

NUMBER 03-103

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

DIANE M. SHERIDON, BORN RICHARD

Plaintiff - Appellee

Versus

JONATHAN SHERIDON

Defendant - Appellant

On appeal from the Fourteenth Judicial District Court [No. 99-6303], for the Parish of Calcasieu, State of Louisiana; the Honorable Lilynn Cutrer, District Judge, presiding.

Woodard, J., dissenting in part, concurring in part.

Respectfully, I dissent, in part, from the majority's opinion.

Whose responsibility is it to make the payments on a *community* obligation *before* the trial court allocates liability for that obligation in a partition judgment? The majority's decision implies that it is the spouse to whom the trial court *will* allocate liability *in the partition*. The problem, of course, is that the former spouses do not know which liabilities the trial court will allocate to them in the partition judgment, until it actually does so.

The majority decides that Article 2365's reimbursement allowance is inapplicable to payments of separate property made on community obligations, if those payments were made after the community's termination, even though the community has not yet been partitioned. At the same time, however, it emphasizes that assets are to be valued *at the time of trial*. This results in a windfall to the non-paying spouse.

For example, if one spouse makes payments on a community debt with separate funds, the benefit inures to *both* spouses because lowering the amount of debt on a community obligation, necessarily, increases the net value of the community's assets.

Thus, the time of trial valuation will reflect this increase and the non-paying spouse will, then, benefit from one-half of the increase in value, without having to reimburse the spouse who caused the increase in value.

Accordingly, I believe that both the law and equity require reimbursement in such situations. Until the court assigns liability to one of the former spouses, *both* remain responsible for community obligations. Therefore, when one spouse pays such an obligation with separate funds, s/he should have the right to be reimbursed by the other spouse.

Notwithstanding, the majority refuses to apply Article 2365 because it contains the language “upon termination of a community property regime.” Indeed, this language is used consistently in the reimbursement articles.¹ However, the limitation that this language imposes on reimbursement is, simply, that there is no entitlement to demand reimbursement while the spouses are still living together in community under the community property regime. La.Civ.Code art. 2358 supports this proposition, as it provides:

Upon termination of a community property regime, a spouse may have a *claim* against the other spouse for reimbursement in accordance with the following provisions.

Thus, the *claim* for entitlement does not arise until the community terminates.² Neither this article nor La.Civ.Code art. 2365 provides that such entitlement is limited to that certain point in time when the community terminates. Merely, it is at that point that a spouse may request reimbursement.

In *Nash v. Nash*, a panel of this court refused to follow the *Preis* and *Bergeron* rule that when a spouse has the exclusive use of a vehicle after the community terminates, that spouse has no right of reimbursement or credit for amounts s/he paid on it after termination. The court today, not only, overrules *Nash v. Nash*,³ but effectively obliterates a former spouse’s right to claim reimbursement for payments

¹See La.Civ.Code arts. 2358, *et. seq.*

²See *Reinhardt*, 728 So.2d 423.

³01-766 (La.App. 3 Cir. 10/31/01), 799 So.2d 829.

made with separate funds, not just on an automobile, but on *any* community obligation, if those payments were made after the community terminated.

Interestingly, while the majority finds Article 2365 inapplicable in these situations, it does not provide us with an *applicable* legal authority which supports its finding. Merely, it states:

La.Civ.Code art. 2365 is not applicable to the matter before us, and we specifically overrule this holding in *Nash*. In doing so, we conclude that the trial court erred in ordering Mr. Sheridan to reimburse Ms. Sheridan one half of the amount she paid on the Pontiac Firebird between October 5, 1999, and November 15, 2001.

Presumably, the majority is basing its ruling on the same equitable principles apparent in *Bergeron* and *Preis*. However, when we trace this equitable principle back to its origin, we find that it was first applied in a situation *distinguishable* from the instant one. This premise appears to have originated in *Gachez v. Gachez*,⁴ a fifth circuit case, in which there were very different and extenuating circumstances. Specifically, in *Gachez*, the trial court denied the husband's reimbursement claim for payments he had made on a vehicle during the time he had exclusive use of it. The wife had used the car for one year after the divorce, but before partition, and she had paid all the notes on it during that time. She returned the car to the husband, who used it exclusively and made the payments for approximately seventeen months. Afterwards, he tried to obtain reimbursement for his payments. The wife did not seek reimbursement for the payments she made during the year that she had used the car. Thus, the trial court denied him reimbursement, stating, "*Equity would dictate that appellant should not have the full use, benefit and enjoyment of the moveable at the expense of the wife, who by the same token enjoyed the use of the vehicle and paid the notes the previous year, prior to returning the automobile to him.*"⁵ (Emphasis added.)

Despite *Gachez*' unique set of facts and its decision, which *deviated* from codal authority, without recognizing *Gachez*' different circumstances, subsequent cases

⁴451 So.2d 608 (La.App. 5 Cir. 1984).

⁵*Id.* at 614.

began citing it for the proposition that *any time* one spouse had exclusive use of a vehicle, s/he was not entitled to reimbursement.⁶

In fact, with one exception—*Stewart v. Stewart*⁷—every case that I reviewed, which found that when one spouse had exclusive use of a vehicle s/he was not entitled to reimbursement, can be traced back to *Gachez* as its *authority*, including *Preis* and *Bergeron*.

Uniquely, in *Stewart*,⁸ a panel of this court provided a codal basis—La.Civ.Code art. 806—for its denial of reimbursement to a spouse for “*maintenance expenses*” on two former community vehicles during the time that the spouse had exclusive use and enjoyment of them. It pointed out that after termination of the community but before partition, spouses were co-owners in indivision of property;⁹ thus, it postulated that La.Civ.Code art. 806 should govern the reimbursement of expenditures that one spouse made from separate funds for an automobile that the spouse exclusively used. La.Civ.Code art. 806 provides:

A co-owner who on account of the thing held in indivision has incurred necessary expenses, expenses for ordinary maintenance and repairs, or necessary management expenses paid to a third person, is entitled to reimbursement from the other co-owners in proportion to their shares. If the co-owner who incurred the expenses had the enjoyment of the thing held in indivision, his reimbursement shall be reduced in proportion to the value of the enjoyment.

While *Stewart* is ambiguous in that the court does not specify the type of “expenses” incurred in maintaining the vehicles at issue, I surmise that, when discussing “*maintenance expenses*,” the court was actually referring, either, solely to payments made on the car note or to payments made on the note, as well as additional

⁶See e.g., *Gachez v. Gachez*, 451 So.2d 608 (La.App. 5 Cir.), *writ denied*, 456 So.2d 166 (La.1984); *Davezac v. Davezac*, 483 So.2d 1197 (La.App. 4 Cir. 1986); *Dillenkoffer v. Dillenkoffer*, 492 So.2d 71 (La.App. 5 Cir. 1986), *writ denied*, 494 So.2d 333 (La.1986); *Meyer v. Meyer*, 553 So.2d 943 (La.App. 4 Cir. 1989); *Guillaume v. Guillaume*, 603 So.2d 235 (La.App. 4 Cir. 1992); *Preis v. Preis*, 94-442 (La.App. 3 Cir. 11/2/94), 649 So.2d 593; *Bergeron v. Bergeron*, 96-1586 (La.App. 3 Cir. 4/9/97), 693 So.2d 199.

⁷98-496 (La.App. 3 Cir. 12/16/98), 728 So.2d 473.

⁸728 So.2d 473.

⁹*Id.*; See also La.Civ.Code art. 2369.1.

expenses for maintenance and upkeep, since the cases on which it relies involve payments made on the car note. *Stewart* did not distinguish between the two. However, the distinction is critical.

Namely, La.Civ.Code art. 806 applies to “necessary expenses.” Necessary expenses include expenses for property taxes and assessments, indispensable repairs and maintenance costs, and insurance costs.¹⁰ A mortgage or note obligation is not the type of “necessary expense” which Article 806 covers.¹¹ Instead, a mortgage is “a non-possessory right created over property to secure the performance of an obligation.”¹² Accordingly, by definition, each monthly charge does not represent a new obligation; rather, payments made on a mortgage constitute performance of one *existing* obligation incurred for ownership of the automobile. Likewise, when one incurs a personal loan, as in the instant case, the obligation to repay the loan in full arises when the loan is incurred;¹³ monthly payments on the loan are no more than performance of the existing obligation.

Louisiana Civil Code Article 806 applies to expenses *incurred* while the spouses are co-owners. Spouses are not considered to be, simply, “co-owners” until after their community ends.¹⁴ Rather, generally, before the community terminates, they each own a present undivided one-half interest in the community property.¹⁵ This distinction is important because different Louisiana Civil Code articles apply to the two labels.

In the instant case, I believe that La.Civ.Code art. 806 is not appropriate to deny Ms. Sheridan reimbursement for the notes she paid on the former community vehicle, first, because the article did not contemplate governing this type of obligation—a note—and, even if it did, she did not incur the obligation when she was a *co-owner*,

¹⁰See La.Civ.Code art. 527 (cmt. (b)).

¹¹*Roque v. Tate*, 93-389 (La.App. 5 Cir. 2/9/94), 631 So.2d 1385; *Cahill v. Kerins*, 34,522 (La.App. 2 Cir. 4/4/01), 784 So.2d 685; *Lupberger v. Lupberger*, 00-2571 (La.App. 4 Cir. 12/5/01), 806 So.2d 264.

¹²La.Civ.Code art. 3278.

¹³La.Civ.Code art. 2913.

¹⁴La.Civ.Code art. 2369.1.

¹⁵La.Civ.Code art. 2336.

as the article requires. Instead, the time of purchase was during the community property regime; thus, the community incurred the obligation at that time.¹⁶

Thus, the debt remains a community obligation until the court declares otherwise in the partition judgment even though under La.Civ.Code art. 2369.1, the parties become co-owners of the property upon termination of the community and before partition. In other words, La.Civ.Code art. 2369.1 cannot transform the nature of an obligation already incurred from that of a “community obligation” to an “obligation incurred by co-owners.” Accordingly, La.Civ.Code art. 2365 governs reimbursement for payments made on a community obligation after the community ends.

Thus, I disagree with the majority’s analysis in the third assignment of error, reversing Ms. Sheridan’s award of reimbursement for payments she made on the Pontiac Firebird note.

Likewise, I disagree with the court’s analysis in the eleventh assignment of error, affirming the trial court’s denial of Mr. Sheridan’s request for reimbursement for insurance premiums he paid on the 1992 GMC truck.

Insurance premiums *are* the type of necessary expenses, incurred between termination and partition, that the co-ownership articles govern.¹⁷ La.Civ.Code art. 2369.3 imposes on a former spouse an affirmative “duty to preserve and to manage prudently former community property under his control . . . in a manner consistent with the mode of use of that property immediately prior to termination of the community regime.” However, when a spouse does not have the former community property “under his control,” s/he is not bound by this *duty*.¹⁸ Nevertheless, s/he has the *right* to incur necessary expenses for maintenance and management.¹⁹ Further, by exercising this right, s/he is entitled to reimbursement from her spouse /co-owner for one-half of such expenses.²⁰ Insurance premiums are “necessary expenses” under the

¹⁶*Roque*, 631 So.2d 1385; *See also Kline v. Kline*, 98-1206 (La.App. 3 Cir. 2/10/99), 741 So.2d 670.

¹⁷La.Civ.Code art. 2369.1.

¹⁸La.Civ.Code art. 2369.3 (cmt. (g)).

¹⁹La.Civ.Code art. 2369.3 (cmt. (a)); La.Civ.Code art. 806.

²⁰La.Civ.Code art. 806.

articles of co-ownership.²¹ In interpreting La.Civ.Code art. 2314, the predecessor to La.Civ.Code art. 527, the Louisiana Supreme Court, explicitly, viewed insurance as a necessary expense for which a co-owner is entitled to reimbursement.²²

Therefore, I believe that Ms. Sheridan owes Mr. Sheridan reimbursement for these insurance premiums. La.Civ.Code art. 806 provides that “[i]f the co-owner who incurred the expenses had the enjoyment of the thing held in indivision, his reimbursement shall be reduced in proportion to the value of the enjoyment.” In the instant case, Mr. Sheridan did not have the enjoyment of the vehicle. Accordingly, I would reverse the trial court’s ruling on this issue and award him reimbursement for the insurance premiums that he paid on the truck.

I concur in the remainder of the judgment.

²¹La.Civ.Code art. 527 (cmt. (b)).

²²*Sharp v. Zeller*, 114 La. 549, 38 So. 449, 451 (1905).