

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 1946

GARY JACKSON, ALICE JACKSON,
AND JOSEPH E. JACKSON

VERSUS

ESTATE OF DONALD RAY GADDIS, FIDELITY FIRE
& CASUALTY INSURANCE COMPANY, AND THE
STATE OF LOUISIANA THROUGH THE
DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT

Judgment Rendered: September 15, 2006.

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On Appeal from the
23rd Judicial District Court,
in and for the Parish of Ascension
State of Louisiana
Trial Court No. 46,618

The Honorable Thomas J. Kliebert, Jr., Judge Presiding

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

McDonald, J. concurs.

CARTER, C.J.

Gary Jackson, Alice Jackson, and Joseph E. Jackson filed suit for injuries sustained in a car accident. Named as defendants were the estate of Donald Ray Gaddis, Fidelity Fire & Casualty Insurance Company (Fidelity), and the State of Louisiana through the Department of Transportation and Development (the State). Plaintiffs filed a supplemental and amending petition adding the Louisiana Insurance Guaranty Association (LIGA) as a defendant. According to the supplemental and amending petition, LIGA was the statutory successor to Fidelity.

The sole issue in this appeal is whether plaintiffs' suit was abandoned pursuant to LSA-C.C.P. art. 561. Whether a suit is abandoned is a question of law; therefore, appellate review is limited to a determination of whether the trial court's interpretive decision is legally correct. **Voisin v. International Companies & Consulting, Inc.**, 05-0265 (La. App. 1 Cir. 2/10/06), 924 So.2d 277, 279, writ denied, 06-1019 (La. 6/30/06), 933 So.2d 132.

Significant to this determination, on May 5, 1999, LIGA moved for summary judgment, and the matter was set for a contradictory hearing on July 12, 1999. The hearing ultimately was continued; however, it is unclear from the record whether plaintiffs' counsel was present at the hearing and prepared to argue against the motion for summary judgment.

It is clear from the record that plaintiffs' July 9, 2002, discovery request, directed at LIGA, was filed into the record within three years of the date LIGA's motion for summary judgment was set for a contradictory hearing. The record also clearly reflects that the State unsuccessfully attempted twice, in 2003 and 2004, to have plaintiffs' suit dismissed as

abandoned. As with LIGA's motion to dismiss, plaintiffs' actively opposed the State's second attempt at dismissal; the State's first attempt was rejected outright by the trial court.

Louisiana Code of Civil Procedure article 561 is to "be liberally construed in favor of maintaining a plaintiff's suit." **Clark v. State Farm Mutual Automobile Insurance Company**, 00-3010 (La. 5/15/01), 785 So.2d 779, 785. Article 561 was not intended to dismiss those cases in which a plaintiff has clearly demonstrated that he does not intend to abandon the action. **Voisin**, 924 So.2d at 280.

For these reasons, the judgment denying the plaintiffs' motion to set aside the judgment of dismissal is reversed, and the judgment of dismissal signed on September 14, 2004, is vacated. The matter is remanded to the district court for further proceedings. Costs of this appeal are assessed to defendant, Louisiana Insurance Guaranty Association. This memorandum opinion is issued in compliance with URCA Rule 2-16.1B.

REVERSED AND REMANDED.