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

JONATHAN HERNANDEZ VELEZ,

Appellant,

v. Case No. 5D20-2350

GLORITZA LAFONTAINE,

Appellee.

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Opinion filed April 30, 2021

Nonfinal Appeal from the Circuit Court
for Orange County,
Diana M. Tennis, Judge.

Christie L. Mitchell, of The CLM Law Firm, P.A., Orlando, for Appellant.

Gloritza Lafontaine, Lake Alfred, pro se.

COHEN, J.

In the underlying proceedings, Jonathan Hernandez Velez ("Father") filed a motion for contempt and to suspend Gloritza Lafontaine's ("Mother") timesharing on weekdays based on her failure to take their child to voluntary prekindergarten. The timesharing and support judgment, entered

approximately one year prior to Father's motion, instructed the parties to place the child into a school located approximately midway between the parties' homes. Unfortunately, the Orange County Public School system guidelines did not allow for that placement to be effectuated, in part because of the child's need for an individualized education plan. As a result, the child was placed into a school located closer to Father's home.

After hearing Father's motion for contempt, the trial court unilaterally changed the child's school, resulting in the child having to attend after-school daycare. The trial court sua sponte ordered Father to pay 63% of the daycare costs.[1] Mother had filed no motions seeking such relief.

We recognize that domestic relations cases, especially those involving children, often pose unique difficulties for trial judges. The reality is that far too often, the parties are simply unable to resolve disputes among themselves, leaving judges to make decisions concerning the best interests of children they have never met. The trial court here appreciated the need of the child to attend a more centrally located school, so as to shorten the drives

[1] Despite the position taken by Father on appeal, the 63/37 apportionment of the daycare costs does not appear to reapportion uncovered medical expenses and agreed upon, albeit undefined, extracurricular activities under the final judgment, although it differs from the 52/48 apportionment for those expenses.

for the child and to facilitate easier timesharing for Mother.[2] This was evident both in the final judgment and in the order on Father's motion for contempt.

Nonetheless, we are constrained to find that the trial court was without authority to change the child's school location and to impose the daycare costs on Father. Because the only motion before the trial court was Father's motion for contempt and to suspend timesharing, the trial court violated Father's due process rights by granting relief not requested by the pleadings or providing notice to the parties. See Buschor v. Buschor, 252 So. 3d 833, 834–35 (Fla. 5th DCA 2018) (reversing order modifying primary residence of child to former husband when his pleading only requested equal timesharing); Cockrell v. Kinnett, 177 So. 3d 1041, 1042–43 (Fla. 5th DCA 2015) (reversing order altering timesharing schedule where father only moved for contempt against mother). Nor were the issues tried by consent, as Father objected on numerous occasions to the trial court's consideration of changing the child's school location. See Newberry v. Newberry, 831 So. 2d 749, 751 (Fla. 5th DCA 2002).

For the same reasons, we find that the trial court also erred in its sua sponte apportionment of the parties' financial responsibility for the daycare

[2] Mother did not live in Orange County.

and babysitting expenses. In the initial final judgment, the financial responsibility between the parties was 52/48, with Father paying the 52%; however, in the order changing the child's school, the trial court split the financial responsibility of the daycare costs 63/37, with Father paying the 63%. No request was made to alter the prior judgment and no findings were made as to the basis of that allocation or why it differed from the earlier apportionment of uncovered medical expenses.[3]

It becomes unnecessary to address the remaining issues raised.

Accordingly, we reverse and remand.

REVERSED and REMANDED.

EVANDER, C.J., and LAMBERT, J., concur.

[3] We can surmise that it was based upon the most recent financial affidavits filed by the parties.