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INTRODUCTION

The Trial Court properly vacated a judgment, as requested by the Former Husband, on the grounds for relief under Rule 1.540. In this answer brief, a reference to Rule 1.540, Florida Rule of Civil Procedure, shall be deemed to include a reference to Rule 12.540, Florida Family Law Rule of Procedure.

The Appellee, [redacted], was the Former Husband in the post-dissolution of marriage proceedings below. The Appellant, [redacted], was the Former Wife in the post-dissolution of marriage proceedings below. In this brief, the parties shall be referred to herein as "Husband," "Former Husband," or "Appellee," and "Wife," "Former Wife," or "Appellant," respectively.

The designation [R.] will indicate a reference to the specific page of the Appellant's Appendix; the designation [A.] will indicate reference to the Appellant's Initial Brief.

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APPELLEE'S STATEMENT OF CASE AND FACTS

The Former Wife instituted dissolution of marriage proceedings on March 19, 2007. On May 31, 2007, the parties entered into a *Mediated Settlement Agreement* regarding temporary relief matters, wherein the parties agreed that the Former Husband would pay, among other things, certain expenses related to the parties' household. [R. 1-3]. The parties' *Mediated Settlement Agreement* was adopted by the Trial Court on November 27, 2007. [R. 4-7].

On February 5, 2008, the Former Wife filed her *Amendment to Motion for Contempt,* which stated in Paragraph 2:

> "The Former Husband has failed to pay the mortgage, the homeowner's association dues, the landscape maintenance and the pool maintenance for three months and is in arrears in the amount of $**11,904.52**."

[R. 8-9]. Thereafter, on March 5, 2008, the Trial Court entered its *Order Granting Wife's Motion for Contempt*, requiring the Former Husband to:

> "…catch up on all bills he is required to pay in accordance with the temporary relief order by March 3, 2008 including the cell phone bills, homeowner's association dues to both associations, landscape maintenance, pool maintenance and the children's medical bills and therapy bills…"

[R. 10].

On June 30, 2008, the Trial Court entered its *Final Judgment of Dissolution of Marriage and Order on Contempt,* which was amended by the Trial Court

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within its July 18, 2008 entry of the *Amended Final Judgment of Dissolution of Marriage and Order on Contempt* (hereinafter referred to as the "*2008 Amended Final Judgment"*) nunc pro tunc to June 30, 2008[1]. [R. 11-12; 25-36]. Within the *2008 Amended Final Judgment,* in relevant part, the Trial Court distributed to each party fifty percent (50%) of the parties' marital home and of the mortgage on the parties' marital home, awarded the Wife two years of bridge the gap alimony, denied the Wife's request for attorney's fees, and entered an Order of Commitment against the Husband for his failure to pay household bills, which Commitment he could avoid by executing a Quit Claim Deed of the marital residence to the Wife. Specifically, Page 8, Paragraph X (titled "Order of Commitment") of the *2008 Amended Final Judgment* stated, in relevant part,

> "This Court has already found the Husband in contempt of Court on March 5, 2008 for his failure to abide by its Order to pay the children's medical bills, the mortgage, the Homeowner's Association dues, lawn maintenance and pool maintenance. As such, the Court now Orders that the Husband be committed to the Palm Beach County Jail for a period of 120 days with work release beginning on August 1, 2008. In lieu of this sentence, the Husband shall execute a quit claim deed for the marital residence in favor of the Wife no later than his date of commitment. . . . " [2]

[1] The sole amendment in the *2008 Amended Final Judgment* from the June 30, 2008 *Final Judgment of Dissolution of Marriage and Order on Contempt* was a minor typographical error.

[2] Paragraph X on Page 8 of the Trial Court's *2008 Amended Final Judgment* was clearly referring to the Trial Court's March 5, 2008 *Order Granting Wife's Motion for Contempt* pursuant to the Former Wife's *Amended Motion for Contempt* dated February 8, 2008, requiring the Former Husband to "…catch up on all bills he is

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[R. 18-19]. The Former Husband ultimately executed a Quit Claim Deed of the marital residence to the Former Wife on July 10, 2008. [R. 23-24].

The Wife appealed the *2008 Amended Final Judgment.* This Honorable Court issued its opinion on November 4, 2009 in [redacted], reversing and remanding the *2008 Amended Final Judgment* as to the Trial Court's determination of alimony and denial of attorney's fees to the Wife. The [redacted] opinion also instructed the Trial Court to determine the Former Husband's arrearages owed as a result of "his contemptuous conduct in failing to pay the household bills," and to enter a judgment for that amount, stating that it was:

> ". . . somewhat inexplicable that, at a time when the home mortgage was pending foreclosure, the trial court found it appropriate to relieve the husband of his contemptuous conduct in failing to pay the household bills by quitclaiming his interest in the house to the wife" and subsequently remanded "for the trial court to determine the amount owing and enter a judgment on that amount due."

The Trial Court held a remand trial on July 25, 2013. Initially, the Former Wife testified that the arrearages owed toward the household bills were in the amount of $15,000.00. However, upon further questioning, the Former Wife's

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required to pay in accordance with the temporary relief order by March 3, 2008 including the cell phone bills, homeowner's association dues to both associations, landscape maintenance, pool maintenance and the children's medical bills and therapy bills…"

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testimony revealed that the Former Husband's arrearages owed toward the household bills totaled "$11,904," consistent with her *Amendment to Motion for Contempt* dated February 8, 2008, which alleged that the Former Husband had failed to pay the mortgage, the home owner's association dues, the landscape maintenance and the pool maintenance for three months, for a total arrearage of $11,904.52. Specifically, on July 25, 2013 during the remand trial, the Former Wife testified as follows:

> THE COURT: I just want to make something clear, actually I've made a slight error. Ms. [redacted], were you reading the [March 5, 2008] order granting the Wife's Motion for Contempt when you said the arrearages were $15,000?
>
> THE WITNESS: I probably was.
>
> THE COURT: Just so the record is clear, the fifteen thousand figure is actually the-
>
> THE WITNESS: Oh, yeah. It's $11,904.
>
> THE COURT: Okay. I just wanted to make sure.
>
> THE WITNESS: Yes. I'm sorry about that.
>
> THE COURT: Because in the Motion for Contempt when I looked at the time, it was $11,904.52 so that's the amount I would –"

[R. 148-51; 217-18; 296-97].

Thereafter, on August 15, 2013, the Trial Court entered its *2nd Amended Final Judgment after Remand from the 4th District Court of Appeal* (hereinafter,

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"*Second Amended Final Judgment").* [R. 42-49]. However, within the *Second Amended Final Judgment,* the Trial Court inadvertently included a money judgment against the Former Husband in the amount of $459,873.02 (the alleged principal due on the note secured by the mortgage foreclosed on the parties' former marital residence[3]) instead of the arrearage amount of $11,904.52, which was owed as a result of the Former Husband's failure to pay household bills.[4]

Additionally, on September 3, 2013, the Trial Court entered an Income Deduction Order against the Former Husband for permanent alimony, retroactive alimony, and alimony arrearages to the Former Wife in the liquidated amount of $83,300.00, although the Former Wife never requested permanent alimony. [R. 53-55].

The Former Wife filed a *Motion for Continuing Writ of Garnishment* against the Former Husband's wages on May 1, 2014 with regard to the $459,873.02 judgment. [R. 61-62]. The Trial Court entered its *Continuing Writ of Garnishment* on May 16, 2014. [R. 73-77].

On June 16, 2014, the Former Husband filed his *Motion to Dissolve the Continuing Writ of Garnishment.* [R. 113-15]. On August 7, 2014, the Former

[3] A copy of a mortgage foreclosure judgment containing the amount of $459,873.02 as the outstanding balance on the mortgage note was marked for identification purposes during the remand trial and admitted into evidence.

[4] The Trial Court ultimately acknowledged that this transposition of numbers was "in no uncertain terms a mistake made by the Court." [R. 297]

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Husband filed his *Motion for Relief from Judgment re: the 2nd Amended Final Judgment,* pursuant to *Florida Rule of Civil Procedure 1.540*. [R. 160-168]. On August 14, 2014, the Former Husband filed his *Supplement to his Motion for Relief from Judgment re: the 2nd Amended Final Judgment* [R. 168-80]. On August 27, 2014, the Former Husband filed an *Amendment by Interlineation re: his Motion for Relief from Judgment re: the 2nd Amended Final Judgment* [R. 181-82].

The Trial Court conducted a hearing on the Former Husband's *Motion for Relief from Judgment re: the 2nd Amended Final Judgment* and the Former Husband's *Motion to Dissolve Continuing Writ of Garnishment* on September 18, 2014 [R. 197-291].

On October 8, 2014, the Trial Court entered an *Order Granting the Former Husband's Motion to Dissolve the Continuing Writ of Garnishment*, dissolving the Continuing Writ of Garnishment and finding that the exception to Florida Statute Chapter 77 provided in Florida Statute § 61.12(2) does not apply as the $459,873.02 judgment was for neither alimony nor child support.[5] [R. 292-93]. On October 16, 2014, the Trial Court entered an *Order Granting the Former Husband Motion for Relief from Judgment* pursuant to Florida Rule of Civil Procedure 1.540. [R. 294-300].

[5] The Trial Court held that alimony was awarded separately in the *Second Amended Final Judgment* and is being paid through an Income Deduction Order, and there were no child support arrearages pursuant to the Trial Court's October 18, 2013 *Stipulated Agreed Order*

The Trial Court denied the Former Wife's *Motion for Rehearing re: (1) Order Granting Motion to Dissolve Etc. and (2) Order Granting Motion for Relief from Judgment Etc.* on October 29, 2014 in the Trial Court's *Order Denying the Former Wife's Motion for Rehearing re: (1) Order Granting Motion to Dissolve Etc. and (2) Order Granting Motion for Relief from Judgment Etc.* [R. 301-312].

On November 13, 2014, the Former Wife filed her *Notice of Appeal* regarding the *Order Granting the Former Husband's Motion to Dissolve the Continuing Writ of Garnishment dated October 8, 2014* and the *Order Denying Former Wife's Motion for Rehearing etc., dated October 29, 2014,* as well as her *Notice of Appeal* regarding the *Order Granting the Former Husband's Motion for Relief from 2nd Amended Final Judgment, etc., dated October 16, 2014,* and the *Order Denying Former Wife's Motion for Rehearing etc., dated October 29, 2014,* which were consolidated by this Honorable Court into a single case on November 17, 2014 [R. 313-16; 317-25].

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SUMMARY OF THE ARGUMENT

Florida Rule of Civil Procedure 1.540 and Florida Family Law Rule of Procedure 12.540 set forth the appropriate basis for granting relief from a Final Judgment. The Trial Court properly granted the *Former Husband's Motion for Relief from 2nd Amended Final Judgment after Remand from the 4th District Court of Appeal Pursuant to Fla. R. Civ. P. 1.540* (and Former Husband's *Supplement* thereto) and must be affirmed.

The Trial Court's insertion of $459,873.02 instead of $11,904.52 as arrearages to be paid by the Former Husband into the *Second Amended Final Judgment* constituted a mistake correctible under Florida Rule of Civil Procedure 1.540. Importantly, the Former Wife has admitted and agreed numerous times throughout her Initial Brief, as well as during the hearing on the Former Husband's *Motion for Relief from 2nd Amended Final Judgment after Remand from the 4th District Court of Appeal Pursuant to Fla. R. Civ. P. 1.540,* that the Trial Court should have entered the arrearage amount of $11,904.52, not the amount of $459,873.02, and the Former Wife has therefore waived the argument that it was not a mistake by expressly agreeing that the Trial Court made an error. [A. 10;11; 15; 18; 23] [R. 204].

The Trial Court's entry of $459,873.02 instead of $11,904.52 as arrearages to be paid by the Former Husband constituted a clerical mistake by the Trial Court

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arising from accidental slip, oversight, or omission, which is correctable under Fla. R. Civ. P. 1.540(a). The Trial Court's entry of $459,873.02 instead of $11,904.52 as arrearages to be paid by the Former Husband was also as the result of mistake, inadvertence, or excusable neglect by the Trial Court made in the ordinary course of litigation, which is correctable under rule 1.540(b)(1).

Further, the Trial Court properly granted the Former Husband's *Motion for Relief from Judgment* pursuant to Fla. R. Civ. P. 1.540(b)(4), as the Trial Court violated the Former Husband's Due Process Rights upon entering its erroneous August 15, 2013 judgment for the alleged principal balance owing in the parties' marital home instead of the arrearage amount of unpaid household expenses; the Former Husband was not and could not have been placed on notice or given a meaningful opportunity to be heard on the issue of a judgment for the alleged principal balance owing on the parties' former marital home as the issue was not presented by the pleadings, noticed to the parties, or litigated below.

Finally, with regard to the Former Husband's *Motion for Relief from Judgment* pursuant to Fla. R. Civ. P. 1.540(b)(5), the Trial Court properly found that it is no longer equitable for *Second Amended Final Judgment* to have prospective application.

A review of the documents contained in the Appellant's Appendix, the Former Husband's *Motion for Relief from Judgment,* and the transcript of the

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hearing clearly establish evidence supporting the Trial Court's proper exercise of its discretion in vacating the judgment. The Trial Court's determination was more than reasonable and did not constitute a miscarriage of justice; to the contrary, the Trial Court's vacating the $459,873.02 judgment remedied a miscarriage of justice based upon a correctible error under Rule 1.540 and must therefore be affirmed.

As to the Trial Court's granting of the Former Husband's *Motion to Dissolve Continuing Writ of Garnishment,* the Trial Court's decision was appropriate and not contradictory. The arrearages for which the Continuing Writ of Garnishment was entered were neither alimony, suit money, nor child support. Therefore, the Former Husband's head of household exemption applied. The Trial Court's granting of the Former Husband's *Motion to Dissolve the Continuing Writ of Garnishment* must be affirmed.

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STANDARD OF REVIEW

The standard of review of an order deciding a motion for relief from judgment under Florida Rule of Civil Procedure 1.540 is abuse of discretion. *See Blanton v. Baltuskouis,* 20 So.3d 881 (Fla. 4th DCA 2009).

The standard of review of orders construing statutes, such as those controlling garnishment and claims of exemption, is *de novo*. *Cadle Co. v. Pegasus Ranch, Inc.,* 920 So. 2d 1276 (Fla. 4th DCA 2006).

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ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE FORMER HUSBAND'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 1.540.

A. STANDARD OF REVIEW:

The standard of review of an order deciding a motion for relief from judgment under Florida Rule of Civil Procedure 1.540 is abuse of discretion. *See Blanton v. Baltuskouis,* 20 So.3d 881 (Fla. 4th DCA 2009).

B. Fla. R. Civ. P. 1.540(a):

The insertion of $459,873.02 instead of $11,904.52 as arrearages to be paid by the Former Husband into the *Second Amended Final Judgment* constituted a clerical mistake by the Court arising from oversight or omission, which is correctible under Fla. R. Civ. P. 1.540(a). The Trial Court's vacating the $459,873.02 judgment was within the Trial Court's discretion and must be affirmed.

The clerical mistakes referred to by Fla. R. Civ. P. 1.540(a) are errors or mistakes arising from accidental slip or omission. *Moforis v. Moforis,* 977 So.2d 786 (Fla. 4th DCA 2008). As the Fourth District Court of Appeal stated in *Moforis:*

> "Subsection (a) of rule 1.540 allows the trial court to correct errors "arising from oversight or omission . . . at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders." The clerical mistakes referred to by subsection (a) are only "errors or mistakes arising from accidental slip or omission,

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> and not errors or mistakes in the substance of what is decided by the judgment or order.""

Id. at 788.

The trial court's use of one number in an order when the court meant to use another has been considered by the Fourth District Court of Appeal to be a mistake arising from oversight or omission which can be corrected at any time under rule 1.540(a). *Roth v. Roth,* 615 So.2d 868 (Fla. 4th DCA 1993). In the case of *Roth v. Roth,* the Fourth District Court of Appeal held that relief under rule 1.540(a) was appropriate where the trial court entered an order requiring the husband to maintain insurance with a deductible of not less than $250.00 when the court meant to require more, holding:

> ". . . we conclude that using less, when the court meant more, was the type of mistake "arising from oversight or omission" which can be corrected at any time under rule 1.540(a). *Town of Hialeah Gardens v. Hendry, 376 So.2d 1162 (Fla. 1979)* (mistakes arising from an "accidental slip or omission" are covered by rule 1.540(a))"

Id. at 869.

Further, Florida appellate courts have consistently held that trial courts have jurisdiction under Fla. R. Civ. P. 1.540(a) to correct errors in orders arising from oversight or omission such as significant mathematical errors as to an amount required in an order. In the case of *Bird Lakes Development Corp. v. Meruelo*, 582 So.2d 119 (Fla. 3rd DCA 1991), the Third District Court of Appeal held:

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> ". . . the trial court had jurisdiction under Fla. R. Civ. P. 1.540(a) . . . to vacate the prior remittitur order and, in a later order, to correct "errors [in the remittitur order] arising from oversight or omission" . . . namely, (1) a significant mathematical error in the remittitur order as to the amount of the remittitur, so as to comport with the implicit mutual agreement of the parties made in open court at the hearing on the post-trial motion for a remittitur, . . ."

In the case at hand, the Former Wife's clear and unequivocal testimony at the July 25, 2013 remand trial was that the amount of the arrearages was "$11,904" which corresponds with the $11,904.52 amount demanded in the Former Wife's underlying *Amended to Motion for Contempt.* The Trial Court clearly intended to enter the arrearage amount of $11,904.52, as is evident by the Trial Court's statements during questioning of the Former Wife during the July 25, 2013 remand trial:

> **TRIAL COURT:** I just want to make something clear, actually I've made a slight error. Ms. Wofford, were you reading the [March 5, 2008] order granting the Wife's Motion for Contempt when you said the arrearages were $15,000?
>
> **THE WITNESS:** I probably was.
>
> **TRIAL COURT:** Just so the record is clear, the fifteen thousand figure is actually the-
>
> **THE WITNESS:** Oh, yeah. It's $11,904.
>
> **TRIAL COURT:** Okay. I just wanted to make sure.
>
> **THE WITNESS:** Yes. I'm sorry about that.

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> **TRIAL COURT:** Because in the Motion for Contempt when I looked at the time, it was $11,904.52 so that's the amount I would –"

[R. 148-151, 217-218].

The ruling that the Former Husband had an arrearage due to his nonpayment of the household bills was the substance of what is decided by the *Second Amended Final Judgment.* The Trial Court's inadvertent slip transposing the actual amount of the arrearages ($11,904.52) with the alleged amount of the principal due on the note secured by the mortgage foreclosed on the parties' former marital residence ($459,873.02) was an oversight correctible by the Trial Court pursuant to Fla. R. Civ. P. 1.540(a) that does not change the substance of the *Second Amended Final Judgment.* To be clear, the substance of the judgment was that there was an arrearage in existence; simply the amount of the arrearage entered by the Trial Court was the clerical error. The Trial Court did not misinterpret the law; instead, the Trial Court meant to enter one number but accidentally entered another, which is the exact type of mistake "arising from oversight or omission" which can be corrected at any time under rule 1.540(a), as it was in the case of *Roth v. Roth,* 615 So.2d 868 (Fla. 4th DCA 1993).

C. **Fla. R. Civ. P. 1.540(b)(1)**

The insertion of the amount of $459,873.02 instead of $11,904.52 was also the result of mistake, inadvertence, or excusable neglect by the Trial Court. The

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type of mistake envisioned by Rule 1.540(b)(1), Fla. R. Civ. P., is the type of honest and inadvertent mistake made in the ordinary course of litigation, usually by the court itself, and is generally for the purpose of setting the record straight. *Viking General Corp. v. Diversified Mortgage,* 387 So.2d 983, 985 (Fla. 2nd DCA 1980).

In the case of *Bird Lakes Development Corp. v. Meruelo*, 582 So.2d 119 (Fla. 3rd DCA 1991), the Third District Court of Appeal affirmed an order finding that the trial court had jurisdiction under Fla. R. Civ. P. 1.540(a) and (b) to vacate a prior order and correct errors arising from mistakes or inadvertence, such as a significant mathematical error and "certain other mistaken terms of the order which . . . were all contrary to the trial judge's oral instructions to appellant's trial counsel, who drafted the order, as to what the order should contain."

In the case below, the Trial Court mistakenly or inadvertently entered the amount of arrearages as $459,873.02 instead of $11,904.52. During the July 25, 2013 remand trial, the Former Wife testified, and the Trial Court itself verified, that the arrearage amount was $11.904.52. The Former Wife did not claim at the July 25, 2013 remand trial that the Former Husband owed arrearages in the amount of $459,873.02, or any arrearages subsequent to the March 5, 2008 *Order Granting the Wife's Motion for Contempt*. It is clear from the Trial Court's questioning of

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the Former Wife during the July 25, 2013 remand trial that the Trial Court's intent was to enter the arrearages as $11,904.52.

As a result of mistake, inadvertence, or excusable neglect, when the Trial Court was entering the arrearage amount within the *Second Amended Final Judgment* nearly one month after the actual hearing on the matter, instead of entering the actual arrearage of $11.904.52 that was testified to by the Former Wife, the Trial Court instead mistakenly entered an arrearage amount referenced in a copy of a mortgage foreclosure judgment in the amount of $459,873.02. This inadvertent transposition by the Court is exactly the type of honest and inadvertent mistake made in the ordinary course of litigation meant to be correctible under Fla. R. Civ. P. 1.540(b)(1), as recognized by the Trial Court in its *Order Granting Former Husband's Motion for Relief*.

D. **Fla. R. Civ. P. 1.540(b)(4)**

Not only was the Trial Court's mistaken entry of the $459,873.02 judgment correctible under Fla. R. Civ. P. 1.540(a) and (b)(1), the entry of the judgment itself was void as a matter of law, as ultimately recognized by the Trial Court.

The award of the alleged principal due on the note secured by the mortgage foreclosed on the parties' former marital residence was never requested by the Former Wife, never presented in any pleadings, never noticed for hearing, never demanded at hearing, never placed in evidence, and never argued at any point in

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the remand trial. Consequently, the Trial Court's entry of the $459,873.02 money judgment constituted a blatant violation of the Former Husband's Due Process rights, making the judgment void under Rule 1.540(b)(4).

Pursuant to Article I, § 9 of the Florida Constitution, "No person shall be deprived of life, liberty, or property without due process of law. . ." As a general rule, a violation of due process occurs when a court determines matters not noticed for hearing and not the subject of appropriate pleadings. *Mondello v. Torres*, 47 So.3d 389, 397 (Fla. 4th DCA 2003; *Hutchison v. Chase Manhattan Bank,* 922 So.2d 311 (Fla. 2nd DCA 2006).

As stated in the case of *Austin v. Austin,* 120 So.2d 669 (Fla. 1st DCA 2013),

> "The dictates of procedural due process demand that a party be placed on notice and given a meaningful opportunity to be heard before being divested of his or her property. "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.""

Austin v. Austin, 120 So.2d 669, 675 (Fla. 1st DCA 2013) *citing Norberg v. Norberg,* 79 So.3d 887, 889 (Fla. 4th DCA 2012, *quoting Neumann v. Neumann,* 857 So.2d 372, 373 (Fla. 1st DCA 2003).

A judgment based upon a matter entirely outside the issues made by the pleadings cannot stand, and may be vacated as void pursuant to Fla. R. Civ. P. 1.540(b)(4). *Cooper v. Cooper,* 406 So.2d 1223 (Fla. 4th DCA 1981). The

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appropriate procedure for attacking a void judgment is a motion for relief under Rule 1.540(b)(4). *Hutchison, supra* at 315.

Fla. R. Civ. P. 1.540(b)(4) provides, in relevant part:

> "On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, decree, order, or proceeding for the following reasons: . . . (4) that the judgment or decree is void. . . ."

Where a party asserts that a judgment is void and it is determined after evaluation that the judgment entered is void, the trial court is obligated to vacate the judgment and has no discretion to do otherwise. *See Horton v. Rodriguez Espaillat y Asociados,* 926 So.2d 436 (Fla. 3rd DCA 2006).

In the case of *Garcia v. Stewart,* 906 So.2d 1117, 1122 (Fla. 4th DCA 2005), the Fourth District reversed the denial of a motion made pursuant to Fla. R. Civ. P. 1.540 regarding a judgment that granted relief not demanded by a party. The Fourth District Court of Appeal stated:

> "As the [Florida] Supreme Court has explained . . . If a court should render a judgment in a case where it had jurisdiction of the parties, upon a matter entirely outside of the issues made, it would, of necessity, be arbitrary and unjust as being outside the jurisdiction of the subject-matter of the particular case, and such judgment would be void and would not withstand a collateral attack, for upon such matter a presumption would arise that the parties had had no opportunity to be heard." *Citing Lovett v. Lovett,* 93 Fla. 611, 112 So. 768, 775-76 (1927).

See also Sentz v. Sentz, 548 So.2d 297 (Fla. 4th DCA 1989) (holding that the trial court erred in denying the appellant's motion for relief under Fla. R. Civ. P.

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1.540(b)(4) where the trial court had lacked jurisdiction to enter an order exceeding the scope of the proceeding); *Leibowitz v. Leibowitz,* 611 So.2d 629 (Fla. 4th DCA 1993) (holding that the trial court erred in denying the husband's motion filed pursuant to Fla. R. Civ. P. 1.540(b)(4) where the trial court had entered an order granting relief not requested by the wife); *Newberry v. Newberry,* 831 So.2d 749 (Fla. 5th DCA 2002); *Rodriguez v. Santana,* 76 So.3d 1035 (Fla. 4th DCA 2011) (holding that the trial court violated the appellant's due process rights when it expanded the scope of a hearing to address and determine matters not noticed for hearing).

Pursuant to the directive of the Fourth District Court of Appeal in the [redacted] opinion, this Court was obligated to enter judgment for the amount of "arrearages" due stemming from the "contemptuous conduct in failing to pay the household bills" pursuant to the Former Wife's *Amendment to Motion for Contempt*. An "arrearage" is unpaid support accruing from an order requiring payment. *See Milopoulos v. Milopoulos,* 691 So.2d 1199 (Fla. 4th DCA 1997. Thus, the determination of the amount of unpaid support relating to the household bills was the matter for which the parties were on notice. The arrearages were testified to be $11,904.52 by the Former Wife during the July 25, 2013 remand trial.

The general rule of procedure is that all provisional or interlocutory proceedings in a cause are merged in, and disposed of by, the final decree therein.

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Skinner v. Skinner, 579 So.2d 358, 359 (Fla. 4th DCA 1991. Thus, as the underlying temporary relief obligation (the Former Husband's payment of the household bills) terminated at the time of the entry of the *2008 Amended Final Judgment*, no "new" arrearages could have accrued subsequent to the date of the *2008 Amended Final Judgment*. The Former Husband was not ordered to make mortgage payments on a continuing basis beyond the temporary relief order, nor was the Former Husband ordered to pay mortgage payments in the *2008 Amended Final Judgment*. Of critical importance is the fact that at no time did the Former Wife plead, argue, or even allege that she was entitled to a judgment for the alleged principal balance owing on the parties' former marital home. As stated above, the Former Wife testified that the arrearages due were in the amount of $11,904.52, not the sum of $459,873.02. The Former Wife has continued to admit and agree that that arrearages due were in the amount of $11,904.52 throughout the body and footnotes of her Initial Brief, as well as during the hearing on the Former Husband's *Motion for Relief from 2nd Amended Final Judgment after Remand from the 4th District Court of Appeal Pursuant to Fla. R. Civ. P. 1.540*. [A. 10; 11; 15; 18; 23] [R. 204]

Neither the principal loan balance under a foreclosure judgment, nor the foreclosure judgment in its entirety, constitutes an "arrearage." The Fourth District Court of Appeal's reference to the "amount owing" in its [redacted] holding

(remanding "for the trial court to determine the amount owing and enter a judgment on that amount due") clearly meant the amount owing under the Former Wife's *Motion for Contempt* (and *Amendment to Motion for Contempt)* as admitted and agreed to by the Former Wife throughout her Initial Brief. [A. 10; 11; 15; 18; 23].

Fortunately, the Trial Court recognized after the hearing on the Former Husband's *Motion for Relief* that a clear and unequivocal violation of the Former Husband's due process rights occurred when the Trial Court mistakenly entered the $459,873.02 money judgment, when such potential liability was not noticed for hearing, was not the subject of appropriate pleadings, and was never argued at any point. Even assuming *arguendo* that the Trial Court had purposefully entered the arrearage amount of $459,873.02 (which the Former Husband does not agree the Trial Court purposefully did), the Trial Court had to vacate the judgment as a violation of due process. The Trial Court had no choice but to vacate the judgment as void pursuant to the dictates of Rule 1.540(b)(4) under any scenario, and the Trial Court's vacating of the judgment must be affirmed.

E. Fla. R. Civ. P. 1.540(b)(5)

The Trial Court's granting of the Former Husband request for relief from the *Second Amended Final Judgment* pursuant to Fla. R. Civ. P. 1.540(b)(5) was

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appropriate as it was no longer equitable that the *Second Amended Final Judgment* have prospective application.

Florida Rule of Civil Procedure 1.540(b)(5) provides in relevant part: "On motion and upon such terms as are just, the Court may relieve a party . . . from a final judgment, decree, order or proceeding for the following reasons: . . . (5) it is no longer equitable that the judgment or decree should have prospective application." Fla. R. Civ. P. 1.540(b)(5) was designed to provide "extraordinary relief" in exceptional circumstances. *Pure H2O Biotechnologies v. Mazziotti,* 937 So.2d 242, 245 (Fla. 4th DCA 2006. In order to award relief pursuant to the rule, Fla. R. Civ. P. 1.540(b)(5) requires significant new evidence or substantial change in circumstances arising after the entry of the judgment making it no longer equitable for the trial court to enforce its earlier order. *Id.*

In the case below, there were substantial changes in circumstances subsequent to the entry of the *Second Amended Final Judgment*, as the family dynamics had significantly changed. As the Trial Court found, subsequent to June 2008, the parties' minor son began residing virtually full time with the Former Husband by agreement of the parties. Further, the Former Wife neither pays child support nor contributes to the support of the parties' minor son. As the parties' daughter reached the age of majority on August 17, 2013, the Former Wife is no longer supporting or obligated to support the daughter. Moreover, when the Trial

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Court entered its Income Deduction Order on September 3, 2013, the Former Wife was receiving permanent alimony retroactive to June of 2008 (for which relief she had not pled at any point during the dissolution of marriage proceedings) after she had the benefit of living in the marital home for five (5) years without paying a mortgage or rent. [R. 53-55].

The case below is an exceptional circumstance that required extraordinary relief, which is exactly the purpose for which Fla. R. Civ. P. 1.540(b)(5) was designed. The change in the family circumstances made it no longer equitable that the money judgment contained in the *Second Amended Final Judgment* have prospective application. Therefore, Trial Court properly vacated the money judgment as contained in the *Second Amended Final Judgment* under Rule 1.540(b)(5).

F. THE TRIAL COURT MUST BE AFFIRMED BECAUSE THE TRIAL COURT HAD MULTIPLE LEGAL BASIS TO RULE IN APPELLEE'S FAVOR

The Trial Court's decision to vacate the money judgment as contained in the *Second Amended Final Judgment* under Rule 1.540, must be affirmed as the Trial Court had multiple legal bases to rule in the Former Husband's favor, as outlined in detail above.

Pursuant to the "tipsy coachman" doctrine, a trial court must be affirmed if there is any theory or principal of law in the record that supports the ruling. *See*

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Butler v. Yusem, 44 So. 3d 102, 105 (Fla. 2010). The Trial Court's vacating the $459,873.02 judgment was within the Trial Court's discretion under multiple provisions of Florida Rule of Civil Procedure 1.540, even if not under all of provisions simultaneously, and must therefore be affirmed.

II. THE TRIAL COURT'S ORDER GRANTING THE FORMER HUSBAND'S MOTION FOR RELIEF FROM JUDGMENT WAS NOT INCONSISTENT WITH THE ORDER DISSOLVING THE CONTINUING WRIT OF GARNISHMENT.

The standard of review of orders construing statutes, such as those controlling garnishment and claims of exemption, is *de novo*. *Cadle Co. v. Pegasus Ranch, Inc.,* 920 So. 2d 1276 (Fla. 4th DCA 2006).

The Trial Court properly granted the Former Husband's *Motion for Relief from Judgment* along with entering the *Order Dissolving the Continuing Writ of Garnishment* and its decision must be affirmed. The Former Wife's argument that the Trial Court's granting of the two orders leads to an inconsistent conclusion is erroneous.

First, the actual *Continuing Writ of Garnishment* entered by the Trial Court on May 16, 2014 was with regard to the $459,873.02 outstanding on the mortgage

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note contained in the mortgage foreclosure judgment. Pursuant to Florida Statute § 61.12(2), in relevant part,

> "The provisions of chapter 77 or any other provision of law to the contrary notwithstanding, the court may issue a continuing writ of garnishment to an employer to enforce the order of the court for periodic payment of alimony or child support or both."

The statutory language is clear. As stated in *Holly v. Auld,* 450 So.2d 217, 219 (Fla. 1984), "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Further, "it is fundamental that garnishment statutes must be strictly construed." *Williams v. Espirito Santo Bank of Fla.*, 656 So. 2d 212, 213 (Fla. 3d DCA 1995). Thus, according to the plain language of the statute, a creditor is only entitled to a continuing writ of garnishment against a debtor's earnings under Florida Statute § 61.12(2) when the debtor is "head of household" if the underlying judgment is for the payment of alimony or child support. The outstanding balance on the mortgage note contained in the mortgage foreclosure judgment was clearly not alimony or child support. Thus, pursuant to the strict construction of the exception to Florida Statute Chapter 77 provided in Florida Statute § 61.12(2), the Trial Court properly dissolved the *Continuing Writ of Garnishment* that was entered with regard to the $459,873.02 outstanding balance on the mortgage note contained in the mortgage foreclosure judgment.

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Second, even if the Trial Court had properly entered a *Continuing Writ of Garnishment* in the amount of the arrearages that were actually due were in the amount of $11,904.52, not the sum of $459,873.02, the arrearages still would not have fallen under the exception to Florida Statute Chapter 77 provided in Florida Statute § 61.12(2), as the arrearages were still neither for alimony nor for child support. The arrearages in the amount of $11,904.52 were the Former Husband's arrearages owed as alleged in the Former Wife's *Amendment to Motion for Contempt* dated February 8, 2008, which alleged that the Former Husband had failed to pay the mortgage, the home owner's association dues, the landscape maintenance and the pool maintenance for three months, for a total arrearage of $11,904.52. These amounts are clearly separate from amounts of child support and alimony, which were specifically separately determined in the *Second Amended Final Judgment,* and in orders of the Trial Court entered subsequent thereto. Moreover, the alimony arrearages were calculated pursuant to the *Second Amended Final Judgment* as the liquidated amount of $83,300.00 and were and are currently being paid at the rate of $400.00 per month pursuant to the Income Deduction Order. Thus, it is clear that the $11,904.52 arrearage amount was not and could not be for alimony or child support arrearages appropriate for a continuing writ of garnishment.

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III. THE TRIAL COURT'S DISSOLVING OF THE CONTINUING WRIT OF GARNISHMENT WAS PROPER AND MUST BE AFFIRMED.

The Trial Court appropriately dissolved the *Continuing Writ of Garnishment* pursuant to the Former Husband's "head of household exemption" and must therefore be affirmed.

First, as stated above, the arrearage amount that the Trial Court actually entered for the *Continuing Writ of Garnishment* was for the $459,873.02 outstanding on the mortgage note contained in the mortgage foreclosure judgment. This amount is clearly not alimony or child support and therefore the exception to Florida Statute Chapter 77 provided in Florida Statute §61.12(2) does not apply to allow a *Continuing Writ of Garnishment*. The Former Wife's assertion that the *Continuing Writ of Garnishment* in the amount of $459,873.02 must stand is merely an attempt by the Former Wife to seek a windfall of nearly half of a million dollars. The Trial Court appropriately dissolved the *Continuing Writ of Garnishment* in accordance with the strict statutory language of Florida Statute § 61.12(2).

Next, the arrearage amount owed for which the Trial Court *may* have properly entered a *Continuing Writ of Garnishment* would have been from the Former Husband's failure to pay the mortgage, the home owner's association dues, the landscape maintenance and the pool maintenance for three months, for a total

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arrearage of $11,904.52. As stated above, these amounts are clearly distinct from the Former Husband's alimony and child support obligations owing under separate orders, and Income Deduction Order, and as separately outlined in the *Second Amended Final Judgment.*

Pursuant to the exception to Florida Statute Chapter 77 provided in Florida Statute § 61.12(2), a creditor is only entitled to a continuing writ of garnishment against a debtor's earnings when the debtor is "head of household" if the underlying judgment is for the payment of alimony or child support. The underlying temporary relief obligation from which the arrearages stemmed (the Former Husband's payment of household bills) was an interlocutory agreement that merged in and was disposed of by the *Second Amended Final Judgment*. *Skinner v. Skinner,* 579 So.2d 358, 359 (Fla. 4th DCA 1991). There is no reference in the *Second Amended Final Judgment,* contrary to the Former Wife's assertions, that the arrearage amount was for "family support arrearages." Here, the arrearage amount was clearly not alimony or child support. Thus, the exception to Florida Statute Chapter 77 provided in Florida Statute § 61.12(2) still would not apply.

Notwithstanding of the above, it must be noted that the Trial Court did not enter a *Continuing Writ of Garnishment* in the amount of $11,904.52, but instead entered the *Continuing Writ of Garnishment* in the amount of $459,873.02 which

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was clearly neither alimony nor child support. Thus, the Trial Court properly dissolved the *Continuing Writ of Garnishment* and must be affirmed.

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CONCLUSION

The Trial Court was well within its discretion when it appropriately granted the *Former Husband's Motion for Relief from 2nd Amended Final Judgment after Remand from the 4th District Court of Appeal Pursuant to Fla. R. Civ. P. 1.540* (and Former Husband's *Supplement* thereto) under the provisions of Fla. R. Civ. P. 1.540 and must therefore be affirmed.

As to the Trial Court's granting of the Former Husband's *Motion to Dissolve Continuing Writ of Garnishment,* the Trial Court's decision was within its discretion, appropriate, and not contradictory to its granting of the Former Husband's *Motion for Relief from Judgment*. The arrearages for which the Continuing Writ of Garnishment was entered were neither alimony nor child support. Therefore, the Former Husband's head of household exemption applied. The Trial Court's granting of the Former Husband's *Motion to Dissolve the Continuing Writ of Garnishment* must be affirmed.

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