

SUPREME COURT OF LOUISIANA

No. 02-CC-1544

TOTAL BENEFITS SERVICES, INC., ET AL.

Versus

CITY OF NEW ORLEANS

JOHNSON, Justice concurring

The issue in this case stems from the trial court's denial of Total Benefits' requests for a preliminary injunction, mandamus, and temporary restraining order.

LSA-C.C.P. art. 3612 provides, in pertinent part:

B. An appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction, but such an order or judgment *shall not be suspended during the pendency of an appeal unless the court in its discretion so orders.*

(Emphasis added). Clearly, a suspensive appeal is not allowed under this provision unless the trial court so orders. In this case, the trial court allowed the suspensive appeal as a result of an erroneous instruction from the court of appeal. Thus, I believe that this matter should be converted to a devolutive appeal. Consequently, it would be unnecessary to post a bond.

However, since Total Benefits' appeal is not limited to the denial of the preliminary injunction and the temporary restraining order, a reduction of the suspensive appeal bond is proper.

