

# DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

## Berger v. Berger

201 So. 3d 819 (Fla. 4th DCA 2016) · Decided October 13, 2016

### SUMMARY

The Florida Fourth District Court of Appeal held that a long-term marriage creates a rebuttable presumption in favor of permanent alimony under section 61.08, Florida Statutes. The trial court's findings were insufficient to rebut that presumption, and the evidence supported the wife's ongoing need for support. The court reversed the award of durational alimony and remanded for an award of permanent alimony, while affirming the remaining issues without discussion.

### CASE DETAILS

|                       |                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, Fourth District                                                                                        |
| WRITING FOR THE COURT | Gerber, J.; Conner, J.; Croom, Janet C., Associate Judge                                                                                    |
| JURISDICTION          | Florida                                                                                                                                     |
| DECIDED               | October 13, 2016                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                       |
| PROCEDURAL POSTURE    | The wife appealed the amended final judgment of dissolution of marriage, challenging the award of durational rather than permanent alimony. |
| STANDARD OF REVIEW    | An award of durational alimony is reviewed for abuse of discretion. Failure to apply the correct legal rule is error as a matter of law.    |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                              |
| PARTIES               | Wife v. Husband                                                                                                                             |

### TOPICS

alimony spousal support dissolution of marriage statutory interpretation appellate procedure

### PRACTICE AREAS

family law alimony spousal support appellate procedure

### QUESTIONS PRESENTED

1. Whether a long-term marriage creates a rebuttable presumption in favor of permanent alimony under section 61.08, Florida Statutes.
2. Whether the trial court's findings were sufficient to rebut the presumption favoring permanent alimony.
3. Whether permanent alimony was appropriate under the parties' financial circumstances and the statutory factors.

#### **HOLDINGS**

1. A long-term marriage, defined by section 61.08(4) as a marriage lasting seventeen years or longer, gives rise to a rebuttable presumption in favor of permanent alimony, notwithstanding the statutory authorization of durational alimony.
2. The trial court's findings were insufficient to rebut the presumption because the judgment did not expressly find that permanent periodic alimony was inappropriate or that there was no ongoing need for support on a permanent basis.
3. Permanent alimony was appropriate because the husband had the ability to pay, the wife had substantial need, the wife lacked a history of full-time employment with benefits, and the evidence did not establish that she could reliably become self-supporting.

#### **KEY QUOTATIONS**

*“The primary factors for a court to consider when awarding alimony are the requesting spouse’s need and the other spouse’s ability to pay.” (823)*

*“Based on the foregoing, we reverse the amended final judgment’s award of durational alimony, and remand for the trial court to award the wife permanent alimony in an amount to be determined.” (824)*

#### **FACTUAL BACKGROUND**

The parties were married for eighteen years. The husband was a fifty-three-year-old physician earning approximately \$205,704 annually, while the fifty-five-year-old wife had been a stay-at-home mother and had not worked outside the home in more than twenty years. The wife earned only \$10 to \$12 per hour in miscellaneous jobs, and the trial court found that her reasonable monthly needs were \$6,000 while imputing to her annual income of \$18,200. The court awarded durational alimony for ten years, despite evidence that the wife lacked current teaching credentials and had an ongoing need for support.

#### **PROCEDURAL HISTORY**

The husband petitioned for dissolution after an eighteen-year marriage, and the wife counter-petitioned for alimony and child support. Following trial, the circuit court imputed income to the wife, determined her reasonable monthly needs, and awarded her \$4,500 per month in durational alimony for ten years. The wife appealed, and the Fourth District Court of Appeal affirmed in part, reversed the durational-alimony award, and remanded for an award of permanent alimony.

#### **DISPOSITION**

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse the amended final judgment's award of durational alimony and remand for the trial court to award the wife permanent alimony in an amount to be determined. The judgment was affirmed as to the wife's other appellate arguments without further discussion.

## CASES CITED

- Motie v. Motie, 132 So. 3d 1210, 1213 (Fla. 5th DCA 2014)
- Ondrejack v. Ondrejack, 839 So. 2d 867, 870 (Fla. 4th DCA 2003)
- Dickson v. Dickson, 204 So. 3d 498, 498 (Fla. 4th DCA 2016)
- Sherlock v. Sherlock, 199 So. 3d 1039, 1043 (Fla. 4th DCA 2016)
- Motie v. Motie, 132 So. 3d 1210, 1213 (Fla. 5th DCA 2014)
- Ayra v. Ayra, 148 So. 3d 142, 143 (Fla. 2d DCA 2014)
- Broemer v. Broemer, 109 So. 3d 284, 289 (Fla. 1st DCA 2013)
- Taylor v. Taylor, 177 So. 3d 1000, 1002, 1004 (Fla. 2d DCA 2015)
- Julia v. Julia, 146 So. 3d 516, 522 (Fla. 4th DCA 2014)
- Fichtel v. Fichtel, 141 So. 3d 593, 595 (Fla. 4th DCA 2014)
- Alcantara v. Alcantara, 15 So. 3d 844, 846 & n. 3 (Fla. 3d DCA 2009)