

APPENDIX

**ATTACHMENT A-Copy of Louisiana Supreme Court Judgment
Complained of And Reasons for Judgment.**

ATTACHMENT B-Judge Crichton's Concurring Statements

ATTACHMENT C-Fourth Circuit Court of Appeal Judgment

ATTACHMENT D-Copy of Petitioner's Appeal to the Fourth Circuit

**ATTACHMENT-E-Copy of Fourth Circuit denial of Petitioner's Motion to
File Under Seal her official graduate school transcript**

**ATTACHMENT F-Copy of Respondent's statements to the Honorable Claire
Jupiter**

**ATTACHMENT G-Copy of Respondent's statements to Elenora Stokes, OCR
Federal Investigator**

ATTACHMENT H-Louisiana Act 260

ATTACHMENT I-Notice of R. S. 51:1401 Complaint

ATTACHMENT J-Letter from Steven G. Olswang, J. D. P.h.D

ATTACHMENT K-Copy of Southwest Texas Evaluation Form

ATTACHMENT L-Copy of Release file by Respondent

ATTACHMENT M-Copy of Release filed by Petitioner

**ATTACHMENT N-Copy for first summary judgment in Orleans Parish Civil
District Court**

**ATTACHMENT O-Copy for second summary judgment in Orleans Parish
Civil District Court**

The Supreme Court of the State of Louisiana

KATHERINE S. JOHNSON

NO. 2017-C-0776

VS.

LOYOLA UNIVERSITY OF NEW ORLEANS

IN RE: Katherine S. Johnson; - Plaintiff; Applying For Writ of
Certiorari and/or Review, Parish of Orleans, Civil District Court
Div. G, No. 09-6133; to the Court of Appeal, Fourth Circuit, No.
2016-CA-0881;

September 22, 2017

Denied.

JDH

BJJ

JLW

GGG

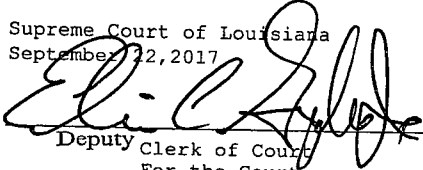
MRC

JTG

CRICHTON, J., additionally concurs and assigns reasons.

Attachment A

Supreme Court of Louisiana
September 22, 2017


Deputy Clerk of Court
For the Court

NOT DESIGNATED FOR PUBLICATION
KATHERINE S. JOHNSON * **NO. 2016-CA-0881**

VERSUS *

* **COURT OF APPEAL**
LOYOLA UNIVERSITY OF *
NEW ORLEANS * **FOURTH CIRCUIT**
*
STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2009-06133, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

Judge Daniel L. Dysart

(Court composed of Judge Roland L. Belsome, Judge Daniel L. Dysart, Judge
Rosemary Ledet)

Katherine S. Johnson
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New Orleans, LA 70178
PLAINTIFF/APPELLANT/IN PROPER PERSON

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COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

MARCH 22, 2017

This matter is before this Court on appeal of a summary judgment granted in favor of defendant-appellee, Loyola University of New Orleans (“Loyola”) as to the issues of damages. While the judgment grants Loyola’s motion for summary judgment, it does not contain any decretal language. Accordingly, it is not a final, appealable judgment. However, and as discussed more fully herein, we convert the appeal to an application for supervisory relief and exercise our supervisory jurisdiction to review the granting of the summary judgment.

Having reviewed this matter *de novo*, we find that summary judgment in favor of Loyola is warranted. We therefore affirm the trial court’s judgment.

BACKGROUND

This lawsuit involves a dispute between plaintiff-appellant, Katherine S. Johnson, and Loyola arising out of Ms. Johnson’s tenure as a graduate student at Loyola. A detailed recitation of the facts in this case can be found in a prior decision of this Court. *See Johnson v. Loyola Univ. of New Orleans*, 11-1785 (La. App. 4 Cir. 8/8/12), 98 So.3d 918. In *Johnson*, we affirmed the trial court’s grant of Loyola’s motion for summary judgment, finding that Loyola had complied with the terms of a release entered into by Ms. Johnson and Loyola, through which

Loyola agreed to award Ms. Johnson a Master of Education Degree with a major in Counseling. The Court in *Johnson*, however, found that the trial court improperly dismissed all of Ms. Johnson's claims, noting that the only matter before the Court was whether Loyola had conferred the degree to which the parties agreed in the Release. *Id.*, 11-1785, pp. 11-12, 98 So.3d at 925-6. The Court found that "there remain genuine issues of material fact as to whether Ms. Johnson sustained any damages as a result of Loyola's five-month delay in submitting a corrected transcript and/or whether the delay was reasonable." *Id.*, 11-1785, p.12, 98 So.3d at 926.¹ Accordingly, the Court remanded the matter for further proceedings.

After the case was remanded, Loyola conducted discovery directed to the issue of damages and, on November 18, 2015, filed a second motion for summary judgment (the "Motion"), arguing that Ms. Johnson suffered no damages as a result of the five-month delay in providing Ms. Johnson a corrected transcript. After a hearing on the Motion and by judgment dated April 25, 2016, the trial granted summary judgment. Ms. Johnson timely appealed the judgment.

Appellate Jurisdiction

Before addressing the merits of this case, we note a jurisdictional issue presented by this case. We routinely follow the rule that "[b]efore considering the merits of any appeal, appellate courts have the duty to determine, *sua sponte*, whether subject matter jurisdiction exists, even when the parties do not raise the issue." *Urquhart v. Spencer*, 15-1354, p. 3 (La. App. 4 Cir. 12/1/16), 204 So.3d

¹ There had been errors in Ms. Johnson's transcript and five months elapsed between the time that Loyola awarded Ms. Johnson her degree and the time that it provided her with a corrected transcript. *Id.*, 11-1785, p.12, 98 So.3d at 926.

1074, 1077, quoting *Moon v. City of New Orleans*, 15-1092, 15-1093, p. 5 (La. App. 4 Cir. 3/16/16), 190 So.3d 422, 425. We explained in *Urquhart*:

We...cannot determine the merits of [an] appeal unless our jurisdiction is properly invoked by a valid final judgment. *Bd. of Supervisors of Louisiana State Univ. v. Mid City Holdings, L.L.C.*, 14-0506, p. 2 (La. App. 4 Cir. 10/15/14), 151 So.3d 908, 910. For a judgment to be a “valid final judgment,” it must contain specific “decretal language.” *Id.* “A valid judgment must be precise, definite and certain. ... The decree alone indicates the decision. ... The result decreed must be spelled out in lucid, unmistakable language. ... The quality of definiteness is essential to a proper judgment.” *Id.* (quoting *Input/Output Marine Sys., Inc. v. Wilson Greatbatch, Tech., Inc.*, 10-477, pp. 12-13 (La. App. 4 Cir. 10/29/10), 52 So.3d 909, 915-16). In the absence of the necessary decretal language, the judgment is not final and appealable. *Tsegaye v. City of New Orleans*, 15-0676, p. 3 (La. App. 4 Cir. 12/18/15), 183 So.3d 705, 710, *writ denied*, 16-0119 (La. 3/4/16), 188 So.3d 1064.

Importantly, in order for the language of a judgment to be considered “decretal” it “must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, **and the relief that is granted or denied.**” *Mid City Holdings*, 14-0506 at p. 3, 151 So.3d at 910 (citations omitted). Furthermore, “**The specific relief granted should be determinable from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment.**” *Id.* (quoting *Input/Output Marine*, 10-477, p. 13, 52 So.3d at 916).

15-1352, pp. 3-4, 204 So.3d at 1077 (Emphasis added).

The judgment in this matter merely states as follows:

IT IS ORDERED, ADJUDGED and DECREED that Defendant’s Motion for Summary Judgment be and same is hereby granted.

It is clear that the judgment does not contain any decretal language setting forth with particularity the relief that is being granted. Nor does the judgment “decree the dismissal of [Ms. Johnson’s] lawsuit with prejudice.” *See Tomlinson v.*

Landmark Am. Ins. Co., 15-0276, p. 2 (La. App. 4 Cir. 3/23/16), 192 So.3d 153, 156.

However, as we noted in *Tomlinson*, when a judgment is lacking in definitive decretal language, and our appellate jurisdiction is therefore not properly invoked, “the appellant is not entitled as of right to appellate review, but may nonetheless invoke our supervisory jurisdiction, which is discretionary with us to grant.” *Tomlinson*, 15-0276, pp. 2-3 (La. App. 4 Cir. 3/23/16), 192 So.3d at 156, quoting *Bd. of Supervisors of La. State Univ. & Mech. College v. Mid-City Holdings, L.L.C.*, 14-0506, p. 3 (La. App. 4 Cir. 10/15/14); 151 So.3d 908, 910. Even when a party has not invoked our supervisory jurisdiction, “[i]n appropriate cases, when confronted with the lack of appellate jurisdiction, we have... converted the party’s appeal to an application for us to exercise our discretionary supervisory jurisdiction and then granted the application.” *Tsegaye v. City of New Orleans*, 15-0676, p. 6 (La. App. 4 Cir. 12/18/15), 183 So.3d 705, 711, *writ denied*, 16-0119 (La. 3/4/16), 188 So.3d 1064.

As we found in *Tsegaye*, when “there are no genuine issues of material fact, and our review will terminate the action,” the exercise of our supervisory jurisdiction is appropriate. *Id.*, 15-0676, p. 7, 188 So.3d at 711. Indeed, “[j]udicial efficiency and fundamental fairness to the litigants...especially when... a decision by us will terminate the litigation” warrant our review of a matter under our supervisory jurisdiction. *Bd. of Supervisors*, 14-0506, p. 4 (La. App. 4 Cir. 10/15/14), 151 So.3d at 911.²

²“The difference between supervisory jurisdiction and appellate jurisdiction is that the former is discretionary on the part of the appellate court while the latter is invokable by the litigant as a matter of right.” *Bd. of Supervisors*, 14-0506, p. 3; 151 So.3d at 910-11 (Citation omitted).

In the instant matter, our review of the record reflects that the trial court correctly found no genuine issues of material fact with respect to Ms. Johnson's remaining claims in this litigation. Accordingly, judicial efficiency and fundamental fairness warrant our exercise of supervisory jurisdiction. We thus convert this appeal to an application for supervisory writ, and we grant the application.

Motions for Summary Judgment

We note, at the outset, that the standard of review of the grant of a motion for summary judgment is *de novo*. *Encalade v. A.H.G. Sols., LLC*, 16-0357, p. 9 (La. App. 4 Cir. 11/16/16), 204 So.3d 661, 666. In doing so, "[w]e use the same standard applied by the trial court in deciding whether summary judgment is appropriate by determining if genuine issues of material fact exist." *Id.*

At the time that Loyola's second motion for summary judgment motion was filed (November 18, 2015),³ La. C.C.P. art. 966 B(2) provided that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law."

While the burden of proof on a motion for summary judgment is on the movant,

³ Louisiana Code of Civil Procedure article 966 underwent significant changes by Act 422 of the 2015 regular session of the Louisiana Legislature. Those changes did not become effective until January 1, 2016 and the official comments reflect that the provisions of the Act "shall not apply to any motion for summary judgment pending adjudication or appeal on the effective date of this Act." 2015 La. Acts 422 (effective January 1, 2016). This appeal was pending on the effective date of the Act; therefore, we apply the prior version of Article 966 to the instant matter.

La. C.C.P. art. 966 C(2) indicated that the mover need not “negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense.” At that point, the burden shifts to the adverse party “to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial.” *Id.* If the adverse party fails to do so, “there is no genuine issue of material fact.” *Id.* See also *Perrier v. Bellsouth Commc'n Sys., LLC*, 16-0553, pp. 2-3 (La. App. 4 Cir. 11/16/16), 204 So.3d 658, 659, writ denied, 16-2233 (La. 2/10/17), 2017 WL 744125, ---- So.3d ----; *Mackey v. Thompson*, 16-0297, pp. 2-3 (La. App. 4 Cir. 11/16/16), 204 So.3d 642, 644.

Thus, the issue before us is whether Loyola met its burden of proving the absence of any factual support for Ms. Johnson's damages claim and if so, whether Ms. Johnson responded by presenting factual support for her claim, which is sufficient to establish that she can carry her evidentiary burden of proof at trial.

DISCUSSION

In its Motion, Loyola contends that, although there was a five month delay in providing Ms. Johnson with a corrected copy of her transcript which showed the actual degree conferred upon her, Ms. Johnson sustained no damages as a result of this delay. Loyola argues that Ms. Johnson “produce[d] no evidence that she was denied any employment due to Loyola's issuance of an incorrect graduate transcript, and thus suffered any harm.” In support of its argument, Loyola submitted the following evidence:

- Affidavit of Ranzy P. Montet, the Assistant Vice President for Human Resource Management for the University of New Orleans (“UNO”), who attested to the fact that Ms. Johnson applied for a job on June 27, 2008,

as an Administration Coordinator 2, which did not require a master's degree. Ms. Johnson was not hired for that position. Mr. Montet's affidavit also attested to the fact that, on July 20, 2008, Ms. Johnson applied for the position of "Counselor/Program Advisor" for the ACCESS & OJETS projects, which did not require a master's degree (although a master's degree was preferred). Ms. Johnson was not hired for this position.

- Ms. Johnson's supplemental answers to interrogatories which state that she applied for a position (Child Welfare Service Assistant) with the Department of Children and Family Services with the State of Louisiana on January 23, 2013.⁴ Ms. Johnson provided no documentation as it was an on-line application.
- Ms. Johnson's supplemental discovery responses which state that she applied for employment with the following institutions: UNO, College of Education and Human Development; LSU Health Services Center in New Orleans – Metropolitan Human Services District; and Louisiana Department of Civil Services Staffing Division. Ms. Johnson's discovery responses provide no further details of these applications, including the dates on which Ms. Johnson submitted the applications or the criteria for employment in these positions.
- The affidavit of Charles L. Dirks, the Executive Counsel for the Louisiana Department of Children & Family Services ("LDCFS"), who attested to the fact that the LDCFS has no record of Ms. Johnson's applying for a job in 2008. He further attested that the LDCFS does not request college transcripts from any applicant for employment.

In response to Loyola's Motion, Ms. Johnson, appearing *pro se*, filed an opposition memorandum on December 30, 2015. In it, Ms. Johnson makes a myriad of assertions, none of which addresses the merits of the Motion. For example, Ms. Johnson argued the following:

- That she "was not a student at Loyola... and does not have the classes or hours to be awarded in [sic] education degree in the State of Louisiana"; that she "only received a Xerox copy of the transcript when it was submitted in evidence in Civil District Court New Orleans."

⁴ Although Ms. Johnson's discovery responses state that she applied for this job "during the applicable five (5) month period in 2008 as per the delay in Loyola submitting the corrected transcript," this is clearly not the case. Loyola provided the corrected transcript in October 2008. See, *Johnson*, p. 12, 98 So.3d at 926. Ms. Johnson's discovery responses expressly state that she applied for the position on January 23, 2013, well beyond the five month period in 2008.

- That the “Masters in Education with Major in counseling degree was conferred on Civil District Court New Orleans, not the Plaintiff in violation 20 U.S.C. § 1101 while the former tenured education professors were suing the Defendant for breaching their contracts and closing the LUNO Education Department in 2006.”
- That “[d]efendant does not have legal authority under Louisiana State Law to confer the “Master’s in Education with Major in Counseling” degree.

Ms. Johnson then recites various causes of action she believes she has in this litigation, including breach of contract, “tortuous [sic] interference with contract,” “[s]upervisory [l]iability,” unjust enrichment, violation of false claims act, retaliation, and age discrimination. Ms. Johnson attached numerous documents to her opposition memorandum, none of which is referred to in her memorandum and none of which is responsive to the Motion.

Ms. Johnson filed a second opposition memorandum on December 30, 2015. In it, she first recounts her version of the events leading up to the original lawsuit (all of which occurred prior to this Court’s opinion in *Johnson*). In response to the Motion, Ms. Johnson again reiterates the various causes of action recited in her first opposition memorandum. She does not address the issue raised by Loyola with respect to her damages claim except to state that “[t]he damages in this case can be easily determined using the Gainful Employment Rule and the Annual Teacher Salary Schedule on-line at the Louisiana Department of Education.” She then states that “the Court can allow the Plaintiff a limited cause of action to whether or not the Defendant upheld the standards of good faith and fair dealings.”

The sole issue presented by this appeal is whether Ms. Johnson sustained any damages as a result of the five month delay in Loyola’s providing her with a corrected transcript. Loyola, as the mover for summary judgment, has the burden of proof on its Motion; however, because it does bear the burden of proof at trial, it

is only required “to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense.”

La. C.C.P. art. 966 C. A review of the record demonstrates that Loyola met its burden of proof on summary judgment. Loyola established that, during the five month delay period, Ms. Johnson applied for several jobs; however, none of the jobs required that she have a master's degree or that she provide a copy of her transcript. While Ms. Johnson was apparently not offered any of the jobs for which she applied during that time period, there is no evidence that she was rejected by any of the potential employers because she was unable to provide a correct copy of her transcript. Loyola, therefore, met its burden of proof that Ms. Johnson sustained no damages from the delay in obtaining a correct transcript from Loyola.

Having met its burden of proof, the burden shifted to Ms. Johnson “to produce factual support sufficient to establish that [she would] be able to satisfy [her] evidentiary burden at trial.” La. C.C.P. art. 966 C. Ms. Johnson failed to do so by affidavit or otherwise. While Ms. Johnson attached numerous documents to her opposition memorandums, and pretermitted a discussion as to whether those documents are competent evidence,⁵ none substantiate her claim for damages resulting from Loyola's failure to provide her with a corrected transcript for five months. Ms. Johnson, therefore, has failed to establish that she can meet her burden of proving an essential element of her claim for damages. Thus, the record is devoid of any genuine issue of material fact with respect to Ms. Johnson's damages claim. The trial court was legally correct in granting Loyola's Motion.

CONCLUSION

For the reasons set forth herein, we convert Ms. Johnson's appeal to an application for a supervisory writ, and we grant the writ. Because we have found that Ms. Johnson has shown a lack of factual support for her damages claim and failed to demonstrate that she would meet her burden of proof as to damages in response to Loyola's Motion, summary judgment was appropriately granted and we affirm the trial court's judgment.

AFFIRMED

⁵ Unverified and unauthenticated documents may not be used summary judgment motions, including oppositions to summary judgment motions. *See e.g., Daniel v. Clarion Inn & Suites*, 16-0760, p. 10 (La. App. 4 Cir. 2/22/17), ---- So.3d ----, ----, 2017 WL 696067 at *6.

**Additional material
from this filing is
available in the
Clerk's Office.**