

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 1770

LOUISIANA SCHOOL BUS OPERATORS ASSOCIATION AND THE  
EAST BATON ROUGE PARISH SCHOOL BUS OPERATORS ASSOCIATION

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD

**Judgment rendered September 20, 2006.**

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Appealed from the  
19th Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 524,043  
Honorable Donald R. Johnson, Judge

\* \* \* \* \*

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MARKSVILLE, LA

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PLAINTIFFS-APPELLANTS  
LOUISIANA SCHOOL BUS  
OPERATORS ASSOCIATION  
AND THE EAST BATON  
ROUGE PARISH SCHOOL  
BUS OPERATORS ASSOCIATION

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EAST BATON ROUGE  
PARISH SCHOOL BOARD

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

*Downing, J. dissents and assigns reasons.  
Hughes, J., concurs with reasons.*

**PETTIGREW, J.**

In this case, plaintiffs, the Louisiana School Bus Operators Association and the East Baton Rouge Parish School Bus Operators Association, appeal a judgment granting a peremptory exception raising the objection of no cause of action filed by defendant, the East Baton Rouge Parish School Board. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

On September 7, 2004, plaintiffs filed a petition seeking a declaratory judgment and related injunctive relief under La. R.S. 17:493.1 against defendant.<sup>1</sup> Plaintiffs alleged that defendant's practice concerning assignment of bus routes was in violation of the legislative intent of La. R.S. 17:493.1. In response thereto, defendant filed numerous exceptions, including an exception raising the objection of no cause of action. A hearing on defendant's exceptions was held on April 18, 2005, at which time the trial court

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<sup>1</sup> Louisiana Revised Statutes 17:493.1 provides as follows:

A. (1)(a) Whenever a school bus operator is needed to drive a new route or a route vacated by a previous operator, the school bus operator who is tenured and has acquired the greatest seniority shall be offered the opportunity to and may change from driving his route to the vacant route before another operator is selected.

(b) If the tenured bus operator with the greatest seniority chooses not to change to the vacant route, the route shall then be offered in order of seniority to a school bus operator who has acquired tenure.

(c) If no tenured operator chooses to change to the vacant route, the route shall then be offered to a full-time probationary bus operator.

(d) If no regular bus operator, tenured or probationary, chooses to change to the vacant route, then a substitute bus operator shall be selected for the position from a list of approved substitute school bus operators.

(2) If a regular bus operator chooses to change routes as provided in this Section, then his vacant route shall be filled using the process described in this Subsection.

B. A substitute operator shall not be used to fill a route vacancy except as provided in R.S. 17:500(C)(2)(b) and (c).

C. Only if a city or parish school board is required, in filling a vacant route pursuant to Subsection A of this Section, to bear an increase in unreimbursed costs for nonpassenger miles over those attributable to the previous operator who vacated the route, may a school system select an operator to fill the vacant route on a different basis.

D. Notwithstanding any provision of this Section to the contrary, whenever a school bus operator owning his own bus retires, a route shall be offered first to any person meeting the requirements of the school board who is willing to acquire the bus of the retiring operator by a method which guarantees that the driver receives full appraised value for his bus using regularly accepted appraisal methods to determine fair market value. The provisions of this Subsection shall be applicable only when the bus owned by the retiring operator has been manufactured within a period of five years immediately prior to the operator's retirement and the operator is retiring due to a documented physical disability.

maintained the no cause of action exception. Ruling from the bench, the trial court noted as follows:

[R]eviewing [plaintiffs'] petition, the court does find that [defendant] statutorily has the sole authority to provide transportation for its students. And the court has not been able to find any statutes which limit or outline the power of [defendant] to draw those bus routes to be assigned to each bus driver. Therefore, since it appears to us that the law does provide no remedy by which they can seek relief we will grant [defendant's] exception of no cause of action.

The trial court rendered judgment in accordance with these findings on May 4, 2005, dismissing plaintiffs' petition with prejudice. This appeal by plaintiffs followed.

### **DISCUSSION**

On appeal, plaintiffs argue that the trial court's actions were an abuse of discretion and that the judgment should be reversed. 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. **Ramey v. DeCaire**, 2003-1299, p. 7 (La. 3/19/04), 869 So.2d 114, 118; **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1238 (La. 1993). The function of the exception raising the objection 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. **Ramey**, 2003-1299 at 7, 869 So.2d at 118; **Everything on Wheels Subaru, Inc.**, 616 So.2d at 1235; **Rebardi v. Crewboats, Inc.**, 2004-0641, p. 3 (La. App. 1 Cir. 2/11/05), 906 So.2d 455, 457.

Generally, no evidence may be introduced to support or controvert the exception raising the objection of no cause of action. La. Code Civ. P. art. 931; **Rebardi**, 2004-0641 at 3, 906 So.2d at 457; **Ramey**, 2003-1299 at 7, 869 So.2d at 118. In addition, all facts pled in the petition must be accepted as true. **Rebardi**, 2004-0641 at 3, 906 So.2d at 457. Thus, 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. **Rebardi**, 2004-0641 at 3, 906 So.2d at 457; **Ramey**, 2003-1299 at 7, 869 So.2d at 118. In reviewing the petition to determine whether a cause of action has been stated, the court must, if possible, interpret it to maintain the cause of action. Any reasonable doubt concerning

the sufficiency of the petition must be resolved in favor of finding that a cause of action has been stated. **Livingston Parish Sewer Dist. No. 2 v. Millers Mut. Fire Ins. Co. of Texas**, 99-1728, p. 5 (La. App 1 Cir. 9/22/00), 767 So.2d 949, 952, writ denied, 2000-2887 (La. 12/8/00), 776 So.2d 1175.

Appellate courts review a judgment sustaining an exception raising the objection of no cause of action *de novo*. This is because the exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition. **Ramey**, 2003-1299 at 7-8, 869 So.2d at 119; see also **Fink v. Bryant**, 2001-0987, p. 4 (La. 11/28/01), 801 So.2d 346, 349.

Louisiana Code of Civil Procedure article 1871 authorizes the judicial declaration of "rights, status, and other legal relations whether or not further relief is or could be claimed." Pursuant to La. Code Civ. P. art. 1872, an interested person whose rights, status or other legal relations are affected by a statute may have determined any question of construction or validity arising under that statute and obtain a declaration of rights, status, or other legal relations thereunder. The distinction between a declaratory judgment and a conventional judgment is that in a conventional judgment there is an ascertainment or declaration of the rights of the parties (usually implied) and a specific award of relief. The declaratory judgment embodies only the first element, which is always express. **ANR Pipeline Co. v. Louisiana Tax Com'n**, 2001-2594, pp. 8-9 (La. App. 1 Cir. 3/20/02), 815 So.2d 178, 184-185.

A declaratory judgment action is designed to provide a means for adjudication of rights and obligations in cases involving an actual controversy that has not reached the stage where either party can seek a coercive remedy. **Chauvin v. Wellcheck, Inc.**, 2005-1571, p. 5 (La. App. 1 Cir. 6/9/06), \_\_\_ So.2d \_\_\_. The function of a declaratory judgment is simply to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. **Williams v. City of Baton Rouge**, 2002-0339, p. 6 (La. App. 1 Cir. 2/14/03), 848 So.2d 9, 13.

In **Louisiana Supreme Court Committee on Bar Admissions ex rel. Webb v. Roberts**, 2000-2517, p. 3 (La. 2/21/01), 779 So.2d 726, 728, the Louisiana Supreme Court noted as follows with regard to declaratory judgments:

Trial courts are vested with wide discretion in deciding whether to grant or refuse declaratory relief. For a declaratory judgment to be granted, there must be a justiciable controversy, as courts are not permitted to issue advisory opinions based on a contingency which may or may not occur. Courts should not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies. [Citations omitted.]

Accepting all of the allegations in the petition as true, and applying the legal principles for the exception raising the objection of no cause of action to the instant case, we find the trial court properly granted defendant's exception raising the objection of no cause of action. This situation presents no existing, actual, and substantial dispute for which declaratory judgment would be appropriate. As correctly found by the trial court, the East Baton Rouge Parish School Board "statutorily has the sole authority to provide transportation for its students." Based on the specific facts and circumstances herein, no resolution of a justiciable controversy could possibly be served by a declaratory judgment in this case.

#### **CONCLUSION**

For the above and foregoing reasons, we affirm the judgment below and assess all costs associated with this appeal against plaintiffs-appellants, the Louisiana School Bus Operators Association and the East Baton Rouge Parish School Bus Operators Association.

**AFFIRMED.**

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**DOWNING, J., dissents and assigns reasons.**



The preamble to the Code of Justinian in 550 A.D. declares the precepts of the law to be these: “To live honestly, to injure no one, and to give each man his due.” To say senior drivers have first choice on existing routes and then make sure every route is changed so that there is no existing route is to make sure no senior bus driver gets his due.

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HUGHES, J., concurring.

I respectfully concur. While I agree there is no relief to be had in this case, a little respect and courtesy might prevent further litigation.