

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0586

LINDA LEDET

VS.

GEORGE LEDET, JR.

JUDGMENT RENDERED: FEBRUARY 9, 2007

ON APPEAL FROM THE
SEVENTEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 93371, DIVISION E
PARISH OF LAFOURCHE, STATE OF LOUISIANA

HONORABLE F. HUGH LAROSE, JUDGE

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GEORGE J. LEDET, JR.

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

*BQC
JMM*

MCDONALD, J.

This is an appeal from the Seventeenth Judicial District Court. George and Linda Ledet were married on March 14, 1985, and divorced on November 14, 2002. Ms. Ledet filed a rule to set spousal support, and after a hearing, the trial court found that Ms. Ledet was free from fault in the breakup of the marriage, was competent and capable of returning to employment, and would need 12 months to acquire the necessary training to re-enter the market. The trial court ordered Mr. Ledet to pay Ms. Ledet \$1,000 per month for 12 months.

Prior to the termination of the spousal support payments, Ms. Ledet filed a rule to modify the spousal support judgment, requesting that spousal support payments not be terminated and that the payments be increased. Ms. Ledet alleged she had been unable to secure employment, that expenses associated with her hospitalization insurance had substantially increased, and that Mr. Ledet had experienced an increase in income. After a hearing, the trial court rendered judgment denying the rule to modify spousal support payments. Ms. Ledet is appealing that judgment.

The trial court is vested with much discretion in determining awards of spousal support. Such determinations will not be disturbed absent a clear abuse of discretion. **Lang v. Lang**, 37,779 (La. App. 2nd Cir. 10/23/03), 859 So.2d 256, 257.

Further, the appellate court's review of factual findings is governed by the manifest error-clearly wrong standard. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). The manifest error standard of review obligates an appellate court to give great deference to the trial court's findings of fact. We will not reverse factual determinations, absent a finding of manifest

error. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989); **Almon v. Almon**, 2005-1848 (La. App. 1st Cir. 9/15/06) ___So.2d ___, ___.

In its reasons for judgment, the trial court found:

The Court is guided by Civil Code Article 114, which states in pertinent part, “An award of periodic support may be modified if the circumstances of either party materially change.” Therefore, before continuing the spousal support obligation, the Court must first determine if Ms. Ledet has experienced a material change in circumstance. In its prior judgment, this Court determined that Mrs. Ledet was competent and capable of returning to employment despite her medical conditions. The Court awarded Ms. Ledet \$1,000.00 per month for a period of twelve months in order for her to obtain any necessary training to re-enter the job market.

Ms. Ledet maintains that her change in circumstance is related to her ongoing medical problems and medical expenses. She has been diagnosed with fibromyalgia, migraines, and anxiety and depression. While this Court does recognize the existence of these conditions, it is of the opinion that Ms. Ledet is capable of engaging in meaningful employment. Ms. Ledet testified that she has been having [m]igraine headaches for the past 15-20 years and was first diagnosed with fibromyalgia during the 1980s, and according to Dr. Hutchinson, Ms. Ledet has also experienced a depressed mood for many years. However, despite having those conditions for quite some time, Ms. Ledet was able to perform various jobs often requiring a great degree of proficiency. Although Ms. Ledet has not worked in years, she has an impressive array of skills that has allowed her to work in numerous fields, often with managerial responsibilities. Ms. Ledet’s work history includes working at a family grocery store, managing a flower shop, working as a receptionist and billing clerk in a medical office, maintaining the financial records for a convenien[ce] store, and managing a law office, with the final job lasting about ten years.

Although Ms. Ledet has been to the doctor more frequently since the previous spousal support judgment, she still suffers from the same medical conditions/diagnoses, and although she claims that she has been unable to work due to these conditions, she **has** been able to actively participate in many social activities. Ms. Ledet is a member of a Mardi Gras Crew and the Red Hat Society. Both organizations are involved in various activities throughout the year. In fact, Ms. Ledet even manages the finances and helps to organize functions for the Mardi Gras association. Additionally, since the last judgment, Ms. Ledet has gone to casinos, Saints games, and has traveled approximately 50 miles down Bayou Lafourche in a wooden boat. It is this Court’s opinion that Ms. Ledet’s medical problems do not rise to the level of incapacity so much

that she cannot engage in meaningful employment, especially considering that there are no objective findings that indicate a specific illness or diagnosis. In fact, the medical diagnoses attributed to Ms. Ledet are all purely subjective.

This Court has given Ms. Ledet an entire year to prepare herself for re-entering the work force, yet there has been no action on her behalf. Although both of Ms. Ledet's treating physicians feel that her complaints may limit her ability to work, both have testified that she has no specific restrictions placed on her functional capacity. In fact, Dr. Gervais testified that he does not keep patients on permanent disability for migraines because it's a cyclical disease process. He explained that although one may not be able to engage in gainful employment during a headache, they can certainly do so in between cycles. Accordingly, Ms. Ledet could have attempted to perform a part time job in order to test her level of ability; however, she did no such thing.

Additionally, both doctors recognize that there are many people diagnosed with fibromyalgia, migraines, and depression who are able to work for a living. This Court does recognize that Ms. Ledet has medical problems; however, these medical problems are not the reason for her unemployment.

Finally, the court recognizes that Ms. Ledet has encountered a significant increase in the cost of hospitalization insurance. Although taxing on the individual, this additional expense is not enough to satisfy the burden of Louisiana Civil Code Article 114 requiring a material change in circumstances.

After a thorough review of the record, we find no abuse of discretion and no manifest error by the trial court, and we affirm the trial court judgment. This opinion is rendered in compliance with Uniform Rules – Courts of Appeal, Rule 2-16.1.B. Ms. Ledet is assessed with costs.

AFFIRMED.