IN THE SUPREME COURT OF FLORIDA

CASE NUMBER SC02-681

JEANNE E. PAUL, :

Petitioner, :

vs. :

JEAN-CLAUDE PAUL, :

Respondent. :

_____

PETITION FROM THE THIRD DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER

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ISSUE ON APPEAL

> WHETHER RULE 1.440 AND DUE PROCESS REQUIRE "ADDITIONAL NOTICE" BEYOND ACTUAL NOTICE OF THE CALENDAR CALL.

REPLY ARGUMENT

Respondent takes issue with the phrase "additional notice," but it is the term the Third District used in framing the issue:

> Once we find that the calendar call notice was properly sent to counsel, we must decide whether it was necessary to provide additional notice to Mr. Paul of the date of the final hearing.

There is no rule of procedure that calls for any "additional notice" either from the court or opposing counsel. Anyone who has ever attended a calendar call and been told "you are standby case number six for the second week," knows that there will be no *written* "order fixing a date for trial" forthcoming. Anyone who has ever attended a calendar call also knows that over half the attorneys summoned don't even appear at the calendar call — for myriad reasons including settlement; reliance on opposing counsel; excusable neglect; inexcusable neglect; indifference; an unpaid bill; or perhaps resignation, knowing the client's position is inevitably unsustainable under the facts and applicable law. To create a new bright line due process lack of a written order fixing the date for trial vitiation of all resulting judgments is both practically and procedurally unacceptable.

The Fourth District has correctly set out the law of due process notice in Watson v. Watson, 683 So.2d 534 (Fla. 4th DCA 1996):

> We reject the former husband's claim that he was not given adequate notice of the date of the final hearing. The former husband received an order setting calendar call . . . . He failed to appear at the calendar call. Ultimately, the final hearing was held on September 16, 1994. . . . We conclude that, in the instant case, the order setting calendar call fulfilled the requirements of [Rule 1.440(c)]. The order *required* the parties to appear at the calendar call. The purpose of the calendar call was for the court to consider possible conflicts and to more specifically advise the parties

> when the case would actually be heard on the docket . . . . The former husband sought no relief from the trial court concerning his mandatory attendance at the calendar call.

The very same is true here. As reflected in the Third District opinion, "[Husband] does not dispute, however, that he received notice of the mandatory calendar call, at which the date of the final hearing was set. This notice was properly sent to Mr. Brutus [Husband's counsel]." The Third District also says, "[R]eceipt of the notice of calendar call by Mr. Brutus' office was sufficient to provide notice to Mr. Paul." This is all the notice to which the Husband was entitled.

In resolving the certified conflict, this Court should approve without reservation Watson v. Watson, 683 So.2d 534 (Fla. 4th DCA 1996) as a correct explanation and application of Rule 1.440(c) and due process notice. If Mr. Paul was entitled to relief, he was entitled to relief under Rules 1.530 or 1.540.

Trial courts have broad equitable and discretionary power under Rules 1.530 and 1.540 regarding rehearing and relief from judgment. If the Husband here suffered any real detriment from his non-attendance at the final hearing, the trial court could have, would have, and should have reconsidered the merits of the final judgment under either Rule 1.530 or 1.540. But the Husband's motion to set aside the final judgment and for rehearing did not set forth any grounds for relief under Rule 1.530

or 1.540. Even so, the trial court did listen to Husband's counsel on the merits but heard no valid basis to revisit the final judgment. There was thus no reason to disturb it.

Rule 1.440 addresses notice of trial. Rules 1.530 and 1.540 address rehearing and relief from judgments. These rules and their case law interpretation provide all the protections necessary. The Third District's creation of a new rule of "additional notice" may be well intended, but it is seriously flawed.

CONCLUSION

This Court should approve Watson v. Watson and reject the Third District engrafting of an additional notice requirement onto existing rules.

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By_____
James C. Blecke
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served upon John G. Crabtree, Esquire, John G. Crabtree, P.A., 240 Crandon Boulevard, Suite 279, Key Biscayne, Florida 33149; and Phillip J. Brutus, Esquire, Brutus and Roberson, 645 N.E. 127th Avenue, North Miami, Florida 33161; and Peter Adrian, Esquire, Legal Aid Society of Dade County, 123 N.W. 1st Avenue, Miami, Florida 33128, this 14th day of June, 2002.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing complies with font requirements.

By_____
James C. Blecke
Fla. Bar No. 136047