

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

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Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

M.T.G., Jr. v. State, __ So. 3d __, 2015 WL 3930230 (Fla. 1st DCA 2015). **THE JUVENILE'S COMMITMENT WAS REVERSED AND REMANDED WITH INSTRUCTIONS FOR THE TRIAL COURT TO RECEIVE A RECOMMENDATION FROM THE DEPARTMENT OF JUVENILE JUSTICE REGARDING A RESTRICTIVENESS LEVEL BEFORE COMMITTING THE JUVENILE.** The juvenile appealed the trial court's disposition order adjudicating him delinquent and committing him to a low-risk residential program. The juvenile argued that the trial court improperly departed from the Department of Juvenile Justice's (DJJ) recommendation of probation without providing sufficient reasons, in violation of E.A.R. v. State, 4 So. 3d 614 (Fla. 2009), and by imposing a commitment without input from the DJJ on the appropriate restrictiveness level. The First District Court of Appeal found that the resolution of both issues was controlled by the decision in B.K.A. v. State, 122 So. 3d 928 (Fla. 1st DCA 2013). Accordingly, the First District affirmed the trial court's decision to adjudicate the juvenile delinquent, but reversed and remanded the commitment with instructions for the trial court to receive a recommendation from the DJJ regarding a restrictiveness level before committing the juvenile.

https://edca.1dca.org/DCADocs/2014/5871/145871_DC08_06262015_103506_i.pdf (June 26, 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

C.W. v. State, __ So. 3d __, 2015 WL 3761242 (Fla. 4th DCA 2015). **ALTHOUGH THE TRIAL COURT ERRED IN *SUA SPONTE* DISMISSING THE DELINQUENCY PETITION, THE DISMISSAL WAS AFFIRMED BECAUSE THE STATE FAILED TO PRESERVE THE ARGUMENT FOR APPEAL.** The State appealed the trial court's final order *sua sponte* dismissing the petition for delinquency filed against the juvenile after the State made several unsuccessful attempts to serve the juvenile with a summons to appear. The Fourth District Court of Appeal found that the trial court improperly ruled on an issue that was not before it and interfered with the State's discretion to bring charges against the juvenile. However, because the State failed to preserve these arguments for appeal, the Fourth District affirmed the dismissal. The Fourth District's opinion emphasized to the trial court that where no motion to dismiss had been filed, the trial court was without authority to dismiss a criminal prosecution *sua sponte*. See State v. D.W., 821 So. 2d 1179 (Fla. 3d DCA 2002), and State v. Leon, 967 So. 2d 437 (Fla. 4th DCA 2007). Additionally, the trial court's *sua sponte* dismissal encroached upon the State's discretion to prosecute. Further, the dismissal of criminal charges is

“an action of such magnitude that resort to such a sanction should only be had when no viable alternative exists.” Dawson v. State, 951 So. 2d 931, 933 (Fla. 4th DCA 2007). In the instant case, the records indicated that despite the State's efforts, the juvenile had not made an appearance because she had not been served, and the State's investigation revealed that she and her mother frequently moved. As such, the State requested additional time to locate and serve the juvenile. Nevertheless, the request was denied and the trial court dismissed the petition, apparently sanctioning the State for its delay in perfecting service. However, because the State requested additional time to locate and serve the juvenile, this provided a viable alternative to dismissal, and as such, the sanction of dismissal was not the trial court's last resort in this case. Nevertheless, while the Fourth District agreed with the State that the trial court erred in *sua sponte* dismissing the case, because the State failed to make these arguments below, the Fourth District affirmed the dismissal.

<http://www.4dca.org/opinions/June%202015/06-17-15/4D14-1320.op.pdf> (June 17, 2015).

Fifth District Court of Appeal

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

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.

Dissolution Case Law

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

Boehm v. Boehm, __ So. 3d __, 2015 WL 3645898 (Fla. 2d DCA 2015). REMANDED TO TRIAL COURT FOR DETERMINATION OF ONE SPOUSE'S ACTUAL MONTHLY INCOME AND RECALCULATION OF OTHER SPOUSE'S CHILD SUPPORT OBLIGATION. Former husband argued that the trial court had improperly calculated his child support obligation because the amount used for former wife's monthly net income was incorrect; former wife conceded that the child support guidelines worksheet attached to the final judgment did not accurately reflect her net monthly income. The appellate court reversed and remanded for the trial court to determine former wife's actual monthly income and recalculate former husband's support obligation accordingly. It affirmed the remainder of the judgment.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/June/June%2012,%202015/2D14-4507.pdf (June 12, 2015).

Banks v. Banks, __ So. 3d __, 2015 WL3875272 (Fla. 2d DCA 2015). IN ABSENCE OF TRANSCRIPT OR STATEMENT OF RECORD, REVERSAL IS LIMITED TO ERRORS ON THE FACE OF THE JUDGMENT; LONG-TERM MARRIAGES DO NOT REQUIRE CLEAR AND CONVINCING PROOF FOR PERMANENT ALIMONY; AMBIGUOUS LANGUAGE REGARDING RETIREMENT BENEFITS REMANDED FOR CLARITY; ISSUES NOT RAISED AT TRIAL ARE NOT PRESERVED FOR APPEAL; ORDINARILY, APPROPRIATE RELIEF IF TRIAL COURT FAILS TO ADDRESS REQUEST FOR AWARD OF LIFE INSURANCE TO SECURE ALIMONY OBLIGATION IS REVERSAL AND REMAND. Former wife appealed the dissolution of a thirty-three-year marriage on four grounds: that she was awarded durational alimony, not permanent; the handling of the equitable distribution of former husband's military retirement benefit; lack of a provision requiring former husband to release her from mortgage indebtedness on the marital home; and the trial court's failure to address her request that former husband secure his alimony obligation with life insurance. The appellate court noted that in the absence of either a transcript or a statement of the evidence pursuant to Florida Rule of Appellate Procedure 9.200(b)(4), reversal is limited to error on the face of the judgment. The appellate court held the trial court "misinterpreted" s. 61.08, F.S., by requiring clear and convincing evidence for permanent alimony. Clear and convincing proof is only required when a marriage is of moderate duration; here, the marriage was long-term. The appellate court reversed and remanded for reconsideration of alimony under the correct standard of proof; it urged the trial court to consider at least a nominal amount of permanent alimony for former wife. On the second issue, the appellate court agreed with former wife that the language in the judgment regarding her share of former husband's military retirement benefits was ambiguous; it remanded for the trial court to clarify. The appellate court declined to rule on the third issue—whether the trial court erred in requiring former wife to deed her interest in the marital home to

former husband without requiring that he release her as an obligor. Because it found no indication that former wife had presented this issue to the trial court for a ruling, it was not preserved for review. In regard to the fourth issue, as there was an absence of any evidence in the record that former wife had requested the trial court to address whether former husband should be required to secure his alimony obligation with life insurance, the appellate court found itself unwilling to find error by the trial court by failing to address that issue; however, it noted that ordinarily, if the trial court fails to address a spouse's request that an alimony obligation be secured by life insurance, the appropriate relief is reversal and remand for the trial court to make the necessary findings.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/June/June%2024,%202015/2D14-962.pdf (June 24, 2015).

Third District Court of Appeal

Herman v. Herman, __ So. 3d __, 2015 WL 3758200 (Fla. 3d DCA 2015). FINDINGS OF FACT MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; S. 61.13, F.S., REQUIRES THAT A TRIAL COURT ORDER SHARED RESPONSIBILITY UNLESS IT FINDS THAT WOULD BE DETRIMENTAL TO THE CHILD; A MEDIATED SETTLEMENT AGREEMENT'S SILENCE ON REQUIRING PRIVATE SCHOOL BEYOND A PARTICULAR SCHOOL YEAR SHOULD BE CONSTRUED AS AN UNRESOLVED ISSUE; DESIGNATION OF PARENT WITH WHOM CHILD RESIDES THE MAJORITY OF THE TIME DOES NOT ALTER EITHER PARENTS' RIGHTS UNDER THE PARENTING PLAN; DESIGNATION SHOULD BE MODIFIED PER SPOUSE'S AGREEMENT; SCRIVENER'S ERROR SHOULD BE CORRECTED. Former wife argued that the trial court abused its discretion as to time-sharing, parental responsibility, and private education in a supplemental final judgment. With the exception of two modifications to the judgment, one agreed to by former husband and the other to correct a scrivener's error, the appellate court affirmed. The trial court's findings of fact were supported by competent, substantial evidence; its award of shared parental responsibility, based on its conclusion that both parents were equally capable of caring for the child, was in accord with s. 61.13(2)(c)2, F.S. (2015). The Mediated Settlement Agreement (MSA) obligated former husband to full and then partial private school tuition for specified school years; it also provided that both parents would contribute to a school fund to be used for middle and high school with any remainder payable to the child at age twenty-five. Due to a scrivener's error, the child was ordered to attend public school during the 2015-2016 school year when former husband was obligated for partial payment under the MSA. The appellate court disagreed with former wife's argument that because the MSA was silent with respect to private school after the 2015-2016 school year, the child should continue in private school for the remainder of elementary school. It concluded that the MSA's silence could only be reasonably construed to mean that the spouses did not resolve the issue of public or private school after the 2015-2016 school year. Former wife also argued that the parenting plan erroneously designated former husband as the parent with whom the child would reside for the majority of the time. The appellate court noted the parenting plan explicitly stated that said designation was only for the purpose of any state law which required one; it did not affect either parent's rights under the plan. The appellate court commended former husband for agreeing to amend the designation to reflect the child would reside with former wife for the majority of the time and instructed the trial court to modify the plan and correct the scrivener's error regarding the school year.

<http://www.3dca.flcourts.org/Opinions/3D15-0296.pdf> (June 17, 2015).

Fourth District Court of Appeal

Bisel v. Bisel, ___ So. 3d ___, 2015 WL 3486717 (Fla. 4th DCA 2015). TRIAL COURT ERRED IN DENYING SPOUSE'S MOTION TO SET ASIDE DEFAULT; NOTICE OF HEARING DEFICIENT IN SEVERAL RESPECTS; REVERSED AND REMANDED. Agreeing with the bulk of former wife's arguments concerning the insufficiency of the notice of hearing mailed to her, the appellate court found that the trial court erred in denying former wife's motion to set aside a default judgment and for relief from judgment. Accordingly, it reversed and remanded for further proceedings. The appellate court found several problems with the notice of hearing: the notice failed to notify former wife that the trial court would consider and rule upon her supplemental petition for upward modification of child support; it failed to give former wife timely notice of the hearing as it related to her supplemental petition; and the trial court, not former husband, was required to enter an order setting the action for trial.

<http://www.4dca.org/opinions/June%202015/06-03-15/4D14-1611.op.pdf> (June 13, 2015).

Fifth District Court of Appeal

Dottaviano v. Dottaviano, ___ So. 3d ___, 2015 WL 3903553 (Fla. 5th DCA 2015). SPOUSE CLAIMING THAT INCOME SHOULD BE IMPUTED TO UNEMPLOYED OR UNDEREMPLOYED SPOUSE BEARS THE BURDEN OF EMPLOYABILITY AND JOB AVAILABILITY; ALTHOUGH GENERAL RULE SUPPORTS AWARD OF EXCLUSIVE USE AND POSSESSION OF MARITAL HOME TO PRIMARY RESIDENTIAL PARENT UNTIL CHILD REACHES MAJORITY, SPECIAL CIRCUMSTANCES MAY JUSTIFY PARTITION AND SALE OF HOME; HERE, SPECIAL CIRCUMSTANCES WARRANTED PARTITION. The appellate court agreed with former wife that the trial court erred in the amount of income it imputed to her because it failed to make any findings that she was voluntarily unemployed or underemployed and failed to consider the evidence that she was diligently trying to find a job. A trial court should also consider that the spouse claiming that income should be imputed bears the burden of proof of employability of the unemployed or underemployed spouse as well as the availability of jobs. Because the erroneous imputation of income affected alimony and child support, those awards were ordered reversed. The trial court was instructed on remand to make the appropriate findings and ensure that the spouse with the burden of proof met that burden before imputing income to the other. The appellate court found that the trial court erred in denying former wife's request to partition the marital home and in awarding exclusive use and possession to former husband as primary residential parent. Although the general rule is that the trial court should award exclusive use and possession of the marital home to the primary residential parent until a child reaches majority, the appellate court held that special circumstances may justify partition and sale of the home if the spouses' incomes are inadequate to meet their debts, obligations, and normal living expenses. Here, special circumstances existed which warranted partition. Reversed and remanded to reconsider the issues of imputation of income, alimony, and child support, and to partition the home.

<http://www.5dca.org/Opinions/Opin2015/062215/5D14-2174.op.pdf> (June 26, 2015).

Domestic Violence 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

Martinez v. Izquierdo, __ So. 3d __, 2015 WL 3760643 (Fla. 4th DCA 2015). **DOMESTIC VIOLENCE INJUNCTION UPHeld IN PART, REVERSED IN PART**. The respondent appealed when the petitioner was awarded an injunction for protection against domestic violence with minor child. The appellate court held that the respondent was not required to surrender his ammunition and firearms under s. 790.233(1), F.S., since he was a law enforcement officer, but upheld the injunction.

<http://www.4dca.org/opinions/June%202015/06-17-15/4D14-4501.op.pdf> (June 17, 2015).

Fifth District Court of Appeal

No new opinions for this reporting period.

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.