DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CHELSEA HENRY,
Appellant,

v.

DAVID RICE,
Appellee.

No. 4D2026-0854

[October 21, 2026]

Appeal of an interim temporary timesharing order from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Victoria L. Griffin, Judge; L.T. Case No. 312022DR001014AXXXVB.

Jennifer N. Weaver of Law Office of Jennifer Weaver, PLLC, Tallahassee, for appellant.

Katlin M. Sanders of KMS Legal, Fort Pierce, for appellee.

MAY, J.

Due process lies at the heart of this appeal by a mother challenging an interim temporary timesharing order that modified timesharing pending full resolution of the father's supplemental petition for modification of the parenting plan, child support, and other relief. She argues the trial court erred in modifying timesharing and granting unrequested relief at a hearing on the father's motion for contempt. We agree and reverse.

- ***The Facts***

The mother and the father share a minor child. The trial court issued a final judgment of paternity in 2024. The father resides in Indian River County. The mother resides in Orange County. The final judgment ordered shared parental responsibility of the minor child with the father having ultimate decision-making authority over healthcare decisions upon disagreement.

Within paragraph two of the final judgment, the trial court retained jurisdiction to modify the parenting plan to return the child to Indian River County without a showing of substantial and material change in circumstances upon a determination of the best interests of the child. In section J, subsection (t) of the findings in the final judgment, the trial court specified factors it would consider in modifying the parenting plan, including "the [m]other's communication with the [f]ather, her priorities to the child, her living arrangements, the child's behavior, progress and schooling, medical needs, hygiene and outside activities as discussed herein, all of which shall all constitute a substantial and material change in circumstances."

The parties' parenting plan provided for the mother's address to control for school boundary determination and registration as long as the child was enrolled at a specific school, Pinecrest Avalon, and provided the child was not doing poorly in school. The trial court reserved jurisdiction to address modification of schooling and residence upon proper application if the child were to be held back and continued to perform poorly in school.

The final paternity judgment did not end litigation between the parties. They filed numerous post-judgment motions. On April 10, 2025, the father filed a "Verified Motion for Contempt and Enforcement, Change of Placement of the Child, and Request for Attorney's Fees ("motion for contempt"). The motion alleged, among other things, that the mother had unilaterally unenrolled the child from Pinecrest Avalon. When the father attempted to discuss the issue with the mother, she was combative and refused to correspond.

The motion for contempt alleged the mother constantly showed up late for timesharing exchanges, requiring the father to contact law enforcement to assist in retrieving the child. The motion referenced the trial court's retention of jurisdiction to modify the parenting plan. The father sought to have timesharing modified and to allow the father to enroll the child in an Indian River County school. Specifically, the father requested to "flip" the parties' timesharing by giving the mother the father's current timesharing and vice versa.

The trial court referred the matter to a magistrate, who heard some of the pending matters on August 4, 2025. The mother withdrew her motion to strike the father's motion for contempt. The magistrate recommended denial of the father's motion for contempt insofar as the motion sought to modify the parenting plan.

Just prior to, and directly after, the hearing, the parties filed various motions:

> July 29, 2025 – mother's "Motion to Strike Father's Motion for Contempt and Enforcement, Change of Placement of Child and Motion for Attorney's Fees";
>
> July 30, 2025 – father's "Petition for Modification of Parenting Plan, Child Support, and Other Related Relief";
>
> August 3, 2025 – mother's "Motion for Contempt and Enforcement and Amended Motion to Strike [the Father's] . . . Verified Motion for Contempt and Enforcement, Change of Placement of Child, and Request for Attorney's Fees and Costs";
>
> August 7, 2025 – mother's "emergency ex parte motion" seeking to have the father "stop disrupting" the child's enrollment in the Orange County school and an order of clarification that timesharing had not been modified;
>
> August 7, 2025 – father's "Verified Urgent Motion for Relief as to School Designation and Temporary Timesharing"; and
>
> August 11, 2025 – mother's "emergency exparte [sic] motion for pick up order."

On August 12, 2025, the trial court entered an order adopting the magistrate's recommendations on:

> (1) the mother's ex parte motion to stop the father from disrupting the child's school in Orange County;
>
> (2) the father's urgent motion for relief as to school designation and temporary timesharing;
>
> (3) the mother's emergency ex parte motion for a pick-up order; and
>
> (4) "any other matter related thereto."

The trial court further adopted the magistrate's recommendation of denying the father's motion for contempt insofar as the motion sought to

modify the parenting plan, determining that such relief needed to be requested through a supplemental petition and not a motion.

In February 2026, the trial court held a hearing on the following three motions: (1) the father's motion for contempt, (2) the mother's motion to strike, and (3) the mother's motion for contempt. By the hearing date, the child was attending school in Indian River County. The parties argued extensively at the hearing, but no evidence was presented.

The father maintained the trial court could enter an interim temporary order on timesharing and the child's school pending a final hearing. The mother argued the trial court could **not** enter an interim order, requesting the court to enforce the final judgment and parenting plan and to return the child to her.

The trial court announced it would not hear the contempt arguments, because those arguments needed to be heard at the same time as the father's petition for modification:

> All right. We've spent an hour and a half just going back and forth and just countering what the other is saying. That's all that's happened in an hour and a half. **The court agrees that you cannot modify the parenting plan without a supplemental petition**. That's the basis for Magistrate Hill's ruling from that hearing.
>
> And if you're talking about reversible error, I believe that reversible error, correct me if you think I'm wrong, that when there is a pending petition for modification, when a motion for contempt is filed, a reversible error to not conduct the hearings together or conduct the modification prior to the contempt [sic]. That's the case law.

(emphasis added).

Despite the trial court's indication that it could not modify the parenting plan, the trial court rendered an interim temporary timesharing order doing just that.

The trial court found it was in the best interests of the child to have interim timesharing with both parents. The trial court acknowledged that the parties disputed where the child should reside for school attendance purposes. The order provided that the mother's timesharing "shall not interrupt the minor child's enrollment in, or attendance at his current

school [in Indian River County]." Thus, until further order of the court, the child was ordered to primarily reside with the father. The order also required the parties to exchange the child at the Indian River County Sheriff's Office, and that the mother's timesharing be exclusively in Indian River County despite her living in Orange County.

From this order, the mother now appeals.

- ***The Analysis***

The mother argues the trial court erred by entering the interim temporary timesharing order without due process, which she argues includes a proper request for temporary relief, notice, and an evidentiary hearing. She also argues the order was entered without a finding of a substantial change in circumstances or an emergency.

She maintains the order materially modified the parenting plan by reducing her timesharing, requiring that her timesharing occur in Indian River County, designating the father as the primary residential parent, changing the exchange location to the Indian River County Sheriff's Office, and imposing a law-enforcement provision applicable solely to the mother.

The father responds that the mother was on notice of the requested relief, and the trial court specifically reserved jurisdiction in the final paternity judgment to modify the parenting plan.

We review a trial court's temporary order modifying timesharing for an abuse of discretion. *See, e.g.*, *Troike v. Troike*, 271 So. 3d 1069, 1072 n. 3 (Fla. 3d DCA 2019) (citing *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980)).

> It is well settled that an order adjudicating issues not presented by the pleadings, noticed to the parties, or litigated below denies fundamental due process. A court violates due process when it "modifies visitation, changes primary residence, or alters child support when the notice of hearing does not include this issue."

Golden v. Bass, 194 So. 3d 1080, 1082 (Fla. 1st DCA 2016) (citations omitted).

Here, the only relevant motion noticed for hearing was the father's motion for contempt. The father's motion sought to have the parties' timesharing "flipped" and to allow the father to enroll the child in school

in Indian River County. Even though the mother was on notice of the specific relief requested, both the magistrate and the trial court acknowledged that modification of the parenting plan required a petition and should not be determined at a contempt hearing.

But the trial court's order modified timesharing without the requisite petition and exceeded a simple modification of the parents' timesharing. The order included unrequested relief: (1) requiring the child's exchange at the Indian River Sheriff's Office, (2) requiring the mother to exercise timesharing only in Indian River County, and (3) changing primary custody to the father.

We have held that a trial court's interim order modifying timesharing after a contempt hearing when a petition for modification is pending constitutes error. *Chevalier v. Emmerson*, 300 So. 3d 217, 219-220 (Fla. 4th DCA 2020). There, we explained:

> As a general rule, "a contempt order should not be the basis for a change of custody (or extensive visitation) order." In other words, "[a] court cannot modify timesharing as a sanction for a parent's contempt of a custody order."
>
> …
>
> Notwithstanding section 61.13(4)(c)6., Florida Statutes, this court has held that "*the trial court abuses its discretion in temporarily changing custody where, as here, custody was already established by a judgment and a petition to permanently change custody is pending, unless there is a real emergency.*"

Id. (citations omitted) (emphasis added).

Here, the trial court declined to hear the contempt motion because it needed to be heard along with the father's petition for modification. Even though the trial court found the modification to be in the child's best interest, no evidentiary hearing occurred, and the court made no finding of an emergency.[1]

[1] We recognize, as we did in *Chevalier*, that a trial court "[m]ay, upon the request of the parent who did not violate the time-sharing schedule, modify the parenting plan if modification is in the best interests of the child." *See* § 61.13(4)(c)6., Fla. Stat. (2024). But that can occur only when the parties present evidence

While the trial court seems to have agreed with the magistrate's recommendation that the modification could only occur at a hearing on a petition for modification, the trial court nevertheless modified timesharing and ordered unrequested restrictive conditions on that timesharing. The trial court also changed the child's primary residence.

We conclude the trial court erred in modifying the parties' timesharing in the interim order when a petition for modification was pending and the only motion noticed for hearing was the father's motion for contempt.[2]

Reversed and remanded.

GERBER, C.J., and KLINGENSMITH, J., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

concerning the child's best interests. That did not occur here. And the order went much further than a simple timesharing modification.

[2] As our holding on the due process issue resolves the appeal, we need not reach the mother's alternative arguments that the trial court erred in failing to find a substantial change in circumstances and in failing to conduct an evidentiary hearing.