NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0616

MATTER OF THE SUCCESSION OF JACQUELINE ANNE MULLINS HARRELL

Judgment rendered: OCT 29 2010

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On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
PROBATE
Suit Number: P84142; Division 23
The Honorable William A. Morvant, Judge Presiding

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Jacqueline Harrell

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BEFORE: KUHN, PETTIGREW AND KLINE, JJ.[1]

[1] Judge William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

KLINE, J.

Doherty Michael Jarreau, the independent administrator of the Succession of Jacqueline Harrell (Succession), appeals a judgment in favor of the decedent's husband, Robert Harrell, that, inter alia, awarded to Mr. Harrell some of his claims for reimbursement from the Succession and recognized other property as his separate property. For the following reasons, we amend the judgment of the trial court, and as amended, we affirm.

PERTINENT FACTS AND PROCEDURAL HISTORY

Jacqueline Anne Mullins Harrell died on May 24, 2005, leaving no will. She was survived by two children from her first marriage and by her second husband, Robert Harrell, the appellee herein. The decedent and Mr. Harrell had executed a marriage contract in 1981 establishing regimes of separate property. The home that Mr. and Mrs. Harrell lived in was her separate property.

In March 2006, Mrs. Harrell's children filed a petition for independent administration and the appointment of an independent administrator, upon which the trial court placed the decedent's estate in independent administration and appointed an independent administrator.

In June 2006, Mr. Harrell filed a notice of proof of claim as the surviving spouse, seeking reimbursement for liabilities allegedly incurred on mortgage loans, credit card charges, and personal loans that were Mrs. Harrell's separate obligations; Mrs. Harrell's medical expenses and other obligations that he paid prior to her death, including a large payment on Mrs. Harrell's mortgage made from his separate funds; and payments he had made for on her obligations after the date of her death, including funeral expenses.

In March 2007, Mr. Harrell filed a petition of intervention alleging that the Succession had rejected his proof of claim and seeking a judgment recognizing his

claims. The Succession answered the petition and filed an exception of no right of action.

In March 2008, the Succession filed a reconventional demand contending that Mr. Harrell was indebted to the Succession for damage to the home and the home's value, funds held in joint bank accounts, the fair market value of an automobile, rental of the marital home, fees, and costs. By a separate pleading, the Succession also filed a supplemental answer to Mr. Harrell's petition of intervention and reconventional demand in which the Succession claimed certain set-offs. Mr. Harrell answered these pleadings. The Succession filed a second supplemental answer to the intervention and reconventional demand. In November 2009, the matter came on for bench trial. On the day of trial, the Succession filed an exception of prescription, asserting that Mr. Harrell's claims were prescribed because they were not brought within one year of the date of Mrs. Harrell's death.

On completion of the trial, the trial court allowed both parties the opportunity to submit post-trial memoranda. The trial court then issued written reasons. It signed judgment in accordance with the written reasons in January 2010, in which it decreed in pertinent part as follows:

- that there be judgment in favor of Mr. Harrell and against the Succession in the amount of $53,322.47 on his claims for reimbursement;
- that there be judgment in favor of the Succession and against Mr. Harrell in the amount of $386.00, representing one-half of funds jointly owned by Mr. Harrell and the decedent;
- that upon payment by the Succession to Mr. Harrell of $7,726.00, Mr. Harrell is to deliver to the Succession physical possession and certificate of title to a certain automobile. The sum stated represents

one-half of the payoff by Mr. Harrell of Mrs. Harrell's separate debt with joint funds;

- that remaining funds in a Chase Bank account designated as an annuity are Mr. Harrell's sole property against which the Succession has no claim;
- that all remaining claims for reimbursement of either party are denied, that the exception of prescription is denied, and that each party is to bear his or its own costs.

The Succession now appeals, asserting five assignments of error:

1. The trial court erred in finding that Mr. Harrell, Appellee, proved his claim in intervention and thereby awarding him any sum in reimbursement; or alternatively in failing to set-off Mr. Harrell's claims against amounts owed by him to the estate, or in the further alternative in failing to reduce the recovery by one-half (½) of the total claimed since such sums were paid from a joint [account].

2. The trial court erred in granting Appellee's claims in contravention of LSA-R.S. 13:3721, et seq.

3. The trial court erred in conditioning the return of the vehicle to the estate by the payment of the sum of $7,726.00 "representing one-half (½) of the $15,452.00 payoff of Mrs. Harrell's separate property with joint proceeds".

4. The trial court erred in denying the Administrator's claim that the estate was entitled to one-half (½) of all of the consolidated accounts in the joint names of the parties with Chase Bank, particularly and specifically $87,294.28, and in not awarding judgment against Appellee for one-half thereof.

5. The trial court erred in not rendering judgment in favor of the estate and against Robert C. Harrell in reimbursement for the payment by the estate of Mr. Harrell's debt.

DISCUSSION

Mr. Harrell's Claims for Reimbursement

On appeal, the Succession argues that the trial court erred in awarding three of Mr. Harrell's reimbursement claims: $3,243.00 for his claim for cemetery expenses at Resthaven Gardens, $7,061.46 in funeral home expenses at Rabenhorst

Funeral Home, and reimbursement of $43,018.01, which were separate funds used to pay off a mortgage loan on Mrs. Harrell's separate property. The Succession contends that La. R.S. 13:3721 and 3722 preclude Mr. Harrell's evidence that supported these claims for reimbursement. These statutes provide in pertinent part as follows:

> § 3721. Parol evidence to prove debt or liability of deceased person; objections not waivable
>
> 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;
>
> (2) The debt or liability is acknowledged by the succession representative as provided in Article 3242 of the Code of Civil Procedure, or by his placing it on a tableau of distribution, or petitioning for authority to pay it;
>
> (3) The claimant has opposed a petition for authority to pay debts, or a tableau of distribution, filed by the succession representative, on the ground that it did not include the debt or liability in question; or
>
> (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.
>
> § 3722. Same; evidence required when parol evidence admissible
>
> 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 Succession argues that these statutes are prescriptive, or that they require proof of a debt by "the testimony of at least one creditable witness other than the claimant, and other corroborating circumstances," as required under La. R.S. 13:3722.

The trial court, however, correctly observed that documentation supported the existence of the three reimbursements awarded and that Mr. Harrell's parol evidence merely established the amounts. Louisiana law distinguishes between parol evidence used to establish the existence of a debt and parol evidence used to establish the debt's value and extent. *See* **Adams v. Carter**, 393 So.2d 253, 255-56 (La.App. 1 Cir. 1980). La. R.S. 13:3721 and 13:3722 do not preclude parol evidence to prove the latter. *See* **Adams**, 393 So.3d at 256.

Here, Mr. Harrell established the existence of the Resthaven debt and the Rabenhorst debt by proper invoices. The separate character of Mr. Harrell's payment of Mrs. Harrell's mortgage debt from separate property was established by documentation showing that these funds were retirement funds provided by his employer. Accordingly, we conclude the trial court did not err in finding that these debts were sufficiently proven.

Succession Claims against Mr. Harrell

On appeal the Succession argues the trial court erred in four respects in failing to recognize its claims against Mr. Harrell. It argues that the trial court failed to recognize its interest in a joint account, that the trial court erred in ordering it to pay Mr. Harrell one-half the value of an automobile before he is required to return it, that the trial court failed to recognize Mr. Harrell's responsibility for one-half the mortgage debt on Mrs. Harrell's immovable property, and that the trial court erred in failing to credit the Succession with one-half the costs of the funeral and cemetery expenses, allegedly paid from joint funds.

Joint Account

The Succession contends that Mr. Harrell should be ordered to return half the balance of an account that was held jointly in both his and Mrs. Harrell's names. The trial court ruled that Mr. Harrell was indebted to the Succession for

$386.00,[2] which represented one-half of the funds that were jointly held. Mr. Harrell does not contest the award of $386.00.

In opposition to the Succession's contentions, however, Mr. Harrell testified that the remaining sums held in the bank account were his retirement proceeds and his separate property. A bank statement, introduced into evidence by the Succession, shows that the remaining $84,581.62 was being held as an annuity. Accordingly, the trial court denied the Succession's claim for reimbursement, finding that "the evidence clearly reflects that this sum was Mr. Harrell's retirement annuity from Dow that constituted his separate property." We cannot conclude the trial court was manifestly erroneous in this finding.

Mrs. Harrell's Automobile

The Succession argues that the trial court erred in conditioning the return of a Toyota to the Succession on reimbursing Mr. Harrell $7,726.00, "representing one-half of the $15,452.00[3] payoff of Mrs. Harrell's separate property with joint proceeds." Mr. Harrell testified that the source of the payoff money was a joint loan to him and Mrs. Harrell. His statement of expenditures in connection with this loan and a bank check to Toyota/Lexus Financial corroborate this expense. Accordingly, we cannot conclude the trial court erred in ordering that he be reimbursed prior to his returning the automobile to the Succession.

Mortgage Payoffs

The Succession further argues that the trial court erred in failing to charge Mr. Harrell with one-half the payoff amounts for two mortgage loans the Succession paid when it sold Mrs. Harrell's home. The Succession contends that these were joint debts. The trial court, however, disallowed these claims against Mr. Harrell, stating in its written reasons that "[w]ith the exception of the amounts

[2] The bank statement in evidence shows that the actual amount of joint funds equals $772.03. One-half of this amount is $386.01 or $386.02. No one challenges this minor discrepancy.

[3] Mr. Harrell's evidence and testimony show that the actual payoff was $15,451.56. One-half of this sum equals $7,225.78. No one challenges this minor discrepancy.

set forth above, all other claims for reimbursement by either intervenor or the estate are denied based upon failure to meet the appropriate burden of proving entitlement to same." The trial court was not erroneous in this finding.

The Succession asserts that four of its exhibits establish its entitlement to recover one-half of these mortgage debts as joint obligations of both Mr. and Mrs. Harrell. Included in these exhibits is a settlement statement to which Mr. Harrell is not a party and is signed by counsel for the Succession as agent, an act of cash sale from the Succession to the purchaser, a copy of a "Multiple Indebtedness Mortgage Home Equity Line of Credit," and a "Cancellation of Encumbrance." The settlement statement reflects that two mortgages were paid off. But little if any evidence connects these sums to any obligation incurred by Mr. Harrell or clearly establishes what he might owe. Accordingly, we cannot conclude the trial court was manifestly erroneous in finding that the Succession failed to meet its burden of proof in these regards.

Cemetery and Funeral Expenses

The Succession argues that it should be credited with one-half of the expenses to Resthaven Gardens and Rabenhorst Funeral Home since these bills were allegedly paid with joint funds from Mr. and Mrs. Harrell's joint checking account. The trial court did not expressly rule on these claims, but did deny them when it dismissed all other claims for reimbursement for failure to meet its burden of proof.

We find no error in the trial court's disposition of the Rabenhorst Funeral Home expense. Those expenses belong to the estate. Mr. Harrell produced evidence showing that he deposited into the joint checking account (which ceased to actually be joint as of May 25, 2005, when Mrs. Harrell died) the total sum of $11,402.91 subsequent to Mrs. Harrell's death. This sum consists of six deposits: two online transfers to checking, Dow Employees Payroll check, The Dow

Chemical payroll check, and a miscellaneous deposit of $7,061.46. The check to Rabenhorst, in the amount of $7,061.46, which coincides with the miscellaneous deposit of the same amount on June 1, 2005, was dated May 25, 2005, but did not clear the bank until June 3, 2005. Accordingly, the trial court was not manifestly erroneous in concluding that the moneys deposited into the former joint checking account were Mr. Harrell's separate property funds. Thus, we affirm that portion of the trial court's judgment.

Regarding the inclusion of $3,243.00 in the trial court's award to Mr. Harrell as burial expenses associated with Resthaven Gardens, we conclude the award to Mr. Harrell should be reduced by $820.45. Mr. Harrell's evidence shows that he paid $985.00 on May 25, 2005. Importantly, the remainder of the $3,243.00 balance was paid subsequent to that date; in other words after Mrs. Harrell's death. On June 23, 2005, Mr. Harrell paid $333.95 of the outstanding balance of $1,333.95 and financed the remaining $1,000.00. The bank records show that Mr. Harrell paid, subsequent to May 25, 2005, on a nearly monthly basis, the total sum of $1,103.60, apparently the financed $1,000.00 along with interest. Thus, the total payments Mr. Harrell paid subsequent to Mrs. Harrell's death were, in fact, $2,422.55 (i.e., $985.00 + $333.95 + $1103.60). Accordingly, the judgment should be modified to reduce Mr. Harrell's award by the full difference between $3,243.00 and $2,422.55, which is $820.45. This is because there is no error in the trial court's determination that Mr. Harrell is entitled to reimbursement for the separate property moneys he used to pay for the estate's obligation for cemetery and funeral expenses; the error is simply one of quantum.

We find partial merit in the Succession's first assignment of error. Otherwise, the Succession's assignments of error are without merit.

DECREE

We amend the decree that rendered judgment in favor of Mr. Harrell and against the Succession to decrease the quantum awarded by $820.45. Thus, we vacate the judgment insofar as it awarded $53,322.47 in favor of Mr. Harrell and against the Succession and amend that decree as follows:

> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the intervenor, Robert C. Harrell, and against the estate of the decedent Jacqueline Anne Mullins Harrell, on the intervenor's claims for reimbursement of personal funds used by intervenor for the benefit of the decedent and/or decedent's estate, in the amount of Fifty-two Thousand Five Hundred Two and 02/100 ($52,502.02) Dollars.

As amended, we affirm the judgment of the trial court. Costs of this appeal are assessed to the appellant, Doherty Michael Jarreau, the independent administrator of the Succession of Jacqueline Harrell.

AMENDED; AFFIRMED AS AMENDED