

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 1530

CONNIE B. VILLENUVE

VERSUS

MICHAEL EUGENE CASH AND BRENDA SUE CASH

Judgment Rendered: SEP 21 2017

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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. 142,620

Honorable Charlotte H. Foster, Judge Presiding

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BEFORE: HIGGINBOTHAM, HOLDRIDGE, AND PENZATO, JJ.

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HIGGINBOTHAM, J.

This appeal concerns the review of a judgment declaring a donation *inter vivos* of immovable property null and void for lack of authentic form.

BACKGROUND

Connie B. Villenuve is a widow with no children. In 2012, Ms. Villenuve was living on approximately 25 acres of property in Denham Springs, Louisiana. She originally acquired the property, including three houses and a barn, from her parents.¹ On July 31, 2012, Ms. Villenuve went with her neighbors and close friends, Michael Eugene Cash and Brenda Sue Cash, to a local notary's office to sign documents that she believed were related to the succession of her husband so that she could sell the Cashes two acres of land for their daughter. Instead, Ms. Villenuve signed a document in which she purported to donate all of her property to the Cashes, which was not her intention. Ms. Villenuve had previously executed a will that left all of the property to the Cashes upon her death, but she never intended to donate the property to them while she was still living.

The Cashes informed Ms. Villenuve later that same day that they now owned all of her property. Upon learning this news, Ms. Villenuve became very upset and returned to the office of the notary, Sandra M. Allen Causey, to attempt to have the donation revoked. She was not successful. Approximately one week later, the Cashes moved into one of the empty houses on the property where Ms. Villenuve still lived. At that point, the previously close relationship between Ms. Villenuve and the Cashes quickly deteriorated, leading to a complete lack of trust and many phone calls to the local sheriff's office concerning harassment and trespassing, as well as threats to evict each other from the property. Ms. Villenuve subsequently revoked her will.

On September 13, 2013, Ms. Villenuve filed a petition against the Cashes, seeking to declare the act of donation an absolute nullity and to return Ms. Villenuve into full

¹ Ms. Villenuve and her husband, Frank Bernard Villenuve, bought two acres from her parents, Cecil and Mary Bovard, in 1980, and then in 1991, she acquired another 22.7 acres from her parents as her separate property.

possession and ownership of the property, to cancel and erase the act of donation from the Livingston Parish conveyance records, for an injunction enjoining the Cashes from filing any eviction proceedings against Ms. Villeneuve, and for damages. Ms. Villeneuve alleged that at the time that she signed the document, she did not understand that she was transferring all of her property to the Cashes, whom she had trusted. She also alleged that at the time she was under duress and the Cashes had perpetrated a fraud in misrepresenting what she was signing. Additionally, Ms. Villeneuve alleged that the act of donation document was void and without effect, because it was not executed in the presence of two witnesses as required by law. The Cashes answered the petition, generally denying all of the allegations and requesting that the lawsuit be dismissed.

The matter proceeded to a bench trial on October 14, 2015. The trial court signed a judgment in favor of Ms. Villeneuve on December 30, 2015, granting all of the remedies she sought in her petition, including a declaration that the act of donation was an absolute nullity. In reasons for judgment, the trial court explained that the donation document was void for proper form because one of the witnesses was not present at the execution of the donation and the other witness did not actually observe any of the parties or the notary sign the document. The Cashes filed a motion for new trial, which was denied by the trial court. The Cashes then filed a motion for devolutive appeal, which the trial court granted. The record was lodged in this Court on November 22, 2016.²

On appeal, the Cashes contend the trial court erred in finding that the act of donation: (1) was an absolute nullity; (2) was not an authentic act; and (3) was subject to

² This Court issued a rule to show cause to the parties, stating that the appeal appeared to be untimely pursuant to La. Code Civ. P. art. 3662 because the delay for taking a devolutive appeal from a judgment rendered in a possessory action is thirty days after the notice of the denial of the motion for new trial. After the parties filed briefs on the timeliness of the appeal, another panel of this Court maintained the appeal while reserving the final determination of the timeliness issue to this panel to which the appeal was assigned. We have reviewed the allegations and prayer in Ms. Villeneuve's petition, and find that the nature of the action was one seeking to declare the act of donation an absolute nullity. Ms. Villeneuve's request to be returned to full possession of the property was based on the declaration that the act of donation was null and that she was the owner of the property. Thus, we find that this action is one primarily seeking to annul the act of donation rather than an action to be maintained in possession of property. Therefore, the appeal is timely and will be maintained, because it was taken within sixty days of the notice of the denial of the motion for new trial as required by La. Code Civ. P. art. 2087(A).

revocation for the Cashes' acts of ingratitude. Ms. Villeneuve maintains that the trial court's judgment should be affirmed since the act of donation was not signed in the presence of two witnesses as required by law for an authentic act.

DISCUSSION

Louisiana Civil Code article 1541 requires that donations *inter vivos* be accomplished by authentic act under the penalty of absolute nullity. An "authentic act" is defined as a "writing executed before a notary public . . . , **in the presence of two witnesses**, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed." La. Civ. Code art. 1833(A) (emphasis added). Any material deviation from the requirements governing authentic acts is fatal. **Hardin v. Williams**, 468 So.2d 1302, 1304 (La. App. 1st Cir.), aff'd, 478 So.2d 1214 (La. 1985). To invalidate an act that purports to be authentic on its face, the proof must be strong and convincing in order to overcome the presumption of validity. See Eschete v. Eschete, 2012-2059 (La. App. 1st Cir. 2/27/14), 142 So.3d 985, 987.

In this case, it is undisputed that all of the parties and the notary signed the document that purported to be a donation of immovable property. The dispute revolves around the witnesses to the document, Ronald A. Causey (the notary's husband) and Merrell Borne (a woman who was at the notary's office for other business), and whether the act of donation was executed "in the presence" of the two witnesses. Conflicting testimony was presented at the trial.

Ms. Villeneuve stated that no witnesses were actually present at the notary's desk while she, the notary, and the Cashes signed the document. Ms. Villeneuve noted that Mr. Causey was not at the office at the time of the signing, and while Ms. Borne was physically in the notary's office, she was sitting on a couch in the waiting area. Furthermore, there was a waist-high wall partition that divided the desk area from the waiting area, and the partition blocked the view into each area.

Ms. Borne verified that she was at the notary's office sitting in the waiting area at the time that the document was being signed. She testified that she did not actually witness or see any person sign the document, and when she signed as a witness after the parties had signed, the other witness was not present. Ms. Borne also stated that the waist-high partition blocked the view of the desk area if a person was seated in the waiting area. She admitted that she was not paying any attention to the people that were at the notary's desk and when she was presented the document for her signature as a witness, the others had already signed it.

The Cashes both testified that everyone was present in the notary's office at the time of the signing, including Mr. Causey, but they admitted that Ms. Borne was sitting on the couch about eight to ten feet away from the desk area, and she was called over to sign as a witness after everyone else had signed the document. Mr. Cash stated that his view of Ms. Borne was not blocked; however, he was not questioned about whether Ms. Borne could actually see what was going on at the desk from where she was sitting. Ms. Cash testified that the witnesses were not physically present at the desk when the parties and the notary signed the document, but they were in the office.

In contrast, Mr. Causey testified that he always stands where he can see the parties sign the documents when he is a witness, and he recalled seeing the parties, the notary, and the other witness in the same room on the day of this particular signing. However, Mr. Causey could not verify whether Ms. Borne was near the desk when everyone signed the document. The notary, Ms. Causey, described her office as one room containing a half-wall located between the waiting area and her desk area. She testified that a person could see over the wall from one area to the other. Ms. Causey insisted that Ms. Villeneuve and the Cashes were sitting at the desk with her for the signing of the document, and her husband was in that area as well. She stated that Ms. Borne and her husband both saw the parties sign the document; however, she later admitted that she could not recall where

the witnesses were exactly located during the signing, but they were in the vicinity of the parties.

In its reasons for judgment, the trial court expressly found that Mr. Causey was “not present at the execution of the donation” and Ms. Borne did “not observe any of the parties nor the [n]otary sign the document, and only affixed her signature later.” The trial court believed “the unbiased and very credible testimony of [Ms.] Borne” and rejected the testimony of the Cashes, the notary, and Mr. Causey.³ Under these specific facts, we cannot conclude that the trial court was unreasonable in crediting Ms. Borne’s unbiased testimony and rejecting the statements made by the Cashes, the notary, and the notary’s husband. We perceive no manifest or clear error in the trial court’s factual findings. Moreover, we agree with the trial court’s determination that the act of donation did not meet the requirements of an authentic act as contemplated by La. Civ. Code art. 1833. Clearly, the act of donation was not executed “in the presence of two witnesses.”

The purpose of the authentic act requirements is to ensure the validity of a signature on a document and that the person whose name appears on a document is the person who actually signed the document. The notary and witnesses attest to seeing the party sign the document. **Eschete**, 142 So.3d at 988. The notary and both witnesses must be present to witness the contracting parties’ signatures. **Id.**, 142 So.3d at 988-89. See also **Brumfield v. Brumfield**, 457 So.2d 763, 765 (La. App. 1st Cir. 1984). In this case, Ms. Borne clearly testified that she did not visually observe any signatures to the act of donation before she signed the document as a witness; therefore, the strict requirements of an

³ It is obvious from its reasons for judgment that the trial court accepted Ms. Borne’s factual version of the events surrounding the execution of the act of donation. It is well settled that a trial court’s findings of fact will not be set aside absent a finding that they are manifestly erroneous or clearly wrong, and where there is conflict in the testimony reasonable inferences of fact should not be disturbed upon review even though the reviewing court may feel its own evaluations and inferences are as reasonable. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). See also **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). Where different, yet permissible, views of the evidence exist, the trial court’s choice from among the different permissible views cannot be manifestly erroneous or clearly wrong. **Stobart**, 617 So.2d at 883. Credibility determinations of the trial court are subject to the strictest deference, and the manifest error-clearly wrong standard demands great deference for those findings. **Theriot v. Lasseigne**, 93-2661 (La. 7/5/94), 640 So.2d 1305, 1313.

authentic act were not met. See Hardin, 468 So.2d at 1304. Accordingly, we find no merit in the Cashes' assignments of error numbers one and two.

Given our reasoning that the act of donation was an absolute nullity for lack of authentic form, we pretermitt consideration of the now moot issue of whether the act of donation was subject to revocation for the Cashes' alleged acts of ingratitude.

CONCLUSION

The judgment of the trial court is hereby affirmed. Costs of this appeal are assessed to defendants-appellants, Michael Eugene Cash and Brenda Sue Cash.

APPEAL MAINTAINED; JUDGMENT AFFIRMED.