RECENT JURISPRUDENTIAL DEVELOPMENTS
pertaining to

THE LAW OF PARENT & CHILD:
Filiation & Child Support

Spring 2019 - Spring 2020

by

J.-R. (Randy) Trahan
Louis B. Porterie Professor of Law &
Saul Litvinoff Distinguished Professor of Law
Paul M. Hebert Law Center
Louisiana State University

Table of Contents

I Filiation

A Paternal filiation

1 By subsequent marriage plus formal acknowledgment

Prudhomme v. Russell, 2020 WL 730591 (E.D. La. Feb. 12, 2020)

Facts: Lasques Vacques Prudhomme filed a civil rights suit on October 19, 2017, against various local government entities and officials, claiming their liability for the death of Brandon Jamal Reed. In his complaint, Prudhomme referred to Brandon as his son. Brandon died on October 26, 2016 in the defendants' custody as a pretrial detainee at the Richwood Correctional Center in Ouachita Parish. Prudhomme asserted *inter alia* a claim for wrongful death and a survival action.

About a week after Prudhomme sued, Leslie Reed ("Reed") and Otis McGinnis filed a separate wrongful death and survival action under § 1983, wherein they represented themselves to be Brandon's mother and father.

On January 11, 2018, the defendants filed a motion to dismiss Prudhomme's complaint for failure to state a claim pursuant to Rule 12(b)(6). The basis for the motion was that Proudhomme was not Brandon's "father" under Louisiana law.

On October 8, 2018, Prudhomme filed a motion for paternity/filiation requesting to be acknowledged as Brandon's biological father. He attached as an exhibit an affidavit executed by Reed where she attested that Prudhomme was Brandon's biological father.

The defendants responded to Prudhomme's motion on October 15, 2018, arguing that he failed to establish his paternity of Brandon and requesting that his wrongful death and survival suit not be permitted to proceed.

The district court held a hearing on the paternity matter on October 24, 2018. Nine witnesses testified. McGinnis did not attend the hearing.

Reed testified that Brandon was born in 1988 and that she had a sexual relationship with Prudhomme at the time Brandon was conceived. She also stated that she had a sexual relationship with McGinnis but she could not remember if it was before or after she began her sexual relationship with Prudhomme. She married McGinnis in 1990-two years after Brandon was born. She stated that she signed an affidavit of paternity in favor of Prudhomme on September 6, 2018, but that she was actually unsure about who Brandon's real father was. She further detailed that she had McGinnis sign Brandon's birth certificate because when she told Prudhomme she was pregnant, he asked her to get an abortion. She also explained that McGinnis continued to provide for her and Brandon from Brandon's birth to his death. She conceded that she never asked either man to submit to a DNA test.

Prudhomme also testified during the hearing and detailed the extent of his relationship with Brandon. He explained that he first met Brandon when he was six years old.4 He became convinced at that time that he was Brandon's father because Reed told him he was and also because he and Brandon resembled each other. He began paying for

Brandon's school tuition, took him to family functions, provided some financial support, and employed him at a restaurant Prudhomme owned. Prudhomme also paid for Brandon's funeral expenses and was listed on the obituary as Brandon's father. Prudhomme admitted that he never got a DNA test or filed an avowal action claiming to be Brandon's father prior to Brandon's death. Three of Prudhomme's family members also testified at the hearing and all three stated that they believed that Brandon was Prudhomme's biological son.

Magistrate Judge Hayes issued her Report and Recommendation on December 17, 2018. Prudhomme v. Russell, No. 17-1344, 2018 WL 6928918 (W.D. La. Dec. 17, 2018). She noted that "under [Louisiana Civil Code] Article 198, Prudhomme needed to file an avowal action: 1) within one year from Brandon's birth (absent the mother's bad faith)-if Brandon is presumed to be the child of another man, or 2) no later than one year from Brandon's death. Prudhomme, however, failed to file an avowal action within either deadline." She continued that under Article 195, "[a] man who marries the mother of a child not filiated to another man and who, with the concurrence of the mother, acknowledges the child by authentic act is presumed to be the father of that child." She reasoned that McGinnis married Reed in 1990, signed Brandon's birth certificate, and there was never any evidence that Brandon was filiated to another man at the time. On this basis she concluded that a presumption was established that Brandon was McGinnis's child. Id. Because Prudhomme did not file an avowal action within one year of Brandon's birth, his right to do so was preempted and no longer existent. Id. She further observed that Prudhomme also failed to file an avowal action within one year of Brandon's death on October 16, 2016, so any attempt to do so now using that method is untimely. Id. She continued that even if Prudhomme's avowal action had been timely he nevertheless failed to meet his burden of proof at the hearing. She explained that although it was clear that Prudhomme had a good faith belief he was Brandon's father, the evidence he presented was not enough to prove that he was.

Result: Affirmed.

Rationale: Civil Code Article 198 defines the time period within which a putative father must file an avowal action to establish paternity for purposes of asserting a wrongful death or survival claim as: 1) within one year of the child's birth if the child is presumed to be the child of another man, or 2) no later than one year from the child's death. Additionally, Article 195 provides that "[a] man who marries the mother of a child not filiated to another man, and who, with the concurrence of the mother, acknowledges the child by authentic act is presumed to be the father of that child."

Here, the magistrate judge initially determined that the one-year-from-birth deadline applied to Prudhomme because another man, McGinnis, was presumed to be Brandon's father. See LA. CIV. CODE arts. 195, 198. Citing Article 196, Prudhomme argues on appeal that the presumption that McGinnis is Brandon's father can only operate to the benefit of the child (Brandon), and not to any other party's benefit (here, McGinnis). See LA. CIV. CODE art. 196 ("The presumption can be invoked only on behalf of the child.... [T]he acknowledgment does not create a presumption in favor of the man who acknowledges the child."); see also Udomeh, 103 So. 3d at 347 n.1.

Prudhomme's reliance on Article 196 is misplaced because the magistrate judge afforded the presumption to McGinnis under Article 195 on grounds that he signed Brandon's birth certificate and married Brandon's mother. See LA. CIVIL CODE art. 195 ("A man who marries the mother of a child not filiated to another man and who, with the concurrence of the mother, acknowledges the child by authentic act is presumed to be the father of that child."). Article 196 in contrast, only applies when a man only signs the child's birth certificate. Further, Article 195 does not contain the limitation found in Article 196 that the presumption can only operate to the benefit of the child.

Comment: Though the result is correct, the rationale behind it is not.

The original version of Art. 195, which was enacted in 2005, permitted the husband of the mother to acknowledge the child either "by signing the birth certificate" or "by authentic act". But the article was amended in 2016 for the specific purpose of eliminating the former possibility. See cmt. (b) (2016). Under the new article, there is, then, one – and only one – way in which to formally acknowledge a child – by authentic act. The birth certificate the McGinnis signed that was not in authentic form.

Nevertheless, the alternative rationale offered by the hearing officer (a rationale that the district court did not assess), that is, that Prudhomme presented insufficient evidence of his paternity, is not clearly erroneous and, for that reason, is sufficient to justify the judgment.

2 By formal acknowledgment alone

State of Louisiana in interest of C.C., Jr. P.B., M.B., and J.B., NO. 18-C-728, 2019 WL 1339474 (La. App. 5th Cir. Mar. 25, 2019)

Facts: In the prior appeal of this case, this Court determined that the record lacked any evidence regarding D.W.'s biological connection to J.B. Our opinion in the case noted that "a biological father has two options to establish his paternity of a child not filiated to another man: one is to acknowledge the child in an authentic act and the second is to file filiation proceedings in a court of competent jurisdiction.

We further acknowledged that the statutory law requires a putative father to file an action to establish filiation, rather than allowing DNA test results alone to establish filiation.

The limited application now before us contains an undated and unsigned Motion To Modify Disposition, purportedly filed by D.W. In the motion, D.W. asserts that he was "named" as J.B.'s father and that DNA testing "confirmed" his paternity of J.B. As noted above, this Court opined in the prior appeal of this case that these two factors, without more, were not sufficient to legally establish a biological connection to J.B.

A minute entry regarding the hearing on D.W.'s motion, held December 11, 2018, indicates that a copy of a Louisiana vital records registry acknowledgment of paternity for the putative father registry, executed by D.W., was accepted by the court into evidence. The minute entry from that date further states, "COURT FINDS [D.W.] TO BE THE BIOLOGICAL FATHER OF [J.B.] AND HE HAS DONE EVERYTHING POSSIBLE

TO ESTABLISH HIS PARENTAL RIGHTS." Relators' counsel represents to this Court that the actual vital records registry acknowledgment of paternity was not entered into evidence at the hearing, but instead, counsel for D.W. showed a photograph of the acknowledgment to the trial court. Relators' counsel further represents to this Court that it is unknown whether the actual acknowledgment was ever presented to the trial court following the hearing. While counsel for D.W. asserts in her brief that, "The act of acknowledgment was submitted to Jefferson Parish Juvenile Court and filed in the record on December 13, 2018." This occurred two days after the hearing on relators' exceptions took place and was ruled upon.

Result: Writ granted, order vacated and remanded

Rationale: The copy of the vital records registry acknowledgment contained in the writ application is mostly illegible. The witnesses' signatures are obscured, as is the identifying information of the notary public. Because the trial court apparently based its ruling upon this image of the original document, and our review necessitates a preliminary verification that the acknowledgment is in authentic form, the condition of this exhibit precludes us from conducting a full consideration of the issues raised in relators' application. To the extent that the trial court may have relied on the exact same image before us, with the same defects, to deny relators' exceptions, we find reversible error based upon insufficient evidence.

Even assuming that a legible copy of the registry acknowledgment was properly introduced into evidence and considered by the trial court, we find that the court erred in denying relator's exceptions on the basis of the document alone. As correctly noted by relators, while an acknowledgment of paternity for the putative father registry can be used as evidence, La. R.S. 9:400(C) limits that use to anyone "other than the person who filed such notice." Accordingly, because the acknowledgement was executed specifically for the purposes of the Louisiana vital records registry, we find that La. R.S. 9:400(C) applies to preclude D.W. from using it as evidence of paternity in this matter.

It appears that there remain outstanding issues of great importance to be determined. The most obvious of these is whether, since our previous opinion was rendered, D.W. has established paternity of J.B. to a legal certainty. Based upon the limited information provided in the application, which includes a transcript of the December 11, 2017 hearing that we ordered to be supplemented by relators, we cannot say that D.W. has proven even that he properly executed a formal acknowledgment since our prior opinion was rendered.

It is incumbent upon the trial court to consider the evidence submitted and make all findings of fact to determine whether, considering the applicable legal standards, D.W. has met his burden of proving his paternity.

Based on the foregoing, relators' writ is granted, and the trial court's ruling denying relators' exceptions is vacated. The matter is remanded for further proceedings. J.B. is ordered to remain in the custody of DCFS.

Barras v. O'Rourke, CA 19-412, 2019 WL 6887850 (La. App. 3rd Cir. Dec. 18, 2019)

Facts: Mr. O'Rourke and Ms. Barras had an intimate relationship during 2013. On July 30, 2014, a child was born, which Mr. O'Rourke believed to be his own. Under that belief, he executed a formal act of acknowledgment of the child and placed his name on the child's birth certificate.

In October of 2017, Ms. Barras filed a petition for child support and to set custody. During the course of that litigation, Ms. Barras made comments which made Mr. O'Rourke begin to question his paternity of the child. He claims that in February of 2018, he purchased a home DNA kit which showed he had a zero percent chance of having fathered the child. He then sought to annul his acknowledgement of paternity, filing a mistitled "Petition to Disavow Paternity." Ms. Barras filed an exception of prescription, citing a prior version of La.R.S. 9:406 in effect at the time of acknowledgement and claiming that Mr. O'Rourke had not sought to annul the acknowledgement within two years of making it.

The trial court agreed and granted the exception. From that decision, Mr. O'Rourke appeals.

On appeal, Mr. O'Rourke asserts two assignments of error: (1) He claims that the trial court erred in granting the exception of prescription in violation of the statutory language of La.R.S. 9:406, and (2) He claims that the trial court erred in failing to conduct an evidentiary hearing when he had alleged his act of acknowledgement was based on having been fraudulently misled about the paternity of the child.

Because we agree with Mr. O'Rourke's first assignment of error, we need not discuss his second.

Result: Reversed.

Rationale: A judgment granting a peremptory exception is generally reviewed de novo, as the exception raises a legal question. Likewise, "[i]n a case involving no dispute regarding material facts, but only the determination of a legal issue, a reviewing court must apply the de novo standard of review, under which the trial court's legal conclusions are not entitled to deference." When no evidence is introduced at the hearing on an exception of prescription, "the reviewing court simply determines whether the trial court's finding was legally correct. "The standard controlling our review of a peremptory exception of prescription also requires that we strictly construe the statutes against prescription and in favor of the claim that is said to be extinguished."

Here, Mr. O'Rourke seeks to annul an acknowledgment of paternity under La. R.S. 9:406. That statute currently reads in pertinent part: "B. (1) If the notarial act of acknowledgment has not been revoked within sixty days in accordance with the provisions of Subsection A of this Section, a person who executed an authentic act of acknowledgment may petition the court to annul the acknowledgment only upon proof, by clear and convincing evidence, that such act was induced by fraud, duress, material mistake of fact or error, or that the person is not the biological parent of the child."

Under the prior version of the law, which was in effect at the time Mr. O'Rourke made his acknowledgment, an action to annul an acknowledgment of paternity had to be made within a two-year period commencing with the execution of the act. Therefore, the issue before us is whether La.R.S. 9:406(B)(1) is to be applied prospectively only,

rendering Mr. O'Rourke's claim prescribed, or retroactively, allowing his action to continue.

Louisiana Civil Code article 6 provides the framework from which statutes are to be interpreted: "In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretive laws apply both prospectively and retroactively, unless there is legislative expression to the contrary."

We believe with a prior Louisiana Supreme Court holding that prescriptive periods are generally treated as procedural laws and applied retroactively. However, we find that holding to be distinguishable from the case at hand. In that case there was no expression of legislative intent to revive prescribed claims, but in this case, it is clear that the legislature was unequivocal in its reasoning behind the amendment to La. R.S. 9:406.

The legislative comments to the 2016 amendment of La.R.S. 9:406 La.R.S. 9:406 state:

> The 2016 revision repeals the two-year prescriptive period previously imposed for revocation of authentic acts of acknowledgment. That prescriptive period was illogical where the acknowledgment was executed by a man who was not the biological father of the child. The Louisiana Supreme Court has held the execution of such an acknowledgment to be an absolute nullity absent the requisite biological relationship supporting it. To speak of prescription when a father seeks a declaration of absolute nullity is inappropriate, as absolute nullities are imprescriptible by nature under Civil Code art. 2032.

In Succession of Robinson, 94-2229, p.4 (La. 5/22/95), 654 So.2d 682, 684, the supreme court stated that through acknowledgment, "the 'mother' or 'father' provides proof of maternal or paternal filiation, that is, biological parentage." That court further stated that "[a]bsent a biological relationship, the avowal is null. 'A fact cannot be avowed when it has never existed.' If the acknowledgment is null, it produces no effects." It is clear from the above legislative comment language that the legislature sought to codify that holding in Robinson.

The legislature was even more clear of its intent in stating that prescription is "inappropriate" in cases "where the acknowledgment was executed by a man who was not the biological father of the child," such as the one currently before this court, as the lack of a biological relationship with the child acknowledged creates an "absolute nullity," which the legislature declared "imprescriptible by nature." In declaring prescription "illogical" in the case of a man who was deceived into acknowledging a child that was not biologically his own, it is clear that the legislature intended to completely remove prescription in these cases, and therefore, to apply the amendment retroactively to revive any already prescribed causes of action, as those actions are clearly and unequivocally deemed by the legislature to be "imprescriptible by nature."

It is clear that the legislature intended that the removal of the two-year prescription period for an annulment of an acknowledgment of paternity apply completely and, therefore, retroactively. Consequently, Mr. O'Rourke's petition to annul his acknowledgment has not prescribed under La.R.S. 9:406.

3 By judgment of "avowal"

Perry v. Clay, 19-135, 2019 WL 6886869 (La. App. 3rd Cir. Dec. 18, 2019)

Facts: This matter involves the succession of Mr. Green, who died in 2014. Appellants Mr. Perry and his daughter, Ms. Perry, sought to be recognized as Mr. Green's father and sister, respectively, when, on August 20, 2018, they filed a Rule to Show Cause contesting the propriety of Mrs. Clay's administration of Mr. Green's succession.

Mr. Perry asserted that he fathered Mr. Green, Mr. Green's brother, Michael McClanahan, and Mr. Green's sister, Laura Ann Green, during an extra-marital affair between himself and Mr. Green's mother, Mrs. Clay, who was married to James Charles Green during the pertinent period. Mr. Perry's testimony on this point was corroborated by his ex-wife, Estella Patton, who was aware at the time of Mr. Perry's relationship with Mrs. Clay, and by three of his biological children fathered with Mrs. Patton. Mr. Perry's paternity of Mr. Green was disputed by Mr. Green's sister, Lenora Green.

Mrs. Clay answered the rule with exceptions of no cause of action and no right of action. The trial court maintained the exception of no right of action and denied the exception of no cause of action. This appeal ensued.

Result: Affirmed in part, reversed in part, and remanded.

Rationale: *1. Mr. Perry.* – Under Louisiana Civil Code article 185 the law establishes the presumption that the husband of the mother is the father of the child born during the marriage. Thus, Mr. James Charles Green is presumed to be Mr. Green's father.

The law also establishes peremptive periods within which a putative biological father may seek filiation of a child. Louisian Civil Code article 198 provides: "A man may institute an action to establish his paternity of a child at any time except as provided in this Article. The action is strictly personal. If the child is presumed to be the child of another man, the action shall be instituted within one year from the day of the birth of the child. Nevertheless, if the mother in bad faith deceived the father of the child regarding his paternity, the action shall be instituted within one year from the day the father knew or should have known of his paternity, or within ten years from the day of the birth of the child, whichever first occurs.

In all cases, the action shall be instituted no later than one year from the day of the death of the child." The time periods in this Article are peremptive.

Mrs. Clay filed an exception of no right of action in response to Appellants' rule. The focus in an exception of no right of action is on whether the particular plaintiff has a right to bring the suit, but it assumes that the petition states a valid cause of action for some person and questions whether the plaintiff in the particular case is a member of the class that has a legal interest in the subject matter of the litigation.

In Leger v. Leger, 15-151 (La. App. 3 Cir. 9/30/15), 215 So.3d 773, a mother's paramour intervened in her divorce to establish his paternity of the second child born during her marriage. The intervention was filed approximately twenty months after the child was born and eighteen months after a DNA test proved to a 99.99% probability that he was the child's father. We affirmed the trial court's maintenance of exceptions of

peremption, no right of action, and no cause of action asserted by the mother's husband.

Applying the precepts of Louisiana Civil Code art. 198 and the reasoning in Legerit is apparent that Mr. Perry's action is perempted: it was filed more than a year after Mr. Green's death, which was the absolute latest such a claim could be made under any circumstance. Accordingly, Mr. Perry no longer enjoys the status of one afforded a remedy in Mr. Green's succession.

2. Ms. Perry. – See infra.

B "Fraternal" filiation

Perry v. Clay, 19-135, 2019 WL 6886869 (La. App. 3rd Cir. Dec. 18, 2019)

See supra.

Rationale: *2. Ms. Perry.* – The same cannot be said of Ms. Perry. Louisiana Civil Code article 875 defines intestate successions, in part: "Intestate succession results from provisions of law in favor of certain persons[.]" Under the provisions of Louisiana Civil Code article 880, when there is no valid testamentary disposition of decedent's property, i.e. an intestate succession, "the undisposed property of the deceased devolves by operation of law in favor of his descendants, ascendants, and collaterals, by blood or by adoption, and in favor of his spouse not judicially separated from him, in the order provided in and according to the following articles."

Comment (c) of the Revision Comments of 1997 to this article state, in pertinent part, "Once a relationship is proven by blood or adoption, the succession rights of such a relative are established without reference to the legitimacy of that relationship." Thus, this revision of the Civil Code removed any distinction between legitimate and illegitimate siblings, and, under Louisiana Civil Code article 880, this decedent's half-siblings are entitled to inherit their share "by operation of law."

Nothing in the law required these siblings to prove their blood relationship to decedent at any time before they made a claim in his succession.

Under the current provisions of the Civil Code articles 934 and 935 "[s]uccession occurs at the death of a person[,]" and universal successors immediately "acquire ownership of the [decedent's] estate[,]" Universal successors are now defined in Louisiana Civil Code art. 3506(28) to include intestate heirs and the former Code article 949 (1870) "is obsolete because of the elimination of irregular successors and therefore has been deleted." Louisiana Civil Code art. 893 makes no distinction between legitimate and illegitimate siblings related by half-blood as evidenced in Comment (a) of the Revision Comments of 1981 to that article.

Thus, the trial court erred in finding that Ms. Perry has no right of action without addressing the legal distinction between Mr. Perry's right of action and Ms. Perry's potential right of action. No factual findings were adduced, and, in the mind of this court, whether Ms. Perry enjoys a right of action is dependent upon an assessment of the credibility of the witnesses in the matter, which we are poorly positioned to assess. We remand the matter to the trial court for proceedings to determine whether Ms. Perry has

proven her sibling relationship to Mr. Green.

Comment: The appellate court's ruling with respect to Ms. Perry is questionable, to say the least. In order for her to establish her filiation to the decedent, she would first have to establish that Mr. Perry, the alleged father of the decedent and her father as well, was properly filiated to the decedent. This she cannot do.

II Child support

A Substantive law

1 The child support order

a Setting the original award

1) Requirement of a "record"

Department of Children and Family Support, Child Support Enforcement v. Jones, 285 So.3d 1163 (La. App. 2d Cir. Nov. 20, 2019)

[record of basis for child support determination"necessity" of divorce proceedings if parents are married]

Facts: On March 19, 2014, Jones signed a stipulation under La. R.S. 46:236.7, agreeing to pay the DCFS $364 per month, effective April 19, 2014, for two of his children, DeBrandon Jones, Jr., born March 9, 2011, and D'Jayden Jones, born March 30, 2012. It appears from the record that Williams is the mother of these children. Jones also agreed to include the children on his health and dental plan at his employment. On April 2, 2014, the trial court signed an order memorializing the stipulation.

In April 2018, the DCFS filed an ex parte motion to suspend the medical support and child support obligation, asserting that Williams, the custodial parent of the children, filed a request that her case for child support and medical support be closed. The request for closure document executed by Williams recited, "DeBrandon Jones and I are back together and he takes care of his kids." A representative of the DCFS signed a certificate of suspension of child support enforcement, averring that the DCFS was not furnishing child support services to Williams and was not providing Family Independence Temporary Assistance Program ("FITAP") benefits or Medicaid benefits for the children.

On April 6, 2018, the trial court signed an order granting the ex parte motion, suspending the judgment of April 2, 2014, effective March 20, 2018.

In November 2018, the DCFS filed against Jones and Williams a rule and order to show cause why a medical support obligation in this case for DeBrandon Jr. and D'Jayden should not be modified to include a child support obligation. The rule indicated that the custodial parent had reapplied for child support services. It asked that a cash medical support award be issued until Jones could secure and maintain health care insurance at a reasonable cost.

A report to a judicial hearing officer listed the issues at the hearing to be a modification of child support to add a third child, a reinstatement of child support, and a cash medical award. The report indicated that Jones and Williams had a third child, D'Kaisen Jones, born October 12, 2016. According to the report, Williams was receiving Supplemental Nutrition Assistance Program ("SNAP") benefits for herself and three children and had applied for reinstatement of child support services. An obligation worksheet, prepared and signed by a DCFS worker, listed all three children and specified that Jones was receiving workers' compensation benefits. The worksheet suggested that a monthly child support obligation of $206.82 be paid by Jones for all three children.

The trial court minutes show that a hearing on the rule was held on December 5, 2018. However, no transcript of the hearing was furnished with this record. It does not appear that a transcript exists. The initial page of the appellate record, prepared by the district court clerk of court's office, contains the following notation: "No Court Reporter in DSS court."

According to the minutes, the parties were present at the hearing. Neither party was represented by counsel. It appears that only one witness, Kylee Barber, testified at the hearing. The state's brief indicates that this witness was the DCFS caseworker. There is no indication what the witness said in her testimony.

On January 14, 2019, the trial court signed a judgment denying the request for reinstatement of child support based upon its finding that the parties were legally married and had not filed for divorce. The court ordered both parties to seek counseling, from a pastor of their choice, concerning marriage and raising children. The trial court did not furnish written reasons for judgment. The judgment appeared to be a form judgment, possibly generated by the district attorney's office on behalf of the DCFS. The elements of the judgment appear to have been checkmarked by computer, not by the hand of the trial court judge.

Result: Reversed.

Rationale: The DCFS argues that the trial court erred in denying child support and medical support awards in this case based upon its finding that the parties were legally married and had not filed for divorce. The DCFS also argues that the trial court erred in ordering Jones and Williams to seek marriage counseling. Under the unique circumstances of this case, these arguments have merit.

It is notable here that no transcript was made of the proceedings below. Louisiana Civil Code article 2130 states: "A party may require the clerk to cause the testimony to be taken down in writing and this transcript shall serve as the statement of facts of the case. The parties may agree to a narrative of the facts in accordance with the provisions of Article 2131." Louisiana Civil Code article 2131 provides: "If the testimony of the witnesses has not been taken down in writing the appellant must request the other parties to join with him in a written and signed narrative of the facts, and in cases of disagreement as to this narrative or of refusal to join in it, at any time prior to the lodging of the record in the appellate court, the judge shall make a written narrative of the facts, which shall be conclusive."

The law is clear that the appellant bears the responsibility of securing a narrative

of facts where there has been no transcript of testimony made during a trial. The lack of a transcript or narrative of facts is imputable to the appellant. In cases where factual issues are involved, and the record on appeal contains no transcript, or narrative of facts, the court applies the presumption that the trial court's judgment is supported by competent evidence, that it is correct, and the judgment is affirmed.

When a record contains written reasons for judgment by a trial judge which reveal substantially all of the material testimony, and the record is sufficiently complete to permit full consideration of the issues presented on appeal, the reasons for judgment will be considered in lieu of the narrative of the facts.

Ordinarily, when an appellant fails to furnish a transcript, written narrative of fact, or written reasons for judgment, the failure is imputed to the appellant, the judgment is deemed to be based upon competent evidence, and is affirmed. Although the trial court judgment in this case was arguably based, in part, upon whatever testimony was adduced below, and a fact determination was made based upon that testimony, this case also contains errors of law which require a reversal of the trial court judgment and a remand for further proceedings.

La. R.S. 46:236.1.2 gives the DCFS a separate cause of action to seek to obtain and modify family and child support orders from a noncustodial parent when the DCFS is providing services to those entitled to support. This cause of action does not require the institution of divorce proceedings

If Jones and Williams were, in fact, married and had not filed for divorce, this would in no way bar the DCFS from seeking to obtain child support and medical support from the noncustodial parent under the circumstances presented in this matter. Based upon La. R.S. 46:236.1.2, the trial court erred in denying child support and medical support because it found that Jones and Williams were legally married and had not filed to obtain a divorce.

Also, there was no legal basis for the trial court's requirement that Jones and Williams seek marriage counseling. The statement in the trial court judgment, that the parties are legally married, is the only indication in this sparse appellate record regarding marriage between the father and mother of these children. We note that the information for service of process for Jones and Williams listed separate addresses, indicating that they were not living together, whether they were married or not.

The DCFS cites provisions of the Covenant Marriage Act, La. R.S. 9:272 providing that parties can sue for child support while living separate and apart, although not judicially separated. We observe that, even if the parties had a covenant marriage, which imposes the most stringent requirements on terminating a marriage in this state, there is no provision in that law requiring the parties to file for divorce or undergo marriage counseling before seeking child support.

The record contains a worksheet prepared by the DCFS setting forth a recommendation for the amount of child support and medical support to be paid by Jones. However, even though the DCFS sought a cash medical support award, there is no indication of the proper amount for that award in this record. According to Louisiana Civil Code of Procedure art. 2164, the appellate court shall render any judgment which is

just, legal, and proper upon the record on appeal. In the interest of protecting and providing for these children, we determine that the trial court judgment, denying child support and medical support to the children, must be reversed.

We also remand the matter to the trial court for further proceedings to determine, based upon the law, whether child support and medical support should be paid and if so, the proper amount. The DCFS is instructed to ensure that those proceedings are transcribed by a court reporter, or the DCFS must obtain from the trial court either a written narrative of facts or written reasons for judgment revealing substantially all of the material testimony upon which the judgment is based. If an appeal is necessary in the future, this court will have some basis to review the proceedings below.

2) Determination of "gross income"

Duffy v. Duffy, 19-72, 2019 WL 4849201 (La. App. 3d Cir. Oct. 2, 2019)
[plus . . . inclusion of private school tuition; retroactivity of award]

Facts: Hunter and Mary Carolyn Haik Duffy were married on August 16, 2008. Three children were born of their marriage, namely C.H.D. on May 5, 2010, C.M.D. on May 9, 2013, and V.K.D. on August 12, 2015.

The parties separated in June of 2017, and Mary Carolyn filed a petition for divorce and child support on June 30, 2017. On July 19, 2017, Mary Carolyn and Hunter executed a notarial document wherein Hunter agreed to pay Mary Carolyn child support in the amount of $850.00 per month for the following three months.

On January 23, 2018, Hunter filed an Answer and Reconventional Demand asking for the court to set his child support. Following a couple of continuances, a hearing officer conference was held on June 26, 2018. At that time, the hearing officer determined that Mary Carolyn's gross monthly income was $3,634.83 and that Hunter's gross monthly income was $4,310.86. The hearing officer recommended that Hunter pay child support in the amount of $2,292.59 per month, retroactive to November of 2017, while noting that the parties had a non-judicial agreement for payment of support for the first ninety days after the suit was filed. In making his recommendation, the hearing officer included the costs of the children's private school tuition, which amounted to $1,160.83 per month, and the cost of the youngest child's daycare expenses, which amounted to $602.75 per month.

Hunter objected to the recommendation of the hearing officer, and on July 6, 2018, the hearing officer's recommendation was made a temporary order of the court pending an August 23, 2018 child support hearing.

On August 23, 2018, Hunter filed an Opposed Motion to Continue the child support trial that was scheduled for that day arguing that he had just retained new counsel and that discovery had not been completed. After a hearing on the morning of trial, the trial court denied Hunter's written motion and ordered the parties to return for trial that afternoon. Before trial, Hunter made an oral motion for the trial court to continue or to reconsider its denial of his motion to continue, which was also denied.

Both Hunter and Mary Carolyn testified at trial and the court received exhibits reflecting the income of each of the parties, the cost of tuition for the two oldest children to attend private school and the cost of daycare and aftercare for the youngest child to attend.

Thereafter, the trial court ordered Hunter to pay child support to Mary Carolyn in the amount of $2,300.10 per month, commencing January 23, 2018, through May 31, 2018, and $2,310.78 from June 1, 2018, forward. The trial court signed a written judgment on October 17, 2018, which reflected the ruling from the bench on August 23, 2018.

Result: Affirmed

Rationale: The first issue to address is whether the trial court erred in including the tuition and fees associated with the parties' two older children attending Fatima private school and their youngest child attending St. Mary's day care in the absence of supporting documentation evidencing the actual costs paid for the children or proof that Mary Carolyn paid for the expenses.

Hunter argues that there was no evidence whatsoever in the form of invoices, receipts, cancelled checks, or bank statements, to prove the amounts reflected on the tuition and fee schedules were in fact the actual amounts owed, and paid, for their children to attend Fatima and St Mary's.

At trial, the published tuitions and fee schedules for Fatima and St. Mary's were introduced into evidence, without objection by the parties. Mary Carolyn also submitted into evidence worksheets that broke down the tuitions and mandatory fees for her three children to attend Fatima and St. Mary's. The exhibits reflected that the tuition and fees for the two oldest children to attend Fatima for the 2018-2019 school year amounted to $1,160.83 per month and that the cost for St. Mary's daycare and after-care for the youngest child was $602.54 per month.

Although Hunter argues that Mary Carolyn's own testimony, without any supporting evidence or third-party testimony, is insufficient for a court to reasonably determine private school tuition through a general tuition/fee statement published online, we find no merit to this argument. Both Hunter and Mary Carolyn testified that Mary Carolyn paid the school tuitions and childcare on a monthly basis and both parties acknowledged the exhibits entered into evidence properly reflected the tuitions and costs associated with sending their children to Fatima and St. Mary's. Hunter offered nothing to controvert this evidence.

Accordingly, we find the record supports the trial court's factual determination that the tuition expenses for the two older children to attend Fatima were $1,160.83 per month (or $580.42 per child per month) on an annualized basis and that the net childcare cost for the parties' youngest child at St. Mary's was $602.54 per month on an annualized basis.

Before determining whether the trial court erred in including the private school tuitions, it is worth noting that although the trial judge stated in his oral reasons for judgment that he "believed that Mr. Duffy is voluntarily underemployed[,]" he chose not "to tag him with that today." The judgment is also void of any language referencing Hunter as being underemployed. Thus, we will review the trial court's factual

determination to include the private school tuitions to the basic child support obligation under an abuse of discretion standard.

La. R.S. 9:315.6 authorizes the inclusion of expenses for private school attendance as an addition to the basic child support obligation. According to the official comments "[t]he needs of the child met by the special or private school need not be particular educational needs but may include such needs of the child as the need for stability or continuity in the child's educational program."

On cross-examination, Mary Carolyn testified that prior to the separation, she and Hunter paid for the private tuitions with their joint incomes and that Hunter was making more money "up until he left." Mary Carolyn testified that she and Hunter set up a "Fatima Fund" when the children were born to hold money that was gifted to the family and that could be used for the children's education. When asked whether they paid the tuition, prior to their separation, with money that was gifted to them, Mary Carolyn testified that they would sometimes use the "Fatima Fund" money, if they wanted to, for tuition but that they "didn't depend on gifts to pay it." Mary Carolyn testified that she believed Hunter could afford private school tuition based on his current income and that they should jointly be responsible for paying their children's tuitions.

On review, we are mindful of the basic principles of the Louisiana child support guidelines in La. R.S. 9:315(A), mainly that "child support is a continuous obligation of both parents, children are entitled to share in the current income of both parents, and children should not be the economic victims of divorce or out-of-wedlock birth." In the case sub judice, both parties agreed to send their three children to private school, and both testified that there two oldest children have been attending Fatima since Pre-K4. We find there is sufficient evidence to support the inclusion of private school tuition in Hunter's basic child-support obligation and that the trial court was within its discretion in making this factual determination. Accordingly, we find no merit to Hunter's argument that the trial court was clearly wrong in its inclusion of private school education expenses into the child support award.

Based on our review of the jurisprudence, and the record before us, we find that the trial court was within its discretion in including the tuitions and fees for the 2017-2018 school year in its child support calculation.

Hunter next argues that the trial court was clearly wrong in excluding the dividends and royalties as indicated in Mary Carolyn's affidavit, and by failing to include recurring gifts to her by her parents. Mary Carolyn responds that the record is devoid of any evidence of other income being received by her in the nature of dividends, interests, or "recurring monetary gifts" since the date of judicial demand.

Although the record contains a Family Law Affidavit that was filed on June 22, 2018, indicating that Mary Carolyn reported receiving interest in the amount of $67.00 and dividends in the amount of $18.31, she testified at trial that she doesn't know where those numbers came from and that she has no additional sources of income other than her teaching salary. When asked whether she received any interest, royalties, or dividends, Mary Carolyn testified "Not to my knowledge."

Mary Carolyn also testified that even though her parents gifted her $5,000.00 for

Christmas in 2016, they did not do so in 2017 because they couldn't afford it. Mary Carolyn testified that her father loans her "money on an as-needed basis for [her] kids, for our children's education[,]" but that she is required to pay the money back to him.

After reviewing the record and exhibits, we cannot say that the trial court abused its discretion in declining to include the $85.31 listed on Mary Carolyn's June 22, 2018 Family Law Affidavit or the alleged recurring monetary gifts from her parents. Accordingly, we find that the trial court properly relied upon Mary Carolyn's teaching salary to determine her income for the child support calculations.

Hunter next contends that the trial judge committed legal error in making the final child support award retroactive to January 23, 2018, the date of Hunter's Answer and Reconventional Demand, without good cause. According to Hunter, the parties had an agreement, filed into the record on July 19, 2017, that Hunter would pay child support in the amount of $850.00 per month. Thereafter, the hearing officer's recommendation that Hunter pay $2,292.59, retroactive to November 1, 2017, became a temporary order on July 6, 2018, pending the trial court's ruling on the final child support award. Thus, Hunter argues that given the parties' notarial act that was filed into the record on July 19, 2017, the Temporary Order issued on July 6, 2018, and the absence of a finding of good cause for retroactivity, the trial court committed legal error by making the final child support award retroactive to January 23, 2018.

La. R.S. 9:315.21(B) "treats a final child support award differently depending on whether there is an interim award in effect when the final judgment was signed." If there is no interim award in effect on the date of the judgment awarding final child support, then a final award is required to be made retroactive to the date of judicial demand, except for good cause shown. But when an interim order is in effect, La. R.S. 9:315.21(B) neither expressly permits, nor forbids, a court from making a final award retroactive. The Louisiana Supreme Court has interpreted La. R.S. 9:315.21 to mean that "upon a showing of good cause, a trial court may order a final child support award retroactive to the date of judicial demand even though there has been an interim order in effect." Absent a showing of good cause, however, the final child support award begins on the date of the signing of the judgment which awards it and terminates the interim award.

Upon review, we find the record supports a showing of good cause for the trial court to make the child support award retroactive to January 23, 2018, the date Hunter requested for the court to "reconsider and revisit" the issue of child support. As Mary Carolyn correctly noted in her brief, Hunter's child support obligations would be significantly more if in fact this court declared the July 6, 2018 interim award in effect until the signing of this judgment. Specifically, if we were to hold the interim award, which adopted the hearing officer's recommendation that Hunter pay $2,292.59 a month, that interim award would be retroactive to November 1, 2017, and would increase Hunter's child support by almost $6,000.00 more than having this final judgment retroactive to January 23, 2018. Thus, we find no error in the trial court judgment rendered on August 23, 2018, and signed on October 17, 2018, ordering Hunter to pay child support "in the amount of $2,300.10 per month, commencing on January 23, 2018, through May 31, 2018, subject to a credit for his prior child support payments made

during that period."

Lowe v. Bacon, 2019 WL 10071052018-1549 (La. App. 1st Cir. Feb. 28, 2019)
[plus . . . voluntary underemployment]

Facts: Chad M. Lowe and Caroline K. Bacon were in a relationship beginning around 2010; although they were engaged for several years, they never married. Two children, both with initials C.M.L., were born of the relationship on October 24, 2011, and December 27, 2013, respectively.

The parties and their children lived together in a home in Mandeville, Louisiana. When the parties' relationship ended, Caroline was awarded sole custody and Chad was granted supervised visitation. Chad appealed from that judgment, and this court affirmed that part of the judgment awarding sole custody to Caroline and remanded the matter for the trial court to establish a valid visitation order for Chad.

The issue of child support remained. The trial court held a hearing on June 5, 2018, on child support and signed a judgment on August 2, 2018 wherein it ordered child support in different amounts over different time periods based on fluctuations in Caroline's income as a nurse.

At the hearing on child support, Caroline and Chad both testified. Chad worked for his parents forty hours per week managing their business, the Antebellum House. He was a wedding event planner and had worked there for twelve or thirteen years. In 2017, Chad's W-2 showed income of $ 14,400.00. According to Chad, he was paid $ 600.00 twice a month, and his employer provided him with gas and a cell phone and paid for his health insurance.

Caroline indicated that Chad did not live the lifestyle of a person earning $ 14,000.00 per year, based on his purchase of her portion of their former home for $ 30,000.00 and a new car for $ 17,000.00 or $ 18,000.00 in cash. According to Caroline, he also had four New Orleans Saints season tickets and had also previously paid child support of almost $ 400.00 monthly for his child from another relationship. Caroline testified that Chad's job involved cash and that he actually earned between $ 60,000.00 and $ 75,000.00 per year. According to Caroline, his parents paid Chad a base salary of $ 300.00, and he was paid in cash for services at the Antebellum House, such as $ 150.00 for acting as the DJ and $ 500.00 for officiating at a wedding, for example.

On questioning by his counsel and by the trial court, Chad denied ever being paid in cash by his parents or anyone using the Antebellum House, although he did acknowledge that people sometimes paid for services at the business in cash. Chad stated that he planned on working for his parents long-term and indicated he had never received a raise over the twelve to thirteen years he worked for them. Chad testified that he had a college degree and that he had worked for a finance company in a "training situation." Chad also testified that he had health conditions that had developed in July of 2017. According to Chad, he had seven procedures performed on his back (with an eighth procedure scheduled), blood pressure issues, and knee issues.

Chad testified that he averaged $300.00 in cash monthly from side jobs such as

bartending. He acknowledged that he paid $17,000.00 or $18,000.00 in cash for a car in 2013, stating that he obtained those funds from a personal injury settlement. Chad stated that he had taken out a second mortgage on his house, and he admitted that he had borrowed $90,000.00 from his parents to pay for his house and attorney's fees.

As to all the time periods, the trial court imputed a monthly income of $3,500.00 to Chad. For all but the two most recent time periods, the trial court reduced Chad's obligation by $ 393.00, which was the amount of a preexisting child support order for another child for which he was given credit.

More specifically, the judgment ordered Chad to pay child support as follows: $730.02 monthly from November 9, 2016 through December 31, 2016, and from October 1, 2017 through May 31, 2018, based on Caroline's monthly income of $2,657.00; $ 98.63 monthly from January 1, 2017 through September 30, 2017, based on Caroline's monthly income of $5,297.00; $791.18 monthly from June 1, 2018 forward, based on Caroline's monthly income of $2,657.00; and $622.46 monthly when Caroline began full-time employment, based on her monthly income of $5,893.00.

Chad appeals the judgment, contending that the trial court erred in imputing gross income to him.

Result: Affirmed.

Rationale: In his only assignment of error, Chad contends that the trial court erred in imputing gross income of $3,500.00 to him, asserting that the court had no evidence to support its conclusions that he was voluntarily underemployed and that he received $1,230.00 in cash benefits monthly in addition to his regular salary.

The Louisiana child support guidelines set forth the method for implementation of the parental obligation to pay child support. apply the guidelines, the court must initially determine the gross income of the parties. Income means the actual gross income of a party, if the party is employed to full capacity. Income also means the potential income of a party, if the party is voluntarily unemployed or underemployed; in such a case, his gross income shall be determined as set forth in La. R.S. 9:315.11 If a party is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of his or her income earning potential (rather than actual gross income), unless the party is physically or mentally incapacitated, or is caring for a child of the parties under the age of five years. A party shall not be deemed voluntarily unemployed or underemployed if he or she is absolutely unemployable or incapable of being employed, or if the unemployment or underemployment results through no fault or neglect of the party.

Voluntary unemployment or underemployment for purposes of calculating child support is a question of good faith on the obligor-spouse. In virtually every case where a parent's voluntary unemployment or underemployment was found to be in good faith, courts have recognized extenuating circumstances beyond that parent's control which influenced or necessitated the voluntary change in employment. Whether a spouse is in good faith in ending or reducing his or her income is a factual determination that will not be disturbed absent manifest error.

Based on our review of the record, we do not find any manifest error in the

conclusion that Chad was voluntarily underemployed. There was reasonable factual support that he earned $1,230.00 per month in cash benefits, and there was sufficient evidence for the imputation of monthly income of $3,500.00 to Chad. Although Chad contends that the trial court erred in giving more weight to Caroline's testimony, which he argues was self-serving and unsupported by evidence, the trial court has wide discretion in determining the credibility of witnesses.

The trial court believed Caroline's testimony that Chad earned more than he claimed. The record shows that Chad is a college graduate who worked at his parents' business for twelve to thirteen years for the same salary of $300.00 weekly for forty hours of work. While Chad testified as to his various health issues, he presented no medical evidence or testimony that he was unable to work or that his workload should be reduced. Moreover, Chad managed to work forty hours weekly at the Antebellum House despite his health issues.

Thus, as Caroline had sole custody and Chad was not caring for his son who was under five years old at the time of the hearing, and as there was nothing presented to the trial court to establish that Chad was mentally or physically incapable of seeking or securing better paying employment or asking for a raise, we find no manifest error in the trial court's decision to impute $ 3,500.00 to Chad as his monthly income. Chad's assignment of error has no merit.

Moody v. Moody, 19-642, 2020 WL 57887720(La. App. 3d Cir. Feb. 5, 2020)
[plus . . . voluntary unemployment; inclusion of special medical expenses]

Facts: Susana and Ross Moody ("Ross") were married on June 29, 2001, and established a matrimonial domicile in Calcasieu Parish, Louisiana. Four children were born of the marriage, namely D.A.M. on March 31, 2002, D.B.M. on March 16, 2004, and twins, E.S.M. and E.K.M., on March 22, 2009.

Susana filed a petition for divorce on February 3, 2011. Ross accepted service of that petition on February 15, 2011, and a judgment of divorce was rendered on March 6, 2012. The parties operated under a temporary custody order until the trial court rendered a custody judgment on March 12, 2014. In that judgment, Ross was granted sole custody of the children and his child support obligation to Susana was terminated.

On April 14, 2014, Ross filed a Rule to Establish Child Support and Related Financial Obligations. Susana was unable to be served and on May 22, 2014, the court appointed a curator to represent her at the Hearing Officer Conference. On July 14, 2014, the Hearing Officer established child support in the amount of $1,421.00 per month for the minor children.

On August 15, 2014, after no objections were filed, a judgment was rendered establishing the amount of $1,421.00 per month for the minor children, retroactive to March 12, 2014.

On January 26, 2015, the State of Louisiana filed an Ex Parte Motion to Amend Existing Orders and Rule to Show Cause alleging that Susana is in arrears in the amount of $15,631.00 and requested that the March 15, 2014 judgment be amended to designate

the State of Louisiana, Department of Children and Family Services, as payee. On March 16, 2015, the trial court ordered an immediate income assignment against Susana.

On August 19, 2015, the Hearing Officer recommended Susana continue paying $1,421.00 a month effective February 1, 2015, with an extra $100.00 a month to go towards the arrears of $15,631.00. Susana appealed the Hearing Officer's recommendation.

On November 5, 2015, Susana filed a Petition to Annul Judgment, Motion and Order to Suspend Child Support, and a Motion for New Trial alleging that she had no knowledge of the previous child support proceedings until she was contacted by her employer for the wage garnishment, and that the August 15, 2014 judgment should be annulled. The trial court denied the motions on November 6, 2015.

On January 8, 2016, Ross filed a Rule for Modification of Child Support seeking to recalculate the child support and pro rata portions of child care costs and unreimbursed medical expenses. A Hearing Officer Conference was held on February 8, 2016.

On February 11, 2016, the Hearing Officer issued a recommendation that provided, in pertinent part, the following: (1) Susana to pay child support in the amount of $1,983.00 a month effective January 8, 2016; (2) uncovered medical expenses are to be considered part of the child support award; (3) uncovered medical expenses exceeding $1,000.00 are to be paid 61% by Ross and 39% by Susana; (4) Ross is allowed to claim D.A.M., D.B.M. and E.S.M. every year; (5) Susana is allowed to claim E.K.M. every year provided that she is current on her child support obligation on December 31 of that calendar year; and (6) in the event Susana is not current on support, Ross is allowed to claim E.K.M. for that tax year. Both parties appealed the April 6, 2016 recommendation.

On July 5, 2017, Susana filed a Motion and Order For Reduction in Child Support requesting a suspension in her child support obligations due to her mental and physical disabilities.

A trial on these issues was held on September 11, 2017, July 5, 2018, October 11, 2018, February 5, 2019, and February 6, 2019. On April 11, 2019, the trial court signed a judgment that ordered, in pertinent part: (1) Susana pay Ross monthly child support as follows: 2017 = $1,227.00; 2018 = $1,327.00; and 2019 = $2,792.00; (2) Ross is entitled to claim the children as dependents for all state and federal income tax purposes every year, beginning in 2019, and Susana shall be obligated to sign documentation which allows Ross to claim the tax dependency exemption; (3) at the end of 2019, and each year thereafter, Ross shall prepare a spreadsheet calculation on the children's medical and child care expenses for the year and forward with support documentation to Susana so that the difference of what is owed and paid can be determined and the appropriate person can make an equalization payment; (4) the equalization payment shall be paid within sixty days of being presented with the spreadsheet calculation; and (5) that an immediate income assignment shall be ordered.

On April 30, 2019, the trial court signed a supplemental judgment in order to include Susana's child support obligation of $1,380.00 a month for the year of 2016, which was erroneously omitted from the previous judgment.

Susana now appeals the April 30, 2019 amended judgment, alleging solely that

the trial court erred in finding that she was voluntarily underemployed.

Result: Affirmed.

Rationale: On appeal, Susana contends that the trial court erred in finding her voluntarily underemployed and that "[t]he record clearly establishes that [she] has had health problems in the past, including anxiety issues" that prevent her from working full time. In response, Ross argues that Susana did not support her claim that she could only work part time due to mental and physical disabilities and that the trial court correctly imputed to Susana her income earning potential as a full-time engineer.

In the trial court's written reasons for judgment, it considered the children's medical expenses and child care expenses as well as Susana's circumstances in determining that Susana had not "presented sufficient evidence of a disability and inability to work, or a valid reason for deviating from the standard child support chart." Specially, the trial court stated, in pertinent part:

> In order to calculate the child support obligation of Susana, the Court must address several issues including the children's extra medical expenses, child care expenses and Susana's employment.
>
> D.A.M. and D.B.M. have been diagnosed with autism-spectrum disorders and trauma disorders. They need an adult with them at all times at school and the help of a special caretaker after school. There is no question in this Court's mind that these children need the special childcare they are receiving. Accordingly, the Court has included the approximate cost of the caregiver in 2018 in the calculations for 2019.
>
> In addition, the Court finds that due to extra medical expenses incurred by these children it is prudent to include an average into the child support calculations. The Court did not include the child care expenses and medical expenses in the calculations for 2017 and 2018. Since these expenses have already occurred, the Court believes that it would be easier to total these separately from child support and have Susana pay any outstanding amounts from her portion of the community property which is set to be partitioned when the trial continues. At the end of 2019, and each year thereafter, Ross shall prepare a spreadsheet calculation on the children's medical and child care expenses incurred for the year and forward, with supporting documentation, to Susana so that she can pay the difference if the total is higher than collected through the year or Ross can reimburse Susana if she has overpaid medical and child care expenses for the year.
>
> Susana maintains that she is not able to work full time due to mental health issues. The Court will note that there were not any medical records appropriately introduced at trial indicating that Susana is unable to work full time as an engineer as she has done in the past. Susana testified that she did not have a doctor expert regarding her disability because the Court does not allow anyone from out of state which is incorrect. There was evidence introduced that Susana was on short term disability at the end of 2017. Accordingly, the Court utilized that income provided by Susana's W-2 for the 2017 year even though it was below her earning ability.
>
> For the year 2018 and 2019, the Court has no evidence, other than Susana's testimony, that she was not able to work full-time. She qualified for short term disability in 2017, but has worked part-time in 2018 and 2019. If she was on long term disability

and had documentation of being approved for long term disability, the Court could consider that documentation. In addition, the children could possibly receive a disability check due to her disability significantly reducing her child support obligation.

However, Susana testified that she does not want to do that. She said she worked too hard for her degree. Susana's only solution to her situation was that she could stay home and take care of the children. However, Susana has not seen the children in years and has not pursued the necessary steps set forth in previous opinions to start seeing the children. Her other solution is for the Court to consider all her costs of living in Houston so she would not have to pay so much child support to Ross. Susana made the decision to move to Houston. However, the Court does not find it appropriate to reduce Susana's child support obligation given the significant special needs of all four of her children. The Court cannot ignore their needs. Further, Ross should not have to take on the expenses alone.

For the reasons set forth above, the Court finds that Susana has not presented sufficient evidence of a disability and inability to work, or a valid reason for deviating from the standard child support chart. The Court has used the average of her income in 2014, 2015 and 2016, when she was working full-time, to establish an income that Susana should be able to make as an engineer working full time in calculating her child support obligation for the years of 2018 and 2019.

Accordingly, the Court sets Susana's monthly child support obligation as follows: 2016 = $1,380; 2017 = $1,227; 2018 = $1,327; and 2019 = $2,792. Child support payments will be due 1/2 on the first of each month and 1/2 on the 15th of each month.

We find that the testimony and evidence presented at trial supports the trial court's finding that Susana failed to prove a disability and inability to work, or a valid reason for deviating from the standard child support chart. This is especially true considering the fact that Susana failed to submit any medical records to support her claim that her mental and physical infirmities keep her from being employed full time.

Consequently, we find that the trial court properly "used the average of her income in 2014, 2015, and 2016, when she was working full-time, to establish an income that Susana should be able to make as an engineer working full time in calculating her child support obligation for the years of 2018 and 2019."

Determination of gross income; inclusion/exclusion of spousal support
Laird v. Laird, 268 So.3d 443 (La. App. 2d Cir. Apr. 10, 2019)

Facts: This suit began with Beth's petition for partition of yet undivided community property. The issues in Laird I were regarding Jack's interest in Chapel Hill, LLC. The Chapel Hill interest is not disputed in the instant appeal because it was settled out of court and voluntarily dismissed from the suit. The only property in dispute in this appeal is the contingency fee earned by Dollar Laird, LLP. The contingency fee of $168,117.19 was owed to John C. Laird, A Professional Law Corporation from the litigation in Kemp v. Kansas City Southern Railway. In the community property settlement, signed by the

parties on September 29, 2006 and October 11, 2006, Jack was apportioned all interest in Dollar Laird, LLP and John C. Laird, APLC. On June 14, 2007, Beth filed her amended and supplemental ancillary petition for partition of yet undivided community property, alleging the Kemp fee was omitted as a community asset.

On April 10, 2018, the trial court rendered judgment. The trial court found that the monies attributable to Jack from the Kemp litigation to be a community asset. The trial court treated the suit as a damages suit and awarded Beth "$56,039.06, plus legal interest thereon from June 7, 2007, until paid and all costs of these proceedings." The trial court did not determine Jack's actions constituted fraud and denied Beth's claim for reasonable attorney fees.

Result: Affirmed in part, amended in part.

Rationale: Jack claims the child support calculation contained an error because Beth's spousal support was not included in her income.

According to La. R.S. 9:315, gross income means: The income from any source, including but not limited to salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, recurring monetary gifts, annuities, capital gains, social security benefits, workers' compensation benefits, basic and variable allowances for housing and subsistence from military pay and benefits, unemployment insurance benefits, disaster unemployment assistance received from the United States Department of Labor, disability insurance benefits, and spousal support received from a preexisting spousal support obligation.

Gross income includes the income from a previous spousal support, not a current spousal support obligation. Given the lack of evidence presented by Jack, we cannot find the trial court was manifestly erroneous in its decision to dismiss Jack's child support claim. This argument lacks merit.

Keith v. Keith, 2018 CU 1222, 2019 WL 1292361 (La. App. 1st Cir. Mar. 20, 2019)
[plus . . . retroactivity of award]

Facts: Mr. and Ms. Keith were married in May of 2004. Three children were born of the marriage, G.K. (born on May 23, 2005), E.K. (born on July 1, 2008), and L.K. (born on June 4, 2011). The parties physically separated on May 26, 2016, and on January 3, 2017, Ms. Keith filed a petition seeking a divorce. She also sought joint custody with herself named as the domiciliary parent, spousal and child support, and use of the family home. Mr. Keith answered and filed a reconventional demand basically seeking the same relief.

On May 9, 2017, based upon the parties' stipulations, the trial court signed a judgment awarding the parties joint custody, designating Ms. Keith as the domiciliary parent, and awarding Mr. Keith visitation. The court ordered Mr. Keith to pay child support of $ 3,000.00 monthly, retroactive to January 3, 2017, with credit for payments made. The parties were to submit to a custodial evaluation, and a ruling on spousal support was deferred.

On September 25, 2017, Mr. Keith filed a rule to set all remaining matters for hearing, and a hearing was held on March 2, 2018. The judgment ordered Mr. Keith to

pay child support beginning March 2, 2018, of $ 2,698.00 monthly, retroactive to January 3, 2017. Mr. Keith filed a motion for new trial, contending that the support award was contrary to the law and evidence. The trial court denied the motion, and Mr. Keith appealed.

On appeal, Mr. Keith asserts three assignments of error. In his first assignment of error, he contends that the trial court erred in failing to follow the child support guidelines set forth in La. R.S. 9:315-315.47, specifically La. R.S. 9:315(C)(3)(d)(iii), which governs seasonal work, because it included "temporary, extraordinary increases of income" attributable to Mr. Keith from his business following the Great Flood of 2016. In Mr. Keith's second assignment of error, he contends that the trial court erred in failing to make the child support award retroactive to the date of judicial demand by Ms. Keith or to the date Mr. Keith filed his motion to set all issues for trial.

Result: Affirmed in part, reversed in part.

Rationale: In his first assignment of error, Mr. Keith contends that the trial court erred in basing its gross income calculation for child support on his business's 2017 income because it was temporarily inflated due to the surge in furniture deliveries caused by the Great Flood of 2016.

According to the judgment, the trial court calculated the child support using Worksheet A with monthly gross income figures of $ 6,850.00 for Ms. Keith and $ 14,000.00 for Mr. Keith, $545.00 for net child care costs, and $ 145.28 for health insurance premiums for the children.

Mr. Keith analogizes the higher income allegedly due to the flood to extraordinary overtime that should not be considered as part of his gross income because the inclusion would be inequitable to him pursuant to La. R.S. 9:315(C)(3)(d)(iii), Mr. Keith relies on State, Dept. of Social Services ex rel. A.D. v. Gloster, 2010-1091 (La. App. 5 Cir. 6/29/11), 71 So.3d 1100, 1103-04, wherein the Fifth Circuit affirmed the trial court's orders for child support payments from the father that included his overtime pay for four months, then set a lower child support amount when his income was reduced because the overtime hours decreased as open positions were filled. The Fifth Circuit found that the overtime was not extraordinary, and therefore, was properly included in the income calculation for the period of time it was earned.

The Louisiana child support guidelines set forth the method for implementation of the parental obligation to pay child support. To apply the guidelines, the court must initially determine the gross income of the parties.. Income means the actual gross income of a party, if the party is employed to full capacity. Gross income, defined in La. R.S. 9:315(C)(3), includes income from any source, but does not include: "Extraordinary overtime including but not limited to income attributed to seasonal work regardless of its percentage of gross income when, in the court's discretion, the inclusion thereof would be inequitable to a party."

Because Mr. Keith operated his own business, those sections of La. R.S. 9:315(C)(3) pertaining to gross income derived from self-employment apply. Although the trial court did not outline in detail how it reached the range of $ 15,000.00 to $ 22,000.00 for Mr. Keith's gross monthly income, the use of $ 14,000.00 per month is

supported by the record.

The only evidence that Mr. Keith presented on the flood's effect on his business was Mr. Hebert's testimony, and Mr. Hebert, the operations warehouse manager for Olinde's Furniture, Mr. Keither's employer, admitted that he had not checked with the accounting department to determine if the sales figures he gave the court were correct. Additionally, Mr. Keith's conclusory statement that business had returned to pre-flood levels and the trial court's comment that the flood produced a temporary increase in furniture sales do not show that the trial court erred in calculating his child support obligation using the first six months of his 2017 income. By failing to present evidence of his business's net income from previous years so that the trial court could compare the 2017 income to prior years, Mr. Keith did not prove that the increased income was temporary.

While the trial court did not base the gross income calculation on the business's income for the entire year or upon the last six months of 2017, the testimony and evidence do not support a finding that the trial court abused its discretion in using the January through June 2017time period.

We also find no error in the trial court's failure to characterize any additional income due to the flood as extraordinary overtime. Since the trial court must use its discretion in setting the amount of child support based upon the facts before it, an appellate court is not to disturb the trial court's factual findings absent an abuse of its discretion or manifest error.

Accordingly, we will not disturb the trial court's determination of gross income for child support, and Mr. Keith's first assignment of error has no merit.

In his second assignment of error, Mr. Keith contends that the trial court erred in failing to make the child support award retroactive to January 3, 2017, the date of initial judicial demand by Ms. Keith, or to September 25, 2017, the date Mr. Keith filed his motion to set all issues for trial.

According to the judgment, the earlier child support award in the judgment dated May 9, 2017, was considered an interim award, and any subsequent child support award was prospective only. Therefore, the final child support judgment was effective as of March 22, 2018.

In this case, the trial court in its oral reasons for judgment commented that, while the May 19, 2017 judgment and court form did not describe the child support as interim, the court's notes and the memoranda indicated that it "was everyone's understanding that that was an amount of child support that was being put in place until we could get the exact number." The trial court concluded that the earlier child support award was an interim support award. The trial court made no finding of good cause, and, based on the record before us, we find no abuse of discretion in that finding.

The parties stipulated to the $ 3,000.00 interim award, which is only $ 302.00 more than the $ 2,698.00 permanent award. In a case such as this where an interim child support award was in effect and there was no showing of good cause, La. R.S. 9:315.21 requires that the final child support award begin on the date of the signing of the judgment, which terminates the interim award. Accordingly, Mr. Keith's second

assignment of error has no merit.

3) Deviations

Bell v. Jackson, 278 So.3d 382 (La. App. 1st Cir. May 31, 2019)
[for minor child in home; plus . . . determination of gross income]

Facts: The parties in this matter, Andrea Ceola Bell and Terral Carl Jackson, Jr., were engaged in a brief relationship, which produced one child, born on November 6, 2015. On October 27, 2016, Ms. Bell filed a Petition to Establish Paternity and Child Support in the Family Court for East Baton Rouge Parish, requesting that Terral Carl Jackson, Jr. be recognized by judicial decree as the natural and biological father of the minor child and that he be ordered to pay child support for the care and maintenance of the minor child as well as his percentage share of maintaining a policy of health, dental, and vision insurance for the minor child, and his percentage share of payments of any non-insured medical expenses and any extraordinary expenses for the minor child.

In discovery requests filed into the record of this proceeding, Mr. Jackson alleged he received an average income of $ 3,000.00 per month as a result of his co-ownership in and ventures he promoted with the Allure Nightclub and Ultralounge, but was unemployed due to the closure of Allure. In his testimony at trial, Mr. Jackson indicated that he intended to find more stable employment, but he was continuing to do work as a promoter of events in addition to some work in marketing and as a disc jockey. Notwithstanding his purported $ 3,000.00 average income, Mr. Jackson alleged monthly expenses totaling $ 8,757.65. Additionally, Mr. Jackson admitted that he has never filed federal or state income tax returns.

Trial in this matter was held on January 22 and 29, 2018, during which both Ms. Bell and Mr. Jackson testified. Evidence was introduced and included Mr. Jackson's bank statements, copies of checks and withdrawal receipts for one of Mr. Jackson's accounts, a spreadsheet Mr. Jackson and his wife created to account for some of the withdrawal receipts, an in globo exhibit containing invoices, estimates, proposals, and a portion of a lease agreement, and one vendor invoice history.

On February 15, 2018, the trial court issued a partial ruling in open court and imputed income of $ 8,471.00 to Mr. Jackson.

Following the trial court's ruling and declaration of Mr. Jackson's imputed income, counsel for Mr. Jackson orally requested a deviation from the child support guidelines based on Mr. Jackson's purported obligation for a minor daughter conceived from a different relationship and allegedly living with him in his home.

In open court on February 27, 2018, the trial court granted Mr. Jackson a deviation from the child support guidelines in the amount of $400.00.

The trial court found Ms. Bell to have a gross monthly income of $5,649.00 for the period of November 1, 2016 to December 31, 2016 and a gross monthly income of $7,996.00 from January 1, 2017 to present. Applying the $8,471.00 imputed income of Mr. Jackson with the deviation of $400.00 to all applicable periods, the trial court ordered

Mr. Jackson to pay $845.00 in monthly child support for the period of November 1, 2016 to December 31, 2016; $798.00 per month for the period of January 1, 2017 through December 31, 2017; and $799.00 per month beginning on January 1, 2018.

Result: Reversed.

Rationale: The guidelines for the determination of child support obligations are set forth in LSA-R.S. 9:315 and rely on the combined adjusted monthly gross income of the parents.

In the first assignment of error, Ms. Bell contends that the trial court erred by imputing a gross income to Mr. Jackson instead of using the evidence introduced at trial reflecting his significant actual earnings and income. In support, Ms. Bell relies on the evidence introduced at trial reflecting monthly deposits into two checking accounts from September 1, 2015 through March 13, 2017 totaling over $640,000.00 and Mr. Jackson's failure to demonstrate any ordinary and necessary expenses reducing this gross income. Ms. Bell contends that the trial court should impute an income to Mr. Jackson based on the average monthly deposits into bank accounts controlled by Mr. Jackson, which was over $ 40,000.00.

Pursuant to LSA-R.S. 9:315(C)(3), "gross income" means income from any source, reimbursed expenses or in-kind payments received in connection with a parent's employment, and gross receipts less ordinary and necessary expenses required to produce income for purposes of income from self-employment, proprietorship of a business, joint ownership, or partnership. The party seeking to reduce his income by including ordinary and necessary expenses bears the burden of proving that the expenses were ordinary and necessary for the production of income. "Adjusted gross income" means gross income less amounts owed for preexisting child or spousal support obligations pursuant to a court order and, subject to the court's discretion, amounts paid on behalf of a party's minor child not the subject of the action of the court.

The only evidence introduced during trial regarding Mr. Jackson's income were copies of bank statements from the Capital One Bank account held by Allure and Mr. Jackson's personal bank account with JP Morgan Chase Bank which were introduced by Ms. Bell. Ms. Bell also introduced numerous copies of checks and cash withdrawal receipts from Allure's Capital One account. Mr. Jackson introduced a spreadsheet he and his wife created to account for some of the withdrawals from Allure's Capital One account, which included expenses for lease payments, alcohol, bar supplies, and food and totaled over $ 150,000.00 for the year 2016. However, there were no receipts or other evidence produced in connection with the spreadsheet, and, as noted by the trial court, it was "an uncorroborated statement of what he believes he spent the money on."

Additionally, Mr. Jackson introduced an in globo exhibit containing various documents he found relating to expenses from events he hosted at Allure or other locations with another production venture in which he participated. This exhibit also contained an unsigned copy of the lease for the building used for Allure, which indicated that the rent was $ 13,650.00 per month, and a receipt for general liability insurance in the amount of $ 1,527.88, which Mr. Jackson testified was a monthly expense, although he may have been delinquent on some of the payments. Again, a number of these documents in the in globo exhibit were uncorroborated, some were issued in Mr. Jackson's wife's

name, some were estimates and proposals, and some were summaries of purported expenses. According to Mr. Jackson's own repeated testimony, he kept poor business records. Notably, no verified income statements showing the gross income of the parties with documentation of current and past earnings was provided, notwithstanding the clear mandate of LSA-R.S. 9:315.2.

Mr. Jackson stated that the last time he received money from the operation of Allure was in April or May of 2016, but he could not guess what his income from Allure would have been in 2016. He also testified as to other sources of income in 2016, which he estimated to be $8,000.00. Mr. Jackson stated that based on events he produced and other unidentified income sources, he believed he made about $40,000.00 to $45,000.00 in 2017. However, at the time of trial, Mr. Jackson was unemployed.

In issuing its ruling, the trial court specifically referenced the Labor Department's average income for advertising and promotions managers, which was $75,920.00, but no evidence regarding this figure was introduced at trial or contained within the record. LSA-R.S. 9:315.1.1(B) states: "providing that when the income of an obligor cannot be sufficiently established, evidence of wage and earning surveys distributed by government agencies is admissible for the purpose of imputing income."

Additionally, the trial court stated that it used "other figures and reduced the income by forty-five percent coming up with [$103,969.00 and $155,308.00]." According to the trial court, these three figures were averaged to arrive at the imputed income to Mr. Jackson in the amount of $8,471.00. However, based on the record herein, this court is unable to determine what information was used or what conclusions of fact were reached by the trial court in arriving at these figures.

Absent the introduction of appropriate documentation and compliance with LSA-R.S. 9:315.2(A), this court is unable to determine the propriety of the trial court's ruling based on the instant record. No verified income statement of Mr. Jackson, as required by LSA-R.S. 9:315.2(A) appears in the record, and the indiscernible evidence as to Mr. Jackson's past earnings renders the determination of his actual earnings virtually impossible on the record as presently constituted. Moreover, Mr. Jackson's testimony provides no apparent basis to support the trial court's calculations or its ruling.

Although we recognize that we review judgments, and not reasons for judgment, there must nonetheless be evidentiary support for a ruling. Thus, in instances where the record is inadequate and lacks information necessary to make a child support determination, a remand to the trial court is necessary. Finding merit to this assignment error, we must vacate the trial court's determination of imputed income to Mr. Jackson and remand the matter to the trial court.

In this assignment of error, Ms. Bell submits that it was error for the trial court to permit a deviation from the basic child support guidelines due to a minor child residing with Mr. Jackson. Pursuant to LSA-R.S. 9:315.1(B)(1), a court is permitted to deviate from the child support guidelines if their application would not be in the best interest of the child or would be inequitable to the parties. In permitting a deviation, the court must provide specific reasons therefor, including a finding of the amount of support that would have been required under the guidelines and the facts and circumstances warranting the

deviation. In accordance with to LSA-R.S. 9:315.1(C)(2) and (9), a court may consider the legal obligation of a party to support dependents who are in the party's household and who are not the subject of the action before it as well as any other consideration which would make application of the guidelines not in the best interest of the child or inequitable to the parties.

Importantly, a deviation from the guidelines based on an obligation to support other minor children in a party's household is neither automatic nor guaranteed; rather, all that is required by the statute is that the trial court consider such factors in its determination of whether a deviation is warranted. As the party requesting the deviation, Mr. Jackson bore the burden of establishing that the application of the child support guidelines would not be in the best interest of the minor child who is the subject of these proceedings or would be inequitable to him because of expenses he has related to his obligation to support his other daughter. Moreover, a deviation pursuant to LSA-R.S. 9:315.1(C)(2) must be supported by an evidentiary basis. Therefore, in order to limit his support obligation under the guidelines, Mr. Jackson was required to come forward with proof as to his expenses related to the support of the minor child living in his home.

In this case, Mr. Jackson testified that he and his wife have one minor daughter living in their home. He also testified that he pays $406.00 per month for tuition for the daughter living with him. However, he did not produce any documentation or record evidence for this expense. Mr. Jackson testified that he has a mortgage note of $1,962.65 per month, utility bills totaling $360.00 per month, a cable bill in the amount of $300.00 to $400.00 per month, and a home security system bill of $60.00 to $80.00 per month. Mr. Jackson testified that he has expenses of $2,329.00 per month for his and his wife's automobiles, food expenses of $400.00 per month, general household expenses of $200.00 per month, clothing and personal grooming expenses of $350.00 per month, and entertainment expenses of $100.00 per month. However, no documentation was submitted for any of the expenses mentioned by Mr. Jackson nor does any such evidence appear in the record. Moreover, while Mr. Jackson testified that his wife has a job, he did not provide any testimony or evidence regarding whether his wife contributed to any of the household expenses or the expenses related to their daughter. No testimony was received regarding how any amount of child support awarded to Ms. Bell in this case would be inequitable to him in light of the expenses and obligations attributable to the support of the daughter who lives with him.

In granting Mr. Jackson a deviation in the amount of $400.00 per month, the trial court reasoned as follows:

> The court is going to deviate from child support guidelines and deduct four hundred dollars per month from Mr. Jackson's income due to his biological child living in his home.... considering the equity of the parties, the testimony and evidence as well as the best interest of both children of Mr. Jackson, the court believes such deviation is warranted.

The court heard evidence of Mr. Jackson's monthly expenses, some of which included housing, food, clothing, and among other things for himself, his wife, and his child full time in his home. Although the court did not hear testimony as to the extent that

Mr. Jackson's wife provides help with these expenses, the court in deviating allocated fifty percent of the expenses to Mr. Jackson and therefore deviated by deducting four hundred dollars per month from Mr. Jackson's monthly income ....

Again, no documentary evidence was received by the trial court on the issue, and Mr. Jackson's testimony as to his expenses and his daughter living with him was uncorroborated. By law, any deviation pursuant to to LSA-R.S. 9:315.1(C)(2) must be supported by an evidentiary basis. On review, we find merit to this assignment of error, as Mr. Jackson did not carry his burden of proving that a deviation was warranted under the circumstances. As such, the trial court erred in granting a deviation to Mr. Jackson.

Hensgens v. Hensgens, CA 19-485, 2019 WL 6886219 (La. App. 3d Cir. Dec. 18, 2019)
[for business debts; plus . . . determination of gross income]

Facts: The parties, Karl and Alanna Hensgens, were married in 2006. The couple have three daughters. Karl filed a petition for divorce on March 7, 2017, which was granted by a July 18, 2018 judgment of divorce.

The trial court thereafter considered ancillary matters, including Alanna's request for child support. During a two-day hearing, the parties presented expert testimony regarding Karl's income as a rice and crawfish farmer in support of their positions regarding issues of support.

Karl relied on calculations reflecting a negative income balance over a period of several years due to difficulties experienced in that industry, including the 2016 flood event. He explained that he had no more liquid assets and referenced a lawsuit pending against the couple due to failure to repay farming loans.

Karl testified that the crawfish and rice farming operation has been sustained each year by farm loans and by government farming assistance. He explained, however, that the operation "got behind" and "was barely getting by" before the August 2016 flood "wiped out everything." He explained that the flooding affected both rice and crawfish crops.

After the Hensgens allegedly failed to pay several of their farm loans, the lender, Bank of Commerce, filed suit against the couple in July 2018. The Bank's petition cited a balance due on promissory notes from March 2015 ($415,800), April 2016 ($486,750), and from August 2016 ($50,065). This difficult financial situation, Karl suggests, undermines the trial court's determinations regarding his income for purposes of support.

Alanna on the other hand presented expert testimony drawn, in part, from the couple's income tax returns and which reported funds available for support. The parties differed on issues related to accounting methodology as well as whether sources of income were recurring and whether certain expenses were business related for purposes of calculating support.

The trial court ultimately rejected Karl's assertion that he had negative income as estimated by his expert through use of an accounting method that relied on income/expenses related to the crop year. Citing La.R.S. 9:315(C)(3)(c), the trial court instead favored Alanna's expert's use of cash basis accounting and explained that choice

in extensive written reasons.

La. R.S. 9:315(C)(3)(c), the trial court determined, was consistent with the accounting method relied upon by Alanna's expert in accounting, Chris Rainey, C.P.A. Mr. Rainey, who employed a cash method of accounting, reviewed, in part, the Hensgens' tax returns for 2016 and 2017 for insight into the farm business's "gross receipts minus ordinary and necessary expenses required to produce income" for those years. With those income/expense figures provided by the returns, Mr. Rainey explained that he made "adjustments" to the return as required by La.R.S. 9:315(C)(3)(c).

Mr. Rainey distinguished the cash basis method from the accrual based accounting method advanced by Karl's expert, Steven Soileau, C.P.A. Cash basis, Mr. Rainey explained, accounts for income when it is received and not earned, whereas the accrual basis accounts for when it is earned and not received. The cash basis method also accounts for expenses as they are actually paid. Mr. Rainey thus reasoned that the former method better reflects income available for child support on a year-to-year basis. Mr. Rainey's calculations were presented to the trial court through "Exhibit Wingate 1," a spreadsheet reflecting gross monthly income of $11,472 in 2016 and $16,572 in 2017.

Karl's expert, Mr. Soileau, testified that although he prepared the Hensgens' tax returns for the previous five years, the returns did not provide an accurate picture of income. He reasoned instead that the cyclical nature of farming required that expenses must be matched with corresponding revenue as expenses are often incurred in one year, but crops may not be sold until the following year. On that latter point, he explained that not all of a rice crop may be sold in the year in which it is grown, but that it may be stored for some period in order to receive a better price at a later time. Noting that farming expenses and revenue may vary widely on a year-to-year basis, Mr. Soileau presented figures related to a five-year period through the use of "Exhibit K-2". Entitled "Profit per Crop Year 2013-2017," the document listed "Net farm income" of $38,266 in 2013 and negative income of "($64,317)," ($202,630)," and ($217,744)" in 2014, 2015, and 2016, respectively. Mr. Soileau identified nominal income of $1,587 for 2017. In contrast, Mr. Rainey calculated gross annual income of $137,666 in 2016 and $198,867 in 2017.

The trial court determined that the cash basis method of accounting was appropriate but concluded that Mr. Rainey's 2016 calculations should not be considered. Rather, a significant payment received by the Hensgens for damages related to the BP oil spill rendered that year's income an outlier. The trial court thus established Karl's gross monthly income based on figures from Mr. Rainey's 2017 calculations alone. The court also adjusted several aspects of Mr. Rainey's calculations.

As a result, the trial court ordered Karl to pay $2,897.70 per month in child support, a figure that included agreed upon sums for private school tuition, associated fees, and costs.

Result: Affirmed

Rationale: Karl first cites error in the trial court's consideration of data from 2017 alone in calculating gross income. He suggests that a longer time span must be considered, giving farming's fluctuations. He relies, instead, on Mr. Soileau's calculations. Karl's argument, however, ignores the limited evidence found reliable by the trial court.

In fact, the trial court specifically rejected Mr. Soileau's methodology and, correspondingly, his resulting calculations. Additionally, Mr. Rainey provided details regarding income only from 2016 and 2017. With the trial court's rejection of the 2016 income due to its inclusion of the BP settlement, only data from 2017 remained. The trial court was thus left with limited evidence from which to draw its own conclusions and calculations. That limitation was created by the parties' evidentiary submissions, not by error on the trial court's part. Given that limitation, the trial court assessed Karl's income under La.R.S. 9:315(C)(3)(c) in accord with the evidence chosen by the parties.

To the extent Karl argues that the trial court erred in accepting Mr. Rainey's methodology over Mr. Soileau's use of accrual based accounting, we leave that finding undisturbed.

In particular, the statute defines "gross income" as "gross receipts minus ordinary and necessary expenses required to produce income, for purposes of income from self-employment, rent, royalties, proprietorship of a business, or joint ownership or a partnership or closely held corporation." Karl's suggestion that the trial court erred in refusing to craft an income outside of the clear legislative language is unpersuasive. Rather, La.R.S. 9:315(C)(3)(c) provides for "a very straightforward accounting analysis[,]" requiring simple consideration of receipts minus ordinary and necessary expenses as demonstrated by the controlling parent.

While Karl maintains his argument that his declining farm practice and his inability to secure farm loans commensurate with those in the past renders the figures from 2017 unreliable, the trial court correctly recognized Karl's stipulation to the payment of private school tuition for the children.

Having recognized both the trial court's direct application of the limited evidence presented to La.R.S. 9:315(C)(3)(c) and its observations regarding the unworkable nature of Karl's calculations, we find that the trial court's ruling is supported by the record. Karl next argues that the trial court erred in including the sale of farm equipment in its calculation of income as "[t]he parties were not in the business of selling farm equipment." He suggests that as the evidence indicates that equipment was sold only in 2016 and 2017, the sale was due only to the parties' declining circumstances and their inability to further borrow money.

In ruling, the trial court maintained Mr. Rainey's inclusion of $23,000 from the sale of farm equipment as an element of Karl's 2017 income. Mr. Rainey noted that the tax returns included a $27,685 gain from the sale of farm equipment in 2016 and a $23,000 gain in 2017.

The trial court accepted Mr. Rainey's testimony regarding the sale of equipment as part and parcel of the farming operation, stating that "in terms of the sale of farm equipment the testimony that was adduced there - - the benefit is having accelerated depreciation. So if you have new equipment coming in and the older equipment being sold it's a tax benefit, there's no longer a tax benefit then it should come in, as income for purpose of this calculation[.]" We find no manifest error in that determination. Notably, while Karl's counsel speculates that the farming equipment was sold in order to pay for farm expenses that Karl could not otherwise meet, Karl did not testify regarding the sale

of farming equipment or the motive therefor.

Karl also questions the trial court's determination that American Express payments in the amount of $9,382.23 were personal in nature rather than business-related. He contends that the trial court accepted Mr. Rainey's testimony on this point, despite the fact that the accountant had not "reviewed any documents to determine whether the credit card payments were nonbusiness related." Karl's argument mistakes the applicable burden of proof, however.

The expenses challenged by Karl are payments made to the couple's American Express account in the amount of $9,382.23 and claimed as business expenses on the 2017 income tax return. Mr. Rainey explained that: "In my conversations with Alanna Hensgens and in my review of the documents these expenses charged to American Express were not business expenses but were personal expenses." Without contrary evidence from Karl, the trial court was only presented with evidence indicating that the American Express expenses were for personal expenses.

Importantly, "[t]he court, of course, is not bound by the controlling parent's designation of which expenses are 'ordinary and necessary,' even if made in federal tax returns." Rather, it is "the party controlling the closely held corporation [who] must bear that burden." As Karl sought to declare the American Express payment as a business-related expense required to produce income, he had the burden of proving that classification. Based on the record, a determination that he failed to do so is not manifestly erroneous.

Moving from the calculation of his income, Karl next contends that the trial court erred in failing to account for the parties' debt to the "Bank of Commerce in an amount of $656,215.92" as well as interest and attorney fees. Karl's claim relates to the Bank's suit on three promissory notes issued in 2015 and 2016. Suit was pending at the time of trial. Karl first claims that this debt should have been considered by the trial court in its calculation of income. That argument, however, is resolved by the above discussion finding no error in the trial court's adherence to La.R.S. 9:315(C)(3)(c).

By his remaining argument, Karl alternatively contends that the trial court should have deviated from the guidelines for determination of child support. He argues that the deviation is required due to both the unpaid debt and his reliance on loans from his mother since the filing of the petition for divorce.

The supreme court explained in Guillot v. Munn, 99-2132, p. 9 (La. 3/24/00), 756 So.2d 290, 297, that since the child support guidelines are presumptively correct, "the party advocating a deviation bears the burden of proving the guideline amount is not in the best interest of the child or would be inequitable to the parties." The trial court cited Guillot for the proposition that deviations are warranted only in limited circumstances so as to ensure the adequacy and consistency of child support awards.

Following review, we maintain the trial court's determination that a deviation as suggested by Karl was not demonstrated by competent evidence. Rather, the trial court remarked on the ambiguity of circumstances surrounding the debt in rejecting the request for deviation.

The trial court accurately remarked on the state of the evidence surrounding the

claim on the purported community debt. Although the burden to prove the claimed deviation was Karl's, he presented the trial court only with information surrounding his past income found to be inconsistent with La.R.S. 9:315(C)(3)(c) and only general testimony regarding anticipated operations going forward. As the trial court explained, future servicing of the debt or proceedings related to the pending suit are speculative. In light of that absence of evidence, the trial court was left with only the positive evidence of 2017 income as presented by Mr. Rainey for application to the guidelines. This court has described those guidelines as mandatory. Accordingly, the trial court's determination is supported by the record.

In his final argument regarding child support, Karl again relates his poor financial circumstances in arguing that the trial court's assessment of $15,8874.47 gross monthly income was erroneous. He asserts in brief that, as many farmers cannot repay their farm loans, some "fall into a category of businessmen who continue farming and continue to accumulate debt to the bank. At some point they will stop farming, get sued for the debts they owe, file bankruptcy, or a combination of the foregoing."

He further maintains that "the parties' farm netting any significant revenue from crops is fantasy" and that this lack of revenue should have been considered by the trial court in its shaping of gross monthly income. He suggests a lesser income be imputed to him or that a remand would be appropriate for consideration of the Louisiana Occupation Employment and Wage Survey.

This argument, however, operates outside of the legislation controlling the court's assessment of gross monthly income. Louisiana Revised Statutes 9:315(C)(3)(c) is specific to "income" rather than profit and is applicable to "income from self-employment[.]" Notwithstanding Karl's bleak farming projections, the trial court correctly applied the statutory framework, albeit doing so on the limitations of the parties' evidence. The trial court simply determined that Karl's chosen evidence was unreliable for the type of deviation suggested.

b Modifying the original award

Calhoun v. Calhoun, No. 52,915-CA, 2019 WL 3807034 (La. App. 2d Cir. Aug. 14, 2019)
[determination of gross income; deviation due to time spent with child]

Facts: Jennifer and Steve Calhoun entered into a covenant marriage on April 8, 2006. Their child, E.M.C., was born on November 5, 2009. Steve is employed as a real estate attorney with a solo practice, while Jennifer is employed as a pediatric nurse practitioner. On May 5, 2015, Steve filed a petition for divorce on the grounds of habitual intemperance, cruel treatment, excesses, and outrages. He also filed for a temporary restraining order seeking temporary sole custody of E.M.C., alleging that Jennifer had a history of alcohol and prescription drug abuse.

On May 29, 2015, Jennifer filed an answer to Steve's petition for divorce, denying the existence of any grounds for the divorce, and seeking both interim and final spousal support. On November 5, 2015, Steve filed a first supplemental and amended petition for

divorce, requesting that Jennifer be ordered to pay child support pursuant to La. R.S. 9:315. A hearing officer conference (HOCR) took place on November 16, 2015.

On February 18, 2016, both parties filed objections to the November HOCR disputing the hearing officer's findings of fact and recommendations. After the February HOC, the trial court issued another temporary order making the HOCR rendered on February 16, 2016 ("February HOCR") a temporary order of the court. The provisions contained in the February HOCR were nearly identical to those set forth in the November HOCR with the following revisions: 1) Jennifer was ordered to pay $100 in child support; and 2) Steve was ordered to provide and maintain health, dental, prescription drug, vision, and orthodontic insurance coverage for E.M.C. and medical insurance coverage for Jennifer.

On October 24, 2016, Jennifer filed an answer Steve's motion for rule for contempt admitting that she had liquidated the retirement accounts which were community property because she had no other means for support. On the morning of November 28, 2016, one day before the scheduled hearing, Steve's attorney sent Judge Sharp a letter indicating that the parties were currently in the process of confecting a consent judgment in which they would settle all the issues before the court in this matter.

On April 4, 2018, the trial court issued a temporary order making the March HOCR an interim order of the court. The March HOCR ordered the following: 1) Jennifer is ordered to pay child support of $1,200 retroactive to April 1, 2017, and payable in two installments on the 1st and 15th of each month. 2) Steve is ordered to provide health, dental, prescription drug, vision, and orthodontic insurance coverage for E.M.C.; and 3) E.M.C.'s uninsured health care expenses shall be paid equally by the parties. Each party shall provide the other with copies of receipts within 30 days of the expense being incurred or waive the right to reimbursement. Reimbursement shall be made within 30 days of receipt of said copies.

Result: Affirmed

Rationale: Jennifer argues that the trial court erred by increasing her child support obligation despite Steve's failure to produce his tax returns and cite any change in circumstances warranting an increase.

The Louisiana Child Support Guidelines set forth the method for implementation of the parental obligation to pay child support. The guidelines are intended to fairly apportion between the parties the mutual financial obligation they owe their children in an efficient, consistent, and adequate manner. Child support is to be granted in proportion to the needs of the children and the ability of the parents to provide support.

The guidelines are to be used in any proceeding to establish or modify child support. The guidelines are mandatory and provide limits and structure to the trial court's discretion in setting the amount of support. The trial court's child support judgment will not be disturbed absent a clear abuse of discretion.

In this case, the trial court did not deviate from the Louisiana Child Support guidelines in ordering Jennifer to pay $1,253 monthly. Instead, the trial court imputed Jennifer's increased salary into the calculation of support for E.M.C. During trial, Jennifer testified that she earned an annual income of $125,000; this figure did not include

bonuses. According to the joint obligation worksheet attached to the trial court's written judgment, Jennifer's monthly gross income was calculated as $10,416, while Steve's was calculated as $6,256. The guidelines set the basic child support obligation as $1,653 for Jennifer and Steve's combined gross income of $16,672. After E.M.C.'s health insurance premium of $412.61 was added to the basic support obligation, the total child support obligation was calculated at $2,006.49 with Jennifer's payment equaling $1,253, or 62.48% share of the combined gross income. Thus, we cannot say that the trial court committed manifest error by ordering Jennifer to pay child support in the amount of $1,253 per month.

Moreover, Jennifer also questions the trial court findings of a material change in circumstances warranting an increase in child support, yet not warranting an increase in visitation with her. An automatic deviation from the child support guidelines is not allowed. All that is required by La. R.S. 9:315.8(E) is that the trial court consider the period of time spent with the non-domiciliary parent as a basis for adjustment of the child support obligation.

The statute does not mandate an adjustment for time spent, nor does it remove from the trial court the discretion to decide whether to make an adjustment. There is no hard and fast rule to determine just how much, if any, to reduce the child support obligation based on the percentage of time the children live with either parent.

In her brief, Jennifer does not cite any jurisprudence or authoritative source to support her assertion that child support obligations should correlate to the amount of visitation each parent receives. From our review of the record and jurisprudence, custodial schemes and support obligations do not operate in a quid pro quo manner. We decline to make such a determination in the matter sub judice.

Moreover, we find that there is ample evidence in the record to support the modification of Jennifer's child support obligation, including her own trial testimony where she indicated her current salary was $125,000 per year excluding bonuses. Accordingly, we find that the trial court did not abuse its discretion by increasing Jennifer's child support obligation.

Guidry v. Guidry, 2019 CU 0534, 2019 WL 7177093 (La. App. 1st Cir. Sept. 26, 2019)
[enforceability of consent judgment that restricted modification of award; voluntarily unemployment; change of domiciliary parent]

Facts: Ms. Guidry and Mr. Paul Guidry were previously married and divorced. During the parties' marriage, they adopted three children: M.G., who was born on March 2, 1999, and is now a major; K.G., who was born on March 3, 2001, and is now a major, and E.G., who was born on October 5, 2002. On February 18, 2014, a consent judgment was rendered in the divorce proceedings that awarded the parties joint custody of the children and designated Ms. Guidry as the domiciliary parent subject to periods of physical custody in favor of Mr. Guidry.

On April 13, 2017, a consent judgment of child support was rendered in these proceedings, which provided that Mr. Guidry would pay child support to Ms. Guidry in

the amount of $5,640.00 per month for the three minor children, M.G., K.G., and E.G., for the period April 1, 2017 through May 31, 2017. Commencing June 1, 2017 through May 31, 2020 (following M.G.'s attaining the age of 18 and graduating from high school), Mr. Guidry would pay child support to Ms. Guidry in the amount of $4,712.00 per month for the two minor children, K.G. and E.G. Thereafter, commencing June 1, 2020 (following K.G.'s attaining the age of 18 and graduating from high school), Mr. Guidry would pay child support to Ms. Guidry in the amount of $3,119.00 per month for the minor child, E.G., until E.G. attained the age of 18 and graduated from high school. In addition to the monthly payments of child support, Mr. Guidry was to pay for 100% of all private school tuition, uniforms, registration and books for the minor children and 100% of all uncovered medical and dental expenses and mutually agreed upon extracurricular activities.

The April 13, 2017 consent judgment of child support specifically provided that the amounts set forth therein for child support represented the amount that Mr. Guidry would be obligated to pay if he had 100% of the child support obligation with a net income of $40,000.00 per month in accordance with the child support guidelines and that no income on the part of Ms. Guidry was considered in establishing the amount of child support owed by Mr. Guidry to Ms. Guidry.

The judgment further provided that Ms. Guidry could seek a modification of child support only if it was established that there had been a material increase or decrease in the income of Mr. Guidry based on a net income of $40,000.00 per month and that Mr. Guidry could seek a modification of child support based on an increase or decrease in the income of Ms. Guidry only if it was established that there had been a material increase or decrease in the income of Ms. Guidry based on an income of $4,000.00 per month.

On July 26, 2018, Mr. Guidry filed a motion seeking to modify custody, to decrease child support, for contempt, and injunctive relief. Mr. Guidry alleged that with respect to E.G. there had been several changes of circumstances such that it was in E.G.'s best interest that the joint custodial arrangement be modified by designating him as E.G.'s domiciliary parent to ensure that E.G.'s educational, medical and mental health needs were met.

In addition, because of the substantial increase in expenses paid by Mr. Guidry for the benefit of E.G. since the rendition of the April 13, 2017 judgment and because E.G. had been continuously in treatment facilities and had not lived at home since May 2018, Mr. Guidry also requested that the trial court terminate his child support obligation to Ms. Guidry for E.G. and to require Ms. Guidry to pay a share of the uncovered medical and other expenses incurred on behalf of E.G.

The hearing officer issued a conference report and recommendation. Both parties filed objections to the hearing officer's recommendations, and a hearing on those objections was scheduled for October 30, 2018.

At the conclusion of the hearing and after considering the evidence and testimony of the parties, the trial court determined that it was in the best interest of E.G. that Mr. Guidry be designated as her domiciliary parent and that it was in the best interest of K.G. that Mr. Guidry be designated her domiciliary parent for educational decisions. The trial

court also determined that notwithstanding the parties' attempt in the April 13, 2017 judgment to "write in stone what [their] child support arrangements were," that provision was against public policy and that the trial court had the ability to modify those arrangements.

Specifically, the trial court found that a modification was warranted since there had been a change in domiciliary parent with respect to E.G. and as such, Mr. Guidry's obligation to pay child support for E.G. was terminated. The trial court found that Ms. Guidry, who was a licensed attorney but not currently working, was voluntarily unemployed and found that she had an income earning capacity of at least $60,000.00 per year or $5,000.00 per month. In addition, the trial court noted that the mother had additional income from investments and other sources. Based on these findings, the trial court then instructed the court's hearing officer to calculate the parties' respective percentage share of income for the purpose of determining the percentage share of expenses that each party would pay on behalf of E.G. and K.G., as well as to calculate Mr. Guidry's child support obligation for K.G.

The judgment further provided, in accordance with the hearing officer's calculations, that Ms. Guidry would be responsible for 14% and Mr. Guidry would be responsible for 86% of K.G. and E.G.'s medical expenses, special extracurricular activities expenses, and tuition, registration, books, and supply fees for her schooling and that Mr. Guidry would pay $2,668.00 in child support for K.G.

Result: Affirmed

Rationale: As to child support, Ms. Guidry contends on appeal that the trial court erred in finding that the parties' April 13, 2017 consent judgment regarding child support was against public policy (and thus subject to modification) and that she was voluntarily underemployed. She maintains that Mr. Guidry should be responsible for 100% of E.G. and K.G.'s expenses in accordance with the April 13, 2017 consent judgment.

The Louisiana child support guidelines set forth the method for implementation of the parental obligation to pay child support. To apply the guidelines, the court must determine the gross income of the parties. Income means the actual gross income of a party, if the party is employed to full capacity. Income also means the potential income of a party, if the party is voluntarily unemployed or underemployed; in such a case, his gross income shall be determined as set forth in La. R.S. 9:315.11.

Thus, if a party is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of his or her income earning potential.

An award of child support may be modified if the circumstances of the child or of either parent materially change. More specifically, La. R.S. 9:311 further provides that "[a]n award for support shall not be modified unless the party seeking the modification shows a material change in circumstances of one of the parties between the time of the previous award and the time of the rule for modification of the award.". Because the obligation of child support is "firmly entrenched in our law and is a matter of public policy," child support agreements are generally subject to modification upon a showing of a change in circumstances regardless of language to the contrary.

The trial court in this case found that a modification of child support was

warranted since there had been a change in domiciliary parent with respect to E.G. and as such, Mr. Guidry's obligation to pay child support as set forth in the April 13, 2017 judgment was terminated.

While we recognize the well-settled jurisprudence providing that child support agreements are generally subject to modification upon a showing of a change in circumstances regardless of language to the contrary, in this case, it was not necessary for the trial court to determine whether the restriction on the modification of child support set forth in the April 13, 2017 judgment, was against public policy. The restriction as to modification was limited to a modification of child support based on a change of income; the April 13, 2017 consent judgment did not contain a restriction of modification of child support as to any other change in circumstance that might exist, such as a change in the domiciliary parent. Indeed, it was the change in the domiciliary parent of E.G. that the trial court found was a change in circumstance warranting a modification of child support.

As we find no error in the trial court's judgment with respect to modifying the parties' custodial arrangement by designating Mr. Guidry as E.G.'s domiciliary parent, we find no manifest error in the trial court's determination that this change was a change in circumstance warranting a modification of the parties' child support obligations.

In determining the parties' obligation of support and income, the trial court found that Ms. Guidry, who was a licensed attorney but not currently working, was voluntarily unemployed and found that she had an income earning capacity of at least $60,000.00 per year or $5,000.00 per month. Ms. Guidry's testimony established that she was a licensed attorney in Louisiana. Although Ms. Guidry has not practiced law in several years and told the trial court that she had not been able to obtain employment as an attorney, she failed to offer any evidence that confirmed she had attempted to obtain employment, but had been unsuccessful.

Rather, Ms. Guidry maintained that she was unable to work because of the needs of her children. However, the record establishes that two of the children are now majors, and E.G. has been residing in therapeutic or other psychiatric facilities for several months. Accordingly, we cannot say that the trial court's determination that Ms. Guidry was voluntarily unemployed and had an income earning potential of $60,000.00 was either manifestly erroneous or clearly wrong.

Olivier v. Olivier, 19-605, 2020 WL 578834 (La. App. 3d Cir. Feb. 5, 2020)
[enforceability of consent judgment that limits modification; decline in income]

Facts: On December 21, 1998, Kimberley Ledoux Olivier and Frank Mitchell Olivier were married. Together they had three children, Chandler Mitchell Olivier, born June 2, 1999, Carsyn Olivier, born April 4, 2001, and Carter Olivier, born April 1, 2008.

On October 6, 2017, the parties were granted a divorce after nineteen years of marriage. A Consent Judgment was signed by the court on December 4, 2017, which contained the following:

(1) The parties were granted joint custody of the two minor children, with Kim being designated as domiciliary parent, (2) Mitch was ordered to pay $1,800.00 per month in child support plus all private school tuition of his children, (3) The graduation of Carsyn Olivier from high school would not be considered a change in circumstances for the purposes of requesting a decrease in child support payments (she graduated high school in May of 2019), (4) Mitch maintains health and dental insurance on the children and uncovered medical expenses are to be paid by Mitch.
Mitch is the owner and operator of several crawfish businesses. He farms and sells crawfish. He is self-employed. Kim is a school teacher in St. Landry Parish.

Although the parties' daughter, Carsyn Olivier, was planning to graduate high school in May of 2019, Mitch agreed that her graduation would not in and of itself be a basis to change child support, to allow Kim to be able to continue to pay the house note on the family home with the $1,800.00 per month child support.

Although there were no accountants employed to determine Mitch's income from his self-employment, the Hearing Officer estimated his income at $8,333.33 per month. The worksheets prepared by Mitch's counsel for settlement purposes estimated Mitch's income from a low of $6,785.00 per month to a high of $20,833.00 per month.

Due to the complexities in actually determining Mitch's monthly income, the parties agreed to a midpoint between the high and low or an average between the two incomes which is $13,809.00 per month. That worksheet resulted in child support of $1,840.50 per month. The parties agreed on $1,800.00 per month as can be seen in the Consent Judgment of December 4, 2017.

On April 20, 2018, four and a half months after the Consent Judgment was signed and filed, Mitch retained a new attorney and filed for Modification of Child Support and the Joint Custody Plan seeking an equal sharing of time with the children.

On October 5, 2018, Kim filed a Peremptory Exception of No Cause of Action and Dilatory Exception of Vagueness, which were scheduled to be heard by Judge Meche on October 15, 2018, along with the Rule for Modification filed by Mitch.

On May 31, 2018, Kim also filed a Rule for Temporary Restraining Order, Rule for Contempt, Attorneys Fees and Court Costs, and to Enforce Community Property Partition. This was also set for hearing on October 15, 2018.

At the hearing before the Honorable Judge Meche on October 15, 2018, Judge Meche recused himself. Hence, Judge Meche did not rule on Mitch's Rule for Modification nor Kim's Exceptions.

This matter was then transferred to Judge Alonzo Harris, and Kim's Exceptions were rescheduled to be heard by Judge Harris on May 14, 2019. Written Reasons for Judgment on Kim's Exceptions were signed and filed on May 23, 2019, by Judge Harris granting Kim's Exceptions. On July 8, 2019, a Judgment on Exceptions was signed by the trial court.

On July 25, 2019, Mitch timely moved for appeal of the trial court's judgment sustaining Kim's Exception of No Cause of Action and dismissing his Rule for Modification of Child Support.

Result: Affirmed in part, reversed in part, and remanded.

Rationale: In his first assignment of error, Mitch contends that the original child support judgment was flawed and therefore cannot serve as a basis to deny modification of child support. In his second assignment of error, Mitch contends that child support awards are always modifiable. In his third assignment of error, Mitch contends that evidence may not be considered on an exception of no cause of action. In his fourth assignment of error, Mitch contends that his Rule states a cause of action for the modification of child support. We find no merit to these contentions.

Initially, we recognize that the judgment in this matter was not merely a judicial decree. Rather, it was a consent judgment reached by the parties. A consent judgment is a bilateral contract wherein the parties adjust their differences by mutual consent and thereby put an end to a lawsuit with each party balancing the hope of gain against the fear of loss.

Mitch contends that the Consent Judgment is flawed and cannot serve as a basis to deny modification of child support because the record is devoid of any information from which the trial court could have complied with its gatekeeping obligation to review the Consent Judgment to ensure its adequacy. Mitch is attempting to set aside a Stipulated Judgment which was submitted after a hearing in which he and Kim confirmed their intent to enter into a complete and total compromise of all the claims pending before the trial court. Thus, the burden is on him to show that the compromise was invalid. Moreover, because the compromise was reduced to a judgment and signed by the trial court, Mitch can only attack it via the methods authorized by law.

Here, the parties balanced "the hope of gain with the fear of loss" when they agreed that Mitch would keep all the crawfish businesses and assets, and Kim and the children would own and continue to live in the family home. Further, they agreed that the graduation of Carsyn Olivier from high school will not be considered a change in circumstances for the purpose of requesting a decrease in child support. The agreement took into account the Hearing Officer recommendations, the worksheets prepared by Mitch's counsel, and the amount needed for Kim to pay the monthly mortgage so that she and the children could remain in the family home.

Mitch seeks reversal of the no cause of action by contending that child support awards are always modifiable and asserts that his Rule stated a cause of action for modification of child support. Mitch contends that the trial court refused to modify the child support award because the parties reached an agreement involving community property and support issues. Mitch acknowledges that while he agreed to pay Kim $1,800.00 per month in child support and that the graduation of Carsyn Olivier from high school will not be considered a change in circumstances for the purpose of requesting a decrease in child support, he now contends that since that time there has been a material change in circumstances affecting his monthly income in that the crawfish production was slowed due to ice and snow in late 2017 and early 2018; that the crawfish production had increased thereby causing an over saturation in the market; and that the weather and oversaturation in the crawfish market caused economic downfall. As such, Mitch contends that he is entitled to a reduction in child support.

Mitch also seeks reversal of the no cause of action by contending that because the

trial court considered and relied upon extrinsic evidence to sustain the exception of no cause of action, its decision should be reversed. The evidence admitted was three settlement negotiation letters dated July 6, 2017, September 27, 2017 with three worksheets, and October 4, 2017. The only objection made by Mitch's counsel was that they were inadmissible as "part of settlement negotiations." There was no objection made that they were inadmissible as part of an Exception of No Cause of Action hearing.

Since the matter was already settled in December of 2017, the court allowed the letters in evidence to show how the $1,800.00 per month of child support was negotiated and agreed upon and to show it was in conjunction with the child support guidelines. Regardless, there was evidence in the record on December 4, 2017, from which Judge Harris could determine if the $1,800.00 per month child support complied with the guidelines - Mitch's tax returns for five years, a worksheet, and a summary of the tax returns. Thus, we find no error in the trial court's admitting of this evidence.

Given the foregoing, we conclude that Mitch has failed to show that the Stipulated Judgment is null and cannot serve as a basis to deny modification of child support, nor can he show any error by the trial court in sustaining Kim's No Cause of Action related to child support.

Accordingly, we affirm the trial court's ruling on these issues.

2 Sanctions (contempt)

Beckman v. Devillier, No. 52,634-CA, 2019 WL 146151952,634 (La. App. 2d Cir. Apr. 3, 2019)

Facts: This appeal arises from litigation initiated by the maternal grandparents, the Beckmans, seeking custody of their maternal grandchildren, A.C.D. and A.G.D. The Devilliers are the natural parents of A.C.D. and A.G.D.

On December 21, 2015, Leslie Beckman filed a petition for protection from abuse in the Juvenile Court of Caddo Parish wherein she alleged a myriad of concerns regarding the care of A.C.D. and A.G.D. On December 23, 2015, an order of protection was rendered in the proceedings, granting Leslie temporary custody of A.C.D and A.G.D. through January 7, 2016.

On January 7, 2016, the Beckmans and the Devilliers filed a joint motion to establish child custody by consent of the parties in which all parties agreed to grant custody of A.C.D. and A.G.D. to the Beckmans. On January 14, 2016, judgment on the joint motion was rendered which, inter alia, granted custody of A.C.D. and A.G.D. to the Beckmans and required the Devilliers to deposit $440 per month in an account established by the Beckmans for child support; and stipulated that this matter may be reviewed by any party after January 1, 2017.

On January 10, 2017, Tara Rheannon Coon Devillier filed a rule for custody seeking the reinstatement of her parental rights, as well as sole custody of A.C.D. and A.G.D. Subsequently, on March 14, 2017, the Beckmans also filed a rule for custody and the child support arrears in the amount of $2,398.47.

After a hearing on May 30, 2017, an interim order was issued allowing the

Beckmans to maintain sole custody of A.C.D. and A.G.D. and awarding Rheannon visitation every other weekend. Additionally, the interim order held Rheannon in contempt of court for failure to pay child support and ordered her to pay $421.21 per week in an attempt to purge the arrears; among other things.

On January 8, 2018, the trial court issued an immediate income assignment order for child support directing Rheannon's employer to withhold $1,608.58 a month and a past due amount of $5,980.88 through weekly payments of $421.21. On April 30, 2018, the Beckmans filed a rule for sole custody, to modify visitation, to reset all of plaintiff's motions, and for contempt ("Rule for Sole Custody") seeking sole custody of A.C.D. and A.G.D. and to modify the terms of visitation with Rheannon.

The trial took place on June 6, 2018, where testimony was heard by the court. The trial court rendered judgment awarding the Beckmans sole custody of A.C.D. and A.G.D., and awarding Rheannon visitation every other weekend. In addition, the judgment found Rheannon in contempt of court for failure to pay child support in arrears of $ 1,608.58.

Result: Affirmed in part, reversed in part. We affirm that portion of the trial court judgment that awards sole custody of the two children to the appellees, and finds the appellant in contempt for allowing a member of the opposite sex to be present during her exercise of visitation. We reverse that portion of the trial court judgment which found the appellant in contempt for failure to pay child support.

Rationale: The support obligation imposed on a mother and father of minor children by Louisiana Civil Code art. 227 is firmly entrenched in our law and is a matter of public policy.

Neither equity nor practical inability to pay overrides this policy or allows a parent to avoid paying his or her share of the obligation where the inability arises solely from that parent's own neglect and failure.

As a general rule, failure to pay alimony and child support resulting from an obligor's financial inability cannot support a contempt charge.

While the enforcement of the personal obligation to pay child support can be pursued through ordinary civil remedies by the parent to whom the obligation is owed, the law also expressly provides that "disobeying an order for the payment of child support" is a specific ground for which a court may hold a delinquent party in contempt of court.

In such delinquent child support settings, the court must determine that disobedience to the court's order for support is willful or a deliberate refusal by the parent to perform an act which was within the power of the parent to perform.

However, the court in Brown v. Taylor, 31,352 (La. App. 2 Cir. 2/26/99), 728 So.2d 1058 after quoting the above language, added: "Nevertheless, the court made clear that by examination of certain financial and other factors, such as, (1) the capacity of the parent for gainful employment immediately prior to the start of the contempt proceedings, (2) the living conditions and financial circumstances of the parent despite his unemployment, (3) the efforts to pay the delinquent alimony, and (4) proceedings to reduce or terminate the award based upon a change in the circumstances, the trial court can hold the parent in contempt."

On the issue of child support, Rheannon unequivocally admits that she is behind on payments, but maintains that "they" are deducting the maximum amount of federal, state, and local taxes from her biweekly paycheck. Further, Rheannon contends, if the court considers her as: (1) being gainfully employed; (2) having a meager standard of living; and (3) and making substantial payments toward child support, there can be no finding of willful disobedience. We agree.

In this case, Leslie testified that Rheannon is complying with the income assignment order; however, the payments are insufficient to cover her obligation. Moreover, she stated that Rheannon resigned from additional part-time employment, and acknowledged that she does not earn enough at her primary place of employment to satisfy the monthly payment amount. Rheannon testified that she is paid twice a month, and after child support is deducted from her paycheck, only $560.64 remains for living expenses. She further explained that she was unable to continue being employed part-time due to her visitation schedule and being diagnosed with fibromyalgia.

In this case, it is evident from the record that the only way Rheannon would be able to make such a payment is through obtaining additional employment. Given her efforts in obtaining increased visitation and ultimately regaining custody of A.C.D. and A.G.D., we cannot conclude that she willfully or deliberately disobeyed the court order to pay child support to the Beckmans.

B Procedural law

1 Service of process / notice

State in interest of L.C.F. v. Futch, 268 So.3d 417 (La. App. Apr. 10, 2019)

Facts: On December 3, 2012, the State of Louisiana filed a rule for child support against Mr. Futch. Jennifer Powell, the applicant, is the mother of the minor child, L.C.F., and qualified for child support services from the State. Mr. Futch was served via certified mail at 212 Jerry Street, West Monroe, Louisiana. The mail was returned to the district court unclaimed on December 29, 2012. On February 19, 2013, the hearing officer recommended that Mr. Futch pay $ 426.32 in monthly support. The district court adopted the recommendation on February 25, 2013. The notice of judgment was sent to Mr. Futch via certified mail to the Jerry Street address. The mail was again returned unclaimed on March 16, 2013.

The State filed a rule for contempt against Mr. Futch on October 6, 2017. Mr. Futch was served via personal service by the Claiborne Parish Sheriff's Office on November 2, 2017.

On January 9, 2018, Mr. Futch, through counsel, filed a petition to annul the judgment of child support. He argued he was never served with process, as required by law, and had no knowledge of the proceedings.

At the hearing, Mr. Futch testified that he never lived at the Jerry Street address. He testified that in December of 2012, he lived with his mother on Highway 3062. The

caseworker, Yoeisha Parks, testified that the 204 postal verification form, dated November 20, 2012, stated Mr. Futch's last known address was 212 Jerry Street. She further testified that before any court action, the policy of her department required her to send out a 204 postal verification form. The hearing officer found La. Ch. C. art. 640[1] was applicable. The hearing officer found Mr. Futch in contempt and ordered him to serve a 90-day sentence.

Mr. Futch filed a motion objecting to the ruling of the hearing officer. According to Mr. Futch, Ch. C. art. 640 is inapplicable to child support proceedings. Rejecting that assertion, the district court denied Mr. Futch's motion.

Result: Reversed.

Rationale: Mr. Futch argues the district court erred in determining he was properly served with notice of the child support hearing via certified mail. Mr. Futch points out that La. Ch. C. art. 640, the article used by the State for service, is located within Title VI of the Louisiana Children's Code, "Child in Need of Care." He argues a child support hearing does not fall within Title VI, and therefore, art. 640 does not apply.

We agree with Mr. Futch. The purpose of Louisiana Children's Code Title VI, "Child in Need of Care," is to protect children whose physical or mental health and welfare is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing for the reporting of suspected cases of abuse, exploitation, or neglect of children. La. Ch. C. art. 601. Title VI provides for reporting, investigating, and procedural requirements when confronted with child abuse or neglect. Title VI does not provide a method for setting or collecting child support.

The State did not allege child in need of care status in the proceeding against Mr. Futch and mentioned nothing about neglect. Therefore, the service requirements included in Title VI do not apply to the child support proceedings brought against Mr. Futch. The district court erred in determining Mr. Futch was properly served under La. Ch. C. art. 640.

Because the Children's Code does not provide for service of process in the case before us, it is proper to look to the Code of Civil Procedure. The Code of Civil Procedure allows service via certified mail when reissuing a subpoena in La. C.C.P. art.

---

[1] This article, entitled "Service and return; resident parent", provides in part as follows:

A. If a parent resides within the state, service of the petition, summons, and notice shall be made as soon as possible, and not less than fifteen days prior to commencement of the adjudication hearing on the matter, by any of the following means:

(1) Personal service.

(2) Domiciliary service.

(3) Certified mail.

(4) Electronic mail to the electronic mail address expressly designated by the parent in a pleading, at the continued custody or continued safety plan hearing, or at any other hearing at which the parent personally appeared before the court.

1355.1; serving every pleading subsequent to the original petition in La. C.C.P. art. 1313; serving notice of a final judgment in La. C.C.P. art. 1913; serving notice on the State or a political subdivision in La. C.C.P. art. 1704 and 4657.1; and, serving notice of a final account filed by a succession representative in La. C.C.P. art. 3335. La. C.C.P. art. 4919 allows citation by certified mail, but requires the reply form be signed to be considered personal or domiciliary service.

The case before us does not present a situation where initial service of process via certified mail is proper under the Code of Civil Procedure. We find that serving Mr. Futch via certified mail was not proper when initiating this child support action.

2 Jurisdiction & venue

State v. S.R., 271 So.3d 415 (La. App. 3d Cir. May 1, 2019)

Facts: During their marriage, C.R. (male) and S.R. (female) had several children together. At some point, S.R. was ordered to pay child support in the amount of $ 305.00 per month. She consistently failed to do so.

At some point S.R. secured a $300,000.00 insurance settlement.

The State, through DCFS, sued S.R. for enforcement of the child support order in Iberia Parish, the parish in which the children were then domiciled. In connection therewith, DCFS moved that S.R. be enjoined from collecting the insurance settlement, except on condition of using some of the proceeds to pay her support arrearages. S.R. filed an exception to based on improper jurisdiction and venue, insisting that the case had to be tried in the parish in which the divorce had been granted, i.e., Lafayette Parish. The trial court overruled the exception. Later, at the end of a day-long trial on the merits, S.R. and her attorney entered into a stipulation with DCFS and C.R. whereby the temporary restraining order could be released in return for a portion of the settlement funds being paid to DCFS and C.R. to satisfy her past due child support obligation. S.R. now appeals that consent judgment.

Result: Affirmed.

Rationale: S.R. argues that the Iberia Parish District Court did not have subject matter jurisdiction over the child support enforcement proceeding. S.R. asserts that the proper venue for the support enforcement proceeding filed by the district attorney on behalf of DCFS was Lafayette Parish, because that is where the divorce proceeding was initiated.

We find the Iberia Parish court had subject matter jurisdiction because at the time the instant action was filed, the children were residents of Iberia Parish. There is no evidence in the record before us that a support order was ever issued in Lafayette Parish, so we do not find C.C.P. art. 2786 applicable, which requires a support order issued in one parish be registered in another parish. We also note that S.R. submitted to the jurisdiction of the court in Iberia Parish since 2009, never once complaining of the venue of the action until this appeal.

3 *Res judicata*

State v. Johnson, NO. 19-CA-422, 2020 WL 465669 (La. App. 5th Cir. Jan. 29, 2019)

Facts: On August 10, 2015, the St. Charles Parish District Attorney's Office ("the State") filed a petition to establish paternity and support obligation that alleged Johnson was the natural/biological father of P.C.,1 who was born on April 9, 2015. The State and Johnson filed a joint motion and order for genetic testing on October 20, 2016. On January 19, 2017, Johnson stipulated to the results of DNA testing that established he was the father of P.C.

A hearing on the petition to establish paternity and child support obligation was held on February 16, 2017. The transcript from the hearing shows that defendant was unrepresented but did not object to the hearing on that basis. Persephone Washington, employed by the Child Support Enforcement Division of the Louisiana Department of Children and Family Services, testified regarding the variables she used to complete a Louisiana Obligation Worksheet. Part of that calculation was allowing a credit for child care costs to P.C.'s mother, who was the custodial parent, in the amount of $467 per month.

Johnson was ordered on March 2, 2017, to pay child support in the amount of $825 per month, retroactive to August 10, 2015, as well as an additional $75 per month toward arrearages. Johnson did not seek review of the trial court's ruling at that time.

On February 15, 2018, Johnson filed a rule to modify child support. On April 5, 2018, Johnson filed a motion to annul the judgment of February 16, 2017. In his motion to annul, Johnson asserted that a "Daycare Cost Letter" used to determine his child support obligation was fraudulently obtained, contained improper calculations, and should not have been introduced into evidence. The motion to annul was denied following a hearing on April 19, 2018, and Johnson withdrew his motion to modify child support on that same date.

On February 8, 2019, Johnson filed a petition to annul the judgment of February 16, 2017. The petition asserted that the February 16, 2017 judgment of child support "was obtained by fraud or ill practice" and was based upon "fraudulently submitted" documentation and "gross miscalculations" by the Louisiana Department of Children and Family Services. Johnson alleged that "this wrongdoing" was discovered by him on February 8, 2018.

The State filed an exception to Johnson's motion to annul on the basis of *res judicata* on April 15, 2019. The theory of the State's exception was that the issues raised in Johnson's "petition" had already been decided against him at the hearing on his earlier "motion". In his defense, Johnson argued that he was not in the same capacity, as he had filed the new motion as an "executor" of the Dexter Johnson estate. The trial court rejected that argument, reasoning as follows:

> The Court fails to -- the Court does not agree with the bifurcation of the individual, the natural person, from the executor of his estate when there's a living person. He is manager and conservator of his own estate and was

at the time he prosecuted his motion in 2018. There is not a different capacity that's acknowledged.

The trial court then granted the State's exception and dismissed Johnson's petition.

Result: Affirmed.

Rationale: La. R.S. 134231(3) provides that "a valid and final judgment is conclusive between the same parties . . . to the following extent: . . . A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment."

We find that the trial court's denial of Johnson's first motion to annul on April 19, 2018, was a valid and final judgment that Johnson did not timely seek to have reviewed. A comparison of the first and second motions to annul demonstrate that Johnson was seeking identical relief: to vacate the child support order on the alleged basis that the State had acted fraudulently or in bad faith. Further, in both actions to annul, Johnson alleged the identical act of fraud: that the State intentionally used a falsified document from P.C.'s daycare to calculate the total amount of child support owed.

Johnson filed the second motion to annul as the executor of his own estate and, on this basis, he argued that any judgment rendered would not be between the same two parties cast in the first judgment. As correctly observed by the trial court, however, such a proposition is neither permissible nor supported by law.

4 Manner of trial & evidence

Pittman v. Flanagan, 2019 CA 0038, 2019 WL 4729515 (La. App. 1st Cir. Sept. 27, 2019)

Facts: During the marriage of Henry and Susan Pittman, she gave birth to a single child. The couple were divorced on October 3, 2003. On May 15, 2004, 225 days after the divorce judgment, Susan gave birth to twins. Though Henry agreed to pay child support for the first child by consent agreement, he refused to pay child support for the twins.

Susan eventually demanded child support for the twins. Because they were born within 300 days after the marriage was dissolved, she contended that Henry is presumed to be their father. CC art. 185. In addition, according to Susan, Henry had formally acknowledged these additional children by placing his name on their birth certificates. It is, nevertheless, undisputed that Henry is not the biological father of the twins.

After the matter had been continued several times, the trial court finally signed a case management schedule setting a trial on April 16, 2018, for the determination of child support. At the pre-trial conference held on April 6, 2018, Henry requested a continuance, which the trial court denied. On April 16, 2018, Henry was hospitalized, and the trial court did grant a continuance on the issue of child support until May 9, 2018.

The trial took place on May 9, 2018. During the court imposed strict limits on the amount of time the two sides could use to present their cases (two hours to each side); refused to allow Henry's financial expert to testify; and, when Henry's counsel proffered that testimony, refused to accept the entirety of the proffer.

At the conclusion of the evidence, the trial court took the matter under advisement and issued oral reasons for its ruling on May 15, 2018, implementing child support for all three children; making executory the arrearages owed by Henry; ordering Henry to maintain the three children on his health insurance; and setting percentages for extraordinary expenses of the children, such as tuition, books, athletic expenses, and travel.

Henry assigns as error that the trial court inappropriately limited the time of trial; erred in refusing to permit his financial expert to testify; and erred in refusing to allow the expert's entire testimony to be proffered.

Result: Affirmed.

Rationale: 1. Manner of trial. – Louisiana Code of Civil Procedure article 1631(A) provides that the "court has the power to require that the proceedings shall be conducted with dignity and in an orderly and expeditious manner, and to control the proceedings at the trial so that justice is done." Also, La. C.C.P. art. 1632 provides for the normal order of trial, but expressly permits the trial court to vary the order "when circumstances so justify." It is only upon a showing of a gross abuse of discretion that appellate courts have intervened, as the trial judge has great discretion in conducting a trial.

The trial court indicated on several occasions that it was familiar with the issues on trial, as the matter before it had been pending for at least seven years. At the beginning of the trial, the trial court informed both parties that each side would be limited to two hours. It appears from the record that each party was actually given a little over two hours and that the time constraints were applied equally to both parties. The trial court had an officer of the court keep the time, and several times during the day reminded the parties of the time remaining. The trial court continually advised the parties that it was familiar with the issues, that there had been several hearings before a hearing officer, and the reasons for limiting the time of the parties. Henry spent the majority of his allotted time cross-examining Ms. Brown, despite being reminded of the limited time he had remaining. While the record does not reflect the exact times of the trial, it is clear that at 3:00 p.m. the trial court informed Henry he had approximately twenty-three minutes remaining, and he was given that time to present evidence, including his own testimony.

Henry argues the fact that he had to make twenty-seven proffers and only had time to introduce one exhibit during the trial is evidence that the time limitation was prejudicial. We note that during the trial, Henry did attempt to introduce at least five other exhibits, which the trial court ruled as inadmissible. We find this undermines his assertion that he only had time to introduce one exhibit. We further note that Henry provides no legal support for his proposition, and we do not agree that the number of proffers reflects that the time limitation was prejudicial.

Given the trial court's ruling on the inadmissibility of Proffers D-4 through D-7, and its comments regarding Susan's disability and her ability to care for two special needs children, it is highly unlikely that the trial court would have admitted Proffers D-15 through D-21. Therefore, we do not find that the number of proffers has any relevance regarding Henry's claim that he did not have enough time to present his evidence.

After a thorough review of the record, we are unable to find that the trial court

grossly abused its discretion in conducting the order and timing of the trial.

2. Refusal to allow witness testimony. – Henry claims that it was error for the trial court to refuse to allow his expert, Mr. Singleton, to testify on his behalf. Susan objected to the inclusion of Mr. Singleton's testimony. The trial court refused to allow Mr. Singleton to testify because Henry did not disclose the expert to Susan until April 24, 2018. Included in the December 13, 2017 case management schedule was the requirement that the parties exchange lists of witnesses, including experts at least forty-five days prior to the April 16, 2018 trial.

Henry argues that he was unaware that Susan had hired a financial expert until a hearing officer conference was held on March 13, 2018. He also argues that he immediately sent documents to Mr. Singleton to review. Henry claims that because it was tax season, he was unable to notify Susan of the availability of Mr. Singleton until April 24, 2018.

Where a pre-trial order has not been complied with, it is within the trial court's discretion to disallow witnesses, expert or not, from testifying. We find nothing in the record evidencing Henry's compliance therewith. Therefore, we find no abuse of the trial court's discretion in refusing to allow a witness to testify that would have violated the trial court's case management schedule.

3. Limitation of proffer. – After refusing to permit Mr. Singleton to testify, the trial court indicated that Henry could proffer a summation of Mr. Singleton's testimony, not the entire testimony.

The trial court did not permit Henry to make a complete record of Mr. Singleton's testimony, but did allow him to proffer the nature of Mr. Singleton's testimony had he been permitted to testify. Louisiana Code of Civil Procedure article 1636(A) allows the trial court this discretion. Furthermore, there is nothing in the record to indicate that Henry availed himself of La. C.C.P. art. 1636(B) by deposing Mr. Singleton within thirty days of the trial. Finally, given our ruling that the trial court did not abuse its discretion in refusing to allow Mr. Singleton to testify in violation of the trial court's case management schedule, the issue as to whether his entire testimony should have been proffered is moot.

Dissent (Higginbotham): While the district court has great discretion to impose reasonable time limits on its docket, those limits "must allow a party to present evidence to support the litigant's case." Considering the facts of this case, specifically, the complex financial issues and the trial court's imposition of two-hour time constraints per side, under the guidelines discussed in Plaia, the trial court's time limits were unreasonable, as Mr. Flanagan was denied an opportunity to present evidence to support his case. Therefore, I would remand the matter to the trial court to allow Mr. Flanagan that opportunity.