

DANIEL J. LIGHTELL

NO. 17-CA-377

VERSUS

FIFTH CIRCUIT

TAMMY E. LIGHTELL

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 753-065, DIVISION "B"
HONORABLE CORNELIUS E. REGAN, JUDGE PRESIDING

December 13, 2017

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Susan M. Chehardy,
Robert A. Chaisson, and Hans J. Liljeberg

REVERSED AND REMANDED

HJL

SMC

RAC

COUNSEL FOR PLAINTIFF/APPELLEE,
DANIEL J. LIGHTELL
Stephen R. Rue

COUNSEL FOR DEFENDANT/APPELLANT,
TAMMY E. LIGHTELL
Renee L. Swanson

LILJEBERG, J.

Appellant, Tammy E. Lightell, seeks review of the trial court's May 31, 2017 Judgment, which maintained appellee, Daniel Lightell's objection to hearing officer recommendations and found Ms. Lightell's interim spousal support award should terminate retroactive to the date of judicial demand pursuant to La. R.S. 9:321(A). For the reasons set forth more fully below, we reverse the trial court's judgment and find that pursuant to La. C.C. art. 113(B) and La. R.S. 9:321(B)(1), Ms. Lightell's interim spousal support award terminated on March 7, 2017, the date the trial court entered its judgment finding Ms. Lightell at fault for the dissolution of the marriage and therefore, ineligible for final spousal support.¹

FACTS AND PROCEDURAL HISTORY

The parties married on April 30, 1982, and have four children who are all of the age of majority. On August 31, 2015, Mr. Lightell filed a petition for divorce. In response, Ms. Lightell filed an answer and reconventional demand alleging she was free from fault in the termination of the marriage and entitled to interim and final spousal support. The parties appeared before a hearing officer on October 13, 2015, who recommended that Mr. Lightell pay Ms. Lightell \$4,623.00 per month for interim spousal support effective on October 15, 2015. Mr. Lightell filed an objection to the hearing officer's recommendation and on January 25, 2016, the parties entered into a consent judgment on the record awarding Ms. Lightell \$5,000.00 per month for interim spousal support.² The trial court entered a written judgment on March 1, 2016.

On February 26, 2016, Mr. Lightell filed a Motion to Place Former Family Home on the Market and Motion to Determine Fault with a Rule to Terminate

¹ In a related matter, *Daniel J. Lightell v. Tammy E. Lightell*, 17-327 (La. App. 5 Cir. ___/___/17), this Court affirmed the trial court's March 7, 2017 Judgment, which found Ms. Lightell at fault for the dissolution of the marriage.

² Mr. Lightell also agreed to pay Ms. Lightell \$1,319.50 in arrearages payable at a rate of \$200.00 per month upon termination of interim spousal support.

Spousal Support. With respect to his request to determine fault and terminate spousal support, Mr. Lightell alleged as follows:

5.

Further, Mover avers that TAMMY LIGHTELL has requested interim and final periodic spousal support.

6.

Mover avers that TAMMY LIGHTELL is at fault for the termination of the marriage.

7.

Accordingly, Mover seeks a hearing for purposes of determining fault and terminating spousal support.

Mr. Lightell did not specifically seek to modify or revoke the March 1, 2016 Judgment awarding interim spousal support in this motion.

The trial court entered a final judgment of divorce on September 8, 2016. On February 21, 2017, the parties appeared for a trial on the rule to determine fault. At the conclusion, the trial court took the matter under advisement. On March 7, 2017, the trial court rendered a judgment finding Ms. Lightell was not free from fault in the break-up of the marriage. As a result, she was precluded from seeking final spousal support from Mr. Lightell.³

On March 17, 2017, Ms. Lightell filed a rule for contempt alleging that Mr. Lightell failed to pay the interim spousal support due in February 2017, as well as the partial interim spousal support payment in the amount of \$1,129.03 due for the period from March 1, 2017 to March 7, 2017. She also alleged that he still owed \$1,319.50 in arrearages awarded in the March 1, 2016 Judgment. In response, Mr. Lightell filed an opposition to the contempt motion arguing that he paid the first installment of \$2,500 owed for February 1, 2017, but missed the subsequent payments through no fault of his own because he was laid off from his job on

³ La. C.C.P. art. 111 provides that the court “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”

February 13, 2017. He also filed a motion to terminate spousal support, and alternative motion to reduce spousal support, based on his employment situation.

The parties appeared before the hearing officer on April 3, 2017. In his recommendations, the hearing officer noted that the parties did not agree to the effective date when interim spousal support terminated. The hearing officer recommended that pursuant to La. C. C. art. 113(B) and La. R.S. 9:321(B)(1), interim spousal support terminated on March 7, 2017, the date the trial court determined Ms. Lightell was at fault in the break-up of the marriage. The hearing officer further recommended that Mr. Lightell owed \$4,948.53 for past due interim spousal support to be paid at a rate of \$500.00 per month starting on May 1, 2017, and deferred the issue of contempt pending the receipt of evidence of the date and amount of Mr. Lightell's final paycheck.

Mr. Lightell filed an objection to the hearing officer's recommendations arguing that the hearing officer should have applied La. R.S. 9:321(A) and terminated the interim spousal support award retroactive to February 26, 2016, the date he filed the Motion to Determine Fault with a Rule to Terminate Spousal Support.

Following a hearing on May 1, 2017, the trial court maintained Mr. Lightell's objection and found the interim spousal support award terminated retroactive to the date of the filing of Mr. Lightell's February 26, 2016 motion. On May 1, 2017, Ms. Lightell filed a motion and order of appeal, which the trial court signed on May 4, 2017. On May 31, 2017, the trial court entered a written judgment maintaining Mr. Lightell's objection and terminating interim spousal support retroactive to the date of judicial demand on February 26, 2016, pursuant to La. R.S. 9:321(A).⁴

⁴ An appeal granted before the signing of a final judgment is premature and subject to dismissal until the final judgment is signed. *Jacobsen v. Asbestos Corp.*, 12-655 (La. App. 5 Cir. 5/30/13), 119 So.3d 770, 774. Once the final judgment is signed, any previously existing defect is cured. *Id.*

LAW AND DISCUSSION

On appeal, Ms. Lightell contends the trial court erred by finding that La. R.S. 9:321(A) applied to determine the effective date of termination of the interim spousal support award. She contends the trial court's ruling is contrary to the plain language contained in La. C.C. art. 113(B) and La. R.S. 9:321(B)(1).

The relevant portions of La. C.C. art 113 provide as follows:

A. Upon motion of a party or when a demand for final spousal support is pending, the court may award a party an interim spousal support allowance based on the needs of that party, the ability of the other party to pay, any interim allowance or final child support obligation, and the standard of living of the parties during the marriage, which award of interim spousal support allowance shall terminate upon the rendition of a judgment of divorce.

B. If a claim for final spousal support is pending at the time of the rendition of the judgment of divorce, the interim spousal support award shall thereafter terminate upon rendition of a judgment awarding or denying final spousal support or one hundred eighty days from the rendition of judgment of divorce, whichever occurs first. The obligation to pay interim spousal support may extend beyond one hundred eighty days from the rendition of judgment of divorce, but only for good cause shown. [Emphasis added.]

The relevant portions of La. R.S. 9:321 provide:

A. Except for good cause shown, a judgment awarding, modifying, or revoking an interim spousal support allowance shall be retroactive to the date of judicial demand.

B. (1) A judgment that initially awards or denies final spousal support is effective as of the date the judgment is rendered and terminates an interim spousal support allowance as of that date.

(2) If an interim spousal support allowance award is not in effect on the date of the judgment awarding final spousal support, the judgment shall be retroactive to the date of judicial demand, except for good cause shown. [Emphasis added].

Pursuant to La. C.C. art. 113(B), when a claim for final spousal support is pending at the time of divorce, an interim spousal support award terminates with

the judgment either awarding or denying final spousal support.⁵ Furthermore, pursuant to La. R.S. 9:321(B)(1), the judgment awarding or denying final spousal support terminates interim spousal support as of that date. *See Maggio v. Maggio*, 07-983 (La App. 5 Cir. 3/25/08), 981 So.2d 55, 59, *writ denied*, 08-1112 (La. 9/19/08), 992 So.2d 960.

In *Maggio v. Maggio, supra*, the appellant challenged the trial court's decision to make a final spousal support award retroactive to the date of divorce. The appellant was receiving interim spousal support at the time the divorce judgment was rendered and when the judgment awarding final spousal support was rendered. This Court applied La. R.S. 9:321(B)(1) and amended the trial court's judgment to make the effective date of the final spousal support award and corresponding termination of the interim spousal support award, the date the judgment awarding final spousal support was rendered. 981 So.2d at 59.

Mr. Lightell contends that when the trial court found Ms. Lightell at fault for the break-up of the marriage, this ruling essentially granted his motion to terminate spousal support and as a result, the termination should be retroactive to the date he filed his motion to terminate spousal support pursuant to La. R.S. 9:321(A). The plain language of this provision indicates that it only applies to a judgment awarding, modifying or revoking an interim spousal support award. However, the trial court's March 7, 2017 Judgment did not grant Mr. Lightell's motion to terminate spousal support. Furthermore, our review of Mr. Lightell's motion indicates he did not request a modification or revocation of the March 1, 2016 Judgment awarding interim spousal support. He consented to this award and did not subsequently raise any grounds as to why the trial court should modify or

⁵ La. C.C. art. 113(B) also provides for the termination of an interim spousal support award 180 days after the judgment of divorce. However, this provision is not applicable in this matter because 180 days after the judgment of divorce was on March 8, 2017, the day after the trial court entered its ruling finding Ms. Lightell at fault for the dissolution of the marriage.

revoke this award. Rather, he requested that the trial court determine Ms. Lightell to be ineligible for final spousal support due to her fault for the dissolution of the marriage and as a result, terminate the interim spousal support. In such a situation, La. C.C. art. 113(B) and La. R.S. 9:321(B)(1) clearly provide that interim spousal support terminates on the date the judgment denying final spousal support is rendered.

Furthermore, if this Court maintained the trial court's ruling on retroactivity, Ms. Lightell would be obligated to return essentially all of the interim spousal support payments made to her based on the filing of a motion seeking to terminate spousal support due to her alleged fault. Fault, however, is not a consideration in a decision to award interim spousal support. *Brignac v. Brignac*, 02-428 (La. App. 5 Cir. 11/13/02), 833 So.2d 373, 375. Interim spousal support is based solely on the need of the claimant, the non-claimant's ability to pay, and the standard of living enjoyed during the marriage. La. C.C. art. 113. Interim spousal support is designed to assist the claimant in sustaining the same style or standard of living enjoyed while residing with the other spouse, pending the litigation of the divorce. *Short v. Short*, 11-1084 (La. App. 5 Cir. 5/22/12), 96 So.3d 552, 556. The purpose of interim spousal support is to maintain the status quo without unnecessary economic dislocation until a final determination of support can be made. *Id.*

DECREE

Accordingly, we reverse the trial court's judgment which maintained Mr. Lightell's objection to the hearing officer's recommendations and find that pursuant to La. C.C. art. 113(B) and La. R.S. 9:321(B)(1), Ms. Lightell's interim spousal support award terminated on March 7, 2017, the date the trial court entered its judgment finding Ms. Lightell at fault for the dissolution of the marriage and therefore, ineligible for final spousal support. We remand the matter to the trial

court to consider Mr. Lightell's remaining objections to the hearing officer's recommendations.

REVERSED AND REMANDED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



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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 **DECEMBER 13, 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-377

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE CORNELIUS E. REGAN (DISTRICT JUDGE)
RENEE L. SWANSON (APPELLANT)

MAILED

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