

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0714

GERALDINE DAIGLE AND ALLEN DAIGLE

VERSUS

STATE OF LOUISIANA AND ABC INSURANCE COMPANY

Judgment Rendered: November 9, 2011

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 576,768**

The Honorable William A. Morvant, Judge Presiding

**Locke Meredith
Sean Fagan
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Baton Rouge, Louisiana**

**Counsel for Plaintiffs/Appellants
Geraldine Daigle and Allen Daigle**

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**Counsel for Defendant/Appellee
State of Louisiana**

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Handwritten signature in black ink, appearing to be 'G. Daigle', with a circular stamp or mark below it.

GAIDRY, J.

SUMMARY DISPOSITION

The plaintiffs, Geraldine Daigle and Allen Daigle, appeal a judgment of the 19th Judicial District Court for the Parish of East Baton Rouge, sustaining a declinatory exception of insufficiency of citation and service of process and dismissing their petition against the State of Louisiana without prejudice. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

The plaintiffs filed suit against the State of Louisiana and its purported unknown liability insurer on March 25, 2009, alleging that Ms. Daigle was injured on a defective escalator at the New Orleans Arena on March 29, 2008. They requested service of process upon the attorney general.

The State excepted, on declinatory and peremptory grounds, to the plaintiffs' petition, raising objections of insufficiency of citation and service of process, improper venue, and no cause of action. It also moved for involuntary dismissal of the action pursuant to La. R.S. 13:5107(D)(2). The State conceded that service was timely requested under La. R.S. 13:5107(D)(1), but urged that because citation was not directed to and service was not made upon the proper state agency, the Louisiana Stadium and Exposition District (the District), which owned and operated the New Orleans Arena, citation and service on the State itself was insufficient and the action should be dismissed without prejudice. The State further contended that the plaintiffs have no cause of action against it, as opposed to the District, under the allegations of their petition.

The plaintiffs subsequently filed a supplemental and amending petition on July 2, 2009, adding the private management company that

managed the New Orleans Arena as a defendant and requesting service upon the State through the attorney general, and upon the District, the Louisiana Office of Risk Management, and the private management company.

On July 22, 2009, the trial court sustained the State's declinatory objection of improper venue. On December 21, 2009, this court granted the plaintiffs' application for supervisory writs, reversing that judgment and remanding this matter to the trial court for consideration of the remaining declinatory and peremptory objections and the motion for involuntary dismissal.

On August 23, 2010, the trial court sustained the declinatory objection of improper citation and service of process, pretermittting consideration of the peremptory objection of no cause of action. Its judgment also granted the State's motion for involuntary dismissal, dismissing the action without prejudice. The plaintiff then sought writs with this court, and we granted their application, directing the trial court to grant the plaintiffs an appeal.

LAW AND ANALYSIS

On July 1, 2011, the Louisiana Supreme Court decided *Whitley v. State ex rel. Bd. of Supervisors of La. State Univ. Agric. Mech. Coll.*, 11-0040 (La. 7/1/11), 66 So.3d 470, and *Burnett v. James Constr. Group*, 10-2608 (La. 7/1/11), 66 So.3d 482. Those cases involved the interpretation and interplay of La. R.S. 13:5107(A) and (D), La. R.S. 39:1538, and La. C.C.P. art. 1672(C), and are dispositive of the issue before us.

The State is the only named defendant as to whom La. R.S. 13:5107(A) and La. R.S. 39:1538 apply in this case's current procedural context. Dismissal of the plaintiffs' action pursuant to La. R.S. 13:5107(D)(2) and La. C.C.P. art. 1672(C) was not warranted, as the plaintiffs requested timely service upon the State, through the attorney

general, pursuant to La. R.S. 13:5107(A). The plaintiffs should be allowed to cure any failure to serve the Office of Risk Management pursuant to La. R.S. 39:1538(4), if they have not already done so. As the trial court did not rule upon the State's peremptory objection of no cause of action, the issues presented therein are not before us.

DECREE

We accordingly reverse the judgment of the trial court and remand this matter for further proceedings through this summary disposition, in accordance with Rules 2-16.2(A)(2) and (10) of the Uniform Rules of the Louisiana Courts of Appeal. All costs of this appeal, in the amount of \$761.50, are assessed to the defendant, the State of Louisiana.

REVERSED AND REMANDED.