

The Supreme Court of the State of Louisiana

DOROTHY BANISH MADDEN

No. 2025-C-00122

VS.

STEVEN RAY FAIRBURN, K.S. TIMBER
COMPANY, INC., PLAZA INSURANCE
CO., XYZ INSURANCE CO., & CAPITOL
SPECIALTY INSURANCE CORPORATION

IN RE: Dorothy Banish Madden - Applicant Plaintiff; Applying For Writ Of
Certiorari, Parish of Washington, 22nd Judicial District Court Number(s) 111549,
Court of Appeal, First Circuit, Number(s) 2024 CA 0513;

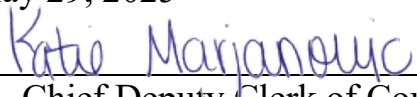
May 29, 2025

Writ application granted. See per curiam.

PDG
JLW
JDH
WJC
JBM
CRC

Guidry, J., recused.

Supreme Court of Louisiana
May 29, 2025



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

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VS.

**STEVEN RAY FAIRBURN, K.S. TIMBER COMPANY, INC., PLAZA
INSURANCE CO., XYZ INSURANCE CO., & CAPITOL SPECIALTY
INSURANCE CORPORATION**

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of Washington

PER CURIAM

This suit arises from a motor vehicle accident between vehicles driven by John Seibert and Steven Ray Fairburn. Plaintiff, a guest passenger in the Seibert vehicle, sued Fairburn, his employer, its liability insurer, and her uninsured/underinsured motorist (“UM”) insurer, seeking damages for injuries sustained in the accident. The UM insurer filed an answer and cross claim, admitting issuance of the policy. The UM insurer additionally alleged the sole cause of the accident was the negligence of Seibert, or others for whom it had no responsibility.

Fairburn then filed a motion for summary judgment alleging Seibert was the sole cause of the accident. The trial court granted summary judgment and dismissed plaintiff’s claims against Fairburn, his employer, and its liability insurer with prejudice.

While the appeal of that judgment was pending, plaintiff amended her petition to allege Seibert was the cause of the accident and her injuries, and that her UM insurer was liable. The UM insurer then filed an exception of prescription. The trial court sustained the exception and dismissed plaintiff’s claims against the UM insurer with prejudice.

The court of appeal affirmed, finding prescription was not interrupted under La. Civ. Code art. 3462. Article 3462 provides prescription is interrupted when the obligee commences action against the obligor, in a court of competent jurisdiction

and venue. The court of appeal reasoned the original petition only gave the UM insurer notice plaintiff was claiming damages caused by Fairburn, not Seibert. La. Code Civ. P. art. 1153 provides, “[w]hen the action or defense asserted in the amended petition or answer arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of filing the original pleading.” Relying on *Kling v. Hebert*, 2023-00257 (La. 1/26/24), 378 So. 3d 54 and *Trahan v. Liberty Mutual Ins. Co.*, 314 So. 2d 350 (La. 1975), the court of appeal found Article 1153 inapplicable, reasoning it only applies where the identity of a defendant is changed or where a plaintiff is added. However, both *Kling* and *Trahan* involved issues of prescription relative to a second, subsequently-filed suit. Here, there is only one suit.

In both the original and amended petitions, plaintiff asserted claims against the UM insurer under the same policy, arising from the same accident. The difference in the original and amended petitions is the allegation of which driver was at fault. “[W]here there is only one suit, the same plaintiff, the same defendant ... although in different capacities, the same insurer, the same vehicle, and the same accident[,]” there is “sufficient factual connexity between the original and amended assertions, together with some identity of interest between the original and the supplemental party” such that the amended petition relates back. *Langlinalis v. Guillotte*, 407 So. 2d 1215, 1219 (La. 1981) (interpreting La. Code Civ. P. art. 1153 and distinguishing *Trahan* as the issue therein was “whether prescription has been interrupted, so as to allow plaintiff to file a second suit against different defendants”); *see also Giroir v. South Louisiana Medical Center, Division of Hospitals*, 475 So. 2d 1040, 1044 (La. 1985) (“Where a plaintiff only seeks to change the capacity in which the action is brought, or in which defendant is sued, because there is no change in the parties, and because all parties are on notice of the facts out of which the claim arose, an amendment will relate back to the date of the original pleading absent

prejudice due to the delay in filing.”); *Courmier-Trahan v. Service Cab Co., Inc.*, 546 So. 2d 513 (La. App. 4 Cir.), *writ denied*, 551 So. 2d 1325 (La. 1989) (finding plaintiff’s amended petition alleging negligence on the part of an unknown hit-and-run driver related back to the original petition as “plaintiff [was] the insured in both instances, and her UM policy cover[ed] any uninsured motorist who negligently injure[d] her”). Here, we have the same plaintiff and the same defendant—the UM carrier. The claims arise out of the same accident. Thus, we find plaintiff’s amended petition relates back to the date plaintiff filed her original petition.

We grant the writ, reverse the trial court’s judgment sustaining the exception of prescription, and remand for further proceedings.

REVERSED AND REMANDED.