SUPREME COURT OF LOUISIANA

Byron Ellis Talbot v. Bernice Ellen Harang Talbot

864 So. 2d 590 (La. 2003) · No. 2003-C-0814 · Decided December 12, 2003

SUMMARY

The Louisiana Supreme Court addresses the burden of proof required to overcome the presumption that property possessed during a marriage is community property under Louisiana Civil Code article 2340. The court holds that the presumption may be rebutted by a preponderance of the evidence, reinstates the classification of certain bank stocks as the wife's separate property, and discusses tracing commingled funds used for certificates of deposit. The court also considers ownership and valuation of a life insurance policy insuring an ex-spouse.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Knoll, Justice; Traylor, J.; Hightower, J. ad hoc; Johnson, J.
JURISDICTION	Louisiana
DECIDED	December 12, 2003
DOCKET	2003-C-0814
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Supreme Court review on writ of a First Circuit Court of Appeal decision reversing portions of a district court judgment partitioning former community property.
STANDARD OF REVIEW	The court reviewed the legal burden of proof and the classification and allocation of community property; it applied the preponderance-of-the-evidence standard to rebut the community presumption and recognized broad trial-court discretion regarding admission of parol evidence.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential.
PARTIES	Byron Ellis Talbot v. Bernice Ellen Harang Talbot

TOPICS

community property · equitable distribution · life insurance litigation · burden of proof · evidence

PRACTICE AREAS

family law | community property | life insurance | evidence

QUESTIONS PRESENTED

1. What burden of proof must a spouse satisfy to overcome the presumption of community property under Louisiana Civil Code article 2340?
2. Whether Bernice Talbot proved by the applicable standard that the Hibernia and Bank One stocks were her separate property.
3. Whether Bernice Talbot traced the separate funds sufficiently to establish that the certificates of deposit remained separate property after commingling and rollover of interest.
4. Whether a community-owned life insurance policy on an ex-spouse's life should be awarded to the noninsured policy owner or divided through an award of its cash surrender value.

HOLDINGS

1. A spouse may rebut the presumption that property possessed during the community regime is community property by proving the property's separate nature by a preponderance of the evidence, not by clear and convincing evidence.
2. Bernice Talbot established by a preponderance of the evidence that the bank stocks were her separate property, and the district court did not abuse its discretion by admitting her and her siblings' parol testimony.
3. The certificates of deposit were community property because Bernice Talbot did not trace the separate funds through successive rollovers with sufficient certainty.
4. Because the life insurance policy was a community asset but Byron Talbot was the policy owner, he retained ownership of the policy and Bernice Talbot was entitled to property equal in value, measured in part by her share of the policy's cash surrender value.

KEY QUOTATIONS

> *"As a matter of public policy and in the interest of fairness, we find that the community presumption contained in article 2340 is rebuttable by either spouse upon a showing by a preponderance of the evidence the separate nature of property brought into the community."* (600)

> *"Thus we find once the spouse allows those separate funds to be commingled with community funds, the spouse still must meet the burden of proof by a preponderance of the evidence to demonstrate the separate ownership of property purchased with the commingled funds, but to satisfy this burden the spouse must trace with sufficient certainty the separate nature of the funds used to purchase the property."* (603)

> *"In accordance with the privity principle, the community asset must be partitioned allowing Mr. Talbot to retain ownership of the policy, with Mrs. Talbot receiving property of an equal value."* (604)

FACTUAL BACKGROUND

Byron and Bernice Talbot married in 1974 and divorced in 1997. During the marriage, Bernice possessed bank stocks that she claimed derived from stock allegedly inherited or donated by her grandfather before marriage, as well as certificates of deposit purchased with proceeds from interests in family businesses. She also possessed a Great Southern Life insurance policy on Byron's life that the parties agreed was community property, while Byron was the policy owner. The district court classified the stocks and certificates of deposit as Bernice's separate property and awarded her ownership of the policy; the appellate court altered those classifications and allocation.

PROCEDURAL HISTORY

The parties divorced in 1997, and the district court later rendered a final judgment valuing and allocating the assets of the former community. The First Circuit reversed several findings, classified the bank stocks and certificates of deposit as community property, and awarded Bernice Talbot a share of the cash surrender value of a life insurance policy rather than ownership of the policy. The Supreme Court granted the writ to determine the burden of proof under Louisiana Civil Code article 2340 and to review the life-insurance allocation.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The court reversed the court of appeal's judgment concerning the community nature of the Hibernia and Bank One stocks and reinstated the district court's judgment classifying those stocks as Bernice Talbot's separate property. In all other respects, the court affirmed the court of appeal's decision. The decree states: "REVERSED IN PART OTHERWISE AFFIRMED."

CASES CITED

- Holliday v. Holliday, 358 So. 2d 618, 619 (La. 1978)
- Succession of Lyons, 452 So. 2d 1161, 1165 (La. 1984)
- R.D.M. Corp. v. Patterson, 255 La. 301, 230 So. 2d 820 (1970)
- Succession of Hemenway, 228 La. 572, 83 So. 2d 377 (1955)
- Tullier v. Tullier, 464 So. 2d 278, 281-283 (La. 1985)
- Lasha v. Olin Corp., 625 So. 2d 1002, 1005 (La. 1993)
- Jordan v. Travelers Ins. Co., 257 La. 995, 245 So. 2d 151, 155 (1971)
- Prince v. Hopson, 230 La. 575, 89 So. 2d 128, 130-131 (1956)
- Succession of Broussard, 306 So. 2d 399, 403 (La. App. 3d Cir. 1975)
- Curtis v. Curtis, 403 So. 2d 56, 58-60 (La. 1981)
- Wood v. Wood, 424 So. 2d 1143 (La. App. 1st Cir. 1982)
- Cay v. State Department of Transportation and Development, 631 So. 2d 393, 395 (La. 1994)
- Boudreaux v. American Insurance Co., 262 La. 721, 264 So. 2d 621 (1972)
- Southwest Natural Prod. Co. v. Anderson, 239 La. 490, 118 So. 2d 897, 900 (1960)

- Lee v. Manning, 505 So. 2d 902, 904 (La. App. 2d Cir. 1987)
- Primeaux v. Libersat, 322 So. 2d 147, 150-151 (La. 1975)
- Hoerner v. ANCO Insulations, Inc., 812 So. 2d 45, 71 (La. App. 4th Cir. 2002)
- Dardeau v. Ardoin, 703 So. 2d 695, 697 (La. App. 3d Cir. 1997)
- Lemoine v. Hessmer Nursing Home, 651 So. 2d 444, 451 (La. App. 3d Cir. 1995)
- Pollock v. Pollock, 164 La. 1077, 115 So. 275, 276 (1928)
- T.L. James & Co., Inc. v. Montgomery, 332 So. 2d 834 (La. 1975)
