

**ANTHONY BOSWELL**

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**NO. 2015-CA-0563**

**VERSUS**

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**COURT OF APPEAL**

**EUGENE LAWRENCE, JR.**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**TOBIAS, J., CONCURS.**

I respectfully concur in the decision of the majority to affirm the judgment of the trial court that denied the sought preliminary writ of injunction.

This matter proceeded in the trial court in a somewhat atypical manner. *See* La. C.C.P. arts. 3601, *et seq.* Notwithstanding the unusual procedural manner in which the “evidence” was received,<sup>1</sup> the record on appeal fails to clearly demonstrate that the plaintiff will suffer irreparable harm should the preliminary writ of injunction not issue. Where a claim is compensable in money, irreparable harm requires a clear showing that the defendant-in-rule will be unable to respond to a money judgment. That evidence is lacking here.

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<sup>1</sup> Ordinarily, if live evidence is not to be heard at the hearing on the preliminary writ, the trial court issues a written order for a hearing in accordance with La. C.C.P. art. 3609. At the oral argument of the motion, formal offering of all evidence into the record is had. In this case, I find the record fails to indicate that the trial court formally ordered that the hearing be had in accordance with Article 3609 or that the evidence (the affidavits) was properly offered or received. (I further note that the transcript incorrectly reflects which attorney is representing which party.)