IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RICHARD KEITH HAYWALD,

Appellant,

v.

DENISE MICHELLE FOUGERE,

Appellee.

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NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D14-5447

Opinion filed May 28, 2015.

An appeal from the Circuit Court for Santa Rosa County.
David Rimmer, Judge.

Richard Keith Haywald, pro se, for Appellant.

Michael T. Webster, Shalimar, for Appellee.

PER CURIAM.

Appellant raises five issues on appeal. We find merit in only one, and otherwise affirm the final judgment of dissolution without comment. But as to Appellant's argument the trial court erred in awarding Appellee attorneys' fees, we agree with Appellant.

It is an abuse of discretion to grant fees where both parties are equally able to pay their own. Galligar v. Galligar, 77 So. 3d 808, 812-13 (Fla. 1st DCA 2011). Equalizing income through an alimony award and then awarding fees is an abuse of discretion. Galligar v. Galligar, 77 So. 3d 808, 812-13 (Fla. 1st DCA 2011) (finding abuse of discretion in award of fees where husband had $5500 per month salary and paid wife $3500 in alimony, on top of wife's $1033 net monthly income; husband was in no better position to pay attorneys' fees than the wife); see also Gaudette v. Gaudette, 890 So. 2d 1161, 1162 (Fla. 5th DCA 2004).

The court's job is to determine whether one party has a need and the other has the ability to pay. In this regard, Appellant is paying significant sums between alimony and child support. For sure, these sums need not be *added* to Appellee's resources to cover attorney's fees. But the sums must be *deducted* from Appellant's ability to pay; Appellant no longer has these funds available within his resources. Thus, properly considered, the parties' relative abilities to pay attorneys' fees are essentially equal and an award of fees was an abuse of discretion.

Accordingly, we REVERSE the court's award of attorneys' fees.

CLARK, J., CONCURS; BENTON, J., CONCURS IN RESULT, and MAKAR, J., DISSENTS WITH OPINION.

MAKAR, J., dissenting.

The partial award of attorney's fees and costs to the former wife was justified where the former husband has a college degree and certification, a stable job in which he makes $4000 more monthly than the former wife (who doesn't have a degree and spent most of her time raising the family's two kids). See Rosen v. Rosen, 696 So. 2d 697, 701 (Fla. 1997) ("a court may consider all the circumstances surrounding the suit in awarding fees under section 61.16[, Fla. Stat.]"). Though she is getting durational alimony of $500 monthly for five years, drawing her monthly income closer to that of the husband for this limited time period, nothing in the record suggests the trial court was attempting to equalize the former spouses income; indeed, absent her being able to significantly increase her own personal earnings in five years, her income will fall further below that of the former husband in the future. Child support is not "income" to the mom for purposes of paying attorney's fees—she has an obligation to spend it solely on the kids. See, e.g., Wilkerson v. Wilkerson, 717 So. 2d 1118, 1119 (Fla. 1st DCA 1998) (reversing award of attorney's fees that would force wife "to pay her attorneys from the support award"). Under these circumstances, the trial court's conclusion that the former husband "has the better ability to pay" a portion of the attorney's fees sought by the former wife ($6500 of $14,787.88 requested) was reasonable. See Canakaris v. Canakaris, 382 So. 2d 1197, 1203-05 (Fla. 1980). But

the trial court did not explain how the $6500 was calculated as is required. See Ingram v. Ingram, 59 So. 3d 147, 148 (Fla. 1st DCA 2011) (trial court must "set forth specific findings regarding the hourly rate, the number of hours reasonably expended, and the appropriateness of the reduction or enhancement factors") (citing Fla. Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985)). A remand requiring the trial court to specify how the amount of fees awarded was calculated is all that is required. See Hamlin v. Hamlin, 722 So. 2d 851, 852 (Fla. 1st DCA 1998) ("The lack of findings constitutes reversible error, even if there is competent, substantial evidence to support the award.").