OSCA/OCI'S FAMILY COURT CASE LAW UPDATE APRIL 2014

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Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

P.W. v. State, __ So.3d __, 2014 WL 1415214 (Fla. 1st DCA 2014). DISPOSITION REVERSED AND REMANDED WHERE THE TRIAL COURT FAILED TO MAKE WRITTEN FINDINGS TO SUPPORT PLACEMENT LEVEL AS REQUIRED BY S. 985.441(2)(d), F.S. The juvenile appealed her commitment to a moderate-risk residential program. The juvenile raised two issues: (1) the trial court failed to comply with E.A.R. v. State, 4 So.3d 614 (Fla.2009), when departing from the recommendation of probation in the predisposition report; and (2) the trial court failed to make written findings to support placement at the moderate-risk residential restrictiveness level as required by s. 985.441(2)(d), F.S. The First District Court of Appeal affirmed as to the first issue based upon B.K.A. v. State, 122 So.3d 928 (Fla. 1st DCA 2013), and J.B.S. v. State, 90 So.3d 961 (Fla. 1st DCA 2012). The First District reversed as to the second issue based upon the State's confession of error and remanded for the trial court to make written findings in compliance with s. 985.441(2)(d), F.S. *See* K.M.H. v. State, 91 So.3d 262 (Fla. 1st DCA 2012).
http://opinions.1dca.org/written/opinions2014/04-14-2014/13-4696.pdf (April 14, 2014)

C.B.B. v. State, __ So.3d __, 2014 WL 1468051 (Fla. 1st DCA 2014). DENIAL OF MOTION FOR JUDGMENT OF DISMISSAL WAS IN ERROR BECAUSE THE STATE FAILED TO ESTABLISH A PRIMA FACIE CASE OF ROBBERY. The juvenile appealed his disposition order for robbery arguing that the State had failed to prove a prima facie case. According to the victim, he was riding his bicycle when a boy approached and grabbed his handlebars. Another boy, the juvenile, then struck the victim in the back of the head. The victim abandoned his bicycle and ran home. When he later returned to the scene, the bicycle was gone. He was not there when the bicycle was taken and he did not see anybody take the bicycle. The bicycle was located the next day in the vicinity of the boy who grabbed the handlebars. The juvenile and another minor were nearby. All three boys were charged with robbing the bicycle. The victim testified that he and the juvenile had a "beef" over a disputed spitting of water incident following a basketball game. The victim believed that the fight occurred because of the earlier incident; and the taking of the bicycle was something separate from the fight. The juvenile claimed that he punched the victim because the victim had previously spit a mouthful of water in his face; threw rocks at him and verbally taunted him prior to the knocking of the victim from his bicycle. The boy who grabbed the handlebars testified that the fight was motivated by the desire to retaliate for the spitting incident and not to obtain the bicycle. The juvenile argued that he did not take the bicycle and had no intent to deprive the

victim of his bicycle. The trial court had summarily denied the juvenile's motions for judgment of dismissal. The First District Court of Appeal found that the evidence showed that the force used by the juvenile against the victim was not in furtherance of a plan to obtain the victim's bicycle. Further, there was no basis for finding the juvenile had an intent to rob the bicycle. As the victim himself admitted, the juvenile had a pre-existing "beef" with the victim, and the blow to the head by the juvenile had nothing to do with the bicycle. Lastly, there was no basis in the record for finding that, when the juvenile attacked the victim, he knew another juvenile would take the bicycle. Therefore, the State failed to establish a prima facie case of robbery and the trial court erred in denying the juvenile's motion for a judgment of dismissal. Accordingly, the disposition order was reversed.
http://opinions.1dca.org/written/opinions2014/04-16-2014/13-5263.pdf (April 16, 2014)

Second District Court of Appeals
No new opinions for this reporting period.

Third District Court of Appeals
D.L. v. State, __ So.3d __, 2013 WL 1613659 (Fla. 3d DCA 2014). DENIAL OF MOTION FOR JUDGMENT OF DISMISSAL WAS IN ERROR BECAUSE THE STATE'S EVIDENCE WAS INSUFFICIENT TO SUPPORT AN ADJUDICATION FOR TRESPASS. Juvenile appealed the denial of his motion for judgment of dismissal and conviction for trespass. Police located a stolen vehicle and set up surveillance. An officer observed four individuals enter the vehicle. As the officer approached the vehicle from the rear with his police cruiser, the driver put the vehicle in reverse and collided with the police cruiser. The juvenile exited the vehicle and fled. It was unclear whether the juvenile was the driver or a backseat passenger due to conflicting testimony. However, the trial court, as trier of fact, made a specific finding that the juvenile was not the driver. The trial court found the juvenile not guilty on all counts associated with being the driver. The trial court did find the juvenile guilty of trespass, stating that "his flight convinces me that he had knowledge of the stolen nature of this vehicle, and that his entry into the vehicle would be trespass." On appeal, the juvenile argued that the trial court erred when it denied his motion for judgment of dismissal and found him guilty of trespass because the State had failed to prove that he knew the vehicle was stolen. The Third District Court of Appeal found that when a trespass involves a stolen vehicle, the State is required to prove the defendant's knowledge of the vehicle's stolen nature. In the instant case, the State failed to present any evidence to establish that the juvenile knew or should have known that the vehicle was stolen. Although the State presented evidence that the ignition was "punched", the State did not present evidence that one could see the "punched" ignition from the backseat. While evidence of flight is admissible and relevant to demonstrate a

defendant's consciousness of guilt, flight alone, was insufficient to warrant a verdict of guilty. Therefore, the juvenile's conviction for trespass was not supported by competent, substantial evidence and the trial court erred when it denied the juvenile's motion for judgment of dismissal. Accordingly, the Third District reversed the juvenile's conviction for trespass.
http://www.3dca.flcourts.org/Opinions/3D13-1125.pdf (April 23, 2014)

Fourth District Court of Appeals

A.W. v. State, __ So.3d __, 2013 WL 1301533 (Fla. 4th DCA 2014). DETENTION ORDER REVERSED BECAUSE THE TRIAL COURT FAILED TO COMPLY WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.150(a). The juvenile appealed a detention order, placing him in secure detention for contempt of court. The juvenile had been ordered him to appear in court for a pre-commitment physical examination. When the juvenile appeared, the following exchange took place:

> THE COURT: Why were you late this morning?
> THE JUVENILE: I wasn't late. I've been here.
> THE COURT: Any reason why I shouldn't hold you in contempt of court for the way you're acting? Any reason? All right. I'll hold you in direct contempt of court. Five days in the detention center for acting disrespectful to the Court. Go ahead and take him down. And do his, his physical.

The trial court entered a written detention order detaining the juvenile for five days "for being disrespectful to the court when asked why he was late for court." The juvenile appealed arguing that the court committed fundamental error in failing to follow the due process requirements of Florida Rule of Juvenile Procedure 8.150(a). The Fourth District Court of Appeal found that the written order was insufficient to comply with the recitation of facts required by rule 8.150(a). In addition, the trial court also failed to give the juvenile the opportunity to present evidence of excusing or mitigating circumstances as required by rule 8.150(a). Asking the defendant if he wished to explain his behavior does not meet the procedural requirement that he be given an opportunity to present evidence. Finally, no judgment was entered as required by rule 8.150(a). Although, there may have been contemptuous nonverbal actions on the part of the child, the record does not reflect them. Accordingly, the Fourth District reversed and remanded the case for the trial court to vacate the contempt order.
http://www.4dca.org/opinions/April%202014/04-02-14/4D12-1977.op.pdf (April 2, 2014)

B.G. v. State, __ So.3d __, 2013 WL 1373816 (Fla. 4th DCA 2014). DISPOSITION ORDER WAS REMANDED FOR CORRECTION. Juvenile appealed his disposition order arguing it should be

corrected because it failed to list his age, the degree of offenses, the statutory maximum for the offenses, and improperly assessed him a fee for teen court. The Fourth District Court of Appeal found that Florida Rule of Juvenile Procedure 8.115(d) provides, in relevant part, that a disposition order shall: (1) state the name and age of the child; and (2) state the disposition of each count, specifying the charge title, degree of offense, and maximum penalty defined by statute and specifying the amount of time served in secure detention before disposition. A disposition order must specify the period of commitment imposed by the court. In the instant case, the disposition order failed to specify the statutory maximum for the offenses, as well as the juvenile's age. Thus, it was impossible to tell, from the face of the order, the maximum length of the juvenile's commitment. It was not possible to determine the statutory maximum by referring to the statutes either, since the order simply listed "grand theft," which could have referred to a first, second, or third degree felony. Accordingly, the Fourth District held the disposition order was deficient and reversed and remanded for correction with directions to also delete the assessment for teen court costs.
http://www.4dca.org/opinions/April%202014/04-09-14/4D12-1719.op.pdf (April 9, 2014)

R.R. v. State, __ So.3d __, 2013 WL 1373814 (Fla. 4th DCA 2014). RESISTING AN OFFICER WITHOUT VIOLENCE ADJUDICATION AFFIRMED WHERE THE OFFICER HAD GROUNDS FOR AN INVESTIGATORY STOP AT THE TIME HE COMMANDED THE JUVENILE TO STOP AND WAS PERFORMING A LEGAL DUTY WHEN THE COMMAND WAS GIVEN. The juvenile appealed his adjudication for resisting an officer without violence. The juvenile argued that the arresting officer did not have reasonable suspicion to stop him, and therefore, was not performing a legal duty when he continued to run, even after the officer commanded him to stop. The juvenile also argued that flight alone is insufficient to form the basis for resisting an officer without violence. At around 3:00 p.m., a police officer observed the juvenile and another juvenile male walking in a parking lot. The juveniles were seen looking into several vehicles. In anticipation that the juveniles were going to commit or attempt to commit a burglary, the officer turned on his lights, exited his vehicle, made eye contact, and identified himself by stating, "Police, I need you guys to come over here." The two youths ran away. The officer yelled "Stop, police" and chased the juveniles in his vehicle. The two split up, and the officer followed and apprehended the juvenile. The juvenile was charged with resisting an officer without violence pursuant to s. 843.02, F.S. (2011). The juvenile moved for a judgment of dismissal. The circuit court reserved ruling on the juvenile's motion, but implicitly denied the motion when it subsequently adjudicated the juvenile delinquent as charged. The Fourth District Court of Appeal found that an officer's command to stop is a lawful execution of a legal duty if there is reasonable suspicion to support the stop. Here, the juvenile fled before the officer commanded him to stop. Prior to issuing the command to stop, the officer engaged in an investigatory stop, rather than a consensual encounter. The issue

was whether the officer had a reasonable suspicion necessary to justify a stop when the command to stop was given. The only reasons articulated by the officer for initially detaining the juvenile were the observations that the juvenile and his companion were looking into several vehicles. The officer did not testify that he saw the juveniles attempting to enter any vehicle, or that the location was a "high crime" area. Based on the facts articulated by the officer, there was no reasonable suspicion of criminal activity to initially justify an investigatory stop. However, the Fourth District found that s. 843.02, F.S. does not require a reasonable suspicion of criminal activity to exist before an individual flees, when officers first approach a suspect. *See* C.E.L. v. State, 24 So.3d 1181 (Fla. 2009)(Section 843.02 provided no basis for the interpretation that reasonable suspicion must arise before the flight begins). In the instant case, although the officer may not initially have had sufficient grounds for an investigatory stop, once the juvenile engaged in an unprovoked, headlong flight from the officer, that behavior, coupled with the officer's prior observations of the juvenile looking into the windows of two parked cars in a parking lot during the holiday season, supplied the officer with sufficient reason to conduct an investigatory stop. Therefore, when the officer then commanded the juvenile to stop, and the flight continued, the juvenile committed the offense of resisting an officer without violence. Accordingly, the denial of the juvenile's motion for judgment of dismissal was affirmed.
http://www.4dca.org/opinions/April%202014/04-09-14/4D12-2420.op.pdf (April 9, 2014)

C.C. v. State, __ So.3d __, 2013 WL 1612444 (Fla. 4th DCA 2014). IN ANDERS APPEAL, ORDER AFFIRMED WITHOUT PREJUDICE TO THE JUVENILE TO SEEK RELIEF IN THE TRIAL COURT WHERE ISSUES WERE NOT PRESERVED. In this Anders v. California, 386 U.S. 738 (1967) appeal, the juvenile appealed an order withholding adjudication and sentencing him to probation, following his plea to possession of marijuana. The Fourth District Court of Appeal found two errors. First, the trial court did not inquire into the juvenile's understanding of the rights he was waiving by entering the plea, nor did the trial court make any findings as to the voluntariness of the plea as required by Florida Rule of Juvenile Procedure 8.080. Second, the trial court did not specify the duration of the probation term. It cannot be determined from the record whether the trial court intended an indefinite period of probation or whether by oversight it omitted to state the period of probation. However, the juvenile failed to preserve these issues by filing a petition for writ of habeas corpus challenging the voluntariness of his plea or by moving to correct the disposition order. Because these issues were not preserved pursuant to Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii), the Fourth District affirmed without prejudice to the juvenile seeking relief in the trial court.
http://www.4dca.org/opinions/April%202014/04-23-14/4D13-2086.co.pdf (April 23, 2014)

T.D.W. v. State, __ So.3d __, 2013 WL 1686462 (Fla. 4th DCA 2014). DETECTIVE'S IDENTIFICATION

TESTIMONY, BASED ON A VIDEO CAMERA ANGLE NOT ADMITTED INTO EVIDENCE, VIOLATED THE BEST EVIDENCE RULE. The key issue at trial was whether the juvenile was adequately identified as one of the three boys who burgled a home. The identification was based in part on the testimony of a detective who described what she saw on a surveillance videotape she viewed outside the courtroom. When the detective first watched the video, it contained four views from different cameras. The video in evidence contained just three of these views. The detective testified that even though the court was unable to view the portion of the surveillance video upon which she based her identification, that unavailable view clearly showed all three subjects and their faces. The crucial camera angle upon which the detective based her identification did not appear on the copy of the video offered into evidence. The juvenile timely raised a "best evidence" objection, which the court overruled. On appeal, the Fourth District Court of Appeal found that the detective's testimony, identifying the juvenile on the surveillance video, violated the best evidence rule. Section 90.952, F.S. (2012), commonly known as the best evidence rule, requires that "when the contents of a writing, recording or photograph are being proved, an original must be offered unless a statutory excuse for the lack of an original exists." Section 90.954, F.S. (2012), sets forth exceptions to the requirement for originals. If an exception cannot be shown, the testimony of a witness about the contents of the original is inadmissible. In the instant case, the detective's testimony—that she saw a better camera angle, not present on the video in evidence, that clearly depicted appellant's face—violated the best evidence rule. The State failed to establish that the video view was "lost or destroyed" within the meaning of s. 90.954, F.S. and none of the other exceptions were applicable. The Fourth District found that the best evidence rule violation was not harmless error. The trial court had expressed concerns about the sufficiency of the evidence and that none of the identifications individually would have been enough to prove the case. As a result, the Fourth District could not conclude beyond a reasonable doubt that the improper identification based on the unadmitted video view did not contribute to the judgment. Accordingly, the Fourth District reversed the juvenile's convictions and sentences and remanded for a new trial.
http://www.4dca.org/opinions/April%202014/04-30-14/4D13-117.op.pdf (April 30, 2014)

Fifth District Court of Appeals

J.S. v. State, __ So.3d __, 2013 WL 1632110 (Fla. 5th DCA 2014). ADJUDICATION FOR THREE COUNTS OF POSSESSING WITH INTENT TO TRANSMIT OR SHOW OBSCENE MATTER, VIOLATED DOUBLE JEOPARDY WHERE THE JUVENILE ONLY POSSESSED ONE OBSCENE VIDEO. The juvenile was adjudicated delinquent of three counts of possessing with intent to transmit or show obscene matter, in violation of ss. 847.011(1)(a) & (c), F.S. (2012). On appeal, the juvenile argued this was a violation of double jeopardy because he only possessed one obscene video. The State

argued that the three separate adjudications should be affirmed because the juvenile displayed the video on three occasions to three different individuals. The Fifth District Court of Appeal found that adjudication on all three counts violated double jeopardy. The possession of the obscene material was the unit of prosecution. Because possession is a continuing crime, only one adjudication can be sustained. This is not a case where the juvenile possessed the same item on several occasions due to a break or interruption. Accordingly, the case was reversed and remanded.

http://www.5dca.org/Opinions/Opin2014/042114/5D13-2989.op.pdf (April 25, 2014)

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

J.P., Sr. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ____, 2014 WL 1379859 (Fla. 2nd DCA 2014). ADJUDICATION OF DEPENDENCY REVERSED. The Second District Court of Appeal reversed an adjudication of dependency that had been based on grounds of neglect due to a lack of evidence. The father was arrested at his sister's home where he was living with his children and an unsecured gun was found in a bedroom. The weapon was confiscated and charges against the father were ultimately dropped. The trial court found the children to be dependent based on neglect. On appeal, the court reviewed the statutory definition of a dependent child and noted that with no evidence of actual harm to the children, adjudication of dependency rests on the existence of a substantial risk of imminent harm to the children. The District Court noted that the finding of neglect was premised on the weapon's presence in the home and therefore when the police confiscated the weapon, the danger to the children was removed. No evidence at trial showed any remaining risk of harm to the children. The adjudication of dependency was therefore reversed.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2009,%202014/2D13-4135.pdf (April 9, 2014)

J.M. and D.B. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ____, 2014 WL 1622050 (Fla. 2nd DCA 2014).
CERTIORARI GRANTED IN PART REGARDING SUBSTANCE ABUSE EVALUATIONS
The Second District Court of Appeal quashed a trial court's order for parents to undergo substance abuse evaluations. The parents had petitioned for a writ of certiorari to quash the disposition order that, *inter alia*, required them to submit to a substance abuse evaluation. The trial court departed from the essential requirements of the law because a substance abuse evaluation was not relevant to the dependency nor would it meaningfully address the facts and circumstances which resulted in the children's removal from the home. The petition for certiorari was therefore granted with regard to substance abuse evaluations. However, the District Court did note that the case plan could be amended under section 39.6013 and Juvenile Rule 8.420, if necessary.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2023,%202014/2D13-5345.pdf (April 23, 2014)

B.K. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ____, 2014 WL 1696142 (Fla. 2nd DCA 2014). PERMANENT GUARDIANSHIP REVERSED. The Second District Court of Appeal reversed an order of permanent guardianship and remanded the case for a new order resolving the matter in the father's favor unless there was additional

evidence showing that reunification cannot occur. The father was not living with the children when they were removed in May 2012 from the home in Volusia County where the mother was living with her boyfriend. The children were sheltered and placed with the maternal grandparents in Hillsborough County. The children were adjudicated dependent based on the mother's consent. The father was living in Tennessee and had limited contact with the children. The children were to remain with the grandparents while a transition plan to Tennessee was implemented. If placement with the father could not be achieved, permanency with the grandparents was an alternate goal. Subsequently, a favorable home study was completed in Tennessee; the father completed drug tests and remained substance free; and there was extended unsupervised visitation between the children and the father and his new wife in Tennessee. The case was transferred from the Seventh Circuit to the Thirteenth Circuit before the transition plan was formally completed. The department agreed that the father was in compliance before transfer of the case and allegations related to him were dismissed. Moreover, the court found that not extending the transition plan would endanger the children's welfare. The court did not find that placement with the father would endanger the children, and the mother was the only person with case plan tasks to complete. In May 2013, the department moved to terminate services; requested the children be placed permanently with the grandparents; and argued that reunification would be contrary to the welfare and not in the best interest of the children. The department also stated that the court previously determined that placement with the father would pose a risk to the children's health, safety, and well-being. After a hearing, the court in Hillsborough County found that a change of placement to the father would endanger the health, safety, well-being, and mental and emotional health of the minor children. After a subsequent hearing, the court granted permanency with the grandparents and denied the father's motion for reunification. The court granted the father liberal unsupervised visitation. On appeal, the court held that the trial court abused its discretion in denying the father's motion for reunification and granting permanent placement with the grandparents. The court held that trial court's conclusions were not reasonably objective or based on any specific findings. The trial court also abused its discretion in finding that the father failed to complete a case plan for which had no tasks. In addition, it was unsupportable for the trial court in Hillsborough County to use the same opinions and evidence before the court in Volusia County as a basis for an opposite determination, particularly when the children had successfully transitioned to long unsupervised visits with the father. In reversing the order, the District Court also noted that the mother was close to substantive compliance with her case plan and therefore the court on remand should make any necessary determinations regarding the mother's visitation and parenting rights.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2030,%202014/2D13-3839.pdf (April 30, 2014)

Third District Court of Appeals

R.B. v. Department of Children and Families, ___ So. 3d ____, 2014 WL 1393103 (Fla. 4th DCA 2014). TERMINATION OF PARENTAL RIGHTS AFFIRMED. The Third District Court of Appeal affirmed termination of parental rights based on incarceration when the child was two and one half years old. The court held that substantial competent evidence supported the trial judge's finding that the parent would be incarcerated for a significant portion of the child's minority.
http://www.3dca.flcourts.org/Opinions/3D13-2753.pdf (April 9, 2014)

Fourth District Court of Appeals

O.A.A. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ____, 2014 WL 1612630 (Fla. 4th DCA 2014). TERMINATION OF PARENTAL RIGHTS AFFIRMED. The Fourth District affirmed termination of parental rights for abandonment. The court on appeal found competent, substantial evidence that the father abandoned his children. The court further held that termination of the father's rights passed the least restrictive means test and that termination was in the children's best interest. The court therefore affirmed the trial court's orders.
http://www.4dca.org/opinions/April%202014/04-23-14/4D13-4133.op.pdf (April 23, 2014)

Fifth District Court of Appeals

No new opinions for this reporting period.

Dissolution Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

Taylor v. Lutz, __So.3d__, 2014 WL 1356057, 39 Fla. L. Weekly D721, (Fla.1st DCA, April 7, 2014). NON-MODIFIABLE BRIDGE-THE-GAP ALIMONY DID NOT TERMINATE ON REMARRIAGE; TRIAL COURT ABUSED ITS DISCRETION IN FEE AWARD. A provision in the marital settlement agreement (MSA) adopted in the final judgment of dissolution obligated former husband to pay former wife non-modifiable bridge-the-gap alimony of $500 per month for three years. Former husband made two partial payments of $235 each. A year later, the trial court entered an order finding that he owed over $5000 in unpaid alimony and attorney's fees. Former wife remarried shortly after. A year later, she again moved to enforce his obligations. Although former husband's failure to pay was not in dispute, he argued that pursuant to section 61.08(5), Florida Statutes (2010), his alimony obligation automatically terminated on former wife's remarriage. The trial court agreed, but the appellate court found that the trial court had erroneously interpreted the law. First, spouses in dissolution proceedings are free to agree to obligations a trial court cannot order in absence of an agreement. Second, an MSA is a contract subject to interpretation as any other contract. If its terms are unambiguous, a court must treat them as evidence of the spouses' intentions. Third, "it is not what [the alimony] is called but what it is that fixes its legal status. It is the substance and not the form which is controlling." *Underwood v. Underwood*, 64 So.2d 281, 288 (Fla. 1953). Appellate court concluded that the MSA was clear and unambiguous; the agreed-upon alimony was $500 per month for three years. There was no provision stating that it would cease upon former wife's remarriage. The fact that that language is in the statute was "not determinative"; the unambiguous language of the agreement controlled. As to fees, appellate court held that the trial court abused its discretion by awarding fees to former wife as the prevailing party without relying on a lodestar amount (reasonable hours times a reasonable hourly rate) as a starting point. Reversed and remanded.
http://opinions.1dca.org/written/opinions2014/04-07-2014/13-3659.pdf (April 7, 2014).

Sanford v. Davis, __So.3d__, 2014 WL 1666009, (Fla.1st DCA, April 25, 2014).
TRIAL COURT ERRED IN MODIFYING CHILD SUPPORT IN ABSENCE OF REQUEST FOR MODIFICATION OR FACTUAL FINDINGS TO SUPPORT REDUCTION. Appellate court agreed with former wife that the trial court erred in modifying an existing child support order in absence of any request for modification and without appropriate factual findings to support the reduction in child support.
http://opinions.1dca.org/written/opinions2014/04-25-2014/13-3354.pdf (April 25, 2014).

Second District Court of Appeals

Anderson v. Anderson, __ So.3d__, 2014 WL 1303420, 39 Fla .L. Weekly D681, (Fla.2d DCA, April 2, 2014). AUTOMATIC CHANGES IN ALIMONY BASED ON FUTURE EVENTS ARE GENERALLY DISFAVORED; PROSPECTIVE MODIFICATIONS MAY BE APPROPRIATE IF CAFEFULLY CRAFTED. Former husband appealed trial court order granting a temporary reduction in his alimony

obligation. Appellate court reversed the order to the extent it provided that the reduced alimony would automatically revert to the premodification amount conditioned on an increase in former husband's income to bring the relative income levels of the spouses to what they were at the time of the final judgment. Appellate court held that automatic changes in alimony based on future events are generally disfavored; however, "prospective modifications may be appropriate when they are 'carefully conditioned upon specifically articulated changes in circumstances which would virtually preclude the possibility of unfairness to either party.'" *Walker v. Walker,* 818 So.2d 711,713 (Fla.2d DCA 2002) quoting *Kangas v. Kangas*, 420 So.2d 115 (Fla.2d DCA 1982). Appellate court found an absence of "such carefully crafted conditions" in the trial court's order which ignored "the myriad factors" that might impact former husband's future ability to pay. Appellate court cited *Austin v. Fernandez*, 898 So.2d 118 (Fla.3d DCA 2005), entitling a spouse to a temporary reduction in alimony until he got "back on his financial feet"; once his income increased, the other spouse could petition for an upward modification of alimony.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2002,%202014/2D12-1048.pdf (April 2, 2014).

Rutan v. Rutan, __So.3d__, 2014 WL 1347072, 39 Fla. L. Weekly D714, (Fla.2d DCA, April 4, 2014). TRIAL COURT'S FAILURE TO MAKE SUFFICIENT FINDINGS OF FACT PRECLUDES MEANINGFUL APPELLATE REVIEW AND IS REVERSIBLE ERROR. Former husband appealed former wife's alimony award in the dissolution of a thirty year marriage. Appellate court reversed because the lack of sufficient findings in the judgment precluded meaningful appellate review. At the time of the dissolution, the spouses owned three pieces of residential real estate, including the marital home. All except the home were income-producing. The dissolution proceedings were bi-furcated with the trial court reserving jurisdiction to determine alimony after the equitable distribution. The assets and liabilities were equitably distributed with former husband receiving the income-producing properties and former wife the marital home. Former husband remained responsible for the mortgage on the home and was ordered to make an equalization payment to former wife. The trial court then determined former wife had established a need for permanent alimony and former husband had the ability to pay; however, it did not determine an amount for either spouse's income. A trial court's failure to make sufficient factual findings is reversible error. Appellate court concluded that it could not perform an adequate review as to whether the trial court had properly calculated the spouses' income and expenses and whether the awards based on those calculations were correct. It reversed and remanded for the trial court to make findings of fact to enable meaningful review of former husband's ability to pay the amount ordered.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2004,%202014/2D13-1322.pdf (April 4, 2014).

Fritz v. Fritz, __So.3d__, 2014 WL 1344514, 39 Fla. L. Weekly D715, (Fla.2d DCA, April 4, 2014). TRIAL COURT'S ORDER DISTRIBUTING PENSION DID NOT REFLECT SPOUSES' ORAL AGREEMENT AND USED WRONG COVERTURE FRACTION. Appellate court agreed with former husband that an order for division of military retirement pay (MPO) did not accurately reflect the spouses' oral agreement as to how his military pension would be distributed and employed a legally incorrect coverture fraction. An oral agreement announced to a trial court is considered an enforceable settlement agreement so long as there is mutual agreement on every essential term. Here, the

only agreement clear from the transcript was that former wife would receive one-half of the portion of former husband's pension earned during the marriage. The MPO drafted by former wife's counsel and signed by the trial judge contained additional provisions not agreed to by the spouses which would have resulted in former wife receiving more than one-half of the portion of former husband's pension earned during the marriage. After explaining the proper method of calculating the marital portion of a retirement account, appellate court reversed the MPO and remanded for further proceedings. The trial court was instructed on remand to enter a new MPO reflecting the spouses' oral agreement and containing provisions necessary to determine and apply the correct coverture fraction.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2004,%202014/2D13-2746.pdf (April 4, 2014).

Alarcon v. Alarcon, __So.3d__, 2014 WL 1382728, 39 Fla. L. Weekly D738, (Fla.2d DCA, April 9, 2014). APPEAL OF ATTORNEY'S FEES PREMATURE BECAUSE TRIAL COURT RULING ONLY ADDRESSED SPOUSE'S ENTITLMENT TO FEES NOT AMOUNT. Former husband appealed a supplemental final judgment which modified time-sharing and child support and determined former wife was entitled to attorney's fees. Appellate court affirmed the time-sharing and child support issues without comment and dismissed as premature the issue regarding attorney's fees because the trial court's ruling only addressed entitlement to fees without determining an amount former husband was obligated to pay.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2009,%202014/2D13-1476.pdf

Valentine v. Valentine, __So.3d__, 2014 WL 1652532, (Fla.2d DCA, April 25, 2014). TRIAL COURT INSTRUCTED ON REMAND TO RECALCULATE AS NECESSARY AND TO CORRECT DISCREPANCIES IN THE FINAL JUDGMENT; IF SPOUSE PUBLISHED BOOK BASED ON JOURNAL KEPT DURING THE MARRIAGE, TRIAL COURT WOULD DETERMINE AT THAT TIME WHETHER ITS PROCEEDS WOULD QUALIFY AS MARITAL ASSETS. Former wife appealed final judgment of dissolution. Appellate court instructed the trial court on remand to recalculate the child support guidelines using the correct number of minor children and the correct income statements. It also instructed the trial court to recalculate, if necessary, any obligations regarding insurance, school, and medical and dental costs, and to correct any conceded discrepancies between the equitable distribution schedule attached to the final judgment and the final judgment. A separate issue regarding equitable distribution stemmed from a potential book former wife might write about the death of her sister, based on a journal she kept during the marriage. The final judgment both equitably distributed the book's proceeds fifty-fifty between the spouses, and reserved jurisdiction as to the "current and future" issues regarding the book. Appellate court read the final judgment as a reservation of jurisdiction to consider the matter in the future as opposed to an award of interest at present time. It held that if former wife published a book based on the journal she kept during the marriage or published the journal itself, the trial court would determine then if any portion of the book's proceeds qualified as marital assets.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2025,%202014/2D12-5245.pdf (April 25, 2014).

Valenta v. Valenta, __ So.3d__, 2014 WL 1714221, (Fla.2d DCA, April 30, 2014). IN LIGHT OF ONE SPOUSE TAKING ON THE FULL COST OF PRIVATE SCHOOL TUITION, MAGISTRATE ABATED CHILD SUPPORT THAT SPOUSE OWED TO THE OTHER, BUT FAILED TO EXPRESSELY TERMINATE THE OTHER SPOUSE'S OBLIGATION TO PAY HALF THE TUITION; REMANDED FOR ORDER CLARIFYING TERMINATION OF OTHER SPOUSE'S OBLIGATION TO PAY HALF OF THE TUITION. Pursuant to the dissolution final judgment, former husband was ordered to pay child support to former wife and half of their child's private school tuition. Both spouses petitioned for modification. Former husband sought child support from former wife based on a change in the spouses' financial circumstances. At the hearing, former wife testified that she had paid all of the private school tuition and agreed to continue to be solely responsible for it in the future. Based upon this, the magistrate abated the "nominal" child support she owed to former husband until the private school was terminated; however, the magistrate did not expressly terminate former husband's obligation to pay half the tuition in the future. Appellate court remanded for entry of an order clarifying he was no longer obligated to pay half of the remaining private school tuition. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/April/April%2030,%202014/2D12-4741.pdf (April 30, 2014).

Third District Court of Appeals

Glaister v. Glaister, __So.3d__, 2014 WL 1301502, 39 Fla. L. Weekly D703, (Fla.4th DCA, April 2, 2014). TRIAL COURT IS BOUND BY MAGISTRATE'S FACTUAL FINDINGS AND RECOMMENDATION UNLESS THEY ARE UNSUPPORTED BY THE EVIDENCE AND CLEARLY ERRONEOUS; TRIAL COURT ERRED IN STRIKING SPOUSE'S EXCEPTIONS AND ADOPTING A REPORT NOT SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; RELIEF NOT PLEAD CANNOT BE GRANTED. Former husband petitioned for modification pursuant to an MSA providing that his child support obligation for each child would terminate when the child turned 18 or graduated from high school before turning 19. He requested a refund or credit against future payments for any overpayment since the date of son's graduation; however, he did not request either a recalculation of support or imputation of income to former wife. The magistrate rejected former wife's testimony regarding her earned income as unreliable and untruthful, imputed income to her using information not previously introduced or noticed to either party, and recommended granting former husband's petition. The magistrate based her personal experience of obtaining nail services locally for 30 years in addition to having presided over cases involving nail technicians as a basis for rejecting former wife's testimony. The trial court struck former wife's exceptions and adopted the magistrate's report in its order granting the petition and ordering retroactive modification. Former wife appealed. Appellate court held that a trial court is bound by a magistrate's factual findings and recommendations unless they are unsupported by the evidence and clearly erroneous. Here, the general magistrate erred in: considering and admitting irrelevant and inadmissible evidence; granting relief not requested; and taking judicial notice of sources without advance to the parties. For the magistrate to substitute her own experience and to rely on information from other cases was "clearly erroneous"; she also erred in taking judicial notice of sources to impute income without affording either party a reasonable opportunity to refute them. Finding that the trial court erred in striking former wife's exceptions and adopting a report unsupported by competent, substantial evidence, appellate court reversed and remanded. http://www.4dca.org/opinions/April%202014/04-02-14/4D13-127.op.pdf (April 2, 2014).

Davis v. Lopez-Davis, __So.3d__, 2014 WL 1373821, 39 Fla. L. Weekly D725, (4th DCA, April 9, 2014). TRIAL COURT IS BOUND BY MAGISTRATE'S FACTUAL FINDINGS AND RECOMMENDATION UNLESS THEY ARE UNSUPPORTED BY EVIDENCE AND CLEARLY ERRONEOUS; TRIAL ABUSED ITS DISCRETION IN ADOPTING REPORT DENYING ANY TIME-SHARING TO FATHER; RESTRICTION OF TIME-SHARING GENERALLY DISFAVORED UNLESS NECESSARY TO PROTECT CHILD'S WELFARE; JUDGMENT LACKED STEPS FATHER MUST TAKE TO ESTABLISH TIME-SHARING; RELIEF NOT PLEAD CANNOT BE GRANTED Former husband appealed an amended final judgment of dissolution which denied him any time-sharing with the minor child. Again, appellate court noted that a trial court is bound by a magistrate's report and recommendations unless they are unsupported by the evidence and clearly erroneous. A trial court's decision to accept or reject a magistrate's conclusions is reviewed for abuse of discretion. Appellate court found the trial court abused its discretion in denying former husband any time-sharing with the child because the evidence did not establish that was necessary to protect the child's welfare. Restriction of time-sharing is generally disfavored unless the restriction is necessary to protect the welfare of the child. Appellate court found the judgment lacking by failing to set forth the steps former husband must take to establish time-sharing. It termed the trial court's reasoning that former husband should be denied any time-sharing because he had been absent from Florida and did not know the child a "catch-22", which would deprive him of rectifying the problem which resulted in his loss of time-sharing. Former wife had requested primary residential custody with former husband being allowed supervised visitation; she had not requested former husband be denied all time-sharing. Trial court was without jurisdiction to grant relief she did not request. Reversed and remanded. http://www.4dca.org/opinions/April%202014/04-09-14/4D12-729.op.pdf (April 9, 2014).

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeal

Fairchild v. Fairchild, __So.3d__, 2014 WL 1325692, 39 Fla. L. Weekly D712, (Fla.5th DCA, April 4, 2014). COLLATERAL CHILD SUPPORT EXPENSES USUALLY ALLOCATED IN THE SAME % AS CHILD SUPPORT; SPOUSES WERE EACH ENTITLED TO A CREDIT FOR HALF THE MONEY SPENT TO MAINTAIN MARITAL PROPERTY; SPOUSE WAS ENTITLED TO HALF THE 401(k) BENEFITS FORFEITED BY THE OTHER SPOUSE'S EMPLOYEES WHO WERE TERMINATED PRIOR TO THE FILING OF THE DISSOLUTION PETITION; SPOUSE WHO PAID FEES FROM NONMARITAL ACCOUNT WAS ENTITLED TO CREDIT FOR HALF THE MARITAL FUNDS OTHER SPOUSE USED TO PAY HER FEES. Both spouses appealed final judgment of dissolution on several issues. The spouses agreed that the trial court erred in its equitable distribution worksheet by doubling the amount former husband should been credited for his contributions to the upkeep of a home during the proceedings and in ordering them to split the cost of their minor child's uncovered medical expenses 50-50 instead of on a pro rata basis. Absent logic to the contrary, collateral child support expenses are allocated in the same percentage as the child support allocation. The spouses also agreed that the final judgment should include the month, day, and year that the reduction or elimination of child support would become effective. Appellate court agreed with former wife that she was entitled to a credit for half the money she spent to maintain a particular property

during the proceedings. She was also entitled to half the 401(k) benefits forfeited to former husband from the accounts of three employees terminated from his medical practice prior to the filing date of the dissolution petition. Appellate court agreed with former husband that the trial court erred in failing to credit him with half of the marital funds former wife used for attorney's fees during the proceedings; he had paid his fees from nonmarital funds. It noted that former wife could move for fees pursuant to section 61.16, Florida Statutes, if she was "in need of assistance" after the equitable distribution equalizing payment was recalculated on remand.
http://www.5dca.org/Opinions/Opin2014/033114/5D11-2755.op.pdf (April 4, 2014).

Albanese v. Albanese, __So.3d__, 2014 WL 1325667, 39 Fla. L. Weekly D710, (Fla.5th DCA, April 4, 2014). TEMPORARY RELOCATION ORDER REVERSED; TRIAL COURT FAILED TO MAKE A FINDING THAT RELOCATION WAS IN CHILDREN'S BEST INTEREST; LACK OF COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THAT FINDING. Appellate court agreed with former wife that the trial court's temporary order allowing former husband to relocate with their children lacked both a finding that relocation would be in the children's best interest and competent, substantial evidence to support that finding. Although the evidence might have supported a finding that the relocation was in former husband's best interest, it was insufficient to establish that it was in the children's best interest. Former wife's testimony that the sons would suffer emotional harm from the relocation was not addressed by the trial court "other than to acknowledge its concerns regarding the emotional health of the children."
http://www.5dca.org/Opinions/Opin2014/0331114/5D13-4469.op.pdf (April 4, 2014).

Overcash v. Overcash, __So.3d__, 2014 WL 1393035, 39 Fla. L. Weekly D761, (Fla.5th DCA, April 11, 2014). ORDER LACKED FINDINGS OF FACT ON PRESENT ABILITY TO PAY. Trial court civil contempt order lacked requisite findings of fact establishing former husband had the present ability to make the ordered payments.
http://www.5dca.org/Opinions/Opin2014/040714/5D13-1160.op.pdf (April 11, 2014).

Puglisi v. Puglisi, __So.3d__, 2014 WL 1491134, 39 Fla. L. Weekly D816, (Fla.5th DCA, April 17, 2014). A TRIAL COURT IS NOT BOUND BY AGREEMENT BETWEEN PARTIES REGARDING CHILD SUPPORT, CUSTODY, OR VISITATION; BEST INTEREST OF CHILD IS OVERRIDING CONCERN AND MUST BE INDEPENDENTLY DETERMINED BY THE COURT; PURPOSE OF SECTION 57.105 IS TO DETER MERITLESS FILINGS. Former husband appealed a final judgment which awarded section 57.105 fees to former wife after entry of a final judgment incorporating the terms of an oral agreement reached by the spouses before the judge. Former husband had opposed entry of the judgment incorporating the oral stipulation; former wife asked for and was awarded 57.105 fees after entry of the judgment. Appellate court reversed. Appellate court held that section 57.105, Florida Statutes (2011), authorizes sanctions in the form of fees and other expenses if a trial court determines that either a party or the party's attorney knew or should have known at the time a claim or defense was presented that it was not supported by material facts or would not be supported by the application of the law to those facts. The purpose of the statute is to "deter meritless filings"; the standard of review is abuse of discretion. Appellate court noted that "in the usual case", an oral settlement is binding and enforceable in absence of such factors as fraud, deceit, and duress, but that cases involving issues of custody and visitation have the children's

best interest as their "overriding concern." A trial court is not bound by an agreement of the parties as to those issues; it must independently determine the child's best interest. A child's best interest takes precedence over any agreement between the parents. Appellate court held that to uphold the fee award it would have to determine that the "finality of the court-approved oral settlement" was so clear that former husband's attempt to set it aside amounted to bad faith. http://www.5dca.org/Opinions/Opin2014/041414/5D12-2572.op.pdf (April 14, 2014).

Wright v. Wright, __ So.3d__, 2014 WL 1491110, 39 Fla. L. Weekly D817, (Fla.5th DCA, April 17, 2014). PRIMARY FACTOR IN DETERMINING ALIMONY IS NEED OF ONE SPOUSE AND ABILITY OF OTHER TO PAY; AN 18 YEAR MARRIAGE QUALIFIES AS LONG-TERM AND RAISES PRESUMPTION FOR PERMANENT, PERIODIC ALIMONY IF NEED IS DEMONSTRATED; TRIAL COURT MUST MAKE SUFFICIENT FINDINGS OF FACT. Both spouses appealed the final judgment dissolving their eighteen year marriage. Appellate court found merit in two issues raised by former wife and affirmed the remaining issues without comment. Noting that an eighteen year marriage qualifies as long-term, thus raising the presumption for permanent, periodic alimony if need is demonstrated, appellate court held that it was unable to conclude whether former wife was entitled to permanent alimony because the trial court failed to set forth sufficient findings of fact. Appellate court found the record "conflicted" as to several factors, including the spouses' standard of living during the marriage and "murky" with regard to former wife's current living expenses and whether her current income was capable of meeting those expenses. It held that the primary factor for a trial court to consider in determining alimony is the need one spouse has for it and the ability of the other spouse to pay. A trial court should be "mindful" that a spouse should not be required to liquidate and deplete their assets to provide for living expenses or left unable to meet basic needs. Appellate court reversed as to alimony, with a possible reconsideration by the trial court as to child support depending on its decision on alimony. Because the final judgment required former wife to both bear the utility and related costs in the marital home while also requiring her to split them with former husband, appellate court instructed the trial court to clarify the judgment on remand.
http://www.5dca.org/Opinions/Opin2014/041414/5D13-460.op.pdf (April 17, 2014).

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Drug Court/Mental Health Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.