

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-27

ESTATE OF ALBERT RHEA, SR. AND CAROLYN RHEA

versus

DONNA PHILLIPS, INDIVIDUALLY AND AS EXECUTOR, AND ESTATES OF EDNA
WILLIAMS RHEA, AND SAMUEL PETER RHEA, SR.

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 854-130, DIVISION "J"
HONORABLE STEPHEN C. GREFER, JUDGE PRESIDING

September 23, 2026

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
John J. Molaison, Jr., and Timothy S. Marcel

AFFIRMED.

SMC
JJM
TSM



COUNSEL FOR PLAINTIFF/APPELLANT,
ESTATE OF ALBERT RHEA, SR. AND CAROLYN RHEA
Thomas G. Donelon

COUNSEL FOR DEFENDANT/APPELLEE,
DONNA PHILLIPS, INDIVIDUALLY AND AS EXECUTOR, AND
ESTATES OF EDNA WILLIAMS RHEA AND SAMUEL PETER
RHEA, SR.

Steven J. Koehler

Carrie H. Pailet

CHEHARDY, C.J.

Plaintiffs/Appellants, the Estate of Albert E. Rhea, Sr. and Carolyn Rhea, seek review of the trial court’s judgment granting the motion for involuntary dismissal filed by Defendants/Appellees—Donna Phillips, individually and in her capacity as administratrix of the Succession of Edna Williams Rhea, wife of/and Samuel Peter Rhea, Sr. For the reasons that follow, we affirm the trial court’s judgment.

Background and Procedural History

This appeal stems from the attempt by a succession administratrix to sell immovable property—specifically, a home located at municipal address 2918 Clermont Road in Jefferson, Louisiana. This property was originally purchased by Samuel and Edna Rhea. After their deaths in 1969 and 1971 respectively, their son Albert E. Rhea, Sr. took corporeal possession of the home and lived there with his wife, Carolyn Rhea, until his death in 2023.¹ His wife Carolyn survives him, and is a named plaintiff in this matter.

On August 17, 2022, the Successions of Edna and Samuel Rhea were opened under Case No. 831-712 in the Twenty-Fourth Judicial Court, with Donna Phillips appointed the administratrix of the Successions. She thereafter filed the motion to sell 2918 Clermont.

Carolyn Rhea and the Succession of Albert E. Rhea, Sr. filed a petition for a petitory action in the Twenty-Fourth Judicial District Court against the Successions of Edna and Samuel Rhea in Case No. 854-130, alleging that Plaintiffs/Appellants acquired ownership of 2918 Clermont Street through 30-year acquisitive prescription. Defendants/Appellees filed a motion to involuntarily dismiss

¹ Albert E. Rhea, Sr., himself was born on February 16, 1944.

Plaintiffs’/Appellants’ petition on the basis that the 30-year acquisitive prescription had not accrued.

Trial for this matter was held on August 4, 2025. The trial court ultimately granted Defendants’/Appellees’ motion to involuntarily dismiss

Plaintiffs’/Appellants’ petition for petitory action, asserting that the claim for acquisitive prescription failed because they were unable to prove via notice to the other heirs of Samuel and Edna Rhea or via overt and unambiguous acts that they intended to own 2918 Clermont for themselves and to the exclusion of all others, as would be required by La. C.C. art. 3478.

Plaintiffs/Appellants timely appealed the judgment, asserting that they met the legal requirement for 30-year acquisitive prescription and that ownership had passed to Plaintiffs/Appellants. They also contest the trial court’s refusal to admit into evidence (1) proof that Defendants/Appellees waived their right to participate in the assets of the estate because they failed to make a claim for 30 years, (2) statements by Albert E. Rhea, Sr., made outside of the trial court because they were hearsay, and (3) Albert E. Rhea, Sr.’s conversation with his attorney because no one available was legally able to waive the lawyer/client privilege. Finally, Plaintiffs/Appellants contest the trial court’s refusal to allow a witness on the Pre-Trial order list to testify.

Discussion

Under La. C.C. art. 3486, ownership and other real rights in immovables may be acquired by the prescription of 30 years without the need of just title or possession in good faith. However, this prescription is not without prerequisites. Louisiana Civil Code Article 3476 requires that the possessor must have corporeal possession—or civil possession preceded by corporeal possession—and that such possession must be continuous, uninterrupted, peaceable, public, and unequivocal. Additionally, La. C.C. art. 3424 requires that a person must intend to possess as

owner and must take corporeal possession of the thing. To acquire ownership, a possessor must establish not only corporeal possession for the required period, but also a positive intent to possess as owner. *McCoy v. Toms*, 384 So.2d 518 (La. Ct. App. 1980).

The threshold obstacle to Plaintiffs'/Appellants' claim is the doctrine of precarious possession. Louisiana Civil Code article 3437 defines precarious possession as the exercise of possession over a thing with the permission of or on behalf of the owner or possessor. Louisiana Civil Code article 3477 provides unambiguously that acquisitive prescription does not run in favor of a precarious possessor or his universal successor.

However, critically, because a co-owner possesses immovable property for himself and his co-owners, he is deemed a precarious possessor by operation of law. *Hooper v. Hooper*, 06-0825 (La. App. 3 Cir. 11/2/06), 941 So.2d 726.

Louisiana Civil Code Article 3438 further provides that a precarious possessor is presumed to possess for another even though he actually intends to possess for himself—a presumption that operates against Plaintiffs/Appellants, regardless of their subjective intent.

When Edna Rhea died in 1971, Albert E. Rhea, Sr., as an heir, became a co-owner of the undivided succession property pursuant to La. C.C. art. 935. Furthermore, pursuant to La. C.C. 802, he had a right to remain at the Clermont address following the ownership transfer to the heirs after the death of Samuel and Edna Rhea. From that moment, the general rule applied: possession by a co-owner is exercised on behalf of all co-owners. *Fuselier v. Billeaud Sugar Factory*, 19-487 (La. App. 3 Cir. 6/24/20), 317 So.3d 632. Albert E. Rhea, Sr.'s uninterrupted physical occupancy of the home from 1971 to 2023, while more than adequate to establish prescription against a stranger, was legally insufficient to commence the running of the prescription clock against his co-owners.

Louisiana Civil Code article 3478 provides the only path by which a co-owner may commence to prescribe: he must demonstrate by overt and unambiguous acts sufficient to give notice to his co-owner that he intends to possess the property for himself. Until such a demonstration is made, acquisitive prescription never commences. *Hooper*, 941 So.2d 726. The Louisiana Supreme Court confirmed in *1026 Conti Holding, LLC v. 1025 Bienville, LLC*, 22-01288 (La. 3/17/23), 359 So.3d 930, that a co-owner commences to possess for himself only when he demonstrates this intent by overt and unambiguous acts sufficient to give notice to his co-owner, and that current law imposes this burden squarely on the co-owner seeking to acquire by prescription.

In this matter, neither Albert E. Rhea, Sr. nor his wife Carolyn made any overt acts of ownership beyond paying bills and making repairs between 1971 and 2023, when acquisitive prescription could have possibly accrued. Louisiana jurisprudence has consistently found such conduct insufficient. In *Bailey v. Alexander*, 376 So.2d 620 (La. Ct. App. 1979), the court held that mere possession by a co-owner is explainable on the basis of implied consent to occupancy or the presumption that possession by one co-owner is generally exercised on behalf of all co-owners and thus does not constitute unequivocal adverse possession. In *Hooper*, 941 So.2d 726, the Louisiana Third Circuit Court of Appeal specifically held that a brother's occupancy and acts of possession for over 30 years were sufficient to establish prescription adverse to a stranger, but because the occupant and his sibling were co-owners, the burden was to show when and how the occupant demonstrated by overt and unambiguous acts his intent to possess for himself—a burden his heirs failed to meet. Paying bills and performing repairs falls squarely within the category of acts consistent with permissive co-owner occupancy, not adverse possession. Furthermore, the tax bill remained in the

names of the deceased Edna and Samuel even after ownership transferred to the heirs.

Louisiana Civil Code article 3477's bar extends explicitly to the universal successor of the precarious possessor. Because Albert E. Rhea, Sr. never converted his precarious possession into adverse possession—prescription having never commenced during his lifetime—his estate steps into the same legal position.

As to the Plaintiffs'/Appellants' assignments of error related to the admission of evidence and witnesses, La. C.C.P. art. 1631 allows the trial court discretion as to how to conduct its trials, including what evidence and witnesses to be included or excluded from a matter. The trial court did not abuse its discretion in refusing to admit the hearsay testimony of the deceased Albert E. Rhea, Sr., finding that the statement did not fall into one of the hearsay exceptions enumerated in La. C.E. art. 804. Secondly, the trial court did not err in refusing to admit privileged recorded conversations between Albert E. Rhea, Sr. and his attorney because no one was present who could waive attorney/client privilege on behalf of the deceased Mr. Albert Rhea and because it determined that none of the Article 804 hearsay exceptions applied. Finally, the trial court did not err in denying the Plaintiffs/Appellants the opportunity to present the testimony of Craig Wright, a witness listed on the Pre-Trial Order who was not present at trial. The trial court determined Mr. Wright would only be offering cumulative testimony. Furthermore, Mr. Wright was not subpoenaed, and Defendants/Appellees stipulated to Mr. Wright's proposed testimony.

CONCLUSION

For the foregoing reasons, the trial court's judgment granting Defendants'/Appellees' motion to involuntarily dismiss Plaintiffs'/Appellants' petition for petitory action is affirmed.

AFFIRMED.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
SEPTEMBER 23, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL
PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-CA-27

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE STEPHEN C. GREFER (DISTRICT JUDGE)
THOMAS G. DONELON (APPELLANT) CARRIE H. PAILET (APPELLEE)
DERISHA RHEA (APPELLANT)

STEVEN J. KOEHLER (APPELLEE)

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