

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1218

SHANE PATRICK GOLDSBY

VERSUS

DR. R.E. GOLDSBY, LTD., A MEDICAL CORPORATION

*JEW*  
*EJC by JEW*  
*J.P.*

Judgment Rendered: AUG 09 2011

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Appealed from the  
Twenty-First Judicial District Court  
In and for the Parish of Tangipahoa, Louisiana  
Trial Court Number 60,723

Honorable Bruce C. Bennett, Judge

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Dr. R.E. Goldsby, Ltd.,  
A Medical Corporation

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BEFORE: PETTIGREW, GAIDRY AND WELCH, JJ.

WELCH, J.

Plaintiff, Shane Patrick Goldsby, appeals a judgment decreeing a reinscribed judgment to be a valid judgment. We reverse.

### **BACKGROUND**

On October 31, 1980, Dr. R.E. Goldsby, Ltd., a medical corporation, filed a lawsuit seeking to recover the balance owed on a promissory against R.E. Goldsby, Myles Goldsby, and Goldsby Jewelers. The record reflects that a default judgment was rendered on December 2, 1980, against the defendants, who failed to appear or answer, in the amount of \$53,816.45 plus interest and attorney fees. The judgment was recorded in the Tangipahoa Parish Clerk of Court's mortgage records.

In an attempt to keep the money judgment from prescribing, on November 19, 1990, Dr. R.E. Goldsby, Ltd. filed a petition to revive and reinscribe the December 2, 1980 judgment against the defendants in the original action. A preliminary default was entered on January 25, 1991.<sup>1</sup> The record reflects no further steps in the prosecution or defense of that action until September 28, 2004, when a confirmation of the default judgment previously entered was rendered. The court minutes taken that date reflect that counsel suggested to the court that more than two days lapsed since the entry of the default, that the defendant failed to appear, and that the original citation showing the sheriff's returns had been offered into evidence. On September 28, 2004, the trial court signed a judgment reviving and reinscribing the December 2, 1980 judgment.

On October 6, 2004, Myles Goldsby signed a "Notarial Acceptance of Service" in which he acknowledged acceptance of service of the notice of rendition of the September 28, 2004 judgment which reinscribed and revived the December 2, 1980 judgment rendered against him. The "Notarial Acceptance of Service"

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<sup>1</sup> The preliminary default judgment does not appear in the record. However, neither party disputes the fact it was entered or the date on which it was entered, and we note that the September 28, 2004 judgment references the January 25, 1991 preliminary default.

was filed into the record on November 10, 2004.

Thereafter, on January 24, 2008, Shane Patrick Goldsby, the sole heir and succession representative of Myles Goldsby, filed this petition against Dr. R.E. Goldsby, Ltd., seeking to nullify the September 28, 2004 judgment. In the trial court, Mr. Goldsby argued that the judgment was void and of no effect because it was rendered nearly four years after the ten year period for reinscribing a judgment had elapsed. He also urged that the lawsuit seeking to reinscribe the judgment was abandoned in the trial court by the failure of Dr. R.E. Goldsby, Ltd. to take any action following the entering of the preliminary default on January 25, 1991, for a period of nearly fourteen years, until obtaining a confirmation of the default on September 28, 2004.

Dr. R.E. Goldsby, Ltd. filed a peremptory exception raising the objection of prescription, urging that Mr. Goldsby's petition for nullity had prescribed. It also argued that the acceptance of the notice of judgment reviving and reinscribing the original judgment by Myles Goldsby constituted an acquiescence in the judgment obtained by Dr. R.E. Goldsby, Ltd., precluding a subsequent nullity action.

The trial court entered judgment in favor of Dr. R.E. Goldsby, Ltd., ruling that the judgment that was reinscribed on October 6, 2004, is a valid judgment.

### **DISCUSSION**

Louisiana Civil Code article 3501 provides that a money judgment is prescribed by the lapse of ten years from its signing if no appeal has been taken. It further states that the judgment may be revived before it prescribes as provided for La. C.C.P. art. 2031. Louisiana Code of Civil Procedure article 2031 provides that a money judgment may be revived at any time before it prescribes by an interested party in an ordinary proceeding brought in the court in which the judgment was rendered. In this case, Dr. R.E. Goldsby, Ltd. did file a lawsuit to revive the money judgment within ten years from the date it had been rendered, thereby

initially interrupting prescription of the money judgment. However, at issue in this appeal is whether, because of Dr. R.E. Goldsby, Ltd.'s failure to prosecute the lawsuit to revive the money judgment for a continuous period of nearly fourteen years, the money judgment became extinguished by prescription.

Louisiana Civil Code article 3463 provides that the interruption of prescription resulting from the filing of a lawsuit in a competent court and in the proper venue or from service of process is considered to never have occurred if the plaintiff abandons, voluntarily dismisses the action, or fails to prosecute the suit at the trial. Louisiana Code of Civil Procedure article 561 provides that an action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years. At the time the action to revive the money judgment was pending, La. C.C.P. art. 561 provided for a five-year abandonment period. Abandonment of an action by failing to take any step in its prosecution or defense within the legislatively prescribed time period is self executing: it occurs automatically upon the passing of that time period without a step being taken by either party, and it is effective without court order. **Lambert v. Roussel**, 2007-1109, p. 5 (La. App. 1<sup>st</sup> Cir. 5/2/08), 991 So.2d 8, 10, writ denied, 2008-1193 (La. 9/19/08), 992 So.2d 933.

In a case involving similar circumstances, **Evans v. Hamner**, 209 La. 442, 450, 24 So.2d 814, 816 (La. 1946), the Louisiana Supreme Court relied on the principle of abandonment and La. C.C. art. 3463's predecessor, Article 3519, in holding that where a timely action to revive a money judgment had been filed, but during the course of that proceeding the judgment creditor failed to take action for over five years prior to obtaining a default judgment, the lawsuit to revive the money judgment had been abandoned and the money judgment became extinguished by prescription. In **Evans**, a money judgment had been rendered on June 21, 1920. On June 17, 1930, within the ten-year prescriptive period for

reviving a money judgment, the judgment creditor filed a lawsuit to revive the judgment to prevent it from prescribing. However, the judgment creditor failed to take any step in the prosecution of the lawsuit to revive the judgment for a period exceeding seven years and nine months, during which time the lawsuit to interrupt prescription on the money judgment remained dormant on the docket of the district court. The first action taken by the judgment creditor after filing the lawsuit was the entering of a preliminary default on March 25, 1938, followed by a confirmation of the default two days later. Under these circumstances, the court held that the judgment rendered in the original lawsuit prescribed by the failure of the judgment creditor to take any step in the prosecution of the lawsuit to revive the judgment for a period exceeding five years. The court reasoned that prescription which was running against the original money judgment would have been interrupted by the filing of the lawsuit to interrupt prescription had that lawsuit not been abandoned. However, because the lawsuit had been abandoned by the operation of law before a judgment reviving the money judgment had been entered, the court concluded that the interruption of prescription that occurred by the timely filing of the action to revive the judgment was considered to never have occurred. Accordingly, the court upheld the holding of the lower courts that the money judgment was extinguished by prescription.

In this case, after timely filing the lawsuit to revive the money judgment and obtaining a preliminary default, Dr. R.E. Goldsby, Ltd. took no steps to prosecute the action until nearly fourteen years later, when it obtained a confirmation of the default judgment. During that time span, the lawsuit remained dormant on the docket of the district court. On the basis of above cited provisions of the Code of Civil Procedure and Civil Code as well as the court's holding in **Evans**, we hold that Dr. R.E. Goldsby, Ltd.'s lawsuit to revive the money judgment was abandoned by the operation of law by the passage of over five years in the trial court without

any step being taken to prosecute that lawsuit to judgment. Because the lawsuit to revive the money judgment was abandoned, the interruption of La. C.C. art. 3501's ten-year prescriptive period by the timely filing of the lawsuit to revive the judgment is considered to never have occurred. The money judgment was extinguished by prescription because the ten-year prescriptive period for reviving a money judgment lapsed.<sup>2</sup> Accordingly, we find that the trial court erred in holding that the September 28, 2004 judgment reviving the December 2, 1980 judgment is a valid judgment.

### CONCLUSION

For the reasons stated above, the judgment appealed from is hereby reversed. Judgment is entered in favor of plaintiff, Shane Patrick Goldsby, decreeing the December 2, 1980 money judgment to be invalid on the basis that it has been extinguished by prescription. All costs of this appeal are assessed to appellee, Dr. R.E. Goldsby, Ltd.

### REVERSED AND RENDERED.

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<sup>2</sup> We find no merit in Dr. R.E. Goldsby, Ltd.'s argument that the action of Myles Goldsby in signing a notarial acceptance of service of notice of the rendition of the September 28, 2004 judgment and his failure to institute a nullity action thereafter constituted an acquiescence in that judgment. It is settled that once abandonment occurs, no action by the plaintiff or inaction by the defendant can revive the abandoned action. *See Clark v. State Farm Mutual Automobile Insurance Company*, 2000-3010, p. 15 (La. 5/15/01), 785 So.2d 779, 789. We conclude that the mere acceptance of service of an invalid judgment and the failure of Mr. Goldsby to institute a nullity action to invalidate the judgment does not establish that Mr. Goldsby affirmatively acquiesced in the judgment, nor could that action and inaction serve to revive a judgment extinguished by prescription.