

# Domestic Violence Review



Office of the State Courts Administrator  
Office of Court Improvement

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### Helpful Web Resources

- [Family Courts](#)
- [DV Benchbook](#)
- [DV Strategic Plan](#)
- [Petitioner Brochures](#)
- [Respondent Brochures](#)
- [DV Civil Injunction Survey Report](#)
- [DV Resources for Court Staff](#)
- [DV Case Management Guidelines](#)
- [Best Practices: Child Support in DV cases](#)
- [Dating Violence Checklist](#)
- [Repeat Violence Checklist](#)
- [Sexual Violence Checklist](#)
- [DV Checklist](#)
- [DV Court Action Plan](#)
- [DV Assessment Final Report](#)

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### *Virtual Court Available for Continuing Education Credits*

The Virtual Court program offers Florida domestic violence stakeholders an opportunity to learn about domestic violence proceedings and see the case through the judge's eyes. The program allows the user to act as judge in a domestic violence simulation. The case is fictitious, but the questions are real questions that judges must grapple with every day. Learn the laws that guide judges' actions during domestic violence proceedings with our engaging, interactive online program. The program can be accessed at: <http://virtualcourt.flcourts.org>.

The Virtual Court program is approved for up to 1.50 non-conference Domestic Violence CJE credit hours. Judges may apply for Continuing Judicial Education (CJE) credit by emailing a request to [CJEMail@flcourts.org](mailto:CJEMail@flcourts.org) or writing to: Court Education Division, Office of the State Courts Administrator, 500 South Duval Street, Tallahassee, Florida 32399-1900 (Attention: CJE Credit). Judges who have completed the program but have not yet requested a certificate of completion may do so by sending an email request to [vcsupport@flcourts.org](mailto:vcsupport@flcourts.org).

The Florida Bar has approved 2.00 hours of general Continuing Legal Education (CLE) credit (including 1.50 hours of Marital and Family Law Certification credit) for the completion of this training module. Individuals are required to post their CLE activity on the Florida Bar website, [www.floridabar.org](http://www.floridabar.org), to receive credit. Please refer to course #19141.

Completion of the Domestic Violence Virtual Court training module can count as 2.0 hours of Domestic Violence Continuing Mediator Education (CME) credit. Individuals are required to keep the information pertaining to the completed virtual court course during the two-year cycle. Individuals will then report the information on the CME Reporting Form included in the renewal packet at the time of renewal, not when the credit is earned. The CME Reporting Form is also available on the Dispute Resolution Center's [website](#).

### *News from the Office of Court Improvement*

#### **2011 DV Coordinators Meeting**

The Office of Court Improvement hosted a Domestic Violence Coordinators Meeting in Tallahassee on March 31-April 1, 2011. This meeting was a chance for DV coordinators to learn about recent domestic violence issues and develop techniques for case coordination, and was attended by DV coordinators throughout Florida. Among some of the topics covered at the meeting were a presentation about dating and sexual violence, an exercise on the troubles abused women face when trying to seek help or trying to leave the abuser, and a discussion on how to coordinate 'cross-over cases' where the victim may be involved in multiple concurrent court proceedings.

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### Virtual Court Program News

The Office of Court Improvement is very pleased to announce that the virtual court program has been upgraded. The upgrade allows users to create and print their own certificate of completion after completing the course. In addition, the upgrade includes a streamlined evaluation form for users to provide feedback about their experience with the program. The virtual court program is available to all stakeholders in the domestic violence injunction process.

### *Upcoming Projects and Events*

- **CASE MANAGER TRAINING MODULE** The Office of Court Improvement is in the process of developing an online virtual training module. The module, similar to the domestic violence virtual court, was created for case managers and other interested stakeholders; it will be an interactive program designed to inform the user of relevant information, rules and regulations, and processes in DV case management. The module has been vetted by a panel of case managers, judges, and OCI staff. This will be a huge endeavor, with the final goal to provide case managers and other interested stakeholders with a high quality module. The training module is tentatively scheduled to be completed in June of 2011.
- **FILLABLE FORMS PROGRAM** The Office of Court Improvement is in the process of developing a program that will aid in populating relevant domestic violence forms. The user – the program may be used by both respondents and petitioners – will be guided through the selected form, in a process that facilitates the entry of data into the proper location on the form. This program is tentatively scheduled for release in June, 2011.
- **CONTINUING JUDICIAL SKILLS WORKSHOP** The Office of Court Improvement is sponsoring Florida judges to the National Council of Juvenile and Family Court Justices Enhancing Judicial Skills Workshop held in Chicago, IL, June 23-25, 2011.



## **Elder Abuse as a Form of Domestic Violence**

Austin Newberry

Nationwide, one of the fastest growing segments of the population is the oldest of the old, that is, people 85 years old and over.<sup>1</sup> While figures for the 2010 census are not yet available, in 2009 the U.S. Census Bureau estimated that over 17% of Florida's population was over the age of 65.<sup>2</sup> The popular notion of Florida as a state with a large number of elderly citizens is born out in fact. As baby-boomers continue to age the number of elderly individuals seeking various kinds of assistance from the courts will no doubt increase as well. Unfortunately, statistics regarding the age of domestic violence injunction petitioners in Florida, as well as the relationship of the respondent to the petitioner, are not readily available. It does seem logical, however, that the state's domestic violence dockets will include more and more older individuals seeking injunctions against a variety of family members. The purpose of this

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article is to provide some helpful information regarding domestic violence perpetrated on the elderly by family members (often, but not always, caretakers) as well as the more commonly seen domestic violence cases in which a spouse or other intimate partner is the abuser.

**Florida Alleged Mistreatments Against Elders 2008-2009**  
**Department of Children and Families**

**PHYSICAL INJURY 10%**  
**SEXUAL ABUSE 1%**  
**NEGLECT 62%**  
**SUBSTANCE ABUSE 1%**  
**EXPLOITATION 18%**  
**MENTAL INJURY 8%**

**Total 41,019**

### **The Courts**

Elder abuse is a crime in Florida. It is statutorily defined as the “[i]ntentional infliction of physical or psychological injury upon an elderly person or disabled adult; [an] [i]ntentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or [the] [a]ctive encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.”<sup>3</sup>

The term elder abuse tends to conjure up images of elderly patients suffering from bedsores and worse in nursing homes, victims of the abuse and/or neglect of nursing home staff. This view does capture one part of the elder abuse problem, but it certainly does not provide the whole picture. “Elder abuse in domestic settings is a serious problem, affecting hundreds of thousands of elderly people across the country. However, because it is still largely hidden under the shroud of family secrecy, elder abuse is grossly under-reported.”<sup>4</sup>

Abuse of the elderly by spouses, intimate partners or other family members might lead to a Petition for Protection Against Domestic Violence and all of these potentially meet the requirements. While abuse of an elderly person by a spouse clearly meets the standard, many instances of abuse by other family members might as well. The filing of a domestic violence injunction petition requires that the petitioner and respondent must be family or household members.<sup>5</sup> Florida has a fairly broad definition of a family or household.

Family or household member means spouses, former spouses, persons related by blood or marriage, person who are presently living together as if a family or who have lived together in the past as if a family and persons who are parents of a child together regardless of whether or not they have been married or lived together. With the exception of persons who have a child in common, the family or household members must be currently residing together or have in the past resided together in the same single dwelling unit.<sup>6</sup>

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There are a number of reasons why abuse of the elderly is underreported and, more importantly, why these elderly victims might not be showing up in domestic violence courts seeking injunctive relief. They may be reluctant to do so because the abuser is often their caregiver and, thus, in their eyes, the only person who helps them. Elders may also feel impeded by health problems; impairment to vision, hearing, or mobility; lack of reading skills or English fluency; limited access to transportation; or lack of funds to hire a lawyer. Elders who aren't computer literate have trouble using web based legal aids for self-represented litigants.<sup>7</sup>

### ***Domestic Violence by Family Members (Non Spouse or Intimate Partner)***

The U.S. Administration on Aging's National Center on Elder Abuse makes reference to several kinds of behaviors that constitute abuse and also meet Florida's statutory definition of domestic violence. The first, and the most obvious, is physical abuse. Sexual abuse, because it is relatively infrequent and because of societal views about older people, tends to be completely overlooked. Elder abuse also includes emotional and/or psychological abuse, neglect, abandonment, and financial or material exploitation.<sup>8</sup> This list includes many behaviors that might be seen in a traditional domestic violence case.

The perpetrators of non-intimate partner abuse are most often family members: children and grandchildren. Frequently, the perpetrator is single, unemployed and living with the victim. As with traditional domestic violence cases, alcohol and substance abuse are often a factor. To the extent that the elders involved are incapacitated, the perpetrator is sometimes the primary caretaker.<sup>9</sup> As with traditional domestic violence, in many instances the motivation for the abuse is power and control rather than anger. Many of the same tactics are used as well but there some that are more specific to elders.

#### **TACTICS USED BY ABUSIVE FAMILY MEMBERS<sup>10</sup>**

##### **PHYSICAL ABUSE**

- Slaps, hits, punches
- Throws things
- Burns
- Chokes
- Breaks bones

##### **SEXUAL ABUSE**

- Makes demeaning remarks about intimate body parts
- Is rough with intimate body parts during care giving
- Takes advantage of physical or mental illness to engage in sex
- Forces the performance of unwelcome sex acts
- Forces the watching of pornographic movies

##### **ABUSING**

##### **DEPENDENCIES/NEGLECT**

- Takes walker, wheelchair, glasses and dentures

- Takes advantage of confusion
- Denies or creates long waits for food, heat, care or medication
- Does not report medical problems
- Understands but fails to follow medical, therapy or safety recommendations
- Causes the victim to miss medical appointments

##### **THREATS/INTIMIDATION**

- Threatens to leave, commit suicide or institutionalize
- Abuses or kills pets or prized livestock
- Destroys property
- Displays or threatens with weapons

##### **RIDICULING VALUES/SPIRITUALITY**

- Denies access to church or clergy
- Makes fun of personal values

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- Ignores or ridicules religious/cultural traditions

### **EMOTIONAL ABUSE**

- Humiliates, demeans, ridicules
- Yells, insults, calls names
- Degrades, blames
- Withholds affection
- Engages in crazy-making behavior

- Uses silence or profanity

### **USING FAMILY MEMBERS**

- Magnifies disagreements
- Misleads family members about extent and nature of illnesses/conditions
- Excludes or denies access to family

- Forces family to keep secrets

### **ISOLATION**

- Controls visits and travel
- Limits time with friends and family
- Denies access to phone or mail

### **USING PRIVILEGE**

- Creates a master/servant relationship

- Makes all major decisions

### **FINANCIAL EXPLOITATION**

- Steals money, titles, or possessions
- Takes over accounts, bills, and spending without permission
- Abuses a power of attorney

An injunction for protection against domestic violence might be part of a good solution for older victims of abuse by family members. Domestic violence injunction cases are seldom simple and these types of cases present even more issues. The involvement of other family members if available and the provision of a variety of services will almost always be required for a positive outcome.

Most, if not all, batterer intervention programs are focused on intimate partner/spouse violence perpetrated by men. Still, it would probably be preferable to send a male family member perpetrating elder abuse to a batter intervention program rather than to an anger management program. The same reasons this is true in spousal/intimate partner domestic violence cases apply here. Domestic violence has little or nothing to do with not being able to control one's temper. It is almost always a purposeful pattern of behavior designed to exercise power and control over another person. Having a dialog with local BIP providers about the inclusion of brothers, sons and grandsons, etc. in groups with husbands and boyfriends would be very helpful. While the majority of perpetrators of domestic violence are men, women can be perpetrators as well. There are very few BIPs designed for women. This is also an issue that should be included in a dialogue with BIP providers.

### ***Elder Abuse by an Intimate Partner***

Good statistics on the actual percentage of people over the age of 65 experiencing domestic violence are hard to come by. It is also likely, for reasons that we have already seen regarding abuse in general, that domestic violence in the elder population is reported even less than in the general population. Data from 1996 showed that 12.6 percent of all reported cases of elder abuse were committed by spouses.<sup>11</sup>

In many cases, the domestic violence experienced by elders is simply a continuation of a pattern of violence that started much earlier. The National Committee for the Prevention of Elder Abuse also notes what it calls, "late onset domestic violence". In these cases, a strained relationship often coupled with emotional abuse becomes worse with age. "When abuse begins or is exacerbated in old age, it is likely to be linked to retirement, disability, changing roles of family members and/or sexual changes." Finally,

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as older individuals seek companionship, they sometimes enter into abusive relationships for the first time.<sup>12</sup>

Apart from the age difference of the petitioners, these cases are similar to most of the domestic violence cases heard in Florida courts. Recognizing the limited access of the elderly to the courts already discussed, the usual approach to the domestic violence injunction process applies. It is important, however, to consider the additional burdens that might be placed on both the petitioner and respondent when one or both are elderly. In terms of the petitioner, options for both shelter, should it be needed, and the provision of ongoing care, if the respondent is the primary care giver, are probably limited. As for the respondent, there may be fewer possible alternative living arrangements outside the shared home and the respondent might also be in need of care.

### **Conclusion**

As the number of aging citizens in Florida continues to increase, they are going to require the court's assistance in dealing with violence perpetrated against them by spouses/intimate partners and/or other family members. The 13<sup>th</sup> Circuit's Elder Justice Center reports that in 2010 they handled about 14 injunction cases initiated by seniors for protection from family members per month. In the first quarter of 2011 that average was approximately 22 per month. The injunction for protection against domestic violence is one of the more important tools currently available. There is much more that needs to be done.

Access to the courts for the elderly is an important concern. This has to go beyond meeting Americans with Disabilities Act requirements. Even in a time of severe budget restraints as well as limited resources of time and personnel, it is important to be aware of what ideally needs to be provided by the court system. The following excerpt from a description of California's Elder Abuse Protection Court Project can serve as a primer on what needs to be in place in order for older citizens to take advantage of protections offered by domestic violence courts.

(Full access to the courts for the elderly requires) judicial officers, an elder abuse case manager, a clinical supervisor, administrative staff, and filing and courtroom clerks, who offer:

- Direct assistance to elders in navigating a court system that seems complex and intimidating to them.
- Coordination with various court personnel and programs to identify possible elder abuse when cases are filed and to help elders apply for protection.
- Efficient processing of elders' petitions for civil restraining orders.
- Links with legal and social agencies that can help elders and follow up on abuse cases.
- New protocols for investigating, tracking, and recording criminal information on parties.<sup>13</sup>

This work has already begun to various degrees in some of Florida's judicial circuits. For example, the 13<sup>th</sup> Judicial Circuit established an Elder Justice Center in 1999.<sup>14</sup> The mission of the Elder Justice Center is "[t]o remove barriers and enhance the linkages between seniors and the court system, as well as social and legal services." The goals of the center, especially "[c]oordinating access to existing agencies"

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and “[p]roviding assistance to senior victims of abuse and/or exploitation” are particularly apropos to the situation of elders and domestic violence.<sup>15</sup>

This article raises a large number of issues, some of which seem daunting in the current climate. It is important to remember that while budget and personnel issues affect how the court approaches its mission, that mission and vision remain unchanged. Three items from the Florida Judicial Branch’s Mission Statement are particularly apropos to the issue of elderly domestic violence victims.

To be **accessible**, the Florida justice system will be convenient, understandable, timely, and affordable to everyone. To be **fair**, it will respect the dignity of every person, regardless of race, class, gender or other characteristic. . . . To be **responsive**, it will anticipate and respond to the needs of all members of society. . . .<sup>16</sup>

### **Resources**

In addition to the links provided in the endnotes, information on and links to various elder abuse resources are presented below.

**Florida Department of Elder Affairs** ([www.elderaffairs.state.fl.us/index.php](http://www.elderaffairs.state.fl.us/index.php)) The Florida Department of Elder Affairs is the primary state agency administering human services programs to benefit Florida's elders.

**National Adult Protective Services Association** ([www.apsnetwork.org](http://www.apsnetwork.org)) The mission of NAPS is to improve the quality and availability of protective services for disabled adults and elderly persons who are abused, neglected, or exploited and are unable to protect their own interests.

**National Center on Elder Abuse** ([www.ncea.aoa.gov/NCEAroot/Main\\_Site/Index.aspx](http://www.ncea.aoa.gov/NCEAroot/Main_Site/Index.aspx)) The National Center on Elder Abuse (NCEA), directed by the U.S. Administration on Aging, is committed to helping national, state, and local partners in the field be fully prepared to ensure that older Americans will live with dignity, integrity, independence, and without abuse, neglect, and exploitation. The NCEA is a resource for policy makers, social service and health care practitioners, the justice system, researchers, advocates, and families.

**National Clearinghouse on Abuse in Later Life** ([http://www.ncall.us/about\\_us.html](http://www.ncall.us/about_us.html)) The National Clearinghouse on Abuse in Later Life (NCALL), a national project of the Wisconsin Coalition Against Domestic Violence, has provided training and technical assistance on abuse in later life and elder abuse to many audiences, including domestic violence and sexual assault programs, aging bureaus, adult protective services, criminal justice entities, health care providers, and legal personnel.

**National Committee for the Prevention of Elder Abuse** ([www.preventelderabuse.org](http://www.preventelderabuse.org)) The National Committee for the Prevention of Elder Abuse (NCPEA) is an association of researchers, practitioners, educators, and advocates dedicated to protecting the safety, security, and dignity of America's most vulnerable citizens. It was established in 1988 to achieve a clearer understanding of abuse and provide direction and leadership to prevent it. The Committee is one of three partners that make up the National Center on Elder Abuse, which is funded by Congress to serve as the nation's clearinghouse on information and materials on abuse and neglect.

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- <sup>1</sup> Frank B. Hobbes, *Population Profile of the United States: The Elderly Population*. U.S. Census Bureau, <http://www.census.gov/population/www/pop-profile/elderpop.html>
- <sup>2</sup> U.S. Census Bureau: State and County QuickFacts. <http://quickfacts.census.gov/qfd/states/12000.html>
- <sup>3</sup> Fla. Stat. § 825.102(1) (2010)
- <sup>4</sup> Toshio Tatara and Lisa M. Kuzmeskus for the National Center on Elder Abuse, *Trends in Elder Abuse in Domestic Settings*. 2 Elder Abuse Information Series (updated Nov. 1997 by Edward Duckhorn)(May 1995) at 1, available at [http://www.ncea.aoa.gov/ncearoot/main\\_site/pdf/basics/fact2.pdf](http://www.ncea.aoa.gov/ncearoot/main_site/pdf/basics/fact2.pdf).
- <sup>5</sup> Fla. Stat. § 741.30(1)(e) (2010)
- <sup>6</sup> Fla. Stat. § 741.28(3), (2010)
- <sup>7</sup> Elder Abuse Protection Court Project. *Swift Court Action to Stop Abuse*. Superior Court of Alameda County, California at 1 available at [http://www.courts.ca.gov/xbcr/cc/Elder\\_Abuse\\_Protection\\_Court.pdf](http://www.courts.ca.gov/xbcr/cc/Elder_Abuse_Protection_Court.pdf)
- <sup>8</sup> National Center on Elder Abuse, Major Types of Elder Abuse (Updated March 2011), available at [http://www.ncea.aoa.gov/NCEAroot/Main\\_Site/FAQ/Basics/Types\\_Of\\_Abuse.aspx](http://www.ncea.aoa.gov/NCEAroot/Main_Site/FAQ/Basics/Types_Of_Abuse.aspx)(last visited April 7, 2011).
- <sup>9</sup> National Committee for the Prevention of Elder Abuse. *Physical Abuse*. available at <http://www.preventelderabuse.org/elderabuse/physical.html>(last visited April 7, 2011).
- <sup>10</sup> Wisconsin Coalition Against Domestic Violence, *Family Violence in Later Life* (2003) available at [http://www.ncall.us/docs/Later\\_Life\\_PCWheel.pdf](http://www.ncall.us/docs/Later_Life_PCWheel.pdf).
- <sup>11</sup> *Supra* note 4 at 2.
- <sup>12</sup> *Supra* note 9.
- <sup>13</sup> *Supra* note 7 at 2.
- <sup>14</sup> Thirteenth Judicial Circuit Hillsborough County: About Elder Justice Center available at <http://www.fljud13.org/CourtProgramsBusinessOperations/ElderJusticeCenter/AboutElderJusticeCenter.aspx>(last visited April 25, 2011).
- <sup>15</sup> Thirteenth Judicial Circuit Hillsborough County: Elder Justice Center FAQs available at <http://www.fljud13.org/CourtPrograms/ElderJusticeCenter/FAQs.aspx> (last visited April 25, 2011).
- <sup>16</sup> Florida State Courts, *Vision of the Florida Judicial Branch*. (last visited April 7, 2011), available at [www.flcourts.org/gen\\_public/mi\\_vi/index.shtml](http://www.flcourts.org/gen_public/mi_vi/index.shtml).

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### Caselaw Corner



**Alkhoury v. Alkhoury**, --- So. 3d ----, 2011 WL 714456 (Fla. 1st DCA 2011) **DISSOLUTION OF INJUNCTION REVERSED**. The trial court granted a motion, filed by the former husband, to dissolve a permanent injunction against domestic violence. The appellate court reversed and noted that although §741.30(10), Florida Statutes, provides that either party may move for modification or dissolution of a domestic violence injunction at any time, the statute does not directly speak to the burden of proof upon the movant. However, as a general rule, permanent injunctions, which remain indefinitely in effect, may be modified by a court of competent jurisdiction "whenever changed circumstances make it equitable to do so...." The requirement to show changed circumstances applies equally to modification or dissolution of a protective injunction. Also, a party seeking an extension of a domestic violence injunction must present evidence from which a trial court can determine that a continuing fear exists and that such fear is reasonable, based on all the circumstances. Because the circumstances in this case that gave rise to

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the injunction had not changed, the court reversed the trial court's ruling. March 2, 2011.

<http://opinions.1dca.org/written/opinions2011/03-02-2011/10-5498.pdf>

*Monteiro v. Monteiro*, --- So. 3d ----, 2011 WL 711055 (Fla. 3d DCA 2011) **IN-CAMERA EXAMINATION OF CHILDREN IN DV INJUNCTION CASE ALLOWED**. The husband petitioned for a Writ of Certiorari, in which he requested the trial court's order, which mandated the in-camera examination of the minor children of the marriage outside the presence of the parties and their counsel at a final domestic violence injunction hearing, be quashed. The original proceeding in the circuit court consisted of an action for dissolution of marriage; however, four domestic violence petition actions were consolidated with the dissolution of marriage case. The domestic violence actions involved one petition filed on behalf of the wife and three on behalf of each of the three minor children. The trial court's order in question stated that it would conduct an in-camera interview "of at least the two oldest minor children, privately and outside the presence of counsel and outside the presence of the parties, before the testimony of any and all other witnesses." The court further ordered that it reserved the right to determine whether an in-camera interview of the youngest child would be conducted, also privately and outside the presence of counsel and outside the presence of the parties.

The husband argued that the trial court's order violated his due process rights, because an interview of the minor children without the presence of counsel or the parties deprived him of a meaningful opportunity to be heard. The appellate court disagreed and noted that the husband did not show how the trial court departed from the essential requirements of the law. The husband did not cite any authority which required the trial court to submit the minor children to cross-examination by the husband's counsel in the domestic violence action. Moreover, he cited no authority which required the trial court to have the husband or his counsel present during any in-camera examination of the children in a domestic violence case. Consequently, there can be no departure from the essential requirements of law because the trial court did not violate any established principles of law when it entered the subject order. The court also noted that Florida Family Law Rule of Procedure 12.407 and case law support the trial court's decision. The children's interests are of the utmost importance in domestic and sexual violence cases. Also, pursuant to § 92.55, Florida Statutes, the trial court has discretion to determine how the best interests of the children are to be protected. The trial court thus acted well within its discretion and consistent with its obligation to act in the children's best interests. March 2, 2011. <http://www.3dca.flcourts.org/Opinions/3D10-1602.pdf>



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People wishing to contribute to future editions of the "Domestic Violence Review" should contact Andrew Wentzell at [Wentzella@flcourts.org](mailto:Wentzella@flcourts.org).