

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2015

ANGELIA BIGGS

VERSUS

JERRY T. BIGGS

**On Appeal from the 21st Judicial District Court
Parish of Livingston, Louisiana
Docket No. 96927, Division "C"
Honorable Robert H. Morrison, III, Judge Presiding**

**Attlah D. Burrell
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**Attorney for
Plaintiff-Appellant
Angelia Biggs**

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**Attorney for
Defendant-Appellee
Jerry T. Biggs**

BEFORE: ARMSTRONG, KIRBY, AND BELSOME, JJ.¹

Judgment rendered AUG - 1 2007

¹ The Honorable Joan Bernard Armstrong, Chief Judge, the Honorable Michael E. Kirby, Judge, and the Honorable Roland L. Belsome, Jr., Judge, all members of the Fourth Circuit Court of Appeal, are serving as judges *ad hoc* by special appointment of the Louisiana Supreme Court.

Appellant Angelia Biggs appeals the trial court's grant of Appellee's Exception of Res Judicata. For the reasons that follow, we affirm as amended in part and reverse in part.

FACTS

Appellant Angelia Biggs (hereafter "Ms. Biggs") and Appellee Jerry Biggs (hereafter "Mr. Biggs") were divorced on December 8, 1999. Ms. Biggs filed a petition for judicial partition of the community property on July 29, 2002, attaching a "Sworn Detailed Descriptive List of Community Property," listing all community assets and liabilities and the estimated fair market value of each. On April 29, 2003, Mr. Biggs filed a similar list of assets and liabilities and the estimated fair market value of each.² The district court issued a written judgment on May 5, 2003, declaring that the items on Ms. Biggs' list were determined to be the assets of the community, without a determination as to valuation of any of the assets.

On December 8, 2003, Mr. Biggs filed a Voluntary Petition for Relief under Chapter 7 of the U.S. Bankruptcy Code in U.S. Bankruptcy Court for the Middle District of Louisiana. An automatic stay order was issued pursuant to the bankruptcy, stopping all other proceedings against Mr. Biggs and his estate.³ Ms.

² On March 19, 2003, Mr. Biggs filed a Motion for Rule to Show Cause Why [Ms. Biggs'] Descriptive List Should Not Be Deemed a Judicial Determination of Community Assets and Liabilities.

³ See 11 U.S.C.A. 362(a), which provides, in pertinent part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

Biggs was listed as an unsecured creditor in reference to her claim for community property in Mr. Biggs' bankruptcy proceedings. On July 6, 2004, both parties signed a consent judgment in the bankruptcy proceedings, which ordered Mr. Biggs to pay Ms. Biggs \$1,000.00, which was non-dischargeable, due on the first and fifteenth of each month, and further ordering that "[t]he remaining demands of the parties will be dismissed with prejudice." Both parties signed the consent judgment. Mr. Biggs ultimately received his discharge in bankruptcy on July 8, 2004.

PROCEDURAL HISTORY

Ms. Biggs filed a motion to set a status conference regarding the partition of community property with the trial court on September 26, 2005, and a Notice of Status Conference (conducted via telephone) for October 25, 2005 was subsequently issued by the court. Shortly after the telephone status conference was conducted, the district court ordered a status conference for February 13, 2006. After the status conference on February 13, the court ordered Mr. Biggs to provide Ms. Biggs with authorization to obtain information as to retirement accounts accumulated during the marriage; to respond to discovery propounded by Ms. Biggs; and to file exceptions or motions which would resolve the issue of whether Ms. Biggs' claims were resolved by the consent judgment in the bankruptcy proceedings. Mr. Biggs then filed an Exception of Res Judicata on February 15,

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

2006, and Ms. Biggs filed her opposition on March 10, 2006. The trial court granted the exception and signed written reasons for judgment on April 3, 2006.⁴ This appeal followed.

STANDARD OF REVIEW

This Court recently held that “[t]he standard of review for the peremptory exception of res judicata requires this Court to determine if the ‘trial court’s decision is legally correct or incorrect.’” *New Orleans Firefighters Ass’n v. City of New Orleans*, 04-2078, p. 2 (La.App. 4 Cir. 3/15/06), 925 So.2d 757, 759 (quoting *Glass v. Alton Ochsner Med. Found.*, 04-1824, p.5 (La.App. 4 Cir. 6/1/05), 907 So.2d 782, 785). Moreover, this Court noted that “[t]he doctrine of *res judicata* is *stricti juris* and any doubts concerning the application of this principle must be resolved against its application.” *Id.* (quoting *Alonzo v. State of Louisiana, ex rel. Dep’t of Natural Resources*, 02-0527, p.8 (La.App. 4 Cir. 9/8/04), 884 So.2d 634, 638).

DISCUSSION

Ms. Biggs first assigns as error the district court’s ruling that the Exception of Res Judicata had merit based upon the consent judgment the parties signed during Mr. Biggs’ bankruptcy proceedings.

In its reasons for judgment, the district court noted that Ms. Biggs’ primary complaint was the disposition of Mr. Biggs’ retirement funds, which Mr. Biggs withdrew from his retirement plan prior to filing for bankruptcy (and did not disperse any part of to Ms. Biggs). The court reasoned that although normally retirement plans are exempt from seizure and administration by the Chapter 7 trustee in bankruptcy proceedings, the jurisprudence holds that once retirement

⁴ While the Reasons for Judgment refer to the reasons for granting the Exception of Res Judicata, the judgment

funds are converted – as they were in this case - the exemption from seizure is no longer applicable.⁵ Thus, the court found that with regard to the retirement funds, Ms. Biggs could not legally compel Mr. Biggs to provide Ms. Biggs with one-half of the retirement proceeds.

In Ms. Biggs’ “Complaint Objecting to Dischargeability of Debt” filed with the bankruptcy court, she argued that she was entitled to her indivisible one-half interest “in the property that is subject to these bankruptcy proceedings,” which she argued Mr. Biggs used to satisfy his own personal and separate debts. Ms. Biggs specifically asserted that Mr. Biggs omitted property that was still in his possession from Schedule B.⁶ Ms. Biggs further argued that Mr. Biggs shielded the community property interests by transferring community property to his mother prior to filing for bankruptcy. This complaint, asserting her right to a one-half interest in all community property, was plainly among the “remaining demands” that the bankruptcy court dismissed with prejudice in the consent judgment, and undeniably sets forth the same arguments as her district court complaint. Notably, the requirements for a valid assertion of res judicata are as follows:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

- (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
- (2) If the judgment is in favor of the defendant, all causes of

itself mistakenly references an Exception of Lis Pendens. Thus, we amend the judgment simply to correct this clerical error.

⁵ The court cited *In Re Friedman*, 9th Cir. BAP (Cal.) 1998, 220 B.R. 670 (holding that money borrowed from a retirement account was not exempt from seizure); *In Re Anderson*, 8th Cir. BAP (Minn.) 2001, 269 B.R. 27 (holding that an interest in a spouse’s retirement account via a community property settlement was not exempt from seizure); *In Re Sims*, N.D. Okla. 1999, 241 B.R. 467 (holding that money received from an IRA account through an inheritance by a debtor was not exempt from seizure); and *In Re Carter*, E.D. Penn. 1999, 236 B.R. 173 (holding that funds withdrawn from a retirement account, although subsequently deposited back into the account, were no longer exempt from seizure).

⁶ Schedule B lists a debtor’s personal property in a Chapter 7 bankruptcy proceeding.

action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

La. R.S. 13:4231. Therefore, we find that the district court did not legally err in granting Mr. Biggs' Exception of Res Judicata with regard to any community property claims that were dismissed with prejudice by the consent judgment in the bankruptcy proceedings. Accordingly, this assignment of error lacks merit.

In her second assignment of error, Ms. Biggs maintains that the district court erred in its ruling that Mr. Biggs had no liability for any further financial obligation to Ms. Biggs because bankruptcy courts are without jurisdiction to dismiss with prejudice community property interests.

The district court accurately noted in its reasons for judgment that granting the Exception of Res Judicata did not effectively dismiss the partition. In other words, those items of property of which the Chapter 7 trustee disclaimed in interest remain viable for division between Mr. and Ms. Biggs. Because the bankruptcy court by definition could not dismiss with prejudice claims regarding property that was exempt from seizure, Ms. Biggs is thus able to pursue any community property interest that she may or may not have in the exempted property (i.e., the items listed on Schedule C, "Property Claimed As Exempt").

Therefore, the grant of the Exception of Res Judicata is hereby affirmed as amended with regard to all community property that was not exempted from seizure. The judgment of the trial court is reversed and remanded for a determination of whether Ms. Biggs maintains a community property interest in any property that was exempt from seizure in the bankruptcy proceedings.

**AFFIRMED AS AMENDED IN PART;
REVERSED AND REMANDED IN PART**