

NOT DESIGNATED FOR PUBLICATION

IN THE MATTER OF ANN TRENCHARD LEAMAN AND PAUL J. LEAMAN, JR. FIFTH CIRCUIT COURT OF APPEAL;
FIFTH CIRCUIT COURT OF APPEAL

C/W FILED MAR 26 2002 STATE OF LOUISIANA

PAUL J. LEAMAN, JR. NO. 01-CA-1207
VERSUS c/w 01-CA-1208
ANN TRENCHARD LEAMAN

Peter J. Fitzgerald
CLERK

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 452-838 c/w 458-744, DIVISION "H"
HONORABLE KERNAN A. HAND, JUDGE

MARCH 26, 2002

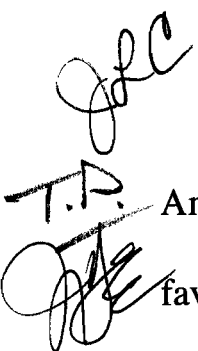
JAMES L. CANNELLA
JUDGE

Panel composed of Judges James L. Cannella,
Thomas F. Daley and Marion F. Edwards

MITCHELL J. HOFFMAN
KERMIT L. ROUX, III
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REVERSED AND REMANDED.

 In this property partition matter, Plaintiff, Ann Cooper (Cooper), formerly Ann Trenchard Leaman, appeals from two trial court judgments rendered in favor of her former husband, Paul J. Leaman, Jr. (Leaman). For the reasons which follow, we reverse and remand.

The parties were divorced by judgment dated December 1, 1993. On January 14, 1994, Leaman sued to partition by licitation numerous jointly owned personal effects that the couple had owned.¹ Between 1994 and 1998 little was done in the partition proceeding. Then, on August 5, 1998, they entered into a Consent Judgment partitioning the assets that they co-owned. The Consent Judgment partitioned certain movable property and art work to the parties pursuant to an attached Descriptive List of Assets. The descriptive list essentially divided the property into two groups. Group I items went to Cooper and Group

¹ The parties were co-owners of the property because they were always separate in property.

11 items went to Leaman.² The Consent Judgment, signed by each party, their attorneys and the trial court, also contained several provisions that form the basis for the current controversy.

The Consent Judgment provided in pertinent part:

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the separate property awarded to Ann Trenchard Leaman, which is currently in the possession of Paul J. Leaman, Jr., shall be picked up by Ann Trenchard Leaman at a time and date mutually agreeable to the parties, but if no mutually agreeable time and date are agreed upon, then said separate property shall be picked up on September 11 and 12, 1998 between the hours of 9:00 a.m. and 5:00 p.m.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the property awarded to Paul J. Leaman, Jr., which is currently in the possession of Ann Trenchard Leaman, shall be picked up by Paul J. Leaman, Jr. at a time and date mutually agreeable to the parties, but if no mutually agreeable time and date are agreed upon, then said separate property shall be picked up on September 11 and 12, 1998 between the hours of 9:00 a.m. and 5:00 p.m.;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in the event some of the items awarded to one party are unable to be located, the party to whom they have been awarded shall be paid by the other party a sum equaling the missing property's fair market value;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event that the party to whom property has been allocated fails to pick up said property in accordance with the terms of this Judgment, then said property is forfeited and abandoned unto the possessor of said property and, from September 13, 1998, shall be owned by the party possessing same;

² Although the descriptive list had a column for the value and a column for who was in possession of each of the 104 items, neither of these columns were filled-in.

On November 22, 2000, Cooper filed a Motion for Contempt and to Compel.³ In the motion and the memoranda in support of the motion, Cooper argues that she was prevented by Leaman from retrieving her property on the two days designated in the judgment, September 11 & 12, 1998. She alleges that on September 11, 1998, after retrieving some of her property from her former husband's home, it started to rain. He requested that they leave. On the following day, when she returned he either would not let her in or was not there. She requested that the court find Leaman in contempt for his refusal to comply with the Consent Judgment by giving her the two designated days to retrieve her property. Further, she had propounded interrogatories to Leaman prior to the consent judgment, which she alleged remained unanswered, and she was requesting that the trial court compel him to answer. She contended that the answers requested would lead to evidence of whether Leaman had any of her missing items.

Leaman filed an opposition to the motion. In it, he denied refusing Cooper entry to retrieve her belongings on the two days in question. He also argued that Cooper's action had prescribed. He relied, in support of his argument, on the last paragraph of the Consent Judgment, which stated that any property left in possession of either party after September 13, 1998 would belong to the possessing party. Further, he argued that the interrogatories filed prior to the Consent Judgment were irrelevant now, since there was no pending action. Both the divorce action and the partition action had been completed.

³ The record on appeal consists of two consolidated case records numbered 452-838 (the divorce proceeding) and 458-744 (the partition proceeding). Cooper filed her motion to compel and for contempt in the divorce proceeding rather than in the partition proceeding, but for the purpose of the matter presented herein, Leaman waived any objection to the erroneous filing by allowing it to go forward on argument before the trial judge. Both records were lodged in this Court.

The trial court agreed to hear argument on the matter, without witnesses, since a ruling in favor of Leaman on the procedural posture of the case would terminate the matter and the need for witness testimony. Following the hearing, on April 3, 2001, the trial judge ruled in favor of Leaman, denying Cooper's Motion for Contempt and to Compel. In reasons for judgment, the trial court relied in part on the last paragraph of the consent judgment, declaring ownership in the possessor after September 13, 1998, to conclude that Cooper's motion based on Leaman's denial of access should have been made "in a more contemporaneous fashion" and thus should be denied.

Cooper filed a Motion for New Trial and/or for Clarification of Judgment, arguing that the ruling was contrary to law and was unclear whether it also precluded her from either retrieving her property now or demanding payment for its fair market value. This motion was denied without reasons.

Thereafter, on May 8, 2001, Cooper filed a Motion to Enforce Consent Judgment, for Delivery of Separate Property, and/or Payment of Fair Market Value. On August 8, 2001, this motion was denied without reasons. Cooper has appealed from both the August 8, 2001 judgment and the April 3, 2001 judgments and they were consolidated for appellate consideration.

On appeal Cooper argues that the trial court erred in denying her motions and not allowing her to enforce the Consent Judgment at this time by either being granted another day to retrieve her property or being awarded fair market value for the missing property. She argues that the Consent Judgment, signed by both parties and the trial judge, has the same effect as any judicial determination and that she is entitled by law to have the Consent Judgment enforced. Ultimately, it is Cooper's contention that, because Leaman violated the terms of the Consent

Judgment by denying her access to his property on the second day specified in the judgment, September 12, 1998, to retrieve the property designated in the judgment as hers, the trial court should enforce the Consent Judgment by now allowing her a second day to retrieve her property or awarding her the fair market value for the property.

In Plaquemines Parish Government v. Getty Oil Co., 95-2452, p. 6 (La.5/21/96), 673 So.2d 1002, 1006, the Louisiana Supreme Court discussed consent judgments as follows:

A consent judgment is a bilateral contract wherein parties adjust their differences by mutual consent and thereby put an end to a lawsuit with each party balancing hope of gain against fear of loss. La.Civ.Code art. 3071; Preston Oil Co. v. Transcontinental Gas Pipe Line Corp., 594 So.2d 908, 913 (La. App. 1st Cir.1991). A judgment, whether it results from the assent of the parties or is the result of a judicial determination after a trial on the merits, is and should be accorded sanctity under the law. Preston Oil Co., 594 So.2d at 913.⁴

Thus, preliminarily, we agree with Cooper that the Consent Judgment has the force of law and that she is entitled to have it enforced by whatever means are available to any other party attempting to enforce a judgment. However, to what extent Cooper is entitled to any specific remedy cannot be determined based on the posture of the case as it presents itself in this appeal. In other words, because the trial court refused to allow witnesses to be called and evidence to be

4. La. C.C. art. 3071 provides as follows:

A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.

This contract must be either reduced into writing or recited in open court and capable of being transcribed from the record of the proceeding. The agreement recited in open court confers upon each of them the right of judicially enforcing its performance, although its substance may thereafter be written in a more convenient form.

presented, it is impossible to determine whether Cooper is entitled, as she prays, to retrieve any further property from Leaman or to an award for the fair market value of any missing property.

Cooper contends that, while she was retrieving her property on the first specified day, September 11, 1998, it started to rain and Leaman ordered her to leave. She further alleges that on the second day specified in the consent judgment, Leaman would not allow her entrance to collect the remainder of her property. Leaman denies that he refused Cooper entrance on the second day. Because the trial court ruled on the motions without allowing testimony and evidence, there is no record evidence to support either side.

According to the terms of the Consent Judgment, any rights that Cooper may assert hereafter turn on the resolution of this factual issue, which should be determined by evidentiary hearing. If Leaman violated the Consent Judgment by denying her access on September 12, 1998, then Cooper has a right to have the Consent Judgment enforced in accord with its terms and/or by contempt. A further evidentiary hearing to determine what property was in Leaman's possession on September 12, 1998 may be required. However, if it is proven to the contrary, that Leaman did not deny Cooper access to the property on September 12, 1998 to collect the items as specified in the Consent Judgment, then he has not violated the Consent Judgment and, by its further terms, any property left in the possession of either party after September 13, 1998 would belong to the possessing party.

Accordingly, we vacate the trial court judgments rendered on April 3, 2001 and on August 8, 2001 and remand the case to the trial court to conduct a full hearing to determine whether the Consent Judgment was violated and in what

manner Cooper may be entitled to have the Consent Judgment enforced.

Leaman's request for sanctions for a frivolous appeal are denied. Costs of appeal are to be borne by each party.

REVERSED AND REMANDED.



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
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PETER J. FITZGERALD, JR.
CLERK OF COURT

GENEVIEVE L. VERRETTE
CHIEF DEPUTY CLERK

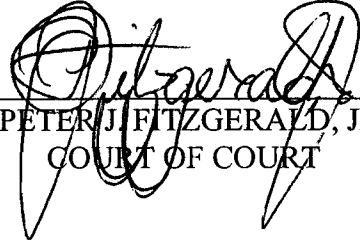
GLYN RAE WAGUESPACK
FIRST DEPUTY CLERK

JERROLD B. PETERSON
DIRECTOR OF CENTRAL STAFF

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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY MARCH 26, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:


PETER J. FITZGERALD, JR.
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