

**STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT**

**DOCKET NUMBER
2025 CA 1059**

**DARRELL ALAN GRABERT HUSBAND
OF/AND THERESA GALE GRABERT**

VERSUS

JEAMIE McCULLEN

Judgment Rendered: AUG 19 2026

*** * * * ***

**ON APPEAL FROM THE
22ND JUDICIAL DISTRICT COURT, DIVISION B
WASHINGTON PARISH, STATE OF LOUISIANA
DOCKET NUMBER 119313**

HONORABLE TARA F. ZELLER, JUDGE PRESIDING

*** * * * ***

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Jeamie McCullen**

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**Attorney for Plaintiffs-Appellees
Darrell Alan Grabert and
Theresa Gale Grabert**

BEFORE: McCLENDON, C.J., GREENE, and STROMBERG, JJ.

GREENE, J.

In this appeal, a tax sale purchaser challenges the granting of a motion for summary judgment declaring the tax sale a nullity. Because the summary judgment is not final and appealable, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On July 23, 2020, Jeannie McCullen purchased tax sale title to a 70% interest in approximately 50 acres located in Washington Parish, Louisiana (the property). The tax sale certificate listed "BAHM, MARK STANLEY ET AL" as the property's record owner and stated that the tax sale title was sold as a result of delinquent property taxes owed for the year 2019 with interest and costs. The Washington Parish Clerk of Court filed and recorded the tax sale certificate on July 28, 2020.

On April 2, 2024, Darrell Alan Grabert and Theresa Gale Grabert (the Graberts) filed a "Petition to Annul Tax Sale," naming McCullen as the defendant. The petition averred that Mark Stanley Bahm co-owned the property with Susan Lynn Bahm Genre until February 28, 2024, when Bahm donated his right, title, and interest in the property to the Graberts. The petition sought to nullify the tax sale on grounds that Bahm did not receive adequate pre- or post-sale notice that his property was subject to a tax sale. The Graberts prayed for judgment declaring the tax sale null and void and asked that ownership of the property be vested in them after all taxes and 10% interest were paid. Proceeding *pro se*, McCullen filed an answer generally denying the allegations of the petition on April 23, 2024.

On September 24, 2024, the Graberts filed a motion for summary judgment seeking to annul the tax sale based upon the redemptive nullity of failure of notice. The motion was set for hearing on November 7, 2024. McCullen did not file any opposition. On the day before the hearing, McCullen filed a motion to continue the hearing seeking additional time to retain counsel. The hearing proceeded as scheduled on November 7th. After hearing arguments, the trial court rendered judgment in open court denying McCullen's motion to continue and granting the Graberts' motion for summary judgment. On December 6, 2024, the trial court signed a judgment in accordance with the oral ruling, stating:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED
that [McCullen's] *Motion to Continue* is hereby denied.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED
that [the Graberts'] Motion for Summary Judgment is hereby granted, and, as such, the Tax Sale Certificate dated July 23, 2020, of record at COB 882, page 123 of the official records of the clerk of court for the parish of Washington, state of Louisiana, involving the following described property:

Ward 2 Parcel 0200041000
27.11 Acs. In SE ¼ of SE ¼ Sec. 1-1-9
26.48 Acs. In SW ¼ of SE ¼ Sec. 1-1-9

is hereby declared to be null and void and without legal effect,
ab initio.

The notice of judgment was issued on December 10, 2024.

After the hearing, McCullen retained an attorney to represent her in this case. Through counsel, McCullen filed a motion for new trial.¹ After a hearing, the trial court denied McCullen's motion in a judgment signed March 26, 2025. The notice of judgment was issued on April 3, 2025.

McCullen now appeals the December 6, 2024 judgment, granting the Graberts' motion for summary judgment and denying her motion to continue, and the March 26, 2025 judgment, denying her motion for new trial. In her first assignment of error, McCullen contends the trial court erred by denying her request for a continuance to retain counsel and present evidence. In her second assignment of error, McCullen contends the trial court erred by granting the Graberts' motion for summary judgment because she contends that genuine issues of material fact remain.

DISCUSSION

After the appeal lodged, this Court issued a Rule to Show Cause Order noting that McCullen's motion for new trial appeared to be untimely filed. The parties were ordered to show cause by briefs why the appeal should not be dismissed. McCullen filed a responsive brief, which attached a document suggesting she timely faxed her motion for new trial to the trial court on December 19, 2024. However, we do not need to decide

¹ The date the motion for new trial was filed is a matter of dispute. McCullen contends she timely fax-filed the motion for new trial on December 19, 2024. The Graberts contend McCullen untimely fax-filed her motion on December 20, 2024. The record reflects the original motion for new trial was electronically filed on January 2, 2025.

the sufficiency of this evidence because the judgments before us suffer from a more fundamental defect.

As an appellate court, we have the duty to examine our subject matter jurisdiction and to determine *sua sponte* whether such subject matter jurisdiction exists, even when the issue is not raised by the litigants. *Allen v. Baton Rouge General*, 2025-0478 (La. App. 1 Cir. 6/16/26), 2026 WL 1740888, *2. This Court's appellate jurisdiction only extends to "final judgments." *Gulfco of Louisiana, LLC v. Plaisance*, 2022-0166 (La. App. 1 Cir. 3/8/2023), 362 So.3d 660, 662. A judgment that determines the merits in whole is final, and a judgment that determines the merits in part may be a partial final judgment under La. C.C.P. art. 1915(A). See La. C.C.P. art. 1841(B).

Louisiana Revised Statute 47:2291 sets forth the procedure that governs actions to annul tax sales, including the procedure for setting costs and the finality of nullity judgments for appeal purposes:

- A. A nullity action shall be an ordinary proceeding governed by the Louisiana Code of Civil Procedure. Upon conclusion of the action for nullity, the court shall either:
 - (1) Issue a preliminary order that the tax sale, an acquisition of full ownership by a political subdivision, or a sale or donation of adjudicated property, as applicable, will be declared a nullity.
 - (2) Render judgment dismissing the action with prejudice which shall be a final judgment for purposes of appeal.
- B.
 - (1) The tax sale purchaser, the political subdivision, or the purchaser or donee from a political subdivision shall be presumed to be a good faith possessor of the property.
 - (2) Costs pursuant to Article VII, Section 25 of the Louisiana Constitution and R.S. 47:2290 shall include costs of sending notice, costs of publication, and costs of determining tax sale parties. Costs shall also include amounts set forth in Civil Code Articles 496 and 497, if applicable.
 - (3) Within fifteen days after the rendering of the order under Paragraph (A)(1) of this Section, the party claiming costs shall submit proof of costs. Proof of costs may be made by affidavit or other competent evidence and may be contested by the party claiming the nullity. A contest of costs shall be filed within fifteen days after the filing of the proof of costs, and the contest shall be heard within forty-five days after the filing of the proof of costs.

(4) Within sixty days after the issuance of the order pursuant to Paragraph (A)(1) of this Section, the court shall render a judgment of nullity, and the judgment shall fix the costs allowed. This judgment shall be a final judgment subject to appeal.

- C. After a judgment under Subsection B of this Section has been rendered, the governmental liens, other than statutory impositions paid if the nullity has been rendered on the basis of prior payment, and costs, shall be paid within one year from the date of the judgment. This one-year period shall be suspended while an appeal is pending. If the payment is not made within the period allowed, the judgment of nullity shall be vacated and the case dismissed with prejudice at the request of the person against whom the judgment of nullity was rendered.
- D. After payment has been made, the party in whose favor judgment has been rendered may apply for an ex parte order stating that the required payments have been made. The application shall be verified and shall state, or an affidavit accompanying the application shall state, the amount and method of payment, that the payment was made to the party against whom the judgment has been rendered, and that a request for dismissal under Subsection C of this Section has not been filed.

La. R.S. 47:2291. Emphasis added. Notably, the statute indicates that the final judgment subject to appeal must fix the costs in the judgment. La. R.S. 47:2291(B)(4).

Here, the trial court's December 6, 2024 judgment grants the Graberts' motion for summary judgment and declares that the Tax Sale Certificate is "null and void and without legal effect, *ab initio*." The judgment does not fix the costs allowed. There is also no proof of costs in the record. Accordingly, the December 6, 2024 summary judgment is not a final appealable judgment. *See Folsom Camp Sites, L.L.C. v. Chiasson*, 2020-0495 (La. App. 1 Cir. 2/19/2021), 320 So.3d 430, 433; *In re Davis*, 2010-1435 (La. App. 1 Cir. 2/23/2011), 59 So.3d 452, 454.

While McCullen additionally challenges the denial of her motion for a continuance in the December 6, 2024 judgment and the denial of her motion for new trial in the March 26, 2025 judgment, these rulings are not independently appealable. Instead, they are interlocutory judgments that are not appealable unless an appealable judgment is rendered in the same case. *See Smith v. Dirt Cheap of Louisiana*, 2023-0808 (La. App. 1 Cir. 3/22/24), 387 So.3d 662, 665 n. 3; *Barham, Warner & Bellamy, L.L.C. v. Strategic Alliance Partners, L.L.C.*, 2009-1528 (La. App. 4 Cir. 5/26/2010), 40 So.3d 1149, 1151, *writ denied*, 2010-1500 (La. 10/1/10), 45 So.3d 1100, citing *Ballard v. Waitz*,

2006-0307 (La. App. 1 Cir. 12/28/2006), 951 So.2d 335, 338. Because there is no final appealable judgment before us, we must dismiss the appeal.^{2,3}

CONCLUSION

For the foregoing reasons, the show cause order is recalled and McCullen's appeal of the trial court's December 6, 2024 and March 26, 2025 judgments is dismissed. This matter is remanded to the trial court for further proceedings consistent with this opinion. We decline to assess costs pending the rendition of a final judgment.

SHOW CAUSE ORDER RECALLED; APPEAL DISMISSED; REMANDED.

² We also point out that a motion for new trial can only be taken from a final judgment. A motion for new trial filed before the signing of a final judgment is premature and without legal effect. *See Carter v. Rhea*, 2001-0234 (La. App. 4 Cir. 4/25/2001), 785 So.2d 1022, 1025, quoting *Clement v. American Motorists Insurance Co.*, 98-504 (La. App. 3 Cir. 2/3/1999), 735 So2d 670, 672.

³ We cannot convert McCullen's appeal to an application for supervisory writs. This Court only has discretion to convert an appeal to an application for supervisory writs if the appeal would have been timely had it been filed as a supervisory writ application. *Mah 2012 Family Trust No. 1 v. Red Stick Studio Development, LLC*, 2022-0161 (La. App. 1 Cir. 10/17/2022), 2022 WL 9812279, at *3 n.5. A party intending to apply to this Court for a supervisory writ shall give notice of such intention by requesting a return date to be set by the trial court, which shall not exceed thirty days from the date of the notice of judgment. *See* Uniform Rules-Courts of Appeal, Rules 4-2 and 4-3. Notice of the December 6, 2024 judgment was issued on December 10, 2024. McCullen's motion for appeal was not filed until April 3, 2025. Accordingly, because the appeal was not filed within thirty days of the notice of judgment, this appeal cannot be converted to a writ application, and we cannot consider this appeal under this Court's supervisory jurisdiction. *See Mah 2012 Family Trust No. 1*, 2022 WL 9812279 at *3 n.5.