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JON S. WHEELER  
Clerk District Court Of Appeals  
1st District

CARL DORÉLIEN

IN THE DISTRICT COURT  
OF APPEAL OF FLORIDA,  
FIRST DISTRICT

CASE NO. 1D05-3546

Appellant,

v.

MARIE JEANNE JEAN,

Appellee.

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**MOTION TO DISMISS APPEAL**

Appellee, Marie Jeanne Jean ("Jean"), moves the Court to dismiss the appeal filed by Appellant, Carl Dorélien ("Dorélien"), for failure to prosecute, abandonment, and lack of jurisdiction. As grounds, Jean says:

**Background**

This appeal by Dorélien arises from Jean's successful application pursuant to Florida's Uniform Out-of-Country Foreign Money-Judgment Recognition Act, § 55.601, Fla. Stat. (2005), *et seq.*, for the recognition of a Haitian money judgment against Dorélien.

On September 8, 2004, the Clerk of the Leon County Circuit Court issued a certificate in accordance with Section 55.604(4), Florida Statutes, certifying that no objection to Jean's application for recognition of the Haitian judgment had

been filed within the 30-day period prescribed by the statute. (App. Tab 1.)<sup>1</sup> Thereafter, on September 10, 2004, Jean filed her Motion for Order as to Foreign Judgment (App. Tab 2), requesting the court take notice of the Clerk's Certificate and issue an Order recognizing the Haitian judgment, so that she could more conveniently enforce that judgment against Dorélien.

On or about October 1, 2004, Dorélien filed his Motion for Relief from Judgment, Leave to File Objections (App. Tab 3), and his Notice of Objections, Motion to Strike and/or Motion for Relief from Judgment. (App. Tab 4.)

On December 3, 2004, the Circuit Court rendered its Order Denying Defendant's Motion for Relief from Judgment, Leave to File Objections (App. Tab 5), and its Order Recognizing Foreign Judgment (granting Jean's Motion for Order as to Foreign Judgment).<sup>2</sup> (App. Tab 6.)

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<sup>1</sup> Jean files an appendix with her Motion, including the Clerk's Certificate, and the relevant motions and orders referenced in this motion, which are referenced as "App. Tab."

<sup>2</sup> The Order Recognizing Foreign Judgment was merely ministerial because the Clerk's Certificate made the Haitian judgment enforceable in Florida without any further hearing. *See Nadd v. Le Credit Lyonnais, S.A.*, 804 So. 2d 1226, 1229 (Fla. 2002) ("If no objections are filed within thirty days, the clerk of court files a statement stating that fact. Under such a circumstance, the judgment creditor is entitled to enforcement without a hearing."). Jean recognized the finality of the Clerk's Certificate in her Motion for Order as to Foreign Judgment, and requested the order recognizing the Haitian judgment, solely for her own convenience. (*See Jean's Motion for Order as to Foreign Judgment*, at ¶ 6 ("This Clerk's certificate may now be enforced in the same manner as [a] judgment of the Court of the State of Florida. F.S. § 55.604(5)."), and ¶ 7 ("Marie Jeanne Jean now requests that this Court take notice of the Clerk's Certificate, and enter an Order

On December 13, 2004, Dorélien filed his Motion for Rehearing, Amendment of Judgment and Relief from Judgment (the "Motion for Rehearing"). (App. Tab 7.) On June 27, 2005, the court entered its Order Denying Dorélien's Motion for Rehearing, Amendment of Judgment and Relief from Judgment, and Denying Motion of Marie Jeanne Jean to Enforce Judgment. (App. Tab 8.)

On July 18, 2005, *some fifteen months ago*, Dorélien filed his notice of appeal from: (1) the June 27, 2005 Order Denying Dorélien's Motion for Rehearing, Amendment of Judgment, and Relief from Judgment and Denying Motion of Marie Jeanne Jean to Enforce Judgment; (2) the December 3, 2004 Order Denying Defendant's Motion for Relief from Judgment, Leave to File Objections; and (3) the December 3, 2004 Order Recognizing Foreign Judgment. (App. Tab 9.) Dorélien filed a docketing statement on August 16, 2005. There has been no subsequent record activity in this appeal. Dorélien has never filed his appellate brief, nor has he requested any extension of time in which to do so.<sup>3</sup>

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recognizing the Foreign Judgment so that the Order can be used conveniently for enforcement of the judgment in the State of Florida.".)

<sup>3</sup> Dorélien also has a second appeal pending in this Court, arising from the same case below. On July 18, 2005, immediately after he filed his notice of appeal in this case, Dorélien filed a motion requesting relief from the court's December 3, 2004 Order Recognizing Foreign Judgment. Dorélien's motion was denied on August 17, 2006. Thereafter, on September 12, 2006, Dorélien filed his second notice of appeal in this Court, appealing from the August 17, 2006 order. Dorélien's second appeal is Case No. 1D06-4806.

## Memorandum of Law

### *A. Dorélien has abandoned his appeal.*

Dorélien was required to serve his appellate brief within 70 days of filing his notice of appeal on July 18, 2005. *See* Fla. R. App. P. 9.110(f) ("Appellant's initial brief shall be served within 70 days of filing the notice."). However, Dorélien did not timely comply, and has not filed any brief. Indeed, Dorélien has not filed any papers since his docketing statement on August 16, 2005. Accordingly, Dorélien has failed to prosecute and has abandoned his appeal.

### *B. The Court lacks jurisdiction to consider Dorélien's appeal from the Circuit Court's December 3, 2004 Order Denying Defendant's Motion for Relief from Judgment, Leave to File Objections.*

The Order Denying Defendant's Motion for Relief from Judgment, Leave to File Objections, was rendered December 3, 2004. Pursuant to Rule 9.110(b), Florida Rules of Appellate Procedure, Dorélien was required to file a notice of appeal within thirty days, by January 2, 2005, to invoke the jurisdiction of the Court for an appeal from that order. *See* Fla. R. Civ. P. 9.110(b). Dorélien did not comply with Rule 9.110(b), nor did his Motion for Rehearing toll the time for his appeal; accordingly, this Court lacks jurisdiction to consider Dorélien's appeal from the Order Denying Defendant's Motion for Relief from Judgment, Leave to File Objections. *See, e.g., In the Interest of T. D.*, 623 So. 2d 851 (Fla. 1<sup>st</sup> DCA 1993) (time for taking appeal is jurisdictional).

Dorélien's Motion for Rehearing did not toll the time for his appeal from the Order Denying Defendant's Motion for Relief from Judgment because his Motion for Rehearing was not an "authorized" tolling motion for the purposes of Rule 9.020(h), Florida Rules of Appellate Procedure.<sup>4</sup>

Dorélien's Motion for Rehearing was not an "authorized" tolling motion because his Motion for Relief from Judgment, Leave to File Objections, which the court denied, was made pursuant to Rule 1.540, Florida Rules of Civil Procedure. Florida law does not authorize motions for the rehearing of orders denying motions made pursuant to Rule 1.540. *See, e.g., Catalano v. Catalano*, 516 So.2d 77 (Fla. 5<sup>th</sup> DCA 1987). As the *Catalano* court stated:

Motions for rehearing (or for "reconsideration") of an order issued under Florida Rule of Civil Procedure 1.540(b) are not authorized. Therefore, such motion in this case did not toll the time for appellant to file a notice of appeal from the order dismissing the appellant's petition under that Rule.

516 So. 2d at 77-78 (citing, *inter alia*, *Ramos v. State*, 456 So. 2d 1297 (Fla. 2d DCA 1984); *Smith v. Weede*, 433 So. 2d 992 (Fla. 5<sup>th</sup> DCA 1983); *Tacy v. Davis*, 425 So. 2d 603 (Fla. 4<sup>th</sup> DCA 1982)). *See also Albano v. Albano*, 579 So. 2d

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<sup>4</sup> Rule 9.020(h), Florida Rules of Appellate Procedure, provides that the rendition of a final order, and the time for an appeal from the order, may be tolled by filing:

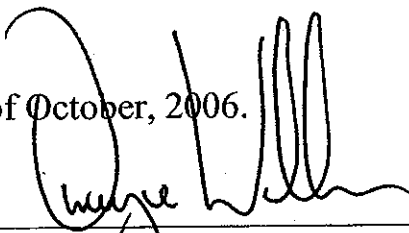
an authorized and timely motion for new trial, for rehearing, for certification, to alter or amend, . . .

*See Fla. R. App. P. 9.020(h).*

757, 758-59 (Fla. 5th DCA 1991) ("Since the order in the instant case was one entered on a motion pursuant to rule 1.540, the motion for rehearing directed to the order did not stay the time for rendition.") (citing *Catalano*); *Smith v. Weede*, 433 So. 2d 992, 992-94 (Fla. 5th DCA 1983) (Florida Rules of Civil Procedure do not authorize the rehearing of motions to set aside default judgments; appeal from order denying motion to set aside default judgment not tolled by motion for rehearing).

Wherefore, appellee, Marie Jeane Jean, requests this Court to dismiss Dorélien's appeal with prejudice.

Respectfully submitted this 11<sup>th</sup> day of October, 2006.



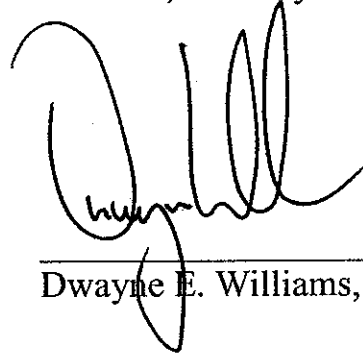
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail, this 11<sup>th</sup> day of October, 2006 to: Kurt R. Klaus, Esq., Law Offices of Kurt R. Klaus, Jr., 3191 Coral Way, Suite 402-A, Miami, FL 33145 and Christian N. Scholin, Esq., 505 S. Flagler Drive, Suite 400, West Palm Beach, FL 33401, attorneys for Carl Dorélien; and Scott M. Behren, Esq., 2853 Executive Park Drive, Suite 103, Weston, FL 33326, attorney for Lump Sum Capital, LLC and Argonne Trust 2003-1.



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Dwayne E. Williams, Esq.

## INDEX TO APPENDIX

<b>Tab</b>	<b>Document</b>
1.	Clerk's Certificate, filed September 8, 2004
2.	Jean's Motion for Order as to Foreign Judgment, filed September 10, 2004
3.	Dorélien's Motion for Relief from Judgment, Leave to File Objections, filed on or about October 1, 2004
4.	Dorélien's Notice of Objections, Motion to Strike, filed on or about October 1, 2004
5.	Order Denying Defendant's Motion for Relief from Judgment, Leave to File Objections, rendered December 3, 2004
6.	Order Recognizing Foreign Judgment, rendered December 3, 2004
7.	Dorélien's Motion for Rehearing, Amendment of Judgment and Relief from Judgment, filed December 13, 2004
8.	Order Denying Dorélien's Motion for Rehearing, Amendment of Judgment and Relief from Judgment, and Denying Motion of Marie Jeanne Jean to Enforce Judgment, rendered June 27, 2005
9.	Dorélien's Notice of Appeal, filed July 18, 2005