

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JAMES EDWIN TRAINOR,
Appellant,

v.

KIMBERLY TRAINOR,
Appellee.

No. 4D16-852

[September 7, 2016]

Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Scott Suskauer, Judge; L.T. Case No. 2015DR005343XXXXMB.

Christine Deis, Jenna D. Wickenhauser, and Kendrick Almaguer of The Ticktin Law Group, P.L.L.C., Deerfield Beach, for appellant.

Yvette B. Reyes of Reyes Miller, P.L., Boca Raton, for appellee.

PER CURIAM.

James Edwin Trainor, the husband in this marital dissolution case, appeals the trial court's order granting the wife, Kimberly Trainor, temporary alimony and attorneys' fees. We affirm the award of temporary alimony but remand for the trial court to address the reasonableness of the wife's attorneys' fees.

"In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor." § 61.071, Fla. Stat. (2014). "[T]emporary relief awards are among the areas where trial judges have the very broadest discretion, which appellate courts are very reluctant to interfere with except under the most compelling of circumstances." *Pedraja v. Garcia*, 667 So. 2d 461, 462 (Fla. 4th DCA 1996).

The standard of review of an order for an award of temporary spousal support is abuse of discretion. *Robbie v. Robbie*, 591 So. 2d 1006, 1008 (Fla. 4th DCA 1991). The test for abuse of discretion is whether the trial

court's action was "arbitrary, fanciful, or unreasonable." *Canakarlis v. Canakarlis*, 382 So. 2d 1197, 1203 (Fla. 1980) (quoting *Delno v. Mkt. St. Ry. Co.*, 124 F.2d 965, 967 (9th Cir. 1942)).

The standard of review for an award of attorneys' fees is also abuse of discretion. *Hallac v. Hallac*, 88 So. 3d 253, 256 (Fla. 4th DCA 2012). While a trial court has broad discretion in making an award of temporary attorney's fees, the trial court must make sufficient factual findings as to the reasonableness of the time expended and the hourly rates. *Baker v. Baker*, 35 So. 3d 76, 77 (Fla. 2d DCA 2010).

After weighing the wife's need for support and the husband's ability to pay, we find no abuse of discretion regarding the trial court's determination that the wife shall receive \$2000 each month in temporary spousal support. We also find no abuse of discretion in the trial court's ruling that the husband shall pay the wife's attorneys' fees. However, we find that the trial court failed to address the reasonableness of the wife's attorneys' fees, both with respect to the number of hours expended and the hourly rate.

We thus affirm the temporary relief order and remand only for the trial court to address the reasonableness of the wife's attorneys' fees.

Affirmed in part, and Reversed and Remanded in part.

GROSS and TAYLOR, JJ., concur.

FORST, J., concurs in part and dissents in part with opinion.

FORST, J., concurring in part and dissenting in part.

In addition to joining the majority in remanding this case to the trial court to address the reasonableness of the attorneys' fees, I would also reverse the trial court's decision with respect to the amount of temporary alimony ordered. The record indicates that the husband's monthly net income was \$5184 and his monthly expenses were \$3335. Adding a monthly support payment of \$2000, plus the installment payment with respect to the \$5000 in attorneys' fees, would put the husband in a deficit situation. Additionally, the husband argued below that the wife's expense calculation included living expenses and mortgage payments that she was not presently incurring, as she was living with her parents.

A trial court abuses its discretion in making an award of temporary alimony that "exceeds or nearly exhausts" the payor spouse's income. *Bolton v. Bolton*, 898 So. 2d 1084, 1084 (Fla. 4th DCA 2005); *see also*

Wilder v. Wilder, 42 So. 3d 961, 961 (Fla. 4th DCA 2010) (reversing temporary relief order because “the husband’s financial obligations under the temporary support order consume his income to the extent that he is left with little or nothing for his own reasonable living expenses”); *Miller v. Miller*, 707 So. 2d 419, 419-20 (Fla. 4th DCA 1998) (award that provided party with nearly all of the other party’s income was an undue burden and an abuse of the trial court’s discretion); *Herr v. Herr*, 463 So. 2d 447, 448 (Fla. 4th DCA 1985) (court cannot authorize support payment in excess of the available income of the other party).

Although the wife’s answer brief challenges some of the expenses claimed in the husband’s financial affidavit, she concludes that reducing these amounts would leave the husband with “at least \$200” per month after the \$2000 temporary support award is added to his monthly expenses. But that calculation doesn’t take into account the trial court’s award of attorneys’ fees. Moreover, the trial court made no oral or written findings regarding the reasonableness of either party’s financial affidavit, except for deleting mortgage payments claimed by the husband (and making no similar deletion of mortgage payments claimed by the wife), which were factored into the amounts addressed in this appeal.

Similarly, the trial court’s order contains no findings as to the husband’s ability to pay the wife’s attorneys’ fees award, or the wife’s need for same, and further, as noted in the majority opinion, does not address the reasonableness of the fees or hours expended. As such, the trial court erred in awarding the wife attorneys’ fees without determining the husband’s ability to pay and the wife’s needs, *Phillips v. Ford*, 68 So. 3d 257, 258 (Fla. 4th DCA 2010), or the reasonableness of the hourly rate or hours expended, *Moore v. Kelso-Moore*, 152 So. 3d 681, 683 (Fla. 4th DCA 2014).

Thus, I join the majority in remanding the issue of the calculation of the wife’s attorney’s fees and otherwise dissent as noted above.

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Not final until disposition of timely filed motion for rehearing.