NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1860

TIMOTHY CUTRER

VERSUS

LOUISIANA FARM BUREAU CASUALTY INSURANCE COMPANY

Judgment rendered: May 2, 2012

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On appeal from the
21st Judicial District Court
In and for the Parish of St. Helena
State of Louisiana
Suit Number 20,917

Honorable Elizabeth P. Wolfe, Judge

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Robert J. Carter Greensburg, LA	Counsel for Plantiff/Appellee Timothy Cutrer
Stacy Moak Jonathan D. Mayeux Christopher W. Stidham Baton Rouge, LA	Counsel for Defendant/Appellant Louisiana Farm Bureau Casualty Insurance Company

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

GUIDRY, J.

On September 21, 2009, as Timothy Cutrer, the owner of Timothy Trailer Park in Greensburg, Louisiana, was patrolling the property in a golf cart, he discovered that a former resident of the trailer park, Gregory Bell, was on the property despite having been banned from parking on the property. Upon being observed by Mr. Cutrer, Mr. Bell drove his vehicle towards Mr. Cutrer in the golf cart[1] and then stopped. After Mr. Bell stopped, Mr. Cutrer exited the golf cart to approach Mr. Bell's vehicle. As he did so, Mr. Bell drove forward and struck Mr. Cutrer. Upon being struck by Mr. Bell's vehicle, Mr. Cutrer landed on the hood of the vehicle and grabbed the windshield wipers, while urging Mr. Bell to stop the car. Instead, Mr. Bell continued driving off the property, and as he did so, he made a right turn onto Salem Drive, causing Mr. Cutrer to be thrown from the hood of the vehicle onto the roadway.[2] The impact of landing on the road after being thrown from the vehicle caused Mr. Cutrer to sustain serious injuries.

On April 1, 2010, Mr. Cutrer filed a petition for damages against his insurance provider, Louisiana Farm Bureau Casualty Company ("Farm Bureau"), asserting that Mr. Bell's liability insurer had paid him the $10,000 policy limits, but Farm Bureau had not paid any amounts under the uninsured/underinsured motorist or medical payments coverage of his policy, despite demand and proof. Farm Bureau answered the petition generally denying liability. Thereafter, Mr. Cutrer filed a motion for summary judgment seeking a judgment decreeing that coverage was provided under his Farm Bureau policy. Specifically, Mr. Cutrer sought a determination of whether there was coverage under the Farm Bureau policy for his injuries "caused by accident and arising out of the ownership,

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[1] Mr. Cutrer's girlfriend, Marlene Bouterie, was riding with him in the golf cart at the time of the incident.

[2] As a result of the incident, Mr. Bell was charged with one count of aggravated battery, a violation of La. R.S. 14:34.

maintenance, or use of such uninsured automobile." In turn, Farm Bureau filed a cross motion for summary judgment seeking judgment declaring that coverage was not provided under its policy. Following a hearing on the cross motions, the trial court granted Mr. Cutrer's motion for summary judgment and denied the motion filed by Farm Bureau in open court on May 20, 2011. In the written judgment, signed June 13, 2011, the trial court further "ORDERED, ADJUDGED, AND DECREED that this is a final judgment under [Louisiana] Code of Civil Procedure Article 1915B[] as there is not just reason for delay." The trial court did not provide reasons for designating the judgment as final under La. C.C.P. art. 1915(B).[3]

As this matter comes before us pursuant to a partial summary judgment that was designated as a final judgment by the trial court with no explicit reasons, either oral or written, for its determination that no just reason for delay existed, we are required to make a *de novo* determination of whether the designation was proper. R.J. Messinger, Inc. v. Rosenblum, 04-1664, pp. 13-14 (La. 3/2/05), 894 So. 2d 1113, 1122. We cannot determine the merits of this appeal unless our jurisdiction is properly invoked by a valid final judgment. See La. C.C.P. art. 2083.

Some of the factors we are advised to consider in our *de novo* determination of whether the judgment at issue was properly designated as a final judgment

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[3] Louisiana Code of Civil Procedure article 1915(B) provides:

> (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.
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> (2) In the absence of such a determination and designation, any order or decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purpose of an immediate appeal. Any such order or decision issued may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

include: (1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; and (4) miscellaneous facts such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. R.J. Messinger, Inc., 04-1664 at 14, 894 So. 2d at 1122-23.

As noted by our supreme court, Article 1915 attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review available at a time that best serves the needs of the parties. R.J. Messinger, Inc., 04-1664 at 13, 894 So. 2d at 1122. Thus, in considering whether a judgment is properly designated as final pursuant to La. C.C.P. art. 1915, we should "take into account judicial administrative interests as well as the equities involved." See R.J. Messinger, Inc., 04-1664 at 13, 894 So. 2d at 1122 (citing Curtiss-Wright Corporation v. General Electric Company, 446 U.S. 1, 8, 100 S.Ct. 1460, 1465, 64 L.Ed.2d 1 (1980)).

With these precepts in mind to direct our *de novo* review and based on the record before us, we perceive no compelling reason that would justify designating the partial summary judgment appealed herein as final. The sole issue to be addressed by this appeal is whether the trial court erred in finding that the incident wherein Mr. Cutrer was injured constituted an "accident" for purposes of holding that there is coverage for his injuries under his Farm Bureau policy.[4] Thus, on

[4] Louisiana Code of Civil Procedure article 968 expressly states that an appeal does not lie from a court's refusal to render summary judgment, so that portion of the judgment denying Farm Bureau's motion for summary judgment is not before us on appeal.

review, whether we affirm or reverse the summary judgment,[5] any ruling by this court would not end the litigation, but would only result in the matter being remanded to the trial court for further proceedings.

Although Article 1915 dispenses with finality in the sense of completion of the litigation, the judgment rendered must be sufficiently final in that it disposes of the claim or dispute in regard to which the judgment is entered. Doyle v. Mitsubishi Motor Sales of America, Inc., 99-0459, p. 10 (La. App. 1st Cir. 3/31/00), 764 So. 2d 1041, 1047, writ denied, 00-1265 (La. 6/16/00), 765 So. 2d 338. A final judgment determines the merits of a controversy, in whole or in part. La. C.C.P. art. 1841. As the summary judgment appealed does not dispose of Mr. Cutrer's claim against Farm Bureau, but just decides the preliminary issue of coverage, we find that the trial court improperly designated the matter before us as a final judgment.

Moreover, despite the request of the parties to this matter, we decline to convert this matter to an application for supervisory writs, as the record indicates that the motion for devolutive appeal was not filed within the 30-day time delay provided for seeking supervisory writs. See URCA, Rule 4-3; Roba, Inc. v. Courtney, 09-0509, p. 7 n.12 (La. App. 1st Cir. 8/10/10), 47 So. 3d 509, 514 n.12.

Thus, based on our *de novo* finding that the trial court improperly designated the summary judgment as final, we dismiss the appeal for lack of appellate jurisdiction. All costs in this matter are assessed to Louisiana Farm Bureau Casualty Insurance Company.

APPEALED DISMISSED.

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[5] Arguably, to the extent the trial court's determination resulted from a weighing of the evidence, such a determination is not proper for summary judgment proceedings. See Hutchinson v. Knights of Columbus, Council No. 5747, 03-1533, p. 6 n.4 (La. 2/20/04), 866 So. 2d 228, 233 n.4. See also Redden v. Doe, 357 So. 2d 632, 634 (La. App. 1st Cir. 1978); Dykes v. Dykes, 38,723, pp. 4-6 (La. App. 2d Cir. 6/23/04), 877 So. 2d 280, 282-83; Willis v. Tipton, 593 So. 2d 435, 437 (La. App. 2d Cir. 1992); Hartman v. Trinity Universal of Kansas, 551 So. 2d 797 (La. App. 3d Cir.1989), writ denied, 556 So. 2d 1264 (La. 1990); Mangum v. Weigel, 393 So. 2d 871, 873 (La. App. 4th Cir. 1981).