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APPENDIX T

Order Continuing Filing Restriction Requiring Review by Member of the Florida Bar, May 6, 2021.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2012-017787-FC-04
SECTION: FC29
JUDGE: Marcia Del Rey

Hernandez, Merlin
Petitioner(s)

vs.

Polo, Frank E
Respondent(s)
_____/

ORDER ON CASE MANAGEMENT CONFERENCE HELD ON APRIL 15, 2021

THIS CAUSE came up to be heard before this Honorable Court upon a *Case Management Conference* held on April 15, 2021. The PETITIONER / Mother ("Mother") was present at the hearing, and was represented by Manuel A. Segarra, Esq. who was also present. The RESPONDENT / Father ("Father") was present at the hearing and was represented by Anthony M. Genova, Esq., who was also present.

WHEREFORE, all parties were given a fair opportunity to be heard on the legal and factual issues involved. The Court having reviewed the court file, considered argument of the parties' attorneys and respective case law, and being fully advised in the premises;

FINDS as follows:

1. On October 8, 2018, the Mother filed her *Motion for Attorney's Fee and Costs to be Paid by RESPONDENT / Father* ("Mother's Motion for Attorney's Fees").

2. On November 1, 2018, Segarra & Associates, P.A. filed their *Motion for Attorney's Fees and Costs to be Paid by RESPONDENT / Father for Moving to Enforce Court Ordered Sanctions* ("Segarra Motion for Attorney's Fees").
3. On June 11, 2019, a hearing was held on the Segarra Motion for Attorney's Fees and Mother's Motion for Attorney's Fees.
4. The General Magistrate then filed a corresponding *Report and Recommendations of the General Magistrate and Notice of Filing* ("Report") on July 19, 2019.
5. Subsequently, Father filed *Exceptions to Report of the General Magistrate entered July 19, 2019* ("Exceptions") on July 29, 2019.
6. On September 12, 2019, the *Order on Report and Recommendations of the General Magistrate and Notice of Filing* ("Order Approving Report") ratifying and approving the Report was entered by this Honorable Court.
7. Thereafter, Father filed *Father's Motion to Vacate Order on Report dated September 12, 2019* ("Motion to Vacate") on September 25, 2019.
8. A Case Management Conference was held on June 24, 2020 in which the Court allowed the parties to make legal argument and subsequently submit case law and proposed orders for the Court to review and consider the parties' respective legal positions prior to entering a ruling on the Father's Motion to Vacate.
9. Since the Case Management Conference on June 24, 2020, the proposed Order on Father's Motion to Vacate has been pending this Honorable Court's ruling.
10. On April 13, 2021, Father's counsel filed a *Motion to Withdraw* as counsel.

11. Father testified he does not consent to his counsel's withdrawal; however, the Court finds it cannot compel Father's counsel's continued representation if he cannot properly represent Father.
12. In relation to the pending ruling on Father's Motion to Vacate, the Mother requested the parties be allowed to resubmit case law and proposed orders for the Court to review and consider the parties' respective legal positions.
13. The Court finds the parties shall have thirty (30) days to resubmit case law and proposed Orders on Father's Motion to Vacate.
14. Moreover, as per the Court's previous Order dated October 24, 2017, the Father shall not file any further pleadings, motions or letters to the Court in this matter without having the same reviewed by a member of the Florida Bar.
15. The Court further finds the Father must have any pleadings, motions or letters reviewed by a Member of the Florida Bar and shall have thirty (30) days to acquire new counsel.

Therefore, based upon these findings, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Father's counsel's Motion to Withdraw is GRANTED.
2. A separate Order of Withdrawal shall be submitted by Father's counsel forthwith.
3. The parties shall also have thirty (30) days to resubmit case law and proposed orders for the Court to review and consider the parties' respective legal positions prior to entering a ruling on the Father's Motion to Vacate.

4. Father must have any pleadings, motions or letters reviewed by a Member of the Florida Bar and shall have thirty (30) days to acquire new counsel.

5. The Father shall have thirty (30) days upon entry of this Court Order to retain new counsel.

6. This Honorable Court retains jurisdiction over the parties hereto and the subject matter hereof to enter such further orders as are necessary to carry into effect the provisions of this Order.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 6th day of May, 2021.



2012-017787-FC-04 05-06-2021 8:56 AM
Hon. Marcia Del Rey

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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APPENDIX U

Excerpt of Transcript of Hearing Before Judge Spencer Multack, July 5, 2022
Relevant portions concerning Petitioner's request for filing access and the court's oral statements regarding acceptance of pleadings and motions.

Hearing Before The Honorable Spencer Multack

Merlin Hernandez
v
Frank E. Polo
July 5, 2022



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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
FAMILY DIVISION

CASE NO.: 2012-017787-FC-04

HERNANDEZ, MERLIN,

Petitioner,

vs.

POLO, FRANK E.,

Respondent.
_____/

TRANSCRIPT OF PROCEEDINGS
Order Setting Case Management Conference/Final Hearing and Mandatory Appearance of all Parties and Lawyers, if any

DATE TAKEN: Tuesday, July 5, 2022

TIME: 2:47 p.m. to 3:03 p.m. EST

PLACE: Zoom web conference

BEFORE: The Honorable Spencer Multack

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were reported by:

Tamala L. Moore, Florida Professional Reporter
Prose Court Reporting Agency, LLC
(561) 832-7500

The appearances at said time and place were as follows:

REMOTE APPEARANCES ON BEHALF OF THE PETITIONER:

IRECH M. COLON MORALES, ESQUIRE
SEGARRA & ASSOCIATES, P.A.
2655 South LeJeune Road
Penthouse 2C
Coral Gables, Florida 33134
(305) 742-33134
Irech@SegarraLawFirm.com

APPEARANCES ON BEHALF OF THE RESPONDENT:

FRANK POLO, PRO SE
9411 Fontainbleau Boulevard
Miami, Florida 33172
(305) 901-3360
Polo@msn.com

right now. And we do have a transcript for that hearing so if Your Honor would like to read it as well.

THE COURT: So if you want me to conclude that hearing, I can read the transcript and then pick up where you left off.

MS. COLON: Correct.

THE COURT: Or we can start from scratch.

MR. POLO: Your Honor, I will object to the hearing to be continued from where it was left off. I think Your Honor is going to have to see the parties and see the acts of the parties and how they are acting. It's just a matter of due process.

Also, Judge Del Ray was taking some actions that I consider to be bias. It's not what she -- the determinations that she did, but the frivolous nature of the determinations.

Moreover, Your Honor, the Motion for Attorney's Fees, this Court doesn't have jurisdiction to entertain the Motion for Attorney's Fees. There is no -- the Court never reserved jurisdiction on the Final Judgment. Neither, there was reserve jurisdiction by the general magistrate when he did his report.

THE COURT: I'm not sure I understand.

MS. COLON: Yeah, neither do I.

MR. POLO: Okay. Let me explain to you. The Final Judgment doesn't have any specification of the Court retaining jurisdiction over the attorney's fees issue. Neither does the --let me go by the dates. On August 20th, 2018, the General Magistrate filed his report and recommendations.

Then the Final Judgment was entered on September 14th by Judge -- of the same year, 2018, by Judge Bernstein. He signed the report and then he filed the report. Then he confirmed the report on September 20, 2018.

Neither one of these events have any order entering which the Court reserved jurisdiction. Neither did the Mother ask for a rehearing in a timely manner. So this Court doesn't have jurisdiction to entertain the attorney's fees.

MS. COLON: Your Honor, if I may respond.

THE COURT: Okay, I understand his position. What I would need to do is have the Motion for Attorney's Fees and then he can state argument during the motion and I can make a ruling.

MS. COLON: Correct, yeah, because he's --

just so you recall, these motions have been pending for maybe three years now. So it's a little bit time barred whatever argument you want to make at that point.

But he had prior counsel prior to going into hearing on these Motions for Attorney's Fees on both the Mother's and the Segarra motion.

So if you want to make that argument, Mr. Polo, it is argument you should have done so two or three years --

THE COURT: You don't need to speak to him directly.

MR. POLO: Your Honor, jurisdictional challenges are never waived. You can raise it at any time.

THE COURT: Well, that's a different kind of jurisdiction. But I understand. He'll have an opportunity to address the issue with the Court at any hearing for fees.

So Mr. Polo, what do you believe needs to be heard by this Court?

MR. POLO: I have a pending Motion for Attorney's Fees, because the Mother has been litigating this in bad faith. I don't have any access to file anything. My access to the Court

was unconstitutionally removed because there was no notice or opportunity to be heard when Judge Bernstein filed his order naming me vexatious, then later Judge Bernstein filed another order naming me vexatious and removing all my access to the Court. At the beginning, the first one was a little bit restricted, but it was not as restricted as the second one.

Then later Judge Del Ray, without a notice or an opportunity to be heard, then entered a new order saying that the only things that I cannot file -- I cannot file is only motions, pleadings, and letters to the Court.

However, every time I try to file objections, I try to file an affidavit or anything, a notice or whatever it is, that it has nothing to do with whatever the order says, the Clerk of Courts prevents me from filing it.

I went to the Court today to file an objection and they told me that they couldn't do it. I explained to them what the order says, that it's limited to those three things, the motion, letters to the Courts, and pleadings. And still they went back there, they talked. I don't know if they called your office. They didn't tell me. And then

they come back to me and they told me, "We cannot file this."

So unfortunately, those orders, since they are unconstitutional, they are void. But I need this Court to request the Clerk of Courts to remove any limitations I have from filing.

THE COURT: All right. Got it. That I can do.

MR. POLO: Thank you, Your Honor.

THE COURT: I imagine that you'll be filing motions. So you'll be able to file a motion if you need to file a motion. You understand?

MR. POLO: Yes, Your Honor.

THE COURT: I don't want you communicating to me about the case about, you know, your feelings about the case or issues about the case. It all needs to be by motion practice with requests for relief.

MR. POLO: Yes, Your Honor. I have never done that.

Let me ask you something else. Well, I forgot. Oh, since English is not my first language, would you allow me to file my objections in writing?

THE COURT: Objections to what?

MR. POLO: Objections like those I have about the -- about the Court not having jurisdiction and some other objections. Because the thing is that Mr. Segarra and his office keeps litigating things that they're not supposed to litigate. Like under 61.16, they were supposed to plead for attorney's fees. They never plead until after the final judgment was entered. And things like this, there are a lots of things that I want to put it in writing.

Moreover, they want to also relitigate things that they didn't litigate during the course of the case. I want to object to all this. But I want to do it in writing so it's clear for everybody.

THE COURT: So let me ask Ms. Colon. What hearing was stopped in the middle? Temporary fees, when was that pleading filed?

MS. COLON: It was -- I will tell you right now. The Motion for Attorney's Fees and Costs, it was not temporarily. It was filed on October 8th, 2018, Mother's Motion for Attorney's Fees --

THE COURT: Hold on. October --let me get to the first one. October --

MS. COLON: October 8th, 2018.

THE COURT: Motion for Attorney's Fees.

MS. COLON: Correct, for the Mother.

THE COURT: Okay.

MS. COLON: And then on November 1st, 2018, Segarra & Associates' Motion for Attorney's Fees. There were hearings conducted on both of those originally in front of the GM. There was a report entered granting the Segarra Motion for Attorney's Fees and Order Approving Same. And then the Mother's Motion for Attorney's Fees is the one that was pending where we heard it this year, of January, and is pending before this Court, and we would like to continue it.

THE COURT: Let me ask. Did Mr. Polo object to the entry of the order for Segarra's fees?

MS. COLON: Yes. So what ended up happening is that there was an exceptions filed but a hearing was never requested. An order was entered approving that report; however, he had an appellate proceeding regarding vacating that same order and it was granted. So at this point, there isn't an appellate court ruling on the Segarra Motion for Attorney's Fees to hear the exceptions on that hearing. So that is pending before this Court and has to be scheduled to be heard. The Mother's Motion for Attorney's Fees is separate.

that it's unconstitutional. What I'll permit you to do is file motions. You can file motions so you'll be able to address the Court in this case. Okay?

MR. POLO: Thank you, Your Honor.

THE COURT: All right. Thank you so much.

MS. COLON: Have a great day.

MR. POLO: Thank you, Your Honor. Have a great day.

THE COURT: Was there a reason for the recusal or it was just abrupt?

MS. COLON: Yeah, it was just abrupt, Your Honor. We don't know.

MR. POLO: Your Honor, the reason is because in the Eleventh Circuit there is a case, because Judge Bernstein personally came after me, my career, and a lot of things are happening. And Mr. Segarra is part of the whole scheme. He also --

THE COURT: Okay.

MS. COLON: The order was general, Your Honor.

THE COURT: I'm just trying to figure out why there was a recusal.

Thank you.

MR. POLO: Your Honor, thank you, Your Honor.

STATE OF FLORIDA)
: SS
COUNTY OF MARTIN)

CERTIFICATE

I, TAMALA MOORE, RPR, Court Reporter and Notary Public of the State of Florida at Large, do hereby certify that the foregoing is a true and correct transcription of my stenographic notes of the Transcript of Proceedings had via Zoom web conference before the Honorable Spencer Multack, presiding Judge of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, on the 5th day of July, 2022.

Dated this 27th day of July, 2022.



_____

TAMALA L. MOORE, COURT REPORTER

APPENDIX V

Order Limiting Petitioner's Filing Access to Pleadings Related Only to One Pending Attorney-Fee Motion, July 11, 2022.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2012-017787-FC-04
SECTION: FC39
JUDGE: Spencer Multack

Hernandez, Merlin

Petitioner(s)

vs.

Polo, Frank E

Respondent(s)

_____/

ORDER ON CASE MANAGEMENT

This matter was set before the Court for case management on July 5, 2022.

1. This Court will continue the hearing of January 27, 2022 started in front of Judge Del Rey from where it left off. The Court will review the transcripts filed with the Court.

2. Mr. Polo is granted access to file limited pleadings in relation to the Petitioner's Mother's Motion for Attorney's Fees and Costs to be Paid by Respondent Father. Any pleading must be limited to the one pending motion before the Court.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 11th day of July, 2022.

2012-017787-FC-04 07-11-2022 10:09 A

2012-017787-FC-04 07-11-2022 10:09 AM
Hon. Spencer Multack

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:
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Honorable Judge Scott Bernstein, 11thFC28@jud11.flcourts.org
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APPENDIX W

Petition for Writs of Prohibition and Mandamus Filed in the Florida Third District Court of Appeal, January 30, 2018.

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

FRANK E. POLO
Appellant, Pro-Se

-VS.-

MERLIN HERNANDEZ
Appellee

CASE NO.:_____

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS

FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA FAMILY DIVISION.

Case No. 2012-017787-FC-04

The Honorable Judge Scott Bernstein

RECEIVED, 1/30/2018 9:28 AM, Mary Cay Blanks, Third District Court of Appeal

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PETITION

1. Comes now Frank E. Polo Sr., and pursuant to Fla. R. App. 9.100 files this petition for the issuance of a writ of certiorari directed to the lower tribunal, which is the Circuit Court, Eleventh Judicial Circuit, in and Miami Dade County, Florida. In the action below, Frank E. Polo is the Respondent; and Merlin Hernandez. ("Ms. Hernandez") is the Petitioner. Counsel for Ms. Hernandez is listed on the Certificate of Service and the Judge of the lower tribunal is listed on the Certificate of Service.

I. BASIS FOR INVOKING THE JURISDICTION OF THIS COURT

2. Under the Fla. Const. art. V, § 5(b). The district courts of appeal is empowered to issue common law Mandamus and Prohibition relief. “Prohibition is an extraordinary writ, a prerogative writ, extremely narrow in scope and operation, by which a superior court, having appellate and supervisory jurisdiction over an inferior court or tribunal possessing judicial or quasi-judicial power, may prevent such inferior court or tribunal from exceeding jurisdiction or usurping jurisdiction over matters not within its jurisdiction.” English v. McCrary, 348 So. 2d 293, 296 (Fla. 1977). “Prohibition may only be granted when it is shown that a lower tribunal is without jurisdiction or attempting to act in excess of jurisdiction.” Id.

3. This Court has previously held that “[w]here a trial court's refusal to rule has no lawful basis, mandamus is the appropriate remedy.” Quintana v. Barad, 528 So.

2d 1300, 1301 (Fla. 3d DCA 1988).. *See also* Villas at Cutler Ridge Homeowners' Ass'n, Inc. v. Newman, 498 So.2d 579 (Fla. 3d DCA 1986)

II. STATEMENT OF THE FACTS

4. On August 15, 2017, the Honorable Scott M. Bernstein, Circuit Judge for the Eleventh Judicial Circuit, who has been the Judge in this case from the beginning of this case, heard three motions and one was postponed, (1)Petitioner's Motion for Temporary Child Support, (2) Petitioner's request for temporary attorney's fees (postponed upon condition of the other side cooperating to go to mediation, requested by the Petitioner); (3) Respondent's objection to Subpoena of Employers Records; (4) Respondent's Objection to Subpoena of Department of Transportation Sun Pass records for the Respondent and her fiancé.

5. Opposing counsel request from the court to allow him to submit the orders of that day some other day. Upon being unable to reach an agreement in regard to the wording of the orders to be presented to the court, the opposing counsel recommended for both parties to submit their own version, and the parties did so. The court, on its own motion, called for a hearing to resolve the competing orders and a hearing was held on October 24, 2017. Nevertheless, the opposing counsel serve the notice of hearing as his own notice. (*See* EXHIBIT-A).

6. On aforementioned hearing, the court named the Petitioner a vexatious litigant without any other explanation that the docket contained more than 200 items, which

included motions, pleadings and multiple notice of production from both sides. The lower tribunal forbade the Petitioner from entering any more pleadings, motions or letters without having those signed by a member of the Florida Bar. *See* (EXHIBIT-B).

7. On November 23, 2017, the Petitioner filed a petition for certiorari. Due to the order naming the Petitioner a vexatious litigant, the Petitioner was prevented from even entering a notice of appeal because the Petitioner lacked the ability to afford the fees of a competent lawyer and was prevented from entering even a notice of appeal. Consequently, the Petitioner did not have any other recourse than to file a petition for certiorari with this Court, which was denied without an opinion on November 28, 2017. *See* EXHIBIT-C.

8. The court called for a hearing on December 12, 2017 which was schedule to two different motions: (1) "PETITIONER I Mother's Objections to RESPONDENT I Father's Notices of Production from Non-Party…"(See EXHIBIT D); (2) Father's "Motion for Relieve(sic) from Judgment Decrees and Orders;" and (3)"*Motion for Evidentiary Hearing on Co-parenting Coordinator Fees"* (*See* EXHIBIT E).

9. The Petitioner was forced to withdraw the previously notice *motion for relief from Judgment* (*See* EXHIBIT-K), for two main reasons, (1) the Petitioner was prevented by the court order to subpoena key witnesses to testify in the hearing; and (2) the Petitioner was afraid of not having a fair opportunity due to the history of

bias ruling maintained against the Petitioner by the lower tribunal Judge since the Petitioner reported his personal Friend, Mrs. Lilliana Real, whom now goes by the name of Lilly Josephine Real, to the Florida bar and initiated legal action against her and other attorneys. Moreover, the Motion for Evidentiary hearing on co-parenting coordinator fees was denied (*See* EXHBIT O) and the Petitioner wanted to appeal it. Nevertheless, the Petitioner was prevented from even entering the required notice of appeal. Consequently, the acts of the lower tribunal Judge have extensively prejudiced the Petitioner. Therefore, the Petitioner has no other recourse but to appeal to this Court using this extraordinary remedy.

10. Additionally, in regard to previously mentioned hearing, the record exist that the Petitioner objected to the hearing because he had not been served with notice of hearing to hear any other pending motion[1]. However, the court at the hearing said that all pending motions were to be resolved on that date, when the Petitioner could not even recall what motions were pending because he was never noticed. The Petitioner wanted to appeal this order and present the records of his objection to a hearing in any other motion not noticed for that day.

11. Moreover, the Petitioner believes at this point that the court in this case is prejudiced and bias against the Petitioner. Moreover, the Petitioner would have to

[1] The Petitioner cannot afford to pay for transcripts.

subpoena the Honorable Judge Scott Bernstein in the other case that is currently open in the Civil case as a material witness to some of the events in which that cause of action was initiated. Consequently, the Petitioner would like to enter a motion to recourse, which is being prevented by the lower tribunal's order naming the Petitioner a vexatious litigant.

12. Additionally, the opposing counsel filed an agreed order on November 27, 2017, which was agreed by Petitioner with a condition precedent of setting the final hearing to January 2018. *See* EXHIBIT-L (2)(C). Opposing counsel, abusing the fact that the Petitioner is unable to file any pleading or motion, filed the agreed order and did not set the final hearing for January, but for April 2018.

13. In the agreed order, opposing counsel says good cause to be that the Respondent had believed to resolve the pending issue in mediation. *See* EXHIBIT-L (2)(B). Nevertheless, at mediation no settlement discussion occurred despite the wiliness and disposition of the Petitioner. Opposing counsel keeps taking advantage of the situation the lower tribunal has created and delaying the final hearing to prejudice the Petitioner.

14. The petitioner has multiple relevant witnesses that he would like to call to take the stand to testify about the Respondent's earning capabilities, and he will not be able to do so for as long as the order naming the Petitioner a vexatious litigant is enforceable.

15.The case in the lower tribunal was not initiated by the Petitioner, but by the respondent named in this petition, which is the Petitioner in the lower tribunal.

16.The Petitioner was represented by attorney when the case was initiated by Respondent in this petition. *See* EXHIBIT-F.

17.The Petitioner has not lost any case in a Civil matter in the Circuit Court during the preceding five years, or ever.

18.The only case that the Petitioner has filed, pro se is still pending in Circuit court and it is against the court appointed Guardian Ad Litem in the lower tribunal and her co-conspirators. (2017-003553-CA-01).

19.On March 28, 2017, a different judge, the Honorable Judge Kreeger, referred the parties to a co-parenting coordinator, upon request of the Petitioner, when the Respondent wanted to register the children in a "B" rated school against the mediation agreement, which stipulated the children shall go to the schools in the zip code with the best schools. This judge referred the parties, upon finding that the Petitioner was indigent, to Family Court Services for free services to resolve the school matter. *See* EXHIBIT N.

20.Upon return of the Honorable Judge Bernstein, on the courts own motion, a non-evidentiary hearing was held to address the issue of the co-parenting coordinator

because Family Court Services was unable to find an Spanish speaking coordinator in a county with 1.8 Million of Hispanic residents (66.8%).

21.Despite the fact that the problem was already resolved, when the lower tribunal called for a hearing on the issue being returned to the court, the Honorable Judge Bernstein interrupted the Petitioner and did not allow the Petitioner to expose his point of view after the other party had already presented theirs. When the Petitioner tried to explain that the problem was resolved, but that he did not understand why we had to go to court to resolve those insignificant matters, and he ordered the Petitioner to pay for co-parenting coordinators despite the other judge's finding that the Petitioner could not afford such a payment, and the fact that the Respondent had already acceded to take the children to a better school. Nevertheless, the court without an evidentiary hearing and with the record reflecting the Petitioner was indigent, ordered the Petitioner to pay 100% of the fees. See EXHIBIT-G, and N.

22.Moreover, since then, the Petitioner asked for an evidentiary hearing to determine the financial capabilities of the Petitioner to pay for co-parenting, which was denied as and untimely motion for rehearing, despite the fact that an evidentiary was never held to determine the capabilities of the parties. *See* EXHIBIT-H.

23.Moreover, the court keeps issuing orders of referral to co-parenting coordinator in which the court says that the parties agree to the co-parenting

coordinator, when the Petitioner has told the court in multiple occasions that he can not afford this and that he is indigent. *See* EXHIBIT-I. Nevertheless, the Petitioner cannot have access to file any objection with the court due to the Order banning the Petitioner from entering any pleading, motions or even letters to the court. *See* EXHIBIT-B.

24. Moreover, denied a motion temporary attorney's fees, and stated that the Petitioner can file for attorney's after trial, knowing that the Petitioner cannot afford to pay for attorney's fees with the illusory promise of determining if the Petitioner can recover attorney's fees after the hearing. *See* EXHIBIT-J.

25. The lower tribunal has taken other retaliatory measures, not listed here, against the Petitioner.

26. When registering with Family Court Services after the last referral, the Petitioner learn from the conversation of the old case manager in the case and the intake person, that the case had been assigned to another case worker, namely Nancy Canate, who had special interest because the Respondent is the best Friend to this case worker's aunt.

27. The Petitioner does not and will not consent to any hearing schedule while the Petitioner is unlawfully prevented from having full and complete access to the court.

28.Additionally, the Petitioner hereby let this petition to serve as notice of his intent to object to be part of any hearing in which the constitutional right of the Petitioner, as guaranteed by the U.S. and the Florida Constitution, are not respected and honored by the lower tribunal, including but not limited to the hearing already set for January 30, 2018.

III. NATURE OF THE RELIEF SOUGHT

The Petitioner seeks the issuance of a writ of prohibition or/and a writ of mandamus to the lower tribunal:

(1) Preventing the lower tribunal from finding the Petitioner in contempt of court for exercising his constitutional right to access to the court, which has been violated by the lower tribunal by naming the Petitioner a vexatious litigant under statutory § 68.093 Fla. Stat. (the "Statute,") which the lower tribunal did not have jurisdiction to apply due to the intent of the legislature to make this statute unavailable to Family Courts. Moreover, even if the statute would had applied, the facts of this case do not support a finding of the Petitioner to be a vexatious litigant as defined under §68.093;

(2) Prohibiting the lower tribunal from intentionally acting, under the immunity provided to the courts, against the Petitioner in retaliation for the Petitioner reporting the Guardian Ad Litem to the Florida Bar for fraud on the court, interference with legal custody of minor children and other crimes as defined under

Florida statutes, and as supported by common law doctrines. Moreover, has suffered and is at risk of suffering retaliation from the court for bringing legal civil action against the Guardian Ad Litem and other attorneys for aforementioned crimes. The actions of the court, in this case, are drafted, designed and carefully thought to prevent the Petitioner from entering the Florida bar upon graduation from law school;

(3) ordering the lower tribunal to exercise jurisdiction over the motion for temporary attorney's fees and having an expedited hearing on the matter to allow both parties equitable access to competent representation. So, this way, the Petitioner can have equal access and protection of the law as this the Respondent in this petition has enjoyed in the last five years.

ARGUMENT AND AUTHORITIES

I. THE TRIAL COURT EXERCISED JURISDICTION NOT RESERVED FOR IT WHEN IT ISSUED AN ORDER NAMING THE PETITIONER A VEXACTIOUS LITIGAN AND IS ABOUT TO EXCEED ITS JURISDICTION IF IT FINDS THE PETITIONER IN CONTEMPT FOR EXERCISING HIS CONSTITUTIONAL RIGHTS.

A. The lower tribunal is in violation of §68.095, Fla. Stat. (2006) by preventing the availability of civil legal assistance to the poor and preventing access to justice.

29. The Lower Tribunal in this case has acted in excess of its statutory granted jurisdiction, and furthers plans to exercise jurisdiction in violation of §68.095, Fla. Stat. (2006) Court Departed from the essential requirements of the intent of the

legislative branch when enacted chapter 68 of the Florida Statutes by declaring the Petitioner a vexatious litigant, and by preventing petitioner from filing essential pleadings/motions during discovery period, by surprisingly having motions heard without previous notice, in violation of Fla. Const. Art. I; Art. III; and Art. V. additionally, the application of §68.093 by the lower tribunal, goes beyond the powers granted by the constitution to the judiciary. Should this Court fail to act, the lower tribunal will continue to exercise jurisdiction in a matter prohibited by statute in family cases.

30. The intent of the legislature in enacting chapter 68 was to "[T]o promote the availability of civil legal assistance to the poor and improve access to justice by establishing a streamlined method to utilize available state funds in furtherance of this goal." §68.095 Fla. Stat. (2006)

31. Moreover, the definition of "'Legal Assistance' means the provision of civil legal services consistent with the rules regulating The Florida Bar, subject to the limitations in s. 68.098." §68.096(3), Fla. Stat. (2006).

32. In regards to §68.093, the application of §68.093 Fla. Stat. does not apply to family court cases. §68.093 Fla. Stat. (2006) is clear about the application of this law. § 68.093(2)(a) Fla. Stat. states in pertinent part:

> "Action" means a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but

> *does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply*.

§68.093(2)(a) Fla. Stat. (2006.) Additionally, §68.093 also provides and defines the elements to find a person a vexatious litigant as follows:

> (1)A person . . . who, in the immediately preceding 5-year period,(2) has commenced, prosecuted, or maintained, (3)pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, (4) which actions have been finally and adversely determined against such person or entity; or
>
> Any person or entity previously found to be a vexatious litigant pursuant to this section.
>
> An action is not deemed to be "finally and adversely determined" *if an appeal in that action is pending.* If an action has been *commenced on behalf of a party by an attorney licensed to practice law in this state*, that action is *not deemed to be pro se* even if the attorney later withdraws from the representation and the party does not retain new counsel.
>
> §§68.093(2)(d)(1)-(2).

33. Moreover, the statute that is being applied against the Petitioner, clearly and unambiguously states that when the legislators make reference to an "action" they refer to "a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but *does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply. See*

§68.093(2)(a) Fla. Stat. (2006). Consequently, the Lower tribunal did not have statutory jurisdiction to apply §68.093 Fla. Stat. (2006.)

B. §68.093 (the "Statute") Does not Grant the Family Division of the Eleventh Judicial Circuit for Miami Dade County, the Jurisdiction to Find Anyone to be a Vexatious Litigant. Nevertheless, even if its Implementation is Found Constitutional, this Statute Would Have not Applied to the Petitioner.

34. In this case, the Petitioner has been found indigent in multiple occasions by the Clerk of Courts for the Eleventh Circuit for Miami Dade. *See* EXHIBIT-G. The case that gave origin to this Petition for Certiorari, is a Family Court case, under the case number No. 12-17787. (1) The case was initiated by the petitioner in the lower tribunal, which is the respondent in this petition, and the Statute requires that the cases lost by a petitioner was commenced, prosecuted, or maintained, pro se; (2) The Petitioner/Petitioner was not a pro se litigant when the case was initiated; (3) the Petitioner has opened only one case in Civil court in the preceding five years, which it is still pending in Civil Court; (4) no action has been terminated against the Petitioner in the last five years; (5) the petitioner has never been found a vexatious litigant by any tribunal, (6) this is an action in Family court, therefore, regulated by the Family Court Rules of Civil Procedures and not subject to application of the Statute; (7) the Petitioner cannot afford to pay to get the signature of an attorney to every motion which must be review by the attorney and could potentially cost from $200.00 to $350.00 per hour of legal work. Consequently, enforcement of the order

against petitioner would not only be unconstitutional due to the denial of access to the court, but also as an excess of jurisdiction of the lower tribunal in violation of §68.093.

C. Enforcement of the order naming the petitioner a vexatious litigant in accordance with §68.093 Fla. Stat. is not Constitutional, and Totally Defeat the Purpose of the Legislators when enacting Chapter 68.

35. According to the text of the Florida Constitution, the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided in the constitution. Art. III Fla. Const. states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida[,]" and Art. V Fla. Const. , stablishes "[t]he judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts."

36. Fla. Const. Art. I, §21 stablishes that "[t]he courts shall be open to every person for redress of any injury, and just shall be administered without sale, denial or delay." Moreover, for a law restricting the access to courts to be constitutional, there needs to be an overpowering public necessity for abolishment of such right and no alternative method to achieve the necessity when the statutory law dates from before the adoption of the Florida Constitution of November 5, 1968.

> We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the

> adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla.Stat. § 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.
>
> Kluger v. White, 281 So. 2d 1, 4 (Fla. 1973)

37. In this case, the legislators were clear that in applying the law, there were multiple elements that shall be met at time of implementing this legislation. Among those elements are: (1) a civil action governed by the Florida Rules of Civil Procedure; (2) those civil actions exclude actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply; (3) A pro se person; (4) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained,, five or more civil actions in any court in this state; and (4) which actions have been finally and adversely determined against such person or entity. None of those elements apply to the Petitioner in this case. Therefore, issuing an order against the plaintiff using different standards than those crated by the legislators would be re-writing Law in an area where the legislature has elected to legislate. This area is constitutionally reserved to the Legislators of the State of Florida. No other power exists under the Fla. Const., which grants legislative powers to the Judiciary in areas where the

legislators have elected to act, and this is a result of the separation of powers intended by the framers of Florida's Constitution.

38. The legislative history of §68.093 Fla. Stat. indicates that "[c]oncerned about frivolous inmate lawsuits, the legislature passed legislation in 1996 'that sought to limit the ability of prisoners to file numerous lawsuits under indigent status.'" Smith v. Fisher, 965 So. 2d 205, 209 (Fla. 4th DCA 2007). (citing Florida's Vexatious Litigant Law: An End to the Pro Se Litigant's Courtroom Capers?, 25 Nova L. Rev. 343). The court continued to say that "[t]he legislature's introduction to Chapter 96-106 stated that 'state and local governments spend millions of dollars each year processing, serving, and defending frivolous lawsuits filed by self-represented indigent inmates, and . . . the overwhelming majority of civil law suits filed by self-represented indigent inmates are frivolous and malicious actions intended to embarrass or harass public officers and employees.'" (quoting Ch. 96-106, § 1 at 93, Laws of Fla.)

39. The Petitioner in this case, does not argues that the State of Florida, in enacting §68.093 did not have an overpowering public necessity for abolishment the right to access to court to a very limited number of individuals due to the high cost that this represent to the state. A limited number of individual, criminals initiating frivolous claims against officials, were the kind of individuals that the legislation wanted to prevent from accessing the court, but not the law-abiding citizen that has never file

a frivolous litigation against anyone or that has never lost a case for this being frivolous.

40. The portioner here has become the target of the State of Florida, for reporting the unethical behavior of a close friend of the Judge, as stated to the Petitioner by the GAL herself. Neither the lower tribunal or the GAL found any reason to remove the children from the Petitioner, and that is why the court is trying alternative methods, like sending parent to a colluding, corrupt family court service personnel, whom have clearly stated that the case manager, Ms. Nancy Canate has special interest in the case because the close relation the Respondent has with the case Manager's aunt while the Petitioner was seating next to the office of Elaine Alvarez (the initial Case Manager), whom did not know the Petitioner was seating there. Moreover, the inaction of this Court will create further damages to the Petitioner in this case, which knows that the ultimate purpose of the lower tribunal is to find the Petitioner in contempt of court to prevent this from honorably be admitted to practice law in the State of Florida and to find an alternative way to remove the children from the Petitioner.

41. The lower tribunal in this case broadened what was supposed to be a be narrowly tailored solution to promote a compelling governmental interest. The lower tribunal made its interpretation of §68.093 as broad as it could impossible get, and made it so as to include anyone that opens a single civil case in Circuit Court eligible

to be named a vexatious litigant with a pure and authentic disregard for the constitutionality of these actions. Should this Court allow the lower court to name anyone a vexatious litigation, this Court would set precedent for any judge to name any individual a vexatious litigant and, thereby, prevent constitutional protected access to the court to any citizen using rational basis when access to court analysis requires strict scrutiny.

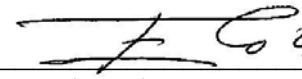
CONCLUSION

WHEREFORE, it is prayed that this Court issue the requested writ and prevent the lower tribunal from continuing exercising jurisdiction in an area where the legislators have not authorized such exercise of jurisdiction.

Moreover, the Petitioner respectfully requests from this Court that this Court issue the writ commanding the lower tribunal to reframe from further violating the constitutional rights of the Petitioner by preventing access to the court and by preventing the Petitioner from having a fair trial with all the guaranties offered by the due process of law.

Additionally, the petitioner request that this Court order the lower tribunal to exercise jurisdiction over the motion for temporary attorney's fees and having an expedited hearing on the matter to allow both parties equitable access to competent representation. So, this way, the Petitioner can have equal access and protection of the law as this the Respondent in this petition has enjoyed in the last five years.

Respectfully Submitted,

/s/ 

Frank Polo Sr.
1475 SW 8th St Apt 411
Miami, FL. 33135
Telephone: 305-901-3360

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was sent via e-filing to the following individuals hereunder, on this Thursday, January 30, 2018.

TO: Manuel A Segarra III
Attorneys for Respondent
Via: E-Filing/Email
E-Mail: manny@segarralawfirm.com

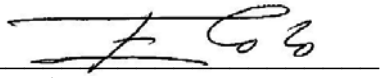
TO: Merlin Hernandez
E-mail: merlinh79@gmail.com
Respondent
Via: E-Filing/Email

To: Honorable Scott Bernstein
E-Mail: 11thFC28@jud11.flcourts.org
Lower Court Judge
Via: E-Filing/Email

By: /s/ _____
Frank Polo Sr.
9619 Fontainebleau Blvd. Apt. 317
Miami, FL. 33172
Telephone: 305-901-3360
Email: Frank.Polo@msn.com

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Petition for Writ of Prohibition and/or Mandamus complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

By: /s/ 

Frank Polo Sr.
9619 Fontainebleau Blvd. Apt. 317
Miami, FL. 33172
Telephone: 305-901-3360
Email: Frank.Polo@msn.com

PETITIONER'S AFFIDAVIT IN SUPPORT OF PETION FOR WRITS

On this 29 day of January, 2018, Under penalties of perjury, I declare that I have read the foregoing document, *Petition for Writ of Mandamus and/or Prohibition,* and further I attest that the preceding document and all facts expressed in support of such petition for writ of Mandamus and or Prohibition are true to the best of my knowledge, belief, and recollection. I understand that I have personal knowledge of all and every fact expressed therein. I am willing and able to testify or provide additional evidence, should this be demanded from me.[2]

Respectfully Submitted,

By: _/s/_____

Frank Polo Sr.
9619 Fontainebleau Blvd. Apt. 317
Miami, FL. 33172
Telephone: 305-901-3360
Email: Frank.Polo@msn.com

[2] §92.525 Fla. Stat., and State v. Shearer, 628 So. 2d 1102 (1993) support the verification of documents without notarization as long as it contains the statement *"under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true."*

EXHIBIT A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

IN RE: THE MATTER OF

MERLIN HERNANDEZ
Petitioner / Mother,
And

FRANK ENRIQUE POLO
Respondent / Father,

FAMILY DIVISION

CASE NO: 2012-17787-FC-04
SECTION: 28

NOTICE OF HEARING [1]
(Special Setting)

TO: FRANK M. POLO
Frank.Polo@msn.com

YOU ARE HEREBY NOTIFIED that the Undersigned has set down for hearing before the Honorable Scott M. Bernstein, or one of the Judges of the above styled court:

MATTER: **Resolution of Competing Orders Submitted by the Parties.**

DATE: **Tuesday, October 24, 2017.**

TIME: **2:30 P.M.,** or as soon thereafter as counsel may be heard.

LOCATION: Courthouse Center, 175 N.W. 1st Avenue, **Courtroom CHC 28-C**, Miami, FL 33128.

I HEREBY CERTIFY that a true and exact copy of the above *Notice of Hearing* was delivered via electronic mail to the above addressee(s) on the 3rd Day of October, 2017.

SEGARRA & ASSOCIATE, P.A.
2655 South Le Jeune Road
Penthouse 2 C
Coral Gables, FL 33134
Tel: (305) 742-5042 Fax: (305) 397-0292
manny@segarralawfirm.com
service@segarralawfirm.com

/s/Manuel A. Segarra, III, Esq.
MANUEL A. SEGARRA, III
Florida Bar No. 0389110

[1] The above noticed hearing was requested by and coordinated with this Honorable Court.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 N.W. 1st Avenue, Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

EXHIBIT A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

Merlin Hernandez

Petitioner,

vs.

Frank Enrique Polo

Respondent.

CASE NO. 2012-17787FC 04

ORDER Re Resolution of Compete Orders

THIS CAUSE having come on to be heard on October 24, 2012

on ~~Petitioner's/Respondent's Motion~~ Resolution of Compete Orders by the Parties

and the Court having read argument of counsel, and being otherwise advised in the Premises, it is

hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

The Court has entered the two (2) proposed orders submitted by Petitioner. Court further finds that Respondents objection to proposed orders ad conduct during pending litigation is vexatious. The Respondent shall not file any further pleadings, motions or letters to the Court in this matter without having the same reviewed by a member of the Florida Bar.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 24 day of Oct. 2017.

Circuit Court Judge
Scott M. Bernstein
Circuit Court Judge

Copies furnished to: M. Segarra
F. Polo

EXHIBIT C

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

NOVEMBER 28, 2017

FRANK E. POLO,
Appellant(s)/Petitioner(s),
vs.
MERLIN HERNANDEZ,
Appellee(s)/Respondent(s),

CASE NO.: 3D**17-2526**

L.T. NO.: 12-17787

Following review of the petition for writ of certiorari, it is ordered that said petition is hereby denied.

SALTER, EMAS and LOGUE, JJ., concur.



cc: Frank E. Polo
Manuel A. Segarra, III
Hon. Scott M. Bernstein

ns

EXHIBIT D

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

IN RE: THE MATTER OF

MERLIN HERNANDEZ
Petitioner / Mother,
And

FRANK ENRIQUE POLO
Respondent / Father,

FAMILY DIVISION

CASE NO: 2012-17787-FC-04
SECTION: 28

AMENDD NOTICE OF HEARING [1]
(Special Setting)

TO: FRANK M. POLO
Frank.Polo@msn.com

YOU ARE HEREBY NOTIFIED that the Undersigned has set down for hearing before the Honorable Scott M. Bernstein, or one of the Judges of the above styled court:

MATTER: (1) **PETITIONER / Mother's Objections to RESPONDENT / Father's Notices of Production from Non-Party and Corresponding Subpoenas Duces Tecum without Deposition dated August 27, 2017.**

DATE: **Tuesday, December 12, 2017.**

TIME: **3:00 P.M.,** or as soon thereafter as counsel may be heard.

LOCATION: Courthouse Center, 175 N.W. 1st Avenue, **Courtroom CHC 28-C**, Miami, FL 33128.

I HEREBY CERTIFY that a true and exact copy of the above *Notice of Hearing* was delivered via electronic mail to the above addressee(s) on the 6th Day of September, 2017.

SEGARRA & ASSOCIATE, P.A.
2655 South Le Jeune Road
Penthouse 2 C
Coral Gables, FL 33134
Tel: (305) 742-5042 Fax: (305) 397-0292
manny@segarralawfirm.com
service@segarralawfirm.com

/s/Manuel A. Segarra, III, Esq.
MANUEL A. SEGARRA, III

[1] Scrivener's error regarding Judge's name on previous *Notice of Hearing* has been corrected.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 N.W. 1st Avenue, Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

EXHIBIT E

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA
(Family Division)

MERLIN HERNANDEZ
Petitioner,

VS.

FRANK E. POLO
Respondent-Pro Se

NOTICE OF HEARING

TO: Manuel A Segarra III
E-Mail: manny@segarralawfirm.com
CC: Merlin Hernandez
E-mail: merlinh79@gmail.com

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable Scott M. Bernstein, Judge of the above-styled court, in Courtroom 28-C, at the Lawson E. Thomas Courthouse Center, 175 N. W. 151 Avenue, Miami, Florida 33128, on **Tuesday, December 12, 2017**, at 3:00 PM, 2 hours special setting hearing, or as soon thereafter as same can be heard:

1. **MOTION FOR RELIEVE FROM JUDGMENT DECREES AND ORDERS**
2. **MOTION FOR EVIDENTIARY HEARING ON CO-PARENTING COORDINATOR FEES**

PLEASE GOVERN YOURSELF ACCORDINGLY.

AMERICAN WITH DISABILITIES ACT (ADA)
"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice-impaired, call 711."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was sent via e-mail and/or e-filing to Manuel A. Segarra III counsel for the Petitioner/Mother, at manny@segarralawfirm.com, and to the Petitioner/Mother, at merlinh79@gmail.com on this **6th day of September 2017.**

CC: Manuel A Segarra III
E-Mail: manny@segarralawfirm.com
TO: Merlin Hernandez
E-mail: merlinh79@gmail.com

By: /s/
Mr. Frank E. Polo
475 SW 8th St Apt 411
Miami, FL. 33135
Phone No. 305-901-3360
Email: Frank.Polo@MSN.Com

EXHIBIT F

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

FAMILY DIVISION

CASE NO.: 12-17787 FC-28

IN RE: THE MATTER OF:

MERLIN HERNANDEZ,

Petitioner/Mother,

vs.

FRANK E. POLO,

Respondent/Father.
_____/

FILED FOR RECORD
2012 NOV 26 AM 8:20
CLERK
CIRCUIT & COUNTY COURTS
MIAMI-DADE COUNTY, FLA.
FAMILY DIV.

NOTICE OF APPEARANCE
Florida Bar No. 215384

COMES NOW, JOSEPH OLIVERA, Esquire, and hereby files his Notice of Appearance on behalf of the Respondent/Father, FRANK E. POLO, in this proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appearance was sent via e-mail to Stephanie Granda, Esquire, of GRANDA & ASSOCIATES P.A., at sg@grandalaw.com, on this 21st day of November, 2012.

JOSEPH OLIVERA, P. A.
Waterford at Blue Lagoon
6161 Blue Lagoon Drive, Suite 400
Miami, Florida 33126
Telephone No.: (305) 267-4665
Facsimile No.: (305) 261-3888
E-mail: jolawmiami@aol.com

By: _____
Joseph Olivera, Esquire

EXHIBIT-L

IN THE CIRCUIT/COUNTY COURT OF THE ———— JUDICIAL CIRCUIT
IN AND FOR ———— COUNTY, FLORIDA

Merlin Hernandez
Plaintiff/Petitioner or in the Interest Of

CASE NO. 2012-017787-FC28

vs.
Frank Polo
Defendant//Respondent

FILED FOR RECORD
2017 FEB -7 PM 12:05
CLERK
CIRCUIT COURT
MIAMI-DADE COUNTY, FLORIDA
FAMILY DIVISION

APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of $25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 2 dependents. *(Include only those persons you list on your U.S. Income tax return.)*
Are you Married? (Yes) No Does your Spouse Work?...Yes (No) Annual Spouse Income? $_____

2. I have a net income of $ 0.00 paid weekly every two weeks semi-monthly monthly yearly other _____.
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other _____.
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job ..... Yes $ _____ (No)		Veterans' benefits ..... Yes $ _____ (No)	
Social Security benefits		Workers compensation ..... Yes $ _____ (No)	
For you ..... Yes $ _____ (No)		Income from absent family members ..... Yes $ _____ (No)	
For child(ren) ..... Yes $ _____ (No)		Stocks/bonds ..... Yes $ _____ (No)	
Unemployment compensation ..... Yes $ _____ (No)		Rental income ..... Yes $ _____ (No)	
Union payments ..... Yes $ _____ (No)		Dividends or interest ..... Yes $ _____ (No)	
Retirement/pensions ..... Yes $ _____ (No)		Other kinds of income not on the list ..... Yes $ _____ (No)	
Trusts ..... Yes $ _____ (No)		Gifts ..... Yes $ _____ (No)	

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash ..... Yes $ 17.00 No		Savings account ..... Yes $ _____ (No)	
Bank account(s) ..... Yes $ 20.00 No		Stocks/bonds ..... Yes $ _____ (No)	
Certificates of deposit or		Homestead Real Property* ..... Yes $ _____ (No)	
money market accounts ..... Yes $ _____ (No)		Motor Vehicle* ..... Yes $ _____ (No)	
Boats* ..... Yes $ _____ (No)		Non-homestead real property/real estate* ..... Yes $ _____ (No)	

*show loans on these assets in paragraph 5

Check one: I DO DO NOT expect to receive more assets in the near future. The asset is _____.

5. I have total liabilities and debts of $ 2658.00 as follows: Motor Vehicle $_____, Home $ 1500, Other Real Property $_____, Child Support paid direct $_____, Credit Cards $_____, Medical Bills $_____, Cost of medicines (monthly) $_____,
Other $ 1158.00

6. I have a private lawyer in this case..... Yes (No)

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this 7 day of Feb, 2017

02/08/72
Date of Birth

D400-265-72-480
Driver's License or ID Number

Signature of Applicant for Indigent Status
Print Full Legal Name Frank Polo
Phone Number: 3059013360

1475 SW 8th St #411
Address, P O Address, Street, City, State, Zip Code

Miami FL 33135

CLERK'S DETERMINATION

Based on the information in this Application, I have determined the applicant to be (✓) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 7 day of Feb, 20 17

Clerk of the Circuit Court by _____

This form was completed with the assistance of: _____
Clerk/Deputy Clerk/Other authorized person.

APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.
THERE IS NO FEE FOR THIS REVIEW.
Sign here if you want the judge to review the clerk's decision _____

EXHIBIT-H

Merlin Hernandez

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 2012-17787 FC 04

Petitioner,

vs.

Frank Enrique Polo

Respondent.

ORDER ON Motion for Evidentiary Hearing on Co-Parenting Coordinator Fees

THIS CAUSE having come on to be heard on 12/12/17

on ~~Petitioner~~'s/Respondent's Motion for Evidentiary Hearing on Co-Parenting Coordinator Fees

and the Court having read argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby Respondent's Motion for Evidentiary Hearing on Co-Parenting Coordinator Fees, dated 8/22/17 is denied as untimely and improper.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 12 day of Dec. 2017.

Circuit Court Judge

Copies furnished to: M. Segarra
F. Polo

Scott M. Bernstein
Circuit Court Judge

Merlin Hernandez
Petitioner,

vs.

Frank E Polo
Respondent.
_____/

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

EXHIBIT-I

FAMILY DIVISION

CASE NUMBER.: 2012-017787-FC-04
Section: 28

ORDER OF REFERRAL TO FAMILY COURT SERVICES

The above cause came to be heard on this 28 day of March, 2017, and there are children at issue whose lives will be affected by these proceedings, and resolution of issues involving said children is in the children's best interest. Therefore, pursuant to Chapter 61 of the Florida Statutes, **THE ABOVE REFERENCED PARTY(S) IS/ARE ORDERED to CONTACT:**

FAMILY COURT SERVICES, LAWSON E. THOMAS COURTHOUSE CENTER
175 NW 1ST AVENUE, SUITE 1503, MIAMI, FLORIDA 33128 Tel: (305) 349-5508 FAX: (305) 349-5634

within five (5) working days of the date of this order for the purpose of providing essential initial data and arranging appointments, then report to the appropriate social service agency(s) as necessary. **A report of compliance with this order, including referrals if any, will be provided to the court and all parties.**

FAMILY COURT SERVICES UNIT TO PROVIDE THE FOLLOWING SERVICES:

____ Alienation Intervention/Reunification
____ Child/Family Assistance
____ Co-parenting
____ Time-Sharing Issues/Schedule
____ Crisis Assistance
____ Marital Reconciliation
✓ Parenting Coordination (limited to 6 meetings with indigent parties only)

Supervised Visitation ____ One visit scheduled per week for 12 weeks ____ Monitored Exchange

Person(s) Authorized to Transport Child(ren): _____

REFERRALS TO COMMUNITY PROVIDERS (Circle or name each party applicable)

____ Individual Counseling for _____
____ Extended Co-Parenting (Both parents jointly)
____ Family Counseling : Petitioner/Respondent/Child(ren)
____ Therapeutic Supervised Visitation
____ Bridging Families & Communities
____ Early Family Court Triage
____ Parenting Class: Petitioner/Respondent
____ Paternity Test: Child(ren) _____
____ Parenting Coordination (Supplemental order required)
____ Social Investigation (Supplemental order required)
____ Substance Abuse Testing through Hair Follicle: Petitioner/Respondent/Child
____ Substance Abuse Evaluation: Petitioner/Respondent/Child

____ **Psychological Evaluation: Petitioner:** Respondent/Child(ren) ____ **Psychiatric Evaluation:** Petitioner/Respondent/Child
Mental health condition in controversy *Good cause shown* *Mental health condition in controversy* *Good cause shown*

Specific Referral instructions/Targeted question(s) to be addressed: pls refer ASAP - children's choice of school is a major issue. Both parents seem to be incapable of communication re major issues. See prior reports

The parties stipulate that the court may review any reports on this case received by Family Court Services that are issued by the above providers. These reports may be admitted into evidence subject to discovery requirements.

Petitioner _____ Respondent _____

The Court determines payment for court ordered referral to community/private provider as follows:

___ borne equally by the parties ___ borne by the Petitioner/waived as to Respondent ___ borne by the Respondent/waived as to Petitioner

Language preferred: [ ] Spanish [ ] Creole [ ] Other _____ **Next Hearing Date**: _____

Additional Judicial Instruction: _____

Any and all statements and/or disclosures made to Family Court Services, whether deemed relevant or not to the overall purpose of this referral, are not confidential and, consequently, may be reported to the referring court.

VIOLATION OF ANY PROVISION IN THIS ORDER MAY RESULT IN PARTY REFERRED BEING HELD IN CONTEMPT OF COURT.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this 28 day of March, 2017.

Judith L. Kreeger
Circuit Court Judge

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

EXHIBIT-J

Merlin Hernandez

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 2012-17787 FC 04

Petitioner,

vs.

Frank Enrique Polo

Respondent.

ORDER re Motion for Relieve (s:c) from Judgment

THIS CAUSE having come on to be heard on 12/12/12

on ~~Petitioner's~~/Respondent's Motion for Relieve (s:c) from Judgment Decree of Order, dated 7/24/12

and the Court having read argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

(1) Respondent withdrew his Motion for Relieve (s:c) from Judgment dated July 24, 2017.

(2) There are no other motions, save for a determination of child support ~~started~~ that shall be heard by the Court as of this date.

(3) Respondent can file a prayer for relief for reimbursement re attorney's fees and costs at the conclusion of this case if he so pleases.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 12 day of Dec 2017.

Circuit Court Judge

Copies furnished to: M. Segarra
F. Polo

Scott M. Bernstein
Circuit Court Judge

EXHIBIT K

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA
(Family Division)

MERLIN HERNANDEZ
Petitioner,

VS.

FRANK E. POLO
Respondent-Pro Se

NOTICE OF HEARING

TO: Manuel A Segarra III
E-Mail: manny@segarralawfirm.com
CC: Merlin Hernandez
E-mail: merlinh79@gmail.com

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable Scott M. Bernstein, Judge of the above-styled court, in Courtroom 28-C, at the Lawson E. Thomas Courthouse Center, 175 N. W. 151 Avenue, Miami, Florida 33128, on **Tuesday, December 12, 2017**, at 3:00 PM, 2 hours special setting hearing, or as soon thereafter as same can be heard:

1. **MOTION FOR RELIEVE FROM JUDGMENT DECREES AND ORDERS**
2. **MOTION FOR EVIDENTIARY HEARING ON CO-PARENTING COORDINATOR FEES**

PLEASE GOVERN YOURSELF ACCORDINGLY.

AMERICAN WITH DISABILITIES ACT (ADA)
"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice-impaired, call 711."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was sent via e-mail and/or e-filing to Manuel A. Segarra III counsel for the Petitioner/Mother, at manny@segarralawfirm.com, and to the Petitioner/Mother, at merlinh79@gmail.com on this **6th day of September 2017.**

CC: Manuel A Segarra III
E-Mail: manny@segarralawfirm.com
TO: Merlin Hernandez
E-mail: merlinh79@gmail.com

By: /s/
Mr. Frank E. Polo
475 SW 8th St Apt 411
Miami, FL. 33135
Phone No. 305-901-3360
Email: Frank.Polo@MSN.Com

EXHIBIT-L

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

IN RE: THE MATTER OF

MERLIN HERNANDEZ
Petitioner / Mother,

And

FRANK ENRIQUE POLO
Respondent / Father,

FAMILY DIVISION

CASE NO: 2012-17787-FC-04
SECTION: 28

AGREED MOTION FOR CONTINUANCE OF THE HEARING ON THE REPONDENT / FATHER'S SUPPLEMENTAL PETITIONS

COMES NOW, the PETITIONER / Mother, MERLIN HERNANDEZ, by and through the undersigned attorney, and files this *Agreed Motion for Continuance of the Hearing on the PETITIONER / Mother's Motion for Contempt* and in support thereof states as follows:

1. **PROCEDURAL HISTORY / BACKGROUND:**

   A. On or about August 7, 2014, this Honorable Court entered the *Final Judgment of Paternity* which ratified and incorporated the parties' *Mediated Settlement Agreement (Partial)* ("MSA") dated August 14, 2014.

   B. The *Agreed Amended Final Judgment of Paternity* was entered by this Honorable Court on July 14, 2015, which modified the parties' timesharing schedule and child support obligations further incorporating all other consistent provisions of the MSA.

   C. On or about February 7, 2017, the RESPONDENT / Father ("Father") filed his *Supplemental Petition for Modification of Child Support and Other Remedies* ("Supplemental Petition").

D. On or about March 12, 2017, the Father filed his *Amended Supplemental Petition for Modification of Child Support and Other Remedies* ("Amended Supplemental").

E. On July 24, 2017, the Father filed his *Motion for Relieve from Judgment and Decrees and Orders* whereby he seeks the Court find all agreements, court orders and decree void as a matter of law. [1]

F. The Father's *Motion for Relieve from Judgment and Decrees and Orders* presumably seeks to find the *Agreed Amended Final Judgment of Paternity* that was entered the Court on July 14, 2015, void as a matter of law.

G. This Honorable Court entered an *Order of Referral to Mediation* on August 15, 2017, which requires the parties attend a Mediation Conference to attempt to resolve all pending issues in the instant case.

H. The hearing on the Father's Supplemental Petition and / or Amended Supplemental Petition is set before the Honorable General Magistrate Robert S. Singer on Thursday, November 30, 2017, at 9:30 A.M.

I. The parties' Mediation Conference is set on Friday, December 22, 2017, at 2:30 P.M (See "Exhibit 1" attached).

J. The hearing on the *Motion for Relieve from Judgment and Decrees and Orders* is scheduled for December 12, 2017 (See "Exhibit 2").

2. **GOOD CAUSE FOR A CONTINUANCE:**

A. The PETITIONER / Mother ("Mother") is respectfully requesting a continuance of the hearing on the Father's Supplemental Petition and / or Amended Supplemental Petition set on Thursday, November 30, 2017.

[1] See *Motion for Relieve from Judgment and Decrees and Orders*, Page 21.

B. Specifically, the Mother has a reasonable expectation that the issues in this case may be resolved at the Mediation Conference on December 22, 2017.

C. Moreover, the Father has agreed to a brief continuance so long as the hearing is rescheduled no later than January 2018.

D. Both parties have outstanding discovery obligations which are pending exchange.

E. Furthermore, for purposes of judicial labor, judicial economy and / or in the interests of making sure the issues are properly litigated before the Court, the Mother contends that the Court should rule on the Father's *Motion for Relieve from Judgment and Decrees and Orders* prior to conducting the hearings on the Supplemental Petition and / or Amended Supplemental Petition.

F. Therefore, the Mother is respectfully requesting that this Honorable Court enter an Order continuing the hearing currently scheduled for November 30, 2017.

G. This Motion for Continuance is not made for the purpose of delaying the matter and will not prejudice either party.

WHEREFORE the Mother prays that this Honorable Court enters an Order continuing the hearing that is currently scheduled on November 30, 2017, setting this matter for a date after the currently scheduled Mediation Conference and prior to the end of January 2018; and entering any other order which this Honorable Court deems just and proper.

Respectfully Submitted,

/s/Manuel A. Segarra, III, Esq.
MANUEL A. SEGARRA, III
Florida Bar No. 0389110

SEGARRA & ASSOCIATES, P.A.

2655 S. Lejeune Road
Penthouse 2 C
Coral Gables, FL 33134
Tel: (305) 742-5042 Fax: (305) 397-0292
manny@segarralawfirm.com
service@segarralawfirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above was provided via electronic mail to FRANK POLO at Frank.Polo@msn.com, in accordance with Florida Law, on this 27th Day of November, 2017.

/s/Manuel A. Segarra, III, Esq.
MANUEL A. SEGARRA, III

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN RE:

Hernandez, Merlin

Petitioner,

vs.

Polo, Frank

Respondent.

: MEDIATION DIVISION

: CASE NO(S): 2012-017787-FC-04
Section: FC 28

: Appointment of Mediator and Scheduled Conference Time:

12/22/2017 2:30 PM

YOU ARE NOTIFIED that a Certified Mediator has been appointed in this action. Please arrive promptly **Fifteen (15) minutes** before the mediation time to proceed with the check-in process at:

Dade County Courthouse / Mediation
73 West Flagler Street, Suite 1801
Miami, Florida 33130.

THERE WILL BE A 15 MINUTE GRACE PERIOD AFTER WHICH A NOTICE OF NON-APPEARANCE WILL BE ISSUED.

If this matter has been Settled or dismissed or otherwise disposed of by the Court, or if there is a history of domestic violence, please notify the mediator immediately, otherwise all parties shall attend in accordance with the Order of Referral.

PLEASE BRING ANY NECESSARY FINANCIAL DOCUMENTS (AFFIDAVITS) THE MEDIATION WILL BE CONDUCTED IN ENGLISH AND IT IS YOUR RESPONSIBILITY TO BRING AN INTERPRETER IF NECESSARY.

MEDIATION FEE OF $60.00 (each) IS TO BE PAID ON APPOINTMENT DATE TO THE MEDIATION UNIT. **MONEY ORDER ONLY PAYABLE TO CLERK OF COURTS.**

Dated this 12 day of October , 2017

Yasmel Sosa / Case Coordinator
Mediation / Arbitration Division
73 West Flagler Street #1801
Miami, Florida 33130
(305) 349-7344 Fax (305) 349-7342

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."



Mediation/Arbitration Division
IMPORTANT NOTICE RELATING TO THE IN-HOUSE MEDIATION UNIT

1. The In-House Unit no longer conducts Family mediations when the combined net incomes of the parties exceed $100,000.00. Parties who wish to request the appointment of a mediator from the rotation list must submit a copy of the Order of Referral with their request.

2. In family cases where the combined net income of the parties is less than $50,000.00, the charge for mediation will be $60.00 per person per session (unless a party is indigent in which case there will be no charge.)

3. In family cases where the combined net income of the parties is greater than $50,000.00, but less than $100,000.00, the charge for mediation will be $120.00 per person per session.

4. All fees should be paid in person the day of mediation at 73 West Flagler Street, Suite 1801, Miami, FL 33130. Form of payment: MONEY ORDER ONLY.

5. **If either party does not speak English that party must provide an interpreter who is not a child of the parties or involved in a personal relationship with any of the parties.** If any party appears who is unable to participate in the mediation due to language barrier, the mediation will not proceed.

6. If any party wishes to appear by telephone, they must obtain an Order from the Judge permitting the telephone conference. No exceptions will be made.

7. If a case is adjourned the parties will be responsible for the payment of another Mediation session. (Unless a party is indigent in which case there is no charge).

We wish to thank you for your cooperation with these procedures. It is our desire to provide an efficient, ethical mediation process to the citizens of the Eleventh Judicial Circuit of Florida.

//Vivian Perez
Program Director

Rev. 10/25/11

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA
(Family Division)

MERLIN HERNANDEZ
Petitioner,

VS.

FRANK E. POLO
Respondent-Pro Se

NOTICE OF HEARING

TO: Manuel A Segarra III
E-Mail: manny@segarralawfirm.com
CC: Merlin Hernandez
E-mail: merlinh79@gmail.com

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable Scott M. Bernstein, Judge of the above-styled court, in Courtroom 28-C, at the Lawson E. Thomas Courthouse Center, 175 N. W. 151 Avenue, Miami, Florida 33128, on **Tuesday, December 12, 2017**, at 3:00 PM, 2 hours special setting hearing, or as soon thereafter as same can be heard:

1. **MOTION FOR RELIEVE FROM JUDGMENT DECREES AND ORDERS**
2. **MOTION FOR EVIDENTIARY HEARING ON CO-PARENTING COORDINATOR FEES**

PLEASE GOVERN YOURSELF ACCORDINGLY.

AMERICAN WITH DISABILITIES ACT (ADA)
"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice-impaired, call 711."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was sent via e-mail and/or e-filing to Manuel A. Segarra III counsel for the Petitioner/Mother, at manny@segarralawfirm.com, and to the Petitioner/Mother, at merlinh79@gmail.com on this **6th day of September 2017.**

CC: Manuel A Segarra III
E-Mail: manny@segarralawfirm.com
TO: Merlin Hernandez
E-mail: merlinh79@gmail.com

By: /s/
Mr. Frank E. Polo
475 SW 8th St Apt 411
Miami, FL. 33135
Phone No. 305-901-3360
Email: Frank.Polo@MSN.Com

Exhibit 2

EXHIBIT M

IN THE CIRCUIT/COUNTY COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI COUNTY, FLORIDA

MERLIN HERNANDEZ
Plaintiff/Petitioner or In the Interest Of

vs.
FRANK E. POLO
Defendant//Respondent

CASE NO. 2012-017787-FC-04

FILED FOR RECORD
2017 DEC 20 AM 11:16
HARVEY RUVIN
CLERK, CIRCUIT COURT
MIAMI-DADE COUNTY, FLORIDA
FAMILY DIVISION

APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of $25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. **I have** 2 **dependents.** *(Include only those persons you list on your U.S. Income tax return.)*
Are you Married? ✓Yes No Does your Spouse Work?...Yes ✓ No Annual Spouse Income? $0.00

2. **I have a net income of $** 0.00 paid weekly every two weeks semi-monthly monthly yearly other 0.00.
*(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, **minus** deductions required by law and other court-ordered payments such as child support.)*

3. **I have other income** paid weekly every two weeks semi-monthly monthly yearly other _____.
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job	Yes $ na	No	Veterans' benefits	Yes $ na	No
Social Security benefits			Workers compensation	Yes $ na	No
For you	Yes $ na	No	Income from absent family members	Yes $ na	No
For child(ren)	Yes $ na	No	Stocks/bonds	Yes $ na	No
Unemployment compensation	Yes $ na	No	Rental income	Yes $ na	No
Union payments	Yes $ na	No	Dividends or interest	Yes $ na	No
Retirement/pensions	Yes $ na	No	Other kinds of income not on the list	Yes $ na	No
Trusts	Yes $ na	No	Gifts	Yes $ na	No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash	Yes $ 10.00	No	Savings account	Yes $ na	No
Bank account(s)	Yes $ 72.28	No	Stocks/bonds	Yes $ na	No
Certificates of deposit or			Homestead Re I Property*	Yes $ na	No
money market accounts	Yes $ na	No	Motor Vehicle*	Yes $ 4000.00	No
Boats*	Yes $ na	No	Non-homeste d real property/real estate*	Yes $ na	No

*show loans on these assets in paragraph 5

Check one: I DO ✓ DO NOT expect to receive more assets in the near future. The asset is _____.

5. **I have total liabilities and debts of $** 2658.00 as follows: Motor Vehicle $_____, Home $ 1500.00, Other Real Property $_____, Child Support paid direct $_____, Credit Cards $_____, Medical Bills $_____, Cost of medicines (monthly) $_____,
Other $ 1.158.00. Student Loans, but not due yet.

6. **I have a private lawyer in this case**..... Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this 20 day of December, 20 17.

02/08/1972
Date of Birth

P400-265-72-048-0
Driver's License or ID Number

Signature of Applicant for Indigent Status
Print Full Legal Name Frank E. Polo
Phone Number: 305-901-3360

9619 Fontainebleau Blvd. Apt. 313, Miami, FL. 33172
Address, P O Address, Street, City, State, Zip Code

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office
HARVEY RUVIN, Clerk of Circuit and County Courts
Deputy Clerk

CLERK'S DETERMINATION

Based on the information in this Application, I have determined the applicant to be (✓) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 20 day of 12, 20 17.

Clerk of the Circuit Court by _____

This form was completed with the assistance of: _____

Clerk/Deputy Clerk/Other authorized person.

APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.
THERE IS NO FEE FOR THIS REVIEW.
Sign here if you want the judge to review the clerk's decision _____

EXHIBIT N

Merlin Hernandez
Petitioner,

vs.

Frank E Polo
Respondent.
_____/

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NUMBER.: 2012-017787-FC-04
Section: 28

ORDER OF REFERRAL TO FAMILY COURT SERVICES

The above cause came to be heard on this 28 day of March, 2017, and there are children at issue whose lives will be affected by these proceedings, and resolution of issues involving said children is in the children's best interest. Therefore, pursuant to Chapter 61 of the Florida Statutes, **THE ABOVE REFERENCED PARTY(S) IS/ARE ORDERED to CONTACT:**

FAMILY COURT SERVICES, LAWSON E. THOMAS COURTHOUSE CENTER
175 NW 1ST AVENUE, SUITE 1503, MIAMI, FLORIDA 33128 Tel: (305) 349-5508 FAX: (305) 349-5634

within five (5) working days of the date of this order for the purpose of providing essential initial data and arranging appointments, then report to the appropriate social service agency(s) as necessary. **A report of compliance with this order, including referrals if any, will be provided to the court and all parties.**

FAMILY COURT SERVICES UNIT TO PROVIDE THE FOLLOWING SERVICES:

____ Alienation Intervention/Reunification
____ Child/Family Assistance
____ Co-parenting
____ Time-Sharing Issues/Schedule
____ Crisis Assistance
____ Marital Reconciliation
✓ Parenting Coordination (limited to 6 meetings with indigent parties only)

Supervised Visitation ____ One visit scheduled per week for 12 weeks ____ Monitored Exchange

Person(s) Authorized to Transport Child(ren): _____

REFERRALS TO COMMUNITY PROVIDERS (Circle or name each party applicable)

____ Individual Counseling for _____
____ Extended Co-Parenting (Both parents jointly)
____ Family Counseling : Petitioner/Respondent/Child(ren)
____ Therapeutic Supervised Visitation
____ Bridging Families & Communities
____ Early Family Court Triage
____ Parenting Class: Petitioner/Respondent
____ Paternity Test: Child(ren) _____
____ Parenting Coordination (Supplemental order required)
____ Social Investigation (Supplemental order required)
____ Substance Abuse Testing through Hair Follicle: Petitioner/Respondent/Child
____ Substance Abuse Evaluation: Petitioner/Respondent/Child

____ **Psychological Evaluation: Petitioner:** Respondent/Child(ren) ____ **Psychiatric Evaluation:** Petitioner/Respondent/Child
Mental health condition in controversy *Good cause shown* *Mental health condition in controversy* *Good cause shown*

Specific Referral instructions/Targeted question(s) to be addressed: pls refer ASAP - children's choice of school is a major issue. Both parents seem to be incapable of communication re major issues. See prior reports

The parties stipulate that the court may review any reports on this case received by Family Court Services that are issued by the above providers. These reports may be admitted into evidence subject to discovery requirements.

Petitioner _____ Respondent _____

The Court determines payment for court ordered referral to community/private provider as follows:

___ borne equally by the parties ___ borne by the Petitioner/waived as to Respondent ___ borne by the Respondent/waived as to Petitioner

Language preferred: [ ] Spanish [ ] Creole [ ] Other _____ **Next Hearing Date**: _____

Additional Judicial Instruction: _____

Any and all statements and/or disclosures made to Family Court Services, whether deemed relevant or not to the overall purpose of this referral, are not confidential and, consequently, may be reported to the referring court.

VIOLATION OF ANY PROVISION IN THIS ORDER MAY RESULT IN PARTY REFERRED BEING HELD IN CONTEMPT OF COURT.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this 28 day of March, 2017.

Judith L. Kreeger
Circuit Court Judge

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

EXHIBIT-O

Merlin Hernandez

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 2012-17787 FC 04

Petitioner,

vs.

Frank Enrique Polo

Respondent.

ORDER ON Motion for Evidentiary Hearing on Co-Parenting Coordinator Fees

THIS CAUSE having come on to be heard on 12/12/17

on ~~Petitioner~~'s/Respondent's Motion for Evidentiary Hearing on Co-Parenting Coordinator Fees

and the Court having read argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby Respondent's Motion for Evidentiary Hearing on Co-Parenting Coordinator Fees, dated 8/22/17 is denied as untimely and improper.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 12 day of Dec. 2017.

Circuit Court Judge

Copies furnished to: M. Segarra
F. Polo

Scott M. Bernstein
Circuit Court Judge

APPENDIX X

Florida Third District Court of Appeal Order Dismissing Petition for Writs of Prohibition and Mandamus, April 12, 2018.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

APRIL 12, 2018

FRANK E. POLO,
Appellant(s)/Petitioner(s),
vs.
MERLIN HERNANDEZ,
Appellee(s)/Respondent(s),

CASE NO.: 3D**18-0189**

L.T. NO.: 12-17787

Following review of the petition for a writ of prohibition and a writ of mandamus, and the response and reply thereto, it is ordered that said petition is hereby dismissed.

SUAREZ, LAGOA and LUCK, JJ., concur.



cc: Manuel A. Segarra, III
Hon. Judith L. Kreeger
Frank E. Polo
Hon. Scott M. Bernstein
Merlin Hernandez

ns

APPENDIX Y

Florida Third District Court of Appeal Order Denying Reinstatement and/or Written Opinion, May 22, 2018.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

MAY 22, 2018

FRANK E. POLO,
Appellant(s)/Petitioner(s),
vs.
MERLIN HERNANDEZ,
Appellee(s)/Respondent(s),

CASE NO.: 3D**18-0189**

L.T. NO.: 12-17787

Upon consideration, petitioner's motion for written opinion and reinstatement of petition for a writ of prohibition and a writ of mandamus is hereby denied.

SUAREZ, LAGOA and LUCK, JJ., concur.



cc: Manuel A. Segarra, III
Hon. Judith L. Kreeger
Frank E. Polo
Hon. Scott M. Bernstein
Merlin Hernandez

la

APPENDIX Z

Petition for Writ of Prohibition Challenging Judge Multack's Jurisdiction Over Attorney-Fee Proceedings, December 1, 2022

Filing # 162150529 E-Filed 12/01/2022 07:10:29 AM

IN THE DISTRICT COURT OF APPEALS OF FLORIDA
THIRD DISTRICT

FRANK E. POLO
Petitioner, Pro-Se

3d DCA Case No. _____

Lower Ct. Case No. 2012-017787-FC-04

v.

MERLIN HERNANDEZ
Respondent

RECEIVED, 12/01/2022 07:11:21 AM, Clerk, Third District Court of Appeal

PETITION FOR COMMON LAW WRIT OF PROHIBITION

Petitioner, Frank Polo, pro se, and pursuant to Rules 9.100 and 9.030 (3) of the Florida Rules of Appellate Procedure, respectfully petitions this court for the issuance of a Writ of Prohibition precluding the Honorable Judge *Spencer Multack* from continuing to exercise jurisdiction in this case, and precluding Judge *Spencer Multack* from entering orders against the Petitioner, and in support thereof, alleges as follows:

§ I - PREFACE

Petitioner, FRANK POLO, is the Respondent in the lower court. He is referred to herein as either "Petitioner", the “Father” or "Mr. Polo". Respondent, MERLIN HERNANDEZ, is the Petitioner in the lower court. She is referred to herein as "Respondent", "Mother" or "Ms. Hernandez".

The Honorable Judge SPENCER MULTACK is referred to as "Judge Multack" or as "the judge".

Reference to Ms. Hernandez's Attorney is referred to as the "Opposing Counsel" or "Mr. Segarra."

The Appendix is referred to by the letter "A" followed by the page number ("A_"), and the page number followed by the Line Number(s). ("A P: L)"). The transcript from the July 5, 2022 hearing is referred to by the letter "T July" followed by the page number ("T-JUL P") and the page number followed by the Line Number(s) "T-JUL P:L"). The transcript from the January 27, 2022 hearing is referred to by the letters "T-JAN" followed by the page number ("T-JAN P") and the page number followed by the Line Number(s) "T-JAN P:L"). The transcripts are included in the Appendix as T-JUL and T-JAN respectively.

§ II - JURISDICTION

This Court has jurisdiction under *Fla. Const. Art. V, Sec.* 4(b)(3), Fla. R. App. P. 9.100, and pursuant to Fla. R. App. P. 9.030(b)(3);

Fla. R. App. P. 100 grants this Court Original Jurisdiction to issue writs of prohibition.

> "Prohibition is an extraordinary writ, a prerogative writ, extremely narrow in scope and operation, by which a superior court, having appellate and supervisory jurisdiction over an inferior court or tribunal possessing judicial or quasi-judicial power, may prevent such inferior court or tribunal from *exceeding jurisdiction or usurping jurisdiction over matters not within its jurisdiction*" …. "Prohibition may only be

granted when it is shown that a lower tribunal is without jurisdiction or attempting to act in excess of jurisdiction."

English v. McCrary, 348 So. 2d 293, 296 (Fla. 1977)

Courts throughout Florida, including this honorable Court, have consistently granted Prohibition to preclude the trial court from continuing to exercise jurisdiction when the lower court lack all jurisdiction to entertain motions for attorney's fees after the court failed to reserve jurisdiction, and the statutory time allowed to file a motion for rehearing has lapsed.

This court has previously prevented the unlawful exercise of jurisdiction when the plaintiff "dropped [the Petitioner] as a party and terminated the proceedings as against [the Petitioner]." This court stated that the filing of the Amended Complaint without naming the petitioner as a party "resulted in the trial court's loss of jurisdiction over her person" (citing *Biggers v. Town of Davie*, 674 So.2d 938 (Fla. 4th DCA 1996)), and that the Petitioner's "application for writ of prohibition to preclude the trial court from the entry of orders against her absent the service of new process or of an appropriate subpoena [was] therefore granted." *Sas v. Postman*, 687 So.2d 54 (Fla. 3d DCA 1997). *See also, Liberty Ins. Corp. v. Milne*, 98 So. 3d 613 (Fla. 4th DCA 2012) (holding that "[t]he rule is firmly established in this State that the trial Court loses jurisdiction of a cause after a judgment or final decree has been entered and the time for filing petition for rehearing or motion for new

trial has expired or same has been denied." (quoting *State ex rel. Am. Home Ins. Co. v. Seay*, 355 So.2d 822, 824 (Fla. 4th DCA 1978))).[1]

§ III - STANDARD OF REVIEW

As this court has previously held, "[a] trial court's interpretation and application of Florida law is reviewed de novo." *Perez v. Maldonato*, 324 So. 3d 1011 (Fla. 3d DCA 20221) (citing *Brigham v. Brigham*, 11 So. 3d 374, 381 (Fla. 3d DCA 2009)).

Pure question of law is revied de novo. See *Engle v. Liggett Group, Inc.*, 945 SO. 2D 1246 (FLA. 2006) (citing *D'Angelo v. Fitzmaurice*, 863 So.2d 311, 314 (Fla.2003) (stating that standard of review for pure questions of law is de novo)).

§ IV - THE PARTIES

1. The Petitioner, Frank E. Polo (hereinafter the "Father", or the "Appellant.")

2. The Respondent, Merlin Hernandez (hereinafter the "Mother", or "Appellee").

3. The Respondent, Hon. Spencer Multack, (hereinafter "Judge Multack").

[1] More 3d DCA cases are discussed under the Argument section.

§ V - STATEMENT OF THE CASE AND THE FACTS

4. On ***February 7, 2017***, Mr. Polo filed a Petition for Modification. *See*. A1.

5. On ***March 12, 2017***, Mr. Polo filed an Amendment to the Petition for Modification. A5.

6. On **March 14, 2017**, the Mother filed her "Answer to Respondent's Amended Supplemental Petition for Modification of Child Support and Other Remedies," which **did not contain a petition for attorney's fees**. PTJN, Doc. 17. A6.

7. On ***July 11, 2018***, General Magistrate Singer ("GM SINGER") sua sponte dismissed a Petition for Modification based on affirmative defenses not raised by proper pleadings, and on ***August 20, 2018***, he filed the "Report and Recommendations of the General Magistrate and Notice of Filing," which ***did not expressly retain Jurisdiction*** to entertain a motion for past attorney's fees. A:2.

8. On ***August 20, 2018***, Judge Scott Bernstein signed the "*Order on Report and Recommendations of the General Magistrate and Notice of Filing*" ("Final Judgement"). This was filed on the docket on ***September 14, 2018*** (*See* A3), and Judge Bernstein reaffirmed it on ***September 20, 2018,***

by filing the "*Order Vacating September 6, 2018 Order and Re-entering order on Report of General Magistrate.*" ("Reaffirmed Final Judgement"). A4.

9. Neither the filed ***September 14, 2018*** (A 3), Final Judgement or the Order reaffirming the Final Judgment on ***September 20. 2018*** (A4) retained Jurisdiction to later entertain any motion for attorney's fees. PTJN, *See* Doc. 273, and 277.

10. Ms. Hernandez failed to request a rehearing, under Fla. Fam. Law. RP 12.530 (b), within the allowable fifteen (15) days (by October 5, 2018). *See* the relevant part of the docket A9.

11. On **October 8, 2018**. Almost *a month after the Final Judgment* was rendered, the Mother filed the "Petitioner/Mother's Motion for Attorney's Fees and Cost to be Paid by Respondent/Father." PTJN, Doc. 285. *See* also A7.

12. The final Judgment was rendered on September 20, 2018, and almost a month later, on October 8, 2018, Mr. Segarra filed his "Petitioner / Mother's Motion for Attorney's Fees and Cost to be Paid by Respondent / Father." Moreover, almost two months later, on November 1, 2018, Mr. Segarra filed his "Segarra & Associates, P.A. Motion for Attorney's Fees and

Cost to Be Paid by Respondent/Father for Moving to Enforce Court Ordered Sanctions.

13. On July 5, 2022, Mr. Polo properly moved the lower court to stop exercising jurisdiction for lack of jurisdiction, either personal or subject matter Jurisdiction. *See* T-JUL 5:21 – 6:1-19. *See also* A8.

14. During the hearing, Judge Multack stated that he would listen to the Jurisdictional arguments during the hearing of attorney's fees. However, he continued to exercise jurisdiction by filling two orders on July 11, 2022 (Docket No. 537, and 538) limiting Mr. Polo's access to the court without due process of law (notice and opportunity to be heard).

15. On July 20, 2022, Mr. Polo filed a motion to dismiss based on lack of Jurisdiction, titled "Verified Motion to Dismiss the October 8, 2018 Motion Titled "Petitioner/Mother's Motion for Attorney's Fees and Cost to be Paid by Respondent/father." any Other Motion Filed After September 20, 2018, and to Vacate any Order Issued After September 20, 2018. *See* A7.

16. On August 2, 2022, Mr. Segarra's office contacted the office of the Judge asking to schedule "the continuation of the evidentiary hearing on the PETITIONER / Mother's Motion for Attorney's Fees and Costs to be Paid

by RESPONDENT/Father; as well as a hearing on the RESPONDENT / Father's Exceptions to Report of the General Magistrate". A8:2.

17. Mr. Polo replied reminding Judge Multack's Judicial Assistant that there was a pending motion to dismiss for jurisdictional reasons. However; Judge Multack's office continued to schedule a hearing for January 12, 2023, ignoring the existence of the motion to dismiss. *Id.*

18. On November 15, 2022, Mr. Polo contacted Judge Multack's office once more requesting a hearing on my motion to dismiss before the court would continue to act absent of all clear jurisdiction; however, the court decided to ignore the petition for a hearing on Mr. Polo's verified motion to dismiss for lack of jurisdiction. (*See* A8).

19. On the same email, Mr. Polo asked for the court to include his motion for attorney's fees to be heard on January 12, 2023, if the court was to continue to act without jurisdiction. However, Judge Multack's JA never replied to Mr. Polo's requests.

20. Moreover, Mr. Polo was never consulted about the amount of time he needed to present his defense in the event the court was to hear the case acting in absence of all clear jurisdiction. Likewise, the hearing was

scheduled as a virtual hearing without consulting with Mr. Polo and Mr. Polo objected to any other hearing but an in-person hearing.

21. On January 27, 2022, the court partially heard the motion for attorney's fees, and Mr. Polo asked the court to take care of some objections before commencing the trial. T-JAN 6:15-16.

22. Among those objections was the objection to litigating something the Mother failed to litigate before the court had signed the final Judgement on September 6, 2018. Mr. Polo asked the court to limit the evidence to be presented to this showing expressed finding of bad faith conduct supported by detailed factual findings described by the specific acts of bad faith and conduct. T-JAN 8:21 – 12:8.

23. Mr. Polo did not consent to re-litigate findings not contained in the final judgment because the case was precluded by res Judicata. T-JAN 16:6-12.

> 6 …. They cannot bring this up now after the case is
> 7 already over. This is --I mean, under res judicata,
> ·8· · · ·after the final hearing, they cannot go back and
> ·9· · · ·relitigate the whole issue.· And they want to enter
> 10· · · ·evidence that is not supported by express finding of bad
> 11· · · ·faith.· It is not supported by detailed factual findings,
> 12· · · ·describing the specific act of bad faith conduct, ….

24. Judge Del Rey allowed the Mother's attorney to continue to litigate knowing they could not relitigate to make new findings of facts not contained on the record.

25. The mother's attorney, knowing that the court has no jurisdiction to entertain a hearing for attorney's fees, continues to claim that they can ask for attorney's fees under *Mettler v. Mettler*, 569 So. 2d 496 (Fla. 4th DCA), which is nothing else, but an application of the inequitable doctrine prescribed under *Moakley*. T-JAN 11:14-19.

§ VI - ARGUMENT

1. JUDGE MULTACK ERRED IN CONTINUING TO HEAR AND ADJUDICATE MATTERS IN THIS CASE AFTER THE ELEVENTH JUDICIAL CIRCUIT COURT OF FLORIDA LOST ALL PERSONAL AND SUBJECT MATTER JURISDICTION OVER THE PARTIES.

26. This court has previously granted a writ of prohibition when the plaintiff "dropped [the Petitioner] as a party and terminated the proceedings as against [the Petitioner]." This court stated that the filing of the Amended Complaint without naming the petitioner as a party "resulted in the trial court's loss of jurisdiction over her person" (citing *Biggers v. Town of Davie*, 674 So.2d 938 (Fla. 4th DCA 1996)), and that the Petitioner's "application for writ of prohibition to preclude the trial court from the entry of orders against her

absent the service of new process or of an appropriate subpoena [was] therefore granted." *Sas v. Postman*, 687 So.2d 54 (Fla. 3d DCA 1997).

27. In *Milne, 98 So. 3d 613*, the Plaintiff filed a third-party complaint against Liberty after the trial court filed a final judgment against the defendants. Liberty moved to dismiss the third-party complaint, arguing that the trial court lacked subject matter jurisdiction over Liberty because the pleading was filed after the trial court entered final judgment, and the court held that:

> The rule is firmly established in this State that the trial Court ***loses jurisdiction of a cause*** after a judgment or ***final decree has been entered*** and the ***time for filing petition for rehearing*** or motion for new trial ***has expired*** or same has been denied.

Id at 615 (quoting State *ex rel. Am. Home Ins. Co. v. Seay*, 355 So. 2d 822, 824 (Fla. 4th DCA 1978)). *See also Mich Auto Sales Inc. v. 14004 NW 19th avenue, LLC*, No. 3D22-0954 (Fla. 3d DCA 2022). (holding that the trial court exceeded its jurisdiction in considering Respondent's motion for leave to amend the complaint and in permitting the complaint's amendment.) See also *U.S. Bank Nat'l Ass'n v. Anthony-Irish*, 204 So. 3d 57, 60 (Fla. 5th DCA 2016) ("The court is said to act outside of its jurisdiction if it enters additional orders after a voluntary dismissal or a final judgment that did not reserve jurisdiction for the specific purpose of entering those orders.").

28. The requirement of subject matter jurisdiction ("SMJ") is ***never waivable***; judgments *rendered without* SMJ are ***void ab initio*** and can be successfully ***attacked at any time***. See *Winn & Lovett Grocery Co. v. Luke*, 156 Fla. 638, 641, 24 So.2d 310, 312 (Fla. 1945) (holding that "jurisdiction of the subject matter cannot be conferred by consent or failure to object").

29. It is well-settled law throughout Florida that a court lacks jurisdiction to adjudicate a motion for attorney's fees when it fails to reserve jurisdiction and the time to file a petition for rehearing has passed. In *Church v. Church*, 338 So.2d 544 (Fla. 3rd DCA. 1976), the court stated:

> We find the order awarding attorneys' fees to be ***void*** in that although the chancellor and the parties at this dissolution hearing ***agreed that attorneys' fees would be allowed at a subsequent date***, the ***final judgment failed to reserve jurisdiction*** with respect to this matter. Therefore, the chancellor ***lacked jurisdiction*** to enter a subsequent order awarding attorneys' fees.

Church, 338, So.2d 544 at 545. (citing *Frumkes v. Frumkes*, 328 So.2d 34 (Fla. 3d DCA. 1976) (reversing the granting of attorney's fees because the court failed to reserve Jurisdiction to grant attorneys fees, and the court had lost subject matter jurisdiction after the time for filing a petition for rehearing had passed.) *See* also *Jackson v. Jackson*, 390 SO. 2D 787 (Fla. 1St DCA. 1980); *Berlin v. Berlin*, 395 So. 2d 1260 (Fla. 3d DCA. 1981); and *Hartford Acc. & Indem. Co. v. Smith*, 366 So. 2d 456 (Fla. 4th DCA. 1978).

30. Fla. Fam. Law. RP 12.530 (b) establishes the timeframe to file a motion for rehearing, which is fifteen (15) days, and reads as follows:

> (b)Time for Motion. A motion for new trial or for rehearing must be served *not later than 15 days after the return of the verdict* in a jury action or the date of filing of the judgment in a non-jury action. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.
>
> Id.

31. Fla. Sup. Ct. has explained the common law doctrine of Res Judicata as follows:

> A judgment on the merits rendered in a former suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is ***conclusive*** not only as to every matter which was offered and received to sustain or defeat the claim***, but as to every other matter which might with propriety have been litigated*** and determined in that action.
>
> *State v. McBride*, 848 So. 2d 287 (Fla. 2003).

32. Moreover, the law is clear in Florida with respect to claims of attorney fees. The *Fla. Sup. Ct.*, has clearly stated that:

> [A] claim for attorney's fees, whether based on *statute or contract*, must be pled. The fundamental concern is one of *notice*. Modern pleading requirements serve to notify the opposing party of the claims alleged and *prevent unfair surprise*. Raising entitlement to attorney's fees only after judgment fails to serve either of these objectives. The existence or nonexistence of a motion for attorney's fees may play an important role in decisions affecting the case.... A party should not have to speculate throughout the entire course of an action about what claims ultimately may be alleged against him. Accordingly, we hold that a claim for attorney's fees, *whether based on statute or contract*, *must be pled*. Failure to do so constitutes a *waiver of the claim*.

Stockman v. Downs, 573 So.2d 835, 837-38 (Fla.1991)

33. Moreover, the 2nd DCA has clearly stated that they "fail to see how a court could reserve jurisdiction to award attorney's fees to the Husband when he had not sought fees at the time the supplemental final judgment was rendered." *Mook v. Mook*, 873 So. 2d 363 at 367 (Fla. 2nd DCA).

34. In addressing the inherent authority of the Court to grant attorneys fees under *Moakley*, The Fla. Sup. Ct. was clear and stated as follows:

> [T]he inherent authority to assess attorneys' fees against an attorney must be based upon an ***express finding of bad faith conduct*** and must be supported by ***detailed factual findings describing*** the ***specific acts of bad faith*** conduct that resulted in the unnecessary incurrence of attorneys' fees. Thus, a finding of bad faith conduct must be predicated on a ***high degree of specificity*** in the factual findings. In addition, the amount of the award of attorneys' fees must be ***directly related*** to the attorneys' fees and costs that the opposing party has incurred ***as a result of the specific bad faith conduct*** of the attorney.
>
> *Moakley v. Smallwood*, 826 SO. 2D 221 (Fla. 2002).

35. In *Mettler, 569 So. 2d 496*, the court exercised Jurisdictions because the court had retained Jurisdiction, the Father made a timely request for attorney's fees, and the record supported a finding of bad faith litigation under Moakley. The court in *Mettler* stated:

> The ***trial court reserved jurisdiction*** on former husband's claim for fees and for the purpose of reapportioning fees already paid the court appointed attorney ad litem. Appellant sought review of the modification order. *At* 498
>
> The ***final judgment*** made ***specific findings of fact*** that the file reflected a "pattern of extensive, expensive and needless litigation," that appellant "instigates litigation at considerable expense and aggravation over matters that could easily be resolved if she were reasonable."

36. In this case, on *February 7, 2017*, Mr. Polo filed a Petition for Modification. *See* A1, and then a subsequent Amended Petition on *March 12, 2017*, *See* A5, which on *July 11, 2018*, General Magistrate SINGER ("GM SINGER") sua sponte dismissed based on affirmative defenses not raised by proper pleadings.

37. On ***August 20, 2018***, GM Singer filed the "Report and Recommendations of the General Magistrate and Notice of Filing," which ***did not expressly retain Jurisdiction*** to entertain a motion for past attorney's fees. *See* A2. Moreover, on ***August 20, 2018***, Judge Scott Bernstein signed the "*Order on Report and Recommendations of the General Magistrate and Notice of Filing*" ("Final Judgement"). This was filed on the docket on ***September 14, 2018*** (A3), and Judge Bernstein reaffirmed it on ***September 20, 2018,*** by filing the "*Order Vacating September 6, 2018 Order and Re-entering order on Report of General Magistrate.*" ("Reaffirmed Final Judgement"). A4.

38. Neither the filed ***September 14, 2018***, Final Judgement or the Order reaffirming the Final Judgment on ***September 20. 2018*** expressly retained Jurisdiction to entertain a motion for past attorney's fees. Therefore, the proceeding concluded on *September 20, 2018*, after Judge Bernstein reaffirmed the final judgment, Ms. Hernandez failed to file a motion for rehearing within the fifteen (15) days allowed under Florida Statutory law under Fla. Fam. Law. RP 12.530 (b) (making October 5, 2018, the last day to file a petition for rehearing).

39. The court failure to expressly reserve jurisdiction to grant past attorney's fees, and res judicata preclude the mother from continuing litigating any motion for attorney's fees, because, not only the court lost personal jurisdiction over Mr. Polo precluding, thereby, the trial court from the entry of orders against Mr. Polo absent the service of new process or of an appropriate subpoena, but also, they lost subject matter jurisdiction when they failed to retain jurisdiction to entertain any motion for attorney's fees.

40. However, assuming arguendo, that the lower court had jurisdiction, which it does not have, Ms. Hernandez would have waived her claim for attorney fees because her motions for attorney's fees were all filed after the final judgment was rendered on September 20, 2018, and she failed to plead for attorney's fees in her answer.

41. The mother failed to plead for attorney's fees in her *March 14, 2017* answer to Mr. Polo's petition. Consequently, *Stockman*, 573 So 2d 835 precludes Ms. Hernandez from seeking attorney's fees under statute or contract (this is assuming that the lower court had jurisdiction, which it does not have).

42. Ms. Hernandez cannot operate under *Moakley.* To operate under *Moakley* they would have to be able to point out an express finding of bad faith conduct supported by detail factual finding. Such a finding must exist on the record, and the record does not contain any finding of bad faith. However, even if the record had contained any detail factual finding of bad faith, the Eleventh Judicial Circuit Court of Florida lacks personal and subject matter jurisdiction to adjudicate any motion for attorney's fees.

43. The mother's attorneys are clearly litigating with no legal or factual bases, with no other objective than to harass Mr. Polo. They claim that under *Mettler*, they can continue to litigate, when they know the court has no jurisdiction.

44. *Mettler* is clearly distinguishable from this case for the following reasons: (1) In Mettler, the court retained Jurisdiction, (2) the Father made a timely request for attorney's fees, and (3) ***the final judgment*** made ***specific***

findings of facts that reflected a pattern of extensive, expensive and needless litigation.

45. It is clear from the multiple petitions of Mr. Polo requesting a hearing on his motion to dismiss based on the Court's lack of jurisdiction, from how the court continues to ignore Mr. Polo's request, and from the fact that the court has already scheduled a hearing for January 12, 2023 on the Mother's motion for attorney's fees, that the court is willing and ready to proceed to exercise Jurisdiction knowing that it does not have the jurisdictional power to do so. (*See* A8).

46. It is clear that the lower court, over Mr. Polo's objection, will allow the Mother to engage in finding of facts after the final judgment was already issued, they failed to litigate the issue, and they failed to plead for attorney's fees before the final judgment was issued. Regardless of how much Mr. Polo objects to the unlawful exercise of jurisdiction, the court will continue to exercise jurisdiction, and regardless of what the case law in Florida stipulates, Mr. Polo will not get a fair trial in Miami Dade unless this honorable Court acts promptly to prevent the Eleventh Judicial Circuit Court of Florida from unlawfully exercising jurisdiction over the person and the subject matter of the pending issues in the lower court.

47. Therefore, the lower court did not have jurisdiction after the final judgment was reaffirmed on ***September 20. 2018*** without retaining jurisdiction over the matter of attorney's fees. Therefore, the lower court lacks jurisdiction to enter ANY judgment or order, including but not limited to a judgment on the two pending motions for attorney's fees, the "***Order on Ex-Parte Communications***," and the order "***On Case Management***". dated ***July 11, 2022***.

48. **WHEREFORE:** I respectfully ask this court to issue a writ of prohibition against the honorable Judge Multack prohibiting the lower court from hearing any further matters in this case for lack of personal and subject matter jurisdiction. This includes pending matters as the **October 8, 2018** motion titled *"Petitioner/Mother's Motion for Attorney's Fees and Cost to be Paid by Respondent/Father,"* and the **September 1, 2018** motion titled *"Segarra & Associates, P.A. Motion for Attorney's Fees and Cost to Be Paid by Respondent/Father for Moving to Enforce Court Ordered Sanctions,"* with prejudice.

§ VII - CONCLUSION

49. The law in Florida is very clear, unequivocal and certain about the exercise of Jurisdiction by the lower court when the court fails to retain Jurisdiction, the statutory time allowed to request a rehearing lapses, and the

parties then file for attorney's fees. This case is barred by res-judicata and the lower court lost jurisdiction after the final judgment was reaffirmed on ***September 20. 2018,*** and the lower court failed to retaining jurisdiction over the subject matter of attorney's fees. Therefore, the lower court lacks jurisdiction to enter ANY judgment or order after the Final Judgment was reaffirmed on ***September 20, 2018***, including but not limited to a judgment on Ms. Hernandez's/her attorney's pending claims for attorney's fees, the "***Order on Ex-Parte Communications***," and the order "***On Case Management***" dated ***July 11, 2022***.

WHEREFORE: Mr. Polo respectfully ask this court to:

1. Issue a Writ of Prohibition precluding the Honorable Judge Spencer Multack from continuing to exercise jurisdiction in this case, and preclude Judge Spencer Multack from entering orders against the Petitioner;

2. To clearly state on the record that the Eleventh Judicial Court of Florida lost Jurisdiction as of September 20, 2018 and therefore, the any order enter after that date are VOID ad initio;

3. Moreover, if this court decides to deny this petition, Mr. Polo respectfully asks for a written opinion stating the facts or legal bases to deny this petition. Since Mr. Polo is not an attorney, he gets confused every time

this honorable court files an order without opinion, and he is sure may other pro se litigants, and even experienced attorneys, will benefit from this Court's wisdom expressed as a written opinion; and

4. This Court may enter any other relief as this Court finds to be just and proper.

Respectfully submitted,

By: __/s/_____

Frank Polo

CERTIFICATE OF SERVICE

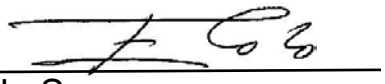
I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded pursuant to Fla. R. Jud. Admin. 2. 516, via e-portal to the Appellee/Respondent's counsel Manuel A. Segarra, III, Esq., at manny@segarralawfirm.com and service@segarralawfirm.com, to, and to the Honorable Judge Spencer Multack at smultack@jud11.flcourts.org, on this day 27 day of November 2022. All other parties have been served as follows:

To: Merlin Hernandez
Appellee/Respondent
E-Mail: merlinh79@gmail.com

By: /s/ _____
Frank Polo Sr.
1475 SW 8th St Apt 411
Miami, FL. 33135
Telephone: 305-901-3360
Email: Frank.Polo@msn.com

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Petition complies with the font requirements, Arial 14-point font, and the word count of 4,422 excluding signature block, certificate of service, and certificate of compliance pursuant to Florida Rule of Appellate Procedure 9.045. Word count is relied upon Microsoft Word processor.

By: /s/ 

Frank Polo Sr.
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APPENDIX AA

Florida Third District Court of Appeal Order Denying Petition for Writ of Prohibition, March 1, 2023.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

MARCH 01, 2023

FRANK E. POLO,
Appellant(s)/Petitioner(s),
vs.
MERLIN HERNANDEZ,
Appellee(s)/Respondent(s),

CASE NO.: 3D**22-2071**

L.T. NO.: 12-17787

Pro se Petitioner's Response to the Motion to Strike is noted.

Upon consideration, pro se Respondent's Motion to Strike pro se Petitioner's Reply to the Response is hereby denied.

Following review of the pro se Amended Petition for Common Law Writ of Prohibition, the Response and Reply thereto, and the Appendix to the Reply, it is ordered that said Petition is hereby denied. See Rorrer v. Orban, 215 So. 3d 148 (Fla. 3d DCA 2017); Juhl v. Juhl, 328 So. 3d 1031 (Fla. 2d DCA 2021); § 61.16, Fla. Stat. (2022).

LINDSEY, HENDON and LOBREE, JJ., concur.



cc: Manuel A. Segarra, III
Hon. Spencer Multack
Frank E. Polo
Patricia Gladson
Merlin Hernandez

ns

APPENDIX BB

Florida Third District Court of Appeal Opinion Regarding Attorney-Fee Jurisdiction, August 30, 2023

Third District Court of Appeal

State of Florida

Opinion filed August 30, 2023.
Not final until disposition of timely filed motion for rehearing.

No. 3D23-249
Lower Tribunal No. 12-17787

Frank E. Polo, Sr.,
Appellant,

vs.

Merlin Hernandez,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Spencer Multack, Judge.

Frank E. Polo., Sr., in proper person.

Merlin Hernandez, in proper person.

Segarra & Associates, P.A., Manuel A. Segarra, III, and Irech M. Colon, for interested party Segarra & Associates, P.A.

Before SCALES, HENDON, and MILLER, JJ.

MILLER, J.

Appellant, Frank E. Polo, Sr., the father, challenges a final order ratifying the recommendations of a general magistrate and awarding attorney's fees to appellee, Merlin Hernandez, the mother. On appeal, he contends the trial court lacked jurisdiction to award fees and, alternatively, the trial court placed its imprimatur on the recommendations without independently reviewing the evidence. For the reasons set forth below, we affirm all aspects of the order, save the provision characterizing the fees as a form of support that "shall not be dischargeable in bankruptcy proceedings."

BACKGROUND

Given the nature of the issues on appeal, the facts require little elaboration. As succinctly observed in this court's earlier opinion in Polo v. Hernandez, 338 So. 3d 386 (Fla. 3d DCA 2022):

> Since the Mother and Father parted ways in 2012, the parties have continued to engage in litigation over various aspects of the parties' 2013 mediated settlement agreement, attorney's fees, and child support, among other things.
>
> In June 2019, a general magistrate was ordered to resolve two separate motions: 1) the Mother's motion for attorney's fees and costs to be paid by the Father, and 2) the Mother's attorney's motion for attorney's fees and costs to be paid by the Father. The magistrate's report was issued July 19, 2019, and was served on the Father's attorney by mail on July 22, 2019. The Father's attorney timely filed his exceptions to the report on July 29, 2019.

Id. at 386–87 (footnote omitted). A predecessor judge initially ratified the report and awarded fees without first considering legal argument on the father's exceptions. This court reversed for a hearing. Id. at 389. The successor judge determined that Polo voluntarily absented himself from the duly convened hearing and overruled the exceptions. Included in the magistrate's recommendation was a finding that the fees "shall not be dischargeable in bankruptcy proceedings." This appeal ensued.

ANALYSIS

Applying a de novo standard of review, we conclude Polo has failed to demonstrate reversible error in his first point on appeal. Lopez v. Dep't of Revenue, 201 So. 3d 119, 123–24 (Fla. 3d DCA 2015). Notwithstanding the fact that the reservation contained in the operative final judgment was sufficient to vest the trial court with jurisdiction to award post-judgment fees, it is axiomatic that fees in family law cases may be awarded "from time to time" in accord with the considerations set forth in section 61.16(1), Florida Statutes (2023). Hence, the thirty-day limitation contained within Florida Rule of Civil Procedure 1.525 is inapplicable, and there was no jurisdictional impediment to awarding fees. See Juhl v. Juhl, 328 So. 3d 1031, 1032–33 (Fla. 2d DCA 2021).

As to the second point, competent, substantial evidence in the form of billing records and testimony bearing on the reasonable hours expended, hourly rate, and available resources support the fee award.

We are constrained to remand, however, because the magistrate determined the fee award was not dischargeable in bankruptcy. This finding was premature. In Meeks v. Meeks, 964 So. 2d 185 (Fla. 2d DCA 2007), our sister court cogently explained:

> The problem with the trial court's judgment is that it reached an issue of federal law that is not yet ripe for consideration. A state trial court is free to place language in a judgment to memorialize factual determinations or legal rulings on questions of state law that may later assist a bankruptcy court in deciding, as a matter of federal law, the dischargeability of obligations created by the judgment. However, the law does not allow a state court to decide the federal issue of discharge prior to the filing of any bankruptcy proceeding.

Id. at 187 (footnote omitted) (citation omitted); see also Segall v. Segall, 708 So. 2d 983, 989 n.4 (Fla. 4th DCA 1998) ("The trial court also erred in prematurely determining that the Wife's attorneys' fee award was in the nature of support and not dischargeable in bankruptcy. State courts have concurrent jurisdiction with bankruptcy courts to determine the dischargeability of debts in bankruptcy."); Scharmen v. Scharmen, 613 So. 2d 121, 123 (Fla. 1st DCA 1993) (quoting In re Shaw, 67 B.R. 911, 912 (Bankr. M.D. Fla. 1986)) ("[T]he debt is nondischargeable when the fees

were incurred either through litigation of alimony, maintenance, or support issues, or through litigation of issues 'so tied in with the obligation of support as to be in the nature of support or alimony.'"); Huey v. Huey, 643 So. 2d 1141, 1142 (Fla. 4th DCA 1994) ("[W]hat constitutes alimony, maintenance or support is determined under federal bankruptcy law."). Accordingly, we affirm but remand with instructions to strike the bankruptcy discharge preclusion.

Affirmed and remanded with instructions.

APPENDIX CC

Motion for Rehearing, Rehearing En Banc, Clarification, and/or Written Opinion Regarding Attorney-Fee Jurisdiction, September 14, 2023.

IN THE DISTRICT COURT OF APPEALS OF FLORIDA
THIRD DISTRICT

FRANK POLO
Appellant
v
MERLIN HERNANDEZ
Appellee

3d DCA Case No. 23-0249
Lower Ct. Case No. 2012-17787

MOTION FOR REHEARING EN BANC, REQUESTS REHEARING, CLARIFICATION, AND/OR THE ISSUANCE OF A NEW WRITTEN OPINION

1. Comes now the Appellant, Frank Polo, and files this Motion for Rehearing (En Banc) pursuant to Fla. R. App. P. 9.331(d), requests Rehearing Clarification, and the Issuance of a new Written Opinion pursuant to Fla. R. App. P. 9.330 and further states as follows:

2. The appellant in this case wants to point out factual and legal reversible errors resulting in a miscarriage of justice, which this honorable Appellate Court may have overlooked or misapprehended in its decision.

3. Moreover, the appellant, in this case, believes that a review En Banc is necessary to maintain uniformity in the court's decisions where there is an apparent deviation from prior precedent in this DCA as well as in other DCAs in cases with the exact same set of fact as those in this case:

A) This court may have overlooked or misapprehended the fact that the Operative Final Judgment is NOT (emphasis added) the **August**

7, 2014. The OPERATIVE FINAL JUDGMENT is the one rendered almost a year later on **JULY 15, 2015** which is titled "AGREED AMENDED FINAL JUDGMENT OF PATERNITY," which states that "*Each party shall pay his/her own attorney's fees and costs*," (emphasis added) and reserves jurisdiction *only* (emphasis added) to enforce its AGREED AMENDED FINAL JUDGMENT OF PATERNITY. This appeal originated from an independent *post-judgment new petition for modification* (emphasis added), initiated on ***February 7, 2017,*** and **NOT** from a proceeding to enforce the Operative Final Judgment rendered on **JULY 15, 2015**. Attached as a courtesy is the Operative Final Judgment titled AGREED AMENDED FINAL JUDGMENT OF PATERNITY, which is the Judgment Rendered on July 15, 2015, as EXHIBIT: 1). As a result, this court's decision in this case conflicts with the recent decision in **Padron v. Padron**, 356 So. 3d 306 (Fla. 3d DCA 2023) which has the exact same facts of this case. In **PADRON**, as in this case, the court issued a final judgment, the court failed to retain jurisdiction, none of the parties moved within the 15 days allowed by law for rehearing, and therefore the lower court lost jurisdiction to adjudicate attorney's fees.

B) This honorable court overlooked or misapprehended the fact Mr. Polo does not argue that the lack of jurisdiction arises out of Fla. R. Civ. P. 1.525, Mr. Polo's claim for lack of jurisdiction arises out of **Padron v. Padron**, 356 So. 3d 306 (Fla. 3d DCA 2023), **Richards v. Bennett**, 642 So. 2d 668 (Fla. 3d DCA 1994), **Berlin v. Berlin**, 395 So.2d 1260 (Fla. 3d DCA 1981); **Church v. Church**, 338 So.2d 544 (Fla. 3d DCA 1976); **Frumkes v. Frumkes**, 328 So.2d 34 (Fla. 3d DCA 1976).. Moreover, this court misapprehends the fact that in **Juhl v. Juhl**, 328 So. 3d 1031 (Fla. 2nd DCA 2021), the lower court in **JUHL** retained jurisdiction over the issue of attorney's fees, and in Mr. Polo's case, the court did not retain jurisdiction.

C) This court may have overlooked or misapprehended the fact that Mr. Polo did not argue that the grant of attorney's fees is not supported by evidence of billing. Mr. Polo argued that the grant of attorney's fees is not supported by "*Findings of Need and Ability to Pay Fees.*" Such factual mistake creates conflicting results in a vast number of cases supporting the legal conclusion that a grant of attorney's fees, under section §61.16 or under §742.045, *must* (emphasis added) be supported by Competent Substantial Evidence supporting *"findings of need and ability to pay fees".*

D) This honorable Court overlooked or misapprehended the requirement of law under section §61.16 or under §742.045, which states that “an award of attorney's fees must be supported [not only] by substantial competent evidence, [but also must] contain *express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved.*”

E) This honorable court overlooked or misapprehended the fact that by affirming the appeal based on a factually erroneous Affirmative Defense never argued and never raised by the other side in formal pleadings/brief, this court may have been violating Mr. Polo right to due process.

4. Based in the mistaken overlooked or misapprehended facts and laws, the appellant in this case, believes that a new written opinion, clearly stating what legal grounds this court has to affirm the lower court order, will provide a legitimate basis for supreme court review. Moreover, an explanation for an apparent deviation from the prior precedent of this Court and many other courts throughout Florida, will provide guidance to the parties or lower tribunal in an issue that is expected to recur in future cases.

5. Being this honorable Court the court of last resource in Florida, if this court files an ambiguous order where the Florida Supreme Court or the U.S.

Supreme Court must guess the reasoning of the court, MR. POLO will be denied access to appeal to a higher court. Even though, U.S. Supreme Court hears Orders without opinion or with ambiguous opinions, it is rarely when this occurs. Therefore, Mr. Polo respectfully and humbly asks this court to issue a detailed opinion explaining how the irrefutable facts of this case differ from the facts and applicability of the law in those cases cited by Mr. Polo in support of this appeal.

A) THE DECISION OF THIS COURT TO AFFIRM THE LOWER COURT JUDGMENT STATING THAT "THE RESERVATION CONTAINED IN THE OPERATIVE FINAL JUDGMENT [RENDERED ON JULY 15, 2015] WAS SUFFICIENT TO VEST THE TRIAL COURT WITH JURISDICTION TO AWARD POST-JUDGMENT FEES" OVERLOOKS OR MISAPPREHEND FACTS AND APPLICABLE LAW. MOREOVER, IT CONFLICTS WITH THIS AND OTHER COURTS' PRECEDENT.

RELEVANT & APPLICABLE LAW THIS HONORABLE COURT OVERLOOKS OR MISAPPREHENDED.

6. In **Francisco v. Victoria Marine Shipping**, 486 So. 2d 1386 (Fla. 3d DCA 1986), this honorable court held as follows:

> Under the present rules, after the rendition of the final judgment, the trial court retains jurisdiction for the ten-day period [15 under Fla. Fam. L. R. P. 12.530] during which a motion for rehearing may be filed and, if filed, until disposition of the motion. The trial court thereafter **loses jurisdiction except to enforce the judgment** and except as provided by Florida Rule of Civil Procedure 1.540.[3] [in this case Fla. Fam. L. R. P. 12.540)

7. "The general rule is that [1] once a trial court has entered a final order in a dissolution proceeding, [2] absent a retention of jurisdiction, [3] the court

may not thereafter enter further orders concerning attorney's fees" **Sottile v. Sottile**, 551 So. 2d 608, 609 (Fla. 5th DCA 1989) (citing **Finkelstein v. North Broward Hospital District**, 484 So.2d 1241 (Fla. 1986); **Jackson v. Jackson**, 390 So.2d 787 (Fla. 1st DCA 1980),

8. In the most recent case on this issue, namely **Padron v. Padron**, 356 So. 3d 306 (Fla. 3d DCA 2023), which was heard before the Honorables Judges EMAS, LINDSEY and GORDO, this Court cited "**Wolfe v. Newton**, 310 So. 3d 1077, 1081 (Fla. 2d DCA 2020) for the proposition that "Prohibition may be appropriate where, as here, a trial court that had subject matter jurisdiction attempts to exercise an unreserved power to adjudicate further substantive matters when a case has **definitively concluded**".

9. In **Padron**, 356 So. 3d 306, this honorable Court also cited **Stokes v. Jones**, 319 So. 3d 166 (Fla. 1st DCA 2021) for the preposition that "'While prohibition is often used in cases where a court does not have subject matter jurisdiction, it is also used where the lower court had subject matter jurisdiction but no longer has jurisdiction over the case—sometimes referred to as "case jurisdiction."'"

10. In **Padron**, this honorable court agreed with the same argument MR. POLO has raised in this case by saying:

> While properly acknowledging the trial court had subject-matter jurisdiction over the post-judgment dissolution proceeding, Former Husband contends that once the time had passed for rehearing or new trial under Florida Family Law Rule of Procedure 12.530,[citation omitted] the trial court no longer had continuing jurisdiction to enter an order sua sponte vacating the final judgment (or a portion thereof) in the absence of a reservation of jurisdiction in the final judgment, a supplemental petition for modification, or a pleading that satisfied the narrow requirements of Florida Family Law Rules of Procedure 12.540. We agree.

Id at 308.

11. Additionally, in **Padron** also this court cited **Ross v. Damas**, 31 So. 3d 201, 203 (Fla. 3d DCA 2010) for the proposition that "'[1]after entry of a final judgment and [2] expiration of time to file a motion for rehearing or for a new trial, the trial court loses jurisdiction of the case ... ***unless*** jurisdiction was reserved to address that matter or the issue is allowed to be considered post-judgment by statute or under a provision of the Florida Rules of Civil Procedure.'"

12. *See also* **Frumkes v. Frumkes**, 328 So. 2d 34 (Fla. 3d DCA 1976) stating that:

> The court retains the power to modify by subsequent order the time and manner of the enforcement of a final judgment after it becomes final, but it does not retain the power, unless provided by statute or rule, to amend, modify or alter the provisions of a final judgment.

Citing McEachin v. McEachin, 154 So. 2d 894 (Fla. 1st DCA 1963).

13. In **Frumkes** this Court also said:

> The reservation clause in the final judgment involved in this appeal, did not have the effect of reserving or retaining the judge's jurisdiction to award attorneys fees and grant to it jurisdiction that otherwise is lost after the time for filing a petition for rehearing had passed.

Id. at 35.

14. In **Frumkes** this Court also said: Fla. Fam. Law. R. P. 12.530 (b) establishes the timeframe to file a motion for rehearing, which is fifteen (15) days.

15. *See also* **Richards v. Bennett**, 642 So. 2d 668 (Fla. 3d DCA 1994) (reversing post judgment order awarding the natural father attorneys' fees because the court did not reserve jurisdiction to award the same in the final judgment) (*citing* **Berlin v. Berlin**, 395 So.2d 1260 (Fla. 3d DCA 1981); **Church v. Church**, 338 So.2d 544 (Fla. 3d DCA 1976); **Frumkes v. Frumkes**, 328 So.2d 34 (Fla. 3d DCA 1976)

POINTS OF FACTS THIS HONORABLE COURT OVERLOOKED OR MISAPPREHENDED

16. The operative Final Judgment became final on **July 15, 2015** (the "2015 Final Judgment" or "Operative Final Judgment of Paternity"), and the other side cannot, and did not, argued that the **2015** Final Judgment titled

"AGREED AMENDED FINAL JUDGMENT OF PATERNITY" is not the Operative Final Judgment of this case.

17. After the Operative Final Judgment was rendered in 2015 (emphasis added), neither one of the parties filed an appeal on that judgment nor did the parties move for rehearing under Fla. Fam. L. R. P. 12.530 or to vacate judgment under Fla. Fam. L. R. P. 12.540.

18. The only reservation the court makes in that The only reference to attorney's fees in the Operative Final Judgment, waives the right of the parties to attorney's fees and cost, and it states in pertinent part that "Each party shall pay his/her own attorney's fees and costs."

19. The order being appealed arose out of that new proceeding for Modification and NOT as a proceeding for enforcement of the Operative Final Judgment.

20. It was not until about two years after the Operative Final Judgment was rendered on July 15, 2015, that MR. POLO filed a Petition for Modification, on ***February 7, 2017***,

21. On ***July 11, 2018***, General Magistrate SINGER ("GM SINGER") dismissed the abovementioned Petition for Modification, and on ***August 20, 2018***, GM SINGER filed the "Report and Recommendations of the General

Magistrate and Notice of Filing," which ***did not expressly retain Jurisdiction*** to entertain a motion for past attorney's fees. *See* Appellant Appendix (hereinafter "AP") [AP: 2].

22. On **September 14, 2018** Judge Scott Bernstein rendered the "Order on Report and Recommendations of the General Magistrate and Notice of Filing" (the "New Final Judgement"). The September 14, 2018 order **did not expressly retain Jurisdiction** to entertain a motion for past attorney's fees See [AP: 3].

23. On ***September 20, 2018,*** Judge Bernstein reaffirmed the September 14, 2018 final judgment by filing the "*Order Vacating September 6, 2018* [date in which was signed, but not rendered] *Order and Re-entering order on Report of General Magistrate.*" ("Reaffirming Final Judgement"). *See* [AP: 4].

24. Ms. Hernandez failed to request a rehearing, under Fla. Fam. Law. RP 12.530 (b), within the allowable fifteen (15) days (by October 5, 2018).

25. Summarizing the facts this court may have overlooked or misapprehended (1) a new Final Judgment (for the modification proceeding) was rendered, (2) the court failed to reserve jurisdiction to adjudicate

attorney's fees, (3) the time for rehearing under Fla. Fam. L. R. P. 12.530 lapsed, and (4) none of the parties move to vacate under Fla. Fam. L. R. P. 12.540.

B) THIS HONORABLE COURT MAY HAVE OVERLOOK OR MISAPPREHENDED THE FACTS THAT THE FACTS IN JUHL V. JUHL ARE NOT THE SAME THAN THOSE IN MR. POLO'S CASE.

RELEVANT & APPLICABLE LAW THIS HONORABLE COURT OVERLOOKS OR MISAPPREHENDED.

26. Claims under **Padron**, 356 So. 3d 306, **Richards**, 642 So. 2d 668, **Berlin**, 395 So.2d 1260; **Church v. Church**, 338 So.2d 544; and **Frumkes**, 328 So.2d 34, all support the legal theory that when (1) a Final Judgment is rendered, (2) the court failed to reserve jurisdiction to adjudicate attorney's fees, (3) the time for rehearing under Fla. Fam. L. R. P. 12.530 lapsed, and (4) none of the parties move to vacate under Fla. Fam. L. R. P. 12.540, the court loses procedural jurisdiction.

POINTS OF FACTS THIS HONORABLE COURT OVERLOOKED OR MISAPPREHENDED

27. Mr. Polo has never claimed that the lack of jurisdiction derived from Fla. R. Civ. P. 1.525.

28. In **JUHL**, the court reserved jurisdiction and stated that: "The trial court entered a final judgment, then issued an amended judgment four days later to correct an error regarding the restoration of Garza's surname. **Both**

judgments included language reserving jurisdiction to consider fee claims and a number of other issues."

29. In Polo's case, in the lower court (1) a Final Judgment (for the new Petion for Modification) was rendered, (2) the court failed to reserve jurisdiction to adjudicate attorney's fees, (3) the time for rehearing under Fla. Fam. L. R. P. 12.530 lapsed, and (4) none of the parties move to vacate under Fla. Fam. L. R. P. 12.540.

30. Mr. Polo's claim for lack of jurisdiction arises out of **Padron v. Padron**, 356 So. 3d 306 (Fla. 3d DCA 2023), **Richards v. Bennett**, 642 So. 2d 668 (Fla. 3d DCA 1994), **Berlin v. Berlin**, 395 So.2d 1260 (Fla. 3d DCA 1981); **Church v. Church**, 338 So.2d 544 (Fla. 3d DCA 1976); **Frumkes v. Frumkes**, 328 So.2d 34 (Fla. 3d DCA 1976).

31. In summary **Juhl** facts are different than Mr. Polo's case because in Mr. Polo's case (1) the court entered a final judgment (2) the court failed to retain jurisdiction in the final Judgement to adjudicate attorney's fees, (3) and the Mother failed to request a rehearing within the time allowed under Fla. Fam. R. P. 12.530 (15 days).

C) THIS HONORABLE COURT MAY HAVE OVERLOOK OR MISAPPREHENDED THE LAW AND THE FACTS ON MR. POLO'S CLAIMS IN RELATION TO THE GRANT OF ATTORNEY'S FEES BEING GRANTED WITHOUT COMPETENT SUBSTANTIAL EVIDENCE OF "THE REQUISITE FINDINGS OF ***NEED AND ABILITY TO PAY FEES***".

RELEVANT & APPLICABLE LAW THIS HONORABLE COURT OVERLOOKS OR MISAPPREHENDED.

32. "As a paternity case, the right to fees resides in § 742.045, not § 61.16. Nevertheless, because § 742.045 is nearly identical to the text and function of § 61.16, Rosen applies to the consideration of fees under § 742.045." **Guerin v. DiRoma**, 819 So. 2d 968 (Fla. 4th DCA 2002), *see also* **Jessup v. Werner**, No. 1D20-3519 (Fla. Dist. Ct. App. Dec. 30, 2022) (holding that "[t]his language is the same as that found in § 61.16, Florida Statutes, the purpose of which, according to ***the supreme court***, 'is to ***ensure that both parties will have a similar ability to obtain competent legal counsel***.'" quoting **Rosen v. Rosen**, 696 So. 2d 697, 699 (Fla. 1997)). *See also* **Zanone v. Clause**, 848 So.2d 1268, 1271 (Fla. 5th DCA 2003).

33. In **Rosen** the court also held that "the trial court **must** look to each spouse's need for suit money versus each spouse's respective ability to pay.

34. Fla. Stat. § 61.16 and Fla. Stat. § 742.045 were created to help the party with fewer resources to afford legal representation, based on the need of the less fortunate party, and the ability of the other party to pay those

needs. "The purpose of this section [§ 61.16] is to ensure that both parties will have a similar ability to obtain competent legal counsel. **Canakaris v. Canakaris**, 382 So.2d 1197 (Fla. 1980)." *Citing* **Rosen**, 696 So.2d at 699. *See also* **Rorrer v. Orban**, 215 So. 3d 148 (Fla. 3d DCA 2017) (quoting **Rosen**, 696 So.2d at 699).

35. The court in Orban also held that: "it is well established in dissolution cases that attorneys' fees and costs are to be borne by the party who has the **superior or greater financial ability to pay**."

36. This court (3d DCA) in **Orban**, also cited the 4th DCA decision in **Widder v. Widder**, 673 So.2d 954, 955 (Fla. 4th DCA 1996) in support of their decision and cited as well: **Mount v. Mount**, 989 So.2d 1208, 1210 (Fla. 2d DCA 2008) (confirming that in a post-dissolution modification proceeding "the proper inquiry [when making a fee determination] is ***whether one spouse has a need for suit money and whether the other has the ability to pay***"); **Kelly v. Kelly**, 925 So.2d 364, 369 (Fla. 5th DCA 2006) (noting husband's "far superior financial posture" and the delay tactics he employed and concluding "that the trial court breached its discretion in not granting Laurie all or most of the fees and costs expended by her attorney")

37. The court also cited **Baker v. Baker**, 754 So.2d 754, 755 (Fla. 3d DCA 2000) ("It is clear from this record that Roland's significant earnings

give him a far superior ability to pay Addie's attorney's fees and costs. ***The law is clear that in dissolution cases attorney's fees and costs are to be borne by the party who has the greater ability to pay***. Accordingly, Roland should pay all of the attorney's fees and costs.") (citations omitted); **Heller v. Kuvin**, 490 So.2d 245, 245 (Fla. 3d DCA 1986) (holding that "the ***husband's ability to pay these fees is superior to that of the wife***.... In view of the husband's superior ability to pay, we think, and so hold, that the trial court abused its discretion in requiring that the husband pay only $8,000, rather than the entire $14,000, for the wife's attorney's fees.").

38. In **Rogers v. Wiggins**, 198 So. 3d 1119 (Fla. 2nd DCA 2016) the court held that

> "While the trial court may take into account the manner in which the mother litigated a case, that factor "does not, however, abrogate the requirement that [the mother] have the ability to pay" ***…"the court's factual finding that the mother had no income and no assets contradicts its conclusion that she had the ability to pay***. Accordingly, it was improper to award the fees to the father."
>
> Id at 1121. See also **Hahamovitch v. Hahamovitch**, 133 So.3d 1020, 1024-25 (Fla. 4th DCA 2014) ("Rosen cannot be applied to allow an award of attorney's fees in favor of a spouse with the greater financial ability to pay.").
>
> *See also* **Hallac v. Hallac**, 88 So.3d 253, 258 (Fla. 4th DCA 2012) (holding that it is an ***error to assess fees against a party who has no ability to pay, even though the party may have engaged in meritless litigation***).

Id at 151.

39. "[A] trial court cannot decide the issue of attorney's fees without findings as to one spouse's ability to pay fees and the other spouse's need to have fees paid." **Perrin v. Perrin**, 795 So.2d 1023, 1024 (Fla. 2d DCA 2001) (citing **Schlafke v. Schlafke**, 755 So.2d 706, 707 (Fla. 4th DCA 1999)).

40. "The consideration of need and ability to pay includes a consideration ***of the overall financial resources*** of each of the parties, not just income and earning capacity." **Perez v. Perez**, 100 So. 3d 769 (Fla. 2nd DCA 2012) (*citing* **Crick v. Crick**, 78 So.3d 696, 699 (Fla. 2d DCA 2012); **Pinder v. Pinder**, 911 So.2d 870, 873-74 (Fla. 2d DCA 2005); and **Stoler v. Stoler**, 679 So.2d 837, 838 (Fla. 2d DCA 1996)).

41. In **Brake v. Murphy**, 736 So. 2d 745 (Fla. 3d DCA 1999) this honorable Court held that: "Generally, when an attorney's fee or cost order is appealed and the record on appeal is devoid of competent substantial evidence to support the order, the appellate court will reverse the award without remand." *Id (quoting* **Rodriguez v. Campbell**, 720 So.2d 266, 268 (Fla. 4th DCA 1998).

42. In summary, this honorable Court may have overlooked or misapprehended that the law in Florida suggests that before any motion for

attorney's fees is granted, the lower court must make a determination of the parties relative needs and abilities to pay attorney's fees, and that it is reversible error to assess fees against a party who has no ability to pay, even though the party may have engaged in meritless litigation. Moreover, this court may have overlooked that when an attorney's fee or cost order is appealed and the record on appeal is devoid of competent substantial evidence to support the order, the appellate court will reverse the award without remand.

POINTS OF FACTS THIS HONORABLE COURT OVERLOOKED OR MISAPPREHENDED

43. Mr. Segarra's request for attorney's fees are statutory in nature, and the "Segarra & Associates, P.A. Motion for Attorney's Fees And Costs To Be Paid By Respondent I Father For Moving To Enforce Court Ordered Sanctions" shows that those attorney's fees were requested under § 61.16. *See* AP: 8.

44. This honorable Court may have overlooked the fact that According to the financial affidavits and their content, which was presented to this honorable Court, in this case Mr. Polo is the party with the fewer financial resources.

45. This honorable Court may have overlooked the fact that Mr. Polo does not argue that the final Judgment was or not supported by "competent, substantial evidence in the form of billing records and testimony bearing on the reasonable hours expended, hourly rate."

46. This honorable Court may have overlooked the fact that the argument of Mr. Polo was that the lower court under Section §61.16 had to make a determination of Competent and Substantial Evidence of *need of the mother for attorney's fees, and ability of the father to pay the fees*.

47. This honorable Court may have overlooked the fact that the record in front of this court, and the General Magistrate Report does not contain evidence as to the mother's need or the father's ability to pay, nor was there any evidence introduced pertaining to need and ability to pay.

48. This honorable Court may have overlooked the fact that on October 1, 2019, Mr. Polo filed his financial affidavit which shows Ms. Hernandez has substantially more assets and income than Mr. Polo. Docket Entry [D.E. 398] and Appellant Supplemental Appendix (hereinafter "ASA") [ASA: 1]. Moreover, Mr. Polo's income shows $ 0.00, and 3,000 in non-liquid assets (his car that he cannot sell) and $127.00, in liquid assets.

49. This honorable Court may have overlooked the fact that on October 25, 2019, Ms. Hernandez filed her financial affidavit which shows Ms. Hernandez makes $3,466.66 per month, has assets of $371,933, and debts of $205,135.09, which results in 166,797.91 liquid assets, not available for Mr. Polo. [D.E. 408] and [ASA: 2].

50. This honorable Court may have overlooked the fact that Mr. Segarra's motion for attorney's fees is based on §61.16 as applied in **Rosen v. Rosen**, 696 So.2d 697 (Fla. 1997).

51. This honorable Court may have overlooked the fact that the record does not support the requisite findings of **Need and Ability to Pay** attorney's fees.

52. This honorable Court may have overlooked the fact that, the record on appeal is devoid of competent substantial evidence of *Need and Ability to Pay* to support the order being appealed.

D) THIS HONORABLE COURT OVERLOOKS OR MISAPPREHENDS THE LEGAL PRECEDENCE THAT INDICATES THAT "AN AWARD OF ATTORNEY'S FEES MUST BE SUPPORTED [NOT ONLY] BY SUBSTANTIAL COMPETENT EVIDENCE OF NEED AND ABILITY TO PAY, [BUT ALSO MUST] CONTAIN EXPRESS FINDINGS REGARDING THE NUMBER OF HOURS REASONABLY EXPENDED AND A REASONABLE HOURLY RATE FOR THE TYPE OF LITIGATION INVOLVED.

RELEVANT & APPLICABLE LAW THIS HONORABLE COURT OVERLOOKS OR MISAPPREHENDED.

53. In **Hoffay v. Hoffay**, 555 So. 2d 1309 (Fla. 1st DCA 1990), the 1st DCA held that:

> It is, however, well established that the trial court must set forth specific findings concerning *the hourly rate, the number of hours reasonably expended and the appropriateness of reduction or enhancement factors*.

Id (citing **Florida Patient's Compensation Fund v. Rowe**, 472 So.2d 1145 (Fla. 1985))

54. Additionally, the Court held that:

> The presence of competent substantial evidence to support the award *does not obviate the need for such specific findings*. Accordingly the failure of the lower court to set forth such findings requires reversal with directions to set forth the basis upon which the award was made.

Id.

55. In **RODRIGUEZ,** 736 So. 2d 745, the fourth DCA held as follows:

> First, we agree the fee awards are deficient because they contain only **bottom line fee totals**, without any **express findings**

> **regarding the number of hours reasonably expended** or **a reasonable hourly rate**. An order awarding fees must expressly determine the number of hours reasonably expended on the litigation and the reasonable hourly rate for the type of litigation involved.
>
> *Id* (*citing* Kelly v. Tworoger, 705 So.2d 670, 673 (Fla. 4th DCA 1998)).

POINTS OF FACTS THIS HONORABLE COURT OVERLOOKED OR MISAPPREHENDED

56. This honorable court overlooked or misapprehended the fact that, the Magistrate made a generalized finding that the Mother's attorney is entitled to a specific amount of attorney's fees without articulating any findings as to the number of hours reasonably spent and the reasonable hourly rate.

57. Specifically, the Report finds:

> 3. The Firm is entitled to payment by the Father for legal fees and costs for a total of $6,368.47.
>
> 4. The Firm shall be entitled to entry of a judgment for the total amount of attorney's fees and costs ordered with all rights as a judgment creditor for which let execution issue.

[AP: 9 P. 046(4)]

58. This honorable court overlooked or misapprehended the fact that there is not findings on the record or in the General Magistrate's Report and Recommendations of "the hourly rate, the number of hours reasonably expended and the appropriateness of reduction or enhancement factors."

E) THIS HONORABLE COURT OVERLOOKED OR MISAPPREHENDED THE FACT THAT BY AFFIRMING THE APPEAL BASED ON A FACTUALLY ERRONEOUS AFFIRMATIVE DEFENSE NEVER ARGUED AND NEVER RAISED BY THE OTHER SIDE IN FORMAL PLEADINGS/BRIEF, THIS COURT MAY HAVE BEEN VIOLATING MR. POLO RIGHT TO DUE PROCESS.

RELEVANT & APPLICABLE LAW THIS HONORABLE COURT OVERLOOKS OR MISAPPREHENDED.

59. In **MORIKAWA v. Castro**, 326 So. 3d 167 (Fla 3d DCA 2021) this honorable Court stated that:

> Morikawa correctly posits that "[w]hen a trial judge sua sponte dismisses a cause of action on grounds `not pleaded,' the trial judge denies the parties due process because the claim is being dismissed without `notice and an opportunity for the parties ... to be heard.'"

*Id (quoting **Barile v. Gayheart***, 80 So. 3d 1085, 1087 (Fla. 2d DCA.

POINTS OF FACTS THIS HONORABLE COURT OVERLOOKED OR MISAPPREHENDED

60. This honorable court overlooked or misapprehended the fact that this Court is dismissing the appeal and affirming without giving Mr. Polo an opportunity to respond to a defense never pleaded and never raised by proper pleading, the affirmative defense that "THE RESERVATION CONTAINED IN THE OPERATIVE FINAL JUDGMENT [RENDERED ON JULY 15, 2015] WAS SUFFICIENT TO VEST THE TRIAL COURT WITH JURISDICTION TO AWARD POST-JUDGMENT FEES."

61. This honorable court overlooked or misapprehended the fact that the Operative Final Judgment (attached herein as EXHIBIT: 1), only retains jurisdiction to enforce the terms of the Operative Final Judgment. It does not retain jurisdiction to adjudicate attorneys fees in subsequent proceedings.

62. This honorable court overlooked or misapprehended the fact that the lower court proceeding was not a proceeding to enforce the terms of the Operative Final Judgement.

63. This honorable court overlooked or misapprehended the fact that the operative final judgment contains a waiver of attorney's fees which stays in pertinent part: "Each party shall pay his/her own attorney's fees and costs."

64. **WHEREFORE**, the appellant in this case, respectfully asks this Court for a rehearing En Banc, and/or rehearing, clarification, and the issuance of a new written opinion specifically explaining how the overlooked or misapprehended points of facts and/or law of this case are differed from the facts and applicability of the law in those cases cited by Mr. Polo as points of facts and points of law that this honorable court may have overlooked or misapprehended, and how this case at bar does not result in a deviation from prior precedent in this DCA as well as in other DCAs in cases with the exact same set of fact as those in this case.

Respectfully submitted,

By: __/s/_____

Frank Polo Sr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded pursuant to Fla. R. Jud. Admin. 2. 516, via e-portal to the Appellee/Respondent's counsel Manuel A. Segarra, III, Esq., at manny@segarralawfirm.com and service@segarralawfirm.com, on this day 14 day of September 2023. All other parties have been served as follows:

To: Merlin Hernandez
Appellee/Respondent
E-Mail: merlinh79@gmail.com

By: /s/_____
Frank Polo Sr.
1475 SW 8th St Apt 411
Miami, FL. 33135
Telephone: 305-901-3360
Email: Frank.Polo@msn.com

7/15/2015 2:55 PM FILED FOR RECORD

EXHIBIT: 1

CFN: 20150455851 BOOK 29698 PAGE 741
DATE:07/15/2015 03:13:37 PM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NUMBER: 2012-017787 FC 28

INRE:

MERLIN HERNANDEZ,

Petitioner/Mother

v.

FRANK E. POLO,

Respondent/Father
_____/

AGREED AMENDED FINAL JUDGMENT OF PATERNITY

THIS CAUSE came on for before the Court upon the agreement of the parties, and upon said Agreement, and the Court being otherwise fully apprised in the premises, it is, by the Court,

ORDERED:

1. The Court has jurisdiction over the subject matter and the parties to this action.

2. The parties are the natural parents and biological parents of two minor children, to wit: FRANK E. POLO, JR. and HENRY M. POLO, dates of birth: 5/10/2012.

3. This Court has jurisdiction over the minor children:

The United States is the country of habitual residence of the children.

The State of Florida maintains the most significant contact with the children and is

the most appropriate forum for addressing parenting contact.

The State of Florida is the children's home state for the purposes of the Uniform Child Custody and Enforcement Act and the Parental Kidnaping Prevention Act.

Venue is proper in Miami-Dade County.

The requirements of the International Child Abduction Remedies Act and the Convention on the Civil Aspects of International Child Abduction enacted at the Hague on October 25, 1980 are met.

4. The following provisions of the parties mediated settlement agreement dated August 14th, 2013 shall remain in full force and effect: B: SHARED DECISION MAKING, C: CHILDREN'S RIGHTS, D. METHODS AND TECHNOLOGIES PARENTS WILL USE TO COMMUNICATE WITH EACH OTHER WHEN WITH CHILDREN, F. TIMESHARING (only sections 4 and 6-19 and sentence stating that "the parties agree to use the address of the party with the best school to register the children for school"), H. PATERNITY, I. DISPUTES OR CONFLICT RESOLUTION, J. MISCELLANEOUS. Otherwise, this Amended Final Judgment of Paternity takes precedence over all prior Court Orders and/or Agreements of the parties and except for the provisions of the mediated settlement agreement set forth above, all prior Court Orders and/or Agreements shall have no legal force or effect. The minor children shall continue to attend the daycare they are currently attending. This Agreed Amended Final Judgment of Paternity resolves all motions and matters currently pending before the Court.

5. The parties shall have equal timesharing with the minor children as follows: Both parties shall have timesharing with the minor children every other weekend from Friday afternoon until Monday morning. In addition thereto, the Father shall have

timesharing with the minor children every Wednesday and Thursday overnight and the Mother shall have timesharing with the minor children every Monday and Tuesday overnight. Holidays and/or Teach Workdays that fall on a Monday or Friday shall append to the weekend before or after the holiday meaning that if such a day falls on a Monday, the parent exercising weekend timesharing the weekend immediately before the Monday holiday shall extend their timesharing until Tuesday morning and if such a day falls on a Friday, the parent exercising timesharing for the weekend commencing on said Friday shall instead commence their weekend timesharing on Thursday afternoon. The Father shall exercise timesharing with the children for their birthday in even years and the Mother shall exercise timesharing with the children for their birthday in odd years. The parties shall not be allowed to seek modification of the timesharing provisions of this Final Judgment for a period of five years unless there is physical or substantial harm to the children with evidence (notwithstanding this provision, any possible relocation by either party shall continue to be governed by the mediated settlement agreement and Fla. Stat. 61.13001)

6. The parties shall communicate via Our Family Wizard. The parties shall be entitled to communicate with the children via SKYPE once per day when the children are timesharing with the other parent with the parties to text one another in advance of their SKYPE session.

7. Neither party is required to pay the other party child support. The parties shall each be 50% responsible for the following child related expenses: Agreed Day Care, Agreed Extra Curricular Activities, Reasonable and Necessary Uncovered Medical/Dental Expenses, Reasonable and Necessary School Supplies and School Related Expenses. With relation to the above, the parties' agreement may not be unreasonably withheld.

Each parent will be allowed to claim one of the children as a dependent on their United States Income taxes each year (the Father shall claim Frank Jr. And the mother shall claim Henry). The parties agree that ths child support provision shall not be modified for a period of five years regardless of any change in financial circumstances of either party. The parties do not owe any retroactive support or any monies of any nature whatsoever to each other at this time.

8. Each party shall pay his/her own attorney's fees and costs.

9. This Court shall retain jurisdiction of the subject matter, persons, and venue of this action and shall retain jurisdiction to enforce any and all of the provisions of the above referenced settlement agreement.

DONE and ORDERED in Chambers, in Miami-Dade County, Florida, this 14 day of July, 2015.

CIRCUIT COURT JUDGE
Scott M. Bernstein
Circuit Court Judge

COPIES FURNISHED TO:
EVAN L. ABRAMOWITZ, Esquire
STEPHANIE GRANDA FERNANDEZ, Esquire

APPENDIX DD

Motion for Rehearing, Rehearing En Banc, Clarification, and/or Written Opinion Regarding Attorney-Fee Jurisdiction, September 14, 2023.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

October 26, 2023

FRANK E. POLO, vs MERLIN HERNANDEZ,

3D2023-0249

Trial Court Case No. 12-17787

Upon consideration, pro se Appellant's Motion for Rehearing, Clarification, and/or Issuance of a New Written Opinion is hereby denied.

Pro se Appellant's Motion for Rehearing En Banc is likewise denied.

SCALES, HENDON and MILLER, JJ., concur.

A True Copy
ATTEST

3D2023-0249-10/26/23
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District

CC: Irech M. Colon Morales
Merlin Hernandez
Frank E. Polo
Manuel A. Segarra, III

LA