

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

RICHARD HENDLEY PALMER,
Appellant,

v.

Case No. 5D19-2389

MARANDA LYNN PALMER,
Appellee.

Opinion filed April 16, 2021

Appeal from the Circuit Court
for Flagler County,
Christopher France, Judge.

Marc E. Dwyer, of Chiumento Dwyer
Hertel Grant P.L., Palm Coast, for
Appellant.

John N. Bogdanoff, of The Carlyle
Appellate Law Firm, Orlando, for
Appellee.

LAMBERT, J.

Richard Hendley Palmer (“Former Husband”) appeals the amended final judgment entered after trial dissolving his long-term marriage with Maranda Lynn Palmer (“Former Wife”). Former Husband argues that the

trial court erred in its calculations regarding his child support obligations for the parties' three minor children and abused its discretion in awarding retroactive alimony and permanent periodic alimony to Former Wife.¹ We affirm on these issues without detailed discussion as the record shows either that there was no abuse of discretion by the trial court or that any alleged error has been waived or not sufficiently preserved for appellate review.

Former Husband also argues that the trial court committed reversible error in its equitable distribution of certain marital assets of the parties. He specifically contends that the court erred in finding that there had been appreciation in the value of his premarital stock in the family-owned, closely-held corporation and in characterizing the entire appreciated value of this stock to be a marital asset subject to equitable distribution. Lastly, Former Husband asserts that the trial court abused its discretion in its distribution of the net proceeds resulting from the parties' sale of a parcel of real property that they owned in Vermont. For the following reasons, we affirm the trial court's valuation, characterization, and distribution of Former Husband's stock, but reverse the distribution of the sale proceeds from the Vermont

¹ "A trial court's alimony award is reviewed for an abuse of discretion." *Hedstrom v. Hedstrom*, 123 So. 3d 150, 152 (Fla. 5th DCA 2013) (citing *Canakaris v. Canakaris*, 382 So. 2d 1197, 1202-03 (Fla. 1980)).

property because the proceeds were double-counted in the court's equitable distribution calculations.

BACKGROUND —

The parties were married in 2000. At the time, Former Husband owned stock in three closely-held corporations in the United Kingdom that were collectively referred to below as the "Palmer Timber" corporation or company. Sometime during 2008, Former Husband left his employment at the Flagler County Airport; and, not long thereafter, he became Chairman of the Board of Directors for Palmer Timber. In 2009, Former Husband began taking a more active role in the operation of Palmer Timber, traveling frequently to the United Kingdom throughout the year to attend to its business.² Former Husband did not work elsewhere during the remainder of the marriage, and the significant salary and dividend payments that he received from Palmer Timber constituted the bulk of the parties' income from 2009 forward.

In May 2018, Former Wife filed her petition for dissolution of marriage. Pertinent here, Former Wife alleged that the value of Former Husband's premarital stock in Palmer Timber had appreciated as a result of his labor

² Former Husband is also the largest shareholder of Palmer Timber.

contributed to the company during the marriage and that the appreciated value in Former Husband's stock was a marital asset that needed to be equitably distributed by the court. Following trial, the trial court found in its amended final judgment that in 2009, just prior to his becoming more actively involved in the corporation, the value of Former Husband's stock in Palmer Timber was \$935,000. It further found that when Former Wife filed for the dissolution of marriage in May 2018,³ the value of Former Husband's stock had appreciated by the sum of \$1,240,000 to \$2,175,000. The court determined that this entire appreciated value of Former Husband's Palmer Timber stock was a marital asset. It distributed the appreciated value of the stock to Former Husband as part of its overall equitable distribution of the parties' marital assets and liabilities.

Former Husband does not challenge the distribution of the stock to him. What he disputes are the values placed by the court on his Palmer Timber stock for the years 2009 and 2018 and its finding that the \$1,240,000 enhancement in the stock's value during this time was due to his labor, thus making it a marital asset. Former Husband argues that his Palmer Timber stock should have been awarded to him as a nonmarital asset and that,

³ Former Husband has not challenged the evaluation dates used by the trial court for this asset.

resultingly, the distribution of the parties' other marital assets and liabilities needs to be modified or adjusted accordingly.

PALMER TIMBER STOCK —

We first address whether the trial court erred in determining the value of Former Husband's stock in Palmer Timber and in characterizing this appreciated value in his nonmarital stock as a marital asset. "We review the trial court's equitable distribution decisions for abuse of discretion and examine its valuation of marital assets to determine whether it is supported by competent, substantial evidence." *Dravis v. Dravis*, 170 So. 3d 849, 853 (Fla. 2d DCA 2015) (citing *Tradler v. Tradler*, 100 So. 3d 735, 738 (Fla. 2d DCA 2012)). However, our review as to the characterization of an asset as marital or nonmarital is de novo. See *Neiditch v. Neiditch*, 187 So. 3d 374, 375 (Fla. 5th DCA 2016) ("An appellate court reviews 'de novo the characterization of an asset as marital or nonmarital.'" (quoting *Tradler*, 100 So. 3d at 738)).

At trial, Former Wife presented an expert witness who testified as to the value of Former Husband's stock. This expert, whose qualifications were not significantly challenged by Former Husband, thoroughly explained the various acceptable methods in his profession for valuing a business and why

he chose to use the “capitalization of earnings” methodology in this case.⁴ The witness opined that in 2009, when Former Husband first started actively contributing his labor to the corporation, the fair market value of Former Husband’s stock in Palmer Timber was \$935,000 and that in May 2018, as a result of Former Husband’s continuing labor and efforts to the company, the fair market value of his Palmer Timber stock had appreciated by \$1,240,000 to a value of \$2,175,000.

In contrast, Former Husband presented no expert witness testimony as to the value of his stock. Former Husband’s only evidence as to the value of his Palmer Timber stock was provided in the financial affidavits that he filed in the case. Notably, in his June 2018 financial affidavit,⁵ Former Husband listed his interest in Palmer Timber at \$2,380,648.00, which, as

⁴ We reject the apparent argument being made by Former Husband that *Soria v. Soria*, 237 So. 3d 454 (Fla. 2d DCA 2018), precludes, as a matter of law, an expert from using the “capitalization of earnings” method in evaluating a business in dissolution of marriage cases. In *Soria*, neither party presented expert testimony as to the value of the business at issue, and the Second District Court simply found that the trial court erred in valuing the business based on the “capitalization scheme” used by the Former Husband in valuing his business. *Id.* at 459.

⁵ See *Marconi v. Erturk*, 293 So. 3d 19, 20–21 (Fla. 4th DCA 2020) (“[A] party’s financial affidavit may constitute competent evidence of value if the party owns the property.” (citing *Noone v. Noone*, 727 So. 2d 972, 974 (Fla. 5th DCA 1998))).

indicated, was more than \$200,000 greater than the value that Former Wife's expert placed on Former Husband's Palmer Timber stock at a similar time.

In its amended final judgment, the trial court wrote that it "accept[ed] the valuation provided by [Former Wife's expert] in all respects." While Former Husband now argues that the analysis provided by Former Wife's expert in determining the stock's value was inadequate or insufficient, we again note that Former Husband provided very little of his own evidence at trial to assist the trial court in valuing his Palmer Timber stock. See *Jones v. Jones*, 51 So. 3d 547, 550 (Fla. 1st DCA 2010) ("It is the parties' duty to present evidence to support their claims, and the trial court's accuracy in valuing an asset or liability is only as good as the evidence offered." (citing *Sauder v. Coast Cities Coaches, Inc.*, 156 So. 2d 162, 165 (Fla. 1963))). As our sister court aptly observed when trial courts are tasked with determining the value of a business in dissolution of marriage cases:

The decisions that judges make when valuing businesses in the context of a divorce are fact-intensive and usually heavily dependent upon the opinions of well-trained experts. The question is not whether the trial court can employ one method or another in valuing a business, but is more appropriately phrased as whether an expert may be permitted to testify and render an opinion based upon a valuation method that the expert claims to be acceptable within his or her profession. If the expert is permitted to so testify, then the trial court, as a finder-of-fact, should have considerable discretion in

deciding to what extent it accepts or rejects the expert testimony.

Erp v. Erp, 976 So. 2d 1234, 1237–38 (Fla. 2d DCA 2008). In our view, Former Husband’s quarrel with the expert’s testimony goes to its weight, not its sufficiency.

We find that the trial court’s acceptance of Former Wife’s expert testimony was well within its considerable discretion and that the values determined by the court of Former Husband’s interest in his Palmer Timber stock in 2009 and 2018 were supported by competent substantial evidence. Accordingly, we affirm the trial court’s valuations of Former Husband’s Palmer Timber stock and turn next to whether the trial court properly characterized this appreciated value of the stock to be a marital asset.

Under section 61.075(6)(a)1.b., Florida Statutes (2018), “[t]he enhancement in value and appreciation of nonmarital assets resulting from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both” is a marital asset to be equitably distributed by the court. The spouse asserting a claim that the appreciation in value of the other spouse’s separate, nonmarital property is a marital asset bears the initial burden of proving “that marital labor or funds were used to improve [the] assets.”

Yitzhari v. Yitzhari, 906 So. 2d 1250, 1254 (Fla. 3d DCA 2005) (citing *Gaetani-Slade v. Slade*, 852 So. 2d 343, 347 (Fla. 1st DCA 2003)).

The court described in its amended final judgment that when Former Husband decided in 2009 to take an active role in Palmer Timber, he found that “the financial standing of the company was bleak for a variety of reasons.” The parties each presented evidence as to whether Former Husband’s efforts or labor had improved the financial condition of Palmer Timber. The trial court, while acknowledging that Former Husband was not involved in the “day-to-day management role” of the company, nevertheless detailed the various “leadership efforts” and “marital labor” that Former Husband did provide to Palmer Timber from 2009 up to Former Wife’s filing for dissolution of marriage in May 2018 that it found to have directly benefited or improved Palmer Timber’s financial condition and, thus, the value of his stock.

We find that competent substantial evidence in the record supports the trial court’s findings that the appreciated value in Former Husband’s stock from 2009 to 2018 was due to his marital labor. Under these circumstances, once Former Wife met her burden of showing that the appreciated value in Former Husband’s Palmer Timber stock was due to his marital labor, the burden then shifted to Former Husband to show that some portion of this

enhanced value was exempt from equitable distribution. See *Gaetani-Slade*, 852 So. 2d at 347 (“[O]nce a non-owner spouse establishes that marital labor or funds were used to improve [an asset] that was nonmarital, the owner-spouse has the burden to show which parts [of the enhanced value] are exempt.” (citing *Adkins v. Adkins*, 650 So. 2d 61, 68 (Fla. 3d DCA 1994))).

On this issue, the trial court found “little evidence available” to allow it to place a percentage on how much of the appreciated value of Former Husband’s Palmer Timber stock was attributable to anything other than Former Husband’s marital effort. Stated somewhat differently, the trial court evidently determined that Former Husband had not met his evidentiary burden of proof that some portion of the enhanced value of his Palmer Timber stock was exempt from equitable distribution. We discern no error in the trial court’s ruling.

Accordingly, we conclude that under section 61.075(6)(a)1.b., Florida Statutes, the trial court correctly characterized the entire \$1,240,000 appreciation in the value of Former Husband’s Palmer Timber stock to be a marital asset and did not abuse its discretion in thereafter distributing this asset to Former Husband.

VERMONT PROPERTY —

Former Husband argues that the trial court abused its discretion in the manner in which it equitably distributed the proceeds from the sale of the Vermont property. The trial evidence showed that the parties sold this property shortly after Former Wife filed for the dissolution of marriage and that they evenly divided between themselves the \$44,082 net proceeds that they received from the sale. Former Husband deposited his share of the sale proceeds into a specific bank account, and these proceeds were in Former Husband's account at the time of trial.

As part of its equitable distribution of the marital assets, the trial court distributed to each party their respective one-half share (\$22,041) of the net sale proceeds of the Vermont property. The court also separately distributed to Former Husband the aforementioned bank account that contained his share of these sale proceeds. As a result, the amended final judgment inadvertently distributed this \$22,041 asset to Former Husband twice, which is to be corrected on remand.

Accordingly, we affirm the amended final judgment of dissolution of marriage in all respects, with the exception of the trial court's distribution of the net sale proceeds of the Vermont property. We reverse on this issue and remand with directions that the trial court enter a second amended final judgment that rectifies this error.

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

EISNAUGLE and HARRIS, JJ., concur.