OSCA/OCI'S FAMILY COURT CASE LAW UPDATE JUNE 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

T.J.L. v. State, __ So. 3d __, 2014 WL 2565934 (Fla. 1st DCA 2014). CONTEMPT ORDER WAS VACATED WHERE THERE WAS NO EVIDENTIARY SUPPORT FOR THE WRITTEN FINDINGS AND THE PROPER PROCEDURAL REQUIREMENTS WERE NOT MET. The juvenile was found in direct criminal contempt and sentenced to two days incarceration at the juvenile detention center. The transcript reflected that in response to being directed to pull up his pants, the juvenile responded, "It won't go up." After an unhelpful comment by the bailiff, the juvenile's mother forcibly brought him to the podium. The juvenile then said something or made an "indiscernible" sound, to which the bailiff responded, "You think something's funny?" The court then charged the juvenile with direct criminal contempt because of "acting out." The court explained that the charge was unrelated to the direction to pull up his pants. Instead, the court said, "He's throwing a tantrum, he's slinging his head around, he's disrupting the proceedings, he's showing out in front of all the people in this court and he's interrupting the decorum of the court." The juvenile was then asked to show cause as to why he should not be held in direct criminal contempt. The court found the juvenile in contempt after his lawyer pointed out that the juvenile had apologized. The juvenile's mother was cut off when she attempted to explain that the juvenile's head was swinging because she had been jerking him around, an explanation which was supported by a video of the proceeding. In explaining the basis of the ruling, the court said, "It was not appropriate what he did in throwing a tantrum, swinging his head around, giving the big sighs, throwing the drama, temper tantrum in front of the entire courtroom." The court did not provide any more details on the record describing the juvenile's behavior. In the written order, the court found that after being directed to follow a decorum order, the juvenile "became loud, argumentative, combative and defiant to the bailiff and the Court. This scene interrupted proceedings and the dignity of the Court." The First District Court of Appeal found that other than the juvenile's statement that he could not comply any further with the court's decorum order, the only indication in the transcript of the juvenile's allegedly contemptuous behavior was the court's description of the behavior as a "temper tantrum," "showing out," "acting out," "slinging his head around," "giving big sighs," and "throwing the drama." After reviewing the transcript and a video of the entire incident, the First District found that aside from the "head swinging," which appeared to be caused by the juvenile's mother grabbing him and dragging him to the podium, and arguably some sighing, they were hard pressed to understand what physical behavior the court was describing. Further, neither the behavior described in the transcript nor

the video supported the written findings that the juvenile's behavior was loud, argumentative, combative, and/or defiant. In addition, the First District found that the trial court's actions were insufficient to comply with the procedural requirements of rule 3.830 of the Rules of Criminal Procedure. The judge never gave the juvenile the opportunity to present evidence of excusing or mitigating circumstances. In fact, the trial court refused to hear from the juvenile's mother. Therefore, the First District found no evidentiary support for the written findings and determined that the proper procedural requirements were not met. Accordingly, the order of contempt was vacated.
http://opinions.1dca.org/written/opinions2014/06-09-2014/14-0853.pdf (June 9, 2014).

Second District Court of Appeals

A.O.L. v. State, __ So. 3d __, 2014 WL 2801726 (Fla. 2d DCA 2014). RESTITUTION ORDER WAS REVERSED AND REMANDED FOR A NEW RESTITUTION HEARING AT WHICH THE JUVENILE WAS ORDERED TO BE PRESENT. Although apparently noticed for a restitution hearing, the juvenile failed to appear. However, the victims appeared and the trial court decided to go ahead with the hearing in spite of the defense attorney's objection. The trial court made specific findings on the record about the amount of restitution and later memorialized the amounts in a final judgment. The Second District Court of Appeal found that the instant case was virtually identical to C.C.N. v. State, 1 So. 3d 1151 (Fla. 2d DCA 2009), in which the trial court failed to inquire about the circumstances of the juvenile's absence or make any findings as to whether the juvenile had voluntarily waived the right to be present. Although a defendant may waive the right to be present and may appear constructively through counsel, the court nevertheless must first determine that the defendant's waiver of the right to be present is knowing, intelligent, and voluntary. The State carries the burden of proving the validity of the juvenile's waiver by competent, substantial evidence. In the instant case, the trial court implicitly found that the juvenile had waived her right to be present based on an unsworn statement that the juvenile and her mother had received notice of the hearing, but the court's assumption of waiver was not supported by competent, substantial evidence. Accordingly, the Second District reversed the final judgment of restitution and remanded for a new restitution hearing at which the juvenile must be present. Alternatively, if the juvenile does not attend, the State must demonstrate by competent, substantial evidence that she validly waived her constitutional right to be present.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/June/June%2020,%202014/2D13-4122.pdf (June 20, 2014).

R.A.S. v. State, __ So. 3d __, 2014 WL 2874311 (Fla. 2d DCA 2014). THE DENIAL OF THE JUVENILE'S MOTION TO SUPPRESS WAS REVERSED WHERE THE PRODUCTION OF THE CONTRABAND WAS A DIRECT CONSEQUENCE OF AN INITIAL ILLEGAL SEARCH AND SEIZURE AND THERE WAS NO

“UNEQUIVOCAL BREAK” IN THE CHAIN OF ILLEGALITY. The juvenile’s motion to suppress evidence was denied. The juvenile pled no contest to possession of marijuana and paraphernalia, reserving his right to appeal the court's ruling on the dispositive suppression issue. A sheriff's deputy was looking for the juvenile because he had been reported absent from school. The deputy located the juvenile and asked him to come over to talk to him. The juvenile told the deputy that he was on his way to school. The deputy offered to give him a ride, and the juvenile accepted. The deputy then stepped out of his car and told the juvenile to empty his pockets. The juvenile emptied all pockets except one back pocket. The deputy then asked if he could “do a weapons patdown” and the juvenile agreed. The deputy patted the pocket that the juvenile had failed to empty, and he felt a small “squishy bulge.” He asked what the pocket contained and the juvenile pulled out a plastic baggy containing marijuana. The trial court denied the juvenile’s motion to suppress on the theory that the juvenile voluntarily produced the contraband after the deputy merely asked him what was in the pocket. On appeal, the Second District Court of Appeal found that the juvenile's disclosure of the contents of his pocket was tainted by an illegal search and seizure that occurred earlier in his encounter with the deputy. While law enforcement may take a child into custody if the officer has reasonable grounds to believe the child is a truant, truancy is not a crime, and the custodial detention is not an arrest. Therefore, the warrant requirement exception for searches incident to arrest did not apply in this situation. An officer may conduct a pat-down for weapons before placing a truant in his vehicle, but he is not authorized to conduct a full search. By directing the juvenile to empty his pockets, the deputy essentially conducted an unauthorized full search. The deputy did not have a reason to think that the juvenile was carrying a weapon or contraband. Thus, the initial search had no legal basis. When the juvenile did not remove the contents of his back pocket, the deputy asked for and obtained the youth's consent to conduct a pat-down search of that pocket. But the illegal search had already tainted his consent and rendered any evidence discovered as “fruit of the poisonous tree.” The Second District recognized that, at the outset, the deputy properly could have conducted a pat-down for weapons instead of the illegal search. But he did not feel an object that remotely resembled a weapon in the juvenile's back pocket. The deputy knew that the “squishy object” in the juvenile's pocket was not a weapon. Therefore, he had no legal basis for questioning the juvenile further about the contents of the pocket. The juvenile's production of the contraband was a direct consequence of the initial illegal search and seizure, and there was no “unequivocal break” in the chain of illegality. Accordingly, the Second District reversed the denial of the motion to suppress and remanded for the court to enter a judgment of dismissal.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/June/June%2025,%202014/2D12-4998.pdf (June 25, 2014).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

C.J.T. v. State, __ So. 3d __, 2014 WL 2589188 (Fla. 4th DCA 2014). DISPOSITION OF FORTY-FIVE DAYS IN SECURE DETENTION WAS UNAUTHORIZED AND REVERSED. The juvenile was on probation for four separate cases. The State filed a petition for violation of probation (VOP) in each case. At the juvenile's VOP hearing, the trial judge adjudicated him guilty of the underlying offense for each petition filed. At the disposition hearing, the trial court ordered the juvenile to spend fifteen days in secure detention for each of three of the four cases, with the fifteen-day periods to run consecutively. The juvenile was to be placed in a level six moderate-risk commitment program for the fourth case. To support the forty-five day secure detention disposition, the trial court relied on § 985.26(3), F.S. The Fourth District Court of Appeal found that § 985.26(3), F.S. (2012), was not a sentencing alternative. When read in conjunction with § 985.27(1)(b), F.S., § 985.26(3), F.S., appears to apply when an order of adjudication has been entered but the trial court determines that continued secure detention is necessary for logistical reasons, such as keeping the child and the public safe while awaiting space in a selected program. Instead, the trial court should have relied upon § 985.433, F.S., which sets forth disposition alternatives for juvenile offenders but, notably, does not include ordering that the child be held in secure detention. Accordingly, the Fourth District held that the disposition of forty-five days in secure detention was unauthorized and reversed.
http://www.4dca.org/opinions/June%202014/06-11-14/4D12-4628.op.pdf (June 11, 2014).

T.B. v. State, __ So. 3d __, 2013 WL 2741452 (Fla. 4th DCA 2014). THE STATE FAILED TO MEET ITS BURDEN OF PROOF WITH RESPECT TO LOITERING AND PROWLING CHARGE. The juvenile was charged with the new offense of loitering and prowling while on juvenile probation. At the adjudicatory hearing, the evidence indicated that a police officer received a report of a possible burglary of a vehicle at an apartment complex late at night. After entering the complex through the manned guard gate, the officer observed the juvenile and another male walking between two buildings. The boys exhibited a "prowling demeanor, kind of creeping slowly through between the buildings, kind of looking around." The officer directed the boys to stop. The juvenile made eye contact with the officer and stopped. However, the boys then started to walk backward toward an area that was not illuminated. The officer renewed his order to stop and they did. In response to the officer's questions, the juvenile identified himself and claimed he was returning from a party and scaled a wall to gain entry to the complex in order to take a shortcut home. The officer frisked the juvenile and discovered a scarf and pliers in his pants pocket. At the close of the state's case, defense counsel moved for a judgment of dismissal, arguing that the juvenile's

behavior was not sufficient to establish loitering and prowling. The court denied the motion. The court then found the juvenile committed the new offense and placed him on probation. The juvenile then admitted to the violation of probation, preserving the issue of sufficiency of the evidence of loitering and prowling, and his probation was reinstated. The juvenile appealed the finding of guilt in the loitering and prowling case, arguing the evidence was insufficient and that the court erred in denying his motion for judgment of dismissal. He also argued that the court's finding that he violated his probation should be reversed, as the finding was based on the loitering and prowling. The Fourth District Court of Appeal found that the delinquent act of loitering and prowling requires proof of two elements, both of which must be committed in the officer's presence prior to arrest. First, the State must show that the arresting officer observed the defendant loitering and prowling in a manner not usual for law-abiding citizens. The second element requires the arresting officer to articulate specific facts which, when taken together with rational inferences from those facts, reasonably warrant a finding that a breach of the peace is imminent or that the public safety is threatened. Circumstances to be considered in determining whether a breach of the peace is imminent or public safety is threatened are whether the person takes flight, refuses to identify himself, or attempts to conceal himself or an object. Because flight from police comes *after* the officers' presence is made known, flight alone is insufficient to satisfy the elements of loitering and prowling. The court may not consider suspicious tools found on a suspect after the person is detained because the offense of loitering and prowling must be completed prior to any police action. In the instant case, the officer observed the juvenile and another person walking "slowly" between two buildings in an apartment complex late at night. The juvenile was "looking around." At that point, the officer did not know the juvenile was not a resident of the complex and he did not see any tools or weapons on the juvenile's person. The juvenile's behavior of walking between two buildings late at night in an apartment complex did not suggest an imminent breach of the peace or threat to public safety, especially where the juvenile identified himself and explained his presence in the complex. This behavior, standing alone, was insufficient to establish loitering and prowling. Accordingly, the Fourth District held that the trial court erred in denying the motion for judgment of dismissal. The Fourth District found that although the burden of proof in the violation of probation case was "greater weight of the evidence" rather than proof "beyond a reasonable doubt," under either burden of proof the evidence was insufficient for the fact finder to determine the State had met its burden with respect to the loitering and prowling charge. Accordingly, the Fourth District reversed the finding of guilt in both cases and remanded for the court to vacate the disposition orders.
http://www.4dca.org/opinions/June%202014/06-18-14/4D12-3729.op.pdf (June 18, 2014).

A.B. v. State, __ So. 3d __, 2013 WL 2741069 (Fla. 4th DCA 2014). THE STATE FAILED TO PROVE THAT THE JUVENILE COMMITTED, OR ASSISTED IN COMMITTING, PETIT THEFT. The juvenile

appealed the finding of guilt and disposition order on two counts of petit theft. He argued the trial court erred in denying his motion for judgment of dismissal. The theft occurred at a park where the victims were playing basketball. They placed their wallets and cell phones on the ground next to the basketball hoop. When the basketball went out of bounds, one of the victims chased after it. When he turned around, he saw the juvenile and the juvenile's friend running from the area, and the cell phones and wallets were gone. The State filed a petition for delinquency, charging the juvenile with two counts of grand theft of property valued between $300 and $5,000. A police officer testified that she questioned the juvenile approximately two weeks after the theft. Prior to being formally Mirandized, he spontaneously said, “I can't believe I am going down for this alone.” After waiving his *Miranda* rights, he told the officer that he went to the park with a friend to play basketball. His friend said, “When I run, you run.” Moments later, he “followed [his friend] blindly, leaving his [own] shoes behind.” He did not know why they were running. They jumped a fence and got into a nearby car belonging to the juvenile's brother. When the State rested, the juvenile moved for a judgment of dismissal. The motion was denied. The defense rested without putting on any evidence, and renewed its motion for judgment of dismissal. The court granted the motion in part reducing the charges to petit theft. The juvenile was found guilty of two counts of petit theft and placed on probation. The juvenile appealed and argued that the trial court erred in denying his motion for judgment of dismissal because the State's circumstantial evidence failed to rebut his hypothesis of innocence. The Fourth District Court of Appeal found that a motion for judgment of dismissal should be granted in a circumstantial evidence case if the State fails to present evidence from which the judge can exclude every reasonable hypothesis except that of guilt. In this case, the juvenile was charged under a principal theory, which required the State to prove beyond a reasonable doubt that the juvenile intended that the crimes be committed and did some act to assist in committing the crimes. Mere knowledge that an offense is being committed, mere presence at the scene, and even a display of questionable behavior after the fact are not alone sufficient to establish participation. In the instant case, the State only established the juvenile's presence, questionable behavior, and a comment that did not amount to an admission. There was no evidence to establish the juvenile's participation in, knowledge of, or assistance in the commission of a crime. There was no evidence that either juvenile stole the items or assisted anyone in doing so. The State proved the juvenile: (1) was in the area where the crime took place; (2) was seen running near where a crime took place; and (3) said, “I can't believe I am going down for this alone.” These three facts failed to prove that the juvenile committed, or assisted in committing, a crime. Therefore, the State's evidence fell short, and the trial court should have granted the juvenile's motion for judgment of dismissal. Accordingly, the Fourth District reversed and remanded the case for the trial court to vacate the finding of guilt and disposition order.
http://www.4dca.org/opinions/June%202014/06-18-14/4D13-1729.op.pdf (June 18, 2014).

E.M. v. State, __ So. 3d __, 2013 WL 2862610 (Fla. 4th DCA 2014). The State appealed the trial court's order granting of the juvenile's motion in limine to exclude his statements to school officials and its determination that its ruling was dispositive. The juvenile was given an internal suspension for violating the school's dress code. The juvenile told a member of the school security staff that the reason he was out of dress code was that his uniform shirt was "messed up." The staff member asked the juvenile to show her his "messed up" shirt. When the juvenile opened his backpack to take out the shirt, the staff member smelled marijuana. She asked the juvenile if he had any illegal substances in his backpack, and the juvenile admitted that he had marijuana. The staff member searched the juvenile's backpack and found two rolled marijuana cigarettes and a cigarette lighter. The juvenile was sent to the principal's office, where he admitted to giving marijuana to other students. The juvenile told the principal that he had more marijuana at home. This admission led detectives to contact the juvenile's mother, who signed a consent to search form. After searching the juvenile's room, the detectives found ten additional grams of marijuana. The State filed a petition charging the juvenile with committing two counts of possession of cannabis with intent to deliver at or near a school. Count one was for the marijuana found at school, and count two was for the marijuana found in the juvenile's room. The juvenile filed a motion in limine seeking to exclude the statements he made to school officials pursuant to S 1006.09(2)(a), F.S. (2014). The juvenile argued that pursuant to S 1006.09(2)(a), F.S., because he admitted to his unlawful possession of the drugs prior to his arrest, that this information, which led to his arrest, could not be used in the subsequent criminal trial against him. After a hearing, the trial court entered an order granting the juvenile's motion. The State appealed. On appeal, the Fourth District Court of Appeal found that S 1006.09(2)(a), F.S., titled "Duties of School Principal Relating to Student Discipline and School Safety," stated:

> (2) Suspension proceedings, pursuant to rules of the State Board of Education, may be initiated against any enrolled student who is formally charged with a felony, or with a delinquent act which would be a felony if committed by an adult, by a proper prosecuting attorney for an incident *which allegedly occurred on property other than public school property,* if that incident is shown, in an administrative hearing with notice provided to the parents of the student by the principal of the school pursuant to rules adopted by the State Board of Education and to rules developed pursuant to s. 1001.54, to have an adverse impact on the educational program, discipline, or welfare in the school in which the student is enrolled.... Any student who is subject to discipline or expulsion for unlawful possession or use of any substance controlled under chapter 893 may be entitled to a waiver of the discipline or expulsion:
>
> (a) If the student divulges information *leading to the arrest and conviction* of the person who

supplied the controlled substance to him or her, *or* if the student *voluntarily discloses* his or her unlawful possession of the controlled substance prior to his or her arrest. Any information divulged *which leads to arrest and conviction* is not admissible in evidence in a *subsequent criminal trial* against the student divulging the information.

The Fourth District looked to the plain and obvious meaning of the text to determine whether the trial court erred in granting the juvenile's motion in limine. The Fourth District held that it seemed clear that the legislature intended for the inadmissibility of statements to apply when a student provides information against a *third-party,* not himself or herself. Therefore, based on the plain meaning of S 1006.09(2)(a), F.S., the trial court's order granting the juvenile's motion in limine to exclude his statements to school officials was reversed and remanded. Because the trial court erred in granting the juvenile's motion in limine, the issue of whether the trial court's ruling was dispositive was moot.
http://www.4dca.org/opinions/June%202014/06-25-14/4D12-4278.op.pdf (June 25, 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

G.H., Sr. v. Department of Children and Families, ___ So. 3d ____, 39 Fla. L. Weekly D1359, 2014 WL 2927159 (Fla. 1st DCA 2014). TERMINATION OF PARENTAL RIGHTS REVERSED. The First District Court of Appeal reversed termination of a father's parental rights because the Department did not establish that termination was the least restrictive means of protecting the child. The Department sought termination of parental rights after the child, P.G.H., claimed to have been re-abused by her older brother approximately one week after he was returned to the mother's home in March 2013. P.G.H. had previously been sexually abused in 2011 by the brother, who was adjudicated delinquent and removed from the family home. The father was not living in the home at the time of the abuse. On appeal, the district court noted that the child's therapist testified that it was not in the child's best interest to have no future exposure to her parents. Moreover, it was the Department's agent who returned the brother to the family home. There was also no explanation as to why removing the brother would not protect the child. Finally, the child's guardian, an aunt, preferred permanent guardianship over adoption. The court concluded that termination of the father's rights was not a narrowly tailored remedy and was not the least restrictive means of protecting the child. The court therefore reversed the termination order and remanded the case for further proceedings under § 39.811, F.S..
http://opinions.1dca.org/written/opinions2014/06-30-2014/13-5334.pdf (June 30, 2014).

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

H.C. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ____, 39 Fla. L. Weekly D1344, 2014 WL 2874745 (Fla. 3rd DCA 2014). ADJUDICATION OF DEPENDENCY REVERSED. The Third District Court of Appeal reversed an adjudication of dependency as to two children, H.C.(1) and H.C.(2). The court reversed the order because the Department failed to establish by a preponderance of evidence that the father either inflicted his child, H.C.(2), with injuries or allowed anyone else to do so. The dependency petition had alleged abuse due to "two purple-green, non-patterned bruises on [H.C.(2)'s] left lateral thigh as well as a purple loop mark." The father had picked up the children from daycare on a Friday and returned them to the mother on the following Sunday. The children played at a park, attended a football game, and were fed and bathed by the father, who did not notice any bruises or marks on H.C.(2). Neither did the father know how the bruises or marks occurred. Nor was there any evidence that the father hit or physically disciplined the children during the weekend. The mother noticed the bruises and mark on Sunday but did not notify the department caseworker until Monday. The Department's expert witness testified that the injury was physical abuse but could not determine the date of the injuries. The witness also testified that although the bruises could have been

caused by falling, the loop mark could not have been. The trial court adjudicated the children dependent, noting that the injuries were consistent with child abuse. The father appealed, arguing that the finding of dependency by "acts of abuse and the prospective risk of abuse presented by the father" was an abuse of the trial court's discretion. On appeal, the district court agreed. The district court reviewed the statutory definition of "harm" and found that there was substantial, competent evidence that H.C.(2) was harmed because it was undisputed that she had significant bruises and a "loop mark" that was consistent with being hit with an electrical cord or a belt. But the court also noted that the record was "completely devoid of any evidence" that the child's injuries were caused by the father; that he allowed anyone else to inflict them; or that he had ever hit or physically disciplined either of the two children. Finally, the court noted that the child had been exposed to numerous people besides the parents. The court therefore reversed the order.
http://www.3dca.flcourts.org/Opinions/3D14-0348.pdf (June 25, 2014)

Fourth District Court of Appeals

No new opinions for this reporting period.

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

Berry v. Berry, __So. 3d__, 2014 WL 2589210 (Fla. 1st DCA 2014). SPOUSE UNABLE TO PROVIDE EXCEPTION TO GENERAL RULE PROHIBITING EX PARTE COMMUNICATIONS; THEREFORE, EX PARTE CONFERENCE GAVE OTHER SPOUSE GROUNDS FOR A MOTION FOR DISQUALIFICATION; APPELLATE COURT FOUND NO IMPROPER MOTIVE ON THE PART OF THE TRIAL JUDGE. The appellate court granted a writ of prohibition to wife after husband failed to identify any exception to the general rule prohibiting ex parte communications concerning a pending proceeding. It held that the fact that an ex parte conference had "occurred constituted a legally sufficient basis" for wife's motion for disqualification. The appellate court specifically noted that it "ascribe[d] no improper motive to the trial judge's actions."
http://opinions.1dca.org/written/opinions2014/06-10-2014/14-0964.pdf (June 10, 2014).

Waters v. Waters, __So. 3d__, 2014 WL 2624993 (Fla. 1st DCA 2014). REMANDED TO TRIAL COURT FOR AMENDED FINAL JUDGMENT TO RESTORE SPOUSE'S FORMER NAME. The trial court inadvertently failed to restore former wife's former name; accordingly, the appellate court remanded the case to the trial court for an amended final judgment to restore her name.
http://opinions.1dca.org/written/opinions2014/06-13-2014/13-4897.pdf (June 13, 2014).

Mitchell v. Mitchell, __So. 3d__, 2014 WL 2751058 (Fla. 1st DCA 2014). FINAL JUDGMENT STATING HOURS AND RATE OF HOURS ARE REASONABLE IS INSUFFICIENT; TRIAL COURT MUST MAKE REQUISITE FINDINGS REGARDING FEES. Former husband appealed the trial court's scheme of equitable distribution, the alimony award to former wife, and the requirement that he pay a portion of her attorney's fees. The appellate court affirmed the first two issues without comment, but reversed and remanded as to the fees. It noted that a trial court's award of fees is reviewed for abuse of discretion; it is reversible error if a trial court awards fees without making the requisite findings. Here, the final judgment stated that the hours and rate per hour provided by former wife were reasonable, which is insufficient. Accordingly, the appellate court reversed and remanded for the trial court to make the requisite findings.
http://opinions.1dca.org/written/opinions2014/06-18-2014/13-4197.pdf (June 18, 2014).

Holland v. Holland, __So. 3d__, 2014 WL 2925282 (Fla. 1st DCA 2014). TRIAL COURT ERRED IN MODIFYING TIME-SHARING WITHOUT FINDINGS REGARDING SUBSTANTIAL CHANGE IN CIRCUMSTANCES OR CHILDREN'S BEST INTERESTS. Former husband appealed the trial court's temporary modification of a parental time-sharing schedule: agreed to by the spouses in a marital settlement agreement; ratified during the entry of a final judgment of dissolution; and modified by a mediation agreement incorporated into a final order entered two years after the dissolution. The appellate court agreed with former husband's argument that the trial court erred in finding no final order in place and in modifying the time-sharing schedule without findings showing a

substantial change in circumstances or the children's best interests. It held the trial court had abused its discretion. Reversed and remanded.
http://opinions.1dca.org/written/opinions2014/06-30-2014/14-0288.pdf (June 30, 2014).

Second District Court of Appeals

Grove v. Grove, __So. 3d__, 2014 WL 2801729 (Fla. 2d DCA 2014). TEMPORARY ALIMONY AFFIRMED; NOTICE TO LITIGATION REVERSED BECAUSE IT VIOLATED SPOUSE'S DUE PROCESS RIGHTS. Former husband appealed a nonfinal order entered by the trial court on former wife's motion for temporary relief. The appellate court affirmed the award of temporary alimony to former wife; however, it reversed and remanded for the trial court to strike the portion of the order requiring the spouses to comply with the notice to litigation because it violated former husband's due process rights. The trial court could reconsider the matters after notice to former husband.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/June/June%2020,%202014/2D13-4679.pdf (June 20, 2014).

Third District Court of Appeals

Sepich v. Papadopoulos, __So. 3d__, 2014 WL 2880212 (Fla. 3d DCA 2014). TRIAL COURT ORDER FINDING SPOUSE IN CONTEMPT FOR FAILING TO VACATE OTHER SPOUSE'S HOME AFFIRMED; IMPOSITION OF FINE NOT AFFIRMED. Former wife appealed an order finding her in contempt for failing to vacate the Atlanta, Georgia, home of her former husband, and fining her $500 per day until she vacated the home. The appellate court affirmed the contempt order, "except as to any fine imposed up to the time of the resolution of this appeal." It then stated, "[I]t is time for Sepich to vacate the Atlanta home."
http://www.3dca.flcourts.org/Opinions/3D14-0026.pdf (June 25, 2014).

Fourth District Court of Appeals

Nathanson v. Rishyko, __So. 3d__, 2014 WL 2480195 (Fla. 4th DCA 2014). APPELLATE COURT WITHOUT JURISDICTION TO CONSIDER ORDER IF TRIAL COURT RESERVES JURISDICTION AND ITS JUDICIAL LABOR HAS NOT ENDED. Former wife appealed the trial court orders denying her counterpetition to modify parental responsibility and finding her in contempt. Finding no abuse of discretion in the trial court's denial of her modification petition, the appellate court affirmed. Because the trial court had reserved jurisdiction on the issue of sanctions and its judicial labor had not ended, the appellate court concluded that it was without jurisdiction to review the contempt order and dismissed the appeal on the authority of Stramaglia v. Marubeni Am. Corp., 561 So. 2d 433, 434 (Fla. 4th DCA 1990).
http://www.4dca.org/opinions/June%202014/06-04-14/4D13-938.op.pdf (June 4, 2014).

Kilnapp v. Kilnapp, __So. 3d __, 2014 WL 2480110 (Fla. 4th DCA 2014). TRIAL COURT VIOLATED SPOUSE'S DUE PROCESS RIGHTS WHEN IT CONCLUDED EVIDENTIARY HEARING AND ISSUED ORDER WITHOUT ALLOWING SPOUSE TO FINISH HIS TESTIMONY OR PRESENT WITNESSES; ESSENTIAL TO CONCEPT OF PROCEDURAL DUE PROCESS IS THE OPPORTUNITY TO BE HEARD. Former husband appealed both a nonfinal order requiring him to repay alleged marital funds he removed from bank accounts and an injunction temporarily freezing those accounts. The

appellate court reversed the temporary injunction after finding that the trial court violated former husband's due process rights by concluding the evidentiary hearing and issuing its order without allowing him to present evidence. The hearing was abruptly concluded when the trial judge, after characterizing potential testimony as "yada, yada, yada", announced he was going to happy hour. Former husband was not allowed to finish his testimony or call witnesses. The appellate court reiterated that essential to the concept of procedural due process is the opportunity to be heard and held that the trial court erred in denying former husband his basic and fundamental right to due process--the right to be heard.
http://www.4dca.org/opinions/June%202014/06-04-14/4D13-3271.op.pdf (June 4, 2014).

Elbaum v. Elbaum, __So. 3d__, 2014 WL 2741317 (Fla. 4th DCA 2014). MARITAL SETTLEMENT AGREEMENT (MSA) IS A CONTRACT SUBJECT TO INTERPRETATION LIKE ANY OTHER; ITS TERMS SHOULD BE GIVEN CLEAR MEANING AND NOT DISTURBED UNLESS AMBIGUOUS; HERE, LANGUAGE LEFT NO ROOM FOR INTERPRETATION AND MADE IT CLEAR NO OTHER CIRCUMSTANCES WERE CONTEMPLATED TO MODIFY ALIMONY. Former husband appealed a final order dismissing his petition to terminate or modify his alimony obligation due to former wife's involvement in a supportive relationship. The appellate court affirmed because the marital settlement agreement (MSA) unambiguously limited the ability to modify to specific situations; the situation he pled was not one of those. The appellate court held that an MSA is a contract subject to interpretation like any other contract; its terms should be given their plain meaning and not be disturbed unless they are found to be ambiguous or in need of interpretation. It cited the nearly identical situation it encountered in Smith v. Smith, 110 So. 2d 108 (Fla. 4th DCA 2013), in which it held that the spouses could have contemplated § 61.14(1)(b), F.S. (2012), when they entered into their MSA but chose not to do so. Here, the appellate court held that allowing modification would "eviscerate" the term non-modifiable. It distinguished Centeno v. Centeno, 109 So. 3d 1259 (Fla. 2d DCA 2013), and Cook v. Cook, 94 So. 3d 683 (Fla. 4th DCA 2012). In Centeno, the MSA provided that although the *term* of the rehabilitative alimony was nonmodifiable, the *amount* was modifiable; in Cook, the amount of alimony was modifiable upon modification in custody. The appellate court concluded in this appeal that the "language leaves no room for interpretation and makes it clear that the parties contemplated no other circumstance where the amount of alimony could be modified." Affirmed.
http://www.4dca.org/opinions/June%202014/06-18-14/4D13-1423.op.pdf (June 18, 2014).

White v. White, __So. 3d__, 2014 WL 2741186 (Fla. 4th DCA 2014). MARITAL SETTLEMENT AGREEMENT (MSA) IS A CONTRACT SUBJECT TO INTERPRETATION LIKE ANY OTHER; HERE, TERMS WERE CLEAR AND UNAMBIGUOUS; TRIAL COURT ERRED IN REQUIRING SPOUSE TO DO SOMETHING NEITHER REQUIRED NOR EVEN IMPLIED IN MSA. Former wife appealed a trial court order denying her motion to enter final judgment for money due and overruling her exceptions to the trial court's findings regarding the dissolution. The appellate court affirmed the order denying her request for prejudgment interest and attorney's fees, but reversed the order requiring that she pay her credit card debt before former husband would be required to reimburse her. Pursuant to the spouses' marital settlement agreement (MSA), former husband would assume former wife's credit card debt for specific cards and balances, but would not be responsible for any additional charges on those cards. When he failed to make the payments, she

filed a motion to enter judgment for money due which the trial court denied. The appellate court stated that an MSA is subject to interpretation like any other contract. Here, its terms were clear and unambiguous. There was no language requiring or "even implying" that former wife would first have to repay her credit card debt before former husband would be required to reimburse her; therefore, "the trial court erred by ordering such." Reversed and remanded for the entry of an order granting her motion to the extent that former husband would be required to pay former wife's credit card debt consistent with the opinion and the MSA.
http://www.4dca.org/opinions/June%202014/06-18-14/4D13-1507.op.pdf (June 18, 2014).

Kershaw v. Kershaw, __So. 3d__, 2014 WL 2740782 (Fla. 4th DCA 2014). TRIAL COURT RETURNED CHILD CONSISTENT WITH PARENTING PLAN. Former wife appealed a trial court order denying her motion for a temporary order permitting relocation and granting former husband's motion for the return of their child. She argued that the trial court erred in granting former husband's motion because its order changed the parenting plan without former husband having requested that it be changed or the trial court having made the findings of fact necessary for a change. The appellate court affirmed. It construed the order as having returned the child consistent with the parenting plan, rather than one which changed the plan.
http://www.4dca.org/opinions/June%202014/06-18-14/4D13-3519.op.pdf (June 18, 2014).

Fifth District Court of Appeals

No new opinions for this reporting period.

Domestic Violence Case Law

Florida Supreme Court

In re: Standard Jury Instructions in Criminal Cases--Instruction 8.25, --- So. 3d ----, 2014 WL 2882571 (Fla. 2014). JURY INSTRUCTIONS AMENDED. The Supreme Court amended the standard jury instructions proposed by the Supreme Court Committee on Standard Jury Instructions in Criminal Cases. The new instructions amend instruction 8.25 related to domestic violence charges to reflect that a person can violate a condition of pretrial release before being released from jail. http://www.floridasupremecourt.org/decisions/2014/sc13-2453.pdf (June 26, 2014).

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

Alderman v. Thomas, --- So. 3d ----, 2014 WL 2783463 (Fla. 2d DCA 2014). DATING VIOLENCE INJUNCTION REVERSED. The petitioner appealed a final judgment of injunction for protection against dating violence. Although she presented evidence that dating violence had occurred in the past, she did not prove that she believed she was in imminent danger of becoming the victim of another act of dating violence. Therefore, the court reversed the final judgment of injunction. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/June/June%2020,%202014/2D13-898.pdf (June 20, 2014).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

Baker v. Pucket, --- So. 3d ----, 2014 WL 2480165 (Fla. 4th DCA 2014). DENIAL OF MOTION TO VACATE INJUNCTION REVERSED. The court denied the respondent's motion to vacate an injunction against domestic violence without a hearing that was entered in 2011. The respondent alleged that she has not had any contact with the appellee, nor does she plan to, and that the injunction was preventing her from participating in a work release program while she was incarcerated. The appellate court held that the motion was legally sufficient and that the respondent was entitled to an evidentiary hearing to fulfill due process.
http://www.4dca.org/opinions/June%202014/06-04-14/4D13-2393.op.pdf (June 4, 2014)

Toubail v. White, --- So. 3d ----, 2014 WL 2740875 (Fla. 4th DCA 2014). DATING VIOLENCE INJUNCTION REVERSED. The respondent appealed an injunction against dating violence and the appellate court reversed because the petitioner failed to prove that she had a reasonable fear of imminent harm.
http://www.4dca.org/opinions/June%202014/06-18-14/4D13-2548.op.pdf (June 18, 2014)

Fifth District Court of Appeals

Barfield v. Kay, --- So. 3d ----, 2014 WL 2616493 (Fla. 5th DCA 2014). DENIAL OF MOTION TO VACATE REPEAT INJUNCTION REVERSED. The appellate court reversed the summary denial of a motion to vacate or modify an injunction for protection against repeat violence and stated that due process required a hearing.
http://www.5dca.org/Opinions/Opin2014/060914/5D14-716.op.pdf (June 13, 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.