

**IN THE DISTRICT COURT OF APPEALS OF FLORIDA  
FOURTH DISTRICT**

In Re Marriage of  
WILLIAM A. CABANA  
Appellant, *pro se*

and

SHARON ANN MAYO  
Appellee.

:  
:  
:  
: Case Number: 4D05-3906  
:  
:  
:  
:  
:

RECEIVED  
2006 JAN 24 PM 12:47  
DISTRICT COURT OF APPEALS  
FOURTH DISTRICT

---

**MOTION FOR REHEARING**

---

Comes now the Appellant, through counsel solely for this motion, pursuant to Fl. Rules of App. Proc. Rule 9.330 to move this court to rehear and reconsider its sua sponte dismissal order as now he has been jailed for civil contempt, suffered irreparable harm and a final order, reviewable, has been entered in the trial court contempt proceedings January 6, 2006 all based on the Florida alimony statute.

On January 12, 2006 this court sua sponte dismissed Appellant's appeal from a trial court denial of a Motion for Declaratory Judgment challenging § 61.08 Fla. Stat. alimony statute as violative of Art. I § 23 Fla. Const. (Right of Privacy). And Art. III § 3 Fla. Const. (Separation of Powers).

On January 5 and 6, 2006 prior to this court's dismissal and the trial court's denial to stay its proceedings pending this court's review the trial court entertained

a hearing on Appellant's Motion for Modification and Appellee's Motion for Contempt.

Appellant has been jailed for civil contempt for failure to pay alimony arrearages without an opportunity to review this court's dismissal order.

Appellant's Appeal challenging the constitutionality of the Florida alimony statutes is now ripe and a final order has been entered which is reviewable by this court. (Appendix A: Final Order of Contempt contained in hearing transcript.)

WHEREFORE, Appellant prays this court

1. rescind its order of dismissal; and
2. reactivate this appeal as timely filed from a final order reviewable on an issue of great importance to the Appellant and the citizens of Florida; and
3. permit the Appellant to add an additional issue with briefing, i.e. 'Whether commitment for civil contempt as enforcement for non payment of alimony arrearages and attorney fees violates the due process and right to privacy clauses of the Florida Constitution?'

Respectfully submitted,



Stephen N. Martyak, Esq.

Florida Bar Number 0066990

Counsel for Appellant for Motion for Rehearing

2305 Fairway Drive S.

Jupiter Florida 33477

January 24, 2006

## Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion for Rehearing has been mailed by U.S. Mail this 24<sup>th</sup> day of January 2006 to Cathy Kamber, Esq., 1675 Palm Beach Lakes Blvd., Tower A-Suite 700, West Palm Beach, Fl 33401, counsel for Appellee; David J. Glantz, Esq., 110 SE 6<sup>th</sup> Street, 10<sup>th</sup> Floor, Fort Lauderdale, FL 33301, Assistant Attorney General; William A. Cabana, 1050 Capri Isles Blvd., Apt. F-105, Venice, FL 34292, *pro se*.

Respectfully submitted,

---

Stephen N. Martyak, Esq.  
Florida Bar Number 0066990  
Counsel for Appellant  
2305 Fairway Drive S.  
Jupiter Florida 33477





14           THE COURT: The time is up. Wait a few  
15 minutes, and I will give you my ruling.

16                           (Judge leaves courtroom.)

17                           (Judge enters courtroom.)

18           THE COURT: Okay. This is the Court  
19 ruling on the Cabana matters.

20           On the former husband's supplemental  
21 petition for modification of alimony, the Court  
22 previously directed -- granted a directed  
23 verdict as to allegations in paragraphs 4-A, B,  
24 and C, because the former husband has failed to  
25 present sufficient evidence to show that

1           there's been a substantial change in his  
2           financial circumstance from the time of the  
3           entry of the final judgment in 1972 until the  
4           time that he filed his petition for  
5           modification.

6           The Court kept, in effect, for the  
7           remainder of the trial, paragraph 4-D in which  
8           he alleged that based upon the substantial  
9           change in circumstance, the respondent former  
10          wife does not have the need any longer for  
11          alimony payments from him to her. The alimony  
12          in this case originally was \$25 a week and  
13          remains \$25 a week. The Court grants the  
14          former husband's supplemental petition for  
15          modification. The Court finds that the former  
16          wife no longer has the need for alimony from  
17          the Former Husband.

18          The Court finds that there's insufficient  
19          evidence -- insufficient credible evidence as  
20          to what the former wife was earning at the time  
21          that the Court entered its final judgment in  
22          1972. The wife presented no documentation on  
23          that and guessed what her income was during  
24          that time.

25          There's no question, though, that the wife

1 currently has a full-time job in which she  
2 earns between income and -- earned income and  
3 interest income and rental income -- enough  
4 money to meet her reasonable needs, many of  
5 which have been created subsequent to the  
6 divorce by investments and other things that  
7 she has done properly for herself in order to  
8 enhance her financial position.

9 But in looking at what her circumstances  
10 are now versus what I was told they were then  
11 at the time of the judgment, the former wife's  
12 overall financial circumstances are vastly  
13 improved as shown in her financial affidavit  
14 which is Exhibit No. 2 of the former husband's  
15 She has a very valuable single-family home.  
16 She has another rental property that's  
17 valuable. She has two lots that's valuable  
18 and -- but she pays for all four of them.

19 Problematic to the former wife's case was  
20 the Court is finding that the former wife  
21 deliberately and intentionally undervalued the  
22 assets contained on her financial affidavit  
23 which is Exhibit No. 2.

24 Now, each and every time that there was an  
25 opportunity for the former wife to give

