NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

BARBARA G. JUDY, Appellant/Cross-Appellee, v. MICHAEL W. JUDY, Appellee/Cross-Appellant.	)	Case No. 2D18-1566

Opinion filed March 4, 2020.

Appeal from the Circuit Court for Manatee County; Susan B. Maulucci, Judge.

Thomas A. Burns and Arda Goker of Burns, P.A., Tampa, for Appellant/Cross-Appellee.

E. Blake Melhuish of E. Blake Melhuish, P.A., Bradenton, for Appellee/Cross-Appellant.

SMITH, Judge.

Barbara Judy (Former Wife) seeks review of the trial court's order granting Michael W. Judy's (Former Husband) supplemental petition for a downward modification of durational alimony, previously agreed to in the parties' mediated marital settlement agreement (MSA). The Former Husband cross-appeals the reduced alimony award,

arguing more income should have been imputed to the Former Wife and the award still exceeds his ability to pay. The parties raise a number of issues in their respective appeals. However, we address only whether income was properly imputed to the Former Wife, as the remaining issues were not properly preserved for appellate review.[1] Because we find the trial court erred by imputing income to the Former Wife—contrary to the MSA—we reverse and remand with instructions. As to all other remaining issues, we affirm.

I

The parties had a long-term marriage of twenty-six years. On April 24, 2012, after the divorce proceedings commenced, the parties entered into the MSA. The Former Husband, the primary wage earner, was an electrical engineer at Honeywell and an officer in the Navy Reserve earning a total gross monthly income of $13,063.88, while the Former Wife stayed home to raise their two children. The parties agreed in the MSA that the Former Husband would pay the Former Wife durational alimony of

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[1] See Fla. Fam. L. R. P. 12.490(f); Lascaibar v. Lascaibar, 156 So. 3d 547, 549 (Fla. 3d DCA 2015) (holding that the trial court properly refused to consider arguments raised by mother where mother did not file exceptions to the general magistrate's recommendation); Rosen v. Wilson, 922 So. 2d 401, 401 (Fla. 4th DCA 2006) (holding when a specific objection is not included in a party's exceptions to a magistrate's report and recommendation, the issue not specifically objected to is unpreserved for appeal (citing Nicholas v. First Interstate Dev. Corp., 315 So. 2d 238, 240 (Fla. 4th DCA 1975) ("It is the declared policy of the appellate court to confine the parties to the points raised and determined in the court now and not to permit the presentation of points, grounds or objections for the first time in the appellate court."))); see also Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982) (holding that except in cases of fundamental error, an issue will not be reviewed on appeal unless it was presented to the trial court, and for an argument to be cognizable on appeal, it must be the specific contention asserted as grounds for the objection, exception, or motion below).

$4,500 per month over the course of the next eight years—when the Former Wife would reach age sixty-two; the Former Wife was fifty-four years of age at the time the parties entered into the MSA. Under the terms of the MSA, the $4,500 per month alimony is non-modifiable as to duration. Notwithstanding, the parties also agreed in relevant part: "Former Husband's involuntary loss of employment shall be considered a substantial change in circumstance or an exceptional circumstance for purposes of modification." As circumstances would have it, by the time of the final hearing, the Former Husband was involuntarily unemployed from Honeywell. Notably, in approving the MSA and incorporating it into the Final Judgment of Dissolution of Marriage dated August 20, 2012, the trial court specifically acknowledged:

> Husband's employment was involuntarily terminated, and Husband is currently unemployed. Husband's future employment, earnings, and ability to pay the alimony and child support amounts set forth and agreed in the Mediated Marital Settlement Agreement are uncertain and unknown. Notwithstanding the prejudgment occurrence of Husband's unemployment, Husband shall not be prohibited, legally or equitably, from asserting and may assert such unemployment as a substantial or exceptional change of circumstance in any supplemental action seeking to modify. . . alimony or spousal support obligation based upon such unemployment.

In December 2012, having not found employment, the Former Husband sought to modify his new alimony obligation, only to later abandon his claim after he became employed with B/E Aerospace.

On February 14, 2017, finding himself unemployed once again, the Former Husband filed a second supplemental petition to modify the final judgment or alternatively to suspend or terminate his alimony obligation (Petition), requesting a reduction in his alimony obligation due to his unemployment and inability to pay. He

complained, among other things, that the Former Wife made no effort to become employed after the dissolution of their marriage. A mere month after the Petition was filed, the Former Husband regained employment and remained employed with Northrup Grumman and the Navy Reserve throughout the proceedings, earning a monthly gross income of $9,641.82, which income was less than his income at the time of the final judgment.

A general magistrate presided over the final hearing on the Petition and based upon his findings, submitted a report and recommended order (Report) to the trial court modifying the alimony obligation downward from $4,500 per month to $2,655.92 per month based, in part, on the imputation of minimum wage income to the Former Wife. The magistrate found "[t]he Former Wife's unemployment was voluntary and she has made no effort to obtain employment after the dissolution, therefore it is appropriate to impute income to her," noting there was no evidence the Former Wife was physically unable to work or that she had searched for employment.[2] The Former Wife timely objected to the Report and filed exceptions (Exceptions) pursuant to Florida Family Law Rule of Procedure 12.490. The Former Husband, however, did not. The magistrate's Report was ultimately adopted by the trial court in the order we review.

II

The Former Wife argues that no income should be imputed to her based upon the clear terms of the parties' MSA. The Former Husband argues in his cross-appeal that not enough income was imputed to the Former Wife. We hold that the trial

[2]The Former Wife testified she does not currently work and has no intention of working in the future. She left her employment during the marriage to stay home and raise the parties' children.

court abused its discretion by imputing income to the Former Wife in contravention of the parties' MSA.

Under the terms of the MSA, the Former Husband agreed to pay the unemployed Former Wife durational alimony for eight years—until she reached the age of sixty-two. The MSA did not contemplate or require the Former Wife to seek employment after the dissolution of marriage. See generally Doganiero v. Doganiero, 106 So. 3d 75, 77 (Fla. 2d DCA 2013) (stating that the purpose of durational alimony under section 61.08(7), Florida Statutes (2012) is "to provide a party with the economic assistance for a set period of time following a marriage . . . of long duration if there is no ongoing need for support on a permanent basis").

The standard of review for a trial court's imputation of income is whether there is competent, substantial evidence to support it. See Gruber v. Gruber, 857 So. 2d 329, 331 (Fla. 2d DCA 2003). Before imputing income, a trial court is required to make "particularized findings regarding work history, occupational qualifications, and the current job market in the community." Masino v. Masino, 254 So. 3d 649, 650 (Fla. 1st DCA 2018) (quoting Broga v. Broga, 166 So. 3d 183, 185 (Fla. 1st DCA 2015)).

However, we need not address whether there was competent, substantial evidence supporting the imputation of income where the trial court gave no effect to the parties' MSA. As correctly argued by the Former Wife, courts "may not rewrite a contract or interfere with the freedom of contract or substitute their judgment for that of the parties thereto in order to relieve one of the parties from the apparent hardship of an improvident bargain." Rotta v. Rotta, 34 So. 3d 108, 108 (Fla. 3d DCA 2010) (quoting Steiner v. Physicians Protective Tr. Fund, 388 So. 2d 1064, 1066 (Fla. 3d DCA 1980)).

"It is never the role of a trial court to rewrite a contract to make it more reasonable for one of the parties or to relieve a party from what turns out to be a bad bargain." Rotta, 34 So. 3d at 108 (quoting Churchville v. GACS Inc., 973 So. 2d 1212, 1216 (Fla. 1st DCA 2008)).

Pursuant to the MSA, the parties here agreed to a specific durational amount of monthly alimony to support the Former Wife's lifestyle for a definite period. While the Former Wife has a college degree, she has not held meaningful full-time employment since 1994, when she worked as a retail store manager before the parties had children. Pursuant to the Report, the last employment held by the Former Wife was in 2005 when she worked part-time as a pre-kindergarten teacher earning $7,000 per year. At the time of the MSA and the Final Judgment, the Former Wife was not employed and had not been employed for some time. All of this information was known to the Former Husband when he entered into the MSA.

Since the parties' divorce in 2012, the Former Wife concedes she has not worked or attempted to obtain employment. In fact, the terms of the MSA are devoid of any language requiring her to obtain employment and/or support herself. Instead, the MSA provides: "Said support shall be non-modifiable in duration and shall terminate in the event the Wife remarries, cohabitates in a supportive relationship or dies," and "[t]he Wife shall declare as her income, the alimony received from the Husband effective May 1, 2012." Nothing in the MSA indicates the parties intended to impute income to the Former Wife in the event she failed to obtain employment following the divorce and so the trial court erred in failing to give effect to the MSA and the parties' intentions. See Regan v. Regan, 217 So. 3d 91, 93 (Fla. 4th DCA 2017) (holding the trial court properly

refused to impute income to former wife where former wife had not been employed outside the home during the marriage and the MSA did not specifically or impliedly require former wife to work to support herself). Thus, the trial court abused its discretion by imputing income to the Former Wife, thereby reducing her durational alimony.

III

Accordingly, we reverse the trial court's order granting the Former Husband's petition for a downward modification of alimony and remand with instructions for the trial court to recalculate the amount of alimony and any retroactive alimony considering the parties' income, the Former Wife's need for alimony, and the Former Husband's ability to pay alimony, without imputing any income to the Former Wife. See Dunn v. Dunn, 277 So. 3d 1081, 1084 (Fla. 5th DCA 2019).

Affirmed in part, reversed in part, and remanded with instructions.

NORTHCUTT and LaROSE, JJ., Concur.