

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

IN RE: THE FORMER MARRIAGE OF

FAMILY DIVISION

ALEXANDER F. FOX

CASE NO.: 2015-004684-FC-01 PJ

Petitioner/Former Husband,

FLORIDA BAR NO.: 578622

and

BARBARA E. FOX

Respondent/Former Wife.

**FORMER WIFE'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
AMENDED SUPPLEMENTAL PETITION FOR MODIFICATION**

COMES NOW, the Former Wife, BARBARA E. FOX, by and through her undersigned counsel and files this, her Memorandum of Law in Support of Motion to Dismiss Former Husband's Amended Supplemental Petition for Modification of Child Support and Alimony and as grounds therefore, states:

1. "The function of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action" Vames v. Dawkins, 624 So. 2d. 349, 350 (Fla 1st DCA 1993).
2. As clearly stated in Ferguson v. Ferguson, 921 So. 2d. 796 (Fla 5th DCA 2006), "to modify an award of alimony, petitioner must show a substantial change in circumstances, not contemplated at the time of the divorce judgment, which is sufficient, material, involuntary and permanent in nature. Such modification can only be based on changed conditions occurring since entry of the prior award or modification thereto. E.g. Hosford v. Hosford, 362 So. 2d. 973 (Fla.1st DCA 1978)(emphasis added); Section 61.14, Fla. Stat. (2004). Where the alimony is set by the parties' agreement, the party who seeks a change carries a heavier burden. E.g., Pimm v. Pimm, 601 So. 2d. 534,537 (Fla. 1992). An evidentiary hearing is not required

on a motion where the allegations and supporting documents fail to allege a colorable entitlement to relief. See, Smith v Smith, 903 So. 2d. 1044 (Fla. 5th DCA 2005)."

3. In accordance with this Court's Final Judgment of Dissolution of Marriage entered on March 16, 2015, the Former Husband has an obligation to pay alimony and child support for the benefit of the Former Wife and the parties' three (3) minor children. Former Husband filed a petition seeking to reduce his agreed upon obligations less than 11 months after entry of the Final Judgment.
4. The Former Husband's Supplemental Petition for Modification of Child Support and Alimony dated February 2, 2016 was previously dismissed in accordance with an Order dated March 7, 2016. The Amended Supplemental Petition for Modification dated March 7, 2016 also fails to state a cause of action upon which relief can be granted and therefore must be dismissed.
5. In support of his Amended Petition, Former Husband has filed his 2014 Income Tax return which reports his 2014 annual income as \$341,954. Also in support of his Amended Petition, Former Husband has filed a financial affidavit which reports his current annual income as \$497, 004. Former Husband's income has increased since the Final Judgment dated March 16, 2015.
6. The Former husband argues in his Amended Petition that the failure of both parties to file financial affidavits and child support guidelines worksheets at the time of their 2015 divorce should entitle him to relief. He argues that he did not know how much his 2014 income was when he signed the Marital Settlement Agreement in 2015. He argues that he did not know what his 2014 income was when he attended an uncontested final hearing requesting approval of the Agreement and entry of a Final Judgment.

7. The invited-error doctrine prohibits a party from taking advantage of an error he makes or invites. Bryan v. Bryan, 930 So. 2d. 693 (Fla. 3rd DCA 2006). "Invited error occurs when the appellant induced the specific ruling by her affirmative action or inactivity" Zanoletti v. Norle Propos Corp., 688 So. 2d. 952 (Fla. 3rd DCA 1997).
8. In the instant case, the Former Husband took an active role in negotiating, revising and finalizing the Marital Settlement Agreement. The Former Husband was the only party attending the uncontested final hearing where he submitted a Final Judgment without child support guidelines or financial affidavits and he clearly made no objection to the parties' failure to file these forms.

WHEREFORE, the Former Wife respectfully requests this Honorable Court enter an Order:

- A. Dismissing the Former Husband's Amended Supplemental Petition for Modification of Child Support and Alimony dated March 7, 2016;
- B. Awarding the Former Wife attorneys' fees and costs incurred in this matter; and
- C. Awarding the Former Wife any other relief permitted by law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by e-mail to: Mary Lou Rodon, Esq., Primary e-mail: mrodon@sralaw.com; secondary e-mail: LLara@sralaw.com on this 31 day of May, 2016.

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