NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

ELAINE J. NICHOLSON,)
Appellant,)))
٧.)))
DONALD LEE NICHOLSON,)))
Appellee.)))

Case No. 2D15-1222

Opinion filed December 18, 2015.

Appeal from the Circuit Court for Pinellas County; Amy M. Williams, Judge.

Jane H. Grossman, St. Petersburg, for Appellant.

No appearance for Appellee.

KHOUZAM, Judge.

Elaine J. Nicholson appeals the circuit court's order awarding her alimony from her husband, Donald Lee Nicholson, unconnected with a dissolution of their marriage. <u>See § 61.09</u>, Fla. Stat. (2014). We reverse only because the circuit court was under the misimpression that it could not consider the husband's social security benefit as income. In calculating the support amount, the court explained that it "[did]

not think it [was] appropriate for this court to award federal social security to the spouse." But to the contrary, section 61.046(8), Florida Statutes (2014), provides that

"[i]ncome" means any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government.

And specifically, social security benefits may be considered income for purposes of calculating alimony. <u>Baker v. Baker</u>, 419 So. 2d 735, 736 (Fla. 1st DCA 1982); <u>see also</u> <u>Boone v. Boone</u>, 3 So. 3d 403, 405 (Fla. 2d DCA 2009) (considering both parties' social security benefits as income in calculating alimony). Accordingly, we reverse and remand for the court to reconsider the amount of the alimony award in light of this opinion and hold another hearing if necessary. <u>Cf. Winewica v. Winewica</u>, 436 So. 2d 271, 271 (Fla. 3d DCA 1983) (reversing for another hearing on the amount of alimony to be awarded where the trial court "labored under the misapprehension that the appellee's federal pension could not be considered in awarding alimony").

Reversed and remanded with instructions.

WALLACE and SALARIO, JJ., Concur.