

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 0511

MONA BREAUX

VERSUS

STEPHEN BREAUX

*Quay  
Whipple*

**Judgment Rendered:** DEC 21 2011

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Appealed from the  
The Family Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Suit number F150505

Honorable Toni Higginbotham, Presiding

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Kim Ngan Nguyen  
Mitchell J. Hoffman  
New Orleans, LA

Counsel for Plaintiff/Appellant  
Mona Breaux

Amy S. Malish  
Maura Z. Pelleteri  
New Orleans, LA

Counsel for Defendant/Appellee  
Park Avenue Securities, L.L.C.

Jim R. Raines  
Baton Rouge, LA

Counsel for Defendant/Appellee  
Stephen Breaux

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*KUHN, J DISSENTS & ASSIGNS REASONS*  
BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

**GUIDRY, J.**

This appeal arises from a trial court judgment enforcing a consent judgment of partition of community property. For the reasons that follow, we dismiss the appeal.

**FACTS AND PROCEDURAL HISTORY**

Mona Breaux and Stephen Breaux were married on August 20, 1993. On April 5, 2004, Ms. Breaux filed a petition for divorce, and a judgment of divorce was signed by the trial court on September 27, 2004. Thereafter, Ms. Breaux filed a petition for partition of community property. On July 15, 2008, the parties entered into a consent agreement, and a consent judgment of partition was signed by the trial court, whereby, among other things, the parties agreed to partition to Ms. Breaux:

SEVENTY SEVEN THOUSAND SEVEN HUNDRED THIRTY AND 12/100 (\$77,730.12) DOLLARS from the Park Avenue Securities IRA Rollover Account #GU1015156, in the name of Stephen R. Breaux.

On January 22, 2009, Ms. Breaux filed a Rule to Show Cause to Enforce Consent Judgment of Partition, alleging that Mr. Breaux and/or Park Avenue Securities, L.L.C. (PAS), the company maintaining Mr. Breaux's IRA account #GU1015156, had failed to transfer the partitioned funds to her. Ms. Breaux prayed that the court enforce the consent judgment of partition and order Mr. Breaux to co-operate in the transfer of \$77,730.12, and moreover, that PAS be ordered to accomplish a tax-free rollover from Mr. Breaux's IRA account to her IRA account with Charles Schwab. Additionally, Ms. Breaux alleged that Mr. Breaux's failure to transfer the funds amounted to a breach of the consent judgment, and she requested that the court sanction Mr. Breaux for his breach. Ms. Breaux also prayed for attorney's fees and costs for bringing the rule to enforce.

Thereafter, by letter dated February 19, 2009, Mr. Breaux authorized PAS to transfer the \$77,730.12 from his IRA account to a PAS IRA account in Ms. Breaux's name. PAS subsequently transferred the funds on February 24, 2009.

On February 20, 2009, Mr. Breaux filed a peremptory exception raising the objection of no cause of action, requesting that Ms. Breaux's claims against him be dismissed and that he be awarded attorney's fees and costs associated with the defense of the matter. PAS also filed exceptions raising the objections of insufficiency of citation, insufficiency of service of process, no cause of action, unauthorized use of summary proceeding, improper cumulation of actions, nonjoinder of a necessary party, and lack of jurisdiction.

Following a hearing on Ms. Breaux's rule to enforce and the exceptions urged by Mr. Breaux and PAS, the trial court signed a judgment on June 2, 2009, denying Mr. Breaux and PAS's exceptions and authorizing Ms. Breaux to file and reset her rule on the Family Court docket so the case could be tried on the merits. Thereafter, Ms. Breaux filed a Motion and Order to Reset Rule to Show Cause to Enforce Consent Judgment of Partition. In response, PAS filed a peremptory exception raising the objections of no cause of action and no right of action. PAS also filed a motion to compel arbitration and to stay the rule to show cause, asserting that the contract between it and Ms. Breaux requires binding arbitration.

Following a hearing on the above rule, exception, and motion, the trial court signed a judgment, stating, in pertinent part:<sup>1</sup>

IT IS ORDERED, ADJUDGED AND DECREED that PAS's Motion to Compel Arbitration and to Stay Rule to Show Cause against Mona Breaux and Stephen Breaux is hereby DENIED;

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<sup>1</sup> Also before the trial court at the hearing was a rule for contempt and to compel filed by Ms. Breaux, a motion to quash and for protective order filed by PAS, and a request by Ms. Breaux for attorney's fees and costs. The trial court denied Ms. Breaux's motion to fix attorney's fees and costs, and dismissed as moot PAS's motion to quash and for protective order and Ms. Breaux's motion for contempt and motion to compel.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that PAS[']s] Peremptory Exceptions of No Cause of Action and No Right of Action are hereby DENIED;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that PAS is to attempt a tax-free rollover of \$77,730.12 from PAS[']s] Premiere Select IRA, Account No. PBB 001490, to Mona Breaux's Charles Schwab account, IRA account No. 6034-1175, without any cost to Mona Breaux. PAS is to further refund to Mona Breaux any and all fees that were charged to her following the February 27, 2009 rollover of funds from Mr. Stephen Breaux's PAS IRA, Account No. GUI015156, or that will occur when she removes her funds from PAS Account No. PBB 001490. Mona Breaux is ordered to complete all paperwork necessary to complete the transfer of funds from PAS Premiere Select IRA Account No. PBB 001490 to her Charles Schwab account and to accept the transferred funds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if PAS is unable to accomplish a tax free rollover, then PAS shall release the funds currently held in PAS Premiere Select IRA, Account No. PBB 001490, directly to Mona Breaux, who shall be solely responsible for any tax consequences that may result from such distribution. Mona Breaux is ordered to complete all necessary paperwork to complete such distribution and shall accept the distributed funds.

Ms. Breaux now appeals from this judgment. Additionally, PAS has answered the appeal, asserting that the judgment is not a final, appealable judgment, and alternatively, that the trial court erred in denying their exceptions raising the objections of no right of action, no cause of action, nonjoinder of a necessary party, subject matter jurisdiction, and improper use of summary proceeding. PAS also asserts that the trial court erred in denying its motion to compel arbitration and motion to stay.

#### DISCUSSION

Prior to reaching the merits of Ms. Breaux's appeal and PAS's answer to the appeal, we must first address the argument raised by PAS that the judgment at issue is not a final appealable judgment.

This court's jurisdiction extends to final judgments. See La. C.C.P. art. 2083. A final judgment is one that determines the merits of a controversy, in

whole or in part. La. C.C.P. art. 1841. However, even when a judgment is rendered on the merits, there are instances in which the judgment will not be considered a final judgment. Louisiana Code of Civil Procedure article 1915(B) provides that a partial judgment as to one or more but less than all of the claims, demands, issues, or theories shall not constitute a final judgment unless so designated by the trial court.

In the instant case, Ms. Breaux filed the Rule to Show Cause to Enforce Consent Judgment of Partition against Mr. Breaux and PAS, seeking the transfer of the partitioned funds from Mr. Breaux's IRA account to a Charles Schwab IRA account in her name. Additionally, Ms. Breaux sought sanctions for Mr. Breaux's alleged breach of the consent judgment of partition for his failure to cooperate with the transfer of the partitioned funds. At the initial hearing in this matter, the trial court denied Mr. Breaux's exception raising the objections of no cause of action and no right of action and noted that Ms. Breaux's "allegations, if proven true, may constitute grounds for ordering Mr. Breaux to comply with the Consent Judgment and may also entitle [Ms.] Breaux to sanctions against Mr. Breaux." The trial court, thereafter, urged Ms. Breaux to file to reset her rule on the docket so that the case could be tried on the merits.

Ms. Breaux's rule was subsequently reset and a hearing was conducted on the merits. At the conclusion of the hearing, the trial court issued a judgment denying several exceptions raised by PAS and Ms. Breaux and ordered PAS to effectuate a no-cost, no-fee transfer of the funds to Ms. Breaux's Charles Schwab IRA account, or, if that was not possible, to Ms. Breaux directly. However, this judgment did not address the claim for sanctions against Mr. Breaux. Accordingly, the judgment is a partial judgment. See La. C.C.P. art. 1915(B). A partial judgment shall not constitute a final judgment for purposes of appeal unless it is

designated as a final judgment by the court after an express determination that there is no just reason for delay. La. C.C.P. art. 1915(B). The judgment at issue, however, does not contain any such designation by the trial court. Therefore, the judgment is not a final judgment, and this court lacks jurisdiction to review this matter. Joseph v. Ratcliff, 10-1342, p. 6 (La. App. 1st Cir. 3/25/11), 63 So. 3d 220, 224.<sup>2</sup>

### CONCLUSION

For the foregoing reasons, we find that this court lacks jurisdiction to review the trial court's partial judgment. Accordingly, we dismiss the appeal and the answer to the appeal without prejudice at Ms. Breaux's cost.

**APPEAL DISMISSED.**

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<sup>2</sup> Further, we decline to exercise our supervisory jurisdiction to review this matter, as this case does not meet the criteria under Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc., 396 So. 2d 878 (La. 1981), nor was the motion for appeal filed within the 30-day delay applicable to supervisory writs contained in Uniform Rules-Court of Appeal, Rule 4-3. See Wooley v. Amcare Health Plans of Louisiana, Inc., 05-2025, p. 11 (La. App. 1st Cir. 10/25/06), 944 So. 2d 668, 674 n.4.

**MONA BREAUX**

**FIRST CIRCUIT**

**VERSUS**

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**STATE OF LOUISIANA**

 **STEPHEN BREAUX**

**NO. 2010 CA 0511**

KUHN, J., dissenting.

The majority correctly notes that the trial court failed to designate the partial judgment as final as required by La. C.C.P. art. 1915B and, therefore, the parties are not entitled to an immediate appeal of the trial court's ruling. See *Joseph v. Ratcliff*, 2010-1342 (La. App. 1st Cir. 3/25/11), 63 So.3d 220, 224. But we can and should exercise our supervisory jurisdiction due to the lengthy delay the parties have experienced. The parties agreed in a consent judgment executed on July 15, 2008, that Ms. Breaux was entitled to nearly \$78,000.00 from an IRA account in Mr. Breaux's name. Nevertheless, she has yet to be afforded the relief she has requested. The propriety of the imposition of sanctions is dependent in large part on the resolution of the issues raised in the appeal. For these reasons, I would convert the appeal to a writ and address the merits of Ms. Breaux's appeal. Accordingly, I dissent from the dismissal of the appeal.