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

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Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

State v. S.A., ___ So. 3d ___, 2014 WL 551989 (Fla. 2014). THE FLORIDA SUPREME COURT HELD THAT THE RECAPTURE WINDOW FOR THE SPEEDY TRIAL RULE FOR JUVENILES WAS CALCULATED AS A 5-DAY PERIOD FOLLOWED BY A SEPARATE 10-DAY PERIOD. The State appealed the trial court's discharge of the juvenile under the juvenile speedy trial rule. The Fourth District Court of Appeal affirmed the trial court's decision, but certified conflict with the Fifth District Court of Appeal's decision in State v. McFarland, 747 So. 2d 481 (Fla. 5th DCA 2000), *rev. denied,* 767 So. 2d 458 (Fla. 2000). The issue was whether Florida Rule of Juvenile Procedure 8.090(m)(3), the recapture window for the speedy trial rule, was calculated as a five-day period followed by a separate ten-day period or a single 15-day period. The juvenile was brought to trial 17 days after he filed his motion for discharge. The juvenile argued that he was entitled to a discharge because the State failed to bring him to trial within 15 days. The State argued that the recapture window consisted of a separate 5–day period to hold a hearing and a 10–day period after the hearing to bring the juvenile to trial. Since the hearing was held within 5 days of the date the juvenile filed his motion—excluding the intervening weekend and legal holiday (Jewish New Year) as required by the time computation rule—and the juvenile was then brought to trial within 10 days of the hearing, the State argued that it had brought the juvenile to trial within the recapture window.
The Florida Supreme Court held that the plain language of Rule 8.090(m)(3) provided for a recapture window that is comprised of up to 5 days for the court to hold a hearing on a motion for discharge followed by a separate period of up to 10 days that the juvenile must be brought to trial. The Florida Supreme Court approved the Fifth District's decision in McFarland and quashed the Fourth District's decision in S.A. In the instant case, the hearing on the juvenile's motion for discharge was timely because under the computation of time rule, intervening weekends and legal holidays are excluded in calculating the deadline for the 5–day hearing. The juvenile was then timely brought to trial within 10 days after the hearing. Therefore, the juvenile was not entitled to discharge and the case was remanded for further proceedings.
http://www.floridasupremecourt.org/decisions/2014/sc12-2229.pdf (February 13, 2014).

First District Court of Appeals

Okaloosa County v. Department of Juvenile Justice, __ So. 3d __, 2014 WL 472089 (Fla. 1st DCA 2014). FINAL DEPARTMENT OF JUVENILE JUSTICE (DJJ) ORDER, ADDRESSING SECURE DETENTION COST SHARING PROCEDURES PURSUANT TO S. 985.686, F.S. (2008), REVERSED AND REMANDED WITH DIRECTIONS TO ADOPT THE ADMINISTRATIVE LAW JUDGE'S (ALJ) RECOMMENDED ORDER. Counties appealed a DJJ final order granting the DJJ's exceptions to the Administrative Law Judge's (ALJ's) recommended order addressing the cost-sharing procedures and the allocation of

costs for secure juvenile detention pursuant to s. 985.686, F.S. (2008). The ALJ found that the DJJ misinterpreted the statutory scheme for detention cost-sharing for Fiscal Year 2008–2009. The DJJ filed exceptions. The DJJ's final order granted the exceptions. After entry of the final order in this case, the First District Court of Appeals issued an opinion in Department of Juvenile Justice v. Okaloosa County, 113 So. 3d 1074 (Fla. 1st DCA 2013), which the parties agreed utilized essentially the same reasoning in rejecting the DJJ's interpretation of the cost-sharing law. In its answer brief, the DJJ acknowledged error regarding its interpretation of s. 985.686, F.S. (2008), and stated its intention to adopt the ALJ's recommended order. Given the confession of error, the First District Court of Appeals reversed and remanded for the DJJ to adopt the ALJ's recommended order. Orange County sought alternative relief relating to assessments made by the DJJ. The DJJ issued its annual reconciliation for Fiscal Year 2008–2009 and notified the counties via a December 7, 2009, letter. For Orange County, the reconciliation resulted in a $684,481.65 overpayment credit, which Orange County accepted. On January 26, 2010, the DJJ issued a letter to the counties setting out the specific procedures for any county that wished to challenge the assessments in the annual reconciliation. Orange County did not file a challenge. In a March 23, 2010, letter to the counties, the DJJ advised that it had concluded its analysis of the challenges to the annual reconciliation. In addition to making adjustments to the accounts of the challenging counties, the DJJ modified the amounts set forth in the annual reconciliation for all thirty-eight non-fiscally constrained counties. Although Orange County initially had received a credit, the March 23, 2010, "proposed adjustment" sought a payment of $701,331.63 from Orange County. Orange County filed a timely petition and sought a determination that the DJJ should not have made any successive adjustment to the annual reconciliation. At the conclusion of the consolidated administrative proceedings, which included the original challengers to the annual reconciliation and the non-challenging counties, the ALJ made the following determinations: 1) the December 7, 2009, annual reconciliation constituted final agency action for all counties that had not contested the reconciliation in accordance with the DJJ's January 26, 2010, letter; 2) the DJJ lacked statutory authority to recalculate the amounts set forth in its annual reconciliation for the fifty-five counties that had not filed challenges; and 3) the doctrine of administrative finality precluded Orange County from belatedly challenging the annual reconciliation. Finding that the DJJ acted without any legitimate reason in disturbing and adjusting the annual reconciliation as to those counties such as Orange County that did not timely challenge it, the ALJ recommended reinstatement of the amounts set forth in the December 7, 2009, annual reconciliation letter for Orange County and similarly situated counties. The First District held that these rulings fully comported with the law. Accordingly, the First District reversed the final order and remanded with instructions to the DJJ to adopt the recommended order in its entirety.

http://opinions.1dca.org/written/opinions2014/02-07-2014/13-0465.pdf (February 7, 2014).

Second District Court of Appeals

W.D. v. State, __ So. 3d __, 2013 WL 470893 (Fla. 2d DCA 2014). THE DEPUTY HAD NO BASIS TO CHARGE THE JUVENILE WITH BURGLARY, TRUANCY, OR TRESPASS. Following the denial of his motion to suppress identity and evidence, the juvenile pled no contest to loitering and prowling, possession of cannabis, and possession of paraphernalia. The juvenile then appealed the withholding of adjudication and disposition order, arguing that his dispositive motion to suppress should have been granted because the arresting officer had no basis to arrest him for loitering and prowling.

The juvenile and another boy were seen by a deputy on the back patio of a vacant house under renovation by Habitat for Humanity. There was a dispatch reporting that children were behind the house. The deputy was concerned about a possible burglary or truancy. The deputy observed no wrongdoing. The boys fled when they saw the deputy approaching them. The deputy caught, searched, handcuffed, arrested, and put the boys into his police car. The deputy checked the house and found no signs of a burglary, attempted burglary, or any other mischief. The deputy acknowledged that he arrested the boys solely "from the suspicion of a crime being committed." The boys explained to the deputy that they had gone to a store, bought some sodas, and had stopped to drink the sodas on the back patio of the house. The juvenile also advised the deputy that he had been suspended from school. The trial court denied the juvenile's motion to suppress. The Second District Court of Appeals found that although the deputy probably had a basis to investigate further, a mere investigatory stop is not what happened. The deputy arrested the juvenile for loitering and prowling. The crime of loitering and prowling has two elements: (1) the defendant loitered and prowled in a place, at a time, or in a manner not usual for law-abiding individuals and (2) the loitering occurred under "circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity."

The Second District held that the deputy had no basis to charge the juvenile with burglary, truancy, or trespass. Assuming that the juvenile's presence was more than just vaguely suspicious, the second element of loitering and prowling is not satisfied in any way. In the instant case, there was no evidence suggesting that the deputy observed conduct sufficient to raise an immediate concern for the safety of persons or property. Thus, the trial court erred in denying the motion to suppress. Accordingly, the Second District reversed and remanded. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2005,%202014/2D12-3453%20%202D12-3454.pdf (February 5, 2014).

J.N. v. State, __ So. 3d __, 2013 WL 464071 (Fla. 2d DCA 2014). COMMITMENT TO MODERATE-RISK FACILITY REVERSED AND REMANDED BECAUSE THE JUVENILE COURT DEVIATED FROM THE DEPARTMENT OF JUVENILE JUSTICE'S (DJJ) RECOMMENDATION OF PROBATION WITHOUT INDICATING ITS REASONS AS REQUIRED BY E.A.R. V. STATE, 4 SO. 3D 614 (FLA. 2009). The juvenile

appealed his commitment to a moderate-risk facility. In its initial predisposition report, the Department of Juvenile Justice (DJJ) recommended that the juvenile be committed to a low-risk facility. However, no low-risk facility would accept the juvenile because of his designation as a sex offender. The DJJ then provided an amended predisposition report which recommended probation. At the disposition hearing, the court considered the fact that the DJJ initially recommended committing the juvenile to a low-risk facility and changed it to probation when it found out that no low-risk facility would accept the juvenile. The juvenile court ordered commitment to a moderate-risk facility. On appeal, the Second District Court of Appeals found that the only finding the juvenile court made regarding the departure was that a low-risk facility was not available for the juvenile and that, "[i]f there's any deviation at all its [sic] DJJ from its own initial determination that he needed a low risk commitment." The Second District held that this failed to satisfy the requirements set forth in E.A.R. v. State, 4 So. 2d 614 (Fla. 2009), and thus reversed and remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2005,%202014/2D13-351.pdf (February 5, 2014).

Q.G.W.M. v. State, __ So. 3d __, 2013 WL 540158 (Fla. 2d DCA 2014). HEARSAY EVIDENCE THAT THE JUVENILE WAS EXPELLED FROM SCHOOL WAS INSUFFICIENT TO VIOLATE HIS PROBATION FOR FAILING TO ATTEND SCHOOL WITHOUT DISCIPLINARY ISSUES. The juvenile appealed the trial court's order modifying his probation. The juvenile was charged with violating his probation by violating his curfew, failing to attend school without disciplinary issues by being expelled from school, and by testing positive for an illegal drug. The trial court found him guilty of violating his probation and placed him on probation again, with additional terms. On appeal, the Second District Court of Appeals found that the juvenile failed to preserve the curfew and drug testing issues. However, the Second District found that the evidence that the juvenile was expelled from school was hearsay and insufficient to violate his probation for failing to attend school without disciplinary issues. Accordingly, the Second District affirmed the trial court's order on the violation of probation but remanded the orders for the trial court to strike from the findings that the juvenile violated the probation condition of attending school without disciplinary issues. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2012,%202014/2D13-992.pdf (February 12, 2014).

Third District Court of Appeals

D.A. v. State, __ So. 3d __, 2013 WL 784990 (Fla. 3d DCA 2014). THE TRIAL COURT DID NOT HAVE JURISDICTION TO ENTER THE DISPOSITION ORDER WHERE THE JUVENILE WAS 19 YEARS OLD ON THE DATE THE ORDER WAS ENTERED. The juvenile appealed an order withholding adjudication and issuing a judicial admonition. The juvenile challenged the trial court's jurisdiction to enter

the disposition order because he was 19 years old on the date the order was entered. See s. 985.0301(5)(a), F.S. (2012). Based on the State's confession of error, the Third District Court of Appeals reversed and remanded with directions that the case be dismissed. http://www.3dca.flcourts.org/Opinions/3D13-2652.pdf (February 26, 2014).

Fourth District Court of Appeals

A.M.R. v. State, __ So. 3d __, 2013 WL 537562 (Fla. 4th DCA 2014). DISPOSITION ORDERS REVERSED AND REMANDED FOR CORRECTION. The juvenile challenged his adjudications for three counts of violation of probation in three separate cases and for new law violations in two separate cases. The disposition orders granted the juvenile credit for time served in a secure detention facility prior to adjudication, but did not specify the amount of days of credit the juvenile was entitled to. Additionally, the orders committed the juvenile for an indeterminate period "but no longer than the child's 21st birthday or the maximum term of imprisonment an adult may serve for each count listed above." In the three disposition orders for the violations of probation, the disposition orders referenced the adult violation of probation statute, s. 948.06, F.S. (2011), instead of the juvenile violation of probation statute, s. 985.439, F.S. (2011). The juvenile had filed a Motion to Correct Disposition Errors, which was denied by the trial court. The Fourth District Court of Appeals found that disposition orders did not comply with Florida Rule of Juvenile Procedure 8.115(d)(2). It is not enough for a disposition order to merely reference the maximum statutory sentence for an offense without specifying what the maximum sentence actually is. Additionally, the juvenile's disposition orders did not specify the number of days that the juvenile served in secure detention before disposition. Additionally, the orders for the three violation of probation cases must also be corrected to reflect the proper violation of probation statute under which the juvenile was charged. Accordingly, the Fourth District affirmed the adjudications but reversed and remanded the disposition orders for correction. http://www.4dca.org/opinions/Feb%202014/02-12-14/4D12-653.op.pdf (February 12, 2014).

Fifth District Court of Appeals

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

K.D. and Z.H. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ____, 2014 WL 444022 (Fla. 2d DCA 2014). TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED. The Second District Court of Appeals reversed an order terminating parental rights of both parents to their twins. The opinion represented the second time that the case had been on appeal. The initial appeal resulted in an *en banc* opinion that, *inter alia*, concluded that if the trial court elected not to terminate parental rights to the two children, it could not place them in a permanent guardianship. The court therefore reversed the orders then on appeal and remanded the case for the trial court to reconsider the issues of least restrictive means and manifest best interests. *See* Department of Children and Family Services v. K.D., 88 So. 3d 977 (Fla. 2d DCA 2012 (en banc)). On remand, the trial court and the parties disagreed on whether additional evidence could be presented. The trial court relied on existing evidence and reapplied the least restrictive means and manifest best interests analyses. On the second appeal, the District Court was concerned with the lack of updated information before the trial court when the trial determined the children's manifest best interests under s. 39.810, F.S. (2013). The District Court could not say with certainty whether the trial court, if it had updated information on the children, would have concluded that termination of parental rights and adoption were appropriate, or whether the trial court would have adjudicated the children as dependent instead. The court therefore remanded the case for the trial court to determine least restrictive means and manifest best interests while permitting the parties to present additional evidence.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2005,%202014/2D13-538.pdf (February 5, 2014).

A.C. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ____, 2014 WL 594381 (Fla. 2d DCA 2014). PERMANENT GUARDIANSHIP ORDER REVERSED AND REMANDED. The Second District Court of Appeals reversed an order of permanent guardianship of a father's three children. Although the trial court's decision to place the children in a permanent guardianship was supported by competent, substantial evidence, the trial court's order failed to contain or reference the findings required by s. 39.6221(2)(a), F.S. (2013). Therefore the District Court reversed and remanded for entry of an amended order.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2014,%202014/2D13-4186.pdf (February 14, 2014).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

D.A. v. Department of Children and Families, Guardian ad Litem Program, et. al., ___ So. 3d ____, 2014 WL 464151 (Fla. 4th DCA 2014). TERMINATION OF PARENTAL RIGHTS AFFIRMED. The Fourth District Court of Appeals affirmed the termination of a mother's parental rights. The mother had argued that her due process rights and her right to a hearing by a fair and impartial judge were violated. The mother's argument was based on the fact that the judge who ordered the department to file the petition for termination of parental rights was the same judge who heard the trial and decided the petition. On appeal, the court held that the procedure did not violate the mother's rights to due process and to a fair and impartial judge. http://www.4dca.org/opinions/Feb%202014/02-05-14/4D13-2523.pdf (February 5, 2014)

Fifth District Court of Appeals

No new opinions for this reporting period.

Dissolution Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

Rushing v. Rushing, __So. 3d__, 2014 WL _____ (Fla. 1st DCA 2014). APPEAL DISMISSED; ORDER CONTEMPLATES FURTHER JUDICIAL ACTION. The appeal was dismissed because the trial court's post-judgment order contemplated further judicial action. http://opinions.1dca.org/written/opinions2014/02-17-2014/10-6522.pdf (February 17, 2014).

Rushing v. Rushing, __So. 3d__, 2014 WL 594383 (Fla. 1st DCA 2014). APPEAL TO ORDER CONTEMPLATING FURTHER JUDICIAL REVIEW DISMISSED. This case features the same parties as above, although it concerns a different issue. Former wife appealed from orders denying her motions for fees for defense of a foreclosure action and to require former husband to pay a contempt fine. The appellate court dismissed the appeal to the first order because it contemplated further judicial review and was outside its jurisdiction; it affirmed the appeal to the second order without discussion. http://opinions.1dca.org/written/opinions2014/02-17-2014/13-0998.pdf (February 17, 2014).

Broemer v. Broemer, __So. 3d__, 2014 WL 628105 (Fla. 1st DCA 2014). FINAL JUDGMENT QUASHED AND REMANDED AFTER CONCESSION OF ERROR. Following former husband's concession of error, the appellate court quashed the judgment and remanded for proceedings consistent with Broemer v. Broemer, 109 So. 3d 284, (Fla. 1st DCA 2013). http://opinions.1dca.org/written/opinions2014/02-18-2014/13-4809.pdf (February 18, 2014).

Behnam v. Zadeh, __So. 3d__, 2014 WL 684952 (Fla. 1st DCA 2014). ERROR TO TREAT MOTION TO DISMISS AS MOTION FOR SUMMARY JUDGMENT. The trial court's entry of an order of final summary judgment in a dissolution of marriage case was error because no motion for summary judgment was before the court. The spouses had married in Iran. After they separated, former wife relocated to Gainesville, Florida. She originally filed a petition for support unconnected with dissolution, then amended it to a petition for dissolution. Arguing that they had already been divorced in Iran, former husband moved to dismiss. The trial court granted summary judgment. The appellate court found error and reversed and remanded. http://opinions.1dca.org/written/opinions2014/02-21-2014/12-5760.pdf (February 21, 2014).

Broadway v. Broadway, __So. 3d__, 2014 WL 684956 (Fla. 1st DCA 2014). CUT-OFF DATE FOR DETERMINING ASSETS AND LIABILITIES IS THE EARLIEST OF: DATE SPOUSES ENTERED INTO VALID SEPARATION AGREEMENT; OTHER DATE SPECIFIED IN THAT AGREEMENT; OR DATE OF FILING OF PETITION FOR DISSOLUTION. HERE, ASSET PURCHASED BEFORE FILING DATE SHOULD HAVE BEEN INCLUDED AS A MARITAL ASSET SUBJECT TO EQUITABLE DISTRIBUTION. Former wife appealed the final judgment of dissolution on numerous grounds. The appellate court affirmed on all issues without discussion, but found merit in one; accordingly, it reversed and remanded on that issue. The trial court ruled that a 25-foot camper purchased by former husband during the week the spouses separated was acquired post-separation and therefore, non-marital. The appellate court

concluded this was error as the cut-off date for determining assets and liabilities, by law, is the earliest of: the date the spouses entered into a valid separation agreement; another date specified in that agreement; or the date of filing of the petition for dissolution. Here, there was no evidence of a valid separation agreement; therefore, the cut-off date was the date of filing. Because both spouses testified that former husband had purchased the camper before that date, the camper should have been classified as a marital asset subject to equitable distribution. http://opinions.1dca.org/written/opinions2014/02-21-2014/13-2779.pdf (February 21, 2014).

Vonnoh v. Vonnoh, __So. 3d__, 2014 WL 684961 (Fla. 1st DCA 2014). TRIAL COURT'S SCHEME OF EQUITABLE DISTRIBUTION MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; TRIAL COURT'S DIVISION OF COSTS BETWEEN SPOUSES IN PARENTING PLAN DID NOT REFLECT THE EVIDENCE. Former husband appealed the trial court's final judgment which dissolved the marriage and created a parenting plan. The appellate court reversed and remanded on two issues and affirmed the remainder of the judgment. First, the appellate court found that the trial court erred in requiring a specific annuity election related to former husband's retirement income plan without competent, substantial evidence. Second, former wife conceded error as to a provision within the parenting plan requiring a division of costs for extracurricular activities based on the spouses' respective incomes when the evidence supported a finding that the spouses would equally share those costs. http://opinions.1dca.org/written/opinions2014/02-21-2014/13-2940.pdf (February 21, 2014).

Second District Court of Appeals

La Fountain v. LaFountain, __So. 3d__, 2014 WL 486134 (Fla. 2d DCA 2014). CHILD SUPPORT REMANDED TO TRIAL COURT FOR RECALCULATION. Former husband argued that the trial court erred in awarding the majority of time-sharing to former wife and in its child support calculations. The appellate court agreed with former husband that the trial court miscalculated the child support award by adding child care expenses which were contrary to the testimony. The appellate court reversed and remanded child support to the trial court with directions that it recalculate former husband's current and retroactive child support obligation without the child care expense. It affirmed the remainder of the final judgment. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2007,%202014/2D10-2304.pdf (February 7, 2014).

Wagner v. Wagner, __So. 3d__, 2014 WL 562937 (Fla. 2d DCA 2014). ERROR TO ASSIGN CREDIT CARD DEBT INCURRED BEFORE DATE OF FILING OF DISSOLUTION PETITION TO ONE SPOUSE; SHOULD HAVE BEEN MARITAL DEBT. IN ABSENCE OF VALID SETTLEMENT AGREEMENT, CUT-OFF FOR DETERMINING MARITAL ASSETS AND LIABILITIES IS FILING DATE OF DISSOLUTION PETITION; COLLEGE EXPENSES INCURRED AFTER FILING DATE MUST BE AGREED TO. The appellate court agreed with former husband that the trial court erred in assigning him credit card debt for payment of an adult child's college expenses incurred before former wife filed her petition for dissolution. In absence of a valid settlement agreement, the cut-off for determining marital assets and liabilities is the date of the filing of the petition for dissolution. College expenses for an adult child incurred *after* the date of filing must be agreed to. The trial court was instructed on remand to classify the debt as marital and to adjust its equitable distribution.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2014,%202014/2D12-5404.pdf (February 14, 2014).

Shadwick v. Shadwick, __So. 3d__, 2014 WL 594369 (Fla. 2d DCA 2014). APPEAL OF FEES PREMATURE WHEN ACTUAL AMOUNT IS NOT DETERMINED. Former husband appealed the alimony and attorney's fees awards in an amended final judgment of dissolution. The appellate court affirmed the alimony award without discussion and dismissed the appeal regarding fees as, "premature with respect to the determination on entitlement to attorney's fees." Because the actual amount of fees was not determined, that portion of the judgment was a non-final, non-reviewable order.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2014,%202014/2D12-6325.pdf (February 14, 2014).

Flynn v. Flynn, __So. 3d__, 2014 WL 562939 (Fla. 2d DCA 2014). TRIAL COURT DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW IN FAILING TO STAY A NEW CAUSE OF ACTION FILED BY SPOUSE INVOLVING THE SAME ISSUES AS ONGOING PROCEEDINGS IN FAMILY DIVISION OF CIRCUIT COURT. Former husband petitioned for certiorari review of an order denying his motion to stay a civil action filed by former wife pending resolution of a similar issue in the family division of the trial court. The appellate court concluded that the trial court had departed from the essential requirements of law in failing to stay former wife's cause of action. Noting that both cases involved the same set of facts, the appellate court pointed out the potential for conflict between separate divisions of the circuit court arising from simultaneous litigation of the cases as well as unnecessarily litigating substantially similar issues with identical parties. The appellate court granted certiorari, quashed the order denying the stay, and remanded with directions to stay former wife's suit pending resolution of the ongoing proceedings in the family division.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2014,%202014/2D13-3329.pdf (February 14, 2014).

Nenov v. Nacheva, __So. 3d__, 2014 WL 784289 (Fla. 2d DCA 2014). ORDER DENYING MOTION TO ENFORCE DISSOLUTION JUDGMENT AFFIRMED; APPEAL TO ORDER GRANTING PERMISSION TO TRAVEL WITH MINOR MOOT. Former husband appealed trial court orders: 1) denying his motion to enforce the dissolution judgment; and 2) granting former wife's motion to travel outside the United States with their minor child. The appellate court affirmed denial of the motion to enforce the judgment without comment and dismissed the appeal to the order granting permission to travel as moot.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2026,%202014/2D13-2190.pdf (February 26, 2014).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

DeLabry v. Sales, __So. 3d__, 2014 WL 444040 (Fla. 4th DCA 2014). TRIAL COURT HAS INHERENT AUTHORITY TO MODIFY CHILD SUPPORT; A SPOUSE SEEKING DOWNWARD MODIFICATION OF AN AGREED UPON AMOUNT OF CHILD SUPPORT BEARS A HEAVIER BURDEN; RETROACTIVITY IS THE RULE RATHER THAN THE EXCEPTION IN MODIFICATION OF ALIMONY AND CHILD SUPPORT; SPOUSE NOT ENTITLED TO FEES UNDER EITHER MARITAL SETTLEMENT AGREEMENT OR ROSEN. The appellate court affirmed the trial court's order granting former husband's petition for downward modification of child support based on its findings that the child support was modifiable and that the decrease in his income was a substantial change in circumstances warranting a reduction. The trial court reasoned that because the alimony and child custody sections of the marital settlement agreement (MSA) contained an express agreement that neither was modifiable and the child support section did not, the child support was modifiable. The appellate court held that a trial court has the inherent authority to modify child support if a spouse proves a substantial change in circumstances; however, if child support is an agreed upon amount, the spouse seeking a downward modification bears a heavier burden. The appellate court concluded that the trial court had not abused its discretion either by finding former husband's income a substantial change of circumstances warranting reduction of child support, or by making that reduction retroactive to the date of the filing of his petition. Retroactivity is the rule rather than the exception in modification of alimony and child support. It also concluded that the trial court had not abused its discretion in denying fees and costs to former wife as she was not the prevailing party as required by the MSA, nor had she alleged sufficient grounds to recover under Rosen v. Rosen, 696 So. 2d 697 (Fla. 1997). The dissenting judge disagreed that former husband had carried his burden to modify the agreed upon amount of child support and felt that the trial court had abused its discretion.
http://www.4dca.org/opinions/Feb%202014/02-05-14/4D12-3143.op.pdf (February 5, 2014).

Padilla v. Vindel, __So. 3d__, 2014 WL 537512 (Fla. 4th DCA 2014). TRIAL COURT'S DISMISSAL OF PETITION FOR DISSOLUTION FOR LACK OF JURISDICTION REVERSED; SPOUSE HAD RESIDED IN FLORIDA SIX MONTHS. Former wife appealed the trial court's dismissal of her petition for dissolution for lack of jurisdiction. The appellate court reversed; the record established that she had resided in Florida six months before the filing of the petition, as required by s. 61.021, F.S. (2012).
http://www.4dca.org/opinions/Feb%202014/02-12-14/4D12-4156.op.pdf (February 12, 2014).

Fifth District Court of Appeal

Hachenberger v. Hachenberger, __ So. 3d__, 2014 WL 470639 (Fla. 5th DCA 2014). A TRIAL JUDGE CANNOT INITIATE EX PARTE COMMUNICATION WITH A PARTY VIA A FACEBOOK FRIEND REQUEST. A writ of prohibition was granted after the trial judge initiated ex parte communications with a party through a Facebook friend request. See Chace v. Loisel, __ So. 3d__, 2014 WL 258620 (Fla. 5th DCA 2014).
http://www.5dca.org/Opinions/Opin2014/020314/5D13-4450.op.pdf (February 3, 2014).

Higdon v. Higdon, __So. 3d__, 2014 WL 560833 (Fla. 5th DCA 2014). CHARGING LIEN PREMATURE; TRIAL COURT CAN CONSIDER IT AFTER FINAL JUDGMENT AND

AFTER SPOUSE RECEIVES NOTICE AND OPPORTUNITY TO BE HEARD. Former wife appealed an order granting an attorney's charging lien in a pending dissolution case. She had argued that it was premature, but the trial court entered its order without holding a hearing to consider her objection. This denial of due process was error. The appellate court held that her attorney, who withdrew prior to the conclusion of the dissolution, had perfected his right to seek a charging lien; however, it agreed with former wife that the order was premature because it issued before it could be determined that the attorney's services resulted in a benefit to her—in the form of assets awarded during dissolution—to which the charging lien could attach. The trial court can consider entry of an order establishing a charging lien after it renders the final dissolution judgment and after former wife has been given notice and an opportunity to be heard. http://www.5dca.org/Opinions/Opin2014/021014/5D13-1924.op.pdf (February 14, 2014).

Motie v. Motie, __So. 3d__, 2014 WL 656748 (Fla. 5th DCA 2014). PERMANENT ALIMONY PROVIDES FOR NEEDS AND NECESSITIES AS ESTABLISHED DURING THE MARRIAGE; PRIMARY FACTORS ARE NEED AND ABILITY TO PAY; STATUTORY REBUTTABLE PRESUMPTION OF PERMANENT ALIMONY FOR MARRIAGES LASTING 17 YEARS OR MORE; AWARD OF RETROACTIVE ALIMONY ALSO BASED ON NEED AND ABILITY TO PAY; RETROACTIVE CHILD SUPPORT APPLIES TO PERIOD SPOUSES LIVE APART; BREADWINNER SPOUSE RESPONSIBLE FOR MORTGAGE AND OTHER EXPENSES DURING THE MARRIAGE CANNOT RECEIVE CREDIT FOR PAYMENT OF THOSE EXPENSES DURING SEPARATION; TRIAL COURT ERRED IN DOUBLE-COUNTING MORTGAGE PAYMENTS. Former wife raised several issues in the appeal of a final judgment of dissolution of 17-year marriage. The appellate court agreed with her that the trial court erred in awarding her durational instead of permanent alimony and in incorrectly calculating retroactive alimony and child support. The purpose of permanent alimony is to provide for the needs and necessities of life as established during the marriage. The primary factors to be considered are the needs of one spouse and the ability of the other to pay. There is a rebuttable presumption that permanent alimony is appropriate after a marriage lasting 17 years or more. Here, the trial court's findings were insufficient to conclude that there was no need for ongoing permanent support to rebut that presumption; therefore, it abused its discretion. An award of retroactive alimony must also be based on need and ability to pay. Here, the trial court failed to make any findings of fact regarding need and ability to pay during the retroactive period. It erred in calculating the retroactive child support by awarding it to a period of time when the spouses were still residing together (the spouses had lived together after the filing of the petition for dissolution). It also erred by giving former husband a credit for making payments to former wife that she used to pay the mortgage and by double-counting those payments. When the breadwinner spouse is generally responsible for paying the mortgage and other household expenses during the marriage, it is inappropriate for the trial court to award a credit to that spouse for paying those expenses during separation. The trial court found that former husband owed child support arrearage, but concluded no arrearage was due because he paid the mortgage and other marital expenses. This was double-counting.
http://www.5dca.org/Opinions/Opin2014/021714/5D12-3951.op.pdf (February 21, 2014).

Leming v. Jenkins, __So. 3d__, 2014 WL 656664 (Fla. 5th DCA 2014). TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING TRANSFER OF CHILD CUSTODY

PORTION OF DISSOLUTION ACTION BASED ON ITS FINDING THAT SPOUSE HAD NOT ESTABLISHED OTHER STATE WAS A MORE APPROPRIATE FORUM. Former wife appealed the denial of her motion to transfer the child custody portion of the dissolution action to Tennessee due to forum non conveniens. The appellate court concluded that the trial court had not abused its discretion in deciding to retain jurisdiction based on its finding that former wife had not met her burden of establishing that Tennessee was a more appropriate forum. http://www.5dca.org/Opinions/Opin2014/021714/5D13-2240.op.pdf (February 21, 2014).

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Drug Court/Mental Health Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.