

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0394

**ROBERT A. GRACE AND JANET F. GRACE, INDIVIDUALLY AND  
ON BEHALF OF THEIR MINOR CHILD, ELIZABETH LEIGH  
GRACE**

**VERSUS**

**LUIS CRESPO AND KIMBERLY CRESPO, INDIVIDUALLY AND  
ON BEHALF OF THEIR MINOR CHILD, SHERRAND E. CRESPO,  
ALLSTATE INSURANCE COMPANY, AND SENTRY SELECT  
INSURANCE COMPANY**

**Judgment Rendered: September 19, 2007**

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On Appeal from the Nineteenth Judicial District Court  
In and For the Parish of East Baton Rouge  
State of Louisiana  
Docket No.534,553

Honorable Donald R. Johnson, Judge Presiding

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Individually and on behalf of  
minor child, Elizabeth L. Grace

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**BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.**

**McCLENDON, J.**

In this personal injury suit, plaintiffs, Robert A. Grace and Janet F. Grace, sued individually and on behalf of their minor daughter, Elizabeth Leigh Grace, for injuries she suffered as a result of a single-car accident in Baton Rouge, Louisiana. The trial court denied plaintiffs' motion for summary judgment asserting that certain policies issued by one of the defendants, Sentry Select Insurance Company (Sentry), to plaintiffs' as part of a comprehensive insurance plan afforded additional coverage, including UM coverage under Sentry's Commercial Umbrella/Excess Liability (umbrella/excess) policy. The trial court certified the denial of plaintiffs' motion as a final judgment, and certified a subsequent judgment that granted a motion for a partial summary judgment by Sentry based on a finding that no additional coverage was available. In this appeal, plaintiffs assigned error to the denial of their motion.<sup>1</sup>

On April 23, 2007, this court issued a rule to show cause regarding this appeal. The rule stated that the denial of the motion for a partial summary judgment appeared to be non-appealable.

Louisiana Code of Civil Procedure article 968 expressly provides that a denial of a summary judgment motion is not appealable. Moreover, LSA-C.C.P. art. 1915B<sup>2</sup> does not provide that a judgment denying a motion for

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<sup>1</sup> In a companion case, **Grace v. Crespo**, 2007-0397 (La.App. 1 Cir. 9/14/07), \_\_\_ So.2d \_\_\_, handed down the same date as this case, plaintiffs appealed the trial court's grant of Sentry's motion for a partial summary judgment based on a finding of no additional coverage. Essentially, the issues involved in granting of the summary judgment are identical to those presented by the plaintiffs in their motion. The appeal of the companion case was maintained, and, as part of that overall appeal, we reviewed the plaintiffs' arguments concerning the denial of their motion, but found no error by the trial court.

<sup>2</sup> Louisiana Code of Civil Procedure article 1915B provides as follows:

(1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is

summary judgment can be designated as a final judgment for purposes of an appeal. Thus, the trial court erred in designating the denial of plaintiffs' motion as a final judgment under article 1915B. **Young v. City of Plaquemine**, 2004-2305 pp. 4-5 (La.App. 1 Cir. 11/4/05), 927 So.2d 408, 411.

For these reasons, by a memorandum opinion in compliance with URCA Rule 2-16.1.B, we dismiss the appeal for lack of jurisdiction. Based on the dismissal, we deny Sentry's motion to consolidate this dismissed appeal with the companion case, **Grace v. Crespo**, 2007-0397 (La.App. 1 Cir. 9/14/07), \_\_\_ So.2d \_\_\_. The costs of the appeal are assessed to plaintiffs.

**MOTION TO CONSOLIDATE APPEALS DENIED. RULE TO SHOW CAUSE GRANTED AND APPEAL DISMISSED.**

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designated as a final judgment by the court after an express determination that there is no just reason for delay.

(2) In the absence of such a determination and designation, any order or decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purpose of an immediate appeal. Any such order or decision issued may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.