Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of December, 2021** are as follows:

BY Weimer, C.J.:

2020-C-00815 ***IN RE: SUCCESSION OF THE ESTATE OF ROBERT CHARLES JOHNSON (Parish of Livingston)***

REVERSED; SEE OPINION.

Crichton, J., concurs and assigns reasons.
McCallum, J., concurs in part, dissents in part and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2020-C-00815

IN RE: SUCCESSION OF THE ESTATE OF ROBERT CHARLES JOHNSON

ON WRIT OF CERTIORARI TO THE FIRST CIRCUIT COURT OF APPEAL, PARISH OF LIVINGSTON

WEIMER, C.J.

Certiorari was granted in this matter to determine whether a usufruct "granted for life" is subject to the ten-year prescription of nonuse set forth in La. C.C. art. 621;[1] and, if so, whether the lifetime usufruct established in this case is prescribed pursuant to that article. After review of the record and consideration of the provisions of the Louisiana Civil Code, we hold that while a lifetime usufruct may prescribe due to nonuse, the usufruct at issue did not prescribe as there was no ten-year period of continued nonuse. For the reasons that follow, the lower courts' judgments are reversed.

FACTS AND PROCEDURAL HISTORY

Robert C. Johnson and Beverly Garner Edwin were married for twenty-two years, and together had three children. During their marriage, Mr. Johnson signed and recorded an "Affidavit of Usufruct," in favor of Ms. Edwin "for the remainder of [Ms. Edwin's] life even if she remarries." This lifetime usufruct covered Mr.

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[1] La. C.C. art. 621 provides:

> A usufruct terminates by the prescription of nonuse if neither the usufructuary nor any other person acting in his name exercises the right during a period of ten years. This applies whether the usufruct has been constituted on an entire estate or on a divided or undivided part of an estate.

Johnson's separate property at 30192 Church Street, Walker, Louisiana. During their marriage, Mr. Johnson and Ms. Edwin lived in a house on the subject property and also rebuilt the house together following a fire. The couple separated in 2002 or 2003, at which time Ms. Edwin moved off of the premises, while Mr. Johnson continued to live on the property. The couple divorced in 2006.

Mr. Johnson died intestate on August 13, 2010. On June 3, 2014, Ms. Edwin filed a petition to be named administratrix of Mr. Johnson's succession and was initially appointed as such. However, the trial court removed her as administratrix on September 18, 2014, and appointed three of Mr. Johnson's fourteen children to serve as co-administrators, namely: Lorie Parker, Aveis Parker, and Robert C. Johnson, Jr.[2]

On September 26, 2018, after a family conflict arose regarding who had a right to use the property, Ms. Edwin filed a "Motion to Enforce Conventional Usufruct and Spousal Reimbursement Claim." Ms. Edwin claimed that the house on the subject property was vacant, the value of the property was depreciating, and it was in need of repair. Ms. Edwin further alleged that Mr. Johnson's estate owed her $21,600.00, representing the amount of money she claimed to have expended to clean, maintain, and improve the property due to the alleged neglect of the co-administrators. The co-administrators countered, filing a peremptory exception of prescription in which they argued that Ms. Edwin's usufruct was extinguished by the ten-year prescription of nonuse pursuant to La. C. C. art. 621. In opposition to the exception, Ms. Edwin contended that the prescription of nonuse does not apply to a lifetime usufruct. Alternatively, she asserted that she had used the property during the pertinent ten-year period so as to interrupt the accrual of prescription for nonuse.

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[2] These co-administrators are Mr. Johnson's children from a previous relationship.

The trial court held two separate hearings to resolve the matter. In the hearing to determine whether the prescription of nonuse under Article 621 applies to a lifetime usufruct, the trial court determined that prescription does apply. Having made that determination, the trial court held an evidentiary hearing concerning the issue of Ms. Edwin's alleged nonuse. Following that hearing, the trial court determined that the usufruct had been extinguished through Ms. Edwin's nonuse. The court thereby rendered judgment sustaining the exception of prescription and dismissing Ms. Edwin's claim to a usufruct over the property.

Ms. Edwin appealed the trial court judgment, after which the court of appeal affirmed the judgment. Ms. Edwin subsequently filed a writ application with this court asserting two contentions: (1) that a conventional usufruct granted for life is not subject to the ten-year prescription of nonuse set forth in Article 621; and (2) that the lower courts erred in finding that she had not interrupted the ten-year prescriptive period by her activities on the subject property. We granted Ms. Edwin's writ application to examine these issues.

LAW AND DISCUSSION

As an initial matter, Ms. Edwin argues that a conventional usufruct for life is not subject to the prescription of nonuse set forth in La. C.C. art. 621, which provides in pertinent part, "[a] usufruct terminates by the prescription of nonuse if neither the usufructuary nor any other person acting in his name exercises the right during a period of ten years." Ms. Edwin asserts that the application of the prescription of nonuse to a lifetime usufruct is contrary to established rules of statutory interpretation.

Specifically, Ms. Edwin contends that the prescription of nonuse may only apply to the duration of a usufruct that has been created without a term or condition,

or if nonuse was itself stipulated as an express condition for termination of the usufruct. In support of this position, Ms. Edwin cites La. C.C. art. 610, which provides that "[a] usufruct established for a term or subject to a condition terminates upon the expiration of the term or the happening of the condition." She contends that, pursuant to Article 610, her usufruct (which is established for a term; i.e., her life) survives until her date of death. Ms. Edwin, therefore, asserts that Article 610 serves as an exception to Article 621. However, Article 610 does not contain any language exempting it from the provisions of Article 621. Likewise, Article 621 contains no language that would preclude its application to Article 610. Thus, we find this argument is without merit.

Ms. Edwin further suggests that the intended meaning of Article 610 would be clearer if the word "only" were inserted so the provision would read as follows: "a usufruct established for a term or subject to a condition terminates [only] upon the expiration of the term or the happening of the condition." We must disagree with this contention, as Article 610 provides two manners by which the usufruct is terminated: by either the expiration of the term or the happening of the condition. The addition of the word "only" would be redundant and would not otherwise add anything meaningful to the article.

Moreover, it is worth noting that a usufruct without an express term expires upon the death of the usufructuary under La. C.C. art. 607.[3] Therefore, whether a usufruct is expressly granted for a lifetime term, or is silent as to its duration, its term is for the lifetime of the usufructuary. There is no logical reason to apply the prescription of nonuse to a usufruct term that is for life by operation of law, but not apply it when the term is for life by express stipulation of the parties. Any usufruct

[3] La. C.C. art. 607 provides: "The right of usufruct expires upon the death of the usufructuary."

is of limited duration and will terminate at the earlier of ten years of nonuse or expiration of its term. La. C.C. art. 607. See also La. C.C. art. 535 ("Usufruct is a real right of limited duration on the property of another . . ."). A usufruct that is not terminated by prescription would enable the usufructuary to abandon or ignore the property for a lifetime, a result inconsistent with the civil law objective of keeping property in commerce. See La. C.C. art. 539, cmt. (b).[4]

Both the learned trial court judge and court of appeal judges determined that Article 621 applies to a usufruct granted for life; we agree. The language of Article 621 is clear and unambiguous, and contains no exception to the prescription of nonuse for lifetime usufructs. Therefore, we hold that a usufruct granted for a life term may be legally extinguished by the ten-year prescription of nonuse.

Finding that a lifetime usufruct may be subject to an exception of prescription for nonuse, we turn to Ms. Edwin's alternative argument: that the trial court erred in finding she had not "used" her usufruct for a period of ten years. The Affidavit of Usufruct granted Ms. Edwin "full usufruct and possession of ... the property, buildings, and improvements thereon ... for the remainder of her life even if she remarries." This grant of use did not limit or otherwise alter Ms. Edwin's rights as

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[4] La. C.C. art 539, cmt. (b) provides:

> Usufruct of nonconsumables is a real right that may be established for a limited duration only, under the obligation of preserving the substance of the thing. This definition accords with provision in modern civil codes, as it derives from a common reservoir of civilian doctrine and jurisprudence. [Citations omitted.]

Further expression of this Civilian objective is found in The Louisiana Civil Code: A European Legacy for the United States:

> Louisiana drafters [of the Civil Code], like their French counterparts [who drafted the Napoleonic Code], took a number of steps to overcome the perpetual removal of property from commerce.

SHAEL HERMAN, THE LOUISIANA CIVIL CODE: A EUROPEAN LEGACY FOR THE UNITED STATES, p. 49 (Louisiana Bar Foundation 1993).

a usufructuary under the Civil Code. Thus, the provisions of the Civil Code dictate what "use" is sufficient to preclude prescription for nonuse.

Pursuant to the Civil Code, as the usufructuary, Ms. Edwin had "the right to possess [the subject property] and to derive the utility, profits, and advantages that [the property] may produce, under the obligation of preserving [the property's] substance." La. C.C. art. 539. The right provided through a usufruct is limited only by the lack of authority to alienate the property. La. C.C. art. 568. Considering Louisiana's civilian division of ownership, a usufruct is the most extensive of the three personal servitudes referenced in the Civil Code, as it includes two of the three fundamental elements of ownership: use and enjoyment.[5]

In this case, Mr. Johnson's broad and extensive grant of use and enjoyment of the property included Ms. Edwin's right to use and inhabit the house located on the property; however, it was not limited to this particular type of use. The lower courts found that Ms. Edwin did not use the property for a period of ten years based on the fact that she did not dwell on the property for that period of time. The trial court determined that Ms. Edwin stopped using the property as of 2006, when she ceased storing her school supplies on the property. In reaching this conclusion, the lower courts effectively limited the usufruct to a grant of "habitation,"[6]rather than evaluating what is "use and enjoyment" of the property pursuant to the usufruct granted to Ms. Edwin. The failure to evaluate the "use and enjoyment" of the property is legal error requiring this court's *de novo* review. **Evans v. Lungrin**, 97-0541, 97-0577 (La. 2/6/98), 708 So.2d 731, 735.("[W]here one or more trial court

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[5] Ownership confers the right to use, enjoy, and dispose of a thing. La. C.C. art. 477.

[6] "Habitation is the nontransferable real right of a natural person to dwell in the house of another." La. C.C. art. 630. Regarding the extent of a right of habitation, Article 634 further provides that "[a] person having the right of habitation is entitled to the exclusive use of the house or of the part assigned to him, and, provided that he resides therein, he may receive friends, guests, and boarders."

legal errors interdict the fact-finding process, the manifest error standard is no longer applicable, and, if the record is otherwise complete, the appellate court should make its own independent *de novo* review of the record and [make a determination based on] a preponderance of the evidence.")

Applying a *de novo* review, we find that it is undisputed that Ms. Edwin did not live in the house on the subject property after 2003. However, the evidence reveals that Ms. Edwin participated in a host of acts on the subject property. From roughly 2003 to 2006, Ms. Edwin visited the property nearly every week to retrieve and store school supplies needed for her profession as a teacher. From 2006 until Mr. Johnson's death in 2010, she attended birthday parties and family gatherings on the property. Ms. Edwin also brought their shared grandchildren to visit Mr. Johnson. From about 2006 to 2008, she and her son mowed the lawn, and "kept the place up." She stored fishing equipment and fished on the property. Ms. Edwin also left her personal furniture in the house from the time she lived there, explaining that she left the furniture on the premises because Mr. Johnson was older and she could "go there and get what she need[ed], when [she] needed it." Likewise, Ms. Edwin testified that in 2008 and 2009, she brought breakfast and dinner to Mr. Johnson on a daily basis to make sure he had food to eat. Although the record is unclear as to exactly how long the son of Mr. Johnson and Ms. Edwin remained on the property, Ms. Edwin allowed their son to move in around 2007. She explained that this was a beneficial use to her, because their son needed a place to live and she would have had difficulty assisting him in her single-income household.

After Mr. Johnson's death in 2010, their son continued to live in the house for some time, and their daughter (Megan) also wished to live there. Ms. Edwin gave both permission, but problems arose when Lorie Parker, another of Mr. Johnson's

children, "caused conflicts." Lorie Parker moved into the home and moved cars and trailers onto the property. From 2010 to 2013, Ms. Edwin made several attempts to access the property to clean it before her daughter moved onto the property. However, this created more tension and conflict with Ms. Parker. In 2013, Ms. Edwin hired an attorney to draft a letter to enforce her rights as usufructuary. She also saved money to have wiring repaired that had been destroyed and stolen from the property. In 2017, in response to a letter from the City addressed to her, Ms. Edwin hired someone to clean the property to avoid further violation of city ordinances.

On September 26, 2018, Ms. Edwin filed the motion to enforce her usufruct. Reviewing Ms. Edwin's activities on the property leading up to this date, it is clear that no continuous ten-year period of nonuse accrued. The trial court focused on the fact that Ms. Edwin ceased storing her school supplies on the property after 2006. However, her other actions of using the property were numerous, including: fishing and storing fishing equipment on the property, caring for the yard, furnishing the home, and allowing her former husband, to whom she provided care by bringing him food twice daily, and their son to remain on the property.

Likewise, while Ms. Edwin's repeated acts of kindness toward Mr. Johnson (delivering meals and bringing grandchildren to visit) may not alone constitute "use," these acts tend to show that she approved of Mr. Johnson's continued use of the property. As previously indicated, according to La. C.C. art. 621, "[a] usufruct terminates by the prescription of nonuse if neither the usufructuary **nor any other person acting in his name** exercises the right." (Emphasis added.) Comment (b) to La. C.C. art. 621 provides that "[u]se of the property by the naked owner with the permission of the usufructuary constitutes use in the 'name' of the usufructuary." See also **Theriot v. Terrebonne**, 195 So.2d 740 (La.App. 1 Cir. 1967). The **Theriot**

court found that where a naked owner used the subject property with the "implied permission" of the usufructuary, the use was for the benefit of the usufructuary. ***Id.*** at 743. In rendering its decision, the **Theriot** court cited the Planiol Treatise, which states, in pertinent part:

> The right which remains vested in the owner during the usufruct, divested as it is of enjoyment, is called naked ownership. The owner may dispose of it subject to the usufructuary's rights (Art. 612). He may sell it. If it appl[ies] to immovables, he may mortgage it. His creditors may seize it, but the purchaser or the adjudicatee can never enter into enjoyment of it until after the extinction of the usufruct.

1 M. PLANIOL, CIVIL LAW TREATISE, § 2824 at 667 (La.St.L.Inst.Transl. 1959). Considering this excerpt and the fact that "a naked owner can never enter into enjoyment of the use of the property until after the extinction of the usufruct," the **Theriot** court found that the naked owner involved in the case had the implied permission of the usufructuary to use the property, and the naked owner's use was for the benefit of the usufructuary. **Id.** As long as the naked owner occupies the property and the usufructuary does not object or exercise a remedial right to remove him, it is implied that the naked owner is permitted to use the property, and the use is on behalf of the usufructuary.

Here, Ms. Edwin's acts of kindness toward her former spouse, along with her approval of their son living on the property, suggests that the two had her permission to use the subject property on her behalf. As properly recognized by the lower courts, Ms. Edwin could have taken remedial action to remove both individuals under La. C.C. art. 566, which authorizes a usufructuary to institute all actions needed to protect her rights against the naked owner or third persons. However, the fact that she did not exercise her right to remove either Mr. Johnson or her son from the property is not proof of nonuse; rather, allowing them to live on the property was her use of the

property. Given the express language of Article 621, the usufruct did not "terminate[] by the prescription of nonuse" because other persons "acting in [her] name exercise[d] the right." The law does not penalize Ms. Edwin for her acts of kindness and benevolence. By allowing Mr. Johnson, with whom she maintained a familial relationship, to remain on the property, she did not forfeit her right of use and enjoyment of the property and her usufruct was not terminated.

CONCLUSION

Based on the foregoing, we find that the trial court erred in its legal analysis regarding what is considered use and, thus, a ten-year period of nonuse did not accrue to terminate Ms. Edwin's rights as usufructuary. Therefore, the judgments of the court of appeal and the trial court are reversed and the usufruct granted by Mr. Johnson to Ms. Edwin remains.

REVERSED.

SUPREME COURT OF LOUISIANA

No. 2020-C-00815

IN RE: SUCCESSION OF THE ESTATE OF ROBERT CHARLES JOHNSON

On Writ of Certiorari to the 1st Circuit Court of Appeal, Parish of Livingston

Crichton, J., concurs and assigns reasons:

For reasons assigned by the majority, I agree that Ms. Edwin's usufruct did not terminate by nonuse pursuant to La. C.C. art. 621 because the use and enjoyment of the property by the naked owner was an exercise of the usufruct in her name. *See also* La. C.C. art. 621 cmt (b) ("Use of the property by the naked owner with the permission of the usufructuary constitutes use in the "name" of the usufructuary.") (citing *Theriot v. Terrebonne*, 195 So. 2d 740 (La. App. 1st Cir. 1967)).

While I tend to agree that one or more of Ms. Edwin's acts on the property constituted use, I write separately because I believe this issue is more appropriately pretermitted. Moreover, *any* partial use of the property constitutes use of the whole such that we would need only find that one of Ms. Edwin's acts constitutes use and enjoyment of the property to interrupt the prescription of nonuse. Yiannopoulos and Scalise, 3 La. Civ. L. Treatise, *Personal Servitudes* § 6:11 (5th 1 ed. September 2021 Update) ("A partial use of the thing is sufficient to preserve the enjoyment of the whole.").

I would not address – and do not necessarily find here – that each of the usufructuary's numerous acts listed in the majority opinion constitutes use and enjoyment of the conventional usufruct. In my view, the Court should refrain from embracing arguments that are unnecessary to deciding the case before us. *See Shaffer v. Heitner*, 433 U.S. 186, 220, 97 S. Ct. 2569, 2588, 53 L. Ed. 2d 683 (1977) (Brennan, J., concurring) ("[A] purer example of an advisory opinion is not to be

found" than where the majority reaches its holding on two independent grounds); Michael C. Dorf, *Dicta and Article III*, 142 U. PA. L. REV. 1997, 2000 (1994) ("Dicta are less carefully considered than holdings, and, therefore, less likely to be accurate statements of law."); *Cohens v. State of Virginia*, 19 U.S. 264, 399–400, 5 L. Ed. 257 (1821) ("The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.").

SUPREME COURT OF LOUISIANA

No. 2020-C-00815

IN RE: SUCCESSION OF THE ESTATE OF ROBERT CHARLES JOHNSON

On Writ of Certiorari to the First Circuit Court of Appeal, Parish of Livingston

McCALLUM, J., concurring in part, dissenting in part.

"It's a very difficult surgical operation. Cut the heart out without killing the patient."[1] In finding that Louisiana Civil Code Article 621 has application to conventional usufructs for life, but also determining that the trial court was manifestly erroneous in concluding the usufructuary had not used the usufruct for a ten-year period, the majority has done just that. Indeed, it is difficult to envision a set of facts, as determined and detailed by the trial judge, that would be more appropriate for a determination of nonuse.

The Louisiana Civil Code, and the manifest error standard of review, should frame our consideration of whether the liberative prescription of nonuse has extinguished a conventional usufruct granted by a husband in favor of his wife prior to the dissolution of their marriage. After a review of the record and the clear provisions of the Code, I find that the usufruct at issue herein is prescribed by nonuse and for the reasons that follow, I respectfully dissent from the well-written opinion of the majority.

The trial court held two separate hearings to resolve the matters presented. In its first hearing to determine whether the prescription of nonuse provided by Article 621 applies to a usufruct granted for life, the trial court determined that it does indeed apply to a lifetime usufruct. Having so determined, the trial court then held an evidentiary hearing concerning the issue of Ms. Edwin's alleged nonuse. Following

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[1] *This Land is Mine*, directed by Jean Renoir (RKO Radio Pictures, May 7, 1943).

that hearing, the trial court rendered judgment sustaining the exception of prescription and dismissing Ms. Edwin's claim to a usufruct over the property. In its reasons for judgment, the trial court determined that the usufruct had been extinguished through nonuse, based on the facts as it determined them.

Our lodestar in consideration of the first issue presented is the Louisiana Civil Code. Article 9 of the Code declares that "[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."

Ms. Edwin initially argues that a conventional usufruct for life is not subject to the prescription of nonuse under La. C.C. art. 621, which provides, in pertinent part, that "[a] usufruct terminates by the prescription of nonuse if neither the usufructuary nor any other person acting in his name exercises the right during a period of ten years." To the contrary, she argues that the application of the prescription of nonuse to a lifetime usufruct is contrary to accepted rules of statutory interpretation.

The trial court, the court of appeal, and the majority have determined that Article 621 applies to a lifetime usufruct and I agree. More specifically, I find Article 621 to be clear and unambiguous, and containing no exception to the prescription of nonuse for lifetime usufructs. A usufruct granted for life may be legally extinguished by the prescription of nonuse of ten years.

Having so determined, I now consider Ms. Edwin's second assignment of error, in which she argues that the trial court erred in finding that she had not "used" her usufruct during a ten-year period. Initially, we should remember that Louisiana law favors the reunification of the incidents of ownership.

According to La. C.C. art. 539, "[i]f the things subject to the usufruct are nonconsumables, the usufructuary has the right to possess them and to derive the

utility, profits, and advantages that they may produce, under the obligation of preserving their substance." A usufructuary who has been disturbed in her use or derivation of the utility, profits, and advantages, of the things subject to the usufruct, is not without remedy. La. C.C. art. 566 authorizes the usufructuary to institute all actions necessary to insure the possession, enjoyment, and preservation of her rights against the naked owner or third persons. According to the comments to Article 566, "[t]he usufruct of immovable property, being an incorporeal immovable, is protected by several innominate real actions as well as three nominal real actions: the petitory action, the possessory action, and the action of boundary." The usufructuary also has available all appropriate personal actions for the protection of her interests.

It is clear in this case that Ms. Edwin availed herself of none of these remedies until she filed the Motion to Enforce Conventional Usufruct and Spousal Reimbursement Claim on September 26, 2018. By her own admission, Ms. Edwin vacated the subject property no later than 2003 when she and Mr. Johnson separated. Thereafter, Mr. Johnson continued living in and possessing the house and property. These facts were confirmed by the co-administrators of Mr. Johnson's succession, three of his children, including Ms. Lorie Parker.

Ms. Parker testified that, after her father's death, she lived on the property, maintained it, paid the taxes, and kept a camper and vehicles there. Ms. Edwin verified that Ms. Parker had indeed moved her cars and trailers onto the property. Ms. Edwin's testimony makes clear that, subsequent to Mr. Johnson's death, Lorie Parker assumed de facto control of the property. Because of this, Ms. Edwin felt she had no "say so" in who lived on the property.

As concerns her connection with the property after moving out, Ms. Edwin testified that she visited weekly or bi-weekly until 2006. Reportedly, the purpose of these visits was to store and retrieve school supplies she used in her teaching profession. In 2006, Ms. Edwin attended a birthday party on the property and she

testified that she paid visits to Mr. Johnson in 2008 and 2009. She also indicated that she told her son he could live in the house with his father, Mr. Johnson, without having to pay her rent. Ms. Edwin likewise testified that in 2007 and 2008 she, her son, and her son's girlfriend mowed the yard and cleaned the place. Contradicting Ms. Edwin's testimony that she maintained the premise, in 2017, she received a letter from the City of Walker indicating that the condition of the property violated city ordinances. Only after the appointment of the co-administrators did she hire someone to clean up the property.

The trial judge determined that Ms. Edwin stopped using the property as of 2006, when she ceased storing her school supplies on the property. He specifically found that her activities on the property after 2006 did not constitute a use of the property sufficient to interrupt the ten-year prescription of nonuse. This factual finding is supported by the record as a whole, and I find no manifest error in the lower courts' determination that the usufruct was extinguished by nonuse. *See*, *e.g*., *Naramore v. Aikman*, 17-1621, p. 16 (La. App. 1 Cir. 6/4/18), 252 So. 3d 935, 945 ("[w]hether a servitude [or usufruct] is lost to nonuse is a factual determination subject to the manifest error-clearly wrong standard of review."). Surely, even if one disagrees with the result, it is difficult to determine that the trial judge was manifestly erroneous in his factual determinations.

The actions of Ms. Edwin on the subject property do not constitute a use of the property sufficient to interrupt the tolling of the prescription of nonuse. After she and Mr. Johnson divorced, Mr. Johnson remained living in the house. Ms. Edwin's visits were sporadic thereafter. Ms. Edwin's testimony that the City of Walker warned her in 2017 that the property violated a city ordinance clearly establishes that Ms. Edwin had allowed the property to molder into a state of disrepair. From this fact alone, it is evident that Ms. Edwin was not "using" the property.

Nor can it be said that anyone else was using the property on her behalf. The fact that Ms. Edwin's son lived in the house rent free with his own father, Mr. Johnson, proves only *Mr. Johnson's* use and possession of the property. It follows that this fact also establishes Ms. Edwin's nonuse. The type of use, or possession, envisioned by Article 621 usually means *detention*; "[t]hat is, one's factual authority over a thing without any intent to own it." *See* Yiannopolous, Civil Law Property § 211 (1980). An example would be a lessee who possesses a thing for another.

Ms. Edwin's testimony that she was aware that Lorie Parker was using the property to park and store her vehicles and camper, and that Ms. Parker had the "say so" over the property, is especially revealing. Together with the other testimony, it reveals an awareness by Ms. Edwin that she was being disturbed in her possession, enjoyment, and the preservation of her rights as a usufructuary. Yet she never availed herself of any remedial actions available to her under La. C.C. art. 566. This, too, supports a finding that, even in her own view, she was not "using" the property or exercising her rights as a usufructuary after she moved out of the property, and that within a ten-year time-frame, she failed to interrupt the accrual of the nonuse prescriptive period.

Based on the foregoing, I would find that the trial court was not manifestly erroneous in its factual determinations and conclusions. Thus, I would affirm the ruling of the court of appeal and the judgment of the trial court that Ms. Edwin's usufruct was terminated by the ten-year prescription of nonuse.