

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1857

KELVIN WELLS

VERSUS

**MELVA CAVANAUGH,
JUSTICE OF THE PEACE WARD III,
DISTRICT III**

Judgment Rendered: **MAY - 2 2012**

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**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C597162**

The Honorable Wilson E. Fields, Judge Presiding

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**Kelvin Wells
Baton Rouge, Louisiana**

**Plaintiff/Appellant
*Pro Se***

**James D. "Buddy" Caldwell
Attorney General
Erin C. Day
Assistant Attorney General
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee
Melva Cavanaugh**

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Hughes, J., dissents with reasons

GAIDRY, J.

This is an appeal from the Nineteenth Judicial District Court's review of the action taken by defendant/appellee Justice of the Peace Melva Cavanaugh against plaintiff/appellant Kelvin Wells. For the following reasons, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

Wells filed a *pro se* "Petition for Judicial Review Expedited" with the 19th Judicial District Court on December 3, 2010. His primary complaint is that Cavanaugh had refused to return monies he claims to have deposited with the Justice of the Peace in connection with a suspensive appeal to the 19th Judicial District Court taken in another matter dealing with an eviction proceeding in docket number 538005 with the 19th Judicial District Court before the Honorable Judge Janice Clark¹.

Cavanaugh filed exceptions of *lis pendens*, no cause of action, and no right of action to Wells's petition on January 21, 2011. Hearings on the motions were ordered by the Honorable Judge Wilson Fields to be set for April 18, 2011.

Wells filed motions to compel discovery on April 6 and 7, 2011.² These motions were set for contradictory hearing on July 18, 2011. On April 14, 2011, Wells also filed a motion to continue the hearing on the exceptions, which he stated to be set for April 17, 2011, due to not yet receiving the discovery which was the subject of his motions to compel. Judge Fields did not sign the order for this continuance.

Wells was not present in court on April 18, 2011 for the hearing on the exceptions. On June 14, 2011, Judge Fields sustained the exception of

¹ From Justice of the Peace Court Ward 3, District 3, East Baton Rouge Parish, Case Number 2005-7029.

² The motions are identical.

lis pendens, dismissing Cavanaugh from the litigation, with prejudice. Wells filed a motion to vacate the judgment and a notice of appeal to this Court on July 6, 2011. Judge Fields denied the motion to vacate and granted the appeal on July 21, 2011.

Cavanaugh filed an opposition to Wells's motion to compel discovery on July 8, 2011, therein stating the matter was now moot due to the judgment of June 14, 2011. Judgment denying Wells's motion to compel was signed by Judge Fields on August 9, 2011. The appeal by Wells is now before this Court.

SUPERVISORY JURISDICTION

La.C.C.P. art. 4924 states, in pertinent part:

A. Appeal from a judgment rendered by a justice of the peace court... shall be taken to... the district court of the parish in which the justice of the peace court is situated.

...

C. No further appeal from the judgment from the parish or district court is allowed.

D. Supervisory jurisdiction of the proceedings in the parish or district court may be exercised by the court of appeal which otherwise would have had appellate jurisdiction.

Wells properly appealed the Justice of the Peace court decision from Ward 3, District 3, East Baton Rouge Parish, to the 19th Judicial District Court. That court's judgment rendered on June 14, 2011 is considered a final judgment from which Wells cannot appeal to this Court; but if he was not satisfied with the district court's judgment, he could invoke the supervisory jurisdiction of this court by proper writs. See Sonnier v. Bourque, 194 So. 78 (App. 1940). Supervisory jurisdiction is the specific remedy in this instance, and not appeal. See State v. Carrau, 45 La. Ann. 1446, 14 So. 292 (La. 1893).

The First Circuit echoes these older cases in Montz v. Willie, 481 So.2d. 190 (La.App. 1 Cir. 1985): “Once a judgment of a justice of the peace court has been appealed to the district court for that parish and tried de novo, no further appeal is allowed. Appellant’s remedy, if any, is application for exercise of our supervisory jurisdiction.” When a party files a supervisory writ to a court of appeal complaining of a trial court’s judicial review of an action taken by a justice of the peace court, the court of appeal may review that specific issue of the writ. See Walker v. Howell, 2004-246, p. 1 (La.App. 3 Cir. 12/15/04), 896 So.2d 110, 111.

Upon a literal reading of the record, Wells filed a “Notice of Appeal” before the 19th Judicial District Court, in which he “[p]rays for an appeal to the Court of Appeals.” While he makes allegations that later become his assignments of error, he does not make any application for a supervisory writ, does not ask for a supervisory opinion, nor does not invoke this Court’s supervisory jurisdiction in any way. Wells in fact filed a timely “appellant brief” with this Court on October 31, 2011, which complies more or less with Rule 2-12 et seq. of the Uniform Rules of the Louisiana Courts of Appeal. Nowhere in his brief does Wells seek supervisory relief from the Court.

Upon a more liberal reading of the record, Wells filed a “Petition for Judicial Review Expedited.” Even if we give Wells the benefit of the doubt and interpret his use of the word “expedited” to mean “emergency” in the sense of an emergency or supervisory writ, we still cannot get past the fact that he sought such relief with the 19th Judicial District Court and not the 1st Circuit Court of Appeal. We therefore do not have jurisdiction to consider this appeal, and a further discussion of the assignments of error is unnecessary.

CONCLUSION

This Court does not have jurisdiction over this appeal. La.C.C.P. art. 4924 would require Wells to file a supervisory writ before this Court, and he has not done so. We therefore dismiss the appeal.

DECREE

The appeal in this matter is dismissed. All costs of this appeal are assessed to the appellant, Kelvin Wells.

APPEAL DISMISSED.

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**MELVA CAVANAUGH,
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DISTRICT III**

HUGHES, J., dissenting.

Hughes, J., dissents and would convert to a writ to be considered under our supervisory jurisdiction, given appellant's pro se status.