

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

WILLIAM N. VEITH,

Appellant,

v.

Case No. 5D19-3450

KELLY L. VEITH,

Appellee.

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Opinion filed April 16, 2021

Appeal from the Circuit Court for
Orange County,
Tanya Davis Wilson, Judge.

Barry W. Rigby, of Law Offices of
Barry Rigby, P.A., Orlando, for
Appellant.

Adam H. Sudbury, of Apellie Legal,
Orlando, for Appellee.

COHEN, J.

William Veith (“Former Husband”) appeals the trial court’s final judgment of dissolution of marriage, dissolving his marriage with Kelly Veith (“Former Wife”). Because the final judgment contains errors related to

equitable distribution, child support and arrearage calculations, as well as internal inconsistencies, we reverse and remand for the trial court to address those issues. See Suk v. Chang, 189 So. 3d 224, 226 (Fla. 2d DCA 2016) (“[D]issolution judgments that contain internal inconsistencies must be reversed so the inconsistencies can be corrected.” (citations omitted)). As to all other issues raised by Former Husband, we affirm.

The parties were married for approximately four years before Former Wife filed her petition for dissolution in 2016. Shortly thereafter, the trial court, Judge Bob LeBlanc, entered a temporary support order requiring Former Husband to pay \$2000 per month in temporary alimony and child support. In 2017, Former Wife filed a motion for contempt based on Former Husband’s non-compliance with that temporary support order; the trial court, Judge Tanya Davis Wilson, found Former Husband in willful contempt in the amount of \$8250. It ordered him to pay \$500 per month in arrears, in addition to his initial obligation of \$2000 per month.

The case proceeded to trial in February 2018. The parties submitted conflicting evidence as to the amount of arrears Former Husband had paid since he was found in contempt. Both parties testified to their respective incomes, employment history and earning potentials, and proposed equitable distribution schemes. The trial court issued its final judgment with

attachments in September 2018, approximately seven months after the final hearing.

Initially, the trial court found that Former Wife's net monthly income was \$2666 and Former Husband's was \$5143; these figures were also used to calculate child support. However, in addressing the alimony factors, the final judgment stated different incomes—\$2291 and \$5649, respectively. Additionally, it found that Former Husband was in arrears in the amount of \$7025 based on his failure to comply with the contempt order and that he still owed another \$14,000 under the initial temporary support order, thus totaling \$21,025. However, the final judgment contained contradictory findings as to the arrearage payments made by Former Husband leading up to trial.¹

The final judgment ordered Former Husband to pay \$1000 per month in durational alimony for two years and required him to maintain life insurance policies to secure his child support and alimony obligations. With respect to equitable distribution, the trial court ordered that each party shall own the marital assets listed in the parties' respective columns in the attached equitable distribution worksheet. It allocated a \$4500 post-

¹ In paragraph 16 of the final judgment, the trial court found that Former Husband had paid \$500 for the months of August and September 2017, and \$225 for December 2017. Then, in paragraph 18(d), the trial court found that he had paid \$500 for August, September, and October 2017, along with adding a \$300 payment for February 2018.

engagement ring to Former Husband while acknowledging that the ring was in Former Wife's possession.

The final judgment contained two different equalizing payments. Initially, the trial court found that Former Wife owed Former Husband \$16,098.67 as an equalizing payment based on the parties' assets, debts, and liabilities. It offset the equalizing payment with Former Husband's \$21,025 support arrearage, which resulted in Former Husband owing Former Wife \$4926.23. However, the attached equitable distribution worksheet stated that Former Wife owed \$17,859.50 as an equalizing payment.

Former Husband moved for rehearing, but that motion was not heard until September 2019, approximately one year after issuance of the final judgment. At that hearing, Former Husband raised the inconsistencies described above, and the following exchange occurred:

TRIAL COURT: I have come to the conclusion, after looking at the evidence, that I can't make a decision on what the correct information is without a transcript [of the trial]. The numbers that I gave you in the final judgment look different from the ones in the financial affidavits So I don't know, and the only way I'm going to know is if I get a transcript. So can I get a transcript within the next 30 days?

FORMER HUSBAND: Yes, ma'am.

TRIAL COURT: All right. I will say this, though. I will look at the dollar amounts as it relates to the alimony, meaning, did I use the correct numbers in

determining need and ability to pay But the child support numbers are wrong, and those need to be corrected. And when I say wrong, I mean, [Former Wife's] gross and net are wrong as are [Former Husband's] gross and net, and I cannot find the numbers that I used in the exhibits So it must have been something that was said during the course of the trial where I made note of that. So that's why I need the transcript.

FORMER HUSBAND: Yes, ma'am.

TRIAL COURT: So get that to me, and then I'll correct what I did wrong.

Despite Former Husband having filed the transcript, the trial court denied his motion for rehearing. This appeal followed.

First, the final judgment and its attached equitable distribution worksheet contain two different equalizing payments owed by Former Wife. Considering the trial court offset the equalizing payment with Former Husband's total support arrearage, a determination of the correct equalizing payment is critical to the overall equitable distribution scheme. On remand, the trial court should determine which equalizing payment is supported by the evidence and amend the final judgment accordingly. See Weymouth v. Weymouth, 87 So. 3d 30, 36 (Fla. 4th DCA 2012) (remanding for trial court to clarify internal inconsistency between amended final judgment and attached equitable distribution schedule). Additionally, the trial court's allocation of the post-engagement ring to Former Husband despite that asset

being in Former Wife's possession is inconsistent with its order that each party shall own the marital assets attributed to them in the equitable distribution worksheet. As such, the trial court should order Former Wife to return the ring to Former Husband.

There are also internal inconsistencies as to the parties' net monthly incomes, as the final judgment contains two different amounts for both parties. Although it appears the trial court used the monthly incomes included in Former Wife's proposed final judgment, that does not explain why the final judgment contains two different income amounts for both parties, with one set used to calculate child support, while the other was used in addressing alimony. Consequently, there is a clear discrepancy on the face of the final judgment, and on remand, the trial court should resolve that inconsistency. See Karkhoff v. Robilotta, 309 So. 3d 229, 232 (Fla. 4th DCA 2020) ("If the written judgment suffers from internal conflict or inconsistency, it 'should be reversed and remanded for correction or clarification.'" (quoting Weymouth, 87 So. 3d at 36)).

The final judgment contains conflicting findings as to Former Husband's arrearage payments, resulting in a mathematical error in the total amount of support arrears owed. Paragraph 18(d) of the final judgment includes arrearage payments that are not referenced in paragraph 16.

Competent substantial evidence supports the payments found in paragraph 18(d). Thus, at the time of the final hearing, Former Husband owed \$6225 in arrears, not \$7025. See Doyle v. Doyle, 789 So. 2d 499, 501 (Fla. 5th DCA 2001) (“[N]otwithstanding the trial court's wide discretion in dissolution matters, this court must correct mathematical errors made by the trial court.” (citation omitted)). Thus, remand is required for recalculation, especially in light of the decision to offset Former Wife’s equalizing payment with Former Husband’s total support arrearage.

Next, Former Husband challenges the trial court’s order requiring him to obtain life insurance as security for his alimony and child support obligations, asserting that the final judgment lacks the necessary factual findings. As a general rule, “[a] party may not complain about ‘inadequate findings in a dissolution case unless the alleged defect was brought to the trial court’s attention in a motion for rehearing.’” Anaya v. Anaya, 987 So. 2d 806, 807 (Fla. 5th DCA 2008) (quoting Mathieu v. Mathieu, 877 So. 2d 740, 741 (Fla. 5th DCA 2004)). Former Husband admittedly did not address that issue in his motion for rehearing. However, because we are remanding, and given the nature of the issues which will require additional review by the trial court, we exercise our discretion to address this issue. See Keum San Yi v. State, 128 So. 3d 186, 188 (Fla. 5th DCA 2013) (“Since we are reversing

and remanding this case . . . we deem it appropriate to address additional issues raised by [the appellant] in the hope that these errors are not repeated”).

“The trial court may order the obligor spouse to purchase or maintain life insurance as security for the payment of alimony or child support.” Smith v. Smith, 912 So. 2d 702, 704 (Fla. 2d DCA 2005) (citing §§ 61.08(3), 61.13(1)(c), Fla. Stat. (2004); Keith v. Keith, 537 So. 2d 138, 139 (Fla. 2d DCA 1988)). “The obligation to obtain life insurance ‘must be supported by 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.’” Paul v. Paul, 300 So. 3d 811, 812 (Fla. 5th DCA 2020) (quoting Packo v. Packo, 120 So. 3d 232, 234 (Fla 5th DCA 2013)). Here, the final judgment lacks the specific factual findings required to mandate the procurement of life insurance. On remand, the trial court shall either make the necessary findings to support the need for life insurance or remove that requirement from its order. See Palmer v. Palmer, 198 So. 3d 1035, 1036 (Fla. 5th DCA 2016).

Finally, the trial court erred by failing to account for its alimony award in calculating child support. See § 61.30(2)(a)9., (3)(g), Fla. Stat. (2018); see also Paul, 300 So. 3d at 812. The monthly income figures used to calculate

child support were not adjusted based on the \$1000 durational alimony award.² Thus, the final judgment must be remanded for recalculation of child support obligations, which will also impact Former Husband's responsibility for uncovered medical expenses. See Mattison v. Mattison, 266 So. 3d 258, 261 (Fla. 5th DCA 2019).³

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

WALLIS and EDWARDS, JJ., concur.

² Although we find that the trial court did not abuse its discretion in awarding alimony, we note that the circumstances of this case suggest that bridge-the-gap alimony would have been more appropriate than durational.

³ The trial court should address the issues discussed in this opinion expeditiously in light of the approximately seven-month delay in the entry of the final judgment.