

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0455

**SUCCESSION OF BIENVENUE JOSEPH LANDRY
AND FELICIA AUCOIN LANDRY**

Judgment Rendered: DEC 27 2013

**Appealed from the
16th Judicial District Court
In and for the Parish of St. Mary
State of Louisiana
Case No. 18522**

The Honorable Edward M. Leonard, Jr., Judge Presiding

**Paul J. Breaux
Lafayette, Louisiana**

**Counsel for Appellant
Marilyn Anne Jones**

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**Counsel for Appellee
Succession of Bienvenue Joseph
Landry and Felicia Aucoin Landry**

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

*AMT
TMH
JEK
WMA*

THERIOT, J.

This case involves the private sale of real property from the estates of Bienvenue Joseph Landry and Felicia Aucoin Landry. One of the heirs appeals the judgment of the Sixteenth Judicial District Court after a trial on the merits to allow the administrator of the succession to sell the property. For the following reasons, we affirm the judgment, except for the assessment of court costs, which we vacate and remand.

FACTS AND PROCEDURAL HISTORY

In January of 1894, Bienvenue Joseph Landry purchased a tract of land in St. Mary Parish measuring approximately fifty arpents in area. Mr. Landry died intestate in 1938, and his wife, Felicia Aucoin Landry, died intestate in 1959. Their nine children all died between the years 1939 and 1985 without being placed into possession of the property.

On April 9, 2009, a petition and order to be appointed administrator of Mr. Landry's succession was filed by Judith O. Broussard. Attached to the petition was a sworn descriptive list of all remaining assets and liabilities of the succession,¹ an affidavit of death and heirship of Mr. and Mrs. Landry, and an oath of administrator.² Ms. Broussard also posted security with the court on April 21, 2009.³

On March 1, 2010, Ms. Broussard filed a petition for authority to sell the succession property at private sale for the sum of \$134,300.00.⁴ The

¹ Pursuant to La.C.C.P. art. 3136.

² Pursuant to La.C.C.P. art. 3158.

³ Pursuant to La.C.C.P. art. 3151.

⁴ Pursuant to La.C.C.P. art. 3281. One of the cash deeds admitted into the record shows the sellers of the property to be Judith Oster Broussard, in her capacity as administrator of the succession, along with heirs Dudley J. Landry, Marie Elaine Barrilleaux Rodriguez, Michael Lynn Barrilleaux, Roland Joseph Barrilleaux Jr., Margo Landry Billeaudeaux, James A. Hebert, Jr., Jerry F. Adams, Robert A. Adams, III, Joseph Brightman Adams, and the Succession of Zellie Landry as the sellers. Leslie J. Landry and Tyra Regan Landry appear as purchasers. In a second cash deed, sellers listed are Judith Oster Broussard in her capacity as administrator, along with Dudley J. Landry, Marie Elaine Barrilleaux Rodriguez, Michael Lynn Barrilleaux, Roland Joseph Barrilleaux Jr., Margo Landry Billodeaux Domingue, trustees of the A.J. Landry Testamentary Trust, Leslie Joe Landry, Jerry F. Adams, Robert A. Adams, III, Joseph Brightman Adams, and Janis Landry Thiebaud, in her capacity as administrator of the Succession of Zelig Landry. Lucien Landry and Katherine M. Landry are listed as purchasers.

court granted the petition, and Ms. Broussard published notification of the private sale in the *Franklin Banner-Tribune*, a local newspaper of St. Mary Parish.⁵ She did not publish notice outside of St. Mary Parish or outside the State of Louisiana, and she did not attempt to contact any of the other heirs personally, nor did she have an ad hoc attorney appointed to represent the interests of these absentee heirs.

On December 8, 2011, an opposition to the petition for authority to sell the succession property was filed by the appellant, Marilyn Anne Jones.⁶ Ms. Jones, claiming to be an heir of the succession of Mr. and Mrs. Landry, opposed the sale as being unnecessary and against the best interest of the succession and the remaining heirs. Ms. Jones noted that in the petition for authority to sell the property, Ms. Broussard stated that the proceeds from the sale would be used to pay the remaining debts of the succession without listing any remaining debts. Ms. Jones therefore prayed that the court deny Ms. Broussard the authority to sell the property and put the remaining heirs directly into proportionate possession of the succession's assets.

Ms. Jones filed a motion to compel Ms. Broussard to file with the court an accounting of the succession's assets and liabilities on March 15, 2012. The court ordered Ms. Broussard to show cause as to why an accounting of the succession had not been done. Ms. Broussard filed an accounting with the court on April 20, 2012. The accounting showed that there was cash on hand in the amount of \$42,099.19.

Ms. Jones amended the original opposition on July 31, 2012 to include the claim that the sale of the property would violate Article I,

⁵ Pursuant to La.C.C.P. art. 3282.

⁶ Sixteen other heirs subsequently filed individual oppositions to the petition for authority to sell the succession property. These heirs are Jody Anne Polito, Joseph Anthony Polito, III, Shirlyn Bergeron Kees, Carolyn Lee Jones, Lennie J. Bergeron, Julie Bergeron Tullier, Susie Bergeron Adams, Bienvenue Joseph "B.J." Landry, Mattie Landry, Phillip W. Stoufflet, Benny J. Adams, Jr., Randy M. Bigler, Amy Adams Champagne, Marie Elaine Barrilleaux Rodriguez, Michael L. Barrilleaux, and Roland J. Barrilleaux. All the heirs were represented in proper person.

Sections 4(A) and (B) of the Louisiana Constitution, as it would deprive the heirs of their right of ownership in the succession property.⁷ Ms. Jones argued that since there were no debts in the succession, and since over \$40,000.00 in cash on hand existed to pay any debts, that not only would the sale of the property be unnecessary, but it would also be unconstitutional to deprive the heirs of ownership rights they acquired in the estate.

On August 16, 2012, Ms. Jones filed a motion to dismiss the petition for authority to sell the succession property on the grounds that the newspaper advertisement did not conform with La.C.C.P. art. 3282. A trial on the merits was held on August 17, 2012, and the trial court denied Ms. Jones's opposition to the petition and her motion to dismiss the petition for authority to sell the succession property. Ms. Jones was cast for all costs in the matter. Ms. Jones filed the instant appeal.

ASSIGNMENTS OF ERROR

Ms. Jones assigns as error: (1) the trial court's authorizing the succession administrator Ms. Broussard to sell the succession property, even though there was sufficient cash on hand to pay all debts; (2) the trial court's ruling that the newspaper publication conformed to the requirements of La.C.C.P. art. 3282; and (3) the trial court's casting Ms. Jones for court costs that were incurred during the three years before Ms. Jones filed her first opposition or made her first appearance in court.

⁷ Article I, Section 4 provides in pertinent part:

(A) Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

* * *

(B)(4) Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner.

STANDARD OF REVIEW

The standard for appellate review of factual determinations by the trial court is the manifest error-clearly wrong standard. Under the manifest error standard, the reviewing court is to assess not whether the factfinder's decision was right, but rather, whether the decision was a reasonable one in light of the record. *Henderson v. Nissan Motor Corp.*, 03-606 (La. 2/6/04), 869 So.2d 62, 69. As Ms. Jones has questioned the trial court's interpretation of La.C.C.P. art. 3282 in light of the newspaper article published by Ms. Broussard, the questions of fact are mixed with questions of law. The manifest error standard of review is also used for reviewing mixed questions of law and fact. See *Brasseaux v. Town of Mamou*, 99-1584 (La. 1/19/00), 752 So.2d 815, 820-21.

DISCUSSION

Authorization of the Sale

Ms. Jones presented very little argument at trial as to why the sale of the succession property should be denied, other than that it was unnecessary and unconstitutional. Ms. Broussard, on the other hand, provided evidence and testimony at trial that the tract of land, now approximately 33 acres in area,⁸ is a narrow strip that begins at Bayou Teche, crosses La. Hwy. 182, U.S. Hwy. 90, a railroad, a service road, and finally ends at a swamp. The succession property contains a dilapidated house that is presently used as storage for the sole occupant of the property, who lives in a nearby trailer. Ms. Broussard testified that the property generated very little income over the years and has not been leased. Due to the land's narrow shape and the large number of heirs, it is not economically feasible to partition in kind.

⁸ Actual appraised acreage is 33.67.

Evidence and testimony at the trial showed that the land has posed a potential liability due to the old house, the swampland, and unauthorized shooting occurring on the property. Ms. Broussard, as well as one of the heirs who did not oppose the sale, testified that they were concerned about potential liability if anyone was injured on the property. Ms. Broussard therefore had the property appraised, and the proposed sale price of \$134,300.00 reflects the appraised value.

A succession representative is a fiduciary with respect to the succession, and shall at all times act as a prudent administrator. La.C.C.P. art. 3191. The trial court found that Ms. Broussard was acting prudently with her intent to sell the property at the appraisal value. We agree. A succession representative has a legal obligation to secure the best price reasonably available as consideration for the conveyance of succession property. *Succession of Irving*, 436 So.2d 1263, 1265 (La. App. 1 Cir. 1983), writ denied, 442 So.2d 452 (La. 1983).

An administrator may sell succession property for the purpose of paying liabilities of the succession or any other purpose authorized by the court. La.C.C.P. art. 3261. In considering an application for authority to sell succession property, the trial court must give consideration to any opposition and reasons for same; if the court considers the sale in the best interest of the succession, it may authorize either the public or private sale of the succession property. *Succession of Tagliavore*, 500 So.2d 393, 396 (La. 1987). In the instant case, the trial court weighed Ms. Jones's opposition against Ms. Broussard's reasons for selling the property and determined that the sale was in the best interest of the succession. We find that conclusion to be reasonable.

Ms. Jones claimed in her amended opposition that the proposed sale of the succession property would violate her ownership right protected by Article I, Section 4 of the Louisiana Constitution; however, that right is not absolute. Paragraph (A) of the Section clearly states that the right to property is subject to reasonable statutory restrictions and the reasonable exercise of police power. The trial court's finding that the private sale would be in the best interest of the succession is consistent with the statutory purposes of a sale authorized in La.C.C.P. art. 3261, which is a reasonable statutory restriction contemplated in Article I, Section 4(A) of the Louisiana Constitution.

Requirement of Notice

According to La.C.C.P. art. 3282, notice shall state that any opposition to the proposed sale must be filed within seven days from the date of the last publication. Ms. Broussard's advertisement of the proposed sale in the *Franklin Banner-Tribune* stated, in pertinent part, as follows:

Notice is now given to all parties whom it may concern, including the heirs and creditors of the decedent, and of this estate, be ordered to make any opposition which they have or may have to such application, at any time, prior to the issuance of the order or judgment authorizing and approving the application to sell succession property at private sale and that such order or judgment may be issued after the expiration of seven (7) days, from the last publication of such notice, all in accordance with law. BY ORDER OF THE COURT, DEPUTY CLERK OF COURT, March 3, 24, 2010

The trial court noted that while La.C.C.P. art. 3282 requires that opposition be filed within seven days of the last publication, the advertisement allows the opposition to be filed *at any time prior* to the issuance of the judgment, and that the judgment *may*, but not *shall*, be issued after the expiration of seven days from the last publication of notice. The advertisement's nonconformity with La.C.C.P. art. 3282 of which Ms. Jones

complained is the very reason she was allowed to file the opposition so long after the last advertisement was published. The second publication occurred on March 24, 2010; therefore, giving a strict application of La.C.C.P. art. 3282, no oppositions to the proposed sale should have been allowed after March 31, 2010. Ms. Jones filed her opposition on December 8, 2011, and the other sixteen opposing heirs filed thereafter. The advertisement's language did not restrict the rights of Ms. Jones and the other opposing heirs, but expanded their rights. The trial court was thus correct to deny Ms. Jones's motion to dismiss the petition for authority to sell the succession property based on noncompliance with La.C.C.P. art. 3282.

Court Costs

The exact amount of costs assessed to Ms. Jones cannot be gleaned from the record. What is known is that proceedings began on April 9, 2009, when Ms. Broussard filed the petition to be appointed the administrator in the succession of Mr. and Mrs. Landry. Ms. Jones made her first appearance when she filed her opposition to the petition for authority to sell the succession property on December 8, 2011.

Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable. La.C.C.P. art 1920. In all contradictory succession proceedings, the court costs are to be paid by the party cast, unless the court directs otherwise. La.C.C.P. art. 2825. While a court has discretion as to whom it casts for costs, that discretion is conditioned upon it being equitable. Upon review, an appellate court will not disturb the trial court's fixing of costs absent an abuse of the sound discretion afforded to the trial court. *Trinh ex rel. Tran v. Dufrene Boats, Inc.*, 08-0824 (La. App. 1 Cir. 1/22/09), 6 So.3d 830, 838,

writ denied, 09-0406 (La. 4/13/09), 5 So.3d 166, cert. denied, 558 U.S. 875, 130 S.Ct. 228, 175 L.Ed.2d 128 (2009).

The trial court's judgment makes no distinction as to the time period for which Ms. Jones was assessed court costs; therefore, it is reasonable to conclude that Ms. Jones was assessed costs for the entire litigation, including the period before she made her first appearance, April 9, 2009 to December 7, 2011. To cast Ms. Jones for proceedings that were neither initiated by her nor done in response to any of her actions is inequitable and, thus, not within the trial court's discretion. La.C.C.P. art. 1920. See also *Trinh* at 838. We therefore vacate the portion of the judgment pertaining to costs and remand with instructions that the costs in this matter incurred from the date of the original filing, April 9, 2009, to the date of Ms. Jones's first appearance, December 7, 2011, are to be paid by the Succession of Bienvenue Joseph Landry and Felicia Aucoin Landry; with the remaining costs to be assessed by the trial court on remand.

CONCLUSION

The trial court was not manifestly erroneous in concluding that Ms. Broussard had acted as a prudent administrator in petitioning the court for authority to sell the succession property. Furthermore, the trial court did not err in finding that the newspaper advertisement of the sale published by Ms. Broussard, while not completely in line with La.C.C.P. art. 3282, did not restrict the rights of Ms. Jones or any other person opposing the sale. However, the trial court did abuse its discretion by casting Ms. Jones with costs incurred prior to her initial appearance. We therefore vacate that portion of the judgment pertaining to costs and remand the case for further proceedings consistent with this opinion.

DECREE

The trial court's denial of the motion to dismiss the petition for authority to sell succession property at private sale is affirmed. The trial court's granting the petition for authority to sell succession property is affirmed. The trial court's assessment of court costs is vacated and this matter is remanded, with instructions. Costs of this appeal are assessed to the appellant, Marilyn Anne Jones.

**AFFIRMED IN PART; VACATED IN PART, AND
REMANDED WITH INSTRUCTIONS.**