

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

SUSAN B. SYLVESTER,

Appellant,

v.

Case No. 5D19-2889

MATTHEW J. SYLVESTER,

Appellee.

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Opinion filed October 9, 2020

Appeal from the Circuit Court  
for St. Johns County,  
John M. Alexander, Judge.

Molly Lewis Sasso, of Sasso & Guerrero,  
Jacksonville, for Appellant.

John E. Westfield, of Canan Law, St.  
Augustine, for Appellee.

WALLIS, J.

Susan Sylvester (Former Wife) appeals the trial court's order on her Supplemental Petition to Modify Child Support. She argues that the trial court erred in several respects, including when it calculated the amount of child support that Matthew Sylvester (Former Husband) owes. We agree that the trial court erred in calculating the new child support amount because it gave Former Husband credit for health care insurance premiums that

included his new wife. We, therefore, reverse and remand for the trial court to re-calculate Former Husband's child support obligation. In all other respects, we affirm.

The trial court entered a Final Judgment dissolving the parties' marriage in August of 2017. The parties then engaged in contentious litigation that resulted in the order on appeal, which modified the Final Judgment and, *inter alia*, awarded Former Wife an increased amount of child support. In calculating the new child support amount, the trial court assigned a credit to Former Husband for the \$460 that he pays for a health insurance plan that includes him and his new wife.

When calculating child support, "[e]ach parent's percentage share of the child support need shall be determined by dividing each parent's net monthly income by the combined net monthly income." § 61.30(9), Fla. Stat. (2019). A parent's net income is "computed by subtracting allowable deductions from gross income." *Id.* § 61.30(4). The statute sets forth a number of allowable deductions, including "[h]ealth insurance payments, excluding payments for coverage of the minor child." *Id.* § 61.30(3)(e). After the parties' net incomes are determined, the trial court combines the net incomes and uses the guidelines table in section 61.30(6) to determine the minimum guidelines amount of support applicable for the number of children. Thereafter, the trial court determines each parent's actual dollar share of the total minimum child support need pursuant to section 61.30(10).

Although section 61.30 does not specify whether the deductions for health insurance payments must be for the parent alone or can be for the parent and his new spouse, the case law applying section 61.30(3)(e) suggests that the deduction should be for the amount that the parent pays for his own health insurance. See *Magann v. Magann*,

848 So. 2d 496, 498 (Fla. 2d DCA 2003) ("Finally, in calculating the child support, the trial court erred by failing to take into consideration the \$125.04 per month the former husband paid for his own health insurance."); Somma v. Vesely, 687 So. 2d 936, 937 n.2 (Fla. 4th DCA 1997) ("The court erred because pursuant to the statute, it should have first subtracted the \$60–70 per month appellant pays for his health insurance."). This interpretation of the statute is supported by Campagna v. Cope, 971 So. 2d 243, 250 (Fla. 2d DCA 2008), wherein the Second District found that "[u]nder section 61.30(3)(e), the [w]ife may deduct from her gross income the cost of her personal health insurance, excluding the cost for the minor child, before calculating the child support obligation." The Second District concluded that "the [w]ife cannot deduct the cost she voluntarily pays for her other adult child because he is not a minor." Id. We agree with the Campagna court that a former spouse may not receive a credit for health insurance that he voluntarily pays for another adult.

Here, the Order found that Former Husband pays \$206 per month for his own health insurance and that he has a joint plan with his new wife that costs \$460 per month. When calculating Former Husband's net monthly income, the trial court gave Former Husband a deduction for \$460 in health care costs. This was error. See id. Therefore, we reverse and remand for the trial court to re-calculate Former Husband's child support obligation. In calculating his net income on remand, we instruct the trial court to use the \$206 amount that Former Husband pays for his own health insurance.

AFFIRMED in PART; REVERSED in PART; and REMANDED with Instructions.

ORFINGER and HARRIS, JJ., concur.