

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

SADRAC ISNORD,
Appellant,

v.

LAURENS MAGLOIRE ISNORD,
Appellee.

No. 4D16-2093

[May 3, 2017]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Timothy L. Bailey, Judge; L.T. Case No. FMCE10002823.

Sadrac Isnord, Fort Lauderdale, pro se.

No brief filed for appellee.

PER CURIAM.

The trial court dismissed appellant's petition for modification of a parenting plan because appellant failed to serve the former wife within 120 days in accordance with Florida Rule of Civil Procedure 1.070(j). Appellant contends that he could serve the former wife by publication where her whereabouts were unknown. See § 49.011(4), Fla. Stat. (2016); see also *Zuccarello v. Zuccarello*, 280 So. 2d 37, 38-40 (Fla. 3d DCA 1973) (holding that husband's petition for modification of child support could be maintained against the non-resident wife upon service by publication where the petition was ancillary to and a continuation of a Florida proceeding). The record in this case, however, does not show that appellant sought to serve the former wife by publication prior to the expiration of 120 days from the filing of the petition.¹ Therefore, the trial court did not abuse its discretion in dismissing the petition. Our affirmance is without prejudice to the filing of another petition and serving

¹ In his appendix to his brief, appellant includes an affidavit of diligent search for the location of the former wife, together with what appears to be an affidavit of publication in the Broward Business Review, but this does not appear in the record on appeal, nor was it mentioned in any of the pleadings appellant filed in the trial court.

the former wife by publication if she still cannot be located.

WARNER, TAYLOR and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.