FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1578

TRISHA GUGLIELMI,

Appellant,

v.

LEONARDO GUGLIELMI,

Appellee.

On appeal from the Circuit Court for Duval County.
Daniel F. Wilensky, Judge.

July 6, 2021

TANENBAUM, J.

In this post-divorce case, the former wife asks us to review whether the trial court had jurisdiction to make an emergency temporary modification to her timesharing conditions contained in the final dissolution judgment. She also asks that we consider whether the trial court denied her due process in how it went about making the modification. The former wife, however, does not appeal the underlying order that made the modification. She instead appeals the trial court's subsequent denial of her motion to vacate that order. This procedural route leaves us without jurisdiction to consider the former wife's challenge.

Here is the course of events that led the former wife to us. In the dissolution judgment rendered December 26, 2018, the trial

court found that she had a "notable drinking problem," but it awarded her and the former husband equal time-sharing (alternating weeks) with conditions. First, the former wife had to abstain from alcohol consumption during her time-sharing with the children, and for the twelve-hour period immediately preceding the beginning of her time-sharing week. Second, she promptly (within seven days of the final judgment) had to enroll in an alcohol-use monitoring program, called SoberLink; purchase the necessary device; and comply with daily, random testing for the ensuing three months. The trial court's stated purpose behind this testing condition was to "assess whether she is able to abstain from drinking during her time with the children." The order required that the court be alerted if the former wife failed any of her tests, at which point the court would revisit the drinking problem and "decide whether any further restrictions on time-sharing need be made."

About six weeks later, on February 6, the trial court held a related hearing between the former spouses. It was at this stop that the trial court discovered the former wife still had not enrolled in the SoberLink program as she had been mandated—but nevertheless had been sharing time with the children. The court set a status conference for the next day, giving the former wife both oral and written notice. She attended the conference. The trial court then rendered an emergency order on February 11, and an amended order on February 20. It characterized the former wife's conduct as "defiance of the testing requirement in the Final Judgment," which the trial court considered to be an emergency because of the risk to the children's safety that the noncompliance posed.

The court temporarily modified the conditions of the former wife's time-sharing as to monitoring her alcohol abstinence, but it did not alter her equal-time-sharing entitlement. The modification order limited the former wife to supervised timesharing until she both enrolled in the SoberLink program (including her obtaining the testing device) and passed the administered breathalyzer test on seven consecutive days during her time-sharing week. It also added specificity for the type and frequency of the testing, which would continue for the remainder of the three-month testing period (the beginning of which was reset to March 1) after the

former wife returned to unsupervised timesharing. According to the temporary order, the changes would remain in place "only until such time as [the former wife] is able to comply with the" SoberLink program enrollment requirements of the final judgment and the daily testing requirements set out in the modification order. The trial court reserved jurisdiction to enforce the temporary order.

The former wife did not appeal the temporary modification orders, but on March 1, she filed a page-and-a-quarter motion to vacate them. The motion argued that the orders were "void or voidable" because the trial court violated the former wife's due process rights; the judge was biased, prejudiced, and partial; there was insufficient evidence to support the modification; there was no motion or petition to modify or enforce the dissolution judgment; and the orders were rendered beyond the time period established for when a trial court could modify its own order sua sponte. The trial court rendered an order denying the motion on March 25, and the former wife appealed *that* order on April 24.

Critical to our disposition is the fact that the temporary modification order here is not a final order. The characterization of an order on review as final or non-final has jurisdictional consequences. A district court has jurisdiction to review all final orders, but it has jurisdiction to review only those non-final orders as provided by rule. *Compare* Art. V, § 4(b)(1), Fla. Const. (providing for jurisdiction "to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts"), *with id.* (authorizing district courts to review non-final orders "in such cases to the extent provided by rules adopted by the supreme court"). For an order to be considered "final," it must mark the end of the court's work in the case. *See S. L. T. Warehouse Co. v. Webb*, 304 So. 2d 97, 99 (Fla. 1974); *Hotel Roosevelt Co. v. City of Jacksonville*, 192 So. 2d 334, 338 (Fla. 1st DCA 1966).

The trial court rendered the modification order in question here *after* the final dissolution judgment. It did so as an enforcement measure, to bring the former wife into compliance with the original enrollment and testing requirements of that final order. The order does not make permanent changes, particularly not to the terms of the former wife's time-sharing. By the express

terms of the order, it is temporary and contingent. It contemplates further court involvement if the former wife were to continue her "defiance"; otherwise, the terms of the modification order would expire within three months if she does comply. *Cf. Wilson v. Wilson*, 906 So. 2d 356, 357 (Fla. 1st DCA 2005) ("[A]n order which purports to become final upon the happening of an event specified in the order is not a final order and the happening of the event does not operate to render the order final."); *Ponton v. Gross*, 576 So. 2d 910, 911 (Fla. 1st DCA 1991) (explaining that an order cannot be made to become final prospectively based on the occurrence or nonoccurrence of a future event); *see also Bahl v. Bahl*, 220 So. 3d 1214, 1215 (Fla. 2d DCA 2016) (characterizing emergency order modifying temporary timesharing as "nonfinal"); *Badger v. Badger*, 568 So. 2d 79, 80 (Fla. 4th DCA 1990) (characterizing contempt order as a non-final order and affirming denial of motion for relief from that order because rule 1.540 does not authorize such a motion).

Because the temporary modification order is nonfinal, "a motion [to vacate] addressed to it is not a motion seeking relief from a final judgment, order, decree or proceeding." *Bennett's Leasing, Inc. v. First St. Mortg. Corp.*, 870 So. 2d 93, 97–98 (Fla. 1st DCA 2003); *see also Hollifield v. Renew & Co., Inc.*, 18 So. 3d 616, 617 (Fla. 1st DCA 2009) (explaining that rule 1.540 does not authorize relief from a non-final order). This means that "[a]n order entered on a motion to vacate a non-final order, even where the motion mislabels the non-final order as final, is not reviewable under Florida Rule of Appellate Procedure 9.130(a)(5)." *Bennett's Leasing*, 870 So. 2d at 98; *see* Fla. R. App. P. 9.130(a)(5) ("Orders entered on an authorized and timely motion for relief from judgment are reviewable by the method prescribed by this rule."). In the absence of a rule allowing for it, we have no jurisdiction to review an order denying a motion to vacate addressed to a non-final order.

This brings us around to what the former wife really seems to be asking of us—to review the underlying temporary modification order. Recall, though, it took her two months after rendition of the amended modification order to file a notice of appeal. *See* Fla. R. App. P. 9.130(b) (requiring that an appeal be filed "within 30 days of rendition of the order to be reviewed"). Because that

modification order is not a final order, even our recharacterizing the subsequent motion to vacate as a motion for rehearing would be of no help to the former wife. *See Wagner v. Bieley, Wagner & Assocs., Inc.*, 263 So. 2d 1, 4 (Fla. 1972) (holding that a motion for rehearing directed to a non-final order is not an authorized motion and "cannot operate to toll the time for filing an interlocutory appeal"); *Longo v. Longo*, 515 So. 2d 1013, 1015 (Fla. 1st DCA 1987) (same); *cf.* Fla. R. App. P. 9.020(h)(1)(B) (providing that only an "authorized and timely" motion for rehearing can toll rendition).

The timing of the former wife's notice of appeal also precludes us from treating her claim for relief as a petition for a writ of certiorari. *See Caldwell v. Wal-Mart Stores, Inc.*, 980 So. 2d 1226, 1228–29 (Fla. 1st DCA 2008) (noting that a petition for certiorari must be filed within thirty days of rendition of the order to be reviewed; holding that both an untimely appeal and the time period for seeking certiorari review "cannot be revived by obtaining a new order to the same effect as the original and then filing the notice of appeal within thirty days of the more recent order").

The road in turn ends with our having no authority to consider the former wife's claim of error, no matter how we treat it.

DISMISSED.

OSTERHAUS and JAY, JJ., concur.

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

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Madelyn M. Pittman of Madelyn M. Pittman, P.A., Jacksonville, for Appellee.