

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE

July 2012

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Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

M.V.K. v. State, __ So. 3d __, 2012 WL 3089400 (Fla. 1st DCA 2012). [TRIAL COURT PROPERLY IMPOSED A MAXIMUM-RISK RESIDENTIAL PLACEMENT PURSUANT TO S. 985.494\(1\), F.S. \(2011\).](#)

The juvenile was adjudicated delinquent for committing grand theft auto. The juvenile had previously completed two different high-risk residential programs for other offenses. This appeal was filed pursuant to Anders v. California, 386 U.S. 738 (1967). The First District Court of Appeal found that s. 985.494(1), F.S. (2011), provides that, “Notwithstanding any other law and regardless of the child's age, a child who is adjudicated delinquent, or for whom adjudication is withheld, for an act that would be a felony if committed by an adult, shall be committed to a maximum-risk residential program if the child has completed two different high-risk residential commitment programs.” Therefore, the trial court had properly imposed a maximum-risk residential placement for the juvenile. The First District also found that the trial court correctly rejected the arguments that it had to explain its reasons for deviating from the recommendation of the Department of Juvenile Justice pursuant to E.A.R. v. State, 4 So. 3d 614 (Fla. 2009), and that s. 985.494(1), F.S. (2011), pertained only to juvenile sexual offenders. Accordingly, the juvenile’s maximum-risk placement was affirmed.

<http://opinions.1dca.org/written/opinions2012/07-31-2012/12-1372.pdf> (July 31, 2012).

D.K.D. v. State, __ So. 3d __, 2012 WL 3000604 (Fla. 1st DCA 2012). [ADJUDICATION FOR GIVING A FALSE NAME OR IDENTIFICATION TO LAW ENFORCEMENT REVERSED WHERE FALSE NAME WAS PROVIDED DURING A CONSENSUAL ENCOUNTER.](#) The juvenile appealed his adjudication for giving a false name or identification to law enforcement officers. The juvenile argued that the trial court erroneously denied his motion to dismiss because s. 901.36(1), F.S. (2011), requires an arrest or lawful detention and he was not arrested or lawfully detained at the time he gave the false name. The juvenile was seen by police at 2:30 am, dashing across a parking lot to a trailer used for the storage of fireworks. The juvenile was observed peeking around the corner of the trailer. The juvenile told officers that he was returning home from a friend's house. Appearing to be a juvenile, the officers asked for his name, explaining that they wanted to contact a parent to be sure he was not a runaway. The juvenile provided a name. He then gave his mother's name, and when police looked up an address for the mother's name, the juvenile advised that they had since moved. The officers put the juvenile in a patrol car and drove in the direction of the address he gave as the current one. Before arriving, the juvenile admitted that he gave an incorrect address and provided a false name. The First District Court of Appeal found that s. 901.36(1), F.S. (2011), requires that the false identification must occur after an arrest or lawful detention in order to constitute a violation of law. The First District held that the false name provided by the juvenile occurred during a consensual encounter, and therefore did not violate the law. The record was undisputed that the officers determined it

was not appropriate to arrest the juvenile, and they decided to take him home for his own health and safety. Even assuming that the consensual encounter became a detention, it could not be construed as a lawful one because there was no well-founded suspicion of any criminal activity. The record indicated that there was no basis to find a well-founded suspicion that criminal activity was occurring. The officers had a mere suspicion and vague concern of criminal activity because of the juvenile's presence at 2:30 a.m. Their primary suspicion was that the juvenile may have been a runaway. Accordingly, the juvenile's adjudication of delinquency was reversed and vacated.

<http://opinions.1dca.org/written/opinions2012/07-24-2012/11-5084.pdf> (July 24, 2012).

R.A.W. v. State, __ So. 3d __, 2012 WL 3013534 (Fla. 1st DCA 2012). **ADJUDICATION OF POSSESSION OF ALCOHOL BY A MINOR WAS AFFIRMED.** The juvenile argued that her motion for judgment of acquittal should have been granted because of the lack of adequate proof that the liquid was actually an illegal substance. A state park enforcement officer testified that he saw a beer can on the ground between the juvenile's legs and that when she stood up it tipped over and its dark-colored contents foamed on the sand like beer. Beyond these visual observations, the officer took no steps to confirm the liquid was actually beer. The officer did not smell the can or its contents, or take possession of the can. The juvenile was not subject to any observation or testing for alcohol consumption, and showed no signs of having imbibed. The only evidence that the content of the beer can was an illegal substance was the officer's observation that the liquid that spilled out was brown and that, in his personal opinion, it foamed like beer when it spilled on the sand. The First District Court of Appeal found that the state bore the burden of presenting sufficient evidence to prove beyond a reasonable doubt that the brown foaming liquid was an illegal substance. In the instant case, the "beer foam" opinion of the officer without other verification, such as smell, left open some doubt about the nature of the liquid. The First District found that proof of whether it was beer should not be based on the perceived characteristics of its foam alone. Here, the additional factor was that the container the liquid spilled from was a beer can. Accordingly, the First District affirmed the adjudication for possession of alcohol.

<http://opinions.1dca.org/written/opinions2012/07-24-2012/11-5376.pdf> (July 24, 2012).

K.M.H. v. State, __ So. 3d __, 2012 WL 2545188 (Fla. 1st DCA 2012). **TRIAL COURT FAILED TO MAKE THE WRITTEN FINDINGS REQUIRED TO COMMIT A JUVENILE TO A RESIDENTIAL PLACEMENT FOR A MISDEMEANOR OFFENSE.** The juvenile appealed her commitment to a moderate-risk residential placement for a violation of probation based upon a misdemeanor offense. The Department of Juvenile Justice (DJJ) had recommended probation with the requirement that she participate in an inpatient drug treatment program. The juvenile argued that the trial court failed to make the written findings required by s. 985.441(2)(d), F.S. (2011), to place a juvenile in a residential placement for a misdemeanor offense. The juvenile also argued that the trial court erred by failing to comply with the requirements enunciated in E.A.R. v. State, 4 So. 3d 614 (Fla. 2009), when deviating from the DJJ's recommendation. The First District Court of Appeal found that s. 985.441(2)(d), F.S. (2011), provides that a trial court may not commit a juvenile for any misdemeanor offense or any probation violation at a restrictiveness level other than minimum-risk nonresidential unless the probation violation is a

new violation of law constituting a felony. However, a court may commit such a child to a low-risk or moderate-risk residential placement if the court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing. The First District held that the trial court failed to make the required written findings. The First District declined to reach the second issue. Accordingly, the disposition was reversed and remanded. <http://opinions.1dca.org/written/opinions2012/07-03-2012/11-6669.pdf> (July 3, 2012).

Second District Court of Appeal

I.M. v. State, __ So. 3d __, 2012 WL 3046351 (Fla. 2d DCA 2012). **FINDINGS OF OBSTRUCTION WITHOUT VIOLENCE AND TRESPASS REVERSED.** The juvenile challenged the order of the trial court finding him guilty of the delinquent acts of obstructing or opposing an officer without violence, trespass, and burglary of an unoccupied dwelling. The burglary charge stemmed from a separate incident, and that disposition was affirmed by the Second District Court of Appeal without further comment. However, the Second District reversed the disposition order as to the trespass and obstruction allegations. Those charges stemmed from an incident at a public library. An off-duty sheriff's deputy was outside the library questioning a group of teenagers about horseplay within the library. The juvenile, who was not one of the teenagers in question, began to interfere by yelling profanity and racial slurs at the deputy. The juvenile told the group of teens that they did not have to listen to the deputy. The deputy instructed the juvenile to leave, but the juvenile continued to yell profanity. The deputy testified that he had to interrupt his original investigation three times to admonish the juvenile. The deputy ultimately approached the juvenile in order to arrest him, but the juvenile jumped onto his bicycle and tried to flee. On appeal, the juvenile argued that merely yelling at the deputy was not enough to constitute obstruction, and that the State failed to establish a prima facie case for trespass because it did not present evidence that the deputy had been authorized by the property owner to issue a trespass warning. The Second District held that: 1.) the juvenile's words alone did not constitute obstruction of an officer; 2.) the State failed to establish that the sheriff's deputy had the authority to issue a trespass warning; 3.) the sheriff's deputy was not acting in his lawful duty when he attempted to arrest the juvenile for trespass, and thus juvenile's act of attempting to ride away on his bike did not constitute obstruction; and 4.) the juvenile's failure to comply with sheriff's deputy's request to leave an area that was otherwise open to the public was not a valid basis for an arrest for trespass after warning. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2027,%202012/2D11-465.pdf (July 27, 2012).

C.W. v. State, __ So. 3d __, 2012 WL 3054121 (Fla. 2d DCA 2012). **ADJUDICATION FOR BATTERY ON A LAW ENFORCEMENT OFFICER REVERSED AND REMANDED BECAUSE THE TRIAL COURT FAILED TO COMPLY WITH THE RULE OF JUVENILE PROCEDURE ADDRESSING A JUVENILE'S RIGHT TO COUNSEL.** The juvenile appealed from the order adjudicating her delinquent based on the offense of battery on a law enforcement officer. The juvenile argued that she was never informed of her right to counsel as required by Florida Rule of Juvenile Procedure 8.165. At arraignment, the juvenile indicated that she had hired an attorney. The trial court asked the

juvenile if she was sure that she was going to be represented and noted that the attorney had not filed any pleadings. The juvenile's trial was then set for a date less than a month later. The juvenile showed up at her trial without a lawyer. The juvenile's father told the court that the attorney was not representing his daughter yet because they had not given him any money. The trial court went ahead and had the trial. After the trial, but prior to sentencing, an attorney was hired by the juvenile. The attorney filed a motion for rehearing, arguing that the juvenile did not understand that the trial was going to take place on the date set, she did not have legal representation at the trial, she had neither received discovery nor demanded it, and she did not have her witnesses present for trial. The trial court noted that there was a representation made at arraignment that an attorney had been hired. The paperwork suggested that the juvenile was given the trial date with the understanding that it was the trial date and that she then appeared without her lawyer. The trial court denied the motion, finding that the juvenile did indeed have a fair trial. On appeal, the Second District Court of Appeal found that Florida Rule of Juvenile Procedure 8.165 requires that counsel be present at each stage of juvenile proceedings, that a juvenile defendant must be advised of his right to counsel, and that if they waive counsel, the court must conduct a thorough inquiry to determine if the waiver was freely and intelligently made. In the instant case, the Second District held that compliance with rule 8.165 was nonexistent. Accordingly, the adjudication of delinquency was reversed and remanded for a new trial.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2027,%202012/2D11-1334.pdf (July 27, 2012).

Third District Court of Appeal

K.N. v. State, __ So. 3d __, 2012 WL 2813886 (Fla. 3d DCA 2012). [RESTITUTION ORDER REVERSED AND REMANDED FOR ENTRY OF A RESTITUTION ORDER REPRESENTING THE COST OF REPAIRS FOR THE DOORS OF THE VICTIM'S HOME](#). The Third District Court of Appeal, upon the State's confession of error, reversed the restitution order entered by the trial court and remanded for entry of a restitution order in the amount of \$1500, representing the cost of repairs for the doors of the victim's home. Reversed and remanded.

<http://www.3dca.flcourts.org/Opinions/3D11-3032.pdf> (July 11, 2012).

Fourth District Court of Appeal

J.K.K. v. State, __ So. 3d __, 2012 WL 2913251 (Fla. 4th DCA 2012). [EVIDENCE OF THE VALUE OF THE COMPUTER AND CELL PHONE CHARGER WAS INSUFFICIENT TO ESTABLISH THE CURRENT VALUE OF THESE ITEMS FOR GRAND THEFT ADJUDICATION](#). The Fourth District Court of Appeal affirmed the juvenile's adjudication for burglary of a dwelling but reversed his adjudication for grand theft. The State's evidence of the value of the stolen computer and cell phone charger was solely the owner's testimony of the purchase price a year and a half prior to the incident. The Fourth District found that this evidence was insufficient to establish the current value of these items. Accordingly, the grand theft adjudication was remanded for entry of adjudication of petit theft as authorized by s. 924.34, F.S. (2006).

<http://www.4dca.org/opinions/July%202012/07-18-12/4D11-1977.op.pdf> (July 18, 2012).

A.S. v. State, ___ So. 3d ___, 2012 WL 2579624 (Fla. 4th DCA 2012). **THE JUVENILE’S CONVICTION FOR FELONY CRIMINAL MISCHIEF WAS REDUCED TO SECOND-DEGREE MISDEMEANOR CRIMINAL MISCHIEF BECAUSE THE DAMAGE TESTIMONY SHOULD HAVE BEEN STRICKEN WHERE THE ACTUAL ESTIMATE OF DAMAGE WAS NOT ADMITTED INTO EVIDENCE.** The juvenile appealed his conviction for felony criminal mischief valued at \$1000 or more. The State alleged that the juvenile caused \$2600 in damage to a car. The owner of an auto body shop testified to the value of the damage. The testimony was based on an estimate made by one of his employees in the regular course of business. Because the estimate was never admitted into evidence, the juvenile requested that the testimony be stricken as hearsay. The trial court refused to strike the testimony. The Fourth District Court of Appeal found that s. 90.803(6), F.S. (2003), provided a hearsay exception for records of regularly conducted business activity. However, the business-records exception to the hearsay rule does not authorize hearsay testimony concerning the contents of business records which have not been admitted into evidence. In the instant case, the estimate would have qualified as a business record; however, the actual estimate was not admitted into evidence. Thus, the testimony concerning its contents should have been stricken. Without this evidence, the record did not provide competent, substantial evidence demonstrating the essential element of value. Also, the owner's testimony would not qualify as expert opinion because he testified only as to what was contained within the estimate, rather than evaluating what should have been included within the estimate based upon viewing photographs during trial. Therefore, the Fourth District found that there was insufficient evidence to prove felony criminal mischief. Accordingly, the juvenile’s conviction for felony criminal mischief was reversed and remanded to reduce the juvenile’s conviction to the lesser offense of second-degree misdemeanor criminal mischief and provide a new disposition hearing. <http://www.4dca.org/opinions/July%202012/07-05-12/4D11-3180.op.pdf> (July 5, 2012).

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

R.W. v. Department of Children and Family Services, ___ So. 3d ___, 2012 WL 2617595, (Fla. 2d DCA 2012). **ADJUDICATION OF DEPENDENCY REVERSED.** The father appealed an order of dependency and the Department of Children and Family Services conceded error. The

Department sheltered the child in September 2011, when the child was approximately eight years old and the mother was incarcerated. The Department alleged that the father had failed to protect the child from the mother; however, the father testified that he had not lived with the mother for at least two years and that he had recently gone to Colorado with the mother to look for a job while the child stayed with the paternal grandmother. The Department conceded that the record did not contain competent, substantial evidence to support the allegations against the father, and the appellate court reversed.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2006,%202012/2D12-759.pdf (July 6, 2012).

Third District Court of Appeal

G.W. v. Department of Children and Families, ___ So. 3d ____, 2012 WL 2947772 (Fla. 3d DCA 2012). **RIGHT TO COUNSEL AT SHELTER**. A shelter hearing was held in which the mother was represented by Regional Conflict Counsel and the father was present but unrepresented. The court appointed counsel for the father for future proceedings, and then continued with the shelter hearing. The father was not given a chance to address the court until the end of the hearing and clearly did not understand the proceedings. The shelter petition was granted and the father sought certiorari relief quashing the order on the ground that he was summarily deprived of his constitutional and statutory right to counsel at the shelter hearing. The appellate court quashed the shelter order and noted that parents are entitled to counsel at shelter hearings. The court concluded that the trial court should have advised the father of his right to counsel before proceeding with the shelter hearing. The trial court's failure to provide the father the opportunity to have counsel present at the shelter hearing constituted a clear departure from the essential requirements of law, amounting to a miscarriage of justice.

<http://www.3dca.flcourts.org/Opinions/3D12-1233.pdf> (July 13, 2012).

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

V.M. v. Home at Last Adoption Agency, ___ So. 3d ____, 2012 WL 3044277 (Fla. 5th DCA 2012). **ADJUDICATION OF DEPENDENCY ORDERED UNDER CHAPTER 63 REVERSED**. The incarcerated father challenged the authority of the trial court to enter an order adjudicating his infant dependent after concluding that the evidence did not support terminating his parental rights pending adoption pursuant to chapter 63, F.S. (2010). The mother had voluntarily executed a consent to adoption pursuant to s. 63.082, F.S. (2010), which gave custody of the child to Home at Last Adoption Agency. Shortly thereafter, the adoption agency placed the child with an out-of-state family and filed a petition for termination of parental rights pending adoption, alleging abandonment as the basis for terminating the appellant's parental rights. At trial, the court found that the mother had lied to the adoption agency and had not told the father about the adoption, or gained the father's consent. The court found that the appellant had not abandoned the child, and denied the Adoption Agency's request to terminate his parental rights; however, instead of dismissing the petition after finding no basis for termination, as

required by s. 63.089(5), F.S. 2010, the court decided that there was enough evidence to adjudicate the child dependent, and in a second trial, made findings of fact pursuant to s. 39.507, F.S., F.S., and ordered visitation and the father to complete a case plan and pay child support. The appellant argued that the trial court exceeded its authority by adjudicating the child dependent and ordering a case plan after finding that there was insufficient evidence to support termination of his parental rights, and the appellate court agreed. Section 63.089(5), F.S. 2010, requires the court to dismiss the petition upon finding that an appellant's parental rights should not be terminated pending adoption. The statute is clear that any dependency proceedings would have to be filed separately in a dependency action pursuant to chapter 39. <http://www.5dca.org/Opinions/Opin2012/072312/5D12-264.op.pdf> (July 24, 2012).

Dissolution Case Law

Florida Supreme Court

In re: Amendments to the Florida Rules of Judicial Administration, the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, The Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, The Florida Probate Rules, The Florida Rules of Traffic Court, The Florida Rules of Juvenile Procedure, The Florida Rules of Appellate Procedure, and The Florida Family Law Rules of Procedure—Computation of Time, __ So. 3d __, SC10-2299, (Fla. 2012). **NEW RULE OF JUDICIAL ADMINISTRATION 2.514 ADOPTED**. The Supreme Court adopted a new uniform rule regarding computation of time, Florida Rule of Judicial Administration 2.514. The new rule is designed to govern the computation of time in all types of proceedings, including dissolution of marriage, although statutory times will still apply to shelter and detention hearings under the juvenile rules. The new rule takes effect October 1st, 2012.

<http://www.floridasupremecourt.org/decisions/2012/sc10-2299.pdf> (July 12, 2012).

First District Court of Appeal

Alvis v. Alvis, __ So. 3d __, 2012 WL 2924072 (Fla. 1st DCA 2012). **APPELLATE COURT WITHOUT JURISDICTION IF FEES ARE NOT SET IN JUDGMENT**. Former husband appealed the final judgment of dissolution of marriage. The appellate court affirmed the trial court's scheme of equitable distribution and foreclosure of the marital home without discussion, but dismissed the issue of fees for lack of jurisdiction. It concluded that because the final judgment did not set the amount of fees, it was not a final order subject to appellate review.

<http://opinions.1dca.org/written/opinions2012/07-19-2012/11-2189.pdf> (July 19, 2012).

Blossman v. Blossman, __ So. 3d __, 2012 WL 2814280 (Fla. 1st DCA 2012). **TRIAL COURT CANNOT SPLIT THE DIFFERENCE IN VALUING STOCK; VALUATION MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE**. Both spouses appealed the final judgment. The appellate court held that the trial court's valuation of the stock was not supported by competent, substantial evidence; it affirmed the remaining issues without comment. The appellate court concluded that the trial court had "split the difference" between the valuations

of stock offered by the spouses' experts at trial without providing the requisite findings or an explanation as to how it arrived at the per share value. Finding that to be reversible error, it reversed and remanded for findings based on competent, substantial evidence.

<http://opinions.1dca.org/written/opinions2012/07-11-2012/11-5366.pdf> (July 11, 2012).

Booth v. Booth, ___ So. 3d ___, 2012 WL 2682758 (Fla. 1st DCA 2012). **ABSENT SPECIAL CIRCUMSTANCES, AND EXCEPTING INTERLOCUTORY RULINGS, A SUCCESSOR JUDGE CANNOT VACATE THE ORDER OF A PRIOR JUDGE ON UNCHANGED FACTS; PARTY SEEKING FEES WHO FAILS TO PRESENT REQUISITE EVIDENCE AT HEARING IS NOT ENTITLED TO A SECOND BITE OF THE APPLE.** Former wife appealed an order granting a rehearing and vacating the order issued by a prior judge which had denied the motion for fees and costs filed by a nonparty--former husband's law firm. Former wife had sought to compel production of information establishing that former husband's interest in the law firm was a marital asset; the firm objected and moved for a protective order. The firm moved for fees after a ruling that former husband's ownership interest in the firm had terminated six years prior to the dissolution; however, the firm failed to present evidence on the reasonableness of the fees requested. Concluding that the "dispositive issue" before it was the reasonableness of the fees, the predecessor judge denied the motion. The appellate court held that in vacating that order, the trial court had abused its discretion. The appellate court reiterated that, in the absence of special circumstances such as mistake or fraud upon the court, it is error for a successor judge to vacate an order of a predecessor judge on unchanged facts. The appellate court found no special circumstances in the record; however, it noted that a successor judge *may* vacate or modify a predecessor judge's interlocutory ruling. The appellate court held that a party seeking fees that fails to make the requisite showing at the evidentiary hearing is not entitled to a "second bite of the apple" at a second evidentiary hearing. The trial court's order was reversed.

<http://opinions.1dca.org/written/opinions2012/07-09-2012/11-5976.pdf> (July 9, 2012).

Second District Court of Appeal

Ross v. Ross, ___ So. 3d ___, 2012 WL 3023209 (Fla. 2d DCA 2012). **A LEGAL DOCUMENT FROM AN INMATE IS CONSIDERED TIMELY SERVED IF IT REFLECTS THE DATE IT WAS PLACED INTO THE HANDS OF THE PRISON OFFICIALS AND THE DOCUMENT WOULD HAVE BEEN TIMELY FILED OR SERVED ON THAT DATE; MAILBOX RULE APPLIES TO CIVIL AND CRIMINAL INMATES.** Former husband argued that the trial court erred in denying as untimely his motion for rehearing and amendment of the final judgment of dissolution. The judgment was filed on December 13, 2010; former husband, who was incarcerated, provided his motion for rehearing to prison officials on December 21, 2010. The appellate court concluded that his motion was within 10 days required for service of either a motion for rehearing or to amend a judgment. It noted that courts in Florida presume a legal document from an incarcerated person is timely served if the certificate of service on the document reflects the specific date that it was placed into the hands of the prison officials for mailing and that the document would have been timely filed or served on that date. This "mailbox rule" applies to documents from inmates in civil and criminal cases.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2025,%202012/2D11-714.pdf (July 25, 2012).

Huebner v. Huebner, __ So. 3d __, 2012 WL 2946494 (Fla. 2d DCA 2012). **ISSUANCE OF FINAL JUDGMENT RENDERED PETITION FOR MANDAMUS MOOT; NO FEES BECAUSE MOTION WAS WELL-FOUNDED AND RESPONSE WAS WELL BEYOND WHAT WAS NECESSARY; SECTION 61.16(1) CAN BE BASIS FOR FEES.** The appellate court denied former husband's petition for mandamus to compel the judge to issue the final order of dissolution because it was rendered moot by the issuance of the order. Noting that section 61.16(1), F.S. 2007, provides a basis for the appellate court to award fees in what it termed "an appropriate case," the appellate court found itself "hesitant" to order former husband to pay former wife's fees in this case because his petition was well-founded and because her counsel's 18-page response to the motion for mandamus was "well beyond the needed response."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2020,%202012/2D12-516.pdf (July 20, 2012).

George v. George, __ So. 3d __, 2012 WL 2948549 (Fla. 2d DCA 2012). **TRIAL COURT'S DETERMINATION OF NET INCOME MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; NET INCOME IS DETERMINED BY SUBTRACTING STATUTORILY ALLOWABLE DEDUCTIONS FROM MONTHLY INCOME; IMPUTATION OF INCOME APPROPRIATE IF A PORTION OF SPOUSE'S MONTHLY LIVING EXPENSES IS PAID FOR OR SUBSIDIZED BY SOMEONE ELSE.** Former husband appealed the award of fees and costs to former wife on several grounds. The appellate court affirmed the trial court's award with the exception of its calculations regarding former husband's net income and his ability to pay the award as ordered; on that issue, it reversed and remanded.
The appellate court held that a trial court's determination of a spouse's net income must be supported by competent, substantial evidence; it noted that meaningful review is often hampered by an absence of findings as to how this amount is determined. Net income should be determined by subtracting statutorily allowable deductions from monthly income. Income may be imputed to a spouse for purposes of determining support when a portion of that spouse's monthly living expenses is being paid for or subsidized by someone else, such as a parent or employer. Here, the appellate court found no error in the trial court having imputed income to former husband, who was living rent-free in a house owned by his parents, but found that the trial court erred in its application of the imputation. That error resulted in the trial court arriving at an incorrect amount of income available to former husband from which he could pay former wife's fees and costs.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2018,%202012/2D11-1388.pdf (July 18, 2012).

Jackson v. Jackson, __ So. 3d __, 2012 WL 2914034 (Fla. 2d DCA 2012). **CERTIORARI GRANTED TO SPOUSE WHERE TRIAL COURT DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW AND SPOUSE SUFFERED IRREPARABLE INJURY WHICH COULD NOT BE REMEDIED ON APPEAL; A TRIAL COURT IS REQUIRED TO CONSIDER ALL ASSETS AND PROPERTY INTERESTS OF OBLIGOR.** The appellate court granted certiorari to former wife to review an order denying her motion to hold former husband in contempt for failure to pay temporary alimony and attorneys' fees pursuant to an order for temporary support. The appellate court concluded that the trial court departed

from the essential requirements of law when it found that former husband had not willfully failed to pay former wife the temporary support it had ordered--especially in light of the assets available to him from which he could pay those amounts. The appellate court found that the trial court's error caused irreparable harm to former wife which could not be remedied on appeal.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2018,%202012/2D12-817.pdf (July 18, 2012).

Third District Court of Appeal

Hedman v. Hedman, __ So. 3d __, 2012 WL 3023167 (Fla. 3d DCA 2012). [PCA; DISSENT AS TO UNFAIR EQUITABLE DISTRIBUTION OF MARITAL HOME](#). This case was affirmed per curiam, but is included for its lengthy dissent by the judge who disagreed with the panel's decision to uphold the trial court's equitable distribution of former husband's half-interest in the marital home to former wife. <http://www.3dca.flcourts.org/Opinions/3D10-2751.pdf> (July 25, 2012).

Fourth District Court of Appeal

Cunha v. Cunha, __ So. 3d __, 2012 WL 3023175 (Fla. 4th DCA 2012). [WHERE MARITAL SETTLEMENT AGREEMENT REQUIRES SPOUSE TO BE RESPONSIBLE FOR A DEBT, BUT DOESN'T SPECIFY AMOUNT OWED, DEBT IS SATISFIED WHEN CREDITOR IS SATISFIED](#). The appellate court agreed with former husband that the trial court should have vacated a judgment in favor of former wife once he settled the outstanding debt on which the judgment had been based. Pursuant to the marital settlement agreement (MSA), former husband assumed responsibility for a particular debt; however, the amount owed was not specified in the MSA. His failure to pay resulted in former wife obtaining a judgment containing a specific amount—the debt plus accrued interest. Former husband satisfied the debt with the creditor at a lower amount than that specified in the judgment; thus, the question on appeal was whether satisfaction of the debt with the creditor satisfied the requirement in the MSA. Answering in the affirmative, the appellate court held that the MSA required former husband to bear responsibility for the debt--which he did. It found that its interpretation of the MSA was confined to the four corners of the agreement; thus, it could not require payment of the full amount owed when the MSA did not. <http://www.4dca.org/opinions/July%202012/07-25-12/4D11-1892.op.pdf> (July 25, 2012).

Fifth District Court of Appeal

Diedrick v. Diedrick, __ So. 3d __, 2012 WL 3044263 (Fla. 5th DCA 2012). [TRIAL COURT ABUSED ITS DISCRETION IN DENYING MOTION FOR CONTINUANCE OF DATE OF FINAL HEARING TO ALLOW SPOUSE TIME FOR DISCOVERY ON MOTION TO SET ASIDE MEDIATED SETTLEMENT AGREEMENT](#). Former wife appealed the trial court order which both denied her motion to set aside a mediated settlement agreement and entered a final judgment of dissolution incorporating the agreement.

The appellate court held that, based on the circumstances of the case, the trial court had abused its discretion in not having granted her a continuance of the final hearing to give her

adequate discovery time on her motion. Accordingly, it reversed the denial of her motion to set aside the settlement agreement and the part of the final judgment incorporating the terms of the agreement.

<http://www.5dca.org/Opinions/Opin2012/072312/5D11-1952.op.pdf> (July 23, 2012).

Le v. Nguyen, __ So. 3d __, 2012 WL 2599285 (Fla. 5th DCA 2012). **TRIAL COURT MUST CONSIDER CHILD'S BEST INTERESTS IN PARENTING ISSUES; IT IS NOT BOUND BY AGREEMENT BETWEEN PARENTS AND CANNOT ABDICATE TO PARENT OR EXPERT ITS RESPONSIBILITY TO DETERMINE BEST INTERESTS TO.** Former wife appealed a final judgment of dissolution of marriage which had incorporated a marital settlement agreement (MSA) and parenting plan, arguing that both should have been set aside. The appellate court concluded that the trial court erred by not considering whether the parenting plan was in the best interests of the children. The appellate court reiterated that just as a trial court is not bound by an agreement entered into by parents regarding child support or parental responsibility; neither should it abdicate to a parent or expert its responsibility to determine the child's best interests. Because former wife sought to set aside the parenting agreement before it was incorporated into the final judgment, she was not required to demonstrate a substantial change in circumstances; that is required when modifying a final judgment. The appellate court reversed and remanded for an evidentiary hearing on the issue of the parenting plan and the related child support.

<http://www.5dca.org/Opinions/Opin2012/070212/5D10-4338.op.pdf> (July 6, 2012).

Doyle v. Doyle, __ So. 3d __, 2012 WL 246868 (Fla. 5th DCA 2012). **GOING FORWARD WITH FINAL HEARING IMMEDIATELY AFTER VACATING SPOUSE'S VOLUNTARY DISMISSAL VIOLATED THAT SPOUSE'S DUE PROCESS.** Former wife appealed the final judgment of dissolution of marriage. The appellate court concluded that the trial court erred in holding the final hearing in the wake of both a notice of voluntary dismissal filed by former wife and former husband's motion to vacate the dismissal. Going forward with the final hearing immediately after vacating the dismissal deprived former wife of due process.

<http://www.5dca.org/Opinions/Opin2012/062512/5D10-2821.op.pdf> (June 29, 2012).

Overcash v. Overcash, __ So. 3d __, 2012 WL 2466568 (Fla. 5th DCA 2012). **WRIT OF PROHIBITION GRANTED TO SPOUSE AFTER TRIAL JUDGE FAILED TO TIMELY RULE ON MOTION TO DISQUALIFY.** Former husband sought a writ of prohibition after his motion to disqualify the trial judge from presiding over a parenting dispute was denied by the judge more than forty-five days after it had been filed—a date outside the thirty-day time period provided for a judge to rule on that motion. Concluding that the trial court's ruling was untimely, the appellate court granted the writ.

<http://www.5dca.org/Opinions/Opin2012/062512/5D11-3689.op.pdf> (June 29, 2012).

Domestic Violence Case Law

Florida Supreme Court

In re: Amendments to Florida Family Law Rules of Procedure, ___ So. 3d ____, 2012 WL 2849216 (Fla. 2012). [RULES AMENDED](#). In response to newly passed legislation, the court approved changes to the family law rules that amended references throughout the rules to injunctions for domestic, repeat, dating, and sexual violence to include stalking. The amendments will take effect on October 1, 2012, at the same time that the cause of action for an injunction for protection against stalking becomes effective.
<http://www.floridasupremecourt.org/decisions/2012/sc12-1205.pdf> (July 12, 2012).

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

Lee v. Lee, ___ So. 3d ____, 2012 WL 3054123 (Fla. 2d DCA 2012). [EXTENTION FOR INJUNCTION REMANDED FOR HEARING](#). A petitioner filed a motion for an extension of an injunction for protection against domestic violence. An ex parte order was entered that extended the injunction and then a hearing was held on the motion. Despite the respondent's opposition to the motion, the trial court entered an order permanently extending the injunction without hearing any evidence; the respondent appealed. Section 741.30(1)(a), F.S. (2010), states "[w]hen moving for an extension of a preexisting injunction, the petitioner must establish either that additional domestic violence has occurred or that, at the time the petition for extension is filed, he or she has a continuing reasonable fear of being in imminent danger of becoming the victim of domestic violence." Since the trial court failed to hear any evidence or make any findings that additional domestic violence had occurred or that the petitioner had a continuing reasonable fear of being in imminent danger, the appellate court held that the ex parte order temporarily extending the injunction for protection against domestic violence could not be permanently extended against the respondent in absence of the required findings and in absence of an opportunity for the respondent to be heard in opposition to the motion.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2027,%202012/2D10-6087.pdf (July 27, 2012).

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Drug Court/ Mental Health Court 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

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.