



The Retroactive Modification of a Temporary Relief Award

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Temporary support orders are routinely issued early in complex dissolution cases. Such orders are typically entered based upon an abbreviated hearing and limited evidence. Often only

a party's self-serving financial affidavit is available to guide the court in making an award. Despite the interlocutory nature of a temporary support order, some courts have held that a temporary support award is final during its lifespan and that any subsequent increased temporary alimony award should not be retroactive to a date before the motion for increased temporary alimony was filed. See *Israel v. Israel*, 824 So. 2d 953 (Fla. 4th DCA 2002), *Kraus v. Kraus*, 749 So. 2d 513 (Fla. 2d DCA 1999) and *Warner v. Warner*, 692 So. 2d 266 (Fla. 5th DCA 1997). Even a statutory remedy has had a hard time eradicating the effect of these cases.

In *Roberts v. Roberts*, 906 So. 2d 1193 (4th DCA 2005), a Fourth District panel simply affirmed a retroactive *downward* adjustment of a temporary support award, citing to *Flores v. Flores*, 874 So. 2d 1211 (4th DCA 2004), and *Dent v. Dent*, 851 So. 2d 819 (2nd DCA 2003). The two cases cited in *Roberts* indeed support the holding in that case that a retroactive *downward* modification in temporary support may be made in a Final Judgment. In *Flores v. Flores*, decided in May, 2004, the Fourth District held that the trial court had authority to reduce the husband's temporary support obligations in a final judgment. The court rejected the wife's arguments that her temporary support award was vested, and could not be retroactively reduced. In her arguments however, the wife relied on the prior cases cited above which held a temporary support obligation could not be *increased* retroactively and she

argued that her temporary support could not be changed at all.

However, the cases cited in *Flores* were all decided before the effective date of a statutory provision specifically authorizing retroactive modification of temporary relief orders, regardless of whether it is upward or downward. Florida Statutes Ch. §61.14(11), which became effective in July of 2004, provides:

- (a) A court may, upon good cause shown, and without a showing of substantial change of circumstances, modify, vacate, or set aside a temporary support order before or upon a final order in a proceeding.
- (b) **The modification of the temporary support order may be retroactive to the date of the initial entry of the temporary support order;** to the date of filing of the initial petition for dissolution of marriage, initial petition for support, initial petition determining paternity, or supplemental petition for modification . . .

The Senate Staff Analysis of the underlying Senate Bill 1060 explains:

The [bill] specifically provides for the possible retroactive timeframes to which a modification to a temporary order may apply. Therefore, the change appears to be retroactive to either the date of the initial entry of the temporary support order, to the date of the filing of the initial petition for dissolution of marriage, the initial petition for support, or the initial petition for a determination of paternity, or the date of the supplemental petition for modification; or the date prescribed in s. 61.14 (1) (a), s. 61.30 (11) (c), or s. 61.30 (17), F.S.

Neither the analysis nor the statute distinguish between retroactive *downward* or *upward* modification of a temporary support award.

The plain language of the statute appears to authorize retroactive modification of temporary support

orders without any restriction as to whether such modification increases or decreases the award.

In *Dent*, cited above, Judge Stringer's concurrence explained the reasoning as to why temporary orders should be retroactively modifiable:

This rule of law reflects practical policy concerns inherent in temporary support orders. A temporary support order is often required at the beginning of the dissolution action, before the parties have had an opportunity to complete discovery. Given the urgency of some of these matters, the order is often entered based upon an abbreviated hearing and limited evidence. The court often has little more than the parties' financial affidavits to guide it in calculating support. These forms can be complicated to fill out accurately, particularly for pro se parties or parties who are unable to review the affidavit with their counsel in detail prior to the temporary hearing. As the case progresses, the developing evidence or changes in the parties' financial circumstances may reveal inequities or errors in the prior support awards that require adjustment in the final analysis.

Id. at 822-23. See also *Mullins v. Mullins*, 799 So. 2d 450 (Fla. 4th DCA 2001) ("Temporary relief hearings are abbreviated and the relief granted is not final, so the trial judge may revisit temporary relief matters in the final judgment").

Unfortunately, in its clarifying legislation, the legislature failed to expressly specify that temporary support orders can be modified both *upwards* and *downwards*. As a result, and because subsequent appellate court decisions have cited to authority that did not allow upward modification, a measure of confusion continues to bedevil the trial courts of the state, and the issue of the retroactive upward modification of a temporary relief award remains unsettled.

continued, next page



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