# OSCA/OCI'S FAMILY COURT CASE LAW UPDATE MARCH 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***

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***

J.B. v. State, __ So.3d __, 2013 WL 837006 (Fla. 4th DCA 2014). ON REHEARING, PETIT THEFT CHARGE WAS DISMISSED BECAUSE THE STATE FAILED TO PROVE ITS CASE. The juvenile appealed her adjudication for petit theft. On January 8, 2014, the Fourth District Court of Appeal in J.B. v. State, __ So.3d __, 2013 WL 51829 (Fla. 4th DCA 2014) held that because there was no direct or circumstantial evidence besides inadmissible hearsay to prove the *corpus delicti* of the theft, the trial court erred in admitting the juvenile's written confession. The Fourth District then reversed and remanded for a new adjudicatory hearing. The juvenile filed a motion for rehearing which was granted. On rehearing, the Fourth District made the same findings as the earlier case, but further held that without the hearsay evidence or the juvenile's confession, the state had failed to prove its case. Therefore, the petit theft charge should have been dismissed rather than remanded for a new adjudicatory hearing. Accordingly, the Fourth District reversed and remanded with directions to dismiss the petit theft charge.
http://www.4dca.org/opinions/Mar%202014/03-05-14/4D12-1156rhg.op.pdf (March 5, 2014)

S.B. v. State, __ So.3d __, 2013 WL 836806 (Fla. 4th DCA 2014). COMPETENCY ISSUE WAS IMPROPERLY DECIDED WHERE NEITHER PARTY STIPULATED TO THE CONTENT AND ADMISSION OF THE DOCTOR'S REPORT AND THERE WAS NO AGREEMENT BETWEEN THE PARTIES AND THE JUDGE TO DECIDE THE ISSUE OF COMPETENCY ON THE BASIS OF THE WRITTEN REPORT ALONE. The juvenile appealed the trial court's finding that he was competent to proceed to trial, arguing that the competency issue was improperly decided. Three years after the juvenile was found incompetent to proceed to trial in two separate criminal cases, the court held a hearing. The juvenile’s attorney advised the court that the juvenile was evaluated by a doctor and after reviewing the report and based on conversations with the juvenile and his mother, they were stipulating that the child was competent to proceed. The State also stipulated to the juvenile's

competency. There were no stipulations to the contents and admission of the doctor's report for the determination of competency. Without further hearing or evidence, the court entered a written order finding that the juvenile was competent, based solely upon the stipulations by the State and defense, and its own review of the doctor's report. The juvenile was tried and found guilty in both criminal cases. On appeal, the Fourth District Court of Appeal found that Florida Rule of Criminal Procedure 3.212(c)(7) provides: "If, at any time after such commitment, the court decides, after hearing, that the defendant is competent to proceed, it shall enter its order so finding and shall proceed." A hearing, to determine whether competency has been restored, requires the calling of court-appointed expert witnesses designated under Florida Rule of Criminal Procedure rule 3.211; a determination of competence to proceed; and the entry of an order finding competence. Sampson v. State, 853 So.2d 1116, 1117 (Fla. 4th DCA 2003). However, "where the parties and the judge agree, the trial Court may decide the issue of competency on the basis of the written reports alone." Fowler v. State, 255 So.2d 513, 515 (Fla. 1971). However, in the instant case, neither party stipulated to the contents and admission of the doctor's report. Nor was there any form of agreement between the parties and the judge to decide the issue of competency on the basis of the written report alone. Although it could be argued that by stipulating to the report's determination of competency, the parties stipulated to the report and agreed to determine competency based on the report alone, there was nothing in the case law to suggest that such implicit stipulations and agreements are sufficient to satisfy rule 3.212. Therefore, the Fourth District found that the trial court erred in its finding of the juvenile's competency. The case was remanded for a new hearing, and the trial court could consider any stipulations in accordance with the opinion.
http://www.4dca.org/opinions/Mar%202014/03-05-14/4D13-892.op.pdf (March 5, 2014)

S.L. v. State, __ So.3d __, 2013 WL 940688 (Fla. 4th DCA 2014). TRIAL COURT ERRED IN REVOKING THE JUVENILE'S PROBATION WHERE NO FORMAL AFFIDAVIT/PETITION OF VIOLATION OF PROBATION WAS FILED. The juvenile appealed his disposition order and sentence. The State conceded that the trial court fundamentally erred in revoking the juvenile's probation because no formal affidavit/petition of violation of probation was filed. The Fourth District Court of Appeal agreed and reversed and remanded for the reinstatement of the withheld adjudication and disposition of probation. *See* Saintiler v. State, 109 So.3d 303 (Fla. 4th DCA 2013); *see also* Johnston v. State, 684 So.2d 262, 263 (Fla. 4th DCA 1996) (holding that an order revoking probation should be vacated if no formal charge of violation of probation has been filed, and that this issue may be raised for the first time on appeal as fundamental error).
http://www.4dca.org/opinions/Mar%202014/03-12-14/4D12-2425.op.pdf (March 12, 2014)

C.C. v. State, __ So.3d __, 201 WL 940668 (Fla. 4th DCA 2014). THE EVIDENCE WAS INSUFFICIENT

TO SHOW THAT THE JUVENILE SUBSTANTIALLY AND WILLFULLY VIOLATED THREE CONDITIONS OF HIS PROBATION AS FOUND BY THE TRIAL COURT. The juvenile appealed a final order reinstating his probation. The trial court found the juvenile committed all five of the alleged probation violations. The Fourth District Court of Appeal found that for a violation of a condition of probation to trigger a revocation, the violation must be willful and substantial, and the State must prove it by the greater weight of the evidence. In the instant case, the Fourth District held that the evidence was insufficient to show that the juvenile substantially and willfully violated the following alleged conditions of his probation: (1) failure to attend school; (2) failure to reside in his mother's home; and (3) failure to cooperate fully and maintain contact with his probation officer. However, the evidence was legally sufficient to establish the remaining two violations: (1) possession of marijuana and; (2) violation of curfew. Accordingly, the Fourth District affirmed in part, reversed in part, and remanded for the lower court to consider whether the same sentence would be imposed based on the two proven violations and to enter a written order specifying the same. Lastly, the Fourth District rejected the juvenile's contention that the lower court failed to hold an adequate Richardson v. State, 246 So.2d 771 (Fla.1971) hearing.
http://www.4dca.org/opinions/Mar%202014/03-12-14/4D12-2540.op.pdf (March 12, 2014)

K.T. v. State, __ So.3d __, 2013 WL 940649 (Fla. 4th DCA 2014). EVIDENCE WAS INSUFFICIENT TO ESTABLISH THE FAIR MARKET VALUE OF THE STOLEN ITEMS AT THE TIME OF THE THEFT. The juvenile challenged the restitution order, arguing the evidence was insufficient to establish the fair market value of the stolen items at the time of the theft. The juvenile had pled no contest to charges of burglary of a dwelling and petit theft and was placed on probation and ordered to pay restitution. The State conceded error. The Fourth District accepted the State's confession of error and reversed the order of restitution and remanded for further proceedings. *See* Thompson v. State, 68 So.3d 425, 426 (Fla. 4th DCA 2011) (stating "amount of restitution is established through evidence of fair market value of the stolen items at the time of the theft" and listing factors to be considered, including depreciation); Soriano v. State, 968 So.2d 112, 114–15 (Fla. 4th DCA 2007) (holding victim's unsubstantiated opinion or speculation as to fair market value at the time of the theft is insufficient to sustain a restitution order).
http://www.4dca.org/opinions/Mar%202014/03-12-14/4D12-4295.op.pdf (March 12, 2014)

A.L. v. State, __ So.3d __, 2013 WL 1031439 (Fla. 4th DCA 2014). MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED BECAUSE THE GUN AND INCRIMINATING STATEMENTS WERE THE PRODUCT OF A STOP, NOT A CONSENSUAL ENCOUNTER, AND THE STOP WAS NOT SUPPORTED BY THE REQUISITE REASONABLE SUSPICION. The juvenile appealed the denial of his motion to suppress. An officer saw the juvenile riding his bicycle while patrolling an area where a burglary had been reported several days earlier. The officer stopped the juvenile and inquired why he was

in the area. The juvenile stated he was visiting a friend, but was unable to tell the officer where the friend lived. The officer told the juvenile there had been burglaries in the area and he should stay out of the area if he had no legitimate reason to be there. The juvenile said he would and rode away. Fifteen to twenty minutes later, in the same area, the officer again saw the juvenile riding his bike. The officer pulled her car over and the juvenile stopped his bike. The officer approached and asked the juvenile what he was doing in the area. The juvenile told the officer he had gone to his friend's home to retrieve his wallet. The officer instructed the juvenile to get off his bike and to sit on the curb. After the juvenile reiterated that he had gone to get his wallet, the officer asked the juvenile for identification. The officer assisted the juvenile to a standing position and, as the juvenile was adjusting his pants, a gun fell to the ground. The juvenile indicated the gun was his and was arrested. The juvenile filed a motion to suppress arguing that the gun and any incriminating statements were the product of a stop, not a consensual encounter, and that the stop was not supported by the requisite reasonable suspicion. The trial court found that the police did not have the reasonable suspicion of criminal activity necessary to justify a stop, but nonetheless denied the motion because the contact was a consensual encounter. On appeal, the Fourth District Court of Appeal also found that the police lacked a reasonable suspicion of criminal activity. However, the Fourth District held that the encounter was a *Terry* stop and not a consensual encounter. A consensual encounter becomes a *Terry* stop when an officer makes an official show of authority from which a reasonable person would conclude that he or she is not free to end the encounter and depart. Whether an encounter is consensual requires consideration of the totality of the circumstances. In the instant case, the officer ordered the juvenile to get off his bike and to sit on the curb. Under these circumstances, a reasonable person would not have felt free to end the encounter and walk away. Thus, the officer's orders converted the consensual encounter into a stop. Since the stop was not supported by reasonable suspicion, the incriminating evidence was subject to suppression. Accordingly, the Fourth District reversed the denial of the juvenile's motion to suppress.
http://www.4dca.org/opinions/Mar%202014/03-19-14/4D12-3818.op.pdf (March 19, 2014)

C.C. v. State, __ So.3d __, 2013 WL 1225230 (Fla. 4th DCA 2014). THE JUVENILE'S ADJUDICATION WAS REVERSED BECAUSE THE STATE FAILED TO ESTABLISH THE CRIME OF LOITERING AND PROWLING. The juvenile appealed his adjudication for loitering and prowling. The juvenile was spotted around 10:00 a.m. by an off-duty officer. The off-duty officer recognized the juvenile and knew he was from a neighboring community and that he should be in school. The off-duty officer called the police and gave a description of the juvenile and another individual with whom he was walking. Thereafter, police officers responded and saw individuals matching the BOLO description. When the officers stopped their patrol car, the juvenile and two other individuals dropped their backpacks in a bush and attempted to conceal themselves behind a truck. The

individuals were placed under arrest. At trial, when asked the basis for the arrest, the arresting officer responded "[i]t was the actions of hiding their backpacks and concealing themselves." The officers searched the juvenile's backpack and found a four-way lug wrench with a "prying tool" on one end and a flathead screwdriver. As a result, the juvenile was initially charged with possession of burglary tools and loitering and prowling. The possession of burglary tools charge was dropped prior to trial. On appeal, the Fourth District Court of Appeal found that the items found in the juvenile's backpack after his arrest, were not relevant to prove loitering and prowling because the offense of loitering and prowling must be completed prior to any police action. Therefore, the items should not have been admitted or considered by the trial court. To establish the crime of loitering and prowling, the State must prove: (1) the defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals, and (2) the loitering was under 'circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. The first element requires proof that the officer observed "unusual conduct indicating incipient criminal activity." The idea of this element is suspicious criminal conduct which comes close to, but falls short of, actual commission or attempted commission of a substantive crime. A mere vaguely suspicious presence is insufficient to satisfy this element. Instead, the defendant's behavior must point toward an imminent breach of the peace or threat to public safety. The Fourth District noted that the facts were nearly identical to M.J. v. State, 121 So.3d 1151 (Fla. 4th DCA 2013). As in M.J., this conduct, while supporting a truancy investigation, was insufficient to establish the first element of loitering and prowling. In this case, the conduct observed by officers prior to the juvenile reacting to the officers' presence, while perhaps indicative of a truancy situation, did not rise to the level of "suspicious criminal conduct which comes close to, but falls short of, actual commission or attempted commission of a substantive crime." As noted in M.J., truancy is not a crime. Because the State failed to establish the first element of loitering and prowling, the Fourth District reversed the juvenile's adjudication and directed the trial court to dismiss the delinquency petition on remand.
http://www.4dca.org/opinions/Mar%202014/03-26-14/4D12-1848.op.pdf (March 26, 2014)

***Fifth District Court of Appeals***

R.A.J. v. State, __ So.3d __, 2013 WL 1255285 (Fla. 5th DCA 2014). SECTION 985.439(4), F.S. AUTHORIZES THE SANCTION OF HOME DETENTION WITH ELECTRONIC MONITORING WITHOUT THE TIME LIMITATIONS REQUIRED FOR A RESIDENTIAL CONSEQUENCE UNIT. The juvenile filed a petition for a writ of habeas corpus arguing that she should be immediately released from her home detention with GPS monitoring. The juvenile argued that the time limitations from s. 985.439(4)(a), F.S should apply to the home detention sanction authorized by subsection (4)(b). Subsection (4)(a) provides that for a violation of probation the court may place the child "in a

consequence unit ... for up to 5 days for a first violation and up to 15 days for a second or subsequent violation." Subsection (4)(b) provided that the court may place the child on home detention with electronic monitoring if a residential consequence unit is not available. The Fifth District found that the plain language of the statute unambiguously authorized the sanction of home detention with electronic monitoring without the time limitations required for a residential consequence unit. Accordingly, the juvenile's petition was denied.
http://www.5dca.org/Opinions/Opin2014/032414/5D14-626.op.pdf (March 28, 2014)

## Dependency Case Law

***Florida Supreme Court***

In Re: Amendments to Florida Rules of Juvenile Procedure, --- So.3d ----, 2014 WL 1281915 (Fla., 2014) RULES AMENDED. As a result of the Florida Bar's Juvenile Rules Committee proposal, the Supreme Court amended several forms in response to recent statutory changes. The court deleted Form 8.971, Motion to Terminate Jurisdiction and Form 8.972, Order Terminating Jurisdiction. It also amended Form 8.973 to 8.973a which is the Order on Judicial Review for Child Age 17 or Older. The court also created Form 8.973b, an Order on Judicial Review, and Form 8.973c, an Order on Judicial Review for Young Adults in Extended Foster Care. The amendments take effect immediately.
http://www.floridasupremecourt.org/decisions/2014/sc13-2385.pdf (March 20, 2014)

***First District Court of Appeals***

S.B. v. Department of Children and Families, --- So.3d ----, 2014 WL 825240 (Fla. 1st DCA 2014) TERMINATION OF PARENTAL RIGHTS REVERSED. The trial court terminated the incarcerated father's parental rights, finding that a continued relationship with the children would be harmful. The appellate court held that DCF failed to produce competent substantial evidence to support termination and reversed. The father's sentence was not a substantial portion of his children's minority, and his criminal offenses were all related to driving infractions. The psychologist that testified in support of termination had never met the father or observed him interacting with his children, and the father had written the children over 50 letters in a 16 month period.
http://opinions.1dca.org/written/opinions2014/03-03-2014/13-5337.pdf (March 3, 2014)

***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***

W.R. v. Department of Children and Families, --- So.3d ----, 2014 WL 1225310 (Fla. 4th DCA 2014) ADJUDICATION OF DEPENDENCY REVERSED. A father appealed an order adjudicating his children dependent. The appellate court affirmed the dependency as to the father's daughter, but reversed the adjudication as to the appellant's son. The trial court found that the father physically abused both of his children, however, there was no evidence of harm to the son, or emotional or psychological trauma as there was to the daughter. The court noted that the abuse of one child is insufficient to prove that a parent's other children are also dependent, and the trial court made no finding that the son was in imminent risk of abuse. Therefore, the court reversed the son's dependency, but remanded the case for the court to determine whether or not the son was in imminent risk.

http://www.4dca.org/opinions/Mar%202014/03-26-14/4D13-3508.op.pdf (March 26, 2014)

***Fifth District Court of Appeals***

No new opinions for this reporting period.

## Dissolution Case Law

***Florida Supreme Court***

No new opinions for this reporting period.

***First District Court of Appeals***

Williams v. Williams, __So.3d__, 2014 WL 847887, (Fla.1st DCA, March 4, 2014). TRIAL COURT'S VALUATION OF ART WORK LACKED SPECIFIC FINDINGS; EQUALIZATION PAYMENT AWARDED TO SPOUSE LACKING EXPLANATION; REVERSED AND REMANDED FOR SPECIFIC FINDINGS AND EXPLANATIONS. Former wife appealed equitable division in final judgment of dissolution; appellate court affirmed in part and reversed in part. The trial court's valuation of the spouses' art collection lacked specific findings, leaving appellate court unable to ascertain how the trial court reached its value or whether that value was supported by competent, substantial evidence. Competent, substantial evidence supported the trial court's finding that the family business and its assets were a marital asset that could not be valued at the time of the final judgment; however, the trial court did not indicate how it reached the equalization payment awarded to former wife, again precluding meaningful appellate review. Both issues were reversed and remanded. On remand, the trial court was asked to set forth specific findings supporting its valuation of the art work and to explain its method of calculating the equalization payment.
http://opinions.1dca.org/written/opinions2014/03-04-2014/13-2781.pdf (March 4, 2014).

Hardman v. Koslowski, __So.3d__, 2014 WL 949850, (Fla.1st DCA, March 12, 2014). TRIAL COURT LOST AUTHORITY TO ORDER VISITATION ONCE DISABLED CHILD REACHED MAJORITY BUT HAD CONTINUING JURISDICTION TO ORDER SUPPORT. Former husband, a Florida resident, argued that former wife was frustrating his attempts to visit their disabled adult son, living out of state with former wife contrary to a trial court order entered in July 2010. Proceeding on former husband's motion as one for enforcement, trial court ordered that former husband was entitled to visitation with the son for a month in Jacksonville and that former wife, a registered nurse, could either accompany the son or pay for a nurse or airline representative to accompany him. Former wife argued that the trial court was without jurisdiction because the son was no longer a minor. Appellate court held that trial court had the authority to order visitation under section 61.13(2), F.S. (2004), only so long as the son was a minor; however, it has continuing jurisdiction to order support for the son under sections 61.13(1) and 743.07(2), F.S. (2012), due to his mental and physical incapacity. Appellate court noted that the guardianship order entered in the State of Washington found the son not to be incompetent in the area of making decisions on his social relationships, including visitation with his father.
http://opinions.1dca.org/written/opinions2014/03-12-2014/13-1883.pdf (March 12, 2014).

Nassirou v. Nassirou, __So.3d__, 2014 WL 949865, (Fla.1st DCA, March 12, 2014). CHILD SUPPORT ARREARAGES REMANDED FOR RECALCULATION. Appellate reversed the post-dissolution order regarding distribution of former husband's 401(k) plan assets, and arrearages in school tuition and child support. In a previous appeal, appellate court had reversed the portion of the dissolution judgment awarding 100% of assets in the 401(k) plan to former wife because the trial court had "improperly considered marital misconduct as one of the bases for the inequitable

distribution of those assets." (*Nassirou v. Nassirou*, 117 So.3d 451 (Fla.1st DCA 2013)). Former husband's failure to contribute his share of private school tuition had also led to this distribution. On remand, the trial court was to determine the value of the plan's assets and how much should be distributed to satisfy the tuition arrearage; any amount above the tuition arrearage "should be equitably distributed." Contrary to those instructions, the trial court divided the plan's assets between the spouses and then subtracted the child support and tuition arrearages from former husband's half; appellate court noted this "oversight" could be corrected when the trial court recalculated the child support arrearages on this go-round.
http://opinions/1dca.org/written/opinions2014/03-12-2014/13-4506.pdf (March 12, 2014).

Bryant v. Bryant, __So.3d__, 2014 WL 963422, (Fla.1st DCA, March 12, 2014). MOTION FOR REHEARING DOES NOT TOLL THE TIME FOR FILING APPEAL. Former wife's motion for rehearing of an order rendered December 10, 2013, did not toll the time for filing a notice of appeal, which was filed January 17, 2014. Appeal dismissed.
http://opinions.1dca.org/written/opinions2014/03-04-2014/14-0254.pdf (March 12, 2014).

***Second District Court of Appeals***

Griffith v. Griffith, __So.3d__, 2014 WL 895611, (Fla.2d DCA, March 7, 2014). TRIAL COURT ERRED IN FAILING TO SPECIFY THE SUBSTANTIAL CHANGE IN CIRCUMSTANCES AND IN FAILING TO CONSIDER CHILDREN'S BEST INTERESTS. Both spouses appealed a final judgment of modification changing shared parental and custodial responsibility ordered in the dissolution to former husband having sole parental and custody responsibility. Former wife appealed the change from shared to sole; former husband appealed former wife's child support obligation not being made retroactive to the date he filed his petition for modification. Appellate court affirmed his cross-appeal without comment, but reversed the modification due to the lack of statutorily required findings in the trial court's order. It held the trial court erred in finding a substantial change in circumstances and in failing to consider the best interests of the children as required by section 61.13, Florida Statutes (2012). The trial court neither specified what the substantial change was, nor indicated that it had considered the children's best interests. The trial court's temporary order modifying time-sharing by naming former husband primary residential parent would remain in effect while the case was pending.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/March/March%2007,%202014/2D13-1303.pdf (March 7, 2014).

Ingram v. Ingram, __So.3d__, 2014 WL 948888, (Fla.2d DCA, March 12, 2014). ALTHOUGH TRIAL COURT COULD NOT CHANGE EQUITABLE DISTRIBUTION IN 1993 DISSOLUTION FINAL JUDGMENT, IT COULD CONSIDER SPOUSE'S SUPPLEMENTAL PETITION AND DETERMINE DOLLAR AMOUNT OF SPOUSE'S MILITARY PENSION DESCRIBED BY PERCENTAGE IN THE FINAL JUDGMENT. Reasoning that it could not modify a scheme of equitable distribution determined in a 1993 dissolution final judgment, the trial court dismissed former husband's supplemental petition for lack of jurisdiction. Appellate court found the trial court's reasoning was "probably correct", but concluded that the petition was to enforce the terms of the final judgment, not change them. The marital settlement agreement adopted in the dissolution final judgment provided that

former wife would receive 27.5% of former husband's disposable retired pay which he would receive at retirement with 20 years' military service; the percentage was a method calculated to give former wife 50% of the amount accrued during the marriage. The trial court retained jurisdiction to change the percentage if former husband retired or resigned prior to 20 years. Former husband retired after 30 years. After former wife requested 27.5% of his 30 year pension, former husband filed his supplemental petition. Appellate court held that former wife's entitlement in the final judgment was based on the amount of a 20 year pension. It concluded that although the trial court was not authorized to increase or decrease the amount of equitable distribution, it was entitled to consider former husband's petition and to "determine and clarify the dollar amount" of his pension as described by percentage in the final judgment. Reversed and remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/March/March%2012,%202014/2D13-1530.pdf (March 12, 2014).

McNorton v. McNorton, __So.3d__, 2014 WL 1133315, (Fla.2d DCA, March 21, 2014). WITHDRAWAL OF FUNDS FROM MARITAL RETIREMENT FUNDS BY SPOUSE FOR LIVING EXPENSES AND A NEW RESIDENCE WERE PROPERLY CHARGED AGAINST HIS SHARE OF THE EQUITABLE DISTRIBUTION; HOWEVER, ADDITIONALLY CHARGING HIM WITH LOST EARNINGS ON THE WITHDRAWALS WAS ERROR. Appellate court found that the trial court properly determined funds withdrawn by former husband from two marital retirement accounts, for living expenses and a new residence, were applied to a purpose unrelated to the marriage and correctly charged them against his share of the equitable distribution. However, it found that the trial court erred by additionally charging him with lost earnings on the withdrawals. Although it questioned whether lost earnings are properly included in an equitable distribution, appellate court stated that it did not need to consider that issue because no competent, substantial evidence supported the lost earnings. A trial court's valuation of an asset must be supported by competent, substantial evidence.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/March/March%2021,%202014/2D12-626.pdf (March 21, 2014).

Ehman v. Ehman, ___ So.3d__, 2014 WL 1226746, (Fla.2d DCA, March 26, 2014). LACK OF A TRANSCRIPT PRECLUDED SPOUSE IN DOM CASE INVOLVING EQUITABLE DISTRIBUTION AND ALIMONY FROM ESTABLISHING ANY TRIAL COURT ERROR IN FAILING TO MAKE REQUIRED FINDINGS WAS HARMFUL; TRIAL COURT DOES NOT HAVE JURISDICTION TO ADJUDICATE PROPERTY RIGHTS OF NONPARTIES; IN A DEFAULT, WELL-PLEADED FACTS ARE DEEMED ADMITTED. Appellate court held because the dissolution in this case involved equitable distribution and alimony, lack of a transcript precluded former husband from establishing that any trial court error in failing to make required findings was harmful; however, it concluded that the trial court erred in awarding former wife three properties, whose titled owner, a corporation, was not a party to the dissolution. A trial court does not have jurisdiction to adjudicate property rights of nonparties. Because the three properties were "an essential component" of the equitable distribution, the trial court would need to readdress equitable distribution and alimony on remand. In doing so, it would be need to make the required statutory findings. Because a default was properly entered against former husband, all well-pleaded facts were deemed

admitted; thus, he conceded former wife's entitlement to equitable distribution and alimony. The amount of alimony and form of equitable distribution would be determined by the trial court on remand.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/March/March%2026,%202014/2D12-5995.pdf (March 26, 2014).

Lafferty, Jr. v. Lafferty, __So.3d__, 2014 WL 1258539, (Fla.2d DCA, March 28, 2014). TRIAL COURT MUST CONSIDER WHETHER SPOUSE'S UN- OR UNDER-EMPLOYMENT IS VOLUNTARY AND IF SO, WHETHER THAT SPOUSE HAS BEEN DILIGENT IN FINDING REPLACEMENT INCOME; DETERMINATION OF THAT AMOUNT IS WITHIN TRIAL COURT'S DISCRETION, BUT SHOULD AT LEAST REFLECT INCOME BASED ON MINIMUM WAGE. Former husband appealed final judgment of dissolution. Appellate court found a "dearth" of competent, substantial evidence supporting former wife's need for the amount of retroactive alimony she was awarded, which was based on a percentage of the total of the net disposable incomes attributed to each spouse. Appellate court agreed with former husband that a one-time payment to former wife for rent should have been set off against the retroactive alimony. It also found that the trial court had erred in its analysis of imputed income. A trial court must consider whether a spouse's change from employment to non-employment is voluntary in computing an alimony award, and if so, whether that spouse has been diligent in finding additional income. If a trial court concludes that a spouse was voluntarily either unemployed or underemployed and has not been diligent in finding "replacement" income, then it should impute income to that spouse based on competent, substantial income. Failure to do so is error. Determination of the amount is within the trial court's discretion; however, it must at least reflect income based on the minimum wage. The trial court miscalculated the attorney's fees awarded to former wife; the amount should have been reduced for expenses accrued by former wife's failure to provide discovery. The trial court was instructed on remand to correct that error as well as recalculate the retroactive alimony and determine whether to impute alimony to former wife in determining alimony.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/March/March%2028,%202013/2D12-4540.pdf (March 28, 2014).

***Third District Court of Appeals***

Salisele v. Sapicas, __So.3d__, 2014 WL 953446, (Fla.3d DCA, March 12, 2014). MSA HELD EACH SPOUSE RESPONSIBLE FOR HIS OR HER OWN ATTORNEY'S FEES; SPOUSE WHO NEITHER ASKED TRIAL COURT TO MODIFY FEE PROVISION IN MSA, NOR RESERVE JURISDICTION TO RULE ON FEE AWARD IN PENDING CUSTODY DISPUTE AT A LATER DATE, WAIVED HER RIGHT TO CLAIM FEES. Former husband appealed a trial court order awarding former wife attorney's fees incurred in litigation of a custody dispute, in contravention of the marital settlement agreement (MSA), which explicitly provided each spouse was to be responsible for his or her own attorney's fees. Former wife confessed error; appellate court agreed with former husband. Former wife was on notice of the dispute at the time the MSA was ratified by the trial court's entry of the dissolution final judgment. She neither asked the trial judge to modify the fee provision in the MSA, nor did she ask that the court reserve jurisdiction to rule on the award of fees in the custody dispute at a later date; therefore, she waived any right to later claim fees in the custody dispute. Reversed.
http://www.3dca.flcourts.org/Opinions/3D13-0355.pdf (March 12, 2014).

***Fourth District Court of Appeals***

Kozell v. Kozell, __So.3d__, 2014 WL 1225213, (Fla.4th DCA, March 26, 2014). TIME FOR FILING A MOTION FOR REHEARING RUNS FROM DATE ORDER IS RENDERED, NOT FROM TIME OF SERVICE; TRIAL COURT LACKS JURISDICTION TO REVERSE AN ORDER IF MOTION TO VACATE IS UNTIMELY; A MOTION TO DISQUALIFY A TRIAL JUDGE FILED AFTER THE PROCEEDINGS ENDED IS UNTIMELY. Former husband appealed an order denying his petition for downward modification of child support, entered after the trial court granted former wife's motion to vacate its order granting his petition. Although her motion sought to vacate the order, its main purpose was to seek rehearing. Former wife argued that her motion was timely because five days should be added for mailing of the judgment; however, appellate court noted that the time for filing a motion for rehearing runs from the date a judgment is rendered, not from date of service. It held that because former wife's motion to vacate was untimely, the trial court lacked jurisdiction to reverse its ruling and vacate its earlier order. Appellate court found itself without jurisdiction to hear former husband's challenge to an order denying his motion to disqualify the trial judge, but stated that even if it had jurisdiction, his motion was untimely as well because it was not filed until after the proceedings had already ended. The trial court was instructed to reinstate the reversed order.
http://www.4dca.org/opinions/Mar%202014/03-26-14/4D12-2404.op.pdf (March 26, 2014).

Garvey v. Garvey, __So.3d__, 2014 WL 1225103, (Fla.4th DCA, March 26, 2014). TRIAL COURT ERRED IN DENYING ALIMONY MODIFICATION PETITION BASED ON ITS FINDING THAT SUBSTANTIAL CHANGES IN CIRCUMSTANCES ALLEGED BY SPOUSE WITH MS COULD HAVE BEEN CONTEMPLATED AT TIME OF AGREEMENT; SINCE 1993, BURDEN OF PROOF FOR MODIFICATION OF ALIMONY IS THE SAME WHETHER THE ALIMONY IS SET BY THE COURT OR AGREEMENT. Former husband appealed an order denying his petition to modify alimony and awarding attorney's fees to former wife. When the spouses entered into their marital settlement agreement (MSA), former husband had MS, but worked full-time; the MSA was silent as to former husband's MS. In denying the modification petition, the trial court found that former husband had experienced MS symptoms during and after his marriage to former wife; those symptoms indicated the likelihood of more severe symptoms in the future which could affect his employment and earning capacity. It found that what former husband alleged as a change in circumstances was a "foreseeable and contemplated event", leaving him unable to meet a heavier burden of modifying agreed-to alimony. Former husband argued that because testimony below established that MS is not a predictable disease, he could not have contemplated its course; therefore, the trial court erred in finding his deteriorating condition was foreseeable. Appellate court held that as a general rule, deteriorating health can support a reduction in alimony. Here, the trial court's denial of former husband's petition based on its finding that he was aware of the likelihood that his conditions would worsen was error. It also noted that section 61.14, Florida Statutes, as amended in 1993, provides for the same burden of proof to apply to modification of alimony—whether the alimony was set by agreement or by the court. It affirmed the fee award.
http://www.4dca.org/opinions/Mar%202014/03-26-14/4D13-1085.op.pdf (March 26, 2014).

***Fifth District Court of Appeal***

No new opinions for this reporting period.

## Domestic Violence Case Law

***Florida Supreme Court***

No new opinions for this reporting period.

***First District Court of Appeals***

Hunter v. Booker, --- So.3d ----, 2014 WL 895188 (Fla. 1st DCA 2014) WRIT GRANTED FOR REMOVAL OF TIME SHARING PLAN. The petitioner filed an petition for protection against domestic violence and was granted a temporary injunction ex parte which gave her one hundred percent of the time sharing for her son. At the subsequent hearing, the court denied the injunction, but established a time sharing plan, even though the respondent did not request time sharing and there no was no pending action to establish parental responsibility or visitation. The petitioner appealed and the appellate court held that the trial court lacked the statutory authority to establish a temporary parenting plan since the court dismissed the temporary injunction and denied the permanent injunction. The court noted that the Florida statutes only authorized the court to establish a temporary parenting plan when the court issued an injunction. The court also stated that the trial court's order violated the petitioner's right to due process and departed from the essential requirements of law because the mother's pleading had not presented the issue of shared custody and the father had not requested custody of the child. If it had been proper for the judge to order time sharing, the trial court also failed to consider the criteria set out in s. 61.13, Florida Statutes, for developing a time-sharing plan.
No link to this opinion available as of April 14, 2014. (March 07, 2014)

Cannon v. Thomas ex rel. Jewett, --- So.3d ----, 2014 WL 949856 (Fla. 1st DCA 2014) INJUNCTION VACATED. A mother was granted an injunction for repeat violence on behalf of a child and against another child. The appellate court reversed since there was no evidence that the aggressive student committed the requisite two acts of violence. The court also noted that sending threatening messages through social media (Facebook) the night before did not constitute assault under s. 784.011, Florida Statutes, since the child did not believe the violence was imminent. A concurring opinion urges the legislature to consider creating an injunction that would apply to school-related violence.
http://opinions.1dca.org/written/opinions2014/03-12-2014/13-2040.pdf (March 12, 2014)

Williams v. Gonder, --- So.3d ----, 2014 WL 1017960 (Fla. 1st DCA 2014) REPEAT VIOLENCE INJUNCTION REVERSED. A petitioner was granted an injunction for repeat violence based on two alleged incidents of vehicle vandalism and the respondent appealed. The appellate court reversed and stated that keying a car did not constitute violence. There was also no competent substantial evidence that the respondent committed two separate acts as required by the statute.
http://opinions.1dca.org/written/opinions2014/03-18-2014/13-4382.pdf (March 18, 2014)

Jeffries v. Jeffries, --- So.3d ----, 2014 WL 1168847 (Fla. 1st DCA 2014) INJUNCTION AFFIRMED. This opinion replaces one issued on January 23, 2014. The trial court issued a petition against domestic violence and the respondent appealed, claiming that he was the victim rather than the

aggressor in a domestic violence incident. The appellate court affirmed the trial court's decision because the record contained substantial evidence to support the injunction, and noted that the appellate court does not re-weigh the evidence or the credibility of witnesses. http://opinions.1dca.org/written/opinions2014/03-24-2014/13-4757.pdf (March 24, 2014)

***Second District Court of Appeals***

Touhey v. Seda, --- So.3d ----, 2014 WL 948886 (Fla. 2d DCA 2014) STALKING INJUNCTION REVERSED. The petitioner was granted an injunction for protection against stalking issued against a business acquaintance and the respondent appealed. The court held that the record did not contain sufficient evidence to support the injunction. The respondent has a legitimate reason to contact the petitioner, the respondent's behavior was not malicious, and a reasonable person would not have suffered substantial emotional distress from the respondent's behavior. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/March/March%2012,%202014/2D12-6338.pdf (March 12, 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***

S.B. v. State, __ So.3d __, 2013 WL 836806 (Fla. 4th DCA 2014). COMPETENCY ISSUE WAS IMPROPERLY DECIDED WHERE NEITHER PARTY STIPULATED TO THE CONTENT AND ADMISSION OF THE DOCTOR'S REPORT AND THERE WAS NO AGREEMENT BETWEEN THE PARTIES AND THE JUDGE TO DECIDE THE ISSUE OF COMPETENCY ON THE BASIS OF THE WRITTEN REPORT ALONE. The juvenile appealed the trial court's finding that he was competent to proceed to trial, arguing that the competency issue was improperly decided. Three years after the juvenile was found incompetent to proceed to trial in two separate criminal cases, the court held a hearing. The juvenile's attorney advised the court that the juvenile was evaluated by a doctor and after reviewing the report and based on conversations with the juvenile and his mother, they were stipulating that the child was competent to proceed. The State also stipulated to the juvenile's competency. There were no stipulations to the contents and admission of the doctor's report for the determination of competency. Without further hearing or evidence, the court entered a written order finding that the juvenile was competent, based solely upon the stipulations by the State and defense, and its own review of the doctor's report. The juvenile was tried and found guilty in both criminal cases. On appeal, the Fourth District Court of Appeal found that Florida Rule of Criminal Procedure 3.212(c)(7) provides: "If, at any time after such commitment, the court decides, after hearing, that the defendant is competent to proceed, it shall enter its order so finding and shall proceed." A hearing, to determine whether competency has been restored, requires the calling of court-appointed expert witnesses designated under Florida Rule of Criminal Procedure rule 3.211; a determination of competence to proceed; and the entry of an order finding competence. Where the parties and the judge agree, the trial court may decide the issue of competency on the basis of the written reports alone. ." Fowler v. State, 255 So.2d 513, 515 (Fla. 1971). However, in the instant case, neither party stipulated to the contents and admission of the doctor's report. Nor was there any form of agreement between the parties and

the judge to decide the issue of competency on the basis of the written report alone. Although it could be argued that by stipulating to the report's determination of competency, the parties stipulated to the report and agreed to determine competency based on the report alone, there was nothing in the case law to suggest that such implicit stipulations and agreements are sufficient to satisfy rule 3.212. Therefore, the Fourth District found that the trial court erred in its finding of the juvenile's competency. The case was remanded for a new hearing, and the trial court could consider any stipulations in accordance with the opinion.
http://www.4dca.org/opinions/Mar%202014/03-05-14/4D13-892.op.pdf (March 5, 2014)

***Fifth District Court of Appeals***

No new opinions for this reporting period.