

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

DARIN M. SKELLY,

Appellant,

v.

Case No. 5D19-3780

ANGELLE SKELLY,

Appellee.

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Opinion filed July 10, 2020

Appeal from the Circuit Court  
for Seminole County,  
Michael J. Rudisill, Judge.

Nadine Brown, of Law Office of Nadine A.  
Brown, P.A., Winter Springs, for Appellant.

Matthew A. Rygh, of Barrister Law Firm,  
P.A., Orlando, for Appellee.

LAMBERT, J.

Darin Skelly (“Former Husband”) appeals the second supplemental final judgment for modification rendered by the trial court following trial that orders him to pay ongoing child support for the parties’ now-adult dependent daughter, as well as child support arrearages that accrued during the litigation. Former Husband raises three arguments for reversal. First, he contends that the trial court erred in determining that the appellee (“Former Wife”) had standing to bring the second supplemental petition for modification

of child support because their adult daughter is a legally-competent adult and, thus, was the necessary party to bring the action. Former Husband next argues that the second supplemental final judgment is facially deficient because the trial court failed to make any factual findings as to the parties' respective incomes. Third, Former Husband asserts that the trial court erred in failing to award him an \$8937 credit against the total support arrearages found to have accrued during the instant litigation. For the following reasons, we affirm as to Former Husband's first issue, but reverse and remand on the second and third issues.

The parties were divorced in 2005. At the time, their three children of the marriage were all minors. Former Husband was ordered to pay monthly child support to Former Wife, continuing until the children reached age eighteen, with the caveat that if any of the children turned eighteen and had not yet graduated from high school, Former Husband's child support obligation would continue until the child's graduation from high school or age nineteen, whichever occurred first.

The daughter who is the subject of the present litigation turned eighteen on March 29, 2017. In February 2017, approximately five weeks before her daughter's birthday, Former Wife filed the subject second supplemental petition for modification of child support. Former Wife alleged that there had been a material, substantial, and permanent change in circumstances since the last court order of support in that the daughter had become physically disabled and unable to support herself. Former Wife averred that the daughter was still dependent on the parties and that she would require ongoing support beyond the age of majority.

Following Former Husband's unsuccessful motions to dismiss the supplemental petition based on Former Wife's alleged lack of standing to bring the action and the trial court's lack of subject matter jurisdiction, the case became at issue and proceeded to trial in July 2019. Approximately five months later, the trial court entered the second supplemental final judgment now before us.

In its final judgment, the court found that the parties' now-adult daughter became physically disabled and incapacitated, and thus dependent upon the parties for support, prior to reaching the age of majority. The court further found that this was a substantial, material, and permanent change in circumstances that was not contemplated or anticipated by the parties at the time of the prior judgment or support order. Former Husband was ordered to pay the sum of \$2395 per month in ongoing support. The trial court also determined that Former Husband owed \$74,245 in child support arrearages<sup>1</sup> that had accrued during the litigation and ordered Former Husband to repay the arrearages at the rate of \$2000 per month. Lastly, the court denied Former Husband's request that he be given credit against the arrearages for child support that Former Husband claimed to have paid after the daughter turned eighteen, finding that Former Husband "failed to offer any evidence that he is entitled to a credit for overpayment of support."

On appeal, Former Husband does not contest the trial court's findings that his daughter is dependent due to her physical disability or incapacity and that her physical incapacity and dependency began prior to reaching the age of eighteen. Nor does he

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<sup>1</sup> The court computed the arrearages amount by multiplying the \$2395 monthly support award by the thirty-one months from April 1, 2017, to December 1, 2019.

challenge that his daughter has a continuing need to be supported beyond the age of majority. Former Husband's succinct first argument for reversal is that the trial court erred in concluding that Former Wife had standing to bring the action for support for their adult daughter because the daughter is legally competent and was not adjudicated dependent prior to her eighteenth birthday. We disagree.

In addressing this argument, we first observe that section 743.07(2), Florida Statutes (2016), provides that a court of competent jurisdiction may order support for a dependent person beyond the age of eighteen years when such dependency is because of a mental or physical incapacity that began prior to such person reaching majority. In *Fagan v. Fagan*, 381 So. 2d 278, 280 (Fla. 5th DCA 1980), we previously rejected one of the arguments that Former Husband brings here, namely, that a "dependent" child under this statute should be equated with an "incompetent" person. See also *Smith v. Smith*, 495 So. 2d 886, 886 (Fla. 2d DCA 1986) ("The issue with regard to the propriety of an award of support for an adult child is dependency, not competency."). In *Fagan*, the former wife brought an action against the former husband both for post-majority ongoing support for the parties' dependent child and to collect support arrearages. 381 So. 2d at 279. At the time the former wife filed her petition, the child was over the age of majority. *Id.* We affirmed the final judgment entered in favor of the former wife; and, significant here, we rejected the former husband's argument that the former wife was not the proper party to enforce the support judgment for the adult dependent child. *Id.*

As to Former Husband's contention that for Former Wife to have standing, his daughter needed to have been adjudicated dependent prior to her eighteenth birthday, our court very recently reiterated that section 743.07(2), Florida Statutes, does not require

that a child be adjudicated dependent before he or she reaches majority for the trial court to order extended support. See *Phagan o/b/o L.D.P. v. McDuffee*, 45 Fla. L. Weekly D1161 (Fla. 5th DCA May 15, 2020). In *Phagan*, the mother's supplemental petition to modify and extend the father's child support obligation of the parties' child alleging that the child's incapacity and dependency began prior to the child reaching majority was filed by her only four days before the child turned eighteen. *Id.* We reversed that trial court's dismissal of the petition and remanded for further proceedings. *Id.* at D1162.

As previously indicated, Former Husband has not challenged the trial court's factual findings and its conclusion that the parties' daughter became physically incapacitated and dependent prior to her reaching majority. Based on the aforementioned precedent, we affirm Former Wife's standing to bring this action.

We do, however, agree with Former Husband's second argument on appeal that the trial court's failure to make factual findings in its final judgment as to the parties' respective net incomes requires that we reverse the child support award and remand for further proceedings. See *Brown v. Brown*, 220 So. 3d 560, 561–62 (Fla. 5th DCA 2017) (concluding that meaningful appellate review of the child support award was precluded by the trial court's failure to make the required factual findings under section 61.30, Florida Statutes, of the parties' respective net incomes and further noting that a child support guidelines worksheet was not attached to the final judgment or made part of the record); *Armour v. McMiller*, 15 So. 3d 923, 925 (Fla. 5th DCA 2009) (holding that “[i]n making an award of child support, the trial court is required to determine the net income of each parent pursuant to section 61.30, and to include findings in the final judgment” and that the court's failure to make these findings necessitated that the case be remanded for a

redetermination of the child support award). In the present case, no findings were made by the court as to the parties' respective net incomes, and although a child support guidelines worksheet was filed with the court during the trial, the worksheet is inconsistent with the child support awarded by the court in its final judgment. On remand, the court is directed to make specific factual findings in its final judgment as to the parties' net incomes and to calculate Former Husband's support obligation based upon these findings. Moreover, if Former Husband's monthly child support obligation changes as a result of these findings, the court shall also recompute the amount of the previously-determined child support arrearages and provide in the subsequent final judgment a method or manner for repayment of the arrearages.

Finally, Former Husband argues that the trial court erred in failing to award him an \$8937 credit against the total child support arrearages. At the conclusion of the trial, Former Husband's counsel inquired of the court whether Former Husband would be entitled to a credit against any support arrearages for the child support payments that Former Husband may have paid after his daughter turned eighteen. The trial court affirmatively responded that Former Husband would receive credit for the payments because it did not want any "double-dipping" or to have "anybody paid twice." The court further directed counsel to "do the math." Former Wife's counsel raised no objection or argument to the court's direction.<sup>2</sup>

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<sup>2</sup> During her trial testimony, Former Wife acknowledged receiving some support payments from Former Husband subsequent to her daughter turning eighteen, although the amount was not quantified.

Despite the foregoing, five months after trial, the court wrote in the second supplemental final judgment now on review that “[a]t trial, the former husband failed to offer any evidence that he is entitled to a credit for overpayment of support.” For two reasons, we reverse the present denial of credit. First, Former Husband was not necessarily seeking a credit for “overpayment” of support. Second, based on the trial court’s comments at the conclusion of trial, it is apparent that the court anticipated further proceedings to address Former Husband’s claim for credit against the arrearages, but that apparently did not occur during the five months between the trial and the entry of the final judgment. Under these circumstances, we find it appropriate for the trial court to hold an evidentiary hearing on Former Husband’s claim and, if established by competent substantial evidence, to award Former Husband credit for any post-majority child support payments that he may have paid to Former Wife for their daughter.<sup>3</sup>

In summary, we affirm the trial court’s conclusion that Former Wife had standing to bring this action. We reverse the present child support award and remand with directions for the trial court to enter an amended final judgment that contains express factual findings as to each party’s net income at the time of trial and to calculate Former Husband’s ongoing child support obligation for his daughter based upon these respective net incomes.<sup>4</sup> We further direct that if Former Husband’s previously-determined monthly

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<sup>3</sup> We take no present position on the merits of Former Husband’s claim for credit.

<sup>4</sup> The present supplemental final judgment ordered that, other than an initial sum of \$151, Former Husband’s ongoing support payments, together with the arrearages payments, be made payable to the adult daughter. Although the competent substantial evidence at trial showed that the daughter has continually lived with Former Wife during her disability and Former Wife has provided extensive care for her at great expense, Former Wife specifically advised the trial court that she had no objection to the court entering judgment that provided the support monies be paid directly to the daughter.

child support obligation changes as a result, the trial court shall also recalculate the total amount of child support arrearages owed. Lastly, we reverse the trial court's present finding that Former Husband is not entitled to any credit against his child support arrearages obligation and remand for the trial court to conduct an evidentiary hearing to determine whether Former Husband is entitled to any of his claimed \$8937 credit against the arrearages.

AFFIRMED, in part; REVERSED, in part; REMANDED with directions.

EVANDER, C.J., and EDWARDS, J., concur.

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Former Husband however has asserted error in the entry of judgment in favor of the non-party daughter. Therefore, on remand, the amended supplemental final judgment to be entered by the trial court shall provide that the ongoing child support and the arrearages payments for the dependent adult child be made payable to Former Wife.