

SUCCESSION OF
FRANK JOSEPH PANEPINTO, SR.

NO. 21-CA-709

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 821-175, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

September 13, 2022

HANS J. LILJEBERG
JUDGE

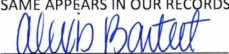
Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and Hans J. Liljeberg

EXCEPTION GRANTED; JUDGMENT VACATED;
REMANDED

HJL

MEJ

SJW

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

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Deputy, Clerk of Court

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LILJEBERG, J.

In this succession proceeding, the decedent's children seek review of the judgment of possession signed by the trial court recognizing the surviving spouse as the sole legatee under the decedent's will and sending her into possession of the decedent's entire estate in full ownership. The decedent's children have also filed a "Peremptory Exception of Nonjoinder of Parties Needed for Just Adjudication" in this Court. For the following reasons, we grant the exception of nonjoinder of parties, vacate the judgment of possession, and remand to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

On March 14, 2021, Frank Panepinto, Sr. ("Frank, Sr.") passed away. At the time of his death, he was married to Cecile Laurie Panepinto and was survived by two children from a previous marriage, Frank Panepinto, Jr. ("Frank, Jr.") and John Panepinto.

On September 23, 2021, Cecile filed a "Petition to File and Execute Notarial Testament and for Possession," asking to be recognized as the sole legatee of Frank, Sr.'s estate and to be placed into possession of the entirety of the estate in full ownership. Cecile noted in her petition that Frank, Sr.'s statutory will, dated June 28, 2004, provided:

To my wife, Cecile Laurie Panepinto, I give and bequeath my entire estate, of whatever nature it consists, whether separate or community, movable or immovable.

It is made clear that I bequeath unto my wife, Cecile Laurie Panepinto, all funds on deposit and certificates of deposit in any and all bank accounts, as well as our two vehicles and household furnishings in our home at 1709 Lake Salvador Drive, Harvey, Louisiana 70058."

Although the will was attached to the petition, Cecile did not mention in her petition that the will also contained the following provision:

If my wife, Cecile Laurie Panepinto, sells the family home

at 1709 Lake Salvador Drive, Harvey, Louisiana, she is to pay my children, Frank J. Panepinto, Jr. and John A. Panepinto, one-half (1/2) of the net proceeds.

On September 27, 2021, the trial court signed an order providing that the will shall be filed and given the effect of probate. The trial court also signed a judgment of possession on this same date, ordering that Cecile be recognized as the only legatee named in Frank, Sr.'s will and sending her into possession of the entirety of Frank, Sr.'s estate, including the immovable property located at 1709 Lake Salvador Drive, in full ownership. The record does not reflect that Frank Jr. or John was served with any pleadings or the judgment of possession in this matter.

On October 29, 2021, Frank, Jr. and John filed a motion for suspensive appeal from the judgment of possession, which was granted by the trial court on November 2, 2021. On January 24, 2022, Frank, Jr. and John filed "Peremptory Exception of Nonjoinder of Parties Needed for Just Adjudication on Behalf of Third-Party-Appellants Frank J. Panepinto, Jr. and John A. Panepinto" in this Court.

LAW AND DISCUSSION

We first address the exception of nonjoinder of parties needed for just adjudication. La. C.C.P. art. 2163 provides that an appellate court may consider a peremptory exception filed for the first time in that court, if it is pleaded prior to submission of the case for decision, and if proof of the ground for the exception appears on the record. *Succession of Pedescleaux*, 19-250 (La. App. 5 Cir. 2/7/20), 290 So.3d 749, 751; *Rourke v. Estate of Dretar*, 17-672 (La. App. 5 Cir. 5/23/18), 248 So.3d 653, 658.

Frank, Jr. and John contend that, as conditional joint legatees named in Frank, Sr.'s will, they are parties needed for the just adjudication of this proceeding. They assert that Frank, Sr. had the right to bequeath his one-half community property interest in the property at 1709 Lake Salvador Drive in any

manner he pleased, including with the suspensive condition that his children receive one-half of the net proceeds in the event Cecile sells the property. They argue that as conditional joint legatees, they must be joined as parties in this action in order to protect their interest in Frank, Sr.'s estate. Frank, Jr. and John further contend that Cecile did not challenge the conditional bequest when she filed the petition for possession; rather, she accepted the terms of the will unconditionally, thereby waiving any objection to the validity of the conditional bequest.

Cecile responds that the conditional bequest to Frank, Jr. and John, of "one-half (1/2) of the net proceeds" in the event that Cecile should sell the house at 1709 Lake Salvador Dr., is null, because it is a prohibited substitution pursuant to La. C.C. art. 1520.¹ She argues that because the conditional bequest is null, Frank, Jr. and John have no justiciable interest in the property and are not, therefore, necessary parties. Cecile further asserts that if this Court finds the conditional bequest to have effect, the matter should be remanded to the trial court for evidentiary proceedings regarding the testator's intent and the nature of the property at issue.

Parties needed for just adjudication in an action are those who have an interest relating to the subject matter of the action and are so situated that a complete and equitable adjudication of the controversy cannot be made unless they are joined in the action. *Cohen v. Cohen*, 20-352 (La. App. 5 Cir. 10/13/21), 329 So.3d 1057, 1062; *Lowe's Home Const., L.L.C. v. Lips*, 10-762 (La. App. 5 Cir. 1/25/11), 61 So.3d 12, 16, *writ denied*, 11-371 (La. 4/25/11), 62 So.3d 89. Courts are without the power to adjudicate the rights of a person who is not a party to the

¹ La. C.C. art. 1520 provides:

A disposition that is not in trust by which a thing is donated in full ownership to a first donee, called the institute, with a charge to preserve the thing and deliver it to a second donee, called the substitute, at the death of the institute, is null with regard to both the institute and the substitute.

litigation or appropriately represented. *Cohen*, 329 So.3d at 1062; *State through Department of Highways v. Lamar Advertising Co. of LA, Inc.*, 279 So.2d 671, 675 (La. 1973). Courts are to determine whether a party should be joined by a factual analysis of the all the interests involved. *Cohen, supra*; *Branch v. Young*, 13-686 (La. App. 5 Cir. 2/26/14), 136 So.3d 343, 350.

La. C.C.P. art. 641, entitled “Joinder of parties needed for just adjudication,” provides:

A person shall be joined as a party in the action when either:

- 1) In his absence complete relief cannot be accorded among those already parties.
- 2) He claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:
 - a) As a practical matter, impair or impede his ability to protect that interest.
 - b) Leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

In the present case, Frank, Jr. and John claim an interest in their father’s estate on the basis that his will provides them with a conditional bequest. Although Cecile claims that the conditional bequest is invalid, she did not challenge it in the trial court proceedings. As a result, the trial court did not consider the validity or enforceability of Frank, Sr.’s conditional bequest to Frank, Jr. and John. Clearly, Frank, Jr. and John have an interest in the determination of the validity of the conditional bequest, and their ability to protect their interest would be impaired by adjudication of this matter in their absence. Therefore, we find that Frank, Jr. and John are parties needed for just adjudication pursuant to La. C.C.P. art. 641.

When an appellate court finds that joinder of parties is required for proper adjudication of the matter, the appropriate course of action is to set aside the

judgment at issue and remand to case to the trial court for joinder of the absent parties and a retrial of the case. *Succession of Pedescleaux*, 290 So.3d at 752; *Rourke*, 248 So.3d at 659.

Accordingly, having found that Frank, Jr. and John are parties needed for just adjudication, as provided in La. C.C.P. art. 641, we grant the exception of nonjoinder of parties needed for just adjudication, vacate the judgment of possession signed September 27, 2021, and remand for further proceedings consistent with this opinion. The costs of this appeal are assessed to Cecile Laurie Panepinto.

**EXCEPTION GRANTED; JUDGMENT VACATED;
REMANDED.**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISON, JR.

JUDGES



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INTERIM CHIEF DEPUTY CLERK

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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 **SEPTEMBER 13, 2022** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-CA-709

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)

WILLARD O. LAPE, III

HAROLD E. MOLAISON

JUSTIN E. MOLAISON

JACK E. MORRIS

MAILED

NO ATTORNEYS WERE MAILED