

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1001

JUNE LEWIS

VERSUS

JOSEPH E. LEWIS

Judgment rendered **AUG 15 2012**

Joe E. Lewis

Appealed from the
21st Judicial District Court
in and for the Parish of Livingston, Louisiana
Trial Court No. 122750
Honorable Brenda Bedsole Ricks, Judge

MARLISE O. HARRELL
HAMMOND, LA

ATTORNEY FOR
PLAINTIFF-APPELLEE
JUNE LEWIS

DAVID BAND
NEW ORLEANS, LA

ATTORNEY FOR
DEFENDANT-APPELLANT
JOSEPH E. LEWIS

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

McCleendon, J. concurs.

PETTIGREW, J.

This is an appeal by Joseph E. Lewis of a community property partition and reimbursement claim judgment in favor of his former wife, June Lewis, signed by the trial court on July 7, 2010. For the reasons that follow, we vacate the judgment of July 7, 2010, and remand the matter to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

To understand the facts and procedural posture of this case and its deficiencies, we must understand and examine two separate proceedings in the lower court. The first case is the divorce action between June and Joseph, filed in docket No. 118505 of the 21st Judicial District Court, Tangipahoa Parish, State of Louisiana (later transferred to the 21st Judicial District Court of Livingston Parish by order dated December 14, 2007). The second case is the actual partition suit filed by June against Joseph on January 29, 2009, in docket No. 122750 of the 21st Judicial District Court, Livingston Parish, State of Louisiana. These two cases were never consolidated by the trial court. At the trial of the partition suit on June 28, 2010, in docket No. 122750, June's attorney introduced as evidence the entire record of the divorce action in docket No. 118505.¹ The Judgment of Partition in docket No. 122750 was rendered in open court on June 28, 2010, and signed by the trial court on July 7, 2010. The Clerk of Court's date and time stamp on the face of said judgment reflects the date June 30, 2010. According to the record, there was no appearance at the trial of the merits by Joseph or his alleged attorney.

The partition judgment was mailed by the Clerk of Court's office on July 9, 2010. Notice was mailed to Marlise O. Harrell, the alleged attorney for June, and Benjamin N. Gibson, the alleged attorney for Joseph. Assuming this notice was correct and proper, the

¹ At oral argument on February 8, 2012, this court recognized the record was deficient in that it did not contain all the exhibits introduced at the trial court -- in particular, the record of the trial court in docket No. 118505 -- and ordered the appellate record be supplemented with same. That supplementation occurred February 17, 2012.

deadline for Joseph to seek an order of appeal was September 20, 2010. See La. Code Civ. P. arts. 1974, 2087, and 2121.

In docket No. 122750, on or about September 20 or 22, 2010, Joseph, by pro se motion, filed a document entitled "Motion and Order for Designation of Record." There is uncertainty if this motion was filed on September 20 or 22, 2010, because it contains two Clerk of Court time and date stamps. One reflects that the motion was filed September 20, 2010, at 8:44 a.m., while the other indicates it was filed September 22, 2010, at 11:32 a.m.

Pursuant to said motion, the trial court signed an order on September 27, 2010, which reads as follows:

ORDER

The Premise Considered: If mover posts the appropriate bond and fees then it is ordered that the Clerk for this Court prepare the following listed document and log same with the State of Louisiana, Court of Appeal, First Circuit, on or before the 28th day of October, 2010. 1) Verbatim transcript of the proceedings held on June 28, 2010; 2) Judgment rendered and signed on July 7, 2010; 3) Partition of community property reimbursement claims of June Lewis (Roth), contempt of Court for disposing of community assets, attorney fees and Court costs (and related exhibits); 4) Sworn Detailed Descriptive List; and 5) Court notice given to attorney Benjamin N. Gibson on April 12, 2010.

Read and Signed in Chambers on the 27th day of Sept., 2010 at Livingston Louisiana.

Based on the above order, a Notice of Appeal was issued by the Clerk of Court on October 21, 2010. Said notice, in part, reads as follows.

NOTICE IS HEREBY GIVEN THAT ON SEPTEMBER 27th, 2010 UPON MOTION OF DEFENDANT AN ORDER OF APPEAL WAS ENTERED ON SEPTEMBER 22th, 2010, GRANTING AN APPEAL FROM THE JUDGMENT SIGNED JULY 7th, 2010.

RETURNABLE TO THE FIRST CIRCUIT COURT OF APPEAL IN ACCORDANCE WITH THE LAW.

THIS IS A DEVOLUTIVE APPEAL.

In docket No. 122750, upon motion by June, the trial court dismissed the appeal, with prejudice, on April 18, 2011, by an ex parte order without contradictory hearing. On that same date, through counsel of record, Joseph filed a "Motion and Order for

Devolutive Appeal *Nunc Pro Tunc*," which was granted, ex parte, by the trial court on April 19, 2011. Said order provided, in part as follows:

IT IS ORDERED that a devolutive appeal be granted to the defendant in pro se, "Nunc Pro Tunc," (effectively and retroactively to the date of September 22, 2010) with the appeal be now returnable to the Court of Appeal, First Circuit, on _____, 2011.

The appeal and record in docket No. 122750 was lodged with this court on June 6, 2011. On July 6, 2011, Joseph, through counsel of record, filed a motion to supplement the record in this proceeding. That motion is still pending. On August 11, 2011, this court, ex proprio motu, issued a Rule to Show Cause Order requesting that the parties show cause why the appeal should not be dismissed due to untimeliness. Subsequent to said order, on November 21, 2011, a writ panel of this court referred the rule to show cause to the panel to which the appeal was assigned. Thus, the issue of the timeliness of the appeal is still outstanding.

In his appeal, Joseph raises the following assignments of error and statement of issues.

ASSIGNMENT OF ERRORS

- I. The Court adjudicated complicated community property partition issues by default without having [followed] the provisions of La. R.S. 9:2801 relating to the procedure for Partition of Community Property[.]
- II. The court failed to give the Mandatory cut offs and procedural instructions mandated by La. R.S. 9:2801 provision relating to the procedure for Partition of Community Property in its scheduling orders in a scheduling conference, which is fatal to the observance of due process and notice to Mr. Lewis as to the nature of the upcoming proceedings.
- III. The court improperly dismissed by ex parte motion Plaintiff's Appeal during a period before he had retained counsel.

STATEMENT OF THE ISSUES

- I. Whether the Judgment in the nature of a default on June 28, 2010, without compliance with La. R.S. 9:2801 is valid considering that there was never compliance with the procedural articles in partitioning community property, highly irregular notices to the defendant and his attorney or waivers or whatever the court might consider then.

The core issue is really the question of whether Joseph was afforded due process and reasonable notice when June obtained a judgment of partition by proceeding in the nature of a default against his attorney on the day the matter had been set for trial.

II. Whether the evidence in the trial record supports the default judgment. (i.e. is there sufficient evidence in the record)

III. Was Ben Gibson "enrolled" into the case such that the court afforded Mr. Lewis due process by conducting the hearing against the absent attorney or was Ms. Harrell obligated to tell the court that there was perhaps another attorney, Roy Maughan, who might be enrolling?

IV. Is the failure of June Lewis to file a Rule to Show Cause why her SDL should *not be deemed* to constitute a *judicial determination* of the community assets and liabilities fatal to her non compliance with the procedural requirements of La. R.S. 9:2801[?]

V. Is the mere fact of a generic "scheduling order" in the wrong case sufficient notice to the defendant and his attorney, Ben Gibson, that the wife's [SDL] is likely to be deemed a judicial determination of the wife's SDL on the day of trial and that a judgment could likely be summarily entered against his client giving the wife all of the property in her separate name?

[VI.] Do basic equities of the circumstances warrant reversal?

[VII.] Is a pro se litigant entitled to special treatment by the trial and the [appellate] courts[?]

DISCUSSION

Before we address the issues raised on appeal by Joseph, we must first address the jurisdiction of this court. A court's lack of jurisdiction can be noticed by the court on its own motion at any time. La. Code Civ. P. art. 2162. **Strickland v. Layrisson**, 96-1280, p. 4 (La. App. 1 Cir. 6/20/97), 696 So.2d 621, 624, writ denied, 97-1940 (La. 11/14/97), 704 So.2d 228. It is well settled that appeals are favored in the law. **Castillo v. Russell**, 2005-2110, p. 1 (La. 2/10/06), 920 So.2d 863. "An appeal is taken by obtaining an order therefor, within the delay allowed, from the court which rendered the judgment." La. Code Civ. P. art. 2121.

According to La. Code Civ. P. art. 2087(A)(1), a devolutive appeal must be filed within sixty days of the expiration of the delay for applying for a new trial, if no application has been filed timely. The appeal delays found in Article 2087 are not prescriptive periods that are subject to interruption; these time limits are jurisdictional. An appellant's failure to file a devolutive appeal timely is a jurisdictional defect, in that neither the court of appeal nor any other court has jurisdictional power and authority to reverse, revise, or modify a final judgment after the time for filing a devolutive appeal has elapsed. **Everett v. Baton Rouge Student Housing, L.L.C.**, 2010-0856, p. 4 (La.

App. 1 Cir. 5/6/11), 64 So.3d 883, 886, writ denied, 2011-1169 (La. 9/16/11), 69 So.3d 1149.

As previously noted, assuming the notice of judgment mailed July 9, 2010, was correct and proper, the deadline for Joseph to seek an order of appeal was September 20, 2010. See La. Code Civ. P. arts. 1974, 2087, and 2121.

If we consider Joseph's pro se motion and order for designation of records as properly filed on September 20, 2012, we cannot say that it was a motion and order for an appeal because in paragraph one of said motion, he states "An appeal having been granted on or about September 10, 2010 in the above captioned matter."

In examining the appellate record in docket No. 122750, we note that the first trial court order concerning appeal issues is the September 27, 2010 trial order, which addresses Joseph's pro se motion and order for designation of records, filed on either September 20 or 22, 2010. Since Joseph's motion did not seek an order of appeal, the September 27, 2010 order granting an appeal did not correct the deficiencies in Joseph's pleading.

The next motion for appeal in docket No. 122750 was Joseph's motion through legal counsel for devolutive appeal *nunc pro tunc*, filed April 18, 2011, with attached order granting same by the trial court, dated April 19, 2011. This, too, is outside of the deadline of September 20, 2010, and untimely. It would appear at first glance that Joseph's appeal is untimely pursuant to the jurisprudence of this State. See Nelson v. Teachers' Retirement System of Louisiana, 2010-1190, pp. 5-6 (La. App. 1 Cir. 2/11/11), 57 So.3d 587, 589-590.

However, this does not end our inquiry about the timeliness of Joseph's appeal. As previously indicated, at the trial of the merits of the partition proceeding in docket No. 122750, the divorce proceeding bearing docket No. 118505 was offered and introduced as evidence into this matter.

After conducting a thorough review of the record in docket No. 118505, we note that there are several pleadings, motions, and orders of the court that were misfiled by the Clerk of Court's office, the lawyers, and the trial court. There are several pleadings

filed in docket No. 118505 (the divorce proceeding) that should have been filed into docket No. 122750 (the partition suit). These pleadings are as follows: 1) Request for Trial on Merits, filed September 25, 2009; 2) An order signed on October 7, 2009, setting pretrial conference for October 26, 2009; 3) Request for Trial on Merits by June for contempt of court and reimbursement of separate funds paid to improve community property, filed November 9, 2009; 4) An order dated November 13, 2009, setting the matter for status conference in chambers January 11, 2010; 5) Motion to Enroll by Benjamin Gibson as attorney for Joseph, filed December 3, 2009; 6) Scheduling Order dated April 21, 2010 for partition suit, filed by the trial court on April 14, 2010, setting the matter for bench trial the week of June 28, 2010, with a final pre-trial conference at 1:00 p.m. on Monday, June 28, 2010; 7) Pre-trial Order filed by June's attorney on May 28, 2010; 8) Memorandum of Law in Support of Community Property Division and Reimbursement Claims of June Lewis, filed May 28, 2010; 9) Motion to Withdraw as Counsel for Joseph by Benjamin N. Gibson filed June 24, 2010, with an order granting said motion signed June 28, 2010; 10) Notice of Appeal/Intent to Seek Writs, filed August 4, 2010, pro se by Joseph, seeking appeal of judgment entered in this action on June 30, 2010, with an order granting said appeal signed by the trial court September 7, 2010; 11) Notice of Appeal, filed September 13, 2010; 12) Transcript of trial on merits June 28, 2010, filed December 22, 2010.

After examining the record of docket No. 118505 (the divorce action), it is immediately obvious that Joseph, by pro se motion, filed a Notice of Appeal/Intent to Seek Writs from the judgment entered in this action on June 28, 2010. The order of appeal was signed September 7, 2010.

The appeal order itself does not specifically state which trial judgment was being appealed. In examining the actual judgment rendered by the trial court in docket No. 122750 (the partition suit), we note the hearing was June 28, 2010, the judgment was signed in chambers July 7, 2010, and the judgment has the Clerk of Court's date stamp of June 30, 2010, at 3:57 p.m. We further observe that the Notice of Appeal/Intent to Seek Writs, filed by Joseph, by pro se motion, in docket No. 118505, refers to a judgment

entered in this action on June 30, 2010. A reasonable interpretation of this is that Joseph is referring to the date and time stamped on the judgment signed July 7, 2010, which reflects a date and time of June 30, 2010, at 3:57 p.m. Further examination of both records bearing trial docket Nos. 118505 and 122750 reflect no other judgments entered around this time by the trial court.

We find that the Notice of Appeal/Intent to Seek Writs and appeal order signed September 7, 2010, filed in docket No. 118505 is an appeal order of the judgment signed by the trial court July 7, 2010, in docket No. 122750. The order of appeal was signed September 7, 2010, prior to the deadline of September 20, 2010, and therefore was timely.

An additional reason for maintaining Joseph's appeal is that there is a serious question concerning whether Joseph actually received legal notice of the judgment rendered by the trial court on July 7, 2010. Prior to and during the trial of June 28, 2010, Joseph was in prison. He had been represented by Benjamin N. Gibson. On June 24, 2010, prior to the trial of June 28, 2010, Mr. Gibson filed a motion to withdraw as counsel of record for Joseph. This motion was erroneously filed in docket No. 118505, in lieu of being filed in the partition suit, docket No. 122750. The trial court granted this motion to withdraw on June 28, 2010, the same day as the trial of the merits. The notice of judgment from the June 28, 2010 trial, concerning the July 7, 2010 judgment, was mailed out by the Clerk of Court's office on July 9, 2010. That notice was sent to Marlise O. Harrell, attorney for June, and to Mr. Gibson. On July 9, 2010, Mr. Gibson was no longer the attorney of record for Joseph, nor had he been since June 28, 2010, the day of the trial. There is nothing in the record that reflects legal notice of the July 7, 2010 judgment on Joseph, which would mean the time delays for appeal never began.

Therefore, for the above reasons, we maintain Joseph's appeal in this matter and vacate the trial court's April 18, 2011 ex parte order dismissing same.

In Statement of Issues I, II, and V, Joseph raises issues of due process violations concerning proper notice to Joseph for the June 28, 2010 trial on the merits.

The foundation of the right to due process in Louisiana is found in Art. I, Sec. 2, of the Louisiana State Constitution, and the Fourteenth Amendment of the United States Constitution. Art. I, Sec. 2, of the Louisiana State Constitution provides "No person shall be deprived of life, liberty, or property, except by due process of law."

Under the Fourteenth Amendment to the United States Constitution and La. Const. Art. I, § 2, a person is protected against a deprivation of his life, liberty, or property without "due process of law." "Very generally, due process requires some kind of hearing and notice thereof." **Fields v. State, Through Dept. of Public Safety and Corrections**, 98-0611, p. 7 (La. 7/8/98), 714 So.2d 1244, 1250. The requirement of a hearing before a final action can be reached stems from the principle that all persons are entitled to their "day in court." **Parker v. Board of Barber Examiners**, 84 So.2d 80, 86 (La. App. 1 Cir. 1955). Likewise, the requirement of a reasonably calculated notice under all the circumstances is an elementary and fundamental requirement of due process to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. **Fields**, 98-0611 at 20, 714 So.2d at 1258.

Pursuant to La. Code Civ. P. art. 1571, the district courts of Louisiana have the power and authority to prescribe the procedures for assigning cases for trial subject to the limitations as established in said article. One such limitation found in Article 1571 is the requirement that all parties receive "adequate notice." La. Code Civ. P. art. 1571(A)(1)(a). The Louisiana District Court Rules also establish guidelines for setting matters for trial. At all times pertinent hereto, these were found in Rule 9.14 and Appendix 8.² Rule 9.14 provided, in part, as follows.

(a) The date on which a motion to fix for trial on the merits may be made, and the method of setting a date for trial or hearing of a matter including deadlines for scheduling orders, pre-trial briefs, contact with jurors, or any other matter, shall be determined by each district court as set forth in Appendix 8.

² These rules have since been amended, and, although there are no substantive changes, Appendix 8 has been redesignated as Appendix 9.14.

Appendix 8 provided, in part, for the 21st Judicial District, as follows:

1. Any party requesting assignment of a civil case for trial on the merits shall file a written request for a telephone status conference. The request shall contain the correct name, address, and telephone number of all counsel of record. At the conference the matter will be set for trial only if the matter is ready to be heard. An appropriate form for requesting trial on the merits, approved by the Court is found below ...

Part of that proposed form contained an order, which read as follows:

ORDER

IT IS ORDERED that this matter be set for trial on the ____ day of _____, 20__, at _____ o'clock __m./ the week of _____, 20__, with a final pre-trial conference on the ____ day of _____, 20__, at _____ o'clock __m. _____, Louisiana, this ____ day of _____, 20__.

In examining the record before us in docket No. 118505, a request for trial on the merits was filed by June through her attorney on November 9, 2009. The service request on Joseph was on him in proper person, in Livingston Parish Jail, as was the order for status conference setting the matter for January 11, 2010. The actual notice was mailed to Joseph at P.O. Box 1000, Livingston, La. 70754. A motion to enroll as attorney for Joseph was filed by Mr. Gibson on December 3, 2009, in docket No. 118505. The order was granted by the trial court on December 8, 2009. The minute entry of January 11, 2010, in docket No. 118505, reflects that only June's counsel appeared, and the matter was continued to April 12, 2010, for 1:00 p.m. The April 12, 2010 minute entry for the pre-trial conference states that both the attorneys for June and Joseph were present. The minutes reflect the matter was set for pre-trial conference on June 28, 2010, at 1:00 p.m., with discovery cut-off by May 31, 2010.

Pursuant to said pre-trial conference, a scheduling order was issued by the trial court, dated April 21, 2010, and a notice of such was mailed by the Clerk of Court's office, all of which occurred in docket No. 118505. This notice was mailed to Mr. Gibson, attorney for Joseph, and Ms. Harrell, attorney for June. It would appear at first glance that proper notice of the trial was made upon Joseph and his attorney. However, on further examination, we note some problems and deficiencies.

The scheduling order³ dated April 21, 2010, in docket No. 118505, only provides three specific dates. The order sets a definite date and time for the pre-trial conference of 1:00 p.m., on Monday, the 28th day of June, 2010. It further sets a definite date for a final pre-trial order and discovery cut-off date of May 28, 2010. It sets a definite date for the parties to issue subpoenas for the trial on the merits, which is Tuesday (June 29, 2010). The order sets an approximate time and date for the trial (the week of June 28, 2010). The scheduling order further provides that all counsel and parties must attend the pre-trial conference. Thus, according to the scheduling order, the only definite judicial proceeding set for June 28, 2010, was the pre-trial conference hearing at 1:00 p.m. And, based on the order that subpoenas for witnesses were to be issued for Tuesday, June 29, 2010, a reasonable interpretation of the scheduling order was that the trial was scheduled to begin on Tuesday, June 29, 2010.

In reviewing the transcript of June 28, 2010, and the minute entry for the pre-trial conference set for June 28, 2010, in civil docket No. 118505, it appears that neither Joseph nor his attorney were in court on June 28, 2010. Rather, on that date, Joseph

³ The scheduling order provides as follows:

SCHEDULING ORDER

This matter came before the court on the 12th day of April, 2010 for a final pre-trial conference; Present in chambers; June Lewis and her attorney Marlise O. Harrell; Joseph E. Lewis represented by his attorney Benjamin N. Gibson.

Pursuant to discussions and representations made at the status conference;

IT IS ORDERED THAT:

1. The above entitled and numbered cause is set for bench trial the week of **June 28, 2010**, with a final pre-trial conference at **1:00 p.m.** on **Monday**, the **28th** day of **June, 2010**. The final pre-trial conference must be attended in person by all trial counsel and it is mandatory that the parties are present in open court this date.
2. A final pre-trial order in one document, signed by all counsel of record, must be filed with the Clerk of Court by **May 28, 2010**. Defense counsel is to submit to plaintiff's counsel his inserts for the pre-trial order on or before **May 18, 2012**. **If said pre-trial order is not presented timely, the matter will be continued and sanctions may be imposed.**
3. No subpoenas are to be issued for **MONDAY** the day of the final pre-trial conference. Instead, subpoenas are to be issued for **TUESDAY** with a notation that witnesses should be contacted on **MONDAY** afternoon with more precise instructions.
4. A memorandum of law must be submitted no later than **May 28, 2010**.
5. Discovery cut-off is **May 28, 2010**.

Livingston, Louisiana this 21st day of April, 2010.

was in prison, as was testified to by June in the presence of the trial court at the hearing on June 28, 2010. We further note that no one issued a subpoena or order to transport Joseph from jail or prison for the June 28, 2010 pre-trial conference, or for the week of June 28, 2010 for trial, as was previously done for a prior hearing on March 11, 2009. We find no waiver of notice of trial in the record before us filed by either Joseph or his attorney.

On the June 28, 2010 date, when the trial of this matter occurred, the trial court also signed an ex parte order allowing Joseph's attorney to withdraw as attorney of record for Joseph. We cannot tell from the record whether this motion to withdraw as Joseph's attorney was signed by the trial court prior to, during, or after the trial heard on June 28, 2010. We do know from the scheduling order the pre-trial conference was set for June 28, 2010, at 1:00 p.m., so the actual trial had to occur thereafter. This ex parte motion to withdraw as Joseph's attorney was filed into docket No. 118505 by Mr. Gibson on June 24, 2010, four days prior to June 28, 2010. At the trial on June 28, 2010, when the trial court inquired with the deputy clerk about notice on Joseph and his attorney, the deputy clerk of court makes no mention of the June 24, 2010 ex parte motion to withdraw by Joseph's attorney.

The procedure for withdrawal as counsel of record is governed by Rule 9.13 of the Louisiana District Court Rules.⁴ Rule 9.13 is designed to fully inform and provide

⁴ Rule 9.13 provides as follows:

Enrolled attorneys have, apart from their own interests, continuing legal and ethical duties to their clients, all adverse parties, and the court. Accordingly, the following requirements govern any motion to withdraw as counsel of record:

(a) The withdrawing attorney who does not have written consent from the client shall make a good-faith attempt to notify the client in writing of the withdrawal and of the status of the case on the court's docket. The attorney shall deliver or mail this notice to the client before filing any motion to withdraw.

(b) If the action or proceeding has been assigned to a particular section or division of the court, then the motion to withdraw shall be submitted to the judge presiding over that section or division.

(c) Any motion to withdraw shall include the following information:

(1) The motion shall state current or last-known street address and mailing address of the withdrawing attorney's client. The withdrawing attorney shall also furnish this information to the clerk of court.

adequate notice of the attorney's withdrawal and pending proceedings to the court, to all parties, and to all attorneys of record.

The motion to withdraw filed in this matter on June 24, 2010, in docket No. 118505, does not comply with any of the requirements of Rule 9.13. In our opinion, it was legal error for the trial court to have granted said motion to withdraw ex parte on June 28, 2010.

Louisiana Code of Civil Procedure art. 2164 states, in part, "The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal." As much as we may be reluctant to do so, we are of the opinion that Art. I, Section 2, of the Louisiana State Constitution compels us to find that there was no notice to Joseph for the

(Continued)

(2) If a scheduling order is in effect, a copy of it shall be attached to the motion.

(3) The motion shall state whether any conference, hearing, or trial is scheduled and, if so, its date.

(4) The motion shall include a certificate that the withdrawing attorney has complied with paragraph (a) and with **Rule 1.16** of the **Rules** of Professional Conduct, Louisiana State Bar Association, Articles of Incorporation, Art. 16. A copy of the written communication required by paragraph (a) shall be attached to the motion.

(d) The court may allow an attorney to withdraw by ex parte motion if:

(1) The attorney has been terminated by the client; or

(2) The attorney has secured the written consent of the client and of all parties or their respective counsel; or

(3) No hearing or trial is scheduled; or

(4) The case has been concluded.

(e) If paragraph (d) does not apply, then an attorney may withdraw as counsel of record only after a contradictory hearing and for good cause. All parties and the withdrawing attorney's client shall be served with a copy of the motion and **rule** to show cause why it should not be granted.

(f) If counsel's withdrawal would delay a scheduled hearing or trial, the court will not allow the withdrawal unless exceptional circumstances exist.

(g) Paragraphs (a) through (f) do not apply to an ex parte motion to substitute counsel signed by both the withdrawing attorney and the enrolling attorney. The following **rules** govern such a motion:

(1) The court may grant the motion without a hearing. Movers shall furnish the court with a proposed order.

(2) Substitution of counsel will not, by itself, be good cause to alter or delay any scheduled matters or deadlines.

trial on the merits that occurred on June 28, 2010, and therefore we are compelled to vacate the judgment rendered by the trial court on June 28, 2010, and remand this matter to the trial court for further proceedings.⁵

Concerning Joseph's motion to supplement the record, we find it is moot due to this court's order to supplement the record issued February 8, 2012. Accordingly, Joseph's motion to supplement the record is denied as moot.

CONCLUSION

For the above and foregoing reasons, we vacate the trial court's April 18, 2011 order dismissing Joseph's appeal, and hereby maintain same. We deny Joseph's motion to supplement as moot. We vacate the trial court's judgment rendered in open court on June 28, 2010, and signed in chambers, July 7, 2010, and remand this matter to the trial court for further proceedings. All costs of this appeal are assessed equally between Joseph E. Lewis and June Lewis.

TRIAL COURT ORDER DATED APRIL 18, 2011 VACATED, APPEAL MAINTAINED; MOTION TO SUPPLEMENT RECORD DENIED AS MOOT; PARTITION JUDGMENT RENDERED JUNE 28, 2010, AND SIGNED JULY 7, 2010, VACATED; REMANDED.

⁵ In light of our findings herein, we pretermitt consideration of the other issues raised by Joseph in his appeal.