

NOT DESIGNATED FOR PUBLICATION

**JO LEIGH SLOAN WIFE OF
THOMAS MONTEVERDE**

*

NO. 2004-CA-0536

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COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

THOMAS MONTEVERDE

*

STATE OF LOUISIANA

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 95-408, DIVISION "DRS-2"
Honorable Kern A. Reese, Judge**

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Judge Patricia Rivet Murray

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(Court composed of Judge Patricia Rivet Murray, Judge Max N. Tobias Jr.,
Judge Leon A. Cannizzaro Jr.)

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AFFIRMED

Thomas Monteverde appeals judgments rendered on December 1, 2003 and on December 18, 2003 regarding the partition of the community property and various child support and custody issues existing between him and his former spouse, Jo Leigh Sloan. For the reasons that follow, we affirm.

Mr. Monteverde and Ms. Sloan were married in 1977 and were divorced October 23, 1995, with three children born of the marriage. A trial on the merits of the community property partition was held September 29, 2003. Several days later, Ms. Sloan's motion to supplement the record was heard, and both a judgment on the partition and a separate judgment granting the motion to supplement were rendered December 1, 2003. The record was then supplemented with a copy of a non-final judgment of the civil district court in *New Orleans Firefighters Local 632, et al v. City of New Orleans*, a class action suit wherein the court awarded back pay to class members including Mr. Monteverde. Ms. Sloan then filed a post-trial motion for contempt, for attorney fees, to make past due child support executory, for income assignment, to order Mr. Monteverde to return funds allegedly taken from a minor child's account, and to prevent Mr. Monteverde from taking a

minor child out of the country. The motion was heard on December 17, 2003, and on December 18 the trial court rendered judgment. That judgment:

(1) made executory the amount of \$44,635.00 owed by Mr. Monteverde in past due child support, and ordered that this amount could be satisfied from Mr. Monteverde's share of the community property funds, which had been frozen by a prior court order;

(2) ordered that Ms. Sloan had until December 30, 2003 to seize community property funds necessary to satisfy the child support arrearages, and that Mr. Monteverde had until the same date to pay any balance remaining after his share of the community funds was exhausted, or to serve thirty days in jail;

(3) ordered Mr. Monteverde to return all funds taken from the UGMA (Uniform Gift to Minors) account in the name of the parties' minor son, Daniel, by noon on December 19th, or to serve thirty days in jail;

(4) established an income assignment order for the payment of future child support by Mr. Monteverde;

(5) held Mr. Monteverde in contempt of court for his failure to

pay court-ordered arrearages in child support and for his unilateral alteration of child support;

(6) awarded Ms. Sloan \$500.00 in attorney fees plus the costs of bringing the motion; and finally,

(7) prohibited Mr. Monteverde from taking any of the minor children abroad or outside the jurisdiction of the court.

On January 15, 2004, Mr. Monteverde obtained orders of devolutive appeal from “the judgments rendered on December 1, 2003 that divide the property of the respective parties,” and from “ the judgment rendered on December 18, 2003 that divide the property of the respective parties.” Although only one of the aforementioned judgments addresses the division of community property, we will consider all three judgments as being subject to the instant appeal.

On appeal, Mr. Monteverde alleges one general assignment of error divided into twelve specific issues. The issues raised are addressed as follows.

ISSUES NO. 1 THROUGH NO. 4

By these assignments, Mr. Monteverde alleges that the trial court improperly denied him a continuance, that the trial judge improperly refused to recuse himself, that the trial judge demonstrated bias against him, and that

the trial court did not allow him to complete his discovery. None of these issues are addressed in any of the three judgments being appealed; therefore, the issues are not before us. However, the record reflects that Mr. Monteverde asserted virtually identical motions for continuance and for recusal of the trial judge prior to the September 29 trial on the partition and again prior to the December 17 motion hearing. The September 29 transcript reflects that the trial court denied these motions from the bench prior to beginning the trial and informed Mr. Monteverde's counsel that he had the option of applying for writs on these issues. The trial judge reiterated these denials from the bench just prior to taking evidence at the December 17 hearing. Mr. Monteverde did not seek writs from these rulings, and nothing in the record demonstrates that the trial court abused its discretion by denying these motions.

ISSUES NO. 6 AND NO. 8

By these assignments, Mr. Monteverde alleges that the trial court erred by ruling in the community partition judgment that: (1) certain property was the separate property of Ms. Sloan; and (2) any proceeds Mr. Monteverde may receive from a final judgment in the class action wage

litigation suit are community funds insofar as they represent compensation for work done by him during the existence of the community. As Mr. Monteverde was not present during the partition trial, the only evidence presented was the testimony of Ms. Sloan and of a real estate appraiser hired by Ms. Sloan. Considering the evidence, we cannot say that the trial court committed manifest error by ruling, based on Ms. Sloan's testimony, that certain property was a gift to her from her mother as part of her mother's estate planning practices, and was therefore separate property. We also find no error in the trial court's determination that if Mr. Monteverde is awarded compensation in the wage litigation suit, any portion attributable to his employment during the existence of the community is community property.

ISSUES NO. 7, NO. 9, AND NO. 11

By these assignments, Mr. Monteverde argues that the trial court violated his constitutional right to privacy by revealing confidential medical information in a written judgment, that the trial court "treated him unjustly" with regard to child support payments, and that Ms. Sloan testified untruthfully about his child support payments. None of these issues are addressed in any of the judgments on appeal. The first issue, the alleged violation of Mr. Monteverde's right to privacy, relates to a judgment rendered June 3, 2002, which judgment was not appealed. The second issue

is a general allegation concerning the unfairness of the amount of the child support award, which amount was determined prior to any of the judgments on appeal herein. The third issue concerns the alleged untruthfulness of Ms. Sloan's testimony, apparently at both the partition trial and the December 17 hearing. As Mr. Monteverde was not present at either of those proceedings and his counsel presented no evidence to contradict Ms. Sloan's testimony, we find no manifest error in the trial court's determinations.

ISSUES NO. 5, NO. 10, AND NO. 12

By these assignments, Mr. Monteverde argues that the trial court erred by making three specific rulings in the December 18, 2003, judgment, namely: (1) by ordering Mr. Monteverde to return funds he took from the UGMA account owned by the parties' then major son, Daniel Monteverde, or to spend thirty days in jail; (2) by awarding Ms. Sloan \$500.00 in attorney fees; and (3) by prohibiting Mr. Monteverde from taking any of the parties' minor children abroad or outside the jurisdiction of the court. The only evidence presented at the December 17 hearing was Ms. Sloan's testimony and documentary evidence introduced by her counsel. Mr. Monteverde neither testified nor presented any contradictory evidence; nor do we find any inconsistencies in the evidence introduced by Ms. Sloan. There is no basis for Mr. Monteverde's argument that the trial court's rulings were

unreasonable. We therefore conclude that the trial court did not err manifestly or abuse its discretion.

CONCLUSION

Accordingly, for the reasons stated, we affirm the judgments of the trial court.

AFFIRMED