

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE NOVEMBER 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

In re: Amendments to the Florida Supreme Court Approved Family Law Forms, ___ So. 3d ____, 2015 WL 7295134 (Fla. 2015). **FORMS AMENDED**. The Court previously amended the family law forms to reflect the implementation of e-service and e-filing. After considering the comments and input from the advisory workgroup, the Court further amended the forms by adding the following language to the instructions sections of the forms:

“If you elect to participate in electronic service, which means serving or receiving pleadings by electronic mail (e-mail), or through the Florida Courts E–Filing Portal, you must review Florida Rule of Judicial Administration 2.516. You may find this rule at www.flcourts.org through the link to the Rules of Judicial Administration provided under either Family Law Forms: Getting Started, or Rules of Court in the A–Z Topical Index.” The amended forms are available for immediate use. <http://www.floridasupremecourt.org/decisions/2015/sc15-44b.pdf> (November 19, 2015)

First District Court of Appeals

S.G. v. Florida Department of Children and Families, ___ So. 3d ____, 2015 WL 6660527 (Fla. 1st DCA 2015). **DUE PROCESS CONCESSION OF ERROR**. The mother failed to appear at an arraignment hearing and a default was entered. She appealed after she was ordered to comply with a case plan at the same hearing, since she wasn’t noticed that adjudication or disposition of the petition would occur at that time. The appellate court accepted the Department of Children and Families’ concession of error and reversed and remanded the case for further proceedings. https://edca.1dca.org/DCADocs/2015/3430/153430_1287_11032015_084449_i.pdf (November 2, 2015)

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Dependency Case Law

Florida Supreme Court

In re: Amendments to the Florida Supreme Court Approved Family Law Forms, ___ So. 3d ____, 2015 WL 7295134 (Fla. 2015). [FORMS AMENDED](#). The Court previously amended the family law forms to reflect the implementation of e-service and e-filing. After considering the comments and input from the advisory workgroup, the Court further amended the forms by adding the following language to the instructions sections of the forms:

“If you elect to participate in electronic service, which means serving or receiving pleadings by electronic mail (e-mail), or through the Florida Courts E–Filing Portal, you must review Florida Rule of Judicial Administration 2.516. You may find this rule at www.flcourts.org through the link to the Rules of Judicial Administration provided under either Family Law Forms: Getting Started, or Rules of Court in the A–Z Topical Index.” The amended forms are available for immediate use. <http://www.floridasupremecourt.org/decisions/2015/sc15-44b.pdf> (November 19, 2015)

No new opinions for this reporting period.

First District Court of Appeal

S.G. v. Florida Department of Children and Families, ___ So. 3d ____, 2015 WL 6660527 (Fla. 1st DCA 2015). [DUE PROCESS CONCESSION OF ERROR](#). The mother failed to appear at an arraignment hearing and a default was entered. She appealed after she was ordered to comply with a case plan at the same hearing, since she wasn’t noticed that adjudication or disposition of the petition would occur at that time. The appellate court accepted the Department of Children and Families’ concession of error and reversed and remanded the case for further proceedings.

https://edca.1dca.org/DCADocs/2015/3430/153430_1287_11032015_084449_i.pdf (November 2, 2015)

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

Florida Supreme Court

State of Florida v. Diaz de la Portilla, ___ So. 3d ___, 2015 WL 6749921 (Fla. 2015). WHEN FAILURE TO APPEAR RESULTS IN CRIMINAL CONTEMPT PROCEEDINGS, THE APPROPRIATE CHARGE IS INDIRECT CRIMINAL CONTEMPT; PROCEDURES UNDER RULE 3.980 MUST BE FOLLOWED; COURT RECEDES FROM ITS PRIOR HOLDING IN ARON II; WHETHER AN ACT LEADS TO DIRECT OR INDIRECT CRIMINAL CONTEMPT DEPENDS ON WHETHER IT WAS COMMITTED IN THE COURT'S ACTUAL PRESENCE. The 1st District Court of Appeal certified the following question to be of great importance: May a party who is ordered by a trial court to appear at a scheduled hearing and who fails to attend be held in direct criminal contempt under Florida Rule of Criminal Procedure 3.830, or should such conduct be addressed as indirect criminal contempt under Florida Rule of Criminal Procedure 3.840? The Supreme Court agreed with both parties that failure to appear pursuant to an order should be treated as indirect contempt under rule 3.840. Former husband was ordered to deliver one of two dogs owned by the former spouses into former wife's custody; when he failed to do so, she moved for contempt. The trial court issued an order directing former husband to appear at a hearing on the motion for contempt. When he failed to appear, he was held in civil contempt for failing to comply with the order to deliver the dog to former wife. The trial court ordered former husband to comply with the order or be committed to jail for 30 days. His continued failure to deliver the dog led former wife to file another motion for contempt. Former husband's counsel attended the hearing on the second motion for contempt; however, former husband did not. At this point, the trial court held former husband in civil contempt and then found him in direct criminal contempt. The State, which was joined as an indispensable party during the appeal of the criminal contempt order, recommended that failure to appear in court be treated as indirect rather than direct criminal contempt. Concluding that the evidence was insufficient to establish criminal contempt, the 1st DCA reversed the conviction, but certified the question. Citing its case of Pugliese v. Pugliese, 347 So. 2d 422, 425 (Fla. 1977), which also involved dissolution of marriage, the Supreme Court noted that whether an act leads to direct or indirect criminal contempt depends on whether it is committed in a court's "immediate presence." Direct criminal contempt requires that the act be committed in the court's actual presence; if the act is committed out of the court's presence, the procedures for indirect criminal contempt are used. The Supreme Court also noted that rule 3.830, which governs direct criminal contempt, provides for limited procedural protections; by contrast, rule 3.840, which governs indirect criminal contempt, requires additional procedural protections be afforded to the contemnor. It found that the procedures delineated by rule 3.830 governing direct criminal contempt, "are not suited for application to a failure to appear pursuant to a court order." That rule requires a trial court to inform a defendant of the basis for contempt and inquire whether he or she has any excuse. When an individual fails to appear, a court is not able to make the necessary inquiries or hear evidence of mitigating circumstances. Nor is a court able to take immediate action to preserve its order and authority if the "disruptive misconduct is a failure to appear." The Court acknowledged that its prior decisions caused "some confusion" as to whether failure to appear should be treated as direct or indirect criminal contempt. Receding from its decision in Aron v. Huttoe (Aron II), 265 So. 3d 699 (Fla. 1972), the Court held that that when

failure to appear results in criminal contempt proceedings, a charge of indirect criminal contempt is applicable and the procedures of rule 3.840 must be followed.

<http://www.floridasupremecourt.org/decisions/2015/sc14-1625.pdf> (November 5, 2015)

In re: Amendments to the Florida Supreme Court Approved Family Law Forms, __ So. 3d __, 2015 WL 7295134 (Fla. 2015). **FURTHER REVISIONS TO E-SERVICE INSTRUCTIONS ADOPTED.** The Court added the following sentences to the first paragraph under Important Information Regarding E-Service Election in the instructions to family law forms providing for e-filing and e-service: "If you elect to participate in electronic service, which means serving or receiving pleadings by electronic mail (e-mail), or through the Florida Courts E-Filing Portal, you **must** review Florida Rule of Judicial Administration 2.516. You may find this rule at www.flcourts.org through the link to the Rules of Judicial Administration provided under either Family Law Forms: Getting Started, or Rules of Court in the A-Z Topical Index." The sentences were proposed to the Court by its Advisory Workgroup on Family Law Forms in response to comments timely submitted after the Court's adoption of e-filing and e-service instructions in March 2015. The revised family law forms took effect on November 19, 2015.

<http://www.floridasupremecourt.org/decisions/2015/sc15-44b.pdf> (November 19, 2015)

First District Court of Appeal

Horton v. Horton, __ So. 3d __, 2015 WL 7135729 (Fla. 1st DCA 2015). **TRIAL COURT CORRECTLY RULED SPOUSE WAIVED HIS RIGHT TO CHALLENGE PERSONAL JURISDICTION; DETERMINATION OF PERSONAL JURISDICTION IS REVIEWED DE NOVO; A TRIAL COURT MUST MAKE FINDINGS AS TO PROPER AMOUNT BEFORE AWARDING ATTORNEY'S FEES; FEE AWARD AFFIRMED DUE TO SPOUSE'S FAILURE TO CHALLENGE LACK OF FINDINGS THROUGH REHEARING OR OTHER MEANS.** Former husband appealed a contempt order which also ordered him to pay former wife's attorney's fees. The appellate court found that it was without jurisdiction to address his arguments regarding the trial court's ruling that it had subject matter jurisdiction over former wife's petition for a writ of ne exeat and the admissibility of certain business records. In its 2005 consent final judgment of dissolution, the trial court retained jurisdiction for enforcement and modification of the judgment. In October 2014, former wife filed a verified petition for a writ of ne exeat, stating that she believed former husband was going to convey his assets and permanently remove himself and his property from the United States. Before withdrawing as counsel, former husband's attorney accepted service of the petition. In its contempt order, the trial court found that former husband had waived any objection to personal jurisdiction based on his former attorney's acceptance of service. The appellate court agreed, noting that even if former husband had not waived his right to challenge personal jurisdiction, he would not have been entitled to relief on the merits. A determination of personal jurisdiction is reviewed de novo. Although former husband argued and former wife conceded that the trial court erred in awarding her fees without making the requisite finding as to the proper amount, the appellate court affirmed in absence of any indication that former husband challenged the lack of findings, such as in a motion for rehearing.

https://edca.1dca.org/DCADocs/2015/1825/151825_DC05_11162015_104335_i.pdf

(November 16, 2015)

Brown v. Brown, __So. 3d__, 2015 WL 7424133 (Fla. 1st DCA 2015). MODIFICATION OF PARENTING PLAN REQUIRES SUBSTANTIAL, MATERIAL, AND UNANTICIPATED CHANGE IN CIRCUMSTANCES AND MUST BE IN CHILD'S BEST INTEREST; TRIAL COURT'S DECISION TO EXCLUDE REPORT OF CHILD'S FORMER PSYCHOTHERAPIST NOT ARBITRARY OR UNREASONABLE UNDER THE CIRCUMSTANCES; INCOME USED FOR BUSINESS PURPOSES NOT CONSIDERED INCOME FOR PURPOSES OF CHAPTER 61; TRIAL COURT'S CALCULATION METHODOLOGY FELL SHORT OF STATUTE. Former husband appealed an order denying his supplemental petition to modify time-sharing, parental responsibility, and child support. The appellate court affirmed in part and reversed in part. It found that the trial court had not abused its discretion in concluding former husband had failed to demonstrate a substantial, material, and unanticipated change of circumstances to warrant modification of the existing parenting plan, but had erred in modifying four components of the parenting plan in absence of changed circumstances. The appellate court also reversed and remanded for reconsideration of former husband's petition to modify child support because the income calculations were not supported by the record. The trial court subtracted half of all of former husband's claimed business expenses from his gross income without specifically considering whether or not they were business related. Although former husband's bookkeeper testified she considered some of the expenses half business and half personal because he lived in and practiced law from the same location, both he and the bookkeeper testified that other expenses were straight business expenses. Because income used for business purposes is not considered income for purposes of chapter 61, F.S., the appellate court found that the trial court's "calculation methodology" in which it cut in half all business expenses—whether wholly business or mixed business and personal—"fell short under the statute." In addition, the trial court erred in establishing former wife's income at a level lower than that supported by the evidence. The appellate court found that the trial court had not abused its discretion by excluding a two-and-one-half year old report filed by the minor child's former psychotherapist. The court found that the patient-psychotherapist privilege had not been waived and that the report lacked relevance after the minor switched psychotherapists and grew older. It was unable to conclude, "under those circumstances," that the trial court's decision to exclude the report was either arbitrary or unreasonable. Reversed and remanded to strike the four modifications to the parenting plan and reconsider the request to modify child support. https://edca.1dca.org/DCADocs/2014/4317/144317_DC08_11232015_100751_i.pdf (November 23, 2015)

Second District Court of Appeal

Gurdian v. Gurdian, __So. 3d__, 2015 WL 7074655 (Fla. 2d DCA 2015). RETROACTIVITY IS RULE RATHER THAN EXCEPTION GUIDING TRIAL COURT'S DISCRETION IF MODIFICATION OF ALIMONY OR CHILD SUPPORT IS GRANTED; HOWEVER, CIRCUMSTANCES OF THE CASE MAY DICTATE OTHERWISE; APPELLATE COURT REVIEWS FOR ABUSE OF DISCRETION. Former wife appealed the order that granted former husband's supplemental petition to modify alimony and child support and denied her request to hold former husband in contempt for failing to pay his support obligations. She also argued that the trial court erred in modifying his support obligations retroactive to the date of filing of the petition for modification and awarding him a nearly \$60,000 judgment against her based upon his overpayment of past support. Noting the general rule that retroactivity is the rule rather than the exception guiding the trial court's discretion if

modification of alimony or child support is granted, the appellate court cited the “unusual circumstances” of this case and agreed with former wife. It concluded that the trial court’s retroactive application of the modification of alimony and child support based on former husband’s income at the time of the final hearing resulted in his receiving a credit for overpayment during a period of time in which his income was sufficient to meet his obligations. The appellate court also found that by retroactively applying the modification, the trial court imposed a “great hardship” on former wife and their children who were not receiving any support; this amounted to an abuse of discretion by the trial court. Accordingly, the appellate court reversed the supplemental final judgment to the extent that it modified former husband’s support obligations retroactively and awarded him a money judgment; it affirmed the remainder of the judgment.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/November/November%2013,%202015/2D14-4077.pdf (November 13, 2015)

Morris-Piard v. Piard, __ So. 3d __, 2015 WL 7280167 (Fla. 2d DCA 2015). **TRIAL COURT ASSESSED WRONG PERCENTAGE IN PREJUDGMENT INTEREST; REMANDED FOR CORRECTION.** Former wife appealed orders granting her petition to modify her child support obligation and awarding the amount of her child support arrearage to former husband. The appellate court agreed with former wife that the trial court erred in assessing a 6% instead of 4.75% prejudgment interest rate on payments she owed between October and December 2011, as the interest rate was decreased effective October 1st. Accordingly, it reversed and remanded the trial court’s calculation of the prejudgment interest award for correction and affirmed the remainder of the judgment.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/November/November%2013,%202015/2D14-4077.pdf (November 18, 2015)

Third District Court of Appeal

Cozzo v. Cozzo, __ So. 3d __, 2015 WL 7709435 (Fla. 3d DCA 2015). **A PARTY SEEKING FEES MUST PROVE: ONE, THE NATURE AND EXTENT OF SERVICES PERFORMED; AND TWO, EXPERT TESTIMONY REGARDING THE REASONABLENESS OF THE FEES. DIRECT TESTIMONY FROM THE ATTORNEY WHO PERFORMED THE SERVICES IS NOT REQUIRED.** On motion for rehearing, the appellate court withdrew its earlier opinion and substituted the following. Former wife appealed an order denying her request for attorney’s fees in post-dissolution proceedings. Concluding that the trial court erred in granting an involuntary dismissal mid-hearing of the motion for attorney’s fees, the appellate court reversed and remanded. At the initial hearing, former wife presented a fee expert who testified, after reviewing the services performed by former wife’s counsel, that the fees incurred were reasonable. At the second hearing, former wife’s counsel presented the testimony of her firm’s records custodian to introduce records detailing the work performed. Former husband argued that the evidence presented was insufficient because the attorney who performed the services in question had to testify directly. The trial court agreed. The appellate court reiterated that a party seeking fees must provide a two-part proof: one, the nature and extent of the services performed; and two, expert testimony regarding the reasonableness of the fees. It held that “no court has mandated direct testimony from the attorney who performed the

services,” so long as a party satisfies these two requirements. Accordingly, it reversed and remanded the order denying former wife’s motion for fees.

<http://www.3dca.flcourts.org/Opinions/3D15-0133.rh.pdf> (November 25, 2015)

Kidwell v. Kidwell, __So. 3d__, 2015 WL 7686949 (Fla. 3d DCA 2015). WRIT OF PROHIBITION IS AN EXTRAORDINARY MEASURE WHOSE PURPOSE IS TO PREVENT SOMETHING FROM BEING DONE RATHER THAN TO COMPEL THE UNDOING OF SOMETHING; PRO SE LITIGANTS ARE OFTEN GIVEN LENIENCY ON TECHNICALITIES, BUT THEY ARE STILL SUBJECT TO RULES OF PROCEDURE. Former husband sought a writ of prohibition, challenging a final judgment of dissolution which adjudicated issues of child support and parental responsibility, on the basis that the trial court lacked jurisdiction over the spouses’ minor child pursuant to the UCCJEA. In denying the petition, the appellate court noted that issuance of a writ of prohibition is an extraordinary measure, whose purpose is to prevent something from being done rather to compel the undoing of something already done. Because the final judgment on appeal was entered before former husband filed his petition for a writ, prohibition was not an “available avenue” for a remedy, regardless of whether the petition had merit. The appellate court found itself without jurisdiction to treat the petition as an appeal under Florida Rule of Appellate Procedure 9.040(c) because it was untimely filed. The final judgment was entered June 15th and former husband filed his petition for a writ on September 9th. Recognizing that pro se litigants are often granted leniency with regard to “certain procedural technicalities,” the appellate court held that they are still subject to the rules of procedure.

<http://www.3dca.flcourts.org/Opinions/3D15-2065.pdf> (November 25, 2015)

Fourth District Court of Appeal

George v. Lull, __So. 3d__, 2015 WL 7209628 (Fla. 4th DCA 2015). A SUBSTANTIAL CHANGE IN CIRCUMSTANCES NOT CONTEMPLATED AT THE TIME OF THE ORIGINAL TIME-SHARING IS NECESSARY TO JUSTIFY MODIFICATION; PETITIONING PARTY HAS THE EXTRAORDINARY BURDEN OF PROVING THE SUBSTANTIAL CHANGE; COMPETENT, SUBSTANTIAL EVIDENCE OF CHANGE IS REQUIRED; THERE MAY BE INSTANCES WHERE A CHANGE IN A WORK SCHEDULE CAN CONSTITUTE A SUBSTANTIAL CHANGE IN CIRCUMSTANCES JUSTIFYING MODIFICATION OF TIME-SHARING; HOWEVER, EVIDENCE IN THIS CASE FAILED TO MEET EXTRAORDINARY BURDEN. The appellate court agreed with former wife that the trial court erred in finding a substantial change in circumstances justifying modification of the spouses’ original mediated settlement agreement. Concluding there was no competent, material evidence of a substantial change in circumstances, the appellate court found that the trial court had abused its discretion in modifying the time-sharing. Former wife petitioned to relocate with the minor child five years following dissolution. Former husband countered with a petition to modify the time-sharing agreement, alleging a substantial change in circumstances since the final judgment. The trial court found that a change in former husband’s work schedule which allowed him to work from home more often coupled with the stress the child was experiencing constituted a substantial change in circumstances justifying modification. The appellate court held that while there “may be instances where a change in work schedule can constitute a substantial change in circumstances to justify a modification of a time-sharing plan,” this was not one. It reiterated that a substantial change in circumstances not contemplated at the time of the original time-sharing is necessary to justify

modification. The petitioning party has the “extraordinary burden” of proving the substantial change; here, former husband did not. The trial court must find by competent evidence that a substantial change in circumstances has occurred since the original agreement. There was no evidence showing that shifting between the spouses’ residences was having a negative effect on the child; thus, the trial court’s finding of stress was not based on competent evidence, but was conclusory. Finding that the trial court abused its discretion in modifying time-sharing, the appellate court reversed and remanded.

<http://www.4dca.org/opinions/Nov.%202015/11-12-15/4D14-2295.op.pdf> (November 12, 2015)

Lake v. Lake, __So. 3d__, 2015 WL 7008133 (Fla. 4th DCA 2015). **SPOUSE FAILED TO PRESERVE ERRORS IN APPEAL OF NON-FINAL ORDER; AFFIRMED WITHOUT PREJUDICE TO ALLOW SPOUSE’S CHALLENGE TO FEE AWARD AT TIME OF DISSOLUTION OF MARRIAGE FINAL JUDGMENT.** Former husband appealed a non-final order awarding temporary support and fees and costs to former wife during dissolution proceedings; however, he failed to preserve any errors on appeal. Accordingly, the appellate court affirmed, but without prejudice to former husband to challenge fees at the time of the final judgment.

<http://www.4dca.org/opinions/Nov.%202015/11-12-15/4D15-1317.op.pdf> (November 12, 2015)

Addie v. Coale, __So. 3d__, 2015 7566689 (Fla. 4th DCA 2015). **TRIAL COURT MUST CONSIDER ALL TEN FACTORS IN SECTION 61.08(2), F.S.; ALIMONY IS AWARDED BASED ON ONE SPOUSE’S NEED AND THE OTHER’S ABILITY TO PAY—BOTH ARE DYNAMIC ISSUES LIKELY TO CHANGE OVER TIME; RELYING ON A STALE RECORD AND INCOMPLETE JUDGMENT IS ERROR.** The appellate court agreed with former husband that the trial court erred in its calculation of the alimony award by not considering all ten factors enumerated in s. 61.08(2), F.S. (2011), and that it departed from the essential requirements of law by appearing to rely on unsworn statements made during a hearing. An earlier appeal resulted in reversal and remand for reconsideration of former wife’s income, recalculation of the child support, and denial of alimony to former husband. Here, at issue were the alimony and child support awards as determined by the successor judge on remand. Former wife argued that she no longer had the ability to pay alimony and questioned former husband’s need for it. The successor judge opted not to take additional evidence; however, at the same time, recognized the possibility that the spouses’ financial positions had changed in the three years since the dissolution. Commenting it would have awarded nominal alimony had it been making an award based on the spouses’ current financial conditions, the trial court read the mandate to make an alimony award as of the date of the final judgment and to calculate child support based upon the findings at the time of the final judgment. The successor judge did not reconsider the ten statutory factors because the previous judge had already done so; however, the appellate court concluded that reliance on a stale record and an incomplete prior judgement was error. The appellate court noted it appeared that the successor judge had considered unsworn statements from the spouses despite statements to the contrary and had incorrectly interpreted the mandate. Reiterating that alimony is awarded based on one spouse’s need and the other’s ability to pay-- both of which are “dynamic issues” likely to change over time -- the appellate court reversed and remanded for an evidentiary hearing on *all* relevant

factors in s. 61.08(2). [Italics in original]. It instructed the trial court to recalculate child support once it had ruled on alimony.

<http://www.4dca.org/opinions/Nov.%202015/11-25-15/4D14-1065.op.pdf> (November 25, 2015)

Fifth District Court of Appeal

Tluzek v. Tluzek, __So. 3d__, 2015 WL 7017418 (Fla. 5th DCA 2015). TRIAL COURT ERRED IN OFFSETTING THE MONTHLY ADOPTION SUBSIDY AGAINST SPOUSE'S CHILD SUPPORT OBLIGATION; CORRECT METHOD IS TO DETERMINE CHILD SUPPORT OBLIGATION AND THEN ALLOCATE THE SUBSIDY BETWEEN THE SPOUSES PROPORTIONATE TO TIME-SHARING. At issue was whether an adoption subsidy paid by the State of Florida to the parents of special-needs children may be credited against a spouse's child support obligation. The appellate court held that it cannot. In its final judgment of dissolution, the trial court found that it was in the children's best interests for the spouses to have shared parental responsibility and equal time-sharing. It calculated former husband's child support to be \$160.44 per month, ordered that the monthly adoption subsidy of \$590 to be paid directly to former wife, but then ordered former wife to remit \$429.56 to former husband each month from the subsidy. Former wife moved for rehearing arguing that the trial court erred in the treatment of the subsidy. On rehearing, the trial court amended its final judgment to provide that the spouses share the subsidy and further provided that neither spouse owed child support to the other—effectively eliminating former husband's child support obligation. The appellate court held that the "clear purpose" of the adoption subsidy statute is to encourage individuals to adopt special-needs children by assisting parents in providing the extra care such children require. It found that here the trial court "essentially negated" the legislative intent of the supplemental benefit of the subsidy by terminating former husband's child support obligation and as a result leaving the children "financially shortchanged" while with former wife. The correct method is to first determine the child support obligation and then allocate the subsidy between the spouses consistent with their percentage of time-sharing. Accordingly, the appellate court affirmed the equal distribution of the subsidy between the spouses, reversed the termination of the previously ordered child support, and remanded for reinstatement of the previous support obligation.

<http://www.5dca.org/Opinions/Opin2015/110915/5D15-595.op.pdf> (November 13, 2015)

Domestic Violence Case Law

Florida Supreme Court

In re: Amendments to the Florida Supreme Court Approved Family Law Forms, ___ So. 3d ____, 2015 WL 7295134 (Fla. 2015). **FORMS AMENDED**. The Court previously amended the family law forms to reflect the implementation of e-service and e-filing. After considering the comments and input from the advisory workgroup, the Court further amended the forms by adding the following language to the instructions sections of the forms: "If you elect to participate in electronic service, which means serving or receiving pleadings by electronic mail (e-mail), or through the Florida Courts E-Filing Portal, you must review Florida Rule of Judicial Administration 2.516. You may find this rule at www.flcourts.org through the link to the Rules of Judicial Administration provided under either Family Law Forms: Getting Started, or Rules of Court in the A-Z Topical Index." The amended forms are available for immediate use.

<http://www.floridasupremecourt.org/decisions/2015/sc15-44b.pdf> (November 19, 2015)

First District Court of Appeal

Mantell v. Rocke, ___ So. 3d ____, 2015 WL 7444217 (Fla. 1st DCA 2015). **DOMESTIC VIOLENCE INJUNCTION REVERSED**. The respondent appealed after the trial court entered a final judgment of injunction for protection against domestic violence against him. Since the petitioner did not introduce any evidence or testimony by the petitioner, the appellate court reversed.

https://edca.1dca.org/DCADocs/2015/1403/151403_DC13_11242015_105034_i.pdf

(November 24, 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

Neptune v. Lanoue, ___ So. 3d ____, 2015 WL 6735348 (Fla. 4th DCA 2015). **STALKING INJUNCTION REVERSED IN PART**. The respondent claimed that the petitioner, a police officer, cut him off in traffic, so he followed the police officer into the neighborhood where they both lived and complained to the officer about his driving. The officer then gave the respondent a ticket for driving without a seatbelt, which the respondent denied. The respondent then sent several letters to the officer's boss, other public officials, and to the officer's home address, complaining about his mistreatment; he also posted the officer's picture on the internet with a complaint. The officer petitioned for an injunction against stalking, which was issued and prohibited the respondent from coming within 500 feet of the officer's residence, from posting anything on the internet regarding the officer, and from defacing or destroying the officer's personal property. While the appellate court upheld the injunction, it also stated that the injunction was overly broad since the first amendment protects the respondent's right to criticize public officials, and struck the provision which interfered with the respondent's freedom of speech.

<http://www.4dca.org/opinions/Nov.%202015/11-4-15/4D14-3133%20op.pdf> (November 4, 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.