

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 2250

FRANCIS X. KRUPA

VERSUS

ELIZABETH GATES KRUPA

Judgment rendered November 3, 2006.

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Appealed from the
Family Court

in and for the Parish of East Baton Rouge, Louisiana

Trial Court No. 133,923

Honorable Luke A. Lavergne, Judge

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ELIZABETH GATES KRUPA

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Hughes, J. - concurs.

PETTIGREW, J.

This appeal challenges the trial court's judgment denying plaintiff's claim for reimbursement in connection with the partitioning of the community property that existed between plaintiff and defendant. For the reasons that follow, we affirm the judgment below.

According to the record, plaintiff, Francis X. Krupa, and defendant, Elizabeth Gates Krupa, appeared before the trial court on February 10, 2005, for a trial on the "Petition For Judicial Partition Of Community Property" filed by Mr. Krupa. Counsel for Mr. Krupa argued that his client was entitled to reimbursement of one-half (\$9,250.00) of the funds that he spent from his separate property to repay a thrift loan, which he alleged was taken out for the benefit of the community. Mr. Krupa testified at trial that his current wife had loaned him the money to pay off the outstanding thrift loan. However, when the trial court asked for documentation to support his reimbursement claim, Mr. Krupa was unable to produce any proof of where he obtained the funds to pay off the loan in question. Counsel for Mr. Krupa requested that the record be left open for 10 days to allow Mr. Krupa time to furnish the requested documentation. When counsel for Mrs. Krupa objected to the record being left open, the trial concluded. On February 24, 2005, the trial court signed a judgment partitioning the community property without granting Mr. Krupa's reimbursement claim.

Thereafter, the parties each filed a motion for new trial. Mrs. Krupa challenged the "monetary values" in the February 24, 2005 judgment and "the designation of the assets as to community or separate assets" as contrary to the stipulations reached between the parties and the evidence introduced before the trial court. Mr. Krupa argued that the judgment was contrary to the law and evidence and that he had newly discovered evidence important to the cause. Following a hearing on the motions, the trial court rendered judgment denying Mr. Krupa's motion but granting Mrs. Krupa a new trial for recalculation of assets. Subsequently, on June 2, 2005, the trial court rendered an "Amended Judgment Of Partition Of Community Property."

It is from this judgment that Mr. Krupa has appealed. In his first assignment of error, Mr. Krupa contends the trial court's refusal to grant his \$9,250.00 reimbursement claim for payment of a community debt with separate funds is manifestly erroneous. Mr. Krupa argues that his uncontradicted testimony at trial, i.e., that he paid the claim that is in question with his separate funds, clearly supports his position on this issue.

If separate property of a spouse has been used to satisfy a community obligation, that spouse, upon termination of the community property regime, is entitled to reimbursement for one-half of the amount or value of the property at the time it was used. La. Civ. Code art. 2365. The burden of proof is on the party claiming reimbursement to show that separate funds existed and that those funds were used for the benefit of the community. **Charles v. Charles**, 2005-0129, p. 7 (La. App. 1 Cir. 2/10/06), 923 So.2d 786, 789.

A trial court's finding regarding the nature of property as community or separate is a factual determination subject to manifest error review. **Biondo v. Biondo**, 99-0890, p. 4 (La. App. 1 Cir. 7/31/00), 769 So.2d 94, 99. The two-part test for the appellate review of a factual finding is: 1) whether there is a reasonable factual basis in the record for the finding of the trial court, and 2) whether the record further establishes that the finding is not manifestly erroneous. Thus, if there is no reasonable factual basis in the record for the trial court's finding, no additional inquiry is necessary. However, if a reasonable factual basis exists, an appellate court may set aside a trial court's factual finding only if, after reviewing the record in its entirety, it determines the trial court's finding was clearly wrong. **Melancon v. Melancon**, 2004-2569, p. 4 (La. App. 1 Cir. 12/22/05), 928 So.2d 10, 12, writ denied, 2006-0150 (La. 5/5/06), 927 So.2d 310.

In the instant case, the trial court concluded that the community debt in question was paid off with community funds and, thus, denied Mr. Krupa's \$9,250.00 reimbursement claim. The trial court noted that Mr. Krupa failed to produce any evidence to support his reimbursement claim. Based on our review of the record before us, we

find that the trial court's conclusions in this regard were reasonable and that its findings were not manifestly erroneous. Accordingly, we decline to disturb same.

In his second assignment of error, Mr. Krupa alleges the trial court erred in not granting his motion for a new trial and allowing him the opportunity to submit proof that the loan in question was paid off with separate funds. Mr. Krupa argues that because the issue of the loan payment had never been questioned by Mrs. Krupa prior to trial, he did not anticipate his reimbursement claim being disputed and, thus, did not bring the documentation regarding the loan repayment with him to trial. Accordingly, Mr. Krupa asserts, he should have been granted a new trial so that he could produce same. We find no merit to this argument.

The established rule in this circuit is that the denial of a motion for new trial is not an appealable judgment absent a showing of irreparable harm.¹ **Dixon v. First Premium Ins. Group**, 2005-0988, p. 5 n.3 (La. App. 1 Cir. 3/29/06), 934 So.2d 134, 138 n.3, writ denied, 2006-0978 (La. 6/16/06), 929 So.2d 1291. There has been no showing of irreparable harm in this case. Thus, we need not address Mr. Krupa's argument regarding the trial court's denial of his motion for new trial.

For the above and foregoing reasons, we affirm the judgment below and assess all costs associated with this appeal against plaintiff, Francis X. Krupa. We issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B.

AFFIRMED.

¹ We note that La. Code Civ. P. art. 2083 was amended by La. Acts 2005, No. 205 § 1, effective January 1, 2006, to remove the longstanding provision that interlocutory judgments, such as the denial of a motion for new trial, that "may cause irreparable injury" are appealable. Article 2083 now provides that interlocutory judgments are only appealable when "expressly provided by law."