

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Paul Witt v. Tonya A. Witt

74 So. 3d 1127 (Fla. 2d DCA 2011) · No. No. 2D10-857 · Decided November 18, 2011

SUMMARY

The Florida Second District Court of Appeal reversed and remanded a dissolution judgment because the equitable distribution scheme lacked specific findings identifying marital and nonmarital assets, liabilities, and their allocation. The court also directed the trial court to make the statutorily required findings concerning the denial of alimony and to apply the current version of the procedural alimony statute on remand.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Khouzam; Northcutt; Villanti
JURISDICTION	Florida
DECIDED	November 18, 2011
DOCKET	No. 2D10-857
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The former husband and former wife timely appealed and cross-appealed the final judgment of dissolution of marriage, challenging the equitable distribution scheme and the denial of alimony.
STANDARD OF REVIEW	The circuit court's equitable distribution findings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published appellate opinion; precedential
PARTIES	Paul Witt v. Tonya A. Witt

TOPICS

- equitable distribution
- alimony
- dissolution of marriage
- family law procedure
- standard of review

PRACTICE AREAS

- Family law
- Appellate procedure
- Equitable distribution
- Alimony

QUESTIONS PRESENTED

1. Whether the final judgment's equitable distribution scheme complied with section 61.075 by containing specific findings identifying marital and nonmarital property, assigning liabilities, and supporting the distribution.
2. Whether the trial court was required to make factual findings addressing the statutory alimony factors when denying the former wife's alimony request.
3. Which version of section 61.08 the trial court should apply on remand.

HOLDINGS

1. A final judgment distributing marital assets and liabilities must contain specific written findings identifying the marital and nonmarital property, assigning liabilities and property to the parties, and showing that the distribution is supported by competent, substantial evidence and the statutory factors. The judgment here was insufficiently clear and required reversal.
2. When determining or denying alimony, the trial court must make factual findings addressing the relevant statutory economic factors. The circuit court's explanation that alimony was unnecessary because the husband would make an equalizing payment and the marriage was short-term did not satisfy section 61.08.
3. Because section 61.08 is procedural in nature, the trial court should apply the current version of the statute on remand.

KEY QUOTATIONS

“A final judgment which fails to include the statutory requirements is difficult to review and requires reversal.” (74 So. 3d at 1128)

“Regrettably, the final judgment did not delineate the equitable distribution scheme to show what property the court found to be marital, what property it found to be nonmarital, and which party should receive each item as required by section 61.075(1).” (74 So. 3d at 1129)

FACTUAL BACKGROUND

Paul and Tonya Witt married on August 17, 2002, and filed for dissolution on November 21, 2005. After a final hearing on May 6, 2009, the circuit court entered a judgment addressing equitable distribution and denying Tonya's request for alimony. The judgment did not assign a \$100,000 contingent tax liability, did not incorporate the parties' stipulation concerning the premarital portion of business assets, did not clearly identify marital and nonmarital property or allocate each item, and denied alimony without addressing all required statutory factors.

PROCEDURAL HISTORY

The circuit court entered a final judgment following a dissolution hearing. The judgment distributed marital assets and liabilities and denied the former wife's request for alimony. The parties appealed and cross-appealed; the district court reversed and remanded because the equitable distribution findings were insufficient and the alimony findings did not satisfy the governing statute.

DISPOSITION

REMAND INSTRUCTIONS

The trial court must create a properly delineated equitable distribution scheme, make specific findings supporting the distribution under section 61.075, make appropriate factual findings regarding alimony under section 61.08, and apply the current version of section 61.08. The court must reconsider the distribution scheme, including alimony, as necessary.

CASES CITED

- Canakaris v. Canakaris, 382 So. 2d 1197, 1202-03 (Fla. 1980)
- Prest v. Tracy, 749 So. 2d 538, 539-40 (Fla. 2d DCA 2000)
- Santiago v. Santiago, 51 So. 3d 637, 638 (Fla. 2d DCA 2011)
- Guobaitis v. Sherrer, 18 So. 3d 28, 33 (Fla. 3d DCA 2009)
- R.A.M. of S. Fla., Inc. v. WCI Cmty., Inc., 869 So. 2d 1210, 1216 (Fla. 2d DCA 2004)

OPINION

Witt v. Witt

74 So. 3d 1127

KHOUZAM, J.

74 So. 3d 1127 (2011)

Paul WITT, Appellant/Cross-Appellee, v. Tonya A. WITT, Appellee/Cross-Appellant. No. 2D10-857. District Court of Appeal of Florida, Second District. November 18, 2011.

*1128 Tarya A. Tribble of Tribble Law Center, P.A., Riverview, for Appellant/Cross-Appellee.

Marina R. Taylor of Marina Taylor, P.A., Riverview, for Appellee/Cross-Appellant. KHOUZAM, Judge. Paul Witt, the Former Husband, and Tonya A. Witt, the Former Wife, timely appeal and cross-appeal the final judgment of dissolution of marriage. Because the equitable distribution scheme created in the final judgment is unclear, we reverse and remand for the trial court to appropriately delineate its equitable distribution scheme. On remand, the trial court shall *1129 also make statutorily required findings regarding alimony. The parties in this case were married on August 17, 2002, and the dissolution of marriage action was filed on November 21, 2005. The final hearing was held on May 6, 2009. The parties stipulated to some facts while others remained in dispute. The appellate record does not contain a transcript of this hearing, though it does contain exhibits introduced at the hearing as well as the final judgment. In the final judgment, the circuit court made findings regarding the equitable distribution of property and debts. This court reviews the circuit court's findings regarding equitable distribution for an abuse of discretion. See Canakaris v. Canakaris, 382 So. 2d 1197, 1202-03 (Fla.1980). Section 61.075, Florida Statutes (2005), governs the distribution of marital assets and liabilities. Subsection (1) requires the court to set apart each spouse's nonmarital assets and liabilities and then distribute the marital assets and

liabilities with the presumption that the distribution be equal. That section also provides various factors that the court may take into account when justifying an unequal distribution. Subsection (3) provides that in any contested dissolution action, regardless of whether the distribution is equal or unequal, the court must make specific written findings to show that the distribution is supported by competent, substantial evidence. The findings must reference the factors listed in subsection (1) as well as subsection (3) of the statute. A final judgment which fails to include the statutory requirements is difficult to review and requires reversal. *Prest v. Tracy*, 749 So. 2d 538, 539 (Fla. 2d DCA 2000). While a trial court has broad discretion to fashion an equitable distribution scheme, it must support its distribution with specific factual findings. See § 61.075(1), Fla. Stat.; *Prest*, 749 So.2d at 539-40; see also *Santiago v. Santiago*, 51 So. 3d 637, 638 (Fla. 2d DCA 2011). Here, the circuit court did not make specific findings regarding several issues. First, the court took testimony and found that the parties' contingent tax liability amounted to \$100,000 without assigning this liability to either of the parties. Second, the court did not include the parties' stipulation regarding the value of the premarital portion of business assets or make clear findings regarding the remaining assets about which the parties disagreed. Regrettably, the final judgment did not delineate the equitable distribution scheme to show what property the court found to be marital, what property it found to be nonmarital, and which party should receive each item as required by section 61.075(1). We must, therefore, reverse the final judgment distributing the parties' marital assets. On remand, the trial court shall make specific findings that support the equitable distribution scheme. *Prest*, 749 So.2d at 539-40. On remand, the trial court also must make factual findings regarding its denial of alimony as required by section 61.08, Florida Statutes (2011). At the time the final judgment in this case was entered, section 61.08 read as follows:

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

(a) The standard of living established during the marriage. (b) The duration of the marriage. (c) The age and the physical and emotional condition of each party. (d) The financial resources of each party, the nonmarital and the marital assets and liabilities distributed to each.

*1130 (e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party. (g) All sources of income available to either party. The court may consider any other factor necessary to do equity and justice between the parties. § 61.08, Fla. Stat. (2009) (emphasis added). Here, the court simply denied the Former Wife's request for alimony because the Former Husband was going to make an equalizing payment and this was a short-term marriage. However, the trial court did not address all of the appropriate factors required by the 2009 statute. Accordingly, we reverse and remand for the court to create a proper equitable distribution scheme in accordance with section 61.075. See *Guobaitis v. Sherrer*, 18 So. 3d 28, 33 (Fla. 3d DCA 2009) ("In light of our holding reversing the

equitable distribution of the parties' marital assets and liabilities and remanding for reconsideration, the trial court shall reconsider the entire distribution scheme, including the award of alimony, both permanent periodic and lump sum; the equitable distribution of the marital assets and liabilities; and child support."'). On remand the court shall also make appropriate findings regarding alimony as required by section 61.08. Because section 61.08 is procedural in nature, on remand the court should apply the current version of the statute. See, e.g., *R.A.M. of S. Fla., Inc. v. WCI Cmtys., Inc.*, 869 So. 2d 1210, 1216 (Fla. 2d DCA 2004). Reversed and remanded with directions. *NORTHCUTT and VILLANTI, JJ., Concur.*