

**STATE OF LOUISIANA**  
**COURT OF APPEAL, THIRD CIRCUIT**

**06-537**

**BRENDA BORDELON**

**VERSUS**

**GREGORY D. BORDELON**

Painter, Judge dissenting.

While I agree with the majority's opinion herein that Mrs. Bordelon is due a reimbursement in connection with the construction of the family home, I disagree with regard to the amount of that reimbursement.

Louisiana Civil Code art. 2368 states:

If the separate property of a spouse has increased in value as a result of the uncompensated common labor or industry of the spouses, the other spouse is entitled to be reimbursed from the spouse whose property has increased in value one-half of the increase attributed to the common labor.

The court in *Brehm v. Brehm*, 00-201, p. 4 (La.App. 5 Cir. 6/27/00), 762 So.2d 1259, 1263, *writ denied*, 00-2286 (La. 10/27/00), 772 So.2d 657, explained the statute as follows:

A claimant spouse under LSA-C.C. art. 2368 has the burden of proving: (1) the property is separate, (2) the property increased in value, and (3) the increase in value was based on the uncompensated or undercompensated labor of the other spouse; the burden then shifts to the other spouse to prove that the increase in value was due to factors other than the uncompensated or undercompensated labor. *Salley v. Salley*, 95-0387 (La.10/16/95), 661 So.2d 437, 438; *Krielow v. Krielow*, 93-2539 (La.4/11/94), 635 So.2d 180, 183.

The evidence at trial, however, was that Mr. Bordelon was compensated for his labor on the house. Therefore, La.Civ.Code art. 2368 does not apply. At trial, Mrs. Bordelon testified that Mr. Bordelon had been paid for his labor. Checks in the amount of \$6,743.00, made out to Mr. Bordelon or to Cash, and bearing notations that

they were payment for labor on the house were introduced into evidence. While Mr. Bordelon testified that he was not paid, Mrs. Bordelon had the burden of showing that the labor was uncompensated. Therefore, the admission should be held against her rather than him. In the absence of uncompensated labor, I would find that Mrs. Bordelon is entitled only to reimbursement of one-half the amount used in improving Mr. Bordelon's separate property, that is one-half of \$38,000.00, as provided by La.Civ.Code art. 2366: "If community property has been used for the acquisition, use, improvement, or benefit of the separate property of a spouse, the other spouse is entitled upon termination of the community to one-half of the amount or value that the community property had at the time it was used."

For these reasons, I respectfully dissent from the majority herein.