

PARISH OF JEFFERSON

NO. 17-CA-272

VERSUS

FIFTH CIRCUIT

HOUSING AUTHORITY OF JEFFERSON  
PARISH AND JAMES LAWSON, JR.,  
CHAIRMAN OF THE BOARD OF  
COMMISSIONERS OF HOUSING  
AUTHORITY OF JEFFERSON,  
AND JOSEPH FENNIDY

COURT OF APPEAL  
STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 762-382, DIVISION "K"  
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

December 13, 2017

**ROBERT A. CHAISSON**  
**JUDGE**

Panel composed of Judges Susan M. Chehardy,  
Jude G. Gravois, and Robert A. Chaisson

**JUDGMENT VACATED IN PART; JUDGMENT RENDERED**

**RAC**  
**SMC**  
**JGG**

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## **CHAISSON, J.**

This case involves a dispute regarding the correct dates of the terms of office for the nine commissioners of the Housing Authority of Jefferson Parish (hereinafter “the Housing Authority”) and a dispute regarding who, of two individuals, is the duly appointed commissioner representing Council At-Large Division “B” (hereinafter “Seat Four”) of the Housing Authority.<sup>1</sup> One of those individuals, Joseph Fennidy, appeals the judgment of the trial court that declared David Martinez the duly appointed commissioner for Seat Four and permanently enjoined Mr. Fennidy from acting as a member of the Housing Authority, and further permanently enjoined James E. Lawson, Jr., the chairman of the Housing Authority, from seating Mr. Fennidy at meetings of the Housing Authority. For the reasons that follow, we vacate that portion of the trial court’s judgment that declared Mr. Martinez the duly appointed commissioner for Seat Four and render judgment declaring Mr. Fennidy the duly appointed commissioner for Seat Four. We further vacate that portion of the trial court’s judgment that issued permanent injunctions against Mr. Fennidy and Mr. Lawson.

### **FACTS AND PROCEDURAL HISTORY**

On March 13, 2013, the Jefferson Parish Council adopted a resolution appointing Reverend James Brown, Jr. as commissioner for Seat Four of the Housing Authority. This resolution did not indicate the dates of the term of office to which Reverend Brown was appointed. Two weeks later, on March 27, 2013, the Council adopted a resolution appointing Joseph Fennidy as commissioner for the same seat to which it had appointed Reverend Brown. This resolution, like the one appointing Reverend Brown, did not indicate the dates of the term of office to which Mr. Fennidy was appointed. Furthermore, although it did indicate that Mr.

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<sup>1</sup> Prior to the trial on the Petition for Declaratory Judgment and Permanent Injunction, the parties were able to research the histories of all nine seats on the Housing Authority since its inception, and thereafter stipulated to the correct dates for the terms of office for all nine commissioners. Consequently, no party has appealed that portion of the trial court’s judgment that established the correct terms of office, and that issue is not before this Court on appeal.

Fennidy was replacing Reverend Brown, it did not indicate the reason why Reverend Brown was being replaced after only two weeks. Reverend Brown never qualified for the office by taking the oath of office pursuant to La. R.S. 42:141(A). Mr. Fennidy took the oath of office and served as commissioner for Seat Four during the next three years, with apparently no questions having been raised as to the validity of his appointment or his authority to act as a commissioner of the Housing Authority.

On June 8, 2016, the Jefferson Parish Council adopted a resolution appointing David Martinez as commissioner for Seat Four of the Housing Authority. Like the resolutions appointing his two predecessors, this resolution did not indicate the dates of the term of office to which Mr. Martinez was appointed. Furthermore, although it did indicate that Mr. Martinez was replacing Mr. Fennidy, it did not indicate the reason why Mr. Fennidy was being replaced at that particular point in time. Subsequent to the adoption of this resolution, James E. Lawson, Jr., the chairman of the Housing Authority, noticed a meeting of the Housing Authority. Mr. Lawson, taking the position that Mr. Fennidy's term of office had not expired, that Mr. Fennidy had not been removed from his position, and that Mr. Martinez was therefore not properly appointed, provided notice of the meeting to Mr. Fennidy, but failed to provide notice of the meeting to Mr. Martinez. Due to this impasse regarding the competing claims of Mr. Fennidy and Mr. Martinez as the duly appointed commissioner for Seat Four, and the apparent disagreement and confusion regarding the correct dates of the terms of office for all nine commissioners of the Housing Authority, the Parish of Jefferson (hereinafter "the Parish") filed a Petition for Preliminary Injunction, Permanent Injunction, and Declaratory Judgment on June 28, 2016.<sup>2</sup>

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<sup>2</sup> Although proceedings were held and a judgment rendered regarding the request for Preliminary Injunction, that portion of the litigation is not pertinent to resolution of the issues raised in this appeal, and is therefore not further discussed in this opinion.

In its petition, the Parish alleged that Mr. Fennidy was appointed to finish the unexpired term of Reverend Brown, and that the term expired on July 16, 2013. The Parish further alleged that, pursuant to La. R.S. 40:532(A), Mr. Fennidy was merely continuing to serve until his successor was duly appointed, which occurred over three years later on June 8, 2016, when the Parish appointed Mr. Martinez.<sup>3</sup> After subsequent research, the Parish determined that the term of office to which Mr. Fennidy was appointed commenced on February 10, 2013, and will end on February 10, 2018. Therefore, at the trial of the Permanent Injunction and Declaratory Judgment, the Parish abandoned its position that Mr. Fennidy's term of office had expired on July 16, 2013, as alleged in its petition. Instead, the Parish took the position that Mr. Fennidy was never validly appointed to the Housing Authority because Seat Four was not vacant at the time of Mr. Fennidy's purported appointment, Reverend Brown having been appointed to the seat two weeks earlier. The Parish reasoned that after the appointment of Reverend Brown on March 13, 2013, the seat was occupied by Reverend Brown, and thus not vacant, and that the earliest date upon which Seat Four could have again become vacant due to Reverend Brown's failure to take his oath of office, was April 12, 2013, which was the end of the thirty-day period that the law allows a public officer, after receipt of his commission, to qualify for his office by taking the oath of office.<sup>4</sup> The Parish argues therefore that Mr. Fennidy's appointment on March 27, 2013, was not valid because Seat Four was occupied by Reverend Brown on that date and thus was not a vacant seat available for a new appointment.

In support of its argument that Seat Four was not vacant at the time of Mr. Fennidy's purported appointment, the Parish, over the objection of Mr. Fennidy, called attorney Rubye Noble, a Parish employee, as an expert witness "in

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<sup>3</sup> La. R.S. 40:532(A) provides that "[a]ll commissioners shall . . . continue to serve until their successors have been duly appointed."

<sup>4</sup> See La. R.S. 42:141.

legislative analysis inclusive of state and municipal legislation.” The trial court accepted Ms. Noble as an expert in the field of legislative analysis and allowed her to testify. Subsequent to the trial of the Permanent Injunction and Declaratory Judgment, the trial court rendered judgment that declared the correct terms of office for all nine seats of the Housing Authority, as per the stipulation of the parties; declared Mr. Martinez the duly appointed commissioner for Seat Four; and permanently enjoined Mr. Fennidy from acting as a member of the Housing Authority, and further permanently enjoined Mr. Lawson from seating Mr. Fennidy at meetings of the Housing Authority. Mr. Fennidy now appeals that portion of the judgment that declares Mr. Martinez the duly appointed commissioner for Seat Four, and further appeals the injunctions issued against him and Mr. Lawson.

In his appeal, Mr. Fennidy states his sole assignment of error as follows: “Whether the trial court abused its discretion by admitting into evidence the expert testimony of Rubye Noble, an attorney employed by the Parish of Jefferson, if her legal interpretation was based on insufficient facts and her interpretation of law was incorrect.”<sup>5</sup>

## **DISCUSSION**

La. R.S. 40:534 provides that “[a] certificate of appointment . . . shall be conclusive evidence of the proper appointment of such commissioner.” The Parish relies upon this provision to support its appointment of Mr. Martinez as the last valid appointment made to Seat Four. We agree with the trial court’s interpretation of this provision, and its analysis that the certificate of appointment being *conclusive* evidence of a proper appointment, does not render the certificate unassailable, but rather creates a presumption of its validity that may be rebutted

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<sup>5</sup> Although not concisely stated in his assignment of error, Mr. Fennidy, in brief, argues that Ms. Noble’s legal interpretations are incorrect, and that the trial court’s adoption of those legal interpretations led the trial court to the erroneous conclusion that Mr. Martinez is the duly appointed commissioner for Seat Four. Further, in his prayer for relief, Mr. Fennidy prays that the judgment against him be reversed and all injunctions against him be removed. Therefore, in the interest of justice, we will address the issue that is the crux of this case, which is whether the trial court’s statutory interpretations and ultimate judgment are correct.

by an opponent of the certificate.<sup>6</sup> In order to rebut the presumption of the validity of the certificate of appointment of Mr. Martinez, Mr. Fennidy produced the certificate of appointment whereby he was appointed to the same seat during the same term of office *prior* to the appointment of Mr. Martinez. The certificate of authority appointing Mr. Fennidy is entitled to the same presumption of validity, and thus the burden was on the Parish to rebut the presumption of validity of the *prior* certificate appointing Mr. Fennidy. The Parish argues that the certificate of appointment of Mr. Fennidy is not valid because Seat Four was occupied by Reverend Brown on the date that the resolution appointing Mr. Fennidy was adopted, and that none of the circumstances that would create a vacancy in the seat had occurred as of that date. In order to support its argument and meet its burden, the Parish called Ms. Noble as “an expert in legislative analysis inclusive of state and municipal legislation.” The Parish specifically questioned Ms. Noble regarding interpretation of state statutes regarding how a vacancy is created by failure of the appointee to take the oath of office and regarding how a vacancy is created by resignation of a commissioner.<sup>7</sup>

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (1) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case. La. C.E. art. 702. Like other evidentiary matters,

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<sup>6</sup> To find otherwise would render the statutory provisions providing for the method of removal of a commissioner meaningless, inasmuch as, if the certificates of appointment are unassailable, the Parish could at any time during a commissioner’s term merely adopt a new resolution appointing a different individual to the commissioner’s seat, with the removed commissioner having no legal recourse.

<sup>7</sup> There are other circumstances by which a vacancy may be created in the office of commissioner (*i.e.*, the expiration of the commissioner’s term of office without the appointment of a successor commissioner; the death of the commissioner; the move of the commissioner out of the housing authority’s area of operation; the conviction of the commissioner of a felony; and the appointing authority’s removal of the commissioner for cause). None of these circumstances are applicable to this case.

the trial court is afforded great discretion regarding the decision to allow expert testimony, and that decision will not be overturned on appeal absent an abuse of that discretion. *Aaron v. McGowan Working Partners*, 16-696 (La. App. 5 Cir. 6/15/17), 223 So.3d 714, 732. However, where an attorney is proffered to the trial court as an expert in a particular area of law, various Louisiana Courts of Appeal, including this Circuit, have adopted a jurisprudential rule that experts may not provide opinions regarding domestic (*i.e.*, Louisiana) law. *See, Normand v. Cox Communs. La., LLC*, 14-563 (La. App. 5 Cir. 12/23/14), 167 So.3d 156, 163, *writ denied*, 15-158 (La. 4/10/15), 163 So.3d 815; *Henderson v. Ruffino*, 17-158 (La. App. 5 Cir. 10/25/17), 2017 La. App. LEXIS 2046; *Crowe v. Bio-Medical in re La., LLC*, 14-0917 (La. App. 1 Cir. 6/03/16), 208 So.3d 473, 482-3; *UTELCOM, Inc. v. Bridges*, 10-0654 (La. App. 1 Cir. 9/12/11), 77 So.3d 39, 54; *Martello v. City of Ferriday*, 01-1240 (La. App. 3 Cir. 3/06/02), 813 So.2d 467, 475; *Boone v. Boone*, 39,544 (La. App. 2 Cir. 4/06/05), 899 So.2d 823, 829. The rationale for this rule is that the judge, being trained in the law, is the ultimate arbiter of what the law is, and that to consider other legal opinions as to an interpretation of the law would be, if not in actuality, at least in perception, an abrogation of the judge's responsibility.<sup>8</sup>

In the case before us, Mr. Fennidy objected to Ms. Noble's testimony based upon the fact that Ms. Noble, an attorney, was testifying as an expert as to her interpretation of Louisiana law, the ultimate determination of which is the function of the judge. Mr. Fennidy further objected based upon the fact that Ms. Noble, as a

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<sup>8</sup> We acknowledge that there are reported Louisiana appellate decisions indicating that attorneys have been allowed to testify as experts regarding a particular area of Louisiana law; however, in each of those cases, the attorney testifying as an expert witness regarding Louisiana law was not raised as an issue on appeal, and those opinions therefore contain no discussion of the propriety of the attorney being allowed to so testify. *See generally, Successions of Powell*, 10-480 (La. App. 5 Cir. 3/29/11), 64 So.3d 267; *First National Bank of Lake Charles v. Austin, et al.*, 00-385 (La. App. 3 Cir. 10/11/00), 771 So.2d 788; *In re Succession of Manheim*, 98-2051 (La. App. 4 Cir. 4/21/99), 734 So.2d 119; *Nelson v. Nelson*, 09-479 (La. App. 5 Cir. 12/29/09), 30 So.3d 870.



Parish employee, had a conflict of interest in testifying on behalf of the Parish.<sup>9</sup> Our review of the record reveals that Ms. Noble did in fact testify as to her interpretation of Louisiana law regarding the appointment of commissioners and the circumstances which create a vacancy in the office of commissioner. We conclude that the trial court erred in allowing Ms. Noble to testify as an expert regarding her interpretation of Louisiana law. However, we further conclude that this error was harmless. We first note that this was a bench trial, not a jury trial, so there was no potential for jury confusion by having an expert opine upon her interpretation of the law, which, in a jury trial, might conflict with the instructions on the law given by the judge.<sup>10</sup> Furthermore, in overruling Mr. Fennidy's objection, the trial court acknowledged the possible perception that Ms. Noble was usurping the role of the court, but stated that she would not allow Ms. Noble to usurp the role of the court regarding the interpretation of the law. Nothing in the record, or in the trial court's reasons for judgment, indicates that the trial court allowed Ms. Noble to usurp the role of the court regarding its interpretation of the law.<sup>11</sup>

We therefore address the issue that is the crux of this case, that being whether the trial court's statutory interpretations and ultimate judgment are correct. First, we conduct a statutory analysis of the "vacancy status" of the seat during the interim period between the Parish's adoption of the resolution appointing Reverend Brown and his failure to take the oath of office within thirty days. Second, we review the trial court's factual determination that Reverend Brown had not resigned from Seat Four prior to the appointment of Mr. Fennidy.

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<sup>9</sup> Due to our finding that it was legal error for the trial court to allow Ms. Noble to testify as an expert regarding her opinions as to Louisiana law, we need not opine upon the objection raised as to Ms. Noble's potential bias as an employee of the Parish.

<sup>10</sup> The allowance of attorney expert testimony "is generally harmless error in a judge trial." *La. Bd. Of Ethics v. Holden*, 12-1127 (La. App. 1 Cir. 6/25/13), 121 So.2d 113, 116; *La. State Bar Ass'n v. Carr & Assocs., Inc.*, 2008-2114 (La. App. 1 Cir. 5/08/09), 15 So.3d 158, 171; *Succession of Allison*, 31,495 (La. App. 2 Cir. 1/29/99), 727 So.2d 683, 684.

<sup>11</sup> Although we do not suggest that an examination of the correctness of the expert's opinion is necessary in order to conduct a "harmless error" analysis, we note that in this particular case, we do not agree with Mr. Fennidy's assessment that Ms. Noble's statutory interpretations of the pertinent statutes are erroneous.

### *Failure to Take Oath of Office*

The Parish contends that adoption of the council resolution on March 13, 2013, appointing Reverend Brown to Seat Four, is the only requirement needed to fill the vacancy created by the council's removal of his immediate predecessor.

The Parish further contends that the requirement that the appointee take the oath of office within thirty days of receipt of his commission is not a condition precedent necessary to extinguish the vacancy, but rather is a requirement that the appointee must comply with in order to qualify for the office, failure of which results in a new, second vacancy in the office. Therefore, the Parish argues, that on March 27, 2013, the date on which the council adopted the resolution purporting to appoint Mr. Fennidy, Seat Four was held by Reverend Brown and thus was not vacant, invalidating the purported appointment of Mr. Fennidy.

Although Mr. Fennidy focuses his argument on the effective date of *his* oath of office to support his position that he properly complied with all of the requirements to qualify for the office, the pertinent inquiry before the trial court on this issue was not whether Mr. Fennidy had correctly fulfilled all of the requirements to qualify for the office, but rather whether the council resolution adopted on March 13, 2013, appointing Reverend Brown, completed the appointment process for Reverend Brown such that the seat was no longer vacant as of that date, or whether the seat remained vacant until the end of the time period allowed by law for Reverend Brown to take his oath of office.

Statutory interpretation begins with the language of the statute itself. *Yount v. Handshoe*, 14-919 (La. App. 5 Cir. 5/28/15), 171 So.3d 381, 386. Subpart F of the Housing Authorities Law, La. R.S. 40:531, *et seq.*, provides for the appointment of commissioners to the Housing Authority and the filling of vacancies on the Board by the appointing authority. La. R.S. 40:531(C) provides, in pertinent part, that “[i]n the parish of Jefferson, . . . [s]even of the commissioners

shall be appointed as provided in this Subsection...”<sup>12</sup> La. R.S. 40:533 provides, in pertinent part, that “[v]acancies shall be filled by the same authority and in the same manner as the original appointment.” And La. R.S. 40:534 provides, in pertinent part, that “[a] certificate of appointment ... shall be conclusive evidence of the proper appointment of such commissioner.” Subpart F, dealing with the appointment of commissioners and the filling of vacancies, contains no other requirements in order to complete the appointment process to fill a vacancy.

La. R.S. 42:141(A), which provides, in pertinent part, that “[e]ach public officer, within thirty days after receipt of his commission ... shall take the oath of office prescribed by law ... ,” is found in a completely separate title of the Revised Statutes, Title 42 entitled “Public Officers and Employees,” in Chapter Four entitled “Qualification by Taking Oath and Giving Bond.” Although this provision imposes obligations on the *appointee* in order to qualify for the office, and the authority of the appointee to act in his official capacity is conditioned upon compliance with these requirements, nothing in this statute indicates that it is part of the appointment process that the *appointing authority* must fulfill in order to complete the appointment process. Reading La. R.S. 42:141(A) as a component of the appointment process, rather than as a separate qualification process, has the potential to create ambiguity in the statutes where none exists. Furthermore, La. R.S. 42:141(C) provides, in pertinent part, that “[f]ailure to comply with the requirements of this Section [*i.e.*, take the oath of office] shall *create a vacancy* in the office, and the vacancy shall be filled in accordance with law as in other cases of vacancy.” (emphasis added). If an office were considered as remaining vacant during the time period that an appointee is given within which to take his oath, then his failure to take that oath cannot *create a vacancy* where a vacancy already

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<sup>12</sup> All parties agree that Seat Four is one of the seven seats that is appointed by the Jefferson Parish Council.

exists.<sup>13</sup> To suggest, as Mr. Fennidy does, that the office is vacant during this thirty-day interim period could potentially lead to absurd results, whereby additional individuals could be appointed to the same office during the period that the law allows the first appointee to qualify for the office by taking the oath of office.

We therefore conclude that once a certificate of appointment is issued, the office for which it is issued is no longer vacant, regardless of the fact that the law allows the appointee thirty days within which to qualify for the office by taking the oath of office. Although the appointee has no authority to act in his official capacity until such time as he takes the oath of office, the office is nonetheless occupied by the appointee during the thirty-day interim period and is not available for a new appointment until it becomes vacant again as provided by law. In the event that the appointee fails to take the oath of office within the allowed thirty-day period, then a new, second vacancy is thereby created for the office. We find that the trial court was therefore correct in its statutory interpretations of these provisions of law, and in its conclusion that the council resolution appointing Reverend Brown filled the vacancy created by the removal of his predecessor, as of the date of the resolution.

#### *Resignation of Reverend Brown*

We next address the issue regarding the trial court's factual conclusion that Reverend Brown had not resigned from Seat Four prior to the time of Mr. Fennidy's appointment, and that Seat Four was therefore not vacant at the time of Mr. Fennidy's appointment due to a resignation by Reverend Brown. Regarding this issue, Ms. Noble testified for the Parish that her review of the Parish's official records did not reveal any evidence of a resignation by Reverend Brown.

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<sup>13</sup> We note that, had the Legislature intended the office to remain vacant during the interim period that the appointee is given to take his oath, it presumably would have provided that the failure to take the oath would result in a *continuation* of the existing vacancy.

In response, Mr. Fennidy called as witnesses Reverend Brown and Elton Lagasse, the Parish councilman who nominated both Reverend Brown and Mr. Fennidy for Seat Four. Reverend Brown testified that Mr. Lagasse spoke to him about the appointment, but that a day or two later, after speaking with several leaders of his church, he determined that it was not in his or his church's best interest to accept the appointment and he therefore advised Mr. Lagasse that he "respectfully declined the offer." Reverend Brown also testified that he was never in attendance at a council meeting at which he was appointed, that he did not recall receiving notification of his appointment, and that he "didn't know that I was officially appointed as such" until the start of this litigation. Reverend Brown confirmed that he never took the oath of office and that he does not recall whether he provided "a resignation" from the Housing Authority Board. Mr. Lagasse testified that he attempted to appoint Reverend Brown to Seat Four, but that Reverend Brown, after speaking with the leaders of his church, declined the appointment. Mr. Lagasse further testified that when Reverend Brown declined the offer, he considered the seat vacant and therefore nominated Mr. Fennidy for appointment to the seat. Lastly, both Reverend Brown and Mr. Lagasse read from a Times-Picayune newspaper article, dated March 27, 2013, the same date as Mr. Fennidy's appointment, which confirms that the appointment was offered to Reverend Brown, but that after speaking to church leaders, he declined the appointment.<sup>14</sup>

The trial court, in finding that Reverend Brown had not resigned from his appointment at the time that Mr. Fennidy was appointed, stated in reasons for judgment that "Brown was unable to establish the dates of his conversations with LaGasse," "Brown confirmed that he never resigned from the Board," and

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<sup>14</sup> Although counsel for Mr. Fennidy neglected to introduce the newspaper article as an exhibit, there was neither an objection to Reverend Brown or Mr. Lagasse reading from the article, nor an objection that their testimony regarding the content of the article, or the date of the article, was not an accurate reflection of the article's content and date.

“[n]othing in the certified records of the Office of the Parish Clerk for the Jefferson Parish Council shows that Brown resigned . . .”

Our review of the law regarding appointments to, and vacancies created on, the Housing Authority reveals no requirements of form necessary to effectuate a resignation from the Board. We find no requirement that a resignation be in writing, or that specific language be used to effectuate a resignation, including use of the word “resignation,” or some variation thereof, or that the “resignation” be filed in the official records of the appointing authority.<sup>15</sup> Therefore, although the trial court was correct that the official records of the council, as presented, contain no evidence of a resignation by Reverend Brown, we do not find this fact to be dispositive of the question of whether Reverend Brown had resigned at the time of Mr. Fennidy’s appointment.

Contrary to the trial court’s finding, Reverend Brown did not confirm that he never resigned from the Board; he testified that he did not recall whether he had resigned. He did, however, clearly testify that he declined the appointment, never took the oath of office, and was not aware that he had ever been formally appointed until this litigation began. Mr. Lagasse confirmed that Reverend Brown declined the appointment. We conclude that in order to effectuate a resignation, there must be a clear expression of the commissioner’s intention not to serve in the capacity of a commissioner, regardless of whether that intention is to terminate service that has already begun, or to decline to begin service. The uncontradicted testimony of Reverend Brown and Mr. Lagasse confirms that Reverend Brown clearly expressed this intention to Mr. Lagasse not to serve as a commissioner. Furthermore, although Reverend Brown was unable to establish exact dates upon which these conversations took place, the Times-Picayune article dated March 27,

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<sup>15</sup> We acknowledge that the better practice, for all parties involved, would be to require that a resignation be in writing and filed into the official records; however, we find that the current law does not mandate such formalities.

2013, containing the substance of those conversations, is irrefutable proof that the conversations took place no later than March 27, 2013, the date of Mr. Fennidy's appointment. Additionally, it would be highly unlikely that the entire Jefferson Parish Council, or someone on their staffs, would either not recall that they had appointed Reverend Brown to the same seat two weeks earlier, or, recalling Reverend Brown's appointment, would nevertheless proceed to appoint Mr. Fennidy to the same seat, unless they had been informed that Reverend Brown was declining the appointment.

We therefore conclude that the trial court was manifestly erroneous in its finding that Reverend Brown had not resigned from the Board prior to the appointment of Mr. Fennidy.<sup>16</sup> The evidence clearly establishes that Reverend Brown had expressed his intention not to serve as a commissioner prior to the appointment of Mr. Fennidy, thereby creating a vacancy in Seat Four at the time that Mr. Fennidy was appointed. Because the seat was vacant, there was no impediment to Mr. Fennidy's appointment, and we find that he was legally appointed to Seat Four on March 27, 2013. Since Mr. Fennidy's term had not expired by June 8, 2016, and no circumstances existed on that date that would have created a vacancy for Seat Four, the Parish's purported appointment of Mr. Martinez on that date was not valid.

## **DECREE**

For the foregoing reasons, we vacate that portion of the trial court's judgment that declared Mr. Martinez the duly appointed commissioner for Seat Four of the Housing Authority of Jefferson Parish and render judgment declaring Mr. Fennidy the duly appointed commissioner for Seat Four, effective immediately. We further vacate that portion of the trial court's judgment that

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<sup>16</sup> The standard of review for findings of fact is manifest error. *In re Succession of Gore*, 17-68 (La. App. 5 Cir. 5/31/17), 223 So.3d 628, 632.

issued permanent injunctions against Mr. Fennidy and Mr. Lawson, also effective immediately.

**JUDGMENT VACATED IN PART;**  
**JUDGMENT RENDERED**



SUSAN M. CHEHARDY  
CHIEF JUDGE

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JUDE G. GRAVOIS  
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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 **DECEMBER 13, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU  
CLERK OF COURT

**17-CA-272**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)  
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P. HANLON DEVERGES, JR. (APPELLEE)      WAYNE E. WOODS (APPELLEE)

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