# FIRST DISTRICT COURT OF APPEAL
# STATE OF FLORIDA

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No. 1D20-1019

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SCOTT G. HAMILTON, Former Husband,

Appellant,

v.

MICHELE J. HAMILTON, Former Wife,

Appellee.

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On appeal from the Circuit Court for Escambia County.
Thomas V. Dannheisser, Judge.

October 13, 2021

PER CURIAM.

Scott Hamilton appeals a final order of dissolution of marriage involving his former wife Michele Hamilton, contending that the equitable distribution scheme adopted by the trial court was unequal on its face and that other errors exist in the alimony and child support calculations. We affirm in part, reverse in part, and remand for further consideration.

Mr. Hamilton contends, first, that the trial court incorrectly classified more than $50,000 of credit card debt as non-marital debt, resulting in an unequal and unjust distribution of the parties' assets. A marital asset is defined by statute as "[a]ssets and

liabilities incurred during the marriage, individually by either spouse or jointly by them." § 61.075(6)(a)1, Fla. Stat. "All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities." § 61.075(8), Fla. Stat. Here, debts existed on multiple personal credit cards held in Mr. Hamilton's name that were used to pay both household expenses and the expenses of running Mr. Hamilton's solo accounting practice (which is itself a marital asset). At the hearing, no attempt was made to separate the household debts from the business debts. In turn, the court concluded that the debt was non-marital corporate debt in view of Mr. Hamilton's "fail[ure] to present any evidence to allocate any portion of this debt as marital." We reverse this determination to exclude the debts from the equitable distribution scheme because it flips the statutory presumption that "[a]ll assets . . . not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities." § 61.075(8), Fla. Stat. From the record, we see no evidence specifically establishing these personal credit card debts as nonmarital liabilities, or a basis for excluding them from the equitable distribution scheme.

The next issues raised by Mr. Hamilton involve the orders to pay $2,000 per month in permanent alimony and $139 in child support. Mr. Hamilton contends that the alimony award lacks record support and that the court improperly awarded more alimony to Ms. Hamilton than she requested without making specific findings. *See Kobe v. Kobe*, 159 So. 3d 986, 986–87 (Fla. 1st DCA 2015) ("[W]hen a court awards more alimony than requested without sufficient findings in the final judgment to support the increased award, the award must be reversed and remanded for further proceedings."). Mr. Hamilton's claim that the court did not make sufficient findings in making this award was not included in his rehearing motion and is not preserved for review. *See Vinson v. Vinson*, 282 So. 3d 122, 142 (Fla. 1st DCA 2019) (requiring complaints about inadequate findings to be brought to the trial court's attention). On the other issue of whether record support exists underlying the alimony award, we agree with Mr. Hamilton that there is a double counting error. Specifically, the court credited Ms. Hamilton's financial affidavit showing a monthly deficit of $2,015, which included a $234 per month expense for the

minor child's health insurance. But the child's health insurance expense was also incorporated into the child support guidelines calculation. This is problematic because alimony awards that include expenses for children that are already accounted for in a child support award create an impermissible double counting. *See, e.g., Lin v. Lin*, 37 So. 3d 941, 942 (Fla. 2d DCA 2010). This double counting of health insurance costs calls for additional consideration of the respective alimony and child support calculations. *Id.* Additionally, we cannot find evidence supporting the figures used for Mr. Hamilton's income in the alimony order—income supposedly exceeding $180,000 in 2016 and $194,000 in 2017. These figures are at odds with the court's income findings elsewhere in the order and exceed the figures provided by the parties' experts, who pegged Mr. Hamilton's highest level of income at around $119,000. Further consideration is necessary because these alimony income figures appear to be unsupported by the evidence.

Finally, we affirm with respect to Mr. Hamilton's additional arguments regarding child support, which were not preserved.

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

OSTERHAUS, BILBREY, and TANENBAUM, JJ., concur.

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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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Jill W. Warren, of Law Office of Jill W. Warren, PLLC, Pensacola, for Appellant.

Charles F. Beall, of Moore, Hill & Westmoreland, P.A., Pensacola; Jennifer Lee Bushnell, Pensacola, for Appellee.