

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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KENNETH SHOBOLA,

Appellant,

v.

JOYELA SHOBOLA,

Appellee.

No. 2D20-3657

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December 7, 2022

Appeal from the Circuit Court for Hillsborough County; Carl C. Hinson, Judge.

Eric R. Maier of Older Lundy Alvarez & Koch, Tampa, for Appellant.

Syed S. Ahmed of Legal Advocate Group, P.A., Tampa, for Appellee.

LABRIT, Judge.

Appellant Kenneth Shobola (Husband) and Appellee Joyela Shobola (Wife) executed a premarital agreement on April 9, 2009, and were married a few weeks later. They separated in November 2016, and in May 2018, Wife filed a petition for dissolution and sought enforcement of the premarital agreement. Husband

challenges the final judgment,<sup>1</sup> arguing that the trial court (1) abused its discretion by awarding temporary support, (2) misinterpreted the premarital agreement with respect to the amount of postdissolution support, and (3) erred by denying Husband's request to modify the premarital agreement based on allegedly changed financial circumstances.

We find no error in the trial court's determination of Wife's entitlement to support and affirm that aspect of the judgment, but we reverse and remand with instructions to recalculate the amounts due Wife for temporary and postdissolution support. We affirm without comment the trial court's denial of Husband's request to modify the premarital agreement.

### **I.**

Section 7.2 of the premarital agreement pertains to spousal support and states:

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<sup>1</sup> Upon the parties' agreement, the trial court entered a bifurcated final judgment of dissolution on February 18, 2019. That order dissolved the marriage but reserved jurisdiction on equitable distribution, support, and enforcement of the premarital agreement. The final judgment that is the subject of this appeal resolved the reserved issues and was entered in September 2020.

7.2 Support. In the event of a Separation Event and the filing of a Petition for Dissolution, [Husband] will pay \$3000 per month as temporary support until the entry of a Final Order of Dissolution.

.....

In the event of a Separation Event after we have been married five (5) [years], the court may award alimony, maintenance, or other form of spousal support, not affecting our rights in our Separate Property. Prior thereto, there shall be no payment of alimony, maintenance or other form of support, except that there shall be a payment by [Husband] to [Wife] of \$3000 per month for twenty-four (24) months, if the Separation Event occurs after five (5) years of marriage and prior to eight (8) years of marriage.

The agreement further provides for postdissolution support of \$3,000 per month for thirty-six months "if the Separation Event occurs after eight (8) years of marriage and prior to ten (10) years of marriage." And the agreement defines "Separation Event" as

the first to occur of the following events: (a) The commencement by either [party] of an action which seeks as part of its relief a judgment or decree of divorce or dissolution of marriage, separation, or annulment; or (b) The delivery by either [party] to the other of a written notice of his or her desire to be permanently separated from the other.

For purposes of calculating support due under the agreement, the trial court found that the Separation Event occurred December 1, 2016. Neither party challenges that finding on appeal.

Following two days of evidentiary hearings during which the trial court heard testimony from the parties as well as a third party and received extensive documentary evidence, the trial court entered the judgment on review, which awarded Wife the following support:

- A. Pursuant to the findings of the Court and the Pre-Marital Agreement, [Husband] shall pay [Wife] the sum of \$54,000 which is for Temporary Support owed from the Separation Event to the Entry of the Final Judgment in February of 2019.
- B. Husband shall also pay 18 months more of spousal support at a rate of \$3000 per month.
- C. Husband shall pay spousal support to Wife at a rate of \$3000 per month for a period of 36 months applied retroactively to February 18, 2019.

Husband timely moved for rehearing, essentially arguing the same issues presented in his arguments on appeal. He also sought clarification of the final judgment, requesting that the trial court clarify

(i) the total amount of retroactive temporary support that the Court is ordering Husband to pay; (ii) the total amount of retroactive post-divorce support that the Court is ordering Husband to pay; and (iii) the total amount of months after the entry of the September 16, 2020 Final Judgment for which the Court is ordering Husband to pay support in the amount of \$3000 per month.

Wife opposed the motion for rehearing but agreed that clarification was necessary. The trial court denied the motion for rehearing and granted the motion for clarification; its order indicated that an amended final judgment "shall be entered . . . to address the clarification issues."

After Husband filed his notice of appeal, this court relinquished jurisdiction to the trial court to enter an amended final judgment. Apparently because the trial judge was on an extended medical leave and ultimately passed away, the parties did not obtain an amended final judgment. The relinquishment of jurisdiction expired after six months, and this appeal proceeded on the original final judgment.

## **II.**

We review the trial court's interpretation of the premarital agreement de novo. *See Famiglio v. Famiglio*, 279 So. 3d 736, 739 (Fla. 2d DCA 2019). Temporary support awards are "within the trial court's broad discretion" and will be affirmed if the record contains "competent, substantial evidence to support the trial court's ruling." *Fonderson v. Lairap*, 98 So. 3d 715, 717 (Fla. 2d DCA 2012).

### **Temporary Support**

Husband principally argues that the trial court abused its discretion by awarding temporary support because the award was "based entirely on" the premarital agreement and the judgment lacked sufficient findings to support the award. Husband is incorrect. The judgment confirms that the trial court not only considered the premarital agreement, but also explicitly found that "Wife has a need for the temporary support and Husband has the ability to pay such support." To support its finding regarding Husband's ability to pay, the trial court provided an analysis of Husband's financial circumstances and income. The trial court's findings are supported by competent substantial evidence, and the trial court's action was not "arbitrary, fanciful, or unreasonable." *See Trainor v. Trainor*, 199 So. 3d 523, 524 (Fla. 4th DCA 2016) (quoting *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980)). Consequently, Husband has not shown that the trial court abused its discretion in determining that Wife is entitled to temporary support. *See id.* ("[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." (alteration in original))

(quoting *Pedraja v. Garcia*, 667 So. 2d 461, 462 (Fla. 4th DCA 1996))).

Without conceding Wife's entitlement to temporary support, Husband fleetingly suggests in a footnote that if temporary support were awardable, the start date should be the date Wife filed her petition for dissolution, which is later than the date of the Separation Event the trial court used to calculate the award. Because Husband developed no argument on this issue, it is abandoned and we do not address it. *See Shere v. State*, 742 So. 2d 215, 217 n.6 (Fla. 1999) (recognizing that an issue raised in a brief without argument is insufficiently presented for review); *Drejka v. State*, 330 So. 3d 1055, 1059 (Fla. 2d DCA 2021) ("An appellant who presents no argument as to why a trial court's ruling is incorrect on an issue has abandoned the issue . . . ."); *see also Simkins Indus. v. Lexington Ins. Co.*, 714 So. 2d 1092, 1093 (Fla. 3d DCA 1998) (stating that referring to a matter "only by way of a footnote . . . does not elevate the matter to a point on appeal").

However—as Husband acknowledges in his briefing and Wife acknowledged in response to Husband's motion for clarification—errors appear on the face of the judgment with respect to temporary

support. The final judgment awarded Wife \$54,000 in temporary support, which purportedly represented the amount owed from "the [December 1, 2016] Separation Event to the [e]ntry of [the bifurcated] Final Judgment in February of 2019," a period of approximately *twenty-six* months. The \$54,000 figure equates to *eighteen* months of temporary support at \$3,000 per month. The final judgment also awarded Wife "18 months more of spousal support at a rate of \$3,000 per month," but it is unclear how this award ties to the twenty-six months of \$3,000 per month temporary support to which Wife is entitled pursuant to the premarital agreement and the trial court's entitlement findings. It is clear, however, that the total of both awards exceeds any amount that would be awardable as temporary support under the terms of the premarital agreement and the trial court's entitlement findings. On remand, the trial court must recalculate the appropriate amount of temporary support payable from December 1, 2016 (the date of the Separation Event) through February 18, 2019 (the date of the bifurcated final judgment dissolving the marriage).

## **Postdissolution Support**

Husband argues that Wife is entitled to twenty-four months, not thirty-six months, of postdissolution support under the premarital agreement. We agree. The premarital agreement provides that Husband shall pay Wife \$3,000 per month in postdissolution support for twenty-four months "if the Separation Event occurs after five (5) years of marriage and prior to eight (8) years of marriage." The Separation Event was December 1, 2016, roughly seven years and seven months after April 26, 2009, the date of the parties' marriage. Thus, the trial court erroneously awarded thirty-six months of postdissolution support. On remand, the judgment should be amended to reflect Husband's obligation to pay twenty-four months of postdissolution support retroactive to February 18, 2019.

Our record does not reveal whether Husband has made support payments during the pendency of this appeal. On remand, the trial court shall account for any such payments in recalculating the amounts owed and determining any schedule for payment of such amounts.

In conclusion, we find no error in the trial court's finding of Wife's entitlement to temporary and postdissolution support and we affirm that portion of the judgment. We reverse the judgment in part as to the amount of support awarded, and remand for recalculation of temporary support and postdissolution support and entry of an amended final judgment consistent with the terms of the premarital agreement and this opinion. We affirm the judgment in all other respects.

Reversed in part; affirmed in part; remanded.

SLEET, J., Concur.

ATKINSON, J., Concur in part and dissents in part.

ATKINSON, Judge, concurring in part and dissenting in part.

I concur in the majority opinion except insofar as it concludes that the Husband waived his argument that, under the premarital agreement, his obligation to pay temporary support started upon the filing of a petition for dissolution, not merely upon the occurrence of a separation event. The Husband asserts this alternative argument as part of the issue on appeal dealing with predissolution, temporary support, about which the trial court's order was less than clear as to the amount, duration, and

entitlement. While the Husband does emphasize his position that *no* such support should have been awarded—despite the premarital agreement language to the contrary—his alternative argument as to during what period of time such support should be applied is appropriately within the ambit of his point on appeal. *Cf. Simkins Indus., Inc. v. Lexington Ins. Co.*, 714 So. 2d 1092, 1093 (Fla. 3d DCA 1998) ("We refuse to consider Simkins' claim that it is entitled to recover its security interest under the U.C.C., because Simkins did not present that as a point on appeal in the original appearance before this court. Although it is true that there is a reference to the matter in Simkins' initial brief, it is only by way of a footnote. Such treatment *does not elevate the matter to a point on appeal.*" (emphasis added)).

Much of the briefing in this case involved a debate about how much of the support enumerated in the final judgment applied to one provision of the premarital agreement (governing temporary support) or another (governing postdissolution support) and how much should be awarded in aggregate, how much is to be assigned to specified time periods, what should be the durations of those time periods, and what considerations other than the calculations

in the premarital agreement, if any, should govern the award. As such, it would not unfairly prejudice the appellee in this case to expect her to be on notice that, if so inclined, she should take the opportunity in her answer brief—in responding to an issue regarding if, when, and how much temporary support is due—to respond to the appellant's assertion that the premarital agreement specifies a time period that the trial court might have overlooked in its final judgment. *Cf. id.* ("It would be unfair to Lexington for us to consider the U.C.C. claim at this point."). And while relegated to a footnote, the Husband adequately explained his rationale that "[e]ven if the temporary support provision were enforceable as written—i.e., without regarding to need and ability to pay—it would not justify an award of support for any period before the filing date [of the dissolution petition]" because the premarital agreement's "temporary support provision contemplates temporary support '[i]n the event of a Separation Event **and** the filing of a Petition for Dissolution.'" (Emphasis added in the initial brief.).

This is not a case in which a party included a conclusory assertion without supporting it with an argument. *Cf. Shere v. State*, 742 So. 2d 215, 217 n.6 (Fla. 1999) ("In a heading in his

brief, Shere asserts that the trial court erred by summarily denying nineteen of the twenty-three claims raised in his 3.850 motion. However, for most of these claims, Shere *did not present any argument or allege on what grounds the trial court erred in denying these claims*. We find that these claims are insufficiently presented for review." (emphasis added)); *Davis v. State*, 153 So. 3d 399, 401 (Fla. 1st DCA 2014) ("An appellant who presents *no argument* as to why a trial court's ruling is incorrect on an issue has abandoned the issue . . . ." (emphasis added) (quoting *Prince v. State*, 40 So. 3d 11, 13 (Fla. 4th DCA 2010)). And given the contractual provision's insusceptibility to multiple interpretations, perhaps anything more than the Spartan argument presented by the Husband might justifiably have been criticized as lily gilding. At any rate, this is not to excuse an appellate brief's inadequate elaboration of an argument or failure to fully explicate an argument's relevance to a point on appeal—nor to condone the concealment of an argument (e.g., in a footnote) with a design to avoid a counterargument from the opposing party. Here, the Husband included in his alternative argument enough explanation of his rationale for this court to address the matter as part of the issue on appeal in which the

Husband raised reasonable questions about "whether the trial court awarded pre-dissolution support to Wife, and if so, for how many months." I believe this court should direct the trial court on remand to calculate predissolution support in accordance with the premarital agreement that only provides for entitlement upon both a separation event *and* the filing of a petition for dissolution, and I respectfully dissent insofar as the majority concludes that the argument was waived by the Husband.

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Opinion subject to revision prior to official publication.