

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CU 2000

MICHELLE PAYETTE REID

VERSUS

JOSEPH DEAN REID

Judgment Rendered: February 11, 2011.

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 2003-12115

The Honorable Dawn Amacker, Judge Presiding

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

CARTER, C. J.

Joseph Dean Reid and Michelle Payette¹ are the divorced parents of a nine-year-old child. A consent judgment rendered September 17, 2007, awarded Mr. Reid sole custody of the child and awarded Ms. Payette supervised visitation. In August 2009, Ms. Payette petitioned the court for a modification of custody and visitation. Mr. Reid, in turn, filed a peremptory exception raising the objection of no cause of action, alleging that pursuant to the consent judgment, any modifications of custody or visitation would be governed by the standard set forth in **Bergeron v. Bergeron**, 492 So.2d 1193 (La. 1986), and that the allegations made in the petition for modification fell short of said standard. The trial court sustained the exception with respect to custody (and allowed Ms. Payette time to amend her petition) and overruled the exception with respect to visitation, finding that the parties' agreement to apply the **Bergeron** standard to visitation was against public policy and unenforceable. Mr. Reid now appeals that portion of the trial court's judgment overruling the peremptory exception raising the objection of no cause of action with respect to visitation.

The trial court's decision overruling the peremptory exception raising the objection of no cause of action is an interlocutory judgment. **Blanchard v. State Through Parks and Recreation Com'n**, 96-0053 (La. 5/21/96), 673 So.2d 1000, 1002; **Landry v. Leonard J. Chabert Medical Center**, 02-1559 (La. App. 1 Cir. 5/14/03), 858 So.2d 454, 461 n.4, writs denied, 03-1748, 03-1752 (La. 10/17/03), 855 So.2d 761. The trial court has the right, at any stage of the proceeding at which the objection was made, to set aside

¹ The record reflects that Michelle Payette Reid is now known as Michelle Payette.

that decree or to sustain the exception, upon finding that it erred in overruling it. **R.G. Claitor's Realty v. Juban**, 391 So.2d 394, 396 (La. 1980). Additionally, a party may seek review of any adverse or prejudicial interlocutory rulings in the event an unrestricted appeal is taken from a final judgment. **Louisiana State Bar Ass'n v. Carr and Associates, Inc.**, 08-2114 (La. App. 1 Cir. 5/8/09), 15 So.3d 158, 164, writ denied, 09-1627 (La. 10/30/09), 21 So.3d 292. However, an interlocutory judgment overruling a peremptory exception of no cause of action is not independently appealable under LSA-C.C.P. art. 2083. Cf. Blanchard, 673 So.2d at 1002; **Landry**, 858 So.2d at 460 n.4

For the foregoing reasons, Mr. Reid's appeal is dismissed. Costs of this appeal are assessed to Joseph Dean Reid.

APPEAL DISMISSED.