

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2021 CA 0585

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR RFMSI 2005S7

VERSUS

WALTER C. DUMAS

Judgment Rendered: DEC 22 2021

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C610504

Honorable Timothy E. Kelley, Judge Presiding

Corey J. Giroir
Natasha D. Fossett
Herschel C. Adcock, Jr.
Patrica Blankenbaker
Alicia B. Cook
Harold E. Cradic, III
Baton Rouge, LA

and

Robert H. Ford
Houston, TX

and

Samuel Martin Dearstyne, *Pro Hac Vice*
Avery A. Simmons
Charlotte, NC

Travis J. Turner
Gonzales, LA

Counsel for Plaintiff/Appellee,
U.S. Bank National Association as
Trustee for RFMSI 2005S7

Counsel for Defendant/Appellant,
Walter C. Dumas

BEFORE: WHIPPLE, C.J., PENZATO, AND HESTER, JJ.

WHIPPLE, C.J.

Defendant appeals a judgment granting a motion for summary judgment filed by the plaintiff. For the following reasons, we dismiss the appeal and deny a pending motion to supplement as moot.

FACTS AND PROCEDURAL HISTORY

This protracted litigation involves a suit on an obligation secured by a mortgage. Defendant, Walter C. Dumas, appeals the December 10, 2020 judgment of the district court entitled “Final Judgment,” which granted a motion for summary judgment filed by plaintiff, U.S. Bank National Association as Trustee for RFMSI 2005S7 (“U.S. Bank National Association”) and provided in pertinent part as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Plaintiff [U.S. Bank National Association’s] Motion for Summary Judgment be, and hereby is, **GRANTED** at Defendant’s costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be **FINAL JUDGMENT** in favor of Plaintiff [U.S. Bank National Association], and against Defendant Walter C. Dumas and at Defendant’s costs, on Plaintiff’s claim for Defendant’s default under the parties’ Promissory Note, awarding Plaintiff damages as follows: (a) Principal sum of \$684,263.55 with interest thereon at 6.00% per annum from September 1, 2011, until paid, together with (b) *any applicable amounts provided for by the Promissory Note, Act of Mortgage, and applicable law such as late charges, escrow advances, corporate advances, property-inspection fees, property-appraisal fees, recording fees, and other fees, together with reasonable attorney’s fees actually incurred by the Plaintiff, if/as applicable, such other or additional amounts incurred or hereafter advanced and proven according to law for taxes, assessments, repairs to and maintenance of the property, and other charges which the Plaintiff is permitted to prove by affidavits filed or submitted before judicial sale.* [Emphasis added by bold and italics.]

The judgment further recognized U.S. Bank National Association’s mortgage, encumbering the property described in the judgment and securing the above-described debt, and declared the mortgage enforceable and entitled to payment with preference and priority over all inferior encumbrances.

After the appeal was lodged, Dumas also filed with this court a Motion and Order to Supplement Record of Appeal, contending that the first petition filed by U.S. Bank National Association, which was fax-filed on March 22, 2012, was omitted from the appellate record transmitted to this court, and requesting that this court order the district court to supplement the record on appeal with the March 22, 2012 fax-filed petition. Thereafter, on July 29, 2021, this court issued a Rule to Show Cause Order, noting that the judgment on appeal requires reference to documents outside the judgment that are not attached to the judgment. Noting also that a final, appealable judgment must be precise, definite, and certain and that the specific relief awarded should be determinable from the judgment without reference to any extrinsic source or to other documents in the record, this court ordered the parties to show cause by briefs whether the appeal should be dismissed. Both the Rule to Show Cause and the Motion to Supplement Record on Appeal are addressed herein.

RULE TO SHOW CAUSE

Louisiana Code of Civil Procedure article 1841 provides that “[a] judgment that determines the merits in whole or in part is a final judgment.” Moreover, LSA-C.C.P. art 1918(A), as amended by & 2 of Act No. 59 of the 2021 Louisiana Regular Legislative Session (Act No. 259), effective August 1, 2021, provides in part as follows:

A final judgment in accordance with Article 1841 shall be identified as such by appropriate language; shall be signed and dated; and shall, in its decree, identify the name of the party in whose favor the relief is awarded, the name of the party against whom the relief is awarded, and the relief that is awarded. ...

These determinations should be evident from the language of a judgment without reference to other documents in the record. D’Luca v. Kirkland, 2020-0713, 2020-0714 (La. App. 1st Cir. 2/19/21), 321 So. 3d 411, 414. As noted in the 2021 Comments to LSA-C.C.P. art. 1918, the issue of whether a judgment

constitutes a final judgment should be determined in accordance with LSA-C.C.P. art. 1841, and a lack of proper decretal language in a judgment that is otherwise a final judgment does not divest the appellate court of jurisdiction.¹ LSA-C.C.P. art. 1918, Comments—2021, comment (a).

As amended by Act No. 259, LSA-C.C.P. art. 1918(A) now provides that “[i]f appealed, a final judgment that does not contain the appropriate decretal language shall be remanded to the trial court, which shall amend the judgment in accordance with Article 1951 within the time set by the appellate court.” Pursuant to LSA-C.C.P. art. 1951, as also amended by Act No. 259, “[o]n motion of the court or any party, a final judgment may be amended at any time ... to correct deficiencies in the decretal language....” Additionally, LSA-C.C.P. art. 2088(A) was amended by Act No. 259 to provide that after the granting of an order of appeal, “the trial court has jurisdiction in the case only over those matters not reviewable under the appeal, including the right to do any of the following: ... (12) Amend a judgment to provide proper decretal language under Article 1918 or 1951.” With regard to these amendments to LSA-C.C.P. arts. 1951 and 2088, the 2021 Comments to LSA-C.C. art. 1951 further provide in part that “[t]he amendments to this Article and Article 2088 allow the trial court to retain jurisdiction to correct on its own motion or after remand from the appellate court, the lack of proper decretal language in a final judgment.” LSA-C.C.P. art. 1951, Comments—2021.

Accordingly, the legislature has now provided a procedural mechanism whereby the appellate court, while retaining appellate jurisdiction over a final

¹This court has previously held that an otherwise final judgment that lacks proper decretal language is not a valid final judgment, such that this court lacked subject matter jurisdiction to review the judgment. See e.g. *D’Luca*, 321 So. 3d at 414, & *Advanced Leveling & Concrete Solutions v. Lathan Company, Inc.*, 2017-1250 (La. App. 1st Cir. 12/20/18), 268 So. 3d 1044, 1046 (*en banc*). However, the 2021 amendments to LSA-C.C.P. art. 1918 clarify that such deficiencies are not jurisdictional defects.

judgment that lacks proper decretal language, shall remand the matter to the district court for correction of deficiencies in decretal language.² Moreover, these rules appear to be procedural in nature such that they should apply retroactively. See LSA-C.C. art. 6.³

Turning to the judgment before us on appeal, the problematic portion of the district court's December 10, 2020 judgment is the portion wherein it awards, in addition to the principal sum due on the note, "any applicable amounts provided for by the Promissory Note, Act of Mortgage, and applicable law such as late charges, escrow advances, corporate advances, property-inspection fees, property-appraisal fees, recording fees, and other fees, together with reasonable attorney's fees actually incurred by the Plaintiff, if/as applicable, such other or additional amounts incurred or hereafter advanced and proven according to law for taxes, assessments, repairs to and maintenance of the property, and other charges *which the Plaintiff is permitted to prove by affidavits filed or submitted before judicial sale.*" (Emphasis added).

In response to the Rule to Show Cause Order, U.S. Bank National Association avers that the foregoing judgment is not final insofar as it "lacks decretal language because it does not fix the costs and fees allowed and instead requires reference to extrinsic documents" and "awards at least twelve different categories of costs and fees without actually fixing the *amounts.*" U.S. Bank National Association contends that the judgment affords it "the opportunity to prove such amounts 'by affidavits filed or submitted before judicial sale.'"

²Notably, any such correction of deficiencies in the decretal language cannot result in a substantive change to the final judgment. LSA-C.C.P. art. 1951, Comments—2021 (Act No. 259).

³ Louisiana Civil Code article 6 provides:

In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.

Accordingly, U.S. Bank National Association concludes that it is therefore impossible to determine the relief granted without reference to other documents, meaning the judgment lacks appropriate decretal language.

U.S. Bank National Association avers that it submitted to the district court an affidavit concerning its costs and fees on February 24, 2021, but that it has continued to incur substantial legal fees responding to Dumas's "various attempts to obtain supervisory and appellate review by this court over the past eight months." As such, U.S. Bank National Association maintains that it has not yet moved the district court to determine the amount of attorney's fees to be awarded.

In his response to the Rule to Show Cause Order, Dumas requests that this court "use its supervisory jurisdiction authority to find an answer to the question of subject matter jurisdiction." Dumas also avers that if this court determines the December 10, 2020 judgment is not a "final appealable judgment," then he "prays this Court issue ... an order that orders Appellee and Appellant to present a judgment containing appropriate decretal language expeditiously to the district court to sign and supplement the appellate record, within the time period set by this Court."

While the 2021 amendments to LSA-C.C.P. art. 1918 require this court to remand matters to district courts to amend judgments involving "decretal language" issues, the December 10, 2020 judgment herein is not defective solely due to decretal language issues. While the judgment does improperly reference extrinsic documents, the more problematic issue is that the judgment does not attempt to delineate or quantify the specific elements of damages actually due and the amounts owed for each outstanding element of damages. Rather, the judgment requires U.S. Bank National Association "to prove [the amounts due] by affidavits filed or submitted before judicial sale." As such, although the district court has determined that U.S. Bank may be owed additional damages, those damages have

yet to be fixed, and the determination and award of those additional damages will require additional actions by the parties as well as the court. A judgment that awards a sum to which must be added the costs of additional expenses that are yet to be calculated is not a final judgment over which this court can exercise appellate jurisdiction. See Aurora Loan Services LLC v. Glass, 2017-1760 (La. App. 1st Cir. 12/6/18) (unpublished), 2018 WL 6381915, *3. Moreover, a judgment is not final when it anticipates a future contingency and includes an order for such an occurrence. See Barfield v. Tammany Holding Company, 2016-1420 (La. App. 1st Cir. 6/2/17) (unpublished), 2017 WL 2399020, *2 (concluding that the district court's judgment granting exceptions of no cause of action only if the defendant were later adjudged liable for additional taxes on the main demand did not constitute a final judgment because it was indeterminate and based on a contingency); Kimsey v. National Automotive Ins. Co., 2013-856 (La. App. 3rd Cir. 2/12/14), 153 So. 3d 1035, 1038-1040 (finding that appellate jurisdiction did not attach "in light of the conditional and uncertain nature of the judgment" where the trial court ordered the plaintiff's insurer to provide knee surgery within a year if pursued by the plaintiff and also awarded loss of future earnings in the event the plaintiff pursued surgery, but further ordered that if surgery were not scheduled within one year of finality of the judgment, any party could seek a determination of whether those costs should be awarded at a future date or whether the obligation should be terminated).

Notably, if the only award still to be quantified and taxed by the district court were attorney's fees, then this court's appellate jurisdiction may have attached given the 2021 amendment to LSA-C.C.P. art. 2088(A)(10), which now specifically provides that the district court retains jurisdiction after the granting of an order of appeal to set and tax attorney's fees. However, to the extent that the judgment requires additional action to be taken by the parties, including

presentation of evidence to the district court, so that the district court may then quantify and award other additional damages that may be due (including, among other things, taxes, assessments, repairs to and maintenance of the property), the judgment at issue is not a final judgment for purposes of appeal until the district court sets those awards following its receipt and consideration of additional evidence. Accordingly, the December 10, 2020 judgment is not a final judgment over which this court has appellate jurisdiction. See Aurora Loan Services LLC, 2018 WL 6381915 at *3.

Additionally, the district court's December 10, 2020 judgment does not fall within any of the categories of partial judgments that are deemed final and immediately appealable pursuant to LSA-C.C.P. art. 1915(A) and further lacks the required certification to be immediately appealable pursuant to LSA-C.C.P. art. 1915(B).

Finally, although this court has discretion to convert an appeal to an application for supervisory writs, it may do so only if the appeal would have been timely had it been filed as a supervisory writ application. Succession of Jaga, 2016-1291 (La. App. 1st Cir. 9/15/17), 227 So. 3d 325, 328 n.2. A party intending to apply to this court for a supervisory writ shall give notice of such intention by requesting a return date to be set by the trial court, which shall not exceed thirty days from the date of the notice of judgment. See Uniform Rules—Courts of Appeal, Rules 4–2 and 4–3. In the instant case, notice of the December 10, 2020 judgment was mailed to the parties on December 15, 2020, and the motion for devolutive appeal was filed on February 19, 2021. Because the motion for appeal was not filed within thirty days of the notice of judgment, it cannot be considered a timely filed application for supervisory writs under Uniform Rules—Courts of Appeal, Rule 4–3. Accordingly, we decline to convert the appeal to an application for supervisory writs. Once a final judgment on the merits of this matter has been

rendered and all issues are properly before this court on appeal, the parties can seek appellate review. See LSA-C.C.P. art. 2083(A); see also Kosak v. Louisiana Farm Bureau Casualty Insurance Company, 2020-0222 (La. App. 1st Cir. 12/10/20), 316 So. 3d 522, 532-533.

MOTION TO SUPPLEMENT

As stated above, Dumas also filed a Motion and Order to Supplement Record of Appeal, requesting that this court order the district court to supplement the record on appeal with the March 22, 2012 fax-filed petition. In light of our action herein dismissing the appeal, we deny the motion to supplement as moot.

CONCLUSION

For the above and foregoing reasons, defendant's appeal of the December 10, 2020 judgment is hereby dismissed, as taken from a judgment that is not final or otherwise subject to immediate appeal. Defendant's Motion and Order to Supplement Record on Appeal is denied as moot. This matter is remanded to the district court for further proceedings consistent with the views expressed herein. Costs of this appeal are assessed against defendant/appellant, Walter C. Dumas.

APPEAL DISMISSED; MOTION TO SUPPLEMENT RECORD ON APPEAL DENIED AS MOOT; REMANDED.