

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

ARTHUR COLLIN CHERRY,

Appellant,

v.

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

CASE NO. 1D16-689

KATHERINE HIETT VIKER,

Appellee.

Opinion filed September 6, 2016.

An appeal from the Circuit Court for Leon County.
Robert Wheeler, Judge.

M. Stephen Stanfield, Gainesville, for Appellant.

Emilian "Ian" Bucataru, Tallahassee, for Appellee.

PER CURIAM.

In this appeal of a non-final order awarding temporary attorney's fees and suit money to Appellee in a child support and custody case, Appellant contends that the trial court's order is not supported by competent, substantial evidence. We agree to the extent that the trial court's findings regarding the parties' financial

resources are not supported by the evidence because only argument of counsel – and no evidence – was presented at the hearing below. Thus, the court could not have properly determined the need of the party seeking fees or the ability of the other party to pay. See Giovanini v. Giovanini, 89 So. 3d 280, 282 (Fla. 1st DCA 2012) (“An award of attorney’s fees pursuant to section 61.16 must be based on the need of the party seeking the fees and the ability of the other party to pay the fees.”). Accordingly, we reverse and remand for a new hearing. See Baker v. Baker, 35 So. 3d 76, 77-78 (Fla. 2d DCA 2010) (reversing and remanding an award of temporary fees where party seeking fee award failed to produce evidence to support the award because “a temporary award does not create vested rights”). By this disposition, we expressly decline to reach the issue of whether the record supports the amounts of suit money and attorney’s fees awarded by the trial court.

REVERSED AND REMANDED.

LEWIS, WETHERELL, and RAY, JJ., CONCUR.