

MARIE BLANCHARD RADAU

NUMBER 2006 CA 1042

VERSUS

FIRST CIRCUIT

WILLIE CHARLES RADAU, III

COURT OF APPEAL

STATE OF LOUISIANA

JAW WELCH, J., CONCURRING.

JUN 13 2007

I respectfully concur with the result reached in this case. While I agree that the trial court erred as a matter of law in failing to award Ms. Radau her reimbursement claims, I believe that the trial court's error was in its underlying reason for disregarding the evidence as opposed to its action in disregarding the evidence that was properly introduced at the trial.

Louisiana Civil Code article 2358 provides that “[u]pon termination of a community property regime, a spouse may have against the other spouse a claim for reimbursement.” The Civil Code then enumerates specific instances in which reimbursement is permissible, including reimbursement for payments of community obligations made from the separate property of a spouse. See La. C.C. art. 2365. The right of reimbursement, however, is a claim of one spouse against the other and not against the community itself. Hence, La. C.C. art. 2358 provides that “[r]eimbursement shall be made from the patrimony of the spouse who owes reimbursement.”

Louisiana Revised Statutes 9:2801 sets forth the procedure for partitioning community property and settling the claims of the spouses arising from matrimonial regimes and co-ownership of former community property, and provides, in pertinent part as follows:

(A) When the spouses are unable to agree on a partition of community property or on the settlement of claims between the spouses arising from either the matrimonial regime, or from the co-ownership of former community property following termination of the matrimonial regime, either spouse ... may institute a proceeding, which shall be conducted in accordance with the following rules:

(1)(a) Within forty-five days of service of a motion, each party shall file a sworn detailed descriptive list of **all community property, the fair market value and location of each asset, and all community liabilities....**

(b) Each party shall affirm under oath that the detailed descriptive list filed by that party contains all of the **community assets and liabilities** then known to that party....
(Emphasis added)

Notably, these provisions do not *require* the reimbursement claims of the parties be placed on the detailed descriptive list. All that is required of the parties is that they list all community property (or assets) and liabilities on the detailed descriptive list. Thereafter, the court partitions the community by “valu[ing] the assets at the time of trial on the merits, determine[ing] the liabilities, and adjudicat[ing] the claims of the parties” (*i.e.* their reimbursement claims). La. R.S. 9:2801(A)(4).

In its reasons for judgment, the trial court explained that it was disregarding evidence concerning reimbursement claims of Mrs. Radau, which totaled \$7,146.57, because the claims were not “listed ... claims on Mrs. Radau’s sworn detailed descriptive list, as amended” This was error since Mrs. Radau’s reimbursement claims were not required to be “listed” on her detailed descriptive list. Accordingly, I would reverse that portion of the judgment and remand for consideration of those reimbursement claims.