

NOT FOR PUBLICATION

ROBERT DUNCAN	*	NO. 2026-C-0304
VERSUS	*	
PETROBRAS AMERICA, INC.,	*	COURT OF APPEAL
ET AL	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA

APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2008-06640, DIVISION “N-8”
Honorable Yolanda Grinstead (Pro Tempore), Judge

Judge Paula A. Brown

(Court composed of Judge Daniel L. Dysart, Judge Paula A. Brown, Judge Karen K. Herman)

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**WRIT GRANTED IN PART;
DENIED IN PART; REMANDED
REQUEST FOR ORAL ARGUMENT DENIED**

JUNE 23, 2026

Relator, Robert Duncan, seeks review of the district court’s April 2, 2026 judgment, denying his two separate motions for new trial. Additionally, Relator has requested that this Court grant him the opportunity for oral argument. For the reasons that follow: (1) we deny the writ seeking review of the December 19, 2025 judgment as untimely; (2) we remand that portion of the matter to the district court to consider Relator’s notice of intent to apply for supervisory writs to be a timely-filed notice of intent to appeal with respect to Relator’s claims against Respondent, Petrobras America, Inc. (“Petrobras”); and (3) we grant the writ and reverse the district court’s December 30, 2025 judgment, insofar as it granted partial summary judgment in favor of Global, and remand the matter for further proceedings consistent with this opinion. Finally, we deny Relator’s request for oral argument.

FACTUAL AND PROCEDURAL BACKGROUND

On June 24, 2008, Relator filed a petition for damages for alleged injuries he suffered on November 17, 2007, when he was jerked by a tagline¹ while working

¹ The Occupational Safety and Health Administration (“OSHA”) defines a tagline as “a rope (usually fiber) attached to a lifted load for purposes of controlling load spinning and pendular

as a seaman aboard the M/V CHICKASAW. At the time of the alleged incident, Relator's direct employer was Baystone Contractors, LLC ("Baystone"), Global was the owner of the M/V CHICKASAW, and Petrobras was the owner of the project and principal for whom the offshore work was being performed. Relator's original petition asserted claims for negligence, unseaworthiness and maintenance and cure arising under the Jones Act against all three entities as his employers at the time of the alleged incident. As explained by the U.S. Supreme Court in *Lewis v. Lewis & Clark Marine, Inc.*, "[a] Jones Act claim is an *in personam* action for a seaman who suffers injury in the course of employment due to negligence of his employer, the vessel owner, or crew members." 531 U.S. 438, 441, 121 S.Ct. 993, 997 (2001) (citation omitted).² Baystone is not a party to the matter now before us.

Petrobras and Global each filed motions for partial summary judgment, which both came for hearing on November 21, 2025.³ At the hearing, counsel for Petrobras lodged an objection to certain exhibits Relator sought to introduce, which the district court sustained. The district court then issued and mailed a written judgment on December 19, 2025, in which it memorialized the sustained objections and granted in part Petrobras' motion for partial summary judgment on

motions or used to stabilize a bucket or magnet during material handling operations." <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1401>.

² The *Lewis* court further outlined that "[u]nseaworthiness is a claim under general maritime law based on the vessel owner's duty to ensure that the vessel is reasonably fit to be at sea." 531 U.S. at 441, 121 S.Ct. at 997 (citation omitted). And further, "[a] claim for maintenance and cure concerns the vessel owner's obligation to provide food, lodging, and medical services to a seaman injured while serving the ship." *Id.* (citation omitted).

³ It appears from the record before us that Petrobras and Global each filed two motions for partial summary judgment—one each on the issue of maritime negligence, and one each pertaining to Mr. Duncan's claims arising under the Jones Act for maintenance and cure and unseaworthiness.

the issue of Jones Act liability, dismissing one of Relator's claims against it with prejudice.⁴ Soon thereafter, the district court issued another judgment on December 30, 2025,⁵ this time dismissing with prejudice the remaining claims against Petrobras and dismissing with prejudice all but one claim against Global.

Relator filed a motion for new trial on January 7, 2026, seeking reconsideration of the issues decided in the December 19, 2025 judgment. On February 23, 2026, Relator filed another motion for new trial, this time seeking reconsideration of the issues decided in the December 30, 2025 judgment. According to a written judgment issued on April 2, 2026, both motions were argued at a hearing held on March 27, 2026. That judgment denied both motions for new trial.⁶ Also on April 2, 2026, Relator filed a notice of intent to apply to this Court for supervisory writ. The district court signed an order setting the return date of the application on April 27, 2026. Relator filed its writ application with this Court, which included a request for oral argument.

On May 21, 2026, this Court ordered Relator to show cause in writing no later than June 1, 2026, why the request to review the December 30, 2025 judgment should not be dismissed as untimely. In response to that order, on May

⁴ Specifically, the district court granted summary judgment in favor of Petrobras on the issue of unseaworthiness, and took the issues of maintenance and cure and maritime negligence under advisement.

⁵ The notice of judgment was mailed on January 5, 2026.

⁶ We note that, on its face, neither motion for new trial appears to have been timely pursuant to La. C.C.P. art. 1974, which provides:

A party may file a motion for a new trial not later than seven days, exclusive of legal holidays, after the clerk has mailed or delivered in open court, or the sheriff has served, the notice of judgment as required by Article 1913.

26, 2026, Relator filed a *Motion to Supplement the Record and Memorandum in Response to Order to Show Cause Regarding Timeliness*, asserting that the district court “expressly ordered reissuance of notice of the December 30, 2025 judgment pursuant to La. C.C.P. art. 1913 after determining that proper notice had not been given.” By motion, Relator sought to supplement the writ application with the district court’s March 13, 2026 order reissuing notice of judgment and related filings. That motion was granted.

DISCUSSION

Upon careful review, we find it necessary to delineate the distinction between final and interlocutory judgments and the proper procedural vehicles utilized to seek review of each. Louisiana Code of Civil Procedure article 1841 provides in part:

A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment.

A judgment that determines the merits in whole or in part is a final judgment.

See, e.g., Edmonds v. Boh Bros. Const. Co., 516 So.2d 224, 225 (La. App. 4 Cir. 1987) (“[a] ruling[] by the [district] court concerning the admissibility of evidence is an interlocutory judgment.”). Furthermore, with the recent amendment of La. C.C.P. art. 1915(C),⁷ the legislature was definitive that “when a court grants a . . . summary judgment . . . as to one or more but fewer than all of the claims . . . that judgment is an interlocutory judgment.” *See also Elysian, Inc. v. Neal Auction Co.*, 20-0674, p. 8 (La. App. 4 Cir. 7/21/21), 325 So.3d 1075, 1083 (a “judgment

⁷ Acts 2025, No. 250, § 3, effective August 1, 2025.

granting in part . . . [a] motion for partial summary judgment . . . [is] interlocutory.”).

This Court has explained that “the provisions of the Louisiana Code of Civil Procedure are clear that motions for new trial may be taken only from a final judgment.” *Johno v. Doe*, 16-0200, p. 5 (La. App. 4 Cir. 8/17/16), 198 So.3d 1216, 1218 (quoting *Carter v. Rhea*, 01–0234, p. 5 (La. App. 4 Cir. 4/25/01), 785 So.2d 1022, 1025). Louisiana Code of Civil Procedure article 2083(C) directs that “[a]n interlocutory judgment is appealable only when expressly provided by law.” Although Relator does not raise the issue with this Court, he explained to the district court in his accompanying memorandum for the February 23, 2026 motion for new trial:

Following the signing of the December 30, 2025 Judgment, the Notice of Signing was mailed to an address for undersigned counsel that was not the address listed on the pleadings and was no longer an active office location. The Notice was therefore not sent to counsel’s correct address of record. The Clerk’s Office subsequently reissued notice of signing with respect to a separate December 19, 2025 judgment 2025[.] . . .; however, notice of signing of the December 30, 2025 Final Judgment has not been reissued to the correct address of record.

Out of an abundance of caution, Plaintiff has calculated the delays applicable to this Motion from the date of the reissued notice; however, Plaintiff notes that proper notice under La. C.C.P. art. 1913 is required to commence the running of delays for purposes of La. C.C.P. art. 1971. This clarification is made to ensure the record accurately reflects the procedural posture of the case.⁸

To determine whether Relator’s writ is properly before this Court, we must first examine whether Relator’s motions for new trial and subsequent notice of intent filed in the district court were timely filed. We will address each judgment in turn.

December 19, 2025 judgment

⁸ A review of the hearing transcript reveals that no arguments or objections were made by the defendants as to the timeliness of the motions for new trial.

As noted above, the district court’s December 19, 2025 judgment sustained objections raised by Petrobras and granted, in part, Petrobras’ motion for partial summary judgment. The record now before us contains a notice of signing of judgment relative to the December 19, 2025 judgment. The original date of mailing appears as December 19, 2025, but there is a handwritten note from a law clerk for Division “N” indicating that the notice was re-issued to a new address on February 10, 2026. Nonetheless, on January 7, 2026, Relator filed a motion for new trial, which was denied on April 2, 2026. Relator also filed his notice of intent to file for supervisory writ on April 2, 2026.

“The proper procedural vehicle to seek review of an interlocutory judgment that is not immediately appealable is an application for supervisory writ.” *Johno*, at p. 4, 198 So.3d at 1218 (quoting *M.R. Pittman Grp., L.L.C. v. Plaquemines Par. Gov’t*, 15–0860, pp. 3-4 (La. App. 4 Cir. 12/2/15), 182 So.3d 312, 316-17). “This Court has consistently recognized that the time period for filing a notice of intent [for supervisory writs] pursuant to Rules 4-2 and 4-3, Uniform Rules, Courts of Appeal is thirty days from the date of notice of the judgment, if a written judgment has been prepared, or from the date of the oral ruling rendered, if no written judgment has been prepared.” *Sally v. R B Laws Builders, LLC*, 24-0494, p. 4 (La. App. 4 Cir. 8/29/24), 398 So.3d 1180, 1182 (quoting *Uddo v. Gusman*, 24-0319, p. 3 (La. App. 4 Cir. 7/8/24), 398 So.3d 661, 663). It is well settled that “the filing of a motion for new trial seeking reconsideration of an interlocutory judgment cannot interrupt the [thirty]-day period for filing an application for supervisory writs established by Rule 4-3 of the Uniform Rules–Courts of Appeal.” *Llopis v. State*, 16-0041, p. 5 (La. App. 4 Cir. 12/14/16), 206 So.3d 1066, 1069 (quoting *Carter v. Rhea*, 01-0234, p. 5 (La. App. 4 Cir. 4/25/01), 785 So.2d 1022, 1025).

Therefore, Relator's April 2, 2026 notice of intent to file for supervisory writ on the December 19 interlocutory judgment—which memorialized the sustained objections to exclude certain exhibits and dismissed with prejudice Relator's claim of unseaworthiness against Petrobras—was filed well beyond thirty days of mailing of the notice of judgment on February 10, 2026, making it untimely and not properly before this Court.⁹ As such, Relator's writ with respect to the portion of the district court's December 19, 2026 judgment that sustained Petrobras' objection to exhibits B, C, E and F attached to Relator's opposition to its motion for partial summary judgment on the issue of Jones Act liability, is denied as untimely.

December 30, 2025 judgment

We will discuss this judgment as it pertains to the claims against Petrobras and Global separately.

Petrobras

The district court's December 30, 2025 judgment dismissed all remaining claims against Petrobras—namely, Jones Act liability, maintenance and cure, compensatory damages for failure to pay maintenance and cure, and maritime negligence. Relator filed a motion for new trial on February 23, 2026, which was heard on March 27, 2026. On April 2, 2026, this motion was also denied. On that same day, Relator filed a notice of intent to apply to this Court for supervisory writ.

⁹ As will be discussed more fully, *infra*, at the time the December 19, 2025 judgment was rendered, the portion that partially granted Petrobras' partial motion for summary judgment was interlocutory; thus, making the April 2, 2026 notice of intent for supervisory writ untimely. However, the December 30, 2025 judgment, which decided all of the remaining claims against Petrobras, making it a final, appealable judgment which would encompass the claim of unseaworthiness against Petrobras that had been dismissed in the December 19, 2025 judgment.

As we quoted previously, pursuant to La. C.C.P. art. 1841, “[a] judgment that determines the merits in whole or in part is a final judgment.” In *Toussaint v. Spears*, this Court clarified that a litigant seeking review by this Court of a final judgment must do so by way of appeal, not an application for supervisory writ. 25-0428, p. 6 (La. App. 4 Cir. 7/23/25), 417 So.3d 1220, 1224. However, an improperly filed application for supervisory writ can be remanded to the district court to treat its notice of intent as an intent to appeal if the notice was filed within the delays for an appeal. *Id.* at p. 6, 417 So.3d at 1224-25. In this instance, the delay for taking a devolutive appeal—one that does not suspend the effect of the judgment—is sixty days, pursuant to La. C.C.P. art. 2087.¹⁰

In his reply brief to Petrobras’s opposition to his writ application, Relator contends that, even assuming that the proper procedural vehicle for this Court to review the dismissal of all claims against Petrobras lies in an appeal, this Court should exercise our jurisdiction of supervisory review because trial of the related negligence claim against Global is set to commence on June 22, 2026. To counter this assertion, on May 27, 2026, Petrobras filed a *Motion for Leave to Supplement Writ Opposition* to inform this Court that the trial will not go forward on that date because: (1) Relator was recently granted leave to file a third amended petition to

¹⁰ Louisiana Code of Civil Procedure article 2087 provides, in pertinent part:

A. Except as otherwise provided in this Article or by other law, an appeal which does not suspend the effect or the execution of an appealable order or judgment may be taken within sixty days of any of the following:

(1) The expiration of the delay for applying for a new trial or judgment notwithstanding the verdict, as provided by Article 1974 and Article 1811, if no application has been filed timely.

(2) The date of the mailing of notice of the court's refusal to grant a timely application for a new trial or judgment notwithstanding the verdict, as provided under Article 1914.

bring in new claims against new defendants, and under those circumstances, La. C.C.P. art. 1571(A)(2)¹¹ precludes trial going forward; and (2) Relator consented to an unopposed motion by Global to continue the trial date that was filed on May 20, 2026. On that same day, we granted the motion, whereupon Petrobras promptly supplemented its opposition with the pleadings in question. The supplemented pleadings included a service copy of Mr. Duncan’s *Third Amended Petition for Damages* signed by his counsel, together with file-stamped copies of the *Unopposed Motion to Continue Trial* and the order continuing the trial without date. This argument is without merit.

Accordingly, as it pertains to Relator’s claims against Petrobras, based on the district court’s March 13, 2026 order reissuing notice of judgment, we remand this matter to the district court to consider Relator’s April 2, 2025 notice of intent to file supervisory writ as a timely-filed notice of intent to appeal.

Global

As to Relator’s claims against Global, we previously noted that the December 30, 2025 judgment dismissed all but one claim against Global—making that an interlocutory ruling. Again, using the district court’s March 13, 2026 order reissuing notice of judgment, we find that Relator’s April 2, 2026 notice of intent to apply for supervisory writ was timely as to the interlocutory rulings pertaining to Global. Consequently, we will review the dismissal of the Jones Act claims

¹¹ Louisiana Code of Civil Procedure article 1571(A)(2) directs:

- A. (1) The district courts shall prescribe the procedure for assigning cases for trial, by rules which shall:
 - (a) Require adequate notice of trial to all parties; and
 - (b) Prescribe the order of preference in accordance with law.
- (2) These rules shall not allow the assignment of ordinary proceedings for trial except after answer filed.

against Global to determine whether summary judgment was proper in this instance.

“Generally, on a motion for summary judgment, the burden of proof remains with the mover.” *Cloud v. Gibson*, 23-0435, p. 10 (La. App. 4 Cir. 7/30/24), 399 So.3d 604, 611 (quoting *Breston v. DH Catering, LLC*, 23-0460, p. 12 (La. App. 4 Cir. 2/5/24), 384 So.3d 953, 961). “But, if the moving party will not bear the burden of proof on the issue at trial and identifies an absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense, then the non-moving party must produce factual support sufficient to counter that assertion and establish that he will be able to satisfy his evidentiary burden of proof at trial.” *Id.* at pp. 10-11, 399 So.3d at 611 (citation omitted). “However, if the opponent of the motion cannot do so, there is no genuine issue of material fact and summary judgment will be granted.” *Id.* at p. 11, 399 So.3d at 611 (citation omitted).

“The . . . adverse party [must] produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.” La. C.C.P. art. 966(D)(1). “[A]n adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided above, must set forth specific facts showing that there is a genuine issue for trial.” La. C.C.P. art. 967(B). “In consider[ing] a motion for summary judgment, the trial court cannot make credibility determinations but must construe reasonable factual inferences in favor of the party opposing the motion, resolving all doubt in favor of the opponent.” *Mendoza v. ACE Prop. & Cas. Ins. Co.*, 24-0604, p. 11 (La. App. 4 Cir. 5/27/25), 414 So.3d

1172, 1181 (quoting *Anderson v. Briggs*, 23-0814, 24-0808, p. 13 (La. App. 4 Cir. 4/25/25), 414 So.3d 990, 1001).

To state a claim under the Jones Act, a plaintiff must establish that the defendant was his employer. 46 U.S.C. § 30104 (2022);¹² *see also Guidry v. S. L. Contractors, Inc.*, 614 F.2d 447, 452 (5th Cir. 1980) (“A Jones Act claim also requires proof of an employment relationship either with the owner of the vessel or with some other employer who assigns the worker to a task creating a vessel connection.”). Furthermore, “[t]he law is clear that only the Jones Act employer/shipowner owes an injured seaman maintenance and cure benefits.” *Armstrong v. Trico Marine, Inc.*, 923 F.2d 55, 58 n.2 (5th Cir. 1991).

Relator does not dispute that his direct employer at the time of the events giving rise to this suit was Baystone. Rather, he argues that Baystone’s role was limited to payroll while Global actually exercised operational control over him, conferring upon him borrowed employee, or servant, status. For support, Relator cites to the case of *Ruiz v. Shell Co.* for the tests to determine borrowed employee status as enunciated by that court. 413 F.2d 310, 312-13 (5th Cir. 1969). This Court distilled those tests into nine separate inquiries:

- 1) Who has control over the employee and the work he is performing, beyond mere suggestion of details or cooperation?
- 2) Whose work is being performed?
- 3) Was there an agreement, understanding, or meeting of the minds between the original and the borrowing employer?
- 4) Did the employee acquiesce in the new work situation?
- 5) Did the original employer terminate his relationship with the employee?
- 6) Who furnished the tools and place for performance?

¹² 46 United States Code § 30104 (2022) provides, in pertinent part, “A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.”

- 7) Was the new employment over a considerable length of time?
- 8) Who had the right to discharge the employee?
- 9) Who had the obligation to pay the employee?

Johnson v. Rogers & Phillips, Inc., 99-0116, p. 4 (La. App. 4 Cir. 7/21/99), 753 So.2d 286, 289–90, *on reh'g* (Dec. 15, 1999) (citing *Ruiz*, 413 F.2d at 312-13). However, as the *Ruiz* court cautioned, “[v]arious criteria have been considered in determining when the doctrine of borrowed servant is applicable. While no one of these factors, or any combination of them, is decisive, and no fixed test is used to determine the existence of a borrowed-servant relationship, [these] tests have been given great weight.” *Ruiz*, 413 F.2d at 312.

Relator relies mainly on deposition testimony from Gary Wayne Davis (“Mr. Davis”), a Global employee, to establish that Global exercised operational control over his work activities. When asked to provide his job description, the following colloquy occurred:

Q: What is your job with Global Industries?

A: Barge superintendent.

* * *

Q: Can you explain for us what the job of superintendent on the CHICKASAW entails?

A: Take care of the barge’s responsibilities as far as to the clients and the scope of work to be done. Take care of the safety of the people, the integrity of the equipment. Pretty much make the decision when we’re going to work.

Q: As far as supervisory capacity, is there anyone above you on the CHICKASAW?

A: No.

Q: So you’re the head of the barge, basically?

A: I’m the superintendent.

Q: The superintendent. You’re like the captain, basically?

A: Yeah, basically.

* * *

Q: There's no one on board that you answer to; is that correct?

A: I have people in the office I answer to, and the client. I answer to the client.

Q: Okay. But as far as the operations of the CHICKASAW, you are the head person on board?

A: Yes ma'am.

Additionally, both Relator and Mr. Davis testified that Mr. Davis ordered Relator to grab a tagline, which resulted in Relator's alleged injuries. Although, as the *Ruiz* court explained, no single factor is dispositive of whether a worker is considered a borrowed employee, we find that this testimony raises a genuine issue of material fact as to who had operational control of Relator's day-to-day activities on the M/V CHICKASAW. As a result, we reverse the district court's December 30, 2025 judgment, insofar as it granted partial summary judgment in favor of Global, and remand the matter for further proceedings consistent with this opinion.

CONCLUSION

For the foregoing reasons: (1) we deny the writ seeking review of the December 19, 2025 judgment as untimely; (2) we remand that portion of the matter to the district court to consider Relator's notice of intent to apply for supervisory writs to be a timely-filed notice of intent to appeal with respect to Relator's claims against Respondent, Petrobras; and (3) we grant the writ and reverse the district court's December 30, 2025 judgment, insofar as it granted partial summary judgment in favor of Global, and remand the matter for further proceedings consistent with this opinion. Finally, we deny Relator's request for oral argument.

**WRIT GRANTED IN PART;
DENIED IN PART; REMANDED
REQUEST FOR ORAL ARGUMENT DENIED**