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

JEREMY MCVICKER,

Appellant,

v. Case No. 5D19-2768

JEANIE MCVICKER,

Appellee.

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Opinion filed August 28, 2020

Appeal from the Circuit Court
for Orange County,
Donald A. Myers, Jr., Judge.

Kenneth C. Gallagher, of Law Office of Kenneth C. Gallagher, LLC, Orlando, for Appellant.

Nicholas A. Shannin and Carol B. Shannin, of Shannin Law Firm, P.A., Orlando, for Appellee.

ORFINGER, J.

Jeremy McVicker, the former husband, appeals the final judgment dissolving his marriage to Jeanie McVicker, the former wife. The former husband contends the trial

court erred by imputing nearly $72,000 of annual gross income to him in the final judgment.[1] We agree and reverse.

It has long been the law in Florida that when imputing income, the trial court must make appropriate findings. For instance, we recently wrote in Frerking v. Stacy, 266 So. 3d 273, 276 (Fla. 5th DCA 2019):

> Trial courts can impute income to an unemployed or underemployed spouse, but they must make the following findings: first, that any "termination of income was voluntary"; and second, that the spouse's underemployment was owing to "less than diligent and bona fide efforts to find employment paying income at a level equal to or better than that formerly received." Schram v. Schram, 932 So. 2d 245, 249–50 (Fla. 4th DCA 2005) (quoting Konsoulas v. Konsoulas, 904 So. 2d 440, 443 (Fla. 4th DCA 2005)). The burden of proving underemployment rests with the party moving for imputation. Andrews v. Andrews, 867 So. 2d 476, 478 n.2 (Fla. 5th DCA 2004).
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> When imputing income, trial courts must consider the spouse's "recent work history, occupational qualifications, and prevailing earnings level in the community." § 61.30(2)(b), Fla. Stat. (2018); see Freilich v. Freilich, 897 So. 2d 537, 543 (Fla. 5th DCA 2005) ("Borrowing from this [child support] statute, the courts consider the same factors in determining the amount to impute for alimony awards and attorney's fees."); see also Broga v. Broga, 166 So. 3d 183, 185 (Fla. 1st DCA 2015) ("For purposes of alimony awards, courts reviewing imputation of income have applied the same factors as those applied to imputing income for child support." (quoting Gray v. Gray, 103 So. 3d 962, 967 (Fla. 1st DCA 2012))).
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> Before imputing income, a trial court must make a finding that the party has not used its best efforts to secure income "at a level equal to or better than that formerly received." Schram, 932 So. 2d at 249–50. A party's best efforts to find work "do not include retraining, but only finding a job for which one is already qualified." Castaldi v. Castaldi, 968 So. 2d 713, 715 (Fla. 2d DCA 2007).

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[1]The former husband preserved the issue for appeal by filing a timely and specific motion for rehearing.

The trial court made no findings that supported its imputation of income to the former husband. Accordingly, we affirm the final judgment,[2] except as to the imputation of income that impacts the trial court's calculation of child support and alimony. On remand, the trial court shall make appropriate findings and take additional evidence, if necessary.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

LAMBERT and EISNAUGLE, JJ., concur.

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[2] The record before this Court does not contain transcripts of the evidentiary portion of the dissolution hearing. However, because the errors of law are apparent on the face of the judgment, our review of those matters was not thwarted. See Fortune v. Pantin, 851 So. 2d 274 (Fla. 5th DCA 2003).