

LORA PITRE

NO. 21-C-184

VERSUS

FIFTH CIRCUIT

LOUISIANA THOROUGHBRED BREEDERS
ASSOCIATION, WARREN HARANG, III, JAKE
DELHOMME, DANIEL GUIDRY, VAL
MURRELL, DAVID TILLSON, AND KEITH
HERNANDEZ

COURT OF APPEAL
STATE OF LOUISIANA

April 29, 2021

Susan Buchholz
First Deputy Clerk

IN RE LOUISIANA THOROUGHBRED BREEDERS ASSOCIATION, WARREN HARANG, III, JAKE
DELHOMME, DANIEL GUIDRY, VAL MURRELL, DAVID TILLSON, AND KEITH HERNANDEZ

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
DANYELLE M. TAYLOR, DIVISION "O", NUMBER 814-185

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and John J. Molaison, Jr.

WRIT GRANTED; REMANDED

Relators/defendants, Louisiana Thoroughbred Breeders Association, Warren Harang, II, Jake Delhomme, Daniel Guidry, Val Murrell, David Tillson, and Keith Hernandez, filed this emergency writ seeking (1) a writ of mandamus ordering the trial court to sign relators' two notices of intent; (2) to vacate the trial court's April 15, 2021 order; (3) a stay of all proceedings in the trial court pending disposition of this writ and relators' suspensive appeal of the trial court's quo warranto judgment; and (4) a stay of enforcement of the trial court's quo warranto judgment in accordance with the suspensive appeal provisions of La. C.C.P. art. 2252.

On April 21, 2021, we issued writs of mandamus ordering the trial court to sign and set a reasonable return date on relators' two notices of intent to apply for supervisory review of the trial court's March 29, 2021 and April 15, 2021 orders. We further stayed all trial court proceedings in this case pending this Court's review and disposition of this writ application. On April 22, 2021, the trial court set April 26, 2021 as the return date. We now address the remaining issues of relators' application for supervisory writs.

A judgment creditor may proceed with the execution of a judgment only after the delay for a suspensive appeal therefrom has elapsed. La. C.C.P. art. 2252 provides:

A judgment creditor may proceed with the execution of a judgment *only after the delay for a suspensive appeal therefrom has elapsed*; however, recordation of a judgment in the mortgage records prior to the lapsing of the delay for a suspensive appeal does not begin proceedings for the execution of the judgment. [Emphasis added.]

The language of La. C.C.P. art. 2252 is clear. It does not require a defendant to have actually taken a suspensive appeal. It prohibits a judgment creditor from taking *any* steps in the execution of a judgment during the suspensive appeal delays, without regard to the defendant's action during that time. Oreman v. Oreman, 07–296 (La. App. 5 Cir. 10/30/07), 971 So.3d 1149, 1161. This prohibition includes the time prior to commencement of the delay for suspensive appeal.

An appeal that suspends the effect or the execution of an appealable judgment may be taken within 30 days of the expiration of time for applying for new trial, or of the date of the mailing of the notice of the trial court's denial of a timely motion for new trial. La. C.C.P. art. 2123 A. In this case, relators have filed a timely motion for new trial, on which no ruling has been made.¹ If the trial court denies the motion, relators may file a suspensive appeal of the March 25, 2021 judgment within 30 days of mail notice of the trial court's denial of relators' motion for new trial. See Individual Members of the Grand Lodge of the State v. Jenkins, 19-59 (La. App. 5 Cir. 03/13/19), 2019 WL 1187146.

Accordingly, under the express provisions of La. C.C.P. art. 2252 and La. C.C.P. art. 2123 A, the March 25 & 29, 2021 judgments will not become executory or enforceable until the expiration of 30 days after mail notice of the denial of the motion for new trial. We therefore find that the trial court erred in granting plaintiff's motion to enforce execution of the March 25, 2021 judgment before the delay for suspensive appeal has expired.

Relators further request a stay of trial court proceedings while the case is pending on appeal. Under the provisions of La. C.C.P. art. 2123 A(2), the time for filing of a suspensive appeal commences on the day after mailing of notice of judgment denying the motion for new trial. While the motion for new trial is pending, relators' notice of appeal is premature. Therefore, relators are not, at this time, entitled to have the stay extended throughout an appeal. Nevertheless, the March 25 & 29, 2021 judgments may not be executed during a suspensive appeal, or before the delay for suspensive appeal has expired.

¹ A review of the record shows that fees for service of the motion for new trial were paid on April 23, 2021.

As this Court stated in Oreman, “we reiterate, in the strongest terms, that his [step in the execution of judgment] prior to the expiration of the suspensive appeal delays *did constitute a violation of LSA—C.C.P. art. 2252*, and caution him against such an action in any case in the future.” [Emphasis is original.] Oreman, 971 So.3d at 1162.

For the foregoing reasons, we grant relators’ writ application and vacate the trial court’s April 15, 2021 order granting plaintiff’s motion to enforce judgment, and ordering relators to deposit \$90,504.29 into the registry of the court, subject to contempt and imprisonment until relators comply. This case is remanded for further proceedings consistent with this holding.

Gretna, Louisiana, this 29th day of April, 2021.

SJW
SMC
JJM

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. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT

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CLERK OF COURT

NANCY F. VEGA
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **04/29/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-C-184

E-NOTIFIED

24th Judicial District Court (Clerk)

Honorable Danyelle M. Taylor (DISTRICT JUDGE)

Judy L. Burnthorn (Relator)

Micah C. Zeno (Respondent)

Beverly A. Delaune (Relator)

Alexandre E. Bonin (Relator)

R. Christian Bonin (Relator)

MAILED

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