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

CURTIS JOHN MOSES,

Appellant,

v. Case No. 5D20-2534

KELLY CHRISTINE MOSES,

Appellee.

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Opinion filed September 17, 2021

Appeal from the Circuit Court
for Osceola County,
Michael Kraynick, Judge.

Moses Robert Dewitt and Joshua Martell, of Dewitt Law Firm, P.A., Orlando, for Appellant.

Jennifer A. Englert, of Orlando Law Group, PL, Orlando, for Appellee.

EDWARDS, J.

Appellant, Curtis John Moses ("Former Husband"), appeals several aspects of the amended final judgment dissolving his marriage to Appellee

Christine Moses ("Former Wife"). We reverse and remand for further proceedings with regard to: the inequitable distribution of assets; the failure to credit Former Husband for child support payments made towards child support arrears; requiring life insurance for Former Husband; and the award to Former Wife of unilateral decision-making regarding the parties' two children. After careful consideration, we affirm as to all other issues.

The parties were married in 2002 and have two minor children. Former Husband was an active-duty member of the military until he was forced to retire in late 2017 due to mental and physical ailments caused by several accidents. Former Husband was honorably discharged and rated as 100% disabled by the Veterans Administration.

Former Wife then took the parties' two children and separated from Former Husband in June 2017 before filing for divorce in August 2017. Former Husband remained in the marital home while Former Wife moved with the two children into her parents' home.

Former Husband was unemployed during the pendency of the dissolution but received military retirement pay which exceeded what Former Wife earned at her job. In March 2018, Former Husband was ordered to pay Former Wife $788 in temporary child support. Former Husband began receiving over $1,300 a month in Social Security disability payments in June

2019. Former Wife also began receiving $788 a month in Social Security derivative support related to Former Husband's disability for the two children. Former Husband and Former Wife received back payments from Social Security of $34,384 and $19,000 respectively in June 2019.

During the pendency of the dissolution proceedings Former Husband and Former Wife underwent a social investigation. That social investigation noted that Former Husband had a history of alcoholism and mental and physical ailments but determined that both parents were capable of parenting the children. The social investigator found that Former Wife was not being cooperative with Former Husband when it came to shared parental responsibilities and communicating information regarding the children. Former Husband also underwent a psychological evaluation which found that there were "no significant concerns . . . that would suggest that [Former Husband] could not safely parent his [children]."

Both parties pled for an equitable distribution of assets, and both filed a joint equitable distribution worksheet. Former Husband proposed that he be allowed to keep the marital home in return for assuming the mortgage on the marital home and assuming a list of debts, which far outweighed the debts that were assumed by Former Wife. Former Wife proposed that the

marital home be sold and that the proceeds remaining after satisfying the mortgage be split equitably.

The final judgment of dissolution was rendered on July 8, 2020. Following motions for rehearing being filed by both parties, an amended final judgment, which incorporated an attached parenting plan and equitable distribution worksheet, was entered.

The amended final judgment ordered Former Husband to pay child support and durational alimony and established child support and alimony arrearages that Former Husband was required to pay. The amended judgment also adopted Former Husband's proposed distribution of marital liabilities. However, it ordered the marital home to be sold, with the proceeds remaining after satisfying the mortgage to be split equally. It further ordered that half of Former Husband's share of the home's equity was to be paid to Former Wife towards satisfying his child support and alimony arrearages. The amended final judgment provided that both parties would be responsible for debts in their own names.

The trial court also referenced the social investigation and the psychological evaluation reports and found that both Former Husband and Former Wife were willing and able to parent the children. The trial court awarded the parties shared parental responsibility but awarded Former Wife

majority timesharing. Although the trial court found that Former Wife was unwilling to share information with or include Former Husband in major decisions regarding the children, it awarded Former Wife ultimate decision-making authority in a list of specified areas including education, healthcare, and moral/religious decision-making. Finally, the trial court ordered Former Husband to secure life insurance sufficient to satisfy his child support and alimony obligations and any related arrears.

Former Husband filed a timely notice of appeal. For the following reasons we reverse in part and remand for further proceedings.

Equitable Distribution

Former Husband first claims that the trial court erred by inequitably distributing a greater share of the marital liabilities to him. The list of liabilities assigned to him, and liabilities in his own name that he was ordered to be responsible for, far outweighed the liabilities assigned to Former Wife. Former Husband claims entitlement to an equitable distribution credit of $56,261.50. Former Husband raised this issue in his motion for rehearing, which the trial court denied.

An equitable distribution award is reviewed under the abuse of discretion standard. *Feger v. Feger*, 850 So. 2d 611, 615 (Fla. 2d DCA 2003). "The final distribution of marital assets, whether equal or unequal, must be

supported by factual findings based on substantial competent evidence." *Guida v. Guida*, 870 So. 2d 222, 224 (Fla. 2d DCA 2004).

Under section 61.075, Florida Statutes (2020), a trial court "must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors." *Vilardi v. Vilardi*, 225 So. 3d 395, 396 (Fla. 5th DCA 2017) (quoting § 61.075(1), Fla. Stat. (2016)). "To justify unequal distribution, the trial court must include in the final judgment findings of fact supporting its determination." *Id.* (citing § 61.075(3), Fla. Stat. (2016)).

The failure of the trial court to make findings of fact to justify an unequal distribution of assets or liabilities generally requires reversal. *See id.* (reversing due to trial court's failure to make findings justifying an unequal distribution); *Guobaitis v. Sherrer*, 18 So. 3d 28, 32 (Fla. 3d DCA 2009) (remanding for further proceedings because trial court failed to make sufficient findings to justify grossly disproportionate distribution of assets and liabilities); *Franklin v. Franklin*, 988 So. 2d 125, 126 (Fla. 2d DCA 2008) (holding that "[a]n appellate court must reverse an unequal distribution if the trial court fails to make a specific finding of fact that justifies the unequal distribution" (citing *Feger*, 850 So. 2d at 615 ("A court must provide a legally

sufficient factual basis for its unequal distribution of marital assets [or liabilities].”))).

Here, Former Wife is correct that the trial court’s distribution of liabilities mirrored Former Husband’s proposed distribution of liabilities. However, Former Husband’s proposed distribution was expressly premised upon his maintaining the marital home. The trial court deviated from Former Husband’s proposed distribution by ordering the sale and equitable distribution of the proceeds from the marital home. Therefore, it cannot be said that Former Husband consented to any inequitable distribution of assets and liabilities.[1] As the trial court made no findings of fact to justify an unequal distribution, we remand to the trial court to either make an equitable distribution or to set forth its findings of fact that might justify an inequitable distribution.

Child Support Arrears

Former Husband next argues that the trial court erred by failing to credit Former Husband’s child support arrears with court-ordered payments of $778 per month in temporary child support that he made between March

[1] For the same reason, the trial court’s statement in its order denying rehearing, that Former Husband should not be now heard to complain about the inequitable distribution as that is what he requested, is not supported by competent substantial evidence.

2018 through May 2019 when the Social Security derivative payments began. Section 61.30(17) requires that "all actual payments made" by Former Husband are to be credited to reduce Former Husband's retroactive child support obligation. *See* § 61.30(17), Fla. Stat. (2020). Former Wife argues that these amounts were actually credited to reduce Former Husband's child support arrears.

However, our review of the amended final judgment does not reveal that Former Husband was credited with these amounts as a reduction of his child support arrearage. Accordingly, we reverse and remand to the trial court to recalculate the child support arrearage by awarding Former Husband credit for the court-ordered payments that he made.

Life Insurance

Former Husband next argues that the trial court erred by failing to make findings of fact to justify requiring Former Husband to obtain life insurance to secure his alimony and child support obligations.

As we recently held:

> A court clearly has the authority pursuant to sections 61.08(3) and 61.13(1)(c), Florida Statutes (2010), to protect an award of alimony by requiring a party who is ordered to pay alimony or child support to purchase and maintain a life insurance policy to secure those obligations. In order to support the requirement for life insurance, however, the trial court must make 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. *Kotlarz v. Kotlarz,* 21 So. 3d 892, 893 (Fla. 1st DCA 2009) (citing *Plichta v. Plichta,* 899 So. 2d 1283, 1287 (Fla. 2d DCA 2005); *Burnham v. Burnham,* 884 So. 2d 390, 392 (Fla. 2d DCA 2004)). The failure to make the necessary findings constitutes reversible error. *See Schoditsch v. Schoditsch,* 888 So. 2d 709 (Fla. 1st DCA 2004).

Foster v. Foster, 83 So. 3d 747, 748–49 (Fla. 5th DCA 2011).

Here, the amended final judgment fails to make any findings at all regarding the cost and availability of insurance. We therefore reverse the award of life insurance and remand for consideration and findings regarding its necessity, cost, availability, and Former Husband's ability to purchase same.

Unilateral Decision-Making

Finally, Former Husband argues that the trial court's award of ultimate responsibility over eighteen separate areas involving parental responsibility was an abuse of discretion. We agree, albeit with an acknowledgment that the record might support a more limited award of ultimate responsibility on remand. We review a trial court's judgment establishing a parenting plan for an abuse of discretion. *See Frye v. Cuomo*, 296 So. 3d 939, 941 (Fla. 4th DCA 2020). In this case, the trial court awarded shared parental responsibility between the parties. This award would not preclude the trial court from granting either party ultimate responsibility over a specific area or

areas of the children's welfare under appropriate circumstances. *See* § 61.13(2)(c)3., Fla. Stat. (2020); *Meyers v. Meyers*, 295 So. 3d 1207, 1214 (Fla. 2d DCA 2020).

However, courts have held that "a blanket, nonspecific award of 'ultimate responsibility' is contrary to the statutory concept of shared parental responsibility." *Neville v. McKibben*, 227 So. 3d 1270, 1272–73 (Fla. 1st DCA 2017) (quoting *Wheeler v. Wheeler*, 501 So. 2d 729, 729 (Fla. 1st DCA 1987)); *see also Gerencser v. Mills*, 4 So. 3d 22, 24 (Fla. 5th DCA 2009) ("[T]he trial court's ruling, as currently written, does not provide the mother with shared parental responsibility as it allows the father to make the ultimate decision on any issue on which the parents do not agree."). The effect of this type of order "gives one parent complete control over all the decision-making, which undermines the intent of the child custody statute regarding shared parental responsibility." *Kuharcik v. Kuharcik,* 629 So. 2d 224, 225 (Fla. 4th DCA 1993) (reversing provision awarding mother ultimate authority over all decisions and remanding for court to delineate authority over specific aspects only).

On the other hand, nothing forbids trial courts from awarding ultimate responsibility to one parent in one or more specific areas where the record justifies it. *Schneider v. Schneider*, 864 So. 2d 1193, 1194 (Fla. 4th DCA

2004) (affirming trial court's award of ultimate responsibility over the children's health, medication, and travel); *Kasdorf v. Kasdorf*, 931 So. 2d 257, 258–59 (Fla. 4th DCA 2006) (affirming trial court's award of ultimate responsibility over medical treatment).

Here, the amended final judgment refers to record evidence that could support awarding Former Wife ultimate responsibility regarding a limited number of specific matters. But the parenting plan decreed by the trial court awards Former Wife ultimate responsibility regarding eighteen separate areas, which when taken together, overcome its award of shared parenting. Such a broad grant essentially transforms the trial court's shared parenting decision into a currently unsupported award of sole parenting to the Former Wife. We therefore remand for the trial court, in accordance with section 61.13(3), Florida Statutes (2020), to determine which specific aspects of the children's welfare, if any, for which the Former Wife should have ultimate decision-making responsibility.

Conclusion

After careful consideration we conclude that the remaining issues raised by Former Husband in this appeal lack merit. Furthermore, while Former Wife raised several requests for relief and claims of error regarding

the amended final judgment, we find that these claims are not properly before us, as Former Wife failed to file a cross-appeal.

Accordingly, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

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

WALLIS and TRAVER, JJ., concur.