

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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2018 CA 0726

JERRY L. ROBINETT

VERSUS

FORD OF SLIDELL, L.L.C.  
(A.K.A. SUPREME FORD OF SLIDELL)

JUDGMENT RENDERED: DEC 21 2018

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On Appeal from the  
City Court of Slidell  
In and for the Parish of St. Tammany • State of Louisiana  
Docket Number 2016-04382

The Honorable James Lamz, Judge Presiding

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Jerry L. Robinett  
New Orleans, Louisiana

APPELLANT  
PLAINTIFF – *Pro Se*

David C. Loeb  
Slidell, Louisiana

ATTORNEY FOR APPELLEE  
DEFENDANT – Ford of Slidell,  
L.L.C. (a.k.a. Supreme Ford of  
Slidell)

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

*J.P. Pettigrew, J. concurs*

*J. Chutz, J. Dissents with Reasons*

*JRW*

**WELCH, J.**

The plaintiff/appellant, Jerry L. Robinett, appeals a motion for partial dismissal granted in his favor that dismissed his claims against the defendant/appellee, Ford of Slidell, L.L.C. (“Ford”), while reserving his rights for the return of costs posted by him. For the following reasons, we dismiss the appeal.

**FACTS AND PROCEDURAL HISTORY**

Mr. Robinett filed a statement of claims and citation in the small claims division of the City Court of Slidell (“city court”), asserting a breach of contract action against Ford. Mr. Robinett alleged that Ford agreed to replace a valve in his 1994 Ford Thunderbird for \$285.00, but instead, repaired the valve without replacing it with a new valve. After answering, Ford filed a motion to transfer the matter to the city court’s regular civil docket, which the city court granted.

Mr. Robinett filed a motion for pretrial conference and to set the matter for trial. Upon receipt of Mr. Robinett’s motion, the city court clerk transmitted notice that his motion was being held for inadequate funds and would not be processed until a deposit of \$100.00 was received. Mr. Robinett responded by filing a motion for review, arguing that his action was originally filed in the small claims division, and therefore, he should not be required to pay additional fees or court costs, citing La. R.S. 13:5206 and 5209.<sup>1</sup> The city court denied Mr. Robinett’s motion for review in an order signed on **May 17, 2017**. Mr. Robinett then paid the \$100.00

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<sup>1</sup> Louisiana Revised Statutes 13:5206(E), regarding the transfer of proceedings from small claims division, provides, “[t]he plaintiff in the small claims action shall not be required to pay to the clerk of the court to which the action is so transferred any transmittal, appearance, or filing fee; although, upon adverse judgment, he may be taxed with costs as in the case of any other defendant.” Louisiana Revised Statutes 13:5209(C), regarding the small claims procedure for waivers of the right to appeal, provides, “a plaintiff shall not be required to pay for additional costs beyond those due under this Part; any such additional costs as may be lawfully assessed shall be paid by the defendant mover; the plaintiff, if judgment is rendered against him, shall not be cast in such additional costs.”

deposit and re-urged his motion to set the matter for trial, which the city court set for a trial on the merits on March 28, 2018.<sup>2</sup>

Thereafter, Mr. Robinett filed a motion for partial dismissal, moving to dismiss his claims against Ford while “reserving all rights ... for return of costs posted by him in the present litigation.”<sup>3</sup> On **March 28, 2018**, the city court signed an order as follows:

In view of the foregoing **Motion for Partial Dismissal**, IT IS ORDERED that Plaintiff’s **Motion for Partial Dismissal** asking to dismiss his claims against Ford of Slidell with prejudice while preserving Plaintiff’s rights of appeal for return of his costs posted in this litigation is hereby -----.

In the March 28, 2018 order, as represented above, the city court drew a line through the blank space reserved for the grant or denial of the motion. It is not clear from the March 28, 2018 order whether the city court granted or denied the motion for partial dismissal; however, the transcript of the hearing on Mr. Robinett’s motion for partial dismissal reflects that the city court granted the motion in open court on March 28, 2018.<sup>4</sup>

Mr. Robinett then filed a motion for final judgment designation on March 28, 2018, requesting that the May 17, 2017 order denying his motion for review be designated as a final judgment pursuant to La. C.C.P. art. 1915(B). The city court signed an order on April 18, 2018,<sup>5</sup> denying Mr. Robinett’s motion for final

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<sup>2</sup> The order setting this matter was signed on October 12, 2017. Although the order states that the trial on the merits was set for March 28, 2017, clearly this is a clerical error, and the correct date was March 28, 2018.

<sup>3</sup> The city court clerk transmitted notice to Mr. Robinett that his motion for partial dismissal was being held for inadequate funds and would not be processed until a deposit of \$28.00 (plus \$6.00 if he was requesting certified copies) was received. It is not clear from the record whether Mr. Robinett paid the \$28.00/\$34.00 deposit as required for the filing of his motion for partial dismissal.

<sup>4</sup> A final judgment and a partial final judgment must be reduced to writing. See La. C.C.P. art. 1911.

<sup>5</sup> The record reflects that the order was signed on April 18, 2017; however, this is another clerical error. Mr. Robinett filed the motion for final judgment designation on March 28, 2018; thus, the correct date the order was signed was April 18, 2018.

judgment designation, with a notation on the order that read: “CCP [a]rt[.] 1915(B)(1) [n]ot applicable[.]”

After filing his motion for final judgment designation, on April 6, 2018, Mr. Robinett filed a motion for an order of appeal of the city court’s **May 17, 2017** order denying his motion for review. In an undated, unsigned order of appeal attached to Mr. Robinett’s motion for an order of appeal, the city court crossed through language granting Mr. Robinett an appeal of the May 17, 2017 order, noting: “See order dated April 18, 2018.” In that separate order of appeal signed on April 18, 2018, the city court granted Mr. Robinett a devolutive appeal from the “judgment entered in the above cause.” The order of appeal did not reference the date of the judgment being appealed. However, the notice of appeal issued by the city court clerk stated “an order of appeal was entered on April 18, 2018, granting an appeal from the ORDER of May 17, 2017[.]”

After the instant appeal was lodged, this court issued a rule to show cause on June 1, 2018, ordering the parties to file briefs discussing why the instant appeal should not be dismissed:

***It appears that the May 17, 2017 “Order” from which plaintiff, Jerry L. Robinett, seeks to appeal, is a non-appealable ruling. (See appellate record pages 32-33.) Furthermore, even assuming the May 17, 2017 “Order” is appealable, the motion for appeal was not filed until April 6, 2018, rendering the appeal untimely. (See appellate record page 35.)***

The show cause order was referred to this merits panel in this court’s interim order dated September 28, 2018.

In his responses to this court’s show cause order, Mr. Robinett agreed that the May 17, 2017 order denying his motion for review was an interlocutory ruling, but argued that he could not appeal the May 17, 2017 order until a final judgment was issued. Mr. Robinett further asserted that the judgment he actually appealed

from was the March 28, 2018 order granting his motion for partial dismissal, which he contended allowed him to also seek review of the prior May 17, 2017 order.<sup>6</sup>

Thereafter, on September 5, 2018, this court entered an interim order, as follows:

This matter is remanded to the [city] court for the limited purpose of allowing the [city] court to consider whether its March 28, 2018 judgment which purported to rule on the motion for partial dismissal may be amended pursuant to La. Code Civ. P. art. 1951, as it contains no decretal language. **Villaume v. Villaume**, 363 So.2d 448, 450-51, (La. 1978); see also **LaBove v. Theriot**, 597 So.2d 1007, 1010 (La. 1992) and **Frisard v. Autin**, 98-2637 (La. App. 1st Cir. 12/28/99), 747 So.2d 813, writ denied, 2000-0126 (La. 3/17/00), 756 So.2d 1145. Additionally, any such amended judgment must be precise, definite and certain, and must also contain decretal language, name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, as well as the relief which is expressly granted or denied. **Johnson v. Mount Pilgrim Baptist Church**, 2005-0337 (La. App. 1st Cir. 3/24/06), 934 So.2d 66, 67.

The [city] court is **ORDERED** to supplement the record on or before September 19, 2018 with any motions, pleadings, documents, exhibits, orders of court, as well as pertinent minute entries pertaining to the matters remanded to the district court in accordance with this order.

**JMG**  
**MRT**  
**AHP**

Following receipt of the interim order, the city court signed an order on September 17, 2018, granting Mr. Robinett's motion for partial dismissal "to dismiss his claims against Ford of Slidell LLC with prejudice while preserving Plaintiff's rights of appeal for return of costs posted in this litigation...." The city court clerk supplemented the September 17, 2018 order granting the motion for partial dismissal to the record on appeal.

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<sup>6</sup> Ford did not file a response to this court's rule to show cause.

## JURISDICTION

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue, and we are obligated to recognize any lack of jurisdiction if it exists. **Quality Env'tl. Processes, Inc. v. Energy Dev. Corp.**, 2016-0171 (La. App. 1 Cir. 4/12/17), 218 So. 3d 1045, 1052-53. The Louisiana Code of Civil Procedure defines three types of judgments: an interlocutory judgment, which determines a preliminary matter in the course of an action, but does not determine the merits (see La. C.C.P. art. 1841); a final judgment, which determines the merits of the case in whole or in part (see La. C.C.P. art. 1841); and a partial final judgment, which disposes of some, but not all, of the issues on the merits, and in some instances requires a designation of finality by the trial court (see La. C.C.P. art. 1915). Different rules govern the appealability of these three types of judgments. See La. C.C.P. arts. 2083(A), 2083(C), and 1915(B).

Our appellate jurisdiction extends to “final judgments.” See La. C.C.P. arts. 1841 and 2083; **Quality Env'tl. Processes**, 218 So. 3d at 1053. A judgment must be precise, definite, and certain. Moreover, a final appealable judgment must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. These determinations should be evident from the language of the judgment without reference to other documents in the record. In relevant part, a final appealable judgment must contain appropriate decretal language disposing of or dismissing claims in the case. **Quality Env'tl. Processes**, 218 So. 3d at 1053. The September 17, 2018 judgment granting the motion for partial dismissal is a final judgment. The May 17, 2017 order denying the motion for review is an interlocutory ruling that is not appealable. See La. C.C.P. art. 1841.

Mr. Robinett argues that he intended to appeal the March 28, 2018 order/the supplemental September 17, 2018 order granting the motion for partial dismissal in order to seek review of the May 17, 2017 order denying his motion for review.<sup>7</sup> The record shows that Mr. Robinett filed a motion for an order of appeal of the city court's May 17, 2017 order denying his motion for review. The order of appeal signed by the city court granted Mr. Robinett a devolutive appeal from the "judgment entered in the above cause," but did not reference the date of the judgment being appealed. The notice of appeal issued by the city court clerk stated "an order of appeal was entered on April 18, 2018, granting an appeal from the ORDER of May 17, 2017[.]" Thus, the record clearly indicates that Mr. Robinett sought, and was granted, an order of appeal of the May 17, 2017 order.

A party wishing to appeal an adverse judgment must obtain an order of appeal. There can be no appeal absent an order of appeal because the order is jurisdictional; this lack of jurisdiction can be noticed by the court on its own motion at any time. **Noyel v. City of St. Gabriel**, 2015-1890 (La. App. 1 Cir. 9/1/16), 202 So. 3d 1139, 1142, writ denied, 2016-1745 (La. 11/29/16), 213 So. 3d 392. The failure of the appellant to obtain an order of appeal forfeits his right to appeal. **Rose v. Twin River Dev., LLC**, 2017-0319 (La. App. 1 Cir. 11/1/17), 233 So. 3d 679, 684. The record is clear that Mr. Robinett has not obtained an order of appeal for the March 28, 2018 judgment, nor the September 17, 2018 judgment. Absent an order of appeal, Mr. Robinett has forfeited his rights to an appeal. See Rose, 233 So. 3d at 685.

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<sup>7</sup> In general, when an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory or partial judgments prejudicial to him or that involve the same or related issues, in addition to the review of the final judgment dismissing all of its claims with prejudice. See Robertson v. Doug Ashy Bldg. Materials, Inc., 2010-1552 (La. App. 1 Cir. 10/4/11), 77 So. 3d 339, 345 n.11, writs denied, 2011-2468, 2011-2430 (La. 1/13/12), 77 So. 3d 972 and 973; **State ex rel. Div. of Admin., Office of Risk Mgt. v. National Union Fire Ins. Co. of Louisiana**, 2010-0689 (La. App. 1 Cir. 2/11/11), 56 So. 3d 1236, 1242 n.6, writ denied, 2011-0849 (La. 6/3/11), 63 So. 3d 1023; **Judson v. Davis**, 2004-1699 (La. App. 1 Cir. 6/29/05), 916 So. 2d 1106, 1112-13, writ denied, 2005-1998 (La. 2/10/06), 924 So. 2d 167.

We recognize that Mr. Robinett intended to seek an appeal of the March 28, 2018 order granting his motion for partial dismissal so that he could seek review of the May 17, 2017 interlocutory order denying his motion for review, in order to challenge the assessment and payment of city court costs and fees. It is unclear why Mr. Robinett did not file a supervisory writ application seeking review of that May 17, 2017 interlocutory order in accordance with the **Uniform Rules—Courts of Appeal**, Rules 4–2 and 4–3, but instead, waited for the city court to render a final judgment in order to also seek review of the interlocutory ruling in conjunction with an appeal of a final judgment. Ordinarily, an application for supervisory writs is the appropriate vehicle for the review of an interlocutory judgment. **McGinn v. Crescent City Connection Bridge Auth.**, 2015-0165 (La. App. 4 Cir. 7/22/15), 174 So. 3d 145, 148.

When confronted with a judgment on appeal that is not final and appealable, like the May 17, 2017 order, we are authorized to exercise our discretion to convert the appeal to an application for supervisory writs. **Verret v. Johnson**, 2017-1015 (La. App. 1 Cir. 4/13/18), 250 So. 3d 269, 273. The Louisiana Constitution confers supervisory jurisdiction to a court of appeal over “cases which arise within its circuit.” La. Const. art. V, § 10(A). Moreover, the jurisprudence indicates that the decision to convert an appeal to an application for supervisory writs is within the discretion of the appellate courts. **Stelluto v. Stelluto**, 2005-0074 (La. 6/29/05), 914 So. 2d 34, 39. 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. **Bosley v. Louisiana Department of Public Safety and Corrections**, 2016-1112, 2017 WL 1423925, at \*4 n.5 (La. App. 1 Cir. 4/20/17); **Lake Villas No. II Homeowners’ Association, Inc. v. LaMartina**, 2015-0244, 2015 WL 9435193, at \*3 (La. App. 1 Cir. 12/23/15), writ denied, 2016-0149 (La. 3/14/16), 189 So. 3d



1070. 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. The record contains no notice of judgment as to when the May 17, 2017 order was forwarded to the parties. However, the motion for appeal was filed on April 6, 2018, almost a year after the May 17, 2017 order was signed by the city court. Because the appeal was not filed within thirty days of the judgment, the motion for appeal cannot be considered a timely filed application for supervisory writs under **Uniform Rules—Courts of Appeal**, Rule 4–3. Accordingly, we decline to convert the appeal to an application for supervisory writs.

#### **DECREE**

For the foregoing reasons, we dismiss the instant appeal and assess all appeal costs against the plaintiff/appellant, Jerry L. Robinett.

**APPEAL DISMISSED.**

**JERRY L. ROBINETT**

**FIRST CIRCUIT**


**VERSUS**

**COURT OF APPEAL**

**FORD OF SLIDELL, LLC  
(AKA SUPREME FORD OF SLIDELL)**

**STATE OF LOUISIANA**

**NO. 2018 CA 0726**

 CHUTZ, J., dissenting.

I disagree with the majority's conclusion that the appeal taken by Mr. Robinett was of the May 17, 2017 order because the Slidell City Court Clerk of Court stated in the notice of appeal that "an order of appeal was entered on April 18, 2018, granting an appeal from the ORDER of May 17, 2017." In fact, the April 18, 2018 order granting Mr. Robinett an appeal, which was drafted by the city court judge, indicated the devolutive appeal was from "the judgment entered in the above cause." It was evident the reference was to the March 28, 2018 ruling granting Mr. Robinett's partial dismissal of his claims with the express reservation of his appeal rights on the costs assessment issue.

As the majority correctly points out, the March 28, 2018 ruling was defective inasmuch as the order failed to include the requisite decretal language, indicating that the motion was granted; and the oral ruling rendered at the hearing on March 28, 2018 was never reduced to a judgment as required under La. C.C.P. art. 1911. Therefore, this court's action of remanding the matter for an amended judgment to include decretal language was appropriate.

The correct interpretation of Article 1911 is that an appeal granted before the signing of a final judgment is subject to dismissal until the final judgment is signed. However, once the final judgment has been signed, any previously existing defect has been cured, and there is no useful purpose in dismissing the otherwise valid appeal. *Overmier v. Traylor*, 475 So.2d 1094, 1094-95 (La. 1985) (per

curiam); *City of Denham Springs v. Perkins*, 2008-1937 (La. App. 1st Cir. 3/27/09), 10 So.3d 311, 317 n.5, writ denied, 2009-0871 (La. 5/13/09), 8 So.3d 568.

Once the record was supplemented with an order, signed on September 17, 2018, granting Mr. Robinett's motion for partial dismissal "while preserving Plaintiff's rights of appeal for return of costs posted in this litigation," the appeal was valid. Although I recognize that ordinarily an appeal cannot be taken by a party who confessed judgment in the proceedings in the tribunal hearing the matter, see La. C.C.P. art. 2085, where the judgment reserves the appellant's right to appeal an issue, the judgment is conditional and, thus, appealable. See *Deville v. Federal Sav. Bank of Evangeline Parish*, 607 So.2d 848, 850 (La. App. 3d Cir. 1992), writ denied, 610 So.2d 901 (La. 1993). As such, I believe a merits review is appropriate. Accordingly, I dissent.