

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0980

LANGE WALKER ALLEN

VERSUS

SUSAN TAYLOR ALLEN

CONSOLIDATED WITH

2015 CA 0981

LANGE WALKER ALLEN, II

VERSUS

SUSAN TAYLOR MARTIN

Judgment Rendered: DEC 23 2015

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF ST. TAMMANY  
STATE OF LOUISIANA  
DOCKET NUMBER 2011-14151, CONSOLIDATED WITH 2011-15433,  
DIVISION K

HONORABLE ROBERT J. BURNS, JUDGE AD HOC

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**BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.**

*Handwritten signatures:*  
JWA  
SMA  
TME

## **McDONALD, J.**

The parties in this case, Lange Walker Allen, II and Susan Taylor Martin, were married in 1998 and had a separate property regime. They were divorced in 2012 and protracted litigation followed thereafter. This is an appeal from a judgment denying Mr. Allen's petition to partition a 2008 Toyota Land Cruiser.<sup>1</sup>

In his appeal, Mr. Allen raises two assignments of error as follows:

1. Where the trial court expressly stated that it ruled in Susan Martin's favor because it believed her testimony, it manifestly erred in denying Walker Allen the opportunity to impeach her credibility by showing that at an earlier stage of these same proceedings she committed perjury by filing with the trial court a sworn affidavit to obtain interim spousal support in which she lied in her answers to several questions on that affidavit regarding her work history and liquid assets.
2. The trial court manifestly erred in granting Susan Martin's claim of an undocumented gift of an interest in a registered movable, where all the documentary evidence and other objective evidence contradicted that claim and where her story itself was internally inconsistent and implausible on its face.

### **ASSIGNMENT OF ERROR NO. 1**

In this assignment of error, Mr. Allen asserts that the trial court erred in denying him the opportunity to introduce exhibits that he wanted to use to impeach Ms. Martin's credibility. The exhibits that were excluded consisted of hearing officer conference affidavits filled out by Ms. Martin in reference to the parties' divorce, notices and a statement of account from the Louisiana Department of Revenue, a Charles Schwab account statement for Ms. Martin, property sales documents involving Ms. Martin, and a listing of antique shops in St. Tammany Parish. Mr. Allen asserts that these documents would show that Ms. Allen was not truthful in the parties' previous divorce-related litigation.

Louisiana Code of Evidence article 607 provides:

**A. Who may attack credibility.** The credibility of a witness may be attacked by any party, including the party calling him.

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<sup>1</sup> In *Allen v. Allen*, 2013-0996 (La. App. 1 Cir. 12/29/14), 2014 WL 7368574 (unpublished), writ denied, 2015-214 (La. 5/22/15), 171 So.3d 922, this court affirmed the judgment of the trial court finding that Mr. Allen was in contempt of court and imposing sanctions for failing to deliver the executed title to the 2008 Toyota Land Cruiser.

**B. Time for attacking and supporting credibility.** The credibility of a witness may not be attacked until the witness has been sworn, and the credibility of a witness may not be supported unless it has been attacked. However, a party may question any witness as to his relationship to the parties, interest in the lawsuit, or capacity to perceive or to recollect.

**C. Attacking credibility intrinsically.** Except as otherwise provided by legislation, a party, to attack the credibility of a witness, may examine him concerning any matter having a reasonable tendency to disprove the truthfulness or accuracy of his testimony.

**D. Attacking credibility extrinsically.** Except as otherwise provided by legislation:

- (1) Extrinsic evidence to show a witness' bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness.
- (2) Other extrinsic evidence, including prior inconsistent statements and evidence contradicting the witness' testimony, is admissible when offered solely to attack the credibility of a witness unless the court determines that the probative value of the evidence on the issue of credibility is substantially outweighed by the risks of undue consumption of time, confusion of the issues, or unfair prejudice.

The trial court noted in its reasons for denying the admission of this evidence:

I find his documents inadmissible and under 1636 the Code says in all cases the court shall state the reasons for its ruling as to the inadmissibility of the evidence and this ruling shall be reviewable on appeal without the necessity of further formality. Now the reason I've held this inadmissible today is under Code of Evidence Article 607, which is entitled *Attacking and Supporting Credibility Generally*, and under 607 of our Code of Evidence, extrinsic evidence to show witness's bias, interest, corruption or defective capacities admissible to attack or call voided or to other extrinsic evidence supporting prior inconsistent statements and evidence contradicting the witness's testimony is admissible when offered solely to attack the credibility of the witness, unless the court determines that the probative value of the evidence on the issue of credibility is substantially outweighed by risk of undue consumption of time, confusion of the issues or unfair prejudice. . . . I determine that the probative value on the issue of Susan Allen's credibility would be substantially outweighed by the risk of undue consumption of time, confusion of the issues or unfair prejudice. I will spend weeks and weeks going through and listening to evidence about everything that's supposedly offered here in Proffers One through Five. In other words, we would have a side trial on the issues about what did prior employment really mean, what did

she mean when she really said 1971. All these, all the occupations that she listed and the various real estate transactions that I'm told may have been, she may have been engaged in. This side trial could drag this case out, as I say, for weeks and weeks. So it would unduly consume this court's time. And, therefore, I'm saying that any probative value connected with Proffers One through Five is substantia[lly] waived by the risk of undue consumption of time, confusion of the issues or unfair prejudice, and that's the reasons why I'm ruling that Proffers One through Five are inadmissible evidence and would not in any way help this court decide the limited issue today of the partition of this automobile.

In regards to allegations of error as to whether the trial court improperly admitted or excluded certain evidence, the trial court is granted broad discretion in these rulings and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. **Brignac v. Barranco**, 2014-1578 (La. App. 1 Cir. 9/10/15), \_\_So.3d\_\_, 2015 WL 5306216, \*4; **CF Industries, Inc. v. Turner Indus. Services, Inc.**, 2011-0540 (La. App. 1 Cir. 8/24/12), 2012 WL 3655247, \*3 (unpublished), writ denied, 2012-2106 (La. 12/14/12), 104 So.3d 442.

Mr. Allen asserts that Ms. Martin's principle support for her claims was her own testimony; thus, her credibility was squarely at issue such that he was entitled to present evidence to impeach her testimony. He also asserts that the opportunity to cross examine a witness so as to impeach her credibility is an essential element of the constitutional right to confrontation of witnesses and of constitutionally-protected due process, citing **State v. Henderson**, 2013-0526 (La. App. 4 Cir. 2/19/14), 136 So.3d 223. In **State v. Henderson**, the defendant was on trial for armed robbery and was not allowed to cross examine a juvenile witness in regard to the juvenile witness's criminal record. The appellate court found that it could not determine whether failing to allow the defendant to cross examine the witness in regard to his criminal record was harmless error or not, and remanded the case for the trial court to determine whether harmless error existed in denying the defendant discovery of the juvenile witness's criminal record and proceed

accordingly. **State v. Henderson**, 136 So.3d at 231. That criminal case is not analogous to the civil case that is before us now.

In this case Mr. Allen testified on direct examination, cross examined Ms. Martin, and introduced exhibits into evidence to support his assertion that the vehicle was jointly owned by the parties. Mr. Allen was **only** prevented from introducing exhibits into evidence that the trial court determined should not be admitted because their probative value was substantially outweighed by the risk of undue consumption of time, confusion of the issues, and unfair prejudice. These exhibits were related to the parties' claims in their earlier divorce litigation.

After thoroughly reviewing the record, we find no abuse of the broad discretion of the trial court in excluding these items from being introduced into the record because their probative value was outweighed by the risk of undue consumption of time, confusion of the issues, or unfair prejudice. This assignment of error has no merit.

#### **ASSIGNMENT OF ERROR NO. 2**

In this assignment of error, Mr. Allen asserts that the trial court's factual findings were manifestly erroneous because the documentary and other evidence contradicted Ms. Martin's claim and because her story itself was internally inconsistent and implausible on its face.

The trial court found in its reasons for judgment:

Mr. Allen's case is that based on the history of these two individuals, he and his wife, that I should find that the vehicle was jointly owned. Mr. Allen's position is the employees, when he intended to make a donation, the vehicle was actually placed in the name of Susan Martin herself and not placed in both of their names. That's his position. The position of Susan Allen is that this was a Christmas gift, that I should consider the timeliness of it, and that is occurring shortly after Christmas. Her position is that corroborates that it was a Christmas gift. And also the testimony of her son, Jeff Martin, that on the way home he was actually on the telephone conversation with both of them, and that they were, I think he said celebrating the purchase of the new car, but in any event there was a discussion that it would be

placed in her name and correct, correct the mistake that was made at the dealership.

I think Susan Martin has carried her burden of proof. I think it's more probable than not that this was a Christmas gift. I think it's more probable than not that he intended to make it a Christmas gift and that she understood it as a gift, considering the fact that it was purchased shortly after Christmas. I also believe the testimony of Jeff Martin presented before me today. I believe this telephone conversation occurred. I think it was discussed that the title would be placed in her name only at a future date.

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

Mr. Allen cites **Succession of Wagner**, 2008-0212 (La. App. 1 Cir. 8/8/08), 993 So.2d 709, 723-24 for the principle that where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face that a reasonable factfinder would not credit the witness's story, a reviewing court may well find manifest error even in a finding purportedly based upon a credibility determination.

In this case, the documentation Mr. Allen refers to is the car's bill of sale, which lists Mr. Allen and Ms. Martin as joint purchasers. Ms. Martin testified that the title was supposed to be in her name only because it was a gift, and that both names were placed upon the title in error by the dealership. Ms. Martin also testified that Mr. Allen agreed on the drive home from the dealership and several times thereafter that the title would be corrected, but that the title was never changed.

The trial court considered the entirety of the evidence, including the testimony of Mr. Allen, the testimony of Ms. Martin, and the testimony of Ms.

Martin's son, Jeff Martin. The trial court determined that the testimony of Ms. Martin and Mr. Martin was credible, that the timing of the purchase of the vehicle three days after Christmas corroborated that testimony, and that Mr. Allen and Ms. Martin discussed changing the title to put it in her name only.

We find that the trial court made reasonable evaluations of credibility and reasonable inferences of fact; thus, we cannot say that the trial court was manifestly erroneous or clearly wrong in finding that the 2008 Toyota Land Cruiser was a gift to Ms. Martin and was her separate property. This assignment of error has no merit.

### **CONCLUSION**

For the foregoing reasons, the trial court judgment is affirmed. Costs of this appeal are assessed against Lange Walker Allen, II.

**AFFIRMED.**