

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Tedesco v. Department of Revenue

93 So. 3d 1236 (Fla. Dist. Ct. App. 2012) · Decided August 10, 2012

SUMMARY

The Florida Second District Court of Appeal reversed the dismissal of Timothy Paul Tedesco's motion for relief from a child support order because the dismissal was based on the mistaken belief that the order was included in a prior appeal. The court also concluded that the defective hearing notice and denial of an opportunity to be heard on exceptions violated due process. The case was remanded for consideration of the motion on its merits and further proceedings.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Villanti, J.; Whatley, J.; Kelly, J.
JURISDICTION	Florida
DECIDED	August 10, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Tedesco sought appellate review of orders dismissing his motion for relief from a child support order and denying his motion for rehearing. The Department of Revenue conceded that the trial court had erred.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	Timothy Paul Tedesco v. Department of Revenue

TOPICS

[family law procedure](#)[child support](#)[due process](#)[appellate procedure](#)[preservation of error](#)

PRACTICE AREAS

[family law](#)[civil procedure](#)[appellate procedure](#)[constitutional law](#)

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing Tedesco's motion for relief from the child support order based on the mistaken belief that the order was pending on appeal.

2. Whether the trial court's refusal to rehear Tedesco's exceptions after he failed to appear because of a defective hearing notice violated his due process right to be heard.

HOLDINGS

1. The trial court abused its discretion by adopting the magistrate's recommendation and dismissing Tedesco's motion for relief based on the mistaken factual premise that the child support order was pending on appeal.
2. Florida Family Law Rule of Procedure 12.492(g) requires that exceptions to a magistrate's recommended order be heard, and a litigant's failure to appear caused by a defect in the court's own hearing notice does not waive the litigant's right to be heard.

KEY QUOTATIONS

“Because of this factual error, the trial court abused its discretion by adopting the magistrate’s recommended order rather than considering the motion on its merits.” (1239)

“On remand, the trial court must consider Tedesco’s motion for relief from the child support order on its merits.” (1240)

FACTUAL BACKGROUND

Tedesco's time-sharing and child-support issues were bifurcated before a magistrate. The magistrate later issued a child-support recommendation, and the trial court adopted it before the period for filing exceptions had expired, apparently relying on an erroneous handwritten date on the recommendation. Tedesco timely filed exceptions and sought to vacate the order, but the trial court did not rule on those filings. When Tedesco later sought relief, the magistrate and trial court mistakenly treated the child-support order as part of an earlier appeal involving only time-sharing. The trial court also denied rehearing after Tedesco missed a hearing because the court's notice stated an incorrect day of the week.

PROCEDURAL HISTORY

Tedesco filed a petition concerning time-sharing and child support, and the magistrate bifurcated the issues. After the time-sharing matter proceeded separately, the trial court adopted the magistrate's child-support recommendation before the period for filing exceptions had expired. Tedesco filed exceptions and a motion to vacate, but the trial court did not rule on them. The trial court later dismissed Tedesco's motion for relief based on the mistaken belief that the child support order was included in an earlier appeal. It also denied rehearing after Tedesco failed to attend a hearing scheduled on a defective notice that identified the wrong day of the week. The appellate court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must consider Tedesco's motion for relief from the child support order on its merits and conduct further proceedings consistent with the appellate opinion.

CASES CITED

- Cnty. of Pasco v. Riehl, 635 So. 2d 17 (Fla. 1994)
- E.I. DuPont De Nemours & Co. v. Lambert, 654 So. 2d 226 (Fla. 2d DCA 1995)
- Edelman v. Breed, 836 So. 2d 1092 (Fla. 5th DCA 2003)
- Vollmer v. Key Dev. Props., Inc., 966 So. 2d 1022 (Fla. 2d DCA 2007)
- V.D.C. v. Dep't of Children & Family Servs., 899 So. 2d 1193 (Fla. 1st DCA 2005)
- Giordano v. Dep't of Banking & Fin., 596 So. 2d 712 (Fla. 1st DCA 1992)
- J.B. v. Fla. Dep't of Children & Family Servs., 768 So. 2d 1060 (Fla. 2000)
- Foxworth v. Wainwright, 167 So. 2d 868 (Fla. 1964)
- Matthews v. Matthews, 133 So. 2d 91 (Fla. 2d DCA 1961)
- Rigot v. Bucci, 245 So. 2d 51 (Fla. 1971)
- Hillsborough Cnty. Bd. of Cnty. Comm'rs v. Pub. Employees Relations Comm'n, 424 So. 2d 132 (Fla. 1st DCA 1982)