

SUPREME COURT OF LOUISIANA

Mary Ann Charles Calbert v. Orlando J. Batiste

31 So. 3d 332 (La. 2010) · No. 2009-C-2646 · Decided March 12, 2010

SUMMARY

The Supreme Court of Louisiana held that the district court properly sustained exceptions of lis pendens because two virtually identical wrongful death and survival actions were pending based on the same occurrence, between the same parties in the same capacities. The court reversed the Court of Appeal and reinstated and rendered the district court's judgment dismissing the later claims.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per curiam
JURISDICTION	Louisiana
DECIDED	March 12, 2010
DOCKET	2009-C-2646
DISPOSITION	reversed
PROCEDURAL POSTURE	The Louisiana Supreme Court granted a writ to review the Court of Appeal's reversal of a district court judgment sustaining exceptions of lis pendens. The Supreme Court reversed the Court of Appeal and reinstated and rendered the district court judgment.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court properly sustained exceptions of lis pendens when two virtually identical tort suits concerning the same occurrence, parties, capacities, and causes of action were pending in the same Louisiana district court.

HOLDINGS

1. Exceptions of lis pendens were properly sustained because Major Calbert had two virtually identical civil tort suits pending in the same Louisiana district court, involving the same transaction or occurrence, the same parties in the same capacities, and the same causes of action; under Louisiana Code of Civil Procedure article 531, all but the first-filed suit must be dismissed.

KEY QUOTATIONS

“In the instant matter, Major has pending in the 15th Judicial District Court two virtually identical civil tort suits, alleging the same causes of action on the same occurrence against the same defendants in the same capacities.” (333)

FACTUAL BACKGROUND

Raymond Calbert died from injuries sustained when he was struck by a vehicle driven by Orlando Batiste. His surviving spouse filed a wrongful-death action, and his surviving son, Major Calbert, filed a separate wrongful-death and survival action involving the same occurrence and defendants. Major subsequently sought to intervene in the spouse's suit and add the governmental defendants, prompting exceptions of lis pendens.

PROCEDURAL HISTORY

Mary Ann Charles Calbert filed a wrongful-death action against Orlando Batiste in the Fifteenth Judicial District Court. Raymond Calbert's surviving son, Major Calbert, later filed a separate wrongful-death and survival action against Batiste, DOTD, and Lafayette, then sought to intervene in Mary's action and add DOTD and Lafayette as defendants. The district court sustained exceptions of lis pendens and dismissed Major's claims with prejudice; the Court of Appeal reversed, and the Louisiana Supreme Court reversed the appellate judgment and reinstated the district court judgment.

DISPOSITION

reversed

OPINION

PER CURIAM.

31 So. 3d 332 (2010) Mary Ann Charles CALBERT v. Orlando J. BATISTE. Nos. 2009-C-2646. Supreme Court of Louisiana. March 12, 2010. PER CURIAM.[*] Finding the Court of Appeal erred in reversing the district court's judgment sustaining defendants', Lafayette City-Parish Consolidated Government's (Lafayette) and State through Department of Transportation and Development's (DOTD), exceptions of lis pendens, we grant this writ to reinstate the District Court's judgment.

On July 23, 2007, Raymond Calbert (Raymond) passed away from injuries he sustained earlier that day when struck by a vehicle driven by Orlando Batiste (Batiste). On July 14, 2008, Mary

Ann Charles Calbert (Mary Ann), as the surviving spouse and on behalf of Raymond's and her minor son, Rashaun Calbert, filed the instant wrongful death action against Batiste in the 15th Judicial District Court, docket number 2008-4022-B.

On August 28, 2008, Major Calbert (Major), as Raymond's surviving son, filed his own wrongful death and survival action against Batiste, DOTD, and Lafayette in the 15th Judicial District Court, docket number 2008-4932-A.

In response, DOTD and Lafayette filed exceptions of prescription, vagueness, and improper service.[1] Then on December 1, 2008, Major filed a petition of intervention, seeking to intervene in the present suit filed by Mary Ann and to add DOTD and Lafayette as defendants.

In response, DOTD and Lafayette brought exceptions of lis pendens, claiming the existence of Major's first filed suit, docket number 2008-4932-A, prevented him from intervening in the present matter, docket number 2008-4022-B.[2] The District Court sustained the exceptions of lis pendens, dismissing Major's claims with prejudice.[3] The Court of Appeal reversed, finding because the first filed suit existed in name only, multiple suits were not pending.

Under the provisions of La.Code Civ. Proc. art. 531, "[w]hen two or more suits are pending in a Louisiana court or courts on the same transaction or occurrence, between the same parties in the same capacities, the defendant may have all but the first suit dismissed by excepting thereto...."

In the instant matter, Major has pending in the 15th Judicial District Court two virtually identical civil tort suits, alleging the same causes of action on the same occurrence against the same defendants in the same capacities.

In accordance with *333 Article 531, DOTD and Lafayette are entitled to have all but the first suit dismissed. Therefore, we find the District Court properly sustained the exceptions of lis pendens, and the Court of Appeal erred in its reversal.

Accordingly, the judgment of the Court of Appeal is reversed, and the judgment of the District Court sustaining the exceptions of lis pendens is reinstated and rendered. REVERSED and RENDERED. NOTES [*] Kimball, C.J., did not participate in the deliberation of this opinion.

[1] On January 12, 2009, the district court heard these exceptions and ordered the suit be transferred to the instant suit, docket number 2008-4022-B. [2] DOTD and Lafayette also filed exceptions of prescription, vagueness, and no cause of action.

[3] The District Court sustained the exceptions of prescription as well. However, our finding the exceptions of lis pendens were properly sustained renders all other issues moot, and therefore, we pretermitted discussion of these issues.

