

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

09-1018

**DALTON JOHN MEAUX
VERSUS
ELIZABETH HENSGENS MILLER, ET AL.**

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF VERMILION, NO. 87119-C
HONORABLE EDWARD B. BROUSSARD, DISTRICT JUDGE**

**JOHN D. SAUNDERS
JUDGE**

Court composed of John D. Saunders, Marc T. Amy, and James T. Genovese,
Judges.

RULE RECALLED. APPEAL MAINTAINED.

**Matthew D. Lane, Jr.
Gordon, Arata, McCollam, Duplantis & Eagan, L.L.P.
Post Office Box 81829
Lafayette, LA 70598
(337) 237-0132
COUNSEL FOR PLAINTIFF/APPELLANT:
Dalton John Meaux**

**Beverly K. Baudouin
Bernard Hayne Ticer, II
Baldwin, Haspel, Burke and Mayer, L.L.C.
1100 Poydras Street, 22nd Floor
New Orleans, LA 70163
(504) 569-2900
COUNSEL FOR DEFENDANTS/APPELLEES:
Noble Royalties, Inc.
The Noble Grantees**

**Frank John Reeks, Jr.
Lemle & Kelleher
401 Edwards Street, 10th Floor
Shreveport, LA 71101
(318) 227-1131
COUNSEL FOR DEFENDANT/APPELLEE:
Eagle Rock Production, L.P.**

**Michael R. Mangham
Mangham & Hardy
406 Audubon Boulevard, # A
Lafayette, LA 70503
(337) 233-6200
COUNSEL FOR DEFENDANTS/APPELLEES:
Elizabeth Miller Hensgens
Charles Nicholas Hensgens
Craig Robert Hensgens
Mary Elizabeth Hensgens Hetzel
Catherine Elaine Hensgens Cramer
Brian Keith Hensgens
Karl Jude Hensgens**

SAUNDERS, Judge.

This court issued, *sua sponte*, a rule ordering the Plaintiff-Appellant, Dalton John Meaux, to show cause, by brief only, why the appeal in this matter should not be dismissed as premature. On September 10, 2009, this court received Appellant's response to the rule. For the reasons given herein, we hereby recall the rule and maintain the appeal.

On June 3, 2009, the trial court signed a judgment granting an exception of prescription and dismissing Appellant's possessory action as to Appellees, Noble Royalties, Inc. and The Noble Grantees. Notice of the judgment was mailed to the parties on June 16, 2009. Appellant filed a Motion for New Trial on June 19, 2009. The trial court did not sign the order attached to the motion. A diagonal line was drawn across the proposed order to show cause, and the word "moot" was written on the line. No hearing was held on the motion.

Appellant filed a motion for devolutive appeal on June 22, 2009, and the order granting the appeal was signed on June 24, 2009. The record in this case was lodged in this court on August 25, 2009.

Louisiana Code of Civil Procedure Article 1918 provides, in pertinent part, that "[a] final judgment shall be identified as such by appropriate language." In the case at bar, the only language on the purported judgment is the word "moot" written on the rule to show cause order. As such, it appeared that pursuant to *Egle v. Egle*, 05-531 (La.App. 3 Cir. 2/8/06), 923 So.2d 780, the statutory requirement set forth in La.Code Civ.P. art. 1918 had not been satisfied. Also, the appeal appeared to be premature in light of La.Code Civ.P. art. 2087(D), which provides that "[a]n order for appeal is premature if granted before the court disposes of all timely filed motions for new trial or judgment notwithstanding the verdict."

However, in response to this court's order that Appellant show cause why his

appeal should not be dismissed as premature, Appellant states that on June 18, 2009, Appellant's counsel sent a letter to the Vermillion Parish Clerk of Court withdrawing his motion for new trial and submitting his motion for appeal. In light of said withdrawal, this court finds that at the time when the motion for appeal was granted, there was no outstanding motion for new trial pending. As such, we find that the appeal is not premature and should be allowed to proceed.

RULE RECALLED. APPEAL MAINTAINED.

This opinion is **NOT DESIGNATED FOR PUBLICATION.**
Rules 2-16.2 and 2-16.3, Uniform Rules, Courts of Appeal.