

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0843

LORI STEVENS FRANKS

VERSUS

JACK FRANKS

Judgment Rendered: SEP 20 2012

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APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF TANGIPAHOA  
STATE OF LOUISIANA  
DOCKET NUMBER 2006-0003744  
DIVISION "F"

THE HONORABLE ELIZABETH P. WOLFE, JUDGE PRO TEMPORE

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Defendant/Appellant  
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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

*Hughes, J., concurs.*



**McDONALD, J.**

This is an appeal by Jack L. Franks from a judgment regarding child support and custody. Lori Stevens Franks (Ms. Stevens) filed a peremptory exception of res judicata and a motion for sanctions, which were both referred to this panel to be decided along with the appeal. The history of the parties and their litigation is set out by this court in a previous opinion, **Franks v. Jack Franks**, 2010-1401, 2011WL379325 (La. App. 1<sup>st</sup> Cir. 2/7/11) (unpublished), 57 So.3d 608 (table) and will not be repeated herein.

Mr. Franks is appealing the district court judgment signed on January 19, 2011, which granted Ms. Stevens' Rule for Sanctions filed on April 29, 2010, finding that certain pleadings filed by Mr. Franks were frivolous and harassing, in violation of La. C.C.P. art. 863, specifically a Motion for Reconsideration filed on April 21, 2010, a Response to Opposition to Motion for Reconsideration filed on April 28, 2010, a Motion to Vacate December 7, 2009 Order filed on April 28, 2010, and a Motion to Vacate Motion to Supplement Record on Appeal filed on April 28, 2010. The district court further: granted the Rule for Sanctions filed by Ms. Stevens on May 21, 2010; found that three different pleadings filed by Mr. Franks were frivolous; ordered that Mr. Franks pay to Ms. Stevens \$5,684.75 as attorney fees and court costs for his violations of La. C.C.P. art. 863; continued Ms. Stevens' Rule for Contempt filed on April 29, 2010, subject to reassignment; dismissed the Motion for Appeal filed by Mr. Franks on December 14, 2009 for failure to pay the appeal costs and abandoning the appeal; ordered that child support be fixed according to the Louisiana Child Support Guidelines, and decreed that Mr. Franks' gross monthly income be set at \$13,638.33 pursuant to the Pennsylvania Labor Wage Survey; decreed that no income be imputed to Ms. Stevens as the children were under the age of five years; ordered that Mr. Franks pay Ms. Stevens child support of \$2,537.05 per month beginning August 3, 2009;

and ordered that the retroactive amount of \$42,928.28, less \$4,982.39 paid by Mr. Franks to Ms. Stevens from August 3, 2009, through December 6, 2010, for a total of \$37,945.89 be made executory, together with legal interest from December 6, 2010, until paid in full.

Mr. Franks' appeal included "Final judgments . . . rendered on December 13, 2010." On December 13, 2010, the district court denied: a motion to dismiss filed by Mr. Franks asking that "Plaintiff's Motion to Dismiss Appeal and Rule to Set Child Support [be] dismissed for failure to provide notice to the Defendant", with the district court noting that a contradictory hearing with notice to defendant was held on December 6, 2010; a motion by Mr. Franks requesting "telephonic participation" in the December 6, 2009 hearing, noting that Mr. Franks could contact the judge's secretary to set up a status call with the attorneys and the judge; and, Mr. Franks' answer requesting the dismissal of "Plaintiff's Rule to Show Cause and For Sanctions, and Rule For Contempt" was denied as moot, with the district court noting that a contradictory hearing was held on December 6, 2010.

Mr. Franks made the following assignments of error.

1. Whether the trial court erred in not utilizing the Pennsylvania support guidelines in a child support calculation as required by the parties' marital settlement agreement.
2. Whether the trial court erred in utilizing hypothetical income in a child support calculation when actual income had been provided.
3. Whether the trial court erred in permitting the utilization of a child support calculation devoid of any credit for income taxes incurred on the income.
4. Whether the trial court erred in imposing sanctions against the defendant-Appellant.
5. Whether the trial court erred in permitting the plaintiff-Appellee to introduce illegal and improper evidence as a basis for judgments against the defendant-Appellant.
6. Whether the trial court erred in imposing sanctions against the defendant-Appellant for his objecting to the permitting of plaintiff-Appellee to not comply with the May 17, 2010, order of court.

7. Whether the trial court erred in not permitting telephonic testimony by the Defendant-Appellant.

A court of appeal may not set aside a trial court's or a jury's findings of fact in the absence of manifest error or unless it is clearly wrong. The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart v. State, Through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993).

After a thorough review of the record, we find no manifest error or abuse of discretion in the district court judgments and affirm the judgments.<sup>1</sup>

#### **THE MOTION FOR SANCTIONS**

Ms. Stevens asserts that Mr. Franks' assignments of error are frivolous and that Mr. Franks continues to file pleadings in the district court and in the appellate court for the sole purpose of harassing Ms. Stevens, requiring her to litigate and requiring her to pay attorney fees. Ms. Stevens asks that Mr. Franks be assessed with costs and be ordered to pay her \$4,000 in attorneys fees, additional damages in the amount of \$10,000, plus legal interest from date of judicial demand. After a thorough review of the record, we find Ms. Stevens' request for \$4,000 in attorney fees is well-grounded and we order Mr. Franks to pay Ms. Stevens \$4,000 in attorney fees. We decline to award additional damages.

For the foregoing reasons, the district court judgment is affirmed and we order Mr. Franks to pay Ms. Stevens \$4,000 in attorney fees. Costs of this appeal are assessed against Mr. Franks.

**JUDGMENTS AFFIRMED; EXCEPTION OF RES JUDICATA NOT CONSIDERED; MOTION FOR SANCTIONS GRANTED TO AWARD ATTORNEY FEES.**

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<sup>1</sup> Having found no merit in Mr. Franks' assignments of error, we find it unnecessary to address the peremptory exception pleading the objection of res judicata urged by Ms. Stevens.