

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

VICTOR G. MERCADO,

Appellant,

v.

LIUBOV S. MERCADO,

Appellee.

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Case No. 2D19-4553

Opinion filed April 23, 2021.

Appeal from the Circuit Court for
Manatee County; Diana L. Moreland,
Judge.

Damien McKinney of McKinney Law
Firm, P.A., Tampa, for Appellant.

Jerome C. Williams, Jr., of Law Office of
Jerome C. Williams, Jr., St. Petersburg,
for Appellee.

NORTHCUTT, Judge.

Victor Mercado appeals the final judgment dissolving his marriage to
Liubov Mercado. He challenges the judgment on four grounds, but we address only two
related issues regarding financial obligations associated with the former marital home.¹

¹We affirm the final judgment without discussion as it relates to Mr.
Mercado's remaining issues.

For our purposes, the salient facts are that the trial court awarded Ms. Mercado exclusive occupancy of the jointly owned former marital home until the parties' child reaches majority, during which Mr. Mercado is to pay the attendant mortgage payments and homeowners association (HOA) fees. After the child reaches majority, the home is to be sold and the net proceeds divided equally between the parties. The court also awarded Ms. Mercado durational alimony for fifteen years.

Mr. Mercado complains that when calculating child support under section 61.30, Florida Statutes (2019), the trial court erred by failing to deduct the mortgage and HOA payments from his income. He is correct; the court should have treated those payments as expenses to Mr. Mercado and as income to Ms. Mercado.

Section 61.30(2)(a)(9) provides that for purposes of calculating child support a party's gross income includes, among other things, "[s]pousal support received from a previous marriage or court ordered in the marriage before the court." Conversely, a party's net income for purposes of determining child support under the statute is obtained by deducting certain enumerated expenses. One such deduction, per section 61.30(3)(g), is "[s]pousal support paid pursuant to a court order from a previous marriage or the marriage before the court." Spousal support may include the payor's court-ordered obligation to bear exclusive responsibility for the mortgage payments on the former marital home. See Pastore v. Pastore, 497 So. 2d 635, 637 (Fla. 1986) (explaining that a court may use various remedies, including lump sum alimony, permanent periodic alimony, rehabilitative alimony, child support, a vested special equity in property, and an award of exclusive possession of property, among others, as part of an overall scheme to achieve equity between the parties).

Here, the court did not expressly describe Mr. Mercado's mortgage and HOA payments as alimony, but that characterization was implicit in its judgment. Notably, the court did not factor those payments into the division of proceeds from the eventual sale of the home, which, as will be discussed, is a hallmark of spousal support. Indeed, the court stated that the payments were to be taken into account in its alimony determination. And it observed that "the Wife's need for alimony will increase when the parties ultimately sell the marital residence and the Wife is obligated to obtain her own housing rather than continuing to reside rent-free in the marital residence."

It is clear, then, that the payments at issue here are a form of spousal support. Cf. Green v. Green, 16 So. 3d 298, 301 (Fla. 1st DCA 2009) (holding that the nature of the mortgage payments made by the out-of-possession party as constituting a form of support was sufficiently implicit in trial court's final judgment, even though not expressly stated). As such, they should have been taken into account when determining the parties' incomes for purposes of setting child support. See Silver v. Silver, 898 So. 2d 145, 146 (Fla. 4th DCA 2005) ("[I]t is necessary for the trial court to recalculate the amount of child support based upon each parent's net income. In order to determine net income, the former husband is entitled to exclude the amount of his alimony obligation from his gross income."). On remand, the court shall recalculate child support accordingly.

Mr. Mercado also contends that he is entitled to be reimbursed for half of his postdissolution mortgage payments from the proceeds of the sale of the home when the parties' child turns eighteen. See Kelly v. Kelly, 583 So. 2d 667, 668 (Fla. 1991). This is directly at odds with his assertion that the payments are spousal support, for it is

settled that a co-owner of real property is not entitled to reimbursement of expenditures made as part of his or her support obligation. See Pastore, 497 So. 2d at 637; Roth v. Roth, 611 So. 2d 1268, 1268 (Fla. 3d DCA 1992) ("The husband is not entitled to a credit for the mortgage payments, when as here, the payments constituted his support obligation."); Fitzgerald v. Fitzgerald, 558 So. 2d 122, 124 (Fla. 1st DCA 1990) ("It is within a trial court's discretion to award the costs of mortgage, insurance and tax payments as support, and in such a circumstance, a paying party is not entitled to credit for those expenditures."). Thus, we reject this claim.

We reverse the provision in the final judgment establishing the amount of the child support obligation and remand for the trial court to recalculate child support in accordance with this opinion.

Affirmed in part, reversed in part, and remanded.

KHOUZAM, C.J., and BLACK, J., Concur.