TAMIKA CARTER	*	**NO. 2001-C-0234**
VERSUS	*	**COURT OF APPEAL**
FRANKLIN RHEA, MANNINO'S P & M TEXACO SERVICE CENTER, INC. AND SCOTTSDALE INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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TOBIAS, J., CONCURS

I respectfully concur in the result. This court should not review the issue addressed in the underlying motion for summary judgment. See Rule 4-3, Uniform Rules, Courts of Appeal.

I am compelled to write this concurrence because this court may have created a trap for the unwary practitioner of law. For the over 14 years that I was a trial judge and the over 14 years before that during which I practiced law in the civil courts of New Orleans, it has been my experience that the practice has been to permit a litigant to file and be heard, if the judge so directed, upon a motion for new trial taken from an interlocutory judgment or order. To some extent, La. C.C. arts. 3 and 4 may have established a custom in the New Orleans civil trial courts.

Nevertheless, I agree with the majority that a literal reading of La.

C.C.P. art. 1974, authorizing motions for new trial, makes it applicable to final judgments only. I do note, however, that one could reasonably read La. C.C.P. art. 1914 as, by implication, authorizing a motion for new trial when an interlocutory judgment or order is at issue.

The majority makes our practice conform to the literal language of La. C.C.P. art. 1974 and the jurisprudence from two other appellate circuits. However, a party may not seek review of an interlocutory decision by filing a motion for new trial. Now, in order to accomplish the same result as a motion for new trial, one must file a brand new motion (with appropriate attachments) addressing the identical issue as a previous motion that resulted in an allegedly erroneous interlocutory decree. I suppose one could seek supervisory writs from the new motion within 30 days as permitted by Rule 4-3. But I can envision an appellate court saying that if you did not take a supervisory writ from the earlier decision, you cannot make application now. That is a question that must be addressed in the future.

Even assuming that one were to embrace a motion for new trial as an appropriate method of obtaining review in the trial court of an allegedly erroneous interlocutory decree, in the case at bar, relators filed a motion for new trial on 30 October 2000. Their writ application fails to demonstrate whether their motion for new trial was filed within 7 days of the interlocutory judgment signed on 27 September 2000. No notice of judgment mandated by La. C.C.P. art. 1914 is attached. Their application is thus untimely because the decision of which they complain was rendered on 27 September 2000 and their application filed more than 30 days thereafter.