FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3727

PAUL R. WESTON JR.,

Appellant,

v.

JAMIE B. DAVIS WESTON,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
Terrance R. Ketchel, Judge.

November 6, 2020

PER CURIAM.

The appellant, Paul Weston, is serving a fifteen-year prison sentence for molesting the daughter of his former wife, appellee Jamie Weston. The appellant argues the trial court erred by holding the final hearing in his absence and entering a final judgment of dissolution of marriage. We are constrained to agree and reverse the final judgment on appeal.

The appellee filed a petition for dissolution of marriage in which she asked to be awarded the marital home and property, inherited from the appellant's father. The appellant filed an answer to the petition. The case was eventually set for a final hearing, and per the appellant's request, the court allowed him to appear telephonically as he was incarcerated. There is no record

indication that the Department of Corrections (the Department) was served with notice of the hearing date. The day before the scheduled final hearing, the appellant filed a notice of address change to a new prison facility and advised the court that he could not participate in the hearing unless the court provided notice to the Department. The appellant claims that at the time he filed this notice, he was unaware of the final hearing date due to his frequent transfers. The trial court proceeded to hold the final hearing in the appellant's absence and entered a final judgment of dissolution that awarded the appellee the marital home and property. This appeal followed.

"[A] prisoner must bring to the court's attention his desire to appear personally or telephonically at a hearing or trial." *Burdoo v. Plympton*, 219 So. 3d 170, 171 (Fla. 1st DCA 2017) (quoting *Johnson v. Johnson*, 992 So. 2d 399, 401 (Fla. 1st DCA 2008)). If the prisoner requests to be heard, "the right is clear." *Id.* The appellant made clear his desire to appear at the final hearing telephonically.

The Department requires institutional staff to initiate the phone call for an inmate to participate in court proceedings. *See Havenner v. Hutchinson,* 162 So. 3d 1113, 1114 (Fla. 1st DCA 2015) (citing Fla. Admin. Code R. 33-602.205(8)(b)). In *Butler v. Norton*, 158 So. 3d 750, 751 (Fla. 1st DCA 2015), a panel of this Court construed the directive in rule 33-602.205(8)(b) to require institutional staff to "first receive an order from the court requiring an inmate to appear for a hearing by telephone on a specific date and at a specific time." *Butler* found the court reversibly erred because its failure to issue the order to the Department precluded the inmate from participating in the hearing. *Id.* at 751. *See also Havenner,* 162 So. 3d at 1113; *Burdoo*, 219 So. 3d at 171. Here the trial court failed to issue an order to the Department requiring the appellant to appear, which, coupled with the confusion arising from the appellant's transfers, deprived the appellant of the right to appear at the final hearing. Based on the holding in *Butler*, we are constrained to find the trial court erred by holding the hearing in the appellant's absence. The final judgment should be reversed, and the case remanded for further proceedings.

REVERSED and REMANDED.

ROBERTS, ROWE, and KELSEY, JJ., concur.

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

Paul R. Weston Jr., pro se, Appellant.

Ryan G. Hardy of Ryan G. Hardy, P.A., Crestview, for Appellee.