NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2014 CA 1532

MAXIE C. GARON MELANCON

VERSUS

GERALD WAYNE GARON

Judgment Rendered: APR 2 4 2015

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On Appeal from the
21st Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Trial Court No. 139151

The Honorable Elizabeth P. Wolf, Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

DRAKE, J.

Defendant, Gerald Wayne Garon, appeals a judgment rendered following a bench trial, revoking a donation inter vivos by the plaintiff, Maxie C. Garon Melancon. Garon also appeals the denial of his exception of no cause of action. For the following reasons, we affirm the judgment of the district court.

FACTS AND PROCEDURAL HISTORY

On March 16, 2001, Plaintiff, the mother of defendant, executed a donation inter vivos donating certain immovable property located in Livingston Parish to defendant. Plaintiff reserved a usufruct over the immovable property on behalf of herself, her current husband, Joseph Melancon, and her son, Eddie J. Garon. On October 29, 2012, Plaintiff filed a petition to revoke the donation, claiming that in the past few years, defendant had displayed many acts of "ingratitude, verbal abuse, emotional abuse, and disrespect of Eddie J. Garon," who had various physical and mental impairments. Plaintiff also claimed that defendant was disrespectful to her and her husband, and that all acts of the defendant amounted to "cruel treatment, crimes, or grievous injuries." Plaintiff also filed an amending and supplemental petition specifying the acts of ingratitude by the defendant.

A bench trial was conducted on January 15, 2014, and the district court rendered judgment with oral reasons. A judgment revoking the donation, denying the defendant's motion for involuntary dismissal, and denying the oral motion for new trial was signed by the district court on February 7, 2014. Defendant filed a written motion for new trial, which the district court also denied. The defendant now appeals.

SPECIFICATIONS OF ERRORS

The defendant claims that the district court erred in denying his exception of no cause of action based on his possession of the property for more than ten years with just title. The defendant also claims that the district court erred in finding

"cruel treatment, crimes, or grievous injuries" to either the plaintiff or the other donees sufficient to revoke the donation pursuant to La. C.C. art. 1557. Finally, the defendant asserts that the trial court erred in permitting the plaintiff to raise at trial the issue of his accusation that the plaintiff was a drug addict, without giving him the opportunity to prepare a defense to that allegation.

DISCUSSION

Exception of No Cause of Action

Defendant filed an exception of no cause of action claiming that he had acquired the immovable property by acquisitive prescription, since he possessed the property uninterrupted for ten years in good faith and with just title. La. C.C. art. 3473 *et seq.* Defendant claims that he acquired just title when plaintiff donated the property to him more than ten years prior to plaintiff's petition to revoke the donation. "The requisites for the acquisitive prescription of ten years are: possession of ten years, good faith, just title, and a thing susceptible of acquisition by prescription." La. C.C. art. 3475.

Acquisitive prescription does not run in favor of a precarious possessor or his universal successor. La. C.C. art. 3477. Comment (a) to La. C.C. art. 3477 states that "[t]his provision reproduces the substance of Article 3510 of the Louisiana Civil Code of 1870. It does not change the law." A precarious possessor is one who exercises possession over a thing "with the permission of or on behalf of the owner or possessor." La. C.C. art. 3437; *Hooper v. Hooper*, 06-0825 (La. App. 3 Cir. 11/2/06), 941 So. 2d 726, 730, *writ denied*, 06-2823 (La. 1/26/07), 948 So. 2d 177. Additionally, because a co-owner possesses immovable property for himself and his co-owners, he is a precarious possessor. Revision Comment (e) to La. C.C. art. 3476; *Hooper,* 941 So. 2d at 730. Thus, a co-owner of immovable property "is presumed to possess for another although he may intend to possess for himself." La. C.C. art. 3438; *Hooper,* 941 So. 2d at 730.

A naked owner can never enter into the enjoyment of the use of the property until after the extinction of the usufruct. *Theriot v. Terrebonne*, 195 So. 2d 740, 743 (La. App. 1 Cir. 1967). Even though the court found in *Theriot* that a mother had given her son implied permission to use certain property, the court held that the use was not for the son's benefit as naked owner but for the use and benefit of the usufructuary, his mother. *Theriot,* 195 So. 2d 743.

As a general and well-established jurisprudential rule, an owner in indivision cannot acquire by prescription the rights of his co-owners in the property held in common. Possession by one co-owner is generally considered as being exercised on behalf of all co-owners. *Tilley v. Unopened Succession of Howard,* 43,013 (La. App. 2 Cir. 2/20/08), 976 So. 2d 851, 853, *writ denied,* 08-0820 (La. 6/6/08), 983 So. 2d 922. There is, however, an exception to the general co-owner rule. Louisiana Civil Code article 3439 states, in pertinent part, that "[a] co-owner, or his universal successor, commences to possess for himself when he demonstrates this intent by overt and unambiguous acts sufficient to give notice to his co-owner." *Tilley,* 976 So. 2d at 854.

The defendant testified at trial that he had lived on the property for over thirty years and that he had received title in the 2001 donation. The donation reserved a usufruct in favor of plaintiff, Joseph Melancon, and Eddie J. Garon. Therefore, defendant was the naked owner of the property and could not acquire the property by acquisitive prescription from a co-owner. There is nothing in the record, and defendant points to no evidence, that he gave notice to the co-owners of his intent to possess for himself. Therefore, the assignment of error with regard to the denial of the exception of no cause of action is without merit.

Revocation of a Donation Inter Vivos

It is well-settled that a court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong.

Moreover, where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Rosell v. ESCO,* 549 So. 2d 840, 844 (La. 1989).

A donation inter vivos is an act by which the donor gratuitously divests himself, at present and irrevocably, of the thing given in favor of the donee who accepts it. La. C.C. art. 1468. However, the inter vivos donation may be revoked because of the ingratitude of the donee. La. C.C. art. 1556. Revocation for ingratitude may take place if the donee has been guilty towards the donor of cruel treatment, crimes, or grievous injuries. La. C.C. art. 1557.

Grievous injuries sufficient to revoke a donation have been defined as any act naturally offensive to the donor. *Perry v. Perry,* 507 So. 2d 881, 883 (La. App. 4 Cir. 1987), *writ denied,* 512 So. 2d 465 (La. 1987). The jurisprudence has held that grievous injury or cruel treatment sufficient to revoke a donation may include adultery by a spouse, seizing property belonging to a parent, filing suit against a parent alleging criminal activity, stating the wish that the donor would die, and attempting to evict the usufructuary from the property. *Perry, supra; Spruiell v. Ludwig*, 568 So. 2d 133, 137-38 (La. App. 5 Cir. 1990), *writ denied*, 573 So. 2d 1117 (La. 1991); *Sanders v. Sanders*, 33,865 (La. App. 2 Cir. 9/27/00), 768 So. 2d 739, 743; *Whitman v. Whitman*, 31,814 (La. App. 2 Cir. 3/31/99), 730 So. 2d 1048, 1053; *Erikson v. Feller*, 04-1033 (La. App. 3 Cir. 12/8/04), 889 So. 2d 430, 434.

The determination as to whether a donee has been guilty of cruel treatment or grievous injury toward a donor depends heavily upon the facts and circumstances specific to each case. The trial court hears the testimony in its entirety and has a first hand impression of the credibility of all the witnesses. *Erikson,* 889 So. 2d at 434.

In the instant case, the district court held that defendant committed grievous injury by the following:

> [F]alsely alleging criminal activity as the defendant called the plaintiff a pain pill addict, told the plaintiff's husband that he needed to have [plaintiff] committed, told [plaintiff] that she needed to be committed, the serious offense which would be offensive to any family member. He—the defendant[-]threatened to turn off the electricity for the plaintiff and the plaintiff's son on the property.

In making this determination, the district court also specifically noted that the plaintiff and her husband were around eighty-two years old or older, and that the defendant had told Mr. Melancon to get out of the house. The district court took into consideration the shouting between family members with regard to threatening to turn off the electricity and to evict the plaintiff and Mr. Melancon from the property. The defendant claims the family members just had an argument and that he had no authority to turn off plaintiff's electricity. When reviewing findings of fact, the issue to be resolved by the reviewing court is not whether the trier of fact was right or wrong, but whether the conclusion was a reasonable one. *Adams v. Rhodia, Inc.*, 07-2110 (La. 5/21/08), 983 So. 2d 798, 806. Our review of the record reveals no manifest error in the district court's determination that the plaintiff proved sufficient grounds for revocation of the donation of the property on grounds of ingratitude through "cruel treatment, crimes or grievous injuries." We cannot conclude that the district court's finding of grievous injury was unreasonable.

Relevancy of Donee Actions towards Others

The defendant claims that the district court erred in admitting evidence of his actions toward Mr. Melancon and Eddie J. Garon, rather than only the donee, since La. C.C. art. 1557 states that ingratitude occurs where the donee is "guilty of cruel treatment, crimes or grievous injury **to the donor.**" (Emphasis added). Generally, the trial court is granted broad discretion on its evidentiary rulings, and

its determinations will not be disturbed on appeal absent a clear abuse of that discretion. *Odyssea Vessels, Inc. v. A & B Industries of Morgan City, Inc.,* 11-2009 (La. App. 1 Cir. 6/13/12), 94 So. 3d 182, 192. Except as otherwise provided by law, all relevant evidence is admissible. La. C.E. art. 402. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. La. C.E. art. 401. Whether evidence is relevant is within the discretion of the trial court, and its ruling will not be disturbed on appeal in the absence of a clear abuse of that discretion. *Travis v. Spitale's Bar. Inc.,* 12-1366 (La. App. 1 Cir. 8/14/13), 122 So. 3d 1118, 1126, *writs denied,* 13-2409, 13-2447 (La. 1/10/14), 130 So. 3d 327 and 329. Moreover, an error may not be predicated upon a ruling that admits or excludes evidence unless a substantial right of the party is affected. La. C.E. art. 103(A). The party alleging prejudice by the evidentiary ruling of the trial court bears the burden of so proving. *Mapp Const., LLC v. Southgate Penthouses, LLC,* 09-0850 (La. App. 1 Cir. 10/23/09), 29 So. 3d 548, 561, *writ denied,* 09-2743 (La. 2/26/10), 28 So. 3d 275.

Given that grievous injuries sufficient to revoke a donation have been defined as any act naturally offensive to the donor, we cannot find that the district court committed manifest error in admitting evidence as to the actions of the defendant toward Mr. Melancon, the plaintiff's elderly husband, and Eddie J. Garon, the plaintiff's son who has various physical and mental impairments. Furthermore, we find that given the totality of the evidence, no substantial right of the defendant was affected by the admission of this evidence.

Sufficient Notice of Allegations

The defendant claims that he had insufficient notice that the plaintiff was going to raise the issue of his having made allegations of pain medicine addiction against the plaintiff. The defendant alleges that issues not raised by the pleadings

may be allowed to be presented at trial if the objecting party fails to satisfy to the court that the admission of such evidence would prejudice him in maintaining his defense of the merits. See La. C.C.P. art. 1154.

A trial court has great discretion to admit or to disallow evidence subject to an objection based upon the scope of the issues and pleadings and to determine whether evidence is encompassed by the general issues raised by the pleadings. *Jalou II, Inc. v. Liner,* 10-0048 (La. App. 1 Cir. 6/16/10), 43 So. 3d 1023, 1035. Louisiana Code of Civil Procedure article 891 requires that a petition "contain a short, clear, and concise statement of all causes of action arising out of, and of the material facts of, the transaction or occurrence that is the subject matter of the litigation." There are no technical forms of pleading; all allegations of fact shall be simple, concise, and direct. La. C.C.P. art. 854.

In her original petition, plaintiff alleged that defendant "displayed numerous acts of disrespect, emotional abuse, and discontent" against his brother and also against plaintiff and Mr. Melancon "by calling each horrible names, cussing each, screaming at each, making [a] horrible accusation against her, threatening to turn off the electricity to the premises, [and] telling them he wanted them off his land." We find no manifest error in the district court's admissibility of the evidence of the defendant's allegations against the plaintiff of drug use given the pleadings in the record. Furthermore, we note that the defendant made no contemporaneous objection when the evidence was admitted at trial. A party must make a timely objection to evidence which the party considers to be inadmissible *and* must state the specific ground for the objection. La. C.E. art. 103; La. C.C.P. art. 1635. The reason for this rule is to afford the trial court an opportunity to prevent or correct prejudicial error. *Jeansonne v. Bosworth*, 601 So. 2d 739, 744 (La. App. 1 Cir. 1992), *writ not considered*, 614 So. 2d 75 (La. 1993). Accordingly, this assignment of error is without merit.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of the appeal are assessed to defendant, Gerald Wayne Garon.

AFFIRMED.