

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1590

SANDRA M. ADAMS

VERSUS

**DONALD K. ADAMS AND METROPOLITAN LIFE
INSURANCE COMPANY**

Judgment Rendered: March 26, 2008

**Appealed from the
Family Court**

**In and for the Parish of East Baton Rouge, Louisiana
Docket Number 157,200**

Honorable Pamela J. Baker, Judge Presiding

**Tom Withers, III
Baton Rouge, LA**

**Counsel for Plaintiff/Appellant,
Sandra M. Adams**

**Mark G. Simmons
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
Donald Adams**

BEFORE: WHIPPLE, GUIDRY AND HUGHES, JJ.

Guidry, P. concurs.

WHIPPLE, J.

This is an appeal from a judgment of the Family Court of East Baton Rouge Parish, granting a divorce to the parties and determining that all the proceeds from a personal injury settlement, including annuity payments, were the separate property of defendant. For the following reasons, we affirm in part, vacate in part, and remand.

FACTS AND PROCEDURAL HISTORY

On December 12, 1985, Donald K. Adams was involved in a serious automobile accident in Baton Rouge, which rendered him a quadriplegic. Fourteen days later, on December 26, 1985, he and Sandra M. Adams were married in the intensive care unit of Baton Rouge General Hospital. Thereafter, Donald and Sandra filed suit against Merchants Truck Line, Inc.¹ and others (“the Merchants Truck Line defendants”), seeking recovery for Donald’s injuries and Sandra’s “great emotional losses, loss of consortium, services, companionship, and other human, social, and economic losses.”²

On June 23, 1987, Donald entered into a settlement agreement with Merchants Truck Line defendants, whereby he was to be paid the sum of \$2,100,000.00 contemporaneously with the execution of the settlement and \$12,000.00 per month for the remainder of his life, increasing at a rate of 3% compounded annually.³

The settlement agreement further provided as follows:

Donald K. Adams agrees to defend, indemnify, and hold harmless The Parties Released from or against any and all claims, demands, obligations, actions, causes of action,

¹According to the petition, a tire that had been improperly secured to a tractor-trailer rig owned and/or operated by Merchants Truck Line dislodged from the rig and crashed into Donald’s car, breaking his neck and paralyzing him from the neck down.

²Versie Stallings, Donald’s grandmother, was also named as a plaintiff and contended that she had depended on Donald for part of her support and that she had lost his services, care, and love.

³The sum Donald actually received after the payment of attorney’s fees and expenses was \$867,973.95.

damages, costs, including attorney's fees, and expenses from any claims which may be brought **against them** by Sandra Moses Adams, Versie Stallings, any health care provider, any relative of Donald K. Adams claiming damages as a result of injuries sustained by Donald K. Adams in the above described accident. (Emphasis added).

Under the terms of the settlement, Donald also agreed that the defendants could assign their obligation to make the future monthly payments to Metropolitan Life Insurance Company ("Metropolitan Life"). As authorized by the settlement agreement, an annuity was established by MetLife Security Insurance Company ("MetLife Security"), with Metropolitan Life being the owner of the annuity, which agreement certified that MetLife Security would make the monthly payments to Donald at the rate set forth in the settlement agreement for the remainder of Donald's life. Donald received the first annuity payment in August 1987, and has been receiving monthly payments since then.

In December 1988, the parties separated, and, over seventeen years later, on February 3, 2006, Sandra filed suit against Donald, seeking a divorce and a partition of community property. In her petition, Sandra sought to have the court recognize a claim in her favor for loss of consortium in the amount of \$1,000,000.00 resulting from Donald's pre-marriage accident.⁴ In her detailed descriptive list, Sandra contended that their community property included two homes, one in Baton Rouge and one in New Orleans, and household furnishings in the homes; cash in a Hibernia Bank account; the monthly annuity payments made to Donald as a result of

⁴Sandra also named Metropolitan Life as a defendant, requesting that the court order Metropolitan Life to pay her 75% of all annuity payments from the date of judicial demand until she received the sum of \$1,000,000.00 for her loss of consortium claim. Metropolitan Life subsequently filed a stipulation into the record, stipulating that it was the owner of the annuity issued by MetLife Security under which the "measuring life" is Donald's and that if ordered to do so by the court, it would instruct MetLife Security to make payments under the annuity as directed by the court. Thereafter, Metropolitan Life was dismissed as a defendant without prejudice.

his personal injury settlement; and her personal injury claim of \$1,000,000.00 allegedly owed to Sandra (for loss of consortium), which she contended should be paid from the past and future annuity payments. She also contended that the parties had incurred a community debt in the form of a mortgage on the Baton Rouge home. In his detailed descriptive list, Donald contended that all of the assets and liabilities listed by Sandra were his separate property and not a part of the community.

Evidence was submitted to the trial court, and the matter was then taken under advisement. Thereafter, by judgment dated February 5, 2007, the trial court granted a divorce between the parties; decreed that all money received by Donald from his personal injury settlement, including annuity payments, was Donald's separate property; and dismissed Sandra's action for judicial partition of community property. From this judgment, Sandra appeals.

DISCUSSION

In her first assignment of error, Sandra contends that the trial court erred in rescinding the compromise agreement between her and the Merchants Truck Line defendants. In her second assignment of error, Sandra contends that the trial court erred in finding that she had to prove at the partition hearing that the injuries sustained by Donald in the pre-marriage accident manifested themselves after the marriage. In her third assignment of error, Sandra contends that the trial court erred in finding that the annuity payments to Donald were his separate property.

Specifically, Sandra contends that the trial court erred in finding that she had no right of action to assert a claim for damages in the personal injury lawsuit for injuries sustained by Donald in a pre-marriage accident. She contends that a compromise and settlement occurred between her and

Donald and the Merchants Truck Line defendants, and that her “legal right to receive the settlement funds” had been resolved by the settlement agreement. Thus, she contends, the trial court erred in finding: that she had to prove at the partition hearing that Donald’s injuries manifested themselves after the marriage; that the settlement was invalid as to her given the lack of evidence that Donald’s injuries manifested themselves only after the accident; and, accordingly, that the proceeds of the settlement, including the annuity payments, were Donald’s separate property.

With regard to Sandra’s assertion that the trial court rescinded or invalidated any portion of the settlement agreement at issue herein, as it pertained to her claims, we dismiss that argument outright. At the outset, we note that the trial court’s judgment in no way rescinded or vacated the compromise agreement of record, as suggested by Sandra in brief. Rather, as stated above, the judgment at issue granted the parties a divorce and decreed that all proceeds from Donald’s personal injury settlement, including the annuity payments, were his separate property.

Additionally, regarding Sandra’s claim that she entered into a settlement agreement with the Merchants Truck Line defendants, which determined her “legal right to receive the settlement funds,” we likewise find no merit. We note that the settlement agreement at issue was **not** between Sandra and the Merchants Truck Line defendants, but was instead a settlement agreement between **Donald** and the Merchants Truck Line defendants. Contrary to her assertions, Sandra was not a party to the settlement.

Furthermore, we reject Sandra’s contention that a “legal right to receive the settlement funds” had been resolved by the settlement agreement. A compromise is an agreement to adjust the differences of two or more

persons by mutual consent for preventing or ending a lawsuit.⁵ LSA-C.C. art. 3071; Brasseaux v. Allstate Insurance Company, 97-0526 (La. App. 1st Cir. 4/8/98), 710 So. 2d 826, 828. It extends only to those matters the parties intended to settle, and the scope of the transaction cannot be extended by implication. Trahan v. Coca Cola Bottling Company United, Inc., 2004-0100 (La. 3/2/05), 894 So. 2d 1096, 1107.

The settlement between Donald and the Merchants Truck Line defendants sets forth the respective duties and obligations between Donald and those defendants, i.e., the payment by the Merchants Truck Line defendants (or Metropolitan Life) of a lump sum and monthly payments thereafter in exchange for the release by Donald of his claims against those defendants and agreement to “defend, indemnify, and hold harmless” the Merchants Truck Line defendants against any claims or demands which may be brought **against those defendants** by Sandra as a result of Donald’s accident.

The settlement agreement does not create, address, or dispose of any rights that Sandra, who was not a party to the contract, may have had against the Merchants Truck Line defendants. As such, Sandra cannot rely upon Donald’s settlement contract with the Merchants Truck Line defendants as somehow giving her an independent right to payment to her by Donald of any of the proceeds of Donald’s settlement.

Moreover, even if the settlement agreement between Donald and the Merchants Truck Line defendants could somehow be construed as creating or establishing a right by Sandra to a sum from Donald, she would have no

⁵ LSA-C.C. art. 3071 was amended by La. Acts 2007, No. 138 § 1 and now provides: “A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship.” According to the 2007 Revision Comment (a) the article is new but does not change the law.

claim against him, by the very terms of the settlement agreement, until she had first asserted and established her claim against the Merchants Truck Line defendants. The record before us is devoid of any evidence suggesting that Sandra had in fact established her loss of consortium claim against the tortfeasors, such as to give rise to any right to collect from Donald from the proceeds of his settlement with the Merchants Truck Line defendants.⁶

Finally, we also reject Sandra's contention that the trial court erred in classifying the monthly annuity payments received by Donald as his separate property. Sandra asserts on appeal that, while the annuity itself cannot be classified as community or separate property given that it is not owned by Sandra or Donald, the monthly annuity payments nonetheless should have

⁶Indeed, given the fact that Donald and Sandra were not married at the time of his crippling injury, Sandra's ability to establish a claim for loss of consortium against the Merchants Truck Line defendants would have been extremely questionable. We find no merit to her assertion that the Second Circuit case of Aldredge v. Whitney, 591 So. 2d 1201 (La. App. 2nd Cir. 1991), establishes a claim in her favor for loss of consortium damages against the Merchants Truck Line defendants.

In Leckelt v. Eunice Superette, Inc. 555 So. 2d 11, 13 (La. App. 3rd Cir. 1989), writ denied, 559 So. 2d 141 (La. 1990), the Third Circuit Court of Appeal determined that a woman, who had lived in open concubinage with the injured plaintiff and who subsequently married the injured plaintiff after the accident, could not assert a claim for loss of consortium given that she was not married to the injured party at the time of the accident.

By contrast, in Aldridge, a woman was injured in an automobile accident, and after the accident, the woman married her spouse and then allegedly began experiencing severe lower back pain, diagnosed as a ruptured disc allegedly caused by the prior accident. Aldridge, 591 So. 2d at 1201-1202. In addressing the issue of whether her husband could assert a claim for loss of consortium for his wife's injuries resulting from a pre-marriage accident, the Second Circuit, distinguishing Leckelt, noted that while the accident had occurred **before** the marriage, the injury at issue had allegedly manifested itself **during** the marriage, after the husband had become a member of the designated class of beneficiaries for a loss of consortium claim. Thus, the court concluded that the husband had a right of action for loss of consortium. Aldredge, 591 So. 2d at 1205.

In the instant case, although Sandra contends that Donald's injuries manifested after her marriage to him, we find no support for this contention in the record. In our view, such a determination would require, at a minimum, very precise, expert medical testimony, none of which appears herein. Moreover, we note that Sandra's contentions in brief that following their marriage, Donald gained weight and became depressed, resulting in his refusal to undergo medical procedures that could have lessened the severity of his paralysis, do not establish that Donald suffered a distinct injury manifesting itself after the marriage, as in the case of Aldredge.

Nonetheless, the issue of the validity of any claim by Sandra against the Merchants Truck Line defendants is not at issue herein. Rather, the sole issue before this court is the classification of the proceeds received by Donald as a result of his settlement with those defendants.

been classified as community property because he permitted the funds to fall into the community without reserving them as his separate property.

Separate property is that which either party brings into the marriage, LSA-C.C. art. 2341, and Donald clearly “brought” his personal injury claim against the Merchants Truck Line defendants into the marriage. Thus, the monies received by Donald as a result of his personal injury settlement are his separate property, even though those monies were not actually received until after Donald and Sandra married. See Broussard v. Broussard, 340 So. 2d 1309, 1312 (La. 1976).

Moreover, we find no merit to Sandra’s assertion that the monthly payments received by Donald under the terms of his settlement agreement with the Merchants Truck Line defendants somehow constituted fruits of Donald’s separate property. Relying on Reynolds v. Reynolds, 388 So. 2d 1135 (La. 1979) (on rehearing), Sandra appears to argue that while Donald did not own the annuity itself, he had a “beneficial interest” in the annuity, which would be an incorporeal right, and thus, that the payments to him generated by the annuity are civil fruits of his separate property, *i.e.*, his incorporeal right of a beneficial interest in the trust. Thus, she argues, because Donald did not reserve these civil fruits as his separate property, the annuity payments became community property. See LSA-C.C. art. 2339.

Pursuant to LSA-C.C. art. 2339, the natural and civil fruits of a spouse’s separate property are community property, unless the spouse reserves them as his separate property. Civil fruits are defined as “revenues derived from a thing by operation of law or by reason of a juridical act, such as rentals, interest, and certain corporate distributions.” LSA-C.C. art. 551.

In Reynolds, the wife was a beneficiary of a trust established upon her grandmother’s death and before her marriage to her husband. The terms of

the trust provided that upon the youngest of the decedent's grandchildren attaining the age of 21, the trustee was to deliver the entire estate to the beneficiaries in equal proportions. During the wife's subsequent marriage, but prior to delivery of the entire estate to the grandchildren, she received as distributed trust income a sum of money which the court was called upon to classify. Reynolds, 388 So. 2d at 1136.

On rehearing, the court determined that while the wife did not own the corpus of the trust, her separate estate included a "beneficial interest" in the trust, which it held was an incorporeal right. The court further determined that the distributed revenues from that incorporeal right were civil fruits, which fell into the community because no instrument had been filed to reserve them for the wife. Reynolds, 388 So. 2d at 1142 (on rehearing).

However, the facts of the instant case are clearly distinguishable from Reynolds. In the instant case, Donald entered into a settlement agreement with the Merchants Truck Line defendants, through which the parties agreed that he would be paid a lump sum amount at the time of execution of the agreement and then a monthly sum thereafter for the remainder of his life. **As a means of funding the lifetime monthly payments**, the Merchants Truck Line defendants purchased an annuity, with Metropolitan Life as the owner of the annuity, and assigned to Metropolitan Life their duties and obligations to make the future monthly payments to Donald as set forth in the settlement agreement.

Additionally, the record establishes that Donald has no legal interest in the annuity contract itself. There is no balance of funds in an account through the annuity contract in Donald's name and no interest earned on any such funds by Donald. As such, Donald has no "beneficial interest" in the annuity. Rather, Donald's legal interest or legal right, as set forth in his

personal injury settlement, is the right to receive monthly payments for the remainder of his life paid by the Merchants Truck Line defendants or, in the event those defendants assigned their duties and obligations, as provided in the settlement agreement, by Metropolitan Life.⁷

As noted by the trial court, “[t]he settlement requires multiple deliveries of money on a given schedule with payments to be made only to Donald Adams. Until delivery of a specific payment, Mr. Adams does not have the direct, immediate, and exclusive authority over the money; nor could he use, enjoy and dispose of the money until it is in his possession.” The monthly payments are part of the structured settlement agreement to compensate Donald for his pain, suffering, medical care, loss of enjoyment of life, lost wages, and reduced earning capacity. As such, we find no error in the trial court’s conclusion that those payments were not interest from or civil fruits of his separate property, but instead constituted his separate property as payments from his personal injury settlement. Accordingly, we affirm the portion of the trial court’s judgment decreeing that all money

⁷The facts of the instant case are also distinguishable from Bergeron v. Bergeron, 96-1586 (La. App. 3rd Cir. 4/9/97) 693 So. 2d 199, relied upon by Sandra in brief. In Bergeron, the husband received settlement funds for pre-marriage injuries, and, during his subsequent marriage, he deposited some of those settlement funds into an annuity account. During the marriage, he made withdrawals of **interest** he earned on the annuity and also withdrew a portion of the principal. Bergeron, 693 So. 2d at 200. The court concluded that the interest earned on the annuity prior to the husband’s filing an affidavit establishing separateness of the fruits was community property, but that the principal remained his separate property. Bergeron, 693 So. 3d at 201-202.

By contrast, in the instant case, the annuity was not purchased by Donald, and he had no right to any principal or interest from the annuity pursuant to either the settlement agreement or the annuity contract. As stated above, Donald’s rights were derived from the settlement agreement and included the right to receive personal injury settlement funds monthly for the remainder of his life.

Furthermore, with regard to any interest earned on the monthly payments after received by Donald, the record contains only one bank statement, showing interest earned in 1990 in the amount of \$3,783.13. The record is devoid of any evidence establishing whether that interest earned has been expended on the community or whether it is still on deposit. Accordingly, we conclude that Sandra failed to establish a claim to any interest earned on the monthly payments received by Donald during the existence of their marriage.

received by Donald as a result of his personal injury, including annuity payments, are Donald's separate property.

However, we note that the trial court then dismissed Sandra's action for judicial partition of community property without specifically adjudicating or decreeing the classification of the remaining property listed in the detailed descriptive list as either community or separate. See LSA-R.S. 9:2800. In addition to the funds derived from Donald's personal injury settlement, Sandra also included in her detailed descriptive list a home in Baton Rouge and a home in New Orleans, with their respective household furnishings, as community assets, and a mortgage note, which the record demonstrates lists both parties as debtors, as a community debt. Donald, in his detailed descriptive list, disputed the community nature of these assets and liabilities, contending that they were all his separate assets and liabilities.

Louisiana Revised Statute 9:2801 sets forth the procedure for partitioning community property. The statute provides that each party shall file a sworn detailed descriptive list of all community property, and that each party is then required to either traverse or concur in the inclusion or exclusion of each asset and liability in the other party's detailed descriptive list. Thereafter, the trial court conducts a trial of the traverses, at which trial, the court "must determine the community assets and liabilities." LSA-R.S. 9:2801(A)(1) & (2).

While the trial court's dismissal of Sandra's action for judicial partition of community property could be viewed as a determination that all assets and liabilities listed in her detailed descriptive list were the separate assets and liabilities of Donald, we consider the more appropriate action pursuant to LSA-R.S. 9:2801 to be the rendition of an order or judgment

specifically decreeing the listed assets as separate or community, especially given that some of the listed assets are real property and the listed liability is a mortgage appearing in the name of both parties for one of the listed homes. See generally Brimer v. Brimer, 95-592 (La. App. 3rd Cir. 11/2/95), 664 So. 2d 622, 623.

If the court indeed found that all of the listed assets and liabilities were the separate property of Donald, then a further provision in such judgment dismissing Sandra's action for judicial partition of community property would be appropriate. However, our review of the record demonstrates that the focus of the proceedings below was Donald's personal injury settlement and the resulting monthly payments made to him. Accordingly, in the interests of justice, we are constrained to vacate the portion of the judgment dismissing Sandra's action for judicial partition of community property in the absence of a specific determination and declaration as to the classification of the remaining assets and liabilities listed in Sandra's detailed descriptive list.

CONCLUSION

For the above and foregoing reasons, the portion of the February 5, 2007 judgment decreeing that all money received by Donald from his personal injury settlement, including annuity payments, is his separate property is affirmed. The portion of the judgment dismissing Sandra's action for judicial partition of community property, if any exists, is vacated, and this matter is remanded for further proceedings consistent with the views expressed herein. In all other respects, the judgment is affirmed. Costs of this appeal are assessed against Sandra Adams.

AFFIRMED IN PART; VACATED IN PART; AND REMANDED FOR FURTHER PROCEEDINGS.