

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

BRYAN STEPHEN PRICHER,

Appellant/Cross-Appellee,

v.

Case No. 5D19-243

STACI ROCHELLE PRICHER,

Appellee/Cross-Appellant.

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Opinion filed July 17, 2020.

Appeal from the Circuit Court  
for Brevard County,  
George B. Turner, Judge.

Elizabeth Siano Harris, of Harris Appellate  
Law Office, Mims, for Appellant/Cross-  
Appellee.

Maureen Monaghan Matheson, of  
Matheson Appellate Law, P.A., Satellite  
Beach, and Charles L. Dorfman, of Weaver  
& Dorfman, P.A., Melbourne, for  
Appellee/Cross-Appellant.

EDWARDS, J.

This is an appeal and cross-appeal from the amended final judgment dissolving the parties' moderate-term marriage. We agree with the argument raised by Appellant, Bryan Stephen Pricher ("Former Husband"), that the record lacked clear and convincing evidence to support the trial court's order awarding Appellee, Staci Rochelle Pricher

("Former Wife"), permanent periodic alimony in the amount of \$6,912 per month. We also agree with the argument raised in Former Wife's cross-appeal, that the trial court abused its discretion by denying her request to be designated as the irrevocable survivor beneficiary of Former Husband's military retirement benefit plan ("SBP") and by instead allowing Former Husband to secure that financial obligation with life insurance. We reverse and remand for further proceedings as to those two points, but affirm as to all other issues raised by the parties.

### **BACKGROUND**

According to the amended final judgment, the parties married May 2003, and during the marriage had two children. They separated January 2014, and Former Husband filed a petition for dissolution on March 3, 2016, following which Former Wife filed a counter-petition seeking dissolution, alimony, and child support. In August 2018, they entered into a partial marital settlement agreement which settled all the matters related to equitable distribution, other than Former Wife's entitlement to be named the beneficiary of Former Husband's SBP.

A trial was held to resolve the issues of alimony, child support, attorney's fees, and a determination of whether Former Wife should be designated as the irrevocable beneficiary under the SBP. The trial court awarded Former Wife \$6,912 per month as permanent periodic alimony, finding that was the amount needed to maintain the standard of living to which she was accustomed. Former Wife did not seek retroactive alimony because her monthly needs during the period of separation had been met by Former Husband's agreed-upon monthly payments of \$5,000. In its amended final judgment, the trial court gave Former Husband the choice to either designate Former Wife as the

irrevocable survivor beneficiary of his SBP or to obtain a life insurance policy on his life that named Former Wife as the sole, irrevocable beneficiary with her having complete control over the policy. Because no evidence on the subject was presented, the trial court did not specify any details at all about the life insurance to be obtained should Former Husband choose that option; instead, it reserved jurisdiction to consider the matter in the future if the parties needed a ruling on the life insurance option.

### **ALIMONY**

The trial court correctly determined that the parties' marriage was a moderate-term marriage as defined by section 61.08(4), Florida Statutes (2018). "The purpose of permanent alimony is not to divide future income to establish financial equality," *Rosecan v. Springer*, 845 So. 2d 927, 929 (Fla. 4th DCA 2003), but to "provide for the needs and necessities of life for a former spouse as they were established during the marriage of the parties." *Mallard v. Mallard*, 771 So. 2d 1138, 1140 (Fla. 2000); *see also* § 61.08(8), Fla. Stat. ("Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs . . ."). Permanent alimony may only be awarded following the dissolution of a moderate-term marriage if such award is based upon clear and convincing evidence taking into consideration all the factors set forth in section 61.08(2).

Here, the trial court found that the parties lived modestly, and their standard of living was not exorbitant or excessive during their first ten years of marriage. It determined that their standard of living only became "comfortable" after 2013, shortly before the couple separated. It would be erroneous to ignore the parties' most recent

standard of living. See *Cardillo v. Cardillo*, 707 So. 2d 350, 350–51 (Fla. 2d DCA 1998). It would similarly be incorrect to consider only the standard established during the early years. See *Hill v. Hooten*, 776 So. 2d 1004, 1007 (Fla. 5th DCA 2001). Section 61.08(2)(a) requires the trial court to consider the standard of living established during the couple’s marriage, which suggests that where appropriate, the trial court should consider what the standard was throughout the course of the marriage. In determining the couple’s standard of living, the trial court improperly focused only on the last few years of marriage during which they lived together for a relatively short amount of time. Rather than looking at Former Husband’s income over the entire course of the marriage, the trial court focused on his current, post-separation income which is considerably higher than what he was earning while they were together. “Disparity in income alone does not justify an award of permanent periodic alimony.” *Rosecan*, 845 So. 2d at 929 (citations omitted).

The uncontested evidence showed that Former Wife was employed by Health First in government relations earning approximately \$31,000 annually when the marriage began and held other temporary jobs at various times during the marriage. The parties differed in their testimony regarding whether Former Wife could begin working immediately or whether she had to delay seeking employment until their children graduated from high school. In the amended final judgment, the trial court found that Former Wife was physically and mentally healthy and has potential in gaining fruitful employment in a minimal, unspecified amount at the current time, but said nothing about whether that would be full or part-time employment based upon the possible needs or schedule of their children. “An award of permanent alimony is improper where the evidence does not reflect a permanent inability on the part of the [spouse] to become self-

sustaining.” *Wismar v. Wismar*, 522 So. 2d 552, 553 (Fla. 5th DCA 1988). Where evidence shows that one spouse was in good health and had job skills, as here, the fact that the other spouse’s income substantially exceeds the other’s either now or previously when they were both employed, does not justify an award of permanent alimony. See *Jaffy v. Jaffy*, 965 So. 2d 825, 829 (Fla. 4th DCA 2007). We find that clear and convincing evidence of a need for permanent alimony in the amount awarded was not presented to the trial court; thus, such an award was inappropriate.

“Durational alimony may be awarded when permanent periodic alimony is inappropriate.” § 61.08(7), Fla. Stat. “The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration . . . if there is no ongoing need for support on a permanent basis.” *Id.* Accordingly, we remand this matter to the trial court to enter a further amended final judgment awarding Former Wife an appropriate amount of durational alimony for an appropriate period of time, which cannot exceed the duration of their marriage. We remind the trial court that it has the discretion to award, in addition to the durational alimony, a nominal amount of permanent periodic alimony if the evidence before the court suggests that would be appropriate.<sup>1</sup>

### **LIFE INSURANCE**

Former Husband proposed during trial that instead of making Former Wife the irrevocable beneficiary of his SBP, he should be allowed to purchase a life insurance policy that listed her as the irrevocable beneficiary. His proposal was based, at least in

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<sup>1</sup> *Donovan v. Donovan*, 200 So. 3d 275, 275 (Fla. 1st DCA 2016) (finding a nominal award of permanent alimony preserves the trial court’s jurisdiction to revisit the issue of alimony in the future).

part, on his expressed desire to name the couple's children as the SBP beneficiaries. The value of the SBP benefit is not fixed and will depend in part upon the length of Former Husband's continued service in the reserves, his pay grade, and the payment tables. Former Husband did not offer any evidence as to what amount of life insurance would be appropriate as a substitute for the SBP benefit. Nor did he offer evidence of his insurability, the annual cost of the insurance, or how Former Wife could be certain that Former Husband would continue to pay premiums over the years to come without requiring repeated judicial intervention.

In the amended final judgment, the trial court determined that Former Wife was entitled to either be designated as the irrevocable beneficiary under the SBP or to be protected by Former Husband obtaining life insurance, with him having the right to choose between those options. Trial courts are permitted to order one spouse to obtain and maintain life insurance to secure the other spouse's interest in military retirement benefits. See *Hickman v. Hickman*, 864 So. 2d 42, 44 (Fla. 3d DCA 2003). However, "the trial court must make specific evidentiary findings regarding the availability and cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation." *Foster v. Foster*, 83 So. 3d 747, 748 (Fla. 5th DCA 2011). Because no evidence was presented, the trial court understandably made no such findings. Nonetheless, this lack of findings by the trial court means it erred in its ruling that gave Former Husband the alternative of substituting life insurance for designating Former Wife the irrevocable beneficiary of his SBP. See *id.*; *Richardson v. Richardson*, 900 So. 2d 656, 661–62 (Fla. 2d DCA 2005) (reversing order requiring husband to maintain life insurance to secure alimony where no findings were made

regarding husband's ability to pay premiums or need for the amount of life insurance). Accordingly, we reverse on this issue and remand with instructions for the trial court to enter an amended final judgment that orders Former Wife to be irrevocably designated as the beneficiary of Former Husband's SBP.

We affirm as to all remaining issues raised by the parties.

AFFIRMED IN PART, REVERSED IN PART WITH INSTRUCTIONS.

COHEN and LAMBERT, JJ., concur.