FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-4771

LARRY WILLIAMS, Former Husband,

Appellant,

v.

CELESTA JONES, Former Wife,

Appellee.

On appeal from the Circuit Court for Santa Rosa County.
Marci L. Goodman, Judge.

February 3, 2020

BILBREY, J.

Larry Williams raises two errors in the judgment of dissolution of marriage. We affirm in part and reverse in part.

After sixteen years and eleven months of marriage, Williams petitioned for dissolution of the marriage. The judgment which subsequently entered granted permanent alimony to his former wife, Celesta Jones. While Williams claims the trial court abused its discretion in awarding permanent, rather than durational alimony, and in the amount awarded, we find no abuse of discretion has been shown.

It is undisputed that Jones has health issues, and the trial court found such issues preclude employment. While the health issues may resolve in the future, on the instant record, there is competent, substantial evidence that Jones' health precludes employment. She had not worked for a decade before the parties separated, and her monthly income is substantially less than Williams' income. Before their separation, the parties were married 16 years and 11 months — just one month shy of the statutory presumption of a "long-term" marriage. *See* § 61.08(4), Fla. Stat. (2017). The trial court treated the marriage as if it were a long-term marriage, and we affirm that decision. One month is a de minimis period given the length of the marriage, and the trial court was permitted to overcome the presumption as to the length of the marriage necessary to qualify as a long-term marriage. There is a rebuttable presumption that a long-term marriage warrants an award of permanent alimony. *See Broemer v. Broemer*, 109 So. 3d 284, 289 (Fla. 1st DCA 2013).

Even if the parties' marriage falls into the "grey area" between a long and a short-term marriage, consideration of the other factors set forth in section 61.08(2), Florida Statutes, beyond the duration of the marriage, including the earning capacity of Jones, warranted an award of permanent alimony. *See Zeigler v. Zeigler*, 635 So. 2d 50, 54 (Fla. 1st DCA 1994). As noted, there is competent, substantial evidence that Jones' health precludes employment.

While Jones was just 53 years of age at the time of dissolution, a party's age is not a valid basis to deny permanent alimony absent evidence that the receiving former spouse's relative youth would allow that former spouse to earn income sufficient to support a life-style consistent with that enjoyed during the marriage. *See Zeigler* 635 So. 2d at 54. Given all the above, we find no abuse of discretion in the award of permanent alimony. *See Griffin v. Griffin*, 993 So. 2d 1066, 1067 (Fla. 1st DCA 2008) (reaffirming a trial court's alimony award is reviewed under the abuse of discretion standard).

However, we do find the trial court abused its discretion in ordering Williams to pay one half of Jones' unpaid attorney's fees and costs. *See Broemer*, 109 So. 3d at 290 (reaffirming abuse of

discretion standard of review of an award of attorney's fees and costs in dissolution proceedings). The parties received equal distribution of the marital assets and debts. With the alimony and child support awarded, the parties' monthly net incomes are roughly equivalent. After "an equitable distribution of the marital property has been achieved and the trial court has equalized incomes through its alimony award, the trial court abuses its discretion in awarding attorney's fees." *Galligar v. Galligar*, 77 So. 2d 808, 813 (Fla. 1st DCA 2011).

Further, even if Jones was entitled to an award of attorney's fees, the record lacks a finding that her incurred fees were reasonable. *See Mahoney v. Mahoney*, 251 So. 3d 977, 980 (Fla. 1st DCA 2018) (explaining that when a trial court has found a party in a dissolution proceeding is entitled to an award of attorney's fees, the trial court must then evaluate the reasonableness of the requested fee).

AFFIRMED in part, REVERSED in part, and REMANDED.

ROBERTS and WINOKUR, JJ., concur.

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

Ross A. Keene, Pensacola, for Appellant.

No appearance for Appellee.