OSCA/OCI'S FAMILY COURT CASE LAW UPDATE MAY 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

Z.M.B. v. State, __ So. 3d __, 2014 WL 2197458 (Fla. 1st DCA 2014). IN ROBBERY PROSECUTION, THE STATE FAILED TO PRESENT REASONABLE EVIDENCE THAT THE USE OF FORCE AGAINST THE VICTIM WAS MOTIVATED BY THE TAKING OF THE VICTIM'S BICYCLE. The juvenile was found guilty of robbery. The property taken was a bicycle. The juvenile was tried with two other juvenile co-defendants. The trial court withheld adjudication and placed the juvenile on probation. On appeal, the juvenile argued that the trial court should have granted his motion for judgment of dismissal because the State failed to present evidence from which a reasonable person could find that the use of force against the victim was motivated by the taking of the victim's bicycle. In C.B.B. v. State, __ So. 3d __, 2014 WL 1468051 (Fla. 1st DCA 2014), which was an appeal brought by one of the juvenile's co-defendants arising from the same prosecution, the First District Court of Appeal held that the State did not adduce evidence showing that the force used against the victim was in furtherance of a plan to obtain the victim's bicycle. In that case, the evidence indicated that the victim was stopped and punched by C.B.B. because of a preexisting "beef" with the victim, and not to rob him of his bicycle. After being struck, the victim abandoned the bicycle and fled. When he returned, the bicycle had been taken. For the same reason, and in accordance with the decision in C.B.B., the First District reversed the final disposition order and remanded for entry of a judgment of dismissal.
http://opinions.1dca.org/written/opinions2014/05-27-2014/13-5318.pdf (May 27, 2014)

D.J.R. v. State, __ So. 3d __, 2014 WL 2217804 (Fla. 1st DCA 2014). THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE TRIAL COURT'S RESTITUTION AWARD OF REPLACEMENT VALUE FOR THREE COMPUTERS CONTAINING SPECIALLY CREATED INSTRUCTIONAL MATERIALS. The juvenile challenged the trial court's restitution order as it pertained to three computers taken from a school. The juvenile argued that the trial court erred in granting the replacement value, rather than the fair market value. The First District Court of Appeal found that unless special circumstances are shown, fair market value rather than replacement value is the appropriate measure of damages in calculating restitution. In the instant case, the trial court awarded restitution in the amount of replacement value based upon the testimony of the school principal that the computers contained instructional materials that took teachers many hours to generate and would take many hours to recreate. However, the principal was unable to testify as to how many teacher work hours were lost or to what monetary value could be put on those hours.

Therefore, the First District found that there was insufficient evidence to support the trial court's finding that the theft of the computers cost the school "literally hundreds, if not thousands, of teacher hours," or that the State's request for restitution in the amount of replacement value was "low" in light of the lost teacher hours. Accordingly, the award of restitution as to the three computers was reversed and remanded for a new hearing, at which the State could present evidence of the number and value of lost teacher hours.
http://opinions.1dca.org/written/opinions2014/05-29-2014/13-4859.pdf (May 29, 2014)

Second District Court of Appeals

K.C. v. State, __ So. 3d __, 2014 WL 2009019 (Fla. 2d DCA 2014). POSSESSION OF FIREARM STATUTES WERE NOT FACIALLY INVALID AS APPLIED TO POSSESSION OF A MODERN .38 CALIBER REVOLVER. The juvenile was adjudicated delinquent for carrying a concealed firearm, s. 790.01(2), F.S. (2012), and being a minor in possession of a firearm, s.790.22(3),(5)(a), F.S. (2012). On appeal, the juvenile argued that his adjudications must be reversed because the statutes were facially invalid. In support, the juvenile relied on the First District's opinion in Weeks v. State, __ So. 3d __, 2013 WL 6818369 (Fla. 1st DCA 2013)(Possession of firearm by a convicted felon, s. 790.23(1), F.S., was found unconstitutionally vague where convicted felon possessed black powder muzzle loader rifle which was arguably a replica of an antique firearm). In the instant case, the juvenile possessed a modern .38 caliber revolver. The Second District Court of Appeal found the statutes defining the charged offenses were not invalid as applied to possession of a modern .38 caliber revolver. The Second District rejected the juvenile's argument on the authority of the decision in Walker v. State, __ So. 3d __, 2014 WL 1758450 (Fla. 2d DCA 2014)(Possession of firearm by a convicted felon, s. 790.23(1), F.S., was not unconstitutional where defendant possessed a modern weapon and not an antique or replica firearm). Accordingly, the adjudications were affirmed.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/May/May%2016,%202014/2D13-1900.pdf (May 16, 2014)

Third District Court of Appeals

E.V. v. State, __ So. 3d __, 2014 WL 2116358 WL (Fla. 3d DCA 2014). THE JUVENILE'S MOTION TO SUPPRESS WAS PROPERLY DENIED BECAUSE THE ENCOUNTER WITH THE POLICE OFFICER WAS CONSENSUAL. The juvenile appealed the trial court's denial of his motion to suppress evidence and the order withholding adjudication for possession of cannabis. The juvenile argued that the police encounter leading to the discovery of the evidence was not consensual and was not supported by reasonable suspicion. The trial court found that the police officer observed the juvenile standing outside of a gas station for approximately thirty minutes. Deciding to investigate, the officer exited his patrol car and asked the juvenile to come towards him. As the

juvenile approached, the officer smelled burnt marijuana emanating from the juvenile's clothing. When asked about the marijuana smell, the juvenile immediately handed the officer a small baggie of marijuana and told the officer where he had acquired it. The trial court concluded that the encounter was consensual and denied the juvenile's motion to suppress the evidence. The Third District Court of Appeal found that a consensual encounter is one in which a reasonable person would feel free to disregard the police and go about his business. A consensual encounter does not require reasonable suspicion of any improper conduct before initiating conversation. A determination of whether an encounter is consensual is based upon the totality of the circumstances. In the instant case, there was no evidence that the officer activated any emergency equipment on his police vehicle (no lights or sirens were used), drew or displayed his weapon, touched or restrained the juvenile, or did anything to block the juvenile's exit or hamper the juvenile's movement. The encounter took place outside in a public place. At no time did the officer make a showing of authority or demonstrate aggressive or coercive behavior toward the juvenile. In fact, the juvenile had testified that, when he came out of the gas station, the officer pulled up and, "he asked me come over here.... I proceeded to come to him." At no point did the officer demand compliance—he simply asked the juvenile if he would speak with him. The juvenile was free to walk away and go about his business or to decline to speak with the officer. Therefore, the Third District held that the encounter was consensual and that the juvenile's motion to suppress was properly denied.
http://www.3dca.flcourts.org/Opinions/3D13-1428.pdf (May 21, 2014)

Fourth District Court of Appeals

C.L.P. v. State, __ So. 3d __, 2013 WL 1908823 (Fla. 4th DCA 2014). THE OFFENSE OF ATTEMPTED BATTERY ON A SCHOOL EMPLOYEE DOES NOT EXIST. The juvenile appealed his adjudication for attempted battery on a school board employee, an offense the trial judge designated a first-degree misdemeanor under s. 784.081, F.S. (2012). The juvenile argued that the offense of attempted battery on a school employee does not exist. The Fourth District Court of Appeal agreed. In W.T.D. v. State, 906 So. 2d 333 (Fla. 4th DCA 2005), the court found that s. 784.081, F.S., does not create the offense of attempted battery on a school employee but rather acts as an enhancement statute. Where the offense of assault, aggravated assault, battery, or aggravated battery is committed against a school official or employee, s. 784.081, F.S., reclassifies the offense to a felony or misdemeanor of a higher degree and enhances the penalty. In the instant case, the juvenile should have been found guilty of attempted battery—not attempted battery of a school employee. Accordingly, the adjudication was reversed and remanded with instructions to enter an adjudication of delinquency for attempted battery, a second-degree misdemeanor.
http://www.4dca.org/opinions/May%202014/05-14-14/4D12-2492.op.pdf (May 14, 2014)

S.M. v. State, __ So. 3d __, 2014 WL 2103374 (Fla. 4th DCA 2014). REVOCATION OF PROBATION AND DISPOSITION ORDER REVERSED AND REMANDED BECAUSE OF MULTIPLE TRIAL COURT ERRORS. The juvenile appealed her revocation of probation and disposition order. The juvenile argued that the trial court erred in revoking her probation based solely on hearsay; based upon allegations not contained in the petition for violation of probation; and in excluding her from part of the disposition hearing without her personal waiver. The trial court found that the juvenile committed five violations of her probation. Two of the violations were alleged in the petition and three violations were not. Were this the only problem, the Fourth District Court of Appeal would have simply remanded to allow the court to determine whether it would have revoked probation on the two violations that were alleged in the petition and whether the disposition would be the same. However, additional errors were reflected in the record. The Fourth District found that there was insufficient evidence other than hearsay evidence to revoke the juvenile's probation on the two violations alleged in the petition. Further, the Fourth District found that the trial court's exclusion of the juvenile so the court could discuss the disposition with her grandmother, her legal guardian/therapist, her probation officer, and the attorneys without her personal waiver was fundamental error. The Fourth District found that, like criminal defendants, juveniles have a constitutional right to be present at all critical stages of the proceedings. Rule 8.100(a) of the Florida Rules of Juvenile Procedure has been construed to mean that, with very limited exceptions, the accused child is required to be physically present at all hearings except when there has been a waiver of the right to be present. This waiver must be personal, not one by the juvenile's counsel. Further, s. 985.433(4), F.S. (2012), requires that a court, before determining and announcing a disposition, shall allow persons present as parties to comment at the appropriate time on the issues before the court; discuss with the child his or her feelings about the offense committed, the harm caused to the victim or others, and what penalty he or she should be required to pay for such transgression; and give all parties an opportunity to comment on the issue of disposition and any proposed rehabilitative plan. In the instant case, the juvenile did not personally waive her right to be present. After discussing concerns outside of the presence of the juvenile, the court called the juvenile back to the courtroom and announced the disposition. Because the court excluded the juvenile from part of the hearing and did not give the juvenile an opportunity to comment on the issue of disposition, the court committed fundamental error. Accordingly, the Fourth District reversed the revocation of probation and the disposition order.
http://www.4dca.org/opinions/May%202014/05-21-14/4D12-2432.op.pdf (May 21, 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

K.S. v. Florida Dept. of Children and Families, __ So. 3d ___, (Fla. 1st DCA 2014). DEPENDENCY ADJUDICATION REVERSED. The mother appealed after her children were adjudicated dependent when the father consented, even though she did not consent and was not granted an evidentiary hearing. The Department conceded error and the appellate court reversed, noting that the trial court's order was contrary to law because the consent of one parent does not affect the rights of the other parent.
http://opinions.1dca.org/written/opinions2014/05-12-2014/13-6161.pdf (May 12, 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

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

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

Cano v. Cano, __ So. 3d __, 2014 WL 1809776 (Fla. 3d DCA 2014). TRIAL COURT ABUSED ITS DISCRETION IN ORDERING CHILDREN TO ATTEND PUBLIC SCHOOL WHEN PETITION FOR MODIFICATION REQUESTED MAJORITY OF TIME-SHARING; COURT CANNOT GRANT UNREQUESTED RELIEF. Agreeing with former wife that the trial court abused its discretion in ordering the children to attend public school, the appellate court reversed. Former husband petitioned to modify the final judgment of dissolution to allow him to have the majority of the time-sharing with the children; however, he did not request that the children attend public school rather than continue with home-schooling. The appellate court held that granting unrequested relief is an abuse of discretion. It found that, "in this case neither party was advised that the hearing in question would result in a permanent determination involving the children's schooling." Reversed and remanded for the trial court to conduct a final hearing on issues pertaining to the education of the children.
http://www.3dca.flcourts.org/Opinions/3D13-1897.pdf (May 7, 2014)

LiFleur v. Webster, __ So. 3d __, 2014 WL 1814156 (Fla. 3d DCA 2014). IN DISPUTE BETWEEN TWO NATURAL PARENTS, TRIAL COURT SHOULD DETERMINE A CHILD'S BEST INTEREST; IN DISPUTE BETWEEN A NATURAL PARENT AND A NON-PARENT, THE CHILD SHOULD GO TO THE NATURAL PARENT IN THE ABSENCE OF PROOF THAT PARENT IS UNFIT OR HAS ABANDONED THE CHILD; THERE IS A STRONG PUBLIC POLICY IN FAVOR OF THE NATURAL FAMILY UNIT. Although not a dissolution case, this opinion is included for the appellate court's holding that a trial court is required to return a child to its natural parent in the absence of proof, by clear and convincing evidence, that the natural parent is unfit or has abandoned the child. Here, the trial court had denied the mother's emergency motion to terminate an order granting temporary sole custody and primary responsibility to the father and temporary supervised visitation to her. The mother argued that the temporary order was rendered unenforceable when the father began a twelve-year term of incarceration for unlawful sexual conduct with a minor, not involving the couple's minor child. In denying her motion, the trial court directed that the child "remain" with his stepmother, the father's wife, with supervised time-sharing to the mother. The appellate court concluded that when a dispute is between two natural parents, both of whom are fit and share equal rights to time-sharing, the trial court should determine the child's best interests; however, when the dispute is between a natural parent and a non-parent, the natural parent of a child born out of wedlock should only be denied custody when it is demonstrated that the parent is

"disabled from exercising custody or that such custody will, in fact, be detrimental to the welfare of the child." In re: Guardianship of D.A. McW, 460 So. 2d 368 (Fla. 1984). It cited the strong public policy in favor of the natural family unit. The temporary order the mother sought to overturn adjudicated the issue of temporary custody between the mother and the father and granted custody to the father only—not the stepmother. Had the mother's emergency motion involved a determination of custody between the parents, application of the best interests of the child test would have been appropriate; however, her motion sought to terminate the temporary order and return the child to her based on the father's incarceration. The appellate court held that the father's long-term incarceration rendered the temporary order unenforceable. It agreed with the mother that the trial court erred in not granting her motion to terminate that order. Reversed.
http://www.3dca.flcourts.org/Opinions/3D13-2732.pdf (May 7, 2014)

Turnier v. Stockman, __ So. 3d __, 2014 WL 2116363 (Fla. 3d DCA 2014). TRIAL COURT DID NOT ABUSE ITS DISCRETION BY NOT APPOINTING A GUARDIAN WHERE STATUTE DID NOT REQUIRE APPOINTMENT; PARENT WHO NEITHER REQUESTED GUARDIAN NOR OBJECTED AT TRIAL WAIVED THE ISSUE; TRIAL COURT'S ORDER SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE. Another case not involving dissolution, but one in which parental responsibility was at issue. The mother appealed a final judgment establishing a parenting plan and ordering that the minor child live with the father for the majority of the school year so that the child could attend the school for the deaf and blind in St. Augustine. The mother, father, and the child had all been deaf since birth. In a mediated settlement agreement, the parents agreed to shared parental responsibility and a temporary time-sharing schedule; the agreement reserved the issues of permanent time-sharing, child support, uncovered medical expenses, as well where the child should attend school, to the trial court for its consideration. At the end of the first day of a two-day trial, the trial judge expressed a desire to seek a guardian ad litem, although he acknowledged that finding one who knew sign language might be difficult. The trial resumed ten months later without a guardian. On appeal, the mother argued that the trial court erred in failing to appoint a guardian; however, she neither filed a motion to appoint a guardian nor objected to the fact one was not appointed when the trial resumed. Acknowledging that no statute mandated appointment of a guardian in this instance, the mother's counsel expressed in his closing argument that having had one would have been helpful. The appellate court found this insufficient to preserve the issue on appeal. It held that the trial court was not required by statute to appoint a guardian and that by failing to move for one herself or object to the lack of one, the mother had waived the issue of the trial court having abused its discretion. The mother also argued that the trial court erred in creating a parenting plan for a physically-challenged child without considering expert testimony. The appellate court found that the trial court's order was supported by competent, substantial evidence and noted that she herself had not offered any expert testimony. The appellate court stated that the legislature may wish to amend section 61.401, F.S. (2013), to require a guardian in these instances, but held, "until then, given the clear language of the statute," the trial court had not abused its discretion.
http://www.3dca.flcourts.org/Opinions/3D13-1822.pdf (May 21, 2014)

Sanchez v. Suasti, __ So. 3d __, 2014 WL 2199751 (Fla. 3d DCA 2014). TRIAL COURT ERRED IN RULING THAT FATHER DID NOT HAVE RIGHTS OF CUSTODY WHEN HE PETITIONED FOR RETURN OF CHILDREN UNDER HAGUE CONVENTION. Former husband appealed the denial of his petition for the return of his minor children to Brazil. The spouses moved to Brazil shortly after their marriage in Ecuador. Former wife remained a citizen of Ecuador, while former husband became a citizen of Brazil. Both their daughters were born in Brazil and were citizens of Brazil. When they divorced, the Brazilian family court approved a separation agreement that gave custody to former wife subject to a visitation schedule for former husband. The spouses agreed that the children would be allowed to visit maternal and paternal grandparents in Ecuador. In 2011, former husband executed an authorization allowing former wife to travel with the children until December 2012; that authorization specifically prohibited establishment of permanent residence abroad. In January 2012, former wife took the children to Ecuador and returned to Brazil; in April 2012, she took the children to Miami and did not return. Former husband filed a petition in the Brazilian court seeking their return. The court agreed with former wife that she had custody and travel authorization until December 2012. When the travel authorization expired, former husband tried again, at which point the Brazilian court ordered the return of the children. During those proceedings, former husband also filed a petition in Florida for return of the children. The Florida trial court found he had no rights of custody and denied his petition. The Hague Convention provides that a child under sixteen who has been wrongfully removed or retained be returned to their country of habitual residence. None of the exceptions to the Hague Convention were asserted here. The appellate court identified rights of custody as one of the three elements a petitioner must establish to demonstrate wrongful removal or retention of a child under the Hague Convention. It concluded that the trial court erred when it overlooked the Brazilian court's ruling that recognized former husband's right to prohibit former wife from establishing permanent residence abroad because that ruling was dispositive of the rights of custody issue in light of Abbott v. Abbott, 560 U.S. 1 (2010). Reversed.
http://www.3dca.flcourts.org/Opinions/3D13-1402.pdf (May 21, 2014)

Fourth District Court of Appeals

Garvey v. Garvey, __ So. 3d __, 2014 WL 1908811 (Fla. 4th DCA 2014). TRIAL COURT ERRED IN FINDING CHANGE IN CIRCUMSTANCES WAS FORESEEABLE; DETERIORATION IN HEALTH CAN SUPPORT REDUCTION; BURDEN OF PROOF IS THE SAME WHETHER ALIMONY IS SET BY AGREEMENT OR BY THE COURT; CHANGE IN CIRCUMSTANCES MUST NOT HAVE BEEN CONTEMPLATED; MUST BE SUBSTANTIAL, MATERIAL, INVOLUNTARY, AND PERMANENT. On a motion for clarification, the appellate court substituted this opinion for the one issued March 26, 2014. Former husband appealed an order which denied his petition to modify alimony and awarded fees to former wife. The spouses entered into a marital settlement agreement which was silent as to former husband's multiple sclerosis (MS). The trial court's denial of former husband's petition was based on its finding that former husband's change in circumstances and his inability to work were foreseeable consequences of the MS when he entered into the MSA. Because the trial court concluded that the change in circumstances was contemplated at the time of the MSA, it did not reach the question of whether the change in circumstances was substantial, sufficient, material, involuntary, and permanent. The appellate court found that the trial court's factual findings did not support its conclusion. A deterioration in health can support a reduction

in an alimony obligation. The appellate court stated that, "a possibility, standing alone, is insufficient to preclude a modification of alimony when the possibility materializes or otherwise comes to fruition." It held that the trial court's finding that former husband failed to meet a heavier burden because the alimony was agreed-to was legally incorrect. Section 61.14, F.S. was amended in 1993 to provide for the same burden of proof whether alimony was set by agreement or by the court. The appellate court held that, to the extent that the fee award was based on need and ability to pay, former husband had not established reversible error. Reversed and remanded for the trial court to determine whether former husband established a substantial change in circumstances that was not contemplated and was sufficient, material, involuntary, and permanent.
http://www.4dca.org/opinions/May%202014/05-14-14/4D13-1085.OnMotClari.pdf (May 14, 2014)

Horowitz v.Horowitz, __ So. 3d __, 2014 WL 1908927 (Fla. 4th DCA 2014). A TRIAL COURT HAS JURISDICTION OF CERTAIN FAMILY LAW MATTERS DURING THE PENDENCY OF AN APPEAL; IT MAY CONDUCT A HEARING AND ISSUE ORDERS CONSISTENT WITH RULE 9.600(c), BUT IT MAY NOT ENTER A FINAL JUDGMENT ON A PETITION UNTIL THE APPEAL IS FINAL AND THE MANDATE ISSUES. The question presented was whether the trial court had jurisdiction to entertain former husband's petition for prospective modification of alimony and child support while former wife's appeal of the dissolution final judgment was pending. Former wife petitioned for a writ of prohibition seeking to prevent the trial court from proceeding. The appellate court denied the former husband's petition because a trial court has jurisdiction of certain family law matters during pendency of an appeal. A trial court may conduct a hearing on a modification petition and issue orders consistent with Florida Rule of Appellate Procedure 9.600(c); however, it may not enter a final judgment disposing of the petition until the appeal is final and the mandate has issued. The appellate court instructed the trial court that it could "fashion a *temporary* order [emphasis in opinion] which may be revisited or reduced to permanent rulings once the pending direct appeal has been disposed of by this court."
http://www.4dca.org/opinions/May%202014/05-14-14/D14-9.op.pdf (May 14, 2014)

Adelberg v. Adelberg, __ So. 3d __, 2014 WL 2197716 (Fla. 4th DCA 2014). BECAUSE SPOUSE'S UNEMPLOYMENT WAS SELF-IMPOSED, TRIAL COURT ERRED IN NOT IMPUTING INCOME; TRIAL COURT MUST CONSIDER ALL SOURCES OF INCOME AVAILABLE TO EITHER SPOUSE, INCLUDING RETIREMENT ACCOUNTS. Both spouses appealed the final judgment of dissolution of marriage. The appellate court agreed with former husband that the trial court erred by not imputing income to former wife and reversed. It affirmed as to former wife's appeal. Although she had her own business before the marriage, the trial court found that former wife lacked the skills required for most of the jobs identified by the vocational evaluator who testified at trial. She was awarded both permanent periodic and lump sum alimony. Former husband argued that she was employable and that his promise that she would never have to work again was only good for the duration of the marriage; she argued that he had failed to prove her employability and that she had closed her business at his request and because of his promise. Finding former wife's unemployment self-imposed, the appellate court held the trial court erred by not imputing income to her. It emphasized that a trial court must consider all sources of income available to

either spouse. Here, former wife was 59 at trial. By the time the trial court entered its judgment, she was two days shy of being able to withdraw funds from her IRA account without incurring any tax penalty. According to the appellate court, this should have been included in the trial court's calculation of her need for alimony. Former husband's nonmarital portions of his IRA and the nonmarital bank accounts of both spouses should be included as well. Reversed and remanded for recalculation of the alimony.
http://www.4dca.org/opinions/May%202014/05-28-14/4D12-2570.op.Conc.Diss.pdf (May 14, 2014)

Fifth District Court of Appeals

Wilks v. Cronin, __ So. 3d __, 2014 WL 1976311 (Fla. 5th DCA 2014). THERE WAS NO COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S CONCLUSION THAT THERE WAS NO SUBSTANTIAL CHANGE IN CIRCUMSTANCES; TRIAL COURT FAILED TO CONSIDER ELEMENTS UNDER 61.13. Former husband appealed an order dismissing his motion to modify the spouses' parenting plan, specifically with regard to time-sharing with their minor child. The appellate court reversed because there was no competent, substantial evidence to support the trial court's conclusion that there was no substantial change of circumstances, and because the trial court failed to consider all of the elements required by sections 61.13(2)(c) and (3), F.S. (2013). The trial court failed to consider the child's best interest and whether the change was material. Reversed and remanded for the trial court to determine the statutory requirements under s. 61.13, F.S.
http://www.5dca.org/Opinions/Opin2014/051214/5D13-1685.op.pdf (May 30, 2014)

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

McCord v. Cassady ex rel. Cassady, __ So. 3d ___ (Fla. 1st DCA 2014). REPEAT VIOLENCE INJUNCTION REVERSED. A parent petitioned for an injunction against repeat violence against another minor child, which the court granted. The appellate court reversed and stated that there was no evidence of an act of violence or stalking within six months as required by statute. The court also noted that a no contact order created by the court could not be treated as an injunction for protection against repeat violence.
http://opinions.1dca.org/written/opinions2014/05-14-2014/12-5936.pdf (May 14, 2014)

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

Sanchez v. Marin, __ So. 3d ___ (Fla. 3d DCA 2014). NEW HEARING REQUIRED. The appellate court vacated an order of protection against domestic violence and an order denying a motion for rehearing. The trial court originally entered the order for protection based upon some verbal threats and a fire that occurred. However, the original petition did not include the facts that formed the basis for the order, and the respondent's due process rights were violated when the court let the petitioner raise material allegations for the first time during the final hearing without allowing the respondent proper time to prepare. The case was remanded for a new final hearing.
http://www.3dca.flcourts.org/Opinions/3D13-1780.pdf (May 21, 2014)

Fourth District Court of Appeals

Kunkel v. Stanford ex rel. C.S., __ So. 3d ___ (Fla. 4th DCA 2014). INJUNCTION REVERSED. A grandfather appealed an injunction ordered against him that was brought on behalf of his granddaughter. While testimony supported that the relationship between the two was strained, there was no evidence or finding by the court that the granddaughter was a victim of domestic violence, or that she was in imminent danger of domestic violence. The appellate court reversed because the evidence was insufficient to support the injunction order.
http://www.4dca.org/opinions/May%202014/05-07-14/4D13-285.op.pdf (May 7, 2014)

Fifth District Court of Appeals

Nettles v. Hoyos, __ So. 3d ___ (Fla. 5th DCA 2014). COURT CAN LIMIT DISCOVERY. A female police officer filed a petition for an injunction for protection against stalking against a male police officer. The respondent attempted to engage in discovery, but the petitioner filed a motion for a protective order, and the court granted the motion and quashed the respondent's discovery requests. The respondent then filed a petition for writ of certiorari, which the appellate court granted; the appellate court held that the trial court could not completely deny the respondent

the opportunity to conduct discovery. The appellate court also noted that the court must balance the need to expedite the hearing with the parties' right to due process, and is therefore given to discretion to limit the time frame and nature of discovery on a case by case basis.
http://www.5dca.org/Opinions/Opin2014/050514/5D14-683.op.pdf (May 9, 2014)

Smith v. Manno, __ So. 3d ___ (Fla. 5th DCA 2014). BOND CONDITIONS OF NO CONTACT INSUFFICIENT TO DENY INJUNCTION. The mother appealed after she filed a petition for an injunction against domestic violence on behalf of herself and her minor daughter, which the court dismissed. The court originally entered a temporary injunction against the respondent but dismissed the case during the return hearing after noting that the respondent had a pending criminal case in which the conditions of his bond already prohibited contact with the petitioner. The appellate court reversed and remanded the case. and noted that the petitioner is entitled to an evidentiary hearing, and that if the petitioner meets her burden of proof at the hearing, then she is entitled to an injunction. The existence of a pending criminal case with bond conditions that prohibit contact does not abolish her right to a domestic violence injunction and the protections it offers.
http://www.5dca.org/Opinions/Opin2014/051214/5D13-3179.op.pdf (May 16, 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

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