

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CW 0323

ELOUISE SPENCER

VERSUS

**BENNY'S CAR WASH, LLC AND CENTRAL CLAIMS
SERVICE, INC.**



Judgment Rendered: **MAY 04 2012**

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On Application for Supervisory Review from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
Trial Court Number 516,558

The Honorable Todd W. Hernandez, Judge

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Elouise Spencer
Baton Rouge, Louisiana

Plaintiff/Relator
Pro Se

James A. Prather
Katherine F. Ogburn
Mandeville, Louisiana

Counsel for Defendants/
Respondents
Benny's Car Wash, LLC and Certain
Underwriters at Lloyds, London,
Subscribing to Certificate Number
SVBPKG1123

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BEFORE: GAIDRY, McDONALD, AND HUGHES JJ.

HUGHES, J.

This is an application for supervisory review of a trial court's partial denial of the plaintiff's motion to supplement the record with exhibits. For the reasons that follow, we decline to exercise supervisory review.

On or about February 1, 2003¹ Elouise Spencer took her vehicle to Benny's Car Wash, on Coursey Boulevard, in Baton Rouge, to get a car inspection sticker. While walking through the garage area, Dr. Spencer² fell into a mechanic's oil-change pit and allegedly suffered injury. On January 29, 2004 Dr. Spencer filed suit against Benny's Car Wash, LLC ("Benny's") and its insurer, Certain Underwriters at Lloyds, London, Subscribing to Certificate Number SVBPKG1123 ("Lloyds").³

On March 21, 2011 a trial was held in this case, and after the presentation of evidence by the plaintiff, who appeared without the benefit of counsel, the defendants made a motion for involuntary dismissal, which the court took under advisement. On March 23, 2011 the trial court issued a written ruling finding the plaintiff failed to prove liability on the part of Benny's and granted the defendants' motion for involuntary dismissal; a judgment dismissing the plaintiff's case was signed on April 14, 2011. Notice of judgment was sent to Dr. Spencer on May 4, 2011, and she filed a devolutive appeal on June 13, 2011. The appeal was lodged with this court on September 15, 2011.

¹ Although the plaintiff listed February 1, 2003 as the date of her accident in her petition, she testified at trial that the accident occurred on February 2, 2003. Because the medical records submitted into evidence showed that Dr. Spencer was treated following the accident on February 1, 2003, we will refer to this date as the date of accident.

² Dr. Spencer testified that she was a Ph.D. professor in and chair of the Department of Sociology at Southern University.

³ In the plaintiff's petition, Central Claims Service, Inc. ("Central") was named as Benny's insurer; however, Central filed a peremptory exception pleading the objection of no cause of action, asserting that it was not an insurer, but rather a corporation that provides "independent adjustment services to the insurance industry." The petition was later amended to add as a defendant Lloyds, and Central was dismissed.

Thereafter, on or about January 11, 2012, Dr. Spencer filed a motion in the trial court seeking to supplement the trial court record with exhibits and or other documents that were not previously filed into evidence. The precise allegations made by Dr. Spencer in that motion are unknown to this court, as she did not include a copy of her January 2012 motion with the instant application for supervisory review. However, the trial court's January 25, 2012 order, issued in connection with Dr. Spencer's motion, was attached to the writ application and stated as follows:

Plaintiff has filed a motion to supplement seeking permission to submit evidence as a supplement to the trial in this case. On March 21, 2011, a bench trial was conducted by this court. Plaintiff was allowed to proceed with her trial in proper person and was allowed time and opportunity to put her case on and submit evidence. It appears in this motion to supplement that plaintiff is seeking to supplement the record with evidence that she failed to submit at the trial. The motion is granted with regard to evidence that was submitted to the court on her trial date along with the transcript of the trial if it was ordered by the plaintiff. The motion is denied with regard to the exhibits that were not put into evidence.

The application for supervisory review was referred to this panel by order of this court, dated March 2, 2012, as we currently have under consideration Dr. Spencer's June 2011 appeal of the trial court's April 14, 2011 judgment, which dismissed her tort action; a decision in that appeal is also rendered on this date. See Spencer v. Benny's Car Wash, LLC, 2011-1708 (La. App. 1 Cir. 5/2/12) (unpublished) (affirming the dismissal by the trial court). In light of our ruling in Dr. Spencer's appeal and the numerous rule violations

present in her application for supervisory review,⁴ we find no merit in this application.

WRIT DENIED.

⁴ Plaintiff/relator's application for supervisory review: (1) failed to include relator's notice of her intent to apply for supervisory review, as required by Uniform Rules of Louisiana Courts of Appeal, Rule 4-2 (stating: "[t]he party, or counsel of record, intending to apply to the Court of Appeal for a writ shall give to opposing parties or opposing counsel of record, notice of such intention; notice simultaneously shall be given to the judge whose ruling is at issue, by requesting a return date to be set by the judge within the time period provided for in Rule 4-3") (see also Rule 4-5(C)(11) (requiring the writ application contain "the notice of intent ... required by [Rule] 4-2")); (2) failed to include documentation of the return date fixed by the trial court, as required by Uniform Rules of Louisiana Courts of Appeal, Rule 4-3 (which states in pertinent part: "[t]he application for writs shall contain documentation of the return date and any extensions thereof; any application that does not contain this documentation may not be considered by the appellate court") (see also Rule 4-5(C)(11) (requiring the writ application contain "the ... return date order required by [Rule] ... 4-3")); (3) failed to include an affidavit by relator, as required by Uniform Rules of Louisiana Courts of Appeal, Rule 4-5(A) (stating: "[t]he original application for writs shall be signed by the applicant or counsel of record, and shall contain an affidavit verifying the allegations of the application and certifying that a copy has been delivered or mailed to the respondent judge and to opposing counsel, and to any opposing party not represented by counsel"); (4) failed to include a copy of the pleading upon which the judgment complained of was based (i.e. relator's January 2012 motion to supplement the trial court record), as required by Uniform Rules of Louisiana Courts of Appeal, Rule 4-5(C)(8) (requiring the attachment of: "a copy of each pleading on which the judgment, order, or ruling was founded, including the petition(s) in civil cases"); and (5) failed to include "a copy of any opposition and any attachments thereto filed by a party in the trial court or a statement by the relator that no opposing written document was filed," as required by Uniform Rules of Louisiana Courts of Appeal, Rule 4-5(C)(9).