

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Lally v. Raber

No. 2D2025-1414 (Fla. 2d DCA May 13, 2026) · No. No. 2D2025-1414 · Decided May 13, 2026

SUMMARY

The Florida Second District Court of Appeal reverses an amended judgment modifying the parties' parenting plan and denying the appellant's request for attorney's fees. The court holds that the trial court failed to make adequate written best-interests findings under section 61.13 and failed to make required findings regarding the parties' relative financial needs and abilities under section 61.16. The case is remanded for the required findings, while the judgment is affirmed in all other respects.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Rothstein-Youakim; Kelly; Smith
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	May 13, 2026
DOCKET	No. 2D2025-1414
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lally appealed an amended judgment modifying the parenting plan and summarily denying her request for attorney's fees.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review.
PRECEDENTIAL VALUE	Published Florida Second District Court of Appeal opinion
PARTIES	Marissa D. Lally v. Wesley D. Raber

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review
- remedies

PRACTICE AREAS

- family law
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the amended judgment sufficiently stated written findings under section 61.13(2)(c)1 and (3), Florida Statutes, to support the ordered parenting-plan modification and timesharing arrangement.
2. Whether the trial court could deny Lally's request for attorney's fees under section 61.16 without making findings regarding the parties' relative financial needs and abilities.
3. Whether Lally was required to prove the existence of separate proceedings against Raber to rebut the presumption of equal timesharing under section 61.13(2)(c)1.

HOLDINGS

1. When modifying a parenting plan and timesharing schedule, the trial court must make adequate written best-interests findings under section 61.13(2)(c)1 and (3), Florida Statutes, sufficient to permit meaningful appellate review. Because the amended judgment lacked those findings, the parenting-plan modification had to be reversed and remanded.
2. A trial court may not deny a request for attorney's fees under section 61.16 without making findings regarding the parties' relative financial needs and abilities to pay.
3. Under section 61.13(2)(c)2, Lally was not required to prove the existence of separate proceedings against Raber in order to rebut the presumption of equal timesharing under section 61.13(2)(c)1.

KEY QUOTATIONS

“because the record does not contain adequate factual findings for this court to conduct meaningful appellate review of the parental time-sharing schedule, we reverse the amended parenting plan and remand for the trial court to make the necessary factual findings.” (2)

“To adhere to the statute’s purpose, ‘[the trial] court cannot deny attorney’s fees and costs under section 61.16 without making any findings as to the parties’ relative financial needs and abilities.’” (2-3)

“The trial court cannot deny a request for attorney’s fees under section 61.16 without making findings as to one party’s ability to pay an award of fees and the other party’s need for the payment of fees.” (3)

FACTUAL BACKGROUND

The parties are former spouses with a minor child, A.R. After an evidentiary hearing, the trial court found a substantial and material unanticipated change in circumstances warranting modification of the parenting plan, but ordered continued joint therapy between Raber and A.R. despite extensive testimony that the therapy was contributing to A.R.'s emotional decline. The trial court denied Lally's request for attorney's fees without making findings regarding the parties' relative financial needs and abilities.

PROCEDURAL HISTORY

The Circuit Court for Sarasota County granted Lally's petition to modify the parenting plan but ordered continued joint therapy between Raber and the parties' minor child. The trial court also denied Lally's request for attorney's fees without explanation. The Second District reversed as to the parenting-plan modification and fees, affirmed in all other respects, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must make the required written best-interests findings under section 61.13(2)(c)1 and (3), determine whether the existing record is sufficient or additional evidence is needed, and make findings under section 61.16 before deciding Lally's request for attorney's fees. The court must also apply the clarification that Lally need not prove separate proceedings against Raber to rebut the equal-timesharing presumption.

CASES CITED

- Brown v. Brown, 239 So. 3d 1271, 1272 (Fla. 2d DCA 2018)
- Allen v. Juul, 278 So. 3d 783, 785 (Fla. 2d DCA 2019)
- Phillips v. Phillips, 264 So. 3d 1129, 1131 (Fla. 2d DCA 2019)
- Gudur v. Gudur, 277 So. 3d 687, 693-94 (Fla. 2d DCA 2019)

OPINION

Lally v. Raber

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

MARISSA D. LALLY,

Appellant, v.

WESLEY D. RABER,

Appellee. No. 2D2025-1414 May 13, 2026 Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Sarasota County; Maria Ruhl, Judge. Dulce B. Fazel of Dulce B. Fazel, P.A., Phoenix, Arizona, for Appellant. Luke Lirot and Rachel Ricks of Luke Charles Lirot, P.A., Clearwater, for Appellee. ROTHSTEIN-YOUAKIM, Judge. Marissa Lally appeals an amended judgment modifying the parenting plan between her and her former husband, Wesley Raber. The modification concerns timesharing with their minor child, A.R. Lally also challenges the trial court's summary denial of her request for attorney's fees. We reverse the amended judgment as to both issues. After an evidentiary hearing, the trial court granted Lally's petition to modify the parenting plan, but it did not grant Lally the full relief that she requested. Rather, it ordered continued joint therapy between Raber and A.R., notwithstanding extensive testimony that the therapy was contributing to A.R.'s emotional decline.¹ Lally contends that although the trial court correctly found a substantial and material unanticipated change in circumstances warranting modification, it did not make adequate written "best interests" findings under section 61.13(2)(c)1 and (3), Florida Statutes (2024), to support the relief that it ordered. We agree and therefore

reverse and remand for the court to make those required findings. See *Brown v. Brown*, 239 So. 3d 1271, 1272 (Fla. 2d DCA 2018) ("[B]ecause the record does not contain adequate factual findings for this court to conduct meaningful appellate review of the parental time-sharing schedule, we reverse the amended parenting plan and remand for the trial court to make the necessary factual findings."). We leave it to the trial court to determine whether the current record is sufficient or whether additional evidence is needed.² Although the parties noted at the hearing that they were reserving for another time their evidentiary presentations regarding attorneys' fees, the trial court denied Lally's request for fees without explanation in the amended judgment. That was error. See § 61.16(1), Fla. Stat. (permitting fees in modification proceedings); *Allen v. Juul*, 278 So. 3d 783, 785 (Fla. 2d DCA 2019) ("To adhere to the statute's purpose, '[the trial] court cannot deny attorney's fees and costs under section 61.16 1 There was, however, also some testimony suggesting that her decline could be due to other causes. 2 It is unclear from the amended judgment whether the trial court believed that Lally was required to prove the existence of separate proceedings against Raber for his alleged conduct if Lally wished to rebut section 61.13(2)(c)1's presumption of equal timesharing. For the court's benefit on remand, we note that under section 61.13(2)(c)2, Lally was not required to prove the existence of such proceedings. 2 without making any findings as to the parties' relative financial needs and abilities.' " (alteration in original) (quoting *Phillips v. Phillips*, 264 So. 3d 1129, 1131 (Fla. 2d DCA 2019))); *Gudur v. Gudur*, 277 So. 3d 687, 693–94 (Fla. 2d DCA 2019) ("As to attorney's fees, the trial court ordered that '[e]ach party shall pay his/her own attorney's fees.' The trial court cannot deny a request for attorney's fees under section 61.16 without making findings as to one party's ability to pay an award of fees and the other party's need for the payment of fees."). Thus, we also reverse and remand for the trial court to make findings under section 61.16 before deciding Lally's request for fees. We express no opinion, however, on whether Lally is entitled to fees. In all other respects, we affirm the amended judgment without further comment. Affirmed in part; reversed in part; remanded with instructions. KELLY and SMITH, JJ., Concur. Opinion subject to revision prior to official publication. 3