

# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of December, 2022** are as follows:

**BY Hughes, J.:**

[2022-C-00263](#)

[SUCCESSION OF WILLIE CLYDE BURNS](#) (Parish of Claiborne)

REVERSED AND REMANDED. SEE OPINION.

[Weimer, C.J.](#), additionally concurs and assigns reasons.

**SUPREME COURT OF LOUISIANA**

**No. 2022-C-263**

**SUCCESSION OF WILLIE CLYDE BURNS**

On Writ of Certiorari to the Court of Appeal,  
Second Circuit, Parish of Claiborne

**Hughes, J.**

In this case a putative wife seeks review of an appellate decision affirming a trial court judgment that assigned the legal wife of a decedent one-fourth of “the assets of Decedent.” For the following reasons, we reverse the appellate court and remand for further proceedings.

**FACTS AND PROCEDURAL HISTORY**

Willie Clyde Burns, the decedent, married Silver Ruth Cooper on November 30, 1959. The couple lived in Claiborne Parish and had three children: Willie Lee Burns, James E. Burns, and Tommy L. Burns. Willie and Silver separated in the summer of 1966. A divorce petition was filed on July 18, 1966 in Columbia County, Arkansas. The matter was captioned “Sybia Ruth Burns vs. W. C. Burns.” Court records show someone signed the name “Sybia Ruth Burns” on two documents. A final judgment of divorce was rendered on August 26, 1966 by the Arkansas court. Willie filed a divorce petition in Claiborne Parish on January 25, 1967, and the petition was served on Silver. This matter was captioned “W.C. Burns (Col.) vs. Sylvia Ruth Burns.” There was no judgment of final divorce rendered in this case.

Silver went on to marry Welcome Boyd on February 13, 1968.<sup>1</sup> Willie went on to marry Annie Lee Bradley on February 23, 1970. Annie testified at trial that at the start of their marriage she and Willie had no assets and that anything Willie owned at the time of his death was acquired during their marriage.<sup>2</sup> The couple was married for 45 years and had two children: Sharon Burns Woods and Estelle Green.

Willie died intestate on June 1, 2015. On June 3, 2015 Annie filed a petition to open Willie's succession and appoint an administratrix. Silver filed a Petition in Intervention on August 17, 2015 in which she sought to be named Willie's surviving spouse as she was never lawfully divorced from him. In support of her position, Silver provided a report by a forensic document examiner who concluded that the signatures on the documents of both divorce proceedings did not belong to Silver. She also testified that she never went by the names Sybia or Sylvia.

The trial court granted the petition to intervene, declared the Arkansas divorce invalid, and recognized Silver as the legal wife of Willie at the time of his death. In addition, the trial court found that Annie was a good faith putative spouse based on Annie's testimony that Willie told her he was divorced. The trial court also found that Willie acted in good faith as to the putative marriage. The trial court then said that the estate would be divided according to the formula in **Prince v. Hopson**, 89 So.2d 128 (La. 1956). The court in **Prince** allocated one-fourth *of the community* to

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<sup>1</sup> Silver and Welcome had three children. Silver and Welcome ended their relationship, although the record does not provide a date of when that occurred. Silver testified that she never divorced Welcome because she found out that he himself was already married. She testified that Welcome's wife called her and informed Silver of their marriage. Silver testified at that point she and Welcome separated. On April 23, 1996 Silver married Talton Kingsby. On November 25, 2015, Silver filed a Petition for Nullity of Marriage, averring that she recently found out that she was married to Willie at the time of her marriage to Talton. Though the marriage was annulled, she resides with Talton.

<sup>2</sup> In February 1970, Silver filed a "Petition for Custody of Children, Child Support, Inventory and Partition of Community Property and Temporary Restraining Order and Injunction" in Claiborne Parish in a matter titled, "Silver Boyd, nee Cooper, formerly Silver Burns vs. W.C. Burns." In his answer, Willie indicated that the community of acquets and gains contained more debts than assets.

the legal spouse, one-fourth to the putative spouse, and the decedent's one half to his heirs. In the case before us the trial court judgment decreed (emphasis added):

[T]he *assets of Decedent* constitute assets of the community and the putative community, and therefore are to be split in the following percentages:

25% to Annie Lee Bradley Burns;

25% to Silver Burns;

50% to the children of the Decedent in equal proportions to:

James Burns;

Willie Burns;

Tommy Burns;

Estelle Burns Green; and

Sharon Burns Woods[.<sup>3</sup>]

While only the decedent's one half of the community would be owned by him, and thus considered his assets, it appears the percentages allocated by the trial court are consistent with the result in **Price v. Hopson**. The trial court rejected Annie's request that (1) she be recognized as the owner of an undivided one-half interest in the community property owned by Willie and Annie at the time of Willie's death and that (2) Willie's children inherit his undivided one-half interest in equal proportions, subject to Annie's usufruct, as was done in **Succession of Chavis**, 29 So.2d 860, 864 (La. 1947). In **Chavis**, the legal spouse did not inherit. **Id.** However, the trial court reasoned that following **Prince** was the "correct and most equitable result" in this case.

The court of appeal affirmed the trial court's distribution of the "assets of Decedent." **Succession of Burns**, 54,168 (La. App. 2 Cir. 11/17/21), 331 So.3d 1062. The appellate court amended the judgment to reflect that the children's

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<sup>3</sup> The trial court's written reasons for judgment detailed the same distribution (emphasis added):

Therefore, the ruling of this Court is as follows: Silver Burns and Annie Burns would receive  $\frac{1}{4}$  interest *in the property of the decedent* W. C. Burns and the children and heirs of the decedent would receive the remaining half of the succession assets in equal portions of  $\frac{1}{10}$  each.

We note that the trial court did not specify a usufruct for portions allocated to the children. *See* La. Civ. Code art. 890.

portions would be subject to a usufruct in favor of their mother, be it Silver or Annie.<sup>4</sup> **Id.** at 1072.

Annie filed a writ to this court, which was granted. **Succession of Burns**, 22-263 (La. 4/26/22), 336 So.3d 892. Annie argues that this court should overrule **Prince v. Hopson** and set forth a new rule based in equity or based on **Chavis**. Annie also argues that the lower courts' decisions improperly divest her of her rights to the putative community as provided in Louisiana Civil Code article 96.

Silver argues that Louisiana Civil Code article 96 provides for no termination of the community belonging to the legal wife and common spouse. Silver argues that the part of **Chavis** on which Annie relies is dicta, and that the **Prince** decision applies to the instant case. James Burns, Willie Lee Burns, and the heirs of Tommy Burns agree with the court of appeal opinion and argue that Annie's contentions are without merit.

## LAW AND ANALYSIS

At issue before the court is what percentage of a common spouse's community property is due to the legal spouse, the putative spouse, and the decedent's children, where the common and putative spouses are in good faith.

When Silver and Willie married in 1959 they entered the legal regime of acquets and gains. La. Civ. Code art. 2334. Under Louisiana Civil Code article 2336, each spouse owns a present undivided one-half interest in the community of acquets

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<sup>4</sup> The decree in the court of appeal opinion provides (emphasis added):

[T]he *assets of Decedent* constitute assets of the community and the putative community, and therefore are to be split in the following percentages:

- 25% to Annie Lee Bradley Burns;
- 25% to Silver Burns;
- 10% to James Burns, subject to the usufruct of Silver Burns;
- 10% to Willie Burns, subject to the usufruct of Silver Burns;
- 10% to Tommy Burns, subject to the usufruct of Silver Burns;
- 10% to Estelle Burns Green, subject to the usufruct of Annie Burns; and
- 10% to Sharon Burns Woods, subject to the usufruct of Annie Burns.

**Succession of Burns**, 331 So.3d at 1072.

and gains. Community property includes property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse. La. Civ. Code art. 2338. With Silver and Willie having never been properly divorced, Silver argues that her community with Willie existed until the day Willie died.

Annie and Willie's marriage was an absolute nullity. Under Louisiana Civil Code article 88, titled "Impediment of existing marriage," a married person may not contract another marriage. A marriage is absolutely null when contracted in violation of an impediment. La. Civ. Code art. 94. Under the Civil Code, an "absolutely null marriage nevertheless produces civil effects in favor of a party who contracted it in good faith for as long as that party remains in good faith." La. Civ. Code art. 96.<sup>5</sup> Courts have defined good faith in the context of putative marriage as "the honest and reasonable belief that the marriage at the time of its confection was a valid one." **Funderburk v. Funderburk**, 38 So.2d 502, 504 (La. 1949) (defining good faith in the context of former Louisiana Civil Code articles 117 and 118).

Here, the trial court found that Annie was a good-faith spouse until Willie died and the putative marriage ended. Thus, under Louisiana Civil Code article 96, the putative marriage produced "civil effects in favor of" Annie. Willie was also found to be in good faith. The putative marriage also produced civil effects in favor of Willie.

One civil effect of marriage is community property, and each spouse owns a present undivided one-half interest in the community property. La. Civ. Code art. 2336. By the terms of Louisiana Civil Code articles 96 and 2336, Annie and Willie

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<sup>5</sup> Louisiana Civil Code article 96 provides in pertinent part:

An absolutely null marriage nevertheless produces civil effects in favor of a party who contracted it in good faith for as long as that party remains in good faith. When the cause of the nullity is one party's prior undissolved marriage, the civil effects continue in favor of the other party, regardless of whether the latter remains in good faith, until the marriage is pronounced null or the latter party contracts a valid marriage.

each have an undivided one-half interest in the community of their putative marriage. Louisiana Civil Code article 96 leaves no room for the legal spouse to have any interest in the community of the putative marriage where both putative spouses are in good faith. Here, Silver and Willie's community ended when Willie and Annie contracted their absolutely null marriage in good faith.

Another civil effect of marriage is the usufruct of the surviving spouse. Louisiana Civil Code article 890 provides:

If the deceased spouse is survived by descendants, the surviving spouse shall have a usufruct over the decedent's share of the community property to the extent that the decedent has not disposed of it by testament. This usufruct terminates when the surviving spouse dies or remarries, whichever occurs first.

Thus, Annie is also entitled to a usufruct over Willie's undivided one-half interest until she dies or re-marries. At that point, Willie's five children will receive full ownership of his interest in the community between Willie and Annie.

It has been suggested that the Civil Code is silent on the issue of what portion legal and putative spouses are due and that in the absence of legislation or custom, a court is "bound to proceed according to equity." La. Civ. Code art. 4. However, we find this not to be the case with respect to Louisiana Civil Code article 96. "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La. Civ. Code art. 9.

By the clear and unambiguous terms of Louisiana Civil Code article 96, Willie and Annie's absolutely null marriage "produce[d] civil effects in favor of" Willie and Annie, both of whom were good-faith spouses. This means that the parties are "entitled to the same civil rights as to the property involved in this suit as though the marriage had been valid." **Chavis**, 29 So.2d at 864. Furthermore, recognizing that the common spouse and the putative spouse, both in good faith, are each entitled to an undivided one-half interest of the community property from their absolutely null

marriage, does not lead to absurd consequences. As Professor Robert A. Pascal wrote:

If the legal consort is in bad faith, e.g., has knowledge of the putative marriage situation and does nothing to prevent it or terminate it, then it would seem equitable that he or she not be permitted to prejudice the rights of the putative spouse or spouses in good faith. Otherwise there would be an abuse of the law. Similarly, if the legal consort excusably believed the legal marriage terminated (in the case under discussion the legal wife believed herself divorced and had remarried<sup>[6]</sup>) there is hardly any reason to recognize community rights in his or her favor, whether or not there is a putative consort involved.

Robert A. Pascal, *Persons*, 17 LA. L. REV. 303, 303 (1957).

Our ruling today is in conflict with **Prince v. Hopson**. 89 So.2d 128 (La. 1956). In **Prince**, James Brough filed for a divorce from his marriage to Victoria Albert; however, a final judgment was never rendered. James married Clementine Prince, and they lived together as husband and wife for 21 years until James' death. Victoria also remarried. After James died, Victoria and the daughter of Victoria and James claimed an interest in a piece of property that Clementine purchased while she was married to James that was determined to be community property. The court determined that James and Clementine were in good faith in their marriage. Because James was in good faith, the court ruled that he had an undivided one-half interest in the community, which was inherited by his only daughter under Louisiana intestate succession law.

Initially, the court reasoned that Clementine was entitled to one-half of the property acquired during the existence of the putative community under what was then Louisiana Civil Code article 117. At that time Louisiana Civil Code article 117<sup>7</sup> provided: "The marriage, which has been declared null, produced nevertheless its

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<sup>6</sup> Professor Pascal is referencing **Prince v. Hopson**, *supra*.

<sup>7</sup> The **Prince** opinion also recited Louisiana Civil Code article 118, which provided: "If only one of the parties acted in good faith, the marriage produces its civil effects only in his or her favor, and in favor of the children born of the marriage." **Prince**, 89 So.2d at 132.

The 1987 Revision Comments to Louisiana Civil Code article 96 state: "(a) This Article reproduces the substance of the source provisions, Articles 117 and 118 of the Civil Code of 1870, and the associated jurisprudence . . . ."

civil effects as it relates to the parties and their children, if it has been contracted in good faith.” The court then reasoned that Victoria, the legal wife, was also entitled to half of the community under the Civil Code. The court stated that the putative community and the legal community were in “coexistence.” The court described the controversy thusly:

The provisions of our law which give to each of these wives one-half of the property are of equal dignity and rank. However, it is impossible to give to each wife under these laws one-half of the entire property, as there remains to be divided between them only one-half of the property because James Brough’s one-half is inherited by his daughter.

**Id.** at 133. Noting that Louisiana Civil Code article 117 was a literal translation of French Civil Code article 201, the court relied on French commentators to hold that the solution “most equitable” would be for each wife to have to an undivided one-fourth interest in the community. **Id.** The court explained:

. . . [W]e certainly are following the provisions of Article 117 by allowing to the husband who is in good faith the civil effects of his second marriage, and we are also following the provisions of the article as to the putative wife’s share as far as we can possibly do so by recognizing her to be entitled to the civil effects of her marriage, which she also contracted in good faith.

**Id.**

We disagree with the **Prince** decision that the Civil Code allows for concurrent communities where there is a legal and putative marriage. Key to the reasoning of the court in **Prince** is the statement that the law governing the civil effects of a null marriage is of “equal dignity and rank” with the law assigning each spouse an undivided one-half interest in the community. **Id.** at 133. This court has held that “it is a fundamental rule of statutory construction that when two statutes deal with the same subject matter, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.” **Burge v. State**, 10-2229 (La. 2/11/11), 54 So.3d 1110, 1113. Here, it can be said there is a conflict between Louisiana Civil Code article 96 and article

2336. As **Prince** correctly observed, “it is impossible to give to each wife under these laws one-half of the entire property, as there remains to be divided between them only one-half of the property . . . .” **Prince**, 89 So.2d at 133. Louisiana Civil Code article 96 is the more specific statute to the facts at bar as it relates to the particular instance of good faith putative marriages. Louisiana Civil Code article 96 provides that the marriage between Willie and Annie “produces civil effects in favor of” Willie and Annie, who are both in good faith. One of the civil effects of marriage is an undivided one-half interest in the community. There is no other interest available to be assigned to any other party. To the extent the **Prince** decision abrogates the rights given to good faith spouses in Louisiana Civil Code article 96, it is overruled.

We note that the court of appeal amended the trial court’s award to give Silver the usufruct over the portion inherited by her children and to give Annie the usufruct over the portion inherited by her children. Today’s ruling will make Annie the usufructuary over Willie’s share of the community inherited by his children. In this circumstance security may be required. La. Civ. Code art. 573.

### **DECREE**

For the reasons stated, we reverse the decision of the court of appeal. The assets of Willie Clyde Burns at his death are his share of the assets of the putative community of Willie and Annie Burns. As a good faith putative spouse, Annie has an undivided one-half interest in the community. Willie’s five children shall divide equally his undivided one-half interest in the community, subject to Annie’s usufruct. We remand for further proceedings in accordance with this opinion.

**REVERSED AND REMANDED.**

**SUPREME COURT OF LOUISIANA**

**NO. 2022-C-00263**

**SUCCESSION OF WILLIE CLYDE BURNS**

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
SECOND CIRCUIT, PARISH OF CLAIBORNE*

**Weimer, C.J.**, additionally concurs.

As the majority explains, the Civil Code is not silent on the issue of what portion is due to legal and putative spouses. Louisiana Civil Code art. 96 addresses and fully resolves the question presented here, so there is no need to resort to equity. However, in this instance what is equitable and the code work hand in hand, as the facts demonstrate that at the time of its termination, the community of acquets and gains shared by Silver and Willie contained more debts than assets. All property owned by Willie at the time of his death was acquired during his marriage to Annie.