

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0883

JOHN KEVIN O'DOWD

VERSUS

BECKY B. O'DOWD



**Judgment Rendered: December 21, 2011**

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF ST. TAMMANY  
STATE OF LOUISIANA  
DOCKET NUMBER 2008-10231

THE HONORABLE MARY C. DEVEREUX, JUDGE

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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

*Hughes, J., concurs with reasons.*

**McDONALD, J.**

In this appeal, Becky O'Dowd challenges a trial court judgment dismissing her petition for protection from abuse against her former husband, John Kevin O'Dowd, and assessing her with court costs. On appeal, Ms. O'Dowd filed a motion to supplement the appellate record. We deny the motion, reverse the judgment, and remand for further proceedings.

**FACTUAL AND PROCEDURAL HISTORY**

The parties herein are the divorced parents of three minor children. They share joint custody, with Mr. O'Dowd designated as domiciliary parent. On November 24, 2010, Ms. O'Dowd filed a petition for protection from abuse on her own behalf and on behalf of the parties' minor children in the Twenty-Second Judicial District Court, under the provisions of La. Ch.C. art. 1564 *et seq.*<sup>1</sup> The petition stemmed from allegations that Mr. O'Dowd sexually abused the parties' twin daughters. According to assertions made in pleadings and in brief, Ms. O'Dowd reported the allegations against Mr. O'Dowd to "OCS<sup>2</sup>," and "OCS" began an independent investigation of the allegations of sexual misconduct, which were pending separately in the juvenile court.

After a hearing on December 1, 2010, the hearing officer for the district court recommended that Ms. O'Dowd's petition be denied and that she be assessed court costs.<sup>3</sup> See La. R.S. 46:236.5(C)(3). Ms. O'Dowd filed an exception to the hearing officer's recommendation. On January 26, 2011, the trial court held a hearing, and thereafter, on February 3, 2011, signed a judgment dismissing Ms.

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<sup>1</sup> The parties' divorce and custody judgments were also rendered in the Twenty-Second Judicial District Court.

<sup>2</sup> Presumably, "OCS" refers to the Office of Community Services.

<sup>3</sup> Under La. R.S. 46:236.5(C), a district court may appoint a hearing officer to hear and make

O'Dowd's petition and assessing her with court costs. Ms. O'Dowd then filed this appeal, seeking review of the district court judgment dismissing her petition.

### **MOTION TO SUPPLEMENT APPELLATE RECORD**

In connection with the pending appeal, Ms. O'Dowd filed a motion to supplement the record on appeal. The motion was referred to the merits. **O'Dowd v. O'Dowd**, 2011 CA 0883 (La. App. 1 Cir. 8/15/11). The motion seeks to supplement the appellate record with part of the record from the related proceeding allegedly pending in the juvenile court. In particular, Ms. O'Dowd seeks to supplement the record on appeal with: 1) the pleading filed in the Juvenile Court, No. 1035-6395 on December 21, 2010; 2) the case plan filed by LA DCFS/OCS, FTC dated December 15, 2010; and 3) the Judgment of Adjudication and Disposition rendered and signed in the same matter on February 14, 2011. Ms. O'Dowd claims these documents from the record in the juvenile proceeding have direct bearing on the matter before the Court, and she believes they are necessary in order for the Court to fully consider her appeal.

We must deny the motion. Appellate courts are courts of record and may neither review evidence that is not in the appellate record nor receive new evidence. **Denoux v. Vessel Management Services, Inc.**, 07-2143 (La. 5/21/08), 983 So.2d 84, 88. Documents from the record in another lawsuit constitute "evidence," and an appeal court cannot review this evidence unless it was part of the trial court record. See **White v. West Carroll Hospital, Inc.**, 613 So.2d 150, 154 (La. 1992). Of the three documents Ms. O'Dowd seeks to introduce, two existed at the time of the proceeding in the trial court but were not introduced nor was an attempt made to introduce them. The third document, namely, the

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recommendations on petitions for protective orders filed under the Louisiana Children's Code.

judgment of adjudication from the juvenile court, was issued after the district court signed the judgment herein dismissing Ms. O'Dowd's petition for protection from abuse. Thus, we cannot review this evidence and must deny Ms. O'Dowd's motion to supplement the appellate record.

### DISCUSSION

Ms. O'Dowd contends the trial court committed legal error by refusing to proceed with this case after being informed at the January 26, 2011 hearing that a "child in need of care" proceeding had been instituted in the Slidell City Court.<sup>4</sup> Despite the trial court's position in open court as to its lack of authority to proceed, it thereafter exercised jurisdiction over this case by signing the February 3, 2011 judgment dismissing Ms. O'Dowd's petition with prejudice and assessing her with costs.

After a review of applicable statutory provisions, we conclude the trial court properly exercised jurisdiction over this case. Under La. Ch.C. art. 302(4), district courts and city courts have concurrent original juvenile jurisdiction for their territorial jurisdiction, except where a separate juvenile court with exclusive original juvenile jurisdiction is established by law. And, under La. Ch.C. art. 303(9), a court exercising juvenile jurisdiction shall have exclusive original jurisdiction over any special proceeding authorized by La. Ch.C. art. 1501 *et seq.*, which includes domestic abuse proceedings. Ms. O'Dowd's petition for protection from abuse was filed under La. Ch.C. art. 1564, *et seq.* (R.216). Because St. Tammany Parish is not one of the parishes in which separate juvenile courts have been established by law,<sup>5</sup> the district court had concurrent original

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<sup>4</sup> The Slidell City Court exercises juvenile jurisdiction for its territorial jurisdiction pursuant to La. Ch.C. art. 302(4). As stated, this jurisdiction is concurrent with that of the district court.

<sup>5</sup> According to La. Ch.C. art. 302(1), special juvenile courts have been created for Caddo,

juvenile jurisdiction over the proceeding pursuant to La. Ch.C. arts. 302(2), 302(4), and 303(9). Thus, regardless of the trial court's position in open court as to its ability to preside over the case, it properly exercised jurisdiction over the proceedings herein.

Ms. O'Dowd next contends the trial court abused its discretion by not allowing her, through counsel, to introduce evidence of abuse at the January 26, 2011 hearing. She argues that she was not represented at the December 1, 2010 hearing before the hearing officer, and that she tried to prove the allegations of abuse set forth in her petition to the hearing officer, but lacked the necessary legal knowledge or skills to do so effectively.

Under La. R.S. 46:236.5(C)(6), once Ms. O'Dowd filed an objection to the hearing officer's recommendation, the trial court was required to schedule a contradictory hearing and accept, reject, or modify in whole or in part the findings of the hearing officer. The trial court had the discretion to receive evidence at the hearing or remand the proceeding to the hearing officer, if she determined that additional information was needed. **Id.**<sup>6</sup>

In this case, the trial court refused to receive additional evidence based on her conclusion that she no longer had jurisdiction over the case based on the

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Orleans, Jefferson, and East Baton Rouge Parishes.

<sup>6</sup> Louisiana Revised Statute 46:236.5(C)(6) provides:

A copy of any written recommendations, orders, or uncontested judgments rendered by the hearing officer shall be provided to the parties and their counsel at the time of the hearing officer's ruling, if present. Any party who disagrees with a judgment or ruling of a hearing officer on a matter set forth in Paragraph (3) may file a written objection to the findings of fact or law of the hearing officer within the time and manner established by court rule. The objection shall be heard by the judge of the district court to whom the case is assigned. Upon filing of the objection, the court shall schedule a contradictory hearing where the judge shall accept, reject, or modify in whole or in part the findings of the hearing officer. If the judge in his discretion determines that additional information is needed, he may receive evidence at the hearing or remand the proceeding to the hearing officer.

parties' assertions that a separate proceeding had been filed in the Slidell City Court. At the hearing, she stated, the "whole issue of whether or not there was abuse is now in the hands of [Department of Child and Family Services] ... ", and that she was "not going to make a determination on that when it's in their hands." However, after making this statement, and refusing to allow Ms. O'Dowd to submit additional evidence, the trial court rendered judgment dismissing Ms. O'Dowd's petition for failure to prove the allegations of her protective order petition by the appropriate standard. The trial court did so without specifically accepting, rejecting, or modifying the hearing officer's findings.

We find the trial court abused its discretion in refusing to give Ms. O'Dowd the opportunity to introduce additional evidence of abuse. If she thought she no longer had jurisdiction over the matter, the trial court should have dismissed the petition on jurisdictional grounds, not on a failure of proof. Thus, we will reverse the judgment on the merits and remand this case to the trial court to conduct a contradictory hearing at which she will allow the introduction of additional evidence, and then accept, reject, or modify the findings of the hearing officer. Accord Ledet v. Ledet, 03-537 (La. App. 5 Cir. 10/8/03), 865 So.2d 762 (trial court's failure to conduct hearing on mother's allegations of father's sexual abuse of children required remand). This hearing will also give the parties an opportunity to present evidence on the current status of the separate proceeding in the Slidell City Court and its effect herein.

Lastly, Ms. O'Dowd contends the trial court committed legal error by ordering her to pay the court costs of the protective order proceeding. Under La. Ch.C. art. 1570.1(B), the trial court may assess court costs against a non-prevailing party only if the court determines the petition was frivolous. There is

no evidence in the record to support a finding that the petition was frivolous. Therefore, we find the trial court abused its discretion in assessing court costs against Ms. O'Dowd. See Vallius v. Vallius, 10-0870 (La. App. 4 Cir. 12/8/10), 53 So.3d 655, 658.

Thus, we reverse the February 3, 2011 judgment on the merits and insofar as it assesses court costs to Ms. O'Dowd. This matter is remanded to the trial court for further proceedings. We deny Ms. O'Dowd's motion to supplement the record on appeal. No appellate costs are assessed in this pauper suit.

**MOTION TO SUPPLEMENT DENIED; JUDGMENT REVERSED  
AND REMANDED.**

**STATE OF LOUISIANA**

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**JOHN KEVIN O'DOWD**

**VERSUS**

**BECKY B. O'DOWD**



HUGHES, J., concurring.

A court exercising juvenile jurisdiction shall have exclusive original jurisdiction over Child in Need of Care proceedings pursuant to the Children's Code. We do not know from the record before us the nature of the proceedings in the Slidell City Court.

Regardless, I agree the proceedings before us should not have been dismissed and court costs should not have been assessed.