

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 1283

CHRISTOPHER BUCKENBERGER

VERSUS

PETER J. GARCIA, MALISE PRIETO, LORI A. BURRIS, GERALD NIELSEN  
ATTORNEY, KEITH DETWEILER AND JOHN CARTER (ATTORNEYS)  
NIELSEN LAW FIRM, ALL STATE/FEDERAL ACTORS & HAYWOOD JARRELL,  
OFFICER OF MADISONVILLE, LA., SHERIFF-JACK STRAIN,  
ST. TAMMANY PARISH, LOUISIANA (JAIL) EMPLOYEES &  
UNIDENTIFIED PARTIES, ET AL

Judgment rendered DEC 27 2018

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Appealed from the  
22<sup>nd</sup> Judicial District Court  
In and for the Parish of St. Tammany, State of Louisiana  
Trial Court No. 2016-14130  
Honorable Burrell J. Carter, Judge Ad Hoc<sup>1</sup>

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CHRISTOPHER BUCKENBERGER  
ANGOLA, LA

PRO SE  
PLAINTIFF-APPELLANT

JEFF LANDRY  
ATTORNEY GENERAL  
DAVID G. SANDERS  
ASSISTANT ATTORNEY GENERAL  
BATON ROUGE, LA

ATTORNEYS FOR  
DEFENDANT-APPELLEE  
JUDGE PETER J. GARCIA OF THE  
TWENTY-SECOND JUDICIAL DISTRICT  
COURT

\*\*\*\*\*

**BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.**

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<sup>1</sup> Judge Burrell J. Carter, retired, served as judge ad hoc by special appointment of the Louisiana Supreme Court.

**PETTIGREW, J.**

In this case, the plaintiff appeals an order denying his pending motions due to an automatic stay in accordance with the Prison Litigation Reform Act. For the reasons set forth herein, we dismiss the appeal.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff, Christopher Buckenberger, an inmate in the custody of the Louisiana Department of Public Safety and Corrections, filed a petition styled a "Civil/Injunctive/Monetary Action," against a number of defendants, including Judge Peter J. Garcia of the Twenty-Second Judicial District Court.<sup>2</sup>

Buckenberger filed a motion to proceed in forma pauperis, which was granted on March 1, 2017. The Pauper Order provided that he would be required to pay \$100.00, the initial filing fee, in amounts as set forth in La. R.S. 15:1186, et seq., plus all costs accruing after the filing of the suit. After Buckenberger's pauper status was granted, an order was signed recognizing the automatic stay of the proceedings pursuant to La. R.S. 15:1186 until all costs of court or fees due the clerk by Buckenberger were paid.

Buckenberger filed a number of pleadings, including a "Motion to Secure Due Contradictory Hearing" and a "Motion Submits Pleadings to Conform to the Evidence." On June 1, 2017, the trial court signed an order stating:

All of Christopher M. Buckenberger's motions are denied. Mover has not put up the \$100.00 initial filing fee as required by the Pauper Order previously filed. Mover has further failed to comply with the other provisions of the order.

Buckenberger devolutively appealed the June 1, 2017 order.<sup>3</sup> Buckenberger subsequently filed a motion to recuse this appellate panel, which was denied on December 13, 2018.

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<sup>2</sup> Because Buckenberger's petition named Judge Garcia as a defendant, all judges of the Twenty-Second Judicial District Court were recused from the case, and Judge Burrell J. Carter was appointed by the Louisiana Supreme Court as an ad hoc judge to hear the case.

<sup>3</sup> Following the notice of appeal, Buckenberger attempted to amend his petition to add ad hoc Judge Burrell J. Carter as a defendant. Although no order was attached to the pleading, it was filed in the record with a note, signed by Judge Carter, stating that an appeal had already been granted from the trial court's June 1, 2017 ruling.

## DISCUSSION

The Prison Litigation Reform Act, La. R.S. 15:1181-1191, provides that where a prisoner brings a civil action in forma pauperis, the prisoner shall still be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of twenty percent of the greater of the average monthly deposits to the prisoner's account, or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the petition. La. R.S. 15:1186(A)(2). After the payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of twenty percent of the preceding month's income credited to the prisoner's account, until the filing fees are paid. La. R.S. 15:1186(B)(1). An order granting a prisoner's request to proceed in forma pauperis automatically stays all proceedings, including any service of process, until all costs of court or fees due the clerk by the prisoner in this matter are paid. During the pendency of the stay, the prisoner may not take any action to prosecute the suit, including but not limited to filing any pleadings, discovery, or motions other than a motion for voluntary dismissal or a motion to lift the stay because all costs have been paid. La. R.S. 15:1186(B)(2)(a). If at any time during the pendency of the action, additional costs of court or fees due the clerk by the prisoner accrue and are unpaid by the prisoner, then upon order of the court ex proprio motu or upon motion of the clerk or any other party, the action may be stayed as provided herein until such additional costs are paid. La. R.S. 15:1186(B)(2)(b); see **Nichols v. Cain**, 03-1169, p. 5 (La.App. 1 Cir. 4/2/04), 871 So.2d 654, 657, writ denied, 04-1711 (La. 10/8/04), 883 So.2d 1017.

Appellate courts have the duty to determine sua sponte whether their subject matter jurisdiction exists, even when the parties do not raise the issue. **Motorola, Inc. v. Associated Indemnity Corporation**, 02-1351, p. 5 (La.App. 1 Cir. 10/22/03), 867 So.2d 723, 725 (en banc). A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. A judgment may be final or interlocutory. A final judgment is one that determines the merits, in whole or in part, and an interlocutory judgment is one that does not determine the merits but only

preliminary matters in the course of the action. La. C.C.P. art. 1841. A final judgment is appealable in all causes in which appeals are given by law, and an interlocutory judgment is appealable only when expressly provided by law. La. C.C.P. art. 2083.

The June 1, 2017 order of the trial court, denying Buckenberger's pending motions in accordance with La. R.S. 15:1186(B)(2)(a) is an interlocutory order, in that it determines only preliminary matters in the course of the action. See La. C.C.P. art. 1841. Buckenberger has cited no law, nor are we aware of any, which expressly provides for an immediate appeal of this order denying his motions. Thus, this court lacks appellate jurisdiction to review this matter, and the appeal must be dismissed. Any pending motions by Buckenberger at the appellate level must also be dismissed for lack of appellate jurisdiction.

#### **DECREE**

The appeal of the June 1, 2017 trial court order is dismissed. Costs of this appeal are assessed to the plaintiff, Christopher Buckenberger.

**MOTIONS DISMISSED; APPEAL DISMISSED.**