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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

A.L.A. v. State, ___ So. 3d ___, 2016 WL 3459432 (Fla. 1st DCA 2016). THE JUVENILE'S ACT OF ARRANGING FOR SOMEONE TO COME AND GET HER FROM THE RESIDENTIAL TREATMENT FACILITY, WHERE SHE HAD BEEN PLACED AS A CONDITION OF HER PROBATION, CONSTITUTED AN OVERT ACT IN FURTHERANCE OF HER INTENT TO VIOLATE HER PROBATION, AND WAS SUFFICIENT TO SUPPORT THE REVOCATION OF HER PROBATION. The juvenile was on post-commitment probation, she reoffended, and was placed on probation again. During the new probationary period, the juvenile absconded within two weeks of placement. The juvenile was again placed on probation with the special requirement that she "participate in and complete residential treatment." Within a week of placement, the juvenile made arrangements to leave the facility. Consequently, her probation was revoked. On appeal, the juvenile contended that her plans to leave the facility never came to fruition, and therefore could not constitute a violation. The First District Court of Appeal reasoned that an overt act in furtherance of the juvenile's intent to violate her probation was sufficient to support the revocation of her probation. More specifically, "there must be a showing of some overt material violation---some act evidencing an intent to contravene the good intentions of the sentencing magistrate and an inability to comport with the restrictions that accompany probation," Blue v. State, 377 So. 2d 1016, 1017 (Fla. 2d DCA 1979). Here, the juvenile had previously absconded; had expressed an intent to violate her current probation; had taken actual steps to abscond again; and, consistent with Blue, had demonstrated an inability to comport with the restrictions that accompanied her probation. Further, the trial court specifically rejected the juvenile's testimony that she had cancelled her plans to be picked up by her friend. Accordingly, the First District affirmed the trial court's decision.
https://edca.1dca.org/DCADocs/2015/5331/155331_DC05_06242016_095808_i.pdf (June 24, 2016)

Second District Court of Appeal

D.L.S. v. State, ___ So. 3d ___, 2016 WL 3216299 (Fla. 2d DCA 2016). VERBAL HARASSMENT ALONE DOES NOT RISE TO THE LEVEL OF OBSTRUCTION NECESSARY TO PERMIT A CONVICTION THAT IS NOT VIOLATIVE OF FIRST AMENDMENT PRINCIPLES. An officer was dispatched to a disturbance in a local residential community. Upon arrival, the officer saw several teenagers outside yelling profanities. The juvenile was part of this group. As the officer tried to disperse the crowd, the juvenile told the crowd that they did not have to listen to the officer. The officer summoned the juvenile, but the juvenile walked away. The officer continued to tell the juvenile to stop. The officer pursued the juvenile and detained him a few blocks away. The State charged

the juvenile with obstruction of an officer without violence. The juvenile appealed the order withholding adjudication and the denial of his motion to dismiss. The Second District Court of Appeal held that the trial court erred in denying the juvenile's motion for dismissal. In so holding, the Second District reasoned that the State had to show that the officer was engaged in the lawful execution of a legal duty and that the juvenile's actions obstructed the execution of that duty. Words alone, rarely, if ever, rise to the level of an obstruction unless the officer is executing process on a person, legally detaining a person, or asking for assistance with an ongoing emergency. Although the officer was responding to a disturbance, he was not detaining anyone, executing process, nor seeking assistance with an ongoing emergency when he asked the juvenile to stop. Thus, the juvenile's actions did not rise to the level of obstruction. Secondly, to the extent that the State contended that the officer wanted to detain the juvenile for investigatory purposes, the State had to show that the officer had a reasonable suspicion that the juvenile was committing a crime. The State had to establish that the juvenile fled from the officer with knowledge of the officer's intent to detain him and that the officer was justified in making the detention based on a founded suspicion that the juvenile was engaged in criminal activity. Even if the officer was engaged in the lawful performance of a legal duty, i.e., dispersing a crowd, he had no founded suspicion to stop and arrest the juvenile. The juvenile was not committing a crime by telling the crowd that they could ignore the officer. Thus, concluded the Second District, because the arrest itself was unlawful, a prosecution for resisting arrest without violence must also fail. Further, "when an individual run away from officers who lack the authority to stop and detain him, that individual is not unlawfully opposing or obstructing officers in the lawful execution of a legal duty," A.R. v. State, 127 So. 3d 650, 654 (Fla. 4th DCA 2013). In sum, although the juvenile's conduct was of the type of verbal harassment that is understandably annoying to any reasonable officer, it did not rise to the level of obstruction necessary to permit a conviction that is not violative of First Amendment principles. Thus, the trial court's denial of the juvenile's motion for dismissal was in error. Accordingly, the Second reversed the order withholding adjudication and vacated the order of probation.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/June/June%2010,%202016/2D14-5216.pdf (June 10, 2016)

Third District Court of Appeal
No new opinions for this reporting period.

Fourth District Court of Appeal
J.L. v. State, ___ So. 3d ___, 2016 WL 3268345 (Fla. 4th DCA 2016). ADMISSION OF OUT-OF-COURT STATEMENTS, INTRODUCED FOR THE TRUTH OF THE MATTER ASSERTED, THAT DO NOT FALL UNDER ANY EXCEPTION TO THE HEARSAY RULE, IS REVERSIBLE ERROR. The juvenile was found guilty of attempted burglary of an occupied dwelling. The trial court withheld adjudication and placed him on probation. On appeal, the State contended that the out-of-court-statements made by the juvenile's friend were an "identification of a person made after perceiving the person," which is excluded from the definition of hearsay. However, concluded the Fourth District, the statements went far beyond mere "identification," and in fact described the two

individuals' activities for the entire day leading up to the arrest of the juvenile. For that reason, the Fourth District found no merit in this argument. As a fallback provision, the State attempted to characterize the out-of-court statements as impeachment rather than substance. However, the Fourth District declined to accept this position because the State's clear position at trial was that the statements were being admitted as substantive evidence. Finally, the Fourth District noted that the State failed to meet its burden of showing that the admission of the out-of-court statements did not contribute to the juvenile's conviction. In sum, because the out-of-court statements were introduced for the truth of the matter asserted, and because they did not fall under any exclusion or exception to the hearsay rule, their admission into evidence was reversible error. Accordingly, the Fourth District reversed and remanded for a new trial.
http://www.4dca.org/opinions/June%202016/06-15-16/4D14-4649.op.pdf (June 15, 2016)

L.V. v. State, ___ So. 3d ___, 2016 WL 3549472 (Fla. 4th DCA 2016). THIS IS AN ANDERS APPEAL. The trial court granted two motions to correct the disposition order, and the record includes an order granting one of the motions. However, the record does not include a corrected disposition order. On appeal, the juvenile filed a motion to withdraw and supporting brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Fourth District Court of Appeal affirmed the finding of guilt, withhold of adjudication, and the juvenile's placement of probation, but remanded for the trial court to enter a corrected disposition order.
http://www.4dca.org/opinions/June%202016/06-29-16/4D14-4324.op.pdf (June 29, 2016)

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

C.T. v. Department of Children and Families, ___ So. 3d ___, 2016 WL 3362651 (Fla. 1st DCA 2016). PETITION FOR BELATED APPEAL DENIED. The First District Court of Appeal denied a petition for belated appeal without prejudice to the petitioner filing a petition for a writ of habeas corpus in the trial court.
https://edca.1dca.org/DCADocs/2016/2299/162299_DC02_06172016_092923_i.pdf (June 17, 2016)

T.J. v. Department of Children and Families, ___ So. 3d ___, 2016 WL 3419104 (Fla. 1st DCA 2016). ORDER REVERSED. The First District Court of Appeal reversed an order pacing a child in a permanent guardianship because the department failed to produce evidence or testimony during the permanency hearing.
https://edca.1dca.org/DCADocs/2016/0378/160378_DC13_06222016_092940_i.pdf (June 22, 2016)

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

F.G. v. Department of Children and Families, ___ So. 3d ___, 41 Fla.L.Weekly D1230, 2016 WL 3178527 (Fla. 3d DCA 2016). CLARIFICATION GRANTED AND PER CURIUM AFFIRMANCE VACATED. The Third District Court of Appeal issued a substitute opinion for a Per Curium Affirmance ("PCA") that it had previously issued on December 23, 2015. The court issued the new opinion "to highlight the potential for inconsistent outcomes when separate appeals are filed by separate parties from the same underlying proceeding and adjudication." The Department had originally filed a shelter petition regarding a two year old child based on the death of the child's sibling, and the parents' positive tests for marijuana. The Department subsequently filed a dependency petition, and the trial court adjudicated the child dependent. The parents separately appealed and were represented by separate counsel. The father's appeal resulted in the aforementioned PCA. The mother's appeal was assigned to a different panel of judges with oral argument being heard more than two months after the father's PCA. The mother's appeal resulted in a lengthy opinion from the District Court concluding that the Department failed to provide substantial competent evidence that the child was in imminent danger of abuse, neglect, or harm. The court therefore reversed the Order of Adjudication and Disposition and remanded the case for immediate proceedings consistent with that opinion. The father's counsel thereafter moved to withdraw the mandate in his case for the court to consider the opinion in the mother's case. The reissued opinion in the father's case acknowledges responsibility for the court's failure to determine that the two cases were related and reminds all counsel of the duty to file the

required "Notice of Similar or Related Case" document, which was not filed in the father's case by any counsel. The court ultimately concluded there was no basis to differentiate between the two parents' cases. The court therefore vacated the PCA and reversed the order of adjudication and disposition and remanded the case.
http://www.3dca.flcourts.org/Opinions/3D15-2432.rh.pdf (June 8, 2016)

Fourth District Court of Appeal

Department of Children and Families v. B.G., ___ So. 3d ___, 2016 WL 3186522 (Fla. 4th DCA 2016). PETITION DISMISSAL REVERSED. The Fourth District Court of Appeal reversed the dismissal of a dependency petition because the Department's petition had stated a prima facie case of dependency based on definitions provided in statute. The case was remanded.
http://www.4dca.org/opinions/June%202016/06-08-16/4D15-4793.op.pdf (June 8, 2016)

A.G. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2016 WL 3186522 (Fla. 4th DCA 2016). ADJUDICATION REVERSED AND ORDER REMANDED. The Fourth District Court of Appeal reversed a trial court's order following a supplemental hearing, characterizing the order being reversed as an adjudicatory order. The children had been adjudicated dependent based on the mother's consent. The court also reversed the trial court's order allowing child testimony *in camera* and allowing the child to testify without holding an evidentiary hearing and making factual findings. The trial court failed to follow the procedure in Florida Rule of Juvenile Procedure 8.255(d), which requires a hearing and specific findings of fact before the child is permitted to testify *in camera*. Furthermore, the trial court failed to conduct a sufficient competency inquiry regarding the child witness. Finally, the court improperly admitted child hearsay statements. Without the child's testimony, there was not a preponderance of evidence of substantial risk of future abuse as alleged. The District Court therefore reversed the adjudication "as to the father" and the disposition, vacated the father's case plan, and remanded the case back to the trial court for further proceedings.
http://www.4dca.org/opinions/June%202016/06-22-16/4D16-782.op.pdf (June 22, 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

McWilson v. McWilson, __ So. 3d__, 2016 WL 3191135 (Fla. 1st DCA 2016). FIGURES USED ON CHILD SUPPORT GUIDELINES WORKSHEET SHOULD MATCH FIGURES USED ON SPOUSES' MOST RECENT FINANCIAL AFFIDAVITS; TRAVEL EXPENSES FOR VISITATION SHOULD BE ALLOCATED IN THE SAME MANNER AS OTHER CHILD CARE EXPENSES. Former wife appealed the distribution of the marital home, the child support calculation, and the parenting plan in her appeal of a dissolution of marriage. The appellate court affirmed the distribution of the marital home and parenting plan without comment, but agreed with former wife that the gross income used on the child support guidelines worksheet did not match the figures on the spouses' most recent financial affidavits. Unable to discern whether the child support award was made in accordance with the guidelines, the appellate court reversed and remanded for recalculation. Because visitation expenses should be allocated at the same rate as other child care expenses, the appellate court instructed the trial court on remand to either allocate former husband's travel expenses for visitation according to the ratios in the recalculated child support or to make findings to support a different allocation.
https://edca.1dca.org/DCADocs/2015/4123/154123_DC13_06092016_082900_i.pdf (June 9, 2016)

Haas v. Haas, __ So. 3d __, 2016 WL 3224136 (Fla. 1st DCA 2016). APPEAL DISMISSED AS PREMATURE; APPELLATE COURT DETERMINED THAT THE AMENDED FINAL JUDGMENT OF DISSOLUTION WAS NOT A FINAL ORDER. The appellate court determined that the amended final judgment of dissolution was not a final order; accordingly, the appeal was dismissed as premature.
https://edca.1dca.org/DCADocs/2016/1844/161844_DA08_06132016_102556_i.pdf (June 13, 2016)

Golden v. Bass, __ So. 3d__, 2016 WL 3459435 (Fla. 1st DCA 2016). AN ORDER ADJUDICATING ISSUES NOT PRESENTED BY THE PLEADINGS OR NOTICED TO THE PARTIES DENIES FUNDAMENTAL DUE PROCESS. The appellate court reversed a trial court order temporarily giving former husband custody of the spouses' minor child after finding that former wife was denied due process. Disputes between the spouses under an earlier time-sharing order prompted former husband to move for enforcement, contempt, and psychological evaluations. He also petitioned for modification of the time-sharing order. Former wife opposed the motions and moved to dismiss the petition. The motions were set for hearing but the petition was not. The trial court did not find former wife in contempt nor did it find a psychological evaluation was necessary; nevertheless, it ordered a temporary change in residence from former wife to former husband. An order adjudicating issues not presented by the pleadings or noticed to the parties denies fundamental due process and constitutes reversible error. The appellate court noted that a

change in residence is "not an analysis of whether the new home would be better—there must be a determination of 'significant inadequacy in the care provided by the custodial parent'". https://edca.1dca.org/DCADocs/2016/1190/161190_DC13_06242016_101003_i.pdf (June 24, 2016).

McFatter v. McFatter, __ So. 3d__, 2016 WL 3450487 (Fla. 1st DCA 2016). AMENDED FINAL JUDGMENT DID NOT INCORPORATE PROVISIONS OF TEMPORARY ORDER ALLOWING SPOUSE'S BIOLOGICAL MOTHER TO BE ADDED TO CHILDREN'S PICK-UP LIST. Several issues raised by former wife in her appeal of the trial court's order on former husband's amended motion for civil contempt/enforcement were affirmed without comment; at issue was whether the children's paternal grandmother should be added to the children's pick-up list. The appellate court agreed with former wife that the amended final judgment did not incorporate the provision of the temporary order which enabled former husband to make decisions concerning the children's contact with his biological mother. Although the portion of the temporary order addressing time-sharing was attached to the amended final judgment, the provision regarding contact with former husband's mother were not. The appellate court concluded that the trial court's inclusion of only a portion of the temporary order, rather than its entirety, was intentional, not inadvertent. Finding the trial court's interpretation that the provision regarding contact with the paternal grandmother was incorporated into the amended final judgment erroneous, the appellate court reversed that portion of the trial court's order.
https://edca.1dca.org/DCADocs/2015/3855/153855_DC08_06242016_094057_i.pdf (June 24, 2016)

Freiha v. Freiha, __ So. 3d__, 2016 WL 3512487 (Fla. 1st DCA 2016). ISSUES NOT PRESERVED FOR REVIEW MAY STLL BE REVIEWED FOR FUNDAMENTAL ERROR; AMOUNT OF INSURANCE ORDERED TO SECURE SPOUSE'S OBLIGATIONS MUST BE SUPPORTED BY EVIDENCE AS TO AVAILABILITY, COST, AND AFFORDABILITY TO OBLIGOR SPOUSE. Former husband appealed the final dissolution of marriage on several grounds. The appellate court affirmed on most, but found the absence of a parenting plan without a time-sharing schedule to be fundamental error. Former husband's failure to preserve that issue did not preclude review for fundamental error. The appellate court concluded that the trial court did not abuse its discretion in requiring former husband to maintain life insurance, but found that the amount of coverage ordered was not supported by any evidence as to the availability, cost, or former husband's ability to pay. It instructed the trial court on remand to recalculate the child support obligation, once it determined the appropriate number of overnights to award former husband in the time-sharing schedule; and to make findings on the availability, cost, and affordability of life insurance in an amount sufficient to secure the alimony and child support obligations.
https://edca.1dca.org/DCADocs/2015/4103/154103_DC13_06282016_082044_i.pdf (June 28, 2016)

Second District Court of Appeal

Cilenti v. Cilenti, __ So. 3d __, 2016 WL 3090565 (Fla. 2d DCA 2016). TRIAL COURT FAILED TO GIVE WRITTEN FINDINGS EXPLAINING ITS DEVIATION FROM S. 61.13(1)(b) REGARDING CHILD'S HEALTH INSURANCE AND TO ADD AN OBLIGATION FOR THAT INSURANCE TO FINAL JUDGMENT;

IT ALSO MISCLASSIFIED CREDIT CARD DEBT AS MARITAL. Former husband appealed the final judgment of dissolution on several grounds. The appellate court affirmed except for two issues: health insurance for the spouses' child with respect to the award of prospective child support; and the determination that former wife's credit card of $55,040 was a marital debt. Former husband argued, and former wife conceded, that the trial court erred in determining prospective child support because the child's health insurance costs exceeded five percent of former wife's gross income, and the trial court made no findings explaining that deviation. In addition, although the child support guidelines worksheet attached to the judgment obligated former wife to pay for the child's health insurance, the final judgment did not. Section 61.13(1)(b), F.S. (2014), requires that the cost of health insurance is reasonable when it does not exceed five percent of the gross income of the parent responsible for providing coverage; deviation requires certain written findings by the trial court. The trial court had found that former wife's testimony, that her credit card debt was incurred during the marriage, was uncontroverted by former husband; however, the trial court "failed to recognize" that former wife's documentary evidence contradicted her testimony. One of her exhibits was a credit card report reflecting that the account had been opened and closed prior to the marriage; therefore, the trial court erred in classifying that debt as marital. Reversed and remanded for the trial court to reconsider the equitable distribution with that credit card debt classified as non-marital, to make the findings required by s. 61.13(1)(b) for deviation from five percent, and to add an obligation regarding the child's health insurance to the judgment.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/June/June%2001,%202016/2D15-1456.pdf (June 1, 2016)

Kruse v. Levesque, __ So. 3d__, 2016 WL 3090565 (Fla. 2d DCA 2016). TRIAL COURT ABUSED ITS DISCRETION IN AWARDING DURATIONAL INSTEAD OF PERMANENT PERIODIC ALIMONY IN MODERATE-TERM MARRIAGE UPON FINDING SPOUSE WAS DISABLED AND EVIDENCE ESTABLISHED THAT SPOUSE WAS UNABLE TO RETURN TO WORK; DURATIONAL IS AWARDED WHEN PERMANENT PERIODIC ALIMONY IS INAPPROPRIATE; PERMANENT PERIODIC ALIMONY FOLLOWING A MODERATE-TERM MARRIAGE REQUIRES CLEAR AND CONVINCING PROOF SPOUSE LACKS FINANCIAL ABILITY TO MEET NEEDS AND NECESSITIES. The appellate court concluded that the trial court had abused its discretion in awarding former wife durational, rather than permanent periodic, alimony in a moderate-term marriage after having found that she was disabled and that the "undisputed" evidence established she was unable to return to work. In accordance with subsections 61.08(7) and (8), F.S. (2013), durational alimony may be awarded when permanent periodic alimony is inappropriate; permanent alimony may be awarded to provide for the "needs and necessities of life" established during the marriage for a spouse who lacks financial ability to meet his or her needs or necessities following dissolution. Permanent periodic alimony following a moderate-term marriage requires that a spouse demonstrate that lack by clear and convincing evidence. The appellate court concluded former wife had demonstrated her lack of financial ability by clear and convincing evidence. Reversed and remanded for entry of an order awarding permanent periodic alimony to former wife in an amount to be determined by the trial court, and for correction of a scrivener's error in the date of the marriage.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/June/June%2010,%202016/2D15-1391.pdf (June 10, 2016)

Powers v. Powers, __ So. 3d__, 2016 WL 3216555 (Fla. 2d DCA 2016). TRIAL COURT CANNOT DENY REQUEST FOR FEES AND COSTS UNDER S. 61.16, F.S., WITHOUT MAKING FINDINGS AS TO SPOUSES' RELATIVE FINANCIAL NEEDS AND ABILITIES. Former wife appealed a final order on a motion to enforce her amended marital settlement agreement (MSA), specifically, the trial court's interpretation of the MSA to limit former husband's financial responsibility for only certain college-related living costs incurred by their son. She also appealed the denial of her request for attorney's fees and costs. The appellate court affirmed the trial court's interpretation of the MSA without comment, but reversed on the denial of her request for fees and costs. Noting that the purpose of a fee award under s. 61.16, F.S., is to ensure that both spouses will be able to obtain competent counsel, the appellate court held that a trial court cannot deny fees and costs under that section without making findings as to the spouses' relative financial needs and abilities. Here, the judgment contained no such findings; accordingly, the appellate court reversed and remanded for the trial court to reconsider former wife's request and make findings of fact regarding the spouses' relative financial needs and abilities "sufficient to permit meaningful appellate review of its decision."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/June/June%2010,%202016/2D15-3909.pdf (June 10, 2016)

Edge v. Edge, __ So. 3d__, 2016 WL 3268811 (Fla. 2d DCA 2016). BONUSES WHICH ARE REGULAR AND CONTINUOUS SHOULD BE INCLUDED IN INCOME FOR PURPOSES OF CALCULATING ALIMONY AND CHILD SUPPORT; MANDATORY RETIREMENT PAYMENTS ARE ALLOWABLE DEDUCTIONS UNDER S. 61.30(3)(d); VOLUNTRY RETIREMENT PAYMENTS ARE NOT; QUESTION OF WHETHER AN UPDATED FIGURE AFFECTS FINAL RESULT IS IRRELEVANT IF ERROR REQUIRES REVERSAL; RECALCULATION REQUIRES RECONSIDERATION; TIME-SHARING CANNOT BE CONDITIONED ON A FINANCIAL OBLIGATION. Former wife appealed the final judgment for dissolution on several grounds. The appellate court affirmed with the exception of the calculation of former husband's income, in which it found that the trial court had erred. The trial court used the amount of gross income former husband had reported on his financial affidavit, although he had testified that he had since gotten a raise. He also testified that he had received a bonus of $7000-$9000 every year since 2009. The trial court concluded that the bonuses were not guaranteed because they were given at the discretion of former husband's employer; however, the appellate court held that "under these circumstances,' the trial court should have included the bonuses. When calculating income for purposes of awarding alimony or child support, a trial court should not exclude bonuses that are regular and continuous. Former husband also testified that the "mandatory retirement payments" entered on his financial affidavit were actually repayments on a 401(k) loan. Under s. 61.30(3)(d), F.S., mandatory retirement payments are an allowable deduction; voluntary retirement payments are not. Thus, the trial court erred in allowing this deduction. Former husband argued this error was de minimis; however, the appellate court held that reversal was necessary whether or not an updated figure would affect the final result. Reversed and remanded for the trial court to recalculate the income calculation and reconsider the alimony and child support in light of the updated income amount. The

appellate court reminded the trial court that it is inappropriate to condition time-sharing -"even implicitly"- on a financial obligation.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/June/June%2015,%202016/2D14-6021.pdf (June 15, 2016)

Haritos v. Haritos, __ So. 3d__, 2016 WL 3265499 (Fla. 2d DCA 2016). TRIAL COURT HAS AUTHORITY TO BIFURCATE DISSOLUTION PROCEEDINGS, BUT DOING SO MAY RESULT IN DELAY AND ADDITIONAL EXPENSE; JUDGMENT DISSOLVED MARRIAGE, BUT WAS NOT FINAL AS TO OTHER ISSUES; SPOUSE WAS ENTITLED TO FINAL DETERMINATION OF ISSUES. Former husband appealed the denial of his petition for modification of a final judgment of dissolution and his motion to modify a temporary support order. The appellate court reversed the trial court's orders and remanded for further proceedings because a final judgment disposing of the financial aspects of the spouses' dissolution was never entered. The final judgment of dissolution was a partial final judgment which dissolved the marriage, but was not final as to other issues, such as equitable distribution and child support. The appellate court noted that a trial court has the authority to bifurcate dissolution proceedings, but cautioned that doing so can lead to legal and procedural problems resulting in delay and additional expense. The appellate court held that former husband was entitled to a final determination of the issues not decided by the trial court in a final order. The trial court erred in ruling that a final order had already been entered on the issue of child support and in denying former husband's request to modify child support. Reversed and remanded for the trial court to consider former husband's request to modify child support under the standard for modifications of non-final support orders.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/June/June%2015,%202016/2D15-2456.pdf (June 15, 2016)

Dunkel v. Dunkel, __ So. 3d __, 2016 WL 3541041 (Fla. 2d DCA 2016). TRIAL COURTS HAVE BROAD DISCRETION IN DISSOLUTION PROCEEDINGS; AN ALIMONY AWARD SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE AND IN ACCORDANCE WITH THE LAW SHOULD NOT BE DISTURBED ON APPEAL; HOWEVER, APPELLATE COURT REVIEWS DE NOVO WHETHER THE TRIAL COURT CORRECTLY APPLIED THE LAW TO THE FACTS; TEMPORARY ALIMONY, PENDING FINAL JUDGMENT, DOES NOT CONTINUE AFTER FINAL JUDGMENT. Former husband appealed an amended final judgment of dissolution on several grounds. The appellate court struck the temporary alimony award and affirmed the remainder. Trial courts have broad discretion in dissolution proceedings. An alimony award should not be disturbed on appeal where it is supported by competent, substantial evidence and complies with the governing law; however, an appellate court reviews de novo whether the trial court correctly applied the law to the facts. An award of temporary alimony, pending final judgment, is merged into the final judgment and does not continue after the judgment. Here, the spouses neither consented to nor requested a post-judgment continuation of the temporary alimony award. The temporary mediation agreement the spouses entered into during the proceedings which provided for temporary alimony payments to former wife terminated upon entry of the final judgment; thus, it could not serve as the basis for a continued award of alimony. Cognizant of the trial court's concern with former wife's ability to support herself until the equitable distribution was realized, the appellate court held that continuation of temporary alimony was "not the proper vehicle addressing this

concern." Reversed and remanded for the trial court to strike the temporary alimony award and to reconsider whether an award of lump-sum alimony, paid in installments, would be appropriate for purposes of equitable distribution.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/June/June%2029,%202016/2D15-1157.pdf (June 29, 2016)

Third District Court of Appeal

Jackson v. Jackson, __ So. 3d__, 2016 WL 3421203 (Fla. 3d DCA 2016). REVERSED AND REMANDED FOR A NEW TRIAL AFTER SPOUSE WAS UNABLE TO EITHER OBTAIN TRANSCRIPT OR RECONSTRUCT THE RECORD THROUGH NO FAULT OF HIS OWN. In an unusual set of facts, former husband requested the court reporter to transcribe the four-day trial in his appeal of a final judgment of dissolution, but was informed that the reporter had died. A search for the recordings or equipment was unsuccessful. The spouses attempted to reconstruct the record in accordance with Florida Rule of Appellate Procedure 9.200, but each objected to the other's version of the facts. Former husband submitted a brief based on his recollection of the facts and set forth his arguments on appeal. Former wife moved to strike the brief and requested that the appellate court affirm on the basis of Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150 (Fla. 1979). While agreeing that an appellant may not file a brief without record support, the appellate court concluded that the unusual circumstances warranted a remand for a new trial because the absence of a record was not due to a lack of diligence on former husband's part. The appellate court compared Chisholm v. Chisholm, 538 So. 2d 961 (Fla. 3d DCA 1989), in which it dismissed an appeal where appellant made no attempt to reconstruct the record with Van Scoyoc v. York, 173 So. 2d 483 (Fla. 2d DCA 1968), in which the Second District Court of Appeal concluded it had the power to award a new trial where essential records had been destroyed through no fault of the appellant. Remanded for a new trial.
http://www.3dca.flcourts.org/Opinions/3D14-3036.pdf (June 22, 2016)

Fourth District Court of Appeal

Carlson v. Carlson, __So. 3d__, 2016 WL 3087698 (Fla. 4th DCA 2016). INCOME MAY BE IMPUTED BASED ON GIFTS THAT ARE CONTINUING AND ON-GOING, NOT SPORADIC; EVIDENCE MUST DEMONSTRATE THAT GIFTS WILL CONTINUE IN THE FUTURE. Former wife appealed post-dissolution trial court orders. The appellate court affirmed in part and reversed in part. It found insufficient evidence to support the magistrate's inclusion of gift income to former wife. The appellate court reiterated that income may be imputed based on gifts which are continuing and on-going, not sporadic, and where the evidence demonstrates that the gifts will continue in the future. Here, the magistrate imputed monthly gift income to former wife, including her mortgage payment, car payment, and air conditioning payment, all of which were paid by her family. The appellate court concluded that there was insufficient evidence to show that her family would regularly pay the entire amount of those expenses; in addition, it noted that former husband elicited no evidence that former wife's family would continue these payments in the future. The appellate court concluded that the magistrate erred in not including child care costs in the child support calculation and by including the 50% discount on daycare that former wife received by working at the daycare center as income to her. Because the magistrate had already imputed a full-time salary to former wife based on a finding that she was underemployed, the daycare

discount should not have been included in her income. Reversed and remanded for the trial court to exclude the gifts and the daycare discount from former wife's income, to include child care costs in the child support calculation, and to reconsider the issue of attorney's fees in light of the redetermination of former wife's income.
http://www.4dca.org/opinions/June%202016/06-01-16/4D14-4757.op.pdf (June 1, 2016)

Golden v. Jones, __ So. 3d__, 2016 WL 3419108 (Fla. 4th DCA 2016). TRIAL COURT'S DISMISSAL WITH PREJUDICE WAS ERROR; COMPLAINANT SHOULD BE GIVEN A CHANCE TO AMEND DEFECTIVE PLEADING; COMPLAINT FILED IN THE WRONG DIVISION OF THE COURT SHOULD BE TRANSFERRED TO PROPER DIVISION RATHER THAN DISMISSED WITH PREJUDICE. The marital settlement agreement (MSA), entered into by the spouses prior to their dissolution, provided that it not be merged into the final judgment, but survive it. The trial court in the final judgment reserved jurisdiction to enter further orders to enforce the MSA and enter the QDROs. Two years prior to former husband's death, the QDROs were entered on both of his retirement plans. Both QDROs stated that the benefits that had accrued under the plan from the date of the marriage to the date of dissolution were marital property. Former wife died three years after former husband. The estates were probated in different circuits. The curator of former wife's estate filed a complaint alleging that former husband had diverted portions of the retirement plans to which former wife was entitled and that those assets had not been distributed to her or her estate. Former husband's trustee moved to dismiss. The trial court dismissed with prejudice. The appellate court held this was error for two reasons: one, that dismissal with prejudice was improper because the curator should have been given an opportunity to amend the defective pleading; and two, a complaint filed in the wrong division of the court should be transferred to the proper one rather than dismissed with prejudice. Reversed and remanded.
http://www.4dca.org/opinions/June%202016/06-22-16/4D14-3063.op.pdf (June 22, 2016)

Jaeger v. Jaeger, __ So. 3d __, 2016 WL 3540950 (Fla. 4th DCA 2016). COMPETENT, SUBSTANTIAL EVIDENCE MUST SUPPORT EQUITABLE DISTRIBUTION; STIPULATIONS REGARDING EQUITABLE DISTRIBUTION BIND THE COURT AS WELL AS SPOUSES. Both spouses appealed a final judgment of dissolution. The appellate court agreed with former wife that the trial court erred in the scheme of equitable distribution because competent, substantial evidence did not support its determinations. The trial court disregarded a stipulation between spouses regarding the marital asset portion of a retirement account. Stipulations regarding equitable distribution are binding on the court as well as on the spouses. Reversed and remanded for recalculation of the equitable distribution of former wife's retirement accounts.
http://www.4dca.org/opinions/June%202016/06-29-16/4D14-1332.op.pdf (June 29, 2016)

Smith v. Smith, __ So. 3d __, 2016 WL 3540953 (Fla. 4th DCA 2016). APPELLATE COURT CERTIFIES QUESTION REGARDING STATUTE RESTRICTING RIGHT TO MARRY. The majority and dissent disagreed on the effect of a statute which restricts the fundamental right to marry. The appellate court certified the following question to be of great public importance: Where the fundamental right to marry has not been removed from a ward under s. 744.3215(2)(a), F.S., does the statute require the ward to obtain approval from the court prior to exercising the right to marry, without

which approval the marriage is absolutely void, or does such failure render the marriage voidable, as court approval could be conferred after the marriage?
http://www.4dca.org/opinions/June%202016/06-29-16/4D14-1436.cert.%20question.op.pdf
(June 29, 2016)

Pachter v. Pachter, __ So. 3d__, 2016 WL 3533869 (Fla. 4th DCA 2016). TRIAL COURT ERRED IN: IMPOSING INCOME TAX CONSEQUENCES ON SPOUSE WHO HAD PREVIOUSLY PAID TAXES AFTER FRAUD; REQUIRING SPOUSE TO PAY MARITAL HOME EXPENSES PENDING SALE WITHOUT CREDITING HIM FOR ONE-HALF OF EXPENSES FROM SALE PROCEEDS. Former husband appealed the final judgment of dissolution on several grounds. The appellate court reversed on two: the trial court's double imposition of income tax consequences; and the order requiring former husband to pay all expenses of the marital home pending its sale—without credit for one-half of those expenses from the sale proceeds. The first issue arose from withdrawals made from former wife's IRA account by former husband forging former wife's signature. He then deposited the funds into a trust account he controlled. She testified that she had found the withdrawals in files in the marital home after their separation and that she did not authorize them. Former husband took the Fifth Amendment when questioned about these withdrawals. The trial court distributed the marital assets unequally and awarded former wife an amount equal to that which former husband withdrew plus an amount equal to the income taxes assessed to her account associated with the withdrawals. The trial court also awarded her the balance of her IRA account with any marital interest imposed on behalf of former husband. The appellate court agreed with former husband that because he previously paid taxes when the withdrawals were made from the IRA account, requiring him to pay former wife for the taxes assessed as a result of the withdrawals amounted to paying twice for taxes. This was error. Former husband argued that the trial court erred in ordering him to pay the "carrying" costs of the marital home, except utilities, while former wife had exclusive possession. The appellate court found no error with the trial court having awarded exclusive possession of the marital home pending sale to former wife and making former husband entirely responsible for the expenses prior to its sale; however, it agreed with former husband that the trial court erred in denying him credit for one-half of the expenses he paid from the sale proceeds. Former husband had already been sanctioned by the trial court for his fraud through the unequal distribution of marital assets to former wife. There was nothing more that the trial court needed to "counterbalance" once the home was sold; thus, it was error to require him to pay the expenses of the marital home without credit for one-half of the expenses from the proceeds.
http://www.4dca.org/opinions/June%202016/06-29-16/4D15-200.op.pdf (June 29, 2016)

Fifth District Court of Appeal

Hurst v. Hurst, __ So. 3d __, 2016 WL 3201207 (Fla. 5th DCA 2016). FAILURE TO GIVE NOTICE OF A HEARING TO OPPOSING PARTY ABSENT A TRUE EMERGENCY DEPRIVES THAT PARTY OF PROCEDURAL DUE PROCESS; A PERSON FACING CIVIL CONTEMPT SANCTIONS IS ENTITLED TO NOTICE AND AN OPPORTUNITY TO BE HEARD. Former husband appealed an order finding him in contempt for failure to pay temporary child support and requiring that he bring his child support payments current within five days. Finding that former husband was not afforded due process, the appellate court reversed. Former wife filed a verified emergency motion for contempt and to

compel former husband to pay child support. Four days later, the judge's judicial assistant emailed former wife's attorney requesting a proposed order. Former husband's counsel, who was copied on the email containing the proposed order, immediately filed a written response objecting to the matter being classified as an emergency. The trial court, without holding a hearing, entered an order granting former wife's motion the following day. The appellate court found the trial court's failure to afford former husband an opportunity to present evidence and be heard on the motion deprived him of his right to procedural due process. Accordingly, it reversed and remanded.
http://www.5dca.org/Opinions/Opin2016/060616/5D16-672.op.pdf (June 10, 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

Moriarty v. Moriarty, ___ So. 3d ___, 2016 WL 3092665 (Fla. 4th DCA 2016). MOTION TO DISSOLVE DOMESTIC VIOLENCE INJUNTION DENIED. Since the appellant's motion did not allege any change in circumstances and only attempted to challenge the initial procurement of the injunction, and failed to establish any reversible error, the appellate court denied the motion. http://www.4dca.org/opinions/June%202016/06-01-16/4D15-2990.op.pdf (June 1, 2016)

Fifth District Court of Appeal

No new opinions for this reporting period.