

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

---

No. 1D19-3833

---

MARLON REED,

Appellant,

v.

FLORIDA DEPARTMENT OF  
REVENUE and TRIA E. PARSONS,

Appellees.

---

On appeal from the Circuit Court for Wakulla County.  
Kevin J. Carroll, Judge.

August 6, 2020

PER CURIAM.

Marlon Reed, the former husband, appeals an order granting a supplemental petition for upward modification of child support filed by Tria E. Parsons, his former wife. Because there was no competent, substantial evidence supporting the trial court's decision to apply a timesharing adjustment to the *Speed*\* credit it granted the former husband for his support of another child, we reverse.

---

\* *Speed v. Fla. Dep't of Revenue ex rel. Nelson*, 749 So. 2d 510 (Fla. 2d DCA 1999).

The former husband and former wife have three children who were the subject of a parenting and child support agreement when the parents divorced in 2012. After the oldest of the children became emancipated, the Florida Department of Revenue (DOR) filed a supplemental petition on behalf of the former wife seeking an upward modification of child support for the remaining two children. By that time, the former husband had remarried and parented a child with his new spouse.

A hearing took place on the former wife's petition before a child support hearing officer. Relevant to this appeal, no evidence was presented showing that the former husband and his current spouse have a timesharing arrangement in place for their child. The former husband, his current spouse, and their child all reside in the same household as an intact family.

During closing arguments, the hearing officer said she would consider a *Speed* calculation. *See Speed*, 749 So. 2d at 511 (holding that a parent is entitled to a child support credit for expenses paid by the obligor to support other biological children). The former wife then asked whether any timesharing adjustment would apply since the former husband and his current spouse were living together in the same household with their child. The hearing officer replied that she normally would not make any such adjustment.

But when the hearing officer entered her recommended order granting the former wife's petition for upward modification of child support, she granted the former husband a *Speed* credit while also applying a 50/50 timesharing adjustment because he and his current wife share the home with their after-born child. The hearing officer reasoned that under section 61.30(11)(a)10., Florida Statutes (2019), she could consider a "time-sharing arrangement exercised by agreement of the parties" as a basis to adjust the guideline amount. The trial judge ratified and approved the recommended order in full.

The former husband then filed a motion to vacate and a motion to alter or amend the order. At the hearing on his motions, he argued that there was no testimony or other evidence about a timesharing schedule between him and his current spouse for their

after-born child, and that the trial court erred by implementing its own 50/50 timesharing schedule. For her part, the former wife contended that since the court has discretion to award the *Speed* credit to begin with, it also has the discretion to determine the amount. While acknowledging that the hearing officer's approach was new and creative, the former wife submitted that it was fair considering the circumstances of this case. The trial court denied the former husband's motions, and this appeal followed.

In a proceeding for an upward modification of an existing child support award, a parent supporting a subsequent child may raise the existence of this support obligation as a basis for deviation from the guidelines schedule. § 61.30(12)(a)–(c), Fla. Stat. (2019); *see also Speed*, 749 So. 2d at 511. Also pertinent to this appeal, the child support guidelines allow a trial court to adjust a parent's share of the total minimum child support award when a child spends a substantial amount of time with each parent based on either "a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties." § 61.30(11)(a)10., Fla. Stat.

Here, the trial court granted the former husband a *Speed* credit against the child support he owed the former wife for their two children based on his support obligations for his child with his new spouse. Then it applied a 50/50 timesharing adjustment to that credit under section 61.30(11)(a)10. because the former husband and his new spouse live in the same home. Even assuming section 61.30(11)(a)10. could apply at all to this situation, there is no record evidence of any timesharing agreement between them for their after-born child. To the contrary, the undisputed evidence shows that they all live together as an intact family. We thus agree with the former husband, and accept DOR's concession on appeal, that the trial court abused its discretion by applying a timesharing adjustment to the former husband's *Speed* credit. *See Miller-Bent v. Miller-Bent*, 680 So. 2d 1119, 1121 (Fla. 1st DCA 1996) (reversing a retroactive modification of child support as an abuse of discretion because no evidence supported the trial court's decision).

For these reasons, we reverse the trial court's order and remand for recalculation of the former husband's child support

obligation to the former wife without the timesharing adjustment to his *Speed* credit.

REVERSED and REMANDED with instructions.

RAY, C.J., and M.K. THOMAS and NORDBY, JJ., concur.

---

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

---

Phelicia D. Stiehl of The Stiehl Law Firm, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Toni C. Bernstein, Assistant Attorney General, Tallahassee, for Appellee Florida Department of Revenue.

Neibra Collins Williams of the Law Office of Neibra Collins Williams, Tallahassee, for Appellee Tria E. Parsons.