NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 2101

ASHLEY ALBERT KELLER

VERSUS

KEVIN ANDREW KELLER

Judgment Rendered: JUL - 7 2011

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Appealed from the
Twenty-second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 2007-12932

Honorable Mary C. Devereux, Presiding

* * * * * *

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Hughes, J., concurs.

GUIDRY, J.

This appeal arises from a trial court judgment partitioning the community of acquets and gains formerly existing between Ashley Keller and Kevin Keller. For the reasons that follow, we reverse in part, render in part, amend in part, and affirm in part as amended and rendered.

FACTS AND PROCEDURAL HISTORY

Ashley and Kevin Keller were married on April 9, 1994. During the course of their marriage, the couple had four children. On June 18, 2007, Ashley filed a petition for divorce under La. C.C. art. 102. In her petition, Ashley requested, among other things, domiciliary custody of the couple's four children, exclusive use and occupancy of the family home, child support, interim and final spousal support, and partition of community property.

On August 7, 2007, the parties appeared before a hearing officer and stipulated, in part: Kevin was to pay $1,270 per month in child support, commencing August 1, 2007; Kevin was to pay $600 per month in interim spousal support, commencing August 1, 2007; Ashley was to be granted interim use of the family residence; the issue of rental reimbursement was deferred to the community property partition; and Kevin was granted the use of the 2006 Ford F-150 truck.

A judgment of divorce was entered on October 22, 2008. Kevin and Ashley subsequently filed their respective detailed descriptive lists. In his list, Kevin listed the children's furniture and play forts as community property. Kevin also listed the value for the community portion of his T. Rowe Price Individual Retirement Account (IRA) as $773.18, the value of the Regions Bank joint checking account as $5,612.53, and the value of the community portion of his tools as $500. Kevin also sought reimbursement for: Ashley's use and occupancy of the family home; one-half of $20,000 in inherited funds used to pay community debts;

one-half of his payments for the F-150 truck; and educational contributions pursuant to La. C.C. art. 121.

In her detailed descriptive list, Ashley listed the value of the Regions Bank joint checking account as $0 and valued the community portion of the T. Rowe Price account as $40,889.51. Ashley also traversed items on Kevin's detailed descriptive list, including: the value given to the community portion of the T. Rowe Price account; the value of the Regions Bank joint checking account; the classification of Kevin's tools, the $20,000 donation, and the children's furniture; and Kevin's claims for reimbursement for rent and the payments on F-150 truck note.

Following a trial on April 28, 2010, the trial court signed a judgment partitioning the community of acquets and gains. Ashley now appeals from this judgment, and Kevin has answered the appeal.

DISCUSSION

Rental Reimbursement

Ashley asserts on appeal that the trial court erred in recognizing Kevin's rental reimbursement claim. The applicable version of La. R.S. 9:374(C) provided, in pertinent part:

> A spouse who uses and occupies or is awarded by the court the use and occupancy of the family residence ... shall not be liable to the other spouse for rental for the use and occupancy, except as hereafter provided. If the court awards use and occupancy to a spouse, it shall at that time determine whether or not to award rental for the use and occupancy and, if so, the amount of the rent. *The parties may agree to defer the rental issue for decision in the partition proceedings. If the parties agreed at the time of the award of use and occupancy to defer the rental issue, the court may make an award of rental retroactive to the date of the award of use and occupancy.* [Emphasis added.]

At the August 7, 2007 meeting with the hearing officer, Ashley and Kevin entered into several stipulations, including that Ashley was to be granted the interim use of the family home, and that rental reimbursement would be deferred to

the community property partition. Because the parties contemporaneously agreed to the use and occupancy of the family home and to defer the "rental issue" for decision in the partition proceedings, we find no error in the trial court's determination that Kevin preserved a claim for rental reimbursement in accordance with La. R.S. 9:374(C).

Furthermore, we find no abuse of discretion in the trial court's decision to award Kevin one-half of the $74,800 rental value of the former family residence during its period of occupancy by Ashley. In awarding rent, a court is to consider the parties' economic status, the needs of the children, and the effect of the occupancy on spousal support. See La. R.S. 9:374(B); see also McCarroll v. McCarroll, 96-2700, p. 20 (La. 10/21/97), 701 So. 2d 1280, 1290. From our review of the record, the trial court was presented with an abundance of evidence from which it could determine that rental reimbursement was appropriate under the facts and circumstances of this case.

Kevin asserts, however, that the award for rental reimbursement should have been for the full rental value, rather than one-half of the rental value. However, such an assessment would ignore the fact that the home remained a part of the community between Kevin and Ashley. Ashley owned the home with Kevin, had the right of occupancy, and would therefore be entitled to her share of the income generated by this item of community property. Accordingly, Kevin is only entitled to receive one-half of the fair monthly value for Ashley's use of his half of the home. See Otterstatter v. Otterstatter, 99-1481, p. 3 (La. App. 3rd Cir. 3/1/00), 758 So. 2d 298, 300; see also McCarroll v. McCarroll, 99-0046, pp. 8-9 (La. App. 1st Cir. 5/12/00), 767 So. 2d 715, 721-722, writ denied, 00-2370 (La. 11/3/00), 773 So. 2d 146.

Other Reimbursement Claims

Donation of $10,000

Kevin asserts that the trial court erred in denying his reimbursement claim for $10,000 received by him in 2001 as a donation from his mother, representing proceeds from his father's life insurance policy. Separate property of a spouse is his exclusively and comprises property acquired by a spouse by inheritance or donation to him individually. See La. C.C. art. 2341. The burden of proof is on the party claiming reimbursement. A trial court's findings as to whether reimbursement claims have been sufficiently established are reviewable under the manifest error standard. Corkern v. Corkern, 05-2297, p. 10 (La. App. 1st Cir. 11/3/06), 950 So. 2d 780, 787, writ denied, 06-2844 (La. 2/2/07), 948 So. 2d 1083.

In finding that Kevin only proved entitlement to reimbursement of $5,000 or for one-half of $10,000, represented by two $5,000 checks that Kevin received from his mother as payment for a portion of his father's life insurance proceeds, which funds were deposited into the community bank account and used to pay community debts, the trial court implicitly found that Kevin failed to establish entitlement to reimbursement for an additional $10,000 received by Kevin in 2001.

At the trial of the community property partition, Kevin testified that he received $20,000 in donations from his mother during the marriage and deposited the funds into the community checking account. Kevin's mother, Carol Keller, testified that she wrote a $10,000 check in 2001 to Kevin, the source of which was his father's life insurance proceeds. Ms. Keller produced a copy of her check register, showing a check numbered 97 made payable to Kevin Keller in the amount of $10,000 on "7/16." Ms. Keller also produced a MetLife Family of Companies history, showing a check number 97 written on July 18, 2001, for $10,000. Though the trial court was presented with Kevin's uncontradicted testimony as to the payment and receipt of the donation, as well as the

uncontradicted, corroborating evidence from Kevin's mother, the record is devoid of evidence that the $10,000 of separate funds received in 2001 were either used during the existence of the community property regime or thereafter to satisfy a community obligation or that they were used during the existence of the community property regime for the acquisition, use, improvement, or benefit of community property. See La. C.C. arts. 2365 and 2367. Accordingly, from our review of the record, we find no error in the trial court's determination that Kevin failed to prove his entitlement to reimbursement for the $10,000 donation received in 2001.

Separate Funds Used to Acquire Co-owned Property

Kevin also asserts that the trial court erred in denying his reimbursement claim for $3,800 of his separate funds used to pay a down payment on property purchased jointly by Ashley and Kevin prior to their marriage. According to Kevin's testimony, in December 1993 he paid a $4,300 down payment with his separate funds to acquire a piece of unimproved property. The trial court, however, found that Kevin established only that $500 of separate funds, as represented by a check dated contemporaneously with or close in time to the transaction,[1] was used toward the purchase of the co-owned property. From our review of the record, we find no error in the trial court's determination.

Separate Funds Deposited into Joint Checking Account

Ashley asserts that the trial court erred in awarding Kevin reimbursement of $5,865.61 of his separate funds deposited into the parties' joint checking account after the termination of the community. Ashley does not dispute that the separate funds were deposited into the joint account, but rather, she asserts that the funds

[1] According to the record, Kevin gave his attorney a copy of the $500 check; however, at the trial of this matter, the attorney could not locate the copy. The trial court accepted the attorney's representation as an officer of the court that Kevin had given him a copy of the check, which was executed contemporaneously or close in time to the December 1993 purchase.

were used to pay for expenses related to the support of the family, not for her separate expenses.

Additionally, Ashley asserts that she stipulated to the August 1, 2007 commencement date for interim spousal support and child support because the parties had agreed that Kevin would continue to deposit funds into the joint checking account to pay the mortgage on the family home and other family related expenses through July 2007. However, Kevin asserts that the parties did not have any such agreement, and there is no mention of this agreement in the stipulations entered into on August 7, 2007. Kevin further asserts that his separate funds did not pay for any of his expenses. From our review of the record, the trial court was clearly presented with two permissible views of the evidence. Accordingly, we find no manifest error in its decision to award Kevin reimbursement for $5,865.61 of his separate funds.

Educational Reimbursement

Louisiana Civil Code article 121 provides:

> In a proceeding for divorce or thereafter, the court may award a party a sum for his financial contributions made during the marriage to education or training of his spouse that increased the spouse's earning power, to the extent that the claimant did not benefit during the marriage from the increased earning power.
>
> The sum awarded may be in addition to a sum for support and to property received in the partition of community property.

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 education or training that increased the spouse's earning power. 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. Bourgeois v. Bourgeois, 00-2149, p. 4 (La. App. 1st Cir. 5/10/02), 818 So. 2d 1005, 1008.

Financial contributions include direct educational or training expenses, as well as living expenses, paid by the claimant for the other spouse. La. C.C. art. 121, 1990 Revision Comment (d).

In the instant case, the trial court denied Kevin's claim for educational reimbursement, finding that Ashley worked for a sufficient amount of time during the marriage for the community to benefit from her enhanced training and education. From our review of the record, we find no error in the trial court's determination.

Ashley testified that she began college in 1996 and graduated in 1999 with a degree in accounting. According to Ashley, she took out a loan to pay for her education, as well as to pay for living expenses. Additionally, she worked part-time as an evening teller for a bank five days a week. After graduation, she started working as a tax accountant on a mostly full-time basis, though there were periods when she worked part time because of the children or because of the slow tax season.

In his testimony, Kevin acknowledged that Ashley worked part time while attending school, but asserted that he paid for Ashley's living expenses during that time, including her gas, car note, food, mortgage, clothes, etc. Additionally, Kevin stated that Ashley did not consistently work full time after she received her degree. However, from our review of the record, there is no evidence that Kevin suffered any detriment as a result of making these contributions or that he did not share in the benefits of Ashley's education. Accordingly, we find no abuse of the trial court's discretion in failing to award Kevin reimbursement for his financial contributions toward Ashley's education.

Payments of F-150 truck note

Louisiana Civil Code article 2365 currently provides, in pertinent part:

> If separate property of a spouse has been used either during the existence of the community property regime or thereafter to satisfy a

> community obligation, that spouse is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used.
>
> If the community obligation was incurred to acquire ownership or use of a community corporeal movable required by law to be registered, and separate property of a spouse has been used after termination to satisfy that obligation, the reimbursement claim shall be reduced in proportion to the value of the claimant's use after termination of the community property regime. The value of that use and the amount of the claim for reimbursement accrued during the use are presumed to be equal.

Article 2365 was amended by Acts 2009, No. 204, §1, which added the second paragraph regarding registered community corporeal movables. Prior to the 2009 amendment, Article 2365 provided, in pertinent part:

> If separate property of a spouse has been used to satisfy a community obligation, that spouse, upon termination of the community property regime, is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used. The liability of a spouse who owes reimbursement is limited to the value of his share in the community after deduction of all community obligations.

Kevin recognizes that the 2009 amendment to Article 2365 reduces and effectively eliminates his claim for reimbursement for payments made on the note for the F-150 truck. Kevin asserts, however, that the 2009 amendment represents a substantive change in the law and therefore, applies prospectively only. See La. C.C. art. 6. Accordingly, Kevin claims that he should be entitled to seek reimbursement for the F-150 truck note payments from the termination of the community until the effective date of the 2009 amendment, August 15, 2009.

In determining whether a newly-enacted provision is to be applied prospectively only, or may also be applied retroactively, La. C.C. art. 6 requires a two-fold inquiry. First, the court must determine whether the amendment to the statute expresses legislative intent regarding retroactive or prospective application. Keith & U.S. Fidelity and Guaranty Co., 96-2075, p. 6 (La. 5/9/97), 694 So. 2d 180, 183. If no such intent is expressed, the enactment must be classified as either

substantive, procedural, or interpretative. Keith, 96-2075 at p. 6, 694 So. 2d at 183.

In enacting the amended version of Article 2365, the legislature did not express its intent regarding retroactive or prospective application. Therefore, we must determine whether the 2009 amendment was substantive or interpretive.

Substantive laws either establish new rules, rights, and duties or change existing ones. Interpretive laws, on the other hand, do not create new rules, but merely establish the meaning that the interpreted statute had from the time of its initial enactment. It is the original statute, not the interpretive one, that establishes the rights and duties. St. Paul Fire & Marine Insurance Co. v. Smith, 609 So. 2d 809, 817 (La. 1992). When an existing law is not clear, a subsequent statute clarifying or explaining the law may be regarded as interpretive, and the interpretive statute may be given retroactive effect because it does not change, but merely clarifies, pre-existing law. St. Paul Fire & Marine Insurance Co., 609 So. 2d at 817.

As noted by the Louisiana Supreme Court, the suggested distinction between interpretive legislation "clarifying," and substantive legislation "amending" or "changing," existing law is an obscure one. There is no bright line between substantive laws, which change existing standards, and interpretive laws, which change existing standards by re-defining and returning to their ostensible "original" meaning. St. Paul Fire & Marine Insurance Co., 609 So. 2d at 819.

The revision comments to Article 2365 state that the second paragraph of this Article is new and incorporates the substantial volume of Louisiana jurisprudence that has limited a spouse's right to reimbursement for the use of separate funds after termination of the community property regime to satisfy a community note obligation for an automobile of which the claimant spouse has the exclusive use. La. C.C. art. 2365, 2009 Revision Comment (b). The First Circuit,

however, did not follow the other four circuits in so limiting a spouse's right to reimbursement, finding that the plain language of then Article 2365 did not provide a basis for treating reimbursement claims differently depending on the nature of the property for which the debt was paid. See Williams v. Williams, 509 So. 2d 77 (La. App. 1st Cir. 1987). Additionally, 2009 Revision Comment (c) notes that the jurisprudence has previously reduced a spouse's right to reimbursement without any authority in the Civil Code.

Because the original codal article did not distinguish reimbursement claims based on the nature of the property subject to the obligation, and it was not until the 2009 amendment that a claimant spouse's right to reimbursement was reduced, or effectively eliminated, based on the nature of the property, we find that the 2009 amendment is substantive, in that it represents a distinct change in the rights of the parties. Under La. C.C. art. 6, a substantive change in the law cannot be applied retroactively.

Therefore, because Article 2365, as enacted prior to the 2009 amendment, did not limit a claimant spouse's right to reimbursement for one-half of the payments made on a community vehicle after termination of the community, and this court applied the plain language of the statute as written, we find that the trial court erred in failing to award Kevin reimbursement for one-half of the monthly notes paid on the F-150 truck from the time of the termination of the community until the effective date of the 2009 amendment, August 15, 2009. Accordingly, we reverse the trial court judgment on this issue and award Kevin $6,153.00 in reimbursement for one-half of the truck note payments.

Classification of Dividends, Tools, Children's Furniture, and Play Forts

Legal Principles

The property of married persons is generally characterized as either community or separate. La. C.C. art. 2335. The classification of property as

separate or community is fixed at the time of its acquisition. Smith v. Smith, 95-0913 (La. App. 1st Cir. 12/20/96), 685 So. 2d 649, 651. The trial court's findings regarding the nature of the property as community or separate are factual determinations subject to manifest error review. See Harvey v. Amoco Production Co., 96-1714 (La. App. 1st Cir. 6/20/97), 696 So. 2d 672, 677; Biondo v. Biondo, 99-0890, p. 4 (La. App. 1st Cir. 7/31/00), 769 So. 2d 94, 99. When findings are based on determinations regarding the credibility of witnesses, the manifest error/clearly wrong standard demands great deference to the trier of fact. Hano v. Latino, 03-0088, p. 5 (La. App. 1st Cir. 11/7/03), 868 So. 2d 61, 64, writ denied, 03-3328 (La. 2/13/04), 867 So. 2d 694.

T. Rowe Price Dividends

Louisiana Civil Code article 2339 provides, in part, that "[t]he natural and civil fruits of the separate property of a spouse ... are community property." Civil fruits are defined in La. C.C. art. 551 as "revenues derived from a thing by operation of law or by reason of a juridical act, such as rentals, interest, and certain corporate distributions."

Conversely, La. C.C. art. 2341 provides, in part, that separate property of a spouse comprises property acquired by a spouse prior to the establishment of a community property regime and property acquired by a spouse with separate things or with separate and community things, when the value of the community things is inconsequential in comparison with the value of the separate things used.

Prior to the marriage, Kevin invested separate funds into a T. Rowe Price IRA, acquiring 528.903 shares of stock. During the marriage, dividends were generated on these funds and were reinvested into the account, acquiring additional shares of stock. In addition, Kevin deposited $1,000 of community funds into the account to purchase an additional 44.111 shares of stock. Kevin asserts that the T. Rowe Price account is not community property, because the amount of community

contributions that acquired 44.111 shares is inconsequential when compared to the 528.903 shares owned by him prior to the marriage, and because the dividends generated during the marriage are not fruits as defined by La. C.C. arts. 551 and 2339. We find both of Kevin's arguments to be without merit.

First, we disagree that the dividends generated during the marriage are not civil fruits. The original shares of stock acquired with Kevin's separate funds generated dividends during the marriage, which were reinvested in the IRA to purchase additional shares of stock. Clearly, the dividends are revenue derived from a thing, being the original shares of stock, by reason of a juridical act.[2]

Further, because the dividends generated during the marriage are fruits of Kevin's separate property, they are classified as community property in accordance with La. C.C. art. 2339. Accordingly, the subsequent stock purchases with those community dividends are also community property. As such, we disagree with Kevin's assertion that only 44.111 shares of stock were acquired with community funds by virtue of the $1,000 deposit. Therefore, because Kevin had 528.903 shares of stock prior to the marriage, and had 1904.724 shares of stock when the community was terminated, we find his argument that the value of the community shares is inconsequential is without merit.

Tools

Ashley and Kevin both assert that the trial court erred in its determination regarding the classification of the tools as community property. Ashley asserts that all of the tools are presumed to be community property, because Kevin failed to establish which tools were his separate property. Kevin, however, asserts that a majority of the tools were acquired by him prior to the marriage and therefore, are

[2] This is not a situation where Kevin was paid a stock dividend. A stock dividend increases the number of shares, thereby diminishing the value of each share, but leaves the aggregate value of all of the stock substantially the same. See Daigre v. Daigre, 228 La. 682, 689, 83 So. 2d 900, 903 (1955).

his separate property, and that only approximately five percent of the tools were purchased during the marriage.[3]

At the trial of this matter, Kevin testified that he graduated from school in 1990, at which time he purchased a five-foot tool box and a bulk amount of tools. Kevin produced an invoice showing delivery of the tool box and six cartons of tools. He also produced an inventory of his tools, which he provided to the insurance company that insures his tools. Kevin marked a small number of tools as those that had been purchased during the marriage. Kevin submitted receipts for some tools purchased during the marriage, but acknowledged that these were not all of the invoices and did not represent all of the tools purchased during the marriage. Further, Kevin acknowledged that he in fact had two five-foot tool boxes, one at home in the garage that he purchased prior to the marriage when he worked for Lamarque Ford in 1988, and one at Federal Express, where he was currently employed. It is the box at Federal Express that he asserts was purchased when he graduated from school in 1990.

Ashley acknowledged that Kevin did acquire a five-foot tool box and tools prior to the marriage when he worked at Lamarque Ford. However, she contends that the other five-foot tool box and tools located at Federal Express were purchased during the marriage for Kevin's job at Federal Express by obtaining a loan from Regions Bank. There is no evidence in the record, however, as to the existence of a loan from Regions Bank.

Accordingly, from our review of the record, we find no error in the trial court's determination that one-half of the tools were community property. The parties agreed that some of the tools were purchased before the marriage, being the tools housed in the tool box in the garage. Additionally, though Kevin did not

[3] Kevin asserts in his brief that the trial court erred in overvaluing the community portion of tools. However, because he did not request a modification of that valuation in his answer to the appeal, the issue is not properly before this court. See Samuel v. Baton Rouge General Medical Center, 98-1699, pp. 5-6 (La. App. 1st Cir. 2/18/00), 757 So. 2d 43, 46, writs denied, 00-1314, 00-1329 (La. 6/23/00), 765 So. 2d 1044, 1046.

have evidence as to exactly how many tools were purchased before the marriage, he did provide a packing slip indicating the purchase of six cartons of tools and a tool box in 1990. Finally, Kevin admitted purchasing additional tools during the marriage, though he could not corroborate the entirety of these tools. Clearly, the trial court was in the best position to evaluate the credibility of the witnesses and the conflicting testimony, and we find no manifest error in its determination.

Children's Furniture and Play Forts

Kevin asserts that the trial court erred in finding that the children's bedroom furniture and two large play forts were gifts to the children, and therefore were not community property. However, from our review of the record, we find no error in the trial court's determination. Kevin and Ashley both acknowledged that the furniture in the children's bedrooms was purchased as a Christmas gift for the children. Further, the trial court specifically found that the play forts were gifts to the children for their use entirely, which is a reasonable determination considering the young ages of two of the children and the nature of the property at issue. See Allen v. Allen, 301 So. 2d 417 (La. App. 2nd Cir. 1974); La. C.C. art. 1543. Therefore, we find no error in the trial court's finding that the property at issue belonged to the children and not to the community.

Value of T. Rowe Price Account

Ashley and Kevin both disagree with the value of the T. Rowe Price IRA as determined by the trial court.

Assets shall be valued as of the time of the trial on the merits. La. R.S. 9:2801(A)(4)(a). A trial court has broad discretion in adjudicating issues raised in a judicial partition proceeding under La. R.S. 9:2801. Smith, 95-0913 at p. 10, 685 So. 2d at 655. If the trial court's valuations of community assets are reasonably supported by the record and do not constitute an abuse of discretion, its determinations should be affirmed. Rao v. Rao, 05-0059, p. 6 (La. App. 1st Cir.

11/4/05), 927 So. 2d 356, 360-361, writ denied, 05-2453 (La. 3/24/06), 925 So. 2d 1232.

In the instant case, Ashley testified that she determined the total amount of dividends generated during the marriage to be $40,889.51. Ashley stated that she arrived at this figure by multiplying the number of shares by the amount of the dividend per share. Ashley introduced statements from the T. Rowe Price account, showing the number of shares, the per share amount, and the total amount of the IRA. Kevin, however, testified that the total amount of dividends generated during the marriage amounted to $23,359.62. However, Kevin did not have any support for this calculation. Rather, he relied on a calculation performed by his attorney.

The trial court excluded the attorney's calculation from evidence, because it was not prepared by Kevin, nor did he participate in its preparation. Rather, it was a calculation performed by the attorney, whereby he excluded all amounts for capital gains.[4] The trial court determined that based on the evidence presented at the trial, there was no way to determine what capital gains were attributed to the separate shares of stock and what gains were attributed to the community shares. The trial judge, therefore, determined the value of the T. Rowe Price account by subtracting the separate shares of stock from the total shares acquired as of the termination of the community, and multiplied that number of shares by the value of the shares as of the date of trial. The value amounted to $30,369.52. From our review of the record, we find the trial court's valuation of the T. Rowe Price account to be reasonably supported by the record, and therefore we find no abuse of discretion in its valuation of this asset.

[4] Kevin also asserts that the trial court erred in excluding the attorney's calculation of dividends from evidence. However, given the trial court's determination that the calculation did not differentiate between capital gains attributed to community shares of stock versus separate shares of stock, we find no error in the trial court's decision not to admit this unhelpful evidence.

Allocation of funds in Regions Bank Joint Checking Account

A trial court has broad discretion in adjudicating issues raised by divorce and partition of the community. The trial judge is afforded a great deal of latitude in arriving at an equitable distribution of assets between the spouses. In deciding to whom an asset or liability shall be allocated, the court shall consider the nature and source of the asset or liability, the economic condition of each spouse, and any other circumstances the court deems relevant. Legaux-Barrow v. Barrow, 08-530, p. 5 (La. App. 5th Cir. 1/27/09), 8 So. 3d 87, 90, writ not considered, 09-0447 (La. 4/13/09), 5 So. 3d 152. A trial court's factual findings and credibility determinations made in the course of valuing and allocating assets and liabilities in the partition of community property may not be set aside absent manifest error. Nesbitt v. Nesbitt, 44,413, p. 1 (La. App. 2nd Cir. 6/24/09), 15 So. 3d 1229, 1231, writs denied, 09-1649 and 09-1729 (La. 10/16/09), 19 So. 3d 483 and 484. The trial court's allocation or assigning of assets and liabilities in the partition of community property is reviewed under the abuse of discretion standard. Legaux-Barrow, 08-530 at p. 5, 8 So. 3d at 90.

Ashley asserts that the trial court abused its discretion in allocating to her the balance of the parties' joint checking account as of the date of termination of the community. According to Ashley, the parties agreed that Kevin would not seek reimbursement or accounting for the funds in the joint checking account in light of the stipulation that interim spousal support and child support payments would not commence until August 1, 2007. Ashley raised a similar argument with regard to Kevin's claim for reimbursement of $5,865.61 in separate funds deposited into the joint checking account after the termination of the community. From our review of the record, we find no error in the trial court's decision to reject this argument. There is no evidence that Kevin agreed to waive any right to seek an accounting for any of the funds on deposit at the time of the termination of the community.

Therefore, we find no abuse of discretion in the trial court's allocation of the balance of this account to Ashley.

Further, though Kevin asserts in brief that the trial court erred in deducting from the balance of the checking account amounts for interim spousal support and child support, he did not raise this issue in either his answer to the appeal or in his supplemental answer to the appeal, and accordingly, this issue is not properly before the court. See Samuel v. Baton Rouge General Medical Center, 98-1669, pp. 5-6 (La. App. 1st Cir. 2/18/00), 757 So. 2d 43, 46, writs denied, 00-1314, 00-1329 (La. 6/23/00), 765 So. 2d 1044, 1046.

CONCLUSION

For the foregoing reasons, we reverse the portion of the trial court's judgment denying Kevin's claim for reimbursement for one-half of the payments made on the F-150 truck note from the termination of the community until August 15, 2009, the effective date of the amendments to La. C.C. art. 2365, and order Ashley to pay Kevin $6,153.00 for this claim. We, therefore, amend the trial court's judgment to reflect that Ashley owes an equalizing payment to Kevin in the amount of $54,074.00. All costs of this appeal are assessed equally between the parties, Ashley Keller and Kevin Keller.

REVERSED IN PART; RENDERED IN PART; AMENDED IN PART; AFFIRMED IN PART, AS AMENDED AND RENDERED.