

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0926

IN THE MATTER OF THE SUCCESSION OF  
EARNESTINE R. KINCHEN

**Judgment rendered March 28, 2007.**

\* \* \* \* \*

Appealed from the  
19<sup>th</sup> Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 79,283  
Honorable Timothy E. Kelley, Judge

\* \* \* \* \*

*E.K.H.  
KAD*

ETTA KAY HEARN  
BATON ROUGE, LA

ATTORNEY FOR  
PLAINTIFFS-APPELLEES  
DOROTHY RICKETTS, SHIRLEY  
DAVIS, FLOYD RANSON &  
FREDRICK RANSON

CURTIS K. STAFFORD, JR.  
BATON ROUGE, LA

ATTORNEY FOR  
DEFENDANT-APPELLANT  
CONNIE A. MOORE

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

*Hughes, J., dissents with reasons.*

**PETTIGREW, J.**

In this case, appellant, Connie Moore, filed a proof of claim against the succession of Earnestine R. Kinchen wherein she sought to recover over \$125,000.00 for various personal loans she allegedly made to Ms. Kinchen prior to her death, rental payments collected by Ms. Kinchen on property owned by Ms. Moore, and labor and materials for repairs and improvements made to property owned by Ms. Kinchen. The trial court concluded that Ms. Moore was not a credible witness and found that she had failed to prove her monetary claims against the succession. This appeal by Ms. Moore followed. For the reasons set forth below, we affirm.

It is well settled in Louisiana law that a trial court's findings of fact may not be reversed absent manifest error or unless clearly wrong. **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). The reviewing court must do more than just simply review the record for some evidence that supports or controverts the trial court's findings; it must instead review the record in its entirety to determine whether the trial court's findings were clearly wrong or manifestly erroneous. *Id.* If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.* at 882-883. The manifest error standard demands great deference to the trier of fact's findings; for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Thus, where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.*

We have thoroughly reviewed the evidence in this case and are convinced that the findings of the trial court are reasonable in light of the record in its entirety. Based on the credibility determinations made by the trial court, it was reasonable to find that Ms. Moore failed to prove her claims against the succession. Thus, in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.2A(5), (6), and (8), we affirm the judgment of the trial court. In so doing, we attach and adopt the trial court's Written Reasons For Judgment,

which correctly and succinctly sets forth the facts of this case. All costs associated with this appeal are assessed against appellant, Connie Moore.

**AFFIRMED.**

IN THE MATTER OF THE  
SUCCESSION OF  
EARNESTINE R KINCHEN

NO: 79,283 SEC: 22  
19<sup>TH</sup> JUDICIAL DISTRICT COURT  
STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

WRITTEN REASONS FOR JUDGMENT

This matter came before the Court for bench trial pursuant to regular assignment on October 18, 2005 through October 20, 2005, and concluded on October 27, 2005. Present in court on all four days were the following: Curtis K. Stafford, Jr., counsel for claimant and defendant in reconvention, Connie Moore, and Etta Kay Hearn, counsel for the Succession of Earnestine R. Kinchen, respondent and plaintiff in reconvention. As set forth in the "Creditor's Proof of Claim," Connie A. Moore asserts various monetary claims against the Succession of Earnestine R. Kinchen. As set forth in its "Answer to Proof of Claims and Reconventional Demand, and Petition to Recognize the Heirs of Earnestine Kinchen as Owners of Skylark Property, and Petition to Recover All Rents and Amounts Paid on the Skylark and Washington Property, and Rule to Show Cause Why the Rent on Skylark Should Not Be Applied to the Mortgage Note," and the "Amended and Supplemented" version thereof, the Succession of Earnestine R. Kinchen prays for judgment in its favor regarding several issues.

For oral reasons assigned, the Court ruled that it would accept documentary evidence but not accept any parol evidence with regard to a claim of ownership of the Skylark property. Further, the Court ruled that it would accept evidence on the issue of fraud or duress with the donation of money. At the close of trial on October 20, 2005, the parties were given until Tuesday, October 25, 2005 to submit post-trial briefs, and oral argument of counsel was set for Thursday, October 27, 2005. On October 27, 2005, closing arguments of counsel were presented. The parties submitted post-argument briefs by November 14, 2005, and the matter was taken under advisement by the Court.

Brief Factual and Procedural Background

Earnestine Ranson Kinchen, decedent herein, died on April 10, 2003, leaving no last will and testament. Decedent was survived only by her four siblings, Dorothy Ranson Ricketts, Frederick Ranson, Floyd Ranson, and Shirley Ranson Davis. On September 5, 2003, decedent's

REC'D C.F.  
DEC 15 2005

133

succession was opened by her heirs, her four siblings. By Court Order, dated March 24, 2004, an independent administration of the succession was granted and decedent's sister, Dorothy Ranson Ricketts, was appointed Independent Administrator. On September 24, 2003, prior to the succession being closed, Connie A. Moore filed a "Proof of Claim" against the Succession of Earnestine R. Kinchen, asserting that Earnestine Kinchen owed her certain sums of money resulting from a certain business arrangement in which the two were involved prior to Ms. Kinchen's death. Such business arrangement, according to Ms. Moore, might be classified as a joint venture, or undertaking, involving retirement plans for each party. Ms. Moore asserts various monetary claims against the Succession. Decedent's heirs, however, deny all such claims and contend they are all fabricated and that Ms. Moore is attempting to secure parts of decedent's estate, particularly funds of the estate, by deception and fabrication. Additionally, decedent's heirs assert positions contradictory to those of Ms. Moore in a Reconventional Demand filed against her. Any and all subsequent exceptions and/or motions filed by either party prior to trial were either referred to the merits or withdrawn.

Although many claims, asserted by both parties, were presented in this lawsuit, the Court found that the basis for most, if not all, of the claims stem from the purchase and ownership of two pieces of property located in Baton Rouge, Louisiana: (1) 7133 Skylark Avenue ("Skylark property"); and (2) 4545 Washington Street ("Washington property").

#### Contested Issues of Fact At Trial

While concrete facts and truth in this case are not easily ascertainable, the Court has framed the following issues to be determined from the trial on the merits: (1) whether the Succession of Earnestine R. Kinchen is indebted to Connie A. Moore; (2) whether Connie A. Moore is indebted to the Succession of Earnestine R. Kinchen; and (3) whether the Succession of Earnestine R. Kinchen or Connie A. Moore is the rightful owner of 7133 Skylark, Baton Rouge, Louisiana.

#### *Connie A. Moore's Claims Against the Succession*

As most recently set forth in her Post-Trial Brief, Connie A. Moore claims she is owed: a total of \$39,600.00 in rent and/or deposits collected by Ms. Kinchen from tenants leasing the property located at 7133 Skylark Avenue, Baton Rouge, Louisiana, which is owned by Ms.

134

Moore; \$72,838.01 for materials and labor for repairs and improvements and \$5,098.66 for general contractor services performed on the property located at 4545 Washington Street, Baton Rouge, Louisiana, which was owned by Ms. Kinchen; a total of \$7,802.24 for payments made by Ms. Moore to loan number 110008868920 at Hibernia National Bank in Baton Rouge, Louisiana, held in the name of Earnestine R. Kinchen; and \$3,000.00 for personal loans made to Ms. Kinchen.

Regarding all of Ms. Moore's foregoing claims against the Succession, the Court finds that the Succession of Earnestine R. Kinchen is in no way indebted to Connie A. Moore. Based on evidence presented by the parties, as well as the Court's valuation of the testimony provided, the Court is of the opinion that Ms. Moore is not a credible witness, and she has failed to prove her monetary claims against the Succession of Earnestine R. Kinchen.

*The Succession's Claims Against Connie A. Moore*

As most recently set forth in Post-Trial Briefs, the Succession prays for a judgment: dismissing and rejecting Ms. Moore's claims against the Succession with prejudice at the cost of Ms. Moore; recognizing the Succession of Earnestine R. Kinchen as the true and lawful owner of the Skylark property, and as such, entitled to the full and undisturbed possession thereof and ordering Ms. Moore to deliver possession to the Succession, free and clear of any mortgage or encumbrances; and, in the alternative, if the Court finds that Ms. Moore owns the Skylark property that she be ordered to pay the Succession all of the monies paid by Ms. Kinchen for the purchase and maintenance of the property and all associated expenses, including \$29,500.00, which is the amount of Ms. Kinchen's certified cashier's check that Ms. Moore used to fraudulently acquire the Skylark property in her own name; finding that Ms. Moore is indebted to the Succession for rents collected by her on the Skylark property for application to the mortgage loan on the property; and finding that Ms. Moore is indebted to the Succession for all expenses and costs paid by Ms. Kinchen and Dorothy Ricketts on the Skylark and Washington properties.

As previously mentioned, the Court finds that the Succession owes nothing to Ms. Moore, thereby dismissing Ms. Moore's claims against the Succession.

135

The Skylark Property

While leery of the means by which Ms. Moore acquired ownership of the Skylark property and placed the title thereto in her own name, the Court is directed by the Public Records Doctrine to find that Connie A. Moore is the true owner of the property located at 7133 Skylark Avenue, Baton Rouge, Louisiana.

Regarding the transaction to purchase the Skylark property, the Court believes that in June of 1997, Ms. Kinchen secured a cashier's check issued by Hibernia National Bank, payable to Pelican State Title Company, in the amount of \$29,500.00. Sometime thereafter, Ms. Kinchen delivered this certified check to Ms. Moore and Ms. Moore was to use it to purchase the Skylark property. While the Court is uncertain as to whether Ms. Kinchen intended for Ms. Moore to use this check to purchase the property for/on behalf of Ms. Kinchen, in Ms. Kinchen's name, or whether Ms. Kinchen intended it to be a "loan" to Ms. Moore for Ms. Moore to purchase the property in Ms. Moore's name, the Court is confident that Ms. Kinchen had no intention of gratuitously giving Ms. Moore this check as a \$29,500.00 gift/donation, which is what Ms. Moore asks the Court to believe. Nevertheless, Ms. Moore took the cashier's check and used it as her own – with or without Ms. Kinchen's consent – to purchase and acquire title to the Skylark property in Ms. Moore's own name.

The Succession contends that Ms. Kinchen owns the Skylark property and requests this Court to recognize her as the true and rightful owner thereof. The Succession asserts that the cashier's check secured with Ms. Kinchen's personal monies was delivered to Ms. Moore to be used by Ms. Moore to purchase the property on behalf of and in the name of Ms. Kinchen. The Succession contends that Ms. Moore took advantage of her relationship with Ms. Kinchen and fraudulently placed the Skylark property in her own name instead of in Ms. Kinchen's name as she was supposed to do. Alternatively, if the Court finds that Ms. Moore is in fact the true owner of the Skylark property, the Succession avers that the money Ms. Moore used to purchase said property, the \$29,500.00 cashier's check, was essentially a loan from Ms. Kinchen to Ms. Moore, which was to be repaid in full. Thus, the Succession argues that, under either scenario, any rent and/or deposits collected by Ms. Kinchen from tenants on the Skylark property were rightfully retained by Ms. Kinchen, and Ms. Moore is not entitled to repayment thereof.

Ownership

The first question presented for the Court's consideration was whether parol evidence would be admissible to prove that title to the Skylark property really vested in Ms. Kinchen instead of in Ms. Moore, the vendee named in the deed, in whose name, it is contended, the title was fraudulently placed, as Ms. Moore was allegedly supposed to purchase such property for Ms. Kinchen with Ms. Kinchen's funds.

The provisions of the Civil Code and the jurisprudence applicable in this case may be stated, in substance, as follows:

"Art. 1832. When the law requires a contract to be in written form, the contract may not be proved by testimony or by presumption, unless the written instrument has been destroyed, lost, or stolen."

"Art. 1835. An authentic act constitutes full proof of the agreement it contains, as against the parties, their heirs, and successors by universal or particular title."

"Art. 1839. A transfer of immovable property must be made by authentic act or by act under private signature. Nevertheless, an oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath. An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish where the property is located."

"Art. 1848. Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature. Nevertheless, in the interest of justice, that evidence may be admitted to prove such circumstances as a vice of consent, or a simulation, or to prove that the written act was modified by a subsequent and valid oral agreement."

"Art. 2440. A sale or promise of sale of an immovable must be made by authentic act or by act under private signature, except as provided in Article 1839."

Under these Civil Code articles, it is now the well-settled jurisprudence of this State that parol evidence is inadmissible to create a title in one who had never owned the property or to show that the vendee was in reality some other person than the person named in the act of sale. *Pattison v. Bryan*, 26 So.2d 778, (La.App. 1 Cir. 1946). Even where real estate is acquired with stolen money the owner of the money does not become the owner of the property. *Ceromi v. Harris*, 175 So. 462, (La. 1937). Thus, under the above mentioned Civil Code articles and the settled jurisprudence quoted, evidence regarding the means by which Ms. Moore actually

137



acquired the Skylark property in her own name must be rejected and not considered by the Court. Without this ~~parol~~ evidence, the Succession's demand for recognition of title to the Skylark property stands unproved and judgment must rest with Ms. Moore.

Rentals and/or Deposits

As discussed above, Ms. Moore is, in fact, the true owner of the Skylark property, and as such *would be* entitled to any rentals received thereon. Yet, it is undisputed that Ms. Kinchen collected and retained the rents on the Skylark property from 1997 until the time of her death in 2003. Consequently, Ms. Moore now claims that Ms. Kinchen's estate is indebted to Ms. Moore for the monies Ms. Kinchen collected and retained in rents and/or deposits for all those years.

While the Court is governed by the Public Records Doctrine to recognize Ms. Moore as the actual owner of the Skylark property, the Court has determined that the \$29,500.00 used by Ms. Moore to purchase said property was acquired by Ms. Moore through a "loan" from Ms. Kinchen. Therefore, the Court finds that Ms. Kinchen was entitled to collect and retain the rentals she received on the Skylark property, essentially as "repayment" of such loan to Ms. Moore. Thus, the Court does not find that Ms. Moore is entitled to any monies collected by Ms. Kinchen in the form of rent and/or deposits from tenants on the Skylark property. Furthermore, since Ms. Kinchen, prior to her death, received and retained said rentals, in an amount equal to the amount of above mentioned loan (\$29,500.00), the issues regarding ownership and past rentals of the Skylark property are resolved. With regard to the right to future rentals, Ms. Moore, as the owner of the immovable Skylark property, is entitled to any future rentals produced by said property.

Other Expenses and/or Encumbrances

Likewise, with regard to maintenance or other expenses, as well as the mortgage on the Skylark property, Ms. Moore, as the owner of such immovable property, is liable for any and all expenses and encumbrances thereon.

*The Washington Property*

Ms. Kinchen is clearly the owner of the Washington property, as evidenced by the deed transferring the property from the Department of Housing and Urban Development (HUD) to Ms. Kinchen. Nonetheless, Ms. Moore voluntarily devoted time and money making various repairs and improvements on the Washington property. Ms. Moore contends that Ms. Kinchen "retained her to supervise the construction of the remodeling and renovations to Ms. Kinchen's

house at the Washington property.” However, Ms. Moore has produced no convincing evidence of the existence of any sort of contract of hire or employment. Moreover, while Ms. Kinchen was always the record owner of the Washington property, Ms. Moore was using and occupying such property as if it were her own. Thus, regarding any and all time and effort spent or expenses endured by Ms. Moore related to the Washington property, the Court finds that Ms. Moore furnished such at her own free will, she enjoyed the benefits therefrom, and therefore she is not entitled to reimbursement from the Succession therefor.

Hibernia National Bank Loan

In January of 2003, in order to purchase the Washington property, Ms. Kinchen obtained a \$55,000.00 loan from Hibernia National Bank, secured by a mortgage on the Skylark property. As evidence of such, Ms. Moore offered into evidence at trial the collateral mortgage note stating that Ms. Kinchen was the borrower of \$55,000.00 with an attached promissory note executed by Ms. Kinchen for that sum. As a condition of the loan and in order to secure a more favorable interest rate, Hibernia directed that an account be set up for the purpose of drafting loan payments. As a result, Ms. Moore asserts that she and Ms. Kinchen opened a joint account at Hibernia, from which Hibernia could withdraw loan payments. Now, Ms. Moore claims that she deposited personal funds into said joint account, and consequently her personal funds wrongfully have been applied to payments on Ms. Kinchen’s loan, which she obtained to purchase the Washington property. Ms. Moore offered bank statements and deposit slips to the joint account as evidence that she deposited her personal funds into that account. The Court does not necessarily dispute that Ms. Moore might have deposited funds into the joint account; however, any such funds ultimately inured, again, to Ms. Moore’s benefit, eliminating any obligation on the part of the Succession to reimburse Ms. Moore. If, however, there is any amount that remains due on the loan, such amount must be paid off by Ms. Kinchen’s estate.

Personal Loans to Ms. Kinchen

Finally, the Court is of the opinion that Ms. Moore’s claims concerning any “personal loans” made to Ms. Kinchen are simply unfounded. In addition to the Court’s reluctance to accept Ms. Moore’s testimony as true, the “Deadman’s Statutes,” LSA-R.S. 13:3721 and 13:3722, support a denial of Ms. Moore’s claims for repayment of any personal loans.

LSA-R.S. 13:3721 provides, in pertinent part:

Parol evidence shall not be received to prove any debt or liability of a deceased person against his succession representative, heirs, or

legatees when no suit to enforce it has been brought against the deceased prior to his death, unless within one year of the death of the deceased:

(1) A suit to enforce the debt or liability is brought against the succession representative, heirs, or legatees of the deceased;

\*\*\*

(4) The claimant has submitted to the succession representative a formal proof of his claim against the succession, as provided in Article 3245 of the Code of Civil Procedure.

The provisions of this section cannot be waived impliedly through the failure of a litigant to object to the admission of evidence which is inadmissible thereunder.

Additionally, LSA-R.S. 13:3722 states:

When parol evidence is admissible under the provisions of R.S. 13:3721 the debt or liability of the deceased must be proved by the testimony of at least one creditable witness other than the claimant, and other corroborating circumstances.

The Louisiana Supreme Court, in *Savoie v. Rogers' Estate*, 410 So.2d 683, (La., 1981), declared that "[T]he statute clearly provides that the credible witness whose testimony is required to prove the debt must be someone other than the claimant." The only evidence of her claims against Ms. Kinchen's estate for purported personal loans that Ms. Moore submitted at trial were copies of checks endorsed by Ms. Kinchen, and Ms. Moore testified that such amounts were loans. The Court finds that such evidence is insufficient, and Ms. Moore is not entitled to recovery of any personal loans made to Ms. Kinchen.

Conclusion

Considering the evidence presented by the parties and the Court's perception of the facts, the Court finds that: (1) Connie A. Moore is the owner of 7133 Skylark, Baton Rouge, Louisiana; (2) the Succession of Earnestine R. Kinchen is not indebted to Connie A. Moore; (3) Connie A. Moore is not indebted to the Succession of Earnestine R. Kinchen.

THUS DONE AND SIGNED this 14<sup>th</sup> day of December, 2005, Baton Rouge, Louisiana.

I HEREBY CERTIFY THAT ON THIS DATE A COPY OF THE WRITTEN REASON FOR THE COURT'S JUDGMENT / ORDER / WAS FORWARDED TO ME, WITH SUFFICIENT POSTAGE AFFIXED TO: E. Jean, C. St. J. 12/14/05 DONE AND SIGNED BY Paul C. [Signature] DEPUTY CLERK OF COURT

[Signature]  
TIMOTHY E. KELLEY, JUDGE  
19th Judicial District Court  
Parish of East Baton Rouge  
State of Louisiana

FILED

DEC 14 2005

140 [Signature]  
DEPUTY CLERK OF COURT

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0926

IN THE MATTER OF THE

SUCCESSION OF

EARNESTINE R. KINCHEN



HUGHES, J., dissenting.

I respectfully dissent.

The trial court found that Ms. Moore owned the Skylark property, that it was purchased with a \$29,500 loan from Ms. Kinchen to Ms. Moore, and therefore Ms. Kinchen could retain the rentals she received on the Skylark property as “repayment”, “in an amount equal to the amount of the above-mentioned loan (\$29,500).” The trial court found that Ms. Moore would be entitled to any “future rentals” (presumably over and above the \$29,500).

Ms. Kinchen collected \$39,600 in rentals on the Skylark property and therefore the estate would owe Ms. Moore \$10,100.

Also, while the trial court does not dispute that Ms. Moore made deposits (\$7,802.24) into the Hibernia account to pay off Ms. Kinchen’s loan (\$55,000), he states that “any such funds ultimately inured, again, to Ms. Moore’s benefit.”

I respectfully disagree with this conclusion. The Washington property, purchased with the \$55,000 loan from Hibernia, was owned solely by Ms. Kinchen. The loan to Hibernia was an obligation solely of Ms. Kinchen.

Moore’s claims for materials and labor on the Washington property were denied because she was living there, and therefore these improvements “inured to her benefit.” While questionable, as improvements to the real estate would certainly benefit the owner as well, I can accept this conclusion more easily that a documented bank loan to the owner only. The estate should reimburse Ms. Moore the \$7802.24.