

ALDA ANN FREITAS HOLMES

NO. 09-CA-55

VERSUS

FIFTH CIRCUIT

MICHAEL RAYMOND MONTZ

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT  
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA  
NO. 53819, DIVISION "A"

HONORABLE A. J. KLING, JR., JUDGE PRESIDING, PRO TEMPORE

**COURT OF APPEAL,  
FIFTH CIRCUIT**

May 14, 2009

**FILED** MAY 14 2009



**EDWARD A. DUFRESNE, JR.  
CHIEF JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr., Marion F. Edwards,  
and Susan M. Chehardy

GREGORY A. MILLER

Attorney at Law

P. O. Box 190

Norco, LA 70079

COUNSEL FOR PLAINTIFF/APPELLEE

ROBERT R. FAUCHEUX, JR.

Attorney at Law

197 Belle Terre Boulevard

Laplace, LA 70068

COUNSEL FOR DEFENDANT/APPELLANT

**APPEAL DISMISSED**

EAJ  
SMC

On October 10, 2008, defendant-appellant, Michael Raymond Montz, filed a motion for devolutive appeal which was granted by the trial court. After receiving the transcript and record, this Court, in accordance with Rule 2-12.7 of the Uniform Rules -Courts of Appeal, mailed the required notice to defendant-appellant advising him that his appellant brief was due on February 17, 2009. Defendant-appellant did not file his brief by February 17, 2009, nor did he ask this Court for any extension of time. Thereafter, in accordance with Rule 2-8.6 of the Uniform Rules, this Court, by notice dated February 23, 2009, advised defendant-appellant that his appeal would be dismissed as abandoned if he did not file a brief by March 25, 2009. As of March 25, 2009, defendant-appellant had not filed his brief, nor had he asked for any extension of time to file his brief. Rather, defendant-appellant did not file his brief until April 1, 2009, as indicated by the postmark on his filing.

On April 3, 2009, plaintiff-appellee, Alda Freitas Holmes, filed a motion to dismiss appeal as abandoned based on the untimely filing of the appellant's brief. On April 6, 2009, this Court issued an order that all parties show cause, by briefs only, on May 4, 2009, why the appeal of Michael Raymond Montz should not be dismissed as abandoned. On April 29, 2009, plaintiff-appellee filed a memorandum in support of the motion to dismiss appeal as abandoned. However, as of this date, defendant-appellant has not filed a brief in accordance with this Court's April 6, 2009 order.

Rule 2-8.6 of the Uniform Rules-Courts of Appeal provides as follows:

For civil appeals, if an appellant does not file a brief within the time prescribed by Rule 2-12.7 or any extension thereof granted by the court as provided by Rule 2-12.8, a notice shall be mailed by the clerk to counsel for the appellant, or to the appellant if not represented, that the appeal shall be dismissed 30 days thereafter unless a brief is filed in the meantime. If an appellant does not file a brief within 30 days after such notice is mailed, the appeal shall be dismissed as abandoned. Provided, however, that irrespective of the time limit, provided in Rule 2-12.7 for the appellee to file a brief, the appellee's brief shall be filed within 20 days from the due date shown on the notice of abandonment.

Considering the foregoing, we hereby dismiss the appeal of Michael Raymond Montz as abandoned.

**APPEAL DISMISSED**

EDWARD A. DUFRESNE, JR.  
CHIEF JUDGE

MARION F. EDWARDS  
SUSAN M. CHEHARDY  
CLARENCE E. McMANUS  
WALTER J. ROTHSCHILD  
FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON

JUDGES



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

PETER J. FITZGERALD, JR.  
CLERK OF COURT

GENEVIEVE L. VERRETTE  
CHIEF DEPUTY CLERK

MARY E. LEGNON  
FIRST DEPUTY CLERK

TROY A. BROUSSARD  
DIRECTOR OF CENTRAL STAFF

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

**NOTICE OF JUDGMENT AND  
CERTIFICATE OF MAILING**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED ON OR DELIVERED THIS DAY **MAY 14, 2009** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

---

PETER J. FITZGERALD, JR.  
CLERK OF COURT

**09-CA-55**

ROBERT R. FAUCHEUX, JR.  
ATTORNEY AT LAW  
197 BELLE TERRE BOULEVARD  
LAPLACE, LA 70068

GREGORY A. MILLER  
ATTORNEY AT LAW  
P. O. BOX 190  
NORCO, LA 70079