

No. 21-5796

IN THE  
SUPREME COURT OF THE UNITED STATES

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LARRY E. CLARK

VS.

LOUISIANA DEPARTMENT OF TRANSPORTATION  
AND DEVELOPMENT

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE LOUISIANA SECOND CIRCUIT COURT OF APPEAL

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**SUPPLEMENTAL BRIEF OF THE PETITIONER**

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This Supplemental Brief is filed under Supreme Court Rule 15.8, as a result of a new Opinion issued by the Louisiana Supreme Court on September 30, 2021, in, J. BENJAMIN ZAPATA AND AMANDA ZAPATA VS. STEPHEN WAYNE SEAL, DIVERSIFIED WELL LOGGING, INC. AND NAVIGATORS INSURANCE COMPANY No. 2020-CC-01148 (La. 9/30/2021), and therein LSA-C.C.P. Articles., 1915(B)(1) and 1915 (B)(2) are fully addressed. The Opinion fully supports Petitioner's PETITION FOR WRIT OF CERTIORARI that the partial final judgments issued by the Caddo Parish State Trial Court were NOT appealable. The Judgments appealed are in the Appendix. The Trial Court DID NOT certify NOR designate a single Judgment for an immediate appeal to the State Appellate Court. Petitioner's Ex Parte Motion had not been ruled upon by the State Trial Court, or a copy of the Trial Court's ruling on the Ex Parte Motion as of this very date, Petition has not been served with notice/due process regarding a ruling.

In pertinent part of the newly released September 30, 2021, Opinion of the Louisiana Supreme Court, it ruled:

Partial judgments, including partial summary judgments, are governed by La. C.C.P. art. 1915.3 When a court renders a partial judgment as to less than all of the claims, demands, issues, or theories against a party, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination there is no just reason for delay. La. C.C.P. art. 1915(B)(1). "In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to the rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties." La. C.C.P. art. 1915(B)(2). Thus, it is "well-settled that prior to final judgment a [trial court] may, at its discretion and on its own motion, change the result of interlocutory rulings it finds to be erroneous." Vasalle v. Wal-Mart Stores, Inc., 01-0462, p. 5 (La. 11/28/01), 801 So.3d 331, 334."

Since Petitioner has never been served with notice/due process of a ruling on the Ex Parte Motion, beginning in January 2021, into the State Trial Court suits, Petitioner filed motions and/or exceptions to vacate and filed amended and supplemental petitions for nullity of the judgments of the trial court, and for nullity of the January 15, 2020, consolidated Opinions issued by the Louisiana Second Circuit Court of Appeal. The litigation is on-going at this present time in the trial court.

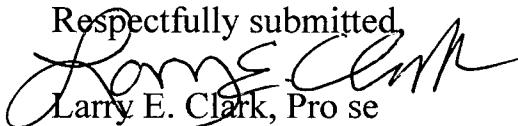
Additionally, the Louisiana Supreme Court in, J. BENJAMIN ZAPATA AND AMANDA ZAPATA VS. STEPHEN WAYNE SEAL, DIVERSIFIED WELL LOGGING, INC. AND NAVIGATORS INSURANCE COMPANY No. 2020-CC-01148 (La. 9/30/2021), in pertinent ruled:

“The plain language of La. C.C.P. art. 1915(B)(2) provides that, absent determination and designation as a final judgment, a partial summary judgment adjudicating less than all of the claims at issue “may be revised at any time prior to the rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.” See La. C.C. art. 9; Louisiana Mun. Ass’n v. State, 04-0227, p. 35 (La. 1/19/05), 893 So.2d 809, 836-37 (“interpretation of a statute starts with the language of the statute itself”); Vasalle, 01-0462, p. 5, 801 So.3d at 334. The trial court’s astute rulings illustrate how this provision may be harmonized with the time limitations of summary judgment procedure. See Louisiana Mun. Ass’n, 04-0227, 6 p. 36, 893 So.2d at 837 (further observing courts must give effect to all provisions of a statute and not render an interpretation that makes any part superfluous or meaningless). Adhering to La. C.C.P. art. 966(B)(2), the trial court struck the Zapatas’ opposition and supporting exhibits and granted partial summary judgment in favor of DWL. It is undisputed that this was not a final judgment – the Zapatas’ motion for new trial was denied for this reason. The trial court subsequently exercised its discretion under La. C.C.P. art. 1915(B)(2) in vacating the September 2018 judgment which it was statutorily empowered to do “at any time” because the judgment was not final.

Finality may be achieved by requesting a trial court to designate a partial summary judgment as final.<sup>4</sup> Because the language of the code as written provides such a remedy, we decline to adopt an interpretation of La. C.C.P. art. 1915(B) that would effectively amend the article to include the “new evidence” standard of La. C.C.P. art. 1972(2). See *Whitley v. State ex. rel. Bd. of Sup’rs of Louisiana State University Agr. Mechanical College*, 11-0040, p. 18 (La. 7/1/11), 66 So.3d 470, 481 (declining to judicially impose requirements not mandated by the legislature); see also *Fraternal Order of Police v. City of New Orleans*, 02-1801, pp. 3-4 (La. 11/8/02), 831 So.2d 897, 899 (declining to read the seven-day time delay under La. C.C.P. art. 1974 into La. C.C.P. art. 1915(B) where no such delay exists to file a motion to certify a partial judgment as final). Rewriting statutes is not the role of the courts. *Kelly v. State Farm Fire & Cas. Co.*, 14-1921, p. 20 (La. 5/5/15), 169 So.3d 328, 340.

Accordingly, we find the trial court was within its discretion in vacating the September 2018 judgment.”

Petitioner’s Petition for Writ of Certiorari should be granted, also based upon: the above September 30, 2021, Opinion of the Louisiana Supreme Court, affirms that the Louisiana Second Circuit Court of Appeal should be reversed, for the lack of jurisdiction; the Partial Judgments of the Trial Court were not certified nor designated for an immediate appeal to the state appellate court; the state appellate court did not convert a single appeal to supervisory writ application; litigation is on-going in the state trial court; and no final appealable judgment has not been issued denying the mandatory payment of federal constitutional compensation, for the taking of private property.

Respectfully submitted,  
  
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