Third District Court of Appeal

State of Florida

Opinion filed June 19, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-1642
Lower Tribunal No. 15-14365

Brenda Molina,
Appellant,

vs.

Melvin Perez,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno-Schurr, Judge.

Abramowitz and Associates, and Jordan B. Abramowitz, for appellant.

Perez-Abreu & Martin-Lavielle, P.A., and Andy W. Acosta and Javier Perez-Abreu, for appellee.

Before FERNANDEZ, LOGUE, and SCALES, JJ.

LOGUE, J.

Appellant, Brenda Molina, (the "Wife") seeks review of the Final Judgment of Dissolution of Marriage to Appellee, Melvin Perez, (the "Husband") which granted the Wife durational alimony for fifteen years, but denied the Wife permanent alimony. The couple had been married for twenty years, since he was 22 and she was 20 years old. Their marriage followed traditional lines: he worked outside the home full time as a financial advisor and she worked at home full time as a homemaker, raising their three children.

Following a bench trial, the court entered a final judgment that properly recognized the marriage had been long-term, and, therefore, a rebuttable presumption existed in favor of an award of permanent alimony. See Dickson v. Dickson, 204 So. 3d 498, 502 (Fla. 4th DCA 2016). The trial court found that the Wife had a need for $38,400 per year in alimony and the Husband, with an income of $145,388, had the ability to provide it. But the trial court awarded only durational alimony for fifteen years.

The trial court found the Husband had overcome the presumption of permanent alimony because "[a]s set forth by the Husband's vocational expert's report and deposition testimony, the Wife is capable of increasing her income over time with reasonable effort on her part." However, the vocational expert's report appears nowhere in the record. Similarly, the vocational expert's deposition, while

in the court file, was never marked as a trial exhibit, moved into evidence, or admitted into evidence by stipulation or otherwise.[1]

Under these circumstances, it was error to award the Wife durational alimony instead of permanent periodic alimony. Because there was no substantial competent evidence that the Wife's ability to earn income would increase after fifteen years, the Husband failed to rebut the presumption in favor of permanent alimony. Alcantara v. Alcantara, 15 So. 3d 844 (Fla. 3d DCA 2009) (reversing denial of permanent alimony based on speculation that wife's income may increase if she returned to her home state). See Gilliland v. Gilliland, 266 So. 3d 866, 868-69 (Fla. 5th DCA 2019) (reversing denial of permanent alimony because there was no evidence wife's income would increase in the future); Griffitts v. Griffitts, 263 So. 3d 220, 220-21 (Fla. 5th DCA 2019) (same); Hedden v. Hedden, 240 So. 3d 148, 151-52 (Fla. 5th DCA 2018) (same); Stark v. Stark, 192 So. 3d 632, 632-33 (Fla. 5th DCA 2016) (same); Winn v. Winn, 669 So. 2d 1155, 1157 (Fla. 5th DCA 1996) (same).

[1] Even if entered into evidence, the deposition would not have supported the finding. In the deposition, the expert did not offer any opinion regarding the Wife's future earnings. The expert was examined only regarding his opinion that the Wife could currently find work as a bank teller or receptionist and earn between $19,820 and $23,700 annually. At trial, the parties stipulated the Wife could earn $21,760 which may be why the deposition was never entered into evidence.

We reverse and remand with instructions for the trial court to enter an amended final judgment that classifies the Husband's alimony payment as permanent, not durational. In so ruling, we do not foreclosure the Husband from seeking modification or termination of the alimony if there is a substantial change in circumstances. Purin v. Purin, 158 So. 3d 752, 753-54 (Fla. 2d DCA 2015) (explaining that the happening of a future event "allows the trial court, upon proper motion, to revisit the parties' respective needs and ability to pay" (citing Suarez v. Sanchez, 43 So. 3d 118 (Fla. 3d DCA 2010))); see §§ 61.08(8), 61.14, Fla. Stat.

Reversed and remanded.