

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CATHERINE NICHOLAS,

Appellant,

v.

DARIEN LEE GRANT,

Appellee.

No. 2D20-3298

October 20, 2021

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Darren D. Farfante, Judge.

Anastasia C. Jaster of Holistic Family Law, PLLC, St. Petersburg, for Appellant.

No appearance for Appellee.

SLEET, Judge.

Catherine Nicholas, the Mother, challenges the trial court's Order on Father's Emergency Motion for Child Pick-up Order filed by Darien Grant, the Father. We affirm the order in all respects but

one. Because the order grants relief not sought by the Father and not determined to be in the minor child's best interests, we must reverse the portion of the order that modifies the conditions of the Father's time-sharing.

On March 17, 2020, the trial court entered a final judgment of paternity, in which it put in place a time-sharing plan for the parties and their minor child. The court ordered that the Father "shall initially have supervised visitation exclusively" but "shall be entitled to unsupervised visitation upon successful completion" of certain conditions specified in the parenting plan.

Subsequent to entry of the final judgment, the Mother filed a motion to clarify certain points in the parenting plan. At some point, she began withholding the child from the Father and not complying with the time-sharing schedule, and on July 11, 2020, the Father filed a pro se Emergency Verified Motion for Child Pick-up Order. A hearing was held on that motion and on the Mother's motion for clarification, but modification of the Father's supervised time-sharing was never discussed. However, it became clear at the hearing that the Mother had taken it upon herself to unilaterally decide to withhold time-sharing from the Father. She testified that

she based this decision on the Covid-19 pandemic and her history of asthma. When the trial court explained to her that Hillsborough County had put in place an administrative order stating that time-sharing is considered essential business that is not to be withheld due to the pandemic, both the Mother and her attorney made statements indicating that they believed the Mother could decide for herself whether to follow or not follow the provisions of the court's final judgment. Following the hearing, the trial court entered an order on the Mother's motion to clarify but did not specifically address the Father's motion for pick-up order.

Then on September 8, 2020, the Father filed a second Emergency Verified Motion for Child Pick-up Order, in which he alleged that the Mother continued to deny him time-sharing with the child. A second hearing was held, and the evidence presented established that the last time the Father had seen the child was June 15, 2020. The Mother and her attorney continued to indicate that they believed the Mother could unilaterally decide not to comply with the parenting plan set forth by the trial court in its final judgment of paternity. But at no time did the Mother seek a modification of the parenting plan based on her medical concerns or

for any other reason. And she conceded at the hearing that the Father had been denied twenty-three days of time-sharing. At the close of the hearing, the trial court awarded the Father twenty-three days of make-up time-sharing and spelled out how those days would be exercised.

However, in its written order, the trial court included the following language: "Pursuant to the Final Judgment, . . . [the] Father is currently entitled to unsupervised timesharing with Minor Child on Wednesday overnight and every other weekend from Friday to Monday school drop off following the completion of an initial phase of unsupervised timesharing outlined . . . in the Final Judgment." (Emphasis added.) On appeal, the Mother argues that this language improperly grants the Father unsupervised time-sharing which he did not request in his pleading and which the trial court did not find was in the best interests of the child. We agree.

Section 61.13(4)(c)(6), Florida Statutes (2020), states, "When a parent refuses to honor the time-sharing schedule in the parenting plan without proper cause, the court . . . [m]ay, upon the request of the parent who did not violate the time-sharing schedule, modify the parenting plan if modification is in the best interests of the

child." (Emphasis added.) By the plain language of the statute, this remedy must be sought by the parent who did not violate the time-sharing schedule and must take into consideration the best interests of the child. Neither requirement was satisfied in this case.

The Father's emergency motion did not seek modification of his time-sharing from supervised to unsupervised, and the issue was not raised at either postjudgment hearing. As such, the trial court awarded a remedy that the Father did not seek and that the Mother was not put on notice to defend against. "[C]ourts are not authorized to award relief not requested in the pleadings. To grant unrequested relief is an abuse of discretion and reversible error."

Stover v. Stover, 287 So. 3d 1277, 1279 (Fla. 2d DCA 2020)

(alteration in original) (quoting *Abbott v. Abbott*, 98 So. 3d 616, 617-18 (Fla. 2d DCA 2012)); see also *Taunton v. Tilton*, 673 So. 2d 149, 149 (Fla. 5th DCA 1996) ("[W]e reverse because a request for modification was neither made nor noticed.").

Additionally, the trial court's order does not address whether changing the Father's time-sharing to unsupervised is in the best interests of the child. This is a requirement whether the

modification was granted as a response to the Mother's failure to comply with the trial court's parenting plan, *see* § 61.13(4)(c)(6), or was simply effectuated based on the Father complying with the terms of the final judgment of paternity, *see* § 61.13(3) ("For purposes of . . . modifying a parenting plan, including a time-sharing schedule, . . . the best interest of the child shall be the primary consideration." (emphasis added)).

As such, we must reverse the portion of the trial court's order that indicates that the Father is entitled to unsupervised time-sharing as that modification was not sought by the Father or found to be in the best interests of the child by the trial court. We find no merit to the Mother's other arguments on appeal and affirm the trial court's order in all other respects.

Affirmed in part; reversed in part.

NORTHCUTT and KELLY, JJ., Concur.

Opinion subject to revision prior to official publication.