

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0566

BRENDON PRESTON

VERSUS

SOUTHERN UNIVERSITY THROUGH THE BOARD OF SUPERVISORS
OF SOUTHERN UNIVERSITY AGRICULTURAL
& MECHANICAL COLLEGE

Judgment Rendered: FEB 19 2019

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APPEALED FROM THE 19TH JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH, LOUISIANA
DOCKET NUMBER 586,376

HONORABLE JANICE CLARK, JUDGE

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BEFORE: McDONALD, CRAIN, and HOLDRIDGE, JJ.

GJ
Holdridge, JJ. concurs w/ reasons

McDONALD, J.

In this appeal, a tort plaintiff challenges a trial court's decision to dismiss his claims against the defendant based on the trial court's finding that the defendant was the plaintiff's statutory employer. For the following reasons, we dismiss the appeal.

On May 1, 2018, this court issued a rule to show cause order noting four apparent defects in the appeal of this matter. Although the parties responded to the order by brief and again at oral argument, no action was taken to correct the apparent defects. On December 10, 2018, this court issued an interim order remanding this matter to, among other things, "[allow] appellant to correct his motion and order for appeal and [to allow] the district court to correct the Notice of Appeal, to state that the appeal is sought and granted from the June 26, 2017 written judgment, not from 'the February 3, 2017 judgment . . .'"

On December 28, 2018, the district court filed a "Per Curiam" in this court stating, "Appellant has failed to present a corrected Motion and Order of Appeal. Thus, undersigned judge is precluded from correcting the Notice of Appeal."

As the appellate record currently stands, the appeal in this case was taken from an interlocutory, non-appealable judgment, over which this court has no appellate jurisdiction. *See LSA-C.C.P. art. 2083C; McKee v. Wal-Mart Stores, Inc., 06-1672 (La. App. 1 Cir. 6/8/07), 964 So.2d 1008, 1013, writ denied, 07-1655 (La. 10/26/07), 966 So.2d 583.* Because this error is imputable to the appellant, and because appellant has failed to correct the error on remand, we have insufficient evidence to confirm our appellate jurisdiction. Thus, we dismiss the appeal without prejudice.

We assess costs of the appeal to Brendon Preston.

APPEAL DISMISSED.

BRENDON PRESTON

VERSUS

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THROUGH THE BOARD OF
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HOLDRIDGE, J., concurs.

I respectfully concur with the report. The record does not contain the notice of the signing of the June 26, 2017 judgment, and the parties agree that a notice of the signing of the judgment was not sent to the attorneys for the parties as required by La. C.C.P. art. 1913. *See Bell v. Demax Management Inc.*, 2002-0618 (La. 5/24/02), 819 So.2d 293. When the notice of the signing of a judgment is not mailed by the clerk of court to counsel of record for each party, neither the delay for applying for a new trial nor the time for taking an appeal begins to run. *Hamiter v. Hamiter*, 414 So.2d 1379, 1380 (La. App. 2 Cir. 1982); *Police Jury of Ascension Parish v. Shaffett*, 428 So.2d 977, 978 (La. App. 1 Cir. 1983). The requirements for the clerk of court to mail notice of the judgment to the counsel for each party is even more important in this case since the judgment was signed by a judge of another division, who agreed to have the case transferred to her division, and the judgment was not signed by the judge who actually rendered the judgment. Considering the strange procedural posture of this case, I agree with the majority to dismiss the appeal without prejudice, which would allow for the proper notice of the judgment to be mailed by the clerk of court to all parties in accordance with La. C.C.P. art. 1913.