

## OSCA/OCI'S CASE LAW UPDATE FEBRUARY 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.....	7
Fourth District Court of Appeal.....	7
Fifth District Court of Appeal.....	7

### Dependency Case Law

Florida Supreme Court.....	10
First District Court of Appeal .....	10
Second District Court of Appeal.....	10
Third District Court of Appeal.....	11
Fourth District Court of Appeal.....	11
Fifth District Court of Appeal.....	12

### Dissolution of Marriage Case Law

Florida Supreme Court.....	14
----------------------------	----

First District Court of Appeal .....	14
Second District Court of Appeal.....	14
Third District Court of Appeal.....	15
Fourth District Court of Appeal.....	15
Fifth District Court of Appeal.....	18
<b>Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law</b>	
Florida Supreme Court.....	19
First District Court of Appeal .....	19
Second District Court of Appeal.....	19
Third District Court of Appeal.....	19
Fourth District Court of Appeal.....	19
Fifth District Court of Appeal.....	19

## **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***

In Re: Amendments to Florida Rule of Juvenile Procedure 8.150, 2016 Florida Court Order 0010 (SC15-711). [AMENDMENTS TO FLORIDA RULE OF JUVENILE PROCEDURE 8.150](#). Florida Rule of Juvenile Procedure 8.150 (“Rule”) governs contempt in juvenile delinquency proceedings. The following amendments conform the Rule to changes to s. 985.037, F.S., which addresses punishment for contempt of court in delinquency proceedings, made by chapter 2014-162, Laws of Florida. These amendments also make additional substantive changes to the Rule beyond the scope of the statutory changes. New subdivision (a) (Contempt of Court): (1) provides that the court may punish a child for contempt “for interfering with the court or court administration, or for violating any order of the court”; (2) clarifies that a child under the jurisdiction of the juvenile court may be subject to contempt “even upon reaching the age of majority”; and (3) provides that a child who has been sentenced to secure detention for contempt may have the placement reviewed by motion of any party to the proceedings. Renumbered subdivision (b) (Direct Contempt), previously subdivision (a), is amended to state that a child is entitled to a hearing and appointment of counsel when accused of direct contempt. New subdivision (c)(1) (Indirect Contempt; Legal Counsel) is added. This new subdivision states that a child is entitled to counsel in an indirect contempt hearing and that any waiver of counsel must comply with rule 8.165 (Providing Counsel to Parties). The provisions of the current subdivision (c)(5) (Disqualification of the Judge), which addresses disqualification of the judge when the indirect contempt involves disrespect to or criticism of the judge, are relocated into renumbered subdivision (c)(2) (Order to Show Cause). This subdivision is also amended to require disqualification only when the child files a motion to disqualify, rather than automatically. Renumbered subdivision (c)(4) is retitled as “Detention Before the Hearing” and amended to limit the detention of a child before the contempt hearing to situations in which the court provides a written demonstrated belief that the child will fail to appear. Renumbered subdivision (c)(5) is retitled “Hearing” and lists the child’s due process rights in an indirect contempt hearing. Subdivision (c)(7) (Sentence) is amended to require the court to consider all available and appropriate sentences, including alternative sanctions as referenced in the statute. These amendments became effective February 11, 2016.

<http://www.floridasupremecourt.org/decisions/2016/sc15-711.pdf> (February 11, 2016)

### ***First District Court of Appeal***

C.B.S. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 381327 (Fla. 1st DCA 2016). [STATE FAILED TO PROVE THAT THE JUVENILE HAD ACTUAL OR CONSTRUCTIVE NOTICE NOT TO ENTER THE PROPERTY, WHICH IS AN ELEMENT OF THE CRIME OF TRESPASS ON PROPERTY OTHER THAN A STRUCTURE OR CONVEYANCE](#). The juvenile was charged with trespass on property other than structure or conveyance. The trial court denied the juvenile’s motion for judgment of acquittal. On appeal, the juvenile contended that the denial was improper as she did not have notice not to enter the property. The notice required by the statute can be accomplished in various ways, including through actual communication or constructive notice by posting or fencing, as defined by s.

810.011, F.S. (2015). The First District Court of Appeal reasoned that notice through actual communication requires that the trespasser receive oral warning against entering or remaining on the property. Here, there is no evidence of such a warning. If there is no actual communication of notice, constructive notice can be accomplished by posting or fencing. Section 810.011, F.S. (2015) detail the requirements that must be met for the property to be considered posted or fenced for the purpose of providing notice not to enter. Strict compliance with the statutory requirements is necessary. The statute requires that the property be enclosed by a fence, s. 810.011(7), F.S. (2015). Here, the juvenile entered onto the property in a place where there was no fence; therefore, the property was not enclosed by a fence. The property also does not meet the legal definition of posted land, s. 810.011(5)(a). Specifically, there is no evidence in the record that the “no trespassing” signs were placed 500 feet apart along the boundary and at each corner of the property. Hence, the First District concluded that the juvenile’s motion for judgment of acquittal was improperly denied because the evidence failed to show that the juvenile had actual or constructive notice not to enter the property. Accordingly, the First District reversed and remanded for entry of an order granting the juvenile’s motion for judgment of acquittal.

[https://edca.1dca.org/DCADocs/2015/3530/153530\\_DC13\\_02022016\\_100048\\_i.pdf](https://edca.1dca.org/DCADocs/2015/3530/153530_DC13_02022016_100048_i.pdf) (February 2, 2016)

State v. J.V., \_\_\_So. 3d\_\_\_, 2016 WL 606767 (Fla. 1st DCA 2016). **AFFIRMED THE ORDER ON APPEAL BECAUSE REVERSAL CAN ONLY BE PREMISED ON ARGUMENTS MADE IN THE INITIAL BRIEF.** The **order on appeal** had two grounds for releasing the juvenile from his commitment before the Department of Juvenile Justice discharged him. The State’s **initial brief** only challenged the first ground. Accordingly, the First District Court of Appeal affirmed the order because reversal can only be premised on arguments made in the initial brief.

[https://edca.1dca.org/DCADocs/2015/2837/152837\\_DC05\\_02162016\\_100614\\_i.pdf](https://edca.1dca.org/DCADocs/2015/2837/152837_DC05_02162016_100614_i.pdf) (February 16, 2016)

### ***Second District Court of Appeal***

R.M.N. v. State, \_\_\_So. 3d\_\_\_, 2016 WL 519610 (Fla. 2d DCA 2016). **STATE FAILED TO PROVE THAT THE JUVENILE ENTERED THE PROPERTY WITH AN INTENT TO COMMIT ANOTHER OFFENSE, WHICH IS AN ELEMENT OF BURGLARY OF AN UNOCCUPIED DWELLING.** The delinquent act allegedly committed by the juvenile was burglary of an unoccupied dwelling. The juvenile appealed the disposition order withholding adjudication and placing him on juvenile probation. The juvenile contended that the State failed to prove that he entered the property with an intent to commit another offense. Therefore, the juvenile argued, that the State proved only a trespass as opposed to burglary of an unoccupied dwelling. The Second District Court of Appeal agreed. Accordingly, the Second District reversed the disposition order to the extent that on remand the order reflect that the juvenile was found to have committed the lesser delinquent act of trespass.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/February/February%2010,%202016/2D14-2133.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/February/February%2010,%202016/2D14-2133.pdf) (February 10, 2016)

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

D.T. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 424654 (Fla. 4th DCA 2016). IN THIS ANDERS APPEAL, THE FOURTH DISTRICT AFFIRMED, BUT REMANDED FOR THE TRIAL COURT TO CORRECT THE DELINQUENCY DISPOSITION ORDER TO REFLECT ALL REQUIRED INFORMATION. This was an Anders appeal (Anders v. California, 386 U.S. 738 (1967)). The Fourth District Court of Appeal affirmed the finding of guilt, the withholding of adjudication of delinquency, and the placement of the juvenile on probation. However, the Fourth District remanded for the trial court to correct the delinquency disposition order to reflect all of the required information; specifically, the maximum penalty and whether the child spent any time in secure detention before disposition. See Fla. R. Juv. P. 8.115(d); A.M.R. v. State, 134 So. 3d 502, 503 (Fla. 4th DCA 2014); D.B. v. State, 114 So. 3d 1121, 1121–22 (Fla. 2d DCA 2013).

<http://www.4dca.org/opinions/Feb%202016/02-03-16/4D15-3130.op.pdf> (February 3, 2016)

K.S. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 625410 (Fla. 4th DCA 2016). SNATCHING AN OBJECT RESTING ON OR BEING CARRIED BY A VICTIM (AS OPPOSED TO MERELY TOUCHING OR LEANING AGAINST THE VICTIM), WHETHER OR NOT THE VICTIM’S FINGERS ARE BENT AROUND IT, IS TAKING “FROM THE VICTIM’S PERSON” AS THAT TERM IS USED IN S. 812.131(1), F.S. (2014). The juvenile stole a phone from the victim’s lap, permanently depriving him of it. The trial court found that the juvenile violated the statute defining robbery by sudden snatching, s. 812.131, F.S. (2014). On appeal, the juvenile contended that taking money or other property (such as a phone) that is resting on a victim’s lap is not considered taking “from the victim’s person” in violation of s. 812.131(a), F.S. (2014). More specifically, the “victim’s person” language in the robbery by sudden snatching statute refers only to objects within “the embrace of the person.” In making this argument, the juvenile attempted to rely on the Fourth District Court of Appeal’s decision in Brown v. State, 848 So. 2d 361 (Fla. 4th DCA 2003), where the Fourth District distinguished “embrace of the person” from the “person’s figurative biosphere.” Brown involved a theft of a purse located on a bench **near** the victim. In Brown, the Fourth District reasoned that the theft of the purse located on the bench **near** the victim, did not fall under the statute because the offense of robbery by snatching requires that the property be abruptly and unexpectedly plucked from the “embrace of a person,” not from a “person’s figurative biosphere.” The statute also requires that the victim become aware of the sudden snatching while it is underway. Brown, 848 So. 2d at 364. In Brown, the victim’s purse was not on the victim’s person when the defendant took it, and the victim did not become aware of the taking of her purse until after the purse was

taken and the defendant was fleeing. Thus, reasoned the Fourth District, in Brown the “embrace of the person” language was used to emphasize **why** the specific crime in Brown did not fall under the statute. Further, in Brown the Fourth District made clear that one’s “embrace” was not the only part of one’s “person” contemplated by the statute. The Fourth District explained that such reasoning was absurd and was not the intent of legislature nor was it the intent of the Fourth District in Brown. In illustrating the absurdity of the juvenile’s reasoning, the Fourth District noted that under the juvenile’s theory, the theft of a **purse** hanging from a person’s shoulder would not constitute robbery by sudden snatching, but the taking of a **clutch** would. Therefore, the Fourth District held that snatching of an object resting on or being carried by a victim (as opposed to merely touching or leaning against the victim), whether or not the victim’s fingers are bent around it, constituted taking “from the victim’s person” as that term was used in s. 812.131(1), F.S. (2014).

<http://www.4dca.org/opinions/Feb%202016/02-17-16/4D14-2955.op.pdf> (February 17, 2016)

T.H.C. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 740273 (Fla. 4th DCA 2016). **IN THIS ANDERS APPEAL, THE FOURTH DISTRICT AFFIRMED, BUT REMANDED FOR THE TRIAL COURT TO CORRECT THE DELINQUENCY DISPOSITION ORDER TO REFLECT ALL REQUIRED INFORMATION.** This was an Anders appeal (Anders v. California, 386 U.S. 738 (1967)). The Fourth District Court of Appeal affirmed the finding of guilt, the withholding of adjudication of delinquency, and the placement of the child on probation. However, the Fourth District remanded for the trial court to correct the delinquency disposition order to reflect all of the required information. See Fla. R. Juv. P. 8.115(d); T.J. v. State, 174 So. 3d 1070 (Fla. 4th DCA 2015); A.M.R. v. State, 134 So. 3d 502, 503 (Fla. 4th DCA 2014); D.B. v. State, 114 So. 3d 1121 (Fla. 2d DCA 2013).

<http://www.4dca.org/opinions/Feb%202016/02-24-16/4D15-3223.op.pdf> (February 24, 2016).

### ***Fifth District Court of Appeal***

B.J.M. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 542841 (Fla. 5th DCA 2016). **VICTIM’S TESTIMONY REGARDING THE VALUE OF DAMAGES CAUSED BY JUVENILE WAS INADMISSIBLE HEARSAY.** The trial court found that the juvenile violated the criminal mischief statute, s. 806.13(1)(b)2, F.S.(2013). At the adjudicatory hearing, the State called the victim to testify concerning the amount of damages resulting from the juvenile’s criminal mischief. The victim testified that he obtained estimates for repair from Home Depot and homedepot.com, and that he engaged in an e-mail exchange about the cost of repair. These estimates exceeded the statutory minimum for a finding of criminal mischief. However, the victim provided no basis to support the estimates. On appeal, the juvenile contended that the State improperly relied on inadmissible hearsay to prove the amount of damage to victim’s property. The juvenile asserted that without an actual estimate, introduced by testimony from a records custodian, the testimony relying on the inadmissible materials must be stricken. Without this evidence, the record did not provide

competent, substantial evidence demonstrating the essential element of value. The Fifth District Court of Appeal agreed. The State argued that the improper admission of victim's hearsay testimony was harmless because "life experience" would dictate the substance of the testimony. Conversely, the Fifth District noted that the Florida Supreme Court rejected the use of the life experience theory of admissibility in a case involving the criminal mischief statute, ruling that the exception did not apply to criminal mischief cases. Marrero v. State, 71 So. 3d 881, 890 (Fla. 2011). See also Perez v. State, 162 So. 3d at 1139, 1141 (Fla. 2d DCA 2015). The Fifth District concluded that because no proper foundation was laid for the valuation testimony, it was insufficient to support any valuation finding by the trial court. However, the evidence was sufficient to prove that the juvenile committed the lesser offense of second-degree misdemeanor criminal mischief. Accordingly, the Fifth District reversed and remanded for reduction of the juvenile's conviction from a first-degree to a second-degree misdemeanor.

<http://www.5dca.org/Opinions/Opin2016/020816/5D15-1048.op.pdf> (February 12, 2016)

## Dependency Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

### **First District Court of Appeal**

Department of Children and Families v. S.A.E., 185 So. 3d 615, 41 Fla.L.Weekly D303 (Fla. 1st DCA 2016). **ADJUDICATION OF DEPENDENCY REVERSED**. The First District Court of Appeal reversed an adjudication of dependency based on a privately filed petition. The trial court had adjudicated the child dependent based on abandonment by the child's father in Honduras twelve years in the past. The child's mother filed the petition seeking to prevent the child's deportation and to support an application for a Special Immigrant Juvenile Visa. The trial court had found that the child's safety was not endangered by staying with the mother but rather the risk to the child was possible deportation. On appeal, the court reviewed caselaw from similar cases and concluded that an abandonment finding was contrary to Chapter 39 and legislative intent. The court therefore reversed the dependency adjudication.

[https://edca.1dca.org/DCADocs/2016/3624/153624\\_DC13\\_02022016\\_100134\\_i.pdf](https://edca.1dca.org/DCADocs/2016/3624/153624_DC13_02022016_100134_i.pdf) (February 2, 2016)

Department of Children and Families and the Guardian ad Litem Program v. B.C., 185 So. 3d 716, 41 Fla.L.Weekly D432 (Fla. 1st DCA 2016). **DENIAL OF TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED**. The First District Court of Appeal reversed a trial court's order that had found that termination of parental rights was warranted and in the manifest best interests of the children but that termination was precluded by the least restrictive means test. On appeal, the district court carefully reviewed recent caselaw to conclude that none of the analyzed cases prevented the trial court from terminating parental rights in the case at bar. The court held that the fact that some supervised or phone contact may be possible between the parent and the child would not preclude termination of parental rights, if the statutory ground and manifest best interests were found and reunification was not possible. The court therefore reversed the judgment and remanded the case for further proceedings.

[https://edca.1dca.org/DCADocs/2016/3328/153328\\_DC13\\_02182016\\_085220\\_i.pdf](https://edca.1dca.org/DCADocs/2016/3328/153328_DC13_02182016_085220_i.pdf) (February 18, 2016)

Department of Children and Families v. Statewide Guardian ad Litem Program and P.W., F.W., W.W.-1, W.W.-2, and J.W., \_\_\_ So. 3d \_\_\_, 41 Fla.L.Weekly D523, 2016 WL 869317 (Fla. 1st DCA 2016). **CERTIORARI GRANTED**. The First District Court of Appeal granted a certiorari petition filed by the Department seeking review of a trial court's order limiting the Department's consideration of prospective adoptive homes for five siblings who were split between three different placements. The children had been placed in the permanent care and custody of the Department for adoption following termination of parental rights. Three of the children were in a single placement and the other two siblings were each in different placements. Potential adoptive families had been identified in both Ohio and Pensacola. In September, 2015, the guardian ad litem program sought an order requiring immediate contact between the children and the Pensacola family and requiring the Department to exercise its discretion to place the children in

a prospective adoptive home in Florida. The magistrate in the case recommended that: all efforts be discontinued to place the children in Ohio either temporarily or permanently; personal contact between the children and the Pensacola family occur within five (5) days of the report being ratified; the Department's discretion to place the children in an adoptive placement in the State of Florida was limited to the Pensacola family; and a hard deadline be set by which the children were to be placed with the Pensacola family or the case would come back to court. The Department filed exceptions to the report, arguing that it filed violated separation of powers. Ultimately, the trial court dismissed the Department exceptions and ordered all parties to comply with the report. On appeal, the district court reviewed the requirements for certiorari as well as various statutory requirements regarding adoption. The court also reviewed caselaw on separation of powers as well as the boundaries and overlapping jurisdiction of the Department and the courts regarding placing children for adoption. The court held that the Department had not unreasonably withheld its consent to adoption by the Pensacola family, who had not filed a petition for adoption. Had the Department selected the Ohio family as the adoptive placement, the trial court's jurisdiction would have extended to reviewing the appropriateness of the placement (upon a showing a good cause by the GAL). The court continued by noting that although the trial court could have compelled the Department to make an expeditious selection of an adoptive family, the trial court exceeded its jurisdiction by limiting the Department's discretion in placing the children in a potential adoptive home to the Pensacola family; in effect, selecting the children's adoptive home without making any findings as to their best interests. The court therefore concluded that the trial court departed from the essential requirements of the law and quashed the trial court's order.

[https://edca.1dca.org/DCADocs/2016/5563/155563\\_DC03\\_02292016\\_091535\\_i.pdf](https://edca.1dca.org/DCADocs/2016/5563/155563_DC03_02292016_091535_i.pdf) (February 29, 2016)

### ***Second District Court of Appeal***

No new opinions for this reporting period.

### ***Third District Court of Appeal***

M.C. v. Department of Children and Families, 186 So. 3d 74, 41 Fla.L.Weekly D463 (Fla. 3d DCA 2016). **TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED**. The Third District Court of Appeal reversed termination of a mother's parental rights. The Department had sought termination of the mother's rights to two of her children, both of whom she adopted, under s. 39.806(1)(f) for egregious abuse, abandonment, or neglect, without first making reasonable efforts to preserve and reunify the family, per s. 39.806(2). Although the petition sought termination as to both children, the Department's evidence related to harm to only one of them, E.C., who suffered from cerebral palsy, was non-verbal (at 8 years of age when the injuries were inflicted), and had severe disabilities. The petition alleged that the mother took E.C. to the hospital with second degree, caustic, liquid burns over his lower back, buttocks, right shoulder, and to the right side of his body. The mother believed that E.C.'s burns had been inflicted by his sibling, G.C., but was unable to provide a "cohesive explanation" as to how they occurred. The mother had an adult daughter who was living in the home at the time of the burns. The injuries occurred two days after G.C. had been Baker Acted and on the evening he had returned home.

The trial court heard testimony from, among others, Dr. Jefry Biehler. Dr. Biehler testified as to the possible causes of the burns and that the burns were painful. Dr. Biehler concluded that because E.C. was non-verbal and severely developmentally delayed and was in the custody of a caretaker who had no explanation for the burns, he had been neglected. The trial court discounted the mother's testimony as not credible and concluded that the E.C. injuries were intentional, malicious, and calculating. The trial court also found it unlikely that the burns were caused by G.C. and concluded that the injuries were either inflicted by the mother or someone else while under the mother's care and therefore E.C. had been egregiously abused. On appeal, the district court examined whether the trial court's decision was supported by competent, substantial evidence. The court noted that contrary to the trial court's findings, E.C. was not under the mother's supervision constantly "but for seconds at a time." The court held that there were in fact lengthy periods of time when E.C. was not under the mother's supervision and concluded that the finding of egregious conduct by the mother was pure speculation. The court held that there was not competent, substantial evidence that the mother engaged in egregious conduct and no evidence that the mother inflicted the injuries herself or knowingly failed to prevent them from happening. The court likewise disagreed with the trial court's alternative finding that the mother had the opportunity and capability but knowingly failed to prevent the egregious conduct. The court therefore reversed the termination order and remanded the case for further proceedings under s. 39.811(1).

<http://www.3dca.flcourts.org/Opinions/3D15-2401.pdf> (February 24, 2016)

#### ***Fourth District Court of Appeal***

Guardian ad Litem Program v. M.H. and W.S., 184 So. 3d 1253, 41 Fla.L.Weekly D409 (Fla. 4th DCA 2016). **DISMISSAL OF TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED.** The Fourth District Court of Appeal reversed a dismissal of a termination of parental rights petition and remanded the case for further proceedings. The guardian ad litem had sought termination of parental rights, alleging abandonment by the mother and alleging both that the father had abandoned the child and that the father's rights should be terminated under s. 39.806(1)(m), which permitted termination when a child was conceived by the offending parent committing a sexual battery upon the other parent. The ground also stated, *inter alia*, that the court must accept a guilty plea or conviction of unlawful sexual battery pursuant to s. 794.011 as conclusive proof that the child was conceived by a violation of criminal law. In this case, the child's father was married to the mother's maternal grandmother and he impregnated his sixteen year-old step-daughter. When considering the ground for termination found in s. 39.806(1)(m), the trial court found by clear and convincing evidence that the father was over the age of majority when he had sex with the mother, who was sixteen at the time. The trial court ultimately found by clear and convincing evidence that the father committed the act described in s. 39.806(1)(m) but was unwilling to find that a sexual battery was committed as defined by the criminal code. The court denied the petition as to the father both on abandonment grounds and on s. 39.806(1)(m) grounds. The mother had consented to the petition by failing to appear but the trial court held that it could not grant the petition as to her without also granting it as to the father. The trial court therefore denied the petition as to both parents. Also, the trial court had not heard testimony regarding manifest best interests and there were no findings regarding least restrictive means. On appeal, the district court analyzed s. 39.801(1)(m) and noted that the Florida

Legislature did not intend that a guilty determination under s. 794.011 was required to support termination under that ground. Rather, the ground merely avoided the necessity of direct or circumstantial proof that the child was conceived as the result of conduct constituting sexual battery under s. 794.011, when a plea of guilty or a conviction as to such conduct was established. The trial court had found that the child was conceived through conduct forbidden by s. 794.011(8) and the trial court therefore improperly interpreted and applied the termination ground. Because the ground applied, termination was presumed to be in the child's best interest and the father was required to rebut the presumption. The case was remanded back to the trial court to make determinations of manifest best interests and least restrictive means.

<http://www.4dca.org/opinions/Feb%202016/02-17-16/4D15-3195.op.pdf> (February 17, 2016)

***Fifth District Court of Appeal***

No new opinions for this reporting period.

## Dissolution of Marriage Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

### **First District Court of Appeal**

Dennis v. Dennis, \_\_\_ So. 3d \_\_\_, 2016 WL 517118 (Fla. 1st DCA 2016). **ORDER MODIFYING ALIMONY REVERSED AND REMANDED FOR TRIAL COURT TO EXPLAIN REASON FOR ITS DETERMINATION OF FORMER SPOUSE'S LEVEL OF NEED.** Former husband appealed a final order modifying alimony, arguing that the trial court, after having found a substantial change in circumstances, failed to explain the reason for the amount of modified alimony it awarded to former wife. Stating that it was "not readily apparent" how the trial court determined former wife's present need for alimony and finding that the trial court failed to explain the reason of the level of the award, the appellate court reversed and remanded for the trial court to explain its determination of former wife's level of need.

[https://edca.1dca.org/DCADocs/2015/2358/152358\\_DC13\\_02102016\\_090312\\_i.pdf](https://edca.1dca.org/DCADocs/2015/2358/152358_DC13_02102016_090312_i.pdf) (February 10, 2016)

Wortman v. Wortman, \_\_\_ So. 3d \_\_\_, 2016 WL 699603 (Fla. 1st DCA 2016). **TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO VACATE ITS TEMPORARY ORDER AND HOLD A HEARING WHERE SPOUSE COULD PRESENT HIS CASE WITH ATTORNEY PRESENT.** Former husband appealed a non-final order determining temporary needs and time-sharing issues in a pending action for dissolution; the order was entered after an evidentiary hearing at which former husband's counsel was not present because he initially went to the wrong courthouse. By the time he reached the correct courthouse, the hearing had ended. The trial court denied counsel's request for reconsideration of the order due to his absence. The appellate court found that the trial court abused its discretion in failing to vacate its prior order upon counsel's prompt request and hold a hearing where former husband could present his case with his attorney present. Accordingly, the appellate court reversed and remanded for vacation of the order and further proceedings consistent with its opinion.

[https://edca.1dca.org/DCADocs/2014/4699/144699\\_DC13\\_02232016\\_090104\\_i.pdf](https://edca.1dca.org/DCADocs/2014/4699/144699_DC13_02232016_090104_i.pdf) (February 23, 2016)

### **Second District Court of Appeal**

Bryan v. Jemal, \_\_\_ So. 3d \_\_\_, 2016 WL 455701 (Fla. 2d DCA 2016). **INCARCERATION FOR CIVIL CONTEMPT CANNOT BE IMPOSED ABSENT A FINDING BY THE TRIAL COURT THAT THE CONTEMNOR HAS THE PRESENT ABILITY TO PURGE HIMSELF; A CONTEMPT ORDER WHICH OPERATES PROSPECTIVELY VIOLATES DUE PROCESS AND IS IMPROPER.** Former husband appealed a contempt order. At the time of their dissolution, the spouses were sole owners of a California corporation. Pursuant to their marital settlement agreement (MSA), former wife was to transfer her fifty-percent interest to former husband; he, in turn, was required to pay \$210,000 for that interest, followed by payment of annual alimony of \$125,000 and a \$1 million dollar life insurance policy payable to her. Former husband made the \$210,000 payment, but fell behind in alimony to the tune of over \$300,000. He also fell \$45,000 behind in premium payments,

requiring former wife to pay to keep the policy in effect. The former spouses stipulated to entry of a judgment for arrearages. When former husband did not pay the judgment, former wife moved for contempt. The appellate court found the trial court's "thorough" order supported by competent, substantial evidence as to the amount former husband could pay towards his current obligations and past arrearages and his willful refusal to pay; however, it reversed the portions sentencing former husband to jail unless he paid a monthly purge amount because incarceration cannot be imposed as a sanction for civil contempt prospectively. "Incarceration for civil contempt cannot be imposed absent a finding by the trial court that the contemnor has the present ability to purge himself of contempt." Bowen v. Bowen, 471 So. 2d 1274, 1277-79 (Fla. 1985). A contempt order which operates prospectively without requiring an additional hearing violates due process and is improper. Cokonougher v. Cokonougher, 542 So. 2d (Fla. 2d DCA 1989). Reversed and remanded for the trial court to take additional evidence as needed and craft an order in compliance with applicable law.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/February/February%2005,%202016/2D14-2433.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/February/February%2005,%202016/2D14-2433.pdf) (February 5, 2016)

Loebs v. Loebs, \_\_ So. 3d \_\_, 2016 WL 671981 (Fla. 2d DCA 2016). APPEAL AS TO ATTORNEY'S FEES DISMISSED BECAUSE TRIAL COURT RESERVED JURISDICTION TO DETERMINE AMOUNT OF AWARD; ABDICATION TO CHILDREN'S DESIRES REVERSIBLE. Former husband raised several issues in his appeal of trial court orders entered on former wife's petition to modify parenting plan. The appellate court dismissed the appeal as to attorney's fees because the trial court reserved jurisdiction to determine the amount of the award. The appellate court agreed with former husband that to award shared parental responsibility, but then allow a child not be required to attend an extracurricular activity if the child desired not to attend, was contradictory to an award of shared parental responsibility. Finding that provision improperly delegated parental decision-making to the minor children, the appellate court reversed and remanded with instructions to the trial court to strike the provision from the order. A trial court's "admitted abdication to the desires of the children constitutes reversible error." Elkins v. Vanden Bosch, 433 So. 2d 1251 (Fla. 3d DCA 1983). Remainder of the order was affirmed.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/February/February%2019,%202016/2D14-191.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/February/February%2019,%202016/2D14-191.pdf) (February 19, 2016)

### ***Third District Court of Appeal***

Wolfson v. Wolfson, \_\_ So. 3d \_\_, 2016 WL 731535 (Fla. 3d DCA 2016). APPELLATE COURT EXERCISED ITS DISCRETION NOT TO ENFORCE ITS MANDATE IN PRIOR APPEAL UNDER FACTS INDICATING MODIFICATION CASE WOULD PROCEED MORE QUICKLY THROUGH UNIFIED FAMILY COURT AND THAT THAT OPTION WAS IN THE CHILD'S BEST INTEREST. Following an unsuccessful attempt to recuse the family law judge in post-dissolution litigation, former wife obtained certiorari relief. The case was remanded for the assigned judge to hear cross-petitions for time-sharing modification; however, twelve days before the hearing date, former wife filed a private petition for dependency seeking the same relief as her petition for modification. Noting that it had the "prerogative" to overrule the natural workings of this case, the appellate court made an exception to enforce its mandate based its belief that the case would progress more quickly in the Unified Family Court and that that option was in the best interests of the child.

<http://www.3dca.flcourts.org/Opinions/3D15-1854.rh2.pdf> (February 24, 2016)

CJM Partners, LLC v. DiGiacomo, \_\_ So. 3d \_\_, 2016 WL 731712 (Fla.3d DCA 2016). **TRIAL COURT ABUSED ITS DISCRETION BY ENTERING TEMPORARY INJUNCTION WITHOUT REQUIRING MOVANT TO POST BOND PURSUANT TO FLORIDA RULE OF CIVIL PROCEDURE 1.610(b)**. The trial court entered an order temporarily enjoining the impleaded third-party defendant, CJM Partners, from disposing of any of its assets without a court order or agreement. CJM moved to dissolve the injunction because it was entered without requiring former wife to post a bond. The trial court granted the motion to dissolve the injunction during a hearing on the motion; however, the appellate court found that the trial court's written order conflicted with its oral pronouncement in that the written order continued to prohibit CJM from disposing of any assets without order or agreement. The appellate court concluded that the trial court's written order did not grant, but denied, the motion to dissolve and kept the injunction in place without requiring former wife to post a bond. Determining that the temporary injunction was entered in violation of Florida Rule of Civil Procedure 1.610(b), which requires the posting of a bond by the movant, the appellate court found that the trial court abused its discretion in issuing the temporary injunction without setting a bond and requiring its posting pursuant to the rule. Accordingly, with the exception of a provision stipulated to by the spouses and CJM, the order was reversed.

<http://www.3dca.flcourts.org/Opinions/3D15-2119.pdf> (February 24, 2016)

#### ***Fourth District Court of Appeal***

Witt-Bahls v. Bahls, \_\_ So. 3d \_\_, 2016 WL 403216 (Fla. 4th DCA 2016). **COURT MUST PROVIDE PARENT WITH STEPS REQUIRED TO REESTABLISH CONTACT WITH CHILD**. Former wife appealed the final judgment of dissolution. The appellate court reversed to the extent that the judgment failed to provide specific steps required for former wife to reestablish contact with her child beyond supervised time-sharing. Failure to set forth any specific requirements or standards for the alleviation of time-sharing restrictions is error. Ross v. Botha, 867 So. 2d 567,571 (Fla. 4th DCA 2004). A court must give the parent the key to reconnecting with his or her children. Grigsby v. Grigsby, 39 So. 3d 453, 457 (Fla. 2d DCA 2010). Here the trial court failed to give former wife that key. Although it affirmed the remainder of the judgment, the appellate court discussed in detail the question of whether former husband exerted the type of effort required to move the appreciation value in the large number of shares of stock he purchased from his former employer prior to the marriage from the nonmarital category to marital. His stock was liquidated when the company terminated him. The shares of stock sold for substantially more than the outstanding balance of the loan he used to purchase them. The trial court found that the appreciation was passive and therefore not a marital asset subject to equitable distribution. The appellate court held that the enhanced value of a stock from a company for which the owning spouse works can be considered a marital asset subject to equitable distribution; however, it can also be a nonmarital asset if marital efforts or assets are not used in enhancing its value. The appellate court distinguished this case from Robbie v. Robbie, 654 So. 2d 616 (Fla. 4th DCA 1995). Here, former husband's family did not own or run his former company, nor was he in a position of significant authority; the appellate court found that former husband was a "middle manager." The appellate court concluded that because former wife had failed to establish that former

husband occupied a significant management role in his former company, the appreciation of the stock was not due to his active effort and therefore was not a marital asset.

<http://www.4dca.org/opinions/Feb%202016/02-03-16/4D14-152.op.pdf> (February 3, 2016)

Manfre v. Manfre, \_\_ So. 3d \_\_, 2016 WL 514254 (Fla. 4th DCA 2016). **TRIAL COURT ERRED IN FAILURE TO IMPUTE INCOME BEFORE AWARDING ALIMONY.** The appellate court agreed with former husband that the trial court erred in its failure to impute income to former wife in determining alimony. Former wife conceded that she left her nursing job voluntarily. The appellate court found that former wife was under no obligation to return to the hospital setting, but at the same time, found the circumstances “akin” to those it faced in Green v. Green, 126 So. 3d 112 (Fla. 4th DCA 2012), where the spouse acknowledged she could obtain employment in her field but was unwilling to accept a lower-paying job. The appellate court reversed and remanded for the trial court to impute income to former wife. If the trial court found former wife had a need for alimony, it would be required to recalculate the appropriate amount using the income imputed to her. The remainder of the final judgment was affirmed.

<http://www.4dca.org/opinions/Feb%202016/02-10-16/4D14-511.op.pdf> (February 10, 2016)

Salituri v. Salituri, \_\_ So. 3d \_\_, 2016 WL 625516 (Fla. 4th DCA 2016). **TRIAL COURT’S NUMEROUS ERRORS REQUIRED REVERSAL; AWARD TO SPOUSE OF SOLE DECISION-MAKING AUTHORITY WAS OVERBROAD; DIRECTION TO SPOUSE’S COUNSEL TO MAKE FACTUAL FINDINGS TURNED COURT’S FACT-FINDING RESPONSIBILITY OVER TO ATTORNEY.** The appellate court agreed with former husband that the “numerous errors” committed by the trial court required reversal. Because the judge was no longer on the bench, the spouses would need to start from scratch with a new judge. The trial court’s award to former wife of sole decision-making authority over the child’s extra-curricular activities, health care, and education was overbroad because former wife had requested sole decision-making authority only over the extra-curricular activities because she wanted the child to learn how to be on a team with other children. The trial court’s direction to former wife’s counsel to make factual findings regarding former husband’s income went beyond creating an appearance of less than independent fact-finding to turning the trial court’s fact-finding responsibility over to an attorney. Revisiting former husband’s income would require recalculation of child support. The trial court also erred in its equitable scheme of distribution. The appellate court remanded for reconsideration of all issues except jurisdiction and the finding that the marriage was irretrievably broken; it noted that revisiting former husband’s income would require recalculation of the child support.

<http://www.4dca.org/opinions/Feb%202016/02-17-16/4D15-1258.co-op.pdf> (February 17, 2016)

Pierre v. Pierre, \_\_ So. 3d \_\_, 2016 WL 717761 (Fla. 4th DCA 2016). **REVERSED AND REMANDED FOR REQUIRED WRITTEN FINDINGS AS TO ASSETS AND LIABILITIES.** Former husband appealed the final judgment of dissolution; the appellate court reversed as to equitable distribution and affirmed the remainder. Concluding that the absence of appropriate findings left it unable to discern whether the trial court had abused its discretion, the appellate court reversed and remanded for the required written findings regarding assets and liabilities.

<http://www.4dca.org/opinions/Feb%202016/02-24-16/4D14-1651.op.pdf> (February 24, 2016)

Preudhomme v. Bailey, \_\_ So. 3d \_\_, 2016 WL 555433 (Fla. 4th DCA 2016). TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CLARIFYING PARENTING PLAN; BECAUSE TRIAL COURT'S DENIAL OF SPOUSE'S MOTIONS WAS WITHOUT PREJUDICE, TRIAL COURT ORDERS WERE NOT FINAL OR APPEALABLE NON-FINAL ORDERS; CERTIORARI NOT APPROPRIATE. Concluding that the trial court did not abuse its discretion in clarifying the parenting plan, the appellate court affirmed the trial court order on former husband's motion for clarification and enforcement of parenting plan. The appellate court dismissed former wife's appeal to other orders. Because the trial court's denial of her motions was without prejudice, the trial court's orders were neither final nor appealable non-final orders; certiorari was not an appropriate remedy.

<http://www.4dca.org/opinions/Feb%202016/02-24-16/4D14-4553.op.pdf> (February 24, 2016)

### ***Fifth District Court of Appeal***

Kitchens v. Martin, \_\_ So. 3d \_\_, 2016 WL 438189 (Fla. 5th DCA 2016). TRIAL COURT ERRED IN BASING CONCLUSION OF SPOUSE'S ABILITY TO PAY PURGE ON FINDING THAT SPOUSE COULD BORROW MONEY FROM RELATIVE. The appellate court affirmed the order finding former wife in contempt and awarding make-up time-sharing to former husband; however, it reversed the portion of the order directing former wife to pay former husband's attorney's fees to purge the contempt. The appellate court held that the trial court's finding that former wife had the ability to pay the purge because she could borrow money from her father did not support the conclusion that she had the ability to pay.

<http://www.5dca.org/Opinions/Opin2016/020116/5D14-3617.op.pdf> (February 5, 2016)

Wanchic v. Wanchic, \_\_ So. 3d \_\_, 2016 WL 742239 (Fla. 5th DCA 2016). APPELLATE COURT QUASHED PORTION OF TRIAL COURT ORDER WHICH PERMITTED ONE SPOUSE TO PERSONALLY VIEW RECORDS REQUIRED TO BE DISCLOSED BY OTHER SPOUSE. Former wife petitioned for a writ of certiorari to quash a trial court order requiring disclosure of certain documents she claimed were protected by statutory privilege. Granting her petition in part, the appellate court quashed the portion of the order permitting former husband to personally review former wife's disclosed records; it denied the remainder of the petition.

<http://www.5dca.org/Opinions/Opin2016/022216/5D15-2623.op.pdf> (February 26, 2016)

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

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

No new opinions for this reporting period.

### ***Second District Court of Appeal***

Leaphart v. James, \_\_ So. 3d \_\_, 2016 WL 540649 (Fla. 2d DCA 2016). [INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE REVERSED](#). The respondent appealed after an injunction for protection against domestic violence was entered against him that had been brought by his ex-girlfriend. The respondent's attorney requested a continuance due to his schedule conflict with another case, but the court didn't rule on the motion and went forward with the hearing having the respondent appear pro se. The petitioner testified that her house and car were vandalized and that neighbors had seen someone similar to the respondent commit the acts. She also testified that the respondent had hit her in the lip once about a year ago. The respondent denied doing any of the alleged acts. The appellate court reversed the order, stating that there was insufficient evidence that the respondent committed the acts of vandalism, and that the petitioner did not have reasonable cause to believe she was in imminent danger of becoming a victim of domestic violence since the hurt lip incident had happened over a year ago. The court noted that the petitioner's testimony about her neighbors' comments was hearsay, and that the trial court violated the respondent's due process rights by not granting his motion for a continuance so his attorney could be present.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/February/February%2010,%202016/2D14-1407.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/February/February%2010,%202016/2D14-1407.pdf) (February 10, 2016)

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

J.G. v. E.B., \_\_ So. 3d \_\_, 2016 WL 742322 (Fla. 5th DCA 2016). [INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE REVERSED](#). A grandfather appealed a final judgment of injunction for protection against domestic violence that was issued against him based upon allegations of sexual misconduct against his grandson. There were no witnesses other than the child. Counsel for the mother attempted to introduce statements made by the child to the mother, but the respondent's counsel objected on hearsay grounds. The mother's counsel did not raise s. 90.803(23), F.S., which is a hearsay exception based upon the statement of a child victim. Nor were the child's statements examined as required under s. 90.803(23). The court ruled the child's statements to his mother inadmissible and sustained several other objections to most of the other evidence submitted, yet still granted the permanent injunction. The appellate court reversed, finding no other evidence to support the ruling.

<http://www.5dca.org/Opinions/Opin2016/022216/5D15-2367.op.pdf> (February 26, 2016)

***Fifth District Court of Appeal***

No new opinions for this reporting period.