NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 0222

TWENTY-FIRST JUDICIAL DISTRICT
PUBLIC DEFENDER BOARD

VERSUS

TRAVIS CLARK, IN HIS OFFICIAL CAPACITY AS MAYOR, AND CAROLYN OTT, IN HER OFFICIAL CAPACITY AS MAGISTRATE JUDGE OF THE MAYOR'S COURT FOR THE CITY OF WALKER, LOUISIANA

Judgment Rendered: December 23, 2008

Appealed from the
Twenty-first Judicial District Court
In and for the Parish of Livingston, Louisiana
Docket Number 116609

Honorable Elizabeth P. Wolfe, Judge Presiding

****

John I. Feduccia **Hammond, LA**	**Counsel for Plaintiff/Appellant,** **Twenty-first Judicial District Court Public Defender Board**
Stephen Shapiro **John M. Sharp** **Ross A. Dooley** **Baton Rouge, LA**	**Counsel for Defendants/Appellees,** **Travis Clark, Mayor of the Town of Walker, and Carolyn Ott, Magistrate Judge of the Mayor's Court for the City of Walker**

****

BEFORE: CARTER, C.J., WHIPPLE, AND DOWNING, JJ.

WHIPPLE, J.

This is an appeal from a judgment of the Twenty-first Judicial District Court in Livingston Parish. Plaintiff, the Twenty-first Judicial District Court Public Defender Board ("the Public Defender Board"), filed suit for mandamus against defendants, Travis Clark, in his official capacity as Mayor of the town of Walker, and Carolyn Ott, in her official capacity as Magistrate Judge of the Mayor's Court for the Town of Walker.

Specifically, the Public Defender Board averred that because the town of Walker has maintained a population exceeding 5,000 since the year 2002, defendants were mandated since that time, pursuant to LSA-R.S. 15:146,[1] to assess a sum of $35.00 to each criminal defendant in the Mayor's Court in cases in which the defendant was convicted, entered a plea of guilty or *nolo contendere*, or forfeited his bond and to remit the assessment to the Public Defender Board on a monthly basis. The Public Defender Board further averred that despite "due and proper demand," defendants have failed to render an accounting of those assessments and remittances. Thus, the Public Defender Board sought a writ of mandamus, directing defendants to assess special costs pursuant to LSA-R.S. 15:146, retroactive to the year 2002, to account for all assessments of such special costs, and to pay over such sums to the Public Defender Board.

Defendants filed dilatory exceptions raising the objections of prematurity, unauthorized use of a summary proceeding, and improper cumulation, and peremptory exceptions raising the objections of prescription and no cause of action. At the hearing on these exceptions, defendants argued that pursuant to LSA-R.S. 1:11, the population of the town of Walker

---

[1]By La. Acts 2007, No. 307, § 1, LSA-R.S. 15:146 was amended and redesignated as LSA-R.S. 15:168. The effective date of the amendments was August 15, 2007, approximately one month after this suit was filed.

was to be determined by the latest federal census. They further asserted that the 2000 census, the latest federal census, established that the town of Walker's population was less than 5,000, thereby exempting it from the requirements of LSA-R.S. 15:146. Thus, defendants argued that the Public Defender Board's action was premature at least until the 2010 census was conducted, if, indeed, that census established a population of 5,000 or greater. After presenting this argument on their exception of prematurity, defendants offered into evidence, without objection, a certified copy of the 2000 United States census.

Thereafter, defendants argued their exception of no cause of action, asserting that LSA-R.S. 15:146 did not allow for retroactive collection of these assessments against criminal defendants. Thus, they asserted, the Public Defender Board failed to state a cause of action for the retroactive collection of these assessments back to the year 2002.

After argument by counsel, the court stated that it was dismissing the Public Defender Board's petition on the basis of the 2000 census of record. When questioned by counsel for defendants as to whether the court was dismissing the petition on the basis of defendants' exception of prematurity, the court responded that the dismissal was based on the maintaining of the exception of no cause of action and that it, therefore, did not need to consider the remaining exceptions.

From the trial court's judgment maintaining defendants' exception of no cause of action and dismissing the Public Defender Board's suit, the Public Defender Board appeals, asserting that the trial court erred in exceeding the scope of its authority when considering an exception of no cause of action and reaching "the merits of an evidentiary finding" in

maintaining defendants' exception.[2] In support of this assignment of error, the Public Defender Board argues that the trial court committed legal error by relying upon evidence beyond the allegations of its petition, in maintaining the exception of no cause of action.

The peremptory exception raising the objection of no cause of action is a procedural device used to determine the sufficiency in law of the petition. Sharp v. Belle Maison Nursing Home, Inc., 2006-1107 (La. App. 1st Cir. 3/23/07), 960 So. 2d 166, 168. The exception tests whether, under the allegations of the petition, the law affords the plaintiff any remedy for the grievance asserted, and is triable on the face of the pleadings. In ruling on the exception, a court must accept all allegations of the petition as true, and generally, no evidence may be introduced to support or controvert the objection. LSA-C.C.P. art. 931; Sharp, 960 So. 2d at 168. However, the jurisprudence recognizes an exception to this rule that allows the court to consider evidence admitted without objection as enlarging the pleadings. City of New Orleans v. Board of Directors of Louisiana State Museum, 98-1170 (La. 3/2/99), 739 So. 2d 748, 756.

Nonetheless, where a hearing in the trial court encompasses both an exception of no cause of action and another exception or a motion, evidence introduced in support of the other exception or motion, for which evidence is

---

[2]We note that the trial court actually signed two judgments on October 2, 2007, both of which maintained defendants' exception of no cause of action and dismissed the Public Defender Board's petition for mandamus with prejudice. The only difference in the two October 2, 2007 judgments is that the first October 2, 2007 judgment in the record further states that because the Public Defender Board failed to state a cause of action, the court did not need to consider the other exceptions brought by defendants.

However, to the extent that the other October 2, 2007 judgment was silent as to the remaining exceptions, such silence in the judgment is deemed a rejection of those exceptions. See Hayes v. Louisiana State Penitentiary, 2006-0553 (La. App. 1st Cir. 8/15/07), 970 So. 2d 547, 554 n.9, writ denied, 2007-2258 (La. 1/25/08), 973 So. 2d 758. Thus, to the extent that the trial court rendered two judgments that were identical in the relief granted, the second October 2, 2007 judgment was superfluous and unnecessary and, consequently, is invalid. See State v. One (1) 1991 Pontiac Trans Sport Van, VIN # 1 GMCU06D3MT208532, 98-64 (La. App. 5th Cir. 7/9/98), 716 So. 2d 446, 448.

properly admissible, cannot be considered by the court in passing on the exception of no cause of action, for which evidence is not admissible. See Lybrand v. Newman, Drolla, Mathis, Brady & Wakefield, 95-9 (La. App. 5th Cir. 10/31/95), 663 So. 2d 850, 852 & 854 (Where motion for summary judgment and exception of no cause of action were before trial court, trial court improperly considered evidence in ruling on the exception); Gros v. Steen Production Service, Inc., 197 So. 2d 356, 359 (La. App. 4th Cir. 1967) (Evidence adduced in the trial court to support the motion for summary judgment may not be used in arriving at a decision on the merits of the exception of no cause of action); and Fontenot v. Great American Indemnity Company, 127 So. 2d 822, 828 (La. App. 3rd Cir. 1961) (Evidence introduced at hearing could be considered in passing on exception of no right of action, but could not be considered in passing on exception of no cause of action).

In the instant case, defendants introduced into evidence, without objection, a certified copy of the 2000 federal census in conjunction with their argument in support of their dilatory exception raising the objection of prematurity.[3] Indeed, while the Public Defender Board did not object to the introduction of that evidence in support of the exception of **prematurity**, such an objection would have been unfounded given that evidence may be admitted to support or controvert an objection raised by a dilatory exception. LSA-C.C.P. art. 930.

Nonetheless, the admission of evidence without objection in support

---

[3]While the transcript of the hearing indicates that defendants offered the 2000 federal census into evidence, the census is not in contained in the record on appeal. However, because we conclude that the exhibit was not properly considered in ruling on the exception of no cause of action, its absence from the record is irrelevant.

of a dilatory exception cannot be considered as an expansion of the pleadings for purposes of consideration of the exception of no cause of action. See generally Lybrand, 663 So. 2d at 852 & 854, Gros, 197 So. 2d at 359, and Fontenot, 127 So. 2d at 828. To hold otherwise would result in a situation where any time an exception of no cause of action is heard together with any other exception or motion, any evidence properly admitted without objection for another exception or motion would result in an automatic expansion of the pleadings with regard to the exception of no cause of action, where evidence is generally not properly admissible.[4] LSA-C.C.P. art. 930 & 931.

Thus, considering the foregoing, we conclude that the trial court erred in considering the 2000 federal census, introduced in support of defendants' exception of prematurity, when ruling on defendants' exception of no cause of action. Accordingly, we will review the trial court's judgment maintaining the exception of no cause of action without consideration of the 2000 federal census. A court of appeal reviews *de novo* a lower court's ruling maintaining an exception of no cause of action because the exception raises a question of law and because the lower court's decision is generally based only on the sufficiency of the petition. City of New Orleans, 739 So. 2d at 756.

Turning to the instant case, former LSA-R.S. 15:146 and current LSA-R.S. 15:168 requires every court of original criminal jurisdiction,

---

[4]We note that in Block v. Bernard, Cassisa, Elliott & Davis, 2004-1893 (La. App. 1st Cir. 11/4/05), 927 So. 2d 339, 344-345, this court concluded that evidence introduced during the course of a hearing on multiple exceptions and motions enlarged the pleadings for purposes of determining the peremptory exception of no cause of action. However, Block is distinguishable in that the trial court therein, in oral reasons for judgment on the hearing date, specifically stated that its ruling on the exception of no cause of action was based on the "arguments and the evidence that's been presented." Block, 927 So. 2d at 344-345.

except in the town of Jonesville, in the city of Plaquemine, and "in mayors' mayors' courts in municipalities having a population of less than five thousand," to assess, except with regard to parking violations, a fee in cases in which a defendant is convicted after a trial, pleads guilty or *nolo contendere*, or forfeits his bond, unless the defendant has retained private counsel. The "respective recipients" of the assessments shall then remit the assessments to the judicial district's indigent defender fund monthly by the tenth day of the succeeding month. See LSA-R.S. 15:146(A), (B) & (E) (prior to amendment and redesignation by La. Acts 2007, No. 307, § 1) and LSA-R.S. 15:168(B) & (D).

In its petition herein, the Public Defender Board avers that the town of Walker has had a population in excess of 5,000; that the mayor of Walker and the magistrate judge for the Mayor's Court for the Town of Walker are mandated, pursuant to LSA-R.S. 15:146, to assess a $35.00 fee to each criminal defendant who is convicted, pleads guilty or *nolo contendere*, or forfeits his bond; that the mayor and magistrate judge are further mandated to remit the assessment to the Public Defender Board on a monthly basis; and that the mayor and magistrate judge have failed to do so. Accordingly, the Public Defender Board avers that defendants are liable to the Public Defender Board for such assessments.

Considering the applicable law and the allegations of the petition, which we must accept as true for purposes of this exception, we conclude that the Public Defender Board has stated a cause of action pursuant to LSA-R.S. 15:146. Accordingly, the trial court erred in maintaining defendants' exception of no cause of action and dismissing the Public Defender Board's petition for mandamus with prejudice on the basis that the town of Walker

had a population of less than 5,000, and therefore was exempt from the provisions of former LSA-R.S. 15:146 and current LSA-R.S. 15:168.

Considering the foregoing, and in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B), the October 2, 2007 judgment maintaining defendants' exception of no cause of action and dismissing the Public Defender Board's petition for mandamus with prejudice is reversed. This matter is remanded for further proceedings consistent with the views expressed herein. Costs of this appeal in the amount of $545.00 are assessed equally against Travis Clark, in his official capacity as Mayor of Walker, and Carolyn Ott, in her official capacity as Magistrate of the Mayor's Court of the Town of Walker.

REVERSED AND REMANDED.