

LOUIS BAILEY

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NO. 2018-CA-0521

VERSUS

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COURT OF APPEAL

**NIDTREAS CLAYTON
BAILEY**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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CHASE, J., DISSENTS

I agree with the majority’s finding that the divorce action was abandoned on its face, as no formal action occurred from October 9, 2012, the date the trial court granted an order of default judgment on the divorce, to May 6, 2016, the date on which Ms. Clayton filed her petition for partition. However, I dissent from the majority’s determination that Ms. Clayton’s action, in filing the petition for partition, did not constitute a submission for a decision in the divorce action, as they were two separate proceedings.

I find Ms. Clayton’s post-abandonment action in seeking partition waived her right to later assert the divorce action was abandoned, as they are part of the same proceeding. “[A] proceeding to partition the community of acquets and gains arises out of and is essential and [concomitant] to the separation/divorce.” *Kambur v. Kambur*, 583 So.2d 1213, 1214 (La.App. 4 Cir. 1991). Resolution of the divorce action is “inextricably bound” with the partition action. *Id.* Ms. Clayton has taken actions inconsistent with intent to treat the case as abandoned. Therefore, she waived her right to assert the divorce action is abandoned.

From the record before us, neither party intended to abandon the divorce action, as both parties believed they were already divorced. Dismissing the divorce

action would serve no other purpose than to achieve “[a] later termination date of the community.” *Id.* at 1216.

For the foregoing reasons, I would reverse the trial court’s judgment dismissing Mr. Bailey’s petition for divorce.