

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

JANUARY TERM 2013

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

MARIANGELICA QUINTERO ETC.,

Appellant,

v.

Case No. 5D11-3457

JOSE S. RODRIGUEZ,

Appellee.

\_\_\_\_\_ /

Opinion filed February 15, 2013

Appeal from the Circuit Court  
for Seminole County,  
Michael J. Rudisill, Judge.

Patrick John McGinley, of the Law Office  
of Patrick John McGinley, PA, Winter Park,  
and David W. Veliz, of David W. Veliz,  
P.A., Orlando, for Appellant.

Nicholas A. Shannin, of The Shannin Law  
Firm, P.A., Orlando, and Jeffrey Feulner,  
of Men's Divorce Law Firm, Orlando, for  
Appellee.

PER CURIAM.

Mariangelica Quintero ("former wife") appeals the final judgment dissolving her marriage to Jose Rodriguez ("former husband"). She first argues that the trial court erred by imputing income to her, resulting in an error in failing to award her permanent

periodic alimony.<sup>1</sup> Alternatively, she argues that the trial court abused its discretion by failing to award her at least \$1 in nominal permanent periodic alimony. Finally, she argues that the trial court abused its discretion by failing to award her trial-level attorney's fees and costs based upon her need and the former husband's ability to pay. Although we find no basis to reverse the trial court's alimony rulings, we agree that the trial court abused its discretion by failing to award the former wife attorney's fees.

The trial court's decision to deny the former wife's attorney's fee motion was premised upon the imputation of income to her, which is allowed by law. *See Arouza v. Arouza*, 670 So. 2d 69 (Fla. 3d DCA 1995). However, even with her imputed income, the former wife is left with a negligible surplus of available funds each month (accepting the trial court's findings as to her reasonable and necessary monthly expenses), which is clearly insufficient to pay her trial counsel's fees. In contrast, the former husband was left with a healthy surplus each month, from which he has the ability to pay the former wife's fees. Under these circumstances, the trial court's denial of the former wife's motion for fees was an abuse of discretion. *Lowman v. Lowman*, 724 So. 2d 648, 650 (Fla. 2d DCA 1999).

Accordingly, we reverse the final dissolution order and remand this matter to the trial court with instructions to award the former wife her reasonable attorney's fees. See § 61.16, Fla. Stat. (2010).

AFFIRMED in part; REVERSED in part; REMANDED with instructions.

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<sup>1</sup> At trial, the former wife asserted "entitlement" to \$3,500 per month in permanent alimony based on the length of the marriage, standard of living during the marriage, and the parties' incomes and expenses.

PALMER, LAWSON and COHEN, JJ., concur.