

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

SARA ARGAMON,
Appellant,

v.

SHLOMO ARGAMON,
Appellee.

No. 4D06-3779

[February 7, 2007]

PER CURIAM.

The former wife appeals a temporary order extending the former husband's visitation with his children pending the disposition of the former husband's petition for modification. We conclude that the order is in effect a temporary change of custody which requires a finding of a substantial change of circumstances and a finding that the change of custody is in the best interests of the children. *See Kendall v. Kendall*, 832 So. 2d 878, 879-80 (Fla. 4th DCA 2002); *McGlamry v. McGlamry*, 608 So. 2d 553, 554-55 (Fla. 4th DCA 1992). The trial court did not make these findings in its order. Although the court found that the former husband showed that the children would be at substantial risk of harm should they be returned to their mother, the testimony supporting that finding involved a domestic violence incident between the former wife and her parents which did not take place in the presence of the children. Further, there was no evidence presented of any connection between the incident and any harm or risk to the children. All that was presented is the possibility of a negative impact on the children, which is insufficient to change custody. *See Burger v. Burger*, 862 So. 2d 828, 832-33 (Fla. 2d DCA 2003).

We reverse the order and remand for further proceedings which may include the bringing of a motion for a temporary change in custody based upon the correct criteria.

WARNER, GROSS and TAYLOR, JJ., CONCUR.

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Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Arthur Wroble, Judge; L.T. Case No. 502004DR008995XXXXSB FZ.

Steven R. Brenners, Coral Springs, for appellant.

Betty C. Resch, Lake Worth, for appellee.

Not final until disposition of timely filed motion for rehearing.