

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1934

AUDWIN LANE JORDAN

VERSUS

SANDRA JORDAN

DATE OF JUDGMENT: MAY - 7 2010

ON APPEAL FROM THE FAMILY COURT
NUMBER 149,205, DIVISION B, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE A. J. KLING, JR., JUDGE AD HOC

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Sandra L. Jordan

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Disposition: AFFIRMED.

McDonald, J. concurs.

Kuhn, J.

Sandra L. Jordan appeals a trial court's judgment that ordered appellee, Audwin Lane Jordan, to pay final periodic spousal support to her in the amount of \$200.00 monthly, beginning on October 1, 2005, for a two-year period. The monthly amount is not disputed on appeal; Ms. Jordan challenges solely the limited duration of the award. Finding no abuse of discretion in the trial court's limitation of the award, we affirm the judgment.

I. PROCEDURAL AND FACTUAL BACKGROUND

After approximately eleven years of marriage, Ms. Jordan and Mr. Jordan were divorced in August 2004.¹ Thereafter, Ms. Jordan filed a petition seeking spousal support wherein she alleged that Mr. Jordan was "'at fault' in the breakup of their marriage."

During a September 22, 2005 hearing, the trial court concluded that Ms. Jordan was free from fault and considered testimony regarding the issue of Ms. Jordan's entitlement to an award of final periodic spousal support.² At the conclusion of the hearing, the trial court rendered a judgment, ordering Mr. Jordan to pay support to Ms. Jordan for a two-year period. The trial court reasoned that in two years, Ms. Jordan's twenty-three-year-old daughter, Asya Douse, who was a graduate student at the time of trial, would be "old enough to earn her own living

¹ There were no children born of this marriage. Each party had an adult child from a prior marriage or other relationship that was dependent on them for support.

² A condition for the award of final periodic support was the claimant's freedom from fault prior to the institution of an action for divorce. See La. C.C. art. 111, Revision Comments - 1997, comment (c).

and [Ms. Jordan] won't have that expense."³ The trial court signed a written judgment on March 7, 2008. Ms. Jordan has appealed.

II. ANALYSIS

At the time of trial, La. C.C. art. 111 provided, in pertinent part, that in a proceeding for divorce or thereafter, the court may award final periodic support to a party 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, in accordance with La. C.C. arts. 112 *et seq.*⁴ La. C.C. art. 112, addressing the determination of final periodic support, provided:

A. The court must consider all relevant factors in determining the entitlement, amount, and duration of final support. Those factors may include:

- (1) The needs of the parties.
- (2) The income and means of the parties, including the liquidity of such means.
- (3) The financial obligations of the parties.
- (4) The earning capacity of the parties.
- (5) The effect of custody of children upon a party's earning capacity.
- (6) The time necessary for the claimant to acquire appropriate education, training, or employment.
- (7) The health and age of the parties.
- (8) The duration of the marriage.

³ See discussion *infra* regarding monthly expenses incurred by Ms. Jordan on behalf of her daughter.

⁴ Articles 111 and 112 were amended by 2006 La. Acts, No. 749, § 1, effective June 30, 2006. The provisions of Act 749 are interpretative and shall apply to pending claims for final periodic support in which trial has not yet commenced as of the effective date of this Act. 2006 La. Acts, No. 749, § 2. Since the trial of this matter was concluded prior to the effective date of the 2006 amendments, the pre-amendment versions of LSA-C.C. arts. 111 and 112 govern this matter.

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

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

In an action for spousal support, the claimant spouse has the burden of proving insufficient means of support. Until need has been demonstrated, the other spouse's financial means are irrelevant. *Prestenback v. Prestenback*, 08-0457, p. 7 (La. App. 1st Cir. 11/18/08), 9 So.3d 172, 177.

“Support” means a sum sufficient for the claimant spouse's maintenance, which includes the allowable expenses for food, shelter, clothing, transportation expenses, medical and drug expenses, utilities, household maintenance, and the income tax liability generated by spousal support payments. *Id.*, 08-1457 at p. 8, 9 So.3d at 178. Expenditures for newspapers, gifts, recreation, vacation, and church tithes are not to be considered in awarding final periodic spousal support. Similarly, expenses attributable to entertainment, including cable television service, are not necessary for a spouse's maintenance and should not be considered in fixing an award of final periodic spousal support. See *Prestenback*, 08-1457 at p. 8, 9 So.3d at 178. The trial court is vested with great discretion in making determinations regarding support, and its judgment will not be disturbed absent a clear abuse of that discretion. *Mayes v. Mayes*, 98-2228, p. 6 (La. App. 1st Cir. 11/5/99), 743 So.2d 1257, 1261.

During the trial, Ms. Jordan testified that she was employed by Southern University as an office coordinator, performing administrative and clerical duties on a probationary but full-time status. Ms. Jordan's educational background included high school and two years of college. She testified at trial that she was in

good health, was almost forty years old, and had recently “enrolled in school to enhance [her] knowledge [and] to get a better job.”

At the time of trial, she was earning an hourly wage of \$10.28. Her gross paycheck, which she received bi-weekly, was approximately \$846.00. Further, Ms. Jordan testified that she was to receive a four percent pay increase that had not yet gone into effect at the time of trial. Ms. Jordan further testified that her net biweekly income was \$242.00, and she explained that numerous expenses were automatically deducted from her paycheck, including her taxes.⁵ These expenses included the following monthly deductions attributable solely to her: car note -- over \$300.00⁶; health insurance -- \$72.00⁷; and retirement -- \$148.00.⁸

Ms. Jordan admitted that \$526.00 in monthly expenses that were deducted from her paycheck were attributable to Asya: car note -- \$354.00; repayment of a loan for her daughter's school tuition -- \$100.00; health insurance -- \$72.00. Ms. Jordan conceded that when her daughter finished graduate school, she would no longer have these monthly expenses.

Ms. Jordan itemized her other monthly expenses, which were not deducted from her check as follows: rent -- \$525.00; auto insurance -- \$150.00; grocery and meal expense -- \$150.00; cell phone in lieu of a land-line phone -- \$64.00; and

⁵ Ms. Jordan did not specify the amount deducted for taxes.

⁶ At trial, Ms. Jordan testified her car note was “\$300 something”; the exact amount of the expense was not provided.

⁷ The health insurance expense of \$72.00 was deducted from Ms. Jordan's paycheck on a bi-weekly basis. However, she testified that the insurance covered both her and her daughter, and she did not know how much the insurance would cost if it only covered her. At trial, she conceded, “That's fine” when Mr. Jordan's attorney attributed one-half of this expense to her daughter, Asya.

⁸ Ms. Jordan testified that a bi-weekly deduction of \$74.00 was taken from her check to fund her retirement.

recreational expense -- \$150.00. Ms. Jordan also stated that she also incurred utility expenses for both water and electricity, but she did not provide the amount of these expenses.

Based on these figures, we conclude that the trial court did not abuse its great discretion in determining that Ms. Jordan failed to establish that she would have a continued need for support after the two-year period.⁹ Based on the evidence submitted at trial, we calculate that Ms. Jordan's net monthly income two years later would have been approximately \$1,123.65. We derive this figure by adding: \$524.33 -- Ms. Jordan's net monthly income (\$242 bi-weekly)¹⁰; \$526.00 -- the monthly expenses previously deducted from her paycheck that were attributable to Asya; and \$73.32 -- the four percent raise she expected to receive, calculated on her \$1,833.00 monthly gross income.¹¹ The monthly expenses that Ms. Jordan submitted to the court as maintenance expenses that were paid from her net earnings, i.e., rent, automobile insurance, and groceries, did not exceed \$1,123.65.¹² At trial, Ms. Jordan testified that if she paid her other expenses, she was unable to keep her rent expense current. Her rent expense was \$525.00 per month, but she was also incurring an equivalent expense at that time on behalf of her adult daughter. Accordingly, the record does not establish that her need would

⁹ We express no opinion as to whether the trial court properly included the expenses attributable to Asya in determining Ms. Jordan's entitlement to spousal support for the initial two-year period.

¹⁰ We determined Ms. Jordan's net monthly income by multiplying her net bi-weekly pay times the 26 pay periods within the year, which figure we then divided by 12.

¹¹ We determined Ms. Jordan's gross monthly income (based on her gross bi-weekly pay of \$846.00) in the same manner explained above in relation to her net monthly income.

¹² Even if we were to include her cell phone expense as part of her maintenance based on the fact that she did not maintain a land-line phone, her itemized expenses would still not exceed her net income.

continue beyond the two-year period in question, and we find no abuse of the trial court's great discretion in limiting the duration of the spousal support award.¹³

III. CONCLUSION

For these reasons, we affirm the trial court's judgment. Appeal costs are assessed against Ms. Jordan.

AFFIRMED.

¹³ Ms. Jordan contends that the trial court erred in limiting the duration of the award because La. C.C. art. 115 provides, "The obligation of spousal support is extinguished upon the remarriage of the obligee [or] the death of either party" She asserts that because neither of these events has occurred in the instant case, the trial court erred in limiting the award to a two-year duration. We find no merit in this argument. La. C.C. art. 112A authorized the trial court to determine the "duration" of final support. Accordingly, the trial court was authorized to award support that terminated after a set period of time. See La. C.C. art. 112, Revision Comments – 1997, comment (c).