

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2008 CA 2489**

**ANNIE WALKER**

**VERSUS**

**DEVANT K. SMITH AND MARTHA C. SMITH**

*Judgment Rendered: June 12, 2009*

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**Appealed from the  
21st Judicial District Court  
In and for the Parish of Tangipahoa, Louisiana  
Case No. 2006-002798**

**The Honorable L. J. Hymel, Judge *Ad Hoc* Presiding**

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**Annie Walker  
Amite, Louisiana**

**Plaintiff/Appellant  
In Proper Person**

**Walter Antin, Jr.  
Hammond, Louisiana**

**Counsel for Defendants/Appellees  
Devant K. Smith and  
Martha C. Smith**

*KUHN, J. CONCURS  
GUIDRY, J. CONCURS in the result.  
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**BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.**

**GAIDRY, J.**

The plaintiff, the purchaser of immovable property at a tax sale, appeals a judgment on a motion declaring her tax title null and ordering her to execute documents transferring the property back to the defendants, the original owners, and further denying the plaintiff's motion in opposition to the defendant's motion. For the following reasons, we reverse the trial court's judgment in its entirety, and remand this matter for further proceedings. We also deny the defendants' answer to the appeal.

**FACTUAL AND PROCEDURAL BACKGROUND**

On May 16, 2001, the plaintiff, Annie Walker, purchased immovable property in Tangipahoa Parish at a sheriff's tax sale for delinquent taxes. The defendants, Devant K. Smith and Martha C. Smith, were the owners of the property and the tax debtors.

On August 28, 2006, Ms. Walker filed a petition to quiet tax title, pursuant to La. R.S. 47:2228, in the 21st Judicial District Court for the Parish of Tangipahoa. She alleged that the defendants could not be found and that their last-known address was in Mississippi; she therefore requested that a curator *ad hoc* be appointed to represent the defendants for purposes of service.

On September 25, 2006, the defendants filed a combined pleading, including exceptions, an answer, and a reconventional demand. In their answer, the defendants asserted a general denial of the allegations of Ms. Walker's petition. In their reconventional demand, they alleged that the notices and other formal requirements for the tax sale were not satisfied. They further alleged that Ms. Walker refused their offer of reimbursement of taxes paid and costs and expenses incurred. Finally, they alleged that Ms. Walker and her representatives trespassed upon the property, causing

damage to the property and movable property on it, and causing them “pain and suffering and mental anguish.” The defendants, as plaintiffs in reconvention, prayed for a money judgment for damages, attorney fees, and court costs. Although the defendants captioned their reconventional demand as a “Reconventional Demand to Annul Tax Sale and for Damages,” they did not allege the nullity of Ms. Walker’s tax title, nor did they set forth a cause of action to annul the tax sale or pray for judgment annulling the tax sale.

The defendants filed a motion for summary judgment on October 20, 2006, seeking the dismissal of Ms. Walker’s petition to quiet the tax title. Ms. Walker responded with a cross-motion for summary judgment. Both motions were assigned for hearing on April 12, 2007. At the conclusion of the hearing, the trial court scheduled another limited hearing and deferred its ruling until May 21, 2007. Following the hearing of May 21, 2007, by judgment signed that day, the trial court granted the defendants’ motion for summary judgment and dismissed Ms. Walker’s petition with prejudice.<sup>1</sup>

On July 30, 2007, the defendants filed a “Motion to Enforce Judgment.” In that motion, the defendants alleged that they had twice asked Ms. Walker to execute a deed transferring the property at issue back to them, but she declined. Asserting that the summary judgment dismissing Ms. Walker’s petition had not been appealed, the defendants moved for an order compelling her to execute the requested deed. On August 23, 2007, Ms. Walker filed a motion opposing the defendants’ “Motion to Enforce

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<sup>1</sup> The record does not reveal the trial court’s disposition of Ms. Walker’s motion for summary judgment, but the trial court obviously denied her relief. Arguably, the dismissal of Ms. Walker’s cause of action should have been without prejudice. But as the summary judgment was not appealed, it is final and definitive as to Ms. Walker’s cause of action stated in her petition. We note that Ms. Walker may still have a viable cause of action pursuant to the second paragraph of former La. R.S. 47:2228 (now La R.S. 47:2266(B)), however that issue is not before us at this time.

Judgment” and seeking to declare the summary judgment a nullity. For unrelated reasons, all judges of the trial court recused themselves from hearing this action, and a judge *ad hoc* was appointed.

On September 11, 2007, the defendants filed a “Rule to Show Cause,” again seeking “enforcement” of the summary judgment as prayed for in their previous motion. On January 25, 2008, Ms. Walker, who was by then unrepresented by counsel, filed a “Motion in Opposition to Defendants’ Motion to Enforce Judgment.” On January 30, 2008, the trial court heard the defendants’ “Rule to Show Cause,” or renewed “Motion to Enforce Judgment,” and at the conclusion of the hearing took the matter under advisement.

On March 13, 2008, the trial court issued its written reasons for judgment, ruling that it would grant the defendants’ motion. Its judgment on the motion was signed on March 25, 2008. The judgment recited that Ms. Walker’s first motion in opposition and to declare the summary judgment a nullity (filed on August 23, 2007) was denied, and that the defendants’ “Motion to Enforce Judgment” was granted. The judgment further provided that the sheriff’s deed for the tax sale was declared “null and void and without effect” and that the clerk of court was to so mark the deed recorded in the conveyance records; that Ms. Walker was ordered to execute the necessary documents transferring the property to the defendants; and that the defendants were ordered to pay Ms. Walker all sums of money she paid for property taxes plus interest thereon.

On April 11, 2008, the trial court denied Ms. Walker’s “Motion in Opposition to Defendants’ Motion to Enforce Judgment” by an *ex parte* judgment.

Ms. Walker now appeals the March 25, 2008 judgment.

## DISCUSSION

During the trial court proceedings and at the time this appeal was taken, the procedure for quieting tax titles was set forth in former La. R.S. 47:2228, which provided:

After the lapse of three years from the date of recording the tax deed in the conveyance records of the parish where such property is situated, the purchaser, his heirs or assigns, may institute *suit by petition and citation as in ordinary actions* against the former proprietor or proprietors of the property, in which petition must appear a description of the property, mention of the time and place of the sale and name of officer who made same, reference to page of record book and date of recording tax deed, notice that petitioner is owner of the said property by virtue of said tax sale, and notice that the title will be confirmed unless *a proceeding to annul is instituted* within six months from date of service of the petition and citation. This suit shall be brought in the parish where the property is situated unless it lies in two or more parishes, in which case this suit may be instituted in either of such parishes. *The petition and citation shall be served as in ordinary suits*; provided, that if the former proprietor be a nonresident of the state, or unknown, or his residence be unknown, the court shall appoint a curator ad hoc to represent him and receive service, and said curator shall receive for his services a reasonable fee to be fixed by the court in each suit, the same to be taxed as costs of suit. After the lapse of six months from the date of service of petition and citation, if no *proceeding to annul the sale* has been instituted, judgment shall be rendered quieting and confirming the title.

In all cases where tax titles have been quieted by prescription of five years under the provisions of Section 25 of Article VII of the Constitution of 1974, the purchaser or his heirs or assigns may, if he or they so desire, either obtain a judgment of the court confirming the title by suit in the manner and form as hereinabove set out, except that the delay for answer shall be ten days instead of six months, or the purchaser or his heirs or assigns may, at his or their option, quiet the title by monition proceeding, as provided by law relative to sheriffs' sales and tax sales; provided that the failure to bring suit shall in no manner affect such prescriptive titles.

Nothing in this Section shall be construed to affect in any way, the principle that as to a tax debtor-owner in possession, prescription does not begin against him and in favor of the tax

title purchaser until such tax debtor-owner has been first dispossessed. (Emphasis added.)<sup>2</sup>

Interpreting La. R.S. 47:2228, our courts have held that the defendant tax debtor's proceeding to annul the tax sale may be brought either as an independent or separate suit or by way of reconventional demand. *Fellman v. Kay*, 147 La. 953, 86 So. 406 (La. 1920); *Regina Lumber Co., Inc. v. Perkins*, 175 La. 15, 142 So. 785 (La. 1932). Because a suit to quiet a tax title under La. R.S. 47:2228 must be "by petition and citation as in ordinary actions," it stands to reason that the responsive proceeding to annul the tax sale must employ the same form of procedure. *See also* former La. R.S. 47:2227 (repealed by Acts 2008, No. 819, § 2, effective January 1, 2009.)

Instead of filing a separate action or amending their reconventional demand to seek the annulment of the tax sale, the defendants filed a motion styled as a "Motion to Enforce Judgment," arguing that the summary judgment dismissing Ms. Walker's petition to quiet the tax title was final and definitive, and additionally seeking to compel Ms. Walker to execute a deed transferring the property back to the defendants. Attached to their motion was a "Show Cause Order," ordering Ms. Walker to appear and show cause by rule, or summary proceeding, why she should not be ordered to execute the deed sought by the defendants. This was procedurally impermissible. Our law does not authorize summary proceedings to be used for the disposition of an action to annul a tax title. *See* La. C.C.P. art. 2592. *See also Fellman*, 147 La. at 959-60, 86 So. at 408-9.

An action brought pursuant to La. R.S. 47:2228 does not place at issue the validity or invalidity of a tax title. It only serves to give notice to the defendant tax debtor that the plaintiff tax purchaser claims to own the

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<sup>2</sup> This statute was repealed by Acts 2008, No. 819, § 2, effective January 1, 2009. However, Section 1 of the same act enacted the new La. R.S. 47:2266, effective January 1, 2009, which reproduces the substance of and combines former La. R.S. 47:2228 and 47:2228.1. La. R.S. 47:2266, Comment – 2008.

property by virtue of the tax title and that, if the defendant does not bring suit to annul the tax title within six months of service, judgment will be rendered quieting and confirming the tax title and barring further challenge to that title. *Fellman*, 147 La. at 963-66, 86 So. at 409-10.<sup>3</sup> The defendants cannot circumvent the ordinary procedure required to determine a cause of action to annul a tax sale under La. R.S. 47:2228 by bootstrapping a motion to “enforce” a prior judgment, seeking by summary procedure a different, affirmative form of relief not placed at issue by Ms. Walker’s original cause of action, which was simply dismissed.

In oral argument before this court, the defendants’ counsel argued that Ms. Walker cannot complain of the defendants’ use of summary proceeding to obtain the judgment at issue, as she failed to file a dilatory exception raising such an objection, thereby waiving that objection. We disagree. Our review of the record convinces us that Ms. Walker adequately preserved this procedural issue for appeal.

Every pleading shall be construed as to do substantial justice. La. C.C.P. art. 865. Our procedural articles are to be construed liberally, and with due regard for the fact that rules of procedure implement the substantive law and are not an end in themselves. La. C.C.P. art. 5051. It is a well-recognized principle of law in Louisiana that a pleading is classed by virtue of what it contends rather than what it is called. *Cobb v. Coleman Oldsmobile, Inc.*, 346 So.2d 831, 833 (La. App. 1st Cir.), writ denied, 349 So.2d 1269 (La. 1977). In other words, pleadings should be interpreted according to their true meaning and effect in order to do substantial justice,

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<sup>3</sup> *But cf. Cressionie, et al. v. Intrepid, Inc.*, 03-1714, p. 4 (La. App. 1st Cir. 5/14/04), 879 So.2d 736, 739, citing *Scheen v. Hain*, 141 La. 606, 611, 75 So. 427, 428. The holding in the latter case, that a suit to quiet a tax title puts that title at issue, may properly be understood as putting the title at issue for the limited purpose of determining whether the plaintiff is entitled to judgment under La. R.S. 47:2228 only.

rather than interpreted according to their caption. *Alcorn v. City of Baton Rouge*, 03-2682, p. 3 (La. 1/16/04), 863 So.2d 517, 519.

We consider Ms. Walker's repeated pleadings in opposition to the defendants' "Motion to Enforce Judgment" to include, among other defenses, the functional equivalent of an exception and objection to summary proceeding. Through counsel, Ms. Walker initially filed a combined "Motion in Opposition to Enforcement of Judgment and Motion to Declare Judgment Ineffectual and Null." In this pleading, she emphasized that "no *petition* to nullify the tax sale was timely filed and served upon [her]," as would be required of a ordinary proceeding to annul the tax sale under La. R.S. 47:2228. We agree with that contention. The defendants' reconventional demand, on its face, failed to set forth any such cause of action or to pray for any such relief.<sup>4</sup>

When the defendants filed their renewed motion (the "Rule to Show Cause") on September 11, 2007, again seeking the "enforcement" of the prior summary judgment, Ms. Walker, in proper person, responded with a "motion" in opposition to the defendants' motion. She specifically objected to the defendants' use of their motion to "force plaintiff to execute a deed, against her will, in which she would effectively sell the property at issue . . . despite the fact that no order in judgment directed her to do anything of the sort, that *no order . . . declared the tax sale in question invalid, that no order . . . decreed the tax deed . . . at issue void, and a nullity*, and that no order . . . decreed the [t]ax [d]eed to be stricken from public record in favor of one in

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<sup>4</sup> The defendants alleged in their dilatory and peremptory exceptions, combined in a pleading with their answer and reconventional demand, that notice of the tax sale was deficient and the tax sale was therefore null. However, after the original hearing on those exceptions was continued without date, the defendants never requested that their exceptions be heard before the hearing on the summary judgment that determined the merits. See La. C.C.P. art. 929(A). Under these circumstances, the defendants waived their exceptions. See *Shear v. Shear*, 96-934, p. 10 (La. App. 5th Cir. 5/28/97), 695 So.2d 1026, 1031, *writ denied*, 97-2138 (La. 11/14/97), 703 So.2d 632.



the name of the defendants.” (Emphasis added.) In that motion, Ms. Walker further objected to the defendants’ attempt to obtain a “substantively amended judgment . . . by way of their Motion to Enforce Judgment.” (Emphasis added.) Accordingly, we will treat Ms. Walker’s “motion” as an exception incorporating an objection to the defendants’ use of summary proceeding to annul her tax title.

Considering the substance of Ms. Walker’s appeal and the basis of her assignments of error, we conclude that she is also appealing the trial court’s interlocutory judgment denying her “motion” (or exception), which was incorporated in a combined judgment with its judgment granting the defendants’ renewed “Motion to Enforce Judgment.”<sup>5</sup> This court has a statutory mandate to render a judgment “which is just, legal, and proper upon the record on appeal.” La. C.C.P. art. 2164. The purpose of article 2164 is to give the appellate courts “complete freedom to do justice on the record irrespective of whether a particular legal point or theory was made, argued, or passed on by the court below.” Comment (a), La. C.C.P. art. 2164; *Vallejo Enter., L.L.C. v. Boulder Image, Inc.*, 05-2649, p. 8 (La. App. 1st Cir. 11/3/06), 950 So.2d 832, 838. We conclude that the trial court erred in overruling Ms. Walker’s exception objecting to the defendants’ improper use of summary proceeding.

Although not argued on appeal, in the trial court the defendants argued in their memoranda that the summary judgment of May 21, 2007 provided the basis for application of *res judicata* or “issue preclusion” on the issue of the invalidity of the tax sale, based upon deficiency of notice and

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<sup>5</sup> We have held that in appropriate cases, when an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory judgments prejudicial to him, in addition to the review of the final judgment. *Dean v. Griffin Crane & Steel, Inc.*, 05-1226, p. 4 n.3 (La. App. 1st Cir. 5/5/06), 935 So.2d 186, 189 n.3, *writ denied*, 06-1334 (La. 9/22/06), 937 So.2d 387.

other legal formalities.<sup>6</sup> We need not address this legal issue at this time, as we conclude it is not properly before us. We simply hold that the defendants may not use the procedural vehicle of a motion or rule to seek the annulment of Ms. Walker's tax title under the provisions of La. R.S. 47:2228, where they have failed to place that matter at issue by petition or reconventional demand.

For the foregoing reasons, we reverse all aspects and decrees of the trial court's judgment of March 25, 2008 granting the defendants' "Motion to Enforce Judgment." Because we have determined that Ms. Walker's appeal has merit, we also deny the defendants' answer to the appeal, seeking damages for frivolous appeal. All costs of this appeal are assessed to the defendants-appellees, Devant K. Smith and Martha C. Smith.

**MARCH 25, 2008 JUDGMENT REVERSED AND CASE REMANDED; ANSWER TO APPEAL DENIED.**

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<sup>6</sup> *But see Fellman*, 147 La. at 966, 86 So. at 411 (holding that a judgment rejecting the plaintiff's demand in an action under La. R.S. 47:2228 may be *res judicata* as to his right to limit the time within which the defendant may bring an action to annul the plaintiff's tax title, but it is not *res judicata* as to the validity or invalidity of the tax title).