STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1811

STANLEY CHARLES LEWIS

VERSUS

MARY MAGDELENE DONOVAN LEWIS

Judgment Rendered: DEC - 1 2011

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On Appeal from the Eighteenth Judicial District Court
In and for the Parish of Pointe Coupee
State of Louisiana
Docket No. 40,708

Honorable William C. Dupont, Judge Presiding

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* * * * * *

BEFORE: WHIPPLE, KUHN, GAIDRY, McDONALD, AND McCLENDON, JJ.

GAIDRY, J. CONCURS

McDonald, J. agrees in part and dissents in part and assigns reasons.

McCLENDON, J.

An ex-wife seeks review of a trial court's judgment partitioning former community property. Finding that the trial court erred in classifying the former community home as a movable, we remand this matter to the trial court to appoint an expert appraiser, or alternatively, to allow the parties to submit appraisals, and to assess the value of the former community home as an immovable, as set forth in more detail herein. We also remand for the trial court to hold a hearing and to rule on the ex-wife's reimbursement claims with regard to the farming income. In all other respects, the judgment of partition is affirmed.

FACTS AND PROCEDURAL HISTORY

Stanley Charles Lewis and Mary Magdalene Donovan were married on March 11, 1977. Stanley filed a petition for divorce on April 23, 2007, and a judgment of divorce was signed by the district court on October 24, 2007, retroactively terminating the community of acquets and gains to the date the petition was filed. On January 30, 2008, Stanley filed pleadings seeking to partition the community property.

During their marriage, the couple purchased a home, but not the underlying land, from the estate of Stanley's grandmother. The home is located on a large tract, consisting of roughly 522 acres. It is undisputed that the home is community property insofar as both parties classified the home as such on their respective detailed descriptive lists.

Stanley, along with numerous co-heirs, inherited an undivided interest in the 522-acre tract.[1] Additionally, Stanley, Mary, and others later obtained additional undivided interests in the 522-acre tract through the following transactions:

[1] We cannot ascertain the specific ownership interest that Stanley acquired through the inheritance because the original succession document indicating Stanley's undivided share was not entered into evidence. However, Mary acknowledges Stanley's inherited interest in the property in her post-trial memorandum.

A quitclaim deed wherein Michael Ray Satterley assigned his interest in 168.34 acres (Lot 17) and 156.14 acres (Lot 18) to Stanley,[2] along with several of Stanley's relatives

Two cash sales wherein Richard Lester Satterley and Charlotte Anne Satterley, in separate instruments, sold their interest in 168.34 acres (Lot 17) and 156.14 acres (Lot 18) to Stanley, along with several of Stanley's relatives

One cash sale wherein Corrie Lewis Enright sold her interest in 198.69 acres (Lot 16) of the land at issue to Stanley and Mary, as well as to several of Stanley's relatives and their spouses

At some point thereafter, all of the co-owners of the 522-acre tract decided to partition the tract in kind so that each co-owner would acquire a separate lot in full ownership rather than an undivided interest in the whole tract.

In 2001, Mary and Stanley decided to refinance their home in order to remodel it. In order to secure financing, however, the bank required that the mortgagor have a clear undivided title to the immovable property underneath the house. On December 17, 2001—after Stanley and Mary had purchased the home, but before the entire tract was partitioned among the co-owners—the other owners in indivision agreed to donate an acre of land to Stanley as an "advance" of a portion of his undivided interest in Lot L-3.[3] Mary signed an "Acknowledgment and Ratification" wherein she indicated that all immovable property acquired in the three cash sales were part of Stanley's "separate estate and form no part of the community of gains existing between her and Stanley..."[4]

Thereafter, by act of partition dated October 24, 2006 (hereinafter "the Act of Partition"), all owners of undivided interests in the 522-acre tract exchanged their undivided interest for 1 of 6 lots in full ownership. The document lists the percentages of undivided ownership interests in the entirety of the 522-acre tract, which interests were being exchanged for a full ownership interest in a smaller portion of the larger tract. Specifically, it indicates that

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[2] In the quitclaim deed, Stanley declared that he purchased the property "with separate funds, for his separate estate."

[3] The record, however, is unclear as to whether the home is located on this one-acre tract, but it is undisputed that the house is located on Lot L-3, as discussed later herein.

[4] While Mary asserts that the Act of Donation and the Acknowledgment and Ratification were temporary documents that would be changed after the Act of Partition was entered, we note that Mary has never directly attacked the validity of the Acknowledgment and Ratification.

Stanley had an undivided separate interest of 21/200 in the 522-acre tract, while Mary and Stanley together owned an undivided community interest of 1/25 in the 522-acre tract. Moreover, the partition agreement provided: "**STANLEY CHARLES LEWIS and MARY DONOVAN LEWIS** agree to take the property described below and listed as **LOT 'L-3'** [consisting of 70.69 acres], which tract of land shall be owned in full ownership." The act of partition was signed by Stanley and Mary.

Following a trial over numerous days on the various community property issues, the trial court issued an "Opinion" on May 21, 2009, wherein it, among other things, found that Stanley owned a separate 72.4% interest in Lot L-3 while the community owned a 27.6% interest in Lot L-3.[5] The trial court arrived at these percentages by utilizing the numbers reflected in the Act of Partition, which indicated that Stanley owned as separate property 21/200 of the undivided interests in the 522-acre tract, while the community owned 1/25 (or 8/200) in the tract, for a total of 29/200 of the entire tract. The trial court found that after Stanley and Mary entered the Act of Partition, Stanley owned 21/29 (72.4%) of Lot L-3 as his separate property, while the community owned 8/29 (27.6%) of Lot L-3.[6] The trial court also found that the community home was a community movable and valued the home at $72,000.00. On March 10, 2010, the trial court signed a Judgment of Partition, which reflected its prior rulings. Mary has appealed the trial court's judgment, assigning the following errors for review.

ASSIGNMENTS OF ERROR

1. The Trial Court erred in categorizing community property as part separate and part community.

2. The Trial Court erred in not categorizing a community immovable—Lot L-3—as 100% community property because the contribution of community assets to the purchase price was not "inconsequential."

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[5] There is also an additional 275-acre tract, which is referred to by the parties as "Tract B" and was partitioned by the trial court, but it is not part of this appeal.

[6] The trial court initially indicated that Stanley's separate interest in Lot L-3 was 74.4%, but later corrected the calculation error.

3. The Trial Court erred in not categorizing a community immovable—Lot L-3—as 100% community property because the documents clearly demonstrate that this was the intent of the parties.

4. The Trial Court erred in categorizing a community home as a movable.

5. The Trial Court erred in causing appraisals to be conducted on things that were allocated to no one and which no one received—a house without land and land without a house.

6. The Trial Court erred in not allowing reimbursement claims of Appellant based on community use of her separate inherited funds and based on a presumption of community expenditures under La. C.C. art. 2361.

7. The Trial Court erred in refusing to...admit evidence that certain community immovable farm property produced community income and in not requiring an accounting and reimbursement for such farm income from community property.

DISCUSSION

ASSIGNMENTS OF ERROR 1, 2, AND 3

In the Act of Partition, the parties recognized that Stanley had an undivided separate interest equaling 21/200 of the entire 522-acre tract, while Mary and Stanley had an undivided community interest equaling 1/25 (or 8/200) of the entire 522-acre tract.[7] The trial court found that the parties intended the interests that they obtained in Lot L-3 to be in proportion to their ownership interest in the entirety of the 522-acre tract.

However, Mary asserts that the Act of Partition, rather than assigning a separate interest of 21/29 to Stanley and a community interest of 8/29, gave the "full ownership" interest in Lot L-3 to the community. Mary contends that even if a portion of the property was properly classified as Stanley's separate property prior to the Act of Partition, he transferred it to the community when he signed the Act of Partition. See LSA-C.C. art. 2343.1.

Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. LSA-C.C. art. 2050. A doubtful provision must be interpreted in light of

[7] An authentic act constitutes full proof of the agreement it contains, as against the parties, their heirs, and successors by universal or particular title. LSA-C.C. art. 1835.

the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and of other contracts of a like nature between the same parties. LSA-C.C. art. 2053. A provision susceptible to different meanings must be interpreted with a meaning that renders the provision effective, and not with one that renders it ineffective. LSA-C.C. art. 2049.

We note that the Act of Partition provides each co-owner's ownership interest in the entire 522-acre tract, and classifies each specific interest in the tract as separate or community. The term "in full ownership" does signify that Stanley and Mary together obtained "direct, immediate, and exclusive authority" over Lot L-3 and that only they, as opposed to the other individuals that had an interest in the entire 522-acre tract, "may use, enjoy, and dispose of [Lot L-3] within the limits and under the conditions established by law." See LSA-C.C. art. 477.[8] Therefore, we cannot conclude that the trial court was manifestly erroneous in finding that the parties intended Stanley to own 72.4% of Lot L-3 as his separate property, and the community to own 27.6% of Lot L-3.

Mary also contends that the trial court erred as a matter of a law in categorizing Lot L-3 as part separate and part community. In support, she cites **Curtis v. Curtis**, 403 So.2d 56, 57-58 (La. 1981), wherein the court noted that "[w]hile other community property states may categorize property paid for in part with separate funds and in part with community funds as mixed, Louisiana does not do so. Under our law property is characterized as either community or separate." (Footnote omitted.) Relevant to this argument, Mary cites LSA-C.C. art. 2341, which provides, in pertinent part:

> The separate property of a spouse is his exclusively. It comprises: property acquired by a spouse prior to the

[8] Reading the two provisions together indicates that the parties intended to acquire Lot L-3 as part separate (21/29) and part community (8/29). Otherwise, there would have been no need to specifically categorize the parties' interests in the undivided tract as being part separate and part community. We recognize that in a separate Act of Partition involving a different tract of land not at issue in this appeal and introduced at trial as Exhibit J-9, the parties specifically designated their ownership interests in the partitioned tract as separate or community. However, Exhibit J-9 and the Act of Partition at issue on appeal, introduced at trial as Exhibit J-2, were prepared by two different notaries at different times.

> establishment of a community property regime; property acquired by a spouse with separate things or with separate and community things when the value of the community things is inconsequential in comparison with the value of the separate things used...

Mary avers that the use of 27.6% of community assets to obtain an interest in Lot L-3 was not inconsequential in comparison to the separate assets utilized in obtaining the tract, and pursuant to Article 2341, the property should have been classified as community. See, e.g. **McMorris v. McMorris**, 09-0590 (La.App. 1 Cir. 4/10/95), 654 So.2d 742.

Although Mary asserts that Louisiana law only allows property to be classified as community or separate, we note that the law in effect at the time Mary and Stanley acquired their interest in Lot L-3 allows a spouse, under certain circumstances, to retain an undivided separate interest in property that would otherwise be classified as wholly community. Specifically, LSA-C.C. art. 2341.1, which was added by 1991 La. Acts No. 329, § 2, provides:

> A. A spouse's undivided interest in property otherwise classified as separate property under Article 2341 remains his separate property regardless of the acquisition of other undivided interests in the property during the existence of the legal regime, the source of improvements thereto, or by whom the property was managed, used, or enjoyed.
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> B. In property in which an undivided interest is held as community property and an undivided interest is held as separate property, each spouse owns a present undivided one-half interest in that portion of the undivided interest which is community and a spouse owns a present undivided interest in that portion of the undivided interest which is separate.

In analyzing LSA-C.C. art. 2341.1, professor Katherine S. Spaht and attorney Richard D. Moreno note that "the undivided fractional interest in property that is separate remains such regardless of the acquisition of undivided interests in property during the legal regime." 16 Katherine S. Spaht & Richard D. Moreno, Louisiana Civil Law Treatise: Matrimonial Regimes, § 3.29 (3d ed. 2007). The authors also note that the provision is not limited to inherited property or donated property, but covers "any undivided interest in property otherwise

classified as separate property under Article 2341." **Id.**[9] Therefore, we must first address whether Stanley's undivided 72.4% was properly classified as separate property under Article 2341.

Louisiana Civil Code article 2341 provides that property acquired by a spouse individually as well as property acquired by a spouse with separate things is a spouse's separate property. It is undisputed that the initial interest in the 522-acre tract was obtained by Stanley through inheritance to him individually. Moreover, Mary also acknowledged that Stanley acquired other interests in the 522-acre tract with his separate funds and such interests were his separate property. Stanley and Mary later acknowledged that Stanley had a 72.4% separate interest in the property when they acquired Lot L-3 through the Act of Partition.[10] In light of the foregoing, we cannot conclude that the trial court was manifestly erroneous in finding that Stanley acquired 72.4% of Lot L-3 as separate property under LSA-C.C. art. 2341.

Despite Mary's assertion that the community and separate interests were commingled when the co-owners partitioned the property and the parties herein obtained Lot L-3, the acquisition of full ownership in the smaller tract, which was a part of the undivided larger 522-acre tract, did not of itself cause Stanley's interest to lose its separate character. Rather, Stanley's separate interest and the community interest were readily identifiable and the proportions of each specifically recognized in the Act of Partition. Pursuant to LSA-C.C. art. 2341.1,

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[9] A time relationship requiring the separate property be obtained first is suggested by the language of LSA-C.C. art. 2341.1. See Spaht and Moreno, 16 Louisiana Civil Law Treatise: Matrimonial Regimes, § 3.29 (3d ed. 2007).

[10] On the record before us, we are unable to ascertain how the parties arrived at the specific ownership interests referenced in the Act of Partition. Notwithstanding the parties' recognition of interests in the partition agreement, Mary asserts that Stanley failed to introduce any evidence to rebut the presumption of community insofar as the portion of property obtained through the three cash sales occurred during the existence of the marriage. See LSA-C.C. art. 2340. Arguably, Mary's acknowledgment regarding the separate nature of the property obtained through the cash sales relieves Stanley with the burden of proving the separate nature of that property. See LSA-C.C. art. 2342, **Albert v. Albert**, 625 So.2d 765, 767 (La.App. 1 Cir. 10/15/93). Courts have recognized that the declaration need not necessarily occur in or contemporaneously with the act of acquisition. Spaht and Moreno, 16 Louisiana Civil Law Treatise: Matrimonial Regimes, §3.57 (3d ed. 2007). Further, even assuming that such declarations are required to be contemporaneous with the act of acquisition, we note that Mary again recognized the separate nature of Stanley's interest in the property at the time Lot L-3 was acquired in the Act of Partition. We also note the first interest acquired in this property was through Stanley's inheritance of an undivided interest.

both Stanley's and the community's percentage interest in the land merely transferred from an undivided interest in the larger 522-acre tract to a larger undivided interest between Stanley and the community in a smaller piece within that same tract. As such, Stanley received 21/29 of Lot-3 as his separate property, while the community received 8/29 of Lot-3. Accordingly, we do not find any error in the trial court's classification of the interests in Lot L-3 as part separate and part community. See LSA-C.C. art. 2341.1. We do not address whether the result might have been different had the couple obtained a new interest in an entirely unrelated separate piece of land, not within the original 522-acre tract.[11] Accordingly, we conclude that assignments of error 1, 2, and 3 have no merit.

ASSIGNMENTS OF ERROR 4 and 5

In these assignments, Mary asserts that the trial court committed legal error in requiring the house to be appraised as movable property and by appraising it without the land. Mary notes that throughout the course of the litigation, she objected to the community home being appraised as a movable. At trial, Mary indicated that the house should be appraised as an immovable with the land and provided a value for the total amount of the land and home together, although no formal appraisal had been done in this manner.

We note that tracts of land, with their component parts, are immovables. LSA-C.C. art. 462. Generally, buildings belonging to a person other than the owner of the ground are considered immovables. LSA-C.C. art. 464. Buildings permanently attached to the ground are classified as component parts of a tract of land when they belong to the owner of the ground. LSA-C.C. art. 463. Accordingly, we conclude that the trial court committed error in classifying the community home as a movable and requiring it to be appraised as such.

A legal error occurs when a trial court applies incorrect principles of law and such errors are prejudicial. **Evans v. Lungrin**, 97-0541, p. 7 (La. 2/6/98),

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[11] We note that in this unique situation, the temporal element under LSA-C.C. art. 2341.1 may not be met. See Spaht and Moreno, *supra*.

708 So.2d 731, 735. Where one or more trial court legal errors interdict the fact-finding process, the manifest error standard is no longer applicable, and, if the record is otherwise complete, the appellate court should make its own independent *de novo* review of the record and determine a preponderance of the evidence. **Evans**, 97-0541 at pp. 6-7, 708 So.2d 731, 735.

David Brent Loupe, who appraised the home at issue, indicated that he was "asked to do this appraisal and to exclude any land that would be with the house." Mr. Loupe indicated that he was unable to apply a market approach to determine the value because homes of this nature are generally sold with land.

On the other hand, it appears that Mrs. Lewis was attempting to have an appraisal done based on a market approach. She requested the court allow her to obtain and submit a new appraisal, which would have included both the house and the land. It appears that Mrs. Lewis may have been seeking to value the house based on an appraisal of the house with the land, with the value of the unimproved land thereafter being subtracted from that appraisal.

However, the court, stating that the house was movable property, refused to allow such an appraisal. Clearly, if the house had been properly categorized as an immovable, the court may have been willing to accept both approaches to valuation and then determine which more fairly reflected the true value of the immovable, i.e. the house.

Upon a *de novo* review of the record, we do not find the record sufficient for us to fairly determine the value of the home.[12] In **Foley v. Entergy Louisiana, Inc.**, 06-0983, pp. 28-29 (La. 11/29/06), 946 So.2d 144, 164, the Louisiana Supreme Court explained:

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[12] We also note that neither LSA-C.C. art. 493 nor 2366 apply because there was no improvement to the immovable tract made by the community. Rather, the community purchased a pre-existing improvement to immovable property. Cf. **Lormand v. Lormand**, 96-62 (La.App. 3 Cir. 5/8/96), 673 So.2d 1345, writ denied, 96-1432 (La. 9/13/96), 679 So.2d 109 (addressing whether LSA-C.C. art. 493 or 2366 applied to determine the reimbursement due a spouse when a community home was built on property that was owned by neither spouse at the time the house was built, but later acquired as the husband's separate property). Moreover, LSA-C.C. art. 2366 cannot apply because the land was owned in part by the community and in part as Stanley's separate property.

> Where a finding of fact is interdicted because of some legal error implicit in the fact finding process or when a mistake of law, such as a consequential but erroneous ruling on the exclusion or admission of evidence, forecloses any finding of fact, and the record is otherwise complete, the appellate court should, if it can, render judgment on the record. Nevertheless, LSA-C.C.P. art. 2164 provides that an "appellate court shall render any judgment which is just, legal and proper upon the record on appeal." It is well settled that an appellate court is empowered under this article to remand a case to the district court for the taking of additional evidence where it is necessary to reach a just decision and to prevent a miscarriage of justice. Although a court should always remand a case whenever the nature and extent of the proceedings dictate such a course, whether or not any particular case should be remanded is a matter which is vested largely within the court's discretion and depends upon the circumstances of the case. (Internal citations omitted.)

We find that under these unique circumstances, the best method to obtain the value of the house would be to appraise the house and land together and then subtract the value of the unimproved land from that figure. Therefore, we remand this matter to the trial court to appoint an expert to appraise the value of the house and land together and to appraise the value of the unimproved land separately, or alternatively, to allow the parties to submit such appraisals. Thereafter, we instruct the trial court to determine the fair market value of the home as an immovable as set forth above. The fee of any court appointed appraiser is to be split by the parties.

ASSIGNMENTS OF ERROR 6 AND 7

In her final two assignments of error, Mary contends that the trial court erred in refusing to receive evidence on her reimbursement claim arising from Stanley's receipt of farm income and in not allowing her claim for reimbursement for use of her separate inherited funds.

With regard to the reimbursement claims for inherited money, Mary testified that she inherited approximately $34,000.00 from Ivonne Cuendet, a friend from her church. Mary avers that the evidence showed that checks in the total amount of $9,000.00 from Mary's inherited funds were written to Stanley and deposited in the community bank account. Mary asserts that under these circumstances, there is a presumption that the funds were spent during the

marriage and used for community purposes. Mary concludes that she is entitled to a reimbursement for the community's use of her separate funds.

We note that the judgment is silent with regard to Mary's reimbursement claims related to the inheritance. When a judgment is silent as to a claim or demand, it is presumed that the trier of fact denied the relief sought. **Parish Nat. Bank v. Wilks**, 04-1439, p. 4 (La.App. 1 Cir. 8/3/05), 923 So.2d 8, 11. This conclusion is further supported by the trial court's statement on the record that it "had no proof" with regard to how the funds were spent.

Louisiana Civil Code article 2365 provides, in pertinent part, as follows:

> If separate property of a spouse has been used either during the existence of the community property regime or thereafter to satisfy a community obligation, that spouse is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used.

Although the funds Mary inherited were her separate property, Mary offered nothing to show that the funds were utilized to satisfy a community obligation. Rather, the evidence presented only indicated that some of Mary's separate funds were placed into a community account.

The mere mixing of separate funds and community funds in a joint bank account does not in and of itself convert the entire account into community property; only when separate funds are commingled with community funds indiscriminately so that the separate funds cannot be identified or differentiated from the community funds are all of the funds characterized as community funds. **Curtis**, 403 So.2d at 59. Thus, once the spouse allows separate funds to be commingled with community funds, the spouse must be able to show the separate nature of the funds used by tracing the use of the separate funds with sufficient certainty. See **Talbot v. Talbot**, 03-0814, p. 17 (La. 12/12/03), 864 So.2d 590, 603.

Although Mary presented proof that separate funds were deposited into a community account, no records of the community account were ever produced to trace the use of the funds with sufficient certainty. Accordingly, we cannot conclude that the trial court was manifestly erroneous in denying Mary's

reimbursement with regard to the use of her separate inherited funds for the community's purported benefit.

With regard to Mary's reimbursement claim on Stanley's receipt of farm income, the trial court indicated that it would not allow Mary to "open the door back up" and retry that issue. After a thorough review of the record, we note that this issue was never tried. A demand may be impliedly rejected by silence of judgment, provided that the matter has been actually litigated and finally adjudged. **Sewell v. Argonaut Southwest Ins. Co.**, 362 So.2d 758, 760 (La. 1978).

After the trial court declined to consider the matter, Mary then proffered a year-end ledger from the Nettie Lewis Estate as evidence that Stanley had received income from farming. Although Mary proffered the referenced ledger, we are unable to ascertain which funds on the ledger, if any, are derived from farming income. We note that at the time the ledger was proffered, Mary, who was not represented by counsel at the hearing, did not introduce any further evidence or testimony regarding the amounts reflected on the ledger.[13] Accordingly, pursuant to the dictates in **Foley**, 06-0983 at pp. 28-29, 946 So.2d at 164, we remand this matter to the trial court to hold a hearing and to rule on this issue.

CONCLUSION

For the foregoing reasons, the trial court's judgment is vacated to the extent it accepted the appraised value of the community home as a movable, and this matter is remanded to the trial court to appoint an expert appraiser to assess the value of the former community home in a manner consistent with this opinion, or alternatively, to allow the parties to submit such appraisals. We further order the court hold a hearing to consider Mary's claim for reimbursement with regard to Stanley's alleged receipt of farm income. The

[13] By contrast, she was represented at the prior hearing wherein reimbursement claims with regard to the use of her separate inherited funds for the community's purported benefit were addressed.

March 10, 2010 Judgment of Partition is affirmed in all other respects. Costs of this appeal are to be split between the parties.

JUDGMENT AFFIRMED IN PART AND VACATED IN PART; MATTER REMANDED WITH INSTRUCTIONS.

STANLEY CHARLES LEWIS

VERSUS

MARY MAGDELENE DONOVAN LEWIS

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1811

McDONALD, J., DISSENTING IN PART AND AGREEING IN PART:

I respectfully dissent from that portion of the majority's opinion concerning the house and lot. I believe the Act of Partition dated 10/24/2006 (exhibit J-2) that transferred lot L-3 to the parties transferred it "in full ownership" without any further designation and this would mean it was owned equally by them both, or equally in community. Contrast this with exhibit J-9 that is the Act of Partition that transferred Tract B. This document also transferred the land "in full ownership", but it also specifies the precise ownership interests of the various owners. i.e: 21/100; 21/200; 1/25; and 1/4. Thus, each of these owners in J-9 owns the specified fraction in full ownership. Exhbit J-2 does not specify any fraction or percentage of ownership. It only provides that they own "in full ownership." Thus, I believe this property is owned as a community asset. I agree with the opinion to remand the matter to the trial court for a hearing on the issue of reimbursement for the alleged receipt of farm income.