

NOT DESIGNATED FOR PUBLICATION

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

CA 21-257

A PLUS HOME CARE SERVICES, LLC

VERSUS

A BLESSING PERSONAL HOME

CARE SERVICES, LLC

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, NO. 2018-1801
HONORABLE MICHELLE M. BREAU, DISTRICT JUDGE**

SHANNON J. GREMILLION

JUDGE

Court composed of Shannon J. Gremillion, John E. Conery, and D. Kent Savoie,
Judges.

**APPEAL DISMISSED.
APPELLANT PERMITTED TO FILE
APPLICATION FOR SUPERVISORY WRITS.**

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GREMILLION, Judge.

On April 26, 2021, this court issued a rule ordering Appellant-Plaintiff, A Plus Home Care Services, L.L.C., to show cause, by brief only, why the instant appeal should not be dismissed for having been taken from a non-appealable, interlocutory ruling. For the reasons that follow, we dismiss the appeal.

Appellant filed a Petition for Breach of Contract, Injunction, and Damages against Appellee-Defendant, A Blessing Personal Home Care Services, L.L.C. At issue herein is Appellee's Motion for Entry of a Protective Order and for Continuance of Trial. Following a hearing held on January 14, 2021, a protective order was granted, and a new trial date was set for March 22, 2021. A written judgment was signed on January 28, 2021, and notice of judgment was mailed to the parties that same day.

Appellant filed a Motion for Appeal and Order Fixing Return Date was filed on February 4, 2021, seeking an appeal from the January 28, 2021 judgment. When the record was lodged in this court, a rule to show cause was issued to Appellant to show cause, by brief only, why the appeal of the judgment granting a protective order and setting a new trial date should not be dismissed for having been taken from a non-appealable, interlocutory ruling.

Appellant timely filed a brief in this court, asserting therein that the trial court made a final determination of a motion whereby Appellee did not produce any evidence to the contrary to warrant a protective order. Appellant asserts that appellee was on a fishing expedition to substantiate its case against a bona fide contract. If this court determines, however, that the judgment is an interlocutory non-appealable judgment, then Appellant requests that this court consider converting this appeal to an application to seek supervisory writs.

The judgment at issue was signed on January 28, 2021, and Notice of Judgment was issued to the parties that same day. Appellants did not seek review of the trial court's ruling via supervisory writs. Appellant, however, filed a motion to appeal on

February 4, 2021, within the thirty-day time period allowed for the filing of an application for supervisory writs. Uniform Rules—Courts of Appeal, Rule 4–3.

In the interest of justice, this court may permit a party to file a writ application when a motion for appeal is filed within thirty days of the trial court’s ruling. *Rain CII Carbon, LLC v. Turner Industries Group, LLC*, 14-121 (La.App. 3 Cir. 3/19/14), 161 So.3d 688. Accordingly, we exercise our discretion and construe the motion to appeal as a notice of intent to file for supervisory writs. The devolutive appeal in docket number 21-257 is hereby dismissed, and Appellant is given until June 16, 2021, to file a properly documented application for supervisory writs pursuant to Uniform Rules—Courts of Appeal, Rule 4–5.

**APPEAL DISMISSED.
APPELLANT PERMITTED TO FILE APPLICATION FOR SUPERVISORY WRITS.**

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