NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

DOCKET NUMBER
2026 CW 0807

KAYLA JOSEPHINE AUCOIN

VERSUS

JOHN MICHAEL WEAVER

Judgment Rendered: NOV 06 2026

* * * * *

ON APPEAL FROM THE
22ND JUDICIAL DISTRICT COURT
ST. TAMMANY PARISH, STATE OF LOUISIANA
DOCKET NUMBER 2019-11499, DIVISION "L"

HONORABLE DAWN AMACKER, JUDGE PRESIDING

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Sarabeth T. Bradley
Covington, Louisiana

Attorney for Defendant/Appellant
John Michael Weaver

Kayla Josephine Aucoin
Slidell, Louisiana

Self-Represented Plaintiff/Appellee

BEFORE: WOLFE, STROMBERG, and BALFOUR, JJ.

STROMBERG, J.

In this custody case, the defendant appeals the district court's judgment that sustained the peremptory exception raising the objection of no cause of action filed by the plaintiff in response to the defendant's motion to modify custody. Finding that the judgment at issue is not a final appealable judgment, we convert the appeal to an application for supervisory writs, grant the writ, reverse the judgment, render judgment, and remand this matter.

FACTS AND PROCEDURAL HISTORY

Kayla Josephine Aucoin and John Michael Weaver are the parents of a minor child who was born on June 14, 2018. The parties never married. After their relationship ended, Ms. Aucoin filed a petition for custody and child support, and, in response, Mr. Weaver filed an answer and reconventional demand. Both parties requested joint custody.

Following a trial on June 20, 2019, the district court signed a judgment on October 3, 2019 (Considered Judgment) that granted the parties joint custody, designated Ms. Aucoin the domiciliary parent, and awarded Mr. Weaver physical custody of the child as specified in the judgment.[1] Mr. Weaver appealed, challenging the amount of physical custody allocated to him. **Aucoin v. Weaver**, 2020-0364 (La. App. 1 Cir. 11/6/20), 315 So.3d 296, 297. (**Aucoin I**). This court found that the district court abused its discretion in awarding approximately 82% of the physical custody to Ms. Aucoin and 18% to Mr. Weaver, based on the record and considering La. R.S. 9:335. **Id.** at 300. We reversed that part of the judgment setting forth the physical custody schedule and remanded the matter to the district court to implement

[1] The district court awarded Mr. Weaver physical custody of the child in one overnight and two afternoon visits weekly until the child reached the age of three years. Upon the child reaching three years old, Mr. Weaver was to have a second overnight visitation on alternating weeks and one additional afternoon visitation weekly. A vacation schedule would also be added. The parties were to alternate holidays.

a custody plan that effectuated the legislative intent of La. R.S. 9:335 and provided Mr. Weaver more frequent contact with the child. **Id.**

On remand, the parties entered into a consent judgment signed by the district court on October 28, 2021 (Consent Judgment), which set forth a physical custody schedule. The schedule provided that Mr. Weaver would have physical custody of the child after school on Tuesdays and Thursdays until 7:00 p.m. beginning June 1, 2021; on Mondays and Wednesdays after school until 7:00 p.m. the following week, alternating weekly; every other weekend; and every other holiday. Ms. Aucoin would have physical custody the remainder of the time. According to the Consent Judgment, all other provisions in the Considered Judgment were to remain in effect.[2]

On July 3, 2025, Mr. Weaver filed a motion to modify custody and child support wherein he sought "joint, shared custody of the ... child, [Mr. Weaver] being designated as the domiciliary parent, and a new holiday schedule." He also sought a custody evaluation by Dr. Kristen Luscher. In his motion, Mr. Weaver referred to the Consent Judgment and alleged that to modify it, he must prove that there had been a material change in circumstances since the last custody decree was signed and that the proposed modification was in the best interest of the child, citing **Evans v. Lungrin**, 97-0541 (La. 2/6/98), 708 So.2d 731, 738. Mr. Weaver alleged that they initially followed the Consent Judgment, except that rather than only having the child two days a week after school, he actually picked the child up from school daily and brought her to his home, from which Ms. Aucoin picked her up. He further alleged that when he retired in October 2023, the child spent a majority of her time at his home while Ms. Aucoin worked. Mr. Weaver also alleged that he had the child during "the entire summer break ... for the last few years," but he also stated that he and Ms. Aucoin agreed to a 2/2/3 schedule over the summer. He alleged that in

[2] We note that the Consent Judgment refers to the "June 20, 2019 Consent Judgment (signed on October 3, 2019)" but it is clear the use of the term "Consent" was in error.

March 2024, Ms. Aucoin changed jobs and was able to be home more, resulting in their return to the physical custody schedule as written in the Consent Judgment. Mr. Weaver stated that he wanted his time with the child to be equal to that of Ms. Aucoin and he also set forth allegations about the parties' relationship with the child to support his request to be designated domiciliary parent. In that part of Mr. Weaver's motion pertaining to child support, he sought a modification from a consent judgment he alleged the parties entered into on July 21, 2021.

Ms. Aucoin filed an answer wherein, among other allegations, she admitted she began enforcing the custody schedule, but alleged it was due to the child's return from Mr. Weaver's home "noticeably coached," frustrated and confused. Ms. Aucoin admitted that she agreed to a 2/2/3 shared physical custody schedule in the summer. Ms. Aucoin also filed a reconventional demand wherein she sought to hold Mr. Weaver in contempt for his alleged failure to pay his share of the child's special expenses and for his alleged failure to comply with the co-parenting guidelines.

The parties participated in a hearing officer conference wherein the hearing officer recommended that Mr. Weaver's weekends expand to include Sunday nights and overnight on the Mondays following Ms. Aucoin's weekends. The hearing officer also ordered that the parties "shall share holidays as agreed upon," referring to the extended school holiday breaks the child had. The hearing officer noted in his report that "*The parties reached a consent judgment appointing Dr. Klein as custody evaluator.*" On October 14, 2025, the court signed an order making the recommendations temporary orders of the court.[3] Both parties objected to the hearing officer's report.

[3] The hearing officer recommended that Mr. Weaver's request to modify child support be granted.

On November 21, 2025, Ms. Aucoin filed an exception of no cause of action seeking a dismissal of Mr. Weaver's motion to modify custody.[4] Ms. Aucoin alleged that while the most recent judgment concerning physical custody was a consent judgment, it was a modification of a considered decree, and therefore, the burden of proof applicable to a considered custody decree set forth in **Bergeron v. Bergeron**, 492 So.2d 1193, 1200 (La. 1986), applied. Because Mr. Weaver did not allege any facts satisfying the **Bergeron** standard, but specifically alleged that the applicable standard was that for a consent judgment under **Evans**, 708 So.2d at 731, Ms. Aucoin contended his motion should be dismissed.

In Mr. Weaver's memorandum in opposition to the exception of no cause of action, he concurred with Ms. Aucoin's contention that the **Bergeron** standard was applicable to his request for modification of the domiciliary parent designation, as the initial judgment was a Considered Judgment and this court did not reverse that part of the judgment in **Aucoin I**. See 315 So.2d at 298, 300-01. However, he contended that the portion of the judgment setting forth the physical custody schedule pertained to the Consent Judgment and was therefore governed by the **Evans** standard. Mr. Weaver argued that the exception of no cause of action should be sustained in part as to the domiciliary parent request and overruled as to the physical custodial schedule request. He also alternatively requested an opportunity to amend the motion to modify.

The district court held a hearing on February 12, 2026, and stated that the initial decree in this case, which was not reversed in **Aucoin I,** was a considered decree on legal custody where the parties were awarded joint custody with Ms.

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[4] Louisiana Code of Civil Procedure article 922 recognizes only three exceptions: the declinatory exception, the dilatory exception, and the peremptory exception. See La. Code Civ. P. arts. 925, 926, 927. For brevity, we refer to the exception at issue in this case as an exception of no cause of action. See **Carrington v. Carrington**, 2024-1016 (La. App. 1 Cir. 4/11/25), 411 So.3d 852, 852-58, writ denied, 2025-00830 (La. 10/1/25), 417 So.3d 576.

Aucoin as domiciliary parent, to which the **Bergeron** standard applied. The district court then stated that "a change to joint shared custody, 50/50 equal custody between the parties" required the **Bergeron** burden of proof, which was not alleged in the motion to modify. The court stated that it would sustain the exception of no cause of action as to the request to change to 50/50 shared custody, but a change in physical custody of less than 50/50 did not fall under **Bergeron**, but under the Consent Judgment. The court asked Mr. Weaver if he wanted an opportunity to amend his motion and he declined, stating that he understood the court to be denying his motion to modify custody, and he wanted to appeal the judgment.

The district court signed its judgment on March 12, 2026, which sustained the exception of no cause of action, stating:

> **IT IS HEREBY ORDERED** that the *Peremptory Exception of No Cause of Action with Incorporated Memorandum* filed by [Ms. Aucoin] ... is SUSTAINED at [Mr. Weaver's] cost. The Court finds that the heightened [**Bergeron v. Bergeron**, 492 So.2d 1193, 1200 (La. 1986)] standard applies to any modification of legal custody to include a modification resulting in a 50/50 equal and shared custodial allocation. A modification of physical custody (other than 50/50) may be granted upon a showing of material change in circumstances affecting the minor child and that the proposed modification is in the child's best interest [**Evans v. Lungrin**, 97-0541 (La. 2/6/98), 708 So.2d 731, 738.]

Mr. Weaver filed a motion for appeal, which the district court granted on April 2, 2026.[5]

APPELLATE JURISDICTION

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. **Schroeder v. Schroeder**, 2024-1134 (La. App. 1 Cir. 4/23/25), 417 So.3d 618, 621. This court's appellate

[5] On the same date, in response to Mr. Weaver's motion for "final judgment determination" and written reasons for judgment, the district court also signed an order declaring that the judgment was a final judgment for purposes of appeal and designating the hearing transcript as the written reasons for judgment. We note that the authority of the district court to designate a judgment as a final and appealable judgment after an express determination that there is no just reason for delay was removed by La. Acts 2025, No. 250 § 3, effective August 1, 2025. La. C.C.P. art. 1915, Comments—2025, Section a.

jurisdiction extends only to final judgments, which determine the merits in whole or in part, and to interlocutory judgments made expressly appealable by law. **Id.** (citing La. C.C.P. arts. 1841 and 2083).

A party has a right of appeal, and this court has jurisdiction to review, judgments regarding modification of custody, visitation, or support. See La. C.C.P. art. 3943; **Dirteater v. Dirteater**, 2022-0266 (La. App. 1 Cir. 9/16/22), 352 So.3d 1016, 1019 n.3; **Dupuy v. Dupuy**, 2000-2744 (La. App. 1 Cir. 3/28/01), 808 So.2d 562, 565.

In this case, the judgment states that the exception of no cause of action is sustained, but it does not specifically dispose of or dismiss Mr. Weaver's motion to modify custody. Louisiana Code of Civil Procedure article 927(A)(5) was amended by La. Acts 2025, No. 250, § 3, effective August 1, 2025, to include in an exception of no cause of action "an objection of no cause of action in part, as to one or more but fewer than all of the claims, demands, issues, or theories against a party ... in an original demand." The purpose of the amendment was to clarify that a partial judgment sustaining an exception of no cause of action may be appropriate when two or more actions based on the same operative facts of a single transaction or occurrence are cumulated, thus changing the result reached by the Louisiana Supreme Court in **Everything on Wheels Subaru, Inc. v. Subaru South., Inc.**, 616 So.2d 1234 (La. 1993). Louisiana Acts 2025, No. 250, § 3, effective August 1, 2025, also amended La. C.C.P. art. 1915(C) to state, in pertinent part, "when a court ... sustains an exception in part, as to one or more but fewer than all of the claims, demands, issues, or theories by or against a party, ... in an original demand, ... that judgment is an interlocutory judgment." In this case, the judgment does not specifically dismiss the motion to modify custody, but even if it could be construed as a dismissal of Mr. Weaver's motion to modify custody, his motion to modify child support remained pending. We also note that in **Paxton v. Paxton**, 2016-1379 (La.

App. 1 Cir. 10/25/17), 2017 WL 4800696 *1 n.2 (unpublished opinion), this court classified a judgment as interlocutory which sustained an exception of no cause of action and dismissed the portion of the father's answer, reconventional demand, and rule for contempt that sought to modify the custody arrangement, where the father had failed to plead facts that set forth a material change in circumstances warranting a modification of custody that would be in the best interest of the children. Thus, in this case, the judgment sustaining the exception is an interlocutory judgment.

This court has supervisory jurisdiction over cases that arise within its circuit, such as this case; however, the decision to convert an appeal to an application for supervisory writs is within the discretion of this Court. See **Stelluto v. Stelluto**, 2005-0074 (La. 6/29/05), 914 So.2d 34, 39. Under certain circumstances, appellate courts have exercised the discretion to convert an appeal of an interlocutory judgment into an application for supervisory writs, such as when the motion for appeal was filed within the thirty-day time period allowed for the filing of an application for supervisory writs under Uniform Rules—Courts of Appeal, Rules 4-2 and 4-3 and when the district court judgment is arguably incorrect, when a reversal would terminate the litigation (in whole or in part), and when there is no dispute of fact to be resolved. **Sauce v. Burke**, 2022-0541 (La. App. 1 Cir. 11/7/22), 356 So.3d 439, 447-48.

In this case, Mr. Weaver's motion for appeal was filed within thirty days of the notice of judgment, and it can be considered a timely filed application for supervisory writ under Uniform Rules—Courts of Appeal, Rule 4-3. Accordingly, we convert the appeal to an application for supervisory writs and grant the writ to consider the merits of the appeal.

EXCEPTION OF NO CAUSE OF ACTION

A cause of action, for purposes of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action

against the defendant. **Watson Memorial Spiritual Temple of Christ v. Korban**, 2024-00055 (La. 6/28/24), 387 So.3d 499, 506, cert denied sub nom., **Korban v. Watson Memorial Spiritual Temple of Christ**, ___ U.S. ___, 145 S.Ct. 1169, 221 L.Ed.2d 251 (2025). The objection of no cause of action may be raised through a peremptory exception. La. C.C.P. art. 927(5). The function of the 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 petition. **Watson**, 387 So.3d at 506.

Generally, 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. All facts pled in the petition must be accepted as true, and any doubts are resolved in favor of the sufficiency of the petition to state a cause of action. **Carson v. Estate of Adams**, 2025-0325 (La. App. 1 Cir. 12/17/25), 438 So.3d 889, 895. Facts shown in any documents annexed to the petition must also be accepted as true. **Id.** The correctness of conclusions of law, however, is not conceded for the purposes of a ruling on an exception of no cause of action. **Id.**

The only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. **Carson**, 438 So.3d at 895. If the petition alleges sufficient facts to establish a case cognizable in law, the exception of no cause of action must fail. **Id.** Appellate courts review a judgment sustaining a peremptory exception raising the objection of no cause of action *de novo*. **Id.**

DISCUSSION

On appeal, Mr. Weaver contends that the district court erred in sustaining the exception of no cause of action based on its determination that a request to modify the physical custody schedule to shared or equal physical custody is a legal custody determination subject to the **Bergeron** standard. Mr. Weaver argues that the

modification of the physical custody he sought was not a determination of legal custody and the **Bergeron** standard did not apply.

In its reasons and the judgment, the district court focused on whether the judgments Mr. Weaver sought to be modify concerned legal custody.[6] When parents share joint custody of their children, La. R.S. 9:335[7] requires an implementation order, except for good cause shown, which allocates the party's custodial time periods, as well as the legal authority and responsibility of the parents. **Aucoin I**, 315 So.3d at 299. Legal custody is the right or authority of parents to make decisions concerning the child's upbringing. **Reine v. Clement**, 2025-0819 (La. App. 1 Cir. 7/9/26), ___ So.3d ___, ___.

At the relevant times in this matter--when Mr. Weaver filed his motion to modify and it was heard, and when the judgment was signed--the burden of proof on a party seeking to modify a prior permanent custody award depended solely on the nature of the original custody award. See **D'Aquilla v. D'Aquilla**, 2003-2212 (La.

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[6] We note that appellate courts review judgments and not reasons for judgment. **Succession of Wimberly v. Brown**, 2025-0295 (La. App. 1 Cir. 4/24/26), 434 So.3d 576, 580 n.3, writ denied, 2026-00936 (La. 10/6/26). In fact, judgments are often upheld on appeal for reasons different than those assigned by a district court. **Id.** The written reasons for judgment are merely an explication of the district court's determinations and do not alter, amend, or affect the final judgment being appealed. **Id.**

[7] Louisiana Revised Statutes 9:335 provides, in pertinent part:

> A. (1) In a proceeding in which joint custody is decreed, the court shall render a joint custody implementation order except for good cause shown.
>
> (2)(a) The implementation order shall allocate the time periods during which each parent shall have physical custody of the child so that the child is assured of frequent and continuing contact with both parents.
>
> (b) Unless the court determines it is not feasible or in the best interest of the child, physical custody of the child shall be shared equally.
>
> * * *
>
> B. ... (2) The domiciliary parent is the parent with whom the child shall primarily reside, but the other parent shall have physical custody during time periods that assure that the child has frequent and continuing contact with both parents.

Louisiana Acts 2026, No. 605, § 1, effective August 1, 2026, amended La. R.S. 9:335(A)(2)(b), which previously read, "To the extent it is feasible and in the best interest of the child, physical custody of the children should be shared equally."

App. 1 Cir. 4/2/04), 879 So.2d 145, 148, writ denied, 2004-1083 (La. 6/25/04), 876 So.2d 838. Where the original custody decree was a stipulated judgment, that is, where the parties consented to a custodial arrangement, a party seeking modification of custody had to prove that there had been a material change in circumstances since the original decree and that the proposed modification was in the best interest of the child. **Evans**, 708 So.2d at 738. In contrast, where the original custody decree was a considered decree of permanent custody, wherein the district court received evidence of parental fitness to exercise care, custody, and control of a child, the party seeking modification had to satisfy the **Bergeron** standard, which included the additional jurisprudential requirement of proving that the continuation of the present custody was "so deleterious to the child as to justify a modification of the custody decree," or of proving by "clear and convincing evidence that the harm likely to be caused by the change of environment was substantially outweighed by its advantages to the child." **Bergeron**, 492 So.2d at 1200. The paramount consideration in any determination of child custody is the consideration of the best interest of the child. See La. C.C. art. 131; **D'Aquilla**, 879 So.2d at 148.

Louisiana Acts 2026, No. 93, § 1, effective August 1, 2026, enacted La. C.C. art. 138 to codify the **Bergeron** standard for the modification of custody orders pursuant to considered decrees "with modifications." Louisiana Civil Code article 138 states:

> A. When a court has awarded custody pursuant to a judgment rendered by considered decree, the award may be modified by the court within the period of five years after the date of the judgment, in accordance with the best interest of the child, only upon proof of either of the following:
>
> (1) By clear and convincing evidence that the harm likely to be caused by a change of custody is substantially outweighed by the advantages to the child.
>
> (2) That the continuation of the present custody award is so harmful to the child as to justify modification.

> B. After five years have elapsed from the date of a judgment rendered by considered decree, and in all other cases, an award of custody may be modified by the court upon a change in circumstances that materially affects the welfare of the child if the modification is in the best interest of the child.
>
> C. A judgment is "rendered by considered decree" when the trial court receives evidence of parental fitness to exercise care, custody, and control of a child and enters a final and appealable judgment based on its evaluation of that evidence.

Louisiana Civil Code article 138 was not in effect at the time that the district court heard this matter in February of 2026. An appellate court is bound to adjudge a case before it in accordance with the law existing at the time of its decision. **Wooley v. AmCare Health Plans of Louisiana, Inc.**, 2005-2025 (La. App. 1 Cir. 10/25/06), 944 So.2d 668, 673. Where the law has changed during the pendency of a suit and retroactive application of the new law is permissible, the new law applies on appeal even though it requires reversal of a district court judgment that was correct under the law in effect at the time it was rendered. **Id.**

The legislature did not express its intent regarding retroactive or prospective application of La. C.C. art. 138, so we must classify it as substantive, procedural, or interpretive. See La. C.C. art. 6; **Segura v. Frank**, 93-1271 (La. 1/14/94), 630 So.2d 714, 723, cert. denied sub nom., **Allstate Insurance Company v. Louisiana Insurance Guaranty Association**, 511 U.S. 1142, 114 S.Ct. 2165, 128 L.Ed.2d 887 (1994). In the absence of contrary legislative expression, substantive laws apply prospectively only. La. C.C. art. 6; La. R.S. 1:2. Substantive laws establish new rules, rights, and duties, or change existing ones, while procedural laws prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of the laws. **Sudwischer v. Estate of Hoffpauir**, 97-0785 (La. 12/12/97), 705 So.2d 724, 729, cert. denied, 524 U.S. 940, 118 S.Ct. 2347, 141 L.Ed.2d 717 (1998); **Avrie as Next Friend of A.A. v. Ascot Specialty Insurance**, 2025-1029 (La. App. 1 Cir. 5/20/26), ___ So.3d ___, ___; **Severio v. Hill**, 2013-

0761 (La. App. 1 Cir. 9/13/13), 2013 WL 5177520 *4 (unpublished opinion), writ denied, 2013-2974 (La. 2/7/14), 132 So.3d 398. The Louisiana Supreme Court has held that a statute changing a burden of proof is procedural and is to be applied retroactively. **Sudwischer**, 705 So.2d at 729. However, procedural laws are not accorded retroactive effect where such retroactivity would operate unconstitutionally to disturb vested rights. **Id.**

Revision Comments—2026(a) and (b) to La. C.C. art. 138 state that La. C.C. art. 138 codifies the **Bergeron** and **Evans** standards for the burden of proof to modify custody based on whether the original judgment is a considered or consent decree, "with modifications."[8] One such modification is that La. C.C. art. 138(B) provides a lesser burden of proof than **Bergeron** after five years have elapsed from the date of a considered judgment.

In this case, because five years have elapsed from the October 3, 2019 Considered Judgment, whether we consider the modification of the Considered Judgment or the modification of the Consent Judgment, La. C.C. art. 138(B) provides that the custody award may be modified upon a change in circumstances that materially affects the welfare of the child if the modification is in the best interest of the child. The application of La. C.C. art. 138 does not disturb a vested right by imposing a lesser burden of proof where the ultimate consideration under both the old and new law in any modification of custody is the best interest of the child. See **Sudwischer**, 705 So.2d at 729.

In his motion to modify child custody, Mr. Weaver made the following allegations: that the parties initially followed the Consent Judgment, except that he kept the child daily after school until Ms. Aucoin finished work; that he had retired

[8] Revision Comments—2026(e) to La. C.C. art. 138 states that the standards set forth in La. C.C. art. 138 apply to modifications of judgments of custody rendered by consent decree or considered decree and generally apply to both physical and legal custody.

in October 2023 and the child spent a majority of her time with him while Ms. Aucoin worked; that the child had spent either her entire summer with him or the parties had a 2/2/3 schedule over the summer; that if the child was sick, she stayed with him; that in March 2024, Ms. Aucoin reverted back to the schedule in the Consent Judgment; that he facilitated the child's participation in her competitive cheer and horse-riding; that the child "consistently asks" to live with him; that Ms. Aucoin has difficulty disciplining the child; that the child "cries hysterically at every exchange" when returned to Ms. Aucoin; that Ms. Aucoin caused a "scene" at a horse show, resulting in the child no longer attending riding practice or competitions; that the child performed better at school when she stayed with Mr. Weaver; that Ms. Aucoin does not encourage a relationship between Mr. Weaver and the child; and that the holiday schedule should be changed now that the child is enrolled in school. Having conducted a thorough *de novo* review of the matter before us, and presuming all of Mr. Weaver's well-pleaded facts are true and resolving all doubts in his favor, Mr. Weaver alleged sufficient facts to plead a cause of action for modification of custody pursuant to La. C.C. art. 138. Accordingly, the district court erred in granting Ms. Aucoin's exception of no cause of action.

CONCLUSION

For the above reasons, we convert the appeal to an application for supervisory writs and grant the request for supervisory review. The March 12, 2026 judgment granting the peremptory exception raising the objection of no cause of action filed by Kayla J. Aucoin is reversed, and we overrule the peremptory exception raising the objection of no cause of action. We remand the matter to the district court for further proceedings consistent with this opinion. Costs of this appeal are assessed to Kayla J. Aucoin.

APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT; WRIT GRANTED; JUDGMENT REVERSED; JUDGMENT RENDERED.