

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE AUGUST 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

G.M. v. State, __ So. 3d __, 2014 WL 4056697 (Fla. 1st DCA 2014). **THE JUVENILE WAS ENTITLED TO IMMEDIATE RELEASE WHERE THE POST-COMMITMENT SECURE DETENTION CLEARLY EXCEEDED THE STATUTORY MAXIMUM.** The First District Court of Appeal had previously granted habeas corpus relief. This opinion was issued to explain their reasoning. The juvenile had entered a plea in a delinquency proceeding and was released to home detention. At disposition, the juvenile was adjudicated delinquent and was ordered into secure detention pending placement in a moderate-risk facility. At a review hearing 29 days later, the Department of Juvenile Justice (DJJ) informed the trial court that the juvenile was on a waiting list for the moderate-risk program. The DJJ asserted that one of the reasons a placement determination had not yet been made was because the juvenile had failed to cooperate when DJJ attempted to administer psychiatric or educational questions to the juvenile. The trial court ordered that the juvenile continue to be held in secure detention. The juvenile filed a petition for writ of habeas corpus arguing that he had been detained longer than the 15-day maximum post-commitment detention allowed under s. 985.27(1)(a), F.S. (2014). The First District found that the power to place juveniles in detention is entirely statutory. Therefore, strict compliance with the statute is required. Section 985.27(1)(a), F.S. (2014), provided a 15-day maximum for post-commitment detention. The First District noted that the juvenile's failure to cooperate with DJJ staff may have resulted in a contempt proceeding; however, there was no showing that the due process procedural requirements of the statutes or rules were met. Because the juvenile was detained longer than the 15-day maximum post-commitment detention and there was no showing that the due process procedural requirements of the rules or statutes on contempt had been satisfied, the First District granted the petition for writ of habeas corpus and ordered that the juvenile be immediately released from detention.

https://edca.1dca.org/DCADocs/2014/3262/143262_DC03_08182014_113332_i.pdf (August 18, 2014)

Second District Court of Appeals

B.R. v. State, __ So. 3d __, 2014 WL 4055636 (Fla. 2d DCA 2014). **THE JUVENILE COULD BE HELD IN SECURE DETENTION FOR FIFTEEN DAYS FOLLOWING HER ADJUDICATION PURSUANT TO S. 985.26(3), F.S., BASED UPON THE FINDING THAT THE JUVENILE PRESENTED A SUBSTANTIAL RISK OF NOT APPEARING AT A SUBSEQUENT HEARING.** The Second District Court of Appeal had previously denied the juvenile's petition for writ of habeas corpus. This opinion was issued to explain their reasoning. Following an adjudicatory hearing on two violation of probation allegations, the trial court placed the juvenile in secure detention pending disposition. The juvenile was not in secure detention at the time of the adjudicatory hearing. The juvenile argued that the permissible length of detention following an adjudicatory hearing was seventy-two hours with a possible seventy-two-hour extension under s. 985.26(5), F.S. The trial court found that the juvenile presented a substantial risk of not appearing at her disposition hearing and that

under s. 985.26(3), F.S., she could be held in secure detention for fifteen days after her adjudicatory hearing. The juvenile filed an emergency petition for writ of habeas corpus, arguing that pursuant to s. 985.26(5), F.S., her continued detention was illegal because she was not in secure detention at the time of the adjudicatory hearing. The Second District found that s. 985.24, F.S., provides that all detention care determinations must be based on certain findings enumerated in the statute and may not be based on other expressly prohibited findings. The enumerated legitimate finding applicable to the juvenile's case was that the juvenile presented a substantial risk of not appearing at a subsequent hearing. Based on that finding, the relevant period at issue was the time between the juvenile's adjudicatory hearing and her disposition. Thus, the applicable statute was s. 985.26(3), F.S., which provided that the juvenile could be detained for up to fifteen days following the entry of an order of adjudication. The Second District rejected the juvenile's contention that s. 985.26(5), F.S., applies solely because she was not in secure detention at the time of her adjudication. Accordingly, the trial court did not err in concluding that the juvenile could be held in secure detention for fifteen days following her adjudication and juvenile's petition for writ of habeas corpus was denied.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/August/August%2015,%202014/2D14-385.pdf (August 15, 2014)

Third District Court of Appeals

A.M. v. State, __ So. 3d __, 2014 WL 3844034 (Fla. 3d DCA 2014). **CORRECTION OF STATUTORY CITATION**. The Fourth District Court of Appeal granted the petitioner's motion for rehearing to correct statutory citation. The Fourth District withdraw its July 16, 2014, opinion in A.M. v. State, __ So. 3d __, 2014 WL 3456157 (Fla. 3d DCA 2014), and issued an opinion that corrected a statutory citation. The holding of the case and the court's reasoning remained the same.

<http://www.3dca.flcourts.org/Opinions/3D14-1259.rh.pdf> (August 6, 2014)

Fourth District Court of Appeals

D.J.D. v. State, __ So. 3d __, 2014 WL 3843152 (Fla. 4th DCA 2014). **ADJUDICATION FOR ASSAULT ON A LAW ENFORCEMENT OFFICER WAS REDUCED TO ASSAULT BECAUSE THE OFFICER WAS NOT ENGAGED IN THE LAWFUL PERFORMANCE OF A DUTY AT THE TIME OF THE ASSAULT**. On appeal, the juvenile argued that the circuit court erred in denying his motion for judgment of dismissal to reduce the charge from assault on a law enforcement officer to the lesser included offense of assault. The juvenile argued that the officer was not engaged in the lawful performance of a duty when the assault occurred. Police officers were dispatched to assist a Department of Children and Families (DCF) investigation. The DCF investigator advised the officers that she discovered the juvenile living with a woman being investigated and her child. The woman told the DCF investigator she believed that the juvenile was an adult. When the woman learned that the juvenile was not an adult, she said that she wanted the juvenile to leave. The officers contacted the juvenile's mother and told her to pick him up. The officers instructed the juvenile that he was not to come back to the apartment and that he was being turned over to his mother. The juvenile said that he did not want to go with his mother and wanted to walk off on his own. The officers told him that he had to be turned over to an adult and could not walk off when subject to an investigation. The juvenile's mother arrived and she told the officers that the juvenile frequently ran away and that she could not control him. The officers then instructed the juvenile to get into

his mother's car. The juvenile did not fully comply and began arguing with an officer. The juvenile said that he did not want to go with his mother and wanted to leave on foot. The officer with whom the juvenile was arguing said, "Come with me ... you're going to go to jail for trespassing." At that point, the juvenile became combative and indicated that he was not going. When the officer attempted to take the juvenile into custody, the juvenile pushed the officer in the chest with a clenched fist. The trial court denied several motions for a judgment of dismissal and adjudicated the juvenile for assault on a law enforcement officer. On appeal, the Fourth District Court of Appeal found that the officer was not engaged in the lawful performance of a duty at the time of the assault. The juvenile was not trespassing. He was not the subject of a DCF investigation, and the record contained no evidence that the officers were seeking to take the juvenile into custody as a dependent child. Although the juvenile's mother told the officers that he frequently ran away and that she could not control him, the record contained no evidence that the officers were seeking to take the juvenile into custody as a runaway. The mother had not requested the officers to prevent the juvenile from walking away, and he had not yet done so when the officer told him he was going to go to jail for trespassing and attempted to grab him. It was premature for the officer at issue to intervene in the mother's custody of her son at that time. Therefore, the officer was not engaged in the lawful performance of a duty when the assault occurred, and the trial court erred in denying the juvenile's motions for judgment of dismissal to reduce the charge to the lesser included offense of assault. Accordingly, the Fourth District reversed and remanded with instructions to adjudicate the juvenile of assault, and to conduct any further proceedings necessary as a result of that lesser adjudication.

<http://www.4dca.org/opinions/Aug%202014/08-06-14/4D12-1242.op.pdf> (August 6, 2014)

Fifth District Court of Appeals

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

A.H. v. Department of Children and Families, 144 So. 3d 662, 39 Fla.L.Weekly D1692, 2014 WL 3906860 (Fla. 1st DCA 2014). **TERMINATION OF PARENTAL RIGHTS REVERSED**. The First District Court of Appeal reversed an order terminating a mother's parental rights, holding that termination was not the least restrictive means of protecting the child. Subsequent to the child's placement in foster care and dependency adjudication, the trial court put the child in a permanent guardianship and terminated supervision. Eighteen months later, the mother moved to reopen the case to regain custody. The court granted the mother's motion for the sole purpose of allowing the Department to file a petition for termination of parental rights. The Department subsequently filed such a petition and, after a hearing, the trial court terminated the mother's parental rights, finding, *inter alia*, long-term abandonment, harm to the child if removed from the guardian's care, and little or no bond between the child and the parents. On appeal, the District Court examined the relevant law and noted that upon a parent's motion for reunification or increased contact, the court must consider and address the parent's compliance with the case plan; the circumstances causing the dependency and whether they have been resolved; the stability and length of the child's placement; the child's preference if the child is able to express one; the custodian's recommendation; and the GAL's recommendation. The record showed no evidence that the mother's irregular contact with the child posed a harm to him. Rather, the child had a strong bond with the guardian but also enjoyed visits with the mother and his siblings and wanted to maintain a relationship with them. Under the circumstances, the Department conceded that the trial court's erred in finding that termination was the least restrictive means of protecting the child. The court therefore reversed the termination of the mother's rights. https://edca.1dca.org/DCADocs/2014/0656/140656_DC13_08122014_084552_i.pdf (August 12, 2014)

Department of Children and Families v. C.T., 144 So. 3d 684, 39 Fla.L.Weekly D1724, 2014 WL 3953309 (Fla. 1st DCA 2014). **APPLICABILITY OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN CLARIFIED**. The First District Court of Appeal reversed an order finding that the Interstate Compact on the Placement of Children (ICPC) did not apply to the case and reunified the children with the father. The children had been removed, adjudicated dependent, and placed with the maternal grandmother. During the case, the father moved to Maryland. At a hearing at which the father appeared in person, the court reunified the children with the father over the Department's objection that it had no information about the father's home in Maryland; that there was no way to monitor the situation; and that the ICPC process was incomplete. The trial court found that there were no safety concerns and that the ICPC does not apply when children are placed with out-of-state parents. The Department would also supervise the father for another six months and he would provide random urinalysis. On appeal, the District Court reviewed the ICPC and relevant caselaw and distinguished a previous case upon which the trial court relied in its ruling, noting in part that the children in the current case were under court jurisdiction and

that state intervention had not yet ended. The court concluded that the ICPC did apply and the children had been sent to Maryland without complying with the ICPC. The court therefore reversed that part of the order that held that ICPC did not apply to the facts of the case.

https://edca.1dca.org/DCADocs/2014/1300/141300_DC13_08142014_084130_i.pdf (August 14, 2014)

Second District Court of Appeals

D.H.R. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ____, 39 Fla.L.Weekly D1619, 2014 WL 3765694 (Fla. 2d DCA 2014). **ADJUDICATION OF DEPENDENCY REVERSED**. The Second District Court of Appeal reversed an order adjudicating the mother's son dependent. The trial court found that the mother physically abused her son and failed to protect him. The trial court also made findings as to the father which were handled separately. See N.J. v. DCF and GALP, *infra*. Because the trial court's finding that the child was injured by physical abuse was not supported by competent, substantial evidence, the District Court reversed the "order adjudicating the child dependent as to the mother." The court added that DCF did not introduce any evidence whatsoever that the mother had caused the child to sustain the injuries leading to the dependency adjudication.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/August/August%2001,%202014/2D13-4879.pdf (August 1, 2014)

N.J. v. Department of Children and Families and Guardian ad Litem Program, 143 So. 3d 1109, 39 Fla.L.Weekly D1619, 2014 WL 3765949 (Fla. 2d DCA 2014). **ADJUDICATION OF DEPENDENCY REVERSED**. In a companion case to D.H.R. v. DCF and GALP, *supra*, the Second District Court of Appeal reversed the adjudication of dependency as to the father's child because the evidentiary burden of proof had not been met. The father testified that he placed A.W.J. in a Bumbo chair on the floor and went to the kitchen to retrieve a bottle, during which time the child pushed the chair over backwards and hit his head on the concrete floor. The father and the mother took the child to Trinity Medical Center, where doctors determined that the child had suffered a skull fracture. Detective Grady testified at the evidentiary hearing that he was not suspicious of the parents' version of events and had confirmed that the Bumbo could be unreasonably unstable. The child's pediatrician, Dr. Charlene Weber, testified that she reviewed reports from two hospitals. She also testified that at six months old, the child was large for his age, had a larger-than-average head circumference and weight, and that his motor skills were a little developmentally delayed. Given the child's characteristics, it was "possible and plausible" that he was injured as described by the parents. She saw no inconsistencies in the parents' accounts and the medical reports. Dr. Sally Smith was the only witness to testify that the child's head injury was the result of abuse. However, she did not provide her opinion within a reasonable degree of medical probability. She also based her conclusion primarily on her own judgment of the parents' credibility rather than on medical reports. Furthermore, the District Court noted that Dr. Smith's testimony was itself inconsistent with her own medical reports regarding the bump on the child's head. In addition, the trial court's finding of abuse was based entirely on the testimony of Dr. Smith, the only witness to testify that the child's injury was from abuse. The District Court noted that it was the Department's burden to provide competent, substantial evidence that the injury was from abuse rather than from an accident. However, the Department did not offer any expert

opinion within a reasonable degree of medical probability that the child's injury was from abuse; Dr. Smith's opinion of abuse was not substantiated by evidence in the record. Because the Department failed to meet its evidentiary burden, the court reversed the adjudication of dependency.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/August/August%2001,%202014/2D13-4877.pdf (August 1, 2014)

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

E.R. v. Department of Children and Families, 143 So. 3d 1131, 39 Fla.L.Weekly D1639, 2014 WL 3843064 (Fla. 4th DCA 2014). **ADJUDICATION OF DEPENDENCY REVERSED.** The Fourth District Court of Appeal reversed an order adjudicating a mother's two children, E.B. and A.R., to be dependent. The father had sole custody of E.B. due to a sworn petition and affidavit from April 2012 alleging that the mother was unable to care for E.B. A family court judge had entered an order that the mother was to have no time sharing with E.B. There was also evidence that approximately eighteen months before the dependency hearing, the mother made E.B. hit her head by grabbing her shirt; watched television and played on her phone while her child crawled away; and repeatedly pulled E.B.'s hair until she started crying. The father obtained sole custody of E.B. and lived with the paternal grandparents. About one year later, the father was reported missing by the grandparents, and DCF found the father and E.B. with the mother and A.R. at a hotel in Sebring. One officer performing a wellness check testified that the motel room was clean and orderly, with food, formula, diapers, two beds, and a crib. He believed there was no immediate danger to the children. DCF informed the officer that the mother had outstanding warrants and he arrested her, taking the children into custody. An adjudicatory hearing was held and the trial court adjudicated the children dependent in February, 2014, finding by a preponderance of evidence that the mother placed both children at imminent risk of neglect and harm. The court referenced the prior alleged mistreatment of E.B.; the mother's violation of the "no time sharing" order; and the mother's failure to contest the order or to rehabilitate herself. Furthermore, with regard to both children, the trial court had noted the mother's history of instability and unemployment as well as her then-current homeless and unemployed status. On appeal, the District Court discussed the standard of review and noted that homelessness and unemployment alone were insufficient to support a finding of prospective harm. Neither was there evidence the children were deprived of food, clothing, shelter, or medical treatment. Regarding E.B. alone, the District Court opined that the allegations about the mother's mistreatment concerned the mother's actions approximately eighteen months prior to the dependency proceeding. Relying on caselaw, the court held that the mother's actions were too remote in time to support an adjudication of dependency. Thus, none of the trial court's findings presented competent, substantial evidence to support its conclusion that the mother subjected E.B. to imminent risk of neglect and harm. With regard to A.R., the court held that the testimony about the mother's prior treatment of E.B. was insufficient evidence to support a finding of dependency as to A.R. The trial court's only finding about A.R. involved the time the mother left with A.R. to go to Sebring with the father and E.B. The mother was arrested in Sebring, leaving

A.R. with no known parent immediately available to care for the two-month old. DCF took A.R. into custody. The court held that the findings did not present competent, substantial evidence that the mother subjected A.R. to imminent risk of neglect and harm. The District Court therefore reversed and remanded the order on appeal.

<http://www.4dca.org/opinions/Aug%202014/08-06-14/4D14-885.op.pdf> (August 6, 2014)

B.B. v. Department of Children and Families, ___ So. 3d ____, 39 Fla.L.Weekly D1809, 2014 WL 4209217 (Fla. 4th DCA 2014). **ADJUDICATION OF DEPENDENCY REVERSED**. In a companion case to E.R. v. DCF, *supra*, the Fourth District Court of Appeal reversed an order adjudicating the father's children dependent. Because competent, substantial evidence did not support a finding of imminent risk of neglect and harm as to the mother, it did not supporting a finding of imminent risk of neglect and harm as to the father either.

<http://www.4dca.org/opinions/Aug%202014/08-27-14/4D14-1007.op.pdf> (August 27, 2014)

Fifth District Court of Appeals

E.N. v. Y.W., 143 So. 3d 481, 39 Fla.L.Weekly D1610 (Fla. 5th DCA 2014). **APPEAL DISMISSED**. The Fifth District Court of Appeal dismissed a petition for a writ of certiorari seeking review of an order denying a father's request to change the children's caregiver. The children had been adjudicated dependent and placed in permanent guardianship with the father's cousin. The father moved to change placement to his adult daughter, which was denied by the trial court and subsequently appealed by the father. On appeal, the District Court noted that the father/petitioner needed to demonstrate: 1) a departure from the essential requirements of the law; 2) resulting in material injury for the remainder of the case; 3) that cannot be corrected on post-judgment appeal. Because the court held that the father did not demonstrate that certiorari would provide a possible remedy, the appeal was dismissed.

<http://www.5dca.org/Opinions/Opin2014/072814/5D14-1017.op.pdf> (July 28, 2014)

H.C. v. Department of Children and Families, ___ So. 3d ____, 39 Fla.L.Weekly D1635, 2014 WL 2805524 (Fla. 5th DCA 2014). **TRIAL COURT'S DENIAL OF REQUEST TO REOPEN A CASE AFFIRMED**. The Fifth District Court of Appeal affirmed the denial of a request to reopen a dependency case. The trial court had placed the children in permanent guardianship with the paternal grandparents. The trial court denied the mother's motion to reopen the case; the mother appealed. The District Court of Appeal held that it was the mother's burden of proof to show that the children's safety, well-being, and physical, mental, and emotional health would not be endangered by reunification, and affirmed the trial court's order.

<http://www.5dca.org/Opinions/Opin2014/080414/5D14-1225.op.pdf> (August 4, 2014)

J.L. v. Department of Children and Families, 143 So. 3d 1158, 39 Fla.L.Weekly D1694, 2014 WL 3893029 (Fla. 5th DCA 2014). **TERMINATION OF PARENTAL RIGHTS AFFIRMED BUT REMANDED FOR MODIFICATION OF ORDER**. The Fifth District Court of Appeal affirmed the termination of parental rights of a father on one ground for termination but reversed as to a separate ground. The father's rights had been terminated under both s. 39.806(1)(b) and (1)(e), F.S. On appeal, the court affirmed termination under 39.806(1)(e) but, due to testimony in the record, reversed

termination for abandonment under 39.806(1)(b). The court remanded the case for modification of the order.

<http://www.5dca.org/Opinions/Opin2014/081114/5D13-4219.op.pdf> (August 11, 2014)

J.S. v. Department of Children and Families, ___ So. 3d ____, 39 Fla.L.Weekly D1721, 2014 WL 3966052 (Fla. 5th DCA 2014). **TERMINATION OF PARENTAL RIGHTS AFFIRMED BUT REMANDED FOR MODIFICATION OF ORDER.** The Fifth District Court of Appeal affirmed the termination of a father's parental rights but reversed the trial court's application of a particular ground for termination. The father's rights had been terminated in part under s. 39.806(1)(f), F.S. On appeal, the District Court noted that this ground was not alleged in the petition against the father, but rather was only alleged in the petition against the mother. The court therefore affirmed termination of the father's rights but remanded the case for modification of the order.

<http://www.5dca.org/Opinions/Opin2014/081114/5D14-882.op.pdf> (August 13, 2014)

Dissolution Case Law

Florida Supreme Court

Shaw v. Shaw, ___ So. 3d ___ (Fla. 2014). [SUPREME COURT DECLINES TO ACCEPT PASS-THROUGH JURISDICTION IN SAME-SEX DISSOLUTION CASE AND REMANDS TO THE DISTRICT COURT.](#) On September 5, 2014, the Florida Supreme Court declined to accept pass-through jurisdiction in a same-sex marriage dissolution case and remanded to the district court for the reasons set forth in the dissent to the Second District's en banc decision. See Shaw v. Shaw in these summaries, and refer to the link below, for the Supreme Court's order issued September 5, 2014.

http://www.floridasupremecourt.org/pub_info/summaries/briefs/14/14-1664/Filed_09-05-2014_Disposition_Order.pdf (September 5, 2014)

First District Court of Appeals

Antonacci v. Antonacci, ___ So. 3d ___, 2014 WL 3805746 (Fla. 1st DCA 2014). [TRIAL COURT FAILED TO CONFORM WRITTEN JUDGEMENT TO ITS ORAL PRONOUNCEMENTS; REVERSED AND REMANDED TO CONFORM THE JUDGMENT.](#) The appellate court held that the trial court erred in failing to conform the written order on rehearing to its oral ruling at the hearing regarding the spouses' pensions. Accordingly, it reversed and remanded the portions of the order concerning the pensions with instructions to the trial court to conform the written judgment to its oral pronouncements that each spouse would be entitled to one-half of the marital portion of the other spouse's pension value at the time of retirement.

https://edca.1dca.org/DCADocs/2011/3669/113669_DC08_08012014_121457_i.pdf (August 1, 2014)

Rolison v. Rolison, ___ So. 3d ___, 2014 WL 3805759 (Fla. 1st DCA 2014). [RELOCATION STATUTE NOT APPLICABLE IF SPOUSE HAS MOVED PRIOR TO THE FILING OF THE PETITION FOR DISSOLUTION.](#) The appellate court affirmed the trial court order finding that the relocation statute, s. 61.13001, F.S. (2013), was not applicable because former wife had moved to Georgia before former husband petitioned for dissolution. Former husband argued that the trial court erred in finding the relocation statute inapplicable in a dissolution proceeding when a spouse unilaterally relocates before the filing of a dissolution petition. The appellate court held that the "plain language of the relocation statute applies only where a parent's principal place of residence changes 'at the time of the last order establishing or modifying time-sharing', or 'at the time of filing the pending action'." Here, former wife had already moved to Georgia when former husband filed the pending action; thus, she did not have to seek either his or the court's permission to relocate. The appellate court noted at least two other districts have read the statute in the same way. See Essex v. Davis, 116 So. 3d 445 (Fla. 4th DCA 2012) and A.F. v. R.P.B., 100 So. 3d 71 (Fla. 2d DCA 2011).

https://edca.1dca.org/DCADocs/2014/1135/141135_DC05_08012014_123359_i.pdf (August 1, 2014)

Ballard v. Ballard, ___ So. 3d ___, 2014 WL 3865835, (Fla. 1st DCA 2014). [PERSONAL PROPERTY OWNED BY A SPOUSE PRIOR TO THE MARRIAGE SHOULD NOT BE INCLUDED IN EQUITABLE DISTRIBUTION; NEITHER SHOULD ACCOUNT FUNDS USED DURING DISSOLUTION PROCEEDINGS](#)

FOR PURPOSES REASONABLY RELATED TO THE MARRIAGE ABSENT DISSIPATION; WHEN MARITAL FUNDS ARE USED TO REDUCE A MORTGAGE ON NONMARITAL PROPERTY, THE INCREASE IN EQUITY IS A MARITAL ASSET SUBJECT TO DISTRIBUTION; A TRIAL COURT NEED NOT MAKE FINDINGS OF FACT IF IT DETERMINES NEITHER SPOUSE NEEDS ALIMONY OR MAINTENANCE; THOSE FINDINGS ARE ONLY REQUIRED IF COURT CONCLUDES ONE SPOUSE IS ENTITLED TO ALIMONY; IF TRIAL COURT FINDS UNEMPLOYMENT OR UNDEREMPLOYMENT IS VOLUNTARY WITHOUT A FINDING OF PHYSICAL OR MENTAL INCAPACITY, IT MUST IMPUTE INCOME; COURT SHOULD DEDUCT HEALTH INSURANCE PAYMENTS MADE BY SPOUSE FROM RETROACTIVE CHILD SUPPORT THAT SPOUSE OWES; FEE ISSUE SHOULD BE RECONSIDERED ON REMAND ALONG WITH RECONSIDERATION OF DISTRIBUTION. Both spouses appealed the final judgment of dissolution of marriage in which the trial court determined issues regarding equitable distribution, alimony, child support, and attorney's fees.

The appellate court affirmed in part, reversed in part, and remanded for further proceedings. It concluded that the trial court had abused its discretion by including personal property owned by former husband prior to the marriage within the equitable distribution, and also by having included a credit union account that had been significantly diminished by the time of trial—in absence of any finding that former husband had used the assets improperly. Funds that have been diminished during dissolution proceedings when used for purposes reasonably related to the marriage, such as fees, should not be included within a scheme for equitable distribution unless there is evidence that one spouse intentionally dissipated the assets for his or her own purpose unrelated to the marriage. The appellate court found that the trial court erred in construing *Kaaa v. Kaaa*, 58 So. 3d 867 (Fla. 2011), to exclude amounts the spouses paid down on the mortgage as a marital asset. It held that when marital assets are used to reduce a mortgage on nonmarital property, the increase in equity is a marital asset subject to equitable distribution. The appellate court noted that the “only question at issue in *Kaaa* was whether passive appreciation in the value of nonmarital property by market forces alone constitutes a marital asset subject to distribution”; the answer to that question is yes. The appellate court held that a trial court is not required to make findings of fact to support a conclusion that neither spouse has an actual need for alimony or maintenance; those findings are only required if a trial court determines that one of the spouses is entitled to alimony. The appellate court concluded that the trial court had not abused its discretion in finding that former husband's retirement was voluntary; however, it did abuse its discretion in determining the amount of his child support obligation without imputing income to him. Section 61.30(2)(b), F.S. (2012), requires monthly income to be imputed to an unemployed or underemployed parent if the court finds the unemployment or underemployment is voluntary on the parent's part—absent a finding of either physical or mental incapacity or circumstances beyond the parent's control. The trial court abused its discretion by failing to deduct payments former husband made for the children's health insurance from the retroactive child support awarded to former wife. The trial court's reconsideration of the division of property on remand would necessitate a reconsideration of the spouses' need for and ability to pay attorney's fees.

https://edca.1dca.org/DCADocs/2013/5851/135851_DC08_08072014_085000_i.pdf (August 7, 2014)

Chadbourne v. Chadbourne, __ So. 3d __, 2014 WL 4057360 (Fla. 1st DCA 2014). TRIAL COURT ABUSED DISCRETION IN DENYING FEES AND COSTS TO SPOUSE AFTER 26-YEAR MARRIAGE GIVEN SIGNIFICANT FINANCIAL DISPARITY BETWEEN THE SPOUSES, HER DEMONSTRATED NEED, AND HIS ABILITY TO PAY. Former wife appealed a final judgment dissolving a 26-year marriage on several grounds. The appellate court held that the trial court abused its discretion in denying her fees and costs, given the significant disparity in the spouses' wealth, (he left the marriage with a net worth of \$17 million, she with under \$1 million), her demonstrated need, and his ability to pay. To require her to pay the remaining balance of her fees would require an "inequitable diminution" of her equitable distribution award. Conlan v. Conlan, 43 So. 3d 931, 934 (Fla. 4th DCA 2010).

https://edca.1dca.org/DCADocs/2013/0039/13009_DC08_08182014_111606_i.pdf (August 18, 2014)

Pierson v. Pierson, __ So. 3d __, 2014 WL 4056645 (Fla. 1st DCA 2014). TRIAL COURT ABUSED ITS DISCRETION IN GRANTING ONE SPOUSE ULTIMATE AUTHORITY OVER CHILD'S RELIGIOUS UPBRINGING; GENERALLY, COURTS HAVE OVERTURNED RESTRICTIONS ON A NONCUSTODIAL PARENT EXPOSING HIS OR HER CHILD TO HIS OR HER RELIGIOUS BELIEFS IN ABSENCE OF CLEAR SHOWING THAT THE RELIGIOUS ACTIVITIES WILL BE HARMFUL TO THE CHILD. Former husband appealed the final judgment of dissolution of marriage. The appellate court affirmed as to the issues of parental time-sharing and equitable distribution without comment, but agreed with former husband that the trial court abused its discretion in granting former wife ultimate authority over their children's religious upbringing and prohibiting him from behavior conflicting with the Catholic faith. During the marriage, the children were raised according to former wife's Catholic faith; former husband became a Jehovah's Witness during the spouses' separation. The appellate court cited Wisconsin v. Yoder, 406 U.S. 205 (1972), regarding parents' rights to direct the religious upbringing of their children. It noted that generally courts have held that restrictions on a noncustodial parent from exposing his or her child to his or her religious beliefs have "consistently been overturned in absence of a clear, affirmative showing that the religious activities at issue will be harmful to the child." It distinguished LeDoux v. LeDoux, 452 N.W. 2d 1, 2 (Neb. 1990), in which "ample evidence" indicated that the child's exposure to diverse religious beliefs was a contributing factor to the stress he was experiencing. Acknowledging former wife's concern that exposure to two different religions could be confusing to a child, the appellate court held here that "neither that concern nor the evidence presented below established the requisite showing of harm to grant the mother ultimate religious decision-making authority for the children and to restrict the father from 'doing anything in front of the children or around the children that . . . conflicts with the Catholic religion'." The appellate court found no error in the trial court's directive that neither parent disparage the other's religion in front of their children.

https://edca.1dca.org/DCADocs/2014/0079/14079_DC08_08182014_112152_i.pdf (August 18, 2014)

Christensen v. Christensen, __ So. 3d __, 2014 WL 4056693 (Fla. 1st DCA 2014). REVERSED AND REMANDED FOR RECALCULATION OF CHILD SUPPORT TO INCLUDE SPOUSE'S ALIMONY AWARD AS INCOME AND FOR RECONSIDERATION OF WHETHER THAT SPOUSE WOULD EXERCISE SUBSTANTIAL TIME-SHARING. Former husband appealed the final judgment dissolving an

eighteen-year marriage. The appellate court found merit in his claim of error regarding the trial court's calculation of child support and reversed; it affirmed the remainder of the judgment without comment. The appellate court held that the trial court failed to include former wife's alimony award as part of her income when it calculated former husband's child support obligation. The trial court also adjusted the spouses' child support obligation based on its assumption that former wife would exercise a substantial amount of time-sharing pursuant to s. 61.30(11)(b), F.S. (2012); however, it was unclear whether former wife would meet the time-sharing threshold contemplated by the statute. The appellate court reversed and remanded with directions to the trial court to recalculate the child support taking former wife's alimony award into account and to reconsider the time-sharing adjustment.

https://edca.1dca.org/DCADocs/2014/0735/140735_DC08_08182014_112339_i.pdf (August 18, 2014)

Anderson v. Durham, __ So. 3d __, 2014 WL 4086800 (Fla. 1st DCA 2014). **DENIAL OF SPOUSE'S REQUEST FOR DOWNWARD MODIFICATION REMANDED DUE TO TRIAL COURT'S FAILURE TO EXPLAIN ITS DECISION.** Both spouses appealed the trial court's denial of their petitions to modify alimony. His request was for downward modification due to his plan to retire after working for 40 years; she requested an increase both in alimony and in the amount of life insurance former husband was obligated to maintain to secure the alimony. The appellate court affirmed the trial court's denial of both of former wife's requests and dismissed former husband's appeal of her request for fees as premature because the trial court had retained jurisdiction; however, it remanded the denial of former husband's request for reduction. The remand for was the trial court to explain why it had denied former husband's request even though it found: he had satisfied the criteria set forth in Pimm v. Pimm, 601 So. 1051 (Fla. 2d DCA 1994); that his plan to retire was reasonable; and that former wife had failed to present any evidence supporting her request. The appellate court clarified that the remand should not be interpreted as a suggestion that the trial court was obligated to grant his request for reduction of alimony "solely on the basis that [he] satisfied the *Pimm* criteria."

https://edca.1dca.org/DCADocs/2014/0341/140341_DC08_08202014_091526_i.pdf (August 20, 2014).

McGee v. McGee, __ So. 3d __, 2014 WL 4197495 (Fla. 1st DCA 2014). **TRIAL COURT ERRED IN TRANSFERRING VENUE; STATUTE REQUIRES A FINDING OF SUBSTANTIAL INCONVENIENCE OR UNDUE EXPENSE; STATUTE ALSO LIMITS TRANSFER TO COURTS IN WHICH THE ACTION COULD HAVE BEEN BROUGHT.** The appellate court reversed a nonfinal order transferring venue from Leon County to Miami-Dade County. Former husband had petitioned for dissolution in Leon County. During the month that he filed his petition, he attempted to leave the marital home with the spouses' minor child. When former wife tried to stop him, he punched her in the face several times, resulting in his arrest for domestic violence. Former wife received a temporary injunction for protection against domestic violence from the Miami-Dade Circuit Court while living with her mother. She moved to transfer venue of the dissolution proceedings from Leon County to Miami for various reasons, including being forced to flee there for safety. Her motion was granted. Noting that it sympathized with former wife, the appellate court held that when granting a change in venue, s. 47.122, F.S., requires the trial court to make a finding of substantial

inconvenience or undue expense. The appellate court found that the trial court did not consider the applicability of 47.122. It also noted that the statute expressly limits a trial court to transfer a case to another court of record in which it could have been brought. It was error for the trial court to have transferred the case to Miami because Leon County was the only “appropriate forum”. Reversed and remanded.

https://edca.1dca.org/DCADocs/2013/5507/135507_DC13_08262014_111903_i.pdf (August 26, 2014)

Second District Court of Appeals

Asteberg v. Russell, __ So. 3d __, 2014 WL 3765965 (Fla. 2d DCA 2014). **TRIAL COURT DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW IN REQUIRING SPOUSE TO UNDERGO PSYCHOLOGICAL EXAMINATION.** The appellate court agreed with former wife that the trial court departed from the essential requirements of the law by ordering that she undergo a psychological examination without any indication that her mental condition was in controversy, without a showing of good cause as required by Florida Rule of Civil Procedure 1.360, and without notice to her that her mental condition was at issue. Although the transcript indicated that the trial court believed former wife was not supportive of former husband’s relationship with their minor child, the appellate court found nothing to demonstrate that former wife’s mental health was in controversy. It noted that the trial court did not modify time-sharing—an indication that it did not believe former wife’s behavior was “adversely affecting the child.” Former wife’s petition for certiorari was granted and the trial court’s order quashed to the extent that it required her to undergo a psychological evaluation.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/August/August%2001,%202014/2D13-5890.pdf (August 1, 2014)

Shaw v. Shaw, __ So. 3d __, 2014 WL 4212771 (Fla. 2d DCA 2014). **ISSUE OF DISSOLUTION OF SAME-SEX MARRIAGES CERTIFIED TO SUPREME COURT FOR IMMEDIATE RESOLUTION; CERTIFIED EN BANC WITH DISSENT.** The parties in this case are same-sex partners who married in Massachusetts in 2010 before moving to Florida and subsequently separating in 2013. The trial court dismissed the amended petition for dissolution, which sought to have a marital settlement agreement incorporated into a final judgment of dissolution, for lack of jurisdiction because same-sex marriages are legally prohibited in Florida. The filing partner appealed both the trial court’s determination that Florida law prohibits dissolution of same sex marriages and its rejection of her constitutional challenge to that law. She suggested that the case be certified to the Florida Supreme Court as one which required immediate resolution; her partner concurred, arguing that petitions for dissolution of same-sex marriages are being “unevenly adjudicated” in Florida. A panel of the appellate court denied to pass the case through to the Supreme Court for immediate resolution; however, on consideration en banc, and in the wake of a ruling by the Broward County Circuit Court that Florida’s same-sex marriage bans are unconstitutional, the appellate court certified the question to the Supreme Court. Three judges dissented. The appellate court cited similar rulings by circuit courts in Miami-Dade and Monroe Counties in considering denial of marriage licenses to same-sex couples. The appellate court noted that the Family Law Section of the Florida Bar and the Florida Chapter of the American Academy of Matrimonial Lawyers sought to file an amicus curiae brief in this appeal, arguing that the trial

court's ruling denies access to Florida courts to same-sex couples who have been validly married in other states but live in Florida. The Florida Supreme Court declined to accept pass-through jurisdiction in the case and remanded it to the district court on September 5, 2014, for the reasons set forth in the dissent to the en banc decision.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/August/August%2027,%202014/2D14-2384.pdf (August 27, 2014)

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

Johnson v. McCullough, __ So. 3d __, 2014 WL 3843082 (Fla. 4th DCA 2014). **TRIAL COURT MUST DETERMINE PARENTS' NET INCOME FOR CALCULATION OF CHILD SUPPORT.** Although not a dissolution of marriage case, this opinion is included due to similar issues. The appellate court held that the trial court's decision on relocation was supported by competent, substantial evidence, but that the child support award was not; accordingly, it reversed. A trial court is required to determine the net income of each parent and include those findings in its final judgment. Here, the child support findings were taken "exclusively" from the mother's child support guidelines worksheet. The worksheet was neither admitted into evidence nor stipulated to by the father, but actually contradicted amounts in the father's financial affidavit. Reversed and remanded for a new hearing limited to the recalculation of child support.

<http://www.4dca.org/opinions/Aug%202014/08-06-14/4D13-3358.op.pdf> (August 6, 2014)

Goff v. Kenney-Goff, __ So. 3d __, 2014 WL 4083011 (Fla. 4th DCA 2014). **TRIAL COURT'S ORDER WAS CONTRARY TO PLAIN LANGUAGE OF MARITAL SETTLEMENT AGREEMENT; WHAT MATTERED WAS WHERE CHILD WAS LIVING, NOT HIS PERMANENT RESIDENCY.** The appellate court agreed with former husband that the trial court erred in requiring that he continue paying child support for the youngest child after that child had turned eighteen and graduated from high school. The spouses had agreed in a marital settlement agreement (MSA) incorporated into the final judgment of dissolution that former husband would continue to pay child support for the three children until each child's twenty-first birthday--if the child was enrolled in college and living at home with former wife. Seven years after the final judgment, and prior to the youngest child turning eighteen and graduating from high school, former husband petitioned for modification of child support. At the hearing, former husband testified that the child was attending the University of Florida; former wife testified that he would be living with her during the summer and attending community college while home. The trial court found that the child was attending college and residing with former wife on a permanent basis "including the times that he is attending classes at the University of Florida." The appellate court found the trial court's order contrary to the plain language of the MSA. It did not require a determination of permanent residency; it required a determination as to where the child was living, which was Gainesville. The portion of the order requiring continued child support was reversed and remanded.

<http://www.4dca.org/opinions/Aug%202014/08-20-14/4D13-3355.op.pdf> (August 20, 2014)

Julia v. Julia, __So. 3d__, 2014 WL 4177223 (Fla. 4th DCA 2014). **REMANDED FOR A NEW TRIAL DUE TO DUE PROCESS VIOLATIONS AND TRIAL COURT'S FAILURE TO MAKE SEVERAL REQUIRED FINDINGS OF FACT.** Former wife appealed the final judgment of dissolution of her second marriage to former husband procedurally and substantively. Married in 1991 and divorced in 1993, the spouses remarried in 1994 and separated again in 2010. During their trial in July 2013, the trial court cut short former wife's side of the case by not allowing her counsel to complete his cross-examination of former husband and subsequently ruled without allowing either spouse to present closing arguments. When former wife expressed concern about the unequal time allocated to the spouses, the judge suggested that she "take it up on appeal." The appellate court held that the record clearly showed "a pattern of depriving the Wife of her opportunity to be heard and present her case throughout the trial." It cited its earlier holdings that justice cannot be "administered arbitrarily with a stopwatch." In addition to the due process violations, the appellate court found several other errors by the trial court. The first was to award the four children (three minors) exclusive use and possession of the marital home, with the parents rotating in and out at two week intervals, without mention of the children's best interests. Second was the trial court's failure to make required findings of fact regarding equitable distribution--specifically, the valuation of significant marital assets. Third was to allocate \$18,000 of debt to former wife without determining whether the liability was marital or nonmarital. Fourth was the trial court's failure to address whether the farm at issue was "completely a non-marital asset" in light of testimony regarding former husband's expenditure of efforts on it and the contribution of marital assets to its upkeep. Fifth was the trial court's failure to make any findings regarding whether former wife's unemployment was voluntary or to address her diligence in seeking employment prior to imputing income to her. Sixth was the trial court's failure to make the required findings to support an award of durational, rather than permanent, alimony. A trial court's failure to make findings of fact relative to all statutory factors for an alimony award is reversible error. Because former wife was not given her "fair share of the court's time" and the final judgment lacked several required findings, the appellate court remanded for a new trial consistent with its opinion.

<http://www.4dca.org/opinions/Aug%202014/08-25-2014/4D13-3559.op.pdf> (August 20, 2014).

Fifth District Court of Appeals

Eldridge v. Eldridge, __So. 3d__, 2014 WL 4249757 (Fla. 5th DCA 2014). **TRIAL COURT ERRED IN RECLASSIFYING TEMPORARY ALIMONY AS CORPORATE DISTRIBUTIONS; ALIMONY WAS THE AGREED-UPON TERM; SPOUSE SHOULD NOT HAVE BEEN AWARDED FEES; SHE FAILED TO SHOW NEED AND HAD "AMPLE MEANS"; DISPARITY BETWEEN SPOUSES' ASSETS IS NOT CORRECT STANDARD.** Former husband appealed a final order interpreting the final judgment dissolving a twenty-five year marriage and granting former wife's post-judgment motions. The spouses had agreed, immediately prior to the trial, that he would purchase her 50% interest in the marital business. She in turn would receive the proceeds from the sale of several parcels of marital property, including the marital home. Former husband's 50% interest in those properties would be set off against the purchase price of her stock in the business. The appellate court reversed the final order after having found the trial court erred in: reclassifying temporary alimony payments as corporate distributions; awarding former wife one-half of the shareholder distributions from the marital business; and awarding her attorney's and expert witness fees.

Former wife argued that various monetary awards labeled as alimony in the dissolution final judgment were instead corporate distributions. The appellate court held that “language deeming the payments alimony was agreed upon by the parties”; therefore, the trial court erred to the extent it reclassified them as corporate distributions. It also found that the spouses had reached clear agreement that former husband’s receipt of the marital business was “part and parcel of the overall equitable distribution scheme.” Citing Morris v. Morris, 743 So. 2d 81 (Fla. 5th DCA 1999), the appellate court found that the trial court erred in awarding her fees due to her “ample means to obtain counsel and experts.” The appellate court noted that former wife failed to show any need for fees; she focused on the disparity between the spouses’ assets, which is not the correct standard.

<http://www.5dca.org/Opinions/Opin2014/082514/5D12-3730.op.pdf> (August 29, 2014)

Cameron v. Cameron, __ So. 3d __, 2014 WL 4249750 (Fla. 5th DCA 2014). **REMANDED FOR RECALCULATION OF CHILD SUPPORT AND DETERMINATION OF RESPONSIBILITY FOR CHILD CARE EXPENSES.** Former wife argued that the trial court erred in its child support calculations by including employer contributions in health insurance in her gross income without subtracting a corresponding amount in determining net income. She also argued that the final judgment did not conform to the trial court’s oral pronouncements regarding child care expenses. Former husband conceded error on both issues. Reversed and remanded with directions to the trial court to recalculate child support, child support arrearages, and responsibility for child care expenses.

<http://www.5dca.org/Opinions/Opin2014/082514/5D13-3723.op.pdf> (August 29, 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

Parrish v. Parrish, ___ So. 3d ____, 2014 WL 3765819 (Fla. 2d DCA 2014). **CASE REMANDED FOR DUE PROCESS VIOLATION.** The wife filed her third petition for temporary injunction for protection against domestic violence against her husband, but the trial court denied the petition because it believed the new petition raised allegations that had been resolved by the wife's voluntary dismissal of an injunction previously entered. The wife appealed; the appellate court held that the wife was denied due process and remanded the case for a hearing, noting that an incident was included in the third petition that could not have been considered in the initial proceedings.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/August/August%2001,%202014/2D13-4639.pdf (August 1, 2014)

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

Selph v. Selph, ___ So. 3d ____, 2014 WL 3928415 (Fla. 4th DCA 2014). **DOMESTIC VIOLENCE INJUNCTION REVERSED.** The husband appealed an order that entered a domestic violence injunction against him. The wife testified that the husband ordered their dog to attack her; however, the petition was filed five months after the incident. The wife did not call the police or seek medical attention. She also claimed that the husband threatened her immigration status and made her work long hours at their business with little pay. The appellate court held that the allegations did not constitute an assault, battery, false imprisonment, or a criminal offense resulting in physical injury as required by the statute; as the evidence was not legally sufficient to support a finding of domestic violence, they reversed the lower court's decision.

<http://www.4dca.org/opinions/Aug%202014/08-13-14/4D13-2488.op.pdf> (August 13, 2014)

Fifth District Court of Appeals

Colin v. Colin, ___ So. 3d ____, 2014 WL 4249752 (Fla. 5th DCA 2014). **DOMESTIC VIOLENCE INJUNCTION AFFIRMED.** The husband appealed the entry of an injunction for domestic violence against him and the amount of child support he was ordered to pay. The appellate court found that there was sufficient evidence to support the injunction and affirmed. It also noted that two issues, including child support, were not preserved for their consideration. The court stated that a party cannot appeal inadequate findings from a dissolution case unless the alleged defect is brought to the trial court's attention in a motion for rehearing.

<http://www.5dca.org/Opinions/Opin2014/082514/5D13-3314.op.pdf> (August 29, 2014)

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.