With regard to the former wife's financial situation, due to her failure and continued refusal to comply with discovery, she was precluded from presenting any evidence at the hearing. As a result of the former wife's actions, the trial court was presented with a very difficult situation because it had no evidence whatsoever regarding the former wife's current finances. In an attempt to resolve this dilemma, the trial court reviewed the 1993 final judgment of dissolution of marriage and the general master's report from the 2002 modification proceeding. Although these documents shed light on the assets awarded to the former wife in 1993, these documents do not reflect the former wife's **current** financial situation or whether the wife still possesses these assets. One would think that if the former wife was in need of financial support, she would have submitted the required discovery. The former wife's refusal to submit the required discovery, however, should not work to her benefit, and the former husband should not be penalized by her failure to provide the necessary financial information.

Additionally, although the former husband was required to pay the former wife $1,000 a month for three years for rehabilitative alimony, there is nothing in the record as to the former wife's attempt(s) to obtain gainful employment to offset her expenses. The record reflects that she was forty-eight years old at the time of dissolution. Under these circumstances, requiring the former husband to draw from his savings to pay the former wife $500 per month in alimony was an abuse

of discretion. We, therefore, reverse the order under review with directions to enter an order reducing the former husband's support obligation to one dollar per month. See Zeballos v. Zeballos, 951 So. 2d 972, 975 (Fla. 4th DCA 2007) (reducing former husband's alimony obligation to one dollar per month, thereby allowing the trial court "to retain jurisdiction to consider modification should the parties' circumstances substantially change in the future").

Reversed and remanded for entry of an order consistent with this opinion.

hearing. Through no fault of the father, the adjudicatory hearing had been continued previously, and the father had appeared for the hearings as scheduled for January 6, 2004, and April 26, 2004.

On April 27, 2004, the father's attorney informed Judge Hunter that the father was not present but that he had attended the hearing that had been specifically set for the prior day. The attorney described the circumstances to Judge Hunter, and nothing in the record suggests that the father knew in advance that the scheduled termination hearing might not be held on April 26 or that he should have made arrangements to stay in Bartow through April 27. Although Judge Hunter expressed his displeasure that the father did not stay in town to attend the April 27 hearing, no one disputed that the father did not have a driver's license, that the grandmother had driven him nine hours to be at the April 26 hearing, that he and the grandmother were required to return to work on April 27, and that he had not made overnight arrangements for the girls at home because he anticipated returning to Navarre after the April 26 hearing.

Also at the April 27 hearing, Judge Hunter was told that the therapist was not available to testify that day. Judge Hunter decided to proceed in the father's absence, but he ruled that the hearing would not be completed until a later date so that the therapist could appear and testify in person. Later, Judge Hunter again refused to grant a continuance even though the attorneys for the guardian ad litem, the mother, and the Department asked him to reconsider the father's request for a continuance, noting that the denial of the continuance was likely reversible error.

Judge Hunter's decision to deny the continuance and his statement that, regardless of the circumstances, the father should have been present for the April 27 hearing appear to be consistent with his comments that the convenience of the lawyers, the judge, and the expert witnesses was paramount. It appears that Judge Hunter placed more emphasis on judicial economy and convenience than on the father's right to parent his child and to have his day in court before the State terminated his parental rights. Based on all of the circumstances, and particularly because the record demonstrates that the father was making reasonable efforts to be present on the dates that the termination hearing had been scheduled and that he was not neglecting the proceedings, we reverse the consent order and final judgment terminating the father's parental rights and remand for further proceedings.

Reversed and remanded. (ALTENBERND and KELLY, JJ., Concur.)

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[1]The final judgment also terminated the mother's parental rights to the son and two other children. The mother is not a party to this appeal.

[2]Although the court and the attorneys used the term "default," a parent's failure to appear at the adjudicatory hearing constitutes a "consent" to the termination of parental rights. *See* § 39.801(3)(d), Fla. Stat. (2003); *T.L.D. v. Dep't of Children & Family Servs. (In re A.N.D.)*, 883 So. 2d 910, 913 n.2 (Fla. 2d DCA 2004).

[3]In addition to acknowledging the father's consent to termination, the final judgment contains findings as to the father's abandonment of the child and the father's capacity and disposition to care for the child. These findings were made, however, without the father having an opportunity to defend the allegations.

* * *

920 So.2d 1165 31 Fla. L. Weekly D477a

Dissolution of marriage—Alimony—Modification—Where default was entered against wife on husband's motion for modification of alimony because of wife's failure to comply with discovery, court abused discretion in granting husband's motion without evidentiary hearing—Although wife should be precluded from presenting any evidence, husband must still meet his burden of establishing substantial change in circumstances, and wife is entitled to cross-examine and challenge that evidence—Where husband's petition only sought a modification of alimony obligation court improperly terminated alimony

MINITA LOPEZ, Appellant, vs. EDUARDO LOPEZ, Appellee. 3rd District. Case No. 3D05-447. L.T. Case No. 92-66568 FC. Opinion filed February 15, 2006. An Appeal from the Circuit Court for Miami-Dade County, Thomas S. Wilson, Jr., Judge. Counsel: Kenneth M. Kaplan, for appellant. Maria Medel, for appellee.

(Before LEVY, GREEN, and WELLS, JJ.)

(PER CURIAM.) Appellant, former wife, appeals from an Order, terminating appellee, former husband's, alimony obligations. We reverse in part, and remand for further proceedings.

The parties were divorced in December of 1993. As part of the Final Judgment of Dissolution of Marriage, former wife was awarded permanent alimony in the amount of $2,000.00 per month. The trial court reserved jurisdiction pursuant to *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992), to consider former husband's permanent alimony obligation upon his reasonable retirement. At the time of the dissolution, former husband was a bank executive with an annual salary of $92,000.00. Former wife was 48 years old and unemployed.

On June 18, 2004, former husband filed a Supplemental Motion for Modification on the ground that his employment was involuntarily terminated effective May of 2004, that he retired as a result, and that his retirement income was $1,588.00 per month. Former husband's financial affidavit established that he is living in a deficit, which requires him to draw from his retirement savings each month.

Former husband's Motion was set for final hearing on several occasions but was continued when former wife did not comply with the financial disclosure requirements. On December 3, 2004, former husband filed a Motion for Default. The trial court granted the Motion for Default and as a result, without taking any evidence except for Husband's financial affidavit, the court granted Husband's Supplemental Motion to Modify Alimony Obligation. The court cited former wife's failure and refusal to comply with discovery to support the default, found that former husband does not have the present ability to make alimony payments, and entered a Final Judgment for Termination of Alimony Payments. Former wife's Motion for Rehearing was denied. This appeal ensued.

A trial court's Order regarding modification of alimony may not be disturbed on appeal in the absence of a showing of a clear abuse of discretion. *Singer v. Singer*, 442 So. 2d 1020 (Fla. 3d DCA 1984).

Former wife claims that the trial court erroneously entered a default judgment against her,[1] and terminated former husband's alimony obligation without conducting an evidentiary hearing to inquire into former husband's assets and the reasonableness of former husband's retirement in light of his age, ability to remain employed, and former wife's needs. Additionally, former wife claims that the court erroneously terminated former husband's alimony obligation where former husband only sought a reduction of alimony.

Former wife alleges that regardless of the trial court's entry of a default judgment against her, an evidentiary hearing should have been conducted to determine whether former husband was entitled to modification of alimony and, if so, to determine the amount of the modification. To support a modification of alimony, the party seeking modification must show a substantial change in circumstances that was not contemplated at the time of the final judgment of dissolution, and that is sufficient, material, involuntary, and permanent in nature. *Reno v. Reno*, 884 So. 2d 462, 464 (Fla. 4th DCA 2004) (citing *Damiano v. Damiano*, 855 So. 2d 708, 719 (Fla. 4th DCA 2003)). This Court in *De La Torre v. Queija*, 702 So. 2d 293 (Fla. 3d DCA 1997) explained that although a default judgment was entered against former husband determining former husband's liability for child support, it was erroneous for the trial court to grant the former wife's modification for support without giving the former husband an opportunity to be heard or present evidence. *Id.* at 294. The Record reflects that in the instant case the trial court reviewed the Record, which contained evidence in the form of financial affidavits and a letter of involuntary termination from former husband's employer. However, in light of the default, former wife was not given an opportunity to challenge husband's evidence, or to cross-examine

M A N D A T E

DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

DCA # 3D05-447

MINITA LOPEZ,

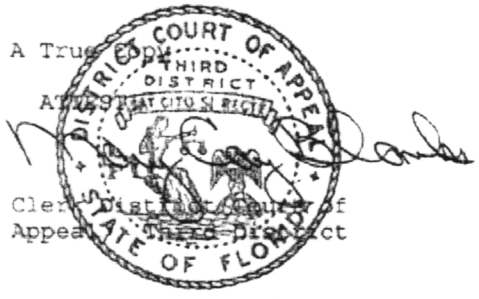
vs.
EDUARDO J. LOPEZ,

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause in accordance with the opinion of this Court attached hereto and incorporated as part of this order, and with the rules of procedure and laws of the State of Florida.

Case No. 92-66568 FC

WITNESS, The Honorable GERALD B. COPE, JR., Chief Judge of said District Court and seal of said Court at Miami, this day March 3, 2006.



CC W/O OPINION: Kenneth M. Kaplan; Maria Medel
la

husband about the evidence presented.

Although former wife defaulted, and should be precluded from presenting any evidence, husband must still meet his burden of establishing a substantial change in circumstances, and wife is entitled to cross examine and challenge that evidence. Accordingly, we find that the trial court abused its discretion in failing to hold an evidentiary hearing on husband's Motion for Modification.

Former wife also argues that pursuant to *Reno*, 884 So. 2d at 464-65, the trial court erred in terminating the former husband's alimony obligation where the Supplemental Motion for Modification of Final Judgment requested that his alimony obligations be modified, not terminated. The Court in *Reno* held that a request to modify alimony does not allow the trial court to terminate alimony without notice to the other party that "termination" is sought. *Id.* at 465. The Court distinguished between a near-complete elimination of alimony and the complete elimination of alimony, explaining that a reduction down to a small amount is acceptable when one petitions for a modification of alimony, whereas a termination of the alimony obligation altogether is not. *Id.* "[A] cancellation of alimony, unappealed from, would not be susceptible to revival later and accordingly . . . cancellation must be pled in order to put the opposing spouse on adequate notice." *Id.* (quoting *Jennings v. Jennings*, 353 So. 2d 921 (Fla. 4th DCA 1978)). The Court further explained that if the alimony obligation was reduced down to a deminimus amount, and circumstances later changed, the question of further modification would be left open. *Id.*

In the instant case, former husband's Petition only sought a modification of his alimony obligation, i.e., he did not request a termination of his alimony obligation. Specifically, the Motion filed by former husband alleges that changes in his circumstances, including former husband reaching the age of retirement, and former husband's involuntary termination from his employment, which are both substantial, involuntary, and permanent, "warrant a *modification* of the Former Husband's alimony." (emphasis added)

Thus, while former husband's current status may support a reduction of his alimony obligation, his alimony obligation should not have been terminated where former husband did not request termination of the alimony in his pleadings and where former wife was not on notice that the alimony could have been completely terminated. Moreover, terminating the alimony would not allow former wife any form of redress should the circumstances change in the future. Accordingly, the Order terminating alimony is reversed and the matter remanded for a determination of the proper amount of reduction, if any.

CONCLUSION

In light of the foregoing, the Order on appeal is reversed and the matter is remanded for an evidentiary hearing[2] to determine the proper amount of "modification," if any.

[1]There is no evidence in the Record to suggest that the trial court abused its discretion in entering a default against former wife in light of her failure to comply with her discovery obligations.

[2]In light of the trial court's entry of default, former wife should be precluded from presenting evidence at the evidentiary hearing. However, former wife may challenge former husband's basis, and evidence, for modification and may cross-examine former husband.

* * *

920 So.2d 206 **31 Fla. L. Weekly D497a**

Injunctions—Domestic violence—Error to summarily deny motion for rehearing wherein defendant claimed lack of notice of hearing that resulted in final judgment of injunction for protection against domestic violence—Remand for evidentiary hearing on claim of lack of notice

CHRISTINA ROBINSON, Appellant, v. CARLOS R. VILLAREJO, Appellee. 4th District. Case No. 4D05-931. February 15, 2006. Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Lawrence L. Korda, Judge; L.T. Case No. 04-22185 4193. Counsel: J.R. Callahan of the Law Offices of J.R. Callahan, Miami Springs, and John D. Hoffman of the Law Offices of Hoffman & Hoffman, P.A., Miami, for appellant. No brief filed for appellee.

(PER CURIAM.) In this appeal, Christina Robinson challenges a final judgment of injunction for protection against domestic violence and the trial court's subsequent order denying her motion for rehearing, wherein she claimed a lack of notice of the hearing that resulted in the final judgment. We reverse and remand for an evidentiary hearing on Robinson's claim of lack of notice of the injunction hearing.

Following a December 7, 2004 hearing, at which the former wife and mother, Christina Robinson, and her counsel did not appear, the trial court entered a final judgment of injunction for protection against domestic violence against Robinson and in favor of appellee Carlos R. Villarejo, the former husband and father. Robinson timely filed a motion for rehearing, arguing, among other things, that she had not received notice of the hearing that resulted in the judgment. The motion alleged that Robinson was never served with notice of the hearing; that the letter terminating the representation of her original counsel made no mention of the hearing; and that a review of the file conducted by her new counsel reflected no notice of the hearing. Attached to the motion was a print-out from the sheriff's office web site reflecting the mother had not been served with the "EXTENSION ON INJUNCTION W/PET & FIN." Although nothing in the record refuted the claimed lack of notice, the trial court summarily denied the motion. In this appeal, Robinson insists the trial court should not have denied her motion for rehearing without affording her an evidentiary hearing. We agree. *See Elmariah v. Assocs. Fin. Servs. Corp.*, 401 So. 2d 929, 929 (Fla. 2d DCA 1981) (reversing denial of motion for rehearing claiming lack of notice of hearing that resulted in judgment and stating "[t]he question of whether or not notice was received by the appellant or his attorney is of sufficient import to justify an evidentiary hearing").

Accordingly, the order on appeal is reversed and the matter is remanded for an evidentiary hearing on Robinson's claim that she did not receive notice of the hearing that resulted in the final judgment of injunction.

Reversed and remanded. (STEVENSON, C.J., FARMER, J., and MARX, KRISTA, Associate Judge, concur.)

* * *

920 So.2d 209 **31 Fla. L. Weekly D505a**

Dissolution of marriage—Error to try dissolution case without presence of wife or counsel where wife's counsel notified court the day before final hearing that criminal case in which he was counsel was going to trial at the same time—New trial required

WANDA SLY-WOODS GARMON, Appellant, v. FREDDIE GARMON, Appellee. 4th District. Case No. 4D05-553. February 15, 2006. Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Linda Vitale, Judge; L.T. Case No. FMCE 03-25158 3990. Counsel: James O. Walker, III, Fort Lauderdale, for appellant. No brief filed for appellee.

(KLEIN, J.) The day before the final hearing in her dissolution case, appellant's counsel notified the court that he had just been informed that a criminal case in which he was counsel was going to trial at the same time. Notwithstanding that Florida Rule of Judicial Administration 2.052 provides that where there are calendar conflicts, criminal cases prevail over civil cases, the court tried the case without the presence of appellant or her counsel. We reverse for a new trial. (STONE, J. and REYES, ISRAEL U., Associate Judge, concur.)

* * *