NOT DESIGNATED FOR PUBLICATION

GRADY DIXON AND MYRNELL THOMAS	*	**NO. 2004-CA-1056**
VERSUS	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
SHIRLEY DIXON	*	**STATE OF LOUISIANA**

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-7473, DIVISION "I-14"
HONORABLE KERN A. REESE, JUDGE

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JUDGE MAX N. TOBIAS, JR.

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(COURT COMPOSED OF JUDGE JAMES F. MCKAY III, JUDGE MAX N. TOBIAS, JR., JUDGE DAVID S. GORBATY)

MYRNELL DIXON THOMPSON
2723 NORTH PRIEUR STREET
NEW ORLEANS, LA 70117
-AND-
GRADY DIXON
2721 NORTH PRIEUR STREET
NEW ORLEANS, LA 70117
IN PROPER PERSONS, PLAINTIFFS/APPELLANTS

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AFFIRMED.

MARCH 2, 2005

In this property dispute case, the appellants, Grady Dixon ("Mr. Dixon") and Myrnell Thomas ("Ms. Thomas"), appeal from default judgments entered against them and in favor of the appellee, Shirley Dixon, their sister. For the reasons below, we affirm the judgments of the trial courts.

The record reveals that on 5 August 1975, the defendant/appellee, Shirley Dixon, purchased the property located at 2721-2721½-2723 North Prieur Street in New Orleans for the sum of $18,000.00. Her brother, Gerald Dixon, co-signed the promissory note with Ms. Dixon, but was not a purchaser of the property; he signed the act of sale containing the security interest in the property binding himself for the repayment of the loan "the same as if he were the Purchaser." The act of sale was recorded on 6 August 1975 in the public records of the Parish of Orleans at (a) Notarial Archives Office, No. 170013 and (b) Conveyance Office Book 733, Folio 354. Once the property was purchased, Ms. Dixon leased a portion of the premises to her older brother, Mr. Dixon, and her older sister, Ms. Thomas, for minimal

amounts pursuant to an oral lease. Over the years, the rent payments consisted of Mr. Dixon and Ms. Thomas paying money for rent, or writing checks for a portion of the mortgage note on the property, and at certain times, paying extra sums to help with extraordinary repairs to the property.

Toward the end of 1999, both Mr. Dixon and Ms. Thomas were paying $76.00 per month rent to Ms. Dixon to occupy a portion of the premises. During that period, Ms. Dixon wished to increase the rent to a reasonable fair market value per month and a dispute ensued among the siblings. The appellants refused to pay additional rent and in the beginning of the year 2000, Ms. Dixon filed eviction proceedings in First City Court against them.

In response to the eviction proceedings, the appellants filed a possessory action against Ms. Dixon in Civil District Court. They alleged that Ms. Dixon "caused a disturbance of plaintiffs' quiet and peaceful possession of the property." They claim that they had been paying rent at 2721 and 2723 North Prieur Street for over 26 years and that during this time, they had maintained and improved the premises. They sought a judgment to recognize their right to possess the property and maintain possession, as well as to order Ms. Dixon to file an adverse claim of ownership of the property in a petitory action. The appellants were

successful in obtaining a stay of the eviction proceedings pending in First City Court.

On 31 May 2000, Ms. Dixon filed an exception of no cause of action and a motion to dissolve the stay order, which were both denied. She then filed an answer to the possessory action and a reconventional demand against the appellants in August 2000, alleging that the appellants filed the possessory action in bad faith and merely as an attempt to defeat the eviction proceedings. In addition, she alleged that they were refusing to pay rent while the possessory action was pending. Ms. Dixon sought dismissal of the action against her, an award of back rent, and reasonable attorney's fees, costs and interest for defending and prosecuting the possessory action and reconventional demand.

The answer and reconventional demand were served on the appellants, through their attorney of record, on 31 August 2000. On 20 September 2000, Mr. Grady and Ms. Thomas filed an answer to the reconventional demand. Ms. Dixon then filed a first amended answer and reconventional demand on 21 June 2002, which was served on Mr. Grady and Ms. Thomas through their attorney of record on 26 June 2002. However, the appellants never answered the amended reconventional demand.

On 5 February 2004, Ms. Dixon filed a motion for default against Mr.

Dixon and Ms. Thomas and a default was entered against them on the same day. The appellants were notified of the defaults by certified mail; Mr. Dixon received the notice as confirmed by his signature on the return receipt. However, Ms. Thomas refused to accept the letter, even after several attempts by the United States Postal Service to deliver it. On 4 March 2004, a judgment confirming the default against Mr. Dixon was entered into the record after testimony in open court and on 16 March 2004, a judgment confirming the default against Ms. Thomas was entered into the record also after testimony in open court. These judgments, finding that Ms. Dixon produced "due proof and support of her reconventional demand," specifically declare that she is the sole and rightful owner of the property at issue. The judgments also lifted the stay order that stayed the eviction proceedings in First City Court. This appeal followed.

The appellants contend that the judgments should be reversed because they have acquired the property based on acquisitive prescription of 10 years, *see* La. C. C. art. 3473, or in the alternative, acquisitive prescription of 30 years. *See* La. C. C. art. 3486. In response, Ms. Dixon argues that the default judgments were properly entered against the appellants and they have not met the prerequisites for acquisitive prescription of either 10 years or 30 years.

In reviewing a default judgment, an appellate court is restricted solely to determining whether the record contains sufficient evidence to support a *prima facie* case. *Mossy Motors, Inc. v. Cameras America*, 2002-1536 (La. App. 4 Cir. 6/25/03), 851 So. 2d 336.

The presumption that the default was rendered upon sufficient evidence and is correct does not apply if testimony is transcribed and is contained in the record, as is true in the instant case. *Id.* at pp. 3-4, 851 So. 2d at 339. *Band v. First Bankcard Center*, 94-0601 (La. App. 4 Cir. 9/29/94), 644 So.2d 211. Where, as here, the record contains a complete transcript of the confirmation proceedings, the reviewing court may determine whether the evidence upon which the default judgment was based was sufficient and competent. *Id.* at 217.

In *Ascension Builders, Inc. v. Jumonville*, 263 So.2d 875, 877-79, 262 La. 519, 527-29 (1972), the Supreme Court held that it is neither necessary to transcribe the testimony offered at a default hearing, nor make a note of evidence, if the claim upon which the default is confirmed is based on written evidence that appears in the record.

In addition, the *Ascension Builders* court stated:

> In order to obtain reversal of a default judgment appealed from, or to obtain a remand, defendant must overcome the presumption that the judgment was rendered upon sufficient evidence and that it is correct. When the judgment recites,

> as it does here, that plaintiff has produced due proof in support of its demand and that the law and evidence favor plaintiff and are against the defendant, the presumption exists that the judgment was rendered upon sufficient evidence and that it is correct. *Baker Finance Co. v. Hines,* 255 La. 971, 233 So. 2d 902 (1970); *Massey v. Consumer's Ice Co. of Shreveport,* 223 La. 731, 66 So. 2d 789 (1953); *Nugent v. Stark,* 34 La. Ann. 628 (1882).
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> This presumption which exists, when there is no note of evidence of parol testimony, that the judgment is well-founded and that it was based on competent evidence, is a fair and reasonable one conducive to the efficient administration of justice and should be given much weight. It has long been recognized in our law. *Escurieux v. Chapduc,* 4 Rob. 323 (La. 1843); *Hubbell v. Clannon,* 13 La. 494 (1839).

Id.

The appellate record contains a certified copy of the act of sale demonstrating that Ms. Dixon is the sole owner of the property in question. She also gave testimony in open court that confirmed her ownership. No evidence exists to contradict this fact. In addition, the record is devoid of any competent evidence that the appellants are entitled to claim acquisitive prescription under either article 3473 or article 3486. (Mr. Dixon and Ms. Thomas have no written deed translative of title that would demonstrate that they have good faith title to any part of the property. Since Ms. Dixon acquired the property less than 30 years ago, Mr. Dixon and Ms. Thomas

cannot establish adverse possession for 30 years that would give them a right to a part of the property.) Consequently, we find that the evidence upon which the default judgments were based was sufficient and competent and that Ms. Dixon proved a *prima facie* case that she is the sole and rightful owner and possessor of the property located at 2721-2721½ -2723 North Prieur Street. Thus, appellants' assignment of error is without merit.

Based on the foregoing, we affirm the judgments against Mr. Dixon and Ms. Thomas. All costs of this appeal are assessed against the appellants.

AFFIRMED.