NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

WILLIAM H. HILBRANDS,

Appellant,

v.

BEA C. HILBRANDS,

Appellee.

Case No. 2D20-1325

Opinion filed May 14, 2021.

Appeal from the Circuit Court for Hillsborough County; Denise A. Pomponio, Judge.

Tanya P. O'Connor of Brandon Law, PLLC, Brandon, for Appellant.

Eric R. Maier, Martin G. Deptula, and Adam D. Birch of Older, Lundy & Alvarez, Tampa, for Appellee.

LABRIT, Judge.

William Hilbrands (Former Husband) appeals an order granting Bea Hilbrands' (Former Wife) motion for judgment on the pleadings as to Former Husband's petition to modify alimony and child support. We affirm without comment the trial court's denial of modification of alimony. However, the trial court erred by granting Former

Wife's motion for judgment on the pleadings as to the child support claim because there remain factual questions requiring resolution. Accordingly, we reverse with instructions for the trial court to determine if the change in circumstances warrants modification of Former Husband's child support obligation.

The parties were divorced in 2009 after twenty-three years of marriage. Former Wife was awarded lump-sum alimony in the form of a cell tower lease. The final judgment of dissolution provides for "net zero" child support for the first six months following dissolution, requires Former Husband to provide medical insurance for the parties' four children, and requires the parties to split fifty/fifty the children's noncovered health expenses. A decade after the final judgment was entered, Former Husband filed a motion for relief from judgment and petition for modification in which he sought relief as to alimony and child support. In response, Former Wife moved for judgment on the pleadings. Former Husband appeals the order granting Former Wife's motion.

Orders granting judgment on the pleadings are reviewed de novo. U.S. Fire Ins. Co. v. ADT Sec. Servs., Inc., 134 So. 3d 477, 479 (Fla. 2d DCA 2013). A motion for judgment on the pleadings "test[s] the legal sufficiency of a cause of action or defense where there is no dispute as to the facts." Id. And such a motion is properly granted only if the movant "is entitled to judgment as a matter of law based solely on the pleadings and attachments thereto." Id.

Former Husband's primary challenge was directed to the alimony award, but he also sought modification of child support "based on the substantial increase in Former Wife's monthly income, to wit: employment earnings and additional 'in kind' support provided by her current spouse." To the extent Former Husband argues that

Former Wife's remarriage constitutes grounds for modification of child support, he is mistaken. Remarriage generally is not relevant to a child support modification action. Hinton v. Smith, 725 So. 2d 1154, 1158 (Fla. 2d DCA 1998) ("The effect of a former spouse's remarriage to a new spouse . . . plays no role in calculating child support."). Likewise, it is error to impute additional income to a party based on "in-kind contribution[s]" from a new spouse. Id.

However, an increased ability of the primary residential parent to contribute to the needs of the child may sustain a modification of child support. Id. at 1156 (concluding that modification of child support was warranted where both parties' incomes had changed substantially). Former Husband alleged that Former Wife's earnings have increased substantially from the minimum wage imputed to her at the time of dissolution. Accepting these allegations as true—as we must—Former Wife is not entitled to judgment as a matter of law with respect to Former Husband's petition for modification of child support.

Former Wife correctly argues that the mere allegation that her income has increased does not necessarily mean the child support calculation would change in Former Husband's favor. Former Wife overlooks that "[i]t is improper to enter a judgment on the pleadings if factual questions remain to be resolved." Britt v. State Farm Mut. Auto. Ins. Co., 935 So. 2d 97, 98 (Fla. 2d DCA 2006). Former Husband's allegations present a factual issue that is improper for a judgment on the pleadings with respect to a potential modification of child support. We therefore reverse the portion of the trial court's order denying modification of Former Husband's child support obligation

and remand this case for the trial court to determine if the change in circumstances warrants a modification to child support.

Affirmed in part, reversed in part, and remanded with instructions.

VILLANTI and SLEET, JJ., Concur.