NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1141

SEAN CHRISTOPHER PATRICK

VERSUS

PATRICIA ROBINSON CLAYTON PATRICK

Consolidated With

2011 CA 1142

PATRICIA ROBINSON CLAYTON PATRICK

VERSUS

SEAN CHRISTOPHER PATRICK

Judgment Rendered: MAY - 2 2012

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On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Docket Nos. 2010-0000959 c/w 2010-0000971

Honorable Elizabeth P. Wolfe, Judge Presiding

* * * * * *

Sean Christopher Patrick
Ponchatoula, Louisiana

Plaintiff/Appellant
In Proper Person

Jeffery T. Oglesbee
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Hammond, Louisiana

Counsel for Defendant/Appellee
Patricia Clayton Patrick

* * * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

JP Pettigrew, J. Concurs
Welch J Concurs

McCLENDON, J.

Appellant seeks review of a district court judgment concerning issues related to discovery. For the following reasons, we convert the appeal to an application for supervisory writs and deny the writ.

FACTS AND PROCEDURAL HISTORY

Sean and Patricia Patrick married in 2006. On March 8, 2010, Mr. Patrick, acting pro se, filed a petition for divorce and sought an order of protection, along with additional orders regarding property. Later that day, Ms. Patrick filed a petition for protection from abuse. The two suits were consolidated on March 25, 2010.

On May 17, 2010, the court signed a stipulated judgment, dismissing both parties' requests for protective orders, making various rulings regarding property, reserving community property issues, waiving interim and permanent spousal support, and entering reciprocal restraining orders against harassment. At some point thereafter, some discovery ensued.

On August 23, 2010, Ms. Patrick filed a "Motion to Reset Hearing," claiming that the parties had been unable to reach an agreement regarding the settlement of community property and requesting a hearing on the matter.

On September 23, 2010, Mr. Patrick filed exceptions raising the objections of no cause of action, no right of action, and prematurity. Therein, he claimed that no petition for partition of community property had been filed and that neither party had made an effort to negotiate a settlement. The pleading also presented additional exceptions raising the objections of want of amicable demand and vagueness or ambiguity of the petition, although these are not listed in the title of the pleading.

The minute entry for December 6, 2010, shows that the matter came up on peremptory and dilatory exceptions, that the parties had reached stipulations, that testimony was adduced, judgments were rendered as prayed for, and the matter continued until January 10, 2011. The court also signed two judgments—the first judgment ordering that Ms. Patrick be allowed to return to her maiden

name, that discovery be completed within 30 days, and that reciprocal restraining orders regarding harassment issue. The other judgment granted the divorce and ordered the community regime terminated, retroactive to the filing date of the divorce action.

On December 28, 2010, Mr. Patrick filed answers to Ms. Patrick's interrogatories. The minute entry for January 10, 2011, shows that the matter came up again on peremptory and dilatory exceptions. However, the transcript reflects that the exceptions were not argued or decided. Rather, the discussion centered on the parties' compliance with prior discovery rulings. The court ordered the parties to produce various items for discovery purposes.

On January 25, 2011, the court signed a judgment memorializing these discovery rulings. Specifically, the judgment ordered Mr. Patrick to provide paycheck stubs, gas bills, and mortgage bills, and to supplement his responses relative to the mortgage within ten days of receipt of the information from his mortgage company. Ms. Patrick was ordered to provide records of her cash income during the marriage. Mr. Patrick was cast with costs of the hearing.

On February 22, 2011, Mr. Patrick filed a motion for appeal regarding the January 25, 2011, judgment and requested a stay of proceedings. That same day, Mr. Patrick also filed a notice of intent to take writs wherein he also requested a stay of proceedings. On February 28, 2011, the court granted the appeal, but denied the request for a return date order on the writ.

The appeal was lodged with this court on June 23, 2011. On August 9, 2011, this court issued a show cause order, noting that the "matter appears to be a NON-APPEALABLE ruling." On August 15, 2011, Mr. Patrick filed a pleading styled "Dilatory Exception for Vagueness and Ambiguity, Dilatory Exception for Nonconformity, and Dilatory Exception for Prematurity."

In the motion, Mr. Patrick urged that this court's August 9, 2011 order referred to page 86 of the record, which page was a copy of an envelope.[1] Mr.

[1] On August 16, 2011, this court issued a corrected show cause order to correct the record page number of the judgment given in the original order.

Patrick contended that he "needs guidance from the court as to which of the many grounds the court is seeking to dismiss his appeal on." Following this court's correction of the clerical error in its August 9, 2011 rule, Mr. Patrick filed a second pleading styled identically to the August 15 exceptions. Therein, he noted the revised show cause correcting the page number, but urged that the show cause is "still impermissibly vague and ambiguous."

On August 22, 2011, Mr. Patrick filed a motion to supplement the record with a document, which is appended to the motion, titled "History of the Original Court Date." He states that the document is part of the official record and was discussed "at length" at the January hearing.

On August 24, 2011, Mr. Patrick filed a brief in response to the show cause order. Therein, he urges that the January 10, 2011, judgment is the trial court's ruling on his exceptions. It appears that Mr. Patrick argues that the trial court, through its silence, has denied his exceptions raising the objections of no cause of action, no right of action, and prematurity. He claims that his exceptions were set for hearing on October 4, 2010, December 6, 2010, and January 10, 2010. Because no future date has been set for the exceptions, Mr. Patrick reasons that the court tacitly denied them in its January judgment.

Finally, on November 28, 2011, Mr. Patrick filed an additional motion with this court, requesting that this court issue an order to the trial court, instructing the trial court to "provide the complete record including every document with transcripts for each and every Court Hearing."

DISCUSSION

Although Mr. Patrick has assigned sixteen errors for review, appellant's underlying complaint is that the trial court abused its discretion in failing to consider his exceptions and ordering him to produce certain documentation and to supplement his discovery responses without a formal petition to partition community property having been filed. We note that nothing in the record indicates that Mr. Patrick ever filed any request to set his exceptions for hearing.

We further note that Mr. Patrick alleges bias on the part of the trial court. This matter is not properly before this court, as no motion to recuse has been filed or ruled upon by the trial court.

Mr. Patrick also challenges the trial court's discovery rulings set out in its January 25, 2011, judgment. However, the judgment at issue is an interlocutory judgment.[2] Unlike final judgments, interlocutory judgments are appealable only when expressly provided by law. See LSA–C.C.P. art. 2083. Because there is no express provision in law providing for an appeal of the interlocutory judgment at issue, the January 25, 2011 judgment is not eligible for an immediate appeal.

Nevertheless, LSA–Const. art. V, § 10(A) provides that a court of appeal has "supervisory jurisdiction over cases which arise within its circuit." The decision to convert an appeal to an application for supervisory writs is within the discretion of the appellate courts. **Stelluto v. Stelluto**, 05-0074, p. 7 (La. 6/29/05), 914 So.2d 34, 39.

In the instant case, the trial court has already prepared and lodged the record with this court, and both parties have submitted briefs to this court. Additionally, Mr. Patrick, who is appearing in proper person, filed both a motion for appeal and an application for writs with the trial court. In denying Mr. Patrick's request for a return date order on the writ, the trial court noted that "[a]n appeal is set with a return date in this case, so a writ would be inappropriate at this time." In light of the foregoing and in the interest of judicial economy, we convert this appeal to an application for supervisory writs. See **Monterrey Center, LLC v. Ed.ucation Partners, Inc.**, 08-0734, pp. 5-6 (La.App. 1 Cir. 12/23/08), 5 So.3d 225, 229.

The issue presented is a discovery issue. In **Herlitz Constr. Co., Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981), the Louisiana Supreme Court explained:

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[2] A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment whereas a judgment that determines the merits in whole or in part is a final judgment. LSA–C.C.P. art. 1841.

> A court of appeal has plenary power to exercise supervisory jurisdiction over district courts and may do so at any time, according to the discretion of the court. In cases in which peremptory exceptions are overruled, appellate courts generally do not exercise supervisory jurisdiction, since the exceptor may win on the merits or may reurge the exception on appeal.
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> This general policy, however, should not be applied mechanically. When the overruling of the exception is arguably incorrect, when a reversal will terminate the litigation, and when there is no dispute of fact to be resolved, judicial efficiency and fundamental fairness to the litigants dictates that the merits of the application for supervisory writs should be decided in an attempt to avoid the waste of time and expense of a possibly useless future trial on the merits. [Footnote omitted.]

This court, applying the rationale provided by the Louisiana Supreme Court in **Herlitz**, generally declines to exercise its supervisory jurisdiction to consider discovery disputes. See **RCS Gaming, Inc. v. State Through Louisiana Gaming Control Bd.**, 97-2321, p. 1 (La.App. 1 Cir. 11/19/97), 705 So.2d 1122. In this case, granting of the writ application will not terminate the litigation and we see no appropriate basis for asserting our supervisory jurisdiction. Although issues involving discovery may warrant the exercise of this court's supervisory jurisdiction in limited circumstances, we conclude that such circumstances are not present herein. Accordingly, we decline to exercise our supervisory jurisdiction to address the trial court's January 25, 2011 judgment at this time.

Additionally, we deny Mr. Patrick's dilatory exceptions raising the objections of vagueness, nonconformity, and prematurity. We also deny, as moot, Mr. Patrick's August 22, 2011 and November 28, 2011 motions to supplement the record.

APPEAL CONVERTED TO SUPERVISORY WRIT; WRIT DENIED. DILATORY EXCEPTIONS OF VAGUENESS, NONCOMFORMITY, AND PREMATURITY DENIED. MOTIONS TO SUPPLEMENT DENIED.