NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2141

RONALD R. HARVEY, GURNEY DEAN HARVEY, FAYE RHONDETTE HARVEY McGEE, AND WHIT HARVEY

VERSUS

ELLA KAY GURNEY WHITE

On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 458,635, Division "D"
Honorable Janice Clark, Judge Presiding

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BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Judgment rendered SEP 20 2010

PARRO, J.

The plaintiffs appeal a trial court judgment dismissing their action to annul a purported act of cash sale in which they transferred property to the defendant. For the following reasons, the judgment is affirmed.

Factual and Procedural Background

Ella Kay Gurney White (Ms. White) and Alice Faye Gurney Harvey (Mrs. Harvey) were the daughters of Louis D. Gurney and Ella Dyer Gurney. Mrs. Harvey was married to Ronald R. Harvey. Of their marriage, three children were born: Gurney Dean Harvey (Dean), Faye Harvey McGee (Faye), and Whit Harvey (Whit). Ms. White had been married to Charles White and had one child, Joshua Paul White (Josh).

By act of donation inter vivos dated May 12, 1980, the Gurneys transferred a 22.68-acre tract of land in East Baton Rouge Parish (tract B-1-A on a May 1, 1980 survey map) to Ms. White. In that same act, the Gurneys donated an adjacent 22.68-acre tract of land in East Baton Rouge Parish (tract B-1-B on that same map) to Mrs. Harvey. The map also referenced the adjacent tract B-1-C, containing 36.82 acres, that was retained by the Gurneys. Later, by a purported act of cash sale dated October 12, 1987 (the 1987 act), Ms. White seemingly transferred tract B-1-A to Mrs. Harvey for $5,000.

Mrs. Gurney died on September 6, 1994. A judgment of possession in Succession of Ella Dyer Gurney, Nineteenth Judicial District Court, docket number 62,447, was signed on September 11, 1995, recognizing Mr. Gurney as the owner of an undivided one-half interest in the property belonging to the former community. Ownership of the other undivided one-half interest was vested by that judgment in Mr. Gurney's four grandchildren, subject to a usufruct in favor of Mr. Gurney.

Afterwards, tracts B-1-B and B-1-C were re-subdivided as shown on a survey map dated November 7, 1995.[1] On November 21 and 22, 1995, a document titled "Acts of Donation and Act of Cash Sale" was executed by Mr. Gurney, his four

[1] Tracts B-1-B and B-1-C were re-subdivided into tracts indentified as B-1-B-1, B-1-B-2, B-1-C-1, and B-1-C-2.

grandchildren, Mr. Harvey, and Mrs. Harvey. In that act, the following occurred: (1) Mr. Gurney transferred his undivided one-half interest in tract B-1-C to his four grandchildren, subject to a usufruct in his favor of a specified portion of the tract; (2) Josh sold an undivided one-eighth interest in tract B-1-C to the three Harvey children for $32,175;[2] and (3) Mr. and Mrs. Harvey donated to their three children an undivided 32.041658 percent interest in tract B-1-B, less and except tract B-1-B-2, which contained 0.97 acres.

Shortly before Mrs. Harvey's death on June 25, 1996, Mr. and Mrs. Harvey donated their remaining undivided 67.958342 percent interest in tract B-1-B to their three children, less and except tract B-1-B-2. The three Harvey children then partitioned the property that was owned in indivision by them, namely, tracts B-1-B-1, B-1-C-1, and B-1-C-2. Pursuant to an act of partition dated July 8, 1996, Dean became the sole owner of tract B-1-B-1, Whit became the sole owner of B-1-C-1, and Faye became the sole owner of B-1-C-2.

On October 26, 1996, Mr. Harvey and his children (collectively, the Harveys) executed a purported act of sale under private signature (the 1996 act) transferring their interest in tract B-1-A back to Ms. White for $5,000. On March 5, 1999, the Harveys filed this suit to annul the 1996 act, questioning its authenticity and validity. Ms. White filed a reconventional demand against them, seeking to have the 1987 act declared a nullity. In her reconventional demand, Ms. White averred that the recited consideration of $5,000 was never given by Mrs. Harvey in connection with the 1987 act and that, by agreement, the property was to be transferred back to Ms. White at a convenient time. In the absence of a counterletter, the Harveys sought dismissal of Ms. White's reconventional demand. In an amending and supplemental petition, the Harveys alleged that the signatures on the 1996 act were obtained by fraud.

At the trial of this matter, Ms. White testified, over the Harveys' objection, as to the circumstances surrounding the 1987 transfer to Mrs. Harvey. Following a trial of

[2] The deed reflects that Josh only transferred an undivided one-eighth interest in the property; therefore, based on the evidence in this record, Josh still holds an undivided one-eighth interest in tract B-1-C.

this matter, the trial court upheld the 1996 act as a valid and binding sale based on an underlying natural obligation serving as the cause for the 1996 transfer. The Harveys appeal, contending essentially that the trial court erred in:

1. finding that a natural obligation existed as a result of the circumstances surrounding the 1987 act that served as consideration for the 1996 act,

2. failing to recognize that Ms. White did not have a right to attack the 1987 act, and

3. failing to find that the 1996 act was a donation disguised as a sale that failed to meet the requirements for a valid donation.

Discussion

In their suit to annul, the Harveys challenged the validity of the 1996 act of cash sale. A sale is a contract whereby a person transfers ownership of a thing to another for a price in money. LSA-C.C. art. 2439. The thing, the price, and the consent of the parties are requirements for the perfection of a sale. Id. The contract of sale is perfected when one party consents to give a certain thing for a price in money and the other consents to give the price in order to have the thing. Benglis Sash & Door Co. v. Leonards, 387 So.2d 1171, 1172 (La. 1980); see Lawrence v. Terral Seed, Inc., 35,019 (La. App. 2nd Cir. 9/26/01), 796 So.2d 115, 123, writ denied, 01-3134 (La. 2/1/02), 808 So.2d 341.

A sale of an immovable must be made by authentic act or by an act under private signature, except as provided by LSA-C.C. art. 1839. LSA-C.C. art. 2440. According to LSA-C.C. art. 1839, a transfer of immovable property must be made by authentic act or by act under private signature. Nevertheless, an oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath. LSA-C.C. art. 1839. In the instant case, there has been no showing that a valid oral transfer of immovable property to Ms. White occurred in 1996, nor was the 1996 act an authentic act since it was not executed before a notary public in the presence of two witnesses. See LSA-C.C. art.

1833 (1984).[3] Therefore, to be a valid sale, the 1996 transfer from the Harveys to Ms. White was required to be made by act under private signature. See LSA-C.C. art. 2440. An act under private signature is one executed by the parties themselves without the intervention of a public officer, such as a notary public. Rainey v. Entergy Gulf States, Inc., 09-572 (La. 3/16/10), 35 So.3d 215, 225, citing Saul Litvinoff, The Law of Obligations § 12.26, at 308, in 5 Louisiana Civil Law Treatise (2d ed. 2001). An act under private signature need not be written by the parties but must be signed by them. LSA-C.C. art. 1837. The signature of the parties is the only element the law requires to give evidentiary weight to an act privately executed by the parties. Rainey, 35 So.3d at 225, citing Litvinoff, § 12.28 at 310.

An act under private signature is regarded prima facie as the true and genuine act of a party executing it when his signature has been acknowledged, and the act shall be admitted in evidence without further proof. LSA-C.C. art. 1836. An act under private signature may be acknowledged by a party to that act by recognizing the signature as his own before a court, or before a notary public, or other officer authorized to perform that function, in the presence of two witnesses. Id. An act under private signature may be acknowledged also in any other manner authorized by law. Id.

Any deed, contract, or other instrument, under private signature, purporting to be attested by two or more witnesses and accompanied by an affidavit of the vendor that the same was signed or executed by him, or by an affidavit of one or more such witnesses, made at or after the signing and execution of such deed or other instrument, and setting forth substantially that the instrument was signed or executed by the party or parties thereto in the presence of the affiant or affiants, shall be deemed, taken, and accepted, prima facie, and without further proof, as being true and genuine, and shall be so received and accepted in evidence in the courts of Louisiana, without further

[3] An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed. LSA-C.C. art. 1833 (1984). LSA-C.C. art. 1833 was amended by 2003 La. Acts, No. 965, § 1, effective January 1, 2005.

proof. LSA-R.S. 13:3720. Therefore, an act under private signature may be acknowledged not only by the party who executed it, but also by a witness in whose presence it was executed. LSA-C.C. art. 1836, Revision Comments—1984, comment (b).

By an act under private signature dated October 26, 1996, the Harveys purportedly sold tract B-1-A to Ms. White for $5,000. This document was seemingly signed by each of the Harveys in the presence of two witnesses, namely, Mr. Gurney and Lela F. Dedon.[4] On October 29, 1996, Mr. Gurney executed an "Acknowledgement by Subscribing Witness" in the presence of a notary and two witnesses. On its face, the 1996 act presently before the court bears all the earmarks of a deed duly acknowledged under the provisions of LSA-C.C. art. 1836 and LSA-R.S. 13:3720. It was purportedly attested by two witnesses, and it was accompanied by the affidavit of one of such witnesses who declared, under oath, that the instrument was signed by the parties thereto in his presence, as well as in the presence of the other subscribing witness.[5] Under LSA-C.C. art. 1836 and LSA-R.S. 13:3720, the 1996 act has to be deemed, taken, and accepted, prima facie, as being true and genuine and shall be received in evidence, without further proof.

When the law requires a contract to be in written form, the contract may not be proved by testimony or by presumption, unless the written instrument has been destroyed, lost, or stolen. LSA-C.C. art. 1832. Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature. Nevertheless, in the interest of justice, that evidence may be admitted to prove such circumstances as a vice of consent, or a simulation, or to prove that the written act was modified by a subsequent and valid oral agreement. LSA-C.C. art.

[4] Ms. White was a named party to this document, but she did not sign it. The fact that Ms. White did not sign as a party to this act does not render the act invalid. Notably, an act under private signature is valid even though signed by one party alone. See LSA-C.C. art. 1837, Revision Comments—1984, comment (b).

[5] Furthermore, a party against whom an act under private signature is asserted must acknowledge his signature or deny that it is his. LSA-C.C. art. 1838. Although the Harveys initially urged that their signatures were forged, three of the Harveys conceded at trial that the signatures on the 1996 act were theirs.

1848. Testimonial proof may be used against a writing to show error, fraud, or duress. LSA-C.C. art. 1848, Revision Comments--1984, comment (b).

In their amending and supplemental petition, the Harveys alleged that they were told that the 1996 act was a mineral lease and that it was signed by them at Mr. Harvey's home in the presence of an oil company representative, Joseph R. Guice, and Ms. White. The Harveys denied that Mr. Gurney and Ms. Dedon were present when this document was signed.

If in fact the 1996 act was not executed in the presence of Mr. Gurney and Ms. Dedon, it would not satisfy the requirements of LSA-C.C. art. 1836 and LSA-R.S. 13:3720 and would not be deemed, taken, and accepted, prima facie, and without further proof, as being true and genuine. However, the act could still have effect as an act under private signature. See LSA-C.C. art. 1834. Thus, we consider the evidence on this issue to determine if the 1996 act was made in contravention to LSA-C.C. art. 1836 and LSA-R.S. 13:3720, and thus was not self-proving.

Ms. White testified that she had the document drawn up by an attorney. She then gave the document to her father, Mr. Gurney, to have it executed by the Harveys. Ms. White denied being present when they signed the document at her father's home on October 26, 1996. On October 29, 1996, the day Mr. Gurney executed the acknowledgement regarding the 1996 act, the Harveys also executed separate mineral leases. On November 6, 1996, the 1996 act was recorded, and Ms. White also executed a mineral lease.

In his deposition, Mr. Gurney stated that he witnessed his three grandchildren and son-in-law sign the 1996 document at his home. He explained that Ms. Dedon was a friend of his, who was personally present at his home when the signing occurred. Mr. Harvey had no recollection of the execution of the 1996 act.

Faye testified that Ms. Dedon was not present when the document was signed. Although subpoenaed to testify by the Harveys, Ms. Dedon failed to appear for trial. According to the transcript, it was noted that a physician with the Stannaco Medical

Center faxed a doctor's excuse to the trial court relative to "Lela F. Dedon, date of birth, February 19, 1920." The trial court read from the doctor's excuse and stated:

> Ms. Dedon has been under ... care for multiple medical problems for many years, ... she is eighty-eight years old and in poor general health. It is their opinion it will be detrimental to her health to testify in a court[.]

Counsel for the Harveys pointed out that Ms. Dedon had been deposed at her home several years earlier. Counsel for the Harveys further stated that, in her July 7, 2005 deposition, she recalled that the Harveys' signatures were not on the instrument when she signed it, and that she was not present in Mr. Gurney's home when the instrument was signed by the Harveys. Counsel for Ms. White seemingly objected to relying on Ms. Dedon's deposition testimony without having her appear in court, questioning her mental capacity. In reviewing the record, the trial court discovered that information relevant to Ms. Dedon's appearance at trial was missing from the record. Therefore, this matter was taken under advisement by the trial court while the matter proceeded to trial.

The trial court's oral reasons at the conclusion of the trial on the merits indicate that it considered Ms. Dedon's deposition but gave no indication of the weight, if any, that was given to her testimony or the testimony of the other witnesses, which had a bearing on whether the requirements of LSA-C.C. art. 1836 and LSA-R.S. 13:3720 were satisfied. Particularly, the trial court reasoned:

> The court has reviewed the deposition of Ms. Dedon, together with the other exhibits adduced into evidence in the trial hereof as well as post trial memorandum. The court is of the opinion and hereby finds that the 1996 private sale was a valid and binding sale because of the underlying natural obligation which operates as the cause of the transfer, therefore, the property should justly be returned to [Ms.] White.

This court is unable to determine, from these reasons, if the trial court found that the 1996 act was self-proving.

Assuming the Harveys' allegations are true and Mr. Gurney and Ms. Dedon did not witness their signing, the 1996 act would still be admitted in evidence without further proof because Mr. Harvey, Dean, and Faye acknowledged and recognized their signatures before the court. See LSA-C.C. art. 1836.

As previously stated, the requirements for the perfection of a sale are the thing, the price, and the consent of the parties. See LSA-C.C. art. 2439. Although Mr. Harvey, Faye, and Dean admitted to the genuineness of their signatures on the 1996 act, they denied knowing what they signed, contending that they intended only to transfer the mineral rights to the property back to Ms. White. A person who signs a written contract is presumed to know its contents and cannot avoid its obligations by contending he did not read the document, or that it was not explained, or that he did not understand it, barring misrepresentation, fraud, or violence. See Tweedel v. Brasseaux, 433 So.2d 133, 137-38 (La. 1983); Griffin v. Lago Espanol, L.L.C., 00-2544 (La. App. 1st Cir. 02/15/02), 808 So.2d 833, 840.; Sonnier v. Boudreaux, 95-2127 (La. App. 1st Cir. 05/10/96), 673 So.2d 713, 717. Once the Harveys signed the 1996 act, they became bound by its contents and could not rescind it without a showing of misrepresentation, fraud, or violence. Where a party has pled ignorance of the contents of the writing on the score of not having read it, the party pleading error must establish the error by very clear proof. See Willis v. Sempe, 139 La. 877, 72 So. 427, 428 (1916).

The 1996 act recites that the consideration for the sale was $5,000, "cash in hand paid, the receipt whereof is hereby acknowledged, and good acquittance and discharge therefor given." In their petition, the Harveys alleged that they never received the price of $5,000 as recited in the 1996 act. In her answer, Ms. White admitted that the Harveys had not received the stated consideration. Furthermore, at trial, the Harveys testified that they never received any cash from Ms. White. Their testimony was supported by that of Mr. Gurney and Ms. White.

In response to the Harveys' allegation regarding consideration, Ms. White alleged in her answer that the 1996 act was "intended by the parties as a means of transferring the property back to defendant for the same consideration that was paid by defendant's sister (plaintiff's ancestor in title) when defendant transferred the property to her." In her reconventional demand, Ms. White, in pertinent part, alleged:

10.

On October 12, 1987, [Ms. White] transferred to [Mrs. Harvey] by Act of Cash Sale passed before Jerry H. Bankston, the property that is the subject of the [suit].

11.

The Act of Cash Sale recites a consideration of $ 5,000.00, which sum was never paid nor was it contemplated by the parties that this sum would be paid.

12.

The Act of Cash Sale dated October 12, 1987, was done merely for the convenience of the parties and was to be transferred back to [Ms. White] at a convenient time.

13.

Said Act of Cash Sale is recorded in the Conveyance Records of the Parish of East Baton Rouge at original 72, bundle 9957. A copy is attached to this petition.

14.

[Ms. White] is entitled to have the transfer dated October 12, 1987, declared null and void as if it had never been enacted.

In their answer to Ms. White's reconventional demand, the Harveys averred that "unless [Ms. White] can produce a written counterletter to establish that the sale referenced in her reconventional demand is a simulation, [Ms. White] is not entitled to the relief she seeks." In order to determine if the 1996 act was supported by cause, we must examine the obligations, if any, that flowed from the 1987 act.

An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed. LSA-C.C. art. 1833 (1984).[6] The 1987 act seemingly meets these requirements. Although testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act, the court is authorized, in the interest of justice, to accept such evidence to prove such circumstances as a simulation. See LSA-C.C. art. 1848. A contract is a simulation when, by mutual agreement, it does not

[6] See LSA-C.C. art. 1833(A).

express the true intent of the parties. LSA-C.C. art. 2025. If the true intent of the parties is expressed in a separate writing, that writing is a counterletter. Id.

Under Article 1848, testimonial or other evidence is admissible to prove an absolute or relative simulation. LSA-C.C. art. 1848, Revision Comments—1984, comment (c). A simulation is absolute when the parties intend that their contract shall produce no effects between them. That simulation, therefore, can have no effects between the parties. LSA-C.C. art. 2026. A simulation is relative when the parties intend that their contract shall produce effects between them though different from those recited in their contract. LSA-C.C. art. 2027. When the expression of a cause in a contractual obligation is untrue, the obligation is still effective if a valid cause can be shown. LSA-C.C. art. 1970.

Based on the allegations in her reconventional demand, Ms. White has alleged that the 1987 act was a simulation. Therefore, under LSA-C.C. art. 1848, the court was authorized, in the interest of justice, to accept testimonial or other evidence to prove the circumstances surrounding such a simulation for purposes of determining the validity of the 1996 act, which is being challenged by the Harveys.

Ms. White explained that she and her then husband were having business problems in the 1980s due to the oil crunch, and they were losing a lot of business.[7] She had used her separate property as collateral for a business venture and feared losing the property. Therefore, she transferred tract B-1-A to Mrs. Harvey in 1987 to protect the property from her then husband and his creditors. According to Ms. White, although the 1987 act was styled as a cash sale, no money changed hands. In connection with the transfer, she and Mrs. Harvey verbally agreed that Mrs. Harvey would return the tract to her at a later unspecified time. Mr. Gurney stated that his daughters had explained their agreement to him. According to Mr. Gurney, the property was transferred to prevent Ms. White's husband from getting it. Mr. Gurney understood that the property would be returned to Ms. White by Mrs. Harvey.

[7] The Whites were divorced in 1989.

Ms. White testified that she spoke to her sister about putting the property back into her name after she and her husband divorced. At that time, Mrs. Harvey advised Ms. White that Josh would be eligible for more grant money if the property was not in her name. Ms. White testified that she trusted Mrs. Harvey and allowed the property to remain in Mrs. Harvey's name. Mrs. Harvey died before she was able to put the record title to tract B-1-A back in Ms. White's name.

Ms. White stated that Mr. Harvey was not a party to the conversations that she had with her sister about the property transfer. Furthermore, Mr. Harvey testified that he was not informed of the circumstances surrounding the 1987 transfer to Mrs. Harvey. Although she denied having knowledge of the agreement between her mother and Ms. White, Faye testified that she knew that Ms. White had transferred tract B-1-A to Mrs. Harvey for the convenience of the sisters and that Mrs. Harvey had not paid Ms. White any money in connection with the 1987 transaction. Dean explained that he did not know the circumstances surrounding the 1987 transfer to his mother.

After considering this evidence, the trial court apparently believed that Ms. White had shown that the 1987 act was a simulation[8] and that pursuant to the intent of the parties thereto, Mrs. Harvey promised to return the property to Ms. White some day in the future, resulting in the creation of a natural obligation.

A natural obligation arises from circumstances in which the law implies a particular moral duty to render a performance. LSA-C.C. art. 1760. A natural obligation is not enforceable by judicial action. Nevertheless, whatever has been freely performed in compliance with a natural obligation may not be reclaimed. LSA-C.C. art. 1761. A contract made for the performance of a natural obligation is onerous. Id. Examples of circumstances giving rise to a natural obligation are: (1) when a civil obligation has been extinguished by prescription or discharged in bankruptcy; (2) when an obligation has been incurred by a person who, although endowed with discernment, lacks legal capacity; and (3) when the universal successors are not bound by a civil obligation to

[8] Notably, this case does not involve an attack of the 1987 act by a third-party creditor of Ms. White on the ground of fraud. See LSA-C.C. art. 2028.

execute the donations and other dispositions made by a deceased person that are null for want of form. LSA-C.C. art. 1762. Nowhere in the Louisiana Civil Code is the term "natural obligation" precisely defined, and our courts have construed the listing of examples of such obligations as illustrative and not exclusive. Gray v. McCormick, 94-1282 (La. App. 3rd Cir. 10/18/95), 663 So.2d 480, 485; Muse v. St. Paul Fire & Marine Insurance Company, 328 So.2d 698, 705 (La. App. 1st Cir. 1976). The determination of whether a natural obligation exists, therefore, depends on the facts of each particular case.

The requirements that must be present in order for a moral duty to be considered a natural obligation are: (1) the moral duty must be felt towards a particular person and not towards all persons in general; (2) special circumstances must exist that allow the inference that the person involved feels so strongly about his moral duty that he truly feels he owes a debt; (3) the duty can be fulfilled through rendering a performance whose object is of pecuniary value; and (4) a recognition of the obligation by the obligor must occur, either by performing the obligation or by promising to perform it, that is, a recognition that brings the natural obligation into existence and makes it a civil obligation. Litvinoff, § 2.4 at 28; Terrell v. Nanda, 33,242 (La. App. 2nd Cir. 5/10/00), 759 So.2d 1026, 1030; Thomas v. Bryant, 25,855 (La. App. 2nd Cir. 6/22/94), 639 So.2d 378, 380.

The intent of the alleged natural obligor is relevant to the determination of whether the alleged natural obligor felt the moral compulsion necessary to transform his moral duty into a natural obligation. See Thomas, 639 So.2d at 380; Litvinoff, § 2.6 at 32.[9] Great discretion must be exercised by the courts in determining whether, in a given situation, a moral duty rises to the level of a natural obligation. Thomas, 639 So.2d at 380; Litvinoff, § 2.6 at 32. In this case, the Harveys denied feeling a moral duty to transfer tract B-1-A back to Ms. White. The following evidence is pertinent to this issue.

[9] The natural obligor's belief in the existence of the moral duty is as important as its reality. Litvinoff, § 2.6 at 28.

Ms. White explained that in accordance with her verbal agreement with Mrs. Harvey and in connection with an inquiry from an oil company about a mineral lease, Ms. White requested that the Harveys execute the 1996 act that transferred the property back to her. At trial, Mr. Harvey indicated that he and his children thought that Ms. White should have the mineral rights and that they intended to transfer only the mineral interests to her. Although they denied having the intent to transfer the tract to Ms. White in October 1996, a map of the family property prepared in November 1995,[10] in connection with Mr. Gurney's donation of family property to his four grandchildren, identified Ms. White as the owner of tract B-1-A. No one objected to this fact. The map was signed by Mr. Gurney, Ms. White, Mrs. Harvey, Mr. Harvey, Dean, Faye, Whit, and Josh, who were all identified as owners of the property. Although Dean denied signing the map, he admitted to the genuineness of his signature on that document. Mr. Gurney continued to pay the property tax on tract B-1-A, just as he had done following the 1980 donation to his daughters. Furthermore, we note that tract B-1-A did not form part of the property that was partitioned by the three Harvey children in July 1996, nor was it included in the 1995 and 1996 donations by Mr. and Mrs. Harvey of their ownership interests in tract B-1-B.

Mr. Guice examined the public records to determine ownership of all of the Gurney property. The oil company was interested in leasing as much of the Gurney property as possible. Mr. Guice explained that he contacted the record owners and met with them in an effort to lease the property. Ms. White, Mr. Harvey, and Faye testified that this meeting occurred on the patio at Mr. Harvey's home. Mr. Guice informed the group that since Ms. White was not a record owner, a deed was necessary to transfer the property back into her name so that she would have the right to lease the property. Mr. Guice denied having anything to do with the preparation or execution of the deed. However, he was present and signed as a subscribing witness when each owner signed a mineral lease in October and November 1996.

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[10] This map was a survey of tracts B-1-B and B-1-C and provided for the re-subdivision of those tracts into tracts B-1-B-1, B-1-B-2, B-1-C-1, and B-1-C-2.

Ms. White stated that she was included in the family meeting with Mr. Guice because the family still considered her to be the owner of tract B-1-A, even though the tract was not in her name. Mr. Guice testified that he could not pay Ms. White for a mineral lease until she had the right to lease the property. According to Ms. White, the Harveys agreed to sign tract B-1-A back over to her so that they could proceed with the execution of the mineral leases for all of the property.

The Harveys denied knowing the terms of Mrs. Harvey's agreement with Ms. White. Even though the 1996 act was executed shortly after Mrs. Harvey's death, they argue that they felt no moral duty to return tract B-1-A to Ms. White. Although Faye denied having knowledge of the verbal agreement between her mother and her aunt or feeling obligated to return the tract to Ms. White, Faye admitted that she knew that Ms. White transferred the property in question to Mrs. Harvey for the convenience of the sisters and that no money had changed hands. Moreover, the Harveys' suit to annul the 1996 act of sale was not filed until March 1999, after Ms. White evidenced her intent to sell tract B-1-A because Mr. Harvey, Dean, and Faye opposed the development of tract B-1-A and wanted it to remain in the family in an undeveloped state. Faye admitted that there were no problems until the Harveys found out that the property was for sale.

Notably, no evidence was offered relative to Mrs. Harvey's succession. Therefore, the record does not reflect whether her succession was opened and, if so, whether tract B-1-A was listed as an asset of her estate. Presumably, if Mr. Harvey and his children believed that Mrs. Harvey was the owner of tract B-1-A, they would have been interested in obtaining a judgment of possession recognizing their ownership interests of it following her death. The absence from the record of a judgment of possession recognizing the Harveys as the owners of tract B-1-A also casts doubt on the Harveys' claim that they felt no moral duty to return tract B-1-A to Ms. White.

In finding that a natural obligation flowing from the 1987 act served as the cause for the 1996 act, the trial court obviously did not find the testimony of Mr. Harvey,

Faye, and Dean to be credible, a finding which is entitled to great weight and should not be disturbed on appeal absent manifest error. See Rosell v. ESCO, 549 So.2d 840, 844-45 (La. 1989).[11] Nothing in the designated record contradicts this finding of the trial court. Considering the evidence in the record, we are unable to find that the trial court manifestly or legally erred in finding that the 1987 act did not express the true intent of Ms. White and Mrs. Harvey, thus resulting in a simulation. Furthermore, we find no abuse of discretion in the trial court's finding that, in connection with the 1987 act, Mrs. Harvey promised to transfer the property back to her sister at a later date, giving rise to a natural obligation on the part of Mrs. Harvey. Moreover, we cannot say that the trial court, given its determination of credibility, manifestly erred in finding that Mrs. Harvey's successors-in-title felt a moral duty to return tract B-1-A to their aunt when they executed the act under private signature in 1996. Therefore, although a natural obligation is not enforceable by judicial action, whatever has been freely performed in compliance with a natural obligation may not be reclaimed. See LSA-C.C. art. 1761.

Decree

For these reasons, the judgment of the trial court is affirmed. Costs of this appeal are assessed to Ronald R. Harvey, Gurney Dean Harvey, and Faye Harvey McGee.

AFFIRMED.

[11] Where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable factfinder would not credit the witness's story, the court of appeal may well find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination. Rosell, 549 So.2d at 844-45. But where such factors are not present, and a factfinder's finding is based on its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong. Id. at 845.