FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-168

JEREMY RAY SPAULDING,

Appellant,

v.

SARA MARIE SPAULDING,

Appellee.

On appeal from the Circuit Court for Duval County.
Karen Cole, Judge.

August 23, 2021

M.K. THOMAS, J.

In this appeal of a final judgment of dissolution of marriage, the former husband argues the trial court erred in five respects: (1) by awarding sole parental responsibility to the former wife without making a specific finding that shared parental responsibility would be detrimental to the child; (2) by relying on evidence not introduced at trial and considering improper hearsay testimony; (3) by ordering former husband's time-sharing to be supervised effectively for child's entire minority because trial court failed to provide a roadmap to achieve unsupervised time-sharing; (4) by incorporating the former wife's closing argument into the final judgment without making independent findings or rulings; and (5) improperly defending itself in the order denying the former husband's motion for rehearing.

The second, fourth and fifth arguments lack merit, and we affirm without further discussion. As to the third argument that the trial court failed to provide the former husband with a roadmap to obtain unsupervised time-sharing, we affirm as this issue has recently been resolved by the Florida Supreme Court. *See C.N. v. I.G.C.*, 46 Fla. L. Weekly S93a (Fla. Apr. 29, 2021) (resolving certified conflict issue and holding a final judgment modifying a preexisting parenting plan is not required to give a parent "concrete steps" to restore lost time-sharing and return to the premodification status quo), *aff'g Dukes v. Griffin*, 230 So. 3d 155, 156–57 (Fla. 1st DCA 2017) ("[V]esting authority in the courts to establish such steps appears contrary to section 61.13(3), Florida Statutes, which sets forth its own specific requirements for modifying parenting plans, including time-sharing schedules."). Regarding the first argument, we affirm and address the issue in detail below.

Regarding the first issue on appeal, the former husband claims the trial court erred by awarding sole parental responsibility to the former wife without making a specific finding that shared parental responsibility would be detrimental to the child. It is undisputed that the former husband failed to raise the lack of detriment finding in his motion for rehearing, despite raising various other arguments. Thus, the issue is not preserved for purposes of appeal. *See Williams v. Williams*, 152 So. 3d 702, 704 (Fla. 1st DCA 2014) ("[W]here an error by the court appears for the first time on the face of a final order, a party must alert the court of the error via a motion for rehearing or some other appropriate motion in order to preserve it for appeal."); *Mize v. Mize*, 45 So. 3d 49, 49 (Fla. 1st DCA 2010) ("[B]ecause the Husband failed to challenge the insufficiency of the fact findings through a motion for rehearing or by any other post-judgment pleading, he has failed to preserve these issues for appellate review."); *Simmons v. Simmons*, 979 So. 2d 1063, 1064 (Fla. 1st DCA 2008) ("[A] party is not entitled to complain that a judgment in a marital and family law case fails to contain sufficient findings unless that party raised the omission before the trial court in a motion for rehearing.").

To the extent that the former husband seeks reversal based on the trial court's failure to make a specific finding of detriment

pursuant to section 61.13(2)(c)2., Florida Statutes, regardless of the lack of preservation, we hold that he waived that claim by failing to argue the error was fundamental on appeal. *See Eaton v. Eaton*, 293 So. 3d 567, 568 (Fla. 1st DCA 2020) ("Absent fundamental error, issues must be preserved for appeal. No argument regarding fundamental error has been made."); *Collins v. State*, 211 So. 3d 214, 215 (Fla. 4th DCA 2017) (noting a claim of fundamental error was waived by failing to make the argument on appeal); *Wheeler v. State*, 87 So. 3d 5, 6 (Fla. 5th DCA 2012) (holding that an appellate court is not required to undertake a fundamental error analysis where the issue was not raised in the initial brief); *Williams v. State*, 845 So. 2d 987, 989 (Fla. 1st DCA 2003) (holding that defendant failed to preserve claim of fundamental error where he did not raise issue until he filed his reply brief).

Our court's decision in *Simmons* tracks the rule applied by a majority of the courts that have addressed the issue—that the trial court's failure to make statutorily required findings in dissolution of marriage cases is not subject to appellate review unless the matter was preserved via a motion for rehearing. *See, e.g.*, *Esaw v. Esaw*, 965 So. 2d 1261, 1265 (Fla. 2d DCA 2007); *Owens v. Owens*, 973 So. 2d 1169, 1170 (Fla. 1st DCA 2007); *Mathieu v. Mathieu*, 877 So. 2d 740 (Fla. 5th DCA 2004); *Broadfoot v. Broadfoot*, 791 So. 2d 584 (Fla. 3d DCA 2001).[*] Because the former husband failed to preserve the issue via a motion for rehearing and did not argue fundamental error on appeal, we affirm the final judgment of dissolution of marriage.

AFFIRMED.

ROWE, C.J., and NORDBY, J., concur.

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[*] As we recently noted, this decision is at odds with the Fourth District's en banc decision in *Fox v. Fox*, 262 So. 3d 789 (Fla. 4th DCA 2018). *See Eaton*, 293 So. 3d at 567. In *Fox*, the Fourth District concluded that the trial court's failure to make statutorily required findings in dissolution of marriage cases was subject to appellate review even if the matter was not preserved via a motion for rehearing. 262 So. 3d at 791.

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

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