

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NO. 2013 CA 1349

BRETT JOSEPH CHIASSON

VERSUS

GISELLE BUSTILLO CHIASSON

Judgment Rendered: MAY 22 2014

On Appeal from the
21st Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
No. 2006-0004186, Div. F

The Honorable Elizabeth P. Wolfe, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

RHP. by EBJ — *Concurs without Reasons* —

DRAKE, J.

Giselle Bustillo Chiasson appeals a district court judgment partitioning the community of acquets and gains formerly existing between herself and her former spouse, Brett Joseph Chiasson. After a *de novo* review of the judgment partitioning the community property, we conclude that the judgment is not a final judgment. Accordingly, we dismiss the appeal and remand this matter to the district court.

FACTS AND PROCEDURAL HISTORY

The parties were married on June 15, 1991. Two children were born of the marriage, both of whom were minors at the time this suit was initiated.¹ The parties separated in May 2006. Mr. Chiasson filed a petition for divorce, pursuant to Louisiana Civil Code article 102² on December 27, 2006. Thereafter, the parties entered into a collaborative divorce, in an attempt to resolve all matters outside of court. A stipulated order regarding collaborative divorce law was signed by the parties and filed with the district court on January 16, 2007. A second petition for

¹ Mr. Chiasson filed for custody on March 19, 2008. Following the initial custody trial, the court awarded the parties joint custody, designating Ms. Chiasson as domiciliary parent. Mr. Chiasson filed a motion for new trial, which the district court granted. Following a second custody trial, the district court awarded the parties joint custody, designated Ms. Chiasson as domiciliary parent, and awarded Mr. Chiasson custody on alternating weekends and certain afternoons. Mr. Chiasson appealed that judgment to this court, which was affirmed. *Chiasson v. Chiasson*, 2009-1554 (La. App. 1 Cir. 2/12/10), 30 So. 3d 285. On September 1, 2010, Mr. Chiasson filed a rule for change of custody, requesting that he be declared domiciliary parent of the minor male child. The district court named him domiciliary parent of that child, and set custodial periods for Ms. Chiasson, in a judgment dated November 18, 2010.

² At the time Mr. Chiasson filed for divorce, Louisiana Civil Code article 102 provided:

Except in the case of a covenant marriage, a divorce shall be granted upon motion of a spouse when either spouse has filed a petition for divorce and upon proof that one hundred eighty days have elapsed from the service of the petition, or from the execution of written waiver of the service, and that the spouses have lived separate and apart continuously for at least one hundred eighty days prior to the filing of the rule to show cause.

The motion shall be a rule to show cause filed after all such delays have elapsed.

divorce, pursuant to Louisiana Civil Code article 103(1),³ was filed by Ms. Chiasson on June 6, 2007. The district court signed a final judgment of divorce on June 19, 2007.

Ms. Chiasson filed a rule to set child support on September 26, 2008. Following a hearing, the court signed a stipulated judgment that awarded her \$4,000 per month (plus insurance and tuition), beginning July 1, 2009. Additionally, the judgment set an arrearage amount of \$13,000 for the period from September 26, 2008–June 30, 2009.

Pursuant to a joint motion of the parties, the collaborative divorce process was terminated on November 20, 2007. Thereafter, Ms. Chiasson filed a petition for partition of community property on June 15, 2011. After both parties filed their detailed descriptive lists, they filed a joint pre-trial order with the district court, setting forth certain stipulations of fact and their various disputed claims.

Trial was held on May 22, 2012, at which the parties testified and submitted documentary evidence. Following trial, the district court allowed both parties to submit post-trial briefs as to the parties' disputed claims; then, the court took the matter under advisement. In written reasons for judgment, issued on August 20, 2012, and in a judgment that was signed on March 13, 2013,⁴ the district court allocated the community assets as follows:

³ Louisiana Civil Code article 103(1) refers to Article 103.1 for the requisite period of time to live separate and apart to obtain a divorce. Article 103.1 provides, in pertinent part:

The requisite periods of time, in accordance with Articles 102 and 103 shall be as follows:

(1) One hundred eighty days:

(2) Three hundred sixty-five days when there are minor children of the marriage.

⁴ The court issued written reasons on August 20, 2012, after the trial on the partition of the parties' community property. The court then issued supplemental written reasons on October 25, 2012, to correct a typographical error and an omission. The final judgment of partition was signed on March 13, 2013.

<u>BRETT</u>		<u>GISELLE</u>	
\$ 167,946.58	money market account	\$ 15,616.82	joint account
\$ 66,471.28	money market account	\$ 13,574.14	Fidelity IRA
\$ 3,481.00	2006 tax overpayment	\$ 10,963.00	Citi 401(k)
\$ 59,000.00	Plaza Ortho accounts rec.	\$ 156,221.00	Fidelity Rollover IRA
\$ 13,574.14	Fidelity IRA	\$ 18,697.50	Fidelity Rollover IRA
\$ 10,963.00	Citi 401(k)	\$ 15,292.00	Fidelity Trad. IRA
\$ 156,221.00	Fidelity Rollover IRA	\$ 20,232.50	Fidelity SEP-IRA
\$ 18,697.50	Fidelity Rollover IRA	\$ 41,666.66	Commercial Lot 13
\$ 15,292.00	Fidelity Trad. IRA	\$ 41,666.66	Commercial Lot 14
\$ 20,232.50	Fidelity SEP-IRA	\$ 10,874.00	'04 Lincoln Navigator
\$ 36,466.67	Commercial Lot 12	\$ 50,000.00	Movables
\$ 90,335.90	New England Ins. Policy	\$ 5,147.04	reimbursement
\$ 9,786.00	'04 Infiniti		
\$ 110,036.62	reimbursement		
\$ 7,758.00	reimbursement		
\$ 32,495.57	reimbursement		
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\$ 818,757.76	TOTAL	\$ 399,951.32	TOTAL ⁵

The judgment of the district court further ordered, “if this results in an unequal net distribution to either party, the court orders payment of an equalizing sum to the other party, which the parties calculate to be \$8,311.51 due to [Mr. Chiasson] from [Ms. Chiasson].”

It is from that judgment that Ms. Chiasson now appeals, assigning seven errors.⁶

JURISDICTION

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. *Rush v. Rush*, 2012-1502 (La. App. 1 Cir. 3/25/13), 115 So. 3d 508, 510, *writ denied*, 2013-0911 (La. 5/31/13), 118 So. 3d 398; *McGehee v. City/Parish of East Baton Rouge*, 2000-1058 (La.

⁵ Based on this court’s calculations, the difference in the amount of community property allocated to the parties is \$418,806.44. In order to equalize the parties, Mr. Chiasson would owe Ms. Chiasson an equalization payment of \$ 209,403.22.

⁶ Ms. Chiasson now appeals, assigning the following errors: (1) the distinct court erred in determining that \$56,000 in payments by Mr. Chiasson from the date of filing the petition for divorce through the date of the child support judgment were “advances of the community” for which reimbursement was due by Ms. Chiasson; (2) the district court erred in valuing the “community movables” at \$50,000 and awarding them to Ms. Chiasson; (3) the district court erred in valuing the 2004 Lincoln Navigator at \$10,874; (4) the district court erred in admitting certain exhibits into evidence, which were allegedly not authenticated nor fall under a hearsay exception; (5) the district erred in granting reimbursement to Mr. Chiasson for payment made to Laporte, Sehrt, Romig and Hand for \$11,000 and to Sage/Plaza Orthopedics for \$2,616; (6) the district court erred in granting reimbursement to Mr. Chiasson for a \$1,900 payment to Qualified Plans; and (7) the district court erred in awarding two commercial lots (Lots 13 and 14) to Ms. Chiasson.

App. 1 Cir. 9/12/01), 809 So. 2d 258, 260. An appeal is the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court. La. C.C.P. art. 2082. In the absence of a valid final judgment, an appellate court lacks appellate jurisdiction of a matter. *LeBlanc v. LeBlanc*, 2012-1994 (La. App. 1 Cir. 7/25/13), 2013 WL 3875044 (unpublished). We must independently ascertain whether this court has appellate jurisdiction to review the judgment from which the appeal was taken. See *R.J. Messinger, Inc. v. Rosenblum*, 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122.

The appellate jurisdiction of this court extends to “final judgments.” La. C.C.P. art. 2083; *Van ex rel. White v. Davis*, 2000-0206 (La. App. 1 Cir. 2/16/01), 808 So. 2d 478, 483. A final judgment is one that determines the merits, in whole or in part, while an interlocutory judgment is one that does not determine the merits, but only preliminary matters in the course of the action. La. C.C.P. art. 1841. A judgment must be precise, definite, and certain. *Johnson v. Mount Pilgrim Baptist Church*, 2005-0337 (La. App. 1 Cir. 3/24/06), 934 So. 2d 66, 67. A final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. *Id.* While a final judgment is appealable, an interlocutory judgment is appealable only when expressly provided by law. La. C.C.P. art. 2083.

Here, the judgment’s use of the language “if this results in an unequal net distribution to either party, the court orders payment of an equalizing sum to the other party, which the parties calculate to be \$8,311.51 due to [Mr. Chiasson] from [Ms. Chiasson],” is fatally defective. The use of the phrase “if this results” is neither precise, definite, nor certain. Furthermore, the judgment of the district court orders one of the parties to pay “the other party” an “equalizing sum” if the partition of the community “results in an unequal net distribution to either party”;

however, the judgment then contradicts itself by setting an equalizing sum calculated by the parties to be \$8,311.51, which the judgment states is due to Mr. Chiasson from Ms. Chiasson. The district court's judgment contemplates the payment of an equalizing sum, should an unequal net distribution result from the partition, but then the judgment confusingly sets an equalizing payment amount and names the party to whom that amount is due. Neither the payment of an equalizing sum, nor the actual amount thereof, is stated in the judgment with certainty or precision; thus the existence or amount of an equalizing payment is not determinable from the judgment itself. A third party could not determine from this judgment the amount owed to either party without reference to other documents or information outside the record. See *In re Succession of Wagner*, 2008-0212 (La. App. 1 Cir. 8/8/08), 993 So. 2d 709, 724. Accordingly, since the equalizing payment is uncertain and indefinite, the judgment is not final.

We decline to vacate only the portion of the judgment rendering it uncertain and indefinite, *i.e.*, an equalizing sum, and remand it to the district court for the limited purpose of amending the judgment to order the payment of the equalizing sum and setting forth the amount of that sum with certainty and precision. A final judgment may be amended by the district court at any time, on its own motion or on motion of any party, to alter the phraseology of the judgment, but not the substance, or to correct errors of calculation. La. C.C.P. art. 1951. Such amendments which add to, subtract from, or in any way affect the substance of a judgment are considered substantive amendments, and can only be made after a party has successfully litigated a timely application for new trial, an action for nullity, or a timely appeal. *Suprun v. Louisiana Farm Bureau Mut. Ins. Co.*, 2009-1555 (La. App. 1 Cir. 4/30/10), 40 So. 3d 261, 268.

DECREE

For the reasons stated, we find that the March 13, 2013 judgment is not a final judgment; therefore, it is a non-appealable, interlocutory judgment. Accordingly, we dismiss this appeal and remand this matter to the district court for further proceedings consistent with this opinion. All costs of this appeal are assessed equally to the parties.

APPEAL DISMISSED; CASE REMANDED.