

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

David v. David

58 So. 3d 336 (Fla. 5th DCA 2011) · Decided March 25, 2011

SUMMARY

The Florida Fifth District Court of Appeal reviewed a dissolution-of-marriage judgment involving equitable distribution, valuation of a dental practice, special equity in the marital residence, alimony, life-insurance security, and attorney’s fees. The court affirmed in part but reversed the unequal allocation of marital credit-card debt, the wife’s special-equity award, and the life-insurance requirement, remanding for reconsideration of the overall equitable-distribution scheme.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Palmer, J.; Griffin, J.; Sawaya, J.
JURISDICTION	Florida
DECIDED	March 25, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Husband appealed the final judgment dissolving the parties' marriage and challenging various financial provisions, including equitable distribution, special equity, alimony security, and attorney's fees.
STANDARD OF REVIEW	Abuse of discretion for financial and equitable-distribution decisions; competent substantial evidence for factual support. Preservation principles barred review of the claimed inadequacy of factual findings.
PRECEDENTIAL VALUE	published opinion
PARTIES	Alberto David v. Loretta David

TOPICS

- dissolution of marriage
- equitable distribution
- spousal support
- appellate procedure
- preservation of error

PRACTICE AREAS

- family law
- equitable distribution
- alimony
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court committed reversible error by substantially adopting the wife's proposed final judgment.
2. Whether the husband preserved his challenge to the sufficiency of the final judgment's factual findings.
3. Whether the trial court could order an unequal distribution of marital assets and liabilities when the wife had not specifically pleaded for unequal distribution.
4. Whether disparate earning abilities alone justified assigning the husband 91.6 percent of the marital credit-card debt.
5. Whether the wife was entitled to one-half of the appreciation in the husband's dental practice and whether the evidence supported the valuation.
6. Whether the trial court adequately considered tax consequences in distributing the dental practice.
7. Whether the trial court properly awarded the wife a special-equity interest in the jointly titled marital residence.
8. Whether the permanent periodic alimony award was improper because rehabilitative alimony should have been awarded or the husband could not maintain his lifestyle.
9. Whether the trial court could require the husband to obtain life insurance to secure his alimony obligation without supporting evidence.
10. Whether the award of attorney's fees to the wife was reversible error.

HOLDINGS

1. A trial court's substantial adoption of one party's proposed final judgment is not reversible error where the judgment is not inconsistent with the court's oral rulings and the record does not indicate that the court failed to exercise independent judgment.
2. A party waives appellate review of allegedly inadequate factual findings in a final dissolution judgment by failing to file a motion for rehearing raising the alleged inadequacy in the trial court.
3. A Florida trial court may order an unequal distribution of marital assets and liabilities under section 61.075(1), even when the spouse seeking the unequal distribution did not specifically plead for it in the counterpetition.
4. Disparate earning abilities, without more, cannot justify an unequal distribution of marital assets or liabilities; an unequal distribution requires factual findings supported by evidence establishing a legally sufficient basis, such as misconduct, intentional waste, or depletion of marital assets.
5. A spouse is not entitled to a special-equity interest in jointly titled marital property merely by showing that the spouse contributed nonmarital funds toward its purchase; the spouse must prove that a gift was not intended.
6. A challenge to an award of permanent rather than rehabilitative alimony fails when neither party presented evidence of a rehabilitative plan and the record otherwise supports the permanent award.
7. A trial court may not require a spouse to obtain life insurance securing an alimony obligation without evidence addressing the need for security, the spouse's insurability, the cost of insurance, and the

spouse's ability to afford it.

8. The husband was barred from challenging the attorney's-fee award where his proposed final judgment expressly provided that he would pay the wife's reasonable attorney's fees and costs; in any event, competent evidence supported the award.

KEY QUOTATIONS

“However, disparate earning abilities cannot, without more, justify unequal distribution of marital assets and liabilities.” (at 338)

“Importantly, standing alone, evidence that one spouse provided non-marital funds to purchase a marital home is insufficient to prove that the spouse did not intend a gift.” (at 339)

“Neither party presented any evidence concerning the need to secure the alimony obligation, the husband’s insurability, the cost of the proposed insurance, or the husband’s ability to afford the insurance.” (at 340)

FACTUAL BACKGROUND

The parties' marriage had no children, and the issues tried were financial. The trial court unequally allocated marital credit-card debt, assigning the husband 91.6 percent based on the parties' earning abilities, awarded the wife a special-equity interest in jointly titled marital real property, awarded permanent periodic alimony, and required the husband to obtain life insurance securing the alimony obligation. The record showed no evidence concerning the need for alimony security, the husband's insurability, the insurance cost, or his ability to afford the policy; it also showed no evidence that the wife's use of nonmarital funds to purchase the jointly titled home was not intended as a gift.

PROCEDURAL HISTORY

The husband petitioned to dissolve the marriage, and the wife filed a counterpetition. After a trial involving only financial issues because there were no children of the marriage, the trial court entered a 32-page final dissolution judgment. The Fifth District affirmed in part, reversed in part, and remanded for reconsideration of specified financial provisions and the overall equitable distribution scheme.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reconsider the distribution of the marital credit-card debt, remove the special-equity award to the wife, remove the life-insurance requirement securing alimony, and revisit the entire equitable-distribution scheme to determine a fair and just distribution of assets and liabilities in light of the opinion.

CASES CITED

- Ross v. Botha, 867 So. 2d 567 (Fla. 4th DCA 2004)
- Mathieu v. Mathieu, 877 So. 2d 740 (Fla. 5th DCA 2004)

- Belford v. Belford, 51 So. 3d 1259 (Fla. 2d DCA 2011)
- Santiago v. Santiago, 51 So. 3d 637 (Fla. 2d DCA 2011)
- Jonsson v. Jonsson, 715 So. 2d 1064 (Fla. 5th DCA 1998)
- Dease v. Dease, 688 So. 2d 454 (Fla. 5th DCA 1997)
- Zangari v. Cunningham, 839 So. 2d 918 (Fla. 2d DCA 2003)
- Robertson v. Robertson, 593 So. 2d 491 (Fla. 1991)
- Cintron v. King, 961 So. 2d 1010 (Fla. 4th DCA 2007)
- Garcia v. Hernandez, 947 So. 2d 657 (Fla. 3d DCA 2007)
- Lovell v. Lovell, 14 So. 3d 1111 (Fla. 5th DCA 2009)
- Rashid v. Rashid, 35 So. 3d 992 (Fla. 5th DCA 2010)
- Child v. Child, 34 So. 3d 159 (Fla. 3d DCA 2010)
- Noah v. Noah, 491 So. 2d 1124 (Fla. 1986)
- Van Den Berg v. Van Den Berg, 49 So. 3d 283 (Fla. 5th DCA 2010)