Third District Court of Appeal
State of Florida

Opinion filed July 8, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-904
Lower Tribunal No. 11-26169

Albert Steven Coriat,
Appellant,

vs.

Enma Larissa Coriat,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Samantha Ruiz Cohen, Judge.

Law Offices of Maria del Carmen Calzon, P.A., and Maria del Carmen Calzon, for appellant.

Wasson & Associates, Chartered, and Annabel C. Majewski; Vilar Law, P.A., and Patrick Vilar, for appellee.

Before FERNANDEZ, LINDSEY and GORDO, JJ.

GORDO, J.

Albert Coriat appeals from the trial court orders denying his Exceptions to the General Magistrate's Report and Recommendations on Former Wife's Supplemental Petition for Modification of Child Support and on Former Husband's Counter-Petition for Modification of Time-Sharing.

In 2013, Albert and Enma Coriat obtained a final judgment of dissolution of marriage incorporating a parenting plan and child support order for their two minor children. The child support payments were calculated based on the Former Husband spending 146 nights per year with the children while the parenting plan provided him with approximately 82 nights of timesharing. In 2017, the Former Wife petitioned for a modification of child support seeking a recalculation based on this disparity. The Former Husband filed a counter-petition seeking a modification of timesharing.

The general magistrate conducted an evidentiary hearing on the petitions and found that the Former Husband complied with the parenting plan as ratified by the final judgment, exercising no more than 82 overnights per year with the children. The magistrate recommended that child support be recalculated based on 82 overnights for the Former Husband. The magistrate applied section 61.30(11)(c), Florida Statutes, to calculate child support retroactively to the entry of the final judgment. The magistrate also found there had been no substantial change in circumstances to support any modification of timesharing. The Former Husband

filed exceptions to the general magistrate's report and recommendations. After hearing the exceptions, the trial court entered orders denying the Former Husband's exceptions and adopting the general magistrate's report and recommendations.

"When the trial court reviews the magistrate's report to resolve an exception, . . . a trial court must accept the magistrate's findings of fact if they are supported by competent, substantial evidence." In re Drummond, 69 So. 3d 1054, 1056 (Fla. 2d DCA 2011) (citing Carls v. Carls, 890 So. 2d 1135, 1138 (Fla. 2d DCA 2004)). "Our review of the trial court's review of the general magistrate's Report and Recommendations is de novo." Lopez v. Dep't of Revenue, 201 So. 3d 119, 123–24 (Fla. 3d DCA 2015) (citing Glaister v. Glaister, 137 So. 3d 513, 516 (Fla. 4th DCA 2014)); see In re Drummond, 69 So. 3d at 1057. "We review the trial court's application of the [child support] statute to the undisputed facts de novo." State, Dep't of Revenue v. Price, 182 So. 3d 782, 782 (Fla. 1st DCA 2015) (citing Faller v. Faller, 51 So. 3d 1235, 1236 (Fla. 2d DCA 2011)).

There is competent, substantial evidence in the record to support the modification of child support. Yet, "modifications are generally retroactive to the date of the supplemental petition." Smith v. Smith, 273 So. 3d 1168, 1171 (Fla. 1st DCA 2019) (citing Miles v. Champlin, 805 So. 2d 1085, 1087 (Fla. 1st DCA 2002)). "[S]ection 61.30(11)(c) provides an exception to that general rule, allowing retroactivity 'to the date the noncustodial parent first failed to regularly exercise the

court-ordered or agreed time-sharing schedule.'" Id.; see § 61.30(11)(c), Fla. Stat. (2019). Here, the court found that the parties had exercised a timesharing schedule consistent with the parenting plan filed in 2013. Absent the Former Husband's failure to exercise the agreed parenting plan, the court's application of this exception was error as a matter of law. We reverse the modification of child support, in part, as the modification should only be retroactive to the date of the supplemental petition.

We affirm the denial of a modification of timesharing as there was no showing of a substantial, material, and unanticipated change of circumstances. See Ezra v. Ezra, No. 3D19-0704, 2020 WL 559189, at *2 (Fla. 3d DCA Feb. 5, 2020).

Affirmed in part, reversed in part and remanded.