

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed May 27, 2009.

Nos. 3D08-2051, 3D07-3215
Lower Tribunal No. 97-28214

Alexis Cooper,
Appellant,

vs.

Matthew Cooper,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Scott M. Bernstein, Judge.

Daniel Kaplan; Greene, Smith, & Associates, and Cynthia L. Greene, for appellant.

Ross & Girtten, and Lauri Waldman Ross; Buckner, Shifrin, Rice & Etter, and Robin Buckner, for appellee.

Before SHEPHERD, CORTIÑAS, and SALTER, JJ.

On Motion for Clarification

PER CURIAM.

Upon consideration of the appellant's motion for clarification, the motion is granted. We withdraw our per curiam opinion filed April 15, 2009, and substitute in its place the following:

The former wife appeals two final orders resulting from the parties' cross motions for post-judgment modification of the child visitation provisions of the final judgment in a dissolution of marriage case. We affirm the final judgment granting modification of visitation, because the mediated settlement agreement below (entered into in 1998, when the child was an infant) specifically contemplated increased co-parenting by the former husband over time; the final judgment was based on competent substantial evidence; and the modification did not constitute a "rotating custody arrangement."

We affirm the final judgment awarding sanctions insofar as it imposed sanctions against the former wife's trial counsel individually (and in fact that attorney¹ did not appeal that judgment). We reverse that portion of the final judgment, however, which imposed the sanctions of \$8,066.60 against the attorney and the former wife, jointly and severally. Based on the record presented here, the events which gave rise to the sanctions—an unprofessional bit of gamesmanship involving the preparation and deposition of an expert witness—were not caused,

¹ None of the counsel involved in this appellate case was sanctioned, as none of them represented the former wife in the trial court regarding the events that were the subject of the sanctions.

aided, or abetted by any action on the part of the former wife. We therefore vacate that portion of the final judgment entering judgment against the former wife “jointly and severally,” while affirming that judgment as imposed against her trial counsel individually.

Affirmed in part, reversed in part.