

Third District Court of Appeal

State of Florida

Opinion filed June 10, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-915
Lower Tribunal No. 14-22244

Cristina Pares,
Appellant,

vs.

Cesar Soriano,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, George A. Sarduy, Judge.

Cristina Pares, in proper person.

Law Offices of Eric Yankwitt and Eric Yankwitt (Fort Lauderdale), for appellee.

Before SCALES, LINDSEY and LOBREE, JJ.

PER CURIAM.

Cristina Pares (the “former wife”) appeals from the lower court’s denial of her motion for rehearing addressed to the order of partition of proceeds from the sale

of the marital home, most of which were awarded to Cesar Soriano (the “former husband”), and the underlying order distributing the proceeds itself.¹ We reverse.

The parties divorced in 2015. The final judgment required the sale of the marital home as soon as practicable, upon which the net proceeds would be distributed in equal parts. The former wife was given exclusive possession of the home until sold, and was required to make all mortgage, property tax, insurance, and maintenance payments. The house was ultimately sold in late 2017, after the former wife was evicted, having delayed the sale for some time. The parties agreed to take each \$15,000 from the sale proceeds and conduct a hearing later to partition the rest and consider credits and set-offs. In January 2018, the former husband filed a motion to enforce and clarify the final judgment, seeking the distribution of sale proceeds and reimbursement for closing and eviction expenses, as well as attorney’s fees. Among the closing expenses were several mortgage and property tax payments made by the former husband that the former wife had purportedly failed to make. The motion was set for hearing on April 4, 2018, and the former wife was properly noticed.

¹ The former wife also seeks to appeal from the prior judgment and orders mandating sale of the home and her eviction therefrom. However, we lack jurisdiction to modify the final judgment, including the provision that she was solely responsible for the full mortgage and property tax payments. See Di Martino v. Di Martino, 360 So. 2d 1133, 1135 (Fla. 3d DCA 1978) (noting that while portion of final judgment may have been subject to reversal on direct appeal, where no appeal is taken, judgment, erroneous or not, is binding on parties).

Subsequently, participating pro se in the proceedings, the former wife unsuccessfully moved to continue the hearing partly on the grounds that she could not attend due to illness, alternatively asking to attend by phone. The trial court conducted the hearing, attended only by the former husband, and rendered an order the following day awarding him \$54,740.43 and \$2,627.37 to the absent former wife. That same day, the trial judge first ruled on one of the former wife's motions for continuance, the record is unclear which, summarily finding that she failed to show good cause. The former wife then timely moved for rehearing, again arguing that she could not attend the hearing due to hospitalization and illness, and attached supporting documentation. She also complained of the insufficiency of the court's findings on what costs and expenses warranted reimbursement. The trial court denied her motion.

Although we review the denial of a motion for rehearing for abuse of discretion, see Beacon Hill Homeowners Ass'n, Inc. v. Colfin Ah-Florida 7, LLC, 221 So. 3d 710, 712 (Fla. 3d DCA 2017); Campagna v. Cope, 971 So. 2d 243, 251 (Fla. 2d DCA 2008), any legal issues presented are reviewed de novo, see Jeffers v. McLeary, 118 So. 3d 287, 289 (Fla. 4th DCA 2013). "Abuse of discretion is shown where the record reveals a lack of competent, substantial evidence," Vena v. Vena, 556 So. 2d 436, 437 (Fla. 5th DCA 1990) (citing Dinkel v. Dinkel, 322 So. 2d 22,

24 (Fla. 1975)), or where no reasonable judge would agree with the lower court's decision, Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980).

Here, in moving for rehearing, the former wife provided the trial judge with documents from her doctors which, unrebutted and on their face, supported her continuance request. The first document, a doctor's letter dated March 19, 2018, certified that she had just missed work on March 15 and 16 due to migraines that affected her ability to function, and that she should be excused from attending any event because she was presently being treated for them. A second letter dated April 3, 2018, the day before the hearing, excused the former wife from work for the period of April 3 through April 10, 2018, due to "severe headaches" and an "expedite[d] inpatient hospital admission for headache treatment" that same week. The third document is a hospital record certifying that she was, indeed, hospitalized for the debilitating headaches on April 6 and discharged on April 10, 2018.

The trial court's disregard of allegations made in good faith coupled with supporting, unrebutted evidence here was an abuse of discretion, especially as the former wife alternatively asked to attend telephonically. See A.P.D. Holdings, Inc. v. Reidel, 865 So. 2d 682, 683 (Fla. 4th DCA 2004) ("Florida courts have held that it is reversible error to refuse to grant a motion for continuance where a party or his or her counsel is unavailable for physical or mental reasons which prevent a fair and adequate presentation of the party's case."); Lopez v. Lopez, 689 So. 2d 1218, 1219

(Fla. 5th DCA 1997) (reversing denial of rehearing where husband was unable to attend final hearing due to medical inability); see also Yaris v. Hartley, 128 So. 3d 825, 828 (Fla. 4th DCA 2013) (reversing denial of continuance where wife was absent due to impending death of her sister). As in Yaris, 128 So. 3d at 828, because the former wife here was effectively prevented from presenting her case, “a judgment or order based on such one-sided presentation is fundamentally flawed.” Accordingly, we reverse the order distributing the sale proceeds, and remand for rehearing of the former husband’s motion.²

Reversed and remanded for further proceedings consistent herewith.

² We decline to reach the sufficiency of the trial court’s findings before awarding credits and setoffs pursuant to section 61.077, Florida Statutes, and partition of sale proceeds, without prejudice to the parties’ ability to address them again below.