

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CU 1653

MICHAEL A. DRAPCHO

VERSUS

SUZANNE PARKE DRAPCHO

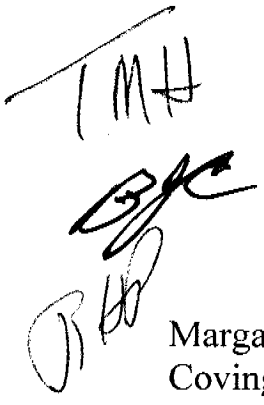
Judgment Rendered: December 21, 2011

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 99-11421

Honorable Dawn Amacker, Judge Presiding

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Suzanne Parke Drapcho
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Defendant - Appellant,
In Proper Person

* * * * *

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

This court *ex proprio motu* issued a rule for the parties to show cause, by brief, why the appeal in this case should not be dismissed as untimely. For the reasons assigned below, we dismiss the appeal.

The applicable time delays for taking an appeal from a visitation judgment are provided by Louisiana Code of Civil Procedure articles 3943, 3942, and 2087(A)(1). Under Article 3943, an appeal from a judgment of visitation must be filed in conformity with La. C.C.P. art. 3942, which provides for an appeal to be filed within **30 days** from the applicable date provided in La. C.C.P. art. 2087(A)(1). The 30-day limitation is an exception to the 60 days for taking a devolutive appeal set forth in Article 2087(A). The applicable date from which the time is counted is from either the expiration of the delay for applying for a new trial, if no application was timely filed, or from notice of the denial of the motion for a new trial, if an application was made. See La. C.C.P. art. 2087(A)(1)(2).

In this case, the judgment denying¹ defendant's motion for family therapy, psychological evaluation, and visitation with her minor child was signed on February 18, 2011, the notice of judgment was mailed on March 7, 2011, and the motion for appeal was filed on May 6, 2011. A motion for new trial was not filed. Therefore, to be timely, the notice of appeal had to have been filed no later than April 15, 2011. Because the appeal is untimely, we lack jurisdiction over the matter. See La. C.C.P. art. 2162; **Dupuy v. Dupuy**, 2000-2744 (La. App. 1st Cir. 3/28/01), 808 So.2d 562, 565.

Accordingly, the appeal is hereby dismissed. Costs are assessed to Defendant-Appellant, Suzanne Parke Drapcho.

APPEAL DISMISSED.

¹ In appellant's memorandum on the timeliness of the appeal, she contends that the trial court did not "award" visitation but denied it. Therefore, Article 3943 should not apply. Appeals from "judgments awarding, **denying**, modifying or terminating" visitation are governed by the provisions of Article 3943; therefore, Article 3943 is applicable. (Emphasis added.) See **Malone v. Malone**, 282 So.2d 119, 121 (La. 1973).