

Judgment rendered June 19, 2003.

No. 37,092-CW

**ON REHEARING**

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

RICHARD L. BAXTER

Respondent

Versus

JOHN L. SCOTT

Applicant

\* \* \* \* \*

**Per Curiam on Rehearing**

On Application for Rehearing  
on Writ of Review Directed to the  
Fourth Judicial District Court for the  
Parish of Ouachita, Louisiana  
Trial Court No. 021866

Honorable Alvin R. Sharp, Judge

\* \* \* \* \*

J. MICHAEL RHYMES

Counsel for  
Applicant

FORRESTER, JORDAN & DICK  
By: Shelly D. Dick

Counsel for  
Respondent

\* \* \* \* \*

Before WILLIAMS, STEWART, GASKINS,  
PEATROSS, and DREW, JJ.

## **PER CURIAM**

On May 16, 2003, this court rendered an opinion in the above entitled writ matter. We reversed the trial court's denial of a special motion to strike filed by John L. Scott pursuant to La. C.C.P. art. 971 against Richard L. Baxter's petition alleging defamation. We granted the motion to strike, dismissed Baxter's action with prejudice, and assessed costs to him.

On May 28, 2003, Judge Stewart signed an order denying a joint motion to dismiss that had been filed on behalf of Baxter and Scott on May 5, 2003, just prior to the opinion being rendered.

Thereafter, on May 30, 2002, Baxter filed a "Motion To Traverse or Alternatively, Application For Rehearing By Richard L. Baxter." Baxter asserts that the opinion of this court was moot when rendered on May 16, 2003, because this court had been informed by way of the joint motion to dismiss that the parties had amicably resolved their differences. Baxter further asserts that the opinion is nothing more than an advisory opinion since this court was aware that the parties had settled their differences. In his prayer for relief, Baxter asks either that the ruling be traversed or rehearing be granted in accordance with Rule 2-18.7 of the Uniform Rules - Courts of Appeal ("U.R.C.A."). He further asks that the opinion be recalled and the writ matter dismissed as moot.

Baxter bases his arguments on the fact that a joint motion to dismiss was filed prior to the opinion being rendered. Although this matter involves a writ rather than an appeal, the uniform rules applicable to appeals apply as provided by U.R.C.A. 4-8, insofar as such rules do not conflict with rules specifically pertaining to writs.

La. C.C.P. art. 2162 provides that “(a)n appeal can be dismissed at any time by consent of all parties.” Joint motions to dismiss are specifically addressed in Rule 2-8.3 of the U.R.C.A., which provides as follows:

Any appeal may be summarily dismissed or remanded by order of the court where there has been a joint motion filed by all interested parties or their counsel of record, which shall set forth the reason for such action and ***which shall be supported by appropriate affidavits that the facts alleged are true and correct.*** (Emphasis added.)

A review of the motion to dismiss shows that the parties failed to comply with the requirement of U.R.C.A. 2-8.3 in that their motion was not supported by appropriate affidavits attesting to the truthfulness of the facts regarding their settlement and desire for dismissal. No affidavits were filed in conjunction with the motion to dismiss. The motion to dismiss was procedurally defective and provided no basis for dismissal of the appeal prior to rendition of the opinion. Nor does the defective motion to dismiss provide any basis for the recall of the opinion and dismissal as prayed for by Baxter in the motion now before this court. Accordingly, Baxter’s Motion to Traverse/Application for Rehearing is denied.

MOTION AND REHEARING DENIED.