FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-3519

AUSTIN T. JESSUP,

Appellant,

v.

TIFFANY WERNER,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
John T. Brown, Judge.

December 30, 2022

TANENBAUM, J.

The father appeals a paternity final judgment that addresses matters of child support, timesharing, and child care costs between him and the mother pursuant to section 742.031, Florida Statutes. The judgment also determines that the father would have to pay the mother for half her attorney's fees and costs, pursuant to section 742.045, Florida Statutes, but rather than fix an amount, the trial court puts that final question off to another day. We affirm on all the issues raised by the father, save for his challenge to the trial court's preliminary fee determination. As we explain below, because the trial court still has not completed its work on the fee question, we cannot reach it in this appeal.

The parties have one minor child in common, were never married, and never lived together. The mother, a resident of

Okaloosa County, has been the primary caretaker of the minor child since his birth in 2018. The father, a non-deployable active-duty military recruiter, currently resides in South Carolina. The father filed a petition to establish paternity and for related relief. After a final hearing on the petition, the trial court rendered a final paternity judgment awarding majority timesharing to the mother, implementing a long-distance parenting plan, and ordering the father to pay child support and previously incurred child-care costs.

The trial court also makes findings regarding the parties' relative financial means. In its final judgment, the trial court explains that the mother has "a need for reimbursement of attorney's fees and costs" from the father because she has been "operat[ing] at a monthly deficit" and had "no significant liquid assets from which to pay attorney's fees." The trial court notes that the mother instead has had "to borrow money from her father to pay her attorney's fees *to date*." (emphasis supplied). Based on the father's "superior monthly income, superior future earning capacity, coupled with his access to approximately [$30,000]," the court orders that the mother is entitled to "reimbursement" from the father for one half of her attorney's fees and costs "associated with this matter." The court finds that at least as of the date of the order, the mother has incurred $27,827.68 in fees and costs. It, however, makes no determination of whether this entire fee amount has been paid from the money she borrowed from her father, and it "reserves jurisdiction to determine, at a later date, a reasonable amount of fees and costs to be paid."

The father now seeks review. He raises several errors that he contends favor reversal.[*] We affirm the final judgment in all

[*] As the appellant, the father bears the burden of demonstrating legal error. As part of satisfying this burden, particularly when the asserted error involves purportedly insufficient evidence to support the trial court's findings, the father must point the court to specific parts of the record that bear out his argument. The record in this appeal contains more than one thousand pages. On top of that, there are over four hundred pages of transcript. The father nevertheless does not set out in his initial brief a statement of the facts, with appropriate citations to

respects insofar that it adjudicates timesharing, child support, and childcare expenses. We stop short of reviewing the trial court's "award" of fees and costs—as the father would have us do—because the trial court has not yet adjudicated the rights of the parties on that discrete question. *See Ness v. Martinez*, 249 So. 3d 754, 759 (Fla. 1st DCA 2018) (declining "to consider the arguments regarding fees and costs" because the trial court had not yet determined the amount of fees).

In a paternity action such as this one, a trial court "may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending" the proceeding. § 742.045, Fla. Stat. This language is the same as that found in section 61.16, Florida Statutes, the purpose of which, according to the supreme court, "is to ensure that both parties will have a similar ability to obtain competent legal counsel." *Rosen v. Rosen*, 696 So. 2d 697, 699 (Fla. 1997). As part of determining a fee request under one of these statutes, then, a trial court must consider whether the requesting party has a lack of access to money or other assets that precludes him or her from hiring counsel to assist in ably seeing the proceeding through to its conclusion. The statute uses the phrase "from time to time," which indicates the interlocutory and ongoing nature of the consideration in a dissolution or paternity action. This approach stands in marked contrast with that taken in a case involving a typical prevailing-party fee provision, where a trial court would not consider a fee request until after a final judgment is rendered.

In this case, the trial court did not make an interim order regarding attorney's fees. Instead, it tucks into its final paternity

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the record. *See* Fla. R. App. P. 9.210(b)(3) (requiring that an initial brief include a statement *both* of the case and of the facts). Then, in one of his arguments—where he would have us flyspeck the trial court's order regarding his obligation to pay for retroactive child-care costs—he fails to cite us to pages in the hearing transcript that reflect testimony he contends contradicts the court's findings. This approach is inconsistent with the minimum required of the father to meet his burden on appeal.

judgment just a preliminary determination of whether there should be a fee payment at all. In doing so, it treats the fee determination as a matter of *reimbursement* for fees that the mother ostensibly already paid, and perhaps for fees she still has to pay. Section 742.045, though, is not a reimbursement provision, like a prevailing-party provision might be. Instead, the terms of section 742.045, as characterized by the supreme court, required the trial court to consider whether the mother *needed* money from the father to hire and retain competent counsel to represent her in the proceeding. The trial court does not include this type of assessment in the final paternity judgment.

In fact, the evidence before the trial court revealed that the mother's dad loaned her money to hire her lawyer. A paternity proceeding is not a dissolution proceeding, and the "loan" from the mother's dad counts as a financial resource that the trial court should account for when determining the mother's need. As it stands, the final paternity judgment also does not make any findings regarding the fee and cost arrangement that the mother had with her lawyer and whether she still owed her lawyer any money for representation—and how either or both considerations factored into her continuing need, if any, for a fee payment from the father so she could continue having the benefit of counsel.

As we already mentioned, the text of section 742.045 anticipates that the trial court would be making these determinations while the proceeding continued, rather than waiting for the close of the case. In fairness to the trial court, though, the text also contemplates that a party would bring the need for fees to the attention of the court by motion when the need arises, so that the trial court may address the need promptly. There was no such motion, and the trial court was left to address fees and costs at the end.

At all events, in the context of family law matters like this one, we have the constitutional authority to review on direct appeal only final adjudications of the parents' or spouses' rights on discrete matters in controversy, plus non-final orders made appealable by rule adopted by the supreme court. *See* Art. V, § 4(b)(1); *see also S. L. T. Warehouse Co. v. Webb*, 304 So. 2d 97, 99 (Fla. 1974) (explaining that "to be appealable as final, an order or

decree must dispose of all the issues or causes in the case, but this general rule is relaxed where the judgment, order or decree adjudicates a distinct and severable cause of action, not interrelated with remaining claims pending in the trial court"); *cf. Deshotels v. Stewart*, 346 So. 3d 717, 718 (Fla. 1st DCA 2022) (Tanenbaum, J., dissenting) (discussing the nature of a final order in terms of adjudication). The trial court's final paternity judgment does operate as an adjudication of the father's and mother's rights to the child with respect to timesharing, child support, and childcare expenses. For that reason, we have jurisdiction to consider the judgment as a final order regarding these issues.

The same cannot be said for the trial court's conclusion regarding fees. Because the trial court has not yet set an amount for the fees to be paid by the father, the part of its final judgment that addresses that question does not count as an adjudication. The trial court essentially acknowledges as much when it notes that it still had work to do as to the amount "at a later date." The trial court's preliminary determination also is not listed as an appealable non-final order (see Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iii), which addresses such orders "in family law matters"). That leaves us with no authority to review what the trial court has done so far.

Indeed, this missing piece impedes our ability to review the correctness of the court's conclusion that the father should pay a portion of the mother's fees anyway. Once the amount ultimately is determined by the trial court—accompanied by findings and an assessment of need and ability to pay consistent with our discussion here of section 742.045—there will be the necessary context to allow for proper appellate review. We hasten to note that all along while this appeal has been pending, the trial court retained jurisdiction to enter such a final order as to fees. *See* Fla. R. App. P. 9.600(c)(1) (addressing retention of trial court jurisdiction in certain family law matters). Once rendered, the order would have counted as a separate adjudication within the context of this family law appeal and would have been reviewable on the merits by motion filed in this case. *See id.* (c)(3). That motion has not come, and now this appeal is at an end. This court's review of the fee question will have to await the filing of another appeal, following a final determination as we have described.

AFFIRMED.

RAY and JAY, JJ., concur.

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

Casey Pless Waterhouse, Waterhouse Law Firm, P.A., Shalimar, for Appellant.

Andrew D. Wheeler, The Wheeler Firm, P.A., Fort Walton Beach, for Appellee.