NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

DEIDRE MALLICK, Appellant, v. BLAKE MALLICK, Appellee.	)	Case No. 2D19-1183

Opinion filed October 16, 2020.

Appeal from the Circuit Court for Pasco County; Alicia Polk, Judge.

Jack D. Hoogewind, Dade City, for Appellant.

Brooke Elvington, Dunedin, for Appellee.

EN BANC

NORTHCUTT, Judge.

The Mallicks' 2015 divorce judgment awarded Deidre Mallick the majority of the parenting time with the parties' minor child pursuant to a time-sharing plan contained in a marital settlement agreement. In this appeal, she challenges a 2019 supplemental final judgment that modified the parties' parenting plan to grant the

majority of time to her former husband, Blake Mallick. We affirm the modification judgment. In doing so, we must recede from or clarify several of our prior decisions.[1]

As she did below, Deidre here acknowledges that there was a substantial change in material circumstances warranting a modification under section 61.13(2)(c) and (3), Florida Statutes (2017). Although the parties litigated over the nature and form that the modification should take, on appeal Deidre contests neither the trial court's factual findings nor the terms of her time-sharing under the supplemental judgment. She contends only that the court erred by failing to delineate what she must do to regain majority time-sharing with the child and by otherwise failing to outline how she may regain "meaningful" time-sharing.

Florida decisional law on this topic is conflicting. This court and the Third and Fourth District Courts of Appeal have held that when a trial court denies or restricts a parent's time-sharing with his or her child, it must specify steps for the parent to take in order to regain meaningful time-sharing. See, e.g., Grigsby v. Grigsby, 39 So. 3d 453, 456–57 (Fla. 2d DCA 2010); Lightsey v. Davis, 267 So. 3d 12, 15 (Fla. 4th DCA 2019); Solomon v. Solomon, 251 So. 3d 244, 245–46 (Fla. 3d DCA 2018). The First and Fifth hold to the contrary, arguing that section 61.13 neither requires nor authorizes courts to prescribe terms beyond the express provisions of the statute. See C.N. v. I.G.C., 291 So. 3d 204, 207 (Fla. 5th DCA 2020); Dukes v. Griffin, 230 So. 3d 155, 156–57 & 157 n.1 (Fla. 1st DCA 2017).

[1]For this reason, we decide the case en banc pursuant to Florida Rule of Appellate Procedure 9.331(a), which provides for en banc proceedings when necessary to maintain uniformity in the court's decisions.

Today we steer the law of this district closer to that of the First and Fifth but only insofar as they hold that the failure to specify such steps or benchmarks is not legal error. We disagree with any suggestion that these provisions are disallowed because they are not expressly authorized by statute.[2] Rather, we conclude that whether to include them in a judgment or order is a matter of judicial discretion.

The proposition that in these matters courts may act only within the bounds of what is explicit in chapter 61 subverts an elemental tenet of Florida's family law jurisprudence. The very first sentence in chapter 61 instructs that "[t]his chapter shall be liberally construed and applied." § 61.001, Fla. Stat. (2017). Further, proceedings under the chapter are in chancery. § 61.011. Accordingly, "proceedings under chapter 61 are in equity and governed by basic rules of fairness as opposed to the strict rule of law. . . . The legislature has given trial judges wide leeway to work equity in chapter 61 proceedings." Rosen v. Rosen, 696 So. 2d 697, 700 (Fla. 1997); see also Wade v. Hirschman, 903 So. 2d 928, 933 n.11 (Fla. 2005) (citing section 61.011 and emphasizing "the intent of the Legislature to give trial judges wide latitude to work equity in chapter 61 proceedings"); Sumlar v. Sumlar, 827 So. 2d 1079, 1084 (Fla. 1st DCA 2002).

---

[2]It is unclear whether the First District strictly adheres to that view. In Dukes v. Griffin, 230 So. 3d 155, 156 (Fla. 1st DCA 2017), the court held that "the law doesn't authorize" courts to include "other steps" necessary to modify time-sharing provisions. But in Hughes v. Binney, 285 So. 3d 996, 998 (Fla. 1st DCA 2019), when reversing a supplemental judgment because it provided for a future automatic modification of its parenting provisions, the court observed "[t]his is not to say that a court cannot instruct a parent as to steps they might take to sufficiently cure what might be ailing them and preventing their presence from being in the best interest of a child's life."

The history of Florida family law includes many examples of these principles at play. For instance, Florida's judiciary adopted and enforced the concepts of marital property and equitable distribution more than eight years before the legislature did so by enacting an equitable distribution statute. See Ch. 1988-98, § 1, Laws of Fla.; § 61.075, Fla. Stat. (Supp. 1988); Canakaris v. Canakaris, 382 So. 2d 1197, 1201 (Fla. 1980); Gardner v. Gardner, 452 So. 2d 981, 983 (Fla. 5th DCA 1984) ("Equitable distribution is a court evolved concept in Florida."). The equitable distribution statute was amended in 1991 to mandate written findings to support and explain the courts' property distributions—well after appellate courts began requiring them. See Ch. 1991-246, § 2, Laws of Fla.; § 61.075(3), Fla. Stat. (1991); O'Leesky v. Liggett, 544 So. 2d 268 (Fla. 1989); Clemson v. Clemson, 546 So. 2d 75, 78 (Fla. 2d DCA 1989); Micelli v. Micelli, 533 So. 2d 1171, 1172–73 (Fla. 2d DCA 1988).

The same 1991 session law established the first statutory directive to make written findings of fact to support awards or denials of alimony. See Ch. 1991-246, § 3, Laws of Fla.; § 61.08(1), Fla. Stat. (1991). Again, such findings had already been required by caselaw. See, e.g., Kim v. Bradshaw, 569 So. 2d 532, 532 (Fla. 1st DCA 1990), and cases cited; Strickler v. Strickler, 548 So. 2d 740, 740 (Fla. 1st DCA 1989). Likewise, the law governing the relocation of children was established by appellate courts well before the legislature addressed the topic. See Ch. 1997-242, § 1, Laws of Fla.; § 61.13(2)(d), Fla. Stat. (1997); Mize v. Mize, 621 So. 2d 417, 420 (Fla. 1993); Hill v. Hill, 548 So. 2d 705, 706 (Fla. 3d DCA 1989). The same is true of what once was referred to as "rotating custody." See Ch. 1997-242, § 2, Laws of Fla.;

§ 61.121, Fla. Stat. (1997); Bienvenu v Bienvenu, 380 So. 2d 1164, 1165 (Fla. 3d DCA 1980).

If courts were obliged to hew strictly to what is expressly delineated in chapter 61, none of the important caselaw described in the preceding paragraphs would have come about. In fact, in many respects the chapter's provisions are simply codifications of preexisting caselaw. In other instances, the legislature has acted to resolve differences among courts. Still other statutes have departed in large or small part from prevailing judicial authority. But the equitable power of the courts to devise and apply principles for deciding the myriad issues that arise in family law matters has remained untouched by the legislature and cannot be doubted.

Even more basically, the independent, inherent power and responsibility of courts to protect the interests and welfare of children is firmly established wholly aside from chapter 61. See Frazier v. Frazier, 147 So. 464, 465 (Fla. 1933); see also Cone v. Cone, 62 So. 2d 907, 908 (Fla. 1953), and Pollack v. Pollack, 31 So. 2d 253, 254 (Fla. 1947) (stating that courts of equity have inherent jurisdiction to protect infants who are wards of the court). This authority prevails in the absence of a statutory provision expressly removing it. Fisher v. Guidy, 142 So. 818, 821 (Fla. 1932); see also Cone, 62 So. 2d at 908. Thus, for example, a court may act in an emergency to temporarily suspend a party's time-sharing even though chapter 61 makes no express provision for emergency orders. See, e.g., Forssell v. Forssell, 188 So. 3d 880, 881 (Fla. 4th DCA

2016) (affirming in part nonfinal order on emergency motion to suspend father's time-sharing with parties' children).[3]

Accordingly, a court's decision to set forth benchmarks or the like in a time-sharing order turns on equitable considerations, "governed by basic rules of fairness as opposed to the strict rule of law." Rosen, 696 So. 2d at 700. It is a matter for the trial court to determine in its discretion according to the circumstances, and it is reviewable as such. See Forssell, 188 So. 3d at 881 (partially reversing emergency suspension of time-sharing because trial court abused its discretion by failing to set forth steps father must take in order to reestablish time-sharing); Hughes v. Binney, 285 So. 3d 996, 998 (Fla. 1st DCA 2019) (observing that nothing prevents a court from instructing a parent "as to steps they might take to sufficiently cure what might be ailing them and preventing their presence from being in the best interest of a child's life").

As mentioned, our previous decisions have suggested that this issue is purely one of law. In Grigsby, this court partially reversed a nonfinal order " 'temporarily completely' suspending" time-sharing between the children and their mother. 39 So. 3d at 455. That extreme measure, albeit justified by the best interests of the children at the time, implicated the mother's fundamental constitutional right to parent her children, the children's interest in maintaining their relationships with their mother, and the important policy announced by the legislature in section 61.13(2)(c)(1): "It is the public policy of

---

[3]Other than in Part II, which implements the Uniform Child Custody Jurisdiction and Enforcement Act, §§ 61.501–.542, Fla. Stat., emergencies are nowhere mentioned in chapter 61, and no provision is made for addressing them. In section 61.517, Florida Statutes (2017), the Uniform Child Custody Jurisdiction and Enforcement Act sets forth the circumstances in which a court of this state may exercise "temporary emergency jurisdiction" over a child who is the subject of a foreign custody decree.

this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing." Thus, the court was required to balance the mother's "longstanding and fundamental liberty interest" in rearing her children, Beagle v. Beagle, 678 So. 2d 1271, 1275 (Fla. 1996) (quoting Padgett v. Dep't of Health & Rehab. Servs., 577 So. 2d 565, 570 (Fla. 1991)), against the legislature's directive to "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." § 61.13(2)(c).

Consistent with those important principles, Grigsby directed the trial court on remand to give the mother the guidance necessary for her and the children to safely reestablish their time-sharing. Grigsby, 39 So. 3d at 456–57. This was clearly within the authority granted to courts in section 61.13(5) to "make specific orders regarding the parenting plan and time-sharing schedule as such orders relate to the circumstances of the parties and the nature of the case and are equitable . . . ." And it was fully within the scope of section 61.052(3): "During any period of continuance, the court may make appropriate orders for the support and alimony of the parties; the parenting plan, support, maintenance, and education of the minor child of the marriage; attorney's fees; and the preservation of the property of the parties."[4]

[4]Section 61.052(3) is commonly cited as a source of a trial court's authority to make prejudgment, or so-called "temporary" or "interlocutory," nonfinal orders during chapter 61 proceedings. See, e.g., Dent v. Dent, 851 So. 2d 819, 821 (Fla. 2d DCA 2003). In 2008, when the legislature amended section 61.13 to discontinue the concepts of "primary residence" and "visitation" in favor of the "parenting plan" and "time-sharing," it also amended section 61.052 to insert "the

Manifestly, those statutes embody the "wide leeway" granted to courts in chapter 61. They contemplate that judges will formulate discretionary directives tailored to the circumstances of individual cases. As such, the trial court's failing in Grigsby was an abuse of discretion, not a violation of a "strict rule of law."

But in Grigsby we wrote that the trial court had "erred." Grigsby, 39 So. 3d at 455.[5] And our subsequent cases—our "Grigsby progeny"—have treated this issue as one of law. See T.D. v. K.F., 283 So. 3d 943, 946 (Fla. 2d DCA 2019) (finding "reversible error"); Curiale v. Curiale, 220 So. 3d 554, 555 (2017) (holding that order was "legally deficient"); Slaton v. Slaton, 195 So. 3d 1192, 1194 (Fla. 2d DCA 2016) (characterizing order as "erroneous"); Niekamp v. Niekamp, 173 So. 3d 1106, 1108 (Fla. 2d DCA 2015) (reversing because judgment was legally deficient); Perez v. Fay, 160 So. 3d 459, 467 (Fla. 2d DCA 2015) (finding "reversible error").

Two significant drawbacks of this legal bright line are that it has led to disproportionate results and it engenders unrealistic expectations. The nonfinal order in Grigsby entirely stripped the mother of any opportunity to parent her children. It was reasonable to expect that she be given guidance to assist her effort to resume some role in childrearing, i.e., to "reestablish time-sharing" with the children. Grigsby, 39 So.

---

parenting plan" in place of "primary residence, custody, rotating custody, [and] visitation." Ch. 2008–61, §§ 3, 8, Laws of Fla.

[5]The cases relied upon by Grigsby were unclear on this point. The order at issue in Ross v. Botha, 867 So. 2d 567, 570 (Fla. 4th DCA 2004), was described as containing "several errors that, as a matter of law, require reversal," but the court did not specifically identify this particular failing as a legal error. The court in Hunter v. Hunter, 540 So. 2d 235, 238 (Fla. 3d DCA 1989), held merely that "[t]hese deficiencies mandate remand for clarification of the conditions under which appellant may regain visitation."

3d at 456–57. On the other hand, when reviewing a modification judgment in T.D., we held that the trial court was required by law to identify steps the mother "must take to reestablish the time-sharing that she had before entry of the order." T.D., 283 So. 3d at 946 (emphasis added). Unsurprisingly, then, in the instant case Deidre Mallick contends that the modification judgment is "fatally deficient on its face" because it does not prescribe what she must do to reclaim the majority time-sharing she enjoyed previously.

Of course, the differences between the order under review in Grigsby and the judgments appealed in T.D. and this case are vast. This certainly is true of the relative degree to which each order impinged on the affected party's opportunity to parent. But there is another important difference between those proceedings that reasonably might affect a trial court's decision to include benchmarks in its order or to omit them, that being the procedural postures of the cases. Grigsby involved a nonfinal order that temporarily suspended the mother's time-sharing; as such, the trial court had authority to alter it, on the court's own motion or that of either party, until entry of a final judgment. See Seigler v. Bell, 148 So. 3d 473, 478-79 (Fla. 5th DCA 2014). On the other hand, the orders in T.D. and this case were final judgments, modifiable only upon the filing of a petition and proof demonstrating substantial changes in circumstances pursuant to section 61.13. Obviously, in proceedings governed by a nonfinal order the court is far better situated to monitor and respond to a party's progress toward reassuming meaningful childrearing.[6]

[6]That there are significant distinctions between modifying a judgment and ordering other, nonfinal, forms of relief is exemplified by Florida Family Law Rule of Procedure 12.110, which sets forth the forms of pleadings in family law cases and which

Another scenario in which the procedural posture of a case could affect the desirability of giving benchmarks to a parent would occur when, unconnected with a modification proceeding, a trial court enters a nonfinal order that suspends an existing parenting or time-sharing plan imposed by an initial or supplemental final judgment. Most often, such interruptions of the status quo occur in emergencies. In such cases the court should take reasonable steps to minimize the period and scope of the suspension of rights under the existing judgment, lest the suspension morph into an improper de facto modification of that judgment. See Smith v. Crider, 932 So. 2d 393, 398 (Fla. 2d DCA 2006) (noting the principles of res judicata arising from the entry of a final judgment in a family law case and the due process concerns raised by temporarily altering the rights of the parties affected by the judgment). Thus, the issuing court might give instructions to the parent whose rights have been interrupted, with the aim of resolving the emergency in order to lift the suspension and restore the status quo under the judgment as written.[7] Sometimes, however, an emergency motion is filed as a

---

provides that claims for relief must be set forth in an "original petition, counterpetition, counterclaim, crossclaim, or third-party claim." Fla. Fam. L. R. P. 12.110(b). In subsection (h), the rule mandates that "[p]roceedings to modify a final judgment must be initiated only under this subdivision and not by motion." (Emphasis added.) The supreme court's 1995 commentary to the rule stated: "This rule clarifies that final judgment modifications must be initiated pursuant to a supplemental petition as set forth in rule [12.110(h)] rather than through a motion. Rule [12.110(h)] is to be interpreted to require service of process on a supplemental petition as set forth in Florida Family Law Rule of Procedure 12.070." In re Family Law Rules of Procedure, 663 So. 2d 1049, 1062 (Fla. 1995); see Clark v. Clark, 204 So. 3d 589, 592 (Fla. 1st DCA 2016) (holding that because husband sought to "change the status quo" by terminating his alimony obligation, his motion was effectively a modification proceeding that could only be initiated by petition and service of process, not by motion); Cuartas v. Cuartas, 951 So. 2d 980, 983 (Fla. 3d DCA 2007) (same).

prelude to modification proceedings, in which case the issuing court might suspend the parenting provisions of an extant judgment on an emergency basis while instructing the movant to expeditiously file his or her petition to modify it. The emergency suspension might then terminate in favor of a temporary parenting order under section 61.052(3).[8]

The upshot is that when deciding whether to include benchmarks or guidance in its parenting order, a trial court must exercise its discretion in light of all material circumstances. In addition to the severity of the time-sharing restriction that is being ordered and factors stemming from the posture of the case, relevant considerations likely would include the nature of the problem that necessitated the restriction, the reasonable likelihood that it could be ameliorated and, if so, how long the process would take, and any other circumstance that might bear on the desirability of giving guidance in the order.

---

[7]An instructive example can be found in Virant v. Bunce, 899 So. 2d 1157 (Fla. 5th DCA 2005), which affirmed an order suspending the father's spring break visitation after he received two DUIs. The trial court

> stated that it would review the status of the case and determine whether the summer visitation would be suspended. The trial court stated that it would hold another hearing concerning whether the summer visitation should be suspended. The trial court noted that it sincerely hoped that the father had completed his probation and received his driver's license by summer because if so, then the trial court intended on resuming visitation.

Id. at 1158.

[8]"Generally, a court may not modify a final judgment of dissolution of marriage on a temporary basis pending a final hearing on a petition for modification unless there is an actual, demonstrated emergency." Smith v. Crider, 932 So. 2d 393, 398 (Fla. 2d DCA 2006) (citing Gielchinsky v. Gielchinsky, 662 So. 2d 732, 733 (Fla. 4th DCA 1995)).

Finally, we emphasize that guidance or directives set forth in an initial or supplemental judgment do not alter the showing required to modify it under section 61.13. The best interests of children must be assessed under the circumstances at the time of the modification proceeding; they cannot be determined prospectively based on either the satisfaction of predetermined benchmarks or the failure to achieve them. See Arthur v. Arthur, 54 So. 3d 454, 459 (Fla. 2010) (holding that "prospective-based" analysis of child's best interest is unsound; the analysis must be "present-based"); Henderson v. Henderson, 905 So. 2d 901, 904–05 (Fla. 2d DCA 2005) (finding error in order that "attempts to prospectively modify the appropriate standard to be applied to any future modification of visitation"). Thus, in Talbi v. Essoufi, 65 So. 3d 1205, 1205 (Fla. 2d DCA 2011), we affirmed a dissolution judgment that described custody modifications the trial court would consider if the former wife completed specified tasks, but we cautioned that in any future modification proceeding the court "should not consider this language to be a limitation on the type of changes in circumstance the trial court should consider as a basis for modification or on the scope of any such modification."

For the reasons described, the trial court in this case did not commit legal error by failing to include benchmarks or the like in the modification judgment under review. We conclude, as well, that the failure was not an abuse of discretion.

We recede from Grigsby and its progeny to the extent that they held the omission of such provisions from parenting orders or judgments to be legal error. We certify that our decision today conflicts with the decisions of the Third and Fourth District Courts of Appeal insofar as they hold that, as a matter of law, an order or judgment

denying or restricting time-sharing must specify steps that the parent may take in order to alleviate the restrictions.[9] We also certify that this decision conflicts with the decisions of the First and Fifth District Courts of Appeal to the extent of their holdings that such provisions are not authorized under chapter 61.[10]

Affirmed.

KHOUZAM, C.J., and CASANUEVA, SILBERMAN, KELLY, MORRIS, and ROTHSTEIN-YOUAKIM, JJ., Concur.
VILLANTI, J., Concurs with opinion.
BLACK, J., Concurs in part with an opinion in which LaROSE, SLEET, LUCAS, ATKINSON, SMITH, STARGEL, and LABRIT, JJ., Concur.

VILLANTI, Judge, Concurring.

I fully agree with the court's decision to recede from those cases that applied Grigsby's requirements to parties in different procedural postures. As the majority notes, the Grigsby case involved a family court order that purported to "temporarily suspend" the timesharing initially awarded to the mother in a final judgment of dissolution. The order did not identify the length of this "temporary" suspension, nor did it identify what the mother had to do before the court would consider lifting this nominally "temporary" suspension. In such a circumstance when there is no actual

[9]These include Pierre v. Bueven, 276 So. 3d 917 (Fla. 3d DCA 2019); Lightsey v. Davis, 267 So. 3d 12 (Fla. 4th DCA 2019); Solomon v. Solomon, 251 So. 3d 244 (Fla. 3d DCA 2018); Whissell v. Whissell, 222 So. 3d 594 (Fla. 4th DCA 2017); Witt-Bahls v. Bahls, 193 So. 3d 35 (Fla. 4th DCA 2016); Forssell v. Forssell, 188 So.3d 880 (Fla. 4th DCA 2016); Tzynder v. Edelsburg, 184 So. 3d 583 (Fla. 3d DCA 2016); Davis v. Lopez-Davis, 162 So. 3d 19 (Fla. 4th DCA 2014); Ross v. Botha, 867 So. 2d 567 (Fla. 4th DCA 2004); Hunter v. Hunter, 540 So. 2d 235 (Fla. 3d DCA 1989).

[10]These include C.N. v. I.G.C., 291 So. 3d 204 (Fla. 5th DCA 2020); Dukes v. Griffin, 230 So. 3d 155 (Fla. 1st DCA 2017).

modification of the timesharing schedule but only some amorphous "temporary suspension" of it, we held that the family law court had an obligation to explain what it meant by "temporary" and what steps the mother would have to take before the court would revisit the issue. Absent this, the "temporary suspension" would become a de facto permanent modification without the court having followed the procedures required for a modification. We characterized the Grigsby court's error as a legal one. Under the majority's decision here, it would be considered an abuse of discretion. This standard is agreeable to me because it is flexible and allows the court to consider all of the circumstances between the parties—a theme that runs through chapter 61.

However, I continue to believe that courts have an obligation to ensure that family law litigants who come to court to resolve disputes leave with an explanation of why they lost. As the majority recognizes, appellate courts have previously used the common law to require family law courts to provide greater guidance to parties whose lives and relationships are being disrupted by the court's orders. Requiring a family law court to adequately inform a parent why he or she received a ruling limiting his or her contact with his or her child can only serve to cause that parent to change their future conduct in a positive direction in hopes that their timesharing might be restored—an action which, by definition, is in the child's best interest. While we now place such an obligation within the discretion of the trial court, thus relying solely on trial judges' willingness to include detailed findings in judgments, my hope is that the legislature will ultimately require courts to do so in furtherance of the constitutional right that all parents have in raising their children free from governmental interference.

BLACK, Judge, Concurring specially.

I concur with the majority insofar as it concludes that an order addressing time-sharing, visitation, or custody that does not set forth the steps by which a parent may regain time-sharing, visitation, or custody is not legally deficient and reversible on that basis alone. Section 61.13—mandating that the trial court "shall determine all matters relating to parenting and time-sharing"—does not require that a trial court provide guidance or establish the benchmarks that a parent must meet in order to restore or regain parental responsibility, time-sharing, visitation, or custody. § 61.13(2)(c). Indeed, section 61.13 expressly provides that where it is in the best interests of the child "[t]he court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent" and without requiring the court to formulate steps or benchmarks for the aggrieved parent. § 61.13(2)(c)(2)(b). Thus, a trial court cannot be reversed solely for entering an order that does not include such guidance or benchmarks. This conclusion necessarily requires that we recede from Grigsby and its progeny.[11]

Although I agree that an affirmance is required in this case, I cannot concur in totality with the majority and its rationale. I disagree with the majority insofar as it holds that trial courts have unfettered discretion to formulate steps or benchmarks which are not bounded by the directives of chapter 61 and the best interests of the child.

---

[11]Grigsby's unrestricted holding that "[a]n order that does not set forth the specific steps a parent must take to reestablish time-sharing . . . is deficient" has been expressly applied by six of this court's subsequent opinions: T.D. v. K.F., 283 So. 3d 943, 946 (Fla. 2d DCA 2019), Curiale v. Curiale, 220 So. 3d 554, 555 (Fla. 2d DCA 2017), Munoz v. Munoz, 210 So. 3d 227, 228 (Fla. 2d DCA 2017), Slaton v. Slaton, 195 So. 3d 1192, 1194 (Fla. 2d DCA 2016), Niekamp v. Niekamp, 173 So. 3d 1106, 1108 (Fla. 2d DCA 2015), and Perez v. Fay, 160 So. 3d 459, 467 (Fla. 2d DCA 2015).

Any guidance or steps set forth by the trial court do not alter the standard required under section 61.13(3) and cannot be used as a substitute for or to circumvent that standard, nor do they change the criteria a trial court must utilize in determining the best interests of the child.

I also cannot agree with the majority because it reaches conclusions as to facts outside of those of this case and its procedural posture. The advisability of setting forth steps or guidance in a time-sharing order and how a trial court might exercise its discretion to work equity under circumstances not present in this case are issues outside of our review of this case and our decision to recede from Grigsby and its progeny. The issue we have voted to address en banc is whether an order is legally deficient on its face and must be reversed solely because it does not provide steps a parent must take to regain time-sharing. We have concluded that such an order is not legally deficient and therefore are receding from our prior opinions which so held. In doing so, we acknowledge that the standard is not one of legal error but of abuse of discretion. And we conclude that on the facts of this case, the trial court did not abuse its discretion by entering a supplemental final judgment which did not provide steps by which Deidre Mallick could regain time-sharing. The advisability of providing steps to a parent in another case, under a different set of facts and circumstances, is not something we can or should determine in this one. The inescapable implication of the majority—through its presentation of possible factual scenarios and the guidance the corresponding orders should include—is that a trial court abuses its discretion in such situations when it fails to include the cited guidance. The conclusions reached by the majority as to facts outside of those of this case exceed this court's authority and invade

the purview of the trial court, effectively stripping it of discretion. We should restrict ourselves to conforming the law of this district to the language of chapter 61 and receding from our prior cases by holding that a trial court does not commit legal error by entering an order that does not provide steps or guidance to a parent whose time-sharing, visitation, or custody has been reduced or eliminated and applying the law to the facts of this case. This holding in no way restricts the constitutional right to parent children; a parent's right to file a motion or petition to modify a time-sharing order or judgment remains intact.

LaROSE, SLEET, LUCAS, ATKINSON, SMITH, STARGEL, and LABRIT, JJ., Concur.