

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

SHARON B. MIDDLETON,

Appellant,

v.

Case No. 5D20-1659
LT Case No. 2009-DR-169

JAMES W. MIDDLETON,

Appellee.

Opinion filed December 3, 2021

Appeal from the Circuit
Court for St. Johns County,
John M. Alexander, Judge.

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

Michael J. Korn, of Korn & Zehmer,
PA, Jacksonville, for Appellee.

EVANDER, J.

In this highly contentious modification action, we affirm the trial court's order on all issues raised on appeal, except one. We conclude that the trial court must reconsider former wife's request for attorney's fees and costs because the trial court's order failed to reflect that it properly considered former wife's need for, and former husband's ability to pay, a further contribution toward former wife's attorney's fees and costs.

The parties' long-term marriage was dissolved in 2009. The amended final judgment of dissolution of marriage awarded former wife \$3,000/month in permanent alimony. In March 2016, former husband filed a supplemental petition for modification seeking to reduce or terminate his alimony obligation. Former wife filed a counter-petition, seeking an increase in former husband's alimony payments. After a lengthy trial, the trial court denied both the petition and the counter-petition.

In denying former wife's request for a contribution toward her fees and costs, the trial court's order referenced the parties' success (or lack of success) on their competing petitions, former husband's contributions to former wife's attorney's fees pursuant to temporary orders,¹ and the need for the litigation to cease. ("The litigation must end.") The order did not include

¹ The order erroneously recited that former husband had, pursuant to temporary orders, paid over \$20,000 toward former wife's attorney's fees. In fact, the former husband had only paid \$10,000 in temporary fees.

adequate findings as to former wife's need for, or former husband's ability to pay, an additional contribution to former wife's fees and costs. This deficiency in the trial court's order was unsuccessfully raised by former wife in her amended motion for rehearing.

Pursuant to section 61.16(1), Florida Statutes (2016), the trial court was required to consider the financial resources of both parties in ruling on former wife's request for fees and costs. The purpose of this statute is to ensure that both parties have similar abilities to secure legal counsel. *Caryi v. Caryi*, 119 So. 3d 508, 511 (Fla. 5th DCA 2013). Thus, the parties' financial resources are generally the primary factor to consider in ruling on a party's request for fees and costs. *Allen v. Juul*, 278 So. 3d 783, 784 (Fla. 2d DCA 2009). "Even in those cases raising issues of inappropriate conduct, the trial court still must consider the parties' respective need for suit money and ability to pay." *Sumlar v. Sumlar*, 827 So. 2d 1079, 1085 (Fla. 1st DCA 2002).

Here, reversal is required because the trial court's order failed to contain sufficient findings on the parties' respective financial resources to facilitate meaningful appellate review. See *Henderson v. Henderson*, 162 So. 3d 203, 207 (Fla. 5th DCA 2015) ("Where an order denying attorney's fees 'fails to contain sufficient factual findings to facilitate meaningful appellate review of the trial court's decision,' the appellate court must reverse for the

trial court to make further findings.”). On remand, in considering former wife’s request for further contribution from former husband to her fees and costs, the trial court shall consider the parties’ financial resources, as well as any other factors that may be appropriate, see *Rosen v. Rosen*, 696 So. 2d 697, 700 (Fla. 1997), and make sufficient factual findings to facilitate meaningful appellate review. If necessary, the court may take additional evidence.²

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

EDWARDS and HARRIS, JJ., concur.

² We express no opinion on the merits of former wife’s request for an award of attorney’s fees and costs.