

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE 4th QUARTER 2013

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Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

In re: Amendments to the Florida Rules of Juvenile Procedure, ___ So. 3d ___, 2013 WL 5476883 (Fla. 2013). The Florida Supreme Court amended rules 8.060 (Discovery); 8.095 (Procedure When Child Believed to be Incompetent or Insane); 8.135 (Correction of Disposition or Commitment Orders); 8.255 (General Provisions for Hearings); 8.345 (Post-Disposition Relief); 8.425 (Permanency Hearings); and Form 8.947 (Disposition Order—Delinquency) of the Florida Rules of Juvenile Procedure.

<http://www.floridasupremecourt.org/decisions/2013/sc13-1354.pdf> (October 3, 2013)

In re: Amendments to the Florida Rules of Juvenile Procedure, ___ So. 3d ___, 2013 WL 5476868 (Fla. 2013). The Florida Supreme Court amended rules 8.085 (Prehearing Motions and Service); 8.225 (Process, Diligent Searches, and Service of Pleadings and Papers); and 8.635 (Process) of the Florida Rules of Juvenile Procedure. The amendments conform the requirements for e-mail service in the Juvenile Procedure rules with amendments to Florida Rule of Judicial Administration 2.516 (Service of Pleadings and Documents), adopted in In re: Amendments to Florida Rule of Judicial Administration 2.516, 112 So. 3d 1173 (Fla. 2013).

<http://www.floridasupremecourt.org/decisions/2013/sc13-1355.pdf> (October 3, 2013)

State of Florida and Department of Juvenile Justice, Petitioners, v. S.M., ___ So. 3d ___, 2013 WL 6500879 (Fla. 2013). **JUVENILE WITH A RISK ASSESSMENT SCORE OF ZERO MAY BE PLACED IN HOME DETENTION WHERE THE JUVENILE IS ALLEGED TO HAVE VIOLATED PROBATION.** The juvenile was arrested at school after allegedly punching another minor female. The juvenile was on probation at the time of her arrest. At the detention hearing, the State and the juvenile had stipulated that the juvenile's risk assessment score should be zero. However, they disagreed about whether the juvenile could be placed in home detention with a score of zero. The trial court placed the juvenile in home detention with electronic monitoring. The juvenile filed a petition for a writ of habeas corpus. The juvenile did not submit a copy of her Risk Assessment Instrument (RAI) with her petition. The Fourth District Court of Appeal granted the petition. The State and the Department of Juvenile Justice petitioned for review, alleging express and direct conflict with R.J.L. v. State, 22 So. 3d 130 (Fla. 5th DCA 2009), B.L.G. v. State, 928 So. 2d 461 (Fla. 5th DCA 2006), and T.D.S. v. State, 922 So. 2d 346 (Fla. 5th DCA 2006), in which the Fifth District Court of Appeal concluded that a juvenile may be placed in home detention with a risk assessment score of zero. The Florida Supreme Court, as a preliminary matter, found that the Fourth District erred in granting the petition for a writ of habeas without a copy of the juvenile's RAI. The RAI was essential for the review. By reviewing the petition without a copy of her RAI, the Fourth District erroneously accepted the juvenile's assertion that the RAI was irrelevant because the parties stipulated that the risk assessment score was zero without verifying that the RAI contained no other

information that was relevant to its review. The Fourth District should have denied the petition without prejudice so that the juvenile could refile her petition with a copy of the RAI. Next, the Florida Supreme Court found that a juvenile may be placed in home detention with a risk assessment score of zero where it is alleged that the juvenile violated probation. Section III of the RAI provides for the calculation of the risk assessment score. However, in some cases, section III never comes into play. Section II provides criteria (F) through (K) where a juvenile may be detained regardless of the juvenile's risk assessment score. In the instant case, the juvenile's RAI contained a "yes" response to criteria (J) - that the juvenile was "alleged to have violated the conditions of [her] probation or conditional release supervision." Thus, section III did not come into play and the juvenile could be placed in home detention regardless of her RAI score. Therefore, the Fourth District erred when it granted the juvenile's habeas petition. Accordingly, the Florida Supreme Court quashed the Fourth District's decision granting the juvenile's habeas petition.

<http://www.floridasupremecourt.org/decisions/2013/sc12-1405.pdf> (December 13, 2013)

First District Court of Appeals

B.K.A. v. State, __ So. 3d __, 2013 WL 5476427 (Fla. 1st DCA 2013). **TRIAL COURT'S COMMITMENT ORDER WAS NOT SUPPORTED BY NECESSARY RECOMMENDED RESTRICTIVENESS LEVEL ASSESSMENT FROM THE DEPARTMENT OF JUVENILE JUSTICE.** The juvenile appealed his placement in a low-risk residential program. The Department of Juvenile Justice (DJJ), in its predisposition report (PDR), had recommended probation. The juvenile argued that the trial court erred by committing him to a different restrictiveness level than that recommended by the DJJ without sufficient reasons in violation of s. 985.433(7), F.S. (2013), and the requirements set out in E.A.R. v. State, 4 So. 3d 614 (Fla. 2009). On appeal, the First District Court of Appeal found that the juvenile disposition process involved a two-step process, as set out in s. 985.433(6) and (7), F.S. (2013). In step one, it is the trial court's responsibility to determine whether the child should be adjudicated and committed to the DJJ. If the trial court determines that the child should be committed to the DJJ, then step two is to determine the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child as described in s. 985.433(7)(a)-(b), F.S. (2013). In the instant case, the trial court fully complied with step one of the disposition process. The trial court considered the DJJ's recommendations which included a recommendation of probation rather than commitment. The trial court included specific findings and reasons for its decision to adjudicate and commit the child to the DJJ. As discussed in J.B.S. v. State, 90 So. 3d 961, 967 (Fla. 1st DCA 2012), E.A.R. does not apply to the initial determination made under s. 985.433(6), F.S. (2013), which gives the trial court wide discretion in determining the suitability of commitment of the child to the DJJ. However, the trial court erred when it proceeded to step two of the disposition process, without sufficient input from the DJJ as to the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. Here, the PDR only recommended probation.

Probation is not a restrictiveness level. Thus, there was no identification of a restrictiveness level by DJJ, as contemplated by s. 985.433(7)(a)-(b), F.S. (2013). A recommendation of probation by the DJJ, without any alternative analysis and recommendation in the event the court determines that the child should be adjudicated delinquent and committed to the DJJ, was insufficient to allow the juvenile court to proceed with a final commitment disposition. The trial court should have requested a further multidisciplinary assessment and follow-up PDS, as the trial judge did in J.B.S. Accordingly, the disposition orders on appeal were affirmed as to the adjudications of delinquency, but the particulars of the commitments were reversed for further proceedings in accordance with the appellate court's opinion and s. 985.433(7), F.S. (2013).

<http://opinions.1dca.org/written/opinions2013/10-02-2013/13-0899.pdf> (October 2, 2013)

R.C. v. State, __ So. 3d __, 2013 WL 5744694 (Fla. 1st DCA 2013). **DISPOSITION ORDER WAS REVERSED AND REMANDED BECAUSE THE DEPARTMENT OF JUVENILE JUSTICE DID NOT HAVE SUFFICIENT INPUT REGARDING THE APPROPRIATE RESTRICTIVENESS LEVEL FOR THE JUVENILE AND BECAUSE THE TRIAL COURT FAILED TO MAKE THE STATUTORILY REQUIRED FINDINGS.** The juvenile appealed his commitment to a moderate-risk facility. The Department of Juvenile Justice (DJJ), in its predisposition report (PDR), had recommended probation. The court declined to enter a written order stating its reasons for deviating from the DJJ's recommendation. The juvenile argued that the trial court failed to comply with E.A.R. v. State, 4 So. 3d 614 (Fla. 2009), and failed to make written findings as required by s. 985.441(2)(d), F.S. (2013). On appeal, the First District Court of Appeal found that as explained in B.K.A. v. State, __ So. 3d __, 2013 WL 5476427 (Fla. 1st DCA 2013) (see previous case of this summary), E.A.R. did not apply to the trial court's initial determination of whether a juvenile should be committed to the DJJ. However, the trial court erred in failing to request an additional multidisciplinary assessment and follow-up PDS, as the court did in J.B.S. v. State, 90 So. 3d 961, 967 (Fla. 1st DCA 2012), before it determined that a moderate-risk placement was the appropriate restrictiveness level for the juvenile. Probation is not a restrictiveness level. Therefore, the DJJ did not have sufficient input regarding the appropriate restrictiveness level for the juvenile. The First District also found that the trial court erred in failing to enter a written order in compliance with s. 985.441(2)(d), F.S. 2013). Accordingly, the adjudication of delinquency was affirmed but the juvenile's commitment was reversed and remanded for further proceedings consistent with B.K.A. and s. 985.433(7), F.S. (2013).

<http://opinions.1dca.org/written/opinions2013/10-23-2013/13-0471.pdf> (October 23, 2013)

A.G. v. State, __ So. 3d __, 2013 WL 5744696 (Fla. 1st DCA 2013). **DISPOSITION ORDER WAS REVERSED AND REMANDED WHERE THE DEPARTMENT OF JUVENILE JUSTICE DID NOT HAVE SUFFICIENT INPUT REGARDING THE APPROPRIATE RESTRICTIVENESS LEVEL FOR THE JUVENILE.** The juvenile appealed her commitment to a moderate-risk facility. The Department of Juvenile Justice (DJJ), in its predisposition report (PDR), had recommended probation. The juvenile argued

that the court erred by failing to comply with the requirements of E.A.R. v. State, 4 So. 3d 614 (Fla. 2009), when it deviated from the DJJ's recommendation. On appeal, the First District Court of Appeal found that as explained in B.K.A. v. State, ___ So. 3d ___, 2013 WL 5476427 (Fla. 1st DCA 2013) (see previous case of this summary), E.A.R. did not apply to the trial court's initial determination of whether a juvenile should be committed to the DJJ. However, the trial court erred in failing to request an additional multidisciplinary assessment and follow-up PDS, as the court did in J.B.S. v. State, 90 So. 3d 961, 967 (Fla. 1st DCA 2012), before it determined that a moderate-risk placement was the appropriate restrictiveness level for the juvenile. Probation is not a restrictiveness level. Therefore, the DJJ did not have sufficient input regarding the appropriate restrictiveness level for the juvenile. Accordingly, the adjudication of delinquency was affirmed but the juvenile's commitment was reversed and remanded for further proceedings consistent with B.K.A. and s. 985.433(7), F.S (2013).

<http://opinions.1dca.org/written/opinions2013/10-23-2013/13-0559.pdf> (October 23, 2013)

J.W.A. v. State, ___ So. 3d ___, 2013 WL 6690221 (Fla. 1st DCA 2013). **STATE MET ITS BURDEN TO SHOW CAUSATION FOR RESTITUTION AWARD WHERE STOLEN CAR WAS DRIVEN INTO A FLOODED AREA AND ABANDONED.** The juvenile stole a super-charged 1997 Pontiac Grand Am. The juvenile drove the vehicle through a flooded area where it stalled and was abandoned. After being recovered, the owner could not get the engine to work. While inspecting the internal engine parts, he discovered rust on the ports and valves, which was not there previously. Given all the new-found internal damage, the owner was of the opinion that the engine was ruined. The owner got a written estimate of \$5,200 to replace the unique engine. He did not have an estimate on rebuilding the existing engine. The car's Bluebook value was \$2,850. The trial court awarded \$2,850 in restitution. The juvenile appealed arguing that the award was based on doubtful evidence that two days of rust destroyed the engine thereby failing to establish causation. The First District Court of Appeal found that a trial court need only find, by competent substantial evidence, that a loss was causally connected to the offense, either directly or indirectly, and that it bears a significant relationship to the offense. In the instant case the uncontested evidence established that (1) the car ran perfectly prior to the theft; (2) it was stolen and driven through a flooded area where its engine stalled and could not be restarted; (3) the officer who recovered the car later that evening testified he could not get the car to start; and (4) the owner testified the car would not start despite extensive remedial efforts over the next several days. The Fourth District held that the State met its burden because it was clear that the damage to the car was caused either directly or indirectly by driving the stolen car through a flooded area where it stopped running. At the very least, the damage was related to the juvenile's criminal episode. Therefore, the finding that the Grand Am was reduced to its Bluebook value of \$2,850 under these circumstances was supported by competent substantial evidence and common sense. Accordingly, the trial court's restitution award was affirmed.

<http://opinions.1dca.org/written/opinions2013/12-20-2013/13-0031.pdf> (December 20, 2013)

Second District Court of Appeals

G.B. v. State, __ So. 3d __, 2013 WL 5629445 (Fla. 2d DCA 2013). **ADJUDICATION FOR FIRST-DEGREE PETIT THEFT WAS REDUCED TO SECOND-DEGREE PETIT THEFT BECAUSE THE STATE FAILED TO PROVE THE VALUE OF THE STOLEN PROPERTY.** The juvenile appealed his adjudication for first-degree petit theft. The juvenile argued that the offense should have been reduced to second-degree petit theft because the State failed to prove the value of two stolen laptop computers. In finding the juvenile delinquent as to petit theft in the first degree, which requires that the value of the property be \$100 or more but less than \$300, the trial court stated that, “even two used laptops that are three years old are going to be worth at least more than a hundred dollar[s]” and that it did not “think reasonable persons could differ on that.” The trial court then noted that it had “never seen a laptop, even a used laptop go for less than a hundred dollars ever.” The Second District Court of Appeal found that in Marrero v. State, 71 So. 3d 881 (Fla. 2011), the Florida Supreme Court determined that a trier of fact “is only allowed to determine a minimum value instead of an actual value if the value of the property cannot be ascertained.” The value must be “impossible to ascertain” and not just a situation “of the State's failure to present evidence of value (although capable of valuation).” Absent impossibility, a “life experience” exception to determine value does not apply. In the instant case, the State failed to establish and the record did not show that it was impossible to determine the value of the stolen property. Thus, the trier of fact could not determine a “minimum value” because valuation was not impossible. Without evidence of value, the trial court should have reduced the offense to second-degree petit theft. Accordingly, the disposition order was reversed and remanded for the trial court to reduce the offense to second-degree petit theft.

www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October_16_2013/2D12-3585.pdf (October 16, 2013)

L.J.G.-C. v. State, __ So. 3d __, 2013 WL 6152332 (Fla. 2d DCA 2013). **DISPOSITION REVERSED AND REMANDED TO CORRECT ERRORS.** The juvenile damaged a statue at a church. The juvenile was charged with third-degree felony criminal mischief under s. 806.13(2), F.S. (2013). At the adjudicatory hearing, the State established that the juvenile had damaged the statue but failed to prove that the damage was greater than \$200, as required to establish the third-degree felony delinquent act. The trial court found that the juvenile had committed the delinquent act, withheld adjudication and imposed a term of juvenile probation. The Second District Court of Appeal found that, as acknowledged by the State, the case must be remanded for a disposition that is based on a finding that the juvenile committed a delinquent act by violating s. 806.13(1)(b)(1), F.S. (2013), as a result of his damage to property in the amount of \$200 or less, which is a second-degree misdemeanor. The trial court’s error affected both the description of the delinquent act in the disposition order and the term of probation. Accordingly, the disposition order was reversed and remanded. The Second District also noted that the disposition order was not consistent with Form

8.947. On remand, the trial court was directed use a form consistent with Form 8.947 for the corrected disposition order.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/November/November%2022,%202013/2D12-3481.pdf (November 22, 2013)

K.D.T. v. State, __ So. 3d __, 2013 WL 6510901 (Fla. 2d DCA 2013). **EVIDENCE WAS INSUFFICIENT TO SHOW THAT JUVENILE HAD KNOWLEDGE THAT FIREARM SERIAL NUMBER HAD BEEN REMOVED.** The juvenile was found to have committed the offenses of being a minor in possession of a firearm and possessing a firearm with the serial number removed. The juvenile appealed. The firearm was found by police incident to a search of a parked car. The juvenile had been sitting in proximity to the firearm and he made spontaneous statements incriminating himself as the possessor of the gun. On appeal, the Second District Court of Appeal held that the evidence was sufficient to support the finding that the juvenile was a minor in possession of a firearm. However, the evidence was insufficient to support the possessing a firearm with the serial number removed finding. The Second District found that s.790.27(2)(a), F.S. (2013), makes it unlawful for “any person to knowingly sell, deliver, or possess any firearm on which the manufacturer's or importer's serial number has been unlawfully altered or removed.” On the type of gun possessed by the juvenile, the serial number is not engraved directly on the weapon. Instead, it is etched on a separate plate that is attached to the weapon. In the instant case, the plate was missing from the particular gun that the juvenile possessed. Section 790.27(2)(a), F.S. (2013), requires knowing possession, and the standard jury instruction recites that the defendant must know the serial number had been altered or removed. Without additional evidence such as an admission, or that it was obvious to an observer that the plate had been removed, the juvenile’s mere possession of the weapon was insufficient to prove the knowledge element. Accordingly, the trial court's finding was reversed and remanded for the court to enter a judgment of dismissal on the possessing a firearm with the serial number removed charge.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/December/December%2013,%202013/2D12-1565.pdf (December 13, 2013)

Third District Court of Appeals

J.X. v. State, __ So. 3d __, 2013 WL 5989743 (Fla. 3d DCA 2013). **JUVENILE FREELY AND VOLUNTARILY WAIVED HIS *MIRANDA* RIGHTS AFTER HE INITIALLY INVOKED HIS RIGHT TO COUNSEL.** The juvenile appealed the denial of his motion to suppress statements. On appeal, the juvenile argued that his right to counsel was violated. The juvenile contended that after he invoked his right to counsel, the detective engaged in the functional equivalent of an interrogation. The juvenile and his mother were summoned to the police station for questioning on the suspicion that the juvenile had been involved in burglaries for which the juvenile’s brother had been arrested. After the juvenile invoked his right to counsel, the detective closed his case file and terminated the interview. As he was leaving the room, the detective stated that he would go “deal with” the juvenile's brother instead. The juvenile then reinitiated contact with the detective by saying, “No,

no, wait, don't go, I'll talk to you.” After being advised of his *Miranda* rights, the juvenile confessed to the burglaries. The Third District Court of Appeal noted that when a suspect has requested the assistance of counsel, that suspect is not subject to further interrogation until counsel has been provided. However, under *Miranda*, interrogation can also refer to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response. The Third District found that the juvenile had effectively waived his right to counsel when he reinitiated contact with law enforcement after he had invoked his right. The issue was whether the decision was made knowingly, voluntarily, and intelligently. The trial court had conducted an evidentiary hearing below. The trial court specifically found that the detective's actions were not made as a threat to the juvenile or his brother, and that it was only after encouragement by his mother that the juvenile reinitiated contact with the detective. The trial court also found that as soon as the juvenile invoked his right to counsel, the detective immediately terminated the interrogation, and it was only after the juvenile called him back that the detective interrogated the juvenile any further. The Third District found that the trial court's finding that the juvenile freely and voluntarily waived his *Miranda* rights after he invoked his right to counsel was not error. The trial court's findings were affirmed because the trial court's findings of fact come with a presumption of correctness, and because those findings were supported by the record. Accordingly, the Third District affirmed the trial court's denial of the juvenile's motion to suppress his statements.

<http://www.3dca.flcourts.org/Opinions/3D12-2144.pdf> (November 13, 2013)

G.R. v. State, __ So. 3d __, 2013 WL 6224035 (Fla. 3d DCA 2013). [ADJUDICATORY AND DISPOSITION ORDERS REVERSED AND REMANDED FOR THE LIMITED PURPOSE OF CONFORMING THE WRITTEN ORDERS TO THE TRIAL COURT'S ORAL PRONOUNCEMENT THAT ADJUDICATION BE WITHHELD](#). The Third District Court of Appeal found no abuse of discretion in the trial court's denial of the juvenile's last minute motion for a continuance. The Third District also found no error in the trial court's order adjudicating the juvenile delinquent for fleeing from a police officer. However, based on the State's proper partial confession of error, the Third District reversed and remanded for the limited purpose of conforming the written adjudicatory and disposition orders to the trial court's oral pronouncement that adjudication be withheld.

<http://www.3dca.flcourts.org/Opinions/3D12-2493.pdf> (November 27, 2013)

G.R. v. State, __ So. 3d __, 2013 WL 6224040 (Fla. 3d DCA 2013). [ADJUDICATORY AND DISPOSITION ORDERS REVERSED AND REMANDED FOR THE LIMITED PURPOSE OF CONFORMING THE WRITTEN ORDERS TO THE TRIAL COURT'S ORAL PRONOUNCEMENT THAT ADJUDICATION BE WITHHELD](#). The Third District Court of Appeal found no error in the adjudication of delinquency. However, based on the State's' proper partial confession of error, the Third District reversed and remanded for the limited purpose of conforming the written adjudicatory and disposition orders to the trial court's oral pronouncement that adjudication be withheld.

<http://www.3dca.flcourts.org/Opinions/3D13-1178.pdf> (November 27, 2013)

K.P. v. State, __ So. 3d __, 2013 WL 6800973 (Fla. 3d DCA 2013). **SCHOOL RESOURCE OFFICER'S SEARCH OF THE JUVENILE'S BOOK BAG, BASED UPON AN ANONYMOUS TIP THAT THE JUVENILE WAS CARRYING A FIREARM, WAS REASONABLE.** The juvenile challenged the finding that he committed the offenses of carrying a concealed weapon, possession of a firearm on school grounds, and possession of a firearm by a minor. Based upon an anonymous tip to a gun bounty program that the juvenile was carrying a firearm, the school resource officer notified the assistant principal and two school security guards. The assistant principal and the school security guards took possession of the juvenile's book bag, removed him from a classroom, and escorted him to the principal's conference room. The assistant principal handed over the book bag to the school resource officer. A search of the bag revealed a loaded handgun. The juvenile moved to exclude the handgun from evidence, arguing that the search of his book bag violated his Fourth Amendment right to be free from unreasonable searches and seizures. The trial court denied the motion. Following a bench trial, the trial court found that the juvenile committed the offenses of carrying a concealed weapon, possession of a firearm on school grounds, and possession of a firearm by a minor. The juvenile appealed the denial of his motion to suppress.

The Third District Court of Appeal found that an anonymous tip like the one at issue may not constitute a sufficiently reliable indicator that a crime was occurring to justify a search of the juvenile by police officers on a public street. However, the level of reliability required to justify a search is lower when the tip concerns possession by a student of a firearm in a public school classroom. The Fourth and Fourteenth Amendments require that searches be reasonable in light of all the circumstances. Here, the lower level of reliability reflected in such an anonymous tip is more than offset because (1) a student's expectation of privacy in the school setting is reduced, and (2) the government's interest (protecting the vulnerable population of children assembled within the confines of the school from a firearm) is heightened. The Third District held that under the circumstances, the school resource officer's search of the juvenile's book bag, based upon an anonymous tip that juvenile was carrying a firearm, was reasonable. Accordingly, the lower court's decision was affirmed.

<http://www.3dca.flcourts.org/Opinions/3D12-1925.pdf> (December 26, 2013)

Fourth District Court of Appeals

S.S. and C.T. v. State, __ So. 3d __, 2013 WL 5450954 (Fla. 4th DCA 2013). **RESTITUTION ORDER REVERSED AND REMANDED WHERE RESTITUTION WAS ORDERED FOR ITEMS NOT CONTAINED IN THE ARREST AFFIDAVITS OR THE FACTS ADMITTED BY THE JUVENILES, AND THERE WERE NO FINDINGS AS TO THE JUVENILES' RESPECTIVE ABILITIES TO PAY.** The juveniles appealed a restitution order finding both juveniles jointly and severally liable for the total of \$27,598. The juveniles pled no contest to burglary and criminal mischief and agreed to pay restitution. The juveniles argued that the court erred in ordering restitution for a Rolex watch and diamond bracelet which were not within the arrest affidavit, the factual basis for the plea, nor in any discovery that

the juveniles received prior to the plea. After filing the appeal, both juveniles also moved to correct a disposition error pursuant to Florida Rule of Juvenile Procedure 8.135(b)(2). The juveniles argued that the trial court erred in failing to consider their ability to pay restitution before determining the amount of the restitution order. The trial court denied the motion. The Fourth District Court of Appeal found that when a defendant agrees to pay restitution as part of a plea agreement, the defendant's agreement is limited to restitution arising out of the offense charged by the State as reflected in the information and/or by the factual basis for the plea. In the instant case, the arrest affidavits did not list either the Rolex or the diamond bracelet, and they were not mentioned at the change of plea hearings. The first mention of the two items was an insurance summary provided to the juveniles' attorney after the entry of their pleas. Accordingly, the Fourth District directed the elimination of restitution for the Rolex watch and diamond bracelet from any restitution orders. The Fourth District also found that the trial court erred in failing to make findings regarding the juveniles' ability to pay restitution prior to determining the restitution amount. Accordingly, the restitution orders were reversed and remanded to determine the amount after making findings as to each juvenile's ability to pay.

<http://www.4dca.org/opinions/Oct 2013/10-02-13/4D12-506.op.pdf>

H.J.W. v. State, __ So. 3d __, 2013 WL 6083092 (Fla. 4th DCA 2013). **REVOCATION ORDER REMANDED WITH INSTRUCTIONS FOR THE TRIAL COURT TO ENTER A WRITTEN ORDER THAT COMPLIES WITH FLORIDA RULE FO JUVENILE PROCEDURE 8.115(D) AND SETS FORTH THE SPECIFIC REASON(S) FOR THE REVOCATION.** The juvenile's probation was revoked following a hearing. On appeal, the juvenile argued that the only evidence regarding the probation violation was hearsay evidence, and that the disposition order failed to comply with mandatory requirements for such orders. The Fourth District Court of Appeal affirmed the revocation on the merits, concluding that the trial court properly found a violation of probation based on competent and substantial evidence and not merely hearsay evidence. However, the Fourth District remanded the case so that the trial court could enter a written order that complies with the applicable laws for such orders. The written disposition order failed to comply with the requirements of Florida Rule of Juvenile Procedure 8.115(d) (2012). Moreover, the order failed to state the evidence relied upon or the reasons for revoking probation. Accordingly, the revocation was affirmed but remanded with instructions for the trial court to enter a written order that complies with Rule 8.115(d) and sets forth the specific reason(s) for the revocation.

<http://www.4dca.org/opinions/Nov%202013/11-20-13/4D12-649.op.pdf> (November 20, 2013)

C.C. v. State, __ So. 3d __, 2013 WL 6082572 (Fla. 4th DCA 2013). **DISPOSITION ORDER REVERSED AND REMANDED TO COMPLY WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.115(D) AND TO CORRECT ADJUDICATION.** The juvenile appealed his disposition order and sentence. The State conceded that the trial court failed to include the mandatory requirements for disposition orders

contained in Florida Rule of Juvenile Procedure 8.115(d). The State also conceded that the disposition order contained an error by adjudicating the child guilty of grand theft instead of petit theft. Finally, the State conceded that the imposition of a \$2 teen court fee was unauthorized. On appeal, the Fourth District Court of Appeal reversed and remanded for the trial court to enter a corrected disposition and to delete the \$2 teen court fee. The Fourth District directed that the corrected order should be entered *nunc pro tunc* to the date of the original disposition.

<http://www.4dca.org/opinions/Nov%202013/11-20-13/4D12-649.op.pdf> (November 20, 2013)

A.R. v. State, ___ So. 3d ___, 2013 WL 6081894 (Fla. 4th DCA 2013). **CHARGE OF RESISTING WITHOUT VIOLENCE WAS DISMISSED BECAUSE THE STATE FAILED TO PROVE THAT THE POLICE HAD A REASONABLE SUSPICION TO DETAIN THE JUVENILE.** The juvenile appealed the denial of his motion for judgment of dismissal on the charge of resisting an officer without violence. Two police officers were investigating a possible crime in a public park. When approached by one of the officers, the juvenile ran away despite being instructed to stop. The juvenile eventually surrendered and was arrested. The Fourth District Court of Appeal found that a conviction for resisting an officer without violence requires proof that (1) the officer was engaged in the lawful execution of a legal duty; and (2) the actions of the defendant obstructed, resisted, or opposed the officer in the performance of that legal duty. In resisting cases involving an investigatory detention, the State must prove that the officer had a reasonable suspicion of criminal activity. In the instant case, the State's evidence that the officers were investigating a possible crime was insufficient to establish that the officers had a reasonable suspicion that the juvenile had committed or was about to commit a crime. Thus, the State failed to establish that the officers were acting in the execution of a legal process or duty. Flight in a high crime area can be sufficient to provide an officer with reasonable suspicion. However, flight, standing alone, is not sufficient where there is no evidence to demonstrate that the flight took place in a high crime area. The State offered no evidence that the juvenile was stopped in a high crime area. Therefore, the juvenile's flight alone was insufficient to establish that the officers had a reasonable suspicion of criminal activity. The State also failed to present any specific evidence of an additional factor which, when combined with flight, would give rise to a reasonable suspicion in this case. Because the State failed to meet its burden of proving that the police had reasonable suspicion to detain the juvenile, it failed to prove that the juvenile's flight obstructed the officers in the lawful execution of a legal duty. Accordingly, the Fourth District reversed and remanded with instructions for the trial court to dismiss the charge of resisting without violence.

<http://www.4dca.org/opinions/Nov%202013/11-20-13/4D12-2105.op.pdf> (November 20, 2013)

Fifth District Court of Appeals

C.G. v State, ___ So. 3d ___, 2013 WL 5658318 (Fla. 5th DCA 2013). **CONVICTION AND SENTENCE FOR FIRST-DEGREE PETIT THEFT WAS REDUCED TO SECOND-DEGREE PETIT THEFT BECAUSE THE**

STATE FAILED TO ESTABLISH THAT THE VALUE OF THE CELL PHONE WAS AT LEAST \$100 AT THE TIME OF THE THEFT.

The juvenile appealed the denial of his motion for a judgment of dismissal after he was found guilty of first-degree petit theft for stealing a cell phone with a value of \$100 or more but less than \$300. The victim testified that: (1) he paid approximately \$200 for the phone six months before the theft; (2) the phone was in “really good condition”; (3) he purchased a case for the phone and a protective screen for the glass right after purchasing it; (4) there were no cracks or nicks on the phone, case, or screen; (5) the phone's software was working identically to when the item was first purchased and was operating at the same speed; and (6) the phone was essentially in the same condition at the time it was stolen as it was when purchased. The Fifth District Court of Appeal found that the value of a stolen item at the time of the theft is a necessary element of first-degree petit theft and must be established beyond a reasonable doubt. Value may be established through direct testimony of the fair market value. The owner of stolen property is competent to testify as to the fair market value of the property. Alternately, in the absence of direct testimony, value can be established through evidence of: (1) the original market cost; (2) the manner in which the property was used; (3) the condition of the property; and (4) the percentage of depreciation of the items since the purchase. The Fifth District noted that cell phones can become obsolete very quickly. In the instant case, the State did not attempt to establish the value of the cell phone through direct testimony. The State also conceded that it did not present evidence regarding the depreciation in value. Therefore, the Fifth District held that the evidence was insufficient to prove that the value of the cell phone was at least \$100 at the time of the theft. Accordingly, the juvenile’s conviction and sentence for first-degree petit theft was vacated and remanded with instructions to enter a judgment and sentence for second-degree petit theft.

<http://www.5dca.org/Opinions/Opin2013/101413/5D12-4725.op.pdf> (October 18, 2013)

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

C.S. and A.S. v. Department of Children and Families, ___ So. 3d ___, 2013 WL 5807398 (Fla. 4th DCA 2013). **TERMINATION OF PARENTAL RIGHTS AFFIRMED**. In a split decision, the Fourth District Court of Appeal affirmed a final judgment terminating parental rights of a mother and father as to their two children. The District Court also affirmed the trial court's denial of the mother's motion to vacate the consent. The trial court found the mother's excuse for nonappearance not to be credible and the trial court's decision was supported by competent substantial evidence. The trial court had entered the consent to termination under s. 39.801(3)(d), F.S. (2013), after having given notice of the date and time of the third day of the Termination of Parental Rights (TPR) adjudicatory hearing. The District Court held that the trial court had authority to enter the consent when the parents failed to appear on that date. The District Court also noted that in addition to entering the consent, the trial court also evaluated testimony and evidence presented and made detailed findings of fact to support grounds for TPR. The trial court also found that TPR was the least restrictive means of protecting the children and that it was in the children's manifest best interest to terminate parental rights. One judge dissented, arguing in favor of adopting precedent from the Third District Court of Appeal that the trial court lacks authority to enter a consent when parents appear for a trial's first day but are not present for the continuation of the trial.

<http://www.4dca.org/opinions/Oct%202013/10-30-13/4D13-713.op.pdf> (October 30, 2013)

Ally v. Justice Administration Commission, ___ So. 3d ___, 2013 WL 5925088 (Fla. 4th DCA 2013). **ATTORNEY FEES DENIED**. Petitioner was appointed as counsel for the father in a dependency case and was denied his motion for excess attorney's fees. He argued that the court arbitrarily failed to fully compensate him for his services and that the fee awarded him was confiscatory, even after the court awarded him double the flat fee for his representation. Pursuant to s. 27.5304(12)(d), F.S. (2013), when determining fees, the trial court must first decide whether the attorney has proved by competent and substantial evidence that the case required extraordinary and unusual efforts. The trial court must then make findings which consider the time spent on a case and the impact of the case on counsel's availability to other clients, as well as the number of hours reasonably expended by the attorney. In this case, the appellate court denied the petition and held that the circuit court did not depart from the essential requirements of law by denying compensation in excess of the

applicable statutory limit. <http://www.4dca.org/opinions/Nov%202013/11-06-13/4D13-687.op.pdf> (November 6, 2013)

J.E. v. Department of Children and Families, ___ So. 3d ___, 2013 WL 5989154 (Fla. 4th DCA 2013). **TERMINATION OF PARENTAL RIGHTS AFFIRMED.** A father appealed the trial court's final judgment terminating his parental rights, and claimed that the termination was not supported by the evidence in the record. The initial dependency petition alleged substance abuse by both parents, arrests for violence, a history of domestic violence, and failure to provide support. The father only attended about half of his substance abuse sessions, missed at least 20 scheduled drug screenings, and tested positive for drugs several occasions. According to testimony, he attempted to visit the child under the influence of drugs. The father also missed several scheduled visits, sometimes for months at a time, failed to financially support the child, and showed no interest when the child was sick. The appellate court noted that to terminate parental rights, the trial court must find by clear and convincing evidence that one of the grounds set forth in s. 39.806, F.S. (2013), has been established. The trial court must also consider the manifest best interests of the child, and the Department must establish that termination of parental rights is the least restrictive means of protecting the child from harm. In this case, the appellate court affirmed the lower court's decision and concluded that the termination of parental rights was supported by competent substantial evidence. The Department instituted two case plans for the father, but he failed to comply with either of them. The father abandoned his child, and refused to stop using illegal substances. The Department established that termination of the father's parental rights was the least restrictive means to protect the child from harm, and in the child's best interest.

<http://www.4dca.org/opinions/Nov%202013/11-13-13/4D13-1191.op.pdf> (November 13, 2013)

N.O. v. Department of Children and Families, ___ So. 3d ___, 2013 WL 5988951 (Fla. 4th DCA 2013). **ORDER TERMINATING PARENTAL RIGHTS VACATED.** The father appealed from the order terminating his parental rights. Both the Department of Children and Families and the Guardian ad Litem Program agreed that the requirements of s. 39.801(3)(d), F.S. (2013), which governs notice and service, were not met. Since the statute was not followed, the appellate court held that the consent to termination was entered improperly. The consent was vacated and the case remanded.

<http://www.4dca.org/opinions/Nov%202013/11-13-13/4D13-2545.op.pdf> (November 13, 2013)

Fifth District Court of Appeals

Department of Children and Families v. T.W., ___ So. 3d ___, 2013 WL 5761970 (Fla. 5th DCA 2013). **EMERGENCY PETITION FOR CERTIORARI GRANTED.** The Fifth District Court of Appeal granted an emergency petition for certiorari which sought review of an order of reunification of a mother with two children who had been sheltered. The Department had petitioned for an expedited review because it did not have prior notice that reunification would be addressed at the mother's drug court status hearing. The Department did not have the opportunity to present witnesses, and witnesses were not called to testify under oath. Instead, the trial court overruled the Department's objections to addressing reunification and took unsworn statements from the mother and the case worker. The District Court held that the lack of proper notice and the trial court's failure to conduct

an evidentiary hearing deprived the Department of its due process rights. Because the trial court's order departed from the essential requirements of the law and caused irreparable harm that could not be remedied on appeal, the District Court quashed the trial court's order and remanded the case for further proceedings.

<http://www.5dca.org/Opinions/Opin2013/102113/5D13-3196.op.pdf> (October 25, 2013)

Home at Last Adoption Agency, Inc. v. V.M., ___ So. 3d ____, 2013 WL 6031048 (Fla. 5th DCA 2013). **TERMINATION OF PARENTAL RIGHTS REMANDED.** An adoption agency appealed a final judgment that dismissed its second amended petition to terminate the parental rights of the father to his daughter. The trial court mistakenly believed that the appellate court's earlier decision on the first petition precluded it from finding that the father abandoned the child. The appellate court reversed and remanded the case and noted that the trial court could not order a chapter 39 case plan in a chapter 63 termination of parental rights proceeding. The court also observed that even though the child was placed with the prospective adoptive parents throughout the appellate process, the biological father was still obligated to demonstrate his commitment to becoming a parent by visiting the child and paying child support. The trial court was directed to reconsider the evidence and enter a final judgment on the adoption agency's petition within forty five days.

<http://www.5dca.org/Opinions/Opin2013/111113/5D12-3732.op.pdf> (November 14, 2013)

Dissolution Case Law

Supreme Court

D.M.T. v. T.M.H., __So. 3d__, 2013 WL ____ (Fla. 2013). SECTION 742.14 RULED UNCONSTITUTIONAL AS APPLIED; DEPRIVED BIOLOGICAL MOTHER, FORMERLY A PARTNER IN A LONG-TERM SAME-SEX RELATIONSHIP, OF HER FUNDAMENTAL RIGHT TO BE A PARENT; LENGTHY DISSENT. Although not a dissolution of marriage case, this opinion is included for its focus on parenting issues which can arise when a relationship ends and one parent prefers to parent alone. Here, two women in a long-term relationship had a child together. One woman provided the egg (the biological mother); the other gave birth (the birth mother). Following a break in their relationship, the birth mother absconded with the child. The biological mother sought to establish her parental rights to the child and reassume her parental responsibilities. Although disagreeing with the birth mother's actions, the trial court concluded that there was no protection for the biological mother under Florida law. The 5th DCA reversed, holding that the trial court's application of s. 742.14, F.S. (2008), was unconstitutional because it prevented the biological mother from asserting her parental rights. The Supreme Court affirmed. It held that, as applied, the statute violates the due process and equal protection clauses of the U.S. and Florida Constitutions, and Florida's constitutional right to privacy. The statute, "is unconstitutional as applied to abridge (the biological mother's) fundamental right to be a parent." It also held that the statute violates the federal and state equal protection clause by denying same-sex couples the statutory protection afforded to heterosexual couples employing the "identical assistance of reproductive technology." The Court reasoned that an unwed biological father has an "inchoate interest that develops into a fundamental right to be a parent protected by the Florida and United States Constitutions when he demonstrates a commitment to raising the child by assuming parental responsibilities." Agreeing with the 5th DCA that it is fundamentally unfair to deny an "unwed genetic mother" the same protection as an "unwed genetic father," it noted that the DCA's holding that the separation between the two women does not "dissolve the parental rights of either woman to the child, nor does it dissolve the love and affection either has for the child." Recognizing the importance of the child's best interests, the Court remanded to the trial court for a determination of time-sharing, child support, and related issues based the child's best interests. This case has a lengthy dissent in which its author: disagrees that the statute violates the fundamental rights of the biological mother; believes that the constitutional claims were neither raised below nor preserved for appeal; and concludes that the woman donating her egg had contractually waived any claim to parental rights when she signed the donor form. It criticizes the due process analysis as "flawed" and the holding as having no "seeming or logical end point."

<http://www.floridasupremecourt.org/decisions/2013/sc12-261.pdf> (SC12-261)(November 7, 2013)

In re: Amendments to the Florida Family Law Rules of Procedure, __So. 3d__, 2013 WL ____ (Fla. 2013.) REVISION OF RULE 12.610 AFTER COMMENTS AND RESPONSE; FORMS 12.900(h) AND 12.928 ALSO REVISED; REVISIONS ADD CAUSE OF ACTION FOR STALKING. The Court revised rule 12.610, after considering a comment and response to the rule as amended in In re: Amendments to the Florida Family Law Rules of Procedure, 95 So. 3d 126 (Fla. 2012). The Court also revised family law forms 12.900(h) and 12.928, after considering the Committee's supplemental petition. The revisions to the rule and forms incorporate a cause of action for stalking created by the 2012 Legislature in s. 784.0485, F.S.

<http://www.floridasupremecourt.org/decisions/2013/sc12-1205.pdf> (November 14, 2013).

Riethmiller v. Riethmiller, __ So. 3d __, 2013 WL 6819159 (Fla. 2013). **SPOUSE BARRED FROM FUTURE FILINGS IN SUPREME COURT PERTAINING TO HER DISSOLUTION OF MARRIAGE TRIAL COURT PROCEEDINGS UNLESS FILINGS ARE SIGNED BY A FLORIDA BAR MEMBER.** The Supreme Court denied former wife's petition for mandamus, but retained jurisdiction to pursue sanctions against her due to "her numerous meritless inappropriate filings" in her dissolution proceedings in circuit court. Finding her response to show cause as to why she should not be barred from future filings insufficient, the Court instructed its clerk to reject any future filings in her pending dissolution proceedings unless they were signed by a member in good standing of The Florida Bar who had in turn determined that the filing had merit and was in good faith.

<http://www.floridasupremecourt.org/decisions/2013/sc12-1183.pdf> (December 5, 2013)

First District Court of Appeals

Watson v. Watson, __ So. 3d __, 2013 WL 5629678 (Fla. 1st DCA 2013). **STANDARD OF REVIEW FOR EQUITABLE DISTRIBUTION AND ATTORNEY'S FEES IS ABUSE OF DISCRETION; GENERAL RULE REGARDING FEES AND COSTS IS THAT THEY MUST BE PLEAD; REQUEST FOR FEES WAIVED IF NOT PLEAD; FUNDAMENTAL CONCERN IS NOTICE TO OTHER PARTY THAT FEES ARE BEING SOUGHT.** In an appeal of the trial court's scheme of equitable distribution, alimony, child support, and attorney's fees, the appellate court reiterated that the standard of review for equitable distribution is abuse of discretion. Unless an unequal distribution is warranted under the statutory factors, distribution of assets and liabilities should be equal. The trial court must include findings to substantiate any disparity. Here, the trial court considered some, but not all of the statutory factors. It was instructed on remand to make all the requisite findings and, "if necessary, craft a new equitable distribution scheme." Alimony and retroactive child support awards were remanded in turn. Having found no abuse of discretion in the trial court's order of retroactive child support for the 18-month period between the date of separation and emancipation of the minor child, the appellate court held that the trial court revisit that award only as necessitated by modifications to the equitable distribution scheme. With regard to fees, the appellate court held the general rule of Stockman v. Downs, 573 So. 2d 835 (Fla. 1991), applied. Former wife was not entitled to fees or costs because she failed to plead them. Former husband was not on notice that they were being sought. Attorney's fees were reversed; the other issues were remanded for further proceedings.

<http://opinions.1dca.org/written/opinions2013/10-16-2013/12-5646.pdf> (October 16, 2013)

McCann v. McCann, __ So. 3d __, 2013 WL 5779192 (Fla. 1st DCA 2013). **REMANDED TO TRIAL COURT TO STRIKE LIFE INSURANCE REQUIREMENT.** The appellate court affirmed the final judgment of dissolution with the exception of the life insurance requirement. The trial court was instructed to strike that requirement on remand.

<http://opinions.1dca.org/written/opinions2013/10-25-2013/12-5418.pdf> (October 25, 2013)

Brown v. Brown, __ So. 3d __, 2013 WL ____ (Fla. 1st DCA 2013). **MODIFICATION MUST BE IN CHILD'S BEST INTERESTS AND BASED ON A SUBSTANTIAL, MATERIAL, AND UNANTICIPATED CHANGE IN CIRCUMSTANCES.** Modification of final judgment of dissolution was reversed because former husband failed to show a substantial and material change in circumstances and there was no competent, substantial evidence to support consent to the modification by former wife.

Modification must be in child's best interests and based on a substantial, material, and unanticipated change in circumstances.

<http://opinions.1dca.org/written/opinions2013/10-25-2013/13-0125.pdf> (October 25, 2013)

Marlowe v. Marlowe, __So. 3d__, 2013 WL 5832530 (Fla. 1st DCA 2013). **IMPUTATION OF INCOME WITHOUT FACTUAL FINDINGS SUBJECT TO REVERSAL; NO ABUSE OF DISCRETION IN TERMINATION OF CHILD SUPPORT AT AGE 18 INSTEAD OF HIGH SCHOOL GRADUATION; SET OFFS AGAINST SUPPORT OBLIGATIONS ARE PERMITTED IN LIMITED CIRCUMSTANCES.** Former wife appealed a downward modification of child support, retroactive to the date of the original filing. She argued that: the trial court improperly imputed minimum wage income to her; its final judgment contravened the statute; the revised child support calculations were erroneous; and it was error to use child support overpayments to set off alimony arrearages or future child support payments. The appellate court agreed that the trial court had failed to support its imputation of income to former wife with any factual findings and that it had erred in the computation of former husband's child support payments; it reversed and remanded on those issues. The appellate court found no abuse of discretion in the trial court's termination of child support upon a child reaching 18 instead of graduating from high school. It also held that set-offs against support obligations are permitted depending upon the circumstances. Here, "equitable circumstances" warranted the set-offs. The appellate court instructed the trial court on remand to cap the amount to be deducted from former husband's future child support obligations as an offset for his retroactive child support overpayments. This would ensure that the children's continuing support needs would be met while amortizing the sum of child support overpayments owed to him.

<http://opinions.1dca.org/written/opinions2013/10-31-2013/12-3964.pdf> (October 31, 2013)

Kearney v. Kearney, __So. 3d__, 2013 WL 5988607 (Fla. 1st DCA 2013). **POSTNUPTIAL AGREEMENTS GOVERNING DISPOSITION OF ASSETS ARE NOT ENFORCEABLE IF ENTERED INTO IN ABSENCE OF FULL DISCLOSURE OF ASSETS; APPELLATE COURT DOES NOT RETRY CASE OR SUBSTITUTE ITS JUDGMENT FOR TRIAL COURT'S ON FACTUAL MATTERS WHICH ARE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.** Both spouses appealed. With the exception of reversing and remanding on the issue of crediting former husband for monies paid against the award of fees and costs, the appellate court affirmed. At former husband's request, former wife had signed an agreement relinquishing her interest in a business--which the spouses had acquired using her credit card--for a fraction of its worth. Under the agreement, she would receive three million dollars; at trial, the business was valued at 43 million dollars. The trial court allocated the business equally between spouses. The general rule is that postnuptial agreements governing disposition of assets are not enforceable if entered into in the absence of full and fair disclosure of the assets. The appellate court found itself bound by the trial court's findings that full disclosure did not occur. The appellate court concluded that the trial court had acted within its discretion in accepting the opinions of former husband's experts over former wife's in valuing the business. An appellate court does not retry a case or substitute its judgment for the trial court's on factual matters which are supported by competent, substantial evidence.

<http://opinions.1dca.org/written/opinions2013/11-12-2013/12-0754.pdf> (November 12, 2013)

Roberts v. Roberts, __So. 3d__, 2013 WL 6097321 (Fla. 1st DCA 2013). **DISSOLUTION OF MARRIAGE JUDGMENT REVERSED DUE TO ITS LACK OF REQUIRED FINDINGS AND ITS**

INCONSISTENCIES; PORTION OF JUDGMENT ORDERING PAYMENT BY SPOUSE AFFIRMED AS BEING SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE. The appellate court reversed a final judgment of dissolution of marriage due to its lack of required findings and its inconsistencies, but affirmed the trial court's order that former wife make specified payments because those orders were supported by competent, substantial evidence.

<http://opinions.1dca.org/written/opinions2013/11-20-2013/13-0278.pdf> (November 20, 2013)

Pulkkinen v. Pulkkinen, __So. 3d__, 2013 WL 6171269 (Fla. 1st DCA 2013). FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT DOES NOT PREEMPT SECTION 88.6111(1) OF FLORIDA UNIFORM INTERSTATE FAMILY SUPPORT ACT; PETITION FOR WRIT OF PROHIBITION GRANTED. Former husband, a California resident, petitioned for a writ of prohibition to restrain the trial court's exercise of jurisdiction on former wife's petition to modify a Michigan child support order. Former wife, a Florida resident, argued that Florida had jurisdiction under the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA); former husband had requested that the order be registered in Florida under the Uniform Interstate Family Support Act (UIFSA), but only for enforcement purposes. Following a lengthy analysis of the interplay between the two statutes, the appellate court held that the FFCCSOA does not preempt section 88.6111(1) of the Florida UIFSA. Holding that the trial court is required to give full effect to s. 88.6111(1) (2012), and refrain from exercising modification jurisdiction, the appellate court granted the petition.

<http://opinions.1dca.org/written/opinions2013/11-26-2013/12-4688.pdf> (November 26, 2013)

Madson v. Madson, __So. 3d__, 2013 WL 6480735 (Fla. 1st DCA 2013). TRIAL COURT ERRED IN CLASSIFYING COCA-COLA SHARES GIVEN TO FORMER WIFE BY HER SON AS MARITAL ASSETS; REVERSED AND REMANDED. The appellate court agreed with former wife that the trial court erred in classifying as marital assets Coca-Cola shares purchased by her son and given to her. She neither reinvested the shares nor purchased additional ones; thus, they were not commingled with marital assets. The appellate court reversed and remanded that portion of the judgment and affirmed the remainder.

<http://opinions.1dca.org/written/opinions2013/12-10-2013/11-6111.pdf> (December 10, 2013).

Idumwonyi v. Belizaire, __So. 3d__, 2013 WL 6480857 (Fla. 1st DCA 2013). TRIAL COURT'S NON-FINAL ORDER AFFIRMED; APPEAL OF MOTION NOT YET RULED ON BY TRIAL COURT BEYOND SCOPE OF APPELLATE COURT'S REVIEW. Former husband appealed a non-final order establishing his obligation to pay temporary child support. He also presented arguments regarding the trial court's failure to rule on his motion to obtain time-sharing. The appellate court affirmed the non-final order, but concluded that the trial court's handling of his motion regarding time-sharing was "beyond the scope of our review."

<http://opinions.1dca.org/written/opinions2013/12-10-2013/12-4670.pdf> (December 10, 2013).

Naylor v. Naylor, __So. 3d__, 2013 WL 6636178 (Fla. 1st DCA 2013). TRIAL COURT'S VALUATION NOT SUPPORTED BY THE EVIDENCE; REVERSED. The appellate court agreed with former husband that the trial court's valuation of his tools for purposes of equitable distribution was not supported by competent, substantial evidence. Accordingly, it reversed and remanded that portion of the final judgment.

<http://opinions.1dca.org/written/opinions2013/12-17-2013/13-0792.pdf> (December 17, 2013).

Wing v. Wing, __So. 3d__, 2013 WL 6690680 (Fla. 1st DCA 2013). TRIAL COURT'S DECISION TO ALLOW SPOUSE TO RELOCATE ERRONEOUS; REFERENCES TO SPOUSE'S DESIRE TO RELOCATE WITHIN THE PLEADINGS DID NOT EXCUSE HER FROM STRICTLY COMPLYING WITH RELOCATION STATUTE. Former husband appealed a non-final order; the appellate court affirmed in part and reversed in part. It found the trial court's decision to allow former wife to relocate to Italy with their children legally erroneous. Despite references in the pleadings to former wife's desire to relocate, the appellate court concluded that in the absence of a valid agreement between the spouses regarding relocation, former wife was obligated to "comply strictly" with s. 61.13001 (2009). <http://opinions.1dca.org/written/opinions2013/12-20-2013/13-1591.pdf> (December 20, 2013)

Evans v. Evans, __So. 3d__, 2013 WL 6865557 (Fla. 1st DCA 2013). TRIAL COURT ABUSED ITS DISCRETION; ORDERING ONE SPOUSE TO PAY THE OTHER'S ONE-HALF INTEREST IN THE MARITAL HOME OVER THE COURSE OF TWENTY YEARS DEPRIVED THAT SPOUSE OF PRESENT INTEREST IN THE HOME. The appellate court agreed with former husband that the trial court abused its discretion in awarding former wife use and possession of the marital home with directions for her to buy out former husband's one-half interest by paying him a monthly amount equal to the monthly amount of permanent, periodic alimony awarded by the trial court, for a period of twenty years. Noting that a trial court has the discretion to order an equitable distribution of marital assets payable in installments over a fixed period of time, the appellate court held that a twenty-year span "effectively deprives the former husband of his present one-half interest in the marital home." Accordingly, it reversed and remanded former wife's alimony award and the twenty-year payment plan. <http://opinions.1dca.org/written/opinions2013/12-31-2013/12-5595.pdf> (December 31, 2013)

Owens v. Owens, __So. 3d__, 2013 WL 6865558 (Fla. 1st DCA 2013). AN APPELLATE COURT CANNOT REVIEW WITHOUT A TRANSCRIPT OR A SUBSTITUTE. Failure of appealing spouse to provide either a transcript or a substitute—such as a stipulated statement of the facts—renders an appellate court unable to review the trial court's decision. <http://opinions.1dca.org/written/opinions2013/12-31-2013/12-5648.pdf> (December 31, 2013)

Second District Court of Appeals

Voda v. Voda, __So. 3d__, 2013 WL 5539239 (Fla. 2d DCA 2013). FAILING TO DETERMINE SPOUSE'S ABILITY TO PAY ALIMONY IS ERROR. Both spouses appealed. The appellate court reversed for the trial court to determine former husband's ability to pay. It affirmed the remainder, but encouraged the trial court to state on remand that any new alimony award would terminate on former wife's death or remarriage. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2009,%202013/2D11-4086.pdf (October 9, 2013)

Francel v. Douma, __So. 3d__, 2013 WL 5566683 (Fla. 2d DCA 2013). TRIAL COURT'S ORDER ENFORCING CHILD SUPPORT AFFIRMED; SPOUSE'S PETITION TO MODIFY CHILD SUPPORT REMANDED TO TRIAL COURT. The appellate court affirmed former husband's appeal from an order enforcing child support and arrearages. Concluding that it could not address former husband's

petition to modify child support because it had not yet been ruled on by the trial court, the appellate court remanded for the trial court to schedule an evidentiary hearing and enter an order ruling on the merits “as soon as possible.”

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2009,%202013/2D11-6277.pdf (October 9, 2013)

Turcotte v. Turcotte, __ So. 3d __, 2013 WL 5539335 (Fla. 2d DCA 2013). SECTION 61.08 REQUIRES FINDINGS OF FACT FOR NOMINAL ALIMONY AWARD ESPECIALLY WHEN MARRIAGE FALLS INTO THE GRAY AREA; NOMINAL ALIMONY IS APPROPRIATE WHERE A RECEIVING SPOUSE WOULD BE ENTITLED TO ALIMONY, BUT FOR PAYING SPOUSE’S CURRENT INABILITY TO PAY. The appellate court reversed and remanded an award of nominal alimony because the trial court failed to include findings of fact supporting its award as required by s. 61.08, F.S. (2008). An award of nominal alimony is appropriate where the receiving spouse would be entitled to alimony, but for the paying spouse’s current inability to pay, which is reasonably expected to change in the future, see Lightcap v. Lightcap, 14 So. 3d 259, 260 (Fla. 3d DCA 2009). The appellate court noted the importance of such findings of fact to meaningful appellate review when a marriage falls into the “gray area” between short-term and long-term marriages.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2009,%202013/2D12-1474.pdf (October 9, 2013)

Froeschle v. Froeschle, __ So. 3d __, 2013 WL 5566681 (Fla. 2d DCA 2013). TRIAL COURT ERRED IN IMPOSING A LIFE INSURANCE REQUIREMENT WITHOUT CONSIDERING WHETHER SPOUSE COULD AFFORD IT OR WHETHER THAT AMOUNT WAS NECESSARY TO SECURE SPOUSE’S ALIMONY OBLIGATION. Former husband appealed a post-dissolution order granting his supplemental petition for modification of alimony and support. The appellate court affirmed the trial court’s downward modification of alimony without termination of the alimony. The appellate court reversed the life insurance required to secure the alimony obligation because the trial court had increased it to an amount beyond what the spouses had agreed to in their marital settlement agreement (MSA). There was no evidence as to whether former husband could afford the life insurance in the amount ordered. The trial court neither considered the financial impact of the insurance requirement on former husband, nor did it make a finding that the insurance requirement it imposed was necessary to secure the alimony obligation. The trial court was instructed on remand to amend the life insurance requirement to reflect the amount agreed to in the MSA. The appellate court also noted a scrivener’s error regarding former wife’s monthly net income.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2009,%202013/2D12-4924.pdf (October 9, 2013)

Grill v. Grill, __ So. 3d __, 2013 WL 5676459 (Fla. 2d DCA 2013). TRIAL COURT ERRED BY FAILING TO MAKE FINDINGS TO SUPPORT DENIAL OF ALIMONY; SPOUSE IS NOT REQUIRED TO LIQUIDATE AND DEplete ASSETS TO PROVIDE FOR LIVING EXPENSES IN LIEU OF OTHER SPOUSE’S CONTRIBUTION; LONG-TERM MARRIAGE TRIGGERS PRESUMPTION OF ALIMONY IF NEEDED. Former wife appealed the denial of her request for alimony. Holding that the trial court did not make sufficient findings to support its denial, the appellate court reversed. The trial court had found that the seventeen-year marriage barely qualified as long-term, triggering the presumption that some amount of alimony should be awarded if need were demonstrated. It then found that

although former husband had the ability to pay some alimony, former wife had failed to demonstrate need. The appellate court found that the trial court's apparent reasoning that former wife had sufficient nonmarital assets, that if she were to liquidate them, she would not need alimony, to be faulty. Citing its opinion in Blakistone v. Blakistone, 462 So. 2d 883, 884 (Fla. 2d DCA 1985), the appellate court held that former wife is not required to liquidate and deplete her assets to provide for her living expenses in lieu of former husband's anticipated contribution. Reversed and remanded.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2018,%202013/2D12-5080.pdf (October 18, 2013)

Hirsch v. Hirsch, __So. 3d__, 2013 WL 5762985 (Fla. 2d DCA 2013). **ISSUE OF FEDERAL PREEMPTION MAY BE RAISED FOR FIRST TIME ON APPEAL; REMAND TO TRIAL COURT FOR DETERMINATION AS TO WHETHER IT HAD SUBJECT MATTER JURISDICTION TO ORDER SPOUSE TO CHANGE BENEFICIARY DESIGNATION OR IF THE LIFE INSURANCE POLICY WAS PROTECTED BY SERVICEMEMBERS' GROUP LIFE INSURANCE ACT.** The appellate court reversed and remanded on the issue of whether the trial court had subject matter jurisdiction to order former husband to change the beneficiary on his life insurance policy or whether the policy was protected by the Servicemembers' Group Life Insurance Act (SGLIA). The issue of federal preemption is a question of subject matter jurisdiction that may be raised for the first time on appeal; an appellate court's review is *de novo*. The appellate court concluded here that the record was clear that the trial court directed former husband to change the beneficiary of his existing life insurance policy; however, what was not clear was whether former husband's policy was one protected under the SGLIA. Accordingly, the appellate court remanded for the trial court to determine whether it had subject matter jurisdiction to order the beneficiary designation to be changed. The appellate court instructed the trial court that if it concluded that the existing beneficiary were protected by the SGLIA and that it could not order the change, it could order former husband to obtain an additional policy pursuant to s. 61.08(3) F.S. (2012), if appropriate.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2025,%202013/2D12-360.pdf (October 25, 2013)

Worthington v. Worthington, __So. 3d__, 2013 WL 5813231 (Fla. 2d DCA 2013). **COURTS NOT AUTHORIZED TO AWARD RELIEF NOT REQUESTED IN PLEADINGS.** The appellate court reversed a portion of an order modifying the time-sharing arrangement because it exceeded the scope of relief requested by the motions noticed for hearing. Former husband had filed a motion for modification of the time-sharing agreement followed by motions for contempt and for clarification of the time-sharing agreement; only the latter two motions were noticed for hearing. The appellate court reiterated that courts are not authorized to award relief not requested in the pleadings; to grant unrequested relief is an abuse of discretion and reversible error.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2030,%202013/2D12-1361.pdf (October 30, 2013)

Rowe v. Rodriguez-Schmidt, __So. 3d__, 2013 WL 5951867 (Fla. 2d DCA 2013). **IF A TRIAL COURT DETERMINES ENTITLEMENT TO FEES, IT MUST PROVIDE FACTUAL FINDINGS JUSTIFYING THE SPECIFIC AMOUNT; SPOUSES' FINANCIAL RESOURCES ARE THE PRIMARY FACTOR; OTHER FACTORS MAY BE CONSIDERED.** In an appeal by former wife, the appellate court held that if a trial

court determines entitlement to fees, it must provide findings that justify the specific amount awarded. It must consider the spouses' financial resources and their relative need for and ability to pay fees. Although the spouses' financial resources are the primary factor, other factors may be considered. Here, the trial court found that former wife had a need for contribution and former husband had a limited ability to pay; however, it did not make any specific factual findings to justify either determination of entitlement to fees or the amount of fees awarded. Reversed and remanded.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/November/November%2008,%202013/2D12-4967.pdf (November 8, 2013)

Fuller v. Fuller, __So. 3d__, 2013 WL 6152326 (Fla. 2d DCA 2013). **COMPETENT, SUBSTANTIAL EVIDENCE MUST SUPPORT FACTUAL FINDINGS.** Former husband appealed a trial court order finding him in contempt for failing to pay court-ordered alimony, which he had unsuccessfully sought to reduce. He argued that the trial court erred in finding that he had hidden sources of income and had the present ability to pay alimony. The appellate court affirmed the finding that former husband had the present ability to pay the alimony and the contempt order; however, it agreed that the trial court had erred in inferring from former husband's ability to pay the purge that he had hidden sources of income. Order was reversed and remanded with instructions to this finding be struck; otherwise affirmed.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/November/November%2022,%202013/2D13-514.pdf (November 22, 2013)

Arias v. Arias, __So. 3d__, 2013 WL 6212038 (Fla. 2d DCA 2013). **FINDING OF CONTEMPT AFFIRMED BUT TRIAL COURT ERRED IN IMPOSING INCARCERATION WITHOUT DETERMINING CONTEMNOR'S PRESENT ABILITY TO PAY PURGE; INSTRUCTED ON REMAND TO HEAR MOTION TO MODIFY ALIMONY.** Former husband appealed an order finding him in contempt for failing to pay alimony to former wife and sentencing him to ten days in jail. The appellate court affirmed the finding of contempt, but found that the trial court erred in imposing incarceration because there was no evidence that former husband had the present ability to pay the purge. Noting that former husband's petition to modify alimony had been pending approximately 1 ½ years at the time of the contempt hearing, and that former wife's counsel had led the trial court to believe it had already ruled on that issue, the appellate court instructed the trial court on remand to hear former husband's motion to modify.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/November/November%2027,%202013/2D12-480.pdf (November 27, 2013)

Driggers v. Driggers, __So. 3d__, 2013 WL 62122024 (Fla. 2d DCA 2013). **TRIAL COURT ABUSED ITS DISCRETION BY FINDING SPOUSE IN CONTEMPT FOR FAILING TO PAY ALIMONY AND BY NOT FINDING THAT SPOUSE'S CHANGED CIRCUMSTANCES WARRANTED A REDUCTION IN ALIMONY.** Former husband appealed an order denying modification of alimony and finding him in contempt for failing to pay alimony to former wife. The appellate court concluded that the trial court had abused its discretion in finding no circumstances warranting a downward modification of alimony, and held that there was no competent, substantial evidence to support the finding of contempt. Finding that former husband had demonstrated an "uncontemplated substantial change in circumstances that was not voluntary or temporary," the appellate court reversed and remanded.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/November/November%2027,%202013/2D13-1021.pdf (November 27, 2013)

Hoffman v. Hoffman, __So. 3d__, 2013 WL 6246173 (Fla. 2d DCA 2013). TRIAL COURT ABUSES ITS DISCRETION IF IT ORDERS A TEMPORARY AWARD WHICH “VIRTUALLY EXHAUSTS” SPOUSE’S INCOME; REVERSED AND REMANDED. The appellate court agreed with former husband that the trial court abused its discretion in ordering him to make support and attorney fee payments which consumed 80% of his net monthly income and making him responsible for all of former wife’s temporary attorney’s fees. Acknowledging temporary awards are among the areas in which trial courts have the broadest discretion, the appellate court held that a temporary award that “virtually exhausts” one spouse’s income, is not based on that spouse’s ability to pay, and renders that spouse unable to support himself or herself constitutes an abuse of discretion. The appellate court did not find error in either the amount of temporary alimony or child support ordered by the trial court--even though these amounts represented more than half of former husband’s monthly income--nor did find error in its determination of retroactive support. However, it found that the combined effect of the court-ordered payments towards retroactive support and temporary attorney’s fees worked to, “tip the scale to the extent that the Husband is deprived of sufficient funds to support himself.” The trial court was instructed on remand to temporarily lower these payments. The payments could be increased if the final judgment reduced or terminated former husband’s alimony obligation.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/December/December%2004,%202013/2D13-1499.pdf (December 4, 2013)

Flaherty v. Flaherty, __So. 3d__, 2013 WL 6691134 (Fla. 2d DCA 2013). TRIAL COURT ERRED IN NOT SETTING PRENUPTIAL AGREEMENT ASIDE AFTER FINDING IT VOIDABLE; EQUITABLE DEFENSES OF RATIFICATION AND LACHES SHOULD NOT VALIDATE A PRENUPTIAL AGREEMENT BECAUSE A SPOUSE HAS NOT SOUGHT TO AMEND, REVISE, OR SET IT ASIDE DURING THE MARRIAGE. Although the trial court found that the spouses’ prenuptial agreement was voidable due to former wife having signed it under duress, it determined that her “inaction” after notification by her attorney that the agreement was inequitable operated to ratify it and concluded that her six-year delay in challenging the agreement constituted laches. The appellate court agreed that there was competent, substantial evidence to deem the agreement voidable, but held that the trial court should have set it aside then, based on duress and coercion, instead of going “where no Florida court has gone before” into the defenses of ratification and laches. Citing holdings in other jurisdictions, the appellate court declined to apply ratification and laches to validate a prenuptial agreement based on a spouse’s failure to attempt to revise or set it aside during the marriage. The appellate court concluded that the trial court considered the issue of alimony independent of the agreement. It affirmed the trial court’s finding that former wife was not entitled to alimony due to a short-term marriage, but instructed it on remand to reconsider the equitable distribution.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/December/December%2020,%202013/2D12-3192.pdf (December 20, 2013)

Third District Court of Appeals

Schoenlank v. Schoenlank, __So. 3d__, 2013 WL 5629769 (Fla. 3d DCA 2013). BECAUSE NEITHER SPOUSE PREVAILED, NEITHER RECEIVED FEES UNDER PREVAILING PARTY PROVISION OF MARITAL

SETTLEMENT AGREEMENT. Former husband appealed the denial of his motion for attorney's fees under the prevailing party provision of a marital settlement agreement (MSA). The appellate court concluded that because both parties prevailed on "significant issues," and neither was the prevailing party, the trial court did not abuse its discretion in refusing to award fees to either party. When litigation ends in a "tie" as it did here, a trial court is within its discretion to deny attorney's fees to both parties. Affirmed.

<http://www.3dca.flcourts.org/Opinions/3D12-2771.pdf> (October 16, 2013)

Wade v. Wade, __ So. 3d __, 2013 WL 5735321 (Fla. 3d DCA 2013). **PETITION FOR CERTIORARI GRANTED TO SPOUSE ORDERED BY TRIAL COURT TO UNDERGO PSYCHOLOGICAL EVALUATION WHERE BOTH PRONGS OF FLORIDA RULE OF CIVIL PROCEDURE 1.360 EXAM—IN CONTROVERSY AND GOOD CAUSE—WERE NOT SATISFIED.** Petition for certiorari granted to former wife in a case where the trial court *sua sponte* ordered her to undergo a psychological evaluation and participate in therapy with the couple's oldest child. The appellate court agreed with former wife that the trial court's order departed from the essential requirements of law in requiring her to submit to a compulsory mental examination because both prongs of Rule of Civil Procedure 1.360(a)(2)--"in controversy" and "good cause"--were not satisfied. Noting that the trial court's written order failed to address the "in controversy" prong, the appellate court held that this failure alone might have been sufficient to overturn the trial court's order. The appellate court held that when a party's mental condition is in controversy, a rule 1.360 examination is authorized only when the party submitting the request has good cause for the examination. This is to prevent infringement on the subject party's privacy rights. The appellate court noted that here the trial court ordered visitation between former wife and the children on the same afternoon it ordered her to undergo a mental evaluation, which indicated that it did not think there was "good cause" to believe the children were in jeopardy due to her mental state.

<http://www.3dca.flcourts.org/Opinions/3D13-2317.pdf> (October 23, 2013)

Wade v. Wade, __ So. 3d __, 2013 WL 5737400 (Fla. 3d DCA 2013). **PETITION FOR WRIT OF PROHIBITION GRANTED; FACTS TAKEN AS TRUE IN MOTION FOR DISQUALIFICATION WOULD CREATE IN A REASONABLE PERSON A WELL-FOUNDED FEAR OF RECEIVING A FAIR AND IMPARTIAL TRIAL.** This case featured the same parties as the above case, but with a different request. Former wife sought the issuance of a writ of prohibition following an order denying, as legally insufficient, her motion for disqualification of the trial judge. The standard of review on a motion to disqualify is *de novo*. The appellate court concluded that the facts alleged in the motion to disqualify, if taken as true, would create in a reasonable person a well-founded fear of not receiving a fair and impartial trial. **Rodriguez v. State**, 919 So. 2d 1252, 1274 (Fla. 2005). The appellate court granted the writ of prohibition, but withheld issuance, "confident that the trial judge will promptly issue an order of disqualification." Remanded for reassignment.

<http://www.3dca.flcourts.org/Opinions/3D13-2354.pdf> (October 23, 2013)

Murphy v. Murphy, __ So. 3d __, 2013 WL 6036973 (Fla. 3d DCA 2013). **TRIAL COURT'S REDUCTION OF ALIMONY DUE TO SUPPORTIVE RELATIONSHIP AFFIRMED; A SUPPORTIVE RELATIONSHIP MAY BE ESTABLISHED THROUGH ECONOMIC SUPPORT PROVIDED BY RECEIVING SPOUSE TO COHABITANT; NON-ECONOMIC SERVICES PROVIDED BY COHABITANTS TO EACH OTHER RELEVANT.** The appellate court withdrew its opinion issued October 3, 2012, and

substituted this in its place. The trial court granted former husband's petition for a downward modification of alimony, based on its conclusion that former wife was involved in a supportive relationship within the meaning of s. 61.14(1)(b), F.S. (2011). The trial court also denied her request for fees. Finding that the trial court had correctly interpreted the law, had support in the record for its findings, and had reasonably reduced the alimony, the appellate court affirmed. It held that review of a trial court decision under s. 61.14(1)(b) is a "mixed question of law and fact that requires a mixed standard of review." It also held that a supportive relationship may be established through economic support provided by the receiving spouse to the third party cohabitant. Non-economic services provided by either cohabitant to the other--here, pool-cleaning, mowing the lawn, washing a car--are relevant to determining whether a supportive relationship exists.

<http://www.3dca.flcourts.org/Opinions/3D11-1604.rh.pdf> (November 6, 2013)

Cole v. Cole, __So. 3d__, 2013 WL 5989825 (Fla. 3d DCA 2013). **NOT ALLOWING A PARTY TO PRESENT WITNESSES OR TESTIFY VIOLATES DUE PROCESS WHICH GUARANTEES A FULL AND FAIR OPPORTUNITY TO BE HEARD.** Former husband appealed a post-dissolution order awarding sole custody of daughter for a month--without interference by him--to former wife. The appellate court reversed. The appellate court concluded that the trial court abused its discretion and violated former husband's due process rights when the judge indicated that he had heard enough and gave his ruling at the conclusion of former wife's case without allowing former husband to present his case. Not allowing a party to chance to present witnesses or testify violates the fundamental right of being given a full and fair opportunity to be heard in judicial proceedings. Reversed and remanded for further proceedings.

<http://www.3dca.flcourts.org/Opinions/3D13-2157.pdf> (November 13, 2013)

Cole v. Cole, __So. 3d__, 2013 WL 6644942 (Fla. 3d DCA 2013). **TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED SPOUSE'S PROCEDURAL DUE PROCESS IN RULING WITHOUT GIVING HIM AN OPPORTUNITY TO BE HEARD.** The appellate court issued a corrected opinion reversing a post-dissolution order which awarded former wife sole custody of the couple's younger daughter for one month without interference from either former husband or his relatives. The order was based on testimony from a neutral evaluator appointed by the trial court. The evaluator found that parental alienation was occurring within the family and recommended that efforts be made to reconcile the younger daughter with her mother. The order sparked a flurry of motions and a hearing in which the trial judge, having heard former wife's side, gave his ruling without having heard former husband and over his objection. The appellate court concluded that the trial court had abused its discretion and violated former husband's procedural due process rights. Reversed and remanded for further proceedings.

<http://www.3dca.flcourts.org/Opinions/3D13-2157.rh.pdf> (December 18, 2013)

Fowler v. Walton, __So. 3d__, 2013 WL 6669821 (Fla. 3d DCA 2013). **REVERSED ON THE AUTHORITY OF COLE V. COLE.** On the authority of Cole v. Cole, 2013 WL 5989825 (Fla. 3d DCA 2013), the appellate court reversed and remanded the order on appeal denying appellant's petition for modification.

<http://www.3dca.flcourts.org/Opinions/3D12-3263.pdf> (December 18, 2013)

Fourth District Court of Appeals

Brennan v. Brennan, __ So. 3d __, 2013 WL 5450946 (Fla. 4th DCA 2013). TRIAL COURT MUST RULE ON PROPER REQUEST FOR PARTITION; IMPUTATION OF INCOME MUST BE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE; ORDERING A NONCUSTODIAL PARENT TO PAY FOR PRIVATE SCHOOL REQUIRES FINDINGS; A REQUIREMENT THAT AN OBLIGATION BE SECURED BY LIFE INSURANCE REQUIRES A FINDINGS ON THE NEED FOR AND COST OF INSURANCE; THE AMOUNT ORDERED CANNOT EXCEED THE OBLIGATION; IF EQUITABLE DISTRIBUTION IS REVERSED, FEES AND COSTS MUST BE REVERSED AS WELL; A CONTEMPT FINDING MUST BE REVERSED IF BASED ON AN AWARD THAT IS REVERSED; ARREARAGES MUST BE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE. Former husband appealed a final judgment of dissolution of marriage and post-judgment order finding him in contempt. The appellate court reversed the equitable distribution portion of the final judgment in part because the trial court failed to rule on former wife's request for partition. It reversed the imputation of income to former wife as unsupported by the evidence. It held that a trial court may require a noncustodial parent to pay for private school only if it finds that: the parent has the ability to pay; the expense is in accord with the family's established standard of living; and attendance is in the child's best interest. Reversal is required if a trial court has failed to make each of these required factual findings. Here, the trial court failed to make a findings as to whether former husband was able to pay for private school. The life insurance requirement was reversed because the trial court failed to make any findings as to the need for or cost of the insurance. The appellate court noted that the amount of life insurance required to secure an obligation should not exceed it. Fees and costs were reversed due to the reversal of the equitable distribution. The order requiring former husband to pay former wife's fees for enforcement as an additional purge amount was reversed because she did not adequately demonstrate her need for fees. Due to reversal of the alimony and child support awards, the contempt finding was also reversed. If an award is improper and requires reversal, a finding of contempt based on the award must also be reversed. Arrearages must be based on competent, substantial evidence; here, the appellate court remanded for more specific findings as to how the amount was calculated.

<http://www.4dca.org/opinions/Oct%202013/10-02-13/4D11-4723.op.pdf> (October 2, 2013)

Teague v. Teague, __ So. 3d __, 2013 WL 5538745 (Fla. 4th DCA 2013). ERROR FOR TRIAL COURT TO INCLUDE OUTSTANDING LOANS IN AMOUNT DISTRIBUTED TO ONE SPOUSE FROM THE OTHER'S 401(k) PLAN; TRIAL COURT'S DISTRIBUTION RESULTED IN WINDFALL TO RECEIVING SPOUSE; APPELLATE COURT'S REVIEW OF A MARITAL SETTLEMENT AGREEMENT IS DE NOVO. The appellate court agreed with former husband that the trial court erred in including the value of outstanding loans in calculating the amount to be distributed from his 401(k) plan to former wife. Pursuant to agreement between the spouses, former wife was to receive half of the marital portion of the plan. The trial court's order would result in former wife receiving more than half and leave the loan repayment obligation as an undistributed marital liability. Because the loans were used to support the spouses' lifestyle and each received the benefit of the loans, the unpaid loans should be excluded from the amount in the plan and not distributed to former wife.

<http://www.4dca.org/opinions/Oct%202013/10-09-13/4D12-2832.op.pdf> (October 9, 2013)

Patino v. Patino, __ So. 3d __, 2013 WL 5538741 (Fla. 4th DCA 2013). A TRIAL COURT MUST MAKE EXPLICIT FINDINGS ON ALL STATUTORILY MANDATED FACTORS IN DETERMINING ALIMONY IN

FINAL JUDGMENTS; IT MUST ALSO ESTABLISH A VALUE FOR ALL MARITAL ASSETS AND LIABILITIES FOR EQUITABLE DISTRIBUTION EVEN IF THAT VALUE IS ZERO OR DE MINIMUS. The appellate court emphasized the importance for a trial court to make “explicit findings as to all statutorily mandated factors for the determination of alimony in final judgments” and to establish a value for all marital assets and liabilities in its scheme of equitable distribution—even if that value is “zero or *de minimus*.” It then reversed for the trial court’s failure to do so in this case.

<http://www.4dca.org/opinions/Oct%202013/10-09-13/4D12-2944.op.pdf> (October 9, 2013)

Pearly Belgrave-Simmonds v. Belgrave, __ So. 3d __, 2013 WL 5538708 (Fla. 4th DCA 2013). WRIT OF MANDAMUS GRANTED TO SPOUSE WHOSE MOTION TO DISQUALIFY TRIAL JUDGE WAS RULED ON THREE MONTHS AFTER IF WAS FILED IN CONTRAVENTION OF FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.330(j) WHICH REQUIRES A RULING WITHIN 30 DAYS. The appellate court granted former wife’s petition for a writ of mandamus following the trial court’s denial of her motion to disqualify the trial judge. Three months after her motion was filed, it was ruled on in contravention of Florida Rule of Judicial Administration 2.330(j), which requires the judge to rule on the motion immediately, but no longer than 30 days after service of the motion. The trial court was directed to enter an order directing the clerk to reassign to a different judge.

<http://www.4dca.org/opinions/Oct 2013/10-09-13/4D13-1421.op.pdf> (October 9, 2013)

McPherson v. McPherson, __ So. 3d __, 2013 WL 5538668 (Fla. 4th DCA 2013). DESPITE FINDING SPOUSE’S MOTION TO DISQUALIFY THE JUDGE LEGALLY INSUFFICIENT, APPELLATE COURT GRANTED WRIT OF PROHIBITION BECAUSE THE TRIAL COURT’S ORDER TOOK ISSUE WITH THE FACTS ALLEGED IN THE MOTION AND CREATED AN INDEPENDENT BASIS TO DISQUALIFY. The appellate court granted former husband’s petition for a writ of prohibition and quashed the trial court’s order denying his motion to disqualify. The appellate court held that disqualification was warranted because the order took issue with the facts alleged in the motion to disqualify. It concluded that although the motion was legally insufficient, the “comments on the validity of the grounds created an independent basis for disqualification.” The appellate court withheld issuance of the writ, believing that the trial court would act in conformity with the appellate court’s opinion.

<http://www.4dca.org/opinions/Oct%202013/10-09-13/4D13-3170.op.pdf> (October 9, 2013)

Blakely v. Blakely, __ So. 3d __, 2013 WL 5628682 (Fla. 4th DCA 2013). PRE-DISSOLUTION ORDER ON PRIVATE SCHOOL NOT AN APPEALABLE NON-FINAL ORDER UNDER FLORIDA RULE OF APPELLATE PROCEDURE 9.130(a)(3) NOR OTHERWISE APPEALABLE; DISMISSED. The appellate court dismissed an appeal from a pre-dissolution order providing that a minor child could attend his first year of high school at an out-of-state private school. It held that the order was not for relocation, but instead for an educational decision. As such, it was neither an appealable non-final order under Florida Rule of Appellate Procedure 9.130(a)(3), nor otherwise appealable.

<http://www.4dca.org/opinions/Oct%202013/10-16-13/4D12-3079.op.pdf> (October 16, 2013)

Duncan v. Duncan, __ So. 3d __, 2013 WL 5729759 (Fla. 4th DCA 2013). TRIAL COURT MUST MAKE FACTUAL FINDING REGARDING SPOUSE’S MONTHLY INCOME; IT IS REVERSIBLE ERROR FOR A TRIAL COURT TO ORDER A LARGE LUMP-SUM PAYMENT IN ABSENCE OF EVIDENCE PAYOR CAN PAY WITHIN TIME-FRAME. Former husband appealed a non-final order compelling him to pay \$50,000 in temporary attorney’s fees and \$10,000 in temporary accountant’s fees to former wife

within 15 days. The appellate court affirmed the determination that former wife had a need for fees, but concluded that the trial court had failed to make a factual finding regarding former husband's monthly income. It found former husband's income and assets were insufficient to comply with the 15-day deadline. It is reversible error for a trial court to order a large lump-sum payment in absence of evidence that the payor has the ability to pay within the time-frame ordered. Reversed.

<http://www.4dca.org/opinions/Oct%202013/10-23-13/4D12-2827.op.pdf> (October 23, 2013)

Barnes v. Barnes, __So. 3d__, 2013 WL 5807772 (Fla. 4th DCA 2013). **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT PERMITS EXERCISE OF HOME STATE JURISDICTION IF, AT ANY TIME DURING THE SIX MONTHS PRECEDING THE FILING OF THE CUSTODY PROCEEDING, FLORIDA QUALIFIED AS THE CHILD'S HOME STATE; DE NOVO REVIEW BY APPELLATE COURT AFTER TRIAL COURT RULED IT DID NOT HAVE JURISDICTION.** The appellate court found that the trial court erred in failing to correctly apply the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to the facts of the case. The appellate court's review of the trial court's ruling that it lacked subject matter jurisdiction was *de novo*. Under the UCCJEA, jurisdictional priority lies in the child's home state, which s. 61.503(7), F.S. (2011), defines as "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before commencement of a child custody proceeding." Section 61.514(1)(a) permits exercise of home state jurisdiction if, at any time during the six months preceding the filing of the custody proceeding, Florida qualified as the child's home state. Sarpel v. Eflani, 65 So. 3d 1080 (Fla. 4th DCA 2011). Under the facts, Florida, not Colorado, was the home state. Reversed and remanded.

<http://www.4dca.org/opinions/Oct%202013/10-30-13/4D12-2441.op.pdf> (October 30, 2013)

Rentel v. Rentel, __So. 3d__, 2013 WL 5807692 (Fla. 4th DCA 2013). **NET INCOME, NOT GROSS, IS USED FOR CALCULATION OF SUPPORT AWARDS.** The appellate court agreed with former husband that the trial court erred by not having made findings regarding net income. Net income, not gross, is relevant when calculating support awards, including alimony. It was not apparent to the appellate court that the trial court based its alimony calculations on net income. Reversed and remanded with instructions to the trial court that it could hold an evidentiary hearing if it needed additional evidence to make the findings.

<http://www.4dca.org/opinions/Oct%202013/10-30-13/4D12-2444.op.pdf> (October 30, 2013)

Yaris v. Hartley, __So. 3d__, 2013 WL 5989275 (Fla. 4th DCA 2013). The appellate court agreed with former husband that the trial court abused its discretion in denying his motion for continuance of the final hearing on his petition for modification of alimony. Recognizing the "high degree of deference" afforded to the trial court in such instances, the appellate court concluded that former husband suffered an injustice as a result of the denial, the request for the continuance was not a dilatory tactic, and a continuance would not have prejudiced the opposing party. Here, former wife had not only not opposed the motion for continuance, but had requested one as well. Former husband requested the continuance due to his desire to visit his sister-in-law in Massachusetts who was dying of lung cancer. Former husband did not appear at the hearing and his sister-in-law died the night following the hearing. The appellate court noted that in some instances, it has no choice but to reverse the trial court if the "injustice caused by the denial of the motion outweighs the judicial policy of deferring to the trial judge."

<http://www.4dca.org/opinions/Nov%202013/11-13-13/4D12-3255.op.pdf> (November 13, 2013)

Burton v. Burton, __ So. 3d __, 2013 WL 6083415 (Fla. 4th DCA 2013). TRIAL COURT MUST MAKE CERTAIN FINDINGS WHEN IMPOSING REQUIREMENT THAT OBLIGOR SECURE ALIMONY OBLIGATION WITH INSURANCE; EVEN IN ABSENCE OF IMPROVEMENTS TO PROPERTY, SPOUSE SHOULD HAVE BEEN AWARDED PORTION OF APPRECIATED VALUE OF PROPERTY AS MARITAL ASSET. Both spouses appealed the final judgment of dissolution of marriage. The appellate court found merit in two issues raised by former husband and affirmed the remainder. The first was the trial court's failure to make the required findings regarding availability and cost of insurance, former husband's ability to pay, and the special circumstances warranting security for the alimony obligation. The second issue involved a passive appreciation of nonmarital property. In this case, although former husband did not make any improvements to property whose mortgage was reduced by marital funds, a portion of the appreciated value of the property should have been included as a marital asset.

<http://www.4dca.org/opinions/Nov 2013/11-20-13/4D12-3694.op.pdf> (November 20, 2013)

Ballard v. Campbell, __ So. 3d __, 2013 WL 6081741 (Fla. 4th DCA 2013). GENERAL RULE IS THAT DISQUALIFICATION IS REQUIRED WHEN COUNSEL FOR ONE PARTY IS REPRESENTING, OR HAS RECENTLY REPRESENTED, THE JUDGE. The appellate court granted a writ of prohibition to former husband in a post-dissolution proceeding in which the presiding judge had been represented in her dissolution by the same law firm representing former wife. The judge had disclosed that relationship in a letter to former husband's counsel. The letter reached him the same day former husband moved to disqualify the judge for fear of not receiving a fair trial because of her representation by former wife's law firm. The appellate court found the motion to disqualify timely and concluded former husband had met his burden for disqualification. The appellate court stated the general rule that disqualification is required if counsel for one party is representing, or has recently represented, the judge. The appellate court held that "justice must satisfy the appearance of justice."

<http://www.4dca.org/opinions/Nov 2013/11-20-13/4D13-2098.op.pdf> (November 20, 2013)

Jordan v. Jordan, __ So. 3d __, 2013 WL 6182380 (Fla. 4th DCA 2013). REVERSED AND REMANDED FOR MULTIPLE ERRORS IN EQUITABLE DISTRIBUTION; TRIAL COURT CORRECTLY CLASSIFIED BUSINESS AS MARITAL; NO ABUSE OF DISCRETION IN USING FILING DATE TO VALUE ASSETS. Finding "multiple errors" in the scheme of equitable distribution in the dissolution of a long-term marriage and concluding that many of the valuations were not supported by competent, substantial evidence, the appellate court reversed and remanded the equitable distribution for correction of the errors and reconsideration of other orders stemming from recalculations. The appellate court instructed the trial court to reconsider its order requiring the sale of the marital home in light of the best interests of the children and because it was based on the "erroneous equitable distribution schedule." The appellate court held that the trial court did not abuse its discretion in determining that the date of filing of the petition for dissolution was an appropriate date to value the assets. It affirmed the trial court's determination that the building housing the realty business had been transformed from a nonmarital asset to a marital one due to former wife's enhancement efforts and the marital investment of proceeds from sale of the building.

<http://www.4dca.org/opinions/Nov 2013/11-27-13/4D12-2811.op.pdf> (November 27, 2103)

Williams v. Lutrario, __ So. 3d __, 2013 WL 6244175 (Fla. 4th DCA 2013). **PLAIN READING OF THE PARENTING PLAN INDICATED THAT SUMMER BREAK CAME INTO PLAY ONCE CHILD BEGAN SCHOOL; A PARENT MUST BE CURRENT IN SUPPORT PAYMENTS TO CLAIM DEPENDENCY EXEMPTION FOR THAT TAX YEAR.** Although this opinion stems from a paternity proceeding rather than a dissolution of marriage one, it is included for the appellate court's comments regarding time-sharing and the IRS tax exemption for a dependent. Here, the appellate court agreed with the trial court that a plain reading of the parenting plan indicated that time-sharing during the child's summer break would begin once the child was in kindergarten. The appellate court also noted that an IRS tax exemption is conditioned on the parent seeking the exemption being current in his or her support payments. It held that a parent cannot be held in contempt for taking the tax exemption for a tax year during which the other parent was never current in support payments—even if they later became current. Here, although the father was entitled to the tax exemption during odd-numbered years according to the parenting plan, because he was not current in support payments at the end of 2011, the mother was not required to execute a waiver of the exemption for that year. <http://www.4dca.org/opinions/Dec 2013/12-04-13/4D13-415.op.pdf> (December 4, 2013)

Fifth District Court of Appeal

Fetzer v. Evans, __ So. 3d __, 2013 WL 5575502 (Fla. 5th DCA 2013). **FINAL JUDGMENT DENYING RELOCATION WELL-SUPPORTED BY EVIDENCE.** The appellate court denied former wife's appeal of a final judgment, saying the judgment was "well-supported by the evidence." <http://www.5dca.org/Opinions/Opin2013/100713/5D12-2716.op.pdf> (October 11, 2013)

Smiley v. Smiley, __ So. 3d __, 2013 WL 5575222 (Fla. 5th DCA 2013). **DENIAL OF MOTION FOR CONTEMPT OF SUPERSEDED ORDER AFFIRMED.** The appellate court affirmed the trial court's denial of former wife's motion for contempt alleging violations of a child custody and contact order which had been superseded by a later order. <http://5dca.org/Opinions/Opin2013/100713/5D13-1947.op.pdf> (October 11, 2013)

Hedstrom v. Hedstrom, __ So. 3d __, 2013 WL 5658335 (Fla. 5th DCA 2013). **TRIAL COURT HAS DISCRETION TO MODIFY ALIMONY RETROACTIVE TO FILING DATE OR LATER DATE; IT ABUSES THAT DISCRETION BY FAILING TO GRANT MODIFICATION RETROACTIVELY IF REASONS FOR MODIFICATION EXISTED THEN; RETROACTIVITY IS THE RULE RATHER THAN THE EXCEPTION.** Former husband argued that a supplemental final judgment for modification that reduced his alimony obligation awarded an amount still beyond his ability to pay. He argued that the trial court erred in basing the modification for the retroactive period on his salary at the time of trial and in not applying the reduced alimony retroactively to the date his income was reduced. The appellate court found no abuse of discretion in the trial court's reduced alimony award; however, it concluded that former husband's post-dissolution income, as determined by the trial court, was not supported by competent, substantial evidence. It held that retroactivity is the rule rather than the exception. A trial court has the discretion to modify alimony retroactively to the date a petition for modification is filed or any subsequent date; it abuses that discretion by failing to grant modification retroactively to the date a petition was filed if the reasons justifying modification existed at that time. Here, the trial court found that former husband had the ability to pay a reduced

amount of alimony beginning January 2010, but then made the reduction retroactive to January 2011. This contradiction was remanded for clarification or recalculation.

<http://www.5dca.org/Opinions/Opin2013/101413/5D12-3878.op.pdf> (October 18, 2013).

O'Shea v. O'Shea, ___ So. 3d ___, 2013 WL 5761972 (Fla. 5th DCA 2013). **THE APPELLATE COURT IS COMPELLED TO AFFIRM WITHOUT TRANSCRIPT.** The appellate court found itself “compelled to affirm” without transcript.

<http://www.5dca.org/Opinions/Opin2013/102113/5D13-2159.op.pdf> (October 25, 2013)

Okpaleke-Ortiz v. Ortiz, ___ So. 3d ___, 2013 WL 6122266 (Fla. 5th DCA 2013). **TRIAL COURTS HAVE DISCRETION TO DETERMINE APPROPRIATE TIME-SHARING; THEIR DECISION SHOULD NOT BE OVERTURNED ABSENT ABUSE OF DISCRETION.** The appellate court concluded that the magistrate’s findings of fact, which were adopted by the trial court, were supported by competent, substantial evidence. Because trial courts have the discretion to determine appropriate time-sharing arrangements between parents, appellate courts should not overturn that decision absent a clear abuse of discretion.

<http://www.5dca.org/Opinions/Opin2013/111813/5D12-4221.op.pdf> (November 22, 2013)

Hodges v. Hodges, ___ So. 3d ___, 2013 WL 6331589 (Fla. 5th DCA 2013). **CHILD SUPPORT PAYMENTS MUST BE CALCULATED ON NET INCOME, NOT GROSS; AN ORDER FOR AN OBLIGOR TO SECURE AN OBLIGATION WITH LIFE INSURANCE REQUIRES SUFFICIENT FACTUAL FINDINGS; THE SECURITY SHOULD NOT EXCEED THE OBLIGATION; TRIAL COURT ERRED IN ORDERING SALE OF MARITAL HOME WHERE NEITHER SPOUSE REQUESTED PARTITION, ALTHOUGH SALE COULD BE USED AS “MECHANISM” TO ENFORCE PAYMENT OF EQUITY.** Trial court error was found in several aspects of the final judgment of dissolution. One, the child support payments were calculated using gross income rather than net. Two, the requirement that former husband provide life insurance to secure his child support obligation was not supported by sufficient factual findings, the amount of the security exceeded the obligation, and he was erroneously ordered to list former wife as the beneficiary. Three, ordering former husband to pay former wife her equity in the marital home within six months, failing which the home would be sold, was error because neither spouse had requested partition. The trial court was authorized on remand to revisit the equitable distribution. Sale of the home could be ordered as a “mechanism” to enforce the payment of equity if former wife moved to enforce that part of the final judgment.

<http://www.5dca.org/Opinions/Opin2013/120213/5D12-4424.op.pdf> (December 6, 2013)

Hodge v. Hodge, ___ So. 3d ___, 2013 WL 6687837 (Fla. 5th DCA 2013). **TRIAL COURT MISCALCULATED INCOMES WHEN DETERMINING ALIMONY AND FAILED TO FOLLOW ANALYSIS OF PASSIVE APPRECIATION LAID OUT IN KAAA V. KAAA.** Former husband argued that the trial court erroneously calculated former wife’s alimony by: improperly calculating his rental income; miscalculating former wife’s income; and improperly calculating the pre-marital portion of his equity in a piece of rental property. The appellate court held that it is reversible error for a trial court to fail to attribute income from property distributed to a spouse when determining need and ability to pay. A trial court must consider all sources of income, including equitably distributed assets, when determining alimony awards. Concluding that the trial court’s findings were not based on competent, substantial evidence, the appellate court reversed the calculations of the spouses’

incomes and remanded for a determination of an appropriate alimony award. The appellate court held the trial court failed to follow the analysis laid out in Kaaa v. Kaaa, 58 So. 3d 867 (Fla. 2010), in allocating the appreciation of the rental property. The trial court awarded former wife one-half of the total increase in value after finding the increase was due to former wife's active efforts as well as passive appreciation. The trial court justified its award as a method of "equalizing" the spouses' assets. The appellate court held that the equity former husband owned before the marriage entitled him to a non-marital portion of any passive increase in value. Although the trial court could find that some portion of the increase in value was attributable to former wife's active efforts and not just passive appreciation, its efforts to equalize the spouses' assets by increasing the size of the marital equity in the property were impermissible and resulted in error in the calculation of former husband's non-marital portion of the appreciation. The appellate court remanded the award of 50% of the passive appreciation of the property for reconsideration "consistent with the Kaaa analysis."

<http://www.5dca.org/Opinions/Opin2013/121613/5D12-3815.op.pdf> (December 20, 2013)

Gregory v. Gregory, __So. 3d__, 2013 WL 6687816 (Fla. 5th DCA 2013). **THERE WAS NO COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTING SPOUSE'S CONTINUED NEED FOR ALIMONY AFTER A FINDING OF SUPPORTIVE RELATIONSHIP; PAYING SPOUSE NOT OBLIGATED TO SUPPORT COHABITANT.** Former husband appealed a final order denying his request to terminate his alimony obligation twenty-nine years after dissolution based on his retirement and reduced income, and former wife's "significantly enhanced" lifestyle due to the estates of her deceased mother and daughter and her involvement in a supportive relationship. Finding that former wife was living in a supportive relationship and that she had gifted her inheritance from her daughter to her son, the trial court reduced former husband's alimony obligation. The appellate court held that the trial court properly found the existence of a supportive relationship, but concluded that former wife failed to carry the burden of proof for a continued need for alimony once the burden of proof shifted to her. There was no competent, substantial evidence that she still needed financial support from former husband; instead, it established that she supported her cohabitant to "a certain extent." The appellate court held former husband was under no obligation to help support the cohabitant. Reversed and remanded with instructions to the trial court to enter an order terminating alimony. <http://www.5dca.org/Opinions/Opin2013/121613/5D13-1222.op.pdf> (December 20, 2013)

Smith v. Smith, __So. 3d__, 2013 WL 6816690 (Fla. 5th DCA 2013). **LACK OF TRANSCRIPT; PRESUMPTION OF CORRECTNESS; AFFIRMED.** The appellate court affirmed for lack of a transcript. Judgment of trial court comes to appellate court clothed with presumption of correctness and may not be disturbed in absence of record demonstrating error. Arnold v. Whitley, 97 So. 3d 339 (Fla. 5th DCA 2012).

<http://www.5dca.org/Opinions/Opin2013/122313/5D13-26.op.pdf> (December 27, 2013)

Szredzinski v. Burgess, __So. 3d__, 2013 WL 6816688 (Fla. 5th DCA 2013). **FINAL JUDGMENT DENIED RELOCATION BUT USED THAT ADDRESS FOR SCHOOL BOUNDARY AND REGISTRATION PURPOSES; TRIAL COURT ORDERED TO REQUIRE SPOUSE TO RETURN WITH CHILD; IF SPOUSE FAILS TO DO SO, TRIAL COURT ORDERED TO RECONSIDER TIME-SHARING AND SCHOOL ADDRESS.** The appellate court affirmed with one exception: the final judgment denied former wife's request to relocate from Seminole County to Hillsborough County, but provided that former wife's address

would be used for the school boundary determination and registration. The parenting plan reflected former wife's Hillsborough County address. The trial court was instructed on remand to require the child be returned to Seminole County; should former wife fail to return with the child, the trial court would reconsider time-sharing and the address used for school purposes.

<http://www.5dca.org/Opinions/Opin2013/122313/5D13-97.op.pdf> (December 27, 2013)

Sims v. Holloway, __ So. 3d __, 2013 WL 6816616 (Fla. 5th DCA 2013). **GRANTING VENUE CHANGE WITHOUT AFFORDING SPOUSE AN OPPORTUNITY TO BE HEARD DEPRIVED THAT SPOUSE OF DUE PROCESS; REMANDED FOR HEARING.** Former wife appealed an order granting former husband's motion to change venue. The appellate court concluded that the trial court deprived former wife of due process by entering the order without affording her an opportunity to be heard. Remanded for an evidentiary hearing on the motion.

<http://www.5dca.org/Opinions/Opin2013/122313/5D13-3484.op.pdf> (December 27, 2013)

Domestic Violence Case Law

Florida Supreme Court

In re: Amendments to Florida Family Law Rules of Procedure, ___ So. 3d ____, 2013 WL 6014354 (Fla. 2013). **FAMILY LAW RULES AMENDED**. The Family Law Rules of Procedure were amended to reflect s. 784.0485, F.S. (2012), which established an injunction for protection against stalking. Forms 12.900(h) and 12.928 were amended as well as rule 12.610. The forms are ready for use. <http://www.floridasupremecourt.org/decisions/2013/sc12-1205.pdf> (November 14, 2013)

In re: Standard Jury Instructions In Criminal Cases – Report NO. 2012-05, ___ So. 3d ____, 2013 WL 6305187 (Fla., 2013). **NEW JURY INSTRUCTIONS**. The Supreme Court proposed new standard criminal jury instructions and/or amended several existing standard criminal jury instructions for crimes including aggravated stalking, violation of a stalking injunction, aggravated assault on an elderly person, sexual battery of a victim less than 12 years of age, and several others. The instructions are ready to be published and used. <http://www.floridasupremecourt.org/decisions/2013/sc12-2031.pdf> (December 5, 2013)

First District Court of Appeals

Arnold v. Santana, ___ So. 3d ____, 2013 WL 5509114 (Fla. 1st DCA 2013). **INJUNCTION REVERSED**. The wife filed a petition for an injunction against domestic violence and claimed that her husband was harassing and stalking her. The appellate court held that the evidence presented did not support a finding that the wife's fear of imminent violence was reasonable, and reversed the lower court's decision. <http://opinions.1dca.org/written/opinions2013/10-07-2013/13-1112.pdf> (October 7, 2013)

Dietz v. Dietz, ___ So. 3d ____, 2013 WL 6635844 (Fla. 1st DCA 2013). **INJUNCTION REVERSED**. A temporary injunction was entered ex parte against the respondent and six days later, a full evidentiary hearing was held during which the court heard testimony from the respondent, his mother, and his sister. The judge ordered the temporary injunction to continue for six months but stated "that the trial judge made no final determination as to the sufficiency of the evidence presented at the hearing." The trial court further ordered the parties to return in six months for a status conference. The appellate court reversed the decision and noted that while the statute did allow the trial court to extend a temporary injunction for good cause, it does not allow for a series of temporary injunctions to be issued in lieu of a permanent injunction. Extending the temporary injunction is not permissible unless a continuance is authorized by the Florida Statutes. <http://opinions.1dca.org/written/opinions2013/12-17-2013/13-2098.pdf> (December 17, 2013)

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

Weisberg v. Albert, ___ So. 3d ____, 2013 WL 5628683 (Fla. 4th DCA 2013). **INJUNCTION REVERSED**. A former son-in-law filed a petition for an injunction for protection against domestic violence without minor children against his former father-in-law. The Circuit Court granted the petition, but the appellate court reversed, holding that there was insufficient evidence that the former son-in-law was in imminent danger of becoming a victim of domestic violence by virtue of a single altercation he had with his former father-in-law.
<http://www.4dca.org/opinions/Oct%202013/10-16-13/4D12-2723.op.pdf> (October 16, 2013)

Stone v. Stone, ___ So. 3d ____, 2013 WL 6479084 (Fla. 4th DCA 2013). **INJUNCTION VACATED**. The former husband appealed an injunction for protection against domestic violence and argued that the court erred because the former wife failed to prove that she was in danger of impending violence, or that actual domestic violence had occurred. The petition alleged that the former husband grabbed the former wife's arms, forced her onto the bed, and made unwanted sexual advances. He stopped when he realized she was not interested. During the hearing, the former wife introduced photos of the bruises on her arms, but also admitted that she may have gotten the bruises from moving boxes. The former husband claimed that the bruises, if he was responsible, came from playing around near the pool and were not intentional. The appellate court held that the evidence did not show that the former husband acted with the purpose of causing harmful or offensive contact, or intended to touch her against her will. Likewise, the court found that the former husband's texts and calls did not threaten violence or make the former wife believe she was in danger, and therefore, did not constitute domestic violence. The court ordered the lower court to vacate the injunction.
<http://www.4dca.org/opinions/Dec%202013/12-11-13/4D12-4164.op.pdf> (December 11, 2013)

Fifth District Court of Appeals

Barbieri v. Muller, ___ So. 3d ____, 2013 WL 5493418 (Fla. 5th DCA 2013). **ORDER DISSOLVING INJUNCTION REVERSED**. The petitioner appealed the order dissolving the permanent injunction for protection against domestic violence that she had obtained against her former boyfriend. The appellate court held that the petitioner correctly argued that the trial court abused its discretion in dissolving the injunction by reweighing the evidence supporting the initial injunction rather than finding a change in circumstances since the injunction was issued. Thus, the appellate court reversed.
<http://www.5dca.org/Opinions/Opin2013/093013/5D13-1605.op.pdf> (October 4, 2013)

Garrett v. Pratt, ___ So. 3d ____, 2013 WL 6687747 (Fla. 5th DCA 2013). **CASE REMANDED FOR A NEW HEARING**. An inmate in Florida's correctional system appealed the trial court's order denying his motion to modify or dissolve a domestic violence injunction. The inmate filed a motion to appear telephonically, and although the court didn't rule on this motion, the clerk's notice of hearing noted the inmate would appear telephonically. When the inmate failed to call in for the scheduled hearing, the trial court denied his motion. Although it didn't occur in this case, the Department of Corrections requires staff to place calls to the court when an inmate must participate in a hearing telephonically. Since the inmate was denied his chance to appear through no fault of his own, the appellate court reversed and remanded the case for further proceedings.
<http://www.5dca.org/Opinions/Opin2013/121613/5D13-3101.op.pdf> (December 20, 2013)

Drug Court/Mental Health Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.