

**COURT OF APPEAL,
FIFTH CIRCUIT**

FILED MAR 13 2007

VERONICA JOHNSON

NO. 06-CA-925

VERSUS



FIFTH CIRCUIT

KERRY BROWN, LLC, ET AL

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 0005-1681, DIVISION "B"
HONORABLE ANNE LENNAN SIMON
JUDGE AD HOC PRESIDING

MARCH 13, 2007

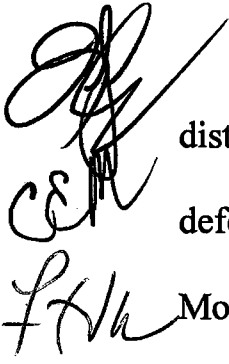
**MARION F. EDWARDS
JUDGE**

Panel composed of Judges Marion F. Edwards,
Clarence E. McManus, and Fredericka Homberg Wicker

C. HUNTER KING
THE KING LAW FIRM
2245 Virginia Street
Baton Rouge, Louisiana 70802
COUNSEL FOR PLAINTIFF/APPELLANT

RICHARD J. DODSON
KENNETH H. HOOKS, III
ANGELA R. CARLISLE
DODSON & HOOKS, APLC
17405 Perkins Road
Post Office Box 1151
Baton Rouge, Louisiana 70810
COUNSEL FOR DEFENDANT/APPELLEE

APPEAL DISMISSED

 Plaintiff/appellant, Veronica Johnson (“Johnson”), appeals a judgment of the district court denying her Motion to Enforce Settlement and granting defendant/appellee’s, Kerry D. Brown L.L.C. and Kerry D. Brown (“Brown”), Motion for Security for Costs. For the following reasons, we dismiss this appeal reserving to Johnson her right to file an application for supervisory writs within thirty days of date of this opinion.

On February 7, 2006, Johnson filed suit in the Fortieth Judicial District Court, alleging an action against Brown. Specifically, Johnson urged that she had been the victim of a medical malpractice in 2004 and that she had retained Brown to represent her in that action. Johnson further alleged that Brown failed to investigate her claim and failed to file a lawsuit on her behalf within the applicable prescriptive period. Johnson asserted that, on June 22, 2005, Brown acknowledged his fault and attempted to remunerate her by entering into a settlement agreement with her and that he had breached that agreement. The petition requests damages against Brown for legal malpractice.

Two months later, Johnson filed a Motion to Enforce Settlement, alleging that, in the June 2005 agreement, she and Brown had consented to settle the legal malpractice matter for \$30,000, \$5,000 of which had already been advanced by Brown. Johnson asked that the settlement agreement be enforced and also requested further damages resulting from Brown's alleged failure to abide by the settlement. Brown brought a Motion for Security for Costs under LSA-R.S. 13:4522 and filed an Answer, Exceptions, and Reconventional Demand. In the reconvention, Brown averred that he paid Johnson \$5,000 without admitting liability and had since learned that the facts alleged by Johnson constitute neither legal nor medical malpractice. There was no written agreement to settle, and Brown requested that Johnson return the \$5,000.

The trial court heard the Motion to Enforce Settlement and the Motion for Security for Costs. Following the hearing, the court denied Johnson's Motion to Enforce and granted Brown's Motion for Security for Costs. From this judgment Johnson appeals.

A judgment that determines the merits in whole or in part is a final judgment. LSA-C.C.P. art. 1841. A final judgment is appealable in all causes in which appeals are given by law. LSA-C.C.P. art. 2083. That article was recently amended to provide that an interlocutory judgment is appealable only when *expressly* provided by law. According to C.C.P. art. 1915(B)(1)(2), in part:

B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

(2) In the absence of such a determination and designation, any order or decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purpose of an immediate appeal. . . .

The judgment before us is not final. While it addresses a portion of Johnson's claim, it does not address the merits of the original petition; that is, the alleged legal malpractice and, thus, does not dispose of all of the claims and issues in Johnson's action. As a partial judgment, it has not been designated as final for purposes of appeal by the trial court. There is no express law allowing Johnson to appeal the denial of a Motion to Enforce Settlement.

The order of the court granting the Motion for Security for Costs is an interlocutory judgment. If, under LSA-R.S.13:4522, a party fails to pay security in accordance with a court order and his case is dismissed, then the matter would be final and appealable.

Accordingly, this appeal is dismissed. Johnson has thirty days from the date of this opinion within which to file an application for supervisory writs.

APPEAL DISMISED

EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. McMANUS
WALTER J. ROTHSCHILD
FREDERICKA H. WICKER
GREG G. GUIDRY

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

PETER J. FITZGERALD, JR.
CLERK OF COURT

GENEVIEVE L. VERRETTE
CHIEF DEPUTY CLERK

MARY E. LEGNON
FIRST DEPUTY CLERK

JERROLD B. PETERSON
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED ON OR DELIVERED THIS DAY **MARCH 13, 2007** TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in black ink, appearing to read "Fitzgerald", written over a horizontal line.

PETER J. FITZGERALD, JR.
CLERK OF COURT

06-CA-925

C. Hunter King
Attorney at Law
2245 Virginia Street
Baton Rouge, LA 70802

Kenneth H. Hooks
Richard J. Dodson
Angela R. Carlisle
Attorneys at Law
17405 Perkins Road
P.O. Box 1151
Baton Rouge, LA 70810