

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT**

**CA 16-190**

**PATRICIA BELL**

**VERSUS**

**CARENCRO NURSING HOME, INC.  
D/B/A EVANGELINE OAKS GUEST HOUSE**

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**APPEAL FROM THE  
FIFTEENTH JUDICIAL DISTRICT COURT  
PARISH OF LAFAYETTE, NO. C-20117362  
HONORABLE MICHELLE M. BREAU, DISTRICT JUDGE**

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**SHANNON J. GREMILLION**

**JUDGE**

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Court composed of Judges Elizabeth A. Pickett, Shannon J. Gremillion, and Phyllis M. Keaty.

**RULE RECALLED. APPEAL MAINTAINED.  
SUPPLEMENTAL RECORD ORDERED.**

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**Patricia Bell**

**GREMILLION, Judge.**

This court, *ex proprio motu*, issued a rule for the plaintiff-appellant, Patricia Bell, to show cause, by brief only, why the appeal in this matter should not be dismissed as premature, citing *Egle v. Egle*, 05-531 (La.App. 3 Cir. 2/8/06), 923 So.2d 780. The plaintiff filed a brief in response to this rule. For the reasons assigned, we recall the rule to show cause, maintain the appeal, and order that the appellate record be supplemented.

The trial court signed a judgment granting a motion for directed judgment which dismissed the plaintiff's suit on December 8, 2015. The plaintiff filed a timely motion for new trial. Attached to the motion was an order to set the motion for new trial for contradictory hearing. However, the trial court drew a line through the proposed order for the show cause hearing and wrote the word "Denied" across the face of the proposed order. The order was dated and signed by the trial court.

Finding that the facts of this case mirrored those presented to this court in *Egle*, 923 So.2d 780, this court issued the instant rule to show cause why the appeal should not be dismissed as premature. In *Egle* this court held that the writing of the word "denied" across the face of the rule to set the motion for new trial for contradictory hearing was not a judgment denying the motion for new trial. Thus, without a proper judgment denying the motion for new trial or a hearing at which the motion is denied in open court, this court found that an appeal is premature pursuant to La.Code Civ.P. arts. 2087(D) and 2123 (C), which state that an appeal taken before the court properly disposes of any motion for new trial or motion for judgment notwithstanding the verdict is premature.

In response to the instant rule to show cause, the plaintiff asserts that the trial court signed a proper judgment denying the motion for new trial on April 13, 2016. Therefore, the plaintiff asks that this court maintain the appeal because the defect has now been cured.

This court has held that, in instances such as this, when the procedural defect is cured, the appeal should be maintained. *See Richard v. Lafayette Fire and Police Bd.*, 07-1010 (La.App. 3 Cir. 9/19/07), 966 So.2d 685. As was the outcome in *Richard*, we hereby recall the rule to show cause, maintain the appeal, and order the Office of the Clerk of Court for the Fifteenth Judicial District Court, Parish of Lafayette, to file a supplemental record, in duplicate, with this court that contains the judgment of April 13, 2016, which denied the motion for new trial.

**RULE RECALLED. APPEAL MAINTAINED.  
SUPPLEMENTAL RECORD ORDERED.**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.  
Rule 2-16.3 Uniform Rules, Court of Appeal.