

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-5273

GENA M. LAWSON,

Appellant,

v.

LOREN C. BARTLEY,

Appellee.

On appeal from the Circuit Court for Duval County.
Lance M. Day, Judge.

November 6, 2019

B.L. THOMAS, J.

Appellant argues that the trial court erred in ratifying the report of the general magistrate in its final judgment before holding a hearing addressing Appellant's exceptions to the magistrate's report. Additionally, Appellant argues that the magistrate abused her discretion in modifying Appellee's child support and deviating from the timesharing guidelines.

Appellee's "Petition to Establish Parental Responsibility and Establish Parenting/Time Sharing Plan" was scheduled for a hearing before a general magistrate. After the hearing, the magistrate filed a report and recommendation with the trial court. On the same day the magistrate filed her report, Appellant filed exceptions to the report.

The trial court issued a “Final Judgment Establishing Parental Responsibility and Parenting/Time-Sharing Plan” that adopted most of the magistrate’s recommendations. Appellant appealed that judgment to this Court. After Appellant filed her appeal, the trial court realized it had not held a hearing to address Appellant’s exceptions to the magistrate’s report. The trial court commendably vacated and set aside its final judgment and scheduled a hearing on Appellant’s exceptions.

Rule 12.490 of the Florida Family Law Rules of Procedure requires a hearing when a party files an exception to a general magistrate’s report. Although the trial court attempted to vacate and set aside the final judgment and schedule a hearing, the trial court did not have jurisdiction to do so. *See Fla. R. App. P. 9.600(a); Soles v. Soles*, 536 So. 2d 367, 368 (Fla. 1st DCA 1988) (finding a trial court lacked jurisdiction to issue an order clarifying and modifying a final order for which Appellant had already filed a notice of appeal).

This case is remanded to the trial court to hold a hearing on Appellant’s exceptions to the magistrate’s report and issue a final judgment.

REVERSED and REMANDED.

ROWE and OSTERHAUS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Gena M. Lawson, pro se, Appellant.

No appearance by Appellee.