

**RECENT JURISPRUDENTIAL DEVELOPMENTS**  
**pertaining to**  
***Filiation & Child Support***

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by

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*Table of Contents*

I	Filiation: natural: paternal.....	1
A	By subsequent marriage plus acknowledgement (CC art. 195).....	1
B	By avowal action judgment (CC art. 198).....	4
II	Child support.....	4
A	Substantive law.....	4
1	What qualifies as “child support”.....	4
2	Calculation of child support.....	6
a	Necessity of following the guidelines.....	6
b	Gross income.....	7
1)	Actual income; in general.....	7
2)	Potential income: voluntary underemployment.....	11
3	Allocation of income tax dependency exemption.....	14
4	Sanctions for non-payment of child support.....	15
a	Contempt.....	15
b	Termination of parental rights.....	16
B	Procedural law.....	20
1	Untimely appeal.....	20
2	Lack of appellate jurisdiction.....	21
III	Miscellaneous odds & ends.....	22
A	Paternity in “child in need of care” cases.....	22
B	Objection to voluntary act of surrender: showing of substantial commitment to parental responsibilities.....	23

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**I Filiation: natural: paternal**

**A By subsequent marriage plus acknowledgement (CC art. 195)**

*McKinley v. McKinley*, 410 So.3d 375 (La. App. 1<sup>st</sup> Cir. Mar. 21, 2025)

*Facts:* After giving birth to two children, Z.M. and M.M., Sheraunte McKinley married Willian McKinley. on July 16, 2016subse. The McKinleys were subsequently divorced by a judgment dated May 24, 2021. Mr. McKinley contended that Mrs. McKinley, without authorization, signed his name to an acknowledgment of paternity form for the minor children. Mr. McKinley contended that he

subsequently filed a petition to annul the acknowledgment, which was granted by the trial court following paternity testing that revealed he was not the biological father of either child. In support of his exceptions, Mr. McKinley attached a copy of the paternity test results and the trial court's May 16, 2023 judgment declaring that he was not the biological father of the minor children and revoking and annulling the acknowledgment of paternity of the minor children.

On October 5, 2023, the State filed a rule to show cause why Mr. McKinley should not be ordered to pay child support. Mr. McKinley responded by filing exceptions of no cause of action and no right of action on the basis that, per the judgment of May 16, he was neither the biological nor legal father of the minor children and, as such, owed no child support. The State opposed the exceptions contending that, pursuant to [La. C.C. art. 195](#), the revocation of Mr. McKinley's acknowledgements of the children did not have the legal effect of disavowing the children. The State thus contended that because Mr. McKinley did not timely file an action to disavow paternity as required by [La. C.C. art. 195](#), he still owed an obligation of support for the minor children. The trial court granted the exceptions of no cause and no right of action and dismissed the State's rule to show cause with prejudice.

*Result:* Affirmed in part; reversed in part.

*Rationale:* 1. In its rule to show cause why Mr. McKinley should not be ordered to pay child support for the minor children, the State alleged that Mr. McKinley was the “father” of the minor children and, as the “father” of the children, owed an obligation of support. Thus, accepting the State's allegation that Mr. McKinley is the father as true as we must, because the law extends a remedy against a father to support his minor children, the petition alleges sufficient facts to establish a case cognizable in law, and the exception of no cause of action fails. Accordingly, we find the trial court erred in maintaining Mr. McKinley's peremptory exception of no cause of action.

2. Turning to the peremptory exception of no right of action, the State, as assignor of Mrs. McKinley's right to pursue support for the minor children, has a clear statutory right to seek to establish or enforce a child support obligation owed by any person pursuant to [La. R.S. 46:236.1.2](#), and this right was alleged in the State's rule to show cause.

Nonetheless, in maintaining the exception of no right of action, the trial court determined that the State, on behalf of Mrs. McKinley, had no right to proceed because its May 16, 2023 final judgment ordered that Mr. McKinley was not the biological father of the minor children and annulled the acknowledgment of paternity of the minor children. Considering that Mr. McKinley's acknowledgements of the minor children were annulled and his name removed from the birth certificates, Mr. McKinley did not “acknowledge[ ] the child[ren] by authentic act” so as to invoke the presumption of paternity established by [La. C.C. art. 195](#). Thus, [Article 195](#) does not apply. As such, the State has no right of action to proceed with the claim for child support on Mrs. McKinley's behalf.

*Concurrence (Greene):* The majority gets the analysis backward. Under [La. R.S. 9:406\(D\)\(2\)](#), once a court annuls an acknowledgment based upon genetic tests which excludes a person as a parent, and a support order has not been established, no further action may be initiated against the excluded person. Thus, because the trial court's May 16, 2023 judgment indeed annulled Mr. McKinley's acknowledgements based on genetic testing, and ordered the return of certain support payments previously established, the law affords no remedy to the State, and the State has no cause of action against him.

*Franklin v. Shotwell*, 404 So.3d 1108 (La. App. 3d Cir. Mar. 5, 2025)

*Facts:* On August 6, 2008, Ms. Franklin gave birth to a son, Aiden. In November of 2008, Ms. Franklin divorced her then husband, David Brunnabend. Ms. Franklin gave birth to another son, Carter, in June 2011. In May of 2012, Ms. Franklin and Mr. Shotwell were married. The couple later separated, and Mr. Shotwell filed a petition for custody of Aiden and Carter on June 27, 2013. On May 21, 2014, Mr. Shotwell was awarded joint custody of the children and designated the

domiciliary parent with Ms. Franklin to have supervised visitation with the children at the discretion of Mr. Shotwell. On May 28, 2014, David Brunnabend signed an acknowledgement of paternity affidavit certifying that he was married to Ms. Franklin at the time of Aiden's birth, but that he is not the biological father of the child. On August 13, 2014, Mr. Shotwell and Ms. Franklin signed the same affidavit certifying that they are the mother and father of Aiden and consenting to have Mr. Shotwell listed as the father on Aiden's birth certificate.

On November 12, 2022, Aiden was involved in an automobile-pedestrian accident with a Westlake police vehicle while crossing the road. On December 15, 2022, Aiden died from his injuries. On May 2, 2023, Ms. Franklin filed a wrongful death and survival action following Aiden's death. Shortly thereafter, Mr. Shotwell also filed a wrongful death and survival action. The matters were consolidated and Ms. Franklin asserted that Mr. Shotwell is not a member of the class of persons set forth in [La.Civ.Code arts. 2315.1](#) and [2315.2](#). Those matters are currently stayed.

On November 8, 2023, Ms. Franklin filed a Petition to Revoke the Acknowledgment of Paternity under the provisions of [La.R.S. 9:406\(B\)\(1\)](#) on the grounds that Mr. Shotwell is not the biological father of Aiden. On January 9, 2024, Mr. Shotwell filed Exceptions to Petition to Revoke Acknowledgment of Paternity asserting the petition was barred by preemption. The trial court granted the exception of preemption and dismissed the Petition to Revoke Acknowledgment of Paternity with prejudice.

*Result:* Affirmed.

*Rationale:* Ms. Franklin is correct that an action under [La.R.S. 9:406](#) is imprescriptible, as an absolute nullity is imprescriptible by nature. [La.Civ.Code art. 2032](#). This court, however, has previously found that an action under [La.R.S. 9:406](#) may still be preempted under other provisions of the law. In [Wetta v. Wetta, 21-92 \(La.App. 3 Cir. 6/2/21\), 322 So.3d 365, writ denied, 21-940 \(La. 10/19/21\), 326 So.3d 255](#), this court faced a similar situation involving preemption and [La.R.S. 9:406](#). In that case, Mr. Wetta executed an acknowledgement of paternity affidavit acknowledging the paternity of his wife's daughter despite knowing that he was not the biological father of the child. After Mrs. Wetta filed for divorce and sought child support from Mr. Wetta, Mr. Wetta filed a motion to revoke and annul the act of acknowledgement and disavow paternity. The trial court granted Mrs. Wetta's exception of preemption and dismissed Mr. Wetta's motion. From Wetta:

It is clear to this court, as it was to the trial court, that Mr. Wetta did not simply intend to revoke or annul his act of acknowledgment but ultimately his goal was to disavow A.S. More importantly, Mr. Wetta cannot annul or revoke his act of acknowledgment without a resulting disavowal of paternity. As will be discussed below, revoking or annulling an acknowledgement of paternity affidavit would result in rebutting the presumption of paternity created by [La. Civ. Code art 195](#). The legislature has provided laws as to how the presumption of paternity can be rebutted, which explicitly includes [La.R.S. 9:406\(B\)](#). Therefore, the trial court did not err in treating this matter as a disavowal action because ultimately that is the result being sought by Mr. Wetta's petition.

Because the matter was treated as a disavowal action, the 180-day preemptive period of [La.Civ.Code art. 195](#) applied. Mr. Wetta's petition was filed more than three years after he signed the act of acknowledgment, well beyond the one hundred and eighty day preemptive period and thus his right to disavow paternity was extinguished.

Ms. Franklin cites [Kelley v. Kelley, 55,358 \(La.App. 2 Cir. 12/20/23\), 376 So.3d 320](#), for the proposition that an action under [La.R.S. 9:406](#) is not subject to preemption. In that case, Mr. Kelley acknowledged the two daughters of his wife despite knowing that he was not the biological father. After the couple separated and Mrs. Kelley sought an order of child support, Mr. Kelley filed a petition to revoke his acknowledgement. Despite being factually similar to [Wetta](#), the second circuit declined to follow the rationale set forth therein. We believe Kelly to be in error and, since it is not the law of this circuit, we refuse to follow it.

Article 195 clearly states that the husband may disavow paternity as provided in

[La.Civ.Code art. 187](#), and “[r]evocation of the authentic act of acknowledgment alone is not sufficient to rebut the presumption of paternity created by this Article.” [La.Civ.Code art. 195](#). “The action for disavowal is subject to a peremptive period of one hundred eighty days. This peremptive period commences to run from the day of the marriage or the acknowledgment, whichever occurs later.” *Id.* Ms. Franklin's petition was filed over nine years after the signing of the acknowledgment of paternity, well after the one hundred and eighty day peremptive period provided in [La.Civ.Code art. 195](#). Accordingly, Ms. Franklin's action is perempted.

Ms. Franklin also argues that this case is distinguishable from *Wetta* because that case involved an acknowledged father seeking to revoke solely on the grounds that he was not the biological father and this case involves a biological mother seeking to revoke an acknowledgment on the grounds of fraud, duress and that Mr. Shotwell is not the biological father. Ms. Franklin contends that [La.Civ.Code art. 195](#) sets forth the time limitation for an acknowledged father's disavowal action not a mother's action and it is therefore inapplicable in this case. We disagree. Just as in *Wetta*, Ms. Franklin is not merely seeking to have the acknowledgement revoked, but she is ultimately seeking to rebut the presumption of paternity for Mr. Shotwell. Although the article contemplates a husband filing the action to disavow, the peremptive period contained in the article would apply in the case of a disavowal brought by the mother. The article is clear that the presumption created by it is only rebutted by a disavowal action brought within the stated peremptive period. If we were to find that the peremptive period did not apply in this case because it was brought by the mother, it would also follow that Ms. Franklin simply does not have a right of action to rebut the presumption of paternity created by [La.Civ.Code art. 195](#), and as her petition to revoke is in essence seeking a disavowal, it would have to be dismissed on those grounds.

## **B By avowal action judgment (CC art. 198)**

*Davidson v. Hardy*, 418 So.3d 360 (La. Sept. 10, 2025)

*Facts*: On January 6, 2025, the trial court issued a judgment denying an exception of peremption and ruling that [La. Civ.Code art. 198](#) was unconstitutional as applied.

*Result*: Appeal docketed.

*Rationale*: The district court's January 6, 2025 judgment declares La. Civ. Code art. 198 unconstitutional.

Accordingly, IT IS ORDERED this matter shall be docketed as an appeal pursuant to the provisions of La. Const. Art. V, § 5(D).

The clerk of court is directed to obtain the record of these proceedings from the district court, issue an appropriate briefing schedule and place the case on the next available docket for oral argument.

## **II Child support**

### **A Substantive law**

#### **1 What qualifies as “child support”**

*Cohen v. Cohen*, 415 So.3d 374 (La. App. 5<sup>th</sup> Cir. May 14, 2025)

*Facts*: Following their divorce in 1994, Dr. Michael Cohen and Jo Ellen Cohen entered into a Consent Judgment for Partition of Community Property. In that judgment, Dr. Cohen agreed to maintain and not cancel the \$1.3 million dollar death benefit on his life insurance policy, and to name his former spouse, Jo Ellen Cohen, and their children, Zachary and Joshua Cohen, as irrevocable beneficiaries. In 2019, Dr. Cohen filed a motion to terminate, or in the alternative, to reduce the amount of the death benefit he must maintain on his life insurance policy.

At the November 26, 2019 hearing, Dr. Cohen testified that he agreed to maintain the death benefit on his life insurance policy as a way to provide financial support for his minor children. This was evident in his last will and testament that named the “Michael Cohen Testamentary Trust” as the beneficiary. The trust was set up to distribute the life insurance proceeds and would terminate when the children were 26. He testified that this was a support obligation, but acknowledged that it was not discussed in the Support Judgment. Nevertheless, he testified that the Support Judgment states that his support obligations are premised on his ability to work. He stated that Ms. Cohen waived her interest in his medical practice in exchange for the house and other assets, including the death benefit of the life insurance policy.

Dr. Cohen testified that his health has deteriorated. He had four back surgeries, a neck fusion surgery, and a lumbar fusion surgery. He was diagnosed with [rheumatoid arthritis](#) in 2015 and has [atrial fibrillation](#). Because of these health issues and the physical limitations associated with these issues, he can no longer practice as an OB-GYN and is on an unpaid extended medical leave of absence. His current sources of income are social security, a pension from a previous employer, and retirement and savings. He stated that his life insurance premium is \$2,540.00 annually, but is set to increase to \$32,000.00 annually in two years. He stated that he does not have the financial wherewithal to pay the premium.

Ms. Cohen testified that she believed the life insurance policy was an investment vehicle; she never considered the life insurance to be a form of child support. She stated that when partitioning the community property, she gave up her interest in Dr. Cohen's medical practice for the life insurance proceeds. She stated that the term “and will not cancel” was added to the Partition Judgment after concerns were raised by her father that she was giving up money by relinquishing an interest in Dr. Cohen's medical practice. Ms. Cohen testified that she was never asked by Dr. Cohen if he could change the life insurance policy. She admitted that should she die before Dr. Cohen, she would not receive any death benefit.

On June 27, 2024, the trial court signed a written judgment which denied Dr. Cohen's motion. The trial court ordered Dr. Cohen to: (1) maintain and not cancel the \$1.3 million dollar death benefit on his life insurance policy; (2) name Ms. Cohen as an irrevocable beneficiary to half of the death benefit in the amount of \$650,000.00; and (3) name Zachary and Joshua Cohen as irrevocable beneficiaries to the other half of the death benefit in the amount of \$650,000.00. As an alternative to complying with its orders for maintaining life insurance coverage, the trial court ordered Dr. Cohen to provide assets in an equivalent amount respectively to Ms. Cohen and to Zachary and Joshua Cohen.

*Result:* Primary judgment affirmed; alternative judgment vacated.

*Rationale:* A consent judgment is a bilateral contract in which parties adjust their differences by mutual consent, thereby putting an end to a lawsuit with each party balancing hope of gain against fear of loss. It has attributes both of contracts and of a judicial decree.

In the present case, on January 10, 1994, the parties signed two separate judgments: the Partition Judgment and the Support Judgment. The Partition Judgment partitioned the family home, household furnishings, vehicles, mutual funds and IRAs, life insurance, and bonds. The language of the Partition Judgment clearly states that Dr. Cohen “will maintain and will not cancel” the \$1.3 million dollar death benefit on his insurance policy and will irrevocably name Ms. Cohen as beneficiary to half of the death benefit and irrevocably name Zachary and Joshua Cohen as beneficiaries to the other half of the death benefit. We find no ambiguity in this decree.

Dr. Cohen argues this was a support obligation. He highlights that the Partition Judgment addressed both support obligations and the partition of property. The Partition Judgment does discuss alimony. Therein, Dr. Cohen was ordered to convey his one-half interest in the home and pay any and all of the indebtedness thereon, approximately \$144,000.00, as alimony to Ms. Cohen. Dr. Cohen would then be entitled to claim a tax deduction for the payment of alimony. Ms. Cohen waived any right to future alimony, except what was granted in the Partition Judgment and the Support Judgment. Unlike this provision, however, the Partition Judgment does not qualify the

death benefit as any type of support obligation or alimony. Nor does the Partition Judgment state that Dr. Cohen's obligation to maintain the death benefit is premised on his ability to work. Based on the clear wording in the Partition Judgment, we do not find Dr. Cohen's obligation to maintain the \$1.3 million dollar death benefit on his life insurance policy to be a support obligation. It is thus not subject to modification due to his change in circumstances.

Nevertheless, we conclude the trial court erred in finding that as an alternative to maintaining the \$1.3 million dollar death benefit, Dr. Cohen shall provide assets in the equivalent respectively to Ms. Cohen and to Zachary and Joshua Cohen. No such requirement is set forth in the Partition Judgment. This ruling goes beyond the terms of the Partition Judgment. Accordingly, we vacate the trial court's ruling ordering Dr. Cohen to provide assets in the equivalent to Ms. Cohen and the children.

## **2 Calculation of child support**

### **a Necessity of following the guidelines**

*Ovide v. Christian*, 418 So.3d 404 (La. App. 5<sup>th</sup> Cir. June 18, 2025)

*Facts:* Mr. Christian and Ms. Ovide are the parents of two minor children who, at the time of trial, were six and three years old (the “Ovide Children”). Mr. Christian and Ms. Ovide were never married to each other. Mr. Christian also has two minor children with another woman, Samantha Jackson. Those children (the “Jackson Children”) were also six and three years old at the time of trial. As of the date of the trial, Mr. Christian and Ms. Jackson had also never been married to each other. Mr. Christian was previously married, but his wife is deceased. He has two minor children from his marriage who live with him full-time. At the time of trial, these children (the “Christian Children”) were thirteen and twelve years old.

Ms. Ovide sued Mr. Jackson for child support. At the time of the Ovide custody and support trial (the “Trial”) on November 25, 2024, Ms. Jackson had already obtained an order from the juvenile court in Jefferson Parish ordering Mr. Christian to pay \$943.00 in monthly child support for the Jackson Children. Ms. Jackson, however, testified at Trial that Mr. Christian was in arrears on his child support obligations to her. Mr. Christian testified that he had filed a motion for a reduction in his child support obligation relative to the Jackson Children.

After proceedings that can only be described as “irregular”, the district court ordered Mr. Jackson to pay child support in the amount of \$950.00 per month to plaintiff-appellee, Crystal Ovide (“Ms. Ovide”) and to pay her \$1,900.00 in child support arrears, for the parties’ two minor children. The irregularities included the following: (1) the court did not require Mr. Jackson to submit submit verified income statements; (2) the court failed to take Mr. Christian’s prior child support obligation into account in calculating Mr. Jackson’s gross income; (3) even though the parties had shared custody of the children, the court did not use Worksheet B.

*Result:* Reversed and remanded.

*Rationale:* In this appeal, Mr. Christian assigns four errors, all of which are related, and all of which complain of the manner in which the trial court conducted the trial, including the lack of opportunity for both complete direct or any cross-examination of Ms. Ovide, the dearth of documentary evidence reflective of either Ms. Ovide's or Mr. Christian's income and expenses, and Mr. Christian's separate court ordered and non-court ordered child support obligations.

Turning to the merits of Mr. Christian's appeal, we initially observe that the designated record before us does not contain any evidence that the trial court either considered or failed to consider the Guidelines in setting the child support award; nor is there any indication in the designated record before us that the trial court utilized Worksheet B, which is required when there is shared custody, in making its award. Finally, no Worksheet B is even contained in the designated record. Further, there is no indication in the record before us that the trial court deducted the amount

that Mr. Christian was paying under the child support order relative to the Jackson Children or that the trial court considered that Mr. Christian is also supporting the Christian Children.

La. R.S. 9:315.1(A) mandates that the Guidelines be considered in determining child support. Section 315(C)(1) mandates that the amount of court-ordered child support to children not the subject of the proceeding be deducted from gross income, and section 315.9(B) mandates that Worksheet B be used to calculate the child support obligations when there is a shared custody arrangement. We find that the trial court committed legal error when it apparently failed to consider the Guidelines, including deducting Mr. Christian's court-ordered child support obligation to the Jackson Children in determining his adjusted gross income and when it failed to use Worksheet B to calculate Mr. Christian's child support obligation. These errors require us to vacate the child support award of \$950.00 per month against Mr. Christian and in favor of Ms. Ovide. Because the arrears assessed against Mr. Christian were calculated based on the \$950.00 per month child support obligation, we also vacate the award of arrears in the amount of \$1,900.00.

At this point, we would normally conduct a *de novo* review of the record to ascertain the preponderance of the evidence and calculate the child support award in accordance with the Guidelines; however, there is simply not enough information in the record to allow us to make a Guidelines' calculation in this case. Here, child support was litigated prior to the completion of discovery. Mr. Christian admitted that he did not prepare and submit a verified income statement. He provided one tax return for the 2023 tax year. He admitted that he had not prepared or filed any tax returns for several years prior to the 2023 tax filing. It is not clear whether he submitted any bank statements. Mr. Christian did not submit any financial information for his businesses other than the information contained in the schedules to his 2023 tax return. Mr. Christian was questioned about his expenses, but for the most part, the numbers to which he testified were guesstimates.

**b Gross income**

**1) Actual income; in general**

*Davis v. Davis*, 418 So.3d 1025 (La. App. 1st Cir. Aug. 1, 2025)

*Facts:* Mr. Davis and Ms. DeBose were married in 2009, and had three children. On August 22, 2022, Ms. DeBose filed a petition for divorce, requesting joint custody of the children and that she be designated the domiciliary parent, with reasonable visitation to Mr. Davis. She further requested that child support be set.

On October 19, 2022, Mr. Davis filed an answer and reconventional demand to the petition for divorce filed by Ms. DeBose. Mr. Davis sought joint custody with him being designated the domiciliary parent, and also sought child support.

The matter came for hearing on May 30, 2024. Both parties testified and Ms. DeBose introduced evidence. In addition, Mr. Davis's father testified. At the conclusion of the hearing, the trial court issued its ruling, naming Ms. DeBose as the domiciliary parent for all three children; continuing the physical custody of A.D. on a week to week schedule; awarding physical custody of the two younger children to Ms. DeBose, with the children spending alternating weekends with Mr. Davis and an equal division of time for all the children during the summer; and awarding Ms. DeBose child support in an amount to be determined based upon the statutory child support guidelines.

On July 2, 2024, the trial court signed a judgment in accordance with its oral rulings on custody and incorporating the child support as calculated using the statutory guidelines.

*Result:* Affirmed.

*Rationale:* In his fourth and final assignment of error, Mr. Davis argues the trial court erred in its award of child support by failing to personally receive and or review the calculations and allowing Ms. DeBose's counsel to prepare said calculations with work sheets using information that was neither

discussed, provided, or presented to the trial court. Specifically, Mr. Davis contends the child support worksheet and awards provided Ms. DeBose with a credit for health insurance although he has always covered the health insurance for the minor children. He further contends the awards were based on incorrect income for the parties as both he and Ms. DeBose are teachers and make nearly the same income.

At the conclusion of the hearing, the trial court instructed Ms. DeBose's counsel to prepare the child support calculations based on the incomes as introduced during trial, using child support obligation worksheet "B" from the date of judicial demand until the time of the hearing, since the parties were exercising shared custody. The trial court further instructed Ms. DeBose's counsel to use worksheet "B" for the oldest child and worksheet "A" for the younger children going forward from May 30, 2024.

The July 2, 2024 judgment ordered that Mr. Davis's child support obligation from August 22, 2022 through May 30, 2024 for all three children was \$205.34 per month, as calculated using worksheet "B," based upon Mr. Davis's gross income of \$5,231.13 per month and Ms. DeBose's gross monthly income of \$4,323.07, and the net health insurance premium cost for the minor children of \$90.00 per month. The worksheet was attached as an exhibit to the judgment. The judgment further ordered that Mr. Davis's child support obligation commencing on June 1, 2024 for A.D. was \$101.44 per month, as calculated using worksheet "B," based upon Mr. Davis's gross income of \$5,231.13 per month and Ms. DeBose's gross monthly income of \$4,323.07, and the net health insurance premium cost for A.D. of \$30.00 per month. The worksheet was attached as an exhibit to the judgment. The judgment further ordered that Mr. Davis's child support obligation commencing on June 1, 2024 for the younger two children was \$1,027.29 per month, as calculated using worksheet "A," based upon Mr. Davis's gross income of \$5,231.13 per month and Ms. DeBose's gross monthly income of \$4,323.07, and the net health insurance premium cost of \$60.00 per month. The worksheet was attached as an exhibit to the judgment.

Mr. Davis testified that while his gross income in 2023 was \$62,773.62 (\$5,231.13 per month), he changed jobs in August 2023 and his net take home pay at the time of the hearing was \$3,000.00 per month. However, he failed to produce any documentary evidence of his current pay and further indicated he was considering working during the summer. He likewise failed to produce any evidence that he provided health care for the children.

We find no error in the child support awards, which were obtained by use of the child support guidelines.

*Guillot v. Guillot*, 2025 WL 3640604 (La. App. 5<sup>th</sup> Cir. Dec. 16, 2025)

*Facts:* Appellant Cecile Guillot and appellee Jules Guillot were married in Jefferson Parish in 2006 and are the parents of three minor daughters. On November 10, 2023, Mrs. Guillot filed a petition for divorce based on [La. C.C. art. 103\(2\)](#), alleging that Mr. Guillot had committed adultery, or in the alternative, seeking a divorce pursuant to [La. C.C. art. 102](#) based on the parties' prospective living separate and apart for the requisite time period. Mr. Guillot filed an answer and a reconventional demand, also seeking a divorce pursuant to [La. C.C. art. 102](#).

The parties litigated the issues of custody, child support, and spousal support before the hearing officer in 2024. Following a hearing on January 10, 2024, the hearing officer recommended that interim spousal support be set at \$900 per month and child support be set at \$45.35 per month, both payable by Mr. Guillot to Mrs. Guillot. The hearing officer's recommendations, which also addressed other ancillary issues, were made the judgment of the court on January 31, 2024. Both parties timely filed objections. The objections were ultimately heard by the district court judge on November 7, 2024. At the conclusion of the hearing, which included testimony from the parties and submission of evidence, the judge amended the January 31, 2024 judgment in only two ways: in favor of Mrs. Guillot, increasing interim spousal support to \$955 per month and increasing child support to \$345 per month.

*Result:* Affirmed.

*Rationale:* Mrs. Guillot next argues that the trial court erred in granting Mr. Guillot's motion for a new trial and reinstating the recommendations of the hearing officer's January 11, 2024 interim order (later reduced to a written judgment dated January 31, 2024) regarding child support and spousal support, and making these recommendations the judgment of the court.

Mrs. Guillot argues on appeal that the trial court erred in granting the new trial, because three hours of testimony at the trial on November 7, 2024 showed that Mr. Guillot was earning “significantly” more than was represented by the pay stubs he had submitted into evidence to the hearing officer, and thus the hearing officer had used lower figures, which were wrong, to calculate Mr. Guillot's support obligations. She also argues that Mr. Guillot revealed that while he was “responsible” for half of the expenses in his new living situation, he was not actually paying them.

Mr. Guillot argued at the hearing that based upon the evidence presented to the hearing officer, as well as his testimony, both the original award and the increased award of interim spousal support were beyond his ability to pay. Counsel highlighted that Mr. Guillot pays \$549 each month for the children's health insurance. He argued that his evidence at the hearing showed that he earned less than when the parties were together, for reasons totally unattributable to him. He testified that he was currently employed full time at an apartment complex in maintenance, which was forty hours per week with additional call time. He previously performed pressure washing services for a relative's business, but that relative's death and the division of the business between the relative's two children caused him to be assigned fewer “side” jobs. He still worked around 60 hours per week between his full-time job and side jobs, and thus argued that he should not be found to be voluntarily underemployed. Counsel for Mr. Guillot asked for child support to be recalculated based on the parties' actual income applied to the support guidelines found in [La. R.S. 9:315](#), and that interim spousal support be reduced to something that Mr. Guillot could pay. At the hearing, the entire record was entered as an exhibit. The judge recessed court so that he could review the evidence. After court resumed, the judge granted Mr. Guillot's motion for a new trial, reinstating the hearing officer's recommendations of January 11, 2024 (written judgment of January 31, 2024).

Having carefully reviewed the entire record, we find no manifest error or abuse of discretion by the trial court in granting the motion for a new trial and reinstating the amounts of child support and interim spousal support contained in the January 31, 2024 judgment memorializing the hearing officer's recommendations. The trial court evidently felt that it originally miscalculated the appropriate amounts of child support and interim spousal support based on the evidence and testimony presented and thus decided to reinstate the hearing officer's recommendations of January 11, 2024 (written judgment of January 31, 2024), which was clearly within the trial court's broad discretion in deciding whether or not to grant the motion for a new trial. All things considered, we find no reason to disturb the trial court's ruling on Mr. Guillot's motion for a new trial.

*Spears v. Spears*, No. 2025-467, --- So.3d ----, 2026 WL 517696 (La. App. 3d Cir. Feb. 25, 2026)

*Facts:* Joshua Spears and Kassie Spears are the parents of one child, Gage Ryder Spears, who was born on May 20, 2012. The parties were married on July 20, 2013. They separated on June 22, 2015, and a Judgment of Divorce was granted on November 21, 2016.

The parties entered into a Consent Judgment on September 3, 2015, fixing custody and ordering Joshua to pay Kassie \$275 per month in child support. Kassie was ordered to maintain health insurance for Gage beginning October 1, 2015, with Joshua responsible for 100% of all medical, dental, and vision expenses for Gage not covered by said insurance.

On April 4, 2016, Kassie filed a Motion to Modify Child Support, asserting that, since the rendition of the September 2015 judgment, Joshua's income had substantially increased while her's had decreased. The civil court minutes of May 5, 2016, reflect that the parties reached a stipulated agreement. Although no judgment is in the record, both parties agree in their appellate briefs that

Joshua's monthly child support obligation was increased to \$525.00 per month.

On December 20, 2023, Joshua filed a Motion to Modify Child Custody. Kassie filed a reconventional demand on March 8, 2024, agreeing that Joshua's visitation with Gage needed to be modified and further asking for an increase in child support. Kassie argued that it had been more than eight years since child support had been addressed and Gage's expenses had since increased.

The hearing went forward as scheduled on May 5, 2024, at which the parties advised the trial court that they had reached an agreement on the issue of custody and visitation. The issue of child support was continued, to be reset on another date mutually agreeable between the counsels of record.

A hearing on the issue of child support was held on February 4, 2025. After a discussion in chambers, the trial court noted on the record that very complex issues were involved and thus the parties would submit the matter on briefs.

The trial court rendered judgment on April 24, 2025, supported by written reasons for judgment, which the trial court stated were “a verbatim reiteration of the facts and law as set forth by counsel for KASSIE KENNEDY SPEARS[.]” The judgment found in favor of Kassie, awarding Kassie child support in the amount of \$2,092.73 per month, to be paid by Joshua in equal installments of \$1,036.37 on the first and fifteenth day of each month. The child support was ordered to be effective retroactive to the date of judicial demand, March 24, 2024. Kassie was ordered to maintain a policy of health and dental expenses through her employer on Gage and pay the premiums associated therewith. Joshua was ordered to pay 80.39% of any medical, dental, ophthalmic, orthodontic, and prescription drug expenses not covered by Gage's insurance. Joshua was further ordered to pay 80.39% of all extracurricular expenses incurred on behalf of Gage.

*Result:* Affirmed.

*Rationale:* 1. Joshua first asserts that the trial court erred when it calculated his gross monthly income. According to Joshua, he is self-employed and receives income from two food trucks, Sports to Geaux, LLC and Big Meaux's BBQ, LLC. Joshua has calculated what he believes to be his income for the year 2023 using the income listed from each food truck on the Schedule Cs attached to his 2023 tax return and then subtracting what he considers to be ordinary and necessary business expenses required to produce income. [La.R.S. 9:315\(C\)\(3\)\(c\)](#). These “ordinary and necessary expenses” are listed in profit and loss statements created and filed into the record by Joshua. Per Joshua's calculation, his 2023 gross annual combined income from Sports to Geaux, LLC and Big Meaux's Bayou BBQ, LLC was \$150,465.00, which equates to a gross monthly income of \$12,538.75. Joshua then used the profit and loss statements to calculate his 2024 gross annual income at \$146,876.05, which equates to a gross monthly income of \$12,239.67.<sup>2</sup>

Kassie also uses Joshua's 2023 tax return to determine his gross monthly income. However, she includes in her calculation not only his income from Sports to Geaux, LLC and Big Meaux's Bayou BBQ, LLC, but also income from another food truck, Swamp Dawgs to Geaux, LLC, and a fourth business, Jungle Beach Concierge, LLC. Schedule Cs were attached to Joshua's 2023 tax return for all four businesses, indicating that Joshua earned income in 2023 from each. Kassie argues that Joshua's failure to produce the requested discovery at the trial court level was his attempt to conceal and/or underreport his income. She maintains that his income from all four businesses reported in the Schedule Cs attached to his 2023 tax return must be included in calculating his income for purposes of child support. Based on Kassie's calculations, Joshua's total gross annual income is \$256,389.00, with a gross monthly income of \$21,365.75.

In determining Joshua's child support obligation, the trial court relied on the calculations made by Kassie and determined Joshua's gross monthly income to be \$21,365.75. It is undisputed that Kassie's gross monthly income is \$5,210.67, as evidenced by her paycheck from the Rapides Parish School Board. Using these sums to calculate child support per the statutory guidelines, the trial court found that Joshua owes Kassie child support in the amount of \$2,092.73 per month.

Joshua argues on appeal that the trial court erred in giving credence to Kassie's argument that Joshua was attempting to conceal or underreport his income. He further argues that the trial

court blindly accepted Kassie's calculation of Joshua's income. We find that the trial court did not err in accepting Kassie's calculation of Joshua's income. The sums Kassie used to calculate Joshua's income came directly from his own 2023 tax return and the Schedule Cs attached to that tax return from each of his four businesses. Thus, the amount of income used by the trial court to determine child support is supported by the record.

Based on the record, we find that the trial court did not err in placing the burden on Joshua to prove his income. [Louisiana Revised Statutes 9:315.1.1\(A\)](#) provides, “When a party alleges that income is being concealed or underreported, the court shall admit evidence relevant to establishing the actual income of the party[.]” In calculating Joshua's income, Kassie referred the trial court to the 2023 tax return prepared by Joshua's wife and filed into the record by Joshua himself. The trial court found this to be evidence establishing Joshua's actual income and used that income in its calculation of Joshua's child support obligation. While Joshua did provide Profit and Loss Statements to the trial court in support of his claimed income and expenses, these statements were created by him, and no evidence was produced to support the figures included therein.

As stated above, the trial court has great discretion in determining which figures are proper to calculate the amount of a party's gross income. [Murphy, 894 So.2d 542](#). We find that the trial court did not abuse its discretion or commit manifest error when determining Joshua's gross income for purposes of calculating his child support obligation.

2. Joshua next argues that the trial court erred when it failed to account for a preexisting child support obligation. [Louisiana Revised Statutes 9:315\(C\)\(1\)\(a\)](#) specifically provides that, for purposes of determining child support, any amounts Joshua might owe for preexisting child support obligations, under an order of support to another who is not a party to this proceeding, should be subtracted from Joshua's gross income. Joshua claims that he is currently paying child support in the amount of \$550 per month for two minor children from a previous relationship. According to Joshua, he was ordered to pay said child support in docket number 82,912-B in the 10<sup>th</sup> Judicial District Court, Parish of Natchitoches. Nonetheless, the trial court did not subtract this preexisting child support obligation from Joshua's gross income when determining the child support obligation in this proceeding.

We find that the trial court did not abuse its discretion or commit manifest error when it declined to subtract Joshua's alleged preexisting child support obligation from his gross income. There is no evidence in the record, in the form of a judgment, order, or otherwise, to support Joshua's claim of a preexisting child support obligation.

## **2) Potential income: voluntary underemployment**

*Albin v. Albin*, 424 So.3d 1137 (La. App. 1<sup>st</sup> Cir. Nov. 7, 2025)

*Facts:* Aaron Albin and Alicen Albin were married on March 15, 2015, and two children were born of their marriage. Aaron and Alicen physically separated on September 7, 2023, and each filed for divorce on October 12, 2023. In her petition for divorce, among other things, Alicen requested that she be awarded an order of support for the minor children and that the parties pay their *pro rata* share of health insurance expenses as well as education and extracurricular expenses for the minor children.

On May 22, 2024, the trial court conducted a hearing to set the child support obligation.

Aaron testified that he had not provided Alicen with any monetary support for their minor children since the parties separated and that he was currently unable to work. Aaron testified that he was previously employed in the field of industrial maintenance and that his earnings were approximately \$139,700.00 in 2019; \$110,000.00 in 2020; \$118,000.00 in 2021; and \$100,000.00 in 2022. He stated he was most recently employed by Brown and Root, but that he was “laid off” on March 6, 2023. In addition, Aaron testified that in 2020

he was being treated for a [degenerative disc disease](#) by Dr. Eric Oberlander, a spinal surgeon at The NeuroMedical Center. Dr. Graham placed certain physical restrictions on him, including restrictions from overhead work, standing for long periods of time, cervical extension of the neck, and lifting over 25 pounds, which Aaron contended prevented him from obtaining employment in the field of industrial maintenance. Aaron stated that he has not applied for any jobs recently and does not plan on returning to work until a determination is made on his application for disability benefits. Aaron denied having any monthly income, testified that he lived rent-free in a home owned by his father, that his father paid for all of his expenses, that his father and grandmother gave him cash every two weeks, and that his mother gave him \$250.00 per month for groceries. Aaron conceded, however, that in 2023 he earned \$14,400.00 from his employment with Brown and Root before he was laid off, and thereafter, he performed work “flipping” houses and restoring residential and commercial properties owned by his father. He further testified that he had received a “small inheritance” from his uncle following the death of his grandmother and that he “liquidated” his crypto account worth \$76,000.00 at the time it was liquidated.

Alicen testified that Aaron had two job interviews after he was laid off, but he told her that he felt they were not a good fit. Alicen testified that Aaron had ongoing neck issues during the length of their marriage but that his neck condition did not render him unable to work. She stated that his condition “wasn’t a disability until it needed to be a disability.” Alicen testified that she and Aaron invested in a house “flipping” project that he worked on after he was laid off in 2023 from which they each profited approximately \$30,000.00. Alicen introduced photographs of Aaron performing manual labor on the project in June of 2023 after the date that he reportedly became disabled. She further testified that their children reported that Aaron frequently rode motorcycles and dirt bikes and that she had photographs and video of Aaron riding dirt bikes after the date he claimed he became disabled. Alicen testified that on March 1, 2024, Aaron, his father, and brother sold seven residential lots and that Aaron profited from the sale of two of the lots. She further stated that Aaron’s \$76,000.00 crypto account, if he still had it, would have profited \$164,000.00 from a one-day spike.

At the conclusion of the hearing the trial court issued oral reasons, wherein it acknowledged that it had reviewed Aaron’s disability application and was aware that Aaron’s physician had placed him on certain work restrictions. However, the trial court noted that Aaron’s physician did not prohibit him from seeking employment within the imposed physical restrictions. The trial court noted that after reviewing documents outlining “some of [Aaron’s] daily activities[,]” it did not find that he was “totally unemployable.” The trial court thus determined that because Aaron was not prohibited from seeking employment within his imposed restrictions, Aaron was underemployed and subject to an imputation of income. The trial court recognized that it could not impute Aaron’s prior income of over \$100,000.00 a year because there was evidence that he was no longer able to do that job. However, the trial court recognized that Aaron earned income flipping houses and determined that he could perform some type of employment. Thereafter, the trial court signed a judgment on August 21, 2024, ordering: (1) that Aaron is capable of earning a gross income of \$5,500.00 per month; that Alicen’s gross income is projected to be \$5,500.00 per month; and that Aaron shall pay Alicen child support in the amount of \$979.50 per month for the two minor children.

*Result:* Affirmed.

*Rationale:* 1. We first address Aaron’s contention that the trial court erred in finding that he was voluntarily underemployed. Generally, the obligation a parent owes to support their children is based on his or her gross income. [See La. R.S. 9:315.2\(A\)](#). However, if a party is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of the party’s income earning potential (rather than actual gross income). [La.](#)

R.S. 9:315.11(A)(1).

The parties do not dispute that Aaron suffered from a degenerative neck condition for which he sought treatment for years. Yet, in spite of this condition, Alicen offered evidence that over the course of these years, Aaron was able to maintain full-time employment in the industrial maintenance field, perform work “flipping” houses, and renovating residential and commercial properties. He was able to ride motorcycles and dirt bikes even after the time that he indicated he became disabled on his application for disability benefits.

Aaron did not disclose the reason he was “laid off.” Aaron applied for and received unemployment benefits for three weeks after he was first laid off. However, he was unable to attend job fairs as required to maintain the benefits because he was busy flipping houses. Aaron failed to produce any evidence that he had attempted to find employment within his physical restrictions even though his disability application indicated that he was capable of performing light duty work. Moreover, Aaron failed to introduce any evidence to establish how his condition limits his work capabilities. In fact, Aaron candidly admitted that he had no intention of seeking any employment until there was a ruling on his disability application.

After reviewing the evidence and listening to the testimony of the parties, the trial court determined that “[j]ust because [Aaron] can't do certain things doesn't mean [he's] totally unemployable. It just means that [he] may have to seek some other type of employment.” The trial court's factual findings regarding Aaron's employability were based heavily on credibility determinations. Thus, the manifest error standard demands that we accord great deference to the trial court. See Kott, 324 So. 3d at 175. Considering the evidence, and applying the considerations set forth in La. R.S. 9:315.11 to the extent they are known, we cannot say the trial court was manifestly erroneous in finding that Aaron is voluntarily underemployed.

2. Aaron next contends that the trial court erred in imputing a gross monthly income of \$5,500.00 to him. In support, Aaron argues that the “record contains insufficient evidence” to support the imputation of \$5,500.00 as his monthly income. On review, we find this argument disingenuous considering that Aaron failed to produce any documentation to support his income.

Aaron's income prior to 2023 was established by his testimony as well as the Gross Income spreadsheet introduced at trial by Alicen. In 2023, although Aaron testified that his monthly income was “zero,” he acknowledged that he earned \$14,400.00 while employed by Brown and Root; that he received \$31,000.00 in October of 2023 from flipping a house with Alicen; that he inherited money, which was in his savings account; that he has a “crypto currency account” of over \$76,000.00 (that he claimed “doesn't exist anymore” because he converted it into miscellaneous things such as bitcoin, etherum, h-bar, and which he kept in his father's safe); and that he received \$800.00 in cash every month from his father and grandmother. Aaron testified that he had not filed a federal income tax return yet for 2023. Aside from Aaron's testimony, he introduced no documentary evidence to establish or otherwise verify his income.

Aaron had a duty to provide accurate and complete evidence of his income. See La. R.S. 9:315.2(A). Where a party ignores a trial court's orders to produce evidence of income, that party cannot seek to his or her contemptuous behavior in his or her favor to reverse the trial court's child support order. Mindful of the important policy considerations associated with the setting of child support, an obligor parent should not be allowed to benefit from his own recalcitrance. Thus, when a party fails to introduce accurate and complete evidence of his or her current income, a court may nonetheless find that the record contains sufficient evidence with which to calculate the child support obligation.

### 3 Allocation of income tax dependency exemption

*Gauthier v. Johns*, 410 So.3d 413 (La. App. 2d Cir. Apr. 9, 2025)

*Facts* : Mr. Gauthier and Ms. Johns, both residents of Winn Parish, had one child together, A.G., born on June 27, 2018. Although the couple chose not to marry, Mr. Gauthier acknowledges A.G. and is listed on her birth certificate as the father. The couple remained together until A.G. was three years old, at which time the parties separated.

Mr. Gauthier and Ms. Johns were unable to agree on a visitation plan for the 2023-24 school year. As a result, Mr. Gauthier filed a petition for custody on June 26, 2024, in which he requested joint custody of A.G., subject to a joint custody implementation plan. He also requested that the parties alternate claiming the child as a dependent for the income tax dependency exemption. In her answer, Ms. Johns requested that she be named the primary domiciliary parent of A.G., with Mr. Gauthier having reasonable custody periods taking into consideration his out-of-state work schedule. She also asked that the court deny Mr. Gauthier's request to claim their daughter as a dependent every other year for tax exemption purposes.

Ms. Johns also testified that she is in school at Northwestern State University to become a teacher, and she expects to graduate sometime between May and December of 2025. She stated that while she works as a paraprofessional, she relies on the tax exemption to help her get through the year. She indicated that, although Mr. Gauthier makes his child support payments, he does not assist with anything further. She testified that she pays for anything extra that comes up, and the income tax exemption helps balance out those extra expenses associated with extracurricular activities for A.G.

Mr. Gauthier testified that he is current on his child support, he provides health insurance for A.G., and he maintains a double life insurance policy on A.G. He indicated that his child support obligation is \$900 per month. Mr. Gauthier testified that being able to claim A.G. for tax exemption purposes would be a significant benefit to him, especially if he were able to have her for longer periods of visitation.

On August 26, 2024, the trial court issued its judgment and its written reasons for judgment. The trial court designated Ms. Johns as the domiciliary parent and the physical custodian of A.G. when she is not in Mr. Gauthier's physical custody. It also determined that so long as Ms. Johns remains employed, she will be able to claim the child as a dependent on her federal and state income tax returns every year. The trial court then implemented a visitation schedule during the school year.

*Result* : Affirmed.

*Rationale* : Regarding Mr. Gauthier's request to alternate the income tax dependency between the parties, the trial court designated Ms. Johns as the parent to claim A.G. as a dependent on her federal and state income tax return every year. The trial court did stipulate that if Ms. Johns is unemployed for a full taxable year and does not file a tax return, and Mr. Gauthier is employed and current on his child support payment, he can then claim A.G. for that year only.

According to [La. R.S. 9:315.18](#), a non-domiciliary party whose child support obligation equals or exceeds fifty percent of the total child support obligation shall be entitled to claim the child as a dependent for federal and state tax purposes if, after a contradictory motion, the judge finds both of the following: (a) no arrearages are owed by the obligor, and (b) the right to claim the child, or some of the children in the case of multiple children, would substantially benefit the non-domiciliary party without significantly harming the domiciliary party.

In her testimony, Ms. Johns indicated that she relies on this exemption throughout the year. Ms. Johns testified that her income is low as a paraprofessional, and she pays for all of A.G.'s extracurricular activities. She further explained to the court that having to alternate claiming A.G. as a dependent for income tax purposes would be detrimental to her. As a single mother, claiming A.G. as a dependent on her income taxes assists her in getting through the year and balancing her

budget. Given Ms. Johns' testimony and considering that she is pursuing her degree to become a teacher, we find that the trial court did not abuse its discretion in denying Mr. Gauthier's request that the parties alternate each year claiming A.G. as a dependent for income tax purposes.

#### **4 Sanctions for non-payment of child support**

##### **a Contempt**

*Ragland v. Ragland*, No. 2025-0397, --- So.3d ----, 2025 WL 3673300 (La. App. 1 Cir. Dec. 18, 2025)

*Facts:* Robert James Ragland (“Robert”) and Katherine Diamond Ragland (“Katherine”) were married on June 28, 1997, thereafter establishing their matrimonial domicile in East Baton Rouge Parish. Twins named W.R. and P.R. were born of the marriage on January 15, 2011. Robert filed a petition for divorce and custody on June 6, 2017. A judgment of divorce was signed on September 5, 2018.

In a judgment signed by the trial court on September 22, 2020, Katherine was ordered to pay child support to Robert in the amount of \$631.50 per month as direct support, plus 50% of the children's health insurance premiums (\$168.81 per month). The trial court ordered that the current support award would be payable in two monthly installments in the amount of \$400.15, payable on the 1<sup>st</sup> and 15<sup>th</sup> day of each month, commencing September 15, 2020. The trial court further ordered Katherine to pay an additional \$200.00 per month commencing September 15, 2020 until the retroactive arrearages are paid.

On June 20, 2022, Robert filed a rule for arrearages and contempt (“third rule for contempt”), alleging that Katherine owed \$9,811.22 in past due child support. On September 13, 2022, the parties stipulated in open court that Katherine would pay \$7,000.00 to Robert on or before September 16, 2022, with these funds partially being applied to Katherine's child support arrearages. On August 29, 2023, Judge Baker issued written reasons for judgment, finding Katherine in contempt for multiple reasons, including that she had failed to timely pay child support in violation of the September 2020 judgment, and failed to make payments towards the retroactive arrearage balance. In so ruling, the court rejected Katherine’s “ignorance” defense. Katherine testified that she became confused about the payment of child support after the trial court granted the February 3, 2022 protective order. When asked about the September 22, 2020 judgment that ordered her to pay child support, Katherine alleged that she did not have that judgment in her possession. Katherine further alleged that “if someone would have brought it to [her] attention earlier, [she] would have addressed it earlier.” She subsequently testified that she “wants to clear up” anything she owes. The court also rejected Katherine’s argument that she was unemployed and unemployable.

In addition, the court awarded Robert \$22,000.00 in attorney fees and court costs for the filing of the third rule for arrearages and contempt.

*Result:* Affirmed as amended.

*Rationale:* Katherine argues that the trial court erred and abused its discretion by holding Katherine in contempt of court for failing to timely pay child support and failing to pay the retroactive arrearage balance without taking into consideration her unemployment and inability to remain employed. Her argument is contradicted by her own testimony at trial, at which she testified that she has a bachelor's degree in architecture from LSU and works in New Orleans as an architect. Katherine testified that all she does “is work, pretty much,” and averred that she was working on some different apartment renovation projects at the time of trial. She further testified that she paid \$1,500.00 per month to rent an office on Josephine Street in New Orleans and explained that she is able to pay the rent because she works “very hard.”

Considering Katherine's testimony about her employment as an architect, we conclude that there is no basis in the record to support Katherine's assertion that she is unemployed or unable to pay child support. This assignment of error lacks merit.

**b Termination of parental rights**

*State in the Interest of C.W.*, 421 So.3d 570 (La. App. 1<sup>st</sup> Cir. Sept. 19, 2025)

*Facts:* K.W. and E.C. are the biological parents of C.W., born on December 20, 2020. The parents both have a history with the State based on extensive substance abuse and mental health issues. On December 30, 2020, the State received a report with allegations of neglect/drug affected newborn against K.W. as a result of C.W.'s meconium testing positive for marijuana. The State took C.W. into custody on February 18, 2021, by instant order, placing the child in the care of her paternal grandmother. Following a 72-hour continued custody hearing, the district court found reasonable grounds existed to find C.W. was in need of care and ordered that she remain in the custody of the State pending further proceedings.

On August 16, 2021, the matter was set for a review hearing. At that time, it was reported by the State that K.W. had not made any parental contributions to the State but was providing clothes and other things for C.W. K.W. did not have stable housing and had not completed a mental health evaluation, but she was participating in a substance abuse program, random drug screens, and parenting classes. The district court agreed with the State's recommendation to keep C.W. in foster care with the State, "with the current case plan of reunification, concurrent goal of adoption." Because of K.W.'s ongoing substance abuse and employment problems and her failure to make financial contributions for the support of C.W., the plan was later change to adoption only.

The district court signed a judgment on July 29, 2024, terminating the parental rights of K.W. and freeing C.W. for adoption, specifically referencing K.W.'s abandonment of her child. Therein, the district court concluded that the State had proven by clear and convincing evidence that K.W. had abandoned C.W. under [Article 1015\(4\)\(b\)](#), inasmuch as for a period in excess of six consecutive months she failed to provide significant contributions to the child's care and support.

*Result:* Affirmed.

*Rationale:* The State argued that although K.W. was required to provide \$25 per month towards the cost of C.W.'s care, she had not provided any financial contributions for C.W.'s care since she came into the State's custody on February 18, 2021.

K.W. argues on appeal that the State failed to prove that something other than poverty prevented her from offering support, citing [State ex rel. A.T., 2006-0501 \(La. 7/6/06\), 936 So.2d 79, 85 n.7](#) ("Further, poverty, and thus lack of support, cannot be the sole reason for terminating parental rights, there must be willful neglect in the failure of a parent to support his or her children."). She also argues that she struggled to find employment. However, a parent alleging lack of employment as just cause for her failure to pay child support must show not only that she was unemployed but that she was unemployable.

At the termination hearing, K.W. testified that although she was aware that her case plan required that she pay \$25 monthly towards C.W.'s care, she had not made any of the required payments. Rather, K.W. alleged that she contributed directly to C.W., believing that these contributions satisfied her obligation. According to K.W., she had been advised by the judge in a prior hearing that because she was pregnant, she did not have to make the \$25 monthly payments as set forth in her case plan.

By the time of the termination hearing on July 15, 2024, K.W., who claimed to have maintained stable housing and employment since C.W. was removed from her custody, had still not provided proof of employment or her income to the State and had not complied with the requirement that she contribute to C.W.'s support. K.W. stated, "I've had two State tax jobs, but I've always had this where I make my own cash money income every week." At the time of the hearing, K.W. was working for a "little lady" doing whatever she needed done, including cleaning house and doing yardwork. K.W. stated that she had never been asked to verify her employment or to provide a pay stub, adding that her caseworker knows that she gets paid in cash.

As the district court indicated in its oral reasons for judgment, K.W. had offered no funds to help support C.W. since C.W. was taken into the custody of the State. Moreover, the district court noted that although K.W. suggests that she works for cash, she was unable to provide any information about her employment such as how many hours she is working, her salary, or how often she is being paid. [Louisiana Children's Code article 1015\(4\)\(b\)](#) sets a time period of six consecutive months of failing to provide significant contributions to the child's care. Based upon the record, K.W. failed to comply with providing significant support for C.W. for that time period. Therefore, we find no manifest error in the district court's finding.

*State in the Interest of M.P.*, 420 So.3d 1243 (La. App. 3d Cir. Oct. 1, 2025)

*Facts:* The child at issue in this matter, S.E.W., was born on March 20, 2021. In October of 2022, S.E.W. was living in a home with her mother (N.M.), her grandmother (J.P.), and her three older sisters (M.P., I.H., and L.H.). The Department of Children and Family Services (DCFS) received a report on October 17, 2022, of alleged drug/alcohol abuse and lack of supervision regarding the children. An investigation ensued, and three of the four children tested positive for amphetamine, methamphetamine, marijuana, and Delta 9-THC. The mother, N.M., also tested positive for amphetamine and methamphetamine. At the time of the initial investigation, DCFS was awaiting the results of drug tests on the fourth child and the grandmother. It was alleged that a cousin who had been staying in the home was blowing methamphetamine into the children's faces when they were hungry to suppress their hunger and marijuana smoke in their faces to help put them to sleep. The children were removed from the home pursuant to an Instant Order issued on November 2, 2022, and placed in the State's custody.

At the time the children were taken into custody by DCFS, S.E.W.'s father, S.W., was incarcerated, where he remained throughout these proceedings. He was released on November 19, 2024, after the judgment terminating his parental rights was rendered.

A petition was filed on December 6, 2022, alleging that the children should be adjudicated "Children In Need of Care" based on the allegations of drug/alcohol abuse and a lack of adequate supervision. After a series of hearings, the children were adjudicated as children in need of care on March 1, 2023, with their custody to remain with the State.

On May 9, 2024, the State filed a Petition for Termination of Parental Rights and Certification of Minor Children for Adoption, naming both N.M. and S.W. as Respondents. The petition stated several grounds for termination, including this:

[A]s of the time of the filing of the Petition, Respondents have failed to provide significant contributions to the care and support of their minor child(ren) for a period of six consecutive months. This demonstrates the intention to permanently avoid parental responsibility within the meaning of [Ch.C. Art. 1015](#) and is a basis for the termination of the Respondents' parental rights to their minor child(ren).

A hearing was held on October 7, 2024, on the issue of the termination of N.M.'s and S.W.'s parental rights. After hearing testimony from several witnesses and taking judicial notice of all the CINC proceedings, the trial court found that the State met its burden of proof by clear and convincing evidence that neither N.M. nor S.W. substantially complied with their case plan, and that it was unlikely either would comply with the case plan in the future.

*Result:* Affirmed.

*Rationale:* It is undisputed that S.W. did not contribute to S.E.W.'s care and support during the entire time he was incarcerated, well over six months. S.W. testified at the termination hearing that he was in the Transitional Work Program, building mobile homes for Champion Home Builders. According to S.W., he was paid approximately \$800.00 per week, 40% of which he was allowed to keep. When questioned why he did not provide any financial support for S.E.W., S.W. argued at the hearing that while the State had "went after" both N.M. and M.H. for child support, "how come

y'all didn't come after me for child support? I was working, you had the chance, you had the option.... [Y]ou didn't come after me like you did with them two (2). Wish you would, I would have paid it. I had the money in my account.”

Despite S.W.’s argument that he was never told by the State to pay child support for S.E.W., the case plan filed in the record includes the following under “Basic Obligations of Parents”:

[S.W.] will support his children in foster care and agree to pay \$10.00 per month per child when not working and \$25.00 per month per child if working. Make the parental contributions to: Department of Social Services, Department of Children and Family Services, State Office Parental Contribution, P.O. Box 3318, Baton Rouge, LA 70801-3318. [S.W.] will provide a copy to the caseworker. This will be in effect until Support Enforcement picks up child support payments. Then the family will follow Support Enforcement rulings.

Ms. Baines testified that she visited him in prison and gave him a copy of his case plan, which included detailed directions on what he needed to do to pay his monthly obligation to S.E.W. Thus, even though incarcerated, S.W. was notified via his case plan and the DCFS caseworker assigned to the case how much child support he should be paying per month and who to send the payments to.

S.W. was obligated as a parent to financially support his child. He admitted at the termination hearing that even though he was incarcerated, he was being paid for work he was doing through the Transitional Work Program and had available funds in his account to contribute to S.E.W.’s care and support. His argument that he did not pay child support while incarcerated because the State never “came after him” is disingenuous and does not excuse his failure to contribute to the care and support of S.E.W.

Additionally, as noted above, this court has previously held that “incarceration is not a defense to termination of parental rights for failure to pay child support, [La.Ch.Code art. 1015\(4\)\(b\)\[.\]](#)”

*State in the Interest of N.J.*, No. 2025-0278, 2025 WL 2741870 (La. App. 1st Cir. Sept. 19, 2025)

*Facts:* N.J., Sr. and M.C. are the parents of several children, including N.J., Jr., N.J., and A.J. On Thursday, May 5, 2022, the Assumption Parish Sheriff's Office was called out to a home in Labadieville regarding a protective order violation by M.C. Upon arrival, the Sheriff's Office called the Department of Children and Family Services (“DCFS”) due to the conditions of the home and of the seven children<sup>4</sup> in the home. DCFS investigators responded immediately and found the home to be in deplorable condition and the children covered in bug bites and appearing not to have been bathed or changed in quite some time.

On June 10, 2022, M.C. was charged with violation of a protective order, and on June 14, 2022, she was charged with five counts of cruelty to juveniles with force/violence. M.C. was convicted of cruelty to juveniles and remained incarcerated from June 10, 2022 until February 20, 2023.

Later, DCFS petitioned the court to have N.J. and N.J., Jr. declared “child[ren] in need of care”. A Review Hearing was held on October 6, 2022 as to N.J., Jr. and N.J. Neither N.J., Sr. nor M.C. attended the hearing, although notice of the date, time, and place of the hearing and their right to attend was properly served; however, their court-appointed attorneys were present. The trial court ordered the custody of the children to be maintained with DCFS, approved the case plan submitted by DCFS, and ordered all parties to comply with the requirements of the case plan.

A Case Review and Permanency Hearing was held on September 7, 2023. N.J., Sr. and M.C. did not attend the hearing, despite receiving notice. The trial court concluded that adoption was the most appropriate permanent plan for the children and was in their best interests.

On October 11, 2023, M.C. was arrested for forgery and identity theft, and she remained

incarcerated at the time of the trial in this matter more than a year later.

On April 25, 2024, DCFS filed a petition for termination of parental rights and certification for adoption as to N.J., Jr., N.J., and A.J. DCFS asked that N.J., Sr. and M.C.'s rights be terminated pursuant to [La. Ch.C. art. 1015\(4\)](#) and [\(5\)](#), for abandonment of the children by failing to provide significant financial contributions to the children's care for a period in excess of six months and for failure to comply with their case plan for services.

A trial was held on the petition to terminate N.J., Sr. and M.C.'s parental rights on October 30, 2024.

M.C. admitted that she had not made the financial contributions to her children's care and support required by her case plan. M.C. testified that she was told by a DCFS caseworker that she could provide items that the children needed in lieu of a cash contribution, so she and N.J., Sr. bought "diapers and clothes" for the children. M.C. did not say how often they bought items for the children or the value of the items. In addition, M.C. alleged that she tried to maintain stable employment for the time period she was not incarcerated so that she could pay child support, but she was unsuccessful and did not pay every month.

According to N.J., Sr., he has provided some financial support for the children when he was employed. Although he could not provide any documentation of the alleged payments, he testified that he was "pretty sure" child support was automatically deducted from his paychecks, and he "had a \$2-thousand tax check that the IRS took and paid the state to catch up on back child support." In addition to child support payments, N.J., Sr. claimed that he had purchased some things for the children, such as diapers and clothes.

After taking the matter under advisement, the trial court concluded that the State had met its burden of proving by clear and convincing evidence that termination of the parental rights of N.J., Sr. and M.C. is justified under [La. Ch.C. art. 1015](#). The trial court further concluded that it was in the best interest of the children for the parental rights of N.J., Sr. and M.C. to be terminated so that the children may be placed in a stable and permanent home for adoption under [La. Ch.C. art. 1039](#).

*Result:* Affirmed.

*Rationale:* N.J., Sr. and M.C. argue that the trial court erred in finding that DCFS proved by clear and convincing evidence that their failure to provide parental contributions was not based on poverty or DCFS's failure to offer reasonable services to them.

At the termination hearing, Ms. Scott testified that N.J., Sr. and M.C.'s case plans required each to make financial contributions for the children. Ms. Scott testified that during the time that M.C. was not incarcerated (between February 2023 and October 2023), she did not make any financial contributions for her children. Further, DCFS records state that N.J., Sr. had not made any required parental contributions as of June 2023, and his case was referred to the Office of Child Support.

M.C. admitted that she did not make any financial contributions to the children's care, although she was aware that her case plan required her to make \$25.00 monthly financial contributions.<sup>12</sup> M.C. explained that "a caseworker" told her that if she provided "diapers and clothes or whatever they needed that it would cover our twenty-five dollars," so instead of financial contributions, "we gave diapers and clothes." M.C. did not testify as to the value of the items she provided or the frequency of her alleged contributions, nor did she provide any documentation of the in-kind contributions. M.C. further testified at trial that she paid child support when she was not incarcerated, although she admitted that she did not pay it every month, and she did not have any documentation of any alleged payments.

N.J., Sr. testified at trial that when the children came into care, he did not make the financial contributions required by his case plan because "we had gave [sic] diapers, clothes, [etc.], I believe. I had paid for a few things for the children." Like M.C., he did not testify as to the frequency of the purchases or the value of the items purchased, nor did he offer any documentation of the alleged in-kind contributions. Because he believed he was satisfying the financial contribution requirement of his case plan by buying diapers and clothes, he testified that he was surprised when he received

a subpoena for child support enforcement. N.J., Sr. alleged that he has paid child support weekly, by way of automatic payroll deductions, in the last four months that he has been employed. He further testified that he “had a [\$2,000.00] tax check that the IRS took and paid the state to catch up on back child support.” N.J., Sr. could not provide any documentation of the child support payments he claimed were made, but he testified that DCFS should have all of that information.

Here, DCFS showed that N.J., Sr. and M.C. made no significant contributions for their children's care and support for a period in excess of six consecutive months. Although N.J., Sr. and M.C. made vague, unsupported claims that they made some contributions, both in-kind and financial, the trial court clearly did not find this testimony to be credible or the alleged contributions “significant.” Thus, the record supports a finding that DCFS proved the statutory ground of abandonment by clear and convincing evidence. See [La. Ch.C. art. 1015\(4\)\(b\)](#).

Based on the record before us, to the extent that the trial court found that N.J., Sr. and M.C. failed to provide significant contributions toward the children's care from the time the children were taken into custody until the time the petition for termination was filed, such a finding was not manifestly erroneous or clearly wrong.

Even so, N.J., Sr. and M.C. argue that termination pursuant to [La. Ch.C. art. 1015\(4\)\(b\)](#) was erroneous because DCFS did not prove by clear and convincing evidence that their failure to provide significant contributions to the children's care and support was not “due to poverty and financial strain caused by case plan compliance.”

Although the law recognizes certain affirmative defenses to termination of parental rights based upon abandonment under [La. Ch.C. 1015\(4\)\(b\)](#), the burden of proof on any such affirmative defense is on the parents. See [La. Ch.C. art. 1035\(B\)](#) ( The parent asserting a mental or physical disability as an affirmative defense to abandonment pursuant to [Article 1015\(4\)](#) bears the burden of proof by a preponderance of the evidence.”). N.J., Sr. and M.C. do not allege that a mental or physical disability prevented them from providing financial support for the children; rather, they argue that “they attempted to or did work,” and that “they did pay or attempt to pay support.” A parent alleging lack of employment as just cause for his or her failure to pay must show not only that he or she was unemployed but that he or she was unemployable. There is no evidence that N.J., Sr. and M.C. were unemployable; in fact, both N.J., Sr. and M.C. testified that they were employed at various times while the children were in the custody of DCFS. Although M.C. was incarcerated during much of the time that the children were in the custody of DCFS, incarceration is not a defense for the failure to support or maintain contact with one's children in a termination of parental rights case because incarceration results from one's own actions. Further, M.C. admitted that she did not maintain stable employment during the time that she was not incarcerated, and Ms. Scott testified that M.C. failed to provide financial support for the children for at least six consecutive months while she was *not* incarcerated. Furthermore, there is no indication that either N.J., Sr. or M.C. asked for a reduction in the amount of the required monthly payments during these proceedings, despite DCFS's consistent reports that they were noncompliant with that component of the case plan.

## **B Procedural law**

### **1 Untimely appeal**

*DCFS in Interest of A.Z.L. & L.M.L.*, No. 25-423 --- So.3d ----, 2026 WL 124431 (La. App. 5th Cir. Jan. 16, 2026)

*Facts:* On October 13, 2023, the State of Louisiana, Department of Children and Family Services (“DCFS”) filed a Rule for Child Support against defendant pursuant to [La. R.S. 46:236.1.1 et seq.](#), in the Jefferson Parish Juvenile Court. The State requested child and medical support from Mr. Louis for his two minor children, A.Z.L. and L.M.L., whose mother, Ariel Kionna LaCarbiere, receives

services from DCFS.

On May 13, 2024, the parties entered into a consent judgment whereby the parties agreed that the child support award “shall be reduced to \$800.00 per month, beginning May 8, 2024,” pursuant to Worksheet A attached to the judgment. The parties acknowledged in the consent that this was a deviation from the Louisiana Child Support Guidelines, that the child support would continue to be paid by income assignment order, and that the “arrears as of May 8, 2024 shall be set at \$0.”

April 30, 2025, defendant filed a rule to modify child support stating that his oldest child was graduating high school on May 15, 2025. The hearing was set on May 30, 2025. On May 13, 2025, defendant filed another rule to modify child support requesting credit for “the over payment,” to be “released from income withholding,” and removal of “court cost.” The rule was also set for May 30, 2025.

On May 30, 2025, the parties appeared before the hearing officer. The hearing officer recommended denying defendant's rules to modify child support and his request to remove court costs. Defendant disagreed and a disagreement hearing was set for June 30, 2025 before the juvenile court judge. At the conclusion of the disagreement hearing, the juvenile court judge denied defendant's rules to modify child support. Notice of mailing of the judgment was sent to the parties on July 1, 2025. Defendant filed a motion for devolutive appeal on July 30, 2025.

*Result:* Appeal dismissed.

*Rationale:* On appeal, defendant is seeking review of the juvenile court's June 30, 2025 judgment denying his motions for modification of child support. Defendant contends the trial court erred (1) in not finding that he has shared custody of his minor child pursuant to [La. R.S. 9:315.9](#); and (2) in not setting his child support obligation at \$537.63 in accordance with the Louisiana Child Support Obligation Worksheet B.

In [State, Dept. of Children and Family Services in Interest of C.I.B. v. Bye, 16-102 \(La. App. 5 Cir. 5/12/16\), 191 So.3d 1207, 1209](#), this court analyzed whether the appeal delays in the Children's Code ([La. Ch.C. art. 332](#)) or the Code of Civil Procedure ([La. C.C.P. arts. 3942](#) and [3943](#)) applied to a judgment rendered in juvenile court regarding child support filed by the DCFS pursuant to [La. R.S. 46:236.1.1, et seq.](#) The court held that the 15-day time delay for filing an appeal provided in [La. Ch.C. art. 332](#), not the 30-day time delay in [La. C.C.P. art. 3942](#), applied to cases originating from the juvenile court. [Id. at 1210](#).

In this case, the juvenile court judge rendered judgment on June 30, 2025, denying defendant's rules to modify child support. The judgment was mailed to the parties on July 1, 2025 and defendant filed his motion for devolutive appeal on July 30, 2025. Consequently, defendant's appeal is untimely under [La. Ch.C. art. 332](#) because it was filed more than 15 days from the mailing of the notice of judgment.

## **2 Lack of appellate jurisdiction**

*McCarter v. DCFS*, 424 So.3d 1124 (La. App. 1st Cir. Nov. 7, 2025)

*Facts:* On July 24, 2023, McCarter filed suit against the Department, claiming he overpaid child support on behalf of his minor child as a result of the Department's inaccurate position that he was in arrears. McCarter claims he suffered damages due to the Department's negligent actions. He seeks to recover compensation for his injuries, “reimbursement of the remaining overpayment” he made to the Department, attorneys’ fees, and costs.

The Department filed an exception raising the objection of prescription, asserting that McCarter's “tort claims for negligence have prescribed” and seeking dismissal of those claims.<sup>1</sup> The Department urged these claims were subject to a liberative prescriptive period of one year that lapsed prior to the date McCarter's suit was filed.

By judgment dated April 23, 2024, the trial court sustained the Department's exception of

prescription and dismissed McCarter's "tort claims for negligence" against the Department with prejudice at McCarter's cost. On May 22, 2024, McCarter filed a pleading bearing the caption, "Notice of Appeal," stating he "hereby appeal[s]" a March 18, 2024 judgment. By order dated June 28, 2024, the trial court ordered the East Baton Rouge Parish Clerk of Court to "forward the entire Record on Appeal" to this court. The Clerk of Court issued a notice of appeal, stating, "an order of appeal was entered granting a DEVOLUTIVE appeal from the judgment of 4/23/24, which appeal is returnable to the FIRST CIRCUIT COURT OF APPEAL[ ], on 7/28/24[.]"

The Department responded by filing a motion to dismiss McCarter's appeal. The Department asserts that because the judgment on appeal dismisses only McCarter's negligence claims and his reimbursement claims remain outstanding, the judgment is a partial judgment that is not immediately appealable absent a designation of finality pursuant to [La. C.C.P. art. 1915\(B\)](#).

*Result:* Appeal dismissed.

*Rationale:* We conclude this court lacks appellate jurisdiction to review the trial court's judgment granting the Department's exception.

This court's appellate jurisdiction extends to final judgments and to interlocutory judgments when expressly provided by law. See [La. C.C.P. arts. 1841](#) and [2083](#). A final judgment is one that determines the merits of a controversy, in whole or in part. [La. C.C.P. art. 1841](#). In contrast, an interlocutory judgment does not determine the merits but only preliminary matters in the course of an action. [La. C.C.P. art. 1841](#). Whether the judgment before us is appealable is determined by examining the requirements of [La. C.C.P. art. 1915](#). [Louisiana Code of Civil Procedure article 1915\(A\)](#) identifies those partial final judgments that are appealable as a matter of right.

A review of the April 23, 2024 judgment on appeal demonstrates that it does not fall into any of the categories of partial final judgments set forth in [La. C.C.P. art. 1915\(A\)](#). The judgment herein granted the Department's exception of prescription and dismissed only McCarter's tort claims for negligence. McCarter's reimbursement claim for overpaid child support remains pending. A judgment on an exception of prescription that deals with less than all the issues between the parties is a partial judgment, which is not appealable unless designated as final for purposes of an immediate appeal by the trial court. Because the April 23, 2024 judgment does not contain a designation that it is final for purposes of immediate appeal pursuant to [La. C.C.P. art. 1915\(B\)\(1\)](#), it is not final and appealable. Therefore, this Court is precluded from exercising its appellate jurisdiction to review this judgment.

Although this court has discretion to convert an appeal to an application for supervisory writs, we decline to convert the appeal of this non-final judgment to an application for a supervisory writ as a reversal of the trial court's judgment would not terminate the litigation in whole or in part.

### **III Miscellaneous odds & ends**

#### **A Paternity in "child in need of care" cases**

*In the Interest of J.K.*, No. 25-284, 2025 WL 1808852, 25-284 (La. App. 5th Cir. July 1, 2025)

*Facts:* This matter originated from a Child In Need of Services proceeding involving a child (J.K.), who tested positive for cocaine at birth. Shortly after his birth, the Department of Children and Family Services (DCFS) was notified. DCFS received the case and applied for instant custody of the child. Early in the DCFS investigation, three possible fathers were identified: T.B., A.F., and W. DCFS was granted instant custody of J.K. In the December 5, 2024 continued custody hearing, the juvenile court found the child in need of immediate protection and care. Based on the representation of A.K. that J.K. is his child, the juvenile court ordered A.K. to submit to DNA paternity testing. DNA testing was scheduled for January 13, 2025. In the meantime, A.F. was allowed limited visitation with J.K.

A.F. objected to the juvenile court's order for him to submit to DNA paternity testing, asserting that he has acknowledged paternity of J.K. by signing the birth certificate. For that reason, he repeatedly refused to undergo such testing.

On March 7, 2025, a court report filed by DCFS listed A.F. as J.K.'s legal father, because he signed the birth certificate. However, A.F. was never adjudicated to be the child's father. He is not listed as the biological father.

On May 23, 2025, the child's attorney filed an emergency motion to suspend extended visitation, arguing that allowing visitation before paternity is established by DNA testing risked irreparable psychological harm to the child, and could cause attachment disruptions. Counsel for the child also raised concerns that DCFS permitted an unsupervised visit between A.F. and J.K. On May 27, 2025, after a pre-trial conference, the juvenile court ordered an unsupervised one weekend visit between A.F. and J.K., and informed DCFS to file a motion to transfer custody to A.F. if the visit went well. A purported act of acknowledgment signed by A.F. was filed into the record at that same conference.

*Result:* Vacated.

*Rationale:* The writ application presented us shows that the establishment of paternity in this case is critical to ensure proper placement of this child. While we recognize that A.F. claims to be the father, signed the birth certificate, and executed a purported act of acknowledgement, the juvenile court clearly ordered A.F. to submit to DNA testing to establish his paternity. We also recognize that DCFS can place a child with an alleged parent based on biological connection, even if paternity has not been formally established through legal proceedings. However, in this case, at this time, no biological connection between A.F. and J.K. has been established, much less a judgment of paternity issued. This matter involves three possible fathers. We find the juvenile court's failure to enforce its order for DNA paternity testing of A.F., an alleged father, has delayed this essential determination to the detriment of the child's best interest.

Accordingly, the May 27, 2025 ruling of the juvenile court is vacated and the matter is remanded for further proceedings pending DNA test results.

## **B      Objection to voluntary act of surrender: showing of substantial commitment to parental responsibilities**

*IN RE: Termination of Parental Rights to the Minor Child L.C.T.*, No. 2025-0698, --- So.3d ----, 2025 WL 3546822 (La. App. 1st Cir. Dec. 11, 2025)

*Facts:* K.T. is the biological mother of L.C.T., who was born on October 13, 2024. On September 25, 2024, K.T. executed a notice of intent to surrender the minor child for adoption to the St. Elizabeth Foundation ("St. Elizabeth"), an agency licensed for the placement of children by the State of Louisiana, and filed the notice in East Baton Rouge Parish Juvenile Court. IN that notice, K.T. stated that the alleged birth father of the child is believed to be a young man named T.G. K.T. was 14 years old when L.C.T. was born. On October 16, 2024, three days after the birth of L.C.T., K.T. surrendered L.C.T. to St. Elizabeth via voluntary act of surrender for adoption.

On October 18, 2024, T.G. filed an objection to K.T.'s notice of intent to surrender L.C.T. for adoption, claiming to be L.C.T.'s biological father. Like K.T., T.G. was 14 years old when L.C.T. was born.

On October 21, 2024, St. Elizabeth filed a motion to approve K.T.'s voluntary act of surrender and terminate K.T.'s parental rights. This motion was later granted in an order signed by the juvenile court on January 28, 2025.

On December 12, 2024, the juvenile court ordered T.G. to submit to a paternity test at a facility mutually agreed upon by the parties and to split the associated costs. The paternity test results revealed T.G. to be the biological father of L.C.T.

On February 19, 2025, E.G. and G.G., on behalf of T.G., filed a petition for paternity,

custody, and ex parte order of custody, requesting that the juvenile court recognize T.G. as L.C.T.'s biological father and grant temporary emergency custody of L.C.T. to T.G. pending a hearing on his opposition to the adoption. Relevantly, T.G. asserted that genetic testing determined him to be the biological father of L.C.T. and it would be in L.C.T.'s best interests for T.G. to be awarded sole custody of the child.

Regarding the ongoing discovery issues, St. Elizabeth indicated at the March 26, 2025 hearing that it received untimely discovery responses from T.G. on February 10, 2025. St. Elizabeth further asserted that T.G.'s discovery responses were incomplete and did not include any of the documents requested by St. Elizabeth. St. Elizabeth averred that T.G. supplemented his discovery responses by providing certain documents on March 25, 2025, the day before the hearing. Pertinently, St. Elizabeth prayed that its requests for admissions be deemed admitted due to T.G.'s deficient discovery responses. Following argument, the juvenile court denied this request and further denied St. Elizabeth's motion for contempt.

At the conclusion of T.G.'s presentation of evidence at the trial, Mr. Sabine, the attorney appointed to represent L.C.T., moved for a directed verdict on behalf of L.C.T., arguing that T.G. failed to demonstrate a substantial commitment to his parental responsibilities as required by [La. Ch. C. art. 1138](#). St. Elizabeth joined in Mr. Sabine's motion. In response, T.G. argued that he was willing to provide support to K.T. and L.C.T., but his attempts were thwarted by K.T.

The juvenile court ruled in favor of Mr. Sabine and St. Elizabeth, finding that the evidence warranted a granting of the involuntary dismissal and that K.T. had failed to establish his parental rights. Accordingly, the juvenile court terminated K.T.'s parental rights and freed L.C.T. for adoption.

In oral reasons, the juvenile court indicated that its ruling hinged upon whether T.G. made reasonable attempts to manifest a parental commitment, was thwarted in his efforts, and is now willing and able to assume care of the child. See [La. Ch. C. art. 1138\(B\)\(2\)](#). The juvenile court questioned whether T.G.'s offers of support, which he asserted were rejected, constituted a reasonable attempt.

*Result:* Reversed.

*Rationale:* T.G. argues that the juvenile court erred in granting the motions for involuntary dismissal and dismissing his opposition to the adoption. He argues that the juvenile court erred when it failed to find that T.G. was willing to make a substantial commitment to his parental responsibilities but was thwarted in his efforts by K.T. or her agents. T.G. further argues that he is willing and able to assume legal and physical care of L.C.T.

Although an unwed father's biological link to his child does not guarantee him a constitutional stake in his relationship with that child, such a link combined with a substantial parent-child relationship will do so. When an unwed father demonstrates a full commitment to the responsibilities of parenthood and an ability to participate beneficially in the rearing of his child, his interest in personal contact with his child acquires substantial protection under the state and federal due process clauses.

[Louisiana Children's Code article 1138\(B\)](#) sets forth in detail what must be shown to prove a substantial commitment to parental responsibilities. [In re Adoption of A.P.C., 776 So.2d at 578](#). The father must show that he provided financial support, including but not limited to the payment of medical expenses of the pregnancy and birth, or contributions of consistent support after birth. [Id.](#) Pursuant to [La. Ch. C. art. 1138\(B\)\(2\)](#), if the support was not provided, the father must show that he was willing to provide such support and made reasonable attempts to manifest such parental commitment, but was thwarted in his efforts by the mother or her agents. [In re Adoption of A.P.C., 776 So.2d at 578](#). Substantial commitment and parental fitness are factual findings that are entitled to deference unless the trial court is clearly wrong.

T.G.'s arguments in this case arise under [La. Ch. C. art. 1138\(B\)\(2\)](#). At trial, T.G. testified that he never doubted that he was L.C.T.'s father and that he informed K.T. that he wanted to be a part of L.C.T.'s life. He testified that he frequently offered assistance to K.T. at school, including

daily offers to help take care of her expenses, but K.T. declined assistance. T.G. also testified that he and his mother, G.G., purchased a crib, diapers, clothes, formula, wipes, baby bottles, and baby powder during the pregnancy, which K.T. also declined to accept. Insofar as G.G. paid for the items listed above, we observe that the juvenile court found that the efforts of T.G.'s family should be attributed to T.G., a finding based on [In Interest of E.C.B., 691 So.2d 687](#).

The cases cited by Mr. Sabine are inapposite. In each of these three cases, the mothers of the children at issue testified about their child's father's failure to manifest his substantial commitment to parenting the child. Conversely, our decision is primarily based upon T.G.'s uncontroverted testimony, which we must take as true to establish the fact for which it is offered, *i.e.* to establish that T.G. made frequent offers of support. See [Succession of Arseneaux, 360 So.3d at 872](#). At this stage of the proceedings, no evidence has been presented to rebut T.G.'s assertions that he repeatedly offered support but was denied. Therefore, we find that the trial court erred in granting the motions for involuntary dismissal filed by Mr. Sabine, on behalf of L.C.T., and St. Elizabeth.

Considering the evidence as a whole, including T.G.'s uncontroverted testimony, T.G. has presented sufficient evidence to establish that it is more probable than not that T.G. repeatedly offered support to K.T. and she declined those offers. See [Succession of Arseneaux, 360 So.3d at 872](#). Because T.G. presented evidence sufficient to defeat the motions for involuntary dismissal raised by Mr. Sabine and St. Elizabeth, we conclude that the trial court's grant of the motions for involuntary dismissal was manifestly erroneous.