

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1328

RODNEY BOUDREAU, JR.

VERSUS

JEANNE SCHACKAI BOUDREAU

Judgment Rendered: MAY - 2 2012

* * * * *

On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket No. 2007-13988

Honorable Mary C. Devereux, Judge Presiding

* * * * *

James E. Moorman, III
Kasi Brannan
Covington, Louisiana

Counsel for Plaintiff/Appellant
Rodney Boudreau, Jr.

Jeanne Schackai Boudreau
Mandeville, Louisiana

Defendant/Appellee
In Proper Person

* * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

*Mc
gob
Jaw*

McCLENDON, J.

Rodney Boudreaux, Jr. appealed from the trial court's judgment in an action to partition the community property, which existed between him and his former wife, Jeanne Schackai. For the following reasons, we reverse in part, amend in part, and affirm as amended.

FACTS AND PROCEDURAL HISTORY

Mr. Boudreaux and Ms. Schackai married on July 4, 2005, and divorced on February 3, 2009. Thereafter, Mr. Boudreaux filed a petition to partition the community property that had accumulated during the parties' marriage. The community property issues were tried on October 27, 2010, and the trial court signed a written judgment reflecting its ruling on February 10, 2011.

Mr. Boudreaux has appealed the trial court's judgment with regard to three specific items. He asserts that the trial court erred in classifying a 1988 Three Buoys houseboat and 1994 Jeep Wrangler as community, and in awarding Ms. Schackai full ownership of a Honda 200 dirt bike.

DISCUSSION

Under Louisiana law, property of married persons is generally characterized as either community or separate. LSA-C.C. art. 2335. 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. 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**, 02-2984, p. 9 (La. 10/21/03), 857 So.2d 384, 390. The classification of property as separate or community is fixed at the time of its acquisition. 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**, 00-1934, p. 3 (La.App. 1 Cir. 11/14/01), 818 So.2d 111, 113, writ denied, 2001-3272 (La.3/8/02), 810 So.2d 1164.

1988 Three Buoys Houseboat

Mr. Boudreaux asserts that the trial court, after properly finding that Mr. Boudreaux used separate funds to purchase the houseboat, erred in concluding that the houseboat was community property. At trial, Mr. Boudreaux testified that the boat was purchased in July 2006 using settlement proceeds arising from damages to his separate property in Grande Isle as a result of Hurricane Katrina and an equity withdrawal from his home on Villere Street in Mandeville.¹ Mr. Boudreaux avers that Ms. Schackai did not offer any conflicting testimony or evidence as to the use of Mr. Boudreaux's separate funds for the purchase of the vessel. Mr. Boudreaux concludes that the trial court, after acknowledging the boat was purchased with his separate funds, manifestly erred in finding that the houseboat comprised part of the community of acquets and gains.

In making its determination that the houseboat was community property, the trial court apparently considered that both parties' names appeared on the bill of sale and title. The bill of sale reflects that the purchasers of the boat were "Rodney J. Boudreaux Jr. OR Jeanne S. Boudreaux." On the other hand, the original title to the houseboat, which was later voided, was executed solely by Mr. Boudreaux. Thereafter, two other titles were issued, listing Mr. Boudreaux and Ms. Schackai as titled owners. Mr. Boudreaux testified that the discrepancy in titles occurred because Ms. Schackai, without his consent or knowledge, went to the office of motor vehicles in Florida and had her name placed on the title. Ms. Schackai confirmed that she went to the office of motor vehicles alone, but testified that she had Mr. Boudreaux's consent and approval to have her name included on the title.

We note that "[c]lassification of an asset as separate or community, whether the asset is movable or immovable, is not determined by the name appearing on documents of title. Classification depends on the time of acquisition, the character of the transaction, and the source of funds." (Footnote

¹ Ms. Schackai does not dispute that the Grande Isle property, which was acquired from his parents, was Mr. Boudreaux's separate property. Additionally, it is not disputed that Mr. Boudreaux owned the Villere Street home prior to the marriage.

omitted.) Katherine S. Spaht and Richard D. Moreno, **Matrimonial Regimes**, 16 Louisiana Civil Law Treatise, § 3.51 (3d ed. 2007); see also **Noil v. Noil**, 96-2167, p. 4 (La.App. 1 Cir. 9/19/97), 699 So.2d 1134, 1137.

Property acquired by a spouse with separate things constitutes his separate property. LSA-C.C. art. 2341. Louisiana Civil Code article 2343.1 allows the transfer of separate property to the community, but requires the transfer for both movable and immovables be made in writing, and by authentic act if by gratuitous title. Comment (b) to LSA-C.C. art. 2343.1 explains that a spouse may convey to the other spouse a thing that forms part of the transferor's separate property, with the stipulation that the thing shall be part of the community.

In **Succession of Davis**, 496 So.2d 549 (La.App. 1 Cir. 1986), a husband, Charles E. Davis, sold his separate property to a third party, in exchange for a promissory note made payable to Mr. Davis and his wife, Irene Gregoire Davis, in monthly installments. In addition to Mrs. Davis's name being included as a payee on the note, Mrs. Davis's name was also included as a seller in the Act of Sale transferring the property to the third party. After Mr. Davis died, Mrs. Davis asserted that the note was part of the community assets. Rejecting that contention and finding the note was Mr. Davis's separate property, this court, after reviewing Article 2343.1, reasoned:

...the record is devoid of any transfer of property between decedent and [Mrs. Davis] stipulating that the note should be part of the community. While property was transferred from decedent to [the third party] by credit deed..., this transaction did not transfer ownership of the property or the promissory note to [Mrs. Davis]. The appearance of [Mrs. Davis's] name as a seller on the Act of Sale as a payee on the promissory note did not transform decedent's separate property to community property.

Succession of Davis, 496 So.2d at 553.

In the case *sub judice*, we find no manifest error in the trial court's determination that Mr. Boudreaux's separate funds were utilized to purchase the houseboat. Although Ms. Schackai's name appears on the act of sale and title, nothing in the record indicates that the transfer was anything other than

gratuitous. As such, Article 2343.1 requires an authentic act stipulating that the houseboat shall be part of the community. Ms. Schackai produced no document, in authentic form, evidencing an intent by Mr. Boudreaux to transfer the houseboat to the community as required by Article 2343.1. Accordingly, although Ms. Schackai's name appears on the bill of sale and title, the houseboat, which was purchased with Mr. Boudreaux's separate funds, remained Mr. Boudreaux's separate property. Therefore, we conclude that the trial court erred in classifying the houseboat as community property.

1994 Jeep Wrangler

In his second assignment of error, Mr. Boudreaux asserts that the trial court erred in classifying the 1994 Jeep Wrangler as community property. Mr. Boudreaux testified that he purchased the vehicle with the insurance settlement proceeds for damages to his separate property that he received post-Katrina. We note that Ms. Schackai did not cross-examine Mr. Boudreaux regarding this testimony nor did she provide any testimony or evidence to contradict Mr. Boudreaux's testimony. Accordingly, the only evidence in the record reflects that Mr. Boudreaux purchased the 1994 Jeep Wrangler with his separate funds. In light of the foregoing, we conclude that the trial court erred in declaring the 1994 Jeep Wrangler as community property.

Honda 200 Dirt Bike

In his third assignment of error, Mr. Boudreaux asserts that the Honda 200 dirt bike was also his separate property. Mr. Boudreaux notes that it was undisputed that he purchased the bike prior to his marriage. See LSA-C.C. art. 2341 ("The separate property of a spouse is his exclusively. It comprises: property acquired by a spouse prior to the establishment of a community property regime;...") Mr. Boudreaux further testified that he never gave the dirt bike to Ms. Schackai as a gift and that the machine is still in his possession.²

² Louisiana Civil Code article 1543 provides: "The donation inter vivos of a corporeal movable may also be made by delivery of the thing to the donee without any other formality."

On cross, Ms. Schackai did not contest the fact that Mr. Boudreaux purchased the dirt bike prior to the marriage nor did she offer any evidence to controvert Mr. Boudreaux's testimony as to his possession of the bike. Rather, she introduced a document, which described a list of her possessions, presumably her separate property. The typewritten document included a handwritten notation that indicated that a "Honda 200 dirt bike belongs to [her son] Derreck Gahagan," and Mr. Boudreaux's signature appears thereon.³ However, nothing in the record suggests that the dirt bike, which is in Mr. Boudreaux's possession, belongs to Ms. Schackai. Accordingly, we find that the trial court erred in awarding Ms. Schackai full ownership of the Honda 200 dirt bike.

CONCLUSION

We reverse the trial court's judgment to the extent that it classified the 1988 Three Buoys houseboat and 1994 Jeep Wrangler as community, and amend the judgment to reflect that the 1988 Three Buoys houseboat and 1994 Jeep Wrangler are Mr. Boudreaux's separate property. We also reverse the judgment to the extent it awarded Ms. Schackai full ownership of the Honda 200 dirt bike. The judgment is affirmed in all other respects.

JUDGMENT REVERSED IN PART, AMENDED, AND AFFIRMED, AS AMENDED.

³ No evidence was presented to show whether the handwritten notation with regard to the dirt bike was made by Ms. Schackai or Mr. Boudreaux and whether the notation was on the document when it was signed by Mr. Boudreaux.