

SUPREME COURT OF LOUISIANA

No. 96-CC-2825

STEVE DOUGLASS, INDIVIDUALLY AND ON BEHALF OF HIS
MINOR CHILD, ANNIE MARIE DOUGLASS; AND THE MINOR
CHILDREN, ADAM RUBEN DOUGLASS AND ANDY ALTON
DOUGLASS; AND KATHY DOUGLASS

Versus

ALTON OCHSNER MEDICAL FOUNDATION; JOHN L. OCHSNER, M.D.;
TERRY D. KING, M.D.; AND THE AMERICAN ASSOCIATION
OF BLOOD BANKS, INC.

LEMMON, J., Dissenting

This case is a classic example of the improper use of a partial summary judgment to decide a single issue in the case without granting any of the relief sought by either party. The relief sought by the plaintiff was money to compensate him for the damages he sustained. The relief sought by the defendant was denial of the asserted obligation to pay money damages. The partial summary judgment neither granted nor refused the payment of money damages. The judgment simply struck one of the plaintiff's theories of the defendant's liability for the damages sustained by the plaintiff. The judgment granted no relief to either party and is not a valid partial final judgment which requires an immediate appeal.

Nevertheless, the judgment will control the admission of evidence in further proceedings, and the loser may (but need not) seek immediate review by supervisory writs under La. Code Civ. Proc. art. 2201. However, because any error in the partial summary judgment may be corrected on appeal after trial of the entirety of the merits, no immediate appeal is necessary. The scheme of the Code articles discussed by the majority does not require a different result.

I

A judgment is a determination of the rights of the parties which may grant any relief to which the parties are entitled. La. Code Civ. Proc. art. 1841. A final judgment is one that determines the merits of the case in whole or in part. Id.

A court has the universal power to render a final judgment that decides the entirety of the merits of the case. However, La. Code Civ. Proc. art. 1915 provides an exclusive list of the partial final judgments by which a court may grant relief to the parties. Everything on Wheels Subaru, Inc. v. Subaru South, Inc., 616 So. 2d 1234 (La. 1993). Thus a judgment that determines the entirety of the merits of the action is appealable under La. Code Civ. Proc. art. 2083, but a judgment that only partially determines the merits of the action is a valid partial final judgment (and therefore appealable) only if authorized by Article 1915.

II

The critical decision facing a practicing lawyer against whom a partial judgment has been rendered is whether the judgment must be appealed in order to prevent that part of the judgment from acquiring the authority of the thing adjudged.¹ In the federal system, Fed. R. Civ. P. 54(b) in effect prohibits a judgment as to one or more, but fewer than all, of the claims or parties unless the court expressly determines there is no just reason for delay and expressly directs entry of the judgment. The redactors of the Louisiana Code of Civil Procedure decided not to adopt Rule 54(b) to govern the handling of the perplexing problems of partial judgments, but chose instead to limit the

¹Under La. Rev. Stat. 13:4231, a final judgment, when rendered, is conclusive between the parties and therefore is a *res judicata* bar to further litigation of the cause of action, except on appeal. However, the judgment does not acquire the authority of the thing adjudged until the delay for appealing elapses without the filing of an appeal or until appellate review has been exhausted. La. Civ. Code art. 3506(31).

situations in which partial final judgments are permitted. Unfortunately, the Louisiana system places the burden of the lawyers, rather than on the court, to decide whether the judgment is a valid partial final judgment which must be appealed immediately.

When a partial judgment dismisses one of several parties, the judgment obviously must be appealed then or never. Such a judgment clearly grants relief to the party seeking the dismissal. It is when a partial judgment decides an issue without granting relief that the losing party faces the dilemma of deciding whether an immediate appeal is necessary to keep the issue alive. In my view, such a judgment is not a valid partial final judgment which requires immediate appeal in order to preserve rights of review.

Concededly, as the majority points out, Article 1915 authorizes a partial judgment which "grants a motion for summary judgment, as provided by Articles 966 through 969." Article 966A(1) provides that a party "may move for a summary judgment in his favor for all or part of the relief for which he has prayed." (emphasis added). In the present case the trial court's striking one of the theories of law under which plaintiff may recover his damages does not grant the defendant all or part of the relief for which it has prayed. This partial judgment therefore does not require an immediate appeal, and any error can be corrected on appeal after trial on the merits.

This interpretation does not mean that the losing party cannot seek immediate review of the partial judgment. Here, plaintiff may (and did) apply for supervisory writs. Indeed, if the issue is one on which settlement negotiations will turn, both parties could urge the appellate court to grant the application and decide the determinative issue as on appeal, and the trial judge by per curiam could certify the significance of the issue in avoiding lengthy litigation. But if the issue decided by partial summary judgment is one that the mover simply wants decided prior to trial in order to limit the

issue and limit the necessary trial preparation, any error in the judgment can be corrected on appeal after trial on the merits.