

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE
November 2012

Table of Contents

Baker Act/ Marchman Act Case Law	3
Florida Supreme Court.....	3
First District Court of Appeal	3
Second District Court of Appeal.....	3
Third District Court of Appeal.....	3
Fourth District Court of Appeal.....	3
Fifth District Court of Appeal.....	3
Delinquency Case Law	3
Florida Supreme Court.....	3
First District Court of Appeal	3
Second District Court of Appeal.....	3
Third District Court of Appeal.....	6
Fourth District Court of Appeal.....	8
Fifth District Court of Appeal.....	9
Dependency Case Law	10
Florida Supreme Court.....	10
First District Court of Appeal	10
Second District Court of Appeal.....	11
Third District Court of Appeal.....	11
Fourth District Court of Appeal.....	11
Fifth District Court of Appeal.....	11
Dissolution Case Law	11
Florida Supreme Court.....	11
First District Court of Appeal	11
Second District Court of Appeal.....	12
Third District Court of Appeal.....	15
Fourth District Court of Appeal.....	15
Fifth District Court of Appeal.....	16
Domestic Violence Case Law	17
Florida Supreme Court.....	17
First District Court of Appeal	17
Second District Court of Appeal.....	17
Third District Court of Appeal.....	17
Fourth District Court of Appeal.....	17
Fifth District Court of Appeal.....	18
Drug Court/ Mental Health Court Case Law	18
Florida Supreme Court.....	18
First District Court of Appeal	18
Second District Court of Appeal.....	18
Third District Court of Appeal.....	18
Fourth District Court of Appeal.....	18

Fifth District Court of Appeal..... 18

Baker Act/ Marchman Act 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.

Delinquency 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

T.S. v. State, __ So. 3d __, 2012 WL 5935660 (Fla. 2d DCA 2012). [EVIDENCE FAILED TO ESTABLISH THAT SCHOOL GUIDANCE COUNSELOR HAD REASONABLE SUSPICION TO SEARCH THE JUVENILE'S BOOKBAG](#). The juvenile appealed the disposition order that withheld adjudications for possession of marijuana and drug paraphernalia. The juvenile argued that the trial court erred when it denied her dispositive motion to suppress. The juvenile had arrived at school early with her mother for a meeting with the school's guidance counselor. The juvenile had a bookbag with her. After the meeting, the guidance counselor reminded the juvenile that school rules prohibited students from carrying bookbags in the halls during the school day. The guidance counselor offered to allow the juvenile to leave the bookbag in her office. The juvenile left the bookbag without any issue. At that time, the juvenile had not violated any school rule, nor was she suspected of violating any law. On four different occasions during the day, the juvenile came to the office asking to have access to her bookbag. Citing the school policy on bookbags, the guidance counselor denied each of the juvenile's requests. The guidance

counselor testified that she did not notice anything out of the ordinary about the juvenile's attitude or demeanor when the juvenile made these requests. Nevertheless, she became suspicious because of the number of times the juvenile requested access to her bookbag. Without any consent or other information, the guidance counselor searched the bookbag and found marijuana and paraphernalia. On appeal, the juvenile sought review of the trial court's denial of her motion to suppress. The Second District Court of Appeal found that searches of students by school officials are analyzed under the Fourth Amendment, but they have their own slightly modified standard of reasonable suspicion. To justify the search of a student by a school official, there must be reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. In the instant case, the search by the guidance counselor was based on nothing more than an unsupported hunch. None of the facts known to the guidance counselor established reasonable grounds for suspecting that a search of the bag would turn up evidence of activity that violated either the law or school rules. The juvenile clearly wanted something from her bookbag during the school day, but that something could have been any number of lawful items. The guidance counselor had no prior information that the juvenile was involved in any type of illegal activity and no reasonable basis for suspecting that the juvenile would have contraband either in her bookbag or on her person. Absent some evidence from which the guidance counselor could draw a reasonable inference that the juvenile had some type of contraband in her bookbag, the juvenile's interest in retrieving her bookbag, taken alone, was not a specific and articulable fact which reasonably warranted the search of the bookbag. Even taking into account the relaxed standard of reasonable suspicion applicable to searches of students by school officials, the search in this case was improper, and the evidence resulting from the search should have been suppressed. Accordingly, the disposition order and sentence was reversed and remanded for the juvenile's discharge.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2028,%202012/2D11-2578.pdf (November 28, 2012).

J.H. v. State, __ So. 3d __, 2012 WL 5500296 (Fla. 2d DCA 2012). **TRIAL COURT FAILED TO ADEQUATELY SUPPORT ITS DEPARTURE FROM DEPARTMENT OF JUVENILE JUSTICE (DJJ) DISPOSITION RECOMMENDATION.** On appeal, the juvenile challenged his placement in a high-risk facility rather than in a moderate-risk facility as recommended by the DJJ. The juvenile was found guilty of burglary of a dwelling and grand theft. The trial court observed that the juvenile committed the burglary while awaiting trial on another burglary charge and that the instant burglary had a long-lasting effect on the victims' sense of safety and security. The Second District Court of Appeal found that the trial court departed from the DJJ recommendation without adequate justification as required by E.A.R. v. State, 4 So. 3d 614 (Fla. 2009). The trial court's explanation fell short of this legal standard. The trial court did not explain adequately how a high-risk level of restrictiveness would better fit the juvenile's rehabilitative needs and public safety than would a moderate-risk level of restrictiveness. Accordingly, the Second District reversed the high-risk placement and remanded for a new disposition hearing with instructions that the trial court must make the findings prescribed in E.A.R. or else place the juvenile in a moderate-risk facility as the DJJ recommended.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2028,%202012/2D11-2578.pdf

[14,%202012/2D11-4749.pdf](#) (November 14, 2012).

R.C.B., Jr. v. State, __ So. 3d __, 2012 WL 5458092 (Fla. 2d DCA 2012). **TRIAL COURT FAILED TO ADEQUATELY SUPPORT ITS DEPARTURE FROM DEPARTMENT OF JUVENILE JUSTICE (DJJ) DISPOSITION RECOMMENDATION.** Juvenile was adjudicated for aggravated battery with great bodily harm and the trial court committed him to a high-risk residential facility. The DJJ had recommended placement in a medium-risk commitment facility. The juvenile appealed the disposition. The juvenile argued that the trial court erroneously deviated from the DJJ-recommended placement. The Second District Court of Appeal found that the trial court committed the juvenile to a high-risk facility largely due to the nature of the offense. Further, the trial court failed to articulate its understanding of the different restrictiveness levels and failed to explain why a high risk facility was better suited to the juvenile's rehabilitative needs and the safety of the public. See E.A.R. v. State, 4 So. 3d 614 (Fla. 2009). As a result, the Second District held that the trial court failed to adequately support its departure from the DJJ recommendation that the juvenile be placed in a medium-risk commitment facility. Accordingly, the disposition order was reversed and remanded for further proceedings.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2009,%202012/2D11-3161.pdf (November 9, 2012).

T.A.W. v. State, __ So. 3d __, 2012 WL 5373440 (Fla. 2d DCA 2012). **THE EVIDENCE FAILED TO ESTABLISH BURGLARY OF AN OCCUPIED DWELLING.** Two juveniles' appealed orders withholding adjudication for burglary of an occupied dwelling and dispositions placing them on probation. The two cases were tried together, and their subsequent appeals were consolidated. At 9:00 p.m., a girl and a boy quietly stepped on the front porch of a small home owned by an elderly woman. The boy kicked the door, breaking the door frame, and the door came open. The elderly woman testified that she believed that at least one person was at the door and that the person was a short distance inside the doorway for a brief time. The neighbor heard the noise and called out, and the two juveniles ran off. The juveniles testified that they were playing a "game" of knock-and-run. The boy admitted that he kicked the door, but denied that he intended to break the door or cause it to open. The girl claimed that she was back from the door and was merely watching the game. Both denied the boy ever entered the home. The Second District Court of Appeal found that to prove burglary, the State had to prove that the teenagers entered the home for the purpose of committing an offense therein. Since burglary is a specific intent crime, the State had to establish the specific intent to commit some offense inside the dwelling at the time of entry. Since the evidence of intent in this case was completely circumstantial, the State was also required to present proof not only consistent with its theory of the case, but also inconsistent with any reasonable hypothesis of innocence. The trial court had never stated the offense that it believed the teenagers intended to commit inside the home. The Second District held that the evidence in the light most favorable to the State indicated that the boy was inches inside the home for a matter of seconds. This evidence simply did not refute the reasonable explanation that the teenagers were playing a prank. Even if the trial court did not believe their testimony, there was no other evidence to establish an intent to commit an offense at the time of entry. Therefore, the State failed to establish that the conduct

rose to the level of burglary of an occupied dwelling. Accordingly, the orders withholding adjudication and the dispositions were reversed and remanded. The Second District further considered whether similar orders could be entered on remand for the lesser offense of trespass. The Second District found that trespass requires proof that the accused entered the property "willfully." In the instant case, the State failed to prove that the boy willfully entered the home. Instead, there was a reasonable possibility that he simply lost his balance when he kicked the door, and accidentally stepped inside when the door broke open. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2002,%202012/2D11-4585.pdf (November 2, 2012).

Third District Court of Appeal

M.R. v. State, __ So. 3d __, 2011 WL 5500505 (Fla. 3d DCA 2012). **SUFFICIENT EVIDENCE WAS PRESENTED TO SUPPORT A LOITERING AND PROWLING ADJUDICATION.** The juvenile appealed his adjudication for loitering and prowling. The juvenile argued that the trial court erred by denying the motion for judgment of dismissal because the State failed to produce sufficient evidence that the juvenile committed the offense of loitering and prowling. An officer, on patrol in his marked K-9 vehicle, saw the juvenile and two other juveniles in a commercial shopping center around 11:30 p.m. All of the businesses were closed and the area was not known for having any activity past 6:00 p.m. The juvenile was in the alley where the businesses' back entrances were located. The officer saw the juvenile walk up and pull on one of the business's rear door handles to see if it would open. After testing the door handles, the juvenile looked at the top of the building to check for security cameras or other types of video surveillance. When the officer approached in his vehicle, the juvenile attempted to conceal himself by hiding behind a dumpster. When the officer exited his vehicle, the juvenile walked away at a very fast pace. The juvenile returned after loud verbal commands from the officer. The juvenile testified that he was walking to the gas station next door to a Wendy's fast food restaurant when he was stopped in the back alley behind the Wendy's. The Third District Court of Appeal found that the State was required to prove: (1) the defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals, and (2) such loitering and prowling were under circumstances that warranted a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. In the instant case, the Third District held there was sufficient evidence to support the trial court's conclusion that the juvenile committed the offense of loitering and prowling. The juvenile's actions, as observed by the officer, plus any rational inferences established that the juvenile was acting in an unusual way at the time and place the police officer encountered him, suggesting that a breach of the peace was imminent. The juvenile's actions were aberrant and suspicious criminal conduct that law-abiding individuals would not engage in. The officer's testimony at the adjudicatory hearing articulated specific facts that warranted the finding that there was an imminent concern to the public and surrounding property. The Third District distinguished its finding in this case from A.L. v. State, 84 So. 3d 1272 (Fla. 3d DCA 2012). Accordingly, the trial court's adjudication of delinquency and final disposition was upheld. <http://www.3dca.flcourts.org/Opinions/3D11-2932.pdf> (November 14, 2012).

M.R v. State, __ So. 3d __, 2011 WL 5500528 (Fla. 3d DCA 2012). **SUPPRESSION OF STATEMENTS AFFIRMED AND SUPPRESSION OF PHYSICAL MARIJUANA EVIDENCE REVERSED.** The State appealed the granting of the juvenile's petitions to suppress two post-arrest statements and seized marijuana physical evidence. The juvenile was charged with possession with intent to sell, manufacture, or deliver cannabis within 1,000 feet of a school. During surveillance, the juvenile was observed making what looked like six or seven narcotic hand-to-hand transactions. On each occasion, an individual shook hands with the juvenile, giving the juvenile an unknown amount of U.S. currency. In exchange, the juvenile would then hand a "baggie" back to the individual. The transactions occurred out in the open, and the juvenile appeared to make no attempt to hide his actions. The surveillance was conducted by a police officer from an undercover vehicle parked about fifty feet across the street. Based on these observations, the officer radioed another officer and directed her to arrest the juvenile. The juvenile was arrested and searched. Eight individually-packaged baggies of marijuana were found on the juvenile. The juvenile was handcuffed and placed in a patrol car. The juvenile was not read his *Miranda* rights. The arresting officer said to the juvenile: "You don't have to be out here doing this." The juvenile responded that he was selling marijuana to support his infant child. The arresting officer then asked the juvenile for his mother's name and phone number. The officer called the mother and requested that she come to the scene. There was nothing in the record to indicate that the juvenile requested to speak with his mother or to have her come to the location of his arrest. When the juvenile's mother arrived, the juvenile said to his mother (with the officer still present) that he did not want to talk to her in front of the officer and that she (his mother) knew why he was selling marijuana. No evidence was introduced to establish how much time passed between the first and second statements made by the juvenile. At the conclusion of a suppression hearing, the trial court suppressed the physical marijuana evidence and both statements made by the juvenile. On appeal, the State sought review of the suppression of the marijuana evidence and the subsequent statement made to the mother in the arresting officer's presence. The State did not seek review of the suppression of the first statement made by the juvenile. The Third District Court of Appeal found that the police had probable cause to arrest the juvenile and conduct a search of the juvenile incident to that arrest. Based upon the totality of the circumstances, there was probable cause to believe that the juvenile was engaged in illegal narcotics transactions. Therefore, the arrest and subsequent search of the juvenile was valid, and the trial court's suppression of the physical evidence found was erroneous. As to the second statement made by the juvenile, the State had argued that the statement was not the product of police interrogation, but instead was made voluntarily. Alternatively, the State argued there was sufficient attenuation between the two statements to dissipate the taint of the initial illegal custodial interrogation. The Third District distinguished the instant case from Mesa v. State, 673 So. 2d 51 (Fla. 3d DCA 1996), and Lundberg v. State, 918 So. 2d 444 (Fla. 4th DCA 2006), because it was the arresting officer, not the juvenile, who called the mother to come to the scene. The Third District then affirmed the trial court's determination that the statements by the juvenile were an exploitation of the initial illegality. Accordingly, the portion of the order suppressing the physical evidence was reversed. The trial court's order in all other respects was affirmed.

<http://www.3dca.flcourts.org/Opinions/3D12-0029.pdf> (November 14, 2012).

Fourth District Court of Appeal

M.J. v. State, __ So. 3d __, 2012 WL 5933037 (Fla. 4th DCA 2012). **THE STATE FAILED TO PROVE THAT THE BB GUN WAS A WEAPON WITHIN THE MEANING OF S. 790.10, F.S. (2011).** The juvenile was convicted of exhibiting a firearm or other deadly weapon in a rude, careless, angry, or threatening manner in violation of s. 790.10, F.S. (2011). On appeal, the juvenile argued that the State failed to meet its burden of proving that the BB gun he wielded was a “weapon” within the meaning of the statute. The Fourth District Court of Appeal found that under the statute, the BB gun had to qualify as an “other weapon.” Section 790.001(13), F.S. (2011), defines “weapon” as any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife. A BB gun is not one of the enumerated weapons; therefore, a BB gun must be a “deadly weapon” in order to fall under the statutory definition of a “weapon.” Whether a BB gun is a deadly weapon is a question of fact for a jury. Where the State offers no evidence about how a BB gun is operated or the type of injuries it might inflict, courts have consistently held that the State has not met its burden of proving that the BB gun is a “deadly weapon.” The State offered a BB pellet into evidence, but not the BB gun. No witness testified about how the BB gun fired by the juvenile might qualify as a “deadly weapon.” The Fourth District held that the State failed to prove that the BB gun was a “deadly weapon,” and that the juvenile’s motion to dismiss should have been granted. Accordingly, the juvenile’s conviction was reversed and remanded. <http://www.4dca.org/opinions/Nov%202012/11-28-12/4D11-3744.op.pdf> (November 28, 2012).

B.L. v. State, __ So. 3d __, 2012 WL 5500339 (Fla. 4th DCA 2012). **DENIAL OF MOTION TO SUPPRESS REVERSED WHERE SEIZING OFFICER DID NOT HAVE GROUNDS FOR AN INVESTIGATORY STOP.** The juvenile was initially charged with carrying a concealed weapon and trespassing. After the denial of his motion to suppress, he pleaded no contest to carrying a concealed weapon, reserving his right to appeal the denial of the motion to suppress. The State dropped the trespassing charge. The arresting officer and another officer were parked inside a park observing those who entered the park after dark. Entering the park at night was a violation of a city ordinance; however, the State conceded that it was not arguing probable cause because the juvenile was trespassing. Three juveniles entered the park. The arresting officer shined the spotlight attached to his vehicle on them and approached. He said, “I need to speak with you for a minute.” While he was still about five feet away from the juveniles, he noticed a sweatshirt being handed by the juvenile to his female companion. To allay his fears that something was going on that shouldn’t have been going on, the arresting officer grabbed it and said, “hold on to that.” When the sweatshirt was grabbed, both the juvenile and the female had their hands on the sweatshirt. As soon as the officer grabbed the sweatshirt, he felt a large metal object which he believed was a gun. It turned out to be a knife. At that point, he ordered the three juveniles to get down on the ground. The officer testified that prior to touching the sweatshirt; nothing indicated that a weapon was present. However, the officer testified that in the past month he had experienced a similar situation in the same park: a female stopped in a similar manner was carrying a .22 caliber handgun. The State’s theory was that the encounter was consensual and that the juvenile began to abandon or actually abandoned the property.

Essentially, the State claimed that the seizure was proper because it violated the rights of the female, rather than the juvenile, and therefore, a motion to suppress evidence initiated by the juvenile could not properly be granted because he did not have a privacy interest in the sweatshirt. The trial court agreed and denied the motion, explaining that the juvenile was in the process of abandoning the sweatshirt with the knife in it and therefore did not have standing to raise a constitutional violation of the female's rights. The Fourth District Court of Appeal found that for a Fourth Amendment analysis, it is the expectation of privacy that is controlling. Implicit in the concept of abandonment is a renunciation of any reasonable expectation of privacy in the property abandoned. If an individual gives up his or her privacy interest in an item, then he or she is without standing to raise a Fourth Amendment violation. The Fourth District held that since the juvenile had not yet let go of the sweatshirt, he retained some control and possession. Therefore, his reasonable expectation of privacy had not yet been relinquished. As a result, he did have standing to contest the seizure of the sweatshirt and subsequent search. Whether an encounter rises to the level of an investigatory stop or remains a consensual encounter is a question of fact. A consensual encounter does not invoke constitutional safeguards. The State conceded that the officer did not have reasonable suspicion to exceed a consensual encounter. Thus, the encounter would be improper if it transitioned into an investigatory stop. Whether an encounter has transitioned from consensual into investigatory is determined by the totality of circumstances. The Fourth District held that the officer's statement — "I need to speak with you for a minute" — did not raise the level of restrictiveness or represent a show of authority. Although slightly more authoritative than a question, his statement was not an order. Rather, it was a request that, standing alone, a reasonable individual would have felt free to decline and therefore would not constitute a seizure. Illuminating individuals with a police vehicle's spotlight may increase the level of restrictiveness. The use of a spotlight or flashlight is one factor to be considered in evaluating whether a seizure has occurred, but this factor alone is not dispositive. Physical touching or grabbing of an individual's person or possessions will also raise the level of restrictiveness. Evaluating the totality of circumstances, the Fourth District concluded that the juvenile was seized at the moment the sweatshirt he was jointly holding with a female was grabbed by the officer. The circumstances which elevated this police-citizen encounter to an investigatory stop included a police spotlight illuminating the juvenile's person and the officer grabbing an item still in the juvenile's hands. Both of these circumstances transformed a consensual encounter into an encounter a reasonable person would not feel free to end. The State conceded the officer did not have an articulable suspicion for an investigatory stop. Having concluded that the juvenile had standing to contest the seizure of the weapon and the seizing officer did not have grounds for an investigatory stop, the Fourth District reversed the denial of the juvenile's motion to suppress and remanded the case for the trial court to vacate the determination of delinquency and the disposition order.

<http://www.4dca.org/opinions/Nov%202012/11-14-12/4D11-4346op.pdf> (November 14, 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

J.F.S. v. Department of Children and Families, ___ So. 3d ___, 2012 WL 5870730 (Fla. 1st DCA 2012). **TERMIATION OF PARENTAL RIGHTS AFFIRMED**. The father appealed his termination of parental rights; however, the termination was affirmed because the father failed to move for a judgment of dismissal after the presentation of the State's evidence or at any other time during the adjudicatory hearing. The court recognized that this decision requires preservation of an evidentiary sufficiency issue under the Florida Rule of Juvenile Procedure 8.525(h) and conflicts with decisions from the Fourth and Fifth District Courts of Appeal, and so certified conflict with the decisions. <http://opinions.1dca.org/written/opinions2012/11-21-2012/12-3883.pdf> (November 21, 2012).

M.N. v. Department of Children and Families, ___ So. 3d ___, 2012 WL 5846288 (Fla. 1st DCA 2012). **ORDER DENYING REUNIFICATION REVERSED**. The mother sought review of the trial court's Order on the Mother's Second Motion for Reunification, which stated that it was in the children's best interest to remain out of the mother's home. The mother claimed that the court did not find competent, substantial evidence that she was a danger to her children. The children were removed from the mother in December, 2011, due to allegations of domestic violence by the father against mother, sexual abuse by the father against one of the children, physical abuse by the father, the mother's untreated mental health issues, and the mother's failure to protect the children from the father. The trial court adjudicated the children dependent and approved a case plan with a goal of reunification. The mother substantially complied with her case plan and completed several evaluations that were positive for reunification; however, the court denied the petition because of its concern that reunification would not be in the children's best interest. The court noted that two factors must be considered when ruling on a reunification petition: the parent's case plan compliance and whether or not reunification would be detrimental to the child. Section 39.522(2), F.S. (2011), also suggests that when a parent requests reunification and has substantially complied with the case plan; there is a presumption of reunification. This presumption can be overcome if the trial court makes a finding supported by competent, substantial evidence that returning the child would endanger the child's physical or emotional health. In this case, the trial court denied reunification based on the report of the children's therapist and the opinions of the guardian ad litem and the State; however, this evidence did not meet the competent, substantial evidence standard.

Pursuant to case law, for reunification to occur, the mother must also show that the trial court's findings were materially inadequate or incomplete, or that the findings were a departure from the essential requirements of the law. The mother provided a transcript of the trial court proceedings, and the appellate court determined that the trial court's findings did depart from the essential requirements of the law; therefore, the appellate court reversed.

<http://opinions.1dca.org/written/opinions2012/11-20-2012/12-3199.pdf> (November 20, 2012).

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.

Dissolution Case Law

Florida Supreme Court

In re: Amendments to the Florida Family Law Rules of Procedure, ___ So. 3d ___ (Fla. 2012).

This Supreme Court Order detailed the adoption of amendments to seven Florida Family Law Rules of Procedure Forms, including: Petition for Simplified Dissolution of Marriage, 12.901(a); Marital Settlement Agreement for Simplified Dissolution of Marriage, 12.902(f)(3); and Response by Parenting Coordinator, 12.984. The amendments implemented recently amended rules of procedure pertaining to nonlawyers who assist self-represented parties in completing family law forms. There is a 60-day period for comments beginning November 15, 2012.

<http://www.floridasupremecourt.org/decisions/2012/sc12-1930.pdf> (November 15, 2012).

First District Court of Appeal

Colley v. Colley, ___ So. 3d ___, 2012 WL 5681168 (Fla. 1st DCA 2012). **TRIAL COURT ERRED IN SETTING ASIDE MARITAL SETTLEMENT AGREEMENT (MSA) AS VAGUE; TRIAL COURT SHOULD INTERPRET MSA TO GIVE EFFECT TO SPOUSES' INTENT AND CORRECT ANY DEFECTS BY DECLARING THAT PART INVALID, NOT BY DECLARING ENTIRE MSA INVALID.** Former wife argued that the trial court erred in having set aside the marital settlement agreement (MSA) after finding it vague. The appellate court concluded that the MSA was valid and that former wife was entitled to have it incorporated into the final judgment of dissolution of marriage. Former wife successfully sought to enforce parts of the agreement prior to the final hearing; the validity of the MSA was not called into question until former husband moved for relief from it.

The appellate court held that if parts of the agreement appeared vague to the trial court, it could have interpreted the MSA to give effect to the spouses' intent without declaring the entire agreement invalid. Similarly, it could have corrected any defects by declaring that part invalid. Reversed with instructions for the trial court to incorporate the MSA and resolve any questionable issues. <http://opinions.1dca.org/written/opinions2012/11-16-2012/11-4391.pdf> (November 16, 2012).

Margaretten v. Margaretten, __So. 3d__, 2012 WL 5681403 (Fla. 1st DCA 2012). **IF AWARDING PERMANENT ALIMONY, A TRIAL COURT IS REQUIRED TO FIND THAT NO OTHER FORM IS FAIR AND REASONABLE UNDER THE CIRCUMSTANCES.** The appellate court agreed with former husband that the trial court erred in awarding permanent alimony to former wife without addressing whether other forms of alimony would be fair and reasonable under the circumstances. The appellate court held that s. 61.08, F.S. (2011), requires that a trial court first consider the need of one spouse for alimony and the ability of the other spouse to pay; when determining type and amount of alimony, the court must find, if awarding permanent alimony, that no other form is fair and reasonable under the circumstances. <http://opinions.1dca.org/written/opinions2012/11-16-2012/11-6888.pdf> (November 16, 2012).

Second District Court of Appeal

Hammesfahr v. Hammesfahr, __So. 3d__, 2012 WL 5935626 (Fla. 2d DCA 2012). **SUFFICIENT EVIDENCE IN THE RECORD SUPPORTED TRIAL COURT'S FINDING THAT REDUCTION IN SPOUSE'S INCOME WAS VOLUNTARY; IT ERRED IN NOT ADDRESSING REDUCTION OF CHILD SUPPORT AFTER CHILD REACHED MAJORITY.** Former husband appealed trial court orders: denying his petition for a downward modification of alimony and child support; finding him in contempt; and awarding former wife attorney's fees.

The appellate court affirmed the trial court's denial of a reduction in alimony based on sufficient evidence in the record to support the court's finding that the reduction in former husband's income was due to voluntary underemployment, dismissed as moot the contempt issue, and reversed the denial of reduction in child support. As the spouses' older child had reached the age of majority, it was error for the trial court not to address that issue; the appellate court ordered it to do so on remand.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2028,%202012/2D10-2909.pdf (November 28, 2012).

Bikowitz v. Bikowitz, __So. 3d__, 2012 WL 5935656 (Fla. 2d DCA 2012). **TRIAL COURT ERRED IN CLASSIFYING ENTIRE PAYMENT TO SPOUSE AS MARITAL; PORTION EXTENDING BEYOND FILING DATE OF DISSOLUTION OF MARRIAGE (DOM) PETITION SHOULD HAVE BEEN NONMARITAL; MONIES USED FOR LIVING EXPENSES DURING DOM PROCEEDINGS SHOULD NOT BE ASSESSED AGAINST SPOUSE; COURT ABUSED ITS DISCRETION IN AWARDING MORE ALIMONY THAN NEEDED.** Former husband contested the trial court's characterization of a payment, received from his employer in the wake of sale of the employer's assets to another company during dissolution proceedings, as a marital asset. Former wife, an attorney, had helped former husband negotiate a provision in his employment contract which would have entitled him to a large payment if a majority of the employer's shares were transferred or sold to a third party

and former husband chose to leave the company. Instead, former husband and his employer entered into a termination agreement under which the payment was made. The appellate court stated that there was no question that the payment was, in part, consideration for a noncompete provision; such payments for future considerations would properly be deemed nonmarital. The employer's general counsel testified that the payment was made to honor the spirit of the original employment agreement; the amount of the payment was based on the change-of-control terms of the employment agreement.

The appellate court was unable to conclude that the trial court erred in classifying the payment as marital, with one exception — the portion of the payment compensating former husband for employment which extended beyond the filing of the petition for dissolution was nonmarital. The trial court was instructed on remand to set aside as nonmarital the postfiling portion of the payment.

The appellate court found that the trial court had erred in assessing the entire value of an account to former wife as part of the equitable distribution when the funds were used for living expenses. The appellate court also found that the trial court had abused its discretion in awarding her more alimony than she needed; it instructed the trial court on remand to reduce the bridge-the-gap alimony.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2028,%202012/2D11-1972.pdf (November 28, 2012).

Weiss v. Weiss, __So. 3d__, 2012 WL 5499974 (Fla. 2d DCA 2012). **FULL FAITH AND CREDIT CLAUSE OBLIGATED THE TRIAL COURT TO ENFORCE CONTEMPT PROVISION OF ILLINOIS FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE, BUT INTEREST SHOULD HAVE BEEN CALCULATED ON ILLINOIS'S RATE PRIOR TO DOMESTICATION AND FLORIDA'S RATE AFTER DOMESTICATION OF ORDER.** Former husband appealed a nonfinal order enforcing a contempt provision in a post-dissolution order, stemming from a provision in a divorce decree entered in Illinois, that he maintains two life insurance policies for the benefit of former wife. Upon domesticating the Illinois order, the Florida trial court, applying full faith and credit principles, entered a money judgment in favor of former wife, and found that it had the authority to enforce the final judgment, including interest and attorney's fees, through contempt; former husband argued that the trial court erred in determining that the Illinois order could be enforced in Florida by contempt. The appellate court concluded that the Full Faith and Credit Clause obligates Florida courts to enforce the contempt provision of an Illinois money judgment, but reversed for recalculation of interest on the judgment because the trial court relied only on the Florida rate instead of relying on the Illinois rate prior to domestication and the Florida rate after domestication. It held that under Florida law, remedies available to enforce breach of a property settlement provision in a marital settlement agreement are those available to creditors against debtors; those do not include either contempt or incarceration. Illinois, on the other hand, permits enforcement of property settlement provisions of a final judgment of dissolution through civil contempt; this may include incarceration. Incarceration was not ordered in this case; therefore, was not discussed on appeal.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2014,%202012/2D10-2429.pdf (November 14, 2012).

Perez v. Perez, __So. 3d__, 2012 WL 5458067 (Fla. 2d DCA 2012). **IN DETERMINING ATTORNEY'S FEES, TRIAL COURT MUST FIRST CONSIDER SPOUSES' RELATIVE FINANCIAL POSITIONS—CORRESPONDING NEED AND ABILITY; THEN IT MUST MAKE SPECIFIC FINDINGS OF FACT TO SUPPORT AWARD.** Both spouses contested the portion of attorney's fees awarded to former wife. The appellate court reversed and remanded because nothing the record, the judgment, or the order awarding fees contained findings necessary to support the award. The appellate court held that in awarding fees, a trial court must first consider the spouses' relative financial positions -- their corresponding need and ability to pay. Then it must make specific factual findings supporting its determination.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2009,%202012/2D10-4199.pdf (November 9, 2012).

Holmes v. Holmes, __So. 3d__, 2012 WL 5415281 (Fla. 2d DCA 2012). **CHILD SUPPORT MUST BE COMPUTED BASED ON CORRECT MONTHLY INCOME.** The appellate court reversed as to an error in the computation in former husband's monthly income; accordingly, it remanded it to the trial court for recomputation of child support based on the correct amount of monthly income.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2007,%202012/2D11-5325.pdf (November 7, 2012).

Tradler v. Tradler, __So. 3d__, 2012 WL 5373446 (Fla. 2d DCA 2012). **TRIAL COURT MUST CONSIDER TAX CONSEQUENCES IN MAKING EQUITABLE DISTRIBUTION; DISSIPATED ASSETS CANNOT BE INCLUDED IN EQUITABLE DISTRIBUTION IN ABSENCE OF FINDING OF MISCONDUCT; VALUATION OF ASSETS MUST BE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE.** Former husband appealed the amended final judgment of dissolution of marriage; the appellate court affirmed the alimony award but reversed and remanded the equitable distribution portion of the judgment. The appellate court stated that review of whether an asset is marital or nonmarital is de novo; that the trial court's evaluation must be based on competent, substantial evidence; and that it must set aside to each spouse his or her nonmarital assets. The appellate court held that the trial court should also consider the tax consequences when valuing marital assets; accordingly, it reversed and remanded for the trial court to consider those consequences in making its equitable distribution. The appellate court held that a trial court cannot include dissipated assets in the equitable distribution scheme absent a finding of misconduct. Here there was no such finding; thus, the trial court abused its discretion by adding to the equitable distribution scheme CDs that former husband cashed in. The appellate court concluded that the valuation of former husband's pension was not supported by competent, substantial evidence. It also found that the trial court had erred in finding that checks to former husband from his mother were marital funds.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/November/November%2002,%202012/2D11-271.pdf (November 2, 2012).

Third District Court of Appeal

Edgar v. Firuta, __So. 3d__, 2012 WL 5416432 (Fla. 3d DCA 2012). **TRIAL COURT'S DETERMINATION OF BEST INTERESTS OF THE CHILDREN NOT ONLY A STATUTORY MANDATE BUT A GUIDING PRINCIPLE.** Former wife appealed a final judgment granting former husband's motion for contempt and his amended petition to modify their parenting plan and child support obligations; the appellate court affirmed in part, reversed in part, and remanded for further proceedings. The marriage was dissolved in North Carolina without any provisions regarding custody, parental responsibility, visitation, or child support for four minor children, and without a parenting plan. Subsequent to their dissolution the spouses resumed living together, but did not remarry. While the family was living near Key West, DCF obtained protective supervision over all four children; that supervision was terminated the following year. Former husband sought sole parental responsibility of the youngest child, then aged 10. Numerous motions and hearings ensued, during which time former wife fled with that child to North Carolina in violation of a Florida order. The appellate court held that former wife failed to comply with the UCCJEA, violated a Florida court order, and that the Florida trial court had jurisdiction over former husband's petition; however, it found that the final judgment lacked the requisite evidentiary findings for modification. Accordingly, it remanded the final order for further proceedings, noting that former wife's interference with custody should be addressed. The appellate court held that the statutory mandate a trial court has to determine the children's best interests should be the "guiding principle" on remand.

<http://www.3dca.flcourts.org/Opinions/3D11-1182.pdf> (November 7, 2012).

Fourth District Court of Appeal

Gottlieb v. Gottlieb, __So. 3d__, 2012 WL 5932995 (Fla. 4th DCA 2012). **TRIAL COURT LACKS JURISDICTION TO RENDER FINAL ORDERS WHILE AN APPEAL FROM A NONFINAL ORDER IN THE SAME CASE IS PENDING.** A trial court lacks jurisdiction to render final orders while an appeal from a nonfinal order in the same case is pending.

<http://www.4dca.org/opinions/Nov%202012/11-28-12/4D12-1038.op.pdf> (November 28, 2012).

Miller v. Miller, __So. 3d__, 2012 WL 5870100 (Fla. 4th DCA 2012). **COURT ERRED IN AWARDING FEES TO SPOUSE FROM MODIFICATION PETITION BECAUSE PREVAILING PARTY FEE PROVISION IN MARITAL SETTLEMENT AGREEMENT WAS TRIGGERED BY ENFORCMENT, NOT MODIFICATION.** The appellate court agreed with former wife that the trial court erred in awarding attorney's fees to former husband based on the prevailing party fee provision in the marital settlement agreement (MSA). The appellate court, after reading the MSA, concluded that attorney's fees were to be awarded only when one spouse bought an action to enforce its terms. It held that the trial court erred in awarding former husband fees for his modification petition because the prevailing party fee provision was triggered by enforcement, not modification. Reversed and remanded. <http://www.4dca.org/opinions/Nov%202012/11-21-12/4D10-5138.op.pdf> (November 21, 2012).

Campbell v. Campbell, __ So. 3d __, 2012 WL 5415083 (Fla. 4th DCA 2012). [TRIAL COURT LACKS JURISDICTION TO VACATE AN ORDER ON APPEAL](#). A trial court lacks jurisdiction to consider a motion to vacate an order while there is a pending appeal on the order that the moving party seeks to vacate. <http://www.4dca.org/opinions/Nov%202012/11-07-12/4D11-4008.op.pdf> (November 7, 2012).

Fifth District Court of Appeal

Hernandez v. Hernandez, __ So. 3d __, 2012 WL 5869660 (Fla. 5th DCA 2012). [TRIAL COURT'S RELIANCE ON TAX ASSESSOR'S VALUATION OF HOME WAS NOT ERROR; BRIDGE LOAN ON HOME SHOULD BE DEDUCTED FROM VALUE OF HOME TO DETERMINE EQUITY, THEN EQUITY SHOULD BE DISTRIBUTED; TRIAL COURT MUST DISTRIBUTE MARITAL DEBT; TRIAL COURT'S AWARD OF PERMANENT ALIMONY IS WITHIN ITS DISCRETION, BUT RELIANCE ON INCORRECT FINANCIAL INFORMATION REQUIRED RECALCULATION OF ALIMONY AND CHILD SUPPORT](#). Former husband appealed the trial court's equitable distribution scheme, award of permanent alimony and attorney's fees to former wife, and calculation of child support. With regard to the valuation of the spouses' second home, the appellate court held that conflicting evidence was present as to the value of the property; the tax assessor's valuation fell within the range of values offered. The trial court's conclusion that the assessed valuation was "closest to fair market value" was not error. What was error, however, was the trial court's failure to address a "bridge loan" on that property. On remand, the trial court was ordered to determine the loan amount and then deduct that amount from the market value of the home to determine its equity; that equity should then be distributed accordingly. The trial court's failure to distribute the remaining marital debt of the spouses was also error; the amount of debt should be determined and distributed on remand. The appellate court concluded that the trial court was within its discretion to award permanent alimony, but relied on incorrect financial information in calculating the award. Recalculation of the alimony on remand should be based on the correct information after a determination of former wife's need for alimony and former husband's ability to pay; a recalculation of child support would also be necessary. <http://www.5dca.org/Opinions/Opin2012/111212/5D10-4143.op.pdf> (November 16, 2012).

Scott v. Scott, __ So. 3d __, 2012 WL 5621672 (Fla. 5th DCA 2012). [REMANDED TO THE TRIAL COURT TO REDUCE THE ALIMONY TO AN AMOUNT ALLOWING BOTH SPOUSES "SUFFICIENT FUNDS TO MEET REASONABLE NEEDS."](#) Former husband appealed the amount by which the trial court reduced his agreed-upon alimony obligation, based on a substantial change of circumstances; the appellate court concluded that the trial court abused its discretion by not having granted a larger reduction. The appellate court found that the trial court's findings of fact to be supported by competent, substantial evidence and that no evidence was presented that former wife's need for alimony had changed since entry of the original judgment; however, it remanded to the trial court to reduce the alimony obligation to an amount that allowed both spouses "sufficient funds to meet their reasonable needs." <http://www.5dca.org/Opinions/Opin2012/111212/5D12-448.op.pdf> (November 16, 2012).

Jensen v. Thibodeaux, __ So. 3d __, 2012 WL 5456701 (Fla. 5th DCA 2012). **TRIAL COURT ORDERS SHOULD BE CLEAR ENOUGH TO ADVISE PARTIES OF THEIR RESPECTIVE RESPONSIBILITIES AND SHOULD BE READILY ENFORCEABLE.** The appellate court affirmed the trial court's denial of former husband's motion for contempt, but directed that the trial court strike overbroad and unclear provisions from its order. It held that if the trial court wished to outline procedures for future time-sharing based on former husband's prior conduct, the order should be clear enough to advise parties of their respective responsibilities so that it can be readily enforceable.

<http://www.5dca.org/Opinions/Opin2012/110512/5D12-2689.op.pdf> (November 9, 2012).

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Goodwin v. Whitley, __ So. 3d ____, 2012 WL 5481090 (Fla. 1st DCA 2012). **DENIAL OF MOTION TO DISSOLVE AN INJUNCTION REVERSED.** The appellant appealed a circuit court order that denied his motion to dissolve an injunction against repeat violence. Section 784.06(11), F.S. (2007), provides that a party to an injunction may file a motion to modify or dissolve an injunction at any time. The appellant filed his motion and claimed that he wanted to regain his ability to own guns. He also stated that he had never violated the injunction and posed no danger to the appellee; however, the appellee testified that she felt that she still needed the protection. The court decided to deny the motion without offering the appellant a chance to cross examine the appellee, to testify, or to present argument to the court. Because he was not given an opportunity to be heard on his motion, the appellate court reversed and remanded the case for a full evidentiary hearing. <http://opinions.1dca.org/written/opinions2012/11-13-2012/11-6528.pdf> (November 13, 2012).

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

Lotridge v. Lobasso, __ So. 3d ____, 2012 WL 5870022 (Fla. 4th DCA 2012). **DENIAL OF MOTION WITHOUT HEARING REVERSED.** Appellant moved to vacate a final injunction for protection against repeat violence, alleging changed circumstances and arguing that the injunction had served its purpose. The circuit court denied the motion without a hearing, but the appellate court reversed the lower court and remanded the case for a hearing on

appellant's motion so he could have “a meaningful opportunity to be heard.”
<http://www.4dca.org/opinions/Nov%202012/11-21-12/4D11-4391.op.pdf> (November 21, 2012).

Hernandez v. Silverman, ___ So. 3d ____, 2012 WL 5499976 (Fla. 4th DCA 2012). **DENIAL OF INJUNCTION WITHOUT HEARING REVERSED**. Appellant filed a petition for an injunction against domestic violence against her ex-fiancé; however, at the evidentiary hearing, the trial court determined that the allegations were insufficient and denied the petition without conducting a full evidentiary hearing. The appellate court reversed and remanded the case for a full evidentiary hearing. The court also noted that the allegations were pled with sufficient specificity and, depending upon the evidence produced during the hearing, sufficient grounds could have existed to grant the injunction. <http://www.4dca.org/opinions/Nov%202012/11-14-12/4D12-1600.op.pdf> (November 14, 2012).

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.