NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0837

SPANISH LAKE RESTORATION, L.L.C.

VERSUS

SHELL OIL COMPANY, WICHITA RIVER OIL CORPORATION, LIBERTY OIL & GAS CORPORATION, LIBERTY RESOURCES, INC., WHITTON COMPANY, INC., INTERNATIONAL PETROLEUM AND EXPLORATION OPERATING CORPORATION, PATRICK PETROLEUM CORPORATION, TEXAS INTERNATIONAL PETROLEUM CORPORATION, EXXONMOBILE OIL COPRORATION, H.L. HAWKINS, JR., INC., AND GOODRICH PETROLEUM COMPANY, L.L.C.

Judgment Rendered: APR 18 2016

Appealed from the
Eighteenth Judicial District Court
In and for the Parish of Iberville, Louisiana
Docket Number C69702

Honorable Alvin J. Batiste, Jr., Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

WHIPPLE, C.J.

In this appeal, plaintiff and a defendant/appellant challenge the trial court's ruling on a motion for partial summary judgment and motion for summary judgment, which granted, in part, and denied, in part, defendant Shell Oil Company's ("Shell") motions. First, Shell asserts that the trial court's ruling was incorrect as it failed to dismiss the claims asserted against it by plaintiff, Spanish Lake Restoration, L.L.C. ("Spanish Lake"), based upon liberative prescription. Shell further asserts that the trial court erred in reserving to Spanish Lake potential remedies pursuant to the Louisiana Conservation Servitude Act, LSA-R.S. 9:1271, *et seq.*, and LSA-R.S. 30:29, *et seq.* Conversely, Spanish Lake appeals, averring that the trial court erred by partially granting summary judgment in Shell's favor based on the subsequent purchaser doctrine, even though, as noted above, the trial court reserved to Spanish Lake two alternative theories of recovery. For the following reasons, we dismiss the appeal for lack of jurisdiction as taken from a partial judgment which is not immediately appealable under the provisions of LSA-C.C.P. art. 1915.

FACTS AND PROCEDURAL HISTORY

In 1940, defendant Shell was granted a mineral lease concerning more than 4,000 acres situated in both Ascension and Iberville Parishes. Due to the size of the acreage and landowner requirements, for rapid development, Shell subleased portions of the property to third parties for oil production, reserving only a non-operational royalty interest as to a portion of the property (referred to as the "Non-Shell Area"), and conducting operations on another portion of the property until 1981 (referred to as the "Shell Area"). Natalbany Lumber Company was the original landowner at the time of the lease, but between 1940 and 1996, ownership of the leased property changed

multiple times. In 1996, Lago Espanol, LLC ("Lago") acquired the entire leased property. In 2009, Lago sold the property to Spanish Lake.

This action was commenced in 2010, when Spanish Lake filed a petition for damages against Shell and other oil-production companies whose exploration and production activities allegedly contaminated certain sections of the property Spanish Lake purchased from Lago. On April 4, 2014, Shell filed a motion for partial summary judgment, seeking a dismissal of Spanish Lake's claims against it with respect to the property on which it never operated, i.e., the "Non-Shell Area." Specifically, Shell's motion regarding the "Non-Shell Area" argued that dismissal was warranted on the basis of the subsequent purchaser doctrine and liberative prescription. At a June 13, 2014 hearing, the trial court granted Shell's motion, in part, pursuant to the subsequent purchaser doctrine, but denied the motion as related to Shell's prescription argument.

On October 29, 2014, Shell filed a motion for summary judgment, contending that *all* claims against it, including those related to the "Shell Area" *and* the "Non-Shell Area" should be dismissed pursuant to the subsequent purchaser doctrine and liberative prescription, as its operations ceased before 1981, long predating Spanish Lake's, and even Lago's, purchase of the property. The trial court affirmed its earlier ruling, granting summary judgment in part, and denying in part.

On November 25, 2014, the trial court issued a written judgment, setting forth its ruling on both the motion for partial summary judgment and motion for summary judgment filed by Shell. In pertinent part, the judgment states:

> Considering all pleadings in the case, argument and summary judgment evidence presented with and in opposition to the Motions heard on the

aforementioned dates, including all summary judgment evidence filed with pleadings as well as the evidence and/or introduced at the time of hearing ..., and for reasons orally assigned, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

A. Plaintiff's claims for damages caused to the Plaintiff's Property (as defined in the Petition) and inflicted prior to the acquisition of the Property on January 15, 1996 by Lago Espanol, L.L.C. are dismissed with prejudice, and any claims based upon rights of Lago Espanol, L.L.C. accruing for damage inflicted thereafter, to the extent they were not further conveyed to the Plaintiff **as referenced in the oral reasons for ruling, are also dismissed with prejudice pursuant to the subsequent purchaser rule; notwithstanding the foregoing dismissals, any remedies available at law pursuant to the Louisiana Conservation Servitude Act (La. R.S. 9:1271-76), or under La. R.S. 30:29, are preserved, unless maintenance of such claims is contrary to the constitution of the State of Louisiana or of the United States.**

B. The Motions for Summary Judgment and Partial Summary Judgment **based on prescription are denied** at this time **for the reasons orally assigned.**

* * *

D. All legal and factual issues not expressly resolved in this judgment are reserved for further proceedings in accordance herewith and the outcome of any appeal hereof.

* * *

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this judgment, as to all rulings on the referenced motions argued and heard on June 13, 2014 and October 29, 2014, determines one or more but less than all of the claims, demands, issues or theories of the case, and that the interest of justice warrant, and this Court hereby expressly determines, **that there is no just reason for delay in designating this judgment as a partial final judgment pursuant to article 1915(B)(1) of the Louisiana Code of Civil Procedure** and that the parties expressly agree to such designation.

(Emphasis added).

In response to the November 25, 2014 judgment, both Spanish Lake and Shell filed the instant appeal. On appeal, Spanish Lake essentially contends that the trial court erred in dismissing its claims pursuant to the subsequent purchaser doctrine. Contrariwise, Shell appeals, arguing that the trial court erred in reserving to Spanish Lake potential theories of recovery and in refusing to dismiss all claims raised against it based on prescription.

DISCUSSION

At the outset, we note that Louisiana courts require that a judgment be precise, definite and certain. Vanderbrook v. Coachmen Industries, Inc., 2001-0809 (La. App. 1st Cir. 5/10/02), 818 So. 2d 906, 913. Moreover, we recognize, as demonstrated by the record herein, the magnitude and complexity of the various claims and factual defenses. However, despite this court's best efforts, the judgment as rendered by the trial court is so imprecise and unclear that we are unable to provide meaningful appellate review. For example, the lack of definiteness in the judgment is demonstrated by the fact that the judgment dismisses some of Spanish Lake's claims pursuant to the subsequent purchaser doctrine "as referenced in the oral reasons for judgment." However, the **oral reasons** are neither attached to, nor included in, the judgment, nor were these reasons distilled into any ruling or stipulation in order that they may be preserved for appellate review. Accordingly, we first note that we cannot discern from the language of the **judgment** exactly what claims have been dismissed pursuant to the subsequent purchaser doctrine and what claims are actually "preserved." Additionally, the judgment states that it preserves to Spanish Lake two alternative theories of recovery, i.e., under the Louisiana Conservation Servitude Act and LSA-R.S. 30:29, *et seq.*, but then qualifies

this reservation of rights, to say that these theories of recovery survive only if maintenance of "such claims" is not "contrary to the constitution of the State of Louisiana or of the United States." Again, we cannot discern what constitutes "such [maintained] claims," particularly since they are contingent on a constitutional finding.

In addition to the lack of specificity of the judgment, we must resolve whether the trial court properly designated the judgment as final pursuant to LSA-C.C.P. art. 1915. As an appellate court, we are obligated to recognize any lack of jurisdiction if it exists. This court's appellate jurisdiction extends to "final judgments," which are those that determine the merits in whole or in part. LSA-C.C.P. arts. 1841 and 2083; See Van ex rel. White v. Davis, 2000-0206 (La. App. 1st Cir. 2/16/01), 808 So. 2d 478, 483. However, a judgment that only partially determines the merits of an action is a partial final judgment and, as such, is immediately appealable only if authorized by LSA-C.C.P. art. 1915. Rhodes v. Lewis, 2001-1989 (La. 5/14/02), 817 So. 2d 64, 66.

Here, while the judgment at issue dismisses Spanish Lake's **environmental damage claims** pursuant to the subsequent purchaser doctrine, it reserves to Spanish Lake **alternative theories of recovery** under both the Louisiana Conservation Servitude Act and LSA-R.S. 30:29, *et seq.* Therefore, the judgment does not determine the merits of all of the claims pending in the case and, thus, constitutes a partial judgment that is appealable only if authorized by article 1915. See Succession of Brantley, 96-1307 (La. App. 1st Cir. 6/20/97), 697 So. 2d 16, 18, and Boutte v. Meadows, 2013-1189, pp. 5-6 (La. App. 1st Cir. 2/18/14) (unpublished), 2014 WL 651754, pp. 4-5. Whether a partial judgment is immediately appealable is determined by examining the requirements set forth in LSA-

C.C.P. art. 1915. State, Department of Transportation and Development v. Henderson, 2009-2212 (La. App. 1st Cir. 5/7/10), 39 So. 3d 739, 741. Subpart A of LSA-C.C.P. art. 1915 designates certain categories of partial judgments as final judgments subject to immediate appeal without the necessity of any designation of finality by the trial court, while Subpart B of LSA-C.C.P. art. 1915 provides that when a court renders a partial judgment, partial motion for summary judgment, or exception in part, it may designate the judgment as final when there is no just reason for delay.[1]

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[1]Louisiana Code of Civil Procedure article 1915, in pertinent part, provides:

A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

(1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.

(2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.

(3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).

(4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.

(5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.

(6) Imposes sanctions or disciplinary action pursuant to Article 191, 863, or 864 or Code of Evidence Article 510(G).

B. (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 against a party, 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 such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and 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.

The November 25, 2014 judgment at issue herein, which, in part, grants summary judgment in favor of Shell on the basis of the subsequent purchaser doctrine, yet reserves to it alternative theories of recovery, and which partially denies summary judgment on the basis of liberative prescription, does not fall within any of the categories identified in Subpart A of LSA-C.C.P. art. 1915. The judgment does not: (1) dismiss the suit as to any party; (2) grant a motion for judgment on the pleadings; (3) pertain to an incidental demand that was tried separately; (4) adjudicate the issue of liability; or (5) impose sanctions or disciplinary action. Moreover, while the judgment does grant a motion for partial summary judgment, it constitutes a summary judgment under the provisions of LSA-C.C.P. art. 966(E), which authorizes the grant of a summary judgment "dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties." However, summary judgments granted pursuant to LSA-C.C.P. art. 966(E) are specifically excluded from the types of partial summary judgments that are immediately appealable under LSA-C.C.P. art. 1915(A) without the need for a designation of finality. See LSA-C.C.P. art. 1915(A)(3).

Thus, because the judgment is not a final judgment for purposes of an immediate appeal under the provisions of LSA-C.C.P. art 1915(A), this court's jurisdiction depends upon whether the judgment was properly designated as a final judgment pursuant to LSA-C.C.P. art. 1915(B)(1). See LSA-C.C.P. art. 1911(B) and 2083. The judgment herein does state that "the parties expressly agree to such [a] designation." However, neither such an agreement nor the trial court's designation are determinative of this court's

jurisdiction.[2] Davis, 808 So. 2d at 481, n.2. Rather, we must determine whether the designation was proper. Moreover, since the record[3] contains no reasons for judgment disclosing the basis for the trial court's finality designation, we are required to conduct a *de novo* review to determine whether the judgment was properly designated as final. R.J. Messinger, Inc. v. Rosenblum, 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122 ("If no reasons are given but some justification is apparent from the record, the appellate court should make a *de novo* determination of whether the certification was proper."); see also Meadows, 2014 WL 651754 at *4 (*de novo* review required where the trial judge "gave no explicit reasons" for its determination that no just reason for delay existed).

In reviewing the propriety of the trial court's finality designation, we consider the "overriding inquiry" of "whether there is no just reason for delay," as well as the other non-exclusive criteria trial courts use in making the determination of whether certification is appropriate, known as the Messinger factors, which 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 trial court;
>
> (3) The possibility that the reviewing court might be obliged to consider the same issue a second time; and

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[2]Indeed, while the judgment provides that the parties "expressly agree" to the judgment's designation as "final," by Acts 1999, No. 1263 § 1, the Louisiana Legislature amended LSA-C.C.P. art. 1915, and deleted from it the authority for parties to agree that a partial judgment can constitute a final judgment. R.J. Messinger, Inc. v. Rosenblum, 2004-1664 (La. 3/2/05), 894 So.2d 1113, 1116, n. 3. As such, there is no authority for the parties to confer appellate jurisdiction by stipulating among themselves whether the partial judgment can be certified as final.

[3]As noted above, the appellate record in this case is extensive, and to date, consists of 48 volumes.

(4) Miscellaneous factors 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 t 1122.

Shell's appeal

In this case, insofar as the judgment relates to Shell, we are constrained to conclude that the trial court improperly designated the judgment as final. Shell only seeks appellate review concerning those portions of its motion for summary judgment which were **denied** (i.e., the trial court's reservation of any claims Spanish Lake may have pursuant to the Louisiana Conservation Servitude Act and LSA-R.S. 30:29, and the trial court's alleged failure to dismiss all of Shell's claims based on prescription). While certification is allowed under LSA-C.C.P. art. 1915 of partial judgments which **grant** a motion for summary judgment, it does not authorize the certification of a judgment **denying** a motion for summary judgment. Belanger v. Gabriel Chemicals, Inc., 2000-0747 (La. App. 1st Cir. 5/23/01), 787 So. 2d 559, 563, writ denied, 2001-2289 (La. 11/16/01), 802 So. 2d 612. Accordingly, since the statute does not provide for certification of a partial judgment relating to the **denial** of a partial summary judgment, we are constrained to conclude that this court does not have subject matter jurisdiction over any of Shell's assignments of error. Accordingly, discussion of the Messinger factors as they relate to Shell's appeal is unnecessary.

Spanish Lake's appeal

Spanish Lake seeks appellate review of the partial grant of summary judgment insofar as it dismisses some of Spanish Lake's claims under the subsequent purchaser doctrine. However, as cited above, the judgment

reserved to Spanish Lake "any remedies available at law pursuant to the Louisiana Conservation Servitude Act ([LSA-] R.S. 9:1271-76), or under [LSA-] R.S. 30:29 [...]."[4] Again, we note that the judgment is not clear as to precisely what claims were dismissed. Nevertheless, through these alternative theories of recovery, the possibility remains that Spanish Lake could still be awarded the recovery it seeks, *albeit* on a different basis. Therefore, should Spanish Lake recover using these alternative theories, the second Messinger factor would not be satisfied, i.e., any action by this court could be mooted by future developments in the district court. As such, we likewise are constrained to find that the trial court erred in improperly certifying the partial grant of summary judgment as final. Accordingly, this court lacks jurisdiction to consider Spanish Lake's appeal. See LSA-C.C.P. arts. 1911 and 2083; Henderson, 39 So. 2d at 742.

Supervisory Review

We recognize that where a judgment was improperly certified, this court has the discretion to convert an appeal to an application for supervisory writs and rule on the merits of the application. Stelluto v. Stelluto, 2005-0074 (La. 6/29/05), 914 So. 2d 34, 39. Accordingly, we next

[4]Louisiana Revised Statute 30:29 is a lengthy statute, but Subparts (C)(1) and (4) provide that if during a judicial proceeding, a party admits liability for environmental damage, or the finder of fact determines that environmental damage exists, and determines the party or parties who caused the damage or who are otherwise legally responsible therefore, the court shall order the party or parties responsible to develop a plan for the evaluation or remediation to applicable regulatory standards of the contamination that resulted in the environmental damage. After additional procedural steps, the party admitting responsibility or who is found legally responsible is required "to fund the implementation of the plan."

address whether this court should exercise supervisory review and rule on the merits of Shell and/or Spanish Lake's appeal.

Concerning Shell's appeal, the record reflects that it did not timely file its notice of appeal in order for this action to be converted to an application for supervisory writs. The judgment at issue was signed on November 25, 2014, and the notice of signing of the judgment was sent on December 12, 2014. Shell's Motion and Order for Devolutive Appeal was filed on February 9, 2015, with the trial court order granting this appeal signed on the same day. Pursuant to Uniform Rules – Courts of Appeal, Rule 4-3, which sets forth the filing requirements of supervisory writ applications, "[t]he return date in civil cases shall not exceed 30 days from the date of notice as provided in [LSA-] C.C.P. art. 1914." Here, since Shell did not file its notice of appeal until more than thirty days after the notice of signing of the judgment, and considering the procedural posture of this case, we decline to convert Shell's appeal for review as an application for supervisory writs. See Fils v. Allstate Ins. Co.,, 2015-0360, p. 6 n.5 (La. App. 1st Cir. 12/23/15) (unpublished), 2015 WL 9435273, ("Moreover, it appears that the parties did not file their notices of appeal within the thirty-day delay applicable to supervisory writs, contained in Uniform Rules – Courts of Appeal, Rule 4-3. Thus, we decline to exercise our discretion to convert the appeals to an application for supervisory writs on this basis also."); see also Stelluto, 914 So. 2d at 39 ("Moreover, the jurisprudence indicates that the decision to

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The Conservation Servitude Act provides that judicial actions affecting a conservation servitude may be brought by the "owner of an interest in the immovable property burdened by the servitude." LSA-R.S. 9:1274(1). Further, a conservation servitude is a "nonpossessory interest of a holder in immovable property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of immovable property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects or unimproved immovable property." LSA-R.S. 9:1272(1).

convert an appeal to an application for supervisory writs is within the discretion of the appellate courts.")

Likewise, in the interest of fairness, we find that Spanish Lake's appeal should not be converted into an application for supervisory writs. In Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc., 396 So. 2d 878 (La. 1981) (per curiam), the Louisiana Supreme Court directed that appellate courts should consider an application for supervisory writs under their supervisory jurisdiction, even though relief may be ultimately available to the applicant on appeal, in specific circumstances, i.e., when the trial court judgment was arguably incorrect, a reversal would terminate the litigation (in whole or in part), and there was no dispute of fact to be resolved. Here, a reversal of the trial court's judgment would not terminate this litigation, in whole or in part, where the judgment at issue conditionally dismissed Spanish Lake's claims pursuant to the subsequent purchaser doctrine, while likewise reserving to Spanish Lake two alternative theories of recovery. Therefore, the granting of a writ application will not terminate the litigation at this time, and the parties have an adequate remedy by review on appeal after a final judgment is rendered.[5] See Meadows, 2014 WL 651754 at *5 (unpublished). Accordingly, we decline to convert Spanish Lake's appeal to an application for supervisory writs.

In sum, we conclude that the trial court erred in designating the partial summary judgment as final, and that this court does not have jurisdiction to address Shell's appeal, as its assignments of error challenge the portions of the judgment that denied its motions for partial summary judgment. Further, we conclude that based on our review of the Messinger factors, we likewise

[5]Additionally, we note that because the partial judgment is not a final one, it may be revised by the trial court at any time prior to rendition of judgment on the merits. See Davis, 808 So. 2d at 485.

lack jurisdiction to consider Spanish Lake's appeal, as any action by this court could be mooted by future developments in the district court. Additionally, given the procedural posture of this matter, and considering that Shell did not file its notice of appeal within thirty days from the notice of signing of the judgment, we are precluded from converting its appeal into an application for supervisory writs. We further decline to convert Spanish Lake's appeal into an application for supervisory writs, inasmuch as the granting of a writ application at this time would not terminate the litigation, and the parties have an adequate remedy on appeal after a final judgment.

CONCLUSION

For the above and foregoing reasons, we find that the instant appeals filed by Spanish Lake and Shell are improper, as taken from a judgment that is not final or otherwise subject to immediate appeal. Therefore, the parties' appeals are dismissed *ex proprio motu*, for lack of appellate jurisdiction, and the matter is remanded to the trial court for further proceedings consistent with this opinion. All costs of the appeal are assessed equally to plaintiff/appellant Spanish Lakes Restoration, L.L.C. and defendant/appellant, Shell Oil Company.

APPEAL DISMISSED; REMANDED.