IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

NICOLE CORRIGAN,

Appellant,

v. Case No. 5D18-2158

MANUEL ISRAEL VARGAS III,

Appellee.

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Opinion filed April 5, 2019

Nonfinal Appeal from the Circuit Court
for Orange County,
Tanya Davis Wilson, Judge.

Andrea Black, of Andrea Black, P.A., Orlando, for Appellant.

Richard L. Wilson, Orlando, for Appellee.

COHEN, J.

Nicole Corrigan ("Mother") appeals the order granting Manuel Israel Vargas III's ("Father") motion to vacate the child support portion of the final order approving the parties' mediated parenting plan. We reverse.

Mother and Father, who never married, had a child in 2006. The parties had an informal agreement to exercise timesharing with the child. In 2015, Father filed a petition for determination of paternity and moved for a formal timesharing plan. The trial court

granted Father's request and ordered a temporary parenting plan and timesharing schedule.

In 2016, Father moved for temporary child support. At the hearing on that motion, Father testified that he did not work in 2015 or 2016 and did not file tax returns in either 2014 or 2015. He also testified that his mother paid for the child's expenses during his timesharing and that he did not pay for food, rent, utilities, a car, gas, or vacations. Father's last job was "marketing for a club" in 2013.[1] He and his current girlfriend had another child in 2014, whom he took care of at his mother's house. Father described himself as a stay-at-home dad. However, he also acknowledged that he took "business trips" in 2016 to New York, Detroit, Atlanta, and Miami, as well as a family cruise, which amounted to approximately three months of travel. According to Father, he did not pay for anything on these trips. The trial court also considered the financial affidavits filed by the parties. Father's affidavit alleged that he was self-employed as a caregiver and had no income. Mother's affidavit reflected that she was employed as a nurse. The trial court denied Father's request for temporary child support, finding that Father's financial affidavit was inconsistent with his lifestyle and lacked credibility.

The parties subsequently attended mediation and successfully settled the majority of their parenting issues. The mediator filed a report reflecting a partial settlement and attached the parties' paternity agreement and parenting plan, as well as a child support

[1] Father previously testified at a deposition that his prior employment included: "distribut[ing] flyers for every night club in the city" (for free); creating an escort service that "provid[ed] female company"; assisting in disaster cleanup for FEMA; assisting in his mother's janitorial business; acquiring a 30% interest in a night club; hosting events for another night club; opening and running a second night club; and starting a talent management business.

guidelines worksheet. The worksheet provided that the child would spend 50% of overnights with each parent. It also reflected that Father had a gross monthly income of $3333, that Mother had a gross monthly income of $4167, and that after adjustments, Father owed Mother $1 in monthly child support. Each party signed the mediated agreement under oath. Their respective lawyers signed the notarized parenting plan as well.[2] The parties initialed each page of the worksheet attached to the mediation agreement. The court entered a final order approving, ratifying, and incorporating the mediated parenting plan, finding it to be in the best interest of the child. The only issue left for resolution was attorney's fees.

Father subsequently attempted to reengage in discovery and requested Mother's financial records, as well as to depose the mediator. As his basis, Father alleged that the mediated child support guidelines worksheet was "falsified to equalize the parties' income, so that neither would be required to pay child support to the other party." Father filed a "corrected" worksheet that imputed his monthly income at minimum wage, which amounted to a net income of $1224.

The trial court denied Father's requests for discovery, and thereafter, Father moved to vacate the child support portion of the final order pursuant to Florida Family Law Rule of Procedure 12.540 on the basis of fraud. He alleged that he and Mother agreed to waive Mother's child support obligation in exchange for equal timesharing, which contravened Florida law.[3] He further alleged that the mediator assisted and

[2] Although unemployed and devoid of any income, Father was represented by not one, but two lawyers throughout the proceeding.

[3] E.g., Golson v. Golson, 207 So. 3d 321, 327 (Fla. 5th DCA 2016) ("It is a well-established principle that parents cannot contract away their child's right to support, nor

orchestrated the fraud by manipulating the software used to prepare the guidelines worksheet at mediation. Father concluded that the alleged fraud injured the court and the child.

In support of his motion, Father attached three affidavits—one from himself and two from his lawyers. His affidavit swore that during mediation, he and his lawyers told the mediator that he was unemployed and had no income, such that child support was necessary. The mediator "announced that he could resolve the child support issue, and left the room" alone. The mediator returned with a parenting plan and a child support guidelines worksheet that reflected Father's monthly income at $3333. According to Father, the mediator explained that if he was willing to waive child support, Mother was willing to increase his timesharing. Father agreed because he wanted to obtain as much timesharing as possible. He signed the mediated parenting plan under oath. Father's lawyers swore to the same, providing that "[e]veryone signed the document with the fictious income amounts," despite knowing that Father had no income.

The trial court heard Father's motion and subsequently entered an order vacating the child support portion of the final order on the basis that "the Petitioner's [Father's] attorneys admit to making false representations in order to reduce the Petitioner's child support obligation to zero." This order is the basis of Mother's appeal.

"Florida has a well-recognized policy favoring the finality of judgments, especially in family law contexts." Romero v. Romero, 959 So. 2d 333, 336 (Fla. 3d DCA 2007) (citations omitted). However, Rule 12.540 allows a court to set aside a final order,

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can one parent waive the child's right by acquiescing in the other parent's non-payment." (citing Green v. Horne, 421 So. 2d 788, 789 (Fla. 1st DCA 1982))).

including one ratifying and incorporating an agreement, on the basis of fraud, misrepresentation, or other misconduct of an adverse party. Fla. Fam. L. R. P. 12.540(b)(3). To demonstrate fraud, a moving party is required to establish four elements: an adverse party made a false statement regarding a material fact; with knowledge that the statement was false; with the intention to induce another's reliance; which consequently injured the party who acted in reliance on the false statement. E.g., Winfield Invs., LLC v. Pascal-Gaston Invs., LLC, 254 So. 3d 589, 592 (Fla. 5th DCA 2018).

Here, Father's Rule 12.540 motion alleged that he, Mother, their respective lawyers, and the mediator engaged in fraud to waive child support. However, the only evidence presented, in the light most favorable to Father, was that any alleged fraud was perpetrated by Father and his lawyers. In his motion and accompanying affidavits, Father alleged that: *he* agreed to a false statement about the material fact of his income; *he* knew his designated income was false; *he* agreed to the misrepresentation to obtain as much timesharing as possible; and *he* injured the court and the child by doing so.

It is clear that Father proceeded through this case with unclean hands. The doctrine of unclean hands is designed to prevent courts from granting a party relief from a result the party brought about through its own voluntary acts. E.g., Thomas v. Thomas, 589 So. 2d 944, 947 (Fla. 1st DCA 1991); see also Cong. Park Office Condos II, LLC v. First-Citizens Bank & Tr. Co., 105 So. 3d 602, 609 (Fla. 4th DCA 2013) (describing unclean hands as "an equitable defense that is akin to fraud . . . [and] closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief") (citations omitted); cf. Hicks v. Hicks, 948 So. 2d 63, 64 (Fla. 5th DCA 2007) ("Although trial courts are normally required to calculate the amount of child

support based upon the statutory guidelines and then justify any substantial deviation from that guideline amount, when a party prevents the court from accurately calculating an amount through the failure to fully and completely disclose financial information, that party will not be heard to complain when the court cannot (and therefore does not) make a specific calculation.").

The court improperly granted Father relief from a result brought about by his own misdeeds. See Gutierrez v. Gutierrez, 248 So. 3d 271 (Fla. 3d DCA 2018) (finding that trial court erred in granting former husband's motion to set aside final judgment, in part, where former husband's alleged misrepresentation stemmed from the nondisclosure of his own assets). Father was aware of his financial situation when he agreed to the mediated parenting plan. See Heard v. Heard, 965 So. 2d 173, 173–74 (Fla. 5th DCA 2007) (holding that former wife was not entitled to relief from judgment where she alleged that she did not have authority to contract away the child's right to support but had access to all material financial information when she agreed to the child support amount and timesharing). Accordingly, we reverse the order granting Father's motion to vacate the child support portion of the final order approving the mediated parenting plan.[4]

REVERSED and REMANDED.

ORFINGER and EISNAUGLE, JJ., concur.

[4] Our opinion should not be read as accepting Father's allegations as true. The trial court appropriately called Father's credibility into question. Our resolution of this case is grounded upon the principles as set forth herein.