FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-561

MARGARET TAYLOR, Former
Wife,

Appellant,

v.

PAMELA DAVIS, Former Wife,

Appellee.

On appeal from the Circuit Court for Duval County.
John I. Guy, Judge.

July 15, 2021

WINOKUR, J.

Margaret Taylor appeals a final judgment awarding her former wife, Pamela Davis, permanent alimony. Because the award misapplies section 61.08, Florida Statutes, we reverse.

I

Taylor and Davis were married for a little over three years. Their marriage followed twenty-four years of cohabitation. Taylor has substantial income, and approximately four years before the two married, Davis experienced health issues and reduced her workload. According to Davis, Taylor had encouraged this reduction and told her that they "had plenty of money." Taylor,

who acknowledged telling Davis that they had enough money to live on, provided most of the support from then on.[1] Davis denied any prenuptial or cohabitation agreement and testified that the only money-related agreement the parties had was to start a foundation.

When the parties divorced, the trial court considered the factors listed in section 61.08(2), Florida Statutes, to determine whether to award alimony. Although the court found that Davis had physical impairments that limited her job opportunities, it also found that she was able to work and imputed to her an annual income of $35,000. The court recognized that Davis had contributed to the marriage by doing more of the housework and helping care for Taylor's mother. In discussing subsection 61.08(2)(j), which allows courts to consider "[a]ny other factor necessary to do equity and justice between the parties," the court observed the following:

> For much of the parties' relationship, they lived as a married couple, mutually dependent upon one another, financially, emotionally, and otherwise. However, later in the parties' relationship, Respondent/Taylor, voluntarily and without prompting of Petitioner/Davis, almost completely supported the parties financially. This caused Petitioner/Davis to discontinue the extent of her prior efforts of employment. Petitioner/Davis credibly testified that she stopped her regular employment in approximately 2010 at the suggestion of Respondent/Taylor so that they could spend more time together. Petitioner/Davis further testified that since 2010 she has relied almost exclusively on

---

[1] It is unclear how much Davis continued to work. Though she testified that she had stopped receiving federally taxable income four years before the parties married, she contributed to household bills and deposited funds from her business checking account into the parties' joint accounts until the parties separated. She also owned two businesses, and she did not sell them until years after she had purportedly stopped working.

> Respondent/Taylor for financial support. This testimony is supported by Petitioner/Davis' tax returns.

Ultimately, the court determined that Taylor should pay Davis $3,000 per month in permanent alimony:

> [T]he Court finds by clear and convincing evidence that given the unique circumstances of the parties and their decades-long relationship, exceptional circumstances do exist for an award of permanent alimony in this short-term marriage. The Court finds no other form of alimony is fair and reasonable under the circumstances of the parties.

Taylor appeals the award, contending that the length of the parties' premarital relationship was not a proper consideration under section 61.08(2)(j) and that no exceptional circumstances exist. Davis counters that the premarital relationship was properly considered. She also argues that her age, which is near retirement age, and time out of the workforce justify permanent alimony. Alternatively, she argues that the couple had an enforceable oral support agreement.

II

We review alimony awards for abuse of discretion. *Odom v. Odom*, 312 So. 3d 1073, 1077 (Fla. 1st DCA 2021). An award will be upheld if it is supported by competent, substantial evidence. *Broemer v. Broemer*, 109 So. 3d 284, 289 (Fla. 1st DCA 2013). Under section 61.08(8), Florida Statutes, permanent alimony may be awarded after a short-term marriage—a marriage of less than seven years—only "if there are written findings of exceptional circumstances." If the court awards permanent alimony following a short-term marriage, its order "shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties." If the court determines that permanent alimony is the only fair and reasonable option, it must "include sufficient findings in its order to explain its decision." *Margaretten v. Margaretten*, 101 So. 3d 395, 398 (Fla. 1st DCA 2012).

This Court has previously held that permanent alimony is improper following a short-term marriage unless "there would be a genuine inequity" without it; the determinative question is "whether the requesting spouse is without means to self-support as a result of something that happened during the marriage." *Odom*, 312 So. 3d at 1077. Generally, short-term marriages resulting in permanent alimony involve "requesting spouses who [a]re incapable of self-support by reason of a physical or mental disability." *Id.* (quoting *Levy v. Levy*, 900 So. 2d 737, 742 (Fla. 2d DCA 2005)).

Additionally, Florida does not recognize palimony; "no legal rights or duties flow from mere cohabitation." *Castetter v. Henderson*, 113 So. 3d 153, 154 (Fla. 5th DCA 2013); *see also Crossen v. Feldman*, 673 So. 2d 903, 903 (Fla. 2d DCA 1996) ("'Palimony' . . . is not a recognized cause of action in this state."). Legal rights "emanate from the establishment of the marital relationship." *Cohen v. Shushan*, 212 So. 3d 1113, 1118 (Fla. 2d DCA 2017).

III

Applying these principles, the trial court abused its discretion in awarding Davis permanent alimony following the parties' short-term marriage. The trial court's finding was insufficient in both form and substance. A mere recitation of statutory factors followed by an unelaborated reference to unique circumstances and a long relationship does not constitute written findings of exceptional circumstances. A conclusory, unexplained statement that only permanent alimony is fair and reasonable is similarly inadequate. Not only did the trial court fail to explain its findings, but the evidence does not support such findings.

There were no exceptional circumstances in this case. Davis is not physically or mentally disabled to the point that she cannot support herself; indeed, the trial court imputed income to her despite finding that her work ability is limited by physical impairments. Moreover, Davis testified that her health issues predate the marriage and there is no evidence that they worsened during the marriage, so they cannot be considered "something that happened during the marriage" to render her incapable of

supporting herself. *Odom*, 312 So. 3d at 1077. Her age and time out of the workforce are not exceptional; it is not abnormal for couples to divorce near retirement age or for one divorcing spouse to have been out of the workforce. It is also unexceptional for one spouse to do more of the housework or care for relatives. Finally, the length of the parties' premarital relationship cannot properly be considered under section 61.08(2)(j). This catch-all provision cannot permit consideration of factors that are impermissible. Florida law is clear that legal rights and duties arise from marriage, not cohabitation or romance. Because there were no exceptional circumstances supporting permanent alimony for a short-term marriage, it was an abuse of discretion to award it to Davis.

Davis argues that even if the alimony award was improper under section 61.08(2), it should be upheld as proper enforcement of an oral contract. We reject this argument. Davis did not make it at the trial court, and she explicitly testified that she and Taylor did *not* have a support agreement, stating that their only agreement was to start a foundation. The only evidence of a contract is her testimony that Taylor had encouraged her to stop working because they had "plenty of money" and Taylor's testimony that she had told Davis that they had enough money to live on. Taken as true, this testimony does not establish that there was an offer, acceptance, consideration, and sufficient specification of essential terms, as required for an enforceable contract. *See CEFCO v. Odom*, 278 So. 3d 347, 352 (Fla. 1st DCA 2019). Moreover, a contract between a cohabiting couple[2] must be in writing to be enforceable. *Posik v. Layton*, 695 So. 2d 759, 762 (Fla. 5th DCA 1997). Because there was no enforceable contract here, the alimony award cannot be affirmed on that ground.

Accordingly, we reverse and remand with instructions to the trial court to determine whether an award of a different form of alimony is appropriate.

ROWE, C.J., and LEWIS, J., concur.

---

[2] Davis alleges that the contract had arisen before the parties married.

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

Michael J. Korn of Korn & Zehmer, P.A., Jacksonville; Sandra J. Mathis and Lewis D. Price of Rogers Towers, Ponte Vedra, for Appellant.

Rebecca Bowen Creed of Creed & Gowdy, P.A., Jacksonville; Michael R. Phillips of Fletcher and Phillips, Jacksonville, for Appellee.