

STATE OF LOUISIANA

JEW

COURT OF APPEAL

mt.

FIRST CIRCUIT

2021 CA 0230

BOARD OF DIRECTORS OF MT. ZION BAPTIST CHURCH OF
BOGALUSA, INC.

VERSUS

JERRY DUNOMES AND DOROTHY DUNOMES

JUDGMENT RENDERED: DEC 22 2021

Appealed from
The Twenty-Second Judicial District Court
Parish of Washington • State of Louisiana
Docket Number 114746 • Division F

The Honorable Vincent LeBello, Presiding Judge

Carl A. Perkins
Covington, Louisiana

COUNSEL FOR APPELLANT
PLAINTIFF—Board of Directors of Mt.
Zion Baptist Church of Bogalusa, Inc.

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Franklinton, Louisiana.

COUNSEL FOR APPELLEES
DEFENDANTS—Jerry Dunomes and
Dorothy Dunomes

PMC by JEW BEFORE: MCCLENDON, WELCH, AND THERIOT, JJ.

McClendon J. concurs without reasons.

WELCH, J.

In this dispute concerning physical and financial control of the Mt. Zion Baptist Church of Bogalusa, Inc. (“the Church”), the plaintiffs/defendants-in-reconvention, who are four members of the “Board of Directors” of the Church,¹ appeal a judgment granting a preliminary injunction in favor of the defendants/plaintiffs-in-reconvention, Jerry Dunomes and Dorothy Dunomes. For reasons that follow, we dismiss the appeal.

On June 5, 2020, the plaintiffs, Alguan Spikes (“Pastor Spikes”), Loreane Luter, Dorothy Ratliff, and Patricia Henry, filed a Petition for Temporary Restraining Order and Preliminary and Permanent Injunction, naming Jerry Dunomes and Dorothy Dunomes as defendants. Jerry Dunomes and Dorothy Dunomes are members of the Church and serve the Church in several leadership and management capacities, including membership on the Church’s Board of Trustees and its Pulpit Committee. In addition, Mr. Dunomes is a deacon in the Church and Ms. Dunomes is the recording and financial clerk for the Church.

In the plaintiffs’ petition, they alleged that on January 11, 2020, the Church voted to vest the corporate powers and management of the Church to a “Board of Directors,” consisting of seven members. The petition alleged that on June 2, 2020, the defendants attempted to incite Pastor Spikes to resign as pastor of the Church, and when he refused to do so, the defendants changed the locks to the Church and informed Pastor Spikes that no one would be permitted to have services in the Church the following Sunday. The petition further alleged that the Board of Directors then met on June 3, 2020, and the Board voted to change the locks on the Church, to remove Ms. Dunomes as the Church’s clerk, and to instruct Ms. Dunomes to return the Church’s stamp, as well as all of the Church’s records,

¹ According to the plaintiff’s petition, the Board of Directors consists of seven members and the petition was brought by four of those members.

minutes, reports, checks, and financial documents. Based on these allegations, the plaintiffs sought a temporary restraining order, and in due course, preliminary and permanent injunctions, prohibiting the defendants from coming onto the Church's property, using the Church's checks, stamp, or letterhead, and committing any acts relative to responsibilities and duties on behalf of the Church.

Based on the allegations of the verified petition, the trial court granted a temporary restraining order as requested. Following the entry of the temporary restraining order, the defendants filed an answer and reconventional demand, seeking their own temporary restraining order and a preliminary and permanent injunction against the plaintiffs. In their reconventional demand, the defendants/plaintiffs-in-reconvention alleged that Pastor Spikes was an at-will employee and that the January 11, 2020 meeting was not held in accordance with the acting constitution and by-laws of the Church. Rather, the defendants/plaintiffs-in-reconvention alleged that Pastor Spikes held the January 11, 2020 meeting to defraud the membership and members attending the unofficial meeting and that the "whole process was a guise to override the real officers and directors in number and remove the governing constitution and rules" in order to take over the Church. The defendants/plaintiffs-in-reconvention contended that Pastor Spikes and the other plaintiffs/defendants-in-reconvention should be restrained, enjoined, and prohibited from coming onto the Church's property, using the Church's checks, stamp, and letterhead, performing or holding any religious services on the Church's property, and changing the locks on the building.

A hearing was held on September 28 and 29, 2020 with regard to both parties' request for a preliminary injunction. At the conclusion of the hearing, the trial court rendered judgment in favor of Jerry Dunomes and Dorothy Dunomes, finding that they made a prima facie showing that they would prevail on the merits, and therefore, granted a preliminary injunction as prayed for, with the exception

that the purported Board of Directors would not be prohibited from coming onto the Church's property. In rendering judgment, the trial court specifically found, in oral reasons for judgment, that the Church's Board of Trustees was acting throughout the history of the Church as a Board of Directors and that the action taken at the January 11, 2020 meeting with respect to the selection of a new Board of Directors was invalid and done based on misrepresentations made to the existing Board of Trustees for the purpose of taking over the Church and existing board.

In subsequently issued written reasons for judgment dated October 11, 2020, the trial court found "that the actions of [Pastor] Spikes at the January 11, 2020 [C]hurch meeting were intended to and did deceive the existing Board of Trustees and [C]hurch members in an effort to usurp power and seize control of the [C]hurch" and that Pastor Spikes "unquestionably deceived the [C]hurch by telling them the new [Board of Directors] he created at the January 11, 2020 [meeting] was in name only, was only for the purpose of adding names to the charter to obtain 501(C)(3) status, and would not replace the existing Board of Trustees or assume the duties of the existing Board of Trustees." Accordingly, the trial court concluded that Jerry Dunomes and Dorothy Dunomes made a prima facie showing that they would prevail on the merits as to their claim that the new Board of Directors purportedly created at the January 11, 2020 meeting had no power or authority, did not replace the existing Board of Trustees, did not divest the Board of Trustees of any duties, powers, or authority to act on behalf of the Church, and that any action taken by the new Board of Directors was void ab initio.

The trial court also specifically found that the January 11, 2020 meeting was not properly held and failed to comply with the notice requirements set forth in the Church's by-laws because it was not called by the pastor from the pulpit and the object of the proposed meeting was not clearly stated in that notice from the pulpit. Therefore, the trial court concluded that Jerry Dunomes and Dorothy Dunomes

made a prima facie showing that they would prevail on the merits of their claim that the January 11, 2020 meeting was not properly called and noticed and that any action taken at that meeting was invalid. Lastly, the trial court concluded that Jerry Dunomes and Dorothy Dunomes made a prima facie showing as to their claim that Pastor Spikes was properly hired by the Church's pulpit committee on a temporary basis for a one-year trial period, that his temporary employment was terminated on June 2, 2020, in accordance with the Church's by-laws and the authority of the pulpit committee, and that any actions taken by Pastor Spikes after that date as pastor of the Church were invalid.

In accordance with the trial court's oral ruling and written reasons for judgment, the trial court signed a judgment on October 7, 2020 granting a preliminary injunction against the plaintiffs/defendants-in-reconvention, preventing them, including Pastor Spikes, from controlling the keys and locks of the Church, using any checks or monies of the Church, using the Church's stamp or letterhead for any correspondence, and conducting any religious services or any acts relative to responsibilities and duties of pastor and/or duties and business of the Church. The plaintiffs/defendants-in-reconvention were ordered to return any official documents of the Church, the keys to the Church, and any other possessions of the Church to counsel for Jerry Dunomes and Dorothy Dunomes. In addition, the judgment specifically provided that the plaintiffs/defendants-in-reconvention were not barred by the preliminary injunction from entering the property of the Church to attend religious services, as long as they did not interrupt or impede the services. Lastly, the judgment provided that the request for a preliminary injunction against Jerry Dunomes and Dorothy Dunomes was denied and that the temporary restraining order that was issued ex parte prior to the hearing was terminated.

A notice of judgment for the October 7, 2020 judgment was issued on

October 9, 2020. The plaintiffs/defendants-in-reconvention filed a motion seeking to appeal the October 7, 2020 judgment. On appeal, the plaintiffs/defendants-in-reconvention essentially challenge the underlying factual findings made by the trial court in reaching the conclusion that a preliminary injunction in favor of the defendants/plaintiffs-in-reconvention was warranted.

After the appeal was lodged with this Court, a review of the record revealed that there was no date stamped on the plaintiffs'/defendants-in-reconvention's motion for appeal reflecting the date that motion was filed. However, the chronological index to the record, which was prepared by the Clerk of Court for the trial court, reflected that the motion for appeal was filed on October 23, 2020. This Court, noting that La. C.C.P. art. 3612 requires appeals seeking review of judgments relating to preliminary injunctions be taken within fifteen days of the date of the judgment, observed that if the motion for appeal was filed on October 23, 2020, as indicated in the chronological index, then the appeal appeared untimely. Accordingly, on April 26, 2021, this Court issued a rule to show cause why the appeal should not be dismissed as untimely; the merits of that rule to show cause was referred to this panel by another panel of this Court. See Board of Directors of Mt. Zion Baptist Church of Bogalusa, Inc. v. Jerry Dunomes and Dorothy Dunomes, 2021-0230 (La. App. 1st Cir. 6/21/21)(*unpublished action on motion*).

An appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction. La. C.C.P. art. 3612(B). An appeal must be taken from an order or judgment related to a preliminary injunction and any bond required must be furnished, within fifteen days from the date of the order or judgment. La. C.C.P. art. 3612(C). The fifteen-day delay begins to run from the date of the judgment, not the mailing of the notice of judgment. **Stevens Construction & Design, L.L.C. v. St. Tammany Fire Protection District No. 1,**

2018-1759 (La. App. 1st Cir. 1/16/20), 295 So.3d 954, 958 (*en banc*), writ denied, 2020-00977 (La. 11/4/20), 303 So.3d 650. The fifteen-day appeal period set forth in La. C.C.P. art. 3612 is only applicable to an order or judgment relating to a preliminary injunction; the appeal from the granting or denial of a permanent injunction is governed by the same delays afforded in other ordinary proceedings. See Brickman v. Board of Directors of West Jefferson General Hospital, 363 So.2d 86, 87 (La. App. 4th Cir. 1978)(citing Pier 1 Imports, Inc. v. Pitcher, 264 So.2d 674, 675 (La. App. 1st Cir. 1972)); see also Pickering v. City of Baton Rouge, 442 So.2d 522, 524 (La. App. 1st Cir. 1983).²

Herein, review is being sought solely from a judgment relating to a preliminary injunction. While the plaintiffs/defendants-in-reconvention, in response to this Court's rule to show cause regarding the timeliness of their appeal, argue that the trial court's judgment effectively denied their request for a permanent injunction,³ and as such, they are entitled to the sixty-day devolutive appeal delays, we find no merit to this argument. At the hearing on the preliminary injunction, the plaintiffs specifically acknowledged that the permanent injunction was not resolved, as evidenced by the following colloquy:

BY MR. PERKINS [Counsel for the plaintiffs]:

Your honor, I'd ask that you order them to file a motion for permanent injunction to support that preliminary injunction within a certain time limit.

* * *

It is preliminary. You have to go to permanent.

² In **Pickering**, the appellants sought review of a judgment that granted preliminary and permanent injunctions, but the appeal was not perfected within the fifteen-day deadline set forth in La. C.C.P. art. 3612. This Court found that the appeal from that portion of the judgment related to the preliminary injunction was not timely perfected and not properly before this Court. However, the remainder of the appeal relating to a final judgment was taken within the sixty-day delay provided for devolutive appeals and was properly before this Court. **Pickering**, 442 So.2d at 524 (citing La. C.C.P. art. 2087 regarding the delays for taking a devolutive appeal).

³ The plaintiffs assert that the trial court essentially disbanded the purported Board of Directors and prohibited them from performing any functions on behalf of the Church, thereby effectively dismissing their claim for a permanent injunction.

BY THE COURT:

They have already requested permanent injunction, it is just not set for a hearing, but the permanent injunction will proceed via ordinary process. So, I'm all for trying to do whatever is possible to expedite that process, but it does have to proceed via ordinary process.

Furthermore, although the trial court's judgment denied the plaintiffs' request for a preliminary injunction, the judgment did not dismiss the plaintiffs' request for a permanent injunction. As such, we find the judgment on appeal herein pertains only to a preliminary injunction; thus, the fifteen-day deadline from the signing of the judgment set forth in La. C.C.P. art. 3612(C) is applicable.

The trial court's judgment granting the defendants'/plaintiffs-in-reconvention's request for a preliminary injunction was signed on Wednesday, October 7, 2020, and fifteen days from that date was Thursday, October 22, 2020. Although there is no date stamped on the motion for appeal that is in the record, the index to the record indicates that it was filed on October 23, 2020, and in response to the rule to show cause issued by this Court, the plaintiffs do not suggest or argue that this date is incorrect. As such, the plaintiffs' motion for appeal is untimely.

We recognize that review of a trial court's ruling relating to a preliminary injunction may also be obtained through a supervisory writ application. See Smart Growth Tammany, Inc. v. St. Tammany Parish Government, 2006-0258 (La. 2/2/06), 922 So.2d 1154 (*per curiam*) (noting that since La. C.C.P. art. 3612 is permissive in nature, it does not mandate an appeal to seek review of judgments relating to a preliminary injunction and remanding to the court of appeal for consideration of the merits pursuant to its supervisory jurisdiction). We also recognize that after the trial court issued its ruling in open court on September 29, 2020, the plaintiffs orally moved to set a return date to seek supervisory writs with this Court, and the trial court subsequently granted the plaintiffs thirty days to file a

supervisory writ application. See Uniform Rules—Courts of Appeal, Rule 4-3. Thus, while the plaintiffs were entitled to seek review of the trial court’s judgment through a supervisory writ application and timely requested a return date within which to seek supervisory writs following the trial court’s ruling, the plaintiffs did not actually file a supervisory writ application within the deadline set by the trial court. Instead, they filed a motion to appeal, albeit an untimely one.

Although this Court has the discretion to convert an appeal into an application for supervisory writs and to review the merits when the motion for appeal has been filed within the thirty-day time period allowed for the filing of an application for supervisory writs under Uniform Rules—Courts of Appeal, Rule 4-3, we decline to exercise our discretion. See **Stelluto v. Stelluto**, 2005-0074 (La. 6/29/05), 914 So.2d 34, 39. Generally, conversion of an appeal to an application for supervisory writs occurs when an appeal has been taken from a non-appealable judgment rather than when an appealable judgment was untimely appealed, as in this case. See **Newtek Small Business Finance, LLC v. Baker**, 2018-1034 p.5 n.4 (La. App. 1st Cir. 2/25/19), 2019 WL 926915, *2 n.4. Furthermore, this case does not meet the criteria set forth by the Louisiana Supreme Court in **Herlitz Const. Co. Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981)(*per curiam*).⁴

Accordingly, although the plaintiffs timely requested a return date within which to file a supervisory writ application, they did not file a writ application with this Court within the deadline afforded by the trial court. Since the judgment at issue pertains solely to a preliminary injunction, La. C.C.P. art. 3612 mandates that the motion for appeal be filed within fifteen days of the signing of the judgment.

⁴ Under **Herlitz**, the appellate court should review the merits of an application for supervisory writs when: (1) there is no dispute of material fact; (2) the ruling of the trial court appears incorrect; and (3) a reversal would terminate the litigation. **Whitney National Bank v. Rockwell**, 94-3049 (La. 10/16/95), 661 So.2d 1325, 1329 n.3.

Since no supervisory writ application was filed within the deadline afforded by the trial court and since the motion for appeal was filed on the sixteenth day following the signing of the judgment, the plaintiffs' appeal is untimely and is hereby dismissed.⁵

All costs of this appeal are assessed to the plaintiffs/defendants-in-reconvention, the four members of the "Board of Directors" of the Mt. Zion Baptist Church of Bogalusa, Inc.: Alguan Spikes, Loreane Luter, Dorothy Ratliff; and Patricia Henry.

APPEAL DISMISSED.

⁵ We recognize that the plaintiffs will be able to seek appellate review after the trial court rules on the merits of the permanent injunction.