

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CA 0475

CARLA S. ROBERTS

VERSUS

ROBERT A. DELPHEN

Judgment Rendered: DEC 22 2021

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APPEALED FROM THE FAMILY COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 181246, DIVISION "C"

HONORABLE CHARLENE CHARLET DAY, JUDGE

* * * * *

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BEFORE: LANIER, WOLFE, AND BURRIS,¹ JJ

¹ The Honorable William J. Burris, retired, is serving pro tempore by special appointment of the Louisiana Supreme Court.

Wolfe, J. dissents in part and assigns reasons.

BURRIS, J.

This is an appeal from a judgment that denied spousal support and determined community property matters. After review, we affirm.

FACTS AND PROCEDURAL HISTORY

Carla Roberts purchased a home in St. Martinville, Louisiana, on February 29, 2000 for \$115,000.00. Ms. Roberts and Robert Delphen began dating in 2002 and were married on October 18, 2005, in St. Martinville, Louisiana. Ms. Roberts worked as an attorney for the Louisiana Senate and also had a private law practice. Mr. Delphen, who was a carpenter at the time, owned Delphen's Cabinets and Remodeling. During the marriage he worked three days a week in Baton Rouge, and he also worked on Ms. Roberts' house. The parties sometimes stayed in Baton Rouge and sometimes stayed in St. Martinville. Ms. Roberts owned an apartment in Baton Rouge and Mr. Delphen had an apartment over his shop in Prairieville where they also stayed on occasion. Ms. Roberts decided to sell the St. Martinville house after Hurricanes Katrina and Rita, since people were listing houses and "making money" due to a demand for houses that didn't flood. Twenty days after the parties were married, Ms. Roberts listed the house for sale. Ms. Roberts sold her home on February 17, 2006 for \$250,000.00. Ms. Delphen then repaid her mother, Helen Caver, \$23,500.00 that she had loaned for the down payment, and paid Mr. Delphen \$5,000.00 for work he had done on the house. The parties separated on July 10, 2011. Ms. Roberts filed for divorce on August 2, 2011. The parties were divorced on July 10, 2012. The community of acquets and gains was terminated retroactive to the date Ms. Roberts filed for divorce.

Mr. Roberts filed a claim for spousal support, and the parties disagreed upon the partition of the community. After a trial, the trial court denied Mr. Delphen's claim for spousal support and partitioned the community. The judgment was

signed on September 22, 2020. Notice of the judgment was issued on September 23, 2020. On November 9, 2020, Mr. Delphen filed a motion for an appeal of that judgment. Ms. Roberts filed a motion seeking to dismiss the appeal as untimely, maintaining that the thirty-day delay found in La. C.C.P. art. 3943 applies.²

ASSIGNMENTS OF ERROR

1. The Trial Court erred when it denied Mr. Delphen's claim for permanent spousal support, finding that he was not free from fault.
2. The Trial Court erred when it found that the \$115,000.00 recovered from the sale of immovable property bearing municipal number 212 Old Market Street, St. Martinville, Louisiana was not conveyed to Mr. Delphen, by Ms. Roberts, for the labor and other services he provided in restoring 212 Old Market Street, St. Martinville, Louisiana, effectively bringing the price for which it was later sold, as agreed to by the parties.
3. The Trial Court erred when it denied Appellant's claim for uncompensated or undercompensated labor in connection with restoring 212 Old Market Street, St. Martinville, Louisiana. Specifically, finding that he had not met his burden of proof in establishing the value of 212 Old Market Street, at the commencement of the community when it was Ms. Roberts that had the burden of proof.
4. In the alternative, the Trial Court erred in not concluding the \$115,000.00 check, referred to in the second assignment of error, written to Mr. Delphen, by Ms. Roberts, and then deposited by him in a joint checking account was not community property.

MOTION TO DISMISS THE APPEAL

We recognize there are issues as to the timeliness of the appeal in regard to the denial of spousal support. See La. C.C.P. art. 3943. However, even if the appeal of the denial of spousal support was timely, following our review of the record, we cannot say that the trial court manifestly erred in its denial of spousal support. Thus, we pretermitt the issue of the timeliness of the appeal of the denial of spousal support.

² Louisiana Code of Civil Procedure article 3943 provides that an appeal from a judgment awarding custody, visitation, or support of a person can only be taken within the delay provided in La. C.C.P. art. 3942. Louisiana Code of Civil Procedure article 3942 provides for a thirty-day appeal deadline. To the extent that the judgment appealed denies the spousal support award, that ruling may be controlled by the thirty-day deadline.

ASSIGNMENT OF ERROR NUMBER 1

When a spouse has not been at fault prior to the filing of a petition for divorce and is in need of support, based on the needs of that party and the ability of the other party to pay, that spouse may be awarded final periodic support. La. C.C. art. 112. The burden of proving freedom of fault is upon the claimant. **Cauthron v. Cauthron**, 2012-0913 (La. App. 1 Cir. 2/15/13), 113 So.3d 232, 233. As with any factual finding, a trial court's findings relative to the issue of fault in domestic cases are entitled to great weight and will not be overturned on appeal absent manifest error. **Gober v. Gober**, 2020-0820 (La. App. 1 Cir. 3/11/21), 322 So.3d 787, 791.

Ms. Roberts testified that she left the marriage on July 10, 2011, the same day Mr. Delphen was arrested for solicitation of a prostitute and aggravated assault with a firearm. Thus, we find no manifest error in the trial court's determination that Mr. Delphen was not entitled to spousal support as he failed to prove that he was without fault prior to the filing of the petition for divorce. This assignment of error has no merit.

ASSIGNMENT OF ERROR NUMBER 3

In this assignment of error, Mr. Delphen maintains that the trial court erred when it denied his claim for uncompensated or undercompensated labor in connection with restoring Ms. Roberts' home in St. Martinville. Specifically, he maintains that the trial court erred in finding that he did not meet his burden of proof in establishing the value of Ms. Roberts' St. Martinville home at the commencement of the community.

If the separate property of a spouse has increased in value as a result of the uncompensated common labor or industry of the spouses, the other spouse is entitled to be reimbursed from the spouse whose property has increased in value

one-half of the increase attributed to the common labor. La. C.C. Art. 2368. In order for Mr. Delphen to show an increase in value he must prove: (1) the condition of the property at the time of the marriage, (2) the value of the property at dissolution in the state it was at the time of the marriage, (3) the real value of said property with all of the improvements in the condition it was at the time of dissolution of the community, and (4) the difference between the two estimates. See Salley v. Salley, 95-0387 (La. 10/16/95), 661 So.2d 437, 439; **Krielow v. Krielow**, 93-2539 (La. 4/11/94), 635 So.2d 180, 183.

After Ms. Roberts purchased the home, it was not appraised again until it was being listed for sale by Ms. Roberts. Mr. Delphen testified that he did not know the value of the house at the time he and Ms. Roberts married in October of 2005. He stated that after the marriage, he worked on the house, but he also worked three days a week in Baton Rouge.

Ms. Roberts testified that she purchased the materials that were used on the house. She testified that Mr. Delphen did work for her on the house while they were dating, and she did legal work for him for his business in return. She testified that he accepted the \$5,000.00 check and cashed it.

Ms. Roberts testified that George Renew, who was semi-retired, acted as a foreman on the project, managing carpenters. She testified that she used the money from her private law practice to fund the renovations for the first three years, which paid for the kitchen renovation and the central air conditioning which was added to the second floor, as well as sealing the roof and rewiring the electrical system. She also stated that her brother-in-law Thad spent two or three weeks insulating the house under the floor and in the attic.

Ms. Caver lived with Ms. Roberts in the St. Martinville home prior to Ms. Roberts' marriage to Mr. Delphen. Ms. Caver testified that an extensive amount of

work was done to the house while she lived there. She stated that the floor was repaired, the kitchen was renovated, and there was work done to the living room walls, as well as insulation work, roof work and repainting. She testified that different carpenters had worked on different parts of the house. Ms. Caver also stated that Thad and her daughter, Janet, stayed at the house for two weeks insulating under the house and in the attic. She stated that George Renew, a friend, worked on the house along with a carpenter during the time that she lived there. Ms. Caver also testified that Ms. Roberts had central air installed on the second floor of the house. She stated that more than half of the work that was done on the house was finished before Ms. Roberts met Mr. Delphen in 2002. Ms. Caver testified Mr. Delphen did carpentry work on the house, specifically that he smoothed a bump in the kitchen floor and added some floor tiles, and also added a bathroom to the master bedroom area. Ms. Caver stated that Ms. Roberts paid for the materials for the house.

In its amended reasons for judgment, the trial court found it had no reliable value to assign the home prior to Mr. Delphen's work, or any work on the house, to determine whether the house had increased in value due to his uncompensated labor, or even that the value of the home had increased at all. Further, the trial court noted that even if it knew the value of the home before and after Mr. Delphen or anyone else worked on it, based on the testimony about the work done after the marriage, and the fact that Ms. Roberts purchased the materials used, the trial court found that \$5,000.00 was sufficient for any work done during the marriage.

In light of the fact that Mr. Delphen was unable to provide a value for the house at the time of the couple's marriage, that the house was not appraised prior to the listing, and that numerous people worked on the house, we cannot say that the trial court manifestly erred in finding that Mr. Delphen failed to prove his claim

for an increase in the value from his allegedly uncompensated work on Ms. Roberts' home. This assignment of error has no merit.

ASSIGNMENTS OF ERROR NUMBERS 2 AND 4

In these assignments of error, Mr. Delphen first maintains that the trial court erred when it found that the \$115,000.00 recovered from the sale of Ms. Roberts' home in St. Martinville was not conveyed to him by Ms. Roberts for services he provided working on the home. In the alternative, Mr. Delphen maintains that the trial court erred in concluding the \$115,000.00 check, which he claims was written to him by Ms. Roberts, and then deposited by him in a joint checking account, was not community property.

It is undisputed that the St. Martinville house was Ms. Roberts' separate property. Thus, the proceeds of the sale of the house were also Ms. Roberts' separate property. See La. C.C. art. 2341, Revision Comments – 1979, Comment (c).

Ms. Roberts testified that she wrote the check for \$115,000.00 to Mr. Delphen as a loan for him to deposit into a joint account to draw interest, but that it was not a gift. The bottom of the check indicates "Sale Proceeds From Carla Roberts House". The check stub indicates "Loan to R.A.D. From CSR's House". She stated that this was a way to put the money into a "safe harbor" as she had gotten into a dispute with the Student Loan Marketing Association (Sallie Mae) the student loan company, which had seized a portion of her paycheck at the Louisiana Senate without filing suit against her or getting a court order for garnishment. She testified that she believed if the money was in a joint account Sallie Mae would at least have to sue her to get it.

Ms. Roberts testified that she first realized that Mr. Delphen believed she owed him more than the \$5,000.00 after they had separated, five years after she

had sold her St. Martinville house. She testified that she never agreed to pay him anything other than the \$5,000.00 that she paid him.

Mr. Delphen testified that he and Ms. Roberts had no written agreement for the work that he did on the house. Mr. Delphen testified that “the deal” was that he would get “the proceeds” from the sale of Ms. Roberts’ St. Martinville house. At different times Mr. Delphen claimed that he was owed different amounts by Ms. Roberts for work and materials for her St. Martinville house: \$115,000.00, \$161,000.00, and \$50,000.00. Mr. Delphen admitted that a ledger he presented at trial, claiming that he worked 25 hours per week on the house during the four months after the marriage and before the sale of the house, was actually created by him in 2011, five years after the house was sold.

Mr. Delphen contends that shortly after the sale of her house, Ms. Roberts sent him a note as a “thank you and acknowledgment”. He contends that this typed note, dated February 23, 2006, is evidence that Carla gifted him the \$115,000.00 for his work on her house. The note contains spelling and grammatical errors and appears to have Ms. Roberts’ signature stamped at the bottom.

Ms. Roberts testified that the letter that Mr. Delphen claimed she wrote was a forgery. She testified that she would not have made the grammatical errors in the letter, that the letter was nonsensical, and that it utilized her signature stamp from her law practice that Mr. Delphen must have gotten from her stored items in a warehouse on Highland Road. Ms. Roberts testified that she first saw the letter when looking through the record for a hearing date. She stated that she immediately reported the letter to the East Baton Rouge Parish Sheriff’s Office as a forgery of her signature, a false public record, and an identity theft.

When questioned about the letter at trial, Mr. Delphen could not remember how the letter got to him, or whether it had a return address on the envelope. He

stated that it came to him with the \$5,000.00 check. The letter stated that Mr. Delphen would receive a larger check after the mortgage was paid off, Ms. Caver was repaid for the down payment, and expenses were paid. Mr. Delphen could not explain why the letter would state those things when the mortgage was paid before Ms. Roberts received the proceeds from the sale and Ms. Roberts had repaid her mother on the same date the letter was supposed to have been written.

Regarding the trial court's determination that Ms. Roberts did not have Mr. Delphen put the \$115,000.00 check into the joint checking account in order to pay him for his work on the house, that factual determination is amply supported by the record and we find no manifest error in that determination. This assignment of error has no merit.

Mr. Delphen argues, in the alternative, that the \$115,000.00 check was a donation to the community by Ms. Roberts. The transfer by a spouse to the other spouse of a thing forming part of his separate property, with the stipulation that it shall be part of the community, transforms the thing into community property. As to both movables and immovables, a transfer by onerous title must be made in writing, and a transfer by gratuitous title must be made by authentic act. La. C.C. art. 2343.1. Since the trial court determined the check was not remuneration by Ms. Roberts to Mr. Delphen for his work on her house, and we have found no manifest error in that determination, the check can only be a gratuitous donation, which must be made by authentic act.³ There was no authentic act in this case. Thus, this assignment of error has no merit.

³ An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed. The typed or hand-printed name of each person shall be placed in a legible form immediately beneath the signature of each person signing the act. La. C.C. art. 1833(A).

CONCLUSION

For the foregoing reasons, the motion to dismiss is pretermitted, and the trial court judgment is affirmed.

DECREE

JUDGMENT AFFIRMED.

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VERSUS

ROBERT A. DELPHEN

 **WOLFE, J., DISSENTS IN PART AND ASSIGNS ADDITIONAL REASONS.**

I respectfully disagree in part with the majority opinion, in that I do not agree that we should pretermitt discussion of a timeliness issue, which is a jurisdictional issue. The failure to file a timely appeal is clearly a jurisdictional defect; therefore, I would dismiss the portion of the appeal concerning the denial of the spousal support. Louisiana Code of Civil Procedure article 3493 was recently amended by La. Acts 2021, No. 259, § 2, effective August 1, 2021, to clarify the jurisprudence (**Malone v. Malone**, 282 So.3d 119, 121 (La. 1973) and **Jupiter v. Jupiter**, 2014-0395 (La. App. 1st Cir. 9/24/14), 154 So.3d 1241, 1242) holding that appeals from judgments denying support are governed by the 30-day timeline. Thus, the appeal of the spousal support issue is untimely under both the former and new versions of Article 3493 and should be dismissed, because this court lacks jurisdiction to rule on that issue. For this reason, I respectfully dissent in part.