

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

CYNTHIA CREO OPATZ n/k/a **CYNTHIA CREO LOMBARD**,
Appellant,

v.

KEVAN JOHN OPATZ,
Appellee.

No. 4D10-1856

[August 24, 2011]

STREITFELD, JEFFREY R., Associate Judge

In this appeal from the trial court's denial of Appellant's Motion for Civil Contempt/Enforcement for non-payment of child support, the record before us demonstrates that the safeguards mandated by the Florida Family Law Rules of Procedure were not followed.

The trial court referred the Motion to a General Magistrate pursuant to Rule 12.490. The General Magistrate conducted an evidentiary hearing, but failed to file a Report and Recommendations and an Order. Yet, the trial court proceeded to deny Appellant's Motion, and modified Appellee's child support obligation without the filing of a Petition or Notice of Hearing, apparently relying on the evidence presented to the General Master.

Failure to follow the procedures established by Rule 1.490 constitutes an abuse of discretion. *Richardson v. Starling*, 56 So. 3d 866 (Fla. 5th DCA 2011). Appellant was not provided with a Report and an opportunity to file Exceptions. Modification of the Appellee's child support obligations without the filing of a Petition constitutes a denial of due process.

Given the passage of time, we reverse and remand for further proceedings, including an evidentiary hearing *de novo*.

Reversed and Remanded for proceedings consistent with this opinion.

STEVENSON and GROSS, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Catherine M. Brunson, Judge; L.T. Case No. 02-11794 DR.

Laura L. Sterling of Laura L. Sterling, P.A., Altamonte Springs, for appellant.

No appearance for appellee.

Not final until disposition of timely filed motion for rehearing.