SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-957
Lower Tribunal No. 18-DR-003153

SHAUNTE FULCHER,

Appellant,

v.

JEFFREY ALLEN,

Appellee.

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Lee County.
John S. Carlin, Judge.

April 21, 2023

COHEN, J.

The child who is the subject of this matter was born in 2013.[1] In 2019 a paternity suit formally established appellee as the child's father. At the end of that case the court set out a parenting plan, whereby the child would live primarily with

[1] This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

her Mother in Ft. Myers, with significant time with her Father in Zephyrhills. The Father would pay the Mother child support. The child has been enrolled with a scholarship at a local academy, where she enjoys school activities, such as cheerleading.

In the fall of 2021, Mother requested that the court appoint a parenting coordinator, a social worker who, when needed, helps parents work through parental disagreements involving their child, including communication and visitation. *See* § 61.125. Fla. Stat. (2021). Father stipulated to the appointment of a coordinator. If there came a point at which issues could not be worked out between the Mother, Father, and the coordinator, the coordinator could ask the court to set a status hearing to help resolve any issues.

The parenting coordinator requested such a status conference to "report and request direction from the court concerning compliance with the Court's Order that the father be able to speak to the child every day . . . ." The sole issue was Father's ability to speak with the child over the telephone.

From that hearing emerged the following order:

> (1) The minor child is immediately placed in the temporary custody of the Father, will reside with the Father at his residence in Zephyrhills, Florida, and will have 100 percent parenting time until further order of the trial court;

> (2) the Mother shall have no contact with the child, including in-person, telephone, electronically, or any other means of communication until further order of the Court;
>
> (3) the Mother may file the appropriate court application for contact between her and the child;
>
> (4) both parties shall work with the Parenting Coordinator prior to scheduling a hearing on any motions to modify this Order;
>
> (5) the Mother shall deliver the child to the Father at his residence in Zephyrhills, Florida no later than 8 p.m. on October 12, 2022, or a writ of bodily attachment will issue;
>
> (6) the Father's counsel shall prepare the proposed order and provide it to the Mother's counsel on October 13, 2022, in the morning so that this Order may issue forthwith; and
>
> (7) the Father shall utilize this Order to promptly enroll the child to attend school in Zephyrhills, Florida.

Mother moved for reconsideration, asserting the trial court erred in hearing matters not properly noticed, but that motion was denied without a hearing. She appeals the order. We have jurisdiction. Art. V, § 4(b)(1), Fla. Const.; Fla. R. App. P. 9.130(a)(3)(C)(iii)(b).

Mother cites several grounds for overturning the lower court's order. Only one was raised in the lower court, however, and that is the one this Court will address. Mother asserts the lower court's order was issued in violation of her due process rights because the scope of the hearing and order went beyond the scope of

matters for which she received notice. The hearing was scheduled as a "status conference," addressing specifically the issue of Father's telephonic communication with the child. The court's order went beyond simply addressing that issue and, instead, modified the timesharing and communication requirements set forth in the final judgment of paternity.

The order changed the primary residential custody of the child without providing Mother prior notice that such a result might occur. This was error. *See Hunter v. Hunter*, 65 So. 3d 1213, 1215 (Fla. 2d DCA 2000) (holding that it was error to change the primary residential custody of the children without providing the parent prior notice that such a result might occur). Outside of an emergency involving a risk of physical harm to the child or where the child is about to be improperly removed from the state, the trial court cannot modify a custody order unless the court's jurisdiction has been properly invoked by appropriate pleadings, proper service of process has been had and there is given proper notice and opportunity to be heard on that issue. *Munoz v. Salgado*, 253 So. 3d 87 (Fla. 3d DCA 2018), *Busch v. Busch*, 762 So. 2d 1010, 1011 (Fla. 2d DCA 2000) (citing *Richmond v. Richmond*, 537 So. 2d 1039, 1040 (Fla. 5th DCA 1988)).

Notably, neither Father nor the parenting coordinator had filed any paper asking the lower court to alter the parenting plan. Father does not contest Mother's arguments in this Court. Modification of the final judgment was not before the court

by a properly noticed pleading, and, therefore, the trial court's order must be reversed.

REVERSED.

NARDELLA and SMITH, JJ., concur.

Stacy L. Haverfield, of Stacy L. Haverfield, P.A., Fort Myers, and Margaret White-Small, of Margaret H. White-Small Attorney at Law, Longboat Key, for Appellant.

No appearance for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED