

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-469

BING TRAN

versus

MATTHEW STEEL

IN RE MATTHEW STEEL

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE DANYELLE M. TAYLOR, DIVISION "O", No. 875-606

TRUE COPY

October 26, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Jude G. Gravois,
Stephen J. Windhorst, and Scott U. Schlegel

WRIT DENIED; STAY DENIED

In this eviction matter, relator, Matthew Steel, seeks this Court's supervisory review of the trial court's September 2, 2026 ruling which, pertinent to this writ application, overruled his dilatory exception of prematurity. He also requests a stay of the October 13, 2026 possession hearing. For the reasons that follow, we deny the writ application and the request for a stay.

To begin, the judgment under review was rendered on September 2, 2026; notice of judgment was issued on September 3, 2026. Relator filed a notice of intent to apply for supervisory review on September 9, 2026, and requested that the trial court set October 2, 2026 as the return date. Thereafter, the trial court set the return date for October 2, 2026. However, this writ application was not filed until October 3, 2026 at 12:12 a.m. Although the writ application was not filed by October 2, 2026, the time fixed by the trial court, it was nevertheless filed

within 30 days of the notice of judgment. *See* Rule 4-3 of the Uniform Rules—Louisiana Courts of Appeal.¹ We will thus consider the merits of the application.

On May 30, 2024, Bing Tran and relator entered into an agreement whereby relator would lease property located at 168 Elaine Drive in Avondale, Louisiana for a term of twenty years. The agreement provided for a price of \$195,000.00, with a \$10,000.00 down payment. The remaining \$185,000.00 would be paid via monthly payments of \$2,082.02 to “Synergy Bank FBO Bing Van Tran.” The agreement further provided:

12. Lessor agrees that Lessee shall not be in default for failure to make any of the rental payments due under the terms of this lease or any extension until Lessor has given Lessee written notice of such delinquency and has allowed Lessee a period of ten (10) days from the date of receipt of such notice in which to make payment.

On May 7, 2026, Mr. Tran filed a Petition for Eviction, Declaratory Judgment, Breach of Lease, and Damages. Mr. Tran sought to evict relator, claiming relator missed approximately twenty payments and is in default. He provided written notice to relator in both January 2026 and March 2026 to vacate the premises. Mr. Tran again notified relator that he was in breach of the lease for failure to pay by sending notice “by regular mail on April 23, 2026, by certified mail and posted by private process server on May 2, 2026.” In addition, Mr. Tran sought a declaratory judgment that the agreement between the parties is a lease rather than a bond for deed, as relator contends.² Mr. Tran also sought damages and sanctions.

¹ Rule 4-3 of the Uniform Rules—Louisiana Courts of Appeal, provides, in pertinent part:

The judge who has been given notice of intention as provided by Rule 4-2 shall immediately set a reasonable return date within which the application shall be filed in the Court of Appeal. The return date in civil cases shall not exceed 30 days from the date of notice of the judgment, as provided in La. C.C.P. art. 1914. ...

... An application not filed in the Court of Appeal within the time so fixed or extended shall not be considered, in the absence of a showing that the delay in filing was not due to the applicant’s fault.

² Mr. Tran stated in his petition that in January of 2026 an eviction proceeding occurred before the Justice of the Peace court. The eviction was dismissed after relator argued the lease was a bond for deed contract. After another rule for eviction was filed in March 2026, the Justice of the Peace ruled to evict. Relator filed an appeal and a trial *de novo* on the matter was set for May 12, 2026 in Second Parish Court. According to the official record, this hearing has been continued without date.

A show cause hearing on the eviction was set for May 28, 2026. On the same day, in response, relator filed a “Combined Declinatory, Dilatory, and Peremptory Exceptions; Objection to Premature Return Date; Motion to Vacate or Continue Rule to Show Cause; And, Strictly in the Alternative and Without Waiver, Conditional Verified Answer Under Oath, Affirmative Defenses, and Conditional Reconventional Demands.” As to prematurity, relator argued that Mr. Tran filed his petition for eviction before the agreement’s cure period matured. By the terms of the agreement, Mr. Tran was to give relator ten days from receipt of notice of default to cure the past due payments. While the letter was dated April 23, 2026, relator alleged he did not receive it until May 2, 2026. Suit was filed only 5 days later on May 7, 2026. Additionally, after this action was filed, on May 9, 2026, relator made a payment which was received by Synergy Bank on May 11, 2026. In the alternative, relator argues that the agreement is a bond for deed, which requires a notice period of 45 days.

The trial court continued the eviction hearing without date. Following a hearing on the exceptions on July 14, 2026, the court signed a written judgment on September 2, 2026: (1) finding the declinatory exception of insufficiency of citation and service of process and lack of personal jurisdiction moot; (2) overruling the declinatory exception of *lis pendens*, dilatory exceptions of prematurity, unauthorized use of summary proceedings, improper cumulation, vagueness and/or ambiguity, and non-conformity with art. 891; (3) overruling the peremptory exception of nonjoinder of a party; and (4) deferring the peremptory exceptions of no cause of action and no right of action to the merits.

On September 9, 2026, Mr. Tran filed a Rule to Set Eviction; the matter was set for October 13, 2026. On September 29, 2026, relator filed a motion to reconsider the September 2, 2026 Interlocutory Judgment and for a limited stay of the October 13, 2026 possession hearing. On September 30, 2026, the trial court set both motions for hearing on October 13, 2026, and stayed the possession hearing.³

The dilatory exception of prematurity questions whether the judicial right of action has yet to come into existence because some prerequisite condition has

³ According to the official record, on October 8, 2026, relator filed a motion to continue the October 13, 2026 hearing; the hearing was reset to November 10, 2026.

not been fulfilled. *Benoit v. Benoit*, 21-865 (La. App. 1 Cir. 2/25/22), 341 So.3d 573, 579, *writ denied*, 22-704 (La. 6/22/22), 339 So.3d 1185. Appellate courts generally review a lower court's decision concerning an exception of prematurity for manifest error. *Id.* (citing *Code v. Dep't of Public Safety & Corrections*, 11-1282 (La. App. 1 Cir. 10/24/12), 103 So.3d 1118, 1127, *writ denied*, 12-2516 (La. 1/23/13), 105 So.3d 59). If the dilatory exception pleading prematurity is sustained, the premature action, claim, demand, issue or theory shall be dismissed. La. C.C.P. art. 933(A).

The burden of proving prematurity is on the mover. *In re Succession of Burton*, 24-598 (La. App. 5 Cir. 12/30/24), 410 So.3d 980, 982, *writ denied*, 25-00120 (La. 4/15/25), 406 So.3d 427. While the mover bears the burden of proof, either party may introduce evidence to support or oppose the exception. *Land Coast Insulation, Inc. v. Gootee Constr., Inc.*, 21-0052 (La. App. 4 Cir. 9/24/21), 369 So.3d 811, 813; La. C.C.P. art. 930. If evidence is not introduced, "the court must render its decision on the exception based upon the facts as alleged in the petition, and all allegations therein must be accepted as true." *Land Coast*, 369 So.3d at 813 (quoting *Blazio v. Ochsner Clinic Found.*, 19-0753 (La. App. 4 Cir. 3/4/20), 294 So.3d 36, 40).

Evidence that has not been properly and officially offered and introduced cannot be considered by a court, even if a physical copy of that evidence has been placed into the record. *Denoux v. Vessel Mgmt. Servs., Inc.*, 07-2143 (La. 5/21/08), 983 So. 2d 84, 88. Furthermore, the long standing jurisprudence of this State holds that documents that are attached to pleadings or memoranda do not constitute evidence if not properly offered and introduced as such. *Gibbs v. Comprehensive Med. Mentoring Program*, 25-0116 (La. App. 4 Cir. 8/8/25), 420 So.3d 253, 256.

The transcript of the July 14, 2026 hearing is not included in the writ application. The only information provided in the writ application as to what transpired at said hearing on July 14, 2026 is a minute entry dated July 14, 2026 which notes that relator offered two exhibits into evidence: a copy of the agreement and a copy of Mr. Tran's April 23, 2026 letter. No other evidence was evidently presented in support of relator's argument that Mr. Tran filed his petition before relator received notice of his default and before the ten-day cure period elapsed. Furthermore, as to notice of his default, by his own admission,

relator participated in two previous court matters in January and March 2026 regarding his eviction and his default payments. Upon review, on the showing made, we cannot say that the trial court erred in overruling the dilatory exception of prematurity.

For the foregoing reasons, this writ application and the requested stay are denied.

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

JGG
SJW
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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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

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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 **10/26/2026** 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:

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

CURTIS B. PURSELL
CLERK OF COURT

26-C-469

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Danyelle M. Taylor (DISTRICT JUDGE)
Matthew G. Steel (Relator)
Max M. Chotto (Respondent)

MAILED

Daniel J. Dorner, Jr. (Respondent)
Attorney at Law
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