

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D20-2154

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SHARON ADAMS ODOM,

Appellant,

v.

JOHN H. ODOM,

Appellee.

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

March 18, 2021

LEWIS, J.

Sharon Adams Odom (the Former Wife) appeals from an amended final judgment that dissolved her short-term marriage to John H. Odom (the Former Husband). She argues that the trial court erred by awarding her bridge-the-gap alimony instead of permanent alimony. For the reasons that follow, we disagree and affirm the amended final judgment.

**BACKGROUND**

The parties were married in April 2013 and had no minor children. The Former Husband filed a petition for dissolution of marriage in December 2017, and the Former Wife filed a counterpetition, seeking temporary, bridge-the-gap, lump-sum,

durational, and/or permanent alimony on the ground that she became disabled during the marriage. At trial, held in June 2020, the Former Wife requested permanent alimony, and the parties disputed her employability due to disability.

The Former Husband, fifty years of age, testified in part that he has been employed by the United States Postal Service for over ten years. He receives monthly disability benefits from the Veteran's Affairs for nerve damage in his foot and ankle, which is worsening, but he is taking pain medication and continues to work because he needs the income. The Former Wife suffered multiple strokes and had brain surgery during the marriage, but she has held several jobs since then. The parties continued to reside together during the divorce proceedings, and the Former Husband observed that the Former Wife was able to get around fine and went on cruises, to concerts, and on trips with her friends. She even posted on Facebook videos of herself dancing at a party in November 2019. Based on his observations, the Former Husband believed the Former Wife is able to work.

The Former Wife, age fifty-one, testified on direct examination that at the time of the marriage, she was working full-time as a store manager. She had her first stroke around May 2013 and then had heart surgery. That same year, she got laid off from work at Napa Auto Parts, and the Social Security Administration ("SSA") denied her application for disability benefits. She has had about three or four major strokes and six mini strokes since then, and she had brain surgery in 2015. She reapplied for disability benefits in 2018, and the SSA approved her application in January 2019. When asked to discuss the places she has worked at since being laid off following her stroke in 2013, the Former Wife explained that she worked at Acumen Medical Imaging for about a month and a half, setting imaging appointments for patients, but she got laid off because she could not make it to work every day due to doctor's appointments and being in pain. She also worked seasonally at UPS from October through December of 2017 and again from October through November of 2018, getting laid off both times. When she worked, she was in pain, the medications made her sleepy, and she had memory problems. She has not been able to function properly enough to keep a job past a probationary period since her first stroke.

On cross-examination, the Former Wife testified that she actually stopped working as a store manager a year or two before the marriage, and she worked at multiple places between 2013 and 2019. After her stroke in 2013, she was hospitalized for a week and then returned to work at Napa Auto Parts, where she worked about fifteen hours a week through December 2013, at which time Napa cut hours “because of the business.” After Napa, she worked about four hours a day at a dry cleaner for approximately a month, which employment she quit because of an argument the Former Husband had with her supervisor. Following that, the Former Wife helped with her mother’s catering business by preparing and delivering food. The Former Wife was hired by UPS for seasonal work through a staffing agency, and she did not lose that job due to medical issues. In 2018, the Former Wife worked at Acumen five to six hours a day, five days a week; there, her supervisor accommodated her medical conditions and she could stand up to alleviate her back pain. She then returned to UPS for seasonal work at the end of 2018. In 2019 and 2020, the Former Wife helped with her sister’s and mother’s catering businesses by preparing, distributing, and delivering food. She drives a car every day, visiting family members, going to her sister’s food truck, and shopping. She waited to reapply for disability benefits until 2018 because she knew she could make more money working than from disability.

A letter from the SSA was admitted as an exhibit, reflecting that the SSA found the Former Wife became disabled in January 2019 and she is receiving monthly disability benefits. Another exhibit consisted of copies of the Former Wife’s Facebook posts on various dates in May and June of 2020 advertising the specials of her family’s catering business and giving her contact information for delivery. The Former Wife also moved into evidence a list of her fifteen medications and the deposition testimony of Diana Medina.

Diana Medina, the Former Wife’s physician’s assistant from January 2015 to August 2018, testified during deposition taken in October 2018 in part as follows. The Former Wife’s first appointment with Medina was for an annual wellness check, and the Former Wife indicated on the new patient form that she was unemployed. When asked if she had any discussions with the

Former Wife about her ability to work, Medina explained, “Yes, we have. . . . [W]e have talked about her migraines, her dizziness, her depression, anxiety, and just her chronic pain and fatigue. So all those things together she’s -- you know, we’ve talked about how it’s just incapacitating for her to work.” In Medina’s opinion, the Wife is not employable based on her chronic pain, incapacitating migraines, anxiety, and depression.

The Former Wife had a congenital heart condition, and in 2015, she had a second stroke and brain surgery and she started treatment with Medina for anxiety and depression. The Former Wife presents well and can speak clearly, and her stroke history and heart condition would not affect her current ability to work, whereas her brain condition might, depending on the frequency and severity of the migraines and dizziness she experiences. The Former Wife did not complain about migraines or dizziness during the last six or so months of treatment, indicating that the medications were working and she was not having those symptoms. Medina did not see any evidence that the medications were affecting the Former Wife negatively. The Former Wife was seeing Medina mainly for anxiety and depression, which worsened due to the stress of this family law case.

Medina was not aware of the Former Wife having had any jobs since January 2015; when they spoke about it, the Former Wife said she has been unemployed. It would surprise Medina if the Former Wife had a job for some of that time period and it would alter her opinion about the Former Wife’s ability to work “because a lot of these symptoms are based . . . on the patient,” they are internal and are based on what the patient reports, and they cannot be observed or measured. Medina added, “So that would shock me because from what I know of her, these symptoms are pretty severe and debilitating.”

In the amended final judgment, the trial court made detailed findings about the evidence presented at trial and the factors set forth in section 61.08(2), Florida Statutes (2019), in determining the type and amount of alimony to award. The trial court found that the Former Wife has a need for alimony, and it acknowledged that permanent alimony can be awarded following a short-term marriage in extraordinary cases where events occurring during the

marriage preclude a spouse from earning as much as she did before the marriage. However, the trial court determined that the Former Wife's claim that she is unable to work is not credible and is not supported by the evidence. The trial court found that the Former Wife is able to work and earn at least a minimum wage salary, finding that she is "currently voluntarily underemployed based on her ability to work, established through her testimony and work history from 2013 to present."

The trial court described the Former Wife's job history since her stroke in 2013 and found in part as follows. The only medical testimony provided in support of the Former Wife's disability claim was the deposition testimony of Medina, who no longer provides medical care to her and last saw her nearly two years before the trial. Medina opined that the Former Wife is not employable, but she was unaware that the Former Wife had been employed between 2015 and 2018, and the Former Wife always indicated to her that she was unemployed. "The most striking portion of Ms. Medina's testimony was that she testified that it would alter her opinion on Wife's employability if she had learned that the Wife had been employed for some of the time period[s] between 2015 through October 2018." The Former Wife was impeached multiple times with prior inconsistent statements she provided during her sworn deposition, and the videos she posted on Facebook from a party in 2019 undermine her disability claim and show her dancing in heels with ease. "Based on the totality of the evidence, the Court does not find the Wife's trial testimony and evidence regarding her disability to be credible."

The trial court concluded that the Former Wife is underemployed and capable of earning a minimum wage salary, but it is expected that she will need time to find employment compatible with her physical condition. Accordingly, the court dissolved the parties' marriage and awarded the Former Wife bridge-the-gap alimony of \$1,000 per month for nine months. This appeal followed.

#### ANALYSIS

We review a trial court's decision on alimony for an abuse of discretion. *Johnson v. Johnson*, 297 So. 3d 700, 702 (Fla. 1st DCA

2020). Section 61.08 governs alimony and provides that in determining whether to award alimony, the trial court must first make a specific factual determination as to whether either party has an actual need for alimony and whether the other party has the ability to pay alimony. § 61.08(2), Fla. Stat. (2019). If the trial court finds that a party has a need for alimony and that the other party has the ability to pay alimony, “then in determining the proper type and amount of alimony . . . , the court shall consider all relevant factors, including, but not limited to” those enumerated in the statute. *Id.* (listing factors such as the standard of living established during the marriage, the duration of the marriage, the age and health of each party, the earning capacities and employability of the parties, and the contribution of each party to the marriage). The party seeking alimony has the burden to prove his or her financial need and the other party’s ability to pay. *Demont v. Demont*, 67 So. 3d 1096, 1101 (Fla. 1st DCA 2011); *see also Phillips v. Phillips*, 264 So. 3d 1129, 1132 (Fla. 2d DCA 2019).

“For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years,” calculated from the date of marriage until the date of filing for dissolution of marriage. § 61.08(4), Fla. Stat. “Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single”; “[it] is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years.” § 61.08(5), Fla. Stat. “Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage,” and it may be awarded following a short-term marriage only “if there are written findings of exceptional circumstances.” § 61.08(8), Fla. Stat.

The presumption against awarding permanent alimony in cases involving a short-term marriage is rebuttable. *Reeves v. Reeves*, 821 So. 2d 333, 334 (Fla. 5th DCA 2002). “Permanent alimony can be awarded in cases involving a short term marriage where events which occurred during the marriage preclude a spouse from earning as much as he or she did prior to the

marriage.” *Id.* at 334–35. In considering the propriety of awarding permanent alimony following a short-term marriage, the question is whether there would be a genuine inequity without permanent alimony; more specifically, whether the requesting spouse is without the means to self-support as a result of something that happened during the marriage. *Levy v. Levy*, 900 So. 2d 737, 742 (Fla. 2d DCA 2005). “The short-term marriage cases in which awards of permanent alimony have been deemed appropriate have generally involved requesting spouses who were incapable of self-support by reason of a physical or mental disability.” *Id.* “An award of permanent alimony is not appropriate in a short-term marriage solely to enable the requesting spouse to maintain the marital lifestyle . . . .” *Id.* at 743.

The Former Wife argues on appeal that the trial court abused its discretion by awarding her bridge-the-gap alimony instead of permanent alimony because the evidence established that she is unable to work due to being disabled. The trial court made detailed findings of fact, based primarily on the Former Wife’s own testimony and evidence, in rejecting her disability claim and determining that she is able to work. In asserting that the trial court’s findings in that regard are contradicted by all the evidence, the Former Wife ignores significant portions of the evidence, as well as the trial court’s finding that her trial testimony about her disability was not credible.

It is undisputed that the Former Wife has had numerous medical conditions since the parties’ marriage in 2013 and that the SSA deemed her disabled in 2019. The SSA documents, however, do not state that she is completely disabled and unable to work. The evidence supports the trial court’s finding that the Former Wife is able to work. The Former Wife testified that she waited nearly six years to reapply for Social Security disability benefits because she knew she would make more money working than from disability. She also testified that she has held several jobs since 2013. The extent of the Former Wife’s work history and the reasons she left the jobs came to light primarily on cross-examination. On direct examination, the Former Wife testified that she was working full-time as a store manager at the time of the parties’ marriage in April 2013 and that since being laid off from Napa after her stroke in 2013, she has worked at Acumen and

UPS briefly, before being laid off. On cross-examination, she conceded that she stopped working as a store manager a year or two before the marriage, she returned to Napa following her stroke and worked there through the end of the year, Napa cut her hours “because of the business” and her jobs at UPS ended because they were seasonal, she also worked at a dry cleaner for a about a month before leaving due to an argument the Former Husband had with her supervisor, and she has been helping with her family’s catering business by advertising it and preparing and delivering meals.

The Former Wife testified that she cannot function well enough to maintain employment while on her medications because of migraines, dizziness, sleepiness, and forgetfulness, but her testimony on cross-examination showed that she left her places of employment for reasons unrelated to her health issues and that she is able to help with her family’s catering business, drive around daily, and go on trips. The only job the Former Wife testified she left for medical reasons was Acumen—she claimed she was laid off because she could not make it to work every day due to medical appointments and being in pain. The trial court rejected her testimony, finding she was not credible. In fact, Medina testified during deposition that she did not see any evidence of the medications negatively affecting the Former Wife, and the medications actually seemed to be working because the Former Wife did not complain about migraines or dizziness during the last six or so months of treatment in 2018. The trial court was not presented with any other evidence about the Former Wife’s medical conditions or employability, such as through her current treating physician or a vocational counselor.

In addition to downplaying her work history on direct examination, the Former Wife told Medina that she was unemployed. Medina testified that if the Former Wife had any job for a period of time during their course of treatment from January 2015 to August 2018, that would alter her opinion about the Former Wife’s ability to work, explaining that the symptoms that would lead to an inability to work are internal and are based on patient reports as they cannot be observed or measured. The trial court found Medina’s testimony in that regard significant and found that the Former Wife’s testimony about her inability to work was not credible. We defer to the trial court’s credibility

determination as it would be inappropriate for us to reweigh the evidence and the credibility of witnesses, which is in the trial court's exclusive purview. *See Meyers v. Meyers*, 295 So. 3d 1207, 1213 (Fla. 2d DCA 2020). Given such, we conclude that the trial court's findings regarding the Former Wife's ability to work are supported by competent, substantial evidence.

In support of her claim on appeal, the Former Wife relies on cases that are distinguishable because they did not involve a short-term marriage and/or resulted in reversal based on grounds inapplicable here, such as lack of adequate findings or the requesting spouse's inability to work having been established. One such case is *Levy*.

In *Levy*, the wife "became disabled and was unable to undertake even part-time employment" during the parties' short-term marriage. 900 So. 2d at 741. Following the filing of the dissolution petition, the SSA "ruled that [she] was totally disabled as to employment," and at the time of the final hearing, her physical condition had not improved and she remained unemployed. *Id.* In denying her claim for permanent alimony and instead awarding her bridge-the-gap alimony, the trial court made no finding that she was capable of working and did not impute any income to her. *Id.* The Second District reversed the alimony award because the trial court applied an incorrect legal standard in denying the wife's claim for permanent alimony and failed to make specific findings as to the section 61.08(2) factors. *Id.* at 742–44 (describing that the trial court denied the wife's claim on the grounds that she was relatively young, she was entitled to Social Security disability benefits, and there was no evidence that the husband contributed to her disability and explaining why each of those rationales was legally incorrect). Unlike in *Levy*, the trial court here did not apply an incorrect legal standard and made sufficient findings of fact; additionally, it found that the Former Wife is capable of working and imputed income to her accordingly.

Another case the Former Wife relies upon is *Kruse v. Levesque*, where the Second District held that the trial court abused its discretion by awarding durational alimony instead of permanent alimony following the parties' moderate-term marriage "[b]ecause the trial court found that the Former Wife was disabled

and the undisputed evidence established that she was unable to return to work.” 192 So. 3d 1263, 1264 (Fla. 2d DCA 2016) (noting that in addition to her own testimony about the impact of her health issues on her ability to work, and evidence that she stopped working and applied for disability six years before filing for dissolution of marriage, the wife presented the testimony of her treating physician, a vocational rehabilitation counselor, and an attorney who specialized in disability to show that her medical issues rendered her unable to work). “Particularly pertinent to” the Second District’s decision was “the trial court’s finding that the testimony presented established ‘that the [Former] Wife is not able to return to work,’” and “the trial court made no finding that the Former Wife could reacquire the capacity for self-support in the foreseeable future or that her need for support was likely to change.” *Id.* at 1266. After discussing when durational and permanent alimony may be awarded following a moderate-term marriage and their purposes as set forth in section 61.08, the Second District concluded that “[t]he trial court abused its discretion in awarding alimony that would terminate within a limited period of time when the record and the trial court’s findings showed that the Former Wife lacked either the actual capacity for self-support or the potential to develop that capacity.” *Id.* at 1267. In contrast to *Kruse*, the trial court here specifically found that the Former Wife is able to work, and this case involves a short-term marriage.

Our case is more analogous to *Fichtel v. Fichtel*, 141 So. 3d 593, 594 (Fla. 4th DCA 2014), where the trial court awarded the wife durational alimony instead of permanent alimony upon the dissolution of the parties’ long-term marriage. At trial, the parties disputed the wife’s entitlement to permanent alimony and, more specifically, her employability. *Id.* When the wife left her teaching position in 2004, the husband “did not agree that she would never return to work, and to his knowledge, no doctor ever determined that [she] was incapable of returning to work.” *Id.* “According to Former Wife, however, she left her teaching position for health reasons.” *Id.* The parties also presented testimony from vocational counselors: the husband’s vocational counselor opined that the wife could reasonably be expected to earn \$10 to \$15 an hour, whereas the wife’s vocational counselor opined that she was 100% unemployable due to her medical condition and role as

caregiver to the parties' minor children. *Id.* The Fourth District held that the trial court did not abuse its discretion by finding that only durational alimony was appropriate:

The Final Judgment indicates that the trial court considered each of the factors enumerated in section 61.08(2) when fashioning the alimony award. It is apparent from the Final Judgment that the trial court questioned Former Wife's claim that she was unable to work due to illness and believed that her voluntary unemployment negated her need for support on a permanent basis.

The trial court is granted considerable discretion with regard to an alimony award and we are loathe to second guess the trial court's ruling where, as here, the statutory factors were considered.

*Id.* at 595. (noting that the trial court's findings sufficiently rebutted the presumption favoring permanent alimony); *see also Heard v. Perales*, 247 So. 3d 533, 535 (Fla. 4th DCA 2018) (affirming the final judgment of child support in which the trial court imputed income to the mother at minimum wage because "there was evidence to support the court's rejection of the mother's contention that she was unable to work. She had worked for ten years with her claimed disabilities, and her applications for employment showed that jobs were available. . . . The mother had the ability to work with her limitations in her prior occupation, and there was no showing that her disabilities prevented her from obtaining a job."). In fact, the trial court here stated in the final judgment that "[t]he *Heard* case is analogous to the instant case because despite the Wife's alleged disability she has worked at various jobs since the time of her first stroke in May 2013."

## CONCLUSION

Based on the foregoing, we conclude that the trial court's findings of fact are supported by competent, substantial evidence and the court did not abuse its discretion by awarding the Former Wife bridge-the-gap alimony instead of permanent alimony

following the parties' short-term marriage. Therefore, we affirm the amended final judgment.

AFFIRMED.

RAY, C.J., and JAY, J., 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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Nina R. Price, Jacksonville, for Appellant.

Brian P. North, Fort Walton Beach, for Appellee.