

2400 CANAL, L.L.C.	*	NO. 2014-CA-0303
VERSUS	*	
BOARD OF SUPERVISORS OF	*	COURT OF APPEAL
LOUISIANA STATE	*	FOURTH CIRCUIT
UNIVERSITY AND	*	
AGRICULTURAL AND	*	STATE OF LOUISIANA
MECHANICAL COLLEGE	* * * * *	
AND JOHN LOMBARDI		

APPEAL FROM
 CIVIL DISTRICT COURT, ORLEANS PARISH
 NO. 2011-11761, DIVISION "H-12"
 Honorable Michael G. Bagneris, Judge

* * * * *

Judge Roland L. Belsome

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(Court composed of Judge Roland L. Belsome, Judge Paul A. Bonin, Judge Daniel L. Dysart)

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AFFIRMED 10/08/2014

This appeal is taken from the trial court's granting of a Motion to Dismiss Appeal. For the reasons that follow, we affirm.

The origin of this and several other causes of action between 2400 Canal, LLC and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and John Lombardi (collectively LSU) is the expropriation of property located at 2400 Canal Street, New Orleans and owned by 2400 Canal, LLC. The Petition of Expropriation maintained that the property was necessary to facilitate the construction of the Department of Veterans Affairs Medical Center. An order of expropriation was executed and funds were deposited into the registry of the court.

Later, 2400 Canal filed a Reconventional Demand in the expropriation suit asserting several claims against LSU, including insufficient payment for the Canal Street property. Eventually, 2400 Canal and LSU entered into a compromise which disposed of the expropriation suit. Approximately two months after the compromise, 2400 Canal filed a Petition for Writ of Mandamus, for Declaratory Relief and for Damages against LSU. LSU answered with numerous exceptions.

The trial court granted LSU's exceptions and dismissed the Petition. 2400 Canal appealed that judgment and this Court affirmed the trial court.¹

Two additional suits were filed after the Petition for Mandamus; a Petition for Damages; and a Petition for Injunction. Like the Petition for Mandamus, the later filed actions challenge the purpose of the original expropriation. LSU responded to the petitions by filing several exceptions. After a hearing, the trial court granted LSU's exceptions and dismissed both the Petition for Damages and the Petition for Injunction with prejudice.² The trial court's written judgment was rendered on July 22, 2013.

On July 23, 2013, 2400 Canal fax-filed a document captioned "Notice of Intent to Appeal." No other documents were filed in the case. After the sixty-day time delay for the filing of a devolutive appeal had passed, LSU filed a Motion to Dismiss Appeal.³ The trial court conducted a hearing, and issued a judgment with reasons dismissing the appeal on December 11, 2013. This appeal followed.

The sole issue before this Court is whether the trial court erroneously dismissed 2400 Canal's appeal as untimely.

The method for perfecting an appeal is set forth in La. C.C.P. art. 2121 which provides in pertinent part:

An appeal is taken by obtaining an order therefor, within the delay allowed, from the court which rendered the judgment.

An order of appeal may be granted on oral motion in open court, on written motion, or on petition. This order shall show the return day of the appeal in

¹ *2400 Canal, LLC v. Board of Supervisors of Louisiana State University Agriculture and Mechanical College*, 12-0220, 12-0221, 12-0222 (La.App. 4 Cir. 11/07/12), 105 So.3d 819.

² The specific allegations set forth in the petitions and the substance of the exceptions have no bearing on the issue before this Court.

³ La.C.C.P. art. 2087

the appellate court and shall provide the amount of security to be furnished, when the law requires determination thereof by the court.

In the instant case, 2400 Canal filed a document captioned “Notice of Intent to Appeal,” which stated that it was notifying the Court and counsel of record of its intent and wish to appeal. The trial court found that the document was insufficient to satisfy the requirements set forth in La. C.C.P. art. 2121. The trial court’s reasons for judgment cited to this Court’s opinion in *Bremermann v. Bremermann*.⁴ In *Bremermann*, this Court found that the plaintiff’s timely filing of a notice of intent to file a devolutive appeal, unaccompanied by an order or prayer for an appeal and followed by an untimely petition for appeal, did not satisfy the statutory provision setting out the requirements for a devolutive appeal. The statute required that a motion or petition for appeal be filed within sixty days of the judgment.

The *Bremermann* opinion acknowledged that a court should look to the substance of a pleading, rather than its caption, to determine the pleading’s intent. *Id.*⁵ This Court went on to differentiate a motion or petition for appeal from a notice of intent to appeal. More specifically, this Court stated that a petition or a motion seeks or requests a judgment or order from the court for some specified relief or action. *Id.* Ultimately, the *Bremermann* Court concluded that the language within the notice of intent to appeal filed in that case simply did not meet the requirements of a motion or a petition. Likewise, in the instant case, the Notice of Intent to Appeal fails to seek any action from the trial court.

⁴ 05-0547 (La.App. 4 Cir. 1/11/06), 923 So.2d 187.

⁵ 05-0547, p.3, 923 So.2d at 189, (citing *Belser v. St. Paul Fire & Marine Ins. Co.*, 542 So.2d 163 (La.App. 1 Cir. 1989)).

2400 Canal relies on *Lifecare Hospitals, Inc. v. B&W Quality Growers, Inc.*,⁶ to suggest that appeal orders are just a formality when dealing with a devolutive appeal since there is no security required. La. C.C.P. art. 2124. The distinguishing factor in *Lifecare* is that there was a timely motion for appeal, and only the appeal order was untimely. The record before this Court does not contain a written motion for appeal, and the transcripts fail to evidence any colloquy by the trial court and the parties that would indicate an oral motion for appeal was raised and granted in open court.

For these reasons, we find that the untimely filing of the Motion and Order for Appeal was just cause for the dismissal of the appeal.

AFFIRMED

⁶ 39,065 (La.App. 2 Cir. 7/8/04), 875 So.2d 135 (citing *Traigle v. Gulf Coast Aluminum Corp.*, 399 So.2d 183 (La. 1981)).