

SUPREME COURT OF LOUISIANA

Calbert v. Batiste

29 So. 3d 1240 (La. 2010) · No. 2009-C-2647 · Decided March 12, 2010

SUMMARY

The Louisiana Supreme Court held that two virtually identical wrongful-death and survival actions arising from the same occurrence were pending between the same parties in the same capacities. Applying Louisiana Code of Civil Procedure article 531, the court reinstated the district court's judgment sustaining exceptions of lis pendens and 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-2647
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Louisiana reviewed the Court of Appeal's reversal of a district court judgment sustaining exceptions of lis pendens.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Mary Ann Charles Calbert, Major Calbert v. Orlando J. Batiste, Lafayette City-Parish Consolidated Government, State of Louisiana through Department of Transportation and Development

TOPICS

- civil procedure
- wrongful death
- appellate procedure

PRACTICE AREAS

- civil procedure
- torts
- appellate procedure

QUESTIONS PRESENTED

1. Whether exceptions of lis pendens were properly sustained when two virtually identical tort suits arising from the same transaction or occurrence were pending in the same Louisiana district court between the same parties in the same capacities.
2. Whether Major Calbert could intervene in the later-filed action despite his earlier-filed separate action.

HOLDINGS

1. Louisiana Code of Civil Procedure article 531 required dismissal of all but the first-filed suit because Major had two virtually identical civil tort suits pending in the same court, involving the same transaction or occurrence, the same causes of action, and the same defendants in the same capacities.
2. The district court properly sustained the exceptions of lis pendens and dismissed Major Calbert's claims with prejudice; the Court of Appeal erred in reversing that judgment.

KEY QUOTATIONS

“In accordance with Article 531, DOTD and Lafayette are entitled to have all but the first suit dismissed.”
(29 So. 3d at 1241)

“Therefore, we find the District Court properly sustained the exceptions of lis pendens, and the Court of Appeal erred in its reversal.” (29 So. 3d at 1241)

FACTUAL BACKGROUND

Raymond Calbert died from injuries sustained when he was struck by a vehicle driven by Orlando Batiste. His surviving spouse, Mary Ann Calbert, filed a wrongful-death action, and his surviving son, Major Calbert, filed a separate wrongful-death and survival action arising from the same accident against overlapping defendants. Major later sought to intervene in Mary Ann's action and add the Department of Transportation and Development and Lafayette as defendants.

PROCEDURAL HISTORY

Mary Ann Calbert filed a wrongful-death action against Orlando Batiste. Major Calbert later filed a separate wrongful-death and survival action arising from the same occurrence against Batiste, the Department of Transportation and Development, and Lafayette, then sought to intervene in Mary Ann's action and add the latter defendants. The district court sustained exceptions of lis pendens and dismissed Major's claims with prejudice; the Court of Appeal reversed. The Supreme Court granted the writ, reversed the Court of Appeal, and reinstated and rendered the district court's judgment.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None stated; the Supreme Court reinstated and rendered the district court's judgment.

OPINION

Calbert v. Batiste

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PER CURIAM.

29 So. 3d 1240 (2010)

Mary Ann Charles CALBERT, et al. v. Orlando J. BATISTE. No. 2009-C-2647. Supreme Court of Louisiana. March 12, 2010. Prior report: La.App., 23 So. 3d 1031.

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.

*1241 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 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.