NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CU 0762

MOLLY GENSLER

VERSUS

MICHAEL JAYMES VINSON

DATE OF JUDGMENT: NOV 07 2014

ON APPEAL FROM THE FAMILY COURT
NUMBER F157811, DIV. A, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE PAMELA J. BAKER, JUDGE

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Michael Jaymes Vinson

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BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

Disposition: AFFIRMED.

KUHN, J.

Defendant-appellant, Michael Jaymes Vinson, appeals the family court's judgment, granting a motion to compel discovery filed by plaintiff-appellee, Molly Gensler, awarding her attorney's fees in the amount of $3,000, and ordering him to pay the court costs associated with the filing of the motion to compel. Additionally, the family court's judgment awarded to Gensler attorney's fees in the amount of $1,000 against Vinson and $1,000 against his attorney as sanctions for having filed, for the purpose of unnecessary delay and/or needless increase in the cost of litigation, an ex parte motion for dismissal on the basis of abandonment that the family court concluded was not warranted by existing law. We affirm.

Vinson contends that because he was not properly served with Gensler's pleading, which was accompanied by her requests for interrogatories, production of documents, and admissions, the family court erred in ordering him to produce discovery. Our review of the record shows that on March 27, 2006, Gensler initiated this litigation to establish paternity, custody, and child support. Represented by counsel, Vinson answered the lawsuit on April 20, 2006. A stipulated judgment, signed by both the parties and their respective attorneys at the time, was presented to the family court and signed on September 5, 2006.

On February 19, 2013, Gensler filed into the court record a pleading seeking to modify custody and child support and to hold Vinson in contempt of court for failing to obey the September 5, 2006, stipulated judgment with attached discovery requests. The record establishes, by the affidavit of Michelle Davis, that the pleading and discovery requests were delivered to and signed for by Vinson via certified mail on February 26, 2013, at his address in Dorado, Puerto Rico. Although Vinson insists that service was ineffective because he was not located within the State of Louisiana at the time of service, and suggests that service under the Long Arm Statute was required, see La. R.S. 13:3204, this assertion is without merit. See ***Parker v. Parker***,

382 So.2d 201, 206 (La. App. 2d Cir. 1980) (where a litigant has been subject to the personal jurisdiction of the court in a case where a custody award has been made, jurisdiction continues as to those matters directly related to the custody and best interest of the child including child support even where no child support award had been made in the earlier proceeding); see also La. C.C.P. art. 1313A(1) (if there is no counsel of record, every pleading subsequent to the original petition may be served by mailing a copy to the adverse party at his last known address). Thus, the family court's order directing Vinson to produce discovery is not erroneous due to insufficient service.

Vinson complains that the family court's award of attorney's fees for his failure to respond to discovery was erroneous because the record lacks an order compelling him to produce the discovery. In the family court's written reasons for judgment, issued on December 2, 2013, the judge granted the motion to compel and ordered Vinson to produce the answers to discovery within ten days. As of the date that the family court issued its written judgment, awarding attorney's fees to Gensler, Vinson had not responded to discovery. There is no error.[1] See La. C.C.P. art.

[1] We note the family court judge's extraordinary patience in response to the dilatory approach undertaken by Vinson's attorney in defending this matter. Initially we point out that the only reason this court vacated the family court's June 11, 2013 ruling was that in his writ application, Vinson pointed out that he "raised the issue of [his] being in the service and ... that [he] was stationed overseas and his ability to defend himself ... would be materially impaired by his military duties." Vinson then suggested that the "very purpose" of the Servicemembers Civil Relief Act (SCRA), see 50 App. U.S.C.A. § 533 (SCRA), was to avoid such issues. See ***Gensler v. Vinson***, 2013-1059 (La. App. 1st Cir. 6/25/13) (an unpublished writ action). Vinson's entitlement to the SCRA stay was a matter that was not pursued by Vinson's attorney at the motion to compel hearing on June 11, 2013. Our subsequent writ action, which remanded "for the [family] court to consider and rule on [Vinson's] motion" for a SCRA stay expressly noted, "Consideration of [Vinson's] arguments raised in this writ application are pretermitted." See ***Gensler v. Vinson***, 2013-1216 (La. App. 1st Cir. 8/9/13) (an unpublished writ action). Thus, the family court's disposition of the motion to compel was not a basis for the vacating of the June 11, 2013 ruling. After remand, the family court held a hearing on October 1, 2013, at which time Vinson withdrew his request for a SCRA stay because he had returned stateside. The family court verbally apprised the parties it intended to reinstate its June 11, 2013 order. Additionally, the transcript of the June 11, 2013 hearing wherein a detailed articulation had been undertaken by the family court was also admitted into evidence. Because Vinson complained that he had not been properly notified that the motion to compel was before the family court on October 1, 2013, at the close of the hearing, the family court rescheduled the motion to compel to October 22, 2013. Despite having been apprised by the family court of reinstatement of its previous ruling, which concluded that Vinson's May 9, 2013 responses were insufficient, Vinson did not supplement or modify his earlier discovery.

1471(C) (the court shall require the party failing to obey the order to produce discovery to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust).[2]

In his next challenge, Vinson maintains the family court erred by hearing, on October 22, 2013, Gensler's pleading, entitled "Motion to Dismiss [Vinson's] 'Ex Parte Motion to Dismiss Abandoned Suit' and Motion for Sanctions Pursuant to [La. C.C.P. art.] 863," suggesting that the pleading was not properly served on him. The record shows that Gensler's pleading was signed by the family court judge and certified by the clerk. The signed order directed Vinson to appear at the October 22, 2013 hearing, which had already been set to take up the motion to compel after this court's remand. See ***Gensler v. Vinson***, 2013-1216 (La. App. 1st Cir. 8/9/13) (an unpublished writ action). The pleading's service information states that service was pursuant to La. C.C.P. art. 1313, and at the hearing Gensler's attorney stated that he had mailed, emailed, and faxed the pleading to Vinson's attorney. There is no error. See La. C.C.P. art. 1313.

Lastly, without raising any contentions about the quantum of the awards of the attorney's fees imposed against himself and his attorney, Vinson asserts the family court erred in ordering sanctions under La. C.C.P. art. 863. Specifically, the family court concluded that Vinson's ex parte motion to dismiss Gensler's claims on the basis of abandonment was filed for purposes of delay and/or to needlessly increase the cost of this litigation.

Article 863 provides in relevant part:

> B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an

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[2] Although the written reasons also indicated that Gensler was entitled to an award of attorney's fees and court costs associated with the motion to compel, the family court did not actually award the attorney's fees until well after the ten-day period that Vinson had to comply with the December 2, 2013 written order to produce discovery.

attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry, he certifies all of the following:

(1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

(2) Each claim, defense, or other legal assertion in the pleading is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.

(3) Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) Each denial in the pleading of a factual assertion is warranted by the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief. ...

D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

E. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction. ...

G. If the court imposes a sanction, it shall describe the conduct determined to constitute a violation of the provisions of this Article and explain the basis for the sanction imposed.

To impose sanctions, a trial court must find that one of the affirmative duties imposed by Article 863 has been violated. Article 863 imposes an obligation on litigants and their attorneys to make an objectively reasonable inquiry into the facts and law; subjective good faith will not satisfy this duty of reasonable inquiry. ***Slaughter v. Bd. of Supervisorrs of S. Univ. and Agric. and Mech. College***, 2010-1114 (La. App. 1st Cir. 8/2/11), 76 So.3d 465, 470, writ denied, 2011-2112 (La. 1/13/12), 77 So.3d 970. A trial court's determination regarding the imposition of sanctions is subject to the manifest error or clearly wrong standard of review. ***Id.***

Because a reasonable factual basis exists, the family court's imposition of sanctions was not manifestly erroneous or clearly wrong. Gensler's action to modify custody and support and for contempt, filed on February 19, 2013, was the first pleading filed since the September 5, 2006, stipulated judgment. And although seven years had passed without any action in the litigation, it is axiomatic that the family court's jurisdiction is continuing. The modifications of child support and custody and the collection for arrearages were clearly claims arising out of the September 5, 2006, stipulated judgment and within the ambit of the family court's jurisdiction. See ***Dupuy v. Dupuy***, 2000-2744 (La. App. 1st Cir. 3/28/01), 808 So.2d 562, 565 (the law grants courts continuing jurisdiction for modification of prior awards because of the need for flexibility in the area of child custody; in custody and support matters, there may be multiple requests for modification brought before the court). Vinson offered no valid legal argument to support the ex parte motion. Because the record contains neither a factual nor a reasonable legal basis for the ex parte motion, the family court's imposition of sanctions is not manifestly erroneous or clearly wrong.

DECREE

For these reasons, the family court's judgment is affirmed. All costs of this appeal are assessed against defendant-appellant, Michael Jaymes Vinson.

AFFIRMED.