NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 1304

SCOTT JARRED

VERSUS

GARY MICHAEL BROWN, J & J DIVING CORPORATION AND PROGRESSIVE INSURANCE COMPANY

Judgment Rendered: MAR 12 2015

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On Appeal from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Trial Court No. 2010-17762

Honorable Martin Coady, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McClendon, J concurs for reasons assigned.

HIGGINBOTHAM, J.

An excess insurer of a corporation appeals the grant of a motion for summary judgment in favor of the plaintiff finding coverage under the excess policy for plaintiff's claims. Because we conclude the judgment was improperly certified as final, we dismiss the appeal.

DISCUSSION

This suit arises from a motor vehicle accident. On May 26, 2010, around 10:45 p.m., Gary Michael Brown was driving a truck owned by his employer J&J Diving Corporation, when he collided with a St. Tammany Parish Sheriff's Department cruiser driven by plaintiff, Deputy Scott Jarred. After the accident, Jarred filed suit against Brown, J&J, and J&J's primary insurer, Progressive Insurance Company. On May 22, 2012, Jarred filed a supplemental and amending petition for damages, adding as defendants XL Specialty Insurance Company and Valiant Insurance Company (collectively "Underwriters"), who provided a Marine Excess Liability Policy ("Bumbershoot policy") in favor of J&J. On May 24, 2012, Jarred entered into a **Gasquet**[1] release that settled all claims against J&J, Brown, and Progressive. In the release, Jarred reserved his claims under any excess and umbrella insurance policies.

On December 5, 2013, Underwriters filed a motion for summary judgment, contending that the Bumbershoot policy issued to J&J provided coverage for commercial diving contractor operations and the automobile accident was in no way related to J&J's commercial diving contractor operations. Therefore, Underwriters argued that the Bumbershoot policy offers no coverage for Jarred's accident.

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[1] **Gasquet v. Commercial Union**, 391 So.2d 466 (La. App. 4th Cir. 1980), writ denied, 396 So.2d 921 (La. 1981).

On February 14, 2014, Jarred filed an opposition to Underwriters' motion for summary judgment and a cross-motion for summary judgment, requesting that the trial court find coverage for him under the Bumbershoot policy. Jarred argued that the policy's use of the word "contractor" expanded the coverage of the policy, and the policy followed form with the Progressive policy, which provided coverage to the Jarred.

After a hearing on the cross-motions, the trial court granted summary judgment in favor of Jarred and denied the motion filed by Underwriters. In the written judgment, signed on June 5, 2014, the trial court stated, "the Court certifies this is a final judgment as the Court finds there is no just reason for delay." The trial court did not provide reasons for designating the judgment as final under La. Code Civ. P. art. 1915(B).[2]

As this matter comes before us pursuant to a partial summary judgment that was designated as a final judgment by the trial court with no explicit reasons, either oral or written, for its determination that no just reason for delay existed, we are required to make a *de novo* determination of whether the designation was proper. **R.J. Messinger, Inc. v. Rosenblum**, 04-1664 (La. 3/2/05), 894 So.2d 1113, 1122.

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[2] Louisiana Code of Civil Procedure article 1915(B) provides:

> (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.
>
> (2) In the absence of such a determination and designation, any order or decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purpose of an immediate appeal. Any such order or decision issued may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

We cannot determine the merits of this appeal unless our jurisdiction is properly invoked by a valid final judgment. See La. Code Civ. P. art. 2083.

Some of the factors we consider in our *de novo* determination of whether the judgment at issue was properly designated as a final judgment include: (1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; and (4) miscellaneous facts such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. **R.J. Messinger, Inc.**, 894 So.2d at 1122–23.

As noted by our supreme court, La. Code Civ. P. art. 1915 attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review available at a time that best serves the needs of the parties. **R.J. Messinger, Inc.**, 894 So.2d at 1122. Thus, in considering whether a judgment is properly designated as final pursuant to article 1915, we should "take into account judicial administrative interests as well as the equities involved." See **R.J. Messinger, Inc.**, 894 So.2d at 1122.

With these precepts in mind to direct our *de novo* review and based on the record before us, we perceive no compelling reason that would justify designating the partial summary judgment appealed herein as final. The sole issue to be addressed by this appeal is whether the trial court erred in finding coverage for Jarred's accident under the Bumbershoot policy. Thus, on review, whether we affirm or reverse the summary judgment, any ruling by this Court would not end the litigation, but would only result in the matter being remanded to the trial court for further proceedings.

Although Article 1915 dispenses with finality in the sense of completion of the litigation, the judgment rendered must be sufficiently final in that it disposes of the claim or dispute in regard to which the judgment is entered. **Doyle v. Mitsubishi Motor Sales of America, Inc.**, 99-0459 (La. App. 1st Cir. 3/31/00), 764 So.2d 1041, 1047, writ denied, 00-1265 (La. 6/16/00), 765 So.2d 338. A final judgment determines the merits of a controversy, in whole or in part. La. Code Civ. P. art. 1841. As the summary judgment appealed does not dispose of Jarred's claim against Underwriters, but just decides the preliminary issue of coverage, we find that the trial court improperly designated the matter before us as a final judgment.

Thus, based on our *de novo* finding that the trial court improperly designated the summary judgment as final, we dismiss the appeal for lack of appellate jurisdiction. All costs in this matter are assessed to appellants, XL Specialty Insurance Company and Valiant Insurance Company.

APPEAL DISMISSED.

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McCLENDON, J., concurs.

While I disagree with the majority and find that certification on the issue of coverage is proper and meets the requirements set forth in **Messinger**,[1] I concur with the result reached given that the judgment lacks appropriate decretal language. See LSA-C.C.P. art. 1918. A valid judgment must be precise, definite, and certain. **Laird v. St. Tammany Parish Safe Harbor**, 02-0045 (La.App. 1 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**, 01-2016 (La.App. 1 Cir. 11/27/02), 837 So.2d 43, 44. These determinations should be evident from the language of a judgment without reference to other documents in the record. **Laird**, 836 So.2d at 366. The judgment at issue merely indicates that "Scott Jarred's Motion for Summary Judgment on the issue of insurance coverage is hereby GRANTED." In the absence of appropriate decretal language, the judgment before us is defective and cannot be considered as a "final judgment." See **Carter**, 837 So.2d at 44.

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[1] See **Gibbens v. Whiteside**, 04-1222 (La.App. 1 Cir. 5/6/05), 915 So.2d 866, 868-69, writ denied, 05-1525 (La. 12/16/05), 917 So.2d 1116.