Tanner v. Tanner

Court of Appeal of Florida, First District

July 1, 2021, Decided

No. 1D19-1220

Reporter
323 So. 3d 808 *; 46 Fla. L. Weekly D 1564

WAYNE ***TANNER***, Former Husband, Appellant, ***v***. TERESSA ***TANNER***, Former Wife, Appellee.

Notice: NOT FINAL UNTIL DISPOSITION OF ANY TIMELY AND AUTHORIZED MOTION UNDER FLA. R. APP. P. 9.330 OR 9.331.

Prior History: On appeal from the Circuit Court for Nassau County. Robert M. Foster, Judge.

Tanner v. ***Tanner***, 2021 Fla. App. LEXIS 5096, 2021 WL 1345228 (Fla. Dist. Ct. App. 1st Dist., Apr. 12, 2021)

Counsel: Daniel Nordby, Amber Stoner Nunnally, and Rachel Procaccini of Shutts & Bowen LLP, Tallahassee, for Appellant.

Michael J. Korn of Korn & Zehmer, P.A., Jacksonville, and Valerie C. Faltemier of Faltemier Rogers, PLLC, Fernandina Beach, for Appellee.

Judges: OSTERHAUS and WINOKUR, JJ., concur; MAKAR, J., concurs with opinion.

Opinion

[*809] ON MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE, FOR REHEARING

PER CURIAM.

On consideration of appellant's motion, this Court grants the motion for clarification, denies the motion for rehearing, withdraws the opinion filed April 12, 2021, and substitutes the following opinion in its place.

In this appeal, Wayne ***Tanner***, the former husband, challenges the final judgment of dissolution of marriage from Teressa ***Tanner***, the former wife. He raises five issues: whether the trial court failed to exercise independent decision making in rendering its final judgment, which was a verbatim adoption of the former wife's proposed order; whether the trial court abused its discretion in awarding alimony to Mrs. ***Tanner***; whether the trial court abused its discretion in ordering Mr. ***Tanner*** to name Mrs. ***Tanner*** as his beneficiary to secure his obligation to pay alimony; whether the trial court abused its discretion in awarding Mrs. ***Tanner*** a disproportionate share of the Hilliard property; and whether the trial court abused its discretion in ordering Mr. ***Tanner*** to provide Mrs. ***Tanner*** football tickets and parking passes. We reverse on the latter four issues and thereby need not address the first.

Alimony Award

Mr. ***Tanner*** contends that the permanent and retroactive alimony amounts were erroneously based on his gross income. Additionally, Mr. ***Tanner*** contends that the trial court erred by failing to credit him for the correct amount of temporary spousal support that he paid during the parties' separation.

In determining the amount of an alimony award, section 61.08(2), Florida Statutes, requires a trial court to consider, among other factors, the parties' financial resources. Florida courts have consistently concluded that this section mandates a consideration of the parties' net incomes, not gross incomes. *See Cooper **v**. Cooper*, 278 So. 3d 765, 766 (Fla. 2d DCA 2019); *Brady **v**. Brady*, 229 So. 3d 892, 893 (Fla. 5th DCA 2017); *Kingsbury **v**. Kingsbury*, 116 So. 3d 473, 474 (Fla. 1st DCA 2013).

Here, both the permanent alimony and retroactive alimony awards in the final order were improperly based on the gross income attributed to Mr. ***Tanner***. Additionally, the final order reflects the trial court's intention to credit Mr. ***Tanner*** for temporary spousal support paid to Mrs. ***Tanner*** during the retroactive alimony period. However, the trial court did not demonstrate how it reached the credit amount and the retroactive alimony award was not supported by competent, substantial evidence, which was error.

Maintaining Security to Ensure Ability to Pay

Next, to the extent necessary to protect an alimony award, a trial court may order an obligor to "purchase or [*810] maintain a life insurance policy or a bond, or to otherwise secure" that alimony award. § 61.08(3), Fla. Stat. (2020). However, a trial court may not require an obligor to maintain security unless it makes a specific finding that special circumstances exist. *Mackoul **v**. Mackoul*, 32 So. 3d 741, 742 (Fla. 1st DCA 2010). Here, the trial court failed to make specific findings that demonstrate the special circumstances warranting a security requirement, which also was error.

Disproportionate Share of Certain Real Property

In distributing marital assets, the trial court awarded the parties' $235,000 Hilliard Property to Mrs. ***Tanner***, reasoning that this unequal distribution would offset Mr. ***Tanner***'s "dissipation of $40,000 from his marital IRA during the parties' separation." Mr. ***Tanner*** contends that he withdrew the money to pay for the parties' mortgage, health insurance premiums, bills, and otherwise support their lifestyles. The trial court's distribution regarding the Hilliard Property was in error, as the final order contains no specific findings that Mr. ***Tanner*** intentionally dissipated the marital IRA account. *See Gotro **v**. Gotro*, 218 So. 3d 494, 496-97 (Fla. 1st DCA 2017) (absent any specific findings of misconduct, it is error for the trial court to assign one party an equalizer payment for the party's use of marital funds).

Invalid Equitable Distribution

Mr. ***Tanner*** correctly contends that future season football tickets and parking passes for University of Georgia football games are not marital assets, as they were not acquired during the marriage. Marital assets are those acquired during the marriage. § 61.075(6)(a)(1)(a), Fla. Stat. (2020). Thus, the trial court's award of the football tickets and parking passes to Mrs. ***Tanner*** is not a valid equitable distribution of marital property.

Conclusion

Based on the foregoing, we reverse and remand for re-consideration of the evidence of record, legal issues presented, and applicable law, to facilitate entry of a final judgment consistent with this opinion.

OSTERHAUS and WINOKUR, JJ., concur; MAKAR, J., concurs with opinion.

Concur by: MAKAR

Concur

MAKAR, J., concurring with opinion.

In this appeal, Wayne ***Tanner***, the former husband, challenges the final judgment of dissolution of marriage from Teressa ***Tanner***, the former wife. He raises a number of issues, one being whether the trial court failed to exercise independent decision making in rendering its final judgment, which was a verbatim adoption of the former wife's proposed order.

Trial courts can benefit from proposed final orders, but "such submissions cannot substitute for a thoughtful and independent analysis of the facts, issues, and law by the trial judge." *Perlow **v**. Berg-Perlow*, 875 So. 2d 383, 390 (Fla. 2004). The record in this case fails to demonstrate that the trial court made independent findings of fact or conclusions of law.

The judge, who was soon leaving the bench due to retirement, was asked but refused to make any preliminary rulings or provide direction or parameters on the major issues in the case, saying that it would take more than three weeks for him to do so on his own; he noted that the parties were "diametrically opposed" but was hopeful that one or the other would be "reasonable." It appears, however, that the trial judge merely adopted one of the "diametrically opposed" submissions without independent analysis of the facts, issues and law, which is the type of outcome that [*811] can occur "when the judge has made no findings or conclusions on the record that would form the basis for the party's proposed final judgment." *Perlow*, 875 So. 2d at 390.

This conclusion is buttressed by the final judgment's inclusion of accusatory language, including allegations that the former husband influenced a bank to ignore subpoenas, was motivated to deprive the former wife of financial resources, schemed with his accountant to hide income, and filed fraudulent tax returns; the final order also included errors and inconsistencies, including listing the former husband's income as three different amounts in various portions of the document, as well as a mathematical error in calculating the former husband's assets and improperly using his gross income instead of his net income in calculating the alimony award. These factors—inflammatory language, errors, and inconsistencies—collectively suggest the trial court failed to independently review the facts, issues and law presented and merely signed off without adequate judicial introspection. *Pedersen **v**. Pedersen*, 892 So. 2d 1125, 1126-27 (Fla. 2d DCA 2004); *see also Perlow*, 875 So. 2d at 395 (Pariente, J., concurring). The former husband did have an opportunity to object, and did so (thereby preserving the issue for review), but the record as a whole fails to show that the final judgment was the result of the "thoughtful and independent analysis of the facts, issues, and law" that is required. *Perlow*, 875 So. 2d at 390. The remedy is to reverse and remand for re-consideration of the evidence of record, legal issues presented, and applicable law, to facilitate entry of a final judgment consistent with the requirements of *Perlow. Damiani **v**. Damiani*, 835 So. 2d 1168, 1171 (Fla. 4th DCA 2002).

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