

DAVID R. M. WILLIAMS

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NO. 2007-CA-1447

VERSUS

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COURT OF APPEAL

**ARTHUR MORRELL, IN HIS
OFFICIAL CAPACITY AS THE
CLERK OF CRIMINAL
COURT FOR THE PARISH OF
ORLEANS, JAY DARDENNE,
IN HIS OFFICIAL CAPACITY
AS THE SECRETARY OF
STATE FOR THE STATE OF
LOUISIANA, SANDRA
WILSON, ETC.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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TOBIAS, J., CONCURS IN THE RESULT AND ASSIGNS REASONS.

I respectfully concur in the result.

I find that the plaintiff/appellant's petition states a cause of action. Ergo, the trial court was in error granting the peremptory exception of no cause of action. Given the time constraints for election contests set forth in La. R.S. 18:1409,¹ the plaintiff/appellant was obligated to proffer the evidence that he would have presented at the trial of the merits of his case. When the trial court refused to allow the plaintiff/appellant to proffer the evidence, something that the trial court was required by La. C.C.P. art. 1636 to do, the trial court again erred as a matter of law. At that point, it was incumbent upon the plaintiff/appellant to seek a writ of mandamus, La.C.C.P. arts. 3861, *et seq.*, from this court to order the trial court to permit him to proffer the evidence. The plaintiff/appellant appealed without seeking a writ of mandamus. The appeal divested the trial court of jurisdiction over the case. La. C.C.P. art. 2088. At this stage of the proceedings and specific facts of this case, the law affords the plaintiff/appellant no procedural relief, even considering the provisions of La. C.C.P. art. 2164.

¹ Trial shall begin at 10:00 a.m. no later than the fourth day following the filing of the petition. La. R.S. 18:1409A(1).