

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CW 1549

JOYCE S. JACKSON AND LYLIA F. JACKSON

VERSUS

ACE AMERICAN INSURANCE COMPANY,
CENIKOR FOUNDATION, INC.,
AND SHAWN CONNER

--CONSOLIDATED WITH--

2017 CW 1550

MEDFINMANAGER, L.L.C.

VERSUS

CENIKOR FOUNDATION, INC.,
ACE AMERICAN INSURANCE COMPANY
AND SHAWN CONNER

JUDGMENT RENDERED: SEP 21 2018

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Docket Nos. 628,856 c/w 652,228 | Sec. 22

The Honorable Timothy E. Kelley, Judge Presiding

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WELCH, J.

The defendants—Cenikor Foundation, Inc. (“Cenikor”), Ace American Insurance Company (“Ace”), and Shawn Conner—appeal a judgment of the trial court that 1) granted a petition for declaratory judgment in favor of a financial services company (that purchases medical liens arising from treatment administered to plaintiffs in personal injury actions), declaring that the company’s purchases of a patient’s accounts from her health care providers were not the sales of litigious rights; 2) denied the defendants’ exceptions to the petition for declaratory judgment; and 3) reversed a prior judgment granting the defendants’ motion to redeem and extinguish a litigious right, to the extent that prior judgment conflicted with the declaratory judgment. For the following reasons, we convert the defendants’ appeal to an application for supervisory writ, grant the writ application, vacate the judgment, and remand.¹

FACTS AND PROCEDURAL HISTORY

The Damages Suit

This matter arises out of an automobile accident that occurred on May 4, 2013, when a 2007 Honda Odyssey operated by Mr. Conner, owned by his employer Cenikor, and insured by Ace² collided with a 2003 Chevrolet Impala occupied by the plaintiffs, Joyce S. Jackson (“Ms. Jackson”) and Lylia F. Jackson.

The plaintiffs filed suit on March 7, 2014 against the defendants, seeking damages for injuries allegedly sustained as a result of the automobile accident.³

¹ In a related writ application also decided this date, 2017 CW 0830, the defendants seek supervisory review of the May 18, 2017 judgment of the trial court that reversed and amended its prior September 15, 2016 judgment granting the defendants’ motion to redeem and extinguish a litigious right.

² The primary insurance policy had liability limits of \$1,000,000.00 per accident. An additional umbrella policy issued by Ace Property and Casualty Insurance Company, which was in effect during all material times, further provided liability coverage up to \$2,000,000.00.

³ Ms. Jackson is the sole remaining plaintiff as Lylia F. Jackson is no longer a party to the damages suit. We further note Ms. Jackson added Ace Property and Casualty Insurance Company as a defendant in her first supplemental and amended petition for damages.

See **Joyce S. Jackson and Lylia F. Jackson v. Ace American Insurance Company, Cenikor Foundation, Inc., and Shawn Conner**, Docket No. 628,856, Sec. 22, 19th Judicial District Court (“JDC”), East Baton Rouge Parish, Louisiana (“the damages suit”). Ms. Jackson received medical care and services from her health care providers—Neuro-Technology Institute, LLC, Baton Rouge General Medical Center, The Bone & Joint Clinic of Baton Rouge, Inc., Strategic Medical Alliance, and Parish Anesthesia of Baton Rouge—who secured a statutory privilege against any recovery in her personal injury action. See La. R.S. 9:4752.⁴ Ms. Jackson’s health care providers subsequently assigned all of their rights and interest in her medical accounts to MedFin Manager, L.L.C. (“MedFin”), a financial services company that purchases medical liens/privileges arising from treatment administered to plaintiffs in personal injury actions.⁵ MedFin paid Ms.

⁴ Louisiana Revised Statutes 9:4752 provides, in pertinent part:

A health care provider, hospital, or ambulance service that furnishes services or supplies to any injured person shall have a privilege for the reasonable charges or fees of such health care provider, hospital, or ambulance service on the net amount payable to the injured person, his heirs, or legal representatives, out of the total amount of any recovery or sum had, collected, or to be collected, whether by judgment or by settlement or compromise, from another person on account of such injuries, and on the net amount payable by any insurance company under any contract providing for indemnity or compensation to the injured person.

⁵ MedFin is a non-Louisiana limited liability company in the business of entering into contractual agreements with health care providers to pay those providers for treatment and services provided to plaintiffs seeking tort damages through personal injury claims. Typically, MedFin becomes involved in a situation where a plaintiff sustains injuries in a traffic accident and needs medical treatment (but has no health insurance) by purchasing the plaintiff’s medical bills, and the liens securing them, from the health care providers. Prior to treatment, the health care provider asks MedFin to evaluate a case to determine whether it is willing to purchase the medical account after the rendition of services. MedFin then contacts the plaintiff’s attorney and gathers information about the case to ascertain whether the plaintiff’s claim against the tortfeasor(s) is worth the investment. If the claim meets with MedFin’s approval, it notifies the health care provider that it is willing to purchase the account and the lien/privilege rights. MedFin and the health care provider have their own agreement that governs their rights and obligations. The contract typically stipulates that MedFin will purchase the bill for about 50 cents on the dollar. Before the plaintiff receives medical services, the plaintiff and her attorney execute a consensual lien in favor of the health care provider. After services are rendered, the health care provider notifies the parties to the lawsuit of the medical lien.

MedFin’s agreement with the health care provider does not require the provider to sell its bill to MedFin. After the rendition of medical services, the provider decides whether or not to sell its account to MedFin. In some cases, a health care provider will retain the account for itself, in which case it can enforce its lien and collect the full amount due from the plaintiff. If the health care provider does sell its account to MedFin, it executes a formal “Notice of Sale and Assignment,” which is sent to the plaintiff. Having sold the bill and lien, the provider closes its

Jackson's health care providers half of the face value of Ms. Jackson's accounts, a total of \$94,412.48 (with legal interest from the date of assignment added), in exchange for the privileges representing the entire billed amount of those accounts.

Thereafter, the defendants filed a motion to redeem and extinguish a litigious right on May 3, 2016, wherein they sought leave to redeem and extinguish the right to recover Ms. Jackson's accounts assigned to MedFin, contending that the assignments of rights were actually the sales of litigious rights. Specifically, the defendants sought leave to extinguish the accounts Ms. Jackson and her health care providers assigned to MedFin by paying MedFin the discounted price that MedFin paid her health care providers for the assignments.

Following a hearing, the trial court granted the defendants' motion to redeem and extinguish a litigious right in a judgment signed on September 15, 2016, which decreed as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Redeem and Extinguish a Litigious Right is hereby granted, and Plaintiff is ordered to provide all documentation in [her] possession or which [she has] access to regarding to [*sic*] the purchase of any medical account by MedFinManager, LLC; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff has thirty (30) days to comply with the Court's Order and all costs of Defendants' Motion are assessed against Plaintiff.

After the deadlines for seeking review of the September 15, 2016 judgment expired, the defendants calculated the amounts paid to Ms. Jackson's health care providers by MedFin and sent a demand letter to MedFin on September 28, 2016,

book on the account. At that point, MedFin owns the account and assumes the entire expense and risk of collection. The plaintiff remains liable for the bill and owes MedFin the full amount of what has been charged. See Medfinmanager, LLC v. Kruse, No. 2010CV3708, 2011 WL 12896591, at *1 (Colo. Dist. Ct. Aug. 16, 2011); see also Capelli v. Brinks Inc., No. 2009CV03469, 2010 WL 1744645, at *1 (E.D. Cal. Apr. 29, 2010); Katiuzhinsky v. Perry, 152 Cal. App. 4th 1288, 1290-92, 62 Cal. Rptr. 3d 309, 310-11 (Cal. App. 3rd 6/29/07).

seeking verification of the amounts so that the defendants could render full and final payment to redeem the litigious rights and extinguish the debt.⁶

The Declaratory Action

Following receipt of the defendants' demand letter, MedFin—who was never a named party in the damages suit—instituted a separate action on October 18, 2016, by filing a petition for declaratory judgment. See MedFinManager, L.L.C. v. Cenikor Foundation, Inc., Ace American Insurance Company and Shawn Conner, Docket No. 652,228, Sec. 27, 19th JDC, East Baton Rouge Parish, Louisiana (“the declaratory action”). Therein, MedFin asserted that its purchases of Ms. Jackson's accounts from her health care providers were not the sales of litigious rights; therefore, the defendants did not have the right to redeem and extinguish those accounts for the price paid by MedFin. MedFin sought a judgment declaring that the trial court's September 15, 2016 judgment granting the defendants' motion to redeem and extinguish a litigious right in the damages suit was not intended to hold that the purchases of Ms. Jackson's accounts by MedFin from her health care providers and still owed by Ms. Jackson were the purchases of litigious rights. MedFin further sought a judgment declaring that the trial court's September 15, 2016 judgment did not order that the debt owed to MedFin by Ms. Jackson in connection with the accounts be redeemed by the defendants or anyone else for less than the full balance and interest.

Additionally, MedFin filed a motion to transfer and consolidate the declaratory action (Docket No. 652,228 in Section 27) with the damages suit (Docket No. 628,856 in Section 22).⁷

⁶ On December 6, 2016, the trial court granted a motion by the defendants to deposit \$94,412.48 into the registry of the court, payable to MedFin, to satisfy the accounts assigned to MedFin and bring an end to the claims of Ms. Jackson to recover the full amount of the medical accounts as an element of damages in her main demand, as well as to extinguish all of the defendants' rights and obligations arising out of the accounts assigned to MedFin.

⁷ The trial court ruled in the declaratory action (Docket No. 652,228, Sec. 27) that it was without legal authority to order the consolidation and transfer of the related matters and indicated that the

The defendants filed exceptions of *lis pendens*, lack of subject matter jurisdiction, *res judicata*, no cause of action, and no right of action to MedFin's petition for declaratory judgment. The defendants also opposed MedFin's motion to transfer and consolidate.

The Three May 18, 2017 Judgments

The trial court in the damages suit (Docket No. 628,856 in Section 22) conducted a hearing on May 1, 2017. Docketed for hearing on May 1st were: 1) MedFin's motion to transfer and consolidate; 2) a motion *in limine* filed by the plaintiff; and 3) a motion to continue trial filed by the plaintiff. At the hearing, the trial court granted MedFin's motion to transfer and consolidate. The trial court then, *sua sponte*, granted MedFin's petition for declaratory judgment and reversed and amended its prior September 15, 2016 judgment. The record contains no indication that MedFin's declaratory action was set for hearing or trial on May 1st, or that the matter had been noticed. The record further indicates that the trial court did not rule on the plaintiff's motion to continue trial or motion *in limine*.

On May 10, 2017, the trial court issued an order setting forth that its written reasons for judgment is the transcript of the May 1, 2017 hearing.

Thereafter, the trial court signed three judgments on May 18, 2017. In the first judgment, the trial court denied the defendants' exceptions to MedFin's petition for declaratory judgment.⁸ The trial court granted declaratory judgment in favor of MedFin as follows:

The accounts receivable owed by Ms. Joyce S. Jackson at issue in Suit No. 628,856 and purchased by MedFinManager are not litigious rights; MedFinManager's purchase of those accounts was not the "purchase of a litigious right;" and the debt owed to MedFinManager by Ms. Jackson in connection with those accounts cannot be redeemed and extinguished by

trial court in the earlier-filed action (the damages suit, Docket No. 628,856 in Section 22) should make the determination.

⁸ The defendants' exceptions were not set for hearing on May 1, 2017.

CENIKOR, ACE and/or Conner or anyone else pursuant to Louisiana Civil Code Article [2652]. To the extent the Judgment entered by this Court on defendants' Motion to Redeem and Extinguish a Litigious Right entered on September 15, 2016, in Suit No. 628,856 rules otherwise, the Court has reversed that Judgment in that Suit. All parties shall bear their own costs.

In the second judgment signed on May 18, 2017, the trial court reversed and amended its prior September 15, 2016 judgment as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the previous Judgment granting defendants' Motion to Redeem and Extinguish a Litigious Right entered on September 15, 2016, which was interlocutory, is hereby **REVERSED** and **AMENDED** in part, to the extent it ordered that MedFinManager's purchase of the accounts at issue in this matter was the purchase of a litigious right and could be redeemed and extinguished. On that issue, defendant[s'] Motion to Redeem and Extinguish a Litigious Right is hereby denied as the accounts were not a litigious right. To the extent the Court's Order on the Motion to Redeem and Extinguish a Litigious Right required discovery from plaintiffs, the Order is maintained. If any evidence is discovered ... of an agreement between [plaintiff's] counsel and MedFinManager at the time of the purchase of the accounts to give plaintiff a discount on the accounts, defendants may seek to introduce such evidence into evidence against [plaintiff] at the trial of the captioned matter. All parties shall bear their own costs associated with the defendant[s'] Motion to Redeem and Extinguish a Litigious Right.

In the third judgment signed on May 18, 2017, the trial court transferred and consolidated the declaratory action (Docket No. 652,228 in Section 27) with the damages suit (Docket No. 628,856 in Section 22).

Thereafter, the defendants filed a motion for new trial of the trial court's first May 18, 2017 judgment, granting declaratory judgment in favor of MedFin, on the basis that the trial court did not have authority to render a valid judgment in the declaratory action before issue had been joined. The defendants argued that they

had only filed exceptions and had not yet answered the declaratory petition. The trial court denied the defendants' motion for new trial on May 31, 2017.⁹

The defendants now devolutively appeal the trial court's May 18, 2017 judgment granting declaratory judgment in favor of MedFin.

JURISDICTION

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue, and we are obligated to recognize any lack of jurisdiction if it exists. **Quality Env'tl. Processes, Inc. v. Energy Dev. Corp.**, 2016-0171 (La. App. 1st Cir. 4/12/17), 218 So. 3d 1045, 1052-53. Our appellate jurisdiction extends to "final judgments," which are those that determine the merits in whole or in part. See La. C.C.P. arts. 1841 and 2083; **Quality Env'tl. Processes**, 218 So. 3d at 1053.

After the instant appeal was lodged with this Court, a rule to show cause order was issued, ordering the parties to file show cause briefs discussing why the instant appeal should not be dismissed since the May 18, 2017 judgment granting declaratory judgment in favor of MedFin appeared to be a "partial judgment, in that it does not appear to dispose of all of the claims and issues in the case," *i.e.*, an interlocutory judgment, and further, "the ruling does not contain the designation of finality required by La. C.C.P. art. 1915(B)," *i.e.*, a partial final judgment.¹⁰ The rule to show cause further ordered a limited remand of the matter for the purpose

⁹ The defendants also filed a motion for new trial of the trial court's second May 18, 2017 judgment that reversed and amended the September 15, 2016 judgment, which the trial court denied on June 15, 2017. In the related writ application also decided this date, 2017 CW 0830, the defendants seek supervisory review of that judgment.

¹⁰ To clarify this Court's rule to show cause order, we note that the Louisiana Code of Civil Procedure defines three types of judgments: an interlocutory judgment, which determines a preliminary matter in the course of an action, but does not determine the merits (see La. C.C.P. art. 1841); a final judgment, which determines the merits of the case in whole or in part (see La. C.C.P. art. 1841); and a partial final judgment, which disposes of some, but not all, of the issues on the merits, and in some instances requires a designation of finality by the trial court (see La. C.C.P. art. 1915). Different rules govern the appealability of these three types of judgments. See La. C.C.P. arts. 2083(A), 2083(C), and 1915(B). Accordingly, this Court's rule to show cause order should have used the term "interlocutory judgment or partial final judgment" rather than "partial judgment."

of inviting the trial court to advise that its judgment did not warrant a La. C.C.P. art. 1915(B) designation, or, inviting the trial court to sign a judgment with a La. C.C.P. art. 1915(B) designation and to provide a *per curiam* giving explicit reasons for its determination that there is no just reason for delay.¹¹ See La. C.C.P. art. 1915; see also **R.J. Messinger, Inc. v. Rosenblum**, 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122-23.

Thereafter, the trial court sent this Court a letter and a copy of the transcript of the May 1, 2017 hearing (*i.e.*, its written reasons for ruling). In its letter, the trial court noted “that there was no language designating the judgment as final and appealable.” The defendants filed a brief responding to this Court’s show cause order. This Court received no response from the plaintiff nor from MedFin regarding the show cause order.

The portion of the May 18, 2017 judgment denying the defendants’ exceptions of *lis pendens*, lack of subject matter jurisdiction, *res judicata*, no cause of action, and no right of action to MedFin’s petition for declaratory judgment is an interlocutory judgment. See La. C.C.P. art. 1841; see also **Ponder v. Stire**, 303 So. 2d 550, 551 (La. App. 1st Cir. 1974), writ denied, 318 So. 2d 55 (La. 1975); **Joseph v. Hosp. Serv. Dist. No. 2 of Par. of St. Mary**, 2001-1952 (La. App. 1st Cir. 12/28/01), 805 So. 2d 413, 416 n.3; **Louisiana Local Gov’t Env’tl. Facilities v. All Taxpayers**, 2011-0027 (La. App. 1st Cir. 2/2/11), 56 So. 3d 1194, 1200, writ denied, 2011-0467 (La. 4/25/11), 62 So. 3d 93; **HPC Biologicals, Inc. v. UnitedHealthcare of Louisiana, Inc.**, 2016-0585 (La. App. 1st Cir. 5/26/16), 194 So. 3d 784, 791-92. Although the correctness of an interlocutory judgment that is incorporated into a purported final judgment may be considered on appeal, an interlocutory judgment cannot, on its own, provide a basis for a suspensive appeal.

¹¹ The show cause order was referred to this merits panel in an interim order dated March 23, 2018.

See La. C.C.P. art. 2083(C); see also **An Erny Girl, L.L.C. v. BCNO 4 L.L.C.**, 2016-1011 (La. App. 4th Cir. 3/30/17), 216 So. 3d 833, 839, writ denied, 2017-0815 (La. 6/29/17), 222 So. 3d 48. Moreover, La. C.C.P. art. 1915 does not authorize a trial court to designate a judgment denying an exception as final. See La. C.C.P. art. 2083(C); see also **Louisiana Local Gov't Env'tl. Facilities**, 56 So. 3d at 1200.

The portion of the May 18, 2017 granting declaratory judgment in favor of MedFin decreed:

The accounts receivable owed by Ms. Joyce S. Jackson at issue in Suit No. 628,856 and purchased by MedFinManager are not litigious rights; MedFinManager's purchase of those accounts was not the "purchase of a litigious right;" and the debt owed to MedFinManager by Ms. Jackson in connection with those accounts cannot be redeemed and extinguished by CENIKOR, ACE and/or Conner or anyone else pursuant to Louisiana Civil Code Article [2652]. To the extent the Judgment entered by this Court on defendants' Motion to Redeem and Extinguish a Litigious Right entered on September 15, 2016, in Suit No. 628,856 rules otherwise, the Court has reversed that Judgment in that Suit. All parties shall bear their own costs.

The function of a declaratory judgment is simply to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. **MAPP Const., LLC v. Amerisure Mut. Ins. Co.**, 2013-1074 (La. App. 1st Cir. 3/24/14), 143 So. 3d 520, 528. Louisiana Code of Civil Procedure article 1871 provides that "[c]ourts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed." When rights are uncertain or disputed in cases involving actual controversy, the court, in a declaratory judgment, can establish or clarify the rights, without ordering anything to be done. **Trans Louisiana Gas Co. v. Louisiana Ins. Guar. Ass'n**, 93-2287 (La. App. 1st Cir. 3/3/95), 652 So. 2d 686, 689, writ not considered, 95-0853 (La. 4/21/95), 653 So.

2d 555. Further or supplemental relief may be granted, if demanded, and after notice and hearing. **Id.** The declaration shall have the force and effect of a final judgment or decree. **Pelican Educ. Found., Inc. v. Louisiana State Bd. of Elementary & Secondary Educ.**, 2011-2067 (La. App. 1st Cir. 6/22/12), 97 So. 3d 440, 445.

Final judgments must contain appropriate decretal language disposing of or dismissing claims in the case. A judgment must be precise, definite, and certain. Moreover, a final appealable judgment must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. The specific relief granted should be determinable from the language of the judgment without reference to an extrinsic source such as pleadings or reasons for judgment. See **Quality Envtl. Processes**, 218 So. 3d at 1053.

The declaratory portion of the May 18, 2017 judgment references “accounts receivable owed by Ms. Joyce S. Jackson at issue in Suit No. 628,856.” The judgment does not identify the “accounts receivable” nor the amounts comprising said accounts. Without referencing an extrinsic source or other document in the record, it would be impossible to determine any identifying information regarding the “accounts receivable.” We find that the judgment does not contain proper decretal language necessary for final, appealable judgments.

Furthermore, the declaratory portion of the May 18, 2017 judgment reverses the September 15, 2016 judgment (which granted the defendants’ motion to redeem and extinguish a litigious right) to the extent that prior judgment conflicted with the declaratory judgment. Not only is that reversal an interlocutory ruling, since it does not determine the merits of the damages suit in whole or in part, but only preliminary matters in the course of the litigation, that reversal goes beyond the scope of a declaratory judgment by ordering something to be done. See La.

C.C.P. arts. 1841 and 1871; see also **Ascension Sch. Employees Credit Union v. Provost Salter Harper & Alford, L.L.C.**, 2006-0992 (La. App. 1st Cir. 3/23/07), 960 So. 2d 939, 939-40. Thus, we find that the judgment on appeal does not have the force and effect of a final judgment or decree.

Generally, appeals may only be taken from final judgments in which appeals are given by law. See La. C.C.P. arts. 1841 and 2083(A). The May 18, 2017 judgment is interlocutory; moreover, it is a partial judgment in that it adjudicates only some, but not all, of the issues on the merits. Therefore, the only way that appellate jurisdiction could be invoked is if all of the requirements of La. C.C.P. art. 1915 were met.

A judgment that only partially determines the merits of an action is a partial final judgment and, as such, is immediately appealable only if authorized by La. C.C.P. art. 1915. See **Quality Env'tl. Processes**, 218 So. 3d at 1053. Subpart A of La. C.C.P. art. 1915 designates certain categories of partial judgments as final judgments subject to immediate appeal without the necessity of any designation of finality by the trial court, while Subpart B of La. C.C.P. art. 1915 provides that when a court renders a partial judgment, partial summary judgment, or sustains an exception in part, it may designate the judgment as final when there is no just reason for delay.

The May 18, 2017 judgment at issue herein does not fall within any of the categories identified in Subpart A of La. C.C.P. art. 1915. Thus, because the judgment is not a final judgment for purposes of an immediate appeal under the provisions of La. C.C.P. art. 1915(A), this Court's jurisdiction depends upon whether the judgment was properly designated as a final judgment pursuant to La. C.C.P. art. 1915(B)(1). See La. C.C.P. arts. 1841, 1911(B), and 2083. The trial court did not designate the judgment as final pursuant to La. C.C.P. art.

1915(B)(1); therefore, our jurisdiction does not extend to an appeal of this judgment.

Nevertheless, La. Const. art. V, § 10(A) provides that a court of appeal has “supervisory jurisdiction over cases which arise within its circuit.” The decision to convert an appeal to an application for supervisory writs is within the broad discretion of the appellate courts. **Stelluto v. Stelluto**, 2005-0074 (La. 6/29/05), 914 So. 2d 34, 39. Because the defendants filed this appeal within the delays for filing a supervisory writ application, we exercise our discretion and convert the defendants’ appeal into an application for supervisory writs. See Uniform Rules—Courts of Appeal, Rule 4-3; see also La. C.C.P. art. 1914(D).

As we have converted the appeal to an application for supervisory writs, we must next determine if the factors set forth in **Herlitz Const. Co., Inc. v. Hotel Inv’rs of New Iberia, Inc.**, 396 So. 2d 878 (La. 1981) (*per curiam*), are satisfied. In **Herlitz**, the Louisiana Supreme Court directed that appellate courts should consider an application for supervisory writs under their supervisory jurisdiction, even though relief may be ultimately available to the applicant on appeal, in such particular circumstances where the trial court ruling was arguably incorrect, a reversal would terminate the litigation (in whole or in part), and there was no dispute of fact to be resolved. See Id.; see also **Andel v. City of Mandeville**, 2016-1473 (La. App. 1st Cir. 9/15/17), 2017 WL 4082895, at *2 (unpublished); **Alex v. Rayne Concrete Serv.**, 2005-1457 (La. 1/26/07), 951 So.2d 138, 144 n.5 (though the **Herlitz** factors were formulated in the context of a denial of an exception of no cause of action, this test should apply to the court’s review of any interlocutory ruling). Here, considering the writ application under our supervisory jurisdiction is appropriate as we find that the trial court’s ruling was arguably incorrect.

A claim for declaratory relief is not a summary proceeding; it requires a trial on the merits where each party has an opportunity to present evidence in a form other than verified pleadings and affidavits. La. C.C.P. arts. 1879 and 2592; **MAPP Const., LLC v. Amerisure Mut. Ins. Co.**, 2013-1074 (La. App. 1st Cir. 3/24/14), 143 So. 3d 520, 530-31. Therefore, a merits trial as to whether MedFin is entitled to the relief they seek is required.

On appeal of a declaratory judgment, the scope of appellate review is confined to a determination of whether the trial court abused its discretion by granting or refusing to render a declaratory judgment. **In re Peter**, 98-0701 (La. App. 4th Cir. 12/23/98), 735 So. 2d 665, 667; **Liberto v. Rapides Parish Police Jury**, 95-456 (La. App. 3rd Cir. 11/02/95), 667 So. 2d 552, 556. By granting declaratory judgment in favor of MedFin without a hearing, we find that the trial court abused its discretion. Therefore, we grant the defendants' writ application. Accordingly, we vacate the May 18, 2017 judgment that granted a petition for declaratory judgment in favor of MedFin, declaring that the company's purchases of the plaintiff's accounts from her health care providers were not the sales of litigious rights; denied the defendants' exceptions to the petition for declaratory judgment; and reversed the prior September 15, 2016 judgment granting the defendants' motion to redeem and extinguish a litigious right, to the extent that prior judgment conflicted with the declaratory judgment. We remand this matter to the trial court for further proceedings consistent with this opinion. All costs associated with this matter are assessed to MedFin Manager, L.L.C.

APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT; WRIT GRANTED; JUDGMENT VACATED; REMANDED.