

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

JOHN LEHMAN,
Appellant,

v.

DEPARTMENT OF REVENUE o/b/o **JOANNE LEHMAN,**
Appellee.

No. 4D06-1056

[February 14, 2007]

ON MOTION FOR REHEARING

POLEN, J.

Appellee, the Department of Revenue, has filed a motion for rehearing. On December 13, 2006, this court issued an opinion reversing the trial court's denial of Appellant, John Lehman's motion to vacate and remanded for an evidentiary hearing to determine the correct amount of child support arrearages and the appropriate reduction in child support payments. We deny the Department's motion for rehearing, but write to clarify our previously issued opinion.

The Department argues that our reference to the Lehman's child support obligation as an "agreement" is incorrect, as the child support was court-ordered rather than part of an agreement. According to the Department, this distinction is important, as our opinion states that the parties' intended that child support be allocated to each child, and if the child support was ordered, the parties' intent would not be a proper basis for determining the effect of the order.

While the Department is right in asserting the child support obligation was ordered by the trial court, rather than determined by the parties' agreement, this court's decision was founded on the language laid out in the child support order. This order was drafted by the Department and issued by the trial court. We find that the language used in the order supports the conclusion that the Department intended child support be allocated amongst Lehman's three children. If the language found in the

order does not correctly reflect the Department's intent, any discrepancy should be resolved by changing the language in future orders to clearly reflect the Department's intent that child support **not be** allocated, and to put all parties on notice of its meaning.

In all other respects, our prior reversal and remand of the trial court's denial of Lehman's motion to vacate, and our instructions that an evidentiary hearing be held, remain unchanged.

KLEIN and MAY, JJ., concur.

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Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Carol-Lisa Phillips, Judge; L.T. Case No. 99-2182 3892.

Ashley A. Sawyer and William M. Shaheen of Libow & Shaheen LLP, Boca Raton, for appellant.

Bill McCollum, Attorney General, and William H. Branch, Assistant Attorney General, Tallahassee, for appellee Department of Revenue.