

OSCA/OCI'S CASE LAW UPDATE APRIL 2016

Baker Act/Marchman Act Case Law

Florida Supreme Court.....	3
First District Court of Appeal	3
Second District Court of Appeal.....	3
Third District Court of Appeal.....	3
Fourth District Court of Appeal.....	3
Fifth District Court of Appeal.....	3

Drug Court/Mental Health/Veterans Court Case Law

Florida Supreme Court.....	4
First District Court of Appeal	4
Second District Court of Appeal.....	4
Third District Court of Appeal.....	4
Fourth District Court of Appeal.....	4
Fifth District Court of Appeal.....	4

Family Court

Delinquency Case Law

Florida Supreme Court.....	5
First District Court of Appeal	5
Second District Court of Appeal.....	5
Third District Court of Appeal.....	6
Fourth District Court of Appeal.....	7
Fifth District Court of Appeal.....	7

Dependency Case Law

Florida Supreme Court.....	8
First District Court of Appeal	8
Second District Court of Appeal.....	8
Third District Court of Appeal.....	8
Fourth District Court of Appeal.....	9
Fifth District Court of Appeal.....	10

Dissolution of Marriage Case Law

Florida Supreme Court.....	11
----------------------------	----

First District Court of Appeal	11
Second District Court of Appeal.....	13
Third District Court of Appeal.....	14
Fourth District Court of Appeal.....	14
Fifth District Court of Appeal.....	16
Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law	
Florida Supreme Court.....	17
First District Court of Appeal	17
Second District Court of Appeal.....	17
Third District Court of Appeal.....	18
Fourth District Court of Appeal.....	18
Fifth District Court of Appeal.....	18

Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Drug Court/Mental Health/Veterans Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

J.L.C. v. State, ___ So. 3d ___, 2016 WL 1366456 (Fla. 2d DCA 2016). **THE STATE FAILED TO MEET ITS BURDEN OF PROVING THE AMOUNT AWARDED IN RESTITUTION BY A PREPONDERANCE OF EVIDENCE.** The juvenile was adjudicated delinquent for burglary of a dwelling for stealing a five-gallon water jug that held loose coins. The State sought restitution for the value of the stolen property. The victim testified that the jug was half-filled with nickels, dimes and quarters, no pennies, valuing \$3500. Whereas the juvenile testified that when he took the jug of coins to a Coinstar machine, he received approximately \$421, after a deducted fee of approximately \$58. The trial court accepted the victim's estimation and entered a restitution order accordingly. On appeal, the juvenile took issue with the trial court's valuation. The Second District Court of Appeal concluded that the victim's estimation of the value of the coins was, at best, an estimated guess. An estimated guess falls short of the competent, substantial evidence required for a determination of property value. Here, the victim's opinion was based upon his experience filling a five-gallon jug with pennies. The Second District noted that the victim's estimation is imprecise and assumes that nickels, dimes, and quarters are minted in the same size as pennies. This comparison is speculative opinion testimony. As such, it does not constitute competent, substantial evidence that will support a restitution order. Hence, the State failed to meet its burden of proving the amount awarded in restitution by a preponderance of evidence. Accordingly, the Second District reversed the order.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/April/April%2006,%202016/2D14-3241.pdf (April 6, 2016)

V.U.B. v. State, ___ So. 3d ___, 2016 WL 1446098 (Fla. 2d DCA 2016). **EVEN THOUGH A TRIAL COURT MAY RESERVE JURISDICTION ON THE ISSUE OF RESTITUTION IN A JUVENILE DELINQUENCY PROCEEDING, IT LOSES JURISDICTION TO HOLD A RESTITUTION HEARING OR TO ENTER A RESTITUTION ORDER ONCE A JUVENILE FILES A NOTICE OF APPEAL.** The juvenile appealed an order finding him guilty of the delinquent acts of robbery and grand theft, withholding adjudication, and imposing probation for an indefinite period of time not to exceed the juvenile's nineteenth birthday for lack of jurisdiction. Specifically, the juvenile contended that the trial court lacked jurisdiction to enter the restitution order because the order was entered after he filed a notice of appeal. The trial court entered a disposition order on July 24, 2014, and held a

restitution hearing on August 13, 2014. The juvenile was not present at the restitution hearing; so, after hearing evidence from the State on the amount to be imposed, the trial court continued the hearing to August 27, 2014. The juvenile filed a notice of appeal on August 21, 2014. The juvenile attended the second restitution hearing on August 27, 2014, at which time the trial court entered an order imposing restitution. The Second District Court of Appeal held that the order entered on August 27, 2014, was error because the trial court lacked jurisdiction to enter a restitution order. Generally, the trial court loses jurisdiction to hold a restitution hearing or to enter a restitution order once a defendant files a notice of appeal. However, the trial court has jurisdiction to render a written order after a notice of appeal is filed when those orders simply memorialize oral rulings made by the court before the notice to appeal is filed. Here, the restitution order was based on evidence presented at the hearing held on August 13, 2014. Although the trial court heard evidence from the State, it did not make any oral findings on the record. Hence, the order did not fall within the exception. Thus, the trial court lost jurisdiction when the juvenile filed notice of appeal on August 21, 2014. Although the restitution order entered on August 27, 2014, may have been based on evidence that was presented at the restitution hearing, which took place before the juvenile filed notice of appeal, it does not fall within the general rule or the exception. Accordingly, the Second District reversed the restitution order and remanded for the trial court to conduct another hearing and to again impose restitution.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/April/April%2013,%202016/2D14-3924.pdf (April 13, 2016)

Third District Court of Appeal

L.L. v. State, ___ So. 3d ___, 2016 WL 1357736 (Fla. 3d DCA 2016). [THE DAUBERT ADMISSIBILITY STANDARD DOES NOT APPLY TO LAY OPINION. HERE, THE OFFICER'S TESTIMONY THAT THE SUBSTANCE IN JUVENILE'S POSSESSION WAS MARIJUANA IS ADMISSIBLE LAY OPINION.](#) The juvenile was charged with one count of simple possession of cannabis. At the adjudicatory hearing, the arresting officer opined that the substance in question was marijuana. Prior to trial, the juvenile requested a Daubert hearing to challenge the admissibility of the officer's opinion testimony. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). At trial, the court expressed some doubt as to whether the officer's testimony met the admissibility test under Daubert; yet, the court ruled that the officer's testimony was admissible under our prior cases allowing such testimony, which were decided before the adoption of Daubert by the 2013 amendments to the Florida Evidence Code. On appeal, the juvenile challenged the continued viability of this practice. More specifically, the juvenile argued that the officer's opinion testimony did not satisfy Daubert's reliability standard. The juvenile argued that the officer's testimony required "specialized" knowledge; therefore, it could not be lay opinion testimony. The Third District Court of Appeal disagreed and analyzed the officer's experience-based testimony within

the lay opinion framework set out in s. 90.701, F.S. (2015), instead of Daubert's expert opinion testimony framework. The Third District reasoned that although s. 90.701, like its federal counterpart, forbids lay opinion testimony that requires "special knowledge, skill, experience, or training," all lay witnesses have some specialized knowledge---knowledge relevant to the case that is not common to every one; this is why all witnesses, lay or expert, are called. Therefore, reasoned the Third District, the question is not whether the opinion requires specialized knowledge, as all opinion testimony does, but whether the opinion requires lay specialized (or personal) knowledge or expert specialized knowledge. Our courts have permitted lay witnesses to testify that a substance appeared to be a narcotic, so long as a foundation of familiarity with the substance is established. Such testimony is lay, not expert, opinion testimony. The Third District went on to explain that when an officer testifies, the mere fact that he is an officer does not mean that he is testifying in an expert capacity. The classification should turn on the experiential basis of the opinion rather than the witness' occupation. Here, the officer's opinion is based solely on his personal, firsthand knowledge and what he perceived. In addition to the requirement that lay opinion testimony be based on the personal knowledge and perception of the witness, the lay witness's method of reasoning results from a process of reasoning familiar in everyday life, while expert testimony results from a process of reasoning which can be mastered only by specialists in the field. Hence, a lay witness, however experienced, offers no methodology beyond ordinary reasoning. Here, the officer's reasoning process was nothing that required a specialist in the field of drug identification; it was reasoning familiar in everyday life. Moreover, the officer did not employ a methodology beyond his ordinary reasoning to arrive at his conclusion. Finally, although the more demanding Daubert admissibility standard does not apply to lay opinion testimony, there is nevertheless a reliability inquiry. Not only must lay opinion testimony be based on the witness's personal knowledge and perceptions, but also the witness must have sufficient personal knowledge to support the opinion, which was the case here. The officer testified that he had years of experience of identifying marijuana by sight and smell, even going so far as to claim marijuana is so predominant in the community that he sees it "practically every day." Therefore, the Third District held that the officer's testimony was admissible lay opinion testimony under s. 90.701 because it was based on sufficient personal knowledge and his senses of sight and smell, and it was arrived at through a process of everyday life. Accordingly, the Third District affirmed.

<http://www.3dca.flcourts.org/Opinions/3D14-2410.pdf> (April 6, 2016)

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

M.M. v. Department of Children and Families, ___ So. 3d ___, 41 Fla.L.Weekly S141, 2016 WL 1458817 (Fla. 2016). **DISTRICT COURT SPLIT RESOLVED**. The Florida Supreme Court resolved a conflict between the Third and First District Courts of Appeal. The issue was whether a post-dependency order that is subject to future modifications for purposes of child welfare and parental visitation is reviewable as a final order by appeal, as an interlocutory order reviewable by appeal, or as a non-final order reviewable by certiorari. The order in question was one that terminated Department supervision and limited the father's ability to seek future visitation to the discretion of the children. The trial court retained jurisdiction for purposes of making further orders for the children's welfare. On review by the Third District Court of Appeal, the court acknowledged a conflict among the district courts regarding the review process for dependency proceedings. The Third District treated the father's appeal as a petition for a writ of certiorari. In resolving the conflict, the Florida Supreme Court first noted that the question presented was a pure question of law and therefore was subject to de novo review. The Court then analyzed Florida Rule of Appellate Procedure 9.130(a)(4). The Court noted that non-final orders that are not listed as appealable interlocutory orders under Rule 9.130 must be reviewed by certiorari. Rule 9.130(a)(3) does not list post-dependency orders as non-final orders reviewable by interlocutory appeal. Because they are not listed, they cannot be reviewed as appealable interlocutory orders. They therefore may only be reviewed by appeal if they are final. The Court further agreed with those district courts that conclude that an order retaining jurisdiction for the purpose of future modification is not final. The Court concluded that a post-dependency order subject to modification is a non-final order reviewable by certiorari. The Court therefore affirmed the Third District's decision and disapproved the First District's decision in the conflicting case. <http://www.floridasupremecourt.org/decisions/2016/sc15-1544.pdf> (April 14, 2016)

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

V.T. v. Department of Children and Families, ___ So. 3d ___, 2016 WL 1449321 (Fla. 3d DCA 2016). **TERMINATION OF PARENTAL RIGHTS AFFIRMED**. The Third District Court of Appeal affirmed termination of the father's parental rights because it was supported by competent substantial evidence. <http://www.3dca.flcourts.org/Opinions/3D16-0034.pdf> (April 13, 2016)

B.J. v. Department of Children and Families, ___ So. 3d ___, 2016 WL 1578492 (Fla. 3d DCA 2016). **ADJUDICATION OF DEPENDENCY REVERSED**. The Third District Court of Appeal reversed an adjudication of dependency based on the death of a child's sibling. The family had spent a

weekend in a hotel during which time the mother was co-sleeping with her two children, a four month old son and a one year old daughter. The father slept on a sofa. When the mother awoke, the four month old was cold and unresponsive. Paramedics could not revive the child. The hotel room was messy and the parents later admitted to having smoked cannabis. During the investigation, the CPI was unable to make contact for weeks with the family and a pickup order was eventually issued. The trial court acknowledged that no single factor rose to the level of dependency but under the totality of the circumstances, the daughter was risk of neglect from co-sleeping with the mother. The trial court adjudicated the child dependent. On appeal, the court held there was no competent substantial evidence in the record that the sibling died from abuse, abandonment, or neglect within the definition "harm" in s. 39.01(30)(k). The expert medical examiner testified that SIDS with co-sleeping as a potential factor was the cause of death but the court elaborated that this was not classified in the record or in statute as abuse, abandonment, or neglect. Furthermore, the trial court's orders mischaracterized the facts of the case. The state of the hotel, although cluttered, was explainable due the circumstances of the family being homeless and lacking in financial resources. The court also considered whether the sibling death would warrant adjudication of the child due to prospective neglect. However the evidence failed to demonstrate a nexus between the sibling's death and speculative prospective neglect to the child from co-sleeping. The court also rejected the argument that the parents had been evasive with the investigation. The court concluded that the Department failed to provide substantial competent evidence was in imminent danger of abuse, neglect, or harm and therefore reversed the order of adjudication and disposition and remanded the case.

<http://www.3dca.flcourts.org/Opinions/3D15-2593.pdf> (April 20, 2016)

Fourth District Court of Appeal

M.D. v. Department of Children and Families, ___ So. 3d ___, 41 Fla.L.Weekly D876, 2016 WL 1367007 (Fla. 4th DCA 2016). **TERMINATION OF PARENTAL RIGHTS AFFIRMED.** The Fourth District Court of Appeal affirmed termination of a father's parental rights based on abandonment. The Department petitioned for termination in January of 2015 based on the father not participating in visitation since July of 2014 and failing to contact the Department regarding her safety and well-being. The father had been advised of his right to visitation but had only sent two letters while incarcerated. On appeal, the court held that the trial court's finding of abandonment was supported by competent, substantial evidence. Other than two letters, the father failed to communicate with the child during approximately two years of incarceration. He also had little involvement for six months prior to being incarcerated. The trial court deemed the father's contrary testimony as not credible and the district court declined to reweigh the evidence. The court therefore affirmed the order.

<http://www.4dca.org/opinions/April%202016/04-06-16/4D15-3858.op.pdf> (April 6, 2016)

B.G. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2016 WL 1446110 (Fla. 4th DCA 2016). **ORDER RELINQUISHING JURISDICTION VACATED AND REMANDED.** The Fourth District Court of Appeal vacated and remanded an order relinquishing jurisdiction. The child was sheltered after an incident of domestic violence between the mother and her boyfriend. The mother had the child pursuant to an order from a domestic relations case between the mother and the father, who lived in Texas. At the shelter hearing, the father

appeared and requested placement of the child. The mother, Department, and the GAL all consented to placement of the child with the father, who planned to take the child to Texas. At a hearing three weeks later, the mother's counsel stated that an ICPC homestudy was required before the child could be placed in another state. Over the mother's objections, the trial court relinquished jurisdiction pursuant to an ICPC regulation, finding that the shelter order placed the child with the father, from whom the child was not removed. On appeal, the court held that the trial court erred in finding that the child was placed with the father permanently by the shelter order. The shelter order, which is by definition temporary, did not alter the father's status as the noncustodial parent under a prior domestic relations order. The consent of the parties to placement was not an intent to abrogate the domestic relations order. The trial court further erred in presuming that the ICPC could be avoided if it relinquished jurisdiction over the child after transferring custody to the out-of-state parent. The district court noted that circumventing the ICPC is not in the best interests of dependent children. The court also found that the trial court had effectively awarded permanent custody to the father in violation of the mother's due process rights. The court therefore vacated the trial court's order and ordered the trial court to hold a hearing to ensure the child's safety and determine the child's best interest.

<http://www.4dca.org/opinions/April%202016/04-13-16/4D15-3834.op.pdf> (April 13, 2016)

Fifth District Court of Appeal

Q.H. v. Department of Children and Families, ___ So. 3d ___, 41 Fla.L.Weekly D897, 2016 WL 1385874 (Fla. 5th DCA 2016). **CONCESSION OF ERROR**. Based on the Department's concession of error, the Fifth District Court of Appeal reversed the trial court's termination of parental rights judgment and remanded the case for specific findings of fact.

<http://www.5dca.org/Opinions/Opin2016/040416/5D15-4498.op.pdf> (April 8, 2016)

S.M. v. Department of Children and Families and T.H., a child, ___ So. 3d ___, 2016 WL 1467645 (Fla. 5th DCA 2016). **TERMINATION OF PARENTAL RIGHTS AFFIRMED BUT REMANDED FOR ENTRY OF AMENDED FINAL JUDGMENT**. The Fifth District Court of Appeal affirmed termination of a father's parental rights but remanded the case for entry of an amended order. Except for a brief period of time ending in 2006, the father has been continually institutionalized since being involuntarily committed 2003 after being found not guilty of homicide by reason of insanity. The child has been sheltered multiple times and the trial court found in 2011 that the father stipulated to being incapable of caring for the child due to his institutionalization. The child had been in multiple placements, several of which were terminated by the caregivers due to the child's behavior. The father was diagnosed with schizoaffective disorder-bipolar type and paranoia; was uncontrollably unstable, even in the hospital; and would not be considered for release due to aggression and a determination that he was a threat to himself and others, possibly including children. The child's proposed adoptive caretaker was willing to adopt the child notwithstanding the child's history and difficulty with prior placements. The trial court terminated parental rights, finding multiple statutory grounds as to the father, including s. 39.806(1)(e) although the TPR petition only alleged the mother's failure to comply with that provision. Therefore, the court on appeal affirmed the termination of parental rights but remanded the case for entry of an amended final judgment striking s. 39.806(1)(e).

<http://www.5dca.org/Opinions/Opin2016/041116/5D15-4185%20op.pdf> (April 15, 2016)

Dissolution of Marriage Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Schneider v. Schneider, __ So. 3d __, 2016 WL 1391860 (Fla. 1st DCA 2016). **CONTEMPT FINDING FOR UNPAID DEBT PROPER ONLY IF DEBT IS ALIMONY OR CHILD SUPPORT.** Former husband appealed an order finding him in contempt for failure to pay an amount due under a final judgment of dissolution and awarding attorney's fees to former wife. The appellate court reversed the contempt finding, but affirmed the fee award due to lack of preservation or transcripts of the proceedings. The final judgment obligated former husband to pay \$343.64 in child support and \$200 from his military retirement pay each month. On the first month the payments were due, former husband gave former wife a check equal to the amount of the child support obligation. He told her he did not intend to pay the other amount, but paid after she moved for contempt. At the time of the contempt hearing, former husband was current on all payments. The trial court found former wife had "elected" to consider the first payment as the property settlement and the remainder as child support; it then found former husband in contempt for his refusal to timely pay \$543.64. The appellate court found that the "only reasonable interpretation" of the \$343.64 check was as a child support payment. By treating the check as something else, the trial court abused its discretion by holding former husband in contempt for failing to comply with a property-settlement provision. A finding of contempt for unpaid debt is proper only if the debt is alimony or child support. As to the fee issue, the appellate court found that although former husband argued error in the lack of sufficient findings, he failed to preserve this challenge. Affirmed in part; reversed in part.

https://edca.1dca.org/DCADocs/2015/0914/150914_DC08_04082016_083653_i.pdf (April 8, 2016)

Bielling v. Bielling, __ So. 3d __, 2016 WL 1534086 (Fla. 1st DCA 2016). **TRIAL COURT VIOLATED SPOUSE'S DUE PROCESS RIGHTS BY CONTINUING HEARING TO ALLOW ADDITIONAL TIME FOR HER TO PRESENT TESTIMONY, BUT THEN ISSUED ITS ORDER PRIOR TO COMPLETION OF THE HEARING AND WITHOUT NOTICE TO EITHER SPOUSE; APPELLATE COURT UNABLE TO DETERMINE BIAS WITHOUT AN ORDER ON DISQUALIFICATION TO REVIEW.** The appellate court agreed with former wife that the trial court violated her due process rights when it continued a final hearing to allow her additional time to present testimony and former spouse to cross-examine, but then entered its order without completing the final hearing. The modification order transferred the majority of time-sharing of the spouses' minor child to former husband and suspended his child support obligation; it also established a new parenting plan. The appellate court noted it was undisputed that former wife had disclosed her witnesses before trial. As it became clear that would not be enough time to complete testimony and cross-examination, both spouses requested additional time. The trial court agreed to continue the hearing, but then entered the order three weeks before the date set for completing it-- without notice to either spouse. Former wife also argued that the trial judge's "abrupt" entry of a final order without allowing her to finish presenting evidence demonstrated bias against her. Noting that former wife probably had no

opportunity to file a motion to disqualify due to the abrupt ending to the proceedings, the appellate court nevertheless found itself unable to review her argument that the trial judge was biased against her without an order on disqualification.

https://edca.1dca.org/DCADocs/2015/4948/154948_DC13_04152016_101843_i.pdf (April 15, 2016)

Nolan v. Nolan, __ So. 3d __, 2016 WL 1534079 (Fla. 1st DCA 2016). **A LONG-TERM MARRIAGE CARRIES WITH IT A PRESUMPTION OF ENTITLEMENT TO PERMANENT ALIMONY; AN ALIMONY AWARD MUST BE ADEQUATELY SUPPORTED BY EVIDENCE AND FINDINGS IN THE FINAL JUDGMENT; A TRIAL COURT ABUSES ITS DISCRETION IF IT ORDERS ONE SPOUSE TO PAY THE OTHER'S ATTORNEY'S FEES IF THEY ARE EQUALLY ABLE TO PAY FEES.** In his appeal of a final judgment dissolving a 33-year marriage, former husband argued that the trial court erred: in failing to make the requisite findings to support its alimony award of \$3,500 per month; and in its equitable distribution. He also appealed the \$11,500 fee award to former wife. Former wife conceded error in the trial court's equitable distribution. The appellate court reversed and remanded for redistribution, necessitating remand of the alimony and attorney's fees portions of the final judgment. Noting that a long-term marriage carries with it a rebuttal presumption of entitlement to permanent alimony, the appellate court agreed with former husband that the alimony award was not adequately supported by the evidence or the findings in the final judgment. It concluded that the final judgment placed the former spouses on substantially equal financial footing. A trial court abuses its discretion if it orders one spouse to pay the other's attorney's fees if they are equally able to pay. The appellate court instructed the trial court on remand to consider the relative financial positions of both spouses after equitable distribution and alimony and to "tailor" any attorney's fee award accordingly.

https://edca.1dca.org/DCADocs/2015/0694/150694_DC08_04152016_101523_i.pdf (April 15, 2016)

Ketcher v. Ketcher, __ So. 3d __, 2016 WL 1660620 (Fla. 1st DCA 2016). **A FINDING THAT A SPOUSE IS VOLUNTARILY UNDEREMPLOYED MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; FINDINGS REGARDING ALIMONY MUST BE SUFFICIENT TO DEMONSTRATE THAT THE RECEIVING SPOUSE HAS A NEED FOR THE AMOUNT AWARDED AND THE PAYING SPOUSE HAS THE ABILITY TO PAY THAT AMOUNT; IF TRIAL COURT ORDERS A SPOUSE TO OBTAIN AND MAINTAIN A LIFE INSURANCE POLICY TO SECURE AN OBLIGATION, THE AMOUNT OF POLICY MUST BE RELATED TO THE EXTENT OF THE OBLIGATION BEING SECURED.** Former husband challenged three aspects of the final judgment dissolving a nearly 27-year marriage: 1) the finding that he was voluntarily underemployed; 2) the amount of alimony he was awarded; and 3) the requirement that he obtain life insurance to secure his obligation to pay a joint credit card debt. The appellate court affirmed the first issue because competent, substantial evidence supported the trial court's finding that former husband was voluntarily underemployed, but reversed and remanded for further proceedings on the second and third issues after finding that the final judgment contained insufficient findings to permit meaningful review as to the amount of the alimony award, and that the amount of life insurance former husband was ordered to obtain and maintain "far" exceeded the amount of the joint credit card debt he was required to pay without explanation in the judgment. Findings regarding alimony must be sufficient to

demonstrate that a receiving spouse has a need for the amount awarded and the paying spouse has the ability to pay that amount. Here, the trial court's findings established that former husband had a need for alimony and former wife had the ability to pay, but the findings were insufficient to afford meaningful review of the amount awarded. If a trial court orders a spouse to obtain and maintain a life insurance policy to secure an obligation, the amount of the policy must be related to the extent of the obligation being secured.

https://edca.1dca.org/DCADocs/2015/4769/154769_DC13_04272016_085227_i.pdf (April 27, 2016)

Second District Court of Appeal

Thomas-Nance v. Nance, __ So. 3d __, 2016 WL 1576764 (Fla. 2d DCA 2016). **PAYMENT PLANS ALLOWING ONE SPOUSE TO MAKE PAYMENTS TO THE OTHER OVER A NUMBER OF YEARS EFFECTIVELY DEPRIVE THE LATTER OF ASSETS; CONSTITUTE ABUSE OF DISCRETION.** Former wife appealed the final judgment dissolving a 22-year marriage. The appellate court affirmed all aspects of the judgment with the exception of the provision permitting former husband to pay former wife her \$25,000 interest in the marital home at the rate of \$100 per month. Calling a payment plan which required a spouse to wait more than twenty years to receive her share of the marital assets "patently unreasonable", the appellate court concluded that the trial court abused its discretion in authorizing it. It noted that the abuse was "compounded" by the requirement that former wife quitclaim her interest in the home within thirty days of entry of the final judgment. The appellate court held that the sentimental interest of one spouse in marital property cannot take priority over "financial fairness" to the other. It cited two recent decisions, Posner v. Posner, 39 So. 3d 411 (Fla. 4th DCA 2010), and Evans v. Evans, 128 So. 3d 972 (Fla. 1st DCA 2013), in which other districts found that payment plans allowing one spouse to make payments to the other over a number of years effectively deprive the latter of assets. Remanded with instructions to the trial court as to how it should reconsider award of the asset.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/April/April%2020,%202016/2D15-2320.pdf (April 20, 2016)

Lathrop v. Lathrop n/k/a Posey, __ So. 3d __, 2016 WL 1602746 (Fla. 2d DCA 2016). **A SPOUSE CANNOT BE REQUIRED TO MAINTAIN LIFE INSURANCE TO SECURE AN ALIMONY OBLIGATION ABSENT SPECIAL CIRCUMSTANCES TO JUSTIFY IT BEING SET FORTH IN JUDGMENT.** Former husband appealed both the alimony award and the requirement that he maintain a life insurance policy to secure that obligation. The appellate court found no error in the alimony award, but concluded that the trial court erred in requiring former husband to maintain the policy to secure it. The appellate court cited its prior cases, including Solomon v. Solomon, 861 So. 2d 1218 (Fla. 2d DCA 2003). A spouse cannot be required to maintain life insurance for the purpose of securing an alimony obligation in absence of special circumstances warranting the requirement set forth in the final judgment. Here, finding no special circumstances in the final judgment to justify the life insurance requirement, the appellate court reversed that portion of the judgment.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/April/April%2022,%202016/2D15-1768.pdf (April 22, 2016)

Minda v. Minda, __ So. 3d __, 2016 WL 1718854 (Fla. 2d DCA 2016). TRIAL COURT ERRED IN DISMISSING SPOUSE’S MOTION TO VACATE DEFAULT; SECOND MOTION WAS NOT SUCCESSIVE AS FIRST HAD BEEN DISMISSED AS FACIALLY INSUFFICIENT AND WAS NOT LITIGATED ON ITS MERITS; FLORIDA HAS STRONG PREFERENCE FOR LITIGATION ON THE MERITS; A FLORIDA DRIVER’S LICENSE, STANDING ALONE, DOES NOT ESTABLISH RESIDENCY. Former wife appealed orders denying her motions to set aside the final judgment of dissolution. The appellate court affirmed the first order without comment, but reversed the second. The spouses were married in New York and resided there until their separation thirteen years later. Former husband initially filed his petition for dissolution in New York, but then voluntarily dismissed it and filed in Pinellas County, Florida, alleging jurisdiction was based on former wife’s residency. Former wife did not respond to the petition in Florida, but filed a new petition in New York. Former husband obtained a clerk’s default and the trial court entered a final judgment of dissolution. After the trial court denied former wife’s first motion to set aside the judgment and for rehearing as legally insufficient, former wife filed a second, more detailed motion, which the trial court dismissed as successive. The appellate court found this was error. Noting Florida’s “strong preference” for litigation on the merits, the appellate court concluded that because the first motion was denied as facially insufficient, none of former wife’s claims were adjudicated on the merits. It was error for the trial court to dismiss the second motion as successive as it was facially sufficient and alleged a “colorable entitlement” to relief. The record reflected that former husband’s residency claim was based entirely on former wife’s Florida driver’s license. Although a driver’s license can be used to corroborate residency, possession of a license, in and of itself, is not “irrefutable evidence” of residency. Reversed and remanded for a formal evidentiary hearing on former wife’s second motion to vacate the default judgment.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/April/April%2029,%202016/2D15-149.pdf (April 29, 2016)

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

Caputo v. Caputo, __ So. 3d __, 2016 WL 1367013 (Fla. 4th DCA 2016). CONTEMPT CANNOT LIE FOR ISSUE NOT EXPRESSLY ADDRESSED IN DISSOLUTION FINAL JUDGMENT; ORDER DETERMINING ENTITLEMENT TO FEES IS NON-FINAL, NON-APPEALABLE. Former wife attempted to hold former husband in contempt for having enrolled their child in day care near his place of employment. The trial court granted former husband’s motion to dismiss and awarded attorney’s fees. Concluding that contempt could not lie where the final judgment of dissolution did not expressly address day care, the appellate court affirmed the dismissal, but dismissed the portion of the appeal regarding fees because the order stated that the amount of the award was to be determined in a later hearing. The appellate court reiterated that an order determining entitlement to attorney’s fees is a non-final, non-appealable order.

<http://www.4dca.org/opinions/April%202016/04-06-16/4D15-2455.op.pdf> (April 6, 2016)

Witt-Bahls v. Bahls, __ So. 3d __, 2016 WL 1587413 (Fla. 4th DCA 2016). A TRIAL COURT MUST GIVE A PARENT THE KEY TO RECONNECTING WITH HIS OR HER CHILD; AN ORDER THAT DEPRIVES

THE PARENT OF THAT KEY IS DEFICIENT; BECAUSE ONE SPOUSE FAILED TO ESTABLISH THE OTHER SPOUSE OCCUPIED A SIGNIFICANT ROLE IN RUNNING THE BUSINESS IN WHICH HE OWNED STOCK, PASSIVE APPRECIATION OF THAT STOCK WAS NOT MARITAL. The appellate court granted former wife's motion for rehearing, withdrew its opinion issued February 3, 2016, and then reversed the final judgment of dissolution for failing to provide specific steps required for former wife to reestablish contact with her child beyond supervised time-sharing. The trial court stated it was not coming up with a "magical answer" to allow former wife unsupervised time-sharing. The appellate court held that a trial court must give a parent the key to reconnecting with his or her child; an order that deprives a parent of that key is deficient. A trial court is not obligated to set out "every minute detail", but must leave a parent knowing, when he or she walks out of the courtroom, what "relatively specific" tasks must be accomplished to reestablish unsupervised time-sharing. Affirming all other issues, the appellate court addressed the passivity of appreciation of stock in a marriage. That issue arose from former husband's employment at a large, privately-held international company from whom he had purchased a large number of shares of stock prior to the marriage. Former husband was demoted at least twice during the marriage and was eventually terminated; at his highest position, there were seven or eight levels of management above him. His stock, which was liquidated when he was terminated, sold for substantially more than the outstanding balance of the loan he had used to purchase them. The trial court found that the appreciation of the stock was passive; thus, it was not a marital asset subject to equitable distribution. The appellate court found a "clear pattern" in recent cases weighing whether the enhanced value of stock was marital or not: those in which the appreciation of stock was found to be a marital asset occurred with businesses in which the spouse had a key role in running the business. Often, the business was family-owned. The appellate court distinguished this appeal from those cases. It held that because former wife failed to establish that former husband occupied a "significant management role" in his company, the appreciation of stock was not due to former husband's active efforts and thus, not a marital asset. Remanded for the trial court to modify its order to provide former wife with the steps required to reestablish contact with her child.

<http://www.4dca.org/opinions/April%202016/04-20-16/4D14-152.rehear.op.pdf> (April 20, 2016)

Turk v. Turk, __ So. 3d __, 2016 WL 1696598 (Fla. 4th DCA 2016). **NO CONTEMPT FOR FAILURE TO COMPLY WITH SOMETHING AN ORDER DOES NOT SAY.** The appellate court agreed with former husband that the time-sharing agreement did not require him to permit visitation on the date he allegedly violated the agreement. Former wife's motion for contempt arose when the spouses' children had a day off from school on a day on which former husband was scheduled to have them. Although he indicated to former wife in an email that he would drop the children off with her, he ended up staying with them that day. The trial court granted former wife's motion for contempt. The appellate court held that a person cannot be held in contempt for failure to comply with something a judicial order does not say. Reversed.

<http://www.4dca.org/opinions/April%202016/04-27-16/4D15-668.op.pdf> (April 27, 2016)

Fifth District Court of Appeal

Collins v. Collins, __ So. 3d __, 2016 WL 1260864 (Fla. 5th DCA 2016). TRIAL COURT FAILED TO INCLUDE SPECIFIC FINDING THAT SHARED PARENTAL RESPONSIBILITY WOULD BE DETRIMENTAL TO THE CHILDREN WHEN AWARDING SPOUSE SOLE RESPONSIBILITY. Former wife appealed a final judgment of dissolution providing that former husband would have sole parental responsibility on decisions relating to their minor children's education and medical care. The appellate court concluded that the trial court's factual findings supported its decision, but remanded the case because the final judgment failed to include a specific finding that shared parental responsibility would be detrimental to the children.

<http://www.5dca.org/Opinions/Opin2016/032816/5D15-1885.op.pdf> (April 1, 2016)

Mills v. Mills, __ So. 3d __, 2016 WL 1718839 (Fla. 5th DCA 2016). EXPENDITURES AND INVESTMENT DECISIONS NOT RISING TO LEVEL OF MISCONDUCT DO NOT SUPPORT UNEQUAL DISTRIBUTION; HOWEVER, LIABILITIES INCURRED BY FRAUD ARE NON-MARITAL LIABILITIES AND THE SOLE BURDEN OF SPOUSE COMMITTING THE FRAUD UNLESS THE LIABILITY IS SUBSEQUENTLY RATIFIED BY THE OTHER SPOUSE; THE TRIAL COURT ERRED BY NOT CLASSIFYING THE LOAN AMOUNT AS A NON-MARITAL LIABILITY. Former wife appealed an amended final judgment dissolving a 37-year marriage. The appellate court affirmed, with the exception of the trial court's failure to classify \$100,000 of the \$245,475 loss incurred in a bank investment as a non-marital liability. Lacking sufficient funds for an investment obligation in a startup bank, former husband took out a loan against the marital home in the amount of \$100,000. He did so without former wife's knowledge and forged her signature because he did not think she would agree to sign the loan. Former wife learned of the loan when the lender called and threatened to take the marital home if the loan was not repaid; it was paid off with funds from former husband's marital retirement accounts. The spouses lost most of their investment when the bank did not receive a state charter. Former wife argued that the loss incurred from the investment should have been assigned to former husband as a non-marital liability in the equitable distribution scheme because he forged her signature. The trial court concluded that former husband had made numerous investments during the marriage, some of which were profitable and were subject to equitable distribution. Because former wife would share in the profitable yields of those investments, it would not be equitable to "punish" former husband for an unprofitable investment. The appellate court found this conclusion erroneous. It held that expenditures and investment decisions not rising to the level of misconduct would not support an unequal distribution of marital assets; however, liabilities incurred by forgery or unauthorized signatures of the other spouse's name are non-marital liabilities and the sole burden of the spouse committing the fraud, unless the liability is "subsequently ratified" by the other spouse. In absence of any evidence that former wife ratified the loan, it was a non-marital liability of former husband. The trial court's failure to classify it as such was error. Remanded to allocate \$100,000 of the losses to former husband.

<http://www.5dca.org/Opinions/Opin2016/042516/5D15-200.op.pdf> (April 29, 2016)

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

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Berrien v. State, __ So. 3d __, 2016 WL 1425943, (Fla. 1st DCA 2016). **DOMESTIC VIOLENCE INJUNCTION VACATED**. An unmarried mother, who had previously received a domestic violence injunction against the father, petitioned to have her injunction dissolved. The court complied. However, the father failed to comply with the terms of the injunction, and the original judge that ordered the injunction vacated the order dissolving the injunction and pursued indirect criminal contempt charges against the respondent. The father appealed, and the appellate court held that once the injunction was dissolved, the father was no longer required to comply with the terms of the injunction. Therefore, the successor judge was not allowed to reinstate it sua sponte or hold the father in contempt for failing to comply or failing to attend the compliance hearings. The appellate court noted that the order of dismissal removed the court's jurisdiction. https://edca.1dca.org/DCADocs/2015/0931/150931_DC13_04122016_103610_i.pdf (April 12, 2016)

Wills v. Jones, __ So. 3d __, 2016 WL 1660617, (Fla. 1st DCA 2016). **DOMESTIC VIOLENCE INJUNCTION REVERSED**. The trial court entered a one-year injunction against domestic violence in favor of a mentally ill woman against her parents, and the parents appealed. The parents had been taking care of their adult daughter's mental health needs most of her life, and claimed that their daughter filed the petition as a response to the recent Baker Act proceeding that they initiated against their daughter. The daughter testified that she felt intimidated and harassed by her parents' constant involvement with her service providers and that they were too involved in her life. A case manager testified that the daughter did not need a guardian, and that some of her behaviors were a result of the parents' behaviors. The parents both testified regarding their daughter's illness and outlined their attempts to help her during various episodes manifested by her mental illness. After the hearing, the trial court was concerned about the parents' confrontations with the daughter's health care providers and other overt conduct, and issued the injunction. The appellate court reversed, noting that petitioning the court for relief in a Baker Act proceeding, even if done maliciously (which wasn't the case here), did not support the injunction order. The court also noted that pursuant to §784.048(1)(a), F.S. (2015), the parents' act of seeking the Baker Act did not constitute harassment because their actions did have a legitimate purpose – obtaining mental health services for their daughter. The parents' other behavior also did not rise to the level necessary to establish a legal basis for an injunction. https://edca.1dca.org/DCADocs/2015/2911/152911_1287_05022016_093651_i.pdf (April 27, 2016)

Second District Court of Appeal

Scott v. Blum, __ So. 3d __, 2016 WL 1718866 (Fla. 2d DCA 2016). **STALKING INJUNCTION REVERSED**. Mr. Blum claimed that Mr. Scott sent out over 2200 emails that negatively affected his business, and the court entered an order prohibiting Mr. Scott from cyberstalking. Mr. Scott

appealed, claiming that the petitioner failed to meet his burden of proof, and that the order hindered his free speech. The appellate court did not discuss the First Amendment issue because they reversed, finding that Mr. Blum failed to meet his evidentiary burden. While the emails may have caused Mr. Blum some emotional distress or embarrassment, the appellate court found that they did not meet the definition of cyberstalking.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/April/April%2029,%202016/2D15-3412.pdf (April 29, 2016)

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

Vaught v. Vaught, ___ So. 3d ___, 2016 WL 1579251, (Fla. 4th DCA 2016). **INJUNCTION AGAINST DOMESTIC VIOLENCE REVERSED AND REMANDED.** The wife filed a petition for protection against domestic violence alleging stalking and destruction of personal property. Since she was advised the allegations were not sufficient for a temporary injunction, the wife later supplemented her petition with an additional affidavit that alleged acts of physical abuse by her husband. The court then granted the temporary injunction and set a hearing. The husband appeared pro se and claimed he had only received the additional affidavit a few days before and requested a continuance. The court denied the request and ultimately granted the petition, and the husband appealed on due process grounds. The appellate court reversed, stating that the trial court erred in denying the motion for a continuance since the notice of the hearing on the new and supplemental allegations was provided only a few business days before the final hearing.

<http://www.4dca.org/opinions/April%202016/04-20-16/4D14-3699.op.pdf> (April 20, 2016)

Fifth District Court of Appeal

No new opinions for this reporting period.