

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1538

BRIDGET MILLER DAIGLE

VS.

DWAYNE DAIGLE

JUDGMENT RENDERED: MAY 4, 2007

JMM
John

ON APPEAL FROM THE
THIRTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 140,443 DIVISION C
PARISH OF TERREBONNE, STATE OF LOUISIANA

HONORABLE TIMOTHY C. ELLENDER, JUDGE

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HOUMA, LA

ATTORNEY FOR PLAINTIFF/APPELLEE
BRIDGET MILLER DAIGLE

JERRI G. SMITKO
HOUMA, LA

ATTORNEY FOR DEFENDANT/APPELLANT
DWAYNE DAIGLE

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Carter J. Carter

MCDONALD, J.

This is an appeal from a judgment from the Thirty-Second Judicial District Court effecting a partition of community property and adjudicating a claim for reimbursement of educational expenses. For the following reasons, we affirm.

Bridget Miller and Dwayne Daigle were married on March 31, 1996, and established their matrimonial domicile in Houma, Louisiana. In November 2003, Bridget filed for a divorce and determination of incidental matters, among them, a termination of the community of acquets and gains. Judgment of divorce was rendered May 11, 2004, reserving to each party the right to a partition of the former community property.

In July 2005, trial was held to partition the community property and also to consider Dwayne's claim for contribution to educational expenses for Bridget. After hearing extensive testimony, the matter was continued to August 12, 2005. Additional testimony was heard on August 12, 2005, and on November 7, 2005, judgment was rendered terminating the community retroactively to November 17, 2003, adjudicating all matters relating to the termination of the community and denying Dwayne's claim for reimbursement for Bridget's educational expenses. From this judgment, Dwayne appeals alleging three errors by the trial court: (1) in overruling defendant's *Daubert* objection and admitting speculative testimony of Bridgett's expert regarding alleged unreported income; (2) in valuing the family-owned business at \$79,000; and (3) in failing to make an award to Dwayne for reimbursement of educational expenses.

The first two assignments of error address the decision of the trial court with regard to the value of a family-owned business, 50% of which was owned by Bridget and Dwayne. The trial court heard testimony from

two experts, both of whom were stipulated to be Certified Public Accountants and experts in business valuation. In addition to the experts' testimony, there was testimony that unreported income was taken out of the business and distributed in cash prior to the separation of the parties. The decision rendered by the trial court split the difference between the values submitted by the experts. Reviewing all testimony on this matter, particularly the reasons given by the judge for his decision, we find no error. Focusing only on the "tax issue," as urged by Dwayne is not warranted under the facts. The evidence considered as a whole supports the decision made by the trial court.

The remaining assignment of error disputes the trial court's denial of reimbursement for Bridget's educational expenses. The trial court was correct in noting an award is not mandatory. The trial court is afforded discretion in determining whether a contributing spouse is entitled to an award for his financial contributions to his spouse's earning power. *Bourgeois v. Bourgeois*, 2000-2149 (La. App. 1st Cir. 5/10/02), 818 So.2d 1005, 1008. Factors that should be considered in determining if an award is warranted include: (1) the claimant's expectation of shared benefits when the contributions were made; (2) the degree of detriment suffered by the claimant in making the contributions; and (3) the magnitude of the benefit received by the other spouse. *Id.* *Barrow v. Barrow*, 27,714 (La. App. 2nd Cir. 2/28/96, 669 So.2d 622, 629, writs denied, 96-1057, 96-1072 (La. 6/21/96), 675 So.2d 1080. These factors are to be included in the court's deliberations, but are not exclusive determinants of how it exercises its discretion. Considering these factors, especially the lack of detriment to Dwayne in making the contribution, as well as other facts revealed from review of the record, including that the debt remaining from Bridget's

student loan was assigned to her, we find that the trial court's denial of Dwayne's claim was not an abuse of its discretion.

After thorough review of the record in this matter, we find no error by the trial court that supports or requires reversal of its judgment. Therefore, the judgment appealed is affirmed, and this opinion is issued in accordance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to Dwayne Daigle.

AFFIRMED.