

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2007*

**RICHARD MENDES,**  
Appellant,

v.

**DEBRA MENDES,**  
Appellee.

No. 4D05-279

[ February 21, 2007 ]

***ON MOTION FOR REHEARING AND REHEARING EN BANC***

BAILEY, JENNIFER D., Associate Judge.

The appellant (former husband) has moved for rehearing based upon the argument that our remand should include leave to seek to modify his permanent alimony obligation. He cites the case of *Reno v. Reno*, 884 So. 2d 462 (Fla. 4th DCA 2004), which stated: "It is clear that when a party requests that alimony be terminated, the trial court has jurisdiction to simply modify the alimony." *Id.* at 465.

The case below was tried because the parties had competing positions: the former husband took the position that his permanent alimony payments had to be terminated due to changes in the real estate finance market in which he was employed. The former wife took the position that the former husband could not seek modification on that ground because the fluctuating character of the real estate finance market was known to the parties at the time the permanent alimony was agreed upon in the parties' marital settlement. The only issue tried in this case was whether termination was appropriate or prohibited. Neither party ever argued or tried the issue of a modified, reduced amount of permanent alimony to the trial court, nor presented the issue on appeal.

As the former husband did not seek a reduction in alimony in lieu of termination below, he failed to preserve this claim for purposes of our remand. While such an issue is within the trial court's jurisdiction

under *Reno*, the former husband did not invoke that remedy. As such, rehearing is denied. See *Hoffman v. Hoffman*, 793 So. 2d 128 (Fla. 4th DCA 2001); see also *Walls v. Sebastian*, 914 So. 2d 1110 (Fla. 4th DCA 2005); *Utterback v. Utterback*, 861 So. 2d 465 (Fla. 3d DCA 2003). Former husband is not limited in seeking modification in a new proceeding if justified by the current facts and circumstances of the parties.

*Rehearing Denied.*

WARNER and KLEIN, JJ., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; William J. Berger, Judge; L.T. Case No. 502002DR000565XXDIFY.

Richard G. Bartmon of Law Offices of Bartmon & Bartmon, P.A., Boca Raton, for appellant.

Alan R. Burton, Fort Lauderdale, for appellee.