

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1416

TERESA MAE BADEAUX FERNANDEZ

VERSUS

DONALD F. HEBERT, ET AL

*DATE OF JUDGMENT: May 4, 2007*

ON APPEAL FROM THE SEVENTEENTH JUDICIAL DISTRICT COURT  
(NUMBER 101047 DIV. "C"), PARISH OF LAFOURCHE  
STATE OF LOUISIANA

HONORABLE WALTER I. LANIER, III, JUDGE

\* \* \* \* \*

Walter Antin, Jr.  
Hammond, Louisiana  
Jacques F. Bezou  
Covington, Louisiana

Counsel for Plaintiffs/Appellants  
Teresa Mae Badeaux Fernandez  
and Charles Raymond Fernandez

Richard F. Zimmerman, Jr.  
Baton Rouge, Louisiana

Counsel for Defendants/Appellees  
J. Alvin Badeaux, Jr., Anthony  
Carroll Badeaux, Mary Claire  
Badeaux Elmore, Manuel J.  
and Lorraine Landeche Rodrigue

Henry P. Julien, Jr.  
New Orleans, Louisiana  
William W. Edelman  
Metairie, Louisiana

Counsel for Defendant/Appellee  
Thomas Badeaux

Frederick R. Bott  
New Orleans, Louisiana

Counsel for Defendants/Appellees  
Camile A. Morvant, II and  
Morvant & Cavell

\* \* \* \* \*

**BEFORE: KUHN, GAIDRY, AND WELCH, JJ.**

**Disposition: AFFIRMED.**

KUHN, J.

Plaintiff-appellant, Charles Raymond Fernandez,<sup>1</sup> appeals the trial court's judgment, granting summary judgment in favor of defendants-appellees, Manuel and Lorraine Rodrigue, and dismissing Fernandez's claims. We affirm.

The petition of Fernandez, the successor to the rights of the residuary legatee named in the will of Viola Mary Tabor Badeaux, seeks, among other things,<sup>2</sup> to have two *inter vivos* donations of 626 shares of stock in Edward Badeaux Company made to Manuel and Lorraine Rodrigue declared null.<sup>3</sup> It is undisputed that the *inter vivos* donations were in conformity with particular legacies made to Manuel Rodrigue in decedent's will and that the Rodrigues continue to own all shares of the Edward Badeaux Company stock. The gist of Fernandez's claim challenging the *inter vivos* donations is that Thomas Badeaux, the purported agent of the decedent, lacked authority to execute the acts of donations and that the decedent lacked requisite mental capacity to donate. The Rodrigues filed a motion for summary judgment seeking dismissal from the lawsuit. For purposes of the motion, the Rodrigues asserted that even if Badeaux lacked authority and the decedent lacked the requisite mental capacity, Fernandez is not entitled to relief. The trial court agreed, granted summary judgment, and dismissed Fernandez's claims against the

---

<sup>1</sup> Although this lawsuit was instituted by Teresa Mae Badeaux Fernandez, after her death Charles Raymond Fernandez, the duly-appointed testamentary executor of her succession, was substituted as plaintiff.

<sup>2</sup> Fernandez has abandoned claims to have declared null two *inter vivos* donations made by the decedent, which transferred a total of 632 shares of stock in Star Cigarette Service, Inc. to the Rodrigues.

<sup>3</sup> The first donation was of 313 shares of stock in Edward Badeaux Company made on October 18, 2001, and the second was of 313 shares of stock in Edward Badeaux Company made on January 8, 2002.

Rodrigues. This appeal followed.

Because the Rodrigues concede these issues for purposes of disposition of their motion for summary judgment, in our appellate review we will assume Thomas Badeaux lacked authority and that decedent lacked the requisite intent. In other words, in this appeal the issue of the validity of the two donations is not before us.<sup>4</sup>

A moot case is one that seeks a judgment or decree which, when rendered, can give no practical relief. *Robin v. Concerned Citizens, St. Bernard, Inc.*, 384 So.2d 405, 406 (La. 1980); *Yarbrough v. Federal Land Bank Ass'n of Jackson*, 616 So.2d 1327, 1332 (La. App. 2d Cir. 1993).<sup>5</sup>

The Rodrigues contend that even if the *inter vivos* donations are declared null, the property would be restored to the decedent's estate. Thereafter, in conformity with the particular legacies set forth in decedent's will, the 626 shares of

---

<sup>4</sup> Fernandez strenuously challenges the efficacy of the power of attorney purportedly executed by the decedent in favor of Thomas Badeaux, which included a right to conduct, manage, and transact all decedent's affairs including "donations, gifts of any kind and/or character" that Thomas Badeaux deemed necessary to make. For purposes of this appeal, because the Rodrigues concede that the *inter vivos* donations are not valid, they do not rely on the power of attorney to assert entitlement to the 626 shares of the Edward Badeaux Company stock. Thus, the efficacy of the power of attorney is not before us in this review.

<sup>5</sup> The Rodrigues refer to "prudential mootness" as the basis to sustain the dismissal of Fernandez's claims against them. According to federal jurisprudence, two varieties of mootness exist: Article III mootness and prudential mootness. Article III mootness arises from the Constitution's case and controversy requirement, i.e., Article III of the United States Constitution limits the jurisdiction of the federal courts to actual, ongoing cases and controversies. Thus, when during the course of litigation, the issues presented in a case lose their life because of the passage of time or a change in circumstances and a federal court can no longer grant effective relief, the case is considered moot. If an issue is moot in the Article III sense, the courts have no discretion and must dismiss the action for lack of jurisdiction. But the cousin of the mootness doctrine, in its strict Article III sense, is a melange of doctrines relating to the court's discretion in matters of remedy and judicial administration, which is referred to as prudential mootness. Therefore, the federal courts distinguish whether a court has jurisdiction under Article III to decide a case and the prudential concerns which may militate against the use of judicial power, i.e., treating a case as moot for prudential reasons. *See Ali v. Cangemi*, 419 F.3d 722 (8th Cir. 2005).

Edward Badeaux Company stock would be distributed to them.<sup>6</sup> Thus, the Rodrigues maintain that under either scenario, they are the owners of the stock and no practical relief is available to Fernandez. As such, urging the case is moot, the Rodrigues contend they are entitled to summary judgment as a matter of law.

In an attempt to avoid dismissal of his claims against the Rodrigues, Fernandez maintains that once the *inter vivos* donations of Edward Badeaux Company stock are declared null, as a matter of law, the 626 shares would be distributed to the residuary legatee. Fernandez asserts that when decedent donated the stock to the Rodrigues, she evinced a clear intent to revoke the legacy of the Edward Badeaux Company stock to Manuel Rodrigue set forth in her will. And relying on former La. C.C. art. 1695, he contends the reacquisition of the stock into her estate after the nullity of the *inter vivos* donations does not affect the revocation.<sup>7</sup> Thus, Fernandez urges that as part of decedent's estate, the residuary legatee is entitled to ownership of the Edward Badeaux Company stock.

Prior to the time the *inter vivos* donations were purportedly made to the Rodrigues, by La. Acts 1997, No. 1421, § 1, effective on July 1, 1999, former La. C.C. art. 1695 was replaced by La. C.C. art. 1608(3). La. C.C. art. 1608(3) states that revocation of a legacy occurs when the testator makes a subsequent *inter vivos*

---

<sup>6</sup> Although the legacy of the Edward Badeaux Company stock in decedent's will is made only to Manuel, the record contains no evidence demonstrating that the Rodrigues are separate in property, *see* La. C.C. art. 2340, and no challenge to Lorraine's entitlement to the stock has been asserted by any party.

<sup>7</sup> Former La. C.C. art. 1695 provided:

A donation *inter vivos*, or a sale made by the testator of the whole or a part of the thing bequeathed as a legacy, amounts to a revocation of the testamentary disposition, for all that has been sold or given, even though the sale or donation be null, and the thing have returned into the possession of the testator, whether by the effects of that nullity, or by any other means.

disposition of the thing that is the object of the legacy *and does not reacquire it*. With a court's declaration that the donations of the 626 shares of stock to the Rodrigues are null, the Edward Badeaux Company stock would be returned to decedent. When a contract is declared null, the parties must be restored to the situation that existed before the contract was made. *See* La. C.C. art. 2033. Thus, the stock would be part of decedent's estate at the time of her death. And because decedent would have reacquired the 626 shares of stock, under La. C.C. art. 1608(3), the *inter vivos* donation to the Rodrigues would not constitute a revocation of the legacy to Manual Rodrigue in her will. Accordingly, the Rodrigues have established that under the law in effect on the date of the donations, any declaration of the nullity of those transactions would result in restoration of the 626 shares of Edward Badeaux Company stock to the decedent's patrimony.

As additional challenges to the trial court's grant of summary judgment, Fernandez maintains that restoration of the situation that existed before the donation includes genuine issues of material fact, which preclude summary judgment. He asserts that a recalculation of the decedent's gift and estate tax would be required. But Fernandez offered no evidence to support his contention that return of stock to decedent's patrimony would include restoration of lost refunds and credits that would accrue to the benefit of the residuary legatee.<sup>8</sup> Likewise, Fernandez failed to

---

<sup>8</sup> Moreover, in *Succession of Badeaux*, 05-0737 (La. App. 1st Cir. 5/5/06), 934 So.2d 820, *writ denied*, 936 So.2d 1278, 2006-1245 (La. 9/15/06), another panel of this court held decedent's inclusion of an unequivocal directive that federal estate taxes were to be paid from the cash she died possessed of clearly evinced the intent that her residuary estate absorb the federal taxes so that particular legacies would not be burdened. And because when she died, decedent owned an annuity that was payable upon demand to her estate, the court held that the annuity (the National Health Insurance Company annuity) was a cash asset available for payment of federal estate taxes. In this appeal, Fernandez concedes that the amount of the annuity is sufficient to pay all the estate taxes even if the 626 shares of Edward Badeaux Company stock were restored to the estate as part of decedent's patrimony prior to her death because the donations were declared null.

offer any evidence whatsoever to support findings that restoration of the stock to decedent's patrimony would have to include an accounting and restoration of dividends paid to the Rodrigues between the time of donation and the declaration of nullity; that the decedent may have had more cash in her patrimony had she chosen to sell the Edward Badeaux Company stock; or that the Rodrigues would have to bear a portion of the debts, administration expenses, and taxes in decedent's succession. Because the Rodrigues made a prima facie case establishing that even if the donations were declared null, Manual Rodrigue would be entitled to ownership of the 626 shares of Edward Badeaux Company stock, the onus was on Fernandez to produce factual support sufficient to establish that restoration of the stock to the patrimony of the decedent would have benefited the residuary legatee. *See* La. C.C.P. art. 966C(2). This he did not do. Accordingly, because Fernandez has failed to establish the existence of a genuine issue of material fact, the trial court correctly granted summary judgment.

### **DECREE**

The trial court's judgment, granting summary judgment and dismissing Fernandez's claims against the Rodrigues<sup>9</sup> is affirmed in compliance with La. URCA Rule 2-16.1B. Appeal costs are assessed against plaintiff-appellant Charles Raymond Fernandez.

**AFFIRMED.**

---

<sup>9</sup> At the March 16, 2006 hearing on the Rodrigues' motion for summary judgment, Fernandez stated that he had asserted no claim for damages besides that for the restoration of the 626 shares of Edward Badeaux Company stock to the decedent's estate, i.e., the claim at issue here.