

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-241

DERRICK VARNADO, SR.

versus

TOURO INFIRMARY, ET AL.

IN RE DERRICK VARNADO, SR.
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
DONALD L. FORET, DIVISION "H", No. 866-571

TRUE COPY

August 14, 2026



LINDA TRAN
DEPUTY CLERK

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

WRIT DENIED

Relator, Derrick Varnado, Sr., appearing *pro se*, seeks supervisory review of the trial court's May 27, 2026 judgment denying his Notice of Intent to Seek Supervisory Writ and denying as moot his Motion to Proceed In Forma Pauperis. For the following reasons, we deny the writ application.

FACTS AND PROCEDURAL HISTORY

On March 13, 2025, Relator filed a request for a medical review panel with the Louisiana Patient's Compensation Fund, asserting a malpractice claim against Defendants Touro Infirmary; Michael P. Falba, PA-C; Lester Prats, Jr., M.D.; and Stephen Bardot, M.D. On July 2, 2025, Defendants filed a Petition for Discovery in the Twenty-Fourth Judicial District Court for the Parish of Jefferson, seeking

authority to conduct discovery to obtain evidence for use before the medical review panel. Judge Donald “Chick” Foret presided over the matter.

Thereafter, Defendants filed an exception of prescription, asserting that Relator’s 2025 malpractice claim was prescribed because the alleged malpractice occurred more than three years earlier. In part based on Relator’s August 18, 2025 motion to continue, the trial court set the exception for hearing on October 27, 2025. Relator filed no opposition, response, or other pleading addressing Defendants’ exception. On October 27, 2025, the trial court held a hearing on Defendants’ exception of prescription. Judge *Pro Tempore* John E. LeBlanc presided over the matter.¹ Judge LeBlanc found that Relator’s claims had prescribed and, in a written judgment issued the same day, granted the exception and dismissed all claims against Defendants with prejudice.

On October 30, 2025, Relator filed a Motion for New Trial seeking to vacate the October 27, 2025 judgment and urging, among other things, that the judgment was procedurally improper because it was rendered by Judge LeBlanc after Judge Foret’s suspension and without written notice to him (Relator) of the case’s “reassignment” to Judge LeBlanc. Relator also filed a Motion to Recuse Judge LeBlanc based on allegations of bias and prejudice. Concluding that the recusal motion had to be resolved before the motion for new trial could be considered, and finding no grounds for self-recusal, Judge LeBlanc issued an order on November 5, 2025, requesting that the Louisiana Supreme Court appoint an *ad hoc* judge to hear the recusal motion.

On November 20, 2025, the Supreme Court assigned Judge Paula A. Brown, of the Fourth Circuit Court of Appeal, as *ad hoc* judge of the Twenty-Fourth Judicial District to hear and dispose of the recusal motion. On December 5, 2025, the parties

¹ Judge Foret was temporarily suspended from the bench for thirty days beginning on October 15, 2025.

appeared before *Ad Hoc* Judge Brown. In a written judgment issued the same day, Judge Brown denied the motion, explaining her reasons, in part, as follows:

After review of the plaintiff's motion, the oppositions and exhibits filed by the defendants, the October 27, 2025 hearing transcript and considering argument of the parties today, **I do not find that the plaintiff has met his burden to prove actual bias or partiality on the part of the district court judge in this case.** See *Lepine v. Lepine*, 17-45, p. 9 (La. App. 5 Cir. 6/15/17), 223 So.3d 666, 673 (where that court explained that, [La. C.C.P. art.] 151 requires actual bias or prejudice – “substantial appearance of the possibility of bias” or the “mere appearance of impropriety” is insufficient to remove a judge from presiding in a given action) (citations omitted); see also *Adams v. Entergy New Orleans, Inc.*, 24-00678, p. 3 (La. 6/18/24), 386 So.3d 299, 301 (where the Supreme Court observed that it is a well-settled proposition that “a judge is presumed to be impartial”) (citation omitted).

Notwithstanding plaintiff's assertion that the district court judge made demeaning comments regarding this *pro se* plaintiff, **the hearing transcript reveals that the presiding judge went to great lengths to explain to the plaintiff why it was ruling the way it did.** In fact, the record reflects that the district court previously provided the plaintiff with the opportunity to either obtain counsel or file a memorandum in opposition to the defendants' exception of prescription in compliance with Rules for Louisiana District Courts, Rule 9.9(c)

As to plaintiff's contention that he has been deprived of his right to be heard, this contention is belied by the plain language of Rule 9.9(e), which instructs [that] “Parties who fail to comply with paragraphs (b) and (c) of this Rule may forfeit the privilege of oral argument”

In other words, the opportunity to participate in oral argument is a privilege, not a right, contingent upon compliance Rule 9.9(c) in this case. Thus, the district court was well within its discretion to deny the plaintiff an opportunity to argue at the hearing. Further after maintaining the defendants' exception, **the district clearly and patiently explained to the plaintiff that he maintained his right to an appeal.**

(Emphasis added). With the recusal matter resolved, Judge LeBlanc denied Relator's motion for new trial on December 10, 2025.

Rather than appeal the judgment of dismissal or seek supervisory review of the recusal judgment in this Court, Relator filed a writ application directly to the Louisiana Supreme Court. Relator explained that he believed his claims were sufficiently serious to warrant bypassing review by this Court. On March 25, 2026,

the Supreme Court declined to consider Relator's writ application, finding that Relator had demonstrated neither that he sought prior review in the court of appeal nor that extraordinary circumstances justified bypassing that review.

Relator returned to the trial court and, on the theory that the Supreme Court had directed him to proceed here first, filed a notice of intent on April 1, 2026, seeking supervisory review by this Court of the same two judgments, *i.e.*, the judgment granting Defendants' exception and the judgment denying Relator's recusal motion. Relator also filed a Motion to Proceed In Forma Pauperis.

Rather than set a return date, the trial court set the matter for a rule to show cause hearing on May 21, 2026. Relator argued that the Supreme Court had remanded the case so that he could seek supervisory review before this Court. Defendants argued in opposition that Relator's notice of intent was untimely. On May 27, 2026, the trial court issued a written judgment denying Relator's notice of intent and denying as moot Relator's *in forma pauperis* motion. In its reasons for judgment, the trial court explained its reasoning, in part, as follows:

This case has a long procedural history. As it relates to the judgments that are the subject of the current Notice of Intent, Mr. Varnado identifies them as "[t]he Prescription Judgment rendered on October 28, 2025, by Judge Pro Tempore John LeBlanc" and "[t]he Judgment Denying Recusal rendered on December 5, 2025, by Judge Paula A. Brown." **Once those judgments were rendered, Mr. Varnado sought supervisory writs to the Louisiana Supreme Court. Mr. Varnado maintained that his legal position was so serious that it warranted bypassing the Fifth Circuit of Appeals . . .** On March 25, 2026, the Supreme Court issued the following ruling on Mr. Varnado's writ application:

Writ application not considered. Plaintiff has not demonstrated that he sought review in the court of appeal before filing in this Court nor shown the "extraordinary circumstances" that would justify bypassing that level of review. La. S.Ct. Rule I, § 3(D).

In Re: Medical Review Panel Proceedings for the Claim of Derrick Varnado, Sr., 2025-CD-01650.

Although Mr. Varnado contends that the matter was remanded, it was not. Based on the Supreme Court's action, the

[judgments on prescription and recusal] are final judgments. Accordingly, claims against all defendants were found to be prescribed and dismissed with prejudice. Therefore, Mr. Varnado's Notice of Intent to Seek Supervisory Writ and Motion for Return Date was denied. The Court also denied the Motion to Proceed In Forma Pauperis as moot.

(Emphasis added) (internal footnote omitted).

On May 28, 2026, the day after the trial court's judgment, Relator filed the instant writ application.

ASSIGNMENTS OF ERROR

In his writ application, Relator contends that the trial court committed the following four errors:

1. The trial court abused its discretion by denying Relator meaningful access to supervisory review despite substantial unresolved procedural and due process concerns.
2. The proceedings below created an appearance of partiality where the court referenced Relator's prior lawful recusal filings immediately before denying his motions.
3. Relator was denied procedural fairness with respect to notice concerns, judicial substitution, and his limited ability to meaningfully participate during proceedings before the *pro tempore* judicial officer.
4. The denial of *in forma pauperis* relief substantially impaired Relator's meaningful access to continued judicial review.

LAW AND ANALYSIS

The merits of the underlying prescription and recusal judgments are not properly before this Court. The only issue before this Court is whether the trial court erred in denying Relator's Notice of Intent to Seek Supervisory Writ and denying as moot his Motion to Proceed In Forma Pauperis.

An application for supervisory writs must be filed within thirty days of the notice of judgment. Uniform Rules – Courts of Appeal, Rule 4-3; La. C.C.P. art. 1914. The rendition of an interlocutory judgment in open court constitutes notice of that judgment to all parties. La. C.C.P. art. 1914(A). An appeal, which is the procedure for reviewing a final judgment, must be filed within thirty days for a

suspensive appeal or within sixty days for a devolutive appeal, measured from either (a) the expiration of the delay for filing a motion for new trial or (b) the date of the mailing of notice of the court’s denial of a motion for new trial. La. C.C.P. art. 2087; La. C.C.P. art. 2123. “The filing of, or the granting of, a writ application does not stay further proceedings unless the trial court or appellate court expressly orders otherwise.” *Everett v. Baton Rouge Student Hous., LLC*, 10-856 (La. App. 1 Cir. 5/6/11), 64 So.3d 883, 885 (citing Uniform Rules – Courts of Appeal, Rule 4-4(A)), *writ denied*, 11-1169 (La. 9/16/11), 69 So.3d 1149. Therefore, the filing of an application for supervisory writ does not suspend the running of the delay for appeal. *Phillips v. Exxon Chem. Louisiana, LLC*, 22-1290 (La. App. 1 Cir. 6/23/23), 370 So.3d 738, 741 (citing *Guillory v. Hartford Ins. Co.*, 383 So.2d 144, 145 (La. App. 3 Cir. 1980)), *writ denied*, 23-1122 (La. 11/21/23), 373 So.3d 451.

The trial court’s judgment granting Defendants’ exception of prescription was rendered on October 27, 2025 and the judgment denying Relator’s motion to recuse was rendered on December 5, 2025. Additionally, the trial court denied Relator’s motion for new trial on December 10, 2025. The time for Relator to file an application for supervisory writ or to appeal to this Court has long since expired. Relator’s assignments of error are without merit, and we find no reversible error in the trial court’s May 27, 2026 judgment.

CONCLUSION

For the foregoing reasons, we deny the writ application.

Gretna, Louisiana, this 14th day of August, 2026.

**FHW
JJM
SUS**

SUSAN M. CHEHARDY
CHIEF JUDGE

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

JUDGES



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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 **08/14/2026** 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:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

26-C-241

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Donald L. Foret (DISTRICT JUDGE)
Jada C. Doucet (Respondent)

Joshua J. Spencer (Respondent)
C. William Bradley, Jr. (Respondent)
Richard S. Crisler (Respondent)

MAILED

Derrick Varnado, Sr. (Relator)
In Proper Person
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