

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2008

DENISE AYALA,

Appellant,

v.

Case No. 5D07-787

WILLIAM A. GONZALEZ,

Appellee.

Opinion filed May 2, 2008

Appeal from the Circuit Court
for Orange County,
Donald Grincewicz, Judge.

Rudolph C. Campbell, Tampa, for
Appellant.

Dorothy J. McMichen, of Dorothy
J. McMichen, P.A., Orlando, for
Appellee.

**CLARIFICATION OF OPINION
AND DENIAL OF MOTION FOR REHEARING**

MONACO, J.

On January 28, 2008, this court issued its opinion on this appeal. The appellant, Denise Ayala, through her counsel, Rudolph C. Campbell, has now filed a motion seeking rehearing, rehearing en banc and clarification of our opinion. We deny the

motion for rehearing but grant the motion for clarification to make abundantly clear the basis for our earlier opinion. The motion for rehearing en banc is the subject of a separate order of this court.

In our earlier opinion we pointed out that Ms. Ayala, through her counsel, had filed ten prior unsuccessful appeals (now eleven) in this cause. The issue brought to us for consideration in connection with the current appeal has been denied with prejudice in two earlier proceedings in the trial court. As a result of one of those proceedings, an appeal was lodged with this court, and we affirmed. When the appellant, through her counsel, sought the identical relief in the trial court yet again, the result, not surprisingly, was another denial of relief with prejudice. Undeterred, the appellant sought relief in this court, and we once again affirmed the trial court and granted fees to the appellee for this utterly frivolous appeal.

Perhaps the egregiousness of the current proceeding should be spelled out more clearly.¹ This case grew out of a final judgment incorporating a mediation settlement agreement between the parties in February, 2003. The final judgment was not appealed and has never been vacated. Ms. Ayala first sought to have the agreement declared void in November, 2003, complete with what was to become a recurrent theme of “emergency” motions for relief. That case was eventually resolved against her with prejudice, and she appealed to this court. We affirmed the judgment *per curiam*.² She

¹ For brevity’s sake, we will omit the many other filings and appellate proceedings that grew out of this controversy, and focus instead only on the matters dealing with the judgment adopting the mediated settlement agreement.

² Case No. 5D04-3444. *Ayala v. Gonzalez*, 903 So. 2d 947 (Fla. 5th DCA 2005).

then unsuccessfully sought rehearing, rehearing en banc, and certification to the Florida Supreme Court.

Shortly after the affirmance of that judgment by this court in 2004, Ms. Ayala brought yet another case in the trial forum again seeking to have the mediation settlement agreement voided. The trial court again dismissed the case with prejudice on the basis of the doctrine of *res judicata*. Curiously, Ms. Ayala then sought mandamus relief from the appellate division of the *circuit* court. It is no surprise that this tactic failed, as well.

In 2005, she filed an “Amended Complaint and Motion for Declaratory Relief” in the circuit court once again seeking the identical avoidance of the mediated settlement agreement. This proceeding led to the order by Judge Grincewicz (the third circuit judge to enter a final order with respect to this particular matter), which was the subject of the present appeal. In that order Judge Grincewicz pointed out that this matter had, indeed, been dismissed with prejudice previously, and that the final judgment adopting the mediation agreement was valid and enforceable.

By our count Ms. Ayala, through her counsel, has through a variety of means tried at various judicial levels on nine different occasions to invalidate the mediation settlement agreement. All have been unsuccessful. Amazingly, the appellant now seeks rehearing because appellant’s counsel found it “incredulous” that we might disagree with him on this matter. The body of the motion describes in intimate detail how in his opinion we have made an absolute muddle of several foundation concepts in the law, and then proceeds to reargue the very same position that we rejected in this

appeal, as well as in at least one of the 10 previous unsuccessful appeals arising out of this dissolution of marriage filed by the appellant.

We thought that it was made relatively clear by this court in *Amador v. Walker*, 862 So. 2d 729 (Fla. 5th DCA 2003), that we do not view the privilege to seek a rehearing pursuant to rule 9.330, Florida Rules of Appellate Procedure, as an open invitation for an unhappy litigant or attorney to reargue the same points previously presented, or to discuss the bottomless depth of the displeasure that one might feel toward this judicial body as a result of having unsuccessfully sought appellate relief.

Accordingly, and in view of these violations of rule 9.330, and pursuant to rule 9.410, Florida Rules of Appellate Procedure, appellant's counsel, Rudolph C. Campbell, shall within 20 days from the date of this opinion, show cause in writing why monetary or other sanctions should not be imposed upon him for having filed a motion for rehearing and clarification in violation of the Florida Rules of Appellate Procedure.

The court reserves jurisdiction to impose such sanctions and to order further response, including the personal appearance of appellant's counsel, should the written response not be deemed sufficient.

MOTION FOR REHEARING DENIED; CLARIFICATION GRANTED; SHOW CAUSE ORDER ENTERED.

ORFINGER and TORPY, JJ., concur.