IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

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

PATTI ANGELA WELCH, Wife,

Appellant,

v.

CASE NO. 1D08-5670

THOMAS FREDERICK WELCH, Husband,

Appellee.

_____/

Opinion filed July 24, 2009.

An appeal from the Circuit Court for Bay County.
Keith Brace, Senior Judge.

Graham Clarke, Panama City, for Appellant.

Carroll L. McCauley, Panama City, for Appellee.

BROWNING, J.

Patti Angela Welch, the former wife, appeals certain findings of fact and conclusions of law made by the trial court in its final judgment dissolving her 23-year marriage to the appellee, Thomas Frederick Welch. Specifically, the former wife contends that no competent substantial evidence supports the findings relating

to the parties' gross and net incomes, which amounts doubtless affected the trial court's rulings on the former wife's requests for permanent periodic alimony and child support. Alternatively, the former wife contends that the final judgment does not disclose the reasoning and calculations underlying the determination of the amount of child support owed by the former husband and the decision to deny her permanent alimony other than nominal alimony in the amount of $1.00 a year. We affirm the final judgment of dissolution.

The Requirement to Preserve Issues in the Trial Court

"The time to request findings is when the case is pending in the trial court." Broadfoot v. Broadfoot, 791 So. 2d 584, 585 (Fla. 3d DCA 2001). For this reason, "[c]ourts generally do not consider appeals alleging insufficient fact-finding where the appellant did not present the issue below at trial or in a motion for rehearing." Matajek v. Skowronska, 927 So. 2d 981, 987-88 (Fla. 5th DCA 2006) (concluding that although the absence of findings regarding the parties' marital standard of living and the former wife's earning ability was not challenged in the trial court, the lack of such required findings hampered meaningful appellate review, rendered unclear the basis for the trial court's award of permanent periodic alimony, and allowed the district court *sua sponte* to exercise its discretion to remand the case to the trial court for findings). Although the Fifth District Court usually abides by this "preservation" requirement, our sister court subjects this rule to the following

caveat, as it did in Matajek: "if the court determines on its own that its review is hampered, [it] may, at [its] discretion, send the case back for findings." Mathieu v. Mathieu, 877 So. 2d 740, 741 n.1 (Fla. 5th DCA 2004).

Our Court has not recognized the *Mathieu* exception to the general "preservation" requirement in family law cases. The law on this subject is currently unsettled among the Florida district courts of appeal. See Jonathan M. Streisfeld, "We're Back: The Appellate Court Said You Didn't Find Anything," 82 Fla. B.J. 32, 32-33 (Apr. 2008). Counsel for the former wife provided the trial court with a proposed final judgment of dissolution, which included detailed findings of fact. However, after the trial court issued its final judgment of dissolution, the former wife failed to challenge the final judgment in any respect in the trial court.

Because the former wife failed to bring these alleged deficiencies to the attention of the trial court via a well-pled motion for rehearing or by any other means available in the trial court to afford the trial judge a reasonable opportunity to rectify the matter, we are constrained to conclude that these issues are not preserved. See Fla. Fam. L. R. P. 12.530 (providing that motions for rehearing "shall be governed by Florida Rule of Civil Procedure 1.530"). Therefore, given the well-established law in our district and several other districts, we decline to consider these issues for the first time on appeal. See Anaya v. Anaya, 987 So. 2d

806 (Fla. 5th DCA 2008); Helling v. Bartok, 987 So. 2d 713, 715 & n.1 (Fla. 1st DCA 2008) (concluding that former husband waived his objection to the trial court's failure to make specific findings supporting the award of alimony by failing to ask the trial court to make such findings in a motion for rehearing that argued other points); Simmons v. Simmons, 979 So. 2d 1063, 1064 (Fla. 1st DCA 2008) (concluding that former wife failed to preserve the issue of the trial court's failure to divide the parties' assets without making required findings of value, where argument was not raised in the trial court in her motion for rehearing or otherwise); Owens v. Owens, 973 So. 2d 1169, 1170 (Fla. 1st DCA 2007) (concluding that the absence of sufficient factual findings to allow meaningful appellate review of a final judgment of dissolution of marriage was never raised in a motion for rehearing or by any other available means in the trial court and, therefore, was not preserved for appellate review); Esaw v. Esaw, 965 So. 2d 1261, 1265 (Fla. 2d DCA 2007) ("We have not, however, held that an order which lacks a finding required under section 61.08 or 61.075 is fundamentally erroneous simply by virtue of the technical deficiency in the trial court's findings. There is no general rule that the lack of statutorily required findings constitutes fundamental error."); Hoffman v. Hoffman, 793 So. 2d 128, 131 (Fla. 4th DCA 2001) (concluding that trial court's failure to deduct the monthly amount attributable to health insurance coverage for the minor children from the former husband's child support obligation

was never argued in the trial court or raised in a motion for rehearing and, thus, was not preserved for appellate review); Broadfoot, 791 So. 2d at 585 (declining to reverse final judgment of dissolution of marriage for failure to make findings required by section 61.08(1), Florida Statutes (2000), where former husband failed to preserve the specific issue in the trial court and the basis for the challenged award was reasonably clear and supported by the record); Reis v. Reis, 739 So. 2d 704, 705-06 (Fla. 3d DCA 1999); Rokicki v. Rokicki, 660 So. 2d 362, 363-64; Eagle v. Eagle, 632 So. 2d 122, 123 (Fla. 1st DCA 1994) (determining that trial court's refusal to consider evidence that income should be imputed to appellee was not preserved for appellate review). But see Dorsett v. Dorsett, 902 So. 2d 947, 950 (Fla. 4th DCA 2005) (concluding that the lack of a transcript did not preclude appellate review of errors of law appearing on the face of the final judgment of dissolution). Accordingly, we affirm the final judgment of dissolution of marriage.

Motion for Appellate Attorney's Fees and Costs

The trial court awarded 50% of the former wife's trial attorney's fees and costs. We do not disturb this ruling, which is not challenged. However, we take this opportunity to remind the bar about the long-standing and well-established pleading requirements for motions for attorney's fees and costs. Florida Rule of Appellate Procedure 9.400(b) states that a motion for attorney's fees "shall state the grounds on which recovery is sought." In United Services Automobile

Association v. Phillips, 775 So. 2d 921 (Fla. 2000), the court addressed this language as follows:

> We interpret this language to require that a party seeking attorney's fees in an appellate court must provide substance and specify the particular contractual, statutory, or other substantive basis for an award of fees on appeal. It is simply insufficient for parties to only refer to rule 9.400 or to rely on another court's order in support of a motion for attorney's fees for services rendered in an appellate court . . . . We intend for this policy to apply prospectively.

Id. at 922. The former wife's motion for attorney's fees and costs alleges that the financial affidavits will show that the former husband has the superior financial ability to pay the former wife's fees and costs; the motion requests a provisional order granting appellate fees and costs. The motion does not mention section 61.16, Florida Statutes (2007), which is the statute specifically governing family law attorney's fees, suit money, and costs, nor does it cite any other legal basis for the claim. Phillips and its progeny compel us to conclude that the motion for appellate fees and costs is facially insufficient and must be denied. See Hembd v. Dauria, 859 So. 2d 1238, 1240-41 (Fla. 4th DCA 2003); Sumlar v. Sumlar, 827 So. 2d 1079, 1086 (Fla. 1st DCA 2002); Rados v. Rados, 791 So. 2d 1130 (Fla. 2d DCA 2001); Shuler v. Darby, 786 So. 2d 627, 630 (Fla. 1st DCA 2001) (on motion for clarification and/or rehearing).

The final judgment of dissolution is AFFIRMED; the motion for appellate attorney's fees and costs is DENIED.

ALLEN and PADOVANO, JJ., CONCUR.