NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1630

CLAIRE BRADLEY URSIN

VERSUS

EDWARD TAYLOR URSIN, II

Judgment Rendered: May 7, 2010

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket Number 2002-12891

The Honorable Patricia T. Hedges, Judge Presiding

* * * * * * * * * *

Harry P. Pastuszek **David Pittman** **Covington, LA**	**Plaintiff/Appellee,** **Claire Bradley Ursin**
Elizabeth W. Ramirez **Covington, LA**	**Counsel for Defendant/Appellant,** **Edward Taylor Ursin, II**
Robert C. Lowe **Jeffrey M. Hoffman** **New Orleans, LA**	

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

Welch, J. concurs.

WHIPPLE, J.

This matter is before us on appeal from a judgment of the trial court partitioning the community of acquets and gains formerly existing between appellant, Edward T. Ursin, II ("Edward"), and appellee, Claire Bradley Ursin ("Claire"). For the following reasons, we amend in part, affirm in part, reverse in part, render and remand.

FACTS AND PROCEDURAL HISTORY

Edward and Claire were married on March 18, 1987, and established their matrimonial domicile in St. Tammany Parish, Louisiana. Claire filed a petition for divorce on June 10, 2002. A judgment of divorce was signed on December 20, 2002, thereby terminating the community of acquets and gains retroactive to the date of the filing of the petition for divorce, i.e., June 10, 2002.

The parties filed detailed descriptive lists and, after the parties jointly stipulated to certain items, a three-day trial to partition the remaining community property was held in July 2008 and March 2009. On March 16, 2009, the trial court issued written reasons for judgment, and on March 24, 2009, the trial court signed a judgment submitted by Claire ordering a partition of the remaining items that were in dispute.

Edward then filed the instant suspensive appeal, contending that the trial court:

(1) erred in finding that the property at 81 Zinnia Drive, Covington, Louisiana, was not a community asset where documentary evidence, in the form of authentic acts, proved that the former community owned a one-half interest in the property;

(2) abused its discretion and committed reversible error of law in recognizing Claire's claims for reimbursement against Edward for half

of the amounts she claimed to have paid on community obligations following the date of termination of the community;

(3) abused its discretion and committed reversible error of law in determining that the Chase and Mainstay IRAs accounts in Claire's name would be divided equally between the parties, when those accounts no longer existed, but had been closed by Claire some years prior to the trial of the community property partition action;

(4) abused its discretion and committed reversible error of law in finding that Edward was not entitled to recover legal interest on the amounts received by Claire from the liquidation of the New York whole life insurance policy on Claire's life, and on the proceeds received by Claire from cashing in the Chase and Mainstay IRA accounts in Claire's name through the date of judgment;

(5) abused its discretion and committed reversible error of law in finding that the jewelry acquired during the marriage, and in Claire's possession, was not community property; and

(6) abused its discretion and committed reversible error of law in finding that Edward was not entitled to reimbursement from Claire for half of the $10,000.00 equity line of credit loan taken to finance Claire's plastic surgery.

DISCUSSION

Under Louisiana law, property of married persons is generally characterized as either community or separate. LSA-C.C. art. 2335. The classification of property as separate or community is fixed at the time of its acquisition. Biondo v. Biondo, 99-0890 (La. App. 1st Cir. 7/31/00), 769 So. 2d 94, 99. Property in the possession of a spouse during the existence of the community property regime is presumed to be community, but either spouse

may rebut the presumption by proving that the things are separate property. See LSA-C.C. art. 2340. The spouse seeking to rebut the presumption bears the burden of proving the property is separate in nature. Ross v. Ross, 2002-2984 (La. 10/21/03), 857 So. 2d 384, 390. A trial court's finding regarding the nature of property as being either community or separate is a factual determination subject to the manifest error-clearly wrong standard of review. Lytal v. Lytal, 2000-1934, (La. App. 1st Cir. 11/14/01), 818 So. 2d 111, 113, writ denied, 2001-3272 (La. 3/8/02), 810 So. 2d 1164.

Assignment of Error Number One

In his first assignment of error, Edward challenges the trial court's determination that the former community did not own a one-half interest in the home and property located at 81 Zinnia Drive in Covington, Louisiana.

The parties do not dispute that this home and property was initially purchased by Edward and Claire and Roger Cope, the husband of Claire's sister, Elizabeth, for the specific purpose of providing a home for Claire and Elizabeth's parents, James and Carolyn Bradley, and grandmother, Ms. Winifred Cook. Specifically, Edward, Claire and Roger decided to purchase the home themselves because the Bradleys had filed for bankruptcy and were unable to purchase a home on their own, and the increasing crime in Ms. Cook's neighborhood in New Orleans rendered her remaining alone in her home unsafe.

Pursuant to an Act of Cash Sale dated May 2, 1995, the home was purchased solely by the Ursins and Roger Cope for $118,500.00. The Ursins, jointly, and Roger Cope provided $16,500.00 each, or a total of $33,000.00, as a down payment on the purchase of the home. The balance of $88,500.00 was financed through a five-year loan and collateral mortgage executed by the Ursins

and Roger Cope in favor of Regions Bank, with the principal balance of the loan due on May 2, 2000.[1]

On May 2, 1995, the Ursins and Roger Cope entered into a "Right of Habitation" contract with Ms. Cook, granting her the right to live in the house for the rest of her life provided that she make ordinary repairs to the house as needed and pay all taxes and insurance premiums for necessary coverage of the house and property. In exchange for the right to live in the house until her death, Ms. Cook paid $35,000.00, which she had acquired from the sale of her home in New Orleans, to the Ursins and Roger Cope, who in turn applied the funds to the principal amount due on the loan.

In 2000, when the balance on the Regions loan became due, the Ursins and Roger Cope refinanced the loan which, at that time, had an outstanding balance of $65,053.14 after applying the $35,000.00 received for Ms. Cook's right of habitation. Also, the sum of $10,000.00 was dispersed from the loan proceeds to pay for foundation repairs to the home.

In 2001, the parties decided to again refinance the property, now through Parish National Bank, to take advantage of a decline in interest rates. The parties also decided to show the Bradleys and Ms. Cook as record owners of the property so that they could enjoy the benefit of claiming the taxes, interest, and homestead exemption on the home. Because the Bradleys still were not in a financial position to receive approval for a loan to purchase a home, the Ursins and Roger Cope facilitated a "sale" of the property to the Bradleys via a purchase agreement dated October 18, 2001, whereby the parties agreed that the Ursins and Roger Cope would "sell" the property to the Bradleys and Ms. Cook for $100,000.00, with the buyers to procure a loan for $80,000.00, and $20,000.00 to be given to

[1]In the Act of Cash Sale, Elizabeth Cope stipulated that Roger's interest in the property was purchased with his separate funds, the property was to be maintained with his separate funds, and that she had no interest whatsoever in the subject property. Thus, Elizabeth's name does not appear in the mortgage affecting the property.

the buyers as "gift equity" from the sellers. In order to help the Bradleys receive approval from the bank for the mortgage, a financial statement was prepared showing the $20,000.00 gift from the Ursins and Roger Cope ($10,000.00 each), which was never actually given or received, but was necessary to show "on paper" to counter the Bradleys' actual negative net worth of $14,000.00. On October 29, 2001, Parish National Bank ultimately approved a loan to the Bradleys and Ms. Cook in the amount of $80,000.00, which was secured by a mortgage on the property in favor of the bank. That same day, Parish National Bank assigned the mortgage to Standard Mortgage Corporation.

In connection with the mortgage, the Ursins, Roger Cope, and the Bradleys also executed a counterletter on October 29, 2001, acknowledging therein that "the subject property was [being] placed solely in the names of [Carolyn and James Bradley] for convenience only and that in truth and in fact the above described property belongs to appearers, ROGER WALKER COPE, CLAIRE BRADLEY URSIN, WIFE OF/AND EDWARD T. URSIN, II." The letter further provided that "the recording of this Counter Letter shall serve as a transfer and conveyance of the subject property by [Carolyn and James Bradley] to ROGER WALKER COPE, CLAIRE BRADLEY URSIN, WIFE OF/AND EDWARD T. URSIN, II." The counterletter was subsequently recorded on November 30, 2001.

A couple of years later, Standard Mortgage discovered the recorded counterletter and returned the loan to Parish National Bank, demanding that Parish National Bank "buy" the loan back, as the purported owners of the property, the Ursins and Roger Cope, were not bound by the mortgage. To rectify the situation, Edward and Claire Ursin, now divorced, executed an "Act of Donation" on July 29, 2003, purporting to donate the property to the Bradleys. On August 26, 2003, Roger and Elizabeth Cope likewise executed an "Act of

Donation" purporting to donate the property to the Bradleys. On August 26, 2003, Parish National Bank was again granted a mortgage on the property by the Bradleys and Ms. Cook, and the bank then immediately assigned the mortgage to Standard Mortgage Company on the that same date.

In connection with the Ursins and the Copes "donating" their interest in the property to the Bradleys, on August 30, 2003, a second mortgage, in favor of Edward and Claire Ursin and Roger and Elizabeth Cope, was placed on the property so that James Bradley could not borrow money using the property as collateral. The Bradleys also executed a promissory note in the amount of $70,000.00 payable on demand to Claire Ursin, Edward Ursin, Roger Cope and Elizabeth Cope.[2] Importantly, simultaneously with the granting of a second mortgage on the property, the Bradleys executed a counterletter in favor of the Ursins and the Copes, again acknowledging therein that the Bradleys had no interest in the property, that the property was acquired by sums furnished to them by the Ursins and the Copes, and that at such time as they were called to do so, the Bradleys would execute an instrument transferring an undivided one-half interest to the Copes and an undivided one-half interest to the Ursins. The counterletter further provided that the Bradleys specifically reserved the rights of usufruct, use, and habitation of the property for life. The counterletter signed by James and Carolyn Bradley was filed into the public records on March 20, 2008.

After a trial on the merits, the trial court determined that the Ursins' former community had no interest in the 81 Zinnia Drive home and property and that the property did not constitute an asset of the former community. In written reasons for judgment, the trial court explained:

> The most complex item in this partition is whether the former community of Edward Ursin and Claire Bradley has an interest in a

[2]According to the testimony of Edward and Roger Cope, the Ursins and the Copes were trying to protect their investment, as James Bradley had a history of being financially irresponsible.

> house located at 81 [Zinnia] Drive, Flower Estates, Covington, Louisiana. The issue is not who owns the house, since all necessary parties to make that determination are not parties to this lawsuit, but simply whether this community has an interest in the house.
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> * * *
>
> ... After the termination of the community they agreed to donate any interest they might have had in the property at 81 Zinnia Drive to Carolyn Bradley and James Bradley, Jr. and they did so. They disposed of this community asset, if it was a community asset. However, when the counter letter was executed on August 30, 2003, the Ursin community had terminated. If any interest in the Zinnia Drive property was conveyed to Claire and/or Ed Ursin by the August 30, 2003 counter letter, it was not community property. The parties had given the property away and while it might come back to the parties by some action, it could not come back into the community. Therefore, the community of acquets and gains that formerly existed between Claire and Ed Ursin has no interest in the house at 81 Zinnia Drive.

On appeal, Edward contends that the ruling of the trial court is erroneous as the documentary evidence, in the form of authentic acts, and the uncontroverted testimony at trial established that Edward and Claire's former community owned a one-half interest in the property. Edward contends that the true intent of the parties, i.e., that the Bradleys were not acquiring the property and that the true owners were always the Ursins and the Copes, was expressed in both the 2001 and 2003 counterletters, which were not challenged or contradicted at trial. Edward argues that the 2001 "sale" and 2003 "donations" to the Bradleys were simulations, which were binding between the parties thereto pursuant to LSA-C.C. arts. 2025 and 2026.[3] He argues that because the property was never

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[3]Louisiana Civil Code article 2025 provides as follows:

> A contract is a simulation when, by mutual agreement, it does not express the true intent of the parties.
>
> If the true intent of the parties is expressed in a separate writing, that writing is a counterletter.

Louisiana Civil Code article 2026 provides as follows:

> A simulation is absolute when the parties intend that their contract shall produce no effects between them. That simulation, therefore, can have no effects between the parties.

actually donated or conveyed to the Bradleys and the Ursins ownership of a one-half interest in the property never left Claire and Edward's former community regime. We agree.

Louisiana Civil Code article 2025 defines a simulation as a contract which the parties mutually agree "does not express the true intent of the parties." It has also been described as "a transfer of property which is not what it seems." Moore v. Moore, 427 So. 2d 1320, 1323 (La. App. 2nd Cir. 1983). A counterletter is a separate written agreement expressing the true intent of the parties to a simulation. LSA-C.C. art. 2025.

"An example of an absolute simulation is an act whereby the parties make an apparent sale when they actually intend that the vendor will remain owner." LSA-C.C. art. 2026, Revision Comments-1984, (a). An absolute simulation, where the parties intend that their simulated contract shall produce no effects between them, includes "the situation in which an apparent transferee confirms by counterletter that the subject property still belongs to the transferor." LSA-C.C. art. 2026, Revision Comments-1984, (b); The "traditional institutions of simulation and counterletter" are "important to the civil law of Louisiana" and "have long been common in practice." LSA-C.C. art. 2025, Revision Comments-1984, (b). Counterletters require no special form except that they must be in writing. Roy v. ROBCO, Inc., 98-214 (La. App. 5th Cir. 10/14/98), 721 So. 2d 45, 46, writ not considered, 98-2855 (La. 1/18/99), 734 So. 2d 1222. Moreover, Louisiana jurisprudence has consistently enforced counterletters signed only by the apparent transferee, without any requirement that the apparent transferor or beneficiary of a counterletter sign it or take any other affirmative action in order to assert the rights acknowledged in the counterletter. See Thom v. Thom, 166 La. 648, 117 So. 750 (1928); Peterson v. Moresi, 191 La. 932, 186 So. 737 (La. 1939); Dupuy v. Riley, 557

So. 2d 703, 708-709 (La. App. 4th Cir.), writ denied, 563 So. 2d 878 (La. 1990); Roy, 721 So. 2d at 47.

An absolute simulation is a contract intended to have no effects between the parties. LSA-C.C. art. 2026. In an absolute simulation, sometimes called a pure simulation or a non-transfer, the parties only pretend to transfer the property from one to the other, but in fact both the transferor and the transferee intend that the transferor retain ownership of the property. Scoggins v. Frederick, 98-1815 (La. App. 1st Cir. 9/24/99), 744 So. 2d 676, 685, writ denied, 99-3557 (La. 3/17/00), 756 So. 2d 1141. When this type of simulation is successfully attacked, the true intent of the parties is revealed; that is, that no transfer had in fact taken place. Peacock v. Peacock, 28,324 (La. App. 2nd Cir. 5/8/96), 674 So. 2d 1030, 1033. Whether or not a transaction is simulated is a matter to be decided in the light of the circumstances of each case. Milano v. Milano, 243 So. 2d 876, 879 (La. App. 1st Cir. 1971). A simulation may be proved by indirect or circumstantial evidence since, by its inherent nature, a simulation often only admits of circumstantial proof. Wilson v. Progressive State Bank & Trust Company, 446 So. 2d 867, 869 (La. App. 2nd Cir. 1984).

In the instant case, Claire failed to present any evidence to challenge the simulations discussed above. The record is also devoid of any evidence of the parties' intentions, other than those clearly set forth in the counterletters and testimony adduced at trial. In fact, despite the argument set forth in her brief on appeal, in Claire's testimony at trial, she did not state that the parties intended to transfer ownership of the property to the Bradleys. Instead, Claire testified that in 1995, she and Edward decided to purchase the home with Roger Cope to provide a place for her parents and grandmother to live in, since Mr. Bradley was unable to borrow the necessary funds from a bank after having previously filed bankruptcy. Moreover, the first community asset shown on Claire's

descriptive list under immovable property is the residence located at 81 Zinnia Drive.

On review, we find that the trial court erred in failing to give legal effect to the counterletters and in failing to recognize the interest of the Ursins' former community in the Zinnia Drive property. The true intent of the parties was clearly established by the counterletters and the testimony of Edward, Claire, and Roger, i.e., that no transfer had ever been intended or had ever, in fact, taken place. Thus, Claire failed to meet her burden of showing that the parties intended otherwise. With reference to Claire's argument that the 2003 counterletter is contradicted by the fact that the Bradleys reserved a usufruct of the home for their lifetimes therein, something that only the owner of the property would have a right to do, we note that in the paragraph preceding their reservation of usufruct, the Bradleys candidly acknowledged that they owned "no interest" in the property. Thus, any purported "reservation" of a lifetime usufruct affecting property that, by their own admission, they did not own, does not, in and of itself, establish the Bradleys' ownership of the property.

Accordingly, to the extent that the trial court determined that the Ursins' interest in the 81 Zinnia Drive property was not an asset to be accounted for in the partition, we find the trial court erred. Because we find that the 2003 counterletter was valid and enforceable, we recognize that Edward is entitled to his share (one-half) of the former community's "undivided one-half interest" in the home and property. As per Edward's request, which we find reasonable, we allocate his share of the former community's interest in the property to Claire and find that he is entitled to a credit in the amount of $45,500.00, representing his half of the

former community's undivided one-half interest in the home and property.[4]

Finding merit to this assignment of error, the judgment will be amended accordingly.

Assignment of Error Number Two

In his second assignment of error, Edward complains that the trial court abused its discretion and committed reversible error of law in recognizing Claire's claims for reimbursement against Edward for one-half of the amounts she claimed to have paid on community obligations following the date of termination of the community, to wit:

Southwest Airlines Credit Union	$2,934.00
Neiman Marcus Credit Card	$261.00
Victoria's Secret Credit Card	$437.26
First U.S.A. Visa	$10,128.29
MBNA Visa	$3,189.13
Dillards	$386.21

It is well settled that a trial court has broad discretion in adjudicating issues raised in a proceeding for partition of the community regime. McCarroll v. McCarroll, 99-0046 (La. App. 1st Cir. 5/12/00), 767 So. 2d 715, 718, writ denied, 2000-2370 (La. 11/3/00), 773 So. 2d 146. Pursuant to LSA-R.S. 9:2801(A)(4), the court shall partition the community assets and liabilities in accordance with the following rules:

> (a) The court shall value the assets as of the time of trial on the merits, determine the liabilities, and adjudicate the claims of the parties.
>
> (b) The court shall divide the community assets and liabilities so that each spouse receives property of an equal net value.

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[4]Both Edward and Claire introduced appraisals of the value of the home and property. The appraisal introduced by Edward was dated February 20, 2008, and set an appraised value of $214,000.00 on the home and property. The appraisal introduced by Claire was dated February 10, 2009, and valued the home and property at $150,000.00. Given the disparity of the appraisals, we have averaged the two appraisal values to arrive at a value of $182,000.00.

> (c) The court shall allocate or assign to the respective spouses all of the community assets and liabilities. In allocating assets and liabilities, the court may divide a particular asset or liability equally or unequally or may allocate it in its entirety to one of the spouses. The court shall consider the nature and source of the asset or liability, the economic condition of each spouse, and any other circumstances that the court deems relevant. As between the spouses, the allocation of a liability to a spouse obligates that spouse to extinguish that liability. The allocation in no way affects the rights of creditors.

Moreover, all obligations incurred by a spouse during the existence of a community property regime are presumed to be community obligations. LSA-C.C. art. 2361.

In order to prove that the presumption of community does not apply to these obligations, Edward was required to show that although the obligations were incurred during the existence of the community property regime, they were not incurred for the common interest of the spouses (benefit of the community) or for the interest of the other (i.e., non-incurring) spouse. See LSA-C.C. art. 2363; Biondo v. Biondo, 769 So. 2d at 108. In determining whether Edward met this burden, the trial court had to examine the uses to which the borrowed money was put. Biondo v. Biondo, 769 So. 2d at 108.

In his brief on appeal, despite the statutory presumption, Edward erroneously argues that Claire had the burden of proving that the obligations were for the benefit of the community. Edward offered no evidence of his own to challenge or rebut the presumption that these debts, incurred during the existence of the community, were, in fact, community debts. At trial, Claire testified that the debts were incurred for the benefit of the community and that she paid the obligations from her separate funds. The trial court found Claire's testimony to be credible, ultimately determined that Edward failed to rebut the presumption and concluded that the obligations were community.

On review, we find no error. As the record reflects, the obligations listed above, which undisputedly were incurred during the existence of the community regime, were community obligations and were paid by Claire after the termination of the community.

Thus, we find no merit to this assignment of error.

Assignments of Error Numbers Three and Four

In his third assignment of error, Edward contends that the trial court erred in ordering in the judgment that the Chase and Mainstay IRA accounts in Claire's name be "evenly allocated" between the parties, without specifying a monetary amount, when those accounts no longer existed, but had been closed (and the funds spent) by Claire some years prior to the partition trial. Specifically, Edward contends that because the accounts no longer existed at the time of the partition, the trial court erred by failing to allocate the dollar amounts received by Claire from those accounts when ordering an accounting between the parties in the judgment. We agree.

As reflected in the trial court's **reasons for judgment**, the trial court determined the accounts' actual values and concluded that the Mainstay and Chase IRA accounts had balances of $15,843.29 and $19,231.93, respectively, at the time the accounts were closed.[5] The trial court determined that these accounts were community property that "shall be divided equally between the parties" and clearly considered these values, along with the parties' other various accounts, when dividing the assets and allocating the various liabilities between the parties and stating the basis for its ruling in the reasons for judgment. As Edward correctly notes, the **judgment** submitted by Claire and signed by the trial court,

[5]On review, we note that in valuing these and various other community assets and liabilities, the trial court seemingly used differing dates when making its determinations, including value as of the "date of liquidation," "date of partition," "current balance," etc. However, other than the challenge raised as to these two IRA accounts, the propriety of the trial court's approach of using different dates is not before us as an issue for review.

however, merely "evenly allocated" the accounts without assigning or specifying a value. While we recognize that a judgment prevails over reasons for judgment, we agree with Edward that the judgment, as rendered, is imprecise. Moreover, to the extent that the judgment, as written, awards or allocates each party an equal interest in the two IRA accounts, which undisputedly have already been liquidated, the relief ordered in the judgment is not supported by the record.[6]

Louisiana courts require that a judgment be precise, definite, and certain. Vanderbrook v. Coachmen Industries, Inc., 2001-0809 (La. App. 1st Cir. 5/10/02), 818 So. 2d 906, 913. Further, the amount of the recovery awarded by a judgment must be stated in the judgment with certainty and precision. Succession of Wagner, 2008-0212, 2008-0213 (La. App. 1st Cir. 8/8/08), 993 So. 2d 709, 724. The amount must be determinable from the judgment itself, without reference to an extrinsic source such as pleadings or reasons for judgment, so that a third person could determine from the judgment the amount owed without reference to other documents. Succession of Wagner, 993 So. 2d at 724; Vanderbrook v. Coachmen Industries, Inc., 818 So. 2d at 913.

As the judgment itself does not set forth specific values assigned to these two liquidated accounts, the judgment fails to properly account for the amount Claire is to reimburse Edward without resorting to the reasons for judgment.[7] Accordingly, that portion of the judgment is not proper and must be vacated. See Succession of Wagner, 993 So. 2d at 724-725; Vanderbrook v. Coachman Industries, Inc., 818 So. 2d at 913-914. As such, the judgment must be amended to set forth the value of the Mainstay and Chase IRA accounts at the time they

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[6]At trial, Claire candidly testified that she had closed the IRA accounts and cashed in the funds, which she used to pay bills and living expenses for herself and their child. Clearly, the trial court was aware that the accounts no longer existed when assigning and allocating their values and ordering reimbursement accordingly.

[7]We note that the judgment likewise does not incorporate or specify the values of the other accounts "evenly allocated." However, the failure to specifically value those assets was not assigned as error and is not before us on appeal.

were liquidated by Claire, and to order that Claire reimburse Edward for his one-half share of the total amount of the funds she received from her liquidation of the two accounts. Accordingly, we find merit to this assignment of error.[8]

In Edward's fourth assignment of error, he contends that the trial court erred in finding that he was not entitled to recover pre-judgment legal interest on the amounts received by Claire from the liquidation of a New York Life whole-life insurance policy on Claire's life, and on the proceeds she received from her liquidation of the Chase and Mainstay IRA accounts. We disagree.

As previously recognized by the Louisiana Supreme Court, pre-judgment interest on an equalizing payment pursuant to LSA-R.S. 9:2801 is not due until the judgment of partition, even when a substantial part of it can be traced to a reimbursement claim resolved as part of a judicial partition. Reinhardt v. Reinhardt, 99-0723 (La. 10/19/99), 748 So.2d 423, 426-427. Thus, interest on equalizing payments is due only from the date of the judgment of partition. Reinhardt v. Reinhardt, 748 So.2d at 427.[9]

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[8]Although not assigned as error in this appeal, at oral argument Edward contended that based on the reasons for judgment, the judgment contains an error in calculation in the amount of $23,325.98, regarding the reimbursement Claire owes. Using the trial court's itemized findings set forth in the **reasons for judgment**, the reimbursement amount due Claire would total $40,084.21 and the reimbursement amount due Edward would total $63,410.19, leaving an equalizing payment in the amount of $23,325.98 owed to Edward. The **judgment**, however, awarded Claire reimbursements in the amount of $49,359.22 and awarded Edward $45,872.58 in reimbursements, resulting in an equalizing payment of $3,486.64 specified in the judgment as the amount owed to Claire.

However, we note that any "error in calculation" is not contained in the **judgment**. Instead, the awards set forth in the **reasons for judgment** differ from the award stated in the **judgment** signed by the trial court. A trial court's written reasons for judgment form no part of the judgment itself. Where there is a discrepancy between the judgment and the written reasons for judgment, the judgment prevails. Delahoussaye v. Board of Supervisors of Community and Technical Colleges, 2004-0515 (La. App. 1st Cir. 3/24/05), 906 So. 2d 646, 654. Thus, to the extent that Edward urges us to "correct" any discrepancies between the judgment and the reasons for judgment, other than the offsets, we order herein in our resolution of assignments of error numbers one and three, we decline to do so, as there is nothing in the judgment itself reflecting an "error of calculation." Moreover, considering the late nature of this request and Edward's failure to properly assign or brief this issue for review on appeal, we decline to further amend the judgment.

[9]As the Supreme Court explained in Reinhardt:

Accordingly, we find no merit to this assignment of error.

Assignment of Error Number Five

In his fifth assignment of error, Edward argues that the trial court abused its discretion and committed reversible error of law in finding that the jewelry acquired during the marriage and in Claire's possession was not community property. In his brief on appeal, Edward argues that the trial court erred in failing to find that the jewelry was purchased for "investment purposes" or for the benefit of the community, and, thus, should be classified as a community asset. We disagree.

At the outset, we note that in his testimony at trial, Edward stated that he bought these items for Claire because she wanted them. Further, Claire testified that the items were given to her as gifts from Edward on various special occasions. After hearing the parties' testimony concerning the circumstances

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> Unlike the former article on reimbursement, Article 2408 (repealed in 1980), and unlike La. R.S. 9:2801(4)(a), under Articles 2354-2367.1, reimbursement is determined by the amount or value that the property had at the time it was used. "The policy reflected in the change in the measure of reimbursement is to treat the advance as an interest-free loan, rather than as an investment." *Matrimonial Regimes*, § 7.13, p. 380; La. C.C. art. 2364, Comment (d). "There is in essence a presumed gift or remission of the interest on account of the marriage relationship intended to reflect cooperative living." *Id.* at pp. 380-381. Thus, where separate property is used to satisfy a community obligation during the marriage, interest does not accrue during the marriage. In fact, the reimbursement claim does not even arise until the termination of the community property regime. La. C.C. art. 2365. The legislature could have indicated its intent that interest begin to accrue after the divorce if it had so intended, but instead, the articles on reimbursement merely provide that the property be valued as of the time it was used in determining the amount of reimbursement owed. *See* La. C.C. arts. 2364, 2364.1, 2365, 2366, 2367, 2367.1. Further, because of the contingencies involved in determining whether a reimbursement claim will be recognized, such as the classification as separate or community of the property used and the purpose for which it was used, the extent to which the separate property has been commingled such that it loses its status as separate property, in many cases the availability of community funds from which the owing spouse can pay the reimbursement claim, and the valuation of the reimbursement claim, the reimbursement claim is not ascertainable and due until the date it is recognized by the court in the partition judgment. [Footnotes omitted.]

Reinhardt v. Reinhardt, 748 So.2d at 426-427.

surrounding the purchase of the jewelry, the trial court made the determination that these items were "clearly bought as gifts to Claire and are her separate property."

After a thorough review of the testimony and evidence, we find no error in the factual determination by the trial court that the jewelry in Claire's possession was given to her by Edward during their marriage and, thus, is Claire's separate property. Finding ample support in the record herein, we decline to disturb the trial court's factual determination and classification of these items.

This assignment of error also lacks merit.

Assignment of Error Number Six

In Edward's final assignment of error, he contends that the trial court erred in finding that he was not entitled to reimbursement from Claire for half of the amounts paid during the marriage pursuant to a $10,000.00 equity line of credit loan taken out during their marriage to finance Claire's plastic surgery.

We again note that the general statutory presumption set forth in LSA-C.C. art. 2361 is that an obligation incurred during the existence of the community is a community obligation. Moreover, Claire testified that because her appearance is important in her profession as a flight attendant, plastic surgery on the area around her eyes was necessary in connection with her employment. She contends that because the obligation was incurred in relation to her job, the expense was incurred for the common interest of the spouses pursuant to LSA-C.C. art. 2360. Moreover, the parties do not dispute that the surgery was discussed and agreed upon prior to the surgery.[10]

[10]With reference to Edward's reliance on Sequeira v. Sequeira, 2004-433 (La. App. 5th Cir. 11/30/04), 888 So. 2d 1097, writ denied, 2005-0350 (La. 4/29/05), 901 So. 2d 1065, where the court held that charges for a corrective LASIK eye surgery (undergone for convenience in playing sports) performed two weeks prior to the termination of the community was a separate debt, we note that the instant case is factually distinguishable from

The trial court classified the debt as community and denied Edward's claim for reimbursement. Aside from his argument that Claire should be deemed responsible for the indebtedness because she eventually left the community home several weeks after the surgery, Edward has offered no evidence to rebut the presumption that the debt is community. See LSA-C.C. art. 2361.

On review, applying these precepts and considering the parties' agreement regarding the surgery, we find no error in the trial court's determination that the debt was incurred as a community obligation, for which no further reimbursement is due by Claire.

This assignment also lacks merit.

Review of Judgment

Pursuant to LSA-C.C.P. art. 2164, this court is empowered to render any judgment which is just, legal, and proper upon the record on appeal. Thus, although not initially assigned as error in his brief on appeal, considering the record herein in its entirety and our resolution and findings as to those assignments of error that have been briefed, we elect to exercise our supervisory authority and to review the judgment to consider Edward's complaint that paragraph 15 of the judgment is legally incorrect, beyond the authority of the trial court, and should be stricken.

Paragraph 15 of the judgment provides, as follows:

> **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that any and all further claims not addressed in this *Judgment* as they pertain to the partition of the community property and alleged to arise out of the community of acquets and gains as it existed between Claire Bradley Ursin and Edward Taylor Ursin, II, are hereby **DENIED**.

Pursuant to LSA-C.C. art. 817, the action for partition is imprescriptible. Moreover, *res judicata* does not apply where issues were not actually litigated or

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Sequira, where the purpose for the surgery therein differed and the spouse did not have the permission of the other spouse to undergo the disputed procedure and incur the debt associated with it during the community.

contained as an object in the judgment. Lamana v. LeBlanc, 526 So. 2d 1107, 1110 (La. 1988). Thus, inasmuch as paragraph 15 basically denies either party any right to raise a future claim for partition, particularly as to property that has not yet been partitioned or claims that have not been adjudicated, we agree that this portion of the judgment is null, legally incorrect, and should be stricken from the judgment.

CONCLUSION

For the above and foregoing reasons, the portion of the March 24, 2009 judgment of the trial court, which determined in paragraph 1 that the former community did not own an interest in the 81 Zinnia Drive home and property is hereby reversed. Judgment is hereby rendered ordering: (1) that an accounting is due between the parties for the former community's one-half interest in the asset; (2) that Edward's half of the former community's interest in the asset be and the same is hereby allocated to Claire; and (3) that in addition to the reimbursement amount previously ordered by the trial court, Edward is entitled to and is hereby awarded a reimbursement credit due from Claire, in the amount of $45,500.00 for his share (one-half) of the former community's undivided one-half interest in the 81 Zinnia Drive home and property.

The portion of paragraph 3 in the judgment "evenly allocating" to the parties the Mainstay and Chase IRA accounts previously liquidated by Claire is hereby amended to reflect that the Mainstay and Chase IRA accounts had a value of $15,843.29 and $19,231.93, respectively, at the time of liquidation, for which Claire owes Edward reimbursement in the amount of $17,537.61, for his one-half interest in the funds she received at liquidation.

It is further ordered that in accordance with our resolution of the issues presented herein, paragraphs 10, 11 and 12 of the judgment, setting forth the

reimbursement amounts due each party and the resulting equalizing payment due, are hereby amended and judgment is hereby rendered, as follows:

> **10. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Edward Taylor Ursin, II, is entitled to **REIMBURSEMENT** from Claire Bradley Ursin in the total amount of **ONE HUNDRED EIGHT THOUSAND NINE HUNDRED TEN AND 19/00 DOLLARS ($108,910.19);**
>
> **11. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Claire Bradley Ursin is entitled to **REIMBURSEMENT** from Edward Taylor Ursin, II, in the total amount of **FORTY-NINE THOUSAND THREE HUNDRED FIFTY-NINE AND 22/00 DOLLARS ($49,359.22);**
>
> **12. IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, considering the **REIMBURSEMENTS** due each party, Edward Taylor Ursin, II, is due a total of **FIFTY-NINE THOUSAND FIVE HUNDRED FIFTY AND 97/00 DOLLARS ($59,550.97);** and judgment is rendered in favor of Edward Taylor Ursin, II, and against Claire Bradley Ursin, in the sum of **FIFTY-NINE THOUSAND FIVE HUNDRED FIFTY AND 97/00 DOLLARS ($59,550.97).**

The March 24, 2009 judgment of the trial court is hereby further amended to delete paragraph 15 of the judgment in its entirety. The matter is hereby remanded to the trial court solely to allow the court, consistent with the views expressed herein, to render any further necessary orders to ensure conformity with this court's rulings, including orders regarding the immovable property described as the "81 Zinnia Street property," and the execution of any necessary documents involving or affecting title to the property. In all other respects, the March 24, 2009 judgment of the trial court is affirmed.

Costs of this appeal are assessed equally between the parties.

REVERSED IN PART, AFFIRMED IN PART, AMENDED IN PART AND RENDERED; REMANDED WITH INSTRUCTIONS.