

**OSCA/OCI'S FAMILY COURT
CASE LAW UPDATE
January 2015**

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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

J.S. v. State, ___ So. 3d ___, 2015 WL 46522 (Fla. 1st DCA 2015). [RESTITUTION ORDER WAS REVERSED AND REMANDED WHERE THE JUVENILE WAS ABSENT FROM THE RESTITUTION HEARING AND THERE WAS NOT COMPETENT, SUBSTANTIAL EVIDENCE TO ESTABLISH THAT THE JUVENILE HAD KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO BE PRESENT.](#) The juvenile appealed from a restitution order entered after he pled no-contest to trespass and petit theft. The First District Court of Appeal found that the State had properly conceded error because the trial court conducted the restitution hearing in the juvenile's absence and without competent, substantial evidence to establish that the juvenile had knowingly and voluntarily waived his right to be present. Accordingly, the restitution order was reversed and remanded for a new restitution hearing.

https://edca.1dca.org/DCADocs/2014/2384/142384_DC13_01022015_091350_i.pdf (January 2, 2015).

M.M. v. Wood, ___ So. 3d ___, 2015 WL 64824 (Fla. 1st DCA 2015). [APPELLATE COURT DECLINED TO EXERCISE ITS DISCRETION TO ADDRESS DETENTION ISSUE, WHICH WAS MADE MOOT BY THE JUVENILE'S SUBSEQUENT RELEASE FROM SECURE DETENTION.](#) The juvenile filed a petition for a writ of habeas corpus, challenging her detention in secure detention for longer than five days while awaiting placement in a non-secure residential program without the Department of Juvenile Justice (DJJ) seeking an order authorizing continued detention. In the instant case, the DJJ sought and secured an order extending her detention eleven days after her initial commitment. The First District Court of Appeal found that pursuant to the language of s. 985.27(1)(a), F.S. (2014), the juvenile's detention should not have continued past day 5 in the absence of the DJJ seeking an order extending her detention. However, the juvenile was no longer in detention care. The First District held that while the issue may conceivably recur, it would not necessarily evade review. Therefore, the First District declined to exercise their jurisdiction to address the question that had been rendered moot by petitioner's release from secure detention. Accordingly, the petition was dismissed as moot.

https://edca.1dca.org/DCADocs/2014/3954/143954_DA08_01062015_020520_i.pdf (January 2, 2015).

Second District Court of Appeals

L.A.R. v. State, ___ So. 3d ___, 2015 WL 199512 (Fla.2d DCA 2015). [THE TRIAL COURT ERRED IN](#)

DENYING THE JUVENILE'S MOTION FOR DISMISSAL WHERE THE FINGERPRINT EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT THE JUVENILE COMMITTED THE CRIMES. The juvenile appealed the withholding of adjudication for burglary of an unoccupied conveyance and petit theft. The juvenile argued that the trial court erred in denying his motion for dismissal because the fingerprint evidence was insufficient to establish that he committed the crimes. The only evidence implicating the juvenile was his fingerprints found on a bag containing a newspaper that was left in the vehicle by someone other than the victim. The Second District Court of Appeal found that the State failed to show that the fingerprints could only have been made at the time of the crime. See Hill v. State, 973 So. 2d 655, 656 (Fla. 2d DCA 2008); Seneca v. State, 760 So. 2d 995, 995–6 (Fla. 4th DCA 2000); and Shores v. State, 756 So. 2d 114, 115–16 (Fla. 4th DCA 2000). Accordingly, the Second District reversed and remanded to vacate.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2016,%202015/2D14-429.pdf (January 16, 2015).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

C.M. v. State, __ So. 3d __, 2015 WL 71949 (Fla. 4th DCA 2015). TRIAL COURT'S DISMISSAL OF PETITION FOR DELINQUENCY WAS AFFIRMED BECAUSE THE ACT (SEXTING - FIRST OFFENSE) WAS A NONCRIMINAL VIOLATION AND NOT A DELINQUENT ACT OR VIOLATION OF LAW AS REQUIRED TO JUSTIFY DELINQUENCY PROCEEDINGS. The State appealed the dismissal of a petition for delinquency that charged the juvenile with violating s. 847.0141(3)(a), F.S. (2013), "Sexting (First Offense)." The juvenile moved to dismiss the petition, arguing that the offense was not a violation of law or a delinquent act, thereby precluding the juvenile court from having jurisdiction. The trial court found it had jurisdiction and denied the juvenile's motion to dismiss based upon jurisdictional reasons. However, the trial court granted the motion because the child did not commit a delinquent act. The State appealed the dismissal. The Fourth District Court of Appeal found that a first offense for sexting under s. 847.0141(3)(a), F.S. (2013), was a noncriminal violation not constituting a delinquent act or violation of law, and was not subject to prosecution through a petition for delinquency. Therefore, the trial court properly dismissed the petition for delinquency. Accordingly, the dismissal of the delinquency petition was affirmed.
<http://www.4dca.org/opinions/Feb%202014/02-12-14/4D12-653.op.pdf> (January 7, 2015).

J.C. v. State, __ So. 3d __, 2015 WL 71791 (Fla. 4th DCA 2015). TRIAL COURT ERRED BY CALCULATING THE JUVENILE SPEEDY TRIAL RECAPTURE WINDOW AS A SINGLE FIFTEEN-DAY

PERIOD. The State appealed the dismissal of delinquency charges against the juvenile after the trial court granted his motion for discharge under the speedy trial rule. The counsel for the juvenile conceded error. The juvenile was arrested on April 26, 2013, and later charged for delinquency. On July 29, 2013, the juvenile filed a motion for discharge, arguing that the State had failed to bring him to an adjudicatory hearing within ninety days of his arrest as required by the speedy trial rule. On August 5, 2013, the trial court conducted a “five-day hearing” and set the case for trial on August 14, 2013. On August 14, 2013, the court held another hearing. The court noted that the case was set for trial that day. Defense counsel argued that the case should be dismissed under the speedy trial rule because the juvenile was not brought to trial within fifteen days of the date the motion for discharge was filed. Relying upon the district's case law in effect at the time of the hearing, the trial court ruled that the speedy trial rule in juvenile cases provided for a single fifteen-day recapture period. Since the trial date was set 16 days after the motion was filed, the trial court granted the motion to dismiss. On appeal, the State argued that the speedy trial rule required a five-day hearing on the notice of expiration and then a ten-day period in which to bring the juvenile to trial. The Fourth District Court of Appeal found that the Florida Supreme Court in State v. S.A., 133 So. 3d 506, 509 (Fla. 2014), held that the speedy trial rule plainly provides for a recapture window that is comprised of up to 5 days for the hearing followed by 10 days for the trial. The Florida Supreme Court further explained that under the computation of time rule, intervening weekends and legal holidays are excluded in calculating the deadline for the five-day hearing. In the instant case, the motion for discharge was filed on July 29, 2013. The five-day hearing was held on Monday, August 5, 2013. The five-day hearing was timely, as the intervening weekend must be excluded in calculating the deadline. The trial was then timely set for August 14, 2013, which was within ten days of the five-day hearing. Therefore the juvenile was not entitled to a discharge even though the trial was set more than fifteen days from the date the juvenile filed his motion for discharge. Accordingly, the order of dismissal was reversed and remanded.

<http://www.4dca.org/opinions/Feb%202014/02-12-14/4D12-653.op.pdf> (January 7, 2015).

S.S. v. State, __ So. 3d __, 2015 WL 248663 (Fla. 4th DCA 2015). **OFFICER WAS NOT ENGAGED IN THE LAWFUL EXECUTION OF A LEGAL DUTY WHEN HE DETAINED THE JUVENILE BECAUSE THE OFFICER DID NOT HAVE REASONABLE SUSPICION THAT THE JUVENILE WAS COMMITTING CRIME OF DISORDERLY CONDUCT.** The juvenile appealed from an order withholding an adjudication of delinquency for resisting arrest without violence. Two police officers responded to a dispatch where they observed a group of 25-30 juveniles causing a disturbance across the street from the incident location. The juveniles were exhibiting hand gestures, aggressive behavior, and screaming obscenities across the street. When the officers exited their vehicles, about half of the juveniles ran away. One officer told the remaining juveniles to sit on the ground while he

conducted an investigation. All complied except for the juvenile. The juvenile was told to sit several times but she refused. The juvenile started to walk away and an officer grabbed her. The juvenile pulled away and continued to walk away. The officer grabbed the juvenile again, and the juvenile pushed and attempted to punch the officer. The officer placed the juvenile on the ground, where she continued to resist. Another officer assisted in restraining the juvenile. The officers testified that they did not see the juvenile do anything illegal or criminal apart from the screaming and cursing that was part of the disturbance. The trial court denied the juvenile's motion for judgment of dismissal. The trial court found that the officers were investigating disorderly conduct and thus engaged in the lawful execution of a legal duty when they detained the juvenile. The Fourth District Court of Appeal found that although there was testimony that the juveniles were exhibiting "hand gestures" and "aggressive behavior," this testimony related to the juveniles' behavior as a group, and not to the juvenile specifically. Further, there was no evidence that the juvenile was fighting or instigating the crowd. The evidence showed only that the juvenile engaged in screaming and cursing, which was insufficient to constitute disorderly conduct. Thus, the Fourth District held that the officer did not have reasonable suspicion that the juvenile was committing a crime. Consequently, the officer was not engaged in the lawful execution of a legal duty when he detained the juvenile. Therefore, the juvenile could not be convicted of the crime of resisting without violence and the trial court erred in denying the juvenile's motion for judgment of dismissal. Accordingly, the judgment and sentence was reversed.

<http://www.4dca.org/opinions/Jan%202015/01-21-15/4D13-4125.op.Final.pdf> (January 21, 2015).

T.J. v. State, __ So. 3d __, 2015 WL 340693 (Fla. 4th DCA 2015). **FINDING THAT THE JUVENILE VIOLATED PROBATION BY COMMITTING THE CRIME OF CRIMINAL MISCHIEF WAS REVERSED WHERE HEARSAY EVIDENCE FORMED THE SOLE BASIS FOR THE VIOLATION.** The juvenile appealed an order finding him guilty of numerous violations of probation and the resulting revocation of his probation. The juvenile raised a number of issues, which were affirmed without comment. However, the Fourth District Court of Appeal recognized that while hearsay evidence is admissible in violation of probation proceedings; hearsay evidence alone may not form the sole basis for revocation. In the instant case, all the evidence purportedly establishing that the juvenile threw a rock through the window of a Walgreens store was hearsay. Therefore, the Fourth District reversed the finding that the juvenile violated probation by committing the crime of criminal mischief. The trial court's order was affirmed in all other respects, including the findings that defendant violated his probation by failing to complete community service hours and committing petit theft, grand theft, and burglary.

<http://www.4dca.org/opinions/Jan%202015/01-28-15/4D13-1282.op.pdf> (January 28, 2015).

K.R. v. State, __ So. 3d __, 2015 WL 340705 (Fla. 4th DCA 2015). **RESTITUTION ORDER WAS REVERSED AND REMANDED WHERE IT WAS BASED UPON A SPECULATIVE AMOUNT TESTIFIED TO BY THE VICTIM.** The juvenile appealed the trial court's restitution order requiring him to pay \$479, arguing that the amount was based on speculation. At the restitution hearing, the victim testified that her vehicle needed repairs. The Fourth District Court of Appeal found that restitution must be proved by substantial, competent evidence and this evidence must be greater than mere speculation. In the instant case, the victim's testimony regarding the amount she paid for the repairs to her vehicle was never more than a guess. All of her testimony regarding the \$479 figure was preceded by "probably," "like," and "I think." Additionally, the trial court made oral pronouncements at the hearing acknowledging the testimony was probably speculative. Further, the victim did not testify about the repairs that were actually performed on her vehicle. Instead, in her testimony, she made general statements that repairs were made. Since the restitution was based upon the speculative amount testified to by the victim, the Fourth District reversed and remanded for a new restitution hearing.

<http://www.4dca.org/opinions/Jan%202015/01-28-15/4D13-1283.op.pdf> (January 28, 2015).

Fifth District Court of Appeals

C.B. v. State, __ So. 3d __, 2015 WL 114063 (Fla. 5th DCA 2015). **WITHHOLD OF ADJUDICATION FOR PETIT THEFT WAS REVERSED BECAUSE THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE CONVICTION.** The juvenile appealed an order withholding adjudication of delinquency and placing him on probation for the offense of petit theft. The juvenile argued that the trial court erred in denying his motion for judgment of dismissal because the evidence was insufficient. The Fifth District Court of Appeal found that the case was a circumstantial evidence case involving the theft of an iPod. The only evidence linking the juvenile to the offense was one witness's testimony that while she was in the classroom where the iPod went missing, she observed out of the corner of her eye, the juvenile pass an object to the person ultimately found to possess the stolen iPod. However, the witness could not identify the object. The Fifth District held that even viewed in the light most favorable to the State, this evidence was insufficient to sustain a conviction for petit theft. Accordingly, the Fifth District reversed the trial court's order withholding adjudication and placing the juvenile on probation.

<http://www.5dca.org/Opinions/Opin2015/010515/5D14-712.op.pdf> (January 9, 2015).

D.A.B. v. State, __ So. 3d __, 2015 WL 376431 (Fla. 5th DCA 2015). **ORDER DIRECTING PAYMENT OF RESTITUTION WAS QUASHED BECAUSE THE JUVENILE COURT'S AUTHORITY TO ORDER RESTITUTION ENDED WHEN THE CHILD TURNED NINETEEN.** The juvenile appealed an order directing the payment of restitution. The order also terminated the juvenile's probation. In April

of 2013, the juvenile plead no contest to taking a deer at night and unlawfully possessing a firearm and knife. In May 2013, at disposition, an issue arose as to the characterization of a \$1,000 payment the juvenile was ordered to make. No order resolving that issue was entered until February 2014, by which time the juvenile had turned nineteen years old. The Fifth District Court of Appeal found that as conceded by the State, the juvenile court's authority to order the payment of restitution ended when the child turned nineteen. Accordingly, the order under appeal was quashed.

<http://www.5dca.org/Opinions/Opin2015/012615/5D14-964.op.pdf> (January 30, 2015).

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

No new opinions for this reporting period.

Third District Court of Appeals

Florida Dept. of Children and Families v. J.B., ___ So. 3d ____, 2015 WL 72477 (Fla. 3d DCA 2015). [ORDER REQUIRING DCF TO PAY ATTORNEY AD LITEM TRAVEL COSTS QUASHED](#). After a dependent youth was placed in residential program in North Carolina, the attorney ad litem filed a motion to require the Department of Children and Families to pay her travel costs to visit the child to foster the attorney-client relationship. The court denied that request, but ordered the Department to fund any visits that were therapeutically recommended, and the Department appealed. The appellate court held that ordering the Department to pay for the travel for the purpose of facilitating child's therapy violated the doctrine of separation of powers, and quashed the order. The court also noted that unless a statute or the constitution authorizes the court to do so, it is a violation of the doctrine of separation of powers for a court to direct an executive branch agency to spend its funds in a certain way.

<http://www.3dca.flcourts.org/Opinions/3D14-1272.pdf> (January 07, 2015).

Fourth District Court of Appeals

D.S.B. v. Department of Children and Families, ___ So. 3d ____, 2015 WL 71711 (Fla. 4th DCA 2015). [MOTHER'S WAIVER OF COUNSEL INVALID](#). The mother's attorney withdrew in the middle of the final hearing on an adjudication of dependency, and the court allowed the mother to represent herself during the rest of the hearing. The trial court did question the mother; however, since the court did not permit evidence of the mother's significant mental health problems, the appellate court held that the mother's waiver of her right to counsel was not valid. The court remanded the case and noted that pursuant to Florida Rule of Juvenile Procedure 8.320(b)(1), the mother must waive her rights with an intelligent and understanding choice, which did not occur in this case.

<http://www.4dca.org/opinions/Jan%202015/01-07-15/4D14-1333.op.pdf> (January 7, 2015).

Department of Children and Families v. T.S., ___ So. 3d ____, 2015 WL 248864 (Fla. 4th DCA 2015). [DISMISSED CASE REMANDED FOR HEARING](#). The arraignment hearing was reset three times due to difficulty in finding the parents. During the last arraignment hearing, the court sua sponte dismissed the petition over the objections of DCF and the child. DCF and the child appealed, claiming that the trial court committed fundamental error and violated the child's due

process rights by dismissing the petition without notice and an opportunity to be heard. The appellate court agreed, reversed, and remanded the case for reinstatement of the petition. <http://www.4dca.org/opinions/Jan%202015/01-21-15/4D14-3629.OP.pdf> (January 21, 2015).

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

Burkett v. Burkett n/k/a McCay, __ So. 3d __, 2015 WL 233041 (Fla. 1st DCA 2015). **AWARD OF ATTORNEY'S FEES AFFIRMED IN ABSENCE OF EITHER A MOTION FOR REHEARING ALERTING TRIAL COURT TO DEFICIENCIES IN FINDINGS OR A TRANSCRIPT OF THE RELEVANT HEARING.** Former husband appealed an order awarding former wife attorney's fees. The appellate court agreed with him that the trial court erred by failing to include sufficient findings to support the fee award, but held that it was "constrained to affirm" because former husband had not filed a motion for rehearing drawing the trial court's attention to the deficiencies in the findings. The lack of a transcript resulted in the appellate court not knowing what evidence the trial court had heard beyond the documents in the record or what issues were preserved for review. Affirmed. https://edca.1dca.org/DCADocs/2014/1843/141843_DC05_01202015_084506_i.pdf (January 20, 2015).

Cameron v. Cameron, __ So. 3d __, 2015 WL 292537 (Fla. 1st DCA 2015). **NO COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTED SIX-MONTH DELAY IN IMPUTING INCOME TO SPOUSE; NO EVIDENCE IN RECORD OF INVOLUNTARY UNDEREMPLOYMENT; REMANDED FOR IMPUTATION OF INCOME TO SPOUSE AND RECALCULATION OF OTHER SPOUSE'S ALIMONY AND CHILD SUPPORT.** The appellate court agreed with former husband that no competent, substantial evidence existed to support the trial court's six-month delay before imputing income to former wife. Both spouses were lawyers; the marriage was brief. The appellate court found no evidence of involuntary underemployment in the record. Accordingly, it reversed and remanded with instructions to impute income to former wife consistent with the child support guidelines and to recalculate former husband's alimony and child support obligations. Remainder of judgment affirmed. https://edca.1dca.org/DCADocs/2014/1161/141161_DC08_01232015_110713_i.pdf (January 23, 2015).

McDuffie v. McDuffie, __ So. 3d __, 2015 WL 292499 (Fla. 1st DCA 2015). **IMPUTATION OF INCOME REQUIRES COMPETENT, SUBSTANTIAL EVIDENCE; TRIAL COURT MUST ALLOCATE DEBT AND ESTABLISH METHOD OF PAYMENT.** The trial court abused its discretion in imputing a monthly income to former wife in absence of competent, substantial evidence. If a trial court finds that a spouse or parent is voluntarily underemployed or unemployed, it must impute income; however, that is only part of the equation. A spouse seeking to impute income must support the amount it advocates and a trial court must make specific findings of fact supporting the amount it imputes. Here, on remand, the trial court was permitted to take further evidence regarding the amount of income to be imputed and to reconsider the alimony and equitable distribution if necessary due to the improperly imputed income that had been factored in before. The appellate court held that the trial court had not abused its discretion in distributing the spouses' credit card and loan debt equally, but found that the trial court had not spelled out how

each spouse would be responsible. The appellate court instructed the trial court on remand to revise its final judgment to “allocate each account so as to accomplish equal distribution,” or otherwise establish allocation of debt and method of payment.

https://edca.1dca.org/DCADocs/2014/0512/140512_DC13_01232015_110918_i.pdf (January 23, 2015).

Second District Court of Appeals

Jarrard v. Jarrard, ___ So. 3d ___, 2015 WL 72356 (Fla. 2d DCA 2015). **SPOUSE ESTABLISHED SUBSTANTIAL CHANGE IN CIRCUMSTANCES; APPELLATE COURT EXPLAINED “MIXED” REVIEW; REMANDED FOR TRIAL COURT TO EXERCISE ITS DISCRETION BASED ON PERMANENT CHANGE IN CIRCUMSTANCES.** The appellate court reversed the trial court’s conclusion that former husband failed to establish a substantial change of circumstances. At the time of the dissolution, former husband was making \$150,000 and former wife \$10,000; they split his monthly military retirement benefit. Former husband’s income decreased after dissolution. After being unemployed for a time, he accepted a job which paid him a commission. Although his income fluctuated, his average monthly income was less than half of what it had been at the time of the dissolution. The appellate court held that the trial court did not err in denying a request to terminate former wife’s alimony due to her need, but held that the evidence showed former husband had sustained a “major, unexpected loss of income.” The appellate court noted that once a trial court determines that a spouse with the burden of proof has established an “entitlement to modify,” the decision to modify is discretionary and is reviewed for abuse of that discretion; however, the issues leading up to that entitlement may involve standards of review other than abuse of discretion. Whether a pleading regarding substantial change of circumstances—or any pleading—is legally sufficient is reviewed *de novo*, while a trial court’s findings of fact upon which relief is based must be based on competent, substantial evidence. The appellate court discussed what it termed a “mixed” standard of review. Reversed and remanded for the trial court to “exercise its discretion” and to update the evidence as necessary based on the legal conclusion that the change in circumstances was permanent.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2007,%202015/2D13-5091.pdf (January 7, 2015).

Valdes v. Valdes, ___ So. 3d ___, 2015 WL 72433 (Fla. 2d DCA 2015). **REVERSED AND REMANDED FOR RECALCULATION OF CHILD SUPPORT.** The appellate agreed with former wife that the trial court miscalculated the child support and retroactive child support. It noted that the calculations were complicated by the fact that one child spent equal amounts of time with both parents, while the other spent time only with former husband. Applying the statutory formula to the numbers in the final judgment yielded a different amount than that in the final judgment; accordingly, the appellate court reversed and remanded for the trial court to recalculate child support using the correct multiplication procedures.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2007,%202015/2D13-5509.pdf (January 7, 2015).

Perez v. Fay, ___ So. 3d ___, 2015 WL 292016 (Fla. 2d DCA 2015). **TRIAL COURT CANNOT GRANT UNREQUESTED RELIEF; TRIAL COURT HAS AN OBLIGATION TO IDENTIFY IN ITS JUDGMENT THE**

CONCRETE STEPS A PARENT MUST TAKE TO REESTABLISH TIME-SHARING; COMPETENT, SUBSTANTIAL EVIDENCE MUST SUPPORT RESTRICTIONS OR LIMITATIONS ON TIME-SHARING. The appellate court found competent, substantial evidence supported trial court's decision to grant former husband primary residential custody of the spouses' daughter, but reversed and remanded the remaining provisions of the judgment due to legal errors in the trial court's rulings. Former wife lost primary custody to former husband after being involuntarily committed. Upon being released, she was granted supervised time-sharing and daily telephone contact with her daughter, but her request to regain primary residential custody was denied. Former wife underwent parenting evaluations, psychiatric evaluations, and social investigations for over two years. At an evidentiary hearing, her treating psychologists testified that she was following her recommended treatment protocol, while both time-sharing supervisors testified to the strong bond between mother and daughter. The parenting evaluator testified that former wife should begin transitioning to increased supervised time-sharing over a six-month period; however, the trial court reduced former wife's supervised time-sharing. Finding nothing in the record to support this reduction and other conditions imposed by the trial court, the appellate court concluded that the trial court had abused its discretion. Because a parent has a constitutionally protected "inherent right" to a meaningful relationship with his or her children, competent, substantial evidence must support any restrictions or limitations on time-sharing. In addition to the judgment granting relief not requested, it was legally deficient on its face for not having included the steps that former wife must take in order to regain primary residential custody and/or meaningful unsupervised time-sharing with her daughter. Citing its opinion in Grigsby v. Grigsby, 633 So. 2d 494, 496 (Fla. 2d DCA 2010), the appellate court held that a trial court has an obligation to identify "concrete steps" in the final judgment that a parent must take to reestablish time-sharing. On remand, the trial court was instructed to reinstate the earlier amount of supervised time-sharing, to set a time-sharing schedule ensuring a meaningful relationship between former wife and her daughter, to address the costs of the time-sharing supervisor, and to identify specific steps former wife must take to reestablish unsupervised time-sharing and/or primary residential custody.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2023,%202015/2D13-4217.pdf (January 23, 2015).

Panopoulos v. Panopoulos, ___ So. 3d ___, 2015 WL 292028 (Fla. 2d DCA 2015). **AMENDMENT OF A JUDGMENT TO CORRECT A SCRIVENER'S ERROR DOES NOT TOLL THE TIME FOR APPEAL; APPEAL TIME RUNS FROM DATE OF INITIAL ORDER.** Former husband's appeal of award of durational alimony to former wife was dismissed for lack of jurisdiction. The initial order was rendered on September 18, 2013. On October 14, 2013, the trial court issued an amended order to correct a scrivener's error. Former husband's notice of appeal was filed October 23, 2013. The appellate court held the case law is clear: when a judgment is amended only to correct a scrivener's error, the time for appeal is not tolled, but runs from the date of the initial order. Former husband's appeal was not timely filed.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2023,%202015/2D13-5234.pdf (January 23, 2015).

Card v. Card, __ So. 3d __, 2015 WL 403985 (Fla. 2d DCA 2015). **TRIAL COURT DID NOT ERR IN AWARDING FEES TO SPOUSE ON MATCHING BASIS WITH OTHER SPOUSE PURSUANT TO TERMS OF A JOINT STIPULATION.** During the dissolution proceedings, the spouses reached a stipulated settlement on temporary attorney's fees which provided that former husband would pay \$10,000 in temporary fees to former wife's counsel and that each spouse would reserve the right to argue later whether and how that amount would be assessed. It also provided that former husband would pay former wife's counsel the same fees he paid to his own counsel should his fees exceed \$20,000 prior to the final hearing, again leaving the door open for adjustment. In its amended final judgment, the trial court determined that former wife was not entitled to a fee award, except for the amount former husband paid through the final hearing. In former wife's first appeal, Card v. Card, 122 So. 3d 436 (Fla. 2d DCA 2013), the appellate court found this judgment ambiguous because it stated both that former wife was and was not entitled to fees and costs. The appellate court directed the trial court to clarify the ambiguity in the judgment and determine the fee. On remand, the trial court set the amount of former wife's fee award equal to what former husband's attorney charged him, consistent with their stipulation. It made no findings as to former wife's need for fees, former husband's ability to pay, or the reasonableness of the fees former wife incurred. Former wife argued that the trial court abused its discretion in capping the amount of her fees at the amount former husband incurred. Pointing out that former wife had argued against the need for a reasonableness hearing and was in agreement with the methodology relied on by the trial court, the appellate court concluded that the trial court did not err in awarding fees to former wife on a matching basis without specific findings as to her need, former husband's ability to pay, and the reasonableness of the award.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2030,%202015/2D13-6054.pdf (January 30, 2015).

Third District Court of Appeals

Chalmers v. Burrough, __ So. 3d __, 2015 WL (Fla. 3d DCA 2015). **SUPPLEMENTAL FINAL JUDGMENT MODIFYING SUPPORT AND PARENTAL RESPONSIBILITY REMANDED FOR CLARIFICATION OF PARENTAL RESPONSIBILITY.** Father appealed the trial court's supplemental final judgment modifying child support and parental responsibility. The appellate court affirmed except to remand for clarification as to whether the supplemental judgment maintained the parents' shared parental responsibility or whether it modified the final judgment by awarding the mother sole parental responsibility; such modification would require a determination that maintaining shared parental responsibility would be detrimental to the child.
<http://www.3dca.flcourts.org/Opinions/3D13-3203.pdf> (January 7, 2015).

Lascaibar v. Lascaibar, __ So. 3d __, 2015 WL 249262 (Fla. 3d DCA 2015). **TRIAL COURT IS NOT BOUND TO ACCEPT CLEARLY ERRONEOUS FINDINGS; HERE, IT ABUSED ITS DISCRETION BY ACCEPTING CLEARLY ERRONEOUS FINDINGS.** Former wife appealed a trial court order denying her exceptions to the general magistrate's recommendation that she was not entitled to accrual of interest on the child support arrearage owed by former husband. The appellate court found that the trial court had abused its discretion in denying her exceptions because its prior order had entitled her to prejudgment interest. A trial court is not bound to accept findings that are clearly erroneous. Because the general magistrate's recommendations were clearly erroneous,

the trial court abused its discretion in denying the exceptions to them. Accordingly, the appellate court reversed the order denying the exceptions and instructed the trial court on remand to permit former wife to present evidence as to the amount of interest that had accrued from the date of its order finding that she was entitled to interest through the date former husband submitted the final lump-sum arrearage payment.

<http://www.3dca.flcourts.org/Opinions/3D13-1693.pdf> (January 21, 2015).

Fourth District Court of Appeals

Wiesenthal v. Wiesenthal, __ So. 3d __, 2015 WL 71944 (Fla. 4th DCA 2015). **TRIAL COURT MUST MAKE FINDINGS ON NEED AND ABILITY IN CONSIDERING FEE AWARDS; IF IT IMPOSES SANCTIONS, IT MUST MAKE SEPARATE AFFIRMATIVE FINDINGS THAT A CONTEMNOR HAS THE PRESENT ABILITY TO COMPLY WITH THE PURGE AND THE FACTUAL BASIS FOR THAT FINDING.**

Consolidated appeal in which the appellate court agreed with former husband that the award of attorney's fees to former wife, the concurrent denial of former husband's request for fees, and the order holding former husband in contempt for failing to pay the children's tuition should be reversed for insufficient findings. As to fees, the trial court failed to make any findings of fact regarding the spouses' respective incomes or need and ability; it simply stated that former husband's financial position was "much better" than former wife's. The appellate court found this insufficient. It also found the trial court's findings that former husband had the present ability to pay the purge based on his inventory insufficient. If a trial court imposes a sanction and sets conditions for purging the contempt, it must make separate affirmative findings that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The appellate court noted that its reversal of the contempt order did not preclude further proceedings on that issue. Its reversal of the fee award necessitated reversal of the money judgment entered against former husband. It instructed the trial court on remand to reconsider the fee issue after making specific findings of fact regarding the spouses' net incomes and financial circumstances.

<http://www.4dca.org/opinions/Jan%202015/01-07-15/4D11-3501.op.pdf> (January 7, 2015).

Wiesenthal v. Wiesenthal, __ So. 3d __, 2015 WL 71854 (Fla. 4th DCA 2015). **REVERSAL OF UNDERLYING FEE AWARD NECESSITATED REVERSAL OF CONTEMPT; ORDER ON ADDITIONAL FEES LACKED SPECIFIC FINDINGS OF FACT.** In an appeal involving the same spouses, former husband appealed a subsequent trial court order holding him in contempt for failing to pay alimony, the attorney's fees previously awarded to former wife, and additional attorney's fees to former wife. The appellate court affirmed the contempt order to the extent that it was based on failure to pay alimony, but reversed as to both fee awards. Reversal of the underlying fee award necessitated reversal of the contempt regarding the previously awarded fees; the order on the additional fees suffered the same fate as the case above—it was not supported by required findings of fact. The issue of the additional fees was remanded to the trial court with instructions that it reconsider the issue after making the specific findings of fact as to the spouses' net incomes and financial circumstances, and need and ability.

<http://www.4dca.org/opinions/Jan%202015/01-07-15/4D12-2807.op.pdf> (January 7, 2015).

Rudnick v. Harman, ___ So. 3d ___, 2015 WL 340721 (Fla. 4th DCA 2015). TRIAL COURT ERRED IN RELYING ON SPOUSE’S INCOME IN A YEAR IN WHICH IT HAD SPIKED DUE TO PRESIDENTIAL ELECTION; APPELLATE COURT COMPARED FACTS TO BONUSES WHICH MUST BE REGULAR AND CONTINUOUS BEFORE THEY CAN BE INCLUDED IN SPOUSE’S INCOME FOR CALCULATION OF CHILD SUPPORT. The appellate court agreed with former husband, the owner of a political consulting firm, that the trial court erred in relying strictly on his 2012 income to calculate his child support obligation. Due to the presidential election, former husband had earned over twice as much in 2012 as he did in either 2010 or 2011. He testified that his 2012 earnings would not continue in the next year. Acknowledging that it was not comparing apples to apples, the appellate court compared the facts to case law concerning the treatment of bonus income. In those cases, there must be evidence that the bonus is “regular and continuous” before it can be included in a spouse’s income for purposes of calculating child support. Here, the evidence was “uncontroverted” that the spike in former husband’s 2012 income was not regular and continuous, but was due to a specific non-recurring event—the 2012 presidential election. Remanded for the trial court to make additional findings.

<http://www.4dca.org/opinions/Jan%202015/01-28-15/4D13-1359.reh'g%20op.pdf> (January 28, 2015).

Gonzalez v. Parisi, ___ So. 3d ___, 2015 WL 340770 (Fla. 4th DCA 2015). TRIAL COURT ORDER GRANTING PETITION TO DOMESTICATE ITALIAN DIVORCE DECREE REVERSED; NO COMPETENT, SUBSTANTIAL EVIDENCE OF AGREEMENT. Former wife petitioned to domesticate an Italian divorce decree and enforce an award of child support against former husband. Former husband argued on appeal that the trial court erred in approving and ratifying the general magistrate’s report and recommendations to domesticate the decree. The appellate court reversed the trial court’s order due to a lack of competent, substantial evidence of the agreement between the spouses regarding child support alluded to in the decree.

<http://www.4dca.org/opinions/Jan%202015/01-28-15/4D13-3718.op.pdf> (January 28, 2015).

Fifth District Court of Appeals

Patel v. Patel, ___ So. 3d ___, 2015 WL 376518 (Fla. 5th DCA 2015). SPOUSE WHO RECEIVED MARITAL HOME SHOULD REFINANCE AND PUT HIS NAME ON MORTGAGE; OTHER SPOUSE SHOULD BE RELIEVED OF LIABILITY; JUDGMENT SHOULD BE AMENDED TO INCLUDE A HOLD HARMLESS CLAUSE; TRIAL COURT SHOULD MAKE FINDINGS ON SPOUSE’S ABILITY TO REPAY HER HALF OF A LOAN FROM IN-LAWS; UNCOVERED MEDICAL EXPENSES SHOULD BE ALLOCATED IN SAME PERCENTAGES AS TIME-SHARING; TRIAL COURT ABUSED ITS DISCRETION IN DENYING FEES TO SPOUSE WITH LOWER INCOME. The appellate court found merit in several issues raised by former wife in her appeal of a final judgment of dissolution. The trial court awarded the marital home to former husband and ordered former wife to execute a quitclaim deed; however, no provision was made to relieve her of liability for the mortgage. The appellate court reversed and instructed the trial court on remand to direct former husband to refinance the home, with the mortgage in his name only, and to include a hold harmless clause in the amended final judgment in the event that he was unable to obtain refinancing. Concluding that there was no finding that a loan owed by the spouses to former husband’s parents was overdue or that the repayment terms called for anything other than monthly payments, the appellate court reversed the trial

court's requirement that former wife immediately pay her half of the debt from marital assets awarded to her in the dissolution. It remanded for the trial court to make necessary findings regarding her ability and willingness to repay her half of the loan. The trial court erred in splitting the uncovered medical expenses between the spouses because former husband had the children 60% of the time and former wife 40%; those percentages should have been applied to the uncovered medical expenses as well. Former husband's payment of the children's monthly insurance premium should have been factored into the support equation. Because the guidelines worksheet was not included in the record, the appellate court was unable to discern whether the premium was included. It instructed the trial court on remand to re-examine this issue and attach the worksheets to its amended judgment. The appellate court agreed with former wife that the trial court abused its discretion in denying her motion for attorney's fees due to the disparity of income between the spouses. On remand, the trial court was to reconsider her entitlement to fees in light of her lower income.

<http://www.5dca.org/Opinions/Opin2015/012615/5D13-3312.op.pdf> (January 30, 2015).

Waheed v. Brummer, ___ So. 3d ___, 2015 WL 376510 (Fla. 5th DCA 2015). **ARGUMENTS FOR APPEAL NOT PRESERVED; PRO SE SPOUSE WHO FILED SEVERAL APPEALS AFTER DISSOLUTION CAUTIONED REGARDING FURTHER APPEALS.** Former husband appealed a trial court order on attorney's fees after an award of fees to his neighbors following his appeal of denial of discovery on them regarding two dogs and several pieces of furniture apparently removed from the marital home by former wife while former husband was out of town and the neighbors were watching the dogs. This was former husband's seventh appeal in connection with his divorce from former wife. The appellate court found that former husband did not preserve any of his arguments for appeal. It stopped short of prohibiting former husband from filing additional appeals regarding his dissolution without being represented by a Florida Bar member; however, it stated it was "close to reaching that point."

<http://www.5dca.org/Opinions/Opin2015/012615/5D13-4222.op.pdf> (January 30, 2015).

Spreng v. Spreng, ___ So. 3d ___, 2015 WL 376395 (Fla. 5th DCA 2015). **TRIAL COURT FAILED TO MAKE FINDINGS OF FACT IN ITS TEMPORARY ORDER AWARDING FEES AND COSTS; HOWEVER, SPOUSE FAILED TO PRESERVE THE ISSUE FOR APPEAL BY NOT REQUESTING REHEARING; ORDER DETAILED SPOUSES' FINANCIAL CIRCUMSTANCES AND "CLEARLY CONSIDERED" NEED AND ABILITY.** Former husband argued that the trial court failed to consider former wife's ability in its temporary order awarding her fees and costs. He argued that the trial court was required to make written findings of fact as to the reasonableness of the hourly rate and the hours expended; its failure to do so was reversible error. Former wife conceded that failure to make the findings was error. "Despite that concession," the appellate court affirmed. Although the order lacked findings of fact, former husband failed to preserve the issue for appeal when he did not request rehearing. The appellate court held the order detailed the history of the marriage and the spouses' financial circumstances, and "clearly considered" former wife's need and former husband's ability to pay. Former husband had a "significant net worth and income stream," while former wife did not.

<http://www.5dca.org/Opinions/Opin2015/012615/5D14-2369.op.pdf> (January 30, 2015).

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

Laseringo v. Gerhardt, ___ So. 3d ____, 2015 WL 196210 (Fla. 5th DCA 2015). **STALKING INJUNCTION REVERSED**. Over a period of 4 months, the respondent repeatedly emailed and sent gifts to the petitioner, followed by a long letter that, due to the content, prompted her to file for an injunction against stalking which was granted by the court. The respondent appealed and the appellate court reversed the ruling. Although the court found that the letter would have caused a reasonable person to suffer the “substantial emotional distress” required by statute, there was no second incident of stalking that supported the issuance of the final injunction.

<http://www.5dca.org/Opinions/Opin2015/011215/5D14-2181.op.pdf> (January 16, 2015).

Drug Court/Mental Health Court Case Law

Florida Supreme Court

In re: Amendments to Florida Rule of Judicial Admin. 2.420, ___ So. 3d ___, 2015 WL 263902 (Fla. 2015). FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.420(D)(1)(B) WAS AMENDED TO ADD FORENSIC BEHAVIORAL HEALTH EVALUATIONS UNDER CHAPTER 916, F.S., AND ELIGIBILITY SCREENING, SUBSTANCE ABUSE SCREENING, BEHAVIORAL HEALTH EVALUATIONS, AND TREATMENT STATUS REPORTS FOR DEFENDANTS REFERRED TO OR CONSIDERED FOR REFERRAL TO A DRUG COURT PROGRAM TO THE LIST OF INFORMATION IN COURT RECORDS THAT THE CLERKS OF COURT MUST AUTOMATICALLY DESIGNATE AND MAINTAIN AS CONFIDENTIAL. The Florida Supreme Court amended Florida Rule of Judicial Administration 2.420(D)(1)(B) to add new subdivisions (xxi) and (xxii). Subdivision (xxi) adds forensic behavioral health evaluations under chapter 916, F.S. to the list of automatically confidential information contained in court records. Subdivision (xxii) adds eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program to the list of automatically confidential information contained in court records. There was also an amendment to subdivision (iv) to corrects a statutory reference for HIV test results and the identity of any person upon whom an HIV test has been performed from s. 381.004(3)(e), F.S. to s. 381.004(2)(e), F.S.

<http://www.floridasupremecourt.org/decisions/2015/sc14-2434.pdf> (January 22, 2015).

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

State v. Kutz, ___ So. 3d ___, 2015 WL 403969 (Fla. 2d DCA 2015). NO COMPETENT, SUBSTANTIAL EVIDENCE WAS PROVIDED THAT DEFENDANT QUALIFIED FOR A DRUG COURT PROGRAM AS REQUIRED TO SUPPORT THE USE OF S. 921.0026(2)(M), F.S., AS A BASIS FOR A DOWNWARD DEPARTURE. The State challenged the trial court's imposition of a downward departure sentence following a no-contest plea to grand theft of more than \$100,000. Kutz embezzled a large amount of money, possibly due in part to her gambling and accumulated debts. Kutz scored fifty-six points and a minimum of twenty-one months in prison on her presentencing scoresheet. At sentencing, she argued for sentence mitigation based on ss. 921.0026(2)(e), (j), and (m), F.S. (2012). The trial court specifically found that subsections (e) and (j) were not applicable but determined that subsection (m) did apply. Kutz was sentenced to a twenty-one-month prison sentence which was suspended and to be served on twenty-four months of community control followed by a twenty-year probationary term with a restitution repayment schedule and completion of a twelve-month gambling program. The State appealed and argued that the sentence was an invalid downward

departure sentence because it was not supported by competent, substantial evidence. The Second District Court of Appeal found that s. 921.0026(2)(m) allows for a downward departure sentence where the defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code Scoresheet total sentence points are 60 points or fewer, the court determines that the defendant is amenable to the services of a post-adjudicatory treatment-based drug court program, and the defendant is otherwise qualified to participate in the program as part of the sentence. In the instant case, the trial court ignored the portion of s. 921.0026(2)(m) that requires the defendant be a candidate for a drug court program. A possible gambling addiction does not provide competent, substantial evidence that Kutz qualified for a drug court program as required by the statute and cannot support the use of subsection (m) as a basis for a downward departure of her sentence. Accordingly, the Second District reversed and remanded the downward departure sentence for resentencing because the trial court based its departure sentence on a mitigator specific to participation in drug court when there was no evidence presented to support that Kutz suffered from a drug-related addiction.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2030,%202015/2D13-4473.pdf (January 30, 2015).

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.