DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

REBECCA ZALKIN,
Appellant,

v.

JEFFREY ZALKIN,
Appellee.

Nos. 4D2025-0278 and 4D2025-0737

[November 4, 2026]

Consolidated appeals from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Lorena V. Mastrarrigo and Carlos A. Rodriguez, Judges; L.T. Case No. 062022DR005878AXXXCE.

Douglas H. Reynolds, Brieonna S. Christopher, and Jennifer A. Bautista of Tripp Scott, P.A., Fort Lauderdale, for appellant.

Brandon S. Vesely and Amy L. Dilday of The Florida Appellate Firm, P.A., St. Petersburg, for appellee.

WHITE, REBECCA, Associate Judge.

The wife appeals from a final judgment dissolving her marriage, and the trial court's order correcting the final judgment entered after the wife had appealed. As discussed below, the wife raises five arguments on appeal, four of which require reversal regarding alimony, child support, amending the final judgment after this appeal had commenced, and parental responsibility and timesharing. On the fifth argument, we affirm the trial court's denial of attorney's fees and costs to the wife.

Background

The parties were married in 2004. They had two minor children during the marriage.

During the pendency of the dissolution case, the wife sought temporary alimony and temporary attorney's fees, which the trial court denied. The wife appealed. We affirmed the trial court's denial of temporary alimony, but reversed the trial court's denial of temporary attorneys' fees, as the trial court had based

its denial on findings unrelated to the parties' financial positions. *Zalkin v. Zalkin*, 392 So. 3d 159, 160–61 (Fla. 4th DCA 2024).

The parties later agreed on an equitable distribution plan. Following a two-day trial held in February 2024, and a separate fees hearing in October 2024, a final judgment was entered by the trial court in November 2024.

In the final judgment, the trial court stated that it would not be rendering a final decision as to the parenting plan. Instead, the trial court ordered a temporary parenting plan, timesharing schedule, and parental responsibility provisions. After applying the factors in section 61.13(3), Florida Statutes (2023), the final judgment gave the husband 100% timesharing, and ordered shared parental responsibility, with the husband having ultimate decision-making authority. However, at the end of the final judgment, the trial court inconsistently granted sole parental responsibility to the husband. The trial court additionally denied the wife's requests for alimony and attorneys' fees.

The wife filed a motion for rehearing, which the trial court denied. The wife then filed this appeal.

After the wife filed this appeal, the husband filed a motion requesting the trial court to correct the final judgment, to make the temporary timesharing schedule previously entered become permanent.

The trial court granted the husband's motion, and entered an order amending the final judgment to indicate that the timesharing and parenting plan described in the final judgment would be permanent. The trial court also amended the final judgment to uniformly indicate that the trial court had granted the husband sole parental responsibility. The trial court further amended the final judgment to include the child support guidelines.

This appeal then resumed.

Alimony

First, the wife raises several arguments for why the trial court erred in denying her alimony. We address each argument in turn.

The trial court has broad discretion to award alimony, and "[a]n appellate court will not disturb an alimony award where competent substantial evidence supports the award and the trial court complies with the governing law." *Broemer v. Broemer*, 109 So. 3d 284, 289 (Fla. 1st DCA 2013).

Need and Ability to Pay

Section 61.08(2)(a), Florida Statutes (2023), states that when a trial court is determining whether to award alimony, it "shall first make a specific, factual determination as to whether the party seeking support, maintenance, or alimony has an actual need for it and whether the other party has the ability to pay support, maintenance, or alimony." § 61.08(2)(a), Fla. Stat. (2023). In assessing a party's need and ability to pay, the trial court must "subtract the party's monthly expenses from their *net monthly income*. . . ." *Lopez v. Lopez*, 385 So. 3d 1090, 1092 (Fla. 4th DCA 2024) (quoting *Waite v. Milo-Waite*, 358 So. 3d 768, 774 (Fla. 4th DCA 2023)). "After finding a need for alimony and an ability to pay, the court *shall* consider all of the mandated factors in section 61.08(3) to evaluate and determine the proper form of alimony." *Edman v. Edman*, 407 So. 3d 452, 455 (Fla. 4th DCA 2025).

Here, the trial court did not first decide the wife's need for alimony or the husband's ability to pay before it considered the factors under section 61.08(3) as required. Further, the trial court imputed gross income to the wife. The "trial court must make specific findings regarding each party's net income and the findings of need and ability to pay must then be based on the parties' net incomes." *Reese v. Reese*, 363 So. 3d 1202, 1212 (Fla. 6th DCA 2023) (citing *Ogle v. Ogle*, 334 So. 3d 699, 703 (Fla. 1st DCA 2022)). In *Reese*, the Sixth District determined that the trial court erred in relying on gross income in imputing income to the wife, which error necessitated reversal due to the trial court's failure to make specific findings regarding the parties' net incomes. *Id.* at 1211. Thus, here, as the trial court did not make specific findings as to need and ability to pay before applying the section 61.08(3)(a)-(h) factors, and relied upon the wife's imputed gross income, the trial court erred in denying alimony.

Additionally, the trial court erred in failing to consider the husband's voluntary contributions to his 401(k) plan. *See Melton v. Melton*, 79 So. 3d 154, 156 (Fla. 2d DCA 2012) ("[T]rial courts must factor in the paying spouse's voluntary contributions to investments, savings, and retirement plans in making the 'ability-to-pay alimony calculation.'" (quoting *Geoghegan v. Geoghegan*, 969 So. 2d 482, 486 (Fla. 5th DCA 2007))). On remand, the trial court should consider the husband's voluntary contributions to his 401(k) account in determining his ability to pay.

The wife additionally argues that the trial court's determinations under section 61.08(3) are not supported by the evidence. The wife makes this argument on four grounds as to the trial court's findings under section 61.08(3): (1) the imputed salary income, (2) the imputed investment income, (3) gifts received from her father, and (4) the existence of a supportive relationship.

Imputed Income – Salary

A trial court may impute income to a spouse. However, "the trial court 'may only impute a level of income supported by the evidence of employment potential and probable earnings based on history, qualifications, and prevailing wages.'" *Inman v. Inman*, 345 So. 3d 320, 322 (Fla. 4th DCA 2022) (quoting *Koscher v. Koscher*, 201 So. 3d 736, 741 (Fla. 4th DCA 2016)). "In determining a party's income for alimony purposes, a court may not speculate on what might happen in the future but must consider the circumstances that existed at the time of the final hearing." *Id.* (citation omitted).

In imputing income, the trial court must evaluate two questions. "First, the court must conclude that the termination of income was voluntary." *Koscher*, 201 So. 3d at 740 (citations omitted). Here, testimony supported that the wife voluntarily reduced her position to a teacher's assistant. The evidence at trial established that the wife holds a master's degree and voluntarily reduced her position from a teacher to a teacher's assistant in the 2020-2021 school year. The school's representative testified that the transition from teacher to teacher's assistant reduced the wife's salary from $49,449.60 to $20,000, and that the current salary of a teacher with a master's level education is $54,000.

Second, the trial court must determine "whether the subsequent unemployment 'resulted from the spouse's pursuit of [her] own interests or through less than diligent and bona fide efforts to find employment paying income at a level equal to or better than that formerly received.'" *Id.* (quoting *Heard v. Perales*, 189 So. 3d 834, 836 (Fla. 4th DCA 2015)). Here, the wife and her therapist testified that the wife works as a teacher's assistant because of the stress caused by teaching. The wife testified that she does not intend to seek a teaching position, and she would not leave the school where she is currently employed as a teacher's assistant. Based on the findings, the trial court did not err in finding the wife voluntarily underemployed.

However, the wife argues that the trial court erred in determining alimony, because the trial court improperly imputed a $54,000 annual income to her when no evidence was presented that a teaching job existed at the school when the trial occurred. The party seeking to impute income "bears the burden of showing both employability and that jobs are available." *Koscher*, 201 So. 3d at 741 (quoting *Durand v. Durand*, 16 So. 3d 982, 985 (Fla. 4th DCA 2009)). The undisputed trial testimony was that no teaching position for which the wife qualifies is currently available. Additionally, while the current income for a teacher with a master's degree is $54,000, the wife's last income as a teacher was less than that amount. Thus, while the husband may have shown employability because of the wife's education and employment history, the husband did not show that a job was available.

Therefore, the evidence does not support the income which the trial court imputed to the wife.

Imputed Income – Investment

The trial court additionally imputed monthly gross income to the parties based on their retirement assets. A trial court does not abuse its discretion in considering a spouse's ability to withdraw from a retirement account without penalty in determining income potential, so long as the withdrawal does not invade the principal. *Niederman v. Niederman*, 60 So. 3d 544, 547 (Fla. 4th DCA 2011). Here, the trial court did not find that the imputed income would not invade the principal. Therefore, the trial court's finding is not supported by competent and substantial evidence.

Gifts from the Wife's Father

The trial court stated in the final judgment that it did not accept the wife's argument that the monies which she has received from her father throughout this action are loans that must be repaid. A trial court may consider family gifts in imputing income to a party where the gifts are not sporadic, but instead are continuing and ongoing and "where the evidence shows that the gifts will continue in the future." *Oluwek v. Oluwek*, 2 So. 3d 1038, 1039 (Fla. 2d DCA 2009) (citation omitted). The wife's father testified at trial that he was paying for the wife's half of her expenses which she shares with her boyfriend. The wife's father stated his "intention is to support and give – loan money to [his] daughter." He further testified that he has not received payments, does not have a payment plan, and was not prepared to sue for the money as of the date of trial.

Based on the evidence presented at trial, the trial court made a credibility determination that the monies which she has received from her father were gifts rather than loans. The trial court determined based on the father's testimony that he intended to continue supporting his daughter, and this support was ongoing. We defer to a trial court's credibility finding. *Evans v. Thornton*, 898 So. 2d 151, 152 (Fla. 4th DCA 2005). Therefore, the trial court did not err in imputing income from the wife's father's gifts.

The Wife's Supportive Relationship

Finally, the trial court determined that the wife and her boyfriend were in a supportive relationship. Section 61.08(3)(h) states that the trial court shall consider "[a]ny other factor necessary for equity and justice between the parties, which shall be specifically identified in the written findings of fact. This may include a finding of a supportive relationship as provided for in s. 61.14(1)(b). . . ." § 61.08(3)(h), Fla. Stat. (2024). Here, the trial court considered the factors listed under section 61.14(1)(b)(2), Florida Statutes (2024) and made specific written findings of fact as to each. The trial court's findings

were supported by competent substantial evidence from the testimony presented at trial.

Alimony Conclusion

Based on the foregoing, we must reverse and remand the alimony determination, as the trial court did not make specific findings relating to need and ability to pay on the parties' **net** incomes before the trial court applied section 61.08(3)'s factors. The trial court also erred in imputing income to the wife as to her salary and investment accounts, as competent substantial evidence did not support those determinations. Although competent substantial evidence supported the trial court's findings that the wife has received continuing gifts from her father, and that her supportive relationship reduced her need for alimony were supported by the evidence, our reversal of the trial court's alimony determination requires the trial court, on remand, to reconsider those components as part of a complete need-and-ability-to-pay analysis conducted on the parties' net incomes.

Child Support

Second, the wife challenges the child support award. "The standard of review for a child support award is abuse of discretion." *Smith v. Loffredo-Smith*, 230 So. 3d 898, 899 (Fla. 4th DCA 2017) (citations omitted).

As analyzed above in the alimony determination, competent substantial evidence did not support the trial court's imputation of income to the wife. The trial court's child support determination also did not consider the wife's detriment-related expenses. *See Frye v. Cuomo*, 296 So. 3d 939, 942 (Fla. 4th DCA 2020). Finally, the trial court's child support calculation does not account for a single child after the older child's entitlement ends. Therefore, the child support determination must be remanded to address all those issues.

Amended Final Judgment

Third, the wife asserts that, after she had filed her notice of appeal, the trial court lacked jurisdiction to amend the final judgment. "The standard of review regarding a trial court's exercise of case jurisdiction while an appeal is pending is de novo." *Terry v. State*, 263 So. 3d 799, 802 (Fla. 4th DCA 2019). Generally, "[w]hen an appeal is taken, 'the lower court [is] divested of jurisdiction to proceed with matters related to the final judgment.'" *Jallali v. Knightsbridge Vill. Homeowners Ass'n*, 152 So. 3d 808, 809 (Fla. 4th DCA 2014) (quoting *Hudson v. Hofmann*, 471 So. 2d 117, 118 (Fla. 2d DCA 1985)).

Here, after the wife had filed her notice of appeal, the trial court amended the final judgment to: (1) make the parenting plan final and permanent, (2) clarify

that the trial court had awarded the husband sole parental responsibility, and (3) add detriment findings required to award sole parental responsibility to the husband. As an initial matter, the trial court did not make a detriment finding orally or in the final judgment. While the factual circumstances may have supported a detriment finding, the trial court did not make that finding until after the wife had filed her notice of appeal. As we stated in *Campbell v. Campbell*, 100 So. 3d 763 (Fla. 4th DCA 2012), once a notice of appeal is filed, "the trial court [is] divested of jurisdiction" to alter that very order. *Id.* at 765. Thus, we conclude that all amendments to the final judgment were substantive, and the trial court was without jurisdiction to amend the final judgment after the wife had filed her notice of appeal.

Parental Responsibility and Timesharing

Fourth, the wife argues the trial court's determination of parental responsibility and timesharing is erroneous. "The standard of review for the trial court's findings and determination regarding primary parental responsibility is abuse of discretion." *De La Fe v. De La Fe*, 332 So. 3d 60, 61 (Fla. 2d DCA 2021) (citation omitted). A trial court may not only consider "the best interests of the child" factors in awarding sole parental responsibility without also determining whether shared parental responsibility is detrimental to the child. *Socol v. Socol*, 291 So. 3d 594, 596–97 (Fla. 4th DCA 2020) (citations omitted).

Here, the trial court did not make a detriment finding in the original final judgment, but rather applied only the best interest factors before the trial court made the inconsistent rulings regarding parental responsibility and awarded the husband ultimate decision-making authority for all aspects of the children's lives. By awarding ultimate decision-making authority to the husband as to all issues, "the trial court essentially nullified the award of shared parental responsibility." *Cranney v. Cranney*, 206 So. 3d 162, 164 (Fla. 2d DCA 2016).

We have held "that giving the primary residential parent unlimited decision making authority over all matters regarding the children is incompatible with shared parental responsibility." *Seligsohn v. Seligsohn*, 259 So. 3d 874, 876 (Fla. 4th DCA 2018) (quoting *McClure v. Beck*, 212 So. 3d 396, 398 (Fla. 4th DCA 2017)). Rather, a court may give ultimate authority over *specific* matters where the parties cannot agree. *Id.* (citations omitted).

Here, the trial court erred in awarding sole parental responsibility or shared parental responsibility with ultimate decision-making authority as to "all aspects of the minor children's lives" to the husband without finding that shared parental responsibility would be detrimental to the children. Thus, we reverse and remand for the trial court to either: (1) grant shared parental responsibility with ultimate decision-making as to *specific* issues, not including medical issues, or

(2) make findings to support awarding sole parental responsibility to the husband. *See De La Fe*, 332 So. 3d at 62.

Attorney's Fees and Costs

Fifth, the wife argues the trial court erred in denying the wife's motion to recover her attorney's fees and costs from the husband. An award of attorneys' fees is "reviewed for an abuse of discretion." *Alvarez v. Salazar*, 338 So. 3d 267, 270 (Fla. 4th DCA 2022) (quoting *Henry v. Henry*, 191 So. 3d 995, 999 (Fla. 4th DCA 2016)). Section 61.16(1), Florida Statutes (2024), authorizes a trial court to award attorney's fees and costs. "The standard for awarding attorney's fees in dissolution cases is the financial need of the requesting party and the financial ability of the other party to pay." *Phillips v. Ford*, 68 So. 3d 257, 258 (Fla. 4th DCA 2010) (quoting *Derrevere v. Derrevere*, 899 So. 2d 1152, 1153 (Fla. 4th DCA 2005)).

Here, the trial court properly considered the parties' relative financial positions in its decision to deny the wife's motion for attorneys' fees. The trial court then found that the wife had a need for trial attorney's fees, but the husband did not have the ability to pay. Competent substantial evidence supports the trial court's findings. Therefore, we affirm the trial court's denial of the wife's motion for attorney's fees and costs.

Appellate Attorney's Fees and Costs

Finally, the wife argues that the final judgment must be reversed because the trial court did not reserve jurisdiction in the final judgment to consider the wife's requests to recover her appellate attorney's fees and costs. This issue is moot because competent substantial evidence supports the trial court's determination that the husband does not have the ability to pay the wife's attorney fees and costs.

Conclusion

Having determined that the trial court failed to make required findings for its denial of the wife's request for alimony, and its awards of child support and time-sharing, we reverse and remand for the trial court to make the requisite findings which are supported by competent substantial evidence. Additionally, we vacate the trial court's order amending final judgment, because the trial court was without jurisdiction to enter the order while this appeal was pending. Finally, we affirm the trial court's denial of the wife's motion to recover her attorney's fees and costs.

Affirmed in part, reversed in part, and remanded with instructions.

GERBER, C.J., and KLINGENSMITH, J., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.