

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D23-2579
LT Case No. 2020-DR-000750-FM

ERICA N. FLUHART,

Appellant,

v.

BRANDON L. RASMUSSEN,

Appellee.

On Appeal from the Circuit Court for Duval County.
Suzanne Bass, Judge.

Michael R. Yokan, of Law Office of Michael R. Yokan,
Jacksonville, for Appellant.

No Appearance for Appellee.

April 4, 2024

EN BANC

KILBANE, J.

Erica Fluhart timely appeals the final judgment of dissolution of marriage rendered by the trial court in which the court accepted and adopted the report and recommended final judgment of dissolution of the parties' marriage submitted by the General Magistrate ("GM") following evidentiary hearings. We

affirm; but we have elected to consider this matter en banc to recede, in part, from our decision in *Gatchell v. Kryvosheia*, 370 So. 3d 374 (Fla. 5th DCA 2023).

Here, after the trial court entered its order adopting the GM's report and recommended final judgment of dissolution of marriage, Fluhart timely filed her notice of appeal without first moving under Florida Family Law Rule of Procedure 12.490(e)(3) to vacate the order. In *Gatchell*, under sufficiently similar circumstances, our court held that an appellant's failure to file a motion to vacate the recommended order under this rule constituted a failure to preserve issues for appellate review. *Id.* at 375–76. We dismissed the appeal, concluding that the appellant's failure to preserve issues for appellate review by filing this motion constituted a failure to invoke our appellate jurisdiction. *Id.*

On further consideration, we find our conclusion in *Gatchell* that we lacked jurisdiction to be error; and we now specifically recede from that portion of the opinion. We do, however, affirm the instant final judgment because, under *Gatchell*, Fluhart's failure to move to vacate the GM's recommended final judgment adopted by the trial court resulted in a failure to preserve for appellate review her claimed error involving the court-ordered time-sharing and shared parental responsibility of the parties' minor child.

AFFIRMED.

EDWARDS, C.J., and MAKAR, WALLIS, LAMBERT, JAY, EISNAUGLE, HARRIS, SOUD, BOATWRIGHT, MACIVER, and PRATT, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.
