

A PRIMER ON CLAIMS OF SPOUSES IN LOUISIANA

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This Article is the sixth in a series of primers on Louisiana Family Law. The Louisiana Civil Code of 1870, as amended to date, operates as the primary source of law, with other ancillary statutes and codes on particular subject matters. The law of claims of spouses appears in three different parts of the Code. First, claims of spouses for support during the marriage are found in Chapter 3 in Title IV on Husband and Wife. Second, claims of spouses for support pending divorce or thereafter are found in Section 1 of Chapter 2 in Title V on Divorce. Finally, claims of spouses for contributions to education or training are found in Section 2 of Chapter 2 in Title V on Divorce.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	263
INTRODUCTION	264
I. CLAIM FOR SUPPORT OWED DURING THE MARRIAGE	265
II. CLAIM FOR SPOUSAL SUPPORT.....	266
A. THE HISTORICAL DEVELOPMENT OF SPOUSAL SUPPORT IN LOUISIANA.....	266
B. INTERIM SPOUSAL SUPPORT.....	268
1. ROLE OF FAULT	269
2. CONSIDERATIONS FOR INTERIM SPOUSAL SUPPORT	270
a. Needs of Claimant.....	271

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b. Other Spouse's Ability to Pay	274
3. DURATION OF INTERIM SPOUSAL SUPPORT	276
C. FINAL SPOUSAL SUPPORT.....	278
1. ROLE OF FAULT	278
2. CONSIDERATIONS FOR FINAL SPOUSAL SUPPORT...	284
D. TIME LIMITATIONS ON SPOUSAL SUPPORT CLAIMS	289
E. MODIFICATION OF SPOUSAL SUPPORT	290
F. TERMINATION AND EXTINGUISHMENT OF SPOUSAL SUPPORT	292
1. TERMINATION OF SPOUSAL SUPPORT	292
2. EXTINGUISHMENT OF SPOUSAL SUPPORT.....	294
G. PARTIES' FREEDOM OF CONTRACT	296
1. WAIVER OF SPOUSAL SUPPORT BY CONTRACT.....	296
2. OTHER TOPICS OF CONTRACTUAL AGREEMENT	298
III. AWARDS FOR CONTRIBUTION TO EDUCATION OR TRAINING	299
CONCLUSION.....	303

INTRODUCTION

Louisiana law provides spouses with three potential claims against one another. First, a spouse may make a claim for support during the marriage pursuant to the reciprocal duties of support that spouses owe to one another.¹ Second, a spouse may make a claim for spousal support, which may be interim spousal support (during the pendency of a divorce action)² or final spousal support (after the termination of the marriage).³ Finally, a spouse may make a claim for the financial contributions made during the marriage to the education or training of the other spouse (in a proceeding for divorce or thereafter).⁴

Although spouses may not sue one another as a general rule,⁵ among other exceptions, they are allowed to do so to seek spousal support while the parties are living separate and apart⁶

1. LA. CIV. CODE ANN. art. 98.

2. *Id.* arts. 105, 111, 113-117.

3. *Id.* arts. 105, 111-112, 114-117.

4. *Id.* art. 121.

5. LA. STAT. ANN. § 9:291.

6. *Id.*

or in a proceeding for divorce or thereafter.⁷

I. CLAIM FOR SUPPORT OWED DURING THE MARRIAGE

By operation of law, the contract of marriage creates the reciprocal duty of support for the spouses as detailed in Louisiana Civil Code Article 98.⁸ Note that Louisiana law imposes this duty on spouses *during* their marriage, regardless of any impending separation or divorce.⁹ As such, it is distinguishable from interim spousal support (the claim to which arises during the pendency of a divorce action) and final spousal support (the claim to which arises upon the termination of the marriage).

This duty of support covers the necessities of life—food, clothing, and shelter.¹⁰ With regard to shelter, one court has interpreted this duty to foreclose one spouse from evicting the other spouse from the matrimonial domicile that was the separate property of the spouse seeking the eviction.¹¹ The duty of support also extends to the cost of modern conveniences like telephones, appliances, and automobiles.¹²

Like most reciprocal duties imposed on spouses,¹³ the duty of support is a rule of public order. This means that generally the parties may not contractually avoid it.¹⁴ However, courts have allowed spouses who opted out of the community property regime to agree on an allocation of expenses during the marriage and

7. LA. CIV. CODE ANN. art. 105.

8. *Id.* art. 98.

9. *See, e.g.*, *Chi v. Pang*, 94-284, p. 3 (La. App. 3 Cir. 10/5/94); 643 So. 2d 411, 413.

10. *Bernhardt v. Bernhardt*, 283 So. 2d 226, 229 (La. 1973).

11. *Purdy v. Purdy*, 331 So. 2d 868, 869 (La. App. 2 Cir. 1976).

12. LA. CIV. CODE ANN. art. 98 cmt. c (1987).

13. Louisiana law provides two other reciprocal duties as well. *Id.* First is the duty of fidelity, which provides that spouses may not commit adultery (i.e., the negative duty of fidelity) and that they submit to the “reasonable and normal sexual desires” of the other spouse (i.e., the positive duty of fidelity). LA. CIV. CODE ANN. art. 98 cmt. b (1987). *See, e.g.*, *Von Bechman v. Von Bechman*, 386 So. 2d 910 (La. 1980). Second is the duty of assistance. While this duty arguably falls within the scope of the duty of support, it also includes the personal care to be given to an ill or infirm spouse. LA. CIV. CODE ANN. art. 98 cmt. c (1987).

14. LA. CIV. CODE ANN. art. 7; *see Favrot v. Barnes*, 332 So. 2d 873, 875 (La. App. 4 Cir. 1976) (rejecting the idea that parties, by a premarital understanding, can repeal or amend the nature of marital obligations set forth in the Louisiana Civil Code).

even to allocate the everyday and usual expenses of the marriage to one spouse alone, finding that such an arrangement did not violate Article 98.¹⁵

II. CLAIM FOR SPOUSAL SUPPORT

A. THE HISTORICAL DEVELOPMENT OF SPOUSAL SUPPORT IN LOUISIANA

Louisiana first codified the concept of spousal support (formerly called “alimony”) in Article 160 of the Louisiana Civil Code of 1870.¹⁶ At that time, the law allowed a spouse to obtain a separation from bed and board and/or divorce only on grounds of the other spouse’s fault,¹⁷ so alimony, likewise, was tied to fault. In its original form, only a wife could obtain alimony from her at-fault husband.¹⁸ Preeminent French scholar Marcel Planiol insinuated that alimony was a duty of the at-fault husband to make pecuniary amends to the wife for his fault, such that the wife would be restored to the means and resources of which she had been deprived because of his fault.¹⁹ Any alimony award was paid from the husband’s property (not his earnings), and it could not exceed one-third of his income.²⁰

In 1916, Louisiana enacted Act 269, which recognized no-fault divorce, allowing either spouse to obtain a divorce on proof of living separate and apart for a certain period of time.²¹ To

15. See *Gereighty v. Domingue*, 17-339, p. 17 (La. App. 5 Cir. 5/30/18); 249 So. 3d 1016, 1030.

16. *Player v. Player*, 110 So. 332, 332-33 (La. 1926).

17. LA. CIV. CODE ANN. arts. 138-139 (1870); *McAlpine v. McAlpine*, 94-1594, p. 4 (La. 9/5/96); 679 So. 2d 85, 88.

18. *Player*, 110 So. at 332; *McAlpine*, 94-1594, p. 4; 679 So. 2d at 88.

19. *McAlpine*, 94-1594, p. 4; 679 So. 2d at 87 (quoting Planiol, CIVIL LAW TREATISE, Vol. I, No. 1259, pp. 696-97 (La. State Law Institute Translation 1959) (“Divorce having destroyed the marriage, no effects of it should continue. Upon what idea is founded persistence of the obligation of support between two persons who have nothing in common? Its basis is found in a principle already mentioned more than once. Whatever act of man causes damage to another obliges him by whose fault it happened to repair it, says Art. 1382. As long as the marriage lasted it gave each of the spouses an acquired position upon which each could count. The community of life permitted the spouse without means to share the welfare of the other. Suddenly through no fault of the spouse in question, he or she find himself or herself devoid of resources and plunged into poverty. It is manifestly in such a case as this that the guilty party should be made to bear the consequences of his wrongful acts.”)).

20. *Player*, 110 So. at 332; *McAlpine*, 94-1594, p. 4; 679 So. 2d at 88.

21. *McAlpine*, 94-1594, p. 4; 679 So. 2d at 88. The time period changed several

address the no-fault divorce scenario, Article 160 was amended to remove the husband's fault as a pre-requisite for alimony; instead, it required the wife to prove that she was not at fault.²² This amendment also made alimony payable from the husband's earnings, as well as from his property.²³ In 1979, the legislature again amended Article 160 to allow either spouse who had not been at fault to assert a claim for alimony.²⁴ This amendment served to remove the unconstitutional gender-bias from the article.²⁵

Under current law, the request for spousal support commonly arises in connection with a divorce proceeding (fault or no-fault based) or thereafter. Spousal support is one of the many incidents that a party may request.²⁶ The request may also arise in a proceeding for the declaration of nullity of a marriage.²⁷ In a pending proceeding, the court may award a party the same incidental relief afforded in a divorce proceeding,²⁸ and after a declaration of nullity, "a party entitled to civil effects of marriage may seek the same relief as a divorced spouse."²⁹

Either spouse in the proceeding may seek spousal support, and such support may be one of two types—interim periodic support or final period support (discussed, in turn, in Parts B and C below).³⁰ One may assert a claim for both, either, or neither of these types of spousal support, but the decision to award spousal support lies within the sole discretion of the court.³¹ Summary proceedings may be employed for the original spousal support awards, as well as for subsequent modifications and/or

times, from as many as seven years separate and apart to as few as 180 days separate and apart. *Id.*

22. *Id.*

23. *Player*, 110 So. at 332.

24. *Lovell v. Lovell*, 378 So. 2d 418, 421 (La. 1979).

25. *Smith v. Smith*, 382 So. 2d 972, 974 (La. Ct. App. 1 Cir. 1980); *Lovell*, 378 So. 2d at 421.

26. LA. CIV. CODE ANN. art. 105. Others include custody, visitation, or support of a minor child; injunctive relief, use and occupancy of the family home, or use of community movables or immovables; or use of personal property. *Id.*

27. LA. CIV. CODE ANN. arts. 151-152.

28. *Id.* art. 151.

29. *Id.* art. 152. Even a spouse not entitled to civil effects of marriage may be awarded custody, child support, or visitation, and the declaration of nullity has no effect on such awards. *Id.*

30. LA. CIV. CODE ANN. art. 111.

31. *Id.*

termination of spousal support.³²

In proceedings involving a claim for spousal support, both parties must provide to the court a copy of their most recent federal tax returns, a verified income statement that shows gross income and adjusted gross income, as well as documentation of current and past earnings.³³ Pay stubs or employer statements generally qualify as suitable documentation.³⁴ If a spouse has an ownership interest in a business, state and federal income tax returns with all attachments and schedules, the most recent profit/loss statement, balance sheets, financial statements, quarterly sales tax reports, personal and business bank account statements, receipts, and expenses should qualify as suitable documentation.³⁵

In the event that a party alleges that the other party is hiding or underreporting income, the court will admit evidence of redirected income³⁶ and deferred income,³⁷ and in the event that the income claimed is inconsistent with the spouse's lifestyle, the court will admit evidence of that spouse's standard of living and assets both before and after the establishment of a spousal support order.³⁸ When a spouse's income cannot be sufficiently established from the foregoing, courts may admit evidence of wage and earnings surveys distributed by government agencies for the purpose of attributing income.³⁹

B. INTERIM SPOUSAL SUPPORT

The first type of spousal support that a party may seek is interim spousal support (previously known as *alimony pendente lite*). Recognition of this type of support predated its codification,⁴⁰ which happened in Article 146 of the Louisiana

32. LA. CODE CIV. PROC. ANN. art. 2592.

33. LA. STAT. ANN. § 9:326(A).

34. *Id.*

35. *Id.*

36. Redirected income might include loans to that spouse by a business they own or payments (in the form of wages or salary) by that spouse or a business they own to someone related to that spouse. LA. STAT. ANN. § 9:326(B).

37. Deferred income might include recent reductions in the distribution of income from the spouse's business to the spouse. *Id.*

38. *Id.*

39. LA. STAT. ANN. § 9:326(C).

40. *Malony v. Malony*, 9 Rob. 116, 116 (La. 1844) (an interlocutory decree ordering defendant to pay \$10 per month alimony pendente lite); *Player*, 110 So. at

Civil Code of 1870.⁴¹ That article provided: “If the wife has not a sufficient income for her maintenance during the suit for separation, the judge shall allow her a sum for her support proportioned to the means of the husband.”⁴²

Under current law, the claim is gender-neutral, and the spouse in need will seek support from the other spouse who has the ability to pay⁴³ when the parties are physically separated with a pending divorce action.⁴⁴ The foundation of this type of spousal support is the mutual duty of support imposed on spouses.⁴⁵ As one court explained: “A spouse’s right to claim interim periodic support is grounded in the statutorily imposed duty on spouses to support each other during marriage and thus provides for the spouse who does not have sufficient income for his or her maintenance during the period of separation.”⁴⁶ Thus, this type of spousal support serves to preserve the status quo, i.e., to allow spouses to adjust to the new normal of living apart without suffering unnecessary economic detriment.⁴⁷ Stated another way, interim spousal support preserves parity in the levels of maintenance and support and avoids unnecessary financial dislocation until a final determination of support can be made.⁴⁸

1. ROLE OF FAULT

It is important to note that a spouse’s fault is irrelevant to a court’s determination of interim spousal support.⁴⁹ This is because interim spousal support is awarded while the marriage is still intact, and as mentioned above, spouses are statutorily bound to support each other during their marriage pursuant to

332-33.

41. As one court noted, this type of alimony has been in the Louisiana Civil Code since its inception. *Cassidy v. Cassidy*, 477 So. 2d 84, 85 (La. 1985).

42. LA. CIV. CODE art. 148 (1870).

43. The terminology change was made in the 1997 revisions to the articles via Act 1078. 1997 La. Sess. Law Serv. Act 1078 (H.B. 2053) (West).

44. LA. STAT. ANN. § 9:291; LA. CIV. CODE ANN. art. 113.

45. *See* LA. CIV. CODE ANN. art. 98.

46. *Hogan v. Hogan*, 49,979, p. 16 (La. App. 2 Cir. 9/30/15); 178 So. 3d 1013, 1022.

47. LA. CIV. CODE ANN. art. 113 cmt. b.

48. *Rodriguez v. Rodriguez*, 2020-0171, p. 3 (La. App. 1 Cir. 11/6/20); 315 So. 3d 913, 916-17 (citing *Lambert v. Lambert*, 2006-2399, p. 10 (La. App. 1 Cir. 3/23/07); 960 So. 2d 921, 928).

49. LA. CIV. CODE ANN. art. 111.

Louisiana Civil Code Article 98.⁵⁰ Thus, the relevant inquiry is the continued existence of the marriage,⁵¹ and fault plays no role in the determination of interim spousal support.⁵²

2. CONSIDERATIONS FOR INTERIM SPOUSAL SUPPORT

Either party may move for interim spousal support.⁵³ In deciding whether to award it, the court considers the moving party's needs, the other party's ability pay, any interim or final child support obligation (presumably of the payor),⁵⁴ and the parties' standard of living during the marriage.⁵⁵ The length of the marriage is irrelevant.⁵⁶ The party claiming interim support bears the burden of proving entitlement to it,⁵⁷ and the court may consider the entire financial condition of the spouses in making its decision.⁵⁸

A judgment awarding an interim spousal support allowance is retroactive to the date of judicial demand except for good cause shown.⁵⁹ A court determines whether there is good cause shown on a case-by-case basis.⁶⁰ In *Cabral v. Cabral*, the court found good cause to delay commencement where the payor was unable

50. *Larson v. Larson*, 16-695, p. 2 (La. App. 5 Cir. 10/25/17); 229 So. 3d 1043, 1048; *Holly v. Holly*, 2018-207, pp. 2-3 (La. App. 3 Cir. 9/26/18); 255 So. 3d 1158, 1160.

51. *Hall v. Hall*, 08-706, p. 4 (La. App. 5 Cir. 2/10/09); 4 So. 3d 254, 257; *Short v. Short*, 09-639, p. 9 (La. App. 5 Cir. 3/23/10); 33 So. 3d 988, 994.

52. *Lightell v. Lightell*, 17-327, p. 8 (La. App. 5 Cir. 12/13/17); 234 So. 3d 244, 250.

53. Prior to the 2018 revision to Article 113, the court could award interim spousal support upon the motion of a party or when a demand for final spousal support was pending. Under current law, a party must simply move for interim spousal support. LA. CIV. CODE ANN. art. 113 cmt. c.

54. This consideration was inserted by legislature in 2014. 2014 La. Acts No. 616, § 1.

55. LA. CIV. CODE ANN. art. 113(A).

56. *Galbraith v. Galbraith*, 382 So. 2d 1042, 1043 (La. Ct. App. 2 Cir. 1980) (“Neither the brevity of the marriage nor the wife’s capacity to earn a gainful wage are factors to be considered in setting alimony pendente lite”).

57. *Molony v. Harris*, 2009-1529, pp. 3-4 (La. App. 4 Cir. 10/14/10); 51 So. 3d 752, 757.

58. *Curry v. Curry*, 19-49, p. 4 (La. App. 5 Cir. 2/12/20); 292 So. 3d 128, 132.

59. LA. STAT. ANN. § 9:321(A).

60. *Roan v. Roan*, 38,383, pp. 21-22 (La. App. 2 Cir. 4/14/04); 870 So. 2d 626, 639 (citing *Piccione v. Piccione*, 2001-1086 (La. App. 3 Cir. 5/22/02); 824 So. 2d 427, 433 (“good cause” must be determined on a case-by-case basis and must constitute, if not a compelling reason, certainly a reason of such significance and gravity that “it would be inequitable to deny an extension of such support.”)).

to work while recovering from surgery for a malignant tumor.⁶¹ In cases like this, the court will set the date on which the award commences.⁶²

a. Needs of Claimant

The first step in an interim spousal support claim is for the claimant to demonstrate need, i.e., the amount sufficient to maintain the claimant in a standard of living comparable to that enjoyed while living with the other spouse during the marriage.⁶³

To assess the claimant's needs, courts look at the claimant's means and their expenses. In considering the claimant's means, one court considered the child support received by the claimant for a child of a previous marriage to be part of her income and also imputed full-time earning capacity to the claimant despite the fact that she did not work full-time due to court-ordered attendance at Alcoholics Anonymous meetings.⁶⁴ In considering the claimant's expenses, those incurred during the marriage are appropriate for consideration on a claim for interim spousal support, but they must be reasonable.⁶⁵ Thus, a claimant must show that they lack sufficient income to maintain that standard of living.⁶⁶

As to the standard of living, this "relates to facts as they have existed during the time that the parties were living together and as they actually exist at the time the litigation commences, not to the future possibilities and capabilities."⁶⁷ With regard to the claimant's ability to maintain themselves in that standard of living, a heavily litigated issue is whether the earning capacity of the claimant should be considered. Courts have consistently held that the claimant may not establish their needs by arbitrarily refusing to work.⁶⁸ They have also routinely considered the

61. *Cabral v. Cabral*, 503 So. 2d 144 (La. Ct. App. 5 Cir. 1987).

62. LA. STAT. ANN. § 9:321(E).

63. *King v. King*, 51,942, pp. 4-5 (La. App. 2 Cir. 4/11/18); 247 So. 3d 973, 977.

64. *Molony*, 2009-1529, pp. 3-4; 51 So. 3d at 757.

65. *Rockett v. Rockett*, 51,453, p. 9 (La. App. 2 Cir. 6/21/17); 223 So. 3d 1227, 1233.

66. Note, though, that courts have specified that the claimant need not be practically destitute to qualify for spousal support. *Loyacano v. Loyacano*, 358 So. 2d 304 (La. 1978).

67. LA. CIV. CODE ANN. art. 113 cmt. b.

68. *See, e.g., Fairchild v. Fairchild*, 537 So. 2d 1260, 1260-62 (La. App. 4 Cir. 1989); *Richard v. Richard*, 577 So. 2d 110, 112 (La. App. 1 Cir. 1991); *LeBlanc v.*

earning capacity of the claimant spouse where the claimant was the primary wage earner during the marriage, where the claimant spouse was regularly employed during the marriage and has the capability of securing employment, or where neither spouse was employed.⁶⁹ However, interim spousal support is not foreclosed for a claimant who does not accept the first available job regardless of the circumstances or the income to be earned.⁷⁰

Courts employ one of three different rationales in deciding whether to consider the claimant's earning capacity. First, some courts refuse to consider the claimant's earning capacity where the claimant spouse was not the primary wage earner and was not regularly employed during the marriage.⁷¹ Courts reason that the status quo of the parties during the marriage precludes a consideration of future possibilities or capabilities, and parties should continue in the roles that they held during the marriage until they are divorced.⁷² Second, some courts simply state that, given the permissive "may" in Louisiana Civil Code Article 113, the court is vested with the discretion to consider all relevant factors, which may or may not include earning capacity.⁷³ Finally, some courts reason that if the claimant is able to work for their own support, interim spousal support is inappropriate.⁷⁴

In *Rodriguez v. Rodriguez*, the court awarded interim spousal support to a fifty-six-year-old wife who had little formal education and limited English language skills and who suffered from medical issues.⁷⁵ She had been unemployed for most of the

LeBlanc, 405 So. 2d 1187, 1188-89 (La. App. 1 Cir. 1981).

69. See, e.g., *Evans v. Evans*, 49,160, p. 6 (La. App. 2 Cir. 6/25/14); 145 So. 3d 1093, 1096; *Brar v. Brar*, 2001-0370, p. 7 (La. App. 3 Cir. 10/3/01); 796 So. 2d 810, 815.

70. *Whipple v. Whipple*, 424 So. 2d 263, 268 (La. App. 1 Cir. 1982).

71. See, e.g., *Evans*, 49,160, pp. 5-6; 145 So. 3d at 1096; *Arrendell v. Arrendell*, 390 So. 2d 927 (La. Ct. App. 2 Cir. 1980); *Braswell v. Braswell*, 494 So. 2d 1333, 1338 (La. App. 2 Cir. 1986); *Clayton v. Clayton*, 431 So. 2d 1082, 1084 (La. App. 2 Cir. 1983); *Harrington v. Campell*, 413 So. 2d 297, 302 (La. App. 3 Cir. 1982); *Cortinez v. Cortinez*, 414 So. 2d 830, 831-32 (La. App. 4 Cir. 1982).

72. *Evans*, 49,160, pp. 5-6; 145 So. 3d at 1096.

73. See, e.g., *Hardee v. Hardee*, 551 So. 2d 846, 848 (La. Ct. App. 3 Cir. 1989); *Wester v. Wester*, 564 So. 2d 799, 804 (La. App. 3 Cir. 1990); *Kirkpatrick v. Kirkpatrick*, 41851, p. 5 (La. App. 2 Cir. 1/24/07); 948 So. 2d 390, 394.

74. See, e.g., *Smith*, 382 So. 2d at 974 ; *Morris v. Morris*, 413 So. 2d 285 (La. Ct. App. 3 Cir. 1982); *Jones v. Jones*, 612 So. 2d 240, 241-42 (La. Ct. App. 4 Cir. 1992); *Daigle v. Daigle*, 96-541, p. 3-4 (La. App. 3 Cir. 11/6/96); 689 So. 2d 478, 480.

75. *Rodriguez*, 2020-0171, pp. 7-8; 315 So. 3d at 919-20.

marriage, and even when employed, only earned minimum wage.⁷⁶ The court found that even assuming that she could return to work, her income earning potential at minimum wage would be insufficient to meet her expenses.⁷⁷

In some interim spousal support claims, litigants have raised the issue of whether a claimant should be forced to deplete assets to meet their needs. In making that determination, courts apply a rule of reasonableness and have considered the relative financial positions of the parties, the type of asset under consideration, and the consequences of its liquidation.⁷⁸ As explained by the Louisiana Supreme Court:

[I]n determining the rate at which a spouse may be required to deplete his or her assets, it may be pertinent to consider the mental and physical health of the parties, their age and life expectancy, the parties' other financial responsibilities, the relative ability, education and work experience of the parties, and the potential effect of any contemplated depletion of assets upon the children of the marriage. The problem is of such a nature as to be unsusceptible of solution by any exact formula or monetary index, and the court should proceed with great caution and due regard for the probable long range effects of any depletion contemplated.⁷⁹

Typically, though, a court will not require the claimant to deplete assets to meet their needs except to the extent that those assets can be invested such that they will generate income without the risk of loss of capital.⁸⁰ In *Sonfield v. Deluca*, therefore, the Louisiana Supreme Court refused to allow the claimant's \$92,000 worth of equity in her home (a non-liquid asset) to serve as a basis to terminate her existing spousal support award.⁸¹ To do otherwise, it found, would force the claimant to sell her home and exhaust the equity for her support until such time as she again needed to be totally dependent upon her former spouse.

76. *Id.* at 919.

77. *Id.*

78. *Loyacano*, 358 So. 2d at 311.

79. *Id.*

80. *See, e.g.*, *Arceneaux v. Arceneaux*, 426 So. 2d 745, 747 (La. App. 3 Cir. 1983); *Thomas v. Thomas*, 281 So. 2d 471, 473 (La. App. 4 Cir. 1973); *Patton v. Patton*, 37,401, pp. 6-8 (La. App. 2 Cir. 9/24/03); 856 So. 2d 56, 60-61.

81. *Sonfield v. Deluca*, 385 So. 2d 232, 235 (La. 1980).

b. Other Spouse's Ability to Pay

Once the claimant demonstrates the need for interim spousal support, the court will then assess the other spouse's ability to pay.⁸² In other words, the claimant's needs are limited only by the other spouse's ability to pay.⁸³ Thus, the court must assess the payor's "means." Obviously, a court will consider the payor's income from labor or services performed.⁸⁴ However, the term "means" extends beyond income to any resource from which the wants of life may be supplied.⁸⁵ As a result, courts have considered the payor's physical property, income from such property, and earning capacity.⁸⁶ They have also considered social security benefits,⁸⁷ veterans' benefits,⁸⁸ retirement income,⁸⁹ profitability of a corporation (where payor owned fifty percent of a Subchapter S corporation that reported profit from income and interest),⁹⁰ and draws against future commissions.⁹¹ In a recent case, the court considered the expenses of a husband paid by his parents as an income source to be considered as part of his means.⁹² In *Goldberg v. Goldberg*, the court ordered a wife who inherited more than \$1 million from her parents to pay interim spousal support to her husband who earned \$160,000 per year during the marriage, despite the fact that the wife had never worked during the marriage.⁹³ In *Sykes v. Sykes*, a husband failed to carry his burden of proof that he lacked the means to pay interim spousal support.⁹⁴ He testified that he was not employed regularly, working only a day occasionally.⁹⁵ He claimed that he

82. *Hight v. Hight*, 2017-0566, pp. 5-6 (La. App. 4 Cir. 12/13/17); 234 So. 3d 1143, 1147.

83. *McFall v. Armstrong*, 10-181, p. 4 (La. App. 5 Cir. 10/12/10); 50 So. 3d 904, 907.

84. *Rockett*, 51,453, pp. 9-12; 223 So. 3d at 1233-1234.

85. *Curry*, 19-49, pp. 5-6; 292 So. 3d at 133-134.

86. *Rockett*, 51,453, pp. 9-10; 223 So. 3d at 1233-1234.

87. *Prestenback v. Prestenback*, 2008-0457, pp. 12-13 (La. App. 1 Cir. 11/18/08); 9 So. 3d 172, 181.

88. *Vassallo v. Vassallo*, 540 So. 2d 1300, 1302-03 (La. Ct. App. 5 Cir. 1989).

89. *Id.* at 1302.

90. *Dagley v. Dagley*, 96-1796, pp. 4-5 (La. App. 4 Cir. 5/21/97); 695 So. 2d 521, 523.

91. *Gravois v. Gravois*, 495 So. 2d 315 (La. Ct. App. 4 Cir. 1986).

92. *Curry*, 19-49, pp. 5-6; 292 So. 3d at 133-34.

93. *Goldberg v. Goldberg*, 96-2145, p. 8 (La. App. 4 Cir. 7/23/97); 698 So. 2d 63, 67-68.

94. *Sykes v. Sykes*, 308 So. 2d 816, 817 (La. Ct. App. 4 Cir. 1975).

95. *Id.*

had tried to secure employment with no success, which he attributed to his lack of education and skill.⁹⁶ The court stated that to be excused from his spousal support obligation, he would have to show absolute unemployability, i.e., that he had exhausted every possibility to find employment.⁹⁷

Once the court determines the means of the payor, it will also consider the payor's reasonable expenses. For example, in *Alexander v. Alexander*, the court declined to award interim spousal support to a wife whose husband was paying considerable community debts.⁹⁸ It reasoned that because he alone was paying these debts, this expense would preclude him from having the sufficient means to pay the requested support.⁹⁹

In a case where the amount the claimant needs to maintain the prior standard of living exceeds the other party's ability to pay, the court will fix interim spousal support at a sum that will be just and fair to all parties involved.¹⁰⁰ Where there is not enough money for both, the court will not allow one spouse to live better than the other.¹⁰¹

Unlike final spousal support discussed in Part C below, there is no statutory maximum on the amount of interim spousal support.¹⁰² However, in *Martello v. Martello*, the appellate court found an abuse of discretion by the trial court that set interim spousal support at sixty-four percent of the payor's income, particularly in light of the fact that after paying child support, the payor would only have \$886.83 left for his own expenses.¹⁰³

96. *Id.*

97. *Id.*

98. *Alexander v. Alexander*, 2002-683, p. 10 (La. App. 3 Cir. 11/13/02); 831 So. 2d 1060, 1067.

99. *Id.*; see also *Cabral*, 503 So. 2d at 147; *Stansbury v. Stansbury*, 258 So. 2d 170, 172-73 (La. Ct. App. 1 Cir. 1972).

100. *Lambert v. Lambert*, 2006-2399, p. 11 (La. App. 1 Cir. 3/23/07); 960 So. 2d 921, 929.

101. See *Arrendell*, 390 So. 2d at 930; *Rodriguez*, 2020-0171, p. 3; 315 So. 3d at 917; *Rockett*, 51,453, p. 10; 223 So. 3d at 1234.

102. Compare LA. CIV. CODE ANN. art. 112(D) (providing for a maximum final spousal support award of 1/3 of the obligor's net income, absent abuse), with LA. CIV. CODE ANN. art. 113 (no maximum interim spousal support award provided).

103. *Martello v. Martello*, 2006-0594, p. 9 (La. App. 1 Cir. 3/23/07); 960 So. 2d 186, 194-95.

3. DURATION OF INTERIM SPOUSAL SUPPORT

In its original form, *alimony pendente lite* terminated at the judgment of divorce.¹⁰⁴ However, beginning in 1997, the termination of interim spousal support was not necessarily aligned with the divorce judgment. Article 113 of the Louisiana Civil Code, at that time, provided a general rule that an award of interim spousal support terminated upon the rendition of a divorce judgment, but several exceptions existed to complicate the general rule.¹⁰⁵ First, if a claim for final spousal support was pending when the divorce judgment was rendered, the interim spousal award would terminate at the rendition of the judgment awarding or denying final spousal support or 180 days from the rendition of the divorce judgment, whichever came first, but it could be extended for good cause.¹⁰⁶ Second, if a claim for final spousal support was pending when the divorce judgment was rendered on grounds of abuse or protective order and the final spousal support award was equal to or less than the interim spousal support award, the interim spousal support award would terminate no less than 180 days from the rendition of the divorce judgment.¹⁰⁷

In 2018, Article 113 was amended to provide the current version of the law, which is straightforward and simplifies the pre-amendment rules. Under current law, interim spousal support terminates 180 days from the rendition of a judgment of divorce as a general rule,¹⁰⁸ and thus, in most instances, the duration of an interim spousal support award is not discretionary.¹⁰⁹ The current law provides a uniform set of rules for all interim support awards, and it ties the duration of the award solely to the judgment of divorce as opposed to the demand for final spousal support.¹¹⁰ Note that the amendment is prospective only because the change to the article is substantive.¹¹¹

104. *Wascom v. Wascom*, 96-0125, p. 4 (La. 4/8/97); 691 So. 2d 678, 680.

105. LA. CIV. CODE ANN. art. 113 (1997).

106. *Id.*

107. *Id.*

108. LA. CIV. CODE ANN. art. 113.

109. *Id.* art. 113 cmt. c (2018).

110. *Id.*

111. *Hanna v. Hanna*, 53,210, pp. 6-7 (La. App. 2 Cir. 11/20/19); 285 So. 3d 116, 120.

However, an interim spousal support award may be extended for good cause.¹¹² Good cause is determined on a case-by-case basis.¹¹³ As explained by one court, good cause must constitute a significant or grave reason such that it would be inequitable to deny an extension of support.¹¹⁴ Another court provided that an extension must be genuinely needed, for a legitimate purpose, and “not calculated to cause hardship or to obtain as much spousal support as possible for as long as possible.”¹¹⁵

In *Larocca v. Larocca*, the court extended interim spousal support in favor of a sixty-four-year-old wife who had been out of the work force for ten years during the marriage and who had only two years of junior college study in interior design, rejecting the payor’s argument that an extension should only be granted to a disabled claimant or one who cannot find work due to forces preventing such.¹¹⁶ In *Hogan v. Hogan*, the court extended interim spousal support because the payor engaged in financial gamesmanship and withheld support to an extent that the court labeled outrageous and extreme, leaving the claimant destitute in the process.¹¹⁷ Similarly, in *Bernstein v. Bernstein*, the court found good cause to extend interim spousal support where the trial on the issue took place two years after the date of demand, mainly due to the payor’s actions.¹¹⁸ During that time, the payor failed to meet many obligations. He failed to pay child support, did not produce information necessary to determine spousal support (causing continuances), and did not pay attorney’s fees, court costs, and expert fees incurred because of those continuances.¹¹⁹ All of this resulted in the claimant having to file motions for contempt, take advances on community property funds, and secure loans to support herself and the children.¹²⁰ Had the court not granted the extension, the interim spousal

112. LA. CIV. CODE ANN. art. 113.

113. *Piccione*, 2001-1086, pp. 9-10; 824 So. 2d at 433.

114. *Id.*

115. *Roan*, 38,383, p. 22; 870 So. 2d at 639.

116. *LaRocca v. LaRocca*, 14-255, pp. 10-11 (La. App. 5 Cir. 10/29/14); 164 So. 3d 207, 213-14.

117. *Hogan*, 49,979, pp. 25-26; 178 So. 3d at 1027.

118. *Bernstein v. Bernstein*, 2019-1106, pp. 16-17 (La. App. 4 Cir. 2/10/21); 313 So. 3d 413, 425.

119. *Id.*

120. *Id.* at p. 17; 313 So. 3d at 425.

support award would have terminated more than a year before trial.¹²¹

C. FINAL SPOUSAL SUPPORT

Final spousal support (formerly known as permanent periodic alimony)¹²² is the other type of spousal support recognized by Louisiana law. Unlike spouses in an intact marriage, former spouses have no duty to support one another.¹²³ As such, some earlier opinions characterized final spousal support awards as a “pension”¹²⁴ or a “pure gratuity” awarded in the court’s discretion.¹²⁵ Thus, a claim for final spousal support differs from one for interim spousal support.

The obligation to pay final spousal support does not begin until the termination of an interim spousal support award.¹²⁶

1. ROLE OF FAULT

As has been the case from the inception of final spousal support claims, fault plays a very important role. Per the Louisiana Civil Code, one must be free from fault prior to the filing of the divorce action¹²⁷ to be awarded final spousal support.¹²⁸ Whether a claimant was at fault is a question of fact.¹²⁹ In assessing fault in the context of final spousal support,

121. *Id.* at pp. 16-17; 313 So. 3d at 425.

122. The terminology change was made in the 1997 revisions to the articles via Act 1078. 1997 La Acts No. 1078, § 1, eff. Jan. 1, 1998.

123. *Barber v. Barber*, 2009-0780, p. 5 (La. App. 1 Cir. 5/7/10); 38 So. 3d 1046, 1050.

124. *Player*, 110 So. at 333 (“As the marriage is forever dissolved, there is no obligation arising from it. The law accords, not alimony in such a case, but a pension, to the unfortunate spouse who has obtained the divorce. This pension becomes revocable in case it should become unnecessary, and in case the wife should contract a second marriage”).

125. *Fortier v. Gelpi*, 197 So. 138, 140 (La. 1940).

126. LA. CIV. CODE ANN. art. 113(B).

127. This timing provision was inserted in the 1997 revision to the articles. *See Jones v. Jones*, 34,822, p. 2 (La. App. 2 Cir. 6/20/01); 793 So. 2d 243, 245. It is a recognition that for fault to bar final spousal support, it should be directly related to and a substantial cause of the dissolution of the marriage. *See Brown v. Brown*, 50,833, p. 7 (La. App. 2 Cir. 8/10/16); 200 So. 3d 887, 893 (“A spouse may be awarded final periodic support when he or she is in need of support and is free from fault prior to the filing of a petition for divorce, based on the needs of that party and the ability of the other party to pay.”).

128. LA. CIV. CODE ANN. arts. 111-112(A).

129. *Matthews v. Matthews*, 15-499, p. 5 (La. App. 5 Cir. 12/23/15); 184 So. 3d 173,

as a general rule, the claimant bears the burden of proving no fault.¹³⁰ Of course, proving a negative is not the easiest burden to satisfy. One court found that the claimant satisfied her burden by offering her own testimony that she was not at fault and the testimony of others who stated that that she performed her fair share of the household duties, the couple rarely argued, and they never saw her nag her husband.¹³¹ In the event that a spouse agrees to pay final support, this constitutes a judicial admission that the payee spouse is free from fault,¹³² and, in such a situation, the issue cannot be raised later.¹³³

This general rule—that the claimant bears the burden of proving lack of fault—carries two noteworthy exceptions under which the law provides that a spouse is presumed to be entitled to final spousal support.¹³⁴ First, when a judgment of divorce is granted due to the fault of one spouse,¹³⁵ the other spouse is presumed to be entitled to final spousal support.¹³⁶ Second, when one spouse is guilty of domestic abuse of the other spouse or a child of either of them, the victim spouse is presumed to be entitled to final spousal support.¹³⁷ Like any presumption, these are rebuttable.¹³⁸ In both instances, the burden of proof shifts to the non-claimant to rebut the presumption, and that burden is met by proving that the claimant was at fault.¹³⁹

The first issue that arises in assessing fault is its definition.

176; *Barnett v. Barnett*, 15-766, p. 6 (La. App. 5 Cir. 5/26/16); 193 So. 3d 460, 466.

130. *Hutson v. Hutson*, 39,901, p. 6 (La. App. 2 Cir. 8/9/05); 908 So. 2d 1231, 1235.

131. *Id.* at pp. 7-8; 908 So. 2d at 1236.

132. *See, e.g., Vesper v. Vesper*, 469 So. 2d 458, 460 (La. App. 3 Cir. 1985).

133. *See Shows v. Shows*, 345 So. 2d 975, 977 (La. App. 2 Cir. 1977); *Mitchell v. Mitchell*, 539 So. 2d 839, 842 (La. Ct. App. 1989), *reversed on other grounds*, 541 So. 2d 831 (La. 1989).

134. LA. CIV. CODE ANN. art. 112(C).

135. The Louisiana Supreme Court developed this burden-shifting mechanism in the context of divorces granted on the basis of the non-claimant's adultery; *see Lagars v. Lagars*, 491 So. 2d 5 (La. 1986); but until 2018, it was only in the jurisprudence. The 2018 amendment to Article 112 (Paragraph C) via Act 265 codified this mechanism and explicitly extended it to situations when a divorce is granted on any fault-based ground, not just adultery. 2018 La. Sess. Law Serv. Act 265 (H.B. 125) (West). It also specifically allows the court to make a finding of abuse, regardless of the grounds on which the divorce was granted, and it extends the presumption to the victim, as well. *Id.*

136. LA. CIV. CODE ANN. art. 112(C).

137. *Id.*

138. *See id.* at cmt. c.

139. LA. CIV. CODE ANN. art. 112(C).

Fault has a different interpretation in the context of final spousal support than it does in the context of divorce. To be at fault for divorce purposes, one must commit adultery,¹⁴⁰ be convicted of a felony carrying a sentence of death or life imprisonment,¹⁴¹ or perpetrate or threaten abuse.¹⁴² These grounds qualify as fault for purposes of final spousal support as well,¹⁴³ but they are not the exclusive grounds of fault in this context.

When it comes to fault for final spousal support, the list of conduct that qualifies is actually much broader. Fault in this context has been defined as “serious misconduct which is a cause of the marriage’s dissolution.”¹⁴⁴ It has also been expressed as “conduct or substantial acts of commission or omission by a spouse violative of his or her marital duties or responsibilities.”¹⁴⁵ It has been equated with the fault grounds that previously existed for separation from bed and board under former law¹⁴⁶ and includes cruel treatment or outrages, abandonment, habitual intemperance or excess, public defamation, an attempt on the other’s life, fugitive status, and intentional non-support.¹⁴⁷ Additionally, courts have decided that violations of the marital duties of fidelity, support, and assistance also constitute fault.¹⁴⁸ That said, one seeking final spousal support need not be perfect

140. Of course, adultery includes sexual intercourse during the marriage with someone other than a spouse, but the concept is not that limited. Louisiana cases have extended it to other sexual contact, as well. *See, e.g.*, *Menge v. Menge*, 491 So. 2d 700, 701-02 (La. App. 5 Cir. 1985); *Bonura v. Bonura*, 505 So. 2d 143, 144 (La. App. 4 Cir. 1987). To prove adultery, one may offer (1) direct evidence or (2) circumstantial evidence that leads fairly and necessarily to the conclusion that adultery has been committed. *Lyons v. Lyons*, 33,237, p. 7 (La. App. 2 Cir. 10/10/00); 768 So. 2d 853, 858.

141. A guilty plea to the crime will suffice as a “conviction.” *Scheppf v. Scheppf*, 430 So. 2d 370, 372 (La. App. 3 Cir. 1983). Additionally, one is still convicted even if the appeals process has not been exhausted. *Nickels v. Nickels*, 347 So. 2d 510, 511 (La. App. 2 Cir. 1977).

142. LA. CIV. CODE ANN. art. 103(2)-(5).

143. *Gitschlag v. Gitschlag*, 593 So. 2d 1331, 1335 (La. App. 1 Cir. 1991).

144. *Anderson v. Anderson*, 2002-1226, p. 3 (La. App. 3 Cir. 3/5/03); 839 So. 2d 1091, 1094.

145. *Simon v. Simon*, 96-876, p. 6-7 (La. App. 5 Cir. 5/14/97); 696 So. 2d 68, 72; *Guillory v. Guillory*, 2008-1375 (La. App. 3 Cir. 4/1/09); 7 So. 3d 144, 144.

146. *Allen v. Allen*, 94-1090, p. 8 (La. 12/12/94); 648 So. 2d 359, 362.

147. *Rusk v. Rusk*, 2012-176, p. 7 (La. App. 3 Cir. 6/6/12); 102 So. 3d 193, 199.

148. *See Guillory*, 2008-1375, p. 4; 7 So. 3d at 147 (explaining that “fault” contemplates conduct or substantial acts of commission or omission by a spouse violative of his or her marital duties or responsibilities and that those spousal obligations include fidelity, support, and assistance).

to be free from legal fault.¹⁴⁹

Cruel treatment is commonly asserted as fault in litigation involving final spousal support. To succeed in proving this ground, one must show (1) cruelty occurred; and (2) it rendered marital life insupportable.¹⁵⁰ A continued pattern of mental harassment, nagging, and griping can qualify as fault.¹⁵¹ However, friction or dissatisfaction in the marital relationship or incompatibility of the spouses,¹⁵² complaints and criticism,¹⁵³ and mere bickering and fussing will not suffice,¹⁵⁴ even where one spouse says extremely harsh things. For example, in *Rusk v. Rusk*, while fighting about money, the wife told her husband that she “should blow his head off.”¹⁵⁵ Although the couple owned guns, the husband failed to show that he believed his wife’s words were any more than baseless comments made in the heat of an argument or that the wife had the capacity or ability to harm him.¹⁵⁶ By contrast, in *Cauthron v. Cauthron*, the court denied a wife’s claim for final spousal support due to her cruel treatment.¹⁵⁷ She exhibited a cavalier attitude toward her husband’s health and refused to accompany him to Mexico for surgery.¹⁵⁸ The court found this was the final straw leading to the dissolution of the marriage.¹⁵⁹ Other examples of conduct that amounts to cruel treatment include persistently refusing to engage in sexual intercourse without justification,¹⁶⁰ engaging in intimate relations with someone other than a spouse (even if not adulterous under the legal definition of that term),¹⁶¹ and continuously or habitually failing to perform household chores

149. See *Matthews*, 15-499, p. 6; 184 So. 3d at 177.

150. ROBERT C. LOWE, DIVORCE § 8:175, in 1 LA. PRAC. DIVORCE § 8:175 (2021).

151. *Adkins v. Adkins*, 42,076, p. 4 (La. App. 2 Cir. 4/11/07); 954 So. 2d 920, 923.

152. *Id.*

153. See *Allen*, 94-1090, p. 9; 648 So. 2d at 362; see generally *Lyons*, 33,237; 768 So. 2d at 859.

154. *King*, 48,881, p. 9; 136 So. 3d at 947; *Anderson*, 2002-1226, p. 3; 839 So. 2d at 1093.

155. *Rusk*, 2012-176, p. 2; 102 So. 3d at 196.

156. *Id.* at p. 8; 102 So. 3d at 199.

157. *Cauthron v. Cauthron*, 2012-0913, p. 2 (La. App. 1 Cir. 2/15/13); 113 So. 3d 232, 233.

158. *Id.* at p. 5; 113 So. 3d at 234-35.

159. *Id.*

160. *Jergins v. Jergins*, 451 So. 2d 1336, 1338 (La. Ct. App. 1 Cir. 1984).

161. *Slaughter v. Slaughter*, 436 So. 2d 1352 (La. Ct. App. 3 Cir. 1983).

over a long period of time.¹⁶²

In *King v. King*, the husband alleged that the claimant's abandonment¹⁶³ precluded her from an award of final spousal support.¹⁶⁴ The court disagreed, determining that while she did withdraw from the common dwelling,¹⁶⁵ she had lawful cause to do so, given the payor's lack of support and communication with her following her cancer diagnosis, as well as his steps to end the marriage and eliminate her access to a bank account and television and internet service while she was undergoing difficult medical treatments.¹⁶⁶ Further, the payor never requested that she return, and therefore, he could not prove that she constantly refused to return, which is another necessary element of an abandonment claim.¹⁶⁷

In *Rodrigue v. Rodrigue*, the court considered whether a wife's drinking qualified as habitual intemperance rendering the marriage insupportable.¹⁶⁸ It explained that the inquiry is one of the extent and habitualness of consumption rather than amount consumed and that the other spouse's reaction must be considered.¹⁶⁹ Under the facts of the case, the husband also drank, and the two of them consented to, participated in, and encouraged the other's drinking.¹⁷⁰

The second issue that arises in assessing fault is its timing. To bar final spousal support, the claimant's fault must have

162. *Carter v. Carter*, 316 So. 2d 829 (La. App. 3 Cir. 1984); *but see* *Lamb v. Lamb*, 460 So. 2d 634 (La. App. 3 Cir. 1984) (where a wife's failure to perform chores was not fault given the spouses' financial standing allowing them to dine out and hire a maid).

163. In addition to the traditional notions of abandonment, constructive abandonment also constitutes fault. This is where a spouse, without lawful cause, prevents the other spouse from entering the matrimonial domicile. *See, e.g.*, *Kruger v. Kruger*, 397 So. 2d 21, 23 (La. App. 2 Cir. 1981); *Guillory v. Guillory*, 626 So. 2d 826, 830 (La. Ct. App. 2 Cir. 1993) (citing *Quinn v. Quinn*, 412 So. 2d 649 (La. Ct. App. 2 Cir. 1982)).

164. *King v. King*, 48,881, p. 11 (La. App. 2 Cir. 2/26/14); 136 So. 3d 941, 948.

165. If both parties agree to the withdrawal, there is no grounds for abandonment. *Gitschlag*, 593 So. 2d at 1336.

166. *King*, 48,881, p. 11; 136 So. 3d at 948.

167. The one asserting abandonment has the burden to show the other's withdrawal; once successful, the one who withdrew has the burden to show lawful cause justifying the abandonment. *LOWE*, *supra* note 150, at § 8:177.

168. *Rodrigue v. Rodrigue*, 424 So. 2d 1185, 1187-88 (La. Ct. App. 1 Cir. 1982).

169. *Id.*

170. *Id.*

occurred before the filing of a proceeding to terminate the marriage.¹⁷¹ In other words, the conduct in question must be an independent, contributory, or proximate cause of the breakup of the marriage.¹⁷² In *Matthews v. Matthews*, the court determined that while the claimant's daily marijuana use to increase her appetite (because of anorexia) could constitute habitual intemperance or excess (i.e., fault), the consumption must be to such an extent that it substantially interferes with the person's marital duties or inflicts great mental anguish upon the other.¹⁷³ In this instance, her husband knew of her habit prior to and during the marriage, and she fulfilled her marital duties.¹⁷⁴ Thus, the claimant's marijuana use was not a proximate cause of the dissolution of the marriage.¹⁷⁵ Courts have also held that when a spouse does not find out about the other spouse's fault until after the filing of the divorce petition, the conduct will not bar spousal support.¹⁷⁶

Note, too, that if the parties reconcile after the act of fault, the fault is essentially extinguished under the rationale that the spouse not at fault condoned it.¹⁷⁷ Of course, if the conduct continues post-reconciliation, the pre-reconciliation fault is revived to show a pattern of conduct constituting fault.¹⁷⁸

The spouse alleged to be at fault can defend against a finding of fault in several ways. Health concerns have excused a spouse's behavior, and a spouse who is provoked may be justified in reasonably responding to the other spouse's fault. For example, in *Barnett v. Barnett*, the court noted that the reason for the claimant's failure to keep or clean the house was her health issues, and therefore, her conduct did not amount to legal fault.¹⁷⁹ In *Anderson v. Anderson*, the court explained that if alcoholism or

171. LA. CIV. CODE ANN. arts. 111-112(A).

172. *Bowes v. Bowes*, 2000-1062, p. 4 (La. App. 4 Cir. 8/15/01); 798 So. 2d 996, 999.

173. *Matthews*, 15-499; 184 So. 3d at 174.

174. *Id.* at 178.

175. *Id.* at 179.

176. *Henry v. Henry*, 2008-692, p. 3 (La. App. 3 Cir. 12/10/08); 999 So. 2d 255, 257.

177. *Hamsa v. Hamsa*, 95-736, 95-737, p. 4 (La. App. 5 Cir. 1/17/96); 668 So. 2d 1209, 1211; *see also* *Noto v. Noto*, 09-1100, p. 7 (La. App. 5 Cir. 5/11/10); 41 So. 3d 1175, 1180 ("The effect of reconciliation is to "wipe the slate clean" and make the issue of fault of the parties prior to the reconciliation moot as to any cause of action subsequent to the reconciliation.").

178. *Bloodworth v. Bloodworth*, 306 So. 2d 812, 814 (La. App. 3 Cir. 1975).

179. *Barnett*, 15-766, pp. 12-13; 193 So. 3d at 469.

dependency is an illness over which the alcoholic has no control, this may excuse what would otherwise be considered fault, assuming, of course, that the illness caused the behavior constituting fault.¹⁸⁰

A frequently litigated issue is whether the conduct of an alleged at-fault spouse was simply a justifiable response to the other's initial acts. For example, a spouse who suspects infidelity may become quarrelsome or hostile (even to the point of cruel treatment) or may become a habitual substance abuser, and courts have determined that this is a reasonable reaction, not fault.¹⁸¹ In *Miller v. Miller*, despite telling her husband that she did not love or like him, the wife was not at fault, given her reasonable suspicion that he was having an affair.¹⁸² In such situations, the suspicion of adultery causes the break up, not the claimant's reaction.¹⁸³ In *Jergins v. Jergins*, the court found the wife justified in occasionally refusing sexual relations when it was because of her husband's drunkenness.¹⁸⁴ Similarly, "[i]n the domestic violence context in particular, the court should consider the potentially responsive nature of a victim's response."¹⁸⁵ In other words, abuse is a provocative act, and a spouse's response, which might otherwise constitute fault, may be deemed a justifiable response. In *Smith v. Smith*, a court awarded final spousal support to a wife who threw boiling water on her husband because her conduct was a reasonable or justifiable response to her husband's provocative act.¹⁸⁶

2. CONSIDERATIONS FOR FINAL SPOUSAL SUPPORT

In addition to freedom from fault, a claimant must be in need of support to obtain final spousal support.¹⁸⁷ In determining need for support, the court will evaluate the needs of the claimant and the payor's ability to pay.¹⁸⁸

180. *Anderson v. Anderson*, 379 So. 2d 795, 796 (La. Ct. App. 4 Cir. 1979).

181. *See, e.g., Diggs v. Diggs*, 2008-1271, p. 4 (La. App. 3 Cir. 4/1/09); 6 So. 3d 1030, 1033.

182. *Miller v. Miller*, 2013-1043, pp. 8-9 (La. App. 3 Cir. 4/2/14); 161 So. 3d 690, 696.

183. *Lyons*, 33237, p. 7; 768 So. 2d at 859.

184. *Jergins*, 451 So. 2d at 1338.

185. LA CIV. CODE ANN. art. 112 cmt. c (2018).

186. *Smith v. Smith*, 08-575 (La. App. 5 Cir. 1/12/10); 31 So. 3d 453, 454.

187. LA CIV. CODE ANN. art. 111.

188. *Id.* art. 112(A).

The claimant must prove their needs, which include the basic necessities of life, like food, shelter, clothing, transportation, medical and drug expenses, utilities, household maintenance, and income tax liability generated by alimony payments.¹⁸⁹ In some instances, television and internet services and lawn maintenance may constitute necessities.¹⁹⁰ In *Anderson v. Anderson*, the hair coloring and dining out of the claimant (who had a history of depression and anxiety) were considered as needs.¹⁹¹ However, in *Ennis v. Ennis*, the court decided that costs for birthday and Christmas gifts, church donations, vacations, entertainment, and such other expenses were unnecessary for support.¹⁹²

Assuming that the claimant is entitled to final spousal support, the court must determine the amount and duration of the award, considering all relevant factors, including those specifically listed in Louisiana Civil Code Article 112(B). Those factors are:

- (1) The income and means of the parties, including the liquidity of such means.
- (2) The financial obligations of the parties, including any interim allowance or final child support obligation.
- (3) The earning capacity of the parties.
- (4) The effect of custody of children upon a party's earning capacity.
- (5) The time necessary for the claimant to acquire appropriate education, training, or employment.
- (6) The health and age of the parties.

189. *Stowe v. Stowe*, 49,596, pp. 1-3 (La. App. 2 Cir. 3/4/15); 162 So. 3d 638, 640-41. Prior to January 1, 2019, the payor spouse was allowed a deduction for alimony paid, and the alimony constituted taxable income for the payee spouse. I.R.C. §§ 61(a)(8), 71(a), 215(a) (repealed 2017). That rule was changed pursuant to the Tax Cuts and Jobs Act such that alimony is no longer deductible by the payor nor is it taxable to the payee. 26 U.S.C.A. § 11051. This new rule applies to orders issued or modified after January 1, 2019. 26 U.S.C.A. § 11051(c) 131 Stat. 2090.

190. *See King*, 48,881, p. 20; 136 So. 3d at 951 (wherein because the claimant was seriously ill and unable to leave the house often, the court considered television and internet services as a necessary expense).

191. *Anderson v. Anderson*, 48,027, pp. 10-11 (La. App. 2 Cir. 5/15/13); 117 So. 3d 208, 215.

192. *Ennis v. Ennis*, 2016-0423, p. 9 (La. App. 1 Cir. 5/8/17); 2017 WL 1900328, at *4.

- (7) The duration of the marriage.
- (8) The tax consequences to either or both parties.
- (9) The existence, effect, and duration of any act of domestic abuse committed by the other spouse upon the claimant or a child of one of the spouses, regardless of whether the other spouse was prosecuted for the act of domestic violence.¹⁹³

This list is merely illustrative, and courts are free to consider factors not listed therein.¹⁹⁴

Many of the factors considered for final spousal support awards mirror those employed in the analysis of interim spousal support awards. For example, both require a court to assess the other party's ability to pay and any child support awards.¹⁹⁵ Therefore, analysis of these factors applies in the context of both interim and final spousal support determinations.¹⁹⁶

With that said, the rules on interim spousal support and final spousal support differ in some ways. For example, the parties' standard of living during the marriage is clearly a consideration for interim spousal support (as discussed above); while Louisiana Civil Code Article 112 does not address the issue, some courts have decided it is not an appropriate factor to consider for final spousal support.¹⁹⁷ Additionally, while the

193. In determining whether to award final spousal support pursuant to Louisiana Civil Code Article 112, "the court shall consider any criminal conviction of the obligor spouse for an offense committed against the claimant spouse during the course of the marriage." LA. STAT. ANN. § 9:327(A). Absent a criminal conviction, the court may, in order to assist it determining the existence and nature of the alleged abuse, order an evaluation of both parties. LA. STAT. ANN. § 9:327(B). This evaluation is conducted by an independent, court-appointed mental health professional who is an expert in the field of domestic abuse and who has no familial, financial, or prior medical relationship with either party or their attorneys of record; the mental health professional shall provide a written report of his/her findings to both the court and the parties. *Id.*

194. *Rhymes v. Rhymes*, 2013-0823, pp. 7-8 (La. 10/15/13); 125 So. 3d 377, 381-82 (given the history of the children's education, the court could consider one parent's role as the homeschooler of the children).

195. LA. CIV. CODE ANN. art. 112(A), (B)(2); *id.* art. 113(A).

196. *Id.* art. 112(A), (B)(2); *id.* art. 113(A).

197. *E.g.*, *West v. West*, 51,692 (La. App. 2 Cir. 11/15/17); 245 So. 3d 269, 275 (citing *Richards v. Richards*, 47,492 (La. App. 2d Cir. 9/20/12); 105 So. 3d 77). Prior to the 2006 revision to Louisiana Civil Code Article 112, jurisprudence was in conflict on this question. *See, e.g.*, *Gremillion v. Gremillion*, 39,588 (La. App. 2 Cir. 4/6/05); 900 So. 2d 262 (court considered the standard of living); *Jones v. Jones*, 35,502, 35,503 (La. App. 2 Cir 12/5/01); 804 So. 2d 161 (court did not consider the standard of

earning capacity of the claimant is an open question for interim spousal support (as discussed above), Louisiana Civil Code Article 112(B)(3) is clear that the claimant's earning capacity is considered for final spousal support purposes.¹⁹⁸ Note, though, that the parties' earning capacity is assessed in light of the effect that custody of children has upon it.¹⁹⁹ Additionally, many courts take into consideration one spouse's subordination of their own career to attend to the other spouse's, especially if the marriage is one of significant duration.²⁰⁰

In addition to the differences in the two sets of rules, the assessment of final spousal support includes factors not considered in the context of interim spousal support. For example, per Louisiana Civil Code Article 112(B)(5), courts must consider the time necessary for the claimant to acquire appropriate education, training, or employment.²⁰¹ Thus, while many final spousal support awards are rehabilitative (as opposed to permanent), the time necessary to obtain education or training must be reasonable.²⁰² One party who has the physical and mental ability to secure employment should not be allowed to avoid employment and remain economically dependent on the other.²⁰³ Also, Louisiana Civil Code Article 112(B)(6)-(8) requires a court to consider the health and age of the parties, the duration the marriage, and the tax consequences to either or both parties, none of which are considered in connection with interim spousal support.²⁰⁴

In recent years, domestic abuse has come to the forefront of family law. Among other contexts, it has been considered in connection with final spousal support. Until 2014, domestic abuse was not on the list of fault-based grounds for divorce; it was also not considered in connection with final spousal support determinations.²⁰⁵ In 2014, the Louisiana Legislature amended

living).

198. LA. CIV. CODE ANN. art. 112(B)(3).

199. *Id.* art. 112(B)(4).

200. *See, e.g.*, *Brett v. Brett*, 2000-0436, p. 6 (La. App. 1 Cir. 5/30/01); 794 So. 2d 912, 917; *Politz v. Politz*, 2005-2568 (La App. 1 Cir. 8/1/07); 2007 WL 2193547, at *5.

201. LA. CIV. CODE ANN. art. 112(B)(5).

202. *Johnson v. Johnson*, 442 So. 2d 901, 903 (La. App. 3 Cir. 1983).

203. *See Ballanco v. Ballanco*, 538 So. 2d 1100, 1102-03 (La. Ct. App. 5 Cir. 1989); *Fountain v. Fountain*, 93-2176, pp. 7-8 (La. App. 1 Cir. 10/7/94); 644 So. 2d 733, 739.

204. LA. CIV. CODE ANN. art. 112(B)(6)-(8).

205. *Id.* art. 103 (2014); *id.* art. 112 (2006).

Louisiana Civil Code Article 112 to mandate final spousal support to a spouse who had not been at fault prior to the filing of a petition for divorce and who was the victim of domestic abuse committed during the marriage in accordance with the factors set forth in the article.²⁰⁶ Among the other factors, courts were to consider “[t]he existence, effect, and duration of any act of domestic abuse committed by the other spouse upon the claimant, regardless of whether the other spouse was prosecuted for the act of domestic violence.”²⁰⁷ However, the Louisiana Legislature amended Article 112 again in 2018. Under the current version, abuse is retained in the list of factors for consideration, but the provision mandating a final spousal support award for the victim has been deleted.²⁰⁸ Ultimately, under the current version of the article, Louisiana law does not give a spouse who was the victim of domestic abuse an automatic final spousal support award.

As a general rule, the final spousal support award cannot exceed one-third of the payor’s net income.²⁰⁹ No such cap exists when (1) the divorce was rendered on ground of abuse or protective order²¹⁰ or (2) the court determines that a party or child of one of the spouses was the victim of domestic violence committed by the other party during the marriage.²¹¹ In such instances, the final spousal support may be awarded as a lump sum.²¹²

While the term “final spousal support” seems to connote an award that lasts forever, this is not the case. Spousal support

206. *Id.* art. 112(B) (2014).

207. *Id.* art. 112(C)(9) (2014).

208. Remember, though, that Article 112(C) now gives the victim of domestic abuse during the marriage a presumption of entitlement to final spousal support as discussed in the section on fault above. Also, remember that this presumption extends to all claimants whose divorces were granted on fault-based grounds or when the court has made a finding of domestic abuse.

209. LA CIV. CODE ANN. art. 112(C). Louisiana law offers no guidance on what expenses are appropriate to deduct from gross income to calculate net income. *See Molony*, 2009-1529, p. 12; 51 So. 3d at 761 (holding that it is within the trial court’s discretion, based on the evidence and testimony before it, to make a determination regarding the spouses’ income). Note that prior to 1997, the limitation on final spousal support was calculated using the payor’s gross income. *See* LA CIV. CODE ANN. art. 112 cmt. f (1997) (citing *Slyater v. Slyater*, 576 So. 2d 1121 (La. Ct. App. 3 Cir. 1991); *Robinson v. Robinson*, 412 So. 2d 633 (La. Ct. App. 2 Cir. 1982)).

210. *See* LA CIV. CODE ANN. art. 103(4)-(5).

211. *Id.* art. 112(D).

212. *Id.*

awards are never final (even if the award is silent as to its duration) because parties may always move for modification, termination, or extinguishment (as discussed in Parts E and F below).²¹³

D. TIME LIMITATIONS ON SPOUSAL SUPPORT CLAIMS

The rules regarding the time limitations to assert a spousal support claim apply to both interim and final spousal support. Ultimately, per Louisiana Civil Code Article 117, a claimant who seeks spousal support after divorce has a preemptive period of three years to do so.²¹⁴ A preemptive period must be distinguished from a liberative prescriptive period. Prescription is a mode of barring actions as a result of inaction for a period of time;²¹⁵ preemption is a period of time fixed by law for the existence of a right that if not timely exercised, extinguishes the right altogether.²¹⁶ While prescriptive periods may be suspended,²¹⁷ interrupted,²¹⁸ or renounced,²¹⁹ the same is not true of preemptive periods.²²⁰ As Louisiana jurisprudence consistently provides, nothing interferes with the running of preemption.²²¹

The three-year preemptive period on spousal support claims begins to run from the latest of the following three events: (i) the day the judgment of divorce is signed; (ii) the day a judgment terminating a previous judgment of spousal support is signed (as long as the previous judgment was signed in an action commenced either before the signing of the judgment of divorce or within three years thereafter); or (iii) the day the last spousal support payment is made (if the spousal support obligation is initially performed by voluntary payment within the periods described in (i) or (ii) and no more than three years has elapsed between payments).²²²

213. See, e.g., *Faucheux v. Faucheux*, 11-939, p. 10 (La. App. 5 Cir. 3/27/12); 91 So. 3d 1119, 1126; *Harmon v. Harmon*, 2012-580, p. 6 (La. App. 3 Cir. 11/7/12); 101 So. 3d 1122, 1126.

214. LA. CIV. CODE ANN. art. 117.

215. *Id.* art. 3447.

216. *Id.* art. 3458.

217. *Id.* arts. 3467-3473.

218. *Id.* arts. 3462-3466.

219. *Id.* arts. 3449-3451.

220. *Id.* art. 3461.

221. *Naghi v. Brener*, 2008-2527, p. 1 (La. 6/26/09); 17 So. 3d 919, 920.

222. LA. CIV. CODE ANN. art. 117.

As explained in the comments to Article 117, the general rule is that the three-year preemptive period commences at the signing of the judgment of divorce.²²³ However, in the event that an award of spousal support was made before the judgment of divorce or during the preemptive period, the period begins to run anew from the day a judgment terminating that prior judgment of support is signed.²²⁴ That same rule applies if the obligor recognized the obligation by making voluntary payments to the other party, in which case, the period begins to run from the date of the last payment.²²⁵ In *Lacombe v. Lacombe*, the wife's spousal support claim made ten months after the husband's last voluntary support payment was timely, despite the fact that it was made eight years after the initial divorce petition.²²⁶

While the three-year preemptive period is an important time limitation, one should note others that may affect spousal support claims. For example, Louisiana Code of Civil Procedure Article 561 provides that an action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years.²²⁷ Additionally, note that the time period to assert a claim for spousal support differs from the time period to collect *past due* spousal support (also known as "arrearages"). One seeking to collect past due spousal support has a *prescriptive* period of five years.²²⁸

E. MODIFICATION OF SPOUSAL SUPPORT

Both interim and final spousal support may be modified as a general rule,²²⁹ and Louisiana Civil Code Article 114 governs

223. *Id.* at cmt. a.

224. *Id.*

225. *See, e.g.,* *Reggio v. Reggio*, 14-493 (La. App. 5 Cir. 12/16/14); 166 So. 3d 290; *Lacombe v. Lacombe*, 11-1178 (La. App. 3 Cir. 2/1/12); 85 So. 3d 721. A "voluntary payment" is one that is not court-ordered. *Lacombe*, 11-1178, p. 12; 85 So. 3d at 726. Thus, payments made under an interim order requiring the payor to make the payments pending the trial on the payee's rule for final spousal support did not qualify. *See id.*; *Stephens v. Stephens*, 49,957, p. 6 (La. App. 2 Cir. 4/9/14); 137 So. 3d 1242, 1246.

226. *Lacombe*, 11-1178, p. 12; 85 So. 3d at 726.

227. LA. CODE CIV. PROC. ANN. art. 561(A).

228. LA. CIV. CODE ANN. art. 3497.1 (emphasis added).

229. A spousal support award may not be modified if the consent judgment contains a non-modification provision. *Bland v. Bland*, 97-0329 (La. App. 1 Cir. 12/29/97); 705 So. 2d 1158, 1161.

both.²³⁰ A judgment modifying a final spousal support judgment is retroactive to the date of judicial demand except for good cause shown,²³¹ in which case the court may fix the date on which the award commences.²³²

The burden of proof rests with the one seeking the modification to show a material change of circumstances of either party—either that the obligor’s needs have materially changed or that the obligee’s ability to pay has materially changed.²³³ Louisiana Civil Code Article 114 specifically states that the subsequent remarriage of the *obligor* spouse (the spouse making payments) shall not constitute a change of circumstance.²³⁴ This is not the case when the *obligee* spouse (the one receiving payments) subsequently remarries, in which case the spousal support obligation is extinguished (as discussed in Part F below).²³⁵

Note, though, that a change in circumstances does not automatically result in a modification of spousal support.²³⁶ Instead, such a finding simply shifts the burden to the party opposing the modification.²³⁷ When assessing a request for modification of interim spousal support, the court considers the factors in Article 112 (in the case of final spousal support) or Article 113 (in the case of interim spousal support).²³⁸

In *Richards v. Richards*, the trial court awarded spousal support to the wife (along with a child support award) and directed that the spousal support award would terminate if the wife received Social Security disability (SSI) benefits.²³⁹ It also noted that either party could seek modification.²⁴⁰ Ten years later, the wife began receiving SSI benefits, ending the husband’s

230. LA. CIV. CODE ANN. art. 114; *see also id.* art. 112 cmt. g; *id.* art. 113 cmt. a.

231. LA. STAT. ANN. § 9:321(C).

232. *Id.* § 9:321(E).

233. LA. CIV. CODE ANN. art. 114; *see Williams v. Poore*, 2010-1087, p. 2 (La. App. 4 Cir. 1/12/11); 55 So. 3d 953, 955.

234. LA. CIV. CODE ANN. art. 114 (emphasis added).

235. *Id.* art. 115.

236. *Mizell v. Mizell*, 40,601, p. 3 (La. App. 2 Cir. 1/25/06); 920 So. 2d 927, 929.

237. *Id.*

238. LA. CIV. CODE ANN. art. 114 cmt. b.

239. *Richards v. Richards*, 49,260, p. 1 (La. App. 2 Cir. 8/13/14); 147 So. 3d 800, 802.

240. *Id.* at p. 6; 147 So. 3d at 805.

spousal support obligation.²⁴¹ However, about a year later, the youngest child reached majority and graduated high school, terminating the husband's child support obligation.²⁴² Thereafter, the wife moved to modify the previous spousal support judgment by having the award reinstated due to the loss of child support as well as her inability to work due to her disability.²⁴³ The court granted the modification based on the wife's acute and devastating financial need and her seriously declining health, finding the loss of child support to be financially catastrophic for her.²⁴⁴ The court was careful to explain that while the loss of child support alone is not justification for reinstating final periodic spousal support, it can be considered as a factor in determining the need for final spousal support under appropriate facts, such as those in the case before it.²⁴⁵

F. TERMINATION AND EXTINGUISHMENT OF SPOUSAL SUPPORT

Spousal support awards—interim or final—may be terminated or extinguished.²⁴⁶ In either scenario, the spousal support award ends. However, a terminated award may be sought again within the three-year preemptive period, but an extinguished spousal support award is lost forever.²⁴⁷

1. TERMINATION OF SPOUSAL SUPPORT

Termination of a spousal support award is appropriate only if it has become unnecessary.²⁴⁸ This must be determined by a court, considering the factors in Article 112 (in the case of final spousal support) or Article 113 (in the case of interim spousal support).²⁴⁹ The person seeking termination bears the burden of proof.²⁵⁰ A judgment terminating a final spousal support judgment is retroactive to the date of judicial demand except for good cause shown.²⁵¹

241. *Id.* at p. 1; 147 So. 3d at 802.

242. *Richards*, 49,260, p. 2; 147 So. 3d at 803.

243. *Id.*

244. *Id.* at pp. 9-10; 147 So. 3d at 806-07.

245. *Id.* at p. 11; 147 So. 3d at 807.

246. LA. CIV. CODE ANN. arts. 114-115.

247. *Lowe*, *supra* note 150, at § 8:188.

248. LA. CIV. CODE ANN. art. 114.

249. *Id.* at cmt. b.

250. *Mizell*, 40,601, p. 3; 920 So. 2d at 929.

251. LA. STAT. ANN. § 9:321(C).

In *Williams v. Williams*, the court terminated the husband's spousal support obligation as unnecessary.²⁵² The wife had settled a personal injury claim, which netted her the sum of \$323,724.27, but in the next two years, she had expended all but \$40,000.00 of the proceeds in paying the debts of others, buying gifts, and donating money to charity.²⁵³ The court found that her spirit of charity was admirable, but it also indicated she had sufficient income and means for her support and no longer needed her ex-husband to support her.²⁵⁴ In *Mitchell v. Mitchell*, the court denied the husband's motion to terminate his spousal support obligation because although he had voluntarily retired, his ex-wife's needs actually increased due to her involuntary reduction in income.²⁵⁵ Additionally, the husband had disposed of tens of thousands of dollars to buy a truck for himself and gifts for his adult daughter and his second wife (whose income contributed to payment of their expenses).²⁵⁶ While the husband averred that termination was appropriate, given the marriage to his ex-wife was short and they had no children, the court rejected that argument.²⁵⁷ In *Gray v. Gray*, a husband moved to terminate his spousal support obligation because, among other issues, the wife was receiving financial support from another.²⁵⁸ The court noted that well-settled jurisprudence provides that "one party's legal obligation to pay alimony is not obviated by the gratuity of another."²⁵⁹

252. *Williams v. Williams*, 2012-0281, p. 1 (La. App. 1 Cir. 11/14/12); 2012 WL 5506669.

253. *Id.* at p. 5; 2012 WL 5506669.

254. *Id.* at p. 6; 2012 WL 5506669.

255. *Mitchell v. Mitchell*, 626 So. 2d 571, 572-73 (La. Ct. App. 3 Cir. 1993).

256. *Id.* at 572.

257. *Id.* at 573.

258. *Gray v. Gray*, 451 So. 2d 579, 586-87 (La. Ct. App. 2 Cir. 1984).

259. *See id.* at 587; *see also* *Shelton v. Shelton*, 395 So. 2d 899, 900 (La. Ct. App. 2 Cir. 1981); *Zatzkis v. Zatzkis*, 632 So. 2d 307, 315 (La. Ct. App. 4 Cir. 1993), *writ denied*, 640 So. 2d 1340 (La. 1994); *but see* *Higginbotham v. White-Higginbotham*, 97-1191, p. 6 (La. App. 5 Cir. 5/27/98); 713 So. 2d 832, 835 (finding that the trial judge did not have authority to order husband to pay the mortgage, utilities, insurance, and reasonable expenses related to the family home in which the wife and children continued to live after divorce, absent hearing on fault and alimony after divorce was granted; purpose of payments was to provide financial assistance to the wife, rather than to preserve community asset).

2. EXTINGUISHMENT OF SPOUSAL SUPPORT

A spousal support award may also be extinguished upon the recipient's remarriage, the death of either party, or a judicial determination that the recipient has cohabited with another person in the manner of married persons.²⁶⁰ Where the recipient remarries or where either party dies, the obligation to pay spousal support is extinguished automatically (without the need for judicial declaration).²⁶¹ Note, too, that even a remarriage of the recipient that is null will terminate the spousal support obligation of the previous spouse.²⁶²

However, in *Hamsa v. Hamsa*, the parties had a consent judgment specifying a term for payment of spousal support, and during the term, the wife remarried.²⁶³ The husband filed pleadings to extinguish his support obligation, but the court granted the wife's exception of *res judicata*, effectively determining that the term in the contract of compromise governed, rather than Article 115.²⁶⁴ With that said, this case has been limited to its particular facts.²⁶⁵ In *Rosenfeld v. Rosenfeld*, the court noted that consent judgments are generally subject to modification and termination.²⁶⁶ It also noted that the only reason the *Hamsa* court created an exception was that the consent judgment was a lump-sum support judgment that included a significant (thirteen-year) past obligation, and the court could not ascertain what amount of the lump-sum payment was owed for past due obligations and what amount was designated for future support obligations.²⁶⁷ Thus, in most scenarios, even where a term for the duration of spousal support payments is included in a consent judgment, the recipient's remarriage will extinguish the spousal support obligation automatically unless the judgment provides otherwise.

260. LA. CIV. CODE ANN. art. 115.

261. *Id.*

262. *See, e.g.,* Keeney v. Keeney, 30 So. 2d 549 (La. 1947); LA. CIV. CODE ANN. art. 115 cmts. c-d. That said, a spouse to a subsequent null marriage may seek spousal support as an incident of that marriage in certain circumstances. *See* LA. CIV. CODE ANN. art. 96, LA. CIV. CODE ANN. art. 115 cmt. d; LA. CIV. CODE ANN. art. 97.

263. *Hamsa v. Hamsa*, 05-219, p. 2 (La. App. 5 Cir. 12/27/05); 919 So. 2d 776, 777.

264. *Id.* at p. 6; 919 So. 2d at 779.

265. *Rosenfeld v. Rosenfeld*, 11-686, pp. 5-6 (La. App. 5 Cir. 3/13/12); 90 So. 3d 1077, 1080.

266. *Id.*

267. *Id.*

While extinguishment is automatic in the situations above, a judicial declaration must be obtained when the recipient has cohabited with another person of either sex in the manner of married persons.²⁶⁸ In *King v. King*, although the wife had been cohabitating with her boyfriend since she and her husband physically separated, she was allowed interim spousal support until the trial court made that determination months later.²⁶⁹ Thus, the simple fact of the wife's cohabitation with her boyfriend was not sufficient to deny spousal support.

To "cohabit in the manner of married persons" is defined as living together in a sexual relationship of some permanence; sexual intercourse alone will not suffice.²⁷⁰ The party seeking extinguishment on this ground bears the burden of proof, and a judgment extinguishing spousal support on these grounds is retroactive to the date of judicial demand.²⁷¹ Conception of a child alone will not suffice for a finding of cohabitation.²⁷² In *Almon v. Almon*, the recipient lived with a man for a year, during which time he contributed to the payment of household expenses, helped with her daughter, and performed repairs.²⁷³ The two engaged in sexual intercourse, but they did not share a bedroom, date, attend events together as a couple, or discuss marriage.²⁷⁴ The court refused to extinguish the support obligation because the recipient and the live-in man engaged in only random acts of sexual intercourse.²⁷⁵ In *Ronquille v. Ronquille*, the court denied the husband's motion to terminate permanent spousal support because, although the wife had a sexual relationship with another man who spent at least eight consecutive nights at her home and exercised visitation with his child there, the evidence did not necessarily establish the parties' intent to cohabit together as married persons.²⁷⁶ Testimony showed that he did not move his

268. LA. CIV. CODE ANN. art. 115 cmt. e; *Almon v. Almon*, 05-1848, p. 5 (La. App. 1 Cir. 9/15/06); 943 So. 2d 1113, 1116-17. Under older versions of the law, spousal support terminated when the payor lived in open concubinage with another. *Petty v. Petty*, 560 So. 2d 629 (La. Ct. App. 4 Cir. 1990).

269. *King*, 51,942, pp. 5-7; 247 So. 3d at 978.

270. LA. CIV. CODE ANN. art. 115 cmt. e.

271. LA. STAT. ANN. § 9:321(F).

272. *Polk v. Polk*, 626 So. 2d 1233, 1237 (La. Ct. App. 4 Cir. 1993).

273. *Almon*, 05-1848, pp. 5-8; 943 So. 2d at 1116-18.

274. *Id.* at pp. 7-8; 943 So. 2d at 1117-18.

275. *Id.* at p. 8; 943 So. 2d at 1118.

276. *Ronquille v. Ronquille*, 17-207, pp. 4-5 (La. App. 5 Cir. 11/15/17); 233 So. 3d 189, 192-93.

belongings into her home and maintained a separate residence; he also did not contribute financially to her household.²⁷⁷ By contrast, in *Olsen v. Olsen*, the court granted the husband's motion to extinguish spousal support because, although the recipient and the man living with her had separate bedrooms, they had or attempted sexual intercourse on occasion, ate meals together, and discussed marriage.²⁷⁸ She had also helped him pay his debts and visited him while he was in the hospital.²⁷⁹ The court determined that this arrangement went beyond friends living together with benefits.²⁸⁰

G. PARTIES' FREEDOM OF CONTRACT

Louisiana law grants spouses the freedom to enter into a matrimonial agreement before or during marriage as to all matters that are not prohibited by public policy.²⁸¹ These contracts—like all contracts in Louisiana—have the effect of law for the parties.²⁸² With that said, if the agreement violates public policy, it is absolutely null,²⁸³ and therefore, as a general rule, it is deemed never to have existed.²⁸⁴ Persons are not allowed by juridical acts to derogate from laws enacted for the public interest.²⁸⁵

1. WAIVER OF SPOUSAL SUPPORT BY CONTRACT

One common topic included within a matrimonial agreement is spousal support. Many times, parties will, by contract, waive their rights to spousal support. It is important to note that, for this topic, the law differentiates between final and interim spousal support. Spouses may not waive interim spousal support, which is a matter of public policy,²⁸⁶ but they may waive final spousal support, which is not.²⁸⁷

277. *Ronquille*, 17-207, p. 4; 233 So. 3d at 192.

278. *Olsen v. Olsen*, 12-737, pp. 7-8 (La. App. 5 Cir. 3/13/13); 113 So. 3d 274, 279.

279. *Id.*

280. *Id.* at p. 10; 113 So. 3d at 280.

281. LA. CIV. CODE ANN. art. 2329.

282. *Id.* art. 1983.

283. *Id.* art. 2030.

284. *Id.* art. 2033.

285. *Id.* art. 7.

286. LA. CIV. CODE ANN. art. 116 cmt.

287. *Id.* art. 116.

The public order nature of interim spousal support was explained in *Holliday v. Holliday*, wherein the court noted that although marriage is a contract, it is more than that.²⁸⁸ Marriage creates a legal relationship which carries with it a duty of support; this, in turn, is the basis for the obligation to pay interim spousal support.²⁸⁹ These duties are of public order, and as such, may not be waived by the parties.²⁹⁰

By contrast, final spousal support is not a matter of public order. Spouses are not bound to support one another permanently after the marriage terminates.²⁹¹ As explained in *McAlpine v. McAlpine*, final spousal support is not a duty by a spouse to a spouse; after all, the marriage has terminated such that they are no longer spouses.²⁹² As such, final spousal support protects the private recipient.²⁹³ Accordingly, parties are allowed to modify the rules of the Louisiana Civil Code.²⁹⁴ They may do so before or during the marriage and also after divorce as long as the waiver is clear and unequivocal, and they follow the requisite form requirements.²⁹⁵ Matrimonial agreements may be nullified upon the same grounds as any contract.²⁹⁶

In most instances, the waiver of interim spousal support and the waiver of final spousal support are included in the same contract and, in many instances, in the same provision of that document.²⁹⁷ When litigated, courts will sever them, thereby invalidating the waiver of interim spousal support and enforcing the waiver of final spousal support.²⁹⁸

288. *Holliday v. Holliday*, 358 So. 2d 618, 619 (La. 1978).

289. *Id.* at 620.

290. *Favrot*, 332 So. 2d at 875.

291. *Barber*, 2009-0780, p. 5; 38 So. 3d at 1050 (citing *McAlpine*, 94-1594, p. 9; 679 So. 2d at 90).

292. *McAlpine*, 94-1594, p. 9; 679 So. 2d at 87 (quoting 1 Planiol, CIVIL LAW TREATISE, Vol. I, No. 1259 (La. State Law Institute Translation 1959)).

293. *Id.*

294. LA. CIV. CODE ANN. art. 116; *id.* cmt.

295. *Id.* art. 116. These agreements must be in authentic act or act under private signature duly acknowledged. LA. CIV. CODE ANN. arts. 116, 2331. *See Vincent v. Vincent*, 2005-1175, p. 2 (La. App. 4 Cir. 1/10/07); 949 So. 2d 535, 542-43 (Cannizzaro, J., concurring in part and dissenting in part).

296. *McAlpine*, 94-1594, p. 15; 679 So. 2d at 93.

297. *See, e.g., Barber*, 2009-0780, pp. 5-6; 38 So. 3d at 1050.

298. *Id.* (citing LA. CIV. CODE ANN. art. 2034).

2. OTHER TOPICS OF CONTRACTUAL AGREEMENT

Parties may make other agreements regarding spousal support. For example, in *Ellefson v. Ellefson*, the parties agreed to a specific amount in spousal support.²⁹⁹ Although that amount could have exceeded the statutory limit, the court upheld the agreement as not in violation of public policy.³⁰⁰ In *Aldredge v. Aldredge*, the parties agreed that spousal support could be modified without a change of circumstances, and the court upheld the contract.³⁰¹ In *Boudreaux v. Boudreaux*, the parties agreed that the recipient would receive final spousal support unconditionally, even if at fault, but the court struck this agreement as in violation of public policy.³⁰² Note that some courts have upheld such agreements when the parties enter them in anticipation of or after the dissolution of the marriage, as opposed to at the inception of the marriage in contemplation of divorce.³⁰³

Parties can also contractually agree when spousal support will terminate. While the Civil Code provides, as a default rule, that the obligation to pay spousal support extinguishes upon the remarriage of the recipient, the death of either party, or a judicial determination that the recipient has cohabitated with another person in the manner of married persons,³⁰⁴ parties may provide otherwise. In *Romero v. Romero*, the parties agreed that final spousal support would terminate upon the earlier of the recipient's death or remarriage.³⁰⁵ Later, the husband moved the court to terminate his spousal support obligation on the grounds that his ex-wife was living with another man, but the court denied his request, reasoning that termination was only appropriate in the instances to which the parties had

299. *Ellefson v. Ellefson*, 616 So. 2d 221, 222 (La. Ct. App. 5 Cir. 1993).

300. *Id.*

301. *Aldredge v. Aldredge*, 477 So. 2d 73, 75 (La. 1985).

302. *Boudreaux v. Boudreaux*, 98-791, p. 4 (La. App. 3 Cir. 6/2/99); 745 So. 2d 61, 63; *see also Williams*, 99-1101, p. 6; 760 So. 2d at 469; *Daigle*, 2006-346, pp. 4-5; 940 So. 2d at 891.

303. *See, e.g., Aufrichtig v. Aufrichtig*, 34,909, pp. 3-4 (La. App. 2 Cir. 8/22/01); 796 So. 2d 57, 60-61; *Cason v. Cason*, 38,974, pp. 5-6 (La. App. 2 Cir. 10/27/04); 886 So. 2d 628, 632; *but see Taylor v. Taylor*, 33,959, pp. 7-8 (La. App. 2 Cir. 11/1/00); 772 So. 2d 891, 896.

304. LA. CIV. CODE ANN. art. 115.

305. *Romero v. Romero*, 509 So. 2d 681, 683-84 (La. Ct. App. 3 Cir. 1987).

contractually agreed.³⁰⁶ In *Gibson v. Gibson*, the parties agreed that spousal support would terminate when the recipient obtained her master's degree, and the court upheld that agreement.³⁰⁷ In *Waites v. Waites*, the parties agreed that the husband would pay the wife's spousal support until her remarriage, his disability, or her agreement to terminate the agreement at any time, and the court upheld the agreement.³⁰⁸

III. AWARDS FOR CONTRIBUTION TO EDUCATION OR TRAINING

In addition to claims for support, spouses may also assert claims for reimbursement for their financial contributions to the education or training expenses of the other spouse when such contributions increased the recipient spouse's earning power, to the extent that the claimant spouse did not benefit from that earning power during the marriage.³⁰⁹ Such claims are typically asserted in a divorce proceeding or thereafter³¹⁰ but may also be asserted in the wake of an action for the declaration of nullity of the marriage.³¹¹

To succeed on a claim for contributions to a spouse's education or training, one must prove several things. First, the claimant must prove the financial contributions to the spouse's education or training during their marriage.³¹² These include direct expenses for educational or training costs paid by the claimant for the other spouse (such as tuition, books, and school fees), as well as contributions to the living expenses of the supported spouse.³¹³ Transportation costs for commuting are not included.³¹⁴ Second, the claimant must prove that the contributions led to the spouse's increased earning power.³¹⁵ In *Shaheen v. Khan*, the court denied the husband's claim for

306. See also *Burns v. Burns*, 2012-128, pp. 4-5 (La. App. 3 Cir. 9/20/12); 94 So. 3d 941, 943-44.

307. *Gibson v. Gibson*, 464 So. 2d 914, 916 (La. Ct. App. 4 Cir. 1985).

308. *Waites v. Waites*, 2017-499, pp. 5-8 (La. App. 4 Cir. 10/10/18); 256 So. 3d 539, 543-45.

309. LA. CIV. CODE ANN. art. 121.

310. *Id.*

311. *Id.* arts. 124, 151.

312. *Id.* art. 121.

313. *Id.* at cmt. d.

314. *Id.*

315. *Id.* art. 121.

contributions to the wife's education, in part, because she received no benefit from the degree.³¹⁶

Finally, the claimant must prove that he did not enjoy the benefit of the spouse's increased earning power during the marriage.³¹⁷ If the claimant reaped the benefits during the marriage, which could happen by way of an improved standard of living or an accumulation of community property,³¹⁸ an award is not appropriate.³¹⁹ For example, in *Bourgeois v. Bourgeois*, the parties divorced three years after the husband graduated from law school.³²⁰ After his graduation, the couple had moved into a nicer apartment, purchased a replacement vehicle for the wife and one for the husband, and paid for the wife to obtain cosmetic surgery and upgrade her engagement ring.³²¹ The court found that the wife had already benefitted from her husband's education.³²²

In deciding a claim for contributions to a spouse's education or training, courts will assess three factors: (1) the claimant's expectation of a shared benefit when the contributions were made, (2) the degree of detriment suffered by the claimant in making the contributions, and (3) the magnitude of the benefit the other spouse received.³²³ Courts tend to focus, in part, on the length of the marriage post-education or training. Typically, the longer the spouses are married after the education or training is completed, the more likely that the claimant will have already benefitted.³²⁴ Framed another way, courts typically grant awards in cases where the parties divorce shortly after the graduation of the recipient spouse.³²⁵ For example, in *McConathy v. McConathy*,³²⁶ the award was appropriate where the parties

316. *Shaheen v. Khan*, 2013-998, p. 13 (La. App. 5 Cir. 5/21/14); 142 So. 3d 257, 265.

317. LA. CIV. CODE ANN. art. 121.

318. *See, e.g., Clemons v. Clemons*, 42-129, 42-130, pp. 9-10 (La. App. 2 Cir. 5/09/07); 960 So. 2d 1068, 1074.

319. LA. CIV. CODE ANN. art. 121.

320. *Bourgeois v. Bourgeois*, 2000-2149, p. 2 (La. App. 1 Cir. 5/10/02); 818 So. 2d 1005, 1007.

321. *Id.* at pp. 6-7; 818 So. 2d at 1010.

322. *Id.* at p. 7; 818 So. 2d at 1010-11.

323. *Barrow v. Barrow*, 27-714, p. 13 (La. App. 2 Cir. 2/28/96); 669 So. 2d 622, 629.

324. LA. CIV. CODE ANN. art. 121 cmt. e.

325. *Id.* at cmt. c.

326. *McConathy v. McConathy*, 25-542 (La. App. 2 Cir. 2/23/94); 632 So. 2d 1200,

separated during the final year of the husband's schooling, and in *Shewbridge v. Shrewbridge*, the same was true where the parties separated a year after the husband obtained his commercial pilot's license.³²⁷ By contrast, in *Earle v. Earle*, the parties divorced six years after the husband graduated from law school, and the court determined that by that time, the wife had received sufficient benefit from her husband's education and denied her claim.³²⁸

The considerations set forth in Article 121 ensure that the award is granted only when equity dictates,³²⁹ typically in cases where the contributing spouse failed to realize benefits from the contribution due to the timing of the divorce.³³⁰ In other words, one who supports the other spouse through school or training only to be divorced by that spouse shortly thereafter is the most likely recipient of this type of award.³³¹

Ultimately, then, the court has discretion to make such an award,³³² and if it does so, it will use the *De La Rosa* formula to determine the amount.³³³ Louisiana courts have set forth this formula as: "working spouse's financial contributions to joint living expenses and educational costs of student spouse less ½ (working spouse's financial contributions plus student spouse's financial contributions less cost of education) equals equitable award to working spouse."³³⁴

If the court decides to make an award for contributions to education or training, it may be in addition to a sum for support and community property received in a partition,³³⁵ making it an independent claim in Louisiana.³³⁶ As a result, rules governing

1202-06.

327. *Shewbridge v. Shrewbridge*, 31-170, pp. 1, 7 (La. App. 2 Cir. 10/28/98); 720 So. 2d 780, 781-84.

328. *Earle v. Earle*, 43-925, pp. 12-13 (La. App. 2 Cir. 12/03/08); 998 So. 2d 828, 836-37.

329. LA. CIV. CODE ANN. art. 121 cmts. c, e.

330. *Id.* at cmt. c.

331. *Id.*

332. *Id.* at cmt. b.

333. See *McConathy*, 25-542; 632 So. 2d at 1204-05 (citing *DeLaRosa v. DeLaRosa*, 309 N.W.2d 755 (Minn. 1981), and adopting the formula used by the Minnesota court to calculate the amount of award to be granted under Article 121).

334. *Id.* at 1205.

335. LA. CIV. CODE ANN. art. 121.

336. *Id.* at cmts. c, f.

support do not apply, making fault irrelevant to this claim.³³⁷ Additionally, any award for contributions to education or training does not terminate on the remarriage or death of either party.³³⁸ Furthermore, these awards cannot be modified.³³⁹ While an award for reimbursement for contributions to education or training differs from a support award in many ways, both may be awarded in a sum certain payable in installments as opposed to a lump sum.³⁴⁰ The law allows installment payments because the court may make the award early in the defendant's career, when the spouse has not yet realized the benefits of his education or training.³⁴¹ Note, however, that in cases of installment payments, the judgment is still a money judgment for a specified sum, not an open-ended award.³⁴²

Louisiana law provides that a claim for reimbursement for contributions to education or training has a prescriptive period of three years, which begins to run on the date of the signing of the divorce judgment or declaration of nullity of the marriage.³⁴³ By contrast, an action to make arrearages of installment payments of this award executory prescribes in five years.³⁴⁴ In such a case, the court shall, except for good cause shown, award attorney's fees and costs to the prevailing party.³⁴⁵

Claims for contributions to education or training are strictly personal to each party³⁴⁶ prior to the rendition of a judgment.³⁴⁷ However, once a court makes the award, it does not terminate on either party's death.³⁴⁸ If either spouse dies while an action for such a claim is pending, the action dies with that spouse.³⁴⁹

337. *Id.* at cmt. c.

338. *Id.* art. 123.

339. *Id.* at cmt. c.

340. *Id.* art. 123; *id.* at cmt. b.

341. *Id.* art. 123; *id.* at cmt. b.

342. *Id.* at cmt. c.

343. *Id.* art. 124.

344. *Id.* art. 3497.1.

345. LA. STAT. ANN. § 9:375.

346. The rules for heritable and strictly personal obligations can be found in Louisiana Civil Code Articles 1765-66. LA. CIV. CODE ANN. arts. 1765-66.

347. LA. CIV. CODE ANN. art. 122.

348. *Id.* art. 123.

349. *Id.* at cmt. c.

CONCLUSION

Louisiana law offers spouses several claims for support against the other spouse. First, during the marriage, one spouse may sue the other for breach of one of the reciprocal obligations detailed in the Louisiana Civil Code, including the duty of support. Second, during the pendency of a divorce action, one spouse may claim entitlement to interim spousal support to be paid by the other spouse; upon termination of the marriage, the payor spouse may also owe final spousal support to the claimant. Finally, in a proceeding for divorce or thereafter, one spouse may claim entitlement to an award for their financial contributions to the other spouse's education or training.