

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1352

TERESA HARDIN HIGHTOWER

VERSUS

LOUIS JAMES HIGHTOWER

Judgment Rendered: December 22, 2010

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 2006-12594

The Honorable Dawn Amacker, Judge Presiding

**David R. Patterson
Covington, Louisiana**

And

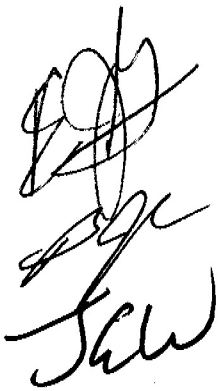
**Robin B. Cheatham
New Orleans, Louisiana**

**Counsel for Plaintiff/Appellant
Teresa Hardin Hightower**

**Craig P. Hart
Tammy L. Karas
Covington, Louisiana**

**Counsel for Defendant/Appellee
Louis James Hightower**

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



GAIDRY, J.

In this divorce proceeding, the wife appeals a judgment classifying certain property, addressing discovery disputes, and addressing objections to the Special Master's report. Because we find that the interlocutory judgment was improperly certified as final and appealable, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

Teresa Hardin Hightower and Louis Hightower were divorced after approximately thirty-five years of marriage by judgment dated January 17, 2007. When numerous disputes arose over partitioning the property of the former community, the court appointed a Special Master pursuant to La. R.S. 13:4165 to assist the court in:

making determinations relative to the discovery that has been propounded, and whether or not it has been adequately answered by both parties. [The Special Master] will make determinations and recommendations to the Court as to the assets of the community and what they are, and, in fact what are the community assets and what are not community assets. . . .

After the Special Master issued her report, both parties filed objections to her findings. A hearing was held on these objections as well as on a rule for contempt. After a hearing, the trial court rendered judgment declaring that Creek Services, L.L.C. is an asset of the former community, rejecting the Special Master's findings concerning the separate ownership of Creek Services, L.L.C. The court also rejected the Special Master's findings relative to discovery involving Creek Services, L.L.C. The court adopted the Special Master's findings regarding other community assets and other discovery matters.

At Teresa's request, the court designated its judgment as a partial final judgment under La. C.C.P. art. 1915(B)(1). In certifying the judgment as a final appealable judgment, the court stated:

[T]his Court hereby finds that the major issue of contention between the parties in this proceeding is the classification of Creek Services, L.L.C. as either community property, or the separate property of Teresa Hardin Hightower, and having a final disposition of that issue will likely shorten and streamline these proceedings, and moot any further appellate review after all remaining issues between the parties are resolved. Thus, the Court believes that designating as a partial final judgment its ruling that Creek Services, L.L.C. is a community asset would have the effect of conserving judicial resources and reducing expenses of litigation of the parties.

This appeal by Teresa followed, in which the sole issue is the trial court's classification of Creek Services L.L.C. as community property.

DISCUSSION

Louisiana Code of Civil Procedure article 1915(B)(1) provides:

When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

The purpose of article 1915 is to prevent multiple appeals and piecemeal litigation and to promote judicial efficiency and economy. *R.J. Messinger, Inc. v. Rosenblum*, 2004-1664, p. 13 (La. 3/2/05), 894 So.2d 1113, 1122. Article 1915 attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review available at a time that best serves the needs of the parties. In considering whether to certify a partial judgment as appealable, the overriding inquiry for the trial court is whether there is any just reason for delay. In making this decision, the court may consider the following non-exclusive list of factors:

- 1) The relationship between the adjudicated and unadjudicated claims;

- 2) The possibility that the need for review might or might not be mooted by future developments in the trial court;
- 3) The possibility that the reviewing court might be obliged to consider the same issue a second time; and
- 4) Miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Messinger, 2004-1664 at pg.14, 894 So.2d at 1122-23.

The proper standard of review on appeal for an order designating a judgment as final and immediately appealable, when the order is accompanied by the trial court's explicit reasons for the certification, is whether the trial court abused its discretion. *Messinger*, 2004-1664 at pg. 13, 894 So.2d at 1122.

In the instant case, both parties presented multiple theories upon which the court could conclude Creek Services, L.L.C. was either community or separate property. The trial court ultimately determined that Creek Services, L.L.C. was community property based upon a May 24, 2004 document executed by the parties entitled "Agreement Transmuting Character of Personal Property." The court found that the agreement was intended to be a donation, but was not in proper form, so the property remained community in character. In ruling, the court stated:

That's my ruling on it. And the form is the least of it, but that's the easiest way for me to just dispose of the issue. But even beyond that, should the Court of Appeals [sic] tell me that the form is correct, then there will be another day on this one on remand because there's many other issues that I see involved in that as well.

Thus, it is clear from a reading of the trial court's ruling that the court's certification of its partial judgment as final and immediately

appealable is likely to lead to multiple appeals and piecemeal litigation. The trial court clearly stated that if the court of appeal reversed its ruling on the community character of this asset on appeal, it would rule on the issue again based upon other theories. Having the trial court address all of these issues prior to appeal would prevent the likelihood of multiple appeals on the same issue and preserve judicial resources. Therefore, we conclude that the trial court abused its discretion in improperly certifying this judgment as final and immediately appealable. For this reason, the appeal must be dismissed.

Additionally, both Louis and Teresa filed motions to strike which were referred to the merits of the appeal. Louis filed a motion to strike Teresa's original brief and reply brief on the grounds that they contained irrelevant information about the events leading up to the parties' divorce. While we agree that the inclusion of such details is unnecessary to the resolution of the issues raised in this appeal, since we are dismissing the appeal, the motion to strike the briefs is moot. Teresa filed a motion to strike Louis's opposition brief for failure to contain citations to the record in support of his argument. Again, because we are dismissing the appeal, this motion to strike is also moot.

DECREE

The appeal is dismissed. Costs of this appeal are assessed to plaintiff, Teresa Hardin Hightower.

APPEAL DISMISSED.