

DANIEL J. LIGHTELL

NO. 17-CA-327

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

AFFIRMED

HJL

RAC

CHEHARDY, C.J. DISSENTS WITHOUT REASONS

SMC

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

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

LILJEBERG, J.

The defendant, Tammy Lightell, seeks review of the trial court's judgment finding she was not free from fault in the dissolution of her marriage to plaintiff, Daniel Lightell, and thus precluded from receiving final spousal support. The trial court made a factual finding based on its resolution of the parties' conflicting testimony. Because the trial court's factual finding was not manifestly erroneous, we affirm.

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 seeking a divorce pursuant to La. C.C. art. 102 after the parties lived separate and apart for a period in excess of 180 days without reconciliation. 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, and he recommended that Mr. Lightell pay Ms. Lightell \$4,623.00 per month in interim spousal support effective on October 15, 2015. Mr. Lightell filed an objection to the hearing officer's recommendation and on January 26, 2016, the parties entered into a consent judgment awarding Ms. Lightell \$5,000.00 per month for interim spousal support. On February 26, 2016, Mr. Lightell filed a motion to determine fault and a rule to terminate spousal support. The trial court entered a final judgment of divorce on September 8, 2016.

On February 21, 2017, the parties appeared for a hearing on the rule to determine fault. At the conclusion of the hearing, 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. On March 15, 2017, Ms. Lightell requested written reasons for judgment. However, the record does not contain a response

from the trial court. On March 17, 2017, Ms. Lightell filed a timely motion and order for appeal, which the trial court granted on March 21, 2017.

At the hearing on the issue of fault, Ms. Lightell testified that she learned of Mr. Lightell's decision to file for divorce when she went to the bank on August 31, 2015, and discovered their checking account was empty. Ms. Lightell called Mr. Lightell from the bank, and he told her he was leaving her because he was unhappy. At that time, Mr. Lightell was living with friends, but still had some of his possessions at their home.

During the marriage, Ms. Lightell worked various jobs and obtained a college degree. After graduating, she worked as a teacher from 1996 until 2007, when she quit working due to health problems. Ms. Lightell testified that Mr. Lightell was not happy that she worked as a teacher because he believed she could earn much more with a college degree. On December 26, 2007, the Louisiana State Medical Disability Board approved Ms. Lightell's application for disability retirement. She explained that at that time, she was experiencing partial renal failure and her doctors told her she had to stop working. According to Ms. Lightell, at the time she stopped working, she was earning \$2,000.00 every two weeks after deductions and Mr. Lightell was earning \$160,000.00 per year. She also provided medical insurance for the family. Ms. Lightell testified that at the time of the hearing she received \$800.00 per month in disability retirement pay, less deductions for health insurance.

Ms. Lightell did not introduce any medical records into evidence, but explained that she has a heart problem, a VP shunt for brain swelling and was diagnosed with rheumatoid arthritis in June 2015. Ms. Lightell explained that she was diagnosed with the brain swelling in 1996, following a car accident. She stated that she suffers from "Arnold Chiari Syndrome" and had three brain surgeries in 1996, 1999 and 2003. She has a "VP shunt" which drains cerebral

spinal fluid on a daily basis. She testified that she went back to work as a teacher within six weeks after each brain surgery. She claimed her doctors told her she should not go back to work, but she felt that she had to because they had four children to support. She also claimed that she was able to be intimate with her husband on a regular basis despite her health problems.

Ms. Lightell also experiences problems with her thyroid as a result of suffering from pituitary macroadenoma. Due to this condition, her pituitary gland was removed and she sees an endocrinologist on a monthly basis because her “adrenals” are affected due to the removal of the gland. She explained that this affects her hormones and as a result, her everyday life. Ms. Lightell was also born with a medullary sponge kidney which causes her to develop kidney stones. She also sees an oncologist because she had basal cell carcinoma in her inner right ear, which affected her jaw and required her to have a metal piece placed in her jaw in order to open and close her mouth. Ms. Lightell testified that she also had surgeries on her shoulders and has herniated discs. She explained that her doctors treat her back issues with epidural steroid injections.

In 2015, Ms. Lightell was diagnosed with rheumatoid arthritis. She testified that the medication she takes for this condition, methotrexate, makes her feel ill. Also, just ten days prior to the fault hearing, Ms. Lightell had a pacemaker installed due to heart problems. In the year after the parties’ separation, her heart problems caused her to suffer from syncope, which is the loss of consciousness due to a drop in blood pressure. Ms. Lightell sees seven doctors on a regular basis and explained that she usually sees two to three doctors per month. She testified that despite her health problems, she worked until 2007, cooked, cleaned and took care of their four children. She explained that at the time of the hearing, on good days, she can sweep, pick up clothes and sometimes cook. However, on bad days, she cannot get out of bed.

Ms. Lightell denied that she ever abused her former husband physically or emotionally, but claimed he abused her. Mr. Lightell admitted that on Father's Day about 18 years ago, he grabbed Ms. Lightell by the arms during an argument and she left their home. Twenty minutes later, a policeman appeared at his door and arrested him for abuse. Mr. Lightell admitted to pleading guilty and was placed on nonactive probation.

On cross-examination, Mr. Lightell's counsel questioned Ms. Lightell's disability and directed her attention to a video on Facebook which showed her dancing. In response, Ms. Lightell explained that in the video she was at a surprise birthday party for her niece who was suffering from cancer and danced with other family members during one song. She also admitted that she went on family vacations where they went white water rafting and climbed a mountain. She explained that on the rafting trip they had a guide and she sat in the boat while everyone else paddled.

Ms. Lightell was also asked on cross-examination whether she accused Mr. Lightell of stealing her jewelry. She explained that when they evacuated for Hurricane Katrina, she brought her jewelry worth approximately \$20,000.00 with her. She stated that Mr. Lightell put the jewelry above one of the ceiling tiles in the room where they were staying. The jewelry went missing and Mr. Lightell told her someone stole the jewelry. On the way home, she became upset and asked Mr. Lightell to return to the room where they were staying so she could look for the jewelry, but he refused.

Mr. Lightell also accused Ms. Lightell of lying to obtain attention. Mr. Lightell's counsel questioned her about an incident where she claimed their daughter was kidnapped at a Wal-Mart. Ms. Lightell explained that at the time, she recently had surgery and was on a new medication. While she was at Wal-Mart, she became dizzy and blacked out. When she woke up, she was confused

and thought her daughter was with her at the store. When she did not see her, she thought she was missing. She called Mr. Lightell and he told her their daughter was at home. She denied that the police were called about the incident. Mr. Lightell, on the other hand, testified that the police were called to the store and when he arrived at the store, he sent Ms. Lightell home. He and their sons helped the police search the parking lot and Mr. Lightell later left to go home and check on Ms. Lightell. When he arrived home, he found their daughter lying in her bed.

Ms. Lightell was also questioned about an incident where she allegedly called Mr. Lightell and told him their daughter was on the floor due to a drug overdose. Mr. Lightell claimed that when he arrived home, their daughter was fine and did not know anything about allegedly overdosing on pills. Ms. Lightell denied the entire incident.

Mr. Lightell's counsel also questioned Ms. Lightell about lying to Mr. Lightell about receiving free dental work at the LSU School of Dentistry, and then incurring a \$27,000 dental bill. Ms. Lightell explained that she had jaw surgery after suffering from basal cell carcinoma. She thought insurance would pay for the surgery, but claimed her employer switched insurance companies and the new insurer refused to pay the dental bill.

Ms. Lightell testified that she and Mr. Lightell argued as any normal couple during their marriage and that the arguments escalated when their son left college to become a Mormon and a missionary. Ms. Lightell explained that she supported their son's decision and Mr. Lightell was very upset and depressed about the situation. She claimed that when Mr. Lightell came home he was angry and did not want to talk to her or the children. She said that sometimes he did not come home on his days off and she did not know where he was. She claimed that he was upset that the children were growing up and leaving home. Both parties admitted to saying terrible things to one another during their arguments prior to the end of

the marriage. Ms. Lightell admitted that she accused Mr. Lightell of being gay, but claimed that was in response to him calling her a “whore” and a “bitch.”

Ms. Lightell testified that she fought hard for their marriage and would have done anything to try to make it work. She also begged Mr. Lightell to go to therapy, but he refused. She said he told her he was unhappy, done with the marriage and that he never loved her. Ms. Lightell admitted to apologizing to Mr. Lightell in August 2016, for taking the best years of his life, but denied that she was equally at fault for the failure of their marriage. She claimed that they both apologized for the things they did to one another.

She claimed that at the end of the marriage, they both accused each other of many things out of anger. She admitted that their arguing contributed to the breakup of the marriage, and that they argued about her medical condition which prohibited her from working, their kids, other family members and their finances. Ms. Lightell denied that she threw Mr. Lightell out of the house on multiple occasions and claims that he left. She stated that he was depressed about many things including their marriage, his job, their kids and family members.

Mr. Lightell testified that he filed for divorce because he was humiliated and could not please Ms. Lightell. He also claimed that their fights contributed to his decision to file for divorce because Ms. Lightell constantly told him he was not good enough and not doing enough for their kids. She compared him to her family members and he felt he was always competing with them. Mr. Lightell explained that before they separated, Ms. Lightell would not want to go anywhere or do anything with him when he was home from work, and would sit in the house depressed. However, when he returned home, she would tell him about the things she did with family and friends while he was away.

He testified that he felt she was taking too much medication and exaggerating the effect of her illnesses. He explained that their adult children were

embarrassed by Ms. Lightell's behavior. Mr. Lightell explained that on several occasions, Ms. Lightell pretended to pass out to try to keep their daughter from leaving to go to dinner with Mr. Lightell and her other siblings. Mr. Lightell also explained that on several occasions, Ms. Lightell insisted on going to the hospital in an ambulance claiming extreme pain and after arriving, the doctors could not find anything wrong with her other than low potassium. He encouraged Ms. Lightell to eat food to help increase her potassium, but she would not do it. He stated that their children told Ms. Lightell she needed to do something other than sitting around the house, taking medications and being depressed.

He also explained that in the three years prior to the hearing, he came home from work on several occasions to find his clothes thrown outside of the house. Ms. Lightell would tell him to leave or she would call the police. He would gather his clothes and go stay with family or friends. Also, one night when Ms. Lightell was in the hospital, she told a nurse that her husband beat her and her kids every day. He told her that he could not continue to live with her constantly threatening to call the police to arrest him and not knowing what she was going to do from day to day. He felt as if he was "walking on egg shells" every day during the last two years of the marriage.

Mr. Lightell claimed that Ms. Lightell falsely accused him of having an affair with a family friend. He also claims that she stated on Facebook that Mr. Lightell had three or four DWI convictions. Ms. Lightell denied accusing Mr. Lightell of having an affair. With respect to the DWI allegations, she explained that in 2015, she received a phone call from a Lafitte policeman to come pick Mr. Lightell up because he was drunk, and that this occurred several times. Mr. Lightell admitted that on one occasion he was stopped by a deputy and told he should have someone drive him home because he was "borderline drunk."

Mr. Lightell testified that the “straw that broke the camel’s back” was when Ms. Lightell started taking money from the children and started hiding credit cards. He claimed that she spent more money than he earned, forged checks and borrowed money from his life insurance policy without telling him. He also claimed that she obtained a loan for their son for college and included Mr. Lightell as a co-signer without first consulting him. Ms. Lightell denied taking money from their children and forging checks. She also claimed that Mr. Lightell told her to obtain credit cards in both of their names and that they both used the cards.

LAW AND DISCUSSION

On appeal, Ms. Lightell argues that she satisfied her burden to prove she was free from fault. She further contends that she is entitled to special consideration due to her health issues. She contends that in response, Mr. Lightell was not able to point to any specific incidents that caused the breakdown of their marriage and instead, raised vague and non-specific complaints that occurred over the entire course of their 34-year marriage.

Final spousal support may only be awarded to a spouse who has not been at fault in the termination of the marriage and is in need of support. La. C.C. art. 111. The initial consideration in determining if a claimant is entitled to final spousal support is whether he or she is free from fault in causing the breakup of the marriage. *English v. English*, 09-214 (La. App. 5 Cir. 12/8/09), 30 So.3d 33, 35. The spouse seeking final spousal support has the burden of proving that he or she is without fault. *Id.*

Statutory law does not specify what constitutes fault sufficient to bar an award of final spousal support. However, the jurisprudence has found the necessary conduct to be synonymous with the fault grounds which previously entitled a spouse to a separation under former La. C.C. art. 138 or the fault grounds which currently entitle a spouse to a divorce under La. C.C. art. 103. *Hutson v.*

Hutson, 39,901 (La. App. 2 Cir. 8/9/05), 908 So.2d 1231, 1235. Prior to its repeal, La. C.C. art. 138 provided the grounds for separation which included adultery, habitual intemperance, excesses, cruel treatment or outrages, making living together insupportable, and abandonment. La. C.C. 103 currently entitles a spouse to seek a fault-based divorce on the basis of the other spouse's adultery, conviction of a felony with a sentence of death or imprisonment at hard labor, the physical or sexual abuse of the spouse seeking a divorce or a child of one of the spouses during the marriage, or the issuance of a protective order during the marriage against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse.

Jurisprudence has also identified other activity that can be construed as fault for the purpose of denying final spousal support, including conduct or substantial acts of commission or omission by a spouse violative of his or her marital duties or responsibilities. *See Barnett v. Barnett*, 15-766 (La. App. 5 Cir. 5/26/16), 193 So.3d 460, 466, *writ denied*, 16-1205 (La. 10/10/16), 207 So.3d 406; *Evans v. Evans*, 04-215 (La. App. 5 Cir. 7/27/04), 880 So.2d 87, 89, *writ denied*, 04-2191 (La. 11/19/04), 888 So.2d 200.

Spouses seeking support need not be perfect to be free from legal fault; rather, to constitute fault which will prohibit a spouse from permanent support, the spouse's conduct must not only be of a serious nature but must also be an independent contributory or proximate cause of the separation. *Matthews v. Matthews*, 15-499 (La. App. 5 Cir. 12/23/15), 184 So.3d 173, 177. Petty quarrels between husband and wife do not rise to the level of "legal fault." Rather, to be legally at fault, a spouse must be guilty of cruel treatment which compels separation because the marriage is insupportable. *Evans*, 880 So.2d at 89. To prove cruel treatment, a party needs to show a continued pattern of mental harassment, nagging, and griping by one spouse directed at the other so as to make

the marriage insupportable. *Barnett*, 193 So.3d at 467. Mere bickering and fussing do not constitute cruel treatment for purposes of denying final spousal support. *Id*; *Gilley v. Gilley*, 07-568 (La. App. 5 Cir. 12/11/07), 976 So.2d 727, 728.

There is little jurisprudential guidance on how a claimant spouse proves he or she is free from fault for purposes of spousal support. *Barnett*, 193 So.3d at 467. In *Hutson*, *supra*, the court found the claimant spouse met her burden of proving she was free from fault through her own testimony, as well as the testimony of her niece, sister and neighbors, that she did nothing to break up the marriage and had been a good wife. The court determined that this evidence constituted *prima facie* proof that the claimant spouse was not at fault in the breakup of the marriage. The court then shifted the burden to the non-claimant spouse to prove conduct on the part of the claimant spouse that rose to the level of fault. 908 So.2d at 1236. Furthermore, this Court has recognized that a spouse in poor health is entitled to special consideration. *Barnett*, 193 So.3d at 469.

The issue of spousal fault turns largely on evaluations of witness credibility. *Noto v. Noto*, 09-1100 (La. App. 5 Cir. 5/11/10), 41 So.3d 1175, 1179. Thus, the trial judge, as trier of fact having the opportunity to observe the demeanor of the witnesses, has vast discretion in determining the weight and credibility of witnesses. *Pearce v. Bailey*, 348 So.2d 75, 78 (La. 1977). A trial court's factual findings regarding fault in the area of domestic relations are to be given great deference, and findings of fact on the issue of a spouse's fault for the purposes of determining final spousal support will not be disturbed on appeal unless found to be manifestly erroneous. *Desai v. Desai*, 01-1325 (La. App. 5 Cir. 4/10/02), 817 So.2d 230, 231.

Ms. Lightell claims that her alleged health issues and arguments regarding their son's decision to become a missionary for the Mormon Church caused Mr.

Lightell to file for divorce. Mr. Lightell denied that Ms. Lightell's health was a factor in ending their marriage, other than his claim that their family believed she exaggerated the effects of her illnesses for attention. Ms. Lightell suffered from various medical conditions throughout their 34-years together and Mr. Lightell remained in the marriage. He testified that he decided to file for divorce due to Ms. Lightell's cruel treatment, which included verbal arguments with disparaging comments, throwing his clothes out of the house on multiple occasions, threats to call the police if Mr. Lightell would not leave the home, and false accusations on Facebook regarding DWI convictions. He also pointed to Ms. Lightell's embarrassing conduct when exaggerating her illnesses and taking too much medication, as well as the financial stress she placed on the marriage. He testified that he was humiliated by Ms. Lightell's conduct toward him and he could no longer remain in the marriage as a result.

Although we recognize that a spouse should not be deprived of final spousal support simply because she is not totally blameless for the dissolution of the marriage, in light of the conflicting testimony and facts and circumstances of this case, we cannot say the trial court abused its vast discretion in determining the credibility of the witnesses and the weight to give their testimony, nor can we say that it was manifestly erroneous in finding Ms. Lightell failed to prove she was free from fault in the breakup of the marriage. The trial court obviously chose to accept Mr. Lightell's testimony regarding the events leading to the dissolution of the marriage, which support a finding of cruel treatment on the part of Ms. Lightell well beyond mere bickering. Furthermore, Ms. Lightell did not introduce any evidence other than self-serving testimony regarding her medical conditions and how these conditions entitled her to special consideration to excuse her conduct toward Mr. Lightell.

DECREE

Accordingly, we find that the trial court was not manifestly erroneous by concluding defendant, Tammy Lightell, was not free from fault in the breakup of her marriage to plaintiff, Daniel Lightell.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
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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-327

E-NOTIFIED

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

MAILED

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