

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D17-3022

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VICKIE B. SCHUTT, Former Wife,

Appellant,

v.

JEFFREY P. SCHUTT, Former  
Husband,

Appellee.

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On appeal from the Circuit Court for Alachua County.  
James M. Colaw, Judge.

December 23, 2019

PER CURIAM.

This case involves review of attorney's fees and costs incurred in the course of dissolution of marriage proceedings. Former wife has raised six issues, all of which we affirm except as to (a) the successor judge's increase of the former wife's income beyond that established in the final judgment; and (b) the failure to award any attorney's fees to the former wife despite the disparities between her income and assets and those of her former husband. As to (a), we reverse and remand for further proceedings to be based upon the income established for the former wife in the final judgment. *Lawyers Co-op. Pub. Co. v. Williams*, 5 So. 2d 871, 872 (Fla. 1942) ("A successor judge generally cannot review, modify or reverse, upon the merits, on the same facts, the final orders of his

predecessor unless there exists some special circumstances such as mistake or fraud perpetrated on the court.”); *Bailey v. Bailey*, 204 So. 2d 531, 532 (Fla. 3d DCA 1967) (“The courts of this state have repeatedly held that a successor judge cannot review, modify or reverse, upon the merits, on the same facts, the final orders of his predecessor, absent mistake or fraud.”). As to (b), we find that it was an abuse of discretion to award no attorney’s fees to the former wife. “Where the parties’ income disparity is substantial, a trial court abuses its discretion by denying a request for attorney’s fees and costs. . . . Earning two and [one half times] more than one’s former spouse constitutes a substantial income disparity.” *Martin v. Martin*, 959 So. 2d 803, 805 (Fla. 1st DCA 2007); *Kelly v. Kelly*, 491 So. 2d 330, 330 (Fla. 1st DCA 1986) (finding that “trial court should have awarded her an attorney’s fee” because the former wife had a substantially smaller income than the former husband, modest liquid assets, and would be in a far worse financial position than the former husband should she have to pay her own fees).

REVERSED and REMANDED.

MAKAR and KELSEY, JJ., concur; WINOKUR, J., concurs in result with opinion.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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WINOKUR, J., concurring in result only.

In an earlier appeal, this court directed the trial court to enter an “amended order on the former wife’s request for attorney’s fees which includes findings of fact on the former husband’s income, assets, liabilities, and general ability to pay, consistent with the trial court’s previous findings in the July 1, 2015, final judgment of dissolution of marriage and in the August 10, 2015, amended final judgment that the former husband’s owner’s drafts from his

S corporation constitute income.” Because the trial court’s subsequent order was inconsistent with this direction, I agree we must reverse and remand for further proceedings. I would not, though, conclude that the trial court lacked discretion to deny fees on this record.

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John D. Middleton of Middleton & Middleton, P.A., Melrose, for Appellant.

Leslie Smith Haswell, Gainesville, for Appellee.