

# OSCA/OCI'S FAMILY COURT CASE LAW UPDATE OCTOBER 2015

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## **Baker Act/Marchman Act Case Law**

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

## Delinquency Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

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

State v. K.S., \_\_ So. 3d \_\_, 2015 WL 5752615 (Fla. 1st DCA 2015). **THE STATE MAY NOT APPEAL A PLACEMENT DECISION EVEN IF IT IS MEMORIALIZED WITHIN AN ORDER FINDING A CHILD INCOMPETENT.** The juvenile was adjudged incompetent to proceed and was committed to the Department of Children and Families. On appeal, the State contended that the trial court erred in failing to order secure placement for the juvenile. The First District Court of Appeal held that the trial court's decision not to order secure placement was not an appealable issue for the State within an order finding a child incompetent. The First District reasoned that the order at issue was non-final. Appellate court jurisdiction to hear the State's appeal from a non-final order requires a court rule. In juvenile delinquency proceedings, the State may appeal an order finding a child incompetent. The statute governing incompetency determinations in juvenile proceedings speak in terms of two separate decisions---incompetency first, then placement. The rule governing state appeals in juvenile delinquency cases reinforces the separateness of the decisions. Read together, only the incompetency determination is subject to non-final appeal by the State. Therefore, the State may not appeal a placement decision even if, as in this case, it was memorialized within the order finding a child incompetent as opposed to a separate order. Accordingly, the State's appeal was dismissed for lack of jurisdiction. See Florida Rule of Appellate Procedure 9.145, s. 985.19, F.S. (2014), and Florida Rule of Juvenile Procedure 8.095. [https://edca.1dca.org/DCADocs/2015/1222/151222\\_DA08\\_10022015\\_104116\\_i.pdf](https://edca.1dca.org/DCADocs/2015/1222/151222_DA08_10022015_104116_i.pdf) (October 2, 2015)

D.J.E. v. State, \_\_ So. 3d \_\_, 2015 WL 6143113 (Fla. 1st DCA 2015). **EVIDENCE WAS INSUFFICIENT TO SUPPORT FINDING OF "INCIPIENT CRIMINAL BEHAVIOR" SUPPORTING ADJUDICATION FOR LOITERING AND PROWLING.** The juvenile argued that the trial court should have granted his motion for judgment of dismissal for: (1) resisting an officer without violence, and (2) loitering and prowling. The First District Court of Appeals affirmed the resisting an officer without violence charge. However, the First District reversed the loitering and prowling charge, and remanded for a judgment of dismissal because the State failed to prove that the juvenile engaged in "incipient criminal behavior," which is the first element of the offense. Specifically, the First District found that congregating in a high-crime area at 3:30 in the afternoon and then dispersing at the sight of police is "vaguely suspicious" conduct, as opposed to the required "aberrant and suspicious criminal conduct." [https://edca.1dca.org/DCADocs/2015/1659/151659\\_DC08\\_10202015\\_101642\\_i.pdf](https://edca.1dca.org/DCADocs/2015/1659/151659_DC08_10202015_101642_i.pdf) (October 20, 2015)

A.L.M. v. State, \_\_ So. 3d \_\_, 2015 WL 6619975 (Fla. 1st DCA 2015). **A RESTRICTIVENESS LEVEL RECOMMENDATION FROM THE DEPARTMENT OF JUVENILE JUSTICE IS NOT REQUIRED WHERE THE TRIAL COURT IMPOSES A STAYED RESIDENTIAL COMMITMENT AFTER THE JUVENILE VIOLATED PROBATION.** The juvenile argued that the trial court reversibly erred when it ordered

a commitment placement without a restrictiveness level recommendation from the Department of Juvenile Justice (DJJ). The First District Court of Appeal found that a restrictiveness level recommendation by the DJJ is not required under these circumstances. Here, the juvenile agreed to a non-secure residential commitment at the time he pled guilty to the original charge (burglary), and commitment was stayed while the juvenile was on probation. The trial court imposed the previously-stayed residential commitment after the juvenile violated probation. Accordingly, the First District affirmed the trial court's order.  
[https://edca.1dca.org/DCADocs/2015/1944/151944\\_DC05\\_10302015\\_072642\\_i.pdf](https://edca.1dca.org/DCADocs/2015/1944/151944_DC05_10302015_072642_i.pdf) (October 30, 2015)

A.L.M. v. State, \_\_\_ So. 3d \_\_\_, 2015 WL 6613330 (Fla. 1st DCA 2015). **A RESTRICTIVENESS LEVEL RECOMMENDATION FROM THE DEPARTMENT OF JUVENILE JUSTICE MUST BE OBTAINED BEFORE THE COURT DECIDES ON A COMMITMENT RESTRICTIVENESS LEVEL.** The juvenile argued that the trial court reversibly erred when it decided on a commitment restrictiveness level without first obtaining a recommendation from the Department of Juvenile Justice (DJJ) following his guilty plea to breach of the peace. Section 985.433(7)(a), F.S. (2014), requires a restrictiveness level recommendation by the DJJ if the court decides that a child should be adjudicated and committed to DJJ custody. In B.K.A. v. State, 122 So. 3d 928 (Fla. 1st DCA 2013), the First District Court of Appeal held that where, as in this case, the DJJ's initial predisposition report recommends probation in lieu of commitment, but the trial court determines adjudication and commitment are justified, then the court must obtain a supplemental recommendation from the DJJ on the appropriate restrictiveness level if the initial report does not address commitment placement alternatives. Accordingly, the First District affirmed the disposition order as to the adjudication of delinquency, but reversed the non-secure residential commitment placement and remanded for further proceedings consistent with B.K.A. and s. 985.433(7)(a).  
[https://edca.1dca.org/DCADocs/2015/1948/151948\\_DC08\\_10302015\\_073030\\_i.pdf](https://edca.1dca.org/DCADocs/2015/1948/151948_DC08_10302015_073030_i.pdf) (October 30, 2015)

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

J.J. v. State, \_\_\_ So. 3d \_\_\_, 2015 WL 6160805 (Fla. 2d DCA 2015). **UNDER THE STATUTORY DEFINITION, A JUVENILE ASSESSMENT CENTER IS NOT A "COUNTY DETENTION FACILITY."** The juvenile appealed an order withholding adjudication of delinquency based on two offenses: (1) delinquent in possession of a firearm, and (2) introduction of a firearm into a detention facility. The juvenile also appealed the disposition order to the extent that it imposed a \$100 cost of prosecution. The Second District Court of Appeal did not address the argument concerning delinquent possession of a firearm. Concerning introduction of a firearm into a detention facility, the Second District concluded that a Juvenile Assessment Center (JAC) is not a facility used for persons charged with or convicted of either a felony or misdemeanor within meaning of the statute governing the offense. The Second District noted that under a liberal or practical construction perhaps the statute could be expanded to include a JAC. Concerning the \$100 cost of prosecution, the State conceded that the juvenile was not a "convicted person" in a "criminal case" within the meaning of the statute authorizing imposition of the \$100 cost of prosecution. Accordingly, the Second District affirmed the withholding of adjudication as to the offense of delinquent in possession of a firearm; reversed the withholding of adjudication for introduction

of a firearm into a detention facility; and reversed the disposition order, requiring the trial court to file a new disposition order without an improper cost of prosecution.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2021,%202015/2D13-2975.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2021,%202015/2D13-2975.pdf) (October 21, 2015)

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

No new opinions for this reporting period.

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

State v. E.S., \_\_ So. 3d \_\_, 2015 WL 5836046 (Fla. 4th DCA 2015). [STATE'S PETITION FOR DELINQUENCY REINSTATED](#). The State appealed the final order dismissing its petition for delinquency. The juvenile conceded that reversal was warranted under State v. J.C., 141 So. 3d 756 (Fla. 4th DCA 2014)(Trial court impermissibly relied on s. 985.0301(6), F.S., to terminate its jurisdiction before the case ever reached adjudication on the merits.), and State v. W.D., 112 So. 3d 702 (Fla. 4th DCA 2013)(Section 985.0301(6), F.S., allows the trial court to end its jurisdiction over a child only after the initial adjudicatory hearing.) Accordingly, the Fourth District Court of Appeal reversed and remanded for reinstatement of the petition of delinquency.

<http://www.4dca.org/opinions/Oct.%202015/10-7-15/4D14-2559.op.pdf> (October 7, 2015)

State v. A.M., \_\_ So. 3d \_\_, 2015 WL 5836050 (Fla. 4th DCA 2015). [STATE'S APPEAL DISMISSED BECAUSE THE JUVENILE ATTAINED THE AGE OF 19](#). The trial court improperly dismissed this case prior to an adjudicatory hearing. See State v. J.C., 141 So. 3d 756 (Fla. 4th DCA 2014), and State v. W.D., 112 So. 3d 702 (Fla. 4th DCA 2013). However, the Fourth District Court of Appeal dismissed the State's appeal because the juvenile had attained the age of 19.

<http://www.4dca.org/opinions/Oct.%202015/10-7-15/4D14-2561.op.pdf> (October 7, 2015)

State v. T.L., \_\_ So. 3d \_\_, 2015 WL 5836055 (Fla. 4th DCA 2015). [STATE'S APPEAL DISMISSED BECAUSE THE JUVENILE ATTAINED THE AGE OF 19](#). The trial court improperly dismissed this case prior to an adjudicatory hearing. See State v. J.C., 141 So. 3d 756 (Fla. 4th DCA 2014), and State v. W.D., 112 So. 3d 702 (Fla. 4th DCA 2013). However, the Fourth District Court of Appeal dismissed the State's appeal because the juvenile had attained the age of 19.

<http://www.4dca.org/opinions/Oct.%202015/10-7-15/4D14-2563.op.pdf> (October 7, 2015)

State v. K.M., \_\_ So. 3d \_\_, 2015 WL 5836059 (Fla. 4th DCA 2015). [STATE'S PETITION FOR DELINQUENCY REINSTATED](#). The trial court dismissed the State's delinquency petition prior to an adjudicatory hearing. The Fourth District Court of Appeal reversed and remanded for further proceedings. See State v. J.C., 141 So. 3d 756 (Fla. 4th DCA 2014), and State v. W.D., 112 So. 3d 702 (Fla. 4th DCA 2013).

<http://www.4dca.org/opinions/Oct.%202015/10-7-15/4D14-2644.op.pdf> (October 7, 2015)

M.D.M. v. State, \_\_ So. 3d \_\_, 2015 WL 6161138 (Fla. 4th DCA 2015). [JUVENILE COULD NOT BE CONVICTED OF DIRECT CRIMINAL CONTEMPT IN DELINQUENCY PROCEEDING BECAUSE JUVENILE WAS NOT REPRESENTED BY COUNSEL AT HIS DIRECT CRIMINAL CONTEMPT HEARING, NOR WAS HE ADVISED OF HIS RIGHT TO COUNSEL](#). The juvenile pled guilty to two charges during his

arraignment hearing. He then got into a verbal altercation with a bailiff. The court recessed. When the court reconvened, the judge asked the juvenile if there was any reason why he should not be held in direct criminal contempt. The juvenile did not respond. Then another verbal confrontation with the bailiff occurred. The court recessed again. When the court reconvened, the judge found the juvenile guilty of direct criminal contempt and sentenced him to five days in the Department of Juvenile Justice. The Fourth District Court of Appeal found that the phrase “all court proceedings” as it is used in s. 985.033(1), F.S. (2014), is broad and necessarily includes contempt proceedings initiated pursuant to Florida Rule of Juvenile Procedure 8.150. Further, contrary to the State’s argument, not only are Florida courts split on whether there is a right to counsel during direct criminal contempt proceedings involving adults, but the cited adult cases are not subject to the broad mandate of s. 985.033(1), F.S., for juvenile cases. The Fourth District also noted that the contempt proceeding itself was deficient for failure to comply with Rule 8.150(a), which states that prior to any adjudication of guilt for direct contempt the court must inform the accused of the accusation and inquire as to whether there is any cause to show why he or she should not be adjudged guilty of contempt by the court and sentenced therefor. The Fourth District concluded that the trial judge’s specific contempt finding did not cure the initial failure to inform the juvenile of the nature of the charges. Accordingly, the Fourth District reversed the order finding the juvenile in contempt and remanded to the trial court for further proceedings, if any, pursuant to Rule 8.150.

<http://www.4dca.org/opinions/Oct.%202015/10-21-15/4D14-2022.op.pdf> (October 21, 2015)

State v. H.C., \_\_ So. 3d \_\_, 2015 WL 6161143 (Fla. 4th DCA 2015). [STATE’S PETITION FOR DELINQUENCY REINSTATED](#). The State appealed the final order dismissing its petition for delinquency. The juvenile conceded that reversal was warranted under State v. J.C., 141 So. 3d 756 (Fla. 4th DCA 2014)(Trial court impermissibly relied on s. 985.0301(6), F.S., to terminate its jurisdiction before the case ever reached adjudication on the merits.), and State v. W.D., 112 So. 3d 702 (Fla. 4th DCA 2013)(Section 985.0301(6), F.S., allows the trial court to end its jurisdiction over a child only after the initial adjudicatory hearing.) Accordingly, the Fourth District Court of Appeal reversed and remanded for reinstatement of the petition of delinquency.

<http://www.4dca.org/opinions/Oct.%202015/10-21-15/4D14-2643.op.pdf> (October 21, 2015)

D.R. v. State, \_\_ So. 3d \_\_, 2015 WL 6161239 (Fla. 4th DCA 2015). [FINDINGS EXPLAINING THE TRIAL COURT’S REASONS FOR DEPARTURE FROM THE RECOMMENDATION OF THE DEPARTMENT OF JUVENILE JUSTICE \(DJJ\) ARE NOT REQUIRED FOR THE COURT’S INITIAL DECISION OF WHETHER TO COMMIT A JUVENILE, EVEN WHERE THE DJJ RECOMMENDS PROBATION](#). After the juvenile was found guilty, the trial court requested a predisposition report from the Department of Juvenile Justice (DJJ), and specifically asked for a restrictiveness level recommendation if the court chose to commit the juvenile. The DJJ recommended probation, but also included a restrictiveness level recommendation. Once the court chose to commit the juvenile, it articulated its findings in support of commitment. It then followed the DJJ’s recommended restrictiveness level, which, the Fourth District Court of Appeal found, eliminated the need to engage in any further legal analysis (or findings explaining the trial court’s reasons for departure). The Fourth District noted that probation is not a restrictiveness level. Accordingly, the Fourth District, affirmed the trial court’s order.

<http://www.4dca.org/opinions/Oct.%202015/10-21-15/4D14-3254.op.pdf> (October 21, 2015)

***Fifth District Court of Appeal***

C.P.C. v. State, \_\_ So. 3d \_\_, 2015 WL 6554452 (Fla. 5th DCA 2015). **THE JUVENILE'S FINGERPRINTS WERE FOUND IN AN AREA ACCESSIBLE TO THE GENERAL PUBLIC, AND NO EVIDENCE ESTABLISHED THAT THE PRINTS WERE MADE AT THE TIME OF THE CRIME.** At trial, the juvenile was adjudicated delinquent for burglary of an unoccupied dwelling and grand theft. Evidence consisted solely of the juvenile's fingerprints found on the bottom of the outside window pane days after the burglary occurred. The Fifth District Court of Appeal reversed, reasoning that the juvenile was entitled to a judgment of dismissal because the fingerprints were found in an area accessible to the general public and no evidence established that the prints were made at the time of the crime. In order to support a conviction based on circumstantial evidence, the State must provide evidence that is consistent with guilt and inconsistent with any reasonable hypothesis of innocence. Thus, a fingerprint left in a location accessible by the public, without more, is insufficient to establish the identity of the culprit. Here, the juvenile had known the plaintiff for years; had lived in the same apartment complex as the plaintiff; and had been in the vicinity of the plaintiff's window, for example. Additionally, while the fingerprints were pulled from the bottom panel of the window, it was uncertain where they were found on the bottom panel. Hence, the evidence presented neither precludes that the juvenile's fingerprints may have been placed on the window before the crime took place nor indicates that they were taken from a place where he might have placed his hands in order to open the window. Therefore, the fingerprints could be consistent with both the juvenile placing his hands on the window to gain access to the apartment and the juvenile leaning against the window, as he claimed. Accordingly, the Fifth District reversed.

<http://www.5dca.org/Opinions/Opin2015/102615/5D14-4442.op.pdf> (October 30, 2015)

## Dependency Case Law

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

No new opinions for this reporting period.

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

B.R. v. Department of Children and Families, 175 So. 3d 388, 40 Fla.L.Weekly D2299, 2015 WL 5920170 (Fla. 1st DCA 2015). **APPEAL DISMISSED**. The First District Court of Appeal dismissed a father's appeal for lack of jurisdiction. The appeal was not filed within 30 days of rendition of the appealable order. Amended orders in the case contained changes immaterial to the appealable orders and thus did not provide additional time.

[https://edca.1dca.org/DCADocs/2015/3908/153908\\_DA08\\_10122015\\_101850\\_i.pdf](https://edca.1dca.org/DCADocs/2015/3908/153908_DA08_10122015_101850_i.pdf) (October 12, 2015)

J.L.B. v. Department of Children and Families, 175 So. 3d 944, 40 Fla.L.Weekly D2311, 2015 WL 5936562 (Fla. 1st DCA 2015). **ADJUDICATION AND WITHHOLD ORDER AFFIRMED**. The First District Court of Appeal affirmed the trial court's order finding the mother's children to be dependent, even though the trial court withheld adjudication on five of the children. One of the panel judges would have reversed the dependency finding as to the five siblings.

[https://edca.1dca.org/DCADocs/2015/2544/152544\\_DC05\\_10132015\\_100611\\_i.pdf](https://edca.1dca.org/DCADocs/2015/2544/152544_DC05_10132015_100611_i.pdf) (October 13, 2015)

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

No new opinions for this reporting period.

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

In the Interest of D.A.M., et. al., minor children, \_\_\_ So. 3d \_\_\_\_, 40 Fla.L.Weekly D2420, 2015 WL 6499396 (Fla. 3rd DCA 2015). **DENIAL OF PRIVATE DEPENDENCY PETITION AFFIRMED**. The Third District Court of Appeal affirmed the trial court's denial of a privately filed dependency petition.

<http://www.3dca.flcourts.org/Opinions/3D15-1154.pdf> (October 28, 2015)

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

T.B. v. Department of Children and Families, \_\_\_ So. 3d \_\_\_\_, 40 Fla.L.Weekly D2414, 2015 WL 6496316 (Fla. 4th DCA 2015). **PERMANENT GUARDIANSHIP REVERSED**. The Fourth District Court of Appeal reversed an order of permanent guardianship. The trial court's order had placed the two children in a permanent guardianship with a relative, terminated protective supervision, and modified the father's visitation plan due to the guardian's impending move out of state. The father had complied with his case plan and sought reunification, which was denied by the trial court because the father's adult son (on pre-trial release for alleged sexual offenses against minors) lived with the father. The Department sought a case plan goal of permanent guardianship because concerns for the children's safety remained. After several more months and a number of hearings later, the Department requested a modified visitation schedule because the

permanent guardian was moving out of state with the children. The Department also request case closure and termination of supervision. The father's attorney objected to the guardian's out of state move and argued for the application of s. 61.13001, F.S., regarding relocation. The trial court disagreed and, without holding an evidentiary hearing, entered a final order of permanent guardianship and terminated the Department's supervision. The trial court found the relocation statute inapplicable to permanent guardianships. On appeal, the district court examined the requirements in s. 39.6221(2), F.S., for the written order establishing a permanent guardianship and found the trial court's language inadequate. Also, the record was not clear that an evidentiary hearing was ever held on the permanent guardianship petition. Furthermore, no hearing was held on relocation. The district court concluded that the children were subject to the provisions of the parental relocation statute and that a hearing was required regarding the best interest of the children regarding the guardian's relocation. The court therefore reversed the trial court and remanded the case for further proceedings.

<http://www.4dca.org/opinions/Oct.%202015/10-28-15/4D14-4060.op.pdf> (October 28, 2015)

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

No new opinions for this reporting period.

## Dissolution Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

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

Hutchinson v. Hutchinson, \_\_ So. 3d \_\_, 2015 WL 5779387 (Fla. 1st DCA 2015). **COURT ABUSED DISCRETION BY AWARDING FEES AND COSTS ONCE INCOMES WERE EQUALIZED.** The appellate court denied former husband's motion for rehearing, but withdrew its earlier opinion and substituted this in its place. Former husband appealed the final judgment dissolving the spouses' thirty-six year marriage on several grounds. The appellate court reversed the award of attorney's fees and costs, but affirmed the remainder of the judgment. Citing its opinion in Galligar v. Galligar, 77 So. 3d 812-13 (Fla. 1st DCA 2011), and opinions of other districts, the appellate court held that, "Where marital property has been equitably distributed and the parties' incomes have been equalized through an alimony award, the trial court abuses its discretion by awarding attorney's fees." The appellate court found here that after equitably distributing the marital property pursuant to the spouses' agreement, determining their monthly incomes, and awarding monthly alimony to former wife, the trial court equalized the spouses' incomes; therefore, it abused its discretion by awarding fees and costs to former wife. Reversed.

[https://edca.1dca.org/DCADocs/2015/0232/150232\\_DC08\\_10022015\\_102338\\_i.pdf](https://edca.1dca.org/DCADocs/2015/0232/150232_DC08_10022015_102338_i.pdf) (October 2, 2015)

Rosenblum v. Rosenblum, \_\_ So. 3d \_\_, 2015 WL 5853869 (Fla. 1st DCA 2015). **SPOUSE WHO FILED MOTION TO MODIFY CHILD SUPPORT WAS ENTITLED TO HAVE MOTION HEARD BEFORE OR SIMULTANEOUS WITH OTHER SPOUSE'S LATER-FILED MOTION FOR CONTEMPT; CHILD SUPPORT ARREARAGES DUE BEFORE MOTION TO MODIFY WAS FILED WERE PROPERLY CALCULATED BASED ON THE OBLIGATION ESTABLISHED IN THE DISSOLUTION FINAL JUDGMENT; HOWEVER, ARREARAGES CALCULATED AFTER MOTION WAS FILED SHOULD HAVE TAKEN APPROPRIATE MODIFICATION IN CHILD SUPPORT INTO CONSIDERATION.** Former husband appealed an order finding him in indirect civil contempt for failing to pay the full amount of his child support obligation as ordered in the final judgment of dissolution. In April 2007, former husband moved for modification of child support based on a change in circumstances. He thought that all pending motions would be set together; however, only former wife's motion for contempt filed in August 2007, proceeded to hearing. The appellate court held that former husband was entitled to have his motion to modify heard before or simultaneously with former wife's later-filed motion for contempt. It also held that child support arrearages due up until the motion to modify was filed were properly calculated on the basis of the amount set forth in the final judgment of dissolution; however, any adjustment in former husband's child support obligation, determined to be "appropriate as a result of his motion to modify," should have been taken into consideration in establishing any arrearage amount due after the motion to modify was filed. The appellate court remanded for further proceedings on former husband's motion to modify child support. It instructed the trial court to resolve whether child support should have been modified beginning on the filing date based on the spouses' financial circumstances existing at that time and former husband's parenting time.

Each spouse has the right to file additional or amended motions for modification that “might be appropriate to reflect the passage of so much time in the course of the litigation and appeal.” [https://edca.1dca.org/DCADocs/2014/2366/142366\\_DC08\\_10082015\\_100856\\_i.pdf](https://edca.1dca.org/DCADocs/2014/2366/142366_DC08_10082015_100856_i.pdf) (October 8, 2015)

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

Horrisberger v. Horrisberger, \_\_So. 3d\_\_, 2015 WL 5918947 (Fla. 2d DCA 2015). TRIAL COURT ERRED IN CALCULATING CHILD SUPPORT USING ONE SPOUSE’S GROSS MONTHLY INCOME AND THE OTHER SPOUSE’S NET; THIS WAS COMPARING “APPLES TO ORANGES”. At issue was whether the trial court correctly calculated the child support after dissolving the marriage; the appellate court concluded it had not and reversed. Child support was calculated using former husband’s gross monthly income, but former wife’s net, which the 5th District likened to comparing “apples to oranges”, Brock v. Brock, 690 So. 2d 737, 741 (Fla. 5th DCA 1997). Reversed and remanded for redetermination of correct amount of child support.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2009,%202015/2D14-2543.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2009,%202015/2D14-2543.pdf) (October 9, 2015)

Taylor v. Taylor, \_\_So. 3d\_\_, 2015 WL 5915260 (Fla. 2d DCA 2015). TRIAL COURT MUST GO THROUGH FOUR-STEP PROCESS TO DETERMINE ALIMONY AND MUST MAKE FINDINGS SUFFICIENT TO ENABLE MEANINGFUL REVIEW BY APPELLATE COURT. Former wife argued that the trial court erred in its final judgment dissolving the spouses’ twenty-two year marriage by awarding her durational rather than permanent alimony. The appellate court concluded that the judgment did not contain the findings necessary findings under s. 61.08, F.S. (2012), to support an award of durational alimony. The appellate court outlined four steps a trial court must determine in order to award alimony: 1) a spouse’s need for support; 2) the other spouse’s ability to pay some support; 3) the appropriate type of alimony; and 4) the amount of alimony. It noted that the type of alimony is not exclusive; under the statute, a trial court may award combinations. The statute also establishes a rebuttable presumption that a marriage lasting seventeen years or more is long-term. For such marriages, permanent alimony may be awarded upon consideration of the factors in s. 61.08, F.S.; however, the trial court must find that no other form of alimony is fair and reasonable under the circumstances. Durational alimony is awardable when permanent alimony is inappropriate because there is no ongoing need for permanent support. Here, the trial court’s failure to “expressly decide” that permanent, periodic alimony was “inappropriate,” coupled with its failure to find that there was not an ongoing need for support on a permanent basis, left the appellate court in a quandary. Because former wife did not have a history of full-time employment with benefits and the trial court had imputed income to her, the appellate court held it could not “assume” that the trial court had made a “proper, implicit” finding that former wife had “no ongoing need for support on a permanent basis.” Accordingly, it reversed and remanded the alimony award. It permitted the trial court to consider additional evidence if necessary to resolve that issue, especially in light of the sale of the marital home.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2009,%202015/2D14-3930.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2009,%202015/2D14-3930.pdf) (October 9, 2015)

Hofschneider v. Horfschneider, \_\_ So. 3d \_\_, 2015 WL 5966167 (Fla. 2d DCA 2015). [PREJUDGMENT CIVIL CONTEMPT ORDERS ARE REVIEWABLE BY CERTIORARI](#). Former husband appealed a contempt order entered during former wife's petition to modify the final judgment of dissolution which required that he pay \$100 for each day he failed to comply with a prior court order. The appellate court converted his appeal to a petition for certiorari because prejudgment civil contempt orders are more properly reviewed by certiorari, but then dismissed the petition after finding that former husband failed to establish that he had suffered a material injury that could not be corrected on post-judgment appeal.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2014,%202015/2D15-270.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2014,%202015/2D15-270.pdf) (October 14, 2015)

Russell v. Pasik, \_\_ So. 3d \_\_, 2015 WL 5947198 (Fla. 2d DCA 2015). [TRIAL COURT DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW IN FINDING SOMEONE OTHER THAN LEGAL OR BIOLOGICAL PARENT HAD STANDING TO FILE A TIME-SHARING PETITION](#). Appellant, Russell, and appellee, Pasik, were partners in a same-sex relationship who decided to start a family together. For two years after their relationship ended, Russell allowed Pasik visitation. Pasik assumed an active parental role, provided financial support, and maintained the children on her health insurance. Russell, to whom two children were born during the relationship by an anonymous sperm donor, refused to allow Pasik visitation. Pasik petitioned for time-sharing, claiming to be the de facto parent. Russell moved to dismiss on the basis that Pasik lacked standing to seek visitation rights. The trial court found that the "unusual" facts of the case set forth a cause of action and denied Russell's motion. Russell petitioned for a writ of certiorari. The appellate court noted that typically, certiorari will not be granted from a denial of a motion to dismiss because there is not a material injury that cannot be corrected on post-judgment appeal; however, it found here that Russell's claim met the "jurisdictional elements" for certiorari. As the mother of the children with whom Pasik seeks time-sharing, Russell has a constitutional privacy interest in the raising of her children; interfering with that right would result in an injury that could not be corrected on post-judgment appeal. Pasik's standing to petition for time-sharing is dependent on her being a "parent" within the meaning of Florida Statutes. The appellate court held, "the law is clear: those who claim parentage on some basis other than biology or legal status do not have the same rights, including the right to visitation, as the biological or legal parents." It concluded that because the trial court could have only made its determination regarding standing based on Pasik being the de facto parent, it "clearly departed from the essential requirements of the law by finding that Pasik had standing." Although it "was not unsympathetic" to Pasik's cause or her desire to see the children she helped raise, the appellate court held that "if the definition of a parent is to be expanded to fit facts" as in this case, then the legislature, not the courts, should make that change. Petition granted.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2014,%202015/2D14-5540.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2014,%202015/2D14-5540.pdf) (October 14, 2015)

Vinsand v. Vinsand, \_\_ So. 3d \_\_, 2015 WL 6503442 (Fla. 2d DCA 2015). [A RESIDENT DEFENDANT IN A DISSOLUTION ACTION IS ENTITLED TO BE SUED IN THE COUNTY OF THEIR RESIDENCE OR IN THE COUNTY WHERE THE CAUSE OF ACTION ACCRUED; IF THE CAUSE OF ACTION DID NOT ACCRUE IN FLORIDA, DEFENDANT MUST BE SUED IN THE COUNTY WHERE HE OR SHE RESIDES](#).

Former husband appealed the final judgment of dissolution. The appellate court concluded that the trial court erred in denying former husband's motion for transfer of venue, and reversed. The Florida Supreme Court has held that because an action for dissolution of marriage is personal or transitory, a resident defendant has the right of being sued either in the county of his residence or in the county where the cause of action accrued. Goedmakers v. Goedmakers, 520 So. 2d 575, 579 (Fla. 1988). Generally, venue lies in the county where the spouses last lived with a "common intent to remain married", Butler v. Butler, 866 So. 2d 1280, 1281 (Fla. 4th DCA 2004). Here, the trial court found that the last place the spouses lived with that intent was South Dakota; thus, its order established this basis for venue was not available. Citing Rivenbark v. Rivenbark, 335 So. 2d 23 (Fla. 1st DCA 1976), the appellate court held that since the cause of action did not accrue in Florida, venue lay where former husband resided at the time former wife filed the dissolution petition, which was Alachua County, not Hillsborough. Former husband had resided in Alachua County long enough to meet the six-month residency requirement of s. 61.021, F.S. (2012), and was entitled, as a matter of law, to be sued there. Accordingly, the appellate court reversed, set aside the final judgment, and remanded for transfer to Alachua County.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2028,%202015/2D14-4193.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2028,%202015/2D14-4193.pdf) (October 28, 2015)

Timmons v. Timmons, \_\_ So. 3d \_\_, 2015 WL 6575864 (Fla. 2d DCA 2015). **ARREARAGES IN AN INCOME DEDUCTION ORDER MUST BE SATISFIED THROUGH DEDUCTIONS OF AT LEAST 20%; A TRIAL COURT DOES NOT HAVE THE DISCRETION TO ORDER A LOWER PERCENTAGE.** In an appeal arising out of a contempt proceeding following a dissolution of marriage, the appellate court agreed with former wife that s. 61.1301(1)(b)2, F.S. (2014), requires that an arrearage in an income deduction order be satisfied through monthly deductions of at least twenty percent, not ten percent as ordered by the trial court. The appellate court found that the statutory language is mandatory; it does not grant a trial court the discretion to direct income deduction in an amount of less than twenty percent. Accordingly, it reversed the contempt and income deduction orders to the extent they provided for an income deduction rate of less than twenty percent and remanded for correct orders.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2030,%202015/2D14-2388.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2030,%202015/2D14-2388.pdf) (October 30, 2015)

O'Connor v. O'Connor, \_\_ So. 2d \_\_, 2015 WL 6613552 (Fla. 2d DCA 2015). **IN ABSENCE OF A TRANSCRIPT AND NO ERRORS ON THE FACE OF THE JUDGMENT, FINAL JUDGMENT WAS AFFIRMED; HOWEVER, IT WAS REMANDED FOR CORRECTION OF A SCRIVENER'S ERROR.** Former wife appealed the final judgment of dissolution. In the absence of a transcript, the appellate court's review was limited to errors on the face of the judgment. Finding no errors in the trial court's rulings, the appellate court affirmed; however, it remanded a discrepancy between two paragraphs in the final judgment regarding the child support award to the trial court for correction of the scrivener's error.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/October/October%2030,%202015/2D14-3690.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/October/October%2030,%202015/2D14-3690.pdf) (October 30, 2015)

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

Cozzo v. Cozzo, \_\_ So. 3d \_\_, 2015 WL 5829812 (Fla. 3d DCA 2015). **DIRECT TESTIMONY FROM LAWYER WHO PERFORMED SERVICES NOT REQUIRED FOR FEE AWARD.** Former wife appealed an order denying her request for attorney's fees in a post-dissolution action brought by former husband because the lawyer who performed the legal services for her did not testify. The appellate court found that the record revealed "sufficient evidence" to support an award of fees; accordingly, it reversed. Under Florida law, a party seeking fees must provide proof detailing the nature and extent of the services performed and expert testimony as to reasonableness of the fees. The appellate court held that where a party has provided "sufficient, admissible" proof of these two components, "no court has further mandated direct testimony from the attorney who performed the services."

<http://www.3dca.flcourts.org/Opinions/3D15-0133.pdf> (October 7, 2015)

Shah v. Shah, \_\_ So. 3d \_\_, 2015 WL 5965206 (Fla. 3d DCA 2015). **DUE PROCESS REQUIRES PROPER NOTICE AND AN OPPORTUNITY TO BE HEARD; CHANGING NATURE AND EXPANDING SCOPE OF A HEARING WITHOUT PROPER NOTICE VIOLATED SPOUSE'S DUE PROCESS.** Former wife appealed a final judgment of dissolution of marriage. The appellate court reversed because the trial court noticed the hearing on the petition for dissolution as a status conference, but then conducted a final hearing and entered a final judgment. The spouses married in India in 2013. Former husband filed a petition for dissolution, alleging that the marriage was irretrievably broken, after moving to Florida. Former wife, who was still living in India, denied that the marriage was irretrievably broken. The trial court entered an order scheduling an uncontested final hearing if former wife did not file an answer; if she filed an answer, the order specified that the hearing would serve as a status conference. Former husband and his attorney attended the hearing; former wife appeared telephonically from India. Over her objection, the trial court conducted a final hearing and orally granted the petition. Former wife then moved for rehearing or to vacate. The trial court held a hearing on her motion; again she appeared telephonically. The appellate court found the trial court correctly treated former wife's pro se reply as an answer, but erred when it announced at the hearing on her motion that it had taken testimony at the earlier hearing and entered a final judgment. Due process requires proper notice and an opportunity to be heard. The appellate court held that the trial court changed the character and expanded the scope of the first scheduled hearing without proper notice. In doing so, it violated former wife's due process rights.

<http://www.3dca.flcourts.org/Opinions/3D14-2366.pdf> (October 14, 2015)

Gromet v. Jensen, \_\_ So. 3d \_\_, 2015 WL 5973933 (Fla. 3d DCA 2015). **TRIAL COURT'S DETERMINATION AS TO WHETHER AN ASSET IS MARITAL OR NONMARITAL INVOLVES MIXED QUESTIONS OF FACTS AND LAW; APPELLATE COURT DEFERS TO TRIAL COURT'S FACTUAL FINDINGS IF SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE BUT REVIEWS TRIAL COURT'S LEGAL CONCLUSIONS DE NOVO.** Former husband appealed a final judgment dissolving a long-term marriage. Finding that the trial court erred by treating three of husband's accounts as marital assets subject to equitable distribution, the appellate court reversed and remanded. Although one account was opened prior to the marriage and the other two were opened during the marriage, it was undisputed that all three were entirely funded with money former husband

inherited from his mother. Former wife argued that the accounts lost their character as nonmarital when former husband commingled marital funds. She also asserted that because former husband personally managed his accounts during the marriage, any enhancement in value of the accounts was due to his marital efforts and labor was a marital asset. Former husband countered that although he had used marital efforts to manage his accounts, they had actually decreased in value. Ultimately, the trial court concluded that the six accounts, former husband's three plus three of former wife's, were marital assets subject to equitable distribution. (It was undisputed that former wife's accounts were marital.) After comparing the value of the accounts and considering the equity in the marital home, the trial court order former husband to pay a cash equalizer. Former wife had not sought alimony. The appellate court reiterated that while it deferred to the trial court's factual findings if they were supported by competent, substantial evidence, it reviewed the trial court's legal conclusions de novo. Here, former husband's three accounts were nonmarital because they were exclusively funded with an inheritance from his mother. The appellate court concluded that their character as nonmarital had not been lost through commingling because former wife failed to introduce any evidence in support of her claim. It concluded that the trial court's findings that former husband actively managed the accounts was supported by competent, substantial evidence; however, because the accounts decreased in value, there was no enhanced value due to marital efforts to transform the accounts into marital assets. Reversed and remanded for recalculation of cash equalizer to former wife.

<http://www.3dca.flcourts.org/Opinions/3D14-3077.pdf> (October 14, 2015)

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

Parenteau v. Parenteau, \_\_So. 3d \_\_, 2015 WL 5965282 (Fla. 4th DCA 2015). **AFFIRMED WITHOUT PREJUDICE; SPOUSE MAY FILE MOTION FOR RELIEF FROM JUDGMENT.** Former wife argued that the trial court miscalculated the value of distribution of assets to former husband in its final judgment dissolving their marriage. The appellate court found that she had failed to preserve her argument for appeal; however, it affirmed the trial court's judgment without prejudice to allow her to file a motion for relief from judgment to "cure any perceived mathematical errors."

<http://www.4dca.org/opinions/Oct.%202015/10-14-15/4D14-2309.op.pdf> (October 14, 2015)

Miggins v. Miggins, \_\_So. 3d \_\_, 2015 WL 6160651 (Fla. 4th DCA 2015). **APPELLATE COURT HELD TRIAL COURT ERRED IN FINDING SPOUSE'S BENEFIT PLAN WAS NONMARITAL, BUT AFFIRMED ITS TREATMENT OF PLAN IN ABSENCE OF EVIDENCE REGARDING MAINTENANCE OF PLAN OR ITS AFFECT ON EQUITABLE DISTRIBUTION OR ALIMONY; REMANDED TO STRIKE COHABITATION FROM JUDGMENT AND SUBSTITUTE "EXISTENCE OF SUPPORTIVE RELATIONSHIP" PER S. 61.14, F.S.** Holding that the trial court erred in finding that former husband's military survivor benefit plan was not a marital asset subject to equitable distribution, the appellate court affirmed the trial court's treatment of the plan because former wife failed to introduce any evidence concerning the cost of maintaining the plan or how equitable distribution or alimony would be affected. The appellate court affirmed on all other issues, with the exception of a provision within the amended final judgment that alimony would continue until former wife remarried or cohabitated, or upon the death of either spouse. It instructed the trial court on remand to amend

the judgment by striking cohabitation and substituting, “existence of a supportive relationship” in accordance with s. 61.14, F.S. (2014).

<http://www.4dca.org/opinions/Oct.%202015/10-21-15/4D14-890.op.pdf> (October 21, 2015)

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

Malave v. Malave, \_\_So. 3d\_\_, 2015 WL 5883657 (Fla. 5th DCA 2015). **ANCILLARY RELIEF IN DISSOLUTION CASES REQUIRES A DISTINCT RELATIONSHIP LINKING THE PARTIES AND THE SUBJECT MATTER; DISSOLUTION ACTION ENDS IF SPOUSE DIES PRIOR TO ENTRY OF FINAL JUDGMENT; REMEDY FOR FILING AN ACTION IN WRONG DIVISION IS TRANSFER, NOT DISMISSAL.** Following the death of former husband and their three minor children during dissolution proceedings, former wife filed an ancillary petition in which she alleged that former husband’s counsel had committed fraudulent acts during the dissolution proceedings to facilitate dissipation and concealment of marital assets. She learned that her husband had allegedly transferred money and property to his relatives; had allegedly divested himself from ownership of the bulk of his assets, including marital; and had changed the beneficiaries on his and his children’s life insurance policies. Ancillary relief is generally available in dissolution cases; however, there must be a common thread -- a “distinct relationship” linking the parties and the subject of the litigation. Here, former wife’s ancillary petition was not ancillary to the dissolution because former husband’s counsel was not a party to that litigation. The appellate court found that the trial court was correct to dismiss the dissolution of marriage petition because that action ended when former husband died, but that it erred when it dismissed the ancillary petition instead of transferring it to the correct division. A circuit court does not lack jurisdiction simply because a case is filed or assigned to the wrong division. Partridge v. Partridge, 790 So. 2d 1280, 1284-85 (Fla. 4th DCA 2001). The remedy for filing of an action in the wrong division is transfer, not dismissal. By dismissing with prejudice, the trial court “completely denied” former wife the opportunity to raise her claims. Accordingly, the appellate court reversed and remanded for transfer to the appropriate division.

<http://www.5dca.org/Opinions/Opin2015/100515/5D14-1167.op.pdf> (October 21, 2015)

Niazi v. Niazi, \_\_So. 3d\_\_, 2015 WL 655444 (Fla. 5th DCA 2015). **TRIAL COURT ERRED IN ASSESSING A \$50,000 FEDERAL INCOME TAX LIABILITY EQUALLY BETWEEN SPOUSES WHEN PRENUPTIAL AGREEMENT PROVIDED THAT EACH SPOUSE WOULD PAY HIS OR HER PRO RATA SHARE IF THEY FILED JOINTED AND IT WAS UNDISPUTED THAT ONE SPOUSE WAS RESPONSIBLE FOR THE ENTIRE \$50,000; A CONTRACTUAL LIMITATION TO ATTORNEY’S FEES IN A PRENUPTIAL AGREEMENT IS ENFORCEABLE IN AN AWARD OF APPELLATE ATTORNEY’S FEES.** Former wife raised numerous issues in her appeal of a final judgment of dissolution and a supplemental final judgment awarding fees and costs. At issue was the validity of the spouses’ prenuptial agreement. The trial court determined that the agreement was valid. The appellate court affirmed that determination and all other issues with the exception of finding that the trial court erred in having assessed a federal income tax liability of \$50,000 equally between the spouses rather than solely against former husband. The prenuptial agreement provided that if the spouses filed a joint income tax return, each would pay his or her pro rata share of any tax due. It was undisputed that former husband’s share was the entire \$50,000. Former wife also filed a motion for appellate attorney’s fees. Citing Hahamovitch v. Hahamovitch, 133 So. 3d 1020, 1023

(Fla. 4th DCA 2014), the appellate court held that a contractual limitation to attorney's fees in a prenuptial agreement is enforceable in an award of appellate attorney's fees. Affirmed in part, reversed in part, and remanded.

Noormohamed v. Noormohamed, \_\_ So. 3d\_\_, 2015 WL 655444 (Fla. 5th DCA 2015). TRIAL COURT CAN DETERMINE AND ALLOCATE MARITAL DEBTS IN A DISSOLUTION ACTION BUT DOES NOT HAVE JURISDICTION TO ADJUDICATE PROPERTY RIGHTS OF NONPARTIES. Former wife appealed the requirement that she either return jewelry allegedly owned by her former mother-in-law to her or pay former husband monetary compensation. A trial court can determine and allocate marital debts as part of its equitable distribution scheme, but does not have jurisdiction in a dissolution action to adjudicate property rights of nonparties. The appellate court reversed the portions of the final judgment requiring return of the property and affirmed the remainder of the judgment.

<http://www.5dca.org/Opinions/Opin2015/102615/5D15-367.op.pdf> (October 26, 2015)

Rodriguez v. Rodriguez, \_\_ So. 3d\_\_, 2015 WL (Fla. 5th DCA 2015). TRIAL COURT DENIED INMATE SPOUSE DUE PROCESS WHEN IT CONDUCTED DISSOLUTION FINAL HEARING WITHOUT ALLOWING HIM TO APPEAR TELEPHONICALLY DESPITE HIS PROPER REQUEST. Former husband, an inmate, made a timely and proper request to the trial court to attend the final dissolution hearing telephonically. The appellate court agreed with him that he was denied due process when the trial court conducted the hearing without giving him an opportunity to appear telephonically.

<http://www.5dca.org/Opinions/Opin2015/102615/5D15-789.op.pdf> (October 30, 2015)

## Domestic Violence Case Law

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

Richards v. Gonzalez, \_\_\_ So. 3d \_\_\_\_, 2015 WL 5973843 (Fla. 3d DCA 2015). **STALKING INJUNCTION REVERSED**. The petitioner was granted a four-year injunction for protection against stalking after a neighbor harassed her on several occasions. The neighbor appealed. Due to the substantial discrepancies between the testimony and the allegations in the petition, as well as the general lack of evidence, the court reversed the injunction. The court also noted that “(c)ourts apply a reasonable person standard, not a subjective standard, to determine whether an incident causes substantial emotional distress.”

<http://www.3dca.flcourts.org/Opinions/3D14-3046.pdf> (October 14, 2015)

De Leon v. Collazo, \_\_\_ SO. 3d \_\_\_\_, 2015 WL 5965216 (Fla. 3d DCA 2015). **PERMANENT DV INJUNCTION REVERSED**. The respondent appealed after the trial court permitted the petitioner to testify over objection to substantial acts of domestic violence that were not included in the petition. Since the respondent was not aware that these issues would be brought up and didn't have time to prepare, the appellate court ruled that the admission of this evidence violated the respondent's due process rights. The court vacated the permanent injunction, reinstated the temporary injunction, and remanded the case for the trial court to conduct a new final hearing.

<http://www.3dca.flcourts.org/Opinions/3D14-0443.pdf> (October 14, 2015)

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

No new opinions for this reporting period.

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

Lippens v. Powers, \_\_\_ So. 3d \_\_\_\_, 2015 WL 6554462 (Fla. 5th DCA 2015). **STALKING INJUNCTION REVERSED**. The respondent appealed from an injunction for protection against stalking which prohibited her from seeing her daughter. The petitioner and respondent were a same-sex couple married in Vermont, and the petitioner became pregnant through alternative methods. The couple raised the daughter together until they separated. The respondent visited the child until the petitioner began prohibiting visitation. Respondent then tried to text and contact the child asking for visitation. Since none of the messages were threatening and served a legitimate purpose of arranging visitation, and since they did not cause emotional distress, the court reversed and vacated the injunction.

<http://www.5dca.org/Opinions/Opin2015/102615/5D14-4362.op.pdf> (October 30, 2015)

## **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.