

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

IRENE SAMANIEGO,

Appellant,

v.

LOUIS SAMANIEGO,

Appellee.

No. 2D19-3920

August 11, 2021

Appeal from the Circuit Court for Pasco County; Alicia Polk, Judge.

Jason Scott Coupal of Ayo & Iken PLC, New Port Richey, for
Appellant.

Danielle M. Glenn of Glenn and Phanco, P.A., Wesley Chapel; and
Mark F. Baseman of Felix, Felix & Baseman, LLC, Tampa, for
Appellee.

SMITH, Judge.

Irene Samaniego, the former wife, challenges the final
judgment of dissolution of marriage. She challenges only the
determinations related to her requests for alimony, life insurance,

and attorney's fees. We therefore affirm the unrelated portions of the final judgment without comment. Based on the lack of findings by the trial court regarding the former wife's request for alimony, we reverse the portion of the final judgment denying alimony and the related determinations regarding the requests for life insurance and attorney's fees and remand for further proceedings consistent with this opinion.

The parties were married in 1996, and the former wife petitioned for dissolution in 2018. Within that petition, she sought permanent alimony for a long-term marriage, under section 61.08(2), Florida Statutes (2017), as well as rehabilitative and bridge-the-gap alimony. She also requested that the former husband be required to maintain a life insurance policy naming her as beneficiary. She requested the award of attorney's fees under section 61.16 based on her need and the former husband's ability to pay.

In the final judgment of dissolution, the trial court denied the former wife's requests for alimony, life insurance, and attorney's fees. It found that the former wife had monthly expenses of \$2,859.64 and that the former husband had monthly expenses of

\$6,904.65. The trial court noted that the former wife's financial affidavits reflected a need for alimony but also noted that her bank accounts "told a different story" than the need reflected by her financial affidavits. But it made no conclusions regarding this perceived discrepancy. The trial court then found that the former wife had "managed" to save some money while the dissolution was pending, that the former husband had almost nothing in savings at the time of the hearing, and that the former husband had no ability to pay alimony. Based on its finding that the former husband had no ability to pay alimony, the trial court declined to make any determination regarding the former wife's need, finding that it was not required to do so under *Mills v. Johnson*, 147 So. 3d 1023, 1024–25 (Fla. 2d DCA 2014). Likewise, the trial court made no determination regarding whether the former wife had a need in regard to her request for attorney's fees, finding only that she had more of a current ability to pay them than the former husband, and it denied her request for life insurance without any comment whatsoever. This was error.

Section 61.08(1) expressly requires that "[i]n all dissolution actions, the court shall include findings of fact relative to the

factors enumerated in subsection (2) supporting an award or denial of alimony." (Emphasis added.) The trial court here was required to make "a specific factual determination as to whether" the former wife had "an actual need for alimony or maintenance" regardless of whether it granted or denied the alimony she sought and regardless of whether it also found that the former husband had an ability to pay. See § 61.08(2) ("In determining whether to award alimony or maintenance, the court shall first make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance."); see also *Engle v. Engle*, 277 So. 3d 697, 698 (Fla. 2d DCA 2019).

Nothing in *Mills*, 147 So. 3d at 1024–25, can be read as obviating that express statutory requirement. Moreover, "when one party is entitled to permanent periodic alimony but the other spouse has no current ability to pay, the trial court should award a nominal sum of permanent periodic alimony, which will give the court jurisdiction to reconsider the award should the parties' financial circumstances change." *Schmidt v. Schmidt*, 997 So. 2d 451, 454 (Fla. 2d DCA 2008); see also *Nourse v. Nourse*, 948 So. 2d

903, 904 (Fla. 2d DCA 2007) (finding that failure to award nominal alimony in order to preserve jurisdiction was an abuse of discretion where the historic incomes of the parties, the length of the marriage, and the future needs of the wife supported permanent periodic alimony). "[T]he trial court's failure to make specific factual findings that are required by statute as set forth in chapter 61 is reversible error regardless of whether the error was first raised in the trial court by means of a motion for rehearing." *Engle*, 277 So. 3d at 704.

Accordingly, "we reverse the alimony portion of the trial court's final judgment and remand for the trial court to make the statutorily required findings." *Id.* We recognize that the trial court's findings on remand based on the statutorily required factors under section 61.08 may impact both the trial court's consideration of the former wife's requests for life insurance and attorney's fees; therefore, we also reverse those related portions of the final judgment for reconsideration on remand.

Affirmed in part; reversed in part; remanded.

NORTHCUTT and LaROSE, JJ., Concur.

Opinion subject to revision prior to official publication.