Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #026

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **8th day of May, 2012**, are as follows:

BY GUIDRY, J.:

2011-CC-2434 ROSE MANALE MCCANN v. WALTER LESTER MCCANN (Parish of E. Baton Rouge)

For the reasons stated, we find the Family Court for the Parish of East Baton Rouge did not retain exclusive subject matter jurisdiction over the partition of community property when one of the former spouses died. See La. Rev. Stat. 13:1401(A)(2)(a). Thus, the Family Court erred in overruling the defendant executrix's exception of lack of subject matter jurisdiction. We therefore reverse that ruling.
REVERSED.

WEIMER, J., dissents and assigns reasons.

05/08/2012

SUPREME COURT OF LOUISIANA

NO. 2011-CC-2434

ROSE MANALE MCCANN

VERSUS

WALTER LESTER MCCANN

ON SUPERVISORY WRITS TO THE FAMILY COURT FOR THE PARISH OF EAST BATON ROUGE

GUIDRY, J.

We granted this writ application to determine whether the Family Court for the Parish of East Baton Rouge Parish retains subject matter jurisdiction over a proceeding for partition of community property, where one of the former spouses died after the partition proceeding was instituted in the Family Court. For the reasons expressed herein, we hold the Family Court no longer had exclusive subject matter jurisdiction over the partition of community property when one of the former spouses died. Thus, the Family Court erred in overruling the defendant executrix's exception of lack of subject matter jurisdiction.

FACTS AND PROCEDURAL HISTORY

On May 29, 2009, Rose Manale McCann (hereinafter "plaintiff" or "Ms. McCann") filed a petition for divorce against Walter Lester McCann (hereinafter "defendant" or "Mr. McCann") in the Family Court for the Parish of East Baton Rouge. Pursuant to a joint motion for judgment of separation of property, the Family Court on August 31, 2009, citing La. Civ. Code art. 2374(C), terminated the community of acquets and gains retroactively as of May 29, 2009.[1] A judgment

[1] Prior to its amendment by 2010 La. Acts, No. 603, § 1, effective June 25, 2010, La. Civ. Code art. 2374(C) stated: "When a petition for divorce has been filed, either spouse may obtain a judgment decreeing separation of property by a rule to show cause and upon proof that the spouses have lived separate and apart without reconciliation for at least thirty days from the date of, or prior to, the filing of the petition for divorce and have not reconciled."

granting the divorce was later signed on January 13, 2010, leaving the identification, valuation, management, and partition of the community property as the remaining issues in the case.

Consistent therewith, on August 17, 2009, Ms. McCann filed in the Family Court a petition for partition of community property pursuant to La. Rev. Stat. 9:2801.[2] In her petition, Ms. McCann also moved the Family Court to appoint various experts to assist in the partition. By judgment dated January 19, 2010, the Family Court appointed a real estate expert to inventory and value the real estate held by the community. On February 3, 2010, the court appointed a financial expert to value the remainder of the property, trace the income stream, oversee the real estate expert and the valuation of the real estate, identify any assets, and evaluate and assess the pending motions of the parties.

On June 16, 2010, Ms. McCann filed a "Motion to Appoint Independent Third Party Professional to Manage the Community Owned Business and Investment Assets, for Injunctive Relief, and for Division of Monies in Community Account," alleging that Mr. McCann had been hospitalized and was no longer capable of managing the community businesses and assets. A short time later, on June 27, 2010, Mr. McCann died.

Thereafter, on June 30, 2010, a "Notice of Filing of Succession" was filed in the Family Court suit, stating that Mr. McCann's succession had been opened in the 19th Judicial District Court under Probate Number 91,681. On July 8, 2010, Ms. McCann filed a motion to substitute the succession executrix, Peggy

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[2] La. Rev. Stat. 9:2801(A), the basis for the instant suit filed by Ms. McCann, states in pertinent part:

> When the spouses are unable to agree on a partition of community property or on the settlement of the claims between the spouses arising either from the matrimonial regime, or from the co-ownership of former community property following termination of the matrimonial regime, either spouse, as an incident of the action that would result in a termination of the matrimonial regime or upon termination of the matrimonial regime or thereafter, may institute a proceeding ... [to] partition the community....

Blackwell, the decedent's daughter, as the party defendant in the partition proceeding. In the motion, Ms. McCann asked the Family Court to establish a case management schedule and to include the fixing of deadlines for the filing of detailed descriptive lists and other matters. On July 16, 2010, a consent judgment was signed by counsel for the parties agreeing, among other things, that the remainder of the funds would be administered by the financial expert previously appointed by the court, that the real estate expert previously appointed by the court would "run the real estate business" of the parties, with the assistance of "Karen Harvey," meet with and regularly report to Peggy Blackwell and Rocky McCann, and that the financial expert would recommend a "financial advisor expert ... to advise the parties regarding community investment decisions, if necessary."

On July 23, 2010, the succession executrix filed a "Declinatory Exception of Lack of Subject Matter Jurisdiction and Motion to Transfer," seeking to have the partition action transferred to the 19th Judicial District Court. The Family Court overruled the exception, denied the motion to transfer, and signed a judgment on September 14, 2010, substituting Ms. Blackwell, in her capacity as executrix for the succession, into the partition action as the defendant, in place of the deceased Mr. McCann.

Ms. Blackwell then sought writs in the court of appeal, which denied the application. *McCann v. Blackwell*, 10-1896 (La. App. 1 Cir. 1/7/11) (unpublished). However, this court granted the defendant executrix's writ application and remanded the matter to the appellate court for briefing, argument and full opinion. 11-0244 (La. 4/1/11), 60 So.3d 1240. On remand, the appellate court by a majority decision again denied Ms. Blackwell's writ application. *McCann v. McCann*, 10-1896 (La. App. 1 Cir. 10/5/11), 77 So.3d 997. This court granted the writ application to consider the correctness of the lower courts' rulings. *McCann v. McCann*, 11-2434 (La. 1/20/12), 78 So.3d 130.

LAW AND DISCUSSION

Ms. Blackwell asserts the Family Court of East Baton Rouge Parish erred in denying her exception of lack of subject matter jurisdiction and motion to transfer the case to the 19th J.D.C., in substituting her as the defendant in the partition proceeding, and in determining that La. Rev. Stat. 9:2801 is applicable in the partition action. There is no dispute that the Family Court had jurisdiction over the partition proceeding when it was originally instigated by Ms. McCann while Mr. McCann was still alive. Thus, the issue before us is whether the Family Court retained exclusive subject matter jurisdiction over the partition proceeding when Mr. McCann died. To answer this question, we must review the constitutional and legislative provisions governing the subject matter jurisdiction of the Family Court for the Parish of East Baton Rouge, a court of limited jurisdiction.

Jurisdiction is the legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled. La. Code Civ. Proc. art. 1. Jurisdiction over the subject matter is the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted. La. Code Civ. Proc. art. 2. Stated another way, a court has jurisdiction over the subject matter only when the particular action falls within the class of proceedings that the court has been given the authority to hear and decide. Frank L. Maraist, 1 *La. Civil Law Treatise*, "Civil Procedure," § 2:2, p. 6. That authority may come only from the law, because "[t]he jurisdiction of a court over the subject matter of an action or proceeding cannot be conferred by consent of the parties." La. Code Civ. Proc. art. 3. Accordingly, a judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. *Id.*

Courts are classified as courts of general jurisdiction or limited jurisdiction. Maraist, § 2:2, p. 7. Courts of general jurisdiction have the authority generally to adjudicate most kinds of actions, while courts of limited jurisdiction are established to provide expertise and expeditious handling of special types of cases. *Id.*

With regard to the original jurisdiction of the district courts, La. Const. art. V, § 16(A) provides as follows:

> (A) Original Jurisdiction. (1) Except as otherwise authorized by this constitution or except as heretofore or hereafter provided by law for administrative agency determinations in worker's compensation matters, a district court shall have original jurisdiction of all civil and criminal matters. (2) *It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property, except as provided in (3) below*; the right to office or other public position; civil or political right; probate and succession matters; except for administrative agency determination provided for in (1) above, the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships. *(3) The legislature may provide by law that a family court has jurisdiction of cases involving title to movable and immovable property when those cases relate to the partition of community property and the settlement of claims arising from matrimonial regimes when such action arises as a result of divorce or annulment of marriage.* (Emphasis added.)

Thus, the district courts will not have general original jurisdiction over cases relating to the partition of community property where the legislature has acted to vest such jurisdiction in the family courts.

With regard to the jurisdiction of the family courts, La. Const. art. V, § 18 provides as follows: "Notwithstanding any contrary provision of Section 16 of this Article, juvenile and *family courts shall have jurisdiction as provided by law*." (Emphasis added). In *Welborn v. 19th Judicial District Court*, this court explained that the Louisiana Constitution allows the legislature to divest the district court of jurisdiction in certain types of matters. 07-1087 (La. 1/16/08), 974 So.2d 1. By giving effect to the "notwithstanding" clause of Section 18 and its specific reference to Section 16, the legislature is empowered to divest the district court of

certain jurisdiction and vest that jurisdiction exclusively in a specialized family or juvenile court. *See Welborn*, 07-1087, pp. 12-13, 974 So.2d at 9.

Thus, in accordance with the constitutional provisions, the legislature has specified the jurisdiction of the Family Court for the Parish of East Baton Rouge in La. Rev. Stat. § 13:1401, which provides as follows:[3]

> A. There is hereby established the family court for the parish of East Baton Rouge, which shall be a court of record with exclusive jurisdiction in the following proceedings:
>
> (1) All actions for divorce, annulment of marriages, claims for contributions made by one spouse to the education or training of the other spouse, establishment or disavowal of the paternity of children, spousal and child support, and custody and visitation of children, as well as of all matters incidental to any of the foregoing proceedings, including but not restricted to the issuance of conservatory writs for the protection of community property, the awarding of attorney fees in judgments of divorce, the cumulation of and rendering executory of spousal and child support, the issuance of writs of fieri facias and garnishment under judgments of the court for spousal and child support and attorney fees, jurisdiction of which was vested in the Nineteenth Judicial District Court for the parish of East Baton Rouge prior to the establishment of the family court for the parish of East Baton Rouge.
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> (2)(a) *All actions between spouses or former spouses for partition of community property and property acquired pursuant to a matrimonial regime.*
>
> (b) All actions for the termination or modification of a matrimonial regime.
>
> (c) All actions for the settlement and enforcement of claims arising from matrimonial regimes or the establishment thereof.
>
> (d) All actions between former spouses seeking the enforcement of a judicial or contractual settlement of claims provided in this Subsection.
>
> (3) All proceedings for writs of habeas corpus for the determination and enforcement of rights to the custody of minors or for the release of any person in actual custody in any case of which the family court has original jurisdiction.
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> B. The family court for the parish of East Baton Rouge has all such additional jurisdiction, power, and authority now or hereafter provided by law. (Emphasis added).

[3] All references herein to La. Rev. Stat. 13:1401 are to the statute as it was prior to its amendment by 2010 La. Acts, No. 754, § 2, which added "and nonsupport," following "spousal and child support," in Section (A)(1). Pursuant to Section 5 of Act 754, the provisions of the Act became effective January 1, 2011.

Therefore, under the Louisiana Constitution and the legislative pronouncements, the Family Court in this case has been granted the exclusive jurisdiction over "[a]ll actions between spouses and former spouses for partition of community property and property acquired pursuant to a matrimonial regime." Thus, as noted previously, Ms. McCann's petition for partition of the community property was properly filed in and entertained by the Family Court when it was originally filed. The question before us is whether the Family Court was divested of subject matter jurisdiction when one of the former spouses died, because at that point the partition of community property and property acquired pursuant to a matrimonial regime was no longer "between spouses and former spouses" but between Ms. McCann and the succession legatees.

The lower courts resolved the question in favor of the Family Court retaining subject matter jurisdiction over the partition of community property even after Mr. McCann died. The appellate court reasoned that the partition action was properly filed in the Family Court before Mr. McCann died and that the action to partition the community property did not abate upon Mr. McCann's death, as it was a heritable obligation rather than a strictly personal obligation. Slip op., pp. 4-5 (citing La. Code Civ. Proc. arts. 428, 734, 801 *et seq.*, and *Larocca v. Larocca*, 597 So.2d 1000 (La. 1992)). Thus, the majority continued, the Family Court retained jurisdiction over the partition action and the succession representative was the proper party to be substituted into the partition proceeding for the deceased Mr. McCann. *Id.*, p. 5. The majority rejected the contention that the Family Court has jurisdiction only over spouses, citing *Spinosa v. Spinosa*, 05-1935 (La. 7/6/06), 934 So.2d 35, wherein this court held that, under the authority of La. Rev. Stat. 13:1401(A)(2)(c), the Family Court had jurisdiction over a trust, into which it was asserted that the former husband had fraudulently diverted community funds without his former wife's permission, in order to resolve conflicts over the

classification of assets held by the trust. *Id.*, p. 6. Finally, the majority below pointed out that, in domestic proceedings, there is an established doctrine of continuing jurisdiction, i.e., once a trial court obtains jurisdiction in a divorce or separation proceeding, it retains jurisdiction over any incidental matters connected with the original proceedings. *Id.* (citing *Golden v. Waterhouse*, 41,889, p. 2 (La. App. 2 Cir. 2/28/07), 953 So.2d 927, 928 (citing *Gowins v. Gowins*, 466 So.2d 32, 35 (La. 1985)).

We disagree with the reasoning of the majority below. The dissenting judge in our view properly focused on the limiting language in the enabling statute, La. Rev. Stat. 13:1401. It is well established that "[t]he starting point for the interpretation of any statute is the language of the statute itself." *Foti v. Holliday*, 09-0093 (La. 10/30/09), 27 So.3d 813, 817 (quoting *Dejoie v. Medley*, 08-2223 (La. 5/5/09), 9 So.3d 826, 829). Legislation, which is defined as the solemn expression of legislative will, La. Civ. Code art. 2, is to be interpreted according to the rules set forth in the Civil Code. *Glasgow v. PAR Minerals Corp.*, 10-2011 (La. 5/10/11), 70 So.3d 765, 768. The basic rule governing statutory interpretation is set forth in La. Civ. Code art. 9: "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." *See also* La. Rev. Stats. 1:3 and 1:4.[4]

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[4] La. Rev. Stat. 1:3, entitled "Words and phrases; how construed," provides:

> Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.
>
> The word "shall" is mandatory and the word "may" is permissive.

La. Rev. Stat. 1:4, entitled "Unambiguous wording not to be disregarded," provides:

> When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.

The Constitution allows for the granting of limited jurisdiction to the family courts, and the legislature has specified the parameters of that jurisdiction for the Family Court for the Parish of East Baton Rouge in La. Rev. Stat. 13:1401. In La. Rev. Stat. 13:1401(A)(2)(a), the legislature vested the Family Court with "exclusive jurisdiction" over "[a]ll actions between spouses and former spouses for partition of community property and property acquired pursuant to a matrimonial regime." After the death of Mr. McCann, Ms. McCann's partition action was no longer an action to partition community property or property acquired pursuant to a matrimonial regime between former spouses; instead, it became an action to partition such movable and immovable property between Ms. McCann and the succession legatees. To give effect to the statutory and constitutional language, and not render any part of that statute meaningless, we must conclude the Family Court was divested of exclusive but limited subject matter jurisdiction when one of the former spouses died. To do otherwise would be to enlarge the limited jurisdiction of the Family Court beyond that contemplated by the legislature.

We see no contradiction between our applications of La. Rev. Stat. 13:1401 today and in our recent decision in *Spinosa v. Spinosa*. In *Spinosa*, the partition action was clearly between "spouses or former spouses," because the proceeding was between the former wife and the former husband. We held that the Family Court nevertheless had subject matter jurisdiction over the former wife's efforts to determine whether property deposited into a trust settled by the former spouses was community property, and, if that property was found to be community, the Family Court would have jurisdiction over any proceedings regarding the former wife's claim against the trust seeking partition. In *Spinosa*, we recognized the specific language of La. Rev. Stat. 13:1401(A)(2)(c), which grants the Family Court exclusive jurisdiction over "all actions for the settlement and enforcement of claims arising from matrimonial regimes or the establishment thereof." We

reasoned that, "unlike subsections 2(a) and 2(d) of La. Rev. Stat. 13:1401[(A)], the jurisdiction established by subsection 2(c) over actions for the settlement and enforcement of claims is not limited to actions 'between spouses or former spouses.'" *Spinosa*, 05-1935, 934 So.2d at 47. Implicit in that reasoning, however, is the recognition that Subsection 2(a) of La. Rev. Stat. 13:1401(A) does explicitly limit the Family Court's exclusive jurisdiction to "[a]ll actions between spouses and former spouses for partition of community property and property acquired pursuant to a matrimonial regime." Indeed, that was precisely the primary action in the *Spinosa* case when the former wife sought to partition the community property. In the present case, although the Family Court initially had subject matter jurisdiction over Ms. McCann's partition action, once Mr. McCann died, the partition proceeding was no longer an action to partition community property between "spouses or former spouses…." Accordingly, the Family Court lacked subject matter jurisdiction to entertain the partition proceeding.

CONCLUSION

For the reasons stated, we find the Family Court for the Parish of East Baton Rouge did not retain exclusive subject matter jurisdiction over the partition of community property when one of the former spouses died. *See* La. Rev. Stat. 13:1401(A)(2)(a). Thus, the Family Court erred in overruling the defendant executrix's exception of lack of subject matter jurisdiction. We therefore reverse that ruling.[5]

REVERSED

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[5] We need not address the defendant executrix's lengthy arguments regarding whether the Family Court erred in ruling that La. Rev. Stat. 9:2801 is applicable to the partition proceeding as it now stands, as opposed to the codal articles governing the judicial partition of movables and immovables owned in indivision. Because the partition proceeding will be transferred to the 19th Judicial District Court, the Family Court's ruling as to the applicable law is moot.

05/08/2012
SUPREME COURT OF LOUISIANA

NO. 2011-CC-2434

ROSE MANALE MCCANN

VERSUS

WALTER LESTER MCCANN

ON SUPERVISORY WRITS TO THE FAMILY COURT
FOR THE PARISH OF EAST BATON ROUGE

WEIMER, J., dissents.

I respectfully dissent. I believe the family court retains jurisdiction over a pending community property partition suit arising from a matrimonial regime despite the death of one spouse.

The jurisdiction of the family court, the majority correctly notes, is provided by statute, La. R.S. 13:1401. As the majority also correctly notes, the family court had jurisdiction at the time that Ms. McCann filed her petition for partition of community property. However, the majority overlooks that La. R.S. 13:1401(A)(2)(c) confers jurisdiction over "[a]ll actions for the settlement and enforcement of claims arising from matrimonial regimes." (Emphasis added.) Furthermore, as this court has already held, "the jurisdiction established by subsection 2(c) over actions for the settlement and enforcement of claims is not limited to actions 'between spouses or former spouses.'" **Spinosa v. Spinosa**, 2005-1935, p. 17 (La. 7/6/06), 934 So.2d 35, 47. Thus, the majority now errs when ruling that jurisdiction over a matter "arising from [a] matrimonial [regime]" under La. R.S. 13:1401(A)(2)(c) was lost when one of the former spouses died because this court has previously rejected the premise that the family court's jurisdiction is limited to actions between spouses or former spouses.

Additionally, the majority's ruling is contrary to the longstanding rule that "the personal jurisdiction of a court over a party is determined as of the time of the filing of the suit." **de Reyes v. Marine Management and Consulting, Ltd.**, 586 So.2d 103, 114 (La. 1991). Although **de Reyes** involved *in personam* jurisdiction, and this matter involves subject matter jurisdiction, the principle is the same. Jurisdiction should be determined at the filing of the action. Indeed, the majority's ruling turns this timing rule on its head by effectively transferring the partition action to a district court that was powerless to hear the action when it was filed. See **Welborn v. 19th Judicial Dist. Court**, 2007-1087 (La. 1/16/08), 974 So.2d 1, 9 ("[W]hen the legislature enacted La. Rev. Stat. § 13:1401(A), vesting the Family Court with *exclusive* jurisdiction to hear cases involving divorce, paternity, child support, spousal support, partition of community property, etc., it simultaneously divested the 19th JDC of jurisdiction over these matters.").

As indicated, jurisdiction remains in the family court once established, even following the death of a spouse, based on this matter "arising from martimonial regimes." La. R.S. 13:1401(A)(2)(c).

Because jurisdiction was unquestionably proper in the family court at the outset, the Code of Civil Procedure provides a framework for substituting parties when vacancies are caused by the death of a party, such as happened here with Mr. McCann's passing. See La. C.C.P. art. 801, *et seq*. The majority's present holding gives an incomplete and erroneous effect to the Code of Civil Procedure's substitution articles, which should be applied to substitute the succession representative and place the succession representative into Mr. McCann's stead in the action already pending in the family court. See La. C.C.P. art. 801 (describing voluntary substitution of a

legal successor in place of a deceased litigant); see also La. C.C.P. art. 802 (describing compulsory substitution of a legal successor in place of a deceased litigant).

Moreover, La. C.C.P. art. 428 provides:

> An action does not abate on the death of a party. The only exception to this rule is an action to enforce a right or obligation which is strictly personal.

As the court of appeal explained in the instant matter, while an action for divorce may be strictly personal, the resolution of property interests is not strictly personal. See **Larocca v. Larocca**, 597 So.2d 1000, 1004-05 (La. 1992) (holding that the death of a party's spouse did not result in the abatement of a divorce action in which an unresolved ancillary claim involving a property interest had been appended). Furthermore, in domestic proceedings, this court established the doctrine of continuing jurisdiction, *i.e.*, once a trial court obtains jurisdiction in a divorce or separation proceeding, it retains jurisdiction over any incidental matters connected with the original proceedings. See **Gowins v. Gowins**, 466 So.2d 32, 35 (La. 1985). Thus, the majority's present ruling runs contrary not only to the substitution articles in the Code of Civil Procedure, but also to the previously-recognized doctrine of continuing jurisdiction.

The majority's present ruling also invites judicial inefficiency. At the time of Mr. McCann's passing, the partition action was pending for approximately one year. The parties had staked out their positions and already actively litigated their dispute. In response, the family court judge had appointed a real estate expert to inventory and evaluate immovable property held by the community. The family court judge also had appointed a financial expert to value the remainder of the property at issue in the McCanns' divorce. Had the matter proceeded to the completion of a trial after which

Mr. McCann died before a judgment was signed, it is unclear whether the majority's ruling would divest the family court of the power to sign the judgment.

The majority's ruling makes no provisions for this and similar situations that could easily be envisioned regarding the finality of the work already undertaken by the family court when a party dies during litigation. What is certain, however, is that the substitution articles in the Code of Civil Procedure, and the longstanding rule that jurisdiction is evaluated at the time of filing, would provide for continuity of the work already undertaken by the family court. What is equally certain is that transferring this action to the district court now, as the majority of this court effectively does, is a step backwards from the prior progress made by the family court to actually resolve this community property dispute.