

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-4604

MALINDA PLEXICO BRADNER,
Former Wife,

Appellant,

v.

BRYAN JACOB BRADNER, Former
Husband,

Appellee.

On appeal from the Circuit Court for Leon County.
Dawn Caloca-Johnson, Judge.

December 27, 2019

PER CURIAM.

Malinda Plexico Bradner challenges an order granting summary judgment in favor of her former husband, Bryan Jacob Bradner, terminating his alimony obligation based on a finding that she had entered a supportive relationship. Because the trial court's conclusion is based on disputed facts, we reverse and remand for further proceedings.

Background

Under the terms of the final judgment dissolving the parties' marriage, Mr. Bradner had to pay Ms. Bradner \$1,500 a month in alimony for thirty-five months beginning April 1, 2017. The final

judgment called for the termination of alimony upon Ms. Bradner's "entry into a supportive relationship as defined by statute."

Mr. Bradner subsequently moved to terminate alimony alleging that Ms. Bradner had entered a supportive relationship—as defined by section 61.14(1)(b), Florida Statutes—with Rob Smith, the owner of Concept Construction Group, a company where Ms. Bradner works. Mr. Bradner alleged that Ms. Bradner and Mr. Smith were holding themselves out as husband and wife, cohabitating, commingling their finances, and supporting each other's children. In support of his motion for summary judgment, Mr. Bradner relied upon deposition testimony of Ms. Bradner and Mr. Smith, as well as a residential "Lease with Purchase Option" between Mr. Smith as landlord and Ms. Bradner as tenant. The lease set a three-year term, starting in May 2017, during which time Ms. Bradner had to pay rental payments of \$1,116.50 per month. The lease also gave Ms. Bradner the exclusive option to buy the property and included a provision allowing her to improve or upgrade the property, upon written consent, and receive a credit in the form of a deposit towards the agreed upon sales price for the amount of the approved alterations.

The summary judgment evidence showed that Ms. Bradner and Mr. Smith lived together in the residence, along with their respective children when they each had visitation. The children each had their own room, while Ms. Bradner and Mr. Smith shared a bedroom. Ms. Bradner and Mr. Smith took trips together and ate together. Ms. Bradner, Mr. Smith, and their respective children shared responsibility for the household chores. Ms. Bradner worked for Mr. Smith's company as a project manager and was paid a salary. The company paid for her health insurance, but she reimbursed the company for the policy. Ms. Bradner and Mr. Smith did not have any joint financial accounts and they did not have access to each other's personal accounts. Ms. Bradner contributed \$75,000 to \$80,000 for renovations of the residence to accommodate room for her children without receiving written consent in the hope that the money would be credited towards her eventual down payment.

As to the reason for the lease agreement, Ms. Bradner testified that she tried to buy the house outright from Mr. Smith

but could not get financing. She said she entered the lease so at the end of its term she could obtain financing to purchase the house. Mr. Smith testified that he bought the residence with the intent to fix it up and sell it. When asked what the business purpose of the lease was, he said: “to facilitate a lease-purchase.” Mr. Smith stated his company had entered similar leases in the past. He testified that he did not know what accounts Ms. Bradner’s payments went into, how much credit she had accrued towards the purchase price, or whether he claimed the rental payments as income on his tax returns, but he explained that his accountant took care of such matters.

The trial court entered an Amended Order Granting Motion for Summary Judgment, finding that the undisputed facts showed there was a supportive relationship between Ms. Bradner and Mr. Smith. The trial court relied in part on the lease, ruling:

This Court cannot in good conscience find that this Lease is an arm’s length transaction and further finds no purpose for the Lease other than an attempt to avoid a Supplemental Petition by Former Husband to terminate alimony. Rob Smith repeatedly stated in his deposition that he had no idea how much money was invested in this property, what the profit margin might be, or even if the rent was being claimed for tax purposes. Meanwhile, Former Wife contributed \$75,000-\$80,000 of her money towards renovations on the property to accommodate room for her children with no guarantee of recovery of the funds and without following the terms of the Lease requiring written consent for alterations.

The court also noted that evidence concerning Ms. Bradner’s “work for and relationship with Rob Smith’s company, Concept Construction, is also indicative of a supportive relationship.” The court ultimately concluded that Ms. Bradner and Mr. Smith “have exhibited financial interdependence; support each other emotionally; support each other financially, in whole or in part; live together; work together; and otherwise evidence a supportive relationship such that alimony . . . is no longer appropriate.”

Analysis

On appeal, Ms. Bradner argues that the trial court erred by granting summary judgment because the material facts were disputed and any reasonable inferences from the facts were not properly drawn in favor of the non-moving party. We agree.

A court's granting of summary judgment must be based on a conclusive showing by the moving party that there are no genuine issues of material fact. *Hawthorne v. Lyons*, 192 So. 3d 1279, 1280 (Fla. 1st DCA 2016). A court's determination that there are no issues of material fact is proper where "the facts are so crystallized that nothing remains but questions of law." *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985). It follows that if the summary judgment evidence "raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, or if it tends to prove the issues," the motion should be denied, and the issue should proceed as a question of fact for resolution at trial. *Id.* If even "the slightest doubt remains" on whether the facts are so crystallized after the evidence has been assessed and all inferences have been drawn in favor of the non-moving party, a trial court's granting of summary judgment cannot stand. *Convergent Techs., Inc. v. Stone*, 257 So. 3d 161, 166 (Fla. 1st DCA 2018) (quoting *Bowman v. Barker*, 172 So. 3d 1013, 1015 (Fla. 1st DCA 2015)). An order granting summary judgment is reviewed de novo. *Hawthorne*, 192 So. 3d at 1280.

Here, the trial court's finding that the lease was not an arm's-length transaction and that its purpose was to avoid the loss of alimony is based on disputed facts. Ms. Bradner testified that the lease was a creative way of trying to obtain financing to eventually buy the residence and that she had invested money in the property based on her intent to exercise the purchase option. And Mr. Smith testified that the lease was a standard lease-purchase agreement that he had used in the past when flipping houses. He stated that his lack of knowledge on the particulars of how much credit Ms. Bradner would have toward the purchase price or whether he was reporting income on the rent resulted from him outsourcing such matters to his accountant. Although a reasonable inference could be drawn from the evidence that the lease was not intended as an arm's-length business arrangement, the implications of the lease

arrangement are debatable, and any inferences must be drawn in favor of Ms. Bradner as the non-moving party. There was evidence from which it could be inferred that the lease was a good-faith lease arrangement entered for reasons other than as part of a supportive relationship.

The court also cited Ms. Bradner’s “work for and relationship with” Mr. Smith’s company as indicative of a supportive relationship. The summary judgment evidence on this point—that Ms. Bradner began employment in early fall of 2016, had worked a standard forty-hour week, and had been paid around \$37,000 a year, a salary which Mr. Smith testified he had paid to other employees in the past working in the same role—is also subject to competing inferences. Viewed in a light most favorable to Ms. Bradner, the evidence showed that the financial support inherent in this relationship was simply the product of a standard employer-employee relationship in which the pair also happen to be dating. Indeed, the marital settlement agreement acknowledged the existence of this work relationship as it related to the award of alimony and provided that it alone “does not constitute a supportive relationship between Wife and Rob Smith.”

Conclusion

Because the trial court found a supportive relationship based on disputed facts and inferences drawn from those facts in favor of Mr. Bradner, we reverse the order granting summary judgment and remand for an evidentiary hearing. By this decision, we decline to address the other issues raised by Ms. Bradner on appeal.

REVERSED and REMANDED for further proceedings.

RAY, C.J., and B.L. THOMAS and WINOKUR, JJ., concur.

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

Jennifer L. Sweeting and Jerry L. Rumph, Jr., of Sweeting & Rumph, P.A., Tallahassee, for Appellant.

Shannon L. Novey, Christin F. Gonzalez, and Jerome M. Novey of Novey+Gonzalez, Tallahassee, for Appellee.