# SUPREME COURT OF LOUISIANA

## No. 96-CC-2825

## STEVE DOUGLASS, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILD, ANNIE MARIE DOUGLASS; AND THE MINOR CHILDREN, ADAM RUBEN DOUGLASS AND ANDY ALTON DOUGLASS; AND KATHY DOUGLASS

**versus**

## ALTON OCHSNER MEDICAL FOUNDATION; JOHN L. OCHSNER, M.D.; TERRY D. KING, M.D.; AND THE AMERICAN ASSOCIATION OF BLOOD BANKS, INC.

## ON WRIT OF REVIEW TO THE COURT OF APPEAL, FIFTH CIRCUIT, STATE OF LOUISIANA

**TRAYLOR, Justice***

The issue in this case is whether a partial summary judgment that disposes of one or more, but less than all, of the issues in a case is a final judgment which must therefore be immediately appealed in order to seek review of the judgment. Because the Louisiana Code of Civil Procedure clearly authorizes partial summary judgments and provides that such a judgment is a final judgment, we find that the proper vehicle for seeking review of a partial summary judgment is by appeal. Therefore, a supervisory writ normally will not lie to correct an improperly granted partial summary judgment.

**Facts and Procedural History**

On January 24, 1983, defendant John Ochsner performed surgery on Annie Marie Douglass at Ochsner Foundation Hospital to repair multiple heart defects. During the course of surgery and recovery, Douglass received several units of blood and blood products. Douglass had no complications and was discharged on January 29, 1983. She has had no related heart problems or symptoms since.

In March 1993, Douglass was diagnosed as positive for HIV. In December, 1995, plaintiffs Steve Douglass, individually and on behalf of Annie Marie Douglass, Kathy Douglass, and their minor children, Adam Douglass and Andy Douglass (hereinafter “Douglass”), filed suit

*Calogero, C.J., not on panel. Rule IV, Part 2, § 3.

in the 24th Judicial District Court against Dr. Ochsner and Alton Ochsner Medical Foundation (Ochsner), Dr. Terry King, and the American Association of Blood Banks (AABB) alleging various theories of liability, including that Ochsner was strictly liable for the distribution or production of a defective product (blood) and breach of an implied warranty of merchantability.

All defendants subsequently moved for summary judgment or partial summary judgment. Based upon La. R.S. 9:2797,[1] Ochsner moved for, and was granted partial summary judgment dismissing Douglass' claims of strict liability and breach of implied warranty of merchantability.[2] The trial court also granted summary judgment in favor of defendant AABB and partial summary judgment in favor of Dr. King. In response, Douglass sought supervisory writs against all three judgments from the Fifth Circuit Court of Appeal, who denied the application on October 25, 1996. Douglass also moved for and was granted leave to file devolutive appeals against the judgments in favor of defendants AABB and Dr. King.[3] Douglass did not, however, seek leave to appeal the judgment granted in favor of Ochsner. Douglass eventually requested that the Fifth Circuit amend its denial and treat Douglass' writ application as a motion and order for appeal. The Fifth Circuit denied this motion, stating, "The [October] 25, 1996 order of this Court denying writs clearly spelled out plaintiffs' right to a regular appeal following final judgment."

We subsequently granted Douglass' application in order to review the partial summary judgment rendered in favor of Ochsner.

**Partial Summary Judgments**

In *Everything on Wheels Suburu, Inc. v. Suburu South, Inc.*, 616 So.2d 1234, 1241 n.12 (La. 1993), we stated:

> We therefore reserve for another day the question of whether a partial summary judgment, that merely decides one of several claims, defenses, or issues without dismissing any party, is a final judgment which is authorized by Article 1915 and which therefore must be appealed immediately in order to prevent the judgment

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[1]La. R.S. 9:2797, the so-called "blood shield" statute, provided in relevant part:

> Strict liability or liability of any kind without negligence shall not be applicable to . .. hospitals, hospital blood banks . . . in the screening, processing, transfusion, or medical use of human blood and blood components of any kind . . . which results in the transmission of viral diseases undetectable by appropriate medical and scientific laboratory tests.

[2]Douglass' claims of negligence remain for trial.

[3]These appeals are now pending in the Louisiana Court of Appeal for the Fifth Circuit.

from acquiring the authority of a thing adjudged.

We now answer that question in the affirmative and hold that the proper vehicle for seeking review of the grant of a partial summary judgment is by way of appeal and that a supervisory writ normally will not lie to correct an improperly granted partial summary judgment.

The Louisiana Code of Civil Procedure provides that a summary judgment that determines the merits of a case in whole or in part is a final judgment. La. Code. Civ. P. art. 1915, entitled "Partial judgment," expressly authorizes the rendering of a *final judgment* on less than all of the issues in the case when the court grants a summary judgment. La. Code. Civ. P. art. 1915 provides in relevant part:

> A. A final judgment may be rendered and signed by the court, even though it may not grant . . . all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
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> * * *
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> (3) Grants a motion for summary judgment, as provided by Articles 966 through 969 . . .
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> * * *
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> B. If an appeal is taken from such a judgment, the trial court nevertheless shall retain jurisdiction to adjudicate the remaining issues in a case.

Notably, Article 1915 specifically refers to the appealability of such a partial judgment by stating that the trial court will retain jurisdiction over the remaining issues in the case if an appeal is taken from a partial judgment. La. Code. Civ. P. art. 1915(B). Article 966, referenced by Article 1915(A)(3), provides that either party may move for summary judgment "for all *or part* of the relief for which he has prayed." La. Code. Civ. P. art. 966(A)(1) (emphasis added). Article 968, also referenced by Article 1915(A)(3), clearly states that summary judgments are final judgments. Finally, Article 1841, provides that a judgment that decides the merits of the case in whole *or in part* is a final judgment. La. Code. Civ. P. art. 1841 (emphasis added); *Tolis v. Board of Supervisors of La. State Univ.*, 660 So.2d 1206 (La. 1995)(per curiam).

These articles clearly authorize the rendition of a summary judgment which disposes of one or more, but less than all, of the claims or issues presented in a case. These articles also clearly provide that such a judgment is final.

Final judgments are appealable judgments. La. Code. Civ. P. art. 2083(A); *In Re Howard*, 541 So.2d 195, 197 (La. 1989) (per curiam). Thus, the grant of a partial summary judgment, as a

final judgment, is appealable.[4] We have upheld the appropriateness of deciding the merits of a supervisory writ which could terminate the litigation in order to "avoid the waste of time and expense of a possibly useless future trial on the merits." *Herlitz v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 898 (La. 1981). We did so in the interest of "judicial efficiency and fundamental fairness" to the litigants. *Id*. Here, an immediate appeal of a grant of partial summary judgment is equally fundamentally fair to the litigants. An immediate appeal will terminate the litigation and avoid the wastes and possibly useless future trial with equal efficiency. Because a supervisory writ is no more efficient and does not better serve the goals of judicial efficiency and fundamental fairness, an immediate appeal is necessarily an adequate remedy for seeking review of a final judgment. Where there is an adequate remedy by appeal, there normally is no need for the courts to exercise supervisory jurisdiction. As this Court has held, it is a mistake to seek review of a final judgment by supervisory writ rather than by appeal. *In Re Howard*, 541 So.2d at 197; *see Armstrong v. Stein*, 634 So.2d 845 (La. 1994).

Because a partial summary judgment that decides the merits of a case in part is a final judgment subject to immediate appeal, we hold that the proper vehicle for seeking review is by appeal in accordance with La. Code Civ. P. art. 2083(A) and 2121.

**Conversion into Appeal**

Although we now hold that an appeal is the proper vehicle for seeking review, we have previously, in order to "do substantial justice," converted numerous applications for supervisory writs into appeals and remanded to a lower court with instructions to treat the application for supervisory writs as a petition for appeal and to grant that appeal. *E.g., Stein v. Martin*, 97-0287 (La. 3/27/97), 1997 WL 152715 (La.) (per curiam), *In Re Howard*, 541 So.2d at 195; *see* La. Code Civ. P. art. 865.[5] In the instant case, because the law regarding the finality and appealability of partial summary judgments was arguably not yet settled,[6] we likewise convert Douglass' application for supervisory writs into an appeal.

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[4]Conversely, an appeal will not lie from the denial of a summary judgment. La. Code. Civ. P. art. 968.

[5]La. Code Civ. P. art. 865 provides: "Every pleading shall be construed as to do substantial justice."

[6]*See* discussion *supra*. *Everything on Wheels*, 616 So.2d at 1241 n.12. We note, however, that the law is now settled.

**Decree**

For the foregoing reasons and in order to do substantial justice, we therefore remand this matter to the court of appeal to docket as an appeal.[7]

**REMANDED.**

[7]Douglass' Notice of Intention to Apply for Supervisory Writs against the September 4, 1996 judgment in favor of Ochsner was filed on September 9, 1996 and thus would have been timely filed as a Motion for Devolutive Appeal. Additionally, Douglass' Application for Writ to the Fifth Circuit was filed on September 17, 1996: also timely for an appeal.