

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2009 CA 1763

DAVID MOAK

VERSUS

AMERICAN EQUITY INSURANCE COMPANY, LOUISIANA DIRT
HAULERS, INC., LOUIS E. ASHLEY, BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY, NATIONAL RAILROAD PASSENGER
CORPORATION, N.R.P.C., a/k/a AMTRAK AND RAYMOND TYLER

Judgment rendered: MAY - 7 2010

On Appeal from the Sixteenth Judicial District Court
Parish of St. Mary, State of Louisiana
Docket Number: 108,548; Division: G
The Honorable Paul J. Demahy, Judge Presiding

Jack W. Harang
Metairie, La.

Counsel for Plaintiff
David Moak

Timothy F. Daniels
Dow Michael Edwards
New Orleans, La.

Counsel for Defendants
Burlington Northern and Santa Fe
Railway Company and National Railway
Passenger Corporation

George P. Hebbler, Jr.
Metairie, La.

Counsel for Defendants
American Equity Insurance Company,
Louisiana Dirt Haulers, Inc., and Louis E.
Ashley

Robert L. Maynard
Dennis P. Couvillion
New Orleans, La.

Intervenor - Robert L. Maynard

Elizabeth W. Ramirez
Covington, La.

Intervenor - Lisa Roberge Moak

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

*McCleendon, J. concurs and
assigns reasons.*

Taylor
PC
PC
PC
EJ
Gabe
Rob

DOWNING, J.

In this appeal plaintiff/appellant, David B. Moak, appeals a trial court judgment that denied him a new trial. The trial court ruled that his motion for a new trial was untimely because the time delays began to run when one of Mr. Moak's counsel of record was notified of the judgment but the other was not. For the following reasons, we affirm the trial court judgment.

The underlying lawsuit arose from a train-truck accident occurring December 17, 2000. Mr. Moak, the train engineer, filed suit against a trucking company and the driver that allegedly caused the accident, and the railroads for whom he worked (hereinafter Amtrak). Robert L. Manard, an attorney from New Orleans, filed the suit December 14, 2001, on Mr. Moak's behalf.

Mr. Moak hired new counsel and on March 20, 2003, attorney Richard H. Barker, IV officially enrolled. On September 15, 2004, Mr. Barker filed a notice to all parties and to the clerk of court that his address had changed to **3500 N. Hullen St., Metairie, La. 70002**.

The record reflects that Mr. Barker's law partner, Jack W. Harang, of the law firm of Harang and Barker, **3500 N. Hullen St., Metairie, La. 70002**, began representing Mr. Moak. Mr. Harang filed numerous pleadings on Mr. Moak's behalf, including a motion and order to continue a status conference. Various pleadings and orders filed by the defendants were served upon Mr. Moak through Mr. Harang at **3500 N. Hullen St., Metairie, La. 70002**.

Sometime after January 2005 and prior to May 2006, a settlement agreement was reached. Although there is no signed document in the record memorializing that agreement, on May 12, 2006, a show cause order was served on Mr. Moak through his attorney of record, Mr. Harang at **3500 N. Hullen St., Metairie, La. 70002**, ordering him show cause why the motion to enforce the settlement should not be granted.

On October 10, 2006, a judgment on the motion to enforce the settlement agreement was signed by the court. Notice of judgment was sent by the St. Mary Parish, 16th J.D.C., Clerk of Court, on October 11, 2006, to **Richard H. Barker, IV, 612 Gravier St., New Orleans, La. 70130, but not to Jack W. Harang at 3500 N. Hullen St., Metairie, La. 70002.**

On August 21, 2008, Mr. Moak, represented by Jack Harang, at **3500 N. Hullen St., Metairie, La. 70002**, filed a motion to unseal the abstract of the settlement agreement on the grounds that the unsigned unconditional release was not signed by Mr. Moak. It also stated that there was a provision in the alleged agreement that Mr. Moak had not agreed to and wanted to contest; specifically, that Mr. Moak would never seek reemployment with Amtrak.

On October 9, 2008, Amtrak filed its opposition claiming that the motion to unseal was nothing more than a veiled attempt to circumvent the settlement agreed upon four years previously and enforced by judgment two years earlier.

On January 26, 2009, Mr. Harang filed a motion for new trial claiming that the motion was timely since he, as counsel of record, was never served with the October 2006 judgment at the address that he always had, **3500 N. Hullen St., Metairie, La. 70002.**

Louisiana Code of Civil Procedure article 1913 requires that notice of judgment shall be mailed by the clerk of court to the counsel of record for each party. Mr. Barker enrolled as Mr. Moak's counsel of record in March 2003. Mr. Harang was clearly a counsel of record since Mr. Harang had been representing Mr. Moak for several years, had filed a number of pleadings into the record, and had received service on behalf of Mr. Moak. The issue in this case is whether Mr. Moak was given adequate notice of the judgment when the notice of that judgment was mailed to one counsel of record, Mr. Barker, but not to the other, Mr. Harang.

It is well settled that notice to an attorney of record is notice to the client. **Jones v. Rodrigue**, 00-0900, p. 10 (La.App. 1 Cir. 11/3/00), 771 So.2d 275, 281. We therefore hold that, under the provision of article 1913, notice to at least one counsel for each of the party litigants is sufficient. See **Baker v. Gidiere**, 315 So.2d 90, 92 (La.App. 3 Cir. 1975); **Lirette v. Roe**, 93-0441(La.App. 4 Cir. 1/13/94), 631 So.2d 503, 505; and **Rose v. Tittle**, 09-193, p. 5 (La.App. 5 Cir. 10/27/09), 27 So.3d 932, 934. Even so, article 1913's requirement that notice be sent to counsel of record dictates that the better practice is that the clerk send notice to all counsel of record.

Since we have concluded, however, that notice to Mr. Barker was sufficient to notify Mr. Moak and begin the delays for a request for new trial and appeal we find no merit in Mr. Harang's argument.

Here, the counsel of record, Richard H. Barker, IV, enrolled on March 20, 2003. It is problematic that Mr. Barker was served with the judgment at a completely different address than the one to which the previous notices were sent. However, since we have determined that Mr. Moak was sufficiently notified according to the law, the assignment of error is without merit and the judgment is affirmed.

DECREE

We affirm the trial court judgment. All costs of this appeal are assessed to plaintiff/appellant, David W. Moak.

AFFIRMED

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McCLENDON, J., concurs and assigns reasons.

I concur with the result reached by the majority. See **Fidelity Nat. Bank of Baton Rouge v. Calhoun**, 08-1685, pp. 11-12 (La.App. 1 Cir. 3/27/09), 11 So.3d 1119, 1127.