

**SCOTT G. WOLFE, SR.,
WAGNER WORLD, L.L.C.,
WOLFE WORLD, L.L.C., AND
PIG FEET, INC.**

VERSUS

**DALE N. ATKINS, IN HER
CAPACITY AS CLERK OF
THE ORLEANS PARISH CIVIL
DISTRICT COURT**

*** NO. 2011-CA-1481
*
* COURT OF APPEAL
*
* FOURTH CIRCUIT
*
* STATE OF LOUISIANA**

**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2011-08107, DIVISION "N-8"
Honorable Ethel Simms Julien, Judge**

Judge Joy Cossich Lobrano

(Court composed of Chief Judge Charles R. Jones, Judge Daniel L. Dysart, Judge Joy Cossich Lobrano)

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REVERSED AND REMANDED WITH ORDER

Appellants, Scott G. Wolfe, Sr., Wagner World, L.L.C., Wolfe World, L.L.C. and Pig Feet, Inc., appeal the trial court's denial of an alternative writ of mandamus.

The record reveals that the appellants filed a Petition for Writ of Mandamus in the trial court on July 29, 2011. In this petition, appellants asked the trial court to issue an alternative writ of mandamus, pursuant to La. C.C.P. Article 3865, compelling the Honorable Dale N. Atkins, Clerk of the Civil District Court for Orleans Parish, to undo the transfer and consolidation of two ongoing civil suits, or, alternatively, to show cause why such writ should not be made peremptory. The trial court denied the request for the alternative writ of mandamus on August 15, 2011, stating only that the request was improper. The appellants filed this timely appeal from the August 15, 2011 ruling.

On appeal, the appellants argue that the trial court erred in its *ex parte* denial of their Petition for Writ of Mandamus, and in its failure to issue an alternative writ

and to set the matter for a show cause hearing. Specifically, appellants argue that the trial court's actions violated La. C.C.P. Article 3865. We agree.

La. C.C.P. Article 3865 states, “[u]pon the filing of a petition for a writ of mandamus, the court shall order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary.” La. C.C.P. Article 3866 then provides, “[a]fter the hearing, the court may render judgment making the writ peremptory.” Under La. C.C.P. Article 3865, the trial court had a mandatory duty to issue the alternative writ of mandamus upon the filing of the Petition for Writ of Mandamus. *See Naquin v. Iberia Parish School Board*, 157 So.2d 287 (La.App. 3 Cir. 1963). Its failure to do so was error.

For the reasons stated above, the trial court's denial of appellants' request for the issuance of an alternative writ of mandamus is reversed. This matter is remanded to the trial court, with an order to issue the alternative writ of mandamus prayed for by the appellants in their Petition for Writ of Mandamus, and to set a show cause hearing to determine whether the writ shall be made peremptory.

REVERSED AND REMANDED WITH ORDER