NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2015 CA 1458

SATHISH THIRUVENGADAM

VERSUS

JOHN DOE AND/OR NICHOLSON APARTMENTS AND/OR LOUISIANA STATE UNIVERSITY SYSTEM AND/OR BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, AND ABC INSURANCE COMPANY

Judgment Rendered: AUG 04 2016

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On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C563340

The Honorable Timothy E. Kelley, Judge Presiding

* * * * *

Joshua M. Palmintier
Jennifer G. Prescott
Baton Rouge, LA

Attorneys for Plaintiff/Appellant
Sathish Thiruvengadam

James D. "Buddy" Caldwell
Attorney General
Rodney A. Ramsey
Karen L. Godwin
Assistant Attorneys General
Baton Rouge, LA

Attorneys for Defendants/Appellees
State of Louisiana through the
Louisiana State University System
and the Board of Supervisors of
Louisiana State University
Agricultural and Mechanical College

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Chutz, J. - Concurs with reasons.

BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

HOLDRIDGE, J.

Plaintiff, Sathish Thiruvengadam, seeks review of a judgment that granted appellee's motion for summary judgment and was rendered after the trial court had signed a prior judgment granting appellee's motion for summary judgment and dismissing plaintiff's case, with prejudice.

FACTS AND PROCEDURAL HISTORY

In January 2007, plaintiff was a graduate student at Louisiana State University (LSU), where he also worked as a research assistant to Associate Professor Theda M. Daniels-Race. Plaintiff was scheduled to attend a conference in South Africa where he would present a paper on behalf of Professor Daniels-Race and LSU. On the morning of his departure, plaintiff had arranged for a taxi to drive him to the airport. Plaintiff exited his on-campus apartment and proceeded to the parking lot where the taxi awaited him. As he was descending the exterior stairs of his apartment complex, plaintiff fell and injured his ankle.

Plaintiff purportedly filed a workers' compensation claim against LSU as a result of his injury. However, exactly one year after the accident, plaintiff also filed a lawsuit against LSU asserting a premises liability claim. Plaintiff claims that the particular stair he fell on was unreasonably dangerous because it lacked a metal "nose cap."

LSU filed a motion for summary judgment seeking the dismissal of plaintiff's suit. LSU asserted that it was entitled to tort immunity because plaintiff was injured while in the course and scope of his employment, and thus, plaintiff's exclusive remedy was workers' compensation. Alternatively, with respect to his premises liability claim, LSU argued that plaintiff would be unable to bear his burden under La. R.S. 9:2800 of proving that LSU had either actual or constructive

knowledge of the alleged defect, or that it had failed to timely correct the alleged defect.

A hearing on LSU's motion for summary judgment was held on May 11, 2015.[1] After brief argument, the trial court concluded that plaintiff was in the course and scope of his employment at the time of his injury and, thus, granted LSU's motion for summary judgment. Counsel for LSU indicated that he would prepare the judgment.

On May 20, 2015, the trial court signed a judgment, prepared by counsel for LSU, which granted LSU's motion for summary judgment and dismissed plaintiff's suit, with prejudice.[2] On May 21, 2015, the trial court signed another judgment, this one prepared by plaintiff's counsel. The subsequent May 21, 2015 judgment simply indicated that LSU's motion for summary judgment was "GRANTED."[3] It is from this May 21, 2015 judgment that plaintiff has appealed.

DISCUSSION

It is the duty of a reviewing court to examine subject matter jurisdiction *sua sponte*, even if the issue is not raised by the parties. Glass v. Voiron, 2008-1347 (La.App. 1 Cir. 3/27/09) 2009 WL 838682 (unpublished). As a reviewing court, we are obligated to recognize our lack of jurisdiction if it exists. Midtown Med., L.L.C. v. Dep't of Health & Hosps., 2012-1597 (La.App. 1 Cir. 2/15/13), 113 So.3d 1094, 1095. The record before us contains two judgments, the May 20, 2015 final judgment granting LSU's motion for summary judgment and dismissing plaintiff's suit with prejudice, and the subsequent May 21, 2015 judgment merely granting LSU's motion for summary judgment.

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[1] During the hearing, the trial court was informed that the workers' compensation proceeding had been stayed pending the trial court's ruling on LSU's motion.

[2] In the accompanying certification, counsel for LSU indicated that plaintiff's counsel had objected to the proposed judgment because it cast plaintiff with all court costs. Before signing this judgment, the trial court amended it to provide that the parties were to bear their own costs.

[3] The May 21, 2015 judgement also provided that the parties were to bear their own costs.

In Starnes v. Asplundh Tree Expert Co., 94-1647 (La.App. 1 Cir. 10/6/95), 670 So.2d 1242, this court, addressing amendments to judgments, explained:

> Pursuant to La. [C.C.P.] art. 1951, a final judgment may be amended by the trial court at any time on its own motion or pursuant to the motion of any party to alter the phraseology, but not the substance, of a judgment; or to correct errors in calculation. Thus, under Article 1951, a judgment may be amended where the amendment takes nothing from or adds nothing to the original judgment. Where an amendment to a judgment adds to, subtracts from, or in any way affects the substance of the judgment, such judgment may not be amended under La. [C.C.P.] art. 1951.
>
> Article 1951 does not authorize the amendment of a final judgment to conform with the trial court's reasons for judgment where the amendment would make substantive changes to the original judgment. Indeed, the trial court's written judgment is controlling even though the trial court may have intended otherwise.
>
> The proper vehicle for a substantive change in a judgment is a timely motion for a new trial or a timely appeal. The Louisiana Supreme Court has also recognized that, on its own motion and with the consent of the parties, the trial court may amend a judgment substantively. An amended judgment rendered without recourse to the above procedures is an absolute nullity. [Internal Citations Omitted.]

Starnes, 670 So.2d at 1245-46.

In this case, the change made by the trial court in the subsequent May 21, 2015 judgment, which merely granted LSU's motion but did not dismiss plaintiff's suit, *subtracted from* and thus, constituted a substantive change to, the May 20, 2015 final judgment which granted LSU's motion for summary judgment and dismissed plaintiff's suit with prejudice. See LaBove v. Theriot, 597 So.2d 1007, 1010 (La. 1992). Since the substantive change[4] was not made pursuant to a contradictory motion for new trial filed by the parties or by the court on its own motion pursuant to La. C.C.P. art. 1971, by consent of the parties, or by a timely

[4] Even assuming the change was not substantive, we would nonetheless be unable to entertain plaintiff's appeal because the May 21, 2015 judgment appealed from is not a final judgment. See Gaten v. Tangipahoa Parish School System, 2011-1133 (La.App. 1 Cir. 3/23/12), 91 So.3d 1073, 1074; Brooks v. Sibille, 2012-1093 (La.App. 3 Cir. 1/30/13), 107 So.3d 826, 828. Nor could we consider the matter under our supervisory jurisdiction; plaintiff's motion for appeal was not filed within the required 30-day period for applying for supervisory writs. See URCA, Rule 4-3; see also Tower Credit, Inc. v. Bradley, 2015-1164 (La.App. 1 Cir. 4/15/16), ___ So.3d ___, ___.

appeal, the subsequent amending judgment is an absolute nullity. See Bourgeois v. Kost, 2002-2785 (La. 5/20/03), 846 So.2d 692, 696; McGee v. Wilkinson, 2003-1178 (La.App. 1 Cir. 4/2/04), 878 So.2d 552, 554-55.

Because the May 21, 2015 judgment is an absolute nullity, we lack subject matter jurisdiction to consider the merits of plaintiff's appeal. See Glass, 2009 WL 83868 at *4; Oreman v. Oreman, 2005-955 (La.App. 5 Cir. 3/31/06), 926 So.2d 709, 712-13, writ denied, 2006-1130 (La. 9/1/06), 936 So.2d 206. Rather, we vacate the May 21, 2015 judgment from which this appeal is taken, and we hereby reinstate the May 20, 2015 judgment as the final judgment of the trial court in this matter. See Bougeois 846 So.2d at 696; Wooley v. AmCare Health Plans of Louisiana, Inc., 2006-1146 (La.App. 1 Cir. 1/17/07), 952 So.2d 720, 731.

CONCLUSION

For the foregoing reasons, we vacate and set aside the amending May 21, 2015 judgment and reinstate the original May 20, 2015 judgment. The appeal of the May 21, 2015 judgment is hereby dismissed. Costs of this appeal, in the amount of $1,612.50, are to be split equally between the parties.

AMENDING JUDGMENT VACATED; ORIGINAL JUDGMENT REINSTATED; APPEAL DISMISSED.

SATHISH THIRUVENGADAM **STATE OF LOUISIANA**

VERSUS

JOHN DOE AND/OR NICHOLSON APARTMENTS AND/OR LOUISIANA STATE UNIVERSITY SYSTEM AND/OR BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, AND ABC INSURANCE COMPANY

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CHUTZ, J., concurring.

I disagree with the disposition that the appeal should be dismissed as untimely but feel constrained to concur in the conclusion which, in effect, dismisses the claims of plaintiff-appellant, Sathish Thiruvengadam. See ***Glasgow v. PAR Minerals Corp.***, 2010-2011 (La. 5/10/11), 70 So.3d 765, 767 n.2 (the disposition of the dismissal of an appeal as untimely "was substantially the same" as an affirmance of the district court's dismissal and, therefore, "would perhaps better be characterized as a concurrence").

I agree with the majority that the May 21, 2015 judgment that appellant expressly referenced in his motion for appeal was null and without effect. Thus, I believe, reinstatement of the May 20, 2015 judgment is warranted. See ***Bourgeois v. Kost***, 2002-2785 (La. 5/20/03), 846 So.2d 692, 696.

It is axiomatic that in Louisiana, appeals are favored. See ***Phi Iota Alpha Fraternity, Inc. v. Schedler***, 2014-1620 (La. App. 1st Cir. 9/21/15), 182 So.3d 998, 1002. And where an appellant references the wrong date in the motion for appeal, it is appropriate to examine his intent to determine whether he has preserved his right of appellate review. ***Phi Iota Alpha Fraternity, Inc.***, 182 So.3d at 1001.

To ascertain appellant's intent in seeking appellate review, our focus should be on: the language of the order of appeal; appellant's assertions; and whether the parties briefed issues on the merits of the final judgment. See ***Phi Iota Alpha***

Fraternity, Inc., 182 So.3d at 1001 (relying on ***State, Dep't of Transp. & Dev. v. Estate of Summers***, 527 So.2d 1099, 1100 (La. App. 1st Cir. 1988)).

In the motion for appeal before us, appellant specifically stated that he "desires to appeal devolutively from the Motion for Summary Judgment *granted in open court on May 11, 2015*," and referenced the May 21, 2015 judgment. (Emphasis added.) It is beyond question that appellant clearly and expressly appealed the trial court's grant of summary judgment rendered in open court on May 11, 2015. And while the trial judge did not expressly state that appellant's claims were dismissed as stated in the May 20, 2015 judgment, this inference is clear from his ruling, "So, we will see what [the Office of Workers' Compensation] does with it." See generally La. Const. art. VI, §16 and La. R.S. 23:1310.3F (establishing that district courts are divested of jurisdiction of workers' compensation where the administrative agency determinations have been provided for by law).

The parties briefed the merits of the issues asserted in the motion for summary judgment, and appellees have neither moved to have the appeal dismissed on the basis of the date of the judgment referenced in the motion for appeal nor raised any issues in their appellate briefs challenging the propriety of the appeal on the basis of the incorrect reference to the May 21, 2015 judgment. Lastly, appellees have not claimed any prejudice, and I have found none. Therefore, I believe the appeal is properly before us.

Turning to the merits of the appeal, I agree with the trial court that appellant was in the course and scope of his employment at the time he sustained his injury and, therefore, that his remedy is correctly a claim in the Office of Workers' Compensation. Thus, I would affirm the dismissal of appellant's claims on this basis and, accordingly, concur in the dismissal of the appeal as having substantially the same effect.