

**NOT DESIGNATED FOR PUBLICATION**

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STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT  
2016 CA 0575

BRAD AND JOY DUET

VERSUS

JERRY LANDRY, JR. AND SIMONEAUX'S MOBILE HOME MOVERS, LLC

Judgment rendered MAR 06 2017

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On Appeal from the  
Twenty-Third Judicial District Court  
In and for the Parish of Assumption  
State of Louisiana  
No. 35001 Div. C  
The Honorable Katherine "Tess" Stromberg, Judge Presiding

\* \* \* \* \*

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Baton Rouge, LA

Attorney for Plaintiffs/Appellees  
Brad and Joy Duet

Tonya Clark  
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Attorney for Defendants/Appellants  
Jerry Landry, Jr. and Simoneaux's  
Mobile Home Movers, LLC

\* \* \* \* \*

**BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.**

## **HOLDRIDGE, J.**

Defendants appeal the trial court's judgment denying their exception of prescription and awarding plaintiffs damages in a tort suit. For the following reasons, we dismiss the appeal for lack of jurisdiction.

### **FACTUAL AND PROCEDURAL HISTORY**

On October 13, 2014, Brad and Joy Duet filed a tort suit against Jerry Landry Jr. and Simoneaux's Mobile Home Movers, LLC (Simoneaux's). Mr. Duet was employed by Simoneaux's, which was owned and operated by Mr. Landry. In August of 2011, Mr. Landry received a check for \$28,095.12 that was payable to Mr. Duet. Mr. Landry asked Mr. Duet to endorse the check, but Mr. Duet was allegedly unaware of what he was signing. The proceeds from the check were deposited into Mr. Landry's account. However, unbeknownst to Mr. Duet, the proceeds of the check were reported as retirement income belonging to him, and he and Mrs. Duet received a bill from the Internal Revenue Service for taxes on the income along with penalties and interest.

In their petition, plaintiffs alleged that the proceeds from the check were liquidated retirement funds belonging to Mr. Duet and they sought a judgment in the amount of those funds as well as for damages, including the IRS interest and penalties and general damages for emotional distress over the matter. Defendants answered the petition, contending that the funds did not belong to Mr. Duet as Mr. Landry had never established a retirement fund for Mr. Duet. Defendants also filed an exception of prescription.

This matter proceeded to a bench trial. The court considered the exception of prescription at the trial and ultimately denied it.<sup>1</sup> Testimony and evidence at trial established that the funds from the check belonged to Mr. Landry; however,

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<sup>1</sup> In addition to the documentary evidence introduced at trial, such as the IRS notices, defendants submitted evidence in support of the exception that included the Duets' depositions and Mr. Landry's deposition.

the trial court found that defendants were liable to plaintiffs for the amount of federal income tax liability plaintiffs incurred on the proceeds. The trial court rendered judgment for plaintiffs against defendants for \$4,733, along with any penalties and interest, representing the tax liability. The trial court also awarded Mr. Duet \$5,000 and Mrs. Duet \$10,000 against defendants for emotional distress.

From this judgment, defendants appeal, and plaintiffs answered the appeal. On appeal, defendants contend that the trial court erred in rendering judgment awarding damages incidental to an alleged conversion when the trial court did not award damages based on the actual conversion; in denying the exception of prescription; in failing to reduce plaintiffs' damages based on their alleged failure to mitigate their damages; and in awarding plaintiffs damages for emotional distress. In their answer to the appeal, plaintiffs contend that the trial court erred in only awarding Mr. Duet \$5,000 instead of \$10,000 as was awarded to Mrs. Duet.<sup>2</sup>

### DISCUSSION

This court on its own motion issued a rule to show cause as to why this appeal should not be dismissed because the written reasons were not set out in an opinion separately from the judgment. See La. C.C.P. art. 1918. The record was supplemented with a judgment allegedly signed February 4, 2016, which contains only the court's rulings and not the reasons for judgment. Therefore, the issue pointed out in the rule to show cause has been resolved.

However, a portion of the judgment is fatally flawed. This court's appellate jurisdiction extends to final judgments, which shall be identified as such by appropriate language. See La. C.C.P. arts. 1918 and 2083; Laird v. St. Tammany Parish Safe Harbor, 2002-0045 (La. App. 1 Cir. 12/20/02), 836 So.2d 364, 365-66.

Although the form and wording of judgments are not sacramental, Louisiana courts

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<sup>2</sup> Plaintiffs initially also contended that the trial court erred in failing to award them damages to cover the state income tax liability they alleged they incurred, but they are no longer raising this contention.

require that judgments be precise, definite, and certain. Id. The amount of the recovery awarded by a judgment must be stated in the judgment with certainty and precision. Costanza v. Snap-On Tools, 2013-0332 (La. App. 1 Cir. 3/5/14), 2014WL886021, 3; In re Succession of Wagner, 2008-0212 (La. App. 1 Cir. 8/08/08), 993 So.2d 709, 724; Vanderbrook v. Coachmen Industries, Inc., 2001-0809 (La. App. 1 Cir. 5/10/02), 818 So.2d 906, 913. The amount must be determinable from the judgment itself, without reference to an extrinsic source, so that a third person could determine from the judgment the amount owed without reference to other documents. Costanza, 2014WL886021 at 3; Wagner, 993 So.2d at 724; Vanderbrook, 818 So.2d at 913-14. This court determined in Wagner that since it was impossible to determine the rate of interest from the judgment, without resort to extrinsic evidence, the interest award was uncertain and indefinite. Wagner, 993 So.2d at 724-25. Similarly, in Costanza, the determination of interest required extrinsic evidence, and this court held that the judgment was not definite and certain. Costanza, 2014WL886021 at 3.

In the present case, the court in the judgment awarded plaintiffs “\$4,733, along with any penalties and interest, for the amount of income tax liability Plaintiffs incurred.” The interest due on the delinquent taxes and penalties are not certain and determinable from the judgment. The judgment does not state the precise rate of interest on the taxes or the period of time for which the interest on the taxes is payable. The judgment does not give any information regarding the amount of the penalties. Therefore, the portion of the judgment concerning interest and penalties on the delinquent taxes is not definite and certain, and the judgment is not a final judgment.

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. Succession of Matthews,

2016-0289 (La. App. 1 Cir. 1/5/17), \_\_\_ So.3d \_\_\_, \_\_\_. Because the judgment in this case is not a valid final judgment, this court lacks jurisdiction to review it. See Gaten v. Tangipahoa Parish School System, 2011-1133 (La. App. 1 Cir. 3/23/12), 91 So.3d 1073, 1074.

### **CONCLUSION**

For the foregoing reasons, we dismiss the appeal, without prejudice, and remand to the district court for further proceedings and for the entry of a final judgment setting forth the interest and penalties on the delinquent taxes with certainty and precision. Assessment of the costs of the appeal is to await final disposition of this matter.

**APPEAL DISMISSED; REMANDED.**