

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-191

AVMI, L.L.C., ET AL

versus

METAIRIE TOWERS CONDOMINIUM ASSOCIATION, INC., ET AL

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 839-979, DIVISION "H"
HONORABLE DONALD L. FORET, JUDGE PRESIDING

October 20, 2026

JUDE G. GRAVOIS
JUDGE

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and John J. Molaison, Jr.

APPEAL DISMISSED

JGG
MEJ
JJM



PLAINTIFF/APPELLANT,
ASHTON R. O'DWYER, JR.

In Proper Person

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GRAVOIS, J.

Appellant, Ashton R. O'Dwyer, Jr., appeals the trial court's January 20, 2026 judgment which denied his "Express Revocation of the 'Class Action Claim Form' Signed by Ashton O'Dwyer on September 25, 2025 and Verified Motion for Recission [sic] of the Claim Due to CC Art. 1948 Vices of Consent, Including Particularly Fraud." For the reasons that follow, we dismiss this appeal with prejudice.

FACTS AND PROCEDURAL HISTORY

In this class action matter, owners of condominium units in Metairie Towers, a 219-unit condominium complex located at 401 Metairie Road in Metairie, Louisiana, filed suit alleging that, in the aftermath of Hurricane Ida, defendants mismanaged the procurement of insurance for the complex and mishandled the resulting insurance claims and proceeds, as well as the remediation, repair, and restoration of the property. Mr. O'Dwyer, the owner of Unit 330, is a member of the class under the July 31, 2024 class certification order.

On August 18, 2025, the trial court preliminarily approved a partial class action settlement with three defendants: Interstate Fire & Casualty Company, Evanston Insurance Company, and Scottsdale Insurance Company. The class members were notified to submit their opt-out form or proof of claim form by September 26, 2025. Mr. O'Dwyer submitted the proof of claim form as well as an objection to the settlement. He did not submit an opt-out form. A final approval hearing took place on October 6, 2025, and on the same date, the trial court signed a final approval order of the partial class action settlement.

On October 27, 2025, Mr. O'Dwyer filed a motion for devolutive appeal of the October 6, 2025 final approval order of the partial class action settlement. The trial court granted the motion for appeal on November 3, 2025.

On December 15, 2025, Mr. O'Dwyer filed an "Express Revocation of the 'Class Action Claim Form' Signed by Ashton O'Dwyer on September 25, 2025 and Verified Motion for Recission

[sic] of the Claim Due to CC Art. 1948 Vices of Consent, Including Particularly Fraud.” In his pleading, Mr. O’Dwyer argued that he only signed and submitted the claim form for the first partial settlement so that he would have “standing” to object to the settlement and to appear at the fairness hearing; he did not wish to accept any settlement money. He asserted he was deceived about the settlement’s scope, and he wished to rescind his claim due to fraud by class counsel and other officers of the court. On December 30, 2025, Mr. O’Dwyer filed a supplemental memorandum in support of his motion, arguing he is entitled to a do-over of his decision not to opt-out. In support, he submitted an opt-out form dated December 13, 2025.

Following a hearing on January 9, 2026, the trial court signed a written judgment on January 20, 2026 denying Mr. O’Dwyer’s “Express Revocation of the ‘Class Action Claim Form’ Signed by Ashton O’Dwyer on September 25, 2025 and Verified Motion for Recission [sic] of the Claim Due to CC Art. 1948 Vices of Consent, Including Particularly Fraud.” On the same date, the trial court also signed a judgment dismissing Mr. O’Dwyer’s appeal of the October 6, 2025 judgment as abandoned for failure to pay appeal costs.

On February 3, 2026, Mr. O’Dwyer filed a request for written findings of fact and reasons for judgment, and the trial court issued reasons for judgment on February 11, 2026. On March 2, 2026, Mr. O’Dwyer filed a motion for a devolutive appeal of the trial court’s January 20, 2026 judgment; the trial court granted the motion on March 3, 2026. This appeal followed.

LAW AND ANALYSIS

Before considering the merits in any appeal, appellate courts have the duty to determine *sua sponte* whether appellate court jurisdiction exists. *Succession of Smith*, 22-565 (La. App. 5 Cir. 5/24/23), 367 So.3d 800, 803. This Court cannot determine the merits of an appeal unless our appellate court jurisdiction is properly invoked by a valid final judgment. *Id.*

On September 16, 2026, this Court ordered that the parties show cause by brief only why this appeal should not be dismissed for lack of appellate jurisdiction. On October 1, 2026, Mr. O'Dwyer filed a brief, asserting that the January 20, 2026 judgment is a final, appealable judgment. He argued that there is an immediate right of appeal pursuant to La. C.C.P. art. 592 because he has alleged "fraud upon the Court" and has always maintained that the class should never have been certified and the class counsel should have been disqualified. Further, he argued that the January 20, 2026 judgment cannot be interlocutory since this is not a preliminary matter. He claimed that this class action matter was effectively concluded by the October 6, 2025 final approval order and judgment for the first partial class settlement and by the November 21, 2025 final approval of the second and final proposed class settlement. He argued the judgment at issue in this appeal ended the litigation. Nonetheless, if this Court finds it does not have appellate jurisdiction, he requests that this Court exercise its discretion and convert the appeal to a supervisory writ application.

La. C.C.P. art. 1841 classifies judgments as either final judgments that determine the merits in whole or in part, or interlocutory judgments that determine only preliminary matters. Under La. C.C.P. art. 2083(C), interlocutory judgments are appealable "only when expressly provided by law." La. C.C.P. art. 592 governs the certification procedure of class actions. La. C.C.P. art. 592(A)(3)(c) provides, in part: "[a] suspensive or devolutive appeal, as provided in Article 2081 *et seq.*, may be taken as a matter of right from an order or judgment provided for herein." This subsection has been interpreted by this Court and other appellate courts as providing an immediate right of appeal from judgments maintaining or refusing to maintain an action as a class action. *See Defraites v. State Farm Mutual Automobile Insurance Co.*, 03-1081 (La. App. 5 Cir. 1/27/04), 864 So.2d 254, 257, writ denied, 04-0460 (La. 3/12/04), 869 So.2d 832; *Sutton Steel & Supply, Inc. v. BellSouth Mobility, Inc.*, 07-146 (La. App. 3 Cir. 12/12/07), 971 So.2d 1257, 1263, writ denied, 08-94 (La. 3/14/08), 977 So.2d 931; *Billieson v. City of New Orleans*, 09-0410 (La. App. 4 Cir. 11/12/09), 26 So.3d 796, writ denied, 10-0064 (La. 6/4/10), 38 So.3d

301. In *Sellers v. El Paso Indus. Energy, L.P.*, 08-403 (La. App. 5 Cir. 2/10/09), 8 So.3d 723, 730-31, this Court limited an appeal afforded in Article 592 to certification issues.

In *Soileau v. Churchill Downs Louisiana Horseracing Co., L.L.C.*, 21-0022 (La. App. 4 Cir. 12/22/21), 334 So.3d 901, writ denied, 22-243 (La. 4/12/22), 336 So.3d 83, the appellants appealed the denial of the plaintiffs' motions to vacate a trial court order that preliminarily approved a proposed class action settlement agreement that included deadlines to opt-out, object, and submit a claim form. *Id.* at 909. The Fourth Circuit explained that the judgment denying the motions to vacate "determined preliminary matters and not the merits." The court further found "there is no law that expressly provides the right to appeal the denial of a motion to vacate[.]" and therefore concluded that "the proper procedural vehicle to seek review of an interlocutory judgment is by the filing of an application for supervisory writs." *Id.* at 928–29.

In *Pollard v. Alpha Tech.*, 13-1239 (La. App. 4 Cir. 2/5/14), 131 So.3d 1123, the court found that a judgment: (1) granting a motion to withdraw from a joint motion for preliminary approval of a settlement agreement and certification of class action for settlement purposes; and (2) denying the class plaintiffs' countervailing motion to enforce the preliminary settlement agreement was "clearly interlocutory" as it "did not dismiss any party or adjudicate liability." *Id.* at 1127–28.

In the present case, we conclude that the judgment at issue is an interlocutory judgment since it does not resolve the merits of this matter. Further, because the judgment at issue does not involve class certification or decertification, but rather involves one class member's attempt to rescind a claim form, there is no right to an immediate appeal under La. C.C.P. art. 592(A)(3)(c). Absent express statutory authority to appeal such an interlocutory ruling, this Court lacks appellate jurisdiction.

The proper vehicle to contest an interlocutory judgment is by application for supervisory writ. *See Short v. Burquera*, 24-407 (La. App. 5 Cir. 10/18/24), 398 So.3d 1224, 1226. It is not this Court's policy to convert jurisdictionally defective appeals into supervisory

writ applications. *In re Medical Review Panel Proceedings of Foster*, 17-653 (La. App. 5 Cir. 3/28/18), 243 So.3d 1282, 1285. This Court, in the interest of justice, permits parties—who use the improper procedural vehicle of appeal instead of supervisory writ—to file a writ application when a motion for appeal is filed within 30 days of the trial court’s ruling. *Id.* In doing so, we construe the motion for appeal as a notice of intent to seek a supervisory writ. *Id.* However, in the present case, the March 2, 2026 motion for appeal was not filed within 30 days of the January 20, 2026 judgment.

Accordingly, because this Court does not have appellate jurisdiction to review the January 20, 2026 judgment, we dismiss this appeal with prejudice.

CONCLUSION AND DECREE

For the foregoing reasons, this appeal is dismissed with prejudice.

APPEAL DISMISSED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
OCTOBER 20, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES
NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-CA-191

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE DONALD L. FORET (DISTRICT JUDGE)

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EMMA C. DEDMAN (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED