

# OSCA/OCI'S FAMILY COURT CASE LAW UPDATE JULY 2014

## Table of Contents

Baker Act/Marchman Act Case Law .....	3
Florida Supreme Court.....	3
First District Court of Appeals.....	3
Second District Court of Appeals .....	3
Third District Court of Appeals .....	3
Fourth District Court of Appeals .....	3
Fifth District Court of Appeals .....	3
Delinquency Case Law .....	4
Florida Supreme Court.....	4
First District Court of Appeals.....	4
Second District Court of Appeals .....	4
Third District Court of Appeals .....	4
Fourth District Court of Appeals .....	5
Fifth District Court of Appeals .....	5
Dependency Case Law.....	8
Florida Supreme Court.....	8
First District Court of Appeals.....	8
Second District Court of Appeals .....	8
Third District Court of Appeals .....	8
Fourth District Court of Appeals .....	8
Fifth District Court of Appeals .....	8
Dissolution Case Law .....	9
Florida Supreme Court.....	9
First District Court of Appeals.....	9
Second District Court of Appeals .....	9
Third District Court of Appeals .....	9
Fourth District Court of Appeals .....	10
Fifth District Court of Appeals .....	10
Domestic Violence Case Law.....	13
Florida Supreme Court.....	13

First District Court of Appeals.....	13
Second District Court of Appeals .....	13
Third District Court of Appeals .....	13
Fourth District Court of Appeals .....	14
Fifth District Court of Appeals .....	14
Drug Court/Mental Health Court Case Law .....	15
Florida Supreme Court.....	15
First District Court of Appeals.....	15
Second District Court of Appeals .....	15
Third District Court of Appeals .....	15
Fourth District Court of Appeals .....	15
Fifth District Court of Appeals .....	15

## **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**

D.C.C. v. State, \_\_ So. 3d \_\_, 2014 WL 3407083 (Fla. 1st DCA 2014). **DISPOSITION FOR ROBBERY OF A BICYCLE WAS REVERSED BECAUSE THE STATE FAILED TO ADDUCE EVIDENCE SHOWING THAT THE FORCE USED AGAINST THE VICTIM WAS IN FURTHERANCE OF A PLAN TO OBTAIN THE BICYCLE.** The juvenile was found delinquent for his participation in the robbery of a bicycle. The juvenile and two other boys were charged and tried together for the robbery of the bicycle of a fellow student. The First District Court of Appeal reversed the final disposition orders of the juvenile's two co-defendants because the State did not adduce evidence showing the force used against the victim was in furtherance of a plan to obtain the victim's bicycle. Instead, the evidence suggested that the force used by the boys was in retaliation for an earlier water spitting incident that occurred at a basketball game. The bicycle was taken after the victim ran away. See C.B.B. v. State, \_\_ So. 3d \_\_, 2014 WL 1468051 (Fla. 1st DCA 2014), and Z.M.B. v. State, \_\_ So. 3d \_\_, 2014 WL 2197458 (Fla. 1st DCA 2014). The First District found that this failure of proof also required the reversal in the instant case. Accordingly, the final disposition order was reversed and remanded for entry of a judgment of dismissal.

[https://edca.1dca.org/DCADocs/2013/5422/135422\\_DC13\\_07142014\\_084824\\_i.pdf](https://edca.1dca.org/DCADocs/2013/5422/135422_DC13_07142014_084824_i.pdf) (July 14, 2014).

### **Second District Court of Appeals**

J.R. v. State, \_\_ So. 3d \_\_, 2014 WL 3377093 (Fla. 2d DCA 2014). **TRIAL COURT ERRED IN ORDERING RESTITUTION FOR A VETERINARY BILL THAT WAS NOT MENTIONED IN THE DELINQUENCY PETITION OR IN THE FACTUAL BASIS SET FORTH IN THE PLEA COLLOQUY.** The juvenile appealed an order withholding adjudication and imposing probation after he pled guilty to burglary of an unoccupied dwelling and third-degree grand theft. The Second District Court of Appeal found that the State had properly conceded that the trial court erred in ordering restitution for a veterinary bill. The \$250 veterinary bill was not mentioned in the petition or in the factual basis set forth in the plea colloquy. The victim had testified that when she arrived home on the day of the burglary, her dog was injured and required treatment. The juvenile also argued that the total restitution amount of \$4082 was not supported by competent substantial evidence because the victim had only testified as to the purchase prices of the stolen items. The Second District found that the extent of the victim's testimony was not fatal as to the restitution order. The Second District noted that the victim had also testified as to the condition of the stolen items. See H.L.C. v. State, 950 So. 2d 1268, 1269 (Fla. 5th DCA 2007) (holding testimony as to purchase dates and prices, condition at time of theft, and replacement values supported finding of fair market value); Bakos v. State, 698 So. 2d 943, 944 (Fla. 4th DCA 1997) (affirming restitution award in part even though victim testified only as to purchase price and not use, condition, or amount of depreciation). Accordingly, the Second District affirmed. Finally, the juvenile contended that the trial court erred in failing to address how much the juvenile could reasonably be expected to earn to pay restitution. The Second District found that the juvenile failed to

preserve this issue. Accordingly, the Second District affirmed in part and reversed in part without prejudice to the juvenile's right to petition for habeas corpus relief in the trial court. See J.E.P. v. State, 130 So. 3d 764, 765 (Fla. 2d DCA 2014).

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/July/July%2011,%202014/2D13-4145.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/July/July%2011,%202014/2D13-4145.pdf) (July 11, 2014).

### ***Third District Court of Appeals***

A.M. v. State, \_\_ So. 3d \_\_, 2014 WL 3456157 (Fla. 3d DCA 2014). **IN THE INSTANT CASE, THE ROBBERY BY SUDDEN SNATCHING OFFENSE SHOULD NOT HAVE BEEN DESIGNATED A VIOLENT THIRD-DEGREE FELONY WHEN SCORING THE JUVENILE'S RISK ASSESSMENT INSTRUMENT.** The juvenile filed a petition for a writ of habeas corpus, asserting that he was being unlawfully held in secure detention. The juvenile was subsequently released and the petition was dismissed as moot. Nevertheless, the Third District Court of Appeal exercised their discretion since the issue had arisen in the past and was likely to recur. The victim was walking in a park when the juvenile ran up from behind and snatched his cell phone from his hand. The juvenile was arrested and charged with robbery by sudden snatching, a third-degree felony. At that detention hearing, the juvenile's Risk Assessment Instrument (RAI) designated the robbery by sudden snatching as a violent third-degree felony which, together with the juvenile's other pending offenses, resulted in a qualifying score for secure detention. In his petition, the juvenile argued that had the robbery by sudden snatching been designated a non-violent third-degree felony, the juvenile's RAI score would not have qualified him for secure detention. The Third District found that the statutory elements of § 812.131, F.S., does not require that the offender use or threaten to use any force or violence in order to commit the crime. Therefore, in light of the statutory elements of the crime and the factual allegations, the Third District held that the juvenile's offense should not have been designated and scored as a violent third-degree felony on the juvenile's RAI.

<http://www.3dca.flcourts.org/Opinions/3D14-1259.pdf> (July 16, 2014).

S.C. v. State, \_\_ So. 3d \_\_, 2014 WL 3620305 (Fla. 3d DCA 2014). **ORDER OF REVOCATION REMANDED SOLELY FOR ENTRY OF A CORRECTED ORDER THAT DELETED THE REFERENCE TO A DRUG TEST THAT WAS NOT ADDRESSED AT THE REVOCATION HEARING.** The juvenile appealed from the trial court's orders that revoked her probation and imposed a new probation. The Third District Court of Appeal found that there was sufficient evidence to support the trial court's finding that the juvenile violated her probation and affirmed the revocation of probation. However, the order of revocation included a statement that the juvenile tested positive for THC. The State conceded that the drug test should not have been a basis for revocation because it was not addressed at the revocation hearing. Accordingly, the Third District remanded the order of revocation to the trial court solely for entry of a corrected order that deleted the reference to the drug test.

<http://www.3dca.flcourts.org/Opinions/3D13-1924.pdf> (July 23, 2014).

### ***Fourth District Court of Appeals***

R.J. v. State, \_\_ So. 3d \_\_, 2014 WL 2957455 (Fla. 4th DCA 2014). **THE STATE IS NOT REQUIRED TO PROVE A JUVENILE'S AGE TO VEST SUBJECT MATTER JURISDICTION IN THE JUVENILE DIVISION OF THE CIRCUIT COURT.** The juvenile was adjudicated delinquent for aggravated assault with a

deadly weapon. During the trial, the State elicited testimony from the arresting officer that the birthday provided by the juvenile would have made him sixteen years old at the time of the crime. The officer made no other attempt to confirm the juvenile's age. On appeal, the juvenile argued that the trial court erred in denying his motion for judgment of dismissal because the State failed to establish that he was under eighteen at the time of the offense, leaving the circuit court without jurisdiction. The Fourth District Court of Appeal found that Florida's circuit courts are divided into divisions for efficiency purposes and that that has no effect on a circuit court's subject matter jurisdiction. Juvenile courts are a division of the circuit court. Whether a child falls within the age requirements of a juvenile court is not a matter of subject matter jurisdiction, but one of divisional jurisdiction. Matters of juvenile divisional jurisdiction do not need proven at trial. In the instant case, the petition for delinquency alleged the juvenile was under eighteen years old at the time he committed the offense. If the juvenile disputed this fact, it was incumbent upon him to have the case transferred to criminal court. Accordingly the juvenile's disposition was affirmed.

<http://www.4dca.org/opinions/July%202014/07-02-14/4D13-635.op.pdf> (July 2, 2014).

M.K. v. State, \_\_\_ So. 3d \_\_\_, 2013 WL 3184787 (Fla. 4th DCA 2014). **FIRST-DEGREE PETIT THEFT FINDING WAS REVERSED AND REMANDED BECAUSE THE STATE FAILED TO PROVE THAT THE VALUE OF THE STOLEN PROPERTY WAS AT LEAST \$100.** The juvenile appealed an order finding him delinquent for first-degree petit theft. The juvenile argued that the State failed to prove that the value of the stolen property was at least \$100. The juvenile was initially charged with third-degree grand theft of a classmate's necklace. The stolen necklace was not recovered. The State's sole evidence of the value of the necklace was the testimony of the twelve-year-old victim, who explained that the necklace was a gift, was Gucci, "real" gold, and in "fine" condition. The juvenile moved for a judgment of dismissal on the ground that the State failed to prove the value of the necklace. The State conceded "the valuation issue," and the court granted the motion in part and proceeded on a charge of petit theft without specifying the degree. After the defense rested, the juvenile renewed his motion arguing that he could only be convicted of second-degree petit theft because the State failed to prove the value of the necklace as \$100 or more. The trial court denied the motion and found the juvenile guilty of first-degree petit theft. On appeal, the juvenile argued that the State failed to establish that the necklace was worth at least \$100 because the victim was not competent to testify as to its value. The Fourth District Court of Appeal found that the victim's personal knowledge regarding the quality and value of the necklace was very limited. Because the necklace was a gift, the victim was unable to testify as to its purchase price or replacement cost beyond repeating what she was told by her father or saw from her mother's research on the internet. Without personal knowledge of the value or cost, the victim's testimony was insufficient to establish the value of the necklace to be at least \$100. Further, the Fourth District rejected the State's argument that the trial court properly found that the necklace was not less than \$100 pursuant to § 812.012(10)(b), F.S. The Fourth District found that the Florida Supreme Court in interpreting § 812.012(10)(b), F.S., has held that a jury is only allowed to determine a minimum value instead of an actual value if the value of property cannot be ascertained. In the instant case, the State offered no alternative evidence to establish the authenticity, market value, original purchase price, or replacement cost of the stolen item. Nor did the State demonstrate that such evidence was unavailable or that the value of the necklace

could not be ascertained. Therefore, since the State failed to prove that the stolen property was worth at least \$100, the conviction for first-degree petit theft had to be reduced to second-degree petit theft. Accordingly, the order finding the juvenile guilty of first-degree petit theft, and the disposition order, were reversed and remanded for the trial court to enter judgment for second-degree petit theft and hold a new disposition hearing.

<http://www.4dca.org/opinions/July%202014/07-09-14/4D12-4635.op.pdf> (July 9, 2014).

J.J. v. State, \_\_ So. 3d \_\_, 2014 WL 3605492 (Fla. 4th DCA 2014). **ORDER SUPPRESSING EVIDENCE WAS REVERSED BECAUSE THE ARRESTING OFFICER'S DETECTION OF MARIJUANA ODOR ON THE JUVENILE'S PERSON GENERATED PROBABLE CAUSE TO ARREST AND SEARCH.** The arresting officer observed a minor roll a "cigar." The cigar was then passed around a small group, including the juvenile who handled it. The officer confronted the group and smelled the "very pungent" smell of cannabis emanating from the group, but especially from the juvenile. After the juvenile responded in a "disrespectful" and "confrontational manner," the officer performed a patdown search on the juvenile for her safety and for the safety of the other officers on the scene. During the search, the officer felt a "large bulge," which she believed to be a quantity of cannabis. The trial court granted the juvenile's motion to suppress, rejecting the State's theory of a search incident to arrest because the search preceded the arrest. The State appealed. The Fourth District Court of Appeal found that a search incident to a lawful arrest is authorized contemporaneous with or prior to the actual arrest so long as probable cause for the arrest existed at the time of the search. Even if an officer articulates a subjective intent to search for officer safety, that will not change the fact that the smell of marijuana may provide an objectively reasonable basis for the search. A police officer who is trained to recognize the odor of marijuana and who is familiar with it and can recognize it has probable cause, based on the smell alone, to search a person or a vehicle for contraband. However, where the person to be searched is part of a group, the odor must be individualized. In the instant case, the arresting officer testified that she could smell marijuana coming directly from the juvenile. The smell of marijuana on the juvenile's person, combined with his handling of the cigar, provided the officer sufficient probable cause to effectuate a search incident to arrest. Accordingly, the Fourth District reversed the order suppressing evidence.

<http://www.4dca.org/opinions/July%202014/07-23-14/4D13-4220.op.pdf> (July 23, 2014).

L.R.N. v. State, \_\_ So. 3d \_\_, 2014 WL 3730138 (Fla. 4th DCA 2014). **CASE WAS REVERSED AND REMANDED FOR A NEW TRIAL/VIOLATION OF PROBATION HEARING WHERE THE NECESSARY PARTS OF THE TRANSCRIPT COULD NOT BE RECONSTRUCTED.** The Fourth District Court of Appeal accepted the State's the concession of error that the case should be reversed and remanded for a new trial/probation violation hearing because necessary parts of the transcript could not be reconstructed. See Jackson v. State, 984 So. 2d 668, 669 (Fla. 4th DCA 2008); Thomas v. State, 828 So. 2d 456, 457 (Fla. 4th DCA 2002). Accordingly, the case was reversed and remanded for further proceedings.

<http://www.4dca.org/opinions/July%202014/07-30-14/4D13-2868.op.pdf> (July 30, 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***

No new opinions for this reporting period.

### ***Second District Court of Appeals***

In re: J.S., --- So. 3d ----, 2014 WL 3674049 (Fla. 2d DCA 2014). **ORDER MODIFYING PLACEMENT QUASHED**. The Guardian ad Litem Program (GAL) petitioned for a writ of certiorari directed at the circuit court's order modifying the placement of the dependent child from his foster parents to his grandmother. Because there was no indication that the circuit court considered whether the modification of placement was in the best interest of the child, the appellate court granted the petition and quashed the order modifying the placement. The child was a special needs child with cerebral palsy, and the GAL maintained that the move would have resulted in irreparable harm to the child. The court noted that § 39.522(1), F.S., provides that “[t]he standard for changing custody of the child shall be the best interest of the child.”

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/July/July%2025,%202014/2D14-1685.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/July/July%2025,%202014/2D14-1685.pdf) (July 25, 2014).

### ***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***

M.G. v. Department of Children and Families, --- So. 3d ----, 2014 WL 2968818 (Fla. 5th DCA 2014). **ORDER TERMINATING JURISDICTION REVERSED**. The children’s mother appealed the order of disposition that adjudicated her children dependent and relinquished the court's jurisdiction. The Department of Children and Families properly conceded that the trial court committed reversible error by failing to hold a disposition hearing as required, and the appellate court reversed.

<http://www.5dca.org/Opinions/Opin2014/063014/5D14-1256.op.pdf> (July 1, 2014).

## Dissolution 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**

Egle v. Krinsk, \_\_So. 3d\_\_, 2014 WL 3377094, 39 Fla. L. Weekly D1540 (Fla. 2d DCA 2014). **DURATIONAL ALIMONY AWARD CANNOT EXCEED LENGTH OF MARRIAGE**. Former husband appealed the final judgment of dissolution; the appellate court reversed solely for the trial court to correct the period of durational alimony to reflect the length of the marriage. Although the trial court had awarded durational alimony for 15 years, it had intended that the alimony run for a period representing the marriage, which was 14 years and 10 months. The spouses agreed that the award was erroneous; § 61.08(7), F.S. (2011), provides that an award of durational alimony may not exceed the length of the marriage. Reversed.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/July/July%2011,%202014/2D13-1506.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/July/July%2011,%202014/2D13-1506.pdf) (July 11, 2014).

Mills v. Johnson, \_\_So. 3d\_\_, 2014 WL 3673942, 39 Fla. L. Weekly D1569 (Fla. 2d DCA 2014). **TRIAL COURT ABUSED ITS DISCRETION IN ADOPTING MAGISTRATE'S REPORT WHERE NO COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTED MAGISTRATE'S DETERMINATION THAT SPOUSE HAD ABILITY TO PAY ALIMONY; IT ALSO ERRED IN ADOPTING REPORT CONTAINING ERRORS ON ITS FACE AND BY APPROVING A TIME-SHARING SCHEDULE WHICH DID NOT CONTAIN HOLIDAY TIME-SHARING**. Former husband appealed the final judgment of dissolution and the order adopting the magistrate's report on several grounds. The appellate court reversed and remanded as to the alimony award and as to the trial court's failure to set a holiday time-sharing schedule; it affirmed the remainder without comment. The magistrate failed to make specific factual findings regarding former husband's ability to pay alimony, but simply stated that he had the ability to pay; the magistrate also based the alimony award in part on disparity in the spouses' incomes. The appellate court found that the trial court had abused its discretion by having adopted the magistrate's report in absence of competent, substantial evidence supporting the determination that former husband had the ability to pay. It also held that a trial court is not required to equalize the spouses' financial positions in dissolution proceedings. The appellate court noted that the spouses had lived "well beyond their means" during their marriage. They incurred large debts, and neither could cover their expenses with their income; however, placing former husband in a "greater income deficiency" would not solve either spouse's financial woes. Kearley v. Kearley, 745 So. 2d 987,988 (Fla. 2d DCA 1999). It found that the trial court erred in approving a time-sharing schedule that did not address holidays. Former husband's failure to raise this point in his exceptions to the magistrate's report was not fatal; if errors in a magistrate's report are clear on its face, the trial court errs in adopting it.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/July/July%2025,%202014/2D13-3100.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/July/July%2025,%202014/2D13-3100.pdf) (July 25, 2014).

Fuller v. Fuller, \_\_So. 3d\_\_, 2014 WL 3738593 (Fla. 2d DCA 2014). TRIAL COURT'S WRITTEN ORDER ON CONTEMPT WAS INCONSISTENT WITH ITS ORAL RULING; APPELLATE COURT WAS UNABLE TO TELL WHETHER TRIAL COURT HAD FOUND THAT CIVIL CONTEMPT HAD NOT OCCURRED OR WHETHER THAT FINDING WAS IMPLICIT IN ITS RULING ON PURGE/INCARCERATION; REMANDED. This is the second of two appeals by former husband of a contempt order. He was previously found in contempt for failing to pay alimony in 2012. In that case, the appellate court affirmed the contempt finding, but remanded with instructions that the trial court strike the language from its order that former husband had hidden sources of income. In the 2013 contempt case, the trial court orally denied former wife's motion for contempt for lack of proof of a purge. The trial court then entered a written order finding former husband in contempt and entering a money judgment for former wife; however, it denied her request to incarcerate former husband because she had failed to establish a purge amount he could pay. The appellate court found that the trial court's written order finding former husband in contempt was inconsistent with its oral ruling. It noted that the record supported a finding of contempt, but was unable to discern whether the trial court had found that a civil contempt had not occurred, or if a finding of civil contempt was implicit in the trial court's ruling on the purge/incarceration issue. Accordingly, it reversed and remanded.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/July/July%2030,%202014/2D13-2962.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/July/July%2030,%202014/2D13-2962.pdf) (July 30, 2014).

### ***Third District Court of Appeals***

No new opinions for this reporting period.

### ***Fourth District Court of Appeals***

Sorgen v. Sorgen, \_\_So. 3d\_\_, 2014 WL 2957486, 39 Fla. L. Weekly D1367 (Fla. 4th DCA 2014). DEPOSITING FUNDS BY SPOUSE INTO A JOINT ACCOUNT GIVES RISE TO THE PRESUMPTION THAT A GIFT TO THE OTHER SPOUSE IS INTENDED; SPOUSE SEEKING TO HAVE ASSET DECLARED NONMARITAL HAS BURDEN OF PROOF OF OVERCOMING THE PRESUMPTION; ASSET IS MARITAL IF THAT SPOUSE CANNOT OVERCOME SAID BURDEN. Both spouses appealed the final judgment of dissolution. The appellate court dismissed former wife's appeal for lack of prosecution and agreed with former husband that, because former wife's inherited asset had been commingled into the spouses' joint account, her inherited asset became a marital asset subject to equitable distribution. Before the marriage, former wife had inherited a one-third interest in a home; the other two-thirds was inherited by her two sisters. The three sisters rented the home and deposited the rent into a separate account. After the marriage, former wife's sisters sold their shares to her. Although there was some dispute as to whether she purchased the home with marital funds or her share of the rent money, it was undisputed that the spouses renovated the home using marital funds and that rental income they received from the home was deposited into a joint account. Marital funds were used to pay taxes on the home and on the rental income. When the home was sold, the funds were deposited into a joint account. The trial court denied former husband's request to include former wife's interest in the proceeds from sale of the home as a marital asset subject to equitable distribution. The appellate court held that when one spouse deposits funds into a joint account, it gives rise to the presumption that a gift to the other

spouse was intended. The spouse seeking to have the asset declared non-marital then has the burden of overcoming the presumption. Here, former wife presented no evidence to rebut the presumption; therefore, the appellate court remanded for the trial court to recalculate the equitable distribution by including her one-third interest in the proceeds from sale of the home as a marital asset.

<http://www.4dca.org/opinions/July%202014/07-02-14/4D12-718.op.pdf> (July 2, 2014).

Napoli v. Napoli, \_\_ So. 3d \_\_, 2014 WL 3434349, 39 Fla. L. Weekly D1461 (Fla. 4th DCA 2014). **CONTEMPT ORDER REVERSED FOR NOT HAVING WRITTEN FINDINGS REQUIRED BY RULE 12.615; A CONTEMPT ORDER MUST INCLUDE A FINDING THAT PRIOR SUPPORT ORDER WAS ENTERED, THAT CONTEMNOR HAD ABILITY TO PAY, AND THAT CONTEMNOR WILLFULLY FAILED TO COMPLY; INCARCERATION REQUIRES SEPARATE FINDING THAT CONTEMNOR HAS THE PRESENT ABILITY TO PAY THE PURGE.** Former husband appealed an order holding him in contempt for failure to pay alimony during dissolution proceedings. The appellate court reversed and remanded because the trial court's contempt order did not contain the written findings required by Florida Family Law Rule of Procedure 12.615. A contempt order must include a finding that a prior support order was entered, that the alleged contemnor had the present ability to pay support, and that he or she willfully failed to comply with the prior support order. If the trial court imposes incarceration, the order must also contain a separate finding that the contemnor has the present ability to comply with the purge.

<http://www.4dca.org/opinions/July%202014/07-16-14/4D14-234.op.pdf> (July 16, 2014).

Steele v. Love, \_\_ So. 3d \_\_, 2014 WL 3605549, 39 Fla. L. Weekly 1534 (Fla. 4th DCA 2014). **IMPUTATION OF INCOME MUST BE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE; REGULAR, PERIODIC PAYMENTS TO A CHILD BY A PARENT ARE CONSIDERED INCOME FOR CHILD SUPPORT DETERMINATION; COURT SHOULD BASE INCOME ON PROBABLE EARNINGS USING CURRENT INCOME FIGURES.** Both spouses appealed the final judgment of dissolution. The appellate court affirmed on all issues, but addressed the imputation of income. Former husband argued that the trial court erred in using the amount of money he received from his parents to impute income to him, and in omitting "significant, regular income" that former wife received from family-owned companies. The appellate court held that imputation of income must be based on competent, substantial evidence as it was here. In general, gifts received from a spouse's parents are not relevant for child support determination; however, regular, periodic payments to a child by a parent are considered income for child support determination, even if the parent testifies that the payments may not be indefinite. In determining child support, a court may only impute a level of income based on the probable earnings as supported by the evidence; outdated income figures should not be used. Here, former husband failed to establish that former wife was voluntarily underemployed. Affirmed.

<http://www.4dca.org/opinions/July%202014/07-23-14/4D12-3507.op.pdf> (July 23, 2014).

### ***Fifth District Court of Appeals***

Johnson v. Johnson, \_\_ So. 3d \_\_, 2014 WL (Fla. 5th DCA 2014). **FINDING TRIAL COURT HAD JURISDICTION TO AWARD FEES IN MATTER RELATING TO SPOUSE'S PETITION TO RELOCATE; APPELLATE COURT REMANDED.** Former husband appealed the trial court's fee award to former

wife in a dissolution proceeding; the appellate court affirmed without discussion. Former wife cross-appealed, arguing: 1) that the fee award was less than one-third of the fees she actually incurred; and 2) that the trial court erred in concluding it did not have jurisdiction to award her fees for a motion she filed relating to her petition to relocate. The appellate court affirmed the fee award, but found that the trial court did have jurisdiction to award fees for the matter relating to her petition to relocate. Remanded.

<http://www.5dca.org/Opinions/Opin2014/063014/5D13-1587.op.pdf> (July 3, 2014).

## Domestic Violence Case Law

### ***Florida Supreme Court***

In re Amendments to Florida Supreme Court Approved Family Law Forms, --- So. 3d ----, 2014 WL 3555973 (Fla. 2014). **FORMS AMENDED**. The Court amended Florida Supreme Court Approved Family Law Form 12.980(b)(1) to better explain the findings that the trial court should make when it denies an ex parte temporary injunction and sets a hearing on the petition for an injunction. The Court also amended Form 12.980(u) by deleting the provision that required a respondent to participate in treatment, intervention, or counseling services at the respondent's expense. <http://www.floridasupremecourt.org/decisions/2014/SC13-305.pdf> (July 3, 2014).

### ***First District Court of Appeals***

Pryor v. Pryor, --- So. 3d ----, 2014 WL 3594209 (Fla. 1st DCA 2014). **ORDER VACATED**. The respondent appealed an order that extended a temporary injunction for protection against domestic violence which, even as extended, had expired by the time of the court's review. The court vacated the original order and the temporary injunction and dismissed the appeal due to the collateral consequences that occur through the injunction process. The court noted that while the statute does allow the court to issue a continuance for good cause, the court may not issue a series of temporary injunctions in lieu of a permanent injunction. [https://edca.1dca.org/DCADocs/2013/6070/136070\\_DA08\\_07222014\\_084641\\_i.pdf](https://edca.1dca.org/DCADocs/2013/6070/136070_DA08_07222014_084641_i.pdf) (July 22, 2014).

### ***Second District Court of Appeals***

Branson v. Rodriguez-Linares, --- So. 3d ----, 2014 WL 3673881 (Fla. 2d DCA 2014). **INJUNCTION PROTECTING AGAINST CYBERSTALKING AFFIRMED**. The respondent appealed a final judgment of injunction for protection against domestic violence that was issued to protect the petitioner from cyberstalking. Although the respondent did not verbally threaten the petitioner, the trial court found that he did stalk her by sending approximately 300 emails during a 1.5 month period. The respondent claimed that his actions did not constitute violence under the statute; however, the court found that, "the statute plainly permits the entry of an injunction for a person who is the victim of "stalking." Thus, the court held that proof of recent stalking can be sufficient to establish the act of "violence" required for the issuance of a § 741.30(1)(a), F.S., domestic violence injunction. If such an act of violence is sufficiently established and if it is between "family or household member[s]" as defined in § 741.28(3), F.S., the petitioner is not also required to demonstrate reasonable cause to believe that he or she is in imminent danger of becoming the victim of any future act of domestic violence. The court also noted that, "some of the offenses described in the statute, such as assault, battery, kidnapping, false imprisonment, aggravated

stalking, and stalking, do not need to result in physical injury or death to qualify as acts of domestic violence.”

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/July/July%2025,%202014/2D12-3827.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/July/July%2025,%202014/2D12-3827.pdf) (July 25, 2014).

***Third District Court of Appeals***

No new opinions for this reporting period.

***Fourth District Court of Appeals***

No new opinions for this reporting period.

***Fifth District Court of Appeals***

No new opinions for this reporting period.

## Drug Court/Mental Health Court Case Law

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeals***

No new opinions for this reporting period.

### ***Second District Court of Appeals***

No new opinions for this reporting period.

### ***Third District Court of Appeals***

No new opinions for this reporting period.

### ***Fourth District Court of Appeals***

No new opinions for this reporting period.

### ***Fifth District Court of Appeals***

Little v. State, \_\_\_ So. 3d. \_\_\_, 2014 WL 3671328 (Fla. 5th DCA 2014). [PROBATION REVOCATION ORDER WAS REVERSED BECAUSE THE ALLEGATIONS CONTAINED IN THE VIOLATION OF PROBATION AFFIDAVIT FAILED TO PROVIDE NOTICE OF THE ACTS ALLEGEDLY VIOLATED.](#) Little challenged the revocation of his drug offender probation. Little argued that the charging affidavit failed to allege an act that violated the terms of his probation. As part of his drug offender probation, Little was ordered to comply with Special Condition 22 which required him to enter, participate, and successfully complete Putnam County adult drug court. At the drug court orientation, Little received and reviewed the Putnam Adult Drug Court Operation Participant Handbook which contained rules for the successful completion of drug court. Regarding over the counter (OTC) medications, the handbook required that before taking these medications, a participant must discuss such with the treatment counselor for approval. The handbook further stated that participants were not to take over-the-counter medications that contained pseudoephedrine. Conducting a random search of pseudoephedrine logs throughout the county, a drug court team member found that Little had purchased pseudoephedrine fifteen times over a nine-month period during his probation. When questioned, Little said that he took the drug for a cold. Little's probation officer filed an affidavit of violation of drug offender probation, which alleged that he violated Special Condition 22 by failing to successfully complete Putnam County Adult Drug Court. As grounds, the probation officer stated that the offender failed to comply with all operating rules, regulations, and procedures of the Putnam County Adult Drug Court as evidenced by the logs which showed that he purchased/possessed pseudoephedrine fourteen times without permission. Little sought dismissal of the violation of probation (VOP), arguing that

possessing pseudoephedrine while participating in drug court, as alleged in the VOP affidavit, did not violate the drug court rule against taking medications with pseudoephedrine. The trial court denied the motion to dismiss. The trial court noted that, “Mr. Little has told us—told Captain Wells one thing and told us something else today.” The court then found Little’s testimony not credible. The trial court found that Little had willfully and substantially violated his probation by violating Special Condition 22, by not following the rules of drug court by taking pseudoephedrine. On appeal, the Fifth District Court of Appeal found that it is error to revoke probation based on allegations contained in an affidavit that failed to provide the probationer notice of the acts he allegedly violated. A VOP affidavit need not be as specific as a criminal charging document and may be acceptable so long as the probationer's minimal due process rights are protected. In the instant case, the VOP affidavit alleged that Little “purchased/possessed” pseudoephedrine, an act that does not violate Special Condition 22, which only prohibits “taking” an OTC medication containing pseudoephedrine. By revoking Little's probation for taking pseudoephedrine, the trial court based the violation on a charge that was not alleged in the affidavit. Accordingly, the probation revocation order was reversed due to the violation of Little's due process right to sufficient notice.

<http://www.5dca.org/Opinions/Opin2014/072114/5D13-1885.op.pdf> (July 25, 2014).