

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CU 0846

CECELIA WALE BLACKWELL

VERSUS

WILLIAM EDWARD BLACKWELL

Judgment Rendered: MAR 13 2015

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On Appeal from the
21st Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Trial Court No. 119349

Honorable Brenda Bedsole Ricks, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCleendon, J. concurs and assigns reasons.

HIGGINBOTHAM, J.

This is an appeal from a judgment continuing and increasing a former husband's obligation to pay spousal support. For the reasons that follow, we reverse the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

Mr. William Edward Blackwell and Ms. Cecelia Blackwell were married on May 27, 1991, separated in April, 2008, and were divorced by a judgment signed on June 15, 2009. There were three children born of the marriage, two of whom were minors at the time the parties separated. On September 25, 2008, after a hearing and several stipulations of the parties, Ms. Blackwell was awarded domiciliary custody of the minor children and Mr. Blackwell was ordered to pay \$1,264.00 per month in child support, \$500.00 per month in interim spousal support, and the monthly mortgage note on the former matrimonial domicile without the right of reimbursement.¹ The parties came back before the court on January 13, 2010, and stipulated that Mr. Blackwell would continue to pay child support and the monthly mortgage note without the right of reimbursement and pay to Ms. Blackwell \$275.00 per month in final periodic spousal support. Further, the parties agreed that Mr. Blackwell was only agreeing to pay the mortgage note without right of reimbursement through the month of June, 2010, after which he reserved his right to seek reimbursement.²

On February 14, 2012, Mr. Blackwell filed a motion to terminate child support because the parties' children had obtained the age of majority and their youngest daughter, who was still a full-time high school student, was living with him. In

¹ This matter came before the court and judgment was rendered on September 25, 2008; however, the judgment was not signed until August 8, 2011.

² This matter came before the court and judgment was rendered on January 13, 2010; however, the judgment was not signed until August 8, 2011.

response, on February 24, 2012, Ms. Blackwell filed an answer and reconventional demand requesting an increase in final periodic spousal support.

On September 14, 2012, Mr. Blackwell filed a rule to extinguish final periodic spousal support on the basis that Ms. Blackwell was cohabitating with Mr. Warren Treadaway in the manner of married persons since approximately January 2012. These matters came before the trial court on March 6, March 7, and April 29, 2013. Judgment was signed on December 9, 2013, granting Mr. Blackwell's rule to reduce child support and extinguishing his child support obligation, but denying Mr. Blackwell's rule to extinguish final periodic spousal support and ordering him to pay \$2,000.00 per month in final periodic spousal support.³ It is from this judgment that Mr. Blackwell appeals.

DISCUSSION

I. Evidentiary Rulings

In Mr. Blackwell's first six assignments of error, he objects to evidentiary rulings made by the trial court including: 1) the denial of his motion to compel Mr. Treadaway to produce his financial records; 2) the failure to allow his attorney to question Mr. Treadaway about beneficiaries in his will; 3) the failure to allow Madison Blackwell, the parties' daughter, to testify regarding Ms. Blackwell's motivation for requesting a spousal support increase; 4) the failure to allow an out-of-court statement made by Mr. Treadaway to a private investigator; 5) the failure to give weight to the testimony of the private investigator; and 6) the failure to allow the private investigator to be recalled on rebuttal.

A trial judge has great discretion in conducting a trial. The judge is required to do so in an orderly, expeditious manner and to control the proceedings so that

³ This judgment is an amended judgment rendered after Mr. Blackwell filed a motion for new trial, alleging errors in the original judgment. These alleged errors were resolved during a conference with the parties and the amended judgment was then submitted and signed.

justice is done. La. Code Civ. P. art. 1631; **Pino v. Gauthier**, 633 So.2d 638, 648 (La. App. 1 Cir. 1993), writs denied, 94-0243 and 94-0260 (La. 3/18/94), 634 So.2d 858 and 859. The judge's discretion includes the admissibility of a witness's testimony. **Combs v. Hartford Ins. Co.**, 544 So.2d 583, 586 (La. App. 1 Cir.), writ denied, 550 So.2d 630 (La. 1989). It is only upon a showing of a gross abuse of discretion that appellate courts have intervened. **Pino**, 633 So.2d at 648.

After thorough review of the record and the reasons given by the trial court for each of its evidentiary rulings, we find no gross abuse of the trial court's vast discretion.

I. In the Manner of Married Persons

In Mr. Blackwell's seventh assignment of error, he contends that the trial court erred in not extinguishing his spousal support obligation based on La. Civ. Code art. 115, because Ms. Blackwell was cohabitating with Mr. Treadaway 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.**" (Emphasis added.)

Comment (e) to the article states that the phrase "cohabited...in the manner of married persons" means to live together in a sexual relationship of some permanence. It does not mean just acts of sexual intercourse.

The appellate court's review of factual findings is governed by the manifest error—clearly wrong standard. The two-part test for the appellate review of a factual finding is: 1) whether there is a reasonable factual basis in the record for the finding of the trial court; and 2) whether the record further establishes that the finding is not

manifestly erroneous. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Thus, if there is no reasonable factual basis in the record for the trial court's finding, no additional inquiry is necessary to conclude there was manifest error. However, if a reasonable factual basis exists, an appellate court may set aside a trial court's factual finding only if, after reviewing the record in its entirety, it determines the trial court's finding was clearly wrong. See **Stobart v. State, through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993).

At the trial, Mr. Treadaway testified that Ms. Blackwell lived at his home for about a year, but they had separate bedrooms. He acknowledged that he and Ms. Blackwell traveled together, shared many meals for which he paid, and held family functions at "our home." Mr. Treadaway stated that he considered himself to be Ms. Blackwell's boyfriend. Mr. Treadaway gave Ms. Blackwell a ring as a gift, included her cell phone on his account, added her name to a truck note, and then purchased the house next door where Ms. Blackwell had resided since January, 2013. Mr. Treadaway testified that Ms. Blackwell was going to pay him back for the house, but at the time of trial she had not started paying yet because they were waiting on the spousal support and community property issues to be resolved. Mr. Treadaway denied that there was any sexual relationship between him and Ms. Blackwell. Mr. Treadaway testified that he and Ms. Blackwell talked about marriage in a "teasing" manner.

Ms. Blackwell testified that she "sort of" considers Mr. Treadaway as her boyfriend because she likes to spend time with him and they enjoy common interests, but she is not interested in him in a romantic fashion. She testified that Mr. Treadaway let her move in with him because she did not want to live alone. She said that the only time they have shared the same bed is to drink coffee together in

the morning. Ms. Blackwell stated that as far as physical contact, she has kissed him on the cheek, sometimes on the mouth and held his hand.

Several witnesses testified about their observations of the relationship between Mr. Treadaway and Ms. Blackwell. Madison Blackwell, Ms. Blackwell's daughter, testified that it seems like they are a couple and that her mom told her that Mr. Treadaway was her boyfriend. Ashley Black, a friend of Madison, testified that she went on a trip with Ms. Blackwell and Mr. Treadaway and they held hands and appeared to be a couple. Ms. Blackwell also referred to Mr. Treadaway as her boyfriend to her treating psychiatrist, Dr. Ashwin B. Sura.

According to the record, Ms. Blackwell and Mr. Treadaway do things that people in relationships do. They frequently go out to eat together and travel together often. They share holidays, attend each other's family functions, entertained in the home they shared, and attended a class reunion as a couple. Ms. Blackwell was the person who cared for Mr. Treadaway when he was in the hospital. Also, they admitted to spending the night at each other's homes prior to living together.

Mr. Treadaway and Ms. Blackwell also have many financial ties to each other. They co-own a vehicle together, Ms. Blackwell can sign on Mr. Treadaway's checking account, and her name is on Mr. Treadaway's credit card. Also, Ms. Blackwell's cell phone is on Mr. Treadaway's account. Further, Mr. Treadaway purchased the house next door where Ms. Blackwell has resided since Mr. Blackwell filed his rule to extinguish spousal support, alleging her cohabitation with Mr. Treadaway.

Photographs of Mr. and Ms. Treadaway were entered into the record that appeared to portray a couple. In the photos, they were traveling together, hugging, kissing on the cheek and sitting closely. They also took a picture in front of a wedding chapel that stated "just married."

After a thorough review of the record, we have determined that the trial court's finding that Ms. Blackwell and Mr. Treadaway did not live together in the manner of married persons is clearly wrong. In reviewing the evidence, it is clear that Mr. Treadaway and Ms. Blackwell were living together in a relationship of some permanence. There was no dispute that the parties lived together for nearly a year, but they also ate together, traveled together, had many financial ties, held hands in public, and publicly referred to each other as "boyfriend" and "girlfriend."

We note that although there was no direct evidence of a sexual relationship, as when trying to prove the sexual component of adultery, one is not likely to have lawful direct, positive evidence of sexual relations when trying to establish that a couple lived together in the manner of married persons. The court must rely on circumstantial evidence.

Having determined that the evidence presented overwhelmingly portrayed a couple living together in the manner of married persons, we find the trial court erred in denying Mr. Blackwell's rule to extinguish final spousal support.⁴ Mr. Blackwell's obligation to pay spousal support is terminated back to the date of his judicial demand requesting to extinguish his final spousal support obligation.

CONCLUSION

For these reasons, the judgment of the trial court is reversed. The costs of these proceedings are assessed to appellee, Ms. Cecelia Wale Blackwell.

REVERSED.

⁴ Because we find merit to Mr. Blackwell's assignment of error regarding extinguishment of his spousal support obligation, we need not address his remaining assignments of error.

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McLENDON, J., concurs.

Based on the totality of the circumstances, I concur with the result reached by the majority. Considering the evidence presented, one must conclude that Ms. Blackwell and Mr. Treadway were cohabitating in the manner of married persons and were engaged in a sexual relationship of some permanence. See LSA-C.C. art. 115.¹

¹ Comment (e) provides that the phrase "cohabited ... in the manner of married persons" means to live together in a sexual relationship of some permanence.

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