

# GOING FOURTH

## COURT CLARIFIES STANDARD FOR MODIFICATION OF TEMPORARY CHILD CUSTODY ORDER

by Alan Bryce Grossman

The Fourth District recently disseminated an opinion intended to clarify for the family law bar apparent confusion on the standard to be applied by the trial court for modification of temporary child custody. In *Riddle v. Riddle*, Case No. 4D16-2803, the Fourth District's opinion intended to "clarify the standard of review that applies to modification of pretrial, temporary relief orders concerning child custody and time sharing." As held by the Court, such temporary orders may be modified absent a "substantial change in circumstances."

The case involves an ongoing divorce where the older of the parties' two children is in elementary school. The trial court entered a temporary order designating the wife as the primary residential parent. At the hearing, the wife testified that she wanted to enroll the older child in a school in Jupiter, in Palm Beach County, and that she intended to move to Jupiter from her home in Okeechobee County, which would prevent her three-hour round-trip drive each day to the school.

Several months later the husband filed a motion to become the primary residential parent, because the wife failed to move to Jupiter as promised. With the start of the school year imminent, the trial court agreed with the husband and modified the initial order, chang-



ing the children's home to the father's in Boca Raton.

The wife appealed that decision, arguing that the initial order must stand because no substantial change of circumstances had been pled nor proved. The Fourth District disagreed that the standard necessary for modification of the temporary order required a substantial change in circumstances. The Court explained that trial judges have "the very broadest discretion" to modify temporary custody orders, stating that such orders are "abbreviated" and because the relief is not final, "the trial judge may revisit temporary relief matters."

The apparent confusion arose in comparing the analysis required by courts to modify a final decree. In that situation, because a final decree has *res judicata* effect, only (1) the presentation of facts as of the time of the decree that were unknown to the court, or (2) a substantial change of circumstances, will permit the court to modify a final

order. The policy consideration of such approach is explained by the Court as promoting finality concerning the welfare of the child.

The difference with temporary orders is that such orders are intended to promote stability in the lives of the children during the pendency of the divorce. To do so, the trial court entertains custody disputes on an expedited basis, relying on shorter hearings to determine the outcome. These abbreviated proceedings may often involve less than complete information, or as with the current case, circumstances that when more fully developed would give the court adequate reason to modify a prior temporary order. When that happens, the "substantial change in circumstances" is unnecessary, where the trial court has the power to make changes that are necessary for the children's welfare on a less than final basis. **B**



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