NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 1321

KB HOME/SHAW LOUISIANA, LLC AND
KB HOME NEW ORLEANS INC.

VERSUS

VINSON ENTERPRISES, LLC OF FLORIDA
AND XYZ INSURANCE COMPANY

Judgment rendered DEC 06 2018

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, State of Louisiana
Trial Court No. 2017-10120
Honorable August J. Hand, Judge

******

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BEFORE: GUIDRY, PETTIGREW, CRAIN, THERIOT, AND PENZATO, JJ.

by Crain, J. concurs

ahp Penzato, J. dissents for the reasons assigned by Judge Guidry.

Guidry, J. dissents and assigns reasons.

PETTIGREW, J.

This is an appeal of a judgment that dismissed a breach of contract action between a general contractor and a subcontractor pursuant to a peremptory exception raising the objection of peremption. The judgment also sustained a peremptory exception of no right of action. For the following reasons, we reverse, render, and remand.

FACTS AND PROCEDURAL HISTORY

KB Home New Orleans, Inc. is the sole owning member of KB Home/Shaw Louisiana, LLC, a foreign limited liability company that served as general contractor for the construction of a residential building in the Guste Island subdivision in Madisonville, Louisiana (KB Home New Orleans, Inc. and KB Home/Shaw Louisiana, LLC are referred to collectively herein as "KB Home."). In May 2007, KB Home entered into an agreement with Vinson Construction Services, LLC ("Vinson Construction"), whereby Vinson Construction was hired as a subcontractor to supply concrete and perform the foundation work on the building. Problems later arose allegedly related to the foundation work performed by Vinson Construction. KB Home paid the expenses to remediate the complaints of the owners of the units in the building and then unsuccessfully sought indemnification under the May 2007 agreement for the costs incurred.

On January 9, 2017, KB Home filed a petition for breach of contract and damages against Vinson Enterprises, LLC of Florida ("Vinson Enterprises"), asserting that it was the company formerly known as Vinson Construction, again seeking indemnification for the remediation expenses it had incurred. Vinson Enterprises answered the petition acknowledging that it was named a defendant in the action, but otherwise denying the allegation that it was formerly known as Vinson Construction. Vinson Enterprises also asserted peremptory exceptions raising the objections of peremption and no right of action. It alleged that KB Home's claims were perempted pursuant to the five-year peremptive period provided in La. R.S. 9:2772 and that KB Home had no right of action because no contract existed between KB Home and Vinson Enterprises.

A hearing on Vinson Enterprises' peremptory exceptions was held on May 31, 2017. Following the hearing, the trial court ruled in favor of Vinson Enterprises,

sustaining both exceptions. The written judgment, signed June 12, 2017, recognized that KB Home's suit was perempted and dismissed the suit with prejudice on that basis. With regards to the objection of no right of action, the judgment stated:

> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Exception of No Right of Action is **MAINTAINED**; provided, however, that in the event plaintiffs are successful on any timely appeal of this Judgment on peremption, plaintiffs have thirty (30) days from entry of reversal on appeal to amend their Petition for Breach of Contract and Damages to name the correct defendant.

KB Home timely sought a devolutive appeal of the June 12, 2017 judgment.

After the appeal was lodged with this court, a rule to show cause was issued questioning whether the June 12, 2017 judgment was final because of the conditional language in the ruling on the Exception of No Right of Action. In response to the rule to show cause, the parties submitted briefs asserting that the June 12, 2017 judgment was final and appealable based on the trial court dismissing KB Home's suit in its entirety based on peremption. Thereafter, following an interim order issued by this court inviting the trial court to consider amending the phraseology of the judgment to remove the conditional language, the trial court signed an amended judgment on December 21, 2017, wherein it stated that "it is the opinion of this Court that the matter is perempted and that Vinson Enterprises, LLC of Florida is not a proper party." The trial court dismissed KB Home's action with prejudice based on peremption, and designated this portion of the judgment as a final judgment under La. C.C.P. art. 1915(B). The trial court also stated that "the Exception of No Right of Action is MAINTAINED." After the record on appeal was supplemented with the December 21, 2017 amended judgment, a panel of this court issued a ruling to maintain the appeal, but stated that "a final determination as to whether this appeal is to be maintained is reserved for the panel to which the appeal is assigned."

The dismissal of the suit with prejudice on an exception of peremption is determinative of the merits in whole; therefore the judgment is final, and La. C.C.P. art. 1915(B) certification is not necessary. See La. C.C.P. art. 1841. Furthermore, when an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review

of all adverse and interlocutory rulings prejudicial to him, in addition to review of the final judgment. **Jackson v. Wise**, 17-1062, p. 3 (La. App. 1 Cir. 4/13/18) 249 So.3d 845, 850. For the above reasons, the appeal is maintained.

ASSIGNMENTS OF ERROR

On appeal, KB Home alleges the trial court committed the following errors:

1. The [trial] court erred in dismissing KB Home's claims as perempted under the five-year periods of La. R.S. 9:2772 and La. R.S. 9:3144(A)(3), where Vinson failed to introduce any evidence establishing the commencement of the applicable peremptive period.

2. The [trial] court erred in concluding that KB Home untimely filed its claims, where KB Home and Vinson validly agreed to lengthen the applicable peremptive period to ten years, and KB Home timely filed its claims within that extended period.

3. The [trial] court erred in maintaining Vinson's exception of no right of action, where Vinson failed to establish that KB Home does not belong to the class of parties entitled to bring the claims asserted in this action.

DISCUSSION

We will begin our review with KB Home's second assignment of error, in which it argues that the trial court erred in not finding that the contractual agreement effectively allowed it up to ten years to file its indemnification claim based on alleged construction defects, thereby extending the peremptive period applicable to its claim. To support its contention, KB Home relies on the following language in Paragraph 19 of the May 2007 agreement with Vinson Construction, entitled "Warranty; Customer Service; and Louisiana Home Warranty Act":

> Subcontractor warrants and represents to Contractor that the workmanship of the Work ... shall be in conformance with this Subcontract and the Contract Documents, be of the finest quality, and be free from faults and defects of design, material and workmanship for at least the period(s) set forth in Contractor's warranty, which is incorporated herein by reference, or for such longer periods as may be required by FHA, VA and/or other applicable governmental authorities.

KB Home Home's "New Home Limited Warranty Agreement" provides a ten-year warranty against any major structural defect,[1] commencing from the date the homeowner closed

[1] The Contractor's warranty defines a *major structural defect*, in pertinent part, as a defect that "results in or causes actual, tangible damage to a 'Load-Bearing Component' of the Home," which includes the foundation systems and footings.

on the purchase of the home from KB Home.

However, Louisiana Revised Statutes 9:2772 provides, in pertinent part:

> A. Except as otherwise provided in this Subsection, no action, whether ex contractu, ex delicto, or otherwise, including but not limited to an action for failure to warn, to recover on a contract, or to recover damages, or otherwise arising out of an engagement of planning, construction, design, or building immovable or movable property . . . shall be brought against . . . any person performing or furnishing the design, planning, supervision, inspection, or observation of construction or the construction of immovables, or improvement to immovable property, including but not limited to a residential building contractor as defined in R.S. 37:2150.1:
>
> (1)(a) More than five years after the date of registry in the mortgage office of acceptance of the work by owner.
>
> (b) If no such acceptance is recorded within six months from the date the owner has occupied or taken possession of the improvement, in whole or in part, more than five years after the improvement has been thus occupied by the owner.
>
> . . .
>
> B. (1) The causes which are perempted within the time described above include any action:
>
> (a) For any deficiency . . . in the construction of any improvement to immovable property, including but not limited to any services provided by a residential building contractor as defined in R.S. 37:2150.1(9).
>
> (b) For damage to property, movable or immovable, arising out of any such deficiency.
>
> . . .
>
> (3) Except as otherwise provided in Subsection A of this Section, this peremptive period shall extend to every demand, whether brought by direct action or for contribution or indemnity or by third-party practice, and whether brought by the owner or by any other person.

Although KB Home acknowledges that peremption may not be renounced, interrupted, or suspended (see La. C.C. art. 3461), it nonetheless argues that the parties to the May 2007 agreement merely "extended" and did not "renounce" the peremptive period provided by law. While the parties to the May 2007 agreement did agree to a warranty period that would otherwise hold the subcontractor liable for a period beyond

the peremptive period established in La. R.S. 9:2772,[2] the warranty provision directly conflicts with governing statutory law.[3] Hence, the contractual provision providing for a ten-year warranty period is not enforceable as an "extension" of the peremptive period, as the extension basically equates to a limited renunciation[4] of the peremptive period. We therefore find no merit in KB Home's second assignment of error asserting that the trial court erred in failing to conclude that its claim was subject to a ten-year peremptive period.

We do, however, find merit in KB Home's first assignment of error asserting that the trial court erred in finding its claim perempted in the absence of evidence establishing the commencement date of the peremptive period.

The objection of peremption is raised by the peremptory exception. La. C.C.P. art. 927(A)(2). Ordinarily, the exceptor bears the burden of proof at the trial of the peremptory exception. However, if peremption is evident on the face of the pleadings, the burden shifts to the plaintiff to show the action has not perempted. **Satterfield & Pontikes Construction, Inc. v. Breazeale Sachse & Wilson, LLP**, 15-1355, pp. 6-7 (La. App. 1 Cir. 1/10/17), 212 So.3d 554, 558, **writ denied**, 17-0268 (La. 3/31/17), 217 So.3d 363. Moreover, at the hearing on a peremptory exception raising peremption, pleaded prior to trial, evidence may be introduced to support or controvert the exception. La. C.C.P. art. 931; **Satterfield & Pontikes Construction, Inc.**, 15-1355 at p. 7, 212 So.3d at 558.

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[2] Since being enacted in 1964, La. R.S. 9:2772 has been amended several times, most notably in 1999, when the legislature reduced the peremptive period of paragraph A from ten to seven years and in 2003, when the legislature further reduced the peremptive period from seven years to the current five-year peremptive period. See 1999 La. Acts, No. 1024, §1 and 2003 La. Acts, No. 919, §1.

[3] Although some reference was also made to the New Home Warranty Act (La. R.S. 9:3141-3150), La. R.S. 9:2772 (providing the peremptive period for actions involving deficiencies in surveying, design, supervision, or construction of immovables or improvements thereon) is the more specific and therefore applicable law. See **Ebinger v. Venus Construction Corporation**, 10-2516, pp. 2-4 (La. 7/1/11), 65 So.3d 1279, 1282-83 (wherein the court recognized that while the homeowners' claim against the general contractor was brought pursuant to the New Home Warranty Act, the general contractor's indemnity claim against the subcontractor was subject to the peremptive period of La. R.S. 9:2772).

[4] *Renounce* has been defined as "[t]o give up or abandon formally (a right or interest)" or "to decline to recognize or observe." Black's Law Dictionary (10th ed. 2014).

The five-year peremptive period provided in La. R.S. 9:2772 commences from the date of registry in the mortgage office of the acceptance of the work by owner or the date the improvement has been thus occupied by the owner, if no such acceptance is recorded within six months from the date the owner occupied or took possession of the improvement. La. R.S. 9:2772(A)(1); see also **Ebinger v. Venus Construction Corporation**, 10-2516, p. 5 (La. 7/1/11), 65 So.3d 1279, 1284. In its petition for breach of contract, KB Home merely alleged that "This lawsuit arises out of a breach of the contract executed on May 15, 2007." While the petition states that four residences were built pursuant to the May 2007 agreement and indicates that those residences were later purchased and occupied, the petition does not recite the date of completion, purchase, or occupation of any of the residences. This court, in **Whitney Bank v. Rayford**, 17-1244, p. 3 (La. App. 1 Cir. 3/29/18), 247 So.3d 733, 737, held that without any allegation of the date the acceptance was recorded or the date of occupancy, the claim could not be perempted on the face of the petition.

Further, Vinson Enterprises did not introduce any evidence in support of its objection of peremption. Instead, it merely alleged that KB Home acknowledged in its 2017 petition that the allegedly defective work was performed in 2007, and therefore the claim was perempted on the face of the petition. As the allegations of KB Home's petition were insufficient to establish the commencement date of the peremptive period, and without evidence to otherwise establish the pertinent dates for commencement, Vinson Enterprises failed to carry its burden of proof. Accordingly, the trial court legally erred in sustaining the peremptory exception based on the objection of peremption and in dismissing KB Home's petition on that basis. See **Whitney Bank**, 17-1244 at p. 3, 247 So.3d at 737.

KB Home's final assignment of error – that the trial court erred in concluding that it has no right of action – has merit as well. The peremptory exception pleading the objection of no right of action challenges whether the plaintiff has an actual interest in bringing the action. See La. C.C.P. art. 927(A)(6). Whether a person has a right of action depends on whether the particular person belongs to the class in whose favor the law

extends a remedy. In other words, the exception questions whether the plaintiff has an interest in judicially enforcing the right asserted. The objection of no right of action simply tests whether this particular plaintiff, as a matter of law, has an interest in the claim sued on. **Phi Iota Alpha Fraternity, Inc. v. Schedler**, 14-1620, p. 7 (La. App. 1 Cir. 9/21/15), 182 So.3d 998, 1002.

This court has consistently held that no action for breach of contract may lie in the absence of privity of contract between the parties. **Greater Lafourche Port Commission v. James Construction Group, L.L.C.**, 11-1548, p. 11 (La. App. 1 Cir. 9/21/12), 104 So.3d 84, 91; **Estate of Mayeaux v. Glover**, 08-2031, p. 8 (La. App. 1 Cir. 1/12/10), 31 So.3d 1090, 1095, **writ denied**, 10-0312 (La. 4/16/10), 31 So.3d 1069; **Pearl River Basin Land & Development Company, L.L.C. v. State ex rel. Governor's Office of Homeland Security and Emergency Preparedness**, 09-0084, p. 4 (La. App. 1 Cir. 10/27/09), 29 So.3d 589, 592-93.

KB Home's contention that it has an interest in enforcing the May 2007 agreement is true, as KB Home is a party to the May 2007 agreement. However, Vinson Enterprises asserts that since it was not a party to the May 2007 agreement, it cannot be held liable for a breach of that agreement. Vinson Enterprises essentially argues that the law does not extend a remedy to KB Home against Vinson Enterprises as a non-party to the agreement. However, the exception raising the objection of no right of action is not designed to test whether the defendant is the right defendant. **Long v. Jeb Breithaupt Design Build Inc.**, 44,002, p. 18 (La. App. 2 Cir. 2/25/09), 4 So.3d 930, 941. So, in essence, the objection Vinson Enterprises is asserting is the objection of no cause of action, as opposed to no right of action.

The peremptory exception raising the objection of no cause of action questions whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. **Jefferson v. International Marine, LLC**, 16-0472, p. 8 n.4 (La. App. 1 Cir. 7/5/17), 224 So.3d 50, 55 n.4, **writ denied**, 17-1369 (La. 11/6/17), 229 So.3d 475. The objection refers to the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. **Tobin v. Jindal**, 11-1004, p. 5 (La.

App. 1 Cir. 2/10/12), 91 So.3d 329, 333. Reference to a cause of action focuses not on whether a remedy is afforded to the plaintiff in the pending action, but whether the law affords a remedy to *anyone* under the accepted factual allegations. **Richard v. Richard**, 09-539, p. 5 (La. App. 3 Cir. 11/4/09), 24 So.3d 292, 296.

A pleading is governed by its substance rather than its caption and must be construed for what it really is, not for what it is erroneously designated. **Bihm v. Deca Systems, Inc.**, 16-0356, p. 6 n.3 (La. App. 1 Cir. 8/8/17), 226 So.3d 466, 473 n.3. Moreover, this court has authority to independently notice the objection of no cause of action. See La. C.C.P. art. 927(B). Therefore, we will consider, *de novo*, whether KB Home's petition establishes a cause of action against Vinson Enterprises. See **Scheffler v. Adams & Reese, LLP**, 06-1774, p. 5 (La. 2/22/07), 950 So.2d 641, 647.

In the petition for breach of contract, KB Home acknowledged that the May 2007 agreement was executed by Vinson Construction and that Vinson Construction was the entity that performed the allegedly faulty foundation work pursuant to the May 2007 agreement. The only allegation in the petition whereby any liability could be attributed to Vinson Enterprises is in the second numbered paragraph of the petition, wherein KB Home makes the singular allegation that Vinson Enterprises, LLC of Florida was formerly known as Vinson Construction Services, LLC. Vinson Enterprises, in its answer to KB Home's petition, expressly denied that a contract existed between it and KB Home, and expressly denied the allegation that it was formerly known as Vinson Construction.

However, the objection of no cause of action is triable only on the face of the petition, and to determine the issues raised by the exception, each well-pleaded fact in the petition must be accepted as true. **Jefferson**, 16-0472 at p. 8 n.4, 224 So.3d at 55 n.4. The parties may not introduce evidence to support or controvert an exception of no cause of action. La. C.C.P. art. 931. The court's inquiry on this objection is limited to determining whether the law provides a remedy to *anyone* if the facts alleged are true; if the law does not grant *anyone* the remedy sought under the facts alleged, the objection should be sustained and the action dismissed. **Wooley v. Lucksinger**, 06-1140, p. 203

(La. App. 1 Cir. 12/30/08), 14 So.3d 311, 452-53, **aff'd in part, rev'd in part on other grounds**, 09-0571 (La. 4/1/11), 61 So.3d 507.

Nonetheless, mere conclusions unsupported by facts are not sufficient to set forth a cause of action. **Ramey v. DeCaire**, 03-1299, p. 7 (La. 3/19/04), 869 So.2d 114, 118. The petition must set forth the material facts upon which a cause of action is based. The allegations must be ultimate facts; conclusions of law or fact and evidentiary facts will not be considered. **McKamey v. New Orleans Public Facility Management, Inc.**, 12-0716, p. 8 (La. App. 4 Cir. 9/19/12), 102 So.3d 222, 227. It is insufficient for the petition to simply state factual conclusions without setting forth the facts that support the conclusions; consequently, any allegations that are no more than factual conclusions shall be disregarded. **Merrick Construction Company, Inc. v. State**, 97-0110, p. 3 n.4 (La. App. 1 Cir. 9/19/97), 700 So.2d 236, 238 n.4; **State ex rel. Ieyoub v. Racetrac Petroleum, Inc.**, 01-0458, p. 4 (La. App. 3 Cir. 6/20/01), 790 So.2d 673, 678.

Obligations arising from a contract are heritable and assignable unless the law, the terms of the contract, or its nature preclude such effects. La. C.C. art. 1984. But KB Home offered no facts to establish that the obligations to which Vinson Construction bound itself in the May 2007 agreement were in any way transferred, assigned to, or assumed by Vinson Enterprises. Instead, it merely offered the unsupported allegation that Vinson Enterprises was formerly known as Vinson Construction. Disregarding this unsupported allegation, we find that KB Home failed to state a cause of action against Vinson Enterprises for breach of contract. Accordingly, we find the trial court erred in sustaining the objection of no right of action, and instead find that KB Home's petition failed to state a cause of action against Vinson Enterprises. However, pursuant to La. C.C.P. art. 934, on remand, KB Home should be given an opportunity to amend its petition to state a valid cause of action.

CONCLUSION

For the foregoing reasons, we reverse the peremptory exceptions sustained by the trial court based on the objections of peremption and no right of action. We render judgment finding that the petition of KB Home fails to state a cause of action against Vinson Enterprises, LLC of Florida, and hereby sustain a peremptory exception raising the objection of no cause of action. We remand this matter to the trial court to allow KB Home an opportunity to amend its petition to state a cause of action against Vinson Enterprises, LLC of Florida and for further proceedings consistent with this opinion. All costs of this appeal are cast one half to KB Home New Orleans, Inc. and KB Home/Shaw Louisiana, LLC and one half to Vinson Enterprises, LLC of Florida.

REVERSED, RENDERED, AND REMANDED.

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

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NUMBER 2017 CA 1321

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KB HOME NEW ORLEANS INC.

VERSUS

VINSON ENTERPRISES, LLC OF FLORIDA
AND XYZ INSURANCE COMPANY

GUIDRY, J., dissents and assigns reasons.

GUIDRY, J., dissenting.

While I agree with the majority's opinion on the merits, because I believe this court lacks jurisdiction to consider the appeal, I respectfully dissent. I believe the amended judgment before us on appeal is not a final judgment because of the interlocutory ruling, specifically the ruling that simply "maintained" the objection of no right of action, contained therein.

A judgment that "grants" a peremptory exception, but fails to dismiss a party and further fails to set forth decretal language disposing of or dismissing the plaintiff's claims against the defendants is defective and cannot be considered a final judgment for the purposes of an immediate appeal. State by and through Caldwell v. Teva Pharmaceuticals Industries, Ltd., 17-0448, p. 10 (La. App. 1st Cir. 2/8/18), 242 So.3d 597, 603. Since the no right of action ruling in the amended judgment lacks decretal language that actually dismisses KB HOME's suit, it is interlocutory. See Kelly v. Kelly, 16-0206, p. 4 (La. App. 1st Cir. 10/31/16), 233 So. 3d 620, 623.

A judgment that only partially determines the merits of the action is a partial final judgment and is only appealable if authorized by La. C.C.P. art. 1915. Rhodes v. Lewis, 01-1989, p. 3 (La. 5/14/02), 817 So. 2d 64, 66. Subpart A of La. C.C.P. art. 1915 designates certain categories of partial judgments as final judgments subject to immediate appeal without the necessity of any designation of finality by the trial court, while Subpart B of La. C.C.P. art. 1915 provides that when a court renders a partial judgment, it may designate the judgment as final when there is no just reason for delay.

The interlocutory portion of the judgment herein does not fall within the enumerated parameters of an immediately appealable partial judgment authorized by La. C.C.P. art. 1915(A). Moreover, while the trial court, in the amended judgment, did designate the judgment as final pursuant to La. C.C.P. art. 1915(B), the judgment recites that the designation applied only to the portion of the judgment that sustained the objection of peremption and dismissed the suit with prejudice pursuant thereto. Consequently, the trial court failed to make the necessary determination and designation required pursuant to La. C.C.P. art. 1915(B) as to the interlocutory portion of the judgment so as to render the entire judgment immediately appealable.

I disagree with the majority's determination that this particular judgment can be reviewed pursuant to the jurisprudential tenet that when an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse and interlocutory rulings prejudicial to him, in addition to review of the final judgment. Jackson v. Wise, 17-1062, p. 3 (La. App. 1st Cir. 4/13/18) 249 So. 3d 845, 850. In Jackson, the rulings considered pursuant to that tenet were not contained within one judgment, but were separately rendered. In Jackson, the final judgment was not defective. Moreover, I believe that it is the inclusion of the interlocutory ruling that does not contain proper decretal language in what would

otherwise be a final judgment that makes this judgment defective and hence not final for purposes of immediate appeal.

In Dufour v. Westlawn Cemeteries, Inc., 94-81 (La. App. 5th Cir. 6/28/94), 639 So. 2d 843, the court was faced with a similar judgment in which a portion of the judgment could be found to be final and immediately appealable, but the remaining portion of the judgment could not. In that case, because a portion of the judgment could constitute a final appealable judgment, the court concluded that judicial economy dictated that it review both the final decree and the interlocutory decree together. The court therefore converted the appeal of the portion of the judgment that was interlocutory to a writ and reviewed that portion of the judgment pursuant to the court's supervisory jurisdiction. Dufour, 94-81 at pp. 3-4, 639 So. 2d at 846.

While I do not agree with the fifth circuit's determination that a portion of the judgment can be final, while another portion of the same judgment is interlocutory, I observe that it would not be proper to convert this matter to a writ, as the appeal in this case was filed beyond the time delay for seeking supervisory writs.[1] I believe the judgment appealed is defective because of the interlocutory ruling contained therein, and therefore, is not a final judgment. Accordingly, I believe the appeal in this matter should be dismissed, and for these reasons, I respectfully dissent.

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[1] Although this court has discretion to convert an appeal to an application for supervisory writs, it may only do so if the appeal would have been timely had it been filed as a supervisory writ application. A party intending to apply to this court for a supervisory writ shall give notice of such intention by requesting a return date to be set by the trial court, which shall not exceed thirty days from the date of the notice of judgment. *See* Uniform Rules - Courts of Appeal, Rules 4–2 and 4–3. Succession of Jaga, 16-1291, p. 5 n.2 (La. App. 1st Cir. 9/15/17), 227 So. 3d 325, 328 n.2.

In this case, notice of the June 12, 2017 judgment was issued by the clerk of the trial court on June 13, 2017, and the petition for appeal was filed on July 24, 2017. Because the appeal was not filed within thirty days of the notice of judgment, the petition for appeal cannot be considered a timely filed application for supervisory writs under Uniform Rules—Courts of Appeal, Rule 4–3.