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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

Doe v. State, ___ So. 3d ___, 2016 WL 5407617 (Fla. 2d DCA 2016). APPELLATE COURT FOUND NO MINISTERIAL, INDISPUTABLE LEGAL DUTY CLEARLY ESTABLISHED IN THE LAW WHICH REQUIRES JUDICIAL OFFICERS PRESIDING OVER INVOLUNTARY INPATIENT PLACEMENT HEARINGS PURSUANT TO S. 394.467, F.S., TO BE PHYSICALLY PRESENT WITH THE PATIENTS, WITNESSES, AND ATTORNEYS. One “John Doe” and fourteen patients filed fifteen petitions for extraordinary writs asking the Second District Court of Appeal to direct the judicial officers assigned to preside over Baker Act hearings in Lee County to appear for those hearings at the receiving facilities where the patients are held rather than via videoconference from the courthouse. The Second District found that the proper remedy—if any—would be a writ of mandamus. For mandamus to lie, the petitioners must demonstrate a clear legal right to have the judge physically present with the petitioners during the hearing and an indisputable legal duty on the part of the judge to be physically present. The Second District held that the decision to preside over a Baker Act hearing remotely via videoconference equipment is within the discretion of the court. There is no ministerial, indisputable legal duty clearly established in the law which requires judicial officers presiding over involuntary inpatient placement hearings pursuant to § 394.467, F.S., to be physically present with the patients, witnesses, and attorneys. Accordingly, the Second District denied the petitions. However, the Second District certified the following question of great public importance to the Florida Supreme Court: DOES A JUDICIAL OFFICER HAVE AN EXISTING INDISPUTABLE LEGAL DUTY TO PRESIDE OVER SECTION 394.467 HEARINGS IN PERSON?

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2028,%202016/2D16-1328.928.pdf

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

A.L.H. v. State, ___ So. 3d ___, 2016 WL 4948887 (Fla. 2d DCA 2016). **THE JUVENILE'S SPONTANEOUS ADMISSION THAT HE DID NOT KNOW THE CAR WAS STOLEN WAS SUFFICIENT TO ESTABLISH THAT THE JUVENILE KNEW THE CAR WAS STOLEN; HENCE, THE "WILLFUL" ELEMENT OF TRESPASS OF A CONVEYANCE WAS SATISFIED.** Fingerprint evidence connected the juvenile to a stolen car. As a result, an officer interviewed the juvenile who admitted that he might have been in the car. During the interview, the officer showed the juvenile pictures of the car and the police report. The officer also told the juvenile that his fingerprints were found on a car window. At this point, the juvenile further admitted that he entered the car through the window. The juvenile then stated that he did not know the car was stolen; however, the officer never told the juvenile that the car was stolen. The juvenile was found guilty of trespass of a structure or conveyance pursuant to s. 810.08, F.S. (2014). On appeal, the Second District Court of Appeals addressed the issue of whether the State failed to prove that the juvenile knew or should have known that the car was stolen as is required under the trespass of a conveyance statute. Specifically, the State was required to establish that the juvenile "willfully entered and remained in a conveyance" without permission, A.H. v. State, 151 So. 3d 48, 50 (Fla. 4th DCA 2014); see also s. 810.08(1), F.S. (2014). In this context, the "willful" element required the State to prove that the juvenile knew or should have known that the car was stolen. The Second District held that the juvenile's spontaneous admission that he did not know the car was stolen could reasonably be construed as demonstrating his knowledge that the car was stolen because it was made before the officer informed him that the car was stolen. Thus, the State presented prima facie evidence as to the willful element of trespass of a conveyance. Accordingly, the Second District affirmed the trial court's decision.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2016,%202016/2D15-3404.pdf (September 16, 2016)

J.A.W. v. State, ___ So. 3d ___, 2016 WL 5404161 (Fla. 2d DCA 2016). **THE JUVENILE'S ACT OF POSTING ON TWITTER THAT HE WAS GOING TO "SHOOT UP" HIS SCHOOL DID NOT INVOLVE A THREAT SENT DIRECTLY TO A SPECIFIC VICTIM OR MEMBER OF THAT PERSON'S FAMILY, AND THUS WAS INSUFFICIENT TO ESTABLISH A VIOLATION OF S. 836.10, F.S..** The juvenile was found guilty of sending written threats to kill or do bodily injury pursuant to § 836.10, F.S., because he posted on Twitter that he was going to "shoot up" his school. On appeal, the Second District Court of Appeal addressed the issue of whether the evidence was sufficient to support the juvenile's disposition. In making this determination the Second District held that the plain language of § 836.10 makes clear that it only applies where a threat is sent directly to a specific victim or a member of that person's family. See State v. Wise, 664 So. 2d 1028, 1030 (Fla. 2d DCA

1995). Under the statute, the act of sending requires both “the depositing of the communication in the mail or through some other form of delivery” and “the receipt of the communication by the person being threatened.” Wise. Here, the juvenile did not “send” the threat because Twitter cannot be considered a “form of delivery” because, even though the tweets were public, there was no evidence that the juvenile directed the threat to the potential victims aside from merely referencing “my school.” Specifically, the tweets were discovered by an out-of-state watchdog group who reported the tweets to local law enforcement who then alerted school officials. The fact that the school received the threat, without more, is insufficient to support a finding that the threat was “sent” under the language of the statute. Hence, the receipt of the threat by the school was too far removed from the original context in which it was posted to support the juvenile’s disposition. Accordingly, the Second District vacated the order. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2028,%202016/2D15-4281.928.pdf (September 28, 2016)

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

M.W. v. State, ___ So. 3d ___, 2016 WL 4916856 (Fla. 4th DCA 2016). **THE FACT THAT THE JUVENILE ENTERED THE STRUCTURE STEALTHILY AND WITHOUT PERMISSION WAS SUFFICIENT TO ESTABLISH THAT THE JUVENILE ENTERED THE STRUCTURE WITH THE NECESSARY INTENT TO COMMIT A CRIME.** The juvenile and four others were found in a closed and locked gymnasium with a TV, DVD player, movies, blankets, a lighter, lighter fluid, and burnt tennis balls. The window was broken and there were burn marks on the floor that were not there the previous week. After being read his Miranda rights, the juvenile admitted to being present when the others started a fire and to touching the lighter and bottle when the others handed them to him. But he denied otherwise participating. The juvenile was found guilty of burglary of a structure pursuant to § 810.02, F.S. On appeal, the juvenile contended in relevant part that the evidence failed to establish that he intended to commit an offense inside the structure. The Fourth District held that the State established the intent element of the offense of burglary of a structure because proof of entering a structure stealthily and without consent raises a statutory presumption of entering with intent to commit an offense. See § 810.07(1), F.S. The Fourth District noted that the innocent reasons for breaking and entering do not overcome the statutory presumption of intent. Accordingly, the Fourth District affirmed the trial court’s decision. <http://www.4dca.org/opinions/Sept.%202016/09-14-16/4D15-3144.op.pdf> (September 14, 2016)

Fifth District Court of Appeal

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

S.M. v. Department of Children and Families, ___ So. 3d ___ (Fla. 2016). **PERMANENT GUARDIANSHIP NEED NOT BE RULED OUT PRIOR TO TERMINATION OF PARENTAL RIGHTS**. The Florida Supreme Court resolved a conflict between two of the District Courts of Appeal regarding the “least restrictive means” and termination of parental rights. The mother of three children argued on appeal that the trial court should have considered permanent guardianship or some other arrangement rather than termination of parental rights. There was a certified conflict between the First and Fourth District Courts of Appeal. The Fourth District had explained that the focus of least restrictive means is whether the parent has the ability to be a parent to the child with all the responsibilities that it entails and not merely to be an occasional presence in the child’s life. The Florida Supreme Court agreed with the Fourth District and held that the least restrictive means test does not require that the trial court consider a permanent guardianship instead of adoption after grounds for termination have been established by clear and convincing evidence and after it has been established that reunification would not be in the manifest best interests of the child. The mother had conceded that the Department had proved a statutory ground by clear and convincing evidence and did not contest that termination was in the manifest best interests of the children. Rather, the mother argued that termination was not the least restrictive means of protecting the children from harm. The Court held that the mother misunderstood the least restrictive means prong, which is part of due process and informs what actions the State must take prior to terminating parental rights. Ordinarily, the Department must prove that it made a good faith effort to reunify the family. Least restrictive means is usually satisfied by offering a case plan to the parents and providing the parents with help and services. The Court recalled that in Padgett it wrote that least restrictive means “is not intended to preserve a parental bond at the cost of a child’s future. Rather...it simply requires that measure short of termination should be utilized if such measures can permit the safe re-establishment of the parent-child bond.” (citation omitted). Regarding the conflicting case from the First District, the Court wrote that the First District had subsequently noted the uniformity of cases rejecting the notion that termination is impermissible under the least restrictive means simply because some limited and highly restricted contact with a parent may pose no harm. The Florida Supreme Court added that the Fourth District’s approach was more consistent with the Legislature’s permanency goals and the statutory scheme. The Court therefore approved the Fourth District’s decision and disapproved of the First District’s decision. The Court remanded the case to ensure that the final judgment of adoption was finalized by the trial court.

<http://www.floridasupremecourt.org/decisions/2016/sc15-2127.pdf> (September 1, 2016)

O.I.C.L. v. Florida Department of Children and Families, ___ So. 3d ___ (Fla. 2016). **CIRCUIT SPLIT NOT RESOLVED IN IMMIGRANT JUVENILE CASE**. The Florida Supreme Court declined to resolve a conflict between two of the District Courts of Appeal regarding an immigrant youth seeking Special Immigrant Juvenile Status. A majority of the Court concluded that because the individual in the case was now an adult who could not be adjudicated dependent, the case should be dismissed as moot. The case involved a private petition for dependency filed on behalf of a youth who was about two and a half months away from turning 18. The petition alleged that the father

had abandoned him during his mother's pregnancy and that his mother neglected him in Guatemala since the age of twelve and forced him to leave Guatemala when he turned seventeen. The youth was detained by the Office of Refugee Resettlement and later released to his uncle in Palm Beach County. The trial court had denied the petition for dependency, noting that he resided with and was cared for by his uncle against whom there were no allegations of abandonment, abuse, or neglect. That ruling was affirmed on appeal by the Fourth District Court of Appeal. In its opinion, the Florida Supreme Court noted that although the petition was filed before the youth reached age 18, he was now over 18 and the question of whether he should be deemed a dependent child was no longer an issue. The Court noted that a person over the age of 18 fails to satisfy the statutory definition of child. The Court refuted the dissent's argument that mootness should not apply because such petitions were capable of repetition, yet evading review. The majority held that the legal issues are not likely to evade review and it would not ignore the mootness of this case. The case was therefore dismissed.

<http://www.floridasupremecourt.org/decisions/2016/sc15-1570.pdf> (September 22, 2016)

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

M.S. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2016 WL 5404167 (Fla. 2d DCA 2016). **TERMINATION OF PARENTAL RIGHTS AFFIRMED.** The Second District Court of Appeal affirmed termination of a mother's parental rights. The mother had alleged ineffective assistance of counsel and that termination of her parental rights on five separate grounds should be reversed. The mother had failed to complete a case plan for an older child who had been sheltered and adjudicated dependent in 2012. The older sibling was separately adopted and is not the subject of the termination under appeal. In 2013, the mother gave birth to J.W. who was sheltered. The mother consented to dependency on J.W. but was subsequently arrested, along with the father, for robbery with a deadly weapon and tampering with a witness. The mother agreed to a case plan, including a substance abuse evaluation, treatment, therapy, stable housing and income, and paying child support. The mother later pleaded guilty, and was sentenced to three years in prison. After the expiration of the mother's case plan but before her expected release date, the Department sought to terminate her parental rights on several grounds, §§. 39.806(1)(b), (1)(c), (1)(e)(1), (1)(e)(3), and (1)(d)(3), F.S. After the adjudicatory hearing, the trial court found all of the termination grounds to be proven by clear and convincing evidence. On appeal, the District Court noted that its standard of review is highly deferential and that findings by clear and convincing evidence are presumed to be correct and will not be overturned unless they are clearly erroneous or lacking in evidentiary support. The Department conceded that termination under §§. 39.806(1)(b), (1)(e)(1), and (1)(e)(3) were not supported by competent, substantial evidence. In reviewing termination under 39.806(1)(c), the court noted that two of the trial court's findings regarding failure to complete case plan tasks were refuted by the record, and the other three were tasks that were impossible for the mother to complete until she was released from prison. Moreover, there was no evidence that the Department had provided the mother with any services regarding J.W. prior to or during her incarceration. Furthermore, the record showed that the mother made significant progress in drug

treatment and rehabilitation while in prison and could have pursued those case plan objectives after being released. The court therefore found that competent, substantial evidence in the record did not support termination under § 39.806(1)(c). As to the final ground, the court agreed with the Department and guardian ad litem's argument that the mother waived the issue of sufficiency of the evidence on termination on the final ground because she failed to raise it in her initial brief. Although the court was sympathetic to the mother's situation, the court noted that under its highly deferential standard review, it was compelled to affirm termination of the mother's parental rights under §. 39.806(1)(d)(3).

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2028,%202016/2D15-5005.928.pdf (September 28, 2016)

T.M. v. Department of Children and Families, ___ So. 3d ____, 2016 WL 5477851 (Fla. 2d DCA 2016). **GUARDIANSHIP AND TERMINATION OF SUPERVISION ORDER REVERSED AND REMANDED.** The Second District Court of Appeal reversed an order of guardianship and termination of supervision because the trial court's order failed to make required statutory findings. The order did not explain why the case was being closed in a permanent guardianship rather than adoption. Further, the order did not state that the child was not to return to the mother's care without court approval. The record reflected that there had not been an evidentiary hearing on the Department's motion to terminate supervision and order guardianship, and there was no competent, substantial evidence for the findings required by § 39.6221(1), F.S. The case was therefore reversed and remanded for further proceedings.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2028,%202016/2D16-794.928.pdf (September 28, 2016)

Third District Court of Appeal

Z.R. v. Department of Children and Families, ___ So. 3d ____, 2016 WL 5156379 (Fla. 3d DCA 2016). **TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED.** The Third District Court of Appeal reversed an order terminating a mother's parental rights to her five children. The court clarified that the record supported termination of the mother's rights but the order made no findings as to the factors in §. 39.811(6), F.S. The court therefore reversed the order and remanded the case for further proceedings.

<http://www.3dca.flcourts.org/Opinions/3D16-0833.pdf> (September 21, 2016)

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

C.B. v. Department of Children and Families, ___ So. 3d ____, 2016 WL 4723698 (Fla. 5th DCA 2016). **TERMINATION OF PARENTAL RIGHTS AFFIRMED BUT REMANDED FOR MODIFIED ORDER.** The Fifth District Court of Appeal affirmed the termination of a mother's rights under §. 39.806(1)(e), F.S. But because the record reflected that the mother visited the child and provided toys and clothing to the child, the court reversed the finding of abandonment and remanded the case for a modified order.

<http://www.5dca.org/Opinions/Opin2016/090516/5D16-1147.op.pdf> (September 7, 2016)

D.R. & Department of Children and Families v. J.R. & Guardian ad Litem, ___ So. 3d ___, 2016 WL 5596266 (Fla. 5th DCA 2016). **ORDER RELINQUISHING JURISDICTION AND TERMINATING DEPARTMENT SUPERVISION REVERSED**. The Fifth District Court of Appeal reversed part of a final order and remanded the case for further proceedings. The Department had removed the children after reports of domestic disputes involving the mother and her paramour. After the dependency petition was filed, the Department sought compliance with the Interstate Compact on the Placement of Children (ICPC) to place the children with their father in Massachusetts. At the adjudicatory hearing, the children testified that the mother physically abused them, called them names, and was violent towards her paramour. The trial court found the children dependent, subsequently placed the children with the father, and later relinquished jurisdiction. On appeal, the District Court held that placement of the children with the father failed to comply with the ICPC because there was no written notice from Massachusetts to the Department or to the court that “the proposed placement does not appear to be contrary to the interests of the children.” The court held it was error to place the children with the father without complying with the ICPC. The court did not, however, require that the children be immediately returned to Florida. Instead, the court reversed the final order and remanded the case with instructions for the trial court to determine whether it was in the children’s best interests to remain with the father pending completion of the ICPC process.

<http://www.5dca.org/Opinions/Opin2016/092616/5D15-3927.op.pdf> (September 27, 2016)

B.R. v. Department of Children and Families, ___ So. 3d ___ (Fla. 5th DCA 2016) and N.G. v. Department of Children and Families, ___ So. 3d ___ (Fla. 5th DCA 2016). **TERMINATION OF PARENTAL RIGHTS AFFIRMED BUT REMANDED FOR MODIFIED ORDERS**. In a pair of companion cases, the Fifth District Court of Appeal affirmed the termination of a father’s rights to his child and a mother’s rights to two children. In each case the Department conceded error that the final judgment didn’t contain required findings of fact even though the legal conclusions were supported by the trial court’s oral pronouncements. Both cases were reversed and each was remanded for the trial court to enter an amended final judgment.

<http://www.5dca.org/Opinions/Opin2016/092616/5D16-1968.op.pdf> (September 29, 2016)

Dissolution of Marriage Case Law

Florida Supreme Court

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms, SC16-1253, ___ So. 3d ___ (Fla. 2016). **NAME CHANGE FORMS REVISED**. The Supreme Court adopted revisions to three forms: 12.982(a), Petition for Change of Name (Adult); 12.982(c), Petition for Change of Name (Minor Child(ren)); and 12.982(f), Petition for Change of Name (Family). The forms were revised to accord with §. 68.07, F.S., as amended, which requires that the state and national criminal history records checks and petitions for name change must indicate whether the petitioner has registered as a sexual predator or sexual offender. The revised forms took effect September 29, 2016. A corrected opinion was issued October 6, 2016; however, the effective date remains the same.

<http://www.floridasupremecourt.org/decisions/2016/sc16-1253.pdf> (September 29, 2016)

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms, SC16-1288, ___ So. 3d ___ (Fla. 2016). **MEMORANDUM FOR CERTIFICATE OF MILITARY SERVICE REVISED**. The Supreme Court adopted revisions to form 12.912(a), the Memorandum for Certification of Military Service, to update the contact information for the various military branches, and to inform litigants that although the contact information is current as of the effective date of the form, it is subject to change. The effective date of the form is September 29, 2016.

<http://www.floridasupremecourt.org/decisions/2016/sc16-1288.pdf> (September 29, 2016)

First District Court of Appeal

Bork v. Bork, ___ So. 3d ___, 2016 WL 4608080 (Fla. 1st DCA 2016). **SPOUSE'S NET MONTHLY INCOME NOT SUPPORTED; TRIAL COURT FAILED TO INCLUDE AMOUNT OF TEMPORARY ALIMONY, PAYABLE UNTIL FINAL HEARING, INTO INCOME**. Former wife appealed the trial court's rulings on duration and amount of alimony and attorney's fees in the dissolution of a fourteen-year marriage. Finding an error on the face of the record in the financial information relied upon by the trial court in setting the alimony, the appellate court reversed the award and affirmed the remainder of the dissolution. Specifically, the trial court erred by not adjusting former husband's net monthly income to include the amount of the temporary alimony that was in place until the final hearing as it should no longer have been deducted. Reversed and remanded to the trial court for correction and further consideration of the appropriate alimony amount to be awarded to former wife.

https://edca.1dca.org/DCADocs/2015/4384/154384_DC08_09062016_064450_i.pdf
(September 6, 2016)

Street v. Street, ___ So. 3d ___, 2016 WL 4708567 (Fla. 1st DCA 2016). **REVERSED AND REMANDED FOR CORRECTION OF TIME-SHARING PERCENTAGES AND RECONSIDERATION OF ATTORNEY'S FEE AWARD**. Former husband raised four issues in his appeal from a final order denying his supplemental petition to modify a final judgment of dissolution. The appellate court affirmed on two issues without comment, but found that the final order incorrectly reflected a 36%/64% split in time-sharing instead of the correct 40%/60%. Accordingly, it reversed and remanded for recalculation of former husband's child support payment to reflect the appropriate time-sharing

split. It instructed the trial court on remand to reconsider the attorney's fee award as the record on appeal did not demonstrate that factors beyond former husband's ability to pay had been considered.

https://edca.1dca.org/DCADocs/2015/5452/155452_DC08_09082016_063006_i.pdf

(September 9, 2016)

Rosenthal v. Rosenthal, ___ So. 3d ___, 2016 4751758 (Fla. 1st DCA 2016). **REVERSED AND REMANDED TO DETERMINE IF MARITAL SETTLEMENT AGREEMENT CONTEMPLATED WAIVER BY THE SPOUSES AND IF NOT, WHETHER FORMER HUSBAND WAS ENTITLED TO MODIFICATION OF ALIMONY.** The appellate court agreed with former husband that the marital settlement agreement (MSA) incorporated into the final judgment of dissolution did not contain either an explicit waiver of the right to modify alimony or "unambiguous language demonstrating" the spouses' intent to waive the right to modify alimony. Spouses may waive their statutory right to seek modification of alimony provisions in a settlement agreement if the language clearly and unambiguously expresses waiver or an interpretation of the agreement as a whole leads to "no other conclusion but waiver." Cook v. Cook, 94 So. 3d 683 (Fla. 4th DCA 2012), quoting Tapp v. Tapp, 887 So. 2d 442, 444 (Fla. 2d DCA 2004). Here, the appellate court concluded that the MSA did not clearly and unambiguously indicate the spouses' intent to waive the right to modify alimony; it disagreed with the trial court that an implicit waiver was the only conclusion to be drawn from the ambiguous language of the MSA. Reversed and remanded for the trial court to conduct further proceedings to determine if a waiver was contemplated by the spouses, and if not, whether former husband was entitled to modification based on former wife's cohabitation.

https://edca.1dca.org/DCADocs/2016/1035/161035_DC13_09132016_101019_i.pdf

(September 13, 2016)

Browne v. Blanton-Browne, ___ So. 3d ___, 2016 WL 4987970 (Fla. 1st DCA 2016). **TRIAL COURT DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW BY NOT WARNING SPOUSE OF CONSEQUENCES FOR HIS FAILURE TO ATTEND HEARING, AS REQUIRED BY RULE 12.615.** The appellate court agreed with former husband that the trial court departed from essential requirements of law by failing to follow Florida Family Law Rule of Procedure 12.615 when it found him in indirect civil contempt for failure to pay both child support arrearages and former wife's attorney's fees. The notice of hearing for former wife's motion for civil contempt/enforcement did not warn former husband that failure to appear could result in his arrest and incarceration for up to forty-eight hours pending a hearing, as required by the rule. After detailing the proper procedure in contempt hearings, including the requirement that a trial court find that a contemnor has the present ability to comply with the purge and state facts in support of its finding, the appellate court held that the trial court's order finding former husband in contempt after an "incomplete process" left former husband under a "continual threat of arrest" until immediate payment of a purge just under \$20,000—notwithstanding the trial court's failure to determine whether he had the present ability to pay the purge. The appellate court granted former husband's petition for a writ of certiorari and quashed both the contempt order and the related writ of bodily attachment. It noted that the trial court was free to conduct further proceedings on former wife's motion for contempt after the issuance of a notice as required by rule 12.615.

https://edca.1dca.org/DCADocs/2016/0679/160679_DC03_09192016_113207_i.pdf

(September 19, 2016)

Koch v. Koch, __ So. 3d __, 2016 WL 5404230 (Fla. 1st DCA 2016). UNDER THE CIRCUMSTANCES OF THIS CASE, TRIAL COURT DID NOT ABUSE ITS DISCRETION OR VIOLATE SPOUSE'S RIGHTS IN PROHIBITING HIM FROM DISCUSSING RELIGIOUS MATTERS WITH HIS CHILDREN; THE WELFARE AND BEST INTERESTS OF THE CHILDREN MUST PREVAIL. In affirming a partial final judgment of dissolution and a final judgment on a parenting plan and time-sharing, the appellate court held that the trial court did not abuse its discretion or violate former husband's rights by restricting him from discussing any religious matter with his children. Noting the protection afforded by the First Amendment, the appellate court reiterated that a court in family law proceedings may not restrict a post-dissolution parent's religious beliefs, no matter how unconventional; however, it agreed with the Kansas Supreme Court's observation that "consideration of religiously motivated behavior with an impact on a child's welfare cannot be ignored." Harrison v. Tauheed, 292 Kan. 663, 683, 256 P. 3d 851, 862 (2011). Here, the record supported a clear showing that former husband's actions, which he believed to be religiously motivated, had been harmful to the children. The appellate court concluded that under the "particular circumstances of this case" the trial court did not abuse its discretion or violate former husband's rights when it restricted his discussion of "religious matters" during his parenting time, stating that "the welfare and best interests of the children must prevail."

https://edca.1dca.org/DCADocs/2016/0478/160478_DC05_09282016_100736_i.pdf

(September 28, 2016)

Second District Court of Appeal

Liguori v. Liguori, __ So. 3d __, 2016 WL 4722540 (Fla. 2d DCA 2016). CHILD SUPPORT SHOULD BE CALCULATED FROM THE DATE SPOUSES NO LONGER RESIDED TOGETHER; FINAL JUDGMENT SHOULD SPECIFY WHO PAYS FOR CHILDREN'S HEALTH AND DENTAL INSURANCE AND HOW UNCOVERED EXPENSES ARE ALLOCATED; CHILD CARE COSTS THAT ARE NOT INCURRED BY A SPOUSE SHOULD NOT BE ADDED TO CHILD SUPPORT OBLIGATION; A TRIAL COURT'S TIME-SHARING PLAN SHOULD BE AFFIRMED IF SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE EVEN IF REASONABLE PEOPLE DIFFER WITH IT. Former husband appealed the trial court's recalculation of temporary child support, child support, equitable distribution, and the parenting plan in a final judgment of dissolution. The appellate court reversed, finding that the trial court erred: 1) in calculating temporary child support from the date of filing rather than the date former husband moved out of the marital home; 2) in not specifying in the final judgment that former wife would be providing for the children's health and dental insurance; 3) in its calculation regarding the number of overnights allocated to each parent; and 4) in including child care costs after testimony indicated none were incurred. The appellate court affirmed the trial court's scheme of equitable distribution and parenting plan. A trial court's time-sharing plan should be affirmed if supported by competent, substantial evidence, even if reasonable people may differ with respect to its decision. Schwieterman v. Schwieterman, 114 So. 3d 984, 987 (Fla. 5th DCA 2012). Here, there was no abuse of discretion.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2009,%202016/2D14-5844.pdf (September 9, 2016)

Guerra v. Guerra, ___ So. 3d ___, 2016 WL 5477797 (Fla. 2d DCA 2016). PROSPECTIVE DETERMINATIONS PURPORTING TO DECIDE WHETHER SUPPORT OBLIGATIONS WILL BE DISCHARGEABLE IN BANKRUPTCY ARE IMPROPER. Former husband appealed a final judgment of dissolution and an order granting former wife attorney's fees and costs. The appellate court affirmed with the exception of a provision within the order characterizing the fee award as a form of support that the trial court stated was not "dischargeable in bankruptcy or by any other means." The appellate court found entry of the award appropriate under the facts of the case, but noted that it has previously held "prospective determinations purporting to decide whether support obligations will be dischargeable in bankruptcy are improper." Roth v. Roth, 973 So. 2d 580, 589 (Fla. 2d DCA 2008). Accordingly, it reversed and remanded for the trial court to strike the provision from its order.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2028,%202016/2D15-2773.928.pdf (September 28, 2016)

Third District Court of Appeal

Clafin v. Clafin, ___ So. 3d ___, 2016 WL 5485034 (Fla. 3d DCA 2016). THE RIGHTS OF AN INTERVENOR ARE CONDITIONAL AND EXIST ONLY AS LONG AS LITIGATION CONTINUES BETWEEN THE PARTIES. Former wife sought a writ prohibiting further proceedings in a dissolution of marriage case which both spouses had voluntarily dismissed. Prior to the voluntary dismissal, the trial court granted MSP Recovery Services the right to intervene in the action to assert its claim to a portion of any equitable distribution to former wife of any interest in MSP Recovery. MSP Recovery argued that its claim as intervenor survived the voluntary dismissal. Noting that it had previously held that the rights of an intervenor are conditional and exist only as long as litigation continues between the parties, the appellate court disagreed. State v. Florida Workers' Advocates, 167 So. 3d 500, 505-506 (Fla. 3d DCA 2015). Because MSP Recovery's claims did not survive the spouses' voluntary dismissal of the dissolution case, the trial court was enjoined and prohibited from conducting further proceedings. Petition granted; writ withheld.

<http://www.3dca.flcourts.org/Opinions/3D16-2133.pdf> (September 28, 2016)

Fourth District Court of Appeal

Brezault v. Brezault, ___ So. 3d ___, 2016 WL 4681076 (Fla. 4th DCA 2016). ALIMONY AWARD EXCEEDED AMOUNT REQUESTED AND WAS NOT SUPPORTED BY EVIDENCE; TRIAL COURT MUST MAKE A FINDING OF FACT ON EACH REQUISITE STATUTORY FACTOR. In an appeal by both spouses to the final judgment dissolving their twenty-two year marriage, the appellate court agreed with former wife that the trial court failed to make the required findings to support the alimony awarded to former husband. Although the trial court specifically found that former husband had proven a need for alimony and that former wife had an ability to pay, it made no findings "regarding the suitability of one type of alimony over another." The appellate court agreed with former wife that the trial court erred in the amount of alimony awarded to former husband; it exceeded the amount he requested and was not supported by the evidence. The appellate court noted it had previously held that absent special circumstances, alimony should not exceed a spouse's need. Rosecan v. Springer, 845 So. 2d 927, 929 (Fla. 4th DCA 2003). Although the trial court stated in its final judgment that it had considered the requisite statutory

factors in entering its alimony award, it failed to make findings of fact corresponding to each factor. A trial court must make findings of fact on *each* listed factor. Patino v. Patino, 122 So. 3d 961, 963 (Fla. 4th DCA 2013). (Emphasis in reviewed opinion.) Reversed and remanded for the trial court to make the required statutory findings of fact and for further proceedings consistent with the appellate opinion. The appellate court noted that “[s]ignificant adjustment” of the alimony award might require adjustment of the child support and attorney’s fee provisions. <http://www.4dca.org/opinions/Sept.%202016/09-07-16/4D15-2788.op.pdf> (September 7, 2016)

Trainor v. Trainor, ___ So. 3d ___, 2016 WL 4681108 (Fla. 4th DCA 2016). **REMANDED FOR TRIAL COURT TO ADDRESS REASONABLENESS OF ATTORNEY’S FEES.** Former husband appealed an award of temporary alimony and attorney’s fees to former wife. The appellate court affirmed the alimony, but remanded the other for the trial court to address the reasonableness of the attorney’s fees. The appellate court noted that temporary relief awards are among the areas where trial judges have the broadest discretion and that the standard of review for temporary alimony and attorney’s fees is abuse of discretion. Here, the trial court did not abuse its discretion in determining either the amount of temporary alimony or that former husband should pay former wife’s fees; however, it failed to address the reasonableness of former wife’s fees, both the number of hours expended and the hourly rate. Remanded. <http://www.4dca.org/opinions/Sept.%202016/09-07-16/4D16-852.op%20&%20dis.pdf> (September 7, 2016)

Koscher v. Koscher, ___ So. 3d ___, 2016 WL 5118340 (Fla. 4th DCA 2016). **NOMINAL ALIMONY INAPPROPRIATE WHERE PAYING SPOUSE HAS ABILITY TO PAY MORE IF HE/SHE WERE TO EARN AMOUNT DETERMINED BY COURT; SPOUSES ARE NOT ON EQUAL FOOTING IF ONE HAS NO INCOME AND THE OTHER HAS SIGNIFICANT EARNING POTENTIAL.** Both spouses appealed the final judgment dissolving their thirty-year marriage which awarded former wife nominal alimony but denied her fees. In the four years prior to his termination, which was nearly three years before the date of dissolution, former husband’s annual compensation averaged over \$800,000. Despite finding former husband was voluntarily unemployed, the trial court refused to impute income to him. Finding former wife entitled to permanent, periodic alimony, the trial court set the amount at \$11,000 per month; however, it ordered that she receive only \$100 per month due to former husband’s present inability to pay the actual amount. Former wife argued that an award of \$100 per month controverted the evidence and was insufficient in that it forced her to deplete marital assets to maintain her standard of living. The appellate court reiterated that nominal alimony is awarded when one spouse is entitled to permanent periodic but the other has no present ability to pay; the trial court retains jurisdiction to reconsider the award should the spouses’ financial circumstances change. The appellate court found nominal alimony inappropriate in situations where a paying spouse has the ability to pay more if he/she were to earn an amount the court determines could be earned through diligent efforts. The appellate court disagreed with the trial court’s finding that the spouses were on equal footing financially. There was no evidence of former wife having any income while former husband was “an experienced business executive with significant earning potential”; thus, they were not on equal footing. The appellate court noted it “is impossible to get blood from a turnip”; however, it is not impossible to require monthly alimony payments from an employable former spouse with a net

worth “in the neighborhood” of two million dollars. Reversed and remanded for the trial court to impute income to former husband and to revisit the amount of alimony to be awarded to former wife along with her request for fees and costs.

https://edca.4dca.org/DCADocs/2015/2432/152432_DC08_09212016_100935_i.pdf

(September 21, 2016)

Fifth District Court of Appeal

Shufelt v. Shufelt, ___ So. 3d ___, 2016 WL 4585978 (Fla. 5th DCA 2016). **APPEALING SPOUSE FAILED TO PROVIDE A SUFFICIENT RECORD TO ESTABLISH ERROR ON ONE ISSUE AND FAILED TO PRESERVE SECOND ISSUE FOR APPELLATE REVIEW.** Former husband raised two issues in his appeal of a final judgment of dissolution: one, the trial court erred in signing the proposed final judgment submitted by former wife’s counsel without giving him an opportunity to comment or object; and two, the trial court erred in awarding the spouses’ sole marital asset—the marital home—to former wife. The appellate court affirmed because former husband failed to provide a sufficient record to establish error on the first issue and failed to preserve the second for appellate review. Although former husband filed a pro se motion to set aside the final judgment, he did not raise the issue of the unequal distribution of the marital home in that motion.

<http://www.5dca.org/Opinions/Opin2016/082916/5D15-4114.op.pdf> (September 2, 2016)

Anderson v. Anderson, ___ So. 3d ___, 2016 WL 4987335 (Fla. 5th DCA 2016). **SPOUSE DENIED DUE PROCESS WHEN HEARING WAS CONDUCTED WITHOUT HIS PRESENCE.** The appellate court agreed with former husband that he was denied due process when the final dissolution hearing was conducted without his telephonic presence. Former husband, an inmate, filed a pro se answer to former wife’s petition for dissolution, agreeing that the marriage should be dissolved, but requesting distribution of certain personal property. The trial court granted his motion to appear telephonically and directed the Department of Corrections to bring him to the telephone at the appointed time; however, Department error prevented his appearance and the hearing proceeded without him. The appellate court found that former husband did all that was required of him and that through no fault of his—or the trial court--his attendance was “frustrated.” The appellate court affirmed the dissolution, but reversed and remanded for the trial court to determine his entitlement to receive any personal property.

<http://www.5dca.org/Opinions/Opin2016/091216/5D16-888.op.pdf> (September 16, 2016).

Lostaglio v. Lostaglio, ___ So. 3d ___, 2016 WL 4944080 (5th DCA 2016). **ABSENT A SHOWING OF DEPLETION OF ASSETS, A SPOUSE’S ADULTERY IS NOT A VALID REASON TO AWARD A GREATER SHARE OF MARITAL ASSETS TO THE WRONGED SPOUSE; NEED AND ABILITY REMAIN THE PRIMACY CONSIDERATIONS IN AWARDING ALIMONY; TRIAL COURT DETERMINED SPOUSE WAS ABLE TO WORK BUT DID NOT IMPUTE INCOME TO HER.** Both spouses appealed a final judgment of dissolution, specifically with regard to the scheme of equitable distribution and the award of durational alimony. The appellate court affirmed the dissolution and the award of durational alimony, but reversed and remanded for the trial court to recalculate the equitable distribution and reconsider the amount of durational alimony. The trial court did not impute income to former wife notwithstanding its finding, which the appellate court concluded was based on competent, substantial evidence that she had the ability to work. The appellate court found no

error in the trial court's consideration of former wife's extramarital affair. Section 61.08(1), F.S., permits a trial court to consider evidence of adultery in determining a proper alimony award; however, consideration is dependent upon the particular circumstances of the case. Absent a showing of depletion of assets, a spouse's adulterous misconduct is not a valid reason to award a greater share of marital assets to the wronged spouse or to deny the adulterous spouse alimony. Childers v. Childers, 640 So. 2d 108, 109-110 (Fla. 4th DCA 1994). Need and ability remain the primary considerations in awarding alimony. Here, there was no evidence former wife depleted marital assets to further her adulterous behavior; thus, the trial court correctly did not consider the adultery "an over-significant factor." Reversed and remanded for reconsideration of several items in the scheme of equitable distribution and the amount of durational alimony. <http://www.5dca.org/Opinions/Opin2016/091216/5D14-3494.op.pdf> (September 16, 2016)

Clemens v. Clemens, ___ So. 3d ___, 2016 WL 5596106 (Fla. 5th DCA 2016). PERMANENT ALIMONY IS INTENDED TO PROVIDE FOR THE NEEDS AND NECESSITIES OF LIFE FOR A FORMER SPOUSE AS THEY WERE ESTABLISHED DURING THE MARRIAGE OF THE SPOUSES; AN INITIAL PRESUMPTION IN FAVOR OF PERMANENT ALIMONY IN LONG-TERM MARRIAGES EXISTS; HERE, TRIAL COURT ABUSED ITS DISCRETION IN DENYING PERMANENT ALIMONY TO SPOUSE. Former wife appealed the final judgment dissolving a twenty-year marriage. She argued that the trial court should have awarded her either permanent or rehabilitative alimony. The appellate court affirmed, without discussion, the denial of her request for rehabilitative alimony, but concluded that the trial court abused its discretion in denying her request for permanent alimony. The trial court found that both spouses were underemployed and imputed minimum wage to each. It found that former wife did not have a need for alimony based on the figures in her financial affidavit. This was error. Her financial affidavit was based on her current living arrangements—renting a single room in a friend's house; however, permanent alimony is intended to provide for the "needs and necessities of life for a former spouse as *they were established during the marriage of the parties.*" Mallard v. Mallard, 771 So. 2d 1138, 1140 (Fla. 2000). (Emphasis in reviewed opinion.) Because this was a long-term marriage, an initial presumption in favor of permanent alimony existed which former husband did not overcome. The appellate court concluded that the trial court abused its discretion in denying permanent alimony to former wife. Accordingly, the appellate court reversed and remanded for the trial court to determine the appropriate amount of permanent alimony to be awarded to former wife. <http://www.5dca.org/Opinions/Opin2016/092616/5D15-3842.op.pdf> (September 30, 2016)

Coleman v. Bland, ___ So. 3d ___, 2016 WL 5597132 (Fla. 5th DCA 2016). TRIAL COURT FOLLOWED APPELLATE MANDATE IN RECONSIDERING PROPER DISPOSITION OF MARITAL PORTION OF SPOUSE'S PENSION; TRIAL COURT'S FINDING THAT SPOUSE WAS UNABLE TO PAY APPELLATE FEES CONTRADICTED ITS PRIOR ATTORNEY'S FEE AWARD, AND WAS UNSUPPORTED GIVEN THE SUBSTANTIAL DISPARITY IN THE SPOUSES' INCOMES. Former wife appealed a final order on remand determining her interest in former husband's pension and denying appellate attorney's fees and costs from a prior appeal. (The appellate court noted that this is former wife's sixth direct appeal in this twelve-year-old dissolution case.) The appellate court found that former wife's arguments regarding the pension lacked merit; however, it concluded that her arguments that the trial court's denial of appellate attorney's fees and costs were not supported by

competent, substantial evidence were well-taken in one appeal. In that case, the trial court's finding that former husband was unable to pay appellate attorney's fees contradicted its prior attorney's fee award without additional evidence, and was unsupported given the substantial disparity in incomes. Accordingly, the appellate court reversed those portions of that order and remanded for reconsideration of appellate fees and costs.

<http://www.5dca.org/Opinions/Opin2016/092616/5D16-1627.op.pdf> (September 30, 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

Ceelen v. Grant, ___ So. 3d ___, 2016 WL 4944103 (Fla. 2d DCA 2016). **STALKING INJUNCTION REVERSED AND REMANDED**. A couple lived together for seven years before breaking up. The girlfriend filed a petition for protection against stalking after the boyfriend forced her out of their home and made over 200 harassing and threatening phone calls and text messages to both her and her family. The boyfriend tried to introduce copies of the texts and claimed they were well meaning, as well as a witness, but the court stated that the sheer number of texts and calls constituted stalking, and did not allow the copies into evidence. The judge did not allow the witness to testify, and the boyfriend appealed. The appellate court reversed and remanded since the boyfriend was not given due process at the hearing and could not present his defense. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/September/September%2016,%202016/2D15-1696.pdf (September 16, 2016)

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.