NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 0356

KRISTY S. WINTZ

VERSUS

GARY JAMES WINTZ

Judgment Rendered: NOV 0 1 2017

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Appealed from the
The Family Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 168824

Honorable Lisa Woodruff-White, Judge

* * * * * * *

Mark D. Plaisance
Thibodaux, LA

Attorney for Appellate
Plaintiff – Kristy S. Wintz

David H. Cliburn
Gonzales, LA

Attorney for Appellee
Defendant – Gary James Wintz

* * * * * *

BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

Theriot, J. Agrees in part, dissents in part w/reasons

WELCH, J.

Kristy S. Wintz appeals a judgment rendered in favor of Gary James Wintz that sustained Mr. Wintz's peremptory exception raising the objection of *res judicata*, dismissed Ms. Wintz's petition seeking a partition of community property, granted Mr. Wintz's motion for sanctions, and awarded, as sanctions, Mr. Wintz's attorney fees in the amount of $3,875.00. For reasons that follow, we affirm the judgment of the trial court.

I. FACTUAL AND PROCEDURAL HISTORY

The parties herein were married on April 18, 1998, and on March 2, 2009, Ms. Wintz filed a petition seeking a divorce from Mr. Wintz based on the provisions of La. C.C. art. 103(1).[1] In the petition for divorce, Ms. Wintz asserted that she and Mr. Wintz owned community property that had not been partitioned, and therefore, in addition to a divorce, Ms. Wintz also sought a judgment terminating and partitioning their community.

On August 12, 2009, the trial court rendered and signed a judgment of divorce. On that same date, August 12, 2009, the trial court also signed a stipulated judgment that had been entered into by the parties. That stipulated judgment provided, among other things, that Mr. Wintz would "retain full ownership, right, title, and interest in and to the former community home owned by the parties located at 9226 Monhegan Avenue, Baker, La. 70714" and that he would "be fully and solely responsible for any and all installment, periodic or other payments related to the property that are due and owing or may become due,

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[1] Louisiana Civil Code article 103(1) provides that, except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that the spouses have been living separate and apart continuously for the requisite period of time, in accordance with La. C.C. art. 103.1, or more on the date the petition is filed.

Additionally, La. C.C. art. 103.1 provides that the requisite periods of time, in accordance with La. C.C. arts. 102 and 103, shall be one hundred eighty days where there are no minor children of the marriage and three hundred sixty-five days when there are minor children of the marriage at the time the rule to show cause is filed in accordance with La. C.C. art. 102 or a petition is filed in accordance with La. C.C. art. 103.

including mortgage payments, equity loan payments[,] and homeowner's insurance premiums." This stipulated judgment further provided that "[t]he parties [would] execute whatever paperwork [was] necessary to transfer said property and corresponding indebtedness into [Mr. Wintz's] name."[2]

On November 8, 2013, Mr. Wintz filed a rule for contempt and request for attorney fees and costs. Therein, Mr. Wintz asserted that Ms. Wintz had refused to comply with verbal and written requests that she execute the documents necessary to transfer the former community home into his name, and therefore, she had willfully disobeyed the stipulated judgment. Mr. Wintz also claimed that he had the chance to refinance the home, but had incurred additional costs as a result of Ms. Wintz's failure to execute the necessary documents to transfer the home into Mr. Wintz's name. Therefore, Mr. Wintz sought an order from the trial court finding Ms. Wintz in contempt of court, ordering Ms. Wintz to execute the necessary documents to transfer the former community home into Mr. Wintz's name, and ordering Ms. Wintz to pay all of Mr. Wintz's costs, damages, and attorney fees.

On December 3, 2013, at the hearing on the rule for contempt, the parties entered into another stipulated judgment. That stipulated judgment, which was signed by the trial court on January 14, 2014, specifically set forth that the August 12, 2009 stipulated judgment "conveyed ownership of the home located at 9226 Monhegan Avenue, Baker, Louisiana 70714 to ... [Mr.] Wintz[;]" ordered Ms. Wintz to "execute a transference within 48 hours[;]" and provided that Mr. Wintz and Ms. Wintz "reserve[d] their rights to partition the community property that existed between the parties."

Thereafter, on May 9, 2014, Ms. Wintz filed a petition for partition of

[2] The stipulated judgment also contained provisions regarding ownership of other assets and the indebtedness and insurance premiums associated with those assets, if any. However, there are no issues on appeal relative to those assets.

community property. Therein, Ms. Wintz asserted that she and Mr. Wintz acquired property during their marriage, which was subject to the community property regime, and had not been able to agree to an amicable community property partition and settlement of claims between the parties arising from the matrimonial regime.[3] Therefore, Ms. Wintz sought a judicial partition of the community property that had not been partitioned. In Ms. Wintz's detailed descriptive list of community assets and liabilities that had not been partitioned, the only asset she listed was the home located at 9226 Monhegan Avenue in Baker, Louisiana, and the only liability she listed was the mortgage associated with that home. In response, Mr. Wintz filed a peremptory exception raising the objection of *res judicata* and a request for sanctions, attorney fees, and costs pursuant to La. C.C.P. art. 863.

After a hearing on July 8, 2014, the trial court rendered judgment in favor of Mr. Wintz as to both the objection of *res judicata* and the motion for sanctions. On July 31, 2014, the trial court signed a judgment sustaining the peremptory exception raising the objection of *res judicata*, dismissing Ms. Wintz's petition to partition community property, granting Mr. Wintz's request for sanctions pursuant to La. C.C.P. art. 863 against Ms. Wintz's attorney, and ordered that he pay, as sanctions, Mr. Wintz's attorney fees in the amount of $3,875.00.[4] From this

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[3] In the petition, Ms. Wintz acknowledged that the parties had already partitioned some of the movable property by mutual agreement.

[4] According to the record, on August 11, 2014, the trial court issued an amended judgment that vacated the portion of the judgment providing that Ms. Wintz's attorney be ordered to pay the sanctions and rendered judgment providing that Ms. Wintz be ordered to pay Mr. Wintz's attorney fees. Mr. Wintz objected to the amended judgment, arguing that it constituted a substantive change to the July 31, 2014 judgment and that it was improper. Nonetheless, the trial court signed the amended judgment, maintaining that the July 31, 2014 judgment was signed in "error" and was "inconsistent with [its] oral ruling on July 8, 2014." Mr. Wintz then filed an application for supervisory writs with this Court, and this Court, finding the judgment awarding sanctions to be a final appealable judgment, granted the writ for the limited purpose of remanding the case to the family court with instructions to grant Mr. Wintz an appeal. See **Wintz v. Wintz**, 2014-1461 (La. App. 1st Cir. 1/12/15)(*unpublished writ action*). An appeal of that judgment was subsequently lodged with this Court under docket number 2017-CA-0357. Thereafter, on March 15, 2017, this Court issued a rule to show cause why the appeal of the August 11, 2014 judgment should not be dismissed because the August 11, 2014 judgment

judgment, Ms. Wintz has appealed. On appeal, Ms. Wintz contends that the trial court erred in: (1) sustaining the peremptory exception of *res judicata*; and (2) awarding sanctions, or alternatively, awarding sanctions that were excessive.[5]

II. LAW AND DISCUSSION

A. *Res Judicata*

Res judicata bars re-litigation of a subject matter arising from the same transaction or occurrence of a previous suit. **Avenue Plaza, L.L.C. v. Falgoust**, 96-0173 (La. 7/2/96), 676 So.2d 1077, 1079; see also La. R.S. 13:4231. It promotes judicial efficiency and final resolution of disputes. **Terrebonne Fuel & Lube, Inc. v. Placid Refining, Co.**, 95-0654, 95-0671 (La. 1/16/96), 666 So.2d 624, 631.

Louisiana Revised Statutes 13:4231, which sets forth the general principles regarding *res judicata,* provides as follows:

> Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:
>
> (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or

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appeared to be an absolute nullity since it altered the substance of the July 31, 2014 judgment without recourse to the proper procedure. See **Frisard v. Autin**, 98-2637 (La. App. 1st Cir. 12/28/99), 747 So.2d 813, 818-819. However, on May 30, 2017, the appeal under docket number 2017-CA-0357 was dismissed pursuant to Uniform Rules—Courts of Appeal, Rule 2-8.6.

[5] We note that on August 8, 2014, Ms. Wintz filed a petition to annul the contractual partition of community property due to lesion. In response to this petition, Mr. Wintz filed a peremptory exception raising the objections of *res judicata*, no cause of action, and prescription, as well as a motion for sanctions, attorney fees, and costs pursuant to La. C.C.P. art. 863. Pursuant to a judgment signed by the trial court on July 13, 2015, the trial court overruled the objections of *res judicata* and prescription, sustained the objection of no cause of action, dismissed Ms. Wintz's petition to annul the contractual partition of community property based on lesion, and denied the motion for sanctions. The record before us does not reflect whether that judgment has been appealed.

Although there are no issues in this appeal with respect to Ms. Wintz's petition to annul, we note that in that petition, Ms. Wintz specifically asserted that the August 12, 2009 stipulated judgment (and the January 14, 2014 stipulated judgments) constituted a "partition" of community property, albeit a lesionary one. Thus, Ms. Wintz has judicially confessed that the stipulated judgments were partitions of the community property set forth therein. See La. C.C. art. 1853; **C.T. Traina, Inc. v. Sunshine Plaza, Inc.**, 2003-1003 (La. 12/3/03), 861 So.2d 156, 159 (noting that "an admission by a party in a pleading constitutes a judicial confession and is full proof against the party making it").

> occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
>
> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
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> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

The chief inquiry is whether the second action asserts a cause of action that arises out of the transaction or occurrence that was the subject matter of the first action. **Avenue Plaza, L.L.C.**, 676 So.2d at 1080. The Louisiana Supreme Court has also emphasized that all of the following elements must be satisfied in order for *res judicata* to preclude a second action: (1) the first judgment is valid and final; (2) the parties are the same; (3) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (4) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation. **Burguieres v. Pollingue**, 2002-1385 (La. 2/25/03), 843 So.2d 1049, 1053.

Notably, there are exceptions to *res judicata*, which are found in La. R.S. 13:4232. One exception, set forth in La. R.S. 13:4232(B), provides that "in an action for partition of community property and settlement of claims between spouses under [La.] R.S. 9:2801, the judgment has the effect of *res judicata* only as to causes of action actually adjudicated."

While *res judicata* is ordinarily premised on a final judgment on the merits, it also applies where there is a transaction or settlement of a disputed or compromised matter that has been entered into by the parties. **Ortego v. State, Dept. of Transp. and Development**, 96-1322 (La. 2/25/97), 689 So.2d 1358, 1363. Thus, a valid compromise may form the basis of a plea of *res judicata.*

Ortego, 689 So.2d at 1364. A compromise precludes the parties from bringing a subsequent action based upon the matter that was compromised. La. C.C. art. 3080. However, a compromise settles only those differences that the parties clearly intended to settle, including the necessary consequences of what they express. La. C.C. art. 3076.

The *res judicata* effect of a prior judgment is a question of law, and the appellate court conducts a *de novo* review to determine if the trial court was legally correct (or legally incorrect) in sustaining the objection of *res judicata*. See **Pierrotti v. Johnson**, 2011-1317 (La. App. 1st Cir. 3/19/12), 91 So.3d 1056, 1063-1064.

With regard to the peremptory exception raising the objection of *res judicata,* Ms. Wintz contends that the trial court erred in sustaining the objection and in dismissing her action to partition the community property because the August 12, 2009 stipulated judgment was not "a partition of community property as envisioned by La. R.S. 9:2801," she did not waive her right to bring a partition action pursuant to La. R.S. 9:2801 in either the August 12, 2009 or January 14, 2014 stipulated judgments, and she specifically reserved her right to partition the community estate in the January 14, 2014 stipulated judgment. On the other hand, Mr. Wintz contends that in Ms. Wintz's petition to partition community property, the only asset and liability that she sought to partition was the former community home located at 9226 Monhegan Avenue, Baker, Louisiana 70714 and the mortgage associated with that home, both of which were partitioned and allocated to Mr. Wintz in the August 12, 2009 stipulated judgment, and further recognized as such in the January 14, 2014 stipulated judgment. Hence, Mr. Wintz contends that since the only asset and liability that Ms. Wintz sought to partition were already partitioned pursuant to the August 12, 2009 stipulated judgment, her cause of action is barred by *res judicata.*

Based on our review of the August 12, 2009 stipulated judgment and Ms. Wintz's petition for partition of community property, we find the trial court was legally correct in sustaining the objection of *res judicata.* In Ms. Wintz's petition to partition, she sought to partition—or to divide the parties' ownership interest[6] in—the former community home located at 9226 Monhegan Avenue, Baker, Louisiana 70714 and the mortgage associated with that home. The full ownership, right, title, and interest in and to that home and the mortgage attached to that home was one of the community assets and liabilities addressed by the August 12, 2009 stipulated judgment, and that stipulated judgment specifically allocated the ownership of that home and the debt associated with it to Mr. Wintz. In addition, Ms. Wintz has judicially confessed that the August 12, 2009 stipulated judgment was a partition of the community assets addressed therein.[7] There is no dispute that when Ms. Wintz filed her petition for divorce, she also sought a partition of the community property owned by the parties; hence, the parties entered into the August 12, 2009 judgment. There is likewise no dispute that the August 12, 2009 stipulated judgment is a valid, final judgment; that the parties to the August 12, 2009 stipulated judgment and the petition to partition are the same (*i.e.*, Mr. and Ms. Wintz); that the cause of action, *i.e.*, the partition of community property, existed at the time the parties entered into the August 12, 2009 stipulated judgment; and that both the August 12, 2009 stipulated judgment and the petition to partition arise out of the termination of the parties' community of acquets and gains.

With respect to Ms. Wintz's argument that the August 12, 2009 stipulated judgment did not reflect a partition of community property in accordance with La. R.S. 9:2801, we find that at the time the parties entered into the August 12, 2009

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[6] A partition is a division of the property between co-owners resulting in individual ownership of the interests of each co-owner. See **Black's Law Dictionary** 1008 (5th Ed., 1979).

[7] See footnote 5.

stipulated judgment, compliance with the procedures set forth in La. R.S. 9:2801 was not necessary. In Louisiana, the partition of property may be made either judicially or non-judicially (extra-judicially). See La. C.C.P. art. 4602 and La. C.C. art. 809. Furthermore, "[a] spouse has the right to demand partition of former community property at any time." La. C.C. art. 2369.8. "If the spouses are unable to agree on the partition, either spouse may demand a judicial partition[,] which shall be conducted in accordance with [La.] R.S. 9:2801." La. C.C. 2369.8; see also La. R.S. 9:2801 (providing that "[w]hen the parties are unable to agree on a partition of community property ... either spouse ... may institute a proceeding, which shall be conducted in accordance with the following rules..."). Stated differently, spouses may partition former community property judicially or extra-judicially (by contract), just as ordinary co-owners; however, only in a judicial partition of community property are the special procedures set forth in La. R.S. 9:2801 applicable. See La. C.C. art. 2369.8, comment (b); **Junca v. Junca**, 98-1723 (La. App. 1st Cir. 12/28/99), 747 So.2d 767, 770, writ denied, 2000-1120 (La. 6/2/00), 763 So.2d 601.

The record in this case reflects that the parties were able to reach an agreement on the partition of certain community assets and liabilities, including the home located at 9226 Monhegan Avenue, Baker, Louisiana 70714 and the mortgage associated with that home, *i.e.*, the parties entered into the August 12, 2009 stipulated judgment. A consent judgment that partitions community property is generally considered a judicial recognition of an extra judicial partition; however, under certain circumstances, it may constitute a judicial partition. **Marks v. Marks**, 2011-1140 (La. App. 1st Cir 12/21/11) (*unpublished*); compare **Junca**, 747 So.2d at 770. Because such circumstances are not present in this matter, compliance with the procedures set forth in La. R.S. 9:2801 was not necessary. Furthermore, to the extent that Ms. Wintz contends that she did not

waive her right to seek a partition pursuant to La. R.S. 9:2801, we note that by entering into the stipulated judgment partitioning certain community assets, she waived the right to a judicial partition (*i.e.* a partition in accordance with 9:2801) of those community assets.

Lastly, with respect to Ms. Wintz's claim that she reserved the right to partition community property in the January 14, 2014 judgment, we note that there is no similar provision set forth in the August 12, 2009 judgment, which is the judgment forming the basis of the objection of *res judicata*. Nonetheless, we find, as the trial court did, that this provision merely reserved her right to partition community property that was not partitioned by the parties in the August 12, 2009 stipulated judgment;[8] this provision did not entitle her to seek a partition of community assets that were already partitioned.

Since the only asset and liability that Ms. Wintz sought to partition in the petition to partition was the former community home located at 9226 Monhegan Avenue, Baker, Louisiana 70714 and the mortgage associated with that home, and since that asset and liability were partitioned and allocated in full to Mr. Wintz in the August 12, 2009 stipulated judgment, we find that Ms. Wintz's cause of action is barred by *res judicata.* Therefore, the trial court correctly sustained Mr. Wintz's objection of *res judicata* and dismissed Ms. Wintz's petition to partition.

B. Sanctions

Louisiana Code of Civil Procedure article 863 provides in pertinent part:

> A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address.
>
> B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has

[8] Indeed, the omission of a thing belonging to the community from a partition is grounds for a supplemental partition. See **Morgan v. Morgan**, 2013-0681 (La. App. 1st Cir. 12/27/13) (*unpublished*).

> read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry, he certifies all of the following:
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> (1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
>
> (2) Each claim, defense, or other legal assertion in the pleading is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.
>
> (3) Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
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> * * *
>
> D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

Louisiana Code of Civil Procedure article 863 imposes an obligation on litigants and their attorneys to make an objectively reasonable inquiry into the facts and law; subjective good faith does not satisfy this duty of reasonable inquiry. **Connelly v. Lee**, 96-1213 (La. App. 1st Cir. 5/9/97), 699 So.2d 411, 414, writ denied, 97-2825 (La. 1/30/98), 709 So.2d 710. This article does not empower a trial court to impose sanctions simply because a particular argument or ground for relief is subsequently found to be unjustified; failure to prevail does not trigger an award of sanctions. Furthermore, La. C.C.P. art. 863 is intended to be used only in exceptional circumstances; where there is even the slightest justification for the assertion of a legal right, sanctions are not warranted. **Tubbs v. Tubbs**, 96-2095 (La. App. 1st Cir. 9/19/97), 700 So.2d 941, 945. A trial court's determination regarding the imposition of sanctions is subject to the manifest error or clearly wrong standard of review. **Stroscher v. Stroscher**, 2001-2769 (La. App. 1st Cir.

2/14/03), 845 So.2d 518, 526. Once the trial court finds a violation of La. C.C.P. art. 863 and imposes sanctions, the determination of the type and/or the amount of the sanction is reviewed on appeal utilizing the abuse of discretion standard. *Id.* Louisiana Code of Civil Procedure article 863 authorizes an award of "reasonable attorney fees," which is not necessarily actual attorney fees. The goal to be served by imposing sanctions is not wholesale fee shifting, but correction of litigation abuse. **Dubois v. Brown,** 2001-0816 (La. App. 1st Cir. 5/10/02), 818 So.2d 864, 866, writ denied, 2002-1654 (La. 10/14/02), 827 So.2d 421.

Ms. Wintz contends that the trial court erred in assessing sanctions against her attorney because her petition to partition was proper in light of the reservation of rights set forth in the January 14, 2014 stipulated judgment. However, as detailed above, we have already found no merit to Ms. Wintz's contention that her petition to partition was proper because of the reservation of rights set forth in the January 14, 2014 judgment. In addition, Ms. Wintz maintains that sanctions were not warranted against her attorney because the petition to partition was filed in good faith and was not a delay tactic, and further, that the attorney fees awarded were excessive.

In granting the motion for sanctions and awarding the attorney fees, the trial court noted that the language of the August 12, 2009 judgment was clear and that at the time Ms. Wintz entered into it, she was represented by counsel. In addition, the trial court noted that it was not the first time that the issue of the effect of the language in the August 12, 2009 stipulated judgment was before the court because at the December 3, 2013 hearing (which resulted in the January 14, 2014 stipulated judgment), the trial court "clarified the transfer of ownership associated with the community property." The trial court further stated that the "problem... is that in reading the petition to partition community property, it only seeks to divide the home on Monhegan which was addressed in ... both of the judgments." The trial

court further noted that when it inquired as to whether "there was any other property that ha[d] not been partitioned between the parties and [Ms. Wintz's attorney] indicated 'there is not.'" For these reasons, the trial court found sanctions were warranted and awarded attorney fees in the amount of $3,875.00, which amount was consistent with the invoice submitted by counsel for Mr. Wintz.

After review of the record, we agree with the trial court's conclusion that given the clear language in the two stipulated judgments regarding the transfer of ownership of the home and its debt, the claim for the partition of that property made by Ms. Wintz's attorney were not warranted by existing law, nor did the assertions in her petition that that asset had not been partitioned have evidentiary support. Thus, we find no manifest error in the trial court's determination that sanctions in the form of the attorney fees against Ms. Wintz's attorney were warranted under La. C.C.P. art. 863. With respect to Ms. Wintz's contention that the trial court's award of attorney fees award was excessive, we note that as a result of Ms. Wintz's attorney's violation of La. C.C.P. art. 863, Mr. Wintz was forced to incur attorney fees in the amount of $3,875.00, which would not have been necessary but for Ms. Wintz's attorney's conduct. Therefore, based on our review of the record, we cannot say that the assessment of sanctions in the amount of the attorney fees actually incurred by Mr. Wintz—$3,875.00—was an abuse of discretion.[9]

III. CONCLUSION

For all of the above and foregoing reasons, the July 31, 2014 judgment of the trial court sustaining the peremptory exception raising the objection of *res judicata*, dismissing Ms. Wintz's petition to partition community property,

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[9] Mr. Wintz did not file an answer to the appeal seeking an increase in the award of attorney fees for defending the judgment on appeal. Absent such an answer, the issue of an increase in the award of attorney fees for the work performed by his attorney in this appeal is not properly before us." See La. C.C.P. arts. 2164 and 2133.

granting Mr. Wintz's motion for sanctions, and assessing sanctions in the amount of $3,875.00 is affirmed.

All costs of this appeal are assessed to the appellant, Kristy S. Wintz.

AFFIRMED.

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0356

KRISTY S. WINTZ

VERSUS

GARY JAMES WINTZ

THERIOT, J., agrees in part, dissents in part, and assigns reasons.

I agree with the majority's finding that the trial court correctly concluded that the claim for the partition of the Monhegan Avenue property was not warranted by existing law, nor did the assertion in the petition that that asset had not been partitioned have evidentiary support. I also agree with the majority that the trial court did not abuse its discretion in its assessment of sanctions in the amount of the attorney fees.

I respectfully disagree with the majority in stopping the analysis at this juncture. I find the appeal, like the petition for partition, lacks evidentiary support. Therefore, pursuant to the authority granted by La. C.C.P. art. 2164, I would, on our own motion, award additional attorney fees to appellee for having to defend this matter yet again.

I advocate that in cases where the trial court awarded sanctions pursuant to La. C.C.P. art. 863 and the appellate court affirms the judgment, then it only follows that the just and proper holding would be to award reasonable attorney fees

to the appellee for having to defend against the sanctionable conduct.[1] I see no benefit to the practice of law to remain silent in such matters. Nor do I see the need, in cases dealing with 863 sanctions, to require the appellee to answer the appeal to trigger the awarding of reasonable attorney fees.

[1] Pursuant to La. C.C.P. art. 2164, this court has the authority to render any judgment which is just, legal and proper upon the record on appeal.