

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE
November - December 2010

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Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

T.M. v. State, __ So. 3d __, 2010 WL 4909313 (Fla. 1st DCA 2010). **DISPOSITION REVERSED AND REMANDED WHERE TRIAL COURT FAILED TO MEET THE STANDARDS SET FORTH IN E.A.R. V. STATE WHEN DEPARTING FROM THE DEPARTMENT OF JUVENILE JUSTICE'S DISPOSITION RECOMMENDATION.** The juvenile's probation was revoked for testing positive for marijuana. The juvenile was also adjudicated for a misdemeanor battery. The Department of Juvenile Justice (DJJ) recommended further probation subject to DJJ supervision. Citing the juvenile's heightened criminal conduct, the trial court overrode the DJJ's recommendation and committed the juvenile to a low-risk residential program. The First District Court of Appeal held that the trial court failed to meet the standards set forth in E.A.R. v. State, 4 So. 3d 614, 638 (Fla. 2009), when providing reasons for a departure from the DJJ's recommendation. First, it could not be discerned from the record that the trial court ever articulated an understanding of the respective characteristics of the opposing restrictiveness levels. Second, the record did not fairly reveal that the trial court identified any material information that DJJ might have misconceived or failed to notice. Accordingly, the disposition was reversed and remanded for further proceedings.

<http://opinions.1dca.org/written/opinions2010/12-03-2010/10-2109.pdf> (December 3, 2010).

P.W. v. State, __ So. 3d __, 2010 WL 4629003 (Fla. 1st DCA 2010). **CONVICTION FOR ASSAULT AS A PERMISSIVE LESSER-INCLUDED OFFENSE TO THE CHARGE OF BATTERY WAS REVERSED WHERE THE ELEMENTS OF THE CRIME OF ASSAULT WERE NOT ALLEGED.** The First District Court of Appeal reversed the juvenile's conviction for assault and directed the trial court to enter a judgment of acquittal on the charge of battery. The First District found that the State correctly conceded error in the juvenile's conviction for assault as a permissive lesser-included offense to the charge of battery where the elements of the crime of assault were not alleged.

<http://opinions.1dca.org/written/opinions2010/11-17-2010/10-2986.pdf> (November 17, 2010).

Second District Court of Appeal

A.B.S. v. State, __ So. 3d __, 2010 WL 5381757 (Fla. 2d DCA 2010). **THE TRIAL COURT ERRED IN DENYING THE JUVENILE'S MOTION TO SUPPRESS CONTAINER OF ILLEGAL DRUGS BECAUSE THE SEARCH WAS CONDUCTED WITHOUT A LEGAL BASIS.** The juvenile was taken into custody as a possible runaway in need of services pursuant to s. 984.13, F.S. (2009). The officer stated that, at a minimum, he was going to take the juvenile home. Before the officer placed the juvenile inside his police cruiser, he handcuffed and searched the juvenile as was his practice. During the search, the officer retrieved a set of keys from the right front pocket of the juvenile's pants. The keychain had an aluminum screw-top container on it that the officer stated was of the type

commonly used to store illegal drugs. The officer shook the container, and it rattled in a way that made the officer suspect there were pills inside. The officer then opened the container and discovered a controlled substance. The officer acknowledged that he did not conduct a pat down before reaching into the juvenile's pocket. The Second District Court of Appeal held that the officer did not have a legal basis to search the juvenile before transporting him in his cruiser. Circumstances that allow a juvenile to be taken into custody under s. 984.13 are not crimes; therefore, the search incident to arrest exception to the warrant requirement does not apply. Further, the officer had no indication that the juvenile was in possession of either a weapon or contraband when he searched the juvenile. The officer searched the juvenile solely because it was his policy to search people before transporting them in his cruiser. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2029,%202010/2D10-273.pdf (December 29, 2010).

Y.Q.R. v. State, __ So. 3d __, 2010 WL 5184905 (Fla. 2d DCA 2010). **MOTION TO SUPPRESS MARIJUANA AND PARAPHERNALIA REVERSED WHERE TRIAL COURT ERRED IN FINDING THAT TRAFFIC STOP WAS UNLAWFUL.** The State appealed from an order granting the juvenile's motion to suppress marijuana and paraphernalia evidence in which the trial court concluded that the arrest followed an unlawful traffic stop. The Second District Court of Appeal concluded that the arresting officer lawfully stopped the car in which the juvenile was riding after watching the car make an improper left turn, as defined under s. 316.151(1)(b), F.S. (2008). Because the stop was lawful, the trial court erred in granting the motion to suppress. Accordingly, the order granting the motion to suppress was reversed and remanded for further proceedings. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2022,%202010/2D09-5610.pdf (December 22, 2010).

N.B., Jr. v. State, __ So. 3d __, 2010 WL 5018895 (Fla. 2d DCA 2010). **NEW TRIAL ORDERED BECAUSE THE JUVENILE DEMONSTRATED PREJUDICE BASED UPON A MISSING TRANSCRIPT.** The trial court found that the juvenile committed the offense of obstructing or opposing an officer without violence. Adjudication was withheld, and the juvenile was placed on probation. The court reporter was unable to provide a transcript for use in the juvenile's appeal, and the parties were unable to reconstruct a record. The Fifth District Court of Appeal found that to obtain a new trial based on a missing transcript, a criminal defendant must show prejudice. In this case, the juvenile observed that, but for the lack of the transcript, he would argue that the trial court erred by denying his motion to dismiss for insufficient proof. Indeed, the denial of this motion was listed in the statement of judicial acts to be reviewed on appeal. The Fifth District held that the juvenile showed prejudice because they were unable to review the issue without a transcript. Case was reversed and remanded for a new adjudicatory hearing. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2010,%202010/2D09-1293.pdf (December 10, 2010).

C.N. v. State, __ So. 3d __, 2010 WL 4967460 (Fla. 2d DCA 2010). **CHARGE OF RESISTING AN OFFICER WITHOUT VIOLENCE WAS REVERSED WHERE THE OFFICER WAS NOT PERFORMING A LEGAL DUTY WHEN HE ARRESTED THE JUVENILE WITHOUT A WARRANT.** The juvenile was in a

crowd of teenagers that spilled into the streets after a dance. The Police Department received a number of complaints about noise, property damage, and fighting in the area. Officers were dispatched to break up the crowd. One officer testified that the situation was chaotic and that many of the teens were ignoring law enforcement's orders. After the officer had been in the area for about an hour, he observed the juvenile shouting and using foul language. He feared the juvenile's actions might instigate fights. According to his testimony, the officer instructed the teens in the vicinity to move along, but the juvenile failed to do so and rolled her eyes. He told her to leave or he would arrest her. She did not move so the officer attempted to take her into custody for committing the crime of disorderly conduct. The juvenile pulled away from his grasp and tightened her arms at her side, all the while continuing to curse. The juvenile was found to have committed the offenses of disorderly conduct and resisting an officer without violence. Adjudication was withheld and the juvenile was placed on probation. The Second District Court of Appeal reversed the disposition order and the order placing the juvenile on probation. The Second District found that the juvenile's actions did not constitute disorderly conduct. Furthermore, the police officer who arrested her did not have a reasonable suspicion that she was committing a crime. Therefore, she did not commit the charge of resisting without violence. In order to prove disorderly conduct based on words alone, the State must show that the words either caused a crowd to gather, thereby resulting in safety concerns, or that the words incited a crowd to engage in an immediate breach of the peace. The evidence presented at the adjudicatory hearing was insufficient to support the finding that the juvenile engaged in disorderly conduct. The evidence did not support the theory that the juvenile's language incited others to fight, thereby resulting in a breach of the peace. Additionally, the crowd had spontaneously come together after a party. No evidence suggested that the juvenile instigated the gathering. The State conceded that if the court reversed on the disorderly conduct charge, they must also reverse on the charge of resisting an officer without violence. The Second District found that to prove that crime, the State must show that the officer was engaged in the lawful performance of a legal duty. In cases involving a detention, the State is required to show that the officer had a reasonable suspicion that the detainee was committing a crime. The Second District found that the acts resulting in the juvenile's detention did not constitute disorderly conduct, and therefore the officer did not have the requisite reasonable suspicion. Thus, the officer was not performing a legal duty when he arrested the juvenile without a warrant. Accordingly, the disposition order and order of probation were vacated. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2008,%202010/2D09-3828.pdf (December 8, 2010).

C.D.M. v. State, __ So. 3d __, 2010 WL 4771065 (Fla. 2d DCA 2010). [TRIAL COURT ORDER GRANTING THE JUVENILE'S MOTION TO SUPPRESS MARIJUANA EVIDENCE WAS REVERSED AND REMANDED BECAUSE THE DRIVER, WHO ASKED THE JUVENILE TO GIVE THE POLICE THE MARIJUANA IN THE JUVENILE'S POSSESSION, WAS NOT ACTING AS AN AGENT FOR THE POLICE WHEN HE DID SO.](#) The State of Florida appealed an order granting the juvenile's motion to suppress marijuana evidence. The trial court granted the juvenile's motion based on a finding that, although it was the driver who asked the juvenile to give him the marijuana that was in the juvenile's possession, the driver was acting as an agent for the officer when he did so. The juvenile was a passenger in a vehicle that was stopped for a traffic violation. The officer told

the driver that he could smell marijuana coming from his person and coming from the vehicle. The officer testified that he told the driver, "I believe that there might be marijuana inside, and if you're willing, go ahead and voluntarily, you know, if you're willing to voluntarily give it up, you know, go ahead and do so." The driver then told the juvenile, "Hey, give me it." The juvenile then gave the marijuana to the driver. The driver testified that when he was talking to the officer outside of the car, the officer asked him, "Where's the weed?" The driver told him that it was in the car. The officer then asked the driver, "Will you go over there and get it?" The driver testified that the officer told him that he would let them off easy if he got the marijuana. The Second District Court of Appeal held that the officer's interaction with the driver did not transform the driver into an agent of the police. To establish that the driver was acting as an agent of the police, the juvenile was required to show that the officer was aware of and acquiesced to the driver's actions. The Second District concluded that the trial court erred in finding that the driver was an agent of the police where the officer did not ask the driver, or even know that he was planning, to tell the juvenile to hand over the marijuana. The officer testified that when he asked the driver to get marijuana from the car, he had no idea where marijuana was located and he was not attempting to gather evidence against the passenger. De minimis or incidental contacts between a citizen and law enforcement agents prior to or during the course of a search or seizure will not subject the search to Fourth Amendment scrutiny. The government must be involved either directly as a participant or indirectly as an encourager of the private citizen's actions before the citizen will be deemed to be an agent of the state for Fourth Amendment purposes. Accordingly, the trial court order granting the juvenile's motion to suppress was reversed and remanded. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/November/November%2024,%202010/2D09-4236.pdf (November 24, 2010).

Third District Court of Appeal

M.L. v. State, __ So. 3d __, 2010 WL 4359940 (Fla. 3d DCA 2010). **THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS A PIPE WITH DRUG RESIDUE WHERE IT WAS THE RESULT OF AN UNLAWFUL SEARCH AND SEIZURE.** At the hearing on the motion to suppress, the officer testified that he responded to a location to recover a missing juvenile. After the officer went to the security desk, he was directed to the second floor mezzanine, where people played poker, chips or dominoes. When he entered the common area, he saw the juvenile and the missing juvenile asleep on a blanket on the floor, half dressed. The officer observed a bunch of personal belongings, including men's and women's clothing, strewn around the subjects. He also saw in between the juvenile and the missing juvenile a red bag holding a multi-colored pipe. The pipe was more out of the red bag than in the bag. It was about an arm's reach from the juvenile. The officer then woke up the juvenile and the missing juvenile. As the officer went to pick up the pipe in the red bag, he heard the juvenile state, "it's my pipe, it's not hers." At that point, the juvenile was arrested. The Third District Court of Appeal held that the officer did not have probable cause to seize the pipe protruding from the juvenile's bag pursuant to the "plain view doctrine." The "plain view doctrine" requires that three elements be satisfied: (1) the police officer is in a place where he has a lawful right to be; (2) in the course of his presence the officer inadvertently comes upon an object which is openly visible; and (3) it is immediately

apparent to the officer that the object constitutes evidence of a crime. "Immediately apparent," for purposes of plain view doctrine, means that at the time police view the object to be seized, they must have probable cause to believe that the object is contraband or evidence of a crime. The mere observation of a portion of a pipe, without more, cannot constitute probable cause because it could be a tobacco pipe or other lawful object. Something more is needed to constitute probable cause. There was no additional evidence presented justifying the officer's seizure of the evidence and arrest of the juvenile. The officer did not observe any suspicious activity or behavior prior to seizing the pipe. There was no evidence that the juvenile was at a location known for drug activity. The officer was not at that location due to a tip regarding drug activity but rather to retrieve a missing juvenile. There was no evidence that the room smelled of marijuana. There was no evidence that either juvenile appeared to be under the influence of marijuana or any drug. There was no evidence that prior to seizing the pipe the officer saw marijuana residue in the pipe. Thus, the trial court erred in denying the motion to suppress. Accordingly, the denial was reversed and remanded.

<http://www.3dca.flcourts.org/Opinions/3D10-0305.pdf> (November 3, 2010).

Fourth District Court of Appeal

S.J. v. State, __ So. 3d __, 2010 WL 5093189 (Fla. 4th DCA 2010). [TRIAL COURT'S DENIAL OF THE JUVENILE'S MOTION TO SUPPRESS AFFIRMED BECAUSE POLICE OFFICER HAD PROBABLE CAUSE TO BELIEVE THE JUVENILE WAS LOITERING AND PROWLING](#). The juvenile appealed the trial court's order adjudicating him guilty of loitering or prowling, burglary of a structure or conveyance, grand theft auto, and petit theft, and placing him on juvenile probation and ordering him to complete fifty hours of community service. Around 1:00 a.m., a police officer responded to a call regarding a black male wearing all black and a white male dressed in a white t-shirt in a hospital parking lot. The officer observed two subjects in the parking lot just outside an enclosed dumpster area. It appeared that the individuals were attempting to hide from an approaching hospital security van. The officer approached the individuals and asked what they were doing. Both replied they were looking for a drink of water. The officer estimated one of the individuals to be about fourteen or fifteen years of age and the other to be about ten years of age. The officer was concerned about safety and property in the area because it was one of the department's most problematic areas for vehicle break-ins and theft. Both individuals gave their names and neither tried to flee. In light of the young age of the individuals, the time of day, and the history of car burglaries in the parking lot, the officer suspected that the boys either had committed or were about to commit a criminal act. Both individuals were arrested. The juvenile was charged with loitering and prowling. The juvenile filed a motion to suppress, arguing that because every element of loitering or prowling was not committed in the officer's presence, the juvenile's arrest for a misdemeanor was unlawful. Furthermore, the decision to arrest the juvenile was based on the officer's suspicion that criminal activity had already occurred or was about to occur, which, according to the case law, is an insufficient basis for arrest. The trial court denied the motion. The Fourth District Court of Appeal found that the proper test for probable cause requires a consideration of the totality of the facts and circumstances within the officer's knowledge. Here, the officer encountered two boys, one of whom appeared to be fourteen years old and the other ten years old, around 1:00 a.m. in a

hospital parking lot which had recently been plagued by vehicle break-ins. The boys claimed they were looking for water but were standing near a dumpster. On this record, the trial court's denial of the motion to suppress was affirmed because the officer had probable cause to believe the juvenile was loitering and prowling.

<http://www.4dca.org/opinions/Dec%202010/12-15-10/4D09-2079.op.pdf> (December 15, 2010).

K.C. v. State, ___ So. 3d ___, 2010 WL 4962875 (Fla. 4th DCA 2010). **POSSESSION OF BB GUN ON SCHOOL PROPERTY REVERSED WHERE EVIDENCE FAILED TO ESTABLISH THAT THE BB GUN WAS A DEADLY WEAPON.** The juvenile was found guilty of possessing a BB gun on school property and was adjudicated delinquent. On appeal, the juvenile argued that the evidence failed to establish that his BB gun was a deadly weapon so as to bring it within the statute charged in the petition for delinquency. The Fourth District Court of Appeal found that a BB gun must be a "deadly weapon" to fall within the scope of s. 790.001(13), F.S. and thus within the scope of s. 790.115(2), F.S. Whether a BB gun is a "deadly weapon" in a particular case is a question of fact to be resolved by the trier-of-fact. Dale v. State, 703 So. 2d 1045, 1047 (Fla.1997). However, where a BB gun is not loaded, and no additional evidence is introduced to establish its capacity to inflict death or great bodily harm, the courts have held the evidence insufficient to call it a statutory "deadly weapon." While the juvenile's BB gun was introduced into evidence, there was no evidence that it was loaded and no testimony describing the BB gun's operation or the nature and character of injuries it was capable of inflicting. Accordingly, the adjudication of delinquency was reversed. <http://www.4dca.org/opinions/Dec%202010/12-08-10/4D09-4469.op.pdf> (December 8, 2010).

L.E.D. v. State, ___ So. 3d ___, 2010 WL 4740193 (Fla. 4th DCA 2010). **FINDING OF GUILT FOR BURGLARY OF A DWELLING AND GRAND THEFT REVERSED WHERE TRIAL COURT REVERSIBLY ERRED IN SEQUESTERING HER MOTHER FROM HER TRIAL.** The juvenile appealed from the finding of guilt for burglary of a dwelling and grand theft. The juvenile asserted that the trial court abused its discretion and reversibly erred in sequestering her mother from her trial. The juvenile was age ten at the time of the offense. After being found guilty, the trial court withheld adjudication and placed her on probation with special conditions. The juvenile and her mother were ordered to pay restitution to the victim in the amount of \$1000. At the beginning of the trial, defense counsel invoked the rule of sequestration of witnesses. Although the mother was going to be a witness in the case, defense counsel argued that the mother, a party to this matter, should not be sequestered from the courtroom. The trial court disagreed and ordered the mother to be sequestered until she was called as a witness by the defense. The juvenile argued on appeal that the trial court should not have sequestered her mother throughout the presentation of the state's case. The Fifth District Court of Appeal found that the First District's opinion in J.R. v. State, 923 So. 2d 1269 (Fla. 1st DCA 2006), to be persuasive and adopted that reasoning as its own. The case was reversed and remanded for a new adjudicatory hearing. <http://www.4dca.org/opinions/Nov%202010/11-24-10/4D09-2164.op.pdf> (November 24, 2010).

J.T. v. State, ___ So. 3d ___, 2010 WL 4628534 (Fla. 4th DCA 2010). **THE TRIAL COURT PROPERLY**

DENIED THE JUVENILE'S MOTION FOR JUDGMENT OF DISMISSAL OF CHARGE OF POSSESSION OF A WEAPON OR FIREARM ON SCHOOL PROPERTY. The juvenile appealed an order finding him guilty of possession of a weapon or firearm on school property. He contended that the state failed to prove that the BB gun he brought onto school property was operable and thus a weapon. The Fourth District Court of Appeal found that, in a prosecution for possession of a BB gun on school premises in violation of s. 790.115(2), F.S., where the state introduces the BB gun into evidence and offers testimony regarding its operation and the extent of harm which can be caused by a BB gun, the state has presented legally sufficient evidence to avoid a judgment of dismissal. It is a jury question to determine by competent substantial evidence whether the BB gun constitutes a deadly weapon and thus violates the statute. The Fourth District noted that the holding should be limited to those cases where the BB gun is admitted into evidence. Accordingly, the trial court's ruling was affirmed. <http://www.4dca.org/opinions/Nov%202010/11-17-10/4D09-3457.op.pdf> (November 17, 2010).

J.Z. v. State, __ So. 3d __, 2010 WL 4483425 (Fla. 4th DCA 2010). **SECTION 775.083(2), F.S., ONLY PROVIDES FOR THE ASSESSMENT OF COSTS WHEN A JUVENILE IS ADJUDICATED DELINQUENT.** The juvenile appealed the finding of guilt on a domestic violence battery charge, the withholding of adjudication and placement on probation, and the award of costs. The juvenile argued that the trial court erred in denying his motions for judgment of dismissal and in awarding court costs when adjudication was withheld. The Fourth District Court of Appeal affirmed the finding of guilt, and the withholding of adjudication and placement on probation. However, the award of costs was reversed. Section 775.083(2), F.S. (2008), only provides for the assessment of court costs when a juvenile is adjudicated delinquent. In the instant case, the trial court withheld the adjudication of delinquency. Therefore, the award of court costs was not authorized by the statute. <http://www.4dca.org/opinions/Nov%202010/11-10-10/4D09-1160.op.pdf> (November 10, 2010).

Fifth District Court of Appeal

C.M. v. State, __ So. 3d __, 2010 WL 5128261 (Fla. 5th DCA 2010). **DENIAL OF ORAL MOTION TO SUPPRESS CANNABIS AFFIRMED.** The juvenile appealed his adjudication of delinquency for possession of twenty grams or less of cannabis. He argued that the trial court erred by denying his oral motion to suppress the cannabis that was the product of an illegal search and seizure. He also argued that the trial court erred by denying his motion for judgment of dismissal where the evidence did not establish his constructive possession or knowledge of the contraband. The Fifth District Court of Appeal found that there was sufficient evidence on record to support the conviction, and there was no reversible error in the trial court's refusal to entertain the suppression motion because it was untimely. Florida Rule of Juvenile Procedure 8.085 requires the filing of a suppression motion prior to the date of the adjudicatory hearing. The trial court refused to consider the juvenile's oral motion to suppress the cannabis because no written motion to suppress had been filed. A trial court's denial of a motion to suppress as untimely is subject to an abuse of discretion standard of review. Because the juvenile had not filed a motion to suppress prior to the date of the adjudicatory hearing, and this was not a case where

the juvenile lacked the opportunity to make a motion to suppress prior to the date of the adjudicatory hearing, the trial court did not abuse its discretion. The juvenile contended on appeal that the failure to timely file the motion was due to “confusion concerning the appointment of the public defender,” and his mother's failure to appear to complete the necessary paperwork for the appointment of counsel until the morning of the hearing. It was conceded by the juvenile that he had previously met with defense counsel, but he asserted that the grounds for the motion did not become obvious until the officer testified. The State objected that the exception to the filing deadline was not argued below. Moreover, the Fifth District noted that, at the beginning of the adjudicatory hearing, the trial judge voiced his concern that it had taken so long for the appointment of counsel paperwork to be completed. He confirmed with defense counsel and the juvenile that they had met prior to the day of the hearing and that they were ready for trial.

<http://www.5dca.org/Opinions/Opin2010/121310/5D10-2.op.pdf> (December 17, 2010).

M.W. v. State, __ So. 3d __, 2010 WL 4903614 (Fla. 5th DCA 2010). **DISPOSITION ORDER THAT DEVIATED FROM THE DEPARTMENT OF JUVENILE JUSTICE’S DISPOSITION RECOMMENDATION WAS REVERSED AND REMANDED.** The Fifth District Court of Appeal, for the reasons explained in *State v. A.C.*, 44 So. 3d 1240 (Fla. 5th DCA 2010), reversed the disposition and remanded with instructions that the trial court either impose the disposition recommended by the Department of Juvenile Justice or, if a different disposition was warranted, support any alternate disposition with written reasons as required by *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009). <http://www.5dca.org/Opinions/Opin2010/112910/5D09-3640.op.pdf> (December 3, 2010).

J.A. v. State, __ So. 3d __, 2010 WL 4365513 (Fla. 5th DCA 2010). **RESTITUTION ORDER WAS REVERSED AND REMANDED BECAUSE JUVENILE WAS NOT PRESENT AT RESTITUTION HEARING AND HAD NOT WAIVED HIS RIGHT TO BE PRESENT.** The juvenile challenged the restitution order entered after a hearing for which he was not present. The Fifth District Court of Appeal found that a juvenile has a constitutional right to be present at hearings to determine the imposition and amount of restitution absent a voluntary and intelligent waiver of that right. The state bears the burden of proving that the right to be present was knowingly and voluntarily waived. In the instant case, it is indisputable that the juvenile did not receive notice of the hearing, nor did he waive his right to be heard. The juvenile also challenged the award of restitution for the value of personal property removed from the stolen vehicle. The record failed to establish that the juvenile’s crime was the cause of this loss. Accordingly, the restitution order was reversed and remanded for further proceedings.

<http://www.5dca.org/Opinions/Opin2010/110110/5D09-4218.op.pdf> (November 5, 2010).

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

J.T. v. Florida Department of Children and Families, --- So. 3d ----, 2010 WL 4751771 (Fla. 1st DCA 2010) **ADJUDICATION REVERSED**. The mother appealed the trial court's Order of Adjudication of Dependency as to K.U. and Supplemental Order of Adjudication as to A.U., and alleged that the orders were facially deficient and/or that there was insufficient evidence to support the trial court's findings. As to the child K.U., both DCF and the GAL conceded that there was insufficient evidence to support the order. As to A.U., although DCF was apparently seeking an adjudication of dependency and the resulting order was entitled a "Supplemental Order of Adjudication," the body of the order did not indicate whether A.U. was in fact adjudicated dependent and did not include any factual findings to support the contention that the mother abused A.U. The appellate court reversed.
<http://opinions.1dca.org/written/opinions2010/11-24-2010/10-4583.pdf> (November 24, 2010).

J.S. v. Florida Department of Children and Families, --- So. 3d ----, 2010 WL 4705102 (Fla. 1st DCA 2010) **ADJUDICATION REVERSED**. The mother sought review of a final order adjudicating her child dependent. Both the Department of Children and Family Services and Guardian ad Litem appropriately conceded that the evidence presented at the adjudicatory hearing was legally insufficient to support a determination of dependency. Therefore, the appellate court reversed. <http://opinions.1dca.org/written/opinions2010/11-22-2010/10-4974.pdf> (November 22, 2010).

Second District Court of Appeal

Department of Children and Family Services v. J.G., D.C., W.J., and Guardian Ad Litem Program, --- So. 3d ----, 2010 WL 4628562 (Fla. 2d DCA 2010) **CONSENT TO DEPENDENCY WITHDRAWN**. The mother appeared in court with appointed counsel and consented to the dependency of her children. After the trial court was satisfied that the mother's consent was voluntary, it accepted her consent and the Department's case plan. Two days later, the Mother appeared before the trial court with different counsel and stated that she wanted to withdraw her consent. The Mother's counsel explained that the Mother felt she had been forced by prior counsel to enter the consent because that counsel had told her that if she went to trial she would lose. Counsel conceded that the trial court had not made any errors in its colloquy with the mother or in accepting her consent two days earlier. However, counsel requested that the court permit the mother to withdraw her consent and proceed to an adjudicatory hearing on the dependency petition, which the court permitted. DCF then filed a petition for writ of certiorari in the appellate court, contending that the trial court departed from the essential requirements of the law in setting aside the mother's consent because the mother had not established any legal ground for withdrawing her consent. The Department did not address, or even mention, whether the trial court's order resulted in irreparable harm to the Department. The appellate court reversed because the Department did not establish entitlement to relief by means of certiorari. When an appellate court reviews a non-appealable non-final order rendered by a trial court, the party seeking review must demonstrate that the trial court departed from the essential requirements of law and that the resulting harm is irreparable and

cannot be remedied on appeal following final judgment. Under this standard, relief by means of certiorari is not available when there is no irreparable harm or when the petitioner has another remedy. In this case, the Department did not show that the trial court's order resulted in irreparable harm that could not be remedied on direct appeal. As the case now stands, the Mother's consent to dependency has been withdrawn, and there is an adjudicatory hearing scheduled on the Department's petition for dependency. At that adjudicatory hearing, the Department may prove that the mother's children are dependent, at which point it will have suffered no harm. If the court determines at that hearing that the Department has failed to prove the allegations in its dependency petition, the Department may seek relief on direct appeal from that adverse ruling. In either event, the appellate court found that the trial court's order did not result in irreparable harm to the Department so as to entitle it to the issuance of a writ of certiorari, and the court dismissed the petition.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/November/November%2017,%202010/2D10-4431.pdf (November 17, 2010).

V.S. v. Department of Children and Family Services, and Guardian Ad Litem Program, --- So. 3d ---, 2010 WL 4489946 (Fla. 2d DCA 2010) **VISITATION RIGHTS**. The Father petitioned the court for a writ of certiorari quashing the circuit court's order entered after a status check hearing which, among other things, denied his request to reinstate visitation with his daughter. The child had been previously adjudicated dependent and placed with a family member, and the Father's one-hour per week of supervised visitation had been suspended. The Father argued that the circuit court departed from the essential requirements of law by continuing the suspension of his visitation rights without clear and convincing evidence that his visits with the child were not in her best interest. The Department of Children and Families conceded error, and the appellate court agreed. The court then granted the Father's petition and issued a writ of certiorari quashing the order denying the Father's motion to reinstate his visitation rights and remanded the case.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/November/November%2010,%202010/2D10-4048.pdf (November 10, 2010).

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

R.I. v. Department of Children and Families, --- So. 3d ----, 2010 WL 4320467 (Fla. 4th DCA 2010) **TRUST FOR THE DISABLED**. R.I. appealed the trial court's Order Denying Motion to Order Department of Children and Families to Pay Fees Associated with the Administration of the Trust. R.I. is developmentally disabled and resided in foster care until his eighteenth birthday in April, 2010. He remains under the extended jurisdiction of the juvenile court until his 19th birthday. Because R.I. was not competent to handle his own financial affairs and had no responsible relative to act as trustee, he requested that the court order the Department to

establish a trust on his behalf, separate from the master trust, and that the department serve as trustee pursuant to §402.17(7)(c), Florida Statutes. The Department located an entity that was willing to create a trust for R.I.; however, that organization charged a one-time establishment fee of \$500 for the trust and R.I. did not consent to the payment of the fee. Instead, he moved for an order requiring the Department to pay the fee. At the hearing, R.I. argued that, when the Department is required to "establish" a trust pursuant to the statute, it must pay any fees associated with the establishment of the trust. The trial court disagreed, and denied R.I.'s motion to require the Department to pay the fee, and the appellate court affirmed. The appellate court stated that the trial court correctly concluded there is no statutory requirement mandating the Department to pay any administrative fees or costs for the establishment of a special needs pooled trust for a client who attains the age of eighteen. To the contrary, the applicable statutes authorize the Department, as trustee, to expend the client's trust assets for his benefit. R.I.'s joining the special needs pooled trust allows him to conserve his assets and ensure continued eligibility for public assistance, which made the \$500 administrative fee to join the special needs pooled trust an appropriate expenditure. <http://www.4dca.org/opinions/Nov%202010/11-03-10/4D10-1540.op.pdf> (November 3, 2010).

Fifth District Court of Appeal

L.T. v. Department of Children and Families, --- So. 3d ----, 2010 WL 4739523 (Fla. 5th DCA 2010) **ORDER DISMISSING DEPENDENCY PETITION REVERSED**. An uncle appealed an order which declared the child to be his legal custodian and dismissed the dependency petition. The uncle had filed the petition for dependency after his nephew's parents both died and he was the only relative able to care for the child. At the dependency hearing, the uncle explained that the Department of Homeland Security had released the child into the uncle's custody after the child was rescued when his boat capsized off the coast of Florida. The uncle further explained that he filed the dependency petition on behalf of the child because an adjudication of dependency would allow the child to petition as a special immigrant juvenile. The uncle was not requesting any services from DCF. The trial court dismissed the uncle's dependency petition, but granted him legal custody of the child. The appellate court reversed and noted that §39.01(14)(e), F.S., provides that when a judge finds that a child is orphaned and has no legal custodian, the legal conclusion is that the child is dependent, as in this case. The court also noted that the record did not support DCF's argument that the trial court lacked subject matter jurisdiction over the dependency petition. DCF also contended that the trial court's order should be affirmed because the uncle failed to comply with notice and service of process requirements; however, DCF waived this issue for purposes of appellate review by failing to raise it at the trial court level. DCF also contended that the trial court's order dismissing the dependency petition was moot because the child had reached the age of majority. The court held that it was not moot because the denial of the declaration of dependency had the effect of continuing to deprive the child of a legal basis for regularizing the child's immigration status. Because the trial court erred as a matter of law in dismissing the dependency petition, the appellate court reversed. <http://www.5dca.org/Opinions/Opin2010/112210/5D10-2073.op.pdf> (November 23, 2010).

Dissolution Case Law

Florida Supreme Court

In Re: Amendments to the Supreme Court Approved Family Law Forms, __ So. 3d __, (SC10-1947)

Adoption of amendments to forms 12.912(a), Memorandum for Certificate of Military Service, and 12.912(b), Affidavit of Military Service, and adoption of a new form, 12.962, Writ of Bodily Attachment to be used in child support proceedings. All three forms took effect on the date the opinion issued, December 2, 2010; interested persons were given a 60 day comment period from the date of the opinion to file comments regarding the forms with the Court.

<http://www.floridasupremecourt.org/decisions/2010/sc10-1947.pdf> (December 2, 2010).

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms, __ So. 3d __, 2010 WL 5129277 (SC08-2058)

Adoption of amendments to numerous family law forms revised in response to comments filed with the Court regarding the forms adopted in the opinion issued in March 2009. (In re: Amendments to Fla. Supreme Court Approved Family Law Forms, 20 So. 3d 173 (Fla. 2009)). The forms took effect on the date the opinion issued, December 16, 2010.

<http://www.floridasupremecourt.org/decisions/2010/sc08-2058.pdf> (December 16, 2010).

First District Court of Appeal

Doran v. Doran, __ So. 3d __, 2010 WL 5383213 (Fla. 1st DCA 2010).

TRIAL COURT ERRED IN NOT ALLOWING PRESENTATION OF EVIDENCE RELEVANT TO A DETERMINATION OF CHILDREN'S BEST INTERESTS.

Former wife appealed an order granting time-sharing to former husband, arguing that the trial court erred by not allowing a presentation of evidence as to why modification of time-sharing was not in the children's best interests. Holding that a time-sharing schedule may not be modified absent a showing of substantial and unanticipated changes in circumstances coupled with a determination that modification is in the best interests of the children, the appellate court reversed. Former wife had sought to present evidence of child abuse of the children by former husband. Appellate court held that such evidence is relevant to a determination of best interests and that the trial court had erred in not allowing the presentation of this evidence; accordingly, it reversed and remanded.

<http://opinions.1dca.org/written/opinions2010/12-29-2010/10-2697.pdf> (December 29, 2010).

Jones v. Jones, __ So. 3d __, 2010 WL 5540948 (Fla. 1st DCA 2010).

TRIAL COURT CORRECTLY CLASSIFIED PROMISSORY NOTE BETWEEN SPOUSE AND HIS MOTHER AS MARITAL DEBT AND REDUCING VALUE BELOW FACE.

Both spouses appealed the trial court's rulings in final judgment of dissolution of marriage regarding: 1) classification of a promissory note signed by former husband (payee) and his mother (the maker) as marital; 2) valuation of the note at half its face value; 3) dissipation by

former husband of marital assets; and 4) denial of attorney's fees and costs to former wife. Appellate court affirmed without comment the trial court's factoring of dissipation into the equitable distribution and its denial of fees and costs. Concluding that the note was a marital obligation but that it would not be fully enforced against former husband by his mother, the trial court assigned a value to the note that was below its face value. On appeal, former husband contended that he should be assigned the full value of the note for equitable distribution purposes; former wife argued that the trial court erred in having classified the note as marital debt. Noting that a trial court's conclusion as to whether a debt is marital or not is reviewed *de novo*, the appellate court held that its role was not to "sit as finders of fact" regarding matters determined by the trial court when supported by competent, substantial evidence. Appellate court held that competent, substantial evidence demonstrated that former husband and his mother signed the note during the parties' marriage, and that all liabilities incurred by either spouse after the date of a marriage, unless specifically shown to be nonmarital, are presumed to be marital. The appellate court further held that in this case, the evidence supported both the trial court's classification of the note as a marital debt and its decision that the note had some value, but not necessarily its face value. Reiterating that a trial court has broad discretion in fashioning its scheme of equitable distribution and that nothing in Florida law requires a trial court to value a note at either zero or face with nothing in between, the appellate court upheld trial court's conclusion that the true value of the note was significantly less than its face.

<http://opinions.1dca.org/written/opinions2010/12-21-2010/09-5010.pdf> (December 21, 2010).

Moore v. Moore, __ So. 3d __, 2010 WL 5557100 (Fla. 1st DCA 2010).

APPEAL PREMATURE IF TRIAL COURT FAILS TO DISPOSE OF INTEGRALLY RELATED ISSUE.

Brief opinion in which the appellate court held that no time schedule had been determined for one of the three minor children and that as the issue of time-sharing was "integrally related to other issues concerning the parties' minor children," the order was not final because it failed to dispose of an "integrally related issue;" therefore, the appeal was premature.

<http://opinions.1dca.org/written/opinions2010/12-21-2010/10-3630.pdf> (December 21, 2010).

Gergen v. Gergen, __ So. 3d __, 2010 WL 4703852 (Fla. 1st DCA 2010).

TRIAL COURT ERRED IN NEITHER GRANTING NOR DENYING ALIMONY OR SUPPORT; AWARD OF NOMINAL SUPPORT WOULD RESERVE JURISDICTION.

Former wife appealed trial court's rulings regarding alimony and attorney's fees in dissolution of the 18-year marriage; appellate court reversed in part and remanded. The trial court had ruled that permanent periodic alimony was appropriate, that former wife had established need, and that former husband was not currently able to pay, but had reserved jurisdiction to award alimony "in the future if the circumstances justify that award." Appellate court held that the trial court erred in not having made final rulings on either alimony or child support; accordingly, it reversed and remanded both issues for the trial court to either grant or deny alimony and child support. Appellate court noted that an award of nominal permanent periodic alimony, if granted, would reserve the trial court's jurisdiction to revisit the issue in the event of a

substantial change in circumstances. <http://opinions.1dca.org/written/opinions2010/11-22-2010/10-0257.pdf>
(November 22, 2010).

Second District Court of Appeal

Betancourt v. Betancourt, __ So. 3d __, 2010 WL 5351069 (Fla. 2d DCA 2010).

TRIAL COURT ERRED BY NOT DEDUCTING MORTGAGE PAYMENT AND EXPENSES.

Appellate court concluded that the trial court had erred in its calculations of the parties' available income; specifically, the trial court erred by failing to deduct the mortgage payment and related expenses from the gross rental income before attributing it to former husband. Accordingly, the appellate court reversed the award of permanent periodic alimony to former wife.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2029,%202010/2D09-3032.pdf (December 29, 2010).

Zinovoy v. Zinovoy, __ So. 3d __, 2010 WL 5350985 (Fla. 2d DCA 2010).

ABSENT RATIONALE, COLLATERAL CHILD SUPPORT EXPENSES MUST BE ALLOCATED IN THE SAME PERCENTAGE AS CHILD SUPPORT.

Appellate court reversed the award of permanent periodic to former wife and the trial court's allocation of financial responsibility for unreimbursed medical expenses. Citing Wilcox v. Munoz, 35 So. 3d 136, (Fla. 2d DCA 2010), appellate court held that the trial court's 50/50 allocation of unreimbursed children's medical expenses conflicted with its 24/76 child support allocation. Stating that, "absent some logically established rationale in the final judgment to the contrary, collateral child support expenses must be allocated in the same percentage as the child support allocation." Appellate court found no such rationale in this case; it instructed the trial court on remand to enter an amended final judgment consistent with controlling case law. Appellate court also held that the trial court abused its discretion in calculating alimony because the amount awarded was both inconsistent with and significantly lower than any of the testimony at trial regarding former wife's need. Appellate court reiterated that a spouse requesting alimony should not be "shortchanged"; it concluded in this case that the alimony award was not commensurate with former husband's ability to pay or former wife's need. It held that any finding by a trial court that a spouse's estimated expenses are inflated must be supported by competent, substantial evidence; here, it was not.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2029,%202010/2D09-5413.pdf (December 29, 2010).

Kinney v. Kinney, __ So. 3d __, 2010 WL 5381756 (Fla. 2d DCA 2010).

APPEAL PREMATURE IF FURTHER JUDICIAL LABOR IS ANTICIPATED.

Appeal dismissed as premature because the final judgment of dissolution of marriage anticipated further judicial labor on the issue of retroactive child support; thus, the judgment was not final in this respect.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2029,%202010/2D09-5932.pdf (December 29, 2010).

Stanton v. Stanton, __So. 3d__, 2010 WL 5018361 (Fla. 2d DCA 2010).

TEMPORARY AWARD SUBJECT TO REVERSAL IF AMOUNT EXCEEDS NEED.

Appellate court reversed trial court's temporary awards of alimony and child support to former wife because they were not supported by competent, substantial evidence. The award of temporary attorney's fees and costs was also reversed due to the trial court's failure to make findings regarding the reasonableness of the hourly rate and the time expended. Appellate court reiterated that a trial court's evaluation of whether a temporary award is proper must take into account the parties' standard of living in addition to the need of one spouse and the ability to pay of the other. It also noted that while establishing abuse of discretion or harmful error is more difficult in cases of temporary alimony, a temporary award is reversible if the amount awarded is greater than the evidence establishing need. Quoting from Levine v. Levine, 964 So. 2d 741, 742-3 (Fla. 4th DCA 2007), the appellate court instructed the trial court on remand to consider former wife's actual needs as opposed to attempting "to fund the enjoyment of every little luxury enjoyed before divorce."

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2010,%202010/2D10-919.pdf (December 10, 2010).

Suit v. Suit, __So. 3d__, 2020 WL 4861715 (Fla. 2d DCA 2010).

TRIAL COURT MUST EVALUATE TRUE COSTS OF SPOUSE'S FUTURE LIVING.

Former husband appealed final judgment in dissolution of a 23-year marriage; appellate court reversed the award of permanent periodic alimony. Appellate court held that the trial court erred by failing to determine the true costs of former wife's future living arrangements and the effect of those costs on the investment assets she received through the equitable distribution scheme. Appellate court concluded that although the trial court did not abuse its discretion by either refusing to impute income to former wife due to being underemployed in her two businesses or by refusing to adjust her alimony award to reflect income earned from investments received from the equitable distribution, it did abuse its discretion by finding former wife would have no income from her nonretirement assets. Appellate court acknowledged the possibility of additional evidence concerning housing costs for former wife on remand and advised the trial court to be cognizant of any concealed savings component in contravention of Mallard v. Mallard, 771 So. 2d 1138 (Fla. 2000).

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2001,%202010/2D08-4814.pdf (December 1, 2010).

El-Hajji v. El-Hajji, __So. 3d__, 2010 WL 4628581 (Fla. 2d DCA 2010).

TRIAL COURT CANNOT ALLOCATE FEDERAL DEPENDENCY EXEMPTION DIRECTLY BUT MAY ORDER PARTIES TO ROTATE THE EXEMPTION.

Appellate court held that under section 61.30(11), F.S., a court cannot allocate the federal dependency exemption directly; however, it may require one parent to transfer the exemption to the other parent based upon that parent's payment of support. Appellate court held that a trial court also has the discretion to order that parents share the exemption in alternating years. It held that here, the trial court had not abused its discretion in determining former wife should share in the benefit of the exemption in alternating years, but had erred in failing to

direct former husband to execute a waiver of the exemption in favor of former wife contingent upon her payment of child support. The trial court was instructed to amend the final judgment accordingly on remand. Appellate court concluded that the trial court did abuse its discretion by failing to equitably distribute two outstanding loans which resulted in an unequal distribution in favor of former wife, without explanation or justification.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/November/November%2017,%202010/2D09-2978.pdf (November 7, 2010).

Third District Court of Appeal

Haddad v. Khan, __So. 3d__, 2010 WL 5348273 (Fla. 3d DCA 2010).

IN ABSENCE OF TRANSCRIPT, FINAL JUDGMENT NOT ERRONEOUS ON ITS FACE MUST BE AFFIRMED.

Appellate court reiterated that in the absence of a transcript, a final judgment which is not erroneous on its face must be affirmed. <http://www.3dca.flcourts.org/Opinions/3D10-0631.pdf> (December 29, 2010).

Schwartz v. Schwartz, __So. 3d__, 2010 WL 4861746 (Fla. 3d DCA 2010).

APPEAL PREMATURE IF TRIAL COURT DOES NOT FINALLY DETERMINE ISSUE.

Appeal was dismissed as premature because the trial court did not make a final determination regarding child support. <http://www.3dca.flcourts.org/Opinions/3D10-0171.pdf> (December 1, 2010).

DiGiorgio v. DiGiorgio, __So. 3d__, 2010 WL 4861639 (Fla. 3d DCA 2010).

ACTUAL PLACE OF RESIDENCE, NOT FILING OF CLAIM, DETERMINES HOMESTEAD.

Former husband appealed a non-final order denying his motion to strike execution and sheriff's sale; appellate court reversed and remanded for an evidentiary hearing to determine whether the property in question was former husband's homestead and therefore exempt. Appellate court held that it is the place of actual residence, not the filing of a claim for exemption, that determines whether a property is homestead; therefore, former husband's filing of a Notice of Homestead Affidavit was not the determining factor. The question of whether a property is homestead can only be answered by evidentiary proof; it is a question of fact to be resolved by the trier of fact. <http://www.3dca.flcourts.org/Opinions/3D10-1835.pdf> (December 1, 2010).

Fourth District Court of Appeal

Glass v. Glass, __So. 3d__, 2010 WL 5345510 (Fla. 4th DCA 2010).

TRIAL COURT FAILED TO MAKE SPECIFIC FINDING REGARDING NEED FOR FEE AWARD.

Appellate court affirmed trial court's orders denying former husband's petition for modification of alimony and finding him in contempt, but reversed the fee award to former wife because the order failed to include a specific finding regarding her need for a fee award.

<http://www.4dca.org/opinions/Dec%202010/12-29-10/4D09-2791.op.pdf> (December 29, 2010).

Sullivan v. Sullivan, __So. 3d__, 2010 5174330 (Fla. 4th DCA 2010).

FEE AWARD APPROPRIATE UNDER 57.105(1) WHEN CLAIM OR DEFENSE LACKS MERIT.

Appellate court affirmed trial court's order finding former husband in contempt for failing to pay former wife as previously ordered. With regard to the issue of attorney's fees, appellate court held that fees are appropriate under section 57.105(1), Florida Statutes, when either a party or his attorney pursues a claim or defense that is without factual or legal merit. Appellate court concluded that under the facts of this case former husband's counsel knew or should have known that former husband's claim on appeal was "completely devoid of merit"; accordingly, it remanded to the trial court to determine the reasonable attorney's fees incurred by former wife.

<http://www.4dca.org/opinions/Dec%202010/12-22-10/4D10-331.op.pdf> (December 22, 2010).

Perez v. Reveiz, __So. 3d__, 2010 WL 5093181 (Fla. 4th DCA 2010).

FEE AWARD IN FINAL JUDGMENT INCONSISTENT WITH ORAL RULINGS.

Trial court found former husband's request for modification of custody and visitation was warranted by a substantial change in circumstances and was in the children's best interests. Concluding that these findings were supported by competent, substantial evidence, appellate court affirmed; however, it reversed the trial court's award of attorney's fees in the final judgment because that award was not consistent with the court's oral rulings at the final hearing.

<http://www.4dca.org/opinions/Dec%202010/12-15-10/4D09-1008.op.pdf> (December 15, 2010).

Scott-Lubin v. Lubin, __So. 3d__, 2010 4962879 (Fla. 4th DCA 2010).

APPEARANCE AND PARTICIPATION IN PROCEEDINGS WITHOUT OBJECTION TO SERVICE OF PROCESS RESULTS IN A WAIVER TO CONTEST JURISDICTION.

Concluding that former husband's appearance at a hearing waived any objection he might have had to defective service of process, appellate court held that the trial court had erred in setting aside a default judgment of dissolution of marriage. While recognizing that a judgment may be voided when a party has not received notice of an action and does not participate in the proceedings, appellate court held that the fact that former husband's appearance and participation in the proceedings was post-judgment was "irrelevant"; his participation and his counsel's notice of appearance, without a simultaneous objection to service of process, resulted in a waiver of his right to contest the trial court's exercise of personal jurisdiction.

<http://www.4dca.org/opinions/Dec%202010/12-08-10/4D09-4609.op.pdf> (December 12, 2010).

Hornyak v. Hornyak, __So. 3d__, 2010 WL 4962711 (Fla. 4th DCA 2010).

FINDING IT MAY HAVE "INTRUDED" ON TRIAL COURT'S DISCRETION, APPELLATE COURT AMENDS ITS EARLIER OPINION.

Commenting that it "may have intruded too much into the trial court's discretion," appellate court on rehearing amended its earlier opinion and reversed the bridge-the-gap alimony. It then remanded the issue of income imputed to former wife to the trial court for

reconsideration. <http://www.4dca.org/opinions/Dec%202010/12-08-10/4D08-4375rhg.op.pdf> (December 8, 2010).

Frederickson v. Frederickson, __ So. 3d __, (Fla. 4th DCA 2010).

DENIAL OF MODIFICATION OF ALIMONY AFFIRMED WHERE DECREASE IN INCOME WAS NEITHER PERMANENT NOR INVOLUNTARY.

Finding that competent, substantial evidence supported trial court's conclusion that the decrease in income sustained by former husband was neither permanent nor involuntary, appellate court affirmed the trial court's denial of former husband's petition for modification of alimony.

<http://www.4dca.org/opinions/Dec%202010/12-01-10/4D09-3608.op.pdf> (December 1, 2010).

Phillips v. Ford, __ So. 3d __, 2010 WL 4740314 (Fla. 4th DCA 2010).

TRIAL COURT MUST MAKE SPECIFIC FINDINGS REGARDING NEED IN AWARDING FEES.

Reiterating that the standard for review for either an award for or denial of attorney's fees in a dissolution of marriage proceeding is abuse of discretion and that the standard for awarding fees is the financial need of the requesting party and the financial ability of the other party, appellate court reversed the award of attorney's fees to former wife for the trial court's failure to make factual findings regarding her financial need.

<http://www.4dca.org/opinions/Nov%202010/11-24-10/4D09-3978.op.pdf> (November 24, 2010).

Mondello v. Torres, 47 So. 3d 389, (Fla. 4th DCA 2010).

TRIAL COURT'S TASK IN EVALUATING ASSETS INHERITED BY SPOUSE IS WHETHER SPOUSE INTENDED THEM TO BE NONMARITAL OR BE A GIFT; PRESUMPTION OF GIFT TO OTHER SPOUSE MAY BE OVERCOME BY EVIDENCE.

Appellate court denied former husband's motion for rehearing, granted former wife's motion for clarification, and substituted this opinion for the one issued July 21, 2010. Reiterating that a trial court's legal conclusion as to whether an asset is marital or nonmarital is subject to *de novo* review, the appellate court found no error in the trial court's classification of former wife's investment account, which was derived from funds she inherited upon the death of her first husband, as nonmarital. Appellate court held that the trial court's task in evaluating assets inherited by a spouse is to determine whether the receiving spouse intended the asset to remain nonmarital or whether the conduct of that spouse during the marriage gave rise to a presumption of a gift to the other spouse. Appellate court also held that the trial court has the discretion to determine that the presumption is overcome by the evidence. Appellate court found that the trial court's determination of all credibility issues in former wife's favor was proper; it concluded that former wife had overcome any presumption that a gift was intended and that the trial court had properly exercised its discretion in awarding her the proceeds of the account. Recognizing that the record supported an unequal distribution of marital liabilities, appellate court remanded for reconsideration or clarification by the trial court regarding distribution of the liabilities. <http://www.4dca.org/opinions/Nov%202010/11-17-10/4D08-4525.rhg.pdf> (November 17, 2010).

Betemariam v. Said, __ So. 3d __, 2010 WL 4628506 (Fla. 4th DCA 2010).

WHETHER RELIGIOUS CEREMONY CONSTITUTES VALID MARRIAGE DEPENDS ON LAW WHERE CEREMONY OCCURRED; EQUITABLE ALIMONY NOT AVAILABLE WHEN BOTH PARTIES ARE EQUALLY RESPONSIBLE FOR INVALID MARRIAGE; TRIAL COURT ABUSED ITS DISCRETION IN NOT ORDERING FATHER TO PAY PRIVATE SCHOOL TUITION.

Appellate court affirmed the trial court's conclusion that, because the marriage between the parties was not valid, it had no authority to award alimony or order equitable distribution; however, the appellate court reversed the trial court's refusal to order the father to pay the children's educational expenses. Appellate court held that determining whether a religious wedding ceremony amounts to a valid marriage depends on the law of the place where the ceremony occurred. Appellate court affirmed the trial court's denial of equitable alimony for the children's mother as it appeared without dispute that both parties were equally responsible for the invalidity of their marriage. Holding that a trial court has the authority under chapter 742, Florida Statutes, to order a father to pay his children's educational expenses, the appellate court concluded that the trial court had abused its discretion by failing to order the father to pay private school tuition.

<http://www.4dca.org/opinions/Nov%202010/11-17-10/4D09-1312.op.pdf> (November 17, 2010).

Campbell v. Campbell, 46 So. 3d 122, (Fla. 4th DCA 2010).

PRESENCE OF COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT FEE AWARD DOES NOT RELIEVE TRIAL COURT OF DUTY TO MAKE SPECIFIC FINDINGS.

Appellate court reiterated that a trial court's award of attorney's fees and costs is reviewed under an abuse of discretion standard of review and that the standard for awarding fees in dissolution of marriage cases is the financial need of the requesting spouse and the financial ability of the paying spouse. Concluding that the trial court had failed to make specific findings regarding the hourly rate and the number of hours reasonably expended, appellate court reversed the award of fees and costs to former wife. Appellate court held that the presence of competent, substantial evidence to support the award does not relieve the trial court of its duty to make specific findings. <http://www.4dca.org/opinions/Nov%202010/11-10-10/4D09-3357.op.pdf>

(November 10, 2010).

Fifth District Court of Appeal

Janssens v. Janssens, __ So. 3d __, 2010 WL 5391516 (Fla. 5th DCA 2010).

TRIAL COURT ABUSED DISCRETION IN AWARDING SPOUSE ONE DOLLAR A MONTH IN ALIMONY AFTER HAVING FOUND NEED FOR ALIMONY EXISTED.

Appellate court held that the trial court abused its discretion by awarding former wife alimony of one dollar per month. Appellate court held that need for alimony by the requesting spouse and ability to pay by the other spouse are the primary elements to be considered by a trial court in determining permanent periodic alimony. Appellate court noted that here, although the trial court found former wife had a need for alimony, it also found that former husband had no present ability to pay. Appellate court found the trial court's conclusion that the parties'

pre-existing debt, most of which was apportioned to former husband, took priority over former wife's present need for alimony, to be "the real problem in this case." Appellate court stated it was "unaware of any authority which would compel such a conclusion." Accordingly, it reversed and remanded for reconsideration of the parties' incomes together with their financial needs and obligations while making some increase in the permanent periodic alimony.
<http://www.5dca.org/Opinions/Opin2010/122710/5D09-3712.op.pdf> (December 30, 2010).

Williamson v. Cowan, __ So. 3d __, 2010 WL 5184655 (Fla. 5th DCA 2010).

FAILURE TO CHALLENGE TRIAL COURT'S FINDINGS IN REQUEST FOR REHEARING LEADS TO NOT PROPERLY PRESERVING ISSUE FOR APPELLATE REVIEW.

Former husband appealed the lack of findings regarding imputation of income in the trial court's modified final judgment for dissolution of marriage. Appellate court held that because former husband never challenged the trial court's findings in a motion for rehearing, he had not properly preserved the issue for appellate review.

<http://www.5dca.org/Opinions/Opin2010/122010/5D09-4119.op.pdf> (December 23, 2010).

Hudson-McCann v. McCann, __ So. 3d __, 2010 WL 5128198 (Fla. 5th DCA 2010).

IMPUTATION OF INCOME, WHEN SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE, SHOULD NOT BE REVERSED.

Having reversed the original final judgment of dissolution of marriage in McCann v. McCann, 8 So. 3d 1228 (Fla. 5th DCA 2009), because the income imputed to former wife was not supported by competent, substantial evidence, the appellate court stated that "unfortunately," it would have to reverse the amended final judgment as well due to an error in calculation of child support. On remand, the trial court reduced both the amount of income imputed to former wife and her monthly child support obligation. Appellate court held that the decision whether to impute income in determining a child support obligation is within the discretion of the trial court. Absent abuse of that discretion, imputation of income should not be reversed, but should be affirmed when supported by competent, substantial evidence.

<http://www.5dca.org/Opinions/Opin2010/121310/5D09-4019.op.pdf> (December 17, 2010).

Wineglass v. Wineglass, __ So. 3d __, 2010 WL 4903795 (Fla. 5th DCA 2010).

SPOUSE NOT ENTITLED TO APPEAL AGREED ALIMONY AMOUNT.

Noting that the amount of monthly alimony in the final judgment of dissolution of marriage was what former husband had agreed to in a mediated settlement agreement, the appellate court held that the final judgment was lawfully entered and that former husband was not entitled to any relief on appeal. Appellate court reiterated that trial courts are obligated to uphold agreements freely made without fraud or coercion so long as they are not against public policy; accordingly, it affirmed the final judgment.

<http://www.5dca.org/Opinions/Opin2010/112910/5D10-1613.op.pdf>
(December 3, 2010).

Poropat v. Poropat, __ So. 3d __, 2010 WL 4903628 (Fla. 5th DCA 2010).

ERROR IN CALCULATION ON FACE OF ORDER REMANDED FOR CORRECTION.

Finding an error in calculation on the face of the trial court's order which incorrectly resulted in a credit to former husband instead of former wife, the appellate court reversed and remanded for correction of the error. <http://www.5dca.org/Opinions/Opin2010/112910/5D10-1003.op.pdf> (December 3, 2010).

Gutierrez v. Gutierrez, ___So. 3d___, 2010 WL 4536789 (Fla. 5th DCA 2010).

TRIAL COURT ERRED IN NOT HEARING TIMELY FILED EXCEPTIONS TO REPORT.

Finding that the trial court had erred by failing to hold a hearing on former husband's timely filed exceptions to the general magistrate's report, the appellate court reversed the trial court's order adopting the general magistrate's recommendations on former husband's motions to modify child support and child custody. Citing Florida Family Law Rule of Procedure 12.490(f), the appellate court held that it is reversible error for a trial court not to hold a hearing on timely filed exceptions; accordingly, it reversed and remanded.

<http://www.5dca.org/Opinions/Opin2010/110810/5D09-2999.op.pdf> (November 12, 2010).

Domestic Violence Case Law

Florida Supreme Court

Allred v. State, --- So. 3d ----, 2010 WL 5110225 (Fla. 2010) **FIRST DEGREE MURDER CONVICTION AFFIRMED.** The defendant pled guilty to and was convicted of two counts of first-degree murder. After receiving evidence in the penalty phase, the court sentenced him to death for both murders, and the defendant appealed, challenging several mitigating and aggravating factors. The court gave great weight to the aggravated factor of the murder being cold, calculated, and premeditated (CCP). The defendant claimed that his actions resulted from an ongoing domestic dispute and therefore were not "cold" and "calculated." The court rejected this argument and found that the defendant presented no mental health testimony that established that he was mentally impaired. Further, the record supported the trial court's determination that the defendant was "suffering from an emotional disturbance" but that it was not severe or extreme and that the appellant was able to conform his actions to the requirements of law. The court also stated that it does not recognize a domestic dispute exception in connection with death penalty analysis. Therefore, even if a murder did, in fact, "arise from a domestic disturbance," such a defense would not preclude a finding of CCP.

The defendant also contended that the trial court failed to consider as a mitigating circumstance the prior domestic violence in his home and his father's drinking problem. Since the defendant did not specifically propose these factors in his sentencing memorandum as separate, non-statutory mitigating factors, the court held that there was no error. The court also noted that the family problems were resolved long before the murders occurred, and if this was error, it was harmless.

Finally, the defendant claimed that his death sentences were not proportionate because the murders stemmed from an ongoing and heated domestic dispute. The court rejected this

argument and restated that, "This Court does not recognize a domestic dispute exception in connection with death penalty analysis."

<http://www.floridasupremecourt.org/decisions/2010/sc08-2354.pdf> (December 16, 2010).

Dennis v. State, --- So. 3d ----, 2010 WL 5110231 (Fla. 2010) **CERTIFIED CONFLICT REGARDING IMMUNITY FROM PROSECUTION**. The defendant was charged with attempted first-degree murder which arose from an incident of domestic violence. He filed two motions to dismiss pursuant to §776.032(1), Florida Statutes, asserting that he was immune from criminal prosecution because his actions were a justified use of force. One motion was designated as being filed pursuant to Florida Rule of Criminal Procedure 3.190(c)(4) and alleged that there were "no material facts in dispute and the undisputed facts do [not] establish a prima facie case of guilt against the Defendant." The other motion was designated as being filed pursuant to Florida Rule of Criminal Procedure 3.190(c)(3) and asserted that the preponderance of the evidence established that the defendant was entitled to immunity because his use of force was justified. The appellate court denied both motions and concluded that in enacting §776.032, the Legislature did not intend to take the question of immunity away from the jury. The Supreme Court concluded that where a criminal defendant files a motion to dismiss on the basis of §776.032 (commonly known as the "Stand Your Ground" statute), the trial court should decide the factual question of the applicability of the statutory immunity, and therefore should conduct a pretrial evidentiary hearing and resolve issues of fact. The court also concluded that the trial court's error in denying the defendant a pretrial evidentiary hearing on immunity was harmless and did not quash the Fourth District's decision affirming his conviction and sentence. <http://www.floridasupremecourt.org/decisions/2010/sc09-941.pdf> (December 16, 2010).

In re Amendments to the Florida Supreme Court Approved Family Law Forms, --- So. 3d ----, 2010 WL 5129227 (Fla. 2010) **FORMS AMENDED**. The court amended several family law forms by removing the terms "custody," "custodial or noncustodial parent," "primary or secondary residential parent," "visitation," and the like, and incorporated the concepts of "parenting plan" and "time-sharing" into the forms. The court also adopted three new forms: (1) form 12.995(a) (Parenting Plan (non-supervised)); (2) form 12.995(b) (Parenting Plan (supervised/safety focused)); and (3) form 12.993(d) (Children of Military Parents). On the Court's own motion for purposes of efficiency, the court also amended form 12.980(h) (Petitioner's Request for Confidential Filing of Address) that was proposed by the Family Law Rules Committee. <http://www.floridasupremecourt.org/decisions/2010/sc08-2058.pdf> (December 16, 2010).

First District Court of Appeal

Rodman v. Rodman, --- So. 3d ----, 2010 WL 4909640 (Fla. 1st DCA 2010) **MOTION FOR REHEARING GRANTED**. The appellate court granted a motion for rehearing and substituted this opinion for one issued on July 13, 2009. The appellate court also noted that injunctions for protection against domestic violence are an exception to the usual rules of mootness because of the collateral legal consequences that flow from such an injunction. On the merits, the injunction for protection against domestic violence was quashed because the petition did not

allege, and the testimony at hearing did not establish, that the appellant and the appellee resided in the same household as required by §741.30, Florida Statutes.

<http://opinions.1dca.org/written/opinions2010/12-03-2010/07-5540.pdf> (December 3, 2010).

Weimorts v. Shockley, --- So. 3d ----, 2010 WL 4628999 (Fla. 1st DCA 2010) **VENUE**. The respondent appealed an order extending a temporary injunction for protection against dating violence, entered the same day the court denied his motion to dismiss for improper venue. Because §784.046, Florida Statutes, provides for a protective injunction against dating violence but does not contain a special venue provision, the trial court was required to apply the general venue provision in §47.011, Florida Statutes, which states, "[a]ctions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located." In this case, the respondent resided in Walton County, any cause of action accrued in Walton County, and the third option allowing venue where the property in litigation is located was not applicable. Thus, venue lay only in Walton County. As a result, the trial court reversibly erred in refusing to transfer venue from Okaloosa County, the residence of the petitioner, to Walton County. The court also noted that the legislature amended §741.30, Florida Statutes, to add a special venue provision, §741.30(1)(j), which allows a petition to be filed in the circuit where the petitioner resides; however, there is no indication by the legislature that this special venue provision applies outside of chapter 741. The court also recognized that under the instructions to family law form 12.980(n) appended to the Florida Family Law Rules of Procedure, a petitioner filing a petition for prohibition against dating violence is instructed to file the petition in the circuit where she lives. However, these instructions cannot contradict §47.011. <http://opinions.1dca.org/written/opinions2010/11-17-2010/10-2660.pdf> (November 17, 2010).

Second District Court of Appeal

Gill v. Gill, --- So. 3d ----, 2010 WL 5351127 (Fla. 2d DCA 2010) **INJUNCTION REVERSED**. The Former Wife filed her petition for injunction for protection against domestic violence in April, 2009. In that petition, she alleged that the Former Husband had pushed her during an argument in February, 2008. She also alleged that she and the Former Husband engaged in a yelling match outside her house during a custody exchange in April, 2009. In the petition, the Former Wife alleged that during the yelling match, the Former Husband "drove his car into me." The Former Wife did not allege any acts of violence or threatened violence between the parties at any time between February, 2008, and April, 2009. The parties were also living separately and the Former Wife had a domestic violence injunction entered against her and in favor of the Former Husband. The Former Wife also alleged in her petition that the Former Husband had beaten and punched the parties' minor child in October, 2008, November, 2008, and April, 2009; however, the Former Wife did not seek an injunction for protection against domestic violence in favor of the child.

After hearing testimony, the appellate court held that the Former Wife's evidence was legally insufficient. The Former Wife did not testify that she was the victim of any act of domestic violence. The only allegation of any actual violence was that of the pushing incident in

February, 2008. However, an isolated incident of domestic violence that occurred years before a petition for injunction is filed will not usually support the issuance of an injunction in the absence of additional current allegations. Accordingly, since the Former Wife failed to prove that she was either the victim of domestic violence or that she had an objectively reasonable basis to believe that she was in imminent danger of becoming the victim of domestic violence, the appellate court reversed. The appellate court also noted that it appeared that the trial court entered this injunction out of frustration with the parties' bickering back and forth in court, but referenced §741.30(1)(i) which provides that the court is prohibited from issuing mutual orders of protection unless each party meets the statutory requirements for issuance of an injunction.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2029,%202010/2D09-2746.pdf (December 29, 2010).

Sanchez v. Sanchez, --- So. 3d ----, 2010 WL 4867884 (Fla. 2d DCA 2010) **INJUNCTION REVERSED**. The respondent appealed a final judgment which granted his estranged wife an injunction for protection against domestic violence. The petitioner gave unsubstantiated, hearsay testimony relating to only one statutory factor, i.e., harm to a family member (the parties' daughter) and offered no reason to believe that she herself was in imminent danger of becoming a victim of domestic violence.

Because the evidence was insufficient to support an injunction for the petitioner's protection, the appellate court reversed. The appellate court also noted that the circuit court did not issue an injunction for the daughter's protection, and therefore did not address whether the evidence was sufficient to warrant such an injunction.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/December/December%2001,%202010/2D08-4673.pdf (December 1, 2010).

Third District Court of Appeal

Schiffman v. Schiffman, --- So. 3d ----, 2010 WL 4483495 (Fla. 3d DCA 2010) **DISMISSAL REVERSED**. The plaintiffs filed a complaint for breach of contract; however, the trial court dismissed the action on its sua sponte determination that no justiciable issues existed and that the matter should be resolved in domestic violence court. In a subsequently entered order denying a rehearing, the trial court justified its dismissal on three grounds: first, that the underlying complaint failed to state a proper cause of action; second, that the settlement agreement at issue was never ratified nor adopted by a court; and third, that a previous dismissal for lack of prosecution barred consideration of the instant action under principles of res judicata. The plaintiffs appealed. Because none of the trial court's reasons supported dismissal, the appellate court reversed and noted that at a minimum, the underlying complaint alleged a cognizable claim for breach of contract.

<http://www.3dca.flcourts.org/Opinions/3D09-2326.pdf> (November 10, 2010).

Fourth District Court of Appeal

J.Z. v. State of Florida, --- So. 3d ----, 2010 WL 4483425 (Fla. 4th DCA 2010) **COSTS REVERSED**. A juvenile appealed the finding of guilt on a domestic violence battery charge, the withholding of adjudication and placement on probation, and the award of costs. He argued that the trial court erred in denying his motions for judgment of dismissal and in awarding court costs when adjudication was withheld. Section 775.083(2), Florida Statutes, provides for the assessment of court costs when a juvenile is adjudicated delinquent. Here, the trial court withheld adjudication of delinquency. Therefore, the appellate court affirmed the finding of guilt and the withholding of adjudication and placement on probation, but reversed the award of costs. <http://www.4dca.org/opinions/Nov%202010/11-10-10/4D09-1160.op.pdf> (November 10, 2010).

Fifth District Court of Appeal

Fuccio v. Durso, --- So. 3d ----, 2010 WL 4903620 (Fla. 5th DCA 2010) **INJUNCTION REVERSED**. The respondent appealed a permanent injunction for protection against domestic violence. The petitioner had alleged in the petition that the parties had resided together at one time; however, the testimony during the hearing established that the parties had never lived together. Nevertheless, the trial court granted the injunction petition. The petitioner conceded that it was improper for the trial court to enter a domestic violence injunction in this case since the parties had never lived together, but asked the court to affirm the injunction as being a matter within the trial court's equitable jurisdiction under §784.046 of the Florida Statutes, which authorizes injunctions for protection against repeat violence. The appellate court stated that although the record evidence in this case might have supported the issuance of an injunction for protection against repeat violence under §748.046, that fact alone does not support an affirmation of the instant injunction because the respondent was never provided notice that an injunction was being sought under this section. Notably, when the issue was raised during the hearing in the trial court, counsel for the petitioner never sought to amend the petition to seek an injunction under §748.046, nor did she request a continuance to file an appropriate pleading. Furthermore, the issue was not tried by consent of the parties. The court therefore reversed. <http://www.5dca.org/Opinions/Opin2010/112910/5D10-95.op.pdf> (December 3, 2010).

Fuccio v. Durso, --- So. 3d ----, 2010 WL 4903618 (Fla. 5th DCA 2010), **INJUNCTION REVERSED**. The facts and legal arguments are identical to the case above; however, the petitioner is a different person. <http://www.5dca.org/Opinions/Opin2010/112910/5D10-96.op.pdf> (December 3, 2010).

Drug Court Case Law

Fifth District Court of Appeal

Espinoza v. State, 42 So.3d 895 (Fla. 5th DCA 2010). **TRIAL COURT EXCEEDED ITS AUTHORITY WHEN IT PLACED THE DEFENDANT INTO A PRETRIAL INTERVENTION PROGRAM WITHOUT THE STATE'S CONSENT.** The State challenged the trial court's placement of defendant into a pretrial intervention program without its consent. The defendant was charged with battery on a law enforcement officer, resisting without violence, and trespass on property other than a structure or conveyance. The Fifth District Court of Appeal held that the trial court exceeded its authority when it placed the defendant into a pretrial intervention program without the state's consent. Section 948.08(2), F.S. provides that any first-time offender or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of the third-degree, is eligible for release to a pretrial intervention program. However, the section requires the consent of the administrator of the program, victim, state attorney, and the judge who presided at the initial appearance hearing. Without the State's consent, the court could only place the defendant in the program if she were charged with one of the offenses enumerated in s. 948.08(6)(a), F.S. The Fifth District found that the defendant was not charged with a crime enumerated in s. 948.08(6)(a), F.S. Therefore, the trial court exceeded its authority when it placed the defendant into a pretrial intervention program over the State's objection. Certiorari relief was granted.

<http://www.5dca.org/Opinions/Opin2010/081610/5D10-337.op.pdf> (August 20, 2010).

Pugh v. State, 42 So.3d 343 (Fla. 5th DCA 2010). **TRIAL COURT EXCEEDED ITS AUTHORITY WHEN IT PLACED THE DEFENDANT INTO A PRETRIAL INTERVENTION PROGRAM WITHOUT THE STATE'S CONSENT.** The State challenged the trial court's placement of defendant into a pretrial intervention program without its consent. Defendant was charged with battery on a law enforcement officer, resisting without violence, and providing false identification to law enforcement officers. The Fifth District Court of Appeal found that s. 948.08(2), F.S. requires the consent of the administrator of the program, victim, state attorney, and the judge who presided at the initial appearance hearing. Without the State's consent, the court could only place the defendant in the program if she were charged with one of the offenses enumerated in s. 948.08(6)(a), F.S. Since the defendant was not charged with a crime enumerated in s. 948.08(6)(a), F.S., the trial court exceeded its authority when it placed the defendant into a pretrial intervention program over the State's objection. Certiorari relief was granted.

<http://www.5dca.org/Opinions/Opin2010/081610/5D10-386.op.corr..pdf> (August 20, 2010).