

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 0327

THE STANDARD FIRE INSURANCE COMPANY

VERSUS

RONALD GALLAWAY, ANGELA GALLAWAY, AND
COUNTRYWIDE HOME LOANS, INC.

Consolidated With

NO. 2007 CA 0328

RONALD GALLAWAY

VERSUS

ANGELA GALLAWAY

Judgment Rendered: November 2, 2007.

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On Appeal from the
21st Judicial District Court,
In and for the Parish of Livingston,
State of Louisiana
Trial Court No. 106484 c/w 107974

Honorable Ernest G. Drake, Jr., Judge Presiding

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

CARTER, C. J.

In this concursus proceeding, appellant, Ronald Gallaway, appeals asserting that the trial court was manifestly erroneous in determining that the property in question was the separate property of appellee, Angela Gallaway. We have thoroughly reviewed the evidence in the record and find no manifest error in the trial court's factual findings or any abuse of discretion on the part of the trial court.

The parol evidence rule does not apply when the writing is collateral to the issue involved and the action is not based upon the writing. **Dawson v. Dawson**, 610 So.2d 917, 919 (La. App. 1 Cir. 1992). Clearly, the determination of the character of the property at issue as community or separate is an issue that is totally collateral to the act of sale since the instant suit involves the payment of insurance proceeds after a fire and does not concern the enforcement of an obligation created by the act of sale. Accordingly, the trial court correctly admitted the parol evidence.

Furthermore, the trial court's finding regarding the nature of the property as community or separate is a factual determination that will not be disturbed absent manifest error. **Ross v. Ross**, 02-2984 (La. 10/21/03), 857 So.2d 384, 395; **Harvey v. Amoco Production Co.**, 96-1714 (La. App. 1 Cir. 6/20/97), 696 So.2d 672, 677. When findings are based on determinations regarding the credibility of witnesses, the manifest error/clearly wrong standard demands great deference to the trier of fact. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). We find that the documentary evidence executed by *both* parties and corroborated by independent testimony at trial were sufficient for a rational trier of fact to conclude that the presumption of community property was rebutted and the

subject property was Angela Gallaway's separate property as it was explicitly declared and acknowledged in the act of sale and mortgage documents admitted into evidence.¹

The trial court's reasons for judgment and controlling precedent reasonably support the trial court's decision. Therefore, we affirm the trial court's judgment in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2A(2), (5), (6), (7), and (8). All costs associated with this appeal are assessed against defendant-in-concursus/appellant, Ronald Gallaway.

AFFIRMED.

¹ The classification of property as separate or community is fixed at the time of its acquisition. **Smith v. Smith**, 95-0913 (La. App. 1 Cir. 12/20/96), 685 So.2d 649, 651.