English Translation of the Judgment of the Court

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| Droit de la famille — 24292 | | 2024 QCCA 297 |
| COURT OF APPEAL | | |
| CANADA | | |
| PROVINCE OF QUEBEC  REGISTRY OF MONTREAL | | |
|  | | |
| No.: | 500-09-030643-233 | |
| (760-12-026122-196) | | |
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| MINUTES OF THE HEARING | | |
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**WARNING: Disclosure and circulation prohibited: The *Code of Civil Procedure* (“*C.C.P*.”) provides that, except as authorized by the court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a family matter to be identified (art. 16 *C.C.P.*).**

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| DATE: March 8, 2024 |  |
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| PANEL: THE HONOURABLE | JULIE DUTIL, J.A. |
|  | SUZANNE GAGNÉ, J.A. |
|  | LORI RENÉE WEITZMAN, J.A. |

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| APPELLANT/INCIDENTAL RESPONDENT | COUNSEL |
| D. E. | Mtre Julie Grant  (*Dunton, Rainville*) |
| RESPONDENT/INCIDENTAL APPELLANT | COUNSEL |
| C. H. | Mtre Valérie Assouline  Mtre REBECCA LEVASSEUR  (*SOS Avocats*) |

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| On appeal from a judgment rendered on June 20, 2023 (corrected on July 11, 2023) by the Honourable Madam Justice Janick Perreault of the Superior Court, District of Beauharnois. |

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| NATURE OF THE APPEAL: | **Divorce – Family patrimony – Incidental appeal.** |

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| Clerk at the hearing: Sarah-Maude Lalande | Courtroom: Pierre-Basile-Mignault |

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| HEARING |

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|  | **Continuation** of the hearing of March 7, 2024. Counsel were excused from appearing in Court.  **BY THE COURT:** Judgment – see page 4. |
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| Sarah-Maude Lalande, Clerk at the hearing |

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| JUDGMENT |

**WARNING: Disclosure and circulation prohibited: The *Code of Civil Procedure* (“*C.C.P*.”) provides that, except as authorized by the court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a family matter to be identified (art. 16 *C.C.P.*).**

1. The Superior Court judgment granted the parties’ divorce and ruled on the accessory measures, including the partition of the family patrimony and the dissolution of the partnership of acquests.[[1]](#footnote-2)
2. Both parties are dissatisfied with the judgment. Mr. E.’s appeal raises the following questions:
3. Did the Judge err in law by not providing sufficient motives for her decision?
4. Did the Judge err in law by deciding that the amount of $54,678.47, representing 50% of the common charges owed by the Respondent, to the Appellant, since March 2019, would not be deducted from the proceeds of sale of the co-owned residence?
5. Did the Judge also err in law by deciding that the renovation costs, amounting to $20,000.00, would not be taken into account in the partition calculation?

[Reference omitted]

1. In her incidental appeal, Ms. H. submits that the judge erred:

* By refusing to deduct an amount of $20,462 used to acquire the first family residence prior to the marriage;
* By deciding that Mr. E. did not owe her an indemnity for the use and exclusive enjoyment of the family residence since March 2019;
* By refusing to deduct from her acquests an amount of $31,719 that she inherited from her father.

1. For the following reasons, the Court is of the opinion that both appeals must fail.

***Common expenses, cost of renovations, and indemnity for the use and exclusive enjoyment of the family residence***

1. After deciding that the net value of the family residence would be established as at the date of the sale, the judge refused to make adjustments to reflect the fact that Mr. E. had borne all of the common expenses for nearly four years (from March 2019 to February 2023). She granted him the use and exclusive enjoyment of the family residence until its sale and ordered him to continue paying the common expenses on his own. In short, she dismissed Mr. E.’s claim based on art. 1019 *C.C.Q.*, which may, at first glance, seem unfair because Ms. H. will benefit from the increase in value at the time of the home’s sale.
2. The judge also dismissed Ms. H.’s claim based on art. 1016 *C.C.Q.* (indemnity for the use and exclusive enjoyment of the home) because the claim was tardy, while pointing out that Ms. H. was not contributing to the common expenses. On this subject, she stated the following:

[80]  Moreover, the Mother never assumed her share of the payments related to the building. Only the Father assumed the payment of all expenses relating to the house. If an indemnity were to be granted in favour of the Mother, all of the costs assumed by the Father up to the date of trial would have to be taken into account, which would significantly dilute the claim. The law does not allow one to obtain only the advantages of co-ownership and to be exempted from the intrinsic obligations of co-ownership.[[2]](#footnote-3)

[Reference omitted]

1. At paragraph 6 of the corrected judgment, the judge confirmed that she intended to effect a formof compensation, stating that “the claim of this sum was taken into consideration in rejecting the Applicant’s request for an allowance for his occupation of the family residence”.
2. Despite the judge not expressing it in so many words, the practical effect of the judgment was to award Ms. H. an indemnity equal to half of the common expenses as of March 2019, which is approximately $1,163 per month.[[3]](#footnote-4)
3. Considering the context of the breakup and the judge’s very broad discretionary power,[[4]](#footnote-5) there is no reason to intervene. Although the judge did not state it clearly, she considered that half of the common expenses served in lieu of an indemnity, notwithstanding that Ms. H.’s claim was late. This solution seems fair in the circumstances. Indeed, Mr. E. is liable for an indemnity.[[5]](#footnote-6) As for Ms. H., she cannot reasonably expect to benefit from the increase in value of the home without contributing to the common expenses relating thereto.[[6]](#footnote-7)
4. As for the cost of the renovation work, admittedly, the judge did not mention it. It can be inferred from paragraphs 138 and 143 of the judgment under appeal that the judge dismissed this claim, but her reasons are silent as to her grounds for this conclusion. Consequently, the Court itself must consider the evidence.[[7]](#footnote-8) Contrary to Mr. E.’s argument, the evidence[[8]](#footnote-9) does not show that the renovations added 18.75% to the value of the residence, nor that they cost $20,000. It can even be inferred from Ms. H.’s testimony that the cost of the renovation work is covered by the partial agreement on the accessory measures signed by the parties.[[9]](#footnote-10)

***Deduction of an amount of $20,462 used to acquire the first family residence***

1. On this point, the judge found that Ms. H. had not discharged her burden of proof and that her claim was late.
2. There is no reviewable error in this finding. Ms. H. did not establish the net value of the first family residence at the time of the marriage. Moreover, both parties testified that Ms. H. had kept part of the proceeds of sale of this house. Their testimonies are contradictory on the amount, but the evidence as a whole supports Mr. E.’s claim that Ms. H. was fully reimbursed for her investment.

***Deduction of an amount of $31,719 originating from an inheritance***

1. According to art. 459 *C.C.Q.*, “[a]ll property is presumed to constitute an acquest, […] unless it is established that it is private property”. Thus, the burden of proving that property should be classified as private property lies on the party wishing to rely on this classification.[[10]](#footnote-11)
2. In the case at bar, the judge concluded that Ms. H. had not proved that part of the funds in her bank account came from the inheritance she had received from her father. The judge explained as follows:

[100]  Even if it is accepted that the Mother received an inheritance, how can the composition of the balance of this account on the day of the parties’ separation be determined, given the many transactions that took place? There is considerable confusion here.

[101]  However, for a party to be able to recover his or her own property, it must still exist on the date of partition and be identifiable. The money must be held separately, identified clearly and cannot have been co-mingled with other monies. This is not the case here. She has not shown that the inheritance deposited in her account was still partially in existence at the time of the separation, let alone what the balance would be.[[11]](#footnote-12)

1. The evidence supports this finding, and Ms. H. has not shown any error that would warrant the Court’s intervention.

FOR THESE REASONS, THE COURT:

1. **DISMISSES** the principal appeal and the incidental appeal, without legal costs given the nature of the matter.

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|  | JULIE DUTIL, J.A. |

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|  | SUZANNE GAGNÉ, J.A. |

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|  | LORI RENÉE WEITZMAN, J.A. |

1. *C.H. v. D.E.*, Beauharnois Sup. Ct., No. 760-12-026122-196, June 20, 2023 (corrected on July 11, 2023), Perreault, J.S.C. [Judgment under appeal]. [↑](#footnote-ref-2)
2. Judgment under appeal, para. 80. [↑](#footnote-ref-3)
3. The amount of $54,678 covers a period of 47 months (from March 2019 to February 2023). [↑](#footnote-ref-4)
4. *Droit de la famille — 163076*, 2016 QCCA 2040, para. 39. [↑](#footnote-ref-5)
5. Art. 1016 *C.C.Q.* [↑](#footnote-ref-6)
6. Art. 1019 *C.C.Q.* See also: *Droit de la famille — 20471*, 2020 QCCA 478, paras. 26-30; *Droit de la famille — 121389*, 2012 QCCA 1071, paras. 7-8. [↑](#footnote-ref-7)
7. *Droit de la famille — 091541*, 2009 QCCA 1268, para. 60. [↑](#footnote-ref-8)
8. Mr. E. essentially relies on exhibit D-2F, Home Market Assessment (per realtors: May 13, 2020 and July 30, 2021) and Municipal Evaluation. [↑](#footnote-ref-9)
9. Section 6 of that agreement states: “6. With regards to the former family residence, the parties have however agreed that the joint personal line of credit, used by the parties for renovations and totalling **$ 60 000.00** be equally partitioned and taken into account in the calculation of the net value of the said property, in all cases” [Bold in the original]. [↑](#footnote-ref-10)
10. *Droit de la famille — 191077*, 2019 QCCA 1003, para. 11. [↑](#footnote-ref-11)
11. Judgment under appeal, paras. 100-101. [↑](#footnote-ref-12)