

LISA B. WALKER, Appellant, v. JOHN SEGRO, Appellee.

CASE NO. 4D02-4627

COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

**848 So. 2d 464; 2003 Fla. App. LEXIS 9929; 28 Fla. L. Weekly D
1528**

July 2, 2003, Opinion Filed

SUBSEQUENT HISTORY: Released for Publication July 18, 2003.

PRIOR HISTORY: [**1] Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; James T. Carlisle, Judge; L.T. Case No. CD 95-8149 FZ.

DISPOSITION: REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant mother appealed a non-final order by the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County (Florida), that denied her motion to set aside a hearing and granted temporary visitation to appellee father.

OVERVIEW: The father was declared to be the father of a child in a paternity action, but was denied visitation due to his criminal problems and drug addiction. In response to a petition to adopt, the father requested a hearing, inter alia, to establish visitation. When the hearing was cancelled, the father's counsel rescheduled a hearing in four days and faxed the only notice thereof to the mother's counsel, who objected to the short notice. Aware of the mother's objection, the trial court, nevertheless, entered a temporary visitation order. The appellate court held that under Fla. R. Civ. P. 1.090(d), four days' notice that spanned a weekend was insufficient time for the mother's counsel to prepare for the hearing. In addition, the notice was not properly served pursuant to Fla. R. Civ. P. 1.080(a), which required service by hand or mail in addition to facsimile service.

OUTCOME: The judgment was reversed and remanded for further proceedings.

CORE TERMS: notice, visitation, reasonable time, mail, fax, visitation order, temporary, faxed

LexisNexis(R) Headnotes

Civil Procedure > Pleading & Practice > Pleadings > Time Limitations

Family Law > Child Custody > Visitation

[HN1] In a visitation context, under Fla. R. Civ. P. 1.090(d), which applies to family law matters through Fla. Fam. L.R.P. 12.090, notice of a hearing on a motion shall be served a reasonable time before the time specified for the hearing. There is no clearly delineated definition of reasonable time, but the notice requirement envisions at a minimum, actual notice and time to prepare.

Civil Procedure > Pleading & Practice > Service of Process > Methods of Service

[HN2] Fla. R. Civ. P. 1.080(a) states that service is required for every "other paper" filed in an action. The term "other paper" encompasses notices of motion hearings. The rule explicitly requires that when a paper is served by facsimile, a copy shall also be served by any other method permitted by the rule, including

mail and hand delivery.

COUNSEL: Lisa Marie Macci of Lisa Marie Macci, P.A., Boca Raton, for appellant.

No appearance for appellee.

JUDGES: GUNTHER, KLEIN and TAYLOR, JJ., concur.

OPINION: [*465] PER CURIAM.

John Segro ("Segro") was declared to be the father of appellant Lisa Walker's ("Walker") child in a 1996 judgment of paternity. He was denied any visitation because of criminal problems, some of which involved drug addiction.

In response to a petition to adopt filed by the child's stepfather, Segro scheduled a hearing on his petition to modify parental responsibility and establish visitation for November 8, 2002. The hearing was cancelled by the judge due to unavailability. On November 14, Segro's counsel rescheduled the hearing for 2:30 p.m. on November 18, and faxed the only notice of this hearing to Walker's counsel at 2:26 p.m. Walker's counsel faxed a response to Segro's counsel the following day objecting to the short notice, [**2] citing her inability to contact Walker and preexisting family obligations on the afternoon of the hearing. The judge was aware of this objection. At hearing, the judge entered a temporary visitation order. Walker moved to set aside the order, the motion was denied, and this appeal ensued.

[HN1] Under Florida Rule of Civil Procedure 1.090(d), which applies to family law matters through Florida Family Law Rule of Procedure 12.090, notice of a hearing on a motion "shall be served a reasonable time before the time specified for the hearing." There is no clearly delineated definition of reasonable time, but the notice requirement envisions at a minimum, actual notice and time to prepare. *Harreld v. Harreld*, 682 So. 2d 635, 636 (Fla. 2d DCA 1996). The Harreld court considered the four days notice given by mail and fax to the husband prior to a final dissolution hearing, and concluded that such was not reasonable notice. *Id.* The court held that two working days' notice, notice on Friday [*466] for a Tuesday hearing, was insufficient prior to such an important hearing, especially considering that the husband did not reside in Florida. *Id.*

The present situation is similar [**3] to that in *Harreld*. Here, Walker also received four days notice of the permanent visitation hearing by fax, notice of which also spanned a weekend from Thursday to Monday. Walker's counsel would also have had at best two working days to prepare for the important hearing. n1 Additionally, the situation was similarly complicated by the fact that counsel was having difficulty contacting Walker to notify her of the hearing and would be forced to rearrange her busy schedule on short notice to accommodate the hearing. Therefore, we hold that the notice given by Segro to Walker was insufficient under the standard set by Rule 1.090(d).

n1 The hearing can be characterized as important because it focused on the hotly contested issue of visitation between the parties. At the time of the hearing, Segro had no visitation rights.

Even if the notice considered alone was not insufficient, one key difference exists between *Harreld* and the present case - the notice was not properly served on Walker in the first instance. [**4] Florida Rule of Civil Procedure 1.080(a) [HN2] states that service is required for every "other paper" filed in an action. The term "other paper" encompasses notices of motion hearings. HENRY P. TRAWICK, JR., *FLORIDA PRACTICE AND PROCEDURE* § 9-7 (1999 ed.). Therefore, Rule 1.080(b) applied to Segro's service of the notice of hearing on Walker. This rule explicitly requires that when a paper is served by facsimile, "a copy shall also be served by any other method permitted by this rule," including mail, as in *Harreld*, and hand delivery. There is no evidence in the record that Segro's attorney served any other form of notice of the hearing, and consequently, Segro violated this rule.

In sum, the temporary visitation order is reversed and remanded due to insufficient and improperly served notice of the motion hearing that violated Walker's due process rights. *Quay Dev., Inc. v. Elegante Bldg. Corp.*, 392 So. 2d 901, 903 (Fla. 1981) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339

U.S. 306, 314, 94 L. Ed. 865, 70 S. Ct. 652 (1950)).

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS. [**5]

GUNTHER, KLEIN and TAYLOR, JJ., concur.