

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT**

Don Du Perault v. Tatiana Du Perault

270 So. 3d 424 (Fla. 4th DCA 2019) · No. No. 4D18-1226 · Decided May 1, 2019

SUMMARY

The Florida Fourth District Court of Appeal reviewed a final judgment of dissolution concerning the valuation of marital assets and an attorneys' fee provision for future enforcement proceedings. The court affirmed the asset valuation without comment but reversed and remanded the enforcement-fee provision because it did not account for the parties' need and ability to pay under section 61.16, Florida Statutes.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Elizabeth A. Metzger; Robert M. Gerber; Jonathan D. Conner
JURISDICTION	Florida
DECIDED	May 1, 2019
DOCKET	No. 4D18-1226
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Husband appealed the final judgment of dissolution, challenging the valuation of certain marital assets and the inclusion of an attorneys' fee provision governing future enforcement actions.
PRECEDENTIAL VALUE	published
PARTIES	Don Du Perault v. Tatiana Du Perault

TOPICS

dissolution of marriage family law procedure remedies appellate procedure equitable distribution

PRACTICE AREAS

family law appellate procedure attorneys' fees dissolution of marriage

QUESTIONS PRESENTED

1. Whether the trial court properly valued certain marital assets in the final judgment of dissolution.

2. Whether the trial court could include in the final judgment a prospective attorneys' fee provision for future enforcement proceedings without considering the parties' need and ability to pay.

HOLDINGS

1. A final judgment of dissolution may not impose a prospective attorneys' fee obligation for future enforcement proceedings without accounting for the parties' need and ability to pay as required by section 61.16, Florida Statutes.
2. The trial court's determination regarding the value of certain marital assets was affirmed.

KEY QUOTATIONS

“Entitlement to fees, pursuant to section 61.16, requires inquiry into the parties’ need and ability to pay.”
(270 So. 3d at 424)

“the financial resources of the parties are the primary factor to be considered.” (270 So. 3d at 424)

“Affirmed in part; reversed in part; and remanded for further proceedings consistent with this opinion.” (270 So. 3d at 424)

FACTUAL BACKGROUND

The parties were involved in a dissolution-of-marriage proceeding in which the trial court valued certain marital assets. The final judgment also addressed attorneys' fees and required each party to pay its own fees for the initial proceeding, while imposing future enforcement fees on a party that failed to comply with the judgment or parenting plan. The appellate court determined that this prospective fee provision did not account for the parties' need and ability to pay.

PROCEDURAL HISTORY

After a final hearing on the Husband's petition for dissolution of marriage, the circuit court entered a final judgment of dissolution. The judgment required each party to pay its own attorneys' fees for the initial proceeding but provided that a party defaulting on the judgment or parenting plan would be liable for the other party's fees and costs incurred in enforcement. The Fourth District affirmed the asset valuation without comment, reversed the future-enforcement fee provision, and remanded for correction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court to correct the enforcement attorneys' fee provision in the final judgment in a manner consistent with section 61.16 and the parties' need and ability to pay.

CASES CITED

- Powers v. Powers, 193 So. 3d 1047, 1048 (Fla. 2d DCA 2016)

- *Rosen v. Rosen*, 696 So. 2d 697, 700 (Fla. 1997)
- *Griffin v. Griffin*, 276 So. 2d 211, 212-13 (Fla. 4th DCA 1973)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT DON DU PERAULT, Appellant, v. TATIANA DU PERAULT, Appellee. No. 4D18-1226 [May 1, 2019] Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Kathleen Kroll, Judge; L.T. Case No. 50-2016-DR-007756- XXXX-NB. Troy W. Klein of the Law Office of Troy W. Klein, P.A., West Palm Beach, for appellant.

Mark C. A. Jennings of Mark C. A. Jennings & Associates LLC, Atlanta, Georgia, for appellee. METZGER, ELIZABETH A., Associate Judge. Don Du Perault (“Husband”) appeals the trial court’s final judgment of dissolution. Specifically, the Husband appeals the court’s value determination pertaining to certain marital assets within the final judgment.

The Husband also appeals the attorneys’ fee provision applicable to future enforcement actions contained within the final judgment. We affirm the court’s determination regarding the value of certain assets without comment.

However, we reverse the court’s inclusion of an attorneys’ fee provision within the final judgment for future enforcement actions. After a final hearing on the Husband’s petition for dissolution of marriage, the trial court entered its final judgment of dissolution.

The judgment addressed attorneys’ fees, noting each party was to “pay their own attorneys’ fees incurred in this initial proceeding.” The judgment went on to state “in the event either party seeks enforcement of this Final Judgment or Parenting Plan for the other party’s failure to comply, the defaulting party shall be liable to the non-defaulting party for all fees and costs incurred as a result of the default and enforcement of same.” Section 61.16, Florida Statutes (2018), governs the issue of entitlement to attorney’s fees in postdissolution enforcement proceedings.

Powers v. Powers, 193 So. 3d 1047, 1048 (Fla. 2d DCA 2016). Entitlement to fees, pursuant to section 61.16, requires inquiry into the parties’ need and ability to pay. *Id.* Other relevant factors may be considered in assessing fees, however, “the financial resources of the parties are the primary factor to be considered.” *Rosen v. Rosen*, 696 So. 2d 697, 700 (Fla.

1997). In this case, because the final judgment contained a fee provision for future enforcement actions which failed to account for the parties’ need and ability to pay, we reverse and remand to the trial court for correction of the enforcement fee provision within the final judgment. See *Griffin v. Griffin*, 276 So. 2d 211, 212–13 (Fla. 4th DCA 1973). Affirmed in part; reversed in part; and remanded for further proceedings consistent with this opinion.

GERBER, C.J., and CONNER, J., concur. * * * Not final until disposition of timely filed motion for rehearing. 2

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