

Louisiana's Forbidden Antenuptial Waiver of Alimony Pendente Lite

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NOTES

LOUISIANA'S FORBIDDEN ANTENUPTIAL WAIVER OF ALIMONY PENDENTE LITE

Andrew Holliday and Vertie Eagles entered into an antenuptial agreement which included the wife's waiver of alimony in the event of separation or divorce. Thirteen years after their marriage Mrs. Holliday petitioned the court for a judicial separation and alimony pendente lite; she received a judgment of separation and an award of alimony pendente lite of \$400 per month. The Third Circuit Court of Appeal reversed that part of the judgment awarding alimony pendente lite, concluding that her pre-marital waiver of alimony was binding.¹ The Louisiana Supreme Court reversed, *holding* that a wife's antenuptial waiver of alimony pendente lite is null and void as contrary to public policy. *Holliday v. Holliday*, 358 So. 2d 618 (La. 1978).

The Digest of 1808 contained a provision for alimony pendente lite which used language similar to that of the French *Projet du Gouvernement* of 1800.² This provision eventually became article 148 of the Louisiana Civil Code of 1870³ which was given its present form by legislative amendment in 1928.⁴ Article 148 allows support to a wife from her husband, whether she is plaintiff or defendant, if she has insufficient income for her maintenance pending suit for separation from bed and board or divorce.⁵

Most judicial considerations of article 148 have viewed alimony pendente lite as a continuation of the husband's duty to support his wife. In a few cases the court has merely spoken of this duty owed by the husband, without mentioning specific

1. 346 So. 2d 1382 (La. App. 3d Cir. 1977), *rev'd*, 358 So. 2d 618 (La. 1978).

2. 1972 COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA art. 148 (J. Dainow ed.). Compare LA. DIGEST OF 1800, bk. 1, tit. 5, art. 12 with *PROJET DU GOUVERNEMENT* (1800), bk. 1, tit. 4, art. 34.

3. 1972 COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA art. 148 (J. Dainow ed.).

4. 1928 La. Acts, No. 130, *amending* LA. CIV. CODE art. 148.

5. LA. CIV. CODE art. 148 states:

If the wife has not a sufficient income for her maintenance pending the suit for separation from bed and board or for divorce, the judge shall allow her, whether she appears as plaintiff or defendant, a sum for her support, proportioned to her needs and to the means of her husband.

codal provisions.⁶ In other instances the court has specifically identified the husband's duty as that which arises under article 120.⁷ However, the husband's duty under article 120 is contingent upon his wife residing with him, which she is relieved of doing when article 148 is applicable. The proposition that article 148 implements the duty of support under article 120 is dubious in view of the fact that only the husband's duty of support is enforced while the wife's reciprocal duty to live with the husband is no longer imposed.⁸

It is perhaps because of this inconsistency that some courts have sought other grounds on which to base the article 148 alimony requirement. In an early decision the Louisiana Supreme Court declared that the husband's role as head and master of the community is the basis for alimony pendente lite.⁹ The court again took this approach in the more recent case of *Williams v. Williams*.¹⁰ The *Williams* decision took notice of the husband's role as head and master of the community,¹¹ recognized the difficulties which the wife may en-

6. See, e.g., *Grisamore v. Grisamore*, 191 La. 770, 186 So. 98 (1939); *Arnold v. Arnold*, 186 La. 323, 172 So. 172 (1937).

7. See, e.g., *Ward v. Ward*, 339 So. 2d 839 (La. 1976); *Murphy v. Murphy*, 229 La. 849, 87 So. 2d 4 (1956); *Eals v. Swan*, 221 La. 329, 59 So. 2d 409 (1952); *Smith v. Smith*, 217 La. 646, 47 So. 2d 32 (1950); *Cotton v. Wright*, 193 La. 520, 190 So. 665 (1939); *State ex rel. Huber v. King*, 49 La. Ann. 1503, 22 So. 887 (1897).

LA. CIV. CODE art. 120 states: "The wife is bound to live with her husband and to follow him wherever he chooses to reside; the husband is obliged to receive her and to furnish her with whatever is required for the convenience of life, in proportion to his means and condition."

8. See *Lazarus, What Price Alimony*, 11 LA. L. REV. 401, 416 (1951). Article 119 of the Civil Code also establishes a duty of support. This article cannot be the basis for article 148, however, since article 119 establishes a reciprocal duty of support, placing the obligation upon both spouses. See Justice Calogero's dissent in *Holliday v. Holliday*, 358 So. 2d at 622 (Calogero, J., dissenting).

9. *LeBeau v. Trudeau*, 1 Mart. (N.S.) 93 (La. 1823). The court stated: "Whether separated from the husband or not, she has a right to subsistence, and until sentence pronounced, it is the duty of the husband to furnish it. He is the head of the community, and its revenues are in his hands for this purpose." *Id.* at 94.

10. 331 So. 2d 438 (La. 1976). In *Williams* the husband claimed that article 148, granting the right to alimony pendente lite only to the wife, denied equal protection of the law to married men. The Louisiana Supreme Court held article 148 to be constitutional, on the ground that it bears a fair and substantial relation to a legitimate legislative objective—a fair and orderly termination of the couple's community regime. *Id.* at 441.

11. *Id.* at 440. See LA. CIV. CODE art. 2404 which states, *inter alia*: "The husband

counter in obtaining access to the community funds when the couple is living separate and apart,¹² and concluded that the purpose of article 148 is to provide a "fair and orderly termination of the community regime."¹³

Antenuptial agreements, such as the one in *Holliday*, are regulated by the Louisiana Civil Code. Article 2325 authorizes couples to enter into antenuptial agreements provided that they are not contrary to good morals.¹⁴ Other articles contain express prohibitions against certain types of provisions in premarital contracts.¹⁵ Antenuptial agreements are also limited by article 11, which is a general prohibition against any contracts in derogation of laws made to protect public order or good morals.¹⁶

In *Holliday v. Holliday*¹⁷ the Louisiana Supreme Court began its consideration of the alienability of alimony pendente lite by examining the codal provision for antenuptial agreements, article 2325.¹⁸ The court declared that the sole issue to

is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife."

12. 331 So. 2d at 441.

13. *Id.* This same view has been expressed by Planiol, who observed: "It is always the wife who is in need of alimony. Even when she has private means it often happens that, according to the marriage contract, the husband has the administration and use of her income." 1 M. PLANIOL, CIVIL LAW TREATISE pt. 1, no. 1247 at 689 (11th ed. La. St. L. Inst. trans. 1959).

14. LA. CIV. CODE art. 2325 states: "In relation to property, the law only regulates the conjugal association, in default of particular agreements, which the parties are at liberty to stipulate as they please, provided they be not contrary to good morals, and under the modifications hereafter prescribed."

15. LA. CIV. CODE arts. 2326-27. These articles preclude the spouses from altering the legal order of descents (article 2326), and from restricting the husband's rights as head of the family (article 2327).

16. LA. CIV. CODE art. 11. Article 11 states:

Individuals can not by their conventions, derogate from the force of laws made for the preservation of public order or good morals.

But in all cases in which it is not expressly or impliedly prohibited, they can renounce what the law has established in their favor, when the renunciation does not affect the rights of others, and is not contrary to the public good.

For an extensive consideration of this article's sources and application, see *Broadwell v. Rodrigues*, 18 La. Ann. 68 (1866).

17. 358 So. 2d 618 (La. 1978).

18. *Id.* at 619. See note 14, *supra*, for the text of article 2325. In a footnote, the court also referred to article 11. 358 So. 2d at 621-22 n.4.

be decided was whether the antenuptial waiver of alimony was contrary to public policy, and as such null and void.¹⁹

The court next turned its attention to the codal authority for alimony pendente lite, article 148.²⁰ In so doing, it examined the husband's duties of support under articles 119 and 120 and concluded that alimony pendente lite is a method of enforcing the husband's duty of support under article 120.²¹ This basis, the court concluded, has the effect of making the husband's duty to pay alimony pendente lite an expression of public policy by the state.²²

Since the right to alimony pendente lite is a matter of public policy, the court determined that any waiver of this right would be against the public interest. This determination was predicated upon a two-fold basis: "The policy involved is that conditions which affect entitlement to alimony pendente lite cannot be accurately foreseen at the time antenuptial agreements are entered, and the public interest in enforcement of the legal obligation to support overrides the premarital anticipatory waiver of alimony."²³ The antenuptial waiver of alimony pendente lite by the wife violated a rule of public policy and was found to be an absolute nullity.²⁴

Two members of the court dissented from the *Holliday* decision.²⁵ Justice Calogero disagreed with the majority's designation of the right to alimony pendente lite as a provision of good morals and public policy.²⁶ He contended that neither article 119 nor article 120 is the basis for alimony under article 148.²⁷ Instead, Justice Calogero chose to define the basis for

19. 358 So. 2d at 619.

20. *Id.* at 620.

21. *Id.* The court stated: "[A]n order to pay alimony pendente lite is merely an enforcement of the obligation of the husband to support his wife as it exists under La. Civil Code art. 120 . . ." *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 621 (Calogero, Summers, J.J., dissenting). Justice Calogero authored the dissenting opinion.

26. *Id.* at 622.

27. *Id.* Justice Calogero contended that article 119 cannot form the basis for alimony pendente lite since it provides a mutual duty of support, while article 148 extends alimony pendente lite only to the wife—a result that would be incongruous.

article 148, as it had been articulated in *Williams v. Williams*,²⁸ to be protection of the wife at a time when she has no access to the assets of the community due to her estrangement from her husband and his role as head and master.²⁹ The dissenting justices also disagreed with the public policy assertion by the majority that alimony pendente lite is necessary to prevent the wife from becoming a social burden, calling the conclusion "a demeaning one which is inconsistent with the realities of the day."³⁰ Finding no public interest in alimony pendente lite, Justice Calogero viewed it as a right for the benefit of the individual, which should be alienable by the wife in an antenuptial contract.³¹

The first factor which led the court in *Holliday* to declare that alimony pendente lite is a non-waivable right is the lack of foreseeability of conditions affecting the right to alimony pendente lite. This contention of lack of foreseeability is not a convincing reason for making alimony pendente lite non-waivable. Foreseeability is not a requirement in other contractual situations, since it is specifically dispensed with by Louisiana Civil Code article 2982.³² The courts have recognized the validity of contracts in other areas where foreseeability was not present at the time the contract was made.³³ The *Holliday* decision provides no reason why a different rule should apply in the area of pre-marital agreements; therefore, lack of fore-

Furthermore, he maintained that neither was article 120 the basis for article 148, since the husband's duty of support under that article is contingent upon the wife residing with him, a condition obviously absent when the couple is living separate and apart. *Id.*

28. 331 So. 2d 438 (La. 1976). For a discussion of the *Williams* case, see note 10, *supra*.

29. 358 So. 2d at 622 (Calogero, J., dissenting).

30. *Id.*

31. *Id.* Justice Calogero also relied upon the legal principle of freedom of contract in maintaining that the right to alimony pendente lite is alienable. See M. PLANIOL, *supra* note 13, at no. 288.

32. LA. CIV. CODE art. 2982 states: "The aleatory contract is a mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties or to one or more of them, depend on an uncertain event."

33. See, e.g., *Moore v. Johnston*, 8 La. Ann. 488 (1852); *Henderson v. Stone*, 1 Mart. (N.S.) 639 (La. 1823); *McDonald v. Grande Corp.*, 214 So. 2d 795 (La. App. 3d Cir. 1968); *Gerde Newman & Co. v. Curcuru*, 19 La. App. 154, 139 So. 83 (Orl. Cir. 1932).

seeability should not operate as a bar to the ability to waive alimony pendente lite in an antenuptial contract.³⁴ Should the court persist in recognizing this as a factor, however, recent changes in the laws on matrimonial regimes³⁵ could have the effect of removing foreseeability as a consideration in some instances. In its 1978 session, the Louisiana legislature enacted La. Revised Statutes 9:2834³⁶ which allows couples to contract to establish, modify or terminate a matrimonial regime³⁷ at any time before or during the marriage. This raises the possibility that a couple could enter a contract during the marriage in which the wife waives her right to alimony. In such an instance, the *Holliday* court's concern with lack of foreseeability could possibly be overcome with the result that any bar to the waiver of alimony would have to rest on other grounds.

In *Holliday* the majority abandoned the basis for article 148 articulated in *Williams v. Williams*.³⁸ The basis for alimony pendente lite set forth in *Williams*, that is, the husband's role as head and master of the community, cannot withstand careful consideration. As pointed out by the dissent in that case, husbands have been required to pay alimony pendente lite after the partition of the community, when the wife's earnings did not fall into the community since the couple was living separate and apart, while the wife's income from her separate property had never entered the community, and even, as in *Holliday*, when the couple remained separate in property and there existed no community between them.³⁹ These results

34. Furthermore, recently passed matrimonial regimes legislation would subject marriage contracts to specific matrimonial regimes provisions and "other laws." LA. R.S. 9:2832 (Supp. 1978). These other laws would include article 2982, relating to aleatory contracts. *Id.*

35. 1978 La. Acts, No. 627.

36. 1978 La. Acts, No. 627, § 1, adding LA. R.S. 9:2834. LA. R.S. 9:2834 (Supp. 1978) provides, *inter alia*: "A contract, whether establishing a matrimonial regime or modifying or terminating an established regime, may be entered into at any time before or during marriage."

37. LA. R.S. 9:2831 (Supp. 1978) defines matrimonial regimes as follows: "Matrimonial regimes regulate the ownership and management of the assets and liabilities of married persons, and in relation to their property, their rights and obligations with respect to each other and to third persons."

38. 331 So. 2d 438 (La. 1976).

39. *Id.* at 442 (Calogero, J., dissenting).

would be inappropriate if the husband's duty to pay alimony pendente lite is based upon the difficulty of the wife to obtain community funds because he is the head and master.⁴⁰ In basing alimony pendente lite on the husband's duty of support under article 120 the court in *Holliday* appears to have recognized the infirmities in the basis for article 148 set forth by the *Williams* decision.

The rejection of the *Williams* basis by the *Holliday* decision necessarily raises the question of the constitutionality of article 148 once more. However, a recent decision of the United States Supreme Court, *Orr v. Orr*,⁴¹ has had the effect of deciding the issue raised in *Williams*, on federal constitutional grounds. In *Orr* the Supreme Court declared that an Alabama statute which provided alimony for the wife alone violates the fourteenth amendment's equal protection clause.⁴² The rationale of this decision applies as well to Louisiana's alimony pendente lite provision⁴³ and virtually establishes its unconstitutionality. The most likely response for the Louisiana legislature is to provide access to alimony for both spouses. Such a solution would maintain the question of the alienability of the right to alimony pendente lite as an important issue.

The second and most significant ground for its decision articulated by the majority in *Holliday* is the public interest in enforcing the husband's duty of support.⁴⁴ The decision fails to detail the exact nature of this interest, however. *Loyacano v. Loyacano*,⁴⁵ decided shortly before *Holliday*, is of assistance in explaining what the court considered to be the public's interest in enforcing the husband's duty of support.⁴⁶ *Loyacano*, con-

40. See Lazarus, *supra* note 8, at 417.

41. 99 S. Ct. 1102 (1979).

42. *Id.* at 1113.

43. LA. CIV. CODE art. 148.

44. 358 So. 2d at 620.

45. 358 So. 2d 304 (La. 1978), *vacated*, 99 S. Ct. 1488 (1979).

46. *Loyacano* involved a challenge to the constitutionality of article 160. The husband claimed a denial of equal protection because article 160 provides alimony only to the wife. On original hearing, the majority considered the nature of public interest in alimony, then concluded that there was no denial of equal protection. This conclusion was based on the reasoning that the husband had a right to alimony by proceeding under article 21. On rehearing, the article was upheld, but there was a great division among the members of the court. Three of the justices felt that providing alimony only

cerned with alimony after divorce under article 160, declared that the policy consideration underlying alimony is to prevent divorced women from becoming wards of the state.⁴⁷ This same public interest consideration was argued by the wife in *Holliday* and, according to Justice Calogero's dissent, guided the court in determining that alimony pendente lite is an inalienable right.⁴⁸

Interest in preventing an individual from becoming a public burden is a valid state concern which is found in other areas of the law. The Louisiana Civil Code forbids an individual from divesting himself of all of his property by a donation *inter vivos*.⁴⁹ In addition, judicial approval of contracts not to compete has been limited, owing to a concern that an individual will become a charge upon the community.⁵⁰ Both of these situations demonstrate the underlying state concern that a person cannot by convention deprive himself of the ability to support himself. However, an antenuptial waiver of alimony by a spouse does not present the same likelihood of ward-of-the-state status as is presented in the case of a donation of one's entire patrimony or of a contract divesting oneself of the ability to earn a living.

Waiver of alimony pendente lite does not take away an individual's ability to support himself or herself. To assume that a wife's waiver of alimony automatically occasions the danger that she will become a ward of the state is to assume that the only revenue which married women have is the salary earned by their husbands. Such an assumption is unrealistic in

to the wife was not a denial of equal protection. An equal number of justices agreed that there was no denial of equal protection, arguing that a husband could secure alimony by relying on an exegesis of articles 21 and 160. The remaining justice agreed with the husband that article 160 was unconstitutional. *Id.* at 314.

47. *Id.* at 308.

48. 358 So. 2d at 622 (Calogero, J., dissenting).

49. LA. CIV. CODE art. 1497. Article 1497 states: "The donation *inter vivos* shall in no case divest the donor of all his property; he must reserve to himself enough for subsistence; if he does not do it, the donation is null for the whole." See also *Kelly v. Kelly*, 131 La. 1024, 60 So. 671 (1913); *Lagrange v. Barre*, 11 Rob. 302, 20 La. 163 (1845); Comment, *Donation Omnium Bonorum—Article 1497*, 6 LA. L. REV. 98 (1944).

50. See *Moorman & Givens v. Parkerson*, 127 La. 835, 54 So. 47 (1911); *National Motor Club of La., Inc. v. Conque*, 173 So. 2d 238 (La. App. 3d Cir. 1965). See also LA. R.S. 23:921 (1950 & Supp. 1962).

light of modern social trends.⁵¹ In the case of waiver of alimony pendente lite a spouse is not deprived of the ability to support himself or herself as in the other areas considered above. Declaring the waiver of alimony pendente lite an absolute nullity is not justified by a sufficiently strong public interest, since there is no imminent danger that a spouse will become a public charge.

In addition, as Justice Calogero notes,⁵² most waivers of alimony pendente lite occur in marriage contracts in which the spouses agree to remain separate in property. Such a provision would seem to be most likely when both spouses had separate property and therefore a potential source of revenue therein. Furthermore, this means that a wife who waives alimony is in no greater danger of being a social burden than she was during the course of the marriage, when she was separate in property from her husband. It is suggested, therefore, that public interest in the duty of support represented by alimony pendente lite is not sufficiently strong to make its waiver a nullity. The probability that a spouse who waives alimony pendente lite will become a public burden does not approach that of other situations where the danger of becoming a ward of the state is deemed to outweigh the freedom to contract as one wishes. The degree of public interest is further lessened by the fact that most wives who waive alimony are separate in property from their husbands and are no greater burdens than they are during the marriage.⁵³

The question of the waivability of alimony has been raised

51. In 1950, 21.6% of all married women with husbands present were in the labor force. By 1976, this percentage had risen to 45.0%. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, U.S. WORKING WOMEN: A DATABOOK 19, table 18 (1977). See also the statistical information presented by Justice Dennis in *Loyacano*, 358 So. 2d at 307 n.7. These statistics indicate that the possibility of ward-of-the-state status does not arise automatically because a woman loses access to her husband's income. Nor would such an assumption be valid for husbands if Louisiana were to adopt gender-neutral alimony laws.

52. 358 So. 2d at 622 (Calogero, J., dissenting).

53. An alternative view to the notion that the public has an interest in preventing a spouse from becoming a ward of the state suggests that it is society's duty to provide for its members and that welfare should not face competition from alimentary obligations between family members. See Sundberg, *Marriage Or No Marriage—The Directives for the Revision of Swedish Family Law*, 20 INT'L COMP. L.Q. 223 (1971).

in other jurisdictions and judicial reactions have varied. In a number of states an antenuptial waiver of alimony has been held void as against public policy for the same two reasons raised in *Holliday*, foreseeability and public interest in the duty of support.⁵⁴ However, a recent trend has developed in some jurisdictions to give effect to an antenuptial waiver of alimony when freely entered into after full financial disclosure by both spouses.⁵⁵ These cases have been influenced by the type of policy consideration expressed by the Connecticut Superior Court in a recent decision: "While there is validity to the Madison Avenue pronouncement that 'you've come a long way, baby,' it is equally true that the former complete protective role of the court regarding alimony is no longer necessary in the light of social changes."⁵⁶ It is suggested that this latter view allowing waiver of alimony is the better view in light of the limited possibility that a spouse will become a social burden merely because he or she receives no alimony.

One issue closely related to those decided in *Holliday*, but which was expressly reserved by the court,⁵⁷ is the ability of a wife to waive her right to alimony under article 160. The factors which the court considered important to the waivability of alimony pendente lite also apply to alimony after divorce.⁵⁸ The

54. See, e.g., *Belcher v. Belcher*, 271 So. 2d 7 (Fla. 1972); *Norris v. Norris*, 174 N.W.2d 368 (Iowa 1970); *McMains v. McMains*, 15 N.Y.2d 283, 258 N.Y.S.2d 93, 206 N.E.2d 185 (1965); *Motley v. Motley*, 255 N.C. 190, 120 S.E.2d 422 (1961). One case, decided by the Iowa Supreme Court, bears language which is markedly similar to that of *Holliday*. The Iowa court stated: "The policy involved is that conditions which affect alimony entitlement cannot accurately be foreseen at the time antenuptial agreements are entered, and public interest in the enforcement of the legal obligation to support overrides a premarital anticipatory forfeiture of alimony." *In re Gudenkauf*, 204 N.W.2d 586, 587 (Iowa 1973). For the similar language used by the *Holliday* court, see note 23, *supra*.

55. See, e.g., *Del Vecchio v. Del Vecchio*, 143 So. 2d 17 (Fla. 1962); *Buettner v. Buettner*, 89 Nev. 39, 505 P.2d 600 (1973); *Hudson v. Hudson*, 350 P.2d 596 (Okla. 1960); *Unander v. Unander*, 265 Or. 102, 506 P.2d 719 (1973).

56. *Parniawski v. Parniawski*, 359 A.2d 719, 721 (Conn. Super. Ct. 1976). The court went on to hold that an antenuptial agreement in which the spouses agreed to remain separate in property and waived any right to alimony was not contrary to public policy and, therefore, enforceable against the wife. *Id.*

57. 358 So. 2d at 620 n.6.

58. The husband's duty of support under articles 119 and 120 is terminated by the divorce judgment. However, there still remains the question of whether this waiver

public interest in keeping the wife from becoming a social burden⁵⁹ and lack of foreseeability apply as well to alimony after divorce. If required to rule on an antenuptial contract waiving alimony after divorce the court would likely declare the waiver null on the same public interest grounds enunciated in *Holliday*. It is urged, however, that the court should consider the above discussion of the two *Holliday* factors. Foreseeability is not a necessary requirement in other contractual agreements and should not be required in antenuptial waivers of alimony. Public interest in preventing the waiving spouse from becoming a public charge thus becomes the basis for considering such a waiver. Because waiver of alimony presents a severely limited likelihood that a spouse will become a ward of the state, this public interest should not be considered a public policy unlawfully contravened by the antenuptial waiver of alimony after divorce.

In the future, the legality of waivers of alimony, both pendente lite and after divorce, should be completely reconsidered in light of the purpose of alimony and the applicable law. Two considerations guided the court in *Holliday*, lack of foreseeability and public interest in enforcing the duty of support.⁶⁰ It has been demonstrated that the requirement of foreseeability is not applied in other contractual situations and that no special circumstances justify its imposition here. Therefore, the prime consideration in examining the waivability of alimony becomes the possibility that a spouse will become a ward of the state. It is suggested that the minimal likelihood of this occurring in this instance does not create a sufficient state interest to justify holding the waiver of alimony a nullity. A comparison with other situations where the possibility of ward-of-the-state status controls supports this conclusion. The recent trend in other jurisdictions whereby the waiver is honored when made by a fully informed spouse represents the best solution in light of the limited amount of public interest. If in future cases the court

of alimony would be contrary to good morals or public policy, and in violation of the provisions of articles 11 and 2325.

59. See *Loyacano v. Loyacano*, 358 So. 2d 304 (La. 1978), *vacated*, 99 S. Ct. 1488 (1979).

60. 358 So. 2d at 620.

is willing to disregard its questionable concern with foreseeability and concentrate upon the nature of the public interest in alimony, Louisiana could join the states which have reached this more desirable result.

Hervin A. Guidry

APPELLATE REVIEW OF SENTENCES: A NEW STANDARD IN LOUISIANA

The defendant, an eighteen-year-old male, had sexual intercourse with a consenting fifteen and one-half-year-old female and was convicted of carnal knowledge of a juvenile.¹ The trial judge sentenced him to serve three years and six months at hard labor. On the first appeal, the Louisiana Supreme Court affirmed the conviction but remanded the case to the trial court for resentencing because the judge had failed to apply the sentencing guidelines of article 894.1 of the Louisiana Code of Criminal Procedure.² On the second appeal, after the

1. LA. R.S. 14:80 (1950 & Supp. 1977) provided in pertinent part: "Carnal knowledge of a juvenile is committed when anyone over the age of seventeen has sexual intercourse, with her consent, with any unmarried female person of the age of twelve years or over, but under the age of seventeen years, where there is an age difference of greater than two years between the two persons."

Although the defendant was actually convicted for a violation of the 1950 version of Revised Statutes 14:80, the Louisiana Supreme Court in its analysis referred to the 1977 version of this statute. Act 539 of 1977 simply added the additional requirement that there be a two-year age difference between the defendant and the victim. 1977 La. Acts, No. 539. Revised Statutes 14:80 was again amended in 1978 to afford equal protection to male victims. 1978 La. Acts, No. 757.

2. LA. CODE CRIM. P. art. 894.1 provides:

A. When a defendant has been convicted of a felony or misdemeanor, the court should impose a sentence of imprisonment if:

(1) There is an undue risk that during the period of a suspended sentence or probation the defendant will commit another crime;

(2) The defendant is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment to an institution; or

(3) A lesser sentence will deprecate the seriousness of the defendant's crime.

B. The following grounds, while not controlling the discretion of the court, shall be accorded weight in its determination of suspension of sentence or probation:

(1) The defendant's criminal conduct neither caused nor threatened serious harm;