

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

Table of Contents

Baker Act/Marchman Act Case Law	3
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
Delinquency Case Law	4
Florida Supreme Court.....	4
First District Court of Appeals.....	4
Second District Court of Appeals	4
Third District Court of Appeals	5
Fourth District Court of Appeals	5
Fifth District Court of Appeals	5
Dependency Case Law.....	7
Florida Supreme Court.....	7
First District Court of Appeal	7
Second District Court of Appeal.....	7
Third District Court of Appeal.....	8
Fourth District Court of Appeal	8
Fifth District Court of Appeal.....	9
Dissolution Case Law	10
Florida Supreme Court.....	10
First District Court of Appeal	10
Second District Court of Appeal.....	11
Third District Court of Appeal.....	13
Fourth District Court of Appeal	14
Fifth District Court of Appeal.....	14
Domestic Violence Case Law.....	18
Florida Supreme Court.....	18
First District Court of Appeal	18

Second District Court of Appeal.....	18
Third District Court of Appeal.....	18
Fourth District Court of Appeal.....	18
Fifth District Court of Appeal.....	19
Drug Court/Mental Health Court Case Law	20
Florida Supreme Court.....	20
First District Court of Appeal	20
Second District Court of Appeal.....	20
Third District Court of Appeal.....	20
Fourth District Court of Appeal.....	20
Fifth District Court of Appeal.....	20

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

M.T.A. v. State, ___ So. 3d ___, 2015 WL 8918220 (Fla. 1st DCA 2015). UNDER S. 806.01(2), F. S. (2014), THE STATE HAS THE BURDEN OF PROVING THAT ARSON WAS BOTH WILLFUL AND UNLAWFUL; UNLAWFULNESS IS NOT PRESUMED BY AN ADMISSION OF STARTING A FIRE AND PROOF OF PROPERTY DAMAGE IN THE VICINITY. The juvenile was adjudicated delinquent for second-degree felony arson of a shed. The juvenile set fire to a fan that he found in a junk pile in his yard using a blowtorch and an aerosol can of lubricant. The fire quickly got out of control. At the time the juvenile ran for help, the shed had not yet caught fire. By the time the juvenile returned, the fire had spread to the shed. The fan was not inside or directly touching the shed, and the juvenile testified that the fan was “not that close” to the shed. On appeal, the juvenile contended that the trial court erred by denying his motion for judgment of dismissal because the State failed to prove that he both willfully and unlawfully set the fire that caused the damage to the shed as is required by s. 806.01(2), F.S. (2014). Further, he argued, any proof of intent was circumstantial; therefore, the State failed to rebut his reasonable hypothesis of innocence that the shed burned accidentally. The State contended that arson is a general intent crime, and, as such, it only had to prove that the juvenile intentionally set fire to the shed or did an act that was substantially certain to result in setting fire to the shed. The First District Court of Appeal concluded that the State failed to prove that the juvenile’s actions were substantially certain to cause the shed to burn. The State proved that the juvenile intentionally set a fan on fire. The State also proved that a shed in the same general area burned. However, the State also carried the burden of connecting the two to prove that a crime occurred. The connection lies in proof of the unlawfulness of the action, which serves to distinguish the action as a criminal act rather than an unforeseen accident. “Unlawful” means without a legitimate, lawful purpose. Unlawfulness cannot be presumed because the juvenile admitted to setting a fan on fire. While setting a fan on fire out of curiosity could hardly be construed as a legitimate purpose, the State made no effort to show that the action was unlawful and, in failing to do so, essentially rewrote the arson statute to remove the element of unlawfulness. Under the State’s position, proof of arson would be satisfied by a defendant’s admission to starting a fire and proof of property damage in the vicinity. The First District found this argument lacking and, accordingly, reversed.

https://edca.1dca.org/DCADocs/2015/2811/152811_DC13_12162015_095857_i.pdf

(December 16, 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

E.G. v. State, ___ So. 3d ___, 2015 WL 8294160 (Fla. 4th DCA 2015). **THE STATE PRESENTED NO EVIDENCE THAT THE MARKET VALUE OF THE PHONE COULD NOT BE SATISFACTORILY ASCERTAINED AS IS REQUIRED BY S. 812.012(10)(A)(1), F.S. (2014).** The juvenile was convicted of grand theft of a cell phone. The Fourth District Court of Appeal concluded that the State failed to offer sufficient evidence that the value of the stolen cell phone was \$300 or more as is required by s. 812.014(2)(c), F.S. (2014). The Fourth District reasoned that the State could have readily ascertained the market value of the phone. Contrary to s. 812.012(10)(a)(1), F.S. (2014), the State relied on the replacement cost of the phone in determining the value of the phone at the time of the offense. This statute prohibits the State from relying on such evidence unless the State first presents evidence that the market value of the phone could not be satisfactorily ascertained. Here, the State did not ask the juvenile about the original purchase price of the phone despite the fact that the juvenile testified that he had his original sales receipt. The original sales price, combined with testimony about the phone's age, condition, and how it was customized, would have supported a finding that the market value of the phone at the time and place of offense was at least \$300. In sum, the State presented no evidence that the market value of the phone could not be satisfactorily ascertained. Accordingly, the Fourth District reversed the finding of grand theft; remanded for the entry of a conviction for petit theft; and affirmed the restitution order because the proper amount or type of restitution must be resolved by a preponderance of the evidence and not beyond a reasonable doubt. Under the lower standard of proof, there was sufficient evidence of value to support the restitution award.

<http://www.4dca.org/opinions/Dec.%202015/12-09-15/4D14-1499.pdf> (December 9, 2015)

Fifth District Court of Appeal

K.W. v. State, ___ So. 3d ___, 2015 WL 9239779 (Fla. 5th DCA 2015). **THE STATE MUST PROVE, UNDER THE TOTALITY OF THE CIRCUMSTANCES, THAT THE JUVENILE GAVE UNEQUIVOCAL, VOLUNTARY CONSENT TO A WARRANTLESS SEARCH.** The arresting officer and his field training officer responded to an indecent exposure complaint at an apartment complex. Upon arrival, the arresting officer approached the juvenile and asked him to place his bag on the ground for officer safety. The juvenile complied with the request and answered the arresting officer's inquiries about his identity and purpose for being at the complex. The officers determined that the exposure complaint was unwarranted. However, at the request of the property manager, the arresting officer issued a trespass warning to the juvenile. The arresting officer then told the juvenile that he must leave the property. Before the juvenile picked up his bag from the ground, the arresting officer asked him for permission to search it. The juvenile stepped back and looked

around over his shoulders, but did not say anything. After the juvenile failed to respond to the arresting officer's second and third requests for permission to search his bag, the arresting officer picked up the bag and said, "I'm going to search your bag now, is that ok with you?" The juvenile did not verbally respond, nor did he make any gestures. As the arresting officer opened the bag, he stated that he appreciated the juvenile's consent to search the bag. The juvenile remained silent, did not attempt to take his bag away from the arresting officer, and did not make any other gestures during the search. As a result of the search, the arresting officer found a baggie of marijuana, along with two cigars, one of which was altered and stuffed with marijuana. The juvenile was then arrested. At the suppression hearing, the juvenile testified that he never gave the officers consent to search his bag. The officers confirmed that the juvenile did not give unequivocal, verbal consent for a search of his bag, but both testified that they interpreted the juvenile's actions or inaction as implied permission to proceed with the search. The trial court denied the motion to suppress, and never ruled directly on whether the juvenile gave unequivocal, voluntary consent for the officer to search his bag. On appeal, the juvenile argued that the officers did not have a warrant to search his bag; consequently, the trial court erred in denying his motion to suppress the evidence found in his bag during the warrantless search. The Fifth District Court of Appeal reasoned that the State had the burden to show that the defendant freely and voluntarily gave the necessary consent to overcome the warrant requirement. Whether consent is voluntary is a question of fact to be determined from the totality of circumstances. Again, the trial court never ruled directly on whether, under the totality of the circumstances, the juvenile gave unequivocal, voluntary consent for the deputy to search his bag. Instead, the trial court based its decision on two theories not argued by either party. Accordingly the Fifth District reversed and remanded with instructions.

<http://www.5dca.org/Opinions/Opin2015/121415/5D14-2434.op.pdf> (December 18, 2015)

Q.Q.P. v. State, ___ So. 3d ___, 2015 WL 9491843 (Fla. 5th DCA 2015). **WHEN READ TOGETHER, S. 985.032(2), F.S. (2013), AND S. 938.27(1), F.S. (2013), EXPRESSLY AND UNAMBIGUOUSLY AUTHORIZE THE IMPOSITION OF COSTS OF INVESTIGATION ON A JUVENILE.** The juvenile appealed his adjudication of delinquency for resisting an officer without violence. He contended that the trial court erred by imposing the investigative costs on him. The juvenile reasoned that the relevant statutes only authorize imposition of costs of prosecution, and not costs of investigation, on a juvenile. To the contrary, s. 985.032(2), F.S. (2013), authorizes the assessment of costs of prosecution "as provided in s. 938.27," which expressly and unambiguously defines the costs of prosecution as, "including investigative costs," s. 938.27(1), F.S. (2013). Accordingly, the Fifth District Court of Appeal found that the plain language of the statute authorized the assessment of investigative costs in juvenile cases and affirmed the trial court's decision.

<http://www.5dca.org/Opinions/Opin2015/122815/5D15-285.op.pdf> (December 31, 2015)

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

N.W. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ____, 40 Fla.L.Weekly D2794, 2015 WL 9258506 (Fla. 2d DCA 2015). [TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED FOR FURTHER CONSIDERATION IN LIGHT OF ERRONEOUS RETROACTIVE APPLICATION OF STATUTORY AMENDMENT](#). The Second District Court of Appeal reversed and remanded termination of a mother's parental rights to her two daughters because the trial court erroneously applied a statutory amendment retroactively. The mother had a lengthy and violent history with her longtime girlfriend and the girlfriend's daughter was the subject of repeated physical abuse by the mother. Although the mother did not abuse her own children, her rights to her daughters were terminated under s. 39.806(1)(f), F.S., which permits termination when the parent engages in egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling. The term "sibling" means another child who resides with or is cared for by the parent regardless of whether the child is related legally or by consanguinity. A 2014 amendment to the termination ground states that proof of a nexus between egregious conduct to a child and the potential harm to the child's sibling is not required. The trial court considered the girlfriend's daughter to be a sibling under those provisions of s. 39.806(1)(f), F.S., and applied the 2014 amendment retroactively to the mother, whose case had commenced prior to the amendment's effective date. The trial court therefore made no findings of any nexus between the mother's abuse of her girlfriend's child and any possible harm to the mother's own children. The court observed that the mother's multiple acts of violence toward the girlfriend and her child, "may detrimentally impact [the mother's] own children's mental and emotional health." Furthermore, although the Department alleged in its Termination of Parental Rights petition an alternate ground under s. 39.806(1)(g), F.S., the trial court declined to make findings of that ground. The District Court held that the trial court's decision to terminate rights based on the 2014 amendment was erroneous. The court noted that the statute was silent as to whether it should be applied retroactively and found in its analysis that the amendment was substantive, not procedural. As a result, it could not be applied retroactively. Although the trial court's findings were supported by competent, substantial evidence, the court neither applied the correct version of s. 39.806(1)(f), F.S., nor ruled on s. 39.806(1)(g), F.S., the alternative ground for termination. The district court therefore remanded the case for reconsideration of those determinations.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2018,%202015/2D15-933.pdf (December 18, 2015)

S.L. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ____, 41 Fla.L.Weekly D26, 2015 WL 9487592 (Fla. 2d DCA 2015). [STRICT COMPLIANCE WITH](#)

TERMINATION OF PARENTAL RIGHTS TIME FRAMES IS REQUIRED. The Second District Court of Appeal affirmed the final judgment terminating the mother's parental rights. The court took the occasion to emphasize that strict compliance with time frames in dependency and termination of parental rights cases is required and that the trial court's time frame did not comply with Florida's public policy on expediting termination proceedings.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2030,%202015/2D15-2770.pdf (December 30, 2015)

Third District Court of Appeal

In the Interest of W.A.Z.R., G.T.Z.R., and M.D.Z.R., minor children v. Department of Children and Families, ___ So. 3d ____, 40 Fla.L.Weekly D2674, 2015 WL 7752340 (Fla. 3d DCA 2015). **DENIAL OF PRIVATE DEPENDENCY PETITION AFFIRMED.** The Third District Court of Appeal affirmed the trial court's denial of a privately filed dependency petition.

<http://www.3dca.flcourts.org/Opinions/3D15-1577.pdf> (December 2, 2015)

O.W. v. Department of Children and Families, ___ So. 3d ____ (Fla. 3d DCA 2015). **CONFESSION OF ERROR.** Based on the Department's confession of error, the Third District Court of Appeal quashed the trial court's order. The court remanded the case for entry of an appropriate order by the trial court.

<http://www.3dca.flcourts.org/Opinions/3D15-2884.pdf> (December 23, 2015)

Fourth District Court of Appeal

K.J. v. Department of Children and Families, ___ So. 3d ____, 40 Fla.L.Weekly D2671, 2015 WL 7752952 (Fla. 4th DCA 2015). **PERMANENT GUARDIANSHIP ORDER REMANDED FOR ENTRY OF NEW ORDER.** The Fourth District Court of Appeal remanded a permanent guardianship order for entry of a new order in compliance with statutory requirements. After the trial court had denied a termination of parental rights petition, the Department had filed a permanent guardianship case plan. On June 5, 2015, the trial court, *inter alia*, approved the case plan for permanent guardianship and terminated protective supervision. On appeal, the District Court held that the trial court's June 5 order failed to contain findings of fact required by s. 39.6221, F.S. The court further found that the record contained competent, substantial evidence to support the trial court's determination of permanent guardianship. The court reversed the order and remanded the case for the trial court to enter an order with specific findings of fact required by the statute.

<http://www.4dca.org/opinions/Dec.%202015/12-02-15/4D15-2606.op.pdf> (December 2, 2015)

T.B. v. Department of Children and Families, ___ So. 3d ____, 41 Fla.L.Weekly D7, 2015 WL 9598332 (Fla. 4th DCA 2015). **MOTION FOR REHEARING DENIED.** The Fourth District Court of Appeal denied a motion for rehearing in a case in which it previously held that the relocation statute, s. 61.13001, F.S., applied to dependency proceedings. The court noted that the plain language of the statute made it applicable to permanent guardianships and suggested that the Department seek a legislative change to the statute.

<http://www.4dca.org/opinions/Dec.%202015/12-23-15/4D14-4060rhg.op.pdf> (December 23, 2015)

Fifth District Court of Appeal

No new opinions for this reporting period.

Dissolution Case Law

Florida Supreme Court

No new opinions for this reporting period

First District Court of Appeal

Rhoads v. Rhoads, __ So. 3d __, 2015 WL 9287018 (Fla. 1st DCA 2015). DENIAL OF CONTINUANCE WITHIN TRIAL COURT'S DISCRETION; TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING AN AMOUNT OF ALIMONY NOT SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; AMOUNT AWARDED DID NOT PROVIDE FOR SPOUSE'S NEEDS AND NECESSITIES OF LIFE; SPOUSE SHOULD NOT HAVE TO DEplete CAPITAL ASSETS TO LIVE. Former wife appealed a final judgment of dissolution that dissolved a long-term marriage on several grounds. The appellate court found no error: in the trial court granting former wife's counsel motion to withdraw due to former wife's failure to communicate with counsel in the months leading up to the motion; in the trial court denying former wife's motion for continuance on the day of the final hearing due to the withdrawal of counsel three weeks before the hearing; or in the trial court's equitable distribution of the marital assets in the final judgment. However, the appellate court agreed with former wife that the trial court's determination of the amount of permanent alimony was not supported by competent, substantial evidence. The appellate court noted that former wife appeared pro se at the final hearing and that her presentation of supporting evidence was, "inartful and disjointed", but it also noted that the transcript contained undisputed evidence of basic needs for her maintenance. The final judgment ordered that former husband and the spouses' still-minor children remain in the marital home until the youngest child reached 18, at which point the home would be sold with proceeds divided between the spouses; however, the judgment made no provision for former wife's current needs for shelter and other living expenses beyond auto and health insurance. The appellate court concluded that the \$600 monthly amount awarded by the trial court did not adequately address former wife's needs even though former husband had the "apparent ability to pay for more if not all of the former wife's needs." The appellate court concluded that amount awarded was inadequate because it did not provide for the "needs and necessities of life" as established during the marriage. Although the trial court awarded former wife one-half of former husband's retirement account, the appellate court agreed with former wife that she should not be required to deplete her capital assets in order to maintain her standard of living. Reversed and remanded for reconsideration of alimony based on factors enumerated in s. 61.08, F.S.

https://edca.1dca.org/DCADocs/2014/4477/144477_DC08_12222015_123538_i.pdf

(December 22, 2015)

DOR v. Price, __ So. 3d __, 2015 WL 9584916 (Fla. 1st DCA 2015). SECTION 61.30(2)(a)13, F.S., REQUIRES AN OVERSEAS HOUSING ALLOWANCE BE INCLUDED IN A SPOUSE'S GROSS INCOME FOR PURPOSES OF CALCULATING A CHILD SUPPORT OBLIGATION. Department of Revenue (DOR) appealed the trial court's determination of former husband's gross income for the purposes of calculating the child support award. At issue was whether former husband's overseas housing allowance (OHA) during the period he was deployed to Bahrain on active service with the US Navy should have been included in his gross income under s. 61.30(2)(a), F.S. An OHA allowance

is used to offset off-base housing expenses when a Service member is deployed to a location where housing costs are higher than amount the Basic Allowance for Housing (BAH) covers. In calculating past due child support, the trial court concluded that the OHA should not have been included in former husband's gross income but did not provide an explanation for that conclusion. Finding that the intent of the child support guidelines statute is to facilitate each parent's obligation to support his or her child by estimating what portion of the parents' combined net incomes would have been allocated to the child if the family were still living in an intact household, the appellate court concluded s. 61.30(2)(a)13, F.S, required former husband's OHA be included in his gross income for the months he benefitted from that allowance. Accordingly, it reversed and remanded for recalculation of the past child support obligation. It affirmed the remainder of the judgments.

https://edca.1dca.org/DCADocs/2015/1452/151452_DC08_12312015_091800_i.pdf

(December 31, 2015)

Second District Court of Appeal

Jericka v. Jericka, __So. 3d__, 2015 WL 7749097 (Fla. 2d DCA 2015). **WITHOUT A TRANSCRIPT THE APPELLATE COURT WAS UNABLE TO REVIEW THE FACTUAL OR LEGAL BASIS FOR THE TRIAL COURT'S DECISION AND AFFIRMED; ABSENCE OF A TRANSCRIPT DOES NOT PRECLUDE REVERSAL IF AN ERROR IS APPARENT ON THE FACE OF A JUDGMENT.** Former husband argued that the trial court erred when it failed to make factual findings in support of its alimony award to former wife in the dissolution of their thirty-six year marriage; however, as he failed to provide a transcript, the appellate court was unable to review the factual or legal basis for the trial court's decision. The appellate court acknowledged that the absence of a transcript does not preclude reversal if an error is apparent on the face of the judgment but held that a "harmless error review is required in alimony cases." Here, the lack of a transcript frustrated the appellate court's ability to conduct such a review; accordingly, it affirmed.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2002,%202015/2D14-2025.pdf (December 2, 2015)

Brown v. Brown, __So. 3d__, 2015 WL 9258435 (Fla. 2d DCA 2015). **APPELLATE COURT REVERSED ATTORNEY AND EXPERT FEE AWARD TO PSYCHOLOGIST HIRED TO ASSIST THE TRIAL COURT DURING DISSOLUTION PROCEEDINGS BECAUSE THE FEE CLAUSE IN THE PSYCHOLOGIST'S CONTRACT ONLY APPLIED TO LEGAL ACTIONS FILED AGAINST HER.** The appellate court reversed the award of attorney's fees and costs to a psychologist hired by the spouses during their dissolution of marriage proceeding to assist the trial court in determining parenting responsibilities. The psychologist found it necessary to retain her own counsel when one spouse subpoenaed records and the other spouse objected. The trial court concluded that the psychologist's contracts with the spouses required that they pay costs and expenses, including attorney's fees, incurred in connection with any legal matters regarding the psychologist. Following testimony from the psychologist's counsel as to her charge for legal services and an expert regarding reasonableness of the fees, the trial court granted the psychologist's motion for fees and costs. Reviewing de novo, the appellate court concluded that the fee clause in the psychologist's contract only applied to legal actions filed *against* her as a result of her preparation of a parenting plan evaluation. [Italics in opinion]. The appellate court reversed the trial court's

order awarding attorney and expert witness fees to the psychologist because the legal charges she incurred were not related to any action filed against her.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2018,%202015/2D14-3386.pdf (December 18, 2015)

Nicholson v. Nicholson, __So. 3d__, 2015 WL 9264154 (Fla. 2d DCA 2015). **SOCIAL SECURITY BENEFITS CONSIDERED INCOME FOR PURPOSES OF CALCULATING ALIMONY**. The appellate court reversed alimony unconnected with a dissolution because the trial court was under a “misimpression” that it could not consider the husband’s Social Security benefits as income when calculating the amount of support. The appellate court held that under s. 61.046(8), F.S. (2014), Social Security benefits may be considered income for purposes of calculating alimony. Accordingly, it reversed and remanded for the trial court to reconsider the amount of alimony in light of its opinion and to hold another hearing if necessary.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2018,%202015/2D15-1222.pdf (December 18, 2015)

Perez v. Fay, __So. 3d__, 2015 WL 9311402 (Fla. 2d DCA 2015). **TRIAL COURT ORDER DENYING COSTS REVERSED; REMANDED FOR ENTRY OF COST JUDGMENT**. Former wife sought review of a trial court order denying her motion for an award of appellate costs. The appellate court granted the motion for review, reversed the order denying costs, and remanded for further proceedings. In the prior appeal, Perez v. Fay, 160 So. 3d 459 (Fla. 2d DCA 2015), former wife had been awarded primary residential custody of the spouses’ minor child. After former wife suffered a health crisis, former husband filed an emergency motion for custody which the trial court granted ex parte. Former wife sought to vacate the ex parte emergency order and regain primary residential custody of the daughter. In response, former husband filed a supplemental petition to modify primary residential custody. Following what the appellate court termed “highly contentious” proceedings, the trial court entered a judgment making the emergency custody order permanent--effectively giving former husband ultimate decision-making authority for all parenting decisions, reducing the former wife’s supervised time-sharing, putting the scheduling of that time-sharing in the hands of the time-sharing supervisor and restricting former wife, a Venezuelan native, from speaking Spanish to their daughter. The appellate court affirmed the permanent change of primary residential custody but reversed all other portions of the Amended Supplemental Final Judgment and remanded to the trial court to identify specific steps former wife need to take to reestablish unsupervised time-sharing and/or primary residential custody. [Emphasis in opinion.] Former wife timely filed a motion in the trial court for taxation of appellate costs pursuant to Florida Rule of Appellate Procedure 9.400(a), which provides that appellate costs be taxed in favor of the prevailing party unless the court orders otherwise. The appellate court clarified that the “court” referred to in the rule is the appellate court, not the trial court. A trial court is without discretion to refuse to award appellate costs if the appellate court has not ordered that costs be denied. The appellate court concluded that the trial court erred in denying former wife’s motion for appellate costs. The fact that former wife did not prevail in her quest to be reinstated as the primary residential parent was not dispositive; there were numerous issues upon which she did prevail. Accordingly, the appellate court reversed the order denying costs and remanded for entry of a cost judgment in favor of former wife.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2023,%202015/2D13-4217or.pdf (December 23, 2015)

Felice v. Felice, __ So. 3d __, 2015 WL 9487576 (Fla. 2d DCA 2015). APPELLATE COURT FOUND THE BROAD LANGUAGE OF A PRENUPTIAL AGREEMENT “EXPRESSLY WAIVED” SPOUSE’S RIGHTS IN PREMARITAL HOME IN LIGHT OF HAHAMOVITCH; REMANDED FOR RECALCULATION AND TO REFLECT RULINGS IN AN ORDER ON REHEARING REGARDING PARENTING PLAN. Former husband raised numerous issues in his appeal of an amended final judgment of dissolution; the appellate court found merit in two. It held that the trial court erred: 1) by including a portion of the value of former husband’s premarital home as a marital asset in the scheme of equitable distribution; and 2) in failing to incorporate into the amended final judgment the amended parenting plan ordered on rehearing. The appellate court reversed on those two issues and affirmed the remainder of the judgment. Pursuant to a prenuptial agreement, the spouses agreed that former wife would not be entitled to any interest in former husband’s premarital home. Although the trial court concluded that the prenuptial agreement was enforceable, it also found that the language of the agreement did not preclude former wife from claiming an interest in the home in part because the agreement failed to specifically address whether its provisions applied to the enhanced value of the premarital home. The trial court determined the home’s fair market value at the time of filing, found that marital funds had been used to pay down the mortgage and a line of credit, and determined that both the enhancement and a portion of the appreciation in fair market value were marital assets. The appellate court held that even though the agreement did not specifically refer to any right to appreciation or enhancement, the broad language of the agreement “expressly waives” former wife’s rights in the premarital home, in light of the Supreme Court’s language in Hahamovitch v. Hahamovitch, 174 So. 3d 983 (Fla. 2015), disapproving Irwin v. Irwin, 857 So. 2d 247 (Fla. 2d DCA 2003), upon which the trial court relied, and Valdes v. Valdes, 894 So. 2d 264 (Fla. 3d DCA 2004). Although a revised parenting plan was entered as part of the order on rehearing, it did not make it into the amended final judgment. The appellate court reversed the amended judgment to the extent that the parenting plan was inconsistent with the trial court’s rulings on rehearing. Reversed and remanded to recalculate the equitable distribution scheme after excluding the amount of the appreciated or enhanced value of former husband’s premarital home, and to amend the amended final judgment to reflect the rulings regarding the parenting plan on rehearing.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2030,%202015/2D14-2862.pdf (December 30, 2015)

Third District Court of Appeal

Theodorides v. Theodorides, __ So. 3d __, 2015 WL 8936789 (Fla. 3d DCA 2015). TRIAL COURT LACKED AUTHORITY TO GRANT SPOUSE RELIEF UNDER RULE 1.540. Former husband appealed a trial court order granting former wife’s motion for relief and vacating an order requiring her to make child support payments to former husband. At issue was whether Florida Family Law Rule of Procedure 12.540, which adopts Florida Rule of Civil Procedure 1.540 into the family law rules, was the appropriate avenue by which former wife could seek relief. Rule 1.540(a) permits a trial court to correct “clerical mistakes” and errors “arising from oversight or omission.” Because the mistake in this case was not clerical, but more in the nature of a judicial or legal error, rule

1.540(a) was not available. Nor was rule 1.540(b) an option because it cannot remedy errors in the substance of what is decided. The appellate court stated that the law is clear in Florida: once the time period for filing a written notice for rehearing has expired, a trial court is without jurisdiction to vacate a final judgment unless it is based on one of the “narrow” grounds within rule 1.540. The appellate court concluded that this case did not present one of those grounds; former wife’s “path to relief” was either by motion for rehearing or appeal of the order requiring her to pay child support to former husband. The trial court lacked authority to grant former wife relief pursuant to rule 1.540. Accordingly, the appellate court reversed and remanded with directions to the trial court to deny the motion.

<http://www.3dca.flcourts.org/Opinions/3D14-2896.pdf> (December 16, 2015)

Fourth District Court of Appeal

Jaeger v. Jaeger, __ So. 3d __, 2015 WL 8950258 (Fla. 4th DCA 2015). **A CHARGING LIEN MAY NOT APPLY AGAINST AN AWARD OF PAST DUE UNDIFFERENTIATED SUPPORT ACCRUING DURING THE PENDENCY OF DISSOLUTION OF MARRIAGE PROCEEDINGS; A TRIAL COURT IS BOUND BY MAGISTRATE’S FACTUAL FINDINGS AND RECOMMENDATIONS UNLESS THEY ARE UNSUPPORTED BY THE EVIDENCE AND ARE CLEARLY ERRONEOUS.** Former wife’s appeal stemmed from a trial court order granting a motion to assert a charging lien against an award of undifferentiated family support and denying her motion to release the funds to her. Concluding that the magistrate had made a legal error in determining that an attorney’s lien could not attach to the award, the trial court ordered the attorney’s lien to be paid out of the lump sum award. Holding that a charging lien may not apply against an award of past due undifferentiated support accruing during the pendency of dissolution proceedings, the appellate court reversed. It concluded the magistrate’s reasoning was in accordance with the case law and that the trial court erred in rejecting that reasoning. The appellate court pointed out that even if the charging lien could have been enforced against that portion of the undifferentiated award which constituted alimony, the magistrate had found that the award was for the necessities of life for former wife. It noted that a trial court is bound by a magistrate’s factual findings and recommendations unless they are unsupported by the evidence and clearly erroneous. The trial court’s denial of immediate release of funds to former wife was reversed.

<http://www.4dca.org/opinions/Dec.%202015/12-16-15/4D15-1243.op.pdf> (December 16, 2015)

Fifth District Court of Appeal

Paulick v. Paulick, __ So. 3d __, 2015 WL 7781732 (Fla. 5th DCA 2015). **AFFIRMED BUT REMANDED FOR THE TRIAL COURT TO EFFECTUATE AN AGREEMENT REACHED BY THE SPOUSES IN THEIR BRIEFS ON APPEAL REGARDING A THRIFT SAVINGS PLAN AT ISSUE.** Former wife argued the trial court erred: in its equitable distribution scheme; in the parenting plan it fashioned; and in denying her alimony and attorney’s fees. The appellate court affirmed but remanded to the trial court to effectuate the spouses’ resolution regarding former husband’s thrift savings plan as the spouses had reached agreement on this issue in their briefs on appeal.

<http://www.5dca.org/Opinions/Opin2015/113015/5D14-3877.op.pdf> (December 4, 2015)

Lynch v. Lockyer, __ So. 3d __, 2015 WL 7779821 (Fla. 5th DCA 2015). **AN AWARD SUBJECT TO EQUITABLE DISTRIBUTION IS NOT ENFORCEABLE BY CONTEMPT.** The appellate court agreed with former husband that contempt was not the proper method of enforcement for payment of money former husband owed to former wife. The dispute stemmed from an award to former wife in the final judgment of dissolution of 50% of the marital portion of former husband's State of Florida retirement benefits (FRS). Prior to retirement, former husband suffered a work-related injury for which he began receiving permanent disability benefits. When former wife attempted to submit a Qualified Domestic Relations Order (QDRO) to FRS, she learned that former husband was no longer eligible for the FRS pension because he was receiving disability benefits. In response, she moved to enforce the final judgment in an attempt to get the money from him directly. The trial court granted her motion and ordered him to pay a portion of his disability benefits in an amount equal to the amount of his pension he owed under the dissolution judgment. When former husband neither appealed nor complied with the trial court's order, former wife moved for contempt. The trial court granted her motion, found former husband in arrears to the tune of roughly two thousand dollars, and found that although he had the present ability to pay, he had willfully refused to do so. Finding the law to be clear that an award subject to equitable distribution is not enforceable by contempt, the appellate court reversed the trial court's contempt order.

<http://www.5dca.org/Opinions/Opin2015/113015/5D15-905.op.pdf> (December 4, 2015)

Goldman v. Goldman, __ So. 3d __, 2015 WL 9242457 (Fla. 5th DCA 2015). **TRIAL COURT MUST CLASSIFY ASSETS AS MARITAL OR NONMARITAL AND MUST MAKE FACTUAL FINDINGS IN SUPPORT OF UNEQUAL DISTRIBUTION; TRIAL COURT MUST ALSO MAKE FINDINGS AS TO COST, AMOUNT, AND AVAILABILITY WHEN ORDERING LIFE INSURANCE AS SECURITY.** Both spouses appealed the final judgment of dissolution of marriage, raising several issues. The appellate court found merit in two: 1) the trial court erred in failing to designate whether former wife's checking account and certificate of deposit (CD) with Bank of America, both of which were in her name, were marital or nonmarital; and 2) the trial court failed to make findings as to the cost, amount, or availability of life insurance before ordering that former husband maintain life insurance to secure his alimony obligation. On the first issue, the trial court stated in its final judgment that each spouse would be entitled to sole use and possession of any checking, savings, money market, CD, and cash accounts in their name. Unable to discern from the record whether the trial court classified former wife's Bank of America accounts as nonmarital or whether it unequally distributed the marital assets, the appellate court reversed and remanded for clarification. It reminded the trial court that if those accounts were determined to be marital, it must make factual findings in support of its unequal distribution. On the second issue, the appellate court remanded for the trial court to make the necessary findings before determining whether it was appropriate, based on those findings, to order former husband to maintain life insurance policy as security for his alimony obligation. Receiving additional evidence on either issue was within the trial court's discretion. The remainder of the final judgment was affirmed.

<http://www.5dca.org/Opinions/Opin2015/121415/5D14-2803.op.pdf>

(December 18, 2015)

Taylor v. Taylor, __ So. 3d __, 2015 WL 9239747 (Fla. 5th DCA 2015). **LATENT AMBIGUITY WITHIN MARITAL SETTLEMENT AGREEMENT REQUIRED REVERSAL OF JUDGMENT AND REMAND FOR THE TRIAL COURT TO HOLD AN EVIDENTIARY HEARING; PAROL EVIDENCE COULD BE PRESENTED.** Former husband appealed the trial court's supplemental final judgment on his supplemental petition to modify child support and custody. Specifically, he argued that the trial court erred by ordering that he pay 45% of the funds from his pension plan on a continuing monthly basis without considering parol evidence regarding the pertinent provision of the spouses' marital settlement agreement (MSA). The appellate court found a "latent ambiguity" within the MSA requiring reversal of the final judgment and remand for the trial court to conduct an evidentiary hearing, at which the spouses could introduce parol evidence regarding their duties under the MSA. A dissent addresses the fact that the trial court has the discretion to "fashion a remedy" allowing former husband to pay former wife a monthly amount from his pension until she is paid in full.

<http://www.5dca.org/Opinions/Opin2015/121415/5D14-2939.op.pdf> (December 18, 2015)

Quinones v. Quinones, __ So. 3d __, 2015 WL 9239673 (Fla. 5th DCA 2015). **IN ABSENCE OF A TRANSCRIPT, APPELLATE REVIEW IS LIMITED TO ERRORS ON THE FACE OF THE JUDGMENT; MARRIAGE OF 17 YEARS IS LONG-TERM AND CARRIES WITH IT REBUTTABLE PRESUMPTION THAT PERMANENT ALIMONY IS APPROPRIATE; TRIAL COURT ERRED IN FINDING MARRIAGE WAS MODERATE AND IN NOT AWARDING AT LEAST NOMINAL ALIMONY.** Former wife failed to supply a transcript in her appeal of a final judgment of dissolution; thus, the appellate court's review was limited to errors on the face of the judgment. Within its limited review, the appellate court agreed with former wife that the trial court erred in finding the spouses' marriage was of moderate duration and denying her request for alimony. Former husband filed the petition for dissolution shortly after the spouses' seventeenth anniversary. The appellate court noted that the petition "languished"; by the time of trial, the spouses had been married twenty-three years. Under s. 61.08(4), F.S., the marriage qualified as long-term and thus carried with it a rebuttable presumption that permanent alimony was appropriate to provide for the "needs and necessities of life," as established during the marriage, for a spouse lacking financial ability to meet his or her needs following dissolution. Taking the spouses' uncertain finances at the time of trial into account, the appellate court found that the trial court abused its discretion in failing to award at least nominal alimony and leaving the door open to increase it if former husband's ability to pay changed. Affirmed in part; reversed in part.

<http://www.5dca.org/Opinions/Opin2015/121415/5D15-378.op.pdf> (December 18, 2015)

Pollack v. Pollack, __ So. 3d __, 2015 WL 9491842 (Fla. 5th DCA 2015). **TERMINATION OF SPOUSE'S ALIMONY OBLIGATION DUE TO OTHER SPOUSE BEING IN A SUPPORTIVE RELATIONSHIP SHOULD HAVE BEEN RETROACTIVE TO FILING DATE OF PETITION.** Former wife appealed an order modifying the final judgment of dissolution by terminating former husband's alimony obligation due to former wife being in a supportive relationship. Former husband conceded that the trial court erred by terminating alimony retroactively to the date former wife began residing with her significant other instead of the date he filed the petition to modify. The appellate court found the other issues raised by former wife either lacking in merit or not preserved below. Accordingly, it affirmed with the exception of the date on which the alimony was terminated and remanded

for the trial court to enter a new order terminating alimony retroactive to the date former husband filed his petition.

<http://www.5dca.org/Opinions/Opin2015/122815/5D15-518.op.pdf> (December 31, 2015)

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Crapps v. State, ___ So. 3d ____, 2015 WL 8114247 (Fla. 1st DCA 2015). **STALKING CONVICTION REVERSED IN PART**. The appellant was convicted of violating an injunction for protection against stalking (count I) and unauthorized computer use (count II) after he logged into his ex-girlfriend's Instagram account and posted nude photographs of her without her permission. The appellant only challenged his conviction on count II, and claimed that his actions did not violate s. 815.06(1)(a), F.S. That statute was enacted in 1978, before the Internet and social media accounts such as Instagram existed, and the plain language of the statutory definitions of "computer," "computer system," and "computer network" refer to tangible devices, not the data and other information located on the device. Therefore, to prove a violation of s. 815.06(1)(a), the State must establish that the defendant accessed one of the listed tangible devices without authorization, not that the defendant accessed a program or information stored on the device without authorization. In this case, the charge against the appellant was based only on the unauthorized access of his ex-girlfriend's Instagram account, not on a specific computer or server. Therefore, the court affirmed the trial court's decision of count I, and reversed count II.

https://edca.1dca.org/DCADocs/2014/4569/144569_DC08_12082015_090851_i.pdf.

(December 8, 2015)

Second District Court of Appeal

Roach v. Brower, ___ So. 3d ____, 2015 WL 8291622 (Fla. 2d DCA 2015). **STALKING INJUNCTION REVERSED**. The respondent appealed an injunction for protection against stalking that prohibited her from contacting the petitioner. Since there was no evidence that the conduct in question caused the petitioner substantial emotional distress under s. 784.048(1)(a), F.S., the court reversed and remanded the case.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/December/December%2009,%202015/2D15-493.pdf (December 9, 2015)

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

Thoma v. O'Neal, ___ So. 3d ____, 2015 WL 8295056 (Fla. 4th DCA 2015). **STALKING INJUNCTION AFFIRMED**. The trial court issued a stalking injunction after the respondent made derogatory comments, followed the petitioner with his car after work, and made a flyer with negative comments about the petitioner and passed it out in the petitioner's neighborhood. The appellant appealed the stalking injunction entered against him and claimed that the trial court erred in entering the injunction because there was insufficient evidence of a course of conduct to support a finding of stalking, and that the conditions imposed by the trial court as part of the injunction

were overly broad and thus unconstitutional as a restriction on the appellant's freedom of speech. The court affirmed the stalking injunction and noted that the flyer may not have been a true threat of violence, but was distributed to harass the victim and sought to invade the victim's privacy, thus the flyer was not speech protected by the First Amendment.

<http://www.4dca.org/opinions/Dec.%202015/12-09-15/4D14-3459.op.pdf> (December 9, 2015)

Fifth District Court of Appeal

Champion v. Zuilkowski, ___ So. 3d ___, 2015 WL 8483830 (Fla. 5th DCA 2015). **MOTION REVERSED, HEARING ORDERED.** The appellant appealed an order that summarily denying his motion to dissolve a permanent injunction against domestic violence. Because the appellant sufficiently alleged changed circumstances, the court reversed and remanded the case for an evidentiary hearing upon proper service of process on the petitioner.

<http://www.5dca.org/Opinions/Opin2015/120715/5D15-676.op.pdf> (December 11, 2015)

Jacquot v. Jacquot, ___ So. 3d ___, 2015 WL 9491807 (Fla. 5th DCA 2015). **DENIAL OF MOTION TO DISMISS INJUNCTION REVERSED.** The appellant appealed after the trial court denied his motion for relief from an injunction against domestic violence without a hearing. The trial court decided that the motion was moot because the injunction has previously expired; however, the appellate court noted that the expiration of an injunction for protection against domestic violence is one of the recognized exceptions to the dismissal of a moot case and reversed. Injunctions for protections against domestic violence are exempt from the usual rule of mootness because of the collateral legal consequences that may result from the injunction.

<http://www.5dca.org/Opinions/Opin2015/122815/5D15-3641.op.pdf> (December 31, 2015)

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.