

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2300

BEVERLY WILSON ON BEHALF OF THE MINOR CHILD,  
SAVANNAH WILSON AND DAWN HUTCHINS, ON BEHALF OF THE  
MINOR CHILD, HANNAH WILSON

VS.

THE JOCKEYS' GUILD AND ABC INSURANCE COMPANY

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JUDGMENT RENDERED: SEP 26 2007

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ON APPEAL FROM THE  
TWENTY-THIRD JUDICIAL DISTRICT COURT  
DOCKET NUMBER 80,994, DIVISION B  
PARISH OF ASCENSION, STATE OF LOUISIANA

HONORABLE THOMAS J. KLIEBERT, JR.

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BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

*McClelland, J. Concurs in the Result Reached by the majority.*

MCDONALD, J.

Defendant, the Jockeys' Guild, appeals the confirmation of a default judgment awarding \$250,000.00, plus legal interest and court costs to the minor children of a deceased member of the Guild. For the following reasons, we reverse and remand to trial court.

Freddie Wilson, Jr. was a professional jockey who was injured during a race in June 2001, reinjured in 2003, and began receiving disability payments, as well as payment of his medical expenses, through the Jockeys' Guild. In June 2004, Mr. Wilson drowned, leaving two minor daughters, Savannah and Hannah. Upon his death, the proceeds of a life insurance policy were paid pursuant to his membership in the Jockeys' Guild.

In June 2005, a petition<sup>1</sup> was filed in the Twenty-third Judicial District Court naming the Jockeys' Guild as defendant, and alleging, inter alia, that Freddie Wilson, Jr. was entitled to payment of a lump sum benefit as a result of his status as a permanently disabled jockey. Citation and service on the Jockeys' Guild, whose home office is in Monrovia, California, was made pursuant to the Louisiana Long Arm statute. No answer was filed in the record. A motion for a default judgment was filed in October 2005 and judgment of default entered against the Jockeys' Guild on October 24, 2005.

After a hearing on July 7, 2006, the trial court confirmed the preliminary default judgment and entered judgment in favor of the minor children<sup>2</sup> in the amount of \$250,000.00, plus legal interest from the date of judicial demand and costs of the proceedings. The Jockeys' Guild appeals this judgment alleging two assignments of error: (1) the trial court erred by

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<sup>1</sup> The petition was filed by Freddie Wilson, Sr. and Beverly Wilson, individually and as legal guardian and tutrix of Savannah Wilson, and Dawn Hutchins, the mother, legal guardian and tutrix of Hannah Wilson.

<sup>2</sup> The judgment did not render an award to Mr. Wilson, Sr. or Mrs. Wilson individually.

confirming a default judgment in favor of plaintiffs who alleged damages arising from a contractual relationship, but failed to produce the contract; and (2) the trial court erred by confirming a default judgment because the plaintiffs failed to offer competent, admissible evidence to establish a prima facie case of entitlement.

It is well established that for a plaintiff to obtain a default judgment, he must establish the elements of a prima facie case with competent evidence, as fully as though each of the allegations of the petition were denied by the defendant. La/C.C.P. art. 1702A; *Thibodeaux v. Burton*, 538 So.2d 1001, 1004 (La. 1/30/89). The plaintiff must present competent evidence that convinces the court that it is more probable than not that he would prevail in a trial on the merits. *Id.*

When reviewing a default judgment, an appellate court is restricted to a determination of sufficiency of the evidence offered in support of the judgment. *Bates v. Legion Indem. Co.*, 01-0552 (La. App. 1<sup>st</sup>. Cir. 2/27/2002), 818 So.2d 176, 178. A plaintiff who knows of a writing that is the principal basis for his claims must produce it when it is the best evidence of the facts at issue. *Ascension Builders, Inc. v. Jumonville*, 263 So.2d 875, 878 (La. 1972).

At the time of filing the petition, plaintiffs did not know whether the Jockeys' Guild had contracted with an insurance company to pay the disability benefit it provided to its disabled members. The fact that the petition named an unknown insurance company as a defendant to address that possibility does not create a requirement that plaintiffs produce an insurance contract that may or may not exist. Therefore, we do not agree with defendants that the failure of plaintiffs to offer a contract of insurance into evidence necessitates reversal of the confirmation of the default

judgment. It is not necessary for plaintiff to prove *every* allegation of the petition. A prima facie case is established when the plaintiff proves the *essential* allegations of his petition. *Crescent City Construction, Inc. v. Camper*, 04-1727 (La. App. 1<sup>st</sup> Cir. 12/30/04), 898 So.2d 408 and cases cited therein. The contractual relationship essentially at issue here is the one alleged to exist between Freddie Wilson, Jr. and the Jockeys' Guild, entitling him or his heirs to a lump-sum disability payment.

We find that in order to meet the burden of proving more probably than not that one will prevail at a trial on the merits, more evidence than that offered by plaintiffs is necessary. Specifically, plaintiffs must prove the requirements for entitlement to the claimed benefit and that Freddie Wilson, Jr. met those requirements. The testimony presented, the sole evidence in that regard, was clearly insufficient to establish the nature and terms of any agreement providing the claimed benefits.

The portion of the judgment confirming the preliminary default and the award of \$250,000.00, plus legal interest is reversed, the portion of the judgment assessing court costs is affirmed. The matter is remanded to the trial court for further proceedings. Costs of this appeal are assessed to the Jockeys' Guild.

**REVERSED AND REMANDED.**