

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DANNY LEE,

Appellant,

v.

KATJA LEE,

Appellee.

Nos. 2D21-1171, 2D21-3331
CONSOLIDATED

November 30, 2022

Appeals from the Circuit Court for Lee County; James Shenko and John S. Carlin, Judges.

Christopher D. Donovan and Ehren J. Frey of Roetzel & Andress, LPA, Naples, for Appellant.

Luis E. Insignares of Luis E. Insignares, P.A., Fort Myers, for Appellee.

SMITH, Judge.

Danny Lee (the Former Husband) appeals the final judgment in case 2D21-3331 (the family law action) that denied his amended

petition for distribution of marital assets, denied his request for attorney's fees, and granted Katja Lee's (the Former Wife) request for fees entered after the trial court found that the Former Husband's action was unreasonable, vexatious, and not in good faith. The Former Husband also appeals the order granting final summary judgment in Case 2D21-1171 (the partition action), entered in favor of the Former Wife in a separate action filed by the Former Wife for partition of the parties' Florida marital home. In both cases, the Former Husband appeals the trial court's separate orders denying his motions to consolidate these cases. We consolidate the appeals of family law action and the partition action for purposes of this opinion.

I.

The parties were married in 1996. During their marriage, they accumulated marital assets and debt. In the summer of 2014, the Former Wife was offered a job in Finland. The parties agreed that she would take the job and that she and the two minor children would immediately move to Finland. The initial plan was for the Former Husband to stay in Florida to tie-up loose ends—selling the parties' cars and home—and eventually join the Former Wife and

children in Finland. That plan did not pan out, and on December 15, 2015, the Former Wife filed for divorce in Finland.

Unlike dissolution proceedings in Florida, Finland has a "divisible divorce" process, in which the court first dissolves the marriage, followed, if necessary, by separate proceedings to determine issues related to child custody, child support, alimony, and equitable distribution. See Hilikka Salmenkylä, *Family Law in Finland: Overview*, Practical Law Country Q&A 8-576-1745 (2020) (explaining that in Finland the distribution of marital property can be carried out if a spouse demands it, but that the distribution is carried out by an estate distributor, not the court; involuntary maintenance (alimony) is to be considered after the divorce; a claim for child maintenance can be handled separately from the divorce; child custody matters are also handled separately, after the divorce has been granted); see also *Davis v. Dieujuste*, 496 So. 2d 806, 807 (Fla. 1986) (recognizing the concept of "divisible divorce" as a dissolution proceeding that has at least two parts: one related to the marital status of the parties and another related to property rights and support obligations). Accordingly, the parties were divorced by the Finnish court in December 2016, and the Finnish court

resolved all child-related issues separately. Both parties agree that the Finnish court did not resolve any equitable distribution or alimony issues.¹

Thereafter, on June 27, 2018, the Former Husband, pro se, filed a petition for dissolution in Lee County, in which he requested equitable distribution and alimony, using the supreme court approved form. The Former Husband encountered issues when he attempted to have the Former Wife served. In March 2019, the Former Wife refused the paperwork because the complaint was not in Finnish, although the record reflects that she speaks English and is in fact a U.S. citizen.

That same month, March 2019, the Former Wife filed a competing complaint, also in Lee County, seeking partition of the

¹ Florida courts have jurisdiction to consider and resolve issues related to equitable distribution and alimony that were not decided by the Finnish court where the Former Wife appeared in the Florida courts and sought affirmative relief in the partition action. *See Davis*, 496 So. 2d at 809 (explaining where the foreign court lacked jurisdiction to determine the respective property rights and obligations of the parties, postdissolution actions seeking adjudication of these matters is proper); *see also Binger v. Binger*, 555 So. 2d 373 (Fla. 1st DCA 1989) (holding that Missouri divorce decree did not divest Florida court of jurisdiction to determine alimony and property rights where the Missouri judgment did not adjudicate those issues).

parties' Florida marital home. The Former Husband filed no less than three motions to consolidate the partition action with the family law action.

On February 2, 2020, the Former Wife filed a motion for summary judgment in the partition action, arguing that the Former Husband's answer admitted the property was jointly held by the parties as tenants in common and raised no defenses to the allegation that the property is nondivisible.

On May 15, 2020, the Former Husband filed a motion for accounting, requesting that the partition court perform an accounting to determine what credits each party was entitled to upon the sale of the property. On July 1, 2020, the Former Husband sought leave to amend his answer to the partition action, acknowledging that his pro se answer included deficiencies. The proposed amended answer included a counterpetition for partition and included a request for an accounting alleging that the Former Husband made all the financial contributions to the marital home and that he is thus entitled to credits.

After a hearing on both the Former Husband's motion to amend his answer and the Former Wife's motion for summary

judgment, the partition court denied the Former Husband's motion for leave to amend his answer, finding the motion was filed too late where the hearing on the motion for summary judgment was scheduled at the time of the filing. The partition court then granted the Former Wife's motion for summary judgment, ordered the sale of the marital home, and ordered that the proceeds from such sale be divided evenly between the parties. The final summary judgment order reserved jurisdiction to enforce the terms of the order.

Meanwhile, in the family law action, the Former Husband, through counsel, filed an amended petition now titled "Amended Petition for Disposition of Assets Following Dissolution of Marriage, Spousal Support, Partition and Other Related Relief." On March 11, 2020, the Former Wife filed her answer and affirmative defenses to the amended petition.²

² After the Former Wife refused service of the family law complaint in Finland, the Former Husband constructively served the Former Wife and obtained a default judgment against her. The Former Wife then moved to vacate the default and concurrently filed a motion to dismiss alleging a lack of personal jurisdiction. The Former Wife's motion to vacate the default was granted, but her motion to dismiss was denied. She filed an answer to the Former Husband's amended petition, which did not raise any issues arguing deficient service or any argument related to the family law court's lack of personal jurisdiction over her. She later filed an

The Former Husband's amended financial affidavit shows marital assets and liabilities, including five bank accounts, two stock plans, eight retirement plans, two cars, a mortgage and expenses related to the Florida home, a mortgage on the Finland home, and eight credit cards. The Former Wife's financial affidavit lists cash, retirement plans, one car, a mortgage on the Finland home, and credit card debt.

At the final hearing, the Former Husband presented financial statements related to the mortgage payments made on the Florida home, bank accounts, and credit cards, as well as maintenance bills related to work done on the Florida Home prior to the parties' divorce, documents related to the value of the Finland property, and documents related to the stock accounts and retirement plans. The Former Husband testified that after the Former Wife moved to Finland, she did not send any funds to the U.S., and her credit cards and expenses in the U.S. were all paid from funds existing in joint accounts. The Former Husband testified he paid his living expenses with the cash from the joint accounts and credit cards.

amended answer, which did raise issues related to deficient process of service and a lack of personal jurisdiction.

The Former Husband testified that he has paid all of the credit card debt that existed at the time of their divorce. He further testified that the house in Finland was purchased prior to the Former Wife filing for divorce, and that after the Former Wife filed for divorce, she did not contribute to the household expenses related to the home in Florida, nor did she contribute any monies to pay off any of the credit card debt.

The Former Wife testified acknowledging that there was marital credit card debt at the time of the divorce and also admitting that she did not send any money to the U.S.—either before or after the divorce—and that she did not pay anything towards maintenance of the Florida home after the divorce.

After the final hearing, the family law court asked both parties to submit proposed orders. Ultimately, the family law court rendered a final judgment denying the Former Husband's amended petition for disposition of assets following dissolution of marriage, finding that the only legally viable remedy prayed for was for the partition of the Florida home, which had already been accomplished in the partition action. With regard to the Former Husband's request for an award of alimony, the family law court found that the

Former Husband had already waived his right to seek alimony "due to the Finnish decree having not made any such award." Finally, the family law court denied the Former Husband's request for attorney's fees because he failed to prove his need, and the Former Wife's ability to pay, and also because the Former Husband caused "avoidable litigation expense." But the family law court granted the Former Wife's motion for attorney's fees finding the

Former Husband's insistence on pursuing a second lawsuit, when the only legally viable remedy prayed for herein was partition of the parties' Lee County real property in Count II, and when such partition relief was also already being sought by Former Wife in the companion case (in which case judgment has already been entered), unreasonably caused Former Wife to incur avoidable litigation expense herein, and Former Husband's insistence on taking this second suit to judgment under these circumstances was vexatious, unreasonable, and was not in good faith.

The Former Husband timely appealed the final judgment in the family law action and the final summary judgment in the partition action.

II.

We first address the trial courts' failure to consolidate the partition action with the family law action. A trial court's refusal to consolidate separate actions involving common questions of law of

fact is reviewed for an abuse of discretion. *Philogene v. ABN Amro Mortg. Grp. Inc.*, 948 So. 2d 45 (Fla. 4th DCA 2006).

Florida Rule of Civil Procedure 1.270(a) governs consolidation and provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation may happen at any time prior to trial at the trial court's discretion. *Baker v. Rowe*, 136 So. 681, 683 (Fla. 1931).

In deciding whether the consolidate cases, a trial court must consider: (1) whether the trial process will be accelerated due to consolidation; (2) whether unnecessary costs and delays can be avoided by consolidation; (3) whether there is the possibility for inconsistent verdicts; (4) whether consolidation would eliminate duplicative trials that involve substantially the same core of operative facts and questions of law; and (5) whether consolidation would deprive a party of a substantive right.

State Farm Fla. Ins. Co. v. Bonham, 886 So. 2d 1072, 1074 (Fla. 5th DCA 2004). The partition court and the family law court both abused its discretion in denying consolidation.

Where two actions are pending that involve the same questions of law and have questions of fact in common, "the

administration of justice is best served by an order which averts the piecemeal handling of the claims between the parties." *Wilson v. Wahl*, 383 So. 2d 311, 311 (Fla. 2d DCA 1980). The supreme court has held, "It seems clear that adjudication of the claim for separate maintenance can be more practically and expeditiously adjudicated in a suit for divorce if one be, at the time, pending, and that proper practice dictates that such procedure should be followed." *Evans v. Evans*, 194 So. 215, 217 (Fla. 1940). "[T]he possibility of a delay of the case already set for trial . . . alone is insufficient" to deny a motion to consolidate. *Pages v. Dominguez By and Through Dominguez*, 652 So. 2d 864, 867 (Fla. 4th DCA 1995); *see also Maharaj v. Grossman*, 619 So. 2d 399, 401 (Fla. 4th DCA 1993) (quashing order denying consolidation where "the trial judge apparently denied consolidation because the case assigned to him was already set for trial, and he did not want to delay its disposition").

In the instant case, the issues are the same in both the partition action and the family law action; the parties are the same; consolidation would certainly have expedited the disposal of all claims between the parties, avoided additional legal expenses, and

avoided duplicative trials; and no party would have been deprived any substantive rights. In short, consolidating the partition action with the family law action allows for a faster, cheaper, and more complete disposition of the parties' claims. While the record reveals that at least one of these motions to consolidate was denied because the partition action was close to trial, that is not reason enough to deny consolidation. *See Pages*, 652 So. 2d at 867 (holding "the possibility of a delay of the case already set for trial . . . alone is insufficient" to deny a motion to consolidate). As the Fourth District aptly stated, "While disposing of cases is important, it is not as important as the efficient and proper administration of justice." *Maharaj*, 619 So. 2d at 401. Because both the partition court and the family law court abused their discretion in denying the motions to consolidate, on remand, the cases must be consolidated for further proceedings.

III.

In the family law case, the Former Husband appeals the trial court's order dismissing his petition for distribution of assets, denying his request for attorney's fees, and granting the Former

Wife's motion for attorney's fees to be paid from the Former Husband's portion of the sale proceeds from the partitioned home.³

a. Failure to distribute assets/liabilities

The Former Husband argues the trial court erred in refusing to consider and equitably distribute the parties' marital property and liabilities where the Florida house was not the only marital property at stake. "While we review the trial court's factual findings under an abuse of discretion standard, failure to make the factual findings is an abuse of discretion and has been held to be reversible

³ To the extent the Former Husband argues the trial court abused its discretion in denying his request to reopen the evidence so that he could introduce evidence to rebut the Former Wife's allegations related to cash advances taken out against marital credit cards, we affirm the family law court's decision without comment. Furthermore, to the extent the Former Husband argues the family law court erred in allowing the Former Wife to amend her pleadings to challenge service and personal jurisdiction, we note that the final judgment does not say anything about the Former Wife's challenge to service of process or personal jurisdiction but instead rules upon the merits of the case, indicating that the family law court rejected the Former Wife's arguments related to the same. Nevertheless, because we hold that the two cases should be consolidated, the Former Wife has waived any claim related to lack of personal jurisdiction where she is seeking affirmative relief in the partition action. *See Babcock v. Whatmore*, 707 So. 2d 702, 704 (Fla. 1998) ("[A] defendant waives a challenge to personal jurisdiction by seeking affirmative relief—such requests are logically inconsistent with an initial defense of lack of jurisdiction.").

error." *Ortiz v. Ortiz*, 306 So. 3d 1081, 1082 (Fla. 3d DCA 2020) (citing *Callwood v. Callwood*, 221 So. 3d 1198, 1201–02 (Fla. 4th DCA 2017)).

"Generally stated, equitable distribution of marital assets is a three-step process: (1) identification of marital and nonmarital assets, (2) valuation of marital assets, and (3) distribution of marital assets as statutorily prescribed." *Keurst v. Keurst*, 202 So. 3d 123, 127 (Fla. 2d DCA 2016) (citing § 61.075(1), (3), Fla. Stat. (2013)). It is reversible error if the trial court fails to identify and distribute marital assets. *See Morgan v. Morgan*, 327 So. 3d 898, 899 (Fla. 2d DCA 2021) ("[T]he trial court erred because it did not identify all the parties' assets and liabilities and classify them as either marital or nonmarital." (citation omitted)); *Tritschler v. Tritschler*, 273 So. 3d 1161, 1164 (Fla. 2d DCA 2019) ("[N]owhere does the judgment purport to identify any of the parties' nonmarital assets even though there was evidence presented at the hearing that at least a portion of the Husband's Thrift Savings Plan was accrued before the marriage. These errors, apparent on the face of the judgment, require reversal of the equitable distribution scheme."); *Pavese v. Pavese*, 932 So. 2d 1269, 1269 (Fla. 2d DCA 2006) ("In fashioning

an equitable distribution, a court is required to make specific written findings of fact that identify, classify, value, and distribute the parties' assets and liabilities. A final judgment without such findings must be reversed." (internal citations omitted)); *Pignataro v. Rutledge*, 841 So. 2d 636, 639 (Fla. 2d DCA 2003) ("[T]he final judgment does not identify or value any of the parties' assets or liabilities, and it provides no factual findings to support the distribution scheme.").

In this case, despite there being evidence relating to the parties' bank account balances, retirement plans, stock accounts, cars, the Finland house, and credit card debt, the trial court's order dismissing the petition for distribution of assets finds that the only marital asset was the house in Florida—which had already been sold in the partition action. This was error. Accordingly, we reverse the final judgment and remand for the trial court to identify all marital and nonmarital assets and liabilities of the parties, value the marital assets and liabilities, distribute the marital assets and liabilities, and finally, calculate a proper equalizing payment, if necessary. See *Tritschler*, 273 So. 3d at 1164.

b. Failure to consider alimony request

The Former Husband further argues the trial court erred in failing to consider his claim for alimony, which he contends was not considered or ruled upon by the Finnish court and was requested in his amended petition before the trial court. We review the trial court's ruling on the alimony request for an abuse of discretion.

Wabeke v. Wabeke, 21 So. 3d 793, 795 (Fla. 2d DCA 2009).

When awarding or denying alimony, a court is required to make factual findings pertinent to the marital standard of living, the duration of the marriage, the age and health of the parties, and the economic circumstances of the parties. § 61.08, Fla. Stat. (2003). The failure to make such findings is reversible error. *Walker v. Walker*, 818 So. 2d 711 (Fla. 2d DCA 2002); *Farley v. Farley*, 800 So. 2d 710 (Fla. 2d DCA 2001).

Pavese, 932 So. 2d at 1269.

The final judgment denying the Former Husband's request for alimony provides:

As to the alimony claim, Petitioner Former Husband's initial pleading sought "dissolution of marriage" even though he well knew the parties had already been divorced in Finland, which was doubly objectionable for requesting alimony (also sought in the amended petition), a remedy the pursuit of which he had already waived, due to the Finnish decree having not made any such award, and Former Husband not having appealed such judgment. *See, Campbell v. State*, 9 So. 3d 59 (Fla. 1st DCA 2009) (party's failure to raise issue on appeal previously does not make trial court ruling

"law of the case," but does constitute waiver of any subsequent challenge to trial court ruling.)

This finding by the trial court is not supported by competent, substantial evidence where both parties testified, and the translated copy of the Finnish divorce decree indicates that the Finnish court did not consider or rule upon any issues related to alimony. Therefore, because the issue was not ruled upon by the Finnish court, the Former Husband's alimony claim was not waived, and we consider this claim below. *See Binger v. Binger*, 555 So. 2d 373 (Fla. 1st DCA 1989) (holding that foreign divorce decree did not divest Florida court of jurisdiction to determine alimony and property rights where the foreign judgment did not adjudicate those issues).

Section 61.08(2) provides several factors that the court "shall consider" when fashioning an alimony award:

- (a) The standard of living established during the marriage.
- (b) The duration of the marriage.
- (c) The age and the physical and emotional condition of each party.

- (d) The financial resources of each party, the nonmarital and the marital assets and liabilities distributed to each.
- (e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, childcare, education, and career building of the other party.
- (g) All sources of income available to either party.

"A trial court's failure to make specific factual findings with regard to alimony 'may preclude meaningful appellate review[] and result in a case having to be reversed and remanded.'" *Ruberg v. Ruberg*, 858 So. 2d 1147, 1155 (Fla. 2d DCA 2003) (quoting *Walsh v. Walsh*, 600 So. 2d 1222, 1223 (Fla. 1st DCA 1992)).

Here, because the trial court determined that the alimony claim was waived by the Former Husband's failure to appeal the Finnish final judgment, the trial court never reached the issue and thus, failed to make any findings regarding the required factors in section 61.08(2). Accordingly, we reverse the judgment as it relates to the Former Husband's request for alimony and remand for the

trial court to make the appropriate findings, recognizing that this may require a further evidentiary hearing.⁴

c. Attorneys' fees

The Former Husband alleges the trial court erred in denying his request for attorneys' fees and granting the Former Wife's request for fees where the litigation was not vexatious and where the Former Wife failed to present any evidence that would support the award amount. "We review an award of attorney's fees . . . for abuse of discretion." *Arena v. Arena*, 103 So. 3d 1044, 1045 (Fla. 2d DCA 2013).

Attorneys' fees in cases related to the distribution of marital assets are governed by section 61.16, and the trial court's primary focus is on the financial resources of the parties. *See Rosen v. Rosen*, 696 So. 2d 697, 699–700 (Fla. 1997). But the trial court also has the inherent authority to award attorneys' fees under the inequitable conduct doctrine. *Myrick v. Myrick*, 214 So. 3d 769,

⁴ In reversing the final judgment as it relates to the lack of findings on the Former Husband's request for alimony, we make no comment as to whether the Former Husband is entitled to alimony.

772 (Fla. 2d DCA 2017). An award of attorneys' fees pursuant to the inequitable conduct doctrine is

"rarely applicable and should be reserved for extreme cases in which a party litigates vexatiously and in bad faith." *Hallac v. Hallac*, 88 So. 3d 253, 259 (Fla. 4th DCA 2012). "When a court uses its inherent authority to assess attorney's fees, the court must make an express finding of bad faith and include facts justifying the imposition of the award." *Hahamovitch [v. Hahamovitch]*, 133 So. 3d [1020,] 1025 [(Fla. 4th DCA 2014)]; *see also Moakley v. Smallwood*, 826 So. 2d 221, 227 (Fla. 2002) ("[A] finding of bad faith conduct must be predicated on a high degree of specificity in the factual findings."). The trial court must also explicitly apportion the amount of the award that is directly related to the attorney fees and costs that the opposing party incurred as a result of the additional work caused by the specific bad faith conduct of the other party. *Heiny v. Heiny*, 113 So. 3d 897, 903 (Fla. 2d DCA 2013). Unlike the scheme under section 61.16, when proceeding under the inequitable conduct doctrine the trial court does not need to make an express finding of need and ability to pay. *Becker v. Becker*, 778 So.2d 438, 439 (Fla. 1st DCA 2001).

Id.

In this case, the trial court found:

Respondent Former Wife's attorney's fee claim is GRANTED, for the reasons set forth in her motion requesting same, including but not limited to *Rosen v. Rosen*, 696 So. 2d 697 (Fla. 1997); *Wrona v. Wrona*, 592 So. 2d 694 (Fla. 2d DCA 1991), and related authority. Former Husband's insistence on pursuing a second lawsuit, when the only legally viable remedy prayed for herein was partition of the parties' Lee County real property in Count II, and when such partition relief was

also already being sought by Former Wife in the companion case (in which case judgment has been entered), unreasonably caused Former Wife to incur avoidable litigation expense herein, and Former Husband's insistence on taking this second suit to judgment under these circumstances was vexatious, unreasonable, and was not in good faith.

Contrary to the trial court's findings, it was the Former Wife who brought the second-in-time suit after she learned that the Former Husband was seeking to equitably distribute their marital assets and liabilities. Moreover, the vague finding that the Former Husband's "insistence in taking this second suit to judgment" lacks the " 'high degree of specificity' required by *Moakley*, 826 So. 2d at 227." *See Myrick*, 214 So. 3d at 773.

Furthermore, the trial court's vexatious finding constitutes an abuse of discretion in that none of the Former Husband's actions rise to the level of conduct that the inequitable conduct doctrine was designed to punish. *Id.* (citing *Rogers v. Wiggins*, 198 So. 3d 1119, 1122 (Fla. 2d DCA 2016) ("While the trial court viewed the mother's actions as selfish and contrary to the best interests of the child, those findings in and of themselves do not support an award of fees as a sanction under the inequitable conduct doctrine.")). The Former Husband's suit to equitably distribute the parties' catalogue

of marital assets amassed during an eighteen-year marriage and refusal to dismiss that case when only the Florida house was partitioned does not amount to a finding of vexatious or bad faith. *See Hallac*, 88 So. 3d at 260–61 ("[T]he trial court abused its discretion in awarding fees to the husband to be assessed against the wife, because the refusal to settle the case in and of itself cannot be the basis for an award of attorney's fees against the refusing party.").

Accordingly, we reverse the award of attorneys' fees and costs to the Former Wife and remand for the trial court to reconsider each party's need and ability to pay under section 61.16 following its newly calculated equitable distribution on remand. *See Whittlesey v. Whittlesey*, 971 So. 2d 1040, 1042 (Fla. 2d DCA 2008) ("Because the trial court's determination of entitlement to fees was based on the now reversed equitable distribution scheme, the trial court's determination of entitlement to fees must also be reversed.").

IV.

Finally, with regard to the partition action, the Former Husband argues the trial court erred in failing to consider certain credits prior to apportioning the proceeds derived from the court-

ordered sale of the Florida house. We review the partition court's order for an abuse of discretion. *Wood v. Friedman*, 388 So. 2d 1355, 1358 (Fla. 5th DCA 1980).

"Upon dissolution of marriage, tenants of an estate by the entirety become tenants in common." *McCarthy v. McCarthy*, 922 So. 2d 223, 226 (Fla. 3d DCA 2005) (citation omitted). Tenants in common bear "equal responsibility in making all payments necessary to maintain their ownership of the property." *Kelly v. Kelly*, 583 So. 2d 667, 668 (Fla. 1991). Thus, each co-tenant is ultimately liable for his or her proportionate share of the "taxes, mortgage payments, insurance and maintenance and repair." *McCarthy*, 922 So. 2d at 226. Accordingly, upon partition, a tenant shouldering a disproportionate responsibility for those obligations "is entitled to credit from the proceeds of the sale for the other co-tenant's proportionate share of those expenses." *Id.* (citation omitted).

Martinez-Noda v. Pascual, 305 So. 3d 321, 323 (Fla. 3d DCA 2020) (emphasis added). "[T]he trial court must make a finding of the value of the marital residence, order its sale, and then direct that the proceeds of the sale be impounded subject to an ancillary proceeding to establish the credits due between the parties."

Burnett v. Burnett, 742 So. 2d 859, 861 (Fla. 2d DCA 1999) (citing § 64.051—64.071, Fla. Stat. (1997)); *Chaney v. Chaney*, 619 So. 2d 440, 441 (Fla. 2d DCA 1993) (emphasis added)).

Initially, we hold that the partition court abused its discretion in denying the Former Husband's motion to amend his answer in the partition action to assert a claim for credits.

"Public policy favors the liberal amendment of pleadings so that cases may be decided on their merits." *EAC USA, Inc. v. Kawa*, 805 So. 2d 1, 5 (Fla. 2d DCA 2001) (citing *Craig v. E. Pasco Med. Ctr., Inc.*, 650 So. 2d 179 (Fla. 2d DCA 1995)); *see also* Fla. R. Civ. P. 1.190 (providing that "leave of court [to amend pleadings] shall be given freely when justice so requires"). All doubts must be resolved in favor of allowing the amendment of pleadings. *See EAC USA, Inc.*, 805 So. 2d at 5. Because of this policy favoring the liberal amendment of pleadings, refusal to permit an amendment constitutes an abuse of discretion unless (1) the privilege to amend has been abused, (2) the amendment would be futile, or (3) the amendment would prejudice the opposing party. *See id.*; *Carter v. Ferrell*, 666 So. 2d 556, 557 (Fla. 2d DCA 1995).

Southern Dev. & Earthmoving, Inc. v. Caterpillar Fin. Servs. Corp., 56 So. 3d 56, 62–63 (Fla. 2d DCA 2011).

None of the three exceptions to the liberal policy of allowing amendments are present in this case. There was no competent substantial evidence that the Former Husband had previously abused the right to amend, the amendment was not futile where it would allow the Former Husband to formally request credits due to him, and the amendment would not prejudice the Former Wife, who

knew the Former Husband was claiming credits dating back to 2014 related to the maintenance of the Florida house. Under these facts, the trial court abused its discretion in denying the motion for leave to amend.

But even though the Former Husband had not raised the accounting issue regarding the credits in his answer, his pleadings sufficiently pled the credits, thus necessitating the partition court to conduct an inquiry into any required credits; in fact, the case law provides that the trial court is required to make specific findings as to the value of the property, the parties' interests in the property, and any obligations either party may have paid. *See Burnett*, 742 So. 2d at 861. The Former Husband's partition complaint expressly alleges, "The court should determine the rights and interests of the parties pursuant to § 64.051[,] Fla. Stat. (2018)." This necessarily includes an accounting establishing the credits due between the parties. No credits were considered by the partition court. This was error.

Accordingly, the partition court was required to hold an ancillary proceeding to determine the credits due to the parties. Because both parties petitioned to have the property partitioned, we

affirm the partition judgment to the extent that it ordered the property to be sold; however, we reverse in part and remand for the family law court to determine what credits, if any, are due between the parties as part of the consolidation of these cases on remand.

V.

Because the family law court wholly failed to distribute the parties' marital assets and liabilities, failed to make the proper findings required when considering whether to award alimony, and abused its discretion in awarding the Former Wife's attorney's fees under the inequitable conduct doctrine, we reverse the final judgment entered on the amended petition for the distribution of marital assets. With regard to the partition action, we affirm the partition final judgment to the extent that it ordered the Florida home sold but reverse that portion of the judgment that determines the interests of the parties in the proceeds from that sale and remand for the court to determine what credits, if any, are due to each party. Finally, on remand, the partition case and the family law case must be consolidated to achieve a global and equitable distribution of the parties' marital assets and liabilities.

Affirmed in part, reversed in part, and remanded.

MORRIS, C.J., and NORTHCUTT, J., Concur.

Opinion subject to revision prior to official publication.