

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2003 CA 2823

DONNA GLASS, WIFE OF
DAVID LOUIS VOIRON

VERSUS

DAVID LOUIS VOIRON

Judgment Rendered: December 17, 2004.

On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 2000-001373

Honorable Bruce C. Bennett, Judge Presiding

Karen C. Fulda
Ponchatoula, LA

Attorney for Plaintiff-Appellant,
Donna J. Glass

Paul L. Billingsley
Hammond, LA

Attorney for Defendant-Appellee,
David L. Voiron

BEFORE: CARTER, C.J., PETTIGREW, AND MCDONALD, JJ.



CARTER, C. J.

This matter arises out of a petition for divorce filed in Division B (Suit Number 2000-001373) and a petition for the partition of community property filed in Division G (Suit Number 2003-000432), both in the 21st Judicial District Court in Tangipahoa Parish. A judgment of divorce was signed on November 13, 2001. Thereafter, the parties continued to litigate incidental issues involving the partition of community property and the reimbursement/payment of community expenses and debts.

Plaintiff, Donna Glass, appealed an October 2, 2003 trial court judgment ordering that “the matters before the Court [in Division ‘B’] related to community property matters and therefore, all issues before this court are transferred to Division ‘G,’ where the community property partition suit between the parties is filed and allot[t]ed.” Also on October 2, 2003, the trial court signed an order setting the return date for plaintiff’s devolutive appeal from the transfer order. In a handwritten Per Curiam at the bottom of the order of appeal, the trial court noted that “the ‘judgment’ signed may well be an interlocutory decree, appealable by writ only.” Defendant, David Voiron, filed an answer to the appeal on December 24, 2003, arguing that plaintiff’s appeal was an improper appeal of an interlocutory judgment. Additionally, defendant requested attorney’s fees, damages, and costs in connection with having to answer plaintiff’s frivolous appeal. Plaintiff never filed an appellate brief, although she paid the appeal costs.

On March 25, 2004, this Court dismissed plaintiff’s appeal as abandoned, pursuant to Rules 2-12.7 and 2-8.6, Uniform Rules-Courts of Appeal, for failure to timely file a brief and failure to respond to this Court’s

notice to file the brief or suffer dismissal.¹ Because we dismissed plaintiff's appeal, the issue of whether plaintiff's appeal should have been dismissed on the grounds that it was a nonappealable interlocutory judgment is now moot.² However, there still remains defendant's issue of damages, attorney's fees, and costs associated with a frivolous appeal. See **State in Interest of Muse v. Ross**, 26,554 (La. App. 2 Cir. 3/1/95), 651 So.2d 364, 366; **Ecopur, Inc. v. McCloud**, 432 So.2d 380, 381 (La. App. 1 Cir. 1983).

The law allows for damages for frivolous appeals where an appeal was taken solely for purposes of delay, or where counsel for the appellant did not sincerely believe in the merits of the appellant's position. Since plaintiff has not filed a brief specifying any error, it is difficult for us to find that she seriously believed in the merits of her position. See **Capital-Union Savings, F.A. v. Williams**, 528 So.2d 187, 188 (La. App. 1 Cir. 1988); **Schnatz v. Schnatz**, 501 So.2d 318, 320 (La. App. 5 Cir.), writ denied, 504 So.2d 877 (La. 1987). Furthermore, plaintiff's abandonment of her appeal took place after defendant's answer to the appeal was filed seeking damages for frivolous appeal. See **Muse v. Ross**, 651 So.2d at 366. Accordingly, we find that plaintiff's appeal was frivolous and that defendant is entitled to reasonable damages and attorney's fees.³

¹ The appeal was dismissed as to plaintiff only; the remainder of the case was maintained. **Glass v. Voiron**, 2003-2823 (La. App. 1 Cir. 3/25/04)(unpublished Per Curiam).

² We recognize that there can be no appeal from an interlocutory judgment absent a showing of irreparable injury. LSA-C.C.P. art. 2083. A judgment that does not determine the merits but only preliminary matters in the course of an action is an interlocutory judgment as contrasted to a final judgment which determines the merits in whole or in part. LSA-C.C.P. art. 1841. A judgment ordering a transfer or consolidation of actions does not determine the merits, but merely deals with preliminary matters and hence is interlocutory in nature.

³ Louisiana Code of Civil Procedure article 2164 empowers us to award damages for frivolous appeal.

Therefore, we hereby render judgment in favor of defendant, David Voiron, and against plaintiff, Donna Glass, in the amount of \$500.00 in damages for frivolous appeal and \$1,000.00 for attorney's fees. Additionally, costs of this appeal are to be paid by plaintiff, Donna Glass.

DAMAGES AWARDED.