

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

W B,
Former wife,

vs.
M B,
Former husband,

Case No. XX DR TTTT N

ORDER GRANTING FATHER'S MOTION TO DISMISS
WITHOUT PREJUDICE

This matter having come before the court on A Date/2014 on the father's "Motion to Dismiss" filed A Date/2013, it is ordered:

1. Findings

On A Date/2013 the mother filed a supplemental petition to modify the Final Judgment filed J Date/2009. Her factual allegations of a substantial change of circumstances justifying the change requested in paragraph 6 are found in paragraph 5 of her supplemental petition. In paragraph 7 she alleges ultimate facts regarding a requested change in the prior child support order.

The mother's supplemental petition requests to change (1) the parental responsibility order and (2) the child support order. There is no request to change the time-sharing schedule order. There is no new proposed time-sharing schedule alleged.

These allegations do not amount to ultimate facts showing that a substantial, unanticipated change in circumstances has occurred since the judgment. These allegations do not show that the best interests of the children will be promoted by a proposed modification.

2. Ruling

If all of the ultimate facts alleged in her supplemental petition are taken as proven, the court could not grant her petition and modify the judgment. A claim for relief must allege ultimate facts that show the pleader is entitled to relief allowed by law. Rule 1.110(b).

The mother's supplemental petition requests to change (1) the parental responsibility order, paragraph 6, and (2) the child support order, paragraph 7.

There is no request to change the time-sharing schedule order and there is no proposed new time-sharing schedule alleged. So, without a request to change the time-sharing schedule and without ultimate facts alleged demonstrating a substantial, material, and unanticipated change in circumstances justifying a different time-sharing schedule and without a new time-sharing schedule being alleged that is in the children's best interest, the court has no authority to change the existing time-sharing schedule, although the argument at this hearing suggested the mother wants to change the time-sharing schedule. *See, e.g., Worthington v. Worthington*, 123 So.3d 1189 (Fla. 2d DCA 2013).

Regarding her request to change the parental responsibility order, the allegations of the mother's supplemental petition do not meet the standard of *Wade v. Hirschman*, 903 So.2d 928 (Fla. 2005). A petitioner requesting "modification carries the extraordinary burden of proving (1) a substantial and material change in circumstances, and (2) that the best interests of the child will be

promoted by such modification.” *Id.* at 933. “Furthermore, the substantial change must be one that was not reasonably contemplated at the time of the original judgment.” *Id.* at 930, FN 2.

See also *Ring v. Ring*, 834 So.2d 216 (Fla. 2d DCA 2002); *Cooper v. Gress*, 854 So.2d 262 (Fla. 1st DCA 2003); *Johnson v Adair*, 884 So.2d 1169 (Fla. 2d DCA 2004); *Bazan v. Gambone*, 924 So.2d 952 (Fla.3d DCA 2006); *Ogilvie v. Oglivie*, 954 So.2d 698 (Fla. 1st DCA 2007); *Paskiewicz v. Paskiewicz*, 967 So.2d 277 (Fla. 3d DCA 2007); *Sanchez v. Hernandez*, 45 So.3d 57 (Fla. 4th DCA 2010); *Ragle v. Ragle*, 82 So.3d 109 (Fla. 1st DCA 2011); *Sueiro v. Gallardo*, 105 So.3d 585 (Fla. 3d DCA 2012).

Regarding her request to change the child support order, she alleged her income has been “drastically reduced,” but she did not file a financial affidavit with her supplemental petition as required by §61.30(14). She did not allege ultimate facts that the standard for modification based on a change in a guideline calculation under §61.30(1)(b) is met.

Therefore, her petition does not state a cause of action to modify the child support order. The allegation that the former husband’s “ability to provide child support has increased” is alone insufficient to state a cause of action for modification of the prior child support order. The allegation that the “children’s needs have increased” is irrelevant, and this factual allegation does not amount to specific factual allegations of “special needs” of the children as a basis for a deviation under §61.30(11)(a)6.

Therefore, the mother’s supplemental petition to modify does not state a cause of action to modify the judgment’s parental responsibility order or child support order. The father’s motion to dismiss is granted. Rule 1.140(h)(2).

Therefore, the mother’s supplemental petition filed 10/30/2013 is dismissed without prejudice. She is granted 20 days leave to file an amended supplemental petition.

Regarding the father’s request for fees in his motion to dismiss, whether the basis of this request is the nonfinancial factors in *Rosen* or *Wrona* or a comparison of the finances of the parties under §61.16, the issue is not ripe for determination. **Therefore, this request is also denied without prejudice.**

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

R. Thomas Corbin, Circuit Judge

Copies provided to:
_____, Esq., and _____, Esq.