

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2007 CA 0182**

**JULIA ELTON SECKETA**

**VERSUS**

**DENNIS SECKETA**



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**On Appeal from the 22nd Judicial District Court  
Parish of St. Tammany, Louisiana  
Docket No. 2003-15368, Division "A"  
Honorable Raymond S. Childress, Judge Presiding**

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**Julia Elton Secketa  
Metairie, LA**

**In Proper Person**

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New Orleans, LA**

**Attorneys for  
Defendant-Appellant  
Dennis Secketa**

**BEFORE: PARRO, KUHN, AND DOWNING, JJ.**

**Judgment rendered November 2, 2007**

**PARRO, J.**

Julia Elton Secketa (Julia) and Dennis Secketa (Dennis) were married on October 24, 1997, and divorced on August 10, 2004. Just prior to their divorce, Julia filed a rule for final periodic spousal support. Following a hearing, the trial court signed a judgment on April 4, 2005, decreeing that Julia was free from fault and awarded monthly final periodic spousal support of \$1,500. Pursuant to a motion for a new trial filed by Dennis on April 13, 2005, and heard on June 16, 2006, the trial court reduced the monthly support award to \$1,000 for a term of 48 months from the rendition of the judgment on July 13, 2006. Dennis appealed, contending that the trial court erred in finding that Julia was free from fault, in awarding final periodic spousal support when she was unable to carry her burden of proof, and in fixing the award at \$1,000 per month for a term of 48 months. We affirm.

**Fault**

Dennis correctly asserts that Julia as the claimant spouse had the burden of showing that she was free from fault in the dissolution of the marriage in order to receive final periodic support. See Gitschlag v. Gitschlag, 593 So.2d 1331, 1335 (La. App. 1st Cir. 1991). Dennis submits that Julia failed to meet her burden and that the record shows that Julia was guilty of cruel treatment and/or public defamation.

Since the statutory law no longer specifies the type of fault which would constitute grounds to deny final periodic spousal support, legal fault must be determined according to the prior jurisprudential criteria. See Allen v. Allen, 94-1090 (La. 12/12/94), 648 So.2d 359, 362; see also LSA-C.C. art. 111, Revision Comments—1997, comment (c). The word "fault" contemplates conduct or substantial acts of commission or omission by a spouse violative of his or her marital duties and responsibilities. A spouse is not deprived of spousal support after divorce simply because he or she was not totally blameless in the marital discord. Pearce v. Pearce, 348 So.2d 75, 77 (La. 1977). To constitute legal fault, misconduct must not only be of a serious nature but must also be an independent contributory or proximate cause of the separation. Mayes v. Mayes, 98-2228 (La. App. 1st Cir. 11/5/99), 743 So.2d 1257, 1259. Such acts include adultery, conviction of a felony, habitual intemperance or

excesses, cruel treatment or outrages, public defamation, abandonment, an attempt on the other's life, status as a fugitive, and intentional non-support. *Id.* at 1260.

The question of a wife's fault is a factual one. *Pearce*, 348 So.2d at 77. A trial court's findings of fact on the issue of a wife's "fault" will not be disturbed on appeal unless found to be manifestly erroneous. *Pearce*, 348 So.2d at 77-78. In the area of domestic relations, much discretion must be vested in the trial court and particularly in evaluating the weight of the evidence, which is to be resolved primarily on the basis of the credibility of witnesses. The factual findings of the trial court are therefore to be accorded very substantial weight on review. *Pearce*, 348 So.2d at 78.

Considering the apparent credibility determinations made by the trial court and the record before us, we are unable to find that the trial court manifestly erred in finding that Julia did not commit conduct of such a nature as to provide an independent contributory or proximate cause of the breakup of the marriage.

#### **Award of Final Periodic Spousal Support**

Dennis urged that because Julia failed to prove that she was in necessitous circumstances, she did not establish her entitlement to final periodic spousal support. At the time of trial and the hearing on the motion for a new trial,<sup>1</sup> LSA-C.C. art. 111 provided, in pertinent part, that in a proceeding for divorce or thereafter, the court may award final periodic support to a party free from fault prior to the filing of a proceeding to terminate the marriage, based on the needs of that party and the ability of the other party to pay, in accordance with LSA-C.C. arts. 112 et seq. A condition for the award of final periodic support was the claimant's freedom from fault prior to the institution of an action for divorce. *See* LSA-C.C. art. 111, Revision Comments—1997, comment (c). Contrary to Dennis's assertion, under the applicable law, Julia, the claimant spouse in this case, did not have to prove that she was in necessitous circumstances. *See Hammack v. Hammack*, 99-2809 (La. App. 1st Cir. 12/22/00), 778 So.2d 70, 74, writ denied, 01-0913 (La. 5/25/01), 793 So.2d 166.

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<sup>1</sup> Articles 111 and 112 were amended by 2006 La. Acts, No. 749, §1, effective June 30, 2006. The provisions of Act 749 are interpretative and shall apply to pending claims for final periodic support in which trial has not yet commenced as of the effective date of this Act. 2006 La. Acts, No. 749, §2. Since the trial of this matter was concluded prior to the effective date of the 2006 amendments, the pre-amendment versions of LSA-C.C. arts. 111 and 112 govern in this matter.

In light of the trial court's hearing officer's recommendation of an award of \$175 per month for a period of two years, Dennis contends that an award of \$1,000 per month for a period of 48 months is excessive. Considering all relevant factors set forth in LSA-C.C. art. 112 including Julia's age, the duration of the marriage, Dennis's ability to pay, Julia's needs, the income and means of both parties, their financial obligations, and the earning capacity of both parties, we conclude that the record reasonably supports the award and duration of the final periodic spousal support granted by the trial court. Therefore, we are unable to find that the trial court clearly abused its great discretion<sup>2</sup> in fixing Julia's award of final periodic spousal support at \$1,000 per month for a period of 48 months.

**Decree**

For the foregoing reasons, the judgment of the trial court is affirmed in accordance with Uniform Court of Appeal Rule 2-16.2(A)(6), (7), and (8). Costs of this appeal are assessed to Dennis Secketa.

**AFFIRMED.**

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<sup>2</sup> The trial court has great discretion in fixing spousal support awards, and such awards should not be disturbed absent a clear abuse of that discretion. See Mayes, 743 So.2d at 1261.