STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 1347

FEW

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SUCCESSION OF DUDLEY BOURG

Judgment Rendered: SEP 21 2017

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On Appeal from the
32nd Judicial District Court,
Parish of Terrebonne, State of Louisiana
Trial Court No. 21770

The Honorable John R. Walker, Judge Presiding

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

Crain, J. concurs and assigns reasons

HOLDRIDGE, J.

In this familial property dispute, the plaintiffs appeal the judgment of the trial court that enforced a settlement agreement. We affirm.

FACTS

The parties are Diana Neal Bourg and her three daughters, Jenny Marie Hotard Picou, Geralyn Ann Hotard Verdin, and Anita Bourg Arceneaux. Jenny and Geralyn were born to Diana and Gerald Joseph Hotard. After Gerald's death in 1958, Diana married Dudley Bourg, and Anita was born. Dudley died in 1976.

At issue are the parties' rights to property located in Montegut, Louisiana. The property is comprised of two contiguous tracts of land; one was Gerald's separate property, and one was the community property of Gerald and Diana. A house built by Gerald and Diana was destroyed by Hurricane Betsy, then rebuilt by them partially on Gerald's separate property. Diana and Anita now live in that house. Geralyn and her daughter each live in mobile homes located on the property.

The property was allegedly involved in the succession proceedings of both Gerald and Dudley. Jenny and Geralyn filed a petition to nullify the judgment of possession from Dudley's 2013 succession, claiming it awarded Diana and Anita property that was previously adjudicated to them (Jenny and Geralyn) in Gerald's succession. Diana and Anita answered, denying Jenny and Geralyn's claim that the same property was involved in both successions, explaining that land was conveyed in Gerald's succession, but Dudley's succession dealt with buildings on the land, specifically a brick house. Diana and Anita also asserted a reconventional demand seeking to partition the disputed property because they, along with Geralyn and Geralyn's daughter, could no longer live on the property peacefully.

On September 28, 2015, the parties and their attorneys appeared for a bench trial and engaged in settlement negotiations with the trial court. At the conclusion

of the negotiations, the trial court stated it had a "lengthy discussion with the attorneys" in an attempt to resolve the pending issues. The trial court pointed out that a home on the disputed property was destroyed, then rebuilt and elevated, raising questions about whether the house and land, respectively, was separate or community property. The trial court said a partition in kind (a physical division of the property) was possible, and continued, saying "The parties have struggled in trying to deal with the issues and come up with some appropriate resolution. And they have, at this point, come up with a possible solution, and they have signed an agreement on a map that is being held by the Court."

The trial court then outlined the agreement reached to divide the property as shown on the map. The trial court explained that in exchange for the agreement, Jenny and Geralyn gave up any right to the property where the house is located; Diana and Anita gave up any rights to the remaining property; and Anita gave up any rights in the house in favor of her mother. The trial court clarified that Diana would own the house, and the remaining property would be carved out around it. The trial court explained that as additional consideration for the agreement, Jenny and Geralyn would each receive $10,000. The parties confirmed their signatures on the map and acknowledged on the record that the trial court's description matched their understanding of the agreement. The trial court noted that a completed survey would need to be signed by the parties, after which the remaining issues could be resolved.

In January, 2016, Diana and Anita filed a motion and rule to show cause alleging they engaged a registered land surveyor to prepare a final map to divide the property and prepared a consent judgment, but Jenny and Geralyn refused to sign. Diana and Anita asked that the surveyor's map be used to finally divide the property. Jenny and Geralyn opposed the motion, arguing they did not voluntarily consent to divide the property as shown on the map signed September 28, 2015,

the day of the scheduled bench trial. They claimed they felt intimidated and coerced to sign and referenced a "miscommunication" between them and their former attorney. Jenny and Geralyn additionally argued the surveyor's map was not in accordance with the proposed agreement and included property not part of the partition proceeding.

The parties appeared in court on February 26, 2016, for Jenny and Geralyn to show cause why the surveyor's map should not be used to divide the property. The trial court continued the hearing after discussing a number of issues with counsel in chambers and hearing suggestions to help resolve differences, including "moving some of the lines, changing some of the previous agreements in connection with this matter." The trial court noted "a number of options" being considered, and reset the hearing to allow the attorneys and their clients to resolve the issues without further litigation expenses. The trial court expressed hope that the parties would reach an agreement, but cautioned there would need to be "some remedial language" and "a number of things that we're going to need to probably clean up."

On March 31, 2016, the parties returned to court. The trial court heard testimony on whether a settlement was reached on September 28, 2015, and whether the surveyor's map should be used to finally divide the property. Both Jenny and Geralyn testified they signed the map on September 28, 2015, but only after their attorney said if they did not sign, Geralyn and her daughter would have to move their trailers. Jenny testified the September 28, 2015, map was signed because they "felt threatened." Jenny and Geralyn said they believed dividing the property according to the surveyor's map was inequitable. Geralyn further stated there was no intent to include her father's separate property in any settlement. Geralyn denied agreeing to allow the judgment of possession rendered in Dudley's succession to stand.

After hearing testimony from both sides, the trial court found a binding agreement was reached on September 28, 2015, as acknowledged by the parties on the record and as shown on the map signed by the parties on that date. The trial court found the surveyor's map did not accurately reflect the parties agreement and the map signed September 28, 2015 would be enforced. A judgment reflecting the September 28, 2015 agreement was signed by the trial court on June 6, 2016.

Jenny and Geralyn suspensively appealed, contending the trial court erred in finding a binding agreement.

DISCUSSION

A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship. La. Civ. Code art. 3071. Louisiana Civil Code article 3072 sets forth the formal requirements for a compromise, stating that a compromise shall be made in writing or recited in open court, in which case the recitation shall be susceptible of being transcribed from the record of the proceedings. Like other contracts, a compromise agreement is the law between the parties, and must be interpreted according to the parties' true intent. The party who attempts to rely on the existence of a compromise agreement bears the burden of proving the requirements for a valid compromise, including the parties' intent to settle. *Suire v. Lafayette City-Parish Consol. Government*, 04-1459 (La. 4/12/05), 907 So. 2d 37, 55.

On appeal, Jenny and Geralyn raise one argument concerning the form of the compromise, and the remainder of their contentions involve the trial court's factual findings as to the existence of a compromise. They argue on appeal that since this case involves the transfer of immovable property, pursuant to Louisiana Civil Code article 3073, the compromise must comply with the form requirements under Louisiana Civil Code article 1839 for transferring immovable property in addition

to the formal requirements of Article 3072. Under Louisiana Civil Code article 1839, a transfer of immovable property must be made by authentic act or by act under private signature. Nevertheless, an oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath. La. Civ. Code art. 1839.

Legislation is the solemn expression of the legislative will; thus, the interpretation of legislation is primarily the search for legislative intent. *See* La. Civ. Code art. 2; *In re Succession of Boyter*, 99-0761 (La. 1/7/00), 756 So. 2d 1122, 1128. The starting point for interpretation of any code article is the language of the article itself. *River Parish Financial Services, LLC v. Gill*, 15-0811 (La. App. 1 Cir. 12/23/15), 186 So. 3d 181, 183. Laws pertaining to the same subject matter must be interpreted *in pari materia*, or in reference to each other. *See* La. Civ. Code art. 13; *Acurio v. Acurio*, 16-1395 (La. 5/3/17), ___ So. 3d ___, ___ (2017WL1709823). The legislature is presumed to have acted with deliberation and to have enacted each article in light of the preceding law involving the same subject matter and court decisions involving those articles. *See* La. R.S. 24:177C; *Rebel Distributors Corporation, Inc. v. LUBA Workers' Comp.*, 13-0749 (La. 10/15/13), 144 So. 3d 825, 836. Courts must interpret a law in a way that harmonizes and reconciles it with other provisions dealing with the same subject matter. *See Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc.*, 06-0582 (La. 11/29/06), 943 So. 2d 1037, 1045. Additionally, courts must give effect to all parts of a law and, if avoidable, should not give an interpretation that makes any part superfluous or meaningless. *See Holly & Smith Architects, Inc.*, 943 So. 2d at 1045.

Louisiana Civil Code article 3073 provides, "When a compromise effects a transfer or renunciation of rights, the parties shall have the capacity, and the contract shall meet the requirement of form, prescribed for the transfer or

renunciation." Although the Official Revision Comments published with statutes are not law, they can be useful in determining legislative intent. *Central Properties v. Fairway Gardenhomes, LLC*, 16-1855 (La. 6/27/17), ___ So. 3d ___, ___ (2017WL2837152). Comment (a) to Article 3073 indicates, "[t]his Article is new. It reflects in part the principle contained in Article 3072 of the Louisiana Civil Code of 1870," which contained requirements regarding capacity.[1] Prior to the 2007 amendments, the Civil Code articles on compromises contained a capacity requirement, but did not specify a form requirement for contracts, relating to the type of rights being transferred.

The longstanding practice in the trial court concerning compromises involving immovable property is that the compromise is recited on the record, then the parties prepare a contract that conforms to the requirements of Article 1839 to transfer the property. Article 3071 of the Code of 1870 (which was in effect until 2007) provided in part that "[t]he agreement recited in open court confers upon each of them the right of judicially enforcing its performance, although its substance may thereafter be written in a more convenient form." Current Article 3071 was not intended to change this practice or law. See Revision Comments - 2007(a) to Article 3071 ("This Article is new. It is not intended to change the law.")

Prior Civil Code Article 3071 and current Article 3073 recognize that more than one contract may be involved with a compromise dealing with immovable property. By using two different terms, "compromise" and "contract," the legislature clearly intended that they have different meanings. A compromise is defined as a contract by Louisiana Civil Code article 3071, and Louisiana Civil

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[1] Article 3072 of the Code of 1870 provided:

> A man to transact must have the capacity to dispose of the things included in the transaction.
>
> The tutor of a minor or the curator of a person interdicted or absent can not make a transaction without being authorized thereto by the judge.

Code article 1906 defines a contract, stating, "A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished." While all compromises are contracts, not all contracts are compromises. Therefore, by its plain language, Article 3073 requires that when a compromise effects the transfer of rights, the parties must have the capacity to enter into the compromise, and if the initial compromise agreement is written or if a subsequent contract is entered into transferring the rights of the parties, that written contract must meet the requirements of form necessary to transfer those rights. The word "contract" in Article 3073 refers to a written compromise or, if the initial compromise is recited in open court, to this additional written contract that the parties may choose to enter into to transfer immovable property or to perform the compromise, as opposed to the actual compromise agreement.[2] Therefore, a compromise involving immovable property is only subject to the formal requirements of Article 3072 and that the parties entering the compromise must have capacity to do so under Article 3073. A compromise agreement is not subject to any additional formal requirements (other than those contained in Civil Code article 3072) unless the parties enter into a written contract involving the transfer of immovable property, in which case the requirements of Civil Code article 1839 must be met.

The remainder of Jenny and Geralyn's contentions concern the trial court's determination that a compromise was reached, which is a factual determination subject to the manifest error standard of review. *See Chaney v. New Orleans Private Patrol*, 11-2077, 2012WL2061403, p.2 (La. App. 1 Cir. 6/8/12). Under the manifest error standard, a reviewing court may not merely decide if it would have

[2] To interpret Louisiana Civil Code article 3073 to require compromises which are recited in open court that concern immovable property to meet the requirements of Louisiana Civil Code article 1839 would have a chilling effect on settlements requiring the transfer of immovable property, which are entered in open court and recited on the record. Those compromises would be invalid unless the parties could simultaneously prepare and sign the necessary contracts to transfer title to the property which meet the form requirements of Article 1839. Such an interpretation would add additional formality requirements to a compromise recited in open court which are not contained in Louisiana Civil Code article 3072.

found the facts of the case differently. *Hayes Fund for First United Methodist Church of Welsh, LLC v. Kerr-McGee Rocky Mountain, LLC*, 14-2592, (La. 12/8/15), 193 So. 3d 1110, 1115; *see also Hall v. Folger Coffee Company,* 03-1734 (La. 4/14/04), 874 So. 2d 90, 98. Rather, to reverse a trial court's factual conclusion, the appellate court must satisfy a two-step process based on the record as a whole: there must be no reasonable factual basis for the trial court's conclusion, and the finding must be clearly wrong. *Hayes,* 193 So. 3d at 1115-16; *Stobart v. State through Department of Transportation and Development,* 617 So. 2d 880, 882 (La. 1993). Reasonable evaluations of credibility and inferences of fact should not be disturbed, even if the appellate court feels its own evaluations and inferences are as reasonable. *Hayes,* 193 So. 3d at 1116; *Richardson v. Bridgefield Cas. Ins. Co.*, 14-1587 (La. App. 1 Cir. 8/10/15), 181 So. 3d 61, 65.

The trial court found the parties entered a valid compromise on September 28, 2015. The trial court explained that everyone was present in court with their attorneys when the pending matters were explained, and the parties agreed to divide the property as shown on the map and according to the terms outlined on the record. The trial court observed that Diana, Anita, Jenny, and Geralyn each confirmed that the division of property as reflected on the map and outlined by the trial court was their agreement, and they signed the map indicating their agreement.

On appeal, Jenny and Geralyn argue there was no discussion of settling the nullity action filed in Dudley's succession. However, the record reveals the trial court did inform the parties they were present for the nullity action. That action raised issues regarding the ownership of the disputed land. The parties agreed to divide the ownership of the disputed land in accordance with the map, as shown by their signatures and verbal agreements made on the record in open court. A compromise settles only those differences the parties clearly intended to settle,

including the necessary consequences of what they express. La. Civ. Code art 3076. Resolution of the nullity action was implied in the agreement and was a necessary consequence of settling the property dispute.

Jenny and Geralyn also argue their consent was coerced. At the March 31, 2016, hearing, Jenny and Geralyn argued they did not willfully enter the agreement, which included separate property of their father that was not part of the partition, saying they felt coerced and threatened. Jenny testified the September 28, 2015 agreement was only tentative, and she signed the map only because she was informed that if she did not, the trial court would annul the judgment from her father's succession. Jenny also said she was told they would need to determine the feasibility of moving a telephone pole so another driveway could be added. Jenny testified she signed the map on September 28, 2015, despite concerns over the telephone pole, after being told she had five minutes to sign or her sister and niece would have to move. Jenny believed the division of property reflected on the September 28, 2015 map was inequitable.

Geralyn similarly testified regarding the inclusion of her father's separate property in the property division. However, she acknowledged she always viewed the entire property as one tract. Geralyn admitted telling the trial court on September 28, 2015, she understood and agreed with the property division, but argued she did so only because she believed she and her daughter may have to move. Geralyn said she did not understand the matter would have proceeded to trial had she not signed the map.

The trial court explained that on September 28, 2105, the parties were informed the proceeding was to partition the property, including a possible partition by licitation at a sheriff's sale with everything sold. The trial court explained that if the property were sold, the parties would have to move. To avoid that, the parties agreed to a partition in kind, with certain concessions, including

Anita giving up her rights, and Diana and Anita making $10,000 payments to Jenny and Geralyn. The trial court also indicated all the issues, including the relocation of a telephone pole, were discussed prior to the parties' September 28, 2015 agreement.

We find no manifest error in the trial court's determination that the parties entered a valid compromise on September 28, 2015. The record establishes a meeting of the minds as to what was conveyed to each party and an intent to resolve their disputes. The trial court rejected the claims that Jenny and Geralyn were coerced into signing the map, which determination was reasonable based on its evaluation of the credibility of the parties, and that determination will not be disturbed on appeal. *See Hayes,* 193 So. 3d at 1116; *Richardson,* 181 So. 3d at 65. The record shows that after September 28, 2015, the parties considered altering the agreement, but could not agree. The trial court did not err in enforcing the September 28, 2015 compromise.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed to Jenny Marie Hotard Picou and Geralyn Ann Hotard Verdin.

AFFIRMED.

CRAIN, J., concurs.

The legislature's amendment and reenactment of Louisiana Civil Code articles 3071-3078 were not intended to change the law, but merely to reproduce the substance of the former articles and to clarify and reflect principles contained in the former articles and jurisprudence. *City of Baton Rouge v. Douglas*, 07-1153 (La. App. 1 Cir. 2/8/08), 984 So. 2d 746, 748-49, *writ denied,* 08-0939 (La. 6/20/08), 983 So. 2d 1284; *see also* Acts 2007, No. 138, § 1; 2007 Official Revision Comments, La. Civ. Code arts. 3071-3078. The jurisprudence interpreting the articles governing compromises establishes that a compromise agreement recited on the record in open court will be treated as though it is a written contract, conferring upon each party the right to judicially enforce the agreement even though the substance may later be written in a more convenient form. *See Morris, Lee & Bayle, LLC v. Macquet*, 14-1080 (La. App. 4 Cir. 3/23/16), 192 So. 3d 198, 209. This principle is also reflected in revision comment (b) to Article 3072, which provides that when parties reach a valid oral settlement in court they may mutually compel each other to reduce the agreement to writing. Further, Louisiana Code of Civil Procedure article 1916B provides that when parties to a contested matter reach a compromise agreement recited on the record in open court, the court may order counsel for a party to prepare and submit a judgment to the court for signature.

Article 3073 requires that when *"a compromise"* effects a transfer of rights, *"the contract"* shall meet the requirement of form prescribed for the transfer. Applying well-established rules of statutory construction, and considering the

particular wording of the article in relation to the other articles governing compromises, as well as the jurisprudence on the subject, I agree with the majority's rejection of the interpretation suggested by Jenny and Geralyn that a compromise recited on the record in open court must meet the form requirements for the transfer of immovable property. Instead, by its plain language, Article 3073 requires that "the contract" reflecting "the compromise" meet the specified form requirements for the transfer of rights.

In this case, the terms of the parties' agreement were set forth on the record in open court on September 28, 2015. The parties acknowledged their agreement to the court and signed the map reflecting the agreed upon division of the property. The agreement was capable of being transcribed from the record, and therefore complied with the requirements for a "compromise" under Article 3072. *Accord, Catalanotto v. Catalanotto*, 14-0708 (La. App. 1 Cir. 12/10/14), 168 So. 3d 463, 466 (recognizing that the parties' agreement in open court to stipulations regarding community property constituted a binding compromise); *Reon v. Reon*, 07-1277 (La. App. 3 Cir. 4/2/08), 982 So. 2d 210, 211 (recognizing a binding compromise of community property issues based upon agreements made in open court). Diana and Anita sought to compel Jenny and Geralyn to reduce the compromise to writing. After finding that a valid compromise was achieved, the trial court ordered that a judgment be prepared to reduce the compromise to writing in accordance with Louisiana Code of Civil Procedure article 1916B.

I agree the trial court did not err in determining the parties entered a valid compromise on September 28, 2015. The record establishes a meeting of the minds as to what was conveyed and an intent to resolve the parties' disputes. The trial court rejected the claims that Jenny and Geralyn were coerced into signing the map, which determination was reasonable based on its evaluation of the credibility of the parties. *See Hayes Fund for First United Methodist Church of Welsh. LLC*

v. Kerr-McGee Rocky Mountain, LLC, 14-2592, (La. 12/8/15), 193 So. 3d 1110, 1116; *Richardson v. Bridgefield Casualty Insurance Company*, 14-1587 (La. App. 1 Cir. 8/10/15), 181 So. 3d 61, 65. The record shows that after September 28, 2015, the parties considered altering the agreement, but could not agree. Consequently, the trial court did not err in enforcing the September 28, 2015 compromise by rendering the June 6, 2016 judgment.