FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-353

CHRISTOPHER PAUL
RINGENBERG,

Appellant,

v.

STEPHANIE DAYLE RINGENBERG
n/k/a Stephanie Douglas,

Appellee.

On appeal from the Circuit Court for Columbia County.
Paul S. Bryan, Judge.

December 14, 2020

WINOKUR, J.

Christopher Ringenberg appeals from a contempt order. He argues that the order should be reversed on three grounds: first, that it holds him in criminal contempt without complying with the requirements of Florida Rule of Criminal Procedure 3.840; second, that it improperly modifies visitation with his son from unsupervised to supervised; and third, that it improperly conditions his future right to petition to modify time-sharing. We agree and reverse.

"A contempt order is reviewed for an abuse of discretion or fundamental error." *Ford v. Ford*, 153 So. 3d 315, 317 (Fla. 4th

DCA 2014). The order in this case contains a fundamental error and other reversible errors.

I.

The trial court committed fundamental error by holding Ringenberg in contempt without following the required procedure. Following a motion from Ringenberg's former wife, the court held Ringenberg in contempt and imposed several sanctions, including 179 days in county jail to be served on alternating weekends. The order contained no purge provision, and it did not comply with Florida Rule of Criminal Procedure 3.840(a), (b), (d), (f), and (g). A contempt order that does not contain a purge provision must be characterized as criminal contempt. *See Wendel v. Wendel*, 958 So. 2d 1039, 1040 (Fla. 1st DCA 2007). Imposing the sanctions ordered here without complying with Rule 3.840 in an indirect criminal contempt proceeding constitutes fundamental error. *Id.*

II.

The trial court abused its discretion when it ordered that Ringenberg's visitation with his son continue to be supervised. Ringenberg had consented to temporary supervised visitation so that he could get a continuance on the contempt hearing, but there was no basis for a permanent time-sharing modification. Section 61.13(2)(c), Florida Statutes, provides the following:

> The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

Where there is no motion to modify time-sharing, the court lacks jurisdiction to do so. *See Langdon v. Langdon*, 96 So. 3d 1053, 1055 (Fla. 1st DCA 2012) (holding that the court lacked jurisdiction to modify time-sharing after it had already dismissed the father's complaint for modification). Ringenberg's ex-wife's motion was

insufficient under section 61.13(2)(c). The motion asked the court to find Ringenberg in contempt and require him to complete an anger management course with a parenting skills component before allowing him unsupervised time-sharing with the child. The motion did not allege a substantial change in circumstances and did not allege that the requested change in custody would serve the best interest of the child. Moreover, the court did not make such findings. Because there was no showing of a substantial, material, and unanticipated change of circumstances, the court did not have jurisdiction to modify time-sharing.

III.

The court also abused its discretion when it prohibited Ringenberg from petitioning to modify time-sharing until he had complied "with all orders in effect." Section 61.13(3), Florida Statutes, requires "the best interest of the child" to be the "primary consideration" in establishing or modifying time-sharing. A trial court cannot consider the best interest of a child if that child's parent is prohibited from raising the issue. *See Hughes v. Binney*, 285 So. 3d 996, 998 (Fla. 1st DCA 2019) (holding that "enumerating conditions precedent to an automatic future modification" is essentially "a prospective determination of what course of action would be in the best interests of children in the future" and is inappropriate). Preventing parents from filing future motions for modification is likewise inappropriate; many circumstances could arise that would require modification.*

REVERSED.

MAKAR and OSTERHAUS, JJ., concur.

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* Because we reverse the order entered below, we do not address Ringenberg's claims that the order violates his constitutional right of access to the courts or his due process rights.

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

Adam L. Morrison of Sellers, Taylor & Morrison, P.A., Live Oak, for Appellant.

No appearance for Appellee.