

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 2010

ABDULLAH HAKIM EL-MUMIT-EL

VERSUS

NATHAN BURL CAIN, RICHARD PEABODY,
AND CATHY ROBERTS

Judgment Rendered: JUL 18 2007

PMC by [Signature]
[Signature]
RHP by [Signature]

Appealed from the Nineteenth Judicial District Court
in and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 532,395

Honorable Leon A. Cannizzaro, Jr., Judge

Abdullah Hakim El-Mumit-El
Angola, LA

Plaintiff/Appellant
In Proper Person

William L. Kline
Baton Rouge, LA

Counsel for Defendant/Appellee
Louisiana Department of Public
Safety and Corrections

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

McCLENDON, J.

Petitioner, Abdullah Hakim El-Mumit-El (El-Mumit-El), appeals a judgment adopting the Commissioner's recommendation to issue a stay order. The order stayed proceedings regarding El-Mumit-El's petition for judicial review of the denial of administrative relief, until petitioner paid the accruing court costs. Because this is an impermissible appeal of an interlocutory order, we dismiss the appeal.

In his original administrative remedy claim, the petitioner complains that the defendants are impinging on his religious freedoms by denying him access to publications from the Moorish Science Temple of America, Inc., a vendor not on the prison's approved vendor list. The petitioner filed to proceed in *forma pauperis*. However, the Commissioner noted that this petitioner, "a prolific litigant who routinely files in forma pauperis," has three dismissals (strikes) pursuant to LSA-R.S. 15:1187 of the Prison Litigation Reform Act (PLRA), for filing actions dismissed on the grounds that the suits were malicious, frivolous, or failed to state a cause of action or a claim upon which relief could be granted. Upon so noting, the Commissioner issued a PLRA stay order, pursuant to LSA-R.S. 15:1186F, giving the petitioner 20 days to show proof to the contrary, or to show that any one of the dismissals had been overturned or vacated. Absent such proof, his underlying petition for judicial review was stayed indefinitely or until the petitioner paid the accruing costs.

Petitioner failed to present any such proof and traversed the Commissioner's recommendation by simply reasserting his indigent status and the alleged denial of his religious freedoms. The district court, after conducting the requisite *de novo* review, adopted the recommendation and rendered judgment ordering the stay. Petitioner appeals that judgment.

The judgment appealed, issuing a stay pending proof of payment of court costs by the petitioner, is an interlocutory judgment, as defined in LSA-C.C.P. art. 1841: a judgment that does not determine the merits but only preliminary matters in the course of the action. See Savoie v. Rubin, 01-3275, p. 3 (La. 6/21/02), 820 So.2d 486, 488 (per curiam).

Louisiana Code of Civil Procedure article 2083, as amended by 2005 La. Acts, No. 205, § 1, effective January 1, 2006, which removed the provision that interlocutory judgments that “may cause irreparable harm” are appealable, now provides that an interlocutory judgment is appealable only when expressly provided by law.

Cases decided prior to the aforementioned amendment to LSA-C.C.P. art. 2083 consistently recognized that judgments granting stay orders are interlocutory. The appealability of such orders depended on a finding that such a stay may cause irreparable harm. See e.g. Farber v. Farber, 04-589 (La. App. 5th Cir. 11/30/04), 890 So.2d 652.

With the omission of this language in the amended version of LSA-C.C.P. art. 2083, an immediate appeal of an interlocutory ruling must be specifically provided by law. In the absence of legislation expressly authorizing an appeal of an interlocutory judgment, a party must now seek review under the appellate court’s supervisory jurisdiction. LSA-C.C.P. art. 2083, Comments-2005, comments (a) and (b); **Roundtree v. New Orleans Aviation Board**, 04-0702, p. 15 (La. App. 4th Cir. 2/4/05), 896 So.2d 1078, 1099.¹

¹ We note that our courts have the discretion to convert an appeal to a writ, if a *Herlitz* situation is present, but this practice is used sparingly, as the law does not authorize the converting of any other appeal to a writ. **Roundtree**, 896 So.2d at 1099-1100. Therefore, we decline to exercise our discretion to convert this nonappealable judgment to a supervisory writ. See also In Re: Chemical Release at Bogalusa, 98-1122 (La. App. 1st Cir. 8/27/98), 718 So.2d 1015 (per curiam), writ granted in part and denied in part, 98-2505 (La. 11/6/98), 726 So.2d 916.

There is no statutory authority allowing for an immediate appeal of an interlocutory ruling granting a stay. Accordingly, this appeal must be dismissed; the stay order issued by the district court's judgment remains in full effect, until payment of court costs by the petitioner. Costs are assessed to the petitioner.

APPEAL DISMISSED.