

FIFTH DISTRICT COURT OF APPEAL OF FLORIDA

Robert M. Warner v. Carolyn M. Warner

Warner v. Warner, Case No. 5D2024-1274 · No. 5D2024-1274 · Decided October 3, 2025

SUMMARY

The Florida Fifth District Court of Appeal reversed a final judgment dissolving the marriage of Robert and Carolyn Warner. The court held that the trial court lacked competent, substantial evidence to impute income to Former Husband, improperly calculated Former Wife’s alimony need, failed to credit marital-bill payments against retroactive child support, and improperly included dissipated retirement assets in equitable distribution. The case was remanded for recalculation of alimony, child support, retroactive child support, equitable distribution, and the equalizing payment.

CASE DETAILS

COURT	Fifth District Court of Appeal of Florida
WRITING FOR THE COURT	Wallis, J.; Jay, C.J.; Eisnaugle, J.
JURISDICTION	Florida Fifth District Court of Appeal
DECIDED	October 3, 2025
DOCKET	5D2024-1274
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Former Husband appealed the final judgment dissolving the parties' marriage, challenging the awards and calculations of alimony, child support, retroactive child support, and equitable distribution.
STANDARD OF REVIEW	Abuse of discretion applies to the trial court's decisions regarding alimony, child support, imputation of income, and equitable distribution. Imputation of income also must be supported by competent, substantial evidence.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Robert M. Warner v. Carolyn M. Warner

TOPICS

- dissolution of marriage
- alimony
- child support
- equitable distribution
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court properly imputed income to Former Husband for alimony and child support when the evidence did not establish his current earning ability or that he was voluntarily underemployed.
2. Whether the trial court properly calculated Former Wife's need for alimony when her claimed expenses included food and other expenses attributable to the parties' children.
3. Whether the trial court properly awarded retroactive child support without crediting Former Husband for payments of marital bills that benefited the child during the retroactive period.
4. Whether the trial court properly included the depleted retirement-account funds in the equitable distribution scheme based on alleged misconduct.

HOLDINGS

1. The trial court erred in imputing \$220,499.24 in income to Former Husband because the record did not contain competent, substantial evidence establishing the income he could earn if he returned to self-employment, and the amount was based solely on his prior average earnings.
2. The trial court erred in finding that Former Wife needed \$7,433 per month because the figure included expenses for the parties' minor and adult children; the alimony award therefore had to be recalculated.
3. The trial court erred by awarding retroactive child support without crediting Former Husband for payments of marital bills made during the retroactive period that benefited the minor child.
4. The trial court erred in including the depleted Brookstone IRA and Lincoln Retirement Account in the equitable distribution scheme because the record contained no evidence that Former Husband intentionally dissipated or destroyed the funds.

KEY QUOTATIONS

“To impute income to an underemployed spouse, the court must make two findings: (1) that the termination of income was voluntary; and (2) “the spouse’s underemployment was owing to ‘less than diligent and bona fide efforts to find employment paying income at a level equal to or better than that formerly received.’” (at 5)

“We conclude the trial court erred when it imputed income to Former Husband for two reasons. First, assuming without deciding that Former Husband was voluntarily underemployed by leaving his self-employment, there was no competent, substantial evidence to establish the income he could earn if he returned to self-employment.” (at 6)

“The misconduct necessary to support inclusion of dissipated assets in an equitable distribution scheme does not include mismanagement or simple squandering of marital assets in a manner of which the other spouse disapproves.” (at 8)

“Because there is uncontradicted evidence in the record that the dissipated funds were used to pay marital expenses during the dissolution proceedings and because there is no evidence that the Husband engaged in

misconduct in expending the funds, the trial court abused its discretion in including these dissipated funds in the equitable distribution scheme.” (at 9)

FACTUAL BACKGROUND

The parties were married in 1999 and had three children; only one child was a minor at the time of trial. Former Husband left self-employment as a certified registered nurse anesthetist, where he had earned approximately \$220,499 annually on average, and accepted hospital employment paying \$150,000 annually for benefits, insurance, and more consistent hours. The trial court imputed his prior average income for alimony and child support, accepted Former Wife's claimed monthly expenses including amounts attributable to the children, awarded retroactive child support without crediting Former Husband's payments of marital bills, and included depleted retirement-account funds in equitable distribution. Former Husband testified that he used those funds for marital bills, living and medical expenses, and divorce-related costs, including attorney's fees.

PROCEDURAL HISTORY

Robert Warner filed a petition for dissolution of marriage in August 2022. After a February 2024 trial, the County Court for Marion County entered a final judgment awarding alimony, child support, retroactive child support, and an equalizing payment based in part on the valuation of dissipated retirement assets. The trial court denied Warner's timely motion for rehearing, and he appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Recalculate alimony, including Former Wife's need without expenses attributable to the children; recalculate child support using a properly supported income determination; recalculate retroactive child support with credit for Former Husband's qualifying payments during the retroactive period; and recalculate equitable distribution without valuing the retirement accounts at their earlier values based on unsupported misconduct findings. Recalculate the resulting equalizing payment.

CASES CITED

- Schmidt v. Schmidt, 373 So. 3d 645, 649 (Fla. 5th DCA 2023)
- Johnson v. Johnson, 371 So. 3d 944, 953 (Fla. 5th DCA 2022)
- Brady v. Brady, 229 So. 3d 892, 895 (Fla. 5th DCA 2017)
- Freilich v. Freilich, 897 So. 2d 537, 541 (Fla. 5th DCA 2005)
- Frerking v. Stacy, 266 So. 3d 273, 276 (Fla. 5th DCA 2019)
- Schram v. Schram, 932 So. 2d 245, 249-50 (Fla. 4th DCA 2005)
- Gillespie v. Holdsworth, 333 So. 3d 278, 281 (Fla. 2d DCA 2022)
- Gerville-Reache v. Gerville-Reache, 307 So. 3d 962, 965 (Fla. 1st DCA 2020)
- Jorgensen v. Tagarelli, 312 So. 3d 505, 506-07 (Fla. 5th DCA 2020)

- Jones v. Jones, 295 So. 3d 1226, 1228 (Fla. 5th DCA 2020)
- Lin v. Lin, 37 So. 3d 941, 942 (Fla. 2d DCA 2010)
- Coniglio v. Coniglio, 969 So. 2d 579, 580 (Fla. 4th DCA 2007)
- Williams v. Gonzalez, 294 So. 3d 941, 945 (Fla. 4th DCA 2020)
- Ditton v. Circelli, 888 So. 2d 161, 163 (Fla. 5th DCA 2004)
- Douglas v. Douglas, 328 So. 3d 1071, 1074 (Fla. 5th DCA 2021)
- Julia v. Julia, 263 So. 3d 795, 798 (Fla. 4th DCA 2019)
- Roth v. Roth, 973 So. 2d 580, 584-86 (Fla. 2d DCA 2008)
- Lopez v. Lopez, 135 So. 3d 326, 328 (Fla. 5th DCA 2013)
- Niederkohr v. Kuselias, 301 So. 3d 1112, 1113 (Fla. 5th DCA 2020)

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