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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2024 CA 1048

GLYNNE M. JONES III, CHARLES EDWARD FOGG,
MILTON T. FOGG, JR., AND THE SUCCESSION OF
HAZEL NELL MORAN FOGG

VERSUS

GARY L. FOGG

Judgment Rendered: MAY 30 2025

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On Appeal from the
22nd Judicial District Court
Parish of St. Tammany, State of Louisiana
Trial Court No. 2021-11676

The Honorable Vincent J. Lobello, Judge Presiding

* * * * *

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Slidell, Louisiana

Attorneys for Plaintiffs-Appellees,
Glynne M. Jones III, et al.

C. Glenn Westmoreland
Albany, Louisiana

Gary L. Fogg
Angie, Louisiana

Defendant-Appellant,
In Proper Person

* * * * *

BEFORE: WOLFE, MILLER, AND GREENE, JJ.

B GREENE, J. concurs.

WOLFE, J.

Pro se appellant, Gary L. Fogg, appeals the trial court's judgment denying and dismissing his Motion to Annul Power of Attorney. After review, we dismiss Mr. Fogg's devolutive appeal because it was taken from a non-appealable interlocutory judgment.

BACKGROUND

This litigation began on April 14, 2021, with the filing of a petition for partition of co-owned immovable property located in St. Tammany Parish that was inherited by siblings. The dispute over the division of the property was settled by stipulation and consent judgment on August 12, 2021, including an order that the plaintiff siblings¹ pay the sum of \$95,000.00 to Mr. Fogg, the sole defendant sibling. On January 5, 2022, counsel for the plaintiff siblings moved to deposit the amount due to Mr. Fogg into the registry of the court, since Mr. Fogg was an inmate incarcerated at the Rayburn Correctional Center in Angie, Louisiana. The order granting the motion was signed by the trial court on January 11, 2022.

On November 3, 2022, Mr. Fogg executed a power of attorney in favor of his agent, Jason Sonnier, so that the funds could be withdrawn from the registry of the court. The trial court signed an order allowing the withdrawal of the funds on November 17, 2022. On December 6, 2022, the trial court signed a judgment dismissing all claims by Mr. Fogg against the plaintiffs.² Approximately five months later, on May 30, 2023, Mr. Fogg filed a motion to annul the power of

¹ The plaintiff siblings are Glynne M. Jones III, Charles Edward Fogg, and Milton T. Fogg, Jr.

² Mr. Fogg filed a one-page uncaptioned document requesting that the trial court release the \$95,000.00 from the registry of the court to Mr. Sonnier. In that document, Mr. Fogg also stated that Mr. Sonnier held "all legal authority to receive the funds on my behalf ... by the Not[a]rized Power of [A]ttorney," which Mr. Fogg acknowledged signing. Mr. Fogg also requested that "any and all open court cases in [this case] be ruled as moot and dismissed[.]"

attorney in favor of Mr. Sonnier, arguing that it was invalid due to the alleged absence of the notary at the time of execution.

After a delay due to Mr. Fogg applying for supervisory review with this court concerning costs, the hearing on the motion to annul the power of attorney was set for May 14, 2024.³ During the May 14, 2024 hearing, the trial court denied Mr. Fogg's motion in open court. The trial court signed a judgment in accord with that ruling on June 3, 2024, and dismissed "[a]ny and all pending motions and/or remaining claims associated with the Motion to Annul Power of Attorney ... with prejudice." The trial court clerk mailed notice of the judgment on June 6, 2024, and on June 17, 2024, Mr. Fogg filed a motion for devolutive appeal. The trial court granted the appeal on June 21, 2024. After the appeal was lodged, this court, *ex proprio motu*, issued a rule ordering the parties to show cause why the appeal should not be dismissed as the June 3, 2024 judgment appeared to be non-appealable. The rule to show cause was referred to this panel to which the appeal is assigned.

DISCUSSION

As an appellate court, we have the duty to examine our subject matter jurisdiction and to determine *sua sponte* whether such subject matter jurisdiction exists, even when the issue is not raised by the litigants. **Wells v. Mentorship Steam Academy as Part of Helix Community Schools**, 2023-1112 (La. App. 1st Cir. 4/19/24), 2024 WL 1697437, *1 (unpublished). This court's appellate jurisdiction only extends to final judgments. **Id.** A final judgment is appealable in all cases in which appeals are given by law, while an interlocutory judgment is appealable only when expressly provided by law. La. Code Civ. P. art. 2083. An interlocutory judgment does not determine the merits, but only preliminary matters

³ In an unpublished writ action rendered on December 4, 2023, this court noted that "[t]he Revocation of Power of Attorney does not require an action by the district court." **Jones v. Fogg**, 2023-1104 (La. App. 1st Cir. 12/4/23), 2023 WL 8372216, *1 (unpublished).

in the course of the action, while a final judgment determines the merits in whole or in part. La. Code Civ. P. art. 1841.

A judgment that denies a motion is inherently not an appealable final judgment, but is an interlocutory judgment that is subject only to discretionary review by appellate courts through their supervisory jurisdiction. **Barnett & Associates, LLC v. Whiteside**, 2020-362 (La. App. 5th Cir. 12/11/20), 308 So.3d 1218, 1220. A judgment that denies a motion to annul a power of attorney does not determine the merits and is therefore, interlocutory. See Wells, 2024 WL 1697437 at *1 (a judgment denying a *motion* for default judgment is interlocutory). See also Prepotente v. Williams, 2024-0906 (La. App. 1st Cir. 2/21/25), ___ So.3d ___, ___, 2025 WL 572985, *2 (a judgment denying a *motion* to enforce a settlement agreement and seeking penalties and attorney fees is an interlocutory judgment); **Morrison v. Dillard Dept. Stores, Inc.**, 99-2060 (La. App. 1st Cir. 9/22/00), 769 So.2d 742, 744, writ denied, 2000-3379 (La. 2/2/01), 784 So.2d 646 (a judgment denying a *motion* to set aside an order of dismissal is an interlocutory ruling); **In re Smith o/b/o Smith**, 2018-62 (La. App. 5th Cir. 10/17/18), 257 So.3d 1281, 1282 (a judgment denying a *motion* to reset a hearing is interlocutory).

We first note that Mr. Fogg's desire to annul his power of attorney does not require any ruling by any court. Additionally, we realize that the merits of the partition litigation have already been decided by the consent judgment signed on August 12, 2021, and the judgment of dismissal signed on December 6, 2022, which are both now final judgments. Therefore, the judgment denying the motion to annul the power of attorney does not and could not determine the merits of the litigation. Moreover, the judgment denying the motion to annul the power of attorney does not dismiss any party or the entire case. It merely denies and dismisses the motion and any and all pending motions and/or remaining claims associated with the motion to annul the power of attorney. The judgment is interlocutory.

The proper procedural vehicle to contest an interlocutory judgment is an application for supervisory writs. La. Code Civ. P. art. 2201; **Prepotente**, 2025 WL 572985 at *2. When a party improperly appeals a non-appealable interlocutory judgment, this court has discretion to convert that appeal to an application for supervisory writs; however, this court may only do so if the appeal would have been timely had it been filed as a supervisory writ application. **Prepotente**, 2025 WL 572985 at *2. A supervisory writ application must be filed within thirty days of the notice of judgment. See La. URCA, Rules 4-2 and 4-3. However, when the interlocutory judgment is rendered in open court, as it was in this case, its rendition constitutes notice to all parties, unless certain exceptions apply. La. Code Civ. P. art. 1914(A); **Prepotente**, 2025 WL 572985 at *2. Those exceptions are, if the trial court orders that an interlocutory judgment be reduced to writing, or if the trial court takes the interlocutory matter under advisement, or if a party requests that the interlocutory judgment be reduced to writing within ten days of its rendition in open court. La. Code Civ. P. art. 1914(B). None of those exceptions apply in this case.

Herein, the trial court rendered its interlocutory judgment denying the motion to annul the power of attorney in open court on May 14, 2024. That ruling constituted notice to all parties, even though the judgment was later reduced to writing on June 3, 2024. Mr. Fogg's motion for appeal was not filed until June 17, 2024, which was beyond the thirty-day deadline within which a writ application could have been filed. As such, we cannot convert this appeal to a supervisory writ application. See **Prepotente**, 2025 WL 572985 at *3. Furthermore, even if we considered the motion for appeal to have been timely filed within the supervisory writ timeframe, we conclude that the factors enumerated in **Herlitz Const. Co., Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) (*per curiam*), limit our discretionary authority to consider this matter as a supervisory writ application. We do not find that the trial court's ruling on the motion to annul the

power of attorney was arguably incorrect, there are no disputed facts to be resolved, and a reversal would not terminate the litigation that has already been terminated by the final judgments rendered in August 2021 and December 2022. As such, we cannot convert this appeal to a supervisory writ application. Accordingly, we dismiss this appeal.

CONCLUSION

For the outlined reasons, we dismiss the appeal of the June 3, 2024 judgment, filed by Gary L. Fogg. All costs of this appeal are assessed to the defendant/appellant, Gary L. Fogg.

APPEAL DISMISSED.