Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **8th day of September, 2023,** are as follows:

BY McCallum, J.:

2022-CC-01713 WILLIAM MELLOR, ET AL. VS. THE PARISH OF JEFFERSON, ET AL. (Parish of Jefferson)

AFFIRMED IN PART; VACATED IN PART; REMANDED. SEE OPINION.

Weimer, C.J., dissents and assigns reasons.
Hughes, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2022-CC-01713

WILLIAM MELLOR, ET AL.

VS.

THE PARISH OF JEFFERSON, ET AL.

On Supervisory Writ to the 24th Judicial District Court, Parish of Jefferson

McCALLUM, J.

Jefferson Parish School Board and Jefferson Parish Sheriff (collectively, "defendants") challenge the constitutionality of a trial court judgment ordering the defendants to remit into the trial court's registry $2,780,232.02. The disputed funds were collected through the enforcement of Jefferson Parish ordinance, Section 36-320, *et seq*., titled "School Bus Safety Enforcement Program for Detecting Violations of Overtaking and Passing School Buses" ("SBSEP"). This Court previously affirmed the trial court's initial decision that found the SBSEP unconstitutional because it violated Article VI, Section 5 (G) and Article VII, Section 10 (A) of the Louisiana Constitution. *See Mellor v. Par. of Jefferson*, 2021-0858 (La. 03/25/22), 338 So. 3d 1138 (Weimer, C.J., dissenting with reasons; Crichton, J., dissenting for the reasons assigned by Weimer, C.J.) ("*Mellor I*").

The class action petitioners, William Mellor, et al., then filed a motion for summary judgment seeking "the immediate return of their property in the possession of these two government entities… ." The trial court granted their summary judgment and ordered the defendants to remit the aforementioned funds into the registry of the court. Defendants sought an appeal and challenged the trial court's authority to order them to remit the funds into the court's registry. They alleged the order violates Article XII, Section 10 of the Louisiana Constitution and Louisiana

Revised Statute 13:5109 B (2).[1] The court of appeal found that defendants improperly sought an appeal of an interlocutory judgment. The defendants' later attempts to seek supervisory review of the trial court's judgment and order were denied as untimely. This Court's appellate jurisdiction to review the merits of the trial court's order has been placed before the Court.

While this Court lacks appellate jurisdiction to review the merits of the trial court's order, this Court does have the authority to exercise supervisory jurisdiction under Article V, Section 5 (A) of the Louisiana Constitution. Such authority is granted to this Court by the language providing that "[t]he supreme court has general supervisory jurisdiction over all other courts." We recently expounded upon our

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[1] Titled "Suits Against the State," Article XII, Section 10 of the Louisiana Constitution provides:

> (A) No Immunity in Contract and Tort. Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.
>
> (B) Waiver in Other Suits. The legislature may authorize other suits against the state, a state agency, or a political subdivision. A measure authorizing suit shall waive immunity from suit and liability.
>
> (C) Limitations; Procedure; Judgments. Notwithstanding Paragraph (A) or (B) or any other provision of this constitution, the legislature by law may limit or provide for the extent of liability of the state, a state agency, or a political subdivision in all cases, including the circumstances giving rise to liability and the kinds and amounts of recoverable damages. It shall provide a procedure for suits against the state, a state agency, or a political subdivision and provide for the effect of a judgment, but no public property or public funds shall be subject to seizure. The legislature may provide that such limitations, procedures, and effects of judgments shall be applicable to existing as well as future claims. **No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered.**
>
> **(Emphasis added).**

Titled "Authority to compromise; judgment; notice of judgment; payments," Louisiana Revised Statute 13:5109 B (2) provides:

> Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision.

plenary supervisory jurisdiction in *Westlawn Cemeteries, L.L.C. v. Louisiana Cemetery Bd.*, 2021-1414, pp. 2-3 (La. 03/25/22), 339 So. 3d 548, 553-54:

> As we noted in *Unwired Telecom Corp. v. Par. of Calcasieu*, 2003-0732, p. 8 (La. 1/19/05), 903 So. 2d 392, 400, "the constitutional grant of supervisory authority to this court is plenary, unfettered by jurisdictional requirements, and exercisable at the complete discretion of the court." Thus, although we have "respect for the independence of other courts" and certainly want "to avoid usurping ... appellate jurisdiction not conferred upon us by the constitution," we have historically exercised "supervisory jurisdiction when [we] deem[ed] it necessary." *Id.*, 2003-0732, p. 9, 903 So. 2d at 400. We have exercised supervisory jurisdiction, for example, in the interest of judicial economy (*State v. Peacock*, 461 So. 2d 1040, 1041 (La. 1984) ("since this case has already been briefed and argued in this court, judicial economy will best be served by exercising our supervisory jurisdiction"), and to avoid further delay (*Mayeux v. Charlet*, 2016-1463, p. 7 (La. 10/28/16), 203 So. 3d 1030, 1035 ("Because resolution of this issue would greatly aid the parties and the courts as well as avoid further delay[,] ... we find it appropriate pursuant to our supervisory authority to now resolve this question of law, especially in view of the District Court declaring La. Child. Code art. 609 unconstitutional.").

The same reasoning applies here. Exercising our plenary authority serves the interest of judicial economy by disposing of a matter already briefed and argued before this Court. It further avoids any delay involved in overturning the enforcement of an order that infringes upon the separate and exclusive powers of another branch of government. This Court is only exercising its plenary authority based on the possibility of a constitutional infringement. We do not intend to set any precedent as to the future exercise of our supervisory jurisdiction when an issue has not been properly preserved for review.

Even if the petitioners are entitled to a judgment in their favor, the trial court overstepped its authority in ordering defendants to remit funds into the court's registry, as this unconstitutionally intrudes upon their delegated responsibility to appropriate funds, pursuant to Article XII, Section 10 of the Louisiana Constitution and Louisiana Revised Statute 13:5109 B (2).[2] Our recent decision in *Crooks v.*

[2] Even a casual observer will recognize that this case does not occur in a vacuum. Rather, it presents itself in the context of a rising number of justiciable controversies, and a growing conversation, concerning the doctrine of the separation of powers; a constitutional issue that is

State through Dep't of Nat. Res, 2022-0625 (La. 01/27/23), 359 So. 3d 448, *reh'g denied*, 2022-0625 (La. 03/16/23), 362 So. 3d 424, makes clear that orders, like that issued herein, are a constitutional overreach. For these reasons, and as set forth more fully below, we affirm those lower court judgments properly before us. However, in exercising our plenary supervisory jurisdiction, we further find the trial court's order to remit funds into its registry violates the aforementioned constitutional provisions. We vacate that order.

FACTS AND PROCEDURAL HISTORY

This Court found the SBSEP unconstitutional in *Mellor I*. On remand, the petitioners filed a motion for summary judgment, seeking return of the collected funds. The trial court granted the summary judgment and ordered the defendants to pay $2,780,232.02 into the court's registry, representing all funds collected through the enforcement of the SBSEP. Notably, the petitioners had not sought an order requiring the defendants to remit any specific funds into the court's registry. The transcript of the hearing shows that the parties anticipated additional, future hearings and litigation. The trial court signed the judgment and order on June 30, 2022.

On July 27, 2022, the defendants filed a motion for suspensive appeal. Petitioners opposed the motion, arguing that the judgment granting their motion for summary judgment, and ordering the defendants to remit the funds into the court's registry, was not appealable as it was not a final judgment. To the contrary, petitioners asserted the judgment was interlocutory and that, under Louisiana law, it did not fall under any exception for the appeal of a non-final judgment. The trial court did not grant the defendants' motion for appeal, and instead, it entered a show-cause order and set the matter for a hearing.

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worthy of this Court's attention. We recognize that the doctrine of separation of powers is part of the constitutional foundation upon which the superstructure of our government and Civil Law system is erected.

Allegedly out of an abundance of caution, on July 29, 2022 the defendants filed a timely Notice of Intention to Apply for Supervisory Writ, seeking review of the June 30, 2022 judgment. On August 3, 2022, the trial court denied the defendants' motion for appeal as moot, wrote "converted to writ filing," and signed an order that the defendants' writ "be filed … within the delays allowed by law." However, the defendants failed to timely file their writ with the court of appeal, instead filing a Motion for Extension of Return Date for Filing Application with the trial court on August 12, 2022. On August 15, 2022, the trial court denied the defendants request for an extension as "not timely."[3]

Defendants then filed two notices of intent to apply for supervisory writs, seeking to have appellate review of the August 3, 2022 judgment denying their Motion for Suspensive Appeal of the June 30, 2022 judgment, and of the August 15, 2022 judgment denying their motion for extension of time to file a writ as to the June 30, 2022 judgment. Defendants timely filed their writ applications with the Fifth Circuit Court of Appeal.

The Fifth Circuit denied consideration, in part and denied both writs in part. The court noted the defendants not only sought review of the two trial court judgments denying their suspensive appeal and their request for an extension of time to file a writ, but also sought review of the June 30, 2022 judgment on its merits. Finding that judgment was not properly preserved for review, the court of appeal found that it lacked supervisory jurisdiction to review it.

Regarding the August 3, 2022, and the August 15, 2022 judgments, the court of appeal found no error in the trial court's rulings, and denied the defendants' writ applications. More particularly, it found the June 30, 2022 judgment to be interlocutory, insofar as it rendered a dispositive ruling as to only a single issue, the

[3] Under Rule 4-3, Uniform Rules-Courts of Appeal, an application for a supervisory writ to review an interlocutory judgment must be filed within 30 days of the ruling. Thus, here, defendants had until July 29, 2023 to file their writ application or to seek an extension of time to do so.

amount of fees collected as a result of the SBSEP program. The court further found that the record reflected additional rulings and adjudications would be necessary to reach a final disposition and judgment. The court of appeal also noted the trial court did not otherwise designate its June 30, 2022 judgment as a final judgment for appeal purposes under La. C.C.P. art. 1915 B.[4] Thus, the court of appeal reasoned that because the judgment could not be appealed, defendants' sole option had been to seek supervisory review via a writ application. Lastly, the court of appeal found that the trial court properly denied the defendants' request for an extension of time to file their writ application, relying on Uniform Rule – Court of Appeal, Rule 4-3.[5]

Defendants timely applied for supervisory review with this Court and our grant of certiorari followed. *See Mellor v. Par. of Jefferson*, 2022-1713, p. 1 (La. 02/07/23); 354 So. 3d 662.

DISCUSSION

Defendants maintain that the June 30, 2022 judgment was not interlocutory, and that under La. C.C.P. art. 1841, it was a final, appealable judgment.[6] Defendants

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[4] Titled "Partial final judgment; partial judgment; partial exception; partial summary judgment," La. C.C.P. art. 1915 B provides:

> (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.
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> (2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

[5] The court of appeal cited to the pertinent portion of Uniform Rule – Court of Appeal, Rule 4-3 that states, "An application not filed in the appellate court within the time so fixed or extended shall not be considered, in the absence of a showing that the delay was not due to the applicant's fault."

[6] Titled "Judgments, interlocutory and final," La. C.C.P. art. 1841 provides:

> A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. It may be interlocutory or final.

assign a second error by the trial court, namely, that its order to remit the funds into the court's registry violates La. Const. Art. XII, § 10 and La. R.S. 13:5109 B (2). Regarding this second assignment of error, defendants rely heavily on this Court's decision in *Crooks, supra*. We note our decision in *Crooks* had not been issued at the time the lower courts reviewed the matters in question.

DISPOSITION OF THE JUNE 30, 2022 JUDGMENT

As a first matter, we affirm the lower court judgments finding that the June 30, 2022 judgment was interlocutory in nature, and denying defendants an extension of time to file their initial writ application. We agree with petitioners and the lower courts that the June 30, 2022 judgment did not address all issues, and was therefore not a final judgment under La. C.C.P. art. 1915 A (3), nor under the various and controlling class action articles.[7] La. C.C.P. art. 1915 A (3) provides:

> A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
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> …
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> (3) Grants a motion for summary judgment, as provided by Article 966 through 969, but not including a summary judgment granted pursuant to Article 966 (E).

La. C.C.P. art. 966 E provides:

> A summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of summary judgment does not dispose of the entire case as to that party or parties.

> A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment.
>
> A judgment that determines the merits in whole or in part is a final judgment.

[7] La. C.C.P. art. 592 C's mandate that a class action judgment "… shall include and describe those whom the court finds to be members of the class…" and "… shall include and specify or describe those to whom the notice provided in Paragraph B of this Article was directed, and who have not requested exclusion, and whom the court finds to be members of the class" further highlights that the judgment in question was not a final judgment as it markedly was absent of such mandated findings.

The legislature has further distinguished final from interlocutory judgments. La. C.C.P. art. 2083 provides:

> A. A final judgment is appealable in all causes in which appeals are given by law, whether rendered after hearing, by default, or by reformation under Article 1814.
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> …
>
> C. An interlocutory judgment is appealable only when expressly provided by law.

Although the June 30, 2022 judgment is interlocutory in nature and is not properly before the Court, it raises significant constitutional questions. As we noted in *Unwired Telecom Corp. v. Par. of Calcasieu*, 2003-0732, p. 8 (La. 01/19/05), 903 So. 2d 392, 400:

> In finding it appropriate to address the constitutional issues at hand, we note the primary objective of all procedural rules should be to secure to parties the full measure of their substantive rights. *Fraternal Order of Police v. City of New Orleans*, 02–1801 (La.11/8/02), 831 So.2d 897, 899. It bears remembering that rules of procedure exist for the sake of substantive law and to implement substantive rights, not as an end in and of itself. *JAMES FLEMING, JR., CIVIL PROCEDURE* 2 (1965). … In that light, the aim of pleadings is basically threefold: to show that the court is vested with subject matter jurisdiction in a particular case; to set forth the bounds to a controversy; and to allow the parties to explore the issues within the bounds of the controversy. *FLEMING*, *supra* at 56–57.

We reiterate that it is in the interest of judicial economy, and in the interest of protecting significant constitutional powers, that we exercise our plenary supervisory jurisdiction to consider the merits of the trial court's order to remit the funds in question into the court's registry.[8] We do so in order to prevent the miscarriage of justice that would result in allowing the trial court's judgment to stand, which would effectively deny the defendants a constitutionally endowed

[8] We additionally note that upon being asked at oral argument if they would waive the procedural issues, counsel for petitioners stated that "I would leave it to the Court;" however, they tacitly urged the court to address the merits of the issue, stating "I would think you would save us all a bunch of time and money and not get sent back down for a procedural hiccup only to be back here again in six or eight or ten months arguing this exact same issue. So I hope that doesn't happen."

power, and erode the separation of powers delineated by our constitution.[9] Our decision herein is limited to the unique facts and circumstances presented by this case.

We now turn to the merits of this case.

CONSTITUTIONALITY OF THE REMITTANCE ORDER

Defendants argue this Court's recent decision in *Crooks* warrants reversal of the trial court's June 30, 2022 order to remit into the court's registry the funds collected pursuant to enforcement of the SBSEP. They assert that, similar to the issue presented in *Crooks*, the SBSEP collected fines are "public funds" not subject to seizure as set forth in La. Const. art. XII, § 10 (C) and La. R.S. 13:5109 B (2). Defendants contend the trial court's order to remit the funds into the court's registry sidesteps constitutional and statutory provisions, and in essence, is an order forcing an appropriation by the government entities.

Petitioners counter that the trial court's order properly complies with La. Const. Art. I, § 4 (B) (1).[10] Petitioners contend they are owed just compensation because defendants took their property, and that payment should be made to them directly or paid into the court's registry for their benefit. Thus, petitioners argue that *Crooks* has no application to the instant matter. Petitioners rely on *Parish of St.*

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[9] *See Hoag v. State*, 2004-0857, p. 8 (La. 12/01/04), 889 So. 2d 1019, 1024:

> The act of appropriating funds is granted to the legislature by La. Const. art. III, § 16. … The Louisiana Constitution delineates the parameters of each branch of government. Admittedly, there is some inevitable overlap of the functions and each branch of government must strive to maintain the separation of powers by not encroaching upon the power of the others. Consequently, the inherent powers of the judiciary should be used sparingly and only to the extent necessary to insure judicial independence and integrity.

[10] Titled, "Right to Property," La. Const. Art. I, § 4 (B) (1) provides:

> Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Except as specifically authorized by Article VI, Section 21 of this Constitution property shall not be taken or damaged by the state or its political subdivisions: (a) for predominant use by any private person or entity; or (b) for transfer of ownership to any private person or entity.

Charles v. R.H. Creager, Inc., 2010-180 (La. App. 5 Cir. 12/14/10), 55 So. 3d 884; *writ denied*, 2011-0118 (La. 04/01/11), 60 So. 3d 1250.

As to petitioners' argument invoking La. Const. Art. I, § 4 (B) (1), defendants assert such classification of an action as one borne in tort, contract, or as a taking is a distinction without a difference when "public funds" are at issue. Defendants contend that regardless of the action, except where a specific statutory or constitutional exception can be found, La. Const. art. XII, § 10 (C) and La. R.S. 13:5109 B (2) expressly forbid the seizure of "public funds." Furthermore, defendants cite *Lafaye v. City of New Orleans*, 35 F. 4th 940 (5th Cir. 2022). In *Lafaye*, the United States Fifth Circuit addressed a certified question, brought by the defendant, New Orleans, as an interlocutory appeal under 28 U.S.C. § 1292 (b).[11] The underlying case involved "the plaintiffs [who] have been waiting for the City of New Orleans to return traffic fines that it illegally collected from them between 2008 and 2010. … The plaintiffs allege a taking based on the city's failure to honor a judgment of the Louisiana state courts[.]" *Id*., 35 F. 4th at 941. The court held that "to allege a cognizable takings claim, a plaintiff must challenge action that would have been legal if only it had been compensated," and that, "an exaction of money that is completely unlawful, whether compensated or not, is not a taking." *Id*., 35 F. 4th at 943. The Court ultimately decided that "New Orleans exacted money using an enforcement power that was later deemed *ultra vires*. Though the city was seeking

[11] Titled "Interlocutory decisions," 28 U.S.C. § 1292 (b) provides:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

to exercise its police power rather than Congress's taxing authority, the analogy is strong enough to bolster our conclusion that the implementation of ATES does not constitute a taking." *Id*.

An action by one branch of government that compels another branch of government to perform or act must be closely examined to ensure that such action is within the confines of that branch's constitutional powers. *See Crooks*, 2022-0625, p. 2, 359 So. 3d at 450 ("When litigants seek to invoke the power of the judiciary to compel another branch of government to perform or act, we must closely and carefully examine whether the action is within the confines of our constitutional authority."). In *Crooks*, we considered whether mandamus was appropriate to compel the State to pay a judgment by ordering the repayment of royalties improperly collected by it. There, the trial court had issued a judgment recognizing the class action petitioners to be the owners of certain royalties. When the State failed to pay the judgment, the petitioners sought the mandamus. The petitioners in *Crooks* asserted that the judgment did not require legislative appropriation because the funds sought were not "public funds" as the government agency was without legal authority to collect the royalties from riverbanks it did not own. *Id.*, p. 3, 359 So. 3d at 451. They also argued that the judgment signed by the trial court determined that the funds in question never belonged to the State. The trial court specifically ordered the State to deposit the petitioners' mineral royalties into the registry of the court. An equivalent order is now before this Court on review. It is unquestionable that the order is one compelling a government agency to act or perform. We disagree with petitioners that *Crooks* is distinguishable and inapplicable to the matter at hand.

As in *Crooks*, we find the funds in question are "public funds" and not subject to seizure. In *Crooks*, the funds were deposited into the State's general fund. Here, the funds in question were deposited into the accounts of the Jefferson Parish Sheriff.

It is irrefutable that in order to remit the funds in question into the court's registry in compliance with the trial court's order, the defendants would have to appropriate and pay the funds from their general accounts, unquestionably impacting the public fisc. In *Crooks*, we were resolute that "[p]ublic funds are not subject to seizure." *Id*., p. 5, 359 So. 3d at 452 (citing to La. Const. art. XII, § 10 (C)). We reaffirm that holding.

As we further noted in *Crooks*, only a specific constitutional or statutorily provided exception will overcome the mandates of La. Const. art. XII, § 10 (C) and La. R.S. 13:5109 B (2). *Id*. We have rarely found such exceptions to exist. One recent example where we did find such authority to be appropriate was *Jazz Casino Company, L.L.C. v. Bridges*, 2016-1663 (La. 05/03/17), 223 So. 3d 488. In *Jazz Casino*, we held that a court could order a government agency to pay a taxpayer's refund judgment because a specific statutory provision mandated the payment of the judgment. *Id*., pp. 7-8, 223 So. 3d at 493-94 ("[T]he legislature enacted procedures to authorize the return of overpaid taxes without requiring a legislative appropriation. … Where there has been a determination that an overpayment has been made, La. R.S. 47:1621(D)(1) directs that the refund of overpaid taxes 'shall be made out of any current collections of the particular tax which was overpaid.' … Tax laws enacted by the legislature to satisfy the requirements of La. Const. art. VII, § 3(A) make the refund of overpaid taxes under La. R.S. 47:1621 mandatory.").

Petitioners also put much emphasis on *Parish of St. Charles*, *supra*. First, we note that we are not bound by the rulings and opinions of the lower courts. Additionally, the matter in *Parish of St. Charles* is distinguishable. At issue was the expropriation of land for the use of levee and drainage purposes, and an attendant judgment awarding compensation and damages for the taking of the land and the diminishment of the value of surrounding land. The court in that case relied upon the powers of eminent domain, and similar to the federal court in *Lafaye*, took note

that "St. Charles Parish had the right under the above-cited law to expropriate land owned by Creager and the McDonalds for use in the drainage and levee improvement project." *Id*., p. 10, 55 So. 3d at 891. Just as *Lafaye* reasoned that a taking, and any consequent compensation, is based on the legality of the underlying action, the court in *Parish of St. Charles* also held that, "the same law that affords the right of the Parish to exercise its police power compels the Parish to pay just and fair compensation, and to afford constitutional due process rights to citizens affected." *Id*. The court found that the requirement to pay the judgment was attendant to the power legally afforded to the parish to first exercise eminent domain, engendering the requirement to compensate. Furthermore, although the *Parish of St. Charles* court did not find the parish to be a levee district, it cited to, and took instruction from, specific statutory provisions mandating the issuance of mandamus to pay a judgment of compensation in proceedings for expropriation of land by levee boards:

> While we agree with the trial court that the actions taken by the Parish do not make it a "de facto " levee district subject to the provisions of La. R.S. 38:513(B) and the mandamus power consistent with that law, we do believe the legislative intent of those statutes can be instructive in the matter before us.
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> When a levee district expropriates land, Louisiana law provides:
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> > If the amount finally awarded exceeds the amount so deposited, the court shall enter judgment against the levee district or levee and drainage district and in favor of the persons entitled thereto for the amount of the deficiency. The final judgment together with legal interest thereon shall be paid within sixty days after becoming final. Thereafter upon application by the owner or owners, the trial court **shall** issue a writ of mandamus to enforce payment.
>
> (Emphasis supplied.) By incorporating the mandamus power to compel payment of fair and just compensation into the proceedings for expropriation of land by levee boards, we believe the legislature intended that this be an exception to the general mandamus law. Furthermore, we note that the issuance of a mandamus by the trial court in that case is actually mandated by the legislature.

Id., p. 8, 55 So. 3d at 890-91.

Here, no specific constitutional or statutory provision permits the trial court to order the defendants to remit into its registry the $2,780,232.02. Consequently, we cannot find that the trial court's order conforms with our prior pronouncement that the inherent powers of the judiciary be used sparingly and only to the extent necessary to insure judicial independence and integrity. *See Hoag*, *supra*. This is particularly true when no authority exists to justify the judiciary's encroachment into the exclusive dominion of a governmental authority to appropriate funds to pay judgments under La. Const. art. XII, § 10 and La. R.S. 13:5109 B (2). Without such specific authority being given to us, we may not seize it. *See Town of Sterlington v. Greater Ouachita Water Company*, 52,482, p. 21 (La. App. 2 Cir. 04/10/19), 268 So. 3d 1257, 1270, *writ denied*, 2019-0913 (La. 09/24/19), 279 So. 3d 386, *and writ denied*, 2019-0717 (La. 09/24/19), 279 So. 3d 931. We are likewise without power to create this authority in its absence. We decline to blur the lines between the several branches of government, weakening the thoughtfully crafted, necessary trichotomous branching of authority. *See Id*., p. 22, 268 So. 3d at 1270.

CONCLUSION

The lower court judgments ruling the June 30, 2022 judgment to be interlocutory, and not final, are AFFIRMED. The trial court's order to remit funds amounting to $2,780,232.02 into the court's registry is VACATED. We remand to the trial court for further proceedings.

AFFIRMED, IN PART; VACATED, IN PART; REMANDED.

SUPREME COURT OF LOUISIANA

No. 2022-CC-01713

WILLIAM MELLOR, ET AL.

VERSUS

THE PARISH OF JEFFERSON, ET AL.

On Supervisory Writ to the 24th Judicial District Court
Parish of Jefferson

WEIMER, C.J., dissenting.

The issue before the court involves the return of fines collected through the enforcement of Jefferson Parish ordinance, Section 36-320, *et seq*., titled "School Bus Safety Enforcement Program for Detecting Violations of Overtaking and Passing School Buses" ("SBSEP"). I previously dissented in this same case when the majority of this court found this ordinance unconstitutional. **Mellor v. Par. of Jefferson**, 21-0858 p. 1 (La. 3/25/22), 338 So.3d 1138, 1144 (Weimer, C.J., dissenting). I continue to adhere to my belief that the ordinance is constitutional. Thus, I would find the fines were properly collected and any issue related to the return of fines immaterial.

I also have concern regarding whether it is appropriate for this court to exercise its plenary authority to review a judgment that was not timely challenged and, thus, should not be subject to review. Admittedly, this case presents a legal conundrum. As explained by the majority, the district court's June 30, 2022 judgment requiring defendants to remit funds into the registry of the court runs afoul of our opinion in **Crooks v. State through Dep't of Nat. Res.**, 22-0625 (La. 1/27/23), 359 So.3d 448. Similar to this case, **Crooks** recognized that class plaintiffs were entitled to payment of the judgment, but held a writ of mandamus could not be issued requiring the state

to deposit the funds because the judgment is payable only when funds are appropriated by the legislature. **Crooks**, 22-0625 at 5, 359 So.3d at 452. The majority also correctly concludes the June 30, 2022 judgment was not a final judgment subject to appeal and that defendants failed to timely seek supervisory review of the district court's ruling. Thus, we are faced with a judgment that encroaches on functions constitutionally dedicated to the legislative branch in violation of **Crooks**, yet the merits of that judgment are not properly before this court for review.

I recognize that "[s]upervisory authority of this court is plenary, unfettered by jurisdictional requirements, and exercisable at the complete discretion of the court." **Marionneaux v. Hines**, 05-1191, p. 4 (La. 5/12/05), 902 So.2d 373, 376. However, I am not inclined to find use of this court's plenary authority warranted in this case. The majority opinion cites to interests of judicial economy and protecting constitutional powers to justify exercise of our plenary supervisory jurisdiction. Despite these interests, defendants' failure to timely challenge the district court's June 30, 2022 ruling has consequences. The court of appeal was correct in refusing to consider defendants' writ application. Defendants, by their own actions, lost the opportunity to have the district court's June 30, 2022 judgment reviewed under this court's supervisory jurisdiction. This court should not revive that right to seek review by use of its plenary authority, especially considering defendants would retain the ability to seek review of any order involving the disbursement of these funds and the ability to challenge the district court's June 30, 2022 interlocutory ruling in a final appeal on the merits. Although I would not use this court's plenary authority to vacate the district court's order, I would instead discourage the district court from

ordering disbursement of the deposited funds absent a legislative appropriation given the June 30, 2022 order directly contravenes this court's holding in **Crooks**.

SUPREME COURT OF LOUISIANA

No. 2022-CC-01713

WILLIAM MELLOR, ET AL.

VS.

THE PARISH OF JEFFERSON, ET AL.

On Supervisory Writ to the 24th Judicial District Court, Parish of Jefferson

Hughes, J., dissenting.

I respectfully dissent. This is not an attempt to enforce a money judgment against a governmental entity. Rather, it is the return of property that has been determined by this court to have been unconstitutionally taken.