FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-946

MICHELLE P. HUTCHINSON,
Former Wife,

Appellant,

v.

MARK H. HUTCHINSON,
Former Husband,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
John Jay Gontarek, Judge.

December 27, 2019

OSTERHAUS, J.

Michelle P. Hutchinson appeals an order modifying a final judgment of dissolution of marriage. She argues that the court erred in modifying the parties' timesharing for their son and in changing the child support obligation. We agree and reverse because Mark H. Hutchinson did not show a substantial change in circumstances, a necessary condition for modification of timesharing.

I.

The parties' marriage was dissolved in 2011. They had one minor child, who was 7 years old when the final judgment was

entered. The timesharing plan called for their son to reside with the mother during the school week and have alternating timesharing with the father on weekends. The child was to spend half of the summer vacation with each parent. However, from 2011 to 2017, Mr. Hutchinson informally exercised more timesharing than provided for in the final judgment.

In 2017, the parties' informal cooperation ended, and they began to more closely follow the timesharing arrangement from the final judgment. Ms. Hutchinson also moved to another home within the county and registered her son at another more convenient district school. She tried to speak with her ex-husband about the school change, but apparently their communications broke down and he wasn't told.

Mr. Hutchinson subsequently filed a petition to modify the final judgment in the trial court. After taking evidence, the trial court ruled that Mr. Hutchinson had proven a substantial change in circumstances and that the child's best interest favored a new 50/50 timesharing arrangement. The court also modified the parties' respective child support obligations in line with the new timesharing plan.

II.

To be entitled to modification of timesharing, the moving party "must show that (1) circumstances have substantially and materially changed since the original custody determination, (2) the change was not reasonably contemplated by the parties, and (3) the child's best interests justify changing custody." *Korkmaz v. Korkmaz*, 200 So. 3d 263, 265 (Fla. 1st DCA 2016) (quoting *Reed v. Reed*, 182 So. 3d 837, 840 (Fla. 4th DCA 2016)). This required proof imposes an "extraordinary burden" on the party seeking modification. *Ragle v. Ragle*, 82 So. 3d 109, 111 (Fla. 1st DCA 2011) (quoting *Boykin v. Boykin*, 843 So. 2d 317, 320 (Fla. 1st DCA 2003)). "Practically speaking, this means that the parent requesting the modification must establish more than 'an acrimonious relationship and a lack of effective communication in order to show a substantial change' of circumstances.'" *Korkmaz*, 200 So. 3d at 266 (quoting *Sanchez v. Hernandez*, 45 So. 3d 57, 62 (Fla. 4th DCA 2010)). Nor will relocation of one parent, by itself, always constitute a change in circumstances. *See Ogilvie v.*

Ogilvie, 954 So. 2d 698, 701 (Fla. 1st DCA 2007); *Ragle*, 82 So. 3d at 112.

Here, Mr. Hutchinson alleged that his ex-wife had limited the time he spent with his son, changed the child's school without notifying him, and had moved several times. But these circumstances don't prove a substantial change in circumstances. There was no evidence, for instance, that Ms. Hutchinson denied Mr. Hutchinson the timesharing ordered by the final judgment. Rather, the parties adopted an informal timesharing arrangement for a while after the final judgment that gave Mr. Hutchinson more time with his son. In 2017, contrary to Mr. Hutchinson's wishes, the timesharing reverted back to more closely resemble the original court-ordered plan. But this change in the parties' dealings is not a basis for finding a substantial change in circumstances. *See, e.g.*, *Brown v. Brown*, 124 So. 3d 424, 425 (Fla. 1st DCA 2013) ("[A] parent's consent to extra visitation is not a basis for a modification."); *see also Sidman v. Marino*, 46 So. 3d 1136, 1137 (Fla. 1st DCA 2010) ("As we have said regarding modification of custody arrangements, allowing an agreement between the parents to provide a basis for modification would discourage parents from making informal, joint decisions for the benefit of their children.").

In addition, the fact that Ms. Hutchinson has made a few local moves since entry of the final judgment also does not establish a substantial change in circumstances. In fact, the final judgment originally recognized that she would be moving out of the marital home, and that her future residence was "not known." The final judgment further provided that "for purposes of school boundary determination, registration and enrollment, the Mother's address shall control." As anticipated in the final judgment, Ms. Hutchinson moved away from the marital home. And she eventually landed at an address in the same school district that was closer to the child's present middle school. Relocation under these circumstances does not amount to a substantial change in circumstances allowing for modification of the original parenting plan. *See Ragle*, 82 So. 3d at 112.

We acknowledge the trial court's finding and record support for the conclusion that Ms. Hutchinson inadequately informed her

ex-husband about their son's change of schools. But the existence of periodic communication failures between the parties is also not a basis for finding a substantial change in circumstances. *See Korkmaz*, 200 So. 3d at 266 (recognizing that modifications must be proven by more than acrimony and ineffective communication); *see also Ragle*, 82 So. 3d at 113 ("In *Ogilvie*, this court reiterated that parents' inability to communicate does not satisfy the substantial change requirement for modification.").

In sum, we view this case as being similar to *Ragle*. In *Ragle*, the "[a]ppellee sought a modification of custody based on 'a substantial change in circumstances,' including Appellant's decision to move out of the former marital home and relocate to the adjoining county, failure to allow 'frequent and liberal visitation and telephonic communication' between Appellee and the children, and changing the children's schools." 82 So. 3d at 112. We concluded in that case that the appellee had not shown a substantial change in circumstances. *Id*. at 114. Similarly here, the parties' varied timesharing schedule, Ms. Hutchinson's local moves, and the child's change of middle schools does not establish a substantial change in circumstances sufficient to support a modification of the previous final judgment.

Finally, we agree with Ms. Hutchinson that the modified child support order must be reversed. The calculations in the child support worksheet are based on the modified timesharing scheme addressed above and the income figures appear to deviate from the parties' respective financial affidavits.

III.

Accordingly, we reverse the modified judgment with instructions to reinstate the parenting plan from the 2011 final judgment, as well as reverse the child support calculation for additional consideration consistent with this opinion.

REVERSED and REMANDED.

B.L. THOMAS and KELSEY, JJ., concur.

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

Ashley Puro of Ashley Puro, P.A., Destin, for Appellant.

Clark H. Henderson of Oberliesen & Henderson, Shalimar, for Appellee.