

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Sergio Alberto Castillo v. Marlen Castillo

150 So. 3d 1255 (Fla. 4th DCA 2014) · No. No. 4D14-2522 · Decided November 19, 2014

SUMMARY

The Florida Fourth District Court of Appeal granted Sergio Alberto Castillo’s petition for a writ of prohibition based on his allegation that the trial court failed to provide a fair opportunity to present argument or additional evidence concerning temporary support. The court directed reassignment to a successor judge and vacated the order granting temporary relief and attorney’s fees entered after the motion to disqualify was filed.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Damoorgian, C.J.; Ciklin, J.; Conner, J.
JURISDICTION	Florida
DECIDED	November 19, 2014
DOCKET	No. 4D14-2522
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for writ of prohibition in a post-dissolution proceeding challenging the trial court's handling of a motion for temporary support and the trial judge's continued participation after a motion to disqualify.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Sergio Alberto Castillo v. Marlen Castillo

TOPICS

- family law procedure
- writ of certiorari
- appellate procedure
- spousal support
- attorney fees

PRACTICE AREAS

- family law
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether petitioner's sworn allegation that the trial court denied him an opportunity to present argument or additional evidence before ruling on temporary support was sufficient to establish a well-founded fear that he would not receive a fair hearing.
2. Whether the trial court's order granting temporary relief and attorney's fees, entered after petitioner moved to disqualify the trial judge, should be vacated.

HOLDINGS

1. A sworn allegation that the trial court failed to allow a party to present argument or additional evidence before ruling on a motion for temporary support is sufficient to place a reasonably prudent person in fear of not receiving a fair hearing and supports issuance of a writ of prohibition.
2. The case must be reassigned to a successor judge.
3. The trial court's order granting respondent's May 14, 2014 motion for temporary relief and attorney's fees must be vacated because it was entered after petitioner moved to disqualify the trial judge.

KEY QUOTATIONS

"We grant petitioner's petition for writ of prohibition, based on his sworn allegation that the trial court failed to allow him to present argument or additional evidence prior to ruling on respondent's motion for temporary support in this post-dissolution proceeding." (150 So. 3d at 1255)

"We find that this allegation is sufficient to place a reasonably prudent person in fear of not receiving a fair hearing on his legal claims." (150 So. 3d at 1255)

FACTUAL BACKGROUND

In this post-dissolution proceeding, respondent filed a motion for temporary support. Petitioner alleged under oath that the trial court failed to permit him to present argument or additional evidence before ruling on the motion. The trial court subsequently entered an order granting respondent's motion for temporary relief and attorney's fees after petitioner had filed a motion to disqualify the trial judge.

PROCEDURAL HISTORY

The proceeding arose in the Seventeenth Judicial Circuit in and for Broward County. The trial court ruled on respondent's motion for temporary support without allowing petitioner to present argument or additional evidence, and later entered an order granting temporary relief and attorney's fees after petitioner moved to disqualify the trial judge. Petitioner sought a writ of prohibition, which the Fourth District granted, directing reassignment to a successor judge and vacating the challenged order.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Reassign the case to a successor judge. The trial court's order granting respondent's May 14, 2014 motion for temporary relief and attorney's fees is vacated.

CASES CITED

- Keating v. State, 110 So. 3d 538, 539-40 (Fla. 4th DCA 2013)
- Wade v. Wade, 123 So. 3d 697, 698 (Fla. 3d DCA 2013)
- Swida v. Raventos, 872 So. 2d 413, 415 (Fla. 4th DCA 2004)
- Peterson v. Asklipious, 833 So. 2d 262, 264 (Fla. 4th DCA 2002)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT July Term 2014 SERGIO ALBERTO CASTILLO, Petitioner, v. MARLEN CASTILLO, Respondent. No. 4D14-2522 [November 19, 2014] CORRECTED OPINION Petition for writ of prohibition to the Seventeenth Judicial Circuit, Broward County; Laura M. Watson, Judge; L.T. Case No. FMCE 12-07321 3598. Gary Kollin of Gary Kollin, P.A., Fort Lauderdale, for petitioner.

Gregory F. Betancourt of Gregory F. Betancourt, P.A., Miami Lakes, for respondent. PER CURIAM. We grant petitioner's petition for writ of prohibition, based on his sworn allegation that the trial court failed to allow him to present argument or additional evidence prior to ruling on respondent's motion for temporary support in this post-dissolution proceeding.

We find that this allegation is sufficient to place a reasonably prudent person in fear of not receiving a fair hearing on his legal claims. See Keating v. State, 110 So. 3d 538, 539-40 (Fla. 4th DCA 2013); Wade v. Wade, 123 So. 3d 697, 698 (Fla. 3d DCA 2013).

We direct this case to be reassigned to a successor judge. Swida v. Raventos, 872 So. 2d 413, 415 (Fla. 4th DCA 2004). We further vacate the trial court's order granting respondent's May 14, 2014 motion for temporary relief and attorney's fees, as that order was entered subsequent to petitioner's motion to disqualify the trial judge. Peterson v. Asklipious, 833 So.

2d 262, 264 (Fla. 4th DCA 2002). Petition for writ of prohibition granted. DAMOORGIAN, C.J., CIKLIN and CONNER, JJ., concur. * * * Not final until disposition of timely filed motion for rehearing. 2