

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 CU 0376

AND 2015 CW 0678

KENDRICK D. JUPITER

VERSUS

DELISYEE DAGGS JUPITER

Judgment Rendered: JUN 05 2015

\* \* \* \* \*

On Appeal from  
The 17<sup>th</sup> Judicial District Court,  
Parish of Lafourche, State of Louisiana  
Trial Court No.102952  
The Honorable Jerome J. Barbera, III, Judge Presiding

\* \* \* \* \*

Kendrick D. Jupiter  
Baton Rouge, Louisiana

Defendant/Appellant,  
In Proper Person

Felix J. Sternfels  
Napoleonville, Louisiana

Attorney for Plaintiff/Appellee,  
Delisyee Daggs Jupiter (Morris)

\* \* \* \* \*

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

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**CRAIN, J.**

In this domestic proceeding, Kendrick D. Jupiter appeals a February 13, 2015 judgment dismissing his motion to recuse Judge Jerome J. Barbera. The judgment specified that the motion was dismissed because Mr. Jupiter failed to appear at the hearing on the motion and because the motion was moot since Judge Barbera retired on December 31, 2014. Mr. Jupiter contends that the ruling violated his right to due process and equal protection of law.

**JURISDICTION**

A threshold inquiry in any case is whether there is a basis for jurisdiction. Jurisdiction is the legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled. La. Code Civ. Pro. art. 1. We have a duty to examine subject matter jurisdiction *sua sponte*, even when the issue is not raised by the litigants. *Swanson v. Department of Public Safety and Corrections*, 01-1066 (La. App. 1 Cir. 6/21/02), 837 So. 2d 634, 636.

This court's appellate jurisdiction extends to final judgments. *See* La. Code Civ. Pro. art. 2083A. A final judgment determines the merits of a controversy, in whole or in part. La. Code Civ. Pro. art. 1841. In contrast, an interlocutory judgment does not determine the merits, but decides only preliminary matters in the course of an action. La. Code Civ. Pro. art. 1841. An interlocutory judgment is appealable only when expressly provided by law. La. Code Civ. Pro. art. 2083C.

A judgment dismissing or denying a motion to recuse a trial judge is an interlocutory judgment. *See* La. Code Civ. Pro. art. 1841; *Augman v. City of Morgan City*, 04-1746 (La. App. 1 Cir. 9/23/05), 914 So. 2d 583, 585; *Tatum v. New Orleans Aviation Bd.*, 10-1218 (La. App. 4 Cir. 1/26/11), 2011WL9159673, p.2; *Tatum v. New Orleans Aviation Bd.*, 08-0831 (La. App. 4 Cir. 2/18/09),

2009WL8688806, p.1. Further, no provision of law expressly provides for its appeal.

This court has the discretion to convert appeals to applications for supervisory writs or to order the trial court to set a return date pursuant to a timely filed motion for appeal. *See Stelluto v. Stelluto*, 05-0074 (La. 6/29/05), 914 So. 2d 34, 39; *Jupiter v. Jupiter*, 14-1421 (La. App. 1 Cir. 3/6/15), \_\_\_ So. 3d \_\_\_, \_\_\_, 2015WL995404, p.3. We decline to do so here, where Mr. Jupiter seeks review of the judgment dismissing his motion to recuse Judge Barbera. An issue is moot when a judgment or decree has been deprived of practical significance or made abstract or purely academic. *In re E.W.*, 09-1589 (La. App. 1 Cir. 5/7/10), 38 So. 3d 1033, 1037. As noted in the judgment itself, Judge Barbera is now retired and is no longer presiding over this case. Clearly, the issues raised in the motion to recuse Judge Barbera are now moot and do not present a justiciable controversy over which this court could exercise jurisdiction.<sup>1</sup>

### **CONCLUSION**

This court lacks jurisdiction to review the February 13, 2015 judgment. Accordingly, this appeal is dismissed.

**APPEAL DISMISSED; WRIT DENIED.**

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<sup>1</sup> After this appeal was taken, Mr. Jupiter filed an application for supervisory writs, 2015CW0678, challenging the trial court's denial of a motion to supplement this appellate record. The writ application was referred to this panel. Considering our decision herein, the writ application is denied as moot.