

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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LAURA L. PESCOD,

Appellant,

v.

CHRISTOPHER G. IRVIN,

Appellee.

No. 2D21-188

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November 17, 2021

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Pinellas County; Jack St. Arnold, Judge.

Laura L. Pescod, pro se.

Tyrone Zdravko of Reeser & Zdravko, LLC, Palm Harbor, for Appellee.

BLACK, Judge.

Laura L. Pescod challenges the trial court's order granting Christopher G. Irvin's "Verified Emergency Motion to Adopt the Interim Recommendations of the Guardian Ad Litem." The court

granted Mr. Irvin's motion on an ex parte basis, finding that it was in the best interest of the parties' minor child to implement the recommendations of the guardian ad litem. We reverse.

The order on appeal was entered in December 2020 without a hearing. It required Ms. Pescod and the parties' child to participate in reunification therapy and implemented a three-month "time out" during which time Ms. Pescod did not have timesharing with the child overnight or at Ms. Pescod's home. Although the motion upon which the order was predicated was sworn to by Mr. Irvin, Mr. Irvin did not allege an emergency situation as required for entry of an ex parte order and his only support was the unsworn report of the guardian ad litem. *See Bahl v. Bahl*, 220 So. 3d 1214, 1216 (Fla. 2d DCA 2016). Accordingly, the trial court reversibly erred in granting the motion without first holding an evidentiary hearing. *See id.* The December 2020 order must be vacated on remand.<sup>1</sup>

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<sup>1</sup> Despite the fact that no relief can be afforded to Ms. Pescod because the order is no longer in effect, we conclude that under the circumstances of this case the appeal is not moot and that the order must be vacated so that it may not be utilized in future timesharing proceedings. *Cf. Cancellari v. Rance*, 779 So. 2d 373, 374 (Fla. 2d DCA 2000); *Julian v. Bryan*, 710 So. 2d 1037, 1039 (Fla. 2d DCA 1998); *Troiike v. Troiike*, 271 So. 3d 1069, 1072 (Fla. 3d DCA 2019).

Reversed and remanded with instructions.

LUCAS and ATKINSON, JJ., Concur.

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Opinion subject to revision prior to official publication.