Orders denying motions for rehearing

A motion for rehearing under Rule 1.530 can be denied without a hearing if it does not state on its face a legally sufficient reason to hold a second trial or an evidentiary hearing on the motion. *See, e.g., Stella v. Stella.* 418 So.2d 1029 (Fla. 4th DCA 1982) and *Flemenbaum v. Flemenbaum*, 636 So.2d 579 (Fla. 4th DCA 1994), in which the court said: "If a motion [for rehearing] on its face does not set forth a basis for relief, then an evidentiary hearing is unnecessary. The time and expense of needless litigation are avoided and the policy of preserving the finality of judgments is enhanced." *Id.* at 580.

Although the former husband's motions are directed at an order denying his post judgment motion for contempt, and not a final judgment under Rule 1.530, and therefore they are, strictly speaking, common law motions for reconsideration, the same reasoning applies to his motions. The former husband's motions reargue and present again the same evidence that the court heard previously. It disagrees with the court's ruling. It does not state a legally sufficient reason to hold a second hearing. There is no legally sufficient reason stated in the motions to hear the same evidence again and to hold another hearing to reconsider the court's ruling.

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ORDER DENYING FORMER WIFE'S MOTION FOR REHEARING

This matter came before the court on the former wife's "Motion for Rehearing" filed 11/30/2009. It is ordered:

The Final Judgment was filed with the clerk on 11/19/2009. Therefore, under the time limit of Rule 1.530(b) the motion was timely filed and the court has jurisdiction to consider the motion.

The former wife's motion presents again the same arguments that the court heard previously at the trial. Former wife's counsel ably presented the former wife's evidence, her understanding of the facts and the argument for the former wife's conclusions. The evidence at the trial was conflicting and contradictory. The court, therefore, had to resolve the conflicts in the evidence. The motion for rehearing repeats the former wife's arguments. It disagrees with the court's findings of fact and ruling.

Therefore, because the motion presents the same evidence and argument a second time, it does not state a legally sufficient reason to order a second trial or to hold a hearing to clarify or correct the judgment. Disagreement with the court's resolution of conflicting and contradictory evidence is not a sufficient reason to grant a motion for rehearing. The court's ruling was within the court's discretion under the law.

A motion for rehearing under Rule 1.530 can be denied without a hearing if it does not state on its face a legally sufficient reason to hold a second trial or an evidentiary hearing on the motion. *See, e.g., Stella v. Stella.* 418 So.2d 1029 (Fla. 4th DCA 1982) and *Flemenbaum v. Flemenbaum*, 636 So.2d 579 (Fla. 4th DCA 1994), in which the court said: "If a motion [for rehearing] on its face does not set forth a basis for relief, then an evidentiary hearing is unnecessary. The time and expense of needless litigation are avoided and the policy of preserving the finality of judgments is enhanced." *Id.*

For the foregoing reasons, the former wife's motion is **denied without a hearing. Therefore, no hearing will be held on the motion for rehearing**.

The Final Judgment is, therefore, now final. .

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A motion for rehearing under Rule 1.530 can be denied without a hearing if it does not state on its face a legally sufficient reason to hold a second trial or an evidentiary hearing on the motion. *See, e.g., Stella v. Stella.* 418 So.2d 1029 (Fla. 4th DCA 1982) and *Flemenbaum v. Flemenbaum,* 636 So.2d 579 (Fla. 4th DCA 1994), in which the court said: "If a motion [for rehearing] on its face does not set forth a basis for relief, then an evidentiary hearing is unnecessary. The time and expense of needless litigation are avoided and the policy of preserving the finality of judgments is enhanced." *Id.* at 580.

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Although the former husband's motion is directed at an order denying his motion for contempt, and not a final judgment under Rule 1.530, and therefore it is, strictly speaking, a common law motion for reconsideration, the same reasoning applies to his motion.

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ORDER DENYING HUSBAND'S MOTION TO REHEAR

This matter having come before the court on the husband's "Motion for Rehearing and Modification of Income Deduction Order" served December 3, 2009, it is ordered:

1. . Findings

The parties have two minor children,

The motion reargues the husband's arguments made at the hearing of 11/24/2009 and disagrees with the court's findings of fact and ruling. The Order of 11/24/2009 is a temporary order.

2. . Ruling

Although the former husband's motion is directed at an interlocutory order and not a final judgment, and therefore it is, strictly speaking, a common law motion for reconsideration of an interlocutory order, the reasoning and case law under Rule 1.530 applies to his motion.

A motion for rehearing under Rule 1.530 can be denied without a hearing if it does not state on its face a legally sufficient reason to hold a second trial or an evidentiary hearing on the motion. *See, e.g., Stella v. Stella.* 418 So.2d 1029 (Fla. 4th DCA 1982) and *Flemenbaum v. Flemenbaum,* 636 So.2d 579 (Fla. 4th DCA 1994), in which the court said: "If a motion [for rehearing] on its face does not set forth a basis for relief, then an evidentiary hearing is unnecessary. The time and expense of needless litigation are avoided and the policy of preserving the finality of judgments is enhanced." *Id.* at 580.

The husband's motion only disagrees with the Order of 11/24/2009, which is not a reason to hold a hearing on the motion. With nearly every order in every litigation someone disagrees with the court's ruling. The Order of 11/24/2009 is supported by substantial evidence in the record

and the rulings are within the court's discretion under the law.

The request to amend the income deduction order, for example, disagrees with the court's ruling. The court has the discretion to order child support from the date of filing, that is, 11/13/2009, so based on the calculation there is one month's arrearage. When the arrearage has been paid in full, the court can then amend the income deduction order because at that point the situation will have changed, that is, there will then be no arrearage. Until then, the income deduction order is supported by substantial evidence in the record and it is within the court's discretion under the law.

In general, any temporary or any interlocutory order entered before the final judgment in any case can be modified as the situation changes or if the court decides such an order was incorrect under the law. So, for example, if it is later proven that the parties demonstrate a capacity to share parenting decisions after 11/24/2009, then a shared parenting order would be supported by substantial evidence and such an order would be within the court's discretion.

Therefore, for the foregoing reasons, **the husband's motion for rehearing is denied without a hearing**, without prejudice to either party to move to modify the Order of 11/24/2009 or for other temporary relief, as allowed by law.

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The former wife's motion presents again the same arguments that the court heard previously at the trial. The motion disagrees with the court's ruling. In nearly every case the court decides, one party or the other or both of them disagree with some or all of the court's decisions.

The former wife ably represented herself at the trial. The evidence at the trial was conflicting and contradictory. The court, therefore, had to resolve the conflicts in the evidence. The motion for rehearing repeats the former wife's arguments. It disagrees with the court's findings of fact and ruling. The testimony of the party, uncorroborated by any document, is evidence, and the court, as the finder of fact, may consider any and all evidence and may believe or disbelieve any evidence.

Therefore, because the motion presents the same evidence and argument a second time and because it argues the court should not have believed certain testimony, it does not state a legally sufficient reason to order a second trial or to hold a hearing to clarify or correct the judgment. Disagreement with the court's resolution of conflicting and contradictory evidence is not a sufficient reason to grant a motion for rehearing. Disagreement with the court's finding that testimony was believable is not a sufficient reason to grant a rehearing. The court's ruling was within the court's discretion under the law.

A motion for rehearing under Rule 1.530 can be denied without a hearing if it does not state on its face a legally sufficient reason to hold a second trial or an evidentiary hearing on the motion. *See, e.g., Stella v. Stella.* 418 So.2d 1029 (Fla. 4th DCA 1982) and *Flemenbaum v. Flemenbaum*, 636 So.2d 579 (Fla. 4th DCA 1994), in which the court said: "If a motion [for rehearing] on its face does not set forth a basis for relief, then an evidentiary hearing is unnecessary. The time and expense of needless litigation are avoided and the policy of preserving

the finality of judgments is enhanced." *Id.*

For the foregoing reasons, the former wife's motion for rehearing is denied with prejudice. The judgment is now final.