

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RANKIN H. BECHER,)
)
 Appellant,)
)
 v.)
)
 JILLIAN BEST WOOLERY,)
)
 Appellee.)
 _____)

CASE NO. 2D00-4749

Opinion filed October 5, 2001.

Appeal from a nonfinal order
of the Circuit Court
for Pinellas County;
Walt Logan, Judge.

Bonnie S. Newton, Seminole, and
Sarah M. Chaves, St. Petersburg,
for Appellant.

Kathleen M. Calcutt of
Calcutt & Calcutt, St. Petersburg,
for Appellee.

GREEN, Judge.

Jillian Best Woolery filed an amended petition for determination of paternity
pursuant to chapter 742, Florida Statutes, against Rankin H. Becher. Mr. Becher filed a

motion to dismiss the amended paternity petition. At the hearing noticed for the motion to dismiss, the trial judge denied the motion and entered a temporary order against Mr. Becher determining paternity and fixing child support. We reverse the order granting temporary relief because it was entered without due process.

In his motion to dismiss, Mr. Becher alleged that the child in question was born while Jillian Best Woolery was married to Phillip Woolery. It appears from Jillian Best Woolery's pleadings that she and Phillip Woolery presently enjoy a traditional family relationship and that Phillip Woolery contends he is the legal father of the child, although acknowledging that he is not the biological father.¹ The court found that Phillip Woolery should be made an indispensable party. Phillip Woolery's counsel was given ten days to file pleadings, but they are not a part of this record.

Jillian Best Woolery concedes that the temporary order of paternity and support was entered without a request for this relief being noticed. She contends that the court had authority to proceed with disposition on the merits of her petition, at least temporarily, in spite of this lack of notice. Jillian Best Woolery makes reference to section 742.031(1), Florida Statutes (1999), which directs that temporary orders of child support be entered expeditiously should evidence of paternity be clear and convincing, such as supported by a high probability DNA test result.² However, the statute does not obviate the

¹ This information was contained in affidavits by Jillian Best Woolery and Phillip Woolery. The affidavits also recite that Phillip Woolery did not know his name was placed on the child's birth certificate as the father.

² It is alleged that Mr. Becher submitted to a DNA test with a 99.999% probability of paternity.

necessity for reasonable notice. Regarding due process, the supreme court recently stated:

The basic due process guarantee of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Art. I, § 9, Fla. Const. The Fifth Amendment to the United States Constitution guarantees the same. As this court explained in Department of Law Enforcement v. Real Property, 588 So. 2d 957, 960 (Fla. 1991), “[p]rocedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue.” Procedural due process requires both fair notice and a real opportunity to be heard. See id. As the United States Supreme Court explained, the notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (citations omitted). Further the opportunity to be heard must be “at a meaningful time and in a meaningful manner.” Mathews v. Eldridge, 424 U.S. 319, 333 (1976); accord Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (stating that procedural due process under the Fourteenth Amendment of the United States Constitution guarantees notice and an opportunity to be heard at a meaningful time and in a meaningful manner).

Keys Citizens for Responsible Gov’t, Inc. v. Fla. Keys Aqueduct Auth., 26 Fla. L. Weekly S502, S505 (Fla. July 12, 2001).

We agree with the trial court that Phillip Woolery is a necessary party and must be joined in the suit. We do not address whether Phillip Woolery could be financially responsible for support of the child on the basis of equitable estoppel. C.C.A. v. J.M.A.,

744 So. 2d 515 (Fla. 2d DCA 1999), review granted, 762 So. 2d 916 (Fla. 2000).

Furthermore, should Mr. Becher be ordered to pay child support, it may be appropriate to consider the income of the child's legal father, Phillip Woolery. See § 61.30(1)(a), Fla. Stat. (2000) ("The trier of fact may order payment of child support in an amount which varies more than 5 percent from such guideline amount only upon a written finding explaining why ordering payment of such guideline amount would be unjust or inappropriate"). We also recommend that the trial judge consider the appointment of a guardian ad litem on behalf of the child. Department of Health & Rehab. Servs. v. Privette, 617 So. 2d 305 (Fla. 1993); Daniel v. Daniel, 695 So. 2d 1253 (Fla. 1997).

We do not address the order denying Rankin H. Becher's motion to dismiss because that is not an appealable nonfinal order. We reverse the temporary order determining paternity and fixing child support.

Reversed in part and remanded for further proceedings consistent with this opinion.

NORTHCUTT, A.C.J., and CAMPBELL, MONTEREY, (SENIOR) JUDGE, Concur.