

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1134

RANDALL P. MOREL

VERSUS

JAN P. MOREL

Judgment Rendered: February 13, 2012

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2009-11,626

Honorable Dawn Amacker, Judge

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

Randall P. Morel appeals a trial court judgment awarding Jan P. Morel final periodic spousal support. Finding no error in the judgment of the trial court, we affirm in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

Randall and Jan were married on November 3, 1994, and thereafter, they established their matrimonial domicile in St. Tammany Parish. The parties had one child of the marriage, Nicholas Alexander Morel, who is now a major.¹ On March 20, 2009, Randall filed a petition for divorce pursuant to La. C.C. art. 102. In response, Jan filed an answer and reconventional demand, requesting among other things, that she be awarded interim periodic spousal support and final periodic spousal support because she was in need of support and free from fault in the break-up of the marriage. The parties were ultimately divorced by judgment rendered on June 4, 2010.

Prior to the judgment of divorce, Randall agreed to pay Jan interim periodic spousal support in the amount of \$1,972 per month, with \$475 of that amount to be satisfied by Randall continuing to pay Jan's car note each month. After the judgment of divorce was rendered, a hearing with regard to the fault portion of Jan's claim for final spousal support was held. After an evidentiary hearing, the trial court rendered judgment finding that Jan was free from fault in causing the break-up of the marriage.² Thereafter, following another evidentiary hearing, the trial court rendered judgment awarding Jan final spousal support (or rehabilitative spousal support) in the amount of \$981 per month for a period of four years and ordering Randall to continue to pay Jan's car note in the amount of \$485 per month, until paid in full. Randall now appeals both judgments, asserting that the

¹ Jan Morel is the natural mother of the child and Randall Morell is the adoptive father of the child.

² Following this hearing, the original trial court judge recused herself, and the case was allotted to a new trial court judge. The grounds for the recusal are not contained in the record before us.

trial court manifestly erred in finding Jan free from fault and that the amount of the spousal support award was an abuse of the trial court's discretion.³ Specifically, Randall contends that the evidence established that Jan had a drinking problem and that her drinking problem or "habitual intemperance" led to the demise of the marriage. Additionally, Randall contends that the trial court's award of spousal support failed to take into consideration the evidence establishing that Randall is currently supporting the parties' child while he is enrolled in college.

Louisiana Civil Code article 111 provides:

In a proceeding for divorce or thereafter, the court may award interim periodic support to a party or may award final periodic support to a party who is in need of support and who is free from fault prior to the filing of a proceeding to terminate the marriage in accordance with the following Articles.

The burden of proof regarding freedom from fault is on the party that is seeking support. Fault, in a final support context, is synonymous with conduct that would entitle a spouse to a separation from bed and board or divorce under former La. C.C. arts. 138 and 139. **Harrington v. Montet**, 93-984 (La. App. 3rd Cir. 3/2/94), 634 So.2d 1302, 1303-1304; see also La. C.C. art. 111, comment (c). These grounds included, among other things, habitual intemperance, excesses, cruel treatment or outrages of one of the spouses toward the other, if these intemperances make living together unsupportable. See former La. C.C. art. 138.

Additionally, jurisprudence has broadened fault to include other activity that can be construed as fault for the purpose of denying periodic spousal support. For a spouse to be free from fault, that spouse must not have had any misconduct of a serious nature that is an independent, contributory, or proximate cause of the

³ Randall also asserted that the original trial court judge erred in not recusing herself from this case prior to the fault hearing, and therefore this matter should be remanded for a new trial on the issue of fault before the current trial court judge. However, as previously noted, the record does not reveal the grounds for the recusal of the original trial judge. Therefore, we must presume that the original trial court judge was impartial, with full power and authority to render judgment, on the date of the hearing on fault. See State v. Edwards, 420 So.2d 663, 673 (La. 1982) and La. C.C.P. art. 153. Accordingly, this assignment of error has no merit.

failure of the marriage. **Terry v. Terry**, 2006-1406 (La. App. 3rd Cir. 3/28/07), 954 So.2d 790, 794, writ not considered, 2007-0928 (La. 6/22/07), 959 So.2d 486.

At the fault hearing in this matter, the trial court found that both Jan and Randall had “a drinking issue,” and that “it was not [Jan’s] drinking that caused the breakup of the marriage” as both “parties each drank to excess during the entire marriage.” Additionally, the trial court found that the marriage of the parties’ broke-up as the result of an incident involving domestic abuse perpetrated by Randall, in which Jan was injured and Randall was subsequently arrested and convicted. As such, the trial court concluded that Jan was free from fault in the break-up of the marriage.

Our review of the entire record reveals that the trial court’s factual finding in this regard is reasonably supported by the evidence and is not clearly wrong. The testimony of both parties revealed that the parties drank alcohol together during their entire marriage—both at home and socially—and that they consented, participated, and encouraged each other’s alcohol consumption. Additionally, the evidence revealed that Randall often supplied and paid for the alcohol consumed by Jan, thus contributing to the conduct for which he blames Jan. Thus, we find no manifest error in the trial court’s factual finding that Jan was free from fault or not guilty of any misconduct of a serious nature that was an independent, contributory, or proximate cause of the failure of the marriage.

With regard to the amount of spousal support awarded by the trial court, we recognize that the trial court is vested with much discretion in determining awards of spousal support and that these determinations will not be disturbed absent a clear abuse of discretion. **Noto v. Noto**, 2009-1100 (La. App. 5th Cir. 5/11/10), 41 So.3d 1175, 1180. Louisiana Civil Code article 112 governs the calculation of spousal support and provides:

A. When a spouse has not been at fault and is in need of

support, based on the needs of that party and the ability of the other party to pay, that spouse may be awarded final periodic support in accordance with Paragraph B of this Article.

B. The court shall consider all relevant factors in determining the amount and duration of final support. Those factors may include:

(1) The income and means of the parties, including the liquidity of such means.

(2) The financial obligations of the parties.

(3) The earning capacity of the parties.

(4) The effect of custody of children upon a party's earning capacity.

(5) The time necessary for the claimant to acquire appropriate education, training, or employment.

(6) The health and age of the parties.

(7) The duration of the marriage.

(8) The tax consequences to either or both parties.

C. The sum awarded under this Article shall not exceed one-third of the obligor's net income.

In this case, the trial court's reasons for judgment reflect that it considered the above-listed factors relevant to this case, as well as the income and expense affidavits of each party. The trial court found that although Jan was not employed, she was capable of being employed and earning minimum wage. The trial court then considered Jan's reasonable needs, Randall's ability to pay, and then awarded Jan the sum of \$981 per month for a period of four years and ordered Randall to pay Jan's car note in the amount of \$485 per month until paid in full. The evidence in the record does not reveal that this amount exceeds one-third of Randall's net income. After reviewing the record, we find the trial court's award was reasonable under the circumstances and was not an abuse of the trial court's vast discretion.

Accordingly, the trial court judgments finding Jan Morel free from fault and

awarding her final spousal support are hereby affirmed. All costs of this appeal are assessed to the plaintiff/appellant, Randall P. Morel.

AFFIRMED.