

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 26-C-218

DARLENE BURREGI KEMP

versus

EDWARD MASON KEMP, JR.

IN RE DARLENE KEMP
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
JACQUELINE F. MALONEY, DIVISION "D", No. 853-021

TRUE COPY

May 26, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT DENIED AS MOOT

This matter arises from a dispute regarding the validity and scope of a matrimonial agreement entered into between relator, Darlene Kemp, and respondent, Edward Kemp, Jr. For the reasons explained more fully below, we deny the writ application as moot.

The parties entered into a matrimonial agreement shortly before their marriage in 2005. They divorced almost 20 years later, on December 30, 2024. On November 13, 2025, Edward filed a Petition for Declaratory Relief seeking to invalidate the matrimonial agreement or alternatively to limit its scope. Edward alleged in the petition that the matrimonial agreement should be invalidated based

on two grounds: 1) duress and 2) Darlene's failure to advise him to hire counsel to review the agreement and her failure to provide him with funds to retain counsel.

In response to the Petition for Declaratory Relief, Darlene filed peremptory exceptions of prescription and no cause of action, and a dilatory exception of vagueness. She argued that the duress claim was prescribed, that both the duress and the non-advisement/non-payment claims failed to state a cause of action under Louisiana law, and that Edward's petition was impermissibly vague for failing to cite to any legal authority. In his opposition to the exceptions, Edward withdrew his duress claim and argued that his remaining claim — the non-advisement and non-payment of attorney's fees — stated a valid cause of action. He also argued that Darlene induced him to sign the matrimonial agreement by proceeding with its execution while knowing he did not understand the agreement.

On March 18, 2026, the domestic commissioner heard oral argument on the exceptions. In a written judgment signed on the same date, the domestic commissioner 1) granted the exceptions of prescription and no cause of action as to the duress claim; 2) denied the exception of no cause of action as to the claim seeking invalidation based on the failure to advise Edward to retain counsel and provide funds for counsel to review the matrimonial agreement; and 3) granted the exception of vagueness and ordered Edward to amend his petition within 15 days "to include the source(s) of law seeking to be clarified, declared, and/or relief awarded under."

Darlene filed a timely objection to the domestic commissioner's judgment pursuant to La. R.S. 13:717, which was set for an evidentiary hearing before the district court on April 15, 2026. Prior to the hearing on Darlene's objection, Edward filed a First Amended Petition for Declaratory Relief on April 2, 2026, that superseded the Petition for Declaratory Relief. The amended petition completely re-alleged many of the allegations set forth in the original petition, and did not

incorporate or adopt any allegations from the original petition.¹ More specifically, the amended petition removed the allegations supporting Edward's duress claim and added a legal citation to La. C.C. art. 1949 with respect to his remaining claim seeking to invalidate the matrimonial agreement.²

Following a hearing on April 15, 2026, the district court issued a written judgment dated April 18, 2026 denying Darlene's objection and affirming the domestic commissioner's ruling that denied the exception of no cause of action. The judgment further stated that the "Court finds that the *Petition for Declaratory Relief* filed by Edward Kemp states a cause of action for invalidation of the parties' matrimonial agreement under the theory that Darlene Kemp allegedly failed to advise Edward Kemp to obtain independent legal counsel and failed to provide for the payment of such counsel prior to execution of the agreement."³

In her writ application, Darlene asks this court to reverse the district court's ruling and find that Edward failed to state a cause of action to invalidate the matrimonial agreement in the original Petition for Declaratory Relief. However, as explained above, the First Amended Petition for Declaratory Relief completely replaced the original petition. Thus, we find that because the judgment at issue addresses only the original petition and Edward filed an amended petition that

¹ Louisiana courts have acknowledged that the wording used in an amending petition may have the effect of superseding and replacing the allegations in an original petition. See *Martin v. Pham Le Bros., LLC*, 21-159 (La. App. 5 Cir. 9/22/21), 330 So.3d 346, 353, fn. 6; *Gereighty v. Domingue*, 17-339 (La. App. 5 Cir. 5/30/18), 249 So.3d 1016, 1023, fn. 4 (finding that allegations in earlier reconventional demand were abandoned when defendant filed a new reconventional demand that replaced all allegations and did not re-allege or incorporate any allegations from prior pleadings); see also *Santiago v. Tulane University Hospital and Clinic*, 12-1095 (La. App. 4 Cir. 4/24/13), 115 So.3d 675, 685-86.

² La. C.C. art. 1949 entitled "Error vitiates consent" provides:

Error vitiates consent only when it concerns a cause without which the obligation would not have been incurred and that cause was known or should have been known to the other party.

³ We recognize that the district court judge indicated in her oral ruling, provided following the April 15, 2026 hearing, that she found a cause of action existed in both the original and amended petitions. However, when there is a conflict between an oral ruling and a written judgment in a civil matter, the written judgment controls. *Alonso v. Admin. Patient's Comp. Fund*, 20-211 (La. App. 5 Cir. 12/30/20), 310 So.3d 297, 301, fn. 7, writ denied, 21-125 (La. 2/9/21), 310 So.3d 177.

superseded the original petition, the exception of no cause of action subject to this Court's *de novo* review has been rendered moot. See *Aydell v. Parish of East Baton Rouge*, 23-396 (La. App. 1 Cir. 6/20/23), 2023 WL 4074018; *Smith v. Cannon*, 43,964 (La. App. 2 Cir. 1/28/09), 2 So.3d 1227, 1230, *writ denied*, 09-668 (La. 6/19/09), 10 So.3d 734. The First Amended Petition for Declaratory Relief has not yet been properly subject to an exception of no cause of action.

For these reasons, the writ application is denied as moot.

Gretna, Louisiana, this 26th day of May, 2026.

SUS
FHW
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **05/26/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-218

E-NOTIFIED

24th Judicial District Court (Clerk)

Honorable Jacqueline F. Maloney (DISTRICT JUDGE)

Christy M. Howley (Relator)

M. Elizabeth Bowman (Relator)

Jordan T. Giles (Relator)

MAILED

Kermit L. Roux, III (Respondent)

Ethan A. King (Respondent)

Attorney at Law

755 Magazine Street

New Orleans, LA 70130