

CHARLES HENRY JACKSON

NO. 17-CA-194

VERSUS

FIFTH CIRCUIT

SIMONA D. MORTON

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 753-023, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

November 15, 2017

MARC E. JOHNSON
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Hans J. Liljeberg

AFFIRMED

MEJ

FHW

HJL

COUNSEL FOR PLAINTIFF/APPELLANT,
CHARLES HENRY JACKSON

Tonya S. Johnson

COUNSEL FOR DEFENDANT/APPELLEE,
SIMONA D. MORTON

Christy M. Howley

M. Elizabeth Bowman

JOHNSON, J.

Plaintiff/Appellant, Charles Henry Jackson, appeals a directed verdict that denied his claim for reimbursement of mortgage payments in favor of Defendant/Appellee, Simona D. Morton, from the 24th Judicial District Court, Division, “F”. For the following reasons, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

The following relevant facts were taken from the pleadings.

Mr. Jackson and Ms. Morton were a co-habiting, unmarried couple for numerous years. Two children were born from their relationship: Kaelin Jackson and Joshua Jackson. On March 27, 2003, Mr. Jackson purchased the property located at 2716 Conor Court in Marrero, Louisiana, and mortgaged the property in his name. On the same day, Mr. Jackson placed Ms. Morton into unconditional and irrevocable possession of one-half interest of the property pursuant to an act of *inter vivos* donation in consideration of love and affection he had for Ms. Morton.

The parties resided together until November 11, 2014, when Mr. Jackson was arrested for domestic abuse battery and had a temporary restraining order issued against him. Mr. Jackson did not return to the home while Ms. Morton was present, even after the restraining order had expired.

On August 27, 2015, Mr. Jackson filed a “Petition for Judicial Partition.” In his petition, Mr. Jackson alleged that Ms. Morton failed to contribute to the mortgage, taxes or homeowner’s insurance, and that Ms. Morton should be held accountable to him for the expenses of the mortgage, maintenance, management and repairs of the property pursuant to La. C.C. art. 806. He averred that he was also entitled to his share of rental reimbursements from the time of Ms. Morton’s exclusive use of the property until the time of the partition. Ms. Morton answered Mr. Jackson’s petition, denying any liability for the mortgage or rent for the

property, and filed a reconventional demand, asserting that she was entitled to exclusive use of the property and reimbursement of all funds she expended towards the upkeep, mortgage, taxes and insurance on the property.

The parties entered into a Consent Judgment on February 29, 2016, agreeing that Mr. Jackson would enjoy exclusive use of the property and would be solely responsible for the expenses and upkeep of the home pending the partition of the property.

The matter proceeded to a bench trial on November 4, 2016. At the conclusion of Mr. Jackson's presentation of his case, Ms. Morton orally moved for a motion for involuntary dismissal,¹ which was granted in part by dismissing Mr. Jackson's claims for mortgage reimbursement, off-set for taxes and rental reimbursement. In open court, the trial court ordered that the property be sold by private sale and the proceeds be split between Mr. Jackson and Ms. Morton. The trial court further ordered reimbursement to Mr. Jackson by Ms. Morton in the amount of \$1,460.31 for improvements to the home. A written judgment to that effect was rendered on November 17, 2016. All other claims were dismissed, and each party had to bear his/her own costs. The instant appeal followed.

ASSIGNMENT OF ERROR

Mr. Jackson's sole assignment of error alleges the trial court erred in failing to award him reimbursements for mortgage payments made by him from November 2014 through February 29, 2016.

LAW AND ANALYSIS

Mr. Jackson alleges the trial court erred by failing to award him reimbursement for mortgage payments made by him from November 2014 through

¹ Throughout the trial and in briefs to this Court, the parties referenced the motion as a motion for directed verdict. However, this matter was tried before a judge, not a jury; thus, the applicable motion was a motion for involuntary dismissal pursuant to La. C.C.P. art. 1672(B). Motions for involuntary dismissal are applicable to cases tried in a bench trial. Because this matter was tried in a bench trial, we will address the granting of the motion for involuntary dismissal.

February 29, 2016, which was during the time Ms. Morton solely enjoyed the family home. He argues that the entirety of the payments he made during the years he and Ms. Morton were together benefitted Ms. Morton and resulted in her unjust enrichment. He contends that Ms. Morton should not have the benefit of obtaining ownership in a thing that was burdened by a mortgage, towards which she made no payments.

Ms. Morton avers the trial court judgment was correct because Mr. Jackson failed to prove his *prima facie* case of entitlement to mortgage reimbursement. She maintains that Mr. Jackson failed to introduce any mortgage statements, a representative from the mortgage company, or proof of mortgage payments. Even if Mr. Jackson had produced evidence supporting his claim, Ms. Morton further avers that Mr. Jackson could not seek reimbursement for years that he lived in the home with her and their children, and any claims Mr. Jackson would have had were prescribed.

In a motion for involuntary dismissal, the defendant may move for a dismissal of the action against him/her after the close of the plaintiff's case. *Machado v. Baker Concrete Constr.*, 13-273 (La. App. 5 Cir. 10/30/13); 128 So.3d 477, 481, citing *Brock v. Singleton*, 10-550 (La. App. 5 Cir. 3/29/11); 65 So.2d 649, 600. The appropriate standard in determining whether an involuntary dismissal should be granted is whether the plaintiff has presented sufficient evidence in his case-in-chief to establish his claim by a preponderance of the evidence.² *Id.* An appellate court may not reverse a ruling on a motion for involuntary dismissal, unless it is manifestly erroneous or clearly wrong. *Id.*

A co-owner who on account of the thing held in indivision has incurred

² Proof by preponderance of the evidence has been defined to mean "evidence, taken as whole, shows that fact or cause shown to be proven is more probable than not." *State v. One 1991 Pontiac Trans Sport Van*, 98-64 (La. App. 5 Cir. 7/9/98); 716 So.2d 446, 449, citing *Cromwell v. City of Alexandria Through Snyder*, 558 So.2d 216 (La. 1989).

necessary expenses, expenses for ordinary maintenance and repairs, or necessary management expenses paid to a third person, is entitled to reimbursement from the other co-owners in proportion to their shares. La. C.C. art. 806. The law is settled that under La. C.C. 806, a co-owner who has incurred necessary expenses is entitled to reimbursement from the other co-owners; however, a mortgage is not such an expense. *Slimp v. Sartisky*, 11-1677 (La. App. 4 Cir. 9/17/12); 100 So.3d 901, 921, *rehearing granted and amended on other grounds*, (La. App. 4 Cir. 10/11/12); *Roger v. Roger*, 99-765 (La. App. 5 Cir. 1/12/00); 751 So.2d 354, 356, *writ denied*, 00-442 (La. 3/31/00); 759 So.2d 73, citing *Roque v. Tate*, 93-389 (La. App. 5 Cir. 2/9/94); 631 So.2d 1385, 1386. The mortgage is “a nonpossessory right created over property to secure the performance of an obligation.” *Id.*, citing La. C.C. art. 3278.

In this matter, Mr. Jackson entered into a mortgage with Standard Mortgage Corporation for the property in question for \$105,183. It is unclear whether the mortgage was signed before or after the act of donation; however, Mr. Jackson was the only person who signed and obligated himself to paying the mortgage. Because he and Ms. Morton were co-owners of the property and a mortgage is not an expense subject to reimbursement under La. C.C. 806, Mr. Jackson did not and could not prove that he was entitled to mortgage reimbursement from Ms. Morton. *See, Slimp, supra*. Therefore, we find that the trial court properly granted the motion for involuntary dismissal, in part, at the conclusion at Mr. Jackson’s case-in-chief on the issue of mortgage reimbursement.

DECREE

Accordingly, we affirm the judgment of the trial court that partially granted the motion for involuntary dismissal of Mr. Jackson’s mortgage reimbursement claim. Mr. Jackson is assessed the costs of this appeal.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 15, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-194

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)
TONYA S. JOHNSON (APPELLANT)

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