

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

May 6, 2005

NANCY NICOLETTI, n/k/a	)	
NANCY GREENBERG,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D04-2356
	)	
SCOTT NICOLETTI,	)	
	)	
Appellee.	)	
_____	)	

BY ORDER OF THE COURT:

Upon consideration of Appellant's motion for rehearing filed on March 16, 2005, it is

ORDERED that Appellant's motion for rehearing is granted and the prior opinion filed March 4, 2005, is withdrawn. The attached opinion is substituted therefor. In all other respects, Appellant's motion is denied. No further rehearing will be entertained in this appeal.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES R. BIRK HOLD, CLERK

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

NANCY NICOLETTI, n/k/a	)	
NANCY GREENBERG,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D04-2356
	)	
SCOTT NICOLETTI,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed May 6, 2005.

Appeal from the Circuit Court for Pinellas  
County; Mark I. Shames, Judge.

Philip A. McLeod, St. Petersburg, for  
Appellant.

Jane H. Grossman of Law Office of Jane H.  
Grossman, St. Petersburg, for Appellee.

NORTHCUTT, Judge.

ON MOTION FOR REHEARING.

Nancy Nicoletti challenges the circuit court's order denying as untimely her  
motion for attorney's fees incurred in postjudgment litigation with her former husband.

We affirm.

The parties' marriage was dissolved in 1990. In August 2002, the circuit court entered a contempt order and judgment for college expenses and support arrears against Mr. Nicoletti. That judgment reserved jurisdiction to determine a reasonable amount of attorney's fees and costs to be paid by Mr. Nicoletti to Mrs. Nicoletti's attorney in connection with the motion for contempt. The court later denied Mrs. Nicoletti's fee claim because she failed to file a timely motion therefor, as required by Florida Rule of Civil Procedure 1.525.

As the circuit court observed, this court has previously held that rule 1.525 establishes a bright-line rule that requires a party to file a separate motion for attorney's fees within thirty days of the entry of a judgment. That a judgment reserves jurisdiction to award fees does not automatically extend the time for filing the motion. Swann v. Dinan, 884 So. 2d 398, 399 (Fla. 2d DCA 2004); Gulf Landings Ass'n v. Hershberger, 845 So. 2d 344 (Fla. 2d DCA 2003). In this regard, we disagree with the Third and the Fourth Districts, and we certify conflict with Saia Motor Freight Line, Inc. v. Reid, 888 So. 2d 102 (Fla. 3d DCA 2004), and Fisher v. John Carter & Associates, Inc., 864 So. 2d 493 (Fla. 4th DCA 2004).

The day before our original opinion issued in this case, the Florida Supreme Court promulgated Florida Family Law Rule of Procedure 12.525, which states that rule 1.525 does not apply in family law matters such as this one. See Amendments to the Florida Family Law Rules of Procedure (Rule 12.525), 30 Fla. L. Weekly S133 (Fla. Mar. 3, 2005). Mrs. Nicoletti contends on rehearing that this new rule requires reversal. We disagree.

The judgment that triggered Mrs. Nicoletti's right to attorney's fees was entered in August 2002. At that time, rule 1.525 controlled this action. See Fla. Fam. L. R. P. 12.020 (reciting that the Rules of Civil Procedure govern family law matters except where otherwise stated). Rule 12.525 became effective on March 3, 2005, the date of the supreme court's opinion. See Amendments, 30 Fla. L. Weekly at S133. Amendments to rules of procedure are prospective unless the language of the rule specifically provides otherwise. Natkow v. Natkow, 696 So. 2d 315, 317 (Fla. 1997). Neither the text of rule 12.525 nor the Florida Supreme Court's opinion adopting the rule states that it applies retroactively or to pending cases. See Reddell v. Reddell, 30 Fla. L. Weekly D944 n.1 (Fla. 5th DCA Apr. 8, 2005). Hence rule 1.525, which was in effect at the time the circuit court entered the judgment, governs this case. See Natkow, 696 So. 2d at 317 (citing Mendez-Perez v. Perez-Perez, 656 So. 2d 458, 460 (Fla. 1995)). Mrs. Nicoletti did not comply with the requirements of that rule.

We acknowledge that even before the promulgation of rule 12.525, the Fourth District held that rule 1.525 did not apply in cases involving postdecretal orders in marital dissolution actions. Gosselin v. Gosselin, 869 So. 2d 667, 669 (Fla. 4th DCA 2004). We certify conflict with Gosselin on the issue of whether rule 1.525 applied in family law cases decided before rule 12.525 was adopted.

Affirmed; conflicts certified.

SALCINES and CANADY, JJ., Concur.