

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE SEPTEMBER 2014

Table of Contents

Baker Act/Marchman Act Case Law	3
Florida Supreme Court.....	3
First District Court of Appeals.....	3
Second District Court of Appeals	3
Third District Court of Appeals	3
Fourth District Court of Appeals	3
Fifth District Court of Appeals	3
Delinquency Case Law	4
Florida Supreme Court.....	4
First District Court of Appeals.....	4
Second District Court of Appeals	4
Third District Court of Appeals	4
Fourth District Court of Appeals	4
Fifth District Court of Appeals	5
Dependency Case Law.....	7
Florida Supreme Court.....	7
First District Court of Appeals.....	7
Second District Court of Appeals	7
Third District Court of Appeals	7
Fourth District Court of Appeals	7
Fifth District Court of Appeals	7
Dissolution Case Law	9
Florida Supreme Court.....	9
First District Court of Appeals.....	9
Second District Court of Appeals	9
Third District Court of Appeals	9
Fourth District Court of Appeals	10
Fifth District Court of Appeals	10
Domestic Violence Case Law.....	12
Florida Supreme Court.....	12
First District Court of Appeals.....	12

Second District Court of Appeals	12
Third District Court of Appeals	12
Fourth District Court of Appeals	12
Fifth District Court of Appeals	12
Drug Court/Mental Health Court Case Law	13
Florida Supreme Court.....	13
First District Court of Appeals.....	13
Second District Court of Appeals	13
Third District Court of Appeals	13
Fourth District Court of Appeals	13
Fifth District Court of Appeals	13

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

O.A. v. State, __ So. 3d __, 2014 WL 4344546 (Fla. 3d DCA 2014). [THE ROBBERY BY SUDDEN SNATCHING CHARGE WAS NOT A VIOLENT THIRD-DEGREE FELONY FOR PURPOSES OF CALCULATING THE JUVENILE'S DETENTION SCORE.](#) The juvenile was charged with robbery by sudden snatching, and possession of a controlled substance without a prescription. Over objection, the trial court classified the charged crime of robbery by sudden snatching as a "violent third-degree felony," resulting in an enhanced detention-status score. Based on the enhanced detention-status score, the trial court ordered home detention. The juvenile filed a petition for writ of habeas corpus seeking his immediate release. The Third District Court of Appeal held that in the instant case, the robbery by sudden snatching was not a categorical violent third-degree felony for purposes of calculating a detention score. The trial judge did not have the benefit of the Third District's recent decision in A.M. v. State, __ So. 3d __, 2014 WL 3844034 (Fla. 3d DCA 2014) (Held that robbery by sudden snatching is not a categorical "violent third-degree felony" when the crime is committed without the use of force beyond that which is necessary to obtain possession of the stolen property). Therefore, the juvenile's detention-status score was miscalculated resulting in his improper detention. Accordingly, the juvenile's petition for writ of habeas corpus was granted.

<http://www.3dca.flcourts.org/Opinions/3D14-1277.pdf> (September 3, 2014).

F.T. v. State, __ So. 3d __, 2014 WL 4628512 (Fla. 3d DCA 2014). [IN PETIT THEFT OF RETAIL MERCHANDISE PROSECUTION, THE TESTIMONY OF THE DOLLAR AMOUNTS ON THE ATTACHED PRICE TAGS WAS NOT HEARSAY AND WAS RELEVANT TO PROVE THE STATED VALUE OF MERCHANDISE.](#) The juvenile appealed his conviction for first-degree petit theft of retail merchandise. The trial court had permitted the store's loss prevention officer to testify, over objection, to the price contained on the price tags attached to the merchandise taken from the store. The juvenile argued that the testimony constituted inadmissible hearsay and that the admissible evidence failed to establish that the value was \$100 or more. Therefore, the charge should have been reduced to second-degree petit theft, a second-degree misdemeanor. The

Third District Court of Appeal found that it is not the market (actual) value of the retail merchandise, but rather the sale price, that establishes value for purposes of determining the degree of a retail theft offense. The State can meet its burden of proving the value for purposes of retail theft by simply introducing evidence of the sale price as stated on the price tag. In a retail theft prosecution, the contents of the price tag is admitted not to prove the truth of the matter asserted (i.e., the item's actual worth or market value) but only to establish its stated value. Therefore, the testimony of the store's loss prevention officer was not hearsay and was relevant to prove the stated value of merchandise. Accordingly, the first-degree petit theft of retail merchandise conviction was affirmed.

<http://www.3dca.flcourts.org/Opinions/3D13-1590.pdf> (September 17, 2014).

Fourth District Court of Appeals

J.S. v. State, __ So. 3d __, 2014 WL 4427041 (Fla. 4th DCA 2014). **DENIAL OF JUDGMENT OF DISMISSAL WAS IMPROPER BECAUSE THE EVIDENCE FAILED TO ESTABLISH THE ELEMENTS OF LOITERING AND PROWLING.** The juvenile appealed his adjudication for loitering and prowling. The juvenile argued that the trial court erred in denying his motion for judgment of dismissal because the State failed to present a prima facie case of the elements of the offense. A law enforcement officer responded to a report of a “burglary in progress” at 4:00 a.m. in a residential neighborhood. The juvenile was the only person in the area, and he matched the description in the BOLO (“black male wearing a red shirt”). The officer tried to stop the juvenile, and the juvenile took off running. The juvenile was found hiding behind an air conditioning unit in the bushes behind a building. The juvenile was observed by another officer removing his shirt in an effort to conceal himself. The juvenile explained that he did not live in the immediate area but was on his way home from his girlfriend's house. At trial, the juvenile moved for judgment of dismissal, arguing that it is not unusual for a person to be walking down the street in a red shirt in a residential area at that time of day and that the alleged crime (“loitering and prowling”) was not completed when the officers came upon the juvenile. The motion and renewed motion were both denied. The juvenile was found guilty of loitering and prowling. The Fourth District Court of Appeal found that the offense of loitering and prowling consisted of two elements: (1) the defendant loitered or prowled in a place, at a time, or in 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 is proven when the State establishes that the defendant engaged in incipient criminal behavior which law-abiding people do not usually engage in due to the time, place, or manner of the conduct involved. A mere vaguely suspicious presence is insufficient to satisfy this element. In the instant case, the Fourth District held that the facts did not indicate incipient behavior pointing towards the threat of an immediate, future crime. Instead, the juvenile’s

walking early in the morning with no one else around was a mere vaguely suspicious presence. Because the State failed to present sufficient evidence to satisfy the first element of the offense, the court did not need to address the sufficiency of the evidence as to the second element. Since sufficient evidence was not presented to prove a prima facie case for loitering and prowling, the denial of the juvenile's motion for judgment of dismissal was improper. Accordingly, the Fourth District reversed the final disposition as to the loitering and prowling charge. <http://www.4dca.org/opinions/Sept.%202014/09-10-14/4D13-973.op.pdf> (September 10, 2014).

Fifth District Court of Appeals

D.L. v. State, __ So. 3d __, 2013 WL 4648085 (Fla. 5th DCA 2014). **INCLUSION OF THREE POINTS FOR POSSESSION OF A FIREARM ON JUVENILE'S RISK ASSESSMENT INSTRUMENT WAS IMPROPER BECAUSE THE POSSESSION WAS ALREADY ACCOUNTED FOR IN THE TEN POINTS SCORED FOR THE AGGRAVATED ASSAULT WITH A DEADLY WEAPON CHARGE.** The juvenile filed a petition for writ of habeas corpus challenging his continued secure pretrial detention. The juvenile's Risk Assessment Instrument (RAI) score of 16 points mandated secure detention. The juvenile alleged that the trial court improperly scored his RAI. The juvenile was charged with aggravated assault with a deadly weapon. The RAI was scored as follows: ten points for the aggravated assault charge, a third-degree felony involving the use or possession of a firearm; two points for an unrelated pending felony charge, the grand theft of a motor vehicle; one point for a prior felony adjudication; and three points for a Mandatory Aggravating Circumstance, the illegal possession of a firearm arising from the aggravated assault charge. The juvenile argued that the RAI improperly double-scored his possession of a firearm by adding three points for the aggravating circumstance in addition to ten points for the third-degree felony charge. The juvenile also argued that the two points for the grand theft charge were improper because he was never arrested or charged with that offense and because the alleged victim, the juvenile's mother, filed a declination of prosecution. The Fifth District Court of Appeal found it was improper to include three additional points for "possession of a firearm" where the possession is already accounted for in the ten point third-degree felony charge. See D.P. v. State, 8 So. 3d 1203 (Fla. 5th DCA 2009).

The Fifth District found that the mother's refusal to pursue the grand theft charge was immaterial to the pendency of that offense. The decision to prosecute does not lie with the victim of a crime. Accordingly, the Fifth District granted the juvenile's petition as to the inclusion of the three points for aggravating circumstances and remanded for an immediate hearing to determine whether the grand theft charge was currently pending and whether continued detention was appropriate. <http://www.5dca.org/Opinions/Opin2014/091514/5D14-3228.op.pdf> (September 17, 2014).

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

A.A. v. Department of Children and Families, ___ So. 3d ____, 2014 WL 4435960 (Fla. 3d DCA 2014). **ORDER DENYING MOTION FOR MODIFICATION OF PLACEMENT REVERSED**. The mother sought review of an order that denied her motion for modification of a permanency order that placed her children in permanent guardianship, and requested reunification with her children. The appellate court granted the petition and quashed the lower court's order, noting that the trial court failed to hold an evidentiary hearing before it denied the motion for modification, thus denying the mother's due process rights. The trial court's order also failed to include the necessary written findings of fact set forth in s. 39.621(10) F.S., which outlines the factors that the court must consider and address in a motion for reunification. <http://www.3dca.flcourts.org/Opinions/3D14-1020.pdf> (September 10, 2014).

R.W. v. Department of Children and Families, ___ So. 3d ____, 2014 WL 4495187 (Fla. 3d DCA 2014). **TERMINATION OF PARENTAL RIGHTS REVERSED**. The father appealed the termination of his parental rights. DCF confessed error and the case was remanded. The appellate court held that since the trial court's written final judgment conflicted with the trial court's oral pronouncement, further proceedings were required. The court noted that, "where there is a conflict between the trial court's oral pronouncement and its written order, the oral pronouncement controls." The court also found that the termination was based upon a pleading that wasn't included in the petition. <http://www.3dca.flcourts.org/Opinions/3D14-1271.pdf> (September 15, 2014).

Fourth District Court of Appeals

E.H. v. Department of Children and Families, ___ So. 3d ____, 2014 WL 4426331 (Fla. 4th DCA 2014). **DEPENDENCY ADJUDICATION AFFIRMED**. The mother appealed the adjudication of dependency of her child. The appellate court affirmed the lower court's decision and held that there was sufficient evidence to establish that the mother's behavior posed a substantial risk of imminent harm to the child. The evidence showed that multiple incidents of domestic violence had occurred between the mother and father, the mother had recently been arrested for aggravated assault on the father, and the mother's untreated mental illness posed a risk to the child. She was also unemployed, homeless, and her previous child had also been removed. <http://www.4dca.org/opinions/Sept.%202014/09-10-14/4D14-551.op.pdf> (September 10, 2014).

Fifth District Court of Appeals

No new opinions for this reporting period.

Dissolution Case Law

Florida Supreme Court

Shaw v. Shaw, __ So. 3d __, 2014 WL 4403366, 39 Fla. L. Weekly S561 (Fla. 2014). **SUPREME COURT DECLINES TO ACCEPT PASS-THROUGH JURISDICTION IN SAME-SEX DISSOLUTION CASE AND REMANDS TO THE DISTRICT COURT.** On September 5, 2014, the Florida Supreme Court declined to accept pass-through jurisdiction in a same-sex marriage dissolution case, and remanded the case to the district court for the reasons set forth in the dissent to the Second District's en banc decision. See Shaw v. Shaw in the August 2014 update, and refer to the link below for the Supreme Court's order issued September 5, 2014.

http://www.floridasupremecourt.org/pub_info/summaries/briefs/14/14-1664/Filed_09-05-2014_Disposition_Order.pdf (September 5, 2014).

First District Court of Appeals

Nguyen v. Huynh, __ So. 3d __, 2014 WL 4629184, 39 Fla. L. Weekly D1982 (Fla. 1st DCA 2014). **IN CONTESTED DISSOLUTIONS, COMPETENT, SUBSTANTIAL EVIDENCE MUST SUPPORT FACTUAL FINDINGS FOR DISTRIBUTION OF ASSETS AND LIABILITIES; TRIAL COURT'S OMISSION LEFT APPELLATE COURT UNABLE TO CONDUCT MEANINGFUL REVIEW; REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.** Former wife appealed the supplemental final judgment of dissolution of marriage, arguing error. The appellate court found that the trial court erred in its scheme of equitable distribution regarding the rental income from marital properties. It held that in a contested dissolution proceeding, the distribution of assets and liabilities must be supported by factual findings based on competent, substantial evidence. Here, the trial court's omission left the appellate court unable "to conduct meaningful appellate review as to whether competent substantial evidence supports the determination that former wife received and fraudulently conveyed, transferred, and/or hid \$502,279.00 in proceeds from the rental properties." Accordingly, the appellate court reversed the equitable distribution scheme and remanded for further proceedings.

https://edca.1dca.org/DCADocs/2013/4146/134146_DC08_09162014_084518_i.pdf (September 16, 2014).

Starling v. Starling, 146 So. 3d 538 (Fla. 1st DCA 2014). **APPEAL DISMISSED AS PREMATURE; FINAL JUDGMENT WAS NOT A FINAL ORDER.** The appeal was dismissed as premature because the final judgment of dissolution was not a final order.

https://edca.1dca.org/DCADocs/2014/2691/142691_DA08_09162014_090604_i.pdf (September 16, 2014).

Second District Court of Appeals

Valente v. Barion, __ So. 3d __, 2014 WL 4476516, 39 Fla. L. Weekly D1973 (Fla. 2d DCA 2014). **REVERSED AND REMANDED FOR TRIAL COURT'S FAILURE TO MAKE REQUIRED STATUTORY FINDINGS RE ALIMONY IN MODERATE-TERM MARRIAGE.** Both spouses appealed the final judgment in the dissolution of a twelve-year marriage. The appellate court affirmed the dissolution, but reversed and remanded the permanent alimony award to former wife. It held that section 61.08(8), F.S. (2011), requires a finding of clear and convincing evidence that

permanent alimony is appropriate in a moderate-term marriage. Here, the findings appeared to be more supportive of durational alimony. The appellate court instructed the trial court on remand to determine whether durational or permanent alimony is appropriate, determine the amount of that support, and then revisit the issues of retroactive alimony and attorney's fees for former wife as necessitated by any change in alimony. It emphasized it was not telling the trial court it could not award permanent alimony as much as it was emphasizing the importance of clear and convincing evidence if permanent alimony were awarded.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/September/September%2012,%202014/2D12-3007.pdf (September 12, 2014).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

Knudson v. Drobnak, __ So. 3d __, 2014 WL 462846, 39 Fla. L. Weekly D1987 (Fla. 4th DCA 2014). **TRIAL COURT ERRED IN CALCULATING CHILD SUPPORT ARREARAGES BY INCLUDING CHILDCARE EXPENSES PARENT DID NOT INCUR; REMANDED.** The appellate court agreed with former husband that the trial court erred in its calculation of arrearages by including childcare costs not actually incurred by former wife. Accordingly, it reversed and remanded for the trial court to recalculate the arrearages by subtracting child care expenses during the time former wife was not working outside the home and not incurring them.

<http://www.4dca.org/opinions/Sept.%202014/09-17-14/4D13-3714.op.pdf> (September 17, 2014).

Fifth District Court of Appeals

Beal v. Beal, 146 So. 3d 153 (Fla. 5th DCA 2014). **A SPOUSE IS NOT REQUIRED TO DEplete ASSETS TO PAY FOR LIVING EXPENSES.** Former wife appealed the final judgment of dissolution of a twelve-year marriage. The appellate court found that the trial court erred because the amount of alimony it awarded required former wife to use her equitable distribution assets for living expenses. The appellate court noted that this circumstance is frowned on in Florida law, which has "consistently held" that a former spouse is not required to deplete her assets to provide for her living expenses. Accordingly, it reversed the trial court's alimony award and remanded for the trial court to reconsider both alimony and attorney's fees.

<http://www.5dca.org/Opinions/Opin2014/090114/5D13-936.op.pdf> (September 5, 2014).

Orizondo v. Orizondo, 146 So. 3d 151 (Fla. 5th DCA 2014). **TRIAL COURT DIDN'T RESOLVE TIME-SHARING; CHILD SUPPORT ARREARAGE EXCEEDED MONTHLY CHILD SUPPORT OBLIGATION; NO BASIS FOR UNEQUAL ALLOCATION OF UNCOVERED MEDICAL EXPENSES BETWEEN SPOUSES WITH SUBSTANTIALLY EQUAL INCOMES; LIABILITIES SHOULD BE ALLOCATED.** Former husband appealed the final judgment of dissolution of marriage. The spouses had two daughters: one already eighteen; the other turning eighteen in fewer than six months. The appellate court found that although a ruling on time-sharing would not "repair the strained relationship between Former Husband and his daughters," the trial court's "admitted abdication to the desires of the children" constituted reversible error. It reversed other parts of the final judgment as well,

including a child support arrearage amount which exceeded the monthly child support obligation and an unequal allocation of uncovered reasonable and necessary medical expenses between two spouses whose incomes were substantially equal. The appellate court instructed the trial court on remand to allocate the spouses' liabilities and include factual findings to support the allocation.

<http://www.5dca.org/Opinions/Opin2014/090114/5D13-4251.op.pdf> (September 5, 2014).

Hammad v. Hammad, 146 So. 3d 532 (Fla. 5th DCA 2014). **TRIAL COURT FAILED TO MAKE STATUTORILY REQUIRED FINDINGS OF FACT.** Former husband argued that the trial court abused its discretion by awarding former wife durational alimony and ordering that he pay 75% of her attorney's fees without having made the statutorily required findings of fact. Former wife conceded error. Reversed and remanded.

<http://www.5dca.org/Opinions/Opin2014/090814/5D14-577.op.pdf> (September 12, 2014).

Clark v. Clark, __ So. 3d __, 2014 WL 4648628, 39 Fla. L. Weekly D2027 (Fla. 5th DCA 2014). **TRIAL COURT ERRED BY SUBSTITUTING SPOUSE'S PROPOSED FINAL JUDGMENT FOR ITS OWN ANALYSIS AND AWARING AMOUNTS UNREQUESTED BY SPOUSE.** Former husband appealed a final judgment dissolving his sixteen-year marriage to former wife on several grounds. The appellate court affirmed the dissolution, the time-sharing, and the entitlement to child support; it reversed the awards of alimony and attorney's fees to former wife, and reversed and remanded the amount of child support and the equitable distribution. It agreed with former husband that the trial court permitted former wife's proposed final judgment to substitute for its own "thoughtful and independent analysis." The proposed final judgment ruled on matters former wife had not pled--alimony and attorney's fees. The appellate court cited an earlier case on similar facts which reversed a judgment awarding alimony and fees because the petitioning spouse had not requested either. Kratzer v. Reimiller, 552 So. 2d 1188 (Fla. 5th DCA 1989). The appellate court distinguished unpled issues tried by consent from those tried in absentia.

<http://www.5dca.org/Opinions/Opin2014/091514/5D13-1464.op..pdf> (September 19, 2014).

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Drug Court/Mental Health Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.