

NOT DESIGNATED FOR PUBLICATION

**BRIDGET MARIE WILLIAMS,
WIFE OF BRECK LAWRENCE
FALCON**

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NO. 2004-CA-1673

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

BRECK LAWRENCE FALCON

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STATE OF LOUISIANA

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**APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 47-141, DIVISION "A"
Honorable Anthony D. Ragusa, Judge**

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Judge David S. Gorbaty

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(Court composed of Judge Patricia Rivet Murray, Judge David S. Gorbaty,
Judge Leon A. Cannizzaro, Jr.)

CANNIZZARO, J., DISSENTS

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APPEAL DISMISSED

Defendant/appellant Breck L. Falcon appeals a ruling by the district court denying a motion for new trial. For the following reasons, we dismiss the appeal.

PROCEDURAL HISTORY:

Bridget Williams Falcon filed a petition for divorce on March 26, 2001, pursuant to La. Civ. Code art. 103. The petition also contained a request for joint custody of the couple's son, with designated visitation, and a request for child support of \$555 per month, an amount the petition indicated was agreed upon by the parties. The record indicates that citation issued on March 29, 2001, and that domiciliary service was made on April 3. The return was filed into the record of April 12.

Minute entries in the record indicate that plaintiff entered a preliminary default on May 14, 2001, and confirmed the default on May 30. Plaintiff's affidavit was entered wherein she requested that a divorce be

granted; no testimony relative to custody or child support was contained in the affidavit. The record contains a judgment dated May 30, but does not contain a notice of judgment.

On May 8, 2004, defendant filed a motion for new trial arguing that because he was never notified of the signing of the judgment of May 30, 2001, the delay for applying for a new trial had not run.

After hearing argument of counsel wherein it was revealed that the parties had in fact been abiding by the terms of the judgment since its rendition until a recent disagreement precipitated these court proceedings, the court denied the motion for new trial. The court stated that it believed the defendant was in fact asking the court to annul the May 30, 2001, judgment, a remedy to which he was not entitled.

This appeal followed.

DISCUSSION:

This Court does not have before it the complete record from the district court. Rather, defendant designated portions of the record for the appeal. We note that he requested the May 30 judgment be included as well as “[a]ny document indicating service of the May 30, 2001 Judgment upon

Breck L. Falcon.” As stated above, the record contains the judgment, but not any evidence that a notice of judgment was signed by the court, or that defendant was served with the judgment. The fatal omission from the record, however, is the judgment denying defendant’s motion for new trial, which is the judgment he wishes to appeal. The record contains a transcript of the hearing and a minute entry for July 26, 2004, both indicating that the trial court denied the motion. However, no written, signed judgment is included in the record, much less attached to defendant’s brief. See Rule 8, Local Rules of the Court of Appeal, Fourth Circuit.

Louisiana Code of Civil Procedure art. 1911 provides, in part:

Except as otherwise provided by law, every final judgment shall be signed by the judge. For the purpose of an appeal as provided in Article 2083, no appeal may be taken from a final judgment until the requirement of this Article has been fulfilled. . . .

Thus, because the record before us does not contain a judgment on defendant’s motion for new trial, this Court is without jurisdiction to entertain the appeal. Accordingly, the appeal is dismissed.

APPEAL DISMISSED