

**OSCA/OCI'S FAMILY COURT CASE LAW UPDATE**  
**February 2011**

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## Delinquency Case Law

### *Florida Supreme Court*

No new opinions for this reporting period.

### *First District Court of Appeal*

D.W.G. v. State, \_\_ So. 3d \_\_, 2011 WL 522877 (Fla. 1st DCA 2011). **DISPOSITION WAS REVERSED AND REMANDED WHERE THE TRIAL COURT’S DEPARTURE FROM THE DEPARTMENT OF JUVENILE JUSTICE’S PLACEMENT RECOMMENDATION FAILED TO COMPLY WITH THE REQUIREMENTS SET FORTH IN E.A.R. V. STATE, 4 SO. 3D 614 (FLA. 2009).** The trial court departed from the Department of Juvenile Justice's (DJJ) recommendation that the juvenile be placed on probation. Instead, the trial court committed the juvenile to a moderate-risk commitment program. The First District Court of Appeal held that the trial court failed to engage in the analysis required by E.A.R. v. State, 4 So. 3d 614 (Fla. 2009), and reversed. In the instant case, the trial court should have compared the relevant features of the various restrictiveness levels, “with a focus on the appropriateness of each setting as a tool for achieving the rehabilitative goal.” Accordingly, the case was reversed and remanded to provide the trial court with an opportunity to enter an order fulfilling the requirements set forth in E.A.R., or, if it could not do so, to impose the DJJ's recommendation.

<http://opinions.1dca.org/written/opinions2011/02-16-2011/10-4547.pdf> (February 16, 2011).

C.C.T. v. State, \_\_ So. 3d \_\_, 2011 WL 362241 (Fla. 1st DCA 2011). **DISPOSITION WAS REVERSED AND REMANDED WHERE THE TRIAL COURT’S DEPARTURE FROM THE DEPARTMENT OF JUVENILE JUSTICE’S PLACEMENT RECOMMENDATION FAILED TO COMPLY WITH THE REQUIREMENTS SET FORTH IN E.A.R. V. STATE, 4 SO. 3D 614 (FLA. 2009).** The Department of Juvenile Justice (DJJ) recommended that the juvenile be committed to a moderate-risk facility. The trial court departed from the DJJ’s recommendation and committed the juvenile to a high-risk facility. The First District Court of Appeal held that the trial court failed to comply with the “highly specific” requirements set forth in E.A.R. v. State, 4 So. 3d 614 (Fla. 2009). The trial court failed to articulate an understanding of the respective characteristics of high-risk and moderate-risk restrictiveness levels and logically and persuasively explain why the high-risk level was better suited to serving the juvenile's rehabilitative needs in the least restrictive setting while maintaining the ability of the State to protect the public from further acts of delinquency. Accordingly, the case was reversed and remanded.

<http://opinions.1dca.org/written/opinions2011/02-07-2011/10-4001.pdf> (February 7, 2011).

### *Second District Court of Appeal*

J.M. v. Gargett, in his official capacity as Superintendent of the Manatee County Regional Juvenile Detention Center, \_\_ So. 3d \_\_, 2011 WL 637296 (Fla. 2d DCA 2011). **NOTHING IN S. 985.037(2), F.S., PROHIBITS THE CIRCUIT COURT IN A SINGLE PROCEEDING FROM ADJUDICATING A DEFENDANT GUILTY OF MULTIPLE INSTANCES OF INDIRECT CRIMINAL CONTEMPT AND IMPOSING CONSECUTIVE SENTENCES FOR EACH CONVICTION.** The juvenile

filed a petition for writ of habeas corpus, arguing that his consecutive placements in secure detention for two separate violations of a juvenile probation order adjudicated in a single hearing were not authorized pursuant to s. 985.037(2), F.S. (2010). On October 13, 2010, the juvenile was placed on juvenile probation. On October 25, 2010, the circuit court filed three separate orders to show cause why the juvenile should not be held in indirect criminal contempt. On November 8, 2010, the juvenile pleaded guilty to all three charges. The circuit court placed the juvenile in secure detention for five days for the first offense of indirect criminal contempt. On November 10, 2010, the circuit court placed the juvenile in fifteen days' secure detention for the second offense. The second period of secure detention was not to commence until the first period had expired. The Second District Court of Appeal held that nothing in s. 985.037(2), F.S., prohibited the circuit court from adjudicating a defendant guilty of multiple instances of indirect criminal contempt in a single proceeding and then imposing consecutive sentences for each conviction. The Second District agreed with the reasoning in K.Q.S. v. State, 975 So. 2d 536 (Fla. 1st DCA 2008) and disagreed with M.P. v. State, 988 So. 2d 1266 (Fla. 5th DCA 2008). Accordingly, the petition was denied and conflict certified with the Fifth District's opinion in M.P. [http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Page\\_2011/February/February%2023,%202011/2D10-5420.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/February/February%2023,%202011/2D10-5420.pdf) (February 23, 2011).

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

No new opinions for this reporting period.

### ***Fifth District Court of Appeal***

D.T. v. State, \_\_\_ So. 3d \_\_\_, 2011 WL 553766 (Fla. 5th DCA 2011). **BURGLARY OF A CONVEYANCE ADJUDICATION WAS REVERSED AND REMANDED WHERE THE STATE OFFERED NO EVIDENCE THAT THE JUVENILE WAS ONE OF THE INDIVIDUALS SEEN INSIDE OR TRYING TO ENTER THE VEHICLE SPECIFIED IN THE PETITION FOR DELINQUENCY.** Juvenile appealed his adjudications for burglary of a structure, burglary of a conveyance, and loitering or prowling. The Fifth District Court of Appeal affirmed the adjudications as to burglary of a structure and loitering or prowling without further comment. However, the Fifth District reversed as to burglary of a conveyance because the State offered no evidence that the juvenile was one of the individuals seen inside or trying to enter the vehicle specified in the petition for delinquency. <http://www.5dca.org/Opinions/Opin2011/021411/5D10-3406.op.pdf> (February 18, 2011).

B.S.K. v. State, \_\_\_ So. 3d \_\_\_, 2011 WL 470256 (Fla. 5th DCA 2011). **HABEAS CORPUS PETITION GRANTED AND CASE REMANDED WHERE RISK ASSESSMENT INSTRUMENT WAS IMPROPERLY PREPARED.** The juvenile filed a petition for a writ of habeas corpus, claiming that she was illegally detained due to an improperly prepared Risk Assessment Instrument (RAI). The juvenile was charged with felony possession of a controlled substance, along with three misdemeanors. The Fifth District Court of Appeal found that her RAI included one point based on the mistaken

conclusion that the crime was committed in a well-planned and premeditated manner. Without the additional point, the juvenile's total score on the RAI would be reduced to eleven points, which, by itself, did not support secure detention. The Fifth District ordered that line III.E. of the RAI be corrected to reflect zero points, and that any other scoring errors could be corrected. If the juvenile did not score sufficient points under the corrected RAI, and no other criteria for detention were found, the juvenile was to be released to nonsecure detention or home detention. Accordingly, the petition was granted and the case remanded with instructions. <http://www.5dca.org/Opinions/Opin2011/020711/5D11-309%20op.pdf> (February 7, 2011).

## **Dependency Case Law**

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

D.T. v. Department of Children and Families, \_\_\_ So. 3d \_\_\_\_, 2011 WL 659872 (Fla. 1st DCA 2011). [DENIAL OF REUNIFICATION AFFIRMED.](#)

The First District Court of Appeal affirmed an order denying the mother's motion for reunification. The mother argued on appeal that the trial court failed to make findings required by section 39.621(10), Florida Statutes, and that the record lacked competent substantial evidence that reunification would be detrimental to the child. However, the court held that the mother failed to preserve the issue for appeal and therefore affirmed the trial court's order. <http://opinions.1dca.org/written/opinions2011/02-24-2011/10-5313.pdf> (February 24, 2011).

### ***Second District Court of Appeal***

R.N. v. Department of Children and Family Services, \_\_\_ So. 3d \_\_\_\_, (Fla. 2d DCA 2011). [PERMANENT GUARDIANSHIP AFFIRMED.](#)

The Second District Court of Appeal summarily affirmed an order of dependency and wrote an opinion affirming an order placing the same child in a permanent guardianship with the child's stepfather. The father had appealed the orders. The trial court failed to specify visitation conditions as required by section 39.6221(2)(c), Florida Statutes, but rather ordered the father and stepfather to agree on a visitation and contact schedule. On appeal, the court noted that this was impractical and a violation of the statute. The court therefore reversed the guardianship order and remanded the case for entry of an order setting out a visitation schedule.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Page\\_2011/February/February%2025,%202011/2D10-4126.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/February/February%2025,%202011/2D10-4126.pdf) (February 25, 2011).

### ***Third District Court of Appeal***

C.R. v. Department of Children and Family Services and the Guardian ad Litem Program,

\_\_\_ So. 3d \_\_\_\_, 2011 WL 613685 (Fla. 3d DCA 2011). [CLARIFICATION PER CURIAM DENIED.](#) The court summarily denied a motion for clarification. However, Judge Rothenberg dissented from the denial of the motion to write that she would have granted the motion. Judge Rothenberg would have certified two questions of great public importance to the Supreme Court regarding section 39.507(7), Florida Statutes. <http://www.3dca.flcourts.org/Opinions/3D09-2928mot.pdf> (February 9, 2011).

### ***Fourth District Court of Appeal***

I.Z. v. B.H. and R.M., \_\_\_ So. 3d \_\_\_\_, 2011 WL 520547, 36 Fla.L.Weekly D350 (Fla. 4th DCA 2011). [TERMINATION OF PARENTAL RIGHTS REVERSED.](#)

The Fourth District Court of Appeal reversed termination of a mother's parental rights that had been sought by the child's permanent guardians. In 2007, the child was placed in a permanent guardianship with B.H. and R.M., and the Department's supervision was terminated. The order was affirmed on appeal. In 2009, the guardians petitioned to terminate the mother's parental rights under sections 39.806(1)(b), (c), and (e), Florida Statutes. The trial court granted the petition on all 3 grounds. On appeal, the court recounted the factual history of the case and noted, among other things, that the mother had mental health issues, and that the child wanted to visit her mother and was not afraid of her mother. The court noted its standard of review and then addressed the grounds for termination. Regarding abandonment, the court noted that the mother was incarcerated from February 2009 until November 2009 and that there were no visits during that period. The mother testified that she sent the child a birthday card. The trial court found that in December 2009 the mother visited, and a therapist recommended a cessation in visitation due to the mother's inappropriate behavior during the visit. However, the record indicated that no visitation was permitted after the mother's release due to the pending termination of parental rights proceedings. The district court found that the case was distinguishable from T.G. v. Department of Children and Families, 8 So. 3d 1198 (Fla. 4th DCA 2009), which was cited by the guardians, and noted that the mother had made a dedicated effort to maintain contact with the child. The court also rejected the application of section 39.806(1)(c). The court noted that the statute permits termination when the parent's conduct towards the child or other children demonstrates a threat to the child's well-being, but a parent's mental health issues, without evidence that they pose a risk to a child's well-being, are insufficient to justify termination under the statute. The incident the court found that might have supported a threat to the child occurred in December 2006, roughly three years prior to the decision to terminate parental rights. In reviewing the third ground for termination, the court noted that the trial court had simply referred back to its findings under the other two grounds and determined that they also supported termination under section 39.806(1)(e), Florida Statutes. The district court noted that the findings were not supported by the record and that abandonment, abuse, or neglect had not been shown by clear and convincing evidence. The court therefore reversed termination of parental rights. <http://www.4dca.org/opinions/Feb%202011/02-16-11/4D10-3372.op.pdf> (February 16, 2011).

## ***Fifth District Court of Appeal***

J.D.L. v. W.J.J., \_\_\_ So. 3d \_\_\_, 2011 WL 553586, 36 Fla.L.Weekly D380 (Fla. 5th DCA 2011).

### **TERMINATION OF PARENTAL RIGHTS REVERSED DUE TO LACK OF TRANSCRIPT.**

The Fifth District Court of Appeal reversed an order terminating the mother's parental rights. The mother had been declared indigent and was therefore entitled to a sufficiently complete record to allow appellate review. However, no court reporter had been present at the proceedings and there was no adequate substitute for a transcript. Because Rule 8.255(g) mandated that a record of the proceedings be made, the court reversed the order and remanded the case for a new trial.

<http://www.5dca.org/Opinions/Opin2011/021411/5D10-1850%20op.pdf> (February 17, 2011).

A.N.B. v. Department of Children and Families, \_\_\_ So. 3d \_\_\_, 2011 WL 553602, 36

### **ORDER OF ADJUDICATION AFFIRMED IN PRIVATE DEPENDENCY ACTION.**

The Fifth District Court of Appeal affirmed an order adjudicating a child as dependent in a private dependency action. The mother had appealed the order, arguing: 1) insufficient evidence; 2) improper reliance on the child's preference; and 3) improper exclusion of a witness. Although the court agreed that some of the trial court's findings were inadequate, it noted that the finding of neglect was supported by the record, and that an additional dependency ground was unchallenged by the mother. Although the court agreed that the child's preference was an invalid basis for dependency, it noted that that was not the sole basis of the trial court's finding. On the final issue, although the exclusion of the mother's boyfriend as witness was erroneous, the mother did not proffer the witness' testimony or explain its significance. The court therefore affirmed the trial court's order.

<http://www.5dca.org/Opinions/Opin2011/021411/5D10-2356.op.pdf> (February 17, 2011).

## **Dissolution Case Law**

### ***Florida Supreme Court***

Arthur v. Arthur, \_\_\_ So. 3d \_\_\_, 2011 WL 5758983, (Fla. 2011). **DETERMINATION OF BEST INTEREST IN PETITION FOR RELOCATION MUST BE MADE AT TIME OF TRIAL NOT PROSPECTIVELY.**

In a case of conflict between the First and Second District Courts of Appeal, the Supreme Court quashed the Second DCA's decision in Arthur v. Arthur, 987 So. 2d 212 (Fla. 2d DCA 2008), to the extent that it was inconsistent with its opinion and approved the First DCA's decisions in Sylvester v. Sylvester, 992 So. 2d 296 (Fla. 1st DCA 2008), Janousek v. Janousek, 616 So. 2d 131 (Fla. 1st DCA 1993), and Martinez v. Martinez, 573 So. 2d 37 (Fla. 1st DCA 1990), to the extent that they were consistent with its opinion. The trial court had designated former wife as the primary residential parent and had granted former husband visitation; the trial court had also authorized former wife to permanently relocate to Michigan once the couple's child, who was sixteen months old at the time of trial, turned three. The trial court reasoned that relocation was proper because former wife had grown up in Michigan and former husband had extended

family there. The trial court had postponed relocation until after age three based on its understanding that children between infancy and age three need more frequent contact with their parents in order to bond. On appeal, former husband argued that the trial court lacked authority to make a prospective determination of the child's best interest. Citing both Section 61.13001, Florida Statutes, for the factors a trial court must consider when reviewing a request to relocate and the views expressed by the First DCA decisions as to deferred relocation, the Court concluded that the determination of best interest in a petition for relocation must be made at the time of trial, and must be supported by competent, substantial evidence. The Supreme Court termed a "prospective based" analysis as "unsound" because "a trial court is not equipped with a 'crystal ball' that enables it to prophetically determine whether future relocation is in the best interest of the child." <http://www.floridasupremecourt.org/decisions/2010/sc08-1675.pdf> (February 11, 2011).

### ***First District Court of Appeal***

Ingram v. Ingram, \_\_ So. 3d \_\_, 2011 WL 522873, (Fla. 1st DCA 2011).

**TRIAL COURT ERRED BY AWARDING FEES WITHOUT REQUISITE FINDINGS.**

Appellate court agreed with former husband in his appeal of the dissolution of marriage that trial court had erred in awarding attorney's fees to former wife without having made the requisite findings. Accordingly, it reversed on that issue and affirmed the remainder of the judgment. Citing Blits v. Renaissance Cruises, Inc., 647 So. 2d 971 (Fla. 4th DCA 1994), the appellate court noted that in some cases, the trial court's failure to make the required findings may qualify as harmless error; however, that was not the case here.

<http://opinions.1dca.org/written/opinions2011/02-16-2011/10-2374.pdf> (February 16, 2011).

Peters v. Blackshear, \_\_ So. 3d \_\_, 2011 WL 522871, (Fla. 1st DCA 2011).

**REQUIREMENT OF LIFE INSURANCE TO SUPPORT ALIMONY OR CHILD SUPPORT OBLIGATIONS REQUIRES SPECIAL CIRCUMSTANCES; AMOUNT OF INSURANCE MUST BE RELATED TO THE EXTENT OF THE OBLIGATION BEING SECURED.**

Former husband appealed final judgment which: dissolved a sixteen-year marriage; imputed income to him; awarded permanent periodic alimony and attorney's fees to former wife; and ordered that he maintain life insurance to secure the alimony and child support obligations. Finding support in the record and no abuse of discretion, the appellate court affirmed the imputation of income and the alimony; however, it vacated the life insurance requirement due to the absence of any special circumstances in the record. Reiterating that the amount of insurance must be related to the extent of the obligation being secured, the appellate court concluded that the amount of insurance required to secure the child support obligation bore no "reasonable relationship" to the amount to be paid to support a child turning eighteen in August 2011.

<http://opinions.1dca.org/written/opinions2011/02-16-2011/09-5413.pdf> (February 16, 2011).

Sullivan v. Hoff-Sullivan, \_\_ So. 3d \_\_, 2011 WL 522874, (Fla. 1st DCA 2011).

**RES JUDICATA BARS SPOUSE FROM RELITIGATING ISSUES ALREADY DECIDED.**

Of the four issues raised by former husband, the appellate court concluded that he had failed to preserve three for appellate review and affirmed; however, it agreed with him that *res judicata*

prevented former wife from relitigating enforcement of the dissolution of marriage final judgment, which was issued in Georgia. The appellate court reiterated that the doctrine of *res judicata* means that a final judgment issued by a court of competent jurisdiction is absolute and settles all issues actually litigated and those which could have been litigated. The appellate court held that because the orders regarding the dissolution agreement were entered by a Georgia court, former wife was barred from relitigating that issue in Florida; the Florida trial court had jurisdiction once the date the petition for domestication was filed.  
<http://opinions.1dca.org/written/opinions2011/02-16-2011/10-3796.pdf> (February 16, 2011).

Holub v. Holub, \_\_ So. 3d \_\_, 2011 WL 478467, (Fla. 1st DCA 2011).

**DETERMINING FACTS FOR JURISDICTION UNDER UCCJEA ARE: WHERE CHILD LIVED WITH PARENT FOR THE SIX MONTHS PRECEDING FILING, AND WHETHER CHILD LIVED IN ANY OTHER STATE FOR SIX MONTHS PRECEDING FILING.**

Former husband appealed final judgment of dissolution of marriage; the appellate court affirmed, addressing only the jurisdiction of the trial court to rule on parenting and child support issues of a couple who were married in and had their child in Austria. The appellate court held that the determining facts for the trial court's jurisdiction under the UCCJEA are: 1) where the child lived with a parent for the six months preceding the filing of a petition for dissolution; and 2) whether the child lived in any state, other than the state in which the petition was filed, for six consecutive months prior to filing the petition. The appellate court held that, because former wife had alleged in her petition that the child had lived with her in Florida for a period of more than six months and because former husband had chosen neither to respond nor to contest the issue in his UCCJEA, he was estopped from disputing, at this point, where the child lived. The appellate court concluded trial court had jurisdiction.  
<http://opinions.1dca.org/written/opinions2011/02-11-2011/10-1345.pdf> (February 11, 2011).

Schang v. Schang, \_\_ So. 3d \_\_, 2011 WL 362422, (Fla. 1st DCA 2011). **ORDER ENTERED OVER ONE YEAR FROM TRIAL REVERSED; NO BRIGHT LINE RULE ON REASONABLE TIME TO ENTER JUDGMENT; CITE TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.250; KEY FACTORS IN REVIEWING JUDGMENTS.**

Former wife appealed an order modifying alimony and child support. The appellate court reversed because the trial court's order, which was entered more than one year after the date of the evidentiary hearing on former husband's petition for modification, did not reflect adequate consideration of the facts. Acknowledging that there is no "bright line rule" stating a reasonable time for rendering a judgment, the appellate court noted that Florida Rule of Judicial Administration 2.250(a)(1)(C) provides that the presumptively reasonable period for completing a domestic relations case is 180 days. The appellate court concluded that excessive delay in the entry of a judgment, especially when combined with an indication that "something is seriously amiss on the merits," warrants reversal. The appellate court identified two key factors: 1) whether there is a conflict between the judge's statements or findings at trial and the order; and 2) whether a factual finding in the final judgment is unsupported by the evidence. The appellate court reiterated that the primary concern in determining the amount of alimony is balancing the payee spouse's needs, in light of the standard of living established during the marriage, with the payor spouse's ability to pay; a trial court must also consider

factors enumerated in Section 61.08(2), Florida Statutes.

<http://opinions.1dca.org/written/opinions2011/02-07-2011/09-5310.pdf> (February 7, 2011).

### ***Second District Court of Appeal***

Morrison v. Morrison, \_\_ So. 3d \_\_, 2011 WL 478711, (Fla. 2d DCA 2011).

**TRIAL COURT ABUSED ITS DISCRETION BY MODIFYING ALIMONY SET IN MSA.**

Former husband appealed the trial court's decision, on former wife's petition for modification, to increase permanent alimony from \$900 to \$3250 a month; the original amount was pursuant to a marital settlement agreement. Former wife cross-appealed, arguing that the trial court abused its discretion in ordering that the parties be responsible for their own attorney's fees. The appellate court reiterated that in modification proceedings, the burden is on the petitioner to establish a substantial change in circumstances not contemplated at the time of the final order; it stated that petitioner "carries an exceptionally heavy burden" when the alimony award is fixed by agreement. The appellate court concluded that the trial court had abused its discretion because the record did not support a substantial change in circumstances based on former wife's need. The appellate court discussed Bedell v. Bedell, 583 So. 2d 1005 (Fla. 1991), regarding circumstances where the payee spouse's needs were initially not met owing to the inability of the payor spouse to meet the needs at the time the final judgment was entered; it distinguished Morrison from Bedell because the original alimony award was pursuant to a marital settlement agreement.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Page\\_2011/February/February%2011,%202011/2D08-5350.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/February/February%2011,%202011/2D08-5350.pdf) (February 11, 2011).

Schlifstein v. Schlifstein, \_\_ So. 3d \_\_, 2011 WL 439468, (Fla. 2d DCA 2011).

**TRIAL COURT ERRED IN ENFORCING A VOID MEDIATION AGREEMENT.**

Former husband appealed the final judgment of dissolution of marriage, arguing that the trial court erred in entering the final judgment based on a void mediation agreement; the appellate court agreed. The agreement was conditioned upon payment of a specified amount by former husband to former wife; failure to pay would result in nullification of the agreement. Although there was no dispute that former husband failed to pay the amount, the trial court enforced the terms of the agreement based on its determination that former husband had not used his best efforts to obtain refinancing in order to pay the amount. The appellate court held that the language of the agreement was clear and unambiguous; former husband's inability to pay would nullify the agreement. Accordingly, it reversed all aspects of the final judgment with the exception of the provision dissolving the marriage.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Page\\_2011/February/February%2009,%202011/2D09-4926.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/February/February%2009,%202011/2D09-4926.pdf) (February 9, 2011).

### ***Third District Court of Appeal***

Ferguson v. Ferguson, \_\_ So. 3d \_\_, 2011 WL 409083, (Fla. 3d DCA 2011).

**TRIAL COURT ERRED IN VOIDING PROVISION OF AN MSA; UNDER CONTRACT LAW, WHICH IS APPLICABLE TO MSA, BAD DEALS ARE AS ENFORCEABLE AS GOOD ONES; BECAUSE THE ERROR**

**WAS ON THE FACE OF THE JUDGMENT, REVERSAL WAS PERMISSABLE EVEN IN ABSENCE OF TRANSCRIPT.**

Former wife appealed an order in which the trial court voided a provision of a mediated marital settlement agreement (MSA) due to a downward trend in the real estate economy. The appellate court reversed, holding that the “bedrock” principle of contract law, which applies to marital settlement agreements, is that bad deals are as enforceable as good ones. The provision in question referred to the marital home. Former husband was responsible for paying former wife a specific amount and for refinancing the home; former wife in turn would quit-claim her interest in the home and would vacate the home after receiving her equalization payment. Former husband neither paid the amount nor refinanced the home, leading former wife to move for contempt and enforcement, specifically to receive the payment. Citing the real estate downturn, the trial court voided the provision, ordered former wife to vacate the home, and ordered that the home be listed for sale with the proceeds split between the former spouses. Commenting that the record was “sparse” and noting the absence of a transcript, the appellate court concluded that the trial court reversibly erred by voiding a provision of the MSA and that the error was on the face of the judgment. The appellate court held that the trial court was obligated to enforce the terms of the MSA and that former wife was entitled to a judgment against former husband for the equalization payment.

<http://www.3dca.flcourts.org/Opinions/3D10-0479.pdf>

(February 2, 2011).

***Fourth District Court of Appeal***

Perelli v. Bolanos, \_\_ So. 3d \_\_, 2011 WL 519963, (Fla. 4th DCA 2011).

**TRIAL COURT MUST MAKE SEPARATE AFFIRMATIVE FINDINGS IN CONTEMPT PROCEEDINGS THAT CONTEMNOR HAS THE ABILITY TO PAY THE PURGE AMOUNT AND THE BASIS FOR THAT ABILITY.**

Short opinion in which the appellate court concluded that the trial court had erred by having ordered incarceration without having specified the basis for its finding that former husband had the financial ability to pay the purge amount. Citing Martyak v. Martyak, 873 So. 2d 405 (Fla. 4th DCA 2004), the appellate court held that the trial court should have made separate affirmative findings that former husband had the ability to pay the purge and the basis for that ability.

<http://www.4dca.org/opinions/Feb%202011/02-16-11/4D09-3008.op.pdf> (February 16, 2011).

***Fifth District Court of Appeal***

Coristine v. Coristine, \_\_ So. 3d \_\_, 20110 WL 470056, (Fla. 5th DCA 2011).

**ALTHOUGH GENERAL RULE IS TO AWARD EXCLUSIVE USE AND POSSESSION OF MARITAL HOME TO PRIMARY RESIDENTIAL PARENT UNTIL YOUNGEST CHILD REACHES MAJORITY, EXISTENCE OF SPECIAL CIRCUMSTANCES MAY DICTATE EXCEPTION; COMPETENT, SUBSTANTIAL EVIDENCE REQUIRED FOR DECISION.**

Primary issue in appeal by former wife to the final judgment of dissolution of marriage was whether the trial court abused its discretion by ordering sale and partition of the marital home rather than awarding exclusive use and possession to her until the couple’s youngest children

reached majority. Reiterating the general rule that a trial court should award exclusive use and possession to the primary residential parent until the youngest child either reaches majority or is emancipated, the appellate court noted that special circumstances exist where the parties' incomes are inadequate to meet their debts, obligations, and living expenses in addition to maintaining the marital home. In this case, the trial court was not convinced that former wife was in a position to be able to maintain the home if she were given exclusive use and possession; the appellate court concluded that the trial court's decision was supported by competent, substantial evidence.

<http://www.5dca.org/Opinions/Opin2011/020711/5D08-3724.op.pdf> (February 11, 2011).

## **Domestic Violence Case Law**

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

Randolph v. Rich, --- So. 3d ----, 2011 WL 522868 (Fla. 1st DCA 2011). The Appellant appealed the final judgment of injunction for protection against domestic violence entered against him based upon the petition of his former wife. In order for the trial court to issue an injunction for protection against domestic violence, the party seeking the injunction must establish that he or she has an objectively reasonable fear that he or she is in imminent danger of becoming the victim of any act of domestic violence. In evaluating these issues, the trial court must consider the behavior of the party against whom the injunction is sought in the context of the current threats and the parties' relationship and its history. The court also noted that the law requires more than general relationship problems and uncivil behavior to support the issuance of an injunction. Rather, the law requires that the party seeking the injunction must present sufficient evidence to establish the objective reasonableness of his or her fear that the danger of violence is "imminent." Although the testimony revealed much bad behavior, the evidence did not rise to the statutory standard and the appellate court reversed because the petition was legally insufficient to support the injunction.

<http://opinions.1dca.org/written/opinions2011/02-16-2011/10-5711.pdf> (February 16, 2011).

### ***Second District Court of Appeal***

No new opinions for this reporting period.

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

No new opinions for this reporting period.

***Fifth District Court of Appeal***

No new opinions for this reporting period.