

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed August 12, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-2232  
Lower Tribunal No. 18-8522

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**Angelo Ortiz,**  
Appellant,

vs.

**Paola Ferreyra Ortiz,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, David Young,  
Judge.

Davis Smith & Jean, LLC, and Sonja A. Jean, for appellant.

Law Offices of Granoff & Kessler, P.A., and Roy E. Granoff, for appellee.

Before FERNANDEZ, GORDO and LOBREE, JJ.

PER CURIAM.

Angelo Ortiz, the former husband, appeals the trial court's equitable distribution scheme and award of alimony to Paola Ferreyra Ortiz, the former wife. The former husband argues the trial court abused its discretion by failing to identify and assign certain assets and by failing to make specific factual determination as to the former wife's need for alimony. We agree, reverse and remand for the trial court to address the omissions in the equitable distribution scheme and make the requisite factual determinations for need of alimony pursuant to Section 61.08, Florida Statutes.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The parties were married nearly fifteen years and had one child at the time the former wife petitioned for dissolution of marriage. Both parties had non-marital property. The former wife owned a property, the value of which increased throughout the marriage from \$147,000 to \$253,500. Additionally, \$67,500 of marital funds were used to pay down the mortgage. The parties stipulated that the marital component of the former wife's non-marital home subject to equitable distribution was \$116,403.05. The final judgment acknowledged the \$116,403.05 as marital property but failed to distribute that sum in the equitable distribution scheme. The final judgment also identified the parties' joint checking account and the former wife's jewelry as assets but did not include these items in the equitable distribution scheme. As part of the equitable distribution scheme, the former

husband was required to pay the former wife \$10,007. The judgment also awarded the former wife child support and \$500 in alimony for five years.

The former husband filed a motion for rehearing, arguing the same points he now raises on appeal. Upon rehearing, the trial court adjusted the child support to accurately reflect the additional alimony income to the former wife and reduced the length of alimony from five to three years, but refused to correct the equitable distribution scheme. The amended final judgment awarded the former wife \$636.78 in child support, as well as \$500 in alimony for three years.

## **LEGAL ANALYSIS**

### *Equitable Distribution Scheme*

Pursuant to Section 61.075(3), Florida Statutes, “any distribution of marital assets or marital liabilities shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1).” 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 error. See, e.g., Callwood v. Callwood, 221 So. 3d 1198, 1201–02 (Fla. 4th DCA 2017) (“Reversible error occurs where ‘the equitable distribution in the final judgment is not supported by factual findings with reference to the factors listed in section 61.075(1), as required by section 61.075(3) when a stipulation and agreement has not been entered and filed.’”

(citing Richardson v. Knight, 197 So. 3d 143, 146 (Fla. 4th DCA 2016)); Diaz v. Diaz, 2020 WL 1284974 (Fla. 3d DCA Mar. 18, 2020). The final judgment on appeal here fails to identify and distribute all the marital assets as part of the equitable distribution scheme and does not contain the requisite statutory findings pursuant to Section 61.075.<sup>1</sup> As such, we reverse and remand for the trial court to make the specific, requisite findings.

### *Alimony*

When making determinations of alimony, a trial court is required to “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.” § 61.08, Fla. Stat. (2019). The judgment on appeal does not include the reasoning behind the award of alimony to the former wife.<sup>2</sup> Failure to make such specific factual findings has been held to be an abuse of discretion. See, e.g., Kennedy v. Kennedy, 60 So. 3d 466, 468 (Fla. 2d DCA 2011) (“The statute requires the court to make findings of fact relative to these factors, § 61.08(1), and its failure

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<sup>1</sup> The former wife argues that the former husband waived his opportunity for this Court to review the issue of the trial court’s omission of the statutory factors by failing to specifically raise it in his motion for rehearing below. This type of error, however, is fundamental and is reviewable where the error is apparent on the face of the final judgment. See Diaz, 2020 WL 1284974 at \*3.

<sup>2</sup> Although the amended final judgment appears to consider the statutory factors under Section 61.08, it does so in a perfunctory fashion. As such, the trial court’s reasoning for concluding that the former wife was in need of alimony is unclear from the face of the judgment or transcripts of the proceedings filed with this Court.

to make necessary findings is reversible error.” (citing Milo v. Milo, 718 So. 2d 343, 344 (Fla. 2d DCA 1998))). Absent the requisite statutory findings, the trial court’s reasoning supporting its determination of the former wife’s need for alimony is indiscernible on the record before us. We reverse and remand for the trial court to make findings of need and ability to pay pursuant to Section 61.08, Florida Statutes.

Accordingly, we affirm the dissolution of marriage but reverse the equitable distribution scheme and award of alimony and remand for proceedings consistent with this opinion.

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