IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

XXX,
Petitioner & wife,

vs. **Case No. 0 DR 0 N**
YYY,
Respondent & husband,

ORDER DENYING FORMER WIFE'S MOTION

This matter having come before the court today on the "Motion for Writ of Possession and Transfer of Title" filed DDD, it is ordered:

1. Findings

The parties have two minor children. This is an action for dissolution of marriage filed by the mother on DDD. The father filed a counter petition.

The mother's motion asks the court to issue a writ of possession for a certain automobile that she says is a marital asset. She also asks for an order requiring the title of that vehicle to be transferred to her. She seeks this relief because the husband is in arrears in temporary child support ordered in another case.

The parties have a D.V. case, 0 DR 0. In that case a final judgment was entered against the father on DDD. The children were then residing most of the time with the mother. The D.V. judgment ordered the father to pay temporary support of $X a month. The judgment made a written finding of an employment day care expense that was being paid by the mother. It also made written findings of the monthly incomes of the parties.

F.S. §§741.30(1)(c) and (6)(a)4. allow the court in a D.V. action to enter a temporary child support order upon the entry of a Final Judgment of Injunction for Protection Against Domestic Violence. Those statutes do not permit the court to enter a permanent, final child support order. Consequently, the form of judgment required by the Supreme Court of Florida in D.V. actions provides that any child support order is temporary. Those statutes also provide that a temporary child support order in a D.V. Final Judgment may be modified in a later filed dissolution of marriage action.

In this dissolution case there has never been a temporary relief hearing and there is no child support order. From the testimony at today's hearing, it appears there may be facts that might justify changing the amount of the temporary monthly support ordered in the D.V. action. The testimony revealed: (1) the mother may not have paid employment day care expense every months since DDD because she testified she is now unemployed and she has had other periods of unemployment over the last two years; (2) there was a period of time since DDD during which the

parties attempted a reconciliation and they may have resided together for that time; (3) the father is presently unemployed and has been for other periods since DDD; (4) the mother is presently unemployed and has been for other periods since DDD; (5) both parties received unknown amounts of unemployment benefits for some specific months since DDD.

The establishment of any of these facts would vary the amount of temporary child support that was due under the D.V. temporary order and therefore the amount of any arrearage in the temporary support. Further, child support in this case may be payable from the date the parties separated but not to exceed 24 months before the mother filed her petition in this case, pursuant to §61.30(17), so the D.V. temporary order does not fix the earliest date that support may be assessed in this case.

Nevertheless, there is no question that a temporary child support order was entered in the D.V. case and it has not been modified in this case, as allowed by §731.30(1)(c), by a motion for temporary relief or trial on the merits of the mother's or the father's petition. There is also no question that the father has not paid any child support in the D.V. case.

2. Ruling

The mother's motion is denied, without prejudice to proceed otherwise according to law for the enforcement of a temporary support order.

The court has not been cited to any law that allows a child support obligee to bypass the due process requirement of the entry of a final money judgment for a specific amount of past due, permanent child support before a writ of execution or other post judgment process may issue. *See, e.g.,* §61.14(6)(a) *et seq.*, which is a statutory procedure for reducing past due, permanent child support to a money judgment.

A past due amount of temporary child support cannot be reduced to a money judgment because all temporary orders in any case are interlocutory orders and all interlocutory orders may be modified at any time before the entry of a final judgment. Because temporary support orders can be modified or vacated at any time before the entry of the final judgment, there is no vested right to an amount of an arrearage in a temporary support order. *See* F.S. §61.14(11)(a) & (b) and *Ghay v Ghay*, 954 So.2d 1186 (Fla. 2d DCA 2007); *George v. George*, 32 So.3d 651 (Fla. 2d DCA 2010; *Hall v. Maal*, 32 So.3d 682 (Fla. 1st DCA 2010). If there is no vested right, the past due amount of temporary child support cannot be reduced to a money judgment.

This case illustrates why temporary orders do not vest rights. During the two years since the temporary order was entered in the D.V. case, the parties have both been unemployed from time to time, they attempted a reconciliation for some months, they each collected unemployment benefits for certain months, and the D.V. support calculation assumes an employment day care expense but the mother has not been employed for all of the months since that order was entered.

So, the mother cannot reduce the temporary child support arrearage in the D.V. case to a money judgment, and she is not entitled to post judgment legal process in this case to collect past due temporary child support ordered in the D.V. case.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
., *pro se*, and Esq.