

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1471

RONNIE L. WILLIAMS

VERSUS

BRENDA JOYCE WILLIAMS

Judgment Rendered: February 9, 2007

**Appealed from the
Family Court**

**In and for the Parish of East Baton Rouge, Louisiana
Docket Number 135,186**

Honorable Toni Higginbotham, Judge Presiding

**Kristen W. Parnell
Harry W. Ezim, Jr.
Baton Rouge, LA**

**Counsel for Plaintiff/Appellee,
Ronnie L. Williams**

**Marcus T. Foote
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Baton Rouge, LA**

**Counsel for Defendant/Appellant,
Brenda Joyce Williams**

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

This is an appeal from a judgment of Division C of the Family Court for East Baton Rouge Parish. Plaintiff, Ronnie Williams, and defendant, Brenda Williams, were divorced by judgment dated February 25, 2000, in Division C of the Family Court. On August 11, 2005, approximately five and one-half years after the parties were divorced, and after a consent judgment was rendered in partition proceedings in Division B, Mrs. Williams filed a petition for judicial partition of property in the divorce proceedings in Division C, seeking “a judicial partition of the community property which has not been partitioned” (“the Division C partition matter”). On that same day, Mrs. Williams filed a motion to transfer and consolidate cases, seeking to transfer the partition matter of Brenda Joyce Williams v. Ronnie L. Williams, that she had previously filed (on November 10, 2004) under docket 152,733 in Division B (“the Division B partition matter”) and consolidate it with the newly filed Division C partition matter.¹

However, by judgment dated December 2, 2005, the court in Division C denied the motion to transfer and consolidate. The court noted that while the local court rules provided that her partition action should have initially been filed in the divorce proceeding, the violation of that rule did not nullify any actions taken by the judge in Division B, including the judgment rendered in the Division B partition matter that dismissed Mrs. Williams’ petition for partition **with prejudice**. The Division C court further stated that to allow consolidation would virtually allow Mrs. Williams to “shop for

¹Also on that same date, Mrs. Williams filed in the Division B partition matter a petition to nullify the December 17, 2004 judgment of Division B which, by stipulation of the parties, upheld an October 22, 1999 agreement to partition between the parties and dismissed Mrs. Williams’ petition for judicial partition with prejudice.

the division she feels will best meet her needs.” The court held that Mrs. Williams had chosen to file a new suit for judicial partition after the divorce had been rendered, which suit was randomly assigned to another division (i.e., the Division B partition matter), that the Division B court “had rendered judgment [on December 17, 2004] regarding the exact same matter that is sought to be resolved in Division ‘C’[]” and that she “must live with her decision.”

Nonetheless, Mrs. Williams then filed in Division C a motion to disqualify counsel, contending that counsel for Mr. Williams would be a witness in the Division C partition matter because he was privy to information that was key to Mrs. Williams’ case.

Mr. Williams then filed, in Division C, exceptions of res judicata and lis pendens as to the petition for judicial partition of community property, and exceptions of no cause of action and prematurity and a motion for sanctions pursuant to LSA-C.C.P. art. 863 as to Mrs. Williams’ motion to disqualify opposing counsel.

In support of his exceptions of res judicata and lis pendens, Mr. Williams presented evidence that the parties had entered into an agreement on October 22, 1999, which purported to settle and resolve the parties’ disputes regarding the community property of the parties. Additionally, Mr. Williams also produced evidence to establish that Mrs. Williams had previously filed the Division B partition matter and that a judgment dated December 17, 2004 had been rendered in Division B, upon stipulation of the parties, decreeing that the October 22, 1999 agreement was a valid and enforceable agreement to partition the parties’ community property and dismissing Mrs. Williams’ petition for judicial partition of community

property with prejudice. The December 17, 2004 judgment had not been appealed and, thus, became final.

Thus, Mr. Williams contended, since the issues regarding judicial partition of the community property had been decided in the December 17, 2004 judgment rendered in the Division B partition matter, Mrs. Williams was barred from seeking similar relief in Division C by the application of res judicata. Alternatively, Mr. Williams argued that any outstanding issues regarding partition of the community property were pending in Division B and in Mrs. Williams' writ application and appeal related to that suit. Thus, he argued, the exception of lis pendens should also be maintained.

With regard to the motion to disqualify counsel, Mr. Williams contended that the information Mrs. Williams sought was obtainable from sources other than his attorney and, thus, that Mrs. Williams had failed to state a cause of action to disqualify his counsel. He also argued that any motion to disqualify counsel was premature and that sanctions for the filing of the motion to disqualify counsel should be imposed.

Following oral argument on the exceptions and motions, the Division C court rendered judgment, maintaining the exceptions of res judicata and lis pendens, dismissing the motion to disqualify opposing counsel and granting the motion for sanctions against Mrs. Williams and her attorney in the amount of \$500.00.² The trial court denied the motion to disqualify counsel on the basis that it had previously ruled that the partition matter was properly

²On September 11, 2006, this court issued a show cause order, ordering the parties to show cause by briefs why the appeal should not be dismissed because the judgment did not contain appropriate decretal language disposing of and/or dismissing Mrs. Williams' claims. Subsequently, on November 14, 2006, this court issued an interim order, ordering the appeal be remanded for the limited purpose of having the trial court sign a valid written judgment which includes appropriate decretal language. The appellate record was to be supplemented with the new judgment within 30 days of the date of this action. On December 27, 2006, the appellate record was supplemented with a judgment dated December 8, 2006, that maintained the exception of res judicata and dismissed Mrs. Williams' petition to partition with prejudice.

before Division B of the Family Court and, thus, that the Division C court would not rule on whether counsel for Mr. Williams should be disqualified. The court also imposed sanctions against Mrs. Williams and her counsel of record for filing the motion to disqualify counsel in the Division C partition matter **after** the court had ruled that the partition matter was properly before Division B. The court concluded that the motion to disqualify counsel was improperly filed in Division C and was untimely, thus warranting sanctions.

Mrs. Williams now appeals, challenging the trial court's rulings maintaining the exceptions of res judicata and lis pendens, denying the motion to transfer and consolidate and imposing sanctions.

The doctrine of res judicata is set forth in LSA-R.S. 13:4231 and applies under the following circumstances:

(1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Louisiana Revised Statute 13:4231 embraces the broad usage of the phrase "res judicata" to include both claim preclusion (res judicata) and issue preclusion (collateral estoppel). Thus, res judicata used in the broad sense has two different aspects: (1) foreclosure of relitigating matters that have never been litigated, but should have been advanced in the earlier suit (claim preclusion); and (2) foreclosure of relitigating matters that have been

previously litigated and decided. Mandalay Oil & Gas, L.L.C. v. Energy Development Corp., 2001-0993 (La. App. 1st Cir. 8/4/04), 880 So. 2d 129, 135, writ denied, 2004-2426 (La. 1/28/05), 893 So. 2d 72. However, pursuant to LSA-R.S. 13:4232, in an action for partition of community property and settlement of claims between spouses under LSA-R.S. 9:2801, the judgment has the effect of res judicata only as to causes of action actually adjudicated.

In the instant case, our examination of the transcript of the hearing conducted in the Division B partition matter confirms that the issue of partition of the parties' community property was fully and finally settled by consent of the parties. Accordingly, we find no error in the trial court's ruling maintaining the exception of res judicata. See Lee v. Twin Brothers Marine Corporation, 2006-0017 (La. App. 1st Cir. 11/3/06), ___ So. 2d ___, ____.³

Because we conclude that the trial court did not err in maintaining the exception of res judicata, and thereby dismissing the Division C partition matter, with prejudice, we pretermitt Mrs. Williams' contentions that the trial court erred in maintaining the exception of lis pendens and abused its discretion in denying the motion to transfer and consolidate.

With regard to the trial court's imposition of sanctions, we also find no error or abuse of discretion. Any pleading signed by an attorney is a

³On appeal, Mrs. Williams argues that the December 17, 2004 judgment rendered in the Division B partition matter cannot have res judicata effect as to her subsequently filed Division C partition matter, because the December 17, 2004 judgment is an absolute nullity (in that it attempts to preclude partition of co-owned property).

However, we note that Mrs. Williams filed a petition to nullify the December 17, 2004 judgment in the Division B partition matter, and her petition was dismissed for failure to state a cause of action. By opinion handed down this date, in the related appeal of Williams v. Williams, 2006 CA 0358 (La. App. 1st Cir. 2/9/07)(unpublished), this court affirmed the trial court's judgment finding that Mrs. Williams failed to state a cause of action in nullity. For the reasons expressed therein, we reject her argument that the December 17, 2004 judgment was an absolute nullity and, thus, could not have res judicata effect as to the petition for partition before us in this matter.

certification that it is grounded in fact and warranted by law or a good faith argument for the extension, modification, or reversal of existing law and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. LSA-C.C.P. art. 863. To impose sanctions, a trial court must find that one of the affirmative duties imposed by LSA-C.C.P. art. 863 has been violated. Stroscher v. Stroscher, 2001-2769 (La. App. 1st Cir. 2/14/03), 845 So. 2d 518, 526.

A trial court's determination regarding the imposition of sanctions is subject to the manifest error or clearly wrong standard of review. Once the trial court finds a violation of article 863 and imposes sanctions, the determination of the type and/or the amount of the sanction is reviewed on appeal utilizing the abuse of discretion standard. Stroscher, 845 So. 2d at 526.

In the instant case, we find no manifest error in the trial court's decision to impose sanctions. The issue of partition of the community property was previously decided by consent judgment in another division of the Family Court, i.e., the Division B partition matter. Although Mrs. Williams now clearly wishes to dispute that judgment, she did not seek review thereof. See Stroscher, 845 So. 2d at 527. Moreover, in declining to transfer and consolidate the Division B partition matter and suit for nullity into the Division C partition matter, the Division C court noted that the Division C court had previously ruled that issues related to the community property partition were properly before Division B. Thus, we find no manifest error in the trial court's imposition of sanctions for Mrs. Williams' decision to thereafter file a motion to disqualify counsel and attempt to

obtain relief in Division C. We likewise find no abuse of discretion in the amount of sanctions imposed.

MOTION TO DISMISS

Mr. Williams has filed in this court a motion to dismiss Mrs. Williams' appeal. Mr. Williams contends that the rendition of a September 25, 2006 judgment in Division B, which partitioned the only remaining community asset, renders this appeal moot and deprives this court of jurisdiction.⁴

At the outset, we note that although the September 25, 2006 judgment has been included in the appellate record in these related appeals, the propriety of that judgment and the issue of its finality are not before the court in this appeal. Accordingly, we reject Mr. Williams' assertion that the September 25, 2006 judgment rendered this appeal moot. Thus, Mr. Williams' motion to dismiss the appeal is denied at his costs.

CONCLUSION

For the above reasons, we affirm the December 8, 2006 judgment dismissing Mrs. Williams' petition for judicial partition of community property and imposing sanctions on Mrs. Williams and her attorney. The motion to dismiss the appeal filed by Mr. Williams is denied at his costs. Costs of this appeal are assessed against Brenda Joyce Williams.

AFFIRMED; MOTION TO DISMISS DENIED.

⁴ Mr. Williams filed in the trial court a motion to supplement the appellate record in the related appeal of Williams v. Williams, 2006 CA 0358, with the September 25, 2006 judgment rendered by Division B. That judgment purported to judicially partition the "only remaining asset of the community," by awarding sole ownership of the home to Mr. Williams and ordering him to pay Mrs. Williams for her undivided one-half interest in the home. The trial court granted Mr. Williams' motion to supplement the appellate record, and the record in 2006 CA 0358 has been supplemented with that judgment.