

Third District Court of Appeal

State of Florida

Opinion filed July 15, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-0863
Lower Tribunal No. 14-21439

Csilla Mezei,
Appellant,

vs.

Iehuda Tzynder,
Appellee.

An appeal from a nonfinal order from the Circuit Court for Miami-Dade County, Maria Elena Verde, Judge.

Buckner, Shifrin, Etter, Dugan & Bradfute, P.A., and Emily M. Bradfute, for appellant.

No appearance for appellee.

Before FERNANDEZ, LINDSEY, and MILLER, JJ.

MILLER, J.

Appellant, Csilla Mezei, the mother, seeks review of a nonfinal temporary order granting appellee, Iehuda Tzynder, the father, overnight timesharing.¹ Because the motion to modify timesharing was not properly noticed for hearing, the mother was divested of her procedural due process rights.² See Schmidt v. Nipper, 287 So. 3d 1289, 1292 (Fla. 1st DCA 2020) (“Courts have found a due process violation that rises to the level of an illegal deprivation of the opportunity to be heard when the trial court heard matters beyond the scope of the matters noticed.”) (citation omitted); Shah v. Shah, 178 So. 3d 70, 71 (Fla. 3d DCA 2015) (“The trial court . . . changed the nature and expanded the scope of the scheduled hearing without proper notice. In so doing, the court violated the wife’s due process rights.”) (citation omitted); Rodriguez v. Santana, 76 So. 3d 1035, 1037 (Fla. 4th DCA 2011) (“We find that the trial court . . . improperly conducted a final evidentiary hearing when only a case management conference had been scheduled.”); Margulies v.

¹ The mother sought to invoke our original jurisdiction by filing a petition for certiorari. As the challenged order determines “the rights or obligations of a party regarding child custody or time-sharing,” we treat the instant petition as a notice of appeal. Fla. R. App. P. 9.130(a)(3)(C)(iii)(b); see Fla. R. App. P. 9.040(c) (“If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.”); Drago v. Drago, 895 So. 2d 529 (Fla. 4th DCA 2005) (redesignating petition for certiorari concerning an order modifying visitation rights as an appeal from a nonfinal order under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iii)).

² Given the challenges facing our trial courts in conducting virtual court hearings during the current public health crisis, we are not unmindful of the attempt here to efficiently and equitably resolve the pending motion.

Margulies, 528 So. 2d 957, 959 (Fla. 3d DCA 1988) (“A trial court violates a litigant’s due process rights when it expands the scope of a hearing to address and determine matters not noticed for hearing.”) (citations omitted). Thus, we reverse the order under review and remand for further proceedings consistent with this opinion.

Reversed and remanded.