

JULIA JACKSON

NO. 20-CA-402

VERSUS

FIFTH CIRCUIT

KIRK P. USEY, XYZ INSURANCE  
COMPANY, JOHN AND JANE DOE

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 778-282, DIVISION "F"  
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

February 10, 2021

**HANS J. LILJEBERG**  
**JUDGE**

Panel composed of Judges Jude G. Gravois,  
Robert A. Chaisson, and Hans J. Liljeberg

**APPEAL DISMISSED WITHOUT**  
**PREJUDICE AND REMANDED**

**HJL**

**JGG**

**RAC**

COUNSEL FOR PLAINTIFF/APPELLANT,  
JULIA JACKSON  
James B. Mullaly

**LILJEBERG, J.**

Plaintiff/Appellant, Julia Jackson, appeals the trial court's February 5, 2020 judgment denying her motion to confirm a preliminary default. For reasons stated more fully below, we find the trial court's February 5, 2020 judgment is not a final appealable judgment and dismiss plaintiff's appeal due to lack of appellate jurisdiction.

On December 1, 2017, plaintiff filed a petition for damages against defendant, Kirk P. Usey. Defendant was served by domiciliary service on December 11, 2017. After defendant failed to answer or file other pleadings, plaintiff moved for a preliminary default, which the trial court entered on January 16, 2018. On March 7, 2018, plaintiff filed a motion to set a hearing to confirm the preliminary default pursuant to La. C.C.P. art. 1702. After numerous continuances and delays, the trial court heard plaintiff's motion to confirm the preliminary default on January 27, 2020. Plaintiff testified at the hearing and entered certified copies of her medical records into evidence. The trial court then took the matter under advisement.

On February 5, 2020, the trial court entered a judgment denying plaintiff's motion to confirm the preliminary default. In its reasons for judgment, the trial court explained that "[w]hile pretermittting whether the defendant was negligent, the Court finds that plaintiff has failed to meet her burden of proof to establish, what injuries, if any, were sustained as a result of a fall on December 3, 2017."

Before considering the merits in any appeal, appellate courts have the duty to determine *sua sponte* whether subject matter jurisdiction exists, even when the parties do not raise the issue. *Input/Output Marine Sys. v. Wilson Greatbatch Techs., Inc.*, 10-477 (La. App. 5 Cir. 10/29/10), 52 So.3d 909, 910. This Court cannot determine the merits of an appeal unless our appellate court jurisdiction is properly invoked by a valid final judgment. *Id.* at 915.

Only final judgments and interlocutory judgments expressly provided by law are appealable. La. C.C.P. art. 2083. A judgment that determines the merits in whole or in part is a final judgment. La. C.C.P. art. 1841. A judgment that denies a confirmation of a preliminary default does not determine the merits and is therefore, interlocutory. *R&R Steel Erectors v. D. Watson*, 01-1322 (La. App. 3 Cir. 3/6/02), 809 So.2d 1228, 1230 (“We recognize that the refusal to confirm a default judgment is not by itself a final judgment because the plaintiff’s claims are not rejected.”); *Deville v. Carmouche*, 450 So.2d 24, 25 (La. App. 3<sup>rd</sup> Cir. 1984); *McElwee v. McElwee*, 256 So.2d 477, 479 (La. App. 2<sup>nd</sup> Cir. 1972); *see also Gorman v. Miller*, 12-412 (La. App. 1 Cir. 11/13/13), 136 So.3d 834, 839 (treating the denial of request to confirm a preliminary default as an interlocutory ruling); *Band v. First Bankcard Center*, 94-3062 (La. 2/9/95), 650 So.2d 738 (recognizing that if a plaintiff fails to establish a *prima facie* case, his claims are not rejected and the case may be remanded for further proceedings.)

Based on the foregoing, we find this Court lacks appellate jurisdiction over this matter. We dismiss the appeal filed by plaintiff/appellant, Julia Jackson, without prejudice and remand this matter to the trial court for further proceedings.

**APPEAL DISMISSED WITHOUT  
PREJUDICE AND REMANDED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
JOHN J. MOLAISON, JR.

JUDGES



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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **FEBRUARY 10, 2021** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**20-CA-402**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)  
HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)  
JAMES B. MULLALY (APPELLANT)

**MAILED**

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