# OSCA/OCI'S FAMILY COURT CASE LAW UPDATE JANUARY 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***

No new opinions for this reporting period.

***First District Court of Appeals***

No new opinions for this reporting period.

***Second District Court of Appeals***

J.E.P. v. State, __ So. 3d __, 2013 WL 261407 (Fla. 2d DCA 2014). WHERE A HABEAS CORPUS PETITION WAS FACIALLY SUFFICIENT, THE JUVENILE WAS ENTITLED TO GREATER DUE PROCESS THAN AN ORDER DENYING HIS PETITION WITHOUT ANY EXPLANATION. The juvenile appealed an order denying his petition for a writ of habeas corpus. The petition alleged that the juvenile did not enter a knowing plea and that the original attorney had committed ineffective assistance of counsel. The contents of the petition appeared facially sufficient. However, the juvenile court did not hold a hearing on the petition. Instead, it entered a short order denying the petition without explanation. The Second District Court of Appeals found that the Florida Rules of Juvenile Procedure do not contain a rule comparable to Florida Rule of Criminal Procedure 3.850. As a result, a petition for habeas corpus was the proper method to seek post-disposition relief. The Second District noted that the procedural rules for handling these relatively rare petitions are not well established. Further, the provisions addressing habeas corpus in chapter 79, F.S. (2011), are also not well suited for these motions. The Second District further noted its belief that the procedures do not need to be as complex as those for handling rule 3.850 motions. However, where the motion is facially sufficient, the juvenile should be entitled to greater due process than an order denying the petition without any explanation. At a minimum, the juvenile court should hold a hearing on the petition to determine an adequate method to resolve the allegations of the petition. Accordingly, the Second District reversed and remanded with instructions that the juvenile court hold a hearing on the petition.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/January/January%2024,%202014/2D13-836.pdf (January 24, 2014)

***Third District Court of Appeals***

R.M. v. State, __ So. 3d __, 2013 WL 20628 (Fla. 3d DCA 2014). SCHOOL OFFICIALS' SEARCH OF THE JUVENILE BASED UPON A CLASSMATE'S DETAILED REPORT ABOUT A GUN IN A SCHOOL BATHROOM WAS REASONABLE. A student told his teacher that three juveniles were in the school bathroom examining a handgun. The student informant described the person holding the gun as a tall, thin, African American male with a dark complexion and a low "afro" haircut, who appeared to be an upper-classman, wearing a red school uniform shirt and dark-colored "skinny jeans,"

and carrying a book bag with a cartoon character or some type of “bling” on it. According to the record, there were approximately sixty black male students in the high school, and the type of the pants, hairstyle, and book bag identified were uncommon amongst the student body. The teacher informed the school police officer and principal of the report, and the principal immediately sent an email to the school's teachers to be on the lookout for someone matching the given description. The principal and officer then began walking through the school hallways in an attempt to locate the student with the gun. The juvenile was observed in the first classroom searched. The juvenile matched the description exactly. The officer asked the juvenile to accompany her into the hallway, and the principal took the juvenile's book bag and asked him if there was anything illegal inside. The juvenile admitted that he had a gun in his book bag, and the principal opened the book bag and found a handgun. The principal later found an email response from a different teacher stating that she had a student other than the juvenile who matched the description. Before his adjudicatory hearing, the juvenile filed a motion to suppress the gun and his statements, arguing that there was no reasonable suspicion for the warrantless search and seizure because the student informant gave a broad, generalized description that could have matched almost any African American high school student in the building. The trial court denied the motion to suppress. The juvenile appealed. The Third District Court of Appeals found that the constitutional protections afforded students at school are not the same as those provided to adults in the general public. The search of a student conducted in a school context is permissible so long as the search is reasonable considering the totality of the circumstances. A search may be unreasonable under the circumstances if it is based on a generalized description of the suspect that could apply to a large number of presumably innocent people in the area. In the instant case, the description was very specific. Furthermore, the universe of potential suspects was quite narrow because there were only sixty African American male students in the high school and the described clothing and haircut were uncommon. Finally, the informant in this case was not an anonymous tipster, but a known and identified student, which bolsters the reasonableness of the school's reliance on the description. Accordingly, the Third District held that the school officials' actions were entirely reasonable under the circumstances and affirmed the trial court’s decision.
http://www.3dca.flcourts.org/Opinions/3D13-1245.op.pdf (January 2, 2014)

R.M. v. State, __ So. 3d __, 2013 WL 228695 (Fla. 3d DCA 2014). THE JUVENILE'S DUE PROCESS RIGHTS WERE VIOLATED WHEN HE WAS ADJUDICATED FOR ATTEMPTED BATTERY BASED ON FACTS NOT ALLEGED IN THE DELINQUENCY PETITION. The juvenile and his father got into an argument that escalated into a physical fight after the father said, “let's take this outside.” The juvenile was charged with battery. At the adjudicatory hearing, the father testified that the two of them physically fought. In response to a generic question (“What happened next?”), the father

testified that the juvenile "spit at" him after the fight had ended while the juvenile was being restrained by others. There were no follow-up questions or cross-examination regarding the father's spitting testimony. When the juvenile testified, he was not questioned on direct or cross examination whether he spit at his father. Further, neither party in opening statements indicated there would be evidence that the juvenile spit at his father, and there was no indication in the delinquency petition, discovery, motions or other pleadings that this act of spitting at (not on) the father was a part of the battery charge. The trial court did not adjudicate the juvenile for battery. The trial court found that the father's actions of unbuttoning his shirt and telling the juvenile that they should "take it outside" was an invitation to fight, and therefore, a consent to the "touching" that followed. However, the trial court found that the juvenile was delinquent for attempted battery because the spitting, while being restrained, was not a defensive maneuver under the circumstances. The juvenile appealed asserting that the attempted battery by spitting was a separate act, that was not part of the allegations of the petition, and that the juvenile was not reasonably placed on notice of this charge. The State argued that the delinquent act of "attempted battery" was a permissive lesser-included offense of battery, and that the allegations in the petition and the evidence at trial supported a finding of delinquency on that charge. The Third District Court of Appeals found that while an attempted battery can serve as a permissive lesser-included offense of battery, the elements of which are technically alleged in the petition, the State's argument overlooked the fact that the trial court determined that the fight and the actual battery alleged had already ended at the time of the spitting. There was a temporal break when the juvenile allegedly spat at his father. The act of spitting was not itself alleged in the petition, and there is nothing in this record to indicate that the juvenile or his counsel were ever placed on notice (until the court raised the issue during closing argument) that this act of spitting was to be considered a part of the petition or serve as a basis for an adjudication of delinquency. The Third District held that the juvenile's due process rights were violated when he was adjudicated delinquent for committing an attempted battery based on facts not alleged in the delinquency petition. Accordingly, the attempted battery adjudication was reversed and remanded with directions to vacate and enter a judgment of dismissal. Further, because the juvenile was never charged with attempted battery for the alleged act of spitting at his father, there was no double jeopardy bar to the filing of a petition which charges such an act.
http://www.3dca.flcourts.org/Opinions/3D13-0039.pdf (January 22, 2014)

***Fourth District Court of Appeals***

J.B. v. State, __ So. 3d __, 2013 WL 51829 (Fla. 4th DCA 2014). PETIT THEFT ADJUDICATION REVERSED BECAUSE THE TRIAL COURT ERRED IN ADMITTING HEARSAY TESTIMONY AND IN ADMITTING A WRITTEN CONFESSION WITHOUT PROOF TO ESTABLISH THE CORPUS DELECTI OF A THEFT. The juvenile was adjudicated delinquent for petit theft of a bracelet. At the trial, neither

the store manager nor the store security officer, who allegedly witnessed the theft, were available to testify, as they no longer worked for the store. The arresting officer testified that he had not personally witnessed the theft and that he arrested the juvenile based on an affidavit from the unavailable store security officer. A current security officer testified, over a hearsay objection, that the absent security officer told him that the juvenile had put a bracelet on her wrist and left the store. Then the security officer and his co-worker approached the juvenile, who was standing just outside the store and took her to a back office and called their manager. There, they filled out a form for the juvenile to sign which was an "acknowledgment of guilt." On cross-examination, the security officer admitted that the acknowledgment of guilt form was not signed by the juvenile but only by his co-worker, the absent store security officer. Furthermore, he could not recall exactly what occurred in the filling out of the acknowledgment form. When the State moved to introduce the form, the juvenile objected on the grounds of *corpus delicti.* She argued that there was no evidence, other than hearsay, of the crime of theft. The trial court denied the motion. After presentation of the evidence, the defense moved for a judgment of dismissal, which was denied. The juvenile was found to have committed petit theft and the juvenile appealed. The Fourth District Court of Appeals found that the security officer's recitation of his co-worker's statement that the juvenile took the bracelet was classic hearsay that should not have been admitted by the trial court. The State sought to justify the hearsay statement's admission as necessary to establish a logical sequence of events in the investigation of the theft. The Fourth District rejected this rationale finding that it was not necessary to prove a logical sequence of events and the only purpose of the evidence was to link the juvenile to the crime. The hearsay statement was the only evidence of the theft, other than the alleged acknowledgment of guilt form, which was not signed by the juvenile. The Fourth District found that the State must present evidence of the *corpus delicti* of a crime, namely the legal elements necessary to show a crime was committed, before a defendant's confession to that crime may be admitted. In the instant case, without the hearsay statement of the absent security officer, the State failed to prove the *corpus delicti* of the petit theft prior to introducing the juvenile's alleged confession through the acknowledgment of guilt form. The State argued that there was circumstantial evidence of a theft because the juvenile was seen outside the store entrance while wearing a bracelet currently being sold in the store. The Fourth District found that this was insufficient to prove, even circumstantially, that a theft had occurred, because this evidence is equally consistent with a theory that the juvenile had previously purchased the bracelet (or received it as a gift), making it her property. It did not tend to prove that the juvenile, or anyone else, had taken the bracelet with the required intent for theft. Because there was no direct or circumstantial evidence, besides the inadmissible hearsay, to prove the *corpus delicti* of the theft, the trial court erred in admitting the juvenile's written confession. Accordingly, the Fourth district reversed and remanded for a new adjudicatory hearing.

http://www.4dca.org/opinions/Jan%202014/01-08-14/4D12-1156.op.pdf (January 8, 2014)

J.T. v. State, __ So. 3d __, 2013 WL 223019 (Fla. 4th DCA 2014). SUPPRESSION OF EVIDENCE SEIZED INCIDENT TO ARREST REVERSED AND REMANDED WHERE THE OFFICER HAD REASONABLE SUSPICION TO DETAIN THE DEFENDANT. The State appealed the trial court's decision which granted a burglary defendant's motion to suppress the evidence seized as a result of his arrest. The juvenile was charged with burglary of a dwelling, grand theft, and possession of burglary tools. At the suppression hearing, two law enforcement officers testified that an anonymous person called and alerted law enforcement to a possible burglary. A dispatch went out advising that "two to three black males" were breaking into an electrical box. The males were using a flashlight. No other identifiable details were provided. Multiple law enforcement units were sent to the area. Soon after arriving, a detective observed three black males riding on two bicycles approximately 100 feet from the identified residence. Upon seeing law enforcement officers and the marked vehicles, the boys immediately took flight. Shortly thereafter, an officer spotted the juvenile and the two other boys approximately 100 yards away from the identified residence. The officer observed a boy, who was holding a black bag, riding on the juvenile's handlebars. The boy dropped the bag when he saw the officer. The boy then jumped off the handlebars and ran away. The juvenile quickly peddled away and later jumped off the bike and started to run. While running away, the juvenile was observed dropping an orange screwdriver. When told to stop, the juvenile got on the ground. The juvenile was detained at approximately twelve minutes after the dispatch. The black bag was contained a computer and a bank envelope. At the suppression hearing, the trial judge found that the police did not have reasonable suspicion to stop the juvenile and granted the juvenile's motion to suppress. The State appealed. After reviewing the testimony presented to the lower court, the Fourth District Court of Appeals found that the lower court erred in ruling that law enforcement had no reasonable suspicion to detain the juvenile. The Fourth District found that the reasonable suspicion needed to justify an investigatory stop, based on the objective facts, depended on the totality of the circumstances observed in light of the officer's experience. A suspect's nervous and evasive behavior upon the approach of an officer, when considered in conjunction with a purely anonymous tip, may under the totality of the circumstances establish reasonable suspicion for an investigative stop. In the instant case, given the combined experience of the detective and the officer, the totality of the circumstances—the early morning hour, the short time frame between the anonymous call and the juvenile's detention, the juvenile's close proximity to the identified residence, the dispatch identifying two to three male suspects, the dropped bag, and the uncontroverted testimony that the juvenile took flight upon seeing law enforcement officers, abandoning his bicycle and running away on foot, provided ample reasonable suspicion to detain the juvenile. Accordingly, the trial court's decision was reversed and remanded for further proceedings.

http://www.4dca.org/opinions/Jan%202014/01-22-14/4D13-507.op.pdf (January 22, 2014).

***Fifth District Court of Appeals***

No new opinions for this reporting period.

## Dependency Case Law

### *Florida Supreme Court*

In re: Amendments to Florida Rules of Judicial Admin., ___ So. 3d ____, 2014 WL 172531 (Fla. 2014). RULES AMENDED. The Steering Committee on Families and Children in the Court proposed amendments to Florida Rule of Judicial Administration 2.545(d), which were approved by the Court. The Steering Committee also proposed five new rules of procedure for Florida's family courts which were also approved. The new rules require the courts to assign related family cases to a single judge unless it is deemed impractical, and also for coordination of related cases that are assigned to different judges. The Supreme Court also noted its support for the unified family court model. The amendments are effective April 1, 2014. http://www.floridasupremecourt.org/decisions/2014/sc12-2007.pdf (January 16, 2014).

### *First District Court of Appeals*

No new opinions for this reporting period.

### *Second District Court of Appeals*

In re J.B., ___ So. 3d ____, 2014 WL 258743 (Fla. 2d DCA 2014). ORDER PLACING CHILDREN IN PERMANENT GUARDIANSHIP AND TERMINATING PROTECTIVE SUPERVISION REVERSED. The father appealed an order which placed his children in permanent guardianship with foster parents and terminated protective supervision. The appellate court reversed and held that the father was not given the required notice of the Department's intent to change the permanency goal and terminate protective supervision, and therefore he did not have time to properly prepare. The appellate court also stated that there was not enough evidence presented during the hearing to support an order of permanent guardianship in this case. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/January/January%2024,%202014/2D13-4044.pdf (January 24, 2014).

### *Third District Court of Appeals*

D.C. v. J.M and R.M., ___ So. 3d ____, 2014 WL 305284 (Fla. 3d DCA 2014). FOSTER PARENTS' RIGHT TO SEE CONFIDENTIAL DOCUMENTS REVERSED. Foster parents moved to become parties in a dependency case rather than participants, and the trial court granted their motion in part and ordered that they, and the foster parents' attorneys, could have full access to the court files regarding the case. The mother then sought to quash the order giving the foster parents the right to intervene as parties in her dependency case. The mother claimed that the order violated her privacy rights and would cause irreparable injury; the appellate court agreed and quashed the order. The appellate court noted that while foster parents had the right to receive notice of hearings and be heard by the court, they did not have a right to every record in a confidential dependency case.
http://www.3dca.flcourts.org/opinions/3D13-3158.pdf (January 29, 2014).

### *Fourth District Court of Appeals*

T.N.L. v. Department of Children and Families, ___ So. 3d ____, 2014 WL 223001 (Fla. 4th DCA 2014). PLACEMENT ORDER REVERSED. A mother appealed an order that denied her motion for reunification with her child and placed the child with the father. The evidence showed

that the mother was in substantial compliance with her case plan. The mother argued that the court could not deny reunification since the court did not make a finding that the child's safety and well-being would be endangered as found in s. 39.522(2), F.S. (2012). At the time of the reunification hearing, this statute provided that a child must be reunited with the offending parent if the parent has substantially complied with the case plan to the extent the child would not be endangered by reunification. However, the appellate court noted that the amended version of the statute became effective on July 1, 2013, a date after the reunification hearing in this case, and could be applied retrospectively. This amended statute changed the legal standard for courts to apply in ruling on reunification motions involving a child placed with the non-offending parent. Since the mother may have chosen to present different or additional evidence under the new standard, the court reversed and remanded the case for a new hearing to satisfy due process. http://www.4dca.org/opinions/Jan%202014/01-22-14/4D13-1577.op.pdf (January 22, 2014).

***Fifth District Court of Appeals***

No new opinions for this reporting period.

## Dissolution Case Law

### *Supreme Court*

In Re: Amendments to the Florida Rules of Judicial Administration and In Re: Amendments to the Florida Rules of Family Law Rules of Procedure, __So. 3d__, 2014 WL 172531 (Fla. 2014). Adoption of amendments to the Florida Rules of Judicial Administration and the Florida Family Law Rules of Procedure proposed by the Court's Steering Committee on Families and Children in the Court. To implement a unified family court, the family law rules: ensure all parties, attorneys, and judges in a family case receive notice of related family cases; outline procedures for assigning related family cases to a single judge, unless impractical; and coordinate related family cases assigned to different judges. The adopted rules will take effect April 1, 2014. http://www.floridasupremecourt.org/decisions/2014/sc12-2030.pdf (January 16, 2014)

### *First District Court of Appeals*

Moore v. McIntosh, __So. 3d__ , 2014 WL 30685 (Fla. 1st DCA 2014). RELOCATION ITSELF DOES NOT CONSTITUTE A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; IF A MOVE IS EXPRESSLY PROHIBITED BY A SETTLEMENT, THE PARENT SEEKING TO RELOCATE MUST SHOW A SUBSTANTIAL CHANGE IN CIRCUMSTANCES TO JUSTIFY RELOCATION; HERE BOTH PARENTS STAYED IN SAME SCHOOL DISTRICT AFTER MOVE; SETTLEMENT ONLY REQUIRED NOTICE OF RELOCATION IF ONE CHOSE TO RELOCATE OUTSIDE THAT SCHOOL DISTRICT. Reiterating that courts have generally found that relocation itself does not constitute a substantial change of circumstances warranting modification of time-sharing, the appellate court found that the trial court had erred as a matter of law in concluding that a substantial change in circumstances resulted from the parents' relocation to different cities in Okaloosa County, each of which was 20 miles from their child's school, and then modifying the time-sharing based on its conclusion. If a move is expressly prohibited by a settlement or time-sharing agreement, the parent seeking to relocate must show a substantial change in circumstances to justify relocation. Here, the Marital Settlement Agreement required 90-days notice by one parent to the other only if the relocating parent relocated outside the school district; after moving, they were still in the same Okaloosa County School District.
http://opinions.1dca.org/written/opinions2014/01-03-2014/13-3176.pdf (January 3, 2014).

### *Second District Court of Appeals*

Greenberg v. Greenberg, __So. 3d__, 2014 WL 28300 (Fla. 2d DCA 2014). AN ORDER DETERMINING ENTITLEMENT TO FEES AND COSTS WITHOUT SETTING THE AMOUNT IS NON-FINAL AND NON-APPEALABLE. Former husband appealed the denial of his request for modification of alimony and the order to pay 100% of former wife's fees and costs. The trial court did not determine the amount of fees and costs. The appellate court affirmed the denial of the modification, but concluded that it did not have jurisdiction to review the fee award because an order determining entitlement to fees and costs without setting an amount is non-final and non-appealable.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/January/January%2003,%202014/2D12-6011.pdf (January 3, 2014).

Russo v. Russo, __So. 3d__, 2014 WL 101446 (Fla. 2d DCA 2014). CONTEMPT NOT PROPER METHOD OF ENFORCEMENT FOR EQUITABLY DISTRIBUTED ASSET; TRIAL COURT COULD DETERMINE PROPER METHOD. The appellate court affirmed the dissolution of long-term marriage with the exception of one sentence in the magistrate's report, which was incorporated by reference into the final judgment. The sentence indicated that contempt would be an available remedy for former wife if former husband failed to pay her half of his retirement benefit earned during his employment in Italy. The appellate court concluded that the retirement benefit was an equitably distributed asset; therefore, contempt was not a proper method of enforcement. It left the trial court free to determine the proper method of enforcement when and if former wife needed to enforce that provision of the judgment. The trial court was instructed to remove the sentence from its final judgment.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/January/January%2010,%202014/2D12-2976.pdf (January 10, 2014).

Baricchi v. Barry, __So. 3d__, 2014 WL 185203 (Fla. 2d DCA 2014). IT WAS ERROR FOR TRIAL COURT TO ALLOW SPOUSE TO PROCEED TO FINAL JUDGMENT ON AN AMENDED PETITION WHICH ASSERTED NEW CLAIMS AND RELIEF AND WHICH HAD NOT BEEN SERVED ON OTHER SPOUSE; A DEFAULT ONLY ADMITS WELL-PLEADED FACTS AND ACQUIESCES TO RELIEF SPECIFICALLY PRAYED FOR; DEFAULT SHOULD NOT GIVE STRATEGIC ADVANTAGE TO A PLAINTIFF. The appellate court agreed with former husband that by allowing former wife to proceed to final judgment on an amended petition for dissolution that had not been served on him he was denied due process. Former wife had obtained a clerk's default against former husband after filing the initial petition; her amended petition asserted new claims and requested relief not specifically identified in the initial petition. The appellate court found this "critical," because "a default only admits the well-pleaded facts and acquiesces only to relief specifically prayed for." Citing its language in *Makes and Models Magazine, Inc. v. Web Offset Printing Co.*, 13 So. 3d 178,181 (Fla. 2d DCA 2009), that, "[A] default is not designed to give a strategic advantage to the plaintiff so that it may obtain a judgment without dealing with the defendant's challenges and defenses," the appellate court concluded here that former wife "was afforded a strategic advantage to which she was not entitled." The appellate court also noted that Florida Family Law Rule of Procedure 12.080(c)(1) requires service of process on a party against whom a default has been entered if the subsequent pleading asserts "new or additional claims." It held that the amended petition was the "operative pleading" and must be served before further proceedings could be held. Reversed and remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/January/January%2017,%202014/2D12-6381.pdf (January 17, 2014).

Herrera-Frias v. Frias, __So. 3d__, 2014 WL 228638 (Fla. 2d DCA 2014). FINAL JUDGMENT AFFIRMED; NO TRANSCRIPT BUT NO ERRORS ON ITS FACE; TRIAL COURT HAS DISCRETION TO AWARD SOLE PARENTAL RESPONSIBILITY TO PARENT PROPERLY BEFORE IT IF OTHER PARENT HAS WILLFULLY VIOLATED PRETRIAL ORDER ADDRESSING REMOVAL OF CHILDREN FROM ITS JURISDICTION. Former wife appealed the final judgment of dissolution on several grounds, but failed to provide a transcript. Prior to entry of the final judgment, she disobeyed a pretrial court order and fled to Mexico with her three children. Although it could have dismissed the appeal

due to her non-compliance, the appellate court chose not to because it wanted the Mexican court, before whom proceedings to return the children were pending, to "have confidence" that the appellate court "has accorded a full measure of due process to Ms. Herrera-Frias." Although the lack of a transcript severely limited its ability to review the equitable distribution, the appellate court found no errors on the face of the judgment. Noting that its review of the issues regarding the children and their support were also hampered by the absence of a transcript, it cited *Carney v. Carney*, 861 So. 2d 1272 (Fla.1st DCA 2003), that is it well within the discretion of a trial court to award sole parental responsibility to the parent properly before the court if the other parent has willfully violated a pretrial order regarding removal of the children from that court's jurisdiction.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/January/January%2022,%202014/2D12-3294.pdf (January 22, 2014).

***Third District Court of Appeals***

Cazi v. Prophete, __So. 3d.__, 2014 WL 54857 (Fla. 3d DCA 2014). TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER SPOUSE'S TIMELY FILED EXCEPTIONS; REMANDED FOR HEARING ON EXCEPTIONS. The appellate court found that the trial court had abused its discretion by failing to consider former husband's timely filed exceptions to the general magistrate's report and recommendations. Reversed and remanded for a hearing on former husband's timely filed exceptions.
http://www.3dca.flcourts.org/Opinions/3D12-3279.pdf (January 8, 2014).

Sordo v. Camblin, __So. 3d__, 2014 WL 228688 (Fla. 3d DCA 2014). TRIAL COURT'S ORDER MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; FAILURE TO RAISE ISSUE ON REHEARING WAIVES IT FOR APPEAL. The appellate court affirmed the modification of the spouses' time-sharing plan. The trial court's order was supported by competent, substantial evidence, and former wife failed to argue the trial court's failure to make specific findings in its final order in her motion for rehearing. Hoping that the spouses would discontinue their "destructive behavior," the appellate court cautioned them that continuation of their conduct might result in further modification of the time-sharing order.
http://www.3dca.flcourts.org/Opinions/3D13-0353.pdf (January 22, 2014).

***Fourth District Court of Appeals***

Hahamovitch v. Hahamovitch, __So. 3d__, 2014 WL 52717 (Fla. 4th DCA 2014). UPHOLDING PRENUPTIAL AGREEMENT REQUIRES COMPETENT, SUBSTANTIAL EVIDENCE; IF AGREEMENT IS UNREASONABLE, BURDEN SHIFTS TO OTHER SPOUSE; WAIVER OF MODIFICATION OF ALIMONY MUST BE CLEAR; WAIVER OF ALIMONY OTHER THAN PROVIDED IN AN AGREEMENT DOES NOT EQUAL WAIVER OF MODIFICATION OF ALIMONY PROVIDED IN THE AGREEMENT; UNDER PLAIN LANGUAGE OF AGREEMENT EACH SPOUSE WAIVED CLAIM TO ASSETS OWNED BY OTHER SPOUSE EITHER AT THE TIME OF THE AGREEMENT OR ACQUIRED IN THE OTHER SPOUSE'S OWN NAME DURING THE MARRIAGE, INCLUDING ENHANCEMENT IN VALUE; APPELLATE COURT CERTIFIED CONFLICT DUE TO DIFFERENT CONCLUSIONS REACHED UNDER SIMILAR AGREEMENTS BY 2D AND 3D DISTRICTS; QUESTION OF A SPOUSE'S CLAIM TO ASSETS TITLED IN

THE OTHER SPOUSE'S NAME, EVEN IF THOSE ASSETS WERE ACQUIRED BY THE OTHER SPOUSE DURING MARRIAGE DUE TO MARITAL EFFORTS, OR TO APPRECIATION OF NONMARITAL ASSETS CERTIFIED TO SUPREME COURT. The first of three opinions involving the same spouses. A trial court's decision to uphold a pre-nuptial agreement must be supported by competent, substantial evidence. An agreement may be set aside if one spouse can establish either that the agreement was obtained through fraud or duress etc., or that it treats that spouse unfairly given the parties' circumstances. In the latter case, a trial court must find that the agreement is "disproportionate to the means" of the defending spouse. If an agreement appears unreasonable, a presumption arises that the defending spouse either concealed information or the challenging spouse was unaware of the defending spouse's finances at the time the agreement was reached. The burden then shifts to the defending spouse to prove disclosure or show that the other spouse had an approximate knowledge of the marital property. Here, the appellate court concluded that the pre-nuptial agreement was fair when it was entered into. It also concluded that under the "plain language" of that agreement, former wife waived and released claims to property or assets owned by former husband at the time of the agreement or acquired in his own name afterwards, including any enhancement in value. Recognizing that the 2d and 3d District Courts of Appeal have construed similar agreements as being insufficient to waive the enhanced value of a non-marital asset, the appellate court certified conflict with those districts on that question. The appellate court found that the trial court erred in determining that former wife had waived the right to petition for modification of alimony. Although the agreement was silent as to modification, the general waiver of alimony, except as provided by the agreement, was not specific enough to waive modification of the alimony provided by the agreement. The appellate court certified to the Supreme Court the question of whether agreements which provide that each spouse will not claim any interest in the other's property, but will remain as sole owner of property purchased or acquired in their name, waive a spouse' right to any assets in the other spouse's name even if those assets were acquired during the marriage due to the spouses' marital efforts or appreciated in value during the marriage due to the spouses' marital efforts?
http://www.4dca.org/opinions/Jan%202014/01-08-14/4D10-3051.op.pdf (January 8, 2014).

Hahamovitch v. Hahamovitch, __So. 3d__, 2014 WL 52761 (Fla. 4th DCA 2014). FEES: ATTORNEY'S TRAVEL TIME REQUIRE SPECIAL CIRCUMSTANCES. In the second case, the appellate court reversed the award to former wife for her attorney's travel fees. No special circumstances were shown to justify travel fees. There was no evidence that local competent counsel could not be obtained, nor was there a finding that the travel time was required due to excessive or vexatious litigation by former husband. The trial court was directed on remand to remove attorney travel time from the fee award and re-determine the fee.
http://www.4dca.org/opinions/Jan%202014/01-08-14/4D10-1077.op.pdf (January 8, 2014).

Hahamovitch v. Hahamovitch, __So. 3d__, 2014 WL 51992 (Fla. 4th DCA 2014). PRENUPTIAL AGREEMENT MAY PRECLUDE SPOUSE FROM RECEIVING FEE AWARD FOR SERVICES RENDERED AFTER ENTRY OF FINAL JUDGMENT; TRIAL COURT ABUSED ITS DISCRETION BY AWARDING FEES TO SPOUSE REGARDING DISCOVERY ISSUES THAT WERE CENTRAL TO CASE; TRIAL COURT CORRECTLY AWARDED FEES TO SPOUSE FOR OTHER SPOUSE'S BAD FAITH CONDUCT. In the third case, former wife argued that the trial court erred in not awarding her fees incurred after the dissolution judgment for litigating pre-dissolution temporary fee amounts, while awarding former husband fees and costs, some of which were due to her "vexatious litigation." The

appellate court affirmed the denial of fees to former wife because the fee waiver in the pre-nuptial agreement precluded her from receiving an award for services rendered after entry of the dissolution judgment; however, it concluded that the trial court had abused its discretion in awarding former husband fees and costs for litigation over former wife's denial of requests for admission which pertained to "contested matters that were central issues in the case." With regard to former wife's "bad faith conduct" in litigating the execution of the pre-nuptial agreement, the appellate court affirmed the trial court's award of fees to former husband. The award was based upon the trial court's express finding of bad faith and was supported by factual findings. The award was limited to fees unnecessarily incurred due to former wife's false allegations.
http://www.4dca.org/opinions/Jan%202014/01-08-14/4D11-3369.op.pdf (January 8, 2014).

Wilcoxon v. Moller, __So. 3d__, 2014 WL 51684 (Fla. 4th DCA 2014). A COURT CANNOT BASE CONTEMPT ON NONCOMPLIANCE WITH SOMETHING AN ORDER DOES NOT SAY OR SOMETHING A CONTEMNOR DOES NOT HAVE THE ABILITY TO DO; FINDING THAT SPOUSE VIOLATED TIME-SHARING AGREEMENT UNSUPPORTED BY THE EVIDENCE; ERROR TO ORDER SPOUSE TO DO SOMETHING MARITAL SETTLEMENT AGREEMENT REQUIRED OTHER SPOUSE TO DO; IF CONTEMPT IS REVERSED, FEES AWARDED TO SPOUSE AS SANCTION FOR OTHER SPOUSE'S CONTEMPT MUST BE REVERSED AS WELL; FEE AWARD AFFIRMED AFTER SPOUSE DIDN'T APPEAL. The appellate court found numerous orders in a post-dissolution order holding former wife in contempt, modifying a time-sharing agreement, and awarding fees to former husband. The order found former wife in contempt by permitting her current husband to be in the "general area" of her former husband at the minor children's activities; however, the order she was found to have been in contempt of did not specify what she was supposed to do to keep her current husband from attending those events. A court cannot base contempt upon noncompliance with something an order does not say or on something a contemnor does not have the ability to do. The trial court erred by holding former wife in contempt. It erred in finding that former wife violated the time-sharing agreement because the evidence did not establish that she had violated it. It also erred by ordering former husband to maintain the vision and dental insurance for the children when the Marital Settlement Agreement clearly required former wife to maintain those. The trial court awarded fees to former husband as a sanction for former wife's contempt. Because the contempt was in error, that award was reversed. Former wife failed to appeal the award of fees and costs to former husband after she failed to attend her own deposition; therefore, that award was affirmed.
http://www.4dca.org/opinions/Jan%202014/01-08-14/4D12-4076.op.pdf (January 8, 2014).

Tannenbaum v. Shea, __So. 3d__, 2014 WL 51645 (Fla. 4th DCA 2014). TRIAL COURT ERRED IN VACATING PORTION OF ORDER UNDER RULE 1.540(b); A JUDGMENT WHICH IS VOID MAY BE ATTACKED AS VOID UNDER THE RULE AT ANY TIME; A JUDGMENT WHICH IS VOIDABLE CANNOT; A JUDGMENT WHICH IS VOIDABLE MUST BE TIMELY CHALLENGED BY REHEARING OR APPEAL. Former husband appealed an order issued under Florida Rule of Civil Procedure 1.540(b), which vacated a portion of an agreed-upon order awarding money for back child support. Concluding that there was no legal basis under the rule to grant relief, the appellate court reversed. The agreed judgment of dissolution had provided that former husband would pay $1300 per month, increasing to $1500 in child support, in addition to other expenses; however, only the amount of child support due under the guidelines would be enforceable by contempt. In

the nine-year period following dissolution, former husband failed to meet many of his obligations. An agreed-upon order awarded former wife $70,000 with interest; a paragraph within that money judgment provided that the trial court would retain jurisdiction of the action, but not of the money judgment. Three years later, former wife moved to enforce the judgment. Contending that he was current on the child support payments punishable by contempt, former husband moved to dismiss because the trial court had divested itself of jurisdiction of the money judgment. The trial court denied former husband's motion to dismiss and struck the paragraph divesting itself of jurisdiction. The appellate court held that this was error. It read the trial court's paragraph divesting itself of jurisdiction as meaning that former wife was precluded from pursuing collection in the family division; nothing precluded her from pursuing collection in either the civil division or in New York where former husband currently lived. The appellate court distinguished between a void and voidable judgment. A judgment that is void may be attacked pursuant to the rule at any time; a voidable judgment can be challenged by motion for rehearing or appeal, but it cannot be challenged at any time as void under the rule. Here, the trial court erred in vacating the provision regarding jurisdiction pursuant to the rule because the order was not "void" under the meaning of the rule.
http://www.4dca.org/opinions/Jan%202014/01-08-14/4D13-1368.op.pdf (January 8, 2014).

Bobyack v. Larkin, __So. 3d__, 2014 WL 127732 (Fla. 4th DCA 2014). EXISTENCE OF GENUINE ISSUE OF MATERIAL FACT PRECLUDES ENTRY OF SUMMARY JUDGMENT. To the strains of "This Diamond Ring Doesn't Shine for Me Anymore," the appellate court agreed with a former fiancée that genuine issues of material fact prevented the trial court from entering summary judgment as a matter of law regarding the return of a 6.71 carat engagement ring. The couple's disagreement over whether he needed to seek treatment for a problem escalated into an argument resulting in his arrest on a charge of domestic dispute. He sought replevin of the ring, alleging it was given in contemplation of marriage and that he was entitled to its return because his fiancée had terminated the engagement. She responded that she never intended to break their engagement, simply postpone it until he completed treatment. She appealed the trial court's order of summary judgment in his favor, arguing that this was a classic "he said, she said" argument. The appellate court agreed with her and reversed and remanded for further proceedings.
http://www.4dca.org/opinions/Jan%202014/01-15-14/4D13-486.op.pdf (January 15, 2014).

Byrne v. Byrne, __So. 3d__, 2014 WL 308023 (Fla. 4th DCA 2014). CONTEMPT CANNOT BE USED TO ENFORCE EQUITABLE DISTRIBUTION; A RECEIVER MAY NOT BE APPOINTED WITHOUT A LEGAL OR EQUITABLE CLAIM. Former wife appealed an order holding her in contempt for failing to pay the mortgage on the marital home and appointing a receiver to collect rental income from the home to pay its mortgage. The appellate court agreed with her that contempt cannot be used to enforce equitable distribution and that former husband lacked standing to seek appointment of a receiver. It stated that the law is well-settled that contempt does not lie to enforce a property settlement arising out of a dissolution of marriage and that a receiver may not be appointed unless the person seeking appointment has standing due to an underlying legal or equitable claim, such as ownership.
http://www.4dca.org/opinions/Jan%202014/01-29-14/4D13-1150.op.pdf (January 29, 2014).

***Fifth District Court of Appeal***

Chace v. Loisel, __So. 3d__, 2014 WL 258620 (Fla. 5th DCA 2014). TRIAL JUDGE WHO FRIENDED SPOUSE ON FACEBOOK DURING DISSOLUTION PROCEEDINGS SHOULD HAVE DISQUALIFIED HERSELF; MOTION TO DISQUALIFY IS LEGALLY SUFFICIENT IF IT ALLEGES FACTS WHICH, IF TAKEN AS TRUE, WOULD CREATE A FEAR IN A REASONABLE PERSON THEY WOULD NOT GET A FAIR TRIAL. Prior to the entry of a final judgment of dissolution, the trial judge sent a Facebook friend request to former wife. Upon the advice of counsel, former wife did not respond to that request, but filed a formal complaint against the judge after entry of the judgment. Her motion was denied as legally insufficient. Former wife learned that the judge had been disqualified in other cases after similar contacts on social media. The appellate court concluded that the trial court erred in denying former wife's motion. If the grounds given in a motion for disqualification are legally sufficient to create a "well-founded fear" in the mind of party that he or she will not receive a fair trial, it is incumbent on the judge to excuse his- or herself. To determine whether a motion is legally sufficient requires an appellate court to decide whether the alleged facts, if taken as true, would prompt a reasonable person to fear that he or she would not get a fair and impartial trial before that judge. While expressing doubts with the 4th District Court of Appeal's logic in *Domville v. State*, 103 So. 3d 184 (Fla. 4th DCA 2012), the appellate court held that because it was the only Florida case discussing the impact of a judge's social network activity, it was binding on this trial judge. Although *Domville* concerned the friending of a prosecutor rather than a party, the appellate court found the friending of a party more alarming than a judge's Facebook friendship with an attorney. *Domville* aside, it found the motion to disqualify sufficient on its face to warrant disqualification. It held that judges must place "boundaries on their conduct" to avoid the situation which occurred here. Former wife's motion alleged facts that would create in a reasonable person a well-founded fear that she would not receive a fair trial; the order denying the motion to disqualify was quashed. http://www.5dca.org/Opinions/Opin2014/012014/5D13-4449.op.pdf (January 24, 2014).

Matura v. Griffith, __ So. 3d__, 2014 WL 338750 (Fla. 5th DCA 2014). SECTION 61.13(2)(C)2 CREATES PRESUMPTION OF DETRIMENT TO CHILDREN IF PARENT SEEKING PARENTING PLAN AND TIME-SHARING HAS BEEN CONVICTED OF A MISDEMEANOR BATTERY INVOLVING DOMESTIC VIOLENCE; JAMAICA IS NOT A SIGNATORY TO THE HAGUE CONVENTION; NO EVIDENCE THAT SPOUSE COULD GET CHILDREN LEGALLY RETURNED; TIME-SHARING REVERSED. Former wife appealed a provision within a final judgment of dissolution allowing former husband to have time-sharing with their two sons in Jamaica, a non-signatory to the Hague Convention of the Civil Aspects of International Child Abduction (Hague Convention). Former husband had been deported to Jamaica for battery convictions on former wife and had repeatedly threatened to kidnap the children. The appellate court cited section 61.13(2)(c)2, F.S., that a presumption of detriment to children is created when a parent seeking a parenting plan and time-sharing has been convicted of a misdemeanor of the 1st degree or higher involving domestic violence. That section obligated the trial court to inform former husband of the presumption. If former husband was unable to rebut the presumption, the trial court would have been precluded from ordering shared responsibility, including time-sharing. This it did not do. Because Jamaica is not a signatory to the Hague Convention, no evidence indicated that former wife would be able to get the children legally returned from Jamaica. Reversed and remanded. http://www.5dca.org/Opinions/Opin2014/012714/5D12-4182.op.pdf (January 31, 2014).

Vyfvinkel v. Vyfvinkel, __So. 3d__, 2014 WL 337958 (Fla. 5th DCA 2014). STIPULATION ENTITLED SPOUSE TO CUMULATIVE EFFECT OF INFLATION. Former husband appealed an order finding that he was not entitled to a cumulative annual inflation adjustment to his alimony payment based upon the language stipulated to by the spouses and adopted in the final judgment of dissolution. The stipulation required the spouses to use the Consumer Price Index (CPI) for an annual increase of alimony. The trial court adopted former wife's reading of the stipulation which multiplied the base alimony figure times the CPI for the preceding calendar year; the appellate court read the agreement as requiring an adjustment that took into account the cumulative effect of inflation by adding the CPIs of previous years and multiplying that sum by the base alimony. The appellate court concluded that this was the "only reasonable reading" of the stipulation. The CPI adjustment language in the stipulation was intended to protect the negotiated alimony from "erosion by inflation;" the language should be read in such a way that would accomplish, not defeat, the intended purpose.
http://www.5dca.org/Opinions/Opin2014/012714/5D13-2321.op.pdf (January 31, 2014).

## Domestic Violence Case Law

### *Florida Supreme Court*

In re: Amendments to Florida Rules of Judicial Admin., ___ So. 3d ____, 2014 WL 172531 (Fla. 2014). RULES AMENDED. The Steering Committee on Families and Children in the Court proposed amendments to Florida Rule of Judicial Administration 2.545(d) which were approved by the Court. The Steering Committee also proposed five new rules of procedure for Florida's family courts which were also approved. The new rules require the courts to assign related family cases to a single judge unless it is deemed impractical, and also for coordination of related cases that are assigned to different judges. The Supreme Court also noted its support for the unified family court model. The amendments are effective April 1, 2014. http://www.floridasupremecourt.org/decisions/2014/sc12-2007.pdf (January 16, 2014).

### *First District Court of Appeals*

Jeffries v. Jeffries, ___ So. 3d ____, 2014 WL 261331 (Fla. 1st DCA 2014). INJUNCTION AFFIRMED. The respondent appealed an injunction for protection against domestic violence entered against him; however, he failed to supply the court with a transcript of the hearing. Without the transcript, the appellate court could not review the case to verify that the order was supported by competent, substantial evidence, and therefore, it was forced to affirm the lower court's decision. http://opinions.1dca.org/written/opinions2014/01-23-2014/13-4757.pdf (January 22, 2014).

### *Second District Court of Appeals*

No new cases reported.

### *Third District Court of Appeals*

Schutt v. Alfred, ___ So. 3d ____, 2014 WL 305227 (Fla. 3d DCA 2014). DATING INJUNCTION REVERSED. The respondent appealed a permanent injunction for protection against dating violence issued against her. During the hearing, testimony revealed that the petitioner and the respondent had not been in a dating relationship since November of 2011. However, s. 784.046(2), F.S. (2013), states that to receive an injunction against dating violence, two individuals must have had a dating relationship within the past 6 months. The dating violence statute does not provide relief to those who may have experienced violence in a "casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context." The court vacated the permanent injunction without prejudice to the petitioner filing a timely petition for an injunction for protection against stalking. http://www.3dca.flcourts.org/Opinions/3D13-1389.pdf (January 29, 2014).

### *Fourth District Court of Appeals*

No new cases reported.

### *Fifth District Court of Appeals*

No new cases reported.

## 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.