

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE
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Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

K.N.W. v. Durham and A.F.R. v. Durham, __ So. 3d __, 2011 WL 198380 (Fla. 1st DCA 2011). **PETITIONS FOR HABEAS CORPUS RELIEF WERE DENIED FOR FAILURE TO FIRST EXHAUST AVAILABLE REMEDIES WITH TRIAL COURT.** Two juveniles separately petitioned for habeas corpus relief. Their petitions were denied by unpublished orders. The First District Court of Appeal consolidated their cases for purposes of this opinion to explain the basis for their rulings. After being arrested, neither juvenile reached the 12-point threshold on the Risk Assessment Instrument (RAI) necessary to qualify for secure detention. Nevertheless, both were ordered to be held in secure detention. The trial court briefly stated on the record its reasons for doing so. In each case, defense counsel objected for the record, but did not state any specific objection to the circuit court's ruling. In their petitions, the juveniles argued that their detentions were illegal because the circuit court failed to issue written reasons for ordering a more restrictive detention placement as required by s. 985.255(3)(b), F.S. Further, even if the reasons orally pronounced had been reduced to writing, they were insufficient to justify secure detention. The First District Court of Appeal found that before seeking habeas corpus relief in the First District, a juvenile is required to first present arguments in favor of release to the trial court. In the instant case, defense counsel's general objections did not alert the trial court to the need for written departure orders. The absence of such orders is clearly a matter that could have been remedied through either a timely objection or a motion for rehearing. Further, the failure to allow the trial court the opportunity to correct any error or procedural deficiency prevented the creation of an adequate record for appellate review. Accordingly, the juveniles' petitions were denied for failure to first exhaust all available remedies with the lower court.

<http://opinions.1dca.org/written/opinions2011/01-24-2011/10-6664.pdf> (January 24, 2011).

M.M. v. State, __ So. 3d __, 2011 WL 103036 (Fla. 1st DCA 2011). **ADJUDICATION FOR RESISTING WITHOUT VIOLENCE WAS REVERSED WHERE JUVENILE WAS NOT UNDER ARREST OR BEING DETAINED WHEN HE REFUSED TO PROVIDE HIS NAME OR IDENTIFICATION.** At issue in this Anders v. California, 386 U.S. 738 (1967), appeal was whether the juvenile was correctly adjudicated delinquent for resisting without violence when he refused to give his name or identification. The juvenile and a group of youngsters were at a Starbucks in a shopping center anchored by a Publix supermarket. The group got into a loud disagreement with another patron. By the time a police officer arrived, the disturbance had ended and the group was quietly sitting at a table. The officer asked the group to leave. After a lot of protest, all except the juvenile left as requested. When the officer made it clear she wanted the juvenile to leave the shopping center altogether, he began walking away. The officer followed the juvenile as he walked extremely slowly toward the Publix. The juvenile was inside the Publix when the officer

asked for his name and identification. The juvenile twice refused to give his name and claimed he had no identification on him. The juvenile was arrested and charged with resisting without violence. The First District Court of Appeal held that the juvenile was not under arrest or lawfully detained when he refused to give his name or provide identification. Therefore the juvenile's refusal did not constitute obstruction or resistance. Although the juvenile had initially refused to leave the area, he ultimately complied with the officer's request. The officer beseeched the juvenile to leave, indicating he would not be arrested if he did so, and then essentially escorted him away from the scene. At no time was the juvenile under lawful detention. Thus, he was free to refuse to identify himself to the officer. Accordingly, the adjudication for resisting without violence was reversed.

<http://opinions.1dca.org/written/opinions2011/01-13-2011/10-2490.pdf> (January 13, 2011).

Second District Court of Appeal

J.E.R. v. State, __ So. 3d __, 2011 WL 252731 (Fla. 2d DCA 2011). **CASE REMANDED FOR CORRECTION OF THE AMOUNT OF TIME SERVED TO REFLECT CREDIT FOR TIME SERVED IN SECURE DETENTION.** The juvenile was hiding in a friend's bedroom when he should have been in school. The friend's father found and removed the juvenile from the home and returned him to the area near the school that the juvenile told him he attended. The father then discovered that several valuable items were missing from the home. One of the items was found in the juvenile's possession later that day. The juvenile was charged with burglary of a dwelling and grand theft. The juvenile was acquitted of the burglary charge, but adjudicated delinquent for grand theft. On appeal, the juvenile argued that the evidence was insufficient to support the grand theft charge and that he was denied allowable credit for time served in secure detention. The Second District Court of Appeal affirmed the adjudication for grand theft without discussion. The Second District did remand the case for correction of the amount of time served to reflect credit for time served in secure detention. See A.M. v. State, 958 So. 2d 461 (Fla. 2d DCA 2007). The Second District noted that the juvenile was committed to the Department of Juvenile Justice until his twenty-first birthday or until he served the maximum penalty allowed by law. This language was ambiguous given his young age at disposition (15 years old), and the Second District trusted that on remand any correction the trial court made to the disposition order would also take this issue into account.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2028,%202011/2D09-3742.pdf (January 28, 2011).

M.W. v. State, __ So. 3d __, 2011 WL 116871 (Fla. 2d DCA 2011). **ORDER WITHHOLDING ADJUDICATION FOR OBSTRUCTING OR OPPOSING AN OFFICER WITHOUT VIOLENCE WAS REVERSED WHERE THE STATE FAILED TO ESTABLISH THAT THE OBSTRUCTION OFFENSE OCCURRED.** The juvenile appealed an order withholding adjudication for obstructing or opposing an officer without violence. A school administrative staff member was called to remove the juvenile from a classroom because he was being disruptive. The juvenile allegedly slammed his books into the ground, told the staff member to get out of his face or he was going to hit him, and took two steps toward the staff member. Shortly thereafter, the school resource officer arrived to give assistance. There was no evidence that the officer witnessed the alleged assault. After speaking with the staff member and the juvenile for about fifteen minutes, the

officer told the juvenile that he was under arrest. When the officer attempted to handcuff the juvenile, he bowed up and would not put his hands behind his back. The juvenile was charged with assault on a specified official, a first-degree misdemeanor, and obstructing or opposing an officer without violence. The circuit court found that the evidence was insufficient to establish the assault. However, the juvenile was found to have committed the offense of obstructing or opposing an officer without violence because the officer had probable cause to arrest the juvenile for the assault when the juvenile obstructed him. Adjudication was withheld and the juvenile was placed on an indefinite period of probation not to exceed his nineteenth birthday. The Second District Court of Appeal found that the crime of obstructing or opposing an officer without violence requires a showing that the officer was engaged in the lawful execution of a legal duty. When the legal duty is an arrest, the lawfulness of the arrest is an essential element of the offense. The Second District held that a warrantless arrest for the misdemeanor assault at issue was only lawful if committed in the officer's presence. Since the alleged assault occurred outside the officer's presence, the resultant warrantless arrest was unlawful. Therefore, the officer was not engaged in the lawful execution of a legal duty when the juvenile obstructed or opposed the arrest. Thus, it follows that the State failed to establish that the offense of obstructing or opposing an officer without violence had occurred. The Second District noted that the juvenile did not argue in the circuit court that the officer was not engaged in the lawful execution of a legal duty when he made the arrest, and further noted that that argument had not been preserved for appellate review. However, because the State failed to establish that the obstruction offense occurred at all, the juvenile's conduct could not constitute a delinquent act. The circuit court's determination that the juvenile had committed a delinquent act that never occurred constituted fundamental error that could be raised for the first time on appeal. The Second District also rejected the State's argument for affirmation under the "fellow officer rule." That rule allows an arresting officer to assume probable cause to arrest a suspect based on information supplied by fellow officers. The State cited no authority for the proposition that a school administrator may be considered a fellow officer under the rule. Accordingly, the order withholding adjudication of delinquency was reversed and remanded for the entry of an order of dismissal.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2014,%202011/2D10-2395.pdf (January 14, 2011).

Third District Court of Appeal

N.G. v. State, __ So. 3d __, 2011 WL 222171 (Fla. 3d DCA 2011). [THE WRITTEN ORDER OF ADJUDICATION WAS REVERSED AND REMANDED FOR CORRECTION TO CONFORM WITH THE ORAL PRONOUNCEMENT](#). The juvenile appealed from an adjudication of delinquency, claiming that the written order of adjudication did not conform to the trial court's oral pronouncement that the juvenile's adjudication was to be withheld. Based upon the State's confession of error, which was confirmed by the record, the Third District Court of Appeal reversed and remanded to the lower court for correction of the written adjudicatory order in conformance with the oral pronouncement. <http://www.3dca.flcourts.org/Opinions/3D10-0559.pdf> (January 26, 2011).

F.C. v. State, __ So. 3d __, 2011 WL 92768 (Fla. 3d DCA 2011). [ATTEMPTED ROBBERY CONVICTION AFFIRMED WHERE THE JUVENILE DID NOT VOLUNTARILY ABANDON THE](#)

ROBBERY. The juvenile appealed the denial of his motion for judgment of dismissal and conviction of attempted robbery. The juvenile argued that he voluntarily abandoned the attempt to commit robbery. The Third District Court of Appeal held that the juvenile did not abandon the robbery. Instead, according to his own testimony, either the victim started to walk away, or he was hit by another person. In either case, the juvenile did not voluntarily abandon the robbery. An involuntary abandonment is not a defense. Accordingly, the judgment was affirmed.

<http://www.3dca.flcourts.org/Opinions/3D10-0301.pdf> (January 12, 2011).

J.L. v. State, __ So. 3d __, 2011 WL 92742 (Fla. 3d DCA 2011). **CASE REMANDED FOR THE TRIAL COURT TO CORRECT THE WRITTEN RESTITUTION ORDER TO REFLECT THE ORAL PRONOUNCEMENT.** Pursuant to an Anders v. California, 386 U.S. 738 (1967), appeal, the Third District Court of Appeal affirmed the adjudication of delinquency. However, the Third District remanded for the trial court to correct the written restitution order to reflect the oral pronouncement that restitution would start when the juvenile became employed. Additionally, as a trial court may not impose restitution once a notice of appeal has been filed, the restitution order, as corrected pursuant to the Third District's opinion, would need to be re-entered after the conclusion of the appeal.

<http://www.3dca.flcourts.org/Opinions/3D10-1282.pdf> (January 12, 2011).

Fourth District Court of Appeal

T.L.T. v. State, __ So. 3d __, 2010 WL 222180 (Fla. 4th DCA 2010). **WITHHOLD OF ADJUDICATION TO ONE COUNT OF THROWING A DEADLY MISSILE REVERSED WHERE STATE FAILED TO MEET ITS BURDEN.** The juvenile appealed an order withholding adjudication on two counts of throwing a deadly missile into two different vehicles. The charges arose from an incident in which two women reported that their vehicles were struck by objects thrown from a school bus. Victim one was stopped at a red light with the school bus on her right. She heard two big sounds, and saw two hands snatched back through the bus windows. She did not see any faces, nor did she see what was thrown, but the vehicle had a small dent that was not there before the incident. The bus driver observed the juvenile throw something from the window but did not see what was thrown. Immediately after the first vehicle was struck, victim two's vehicle was struck while sitting at a red light, going in the opposite direction of the bus. As the bus passed by on her left, a small object hit her window. She looked down to see a Gatorade bottle bouncing on the ground. She did not see the object hit another vehicle. At trial, another child testified that he had handed the juvenile a small plastic Gatorade bottle which was empty. He did not see what the juvenile did with the bottle. In addition, the State presented a video taken inside the bus during the incident. It showed children quite active on the bus. The juvenile could be identified in the back, and the court indicated that it observed the juvenile turning to the bus window twice and laughing, although the juvenile could not be seen throwing anything out the window. After the State presented its case, the defense moved for a judgment of dismissal. The trial court denied the motion. The defense did not present any evidence. The trial court then found that the State had proven its case. In making its findings, the court stated that the Gatorade bottle was full. Adjudication was withheld on both counts and the juvenile was placed on probation. The juvenile appealed. The Fourth District Court of Appeal, citing State v. Law,

559 So. 2d 187 (Fla.1989), found that where the evidence is circumstantial, a special standard applies. A conviction cannot be sustained when the only proof of guilt is circumstantial unless the evidence is inconsistent with any reasonable hypothesis of innocence. The question of whether the evidence fails to exclude all reasonable hypotheses of innocence is for the trier of fact to determine. In order to survive a motion for judgment of acquittal, the State is only required to introduce evidence which is inconsistent with the defendant's theory of events. Once that threshold burden is met, it becomes the trier of fact's duty to determine whether the evidence is sufficient to exclude every reasonable hypothesis of innocence. The Fourth District found that two separate incidents occurred even though the lower court treated it as one incident involving one bottle of Gatorade. Victim two's car was struck as she passed the bus going in the opposite direction. Given that both vehicles were beside the bus, according to their drivers, when they were hit by the objects, the evidence was legally insufficient to prove that the same object hit both vehicles. The evidence shows that another child on the bus handed the juvenile an empty Gatorade bottle. The bus driver saw the juvenile throw something out - the window, although the bus video does not show the juvenile throwing anything. Victim two identified the object that hit her vehicle as an empty Gatorade bottle. Therefore, the State satisfied its burden as to the incident involving victim two. On the other hand, no evidence supported the argument that the juvenile threw anything out the window to dent victim one's vehicle. No one saw anything thrown from the bus other than the empty Gatorade bottle which hit victim two's vehicle. Therefore, the evidence was legally insufficient to support the charge against the juvenile involving victim one. Thus, the Fourth District reversed and remanded to the trial court to vacate the sentence on the count of throwing a deadly missile into victim one's vehicle. Further, the appellate court indicated that on remand, the trial court should reconsider the sentence on the remaining charge, as the elimination of the charge involving victim one may affect the court's judgment as to the propriety of the sentence, particularly because the trial court erroneously concluded that the evidence showed that the juvenile had thrown a full bottle out of the bus window. <http://www.4dca.org/opinions/Jan%202011/01-26-11/4D09-1907.op.pdf> (January 26, 2011).

Fifth District Court of Appeal

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

M.N. v. Department of Children and Family Services, --- So. 3d ----, 2011 WL 116872 (Fla. 2d DCA 2011) [TERMINATION OF PARENTAL RIGHTS REVERSED](#). The father appealed the trial court's order terminating his parental rights to his three children based on the material breach of a case plan under § 39.806(1)(e)(2), Florida Statutes. The children were declared dependent and the father was given a case plan with tasks that included (1) no further law violations; (2) no further involvement in crimes of violence; (3) a domestic violence assessment and completion of a domestic violence program; (4) anger management assessment and class; (5) substance abuse evaluation and treatment, if ordered; (6) financial stability; and (7) stable housing for six months prior to reunification. The father began working on his tasks, but was arrested again for contributing to the delinquency of a minor, aggravated assault with a deadly weapon, and aggravated battery on a pregnant woman. He was convicted on the latter two charges and sentenced to four years in prison. Because of the conviction, DCF maintained that the father breached the case plan tasks requiring him to commit no further law violations and to avoid further involvement in crimes of violence, and DCF filed a petition to terminate his parental rights based upon § 39.806(1)(e)(2), Florida Statutes. Although the father was imprisoned for four years, the Department of Children and Family Services (DCF) did not seek to terminate the father's parental rights under § 39.806(1)(d), which relates to parents who are incarcerated. The court concluded that a requirement that a parent commit no new law violations or that the parent comply with the terms and conditions of probation or community control may not properly be included as a case plan task. The breach of such a task that results in the parent's incarceration is not, by itself, a proper ground for the termination of parental rights. The court also concluded that the statutory scheme for the termination of parental rights makes §39.806(1)(d) the exclusive method for the termination of parental rights based on a parent's incarceration.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2014,%202011/2D10-2086.pdf (January 14, 2011).

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

R.F. v. Department of Children and Families, --- So. 3d ----, 2011 WL 222243 (Fla. 4th DCA 2011) [ICPC AND THE BEST INTERESTS OF THE CHILD](#). Through his attorney ad litem, a seventeen year old dependent child petitioned the court for a writ of certiorari to review an order requiring the child to return to Florida because his continued stay in New York was in violation of the Interstate Compact on the Placement of Children (ICPC). § 409.401, Fla. Stat. (2010). The child was residing in New York with his uncle and aunt who had applied for guardianship. There was general agreement that placement with the uncle was in the child's best interest, but the procedures for modification of placement under the ICPC were not complied with before the child decided to remain with his uncle after a summer visit and to enroll in school in New York. The appellate court granted the petition for writ of certiorari and quashed the trial court's order. The court noted that even if an out-of-state placement does not strictly comply with the

ICPC, a court may allow the child to remain in the out-of-state placement during the ICPC process if it is in the child's best interest. The court also stated that DCF had taken an overly legalistic position that could not be reconciled with the facts in this case, and that courts and agencies charged with protecting the welfare of children should be concerned foremost with the best interests of the child. <http://www.4dca.org/opinions/Jan%202011/01-26-11/4D10-4104.op.pdf> (January 26, 2011).

Fifth District Court of Appeal

No new opinions for this reporting period.

Dissolution Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

Randall v. Randall, __ So. 3d __, 2011 WL 252726 (Fla. 2d DCA 2011).

AN ENGAGEMENT RING IS NONMARITAL PROPERTY AND SHOULD NOT BE INCLUDED IN THE SCHEME FOR EQUITABLE DISTRIBUTION.

Appellate court cited the general rule that an engagement ring is nonmarital property; therefore, it is error for a trial court to consider it in the scheme for equitable disposition. Here, the trial court's treatment of an engagement ring as an "heirloom" to be returned to former husband was error.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2028,%202011/2D08-4349.pdf (January 28, 2011).

Lee v. Lee, __ So. 3d __, 2011 WL 252728 (Fla. 2d DCA 2011).

TRIAL COURT FAILED TO DELINEATE MARITAL AND NONMARITAL PROPERTY AND FAILED TO JUSTIFY ITS UNEQUAL DISTRIBUTION SCHEME.

Both spouses appealed the final judgment of dissolution of marriage; former husband also appealed the supplemental judgment awarding attorney's fees to former wife. Appellate court affirmed the dissolution, but reversed the remainder of the judgments. Reiterating what is required of a trial court with regard to equitable distribution, appellate court held that the trial court had failed to "specifically delineate" nonmarital and marital property, and had also failed to justify its unequal distribution scheme. Accordingly, appellate court ordered the trial court on remand to make the appropriate findings and articulate a basis for the unequal distribution of marital assets, and to clarify its conclusion that former husband's actions had transformed nonmarital assets into marital ones. Appellate court also reversed and remanded former wife's

fee award and noted that clarification of the equitable distribution scheme would require reconsideration of the parties' need for and ability to pay attorney's fees.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2028,%202011/2D09-269.pdf (January 28, 2011).

Webber v. Webber, __So. 3d__, 2011 WL (Fla. 2d DCA 2011).

RETROACTIVE CHILD SUPPORT TIED TO FILING DATE OF PETITION.

Former wife appealed a post-dissolution order regarding modification of alimony, child support and child custody. Appellate court found that the trial court had erred by imposing a retroactive child support obligation on former wife dating back to January 2007, even though former husband's petition for modification was not filed until late May 2007. Appellate court held that because it is the date of the filing of the petition that determines when retroactive child support begins, the trial court had abused its discretion by imposing the obligation on her prior to the filing date. Accordingly, it reversed and remanded with instructions to the trial court to enter an amended order showing that the retroactive child support would commence on the date of the filing of the petition for modification.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2028,%202011/2D09-4127.pdf (January 28, 2011).

Swor v. Swor, __So. 3d__, 2011 WL 252940 (Fla. 2d DCA 2011).

TRIAL COURT ERRED IN INCLUDING MONTHLY ALIMONY AMOUNTS IN ITS CALCULATIONS FOR RETROACTIVE CHILD SUPPORT OBLIGATION OF FORMER WIFE WHEN SHE DID NOT RECEIVE ALIMONY PAYMENTS FOR THOSE MONTHS.

Appellate court agreed with former wife that retroactive child support was erroneously calculated by the trial court where the calculations were based on monthly alimony payments former wife should have received but did not actually receive from former husband. Appellate court found that the trial court had erred in including in its calculations months in which former wife had not received alimony payments.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2028,%202011/2D09-5418.pdf (January 28, 2011).

Belford v. Belford, __So. 3d__, 2011 WL 182125 (Fla. 2d DCA 2011).

MISCONDUCT IS NOT JUST MISMANAGEMENT OR SPENDING MARITAL ASSETS IN A WAY DISAPPROVED OF BY OTHER SPOUSE; REQUIRES A SPECIFIC FINDING.

Former husband appealed the trial court's equitable distribution based on its finding that he had dissipated marital assets; appellate court reversed. Appellate court held that the evidence failed to prove misconduct by former husband and that the magistrate's conclusion that the dissipation was not intentional should not have resulted in a finding of misconduct. Appellate court held that absent a finding of misconduct, it is error either to charge assets dissipated during proceedings to a spouse or to classify marital debt as one spouse's obligation. Appellate court reiterated that misconduct requires more than either mismanagement or spending marital assets in a way disapproved of by the other spouse; there must be a specific finding of intentional misconduct.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2021,%202011/2D09-1566.pdf (January 21, 2011).

Rowe v. Rodriguez-Schmidt, __So. 3d__, 2011 WL 148815 (Fla. 2d DCA 2011).

PAYMENT FOR UNREIMBURSED MEDICAL EXPENSES, IF NOT FACTORED INTO CHILD SUPPORT GUIDELINES, SHOULD BE APPORTIONED BASED ON INCOMES.

Former wife appealed the reduction of child support and modification of former husband's obligation regarding unreimbursed medical expenses for the parties' minor child. Appellate court reversed the trial court's conclusion that each parent would be responsible for one-half of the unreimbursed medical expenses. Appellate court held that where, as here, such expenses are not factored into the child support guidelines, responsibility for them should be apportioned based on the parties' relative incomes.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2019,%202011/2D10-487.pdf (January 19, 2011).

Santiago v. Santiago, __So. 3d__, 2011 WL 116876 (Fla. 2d DCA 2011).

UNEQUAL DISTRIBUTION MUST BE JUSTIFIED BY SPECIFIC FINDINGS OF FACT; TRIAL COURT ABUSED ITS DISCRETION BY PENALIZING SPOUSE TWICE FOR DEPLETION OF MARITAL FUNDS.

Both spouses appealed the final judgment of dissolution of marriage. Appellate court agreed with former husband that the trial court had abused its discretion with regard to the equitable distribution. Appellate court stated that a trial court may take a spouse's dissipation of marital assets into account and may also unequally distribute the assets when justified; however, it noted that in this case, even though the unequal distribution may have been justified by the finding that former husband depleted \$100,000 in marital assets, the trial court's imposition of a tax liability to former husband in an amount roughly equivalent to the depleted sum resulted in a further disproportionate distribution. Appellate court held that this additional unequal distribution was an abuse of discretion because it penalized former husband twice for his depletion of marital funds. Appellate court reasoned that the trial court's additional unequal distribution might have been justified under the facts of the case, but found that it had not made any specific findings. Holding that the trial court's lack of findings precludes meaningful review, appellate court reversed and remanded the equitable distribution with instructions that the trial court either make specific findings to justify the distribution scheme set out in its final judgment or reconsider the distribution and make specific findings to support a new scheme.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2014,%202011/2D09-5099.pdf (January 14, 2011).

Tilchin v. Tilchin, __So. 3d__, 2011 WL 43485 (Fla. 2d DCA 2011). **UNEQUAL DISTRIBUTION MUST BE JUSTIFIED BY ADEQUATE FINDINGS OF FACT.**

Both spouses appealed the final judgment of dissolution of marriage. Appellate court affirmed without discussion the imputation of income to former wife, the denial of bridge-the-gap alimony, and the amount of permanent alimony, but reversed the trial court's unequal distribution for lack of justification. Appellate court found that the trial court had erred in allocating 32% of the net value of the marital estate to former husband and the remaining 68% to former wife. Reasoning that former husband had paid off the mortgage on the marital home

during the proceedings in order to reduce his monthly alimony obligation to former wife, the trial court awarded the home to her without any offset to former husband. Appellate court held that the trial court had abused its discretion by granting former wife a disparate percentage of the marital assets because former husband had chosen to pay off the mortgage. Accordingly, it reversed and remanded with instructions that any unequal distribution on remand must be based on adequate findings of fact; if the trial court was unable to “articulate a valid reason for unequal distribution,” it was authorized to create a new scheme for equitable distribution and alimony.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2007,%202011/2D09-1560.pdf (January 7, 2011).

Third District Court of Appeal

Higginbotham v. Higginbotham, __ So. 3d __, 2011 WL 13672 (Fla. 3d DCA 2011).

ALTHOUGH SPOUSE SHOULD NOT BE LIMITED TO FEE CAP IN ANTENUPTIAL AGREEMENT, TRIAL COURT’S EXCESSIVE FEE AWARD REQUIRED REDUCTION.

Appellate court held that although former wife should not be limited to the cap on attorney’s fees contained in the parties’ antenuptial agreement, the temporary fees she was awarded were excessive. Accordingly, it reversed and remanded for substantial reduction of the fee award.

<http://www.3dca.flcourts.org/Opinions/3D10-2310.pdf> (January 5, 2011).

Fourth District Court of Appeal

Delate v. Iler, __ So. 3d __, 2011 WL 222214 (Fla. 4th DCA 2011).

MODIFICATION OF ALIMONY REQUIRES DEMONSTRATION OF SUBSTANTIAL CHANGES IN CIRCUMSTANCES WHICH ARE PERMANENT AND INVOLUNTARY.

Appellate court affirmed the final judgment of dissolution of marriage, including trial court’s finding that former husband did not have the present ability to pay alimony in an amount sufficient to cover former wife’s needs. Appellate court noted that former wife could seek modification of the alimony award should former husband’s financial circumstances change in the future. Appellate court reiterated that in order to justify modification of alimony, a former spouse must demonstrate a substantial change in circumstances which is material, permanent, and involuntary that was not contemplated at the time of the final hearing.

<http://www.4dca.org/opinions/Jan%202011/01-26-11/4D09-4825.op.pdf> (January 26, 2011).

Fifth District Court of Appeal

Forster v. Forster, __ So. 3d __, 2011 WL 248545 (Fla. 5th DCA 2011).

TRIAL COURT DID NOT ABUSE DISCRETION IN ALIMONY AWARD BUT ERRED IN FEE AWARD IT FOUND SPOUSE ENTITLED TO.

(Appeals from two lower court cases resulted in one opinion with two DCA case numbers.) Former husband appealed awards of permanent periodic alimony and attorney’s fees and costs. Appellate court had previously reversed the alimony award in Forster v. Forster, 11 So. 3d 972, (Fla. 5th DCA 2009), and had remanded for the trial court to make findings required by Section 67.08(2), Florida Statutes. In response to former husband’s appeal of the order on

remand, appellate court found the trial court had not abused its discretion with regard to the alimony award (5D09-2311), but had erred in the fee award it found former wife entitled to (5D09-3666). <http://www.5dca.org/Opinions/Opin2011/012411/5D09-2311.op.pdf>
<http://www.5dca.org/Opinions/Opin2011/012411/5D09-3666.op.pdf> (January 31, 2011).

Dybalski v. Dybalski, __ So. 3d __, 2011 WL 180201 (Fla. 5th DCA 2011).

TRIAL COURT FAILED TO PROVIDE EXPLANATION FOR UNEQUAL DISTRIBUTION.

Former husband appealed an award of equity in the marital home to former wife in a supplemental final judgment in which most issues were disposed of before trial through a consent final judgment. It became apparent while trying to resolve the remaining issues at trial that disposition of the marital home had not actually been agreed to by the parties. Evidence at trial indicated that former husband had borrowed against a line of credit secured by the home; he had then loaned the borrowed money to a friend and testified that he was using income from the loan to pay his child support obligations. In its supplemental final judgment, the trial court awarded former wife one-half interest in the loan as well as equity in the marital home after the loan was satisfied from proceeds from sale of the home. The trial court permitted either spouse to make payments to the line of credit, with credit for those payments to be awarded upon sale of the home; the court also permitted former wife to refinance the home and pay off the line of credit, which would result in ownership of the home. Appellate court held that the supplemental final judgment “inequitably distributed” the proceeds from the marital home and concluded that the trial court had provided no explanation for its “significant” unequal distribution. Commenting that the trial judge had done an “admirable job of trying to resolve the equities with little help from the attorneys,” appellate court remanded for reconsideration of the scheme for equitable distribution with regard to the marital home and the loan.

<http://www.5dca.org/Opinions/Opin2011/011710/5D09-1131.op.pdf> (January 26, 2011).

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

Fleshman v. Fleshman, --- So. 3d ----, 2011 WL 115973 (Fla. 2d DCA 2011) **INJUNCTION**

DISSOLVED. A father appealed a domestic violence injunction that was entered to prevent him from having any contact with his adult son. Because the father and son never lived together in the same dwelling as required by the applicable statutes, the court held that the trial court erred in entering a domestic violence injunction and reversed the injunction order.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/January/January%2014,%202011/2D09-2205.pdf (January 14, 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

Williams v. Department of Transportation, --- So. 3d ----, 2011 WL 248522 (Fla. 5th DCA 2011) **EMPLOYEE'S TERMINATION UPHELD**. The appellant appealed a final order entered by the Public Employees Relations Commission which upheld the Department of Transportation's discharge of the appellant for violating agency rules and for conduct unbecoming a public employee. The Department's Violence-Free Workplace Environment policy provides in pertinent part that: "It is the Department's intent to maintain a violence-free workplace by creating a business environment with a zero tolerance of behavior which leads to harassment and violence." The appellant was a project inspector and was discharged after threatening another employee by saying, "If he gets me fired, I'll get my gun and blow his guts out." The hearing officer, in a proposed order, set forth the facts and concluded that the appellant's statement was "a verbal exclamation of his frustration with another employee, not an actual threat to harm him" and recommended that he be reinstated with back pay and benefits. The Department filed exceptions to the proposed order, and by final order modified several of the findings of fact, rejected the hearing officer's analysis of the dispositive legal issues, and concluded that the Department had cause to discharge the appellant. The court found no error in the granting of the exception on the modification, nor did it find merit in the remaining issues raised on appeal. The Commission's conclusion concerning the evidence was supported by the hearing officer's findings of fact as modified and adopted by the Commission. There was evidentiary support for the Commission's conclusion that the Department had cause to discharge the appellant. <http://www.5dca.org/Opinions/Opin2011/012411/5D09-1226.op.pdf> (January 28, 2011).