

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Alvarez-Reyes v. Fernandez-Gil

271 So. 3d 70 (Fla. 3d DCA 2019) · No. 3D17-2676 · Decided February 6, 2019

SUMMARY

The Florida Third District Court of Appeal affirmed a final judgment dissolving the marriage of Nelson Alvarez-Reyes and Idia Fernandez-Gil. The court upheld the trial court’s findings of voluntary underemployment, imputation of income, and its award of permanent periodic alimony, concluding that the judgment was supported by competent substantial evidence and did not constitute an abuse of discretion.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Chief Judge Ivan F. Fernandez; Judge Thomas Logue Salter; Judge Ivan F. Fernandez
JURISDICTION	Florida
DECIDED	February 6, 2019
DOCKET	3D17-2676
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nelson Alvarez-Reyes appealed a final judgment dissolving his marriage to Idia Fernandez-Gil, challenging the trial court's imputation of income and award of permanent periodic alimony.
STANDARD OF REVIEW	The imputation-of-income determinations were reviewed for competent substantial evidence. The award of permanent periodic alimony was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Nelson Alvarez-Reyes v. Idia Fernandez-Gil

TOPICS

- dissolution of marriage
- alimony
- spousal support
- appellate procedure
- standard of review

PRACTICE AREAS

- Family law
- Dissolution of marriage
- Alimony
- Appellate procedure

QUESTIONS PRESENTED

1. Whether competent substantial evidence supported the trial court's finding that Alvarez-Reyes was voluntarily underemployed and its resulting imputation of income.
2. Whether the trial court abused its discretion in awarding Fernandez-Gil permanent periodic alimony after considering the statutory factors, the parties' respective need and ability to pay, and the stated bases for the award.

HOLDINGS

1. A trial court may impute income to a spouse found to be voluntarily unemployed or underemployed based on the spouse's demonstrated earning capacity, and the imputation determination will be upheld when supported by competent substantial evidence.
2. The trial court did not abuse its discretion in awarding permanent periodic alimony where it considered the statutory factors, weighed the recipient spouse's need against the payor spouse's ability to pay, and articulated the bases for its determination.

KEY QUOTATIONS

“It is well settled that a trial court, who has made a finding that a party is voluntarily unemployed or underemployed, may properly impute income to that party based upon that party’s demonstrated earning capacity” (271 So. 3d at 71)

“Permanent periodic alimony is used to provide the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties. The two primary elements to be considered when determining permanent periodic alimony are the needs of one spouse for the funds and the ability of the other spouse to provide the necessary funds.” (271 So. 3d at 72)

FACTUAL BACKGROUND

The trial court determined that Alvarez-Reyes was voluntarily underemployed and imputed income based on his demonstrated earning capacity. It awarded Fernandez-Gil permanent periodic alimony after considering her need, Alvarez-Reyes's ability to pay, and the statutory factors governing alimony. The appellate record contained competent substantial evidence supporting the trial court's determinations.

PROCEDURAL HISTORY

The Circuit Court for Miami-Dade County entered a final judgment of dissolution of marriage. The trial court found Alvarez-Reyes voluntarily underemployed, imputed income to him, and awarded Fernandez-Gil permanent periodic alimony. The Third District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Cochran v. Cochran, 819 So. 2d 863, 864 (Fla. 3d DCA 2002)
- Arouza v. Arouza, 670 So. 2d 69, 71 (Fla. 3d DCA 1995)
- Gillette v. Gillette, 226 So. 3d 958, 961 (Fla. 4th DCA 2017)
- Manfre v. Manfre, 189 So. 3d 197, 201 (Fla. 4th DCA 2016)
- Smith v. Smith, 737 So. 2d 641, 644 (Fla. 1st DCA 1999)
- Mata v. Mata, 185 So. 3d 1271, 1272-73 (Fla. 3d DCA 2016)
- Maddux v. Maddux, 495 So. 2d 863, 864 (Fla. 4th DCA 1986)
- Canakaris v. Canakaris, 382 So. 2d 1197, 1201 (Fla. 1980)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed February 6, 2019. Not final until disposition of timely filed motion for rehearing. _____ No. 3D17-2676 Lower Tribunal No. 14-21488 _____ Nelson Alvarez-Reyes, Appellant, vs. Idia Fernandez-Gil, Appellee. An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

Law Offices of Kenneth M. Kaplan and Kenneth M. Kaplan, for appellant. Nancy A. Hass, P.A., and Nancy A. Hass (Fort Lauderdale), for appellee. Before EMAS, C.J., and SALTER and FERNANDEZ, JJ. PER CURIAM. Nelson Alvarez-Reyes appeals a final judgment of dissolution of his marriage to Idia Fernandez-Gil.

We affirm. The record contains competent substantial evidence to support the trial court's determinations regarding Alvarez-Reyes' voluntary underemployment and imputation of income. See Cochran v. Cochran, 819 So. 2d 863, 864 (Fla. 3d DCA 2002) (holding: "It is well settled that a trial court, who has made a finding that a party is voluntarily unemployed or underemployed, may properly impute income to that party based upon that party's demonstrated earning capacity") (quoting Arouza v. Arouza, 670 So.

2d 69, 71 (Fla. 3d DCA 1995)); Gillette v. Gillette, 226 So. 3d 958, 961 (Fla. 4th DCA 2017) (describing the two-step process: "First, the court must conclude the termination of income was voluntary. Second, 'the court must determine whether the subsequent unemployment resulted from the spouse's pursuit of his own interests or through less than diligent and bona fide efforts to find employment paying income at a level equal to or better than that formerly received'") (internal citations omitted); Manfre v. Manfre, 189 So.

3d 197, 201 (Fla. 4th DCA 2016); Smith v. Smith, 737 So. 2d 641, 644 (Fla. 1st DCA 1999) (noting: "A trial court can impute income where a spouse has failed to use his or her best efforts to earn income" and "we shall not disturb any [such] ruling that is supported by the evidence and satisfies the general test of reasonableness"). See also Mata v. Mata, 185 So.

3d 1271, 1272-73 (Fla. 3d DCA 2016) (noting: “The Florida Supreme 2 Court and other district courts have suggested that a presumption arises from a spouse’s historical earnings that supports a finding the spouse can continue to earn the same amount, absent evidence to the contrary”) (internal citations omitted); *Maddux v. Maddux*, 495 So. 2d 863, 864 (Fla. 4th DCA 1986) (holding: “Where a former husband has an ability to earn if he so desires, the trial judge may impute an income to the husband according to what he could earn by the use of his best efforts to gain employment equal to his capabilities, and on that basis enter an award of alimony as if the husband were in fact earning the income so imputed).

We likewise affirm the trial court’s award of permanent periodic alimony to Fernandez-Gil, which we review for an abuse of discretion. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1201 (Fla. 1980) (holding: “Permanent periodic alimony is used to provide the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties.

The two primary elements to be considered when determining permanent periodic alimony are the needs of one spouse for the funds and the ability of the other spouse to provide the necessary funds.”) The final judgment evidences that the trial court thoughtfully considered and addressed each of the statutory factors enumerated in section 61.08(2)(a)-(j), Florida Statutes (2017), weighed Fernandez-Gil’s need and Alvarez-Reyes’ ability 3 to pay, and articulated the bases for its determinations.

We find no abuse of discretion.¹ Affirmed. 1 We find no merit in the other issues raised on appeal and affirm without further discussion. 4