NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1948

SHEILA R. ALBIN

VERSUS

RICKY D. ALBIN

Judgment Rendered: June 8, 2006

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Appealed from the 21st Judicial District Court
in and for the Parish of Livingston
State of Louisiana
Docket Number 109219

Honorable Brenda Bedsole Ricks, Judge

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: AMENDED; AFFIRMED AS AMENDED

GJG - Gaidry, J - concurs w. th reasons

KUHN, J.

This is an appeal of a trial court judgment awarding a former wife monthly spousal support in the amount of $2,664 for a six-month period. For the following reasons, we amend the judgment to reduce the duration of the spousal support award to a three-month period and affirm the judgment as amended.

FACTUAL AND PROCEDURAL HISTORY

Sheila Addison and Ricky Albin were married in June 1999. On September 6, 2005, Sheila filed a petition for divorce alleging that the parties had been separated for more than six months and that Ricky had committed adultery. Therein, she requested an award of "temporary spousal support."

Following a hearing on November 14, 2005, the trial court indicated its intent to grant Sheila temporary spousal support in an amount to be determined at a future hearing. On December 5, 2005, the trial court signed a judgment granting the parties a divorce and awarding Sheila "spousal support in an amount to be determined at a hearing set for February 6, 2006."

A hearing to establish the amount of spousal support was ultimately held on April 10, 2006. Each of the parties testified regarding their incomes and expenses, although no real supporting documentation was submitted into evidence. Based on the credibility of the respective witnesses, the trial court concluded that Ricky's income was $8,000 per month. The trial court then stated: "The article that was found said [the spousal support] shall not exceed a third of the net income." Hence, the trial court awarded Sheila a monthly award of $2,664. It further limited the award to a six-month period based on its belief that "that's what the statute says." Judgment was signed

accordingly on April 17, 2006. From this judgment, Ricky appeals contending that the award is excessive.

DISCUSSION

In addressing this appeal, we are faced with a dilemma. The judgment at issue fails to classify the type of support awarded; hence, it is unclear to us whether the judgment was intended to award "interim spousal support" pursuant to LSA-C.C. art. 113 or "final periodic support" under LSA-C.C. art. 112. The rules governing, and the purposes underlying, these respective awards differ; however, throughout the record, both counsel and the trial court confusingly referenced various aspects of each type.

Initially, we note that in her petition, Sheila only requested "temporary spousal support." Moreover, the purpose of the original hearing was for the express purpose of addressing the issue of "temporary spousal support." BLACK'S LAW DICTIONARY 1464 (6th ed. 1990) defines "temporary" as "that which is to last for a limited time only" and further expounds that "temporary alimony is granted for the support of the wife pending the action for divorce." Furthermore, we note that "interim" is defined as "temporary." BLACK'S LAW DICTIONARY 814 (6th ed. 1990). Accordingly, we conclude that Shelia requested, and the trial court judgment awarded, "interim spousal support" in the case *sub judice*.[1] See **Gremillion v. Gremillion**, 39,588, 39,589 (La.App. 2 Cir. 4/6/05), 900 So.2d 262 (using the terms "temporary spousal support" and "interim spousal support" interchangeably.)

Pursuant to LSA-C.C. art. 113, a court may award interim spousal support based on the needs of the claimant, the ability of the other party to

[1] Our conclusion is buttressed by the fact that there has been no definitive finding regarding Shelia's freedom from fault, which is necessary to receive an award of final periodic support.

pay, and the standard of living enjoyed by the parties during the marriage. The purpose of an interim spousal support allowance is "to maintain the status quo" regarding the parties' standard of living until a limited period of time for adjustment elapses. See LSA-C.C. art. 113, comment (b). The trial court is vested with much discretion in determining an award of interim spousal support and its determination will not be disturbed absent a clear abuse of that discretion. **Romanowski v. Romanowski**, 2003-0124, p. 11 (La.App. 1 Cir. 2/23/04), 873 So.2d 656, 664.

In the present case, Ricky could provide no documentation in support of his testimony that he earned only $12 per hour. He testified that he was paid in cash, that he had not filed income taxes for several years, and that he maintained no bank accounts. Nonetheless, Sheila demonstrated that Ricky was able to finance large pieces of construction equipment as well as various vehicles, thereby casting doubt on his testimony regarding his income. Conversely, the trial court expressly credited the testimony of Sheila wherein she stated that Ricky earned between $2,000 and $5,000 per week.

Concluding that Ricky earned $2,000 per week (or $8,000 per month), the trial court awarded Sheila one third of that amount, $2,664 per month, to continue for a period of six months. Given the evidence, and its assessment regarding the credibility of the witnesses, we cannot say that the trial court clearly abused its discretion in establishing **the amount** of the interim spousal support award at issue; nevertheless, we do find that the trial court abused its discretion in establishing **the duration** of the award.

A judgment awarding an interim spousal support allowance shall be retroactive to the date of judicial demand. LSA-R.S. 9:321(A). Absent a pending demand for final spousal support, an award of interim spousal support allowance shall terminate upon the rendition of a judgment of

divorce. LSA-C.C. art. 113; **Romanowski**, 2003-0124 at p. 11, 873 So.2d at 663.

Sheila made no request for final spousal support. Accordingly, the duration of her interim spousal support award should be from September 6, 2005 (the date of judicial demand) until December 5, 2005 (the date the judgment of divorce was granted). Therefore, we amend the judgment to award Sheila spousal support for a period of three months rather than six months.

Finally, in her appellee brief, Sheila requested damages in the form of attorney's fees incurred due to Ricky's allegedly frivolous appeal. However, Sheila failed to appeal or file an answer to Ricky's appeal; consequently, we need not address the merits of her request as she is not entitled to recover such damages. See LSA-C.C.P. art 2133; see also **Domingue v. Legion Indem. Co.**, 2005-580, p. 5 (La.App. 3 Cir. 1/4/06), 918 So.2d 1213, 1216-17.

CONCLUSION

For all of the foregoing reasons, the judgment of the trial court is amended to reduce the duration of Sheila's spousal support award to a period of three months. We hereby affirm the judgment as amended. Costs of this appeal are to be borne equally by the parties.

AMENDED; AFFIRMED AS AMENDED.

SHEILA R. ALBIN	**COURT OF APPEAL**
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VERSUS	
	STATE OF LOUISIANA
RICKY D. ALBIN	**NO. 2006 CA 1948**

GAIDRY, J., concurring.

I agree with the result reached, but concur separately to question the soundness of the 2003 amendment, as well as to note some confusion arising from the "revision comments" contained in the code.

Prior to the 2003 amendment, La. C.C. art. 113 provided that an interim spousal support award terminated 180 days after the judgment of the divorce if no request for permanent (final) spousal support was pending. If such request was pending, the interim spousal support award terminated when the final support award was either granted or denied, or 180 days following the divorce judgment, whichever came first. This version of the article was logical – the termination of interim support when the final support award is decided implies that once one terminated, the other kicked in; or the claimant's support award was extended to 180 days past the divorce judgment date.

The 2003 amendment very clearly takes away the 180-day extension time allowed for an interim support award *when the claimant has not also requested final spousal support,* in which case, that claimant's interim spousal support now terminates upon the rendering of a judgment of divorce. However, a claimant who also requested final spousal support is now allowed to collect the interim spousal support for an additional 180 days, *even when final spousal support has been denied.* Therefore, in my opinion, the amended article dictates unwarranted and incongruous results depending

on whether a claimant has requested or not requested final spousal support in addition to a request for interim spousal support. The amendment clearly penalizes claimants, such as Ms. Albin, who did not request final spousal support, by terminating her interim spousal support award upon the rendering of the divorce judgment; and in this case, reducing the award from six months to three months. The effect of this amended article's application not only lacks logic, but it also leads to incongruous results between claimants who claim final spousal support and those who seek only interim spousal support when such inconsistency is not warranted.

Moreover, my review of this issue revealed that the "revision comments" to the code itself are misleading and add confusion to the issue. Notwithstanding the 2003 amendment, which significantly altered the rights of claimants who have been awarded interim support, the comments contained in the code apply to the pre-amended version of the article. While we recognize that the comments are not "law," they are very instructive and offer guidance to the interpretation of the article. Thus, the now amended article and the 1997 comments, which inexplicably still follow, are wholly inconsistent. The legislative history of the 2003 amendment provides notes evidencing the legislature's very clear intent to remove the 180-day extension for interim spousal support awards rendered in favor of claimants who did not also seek final spousal support.

I do not believe that the court's award of interim spousal support to Ms. Albin in the amount awarded for a six-month period of time is patently excessive under the circumstances and evidence provided in this record. However, the legislature changed the law; and although I disagree with it, it is the law and I am constrained to follow the law.