

# Third District Court of Appeal

## State of Florida

Opinion filed July 24, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-450  
Lower Tribunal No. 17-11174

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**Richard Hart,**  
Appellant,

vs.

**Desiree A. Hart,**  
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Ivonne Cuesta, Judge.

Law Offices of Kristin A. West, P.A., and Kristin A. West (Fort Lauderdale),  
for appellant.

No appearance, for appellee.

Before LOGUE, SCALES and LOBREE, JJ.

PER CURIAM.

The former husband, Richard Hart, appeals the lower court’s February 4, 2019 order adopting the general magistrate’s report and recommendation on the former wife’s, Desiree Hart, Verified Motion for Civil Contempt, Enforcement and Attorney’s Fees and Costs. The former husband contends that the subject civil contempt order – entered after a hearing that the former husband did not attend – violated his due process rights because the notice of hearing on the former wife’s civil contempt motion failed to comply with the requirements of Florida Family Law Rule of Procedure 12.615. We agree, and vacate the challenged order.

“In family law civil contempt proceedings based upon a party’s failure to meet his or her support obligations, the family law procedural rules spell out the due process requirements of proper notice and time to prepare.” Kane v. Kane, 247 So. 3d 57, 59 (Fla. 3d DCA 2018); see Fla. Fam. L. R. P. 12.615(b).<sup>1</sup> Failure to comply

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<sup>1</sup> Rule 12.615(b) provides:

**Motion and Notice.** Civil contempt may be initiated by motion. The motion must recite the essential facts constituting the acts alleged to be contemptuous. No civil contempt may be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt motion and notice of hearing may be served in accordance with Florida Rule of Judicial Administration 2.516 provided notice is reasonably calculated to apprise the alleged contemnor of the pendency of the proceedings. The notice must specify the time and place of the hearing and must contain the following language: “FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 48 HOURS BEFORE A

with the requirements of rule 12.615(b) results in a violation of the opposing party's due process rights. Id. Because the notice failed to comply with the express requirements of rule 12.615(b), we vacate the subject order and remand for further proceedings.<sup>2</sup>

Order vacated; remanded with directions.

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HEARING IS HELD.” This notice must also state whether electronic recording or a court reporter is provided by the court or whether a court reporter, if desired, must be provided by the party.

<sup>2</sup> We note also that it appears the general magistrate's report and recommendation purportedly makes a factual finding that the former husband had not overcome the statutory presumption that the former husband had the present ability to pay support. See § 61.14(5), Fla. Stat. (2018). Where, however, the alleged contemnor (like the former husband) fails to appear at a civil contempt hearing, the determinations of both the alleged contemnor's "present ability to pay support" and "whether the failure to pay such support is willful" shall be made at a *subsequent* hearing at which, upon execution of the writ of bodily attachment, the alleged contemnor is present before the court. Fla. Fam. L. R. P. 12.615(c)(2)(B).