

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 1830

MELVIN RENFRO

VERSUS

LISA YOUNG RENFRO

Judgment rendered May 8, 2009.

Appealed from the
Family Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 136,507
Honorable Luke Lavergne, Judge

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FOR PLAINTIFF-APPELLEE
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FOR DEFENDANT-APPELLANT
LISA YOUNG RENFRO

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.



PETTIGREW, J.

In this case, appellant, Lisa Young Renfro (hereinafter referred to as "Lisa"), challenges the trial court's judgment of May 13, 2008, as amended January 6, 2009, granting summary judgment in favor of Brandi Renfro, independent administratrix of the estate of Melvin Renfro (hereinafter referred to as "Brandi"), dismissing all of Lisa's claims of community property in the estate of Melvin Renfro. For the reasons that follow, we affirm in part, reverse in part, and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

According to the record herein, Lisa and Melvin signed a matrimonial agreement prior to their marriage declaring a separate property regime. On March 17, 1995, Lisa and Melvin were married. Subsequently, on March 10, 1999, Lisa and Melvin signed a document, entitled "Cancellation of Marriage Contract," and established a community property regime.

On June 8, 2000, Melvin filed a petition for divorce. A judgment of divorce was granted to the parties on July 27, 2000, dissolving any community property regime between the parties retroactive to June 8, 2000. A petition for partition of community property was filed by Lisa on March 5, 2005, with issue being joined by Melvin's attorney through his answer on May 18, 2005.¹

In June 2006, Brandi filed a motion for summary judgment, along with a memorandum in support and exhibits. The matter was heard on June 12, 2007, at which time the trial court noted there was no evidence in opposition to the motion for summary judgment and granted same in a written judgment signed July 2, 2007. Thereafter, in June 2007, Lisa filed a motion to set aside the ruling on the motion for summary judgment, arguing that, in fact, an opposition to the motion for summary judgment, along with exhibits, had been filed with the clerk's office on July 24, 2006, but for some unknown reason, was not part of the record at the time of the initial hearing in June

¹ We note that Melvin died on February 24, 2005, and that Lisa filed a motion to substitute "The Estate of Melvin Renfro for Melvin Renfro" on May 5, 2005.

2007. Lisa's motion to set aside was heard on August 14, 2007. According to the minute entry from the hearing, the trial court noted as follows: "The Court is of the opinion that apparently the Memorandum in Opposition ... had been misplaced by the Clerk of Court and not filed into the record. However, the Court found that [Lisa] had a file stamped copy ... which created issues of genuine fact in the case." Thus, in a judgment signed August 31, 2007, the trial court vacated and set aside the July 2, 2007 judgment.

Brandi subsequently filed another motion, requesting that his motion for summary judgment be set for hearing. The matter proceeded to hearing on April 22, 2008, at which time the trial court heard arguments from the parties. After considering the applicable law and evidence in the record, the trial court granted summary judgment in favor of the estate of Melvin Renfro. The trial court signed a judgment on May 13, 2008, decreeing, "the Motion for Summary Judgment filed by Brandi Renfro, relative to the issue of community property in the estate of Melvin Renfro is hereby GRANTED." This appeal by Lisa followed. An interim order was issued by this court on November 26, 2008, remanding the matter for the limited purpose of having the trial court sign a valid written judgment, including appropriate decretal language as required by La. Code Civ. P. art. 1918. On January 6, 2009, the trial court signed an amended summary judgment.

The judgment of May 13, 2008, as amended January 6, 2009, in part, provides the following.

IT IS ORDERED, ADJUDGED AND DECREED that the motion for summary judgment filed by Brandi Renfro, independent administratrix of the estate of Melvin Renfro, alleging that no community property exists in the estate of Melvin Renfro is hereby GRANTED. All claims of community property in the estate of Melvin Renfro, as alleged by Lisa Young Renfro are without merit and are hereby dismissed, with prejudice, with each party to bear its own cost. This is a final judgment dismissing all claims of community property in the estate of Melvin Renfro.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that there is no just reason for delay as this summary judgment disposes of the entire case, and therefore same is designated as a final judgment in accordance with the provisions of Louisiana Code of Civil Procedure, Article 1915B.

ISSUES FOR REVIEW

On appeal, Lisa sets forth the following issues for review.

I. Whether the trial court committed legal error when it determined that there was no genuine issue of material fact.

II. Whether Lisa Young Renfro is entitled to a Judgment recognizing her interest in proceeds from Melvin Renfro's Retirement Plan.

SUMMARY JUDGMENT

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine factual dispute. **Board of Sup'rs of Louisiana State University v. Louisiana Agr. Finance Authority**, 2007-0107, p. 8 (La. App. 1 Cir. 2/8/08), 984 So.2d 72, 79. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and the mover is entitled to judgment as a matter of law. La. Code Civ. P. art 966(B). Summary judgment is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. Code Civ. P. art. 966(A)(2); **Thomas v. Fina Oil and Chemical Co.**, 2002-0338, pp. 4-5 (La. App. 1 Cir. 2/14/03), 845 So.2d 498, 501-502. In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Lewis v. Four Corners Volunteer Fire Dept.**, 2008-0354, p. 4 (La. App. 1 Cir. 9/26/08), 994 So.2d 696, 699.

The burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material

fact. La. Code Civ. P. art. 966(C)(2). Once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. **Pugh v. St. Tammany Parish School Bd.**, 2007-1856, p. 2 (La. App. 1 Cir. 8/21/08), 994 So.2d 95, 97, writ denied, 2008-2316 (La. 11/21/08), 996 So.2d 1113.

In **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751, the Louisiana Supreme Court set forth the following parameters for determining whether an issue is genuine or a fact is material.

A "genuine issue" is a "triable issue." More precisely, "[a]n issue is genuine if reasonable persons could disagree. If on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. Summary judgment is the means for disposing of such meretricious disputes." In determining whether an issue is "genuine," courts cannot consider the merits, make credibility determinations, evaluate testimony or weigh evidence. "Formal allegations without substance should be closely scrutinized to determine if they truly do reveal genuine issues of fact."

A fact is "material" when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. "[F]acts are material if they potentially insure or preclude recovery, affect a litigant's ultimate success, or determine the outcome of the legal dispute." Simply put, a "material" fact is one that would matter on the trial on the merits. Any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of a trial on the merits. [Citations omitted.]

Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. **Omega Const. v. Thornco, Inc.**, 2007-1806, p. 4 (La. App. 1 Cir. 8/21/08), 994 So.2d 65, 67.

DISCUSSION

The classification of property as separate or community is fixed at the time of its acquisition. **Robinson v. Robinson**, 99-3097, p. 6 (La. 1/17/01), 778 So.2d 1105, 1113; **Corkern v. Corkern**, 2005-2297, p. 6 (La. App. 1 Cir. 11/3/06), 950 So.2d 780, 785, writ denied, 2006-2844 (La. 2/2/07), 948 So.2d 1083. As a general principle, a court partitioning a community asset is required to classify the property as of the date of

termination of the community. La. Civ. Code art. 2338 *et seq.*; La. R.S. 9:2801. **Robinson**, 99-3097 at 8, 778 So.2d at 1114.

In support of Melvin's motion for summary judgment, the following exhibits were introduced into evidence: (Exh. 1) Matrimonial Agreement; (Exh. 2) Cancellation of Marriage Contract and Declaration of Community Property; (Exh. 3) Partition for Divorce and Judgment of Divorce; (Exh. 4) Deposition of Lisa Young Renfro; (Exh. 5) Act of Cash Sale for Lemonwood property by Melvin Renfro and Lisa Renfro; (Exh. 6) Act of Donation of Saratoga property by Lisa Renfro; (Exh. 7) Mortgages on properties on which Lisa Young Renfro is a cosigner with Melvin Renfro; (Exh. 8) Act of Donation of Lemonwood property by Lisa Renfro to Brandi Renfro; (Exh. 9) Answers to Interrogatories, Request for Production, and Admissions; and (Exh. 10) Act of Cash Sale of Plank Road property by Melvin Renfro as his separate property.

In her opposition to the summary judgment, Lisa filed her memorandum in opposition and the following exhibits: (Exh. 1) Excerpts of the Deposition of Brandi Renfro; (Exh. 2) Excerpts of the Deposition of Lisa Young Renfro; (Exh. 3) Settlement Disbursement Sheet; and (Exh. 4) Copies of cancelled checks.

We have thoroughly reviewed the evidence in the record and the applicable law governing the legal issues, and agree with the trial court that Lisa has no viable claim of ownership of any immovable or movable property formerly existing in the community with Melvin; nor does she have any viable reimbursement claim against the community, and therefore, we will affirm those parts of the trial court's judgment.

However, we do find material issues of fact still exist concerning Lisa's potential claims against Melvin's retirement accounts. From the evidence presented and reviewed, a community property regime existed between Lisa and Melvin from March 10, 1999 to June 8, 2000, a period of approximately 15 months. Melvin died February 24, 2005. At the time of Melvin's death, the testimony of Brandi Renfro, the administratrix of the estate of Melvin Renfro, indicates that there existed two accounts designated as retirement accounts in the name of Melvin at Liberty Bank and Hibernia Bank. Neither side introduced any evidence as to the nature of these accounts, when they were opened, the

balance in them at the time of the termination of the community regime, or whether any contributions were made to these accounts during the existence of the community between Lisa and Melvin.

It is well settled that "[a] spouse's right to receive *an annuity, lump-sum benefit, or other benefits payable by a retirement plan* is, to the extent attributable to his employment during the community, therefore an asset of the community." **Louisiana State Employees' Retirement System (Lasers) v. McWilliams**, 2006-2191, 2006-2204, p. 10 (La. 12/2/08), 996 So.2d 1036, 1043 (quoting **Sims v. Sims**, 358 So.2d 919, 922 (emphasis added)). For the foregoing reasons, we must reverse the portion of the trial court's judgment that held Lisa was not entitled to any part of Melvin's retirement and remand that portion to the trial court to determine if and how much, if anything, Lisa is entitled to for her half of Melvin's retirement benefits that are attributable to effort expended by him during the existence of the community.

CONCLUSION

For the foregoing reasons, that portion of the trial court's judgment dated May 13, 2008, as amended January 6, 2009, is affirmed insofar as any claims of Lisa concerning ownership of any movable or immovable property formerly in the community with Melvin or any reimbursement claim against the community. However, the trial court's judgment denying Lisa's potential claim on Melvin's retirement accounts is reversed, and that portion of the trial court's judgment is remanded to the trial court to determine if and how much, if anything, Lisa is entitled to for her half of Melvin's retirement benefits that are attributable to the efforts expended by him during the existence of the community. Costs of this appeal shall be split equally between the parties.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.