

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-139

BROCK HAYS

versus

LEKESHIA HAYS

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 866-285, DIVISION "L"
HONORABLE DONALD A. ROWAN, JR., JUDGE PRESIDING

July 29, 2026

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and John J. Molaison, Jr.

**WRIT GRANTED; JUDGMENT VACATED; REMANDED FOR
FURTHER PROCEEDINGS**

SJW
MEJ
JJM



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LEKESHIA HAYS

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BROCK HAYS

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WINDHORST, J.

Relator, Lekeshia Hays (“Lekeshia”), seeks review of the trial court’s March 5, 2026 judgment, granting Brock Hays’ (“Brock”) oral motion for involuntary dismissal of her objection to the hearing officer’s recommendation and interim order regarding choice of schools for the three (3) minor children, dismissing her objection, and adopting the hearing officer’s recommendation and interim order as to the choice of schools for the minor children as the judgment of the trial court. For the following reasons, this writ application is granted, the March 5, 2026 judgment is vacated, and this case is remanded for further proceedings.

PROCEDURAL HISTORY

The parties were married on April 26, 2012, and three children were born of the marriage. On June 24, 2025, Brock filed a petition for divorce and determination of incidental matters. On July 28, 2025, Lekeshia filed an answer and reconventional demand. Both pleadings were set before the hearing officer.

On August 26, 2025, the hearing officer issued a recommendation and interim judgment that, *inter alia*,¹ awarded the parties joint custody of the three minor children. It also designated Lekeshia as the domiciliary parent, “subject to the obligation of the parties to promptly share information with one another about the

¹ Besides joint custody and designation of domiciliary parent, the August 26, 2025 interim judgment set forth a comprehensive joint custody implementation order, which also made recommendations regarding: (1) parental communication; (2) sharing of the minor children’s birth certificates and social security cards between the parties; (3) sharing of tax information; (4) parental use of “Our Family Wizard” for all communications; (5) the time for filing of sworn detailed descriptive lists and the time for traversal/opposition; (6) physical custody exchange locations and times; (7) parental custody during mandatory hurricane evacuations; (8) transportation of children; (9) the responsibilities of parents in ensuring the children properly prepared for school; (10) parents attendance at the children’s extracurricular activities; (11) Brock’s unsupervised visitation; (12) vacations with the children; (13) Lekeshia’s unsupervised physical custody; (14) parental schedules for holidays, birthdays, and special occasions; (15) telephone contact by parent or child; (16) co-parenting orders; (17) Brock’s calculated child support award; (18) orders regarding medical, health, vision and dental insurance, ordinary and extraordinary medical expenses and percentages to be paid by each parent; (19) education expenses to be determined at next hearing; (20) a list of expenses and percentages to be paid by each parent; (21) directing where and when parents should forward copies of bills and reimbursable expenses to each other; (22) continuing interim spousal support to September 29, 2025; however, on interim basis, without prejudice to either party, pending further orders that Brock will continue to provide health insurance for Lekeshia and continue to pay the mortgage on the community home; (24) accrued amount of interim spousal support to be determined next hearing; (25) granting Lekeshia interim use and occupancy of family residence and contents; (26) the granting of rental reimbursement and deferring it until the partition; (27) granting Lekeshia use of the vehicle; (28) prohibiting parties from alienating, encumbering, concealing or disposing of the community property.

children and to confer with one another in a meaningful fashion before major decisions concerning the children are made.” The hearing officer conference was continued to September 29, 2025, to address the rules for use of a vehicle, interim spousal support, and tuition expenses. There is no indication that the issue of choice of schools was also set for September 29, 2025. The interim order further provided that the parties did not have to file an objection to the recommendation and interim judgment “until after September 29, 2025.”² Neither party filed an objection to the hearing officer’s recommendation regarding joint custody of the children or Lekeshia’s designation as domiciliary parent.

On September 29, 2025, the hearing officer issued a recommendation and interim judgment ordering, *inter alia*,³ the two oldest children to attend Judge Collins Elementary School for the 2025-2026 school year and the youngest to attend Westbank Cathedral Preschool beginning October 2025. The interim judgment also recalculated Brock’s child support order and calculated and awarded Lekeshia interim spousal support.⁴

On October 6, 2025, Lekeshia filed a timely objection to the hearing officer’s September 29, 2025 recommendation and interim judgment regarding choice of schools for the minor children. Brock also filed an objection regarding the hearing

² There is no prohibition against a hearing officer’s extension of the deadline to file an objection. A hearing officer has discretion to grant an extension of the deadline to file an objection under La. R.S. 46:236.5 C(4)(j), which authorizes a hearing officer to “[s]ign and issue all rules nisi, orders to appear and show cause, and other orders necessary to the performance of the duties of the office.” La. R.S. 46: 236.5 C(4)(j); See Lingo v. Lingo, 52,105 (La. App. 2 Cir. 4/11/18), 249 So.3d 932, 938; See also State v. Domingue, 95-1174 (La. App. 3 Cir. 12/6/95), 665 So.2d 152, 153, writ denied, 96-68 (La. 2/28/96), 668 So.2d 364.

³ The September 29, 2025 interim judgment also (1) ordered Lekeshia to execute documents to sell family residence; (2) recalculated Brock’s child support award; (3) restated orders regarding medical, health, vision and dental insurance, ordinary and extraordinary medical expenses, with a change in the percentages to be paid by each parent; (4) restated method of submitting bills and reimbursable expenses; (5) ordered Brock to pay Lekeshia interim spousal support by paying mortgage on the community home, mortgage and insurance on the vehicle, and providing health insurance for Lekeshia through the date of divorce, with no retroactive interim spousal support owed because parties lived together until September 28, 2025; (6) ordered Brock to continue to provide current coverages for medical, dental, and vision insurance for Lekeshia until judgment of divorce is granted, or agreement of parties in any written medium; and (7) ordered that all prior orders not in conflict with these orders shall remain in full force and effect.

⁴ The issue of tuition expenses was reset to September 29, 2026. It appears that Lekeshia was requesting that Brock pay a portion of the tuition expenses for the children attending ICS. Because the hearing officer’s recommendation removed the children from ICS, it appears that issue was deemed moot.

officer's September 29, 2025 recommendations regarding child support, interim spousal support, and spousal support. Both objections were set for a hearing before the trial court on March 5, 2026.

On March 5, 2026, the hearing before the trial court proceeded only as to Lekeshia's objection regarding choice of schools.⁵ Based on the transcript, the parties and the court believed that it was Lekeshia's burden of proving that the best interest of the children would be served by deviating from the hearing officer's recommendations.⁶ In the presentation of her case, Lekeshia's counsel called Lekeshia, the domiciliary parent, to testify, and several exhibits were admitted to support Lekeshia's choice of schools for the children. Lekeshia's counsel also called Brock to testify. After counsel tendered the witness, Brock's counsel stated that she would wait to call Brock until her case in chief. At that point, Brock's counsel orally moved for involuntary dismissal of Lekeshia's objection, arguing that it was Lekeshia's burden to show the trial court that there is some necessity for the children to have placement at a private school, and she did not do so.⁷ After argument of

⁵ The March 5, 2026 judgment pretermitted Brock's objection regarding child and spousal support and ordered the hearing officer to recalculate the parties' child and spousal support obligations based on the parties "most recent W-2 documents."

⁶ The March 5, 2026 judgment states that Brock's counsel argued that Lekeshia "did not meet **her burden** of proving that the best interests of the children would be served by deviating from the Hearing Officer's Recommendations" and the court agreed. [Emphasis added.] The transcript also contains the following exchange:

Ms. Salley (Brock's counsel):

Your Honor, I'm going to object here. The burden is actually on the mother because she wants to put them in special placement in private school. So it's not for him to prove why public school is great. It's for her to prove why the children have the need for public -- or for private school.

Ms. Lockett (Lekeshia's counsel):

Actually, we're not trying to get all of the children in public -- in private school. As I mentioned previously, the middle child is in a public school. [Mr. Hays] is adamant that he wants the child at Judge Collins where the mother does not work any longer. Also whether it was public, private, the inquiry before the Court is what is the school choice that would serve the children's best interest.

So I'm asking a very simple question: Why do you believe this school for all of your children --

The Court:

But [Ms. Salley] is correct. **The burden is on you, not him.** [Emphasis added.]

Ms. Lockett (Lekeshia's counsel) in pertinent part:

I understand the burden. And I think I've established that burden[.]

⁷ After Brock's counsel moved for involuntary dismissal, Lekeshia's counsel acknowledged she had no further witnesses. The parties then argued the motion for involuntary dismissal.

counsel on the motion to dismiss, the trial court recessed. Instead of returning to the hearing, the transcript indicates that the trial court's clerk noted for the record that "both parties received a copy of the judgment in open court."

The written judgment rendered March 5, 2026 states, in pertinent part:

At the close of the hearing, the [Brock] lodged a Motion for Dismissal of [Lekeshia's] Objection, arguing that [Lekeshia] did not meet her burden of proving that the best interest of the children would be served by deviating from the Hearing Officer's Recommendations. Considering the law and evidence presented at the hearing of this matter, this Court agrees. Accordingly, this Court must grant [Brock's] Motion for Dismissal and dismiss [Lekeshia's] Objection. Further, this Court finds that the Hearing Officer's Interim Order of September 29, 2025, should be upheld with respect to the children's school placement.

The judgment granted Brock's motion for involuntary dismissal and dismissed Lekeshia's "Objection to Domestic Commissioner Order and Order to Transfer to District Court."⁸ The judgment further adopted the hearing officer's September 29, 2025 interim order as the judgment of the court as to the school placements of the minor children.

This writ application followed.

LAW and ANALYSIS

In this writ application, Lekesha contends that the trial court (1) erred in granting the motion for dismissal and dismissing her objection; and (2) erred in failing to sustain her objection to the hearing officer's recommendation and interim order. Lekeshia argues that the testimony and evidence establishes that she satisfied the burden of proof to show that her choice of schools served the best interest of the children and that the hearing officer's recommendation was not in the best interest of the children. Lekeshia contends that she presented testimony and evidence demonstrating that the hearing officer's recommendation was not in the best interests of the minor children. The trial court reviewed report cards from both schools for

⁸ The judgment incorrectly refers to Mrs. Hays' objection as an "Objection to Domestic Commissioner Order and Order to Transfer to District." Mrs. Hays' objection was to the hearing officer's September 29, 2025 recommendation and interim judgment regarding choice of schools. Because we are vacating the trial court's March 5, 2026 judgment for other reasons, we need not address this issue.

the oldest daughter, which showed a substantial improvement in her academic performance at ICS. Lekeshia contends that she also provided testimony and evidence establishing that the middle child's best interests would be best served by attending the school where his mother is employed, especially considering his behavioral needs. Lekeshia stated that she further testified that the youngest child's best interests are served by attending ICS and that she cannot be enrolled in Westbank Cathedral Preschool because there are no spots available. Additionally, Lekeshia contends she presented testimony detailing the logistical challenges created by placing the children in multiple schools. She testified regarding her work schedule, the start and dismissal times at Judge Collins, and the lack of feasible aftercare programs there. Moreover, she testified Brock has not and does not assist with transporting the children to or from school.

Lekeshia asserts that as the domiciliary parent, her decision regarding the children's school is presumed by statute to be in the best interest of the children. She contends that the trial court granted Brock's motion for dismissal before he presented his case. Lekeshia states that the trial court erred in failing to apply the statutory presumption to her decision regarding choice of schools. Moreover, Lekeshia asserts that at the *de novo* hearing, Brock, as the non-domiciliary parent, did not meet his burden of rebutting the statutory presumption and did not present any evidence to rebut the presumption in favor of Lekeshia. Lekeshia further avers that the trial court's judgment improperly restricts her authority as the domiciliary parent and fails to serve the best interests of the children.

In opposition, Brock contends that the interim judgment designated Lekeshia as domiciliary parent, "subject to" the obligations of joint custodians under La. R.S. 9:336. Therefore, Brock argues that Lekeshia was required to meaningfully confer with him prior to her acting decision-making authority on any major decisions. Brock asserts that "[o]nly after such a conference" are her decisions as domiciliary parent

to be presumed to be in the best interests of the children. Brock claims that Lekeshia admitted in her testimony that she did not meet her obligation under La. R.S. 9336 and did not confer with Brock in exercising her decision-making authority. He avers that Lekeshia's testimony contradicts her argument that the decision to move the children's schools was in the best interests of the children. He claims that Lekeshia only testified as to why she believed changing the parties' oldest child's school was in her best interest and that the evidence does not show a significant difference in the oldest child's performance at Judge Collins and where she was later enrolled at ICS. Brock contends that any other argument provided by Lekeshia in favor of unilaterally changing the children's school was for her own convenience. Brock contends that "[i]n his Oral Motion for Involuntary Dismissal," he rebutted any presumption that Lekeshia's unilateral decision to change the children's school was in the children's best interest. Brock argues that the facts presented to the trial court showed that Lekeshia did not meaningfully confer with him as required by La. R.S. 9:336, nor was her choice to change the children's schools made for the best interest of the children. He further argues that there is no indication that the trial court did not give her authority as domiciliary parent sufficient weight. Brock, therefore, contends that Lekeshia failed to meet her burden to show she meaningfully conferred with Brock before making the unilateral decision to change the children's school.

When a party timely objects to the hearing officer's recommendations, those recommendations do not become a final judgment, and the objecting party is clearly entitled to a *de novo* review of the hearing officer's findings by the trial court. McLauren v. McLauren, 24-553 (La. App. 5 Cir. 10/6/25), 426 So.3d 32, 41; Fairbanks v. Beninate, 20-206 (La. App. 5 Cir. 12/23/20), 308 So.3d 1222, 1233-1234, writ denied, 21-250 (La. 3/23/21), 313 So.3d 272; Dugué v. Dugué, 17-525

(La. App. 5 Cir. 6/27/18), 250 So.3d 1174, 1178; See also La. R.S. 46:236.5 C(6).⁹ Here, Lekeshia filed a timely objection. Therefore, the hearing officer's recommendations did not become a final judgment, and Lekeshia was entitled to a *de novo* hearing.

At the *de novo* hearing, the burden of proof does not shift to the objecting spouse. Fairbanks, 308 So.3d at 1234. Moreover, “[i]n keeping with the intent of a *de novo* hearing, the burden of proof remains on the moving spouse who originally had the burden of proof.”

In a child custody proceeding, a trial court's determination is “entitled to great weight” and will not be disturbed unless there is a clear showing of an abuse of discretion. C.M.J. v. L.M.C., 14-1119 (La. 10/15/14) 156 So.3d 16, 29; See also Randazza v. Giacona, 20-439 (La. App. 5 Cir. 3/24/21), 316 So.3d 564, 568; Schmidt v. Schmidt, 02-885 (La. App. 5 Cir. 1/14/03), 839 So.2d 150, 152. Nevertheless, a court necessarily abuses its discretion if its ruling is based on an erroneous application or view of the law. Rabalais v. Rabalais, 23-164 (La. App. 3 Cir. 10/18/23), 372 So.3d 970, 973, writ denied, 23-1519 (La. 1/24/24), 378 So.3d 67, citing A.S. v. D.S., 14-1098 (La. App. 4 Cir. 4/8/15), 165 So.3d 247, 257.

In a nonjury case, a party may move for an involuntary dismissal of the action against him after the close of the plaintiff's case. La. C.C.P. art. 1672 B.¹⁰ The appropriate standard in determining whether an involuntary dismissal should be granted is whether the plaintiff has presented sufficient evidence in his case to

⁹ See also Ariatti v. Plaisance, 18-84 (La. App 5 Cir. 09/13/18), 255 So.3d 1239, 1249 and Garcia v. Hernandez, 21-338 (La. App. 5 Cir. 4/11/22), 339 So.3d 61 (wherein this court recognized a party's right to a *de novo* hearing before the trial court upon a timely objection to the domestic commissioner's interim judgment).

¹⁰ La. C.C.P. art. 1672 B provides:

B. In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, any party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal of the action as to him on the ground that upon the facts and law, the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff and in favor of the moving party or may decline to render any judgment until the close of all the evidence.

establish his claim by a preponderance of the evidence. Cousin v. Cousin, 21-150 (La. App. 5 Cir. 12/23/21), 365 So.3d 784, 791. The trial court has much discretion in determining whether to grant a motion for involuntary dismissal. Id. An appellate court may not reverse a ruling on a motion for involuntary dismissal unless it is manifestly erroneous or clearly wrong. Id.

Because an involuntary dismissal of an action under La. C.C.P. art. 1672 B is based on the “facts and law,” a review of the substantive law applicable to this case is necessary. Id.

When joint custody is decreed, the court shall designate a domiciliary parent, defined as “the parent with whom the child shall primarily reside,” and who has “authority to make all decisions affecting the child unless an implementation order provides otherwise.” La. R.S. 9:335 B(2)-(3); McCaffery v. McCaffery, 13-692 (La. App. 5 Cir. 4/9/14), 140 So.3d 105, 115, writ denied, 14-0981 (La. 6/13/14), 141 So.3d 273. “[T]he plain language of La. R.S. 9:355 manifests the legislature’s clear intent to establish a custodial system in which a child has a domiciliary parent and no more than one such parent. The text is clear.” Hodges v. Hodges, 15-585 (La. 11/23/15), 181 So.3d 700, 706. All major decisions made by the domiciliary parent concerning the child, which includes the choice of school, are subject to review by the court upon motion of the non-domiciliary parent. La. R.S. 9:335 B(3); Brue v. Brue, 25-1260 (La. 11/25/25), 423 So.3d 73, 73-74 (*per curiam*); See also Randazza, 316 So.3d at 569; Shaw v. Shaw, 30,613 (La. App. 2 Cir. 6/24/98), 714 So.2d 906, 910, writs denied, 98-2414 (La. 11/20/98), 729 So.2d 556 and 98-2426 (La. 11/20/98), 729 So.2d 558. Additionally, La. R.S. 9:336 provides that “Joint custody obligates the parents to exchange information concerning the health, education, and welfare of the child and to confer with one another in exercising decision-making authority.”

Therefore, pursuant to La. R.S. 9:335 B(3), in the absence of an implementation order to the contrary, the domiciliary parent maintains authority to make all major decisions affecting the child, including school choice. See Brue, 423 So.3d at 73-74; Thibodeaux v. Thibodeaux, 25-972 (La. 8/6/25), 415 So.3d 932, 933 (*per curiam*). The statute also expressly states that “[i]t shall be presumed that all major decisions made by the domiciliary parent are in the best interest of the child.” La. R.S. 9:355 B(3). Consequently, under the statute, the burden of proving that such decisions are not in the best interest of the child is placed on the non-domiciliary parent who opposes the decision. Id.; Brue, 423 So.3d at 74, citing Lawson v. Lawson, 48,296 (La. App. 2 Cir. 7/24/13), 121 So.3d 769, 773 and Thibodeaux, 415 So.3d at 933.

In Thibodeaux, *supra*, the father sought review of a judgment that designated him as the children’s domiciliary parent but then provided that “the minor children shall remain enrolled in school in the Central Community School System so long as [the children’s mother] maintains her residence in the Central, Louisiana.” The Louisiana Supreme Court stated:

The authority of a domiciliary parent is set forth in La. R.S. 9:335(B)(3), which provides:

(3) The domiciliary parent shall have authority to make all decisions affecting the child unless an implementation order provides otherwise. All major decisions made by the domiciliary parent concerning the child shall be subject to review by the court upon motion of the other parent. **It shall be presumed that all major decisions made by the domiciliary parent are in the best interest of the child.** [Emphasis added.]

The July 24, 2025 judgment clearly designates the father as domiciliary parent. Therefore, in the absence of an implementation order to the contrary, the father retains authority for all decisions affecting the minor children, including school choice.

The mother submits the portion of the judgment maintaining the children's enrollment in the Central Community School System constitutes an implementation order. Although there is no specific form requirement for an implementation order, such an order must satisfy certain requirements, including specifying the legal authority and responsibility of the parents. La. R.S. 9:335(A); Hodges v. Hodges, 2015-0585 (La. 11/23/15), 181 So. 3d 700, 710–11.

The July 24, 2025 judgment fails to specify any legal authority or responsibility of the mother with respect to school choice; rather, it unilaterally decrees the children will remain enrolled in the Central Community School System so long as the mother maintains her residence in the district. This portion of the judgment is an improper infringement on the father's authority as domiciliary parent under La. R.S. 9:335(B)(3) and must be reversed.

Thibodeaux, 415 So.3d at 933. [Emphasis in original.]

Thereafter, the Supreme Court reversed the portion of the judgment providing that the children shall maintain enrollment in the Central Community School System, amended the judgment to provide that the father, as domiciliary parent, shall have authority to make all decisions affecting the children, including school choice, subject to review by the court upon motion of the other parent. Id. The Supreme Court further decreed that if the other parent objects to the domiciliary parent's choice of school, the family court is directed to apply the presumption that the domiciliary parent's choice is the best interest of the child, and to hear the motion in an expedited manner. Id.

In Brue, the parties were granted joint custody of the minor children, with the mother designated as the domiciliary parent. 423 So.3d at 73. The mother homeschooled the children five days a week and the children attended a small private school for several mornings each week for additional tutoring. Id. The father challenged this arrangement. Id. After a hearing, the trial court rendered judgment ordering the children to attend a public school for the next school year. Id. The Louisiana Supreme Court stated:

In the case before us, we find the trial court failed to give proper effect to the presumption that the mother's choice of schooling was in the children's best interest. Rather than finding any fundamental defects in the current arrangement, the trial court acknowledged in its reasons for judgment that there was “no issue that the children have done well in their education to date....” This finding reveals the father failed to rebut the presumption of best interest accorded to the mother's major decisions.

The trial court's primary focus was on certain aspects of the current arrangement, such as its effect on the father's custody and whether it included adequate resources to address the children's dyslexia. While these

concerns are reasonable, they do not indicate the mother's schooling decision is not in the children's best interest. Rather, these concerns can be addressed through narrow rulings which do not impact the mother's school decision, such as explicitly defining the time periods when the mother must make the children available to the father.

Applying this reasoning, we find the trial court erred in ordering the children to attend a different school for the next school year. We will vacate this ruling and remand the case to the trial court to fashion a remedy that addresses the concerns raised by the father while maintaining the mother's educational decision.

Id.

In the instant case, pursuant to the hearing officer's August 25, 2025 interim judgment, the parties were awarded joint custody of the three minor children and Lekeshia was designated the domiciliary parent. Brock did not file an objection to Lekeshia's designation as domiciliary parent.¹¹ Because a timely objection was not filed, the hearing officer's recommendation and interim order designating Lekeshia as the domiciliary parent became the final judgment of the court. We find that once she was designated as the domiciliary parent, like the father in Thibodeaux, *supra*, Lekeshia retained authority to decide all major decisions concerning the children, *including choice of schools*, because there was no implementation order to the contrary.¹² The August 26, 2025 and September 29, 2025 interim judgments, like the judgment in Thibodeaux, do not specify any legal authority or responsibility of Brock with respect to school choice. La. R.S. 9:355 B(3) unambiguously provides that "It shall be presumed that all major decisions made by the domiciliary parent are in the best interest of the child."

Consequently, the hearing officer's September 29, 2025 recommendation and interim judgment ordering the two oldest children to attend Judge Collins for the 2025-2026 school year and the youngest to attend Westbank Cathedral Preschool

¹¹ Brock had until after the September 29, 2025 interim judgment to file an objection to the August 25, 2025 interim judgment designating Lekeshia as domiciliary parent, which he did not do.

¹² Despite Brock's argument to the contrary, the general obligation to meaningfully confer required of parents under La. R.S. 9:336 is not "an implementation order to the contrary" as contemplated by La. R.S. 9:335 B(3).

beginning October 2025, effectively ordered Lekeshia, the domiciliary parent, to remove the children from the schools she had already enrolled them in for the 2025-2026 school year, appears to have been rendered in violation of Lekeshia's express authority to decide all major decisions for the children, including choice of school, because there was no implementation order to the contrary as set forth in La. R.S. 9:355 B(3). Similar to the judgment in Thibodeaux, *supra*, the September 29, 2025 interim judgment with respect to school choice appears to be an improper infringement on Lekeshia's authority as domiciliary parent.

On the other hand, however, it is undisputed by the parties that Brock objected to Lekeshia's choice of schools at the hearing officer conference(s). Pursuant to La. R.S. 9:355 B(3) "upon motion"¹³ of the non-domiciliary parent, all major decisions made by the domiciliary parent concerning the child, including choice of schools, are subject to review by the court. Because the record does not contain a written motion by Brock, it appears he orally objected to Lekeshia's decision as to choice of schools. Assuming for the purposes of this writ application only that Brock's oral objection was proper¹⁴ and that the hearing officer applied the statutory presumption in favor of Lekeshia, the hearing officer could have found that Brock rebutted the statutory presumption regarding Lekeshia's choice of schools.

Therefore, at the March 5, 2025 *de novo* hearing, the burden of proof remained on Brock, the moving spouse who originally had the burden of rebutting the statutory presumption in favor of Lekeshia, the domiciliary parent, regarding choice of schools. Our review of the transcript clearly shows that the burden of proof was improperly shifted to Lekeshia at the *de novo* hearing. During the hearing, Brock's

¹³ La. C.C.P. art. 961 provides "[a]n application to the court for an order, if not presented in some other pleading, shall be by motion which, unless made during trial or hearing or in open court, shall be in writing." La. R.S. 9:335 B(3) does not specifically state that the "motion" must be in writing.

¹⁴ This disposition pretermits the issue of whether a hearing officer's conference constitutes a "hearing" under La. C.C.P. art. 961, such that an oral motion challenging a domiciliary parent's decision regarding school is permissible under La. R.S. 9335 B(3).

counsel argued, and the court agreed, that it was Lekeshia's burden regarding choice of schools because she wanted the children (at least two of the three) to attend private school.¹⁵ The trial court failed to give proper effect to the statutory presumption that Lekeshia's choice of schools was in the best interest of the minor children because there was no implementation order to the contrary, and the trial court failed to place the burden on Brock to rebut that statutory presumption.

We find the trial court's improper shifting of the burden of proof to Lekeshia constitutes "legal error."¹⁶ This legal error was prejudicial because it materially affected the outcome and deprived Lekeshia of substantial rights. Specifically, the trial court granted Brock's oral motion for involuntary dismissal and dismissed Lekeshia's objection, erroneously concluding that the burden was on Lekeshia as to choice of schools and that she did not meet her burden of proving that the best interest of the children would be served by deviating from the hearing officer's recommendations.

When a prejudicial error of law skews the trial court's finding of a material issue of fact and causes it to pretermite other issues, an appellate court is required, if it can, to render judgment on the record by applying the correct law and determining the essential material facts *de novo*. Cook v. Sullivan, 20-1471 (La. 9/30/21), 330 So.3d 152, 157. Here, the trial court improperly shifted the burden of proof to Lekeshia and granted Brock's motion for involuntary dismissal of Lekeshia's objection. Brock did not present his case in chief, and therefore, the record is

¹⁵ It appears that the parties *and* the court incorrectly believed it was Lekeshia's burden as it related to choice of schools. It also appears that the parties and the court were possibly confusing or intertwining the rebuttable statutory presumption of best interest of the children standard as set forth in La. R.S. 9:335 B(3) with the payment of private school tuition and expenses in relation to Brock's child support obligation under La. R.S. 9:315.6. See Rabalais v. Rabalais, 23-164 (La. App. 3 Cir. 10/18/23), 372 So.3d 970, 978, writ denied, 23-1519 (La. 1/24/24), 378 So.3d 67; Short v. Short, 11-3 (La. App. 5 Cir. 10/25/11), 77 So.3d 405, 416, writ denied, 11-2635 (La. 2/10/12), 80 So.3d 472.

¹⁶ A legal error occurs when a trial court applies incorrect principles of law and such errors are prejudicial. Cook v. Sullivan, 20-1471 (La. 9/30/21), 330 So.3d 152, 157. Prejudicial legal errors occur when the materially affect the outcome and deprive a party of substantial rights. *Id.*; See also Duhe v. O'Donnell, 15-683 (La. App. 5 Cir. 5/26/16), 193 So.3d 455, 459 n.1; Johnson v. Spurlock, 07-949 (La. App. 5 Cir. 5/27/08), 986 So.2d 724, writ denied, 08-1400 (La. 7/25/08), 986 So.2d 670.

incomplete. Under these circumstances, this court is unable to conduct a *de novo* review. Thus, because the trial court's legal error interdicted the fact-finding process, and the record is incomplete, we vacate the trial court's March 5, 2026 judgment and remand for further proceedings.¹⁷

DECREE

Accordingly, this writ application is granted, the March 5, 2026 judgment is vacated, and the case is remanded to the trial court for further proceedings.

WRIT GRANTED; JUDGMENT VACATED;
REMANDED FOR FURTHER PROCEEDINGS

¹⁷ Because we are vacating the trial court's March 5, 2026 judgment, we pretermitt Lekeshia's second assignment of error.

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 **JULY 29, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES 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-139

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)		
HONORABLE DONALD A. ROWAN, JR. (DISTRICT JUDGE)		
MELANIE C. LOCKETT (RELATOR)	JORDAN M. DAIGLE (RESPONDENT)	LAUREL A. SALLEY (RESPONDENT)
ALEXANDRA N. BAIRD (RELATOR)		

MAILED

NO ATTORNEYS WERE MAILED