

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2026 CU 0593

NO. 2026 CW 0212

JEREMY BAKER

VERSUS

KRYSTLE LOWE

JUDGMENT RENDERED: OCT 02 2026

The Family Court,
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. F240593, Division C

Honorable Charlene C. Day, Judge Presiding

Brett L. Bajon
Graham E. Peavy
Charles G. Blaize
Baton Rouge, Louisiana

Counsel for Plaintiff-Appellee,
Jeremy Baker

Elizabeth K. Fox
Springfield, Louisiana
and
Robin V. Cazayoux
Baton Rouge, Louisiana

Counsel for Defendant-Appellant,
Krystle Lowe

BEFORE: WOLFE, STROMBERG, AND BALFOUR, JJ.

KEB
TPS/KEB
EW/KEB

BALFOUR, J.

Krystle Lowe appeals a January 15, 2026 judgment awarding Jeremy Baker visitation of a minor child born to Lowe (“the minor child”). This judgment was entered pursuant to La. C.C. arts. 133 and 136. Lowe also has before this Court a writ application that challenges the January 15, 2026 judgment. Additionally, Lowe filed peremptory exceptions of res judicata, no right of action, and no cause of action in this Court after the appeal was lodged. For the following reasons, we vacate the January 15, 2026 judgment. We deny the exceptions of res judicata, no right of action, and no cause of action, and deny Lowe’s writ application as moot. We remand this matter for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL HISTORY

Baker and Lowe began a romantic relationship in 2011 while living in Lubbock, Texas, but never married. During the relationship, Lowe became pregnant through assisted reproductive technology using a donated oocyte and donated sperm. Baker and Lowe thereafter moved to Clinton, Louisiana, and on July 2, 2022, Lowe gave birth to the minor child. The next day, both parties executed a voluntary acknowledgment of paternity. Baker and Lowe ended their romantic relationship in October 2022.

In May 2023, Baker filed suit in the 20th Judicial District Court, Parish of East Feliciana (hereinafter the “20th JDC suit”), to establish custody of the minor child based on the voluntary acknowledgment of paternity. In response, Lowe filed an exception of no right of action. While the 20th JDC suit was pending, Baker was granted visitation with the minor child every weekend. On October 15, 2025, the trial court presiding over the 20th JDC suit granted Lowe’s exception of no right of action and vacated its interim judgment granting Baker visitation with the minor child. Baker did not appeal the October 15, 2025 judgment making this judgment a final judgment in the matter.

On October 28, 2025, Baker filed an “Ex Parte Motion for Custody” pursuant to La. C.C.P. art. 3945 in the Family Court in and for the Parish of East Baton Rouge, Louisiana (hereinafter the “underlying suit”) wherein he alleged he has served as a father figure to the minor child since the child’s birth. Baker further alleged that he and Lowe had shared physical custody of the minor child for the previous three years, with Baker exercising visitation every weekend. Baker asserted that “[i]mmediate and irreparable injury will result from the minor child being ripped from his father’s house and no longer allowed to see him.” Baker did not make mention of the 20th JDC suit or the October 15, 2025 judgment in the ex parte motion for custody, and specifically alleged “there are no judgments establishing legal custody between the parties and the minor child.”

In a separately designated section of the ex parte motion for custody, Baker sought custody of the minor child pursuant to La. C.C. art. 133, specifically asserting that, “[t]o award sole custody to Krystle Lowe would result in substantial harm to the minor child” because it “would essentially bastardize the minor [child] if sole custody was awarded to her.” Baker claimed Lowe was domiciled in East Baton Rouge Parish, however, the service instructions listed on the ex parte motion for custody did not request service on Lowe at an address in East Baton Rouge Parish. In fact, no address was listed for Lowe on the ex parte motion for custody. Instead, the ex parte motion for custody requested the trial court clerk “prepare service for Krystle Lowe pursuant to [La. C.C.P. art. 1313(A).]”¹

¹ Baker attached to his ex parte motion for custody a certificate of service certifying that on October 28, 2025, a copy of the ex parte motion for custody was sent to Lowe via email transmission and “by calling her,” and a copy was also emailed to her “former” counsel of record. Louisiana Code of Civil Procedure article 3945(B)(2) requires a mover seeking ex parte custody to provide the adverse party with reasonable notice of the date and time the ex parte custody order is being presented to the trial court or, alternatively, to provide reasons why notice is not required. *See Raymond v. Raymond*, 25-498 (La. App. 5 Cir. 10/24/25), 426 So. 3d 81, 84 (explaining that to satisfy the notice requirement of La. C.C.P. art. 3945(B)(2)(a), “the mover must reasonably inform the adverse party *in advance* of the date and time the mover intends to present the proposed order of temporary custody to the court.”). (Emphasis in original). The record indicates that Baker failed to provide Lowe with reasonable notice of the day and time the ex parte custody order would be

The trial court held a hearing on Baker's ex parte motion for custody the day it was filed. Lowe did not appear at the hearing. Baker briefly testified regarding his employment and potential daycare options if he obtained custody of the minor child. Baker also testified that Lowe lived in Baton Rouge, although he could not provide an address. The trial court then asked where Lowe would be served and counsel for Baker stated "we served her former counsel" who represented Lowe in the 20th JDC suit. Following the hearing, the trial court signed a written order granting Baker custody of the minor child from Friday, November 7, 2025, at 5:00 p.m. until Sunday, November 9, 2025, at 5:00 p.m., and the following weekend for the same time period. The trial court granted custody of the minor child to Lowe for the third weekend of November 2025, from November 21, 2025, at 5:00 p.m. until Sunday, November 23, 2025. The trial court scheduled review of the ex parte custody order on November 25, 2025 at 9:00 a.m. and directed Lowe to show cause on that date and at that time why "[i]t is not in the best interest of the minor child for this Honorable Court to award legal custody to Jeremy Baker." The record does not indicate that Lowe was served with the ex parte custody order or notice of the November 25, 2025 hearing prior to the date of the scheduled hearing.²

On October 29, 2025, Lowe, through counsel Elizabeth K. Fox, filed a "Notice of Lis Pendens" to notify the trial court in the underlying suit that the 20th JDC suit was currently pending and involved "the same parties, the same child...and the same demand for custody and incidental relief."³ Lowe did not request that her notice be

presented to the trial court. Additionally, Baker did not provide reasons why notice was not required.

² The record indicates that Baker requested service of the ex parte custody order and notice of the November 25, 2025 hearing via La. C.C.P. art. 1313(A). However, the record does not indicate Lowe was served with the ex parte custody order and notice of the November 25, 2025 hearing on Lowe via La. C.C.P. art. 1313(A). Nor would service pursuant to La. C.C.P. art. 1313(A) have been proper. See La. C.C.P. art. 1313(C).

³ We note that the purpose of a notice of lis pendens is to give effective notice to third persons of the pendency of an action affecting title to, or asserting a mortgage or lien on, immovable property. See La. C.C.P. art. 3751; *Mortgage Electronic Registration Systems, Inc. v. Bynum*, 2003-1671

set for hearing, but stated she reserved the right to file exceptions, including an exception of *lis pendens*. Baker filed an objection to Lowe's notice of *lis pendens*, arguing the 20th JDC suit was no longer pending because the October 15, 2025 judgment dismissed Baker's amended petition to establish custody. Lowe filed a reply to Baker's objection, arguing the 20th JDC suit remained pending because the appeal delays for the October 15, 2025 judgment had not yet lapsed.⁴

On November 17, 2025, Baker filed a rule for contempt, arguing Lowe failed to comply with the October 28, 2025 *ex parte* custody order. Baker requested that Lowe be ordered to pay his attorney's fees and costs due to her contempt and to provide Baker with "makeup visitation" with the minor child for the time denied to him. Baker's rule for contempt was set for hearing on November 25, 2025. However, there is no indication from the record that Lowe was served with the trial court's order setting a hearing on Baker's rule for contempt.

Inexplicably, on November 25, 2025, the day review of the *ex parte* custody order and Baker's rule for contempt were scheduled to be heard, a status conference was held instead.⁵ Fox appeared on behalf of Lowe and argued Lowe had never been properly served with Baker's *ex parte* motion for custody. The trial court, acknowledging that Lowe was not served with notice of the hearing scheduled for November 25, 2025, thereafter continued the hearing on Baker's *ex parte* motion for custody until December 9, 2025, and extended the October 28, 2025 *ex parte* custody order until December 9, 2025. The trial court did not hear Baker's rule for contempt,

(La. App. 1 Cir. 5/14/04), 879 So. 2d 807, 812, *writ denied*, 2004-1926 (La. 11/15/04), 887 So. 2d 479. In order to raise the objection of *lis pendens* as provided by La. C.C.P. arts. 531 and 532 when two or more suits are pending, a declinatory exception must be asserted. La. C.C.P. art. 925(A)(3). The notice of *lis pendens* filed by Lowe does not meet the requirements of an exception.

⁴ Lowe attached a copy of the October 15, 2025 judgment to her reply and pointed out that Baker's amended petition to establish custody was dismissed with prejudice, not without prejudice as stated by Baker.

⁵ For reasons not explained, the status conference was held on the record.

explaining that Lowe had not been served with the ex parte custody order and therefore, could not be held in contempt. Brett L. Bajon, Baker's counsel, requested an address for Lowe, but Fox stated that Lowe lived out of state and she would not disclose her address, citing attorney-client privilege. Baker then orally moved for the appointment of an attorney to serve Lowe. The trial court granted Baker's oral motion, but instructed him to file a written motion.

On November 26, 2025, Baker filed a written motion to appoint an attorney⁶ to represent Lowe, arguing Lowe is an "absentee" as defined by La. C.C.P. art. 5251(1) because according to Fox, Lowe now lived out of state. Baker further alleged that Lowe's "whereabouts are unknown" to him, and Lowe "cannot be found and served after a diligent search and her attorney of record refused to accept service or divulge Ms. Lowe's address." Baker requested an attorney be appointed to represent Lowe pursuant to La. C.C.P. art. 5091(A)(1)(a). On December 1, 2025, the trial court granted Baker's motion and appointed an attorney, Robin Cazayoux, to represent Lowe. On December 3, 2025, the trial court issued an order setting "all matters pending before this Honorable Court" for hearing on December 9, 2025. The trial court's December 3, 2025 order also extended the October 28, 2025 ex parte custody order to December 9, 2025, and granted Baker's oral motion to appoint an attorney for Lowe.

Meanwhile, Lowe filed a writ application with this Court seeking review of the October 28, 2025 ex parte custody order, as well as the trial court's extension of the October 28, 2025 ex parte custody order, and the appointment of an attorney to effectuate service on Lowe.⁷ Lowe sought expedited consideration of her writ

⁶ Baker captioned his motion as a "Motion to Appoint Curator[.]" The record further contains other references to a "curator" to accept service for Lowe under La. C.C.P. art. 5091. We note, however, La. C.C.P. art. 5091(A) provides for the appointment of an attorney at law, not a curator. Therefore, in this opinion we refer to the appointed person as an attorney, not a curator.

⁷ This Court takes judicial notice of the writ application filed in this Court by Lowe on December 5, 2025. See La. C.E. art. 202.

application due to the pending December 9, 2025 hearing. In the alternative to expedited consideration, Lowe requested a stay of the trial court proceedings. On December 9, 2025, this Court granted Lowe's writ application in part and vacated the October 28, 2025 ex parte custody order and the portion of the December 3, 2025 order that extended the October 28, 2025 ex parte custody order. This Court denied Lowe's writ "in all other respects." *Baker v. Lowe*, 2025-1258 (La. App. 1 Cir. 12/9/25) 2025 WL 3527326, *1 (unpublished writ action) (hereinafter the "December 9, 2025 writ action"). In the December 9, 2025 writ action, this Court explained that the allegations in Baker's ex parte motion for custody were insufficient to demonstrate that he was entitled to custody under La. C.C.P. art. 3945(B)(1). This Court denied Lowe's request for a stay of the trial court proceedings.

On December 9, 2025, Baker, through his attorney Bajon, attended the scheduled hearing, but neither Lowe nor Fox made an appearance. According to the trial court's staff attorney, Fox sent an email to the trial court prior to the hearing to advise that based on the writ action issued by this Court, she would not be attending the scheduled hearing because the ex parte custody orders had been vacated. Cazayoux, who was present at the hearing, stated that she, as the appointed attorney for Lowe, was served.⁸ Cazayoux noted that she was contacted by Fox by email prior to being served and Fox stated that she represented Lowe and objected to Cazayoux "moving forward in any capacity." Cazayoux stated she "forwarded [Fox] certified copies whenever I received them."

Additionally, at the outset of the hearing, the following pertinent exchange occurred between Bajon and the trial court regarding the nature of the hearing and the issues to be resolved:

⁸ The record does not indicate that Cazayoux was sworn in as a witness. Cazayoux did not specify what documents she was served. However, the record contains a copy of a citation indicating Cazayoux was served with Baker's ex parte motion for custody on December 4, 2025.

Mr. Bajon: We would like to move forward, Judge. We have done everything necessary --

The Court: There is nothing to move forward with -- did you read the First Circuit thing --

Mr. Bajon: I did respectfully Judge.

The Court: Okay. I'm listening --

Mr. Bajon: I did read it this morning, and all it did was vacate the ex parte order. It denied her request for a stay. So are -- the subsequent hearing that needs to happen on the custody pursuant to Article 133 is still moving forward.

* * *

Mr. Bajon: And again, Your Honor. It [the December 9, 2025 writ action] vacates the October 28th order and says the portion of the Family Court's December 3, 2025 order, which extended that order of custody, is vacated.

And at the end, it says the writ is denied in all other [respects], and it also denies the stay.

* * *

Mr. Bajon: And then we already had the custody set. So, the custody is still set before the day. The stay has been denied.

So, we're of the opinion that the custody matter pursuant to [La. C.C. art.] 133 is still on.

* * *

The Court: When was the custody order to be set --

Mr. Bajon: Until today, Your Honor. So, you had extended the temporary custody order until today from November 25th, and [the December 9, 2025 writ action] specifically says that that portion of the December 3rd order which extended that order of custody be vacated.

So, I think it's clear that the First Circuit is saying maybe the original temporary order is vacated, but -- by them denying her request for a stay and all other requests in her writ -- I think the First Circuit is wanting us to have an actual custody hearing on the merits.

And Ms. Fox is playing games and trying to continue to push it back.

* * *

The Court: And so there were ample allegations made in [the ex parte motion] regarding custody?

Mr. Bajon: Yes, ma'am, we put in there substantial harm tests that my client -- you know, the child being or my client being ripped from the child's life -- as having been a parent figure for all of this child's life would cause substantial harm to the child.

And that no sole award of custody to Ms. Lowe would cause substantial harm. Now we would also love to argue --

The Court: Today is Tuesday, so you have 15 minutes if you want to proceed today. Otherwise, we have to do a case management schedule.

Thereafter, the hearing proceeded on Baker's claim for custody under La. C.C. art. 133 in Lowe's absence. Baker testified he was in a relationship with Lowe for 11 years and the couple agreed to have a child using a donated fertilized embryo after they could not conceive naturally.⁹ Baker stated he intended to be a father to the minor child and signed an acknowledgment of paternity after the minor child was born. Baker testified he saw the minor child every day until he and Lowe ended their relationship in December 2022. Baker explained he filed for custody of the minor child in the 20th JDC because that was where Lowe and the minor child were living at the time. Baker stated he was granted visitation of the minor child in the 20th JDC suit in July 2023, but the visitation order was vacated by the October 15, 2025 judgment. Baker's current romantic partner and his friend both testified at the hearing that Baker is a father figure to the minor child. Following the testimony, the trial court took the matter under advisement.

On January 15, 2026, the trial court signed a written judgment, which states, in relevant part, as follows:

THIS MATTER came before the Court on the 9th day of **December, 2025**, pursuant to an Ex Parte Motion for Custody filed by **JEREMY BAKER** on October 28, 2025, and the Louisiana Code of Civil Procedure article 3945(D) hearing required by law. Present in court were **JEREMY BAKER** with his counsels of record, **BRETT L.**

⁹ A copy of the contract from the fertility clinic signed by Lowe and Baker was admitted into evidence at the hearing. The trial court also admitted a copy of an acknowledgement of paternity signed by Baker and Lowe on July 3, 2022, as well as multiple text messages between Lowe and Baker wherein Lowe referred to Baker as the father to the minor child. The text messages also included photographs of Baker and the minor child.

BAJON and GRAHAM E. PEAVY. **KRYSTLE LOWE** failed to appear after being properly served via her counsel of record, ELIZABETH K. FOX, by the Court-appointed [attorney], ROBIN V. CAZAYOUX. Ms. Fox also failed to appear on her client's behalf.

WHEREUPON, THE COURT, after hearing the testimony of the parties; considering the pleadings in the record and the applicable law, including Louisiana Civil Code articles 133 and 136; and issuing written reasons, ordered as follows:

IT IS ORDERED that **KRYSTLE LOWE** shall continue exercising sole custody of the minor child ... born July 3, 2022.

IT IS FURTHER ORDERED that **JEREMY BAKER** is awarded reasonable visitation with the minor child every third weekend of each month from Friday at 6:00 PM to Sunday at 6:00 PM, as well as any additional times as agreed upon by the parties.

IT IS FURTHER ORDERED that the parties shall exchange the minor child at a mutually agreeable location at a halfway point between the parties' residences

Lowe appeals the January 15, 2026 judgment. Lowe also filed a writ application, 2026 CW 0212, seeking review of the January 15, 2026 judgment and raising the same issues as in the assignments of error in her appellate brief. On March 16, 2026, a panel of this Court referred Lowe's writ application to the appeal panel for the yet-to-be lodged appeal.

EXCEPTIONS FILED ON APPEAL

After this appeal was lodged, but prior to submission of the case, Lowe filed exceptions of res judicata, no right of action, and no cause of action. We address these exceptions first.

Exception of Res Judicata

Lowe argues the October 15, 2025 judgment rendered in the 20th JDC suit is a res judicata bar to Baker's claim for custody in the underlying suit. In support of her exception, Lowe points out the following: (1) the October 15, 2025 judgment is valid and final; (2) the parties to both suits are the same; (3) the cause of action asserted in the underlying suit existed at the time of the October 15, 2025 judgment

was rendered; and (4) the causes of action asserted in the underlying suit arose out of the same transaction or occurrence that was the subject of the 20th JDC suit.

Baker argues his claim for custody pursuant to La. C.C. art. 133 did not exist at the time the 20th JDC suit was pending and only arose after the October 15, 2025 judgment was rendered.

The doctrine of res judicata precludes subsequent litigation when all of the following are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) the parties in the two matters are the same; (4) the cause or causes of action asserted in the second suit existed at the time of the final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation. *See* La. R.S. 13:4231; *Burguières v. Pollingue*, 2002-1385 (La. 2/25/03), 843 So. 2d 1049, 1053.

Louisiana Code of Civil Procedure article 2163 affords a party the opportunity to raise peremptory exceptions, such as an exception of res judicata, for the first time in the appellate court. However, the article specifically states that for such an exception to be considered “proof of the ground of the exception” must appear of record. *Id.* The article does allow for remand of the case to take evidence on the exception if it is based on prescription. *Id.* However, if the grounds of the exception of res judicata do not appear in the record, the exception cannot be considered for the first time in the appellate court and must be denied. *Smith v. State, Dept. of Transp. & Development*, 2004-1317 (La. 3/11/05), 899 So. 2d 516, 530-31.

Lowe and Baker both acknowledge the proceedings in the 20th JDC suit and the rendition of the October 15, 2025 judgment. However, no portion of the record of the 20th JDC suit, including the October 15, 2025 judgment, was admitted into evidence in the underlying suit. As such, the proof of the ground of the exception is not contained in the record before this Court and we are unable to address Lowe’s

exception of res judicata. Accordingly, Lowe's exception of res judicata is denied.¹⁰ See *Smith*, 899 So. 2d at 531.

Exception of No Right of Action

Lowe argues Baker has no right of action under La. C.C. art. 133 because Baker has never been the minor child's primary caregiver.

Baker argues he has a right of action under La. C.C. art. 133 because his ex parte motion for custody alleges the minor child has been living with him and he is willing to continue his relationship with the minor child.¹¹

The peremptory exception of no right of action tests whether the plaintiff who seeks relief is the person in whose favor the law extends a remedy. See La. C.C.P. art. 927; *Denham Homes, L.L.C. v. Teche Federal Bank*, 2014-1576 (La. App. 1st Cir. 9/18/15), 182 So. 3d 108, 120. The exception does not raise the question of the plaintiff's ability to prevail on the merits nor the question of whether the defendant may have a valid defense. See La. C.C.P. art. 927(A)(6); *Pearce v. Lagarde*, 2020-1224 (La. App. 1 Cir. 10/7/21), 330 So. 3d 1160, 1166-67, writ denied, 2022-00010 (La. 2/22/22), 333 So. 3d 446. An appellate court may consider an exception of no right of action filed for the first time on appeal if the proof of the ground of the exception appears from the record. La. C.C.P. art. 2163.

Louisiana Civil Code article 133 states:

If an award of joint custody or of sole custody to either parent would result in substantial harm to the child, the court shall award custody to another person with whom the child has been living in a wholesome and stable environment, or otherwise to any other person able to provide an adequate and stable environment.

¹⁰ We note Lowe is not precluded from filing her exception of res judicata in the underlying suit after this matter is remanded. See *Louisiana State Bar Ass'n v. Carr & Associates, Inc.*, 2008-2114 (La. App. 1 Cir. 5/8/09), 15 So. 3d 158, 164, writ denied, 2009-1627 (La. 10/30/09), 21 So. 3d 292 ("a party may re-urge a peremptory exception after it has been denied"). We also note our grave concern regarding the appearance of forum and/or judge shopping considering the timing of the institution of the underlying suit, which appears to have occurred while the 20th JDC suit was still pending.

¹¹ Baker also argues he has a right of action under La. C.C. art. 136. However, Baker's motion for ex parte custody does not allege a claim for visitation under La. C.C. art. 136.

Thus, under the plain language of La. C.C. art. 133, the class of persons with a right of action to seek non-parent custody falls into two categories: (1) a person with whom the child has been living in a wholesome and stable environment; or (2) any other person able to provide an adequate and stable environment. La. C.C. art. 133; *see Creel v. Giordano*, 2026-116 (La. App. 5 Cir. 7/22/26) --- So. 3d ---, ---, 2026 WL 2120372, *7. Based on the broad language of La. C.C. art. 133, we find Baker has a right of action to seek custody of the minor child pursuant to that article. Accordingly, Lowe's exception of no right of action is denied.

Exception of No Cause of Action

Lowe argues Baker's ex parte motion for custody fails to state a cause of action under La. C.C. art. 133 because he does not allege that the minor child has been living with him in a wholesome and stable environment, or that Baker is able to provide an adequate and stable environment for the minor child.

Baker argues the allegations in his ex parte motion for custody state a cause of action for custody of the minor child under La. C.C. art. 133.

The function of the peremptory exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Calloway v. Lobrano*, 2016-1170 (La. App. 1 Cir. 4/12/17), 218 So. 3d 644, 648. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. The exception is triable on the face of the pleading, and for the purpose of determining the issues raised by the exception, the well-pleaded facts in the pleading must be accepted as true. *Calloway*, 218 So. 3d at 648. The burden of demonstrating that no cause of action has been stated is on the party raising the objection. *Christian Schools, Inc. v. Louisiana High School Athletic Association*, 2020-0762 (La. App. 1 Cir. 5/18/22), 342 So. 3d 1068, 1074, *writ denied*, 2022-01015 (La. 10/12/22), 348 So. 3d 78. In reading a petition to determine whether a cause of action has been

stated, it must be interpreted, if possible, to maintain the cause of action instead of dismissing the petition. Any reasonable doubt concerning the sufficiency of the petition must be resolved in favor of finding that a cause of action has been stated. *Id.*

In his ex parte motion for custody, Baker alleges he had shared custody of the minor child for the past three years and he exercised visitation every weekend. Baker also alleged that he has been a father figure to the minor child and is willing to continue his relationship with the minor child. Accepting the facts alleged in the ex parte motion for custody as true, which we are required to do, and interpreting the allegations in the ex parte motion for custody in order to maintain a cause of action, we find Baker alleged sufficient facts that the minor child lived with him in a stable and wholesome environment or that he is capable of providing an adequate and stable environment. *See* La. C.C. art. 133. Accordingly, Lowe's exception of no cause of action is denied.

ASSIGNMENTS OF ERROR

Lowe asserts the following assignments of error:

1. The [trial court] committed legal error by proceeding despite Mr. Baker's failure to properly serve Ms. Lowe.
2. The [trial court] committed legal error by adopting Mr. Bajon's misinterpretations of [the December 9, 2025 writ action], the text of [La. C.C.P. art.] 3945(D), and the procedural posture of the case.
3. The [trial court] committed legal error by concluding that Ms. Lowe had adequate notice of the December 9, 2025 status conference and the [La. C.C. art.] 133 custody hearing.
4. The [trial court] committed legal error by rendering a default judgment materially different from the relief prayed for in Mr. Baker's [ex parte motion for custody].
5. The [trial court] committed legal error by misapplying the legal standards under [La. C.C. arts.] 133 and 136 in issuing its January 15, 2026 [judgment].

DISCUSSION

Assignment of Error Number 1

In her first assignment of error, Lowe argues she was never properly served with Baker's ex parte motion for custody and she never waived service. Lowe asserts that since she lives out of state, Baker was required to serve her under Louisiana's long-arm statute, La. R.S. 13:3204. Lowe points out that Baker never attempted to serve her through the available statutory procedures, but instead sought the appointment of an attorney ad hoc "on the premise that Ms. Lowe could not be served because Ms. Fox refused to accept service or disclose Ms. Lowe's address, not because he had attempted to and failed at serving her."

Baker argues service was effectuated on Lowe when Cazayoux, the attorney appointed by the trial court pursuant to La. C.C.P. art. 5091, was served. Baker notes that "shortly following the [October 15, 2025 judgment], Ms. Lowe left the State with the minor child." Baker further points out that Fox refused to provide Lowe's out-of-state address. Therefore, Baker argues Lowe was properly served through Cazayoux.

Absent an express written waiver, citation and service thereof are essential in all civil actions; without citation and service all proceedings are absolutely null. La. C.C.P. art. 1201. An absolutely null judgment for a vice of form under La. C.C.P. art. 2002(B) may be raised by any interested person at any time, before any court, and through a collateral proceeding, such as a contradictory motion or rule. *Butler v. Sandberg*, 2018-0917 (La. App. 1 Cir. 10/23/19), 289 So. 3d 638, 641. Generally, a party attacking citation and service must prove by a preponderance of the evidence that there was lack of service of process. *Id.*

Louisiana Revised Statutes 13:3204 provides, in relevant part:

A. In a suit under R.S. 13:3201, a certified copy of the citation or the notice in a divorce under Civil Code Article 102 and of the petition or a certified copy of a contradictory motion, rule to show cause, or other

pleading filed by the plaintiff in a summary proceeding under Code of Civil Procedure Article 2592 shall be sent by counsel for the plaintiff, or by the plaintiff if not represented by counsel, to the defendant by registered or certified mail, or actually delivered to the defendant by commercial courier, when the person to be served is located outside of this state or by an individual designated by the court in which the suit is filed, or by one authorized by the law of the place where the service is made to serve the process of any of its courts of general, limited, or small claims jurisdiction.

B. If service of process cannot be made on the nonresident by registered or certified mail or by actual delivery, the court shall order that service of process be made on an attorney at law appointed to represent the defendant pursuant to Code of Civil Procedure Article 5091.

Louisiana Code of Civil Procedure article 5091 provides, in pertinent part:

A. The court shall appoint an attorney at law to represent the defendant, on the petition or ex parte written motion of the plaintiff, when:

(1) It has jurisdiction over the person or property of the defendant, or over the status involved, and the defendant is:

(a) A nonresident or absentee who has not been served with process, either personally or through an agent for the service of process, and who has not waived objection to jurisdiction.

Louisiana Code of Civil Procedure article 5251(1) defines “absentee” for purposes of the Louisiana Code of Civil Procedure as follows:

“Absentee” means a person who is either a nonresident of this state, or a person who is domiciled in but has departed from this state, and who has not appointed an agent for the service of process in this state in the manner directed by law; or a person whose whereabouts are unknown, or who cannot be found and served after a diligent effort, though he may be domiciled or actually present in the state; or a person who may be dead, though the fact of his death is not known, and if dead his heirs are unknown.

Initially, we find the emails that were purportedly sent to Lowe and Fox with a copy of the ex parte motion for custody attached did not effectuate service on Lowe.¹² Louisiana Code of Civil Procedure article 1313(A) permits a pleading, subsequent to the original petition, to be served by mail, delivery, or electronic means. Baker’s ex parte motion for custody, which included his claim for custody

¹² The record does not indicate that the emails were admitted into evidence.

under La. C.C. art. 133, was the original petition or pleading filed in the underlying suit, and therefore, could not be served on Lowe or Fox pursuant to La. C.C.P. art. 1313(A).

We next consider whether service was effectuated on Lowe through service on Cazayoux, as appointed attorney for Lowe under La. C.C.P. art. 5091(A).¹³ Lowe argues the trial court should not have appointed Cazayoux to accept service on her behalf because Baker failed to demonstrate that he could not serve Lowe pursuant to La. R.S. 13:3204. As discussed, La. R.S. 13:3204(B) provides that if service cannot be made on a nonresident defendant pursuant to La. R.S. 13:3204(A), by registered or certified mail or by actual delivery, then the court shall order service on the nonresident pursuant to La. C.C.P. art. 5091. Here, there is no indication in the record that Baker attempted service on Lowe pursuant to La. R.S. 13:3204(A). However, Fox stated during the November 25, 2025 status conference that Lowe had moved out of state with the minor child.

As noted, La. C.C.P. art. 5091(A)(1)(a) provides that the court shall appoint an attorney at law to represent the defendant when it has jurisdiction over the person and the defendant is “[a] nonresident **or** absentee[.]” (Emphasis added). Furthermore, the term “[a]bsentee” is defined, in pertinent part, in La. C.C.P. art. 5251(1) as “a person who is either a nonresident of this state, or a person who is domiciled in but has departed from this state, and who has not appointed an agent for the service of process in this state[.]” Lowe concedes she no longer lives in Louisiana and therefore, we find she is a nonresident for purposes of La. C.C.P. art.

¹³ As stated, La. C.C.P. art. 5091(A)(1) requires a court, on the ex parte written motion of the plaintiff, to appoint an attorney to represent a defendant when the court “has jurisdiction over the person or property of the defendant, or the status involved[.]” Initially, we note that the record does not indicate that Lowe submitted to the jurisdiction of the trial court. *See* La. C.C.P. art. 6(A)(3). Additionally, according to Lowe, her and the minor child no longer live in Louisiana. However, as the issue of whether the trial court has personal jurisdiction over Lowe was not raised in the proceedings below, we find the record does not contain sufficient evidence for us to resolve this issue.

5091(A)(1)(a). See *Carter v. First South Farm Credit, ACA*, 49,531 (La. App. 2 Cir. 1/14/15), 161 So. 3d 928, 933, *writ denied*, 2015-1166 (La. 9/18/15), 178 So. 3d 151, *cert. denied*, 577 U.S. 1142, 136 S. Ct. 1199, 194 L. Ed. 2d 183 (2016) (finding the defendants were “absentees” under La. C.C.P. art. 5252(1) because they were nonresidents and thus, the fact the defendants’ whereabouts were unknown was irrelevant). As such, we find Lowe failed to prove by a preponderance of the evidence that she was not properly served through Cazayoux. Accordingly, this assignment of error is without merit.

Assignments of Error Nos. 2 and 3

In her second assignment of error, Lowe argues the trial court legally erred in its interpretation of the December 9, 2025 writ action, the text of La. C.C.P. art. 3945, and the procedural posture of the underlying case. In sum, Lowe argues the trial court erred by holding a hearing on Baker’s request for custody under La. C.C. art. 133 on December 9, 2025 after the December 9, 2025 writ action was issued. In her related third assignment of error, Lowe argues the trial court erred by holding a hearing on Baker’s request for custody under La. C.C. art. 133 on December 9, 2025 because she did not have notice of the hearing.

Louisiana Code of Civil Procedure article 3945(D) requires an expedited hearing be held within thirty days of the issuance of an ex parte custody order. In *Fontenot v. Fontenot*, 2024-215 (La. App. 3 Cir. 12/11/24), 404 So. 3d 42, 46, *writ granted in part on other grounds, denied in part*, 2025-00048 (La. 2/25/25), 401 So. 3d 650, the appellate court explained, in pertinent part, the nature of the expedited hearing provided by La. C.C.P. art. 3945(D) as follows:

The thirty-day hearing required by [La. C.C.P.] art. 3945(D) is not the trial to establish permanent custody. Nor is it the trial to modify permanent custody. Oversimplifying slightly, it is instead an expedited hearing intended to stabilize the custodial situation through temporary orders on legal custody and on time periods with the minor children.

A hearing conducted under La. C.C.P. art. 3945(D) does not take the place of a trial on the merits and a judgment rendered thereafter is not a final judgment. *See Fontenot*, 404 So. 3d at 46-47. In contrast, La. C.C. art. 133, which authorizes an award of custody to a non-parent, does not require that a hearing be held on an expedited basis. The burden of proof is different under La. C.C. art. 133 (substantial harm) than under La. C.C.P. art. 3945 (immediate and irreparable injury). A judgment granting custody pursuant to La. C.C. art. 133 is a final judgment. *See Wiley v. Small*, 2022-0675 (La. App. 1 Cir. 12/22/22), 357 So. 3d 839, 840.

Adequate notice is one of the most elementary requirements of procedural due process; it is fundamental to our system of laws that there be notice prior to trial. *See Smith v. LeBlanc*, 2006-0041 (La. App. 1 Cir. 8/15/07), 966 So. 2d 66, 76. Procedural due process requires an opportunity to be heard, in addition to notice of the pendency of an action, and in conjunction therewith, adequate notice of the hearing is fundamental. *Ikonitski v. Ikonitski*, 2016-0642 (La. App. 1 Cir. 9/16/16), 204 So. 3d 232, 234. Louisiana Code of Civil Procedure article 1571(A)(1)(a), provides, in pertinent part, that district courts shall prescribe the procedure for assigning cases for trial by rules, which shall require adequate notice of trial to all parties. *See Hill v. Lopez*, 2005-0182 (La. App. 1 Cir. 2/22/06), 929 So. 2d 80, 82 n. 2 (noting that “adequate” notice must describe the nature or purpose of the hearing).

Following this Court’s December 9, 2025 writ action, Baker’s claim for custody under La. C.C. art. 133 was still pending, as there had not been an adjudication of that claim. However, there is no indication from the record before us that Baker’s claim for custody under La. C.C. art. 133 had been set for trial on December 9, 2025, or that Lowe had notice that the claim was set for trial on that date. Additionally, there is no language in the December 9, 2025 writ action directing the trial court to hear Baker’s claim for custody under La. C.C. art. 133 at

the December 9, 2025 hearing. During the November 25, 2025 status conference, the trial court advised the parties that it was setting the expedited hearing on Baker's ex parte motion for custody on December 9, 2025. The record is devoid of any notice that Baker's action for custody under La. C.C. art. 133 was set for trial on December 9, 2025. Baker's action for custody pursuant to La. C.C. art. 133 should have been considered after a trial on the merits where both parties received adequate notice and had an opportunity to prepare for the trial. The transcript of this matter indicates that not only was Lowe under the impression that the December 9, 2025 hearing was rendered moot following this Court's December 9, 2025 writ action, but the trial court was also initially of the opinion there was nothing to be heard on that date.

We further note the record does not contain an answer filed by Lowe. According to La. C.C.P. art. 1571(A)(2), ordinary proceedings may not be set for trial except after an answer is filed. Typically, a judgment obtained in violation of the mandatory requirements of La. C.C.P. art. 1571 is null and void, unless this irregularity is waived. *Shepherd v. Schedler*, 2015-1750 (La. 1/27/16), 209 So. 3d 752, 776, *on reh'g* (5/2/16) (*per curiam*). There is no indication from the record that Lowe waived this error.

Based on the record before us, we find Lowe did not receive adequate notice that Baker's action for custody pursuant to La. C.C. art. 133 would be heard on December 9, 2025. The lack of proper notice violated Lowe's right to procedural due process. Accordingly, we vacate the trial court's January 15, 2026 judgment. *See Ikonitski*, 204 So. 3d at 235. Because we vacate the January 15, 2026 judgment, we pretermitt the remaining assignments of error.

CONCLUSION

For the aforementioned reasons, we vacate the trial court's January 15, 2026 judgment. Lowe's writ application assigned 2026 CW 0212 is denied as moot. The

peremptory exceptions of res judicata, no right of action, and no cause of action filed on appeal by Krystle Lowe are denied. We remand this matter for further proceedings consistent with this opinion. Costs of this appeal are assessed against Jeremy Baker.

JUDGMENT VACATED; EXCEPTIONS OF RES JUDICATA, NO RIGHT OF ACTION, AND NO CAUSE OF ACTION RAISED ON APPEAL DENIED; WRIT DENIED AS MOOT; CASE REMANDED.