NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 2123

FRANCIS RAY CHIDESTER, JR.

VERSUS

RHONDA BRIDGES CHIDESTER

Judgment Rendered: June 8, 2007

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Appealed from the
Twenty-First Judicial District Court,
in and for the Parish of Livingston,
State of Louisiana
Docket Number 106566

Honorable Zorraine M. Waguespack, Judge Presiding

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Rodney N. Erdey Denham Springs, LA	Counsel for Plaintiff/Appellant, Francis Ray Chidester, Jr.
Jeffrey C. Cashe Hammond, LA	Counsel for Defendant/Appellee, Rhonda Bridges Chidester

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

WHIPPLE, J.

This matter is before us on appeal by plaintiff, Francis Ray Chidester, from a judgment of the trial court ordering him to pay spousal support to Rhonda Bridges Chidester in the amount of $1,000.00 per month, retroactive to the date of their divorce.

Francis and Rhonda were married on June 30, 2000, in Livingston Parish. Prior to their marriage, on August 10, 1999, the parties entered into a purported "Marriage Contract" whereby they agreed to renounce the provisions of the Civil Code establishing a community property regime between husband and wife, and entered into a separate property regime. The contract was filed and recorded in Livingston Parish on August 11, 1999. The parties subsequently divorced on January 27, 2006. No children were born as a result of their union.

On February 6, 2006, Rhonda filed a rule for Francis to show cause why he should not be ordered to pay final periodic spousal support, contending that she was completely disabled and unable to earn a sustainable income. The matter was heard before the trial court on March 22, 2006. At the conclusion of the trial, the trial court ordered that the record be left open for ten days, within which time the parties were to submit monthly income and expense statements for the previous four months and Francis was to submit copies of his recent pay check stubs. On April 18, 2006, the trial court rendered judgment finding Rhonda free from fault in the dissolution of the marriage and ordering that Francis pay Rhonda $1,000.00 per month in spousal support retroactive to January 27, 2006. The judgment further ordered that if Rhonda

should be awarded income from social security or any other source, the matter be reset by motion of either party.[1]

Francis appeals, contending that the trial court erred in: (1) finding that Rhonda was free from fault in the dissolution of the marriage and that Francis had the ability to pay spousal support;[2] and (2) failing to consider the valid pre-nuptial separation-of-property agreement between the parties in granting Rhonda spousal support.

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.

"Fault" is defined as misconduct that rises to the level of one of the previously existing fault grounds for legal separation or divorce. The burden of proving freedom from fault is upon the claimant. To constitute fault sufficient to deprive a spouse of permanent support, the spouse's misconduct must not only be of a serious nature, but it must also be an independent, contributory, or proximate cause of the separation. Hammack v. Hammack, 99-2809 (La. App. 1st Cir. 12/22/00), 778 So. 2d 70, 72, writ denied, 2001-0913 (La. 5/25/01), 793 So. 2d 166.[3]

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[1]While the face of the judgment shows a typed date of March 12, 2006, we note that this date precedes the actual date of the hearing. Thus, we refer to this judgment by the date it was stamped filed with the clerk of court, i.e., April 18, 2006.

[2]Although Francis claims that the trial court erred in finding that he had the ability to pay spousal support, this issue was not briefed by him. Thus, this challenge to the trial court's ruling is considered abandoned. See Uniform Rules, Courts of Appeal, Rule 2-12.4; Martello v. Martello, 2006-0594 (La. App. 1st Cir. 3/23/07), ___ So. 2d ___.

[3]Once a party in need is determined to be free from fault, final periodic support is determined in accordance with the factors set forth in LSA-C.C. art. 112, which provides, as follows:

> 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,

Francis argues that Rhonda was at fault in causing the dissolution of the marriage. Specifically, he contends that Rhonda engaged in various acts of "misconduct" during the marriage, consisting of: excessive drug abuse; lying and misrepresenting credit card indebtedness to Francis; falsely applying for and obtaining credit cards in Francis's name and using the cards without authorization to accumulate over $13,000.00 in charges; theft of Francis's family business's mail, as well as unauthorized entry to the business's mail box; and incurring phone bills in excess of $600.00. He contends these acts were proven at trial and constitute sufficient "legal fault" to negate an award of final periodic spousal support.

At trial and on appeal, Rhonda denies these claims by Francis. Rhonda testified that she suffers from a debilitating back condition, which caused her to constantly suffer immense pain and, eventually, led to her participating in an experimental surgery where a titanium steel plate was inserted in her lumbar spine to allow her to continue walking. Rhonda testified that she was prescribed pain medication to relieve the constant pain, but never took "illegal drugs" or drugs that were not prescribed for her. Rhonda stated that

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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.

throughout this time, while she was experiencing back problems, she served as secretary to Francis in his role as Director of the Office of Homeland Security where she received no salary or compensation. She stated that Francis would provide her with the family credit card, cash, or checks to allow her to purchase things. She denied ever stealing anything from Francis's family business, including mail.

It is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." Where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989). If the trial court or jury's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. Rosell, 549 So. 2d at 844.

At trial, the trial court was presented with conflicting testimony by Rhonda and Francis. In determining that Rhonda was free from fault in the dissolution of the marriage, the trial court obviously gave credence to Rhonda's testimony. As a court of review, we are constrained from disturbing the factfinder's credibility determinations where, as here, there is conflicting testimony and the trial court's findings are reasonable in light of the record as a whole. These arguments by Francis lack merit.

Likewise, we find no merit to Francis's contention that the trial court erred by failing to consider the marriage contract entered into by the parties

and in granting final periodic spousal support. Francis argues that "no specific language or wording is required to establish the waiver of alimony/spousal support" and that the instant marriage contract evidences a "clear intent" for Francis and Rhonda to maintain their respective property separately. Thus, he contends Rhonda's claim for final spousal support is prohibited. In support, Francis cites a dissenting opinion in Vincent v. Vincent, 2005-1175, 2006-1312 (La. App. 4th Cir. 1/10/07), 949 So. 2d 535 (per curiam), wherein one of the dissenting judges concluded that the district court erred in considering property as community in setting an award for final periodic spousal support, as the parties had entered into a separate property regime by written agreement. The dissenting judge concluded that the agreement prevented either party from making any claims to the other party's separate property, including claims for final support. Vincent, 949 So. 2d at 538-539. We are neither bound nor persuaded by the dissenting opinion, which we reject as meritless.

In McAlpine v. McAlpine, 94-1594 (La. 9/5/96), 679 So. 2d 85, the Louisiana Supreme Court held that "antenuptial waivers" of permanent alimony are not per se invalid as against public policy and determined that a premarital contract waiving permanent alimony is subject to the rules of conventional obligations.[4] McAlpine, 679 So. 2d at 93; Vogt v. Vogt, 2002-0066 (La. App. 5th Cir. 10/29/02), 831 So. 2d 428, 432, writ denied, 2002-2894 (La. 2/14/03), 836 So. 2d 120.

Louisiana Civil Code article 2328 defines a "matrimonial agreement" as a "contract establishing a regime of separation of property or modifying or terminating the legal regime." Further, LSA-C.C. art. 2328 sets forth that

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[4]Louisiana Civil Code article 2329 provides, in part, that "[s]pouses may enter into a matrimonial agreement before or during marriage as to all matters that are not prohibited by public policy."

parties "are free to establish by matrimonial agreement a regime of separation of property or modify the legal regime as provided by law" and that "[t]he provisions of the legal regime that have not been excluded or modified by agreement retain their force and effect." The "legal regime" is defined in LSA-C.C. art. 2327 as the community of acquets and gains established in Title VI, "Matrimonial Regimes," Chapter 2, "The Legal Regime of Community of Acquets and Gains."[5]

The "Marriage Contract" entered into by the parties in the instant case provides that the parties formally renounce those provisions of the Civil Code that establish a community of acquets and gains between husband and wife during the marriage, in accordance with the provisions of LSA-C.C. art. 2328. However, pretermitting whether the parties could validly waive any future obligation to pay final periodic support by contractual agreement, the contract is silent as to final periodic spousal support or any waiver of final periodic spousal support. Thus, after a thorough reading of the marriage contract as a whole, because the words of the contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA-C.C. art. 2046. Accordingly, the trial court correctly determined the issues before it.

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[5]We note that in Williams v. Williams, 99-1101 (La. App. 3rd Cir. 4/12/00), 760 So. 2d 469, 473, writ denied, 2000-1929 (La. 10/27/00), 772 So. 2d 123, the third circuit nonetheless held that a matrimonial agreement cannot affect periodic spousal support, as it is not contemplated in the meaning of "legal regime." See LSA-C.C. arts. 2328, 2327. Thus, the court reasoned, the matrimonial agreement, which can only modify or terminate the legal regime, cannot establish periodic spousal support.

The Williams court attempted to distinguish its holding from the Supreme Court's holding in McAlpine by pointing out that Williams involved a post-nuptial matrimonial agreement that addressed and provided for the payment of alimony, regardless of fault, need, or ability to pay, while the McAlpine agreement was antenuptial and waived the right to alimony. Williams, 760 So. 2d at 474-475.

After thoroughly reviewing the entire record in this matter, as well as the pertinent jurisprudence, we find no merit to Francis's assignments of error. Thus, in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1(B), we render this memorandum opinion affirming the April 18, 2006 judgment of the trial court. Costs of this appeal are assessed to the appellant, Francis Ray Chidester.

AFFIRMED.