

KIMBERLY RONQUILLE

NO. 17-CA-207

VERSUS

FIFTH CIRCUIT

DAVID ANTHONY RONQUILLE, JR.

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 725-727, DIVISION "K"
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

November 15, 2017

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Hans J. Liljeberg

AFFIRMED

HJL

FHW

MEJ

COUNSEL FOR PLAINTIFF/APPELLEE,
KIMBERLY RONQUILLE

Stacey W. Marcel

COUNSEL FOR DEFENDANT/APPELLANT,
DAVID ANTHONY RONQUILLE, JR.

Bernadette R. Lee

Sheila H. Willis

LILJEBERG, J.

Appellant, David Anthony Ronquille, Jr., appeals the trial court's January 3, 2017 judgment, which denied his request to terminate permanent spousal support awarded to appellee, Kimberly Ronquille. Mr. Ronquille contends that Ms. Ronquille cohabitated with another man in the manner of married persons, and therefore, his obligation to pay spousal support was extinguished pursuant to La. C.C. art. 115. For the following reasons, we affirm the trial court's judgment denying Mr. Ronquille's request to terminate permanent spousal support.

FACTS AND PROCEDURAL HISTORY

The parties divorced on May 28, 2014. On January 16, 2015, the parties agreed Mr. Ronquille would pay Ms. Ronquille permanent spousal support in the amount of \$1,000 per month once she moved from the family home. On September 22, 2016, Mr. Ronquille filed a motion to extinguish the permanent spousal support pursuant to La. C.C. art. 115, due to Ms. Ronquille's alleged cohabitation with another man in the manner of married persons. Following an evidentiary hearing held on December 6, 2016, the trial court verbally denied Mr. Ronquille's motion, and on January 3, 2017, the trial court entered a written judgment. Mr. Ronquille filed a timely motion for appeal on January 11, 2017, and the trial court signed the order granting the appeal on the same day.

At the December 6, 2016 evidentiary hearing, Mr. Ronquille testified that he learned from his minor son that David Belsome, a childhood friend of Ms. Ronquille, was sleeping in the same room with her. His son also told him that Mr. Belsome's child slept on an air mattress in the room with them.

Mr. Ronquille hired a private investigator, Ronald B. Frazier, Sr., to document whether David Belsome was living with Ms. Ronquille at her residence located at 2317 Biron Street in Mandeville, La. Mr. Ronquille told Mr. Frazier that David Belsome drove a white GMC vehicle and Ms. Ronquille drove a late model

Mercury Mountaineer. Mr. Frazier first researched Mr. Belsome by reviewing his Facebook page. He obtained several pictures of Mr. Belsome and noted that Mr. Belsome claimed to live in Lacombe, La. Mr. Frazier initiated surveillance of Ms. Ronquille's residence on September 2, 2016. Upon arriving, no one was home and he suspended surveillance as it was the beginning of the Labor Day weekend.

On Friday, September 9, 2016, Mr. Frazier restarted his surveillance. He arrived at Ms. Ronquille's residence at approximately 6:38 p.m., and observed a white GMC Envoy parked in front of the residence. He conducted a registration check of the license plate and learned the vehicle was registered to David Belsome at an address located at 27226 Tag Along Road in Lacombe, La. At approximately 8:41 pm., Mr. Frazier observed Ms. Ronquille's Mercury Mountaineer pull into the driveway. Mr. Belsome exited the driver's seat and unlocked the front door of the residence. Ms. Ronquille and her son exited the car and went into the house. Mr. Belsome returned to the vehicle and carried the Ronquilles' daughter into the house. He then went to the back of the vehicle, opened the back of the Mountaineer, and retrieved the wheelchair used by the Ronquilles' daughter.¹ He returned to the vehicle one last time to remove another young female believed to be Mr. Belsome's daughter. They entered the house and turned off the front lights. Surveillance continued until the interior lights were extinguished.

On Saturday, September 10, 2016, Mr. Frazier arrived at Ms. Ronquille's residence at approximately 6:30 a.m. Mr. Belsome's and Ms. Ronquille's vehicles were both still at the residence. He noticed dew on both vehicles, indicating they were not moved overnight. Mr. Frazier returned again at approximately 6:52 p.m. Both vehicles were at the residence and he continued surveillance until he believed Mr. Belsome and Ms. Ronquille would remain there for the night. On Sunday, September 11, 2016, Mr. Frazier returned to 2317 Biron Street at 5:51 a.m., where

¹ The Ronquilles' daughter suffers from cerebral palsy.

he observed both vehicles parked at the residence in the same locations. He returned at 6:24 p.m. and found only Mr. Belsome's vehicle parked at the residence. In an effort to determine who was at the residence, Mr. Ronquille called Ms. Ronquille and learned Ms. Ronquille and her two children were home. Mr. Frazier believed Mr. Belsome used Ms. Ronquille's vehicle to return his daughter back to her mother.

On Monday, September 12, 2016, Mr. Frazier arrived to Ms. Ronquille's residence at approximately 6:20 a.m. and Mr. Belsome's vehicle was not there. When he returned at 7:57 p.m. that same day, both vehicles were parked in the driveway. He discontinued surveillance at approximately 9:15 to 9:30 p.m. On Tuesday, September 13, 2016, Mr. Frazier arrived at the residence at the earlier time of 4:49 a.m., because he believed Mr. Belsome had left for work before he arrived at the residence the prior morning. Both Mr. Belsome's and Ms. Ronquille's vehicles were parked in the driveway. He returned at 8:30 p.m. and saw a truck with a sign "Closets by Design" on the side parked by the residence. Mr. Frazier indicated that he believed Mr. Belsome worked for this company. He also saw a gray Cube, belonging to Ms. Ronquille's mother, Carol Dominick, parked in the driveway.

On Wednesday, September 14, 2016, at 4:57 a.m., Mr. Belsome's work vehicle and the Cube were still at the residence. At 7:44 p.m., Mr. Frazier observed Ms. Ronquille's and her mother's vehicles parked at the residence. At 7:48 p.m., an unmarked white truck pulled up in front of the house and parked on the grass. Mr. Frazier saw Mr. Belsome exit the vehicle and enter the residence. On Thursday, September 15, 2016, Mr. Frazier arrived at 4:58 a.m. and observed the same unmarked white truck. When he returned in the evening, he observed Mr. Belsome's GMC Envoy parked in the driveway at 8:38 p.m.

On Friday, September 16, 2016, Mr. Belsome's GMC Envoy was parked in the driveway at 4:58 a.m. When Mr. Frazier returned that evening, he saw Ms. Ronquille's vehicle and a dark green Chevrolet SUV at the residence. After checking the green SUV's registration, he learned it belonged to Daniel Belsome, Jr., of 1101 Colbert St, Trailer 40, in Mandeville, La. Mr. Frazier believed Daniel is Mr. Belsome's nephew. On Saturday September 17, 2016, Mr. Belsome's vehicle was parked in the driveway at 8:40 a.m. and the green SUV was not there. Following his testimony, Mr. Frazier played a video documenting his eight nights of surveillance at Ms. Ronquille's residence.

On cross-examination, Mr. Frazier agreed he did not determine whether Mr. Belsome maintained a residence at another location, and he did not know if Mr. Belsome moved personal items into Ms. Ronquille's home or contributed financially to her household.

Ms. Ronquille testified that Mr. Belsome was her best friend since they were 10 years old. She admitted to starting a sexual relationship with Mr. Belsome. She claimed Mr. Belsome stayed at her home on the nights observed by Mr. Frazier because they were trying to take the relationship to the next level and the sexual relationship was new. She claimed the relationship did not last and denied that Mr. Belsome moved any personal items into her home or contributed financially to her household. She testified that Mr. Belsome resided on Colbert Street in Mandeville with his nephew.

Ms. Ronquille's mother, Carol Dominick, testified that she stayed at her daughter's home several nights during the week to help with the children. She confirmed that her daughter had a sexual relationship with Mr. Belsome and that he sometimes slept over in her daughter's room when she was there. She testified that they also went out together on the weekends with their children, but that they

were not living together. She testified that Mr. Belsome had a separate residence and did not provide financial support to her daughter.

Following the hearing, the trial court denied Mr. Ronquille's motion to terminate the permanent spousal support. The trial court noted in oral reasons that while she found Ms. Ronquille's testimony indicating that Mr. Belsome only slept at her home on the nights it was under surveillance to be extremely convenient, the trial court found it did not have sufficient evidence regarding the actual duration of the cohabitation and the nature of their arrangement to terminate spousal support. The trial court also found it did not have sufficient evidence regarding Mr. Belsome's actual residence, and stated it would consider hearing the issue again if Mr. Ronquille could supply more evidence.

LAW AND DISCUSSION

On appeal, Mr. Ronquille contends the trial court erred by denying his motion to extinguish Ms. Ronquille's spousal support obligation because the evidence indicates she was cohabitating with Mr. Belsome in the manner of married persons.

Louisiana Civil Code article 115, which governs the extinguishment of spousal support obligations, provides as follows:

The obligation of spousal support is extinguished upon the remarriage of the obligee, the death of either party, or a judicial determination that the obligee has cohabited with another person of either sex in the manner of married persons.

According to the Official Revision Comment (e), the "word 'cohabit' means to live together in a sexual relationship. The phrase 'in the manner of married persons' requires a relationship of some permanence. It does not mean just acts of sexual intercourse."

The determination of whether a party cohabitated with another person in the manner of married persons is a question of fact subject to the manifest error

standard of review. *Almon v. Almon*, 05-1848 (La. App. 1 Cir. 9/15/06), 943 So.2d 1113. A court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. *Olsen v. Olsen*, 12-737 (La. App. 5 Cir. 3/13/13), 113 So.3d 274, 278. Under the manifest error standard, in order to reverse a trial court's determination of fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. *Id.* at 278-79. The manifest error standard of review obligates an appellate court to give great deference to the trial court's findings of fact. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). On review, an appellate court must be cautious not to reweigh the evidence or to substitute its own factual findings just because it would have decided differently. *Bonin v. Ferrellgas, Inc.*, 03-3024 (La. 7/2/04), 877 So.2d 89, 94-95.

Mr. Ronquille argues that the trial court erred by denying his motion to terminate spousal support because Ms. Ronquille was living with and engaging in a sexual relationship of some permanence with Mr. Belsome. Mr. Ronquille first cites to the First Circuit Court of Appeal's decision in *Almon, supra*, as an example of a situation where the court found a lack of permanence. In *Almon*, a male friend moved into Ms. Almon's home because he had nowhere else to stay. During the time in question, they did not share a bedroom and the friend kept his belongings in the garage. Ms. Almon admitted she engaged in sexual relations on occasion at the beginning of her friend's residency, but claimed she never committed to a romantic relationship with him. Ms. Almon testified they did not attend parties or social functions together as a couple, she did not introduce or consider him her boyfriend, and they never discussed marriage. Based on these facts, the appellate court affirmed the trial court's finding that Ms. Almon and her male friend were not cohabiting in the manner of married persons. 943 So.2d at 1118.

In contrast, in *Arnold v. Arnold*, 02-819 (La. App. 1 Cir. 4/2/03), 843 So.2d 1167, 1171, the appellate court found the evidence was sufficient to support the trial court's decision to terminate permanent spousal support. In *Arnold*, the wife admitted that within one month of moving out of the marital domicile, her boyfriend moved into her apartment with her and the two were still living together at the time of the hearing on the husband's motion to terminate support. The former wife also testified that her boyfriend kept his personal belongings in the apartment.

In *Olsen, supra*, this Court affirmed the trial court's decision to extinguish spousal support based on its finding that the former wife and her male friend were living together in a relationship of some permanence following his release from prison. 113 So.3d at 280. This Court found the couple ate and cooked together, the male friend received his mail at the former wife's home, and he told the probation and parole department that he resided at the former wife's home. While they claimed to have separate rooms, the former wife admitted they sometimes slept in the same bed and had sexual intercourse. This Court noted that one of the most important factors in affirming the trial court's decision was that the couple admitted to openly discussing marriage. *Id.*

After hearing the testimony and evidence in the present matter, the trial court determined it did not have sufficient evidence regarding the nature and duration of the Ms. Ronquille's relationship with Mr. Belsome to determine they were cohabitating in the matter of married persons. Mr. Ronquille contends the trial court was clearly wrong because his son told him prior to the surveillance that Mr. Belsome slept in Ms. Ronquille's room and the private investigator's testimony indicated that Mr. Belsome spent eight consecutive nights at Ms. Ronquille's home. He also notes that the trial court recognized that Ms. Ronquille's testimony lacked credibility.

Mr. Ronquille argues that based on this evidence, he carried his burden to establish that Mr. Belsome was living with Ms. Ronquille in a sexual relationship of some permanence. He points to the fact that Mr. Belsome drove Ms. Ronquille's car, had a key to her residence, exercised visitation with his own child at the residence and engaged in outings with her and her child together as a family. He contends that Ms. Ronquille's explanation that Mr. Belsome spent eight nights in a row because the relationship was "new" was not credible. He also argues that the testimony provided by Ms. Ronquille's mother, Carol Dominick, was confusing and evasive.

The trial court determined Mr. Ronquille did not present sufficient evidence regarding the nature and duration of the relationship to determine Ms. Ronquille and Mr. Belsome were cohabitating in the manner of married persons. After reviewing the entirety of the record, we do not find the trial court's determination was manifestly erroneous. We agree that though the surveillance evidence indicates Mr. Belsome spent eight consecutive nights at Ms. Ronquille's home, it was not clearly wrong for the trial court to determine that insufficient evidence existed to find Ms. Ronquille and Mr. Belsome were living together in a sexual relationship of some permanence. The additional facts indicating that Mr. Belsome drove Ms. Ronquille's car, exercised visitation with his child at her home, and engaged in outings with her and her children does not necessarily establish the parties' intent to cohabit together as married persons.

DECREE

Based on the foregoing, we do not find the trial court was manifestly erroneous and affirm the trial court's judgment denying the motion to terminate permanent spousal support filed by appellant, David Anthony Ronquille, Jr.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 15, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-207

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE ELLEN SHIRER KOVACH (DISTRICT JUDGE)
NO ATTORNEYS WERE ENOTIFIED

MAILED

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