

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Herrera-Frias v. Frias

130 So. 3d 733 (Fla. 2d DCA 2014) · Decided January 22, 2014

SUMMARY

The Florida Second District Court of Appeal affirmed a judgment dissolving the marriage of Claudia Herrera-Frias and Jesus Frias. The court upheld the equitable-distribution provisions and declined to disturb the child-custody and child-support rulings because the appellant failed to provide a transcript and had willfully violated an order requiring her to return the parties' children to Florida.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Altenbernd, J.; Davis, C.J.; Black, J.
JURISDICTION	Florida
DECIDED	January 22, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claudia Herrera-Frias appealed the final judgment dissolving her marriage, challenging equitable distribution, parental responsibility and contact with the children, and child support.
STANDARD OF REVIEW	Appellate review of evidentiary determinations and other decisions dependent on the evidence and arguments presented at trial is limited when the appellant fails to provide a transcript or adequate record.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Claudia Herrera-Frias v. Jesus Frias

TOPICS

dissolution of marriage

equitable distribution

child custody

child support

appellate procedure

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in its equitable-distribution determinations.

2. Whether the trial court erred by awarding Jesus Frias sole parental responsibility and limiting Claudia Herrera-Frias's contact with the children.
3. Whether the trial court erred in calculating child support.
4. Whether the absence of a transcript or adequate record prevented meaningful appellate review of evidence-dependent issues.

HOLDINGS

1. An appellant challenging trial-court decisions that depend on the evidence and arguments presented below must provide a transcript or otherwise take the necessary steps to furnish an adequate appellate record; without such a record, appellate review is extremely limited.
2. When a parent willfully violates a pretrial order concerning removal of children from the court's jurisdiction, the trial court has discretion to award sole parental responsibility to the parent who is properly before the court and complies with the court's orders.
3. The judgment of dissolution was affirmed.

KEY QUOTATIONS

“When a parent is in willful violation of a pretrial order addressing the removal of the children from the jurisdiction of the court, it is well within the discretion of the trial court to award sole responsibility to the parent who is properly before the court and compliant with the orders of that court.” (735)

FACTUAL BACKGROUND

The parties' marriage was dissolved and the judgment addressed equitable distribution, parental responsibility, contact with the parties' three children, and child support. Before entry of the final judgment, Herrera-Frias willfully disobeyed a pretrial order by fleeing to Mexico with the children and did not return them to the United States. The appellate record contained no transcript of the final hearing, so the court could not determine what evidence the trial court considered.

PROCEDURAL HISTORY

The trial court entered a judgment of dissolution awarding the husband sole parental responsibility for the parties' three children, limiting the wife's contact with them, determining child support, and dividing marital property. The wife appealed without providing a transcript of the final hearing, leaving the appellate court unable to review evidence-dependent issues fully. The appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gazil v. Gazil, 343 So. 2d 595 (Fla. 1977)
- Carney v. Carney, 861 So. 2d 1272 (Fla. 1st DCA 2008)

OPINION

ALTENBERND, J.

ALTENBERND, Judge. Claudia Herrera-Frias appeals the judgment of dissolution of her marriage to Jesus Frias. She challenges the trial court's decisions relating to equitable distribution. She also challenges the trial court's decision to award her husband sole parental responsibility for the three children of the marriage while giving her limited contact with the children.

Finally, she challenges the trial court's calculation of child support. The record in this case does not contain a transcript of the final hearing. As a result, we do not know what evidence the trial court considered when making its decision.

We gave Ms. Herrera-Frias an opportunity to provide this court with a transcript, but she has failed to provide a transcript. It appears likely that neither party arranged for that hearing to be recorded. The record reflects that Ms. Herrera-Frias has not complied with the judgment on appeal. Prior to the entry of the final judgment, she willfully disobeyed a court order, fleeing to Mexico with her three children.

She has not returned the children to the United States, despite the fact that at least one of the children is a United States citizen. This court presumably had the authority to dismiss this appeal because of her noncompliance. See *Gazil v. Gazil*, 343 So.2d 595 (Fla.1977).

We have not dismissed the appeal because we are aware that proceedings are pending in Mexico seeking the return of these children to the United States and we want that court to have confidence that this court has accorded a full measure of due process to Ms. Herrera-Frias. Concerning equitable distribution, we note that the judgment on appeal requires that all property of the marriage in the United States be sold and the proceeds divided equally between the parties.

It identifies certain property in Mexico, some of which is awarded to Ms. Herrera-Frias. Although our ability to review the equitable distribution is extremely limited without a transcript, there is nothing in the judgment on appeal that would appear to be incorrect or not in accordance with Florida law. Concerning child custody and child support, again our review is hampered by Ms. Herrera-Frias's failure to take the steps necessary to provide a rec*735ord to this court.¹ Under Florida law, it was her responsibility to take those steps if she wished to challenge a decision by the trial court that was dependent upon the evidence and arguments before that court.

See Fla. R. App. P. 9.200(e); *Carney v. Carney*, 861 So.2d 1272 (Fla. 1st DCA 2008). When a parent is in willful violation of a pretrial order addressing the removal of the children from the jurisdiction of the court, it is well within the discretion of the trial court to award sole responsibility to the parent who is properly before the court and compliant with the orders of that court.

Affirmed. DAVIS, C.J., and BLACK, J., Concur.. We note that although Ms. Herrera-Frias is representing herself in this appeal, she was represented by counsel in the trial court until she refused to comply with the order requiring her to return the children to Florida.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/florida-district-court-of-appeal-of-florida-second-district/2014/herrera-frias-v-frias-i4c29uxy>