

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0143

THOMAS R. DENTON

VERSUS

*P.A.*  
PAMELA A. VIDRINE, AMERICAN DEPOSIT INSURANCE COMPANY,  
LA SHERIFFS' AUTOMOBILE RISK PROGRAM, AND STATE FARM  
MUTUAL AUTOMOBILE INSURANCE COMPANY

CONSOLIDATED WITH

NO. 2006 CA 0144

PAMELA VIDRINE

VERSUS

THOMAS R. DENTON, RANDALL ANDRE IN HIS CAPACITY  
AS SHERIFF FOR THE PARISH OF WEST BATON ROUGE -- WEST  
BATON ROUGE PARISH SHERIFF'S OFFICE, LOUISIANA SHERIFFS'  
AUTOMOBILE RISK PROGRAM AND XYZ INSURANCE COMPANY

**Judgment rendered December 28, 2006.**

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Appealed from the  
18th Judicial District Court  
in and for the Parish of West Baton Rouge, Louisiana  
Trial Court No. 27,225 c/w No. 27,167  
Honorable James J. Best, Judge

\* \* \* \* \*

LEWIS O. UNGLESBY  
ROBERT M. MARIONNEAUX  
HARRY L. SHOEMAKER, III  
JOHN P. CALMES, JR.  
BATON ROUGE, LA

*Downing, Jr. concurs.*  
*Hughes, Jr. concurs.*

ATTORNEYS FOR  
PLAINTIFF-APPELLANT  
THOMAS R. DENTON

BURT K. CARNAHAN  
EDWARD F. RUDIGER, JR.  
NEW ORLEANS, LA

ATTORNEYS FOR  
DEFENDANT-APPELLEE  
STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY

SUZANNE WILLOUGHBY MILLER  
TERRY J. BUTCHER  
BATON ROUGE, LA

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

**PETTIGREW, J.**

These consolidated cases involve claims for damages resulting from personal injuries arising out of the same vehicular collision.<sup>1</sup> Following a lengthy trial, the jury returned a verdict in favor of plaintiff, Thomas R. Denton, awarding damages totaling \$5,285,908.00 and ordering Mr. Denton's uninsured/underinsured motorist carrier, State Farm Automobile Insurance Company, to pay its policy limit of \$50,000.00 plus court costs and interest from the date of judicial demand until paid.

Thereafter, Mr. Denton filed a "Motion To Introduce Additional Evidence And To Fix Interest," seeking to have the trial court set the interest owed to him by State Farm. According to Mr. Denton's motion, State Farm altered and/or changed the policy language of Mr. Denton's policy during the time in question, in an attempt to limit State Farm's liability for the amount of the interest it owed under the insurance policy. Paragraph nine of the motion sets forth the following allegations:

Subsequent to the signing of this Court's judgment, State Farm has tendered its policy limits together with interest only on the \$50,000.00 policy. However, the plaintiffs have consistently maintained that State Farm is obligated to pay interest in accordance with the original insurance policy, making State Farm liable for the amount of its policy limits together with interest on the entire judgment as a matter of law.

State Farm opposed Mr. Denton's motion, arguing that his motion was in fact an untimely motion for new trial.

Mr. Denton's motion was initially denied by the trial court on February 28, 2005, without a hearing. However, during a March 2, 2005 hearing, the trial court vacated its previous ruling and ordered the parties to file briefs regarding the amount of interest owed by State Farm. After considering the argument of the parties, the trial court denied Mr. Denton's motion in a judgment signed on June 27, 2005.

It is from this judgment that Mr. Denton has appealed, arguing that the trial court erred in finding (1) that his post-judgment motion was a motion for new trial rather than an incidental matter arising out of enforcement of its judgment and (2) that it did not

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<sup>1</sup> See **Denton v. Vidrine**, 2006-0141, 2006-0142 (La. App. 1 Cir. 12/28/06), \_\_\_ So.2d \_\_\_, also decided this date, for a discussion of the facts of this case and DOTD's appeal from the judgment on the merits.

have jurisdiction to decide his motion in a summary proceeding to clarify and enforce its judgment of November 3, 2004. We need not reach the merits of Mr. Denton's appeal.

According to the record, Mr. Denton filed the motion in question on January 10, 2005. Thereafter, on February 2, 2005, the trial court signed the order for suspensive appeal from the judgment on the merits.

It is well settled in Louisiana law that once an order for a suspensive appeal is entered and the appeal bond posted, the trial court is divested of jurisdiction over the matter, except for ten limited situations, none of which are applicable to this case. La. Code Civ. P. art. 2088.<sup>2</sup> Thus, every action taken and the judgment rendered by the trial court subsequent to the granting of DOTD's motion for suspensive appeal on February 2, 2005, and the posting of the appeal bond is a nullity, as jurisdiction over the matter lay at that time exclusively with the court of appeal.

Accordingly, we vacate and set aside the June 27, 2005 judgment below and assess appeal costs in the amount of \$3,325.00 against State Farm Automobile Insurance Company. We issue this memorandum opinion in compliance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

**VACATED AND SET ASIDE.**

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<sup>2</sup> Article 2088 provides as follows:

The jurisdiction of the trial court over all matters in the case reviewable under the appeal is divested, and that of the appellate court attaches, on the granting of the order of appeal and the timely filing of the appeal bond, in the case of a suspensive appeal or on the granting of the order of appeal, in the case of a devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over those matters not reviewable under the appeal, including the right to:

- (1) Allow the taking of a deposition, as provided in Article 1433;
- (2) Extend the return day of the appeal, as provided in Article 2125;
- (3) Make, or permit the making of, a written narrative of the facts of the case, as provided in Article 2131;
- (4) Correct any misstatement, irregularity, informality, or omission of the trial record, as provided in Article 2132;
- (5) Test the solvency of the surety on the appeal bond as of the date of its filing or subsequently, consider objections to the form, substance, and sufficiency of the appeal bond, and permit the curing thereof, as provided in Articles 5123, 5124, and 5126;
- (6) Grant an appeal to another party;
- (7) Execute or give effect to the judgment when its execution or effect is not suspended by the appeal;
- (8) Enter orders permitting the deposit of sums of money within the meaning of Article 4658 of this Code;
- (9) Impose the penalties provided by Article 2126, or dismiss the appeal, when the appellant fails to timely pay the estimated costs or the difference between the estimated costs and the actual costs of the appeal; or
- (10) Set and tax costs and expert witness fees.