

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0825

THOMAS ACCARDO

VERSUS

**CHENIER PROPERTY PARTNERS, LLC
AND PARK PROPERTIES, LLC**

Judgment Rendered: October 29, 2010

**Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket Number 2008-13057**

The Honorable Raymond S. Childress, Judge Presiding

**Stephen K. Conroy
Tom D. Snyder
Rebecca E. Fenton
Metairie, LA**

**Counsel for Plaintiffs/Appellants,
Thomas Accardo, Marla wife of/and
Robert Lampp, Susan wife of/and
Edward Roberts, Jr., and Rosemarie de
la Tour and Intervenor/Appellee,
Greenleaves Master Association**

**Bernard S. Smith
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**Counsel for Defendant/Appellee,
St. Tammany Parish**

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McDonald, J. dissents: An interim order for a new judgment would be more efficient and economical and prevent having to file an additional appeal.

McCleendon, J. concurs.

WHIPPLE, J.

This matter is before us on appeal by plaintiffs, Thomas Accardo, Marla and Robert Lampp, Susan and Edward Roberts, Jr., and Rosemarie de la Tour, from a judgment of the trial court granting a motion for summary judgment in favor of St. Tammany Parish and denying plaintiff's cross motion for summary judgment. For the following reasons, we dismiss the appeal and remand the matter.

FACTS AND PROCEDURAL HISTORY

On June 9, 2008, plaintiffs, residents of Chateau Loire, a residential area in Greenleaves Subdivision in Mandeville, Louisiana, filed a petition for injunctive relief and for damages purportedly caused by the widening and redirecting of a drainage ditch within a servitude encumbering plaintiffs' properties. The activities complained of were allegedly undertaken to accommodate the development of Chenier Apartments located on U.S. Hwy. 190 immediately adjacent to plaintiffs' properties.¹ Named as defendants were Chenier Property Partners, L.L.C. ("Chenier") and Park Properties, L.L.C. ("Park"), developers of the Chenier Apartment Development.² In their petition, plaintiffs contended that in November 2007, Chenier, without authority, began widening and redirecting a drainage servitude, and cut down several trees on plaintiffs' properties. Plaintiffs further averred that Chenier diverted waters from its construction site into the drainage servitude, causing the diverted waters to run through plaintiffs' properties.

¹Although Thomas Accardo was the original plaintiff, Marla and Robert Lampp, Susan and Edward Roberts, Jr., and Rosemarie de la Tour subsequently petitioned to join as party plaintiffs.

²Greenleaves Master Association ("GMA") filed a petition for intervention seeking a judicial finding that the drainage servitude at issue exists in favor of GMA and that it was entitled to compensation for any and all damages to its servitude and restoration of the servitude to its original condition.

On July 14, 2008, Chenier and Park filed affirmative defenses and answers to the suit, contending: (1) that the Master Drainage Plan for the Chenier Development had been presented to and approved by the Parish and the City of Mandeville; (2) that plaintiffs' property is subject to a drainage servitude dedicated to St. Tammany Parish, the work performed within the servitude was consistent with the purpose of that servitude and the work was authorized by the Parish; (3) that plaintiffs' claims are barred by prescription, preemption, statutes of limitations, and/or the doctrines of laches and estoppel; and (4) the removal of any trees or shrubs from the Parish's drainage servitude was consistent with the use and nature of a drainage servitude and was performed in good faith. Plaintiffs subsequently amended their petition to name the Parish of St. Tammany (hereinafter "the Parish") as a defendant.

Chenier and Park filed motions for summary judgment, seeking a judicial determination as to whether plaintiffs' properties were subject to a drainage servitude in favor of the Parish. Plaintiffs and GMA filed a cross-motion for summary judgment on the same issue. By judgment dated July 20, 2009, the trial court granted the motions for summary judgment filed by Chenier and Park, denied the motion for summary judgment filed by plaintiffs and GMA, and ruled that "the thirty-foot drainage servitude at issue that runs along the border between Greenleaves Subdivision and the Chenier property was dedicated to St. Tammany Parish and that St. Tammany Parish is the beneficiary of that servitude." The trial court further ordered that Chenier and Park be dismissed from the suit with prejudice. This judgment was not appealed.

The Parish then filed a motion for summary judgment on the issue of whether it was liable to plaintiffs or GMA for the destruction of trees located within the Parish's drainage servitude between Greenleaves Subdivision and the Chenier development. Plaintiffs filed a cross-motion for partial summary

judgment on the issue of whether they are entitled to compensation from the Parish for the “taking” of their property. The cross-motions for summary judgment were heard before the trial court on October 9, 2009. At the conclusion of the hearing, the trial court granted the Parish’s motion for summary judgment and denied plaintiffs’ motion for summary judgment.

Thus, a judgment was signed on October 28, 2009, dismissing the claims of plaintiffs and GMA against the Parish “for any liability for destruction of any tree previously located within the Parish of St. Tammany’s drainage servitude that exists between Greenleaves Subdivision and the Chenier development that occurred during the expansion of the drainage ditch within that servitude as claimed by plaintiffs and intervenor in their petitions.” The judgment further ordered that plaintiffs’ cross-motion seeking summary judgment “that they are entitled to compensation from the Parish for the taking and/or damaging of their property” was denied.

Written reasons for judgment were subsequently issued by the trial court on January 12, 2010, at plaintiffs’ request. The trial court provided the following explanation in its written reasons for judgment:

At issue is the liability of the “Parish” for its authorization allowing the widening of a ditch along the border of the “plaintiffs” property in Greenleaves Subdivision, and the Chenier development in Mandeville, Louisiana. The border is subject to a servitude of drainage preexisting the development of Greenleaves. During the course of the Chenier Property construction, the parish authorized widening the drainage ditch by clearing trees within the servitude, which was done predominantly on the Chenier property. “Plaintiffs” urge the court to find that this widening amounts to unauthorized taking of their property by the “Parish[,]” which the court declines to do so.

The court has previously ruled that the servitude of drainage preexisted the development of Greenleaves. Maintenance, tree removal, and expansion of the ditch within the servitude is an accessory right ... to the maintenance of a dedicated servitude. Additionally, when the “Parish” contracted with others for the work to be done, it acted within their discretionary authority, for which it is statutorily immune from suit.

Plaintiffs filed the instant appeal, contending that the trial court erred in: (1) finding that St. Tammany Parish could authorize the removal of trees and the widening of a drainage servitude on the plaintiffs' property, in order to receive waters from an adjacent subdivision that previously flowed through undeveloped land, without paying just compensation to the landowners on whose property the drainage servitude is located; and (2) concluding that the Parish is immune from suit for the actions described above.

DISCUSSION

At the outset, the initial issue that we must address in this appeal is whether the trial court's judgment of October 28, 2009 is a final appealable judgment. Appellate courts have the duty to determine *sua sponte*, whether their subject matter jurisdiction exists even when the parties do not raise the issue. Motorola, Inc. v. Associated Indemnity Corporation, 2002-1351 (La. App. 1st Cir. 10/22/03), 867 So. 2d 723, 725-726.

Under Louisiana law, a final judgment is one that determines the merits of a controversy, in whole or in part. LSA-C.C.P. art. 1841. A final judgment must be identified as such by appropriate language. LSA- C.C.P. art. 1918. In contrast, an interlocutory judgment does not determine the merits, but only preliminary matters in the course of an action. LSA-C.C.P. art. 1841. An interlocutory judgment is appealable only when expressly provided by law. LSA-C.C.P. art. 2083(C).

A valid judgment must be precise, definite and certain. Laird v. St. Tammany Parish Safe Harbor, 2002-0045 (La. App. 1st Cir. 12/20/02), 836 So. 2d 364, 365. A final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. See Carter

v. Williamson Eye Center, 2001-2016 (La. App. 1st Cir. 11/27/02), 837 So. 2d 43, 44.

As noted above, as an appellate court, we are required to note our lack of jurisdiction, if such exists. Although this matter was docketed for appeal, on review, we find that the judgment in the instant case does not contain proper decretal language necessary for a final appealable judgment. Specifically, although the October 28, 2009 judgment purports to grant the Parish's motion for summary judgment and deny plaintiffs' motion for summary judgment, it does not dismiss the Parish as a defendant in these proceedings, nor does it dismiss the plaintiffs' suit. Thus, it is unclear from the judgment whether the entirety of plaintiffs' case is disposed of or dismissed by the judgment. If, in fact, the trial court intended to dispose of the only remaining claim against the Parish, the judgment lacks the appropriate decretal language to do so. Instead, it is unclear whether the trial court intended that the judgment dismiss any and all of the remaining claims asserted by the plaintiffs against the Parish, *i.e.*, the suit in its entirety, a determination which must be evident from the language of the judgment without resort to pleadings filed or reference to other documents in the record. See Laird v. St. Tammany Parish Safe Harbor, 836 So. 2d at 366. Moreover, without this necessary decretal language, it is unclear whether the judgment is a partial summary judgment, which requires the trial court's express designation that the judgment is final and appealable and that there is no just reason for delay pursuant to LSA-C.C.P. art. 1915. See Motorola, Inc. v. Associated Indemnity Corporation, 867 So. 2d at 732.

Thus, in the absence of such decretal language, the judgment before us is defective and cannot be considered as a "final judgment" for the purpose of an immediate appeal. LSA-C.C.P. art. 1915(B); see Carter v. Williamson Eye Center, 837 So. 2d at 44. In the absence of a valid final judgment, this court lacks

jurisdiction to review this matter. See Laird v. St. Tammany Parish Safe Harbor, 836 So. 2d at 366; Jenkins v. Recovery Technology Investors, 2002-1788 (La. App. 1st Cir. 6/27/03), 858 So. 2d 598, 600; Johnson v. Mount Pilgrim Baptist Church, 2005-0337 (La. App. 1st Cir. 3/24/06), 934 So. 2d 66, 67. Therefore, we dismiss the appeal, but without prejudice, and remand this matter to the trial court for further proceedings. Once a proper final judgment has been signed, a new appeal and a request for expedited docketing thereof may be filed. Assessment of appeal costs are to await a final determination of this suit.

APPEAL DISMISSED; REMANDED.