

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE APRIL 2015

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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.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

I.A. v. State, __ So. 3d __, 2015 WL 1928619 (Fla. 1st DCA 2015). [UNDER S. 985.441\(2\), F.S. \(2014\), THE JUVENILE COULD NOT BE COMMITTED TO A HIGH-RISK PLACEMENT FOR TWO MISDEMEANOR OFFENSES.](#) The juvenile argued that the trial court impermissibly committed him to a high-risk placement for two misdemeanor offenses. The juvenile was on probation for two misdemeanors and he admitted to technical violations of that probation. The First District Court of Appeal found that under s. 985.441(2), F.S. (2014), the most that the juvenile could be committed to was a non-secure residential placement. Therefore, the trial court's commitment to a high-risk placement was contrary to law. Accordingly, the commitment was reversed and remanded for further proceedings.

https://edca.1dca.org/DCADocs/2014/5091/145091_DC13_04292015_093611_i.pdf (April 29, 2015).

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

L.W. v. State, __ So. 3d __, 2015 WL 1578840 (Fla. 3d DCA 2015). [THE TRIAL COURT WAS REQUIRED TO MAKE SPECIFIC FACTUAL FINDINGS THAT THE JUVENILE COULD PAY THE AMOUNT OF RESTITUTION ORDERED AT THE TIME THE RESTITUTION WAS IMPOSED.](#) The juvenile appealed the trial court's restitution order of \$321.61 in \$30 monthly installments. The juvenile argued the trial court erred because he was not present at the restitution hearing and the trial court did not make specific factual findings that the juvenile could pay the amount of restitution ordered. The Third District Court of Appeal found that the juvenile's attendance at the restitution hearing was waived and therefore there was no error. However, the Third District reversed and remanded the probation order for a determination by the trial court as to whether the juvenile and/or his parents or legal guardian had the ability to pay the restitution ordered. At the restitution hearing, the juvenile's counsel suggested that the trial court conduct a hearing on the juvenile's ability to pay the restitution order. The trial court stated that such a hearing would not be necessary unless the juvenile failed to make the required payments and a probation violation hearing was conducted. Shortly after the restitution order was finalized, the juvenile filed a motion to correct his sentence under Florida Rule of Juvenile Procedure 8.135(b)(2), arguing that the trial court was required to make specific factual findings regarding the juvenile's reasonable ability to pay the restitution order. The Third District found that the cases interpreting s. 985.437, F.S., universally required the trial court to make a factual finding that the child and/or his parent or guardian could reasonably be expected to pay the amount of the loss at the time the restitution was imposed and not subsequently to enforce the order or determine whether the juvenile violated his probation. The State argued that the issue was not preserved for appeal and was not fundamental error. The Third District found that the trial court's failure to make factual findings

would not have risen to the level of fundamental error had the issue not been preserved. However, the juvenile did preserve the issue for appeal by informing the trial court that it was required to make a factual finding on the juvenile's reasonable ability to pay the order and also by filing his motion for postconviction relief under Florida Rule of Juvenile Procedure 8 .135(b)(2). Therefore, the Third District found that the trial court's failure to make the requisite factual findings over the juvenile's objection and subsequent motion apprising the trial court of its mistake was reversible legal error. Accordingly, the restitution order was reversed and remanded for the trial court to make factual findings as to whether the juvenile could reasonably be expected to pay the restitution order.

<http://www.3dca.flcourts.org/Opinions/3D14-1894.pdf> (April 8, 2015).

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

C.D. v. Department of Children and Families, __ So. 3d __, 40 Fla.L.Weekly D981, 2015 WL 2374420 (Fla. 1st DCA 2015). **COURT WITHDRAWS PREVIOUS OPINION AND SUBSTITUTES NEW OPINION THAT REVERSES TERMINATION OF PARENTAL RIGHTS AND REMANDS CASE.** The First District Court of Appeal acted on a group of motions regarding an opinion it issued in February of 2015. See C.D. v. Department of Children and Families, 40 Fla.L.Weekly D546, 2015 WL 848157. The Department of Children and Families had filed motions for clarification, rehearing, and rehearing en banc. The GAL had filed motions for rehearing, rehearing en banc, and for clarification and/or certification. The court denied all motions except for clarification, withdrew its February opinion, and substituted a new opinion. In the new opinion, the court expounded on its original statement that “the State must prove by clear and convincing evidence that termination is the least restrictive means of protecting the children.” In its new opinion, the court elaborated that the State was to prove by clear and convincing evidence that termination was the least restrictive means of protecting the children, and noted that although the availability of a permanency option other than TPR is not a proper basis for denying TPR, this does forestall utilizing such an option should the State fail to meet its burden on the issue of least restrictive means. The end result of the opinion was the same as its previous opinion. The court held that termination of parental rights was warranted under ss. 39.806(1)(c) & (1)(e), F.S., but reversed the trial court’s order to the extent it found that the termination was the least restrictive means of protecting the children from serious harm. The court therefore remanded the case for proceedings consistent with the opinion.
https://edca.1dca.org/DCADocs/2014/4688/144688_DC08_04272015_100743_i.pdf (April 27, 2015).

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

A.S. v. Department of Children and Families, J.A., and Guardian ad Litem Program, 162 So. 3d 335, 40 Fla.L.Weekly D771, 2015 WL 1448507 (Fla. 4th DCA 2015). **TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED.** The Fourth District Court of Appeal reversed the termination of a father’s parental rights based on abandonment. The child had been born in September 2012 and adjudicated dependent in January 2013. The mother had named three possible fathers, two of which were rule out by paternity tests. The mother testified that A.S. was father in February 2013. A.S. missed a March 20, 2013, hearing as well as two paternity test appointments

scheduled by the department for April and May of 2013. A.S. finally took a paternity test in August 2013 and learned he was the child's father in December 2013, although the test result showing paternity was filed with the trial court on October 2, 2013. By the end of 2013, paternity had been established but the father was not offered a case plan. The father missed a mediation in January 2014 and first met the child in late March 2014. The father then had several visits with the child, purchasing food for the child and once bringing the child a toy. There was a TPR hearing and the trial court entered an order terminating the father's parental rights, finding clear and convincing evidence of abandonment and that termination was the least restrictive means available since reunification with the father posed a substantial risk of significant harm to the child. On appeal, the court analyzed the statutory definitions of "abandonment" and "parent" and concluded that a prospective parent is unable to abandon a child under Chapter 39 unless the prospective parent's status falls within the terms of sections 39.503(1) or 63.062(1). The court noted that neither of those sections applied to the father and that the department never used section 39.803 to find him. The father's paternity was not established until the end of 2013 rather than the beginning and the trial court therefore should only have considered the father's actions following the establishment of paternity in determining whether the father abandoned his child. The trial court erred in relying on the father's failure to take affirmative steps to establish his paternity in early to mid-2013. The court concluded there was not clear and convincing evidence that the father abandoned his child and the trial court erred in so finding. The court next noted that the department conceded that termination of the father's rights was the least restrictive means available. The court noted that the father was never offered a case plan and there was no indication that he was unable to comply with a case plan or that the child would suffer significant harm if reunited with the father. The court found no evidence, other than dirty diapers and occasional night terrors, of harm to the child if reunited with the father. Thus the trial court lacked clear and convincing evidence that termination of parental right was the least restrictive means. The court therefore reversed the order terminating the father's parental rights and remanded the case for further proceedings.

<http://www.4dca.org/opinions/April%202015/04-01-15/4D14-3571.op.pdf> (April 1, 2015).

M.N., Jr. v. Department of Children and Families and Guardian ad Litem Program, 161 So. 3d 1290, 40 Fla.L.Weekly D807, 2015 WL 1545230 (Fla. 4th DCA 2015). **DISMISSAL OF MOTION TO SET ASIDE ADOPTION AFFIRMED**. The Fourth District Court of Appeal affirmed a trial court's dismissal of a motion to set aside an adoption. The appellant is the biological father of a child born to the marriage between the mother and the child's legal father. After termination of parental rights of the mother and legal father, a relative adopted the child and the biological father moved to set aside the adoption. The trial court denied the father's motion without addressing the issue of whether notice required by statute was provided to the father. The court instead found the father lacked standing to contest the adoption. Following an unsuccessful appeal, the father filed a second motion to set aside the adoption, which was also denied. On the second appeal, the District Court affirmed, albeit without addressing the merits of the father's argument. Instead, the court noted the statute of repose provides that an action to nullify a judgment of adoption may not be filed more than 1 year after entry of the judgment terminating parental rights. Because the father's second motion was filed more than one year after the order

terminating rights was entered, the father's action to set aside the adoption was statutorily barred.

<http://www.4dca.org/opinions/April%202015/04-08-15/4D14-2345.op.pdf> (April 8, 2015).

D.S. v. Department of Children and Families, __ So. 3d __, 40 Fla.L.Weekly D923, 2015 WL 1810315 (Fla. 4th DCA 2015). **TERMINATION OF PARENTAL RIGHTS REMANDED FOR FURTHER PROCEEDINGS**. The Fourth District Court of Appeal remanded a termination of parental rights case for further proceedings. The father's rights had been terminated as to three children: D.S., Jr.; P.S.; and K.S. Termination of parental rights was affirmed as to P.S., who did not reside with the other children and with whom the father did not maintain a continuing relationship. But the court reversed termination of the father's rights as to the other two children because competent substantial evidence did not support termination, because termination was not in those children's manifest best interest, and because it was not the least restrictive means of protecting those children from harm. The father had become incarcerated a month before the children had been removed from the mother. The case plan required the father to comply with the conditions of his incarceration. He was sentenced to six years of incarceration in January 2013 with an anticipated maximum release date of February 2018. Although the court adopted a reunification goal at a judicial review in February 2013, the department filed a petition to terminate the parents' rights in July 2013. The sole ground against the father was based on s. 39.806(1)(d)1, F.S., that his incarceration was for "a significant portion of the child[ren]'s minority." P.S. was in foster care but the paternal aunt had custody of the other two children, D.S., Jr., and K.S. When the trial court made termination findings regarding the children's manifest best interests, it found there was a suitable permanent custody arrangement with the aunt for D.S., Jr., and K.S. but not for P.S. The trial court also found that P.S.'s foster parents wanted to adopt him. When the District Court examined evidence regarding P.S., it determined that the ground for termination was supported by competent substantial evidence and that termination was in P.S.'s manifest best interest and was the least restrictive means to prevent harm. However, as to the other children the court noted that they were not in foster care but in the aunt's care with their father in regular contact with them. Importantly, because the aunt had not decided that she would adopt the children, terminating the father's rights might upset the intended goal of maintaining the children with the aunt. The District Court further found that the trial court did not apply the manifest best interest factors as directed by the Florida Supreme Court's decision in B.C. v. Florida Department of Children and Families, 887 So. 2d 1046 (Fla. 2004)(interpreting a previous version of the incarceration ground for termination of parental rights). The court further held that the department failed to prove that termination was the least restrictive means to prevent harm to the children. Indeed, the court noted that there was an available relative caregiver and no proof of any harm to the children due to contact with their father. The court therefore affirmed termination of parental rights as to P.S. but reversed termination as to the other children and remanded the case for further proceedings.

<http://www.4dca.org/opinions/April%202015/04-22-15/4D14-3144.op.pdf> (April 22, 2015).

Fifth District Court of Appeal

No new opinions for this reporting period.

Dissolution Case Law

Supreme Court

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms, __ So. 3d __, (Fla. 2015). **DATING VIOLENCE PETITION REVISED TO MORE CLOSELY TRACK THE STATUTE**. At the request of its advisory workgroup on family law forms, the Supreme Court adopted revisions to the dating violence petition and its instructions to more closely track the language of the statute regarding imminent danger. The instructions for filing on behalf of a child or children were also revised. Interested persons must submit comments to the Court on or before June 22, 2015. <http://www.floridasupremecourt.org/decisions/2015/sc15-339.pdf> (April 23, 2015).

First District Court of Appeal

Broga v. Broga, __ So. 3d __, 2015 WL 1650268, 40 Fla. L. Weekly D867 (Fla. 1st DCA 2015). **TRIAL COURT MUST SPECIFICALLY ADDRESS AVAILABILITY OF JOBS SPOUSE IS QUALIFIED FOR BEFORE IMPUTATING INCOME TO THAT SPOUSE; IT MUST ALSO MAKE FINDINGS OF FACT REGARDING NECESSITY, COST, AND AVAILABILITY OF LIFE INSURANCE BEFORE REQUIRING IT AS SECURITY; ASSETS CANNOT BE DOUBLE-COUNTED; CHILD SUPPORT NEED NOT BE REDUCED PROPORTIONATELY**. Former husband raised numerous issues; the appellate court found three had merit and another warranted discussion. The appellate court found the trial court erred by: failing to specifically address the availability of jobs for which former husband was qualified prior to imputing income to him; failing to make findings of fact regarding the necessity, cost, and availability of life insurance before requiring former husband to obtain it as security for his child support obligation; and double-counting a college savings plan by adding it former husband's assets as an independent asset after it was already included in another account awarded to him. The appellate court reversed and remanded and instructed the trial court to revisit the scheme of equitable distribution. The appellate court found no error in the trial court's failure to decrease the amount of child support proportionately as each child reached majority; because the statute did not require that. The appellate court noted that its prior case of Evans v. Evans, 443 So. 2d 235 (Fla. 1st DCA 1983), predated the child support guidelines and thus, "no longer reflects the accurate law."

https://edca.1dca.org/DCADocs/2014/1364/141364_DC08_04152015_065342_i.pdf (April 15, 2015).

Teresi v. Teresi, __ So. 3d __, 2015 WL 1650593, 40 Fla. L. Weekly D870 (Fla. 1st DCA 2015). **TRIAL COURT ERRED IN ORDERING SPOUSE TO PAY RETROACTIVE CHILD SUPPORT ONLY THROUGH MONTH CHILD TURNED 18 ALTHOUGH CHILD GRADUATED ELEVEN MONTHS LATER; REMANDED FOR RECALCULATION**. Former husband appealed a supplemental final judgment of dissolution. Former wife conceded that the trial court erred in ordering her to pay retroactive child support for the spouses' remaining minor child through the month the child turned 18 although the child did not graduate from high school until eleven months later. Accordingly, the appellate court reversed and remanded for recalculation of the amount of retroactive child support former wife owed former husband. The remainder of the judgment was affirmed.

https://edca.1dca.org/DCADocs/2014/3239/143239_DC08_04152015_070551_i.pdf (April 15, 2015).

Second District Court of Appeal

Brandon-Thomas v. Brandon-Thomas, __ So. 3d __, 2015 WL 1874457, 40 Fla. L. Weekly D971 (Fla. 2d DCA 2015). **REVERSAL OF TRIAL COURT’S DISMISSAL OF PETITION FOR DISSOLUTION BY SAME-SEX COUPLE LEGALLY MARRIED IN ANOTHER STATE; SEXUAL ORIENTATION IS NOT A PROTECTED CLASS ENTITLED TO STRICT-SCRUTINY ANALYSIS; RIGHT OF A SAME-SEX COUPLE LEGALLY MARRIED IN ANOTHER STATE TO SEEK DISSOLUTION IN FLORIDA IS NOT A FUNDAMENTAL RIGHT; HOWEVER, NO LEGITIMATE GOVERNMENTAL INTEREST WAS SHOWN BY PRECLUDING FLORIDA COURT FROM EXERCISING ITS JURISDICTION; EFFECT OF DISMISSAL DENIED A VALIDLY MARRIED COUPLE ACCESS TO A FLORIDA COURT; THEIR CHILD’S BEST INTEREST SHOULD BE DETERMINED BY COURT.** The former spouses were a same-sex couple who moved to Florida after being legally married in Massachusetts. The trial court agreed with one spouse that the court lacked jurisdiction and dismissed the petition. The appellate court reversed, citing the full faith and credit clause of the United States Constitution. That clause requires that each state must recognize judgments obtained in the courts of other states, to prevent selective enforcement. The appellate court noted that there may be circumstances in which a state might seek not to give full faith and credit to another state’s law or judgment based on public policy considerations; however, a state may not do so in a “manner that runs afoul of the equal protection clause of the U.S. Constitution.” That clause precludes persons similarly situated from being classified and treated differently while the due process clause requires a court to “apply strict scrutiny in reviewing governmental action that infringes upon fundamental rights.” A non-fundamental right is subject to a rational basis review instead of strict-scrutiny; thus the first step is determining whether an asserted right is a fundamental one. The appellate court concluded that under Florida law, “sexual orientation is not a protected class entitled to strict-scrutiny analysis.” It held that the right of a same-sex couple legally married in another state to seek dissolution in Florida is not a fundamental right; therefore, the rational basis test is employed and the state must only have “a legitimate purpose” for precluding the exercise of that right. The appellate court noted that the issue regarding any legitimate purpose served by precluding a Florida court from exercising its jurisdiction to dissolve a same-sex marriage legally entered into outside Florida was not addressed by the parties. It found that the “practical impact” of the trial court’s dismissal was that a “validly married couple, albeit of the same sex, cannot access a Florida court to undo their marriage.” The appellate court expressed concern for “the welfare and stability” of the couple’s child, commenting that the act of leaving the child “in limbo” was contrary to Florida’s strong public policy of protecting children by determining parenting arrangements in accordance with the child’s best interest. Reversed and remanded for the trial court to address the petition for dissolution on the merits.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/April/April%2024,%202015/2D14-761.pdf (April 24, 2015).

Gilroy v. Gilroy, __ So. 3d __, 2015 WL 1929184 (Fla. 2d DCA 2015). **DENIAL OF SPOUSE’S REQUEST FOR CONTINUANCE WAS REVERSIBLE ERROR.** The former spouses had previously entered into an agreement, approved by the court, that former wife would pay for the children’s private school tuition and health insurance instead of paying child support to former husband. The spouses declined to file a child support guidelines worksheet at that time, despite the judge’s concern for lack of a benchmark in the event of subsequent modifications. At issue was a supplemental final

judgment issued after former husband petitioned for a modification of time-sharing due to relocation. Former husband appealed the denial of his request for a continuance based on the late disclosure of former wife's financial affidavit. Reviewing the trial court's ruling for abuse of discretion, the appellate court held that the denial of former husband's request for continuance was reversible error; accordingly, it reversed and remanded for a new hearing on the issue of child support. The appellate court also found that the trial court erred by requiring former husband to pay retroactive child support in a lump sum within six weeks of the judgment in absence of any evidence he had the ability to pay that amount within that period of time. The appellate court was not swayed by former husband's argument that the trial court erred in including the children's private school tuition as a component on the guidelines worksheet. It held that it was clear from the earlier agreement that tuition expenses were taken into account; it found former husband had effectively agreed to pay part of the tuition by foregoing child support in exchange for former wife's payment of private school tuition.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/April/April%2029,%202015/2D14-2950.pdf (April 29, 2015).

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

Beckstrom v. Beckstrom, __ So. 3d __, 2015 WL 1934574 (Fla. 4th DCA 2015). TRIAL COURT MUST MAKE FINDINGS OF FACT REGARDING SPOUSE'S ABILITY TO PAY FEES; ANY PAYMENT PLAN FOR FEES MUST SET FORTH FACTUAL BASIS FOR IMPOSING SPECIFIC PAYMENT PLAN; UNDER INVITED ERROR RULE, SPOUSE CANNOT SUCCESSFULLY COMPLAIN ABOUT AN ERROR FOR WHICH HE OR SHE IS RESPONSIBLE OR RULINGS THAT HE OR SHE INVITED THE COURT TO MAKE. Former husband appealed the final judgment of dissolution, arguing that the trial court erred in awarding attorney's fees without making the requisite findings of fact regarding: his ability to pay; the reasonableness of the hours expended; the hourly rate; and the basis for the court's payment plan. The appellate court agreed with former husband on the first and fourth arguments and reversed; it disagreed with him on the second and third arguments, finding the judgment sufficient on those points. Former husband also appealed the requirement that he obtain life insurance to secure his obligations. The appellate court affirmed on this issue, citing the invited error rule. Finding that former husband had agreed to purchase a \$100,000 life insurance policy and included that provision in his proposed final judgment, the appellate court held that former husband could not then complain that it was error to include that provision in the final judgment. <http://www.4dca.org/opinions/April%202015/04-29-15/4D14-929.op.pdf> (April 29, 2015).

Fifth District Court of Appeal

Liberatore v. Liberatore, __ So. 3d __, 2015 WL 1609934, 40 Fla. L. Weekly D864 (Fla. 5th DCA 2015).

A LOWER COURT MUST STRICTLY FOLLOW APPELLATE COURT'S MANDATE. The appellate court agreed with former wife that the trial court's order disbursing certain marital assets and liabilities violated the mandate in Liberatore v. Liberatore, 101 So. 3d 1290 (Fla. 5th DCA 2012); accordingly, it reversed. A lower court must strictly follow the appellate court's instructions on

remand. The lower court's function in implementing the instructions in an appellate court's mandate are purely ministerial; the lower court may not deviate from those instructions. Concluding that the trial court had "strayed" from its directions, the appellate court reversed and remanded for reconsideration of the entire equitable distribution scheme.

<http://www.5dca.org/Opinions/Opin2015/040615/5D13-3907.op.pdf> (April 10, 2015).

Harris v. Harris, __So. 3d__, 2015 WL 1736866, 40 Fla. L. Weekly D919 (Fla. 5th DCA 2015). **TRIAL COURT ERRED IN CONSIDERING SECONDARY SOURCES OF INCOME FOR ONE SPOUSE BUT NOT THE OTHER; USE OF DIFFERENT STANDARDS FOR CALCULATING EACH SPOUSE'S INCOME WAS ABUSE OF DISCRETION.** On former husband's motion for rehearing, the appellate court withdrew its earlier opinion and substituted this opinion, which found that the trial court had abused its discretion in calculating former wife's income and awarding her attorney's fees. The trial court imputed income equal to minimum wage to former wife, but did not include income she received working for the Air Force and Army Reserves; however, it included former husband's pension and disability benefits in addition to imputing full-time minimum wage to him. The appellate court held it was error for the trial court to consider secondary sources of income for one spouse, but not the other. Use of different standards for calculating each spouse's income was an abuse of discretion. Its award of attorney's fees to former wife was error as no evidence supported the reasonableness of the fee award. On remand, the trial court was instructed to reconsider former wife's income from the Reserves and to conduct an evidentiary hearing on the reasonableness of the fee award.

<http://www.5dca.org/Opinions/Opin2015/041315/5D14-223.reh.op.pdf> (April 17, 2015).

Gillard v. Gillard, __So. 3d__, 2015 WL 1851, 40 Fla. L Weekly D961 (Fla. 5th DCA 2015). **EXCEPT AS SPECIFICALLY PROVIDED BY RULE, A TRIAL COURT CANNOT ALTER, MODIFY, OR VACATE AN ORDER OR JUDGMENT; THE STARTING POINT IS THAT EQUITABLE DISTRIBUTION BE EQUAL; ANY UNEQUAL DISTRIBUTION MUST BE JUSTIFIED; NET INCOME, NOT GROSS, IS USED TO DETERMINE ALIMONY; FUTURE RETIREMENT BENEFITS SHOULD BE CONSIDERED IN DIVISION OF MARITAL ASSETS BUT NOT AS PRESENT INCOME; WRITTEN FINDINGS ARE REQUIRED AFTER CONSIDERATION OF RELEVANT STATUTORY FACTORS; A TRIAL COURT MAY IMPOSE SANCTIONS FOR FAILURE TO PAY ALIMONY AFTER A HEARING AND FINDINGS BUT MAY NOT PREMATURELY IMPOSE SANCTIONS WITHOUT PROVIDING DEFAULTING SPOUSE AN OPPORTUNITY TO BE HEARD.** A lengthy opinion in which the appellate court vacated the trial court's second amended final judgment of dissolution as being entered untimely and without jurisdiction, reversed the first amended final judgment, and remanded for further proceedings. Except as specifically provided by rule, a trial court cannot on its own initiative alter, modify, or vacate an order or judgment. The appellate court reiterated that the starting point for distribution of marital assets and liabilities is that it should be equal; any unequal distribution by the trial court must be justified. Finding that the trial court erred in distributing the marital assets and liabilities, the appellate court ordered that the entire distribution scheme be reconsidered on remand. The trial court was not precluded from making an inequitable distribution so long as the requisite findings were made. The trial court erred in its alimony award to former wife because it relied on gross income rather than net income. It also erred in considering former husband's future retirement benefits as both current income and a marital asset. Future retirement benefits should be

considered in the division of marital assets, but not as a source of present income. The appellate court found that the trial court erred by not making specific written findings after its consideration of the relevant statutory factors in s. 61.08(2), F.S. (2013); the absence of those findings hampered appellate review. The appellate court reversed and remanded the alimony award and instructed the trial court to “facilitate possible future review,” by making specific written findings regarding the spouses’ net monthly income and the factors enumerated in s. 61.08(2). It instructed the trial court on remand to consider imputing full-time minimum wage to former wife if she was not working full-time at the time of the hearing. The appellate court vacated the alimony and child support arrearages in the judgment and ordered recalculation of arrearages as necessary based on a determination of former husband’s net income and the alimony award. Although it affirmed the trial court’s requirement that former husband maintain life insurance to secure the alimony, the appellate court instructed the trial court on remand to consider whether the entire amount of the life insurance amount was necessary to secure the obligation. The appellate court found that the trial court’s separate finding that former husband’s failure to timely pay alimony would subject him to payment of the mortgage and other liabilities of the marital home was error. A trial court has the authority to impose sanctions on a spouse for failure to pay alimony after providing that spouse an opportunity to be heard and making a finding that he or she has the present ability to pay support and willfully failed to pay; however, prematurely imposing a sanction upon default of an alimony obligation without providing an opportunity to be heard was error. The trial court was instructed to reconsider the fee award to former wife after determination of alimony and distribution of marital assets and liabilities, but was not precluded from awarding attorney’s fees to former wife if appropriate.

<http://www.5dca.org/Opinions/Opin2015/042015/5D13-3359.op.pdf> (April 24, 2015).

Domestic Violence Case Law

Florida Supreme Court

In re: Family Law Forms, __ So. 3d __, 2015 WL 1825400 (Fla. 2015). **FORM AMENDED**. The Supreme Court amended form 12.980(n), Petition for an Injunction for Protection Against Dating Violence, and the instructions to reflect the statutory language in s. 784.046(2)(b), F.S.. This section provides that, “a person who is either the victim of dating violence and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence, has standing to file a petition for an injunction for protection against dating violence.” The court also amended the instructions and the wording of the form to better explain that a parent or legal guardian has standing to petition for an injunction for protection against dating violence on behalf of a minor living at home. If the person against whom the injunction is sought is also a parent or legal guardian, the petitioning parent or legal guardian must have been “an eyewitness to, or have direct physical evidence or affidavits from eyewitnesses of, the specific facts and circumstances that form the basis upon which relief is sought.” S. 784.046(4)(a), F.S.. If the person against whom the injunction is sought is not a parent, stepparent, or legal guardian of the minor, the petitioner must “[h]ave a reasonable cause to believe that the minor child is a victim of ... dating violence to form the basis upon which relief is sought.” S. 784.046(4)(a)(2), F.S.. The amendments are effective immediately and the form is ready to use.

<http://www.floridasupremecourt.org/decisions/2015/sc15-339.pdf> (April 23, 2015).

First District Court of Appeal

Snead v. Ansley, __ So. 3d __, 2015 WL 1650468 (Fla. 1st DCA 2015). **REPEAT VIOLENCE INJUNCTION REVERSED**. The appellate court reversed and remanded the injunction for protection against repeat violence. The trial court erred in granting appellee's petition because appellant was not given a full opportunity to present evidence in opposition to the petition.

https://edca.1dca.org/DCADocs/2014/2846/142846_DC13_04152015_065758_i.pdf (April 15, 2015).

Havener v. Hutchinson, __ So. 3d __, 2015 WL 1747374 (Fla. 1st DCA 2015). **MOTION FOR MODIFICATION DENIAL REVERSED**. An incarcerated inmate appealed the denial of his motion for modification of a repeat violence injunction issued against him. The court held that the appellant's due process rights were violated when the lower court denied his motion after the inmate failed to appear at the hearing, even though the record showed the inmate had attempted to appear telephonically. The appellate court noted that the trial court failed to issue an order directing the Department of Corrections to facilitate the appellant's telephonic appearance at a specified time and date.

https://edca.1dca.org/DCADocs/2014/3429/143429_DC13_04172015_092530_i.pdf (April 17, 2015).

Second District Court of Appeal

Horowitz v. Horowitz, __ So. 3d __, 2015 WL 1443223 (Fla. 2d DCA 2015). **INJUNCTION FOR PETITION FOR DOMESTIC VIOLENCE REVERSED**. The wife was granted an injunction for protection against domestic violence. The appellate court reversed and held that the husband's two posts on his own social media webpage did not amount to cyberstalking, and that the wife failed to establish that she had reasonable cause to believe she was in imminent danger of becoming a victim of domestic violence. The wife believed the husband's posts showed that he had hacked her Facebook account or had been spying on her, and she testified that someone had installed a keylogger on her computer that kept track of her computer use. However, there was no evidence that it was her husband that installed the keylogger. The court noted that the husband's posts did not meet the statutory definition of cyberstalking because the posts were not directed at a specific person; they were posted to the husband's page and the wife was not "tagged" or mentioned, nor were the posts directed to her in any obvious way. The court also noted that although the wife's assertions that the husband somehow "hacked" into her Facebook account were disconcerting, that behavior alone does not amount to cyberstalking because it is not an electronic communication.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/April/April%2001,%202015/2D13-3871.pdf (April 01, 2015).

Leach v. Kersey, __ So. 3d __, 2015 WL 1740907 (Fla. 2d DCA 2015). **REPEAT VIOLENCE INJUNCTION REVERSED**. The wife appealed a final judgment of injunction for protection against stalking entered against her and in favor of her husband's girlfriend. The appellate court reversed the injunction because competent, substantial evidence was not presented that supported the required two incidents of stalking for injunctive relief. The wife contacted the girlfriend by phone and messages through Facebook and told the girlfriend to stay away from her husband. The court held that these messages did serve a legitimate purpose and would not cause a reasonable person to suffer substantial emotional distress.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/April/April%2017,%202015/2D14-1812.pdf (April 17, 2015).

Third District Court of Appeal

No new opinions reported.

Fourth District Court of Appeal

Putzig v. Bresk, __ So. 3d __, 2015 WL 1667055 (Fla. 4th DCA 2015). **DATING VIOLENCE INJUNCTION REVERSED**. The appellant argued that the trial court violated her due process rights; the appellate court agreed and reversed and remanded the case. The trial court did not allow the appellant to complete her testimony, present evidence or a witness, or allow the parties to cross-examine each other. Therefore the appellate court held the trial court abused its discretion and remanded the case for a full evidentiary hearing.

<http://www.4dca.org/opinions/April%202015/04-15-15/4D14-554.op.pdf> (April 15, 2015).

Fifth District Court of Appeal

No new opinions reported.

Drug Court/Mental Health 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.