

Judgment rendered October 24, 2007  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

No. 42,679-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

TOD B. LAWHON

Plaintiff-Appellee

versus

TAMMY JUDKINS LAWHON

Defendant-Appellant

\* \* \* \* \*

Appealed from the  
Fourth Judicial District Court for the  
Parish of Morehouse, Louisiana  
Trial Court No. 2005-482

Honorable Alvin R. Sharp, Judge

\* \* \* \* \*

BLACKWELL, CHAMBLISS,  
HENRY AND CALDWELL  
By: Sam O. Henry, III

Counsel for  
Appellant

RANKIN, YELDELL & KATZ  
By: Stephen J. Katz

Counsel for  
Appellee

\* \* \* \* \*

Before BROWN, CARAWAY and PEATROSS, JJ.

NOT DESIGNATED FOR PUBLICATION.  
Rule 2-16.3, Uniform Rules, Courts of Appeal.

CARAWAY, J.

Following a four-year marriage, the parties separated and divorced a short time after the wife had been laid off of her successful employment. The wife returned to work in a lower paying job and sought final periodic spousal support after the divorce. The trial court found the wife free from fault in the breakup of the marriage but not in necessitous circumstances so as to require alimony. The parties respectively now raise on appeal these two issues. Finding no manifest error in the trial court's conclusions, we affirm.

*Facts*

Tod B. Lawhon ("Tod") and Tammy Judkins Lawhon ("Tammy") were divorced on January 26, 2006, after four years of marriage. No children were born of their marriage but both parties had children from prior marriages. Tammy's teenage daughter, Hali, who was 18 at the time of trial, lived with them during the marriage.

During the marriage, Tammy continued her successful employment with State Farm Insurance Company in Monroe. During the nine years she worked for State Farm, Tammy was promoted from entry level up to claims representative and her starting salary tripled. However, this job ended on March 31, 2005, when the company closed its Monroe office. Tammy presently works at Community Financial Insurance Center, earning about two-thirds of her former salary at State Farm.

Tod is a self-employed dentist practicing in Bastrop. After their marriage, Tammy and Hali moved into Tod's house in Bastrop. Tod

furnishes support for his youngest child, age 14, and testified that he had recently satisfied a contractual spousal support obligation for his first wife.

After the parties separated in July 2005, they jointly stipulated that Tammy would receive \$3,000/month interim spousal support. Tammy's entitlement to final periodic support was reserved for trial. Tod testified that he gave Tammy \$3,000 in cash when she left and agreed to give her another \$6,000 for furniture to help with her apartment.

The matter regarding final support was tried and taken under advisement. The trial court issued a written ruling finding that Tammy was free from fault in the dissolution of the marriage. However, considering the economic and other factors enunciated in La. C.C. art. 112, the trial court denied appellant's motion for final periodic support. The judgment was signed on December 19, 2006.

Tammy now appeals the judgment questioning the trial court's assessment of her "needs," economic and otherwise, under Civil Code Article 112 regarding final periodic support. Tod answered the appeal disputing the trial court's determination that Tammy was free from fault in the dissolution of the marriage.

### *Discussion*

#### I.

In his brief, Tod argues that Tammy did not carry her burden of proving she was free from fault. Rather, he asserts that her "constant false accusations of infidelity," "repeated threats" and "explosive cursing

outbursts” constituted a pattern of mental harassment rising to the level of fault sufficient to preclude her from final periodic spousal support.

Final periodic support may be awarded 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, based on the needs of that party and the ability of the other party to pay. La. C.C. arts. 111 and 112. Thus, a spouse seeking such support must be without fault, and the burden of proof is on the claimant. *Adkins v. Adkins, supra*. The Civil Code does not specify fault which would deny permanent alimony and legal fault has been determined according to jurisprudential criteria. *Allen v. Allen*, 94-1090 (La. 12/24/94), 648 So.2d 359; *Adkins v. Adkins*, 42,076 (La. App. 2d Cir. 4/11/07), 954 So.2d 920; *Hutson v. Hutson*, 39,901 (La. App. 2d Cir. 8/9/05), 908 So.2d 1231; *Lyons v. Lyons*, 33,2378 (La. App. 2d Cir. 10/10/00), 768 So.2d 853, writ denied, 00-3089 (La. 1/5/01), 778 So.2d 1142. Legal fault consists of serious misconduct which is a cause of the marriage’s dissolution. *Allen, supra; Hutson, supra; Lyons, supra*. A continued pattern of mental harassment, nagging and griping by one spouse directed to the other can constitute cruel treatment, but mutual incompatibility, fussing and bickering cannot. *Lyons v. Lyons, supra; Loyd v. Loyd*, 336 So.2d 912 (La. App. 2d Cir. 1976). Mere friction or dissatisfaction in the relationship or incompatibility between the spouses, however intense, is not enough to constitute cruel treatment or lawful cause for abandonment. *Adkins v. Adkins, supra*.

Fault is a factual finding which will not be disturbed on appeal unless manifestly erroneous. *Carr v. Carr*, 33,167 (La. App. 2d Cir. 4/5/00), 756 So.2d 639. Even though an appellate court may feel its own evaluations are more reasonable than the factfinder's, reasonable evaluations of credibility should not be disturbed where conflict exists in the testimony. *Carr v. Carr, supra*, citing *Stobart v. State Dep't of Transp. & Dev.*, 617 So.2d 880 (La. 1993).

At the hearing, Tammy stated that Tod asked her to move out in mid-May 2005 and told her he did not want to continue the marriage. Nevertheless, she said she was "shocked," and she thought their marital relationship was fine. However, she acknowledged leaving the matrimonial domicile during a family reunion around Easter, 2004, staying overnight in a motel, and returning home the next day. She attributed Tod's unhappiness with their marriage to the fact that his best friend was newly unattached and Tod just wanted to be single again. Tammy's parents, who reside in Morehouse Parish, testified and also expressed their surprise in the sudden breakup of the marriage. Hali, who lived with the parties during the marriage, reported no mistreatment by her mother toward Tod.

Tod's testimony described his dissatisfaction with the marriage and related several examples of Tammy's behavior which he now asserts as her fault in the breakup of the marriage. The particular problems caused embarrassment for him around his office employees and difficulties in his relationships with his children and his parents. Also, Tammy's handling of her relationship with Hali caused him concern. He described Tammy as

prone to brief emotional and angry outbursts and pointed to her frequent accusations of infidelity, including her threats to harm him if he was unfaithful, as destructive to the relationship. Tod testified that they could not function in public as a married couple, and he was unhappy with the marriage and chose to change his situation by asking for the divorce.

Tod called three witnesses to testify about the marriage, including his best friend, his stepmother, and his employee. His stepmother, Linda Lawhon, corroborated Tod's testimony concerning certain evidence which tended to show Tammy's disruptive effect on their family's social gatherings. His dental assistant, Karen Akers, testified about two or three incidents involving Tammy's interaction with his office employees.

This court has repeatedly said that domestic relations issues largely turn on evaluations of witness credibility for the trial court to measure. *Adkins v. Adkins, supra*. We do not doubt that there were instances when Tammy "flew off the handle" during the four-year marriage and indeed, the trial court acknowledged Tammy's emotional outbursts. Nevertheless, the trial court had to consider each marital incident in terms of its overall effect on the marriage and whether or not, cumulatively, the conditions became unbearable, cruel treatment against Tod. The timing of the incidents was less than clear from the testimony and does not indicate a sustained pattern of misconduct during the spring of 2005 that amounted to intolerable conditions. Tammy's testimony of her shock in Tod's decision to end the marriage suggests that her past outbursts had not built up such a wall between the parties so as to amount to fault. The trial court's choice to

credit her testimony on that point is one which an appellate court cannot overturn on a cold record.

Accordingly, we affirm the trial court's ruling on the issue of Tammy's fault.

## II.

Post-divorce alimony is awarded to a former spouse in need and is limited to an amount sufficient for maintenance, as opposed to continuing an accustomed style of living. *Carr v. Carr, supra* (internal citations omitted). Factors to be considered in determining whether an ex-spouse is in need of post-divorce alimony include her income, means, earning capacity, assets, the liquidity of assets, her financial obligations, her health and age, and other circumstances deemed relevant by the court. *Id.* A spouse who is working full-time for a respectable salary who has no unusual expenses or obligations is not in necessitous circumstances so as to justify an award of post-divorce alimony. *Id.* The claimant spouse has the burden of proving necessitous circumstances or insufficient means for maintenance. An award for maintenance or basic necessities includes reasonable expenses for food, shelter, clothing, transportation, medical care and income tax liability caused by post-divorce alimony payments. *Id.*

Tammy testified that her employment with State Farm terminated on March 31, 2005, when the Monroe office closed. She and Tod had known for some time that State Farm was pulling out of Monroe, and Tammy had considered relocation options offered by State Farm to its employees. However, even at that time immediately preceding their separation, Tod

discouraged her from attempting any kind of commute between Bastrop and Baton Rouge, telling her they “would be okay.” Tammy testified her earning capacity was good, and she liked her new job, but she needed help from Tod to pay her living expenses until she realized her salary potential.

Tammy’s automobile expense was among the items addressed at the hearing. She drove a 2004 Toyota Sequoia purchased in November 2004, and made a \$750 car payment each month. This amount was included in Tammy’s expense affidavit, but before the hearing Tod paid off the \$19,000 balance on the loan. However, he characterized the vehicle as a community asset, suggesting the allocation of its value in any subsequent partition of community property.

Additionally, after the parties’ separation, Tod gave Tammy \$6,000 for furniture and other expenses for her new residence. Her monthly rental expense for a two-bedroom apartment is \$650. Overall, Tod contends that Tammy’s living expenses reflect added expenses for Hali, who is no longer a minor.

Tammy’s payroll data for March 2006 indicates a gross annual pay of \$28,000. After a \$70 contribution to a retirement plan and payment for medical insurance, her net monthly income was \$1,693.

While we recognize that Tammy’s income level is low, providing for only basic necessities, she did not demonstrate any unusual expenses that placed her in necessitous circumstances at this time. She has full-time employment and much experience in the workplace. With her current economic circumstances, we agree with the trial court’s assessment that our

law does not mandate an award of post-divorce alimony. The trial court's ruling reflects correct application of our law for final periodic spousal support.

*Conclusion*

For the above reasons, the judgment of the trial court is affirmed.

Costs are assessed to Tammy Judkins Lawhon.

**AFFIRMED.**