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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

No new opinions for this reporting period.

Second District Court of Appeal

S.T.L. v. State, ___ So. 3d ___, 2016 WL 3569568 (Fla. 2d DCA 2016). **DISPOSITION ORDER REMANDED FOR CORRECTION OF SCRIVENER'S ERROR.** In an Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), appeal, the Second District Court of Appeal found no error in the disposition or the sentence. However, the Second District remanded for the circuit court to correct a scrivener's error in the disposition order. The juvenile entered a plea of no contest to the offenses of possession of marijuana and possession of drug paraphernalia. The circuit court withheld adjudication and issued a judicial warning. However, the following three options were checked on the disposition order: "Adjudication of delinquency is withheld," "The child is adjudicated delinquent," and "The child is given a Judicial Warning." Accordingly, the disposition order was remanded for the circuit court to correct the scrivener's error to reflect that adjudication of delinquency was withheld and that the child was given a judicial warning. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/July/July%2001,%202016/2D15-3964.pdf

Z. A. v. State, ___ So. 3d ___, 2016 WL 3766773 (Fla. 2d DCA 2016). **TRIAL COURT IMPERMISSIBLY ORDERED DEPOSITIONS TO BE TAKEN IN A COUNTY OTHER THAN WHERE THE DEONENTS RESIDED AND ORDERED THE STATE TO REIMBURSE DEFENSE COUNSEL FOR EXPENSES ASSOCIATED WITH GOING TO UNATTENDED DEPOSITIONS.** The State petitioned for a writ of certiorari to quash the trial court's orders directing: (1) the depositions of two witnesses to occur in Lee County, and (2) the State to reimburse the defense for costs associated with deposing the two witnesses. The deponents were residents of Lee County at the outset of the underlying juvenile delinquency case. However, by the time they were actually served, the deponents had moved to Orange County. They were at their Lee County residence when they were served only to finish packing their remaining belongings. Prior to the deposition, the assistant state attorney was informed that the deponents had moved to Orange County. The assistant state attorney responded that she would do more research and get back to them. The assistant state attorney did not contact the deponents prior to the scheduled depositions. The assistant state attorney did not contact defense counsel to object to the location of the deposition or file a motion to quash the subpoena for deposition. The deponents failed to appear in Lee County for their depositions. The defense counsel filed a motion for an order to show cause based upon the deponents' nonattendance. Following a hearing on the motion and based upon the erroneous belief the deponents still lived in Lee County when they were served, the trial court ordered the depositions to occur in Lee County and for the State to reimburse defense counsel for the expenses associated with going to the unattended depositions. On appeal, the Second District

Court of Appeal, citing Florida Rule of Juvenile Procedure 8.060(d)(1)(B), found that the trial court impermissibly ordered the depositions to occur in Lee County when the deponents resided in Orange County. The Second District also found that the trial court could only impose costs through criminal contempt. In this instant case, the trial court explicitly found that the State's actions were not "nefarious," and no charge of contempt was ever brought. In the absence of a finding of contempt, it was clear legal error for the trial court to assess costs against the State. Accordingly, the Second District granted the petition and quashed the trial court order under review.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/July/July%2015,%202016/2D15-4926.pdf

Third District Court of Appeal

Y. A. v. State, __ So. 3d __, 2016 WL 3690611 (Fla. 3d DCA 2016). **USING THE JUVENILE'S PROBATIONARY STATUS AS A BASIS FOR ASSESSING AN ADDITIONAL POINT AS AN AGGRAVATING CIRCUMSTANCE ON THE DETENTION RISK ASSESSMENT INSTRUMENT (DRAI) WAS AN IMPERMISSIBLE DOUBLE SCORING.** The juvenile filed a petition for a writ of habeas corpus challenging the trial court's order of secure detention. The juvenile's risk assessment score was twelve points, as calculated by the Detention Risk Assessment Instrument (DRAI) prepared by the Department of Juvenile Justice (DJJ). In calculating the juvenile's score on the DRAI, the DJJ assigned points based upon the juvenile's most serious current offense (seven points); any other separate but pending offenses (zero); prior history of adjudication or adjudication withheld (two); and legal status (two). These assessments totaled eleven points, warranting non-secure or home detention. However, the DJJ assessed one point for "Aggravating Circumstances." The explanation for this additional point on the last page of the DRAI was, "The youth has an extremely unusual amount of prior offenses. The Juvenile has unusual amount of prior offenses." During the detention hearing, the juvenile's counsel challenged the calculations and specifically contended that the additional point for Aggravating Circumstances was improper. The trial court did not directly address this objection, or make a finding that the additional one-point assessment was warranted based upon the juvenile's "extremely unusual amount of prior offenses." Instead, the trial court indicated it was ordering secure detention based on the fact that the juvenile was on probation and allegedly violated that probation by being arrested on this new charge. The Third District Court of Appeal found that this was an improper basis upon which to order secure detention, as the DRAI already took into account, and assessed points for, the petitioner's "legal status" (i.e., being on probation) at the time of his arrest. Therefore, utilizing the juvenile's probationary status as a basis for assessing an additional point as an Aggravating Circumstance would be an impermissible double scoring. Accordingly, the Third District granted the writ, quashed the order of secure detention, and remanded with directions to hold an expedited detention hearing.

<http://www.3dca.flcourts.org/Opinions/3D16-1582.pdf>

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

D.L.C. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2016 WL 3916979 (Fla. 3d DCA 2016). **CONCESSION OF ERROR**. The Third District Court of Appeal reversed the trial court's Order of Default on the Motion for Supplemental Findings because the Department conceded error. The court remanded the case for an evidentiary hearing. <http://www.3dca.flcourts.org/Opinions/3D16-1109.pdf> (July 20, 2016)

In the Interest of: F.J.G.M., ___ So. 3d ___, 2016 WL 3974568 (Fla. 3d DCA 2016). **REHEARING DENIED**. The Third District Court of Appeal denied a motion for rehearing but granted a motion for a written opinion in a case that previously had been decided by a *per curiam affirmed* opinion. The case involved a mother's privately filed dependency petition. If the child had been adjudicated, he would have become eligible for a Special Immigrant Juvenile status visa. The petition's sole basis for dependency was abandonment by the father since the child's birth and the threat that the child would be deported to Honduras if the petition were denied. The trial court summarily denied the petition, which was affirmed on appeal by the District Court because the abandonment claim, thirteen years later, was too remote. The child did not meet the criteria for dependency. The court also noted that whether the child is ultimately permitted to remain in the country is the exclusive domain of Congress. <http://www.3dca.flcourts.org/Opinions/3D15-0546.rh.pdf> (July 20, 2016)

B.V. v. Department of Children and Families, ___ So. 3d ___ (Fla. 3d DCA 2016). **CONFESSION OF ERROR**. The Third District Court of Appeal reversed a permanent guardianship order, based on the Department's confession of error and the court's own review of the record. The court remanded the case back to the trial court for specific factual findings pursuant to statute. <http://www.3dca.flcourts.org/Opinions/3D16-0875.pdf> (July 27, 2016)

Fourth District Court of Appeal

E.M. v. Department of Children and Families, ___ So. 3d ___, 2016 WL 3611043 (Fla. 4th DCA 2016). **TERMINATION OF PARENTAL RIGHTS ORDER AFFIRMED BUT REMANDED FOR CORRECTION OF SCRIVENER'S ERROR**. The Fourth District Court of Appeal affirmed the termination of parental rights but remanded the order to correct a scrivener's error. Because the

abandonment ground which had been alleged was withdrawn, the judgment was remanded to clarify it was only based on the other grounds alleged.

<http://www.4dca.org/opinions/July%202016/07-06-16/4D16-287.op.pdf> (July 6, 2016)

S.R. v. Department of Children and Families, ___ So. 3d ___ (Fla. 4th DCA 2016). **PERMANENT GUARDIANSHIP ORDER REVERSED AND REMANDED BASED ON CONFESSION OF ERROR**. The Fourth District Court of Appeal reversed an order placing a father's two children in a permanent guardianship and terminating protective supervision. The Department conceded error to the father's argument that the order lacked the necessary factual findings under s. 39.6221(a) & (c), F.S. The general language used by the trial court was insufficient to meet the statutory standard. The appellate court thus reversed the order and remanded the case for the trial court to make the required statutory findings and set out the terms of the father's visitation.

<http://www.4dca.org/opinions/July%202016/07-20-16/4D16-0858.op.pdf> (July 20, 2016)

Fifth District Court of Appeal

No new opinions for this reporting period.

Dissolution of Marriage Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Everett v. Everett, __ So. 3d __, 2016 WL 3581267 (Fla. 1st DCA 2016). TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING STAY. Former husband sought an emergency stay of a trial court order granting former wife's eighth motion for contempt for non-payment of child support. Having made only two child support payments since January, 2015, and none since January, 2016, with the exception of paying a court-ordered purge in February, 2016, former husband was over \$20,000 in arrears. The appellate court treated former husband's request as a motion for review of the trial court's order denying the stay. Finding no abuse of discretion by the trial court, the appellate court affirmed.

https://edca.1dca.org/DCADocs/2016/2387/162387_NOND_07012016_020137_i.pdf (July 1, 2016)

Pucci v. Johnson, __ So. 3d __, 2016 WL 4004426 (Fla. 1st DCA 2016). TRIAL COURT ERRED IN FAILING TO DISTRIBUTE MARITAL ASSETS NOT ADDRESSED IN MARITAL SETTLEMENT AGREEMENT; A TRIAL COURT IS STATUTORILY REQUIRED TO DISTRIBUTE ALL MARITAL ASSETS. The appellate court agreed with former wife that the trial court erred in failing to distribute the marital assets identified in her motion for rehearing but not addressed in the marital settlement agreement (MSA) which was incorporated into the final judgment. A trial court is statutorily required to distribute all marital assets. Accordingly, it reversed and remanded for the trial court to distribute any marital assets not addressed in the settlement agreement.

https://edca.1dca.org/DCADocs/2015/3747/153747_DC13_07252016_094657_i.pdf (July 25, 2016)

Fahey v. Fahey, __ So. 3d __, 2016 WL 3675213 (Fla. 1st DCA 2016). A TRIAL COURT REVIEWS A MAGISTRATE'S REPORT TO ENSURE FINDINGS ARE NOT CLEARLY ERRONEOUS AND LAW HAS NOT BEEN MISCONSTRUED; APPELLATE COURT REVIEWS A TRIAL COURT'S ORDER FOR ABUSE OF DISCRETION; FLORIDA LAW PRECLUDES AGREEMENTS TO TERMINATE PARENTAL RIGHTS; HOWEVER, STIPULATIONS CONCERNING PATERNITY CAN SERVE AS A BASIS FOR DETERMINATION OF PATERNITY; DETERMINATION OF NON-PATERNITY HAS NO EFFECT ON LEGITIMACY OF CHILD BORN DURING A VALID MARRIAGE; LEGITIMACY AND PATERNITY ARE RELATED, BUT ARE SEPARATE CONCEPTS. The spouses were married after discovering former wife was pregnant; after they separated, a paternity test revealed that the child born during their marriage was not former husband's biological son. The spouses stipulated to this fact during their dissolution proceeding and agreed that former husband would have no parental rights or responsibilities regarding the child. The spouses began seeing each other again a few months after their dissolution. In November, 2012, the child's biological father petitioned in Georgia to be declared the legitimate father and also sought custody. In December, 2012, the spouses remarried; shortly after, former husband sought to intervene in the action in Georgia on the basis

that he was the child's legitimate and legal father. In October, 2014, the Georgia court awarded the biological father primary physical custody after having found him to be the legitimate father. Concluding that the stipulation contained in the final judgment of dissolution in Florida had effectively terminated former husband's rights, the Georgia appellate court affirmed. Former husband petitioned for relief in Florida, arguing that the paragraph in the final judgment containing the stipulation effectively terminated his parental rights without invoking Chapter 39 "safeguards". Concluding that the stipulation was not a termination of parental rights, but rather a stipulation as to non-paternity, the magistrate recommended that former husband's petition be dismissed with prejudice. The trial court denied former husband's exceptions to the report and incorporated the report into its order. A trial court reviews a magistrate's report to ensure its findings are not "clearly erroneous" and that the law has not been misconstrued; an appellate court reviews a trial court's order for abuse of discretion. Florida law precludes an agreement to terminate parental rights as a matter of public policy; however, stipulations or agreements concerning paternity can serve as a basis for determination of paternity. Here, the magistrate correctly noted that there was no suggestion in the dissolution final judgment that the stipulation was a termination of parental rights, but rather a stipulation based on results of a paternity test. The appellate court noted that the non-paternity determination had no effect on the legitimacy of the child because he was born during a valid marriage. While paternity and legitimacy are related, they are separate concepts, Daniel v. Daniel, 695 So. 2d 1253 (Fla. 1997). The appellate court held that *res judicata* precluded former husband from collaterally attacking the Georgia judgment in a Florida court. Acknowledging its sensitivity to former husband's plight, the appellate court found itself unable to conclude that the magistrate's report was clearly erroneous or that the trial court abused its discretion in adopting it. Affirmed.

https://edca.1dca.org/DCADocs/2016/0910/160910_DC05_07252016_100106_i.pdf (July 25, 2016).

Second District Court of Appeal

Slaton v. Slaton, ___ So. 3d ___, 2016 WL 3767297 (Fla. 2d DCA 2016). TRIAL COURT HAD SUFFICIENT EVIDENCE TO MODIFY CUSTODY BUT FAILED TO PROVIDE PARENT WITH STEPS NECESSARY TO REGAIN CUSTODY AND TIME-SHARING. At the time the spouses' marriage was dissolved in Washington State, former wife was living in Florida; former husband was deployed on active duty in Qatar with the US Air Force. The Washington judgment gave former wife primary residential custody with former husband having "visitation" via Skype or phone call. Former husband was transferred to Louisiana on return to the United States. At that time, the spouses reached an agreement on time-sharing, which allowed the children to spend time with former husband in Louisiana while former wife remained in Florida. The spouses shared the expenses of the exchanges. While the children were with former husband in the summer of 2015, former wife was arrested for aggravated battery with a weapon on her paramour and the paramour was arrested for battery as well. This was not the first instance of domestic violence between the pair. The children had witnessed prior acts of domestic violence because the paramour lived on and off with former wife and the children. Former wife's arrest prompted former husband to refuse to return the children which in turn prompted her to domesticate and enforce the Washington judgment. Former husband petitioned for and was granted temporary residential custody after

a hearing. Former wife appealed the lack of a time-sharing schedule within the trial court's order as well as its failure to provide her with a path to regain primary residential custody. The appellate court affirmed the temporary modification of primary residential custody after finding sufficient evidence to support the trial court's findings that an emergency situation existed and that the situation constituted an unanticipated, substantial, and material change in circumstances warranting modification of former wife's custody and visitation; however, it found that the trial court erred in failing to specify the steps necessary for former wife to regain residential custody. Citing its opinions in Perez v. Fay, 160 So. 3d 459 (Fla. 2d DCA 2015), and Grigsby v. Grigsby, 39 So. 3d 453 (Fla. 2d DCA 2010), the appellate court held that a trial court may not modify primary residential custody, based on a parent's behavior, without specifying the steps that the parent must take to restore the original custody arrangement. Here, it found the trial court's order "wholly failed" to provide those steps; the appellate court concluded that the order was also deficient for having failed to incorporate any time-sharing plan for former wife. Both are reversible error; accordingly, the appellate court remanded for further proceedings.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/July/July%2015,%202016/2D15-5614.pdf (July 15, 2016)

Bachman v. McLinn, ___ So. 3d ___, 2016 WL 3913366 (Fla. 2d DCA 2016). **A TRIAL COURT CAN ONLY MODIFY SUPPORT PAYMENTS PROSPECTIVELY FROM THE TIME A PETITION FOR MODIFICATION IS FILED.** In June, 2012, former husband sought relief for monthly child care costs that former wife did not incur dating to March, 2010. The trial court granted relief retroactive to March, 2010. The appellate court held this was error because a trial court can only modify support payments prospectively from the time a petition for modification is filed. Accordingly, the appellate court reversed and remanded for the trial court to credit former husband retroactive to June, 2012. A supplemental final judgment entered by the trial court on the same day as the order on appeal correctly credited former husband for child care costs from June, 2012, forward.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/July/July%2020,%202016/2D15-2796.pdf (July 20, 2016)

Back v. Back, ___ So. 3d ___, 2016 WL 3946806 (Fla. 2d DCA 2016). **TRIAL COURT MAY NOT IMPUTE INCOME TO PARENT WHOSE UNEMPLOYMENT IS INVOLUNTARY.** Both spouses cross-appealed the amended final judgment dissolving their marriage; former wife also appealed a final money judgment which the appellate court affirmed without comment. It also affirmed the other points raised by the spouses with the exception of the trial court's imputation of income to former husband for the purpose of calculating child support. The evidence showed that former husband had been fired from his position as a Farm Bureau Insurance agent; his termination did not result from any misconduct. Other than severance pay of \$720 for 120 months, former husband's only other income was the \$1000 per month he received as an agent for Citizens Property Insurance. Former husband argued that the trial court's imputation of income to him of \$140,000 per year was error; the appellate court agreed. Imputing income to an unemployed parent for purposes of calculating child support is a two-step process. First, the court must determine whether the unemployment is voluntary; if so, it must then determine what level of income to impute. In absence of evidence that a parent's unemployment is voluntary, imputing income is error. The appellate court stated it succinctly: a trial court may not impute income to a parent whose

unemployment is involuntary. Here, former husband was terminated days before the final hearing began. He testified that in those days he had contacted several persons within the industry and had several interviews scheduled. Former wife offered no evidence that his unemployment was anything other than involuntary. Reversed and remanded for the trial court to recalculate former husband's child support obligation based on evidence of his actual employment status and earnings.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/July/July%2022,%202016/2D14-3076.pdf (July 22, 2016)

Third District Court of Appeal

Glass v. Glass, __ So. 3d __, 2016 WL 3611019 (Fla. 3d DCA 2016). **REMANDED FOR THE TRIAL COURT TO CORRECT ITS CALCULATION ON UNPAID WAGES.** Former husband appealed a final judgment of dissolution. The appellate court affirmed, but remanded for the trial court to correct its calculation of the amount of unpaid wages owed by former husband to former wife. Former wife conceded that the amount was incorrect.

<http://www.3dca.flcourts.org/Opinions/3D15-0013.pdf> (July 6, 2016)

Fourth District Court of Appeal

Sherlock v. Sherlock, __ So. 3d __, 2016 WL 3745486 (Fla. 4th DCA 2016). **DISPARITY IN INCOME ALONE DOES NOT JUSTIFY PERMANENT, PERIODIC ALIMONY; TRIAL COURT MUST CONSIDER ALL SOURCES OF INCOME AVAILABLE TO EITHER SPOUSE; INCOME THAT CAN BE REASONABLY EARNED ON SPOUSE'S LIQUID ASSETS MAY BE IMPUTED; HOWEVER, THE LAW ON IMPUTING INCOME BASED ON NON-LIQUID ASSETS IS NOT CLEAR; DISCRETION IS ABUSED WHEN NO REASONABLE PERSON WOULD TAKE THE TRIAL COURT'S VIEW.** Former husband argued that the trial court erred in denying his request for permanent, periodic alimony in the dissolution of a 17-year marriage. The appellate court affirmed. It reiterated that permanent alimony is not intended to divide future income to establish financial equality; disparity in income alone does not justify an award of permanent periodic alimony. Although a court should not require a spouse in need of alimony to deplete or invade capital assets to maintain his or her standard of living, a court is required by statute to consider all sources of income available to either spouse. A court abuses its discretion if it fails to take into account evidence showing that a spouse has a substantial source of income available, but refuses to access it. Niederman v. Niederman, 60 So. 3d 544,549 (Fla. 4th DCA 2011). The appellate court found it well-settled that income that could reasonably be earned on a former spouse's liquid assets should be imputed, but concluded that the law was not clear as to whether a trial court should impute income based on non-liquid assets. The appellate court acknowledged the concern expressed by a concurring judge in Levine v. Levine, 29 So. 2d 464 (Fla. 4th DCA 2010), that a spouse could "strategically maneuver" to receive non-liquid assets in equitable distribution in an attempt to bolster his or her claim for alimony. It concluded that here the trial court did not abuse its discretion in denying former husband's request for permanent alimony. Discretion is abused where no reasonable person would take the trial court's view. The appellate court found the trial court's imputation of income from equity in former husband's residence to be harmless error.

<http://www.4dca.org/opinions/July%202016/07-13-16/4D15-365.op.pdf> (July 13, 2016)

Fortunoff v. Morris, __ So. 3d __, 2016 WL 3913595 (Fla. 4th DCA 2016). **TEMPORARY RELIEF AWARDS ARE AMONG AREAS IN WHICH TRIAL COURTS HAVE BROADEST DISCRETION; HERE, AWARD LACKED COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT IT.** Former wife appealed temporary order granting former husband \$7,500 per month in alimony and \$40,000 in temporary fees and costs. The appellate court affirmed most of the issues raised by former wife without discussion, but agreed with her that the evidence did not support the amount of temporary alimony awarded. Accordingly, the appellate court reversed and remanded on that issue. "Temporary relief awards are among the areas where trial judges have the very broadest discretion, which appellate courts are reluctant to interfere with except under the most compelling of circumstances." Bengisu v. Bengisu, 12 So. 3d 283,286 (Fla. 4th DCA 2009). Here, however, the evidence presented established that former husband's monthly expenses minus his imputed monthly net income equaled slightly over half the amount of monthly alimony the trial court awarded him, leading the appellate court to find a lack of competent, substantial evidence to support the award. Reversed and remanded for further proceedings.

<http://www.4dca.org/opinions/July%202016/07-20-16/4D15-3139.op.pdf> (July 20, 2016)

Buckalew v. Buckalew, __ So. 3d __, 2016 WL 4035624 (Fla. 4th DCA 2016). **DISTRIBUTION OF MARITAL ASSETS AND LIABILITIES MUST BE SUPPORTED BY FACTUAL FINDINGS WHICH ARE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE; STANDARD OF REVIEW OF A TRIAL COURT'S DETERMINATION OF EQUITABLE DISTRIBUTION IS ABUSE OF DISCRETION.** Both spouses appealed a final dissolution of marriage. The appellate court reversed and remanded the equitable distribution due to the trial court's failure to make the required findings of fact. Distribution of marital assets and liabilities must be supported by factual findings which are based on competent, substantial evidence. The standard of review of the trial court's scheme of equitable distribution is abuse of discretion. Here, the appellate court found that the trial court's errors relating to its equitable distribution resulted in an abuse of discretion. The trial court erred in failing to clearly identify any of the assets and liabilities as marital or non-marital, with the exception of one real estate parcel on Oregon Street, and in failing to ascribe a value to two other real estate parcels. In addition, the appellate court found no competent, substantial evidence to corroborate the trial court's valuation of the Oregon Street property. Reversed and remanded for reconsideration of the scheme of equitable distribution.

<http://www.4dca.org/opinions/July%202016/07-27-16/4D14-2671.op.pdf> (July 27, 2016)

Richardson v. Knight, __ So. 3d __, 2016 WL 4016334 (Fla. 4th DCA 2016). **GENERALLY, AN AGREEMENT ANNOUNCED IN OPEN COURT IS AN ENFORCEABLE AGREEMENT; HOWEVER, IT REQUIRES MORE THAN A RECITATION OF ITS TERMS BY ATTORNEYS TO BE VALID; JUDGE MUST OBTAIN CLEAR ASSENT FROM EACH PARTY AND CONFIRM THAT EACH PARTY HAS DISCUSSED AGREEMENT WITH COUNSEL AND UNDERSTANDS TERMS.** Former husband appealed a final judgment of dissolution which incorporated terms of an oral marital settlement agreement (MSA) reached during the final hearing. The MSA was read into the record by one spouse's attorney and agreed to by the other. The final judgment incorporated the terms of the MSA and attached the transcript of the proceedings to serve as the MSA. After the trial court rendered the judgment, former husband obtained new counsel and filed for either a new trial or amendment of the final judgment. The trial judge denied the motion. The appellate court held that generally,

an agreement announced in open court, including dissolution proceedings, is an enforceable settlement agreement; however, an oral MSA read into the record requires more than a “mere recitation” of its terms by the spouses’ counsel to be valid and enforceable. The trial judge must obtain “clear and unequivocal” assent to the MSA from each party and confirm that each party has discussed the MSA with their counsel and understands its terms. Here, the trial court erred by accepting the oral MSA as valid and incorporating it into the final judgment because it was not based on either spouse’s testimony or sworn statements. Accordingly, the appellate court reversed and remanded with instructions that if the spouses were unable to reach an agreement, the trial court would need to include the statutorily required findings of fact in its scheme of equitable distribution.

<http://www.4dca.org/opinions/July%202016/07-27-16/4D15-2761.op.pdf> (July 27, 2016)

Fifth District Court of Appeal

Holaway v. Holaway, __ So. 3d __, 2016 WL 3653527 (Fla. 5th DCA 2016). **TRIAL COURT ERRED IN CHILD SUPPORT CALCULATIONS, EQUITABLE DISTRIBUTION, AWARD OF POST-VALUATION PROFITS, AND USING INCORRECT DATE FOR VALUATION OF ASSETS.** The appellate court agreed with former husband that the trial court erred in its final judgment of dissolution by: imputing income to him without explaining its calculations; omitting marital liabilities from its equitable distribution; relying on a date other than the one it had specified as the proper date of valuation to value the spouses’ business interests; and awarding post-valuation profits from former husband’s business interests to former wife after having found that the income generated after valuation was passive. Reversed as to the calculation of child support, equitable distribution and award of post-valuation profits; the trial court was instructed on remand to identify the date to be used for valuation of the spouses’ assets and use that date to calculate the equitable distribution.

<http://www.5dca.org/Opinions/Opin2016/070416/5D15-54.op.pdf> (July 8, 2016)

Viruet v. Grace, __ So. 3d __, 2016 WL 3654438 (Fla. 5th DCA 2016). **REMANDED FOR DETERMINATION OF ARREARAGE AND ENTRY OF AMENDED JUDGMENT.** The appellate court reversed the portion of final judgment of dissolution that ordered former husband to pay \$100 per month towards child support arrearage because neither the magistrate’s report nor the final judgment stated the amount of the arrearage. It remanded for the trial court to determine the amount of the arrearage, if any, and to enter an amended judgment specifying the amount. The appellate court found that the trial court had not abused its discretion in denying former husband’s motions for new trial and rehearing on the issue of whether he was paying more than his proportional share of child care costs, but did so without prejudice to allow former husband to bring that matter before the trial court if he chose.

<http://www.5dca.org/Opinions/Opin2016/070416/5D15-4058.op.pdf> (July 8, 2016)

Wilkinson v. Wilkinson, __ So. 3d __, 2016 WL 4063824 (Fla. 5th DCA 2016). **A TRIAL COURT’S ADOPTION OF A PROPOSED ORDER VERBATIM DOES NOT CONSTITUTE REVERSIBLE ERROR, STANDING ALONE, BUT CALLS INTO QUESTION WHETHER THE ORDER REFLECTED THE TRIAL COURT’S INDEPENDENT JUDGMENT.** Former husband appealed the distribution of marital assets in the final judgment dissolving a twenty-year marriage. He argued that the trial court erred in

adopting former wife's proposed order verbatim, in its mathematical calculations, and in its written order. Finding inconsistency and computational errors in the oral and written rulings, the appellate court reversed and remanded. The primary issue at trial was equitable distribution of the spouses' assets and liabilities. The trial court made "extensive" factual findings in its oral rulings and directed former wife's attorney to prepare the final judgment. Former wife conceded that the trial court adopted that draft verbatim. The appellate court held that fact, standing alone, was not reversible error; however, it gave rise to the question of whether the trial court's order reflected its independent judgment. Here, the appellate court found several inconsistencies and errors which drew the trial court's independent judgment into question. The appellate court also found mathematical errors requiring correction in both the oral ruling and written judgment. It instructed the trial court on remand to ensure that its final judgment be consistent with the evidence presented and reflect its independent judgment.

<http://www.5dca.org/Opinions/Opin2016/072516/5D14-4285.op.pdf> (July 29, 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

Hall v. Lopez, ___ So. 3d ___, 2016 WL 4036093 (Fla 1st DCA 2016). **ATTORNEY'S FEES ALLOWED IN REPEAT VIOLENCE CASE**. The appellee was awarded a temporary injunction for protection against repeat violence, and the appellant filed a motion for attorney's fees and sanctions against the appellee and her attorney. The appellee voluntarily dismissed the action, and the trial court then held a hearing and denied appellant's motion for attorney's fees under s. 57.105, F.S. The appellant appealed, and the appellate court reversed. The court noted that s. 784.046, F.S., does not authorize an award of attorney's fees; however, fees are allowed pursuant to s. 57.105, F.S., in civil cases. While it is clear through case law that attorney's fees cannot be awarded in a domestic violence injunction case, the appellate courts disagree about whether or not it is proper in a repeat violence case under s. 57.105, F.S. Since there is no statutory provision that states that an award of attorney's fees pursuant to s. 57.105 is not permissible in a Chapter 784 (or Chapter 741) proceeding, and since the language in s. 57.105 states that its provisions apply to civil proceedings/actions and are supplemental to other sanctions/remedies, the court held that an award of attorney's fees is allowed. Recognizing that this decision conflicts with cases from the Fifth District and the Third District, the court certified the conflict.

https://edca.1dca.org/DCADocs/2015/0531/150531_DC13_07282016_083529_i.pdf (July 28, 2016)

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

Chizh v. Chizh, ___ So. 3d ___, 2016 WL 3747112 (Fla. 4th DCA 2016). **DENIAL OF INJUNCTION FOR DOMESTIC VIOLENCE REVERSED**. The trial court denied a petition for an injunction against domestic violence, and the appellate court reversed because the trial court failed to have a hearing or explain why the allegations were insufficient or improper. The appellate court stated that on remand the trial court must either enter an order explaining the deficiencies or hold a hearing on the petition.

<http://www.4dca.org/opinions/July%202016/07-13-16/4D16-1176.op.pdf> (July 13, 2016)

Fifth District Court of Appeal

No new opinions for this reporting period.