

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Pena v. Rodriguez

273 So. 3d 237 (Fla. 3d DCA 2019) · No. No. 3D18-0012 · Decided May 22, 2019

SUMMARY

The Third District Court of Appeal of Florida reversed a final judgment of paternity addressing parental responsibility, timesharing, and child support. The court held that the trial court violated the father's procedural due process rights by relying on counsel's proffer and other unsworn representations without receiving admissible evidence or providing a meaningful opportunity to present and challenge evidence. The case was remanded for a new adjudicatory hearing.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Miller, J.; Fernandez, J.; Logue, J.
JURISDICTION	Florida
DECIDED	May 22, 2019
DOCKET	No. 3D18-0012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	David Pena appealed a final judgment of paternity adjudicating parental responsibility, timesharing, and child support.
STANDARD OF REVIEW	Child-custody and parenting-plan determinations are reviewed for abuse of discretion; imputation of income for child-support purposes is reviewed for abuse of discretion; claims of deprivation of procedural due process are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential Florida District Court of Appeal decision.
PARTIES	David Pena v. Leydis Rodriguez

TOPICS

procedural due process paternity child custody child support appellate procedure

PRACTICE AREAS

family law civil procedure constitutional law evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court violated Pena's procedural due process rights by entering a final judgment determining parental responsibility, timesharing, and child support based solely on unsworn representations of counsel and without an evidentiary hearing.
2. Whether any alleged informal settlement or waiver justified the trial court's reliance on proffered evidence.
3. Whether the final judgment of paternity should be reversed and the matter remanded for a new adjudicatory hearing.

HOLDINGS

1. A trial court violates procedural due process when it relies solely on unsworn representations of counsel to adjudicate contested parental responsibility, timesharing, and child-support issues without allowing the opposing party a full, fair, and meaningful opportunity to present, examine, cross-examine, and rebut evidence.
2. The record did not establish a valid settlement or waiver that authorized the trial court to decide the contested issues without an evidentiary hearing, and a procedural due process violation constitutes fundamental error that may be raised for the first time on appeal.

KEY QUOTATIONS

“One of the basic elements of due process is the right of each party to be apprised of all the evidence upon which an issue is to be decided, with the right to examine, explain or rebut such evidence.” (5)

“In the absence of a clear stipulation of counsel, argument of counsel alone does not constitute evidence from which the trial court can determine the propriety, vel non, of granting injunctive relief.” (5)

“Accordingly, the reliance upon the representations of counsel, in an evidentiary context, undermines procedural due process guarantees by divesting the opposing party of a full, fair, and meaningful opportunity to be heard.” (6)

FACTUAL BACKGROUND

David Pena and Leydis Rodriguez were the unmarried parents of a child born in 2010. They initially arranged an informal visitation schedule, and Pena provided intermittent child support, but their relationship later deteriorated. Although paternity was undisputed, the parties disputed parental responsibility, timesharing, and child support. At the final hearing, Rodriguez's counsel proffered the substance of her case, Pena was not sworn before addressing the court, and no evidence was formally presented before the trial court entered judgment.

PROCEDURAL HISTORY

Pena filed a petition for determination of paternity in 2017. After Pena failed to appear at court-ordered mediation, the trial court struck his pleadings and proceeded to a final hearing on the issues raised in Rodriguez's counterpetition. At the hearing, counsel proffered the substance of Rodriguez's case, and Pena addressed the

court without being sworn; no evidence was formally presented. The trial court then entered a final judgment addressing parental responsibility, timesharing, and child support.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the final judgment of paternity and remand for a new adjudicatory hearing.

CASES CITED

- Fazzaro v. Fazzaro, 110 So. 3d 49, 51 (Fla. 2d DCA 2013)
- Miller v. Miller, 842 So. 2d 168, 169 (Fla. 1st DCA 2003)
- Turnier v. Stockman, 139 So. 3d 397, 400 (Fla. 3d DCA 2014)
- Smith v. Smith, 872 So. 2d 397, 398 (Fla. 1st DCA 2004)
- Richardson v. Richardson, 442 So. 2d 1005, 1005 (Fla. 3d DCA 1983)
- Schwieterman v. Schwieterman, 114 So. 3d 984, 987 (Fla. 5th DCA 2013)
- A.B. v. Fla. Dep't of Children & Family Servs., 901 So. 2d 324, 326 (Fla. 3d DCA 2005)
- Beroes v. Fla. Dep't of Revenue ex rel. Palacios, 958 So. 2d 489, 492 (Fla. 3d DCA 2007)
- Verizon Bus. Network Servs., Inc. v. Dep't of Corr., 988 So. 2d 1148, 1151 (Fla. 1st DCA 2008)
- Nationstar Mortg., LLC v. Weiler, 227 So. 3d 181, 184-85 (Fla. 2d DCA 2017)
- Slotnick v. Slotnick, 891 So. 2d 1086, 1089 (Fla. 4th DCA 2004)
- Little v. Streater, 452 U.S. 1, 5 (1981)
- Walters v. Petgrave, 248 So. 3d 1202 (Fla. 4th DCA 2018)
- Matter of SAJ, 942 P.2d 407, 410 (Wyo. 1997)
- Davis v. Alaska, 415 U.S. 308, 316-17 (1974)
- Goldberg v. Kelly, 397 U.S. 254, 269 (1970)
- Matrix Sys., Inc. v. Odebrecht Contractors of Fla., Inc., 753 So. 2d 652 (Fla. 3d DCA 2000)
- Brand v. Elliott, 610 So. 2d 37, 38 (Fla. 5th DCA 1992)
- State v. T.A., 528 So. 2d 974, 975 (Fla. 2d DCA 1988)
- Haywood v. Bacon, 248 So. 3d 1254, 1256 (Fla. 5th DCA 2018)
- Bielling v. Bielling, 188 So. 3d 980, 981 (Fla. 1st DCA 2016)
- Chiu v. Wells Fargo Bank, N.A., 242 So. 3d 461, 464 (Fla. 3d DCA 2018)
- Julia v. Julia, 146 So. 3d 516, 520-21 (Fla. 4th DCA 2014)
- Minakan v. Husted, 27 So. 3d 695, 699 (Fla. 4th DCA 2010)
- PDK Labs., Inc. v. U.S. D.E.A., 362 F.3d 786, 799 (D.C. Cir. 2004)

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