

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

U. SAMUEL HENRY,)
)
 Appellant,)
)
 v.)
)
 NANCY L. HENRY,)
)
 Appellee.)
)
 _____)

Case No. 2D09-53

Opinion filed July 21, 2010.

Appeal from the Circuit Court for Polk
County; Ellen S. Masters, Judge.

Matthew J. Kovschak of The Law
Offices of Matthew J. Kovschak, P.A.,
Bartow, for Appellant.

Jean Marie Henne of Jean M. Henne,
P.A., Winter Haven, for Appellee.

KELLY, Judge.

In this appeal from a final judgment of dissolution of marriage, U. Samuel Henry (the Husband) challenges the order denying his motion for rehearing or alternatively for relief from judgment. Because we conclude that the Husband alleged sufficient facts to show a colorable claim for relief under Florida Rule of Civil Procedure

1.540(b), we reverse and remand for an evidentiary hearing on the Husband's motion. See Smith v. Smith, 903 So. 2d 1044, 1045 (Fla. 5th DCA 2005) ("A motion for relief from judgment should not be summarily dismissed without an evidentiary hearing unless its allegations and accompanying affidavits fail to allege 'colorable entitlement' to relief.") (quoting In re Guardianship of Schiavo, 800 So. 2d 640, 644 (Fla. 2d DCA 2001)). See also Jerue v. Holladay, 945 So. 2d 589 (Fla. 2d DCA 2006) (holding that the trial court erred in denying motion for relief from judgment where proper showing of excusable neglect and a demonstration that a meritorious defense could have been asserted).

Reversed and remanded.

CASANUEVA, C.J., and ALTENBERND, J., Concur.