

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1003

BRIDGETTE GRAVOIS ORTEGA

VERSUS

KOURY J. ORTEGA

Judgment rendered December 22, 2010.



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Appealed from the
16th Judicial District Court
in and for the Parish of St. Mary, Louisiana
Trial Court No. 120334
Honorable Edward M. Leonard, Jr., Judge

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BRIDGETTE GRAVOIS ORTEGA

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KOURY JAMES ORTEGA

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BEFORE: KUHN, PETTIGREW, JJ, and KLINE, J. *pro tempore*.¹

¹ Judge William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

PETTIGREW, J.

In this case, plaintiff, Bridgette Gravois Ortega, filed a petition to annul a December 13, 2004 judgment that was rendered terminating the community property regime that previously existed between her and defendant, Koury J. Ortega, and substituting in lieu thereof a regime of separation of property. Bridgette alleged that this judgment was "obtained due to the fraudulent actions of [Koury] and his agents." Bridgette further argued that she was never informed that she needed to speak to an attorney before signing the agreement and that she never appeared before the trial court prior to the entry of the judgment. On February 2, 2010, the trial court rendered judgment in favor of Koury, dismissing Bridgette's petition to annul and finding no evidence that Bridgette was under duress in signing the agreement. The trial court further found that based on this court's holding in **Boyer v. Boyer**, 616 So.2d 730, 733 (La. App. 1 Cir.), writ denied, 620 So.2d 882 (La. 1993), a hearing was not required for the granting of the separation of property.²

From this judgment, Bridgette has appealed, assigning the following specifications of error:

1. The Trial Court erred in finding [that Bridgette] was not defrauded or misled in agreeing to and signing the Termination of Community Property Regime when her husband and father-in-law decided it should be done before starting their new business partnership.
2. The Trial Court erred in finding that the requirements of La. Civil Code Art. 2329 were adequately met when the District Judge failed to make a determination as to whether the termination was in the best interests of the parties and whether the parties understood the governing principles and rules.

² In **Boyer**, the issue was "whether the failure of the trial court to hold a hearing with the parties and the signing of the [separation of property] agreement before it was approved by the court rendered the agreement an absolute nullity." **Boyer**, 616 So.2d at 731. The trial court found that both the matrimonial agreement and the partition were null and without legal effect. On appeal, this court reversed, finding no requirement in Article 2329 that a hearing be held prior to the court granting the separation of property. **Boyer**, 616 So.2d at 733. This court concluded, "[t]he trial court must be satisfied that the spouses both agree to the change, that the spouses understand the rules and principles underlying a change in the matrimonial regime, and that the agreement appears to serve the best interest of the spouses." **Boyer**, 616 So.2d at 732.

With respect to the initial error assigned by Bridgette, the trial court concluded in written reasons for judgment as follows:

The petition alleges that [Bridgette] never spoke with an attorney prior to the judgment separating property, nor was she ever informed of her need to do so; she did not appear in court prior to the entering of the judgment; she did not know that upon divorce she would have no community rights; and the judgment of separation was fraudulently obtained by [Koury] and his agents.

The evidence does not support the allegations. [Koury] and [his step-father] wanted to go into business and in the process they would borrow a significant amount of money. The business had a chance of succeeding, but also of failing. A failure would have involved community assets of the parties as well as their personal responsibility for the debt. Discussions were had between the parties and with Attorney Stubbs about isolating [Bridgette] from responsibility for the loan. He recommended the separation of property, met with the parties to explain the process, and prepared the documents. He also advised [Bridgette] of her right to seek independent counsel. [Bridgette] must have understood that she owned no part of the business, just as she must have understood that she owned no part of the debt of the business. The family home was relegated to [Bridgette] to protect it from the risk of the business venture while the rental property was relegated to [Koury].

The Court finds there is no evidence of fraud or duress in the preparation or execution of the separation of property.

Based on our thorough review of the record herein, we find no manifest error in this determination. This assignment of error is without merit.

The second error assigned by Bridgette concerns the trial court's determination that no hearing was required for the granting of the separation of property. It is the opinion of this court that **Boyer** is controlling precedent, and thus, this assignment is similarly without merit.

For the foregoing reasons, we affirm the trial court's judgment in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1.B. All costs associated with this appeal are assessed against plaintiff/appellant, Bridgette Gravois Ortega.

AFFIRMED.