

NOT DESIGNATED FOR PUBLICATION

ELAINE ARMSTEAD, ET AL * **NO. 2017-CA-0696**
VERSUS *
NETTIE BROOKS ROCHE, ET * **COURT OF APPEAL**
AL * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

* * * * *

APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 62-588, DIVISION "B"
Honorable Michael D. Clement,

* * * * *

Judge Dennis R. Bagneris, Sr., Pro Tempore

* * * * *

(Court composed of Judge Terri F. Love, Judge Joy Cossich Lobrano, Judge
Dennis R. Bagneris, Sr., Pro Tempore)

LOBRANO, J., CONCURS IN THE RESULT

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APPEAL DISMISSED; MATTER REMANDED

JANUARY 31, 2018

This is an appeal taken by defendants, Nettie Brooks Roche and Tyrone White, from a judgment of the trial court denying an exception of prescription. For reasons that follow, we dismiss the appeal and remand the matter to the trial court.

All parties to this action are descendants of Marcel Brooks, Sr., who is deceased. Mr. Brooks' succession was opened in September of 1978.¹ However, it does not appear that a succession representative was appointed, or that any of the heirs have been sent into possession of succession property.²

On July 17, 2008, title to immovable property belonging to the succession was transferred to defendants in a tax sale. On November 6, 2015, plaintiffs filed suit to annul that 2008 tax sale. In subsequent pleadings, plaintiffs also sought a declaratory judgment that the tax sale was, in reality, a redemption of the property owned by Marcel Brooks, Sr. in favor of all of the heirs. Defendants filed several exceptions to the initial petition including no right of action, no cause of action, failure to join indispensable parties and prescription. The trial court denied all exceptions in two separate judgments. The second judgment, on April 21, 2017 denied the exception of prescription. Defendants filed an appeal to that second judgment.

This Court notices, *sua sponte*, our lack of jurisdiction to review the defendants' appeal in this matter. An appeal can be dismissed at any time for lack

¹ The Petition for Possession, filed in September of 1978 by Espy Brook and Mildred Simmons, does not give Marcel Brooks, Sr.'s date of death.

² There is a Judgment of Possession listing 27 heirs in this record. However, that judgment is not signed.

of jurisdiction.³ Even when the parties do not raise the issue, appellate courts have the duty to examine *sua sponte* whether they have subject matter jurisdiction.⁴

On appeal is a judgment in favor of plaintiffs, denying an exception of prescription filed by defendants. “A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment.”⁵ “An interlocutory judgment is appealable only when expressly provided by law.”⁶ As a general rule, the denial of an exception of prescription is an interlocutory judgment that is not appealable,⁷ absent a showing of irreparable harm.⁸

While appellate jurisdiction is exercised as a right of a party to have a judgment reviewed, supervisory jurisdiction is discretionary.⁹ The preliminary criterion for exercising our discretion to convert a motion for appeal to an application for supervisory review is whether the appeal motion has been filed within the thirty-day time period allowed for the filing of an application for supervisory writs pursuant to Rule 4-3 of the Uniform Rules-Courts of Appeal.¹⁰ However, in the matter before us the motion for devolutive appeal, filed on June 26, 2017, was filed well beyond thirty days of the rendition of the April 21, 2017 judgment.¹¹

³ La. C.C.P. art. 2162.

⁴ *Texas Gas Expl. Corp. v. Lafourche Realty Co.*, 11-0520, p. 8 (La. App. 1 Cir. 11/9/11), 79 So.3d 1054, 1059, writ denied, 2012-0360 (La. 4/9/12), 85 So.3d 698.

⁵ La. C.C.P. art. 1841.

⁶ La. C.C.P. art. 2083.

⁷ *Davis v. Reg'l Transit Auth.*, 03-1847, p. 1 (La. App. 4 Cir. 4/14/04), 872 So. 2d 1218, 1219.

⁸ *In re Succession of Linder*, 05-640, p. 4 (La. App. 5 Cir. 2/14/06), 924 So.2d 293, 294.

⁹ See La. Const. Art 5 § 10 and La. C.C.P. Art. 2082.

¹⁰ *Ramirez v. Evonir, LLC*, 14-1095, p. 5 (La. App. 4 Cir. 4/9/15), 165 So.3d 260, 263.

¹¹ The record shows that notice of the judgment was mailed on the same day.

Appellees assert that this Court has appellate jurisdiction based on language in the trial court's Reasons for Judgment indicating it granted a declaratory judgment on the issue of the legal nature of the tax sale. We are not persuaded by that argument. Written reasons for judgment do not carry the finality of a judgment.¹² "The trial court's written reasons, while defining and elucidating the principles upon which he is deciding a case, form no part of the official judgment he signs and from which appeals are taken."¹³

We find the judgment of the trial court denying the exception of prescription that is the subject of this appeal is an interlocutory judgment not subject to review under our appellate jurisdiction absent a showing of irreparable harm. We find no irreparable harm. Accordingly, we dismiss the appeal for lack of jurisdiction.

APPEAL DISMISSED; MATTER REMANDED

¹² *Thurman v. Thurman*, 521 So.2d 579, 581 (La. App. 1 Cir. 1988).

¹³ *Hamilton v. Hamilton*, 97-2909 (La. App. 4 Cir. 6/24/98), 716 So.2d 412, 415, (quoting *Sullivan v. Gulf States Utilities Co.*, 382 So.2d 184, 186 (La. App. 1 Cir.1980), writ denied 384 So.2d 447 (La.1980)).