

**NOT DESIGNATED FOR PUBLICATION**

LESLEY ANN PARKS CREPPEL

NO. 02-CA-752

VERSUS

FIFTH CIRCUIT

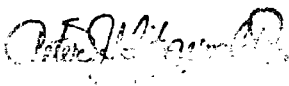
ADAM ANTHONY CREPPEL, JR.

**COURT OF APPEAL;  
FIFTH CIRCUIT**

COURT OF APPEAL

FILED DEC 11 2002

STATE OF LOUISIANA



ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT  
PARISH OF ST. CHARLES, STATE OF LOUISIANA  
NO. 53,209, DIVISION "E"  
HONORABLE ROBERT A. CHAISSON, JUDGE PRESIDING

DECEMBER 11, 2002

**WALTER J. ROTHSCHILD  
JUDGE**

Panel composed of Judges Sol Gothard, Clarence E. McManus  
and Walter J. Rothschild

**GOTHARD, J., CONCURS WITH REASONS**

KAREN MATHERNE O'BRIEN

7521 Westbank Expressway

Suite D

Marrero, Louisiana 70072

COUNSEL FOR LESLEY ANN PARKS CREPPEL,

PLAINTIFF/APPELLEE

THEODORE W. NASS

Nass, Tiemann & Nass

806 Behrman Highway

Gretna, Louisiana 70056

COUNSEL FOR ADAM ANTHONY CREPPEL, JR.,

DEFENDANT/APPELLANT

**REVERSED AND REMANDED.**

WCP  
CEN

The parties were married on September 20, 1986 and divorced on February 26, 2001. Ms. Creppel filed a Petition to Partition Community Property on March 30, 2001, and a Sworn Descriptive List of Community Assets and Liabilities on May 31, 2001. On January 17, 2002, the parties appeared before the court for a community property partition trial. After a pre-trial conference, the parties entered into a consent judgment dividing the parties' assets and liabilities and providing that Ms. Creppel was entitled to a \$12,500.00 equalization payment. The trial court ordered Mr. Creppel to pay \$500.00 immediately, \$2,000.00 within sixty (60) days, and the remaining \$10,000.00 in installments of \$350.00 per month, via an income assignment. At the hearing, Mr. Creppel objected to the payment of the community property equalization through an income assignment. On March 21, 2002, the trial judge signed an "Immediate Income Assignment Order Pursuant to R.S. 9:303" for the payment of the community property reimbursement. It is from this order and the portion of the consent judgment ordering an income assignment that Mr. Creppel appeals.

## DISCUSSION

The primary issue in this case is whether the trial court can order community property equalization payments to be paid through an income assignment. Mr. Creppel argues that income assignment orders may only be rendered in “support” or “alimentary” matters. Ms. Creppel argues that Mr. Creppel may not appeal this ruling of the trial court because the parties entered into a consent judgment as to the assets, liabilities, and reimbursements, and they left the method of payment to the trial court to decide. Although the parties entered into a consent judgment, the transcript of the hearing indicates that Mr. Creppel timely objected to the method of payment. Therefore, this matter is properly before this Court on appeal, because Mr. Creppel did not consent to this part of the judgment.

The trial court ordered an income assignment pursuant to LSA-R.S. 9:303 and LSA-R.S. 46:236.3. LSA-R.S. 46:236.3 provides for the enforcement of a support order through an income assignment. This article defines “support” as “child support, spousal support, and medical support established by a court order and any amounts ordered under R.S. 46:236.5.”<sup>1</sup> In Ellefson v. Ellefson, 95-182 (La. App. 5 Cir. 11/28/95), 666 So. 2d 1112, 1114, this Court held that “support” in LSA-R.S. 46:236.3 applies to “*all* orders of support”, including spousal and child support awards.

LSA-R.S. 46:236.3 does not specifically state that an income assignment may be ordered for community property equalization payments. However, the equalizing payment in this case is \$10,000.00 and the trial court ordered monthly payments of \$350.00. The trial court’s order of monthly community property payments creates a situation analogous to monthly payments of spousal support. Furthermore, many people use their share of community property for their maintenance and support. Therefore, considering the similarity between monthly

---

<sup>1</sup> LSA-R.S. 46:236.5 is entitled “Expedited process for establishment of paternity and establishment or enforcement of support.”

spousal support and monthly community property payments, we find that an income assignment may be ordered for monthly community property payments.

The parties contend that the trial judge relied on Fink v. Bryant, 01-0987 (La. 11/29/01), 801 So. 2d 346 when he determined that an income assignment could be ordered for community property matters. In that case, the Louisiana Supreme Court held that a delinquent party may be held in contempt of court for failing to pay an executory child support arrearage, and that the payee did not have to enforce payment of such arrearages solely through ordinary civil remedies. However, Fink v. Bryant addressed a situation in which the father was delinquent in his child support payments. There has been no showing that Mr. Creppel has refused to obey the orders of the court regarding monthly community property payments or has been delinquent in such payments. Therefore, we find that Fink v. Bryant is distinguishable from the instant case.

LSA-R.S. 46:236.3C(1) provides that in cases in which the Department of Social Services is not providing services and in which an income assignment has not been issued, “the case shall be subject to immediate income assignment upon a delinquency of an amount equal to one month’s support.” As stated above, the consent judgment regarding community property was rendered the same day that the income assignment was ordered. Therefore, there was no showing that Mr. Creppel was delinquent in his community property payments when the income assignment was ordered. We find that it was premature for the trial court to order an income assignment prior to any delinquency regarding community property payments. However, if Mr. Creppel becomes delinquent in his payments in the future, he may be found in contempt of court and further, an income assignment may be ordered.

We find that an income assignment may be ordered for monthly community property payments, but in this case, such an order is premature at this time.

Accordingly, we vacate the income assignment order for the payment of the community property equalization and remand to the trial court for further proceedings.

Mr. Creppel further asserts that the trial court erred in treating the equalization payment as a contempt matter by ordering the community property reimbursement to be paid through an income assignment. Ms. Creppel argues that the trial court had the authority to punish Mr. Creppel for removing funds from his 401K plan in violation of the court's temporary restraining order. It is clear that, at the time that the income assignment was ordered, Mr. Creppel was not in contempt of court for failing to abide by the provisions of the consent judgment, because the income assignment and the consent judgment were rendered on the same day. Whether or not Mr. Creppel was in contempt of court for removing funds from his 401K in violation of a court order or whether the trial court ordered the income assignment on the basis of contempt are not issues before this Court on appeal. Furthermore, considering our ruling that an income assignment may not be ordered prior to Mr. Creppel becoming delinquent in his community property payments, it is unnecessary to discuss the merits of this claim or any allegations of contempt of court.

For the reasons set forth above, we vacate the order of the trial court providing that Mr. Creppel's community property payments be made through an income assignment order and we remand the matter to the trial court for further proceedings consistent with this opinion. This ruling does not affect the remaining provisions of the consent judgment.

**REVERSED AND REMANDED.**

LESLEY ANN PARKS CREPPEL

NO. 02-CA-752

VERSUS

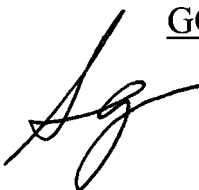
FIFTH CIRCUIT

ADAM ANTHONY CREPPEL, JR.

COURT OF APPEAL

STATE OF LOUISIANA

GOTHARD, J. CONCURS

 I concur with the majority opinion that the judgment of the trial court must be reversed. However, I respectfully disagree with the reasoning used in the opinion.

The opinion finds that income assignments are permissible for community property equalization payments. I disagree. I find no provision in the law permitting an income assignment for such purposes. LSA-R.S. 46:236.3 is clear in its provisions.

That statute applies only to support payments and, in my view, cannot be used for community property matters. Thus, I would find the trial court erred in basing an income assignment order for community property equalization payments on that statute, and reverse on that ground.



EDWARD A. DUFRESNE, JR.  
CHIEF JUDGE

SOL GOTHARD  
JAMES L. CANNELLA  
THOMAS F. DALEY  
MARION F. EDWARDS  
SUSAN M. CHEHARDY  
CLARENCE E. MCMANUS  
WALTER J. ROTHSCHILD

JUDGES

# Court of Appeal

FIFTH CIRCUIT  
STATE OF LOUISIANA  
101 DERBIGNY STREET (70053)  
POST OFFICE BOX 489  
GRETNA, LOUISIANA 70054

PETER J. FITZGERALD, JR.  
CLERK OF COURT

GENEVIEVE L. VERRETTE  
CHIEF DEPUTY CLERK

GLYN RAE WAGUESPACK  
FIRST DEPUTY CLERK

JERROLD B. PETERSON  
DIRECTOR OF CENTRAL STAFF

(504) 376-1400  
(504) 376-1498 FAX

## CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY DECEMBER 11, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

PETER J. FITZGERALD, JR.  
COURT OF COURT

7002 0510 0004 3525 2448

U.S. Postal Service CERTIFIED MAIL RECEIPT <small>(Domestic Mail Only; No Insurance Coverage Provided)</small>	
02-CA-752 USF	
Postage \$	
Mr. Karen Matherne O'Brien	
Re (Endors)	Attorney at Law
Restrict (Endors)	7521 Westbank Expressway, Suite D
	Marrero, LA 70072
Total I	
Sent To	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
PS Form 3800, January 2001 See Reverse for Instructions	

7002 0510 0004 3525 2455

U.S. Postal Service CERTIFIED MAIL RECEIPT <small>(Domestic Mail Only; No Insurance Coverage Provided)</small>	
02-CA-752	
Postage \$	
Certified Fee	
Ret (Endors)	Mr. Theodore W. Nass
Restrict (Endors)	Attorney at Law
	860 Behrman Highway
Total F	Gretna, LA 70056
Sent To	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
PS Form 3800, January 2001 See Reverse for Instructions	