

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JENNY EVY RIDDLE,
Appellant,

v.

ALAN RIDDLE and **THE PLANK FACTORY, INC.,**
Appellees.

No. 4D16-2803

[December 30, 2016]

Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Karen Miller, Judge; L.T. Case No. 50-2015-DR-012457-XXXX-NB.

Chris Keith, Palm Beach Gardens, for appellant.

Renier Ledezma, Palm Beach Gardens, for appellee Alan Riddle.

PER CURIAM.

Jenny Evy Riddle (mother) appeals a non-final order granting Alan Riddle's (father) amended motion to modify to become primary residential parent of the parties' minor children in this ongoing dissolution of marriage proceeding. We reverse the trial court's order because the father did not allege, nor did the trial court find, there has been a substantial change in circumstances. *See Bon v. Rivera*, 10 So. 3d 193, 195 (Fla. 4th DCA 2009); *Bartolotta v. Bartollota*, 687 So. 2d 1385, 1387 (Fla. 4th DCA 1997).

After the mother filed the pending dissolution action, the trial court entered an order for temporary relief that designated the mother the primary residential parent as to the couple's two minor children. The father's amended motion to modify alleged the mother "is currently bouncing around from Okeechobee County to Boca Raton with the minor children reflecting no stability in her living situation[;] when in Okeechobee [the mother] is subjecting the minor children to a 3-hour . . . grueling drive everyday [to and from school and daycare]." The motion further alleged "[the father] resides next to . . . an 'A' rated school as compared to [the mother's] residence in Okeechobee which is next to 'C' and 'D' rated

schools.”

After a hearing, the trial court entered an order granting the father’s motion, redesignating him the primary residential custodian of the minor children after concluding the daily travel routine described above was not in the children’s best interests. The order contained no findings of substantially changed circumstances or additional analysis of the best interests of the minor children. The mother appeals from this order.

The standard of review from an order changing child timesharing is abuse of discretion. *Chamberlain v. Eisinger*, 159 So. 3d 185, 189 (Fla 4th DCA 2015). However, the trial court has much less discretion to modify a custody order than to make the original custody determination. *Bon*, 10 So. 3d at 195; *see also San Marco v. San Marco*, 961 So. 2d 967, 970 (Fla. 4th DCA 2007).

In order to obtain a temporary custody modification, the moving party must satisfy a two-part test by establishing through competent, substantial evidence that (1) there has been a substantial or material change in circumstances since the initial custody decision, and (2) the modification is in the best interest of the children involved. *Sanchez v. Hernandez*, 45 So. 3d 57, 61 (Fla. 4th DCA 2010).

To meet the “substantial change” prong of this test, there must be a “factual basis sufficient to show the conditions have become materially altered since the entry of the previous [custody] decree.” *Wade v. Hirschman*, 903 So. 2d 928, 933 (Fla. 2005) (quoting *Frazier v. Frazier*, 147 So. 464, 467 (Fla. 1933)). The burden placed on the moving parent has been termed “extraordinary,” *Reed v. Reed*, 182 So. 3d 837, 840 (Fla. 4th DCA 2016), so as to honor the res judicata effect of the original custody determination, and to preclude the parties to a dissolution from continually disrupting the lives of their children by initiating repeated custody disputes. *Pedersen v. Pedersen*, 752 So. 2d 89, 91 (Fla. 1st DCA 2000); *Zedikder v. Zediker*, 444 So. 2d 1034, 1036 (Fla. 1st DCA 1984).

“In the absence of a properly pled modification petition, it is error to enter a modification order.” *Bon*, 10 So. 3d at 195. “Further, if the noncustodial parent fails to allege that a substantial and material change in circumstances has occurred and the trial court fails to make a similar finding, the modification order must be reversed.” *Bartolotta*, 687 So. 2d at 1387.

In this case, the father did not specifically allege, in either his amended motion for modification or at the hearing on that motion, that there had

been a substantial change in circumstances since the order on temporary relief designating the mother as the primary residential parent. Moreover, the trial court's order granting modification failed to make a finding of a substantial change in circumstances in support of that order. As a result, the trial court erred in modifying custody of the parties' children.

We therefore reverse the trial court's order granting the father's amended motion for modification, and remand for further proceedings consistent with this opinion. Our holding is without prejudice to the father bringing a properly pled motion for modification of custody.

Reversed and remanded with directions.

CIKLIN, C.J., LEVINE and FORST, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.