

## OSCA/OCI'S CASE LAW UPDATE MARCH 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.....	9
First District Court of Appeal .....	9
Second District Court of Appeal.....	9
Third District Court of Appeal.....	9
Fourth District Court of Appeal.....	9
Fifth District Court of Appeal.....	10

### Dissolution of Marriage Case Law

Florida Supreme Court.....	12
----------------------------	----

First District Court of Appeal .....	12
Second District Court of Appeal.....	13
Third District Court of Appeal.....	14
Fourth District Court of Appeal.....	14
Fifth District Court of Appeal.....	20
<b>Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law</b>	
Florida Supreme Court.....	23
First District Court of Appeal .....	23
Second District Court of Appeal.....	23
Third District Court of Appeal.....	23
Fourth District Court of Appeal.....	23
Fifth District Court of Appeal.....	23

## **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***

K.D. v. J.R.D., \_\_\_ So. 3d \_\_\_, 2016 WL 830313 (Fla. 5th DCA 2016). K.D. appealed the trial court's order for involuntary treatment for substance abuse. On May 21, 2015, K.D.'s father petitioned for involuntary substance abuse assessment and stabilization for K.D. under the Marchman Act. On the same day, the trial court granted the petition ex parte. On May 27, 2015, K.D. underwent a biopsychosocial assessment. On June 1, 2015, K.D.'s father petitioned for involuntary substance abuse treatment for K.D. The trial court set the petition for hearing on June 16, 2015. After the hearing, the trial court entered an order for involuntary treatment for substance abuse for K.D. K.D. appealed the trial court's order. The Fifth District Court of Appeal found that s. 397.6955, F.S. (2015), provided that, upon filing of a petition for the involuntary treatment of a substance abuse impaired person, the trial court "shall schedule a hearing to be held on the petition within 10 days." Computing the time according to Florida Rule of Judicial Administration 2.514(a)(1), the last permissible day for the trial court to schedule a hearing was June 11, 2015. In the instant case, the trial court did not hold a hearing on the petition until June 16, 2015. Therefore, the trial court exceeded the statutory 10-day time limit and lacked jurisdiction over the petition. Accordingly, the Fifth Circuit reversed the resulting order.

<http://www.5dca.org/Opinions/Opin2016/022916/5D15-2489.op.pdf> (March 4, 2016)

## **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**

K.H. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 937146 (Fla. 1st DCA 2016). SECTION 810.011(1), F.S. (2014), REQUIRES THAT A TEMPORARY BUILDING “HAS A ROOF OVER IT;” THE STATUTE DOES NOT REQUIRE THAT THE TEMPORARY BUILDING ITSELF “HAS A ROOF.” The juvenile jumped over the counter of a kiosk located in the middle of the main hallway of a local mall. He stole three cell phones, three \$2.00 bills, and some postage stamps from the kiosk. The trial court found the juvenile guilty of burglary of a structure, withheld adjudication, and imposed probation. On appeal, the juvenile contended that he could not have committed the crime of burglary of a structure because the kiosk was not a “structure” as defined by s. 810.011(1), F.S. (2014). More specifically, reasoned the juvenile, “structure” is defined as “a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof,” s. 810.011(1), F.S. (2014). The First District Court of Appeal reasoned that a plain reading of the statute requires that a temporary building, such as the kiosk at issue, has “a roof over it.” The statute does not require that the temporary building itself “has a roof.” Here, the kiosk falls within the statute because it has “a roof over it,” which is the roof over the entire enclosed mall. The fact that the roof is shared does not change the analysis. See Smith v. State, 632 So. 2d 136, 137 (Fla. 4th DCA 1994). To emphasize the distinction between a temporary building “with a roof over it” and a temporary building “with a roof,” the First District noted that a kiosk in an open-air market or bazaar without a roof over it might not qualify under the existing statute. The First District concluded that the kiosk had a roof over it at the time of the burglary. Accordingly, the First District affirmed the trial court’s order.

[https://edca.1dca.org/DCADocs/2015/4126/154126\\_DC05\\_03112016\\_101613\\_i.pdf](https://edca.1dca.org/DCADocs/2015/4126/154126_DC05_03112016_101613_i.pdf) (March 11, 2016)

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

R.C. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 920571 (Fla. 2d DCA 2016). THE DAUBERT STANDARD REGARDING THE ADMISSIBILITY OF EXPERT TESTIMONY DOES NOT CHANGE THE LONG-ESTABLISHED RULE THAT LAY PERSONS CAN IDENTIFY MARIJUANA BASED ON THEIR PERSONAL EXPERIENCE AND KNOWLEDGE. The juvenile ran from school campus into a nearby neighborhood after being confronted by a teacher for smoking on campus. The school resource officer pursued, apprehended, and escorted the juvenile back to campus in his patrol car. When the school resource officer, who was also a sheriff’s deputy, approached the juvenile he noticed a “strong odor of burnt marijuana emitting from his person.” Upon the juvenile’s return, the assistant

principal searched his book bag to find a package containing a leafy substance and a blue pipe. The juvenile was charged with and pled not guilty to possession of marijuana and possession of drug paraphernalia. **Before the adjudicatory hearing**, the juvenile filed a motion in limine requesting the entry of an order barring “law enforcement opinion testimony as to having sufficient training and experience to detect cannabis.” In support of his motion, the juvenile argued that the State would be unable to satisfy the Daubert standard for the admissibility of expert testimony, with regard to the testimony of the deputy identifying the substance found in his book bag. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). **At the adjudicatory hearing**, the deputy was permitted to testify, based on his training and experience, that: (1) he could identify the odor coming from the juvenile upon his apprehension as marijuana; (2) he had determined that the substance found in the juvenile’s book bag was marijuana; and (3) the pipe taken from the book bag was a device used for smoking marijuana. The juvenile objected to the deputy’s testimony about the odor and the nature of the substance reasoning that the deputy’s testimony cannot meet the reliability standard under Daubert. The trial court explained that the deputy’s testimony was based on his training and experience, not on a scientific test. As such, the deputy gave his lay opinion, not an expert opinion. Therefore, the deputy’s testimony was admissible. The trial court withheld adjudication and placed the juvenile on probation for possession of marijuana, and administered a judicial warning for possession of drug paraphernalia. **On appeal**, the juvenile asserted that the trial court erred in admitting the testimony of the deputy because the State failed to satisfy the recently adopted Daubert standard for the admissibility of expert testimony as stated in s. 90.702, F.S. (2014). More specifically, the juvenile contended that because law enforcement officers cannot reliably depend upon their sensory organs to detect marijuana, the codification of Daubert in s. 90.702, F.S. (2014), prohibits the use of their pure opinion testimony (rooted in their training and experience) in identifying an unknown substance as marijuana. The Second District Court of Appeal reasoned that Florida’s adoption of the Daubert standard had not changed the long-established rule that lay persons could identify marijuana (and some other illicit substances as well, e.g., cocaine and methamphetamine) based on their personal experience and knowledge. Such testimony is not admitted based on scientific expertise but instead based on the layman’s training and experience, for which a predicate establishing a sufficient degree of familiarity is sufficient. The federal courts, which have followed Daubert since 1993, have long allowed lay testimony to identify illicit substances much as the deputy did in this case. Here, the Second District concluded, the State laid a sufficient foundation for the deputy’s identification of the substance found in the juvenile’s book bag as marijuana based on the deputy’s experience and training. For that reason, the Second District concluded that the trial court did not err in denying the juvenile’s motion in limine and properly admitted the deputy’s testimony identifying the substance found in the juvenile’s book bag as marijuana. Accordingly, the Second District affirmed the trial court’s order.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/March/March%2011,%202016/2D15-1738.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/March/March%2011,%202016/2D15-1738.pdf) (March 11, 2016)

***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***

M.M. v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 830365 (Fla. 5th DCA 2016). JUVENILE, WHO WAS SUSPENDED FOR ACTING OUT IN CLASS, HAD NO LEGITIMATE BUSINESS ON CAMPUS AFTER THE DEAN INSTRUCTED HIM TO GO TO AN INDOOR WAITING ROOM OUTSIDE HER OFFICE; HE THUS VIOLATED THE STATUTE GOVERNING TRESPASS ON SCHOOL GROUNDS WHEN HE WALKED OUTSIDE INTO AN ADJACENT OPEN-AIR COURTYARD; ALTHOUGH JUVENILE WAS AUTHORIZED TO STAY IN THE SCHOOL'S WAITING ROOM UNTIL HIS MOTHER PICKED HIM UP, HE WAS NOT AUTHORIZED, LICENSED, OR INVITED TO BE ANYWHERE ELSE ON SCHOOL GROUNDS. The juvenile was escorted to the dean's office for acting out in class. While in the dean's office, the juvenile's misconduct continued. Consequently, the dean suspended the juvenile and called his mother to come pick him up. The dean then instructed the juvenile to wait in the indoor waiting room outside of her office. While in the waiting room, the juvenile continued to engage in disruptive behavior. Subsequently, the school resource officer was called to address the juvenile's behavior. Both the dean and the school resource officer advised the juvenile that he must remain in the waiting area. Despite this advisement, the juvenile walked outside into an adjacent open-air courtyard (near the back of the school campus). At this time the juvenile was arrested for trespass. At trial, the juvenile was adjudicated delinquent for trespass on school grounds in violation of s. 810.097(1), F.S. (2014). On appeal, the juvenile contended that the trial court erred in denying his motion for judgment of dismissal. He argued that the evidence was insufficient to establish that he unlawfully entered, or remained upon, his middle school campus immediately following his suspension. More specifically, the juvenile reasoned, he could not be found guilty of unlawfully entering or remaining on school property because he was expressly authorized to remain on campus until his mother arrived. In essence, the juvenile maintained that as long as he was authorized to enter or remain on some part of the school's property, he could not be found to have committed trespass. The Fifth District Court of Appeal disagreed. The Fifth District reasoned that in Downer v. State, 375 So. 2d 840 (Fla. 1979), the Florida Supreme Court recognized that a property owner who impliedly invites members of the public to enter onto its property can limit public access to certain areas of that property and that a criminal trespass occurs when an individual willfully enters or remains in the restricted area of that same property. Here, the juvenile was suspended before the events leading to his arrest for trespass. Therefore,

he had no legitimate business on campus. Until his mother's arrival, the juvenile was authorized, licensed, or invited to be in the office waiting room; he was not authorized, licensed, or invited to be anywhere else on school grounds. Accordingly, the juvenile's willful action of disobeying the instruction of both the dean and the school resource officer by entering into other areas of the campus constituted a violation of s. 810.097(1), F.S. (2014). The Fifth District noted that this interpretation was consistent with the clear intent of the Legislature as well as the Florida Supreme Court's decision in Downer. Accordingly, the Fifth District affirmed the trial court's order.

<http://www.5dca.org/Opinions/Opin2016/022916/5D15-1869.op.pdf> (March 4, 2016)

## 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***

R.W. v. Department of Children and Families, \_\_\_ So. 3d \_\_\_, 2016 WL 1239878 (Fla. 3d DCA 2016). **TERMINATION OF PARENTAL RIGHTS AFFIRMED.** The mother appealed the termination of her parental rights and claimed that the trial court's questioning of witnesses at the adjudicatory hearing constituted an abandonment of the trial court's role of neutrality and impartiality. However, the appellate court noted that the mother failed to object during the hearing, and found no fundamental error in the court's behavior. The court also stated, "a trial judge must ensure that he or she does not become an active participant or an advocate in the proceedings and should not by words or actions make it appear that his neutrality is departing from the center."

<http://www.3dca.flcourts.org/Opinions/3D15-2838.pdf> (March 30, 2016)

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

D.V. v. Department of Children and Families, \_\_\_ So. 3d \_\_\_, 2016 WL 805306 (Fla 4th DCA 2016). **TERMINATION OF PARENTAL RIGHTS REVERSED.** The father appealed the order terminating his parental rights and claimed that the trial court failed to advise him of his right to counsel at the manifest best interests hearing. The attorney for the father sent an email asking that his presence at the hearing be waived, and did not appear during the hearing. The father asked the court questions during the hearing, and court stated that the father needed to contact his attorney and discuss those issues with the attorney. The father never waived his right to counsel. The appellate court reversed, noting that s. 39.013, F.S., stated that the court must advise the parents of the right to counsel at each stage of the dependency proceedings.

<http://www.4dca.org/opinions/Mar%202016/03-02-16/4D15-3445.op.pdf> (March 2, 2016)

R.J. v. Florida Dept. of Children and Families, \_\_\_ So. 3d \_\_\_, 2016 WL 1039178 (Fla. 4th DCA 2016). **ORDER STATING THAT THE COURT COULD NOT COMPEL DEPARTMENT TO PROVIDE SERVICES TO DEPENDENT CHILD REVERSED.** A minor's parents' stated that they would not accept the minor back into their home after he was discharged from a residential psychiatric center, and the minor's attorney filed a petition for dependency. The petition asked the court to: 1) adjudicate the minor dependent; 2) join the Department (DCF) to the action; 3) order the minor to be placed in the custody of DCF; and 4) order DCF to conduct a suitability assessment. DCF filed a limited notice of appearance for the purpose of objecting to the petition's request to join

it as a party and place the minor in its custody. The court adjudicated the minor as dependent, but determined that it could not compel DCF to participate or place the minor in DCF's custody without DCF's consent; the minor appealed.

The court noted that, "(w)hile nothing in chapter 39 requires DCF to participate in the dependency process, there are provisions which certainly grant the court the authority to compel DCF to provide services once a child is adjudicated dependent. Specifically, section 39.521, Florida Statutes." The appellate court reversed and remanded the case, noting that it was not directing the court to place the minor in DCF's custody, but clarifying that the trial court did have the authority to do so.

<http://www.4dca.org/opinions/Mar%202016/03-16-16/4D15-4026.op.pdf> (March 16, 2016)

G.K. v. Department of Children and Families, \_\_\_ So. 3d \_\_\_, 2016 WL 1133846 (Fla. 4th DCA 2016). **ADJUDICATION OF DEPENDENCY REVERSED**. The Department conceded error and agreed that there was no competent evidence showing that the children witnessed domestic violence, or suffered harm, or that the father was a threat to the safety of the children or posed a current threat to the safety of the children. The appellate court reversed and noted that the trial court relied upon inadmissible hearsay evidence.

<http://www.4dca.org/opinions/Mar%202016/03-23-16/4D15-4787.op.pdf> (March 23, 2016)

J.M. vs. Department of Children and Families, \_\_\_ So. 3d \_\_\_, 2016 WL 1239866 (Fla. 4th DCA 2016). **DEPENDENCY ADJUDICATION REVERSED**. The mother appealed the court's order adjudicating her children dependent, and both the Department (DCF) and the Guardian ad Litem (GAL) program conceded error. While there was evidence of domestic violence between the mother and the father, there was no evidence presented that the child was aware of the violence or affected by it. There was also no evidence that the mother's substance abuse harmed the children. Accordingly, the appellate court reversed the order of dependency.

<http://www.4dca.org/opinions/Mar%202016/03-30-16/4D15-4785.op.pdf> (March 30, 2016)

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

T.D. v. Department of Children and Families, \_\_\_ So. 3d \_\_\_, 2016 WL 1062189 (Fla. 5th DCA 2016). **TRIAL COURT'S FAILURE TO ORALLY INFORM A PARENT OF THE RIGHT TO ASSERT AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IN A TERMINATION OF PARENTAL RIGHTS CASE DID NOT REQUIRE REVERSAL**. The appellant appealed after the court terminated her parental rights to her minor child. At the conclusion of the Termination of Parental Rights (TPR) hearing, the court orally announced its ruling. Eighteen days later, the court issued the a detailed final judgment terminating the appellant's parental rights, continuing the child's placement in foster care, and placing the child in the permanent custody of the Department (DCF) for subsequent adoption. The appellant argued that the court "did not conduct an adequate inquiry regarding her unelaborated request, during trial, to discharge her court-appointed counsel." The appellate court noted that the law does not require an inquiry by the court when the request to discharge counsel is made during trial.

The appellant also claimed that the trial court erred by not orally instructing her at the conclusion of the adjudicatory hearing of her right to file a motion in the circuit court alleging ineffective assistance of her court-appointed counsel. The notice was included in the final order. According to the interim rules established by case law, the appellant had until January 7, 2016, to file her motion that alleged ineffective assistance of counsel, and both she and her court-appointed appellate counsel failed to do so within the time allotted. The appellate court also noted that there is a strong presumption that the attorney that represented the parent provided reasonable, professional assistance. In this case, since the minor had been in DCF's custody for most of his two year old life, the timely determination of TPR proceedings was necessary, and since a high standard of proof is required to establish ineffective assistance of counsel, the court was unwilling to reverse or delay the case.

<http://www.5dca.org/Opinions/Opin2016/031416/5D15-4460.op.pdf> (March 17, 2016)

## Dissolution of Marriage Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

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

Abbott v. Abbott, \_\_ So. 3d \_\_, 2016 WL 878821 (Fla. 1st DCA 2016). **GENERALLY, A TRIAL COURT'S FAILURE TO MAKE FINDINGS OF FACT SUFFICIENT FOR MEANINGFUL REVIEW LEADS TO REVERSAL OF ALIMONY AND ATTORNEY'S FEE AWARDS.** Former wife argued that the trial court erred in: calculating the permanent alimony award; denying her request for retroactive alimony; setting the amount of the fee award; failing to make any findings of fact on the attorney's fees; and failing to make the findings of fact required by s. 61.08, F.S. (2013). Concluding that the trial court's factual findings were insufficient to allow for meaningful review, the appellate court reversed the alimony and fees award. It noted that both of those awards are reviewed for an abuse of discretion. An appellate court will not disturb an alimony award when it is supported by competent, substantial evidence and the trial court has complied with the law; however, it reviews the trial court's application of the law to the facts *de novo*. Generally, a trial court's failure to include the findings of fact required by s. 61.08(2), is reversible error because it precludes meaningful review. Likewise, a trial court reversibly errs when it awards attorney's fees without making the requisite findings as to the amount, even if there is competent, substantial evidence to support the award. Here, the trial court failed to make any findings of fact with regard to former wife's need for alimony and former husband's ability to pay, the spouses' incomes and expenses, the factors listed in s. 61.08(2), the spouses' need and ability as to fees, the attorney's hourly rate, the number of hours reasonably expended, the reasonableness of the fee, and the appropriateness of reduction or enhancement factors. Accordingly, the appellate court reversed and remanded.

[https://edca.1dca.org/DCADocs/2015/2550/152550\\_DC13\\_03082016\\_083645\\_i.pdf](https://edca.1dca.org/DCADocs/2015/2550/152550_DC13_03082016_083645_i.pdf) (March 8, 2016)

Demmi v. Demmi, \_\_ So. 3d \_\_, 2016 WL 1203894 (Fla. 1st DCA 2016). **SPOUSES' FINANCIAL RESPONSIBILITY FOR UNCOVERED MEDICAL EXPENSES FOR MINOR CHILDREN SHOULD REFLECT THE ALLOCATION OF RESPONSIBILITY FOR CHILD SUPPORT.** Former wife appealed final order of dissolution, arguing that the trial court abused its discretion in: determining the amount of her permanent alimony award; denying her request for attorney's fees; and ordering the spouses to share equally the responsibility for payment of all non-covered medical expenses for the minor children. The appellate court affirmed the first two issues without comment, but agreed with former wife that the trial court erred in ordering the spouses to be equally responsible for the medical expenses, because that allocation conflicted with the final judgment's allocation of the spouses' relative financial responsibility for child support. Accordingly, it instructed the trial court on remand to reapportion the spouses' financial responsibility for uncovered medical expenses based on their child support allocation.

[https://edca.1dca.org/DCADocs/2015/1468/151468\\_DC08\\_03292016\\_100214\\_i.pdf](https://edca.1dca.org/DCADocs/2015/1468/151468_DC08_03292016_100214_i.pdf) (March 29, 2016)

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

Suk v. Chang, \_\_\_ So. 3d \_\_\_, 2016 WL 938435 (Fla. 2d DCA 2016). **DISSOLUTION JUDGMENTS CONTAINING INTERNAL INCONSISTENCIES REQUIRE REVERSAL AND REMAND IN ORDER FOR THE INCONSISTENCIES TO BE CORRECTED.** Former husband appealed the final judgment of dissolution. The appellate court reversed and remanded the unequal allocation of the proceeds of the sale of a piece of rental property the spouses owned. In an interlocutory ruling, the trial court ordered the property to be listed at a price no less than its stipulated value and that the proceeds of the sale be split 50-50. As the property had not been sold by the time of the final hearing, the trial court ordered the spouses to abide by the interlocutory ruling; however, when the property appeared in the scheme of equitable distribution, its value was not allocated equally between the spouses. The appellate court surmised that the error might have resulted from the difference between the stipulated value at trial and the agreed value when the interlocutory order was entered, but concluded that however it happened, the inconsistency needed to be corrected within the final judgment. Dissolution judgments containing internal inconsistencies require reversal and remand in order for the inconsistencies to be corrected. The appellate court noted that making the correction would also require the trial court to recalculate the equalizing payment. On remand, the trial court was authorized to consider new evidence regarding the status of the sale if necessary.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/March/March%2011,%202016/2D14-5709.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/March/March%2011,%202016/2D14-5709.pdf) (March 11, 2016)

Murray v. State, \_\_\_ So. 3d \_\_\_, 2016 WL 1066250 (Fla. 2d DCA 2016). **POSTCONVICTION COURT'S FINDING THAT IT WAS WITHOUT AUTHORITY TO ENFORCE INMATE'S VISITATION RIGHTS AWARDED IN DISSOLUTION ORDER OR DIRECT DEPARTMENT OF CORRECTIONS TO ALLOW VISITATION AFFIRMED WITHOUT PREJUDICE TO ANY RIGHT SPOUSE MIGHT HAVE TO SEEK VISITATION WITH HIS SON; REGULATION OF PRISON VISITATION IS WITHIN DEPARTMENT'S AUTHORITY.** Former husband, an inmate, filed a motion in the post-conviction court for an order to affirm visitation with his son which was awarded by a 2007 final dissolution judgment. Department of Corrections (DOC) responded that visitation would not be approved until it was approved in writing by a judge; it advised former husband of the procedure to either seek an administrative remedy or appeal its decision. Citing Singletary v. Carpenter, 705 So. 2d 110 (Fla. 2d DCA 1998), in which the appellate court held that criminal trial judges do not have the authority to dictate to DOC the terms and conditions under which guests may visit with inmates at their prison, the post-conviction court denied former husband's motion because regulation of prison visitation is within the authority of DOC. The appellate court noted that the Singletary court explained that s. 944.09(1)(n), F. S. (Supp. 1996), which appears to give circuit court judges authority to order visitation in DOC, is intended for domestic and juvenile courts that have authority over parental visitation and the welfare of the children involved. It concluded the post-conviction court did not err in its finding that it was without authority to enforce former husband's visitation or to direct DOC to allow visitation. The appellate court held that, assuming the portion of the dissolution order former husband attached to his motion was a true and correct copy, he had already obtained an order from a judge permitting visitation. Affirmed without prejudice to any right former husband might have to seek visitation with his son.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/March/March%2018,%202016/2D15-3158.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/March/March%2018,%202016/2D15-3158.pdf) (March 18, 2016)

Felice v. Felice, \_\_\_ So. 3d \_\_\_, 2016 WL 1243463 (Fla. 2d DCA 2016). ABSENCE OF A TRANSCRIPT DOES NOT PRECLUDE REVERSAL WHERE ERROR IS APPARENT ON FACE OF THE JUDGMENT; TRIAL COURT'S INTERPRETATION OF PRENUPTIAL AGREEMENT REGARDING PREMARITAL HOME REVERSED AND REMANDED; TRIAL COURT RELIED ON IRWIN V. IRWIN WHICH WAS DISAPPROVED BY SUPREME COURT IN HAHAMOVITCH V. HAHAMOVITCH; REMANDED FOR AMENDED FINAL JUDGMENT TO REFLECT RULINGS ON REHEARING. After granting former wife's motion for rehearing, the appellate court substituted this for its opinion of December 30, 2015, which it withdrew. Former husband appealed an amended final judgment of dissolution. The appellate court found that the trial court erred by having included a portion of the value of former husband's premarital home as a marital asset in the scheme of equitable distribution and by failing to incorporate the amended parenting plan, ordered on rehearing from the original final judgment, into the amended final judgment. The appellate court noted that the absence of a transcript does not preclude reversal where errors are apparent on the face of a judgment. Pursuant to a prenuptial agreement, former wife was not entitled to any interest in former husband's premarital home. The trial court found that the agreement was enforceable, but concluded that it did not prevent former wife from claiming an interest in the home, specifically, as to any enhancement or appreciation, nor did it prohibit the trial court from using the home as security for an equalizing payment. The trial court found that the spouses had used marital funds during the course of the marriage to pay down a home equity line of credit and a mortgage on the home; it also found that the home's fair market value had appreciated during the marriage. The trial court included the sum of these amounts as a marital asset in the equitable distribution scheme and counted the premarital value of the home as a nonmarital asset belonging to former husband. Former husband argued that the prenuptial agreement entitled him to all equity in the home. Citing Hahamovitch v. Hahamovitch, 174 So. 3d 983 (Fla. 2015), in which the Supreme Court resolved a conflict among the districts and disapproved Irwin v. Irwin, 857 So. 2d 247 (Fla. 2d DCA 2003), upon which the trial court had relied, the appellate court reversed the trial court's interpretation and remanded for recalculation of the equitable distribution after excluding the amount representing the appreciated or enhanced value of the premarital home. The appellate court agreed with former husband that the trial court's modifications to the parenting plan in its order on motions for rehearing were not reflected in the amended final judgment. Accordingly, it reversed and remanded with instructions for the trial court to amend the amended final judgment to reflect its rulings.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2016/March/March%2030,%202016/2D14-2862rh.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/March/March%2030,%202016/2D14-2862rh.pdf) (March 30, 2016)

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

Schlesinger v. Schlesinger, \_\_\_ So. 3d \_\_\_, 2016 WL 834035 (Fla. 3d DCA 2016). ORDER DENYING FORMER WIFE'S MOTION FOR PROTECTIVE ORDER QUASHED IN ACTION BY WIDOW AGAINST FORMER HUSBAND'S ESTATE. The former spouses were married for thirty years; shortly after their dissolution, former husband married again. He died five years later. Former wife petitioned the appellate court to quash an order denying her motion for a protective order to bar discovery

of her banks' records in an action brought by former husband's widow against his estate. The widow claimed that former husband violated the terms of their post-nuptial agreement by making gifts to former wife, which decreased the value of the portion of the estate that was to pass to the widow. The appellate court granted the petition because the widow, as co-personal representative, had full access to all of former husband's bank accounts and other records from which she could "discern" if any payments were made to former wife and whether those payments violated the terms of the post-nuptial agreement. Its additional ground for granting the petition was because no determination had been made either that the widow was entitled to an accounting from the estate or that she could recover any payments made by former husband to former wife. The appellate court concluded that until such time as those determinations were made, it was premature to allow the widow to "pursue" former wife's personal financial records. Accordingly, it granted the writ and quashed the order.

<http://www.3dca.flcourts.org/Opinions/3D15-2048.pdf> (March 2, 2016)

Molina v. Perez, \_\_ So. 3d \_\_, 2016 WL 899300 (Fla. 3d DCA 2016). **TEST FOR MOTION FOR DISQUALIFICATION IS WHETHER THE FACTS ALLEGED, TAKEN AS TRUE, WOULD PROMPT A REASONABLY PRUDENT PERSON TO FEAR RECEIVING A FAIR TRIAL.** The appellate court reiterated that the test for a motion for disqualification is whether the facts alleged, taken as true, would prompt a reasonably prudent person to fear he or she would not receive a fair and impartial trial. Here, it agreed with former wife that the alleged comments could have reasonably caused her to fear that she would not receive a fair trial. Petition granted.

<http://www.3dca.flcourts.org/Opinions/3D15-2879.pdf> (March 9, 2016)

Salinas v. Pascariello, \_\_ So. 3d \_\_, 2016 WL 1239619 (Fla. 3d DCA 2016). **COUNSEL'S FILING OF GENERAL APPEARANCE TO REVIEW TRIAL COURT'S FILE DID NOT CONSTITUTE WAIVER OF DEFECT IN SERVICE OF PROCESS WITH MODIFICATION PETITION.** Former husband appealed a trial court order denying his verified motion to quash service and set aside an order granting former wife's motion to modify time-sharing and child support. The appellate court held that a general appearance filed by former husband's counsel in order to review the trial court's files did not constitute waiver of service and reversed. The appellate court noted that although a general appearance could waive objections relating to a trial court's exercise of personal jurisdiction over a defendant, an "after-the-fact" general appearance does not waive a defect in service of process related to a supplemental modification petition.

<http://www.3dca.flcourts.org/Opinions/3D15-0594.pdf> (March 30, 2016)

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

Smith v. Smith, \_\_ So. 3d \_\_, 2016 WL 803625 (Fla. 4th DCA 2016). **STATUTORY LANGUAGE MUST BE GIVEN ITS PLAIN AND ORDINARY MEANING; IN S. 744.3214, F.S., IT IS THE RIGHT TO MARRY THAT IS SUBJECT TO COURT APPROVAL, NOT THE MARRIAGE ITSELF; A MARRIAGE ENTERED INTO BY A PERSON WITH NO RIGHT TO MARRY IS VOID; AN INCAPACITATED PERSON WHO HAS HAD HIS OR HER RIGHT TO CONTRACT REMOVED MUST ASK THE COURT TO APPROVE HIS OR HER RIGHT TO MARRY; LONG DISSENT CITES OBERGEFELL V. HODGES, MARRIAGE IS CONSTITUTIONALLY-PROTECTED FUNDAMENTAL RIGHT.** The appellate court affirmed a final judgment annulling a marriage between spouses, one of whom (the ward), had been declared

incompetent and was restricted from marrying without court approval. Former wife, the competent spouse, argued that the annulment should be vacated because prior court approval was not required either by the court's order appointing the ward's plenary guardian or by the controlling statute. The appellate court stated that language in a statute must be given its plain and ordinary meaning. In s. 744.3215, F.S. (2013), it is "the right to marry" that is subject to court approval, not the marriage itself. A marriage entered into by a person with no right to marry is void; an incapacitated person who has had his or her right to contract removed must ask the court to approve his or her right to marry. The appellate court concluded that the trial court's interpretation of the statute was correct: at the time of the marriage, the ward had no right to marry because he had not obtained court approval; therefore, the marriage was void. The dissenting judge cited Obergefell v. Hodges, 135 S. Ct. 2584 (2015), in support of the recognition that the right to marry is a constitutionally-protected fundamental right. He opined that because the trial court did not remove the right to marry from the ward, he was not "rendered incompetent" as to his ability to marry. As the sole ground alleged for annulling the marriage was the failure to obtain court approval prior to the marriage and there was no claim that the ward did not understand the marriage contract, the marriage was "voidable," not void, and should have been ratified. He also found that the attorney ad litem had no authority to seek the annulment and the ward was denied fundamental due process because he did not have independent counsel in the proceedings.

<http://www.4dca.org/opinions/Mar%202016/03-02-16/4D14-1436.op.pdf> (March 2, 2016)

Cuesta v. Cuesta, \_\_ So. 3d \_\_, 2016 WL 806279 (Fla. 4th DCA 2016). **SPOUSE'S APPEAL OF ORDER GRANTING ATTORNEY'S FEES DISMISSED WITHOUT PREJUDICE; TRIAL COURT DETERMINED ENTITLEMENT TO FEES AND RESERVED JURISDICTION OF AMOUNT.** The appellate court affirmed the trial court's denial of former husband's supplemental petition for termination or reduction of support obligation and his motion for rehearing. It dismissed without prejudice his appeal of the final order granting former wife's motion for attorney's fees because the trial court determined entitlement to fees, and reserved jurisdiction as to the amount.

<http://www.4dca.org/opinions/Mar%202016/03-02-16/4D15-794.op.pdf> (March 2, 2016)

Marquez v. Lopez, \_\_ So. 3d \_\_, 2016 WL899334 (Fla. 4th DCA 2016). **TRIAL COURT MUST MAKE FINDING THAT TIME-SHARING ARRANGEMENTS ARE IN CHILD'S BEST INTERESTS; ACCEPTANCE OF AGREED UPON ARRANGEMENTS ARE NOT PRECLUDED SO LONG AS THEY ARE IN CHILD'S BEST INTERESTS; TRIAL COURT MUST DEVISE SCHEME OF EQUITABLE DISTRIBUTION; NET INCOME IS USED AS STARTING POINT TO CALCULATE CHILD SUPPORT.** Former wife appealed the final judgment of dissolution. The appellate court reversed and remanded after finding the trial court failed to make the requisite statutory findings related to time-sharing, equitable distribution, and the amount of child support. The appellate court held that the trial court erred in providing for equal time-sharing without an accompanying finding that the arrangement was in the children's best interests. A trial court must make a finding that the time-sharing schedule is in a child's best interests. Although the record here might have supported that finding, the final judgment did not include it; the appellate court noted it was "not for us to do so." Finding the record unclear as to whether the trial court relied on an agreed upon parenting plan, the appellate court reversed and remanded for the trial court to either find that equal time-sharing was in the best interests

of the children or fashion a time-sharing schedule that it determined was in their best interests. If a parenting plan were submitted after trial, the trial court is not precluded from approving it so long as it is in the children's best interests. The appellate court agreed with former wife that the trial court had failed to devise a scheme of equitable distribution; therefore, it remanded for the trial court to do so. The child support calculations were remanded because former wife's payroll deductions from her gross income were not correctly considered.

<http://www.4dca.org/opinions/Mar%202016/03-09-16/4D13-4077.op.pdf> (March 9, 2016).

Farghali v. Farghali, \_\_\_ So. 3d \_\_\_, 2016 WL 899804 (Fla. 4th DCA 2016). SPOUSE MUST ALERT A TRIAL COURT OF ERROR THROUGH A MOTION FOR REHEARING TO PRESERVE ERROR FOR REVIEW; WHILE AN APPEAL IS PENDING A TRIAL COURT RETAINS JURISDICTION WITH REGARD TO MATTERS NOT INTERFERING WITH APPELLATE COURT'S AUTHORITY OR WITH RIGHTS OF PARTY TO APPEAL UNDER CONSIDERATION; CONTEMPT POWER CANNOT BE INVOKED FOR SETTLEMENT OF PROPERTY RIGHTS; PAYMENTS FOR EQUITABLE DISTRIBUTION NOT ENFORCEABLE BY CONTEMPT UNLESS IN NATURE OF SUPPORT. In the first of two cases consolidated on appeal, former husband argued that the trial court erred in its equitable distribution of marital property by failing to make specific factual findings; however, he neither provided a transcript nor alerted the trial court of its error through a motion for rehearing. After expressly adopting the rule that a spouse must file a motion for rehearing in order to preserve an error for review, the appellate court affirmed. In the second case, the Qualified Domestic Relations Order (QDRO), entered after a prior appeal, was found to be ineffectual for former husband's type of pension. The trial court entered a second order in an attempt to remedy the error and clarify the distribution; former husband argued that the trial court was without jurisdiction to enter that order. The appellate court reiterated that while an appeal is pending, a trial court retains jurisdiction with regard to matters that do not interfere with the appellate court's authority or with the rights of a party to the appeal under consideration by appellate court, but found that the trial court's language in its second order left "some ambiguities" as to how former husband's pension was to be divided. It remanded for the trial court to enter a new order distributing former husband's pension equitably. The appellate court reversed the portion of the trial court's order which made the equitable distribution order enforceable through contempt because a court's contempt power cannot be invoked for settlement of property rights as opposed to alimony, support, or maintenance. Payments for equitable distribution are not enforceable by contempt; however, if a provision requiring payment is found to be in the nature of support rather than an exchange for a property interest, the failure to make the payment may be enforced through civil contempt. The appellate court concluded that the payments were ordered as part of the scheme of equitable distribution rather than alimony or support; thus, they were not enforceable by contempt.

<http://www.4dca.org/opinions/Mar%202016/03-09-16/4D14-1364%20&%204D15-1461.op.pdf> (March 9, 2016)

Longarzo v. Castillo, \_\_\_ So. 3d \_\_\_, 2016 WL 903665 (Fla. 4th DCA 2016). TRIAL COURT ERRED IN DISMISSING SPOUSE'S PETITION TO MODIFY BASED ON HER UNCLEAN HANDS IN FAILING TO PURGE A PRIOR CONTEMPT ORDER; REMANDED FOR EVIDENTIARY HEARING TO DETERMINE SPOUSE'S PRESENT ABILITY TO COMPLY WITH PREVIOUS CONTEMPT ORDER; CLEAN HANDS

**DOCTRINE CAN BAR MODIFICATION TO A DELINQUENT SPOUSE; WHERE SPOUSE HAS ABILITY TO PAY ARREARAGE AND DOES NOT DO SO, PETITION SHOULD NOT BE CONSIDERED ON MERITS UNTIL FORMER ORDER HAS BEEN COMPLIED WITH.** Former wife appealed an order dismissing her petition to modify custody, time-sharing, and child support based on her “unclean hands” in failing to purge a contempt order entered years earlier. Finding that the trial court erred in dismissing the petition without holding an evidentiary hearing on former wife’s present ability to comply with the previous contempt order, the appellate court reversed and remanded for a hearing on her present ability to pay the arrearages. Following that determination, the trial court could determine, consistent with this opinion, whether the clean hands doctrine was applicable. The clean hands doctrine can act to bar modification to a delinquent spouse; however, an arrearage does not in and of itself require denial of a modification if spouse can show he or she was unable to comply with the previous support order. Where a spouse has the ability to pay an arrearage and does not do so, the petition should not be considered on the merits until the former order has been complied with.

<http://www.4dca.org/opinions/Mar%202016/03-09-16/4D15-951.op.pdf> (March 9, 2016)

**Butler v. Cabassa, \_\_\_ So. 3d \_\_\_, 2016 WL 892652 (Fla. 4th DCA 2016). TRIAL COURT ERRED IN DENYING MOTION TO VACATE JUDGMENT CHANGING TIME-SHARING.** Although this case involves a domestic violence injunction rather than a dissolution final judgment, it is included for its rulings regarding time-sharing. The original judgment contained no provision for a change in time-sharing with the minor child; however, the trial court entered an amended judgment *sua sponte* awarding 100% time-sharing to the mother. The father, as primary residential parent for the child prior to the entry of the amended judgment, moved to vacate the judgment on due process grounds. The trial court stated its amended judgment corrected a “clerical error”; however, the record reflected that the custody issue was neither argued nor ruled upon at the hearing. Accordingly, the appellate court found the trial court erred in summarily denying the father’s motion to vacate the judgment. Reversed and remanded.

<http://www.4dca.org/opinions/Mar%202016/03-09-16/4D15-2984.op.pdf> (March 9, 2016)

**Miller v. Miller, \_\_\_ So. 3d \_\_\_, 2016 WL 1039153 (Fla. 4th DCA 2016). INTENTIONAL MISCONDUCT RESULTING IN DISSIPATION OF MARITAL ASSETS IS AN EXCEPTION TO GENERAL RULE THAT IT IS ERROR TO INCLUDE IN SCHEME OF EQUITABLE DISTRIBUTION ASSETS WHICH HAVE BEEN DIMINISHED OR DISSIPATED DURING DISSOLUTION PROCEEDINGS; TRIAL COURT MUST MAKE A SPECIFIC FINDING ON SPOUSE’S MISCONDUCT.** The appellate court found merit in former wife’s argument that the trial court’s equitable distribution of assets and liabilities did not include a specific finding that she engaged in intentional misconduct during the dissolution proceedings which resulted in dissipation of marital assets. An exception to the general rule that it is error to include assets in an equitable distribution scheme that have been diminished or dissipated during dissolution proceedings exists when misconduct results in dissipation of a marital asset; if so, the trial court must make a specific finding that the dissipation resulted from intentional misconduct. **Roth v. Roth**, 973 So. 2d 580 (Fla. 2d DCA 2008). Accordingly, the appellate court reversed and remanded for the trial court to determine whether former wife engaged in intentional misconduct. If that determination could be made from the record of the hearing, the trial court

could amend the final judgment without conducting an evidentiary hearing or hearing additional arguments.

<http://www.4dca.org/opinions/Mar%202016/03-16-16/4D14-2208.op.pdf> (March 16, 2016)

Nagl v. Navarro, \_\_ So. 3d \_\_, 2016 WL 1039172 (Fla. 4th DCA 2016). FEE AWARD MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE AND EXPRESS FINDINGS AS TO NUMBER OF HOURS REASONABLY EXPENDED AND A REASONABLE HOURLY RATE FOR TYPE OF LITIGATION; APPELLATE COURT SHOULD BE ABLE TO DISCERN FROM FACE OF THE JUDGMENT WHETHER THE TRIAL COURT MADE THE NECESSARY DETERMINATIONS; ENTITLEMENT IS GENERALLY BASED ON SHOWING OF NEED AND ABILITY TO PAY; HOWEVER, TRIAL COURT MAY TAKE SURROUNDING CIRCUMSTANCES INTO CONSIDERATION. Following marriage, birth of a child, and divorce in Austria, former wife and the minor child moved to Florida. Former husband petitioned for visitation, alleging former wife was thwarting his attempts to visit and communicate with the child. The trial court granted former wife's motion to dismiss and entered two judgments awarding attorney's fees to her which former husband appealed. A fee award must be supported by competent, substantial evidence and contain express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved. The lodestar method is an appropriate starting point in dissolution cases. Rosen v. Rosen, 696 So. 2d 697 (Fla. 1997). Using that method means a trial court should first determine the number of hours reasonably expended on the litigation and then determine the reasonable hourly rate for the services. An appellate court should be able to discern from the face of the judgment whether the trial court made the determinations; the appellate court concluded that here it could not. It also found that the trial court had failed to make a finding as to entitlement. Although entitlement is generally based on a showing of need and ability to pay, those factors are not exclusive; a trial court may consider the surrounding circumstances. Former husband argued that s. 61.16, F. S. (2013), governed; former wife countered that s. 61.35 did. The appellate court instructed the trial court on remand to determine which statutory provision should govern the fee award and make the necessary findings as to the reasonableness of the hours expended and the hourly rate. <http://www.4dca.org/opinions/Mar%202016/03-16-16/4D14-4837.op.pdf> (March 16, 2016)

McGlynn v. Tallman-McGlynn, \_\_ So. 3d \_\_, 2016 WL 1129765 (Fla. 4th DCA 2016). ANY ERROR ON PART OF THE TRIAL COURT WAS INVITED; MATTERS ARGUED FOR FIRST TIME IN REPLY BRIEF WILL NOT BE CONSIDERED; SPOUSE HAD ENOUGH LEFT AFTER SUBTRACTION OF OBLIGATIONS FROM PROPERLY DETERMINED NET INCOME TO SURVIVE ECONOMICALLY. Former husband argued: 1) that the trial court erred in computing and applying his net income when determining child support payment; and 2) that the cumulative amount of all the post-dissolution monetary awarded was an abuse of discretion. The appellate court affirmed on both counts. It found that any error on the part of the trial court was invited error because the bonus which former husband appealed in the calculation of his income was entered on his financial affidavit. He also testified that the net monthly income on the affidavit was correct. He neither objected to inclusion of the bonus in calculating his income nor raised it on appeal until the reply brief. Matters argued for the first time in a reply brief will not be considered. The key question in former husband's second argument was his ability to survive economically after his alimony and child support obligations, including retroactive payments, were subtracted from a properly determined net income. The

appellate court found that former husband was left with a monthly amount that was “entirely dissimilar” from those in the cases he cited. It affirmed the trial court’s conclusion that former husband was left with the ability to survive economically, but noted that if his bonus was not a recurring event, he might have cause to seek modification.

<http://www.4dca.org/opinions/Mar%202016/03-23-16/4D14-4859.op..pdf> (March 23, 2016)

Abramovic v. Abramovic, \_\_ So. 3d \_\_, 2016 WL 1129884 (Fla. 4th DCA 2016). **EVIDENCE MUST REFLECT JUSTIFICATION FOR EQUALIZING PAYMENT AND THE ABILITY OF THE OBLIGOR SPOUSE TO MAKE THE PAYMENT WITHOUT SUBSTANTIALLY ENDANGERING HIS OR HER ECONOMIC STATUS; A FINAL JUDGMENT AWARDING INCOME TAX EXEMPTION MUST BE CONDITIONED ON OBLIGOR SPOUSE BEING CURRENT WITH SUPPORT OBLIGATIONS.** Former wife appealed a final judgment of dissolution and a subsequent order compelling her compliance with equalizing payments and awarding attorney’s fees. The appellate court agreed with former wife that the trial court erred in: requiring her to make an equalizing payment she could not afford; awarding former husband the dependency exemption without conditioning it on his compliance with his child support obligations; and not alternating the dependency tax exemption between the spouses. It concluded that not only did the evidence fail to establish former wife’s ability to make the equalizing payment; the record indicated that she could not make the payments. Evidence must reflect justification for an equalizing payment and the ability of the obligor spouse to make the payment without substantially endangering his or her economic status. A final judgment awarding a dependency tax exemption must condition it on the obligor spouse being current with support obligations. The appellate court also agreed with her argument that the trial court erred in compelling her compliance with the equalizing payments and in awarding attorney’s fees and costs. Reversed and remanded for the trial court to reconsider the amount of the equalizing payment, to condition the tax exemption on former husband’s compliance with his child support obligations, and to reconsider alternating it.

<http://www.4dca.org/opinions/Mar%202016/03-23-16/4D15-250.op.pdf> (March 23, 2016)

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

Coleman v. Bland, \_\_ So. 3d \_\_, 2016 WL 830406 (Fla. 5th DCA 2016). **TRIAL COURT ERRED IN FINDING THAT MARITAL PORTION OF SPOUSE’S PENSION WAS *DE MINIMIS*.** Former husband retired from the Yonkers School Board of Education after 31 years. At the time of his retirement, former spouses had been married just shy of one year; he filed a dissolution petition approximately two years later. The appellate court affirmed the final judgment of dissolution with one exception. Concluding that some portion of former husband’s pension, “although small”, was earned during the marriage, the appellate court reversed and remanded for the trial court to determine what portion of the pension was marital. Coleman v. Bland, 73 So. 3d 795 (Fla. 5th DCA 2011). On remand, the trial court found that the marital portion was 3%, or \$88.50 per month; however, it reasoned that under the circumstances of the case it was not going to equitably distribute what it termed a “*de minimis* amount,” and awarded the pension solely to former husband. Former wife argued that an amount of just under \$90 per month might be *de minimis* to the trial court, but not to her. The appellate court agreed. It found that the trial court had erred in determining the marital portion was *de minimis*. Accordingly, it reversed and remanded for the trial court to reconsider disposition of the marital portion of the pension.

<http://www.5dca.org/Opinions/Opin2016/022916/5D14-3779.op.pdf> (March 4, 2016)

Jordan v. Jordan, \_\_ So. 3d \_\_, 2016 WL 830177 (Fla. 5th DCA 2016). **PETITION FOR CERTIORARI GRANTED; TRIAL COURT'S ORDER REQUIRING SPOUSE TO SUBMIT TO EXAMINATION DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW; WAS OVERBROAD.** Former husband sought certiorari review of an order requiring him to submit to a psychosexual examination. The trial court stated the evaluation was an "essential" component of its responsibility to oversee former husband's contact with the children. The appellate court granted the petition because the trial court's order departed from essential requirements of law. In the absence of a transcript, the appellate court was unable to determine whether sufficient evidence was presented to establish good cause for the examination or that former husband's mental condition was in controversy; however, it noted that the order failed to address either requirement. The appellate court also found the scope of the order overbroad. It granted former husband's petition for certiorari, quashed the order and remanded for further proceedings.

<http://www.5dca.org/Opinions/Opin2016/022916/5D15-3915.op.pdf> (March 4, 2016)

Nieditch v. Nieditch, \_\_ So. 3d \_\_, 2016 WL 1062848 (Fla. 5th DCA 2016). **APPELLATE COURT REVERSED DUE TO NUMEROUS ACCOUNTING AND MATHEMATICAL ERRORS.** Former husband raised multiple issues in his appeal of a final judgment dissolving a thirty-two year marriage. The appellate court reversed due to several accounting and mathematical errors including: charging former husband for loan payments against former wife's retirement account; including both the value of former husband's car and the amount owed on the car as former husband's assets; and ordering former husband to make an equalizing payment to former wife for the full amount of the differences in their net marital estate instead of half the amount. Noting that the distribution of marital assets would differ from the original final judgment after the above adjustments were made on remand, the appellate court instructed the trial court to ensure that any equalizing payment achieve equalization of the distribution.

<http://www.5dca.org/Opinions/Opin2016/031416/5D14-4317.op.pdf> (March 18, 2016)

Leslie v. Gray-Leslie, \_\_ So. 3d \_\_, 2016 WL 1062814 (Fla. 5th DCA 2016). **ENTRY OF DEFAULT FINAL JUDGMENT OF DISSOLUTION REVERSED; SPOUSE WHOSE PLEADINGS WERE STRUCK STILL DESERVED NOTICE AND OPPORTUNITY TO BE HEARD; GENERALLY, IT IS IMPROPER TO DETERMINE ISSUES REGARDING CARE AND CUSTODY OF CHILDREN BY DEFAULT.** Former husband appealed entry of a default final judgment of dissolution after the trial court struck his pleadings for failure to provide mandatory disclosure and for non-compliance with court orders. The default final judgment included provisions concerning the parenting plan, allocation of parental responsibility, time-sharing, child support, equitable distribution of marital assets and liabilities, and attorney's fees. The appellate court reversed because the final judgment was entered "notwithstanding" a lack of notice of trial and the trial court's failure to take evidence. The striking of former husband's pleadings did not deprive him of his right to notice and an opportunity be heard, nor did it obviate the need for former wife to provide evidence in support of her counter-petition. In addition, the appellate court noted it is generally improper to determine issues regarding care and custody of minor children in a dissolution action by entry of default because the children's best interests are the primary concern.

<http://www.5dca.org/Opinions/Opin2016/031416/5D15-239.op.pdf> (March 18, 2016)

Palmer v. Palmer, \_\_ So. 3d \_\_, 2016 WL (Fla. 5th DCA 2016). TRIAL JUDGES HAVE GREAT DEAL OF DISCRETION IN DISSOLUTION CASES; COURT ABUSED ITS DISCRETION BY NOT RESTRICTING CHILD WITH CANINE ALLERGIES FROM EXPOSURE TO DOGS. Former wife raised three issues in her appeal of a final judgment of dissolution; the appellate court affirmed on two and reversed as to the third. Former wife was the children's primary caregiver during the marriage; once they separated, the spouses began to disagree over child care issues. A point of contention was the spouses' response to the canine allergies suffered by one of the minor children. The appellate court noted that both spouses "demonstrated poor judgment and a lack of common sense." Recognizing the amount of discretion trial judges have in dissolution cases, the appellate court found no abuse of discretion in the trial court's reopening of the evidence or revising time-sharing; however, it found that the trial court abused its discretion by its decision not to restrict a minor child with canine allergies from exposure to dogs.

<http://www.5dca.org/Opinions/Opin2016/032116/5D15-2308.op.pdf> (March 24, 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***

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

Butler v. Cabassa, \_\_\_ So. 3d \_\_\_, 2016 WL 892652 (Fla. 4th DCA 2016). **ORDER DENYING MOTION TO VACATE FINAL JUDGMENT REVERSED.** The court issued an injunction for protection against domestic violence that did not provide for a change in timesharing with the minor child. Without notice to appellant or any pleadings to amend the judgment, the trial court then sua sponte entered an amended judgment that awarded one-hundred percent timesharing to appellee; the appellant appealed because the order was issued without notice or an opportunity for the appellant to be heard. At the hearing on appellant's motion to vacate the amended final judgment, the trial court stated that the amended judgment merely corrected a "clerical error." However, the transcript of the hearing leading up to the original judgment shows that the issue of custody was not argued or ruled upon at the hearing. The appellate court reversed because the trial court erred in summarily denying appellant's motion to vacate the amended final judgment.

<http://www.4dca.org/opinions/Mar%202016/03-09-16/4D15-2984.op.pdf> (March 9, 2016)

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

No new opinions for this reporting period.