



Fourth DCA Addresses Judicial Discretion in Temporary Relief Orders

By Christopher R. Bruce

In the recent case of *Hoff v. Hoff*, 37 Fla. L. Weekly D2337a, Case No. 4D12-574 (Fla. 4th DCA Oct. 3, 2012), the Fourth District Court of Appeal affirmed a temporary relief order by Judge Amy Smith that denied an unemployed wife's request for temporary attorney's fees while also awarding both parties "50/50 timesharing".

In *Hoff*, the parties had been married nearly three years before the wife filed her petition for dissolution of marriage. The parties were parents of a child who was three years old at the time of the proceedings and husband admitted the wife was the primary caretaker of the child. The wife was unemployed, while the husband listed monthly income of \$4,193 on his financial affidavit and testified he collected royalties of \$20,000-\$30,000/year from his photography business. The wife testified to having liquid assets of \$27,800. Husband disclosed having \$470,000 in assets and testified that \$22,000 of wife's assets were monies taken from the parties' safe deposit box and financial accounts.

After a temporary relief hearing, the trial court ultimately denied the wife's request for temporary attorney's fees, finding the wife did not have a need for fees based on her possession of \$22,000 in marital funds. The temporary relief order also awarded the parties temporary shared parental responsibility and "50/50 timesharing". The wife appealed the temporary relief order to the Fourth District Court of Appeal.

Temporary Attorney's Fees and Costs

On appeal, the wife argued the trial court erred in denying her temporary attorney's fees when she demonstrated she was unemployed and in a significantly inferior financial position to that of the husband. The wife claimed it was inequitable to require her to deplete her assets to pay her attorney on a temporary basis when the husband's income and assets substantially exceeded hers.

The *Hoff* court determined it was not an abuse of discretion for the trial court to deny wife's request for temporary attorney's fees despite the wife being unemployed and the husband's assets exceeding hers by a factor of over 20:1. The court noted that the wife admitted she could pay her outstanding attorney's fees from assets in her possession and that the evidence supported the trial court's implicit finding that the wife's request for future fees was unreasonable based on the lack of complexity of the case. The *Hoff* court further explained that temporary relief awards are among the areas where trial judges have the very broadest discretion and that interim attorney's fee awards are difficult to attack on appeal because the trial court can remedy any inequity in the final judgment.

Temporary Timesharing

The wife also argued on appeal that the trial court committed reversible error by awarding the parties "50/50 timesharing" without making explicit findings concerning the best interest of the child or addressing the factors set forth in

§ 61.13(3). The trial court's order on temporary relief did not contain any factual findings concerning timesharing and the court did not make any such findings on the record at the temporary relief hearing.

In affirming the trial court's temporary timesharing schedule, the *Hoff* court explained that Fourth District jurisprudence does require a trial court to make findings concerning whether a timesharing schedule/parenting plan is in the best interest of a child, but said requirement only applies to final judgments- not temporary orders. The court explained that the goal of temporary relief hearings is to promote stability in the lives of children while the divorce is pending and not to decide the final outcome for timesharing issues. Provided that a temporary relief order is supported by competent substantial evidence, it is not reversible error for a trial court to fail to address any of the § 61.13(3) factors or "make a rote statement" that the temporary timesharing schedule is in the best interests of a child.

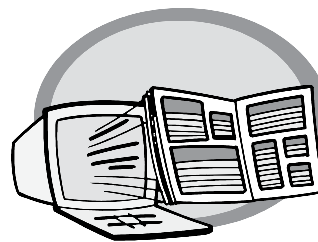
Takeaways from Hoff

Hoff has the potential to be a significant decision in the area of temporary attorney's fees. Divorce lawyers may be able to rely on *Hoff* to argue a spouse is not entitled to temporary attorney's fees regardless of comparative ability to pay when the spouse (1) has enough assets in their possession to pay their outstanding legal fees and (2) the amount of fees requested for future litigation is unreasonable. That said, practitioners should be cautioned that a family law judge has extremely broad discretion when it comes to temporary fee awards and a different result may well survive interlocutory appellate scrutiny under similar facts.

Additionally, *Hoff* reiterates longstanding jurisprudence that temporary timesharing orders will survive appellate review as long as there is not an abuse of discretion. A failure to make factual findings concerning the best interest of a child in a temporary order does not, in and of itself, constitute reversible error.

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