

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1672

ADAN RIVERA

VERSUS

LISSETTE BETANCOURTH RIVERA

Judgment Rendered: JUL 10 2014

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Appealed from
The Family Court
East Baton Rouge Parish
State of Louisiana
Suit Number F175214

Honorable Lisa Woodruff-White, Presiding

Donald Carl Hodge, Jr.
Baton Rouge, LA

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Adan Rivera

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Lissette Betancourth

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

GUIDRY, J.

Plaintiff, Adan Rivera, appeals from a judgment of the trial court finding him in contempt of court and ordering him to pay attorney's fees to defendant, Lissette Betancourth,¹ in the amount of \$1,204.50. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Adan Rivera and Lissette Betancourth were married on December 20, 1975. Thereafter, on September 13, 2010, Mr. Rivera filed a petition for divorce pursuant to La. C.C. art. 102. Ms. Betancourth filed an answer to Mr. Rivera's petition and a reconventional demand, also seeking a divorce pursuant to Article 102. The trial court subsequently signed a judgment on March 31, 2011, granting the parties a divorce as requested.

Thereafter, the parties entered into an agreement as to the partition of the community property and ancillary matters, including spousal support. A stipulated judgment reflecting the parties' agreement was signed by the trial court on July 15, 2011. Particularly, as to spousal support, the stipulated judgment ordered Mr. Rivera to pay \$1,500 per month in contractual spousal support, which amount includes the payment of health insurance benefits in the amount of \$425 per month, for three years or until Ms. Betancourth's death or remarriage, whichever event occurs first. The judgment further provided that the spousal support obligation is non-modifiable.

On March 27, 2013, Ms. Betancourth filed a rule for contempt, attorney's fees, and court costs against Mr. Rivera, asserting that Mr. Rivera had failed to make the contractual spousal support payment for March 2013 and had stated that he would no longer make said payments, except for the \$425 health insurance

¹ A January 2, 2012 judgment signed by the trial court ordered that Lissette may have the right to revert back to the use of her maiden name and be known as Lissette Betancourth. Accordingly, we will refer to defendant/appellee as Ms. Betancourth throughout this opinion.

premium. Thereafter, Mr. Rivera also filed a rule for contempt against Ms. Betancourth, asserting that Ms. Betancourth had called Mr. Rivera on the phone three times on February 21, 2013, leaving messages and otherwise harassing him, which was in violation of a January 14, 2013 order of the court restraining her from contacting Mr. Rivera personally, electronically, by phone, in writing, or through a third party, without the express written permission of the court. Mr. Rivera requested that Ms. Betancourth be found in contempt of court and be ordered to pay attorney's fees and court costs.

Following a hearing on both parties' rules for contempt, the trial court rendered judgment finding Ms. Betancourth was not in contempt of court. However, the trial court did find Mr. Rivera in contempt of court and ordered him to pay attorney's fees to Ms. Betancourth in the amount of \$1,204.50. The trial court also found that Mr. Rivera owed the sum of \$2,033.98 in contractual spousal support for his failure to pay spousal support for the months of March and April of 2013. However, because the trial court found that Mr. Rivera had a credit of \$3,297.39 towards the amount owed, it determined that he had a net credit of \$1,263.41 for spousal support, which the trial court ordered could be credited against the attorney's fees owed in the sum of \$1,204.50. Accordingly, the trial court ordered that Mr. Rivera pay the full amount owed for spousal support in May of 2013, less a credit of \$58.91, and that he continue to pay the contractual spousal support each month through July of 2014.

Mr. Rivera now appeals from the trial court's judgment.

DISCUSSION

Willful disobedience of any lawful judgment constitutes constructive contempt of court. La. C.C.P. art. 224(2). To find a person guilty of constructive contempt, the trial court must find the person violated the court's order intentionally, purposely, and without justifiable excuse. Barry v. McDaniel, 05-

2455, p. 5 (La. App. 1st Cir. 3/24/06), 934 So. 2d 69, 73. The decision to hold a party in contempt of court for disobeying the court's order is within the trial court's great discretion, and the court's decision should only be reversed when the appellate court discerns an abuse of that discretion. Boudreaux v. Vankerkhove, 07-2555, pp. 10-11 (La. App. 1st Cir. 8/11/08), 993 So. 2d 725, 733. However, the trial court's predicate factual determinations are reviewed under the manifest error standard of review. Boyd v. Boyd, 10-1369, p. 15 (La. App. 1st Cir. 2/11/11), 57 So. 3d 1169, 1178.

In the instant case, Mr. Rivera admitted that he did not make any payments for the monthly spousal support obligation after February of 2013. However, Mr. Rivera contended that the reason he stopped making spousal support payments was because he had advanced Ms. Betancourth money in excess of the agreed upon three-year spousal support obligation amount. After hearing the conflicting testimony of Ms. Betancourth and Mr. Rivera and reviewing the documentary evidence admitted at the trial of this matter, which included copies of the support checks with notations and account ledgers, the trial court found that there was insufficient evidence of an extrajudicial agreement to modify the support obligation and insufficient evidence that any additional monies paid to Ms. Betancourth were an advance on the spousal support obligation.² From our review

² Mr. Rivera also asserts that the trial court erred in failing to admit into evidence an email from his attorney to Mr. Rivera's daughter, stating that Mr. Rivera had made payments in excess of the court ordered spousal support and would not be making any further spousal support payments. The trial court determined that this evidence was not relevant to the issue of whether the parties had agreed that any excess money paid to Ms. Betancourth was in the form of an advance on Mr. Rivera's spousal support obligation. Whether evidence is relevant is within the discretion of the trial court, and its ruling will not be disturbed on appeal in the absence of a clear abuse of the trial court's discretion. Boudreaux v. Mid-Continent Casualty Co., 05-2453, p. 8 (La. App. 1st Cir. 11/3/06), 950 So. 2d 839, 845, writ denied, 06-2775 (La. 1/26/07), 948 So. 2d 171.

From our review of the record, we do not find that the trial court abused its discretion in failing to admit the subject email into evidence. The email merely reiterates Mr. Rivera's position that he no longer owes spousal support to Ms. Betancourth because he paid money in excess of the court-ordered spousal support obligation. However, the email fails to specifically mention that any excess payments were an advance on the support obligation, nor does it indicate that the parties had agreed that any excess payments were an advance on the support obligation. Therefore, we find this assignment of error without merit.

of the record, we cannot find that the trial court's factual finding in this regard was manifestly erroneous.

Likewise, we do not find that the trial court abused its discretion in finding Mr. Rivera in contempt for failing to pay the spousal support obligation as ordered by the court. The consent judgment specifically states that the contractual spousal support obligation in the amount of \$1,500.00 *shall be payable monthly* and is *non-modifiable*. Mr. Rivera admitted that he did not make spousal support payments to Ms. Betancourth after February of 2013, and that he had no intention of making any further payments. Therefore, despite the fact that he may have made additional payments for which the trial court awarded him a credit towards the support arrearage amount,³ he still had failed to comply with the court's order, and in accordance with La. C.C.P. art. 224(2), he was in constructive contempt of court.

Finally, Mr. Rivera asserts that the trial court erred in failing to find Ms. Betancourth in contempt of court for her prohibited contacting of Mr. Rivera. According to the record, Ms. Betancourth called Mr. Rivera on February 21, 2013, because the police had come to her home looking for the parties' adult son and because their son had been arrested. The trial court determined that the situation constituted an emergency circumstance between the parties and, as such, was not a willful or intentional violation of the court's order. From our review of the record, we do not find that this factual determination is manifestly erroneous, nor do we

³ In calculating the amount of arrearages owed by Mr. Rivera, the trial court noted that Mr. Rivera owed \$2,033.98 in spousal support for the months of March and April of 2013. However, the trial court also determined that Mr. Rivera was entitled to a credit in the amount of \$3,297.39 against the arrearage amount. The trial court arrived at this determination after finding that Mr. Rivera had paid the \$1,500.00 per month spousal support obligation in 2011 and 2012, which was to include the payment of health insurance benefits in the amount of \$425.00, in addition to paying the health insurance premium directly to the insurance company. Therefore, the trial court credited the excess amount toward the support arrearage, and also permitted this amount to be credited toward the attorney's fees award.

find that the trial court abused its discretion in failing to find Ms. Betancourth in contempt of court.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are assessed to Adan Rivera.

AFFIRMED.