

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2003 CA 2793**

**JOY DELACROIX BIBLE**

**VERSUS**

**MARTIN BIBLE**

**Judgment Rendered: March 24, 2005**

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Rehearing Granted for Limited Purpose of Clarification

On Appeal from the 22nd Judicial District Court  
In and For the Parish of St. Tammany  
State of Louisiana  
No. 2002-14033

The Honorable Judge Donald M. Fendlason

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**BEFORE: GUIDRY, GAIDRY, AND McCLENDON, JJ.**

*GGP - Gaidry, J. dissents*

*JMC  
GMB*

**McCLENDON, J., on rehearing**

This rehearing is granted in this matter for the limited purpose of clarifying this Court's previous opinion, which held that appellant's petition for the partition of community property failed to comply with the mandatory procedure set forth in LSA-R.S. 9:2801. Appellant has cited **Palombo v. Palombo**, 94-95 (La.App. 3 Cir. 10/5/94), 643 So.2d 445, and **Joseph v. Joseph**, 619 So.2d 181 (La.App. 3 Cir. 1993), as authority for her position that failure to conform with the requirements of LSA-R.S. 9:2801 is not a basis for a nullity action of an otherwise procedurally valid default judgment. We disagree.

In both the **Palombo** case and **Joseph** case, the plaintiff's petition for partition of the community property included a prayer requesting that the trial court order the defendant to file a sworn detailed descriptive list in accordance with LSA-R.S. 9:2801. In conformity with the prayer of the petition, the trial court in each case issued said order, and in each case defendant failed to follow said order or file any type of response. In contrast, the petition in this case does not include such a request, nor is there any language in the petition that would suggest such an order issue. Thus, the petition was defective and, as a result, no order issued as required by the procedural rules set forth in LSA-R.S. 9:2801. Accordingly, we find the trial court properly vacated the default judgment in the present matter, and we adhere to the result reached in our original opinion.