NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 0208

KELLIE DORGAN KEEFFE
VERSUS
KERRY MICHAEL KEEFFE

CONSOLIDATED WITH

NUMBER 2007 CA 0209

KERRY MICHAEL KEEFFE
VERSUS
KELLIE DORGAN "KEEFFE"

Judgment Rendered: November 2, 2007

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2003-13635 c/w 2003-13647

Honorable Elaine W. DiMicelli, Judge

* * * * * * *

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BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

J. P. Pettigrew J. concurs

WELCH, J.

In this appeal, the defendant, Kerry Michael Keeffe, challenges a trial court judgment partitioning the community of acquets and gains that formerly existed between him and his former wife, Kellie Dorgan Keeffe. Because the trial court failed to follow the mandatory procedure set forth by law for partitioning community property, we vacate the judgment and remand for further proceedings in accordance with law.

I. FACTUAL AND PROCEDURAL HISTORY

Kellie Keeffe and Kerry Keeffe were married in St. Tammany Parish, Louisiana, on June 26, 1998.[1] They physically separated in April 2002, and on August 1, 2003, Kellie filed petition for divorce based on La. C.C. art. 103.[2] The parties were ultimately divorced by judgment signed on March 2, 2004.

With regard to the partition of community property, in Kellie's petition for divorce, she alleged:

> 11.
>
> Plaintiff, [Kellie] and defendant [Kerry] acquired certain community property during their marriage consisting of both movables and immovables. Petitioner is entitled to a portion of the community of acquets and gains existing between them and reserves her right to reimbursements, and after due proceedings are had herein, there be a judgment terminating the community property regime retroactive to the date of the filing of this petition and a judgment partitioning the community of acquets and gains [between] petitioner and defendant, respectively, in accordance with the provisions of [La. R.S.] 9:2801(4) and that this Court issue an Order fixing a date for the parties to file their descriptive lists and fixing a date for the parties herein to file their motions to traverse.
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> ***
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> WHEREFORE, petitioner [Kellie] prays that:

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[1] The petition for divorce filed by Kellie states that the parties were married on June 26, 1998; however, her detailed descriptive list states that the parties were married on June 28, 1998.

[2] Kerry also filed a petition for divorce on August 1, 2003. However, by order dated September 24, 2003, the two suits were consolidated.

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> 6. The community of acquets and gains be terminated retroactive to the date of the filing of this pleading and the Court order the parties to filed Detailed Descriptive Lists of assets and liabilities within forty-five (45) days of service and a motion to traverse be filed within sixty (60) days of the last filed detailed descriptive list, and that the community be partitioned in accordance with the provisions [of La.] R.S. 9:2801.

On December 17, 2003, at a hearing on other matters incidental to the parties' divorce, Kellie requested, and the trial court set a trial for the partition of the parties' community property on April 26, 2004. The trial court further informed the parties and their counsel that it would be sending an "order which outlines what [is to be] done for [a] community property partition."

On December 19, 2003, the trial court sent a notice for trial on April 26, 2004, and issued a "Standing Order [for] Community Property Partition" that provided the parties (and their counsel) were to meet to review the descriptive lists filed by each party for the purpose of reaching a joint stipulation on the value of community assets, liabilities, and reimbursement requests and to file a joint stipulation into the record three days prior to trial regarding the identity of each uncontested item and its value, the identity of each item to which the parties agree on value, but contest the inclusion or exclusion of the item in the partition. The order also provided that if the parties could not agree on the valuation of an item, independent third party testimony would be required to establish the market value of the item, that all appraisals of real estate were to be performed by certified appraisers (unless otherwise agreed by the parties), and that contested reimbursement requests were to be supported by documentary evidence.

Thereafter, on April 26, 2004, a trial was held. Prior to trial, neither Kellie nor Kerry filed a detailed descriptive list into the record of these proceedings nor did they file a joint stipulation of facts. Kerry did not appear at the trial; only

Kellie and her attorney were present, and Kellie was the only witness who testified at the trial. At the conclusion of Kellie's testimony and presentation of her case, the trial court made the following statements:

> I'm going to need additional information on some of this stuff. I need blue book values on all of these vehicles.
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> ***
>
> And I'm going to need some kind of an appraisal or something on the other equipment. I can't just take her estimate of what she thinks the stuff is worth, to set a value of it.
>
> ***
>
> And I also need an evaluation of the business.
>
> ***
>
> So we're going to hold the record open

Approximately a year and a half later, on November 18, 2005, Kellie filed a sworn detailed descriptive list into the record in this matter and certified that she served the defendant with this pleading (by telefax, hand delivery or mail) on November 3, 2005. On the same date Kellie filed her detailed descriptive list into the record, a judgment partitioning the parties' community property was filed into the record of these proceedings, which judgment was ultimately signed by the trial court on November 29, 2005. It is from this judgment that Kerry has appealed.

II. ASSIGNMENTS OF ERROR

On appeal, Kerry contends that:

> 1. The trial court erred in rendering and signing a community property partition judgment without first complying with the requirements of [La.] R.S. 9:2801.
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> 2. The trial court erred in rendering and signing a community property partition judgment without first requiring compliance with its own pretrial orders.

III. LAW AND DISCUSSION

In his first assignment of error, Kerry contends that the trial court erred in

rendering a judgment partitioning the community property because it failed to comply with the specific procedural requirements of La. R.S. 9:2801. We agree.

The provisions of La. R.S. 9:2801 set forth the procedure by which community property is to be partitioned when the spouses are unable to agree on a partition of community property. La. R.S. 9:2801(A); **Bible v. Bible**, 2003-2793, p. 4 (La. App. 1st Cir. 9/17/04), 895 So.2d 547, 549-550, writ denied, 2005-1081 (La. 6/17/05), 904 So.2d 700.

Louisiana Revised Statutes 9:2801(A)(1)(a) provides that "[w]ithin forty-five days of service of a motion by either party, each party shall file a sworn detailed descriptive list of all community property, the fair market value and location of each asset, and all community liabilities." "Within sixty days of the date of service of the last filed detailed descriptive list, each party shall either traverse or concur in the inclusion or exclusion of each asset and liability and the valuations contained in the detailed descriptive list of the other party." La. R.S. 9:2801(A)(2). At the trial of such traverses, the court must determine the community assets and liabilities, and the valuation of assets is to be determined at the trial on the merits. *Id.* However, "[t]he court, in its discretion, may by ordinary procedure try and determine at one hearing, all issues, including those raised in the traverses." La. R.S. 9:2801(A)(2). The provisions of La. R.S. 9:2801 are mandatory. **Bible**, 2003-2793 at p. 5, 895 So.2d at 550.

In this case, the record reflects that the trial court conducted a partition trial before either party filed a sworn detailed descriptive list into the record in this matter, and then rendered and signed a judgment of partition approximately eleven days after Kellie filed her sworn detailed descriptive list.[3] As a result, Kerry was

[3] We note that record before us does not contain a rule to show cause why Kellie's detailed descriptive list should not be deemed to constitute a judicial determination of the community assets and liabilities (or a judgment thereon), which may be an appropriate remedy when an opposing party fails to file their own detailed descriptive list. See La. R.S. 9:2801(A)(1)(a).

not given the opportunity he was statutorily entitled to under La. R.S. 9:2801(A)(2) to either traverse or concur in the inclusion or exclusion of each asset and liability and the valuations contained in Kellie's descriptive list.

Furthermore, with the exception of a savings account at Parish National Bank, the mortgage on the former matrimonial domicile, and a "note" on a Harley Davidson motorcycle, the record in this matter does not reflect that the trial court valued any of the assets of the community or determined any of its liabilities as required by La. R.S. 9:2801(A)(4)(a). Although a trial court has broad discretion in adjudicating issues raised by a partition of community property and is afforded a great deal of latitude in arriving at an equitable distribution of assets between the spouses, in this case we do not have any factual findings or legal conclusions by the trial court with respect to its valuation of community assets and determination of liabilities. Therefore, it is impossible for this court, on review, to determine if each spouse received assets and liabilities of an equal net value as required by La. R.S. 9:2801(A)(4)(b), and accordingly, whether the trial court's judgment of partition was an appropriate exercise or an abuse of its discretion.

In light of the trial court's failure to comply with the procedures mandated by La. R.S. 9:2801, this court must vacate the judgment on appeal and remand this matter for completion of the partition proceedings in accordance with La. R.S. 9:2801.[4]

IV. CONCLUSION

For the above and foregoing reasons, the November 29, 2005 judgment of the trial court partitioning the community of acquets and gains formerly existing between Kerry Michael Keeffe and Kellie Dorgan Keeffe is hereby vacated and this matter remanded for further proceedings consistent with the views expressed

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[4] Since we find merit to Kerry's first assignment of error and vacate the trial court's judgment, we pretermit discussion of his second assignment of error.

in this opinion.

All costs of this appeal are assessed to the plaintiff/appellee, Kellie Dorgan Keeffe.

VACATED AND REMANDED.