

OSCA/OCI'S CASE LAW UPDATE AUGUST 2016

Baker Act/Marchman Act Case Law	3
Florida Supreme Court.....	3
First District Court of Appeal	3
Second District Court of Appeal.....	3
Third District Court of Appeal.....	3
Fourth District Court of Appeal	3
Fifth District Court of Appeal.....	3
Drug Court/Mental Health/Veterans Court Case Law	4
Florida Supreme Court.....	4
First District Court of Appeal	4
Second District Court of Appeal.....	4
Third District Court of Appeal.....	4
Fourth District Court of Appeal	4
Fifth District Court of Appeal.....	4

Family Court

Delinquency Case Law	5
Florida Supreme Court.....	5
First District Court of Appeal	5
Second District Court of Appeal.....	5
Third District Court of Appeal.....	6
Fourth District Court of Appeal	7
Fifth District Court of Appeal.....	7
Dependency Case Law.....	9
Florida Supreme Court.....	9
First District Court of Appeal	9
Second District Court of Appeal.....	9
Third District Court of Appeal.....	9
Fourth District Court of Appeal	10
Fifth District Court of Appeal.....	10
Dissolution of Marriage Case Law	11

Florida Supreme Court.....	11
First District Court of Appeal	11
Second District Court of Appeal.....	13
Third District Court of Appeal.....	14
Fourth District Court of Appeal	15
Fifth District Court of Appeal.....	17
Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law	19
Florida Supreme Court.....	19
First District Court of Appeal	19
Second District Court of Appeal.....	19
Third District Court of Appeal.....	19
Fourth District Court of Appeal	19
Fifth District Court of Appeal.....	20

Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Drug Court/Mental Health/Veterans Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

K.O. v. State, ___ So. 3d ___, 2016 WL 4396084 (Fla. 1st DCA 2016). **THIS WAS AN ANDERS APPEAL**. The juvenile filed an initial brief pursuant to Anders v. California, 386 U.S. 738 (1967), which required the First District Court of Appeal to independently “examine the record to the extent necessary to discover any errors apparent on the face of the record,” State v. Causay, 503 So. 2d 321, 322 (Fla. 1987). Upon review, the First District found that a sentencing error may have existed. Specifically, the final disposition order did not state the length of the juvenile’s probation despite the fact that the juvenile was entitled to be informed of such. Further, the trial court did not address the length of time the juvenile was to serve on probation or whether the probation was indefinite. Even more, the delinquency court did not make a notation of the length of probation on the written order. Accordingly, the First District struck the order with instructions to resolve the issue.

https://edca.1dca.org/DCADocs/2016/1065/161065_NOND_08182016_034333_i.pdf (August 18, 2016)

Second District Court of Appeal

M.R. v. State, ___ So. 3d ___, **2016 WL 0000000** (Fla. 2d DCA 2016). **BECAUSE THE STATE FAILED TO ESTABLISH THAT THE ARRESTING OFFICER HAD A REASONABLE SUSPICION OF CRIMINAL ACTIVITY WHEN HE ORDERED THE JUVENILE TO STOP, THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT THE OFFICER WAS EXECUTING A LAWFUL DUTY AT THAT TIME.** The juvenile was charged with resisting an officer without violence. At the adjudication hearing, the arresting officer testified that he was completing his usual patrol through an apartment complex when he saw four juveniles on bicycles. The juvenile apparently saw the officer’s vehicle and rode behind one of the buildings. The officer testified that he found the juveniles’ actions suspicious and wanted to know why they went from riding in the street to riding behind a building. He radioed that he was exiting the vehicle and went behind the building on foot, but the juveniles were not there. As the officer was returning to his vehicle, he saw the juvenile riding away and directed him to stop in order to make contact with him. The juvenile did not stop. On appeal, the juvenile contended that the lower court erred in denying his motion for judgment of dismissal because the officer was not executing a legal duty when he initially ordered the juvenile to stop. The Second District concluded that the officer’s testimony failed to establish that he had a reasonable suspicion of criminal activity when he ordered the juvenile to stop. The threshold for establishing the offense of resisting an officer without violence under s. 843.02, F.S. (2014) is that the officer be in the lawful execution of a legal duty. To meet this threshold, the conduct of the officer must be consistent with the Fourth Amendment and any other relevant requirements of the law. Generally, flight, standing alone, is insufficient to form the basis of a resisting without violence charge. Specifically, the individual must know of the officer’s intent to detain him, and the officer must be justified in making the stop at the point when the command to stop is issued. An officer’s

command to stop is lawful if there is a reasonable and well-founded suspicion that criminal activity has occurred or is about to occur. Whether an officer's suspicion is reasonable is determined by the totality of the circumstances which existed at the time of the stop and is based solely on facts known to the officer before the stop. Here, the officer's testimony failed to establish that he had a reasonable suspicion of criminal activity. Thus, the evidence was insufficient to establish that the officer was executing a lawful duty at that time. Accordingly, the Second District reversed the adjudication for resisting an officer without violence.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/August/August%2012,%202016/2D15-3651.pdf (August 12, 2016)

L.A.H. v. State, ___ So. 3d ___, 2016 WL 4375437 (Fla. 2d DCA 2016). **THE STATE FAILED TO PROVE THE PRIMA FACIE ELEMENTS OF BURGLARY OF A CONVEYANCE. ACCORDINGLY, THE SECOND DISTRICT REMANDED FOR ENTRY OF THE LESSER INCLUDED OFFENSE OF TRESPASS IN A CONVEYANCE.** The juvenile was placed on six months' juvenile probation for the offense of burglary of a conveyance. On appeal, the juvenile contended that the trial court should have granted his motion of judgment of dismissal. The Second District Court of Appeal reasoned that although the juvenile entered the conveyance without the consent of the owner, the State failed to present evidence as to how or when the juvenile entered the conveyance. Further, the State presented no evidence on the juvenile's intent when he entered. Additionally, it was improper for the lower court to infer intent based on the fact that the juvenile's entry was "stealthy" pursuant to s. 810.07(1), F.S. (2014). The statute provides that in a burglary trial "proof of the entering of such structure or conveyance at any time stealthily and without consent of the owner or occupant thereof is prima facie evidence of entering with intent to commit an offense." Here, whether the juvenile's entry was stealthy could not be determined because the State presented no evidence as to how the juvenile entered the conveyance. The Second District concluded that the State failed to meet its burden of proving that the juvenile entered the conveyance with the specific intent to commit an offense. Accordingly, and because it was undisputed that the juvenile entered the conveyance without consent, the Second District reversed and remanded for entry of a disposition order for the lesser included offense of trespass in a conveyance.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/August/August%2017,%202016/2D15-2174.pdf (August 17, 2016)

Third District Court of Appeal

C.H. v. State, ___ So. 3d ___, 2016 WL 4536457 (Fla. 3d DCA 2016). **USE OF "COMMON EXPERIENCE" OR "LIFE EXPERIENCE" IS NOT COMPETENT, SUBSTANTIAL EVIDENCE OF VALUATION AND IS INCONSISTENT WITH THE UNIFORM SYSTEM OF JUSTICE THAT BOTH THE FLORIDA AND UNITED STATES CONSTITUTION REQUIRE.** The juvenile appealed the lower court's order adjudicating him delinquent on a charge of felony criminal mischief. The Third District Court of Appeal found that the record evidence did not satisfy the \$1,000 threshold for felony criminal mischief. The only evidence presented regarding the element of value came from the owner of the car. The State did not offer the repair bills for the vehicle into evidence. Nor was the owner qualified to provide a lay opinion of the value of the damage to the vehicle. However, the State did offer into evidence a videotape showing the juvenile jumping on the vehicle, and the testimony of the owner that his car was in the repair shop for more than two weeks. However,

the Florida Supreme Court expressly rejected the use of “common experience” or “life experience” to determine the value of damage in a criminal mischief case. Hence, the lower court erred in finding the juvenile guilty of felony criminal mischief. Further, reasoned the Third District, although the testimony of loss market value may be an appropriate measure of damages in a criminal mischief case, this owner’s testimony was too imprecise to constitute competent, substantial evidence of lost market value. Even more, the owner was no more qualified to give a lay opinion concerning a post-repair diminution of market value, if any, of the vehicle as a result of the crime any more than he was qualified to opine on the cost of the repair itself. Accordingly, the Third District, reversed and remanded with instructions.

<http://www.3dca.flcourts.org/Opinions/3D15-1618.pdf> (August 31, 2016)

Fourth District Court of Appeal

A.R.M. v. State, ___ So. 3d ___, 2016 WL 4470164 (Fla. 4th DCA 2016). **THE LOWER COURT DEPARTED UPWARD FROM THE DEPARTMENT OF JUVENILE JUSTICE’S COMMITMENT LEVEL RECOMMENDATION AND FAILED TO MAKE THE SPECIFIC FINDINGS MANDATED BY E.A.R. THE LOWER COURT ALSO IMPROPERLY CONSIDERED SUBSEQUENT CHARGES IN VIOLATION OF THE JUVENILE’S DUE PROCESS RIGHTS UNDER THE RECENT CASE NORVIL.** The juvenile was charged with burglary and other charges. During a weekend recess, the juvenile was arrested for a new burglary charge. The lower court sentenced the juvenile to a level eight (8) commitment despite the Department of Juvenile Justice’s level six (6) recommendation. The Fourth District Court of Appeal reversed the sentence because the lower court failed to make the specific findings mandated by E.A.R. v. State, 4 So. 3d 614 (Fla. 2009). The Fourth District noted that during sentencing the court took into account the juvenile’s arrests without conviction that occurred after the crimes in this case. Although such a consideration is consistent with the crimes in that jurisdiction, it violated due process rights under the recent case of Norvil v. State, 191 So. 3d 406 (Fla. 2016).

<http://www.4dca.org/opinions/Aug%202016/08-24-16/4D15-65.op.pdf> (August 24, 2016)

Fifth District Court of Appeal

D.J.M. v. State, ___ So. 3d ___, 2016 WL 4158763 (Fla. 5th DCA 2016). **BECAUSE THE RESTITUTION ORDER INCLUDED AN AWARD FOR ITEMS NOT SPECIFICALLY LISTED AND ALSO PROVIDED FOR RESTITUTION FOR A CLAIM THAT WAS NOT CAUSALLY CONNECTED (OR OTHERWISE HAD A SIGNIFICANT RELATIONSHIP TO THE OFFENSES FOR WHICH THE JUVENILE TENDERED A PLEA), THE FIFTH DISTRICT REVERSED AND REMANDED FOR A CORRECTED ORDER.** The juvenile was charged with (1) grand theft of a motor vehicle, (2) burglary of a conveyance, and (3) grand theft of money, a cellphone, and a wallet and its contents, having a combined value of \$300 or more. The juvenile and the State entered a plea agreement in which the juvenile agreed to plead no contest to the two grand theft charges, with the State agreeing to dismiss the count of burglary of a conveyance. As part of the plea, the juvenile agreed to pay restitution, with the lower court reserving jurisdiction to determine the specific amount of restitution. The Fifth District Court of Appeal found a portion of the lower court’s restitution order improper for two reasons. First, the lower court ordered the juvenile to pay restitution for both a computer tablet and school textbooks that the victim testified were also taken from the stolen vehicle. However, 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 body of the factual basis of the plea. Here, the arrest affidavit, petition for delinquency, and the factual basis tendered to support the plea never mentioned the tablet or textbooks, nor was the delinquency petition ever amended. Secondly, the lower court required the juvenile to reimburse the victim for the loss of college financial aid that the victim testified he lost due to failing two classes as a result of the theft. In so doing, the lower court should have found that the loss was causally connected to the offense; and, for restitution to be deemed reasonable, it must bear a significant relationship to the offense of which the defendant is convicted. Like the tablet and textbooks, the loss of college financial aid was never mentioned by the State in the petition for delinquency or at the plea hearing. Further, the loss of financial aid had no causal connection to the theft of the motor vehicle (as the vehicle was promptly returned to the victim), nor to the theft of the money, wallet, or cellphone (which were the two specific charges to which the juvenile pleaded no contest). Accordingly, the Fifth District reversed and remanded for entry of a corrected restitution order.

<http://www.5dca.org/Opinions/Opin2016/080116/5D15-4496.op.pdf> (August 5, 2016)

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

J.C.O. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2016 WL 4468112 (Fla. 3d DCA 2016). **ADJUDICATION ORDER REVERSED BASED ON IMPROPERLY ADMITTED HEARSAY AND EXCLUSION OF COUNSEL FROM HEARING.** The Third District Court of Appeal reversed adjudication of a father's child as dependent. The father resided in Nicaragua and was not present at the dependency hearing. The Department requested that a default be entered against the father due to his failure to appear at the hearing, which the court would have granted if the Department could show proof that the father had been served. However, the name on the delivery receipt for service was somewhat different from the father's name. In addition, the case manager's testimony was ambiguous and included a layer of hearsay regarding whether the father was served. Moreover, the father's counsel was removed from the courtroom after improperly interrupting the trial court multiple times to object to object to the testimony. The child was adjudicated dependent after the father's counsel was removed. On appeal, the District Court noted that the case manager's testimony included inadmissible hearsay and reversal was required. The court also noted a separate ground for reversal when that the trial court heard argument from the Department on the service issue after the father's counsel had been removed. The court reversed the order and remanded the case for further proceedings.

<http://www.3dca.flcourts.org/Opinions/3D16-0320.pdf> (August 24, 2016)

Department of Children and Families v. M.N., ___ So. 3d ___, (Fla. 3d DCA 2016). **TERMINATION OF SUPERVISION REVERSED.** The Third District Court of Appeal reversed an order terminating the Department's supervision over two children placed with their paternal aunt. The children and the aunt lived in Puerto Rico, having been placed there while the parents worked on their case plans. During the course of the case, the parents did not engage in the services to which they were referred, and the children's caregiver, the aunt, was concerned about the lack of parent-child communication. Neither parent complied with the case plan. The mother advised the case manager that both parents were leaving for Puerto Rico and the case manager provided referrals for services there. The court terminated supervision in April, 2016, over the Department's objection, intending to transfer the case to Puerto Rico. The Department filed a motion for rehearing, which argued that there was no mechanism to transfer the case and that witnesses were in Miami. The Department wanted to file a termination of parental rights petition so that the children could be adopted. The trial court denied the motion because the parents had not

been located and because the court would not conduct adoption proceedings for out-of-state children. On appeal, the District Court noted the applicability of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and that the trial court had jurisdiction over the children. The court further noted that the trial court's dismissal of the case without a permanency provision for the children was contrary to statute. The court thus reversed the dismissal and remanded the case for either termination of parental rights or a hearing to consider the "relevant factors" under s. 61.520(2), F.S.

<http://www.3dca.flcourts.org/Opinions/3D16-1111.pdf> (August 31, 2016)

Fourth District Court of Appeal

J.P. v. V.P., ___ So. 3d ___, 2016 WL4205359 (Fla. 4th DCA 2016). **CONFESSION OF ERROR**. The Fourth District Court of Appeal reversed a visitation order and remanded the case so the trial court could enter a proper order containing specific findings of fact and conclusions of law. <http://www.4dca.org/opinions/Aug%202016/08-10-16/4D16-1590.pdf> (August 11, 2016)

Fifth District Court of Appeal

Department of Children and Families v. J.D., ___ So. 3d ___, 2016 WL 4180212 (Fla. 5th DCA 2016). **DISMISSAL OF INJUNCTION PETITION FOR LACK OF JURISDICTION REVERSED**. The Fifth District Court of Appeal reversed a dismissal of a dependency that had been made purportedly based on a lack of jurisdiction. The Department had sought a petition for an injunction to prevent the mother's paramour from having contact with a seven-year old child who the paramour was accused of raping repeatedly. The trial court granted a temporary injunction but denied a permanent injunction, erroneously believing the court lacked jurisdiction. On appeal, the District Court noted the statutory basis for the trial court's jurisdiction, analyzed ss. 39.504(2) and 39.01(20), F.S., and determined that the trial court abused its discretion in attempting to send the petition to a colleague in a different division. The court thus reversed the order and remanded the case to the trial court to conduct an evidentiary hearing on whether a permanent injunction should be issued prohibiting the paramour from abusing or having any contact with the child.

<http://www.5dca.org/Opinions/Opin2016/080116/5D16-1739.op.pdf> (August 5, 2016)

Dissolution of Marriage Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Department of Revenue v. Llamas, __ So. 3d __, 2016 WL 4446050 (Fla. 1st DCA 2016). **INCOME CANNOT BE IMPUTED TO A PARENT WHO IS INCARCERATED AT THE TIME AN INITIAL SUPPORT OBLIGATION IS ESTABLISHED; APPELLATE COURT CERTIFIED CONFLICT WITH McCALL**. Although not a dissolution of marriage case, this opinion is included because it addresses a prisoner's child support obligations. Here, the Administrative Law Judge (ALJ) declined to award current child support, finding that because the father was about to be incarcerated, he lacked the present ability to pay support. Concluding that the controlling statutes and the precedent set by the Florida Supreme Court do not permit imputation of income for child support purposes in such circumstances, the appellate court: declined to follow McCall v. Martin, 34 So. 3d 121 (Fla. 4th DCA 2010; certified conflict with McCall); and affirmed the order issued by the ALJ. https://edca.1dca.org/DCADocs/2015/2660/152660_DC05_08042016_082534_i.pdf (August 4, 2016)

Chandler v. Kibbey, __ So. 3d __, 2016 WL 4205418 (Fla. 1st DCA 2016). **TRIAL COURT FAILED TO MAKE CERTAIN FINDINGS REGARDING REASONABLENESS OF FEE AWARD**. The appellate court agreed with former husband that the reversal of the attorney's fee award to former wife was warranted where the trial court failed to make certain findings relating to the reasonableness of the award; the remainder of the final judgment of dissolution was affirmed. Reversed and remanded for further proceedings. https://edca.1dca.org/DCADocs/2015/3038/153038_DC08_08092016_081330_i.pdf (August 9, 2016)

Palmer v. Palmer, __ So. 3d __, 2016 WL 4205368 (Fla. 1st DCA 2016). **TRIAL COURT SHOULD ONLY REDUCE FEES WHEN IT WOULD BE INEQUITABLE NOT TO DO SO AFTER REVIEW OF ALL CIRCUMSTANCES; NEITHER S. 45.061(4) NOR 768.79, F.S., APPLY IN DISSOLUTION OF MARRIAGE PROCEEDINGS**. In another appeal from an order granting attorney's fees to former wife, at issue was whether the trial court, having determined to award fees to former wife based on a significant disparity in non-marital assets, could then deny fees incurred after her rejection of a settlement offer. The trial court's denial of fees was based solely on its determination that the rejection of the settlement offer was unreasonable. The appellate court declared conflict with Hallac v. Hallac, 88 So. 3d 253 (Fla. 4th DCA 2012), to the extent that it determined that rejection of a settlement offer may be the "sole basis for overriding a determination of an award of financial need in denying attorney's fees accrued after the rejection." The appellate court concluded that here the trial judge erred in applying the offer of judgment statutes to dissolution proceedings; that should be a legislative decision. Reversed and remanded for the trial court to revisit the fee award, "evaluating all pertinent considerations," not just rejection of the settlement offer.

https://edca.1dca.org/DCADocs/2015/3325/153325_DC13_08092016_081701_i.pdf (August 9, 2016)

Donovan v. Donovan, ___ So. 3d ___, 2016 WL 4205426 (Fla. 1st DCA 2016). **ENTRY OF A NOMINAL ALIMONY AWARD NOT NECESSARY WHERE TRIAL COURT STATED ITS INTENTION TO RETAIN JURISDICTION TO ENTER WHATEVER ORDERS MIGHT BE REQUIRED.** The appellate court affirmed on all issues raised by the spouses, but provided an explanation as to the appropriateness of affirming the trial court's order that reduced former husband's alimony obligation to zero based on changed circumstances. Former wife argued that even if reduction of alimony were proper, the appellate court should remand and require the trial court to enter a nominal amount to preserve jurisdiction. Although a nominal award of alimony preserves a trial court's jurisdiction to revisit the issue in the future, the appellate court noted here that the trial court had clearly stated its intention to retain jurisdiction to enter whatever other orders might be required; therefore, entry of a nominal alimony award was unnecessary.

https://edca.1dca.org/DCADocs/2015/3885/153885_DC05_08092016_082529_i.pdf (August 9, 2016)

Nguyen v. Nguyen, ___ So. 3d ___, 2016 WL 4235368 (Fla. 1st DCA 2016). **TRIAL COURT ERRED IN ALLOCATION OF RENTAL INCOME IN EQUITABLE DISTRIBUTION.** Former wife appealed the trial court's order. The appellate court agreed with former wife that the trial court erred in its allocation of rental income when devising its equitable distribution scheme, and reversed and remanded on that issue; it affirmed the remainder of the trial court's order without discussion. In its supplemental final judgment the trial court found that former wife had received one-half million dollars in rental income from the spouses' marital assets which she "solely received, conveyed, transferred, and/or hid." The trial court allocated this amount in rental income to former wife in its scheme of equitable distribution. The appellate court reversed and remanded for the trial court to make findings of fact explaining the evidentiary source of the amount of the rental income allocated to former wife. In its Order on Remand, the trial court found that former wife had "solely received, transferred, conveyed, and/or hid" a slightly higher amount than that contained in the supplemental final judgment. It also: made findings as to the real properties and the rental incomes they generated; found former wife was the sole beneficiary of the rental income; and made factual findings to support its conclusion that former wife intentionally attempted to defraud former husband regarding their real properties. The appellate court noted that a trial court's ruling on equitable distribution is reviewed for an abuse of discretion and that an appellate court must determine whether the trial court's order is supported by competent, substantial evidence. The appellate court concluded that although the trial court referred to its figures as net rental income, it failed to account for any expenses associated with the properties such as mortgage payments. Furthermore, the trial court made additional errors regarding allocation. Accordingly, the appellate court reversed the trial court's scheme of equitable distribution regarding rental income and remanded for further proceedings consistent with its opinion.

https://edca.1dca.org/DCADocs/2015/4451/154451_DC08_08112016_122107_i.pdf (August 11, 2016)

Ketcher v. Ketcher, ___ So. 3d ___, 2016 WL 4395040 (Fla. 1st DCA 2016). TRIAL COURT'S CHANGE IN TYPE OF ALIMONY ON REMAND EXCEEDED SCOPE OF THE MANDATE TO MAKE FINDINGS ON AND, IF NECESSARY, RECONSIDER AMOUNT OF ALIMONY. Another appeal of an Order on Remand. In Ketcher v. Ketcher, 188 So. 3d 991 (Fla. 1st DCA 2016), the appellate court reversed the final judgment dissolving a twenty-six year marriage and remanded for the trial court to make additional findings and, if necessary, reconsider the *amount* of the alimony award. (Emphasis in opinion). The trial court's amended final judgment entered on remand made the additional findings but changed the type of alimony from permanent to durational. Former husband moved to enforce the mandate, arguing that the trial court had exceeded the scope of the mandate by changing the type of alimony awarded. Former wife countered that the trial court did not exceed the scope because it effectively reduced the amount by reducing its duration. Agreeing with former husband and noting that it had the inherent power to enforce its mandate, the appellate court granted former husband's motion to enforce the mandate, quashed the amended final judgment, and remanded for further proceedings consistent with its opinion. The appellate court noted that the trial court's findings on remand suggested that former husband's need for alimony and former wife's ability to pay were "considerably" less than those in the final judgment. Those findings, if supported by the evidence, might warrant nominal or reduced permanent alimony, but did not justify the trial court's decision to exceed the scope of the mandate by changing the type of alimony awarded.

https://edca.1dca.org/DCADocs/2015/4769/154769_DC08_08182016_021918_i.pdf (August 18, 2016)

Second District Court of Appeal

Loza v. Marin, ___ So. 3d ___, 2016 WL 4261396 (Fla. 2d DCA 2016). TRIAL COURT WAS WITHOUT JURISDICTION TO EXTEND CHILD SUPPORT OBLIGATION WHERE SPOUSE'S PETITION FOR MODIFICATION WAS FILED AFTER CHILD REACHED MAJORITY AND OTHER SPOUSE'S SUPPORT OBLIGATION CEASED; CHILD SUPPORT TERMINATES WHEN A CHILD TURNS EIGHTEEN UNLESS S. 743.07 APPLIES OR THE PARTIES AGREE OTHERWISE; A TRIAL COURT MAY MODIFY A CHILD SUPPORT OBLIGATION WHILE IT IS STILL IN FORCE. At issue was whether the trial court had subject matter jurisdiction to modify former husband's child support obligation pursuant to s. 743.07, F.S. (2013). Approximately five months after their son turned eighteen, former husband moved for termination of his child support obligation for that child. Former wife filed a counter-petition for modification. The appellate court found that her counter-petition was untimely and that the trial court lacked jurisdiction to extend former husband's child support obligation. Child support orders are required to terminate upon a child reaching majority unless s. 743.07(2) applies or the parties agree otherwise. A trial court has continuing jurisdiction to modify a support award while it is in force. Here, because former husband's child support obligation ceased when the son graduated from high school and turned eighteen, the trial court's jurisdiction to extend that obligation also ended. The appellate court reversed the modification order and remanded for the trial court to recalculate the support obligation relating to the spouses' still-minor daughter.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/August/August%2012,%202016/2D15-3235%20co.pdf (August 12, 2016)

Rieder v. Rieder, ___ So. 3d ___, 2016 WL 4375425 (Fla. 2d DCA 2016). **INJUNCTIVE REMEDIES GRANTED BY TRIAL COURT BUT NOT REQUESTED BY SPOUSE REVERSED**. The appellate court found no reversible error in the denial of former husband's petition for modification of alimony and affirmed. It also affirmed the trial court's order that granted former wife's motion for contempt and enforcement of the final judgment of dissolution and the marital settlement agreement with two exceptions: a provision threatening former husband with incarceration if he did not sell a home located in Georgia and use the proceeds to satisfy an alimony arrearage; and a provision enjoining him from transferring any of the property listed on his financial affidavit except for purposes of satisfying the alimony arrearage. Neither of these injunctive remedies were requested by former wife in her motion, nor was former husband given notice of either. Accordingly, the appellate court reversed both provisions.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/August/August%2017,%202016/2D14-415.pdf (August 17, 2016)

Shaver v. Shaver, ___ So. 3d ___, 2016 WL 4446498 (Fla. 2d DCA 2016). **LACK OF COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTING FINDINGS AND INCONSISTENCIES BETWEEN TRIAL COURT'S ORAL RULINGS AND ITS FINAL JUDGMENT REQUIRED REVERSAL**. The appellate court reversed a final judgment of dissolution in part and remanded for further proceedings because "significant portions" of it were not supported by competent, substantial evidence or were inconsistent with the trial court's oral rulings. Reversed and remanded for the trial to reconsider the scheme of equitable distribution and the amount and duration of the alimony award, taking into account the impact of former wife's education expenses.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/August/August%2024,%202016/2D14-5873.pdf (August 24, 2016)

Sweeney v. Sweeney, ___ So. 3d ___, 2016 WL 4547653 (Fla. 2d DCA 2016). **TRIAL COURT ERRED IN CREDITING SPOUSE FOR SAME TAXES TWICE IN EQUITABLE DISTRIBUTION**. Both spouses appealed a final judgment of dissolution. The appellate court affirmed the judgment in its entirety with the exception of an "excessive" credit awarded to former wife for tax payments she made on real estate commissions that were divided in the equitable distribution. The appellate court agreed with former husband that the trial court erred in crediting former wife for taxes she paid on the marital commissions because the court had already permitted her to deduct cash for the same marital taxes. Thus, former wife was credited for the same taxes twice. Reversed and remanded for the trial court to adjust the equitable distribution scheme.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/August/August%2031,%202016/2D15-2677.pdf (August 31, 2016)

Third District Court of Appeal

Jackson v. Jackson, ___ So. 3d ___, 2016 WL 4131962 (Fla. 3d DCA 2016). **NEW TRIAL WARRANTED WHEN APPEALING SPOUSE WAS UNABLE TO PROVIDE A TRANSCRIPT THROUGH NO FAULT OF HIS OWN AND THE RECORD COULD NOT BE RECONSTRUCTED**. The appellate court granted former husband's motion for clarification, withdrew its opinion issued June 22, 2016, and substituted another opinion. The appellate court found a new trial was warranted in an appeal

of a final judgment of dissolution in which former husband was unable to provide a transcript of the final hearing through no fault of his own and the record could not be reconstructed. Shortly after former husband filed his notice of request to transcribe the final hearing, his counsel was informed that the court reporter who had transcribe the proceedings had died; a search for the recordings or equipment proved fruitless. The appellate court affirmed the judgment of dissolution, but reversed the trial court's rulings on alimony, equitable distribution, child support, time-sharing, and attorney's fees, and remanded for a new trial.

<http://www.3dca.flcourts.org/Opinions/3D14-3036.rh.pdf> (August 3, 2016)

Adkins v. Sotolongo, __ So. 3d __, 2016 WL 4131996 (Fla. 3d DCA 2016). **IN ABSENCE OF A TRANSCRIPT, APPELLATE REVIEW IS LIMITED TO ERRORS ON FACE OF ORDER; CHILD SUPPORT PAYMENTS MAY NOT BE SUBORDINATED TO ATTORNEY'S FEES OR GUARDIAN AD LITEM FEES.** The mother appealed a non-final trial court order that granted the Guardian ad Litem's (GAL) motion to compel payment of the GAL fees. In the absence of a record, the appellate court noted its review was limited to errors on the face of the order. The appellate court concluded that although there may have been evidentiary support for the trial court's decision to modify the father's child support obligations, its order failed to set forth the requisite statutory findings as to the parents' income, the basis for the modification, or justification for departure from the child support guidelines. It also failed to include findings supporting the GAL's requested fees, what the services were, or the claimed value of those services. The trial court's order also directed the father to pay a portion of the GAL fees directly from his child support obligation. This was error; child support payments may not be subordinated to attorney's fees. The appellate court reversed the portion of the order requiring that the GAL fees come out of child support; it remanded for the trial court to consider the evidence supporting the GAL's request for fees, to include findings justifying reasonable fees for specific services, and to clarify who would pay.

<http://www.3dca.flcourts.org/Opinions/3D16-0603.pdf> (August 3, 2016)

Fourth District Court of Appeal

Dickson v. Dickson, __ So. 3d __, 2016 WL 4132704 (Fla. 4th DCA 2016). **NEITHER A SPOUSE'S AGE NOR HIS OR HER ABILITY TO EARN SOME INCOME IS ENOUGH, STANDING ALONE, TO REBUT THE PRESUMPTION IN FAVOR OF PERMANENT ALIMONY IN LONG-TERM MARRIAGES; HERE, TRIAL COURT ERRED IN NOT APPLYING THE PRESUMPTION; A TRIAL COURT ABUSES ITS DISCRETION IF IT FAILS TO AWARD RETROACTIVE SUPPORT FROM THE FILING DATE WHERE THERE IS A NEED FOR CHILD SUPPORT AND AN ABILITY TO PAY.** Former wife argued trial court error in her appeal of a final judgment of dissolution. Specifically, she argued that bridge-the-gap alimony was inappropriate, that she should have been awarded retroactive child support, and that the scheme of equitable distribution was in error. The appellate court found that the first two arguments had merit and required reversal. Citing Cerra v. Cerra, 820 So. 2d 398 (Fla. 5th DCA 2002), the appellate court reiterated that neither a spouse's age nor his or her ability to earn some income is enough in and of itself to rebut the presumption in favor of permanent alimony in long-term marriages. As the Fifth District recognized in Motie v. Motie, 132 So. 3d 1210 (Fla. 5th DCA 2014), courts have very often found permanent alimony appropriate in long-term marriage cases where one spouse has historically been the home-maker and there is substantial disparity in income. Here, the trial court should have applied the rebuttable presumption in favor of permanent

alimony; its findings were insufficient to overcome that presumption and its finding that bridge-the-gap alimony was appropriate was in error. The trial court's failure to consider an award of retroactive child support was also in error. A trial court abuses its discretion when it fails to award retroactive support from the filing date of a petition for dissolution where there is a need for child support and an ability to pay. Reversed and remanded for the trial court to apply the rebuttable presumption of permanent alimony and to make findings, supported by the evidence, if it found that permanent alimony was inappropriate. The trial court was also instructed to reconsider retroactive child support on remand.

<http://www.4dca.org/opinions/Aug%202016/08-03-16/4D15-2804.op.pdf> (August 3, 2016)

Jordan v. Jordan, __ So. 3d __ 2016 WL 4132676 (Fla. 4th DCA 2016). **IF AWARDING PERMANENT ALIMONY, TRIAL COURT MUST FIND THAT NO OTHER TYPE OF ALIMONY IS FAIR AND REASONABLE UNDER THE CIRCUMSTANCES OF THE SPOUSES; IN AWARDING ATTORNEY'S FEES, TRIAL COURT MUST MAKE FINDINGS ON THE REASONABLE NUMBERS OF HOURS EXTENDED AND THE REASONABLENESS OF THE HOURLY RATE.** In Jordan v. Jordan, 127 So. 3d 794 (Fla. 4th DCA 2013), the appellate court reversed a final judgment of dissolution and remanded to the trial court for it to correct the equitable distribution schedule and reconsider issues that would be affected as a result of the new distribution. After attempting to re-litigate a number of issues on remand, former husband appealed the amended final judgment entered by the successor judge. Finding that three issues had merit, the appellate court "gave those issues a final resting place" and affirmed the remainder. The first issue was the absence of the turn-in fees on a leased Lexus on the revised equitable distribution schedule; the appellate court reversed and remanded for the trial court to either revise the schedule, explain where the liabilities appeared, or justify why the liabilities were not shared. The second issue was possible reconsideration of the alimony award in light of the revised equitable distribution schedule. On remand, the trial court found no need to modify it because former husband had received more money as a result of the revised schedule. The appellate court found no error in the trial court's conclusion; however, it found that the trial court's failure to make the requisite findings that no other form of alimony would be fair and reasonable required reversal and remand. The third issue was whether the trial court erred in awarding \$13,000 in attorney's fees for former wife's two prior attorney where she failed to provide evidence in support of a reasonable number of hours. As neither attorney testified, the evidence consisted of former wife's testimony alone. The trial court failed to make findings on the reasonable number of hours or the reasonableness of the hourly rate. The appellate court concluded that the trial court abused its discretion. Accordingly, it reversed the \$13,000 fee award, but affirmed the remaining attorney's fees award.

<http://www.4dca.org/opinions/Aug%202016/08-03-16/4D15-1529.op.pdf> (August 3, 2016)

Pansky v. Pansky, __ So. 3d __, 2016 WL 4138246 (Fla. 4th DCA 2016). **TRIAL COURT MUST MAKE A SPECIFIC FINDING OF MISCONDUCT.** Former husband appealed the final judgment of dissolution, arguing numerous error by the trial court. Former wife conceded one: the trial court failed to make a specific finding of misconduct by former husband to support equitable distribution of the spent funds to her. Reiterating that there must be evidence of intentional dissipation or destruction of an asset by the spending spouse and a specific finding by the trial

court that the dissipation resulted from intentional misconduct, the appellate court reversed and remanded for further proceedings.

<http://www.4dca.org/opinions/Aug%202016/08-03-16/4D14-3481.op.pdf> (August 3, 2016)

Ridings v. Ridings, __ So. 3d __, 2016 WL 4468238 (Fla. 4th DCA 2016). **TRIAL COURT ERRED IN FAILING TO INDICATE WHICH SPOUSE WAS PAYING WHICH DEBT.** Former husband raised four issues in an appeal of a final judgment of dissolution. The appellate court found merit in one: the trial court clearly identified each marital liability and ordered the debt to be equally distributed between the spouses, but failed to indicate which spouse was responsible for making payments on which debt. This was error. Reversed and remanded for the trial court to determine which spouse was responsible for payment of which debt.

<http://www.4dca.org/opinions/Aug%202016/08-24-16/4D15-4103.op.pdf> (August 24, 2016)

Fifth District Court of Appeal

Palmer v. Palmer, __ So. 3d __, 2016 WL 4261989 (Fla. 5th DCA 2016). **AN ORDER REQUIRING A SPOUSE TO OBTAIN LIFE INSURANCE TO SECURE AN OBLIGATION MUST BE SUPPORTED BY THE EVIDENCE AND MUST INCLUDE FINDINGS AS TO COST AND AVAILABILITY OF THE INSURANCE AS WELL AS CIRCUMSTANCES JUSTIFYING INSURANCE.** Former husband raised a number of issues in his appeal of a final judgment of dissolution. The appellate court found that one had merit: the trial court required, without adequate factual findings, that he obtain life insurance to secure his alimony obligation. An order requiring a spouse to obtain life insurance to secure an obligation must be supported by the evidence and must include findings as to the cost and availability of the insurance as well as any special circumstances justifying the need for the insurance. A trial court's failure to make specific findings to support the award is reversible error. The appellate court instructed the trial court on remand to make sufficient findings of fact to support the award or remove the requirement.

<http://www.5dca.org/Opinions/Opin2016/080816/5D15-892.op.pdf> (August 12, 2016)

Viruet v. Grace, __ So. 3d __, 2016 WL 4431563 (Fla. 5th DCA 2016). **MONTHLY ARREARAGE PAYMENT REVERSED; AMOUNT OWED WAS NOT IN JUDGMENT; REMANDED TO TRIAL COURT TO DETERMINE AMOUNT OF CHILD SUPPORT ARREARAGE.** Granting former husband's motion for clarification in part, the appellate court reversed the provision in the final judgment of dissolution requiring that he pay \$100 per month towards child support arrearages because neither the magistrate's report nor the final judgment stated the amount of support owed. It remanded for the trial court to determine the amount, if any, of retroactive child support owed by former husband and to enter an amended judgment specifying the amount. The appellate court held that the trial court did not abuse its discretion in denying former husband's motions for a new trial and for rehearing, but did so without prejudice to allow former husband to bring the issue of whether former wife paid her court-ordered proportional share of day care expenses before the trial court if he chose.

<http://www.5dca.org/Opinions/Opin2016/081516/5D15-4058.op.pdf> (August 19, 2016)

Manubens v. Manubens, __ So. 3d __, 2016 WL 4415069 (Fla. 5th DCA 2016). **TRIAL COURT ORDER FOR PSYCHOLOGICAL EVALUATION OF A SPOUSE WHICH DID NOT ADDRESS "IN CONTROVERSY"**

OR “GOOD CAUSE” REQUIREMENTS OF RULE 1.360 QUASHED. Former wife sought certiorari review of a trial court order directing her to submit to a psychological evaluation. The appellate court granted the petition and quashed the order after finding it “overly broad”, and that the trial court failed to make the necessary findings to support its ruling. The trial court’s order stated that a psychological evaluation of former wife was warranted by the fact that she homeschooled the spouses’ four children. The order did not address the “in controversy” or “good cause” requirements of Florida Rule of Civil Procedure 1.360(a)(2). The appellate court held that this, in itself, was enough to overturn the trial court’s order.

<http://www.5dca.org/Opinions/Opin2016/081516/5D15-4081.op.pdf> (August 19, 2016)

Colino v. Colino, ___ So. 3d ___, 2016 WL 4493566 (Fla. 5th DCA 2016). A TRIAL COURT’S INTERPRETATION OF A PRENUPTIAL AGREEMENT IS REVIEWED DE NOVO; WHERE A CONTRACT IS CLEAR AND UNAMBIGUOUS, IT MUST BE ENFORCED PURSUANT TO ITS PLAIN LANGUAGE. The appellate court agreed with former husband that the trial court misinterpreted the spouses’ prenuptial agreement when it determined that a particular house was former wife’s separate property and awarded it to her. The evidence at trial regarding the home was “essentially undisputed.” During the marriage, former husband obtained a significant monetary settlement from a personal injury claim. He eventually transferred the settlement proceeds into an account titled solely in former wife’s name. The home was purchased from funds drawn from that account and titled solely in former wife’s name. Former wife quitclaimed the home to former husband in whose name title remained at the time of trial. The appellate court reiterated that a trial court’s interpretation of a prenuptial agreement is reviewed *de novo*; where a contract is clear and unambiguous, it must be enforced pursuant to its plain language. The appellate court concluded that when former wife first acquired the home in her name, it became her separate property; however, when she executed the quitclaim deed and transferred it to former husband, it became his separate property. Pursuant to the agreement, each spouse agreed not to make any claim on the separate property of the other spouse. Because neither spouse attempted to vacate or rescind the agreement, the trial court was obligated to enforce its clear terms and distribute the home to former husband. Reversed and remanded with directions to the trial court that it amend its judgment and distribute the home to former husband.

<http://www.5dca.org/Opinions/Opin2016/082216/5D15-2567.op.pdf> (August 26, 2016)

Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

Austin, v. Echemendia, ___ So. 3d ___, 2016 WL 4382557 (Fla. 4th DCA 2016). **DENIAL OF REPEAT VIOLENCE INJUNCTION REVERSED**. The petitioner appealed after the circuit court denied her petition for an injunction for protection against repeat violence. At the hearing, the petitioner testified that the respondent strangled her multiple times and left marks around her neck, then threatened to kill her. On a later date, she testified that the respondent again strangled her and left marks, then threw her to the ground. The respondent called the petitioner 28 times on one occasion and about 30-40 times during the month. He also left pictures of her house, texted her, followed her when she was with co-workers, and threatened to slash her tires. She also testified that he blocked her from leaving work with her car, banged on her car doors, and threatened her. The respondent did not appear at the hearing. The court denied the injunction, stating that there was no physical violence, but that the petitioner could re-file under a different form of petition, such as a stalking petition. The appellate court reversed, stating that the petitioner clearly established two incidents of violence as the statute required, when she testified about the two strangulation incidents. The court noted that the trial judge “overlooked the fact that stalking can constitute an act of repeat violence under the statute.”

<http://www.4dca.org/opinions/Aug%202016/08-17-16/4D15-4607.op.pdf> (August 17, 2016)

Bowles v. State, ___ So. 3d ___, 2016 WL 4381840 (Fla. 4th DCA 2016). **EVIDENCE WAS INADMISSIBLE IN CRIMINAL STALKING CASE**. In 2013, the defendant was ordered not to have any contact with his ex-wife except for issues related to the child. He was also required to have supervised timesharing, and could not possess a firearm. The order was later amended to stop the timesharing, but allowed him phone contact with the child. Another order stopped all contact between the defendant and his child and extended the order prohibiting him from possessing a firearm. Despite these orders, the defendant sent disturbing text messages, photos, and e-mails to his ex-wife and her fiancé and made threats to kill them and the fiancé’s family. The ex-wife obtained a domestic violence injunction against the defendant, yet he continued his threatening behavior. He was then charged and convicted for stalking and aggravated stalking in violation of the court orders and domestic violence injunction, and appealed. He argued that the trial court

erred by admitting evidence from the family court orders which required him to complete a psychological evaluation and prohibiting him from having firearms because the evidence was prejudicial. He claimed that the objectionable portions of the order only outlined the reason that the court temporarily suspended his timesharing, but the reason for the suspension was not relevant to any material fact in dispute in the aggravated stalking case. The appellate court agreed and reversed and remanded the case for a new trial, stating that “because the references in the court order to the requirements of a psychological evaluation and anger management course did not tend to prove or disprove a material fact, such evidence was irrelevant, and therefore, inadmissible.”

<http://www.4dca.org/opinions/Aug%202016/08-17-16/4D15-1929.op.pdf> (August 17, 2016)

Mitchell v. Mitchell, ___ So. 3d ___, 2016 WL 4445936 (Fla. 4th DCA 2016). **DOMESTIC VIOLENCE INJUNCTION REVERSED**. The trial court issued a final judgment of injunction for protection against domestic violence based upon several text messages that the petitioner provided and the court admitted into evidence. The respondent appealed, stating that the text messages were incomplete and were missing portions of the conversation. He also claimed that the trial court applied the incorrect standard and that the evidence did not support the injunction. The appellate court agreed and reversed, stating that the petitioner was not in imminent harm as required by the statute.

<http://www.4dca.org/opinions/Aug%202016/08-24-16/4D15-864.op.pdf> (August 24, 2016)

Klemple v. Gagliano, ___ So. 3d ___, 2016 WL 4539610 (Fla. 4th DCA 2016). **STALKING INJUNCTION REVERSED**. Neighbors filed petitions for injunctions for protection against stalking against each other, and the court issued both injunctions. One neighbor appealed, stating that the evidence was insufficient to establish that the appealing neighbor followed or harassed the other neighbor. The appellate court reversed, noting that there was not competent, substantial evidence to support the injunction. The behavior described during the hearing did not constitute following or harassment as described in the statute. Further, the evidence that was admitted was based upon hearsay and speculation.

<http://www.4dca.org/opinions/Aug%202016/08-31-16/4D15-4761.op.pdf> (August 31, 2016)

Fifth District Court of Appeal

No new opinions for this reporting period.