

H

Murray v. Murray
Fla.App. 3 Dist.,2001.

District Court of Appeal of Florida,Third District.

John MURRAY, Appellant,

v.

Nancy Simon MURRAY, Appellee.

Nos. 3D00-1948, 3D00-3150.

Nov. 21, 2001.

After the Circuit Court, Miami Dade County, [Maxine Cohen Lando](#), J., entered judgment dissolving the parties' marriage, both sides appealed. The District Court of Appeal, [Sorondo](#), J., held that: (1) amount of husband's temporary alimony payment should not have been subtracted from monthly income for purposes of determining net monthly income from which permanent alimony would be based; (2) trial court should have made automobile payment wife's responsibility rather than deduct it from permanent alimony; (3) wife was entitled to award of attorney fees; and (4) trial court's consideration of equitable distribution award in denying attorney fees award was inappropriate.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Divorce 134  **287****134** Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k278](#) Appeal

[134k287](#) k. Determination and Disposition of Questions. [Most Cited Cases](#)

Amount of husband's temporary alimony payment should not have been subtracted from monthly income for purposes of determining net monthly income upon which permanent alimony would be based, and thus reversal and remand for recalculation was required.

[2] Divorce 134  **239****134** Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k230](#) Permanent Alimony

[134k239](#) k. Application and Proceedings Thereon. [Most Cited Cases](#)

Rather than reduce wife's permanent monthly alimony obligation by amount that husband was temporarily paying on monthly basis for wife's automobile, trial court should have made no deduction for automobile payment, and should have made automobile payment wife's obligation, so that when automobile debt was paid off, wife would not be forced to return to court to have that amount added to alimony.

[3] Divorce 134  **224****134** Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k220](#) Allowance for Counsel Fees and Expenses

[134k224](#) k. Grounds. [Most Cited Cases](#)

Divorce 134  **225****134** Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k220](#) Allowance for Counsel Fees and Expenses

[134k225](#) k. Defenses and Objections. [Most Cited Cases](#)

Award of fees in a dissolution matter is a matter of determining one party's needs and the other party's ability to pay. [West's F.S.A. § 61.16\(1\)](#).

[4] Divorce 134  **221****134** Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k220](#) Allowance for Counsel Fees and Expenses

[134k221](#) k. In General. [Most Cited Cases](#)

Purpose of the statute allowing attorney fees awards in dissolution matters is to ensure that both parties will have a similar ability to obtain competent legal counsel. [West's F.S.A. § 61.16](#).

[5] Divorce 134  **226****134** Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k220](#) Allowance for Counsel Fees and Expenses

[134k226](#) k. Application and Proceedings Thereon. [Most Cited Cases](#)

Wife was entitled to award of attorney fees in dissolution action, where husband's income far exceeded wife's earnings during same period, as well as ability to earn in future, and, for six years preceding divorce, husband earned \$429,301, \$497,783, \$678,618, \$732,346, \$567,573, and \$661,139. [West's F.S.A. § 61.16\(1\)](#).

[6] Divorce 134 ↪ 224

[134](#) Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k220](#) Allowance for Counsel Fees and Expenses

[134k224](#) k. Grounds. [Most Cited Cases](#)

Trial court's consideration of wife's share of equitable distribution in denying wife's motion for attorney fees in dissolution action was inappropriate, given that substantial part of equitable distribution was equity in marital home, and very significant amount of fees and costs would seriously erode wife's share of marital estate. [West's F.S.A. § 61.16\(1\)](#).

[7] Divorce 134 ↪ 224

[134](#) Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k220](#) Allowance for Counsel Fees and Expenses

[134k224](#) k. Grounds. [Most Cited Cases](#)

Divorce 134 ↪ 225

[134](#) Divorce

[134V](#) Alimony, Allowances, and Disposition of Property

[134k220](#) Allowance for Counsel Fees and Expenses

[134k225](#) k. Defenses and Objections. [Most Cited Cases](#)

It is not necessary that one spouse be completely unable to pay attorney's fees for the trial court to require the other spouse to pay those fees, or, in other words, to ensure that both parties have similar access to competent legal counsel, the trial court must look to each spouse's need for suit money versus each spouse's respective ability to pay.

[West's F.S.A. § 61.16](#).

[Melvyn B. Frumkes](#), Miami; [Cynthia L. Greene](#), Miami, for appellant.

[Lauri Waldman Ross](#), Miami, for appellee.

Before [SCHWARTZ](#), C.J., and [FLETCHER](#) and [SORONDO](#), JJ.

[SORONDO](#), J.

John Murray appeals a final judgment of dissolution of marriage with respect to the trial court's permanent alimony award to Nancy Simon Murray, his former wife. Mrs. Murray cross-appeals the amount of alimony awarded, arguing that the lower court erred in its calculations by failing to include Mr. Murray's bonuses in the equation and by mistaking his net and gross income.

We find no abuse of discretion in the lower court's decision to award permanent *1031 alimony to Mrs. Murray and affirm. [FN1](#) We do, however, agree with Mrs. Murray that the trial judge erred in both the calculation of the award and the denial of attorney's fees and costs. Accordingly, we reverse on the cross-appeal.

[FN1](#). We also find no merit in Mr. Murray's second issue in this appeal.

[\[1\]](#) In her Final Judgment, the trial judge determined that "[Mr. Murray's] gross monthly income is \$16,000." Although the court acknowledged in a footnote that Mr. Murray had received additional bonuses at the end of the year, specifically noting that his 1999 bonus was \$192,000, we do not find that this additional income was properly considered.

[\[2\]](#) In a financial affidavit filed by Mr. Murray in January of 2000, he indicated that his monthly gross income, including his bonus, was \$35,833. In reaching a net figure, Mr. Murray properly subtracted payments for monthly federal income taxes, FICA, Medicare and health insurance payments, a total of \$12,370. He improperly subtracted \$7,000 he was paying in court ordered alimony payments in this case. Using these numbers, Mr. Murray reported a net income of \$16,463. The \$16,000 round figure used by the trial judge represented Mr. Murray's monthly net and not his gross as indicated in the Final Judgment. As indicated above, the \$7,000 he was paying as alimony in the present case should not have been excluded from his net income when calculating his permanent alimony

obligations. We therefore conclude that his net monthly income was \$23,463, and remand for a calculation of the necessary upward adjustment in Mrs. Murray's alimony award.^{FN2}

^{FN2}. The trial judge reduced Mr. Murray's *permanent* monthly alimony obligation by the amount he was then *temporarily* paying on a monthly basis for Mrs. Murray's automobile. Under this scenario, when the car debt is payed off in the very near future, Mrs. Murray will be forced to return to court to have that amount added to her alimony. On remand, the trial judge will recalculate the appropriate permanent alimony given the net income indicated above. No deduction will be made for the automobile in question. The automobile debt will then be the responsibility of Mrs. Murray.

^{[3][4][5]} Mrs. Murray further cross-appeals the lower court's denial of her motion for statutory attorney's fees and costs. "The award of fees is a matter of determining one party's needs and the other party's ability to pay." *Abraham v. Abraham*, 753 So.2d 625 (Fla. 3d DCA 2000); § 61.16(1), Fla. Stat. (1997). The purpose of section 61.16 is to ensure that both parties will have a similar ability to obtain competent legal counsel. *Rosen v. Rosen*, 696 So.2d 697, 699 (Fla.1997). The record demonstrates that Mr. Murray's earning ability is infinitely greater than Mrs. Murray's. His total wages for the years of 1994 through 1999 were the following:

1994-\$429,
301

1995-\$497,
783

1996-\$678,
618

1997-\$732,
346

1998-\$567,
573

1999-\$661,
139

[6][7] This income far exceeds Mrs. Murray's earnings during the same period, as well as her ability to earn in the future. The trial court's consideration of Mrs. Murray's share of the equitable distribution in denying the motion was inappropriate. A substantial part of the equitable distribution is the equity in the marital home, the very significant amount of fees and costs in this case will seriously erode her share of the marital estate. In *Rosen*, the Florida Supreme Court said:

In *Canakaris [v. Canakaris, 382 So.2d 1197 (Fla.1980)]*, we noted that it is not necessary that one spouse be completely unable to pay attorney's fees for the trial court to require the other spouse to pay those fees. In other words, to ensure*1032 that both parties have similar access to competent legal counsel, the trial court must look to each spouse's need for suit money versus each spouse's respective ability to pay.

Id. We hold that the denial of Mrs. Murray's motion was an abuse of discretion and reverse. On remand, the trial court will grant her motion.

Affirmed in part; reversed in part, and remanded with directions.

Fla.App. 3 Dist.,2001.
Murray v. Murray
826 So.2d 1029, 26 Fla. L. Weekly D2753

END OF DOCUMENT