

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
 IN AND FOR BREVARD COUNTY, FLORIDA
 Case No.: 05-2007-DR-007712-XXXX-XX

AMY L. WOOD,)
)
Petitioner,)
)
vs.)
)
CHRISTOPHER J. WOOD,)
)
Respondent.)
)

**MOTION TO VACATE FINAL JUDGMENT OF DISSOLUTION OF
 MARRIAGE, AND REQUEST FOR HEARING**

COMES NOW, the Respondent, CHRISTOPHER J. WOOD, in proper person, pursuant to Fla. R. Civ. P. Rule 1.540(b), moves this Court to vacate the Final Judgment of Dissolution of Marriage entered in this cause on the ground that it is a void judgment, and pursuant to Fla. R. Jud. Admin. Rule 2.530, request a telephonic hearing on this matter, and states:

CASE HISTORY

1. The Petitioner, my wife, Amy L. Wood, filed a Petition For Dissolution Of Marriage in this Court on March 19th, 2007, requesting: sole parental responsibility and full custody of our minor children; no visitation from myself; child support; medical and dental expenses, and claiming there was no marital residence nor personal property for the Court to divide.

2. On circa April 09th, 2007, I filed a response to the petition objecting to the request for sole parental responsibility and full custody of our children, the request for no visitation, and explained that my wife and I had a marital residence with over \$100,000.00 in equity, several cars and boats as well as a large amount of personal property obtained over the 9 years of our marriage for this Court to divide.
3. The case was set for final hearing then continued several times by both my wife and myself. During which time I was sentenced to prison and housed at Santa Rosa Correctional Institution - Annex.
4. The final hearing was then set for May 14th, 2008, where an order was entered that I would appear telephonically. However, the Department of Corrections failed to present me for the telephonic hearing and this court held the final hearing without me present.
5. The Final Judgment of Dissolution Of Marriage On Report And Recommendation of General Magistrate was subsequently entered on August 18th, 2008, granting my now ex-wife: sole parental responsibility and custody of our children; no visitation from me at this time; no child support at this time; 50% of all medical expenses; and, found that we had

previously divided all of our jointly owned personal property, apparently based solely on my ex-wife's testimony.

ARGUMENT

I am requesting this court vacate the final judgment in this case because it is a void judgment. Void because I was not given an opportunity to be heard at the final hearing held on May 14th, 2008, especially on the matters which I specifically objected to. And, at no time did I concede to the final hearing being held in my absence.

It is well settled that "[a] judgment is void if, in the proceedings leading up to the judgment, there is a violation of the due process guarantee of notice and an opportunity to be heard. Generally, due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure before judgment is rendered." *Schuman v. International Consumer Corp.*, 50 So.3d 75, 76 (Fla. 4th DCA 2010). Therefore, since this judgment is void, it can be attacked at any time, *Wolfe v. Stevens*, 965 So.2d 1257 (Fla. 2d DCA 2007) regardless of the time which has lapsed since the judgment was entered.

In the instant case, 3½ years has past since the judgment was entered, however, as out Fifth District Court of Appeal stated when reviewing an order denying a Motion To Vacate A Void Judgment in *Rinas v. Rinas*, 847 So.2d 555 (Fla. 5th DCA 2003):

This Court in *Greisel v. Gregg*, 733 So.2d 1119, 1121 (Fla. 5th DCA 1998), found that 'a void judgment alleged to be void may be attacked at any time because the [void] judgment creates no binding obligation on the parties [and] is legally ineffective and is a nullity.'

In *Greisel*, seven years had passed since the entry of the judgment, yet the debtor there was not barred from seeking relief because the final judgment was void." *Id.* at 557.

Likewise, I too may seek relief of this void judgment regardless of the time passed since the judgment was entered and regardless of whether I appealed the issue. In *Whigham v. Whigham*, 464 So.2d 674 (Fla. 5th DCA 1985), the Court, in a dissolution of marriage action found that a seven year delay in the filing for relief alleged to have been granted in the absence of the Court hearing subject matter jurisdiction to distribute marital property was void at its rendition." The Court further explained that "when the final judgment is void from the outset, the requirement to file an appeal within 30 days of the rendition of the final judgment does not apply." *Id.* at 557.

The final hearing held on *May 14th, 2008*, in my absence was done so by negligence by the classification officer of the Department of Corrections where I was then housed. This Court issued an order scheduling the telephonic hearing for *May 14th, 2008* at 1:00 PM. Prior to this date and time, I notified the classification officer of the hearing, however he failed to call

me to the office.

Promptly after 1:00 PM, I asked a security officer to call the classification officer and arrange for my presence. However, upon my arrival for the hearing, the classification officer informed me that he had just called the court was advised that the hearing was held in my absence. Again, at no time did I waive my presence at this hearing, in fact, quite the contrary, my previously filed motions show that I expressed great concern over proving many facts which were being debated in this divorce. Thus, it is the Department of Corrections that is responsible for failing to have me available for the telephonic hearing.

Similar circumstances as to the one in this case occurred in the following two cases regarding incarcerated husbands. In *Mattingley v. Mattingley*, 789 So.2d 1191 (Fla. 4th DCA 2001), the incarcerated husband was divorcing his wife who was subsequently named the primary residential parent with sole parental responsibility of their minor children in the final judgment, however, it failed to include any visitation provisions for the former husband. He moved the Court for visitation, again, and a hearing was held, though he was absent. The Court ruled this to be error stating "Due Process necessarily includes the right to notice and opportunity to be

heard." *Id.* at 1192. And, since he was incarcerated, 'a telephonic appearance would satisfy the former husband's due process rights." *Id.* at 1193.

The next case is similar to the instant case because it explains that by my requests to this Court for a continuance and to be present at the hearing so that I could prove my case is sufficient to preserve my right to be heard. In *Johnson v. Johnson*, 992 So.2d 399 (Fla. 1st DCA 2008), the Court found that incarcerated husband preserved "his right to be heard at the final hearing by appraising the trial court of his desire to be heard his incarceration notwithstanding. [Since he] appraised the Court of his desire to be present at the final hearing, including by moving to continue the proceeding; the trial Court erred in failing to give appellant opportunity to appear (at least telephonically) at the hearing." *Id.* at 401 (see also *Baker v. Baker*, 403 So.2d 1111, 1113-14 (Fla. 2d DCA 1981) (holding that where incarcerated husband's pleading adequately appraised trial Court that husband desired to present evidence on issue of disposition of marital home during dissolution proceedings, "trial Court erred in holding final dissolution hearing addressing issue in husband's absence."))

The trial Court in *Johnson* further noted that "while no discrete motion was filed ... [Johnson] repeatedly averred in

several different filings that he wanted to, but could not, attend the final hearing because of his incarceration. His multiple pro se pleadings, which are to be construed liberally, evince an unequivocal desire to appear at the final dissolution hearing." *Id.* at 402.

Additionally, I cannot be held responsible for the Department of Corrections lack of acting in failing to present me for the telephonic hearing. This Court is required to notify the Department of Corrections of the hearing and the Department of Corrections is required to have me present, as seen in *Richardson v. Department of Revenue ex. rel.*, 742 So.2d 445, 446 (Fla. 4th DCA 1999) which stated that, "no telephonic hearing would be permitted at a Florida correctional facility without a court order to the classification specialist in charge of the inmate." And in *Helm v. Fooye*, 841 So.2d 639 (Fla. 2d DCA 2003) which stated that, "should the trial court elect to offer Helm an opportunity to participate in a necessary hearing by telephone, [as opposed to in person], the trial court should ensure that the necessary arrangements are made with the Department of Corrections to permit Helm's participation." *Id.* at 641.

Of course, this Court did make those necessary arrangements with the Department of Corrections but they failed to have me

present and the hearing was held in my absence despite my repeated requests to this Court to be present so that I can present evidence. As a result, a final judgment was entered, all of which deprived me of my due process right to be heard, therefore, making, the judgment void.

Wherefore, I respectfully request this Court for an order vacating the final judgment in this cause and set a new date for the final hearing with me present telephonically so that I may present evidence challenging the issues of this case.

Additionally, I respectfully request this Court to hold a telephonic hearing on this matter with me present.

Respectfully submitted on this 25th day of June 2012.



CHRISTOPHER J. WOOD, pro se
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Amy L. Wood, 6201 Whispering Lane, Titusville, Florida 32780 by U.S. mail on this 25th day of June 2012.



CHRISTOPHER J. WOOD, pro se