

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

EVA CARMACK,

Appellant,

v.

Case No. 5D20-297

GARY CARMACK,

Appellee.

_____ /

Opinion filed April 9, 2021

Appeal from the Circuit
Court for Orange County,
Julie H. O'Kane, Judge.

Eva Carmack, Orlando, Pro se.

Leslie Thomas and Mark H.
Ruff, of The Law Offices of
Mark H. Ruff, P.A., Maitland,
for Appellee.

SASSO, J.

Former Wife seeks review of a final order finding her in indirect civil contempt and an order granting Former Husband's motion for temporary child support. Former Wife presents several arguments for reversal, only one

of which has merit. We conclude that the trial court erred in awarding retroactive child support prior to the date Former Husband filed his post-judgment motion for temporary child support. As a result, we reverse the order granting temporary child support on that basis. In all other respects, we affirm.

BACKGROUND AND FACTS

Pursuant to a final judgment of dissolution, Former Husband was required to pay Former Wife \$943 per month in child support. Former Husband successfully moved to abate this obligation in May 2019 due to a pending dependency action wherein the dependency court ordered the children to be placed with Former Husband 100% percent of the time. On December 20, 2019, the dependency petition was dismissed upon Former Wife's motion for judgment of dismissal due to insufficiency of the evidence. Former Wife's timesharing resumed on December 22, 2019.

Thereafter, Former Husband filed a "motion for temporary child support."¹ He alleged there was a substantial change in circumstances

¹ While Former Husband mislabeled his request a "Motion for temporary child support," that error does not support reversal. See, e.g., *Rossi v. Rossi*, 169 So. 3d 1233, 1235 (Fla. 5th DCA 2015) ("Where a party files a motion that would be unauthorized based on the motion's title, Florida courts will consider the motion's substance in determining whether the motion was authorized.").

supporting modification of the child support award because the children were with him from March 1, 2019, through December 22, 2019, and during that time he had “been providing and paying 100% of the child support, health insurance cost, and child care costs for the parties’ children” without any assistance from Former Wife. He stated that the dependency court did not address child support, although he had requested it back on March 14, 2019. He requested the court award him child support from March 1, 2019, to December 22, 2019, using the child support guidelines worksheet pursuant to the parties’ marital settlement agreement.

The court noted that Former Husband was not seeking permanent modification of the final judgment but instead only sought an order temporarily requiring Former Wife to pay child support. The court stated that “it seems patently inequitable for the Father to absorb the entire financial support of the children without assistance from the Former Wife when he was solely responsible to care and support the children for close to 10 months.” The court then awarded Former Husband retroactive child support, calculated at \$1483 per month from March 1, 2019, through December 20, 2019.

ANALYSIS

As she did below, Former Wife argues on appeal that the trial court erred in modifying child support payment retroactively. We view orders granting retroactive child support for an abuse of discretion. *Ditton v. Circelli*, 888 So. 2d 161, 162 (Fla. 5th DCA 2004).

While trial courts are afforded broad discretion when determining child support, that discretion is cabined by the applicable statutory scheme. And here, while section 61.14, Florida Statutes (2020), permits trial courts to award retroactive child support “as equity requires,” the statute also makes clear that a retroactive child support obligation may not be imposed prior to the date the petition seeking modification was filed. See § 61.14(1)(a), Fla Stat. (allowing modification retroactive only “to the date of the filing of the action or supplemental action for modification”); *Coriat v. Coriat*, 306 So. 3d 356, 358–59 (Fla. 3d DCA 2020) (noting general rule that modifications are retroactive to the date of the supplemental petition, with limited statutory exceptions). Accordingly, regardless of the equities presented, the trial court was without authority to impose a retroactive child support obligation on Former Wife dating back to March 2019.² This legal error is apparent on the face of the record. *Ivanovich v. Valladarez*, 190 So. 3d 1144, 1147 (Fla. 2d

² Based on our record, we can discern no legal basis to support the order, nor has Former Husband identified one.

DCA 2016) (finding the trial court's ruling that the former husband is entitled to child support from the former wife retroactive to the date he received custody of the minor child is an error of law that is apparent from the face of the judgment.). And although there is competent substantial evidence supporting a modification, the motion seeking temporary support sought modification of child support only for time periods pre-dating the petition. As a result, we hold the trial court abused its discretion in granting the requested relief and reverse the award granting temporary child support in full. We affirm the trial court's order finding Former Wife in indirect civil contempt.

AFFIRMED, in part; REVERSED, in part.

COHEN and LAMBERT, JJ., concur.