

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2011

GARY LEE MORRIS,

Appellant,

v.

CASE NO. 5D10-672

ROBIN LYNN TARDIF MORRIS,

Appellee.

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Opinion filed June 10, 2011.

Appeal from the Circuit Court
for Volusia County,
Shawn L. Briese, Judge.

Theodore R. Doran, of Doran, Sims,
Wolfe, Ansay & Kundid, Daytona Beach,
for Appellant.

Horace Smith, Jr., of Horace Smith, Jr.,
P.A., Smith, Hood, Loucks, Stout, Bigman
& Brock, P.A., Daytona Beach, for
Appellee.

PER CURIAM.

The former husband, Gary Lee Morris, timely appeals a final judgment awarding attorney's fees and costs to the former wife in the amount of \$69,069.82. We agree with the former husband that under the facts of this case the trial court should have set the fee and cost award off against the \$98,800 that the former wife owed him based upon his overpayment of alimony. See *Novack v. Novack*, 210 So. 2d 215 (Fla. 1968);

Selembo v. Selembo, 591 So. 2d 1112 (Fla. 2d DCA 1992). In all other respects, we affirm. Accordingly, we remand this matter to the trial court with directions to set off the fee and cost award entered in favor of the former wife against the final judgment entered in favor of the former husband.

AFFIRMED IN PART; REMANDED WITH DIRECTIONS.

TORPY, LAWSON, and COHEN, JJ., concur.