

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

MARCUS BROWN,

Appellant,

v.

Case No. 5D18-3836

MARY NORWOOD,

Appellee.

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Opinion filed February 28, 2020

Appeal from the Circuit Court  
for Orange County,  
Tanya Davis Wilson, Judge.

Cynthia M. Winter, of Greater Orlando  
Family Law, Winter Park, for Appellant.

Mary Norwood, Apopka, pro se.

GROSSHANS, J.

Former Husband appeals the final judgment of dissolution of marriage, which awarded alimony and child support in favor of Former Wife. Former Husband argues that the trial court erred in its final determination of his gross monthly income because it failed to consider ordinary and necessary business expenses. We agree and, therefore, reverse the award of alimony and child support. We affirm in all other respects.

Former Husband is a self-employed commercial truck driver. Prior to trial, he filed at least six financial affidavits that depicted, over time, a steady decrease in his monthly

income. At trial, the financial affidavits and three years of tax returns were entered into evidence. The tax returns—which included deductions for business expenses and for cost of goods sold—showed a significant disparity between the amount Former Husband received as business income and his final taxable income. During trial, Former Husband acknowledged that he did not sell goods; rather, he only transported them.

The trial court ultimately entered a final judgment, finding that the taxable income reflected on Former Husband’s tax returns did not reflect his actual income, specifically finding the deduction for the cost of goods sold not credible. Based on this finding, the court imputed to Former Husband the full amount of his business income to determine his gross monthly income for purposes of alimony and child support. Former Husband filed a motion for rehearing, arguing that the trial court failed to properly deduct his business expenses. The trial court denied his motion, and this appeal timely followed.

This court reviews a trial court’s determination of income for alimony and child support purposes for an abuse of discretion, and will not reverse so long as the determination is supported by competent, substantial evidence. See Moore v. Moore, 157 So. 3d 435, 435–36 (Fla. 2d DCA 2015).

We recognize the difficult, and often frustrating, task a trial court faces in determining income when an individual lacks candor with regard to business income and expenses. See Trespalcios v. Trespalcios, 978 So. 2d 858, 860 (Fla. 2d DCA 2008). However, section 61.30, Florida Statutes (2018), requires the court to consider ordinary and necessary business expenses in arriving at the final determination of income. § 61.30(2)(a)3.; cf. Berges v. Berges, 871 So. 2d 919, 920–21 (Fla. 3d DCA 2004).

In this case, the trial court found that Former Husband lacked credibility with regard to the expenses for the cost of goods sold listed on his tax returns. Therefore, after reviewing the evidence, the trial court determined that any amount categorized under “cost of goods sold” should not be considered a necessary business expense. We affirm the trial court’s findings in that regard and do not disturb the portion of the final judgment imputing that income to Former Husband. However, the trial court failed to give Former Husband credit for any other business expense that was separately listed on his financial affidavits or tax returns. The failure to consider Former Husband’s other business expenses when calculating his income constituted an abuse of discretion. See Moore, 157 So. 3d at 436.

Accordingly, we reverse the award of alimony and child support and remand for the trial court to recalculate Former Husband’s income, including deductions for ordinary and necessary business expenses. In making findings as to those expenses, the trial court may consider the credibility of Former Husband’s claims as well as the financial affidavits and records introduced during trial.

AFFIRMED, in part; REVERSED, in part; and REMANDED with instructions.  
HARRIS and SASSO, JJ., concur.