

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE
August-September 2010

Table of Contents

Delinquency Case Law	2
Florida Supreme Court.....	2
First District Court of Appeal	2
Second District Court of Appeal.....	3
Third District Court of Appeal.....	5
Fourth District Court of Appeal.....	7
Fifth District Court of Appeal.....	10
Dependency Case Law	11
Florida Supreme Court.....	11
First District Court of Appeal	12
Second District Court of Appeal.....	13
Third District Court of Appeal.....	14
Fourth District Court of Appeal.....	15
Fifth District Court of Appeal.....	15
Dissolution Case Law	16
Florida Supreme Court.....	16
First District Court of Appeal	16
Second District Court of Appeal.....	17
Third District Court of Appeal.....	18
Fourth District Court of Appeal	20
Fifth District Court of Appeal.....	20
Domestic Violence Case Law	21
Florida Supreme Court.....	21
First District Court of Appeal	21
Second District Court of Appeal.....	22
Third District Court of Appeal.....	22
Fourth District Court of Appeal	22
Fifth District Court of Appeal.....	23

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

I.L.G. v. State, __ So. 3d __, 2010 WL 3584264 (Fla. 1st DCA 2010). **JUVENILE RECEIVED A NEW RESTITUTION HEARING WHERE HE WAS NOT PRESENT AT THE RESTITUTION HEARING AND THE RECORD FAILED TO DEMONSTRATE THAT HE WAIVED HIS RIGHT TO BE PRESENT.** The First District Court of Appeal found that a juvenile has a constitutional right to be present at the restitution hearing unless the juvenile voluntarily and intelligently waives that right. The First District held that the juvenile was entitled to a new restitution hearing because he was not present at the restitution hearing and because there was nothing in the record to suggest he waived his right to be present. Accordingly, restitution was reversed and remanded with directions to hold a new restitution hearing.

<http://opinions.1dca.org/written/opinions2010/09-16-2010/10-2103.pdf> (September 16, 2010).

K.J.F. v. State, __ So. 3d __, 2010 WL 3783340 (Fla. 1st DCA 2010). **SECTIONS 985.4815 AND 943.0435, F.S. (2008), DO NOT REQUIRE A JUVENILE TO REGISTER AS A SEXUAL OFFENDER WHERE THE ADJUDICATION OF DELINQUENCY HAS BEEN WITHHELD.** The juvenile pled guilty to the following offenses: sexual battery; lewd or lascivious molestation; lewd or lascivious exhibition; and false imprisonment. The trial court withheld adjudication of delinquency, placed the juvenile on probation, and ordered the juvenile to register as a sexual offender. On appeal, the juvenile argued that he failed to meet the statutory criteria for qualification as a sexual offender. The First District Court of Appeal, after a lengthy statutory analysis, held that ss. 985.4815 and 943.0435, F.S. (2008), do not require a juvenile to register as a sexual offender where the adjudication of delinquency has been withheld. As a result, the case was reversed and remanded with instructions to eliminate the requirement that the juvenile register as a sexual offender.

<http://opinions.1dca.org/written/opinions2010/09-30-2010/10-1539.pdf> (September 30, 2010).

K.D. v. State, __ So. 3d __, 2010 WL 3360097 (Fla. 1st DCA 2010). **ADJUDICATION FOR PROVIDING A FALSE NAME WAS REVERSED AND REMANDED WHERE THE JUVENILE WAS NOT LEGALLY DETAINED WHEN SHE PROVIDED THE FALSE NAME.** The juvenile appealed her adjudication for providing a false name under s. 901.36(1), F.S. (2010). The juvenile argued, and the State conceded, that the trial court erred in denying her motion for dismissal because she was not legally detained when she gave the false name. The First District Court of Appeal agreed and found that a lawful detention is a condition precedent to the crime of giving a false name to a law enforcement officer. In the instant case, the record failed to show that the juvenile was legally detained when she provided the false name. Instead, the incident began as

a consensual encounter when the juvenile gave the false name, which in and of itself was not a valid reason to detain her. Accordingly, the adjudication was reversed and remanded.

<http://opinions.1dca.org/written/opinions2010/08-25-2010/10-1165.pdf> (August 25, 2010).

Second District Court of Appeal

B.D.M. v. State, __ So. 3d __, 2010 WL 3718182 (Fla. 2d DCA 2010). **THE JUVENILE'S ADJUDICATION WAS REVERSED AND REMANDED WHERE THE CIRCUMSTANTIAL EVIDENCE DID NOT EXCLUDE A REASONABLE HYPOTHESIS OF INNOCENCE.** The juvenile was the boyfriend of the juvenile M.F. from M.F. v. State, 35 So. 3d 998 (Fla. 2d DCA 2010)(See Delinquency Case Law Summary for May 2010). Two unidentified men had towed a car from a carport without the owner's permission. The victim's daughter and the daughter's boyfriend were charged with grand theft and adjudicated delinquent after separate hearings. The Fourth District Court of Appeal reversed the daughter's adjudication in M.F. v. State because the circumstantial evidence did not exclude the daughter's reasonable hypothesis of innocence. The juvenile's adjudication was based on substantially the same circumstantial evidence. Therefore, the circumstantial evidence was likewise insufficient because it did not exclude the juvenile's reasonable hypothesis of innocence. Accordingly, the juvenile's case was reversed and remanded.

<http://www.2dca.org/opinions/Opinion Pages/Opinion Page 2010/September/September%2024,%202010/2D09-2111.pdf> (September 24, 2010).

M.A.R. v. State, __ So. 3d __, 2010 WL 3655501 (Fla. 2d DCA 2010). **THE MANDATORY SENTENCING PROVISIONS OF SS. 316.1935(5) AND (6), F.S. (2008), DO NOT APPLY TO JUVENILES.** The juvenile argued that the mandatory sentencing provisions of ss. 316.1935(5) and (6), F.S. (2008), did not apply to juveniles. Section 316.1935(1)-(4) makes it a crime to commit the offenses of fleeing or eluding a law enforcement officer and aggravated fleeing or eluding. Subsection (5) requires the revocation of driver's license, and subsection (6) requires *inter alia* that the court may not suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. The Second District Court of Appeal found that adult sanctions are not applicable to juvenile proceedings unless the legislature makes them expressly applicable. In this case, the Second District held that no clear legislative mandate appears for ss. 316.1935(5)-(6). Section 316.1935(5) applies to defendants "convicted" of a violation of subsections (1)-(4). However, delinquency adjudications under Florida law are not convictions. Further, s. 316.1935(6) states, in pertinent part, that no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. It does not reference juveniles or adjudications of delinquency or withholdings of adjudication of delinquency. Juvenile courts do not "suspend, defer, or withhold adjudication of guilt"; they adjudicate or withhold delinquency. Therefore, the trial court erred in determining that the mandatory sentencing provisions of s. 316.1935(5) and (6) applied to juveniles. The juvenile's case was reversed and remanded for reconsideration of the disposition.

<http://www.2dca.org/opinions/Opinion Pages/Opinion Page 2010/September/September%2022,%202010/2D09-5200.pdf> (September 22, 2010).

R.F. v. State, __ So. 3d __, 2010 WL 3239000 (Fla. 2d DCA 2010). **COSTS IMPOSED PURSUANT TO S. 939.185, F.S. (year?), ARE NOT APPLICABLE WHEN THE COURT WITHHOLDS THE ADJUDICATION OF DELINQUENCY.** The juvenile appealed a disposition order that withheld adjudication and placed him on indefinite probation not to exceed his nineteenth birthday for aggravated assault with a deadly weapon. The Second District Court of Appeal affirmed the determination that the juvenile committed the delinquent act and the withholding of adjudication without comment but wrote to address the disposition, which was also affirmed. Additionally, the Second District reversed and remanded for the trial court to strike costs imposed pursuant to s. 939.185, F.S. (year?).

The juvenile filed a motion to correct disposition error under Florida Rule of Juvenile Procedure 8.135(b)(2) which was deemed denied when the trial court failed to render an order on the motion within thirty days. In the motion, the juvenile argued that the trial court entered an illegal disposition of indefinite probation, improperly imposed an unknown amount of costs in the written order that read “\$____ F.S. 939.185,” and that the statute does not even apply to juvenile delinquency cases. The Second District found that the juvenile was thirteen when the trial court imposed probation not to exceed the juvenile's nineteenth birthday. Thus, the disposition imposed more than five years of probation. Aggravated assault is a third-degree felony that carries a statutory maximum penalty for an adult of five years in prison. While juvenile probation cannot exceed the term that the court could impose if it committed the juvenile, and a commitment may not exceed the maximum term that an adult could serve for the same crime, this limitation specifically applies when the court adjudicates a child delinquent, not when the court withholds the adjudication of delinquency. Therefore, because the trial court withheld adjudication of delinquency, it properly imposed the probationary term until the juvenile's nineteenth birthday. With respect to the costs imposed, the Second District noted that effective July 1, 2007, the legislature amended s. 939.185, F.S., to apply specifically to an adjudication of delinquency. However, the amended statute does not provide for the imposition of the cost when the court withholds adjudication of delinquency. Therefore, s. 939.185, F.S., did not apply to the juvenile's case. Accordingly, the Second District reversed and remanded and directed the trial court to strike those costs.

<http://www.2dca.org/opinions/Opinion Pages/Opinion Page 2010/August/August%2018,%202010/2D09-689.pdf> (August 18, 2010).

G.D. v. State, __ So. 3d __, 2010 WL 3184339 (Fla. 2d DCA 2010). **PUBLIC DEFENDER FEE WAS REVERSED WHERE THE JUVENILE WAS NOT PROVIDED NOTICE AND AN OPPORTUNITY TO CONTEST THE IMPOSITION OF THE FEE.** The Second District Court of Appeal granted the juvenile's motion for rehearing and clarification, and denied the motion for rehearing en banc. The opinion, dated May 28, 2010, was thereby withdrawn and the attached opinion was substituted. The Second District held that no further motions for rehearing would be entertained. This was an appeal pursuant to Anders v. California, 386 U.S. 738 (1967), of the juvenile's adjudication of delinquency for possession of cannabis and paraphernalia. After careful review of the record, the Second District found no error in the juvenile's adjudication of delinquency. However, appellate counsel had raised an issue of merit regarding the trial court's assessment of a public defender fee against the juvenile without notice and an opportunity to object. Section 938.29, F.S. (2008), authorized the assessment of a public defender fee. Although imposition of the fee was mandatory, the statute required the trial court to give the defendant notice and an opportunity to object to the amount. In addition, Florida Rule of Criminal Procedure 3.720(d)(1) provides that at sentencing, a defendant must be given notice of the right to a hearing to contest the amount of the lien. In the instant case, the trial court failed to provide the juvenile notice and an opportunity to contest the public defender fee. Accordingly, imposition of the public defender fee was reversed with instructions that on remand, the trial court may reimpose the fee once the mandate issues only if it provides the juvenile notice of its intent to do so and an opportunity for a hearing on the

matter.

<http://www.2dca.org/opinions/Opinion Pages/Opinion Page 2010/August/August%2013,%202010/2D08-2691rh.pdf> (August 13, 2010).

Third District Court of Appeal

D.J. v. State, __ So. 3d __, 2010 WL 3489010 (Fla. 3d DCA 2010). **THE STATE DID NOT HAVE TO PROVE THAT THE SCHOOL SECURITY GUARD WAS DESIGNATED BY THE PRINCIPAL AS A PERSON WHO COULD DIRECT THE JUVENILE NOT TO ENTER THE SCHOOL PROPERTY WHERE THE JUVENILE DID NOT CHALLENGE THE AUTHORIZATION AT TRIAL.** Section 810.097(2), F.S. (2009), provides that it is a trespass of a school facility when a person enters or remains after the principal or his or her designee has directed such person to leave or not enter such campus or facility. In the instant case, the school security guard had directed the juvenile not to enter the school property. On appeal, the juvenile argued that his motion for judgment of dismissal should have been granted because the State failed to produce any evidence that the school security guard was designated by the principal as a person who could direct the juvenile not to enter the school property. At trial, the State failed to introduce any evidence that the security guard was a designee of the principal for these purposes. The Third District Court of Appeal rejected the juvenile's argument based upon ***Downer v. State***, 375 So. 2d 840 (Fla.1979), which involved a similar statute. In that case, the Florida Supreme Court held that the identity and authority of those who have withheld permission to enter certain portions of a public facility are elements of the trespass statute. It was sufficient if the prosecutor established that the defendant was on notice that he was not authorized to enter the portion of the public building in which the alleged trespass occurred. Only if the defendant at trial challenges the authorization of one who has posted notice of or who has otherwise communicated this restriction, is the State required to prove the identity of the individual and his authority to restrict access to the portion of the public facility in question. Accordingly, the Third District held that the motion for judgment of dismissal was correctly denied.

<http://www.3dca.flcourts.org/Opinions/3D09-1965.pdf> (September 8, 2010).

A.G. v. State, __ So. 3d __, 2010 WL 3154830 (Fla. 3d DCA 2010). **THE STATE FAILED TO MAKE A PRIMA FACIE CASE THAT THE MOTORCYCLE THE JUVENILE WAS RIDING WAS INDEED THE SAME MOTORCYCLE THAT WAS REPORTED AS STOLEN.** The juvenile appealed from an order withholding adjudication of delinquency after being found guilty of trespass to a conveyance. A police officer saw the juvenile riding a motorcycle in an erratic fashion. The officer ran the motorcycle's tag number, which did not match the vehicle description, and followed the juvenile to his destination. The officer arrested the juvenile after noticing that the motorcycle's engine was running without a key, that something had been jammed in the ignition, and that the motorcycle's VIN number came up as being reported stolen. The juvenile stated that he borrowed the motorcycle from an individual around the corner for a test drive, as he was planning on purchasing it. The juvenile agreed to take the officers to the owner, but nobody was found at the location. The motorcycle was towed to the police impound and retrieved by the purported owner. The juvenile was charged with grand theft of a motor vehicle. At the close of the State's evidence, defense counsel moved for judgment of dismissal on the ground

that no evidence showed that the juvenile was riding the motorcycle that was reported stolen, as the VIN numbers, manufacturers, and level of damage on the vehicles did not match. The trial court denied the motion and found the juvenile guilty of trespass to a conveyance. The Third District Court of Appeal found that the State failed to make a prima facie case that the motorcycle the juvenile was riding was indeed the stolen motorcycle. The owner's testimony revealed a discrepancy in VIN numbers and manufacturer. The stolen motorcycle was a Kawasaki, while the officer testified that the juvenile was riding a Honda. Further, the owner testified that the damage to his recovered motorcycle was extensive and rendered it unusable. The police officer, on the other hand, did not notice any unusual damage to the motorcycle when he encountered the juvenile other than the fact that the key slot was "chewed up" and the bike was running without a key in the ignition. The Third District Court of Appeal held that the defense counsel's motion for judgment of dismissal should have been granted and reversed.

<http://www.3dca.flcourts.org/Opinions/3D09-1484.pdf> (August 11, 2010).

J.Q. v. State, ___ So. 3d ___, 2010 WL 3023351 (Fla. 3d DCA 2010). **ADVISING JUVENILE OF CHARGES AND SHOWING HIM A BAGGIE OF COCAINE WAS NOT A CUSTODIAL INTERROGATION REQUIRING MIRANDA WARNINGS.** The juvenile argued that the trial court erred in denying his motion to suppress his statements. The juvenile contended that when the police detective showed him a baggie of cocaine, this amounted to conducting a custodial interrogation of the juvenile without warning the juvenile of his Miranda v. Arizona, 384 U.S. 436 (1966), rights. At the suppression hearing, the detective testified that he only asked identification questions and denied that he conducted any interrogation. The detective stated that the juvenile made spontaneous statements saying that the drugs were not his, and that he was holding the drugs for somebody else. Neither side asked the detective whether he showed the juvenile a baggie of cocaine. The motion to suppress was denied and the trial immediately began. At trial, the detective was questioned in greater detail. The detective testified that the juvenile asked him why he was being arrested. In response, the detective explained to the juvenile why he was being arrested and showed the juvenile a baggie of cocaine. The juvenile responded by saying that the drugs were not his and that he was holding them for a friend. The juvenile testified that the detective questioned him about who was doing illegal acts in the area and at the end of the questioning showed him the baggie of cocaine. The juvenile denied saying that he was holding the drugs for a friend, or making any incriminating statements. The trial judge resolved the conflict in testimony in favor of the detective and found that the juvenile had committed the offense of possession of cocaine. Accepting the detective's testimony as being true, the Third District Court of Appeal affirmed the trial court based upon Perez v. State, 980 So.2d 1126 (Fla. 3d DCA 2008). In that case, the defendant invoked his right to silence and right to counsel. The detective ceased questioning the defendant. As the detective walked out of the interview room, the defendant asked what he was charged with. The detective told the defendant what the charges were, and showed him a picture of another man who the State ultimately charged as a codefendant in the case. The defendant then made an incriminating statement in response to seeing the photograph. The Third District held that showing the picture to the defendant did not amount to an interrogation. In the instant case, the juvenile asked what he was charged with and the detective told him and showed him the baggie of cocaine. The Third District held

that showing the juvenile the bag of cocaine did not amount to an interrogation. Accordingly, the trial court's order was affirmed.

<http://www.3dca.flcourts.org/Opinions/3D09-2237.pdf> (August 4, 2010).

Fourth District Court of Appeal

J.S. v. State, __ So. 3d __, 2010 WL 3766818 (Fla. 4th DCA 2010). **DENIAL OF MOTION TO CONDUCT A SECOND DEPOSITION WAS AFFIRMED BECAUSE THE JUVENILE'S COUNSEL HAD A FULL OPPORTUNITY TO DEPOSE THE VICTIM ON A CLOSELY RELATED SET OF FACTS.** The juvenile appealed his adjudication of delinquency. The juvenile argued that the trial court's decision to deny his attorney's motion to conduct a second deposition of the victim after the State amended the charges from lewd and lascivious conduct to lewd and lascivious molestation was an abuse of discretion. The Fourth District Court of Appeal found that the issue of granting or limiting discovery is within a trial judge's sound discretion. Florida Rule of Juvenile Procedure 8.060(d)(2)(D) provides that no person shall be deposed more than once except by consent of the parties or by order of the court issued on good cause shown. At the juvenile's hearing on his motion to re-depose the victim, the State informed the trial court that, at the victim's first deposition, the victim was already asked (and she answered) questions about whether the juvenile, among other things, touched her breasts, buttocks, or genitals, or the clothing covering them. The juvenile's lawyer attended and participated in this deposition and admitted that "these were areas that I should have covered and I didn't." The Fourth District held that, given the particular facts of this case, counsel's oversight was not the sort of good cause to subject the victim to a second deposition. Thus, the trial court was well within its discretion to deny the motion because the juvenile's counsel had a full opportunity to depose the victim on a closely related set of facts. Accordingly, the delinquency adjudication is affirmed.

<http://www.4dca.org/opinions/Sept%202010/09-29-10/4D09-1070.op.pdf> (September 29, 2010).

V.M.S. v. State, __ So. 3d __, 2010 WL 3564713 (Fla. 4th DCA 2010). **AMENDED PROBATION ORDER, THAT ENHANCED THE JUVENILE'S SENTENCE, VIOLATED THE DOUBLE JEOPARDY CLAUSE OF THE UNITED STATES CONSTITUTION.** The juvenile entered a plea of no contest to battery. The circuit court withheld adjudication and placed the juvenile on probation. At the plea hearing, there was some discussion about other charges and how they might be used to obtain some type of treatment for the juvenile. After the sentence was imposed, a second hearing was held, apparently at the request of juvenile's mother. At that time, the juvenile was in the detention center because of a new charge. The mother requested that the juvenile's probation be modified to require the juvenile to attend a non-public school. The prosecutor suggested that the court did not have jurisdiction to modify the sentence. The trial judge responded that he "always" had "supervisory jurisdiction" to modify probation. The mother's motion for modification was granted and the juvenile was required to attend the PACE School. An amended probation order reflected this change. As in the original order, the amended order imposed a \$50 charge for the Crimes Compensation Trust Fund. The juvenile later moved the court to correct a disposition error. The juvenile argued the modification enhanced the probation without a violation of probation, thereby violating her right against double jeopardy.

The juvenile also contended that the judge could not impose the \$50 trust fund charge because he had withheld adjudication. No ruling was made on the motion, so it was deemed denied. The Fourth District Court of Appeal found that the Double Jeopardy Clause of the Fifth Amendment applies to juvenile proceedings. Under that protection, a circuit court cannot enhance a defendant's probation without the state first charging, and the court determining, that the defendant violated probation. In this case, the court modified the juvenile's probation without the juvenile having been found in violation of probation. The requirement that the juvenile must attend the PACE School was an enhancement to the original sentence that made the sentence more severe. Thus, the modification of probation violated the juvenile's right against double jeopardy. The Fourth District reversed the \$50 assessment for the Crimes Compensation Trust Fund because a court may only assess that cost when the juvenile has been adjudicated delinquent. Since the judge withheld adjudication in the original sentence, the cost should not have been imposed. Accordingly, the amended probation order was reversed with instructions to reinstate the original probation order, from which the \$50 cost for the Crimes Compensation Trust Fund should be stricken.

<http://www.4dca.org/opinions/Sept%202010/09-15-10/4D09-1831.op.pdf> (September 15, 2010).

J.M.P. v. State, __ So. 3d __, 2010 WL 3564729 (Fla. 4th DCA 2010). **THE EVIDENCE WAS INSUFFICIENT TO DEMONSTRATE THAT THE BB GUN POSSESSED BY THE JUVENILE WAS A DEADLY WEAPON.** The juvenile was charged with violating s. 790.115(2), F.S. (2008), because she brought a BB gun to school. The Fourth District Court of Appeal found that the term "weapon" is distinctly defined in the statute. Section 790.115(2)(a) provides, in pertinent part, that a person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13) on the property of any school. A BB gun is not a firearm, electric weapon, or destructive device. Thus, it is relegated to the category of "other weapon" as defined in section s. 790.001(13). Section 790.001(13) defines a "weapon" as any dirk, knife, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon. Again, since a BB gun is not enumerated, it must be "or other deadly weapon" to fit within the definition. The Florida Supreme Court in Dale v. State, 703 So.2d 1045, 1047 (Fla.1997), held that whether a BB or pellet gun is a deadly weapon is a question of fact for a jury. In the instant case, the school principal testified that she recovered a BB gun from the juvenile at the elementary school. An officer testified that the BB gun was not loaded. However, there was no testimony explaining how to operate the gun or what type of injury the gun might inflict. The Fourth District held that pursuant to the Florida Supreme Court's analysis in Dale, the evidence was insufficient to demonstrate that the juvenile possessed a deadly weapon. Thus, the trial court erred in denying the juvenile's motion for judgment of dismissal. Case reversed and remanded. <http://www.4dca.org/opinions/Sept%202010/09-15-10/4D09-3783.op.pdf> (September 15, 2010).

R.V. v. State, __ So. 3d __, 2010 WL 3488833 (Fla. 4th DCA 2010). **PETITION FOR WRIT OF PROHIBITION WAS GRANTED WHERE THE TRIAL JUDGE'S STATEMENTS SUGGESTED THAT THE TRIAL COURT WOULD CONSIDER THE NUMBER OF CASES PENDING AGAINST A CHILD AS EVIDENCE AGAINST HIM IN DETERMINING HIS GUILT IN ANY ONE CASE.** The juvenile filed a

petition for writ of prohibition seeking to prohibit the circuit court judge from further participating in his pending cases. The juvenile had nine delinquency proceedings before the court. The juvenile was concerned that the trial judge would consider the number of cases pending as evidence in determining his guilt in any one case. The juvenile's fears were based upon statements made in court by the judge when discussing the number of cases another child had pending (eleven). Further, the juvenile was advised by his counsel that the trial judge had previously made comments in open court implying that the judge would punish a child with multiple cases for maintaining his or her innocence. According to the juvenile's motions, the trial judge had expressed his opinion that when a child has multiple cases, it is a waste of the judge's time for the child to proceed to trial on any one charge and plea out the remainder of the cases. The trial judge reasoned that the sanctions imposed in those cases that were pled would be the same as the penalty imposed in the case that was tried. Other comments at that hearing suggested the judge would punish a child for maintaining his or her innocence by adjudicating the child if found guilty after trial, and imposing any sentence consecutive to that imposed following a plea. The State argued that subjective fears or speculation are not reasonably sufficient. In the instant case, the judge's statements would not lead a reasonable person to believe that the court would not judge each case individually and instead take the number of cases into account in determining guilt or innocence, or that the statements reflected a bias against juveniles with multiple pending cases. The Fourth District Court of Appeal held that the judge's comments suggested that the trial court would consider the number of cases pending against a child as evidence against him in determining his guilt in any one case. Further, the prior comments regarding bias against maintaining innocence with multiple cases cannot now be used as a timely basis for disqualification. However, these comments can inform a petitioner's understanding of the comments from which the motion for disqualification were timely filed. As a result, the Fourth District granted the petition for writ of prohibition.

<http://www.4dca.org/opinions/Sept%202010/09-08-10/4D10-1987.op.pdf> (September 8, 2010).

T.D.W. v. State, __ So. 3d __, 2010 WL 3418389 (Fla. 4th DCA 2010). **ROBBERY CONVICTION REVERSED WHERE THE EVIDENCE AT TRIAL ESTABLISHED THE JUVENILE'S GOOD FAITH BELIEF THAT HE WAS THE OWNER OF THE CELL PHONE TAKEN DURING THE ROBBERY.** The Fourth District Court of Appeal reversed a robbery conviction because the only evidence at trial established the juvenile's good faith belief that he was the owner of the cell phone that was taken during the robbery. The Fourth District held that all of the evidence, including the victim's testimony, supported the juvenile's story that he approached the victim for the purpose of retrieving his cell phone. The specific intent to commit robbery is the intent to steal, i.e., to deprive an owner of property either permanently or temporarily. The state failed to establish the state of mind element for the robbery charge. Accordingly, the Fourth District reversed and remanded the robbery conviction. <http://www.4dca.org/opinions/Sept%202010/09-01-10/4D09-2608.op.pdf> (September 1, 2010).

E.J. v. State, __ So. 3d __, 2010 WL 3023327 (Fla. 4th DCA 2010). **DENIAL OF MOTION TO SUPPRESS SEIZED MARIJUANA WAS REVERSED WHERE THE JUVENILE'S ACTIONS DID NOT**

CONSTITUTE A CONSENT TO SEARCH. The juvenile argued that the trial court erred in denying her motion to suppress evidence because her actions were an acquiescence to authority and did not constitute a consent to search. The juvenile was a passenger in a vehicle pulled over for a traffic stop. The driver was arrested for DUI. The juvenile was fourteen. Because the vehicle needed to be towed, the deputy asked the passenger to step out of the car so she could inventory it. As the juvenile stepped out of the car the officer asked if she had anything on her person about which the deputy should be concerned. The juvenile stepped out of the vehicle, turned and placed her hands on the top of the car and spread her legs. The deputy took that to mean that the juvenile was consenting to a search. The deputy patted her down and found a large bulge. The deputy asked the juvenile what the bulge was and the juvenile responded "weed." The juvenile testified that she was fourteen years old at the time of the stop, and this was her first and only encounter with police officers. When she exited the vehicle and placed her hands on the car top, she was simply following what the driver was doing, as he was being searched by the officers. The Fourth District Court of Appeal found that the State had the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given. The Fourth District found that the trial court used the wrong standard in determining whether the state proved a voluntary consent by the juvenile. The trial court erroneously viewed the issue as whether the officers reasonably believed that the juvenile's actions of spreading her legs constituted consent to search rather than whether the defendant in fact gave consent. The trial court did not analyze the consent issue based upon this standard and did not address the issues of the juvenile's age or experience or any other factors. The Fourth District found that the juvenile's age and inexperience with police prevented the conclusion that she freely and voluntarily consented to any search. The deputy did not ask for consent to search. With her age and lack of experience with police, the juvenile did not know that she could refuse to consent. Her actions in assuming the spread eagle position merely mimicked what she observed the arrested driver doing. Thus, her conduct did not yield the conclusion that she consented but merely acquiesced to the authority around her and what she expected was required in the circumstances. The Fourth District also found that the trial court's conclusion that the frisk was supported by reasonable suspicion was also in error. The mere stop of a vehicle does not confer upon the authorities the right to frisk a passenger. The officer must articulate a particularized basis to suspect that the individual is armed. In the instant case, the officers discussed only general conditions which caused them to be particularly careful. The officers testified that they had no information or suspicion that the juvenile had committed a crime or was armed and dangerous. Their generalized fear for officer safety alone did not justify a frisk of the juvenile. The Fourth District reversed and remanded to vacate the dispositional order.

<http://www.4dca.org/opinions/Aug%202010/08-04-10/4D09-736.op.pdf> (August 4, 2010).

Fifth District Court of Appeal

A.D. v. State, ___ So. 3d ___, 2010 WL 3602827 (Fla. 5th DCA 2009). **TRIAL COURT ERRED IN DIRECTING THE JUVENILE TO PAY THE COSTS FOR HIS COMPETENCY EVALUATIONS WHERE HE HAD BEEN DECLARED INDIGENT BY THE COURT.** The juvenile appealed his disposition order. The juvenile argued that the trial court erred in directing him to pay the costs incurred with his

competency evaluations because he had been declared indigent by the court. The State essentially conceded error. The Fifth District Court of Appeal held that the ruling in W.Z. v. State, 35 So. 3d 51 (Fla. 5th DCA 2010), which held that such an assessment of costs was improper, was controlling. Accordingly, the portion of the disposition order which directed the juvenile to pay the costs for his competency evaluations was reversed and remanded. <http://www.5dca.org/Opinions/Opin2010/091310/5D09-4110.op.pdf> (September 17, 2010).

D.L.B. v. State, ___ So. 3d ___, 2010 WL 3056618 (Fla. 5th DCA 2009). **COSTS FOR COURT-ORDERED COMPETENCY EVALUATIONS REVERSED WHERE THE JUVENILE WAS INDIGENT AT THE TIME OF APPOINTMENT.** The juvenile appealed his adjudications of delinquency and sentences for burglary of a dwelling, burglary of a conveyance, attempted robbery, carrying a concealed firearm, and grand theft of a firearm. He argued that the trial court erred in denying his pre-plea dispositive motion to suppress, and by ordering him to pay for competency evaluations by two court-appointed experts when he was indigent. The Fifth District Court of Appeal affirmed as to the suppression issue without elaboration, but reversed the order for payment for the reasons explained in W.Z. v. State, 35 So.3d 51 (Fla. 5th DCA 2010). Affirmed in part; reversed in part; remanded with directions to strike costs for competency evaluations. <http://www.5dca.org/Opinions/Opin2010/080210/5D09-4089.op.pdf> (August 6, 2010).

Dependency Case Law

Florida Supreme Court

In re Amendments to the Florida Family Law Rules, No. SC06-2513 (Fla. 2010) **FAMILY LAW RULES AMENDED.** The court amended form 12.951(a) Petition to Disestablish Paternity and/or Terminate Child Support Obligation and 12.951(b) Order Disestablishing Paternity and/or Terminating Child Support Obligation, and created new rule 12.635 addressing relocation, all following recommendations by the Family Law Rules Committee. The Court also accepted the revision of eleven new relocation forms which are available for comment for the next sixty days. <http://www.floridasupremecourt.org/decisions/2010/sc06-2513.pdf> (September 30, 2010).

In re Amendments To The Florida Family Law Rules Of Procedure, --- So. 3d ----, 2010 WL 3701318 (Fla. 2010) **FAMILY LAW RULES AMENDED.** The Florida Bar's Family Law Rules Committee filed a "fast-track" report proposing amendments to the Florida Family Law Rules of Procedure Forms which the Florida Bar Board of Governors unanimously approved. The Supreme Court accepted the proposed changes, which included amendments to Florida Family Law Rules of Procedure Forms 12.902(e) (Child Support Guidelines Worksheet) and 12.996(a) (Income Deduction Order (Non-Title IV Case)). The proposed amendments are in response to chapter 2010-199, sections 3 and 5, Laws of Florida, which amend numerous provisions within chapter 61, Florida Statutes, pertaining to alimony and child support. With regard to forms 12.902(e) and 12.996(a), the amendments require: removal of the first three combined net income amounts in the guidelines schedule; the elimination of the twenty-five percent reduction in calculating monthly child care costs to be added to the basic child support

obligation; a decrease from forty percent to twenty percent of the overnights in a year that a parent must have with a child to qualify as a "substantial amount of time" for time-sharing (formerly visitation) purposes; and the addition of a "Child Support Reduction/Termination Schedule" to income deduction orders issued after October 1, 2010. Because the amendments were not published for comment prior to their adoption, interested persons have sixty days from the date of the opinion in which to file comments with the Court.

<http://www.floridasupremecourt.org/decisions/2010/sc10-1468.pdf> (September 23, 2010).

First District Court of Appeal

D.S. v. Department of Children and Family Services, ___ So. 3d ____, 2010 WL ____, 35 Fla.L.Weekly D ____ (Fla. 1st DCA 2010). [RELIANCE OF INADMISSIBLE HEARSAY WAS REVERSIBLE ERROR.](#)

The First District Court of Appeal considered a father's appeal of the trial court's rulings denying his motion for reunification, placing his child in permanent guardianship, and terminating protective supervision. The child had been placed with a relative while the father was incarcerated. Subsequently, the father was released and entered into a reunification case plan. After the Department filed its motion for guardianship and to terminate supervision, and the father moved for reunification, the court held a combined hearing on the motions during which the court admitted hearsay over the father's objection. The hearsay consisted of testimony by the child's guardian regarding statements purportedly made by the child regarding her father's alcohol use and altercations involving her father, although the child did not testify and no other evidence was presented on these issues. Because the District Court of Appeal concluded that the trial court's reliance on the hearsay for its ruling was not harmless, it reversed the trial court and remanded for the trial court to conduct further proceedings on both the Department's motion and the father's motion for reunification.

<http://opinions.1dca.org/written/opinions2010/08-13-2010/10-2456.pdf> (August 13, 2010).

W.S. v. Department of Children and Family Services, ___ So. 3d ____, 2010 WL3156637 (Fla. 1st DCA 2010). [RELIANCE ON INADMISSIBLE CHILD HEARSAY CONSTITUTES REVERSIBLE ERROR.](#)

In the parents' appeal of an order adjudicating their child dependent, the Department and Guardian ad Litem both conceded error because the trial court relied on inadmissible hearsay. The basis of dependency was physical abuse by the parents of their child and another child, upon whom they were also alleged to have inflicted a bizarre punishment. At trial, most of the testimony of the Child Protection Team investigator consisted of hearsay statements of children and of abuse that she did not personally observe. The hearsay was the trial court's basis for finding that the parents' child was physically abused, and it was part of the basis for finding that the other child was the subject of improper punishment. Because the trial court mostly relied on inadmissible hearsay in finding the child dependent, it committed reversible error. The court reversed the order and remanded the case for further proceedings.

<http://opinions.1dca.org/written/opinions2010/08-11-2010/10-2618.pdf> (August 11, 2010).

Second District Court of Appeal

S.D. v. Department of Children and Family Services and Guardian ad Litem Program,
___ So. 3d ___, 2010 WL ___, 35 Fla.L.Weekly D___ (Fla. 2d DCA 2010).

ADJUDICATION OF DEPENDENCY REVERSED DUE TO LACK OF COMPETENT, SUBSTANTIAL EVIDENCE.

The Second District Court of Appeal reversed an adjudication of dependency following the mother's appeal, which argued that the trial court failed to make the required factual findings to support dependency and that there was insufficient evidence to support a determination of dependency. Both parents had denied the Department's dependency allegations, although the father later consented to the dependency petition. The mother contested dependency and the court held a hearing at which the only witnesses were the mother and child protective investigator. Although the mother admitted that she had scratches on her neck and chest when she met with the investigator, she testified that the father never pushed, hit, or scratched her and that she scratched her own throat when she was anxious. The investigator testified that the mother stated she scratched herself and her bruises were from walking into a car door, although the investigator also opined that the bruises were like those from a struggle and attempted choke. He further testified that he had no evidence of domestic violence having affected the child or occurring when the child was in the room. The trial court adjudicated the child dependent, accepted a case plan for the mother, and ordered the child to remain with the parents under the Department's protective supervision. The court's order based the dependency on the father's consent with no additional findings. On appeal, the court noted that the record lacked competent, substantial evidence supporting findings of dependency, and that the only evidence of domestic violence was the investigator's opinion on the cause of mother's scratches and bruises. There was no evidence that the child saw, heard, was in the presence of any violence, or was affected by any violence. Therefore, the court reversed the adjudication of dependency.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/August/August%2027,%202010/2D10-1717.pdf (August 27, 2010).

A.B. v. Department of Children and Family Services and Guardian ad Litem Program,
___ So. 3d ___, 2010 WL 3061494 (Fla. 2d DCA 2010).

TERMINATION OF PARENTAL RIGHTS REVERSED BASED ON FAILURE TO CONSIDER MANIFEST BEST INTEREST.

In an appeal by a mother of an order terminating her parental rights, the Department and Guardian ad Litem conceded error because the trial court did not address the child's manifest best interests. Although the trial court's order stated it would consider the manifest best interests, as mandated by section 39.810, Florida Statutes (year?), at a subsequent hearing it did not do so. Therefore the Second District Court of Appeal reversed the order terminating parental rights and remanded the case for the trial court to consider the factors in section 39.810 and enter written findings.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/August/August%2006,%202010/2D10-124.pdf (August 6, 2010).

L.K. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ___, 2010 WL 3023277, 35 Fla.L.Weekly D1721 (Fla. 2d DCA 2010).

CONCESSION OF ERROR.

Based on concession of error by both DCF and the Guardian ad Litem, the Second District Court of Appeal reversed the trial court's order terminating protective supervision and awarding permanent custody of the child to her father. The court further ordered that the trial court hold a hearing to determine whether the mother had substantially complied with her case plan and, if so, whether reunification would be in the manifest best interests of the child.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/August/August%2004,%202010/2D10-1168.pdf (August 4, 2010).

Third District Court of Appeal

Florida Department of Children and Families, v. In re Matter of ADOPTION OF X.X.G. and N.R.G., ___ So. 3d ___, 2010 WL 3655782 (Fla. 3d DCA 2010) **ADOPTION BY GAY PARENT UPHELD**. DCF appealed a final judgment of adoption in which the adoptive father of two boys was a homosexual, despite §63.042(3), Florida Statutes (year?), which states "No person eligible to adopt may adopt if that person is a homosexual." The trial court found, and all parties agreed, that the father was a fit parent and that the adoption was in the best interest of the children. The appellate court noted that under Florida law, a homosexual person is allowed to be a foster parent, and that under the rational basis test, "a court must uphold a statute if the classification bears a rational relationship to a legitimate governmental objective." However, the court found it difficult to see any rational basis in utilizing homosexual persons as foster parents or guardians on a temporary or permanent basis, while imposing a blanket prohibition on adoption by those same persons. Currently, the statute calls for an individual, case-by-case evaluation to determine if the proposed adoption is in the best interest of the child. Except for homosexual persons, there is no automatic, categorical exclusion of anyone else from consideration for adoption. The trial court held that the statute violated the equal protection rights of the children in addition to violating the equal protection rights of the father, and the appellate court affirm the judgment of adoption which held that subsection 63.042(3), Florida Statutes, violated the equal protection provision found in article I, section 2, of the Florida Constitution. <http://www.3dca.flcourts.org/Opinions/3D08-3044.pdf>

A.D. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ___, 2010 WL 3154854 (Fla. 3d DCA 2010). **CONFESSION OF ERROR.**

Due to confession of error, the Third District Court of Appeal reversed the trial court's order of Supplemental Findings for Adjudication of Dependency.

<http://www.3dca.flcourts.org/Opinions/3D10-1428.pdf> (August 11, 2010).

R.P. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ___, 2010 WL 3154859 (Fla. 3rd DCA 2010). **CONFESSION OF ERROR.**

Due to confession of error, the Third District Court of Appeal quashed the trial court's order for continuous alcohol monitoring.

<http://www.3dca.flcourts.org/Opinions/3D10-1855.pdf> (August 11, 2010).

Fourth District Court of Appeal

M.I. v. Department of Children and Families, ___ So. 3d ___, 2010 WL 3488828 (Fla. 4th DCA 2010) **TERMINATION OF PARENTAL RIGHTS AFFIRMED**. The father appealed the termination of his parental rights. The Department of Children and Families took the position that the trial court was correct in its termination, but that it erred in changing the case plan goal from permanent guardianship to adoption. The Guardian ad Litem argued that the trial court properly amended the case plan, terminated the Father's parental rights, and placed the child for adoption. The appellate court agreed with the Guardian ad Litem and affirmed. The Department had presented competent substantial evidence that termination was the least restrictive means of protecting the child and adoption was in the best interest of the child during the TPR trial, and the court entered an order terminating the father's parental rights to the child based upon case plan noncompliance. Section 39.6013, Florida Statutes (year?), expressly allows the amendment of case plan goals by the court at any time. The court also noted §39.621, Florida Statutes (year?), which states that the purpose of the permanency hearing is to determine whether modifying the goal is in the best interest of the child. The language in these statutes made it clear that a trial court was permitted to change the case plan goal, and the warnings in the case plan provided notice that parents could lose their parental rights if they failed to complete the case plan tasks.
<http://www.4dca.org/opinions/Sept%202010/09-08-10/4D09-3819.op.pdf> (September 8, 2010).

Fifth District Court of Appeal

J.S. v. Department of Children and Families, ___ So. 3d ___, 2010 WL 3808982 (Fla. 5th DCA 2010) **TPR AFFIRMED**. The mother appealed the final order entered by the trial court terminating her parental rights. She conceded that competent, substantial evidence supported the TPR on two of the statutory grounds alleged by DCF in the TPR petition. However, she contended that the trial court violated her due process rights by terminating her parental rights based upon additional grounds not set forth in the TPR petition. DCF properly conceded that the grounds that were not alleged in its petition should be stricken from the trial court's order. Therefore, the court struck those portions of the trial court's order and otherwise affirmed.
<http://www.5dca.org/Opinions/Opin2010/092710/5D10-607.op.pdf> (September 30, 2010).

Department of Children and Families v. T.T. and J.R., ___ So. 3d ___, 2010 WL 3446912 (Fla. 5th DCA 2010) **INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN**. Two children were removed and placed with grandparents due to domestic violence. After a year, the children were placed in guardianship with the grandparents, and the mother had two more children that were also placed with grandparents over the next few years. The mother and father moved to different states and eventually requested reunification with their children. Pursuant to their requests, the trial court directed DCF to obtain orders of compliance with ICPC for home studies on both parents. At a hearing on the mother's motion for holiday visitation, the trial court learned that DCF did not timely submit the ICPC orders to the other states' compact administrators. Over objections by DCF and the Guardian ad Litem about the incomplete ICPC approval procedure and the lack of any current information about the mother's housing or

financial ability to support four children, the trial court ordered reunification with the mother. The appellate court reversed the trial court's orders reuniting the children with their mother, dismissing the dependency proceeding, and terminating the trial court's jurisdiction because the orders did not comply with the ICPC, §409.401, Florida Statutes (year?). The court noted that the trial court was understandably frustrated with DCF's failure to comply with his order, which required DCF to obtain ICPC home studies of both parents. However, a trial court cannot send children to a receiving state unless it has complied with "each and every requirement set forth" in Article III of the ICPC. The ICPC requires that the receiving state evaluate the placement before the child is placed and then monitor the placement to protect the child. <http://www.5dca.org/Opinions/Opin2010/083010/5D09-4652.op.pdf> (September 1, 2010).

K.M. v. Department of Children and Families, ___ So. 3d ____, 2010 WL3359415 (Fla. 5th DCA 2010). **TERMINATION OF PARENTAL RIGHTS AFFIRMED PER CURIAM.**

The court affirmed termination of the mother's parental rights because the trial court's decision was supported by competent, substantial evidence.

<http://www.5dca.org/Opinions/Opin2010/082310/5D09-2726.op.pdf> (August 25, 2010)

Dissolution Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Pool v. Bunger, ___ So. 3d ____, 2010 WL 3398145, (Fla. 1st DCA 2010).

TRIAL COURT ORDER NOT APPEALABLE BECAUSE COURT HAD EXPRESSLY RESERVED JURISDICTION.

Former husband appealed a trial court order which had ruled on a number of post-dissolution issues concerning child support, visitation, and other matters pertaining to the parties' parenting plan. As the trial court had expressly reserved jurisdiction to determine the amount of former husband's child support arrearages, the appellate court concluded that the order on appeal was neither a final order nor an appealable non-final order; accordingly, it dismissed the appeal.

<http://opinions.1dca.org/written/opinions2010/08-31-2010/09-5642.pdf> (August 31, 2010).

Mize v. Mize, ___ So. 3d ____, 2010 WL 3328050, (Fla. 1st DCA 2010).

APPEAL DISMISSED DUE TO SPOUSE'S FAILURE TO REQUEST REHEARING.

Former husband appealed a final judgment of dissolution of marriage on several grounds. Appellate court agreed with him that the trial court's determinations were not supported by adequate factual findings, but concluded that former husband failed to preserve the issue for appellate review when he did not challenge the sufficiency of the findings through either a motion for rehearing or other post-judgment pleadings. Appeal dismissed.

<http://opinions.1dca.org/written/opinions2010/08-25-2010/10-0786.pdf>

(August 25, 2010).

Second District Court of Appeal

MacRae-Billewicz v. Billewicz, __ So. 3d __, 2010 WL 3269955, (Fla. 2d DCA 2010).

FULL FAITH AND CREDIT APPLIES TO INDIVIDUALS WHO WERE EITHER A PARTY IN THE PROCEEDINGS OR WERE GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD; CLASSIFICATION OF ASSETS MUST BE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE; TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO PROPERLY APPLY CHILD SUPPORT GUIDELINES; COURT MUST TAKE CHILD'S DISABILITY INTO ACCOUNT.

Former wife appealed a final judgment of dissolution of marriage on several grounds; appellate court reversed and remanded as to equitable distribution and child support. The trial court found that a condo in Canada acquired by the spouses during their marriage was subject to a New Hampshire probate order which had found that former husband had fraudulently acquired assets of a family trust; therefore, it concluded that the New Hampshire order divested the former spouses of any interest in the condo. Appellate court reiterated that courts are required to give full faith and credit to judgments from sister states; however, that goes only to the individuals who were either parties in the proceedings or were given notice and an opportunity to be heard. Appellate court held that, because former wife was not a party to the New Hampshire proceedings, the trial court had erred in giving full faith and credit to the New Hampshire's court's rulings. Appellate court also held that because both spouses had testified that the condo was a gift from former husband to former wife during the marriage and acquired with funds not associated with the trust assets, there was competent, substantial evidence that the condo was a marital asset. On the issue of child support, appellate court held that not only had the trial court failed to make the required findings with regard to former husband's income and had failed to take the child's disability (autism) into account, it had abused its discretion in failing to properly apply the child support guidelines.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/August/August%2020,%202010/2D07-5804.pdf (August 20, 2010).

Needham v. Needham, __ So. 3d __, 2010 WL 3155015, (Fla. 2d DCA 2010).

TRIAL COURT ERRED IN FAILING TO CONSIDER EFFECT EXPENSES ASSOCIATED WITH CHILD OF A PRIOR MARRIAGE WOULD HAVE ON CHILD SUPPORT AWARD.

Former wife appealed a final judgment of dissolution of marriage; appellate court reversed the award of child support payable by her to former husband. Appellate court concluded that the trial court erred in failing to consider the effect that the expenses associated with former wife's teenage daughter from an earlier marriage had on the child support award to former husband for their child. (The record did not reflect that former wife was receiving child support from her prior husband for her teenage daughter.) Appellate court stated it was not holding that the trial court had abused its discretion in awarding the amount of child support that it did and therefore was not compelling it to change the amount; its reversal was so that the trial court would take into consideration the effect of the older child.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/August/August%2011,%202010/2D09-545.pdf (August 11, 2010).

Furbee v. Barrow, __So. 3d__, 2010 WL 30596909, (Fla. 2d DCA 2010).

IN ABSENCE OF A SEPARATION AGREEMENT, CUT-OFF DATE FOR CLASSIFICATION OF ASSETS AND LIABILITIES IS THE DATE OF FILING PETITION FOR DOM; TRIAL COURT HAS MORE DISCRETION WITH VALUATION THAN CLASSIFICATION; VALUATION MUST BE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE; TRIAL COURT MUST IDENTIFY WHICH SPOUSE IS RESPONSIBLE FOR WHICH DEBT; ASSETS DEPLETED DURING PROCEEDINGS CANNOT BE AWARDED TO SPOUSE IN ABSENCE OF MISCONDUCT.

Both spouses appealed the final judgment dissolving their 14 year marriage. Commenting that many of the issues on appeal arose from the trial court's failure to make detailed findings of fact determining marital and nonmarital assets and liabilities, the appellate court reversed the portions of the final judgment pertaining to equitable distribution and remanded for a new trial. It noted that alimony and attorney's fees would also need to be reconsidered on remand. Appellate court held that in cases where the parties do not enter into a separation agreement, the cut-off date for classification purposes is the date of filing of the petition for dissolution. It also held that section 61.075(6), F.S. (year?), does not provide the same "bright line clarity" for valuing marital assets and liabilities as it does for classifying them, but instead gives the trial court greater discretion with the valuation process. The trial court's valuation, however, must be based on competent, substantial evidence. Appellate court reiterated that the trial court must identify which spouse is responsible for each liability; it is not enough to simply require the parties to equally divide any joint marital debt incurred during the marriage. Appellate court cautioned the trial court on remand not to award assets that were depleted during the dissolution proceedings for support and marital expenses in absence of any misconduct.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/August/August%2006,%202010/2D09-2505.pdf (August 6, 2010).

Third District Court of Appeal

Suarez v. Sanchez, __So. 3d__, 2010 WL 3239168, (Fla. 3d DCA 2010).

MODIFICATION OF ALIMONY REQUIRES SUBSTANTIAL CHANGE IN CIRCUMSTANCES WHICH WERE NOT CONTEMPLATED AT THE TIME OF FINAL JUDGMENT, AND WHICH ARE SUFFICIENT, MATERIAL, PERMANENT, AND INVOLUNTARY; TERMINATION OF PERMANENT ALIMONY REQUIRES PAYOR TO SHOW THAT HE/SHE CAN NO LONGER PAY ANY MONEY OR THAT THE PAYEE IS CAPABLE OF SELF-SUPPORT; IN DETERMINING WHETHER VOLUNTARY REQUIREMENT IS REASONABLE, TRIAL COURT MUST TAKE INTO ACCOUNT AGE, HEALTH, AND MOTIVATION FOR RETIREMENT OF PAYING SPOUSE, THE TYPE OF WORK PERFORMED, AND THE AGE AT WHICH OTHERS ENGAGED IN THAT LINE OF WORK USUALLY RETIRE.

Former wife appealed a post-dissolution order terminating former husband's alimony obligation, decreasing the obligation for an earlier period of time, and denying her request for attorney's fees. Appellate court concluded trial court abused its discretion by terminating and decreasing former husband's alimony obligation, but not in denying former wife's request for fees. Appellate court reiterated that to justify modification of alimony, the moving party must show substantial change in circumstances not contemplated at the time of final judgment of dissolution that is sufficient, material, permanent, and involuntary. To justify termination of

permanent periodic alimony, the paying spouse must show that he or she is no longer able to pay any money or that the receiving spouse is capable of self-support. In determining whether voluntary retirement is reasonable, the trial court must determine the age, health, and motivation for retirement of the paying spouse as well as the type of work he or she performs and the age at which others engaged in that line of work usually retire. Here, former husband was a mechanic who chose to retire at 81; appellate court held that his voluntary retirement was reasonable and properly considered by the trial court. Appellate court concluded that the decrease in his income constituted a substantial change in circumstances for purposes of modification of alimony; however, it found that the trial court had abused its discretion by terminating former husband's obligation to pay alimony, because he failed to establish that he did not have the ability to pay any alimony or that former wife was capable of supporting herself.

<http://www.3dca.flcourts.org/Opinions/3D09-1593.pdf> (August 18, 2010).

Bieda v. Bieda, __ So. 3d __, 2010 WL 3154834, (Fla. 3d DCA 2010).

TEMPORARY INJUNCTIONS ISSUED WITHOUT NOTICE ARE EXTRAORDINARY REMEDIES AND MUST STRICTLY COMPLY WITH FLORIDA RULE OF CIVIL PROCEDURE 1.610.

Former husband appealed orders granting former wife's ex parte verified emergency motions for temporary injunctions and final judgment for support arrearages, reimbursement, and attorney's fees. Appellate court reversed. Former wife succeeded in having the trial court issue an injunction to freeze a certificate of deposit without notice to former husband in an attempt to recoup arrearages. (Former husband's arrearage was roughly \$280,000.00; certificate of deposit was approximately \$200,000.00). Noting that it would review the trial court's legal conclusions de novo, appellate court held that a temporary injunction without notice is an extraordinary remedy which must strictly comply with Florida Rule of Civil Procedure 1.610. Appellate court concluded that the order in this case: did not include the requisite findings; did not define the injury; did not state why the injury was irreparable; and did not provide reasons why it was granted without notice to former husband. Appellate court also found that the trial court erred in entering a final judgment without providing notice and time for response to former husband. <http://www.3dca.flcourts.org/Opinions/3D09-3033.pdf> (August 11, 2010).

Sootin v. Sootin, __ So. 3d __, 2010 WL 3023361, (Fla. 3d DCA 2010).

PER UIFSA, OUT OF STATE COURTS MAY ENFORCE, BUT NOT MODIFY, FLA. SPOUSAL SUPPORT ORDERS.

Former wife appealed an order transferring a Florida post-final judgment dissolution case to Tennessee. Finding no authority to support the transfer, appellate court reversed. The couple divorced in Florida in 1998, and then each moved, independent of the other, to Tennessee. Appellate court held that "despite the obvious logic of allowing the two former spouses now living in Tennessee to resolve their dispute there," that under the Uniform Interstate Family Support Act (UIFSA), the Florida court had continuing exclusive jurisdiction over the spousal support issue as long as the obligation existed. Out of state courts may enforce, but not modify, Florida spousal support orders.

<http://www.3dca.flcourts.org/Opinions/3D09-2268.pdf> (August 4, 2010).

Pearce v. Pearce, __ So. 3d __, 2010 WL 3023335, (Fla. 3d DCA 2010).

THERE IS A REBUTTABLE PRESUMPTION AGAINST PERMANENT ALIMONY IN SHORT-TERM MARRIAGES.

Former wife appealed a final judgment of dissolution of marriage; at issue was equitable distribution and alimony. Having concluded that permanent periodic, lump sum, and rehabilitative alimony were inappropriate as the marriage lasted nine years, there were no children, and no rehabilitative plan was submitted by former wife, the trial court awarded bridge-the-gap to former wife and ordered former husband to cover her health insurance for a stated period of time. Reiterating that there is a rebuttable presumption against permanent periodic alimony in a dissolution involving a short-term marriage, the appellate court found that the trial court had not abused its discretion when it did not award it to former wife.

<http://www.3dca.flcourts.org/Opinions/3D09-0400.pdf> (August 4, 2010).

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

Hayde v. Hayde, __ So. 3d __, 2010 WL 3186495, (Fla. 5th DCA 2010).

SUBSTANTIAL AMOUNT OF TIME REQUIRES ADJUSTMENT TO CHILD SUPPORT; PERCENTAGE OF OVERNIGHTS TO CHANGE FROM 40% TO 20% IN SECTION 61.30(11)(b), F.S., EFFECTIVE 1/1/2011.

Appellate court held that section 61.30(11)(b), Florida Statutes (year?), requires a trial court to adjust child support, in accordance with a formula set forth in the statute, when a child spends a substantial amount of time with a parent. Although former husband was granted a substantial amount of time-sharing pursuant to the parenting plan, appellate court held that this fact was not reflected on the face of the judgment; accordingly, it remanded for the trial court to either recalculate the child support as required by the statute or give its reasons for not having done so. (Currently, "substantial amount of time" is defined by section 61.30(11)(b) as at least 40% of the overnights of the year; pursuant to Section 5 of Chapter 2010-199, Laws of Florida, this amount will be reduced to 20%, effective January 1, 2011).

<http://www.5dca.org/Opinions/Opin2010/080910/5D09-3807.op.pdf> (August 13, 2010).

Morris v. Morris, __ So. 3d __, 2010 WL 3269238, (Fla. 5th DCA 2010).

TERMINATION OF PERMANENT ALIMONY CORRECT IF SUPPORTIVE RELATIONSHIP EXISTS.

Appellate court found no abuse of discretion by trial court having terminated an award of permanent alimony to former wife in light of the existence of a supportive relationship.

<http://www.5dca.org/Opinions/Opin2010/081610/5D09-3209.op.corr.pdf> (August 20, 2010).

McGuire v. McGuire, __ So. 3d __, 2010 WL 3359416, (Fla. 5thth DCA 2010).

WHERE TRIAL COURT EXPRESSLY RESERVES JURISDICTION TO RESOLVE AN ISSUE AND FURTHER JUDICIAL LABOR IS CONTEMPLATED, APPELLATE COURT LACKS JURISDICTION TO ENTERTAIN AN APPEAL.

Former wife appealed an order amending the final judgment of dissolution. Appellate court dismissed for lack of jurisdiction, finding that the trial court had reserved jurisdiction to resolve an issue regarding the amount of income available for alimony following a scrivener's error in the final judgment. Appellate court held that, because the appealed order addressed an issue in which further judicial labor was contemplated, it was not final; thus, the appellate court lacked jurisdiction to entertain the appeal.

<http://www.5dca.org/Opinions/Opin2010/082310/5D09-3499.op.pdf> (August 27, 2010).

Domestic Violence Case Law

Florida Supreme Court

In re Amendments to the Florida Family Law Rules, No. SC06-2513 (Fla. 2010) **FAMILY LAW RULES AMENDED**. The court amended form 12.951(a) Petition to Disestablish Paternity and/or Terminate Child Support Obligation and 12.951(b) Order Disestablishing Paternity and/or Terminating Child Support Obligation, and created new rule 12.635 addressing relocation, all following recommendations by the Family Law Rules Committee. The Court also accepted the revision of eleven new relocation forms which are available for comment for the next sixty days. <http://www.floridasupremecourt.org/decisions/2010/sc06-2513.pdf> (September 30, 2010).

In re Amendments To The Florida Family Law Rules Of Procedure, ___ So.3d ___, 2010 WL 3701318 (Fla. 2010) **FAMILY LAW RULES AMENDED**. The Florida Bar's Family Law Rules Committee filed a "fast-track" report proposing amendments to the Florida Family Law Rules of Procedure Forms which the Florida Bar Board of Governors unanimously approved. The Supreme Court accepted the proposed changes, which included amendments to Florida Family Law Rules of Procedure Forms 12.902(e) (Child Support Guidelines Worksheet) and 12.996(a) (Income Deduction Order (Non-Title IV Case)). The proposed amendments are in response to chapter 2010-199, sections 3 and 5, Laws of Florida, which amend numerous provisions within chapter 61, Florida Statutes, pertaining to alimony and child support. With regard to forms 12.902(e) and 12.996(a), the amendments require: removal of the first three combined net income amounts in the guidelines schedule; the elimination of the twenty-five percent reduction in calculating monthly child care costs to be added to the basic child support obligation; a decrease from forty percent to twenty percent of the overnights in a year that a parent must have with a child to qualify as a "substantial amount of time" for time-sharing (formerly visitation) purposes; and the addition of a "Child Support Reduction/Termination Schedule" to income deduction orders issued after October 1, 2010. Because the amendments were not published for comment prior to their adoption, interested persons have sixty days from the date of the opinion in which to file comments with the Court. <http://www.floridasupremecourt.org/decisions/2010/sc10-1468.pdf> (September 23, 2010).

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

Polanco v. Cordeiro, ___ So. 3d ___, 2010 WL 3655514 (Fla. 2d DCA 2010) **ORDER FOR REPEAT VIOLENCE INJUNCTION REVERSED**. The respondent appealed a final judgment of injunction against repeat violence entered in favor of the petitioner. At the hearing on the petition, the petitioner testified that the respondent harassed and stalked her, but could not describe specific instances that fell within the statutory definition of repeat violence or stalking. The court noted that the trial judge's findings that the parties were emotional and hostile toward each other were insufficient to support an injunction against repeat violence as provided for in §784.046(2), Florida Statutes (year?). Because the petitioner failed to prove any acts of violence or stalking, the court reversed the trial court's decision.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/September/September%2022,%202010/2D09-2998.pdf (September 22, 2010).

S.D. v. Department of Children and Family Services, ___ So. 3d ___, 2010 WL 3363381 (Fla. 2d DCA 2010) **ORDER OF DEPENDENCY REVERSED**. The mother appealed an order adjudicating her child dependent. The mother claimed that the trial court failed to set forth the required factual findings in support of its determination of dependency and that the evidence presented at the hearing was legally insufficient to sustain the determination. The appellate court agreed because the only evidence of domestic violence was the child protective investigator's opinion as to the cause of the scratching and bruising on the mother's neck and chest. No evidence was presented that the child saw or heard any alleged violence or was otherwise in the presence of such violence. Neither was evidence presented that the child has been impacted, or could reasonably be impacted, by any alleged violence. The order of dependency was reversed.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/August/August%2027,%202010/2D10-1717.pdf (August 27, 2010).

Third District Court of Appeal

Aguiluz v. State, ___ So. 3d ___, 2010 WL 3239143 (Fla. 3d DCA 2010) **TESTIMONY REGARDING PRIOR INCIDENT WAS ADMISSIBLE**. The defendant appealed his conviction and sentence for second-degree murder with a deadly weapon. He argued that the trial court erred in admitting witness testimony regarding a collateral, uncharged crime because during the trial, the victim's best friend testified about a possible domestic violence incident that had occurred between the victim and the defendant. The trial judge had given the jury specific directions on how to interpret the evidence based upon Williams v. State, 110 So. 2d 654 (Fla.1959), and the appellate court found that the trial court did not abuse its discretion and that the testimony of prior incidents was admissible to prove motive, intent, and the absence of mistake or accident based upon §90.404(2)(a), Florida Statutes (2010). The court affirmed the conviction and sentence. <http://www.3dca.flcourts.org/Opinions/3D07-3191.pdf> (August 18, 2010).

Fourth District Court of Appeal

Department of Children and Families v. D.B.D., ___ So. 3d ___, 2010 WL 3324720 (Fla. 4th DCA 2010) **CHAPTER 39 INJUNCTION DISMISSED/DUE PROCESS**. The mother, a DCF attorney involved in a heated divorce, was denied both an injunction on behalf of her children and a

motion to suspend visitation by a family law judge. DCF then filed a §39.504 injunction that was heard before a different judge who was not familiar with the family. The father received notice 2 hours before the hearing but was not allowed to appear by phone and was unable to attend. In addition to the mother, two lawyers and three DCF representatives were present. None of the attorneys made the judge aware of the ongoing proceedings in family court, mentioned the mother's August 21 emergency motion to suspend visitation, or brought up the mother's previous attempt to secure an injunction on behalf of the children. The DCF attorney also convinced the judge to enter an injunction that remained in effect until further order of the court, without holding any further hearing. However, §39.504(2) provides that if a judge issues an immediate injunction, the court must hold a hearing on the next day of judicial business to dissolve the injunction or to continue or modify it. The family court judge ordered the transfer of the injunction case to the family court because of the longstanding dissolution case pending there and held a hearing, after which she dismissed the injunction entered against the father. At the hearing which was required by due process, DCF failed to justify the continuation of the injunction and the court dismissed the injunction. The appellate court affirmed.

<http://www.4dca.org/opinions/Aug%202010/08-25-10/4D09-4862.op.pdf> (August 25, 2010).

Fifth District Court of Appeal

Department of Children and Families v. T.T., ___ So. 3d ___, 2010 WL 3446912 (Fla. 5th DCA 2010) **INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN**. Two children were removed and placed with grandparents due to domestic violence. After a year, the children were placed in guardianship with the grandparents, and the mother had two more children that were also placed with grandparents over the next few years. The mother and father moved to different states and eventually requested reunification with their children. Pursuant to their requests, the trial court directed DCF to obtain orders of compliance with ICPC for home studies on both parents. At a hearing on the mother's motion for holiday visitation, the trial court learned that DCF did not timely submit the ICPC orders to the other states' compact administrators. Over objections by DCF and the Guardian ad Litem about the incomplete ICPC approval procedure and the lack of any current information about the mother's housing or financial ability to support four children, the trial court ordered reunification with the mother. The appellate court reversed the trial court's orders reuniting the children with their mother, dismissing the dependency proceeding, and terminating the trial court's jurisdiction, because the orders did not comply with the ICPC §409.401, Florida Statutes (year?). The court noted that the trial court was understandably frustrated with DCF's failure to comply with his order, which required DCF to obtain ICPC home studies of both parents. However, a trial court cannot send children to a receiving state unless it has complied with "each and every requirement set forth" in Article III of the ICPC. The ICPC requires that the receiving state evaluate the placement before the child is placed and then monitor the placement to protect the child.

<http://www.5dca.org/Opinions/Opin2010/083010/5D09-4652.op.pdf> (September 1, 2010).