

SUPREME COURT OF LOUISIANA

No. 2006-C-1017

KENDRITH & ONNIE NICHOLS, ET AL.

versus

STATE FARM FIRE & CASUALTY CO.

KNOLL, Justice, dissenting

I respectfully dissent from the Court’s decision to grant State Farm’s writ application,¹ in part, and to reverse the appellate court’s remand of this case to the trial court for the taking of additional evidence.

Courts of appeal have the authority under LA. CODE CIV. PROC. ANN. art. 2164 to remand a case for the introduction of additional evidence if grave injustice might result from failure to do so. Mack v. Southern Farm Bureau Casualty Insurance Company, 434 So. 2d 594, 595 (La.App. 1 Cir.1983), writ denied, 449 So. 2d 1346 (La.1984). A remand for the introduction of additional evidence is warranted only when the new evidence is likely to affect the outcome of the case. White v. West Carroll Hospital, Inc., 613 So. 2d 150, 154 (La.1992).

Although the trial court found the plaintiffs’ home was liveable, it nonetheless found the evidence uncontroverted that more probable than not their home could not be returned to pre-fire status and State Farm was liable to them under the home owner’s policy. The appellate court agreed State Farm was liable to the plaintiffs for the fire damage, but found no evidence bearing upon the salvage value and actual

¹ “Within thirty days of the mailing of the notice of the judgment and opinion of the court of appeal, a party may apply to the supreme court for a writ of certiorari.” LA. CODE CIV. PROC. ANN. art. 2166. State Farm Fire & Casualty Co. is the only party who filed a writ application with this Court after the appellate court rendered judgment on April 5, 2006.

cash value of the home, as well as the proposed repairs. Under these facts, I find the appellate court acted properly under LA. CODE CIV. PROC. ANN. art. 2164 when it remanded this case for the taking of additional evidence. The failure to order a remand will result in a grave injustice to these homeowners. For these reasons, I would deny State Farm's writ application and allow the remand of this matter to the trial court for the taking of additional evidence.