NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1232

C/W

2012 CA 1233

JASON JAMES ADAMS

VERSUS

NICOLE ROME ADAMS

DATE OF JUDGMENT: MAR 25 2013

ON APPEAL FROM THE SEVENTEENTH JUDICIAL DISTRICT COURT
NUMBER 115312, DIV. B, PARISH OF LAFOURCHE
STATE OF LOUISIANA

HONORABLE JEROME J. BARBERA, III, JUDGE

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BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: AFFIRMED.

McDonald, J. agrees with the majority on all issues except the ring donation, on which he concurs.

KUHN, J.

Defendant-appellant, Nicole Rome Adams, appeals the trial court's judgment, partitioning the community of acquets and gains she shared with her former husband, plaintiff-appellee, Jason James Adams, contending that certain property was incorrectly classified as community and challenging the allocation of a community property asset to her rather than to Jason. We affirm.

Jason and Nicole were divorced after seventeen years of marriage. A merits hearing was held on Jason's request for partition of the property of the community as well as his petition to revoke a gratuitous donation for ingratitude. The trial court determined which property from the parties' respective detailed descriptive list was community and allocated the various assets and liabilities of the community to the parties. The trial court specifically found that Nicole was guilty of ingratitude and revoked a donation to her from Jason of a princess-cut diamond ring, declaring it an asset of the community and allocating it to Nicole. A judgment in conformity with the trial court's determination was signed, and Nicole appealed.

On appeal, Nicole urges that the trial court incorrectly determined that: attorney fees incurred during the marriage for criminal charges brought against Jason were community debts; a loan from Jason's parents was a debt of the community rather than Jason's separate obligation; and Nicole was not entitled to reimbursement for the loss of value of a community asset that parties sold during the marriage. Nicole also asserts the trial court erred in allocating an individual retirement account (IRA) in Jason's name to her; and in concluding that Jason was entitled to revocation of the donation of the diamond ring.

Classification of Debts as Community as a Result of Jason's Alleged Intentional Wrong and Denial of Reimbursement for Claim of Devaluation of Community Asset:

An obligation incurred by a spouse may be either a community obligation or a separate obligation. La. C.C. art. 2359. An obligation incurred by a spouse during the existence of a community property regime for the common interest of the spouses or for the interest of the other spouse is a community obligation. La. C.C. art. 2360. Except as provided in La. C.C. art. 2363, all obligations incurred by a spouse during the existence of a community property regime are presumed to be community obligations. La. C.C. art. 2361.

A separate obligation of a spouse includes one incurred during the existence of a community property regime though not for the common interest of the spouses or for the interest of the other spouse. An obligation resulting from an intentional wrong is likewise a separate obligation to the extent that it does not benefit both spouses, the family, or the other spouse. La. C.C. art. 2363.

Factual findings and credibility determinations made in the course of valuing and allocating assets and liabilities in the partition of community property may not be set aside absent manifest error. ***Benoit v. Benoit***, 2011-0376 (La. App. 1st Cir. 3/8/12), 91 So.3d 1015, 1019, writ denied, 2012-1265 (La. 9/28/12), 98 So.3d 838.

The record establishes that Jason was a working partner in Millennium Boat Supply. It is undisputed that the business was a community property asset. According to Nicole, after Jason's business partner brought criminal charges against Jason for debt that he accumulated with a Millennium credit card, Jason borrowed $200,000 from his parents to repay the debt. Subsequently, after Jason apparently repaid the debt to Millennium, Jason's Millennium partner purchased the parties'

interest in the business from Jason and Nicole for $525,000 in a settlement that included withdrawal of the criminal charges against Jason. Although criminal charges had not been formally dismissed, evidence was introduced that the district attorney was no longer pursuing the case against Jason.

On appeal, Nicole maintains that Jason's criminal attorney fees, incurred during the community to ward off any prosecution against him, are his separate obligations for which she is entitled to reimbursement. In tandem with the attorney fees, Nicole also claims that the loan of $200,000 from Jason's parents that he used to repay Millennium before the sale of their community property interest to Jason's business partner should have been allocated to Jason as his separate property debt.

On this record, the trial court was entitled to apply the presumption of Article 2361 to these obligations. While Nicole insists that the institution of criminal prosecution is sufficient to show Jason's intentional wrongdoing, she has failed to show that any misuse of the Millennium credit card by Jason did not benefit the community. Thus, a reasonable factual basis exists to support the trial court's classification of Jason's attorney fees incurred in defense of threatened criminal prosecution and the loan of $200,000 from his parents to repay Millennium as community obligations. See La. C.C. art. 2363; see also ***Skannal v. Bamburg***, 44,820 (La. App. 2d Cir. 1/27/10), 33 So.3d 227, 239, writ denied, 2010-0707 (La. 5/28/10), 36 So.3d 254 (even if wife did not know of husband's fraudulent conduct, where record contained no evidence that the community did not benefit from the wrongdoing, wife was liable for the community obligations) and ***Gardes Directional Drilling, Inc. v. Bennett***, 2001-0080 (La. App. 3d Cir. 6/6/01), 787 So.2d 1201, 1204-05, writ denied, 2001-1991 (La. 10/26/01), 799 So.2d 1154 (evidence

established that employee's husband and the community benefitted from the money employee stole from her employer).

Lastly, Nicole claims entitlement to reimbursement for the devaluation of the value of the community property interest in Millennium, offering an appraisal that established the parties' ownership interest in Millennium was $1.2 million, significantly more that the amount for which the parties sold their Millennium interest. But Nicole admitted that she signed the settlement document that conveyed the parties' Millennium interest to Jason's business partner for $525,000. And nothing in the record establishes a basis to vitiate Nicole's consent. Mindful that contracts have the effect of law for the parties, we find no error by the trial court in denying this claim. See La. C.C. art. 1983,

Allocation of IRA Account Titled in Jason's Name to Nicole:

The procedure by which community property is to be partitioned when the spouses are unable to agree is set forth in La. R.S. 9:2801. We review the allocation or assigning of assets and liabilities in the partition of community property under the abuse of discretion standard. ***Benoit***, 91 So.3d at 1019.

Nicole's complaint is that by awarding her the IRA account, the trial court overlooked the tax consequences that attach to a disbursement of the monies in the account before she turns 59½. She urges that given the amount of cash in trust accounts, the trial court erred by not ordering an equalizing payment of cash.

While it is true that if Nicole withdraws the money before a certain age, she will incur a tax liability that Jason will not be required to share, it is also true that if she leaves the funds in the account, they will earn interest for which Jason will not benefit. See ***Sherrod v. Sherrod***, 97-907 (La. App. 5th Cir. 3/25/98), 709 So.2d

352, 356-57, writ denied, 98-1121 (La. 6/5/98), 720 So.2d 687 (relying in part on ***Ramstack v. Krieger***, 470 So.2d 162, 167 (La. App. 4th Cir.), writ denied, 474 So.2d 1310 (La.1985)). In light of the substantial community liabilities allocated to Jason (with none to Nicole), and given the parties' tax situation,[1] we cannot say the trial court abused its discretion in its allocation of the community property IRA account to Nicole.

Revocation of Donation for Ingratitude:

A donation inter vivos may be revoked because of ingratitude of the donee. La. C.C. art. 1556. Revocation on account of ingratitude may take place if the donee has been guilty of grievous injuries towards the donor. La. C.C. art. 1557(2). The jurisprudence has held that cruel treatment or grievous injury sufficient to revoke a donation may include adultery by a spouse. La. C.C. art. 1557, 2008 Revision Comment (c). A trial court's determination as to whether a donee has committed a grievous injury upon a donor, so as to warrant revocation of a donation on account of ingratitude, is a factual determination that depends heavily on the facts and circumstances specific to the case. ***Petrie v. Michetti***, 2010-122 (La. App. 5th Cir. 1/11/11), 59 So.3d 430, 440.

The parties agree that Christmas 2008, Jason gave Nicole a diamond ring that he purchased for $7,500. It is likewise undisputed that the parties' divorce was granted on the basis of adultery committed by Nicole. On appeal, Nicole asserts that

[1] The evidence at trial established that the cash on hand that the parties had consisted of various federal and state tax refunds that each had tendered to their respective attorneys who placed these monies in trust accounts. It was undisputed that the refunds were for joint returns filed for several years prior to dissolution of the community. Jason admitted that in conjunction with his 2010 tax liability, the state applied approximately $19,000 in community-property refund amounts, and the trial court awarded Nicole reimbursement of one-half this amount. But as of the date of trial, Jason continued to owe the federal government approximately $129,000 that he conceded was amassing legal interest.

because the parties apparently reconciled between December 2009, when she confessed the adultery, and June 2010, when they separated, the donation of the movable property was valid, complete, and insusceptible of revocation upon delivery.

We find no error by the trial court. In so concluding, we point out that despite Nicole's assertions that Jason did not expressly advise her she should not commit adultery to continue ownership of the ring as her separate property, by their consent to enter a marriage, the spouses legally owed each other an obligation of fidelity. See La. C.C. art. 98. Nicole's confessed adultery apparently caused Jason sufficient grievous injury that he wanted the ring returned to him. A reasonable factual basis exists and, therefore, the trial court was not manifestly erroneous in finding that Nicole's confessed adultery was a grievous injury upon Jason sufficient to warrant revocation of the donation of the diamond ring.[2]

DECREE

For these reasons, the trial court's judgment, partitioning the community of acquets and gains between the former spouses and expressly revoking the gratuitous gift of the diamond ring to Nicole, is affirmed. Appeal costs are assessed against Nicole Rome Adams.

AFFIRMED.

[2] Nicole's assertion on appeal that she should not be assessed the entirety of the value of the ring because she has chosen to retain ownership of it is without merit. The trial court correctly allocated the ring as a community asset and Jason, who did not so request, was not awarded any reimbursement for the revoked donation.