Appealing "Partial" Final Judgments under Article 1915(B): The First Circuit Adopts its Own Approach

by Ryan E. Johnson

The Louisiana First Circuit recently fired another volley in the continuing skirmish over the requirements for partial final judgments under Louisiana Code of Civil Procedure Article 1915(B). As many practitioners know, appealing judgments under this article can be problematic when the trial court either fails to give any explanation of why it designated the judgment as appealable or fails to provide any designation at all.

In *Motorola Inc. v. Associated Indemnity Corp.*,[1] the First Circuit adopted a divided procedure for dealing with this problem. If the trial court fails to designate the judgment as final and appealable, the court will allow the parties to supplement the record with a designation. If the trial court designates a partial judgment as appealable but fails to give written reasons for doing so, the court will conduct a *de novo* review to determine whether the appeal is proper.

The First Circuit's procedure in *Motorola* is different from that followed in other Louisiana courts of appeal. Consequently, the *Motorola* ruling could now provide the Supreme Court with additional justification to develop a uniform procedure for appealing final judgments under this article.[2]

Article 1915(B)

The Legislature patterned article 1915 after federal Rule 54 and intended to give parties a vehicle to take appeals without enduring the "hardship of awaiting final disposition of all claims."[3] Unfortunately, despite five different amendments to the article,[4] the courts of appeal have debated and differed on the proper interpretation of article 1915 since it was adopted in 1960.

The text of the article is straightforward enough. Article 1915(A) lists the instances when a partial judgment is final for purposes of appeal, including where the judgment dismisses some, but not all, of the parties to the suit. A partial judgment rendered under Section (A) is final and immediately appealable without any designation or explanation by the trial court. Article 1915(B) applies to a judgment that dismisses some of the claims in the lawsuit and mandates that the judgments "shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay."[5] Moreover, a judgment that does not contain an "express determination and designation" is not a "final judgment for purpose of an immediate appeal."[6]

The courts of appeal have differed on how to interpret article 1915(B)'s requirement that the trial court make "an express determination that there is no just reason for delay." Since 1997, the decisions have questioned whether this language means the trial court must give an explicit written explanation of why the partial judgment is final and appealable, or whether the appellate court can rely on something short of an express explanation. It is against this backdrop that the First Circuit grappled with these issues in *Motorola*.

Motorola v. Associated Indemnity Corporation

The *Motorola* suit involved a declaratory judgment action brought by Motorola against its primary and excess insurers for coverage and indemnity related to two class action lawsuits. The insurers and Motorola filed cross motions for partial summary judgment on coverage issues. The trial court granted several of the motions in favor of the insurers.[7]

In one of its rulings, the trial court disposed of some, but not all, the claims against one of the insurer defendants. The trial court designated that ruling as a "final judgment" under article 1915. The trial court did not provide any explanation of the "reasoning upon which it based that designation," however.[8]

As the First Circuit explained, the issue on appeal in *Motorola* was how to interpret article 1915(B)'s requirement of an "express determination" and whether "such a determination requires the trial court to give specific reasons for designating a partial final judgment as final."[9] The court observed that federal cases were split on the proper interpretation of the "express determination" language contained in federal Rule 54(b).[10] The majority of federal courts require that the trial court explain why its ruling is immediately appealable. The U.S. Sixth Circuit is the only court, however, that requires a trial court to provide written reasons for its designation.[11]

In several cases before *Motorola*, the First Circuit wrestled with the question of how to treat an appeal where

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the trial court failed to designate a partial judgment as final and appealable. To deal with this problem, the court frequently allowed appellants to supplement the record with a designation from the trial court.[12] This required that the appellant return to the trial court and ask for a designation under article 1915(B).

The court followed this internal procedure for several years, but its decisions were not entirely consistent. In several cases, the court conducted a *de novo* review and determined that the trial court improperly designated the judgments as appealable.[13] In another case, the court adopted a standard of review followed in other Louisiana circuits—an abuse of discretion review if the trial court provided written reasons for its designation and a *de novo* review if the trial court provided no reasons for its designation.[14] Heading in a completely different direction, the court dismissed an appeal in one case for lack of jurisdiction where the trial court did not designate the judgment as final or explain its designation.[15] In yet another case, the court observed that "a valid certification of a partial judgment as final requires that the trial court give explicit reasons on the record as to why there is no just reason for delay; mere conclusory statements do not suffice."[16]

In *Motorola*, perhaps recognizing the inconsistency in its previous opinions, the First Circuit apparently intended to establish a bright-line procedure under Article 1915(B):

> What is more difficult, however, is the trial court's designation as final of the summary judgment in favor of Continental. That judgment clearly falls within the ambit of Article 1915(B), and despite the clear designation of the summary judgment as final and appealable by the trial court, the reasoning upon which it is based is unstated. We will therefore address what constitutes proper designation of a partial judgment for purposes of appeal under Louisiana law.[17]

Although the court noted that "[a] trial court's explication of its designation of a judgment as final is the most desirable practice," it refused to impose "undue labor, however, on already overburdened trial courts in cases where the reasons are obvious."[18] Instead, the court found that a failure to provide written reasons for a designation was not fatal to an appeal:

> Moreover, while written or oral reasons are desirable, we do not believe the trial court's failure to give reasons when it designates a judgment as final is a jurisdictional defect. The legislature has had many opportunities to impose this requirement for our jurisdiction but has failed to do so. We shall not usurp the legislature's authority by invoking a self-imposed jurisdictional requirement.[19]

The court's ruling in *Motorola* appears to adopt parts of the procedure that it followed in earlier cases. In cases where the trial court designates a partial judgment under Article 1915(B) and the reasons are "neither apparent nor provided," the Court will conduct a *de novo* review of the record. In doing so, the court said it would continue to use the non-exclusive five-factor test adopted from federal jurisprudence to decide whether the judgment is "final":

(1) The relationship between the adjudicated and unadjudicated claims;
(2) The possibility that the need for review might or might not be mooted by future developments in the district court;
(3) The possibility that a reviewing court might be obliged to consider the same issue a second time;
(4) The presence or absence of a claim or counterclaim that could result in a set off against the judgment sought to be made final; and
(5) Miscellaneous factors such as delay, economic insolvency considerations, shortening the time of trial, frivolity of competing claims, expense and the like.[20]

If, based on these factors, the court determines that the trial court mistakenly designated the judgment as final, the appeal should be dismissed.[21]

If the party appeals a partial judgment without any designation under article 1915(B), however, the First Circuit will continue to follow its own internal policy of allowing the parties to supplement the record. In explaining this process, the court wrote: "We shall continue to employ the internal policy adopted by this court in 1999 of ordering the parties to show cause why the appeal should not be dismissed and permitting supplementation of the record with a proper designation."[22]

The procedure in *Motorola* is based in part on the Second Circuit's ruling in *Banks v. State Farm Insurance Company*.[23] In that case, the Second Circuit ruled that the *trial court* should consider the non-exclusive five facts in determining whether a judgment is appealable. Unlike *Motorola*, in *Banks*, the Second Circuit put the burden of weighing these factors on the trial court and was not willing to conduct a *de novo* review of the judgment where no written reasons are provided.[24]

Other courts of appeal have adopted a different procedure. In the Fourth Circuit, the trial court must make a "clear and concise" designation. Without such a designation, the appellate court will not certify the judgment as appealable, apparently ruling out the possibility of allowing the parties to supplement the record as allowed in *Motorola*.[25] In the Fifth Circuit, the appellate court uses the same five-factor test in *Motorola*.[26] If the trial court gives written reasons, the trial court's ruling is reviewed for abuse of discretion.[27] If the trial court fails to give written reasons for the designation, the appellate court will review the judgment *de novo*.[28]

Conclusion

The First Circuit's ruling in *Motorola* offers a measure of

predictability and flexibility for appeals under article 1915(B), a desirable result in light of the court's previous rulings. If a trial court fails to designate a judgment as appealable under this article, the appellant will be given an opportunity to supplement the record with an appropriate designation. If the trial court does designate the judgment but fails to provide reasons for doing so, the court of appeal will conduct a *de novo* review of the decision and determine whether the judgment is appealable.

[1] 867 So. 2d 723 (La. App. 1st Cir. 2003). Initially, the First Circuit handed down its opinion but indicated that it was not "released for publication." See 2003 WL 224004944. The court subsequently released the opinion.

[2] It may be that the Supreme Court declines to take up this issue. In some ways, article 1915(B) is an effective docket control device for the courts of appeal. Those courts can determine, depending on the interpretation of the article, how and when partial final judgments are appealed. Perhaps the Supreme Court will elect to leave this device to the discretion of the appellate courts.

[3] *Motorola*, 867 So.2d at 272, citing *Brook, Symposium on Civil Procedure, Rendition of Judgments*, 21 La. Rev. 168, 235 (1960).

[4] See Acts 1983, No. 534, §3, Acts 1992, No. 71, §1, Acts 1997, No. 483, §2, Acts 1999, No. 89, §1, Acts 2001, No. 533, §1.

[5] La. Code Civ. Pro. art. 1915(B). Article 1915(B) does not have an analogue in Federal Rule 54(b). That rule does not permit a partial appeal by designation of the trial court.

[6] Article 1915(B)(2).

[7] *Motorola*, 867 So. 2d at 726-727. As to two of the three insurers in the case, the First Circuit found that the trial court's judgments were immediately appealable under article 1915(A)(1) and (3). See *Motorola, Inc. v. Associated Indemnity Corp.*, 867 So. 2d 715 (La. App. 1st Cir. 2003).

[8] *Motorola*, 867 So. 2d at 727.

[9] *Id.*

[10] *Id.*

[11] See *General Acquisition Inc. v. GenCorp. Inc.*, 23 F. 3d 1022, 1026 (6th Cir. 1994).

[12] *Motorola*, 867 So. 2d at 730. The court adopted this procedure as an "internal policy."

[13] See *Doyle v. Mitsubishi Motor Sales*, 764 So. 2d 1041 (La. App. 1st Cir. 2000), *writ denied*, 765 So. 2d 338.

[14] See *Van ex rel. White v. Davis*, 808 So. 2d 478 (La. App. 1st Cir. 2001).

[15] See *Boudreaux v. Audubon Ins. Co.*, 835 So. 2d 681 (La. App. 1st Cir. 2001).

[16] See *Shapiro v. L. & L Fetter, Inc.*, 845 So. 2d 406, 410 (La. App. 1st Cir. 2003).

[17] *Motorola*, 867 So. 2d at 727.

[18] *Id.* at 732.

[19] *Id.*

[20] *Id.*, citing *Banks v. State Farm Insurance Co.*, 708 So. 2d 523, 525 (La. App 2nd Cir. 1998).

[21] *Motorola*, 867 So. 2d at 732.

[22] *Id.*

[23] 708 So. 2d 523 (La. App. 2nd Cir. 1998).

[24] *Id.* at 525.

[25] *Jackson v. America's Favorite Chicken Co.*, 729 So. 2d 1060 (La. App. 4th Cir. 1999). In a subsequent ruling, the Fourth Circuit ruled that in the absence of a proper designation, the appellate court should convert the appeal to a request for supervisory relief. See *Evans v. Charity Hospital in New Orleans*, 801 So. 2d 1192, 1194 (La. App. 4th Cir. 2001).

[26] See *Berman v. De Chazal*, 717 So. 2d 658 (La. App. 5th Cir. 1998).

[27] *Id.* at 660.

[28] *Id.*

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