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Community Property - Distribution of Property Acquired During Existence of a Putative Marriage

Fred R. Godwin

NOTES

COMMUNITY PROPERTY — DISTRIBUTION OF PROPERTY ACQUIRED DURING EXISTENCE OF A PUTATIVE MARRIAGE

In 1919 deceased obtained a preliminary default in a suit for divorce, but the default was not confirmed and no divorce was granted. He and his wife both remarried believing themselves to be divorced. In 1939, deceased's putative wife purchased immovable property in her name. After deceased's death, and upon discovering the undissolved marriage, the putative wife instituted a suit against the legal wife and the forced heir to be declared owner of the property. The district court found deceased to be in bad faith, declared his second marriage an absolute nullity, and recognized the putative wife as owner of the property. On appeal, *held*, reversed. After noting that there were articles in the Civil Code indicating that each of the litigants was entitled to one-half of the property, the Louisiana Supreme Court awarded the husband's one-half interest to the forced heir and the two wives were given one-fourth each on the theory that their claims were of equal dignity and rank. *Prince v. Hopson*, 89 So.2d 128 (La. 1956), rehearing denied June 29, 1956.

The Louisiana Civil Code provides that property purchased without a stipulation of paraphernality in the name of either spouse during the existence of the community of acquets and gains belongs to the community existing between them.[1] Upon dissolution of the community its net assets are divided in equal portions between husband and wife.[2] The Code also provides that a null marriage produces civil effects in favor of the spouses in good faith and their children.[3] The rules establishing a presumption of community property and those relative to putative marriage can cause anomalies when operating concurrently. For instance, where a man, legally married, celebrates a second marriage with a party who is in good faith, the legal community continues to exist concurrently with the community produced by

1. LA. CIVIL CODE art. 2402 (1870); Salassi v. Salassi, 220 La. 785, 57 So.2d 684 (1952); Pearlstine v. Mattes, 223 La. 1032, 67 So.2d 582 (1953). See further DAGGETT, THE COMMUNITY PROPERTY SYSTEM OF LOUISIANA 15 and authorities there cited (1945 ed.).

2. LA. CIVIL CODE art. 2406 (1870).

3. *Id.* art. 117; Succession of Chavis, 211 La. 313, 29 So.2d 860 (1947); Succession of Verrett, 224 La. 461, 70 So.2d 89 (1954).

the putative marriage.[4] Since the husband is a party to both marriages, any property acquired in the manners prescribed by Article 2402 is presumed to fall into both communities. The husband and the two wives are each entitled to one-half of the property so acquired. This problem of dividing a whole into three halves was first encountered in *Patton v. Philadelphia*.[5] There the court denied the husband any interest because of his bad faith. The property was divided equally between the two wives. The court has followed the *Patton* case by consistently holding that where a man, legally married, contracts a second marriage in bad faith, property acquired by him during the co-existence of the two marriages belongs to the two wives so long as the second wife is in good faith.[6]

In the instant case the court was confronted for the first time with a situation where *all* of the parties were in good faith and the property was purchased by the *putative* wife instead of by the *husband*. The court held that the property became part of the community existing between the husband and the putative wife, and simultaneously became a part of the community existing between the husband and the legal wife. The husband and the putative wife, both being in good faith, were entitled to the civil effects flowing from their marriage, that is, each was entitled to one-half of the property.[7] The legal wife was also en-

4. Jones v. Squire, 137 La. 883, 69 So. 733 (1915). The community arising from the null marriage will hereafter be called the putative community.

5. 1 La. Ann. 98 (1846). This case was decided according to Spanish law because it was in effect when the husband died. However, a later case held that the principle behind the *Patton* decision, although of Spanish origin, was equally deducible from the Louisiana Civil Code of 1825. Hubbell v. Inkstein, 7 La. Ann. 252, 254 (1852). The Spanish theory was actually one of debt rather than punishment or forfeiture. The idea was that the putative wife's claim was a debt of the community. Likewise, since the legal marriage had not failed because of the wife's actions, she too was entitled to her share. The community debts had to be paid first and when this was done, there was nothing left for the husband. See Patton v. Philadelphia, 1 La. Ann. 98, 106 (1846). Louisiana has developed the idea as one of punishment or forfeiture. The husband in bad faith forfeits his share or he is punished for his bad faith by losing his share. See instant case, 89 So.2d 128, 132 (La. 1956).

6. Abston v. Abston, 15 La. Ann. 137 (1860); Succession of Navarro, 24 La. Ann. 298 (1872); Jermann v. Tenneas, 39 La. Ann. 1021, 3 So. 229 (1887); *Id.*, 44 La. Ann. 620, 11 So. 80 (1892); Succession of Barry, 48 La. Ann. 1143, 20 So. 656 (1896); Waterhouse v. Star Land Co., 139 La. 177, 71 So. 358 (1916); Ray v. Knox, 164 La. 193, 113 So. 814 (1927); Succession of Fields, 222 La. 310, 62 So.2d 495 (1952). An unfortunate aspect of this jurisprudence is that the innocent heirs of a bigamous husband in bad faith are deprived of any inheritance while the husband is shielded by his grave from any punishment. For a better discussion of this problem, see Note, 14 LOUISIANA LAW REVIEW 162 (1953).

7. This holding appears to place title examiners on notice of the fact that the interests of the husband and his two wives will vary depending upon whether they are in good faith.

titled to one-half the property since the legal community co-existed with the putative community. The court, while observing that the three claims to a one-half interest could not be fully satisfied, awarded the husband's one-half to his daughter, a forced heir, citing as authority Article 915 of the Civil Code.[8] Having only one-half remaining, the court made reference to several French writers[9] and concluded that since the claims of the two wives were of equal dignity and rank, the only effective solution was to divide this remainder equally by giving each wife a one-fourth interest in the property.

The respective interests of the legal wife, the husband, and the putative wife in property purchased by the latter depend upon whether all the parties actually contribute to the same "community," or whether the parties are separated into two independent communities and contribute only to the community of which they are a member. It is submitted that the court in the instant case fell into error when it took the former position. The writer proposes that two separate communities existed and that the legal wife had no interest in property acquired by the putative wife. A concept of two communities is entirely consistent with the Code articles on community property. A search of the jurisprudence does not reveal any statement negating this concept of two communities. Moreover, the *Patton* case, although speaking relative to Spanish law, states that there are *two entire* communities.[10] Another decision, not cited in the instant case, held that in a settlement of the legal and putative wives' claims, the court costs should be apportioned to each wife according to her share in the property because the suit is for the benefit of *both* communities.[11] The opinion stated that "the rule most reasonable to follow is to consider the property acquired during *each* marriage as belonging to the *community* of *each* marriage."[12] (Emphasis added.) Thus when H, legally married to W_1, contracts a marriage in good faith with W_2, the latter is a stranger

8. The court offers no reason why it satisfied the husband's interest first and then compromised the two wives' claims. If the determining factor was that he had a forced heir, what would the court do in the event that one of the wives also had a forced heir? Moreover, the heirs claim was no greater than the husband's and it appears that the claims of the three parties were *all* of equal dignity and rank.

9. 7 AUBRY ET RAU, COURS DE DROIT CIVIL FRANÇAIS 75, 76, n. 24 (5th ed. 1913); 3 BAUDRY-LACANTINERIE, TRAITÉ DE DROIT CIVIL 516-18, nos 1930-32 (3d ed. 1908). See further Note, 1 LOYOLA L. REV. 54 (1941).

10. 1 La. Ann. 98, 106 (1846).

11. Succession of Barry, 48 La. Ann. 1143, 1148, 20 So. 656, 658 (1896).

12. *Ibid.*

to the community of H and W_1. W_1 is a stranger to the community of H and W_2.

Once the existence of two communities is established, the question then turns upon the resolution of the issue of *which spouses* may contribute to each community, and upon the consideration of the *manner* in which contributions may be made to a community. H and W_1, being the spouses of the legal marriage, contribute to the legal community, whereas H and W_2 contribute to the putative community. Since H is a spouse of both marriages, he contributes to both communities.[13] However, if an acquisition is made by either the legal or putative wife, as was the situation in the instant case, a contribution is made to only one of the communities, that is, a purchase by the legal wife goes into the legal community as she is a stranger to the putative community, and a purchase by the putative wife falls into the putative community as she is a stranger to the legal community.[14] Contrary to this position, however, the court in the instant case held that the property which the putative wife purchased became a part of the legal community. This is so *only if rights in the land went through the husband* and into the legal community. Whether this happened can best be determined by considering the provisions of the Code relative to the *manner* in which spouses may contribute to the community of acquets and gains. Article 2402 shows how property can be contributed to the community:

> "This . . . community consists of . . . the estate which they may acquire during the marriage, either by donations made jointly to them both or by purchase, or in any other similar way, *even although the purchase be only in the name of one of the two and not of both*, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase." (Emphasis added.)

The last clause of Article 2402 is controlling since the property was acquired by purchase. Accordingly, it became a part of the

13. The writer does not offer a solution to this problem, but merely points it out for purposes of emphasizing the situation at hand. An entirely different problem is encountered when the husband acquires property. For a good discussion of this problem, see *The Work of the Louisiana Supreme Court for the 1955-1956 Term — Persons*, at page 305 *supra*.

14. Had there been an allegation and any proof of simulation, i.e., an assertion that the property was bought in the wife's name, but with community funds or that the property was bought by the husband, but placed in the wife's name, the

putative community. The husband, as a participant in the putative community, acquired a one-half interest by *operation of law*, that is, by operation of community property law. The inquiry is then whether this interest acquired by operation of law has gone through the husband and become a part of the legal community. A fair interpretation of Article 2402 is that when the wife alone makes a purchase, it falls into *her* community, notwithstanding the absence of the husband's name in the act of sale, but the article does *not* create a presumption that the *husband* purchased the property. It is submitted then that the husband acquired an interest by *operation of law* — not by purchase. Since the husband acquired nothing by the methods outlined in Article 2402, he apparently brought *nothing* into the legal community. Upon his death the only claimants to his share in the community under this interpretation of Article 2402 are his forced heir and his putative wife. They are entitled to equal shares of the community.[15]

Although the court in the instant case refers to the "coexistence" of the legal and putative communities, it apparently does not envision two distinct communities or it would not have allowed the legal wife to share in an acquisition by the putative wife, a stranger to the legal community. Following the court's reasoning, the putative wife would share in an acquisition by the legal wife. Further, if the legal wife, W_1, contracted a second marriage to H_1, then H and W_2 would share in property acquired by H_1 although the latter is a total stranger to H and W_2. Such results suggest that the court contemplates a multi-party community to which all parties contribute. The writer does not readily discover any concept of such a composite community in the articles of the Code dealing with community property. Perhaps the court was led to its conclusion by the fact that in the prior jurisprudence the legal wife was always given an interest in the property acquired after the putative marriage. However, in all of those prior cases, the property was purchased by the husband. Under such circumstances, the legal wife would have a claim even under the writer's analysis because the husband is a party to *both* communities and both wives have a claim to his acquisitions. It is submitted that the proper, and more

property would have fallen into both communities. However, this is clearly a case where the wife alone has made a purchase.

15. LA. CIVIL CODE arts. 915, 2406 (1870).

equitable, distribution could have been achieved by considering the two wives as participants in separate communities and as strangers to each other instead of forcing them to contribute to a multi-party community as was done in the instant case.

Fred R. Godwin

FAMILY LAW — USE OF BLOOD TESTS IN ACTIONS EN DESAVEU

Plaintiff brought an action to disavow a child born to his wife during a voluntary separation. Being unable to establish his non-paternity by any other method, he requested that his wife and the child be required to submit to physical examinations involving blood grouping tests which could prove that he could not possibly be the father of the child.[1] This motion was denied in the lower court. On appeal, *held*, affirmed.[2] The Louisiana Civil Code does not authorize the *action en desaveu* based on blood grouping tests. *Williams v. Williams*, 230 La. 1, 87 So.2d 707 (1956).

Article 184 of the Louisiana Civil Code provides that "the law considers the husband of the mother as the father of all children conceived during the marriage."[3] However, this presumption is not absolute, and, in certain circumstances, the husband is allowed to disprove his paternity.[4] When it is clear that the child

1. For a general discussion of the use of evidence obtained through blood tests to disprove paternity, see SCHATKIN, DISPUTED PATERNITY PROCEEDINGS 164-289 (3d ed. 1953); WIGMORE, EVIDENCE § 165 (3d ed. 1940).

2. For convenience of trial, this case was consolidated with another action brought by the plaintiff against his wife for divorce on the grounds of adultery. The court refused to grant the husband a divorce, finding that he failed to establish the adultery of the wife.

On the grounds that he did not have the authority to order anyone to submit to a skin puncture, the trial judge refused to order the tests. Plaintiff contended on appeal that the virtual incorporation of the Discovery Statute of the Federal Rules of Civil Procedure into the Louisiana Revised Statutes beginning 13:3741 gave the court the authority to order such a test. He cited the case of Beach v. Beach, 72 App. D.C. 318, 114 F.2d 479 (1940), which held that such an examination involving blood grouping tests could be ordered under Rule 35(a) of the Federal Rules of Civil Procedure. 28 U.S.C. Rule 35(a) (1948). The Supreme Court did not decide whether or not such a test could be ordered under the Louisiana Revised Statutes 13:3783, but the case was affirmed on the theory that, even if the evidence was obtained through the tests, a disavowal of a child conceived during the marriage could not be based on such evidence under the Louisiana Civil Code.

3. LA. CIVIL CODE art. 184 (1870).

4. For a general discussion of the *action en désaveu*, see Comment, *Presumption of Legitimacy and the Action en Désaveu*, 13 LOUISIANA LAW REVIEW 587 (1953) and 14 LOUISIANA LAW REVIEW 401 (1954); Guillory, *The Action en Désaveu*, 5 TUL. L. REV. 449 (1931).