Judgment rendered November 18, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 57,150-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

EBONI ELLIOTT, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF STANTON R. JOHNSON — Appellants

versus

LASALLE CORRECTION CENTER, LLC, RICHWOOD CORRETIONAL CENTER, WILLIAM K. MCCONNELL, XYZ INSURANCE COMPANY — Appellees

* * * * *

Appealed from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 20211252

Honorable Wilson J. Rambo, Judge

* * * * *

LAW OFFICE OF CHARLES DEAN JONES
By: Charles Dean Jones — Counsel for Appellants

LASALLE MANAGEMENT COMPANY
By: Leah DeCelle Sumrall — Counsel for Appellees

* * * * *

Before STEPHENS, COX and MARCOTTE, JJ.

MARCOTTE, J.

This civil appeal arises from the Fourth Judicial District Court, Parish of Ouachita, the Honorable J. Wilson Rambo presiding. The trial court found that this case was abandoned due to the passage of three years without a step in the prosecution or defense of the action. Plaintiff now appeals. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Eboni Elliott, individually and on behalf of the estate of her father, Stanton R. Johnson, filed a petition for damages for wrongful death against LaSalle Correctional Center, LLC ("LaSalle"), Richwood Correctional Center ("Richwood"), William K. McConnell ("McConnell") (collectively, "defendants"), and XYZ Insurance Company ("XYZ") on April 28, 2021, alleging that Mr. Johnson died on April 28, 2020, due to COVID-19 complications. In her suit, Elliott alleged that her father contracted COVID-19 while on the job at these facilities and subsequently died from that disease because he was not permitted to wear a face mask and/or other protective gear while working there during the peak of the pandemic.

Richwood was served with the petition on April 29, 2021. On April 30, 2021, McConnell was served with the petition. XYZ was served with the petition through the Louisiana Secretary of State on May 7, 2021. There is no evidence in the record that LaSalle was ever served with the petition.

On May 12, 2021, after being served with Elliott's suit, defendants' counsel reached out to Elliott's counsel to discuss the matter and request an extension of time to file an answer. After their initial conversation and

confirmation email, counsel for the parties commenced informal settlement negotiations.

On April 6, 2022, Elliott sent defendants a settlement demand. Defendants acknowledged receipt of the settlement demand on May 2, 2022, then responded with a counteroffer on July 5, 2022. On July 25, 2022, Elliott responded to defendants' counteroffer with a reduced demand, to which defendants responded with another counteroffer on September 14, 2022.

The September 14, 2022, correspondence from defendants to Elliott was the last correspondence between the parties' counsel, until October 6, 2025. The relevant dates of communication are not disputed by Elliott.

During the time of informal settlement negotiations between counsel, none of the defendants filed any pleadings or responses or appeared in the lawsuit and Elliott filed no further pleadings. No discovery was scheduled or conducted in the proceedings.

On October 6, 2025, defendants' counsel received from Elliott's counsel a notice of intention to seek a default judgment against the defendants for failure to respond, appear, or otherwise plead. This communication came after a period of three years had elapsed since either the petition was filed or the last written correspondence between the parties occurred.

On October 23, 2025, defendants filed an *ex parte* motion for dismissal of all claims due to abandonment, pursuant to La. C.C.P. art. 561.

On October 24, 2026, the trial court signed a judgment dismissing the lawsuit without prejudice as to defendants and XYZ as being abandoned under La. C.C.P. art. 561. Elliott filed a motion to reconsider the dismissal

of claims on the basis of abandonment on November 7, 2025, and a hearing was held on February 11, 2026. At the hearing, the trial court took the matter under advisement.

On February 25, 2026, the trial court issued written reasons denying Elliott's motion to reconsider with prejudice. The trial court found that the case was abandoned because more than three years had elapsed following the last formal exchange between the parties with respect to settlement prior to defendants' filing the *ex parte* abandonment motion. On March 25, 2026, the trial court signed a judgment denying the motion to reconsider with prejudice. Elliott now appeals.

DISCUSSION

Abandonment

Elliot argues that the trial court erred in finding that the case was abandoned because dismissal was only sought after the statutorily required default notice was given to defendants. She maintains that this was not "a legitimate procedural response," and that defendants "invoked" abandonment without a valid basis under La. C.C.P. art. 561.

Elliott further argues that defendants who failed to respond in any way to the suit cannot use abandonment as an "escape hatch." She claims that because she notified defendants through their counsel that there was an intention to seek a default judgment, it was clear that she did not intend to abandon her claims. Elliott also asserts that when a notice of default is sent as required by law and is received by the opposing party's counsel who then responds by filing for abandonment, then the court should view that party's action as one of bad faith. She avers that the last formal correspondence was the required notice to defense counsel that default would be sought due to

the failure to answer. Elliott claims that instead of answering or otherwise properly defending or filing any other pleadings within the prescribed time, defendants responded by filing for abandonment. She maintains that this sequence shows that Defendants' filing was strategic, obstructive, and "not an actual effort to enforce" La. C.C.P. art. 561.

Elliott's position is that abandonment is not meant to dismiss actions on mere technicalities, but rather to dismiss actions which in fact have clearly been abandoned. She requests that this court reverse the trial court's dismissal of her lawsuit.

Defendants argue that the trial court was correct in dismissing this lawsuit due to abandonment because abandonment occurs by operation of law and by the time Elliott sent her notice of intention to seek a default judgment, the three-year abandonment period had already run. Defendants point out that the only filings in the suit record are the original petition on April 28, 2021, the sheriff return notices, and their own *ex parte* motion for dismissal filed on October 23, 2025. Defendants further note that no formal discovery was scheduled or conducted in the proceedings.

La. C.C.P. art. 561 provides, in pertinent part:

> A. (1) An action, ... is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years[.]
> ....
>
> (3) This provision shall be operative without formal order, but, on ex parte motion of any party or other interested person by affidavit which provides that no step has been timely taken in the prosecution or defense of the action, the trial court shall enter a formal order of dismissal as of the date of its abandonment. The sheriff shall serve the order in the manner provided in Article 1314, and shall execute a return pursuant to Article 1292.

In order to avoid abandonment: (1) a party must take some "step" in the prosecution or defense of the action, (2) the step must be taken in the proceeding and, with the exception of formal discovery, must appear in the record of the suit, and (3) the step must be taken within three years of the last step taken by either party. *Williams v. Montgomery*, 20-01120 (La. 5/13/21), 320 So. 3d 1036; *Louisiana Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C.*, 11-0912 (La. 12/6/11), 79 So. 3d 978; *Clark v. State Farm Mut. Auto. Ins. Co.*, 00-3010 (La. 5/15/01), 785 So. 2d 779; *Allen v. Humphrey*, 51,331 (La. App. 2 Cir. 4/5/17), 218 So. 3d 256.

A "step" is a formal action before the court intended to hasten the suit toward judgment or is the taking of formal discovery. *Williams v. Montgomery, supra*; *James v. Formosa Plastics Corp. of La*., 01-2056 (La. 4/3/02), 813 So. 2d 335. Sufficient action by either plaintiff or defendant will be deemed a step. *See Williams v. Montgomery, supra; Louisiana Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C., supra*.

The underlying policy of the abandonment article seeks to prevent protracted litigation that is filed for purposes of harassment or without a serious intent to hasten the claim to judgment. *Williams v. Montgomery, supra; Louisiana Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C., supra*. Abandonment is a device that the legislature adopted to put an end to the then prevailing practice of filing suit to interrupt prescription, and then letting the suit hang perpetually over the head of the defendant unless he himself should force the issue. *Clark v. State Farm Mut. Auto. Ins. Co., supra.*

La. C.C.P. art. 561 provides that abandonment is self-executing; it occurs automatically upon the passing of three years without a step being

taken by either party, and it is effective without court order. *Clark v. State Farm Mut. Auto. Ins. Co., supra*.

Abandonment functions to relieve courts and parties of lingering claims by giving effect to the logical inference that a legislatively designated extended period of litigation inactivity establishes the intent to abandon such claims. When the parties take no steps in the prosecution or defense of their claims during that legislatively ordained period, the logical inference is that the party intends to abandon the claim and the law gives effect to this inference. *See Williams v. Montgomery, supra; Clark v. State Farm Mut. Auto. Ins. Co., supra*.

The presumption of abandonment that arises under La. C.C.P. art. 561 as a result of three years of litigation inactivity, however, is not conclusive. Two jurisprudential, prescription-based exceptions are recognized. Those two exceptions are: (1) a plaintiff-oriented exception, based on *contra non valentem*, that applies when failure to prosecute is caused by circumstances beyond the plaintiff's control; and (2) a defense-oriented exception, based on acknowledgment, that applies when the defendant waives his right to assert abandonment by taking actions inconsistent with an intent to treat the case as abandoned. *Clark v. State Farm Mut. Auto. Ins. Co., supra*. Moreover, given that dismissal is the harshest of remedies, the general rule is that La. C.C. P. art. 561 is to be liberally construed and any reasonable doubt about abandonment should be resolved in favor of allowing the prosecution of the claim and against dismissal for abandonment. *See Williams v. Montgomery, supra; Clark v. State Farm Mut. Auto. Ins. Co., supra*.

Abandonment is not a punitive concept; rather, it is a balancing concept. Abandonment balances two equally sound, competing policy

considerations: on the one hand, the desire to see every litigant have his day in court, and not to lose same by some technical carelessness or unavoidable delay; on the other hand, the legislative purpose that suits, once filed, should not indefinitely linger, preserving stale claims from the normal extinguishing operation of prescription. *Williams v. Montgomery, supra; Clark v. State Farm Mut. Auto. Ins. Co., supra*. The latter policy consideration parallels those served by prescriptive statutes – promoting legal finality, barring stale claims, and preventing prejudice to defendants. *Clark v. State Farm Mut. Auto. Ins. Co., supra*. More precisely, the latter prescriptive purpose on which abandonment is based promotes the legislative intent and judicial policy of finality, requiring that suits not be permitted to linger indefinitely, that the legal process be expedited where possible, and that abandoned cases be removed from crowded dockets. *Clark v. State Farm Mut. Auto. Ins. Co., supra*.

Abandonment is both historically and theoretically a form of liberative prescription that exists independent from the prescription that governs the underlying substantive claim. *Clark v. State Farm Mut. Auto. Ins. Co., supra*; *P&J Contracting of La., L.L.C. v. Dep't of Educ., Recovery Sch. Dist*., 20-0674 (La. App. 1 Cir. 12/30/20), 318 So. 3d 881.

For purposes of determining abandonment, the intent and substance of a party's actions matter far more than technical compliance. *Louisiana Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C., supra*. La. C.C.P. art. 561 is to be liberally construed in favor of maintaining a plaintiff's action, and any reasonable doubt about abandonment should be resolved in favor of allowing the prosecution of the claim and against dismissal for abandonment. However, while the intention of La. C.C.P. art.

561 is not to dismiss actions as abandoned based on technicalities, abandonment is warranted where plaintiff's inaction during the three-year period has clearly demonstrated his abandonment of the action. *Williams v. Montgomery, supra; Louisiana Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C., supra*.

Whether a step in the prosecution of a case has been taken in the trial court for a period of three years is a question of fact subject to a manifest error analysis on appeal. *Williams v. Montgomery, supra*; *Brown v. Kidney and Hypertension Assocs., L.L.P.*, 08-0919 (La. App. 1 Cir. 1/12/09), 5 So. 3d 258. On the other hand, whether a particular act, if proven, precludes abandonment is a question of law that is examined by ascertaining whether the trial court's decision was legally correct. *Williams v. Montgomery, supra*.

Here, after Elliott filed her petition, counsel for the parties exchanged correspondence regarding resolution of this matter. The last communication between counsel was September 14, 2022, when defendants' counsel sent written correspondence to Elliott's counsel. Between that date and September 14, 2025, there was no other communication between the parties, no filings in the suit record, no formal discovery, nothing that could be considered a "step" in the prosecution or defense of the case by either party. The trial court correctly ruled that the case was abandoned as of September 14, 2025.

Elliott's allegations that defendants' filing of their motion for dismissal due to abandonment was an "improper tactical maneuver" and that the filing was "strategic and obstructive and not an actual effort to enforce La. C.C.P. art. 561" are unfounded. There is no evidence in the record to

indicate that defendants "deceptively sought" or were in bad faith in filing the motion for dismissal. In fact, during the February 11, 2026, hearing, the trial court noted, without objection, that "the position of plaintiff's counsel was not that counsel for the defendants had engaged in any fraud or ill practice."

The trial court recognized that abandonment occurs by operation of law without the need for any action by the court. Therefore, the judgment signed by the court on October 24, 2025, was nothing more than a formal, judicial recognition of a situation that already existed. There was no deception because abandonment occurs automatically, without a motion even needing to be filed.

Elliott's prolonged period of inactivity in this case is consistent with an intention to abandon her lawsuit. Neither of the prescription-based exceptions to the presumption of abandonment applies, because there is no evidence that Elliott's failure to prosecute was caused by circumstances beyond her control, nor is there any evidence that defendants did anything to waive their right to assert abandonment. We find no manifest error in the trial court's ruling that this lawsuit was abandoned effective September 14, 2025.

CONCLUSION

For the reasons expressed, we affirm the trial court's ruling. Costs of the appeal are assessed to Elliott.

AFFIRMED.