Fifth Circuit Court of Appeal
State of Louisiana

No. 25-C-485

FLEMING PLANTATION NEVADA, LLC
VERSUS
CHEVRON U.S.A, ET AL.

IN RE RALACO VENTURES, LLC, AND LANOCO, INC.
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JUNE B. DARENSBURG, DIVISION "C", NUMBER 723,511

February 10, 2026

Panel composed of Judges Jude G. Gravois,
Stephen J. Windhorst, and Scott U. Schlegel

WRIT GRANTED; RULING REVERSED; MOTION TO DISMISS GRANTED; MATTER DISMISSED AS TO RELATORS WITHOUT PREJUDICE

Relators/defendants, Ralaco Ventures, LLC and Lanoco, Inc., seek this Court's supervisory review of the trial court's September 17, 2025 judgment which denied their *ex parte* motion to dismiss the suit against them based on abandonment. Relators assert that the trial court erred in two respects: first, by setting their *ex parte* motion to dismiss for abandonment for a contradictory hearing instead of simply ruling *ex parte* and granting the motion; and second, by denying the motion to dismiss for abandonment on the merits. For the following reasons, we grant the writ application, reverse the trial court's judgment which denied relators' motion to dismiss plaintiff's action against relators as abandoned, render judgment granting relators' motion to dismiss for abandonment, and dismiss plaintiff's suit as to relators as abandoned without prejudice.

FACTS AND PROCEDURAL BACKGROUND

On February 1, 2013, plaintiff/respondent, Fleming Plantation Nevada, LLC, filed a petition for damages[1] in a "legacy" suit against multiple defendants[2] following an environmental report that identified contamination on property plaintiff owned and had leased to multiple companies over the years for hydrocarbon production.[3] The suit alleges defendants were responsible for environmental contamination of plaintiff's tract of land which was originally around 3,700 acres, though it has been reduced in the intervening years by sales of various parcels from the property to less than 200 acres, as represented by the writ application.

On May 13, 2025, relators, Ralaco Ventures, LLC and Lanoco, Inc., filed an Ex Parte Motion to Dismiss for Abandonment, alleging that no party to this litigation had taken any steps in the prosecution or defense of this matter since August 13, 2013, and no formal action intended to hasten the suit towards judgment had been taken in the proceeding before the Court that appear in the record of this matter for a period of time well exceeding three years. The motion further alleged that there had not been any discovery taken or served on any party at any time in this matter, and no depositions had been taken, noticed, or requested either formally or informally. Finally, the motion alleged that there had been no action by any defendant herein for over three years that would constitute a waiver of abandonment.

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[1] A copy of the petition for damages is not included with the writ application, in violation of Uniform Rules–Courts of Appeal, Rule 4-5(C)(8).

[2] According to the trial court's amended written reasons for judgment, the defendants in the petition for damages were Chevron, U.S.A., Canlan Oil Co., Abaco Exploration, Inc., Dixie Rice Agricultural Corp., Inc., Lanoco, Inc., U.S. Oil & Gas, Inc., Riceland Petroleum Co., New Hope Prop., Inc., Ralaco Ventures, Inc., Ralaco Ventures, LLC, Herbert L. Raburn, Ronald W. Hanson, Walter Matthews, Jr., and Carolyn Matthews Lowe.

[3] "The **Legacy Site Remediation Program** is responsible for the management and regulatory oversight of Louisiana lawsuits with property claims of environmental damages from oilfield site operations subject to the provisions of LSA-R.S. 30:29 (ACT 312 of 2006, or ACT 312). Property with oilfield sites covered by the provisions of ACT 312 are commonly referred to as Legacy Sites." *See* State of Louisiana Department of Energy and Natural Resources, Office of Conservation, Environmental Division, Legacy Site Remediation Program. https://denr.louisiana.gov/page/env-legacy-program.

In *Marin v. Exxon Mobil Corp*., 09-2368, 09-2371 (La. 10/19/10), 48 So.3d 234, 238 n.1, the Louisiana Supreme Court explained:

> "Legacy litigation" refers to hundreds of cases filed by landowners seeking damages from oil and gas exploration companies for alleged environmental damage in the wake of this Court's decision in *Corbello v. Iowa Production*, 02-826 (La. 2/25/03), 850 So.2d 686. These types of actions are known as "legacy litigation" because they often arise from operations conducted many decades ago, leaving an unwanted "legacy" in the form of actual or alleged contamination. Loulan Pitre, Jr., "Legacy Litigation" and Act 312 of 2006, 20 Tul. Envt. L.J. 347, 34 (Summer 2007).

In conformity with Louisiana Code of Civil Procedure article 561, relators attached the sworn affidavit of their counsel attesting to the allegations made in the motion to dismiss.

According to the affidavit, on August 13, 2013, plaintiff filed an unopposed motion to continue the hearing that was scheduled for February 20, 2014 on various exceptions that had been filed by several of the defendants, which motion was granted, and that on February 6, 2014, certain of the defendants (not including relators) filed an unopposed motion to continue the hearings on all exceptions without date, indicating that the parties were "working to resolve the matter." The affidavit further attested that since the filing on August 13, 2013 of plaintiff's unopposed motion to continue the hearings to February 14 [sic], 2014, no formal action intended to hasten the suit towards judgment had been taken in the proceeding before the court that appear in the record of this matter, and that there had been no discovery undertaken or served on any party in this matter at any time, with no depositions requested or noticed, either formally or informally at any time. Finally, the affidavit attested that several informal extra-judicial efforts to settle this matter had been taken through at least August 17, 2019, including settlement discussions, conferences, and e-mails between counsel for plaintiff and defendants in an effort to settle the matter and provide for a dismissal of the entire case, but without success.

In its opposition to the motion to dismiss, plaintiff/respondent argued that at no time had it evidenced an intent to abandon the proceedings. In support of its position, plaintiff cited to its efforts, both successful and not, to sell parcels of the affected lands, calling this "discovery." Plaintiff also cited to substantial "discovery," the ongoing monitoring well disputes, and regulatory requirements preventing the removal of the wells until clearance from the Louisiana Department of Natural Resources ("DNR"). Plaintiff contended that it has not received all of the necessary approvals for remediation from DNR, which it alleged is primarily responsible for the delays in proceeding to trial.

The trial court held a contradictory hearing on the motion to dismiss on September 17, 2025.[4] In a written judgment dated that same date, the court denied the motion to dismiss. In amended written reasons for judgment signed on October 10, 2025, the court explained that it denied the motion because "the parties have

[4] A copy of the transcript of the hearing is not included with the writ application.

been continuously working to resolve this case, beginning with the February 11, 2014 Unopposed Motion to Continue Hearings Without Date," that "[plaintiff] has been working to resolve this matter by attempting to sell off the land at issue," that relators "had notice of these acts through [plaintiff's] continuous emails with opposing counsel," and that "no period of three years passed without communication or action."

In their writ application, relators argue that the trial court's findings were interdicted by many legal errors, including basing its findings on arguments of opposing counsel, altering the procedural scheme legislated by Article 561, misconstruing the court's role in a motion to set aside a formal order of dismissal, per its written reasons for judgment, as being "required to take a deeper look into what the parties have been doing or not doing," and determining the nature and extent of the parties' "working behind the scenes to move the matter forward," so as to determine "what the intent of the parties is when abandonment is raised."

In opposition to the writ application, plaintiff argues that relators are narrowly focusing on the timing of court filings and failing to recognize the established legal standards for determining abandonment of a case, including intent. Plaintiff further argues that the documentation of sales agreements of portions of the subject property, in conjunction with email correspondence between some of the parties, which were allegedly entered into evidence at the hearing, and the vast amount of "discovery" conducted, demonstrate that significant progress is being made in the case. Plaintiff claims that relators were fully aware of the ongoing discussions and developments, and there has been no secrecy or "working behind the scenes," as claimed by relators.

In reply to the opposition, relators argue that plaintiff's opposition to the writ application, as it was at the contradictory hearing before the trial court, is based entirely on unsupported arguments of counsel, with absolutely no evidence of any facts relative to the issues of abandonment, and that plaintiff's opposition further demonstrates a fundamental misunderstanding of the law and jurisprudence on abandonment, in particular, the distinction between judicial resolution and extra-judicial resolution of an action.

LAW AND ANALYSIS

In the context of the standard of review applicable to an abandonment ruling, whether a step in the prosecution or defense of a case has been taken in the trial court for a period of three years is a question of fact subject to manifest error analysis; by contrast, whether a particular act, if proven, interrupts abandonment is a question of law that is examined by ascertaining whether the trial court's conclusion is legally correct. *Williams v. Montgomery*, 20-1120 (La. 5/13/21), 320 So. 3d 1036, 1042.

A suit is considered abandoned when the parties fail to take a step in its prosecution or defense for a period of three years, per Article 561, which provides:

> 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, unless it is a succession proceeding:
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> (a) Which has been opened;
>
> (b) In which an administrator or executor has been appointed; or
>
> (c) In which a testament has been probated.
>
> (2) This provision shall be operative without formal order, but, on ex parte motion of any party or other interested person by affidavit that states 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.
>
> (3) A motion to set aside a dismissal may be made only within thirty days of the date of the sheriff's service of the order of dismissal. If the trial court denies a timely motion to set aside the dismissal, the clerk of court shall give notice of the order of denial pursuant to Article 1913(A) and shall file a certificate pursuant to Article 1913(D).
>
> (4) An appeal of an order of dismissal may be taken only within sixty days of the date of the sheriff's service of the order of dismissal. An appeal of an order of denial may be taken only within sixty days of the date of the clerk's mailing of the order of denial.

B. Any formal discovery as authorized by this Code and served on all parties whether or not filed of record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.

C. An appeal is abandoned when the parties fail to take any step in its prosecution or disposition for the period provided in the rules of the appellate court.

Abandonment occurs automatically upon the passing of three years without either party taking a step in the prosecution or defense of the action. *Bd. of Supervisors of Louisiana State Univ. & Agric. & Mech. Coll. v. Bickham*, 23-1364 (La. 10/25/24), 395 So.3d 792, 798 (citing Article 561(A)(1) and (3)). Whether an action has been abandoned is a question of law and is therefore subject to *de novo* review on appeal. *Felo v. Ochsner Med. Ctr.-Westbank, LLC*, 15-459 (La. App. 5 Cir. 12/23/15), 182 So.3d 417, 420.

For purposes of Article 561, a "step" in the prosecution or defense of a suit is either "a formal action before the court intended to hasten the suit towards judgment" or "the taking of formal discovery." *Williams v. Montgomery*, 20-1120 (La. 5/13/21), 320 So.3d 1036, 1041. The *Williams* court explained that, to avoid the dismissal of a case as abandoned:

(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.

Id.

Although a step must "appear in the record," not all pleadings or filings in a lawsuit are deemed to be steps sufficient to hasten a suit to judgment. *Bickham*, 395 So.3d at 799. Further, certain extrajudicial efforts, such as informal discussions and correspondence between the parties, have uniformly been considered insufficient to constitute a step for purposes of interrupting or waiving abandonment. *Comp. Specialties, L.L.C. v. New England Mut. Life Ins. Co.*, 08-1549 (La. App. 1 Cir. 2/13/09), 6 So.3d 275, 281, *writ denied*, 09-575 (La. 4/24/09), 7 So.3d 1200.

One purpose of Article 561 is to prevent protracted litigation where there is no "serious intent to hasten the claim to judgment." *Louisiana Dep't of Transp. &*

Dev. v. Oilfield Heavy Haulers, L.L.C., 11-912 (La. 12/6/11), 79 So.3d 978, 981. As the *Williams* court recognized, abandonment is not a "punitive concept"; to the contrary, it balances two competing policy considerations:

> (1) the desire to see every litigant have his day in court and not to lose same by some technical carelessness or unavoidable delay, and
>
> (2) the legislative purpose that suits, once filed, should not indefinitely linger, preserving stale claims from the normal extinguishing operation of prescription.

Williams, 320 So.3d at 1041.

Article 561 is to be liberally construed in favor of maintaining an action. *Clark v. State Farm Mut. Auto. Ins. Co.*, 00-3010 (La. 5/15/01), 785 So.2d 779, 785. Given that dismissal is the "harshest of remedies," the general rule is that any reasonable doubt about abandonment should be resolved in favor of allowing the prosecution of the claim and against dismissal for abandonment. *Id.* at 787. However, our jurisprudence also reflects that abandonment is intended "to dismiss actions which in fact clearly have been abandoned." *Oilfield Heavy Haulers*, 79 So.3d at 986 (quoting *Clark*, 785 So.2d at 786).

In their writ application, relators first assert that the trial court erred in setting their *ex parte* motion to dismiss for a contradictory hearing, instead of simply granting it, per Article 561(A)(2). Relators are correct in this regard. Based on the allegations made in the motion to dismiss and the attestations made in counsel's affidavit attached to the motion, it was improper for the trial court to set the motion to dismiss on the basis of abandonment for a hearing instead of simply signing an order of dismissal *ex parte* as required by Article 561(A)(2). *See Cassilli v. Summerfield Apartments, LLC*, 21-261 (La. App. 5 Cir. 1/26/22), 336 So.3d 554, 557, citing *Hancock Bank of Louisiana v. Robinson*, 20-791 (La. App. 1 Cir. 3/11/21), 322 So.3d 307, 311. Article 561(A)(2) clearly states that if a party files an *ex parte* motion and supporting affidavit regarding the lack of timely steps "taken in the prosecution or defense of the action," then "the trial court *shall enter* a formal order of dismissal as of the date of its abandonment." (Emphasis added.) In Louisiana, "shall" is mandatory. *Feingerts v. Feingerts*, 25-397 (La. App. 4 Cir. 8/19/25), 420 So.3d 264, 270.

Respondent's opportunity to oppose the motion to dismiss, if granted, comes in the context of a contradictory hearing on a motion to set aside dismissal filed by the opposing party, per Article 561(A)(3), where the respondent is allowed to admit competent evidence in support of its claim that the suit has not been abandoned. In hindsight, this is in essence what actually occurred at the contradictory hearing held in the trial court in this proceeding on September 17, 2025. Accordingly, while we point out the trial court's error in failing to simply grant the properly supported motion to dismiss *ex parte* and instead in setting the matter for a contradictory hearing, the proper course of action for us at this procedural juncture of this case is to review the merits of the motion to dismiss within the context of the contradictory hearing and the subsequent judgment.

Relators supported their motion to dismiss with the required affidavit asserting that there have been no formal steps or court filings constituting prosecution or defense since 2013/2014, and all actions by any of the parties taken since then have been extrajudicial, involving only land sales and email communications, with the last group of correspondence being dated April 17, 2019. Relators argue that what occurred after 2014 were only informal discussions or settlement efforts, not steps before the court, and that communications between plaintiff and the other non-moving defendants' counsel did not constitute notice to or agreement by relators.

Plaintiff asserts in response that active, regulatorily required engagement due to unresolved monitoring well issues and DNR action, as well as the exchange of land sales and environmental studies, were "discovery" among the parties.

While asserting that informal correspondence, emails, or settlement discussions between counsel do not constitute a step in the defense or prosecution of a case or a waiver of abandonment, relators specifically dispute the lower court's finding that:

> Between 2013-2025, all counsel communicated to conduct discovery, agree on experts, use the efforts and time to produce mutually agreed expert reports, and otherwise worked to expedite this matter toward resolution. All parties have consistently engaged in negotiations, meetings and discovery efforts. While the duration of the case exceeded initial expectations due to delays beyond the parties' control, these actions were essential and mutually agreed upon by the parties to prepare the case.

Relators dispute the assertion that they had continuous notice or involvement in the activities plaintiff characterizes as "discovery" or resolution efforts. They claim that the last joint communication was on April 17, 2019, and after that, neither joint communications nor notice of plaintiff's actions was provided to them. Relators deny being included or copied on email discussions after April 2019, and contest that sales or emails about sales were ever communicated to them.

Upon *de novo* review, on the merits, we find that the trial court erred in denying the motion to dismiss for abandonment relative to relators, Ralaco Ventures and Lanoco. Simply put, the record before us (the writ application, the opposition thereto, and the reply to the opposition) does not reflect that plaintiff sufficiently refuted relators' counsel's affidavit and the assertions made therein. Citing *Bd. of Supervisors of Louisiana State Univ. & Agric. & Mech. Coll. v. Bickham*, *supra*, plaintiff argued in its opposition to the motion to dismiss that "[t]he law is not steps anymore. It is an action taken which is inconsistent with an intent to abandon.," A review of *Bickham*, however, clearly contradicts this position, as the Supreme Court in *Bickham* devoted much of its opinion to an analysis of what may constitute "steps" in the prosecution of a suit, and not what constitutes intent to abandon.

Nor does the activity cited by plaintiff—the land sales and communications evidenced by the submitted emails—constitute discovery or formal steps in hastening this matter to judgment as to relators. As pertains to them, relators showed that the last group communication they received was in 2019, well more than three years before they filed their motion to dismiss based on abandonment.

Plaintiff appears to argue that "legacy" lawsuits, many of which take years to resolve, should be considered differently from other types of lawsuits. Indeed, the trial court apparently opined as much, saying in its reasons for judgment:

> To determine whether the parties had the intent to move this matter forward, the Court may need to look further than just what the parties have filed into the record or even beyond the written word of the statute to determine what is fair for all parties.

An extensive search of our statutes and jurisprudence fails to show, however, that "legacy" lawsuits are given any different or special consideration when it comes to abandonment under Article 561. The fairest thing for all parties is the application of Article 561 in a uniform manner in conformity with the written words of the statute and the jurisprudence interpreting it, none of which supports plaintiff's position.

CONCLUSION AND DECREE

We conclude that the trial court legally erred in setting relators' motion to dismiss for abandonment for a contradictory hearing. The trial court further erred in denying relators' motion to dismiss for abandonment on the merits following the contradictory hearing. Accordingly, for the foregoing reasons, the writ application is granted, the trial court's judgment which denied relators' motion to dismiss plaintiff's action against relators as abandoned is reversed, judgment is rendered granting relators' motion to dismiss, and plaintiff's suit as to relators is dismissed as abandoned without prejudice.

Gretna, Louisiana, this 10th day of February, 2026.

JGG
SJW
SUS

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **02/10/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-C-485

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable June B. Darensburg (DISTRICT JUDGE)
Robert E. Tarcza (Respondent)
Timothy W. Cerniglia (Relator)
Wade P. Webster (Respondent)
Louis M. Grossman (Respondent)
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