NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0442

ROBERT T. DANIEL and SANDRA DANIEL, individually and on behalf of their minor daughter, DIANNE DANIEL

VERSUS

ANDREW MONISTERE, MARK LEWIS and NATIONAL FIRE & MARINE INSURANCE CO.

Judgment Rendered: February 14, 2007

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On Appeal from the Twenty-First Judicial District Court
In and For the Parish of Livingston
State of Louisiana
Docket No. 84,920

Honorable Zorraine M. Waguespack, Judge Presiding

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John Smith Baton Rouge, LA	Counsel for Plaintiffs/Appellees Robert T. Daniel and Sandra Daniel, individually and on behalf of their minor daughter, Dianne Daniel
Leo R. McAloon, III New Orleans, LA	Counsel for Defendant/Appellant Mark Lewis

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Parro, J., concurs.

McCLENDON, J.

Appellant seeks to have a factual finding of the trial court overturned as being manifestly erroneous. For the reasons that follow, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

Appellant, Mark Lewis, owned a 1995 Wellcraft Scarab, which was involved in an accident on the Tickfaw River in Tangipahoa Parish, on May 25, 1998. Andrew Monistere was operating the vessel when it collided with another boat operated by the plaintiff, Robert Terry Daniel. Daniel and Sandra Daniel, individually and on behalf of their minor daughter, Dianne Daniel, filed a petition for damages on March 1, 1999, against Monistere, Lewis, and National Fire & Marine Insurance Company (National).[1] In their petition, plaintiffs asserted that Monistere, without warning, cut across the river into the path of the Daniels, causing serious injury to Daniel and his daughter. Plaintiffs further asserted that National had in effect a comprehensive liability policy issued to Lewis.

On May 28, 1999, Lewis filed a Notice of Stay Order in this matter, notifying the trial court of a stay order issued by the United States District Court for the Middle District of Louisiana, where a limitation of liability proceeding had been filed.[2] Subsequently, plaintiffs filed a motion for partial dismissal as to National, and on November 24, 1999, National was

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[1] The claims of Sandra Daniel were abandoned prior to trial.

[2] The Order Directing Issuance of Notice and Restraining Prosecution of Claims, signed by the federal court on May 18, 1999, accepted an Ad Interim Stipulation of the value of the Wellcraft Scarab, executed by Lewis, in the principal amount of $22,000; provided for contesting of the amount; provided for notice to all interested persons; and stayed the prosecution of any other claims until the hearing and determination of the limitation proceeding.

dismissed from this matter.[3] Thereafter, Lewis filed an answer, reconventional demand and third-party demand against Monistere.

A bench trial was held on March 8, 2005, and the matter was taken under advisement.[4] Judgment was rendered on May 4, 2005, as follows:

> 1) The trial court found Monistere to be 75% at fault in the accident and Daniel to be 25% at fault;
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> 2) Lewis was awarded $14,000.00 in property damage and $15,000.00 in exemplary damages from Monistere. The trial court did not award Lewis the $6,000.00 he alleged he lost in the sale of his boat, nor did it award any exemplary damages to Lewis from Daniel. Daniel's claim for exemplary damages was also denied;
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> 3) Dianne Daniel was awarded $30,000.00 in exemplary damages, special damages in the amount of $16,000.00, and $180,000.00 in damages for pain and suffering;
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> 4) Daniel was awarded $3,500.00 in general damages, and $233.00 in special damages; and
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> 5) "[D]efendant's" (sic) were cast for all costs.

The trial court also issued written reasons for judgment on May 4, 2005.

Thereafter, Lewis filed a motion for new trial and a motion to amend the judgment. Lewis sought a new trial, asserting that the evidence clearly established that Monistere did not have permission to use Lewis' boat. In his motion to amend the judgment, Lewis asked the trial court for clarification of the judgment in several respects. Following a hearing, on September 26, 2005, the trial court denied Lewis' motion for new trial, but granted his motion to amend. Judgment was signed on October 12, 2005. The trial court amended the judgment as follows:

> 1) The trial court corrected the representation of counsel for Lewis to reflect that counsel represented only Lewis.

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[3] We note that no copy of any policy of insurance was ever made a part of the record.

[4] Monistere did not appear for trial.

2) The trial court clarified its judgment as to costs so that "each defendant is responsible for its respective ½ of the recoverable costs."

3) The trial court entered an order granting a default judgment in favor of Lewis and against Monistere, on Lewis' claims for contribution and indemnity.

Lewis appealed.

DISCUSSION

In its reasons for judgment, the trial court made the following finding of fact:

> The Court finds by a preponderance of the evidence that Mark Lewis (Lewis) did in fact give permission to Andrew Monistere (Monistere) to use his boat. Testimony adduced at trial shows that Monistere had used Lewis' boat on prior occasions and Monistere had indicated to Lewis that he was going to use the boat on the date of the accident. Although Lewis remarked to a co-worker that Monistere told Lewis he would be using the boat rather than asking him, Lewis never informed Monistere that he could not use the boat.

In this appeal, Lewis contends that the trial court was clearly wrong in finding that Lewis granted permission to Monistere to use his boat. He seeks a reversal of the "ruling" that Lewis granted Monistere permission to use the boat. This is the sole assignment of error.

While we agree with Lewis that the appropriate standard for appellate review of factual determinations is the manifest error/clearly wrong standard, there is nothing in the judgment imposing any fault or financial responsibility on Lewis. Therefore, the issue of the permissive use of the boat is not before us on appeal. Louisiana Code of Civil Procedure Article 2082 provides that "[a]n appeal is the exercise of the right of a party to have a **judgment** of a trial court revised, modified, set aside, or reversed by an appellate court." (Emphasis added.) A judgment and reasons for judgment are two separate and distinct documents. LSA-C.C.P. art. 1918. Appeals are taken from the judgment, not the written reasons for judgment. See LSA-

C.C.P. arts. 2082, 2083; **Greater New Orleans Expressway Com'n v. Olivier**, 02-2795, p. 3 (La. 10/18/03) 860 So.2d 22, 24; **Huang v. Louisiana State Bd. of Trustees for State Colleges and Universities**, 99-2805, p. 5 (La.App. 1 Cir. 12/2200), 781 So.2d 1, 6. Reasons for judgment only set forth the basis for the court's holding and are not binding. **Veal v. American Maintenance and Repair, Inc.**, 04-1785, p. 7 (La.App. 1 Cir. 9/23/05), 923 So.2d 668, 673.

In this matter, the absence from the judgment of any reference to the issue of permission is crucial, as an appellate court can only rule on the judgment and not its reasons for ruling. See **Ranger Ins. Co. v. State**, 06-487, p. 3 (La.App. 3 Cir. 10/11/06), 941 So.2d 182, 185. See also **Johnson v. Henderson**, 04-1723, p. 4 (La.App. 4 Cir. 3/16/05), 899 So.2d 626, 628. Further, Lewis was not found liable in this judgment. Thus, whether Monistere had permission to use Lewis' boat is not properly before this court.[5] Consequently, we cannot consider the issue on appeal.[6] See **Martin v. Brister**, 37,011, p. 6 (La.App. 2 Cir. 7/23/03), 850 So.2d 1106, 1111, writ denied, 03-2374 (La. 11/21/03), 860 So.2d 550.

This assignment of error is without merit. There being no other issues raised on appeal, we affirm the judgment of the trial court.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this appeal are assessed to Mark Lewis.

AFFIRMED.

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[5] We further note that no insurance company was cast in judgment or relieved from liability, which might call into question the issue of insurance coverage and/or permissive use.

[6] While we recognize the concerns raised by Lewis, any discussion or declaration in this matter regarding the issue of permissive use would be purely speculative and would amount to an impermissible advisory opinion. See **Chauvin v. Wellcheck, Inc.**, 05-1571, p. 5 (La.App. 1 Cir. 6/9/06), 938 So.2d 114, 116.