NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 1016

VANESSA MOORE

VERSUS

EXTREME AUTO MART, INC.

Judgment Rendered: JAN 2 9 2009

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On Appeal from the 21st Judicial District Court
In and For the Parish of Tangipahoa
Trial Court No. 2005-001571

Honorable W. Ray Chutz, Judge Presiding

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Maureen Morrow
Hammond, LA

Counsel for Plaintiff/Appellant
Vanessa Moore

Leonard E. Yokum, Jr.
Hammond, LA

Counsel for Defendant/Appellee
Extreme Auto Mart, Inc.

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BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a judgment awarding damages for wrongful repossession of a vehicle. For the reasons that follow, we dismiss the appeal *ex proprio motu* and remand for further proceedings.

In May of 2004 plaintiff Vanessa Moore purchased a 1997 Chevrolet Suburban from defendant Extreme Auto Mart, Inc. ("Extreme") for $9,995.00. Ms. Moore paid Extreme $5,000.00 as a down payment and $50.00 as a "documentation and notary fee." Extreme financed the remaining balance, with Ms. Moore agreeing to make payments in the amount of $250.00 per month. Ms. Moore thereafter paid Extreme four monthly payments, totaling $1,000.00, but failed to pay the October 2004 payment on the date it was due. An Extreme representative went to Ms. Moore's home on October 20, 2004 and requested that she voluntarily surrender the vehicle. Even though Ms. Moore refused to sign the surrender document, the Extreme representative took possession of the vehicle.

On May 10, 2005, Ms. Moore brought suit against Extreme seeking damages for illegal repossession of the vehicle, to rescind the sale and/or for *quantum minores*, and for damages under consumer protection laws.

At the trial of this matter, held June 13, 2007, testimony was presented on the issue of the legality of the repossession of the vehicle; Ms. Moore's other claims were not addressed at trial. At the conclusion of the trial, the court rendered judgment in favor of Ms. Moore, finding that Extreme had unlawfully seized her vehicle and awarding her $500.00 in damages, along with court costs. The trial judge noted that no evidence was submitted as to who had possession of the vehicle at the time of trial, but ruled that Ms. Moore owned the vehicle and still owed to Extreme the unpaid balance on the loan. With the exception of the award of damages and

costs, the court ruled that the parties were back in the positions they were in "as of October 20, 2004." A written judgment was thereafter signed by the court on June 20, 2007, stating:

> **IT IS ORDERED, ADJUDGED AND DECREED** that **EXTREME AUTO MART** committed an unlawful seizure of the 1997 Chevrolet Suburban, VIN # 1GNEC1658VJ394218.
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that **EXTREME AUTO MART** shall pay $500 in damages for the inconvenience to the plaintiff.
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the parties are considered to be back where they were as of October 20, 2004.

While Ms. Moore's claim for wrongful repossession of her vehicle was addressed by this judgment, the remaining claims raised in her petition were not. No other disposition of these claims appears in the record. Therefore, the June 20, 2007 judgment was a *partial* judgment as defined by LSA-C.C.P. art. 1915(B). A *partial* judgment is not a final appealable judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay. LSA-C.C.P. art. 1915(B)(1).[1] See also LSA-C.C.P. arts. 1911 and 2083; **Latiolais v. Jackson**, 2006-2403, p. 5 (La. App. 1 Cir. 11/2/07), 979 So.2d 489, 492. No Article 1915(B) certification was made by the trial court as to the judgment

[1] This court in **Best Fishing, Inc. v. Rancatore**, 96-2254, p. 10 n.4 (La. App. 1 Cir 12/29/97), 706 So.2d 161, 166 n. 4, recognized that when a judgment has been rendered pursuant to a motion for summary judgment, rather than trial on the merits, it would have been a partial final judgment, authorized by LSA-C.C.P. art. 1915(A)(3). The supreme court has held that LSA-C.C.P. art. 1915(A)(3) expressly authorizes the rendering of a final judgment on less than all of the issues in the case when the court grants a summary judgment; however, this article grants no such authority when the judgment is rendered pursuant to trial and does not dismiss any party (unless it meets the requirements of LSA-C.C.P. art. 1915(A)(4) or (5)). In cases other than those authorized by LSA-C.C.P. art. 1915(A)(3), (4) or (5), immediate review of a partial judgment is obtained by application for supervisory writs. There is a valid rationale for such a distinction. While dismissing completely exonerated parties or unmeritorious claims in pretrial proceedings furthers the interests of fairness and judicial economy, the same purpose is not served by piecemeal trials on the merits of the various claims presented.

currently on appeal; therefore, the judgment is not appealable.[2]

Nevertheless, judicial efficiency and the interests of justice have previously induced this court to assert our plenary power to exercise supervisory jurisdiction and convert an appeal to an application for supervisory review and grant writs where warranted. See **Latiolais v. Jackson**, 2006-2403 at p. 5, 979 So.2d at 492. However, we do not find this case appropriate for such action. This case does not present the situation described in **Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981), in which the supreme court encouraged appellate courts to consider granting supervisory writs when a trial court judgment was arguably incorrect and a reversal would terminate. the litigation, in whole or in part. See also **Best Fishing, Inc. v. Rancatore**, 96-2254, pp. 10-11 (La. App. 1 Cir 12/29/97), 706 So.2d 161, 166-67.

Herein, plaintiff's petition sought damages for illegal repossession of the vehicle, to rescind the sale and/or for quantum minores, and for damages under consumer protection laws; however, the only issue tried by the trial court was the propriety of the repossession. This fact is made clear by several exchanges between the court and counsel during the trial. At one point, the court asked, "Are we talking about a redhibitory claim or something here or what?" Trial counsel for Ms. Moore responded, "No, sir."

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[2] We further note that Louisiana courts require that a valid final judgment be precise, definite, and certain. **Laird v. St. Tammany Parish Safe Harbor**, 2002-0045, p. 3 (La. App. 1 Cir. 12/20/02), 836 So.2d 364, 365; **Vanderbrook v. Coachmen Industries, Inc.**, 2001-0809, p. 11 (La. App. 1 Cir. 5/10/02), 818 So.2d 906, 913. The specific nature and amount of an award should be determinable from a judgment without reference to an extrinsic source such as pleadings or reasons for judgment. **Vanderbrook v. Coachmen Industries, Inc.**, 2001-0809 at pp. 11-12, 818 So.2d at 913. Additionally, a valid final judgment must also identify the party in whose favor the ruling was made and the party against whom the ruling was made. **Laird v. St. Tammany Parish Safe Harbor**, 2002-0045 at p. 3, 836 So.2d at 366. We do not believe the judgment rendered in the case currently before the court satisfies these requirements. Since the judgment at issue is not a valid final judgment, it is not subject to review on appeal. See **Carter v. Williamson Eye Center**, 2001-2016, p. 3 (La. App. 1 Cir. 11/27/02), 837 So.2d 43, 44.

Later, when the court was delivering its decision, counsel for Ms. Moore asked the court the following:

> Your Honor, is it possible based on your judgment, could we either amend the petition or file another suit to just go ahead and rescind this contract and all since she does not have the vehicle?

The court responded, "There is a saying that ... you can sue anybody for anything ... but whether you can win or not, I don't know." From these exchanges, it seems that neither Ms. Moore's trial counsel nor the trial judge was aware that the original petition stated causes of action to rescind the sale and/or for *quantum minores*, and for damages under consumer protection laws.[3] Regardless, it is certain that these issues were not tried along with the action for wrongful repossession.[4]

Because a satisfactory outcome to litigation of the remaining issues in this case may obviate the need for appellate review, the criteria set forth in **Herlitz** are not met, and the plaintiff has an adequate remedy by review on appeal after a final judgment, we decline to exercise our supervisory jurisdiction.[5] See **Best Fishing, Inc. v. Rancatore**, 96-2254 at p. 11, 706 So.2d at 167.

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[3] We observe that the attorney who filed the original petition on behalf of Ms. Moore was not the same attorney who appeared on her behalf at the June 13, 2007 trial, while yet another attorney filed the appellate brief in this appeal (though all three attorneys disclosed an affiliation with Southeast Louisiana Legal Services, Inc.).

[4] Ordinarily, when a judgment is silent as to any part of a demand or any issue that was litigated, that issue or demand is deemed rejected; however, where the claim at issue has not been actually litigated at the trial, it should not be considered as rejected by the trial court. See **Best Fishing, Inc. v. Rancatore**, 96-2254 at p. 5, 706 So.2d at 163.

[5] As stated in **Best Fishing, Inc. v. Rancatore**, the denial of a writ application is merely a decision not to exercise the extraordinary powers of supervisory jurisdiction, and does not bar reconsideration of, or a different conclusion on, the same question when an appeal is taken from a final judgment. **Best Fishing, Inc. v. Rancatore**, 96-2254 at p. 11 n.6, 706 So.2d at 167 n.6.

Accordingly, we dismiss this appeal *ex proprio motu* and remand to the trial court for further proceedings; each party to bear his own appellate costs.[6]

APPEAL DISMISSED; REMANDED FOR FURTHER PROCEEDINGS.

[6] In brief to this court, the defendant/appellee requests this court to dismiss the appeal, citing what it claims was an excessive lapse of time between trial and its receipt of the June 2008 appellant's brief filed in this matter. Because of the disposition we make herein, we find it unnecessary to address this argument.