

NOT DESIGNATED FOR PUBLICATION

Whipple
Kuhn
Guidry

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1579

ANTHONY ST. PIERRE

VERSUS

LORETTA ANN RIVERA ST. PIERRE

Judgment Rendered: March 23, 2012

**Appealed from the
Twenty-Third Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Docket Number 83873**

The Honorable Ralph Tureau, Judge Presiding

**Patricia H. Douglas
Gonzales, LA**

**Counsel for Plaintiff/Appellee,
Anthony St. Pierre**

**S. Stephen Spring, II
Baton Rouge, LA**

**Counsel for Defendant/Appellant,
Loretta St. Pierre**

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

This matter is before us on appeal by Loretta St. Pierre, from a judgment of the trial court recognizing that she and her former husband, Anthony St. Pierre, operated under a community property regime and partitioning the community property accordingly. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Loretta St. Pierre and Anthony St. Pierre were married on October 1, 1999. On August 4, 2006, Mr. St. Pierre filed a petition for divorce. By judgment dated December 11, 2006, the parties were divorced.

The trial court subsequently conducted a hearing to determine whether the parties' property was community property, and thus subject to partition, or separate property. At the close of the hearing, after receiving testimony and argument, the trial court concluded that the parties' marital regime constituted a community property regime. Thereafter, in a judgment dated November 15, 2007, the trial court, based on an oral stipulation of the parties, set forth the assets acquired and debts incurred during the parties' marriage. In the judgment, the trial court further recognized and set a formal hearing to determine the valuation of the listed items and any other items inadvertently omitted from the list.

Ms. St. Pierre then filed a motion for the trial court to reconsider its determination that the parties operated under a community property regime. In support, Ms. St. Pierre contended that she and Mr. St. Pierre had entered into an oral stipulated agreement that there would be no community of acquets and gains established during their marriage, and that the parties had acted in conformity with that agreement.

After a hearing on the motion, the trial court again found that the parties were subject to a community property regime and rendered judgment accordingly. Ms. St. Pierre appealed this finding of the trial court. On appeal,

this court determined that the trial court's judgment, which simply declared that the parties operated under a community property regime, was a partial judgment not subject to immediate appeal. Thus, this court dismissed the appeal and remanded the matter for further proceedings. See St. Pierre v. St. Pierre, 2008-2475 (La. App. 1st Cir. 2/12/10), 35 So. 3d 369, writ not considered, 2010-0587 (La. 3/17/10), 29 So. 2d 1243.

On August 19, 2010, the trial court conducted a trial of the partition of the community property. On November 23, 2010, the trial court rendered judgment, accompanied by written reasons for judgment, finding that a community regime existed during the marriage, partitioning the community assets, allocating certain assets, and ordering that Ms. St. Pierre make a cash equalization payment to Mr. St. Pierre in the sum of \$47,003.00.

Ms. St. Pierre appeals, contending that the trial court erred in "finding that although the St. Pierres had an understanding that they would be separate in property during the marriage, [and] continued to operate separately by voluntarily partitioning property on the dates of acquisition and that both parties openly acknowledged they were separate, all property was community property because no matrimonial agreement required by Article 2331 of the Louisiana Civil Code was executed between the parties."

DISCUSSION

A matrimonial regime may be legal, contractual, or partly legal and partly contractual. LSA-C.C. art. 2326. The legal regime is the community of acquets and gains. LSA-C.C. art. 2327. The legal regime of the community of acquets and gains applies to spouses domiciled in this state, regardless of their domicile at the time of marriage or the place of the celebration of the marriage. LSA-C.C. art. 2334.

A matrimonial agreement is a contract establishing a regime of separation of property or modifying or terminating the legal regime. Spouses are free to establish by matrimonial agreement a regime of separation of property or modify the legal regime as provided by law. The provisions of the legal regime that have not been excluded or modified by agreement retain their force and effect. LSA-C.C. art. 2328. Spouses may enter into a matrimonial agreement before or during marriage as to all matters that are not prohibited by public policy. LSA-C.C. art. 2329. While a matrimonial agreement may be executed by the spouses before or during the marriage, it shall be made by authentic act or by an act under private signature duly acknowledged by the spouses. LSA-C.C. art. 2331.

In the instant case, it is undisputed that the parties did not contract or execute a matrimonial agreement setting forth any sort of separate property regime, either before or during the marriage, in accordance with the mandatory requirements set forth in LSA-C.C. art. 2331. Nonetheless, Ms. St. Pierre argues that the judgment of partition should be set aside because the parties made an oral agreement to make a “voluntary partition of assets at acquisition” or maintain their property as separate property, akin to an “interspousal agreement – not a matrimonial agreement.”

The 1980 matrimonial regimes revisions repealed LSA-C.C. art. 1790, which generally prohibited interspousal contracts; therefore, spouses can now contract with each other to the same extent as persons who are not married. Langley v. Langley, 94-726 (La. App. 3rd Cir. 12/7/94), 647 So. 2d 640, 642 (citing Spaht and Hargrave, Matrimonial Regimes § 8.10 at 395-96 in 16 Louisiana Civil Law Treatise.) These contracts do not require judicial approval. Langley v. Langley, 647 So. 2d at 642. While a matrimonial agreement affects the classification and management of future assets, interspousal contracts affect only existing assets and debts. Thus, spouses who are anticipating a divorce

can enter into an “interspousal contract” to divide existing assets and debts without judicial approval. Langley v. Langley, 647 So. 2d at 642; see also Adams v. Adams, 2007-0595 (La. App. 1st Cir. 2/20/08) (unpublished opinion).

In the instant case, Mr. St. Pierre denies, and the record does not reflect, that any such agreement or contract exists. However, even if we were to find that the parties had entered an “oral” interspousal contract to voluntarily partition their assets, there was no agreement formalized into a writing as in Langley v. Langley, 647 So. 2d at 642. Moreover, there was no showing that such an agreement was made in anticipation of a divorce, as evidenced by Mrs. St. Pierre’s claim that this purported oral agreement was in place before and throughout the marriage. Thus, we find no merit to her argument that the trial court erred in failing to recognize or give legal effect to this alleged “oral” interspousal agreement.

Instead, after a thorough review of the testimony and evidence contained in the record and considering the applicable law and jurisprudence, we find no error in the trial court’s determination that a community regime existed during the marriage of Mr. and Mrs. St. Pierre, or in its partition of the parties’ assets in accordance with this determination, all of which is reasonably supported by the record. See Stobart v. State, Department of Transportation and Development, 617 So. 2d 880, 882, n. 2 (La. 1993).

CONCLUSION

For the above and foregoing reasons, the November 23, 2010 judgment of the trial court is affirmed. Costs of this appeal are assessed against the defendant/appellant, Loretta St. Pierre.

AFFIRMED.