

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CU 0160

JERI GILL HUSZAR

VERSUS

JOHN A. HUSZAR

Judgment Rendered: June 8, 2007

**Appealed from the
Twenty-first Judicial District Court
In and for the Parish of Livingston, Louisiana
Docket Number 94,907**

Honorable Elizabeth P. Wolfe, Judge Presiding

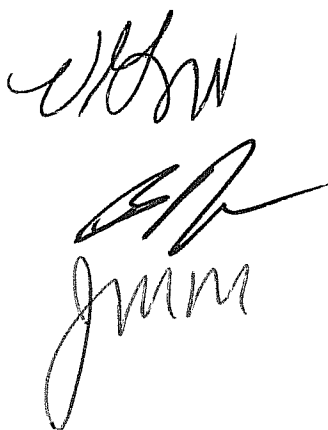
**Ellen Cronin Badeaux
Mandeville, LA**

**Counsel for Appellant,
Jeri Gill Huszar**

**Brenda Braud
Hammond, LA**

**Counsel for Appellee,
John A. Huszar**

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.



WHIPPLE, J.

Appellant, Jeri Huszar Barrington, appeals a judgment of the Twenty-first Judicial District Court, awarding sole custody of the parties' minor son, to appellee, John Huszar. In response, Mr. Huszar contends that the appeal must be dismissed as untimely or alternatively that the judgment should be affirmed.

With regard to the timeliness of the appeal, the relevant facts are that the trial court signed the custody judgment at issue on June 8, 2006, awarding custody to Mr. Huszar. Notice of the June 8, 2006 judgment was mailed by the clerk of court on June 12, 2006. Thereafter, on June 22, 2006, Mrs. Barrington filed a motion for new trial.

Mr. Huszar filed an opposition to the motion for new trial, contending that it was filed untimely. Following a hearing on the motion, the trial court denied Mrs. Barrington's motion for new trial on August 29, 2006. Mrs. Barrington thereafter filed a motion for appeal of the June 8, 2006 judgment on September 5, 2006.

An appellant's failure to file a devolutive appeal timely is a jurisdictional defect, in that neither the court of appeal nor any other court has the jurisdictional power and authority to reverse, revise or modify a final judgment after the time for filing a devolutive appeal has elapsed. Lay v. Stalder, 99-0402 (La. App. 1st Cir. 3/31/00), 757 So. 2d 916, 919. When an appellant fails to file a devolutive appeal from a final judgment timely, the judgment acquires the authority of the thing adjudged, and the court of appeal has no jurisdiction to alter that judgment. Lay, 757 So. 2d at 919. An appellate court may notice its lack of jurisdiction on its own motion and can dismiss an appeal at any time for lack of jurisdiction. Shahla v. City of Port Allen, 601 So. 2d 746, 751 (La. App. 1st Cir. 1992).

Louisiana Code of Civil Procedure article 1974 provides that the delay for filing a motion for new trial is seven days, exclusive of legal holidays, and this period begins to run on the day after the clerk has mailed the notice of judgment

required by LSA-C.C.P. art. 1913. In the instant case, notice of the June 8, 2006 judgment was mailed by the clerk of court on June 12, 2006. Thus, the delays for applying for new trial began to run on June 13, 2006, and expired on June 21, 2006. However, Mrs. Barrington's motion for new trial was not filed until June 22, 2006, and, thus, was untimely. Since the motion for new trial was untimely, it did not affect, interrupt or extend the delay for appealing. Chauvin v. Matherne, 419 So. 2d 1276, 1278 (La. App. 1st Cir. 1982).

An appeal from a judgment awarding custody, visitation or support must be taken within thirty days from the expiration of the delay for applying for new trial, if no application for new trial has been timely filed. LSA-C.C.P. arts. 3942 and 3943. Because there was no timely motion for new trial in the instant case, the appeal delays began to run on June 22, 2007 and expired on July 21, 2007. However, Mrs. Barrington's motion for devolutive appeal was not filed until September 5, 2006.

Accordingly, because no timely motion of appeal was filed herein, this court is without jurisdiction to alter the trial court's judgment, and the appeal is hereby dismissed at appellant's costs for lack of jurisdiction. See Lay, 757 So. 2d at 919-920.

APPEAL DISMISSED FOR LACK OF JURISDICTION.