

Third District Court of Appeal

State of Florida

Opinion filed May 27, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1926
Lower Tribunal No. 13-24802

Brandon Williams,
Appellant,

vs.

Jarrika Taylor,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Maria Espinosa
Dennis, Judge.

Tamarah Lee Wellons, for appellant.

The Joseph Firm, P.A., and Marck K. Joseph, for appellee.

Before FERNANDEZ, HENDON, and GORDO, JJ.

FERNANDEZ, J.

The appellant/father, Brandon Williams (“Williams”), appeals the trial court’s “Order Granting Respondent’s Motion for Relief from ‘Final Judgment’ and Motion to Establish New Final Judgment, Parenting Plan and Timesharing Schedule.” We reverse because the court erred in granting the appellee/mother, Jarrika Taylor’s (“Taylor”), motion for relief because Taylor did not comply with Florida Rule of Civil Procedure 1.540(b), nor Florida Family Law Rule of Procedure 12.540(b).

On September 20, 2013, Williams filed a Petition to Determine Paternity and for Related Relief. He also filed a Proposed Parenting Plan (and time-sharing schedule) on September 25, 2013. On January 6, 2014, the trial court entered a Final Judgment of Paternity, Time Sharing/Paternity Plan (“Final Judgment”). In this Final Judgment, the court found Williams to be the father of the minor child, ordered shared parental responsibility, ordered that the parties abide by the preexisting child support case, resolved tax and health insurance issues, and reserved ruling on the timesharing schedule issue.

On March 4, 2014, Williams filed a Motion [to] Determine Time Sharing and Motion for Clarification of the trial court’s Final Judgment of Paternity. At the April 7, 2014 hearing on the motion, the trial court entered a Final Order of Determination of Parenting Plan/Timesharing Schedule (“Parenting Plan Order”) where the court adopted Williams’s parenting plan/timesharing schedule that he filed on September 25, 2013.

Thereafter, on April 6, 2015, Williams filed a Motion for Civil Contempt/Enforcement of the Final Judgment of Paternity, and a Motion for Clarification of Timesharing Agreement. Williams claimed that Taylor failed to comply with the court-ordered timesharing schedule and that Taylor had been denying him visitation since March 2015. After a hearing on May 4, 2015, the trial court granted the motion for civil contempt/enforcement, ordering Taylor to comply with the Parenting Plan Order of April 7, 2014. Williams's motion for clarification was denied. Afterwards, on October 9, 2015, Taylor filed a Verified Counter-Petition for Enforcement; Petition for Modification [of] Child Support and Timesharing.¹

On April 4, 2018, a little over four years after the trial court entered the Final Judgment of Paternity and almost four years after the trial court entered the Parenting Plan Order, Taylor filed a "Motion for Relief from 'Final Judgment' and Motion to Establish New Final Judgment, Parenting Plan and Timesharing Schedule." She claimed the January 6, 2014 Final Judgment of Paternity and the April 7, 2014 Parenting Plan Order were void under rule 1.540(b), Florida Rules of Civil Procedure and rule 12.540(b), Florida Family Rules of Procedure and, thus, should be vacated.

¹ Williams thereafter filed various other motions for civil contempt/enforcement with the trial court, alleging Taylor was not complying with the Parenting Plan Order.

On August 23, 2018, after memorandums of law were filed by both parties, the trial court granted Taylor's motion for relief in part based on inconsistencies in the Final Judgment of Paternity and the Parenting Plan Order. The trial court also based its decision to vacate on Florida Family Law Rule of Procedure 12.540(b). Williams moved for rehearing, which the trial court denied. Williams now appeals.

Williams contends, in part, that the trial court erred in granting Taylor's motion for relief because the Final Judgment of Paternity and the Parenting Plan Order are not void as a matter of law. We agree with Williams, as the Final Judgment of Paternity and the Parenting Plan Order were voidable but not void as a matter of law.

Florida Rule of Civil Procedure 1.540(b) states, in part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) that the judgment, decree, or order is void; or
- (5) that the judgment, decree, or order has been satisfied, released, or discharged, or a prior judgment, decree, or order upon which it is based has been reversed or otherwise vacated, or it is no longer

equitable that the judgment, decree, or order should have prospective application.

The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken. . . .

In addition, “A void judgment lacks legal force or effect and may be vacated at any time. By contrast, a voidable judgment must be attacked under Florida Rule of Civil Procedure 1.540(b) within one year and has legal force and effect unless and until it is vacated.” Sewell v. Colee, 132 So. 3d 1186, 1188 (Fla. 3d DCA 2014) (internal citations omitted). A void judgment is one that is entered, for example, without subject matter or personal jurisdiction, such as where there is lack of service of process. Id. However, as Williams contends, inconsistencies in an order or final judgment, as Taylor is alleging, do not render an order or judgment void. “[W]here a court is legally organized and has jurisdiction of the subject matter and the adverse parties are given an opportunity to be heard, errors, irregularities or wrongdoing in proceedings, short of illegal deprivation of an opportunity to be heard, will not render the judgment void.” Curbelo v. Ullman, 571 So. 2d 443, 445 (Fla. 1990).

For example, Paragraph 7 of the Final Judgment of Paternity reflects that the Federal Tax Exemption for the minor child shall be given to Williams, but then, the trial court also checked off the box stating the exemption would be shared by the parties. Then, as a result of a scrivener’s error, the Federal Tax Exemption was assigned to both Williams and Taylor on “even years.” This error does not make the

Final Judgment of Paternity void, as the federal tax exemption was not a main issue before the trial court.

Another example of an inconsistency is seen in the Parenting Plan Order. In Section VII, Paragraph 1A of the Parenting Plan, William mistakenly selected “every other weekend” instead of “every weekend” when he checked the box on the form. Then, in Paragraph 1C, he also selected the box that states, “there is a different time-sharing schedule for the following child(ren) in Attachment A-1. Lamaria Williams.” The Overnight Calendar Worksheet in Attachment A-1 then correctly shows that Taylor has 182 overnights with the minor child because she was scheduled to have the child every weekend and the entire month of June. Taylor referred to the schedule in her “Verified Counter-Petition for Enforcement; Petition for Modification [of] Child Support” when she stated, “Father was awarded the following timesharing: Monday from 8:00 a.m. to Friday at 6:00 p.m.” Thus, Taylor understood the timesharing schedule. These errors may have rendered the Final Judgment and Order voidable, but not void. Under rule 1.540(b), Florida Rule of Civil Procedure, Taylor would have had to move for relief within one year from the date of those orders, but she did not.

Moreover, in the order on appeal, the trial court stated that it was basing its ruling on Family Law Rule of Procedure 12.540(b). Rule 12.540(b) tracks almost

exactly the language in Florida Rule of Civil Procedure 1.540(b), with one significant difference as it relates to this case. Rule 12.540(b) states:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and on such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) that the judgment is void; or
- (5) that the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion must be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken; **except that there will be no time limit for motions based on fraudulent financial affidavits in marital or paternity cases. . . .**

(Emphasis supplied). This “no time limit” exception language in rule 12.540(b) is not contained in rule 1.540(b). Although Williams’s case is a paternity case, Taylor’s motion for relief is not based on fraudulent financial affidavits, thus the trial court erred in basing its ruling on the “no time limit” exception in rule 12.540(b).

In the case before us, the parties relied on the Final Judgment of Paternity and Parenting Plan Order for over four years. The mother was represented by counsel and she could have sought to vacate the Final Judgment of Paternity and Parenting Plan Order within the one-year requirement of rule 1.540(b) or 12.540(b), but she failed to do so. Accordingly, we reverse the trial court's order on appeal. Any ambiguities in the Final Judgment of Paternity and Parenting Plan can be resolved when the trial court on remand addresses Taylor's Verified Counter-Petition for Enforcement; Petition for Modification [of] Child Support and Timesharing.

Reversed and remanded for further proceedings consistent with this opinion.