

# TEMPORARY MODIFICATION OF CHILD CUSTODY

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It is axiomatic that a final judgment decree is *res judicata* (the final say) of the facts and circumstances at the time the judgment became final. Thus, once a lawsuit is decided, the same issue or an issue arising from the first issue cannot be contested again.

This rule adopted by the Supreme Court of Florida promotes the finality of the judicial determination of the custody of children. However, parties can, nonetheless, attempt to modify a time-sharing determination post entry of a final judgment upon a showing of a substantial, material, and unanticipated change in circumstances. A court must also find that a modification would serve the best interests of the child or children.

If a child subject to a custody determination is threatened with harm, or the opposing party threatens to remove the child from the State of Florida, temporary relief can be applied for while awaiting a final hearing on their petition for modification.

Florida courts have held that under extraordinary circumstances, a trial court may enter a temporary order modifying custody of a child. But such an order “requires an emergency situation.” See *Smith v. Crider*, 932 So.2d 393 (Fla. 2d DCA 2006), which states that the trial court should still “make every reasonable effort to allow both parties to be heard prior to issuing an emergency modification order. If this is not possible, however, an opportunity to be heard should be provided as soon thereafter as possible.” And the movant is tasked with the burden of providing competent, substantial evidence supporting an emergency temporary change in custody.

Thus, if one seeks to temporarily modify a custody determination, said party must demonstrate an actual emergency. Upon a showing of an actual, demonstrated

emergency, a court can enter a non-final order suspending an existing parenting or time-sharing plan, but the court should take reasonable steps to minimize the period and scope of the suspension. Otherwise, the temporary order could transform into an actual modification of the final judgment. ■■■

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