

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 2131

WARREN JOSEPH BORDELON

VERSUS

SLIDELL MEMORIAL HOSPITAL AND MEDICAL CENTER; NORTHSHORE
ANESTHESIA GROUP; MAHMOUD DAFTARY, M.D.;
LOUIS HERNANDEZ, A.N., M.D.; JEFFREY BAKER, A.N., M.D.;
JULIE JOYCE, C.R.N.A.; T. JURICH, R.N.; LAURA KENDRICK, R.N.;
BRAD CHAMPAGNE, R.N.; NOELLA HAYES, C.S.T.; KORY KRISTA, C.S.T.,
TOM COOK, R.C.P.T.; AND LUCILLE BRANDT, R.N., C.N.O.R.

Judgment rendered June 8, 2007

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Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 2001-10672
The Honorable Donald M. Fendlason

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LOUIS HERNANDEZ, A.N., M.D.,
JEFFREY BAKER, A.N., M.D., AND
JULIE JOYCE, C.R.N.A.

* * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

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PETTIGREW, J.

Plaintiff, Warren Joseph Bordelon, appeals the judgment of the trial court dismissing, with prejudice, his claims against certain defendants on the ground of abandonment. We affirm.

On February 13, 2001, Mr. Bordelon filed this medical malpractice action against numerous defendants, including Louis Hernandez, A.N., M.D., Jeffrey Baker, A.N., M.D., Julie Joyce, C.R.N.A., and Northshore Anesthesia Group (collectively, Northshore). On September 19, 2002, Northshore filed an answer to the petition.¹ After this answer was filed, nothing was filed into the record for more than three years, other than several motions to enroll or withdraw as counsel of record.

Over three years later, on February 1, 2006, another defendant, Dr. Mahmoud Daftary, filed an *ex parte* motion to dismiss the plaintiff's suit on the ground of abandonment. On February 8, 2006, Mr. Bordelon filed a motion to set the matter for trial, and on February 9, 2006, Northshore filed an *ex parte* motion to dismiss the plaintiff's suit on the ground of abandonment. Although Dr. Daftary and Northshore had filed their motions *ex parte*, the trial court set the motions for contradictory hearing. Prior to the hearing, Mr. Bordelon dismissed his claims against Dr. Daftary; however, Northshore's motion proceeded to hearing.

At the hearing, Mr. Bordelon conceded that more than three years had passed since the last step in the prosecution or defense of the suit on the record. He further acknowledged that under a strict interpretation of La. C.C.P. art. 561, the suit had been abandoned. However, he argued

¹ Another answer had been filed on behalf of Northshore Anesthesia Group, Jeffrey Baker, A.N., M.D., and Julie Joyce, C.R.N.A., on June 4, 2001. Louis Hernandez, A.N., M.D., was not a party to that answer.

that the law of abandonment is to be liberally construed in favor of maintaining the plaintiff's suit, and that the purpose of the law is merely to require that the defendant have notice that there is some movement on the case. According to Mr. Bordelon, Northshore clearly had notice that he was pursuing his claims against them, because his attorneys had corresponded with the attorneys for Northshore about a possible settlement in the matter.

After taking the matter under advisement, the trial court issued written reasons finding that Mr. Bordelon's suit had been abandoned. On June 15, 2006, the trial court signed a judgment in accordance with those reasons, dismissing Mr. Bordelon's claims against Northshore with prejudice. Mr. Bordelon has appealed.

In this matter, the record is undisputed that no formal step was taken in the prosecution or defense of the suit for more than three years after September 19, 2002. The only pleadings that appear on the record during that time are several motions to enroll or withdraw as counsel of record. It is well settled that such motions do not constitute formal steps before the court in the prosecution of the suit. Such motions grant to counsel the right to take steps, or to prepare to take steps, toward the prosecution or defense of a case, but are not considered steps because they do not hasten the matter to judgment. **Paternostro v. Falgoust**, 2003-2214, p. 4 (La. App. 1 Cir. 9/17/04), 897 So.2d 19, 22; writ denied, 2004-2524 (La. 12/17/04), 888 So.2d 870. Moreover, it is equally well settled that ongoing settlement negotiations do not constitute a step in the prosecution or defense of a case sufficient to interrupt abandonment of a case. **Porter v. Progressive Specialty Insurance Company**, 99-2542,

p. 3 (La. App. 1 Cir 11/8/00), 771 So.2d 293, 294-95. Accordingly, after a thorough review of the record, we find no error in the judgment of the trial court. The judgment of the trial court is affirmed, and all costs of this appeal are assessed to Warren Joseph Bordelon.²

AFFIRMED.

² This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.