

# OSCA/OCI'S FAMILY COURT CASE LAW UPDATE SEPTEMBER 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***

[Lund v. Project Warm](#), \_\_\_ So. 3d \_\_\_, 2015 WL 5736957 (Fla. 5th DCA 2015). [WRIT OF HABEAS CORPUS DIRECTING IMMEDIATE RELEASE FROM INVOLUNTARY RESIDENTIAL SUBSTANCE ABUSE TREATMENT WAS GRANTED BECAUSE THE PETITION FOR RENEWAL OF THE INVOLUNTARY TREATMENT ORDER WAS UNTIMELY FILED](#). Lund sought a writ of habeas corpus directing her immediate release from involuntary residential substance abuse treatment. On June 4, 2015, the lower court entered an order for involuntary substance abuse treatment pursuant to the Marchman Act. The order specified that it would be effective for 60 days. On July 31, 2015, Lund's case manager filed a petition for renewal of the involuntary treatment order. On August 6, 2015, the lower court heard arguments on the petition. Lund's counsel moved to dismiss the petition as untimely pursuant to s. 397.6975(1), F.S., which provided that a petition for renewal of the involuntary treatment order may be filed with the court at least 10 days before the expiration of the court-ordered treatment period. Lund argued that the 60-day treatment order expired on August 3, 2015; therefore, the petition for renewal of involuntary treatment order should have been filed by July 24, 2015. The lower court found that the wording of the statute was confusing because the phrase "may file" is used instead of "shall file." The lower court denied the motion to dismiss and extended treatment for 90 days. On appeal, the Fifth District found that s. 397.6975(1), F.S., makes it clear that any petition for renewal will be considered timely only if it is "filed with the court at least 10 days before the expiration of the court-ordered treatment period." In the instant case, the petition for renewal of the involuntary treatment order was untimely filed. Accordingly, the Fifth District granted the petition, quashed the lower court's order of continued commitment, and ordered that Lund

be immediately released from her involuntary residential commitment. The Fifth District expressed no opinion as to whether other options, consistent with Lund's due process rights, may exist to promptly consider and address the concerns that were expressed in the petition for renewal of her involuntary treatment.

<http://www.5dca.org/Opinions/Opin2015/092815/5D15-3122%20op.pdf> (September 29, 2015)

## Delinquency Case Law

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

In re: Amendments to the Florida Rules of Juvenile Procedure, \_\_ So. 3d \_\_, 2015 WL 5445986 (Fla. 2015). [THE FLORIDA SUPREME COURT APPROVED AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE](#). Concerning juvenile delinquency, rules 8.075 and 8.165 were amended. In rule 8.075 (Pleas), subdivision (e) (Withdrawal of Plea) was renamed “Withdrawal of Plea Before Disposition” to distinguish it from new subdivision (f) (Withdrawal of Plea After Disposition). New subdivision (f) allows a child to withdraw a plea of guilty or nolo contendere within 30 days of rendition on specified grounds. Current subdivision (f) (Withdrawal of Plea After Drug Court Transfer) was reordered as subdivision (g). This change was intended to conform the juvenile rule to Florida Rule of Criminal Procedure 3.170(l) (Motion to Withdraw the Plea after Sentencing). In rule 8.165 (Providing Counsel to Parties), subdivision (b)(3) (Waiver of Counsel) was amended to clarify that the attorney assigned by the court to assist a child who is waiving counsel must verify on the written form and on the record that the child’s decision to waive counsel has been discussed with the child and appears to be knowing and voluntary. These amendments become effective January 1, 2016.

<http://www.floridasupremecourt.org/decisions/2015/sc15-98.pdf> (September 17, 2015)

### ***First District Court of Appeals***

T.D. v. State, \_\_ So. 3d \_\_, 2015 WL 5309115 (Fla. 1st DCA 2015). [TRIAL COURT STILL HAD JURISDICTION AFTER THE JUVENILE REACHED HIS 19TH BIRTHDAY BECAUSE THE JUVENILE HAD AGREED TO EXTEND JURISDICTION UNTIL AGE 21](#). The juvenile argued that the trial court lacked jurisdiction to commit him to a non-secure residential program after he reached his 19th birthday. The juvenile contended that s. 985.0301(5)(h), F.S. (2009), gave the trial court jurisdiction over delinquent children up to age 19, and that he was not placed in a program (or facility) as would permit an extension of the court’s jurisdiction. On appeal, the First District Court of Appeals found that when the juvenile pled guilty to a lewd and lascivious molestation charge, he was passed for disposition temporarily based on an agreement that he would complete a treatment program for juvenile sexual offenders, with the opportunity to have the case dropped if he completed the program. As part of the agreement, the juvenile consented to an extension of the court’s jurisdiction until he reached the age of 21, consistent with the statute. When the juvenile failed to complete the outpatient program, the trial court sentenced him delinquent and committed him to the Department of Juvenile Justice and a non-secure, residential program. Although the juvenile had turned 19 years of age before the court rendered this sentence, the trial court still had jurisdiction because the juvenile had agreed to extend the trial court’s jurisdiction until age 21, and the juvenile had not completed the program. Accordingly, the First

District affirmed the disposition.

[https://edca.1dca.org/DCADocs/2015/0278/150278\\_DC05\\_09112015\\_105114\\_i.pdf](https://edca.1dca.org/DCADocs/2015/0278/150278_DC05_09112015_105114_i.pdf)

(September 11, 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***

T.J. v. State, \_\_\_ So. 3d \_\_\_, 2015 WL 5247510 (Fla. 4th DCA 2015). **DISPOSITION ORDER REMANDED FOR CORRECTION TO REFLECT THE LENGTH OF THE PROBATIONARY TERM AND TO INCLUDE THE JUVENILE’S AGE.** In an Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), appeal, the Fourth District Court of Appeals affirmed the finding of guilt, the withholding of adjudication, and the placement of the child on probation. However, the Fourth District remanded the delinquency disposition order to the trial court for correction to reflect the length of the probationary term and to include appellant’s age. See Florida Rules of Juvenile Procedure 8.115(d)(1).

<http://www.4dca.org/opinions/Sept.%202015/9-09-15/4D14-3693.op.pdf> (September 9, 2015)

***Fifth District Court of Appeals***

No new opinions for this reporting period.

## Dependency Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

In the Interest of M.P., \_\_\_ So. 3d \_\_\_\_, 2015 WL 5618281 (Fla. 2d DCA 2015). **DEPENDENCY DENIAL AFFIRMED**. Although the opinion did not cite details, the court affirmed the lower court's decision. The court also directed readers to see cases where: the court affirmed the denial of a private petition for dependency based on the ground, among others, that the child who was being cared for by an uncle did not qualify as dependent; the trial court did not have jurisdiction to conduct an adjudicatory hearing because the children had already turned 18 before the hearing date; and the court dismissed a petition for lack of subject matter jurisdiction on the ground that the child was already 18 years old.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/September/September%2025,%202015/2D15-2065.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/September/September%2025,%202015/2D15-2065.pdf) (Sept. 25, 2015)

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

Florida Department of Children and Families v. N.H., \_\_\_ So. 3d \_\_\_\_, 2015 WL 5132689 (Fla. 3d DCA 2015). **FATHER MUST COMPLETE CASE PLAN TASKS**. DCF petitioned for a writ of certiorari to quash a circuit court order that relieved the father from complying with the tasks in his case plan. The father consented to the adjudication of the child and was required to do several tasks; however, the father did not comply. Later, the trial court vacated the father's consent and the adjudication of dependency, and excused the father from completing his case plan tasks due to the father's poor health. An incident of domestic violence by the father in front of the child occurred soon after, which was brought before the court. After the hearing, the judge reinstated the dependency adjudication but again entered an order excusing the father from completing the tasks in the case plan. DCF appealed. The appellate court agreed with DCF and reversed the court order. The appellate court noted that §39.6013, F.S., did authorize the court to amend a case plan, but only in certain circumstances, and that in this case, the domestic violence that occurred showed that the father did indeed need services. In fact, there was no evidence presented that supported eliminating the tasks or amending the case plan; by doing so, the child was at risk. Although the father's health might have impacted his attendance at some of the classes, his heart condition was not enough to eliminate all of the tasks required.

<http://www.3dca.flcourts.org/Opinions/3D15-1554.pdf> (Sept. 2, 2015)

Department of Children and Families v. N.M., \_\_\_ So. 3d \_\_\_\_, 2015 WL 5614852 (Fla. 3d DCA 2015). **CONTEMPT FINE REVERSED**. The Department of Children and Families appealed from an order fining the Department \$500.00 for failing to timely file a case plan seventy-two hours in advance of a reunification hearing. They claimed that they were not given a chance to present evidence showing that the late filing was not willful nor done with the intent to hinder the

administration of justice. The appellate court agreed and reversed the order, noting that the lower court did not specify whether the fine was a criminal or civil contempt fine, but in either case, the Department was not given a reasonable opportunity to respond as provided in the Juvenile Rules of Procedure.

<http://www.3dca.flcourts.org/Opinions/3D15-1470.pdf> (Sept. 24, 2015)

***Fourth District Court of Appeal***

No new opinions for this reporting period.

***Fifth District Court of Appeal***

A.D., Jr. v. Department of Children and Families, \_\_\_ So. 3d. \_\_\_, 2015 WL 5163712 (Fla 5th DCA 2015). **TERMINATION OF PARENTAL RIGHTS REVERSED**. The father appealed the termination of his parental rights; the appellate court reversed the lower court's decision, stating that the evidence did not establish that the father failed to substantially comply with the case plan. The Department conceded that the record did not support a history of abandonment, or that the father had failed to substantially comply with his case plan which only required the father to attend a batterer's intervention program.

<http://www.5dca.org/Opinions/Opin2015/083115/5D15-1794.op.pdf> (Sept. 3, 2015)

## Dissolution Case Law

### **Florida Supreme Court**

Hahamovitch v. Hahamovitch, \_\_ So. 3d \_\_, 2015 WL 5254280 (Fla. 2015). CERTIFIED QUESTION FROM FOURTH DISTRICT REGARDING EXTENT OF SPOUSE'S WAIVER IN PRENUPTIAL AGREEMENTS ANSWERED AFFIRMATIVELY; CONFLICTING DECISIONS OVERRULED; PRENUPTIAL AGREEMENTS ARE GOVERNED BY CONTRACT LAW; WHERE CONTRACT IS CLEAR AND UNAMBIGUOUS, IT MUST BE ENFORCED PURSUANT TO ITS PLAIN LANGUAGE. The Supreme Court answered "yes" to the following question considered on conflict cert: Where a prenuptial agreement provides that neither spouse will ever claim any interest in the other's property, states that each spouse shall be the sole owner of property purchased or acquired in his or her name, and contains language purporting to waive and release all rights and claims that a spouse may be entitled to as a result of the marriage, do such provisions serve to waive a spouse's right to any share of assets titled in the other spouse's name, even if those assets were acquired during the marriage due to the parties' marital efforts or appreciated in value during the marriage due to the parties' marital efforts? The Fourth District upheld the trial court's conclusion that the prenuptial agreement at issue was valid, but certified the question due to other districts having reached different conclusions when confronted with similarly worded agreements. The Supreme Court reiterated that prenuptial agreements are governed by the law of contracts; where a contract is clear and unambiguous, it must be enforced pursuant to its plain language. The Fourth District's decision was affirmed, the decisions in Irwin v. Irwin, 857 So. 2d 247 (Fla. 2d DCA 2003), and Valdes v. Valdes, 894 So. 2d 264 (Fla. 3d DCA 2004), were disapproved to the extent they conflict, and the certified question was answered affirmatively. <http://www.floridasupremecourt.org/decisions/2015/sc14-277.pdf> (September 10, 2015)

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

Matteson v. Matteson, \_\_ So. 3d \_\_, 2015 WL 5514365 (Fla. 1st DCA 2015). FINAL JUDGMENT DID NOT CONTAIN SUFFICIENT FINDINGS FOR MEANINGFUL REVIEW. The appellate court agreed with former wife that the trial court erred in its equitable distribution of the spouses' assets. It held that the final judgment did not contain sufficient findings regarding equitable distribution of personal property, bank accounts, and any tax refunds to enable meaningful appellate review. The appellate court noted that certain attachments which the final judgment indicated would address equitable distribution were not included in the record on appeal; accordingly, it reversed and remanded with instructions to the trial court to make specific findings on equitable distribution. The appellate court also remanded for the trial court to consider whether to include instructions on telephonic/electronic communication, which was another issue raised by former wife. The remainder of the final judgment was affirmed. [https://edca.1dca.org/DCADocs/2015/0296/150296\\_DC08\\_09212015\\_090122\\_i.pdf](https://edca.1dca.org/DCADocs/2015/0296/150296_DC08_09212015_090122_i.pdf) (September 21, 2015)

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

Airsman v. Airsman, \_\_ So. 3d \_\_, 2015 WL 5559808 (Fla. 2d DCA 2015). TRIAL COURT ABUSED ITS DISCRETION IN CHANGING CHILD'S SURNAME; NO COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTED ITS FINDING CHANGE WAS IN CHILD'S BEST INTEREST. Former husband appealed a

final judgment changing the surname of his daughter. Following the dissolution, former wife sought to restore her maiden name and to change the child's surname to hers. The trial court found it was in the child's best interest to bear the same surname as her custodial parent; however, the appellate court concluded that the surname change was not supported by competent, substantial evidence that it was either in the child's best interest or necessary for the child's welfare. It held that the trial court abused its discretion in changing the child's name. It found former wife's desire to change the child's name based on her wish to distance the child from former husband and for her own convenience. The appellate court held, "[S]uch slight proof is not enough." It reversed and remanded for the trial court to enter an order that the child's surname be restored to that of former husband. The dissenting judge concluded that former wife did present competent, substantial evidence that the name change was in the child's best interest and the trial court did not abuse its discretion.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/September/September%2009,%202015/2D14-4826.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/September/September%2009,%202015/2D14-4826.pdf) (September 9, 2015)

Rutan v. Rutan, \_\_ So. 3d \_\_, 2015 WL 5306147 (Fla. 2d DCA 2015). **REMANDED FOR A SECOND TIME FOR TRIAL COURT TO MAKE NECESSARY FINDINGS REGARDING FORMER HUSBAND'S INCOME AND HIS ABILITY TO PAY ALIMONY AWARD.** The appellate court reversed a partial final judgment of alimony and remanded for the trial court to make findings as to former husband's ability to pay. On remand, the trial court reinstated the original alimony amount and former husband again appealed. The appellate court reversed due to the trial court's failure to make sufficient findings to enable meaningful appellate review. As in the prior appeal, the appellate court found that the trial court failed to make the necessary findings regarding former husband's income. While appreciating the difficult task the trial court had before it in determining former husband's income and believing that the trial court had made a "conscientious effort to comply" with its mandate, the appellate court held that "the three factors upon which the trial court relied" in reinstating the alimony were not a "satisfactory substitute" for specific factual findings regarding the actual amount of former husband's income. Remanded a second time for the trial court to make sufficient findings of fact regarding former husband's ability to pay the alimony award to enable meaningful review by the appellate court.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/September/September%2011,%202015/2D14-4456.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/September/September%2011,%202015/2D14-4456.pdf) (September 11, 2015)

Jackson v. Jackson, \_\_ So. 3d \_\_, 2015 WL 5472870 (Fla. 2d DCA 2015). **FEE ORDER MUST INCLUDE A FINDING ON ENTITLEMENT AND FACTS SUPPORTING AMOUNT.** Former husband appealed a final summary judgment in favor of former wife and an order assessing fees against him. The appellate court dismissed his summary judgment appeal as untimely, but reversed the fee order. Following a 2012 final judgment of dissolution which incorporated a 2009 postnuptial agreement, former husband sued former wife alleging that she had breached the postnuptial agreement when she unsuccessfully challenged its validity in the dissolution proceedings. In January 2014 the trial court granted former wife's motion for summary judgment; it also found her entitled to fees. The trial court entered a final order of summary judgment on February 26th and a final order awarding attorney's fees to former wife on April 9th. Former husband

filed a notice of appeal on May 6th; thus his appeal was untimely as to the summary judgment, but timely as to fees. He argued that the trial court's order was deficient because it contained no findings to support the fee award. The appellate court held that in addition to the finding on entitlement, a fee order must include findings to justify the amount. It reversed the fee judgment and instructed the trial court on remand to enter an order setting forth the basis for its finding of entitlement as well as facts in support of the amount awarded.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/September/September%2018,%202015/2D14-2197.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/September/September%2018,%202015/2D14-2197.pdf) (September 18, 2015)

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

Suarez v. Orta, \_\_ So. 3d \_\_, 2015 WL 5132617 (Fla. 3d DCA 2015). **COURTS SHOULD FOCUS ON THE SUBSTANCE OF A MOTION EVEN IF IMPROPERLY TITLED.** Former husband appealed a trial court order adopting the hearing officer's report and recommendations regarding child support and reimbursable expenses. Former husband filed a motion to vacate and set aside the hearing officer's report the day it was submitted to the trial court, but did not style it as an exception to the report. Pleadings by pro se litigants should "only be defined by their function". Haines v. Kerner, 404 US 519, 520-21 (1972). Florida courts have emphasized substance over form. IndyMac Fed. Bank FSB v. Hagan, 104 So. 3d 1232, 1236 (Fla. 3d DCA 2012). Noting the general rule is to focus on the substance of a motion even when improperly titled, the appellate court reversed and remanded with instructions for the trial court to treat former husband's motion as a timely filed exception to the hearing officer's report.

<http://www.3dca.flcourts.org/Opinions/3D14-0964.pdf> (September 2, 2015)

Temares v. Temares, \_\_ So. 3d \_\_, 2015 WL 5139484 (Fla. 3d DCA 2015). **COMPULSORY PSYCHOLOGICAL EVALUATION OR DRUG TESTING REQUIRES PARTY SUBMITTING REQUEST HAVE GOOD CAUSE FOR EXAMINATION; PARTY REQUESTING COMPULSARY EXAMINATION MUST SHOW AT ANY HEARING THAT BOTH THE "IN CONTROVERSY" AND "GOOD CAUSE" PRONGS HAVE BEEN SATISFIED BEFORE COURT CAN ORDER TESTING.** The appellate court held that nothing in the record supported the trial court's sua sponte orders requiring a psychological evaluation and a substance abuse test for former wife; accordingly, it quashed the orders. The issue arose out of a post-judgment action for contempt and enforcement of the time-sharing provisions of a final judgment of dissolution of marriage. Although both spouses moved for contempt, there were no verified allegations or pleadings alleging that former wife's mental condition was in controversy, nor any pleadings requesting drug or psychological testing. The appellate court cited its holding in Wade v. Wade, 124 So. 3d 369,374 (Fla. 3d DCA 2013), that a compulsory psychological evaluation or drug testing is only authorized when the party submitting the request has good cause for the examination. The party submitting the request for a compulsory examination must show that both the "in controversy" and "good cause" prongs have been satisfied before the court can order testing.

<http://www.3dca.flcourts.org/Opinions/3D15-1593.pdf> (September 2, 2015)

Wolfson v. Wolfson, \_\_ So. 3d \_\_, 2015 WL 5247164 (Fla. 3d DCA 2015). **PETITION FOR CERTIORARI GRANTED WHERE TRIAL COURT DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW; TRIAL COURT SHOULD NOT DISTURB CUSTODY DETERMINATIONS MADE IN FINAL**

JUDGMENT OF DISSOLUTION UNLESS SPOUSE CAN PROVE MODIFICATION IS REQUIRED DUE TO SUBSTANTIAL AND MATERIAL CHANGE IN CIRCUMSTANCES AND IS IN CHILD'S BEST INTEREST; IN ABSENCE OF AN EMERGENCY, BOTH SPOUSES SHOULD HAVE NOTICE AND AN OPPORTUNITY TO BE HEARD; EVEN IF EMERGENCY EXISTS, EVERY REASONABLE EFFORT SHOULD BE MADE TO ENSURE BOTH SPOUSES HAVE THE OPPORTUNITY TO BE HEARD. Noting the "tortured, post-dissolution history" of this case, the appellate court granted former wife's petition for certiorari because the trial court departed from the essential requirements of law when it entered an order granting former husband's emergency request for temporary supervised visitation without providing both spouses an opportunity to be heard. The upshot of the evidentiary hearings on the spouses' petitions for modification of the parenting plan was that former wife never had an opportunity to present evidence. The first trial judge intended to continue the unfinished hearing within a couple of weeks, but then recused herself. The second judge intended to set aside time to allow the hearing to be concluded, but then took medical leave. The third judge decided to continue the hearing with the presentation of the evidence instead of rehearing from the witnesses who had previously testified; however, that judge was disqualified when former wife's petition for writ of prohibition was granted by the appellate court. The second judge returned to the bench and entered the order on appeal, pending conclusion of the hearing on the petitions for modification. The appellate court held that a trial court should not disturb the child custody determinations made in a final judgment of dissolution unless modification is required by a substantial and material change in circumstances and is in the child's best interest. Generally, both spouses must be given notice and opportunity to be heard prior to modification unless there is an actual, demonstrated emergency situation concerning the child's welfare. Even then, every reasonable effort should be made to ensure both spouses have an opportunity to be heard. The appellate court found the trial court departed from essential requirements of law by temporarily modifying the parenting plan without a full hearing in which former wife could present her case. Accordingly, it quashed the order and remanded for the trial court to promptly reconsider the issue of former wife's supervised visitation and conclude the evidentiary hearing on the spouses' petitions for permanent modification.

<http://www.3dca.flcourts.org/Opinions/3D15-1854.pdf> (September 9, 2015)

Wolfson v. Wolfson, \_\_ So. 3d \_\_, 2015 WL 5522105 (Fla. 3d DCA 2015). APPELLATE COURT DENIED MOTION FOR REHEARING AND CLARIFICATION, BUT PROVIDED FURTHER EXPLANATION AND CLARIFICATION OF ITS SEPTEMBER 9, 2015, OPINION. Although it denied former husband's motion for rehearing and clarification of the above opinion, the appellate court restated its holding: "the trial court departed from the essential requirements of law by **temporarily** modifying the child's parenting plan without a full hearing in which the mother was permitted to present her case" (Emphasis in September 18th opinion.). The appellate court clarified that the order under review, which it quashed, temporarily modified the spouses' parenting plan which provided for equal time-sharing. The intent of its remand was to provide former wife an opportunity to be heard "without delay" on former husband's emergency request for temporary relief until the trial court could schedule an evidentiary hearing on the "parties' cross petitions for **permanent** modification of the parenting plan." (Emphasis in opinion). Cognizant that the spouses' child had been living with former husband since the evidentiary

hearings began in December 2014, the appellate court was reluctant to disrupt those arrangements. It affirmed the trial court's decision to maintain the status quo; however, it held that supervised visitation should only continue until the trial court ruled on former husband's emergency motion for temporary relief after hearing from former wife.

<http://www.3dca.flcourts.org/Opinions/3D15-1854.rh.pdf> (September 18, 2015)

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

***Berg v. Young***, \_\_ So. 3d \_\_, 2015 WL 5125418 (Fla. 4th DCA 2015). **ALTHOUGH THE TRIAL COURT ERRED IN ITS INTERPRETATION OF A PRENUPTIAL AGREEMENT, ITS CONCLUSION THAT A SPOUSE WAS NOT ENTITLED TO EQUITABLE DISTRIBUTION OF THE VALUE OR APPRECIATION OF THE OTHER SPOUSE'S INTEREST IN A COMPANY WAS CORRECT; APPELLATE COURT AFFIRMED JUDGMENT BUT REVERSED ON FEES; PRENUPTIAL AGREEMENT PROVIDED FOR FEES FOR PREVAILING ON ITS VALIDITY BUT NOT ON ITS INTERPRETATION.** At issue was whether a prenuptial agreement entitled former wife to equitable distribution of former husband's interest in an automobile dealership he acquired from his father during the marriage. The initial judge found that former wife was entitled to equitable distribution of the increase in value or the enhancement in value of all separate assets which had appreciated due to former husband's "active marital efforts," including premarital assets or those acquired during the marriage titled in his name only. The successor judge agreed with the first judge, but went on to find that ***Kaaa v. Kaaa***, 58 So. 3d 867 (Fla. 2010), did not apply because no marital assets were used to pay for former husband's interest in the dealership; in addition, any appreciation of former husband's interest was a result of the passive increase in the value of the dealership's land and buildings, not the result of former husband's marital efforts. The trial court concluded that the former husband's interest in the dealership was separate nonmarital property and that there was no appreciation in its value which would be subject to equitable distribution. The appellate court held that although the trial court erred in its interpretation of the agreement, its conclusion that any appreciation in former husband's interest was passive and not subject to equitable distribution was correct and was supported by competent, substantial evidence. It affirmed the judgment pursuant to the tipsy coachman doctrine—the trial court reached the right result, but for the wrong reasons. Both judges ordered each spouse pay his or her own fees; the initial judge's justification was that former husband had prevailed on validity of the agreement while former wife had prevailed on its interpretation. The appellate court reversed because the agreement provided for fees for prevailing on validity, but not for prevailing on "interpretation." The appellate court remanded with directions that the trial court award former husband fees as the prevailing party on the validity of the agreement and to reconsider former wife's request for additional fees under section 61.16, F.S.

<http://www.4dca.org/opinions/Sept.%202015/9-02-15/4D13-2364.op.pdf> (September 2, 2015)

***Bailey v. Bailey***, \_\_ So. 3d \_\_, 2015 WL 5245134 (Fla. 4th DCA 2015). **ORDER APPOINTING SOCIAL INVESTIGATOR QUASHED FOR LACK OF NOTICE; IF SPOUSE ASSERTS PSYCHOTHERAPIST-PATIENT PRIVILEGE, TRIAL COURT CAN DETERMINE WHETHER THAT PRIVILEGE SHOULD PRECLUDE PRODUCTION OF RECORDS; TRIAL COURT'S FACTUAL FINDINGS SUPPORTED CONCLUSION SPOUSE'S MENTAL HEALTH WAS IN CONTROVERSY AND SHOWED GOOD CAUSE TO COMPEL EXAM; ORDERING A NEW EXAM BALANCES NEED FOR DETERMINING PARENT'S**

HEALTH AS IT RELATES TO CHILD'S BEST INTEREST WITH THE NEED TO PRESERVE CONFIDENTIALITY BETWEEN PSYCHOTHERAPIST AND PATIENT; TRIAL COURT NOT BOUND BY INVESTIGATOR'S TESTIMONY AND RECOMMENDATIONS; TRIAL COURT CANNOT IMPROPERLY DELEGATE ITS AUTHORITY TO DETERMINE TIME-SHARING TO INVESTIGATOR. Former husband sought certiorari relief from two overlapping post-dissolution orders. One order appointed a social investigator; the other denied former husband's motion to dismiss former wife's request that he submit to a psycho-social and substance abuse evaluation and consent to the release of his mental health records. The appellate court quashed the order appointing a social investigator because former husband was not provided adequate notice. Its ruling rendered former husband's argument that the trial court erred in ordering him to execute releases and consent forms moot. The appellate court held that if a social investigator were appointed in the future, former husband could assert his psychotherapist-patient privilege; if contested, the trial court could determine whether that privilege should preclude production. The appellate court held that the trial court's factual findings supported its conclusions that former husband's mental condition was in controversy and there was good cause to compel an evaluation. Compelling an evaluation is not necessarily at odds with recognition of privilege in objecting to the production of existing mental health records. The appellate court cited its opinion in Flood v. Stumm, 989 So. 2d 1240 (Fla. 4th DCA 2008), quoting Schouw v. Schouw, 593 So. 2d 1200, 1201 (Fla. 2d DCA 1992), that the suggested procedure of ordering a new psychiatric or psychological examination, as opposed to disclosure of existing mental health records, balances the trial court's need to determine a parent's mental health, as it relates to the child's best interest, with the need to preserve the confidentiality between psychotherapist and patient. Citing its opinion in Schoonmaker v. Schoonmaker, 718 So. 2d 867 (Fla. 4th DCA 1998), that a trial court should consider but not be bound by testimony or recommendations of an investigator, the appellate court quashed the portion of the trial court's order making former husband's time-sharing "subject to" the recommendations of the investigator as an improper delegation of the trial court's authority. Petition for certiorari granted in part, denied in part. <http://www.4dca.org/opinions/Sept.%202015/9-09-15/4D15-609.op.pdf> (September 9, 2015)

Gentile v. Gentile, \_\_\_ So. 3d \_\_\_, 2015 WL 5244646 (Fla. 4th DCA 2015). REMANDED FOR TRIAL COURT TO DETERMINE WHETHER SETTLEMENT AGREEMENT CONTEMPLATED CANAL ACCESS FOR SPOUSE AND WHETHER APPRAISALS USED IN MEDIATION ACCOUNTED FOR ACCESS; IF THE AGREEMENT PROVIDED FOR ACCESS BUT APPRAISALS DID NOT TAKE IT INTO ACCOUNT, NEW APPRAISALS AND FURTHER MEDIATION MIGHT BE NEEDED. Former husband appealed the trial court order approving a mediator's report and directing that real property be divided pursuant to appraisals relied on in mediation. The appellate court reversed and remanded for trial court to determine whether the spouses' settlement agreement, which divided the house and ten acres per an aerial view attached to the judgment, contemplated canal access for former husband. If the trial court determined on remand that the settlement agreement did contemplate canal access and the appraisals relied on in mediation did not account for canal access, then new appraisals and further mediation might be required. <http://www.4dca.org/opinions/Sept.%202015/9-09-15/4D15-1550.pdf> (September 9, 2015)

Terry v. Terry, \_\_ So. 3d \_\_, 2015 WL 5440801 (Fla. 4th DCA 2015). **REMANDED FOR TRIAL COURT TO REVISE ITS SCHEME OF EQUITABLE DISTRIBUTION.** Former wife appealed the final judgment of dissolution. The appellate court affirmed on two issues and agreed with former husband's concessions to her other four arguments. It concluded the trial court erred: in equitably dividing and awarding former husband's New Jersey pension which the spouses dissipated during the proceedings; in equitably dividing the spouses' furniture and furnishings which they had agreed would not be equitably divided; and in failing to equitably value or divide former husband's pension from the Town of Palm Beach. The appellate court remanded for the trial court to revise its scheme of equitable distribution accordingly.  
<http://www.4dca.org/opinions/Sept.%202015/9-16-15/4D14-2214.op.pdf> (September 16, 2015)

Kelley v. Kelley, \_\_ So. 3d \_\_, 2015 WL 5714602 (Fla. 4th DCA 2015). **REMANDED TO HALVE BALANCING PAYMENT SO MARITAL ASSETS WOULD BE SPLIT EQUALLY AND TO MAKE REQUISITE FINDINGS OF FACT REGARDING THE DURATIONAL ALIMONY AWARD.** Former husband raised four issues in his appeal of a final judgment of dissolution. The appellate court affirmed on two, but reversed and remanded on the other two. The appellate court agreed with former husband that the distribution of marital assets in the final judgment did not reflect the trial court's intention to split them equally because the balancing payment it ordered former husband to pay former wife was twice what it should have been. Accordingly, it ordered the trial court on remand to halve the balancing payment. The appellate court also agreed with former husband that the trial court failed to make findings of fact regarding several statutory factors it was required to consider regarding alimony; accordingly, it remanded on this issue.  
<http://www.4dca.org/opinions/Sept.%202015/9-30-15/4D14-756.op.pdf> (September 30, 2015)

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

Dorworth v. Dorworth, \_\_ So. 3d \_\_, 2015 WL 5165558 (Fla. 5th DCA 2015). **USE OF INCORRECT AMOUNT OF MARITAL DEBT RESULTED IN REVERSAL AND REMAND OF ENTIRE EQUITABLE DISTRIBUTION SCHEME AND RECONSIDERATION OF ALIMONY; ABSENT SPECIAL CIRCUMSTANCES, AN ALIMONY AWARD CANNOT EXCEED A SPOUSE'S NEED.** The appellate court agreed with former husband that trial court errors stemming from its reliance on an incorrect amount for a marital debt required reversal. The trial court had figured on a debt of \$250,000 when it equitably distributed the assets and liabilities and awarded lump sum alimony to former wife. The correct amount was twice that. The appellate court remanded for the trial court to reconsider and recalculate the entire equitable distribution scheme using the correct amount. Former husband also argued that the durational alimony award to former wife combined with her monthly salary exceeded her monthly needs. Absent special circumstances, an alimony award exceeding a spouse's need is an abuse of discretion. Citing lack of clarity in the trial court's calculations of former wife's income and expenses, along with its reliance on the wrong debt amount, the appellate court remanded for the trial court to determine the amount of durational alimony based on former wife's needs and former husband's ability to pay.  
<http://www.5dca.org/Opinions/Opin2015/083115/5D14-357.op.pdf> (September 4, 2015)

Corcoran v. Corcoran, \_\_ So. 3d \_\_, 2015 WL 5279051 (Fla. 5th DCA 2015). TRIAL COURT DIRECTED ON REMAND TO: EXPLAIN OR CORRECT DIFFERENCE BETWEEN SPOUSE'S MARITAL HOME EXPENSE AND CURRENT RENT; MAKE SPECIFIC FINDINGS AS TO NEED AND ABILITY ON ATTORNEY'S FEES; AND GIVE EVIDENTIARY BASIS FOR ITS FINDINGS RE SHARED PARENTAL RESPONSIBILITIES AND PASSPORT RENEWAL. REPAIRS ARE INCLUDED WITHIN PAYMENTS FOR WHICH SPOUSES BECOME EQUALLY RESPONSIBLE AFTER DISSOLUTION. Former wife appealed a trial court order denying her motions following a final judgment of dissolution. The appellate court reversed and remanded four issues; it affirmed the remainder of the judgment. After doing the math, the appellate court found the difference in cost between former wife's expenses in the marital home and her current rent to be significantly lower than the figure given in the final judgment. It instructed the trial court to explain the reason for the disparity or adjust the amount accordingly. On the second issue, the appellate court remanded for specific findings by the trial court on need and ability regarding attorney's fees. Third, the appellate court ordered the trial court to "indicate the evidentiary basis" for its findings concerning shared parental responsibilities and passport renewal as well as any findings that former wife was in contempt as to those issues. Fourth, the appellate court held that the record was devoid of evidence that the air conditioning unit in the marital home was broken due to former wife's actions; it directed the trial court to hold former wife solely responsible only for repairs of mold-related damage in the marital home, or to indicate its evidentiary basis for holding her responsible for all future repair costs. After dissolution, spouses become "equally responsible" for all payments to maintain ownership of the marital property until sale, including repairs. <http://www.5dca.org/Opinions/Opin2015/090715/5D14-1746.op.pdf> (September 11, 2015)

## **Domestic Violence Case Law**

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

### ***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.