

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CA 0440

CHARLOTTE C. McDANIEL McGEHEE

VERSUS

TROY MICHAEL McGEHEE

Judgment Rendered: DEC 22 2021

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On Appeal from the  
23rd Judicial District Court  
In and for the Parish of Ascension  
State of Louisiana  
Trial Court No. 125961

Honorable Jason Verdigets, Judge Presiding

\* \* \* \* \*

Charlotte McDaniel McGehee  
Baton Rouge, LA

Plaintiff-Appellant,  
Pro se

J. Keith Friley  
Baton Rouge, LA

Attorney for Defendant-Appellee,  
Troy Michael McGehee

\* \* \* \* \*

BEFORE: WHIPPLE, C.J., PENZATO, AND HESTER, JJ.

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CHH

## **HESTER, J.**

This appeal involves divorce, custody, support, and protective order proceedings in Colorado and Louisiana. For the following reasons, we dismiss the appeal.

### **FACTS AND PROCEDURAL HISTORY**

According to the record, Charlotte McDaniel McGehee and Troy McGehee were married in November of 1999 and thereafter lived with their three children in Louisiana until August 2018 when they moved to Colorado for Troy's job. In May 2019, the parties separated, and Charlotte left Colorado and returned to Louisiana. On May 21, 2019, Troy filed a petition for divorce in the district court for Arapahoe County, Colorado. In his petition, he requested orders from the court regarding status of the marriage, best interest of the children, spousal support, child support, and division of property and debts. On July 11, 2019, the Colorado court held a hearing to address custody and visitation issues. At the hearing, the Colorado court determined that it had jurisdiction over the proceedings.

After Charlotte returned to Louisiana, on May 29, 2019, she filed in the Twenty-Third Judicial District Court in Louisiana (23rd JDC) a petition for protection from abuse on behalf of herself and her children under La. R.S. 46:2131, *et seq.* A temporary restraining order pending a hearing was granted in favor of Charlotte, but denied as to the children. On October 21, 2019, Charlotte dismissed her petition for protection from abuse on her own motion, and the parties stipulated to a mutual injunction under La. Code Civ. P. art. 3601, *et seq.* forbidding either party from going to each other's residence or place of business and from contacting the other party except for communication regarding the minor children through Our Family Wizard.

On March 3, 2020, Charlotte filed in the 23rd JDC a petition for immediate divorce pursuant to La. Civ. Code art. 103(5), which provides that a divorce shall be

granted if a protective order or injunction was issued during the marriage against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse. The 23rd JDC granted an immediate divorce without a hearing pursuant to La. Civ. Code art. 103(5), on March 5, 2020.<sup>1</sup>

On July 22, 2020, Charlotte filed a “Motion for Expedited Consideration with Incorporated Memorandum in Support of Summary Declaratory Judgment to Extinguish the Claims of Permanent Spousal Support” seeking a declaratory judgment finding that Troy was not entitled to spousal support. In her motion, Charlotte stated that Troy requested spousal support in the Colorado proceeding and a hearing regarding spousal support was set in three weeks. Charlotte argued that she was entitled to a declaratory judgment because the May 28, 2019 petition for protection from abuse and the October 21, 2019 stipulated mutual injunction had the legal effect of finding Troy was at fault in the divorce and therefore not entitled to final spousal support.

The trial court denied her motion for declaratory judgment without a hearing and included a hand written note on the proposed judgment she submitted stating, “Matter denied, this court does not have jurisdiction.” The judgment was not dated.

Charlotte also filed a motion to reconsider the trial court’s order stating that the final trial on the merits was set in Colorado for July 30, 2020. The trial court denied her motion for reconsideration and in conjunction with the denial issued an order on July 29, 2020 stating:

A conference was held with Colorado District Court Judge Michaelson and the parties on Friday, July 24, 2020. This court learned that [Charlotte] consented to Colorado jurisdiction. This court learned, for the first time, the case in Colorado has been quite active. At the conference, this Court learned of possible misrepresentations with the Louisiana and Colorado courts. This Court agreed Colorado had jurisdiction. This matter is stayed pending any appeals regarding jurisdiction in Colorado or Louisiana. [Footnote omitted.]

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<sup>1</sup> The stipulated judgment involved a mutual no contact order, and there was never a finding or admission of abuse by either party.

Charlotte filed a writ application with this court seeking review of the trial court's stay as well as the denial of her declaratory judgment. This court denied the writ. See Charlotte C. McDaniel McGehee v. Troy Michael McGehee, 2020 CW 0662, (La. App. 1st Cir. 7/29/2020).

Thereafter, Charlotte appealed. In her motion for appeal, she requested an appeal from an August 5, 2020 judgment, "which holds that this Honorable Court does not have the jurisdiction to determine the rights of the parties." The record before us does not include an August 5, 2020 judgment. In her brief, Charlotte's assignments of error address both the undated denial of her motion for declaratory judgment and the July 29, 2020 order staying the proceeding.

After this court examined the record, we issued a rule to show cause on October 13, 2021, pointing out that there is no August 5, 2020 judgment in the record. Further, we noted that the undated judgment denying Charlotte's motion for declaratory judgment and the July 29, 2020 order staying the proceeding were interlocutory judgments and therefore not appealable. Troy responded to the rule to show cause agreeing that the appeal should be dismissed. Charlotte responded, but did not address the finality of the judgments in the record or that there was no August 5, 2020 judgment in the record.

#### **APPELLATE JURISDICTION**

This court's appellate jurisdiction extends to final judgments and to interlocutory judgments when expressly provided by law. See La. Code Civ. P. art. 2083. A judgment that determines the merits, in whole or in part, is a final judgment. La. Code Civ. P. 1841; see also La. Code Civ. P. art. 1915. A judgment that does not determine the merits, but only preliminary matters in the course of the action, is an interlocutory judgment. La. Code Civ. P. art. 1841. The undated judgment denies Charlotte's motion for declaratory judgment, and the July 29, 2020 order grants a stay. Neither judgment dismisses the lawsuit or designates the judgment as final, no

relief was granted to any party nor was the suit was dismissed as to any party, and there is no dispositive language in the decrees. Therefore, the judgments are interlocutory and appealable only when expressly provided by law. La. Code Civ. P. art. 1841 and La. Code Civ. P. art. 2083(C).

There is no law that would allow an appeal of the undated denial of Charlotte's motion for declaratory judgment. See Hood Partners, LLC v. Davidge, 2019-11500 (La. App. 1st Cir. 5/11/20), 303 So.3d 349, 350; Walker v. State, 2009-0973 (La. App. 4th Cir. 10/21/09), 26 So.3d 782, 784. Additionally, there is no statutory authority allowing for an immediate appeal of an interlocutory ruling granting a stay. El-Mumit-EL v. Cain, 2006-2010 (La. App. 1st Cir. 7/18/07), 2007 WL 2051978.<sup>2</sup> Accordingly, both judgments are interlocutory and non-appealable.

Furthermore, as previously pointed out, the date listed in Charlotte's motion for appeal was incorrect. In Riedel v. Fenasci, 2018-0539 (La. App. 1st Cir. 12/28/18), 270 So.3d 795, 800, this court determined that plaintiff's mistake in

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<sup>2</sup> As noted, prior to seeking an appeal, on July 28, 2020, Charlotte filed a writ application seeking review of the trial court's stay as well as the denial of her declaratory judgment. This court denied the writ on July 29, 2020. While we are not bound by a writ denial from this court, for the following reasons, we agree with this court's prior decision denying the writ.

When a suit is brought in a Louisiana court while another suit is pending in another court, the applicable law set forth in La. Code Civ. P. art. 532, provides:

When a suit is brought in a Louisiana court while another is pending in a court of another state or of the United States on the same transaction or occurrence, between the same parties in the same capacities, on motion of the defendant or on its own motion, the court may stay all proceedings in the second suit until the first has been discontinued or final judgment has been rendered.

By indicating that the court "may stay" the proceedings, this article establishes that the decision rests in the sound discretion of the trial court and cannot be overturned on review absent a clear abuse of that discretion. Robbins v. Delta Wire Rope, Inc., 2015-1757 (La. App. 1st Cir. 6/3/16), 196 So.3d 700, 705.

Herein, Troy first requested spousal support in the Colorado proceeding; Troy lives in Colorado; the district court in Colorado determined it had jurisdiction over the parties and has previously considered issues ancillary to the divorce; there was no request for spousal support pending in the 23rd JDC; and the stay was issued by the 23rd JDC after a conference with the Colorado judge. Further, there was never a finding by the 23rd JDC that Troy committed abuse nor any finding that he was at fault for the breakup of the marriage such that he would not be entitled to final spousal support. Accordingly, there was no abuse of discretion by the 23rd JDC in ordering the matter stayed.

listing the incorrect date of the judgment in her motion for appeal were insufficient grounds for dismissal of her appeal where the assignments of error clearly indicated plaintiff's intent to appeal from a different judgment in the record. Herein, unlike in **Riedel**, it is unclear which judgment Charlotte is appealing from as both the undated judgment and the July 29, 2020 judgment were attached to her brief and both rulings were discussed in her brief.

We note that this court has discretionary authority to convert an appeal to an application for supervisory writ in certain circumstances. We decline to do so in this case where the judgment appealed from is unclear; the two judgments discussed in Charlotte's brief are interlocutory; and both of those judgments were previously before this court in Charlotte's writ application, which was denied.

### **CONCLUSION**

For the foregoing reasons, this appeal is dismissed for lack of appellate jurisdiction. All costs of the appeal are assessed to plaintiff-appellant, Charlotte McDaniel McGehee.

**APPEAL DISMISSED.<sup>3</sup>**

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<sup>3</sup> This court need not address the supplemental brief filed on behalf of Charlotte attaching a judgment from the Colorado district court addressing the March 5, 2020 judgment of the 23rd JDC, which is not subject of this appeal.