

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Donald Lilly v. Lynne Lilly

35 So. 3d 1022 (Fla. 5th DCA 2010) · No. Nos. 5D09-951, 5D09-953 · Decided May 28, 2010

SUMMARY

The Florida Fifth District Court of Appeal reviewed cross-appeals from an amended final judgment dissolving the parties' marriage. The court held that the trial court improperly changed the valuation date and values of the parties' retirement accounts without competent, substantial evidence, and remanded for correction of the judgment or an evidentiary hearing. All other issues were affirmed without discussion.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Griffin; Sawaya; Lawson
JURISDICTION	Florida
DECIDED	May 28, 2010
DOCKET	Nos. 5D09-951, 5D09-953
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Both parties appealed the amended final judgment in a dissolution of marriage action; the wife cross-appealed.
STANDARD OF REVIEW	The appellate court reviewed whether the trial court's valuation of retirement accounts was supported by competent, substantial evidence and whether the trial court properly exercised its discretion in selecting an equitable valuation date.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Donald Lilly v. Lynne Lilly

TOPICS

- dissolution of marriage
- equitable distribution
- appellate procedure
- evidence
- alimony

PRACTICE AREAS

- family law
- appellate procedure
- evidence
- equitable distribution
- alimony

QUESTIONS PRESENTED

1. Whether the trial court erred by changing the valuation date and values of the parties' retirement accounts in the amended final judgment without evidentiary support.
2. Whether the remaining issues raised in the parties' appeals concerning equitable distribution, alimony, and attorney's fees required appellate relief.

HOLDINGS

1. Although the trial court has discretion under section 61.075(7), Florida Statutes, to select an equitable date for valuing assets, it must establish the asset value based on competent, substantial evidence under section 61.075(3). The trial court erred by changing the retirement-account valuation date and values without such evidence.

KEY QUOTATIONS

“The court erred by changing the valuation date and values without any evidentiary basis.” (35 So. 3d at 1023)

“The wife correctly argues that the husband's bare assertions in a motion for rehearing were not evidence.” (35 So. 3d at 1023)

FACTUAL BACKGROUND

The parties married in 1996 and had no children. The trial court awarded the wife permanent and rehabilitative alimony, a share of the appreciation of the husband's home, and half of the marital portion of three retirement accounts. The accounts were initially valued as of the trial date based on admitted evidence, but the amended final judgment changed their values to January 30, 2009, based on the husband's assertions about an economic downturn.

PROCEDURAL HISTORY

The husband filed for dissolution in 2006. Following an August 2008 trial, the trial court entered a final judgment on January 30, 2009, followed by an amended final judgment in February 2009. Both parties timely appealed, challenging issues concerning equitable distribution, alimony, and attorney's fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was instructed either to correct the amended judgment by inserting the values set forth in the original final judgment, which were based on evidence presented at trial, or to hold an evidentiary hearing before reconsidering the retirement-account values. All other issues were affirmed.

CASES CITED

- Reddell v. Reddell, 899 So. 2d 1154, 1155-56 (Fla. 5th DCA 2005)

OPINION

Lilly v. Lilly

35 So. 3d 1022

PER CURIAM.

35 So. 3d 1022 (2010)

Donald LILLY, Appellant/Cross-Appellee, v. Lynne LILLY, Appellee/Cross-Appellant. Nos. 5D09-951, 5D09-953. District Court of Appeal of Florida, Fifth District. May 28, 2010. Samuel Filler, Longwood, and Vincent W. Howard, Jr., of Howard & Reyes, Chartered, Sanford, for Appellant/Cross-Appellee. Diana M. Tennis, Orlando, for Appellee/Cross-Appellant. PER CURIAM. Both parties appeal the Amended Final Judgment in this dissolution of marriage case. The husband raises three issues, all relating to equitable distribution. On cross appeal, the wife raises six issues relating to equitable distribution, permanent and rehabilitative alimony, and attorney's fees. We reverse only as to the trial court's valuation of the parties' retirement accounts. No other issues merit discussion. The parties were married in 1996, and had no children. The husband filed for dissolution in 2006. After an August 2008 trial, the trial court entered a Final Judgment on January 30, 2009 and an Amended Final Judgment in February 2009. Both parties timely appealed. In the Amended Final Judgment, the trial court awarded the wife \$1,500 a month in permanent alimony and \$1,000 a month rehabilitative alimony for eighteen months. The trial court awarded the wife half of the appreciation of the husband's home, or \$80,000. It also awarded her half of the marital portion of three retirement accounts. In the Final Judgment, the court valued these accounts as of the trial date based on the evidence presented. But in the Amended Final Judgment, the court valued them as of January 30, 2009, the date the Final Judgment was entered, *1023 to reflect a downturn in the economy as asserted by the husband. The court erred by changing the valuation date and values without any evidentiary basis. Although section 61.075(7), Florida Statutes, gives the trial court discretion to pick an equitable date to value assets, section 61.075(3) requires the trial court to establish a value based on competent, substantial evidence. Reddell v. Reddell, 899 So. 2d 1154, 1155-56 (Fla. 5th DCA 2005). The wife correctly argues that the husband's bare assertions in a motion for rehearing were not evidence. Although the value of the assets may well have dropped, as the husband asserted, he failed to present any evidence to support this assertion or the court's findings. Therefore, we reverse the Amended Final Judgment as to this issue only, and remand with instructions that the trial court either correct the judgment by inserting the values set forth in the original Final Judgment, which were based upon the evidence presented at trial, or hold an evidentiary hearing before reconsidering these values. AFFIRMED IN PART; REVERSED IN PART; REMANDED WITH INSTRUCTIONS. GRIFFIN, SAWAYA and LAWSON, JJ., concur.

