

CASENOTE

LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM (LASERS) V. MCWILLIAMS: CONFIRMING SURVIVOR BENEFITS AS COMMUNITY PROPERTY

INTRODUCTION

When a couple divorces in Louisiana, a partition of the community property that the husband and wife co-own is generally required.¹ Frequently a retirement plan earned through employment is among the assets partitioned. Normally, the division of an asset is a relatively simple process when its present value can be readily ascertained at the time of the partition. However, the partition becomes more complex when the asset's present value cannot be accurately calculated for years to come. Such is often the case with retirement benefits. Yet, over the past three decades, the jurisprudence has evolved to fairly divide such assets in accordance with the Louisiana precept that ownership during marriage is a partnership in which husband and wife own equal shares.

The addition of survivor benefits, however, to the list of offerings paid by many retirement programs has revived several community property issues the jurisprudence was thought to have resolved. Designed to compensate the family members of an employee who dies prior to retirement, survivor benefits are paid by employers in lieu of retirement proceeds. For employees of the State of Louisiana, a state statute regulates the distribution of their survivor benefits. This statute, however, omits former spouses from the list of named beneficiaries. As a result, courts have been faced with determining (1) whether survivor benefits constitute community property in which a former spouse would have a cognizable interest and (2) whether the absence of "former spouses" from the statute's list of beneficiaries is an intentional act of the legislature or an omission meant to be interpreted in reference to other laws on the same subject. The 2008 case, *Louisiana State Employees' Retirement System (LASERS) v.*

1. See generally 1 MAUNSEL W. HICKEY ET AL., *LOUISIANA PRACTICE SERIES: ESTATE PLANNING IN LOUISIANA* §§ 4:30, 4:31 (2d ed. 2009) (explaining voluntary and judicial partition of community property in the context of divorce).

McWilliams, presents these very issues.²

This note will address the Louisiana Supreme Court's opinion in *LASERS*, which held that the omission of "former spouse" from a statutory list of beneficiaries does not deprive a former spouse of her interest in survivor benefits as they constitute acquirable community property.³ Additionally, this note will examine the propriety of the court's decision with regard to the application of longstanding precedent, relevant statutory language, and public policy considerations underlying the community property regime in Louisiana. To achieve these ends, Part II will discuss the factual and procedural background of the case, including the judicial partition by the 21st Judicial District Court. Parts III through V will explain: (1) community property as a legal doctrine in Louisiana, (2) the nature and regulation of *LASERS* as a public retirement system, and (3) the evolution of jurisprudence integrating retirement benefits and community property. Part VI will capture and summarize the reasoning of the Louisiana Supreme Court's decision. Finally, Part VII will analyze the opinion, weighing the relevant precedents and policy considerations behind the issues and the adequacy of the court's ruling.

FACTS AND PROCEDURAL HISTORY

The circumstances leading to *LASERS v. McWilliams* began on April 26, 1969, with the marriage of Joel and Dianne McWilliams.⁴ Their marriage initiated a community property regime under Louisiana marital law.⁵ On January 10, 1972, Joel was hired as an engineer by the State of Louisiana, Department of Transportation and Development.⁶ As a condition of employment, Joel joined the state employee retirement system, commonly referred to as *LASERS*.⁷ During their marriage, Joel and Dianne had two children: Jodee, born August 24, 1973, and Joelle, born November 10, 1981.⁸ After eighteen years together, Joel and Dianne filed for divorce on June 15, 1987, which terminated the community property regime between them.⁹ The divorce was finalized on October 12, 1987.¹⁰ A

2. La. State Employees' Ret. Sys. (*LASERS*) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036.

3. *Id.* at 1037.

4. *Id.*

5. A brief background in Louisiana community property law is provided *infra* at Part III.

6. *LASERS*, 996 So. 2d at 1037.

7. *Id.*; see also LA. REV. STAT. ANN. § 11:411 (2002) (stating in pertinent part that "[e]ach person who becomes an employee in the state service, except those specifically excluded . . . shall become a member of the system as a condition of employment").

8. La. State Employees' Ret. Sys. (*LASERS*) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1037.

9. *Id.*; Brief of Defendant-Appellant at 2, *LASERS*, 996 So. 2d 1036 (No. 06-2191).

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December 15, 1989, judgment of the 21st Judicial District Court, Parish of Tangipahoa, partitioned the former community by stipulation of the parties, stating in pertinent part: “Dianne McWilliams’ interest in Joel McWilliams’ [LASERS] plan is hereby recognized and shall be calculated as follows when and if he retires, terminates employment, or *dies*:

$$\begin{array}{r}
 \text{Portion of retirement/} \\
 \text{pension attributable to} \\
 \text{creditable service during} \\
 \text{existence of community} \\
 \hline
 \end{array}
 \times 50\% \times \text{annuity (or lump sum} \\
 \text{payment)} = \text{Dianne's} \\
 \text{portion}$$

Pension/ retirement
attributable to [Joel's] total
creditable service

Dianne McWilliams’ portion shall be paid directly to her from the retirement agency.”¹¹

Nine years later, a judgment of the same court (dated August 24, 1998) set Joel’s amount of creditable service during the existence of his community with Dianne at 217 months and twenty days.¹² The judgment of the district court also recognized Dianne’s interest in Joel’s U.S. Army Reserve Retirement Plan and Joel’s interest in Dianne’s retirement plan with the Diocese of Baton Rouge.¹³ Additionally, the court ordered Dianne to pay Joel \$2,263.50 to equalize the partition of their community property.¹⁴

Approximately six years after Joel and Dianne’s divorce, Joel married Jane McMahon on May 15, 1993.¹⁵ Just over a decade later, on May 24, 2003, Joel died while still an employee of the State of Louisiana and an

10. La. State Employees’ Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1037.

11. *Id.* at 1038 (emphasis in original) (parenthesis and “Dianne’s portion” section added for clarity).

12. *Id.* at 1038 n.1. However, the period established by this judgment (04/26/69-06/15/87) erroneously fixed the start of Joel’s creditable service to the State on his wedding day rather than his date of hire, a factor subsequently corrected in the concursus proceeding of the 19th Judicial District Court mentioned below. *Id.* The denominator of the formula (total creditable service) is determinable once service ends as a result of retirement, termination, or death, as the language of the judgment indicates. *Id.* at 1038.

13. La. State Employees’ Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1038.

14. *Id.*

15. *Id.*

active member of LASERS.¹⁶ Following Joel's death, his widow Jane, his daughter Joelle, and his former spouse Dianne all filed applications for survivor benefits with LASERS.¹⁷ Recognizing the intent of Joel and Dianne to distribute survivor benefits according to the community property division, LASERS invoked a concursus proceeding in the 19th Judicial District Court, Parish of East Baton Rouge, under article 4651 of the Louisiana Civil Code, to determine the proper method of benefit distribution.¹⁸ At the proceeding, the parties specified that Dianne's interest in Joel's LASERS plan would be 24.60 percent, that her monthly payments would be \$1,144.92, and that the contributions made to the community during its existence totaled \$25,963.62.¹⁹ Using these stipulations, LASERS either retained the disputed portion of the benefits, \$1,144.92 per month, or placed the disputed portion in the registry of the court to be relieved of liability and then began distributing the remainder of the survivor benefits to Jane and Joelle in accordance with the percentages set forth in the LASERS Member Handbook and Title 11, section 471 of the Louisiana Revised Statutes (section 471).²⁰

Finding the disputed funds to be survivor benefits rather than retirement benefits, the 21st Judicial District Court declined to apply the formula for distributing retirement funds attributable to a former community as set forth by the Louisiana Supreme Court in *Sims v. Sims*.²¹ As survivor benefits of a state program, the district court held that their distribution was determined pursuant to section 471, which identified only surviving spouses, minor children, and disabled children of any age as

16. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1038.

17. *Id.* While Joelle had since reached the age of majority, LASERS regulations allowed her to keep "minor child" status as a full-time university student to qualify for survivor benefits. *Id.*; see also LA. REV. STAT. ANN. § 11:403(19) (2002).

18. *LASERS*, 996 So. 2d at 1039. "A [concurus proceeding is a] proceeding in which two or more creditors claim, usu. adversely to each other, an interest in a fund or estate so that they can sort out and adjudicate all the claims on the fund." BLACK'S LAW DICTIONARY 310 (8th ed. 2004). The evidence cited by LASERS to support its position that Dianne was entitled to survivor benefits was correspondence between Joel's attorney and the attorney for LASERS, prior to Joel's death. *LASERS*, 996 So. 2d at 1039 n.4. The document authored by counsel for LASERS stated in pertinent part that the language of the 21st JDC judgment, "lead LASERS to believe that it was the intent of the parties to divide any payment whatsoever with [Joel's] former spouse . . . [t]his would include survivor benefits." *Id.* (emphasis added).

19. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1039.

20. *Id.* "The record is unclear concerning whether LASERS deposited any money into the registry of the court; however, there [was] sufficient evidence [for the Louisiana Supreme Court to later] calculate the disputed portion of benefits claimed by Dianne." *Id.* at 1039 n.5.

21. *Id.* at 1040 (citing *Sims v. Sims*, 358 So. 2d 919 (La. 1978)).

recipients.²² Former spouses were absent from this list of statutory beneficiaries.²³ Accordingly, Jane, as Joel's surviving spouse, and Joelle, as Joel's minor child, were the only individuals who qualified for benefits.²⁴ After consideration of the longstanding judgment of the Tangipahoa district court (which partitioned the former community and was meant to govern the distribution of benefits upon Joel's death), the district court declined to abide by the ruling of its sister court.²⁵ It explained that "[e]ither [the Tangipahoa court] need[ed] to revisit their ruling or take it up on appeal if one side or the other d[id] not feel that that was an appropriate ruling."²⁶

Dianne subsequently appealed the ruling of the district court to the Louisiana Court of Appeal for the First Circuit.²⁷ She assigned error to the district court for distinguishing survivor benefits from retirement benefits and for refusing to honor the original partition judgment.²⁸ Alternatively, Dianne argued that the district court erred in declining to award her one-half of the community contributions to the retirement plan accrued during her marriage to Joel.²⁹

The court of appeal determined that, as a matter of public policy, survivor benefits existed to protect family members from destitution after the death of an employed member.³⁰ Because section 471 specifically defined which family members were eligible for benefits, the court of appeal found the omission of "former spouse" from the list of beneficiaries to be an intentional act of the legislature.³¹ Accordingly, the court reasoned that Dianne's status as a former spouse precluded her from collecting benefits under the plan.³² However, the court of appeal held that Dianne was not *completely* barred from recovery because "the return of an amount equal to the total accumulated contributions [was] guaranteed."³³ As a

22. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1040 (citing LA. REV. STAT. ANN. § 11:471 (2003)).

23. *Id.*

24. *Id.* at 1040.

25. *Id.*

26. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 05-0938 (La. App. 1 Cir. 6/9/06); 938 So. 2d 782, 784, *rev'd*, 996 So. 2d 1036 (2008).

27. *LASERS*, 996 So. 2d at 1040.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 05-0938 (La. App. 1 Cir. 6/9/06); 938 So. 2d 782, 785, *rev'd*, 996 So. 2d 1036 (2008).

33. *Id.* The court declined to explain what is meant by "guarantee." *See id.* The Louisiana Supreme Court described this portion of the ruling as an "apparent attempt to fashion an equitable remedy." *LASERS*, 996 So. 2d at 1041.

result, the court awarded her half the amount of Joel's accumulated contributions paid to the plan during their community.³⁴

In response, both Dianne and LASERS applied for writs of certiorari with the Supreme Court of Louisiana.³⁵ The court granted certiorari and held that survivor benefits were not community property because one's right to the benefits does not exist until the death of a spouse enrolled in LASERS.³⁶ In doing so, the court overruled a former opinion on the same issue and held that a former spouse had no claim to survivor benefits because the benefits did not exist during the community, and therefore could not be acquired by the community.³⁷ Following the court's decision, a petition for rehearing was filed and later granted on March 14, 2008.³⁸ The court held on rehearing that a former spouse *is* entitled to her share of survivor benefits payable under a public retirement plan.³⁹

RELEVANT LEGAL PRINCIPLES AND JURISPRUDENCE

To understand the issues of community property in the context of LASERS, it is necessary first to understand community property law generally, the statutory framework of the LASERS retirement system, and the relevant jurisprudence addressing the issue of retirement (and other) benefits as community property.

LOUISIANA COMMUNITY PROPERTY LAW

Generally, "community property" refers to the joint ownership of assets acquired by a husband and wife during marriage.⁴⁰ Specifically, community property is Louisiana's default matrimonial regime, which the Civil Code describes as a "system of principles and rules governing the ownership and management of the property of married persons as between themselves and toward third persons."⁴¹ Community property is not unique

34. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 05-0938 (La. App. 1 Cir. 6/9/06); 938 So. 2d 782, 785-86, *rev'd*, 996 So. 2d 1036 (2008).

35. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191, 06-2204 (La. 2/2/07), 948 So. 2d 183.

36. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191U, 06-2204U, slip op. at 33-34 (La. 12/7/07), <http://www.lasc.org/opinions/2007/06C2191cw2006C2204.opn.pdf>, *vacated on rehearing*, 996 So. 2d 1036 (La. 2008) [hereinafter *LASERS* First Hearing].

37. *Id.* at 29.

38. News Release, John Tarlton Olivier, Clerk of Louisiana Supreme Court (March 14, 2008), http://www.lasc.org/news_releases/2008/2008-21.asp (announcing that the court was granting a rehearing in *LASERS*).

39. La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036.

40. BLACK'S LAW DICTIONARY 297 (8th ed. 2004).

41. LA. CIV. CODE ANN. arts. 2325, 2334 (2009).

to Louisiana.⁴² In fact, the matrimonial regime has existed as a local institution since the eighteenth century.⁴³ As such, the policy of the state has always been that spouses share equally in the acquets and gains of either spouse during marriage.⁴⁴ The moment a member of the community acquires property is the moment both husband and wife are vested with an undivided one-half interest in the ownership of that property.⁴⁵ The ownership of one spouse is not a status contingent upon the gratuity of the other; each spouse's interest exists independently and equally.⁴⁶ Upon the dissolution of the community, a former spouse "is entitled to secure the delivery of this one-half right and ownership into her own exclusive management and control; and the courts have no discretion or power whatever to award her less."⁴⁷

While Louisiana's community property laws are reflected in jurisprudence, the articles of the Civil Code are authoritative.⁴⁸ Article 2334 establishes community property as the default marital regime for couples domiciled in Louisiana, regardless of where the couples were domiciled at the commencement of their marriage.⁴⁹ Articles 2336 and 2337 set each spouse's share at one-half ownership in all things acquired during the community's existence and preclude partition, alienation, or encumbrance of this interest prior to termination of the regime.⁵⁰ Under article 2340, community ownership is established as a rebuttable presumption.⁵¹ Articles 2338 and 2341 are significant in that they define what does and does not

42. BLACK'S LAW DICTIONARY 297 (8th ed. 2004). There are eight other community property states: Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington, and Wisconsin. *Id.*

43. Kenneth Rigby, *Matrimonial Regimes: Recent Developments*, 59 LA. L. REV. 465, 467 (1999). For a detailed discussion of Louisiana's community property regime, see 16 KATHERINE S. SPAHT ET AL., *LOUISIANA CIVIL LAW TREATISE: MATRIMONIAL REGIMES* (3d ed. 2009).

44. Rigby, *supra* note 43, at 467. Acquets and gains are those "assets comprising the community property of spouses who are subject to the Louisiana community-property laws." BLACK'S LAW DICTIONARY 24 (8th ed. 2004).

45. LA. CIV. CODE ANN. art. 2336 (2009); *Messersmith v. Messersmith*, 86 So. 2d 169, 173 (La. 1956).

46. *Messersmith v. Messersmith*, 86 So. 2d 169, 173 (La. 1956).

47. *Id.*

48. See, e.g., *La. State Employees' Ret. Sys. (LASERS) v. McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1042-43; *Sims v. Sims*, 358 So. 2d 919, 922 (La. 1978); *T.L. James & Co. v. Montgomery*, 332 So. 2d 834, 834 (La. 1975); *Messersmith*, 86 So. 2d 169.

49. LA. CIV. CODE ANN. art. 2334 (2009). The article states in pertinent part "[T]he legal regime of community of acquets and gains applies to spouses domiciled in this state, regardless of their domicile at the time of marriage or the place of celebration of the marriage." *Id.*

50. LA. CIV. CODE ANN. arts. 2336, 2337 (2009).

51. LA. CIV. CODE ANN. art. 2340 (2009). A "rebuttable presumption" is "[a]n inference drawn from certain facts that establish [sic] a prima facie case, which may be overcome by the introduction of contrary evidence." BLACK'S LAW DICTIONARY 1224 (8th ed. 2004).

constitute community property.⁵² Article 2338 establishes the following:

The *community property* comprises: property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse; property acquired with community things or with community and separate things, unless classified as separate property under article 2341; property donated to the spouses jointly; natural and civil fruits of community property; damages awarded for loss or injury to a thing belonging to the community; and all other property not classified by law as separate property.⁵³

In contrast, article 2341 defines non-community property, called separate property:

The *separate property* of a spouse is his exclusively. It comprises: property acquired by a spouse prior to the establishment of a community property regime; property acquired by a spouse with separate things or with separate and community things when the value of the community things is inconsequential in comparison with the value of the separate things used; [and] property acquired by a spouse by inheritance or donation to him individually⁵⁴

The remaining sections of the Civil Code's community property chapter contain articles detailing the management and termination of the community.⁵⁵ In particular, article 2369.8 establishes that a spouse has the right to demand the partition of community property at any time after termination of the community, with a legal action available if the parties are unable to agree to a partition without judicial involvement.⁵⁶ Otherwise, the two articles defining what constitutes community and separate property, 2338 and 2341 respectively, are the most relevant to the determination of how survivor benefits are classified.⁵⁷

**THE LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM AND LA.
REV. STAT. ANN. § 11:471**

Created by statute and organized under section 401(a) of the Internal Revenue Code, LASERS is "a trust fund created to provide retirement and

52. LA. CIV. CODE ANN. arts. 2338, 2341 (2009).

53. LA. CIV. CODE ANN. art. 2338 (2009) (emphasis added).

54. LA. CIV. CODE ANN. art. 2341 (2009) (emphasis added).

55. LA. CIV. CODE ANN. arts. 2341.1-2358.1 (2009).

56. LA. CIV. CODE ANN. art. 2369.8 (2009).

57. See *La. State Employees' Ret. Sys. (LASERS) v. McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1043; *Sims v. Sims*, 358 So. 2d 919, 919 (La. 1978); *T.L. James & Co. v. Montgomery*, 332 So. 2d 834, 834 (La. 1975).

other benefits for state officers and employees and their beneficiaries.”⁵⁸ With over 60,000 active members in 2007, enrollment in LASERS is mandatory for all employees of the state, except for those expressly excluded by law.⁵⁹ While the primary purpose of LASERS is to administer a retirement and pension plan, the system also provides survivor benefits to qualifying family members in the event that an active LASERS member dies prior to retirement.⁶⁰

Pursuant to Title 11, section 441 of the Louisiana Revised Statutes (section 441), a regular member hired on or before June 30, 2006, is eligible for retirement at the occurrence of any of the following conditions: (1) he has thirty years or more of service at any age; (2) he has twenty-five years or more of service at age fifty-five or thereafter; or (3) he has ten years or more of service at age sixty or thereafter.⁶¹ The retirement benefit is to be paid throughout the LASERS member’s lifetime, unless he selects another payment option pursuant to Title 11, section 446 of the Louisiana Revised Statutes, which allows a member to receive reduced retirement benefits so that payments may continue to a named beneficiary after the member’s death.⁶² A former spouse of a LASERS member may be the named beneficiary or person “nominated” in accordance with the statute.⁶³

If a LASERS member dies *before* retirement, no such benefits are available under sections 441-454; instead, LASERS includes provisions for the payment of survivor benefits to qualifying family members of the decedent.⁶⁴ Surviving spouses, minor children, handicapped children, and mentally disabled children are those who may qualify for survivor benefits under section 471.⁶⁵ The same statute contains the formulas for benefit distribution depending upon which class of statutorily named beneficiary is present (e.g., a surviving spouse with two minor children, or no surviving spouse but one mentally handicapped child, etc.).⁶⁶ If no qualifying family members exist and, therefore, no survivor benefits are payable, then the accumulated contributions of the deceased LASERS member are paid in a

58. LA. STATE EMPLOYEES’ RET. SYS., MEMBERSHIP HANDBOOK 5 (2008) [hereinafter MEMBERSHIP HANDBOOK]; *see generally* LA. REV. STAT. ANN. §§ 401-608 (2002) (composing the chapter that creates and governs LASERS).

59. MEMBERSHIP HANDBOOK, *supra* note 58, at 5; *see* LA. REV. STAT. ANN. § 11:411 (2002).

60. MEMBERSHIP HANDBOOK, *supra* note 58, at 5; *see* LA. REV. STAT. ANN. § 11:471 (2002).

61. LA. REV. STAT. ANN. § 11:441 (2002).

62. LA. REV. STAT. ANN. § 11:446 (2002).

63. *Id.*

64. *See* LA. REV. STAT. ANN. §§ 11:441- 454, 471 (2002).

65. LA. REV. STAT. ANN. § 11:471(D).

66. *Id.*

lump sum refund to his named beneficiary or estate.⁶⁷

Omitted from the text of section 471 is any mention of benefits for “former spouses.”⁶⁸ As a result, section 11:471 fails to resolve the question of whether a former spouse’s community property interest would apply to survivor benefits. However, a general provision applying to all public retirement plans, Title 11, section 291 of the Louisiana Revised Statutes, states in pertinent part:

*Notwithstanding any other provision of law to the contrary, any benefit . . . shall be subject to a court order issued by a court upon or after termination of a community property regime, which order recognizes the community interest of a spouse or former spouse . . . and provides that a benefit or a return of employee contributions be divided by the retirement system with the spouse or former spouse . . .*⁶⁹

This statute established the primacy of a valid judicial partition of community property as applied to benefits paid by any state retirement system.⁷⁰ Pursuant to section 291, appellate courts across Louisiana have consistently held that the partition of retirement benefits in community property judgments will also apply to survivor benefits.⁷¹

JURISPRUDENCE ADDRESSING BENEFITS PAID BY RETIREMENT PLANS AS COMMUNITY PROPERTY

Messersmith v. Messersmith is the jurisprudential predecessor to modern case law addressing retirement benefits as community property.⁷² Decided by the Louisiana Supreme Court in 1956, the case was the first to address whether an asset with undetermined value at the time of divorce should be inventoried as community property.⁷³ In *Messersmith*, the district court was required to facilitate the liquidation and partition of community

67. LA. REV. STAT. ANN. § 11:476 (2002). The statute contains no provision inhibiting a former spouse from being designated the ‘named beneficiary’ of the refund. *See id.*

68. *See* LA. REV. STAT. ANN. § 11:471 (2002).

69. LA. REV. STAT. ANN. § 11:291(B) (2002) (emphasis added).

70. *See id.*

71. *See, e.g.,* Vicknair v. Firefighters’ Pension & Relief Fund, 05-0467 (La. App. 4 Cir. 6/15/05), 907 So. 2d 787; Smith v. Smith, 03-36910 (La. App. 2 Cir. 3/14/03), 839 So. 2d 1255; Kennard v. Kennard, 99-445 (La. App. 3 Cir. 10/06/99), 747 So. 2d 628; Succession of Silbernagel, 96-2755 (La. App. 1 Cir. 2/20/98), 708 So. 2d 485; *see also* Ordoyne v. Ordoyne, 94-1766 (La. App. 1 Cir. 4/7/95), 653 So. 2d 839; Herrington v. Skinner, 93-1556 (La. App. 3 Cir. 6/1/94), 640 So. 2d 748.

72. *Messersmith v. Messersmith*, 86 So. 2d 169 (La. 1956).

73. *See generally* *Messersmith v. Messersmith*, 86 So. 2d 169 (La. 1956).

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property following a divorce.⁷⁴ The court established that a group annuity certificate acquired by the husband through his employer was worthless because it had no present cash or sale value and therefore could not be considered a community asset subject to partition.⁷⁵

After granting certiorari, the Louisiana Supreme Court rejected this categorization because, while the certificate had no present value, it promised certain amounts would be paid upon the husband's retirement or resignation.⁷⁶ Furthermore, the premiums paid to obtain the certificate were from community funds.⁷⁷ The court found that the group annuity certificate qualified as incorporeal, movable property under the Civil Code.⁷⁸ Though the certificate included obligations to pay money at a future time, the court considered the certificate to be property that the husband acquired during the matrimonial regime. Thus, the certificate was determined to be community property in which the wife had a one-half interest at the time of the community's dissolution.⁷⁹

A second item of dispute between the former couple was company stock that the husband received through his employer.⁸⁰ After the district court held that these shares be partitioned in kind, the husband requested that he be allowed to keep the stock and pay his former wife the *value* of half the shares.⁸¹ The husband justified this position by offering the company charter, which required that stock be offered to company officers or shareholders before being transferred to a third party (to restrict ownership of the company).⁸² Considering this, the Louisiana Supreme Court reasoned that such a ruling would run afoul of the state's established community property regime.⁸³ The court held that restrictive provisions of company charters could not operate to deprive a spouse of her vested interest in one-half of the assets acquired during marriage.⁸⁴ Accordingly, the wife was entitled to ownership of half of the shares themselves.⁸⁵ This

74. *Messersmith v. Messersmith*, 86 So. 2d 169, 171-72 (La. 1956).

75. *Id.* at 173. At the time of this case, a group annuity policy provided by an employer had no cash refund value before the occurrence of the designated event on which the insurance became payable. *Id.* at 174.

76. *Id.* at 173-74.

77. *Id.* at 174.

78. *Id.*

79. *Id.*

80. *Id.* at 171-72.

81. *Messersmith v. Messersmith*, 86 So. 2d 169, 171-72 (La. 1956).

82. *Id.* at 172.

83. *Id.*

84. *Id.*

85. *Id.*

decision paved the way for future jurisprudence on this issue by categorizing assets dedicated to retirement in an era prior to the *per se* offering of retirement benefits by employers.

T.L. James & Co. v. Montgomery was the first case in Louisiana Supreme Court jurisprudence to squarely address whether retirement benefits, *payable at an employee's death*, constitute community property.⁸⁶ The suit arose after the death of Thomas Montgomery,⁸⁷ which created a dispute over who was the proper beneficiary to proceeds from a profit-sharing plan, a retirement plan, and a life insurance policy that T.L. James & Company provided.⁸⁸ Although Montgomery designated his son from a previous marriage as the beneficiary of each plan, Montgomery's surviving spouse, former spouse, and son from his second marriage asserted claims to the proceeds.⁸⁹

The district court in *James* held that the son from the first marriage was entitled to all of the proceeds as the contractual designee of the company plans.⁹⁰ After being affirmed on appeal, the Louisiana Supreme Court granted certiorari and considered each benefit separately in terms of the parties' community property claims.⁹¹ The court classified both the profit-sharing and retirement plans as forms of employee compensation diverted into trust and held for payment on death, retirement, or disability.⁹² While only the employer contributed financially to these plans, the court determined that reciprocal contributions did exist on the part of the employee.⁹³ The court found that loyal and efficient service from the workforce was a clear incentive for offering the plans:⁹⁴

In short, the contribution of the employer is not a purely gratuitous act, but it is in the nature of additional remuneration to the employee who meets the conditions of the plan. The employer expects and receives something in return for his contribution, while the employee, in complying, earns the reward. The benefits to the employee are, therefore, earned income-property within legal contemplation.⁹⁵

86. *See generally* T.L. James & Co. v. Montgomery, 332 So. 2d 834 (La. 1976).

87. *Id.* at 838.

88. *Id.* at 837.

89. *Id.* at 838. The former and current spouses asserted community property interests while the second son asserted a forced heirship claim. *Id.*

90. *Id.*

91. *Id.* at 838-48.

92. T.L. James & Co. v. Montgomery, 332 So. 2d 834, 840 (La. 1976).

93. *Id.* at 841.

94. *Id.*

95. *Id.* at 841 (citing *Langlinais v. David*, 289 So. 2d 343 (La. App. 3 Cir. 1974), *overruled by* *Sims v. Sims*, 385 So. 2d 919 (La. 1978); *Hamilton v. Hamilton*, 258 So. 2d 661 (La. App. 3 Cir.

Once classified as earned income, the court was better able to determine whether the benefits were community or separate property under the Louisiana Civil Code.⁹⁶

Using the predecessor of current article 2338, the *James* court found that the earned-income property was the product of Montgomery's labor during both of his marriages.⁹⁷ Citing *Messersmith*, the court held that plans or devices between employer and employee cannot have the effect of nullifying a spouse's community interest in such benefits.⁹⁸ The court reasoned that while the designation of beneficiaries may offer expedient settlement of plans at the employee's death, such designations could not outweigh or nullify the state's longstanding systems of community property and forced heirship, or their underlying public policy concerns.⁹⁹ Accordingly, Montgomery's naming of his first son as the plans' beneficiary did not extinguish the community property interests of the former wife and widow, nor did it vitiate the forced heirship rights of the decedent's second son. The *James* court held that the proceeds of the profit-sharing and retirement plans would be divided among all four survivors and remanded the case to district court to determine the appropriate distribution.¹⁰⁰

Separately, the Louisiana Supreme Court affirmed the decision of the lower court granting all proceeds from Montgomery's life insurance policy to the named beneficiary, his first son.¹⁰¹ The *James* court found that life insurance proceeds had always been *sui generis* in Louisiana and not subject to the general body of law governing donations.¹⁰² For that reason, the court held that the community property and forced heirship principles of the Civil Code and state constitution did not apply to life insurance.¹⁰³ Accordingly, the court held that proceeds from such a policy were not part of the estate of the insured and refused to interfere with payment to

1972); *Laffitte v. Laffitte*, 232 So. 2d 92 (La. App. 2 Cir. 1970)).

96. *T.L. James & Co. v. Montgomery*, 332 So. 2d 834, 841 (La. 1976).

97. *Id.* at 841-42.

98. *Id.* at 844.

99. *Id.*

100. *Id.* at 848.

101. *Id.*

102. *T.L. James & Co. v. Montgomery*, 332 So. 2d 834, 845 (La. 1976). *Sui generis* is a Latin term meaning "of its own kind." BLACK'S LAW DICTIONARY 1475 (8th ed. 2004). The Civil Law designation of life insurance as *sui generis* indicates that the convention is governed by rules peculiar to itself rather than by the default codal scheme governing donations. See *Fowler v. Fowler*, 03-0590, p. 3-4 (La. 12/12/03); 861 So. 2d 181, 183; see generally 15 WILLIAM SHELBY MCKENZIE & H. ALSTON JOHNSON, III, LOUISIANA CIVIL LAW TREATISE § 252 (3d ed. 2009) (discussing life insurance in relation to the Louisiana law of donations).

103. *T.L. James & Co.*, 332 So. 2d at 845.

Montgomery's first son as the named beneficiary.¹⁰⁴ The *James* court's ruling on retirement benefits at death was a significant building block in the jurisprudence. It established that retirement benefits remain community property, even after death of the employee, and encouraged the general trend toward classifying retirement benefits as community property.

Building on the foundation laid by *James*, the next case to develop Louisiana jurisprudence on the issue of retirement benefits was *Sims v. Sims*.¹⁰⁵ This landmark decision established the method for the partition of retirement benefits in a community property settlement.¹⁰⁶ The conflict in *Sims* arose out of a former wife's claim to her former husband's pension plan following their divorce.¹⁰⁷ Neither the parties nor the court disputed the propriety of a former spouse's community interest in "an annuity, lump-sum benefit, or other benefits payable by a retirement plan."¹⁰⁸ Accordingly, the trial court in *Sims* held that the former spouse was entitled to recover one-half of the funds her husband contributed to the plan during the community; the appellate court affirmed this decision.¹⁰⁹ The former spouse appealed this ruling to the Louisiana Supreme Court because the funds that her husband contributed to his pension plan did not equal the benefits that would be payable upon his retirement.¹¹⁰ She argued that because her ex-husband's employer matched his contributions, the judgment giving her half of what her husband contributed only reflected a fraction of the total benefit paid on his retirement that would have been attributable to the community.¹¹¹

The *Sims* court rendered judgment in favor of the ex-wife and found the decisions of the lower courts erroneous as they failed to account for the actual value of the husband's pension plan augmented by his employer's matching contributions.¹¹² Citing *James*, the court acknowledged that it had previously held these employer contributions to be assets "acquired by community earning and efforts."¹¹³ This finding, however, addressed only half of the issue before the court.¹¹⁴ The determination of the ex-wife's ownership interest in the plan was complicated by the fact that her former

104. T.L. James & Co. v. Montgomery, 332 So. 2d 834, 847-48 (La. 1976).

105. *Sims v. Sims*, 358 So. 2d 919 (La. 1978).

106. *See id.*

107. *Id.* at 920.

108. *Id.* at 921.

109. *Id.*

110. *Id.*

111. *Sims v. Sims*, 358 So. 2d 919, 921 (La. 1978).

112. *Id.*

113. *Id.* (citing T.L. James & Co., Inc. v. Montgomery, 332 So. 2d 834 (La. 1976)).

114. *See id.* at 922-23.

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husband had not yet retired, and the final amount of his annuity could not be calculated until that time.¹¹⁵ Despite this impediment, the *Sims* court found that its prior rulings established that a former spouse was entitled to a judgment at the dissolution of her community at any time.¹¹⁶ In conformity with this principle, the court created a formula to accurately establish her share of the pension plan while her husband continued to work and accrue benefits:¹¹⁷

$$\begin{array}{r}
 \text{Portion of retirement/} \\
 \text{pension attributable to} \\
 \text{creditable service during} \\
 \text{existence of community} \\
 \text{(known)} \\
 \hline
 \end{array}
 \times 50\% \times
 \begin{array}{r}
 \text{annuity (or lump} \\
 \text{sum payment) (still} \\
 \text{not determined)}
 \end{array}
 = \text{Ex-wife's} \\
 \text{portion}$$

$$\begin{array}{r}
 \text{Pension/ retirement} \\
 \text{attributable to total} \\
 \text{creditable service (still} \\
 \text{not determined)}
 \end{array}$$

Once the wife's former husband retired, the missing denominator could be inserted and the wife's final share could then be determined.¹¹⁸ To date, this formula is perhaps the most functional jurisprudential contribution to the categorization of retirement benefits as community property.

Though decided over a decade after *Sims*, *Frazier v. Harper*¹¹⁹ demonstrated that the principles established in *Sims* were alive and well.¹²⁰ In *Frazier*, a former wife brought suit to claim her community property interest in her former husband's retirement plan.¹²¹ While the wife's interest in her former husband's pension plan had been recognized in a judgment following her divorce, the husband's employer had substituted the old plan for a new one in the time since that judgment and credited the husband's existing service to the new plan.¹²² In anticipation of her former husband's claim that her community interest applied only to the old plan,

115. *Sims v. Sims*, 358 So. 2d 919, 921 (La. 1978).

116. *Id.* at 922 (citing *Messersmith v. Messersmith*, 86 So. 2d 169, 174-75 (La. 1956)); *T.L. James & Co.*, 332 So. 2d at 851; *see also* LA. CIV. CODE ANN. art. 2369.8 (2009).

117. *Sims*, 358 So. 2d at 924.

118. *Id.* This is the same formula that was applied to the original community property partition of Joel and Dianne McWilliams in 1989. *See* La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1038.

119. *Frazier v. Harper*, 600 So. 2d 59 (La. 1992).

120. *Id.*

121. *Id.* at 61.

122. *Id.* at 60-61.

the wife sued for a supplementary partition, confirming her interest in the new plan.¹²³ Her ex-husband argued that, in the transition between plans, his ownership interest in the benefit survived while his ex-wife's interest expired.¹²⁴ The Louisiana Supreme Court held that such an argument had "no basis in law, justice or reason."¹²⁵ The court found it well established in Louisiana jurisprudence that a former spouse had an interest in her counterpart's retirement plan to the extent attributable to his employment during the community.¹²⁶ The court reasoned that a novation took place when the old plan was substituted for the new one and held that the wife's undivided share in her ex-husband's pension was maintained in the new plan.¹²⁷ Thus, the spousal interests protected in *Sims* were affirmed in *Frazier*, despite the husband's attempt at a technical evasion of community property responsibilities.

Four years after *Frazier*, the Louisiana Court of Appeals for the First Circuit decided *Bonfanti v. Percy*, which represents a departure from the aforementioned case law.¹²⁸ *Bonfanti* presented a fact pattern unlike any of the cases previously discussed.¹²⁹ The surviving spouse of a deceased state employee petitioned for a declaratory judgment to establish that she alone was entitled to the survivor benefit payable by LASERS.¹³⁰ In his will, the state employee bequeathed one-third of his interest in the community property to his mother, while the remaining two-thirds were to be given to his surviving spouse.¹³¹ The mother's answer to the wife's petition alleged that because the survivor benefits were being paid out of her son's retirement plan, they should be considered a retirement benefit and community property.¹³² The court refused to treat survivor benefits as synonymous with retirement benefits and held that such proceeds were

123. *Frazier v. Harper*, 600 So. 2d 59, 60-61 (La. 1992). The "supplementary partition" referred to was not a second division of community assets but rather a request for the court to acknowledge that the former spouse's interest in the husband's new retirement plan would be established in the same manner as the old plan, which was divided in the original partition of the couple's community property. *See id.*

124. *Id.* at 60-61.

125. *Id.* at 61.

126. *Id.*

127. *Frazier v. Harper*, 600 So. 2d 59, 61-63 (La. 1992). Under Louisiana law, a novation "is the extinguishment of an existing obligation by the substitution of a new one." LA. CIV. CODE ANN. art. 1879 (2009).

128. *Bonfanti v. Percy*, 95-1189 (La. App. 1 Cir. 4/6/96); 672 So. 2d 415.

129. *Compare Bonfanti*, 672 So. 2d 415, with *Messersmith v. Messersmith*, 86 So. 2d 169 (La. 1956), and *T. L. James & Co. v. Montgomery*, 332 So. 2d 834 (La. 1976), and *Sims v. Sims*, 358 So. 2d 919 (La. 1978), and *Frazier v. Harper*, 600 So. 2d 59 (La. 1992).

130. *Bonfanti*, 672 So. 2d at 416.

131. *Bonfanti v. Percy*, 95-1189 (La. App. 1 Cir. 4/6/96); 672 So. 2d 415, 416.

132. *Id.*

separate rather than community property; thus, the surviving spouse was the only qualified recipient as established by statute.¹³³ The court reasoned that this conclusion was justified by variances in the method of computation of each benefit, the existence of a statutory list of beneficiaries, and a statutory exemption from selling, garnishing, attaching or otherwise disrupting payment of the benefits.¹³⁴ This case represents a break in the jurisprudence, because until this point the courts had drawn little conceptual distinction between retirement benefits and survivor benefits as community property. The next case indicated that Louisiana's highest court was unwilling to further the Louisiana First Circuit Court of Appeal's efforts at creating that distinction.

Johnson v. Wetherspoon,¹³⁵ decided in 1997, was the first time the Louisiana Supreme Court addressed whether survivor benefits paid by a state retirement plan were community property.¹³⁶ *Wetherspoon* involved a former spouse asserting an interest in survivor benefits paid out of her ex-husband's public retirement plan following his death.¹³⁷ The decedent in *Wetherspoon* was an active member of the Teacher's Retirement System of Louisiana (TRSLA) at the time of his death, rather than a retiree (i.e. still employed).¹³⁸ Pursuant to Title 11, section 762(D) of the Louisiana Revised Statutes, the TRSLA paid survivor benefits to the employee's widow, his second wife, as his named beneficiary and "widow."¹³⁹ These benefits were paid for ten years after the employee's death until the employee's first wife brought suit to assert her community property interest in the survivor benefits collected by the second wife, as well as the funds still payable by the retirement system.¹⁴⁰ The first wife had been married to the employee for eight years of his creditable service with TRSLA, and the second wife had been married to the employee for ten years of creditable service.¹⁴¹

The trial court in *Wetherspoon* found for the second wife, holding that TRSLA survivor benefits did not constitute community property and

133. *Bonfanti v. Percy*, 95-1189 (La. App. 1 Cir. 4/6/96); 672 So. 2d 415, 416-17; *see also* LA. REV. STAT. ANN. § 11:475 (1993) (current version at LA. REV. STAT. ANN. § 11:471 (2002)).

134. *Bonfanti*, 672 So. 2d at 417-19.

135. *Johnson v. Wetherspoon*, 96-0744 (La. 5/20/97); 694 So. 2d 203, *overruled by* La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036.

136. *See generally id.*

137. *Id.* at 204.

138. *Id.*

139. *Id.*

140. *See id.*

141. *Johnson v. Wetherspoon*, 96-0744 (La. 5/20/97); 694 So. 2d 203, 204, *overruled by* La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036.

therefore belonged to the second wife as the only statutorily named beneficiary.¹⁴² The appellate court reversed, finding the benefits did qualify as community property.¹⁴³ The Louisiana Supreme Court affirmed this ruling.¹⁴⁴ Citing *Sims*, the court found it was well-settled in Louisiana law that a former spouse was entitled to her share of retirement benefits to the extent they were attributable to the former community.¹⁴⁵ Based on the *Sims* court's designation of "*other benefits* payable by a retirement plan" as community property and the *James* ruling in favor of retirement benefits paid at the death of an employee as community property, the *Wetherspoon* court held that retirement and survivor benefits *should be treated synonymously* when determining a former spouse's interest in the benefits (thus also qualifying to use the *Sims* formula).¹⁴⁶ "[T]he similarity in the method used to calculate retirement and survivor benefits" under the public retirement plan statutes establishing TRSLA further reinforced the court's decision.¹⁴⁷ In a footnote, the court briefly addressed the *Bonfanti* decision, stating only that it rejected the argument that differences in the qualifying requirements for survivor and retirement benefits justified separate treatment of the benefits.¹⁴⁸

Despite this ruling in favor of the first wife, the second wife argued that because section 762 named only a specific set of beneficiaries, the legislature must have intended the list to be exclusive.¹⁴⁹ The *Wetherspoon* court answered that such an interpretation was untenable in light of the court's holdings in *Sims* and *Frazier*.¹⁵⁰ While section 762(D) clearly established that "[a] surviving spouse . . . shall be paid" a particular amount, the court found that this designation was not intended by the legislature to create a "statutorily defined class" of beneficiaries.¹⁵¹ The court reasoned that such an interpretation was inconsistent with Civil Code article 13, which requires that "[l]aws on the same subject matter must be interpreted

142. *Johnson v. Wetherspoon*, 96-0744 (La. 5/20/97); 694 So. 2d 203, 204, *overruled by* La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036.

143. *Id.*

144. *Id.* at 205.

145. *Id.* (citing *Frazier v. Harper*, 600 So. 2d 59 (La. 1992); *Sims v. Sims*, 358 So. 2d 919 (La. 1978); *T.L. James & Co. v. Montgomery*, 332 So. 2d 834 (La. 1975)).

146. *Id.* at 207 (emphasis added).

147. *Johnson v. Wetherspoon*, 96-0744 (La. 5/20/97); 694 So. 2d 203, 207, *overruled by* La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036.

148. *Id.* at 206 n.5.

149. *Id.* at 210.

150. *Id.*

151. *Johnson v. Wetherspoon*, 96-0744 (La. 5/20/97); 694 So. 2d 203, 210, *overruled by* La. State Employees' Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036 (emphasis added).

in reference to each other.”¹⁵² For instance, the two TRSLA statutes that name the recipients of retirement proceeds and lump sum refunds also do not include “former spouses” as beneficiaries, even though such proceeds are acknowledged by precedent to constitute community property payable in part to former spouses.¹⁵³ Accordingly, the court reasoned that it was unlikely the legislature would contravene established community property laws to create an exclusive list of statutory beneficiaries for one type of benefit, but not for similar benefits as defined by the same set of statutes.¹⁵⁴

The dissent in *Wetherspoon* sought to distinguish between survivor benefits and retirement benefits by explaining that if the decedent had not remarried, there would be no survivor benefits for a former spouse to claim.¹⁵⁵ As such, the dissent opined that a former spouse seeking TRSLA survivor benefits should be limited to a portion of the decedent’s contributions to the plan paid during the former community.¹⁵⁶ The dissent maintained that only retirement benefits were distributable according to the *Sims* formula, and that survivor benefits should be regulated by the variable conditions set forth by statute.¹⁵⁷

THE COURT’S DECISION

The Louisiana Supreme Court announced the defining issue of *LASERS* as whether the exclusion of “former spouse” from the list of beneficiaries to whom survivor benefits are to be distributed under section 471 “operates to deprive a former spouse of her community property

152. *Johnson v. Wetherspoon*, 96-0744 (La. 5/20/97); 694 So. 2d 203, 210, *overruled by* La. State Employees’ Ret. Sys. (*LASERS*) v. *McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036; *see also* LA. CIV. CODE ANN. art. 13 (2009).

153. *Wetherspoon*, 694 So. 2d at 210 (citing *Frazier v. Harper*, 600 So. 2d 59 (La. 1992); *Sims v. Sims*, 358 So. 2d 919 (La. 1978)); *see also* LA. REV. STAT. ANN. §§ 11:768, 11:1151(G) (2002). Specifically, Title 11, section 768 states that only, “a member who retires . . . shall receive an allowance . . .” *Wetherspoon*, 694 So. 2d at 210. Despite this designation, that “member” is not necessarily the only claimant of that allowance. *Id.* If a community property regime was in effect while the benefit accrued, the *Sims* ruling establishes that the member’s spouse is entitled to her community share of the retirement benefits to the extent attributable to the community; the omission of “spouse” (present or former) from text of the statute cannot be said to deny the spouse of her community interest in a retirement plan. *Id.*

154. *Wetherspoon*, 694 So. 2d at 211.

155. *Id.* at 212 (Calogero, J., dissenting). The *Wetherspoon* dissent was authored by Chief Justice Pascal Calogero, who later wrote the majority opinion in the Louisiana Supreme Court’s original ruling in *LASERS*. *See Wetherspoon*, 694 So. 2d at 212 (Calogero, J., dissenting); *LASERS* First Hearing, *supra* note 36, at 1.

156. *Johnson v. Wetherspoon*, 96-0744 (La. 5/20/97); 694 So. 2d 203, 213 (Calogero, J., dissenting), *overruled by* La. State Employees’ Ret. Sys. (*LASERS*) v. *McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036.

157. *Id.* at 213-14 (Calogero, J., dissenting).

interest in these benefits which have been previously recognized by this Court as community property and which have been awarded to her in a valid community property judgment.”¹⁵⁸ The answer to this inquiry would clarify how the courts would treat a former spouse’s interest in retirement benefits.

The court began its analysis by explaining community property’s historical significance as a legal doctrine in Louisiana; it explained that few principles are as fundamental to the state’s law as the concept that ownership of property during marriage is a partnership in which husband and wife own equal shares.¹⁵⁹ The court recognized that at the dissolution of a community, state courts have “no discretion or power” to award a spouse less than his or her one-half share.¹⁶⁰ To guide these principles, the court relied on the provisions of the Civil Code, specifically article 2338, which establishes that property acquired through the effort, skill, or industry of either spouse during marriage is community property.¹⁶¹ Applied to the benefits payable by a retirement plan, the court found:

(1) an employee’s contractual pension right is not a gratuity, but a property interest owned by him; (2) to the extent that the right derives from the spouse’s employment during the existence of the marriage, it is a community asset subject to division upon dissolution of the marriage; [and] (3) the right to share in a retirement plan is a community asset which, at the dissolution of the community, must be so classified—even though at the time acquired or at the time of dissolution of a community, the right has no marketable or redeemable cash value, and even though the contractual right to receive money or other benefits is due in the future and is contingent upon the happening of an event at an uncertain time.¹⁶²

Additionally, the court found that the *Sims* holding specifically identified “an annuity, lump-sum benefit, or other benefits payable by a retirement plan” to be community property.¹⁶³ In considering cases dealing with survivor benefits, the court found that the *Wetherspoon* decision stood for the proposition that survivor and retirement benefits should not be distinguished because they are both payable by a retirement plan.¹⁶⁴

158. La. State Employees’ Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1042.

159. *Id.*

160. *Id.* at 1042-43 (citing Messersmith v. Messersmith, 86 So. 2d 169, 173 (La. 1956)).

161. LASERS, 996 So. 2d at 1043; see also LA. CIV. CODE ANN. art. 2338 (2009).

162. LASERS, 996 So. 2d at 1043 (citing Frazier v. Harper, 600 So. 2d 59, 62-63 (La. 1992)).

163. *Id.* at 1043-44 (citing Sims v. Sims, 358 So. 2d 919 (La. 1978)).

164. La. State Employees’ Ret. Sys. (LASERS) v. McWilliams, 06-2191 (La. 12/2/08); 996 So.

According to the court, the *James* ruling confirmed that benefits paid by retirement plans are additional remuneration for the employee, rather than a gratuity, and, as such, are earned property of the community.¹⁶⁵ The court recognized that the *James* ruling found restrictive contractual provisions ineffectual in altering the fundamental concepts of community property in Louisiana.¹⁶⁶

In the wake of *Wetherspoon* and *James*, the court considered a myriad of appellate court decisions over the past two decades, a vast majority of which uniformly held that the partition of retirement benefits in a community property settlement applies to survivor benefits.¹⁶⁷ Only the *Bonfanti* decision deviated from this understanding.¹⁶⁸ The Louisiana legal community had come to rely on survivor benefits' classification as community property.¹⁶⁹ Indeed, "attorneys, governmental agencies administering public pension plans, and the public [had] conducted their affairs in the belief that every benefit of a retirement plan, including survivor benefits . . . is community property co-owned by the spouses and to be shared equally."¹⁷⁰ The court acknowledged the countless divorce settlements and community partition judgments certified by the courts under this understanding.¹⁷¹

The court then identified section 291 as legislatively enforcing this reliance.¹⁷² Applicable to all statewide retirement systems, including LASERS, the statute establishes that, despite any provision of law to the contrary, any benefit payable by a retirement plan shall be subject to a court order dissolving community property and recognizing the interest of a

2d 1036, 1044 (citing *Frazier v. Harper*, 600 So. 2d 59, 62-63 (La. 1992)).

165. La. State Employees' Ret. Sys. (*LASERS*) v. *McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1044 (citing *Frazier v. Harper*, 600 So. 2d 59, 62-63 (La. 1992)).

166. *Id.*

167. *Id.* (citing *Vicknair v. Firefighters' Pension & Relief Fund*, 05-0467 (La. App. 4 Cir. 6/15/05); 907 So. 2d 787; *Smith v. Smith*, 03-36910 (La. App. 2 Cir. 3/14/03); 839 So. 2d 1255; *Kennard v. Kennard*, 99-445 (La. App. 3 Cir. 10/06/99); 747 So. 2d 628; *Succession of Silbernagel*, 96-2755 (La. App. 1 Cir. 2/20/98); 708 So. 2d 485; *Ordoyne v. Ordoyne*, 94-1766 (La. App. 1 Cir. 4/7/95); 653 So. 2d 839; *Herrington v. Skinner*, 93-1556 (La. App. 3 Cir. 6/1/94); 640 So. 2d 748 (all holding that the former spouse's relinquishment in community property settlement of interest in retirement plan also constituted relinquishment of rights to survivor benefits)).

168. *See generally* *Bonfanti v. Percy*, 95-1189, (La. App. 1 Cir. 1996); 672 So. 2d 415 (finding survivor benefits to be distinguishable from retirement benefits for the purpose of community property classification).

169. La. State Employees' Ret. Sys. (*LASERS*) v. *McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1045.

170. *Id.*

171. *Id.*

172. *Id.* at 1045-46.

spouse or *former spouse* in that benefit.¹⁷³ The court found that section 291 applied to “any benefit” payable by LASERS, which included survivor benefits.¹⁷⁴ The court also found the statute to be applicable despite the absence of “former spouses” from the list of beneficiaries in section 471.¹⁷⁵

In consideration of LASERS actual policy and practice, the court found that the retirement program had already recognized former spouses’ entitlement to survivor benefits when valid community property judgments exist defining that interest.¹⁷⁶ As evidence, the court addressed the fact that, “[t]his practice is so common that LASERS provides ‘sample court orders’ which contain a paragraph allowing the parties to specifically agree to the division of survivor benefits.”¹⁷⁷

In *LASERS*, the court found that Dianne Sanders, the former and first spouse of Joel McWilliams, had entered into a valid and specific community property judgment defining her share of Joel McWilliams’ retirement benefits in accordance with the formula established in *Sims*.¹⁷⁸ The judgment dictated that Dianne was to receive her *Sims* portion of those benefits whether Joel retired or died.¹⁷⁹ Though section 471 omitted former spouses from the list of classes of beneficiaries for survivor benefits, the court reasoned that the provisions of sections 291 nonetheless recognized the validity of her community property interest in the survivor benefits because her community partition judgment guaranteed this interest.¹⁸⁰ The court held that Dianne had not been deprived of her community property interest in Joel’s survivor benefits after her divorce, and the amount payable to Joel’s surviving spouse and minor child was to be split in accordance with the *Sims* formula expressed in the judgment partitioning the community.¹⁸¹

Despite the great weight of precedent, the dissent in the instant case argued that, “survivor benefits cannot be considered ‘property’ at any time during the existence of a community regime because . . . LASERS’s [statutory] obligation to pay survivor benefits is triggered by the death of

173. La. State Employees’ Ret. Sys. (*LASERS*) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1046.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* at 1046-47.

178. *Id.*

179. La. State Employees’ Ret. Sys. (*LASERS*) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1046-47.

180. *Id.* at 1046.

181. *Id.*

the LASERS member, at which time the community terminates.”¹⁸² The dissent continued, asserting that “LASERS survivor benefits do not belong to ‘married persons’ because the only qualified recipients of survivor benefits are surviving spouses (i.e., widows and widowers) and minor or handicapped children.”¹⁸³ The dissent further argued that survivor benefits fail to qualify under any of the five categories of community property defined by article 2338.¹⁸⁴ The benefits are not an asset that can be acquired during the community because they are payable only when the community has terminated at the death of one of its members.¹⁸⁵ The final concern of the dissent was that under the majority rule, survivor benefits would have to be split among not only a former spouse and a widow, but also surviving children, which would defy the purpose of survivor benefits.¹⁸⁶

THE COURT’S REASONING

The court’s decision in *LASERS* correctly applied the relevant precedents, statutory authority, and Louisiana precepts involving community property. Nevertheless, the issue presented by *LASERS* was divisive for the justices of the Louisiana Supreme Court. For a position that won the support of a narrow majority on rehearing, the court’s opinion could have more fully answered the concerns of the dissenting justices. In particular, the court’s explanation of *why* survivor benefits constitute community property could have been expanded to stifle opposing arguments and more clearly establish the rectitude of the majority’s decision.

As mentioned above, the court’s approach to classifying survivor benefits as community property began with references to the longstanding jurisprudence that maintained *retirement benefits* as community property.¹⁸⁷ To explain these precedents, the court offered one paragraph from *Frazier* to summarize the basis of the court’s position.¹⁸⁸ The opinion then asserted that the *James* and *Wetherspoon* decisions had already established survivor

182. La. State Employees’ Ret. Sys. (*LASERS*) v. *McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1051 (Calogero, J., dissenting). “The dissent” refers to the lengthy dissent authored by Chief Justice Calogero and not to the brief dissents offered by Justices Kimball and Traylor. *See id.* at 1049-56.

183. *Id.* at 1051 (Calogero, J., dissenting).

184. *Id.* (Calogero, J., dissenting).

185. *Id.* (Calogero, J., dissenting).

186. *Id.* at 1054 (Calogero, J., dissenting).

187. *Id.* at 1043 (citing *Frazier v. Harper*, 600 So. 2d 59 (La. 1992); *Sims v. Sims*, 358 So. 2d 919 (La. 1978); *Messersmith v. Messersmith*, 86 So. 2d 169 (La. 1956)).

188. *See* La. State Employees’ Ret. Sys. (*LASERS*) v. *McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1043.

benefits to be community property.¹⁸⁹ While this proposition is largely correct, the case summaries provided by the court to support its position are too brief to fully explain their conclusions. For both *James* and *Wetherspoon*, the summaries contain only a single sentence of the courts' reasoning before each case's holding is mentioned.¹⁹⁰ As the majority opinion is followed by a lengthy dissent challenging the conclusions of those precedents, a lengthier explanation of the majority's position is merited.

The primary dissent set forth a number of arguments in this respect. The two most compelling are: (1) survivor benefits cannot be considered "property" for the purpose of classification as community property because the benefits only come into existence at the death of the employee, at which time the community is simultaneously terminated and (2) survivor benefits fail to satisfy any of the defined categories for community property listed in article 2338.¹⁹¹ The majority opinion possessed the precedential and conceptual framework to refute these arguments, but never did so directly.¹⁹²

The majority could have made clear that the right of an employee's family to receive survivor benefits comes into existence not at the employee's death, but when the employee works the requisite number of years to receive the benefit. This conclusion is best explained by examining the nature of survivor benefits as an employer offering. While the court acknowledged that this concept had been explored by its decision in *James*, it did not inform the reader of the basis for its ruling.¹⁹³ The court could have explained that survivor benefits, like retirement benefits, are offered by employers not as a gratuity, but because they expect loyal service from employees for the years required to earn the benefit.¹⁹⁴

As a result, survivor benefits are "earned" through service to the employer.¹⁹⁵ Once an employee complies with the conditions of the benefit program, he is vested with a right to receive (or have his family receive) proceeds at the occurrence of a future event. This right is acquired *during and as a consequence of employment*; it does not come into existence at the employee's death. The employee's death merely triggers a mechanism for

189. See *La. State Employees' Ret. Sys. (LASERS) v. McWilliams*, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1043.

190. *Id.*

191. *Id.* at 1051-52 (Calogero, J., dissenting).

192. See *id.* at 1041-48.

193. See *id.* at 1044.

194. *T.L. James & Co. v. Montgomery*, 332 So. 2d 834, 841 (La. 1976).

195. See *id.*; *LASERS*, 996 So. 2d at 1044.

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distribution of proceeds. If the right to receive survivor benefits is vested through the employee's service to the employer, and that service is rendered during the existence of a matrimonial regime, it is difficult to imagine how that future remuneration would not be earned-income property belonging to the community. Article 2338 makes clear that "community property comprises: property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse"¹⁹⁶ The above explanation is a brief synthesis of concepts discussed by the court, yet it provides a direct answer to the arguments of the dissent. The majority could have included in its opinion a similar section with little additional effort.

As the court mentioned, the Louisiana legal community and countless divorcees have come to rely on the classification of survivor benefits as community property for both judicial and extrajudicial partitions of community property.¹⁹⁷ Disruption of this reliance would have virtually voided the sections of judicial partitions dividing retirement and survivor benefits. This would have been an especially troublesome prospect for partitions accomplished by stipulation, as the parties had already agreed among themselves to divide survivor benefits as community property. Yet, the opinion of the court in *LASERS* avoided these issues and likely increased public confidence both in the equity of Louisiana's community property regime and the ability of the state's high court to arrive at decisions faithful to precedent and practicality. Survivor benefits, after all, are paid by retirement plans in lieu of retirement benefits. The fact that an employee dies rather than retires should not deprive a former spouse of a previously recognized interest in the plan, especially when that former spouse has come to rely on receiving that income later in life.

CONCLUSION

The decision of the Louisiana Supreme Court in *LASERS v. McWilliams* preserved the status quo for community property in the state. The statutes regulating *LASERS* were vindicated as consistent with community property principles when read in reference to each other, longstanding precedents were upheld, and the countless community property judgments issued by state courts remain valid determinants of how retirement and survivor benefits alike will be distributed. The opinion's most glaring weakness was its brief explanation of the principles underlying the decision. The short reiteration of important precedents and infrequent

196. See LA. CIV. CODE ANN. art. 2338 (2009).

197. La. State Employees' Ret. Sys. (*LASERS*) v. McWilliams, 06-2191 (La. 12/2/08); 996 So. 2d 1036, 1045-46.

references to controlling Civil Code articles should have been bolstered by more substantive legal reasoning to establish in no unclear terms why survivor benefits constitute community property. If the number of dissenting justices is any indication of the resistance some segments of the legal community may have to the decision, a stronger majority opinion would have likely kept future attack at bay.

Tyler J. Rench