

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

HOLLY NIEDERKOHR,  
  
Appellant,

v.

Case No. 5D19-3231

ERIK KUSELIAS,  
  
Appellee.

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Opinion filed August 14, 2020

Appeal from the Circuit Court  
for Orange County,  
Alicia L. Latimore, Judge.

Michael J. Vaghaiwalla and Eric L. Bensen,  
of Greater Orlando Family Law, Winter  
Park, for Appellant.

No Appearance for Appellee.

PER CURIAM.

Holly Niederkohr (“Former Wife”) appeals the trial court’s final judgment of dissolution of marriage, which dissolved her marriage to Erik Kuselias (“Former Husband”). Former Wife presents multiple challenges to the trial court’s equitable distribution scheme, although we find that only one has merit: whether the trial court erred in attributing dissipated marital assets to her.

The main issue at the dissolution trial was the equitable distribution of the parties’ assets, particularly a large settlement that Former Husband had acquired from a previous

employer. Evidence was presented that Former Wife spent a substantial portion of those settlement funds on, among other things, cosmetic procedures at a Beverly Hills, California, dermatologist; the mortgage on the marital home; utilities; homeowners' association ("HOA") fees; car insurance; and the parties' health insurance. The trial court determined that Former Wife had dissipated the settlement funds and attributed to her the entire amount that she had used in its equitable distribution scheme. Based on that calculation, the trial court ordered Former Wife to make an equalizing payment to Former Husband.

"[I]f marital misconduct results in the depletion or dissipation of a marital asset, a trial court may make an unequal distribution of marital property, or may assign the asset to the dissipating spouse as part of that spouse's equitable distribution." Lopez v. Lopez, 135 So. 3d 326, 328 (Fla. 5th DCA 2013) (quoting Karimi v. Karimi, 867 So. 2d 471, 475 (Fla. 5th DCA 2004)). Misconduct occurs when a spouse intentionally dissipates a marital asset for his or her own benefit and for a purpose unrelated to the marriage. Id. at 329.

We find that the trial court properly determined that Former Wife had intentionally dissipated the settlement funds and attributed those amounts to her, with the exception of the funds she spent on the mortgage, utilities, HOA fees, car insurance, and health insurance (collectively, "marital expenses").<sup>1</sup> Those expenditures not only benefitted both her and Former Husband, but were also related to the marriage. Id.; see Karimi, 867 So. 2d at 475 (stating that funds utilized for reasonable living expenses generally may not be attributed to spouse in equitable distribution). The mortgage that Former Wife paid

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<sup>1</sup> The cosmetic procedures collectively amounted to more than \$100,000. Former Wife had also spent over \$7000 on a new dog that she apparently co-owns with her new boyfriend.

secured the marital residence, which was to be sold with the proceeds divided. Accordingly, the monies spent on the marital expenses should not have been included in the equitable distribution scheme.

We note that the dissolution proceeding below was contentious, and the evidence suggested that Former Wife had engaged in other instances of misconduct. The trial court did an excellent job in sorting out the parties' finances and in making detailed findings in its final order of dissolution. We affirm the overwhelming majority of the trial court's equitable distribution and reverse only with respect to the inclusion of the monies spent on the marital expenses.<sup>2</sup> We remand for reconsideration of the equitable distribution scheme accordingly.

AFFIRMED IN PART; REVERSED IN PART and REMANDED.

COHEN, EDWARDS and SASSO, JJ., concur.

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<sup>2</sup> Former Wife also alleged that the trial court made a mathematical error ordering the full value of her marital retirement account as the equalizing payment when the equitable distribution sheet only required approximately half of the value of her retirement account. We note that while this issue is essentially rendered moot, Former Husband was entitled to half of Former Wife's retirement account because it was comprised of marital funds. See § 61.075, Fla. Stat. (2016). The equalizing payment exceeded the remainder of her account, such that Former Wife did not demonstrate error as she presented the issue on appeal.