NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0452

SUCCESSION OF WILDA JEAN BARNETT HUTCHINSON

DATE OF JUDGMENT: DEC 2 1 2011

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 13505, DIV. H, PARISH OF LIVINGSTON
STATE OF LOUISIANA

HONORABLE ZORRAINE M. WAGUESPACK, JUDGE

* * * * * *

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: **VACATED AND REMANDED.**

KUHN, J.

Appellant, Susan B. Landrum, appeals a trial court judgment granting a motion to traverse a detailed descriptive list and ordering certain items of movable property to be stricken from the list, based on the court's finding that the disputed items did not belong to the succession. For the following reasons, we vacate and set aside the judgment and remand this matter to the trial court.

FACTS AND PROCEDURAL HISTORY

Following the death of Harry Hutchinson, Jr., a judgment of possession was rendered in his succession recognizing his four children, Jondalyn Kismet Hutchinson Whitis, Robert Rhom Hutchinson, Jodi Lee Hutchinson Williamson, and Howard Coyt Hutchinson ("the Hutchinsons") as his only heirs. The judgment of possession further recognized Wilda Jean Barnett Hutchinson, the Hutchinsons' stepmother, as the decedent's surviving spouse and as owner of one-half of the community property belonging to the succession and ordered that the property inherited by the Hutchinsons was subject to a usufruct in her favor.

Following the death of Mrs. Hutchinson many years later, her succession was opened, and DeAnn Johnson, Mrs. Hutchinson's granddaughter, was named as the independent executor thereof. The Hutchinsons filed a claim against Mrs. Hutchinson's succession pursuant to La. C.C.P. art. 3245 in which they asserted that they were the rightful owners and requested the return of an antique breakfront cabinet and several paintings they allege were the separate property of their father, although they had remained in the possession of Mrs. Hutchinson following his death. Thereafter, they filed a "Motion to Compel Sworn Descriptive List and for Preliminary Injunction" in which they alleged their claim for the return of these items was rejected by the succession representative. Accordingly, they requested that she be compelled to file a sworn detailed

descriptive list in order to give them the opportunity to traverse the inclusion on the list of the disputed items. They also requested a preliminary injunction prohibiting the succession representative from filing a petition for possession or otherwise seeking to place anyone other than themselves into possession of the disputed property on the list. The matter was set for hearing on June 21, 2010.

Prior to that date, the succession representative filed a sworn detailed descriptive list that included the disputed breakfront cabinet and paintings as property of Mrs. Hutchinson's succession. The Hutchinsons responded by filing a motion to traverse the descriptive list in which they claimed to be the rightful owners of the breakfront cabinet and paintings. They requested that the succession representative be ordered to remove these items from the descriptive list and place them in their possession. The matter was set for hearing on the same date as the Hutchinsons' prior motion.

At the beginning of the motion hearing, the attorney for the succession representative informed the trial court that the succession representative had that morning divested the succession of any ownership interest in the disputed property by donating whatever interest the succession possessed therein to Mrs. Landrum, one of Mrs. Hutchinson's daughters. He presented documentation reflecting that the donation by authentic act had been recorded in the conveyance records that date. He further informed the court that Mrs. Landrum was the only one of Mrs. Hutchinson's three heirs who was interested in acquiring ownership of the disputed items.

Apparently, Mrs. Landrum and her attorney were both present in the courtroom at that time. While emphasizing that he was not making an appearance, her attorney suggested to the court that, since Mrs. Landrum was now the owner of the disputed property and was not a party to the proceedings, the matter should be

continued to allow her joinder. The trial court stated that it would hear the witnesses who were present and make a note of evidence. The trial court offered Mrs. Landrum's attorney the opportunity to remain and cross-examine the witnesses, but that offer was declined. Thereafter, Mrs. Landrum and her attorney departed.

At the conclusion of the hearing, the trial court ruled that the breakfront cabinet and paintings belonged to the Hutchinsons as the heirs of Harry Hutchinson, Jr., rather than to the succession of Mrs. Hutchinson. Accordingly, it rendered a written judgment granting the motion to traverse, striking the disputed items from the detailed descriptive list, and ordering that the Hutchinsons be allowed to take possession of the items. The court further ordered that the Hutchinsons not transfer or alienate any of the items until the judgment was final, pending any appellate review. Finally, the trial court designated the judgment as a final judgment pursuant to La. C.C.P. art. 1915(B)(1).[1] Mrs. Landrum now appeals.[2]

ANALYSIS

In several assignments of error, Mrs. Landrum argues that the trial court erred in rendering judgment affecting ownership of the breakfront cabinet and paintings when she was not joined as a party. As the record owner of these items, she asserts she was an indispensable party to the proceedings. In the alternative, she contends the trial court erred in finding that the Hutchinsons established ownership of the disputed property.

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[1] In view of its finding that the Hutchinsons were the owners of the disputed property and its order that they be given possession thereof, the trial court found their request for a preliminary injunction to be moot.

[2] The trial court denied Mrs. Landrum's request for a suspensive appeal, but granted her alternative request for a devolutive appeal. Mrs. Landrum filed a writ application seeking review of this ruling, which was denied by this Court. ***In the Matter of the Succession of Wilda Jean Barnett Hutchinson***, 2010-1593 (La. App. 1st Cir. 11/22/10) (unpublished).

The joinder of parties required for just adjudication is addressed in La. C.C.P. art. 641 as follows:

> A person shall be joined as a party in the action when either:
>
> (1) In his absence complete relief cannot be accorded among those already parties.
>
> (2) He claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:
>
> (a) As a practical matter, impair or impede his ability to protect that interest.
>
> (b) Leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

Therefore, under Article 641 a person *shall* be joined as a party in the action when he claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may, as a practical matter, impair or impede his ability to protect that interest.[3] See ***Terrebonne Parish School Board***, 852 So.2d at 544.

The determination of whether there is an unjoined indispensable party must be made prior to any adjudication by the trial court. See ***Terrebonne Parish School Board***, 852 So.2d at 544. It is beyond question that courts are without power to adjudicate the rights of a person who is not a party to the litigation. ***Terrebonne Parish School Board***, 852 So.2d at 545-46. Thus, an adjudication made without joining a person described in Article 641 as a party to the litigation is an absolute nullity. ***Terrebonne Parish School Board***, 852 So.2d at 544.

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[3] Louisiana Code of Civil Procedure articles 641 through 646, dealing with joinder of parties, were amended by 1995 La. Acts, No. 662, § 1. Prior to the amendments, the party described in Article 641 was referred to as an indispensable party, and there could be no adjudication unless all indispensable parties were joined in the action. Although the latter provision no longer appears in Article 641, by using the word "shall," the article still makes mandatory the joinder of the person described in Article 641 as a party to the suit. ***Terrebonne Parish School Board v. Bass Enterprises Production Company***, 02-2119 (La. App. 1st Cir. 8/8/03), 852 So.2d 541, 544, ***writs denied***, 03-2786, 03-2873 (La. 1/9/04), 862 So.2d 984-85.

Accordingly, when an appellate court notices the absence of indispensable parties to a suit on appeal, the appropriate remedy is to set aside the judgment and remand the matter for joinder of the absent party and retrial. See La. C.C.P. arts. 645, 646 & 927(B); ***Terrebonne Parish School Board***, 852 So.2d at 546.

Therefore, the crucial inquiry in the instant case is whether Mrs. Landrum claims an interest that is so interrelated to the controversy and is so situated that the adjudication of the matter in her absence may, as a practical matter, impair or impede her ability to protect that interest. We find that she does claim such an interest, which required that she be joined as an indispensable party. In their motion to traverse, the Hutchinsons claimed ownership of the disputed breakfront cabinet and paintings, which they alleged were the separate property of their deceased father. On this basis, they disputed the inclusion of these items on the descriptive list as property belonging to the succession of Mrs. Hutchinson and sought to have the items stricken from the list and possession thereof delivered to them. Thus, the Hutchinsons' claims squarely placed ownership of the disputed property at issue.

Regarding this issue, counsel for Mrs. Hutchinson's succession representative introduced evidence at the motion hearing that the latter had donated whatever ownership interest the succession possessed in the disputed property to Mrs. Landrum on the morning of the hearing. It was further shown that the act of donation was recorded in the public records. Therefore, as the record owner of the disputed property, Mrs. Landrum plainly had an interest in any proceedings potentially affecting ownership of that property.

Moreover, her absence from the proceedings clearly impaired her ability to protect that interest. The judgment on appeal states that the disputed items are the property of the Hutchinsons as the heirs of Harry Hutchinson, Jr., orders the items

stricken from the descriptive list, and orders that possession of the property be delivered to the Hutchinsons. The overall effect of this judgment is that Mrs. Landrum, the record owner of the breakfront cabinet and paintings, has been judicially determined not to be the owner thereof, even though she was never made a party to the proceedings. Under these circumstances, we find that no just adjudication of the ownership issue could be made without joining Mrs. Landrum as a party. See La. C.C.P. art. 641; ***Frey v. American Quarter Horse Association***, 95-157 (La. App. 5th Cir. 7/25/95), 659 So.2d 849, 851-852 (record owner of horses was "indispensable party" to action against horse association to have the plaintiffs declared the true owners of the horses and to have the association's records changed to reflect that ownership); ***Kimble v. Kimble***, 552 So.2d 1343, 1344 (La. App. 5th Cir. 1989) (party listed on mobile home title as owner was an indispensable party to proceedings adjudicating ownership of the mobile home).

The Hutchinsons argue that they were not required to add Mrs. Landrum as a party, because the succession representative was the proper party against whom to pursue their claim against the succession. They further contend that the purported donation of the property to Mrs. Landrum was an absolute nullity because there was no legal basis for the succession representative to donate disputed property on behalf of the succession. Finally, they argue that Mrs. Landrum cannot now complain that her ability to protect her interests was impeded by her absence from the hearing, since she declined the trial court's offer to allow her attorney to participate therein and voluntarily removed herself.

We find these arguments to be without merit. It is true that under La. C.C.P. art. 734 the succession representative initially was the proper party defendant for the Hutchinsons to pursue their claim against Mrs. Hutchinson's succession. However, once it was learned that Mrs. Landrum was the record owner of the

disputed property pursuant to a donation from the succession representative, it became necessary that she also be joined as a party. The requirement that she be joined arose, not because she was one of the heirs in the succession, but due to her status as the record owner of the disputed property. Without her being made a party, there could be no just adjudication of the property's ownership. With respect to the Hutchinsons' arguments attacking the validity of the donation, that is a matter that goes to the merits of their ownership claim, rather than to the issue of whether it was necessary to join Mrs. Landrum as a party.

Lastly, we reject the Hutchinsons' contention that Mrs. Landrum's ability to protect her interests was not impeded because her absence from the motion hearing was self-imposed. A person whose interests may be affected by a proceeding in which that person has not been joined as a party does not have a duty to intervene in or participate in that proceeding. Rather, the burden is placed on those already parties to the litigation to bring in all persons that are required to be joined under Article 641. See ***Stephenson v. Nations Credit Financial Services Corporation***, 98-1688, 98-1689 (La. App. 1st Cir. 9/24/99), 754 So.2d 1011, 1020-21. In this case, Mrs. Landrum had no obligation to participate in the motion hearing, since she was never made a party to the proceedings.

CONCLUSION

For the above reasons, the judgment of the trial court is hereby vacated and set aside and this matter is remanded for further proceedings consistent with this opinion.[4] All costs of this appeal are to be paid by the Hutchinsons.

VACATED AND REMANDED.

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[4] In view of our conclusion that the trial court judgment must be vacated due to the nonjoinder of Mrs. Landrum, we do not address her alternative contention that the trial court erred in finding that the Hutchinsons established ownership of the disputed property.