

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0857

SHIRLEY WISE PRICE

VERSUS

ROGER W. WISE

Judgment Rendered: December 22, 2010.

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On Appeal from the  
23rd Judicial District Court,  
In and for the Parish of Ascension,  
State of Louisiana  
Trial Court No. 89,260

The Honorable Ralph Tureau, Judge Presiding

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G. Bruce Kuehne  
Baton Rouge, LA

Attorney for Plaintiff-Appellee,  
Shirley Wise Price

Roger W. Wise  
Jonesville, LA

Defendant-Appellant,  
In Proper Person

\* \* \* \* \*

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

**CARTER, C. J.**

Roger W. Wise appeals a partial judgment declaring invalid a marriage contract between him and his ex-wife, Shirley Wise Price. The trial court ordered the matter to proceed as a judicial partition of community property and certified that the partial judgment was final, expressly finding no just reason for delay for purposes of an immediate appeal, but failing to give explicit reasons on the record for the certification. After Mr. Wise appealed, Ms. Price filed a motion to dismiss in this court for lack of jurisdiction, maintaining that the judgment was a non-appealable interlocutory ruling. The motion to dismiss was referred to this panel for consideration along with the merits of the appeal.

After a careful *de novo* review, as required by **R. J. Messinger, Inc. v. Rosenblum**, 04-1664 (La. 3/2/05), 894 So.2d 1113, 1122, and considering LSA-C.C.P. art. 1915B along with the **Messinger** factors, we find that the trial court's designation of this partial judgment as final, while well-intentioned, was in error. The partial judgment merely determines that the marriage contract was invalid, but it does not address or resolve the closely related issues of partitioning the community property, the proper valuation of the community assets, the proper division and allocation of the community assets, and whether an accounting is due and by whom.<sup>1</sup> To permit an appeal of such a judgment would encourage multiple appeals and piecemeal litigation. We conclude that an effective remedy is available to the parties once the trial court renders a final judgment partitioning the

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<sup>1</sup> The record reflects that there are community assets and liabilities and reimbursement issues to be determined, regardless of the validity of the marriage contract; thus, the need for further partition proceedings is not precluded by separate consideration of the marriage contract at this point.

parties' assets and liabilities and determines the parties' reimbursement issues. See St. Pierre v. St. Pierre, 08-2475 (La. App. 1 Cir. 2/12/10), 35 So.3d 369, 372, writ not considered, 10-0587 (La. 3/17/10), 29 So.3d 1243; Carber v. Carber, 98-0249 (La. App. 1 Cir. 2/19/99), 729 So.2d 699, 702-703. Furthermore, we find that this case does not present the situation described in Herlitz Const. Co., Inc. v. Hotel Investors of New Iberia, Inc., 396 So.2d 878 (La. 1981), in which the supreme court encouraged appellate courts to consider exercising supervisory jurisdiction when a trial court judgment was arguably incorrect and a reversal would terminate the litigation in whole or in part.

Thus, we hereby grant Ms. Price's motion to dismiss and we dismiss Mr. Wise's appeal, which we find is a partial judgment not subject to immediate appeal.<sup>2</sup> This matter is remanded to the trial court for further proceedings. We issue this summary opinion in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2A(1) and (2). All costs of this appeal are assessed against Mr. Roger W. Wise.

**MOTION TO DISMISS GRANTED; APPEAL DISMISSED;  
AND REMANDED.**

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<sup>2</sup> In her brief, Ms. Price requests damages for frivolous appeal. However, we note that Ms. Price did not file an answer to this appeal or file an independent appeal seeking such damages. Therefore, we do not consider the merits of that request. See LSA-C.C.P. arts. 2133 and 2164. See also In re Interdiction of DeMarco, 09-1791 (La. App. 1 Cir. 4/7/10), 38 So.3d 417, 430-431.