

OSCA/OCI'S CASE LAW UPDATE JANUARY 2016

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Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Drug Court/Mental Health/Veterans Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

L.T. v. State, ___ So. 3d ___, 2016 WL 231730 (Fla. 1st DCA 2016). **THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING THE JUVENILE’S LACK-OF-FOUNDATION OBJECTION AS TO THE ADMISSIBILITY OF THE VIDEOTAPE SHOWING THE ALTERCATION THAT OCCURRED ON HER SCHOOL BUS.** The juvenile was involved in an altercation on her school bus. At trial, the juvenile made a lack-of-foundation objection as to the admissibility of the videotape showing the altercation. Based on the videotape, the trial court withheld adjudication on the offense of affray, and imposed probation. On appeal, the juvenile contended, and the First District Court of Appeal agreed, that the trial court abused its discretion in overruling the juvenile’s lack-of-foundation objection regarding the admissibility of the videotape. Despite that fact that the trial court ruled as it did because it did not “know how it [the video] could hurt the case” and it did not see “anything in there that would be damaging” to the juvenile, the trial court relied almost exclusively on what it saw in the video. The First District agreed with the juvenile because the State failed to authenticate the video. Authentication or identification of evidence is required as a condition precedent to its admissibility. Accordingly, the First District reversed the order and remanded for further proceedings because the State failed to authenticate the video. https://edca.1dca.org/DCADocs/2014/4983/144983_DC13_01202016_102902_i.pdf (January 20, 2016)

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

A.S. v. State, ___ So. 3d ___, 2016 WL 90778 (Fla. 4th DCA 2016). **THE FOURTH DISTRICT AFFIRMED ALL SUBSTANTIVE ISSUES RAISED ON APPEAL, BUT REMANDED FOR THE NARROW PURPOSE OF CORRECTING THE FINAL DISPOSITION TO COMPORT WITH THE REQUIREMENTS OF FLORIDA RULE OF JUVENILE PROCEDURE 8.115(D).** The juvenile was charged with battery on a school board employee and resisting arrest. The Fourth District Court of Appeals affirmed as to all substantive issues raised on appeal. However, the Fourth District remanded the case to the trial court for the sole, narrow purpose of correcting the final disposition to comport with the requirements of Florida Rule of Juvenile Procedure 8.115(d). <http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D14-3250.op.pdf> (January 6, 2016)

P.R. v. State, ___ So. 3d ___, 2016 WL 64434 (Fla. 4th DCA 2016). **THE TRIAL COURT LACKED AUTHORITY, UNDER THE RULE GOVERNING MODIFICATION OF SENTENCES, TO MODIFY THE DISPOSITION TO REQUIRE THE JUVENILE TO UNDERGO HEPATITIS AND HIV TESTING.** The juvenile was charged with first degree misdemeanor battery after he spat upon a county bus driver. The juvenile entered a plea of no contest to the charge. The trial court withheld adjudication and sentenced the juvenile to probation. The trial court's disposition order did not require the juvenile to submit to any hepatitis and HIV testing. Subsequently, the trial court modified the juvenile's sentence to include a requirement that he submit to hepatitis and HIV testing pursuant to s. 960.003(4), F.S. (2013). The Fourth District Court of Appeal reasoned that the plain language of the statute provides for testing following "delinquency adjudication." It is established that statutory reference to a juvenile who has been adjudicated delinquent does not encompass a juvenile for whom adjudication has been withheld, as was the case here. Therefore, the juvenile could not be compelled to undergo testing under s. 960.003(4) after the court withheld adjudication. Accordingly, the Fourth District reversed.

<http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D15-1033.op.pdf> (January 6, 2016)

A.J.M. v. State, ___ So. 3d, ___ 2016 WL 145816 (Fla. 4th DCA 2016). **A PHOTOGRAPH OF A POSTED SIGN WAS ADMISSIBLE BECAUSE THE WORDS ON THE POSTED SIGN HAD INDEPENDENT LEGAL SIGNIFICANCE AND WENT TO PROVE THAT THE OWNER OF THE PROPERTY HAD CONFERRED AUTHORITY ON CITY POLICE OFFICERS TO COMMUNICATE AN ORDER TO LEAVE THE PROPERTY, RATHER THAN BEING OFFERED FOR TRUTH OF THEIR CONTENTS.** The juvenile was charged with trespass, in violation of s. 810.09(2)(b), F.S. (2014). A contested issue at trial was whether the arresting officer was a person "authorized" within the meaning of the trespass statute. To prove this element of the crime, the State offered a photo of the posted trespass sign into evidence. The juvenile objected to admission of the photo on hearsay grounds. The trial court overruled, and the juvenile appealed. The Fourth District Court of Appeal reasoned that hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Here, the words on the sign amounted to a verbal act and not hearsay, because they had independent legal significance because the law attached duties and liabilities to their utterance. The words went to prove that the owner of the property had conferred authority on all Coral Springs police officers to communicate an order to leave the property. And, like language giving consent, the words that conferred authority on the police to act were operative once posted. The words were not offered for the truth of their contents. Accordingly, the Fourth District affirmed the trial court's decision.

<http://www.4dca.org/opinions/Jan.%202016/01-13-16/4D14-1506.op.pdf> (January 13, 2016)

Fifth District Court of Appeal

J.S. v. State, ___ So. 3d, ___ 2016 WL 115649 (Fla. 5th DCA 2016). **A CHILD MAY NOT BE HELD IN SECURE OR NON-SECURE DETENTION FOR MORE THAN TWENTY-ONE DAYS UNLESS AN ADJUDICATORY HEARING FOR THE CASE HAS BEEN COMMENCED.** The juvenile, who was taken into custody on December 21, 2015, petitioned for a writ of habeas corpus. The Fifth District Court of Appeal reasoned that because the trial court's authority to place juveniles in secure detention was entirely statutory, strict compliance with the statute is necessary. Therefore, statutorily, a juvenile may not be held in secure or non-secure detention for more than 21 days unless an adjudicatory hearing on the case has been commenced. Here, more than 21 days had elapsed and the adjudicatory hearing had not commenced. Accordingly, the juvenile was entitled to be released.

<http://www.5dca.org/Opinions/Opin2016/011116/5D16-98.op.pdf> (January 12, 2016)

A.P. v. State, ___ So. 3d___, 2016 WL 165381 (Fla. 5th DCA 2016). **AN INVESTIGATORY STOP IS JUSTIFIED ONLY WHEN THE OFFICER HAS A WELL-FOUNDED SUSPICION THAT THE PERSON HAS COMMITTED, IS COMMITTING, OR IS ABOUT TO COMMIT A CRIME. WHEN THE INITIAL POLICE ACTIVITY IS ILLEGAL, THE STATE MUST ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THERE HAS BEEN AN UNEQUIVOCAL BREAK IN THE CHAIN OF ILLEGALITY SUFFICIENT TO DISSIPATE THE TAIN OF THE PRIOR ILLEGAL POLICE ACTION AND THUS RENDER THE CONSENT TO SEARCH FREELY AND VOLUNTARILY GIVEN.** The juvenile moved to suppress the baggie of marijuana that he pulled from his pocket and gave to the arresting officer who stopped and detained him. The trial court denied the juvenile's motion to suppress, and the juvenile appealed. On appeal, the Fifth District Court of Appeal addressed two issues: (1) whether there was a reasonable basis for the stop, and (2) whether there was a voluntary turnover rather than a search.

As to whether there was a reasonable basis for the stop, the Fifth District concluded that the arresting officer's detention of the juvenile was an investigatory stop. An investigatory stop is justified only when the officer has a well-founded suspicion that the person has committed, is committing, or is about to commit a crime. A citizen encounter becomes an investigatory stop once an officer shows authority in a manner that restrains the defendant's freedom of movement, such that a reasonable person would feel compelled to comply. Here, the stop was predicated on a truly anonymous tip. The tipster did not provide a name, phone number, or any other type of identification. Further, the tipster provided very few details of the suspected criminal activity. Hence, the tip fell on the very low end of the reliability scale in terms of providing justification for a stop. When following an anonymous tip, law enforcement must develop detailed, specific information corroborating the tip. Here, the arresting officer did not observe anything to corroborate the tip. Even more, the arresting officer admitted that he did not find

the juvenile to be engaged in anything criminal or suspicious. Thus, the stop was not justified and all evidence obtained thereafter should have been suppressed.

As to whether there was a voluntary turnover rather than a search when the juvenile handed the baggie of marijuana to the arresting officer, the Fifth District concluded that the turnover was in response to a search. Hence, it was not voluntary. The initial police activity, or the stop, was illegal. When a stop is illegal the State must establish by clear and convincing evidence that there has been an unequivocal break in the chain of illegality sufficient to dissipate the taint of the prior illegal police action and thus render consent to search freely and voluntarily given. In this case, by the time the juvenile gave the arresting officer the baggie of marijuana, four more police officers arrived on the scene and were involved in the investigation, a K9 unit was alerted to possible contraband in the vehicle, and the arresting officer had taken the juvenile across the street to engage in further investigation. Thus, there was nothing in the record to break in the chain of illegality. Because the arresting officer had no justification for stopping the vehicle and because there was no break in the chain of illegality, the juvenile's motion to suppress should have been granted. Accordingly, the Fifth District reversed and remanded.

<http://www.5dca.org/Opinions/Opin2016/011116/5D14-4537op.pdf> (January 15, 2016)

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

J.P. v. Florida Department of Children and Families, ___ So. 3d ____, 2016 WL 167394 (Fla. 1st DCA 2016). **ORDER TERMINATING PARENTAL RIGHTS REVERSED**. The mother appealed from an order terminating her parental rights and argued that no competent, substantial evidence supported the trial court's finding that she engaged in conduct towards her child that demonstrated her continued involvement would threaten his life, well-being, or physical, mental, or emotional health, irrespective of the provision of services. She also claimed that the termination was not the least restrictive alternative. The appellate court agreed with the mother and reversed and remanded the case. The mother struggled with an addiction to alcohol and participated in drug court; however, the appellate court found that the record contained no evidence that the mother's involvement with her children threatened them with harm of any kind. The court noted that the Department also failed to provide her with necessary services, and that the mother had the ability to improve if given services, even though she wasn't a perfect parent. In fact, the record demonstrated the mother's commitment to "both bettering herself and capably raising her child." Finally, there was no evidence that termination was the least restrictive means of protecting the children since the possibility of a relative placement was disregarded without first conducting a home study, and no other relative was even contacted.

https://edca.1dca.org/DCADocs/2015/3023/153023_DC05_01152016_084413_i.pdf (January 15, 2016)

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

Department of Children and Families v. J.S., ___ So. 3d ____, 2016 WL 145866 (Fla. 4th DCA 2016). **ORDER DENYING TERMINATION OF PARENTAL RIGHTS REVERSED**. The DCF and GAL appeal the order denying DCF's petition for the termination of parental rights of both parents. The lower court found that DCF did not prove by clear and convincing evidence that the father breached his case plan, since the father completed the case plan's primary task of a parenting class; the other "secondary" tasks were not fully explained to the father; and the father's incarceration was not

a willful violation of his other case plan tasks because his current prison facility “made it almost impossible for the case manager to have contact with him.” The lower court also found that the Department did not prove by clear and convincing evidence that the father engaged in conduct towards the child which demonstrated that his continued involvement with the child would threaten the child's “life, safety, well-being, or physical or mental, emotional health,” irrespective of provisions of services. Regarding the mother, the court found that the Department proved by clear and convincing evidence that she abandoned the child and that she did not comply with her case plan within twelve months. However, the court denied the termination of the mother's parental rights because the court found insufficient evidence existed to support a single-parent termination.

The appellate court reversed and stated that the circuit court erred in finding that the father's incarceration period did not constitute a significant portion of the child's minority. The court also failed to make findings regarding the child's need for a permanent and stable home. The father was not part of the child's life and there was little evidence that the father had tried to communicate with the child. The court also noted that DCF proved by clear and convincing evidence that the length of the father's incarceration would negatively affect the child's need for permanency. The appellate court remanded the case for termination of both parents' rights.

<http://www.4dca.org/opinions/Jan.%202016/01-13-16/4D15-2272.op.pdf> (January 13, 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

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

Tzynder v. Edelsburg, __ So. 3d __, 2016 WL 313863 (Fla. 3d DCA 2016). **ORDER WHICH IMPOSES SUPERVISED TIME-SHARING MUST IDENTIFY WHAT STEPS A PARENT MUST TAKE IN ORDER TO REESTABLISH UNSUPERVISED TIME-SHARING WITH CHILD.** The appellate court ordered the trial court on remand to amend its final judgment, which had modified parental responsibility and time-sharing but failed to identify what steps the parent needed to take in order to reestablish unsupervised time-sharing with the minor child.

<http://www.3dca.flcourts.org/Opinions/3D15-0671.pdf> (January 27, 2016)

Fourth District Court of Appeal

Reed v. Reed, __ So. 3d __, 2016 WL 64702 (Fla. 4th DCA 2016). **TRIAL COURT FINDING THAT A PARENT'S LIFE HAD STABILIZED AND THE PARENT DESIRED TO SEE THE CHILD MORE WAS INSUFFICIENT TO CONSTITUTE A SUBSTANTIAL CHANGE IN CIRCUMSTANCES WARRANTING MODIFICATION OF TIME-SHARING AS SET IN FINAL JUDGMENT.** Former husband petitioned the trial court to modify the time-sharing schedule set in the final judgment of dissolution to 50/50 time-sharing; he also requested a downward modification of child support. Former wife appealed the trial court's order granting the petition based on its finding that former husband's life had stabilized and he desired more time with their child. The appellate court held that those circumstances were insufficient to constitute a substantial change in circumstances justifying modification of the time-sharing schedule. The appellate court also found that the trial court erred in determining that modification would be in the best interests of the child without any evidence in support of that determination. Accordingly, it reversed and remanded with directions for the trial court to deny former husband's request for modification.

<http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D14-4012.op.pdf> (January 6, 2016)

Benedict v. Benedict, __ So. 3d __, 2016 WL 67401 (Fla. 4th DCA 2016). **SPOUSE'S ARGUMENT THAT THE ENTRY OF A MONEY JUDGMENT OF ALIMONY ARREARAGES WAS AN ERROR BECAUSE HE WAS DISABLED AND UNEMPLOYED AND THE OTHER SPOUSE NO LONGER NEEDED SUPPORT SHOULD BE RAISED IN MODIFICATION PROCEEDINGS, NOT ON APPEAL.** Former husband argued that entry of a money judgment on alimony arrearages in favor of former wife was in error because he was disabled and unemployed and that due to former wife's improved financial circumstances, support was no longer necessary. The appellate court held that former husband's

arguments could not be entertained in the context of an appeal from the arrearages judgment, but should be raised in modification proceedings. Accordingly, it affirmed, but without prejudice to former husband to petition for modification and seek relief from the alimony arrearages judgment if the result of the modification proceeding warranted relief.

<http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D15-90.op.pdf> (January 6, 2016)

Fazio v. Fazio, __So. 3d__, 2016 WL 90792 (Fla. 4th DCA 2016). REMANDED FOR EVIDENTIARY HEARING IF TRIAL COURT FOUND AMBIGUITY IN SPOUSES' SETTLEMENT AGREEMENT AND TO ENTER QUALIFIED DOMESTIC RELATIONS ORDER REFLECTING CORRECT INTERPRETATION. The appellate court reversed a trial court order denying former wife's motion to vacate a qualified domestic relations order (QDRO), and remanded for the trial court to determine whether the mediated settlement agreement entered into by the spouses was ambiguous. The appellate court instructed the trial court to hold an evidentiary hearing if it found the agreement to be ambiguous and then enter a QDRO reflecting the correct interpretation of the agreement.

<http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D15-272.op.pdf> (January 6, 2016)

Forssell v. Forssell, __So. 3d__, 2016 WL 65642 (Fla. 4th DCA 2016). IF TRIAL COURT SUSPENDS TIME-SHARING, IT MUST IDENTIFY STEPS IN ITS ORDER THAT A PARENT MUST TAKE IN ORDER TO REESTABLISH TIME-SHARING; EITHER PARTY MAY MOVE TO MODIFY OR DISSOLVE A DOMESTIC VIOLENCE INJUNCTION AT ANY TIME; IF THE MOTION IS LEGALLY SUFFICIENT, TRIAL COURT SHOULD AFFORD MOVANT AN OPPORTUNITY TO BE HEARD. The appellate court consolidated two appeals by former husband to two non-final orders: one which granted former wife's verified emergency motion to indefinitely suspend his time-sharing with their minor children; the other which denied a joint request from the spouses to vacate and dissolve a final judgment for protection against domestic violence. The appellate court affirmed the temporary suspension of former husband's time-sharing, but reversed in part. It found that the trial court abused its discretion by failing to identify the steps former husband needed to take to reestablish time-sharing. The appellate court reversed the order denying the motion to vacate and dissolve the injunction, and held that, pursuant to Florida Family Law Rule of Procedure 12.610(c)(6), and s. 741.30(10), F.S. (2014), either party could move to modify or dissolve a domestic violence injunction at any time. If a motion was legally sufficient, the trial court should afford the movant an opportunity to be heard instead of summarily dismissing the motion. Here, the trial court erred in denying the spouses' joint request to dissolve the injunction without having given former husband the opportunity to be heard.

<http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D15-702.op.pdf> (January 6, 2016)

Brennan v. Brennan, __So. 3d__, 2016 WL 313958 (Fla. 4th DCA 2016). IF REMAND IS FOR FURTHER CONSIDERATION WITHOUT ANY EXPRESS LIMITATION ON THE TRIER OF FACT, TRIAL COURT MAY, IN ITS DISCRETION, RECEIVE ADDITIONAL EVIDENCE; HOWEVER, IF REMAND INSTRUCTION IS SPECIFIC, A TRIAL COURT CANNOT EXCEED THE SCOPE OF THAT INSTRUCTION; A TRIAL COURT MAY HEAR EVIDENCE ON SPOUSE'S CURRENT INCOME IF SUPPORT ISSUES ARE "IN PLAY" ON REMAND; IMPUTATION OF INCOME MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; ABSENT SPECIAL CIRCUMSTANCES, TRIAL COURT CANNOT IMPUTE INCOME IN AN AMOUNT HIGHER THAN THE SPOUSE HAS HISTORICALLY EARNED; ERROR TO

REDUCE TERM OF ALIMONY IF ORIGINAL TERM IS THE LAW OF THE CASE. Former wife appealed a final judgment of dissolution after the issuance of a mandate in Brennan v. Brennan, 122 So. 3d 923 (Fla. 4th DCA 2013) (Brennan I). Finding that the trial court had exceeded the scope of remand, the appellate court affirmed in part and reversed in part. Brennan I reversed a final judgment of dissolution on five issues: equitable jurisdiction of the marital home; imputation of income to former wife; private school tuition for the minor child; life insurance to secure alimony and child support obligations; and former wife's fees and costs. The contempt was also reversed. The appellate court stated that when a reviewing court remands for further consideration without expressly limiting the trier of fact, the trial court may, in its discretion, receive additional evidence; however, if the remand instruction is specific, the trial court cannot exceed the bounds of that instruction. Here, the trial court exceeded the scope of the mandate in Brennan I by revaluing assets and liabilities. Although Brennan I opined that the entire scheme of equitable division might require revision on remand, that opinion did not authorize the trial court to revisit the valuation of any assets or liabilities. The trial court also exceeded the scope of the mandate by reducing the duration of the alimony from ten years to five; ten-year duration was the law of the case. The appellate court concluded that the trial court had not exceeded the scope of remand by considering evidence regarding former husband's 2013 income because that was relevant to the amount of alimony and the private school issues; a trial court may hear evidence regarding spouses' current incomes if issues regarding support obligations are "in play" on remand. Reversed and remanded for the trial court to: split the net proceeds from sale of the marital home; redistribute the remaining assets and liabilities of the original equitable distribution schedule without revaluing them; reinstate the ten-year duration of alimony from the date of the final judgment; and reconsider fees. The appellate court affirmed the trial court's imputation of income to former wife, despite the amount being higher than she had historically earned, because competent, substantial evidence supported the findings. Competent, substantial evidence also supported the trial court's findings that former husband did not have the ability to pay for private school; accordingly, that issue was affirmed as well.

<http://www.4dca.org/opinions/Jan.%202016/01-27-16/4D14-1363.op.pdf> (January 27, 2016)

Fifth District Court of Appeal

Tatum v. Triana-Tatum, ___ So. 3d ___, 2016 WL 165415 (Fla. 5th DCA 2016). **RETROACTIVE CHILD SUPPORT RUNS FROM THE FILING DATE OF THE PETITION TO MODIFY.** Former husband appealed a final judgment entered on former wife's petition for upward modification of former husband's child support obligation and permanent relocation of the spouses' minor child. The appellate court found error in the calculation of retroactive child support. Retroactive child support runs from the filing date of the petition of modification; here, the trial court erred by relying on a date that was eleven days before the filing date. Accordingly, the appellate court remanded for recalculation using the correct date.

<http://www.5dca.org/Opinions/Opin2016/011116/5D14-3788.op.pdf> (January 15, 2016)

Jones v. Jones, ___ So. 3d ___, 2016 WL 347235 (Fla. 5th DCA 2016). **REMANDED TO ANSWER QUESTIONS REGARDING DISPOSITION OF MARITAL HOME AND TO EXPLAIN OR CORRECT ERRORS IN CALCULATING EQUITABLE DISTRIBUTION; SPOUSES SHOULD SHARE EQUALLY IN ACTUAL REFINANCING VALUE OR SALE PRICE OF HOME.** Former husband argued that the trial court erred

in awarding former wife exclusive use of the marital home and in calculating the equitable distribution of assets and alimony payments. The appellate court affirmed as to alimony without further discussion. Enumerating several errors that the trial court made when calculating equitable distribution, the appellate court remanded for a correction or explanation of those items. The trial court ordered that former wife needed to either refinance or sell the home within eighteen months; however, it failed to identify which spouse was responsible for paying the mortgage and other necessary expenses. The trial court assigned a value to the home and then specified that each spouse should receive one-half of that amount if the home were sold, without taking into consideration the fact that the actual sale price might vary from the amount it assigned to the home. The appellate court held that former husband was entitled to an equal share of the refinancing value or sale price of the home.

<http://www.5dca.org/Opinions/Opin2016/012516/5D14-4538.op.pdf> (January 29, 2016)

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

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

Hall v. State, __ So. 3d __, 2016 WL 67294 (Fla. 2d DCA 2016). [VIOLATION OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE REVERSED](#). The defendant appealed his judgment and sentence for felony battery and his violation of an injunction for protection against domestic violence. The appellate court affirmed the criminal sentence, but reversed the conviction of the violation charge. The court noted that the State did not prove that the defendant knew that the injunction was still in effect, and therefore could not prevail.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/January/January%2006,%202016/2D14-2321.pdf (January 6, 2016)

Woolley v. Nelsen, __ So. 3d __, 2016 WL 231773 (Fla. 2d DCA 2016). [ORDER DISSOLVING DATING VIOLENCE INJUNCTION REVERSED](#). The appellant appealed the order for protection against dating violence after he was convicted of unrelated charges. The court denied the motion without a hearing. The appellate court reversed and held that due process required a hearing since, based on the allegations in the petition, he might be entitled to relief.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/January/January%2020,%202016/2D15-1684.pdf (January 20, 2016)

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

Forssell v. Forssell, __ So. 3d __, 2016 WL 65642 (Fla. 4th DCA 2016). [ORDER DENYING MOTION TO DISSOLVE INJUNCTION REMANDED](#). The father appealed a non-final order denying the parties' joint request to vacate and dissolve the final judgment for protection against domestic violence which the mother had obtained against him. The appellate court reversed the order denying the motion to vacate and dissolve the injunction because the lower court did not grant the father the opportunity to be heard. The case was remanded for a hearing.

<http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D15-702.op.pdf> (January 6, 2016)

David v. Textor, __ So. 3d __, 2016 WL 64743 (Fla. 4th DCA 2016). [ORDER GRANTING PROTECTION FROM CYBERSTALKING REVERSED](#). The appellant appealed a non-final order denying his motion to dissolve an ex parte injunction prohibiting cyberstalking. Both parties have companies which produce holograms used in the music industry, and an argument and lawsuit arose regarding the right to show a hologram during a music awards show. The trial court granted the amended petition for protection that prohibited the appellee from communicating with the appellant or

posting any information about him online, and ordered that he remove any materials he already had posted from the websites. The order was based upon various texts, emails, posts, and a fear of violence. The appellant claimed that the texts and posts were merely the result of a heated argument and didn't constitute cyberstalking, and were also a violation of his first amendment rights. The appellate court agreed and reversed the order that granted the injunction. The court also noted that, "(w)hether a communication causes substantial emotional distress should be narrowly construed and is governed by the reasonable person standard." The court stated that none of the communications should have caused substantial emotional distress and that the communications served a legitimate purpose; therefore, they did not constitute cyberstalking. <http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D14-4352.op.pdf>. (January 6, 2016)

Fifth District Court of Appeal

No new opinions for this reporting period.