

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE FEBRUARY 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 Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

R.S.C. v. State, __ So. 3d __, 2015 WL 735697 (Fla. 1st DCA 2015). **DISPOSITION REVERSED AND REMANDED WHERE THE JUVENILE WAS SENTENCED TO A NON-SECURE RESIDENTIAL PROGRAM WITHOUT THE REQUIRED WRITTEN FINDINGS.** The juvenile pled guilty to two misdemeanor drug offenses. The juvenile was adjudicated and sentenced him to a non-secure residential program. The juvenile appealed. The First District Court of Appeal affirmed the adjudication but reversed the disposition order. The First District found that the State had properly conceded that the trial court erred in sentencing the juvenile to a non-secure residential program without making the required written findings. *See* s. 985.441(2)(d), F.S. (2012) (authorizing the trial court to commit a child whose offense is a misdemeanor to a non-secure residential placement if the court makes written findings that “the protection of the public requires such placement or that the particular needs of the child would be best served by such placement”). Accordingly the disposition order was remanded for the trial court to make written findings to support its placement decision, or if it is unable to do so, to resentence the juvenile. *See* P.W. v. State, 135 So. 3d 583 (Fla. 1st DCA 2014); K.M.H. v. State, 91 So. 3d 262 (Fla. 1st DCA 2012). https://edca.1dca.org/DCADocs/2014/4180/144180_DC08_02232015_091403_i.pdf (February 23, 2015).

Second District Court of Appeals

R.M.T. v. State, __ So. 3d __, 2015 WL 486243 (Fla. 2d DCA 2015). **REMANDED FOR RESENTENCING BEFORE A DIFFERENT JUDGE BECAUSE THE TRIAL COURT ERRED IN CONSIDERING IMPERMISSIBLE FACTORS IN SENTENCING.** Following a bench trial for possession of cannabis, the trial court withheld adjudication and imposed probation. The trial court stated that it would have given the juvenile only a judicial warning but probation was imposed instead because the trial court felt the juvenile had lied on the stand. The Second District Court of Appeal found that a trial court errs and denies the defendant due process by improperly considering truthfulness of testimony at trial in imposing a sentence. *See* Hannum v. State, 13 So. 3d 132, 136 (Fla. 2d DCA 2009)(“A court may not rely on a defendant's lack of truthfulness in imposing sentence”); Diaz v. State, 106 So. 3d 515, 516 (Fla. 2d DCA 2013)(“[A] trial court cannot base a sentence on the truthfulness of the defendant's testimony.”); and Smith v. State, 62 So. 3d 698, 700 (Fla. 2d DCA 2011)(“It is also improper for the court to consider the truthfulness of a defendant's testimony when imposing sentence.”). In the instant case, the Second District found that the trial court subjected the juvenile to a greater punishment based on its conclusion that the juvenile failed to

tell the truth. The judge clearly stated the juvenile would have only received a judicial warning if the trial court had felt the juvenile was truthful in his testimony. Because the court erred in considering impermissible factors in sentencing, the Second District reversed the disposition order and remanded for resentencing before a different judge.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2006,%202015/2D13-4675.pdf (February 6, 2015).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

R.C. v. State, __ So. 3d __, 2015 WL 557187 (Fla. 4th DCA 2015). **JUVENILE MAY DIRECTLY APPEAL AN INVOLUNTARY PLEA ONLY IF IT IS PRESERVED BY A MOTION TO WITHDRAW PLEA IN THE TRIAL COURT.** The juvenile appealed the order adjudicating him delinquent after his plea of no contest. Although not requested at the plea or disposition hearing, a subsequent order stated that the juvenile had preserved the right to appeal the prior order finding him competent to proceed in all of his cases. The order did not state that the order was dispositive. The Second District Court of Appeal found that an order finding a defendant competent to proceed is not a dispositive order. See Fuller v. State, 748 So. 2d 292, 294 (Fla. 4th DCA 1999)(an issue is dispositive only when, regardless of the outcome of the appeal, there will be no trial; an order determining defendant competent has no such effect, as trial proceeds). In Burns v. State, 884 So. 2d 1010, 1012–13 (Fla. 4th DCA 2004), the Fourth District explained that a competency issue relates to the voluntary and intelligent nature of a plea, which is among the limited issues which may be appealed from a plea, but not without moving to withdraw the plea first. The Fourth District applied this preservation rule to juvenile proceedings in P.R.T. v. State, 920 So. 2d 708, 709 (Fla. 4th DCA 2006), citing State v. T.G., 800 So. 2d 204, 210 (Fla. 2001) (“Juveniles pleading guilty ... may directly appeal an involuntary plea only if it is preserved by a motion to withdraw plea in the trial court.”). In the instant case, the juvenile failed to file a motion to withdraw his plea. Thus, he had not preserved the issue for review. Accordingly, the order adjudicating him delinquent after his plea of no contest was affirmed.

<http://www.4dca.org/opinions/Feb%202015/02-11-15/4D13-341.op.pdf> (February 11, 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 Appeals

C.D. v. Department of Children and Families, ___ So. 3d ____, 2015 WL 848157 (Fla. 1st DCA 2015). **TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED**. The First District Court of Appeal reversed termination of a mother's parental rights to her two children because termination was not the least restrictive means of protecting the children from harm. The trial court had: terminated her parental rights under ss. 39.806(1)(c) & (1)(e), F.S.; held that termination was the least restrictive means of protecting the children from harm; and held that termination was in the children's best interests. On appeal, the District Court noted that relevant to the issue of least restrictive means, the Department of Children and Families had presented evidence from a psychologist, Dr. Flynn. Dr. Flynn testified, *inter alia*, that reunification would pose a significant risk of harm to the children's wellbeing and that he did not feel there was any reasonable basis to believe that the mother would improve with additional services. However, Dr. Flynn had no objection to discharging the family from further therapy because supervised visitation was safe to resume.

The trial court found that although Dr. Flynn opined the children would be safe in a supervised visitation setting, the availability of a potential relative disclosed on the eve of trial did not render that placement the least restrictive means. The trial court also applied the District Court's prior ruling in A.H. v. Department of Children and Families, 144 So. 3d 662 (Fla. 1st DCA 2014), and held that although safety was secured for the children and alternative permanency options were available, there was no testimony as to the existence of any relationship between the children and their mother and therefore the test in A.H. was not met. The trial court further found that termination of parental rights would not harm the children because the aunt who offered to adopt the children would allow contact with the mother.

Dr. Flynn had opined that the children would be safe in a supervised visitation setting with the mother. The mother argued on appeal that termination of her parental rights cannot be the least restrictive means of protecting the children because the trial court recognized that further contact between the mother and the children would not endanger the children. The trial court agreed with that reasoning but was dissuaded from doing so based on the trial court's interpretation of A.H. However, the District Court held that the trial court's application of A.H. was mistaken for two reasons. First, it was at odds with the trial court's own factual finding in its order that the children have a bond with their parents. Second, the trial court misconstrued the decision in A.H. The District Court observed that the position of the guardian ad litem was diametrically opposed to the position it took at the trial level and was contrary to Dr. Flynn's testimony that the children would not be harmed by the supervised contact with the mother. The court also emphasized the incongruity of the trial court finding that the children would not be harmed by termination because their aunt would allow them to maintain contact with the

mother and the trial court's finding that the children did not have a relationship with the mother despite finding that the children had a bond with her.

Although the court held that termination of parental rights was warranted under ss. 39.806(1)(c) & (1)(e), F.S., it nevertheless reversed the trial court's order to the extent it found that the termination was the least restrictive means of protecting the children from serious harm. The court therefore remanded the case for proceedings consistent with the opinion.

https://edca.1dca.org/DCADocs/2014/4688/144688_DC08_02272015_095428_i.pdf (February 27, 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

P.C. v. Department of Children and Families and Guardian ad Litem, 155 So. 3d 1279, 40 Fla.L.Weekly D379 (Fla. 4th DCA 2014). **TERMINATION OF PARENTAL RIGHTS AFFIRMED WITH INSTRUCTIONS TO THE TRIAL COURT**. The Fourth District Court of Appeal affirmed the termination of a father's parental rights. The father argued on appeal that the trial court erred in terminating his rights without competent, substantial evidence of the grounds alleged under ss. 39.806(1)(b), (1)(c), and (1)(e)1, F.S. The father also argued that the trial court failed to make statutorily-required findings of fact and conclusions of law, and that termination of his rights was not the least restrictive means of protecting his son from harm. On appeal, the District Court affirmed on the latter arguments without discussion. However, the court agreed that competent, substantial evidence did not support termination based on s. 39.806(1)(b). Because evidence supported the other two grounds, the court affirmed termination of parental rights. The District court instructed the trial to amend the final judgment to indicate the correct grounds.

<http://www.4dca.org/opinions/Feb%202015/02-11-15/4D14-2803.op.pdf> (February 11, 2015).

Fifth District Court of Appeals

No new opinions for this reporting period.

Dissolution Case Law

Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

Clark v. Clark, 155 So. 3d 1261 (Fla. 1st DCA 2015). TRIAL COURT CORRECT IN USING FILING DATE AS DATE OF VALUING SPOUSE'S INVESTMENT ACCOUNT, BUT MISREAD ACCOUNT STATEMENTS; REMANDED TO DETERMINE CORRECT VALUE AND REVISE EQUITABLE DISTRIBUTION SCHEME. Former wife appealed the trial court's valuation of several marital assets and its award of two years bridge-the-gap alimony in the final judgment of dissolution. The appellate court affirmed on all issues with the exception of one of former husband's investment accounts which decreased in value between the date of marriage and the date of filing of the petition for dissolution. The trial court concluded that because there was no evidence that the account had increased in value due to marital funds, it had no legal basis to designate a portion of the account as a marital asset. The appellate court held the trial court was correct in using the dating of filing as the date of valuing the asset, but that it had misread the account statements. It reversed and remanded for the trial court to determine the correct value of the account and revise the equitable distribution scheme.

https://edca.1dca.org/DCADocs/2014/0987/140987_DC08_02092015_103558_i.pdf (February 9, 2015).

Second District Court of Appeals

Moore v. Moore, ___ So. 3d ___, 2015 WL 484050 (Fla. 2d DCA 2015). SPOUSE'S INCOME MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; ONLY PORTION OF INCOME AVAILABLE TO SPOUSE (NET) CAN BE CONSIDERED; BUSINESS EXPENSES MUST BE DEDUCTED FROM GROSS INCOME FOR NET; TRIAL COURT ABUSED DISCRETION IN FAILING TO CONSIDER ANY OF SPOUSE'S BUSINESS EXPENSES IN CALCULATING HIS MONTHLY NET INCOME. Both spouses appealed the final judgment of dissolution. Former husband argued that the trial court erred in determining his monthly income and, consequently, the alimony award; former wife contended that the trial court erred in determining the amount of child support and in failing to order former husband to secure his obligations with life insurance. The appellate court reiterated that a trial court's determination of a spouse's income must be supported by competent, substantial evidence. Only the portion of a spouse's income available to the spouse--the net monthly income--should be considered; business expenses must be deducted from gross income in calculating monthly income. Notwithstanding the "difficult task" the trial court faced in determining former husband's monthly income after his six financial affidavits showed a monthly income varying from \$4,055 to \$20,362, the appellate court concluded the trial court's failure to consider any business expenses when calculating net income was an abuse of discretion. The appellate court found former husband's tax return translated to a monthly gross income of \$23,295, but that the trial court had determined that to be his net income. The appellate court reversed and remanded for the trial court to determine former husband's net monthly income, permanent alimony and child support and, if necessary, reconsider the tax consequences of the alimony and whether former husband should be required to maintain life insurance to secure his obligations.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2006,%202015/2D13-3204.pdf (February 6, 2015).

Atkinson v. Atkinson, __So. 3d__, 2015 WL 574251 (Fla. 2d DCA 2015). MERE PRESENCE OF A MALE TENANT DOES NOT AMOUNT TO COHABITATION; FINDINGS REGARDING ABSENCE OF A SUPPORTIVE RELATIONSHIP AND SUBSTANTIAL CHANGE IN CIRCUMSTANCES WERE BASED ON COMPETENT, SUBSTANTIAL EVIDENCE. Both spouses appealed an order terminating former husband's alimony obligation based on the trial court's finding that former wife had cohabitated with a male within the meaning of the marital settlement agreement (MSA). Former husband appealed the trial court's findings that former wife was not engaged in a supportive relationship as defined in s. 61.14(1)(b), F.S., and that there was no substantial change of circumstances to support reduction or termination of alimony. The appellate court held that the trial court's findings regarding the absence of a supportive relationship and a substantial change in circumstances were supported by competent, substantial evidence; however, it concluded that the trial court erred in its ruling that the "mere presence" of a male tenant in former wife's residence amounted to cohabitation as the facts indicated that their relationship was one of landlord-tenant rather than a couple. As the appellate court succinctly put it: "in a nutshell" the two "shared a roof, but they did not share their lives." There is a long discussion of cohabitation. Reversed in part and affirmed in part.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2011,%202015/2D13-5815.pdf (February 11, 2015).

Juchnowicz v. Juchnowicz, __So. 3d__, 2015 WL 630193 (Fla. 2d DCA 2015). DETERMINATION OF NEED BASED ON SPOUSE'S POST-SEPARATION LIFESTYLE INSTEAD OF STANDARD OF LIVING DURING THE MARRIAGE WAS ERROR; ALIMONY AWARD RESULTING IN DISPARITY AND NOT COMMENSURATE WITH SPOUSES' MARITAL STANDARD OF LIVING WAS ABUSE OF DISCRETION. Both spouses appealed a final judgment dissolving a twenty-eight year marriage. The appellate court reversed as to alimony and the requirement that former husband secure that obligation with life insurance; it affirmed the remainder of the judgment. Citing its opinion of Zinovoy v. Zinovoy, 50 So. 3d 763 (Fla. 2d DCA 2010), the appellate court concluded that the amount of alimony awarded to former wife "was not commensurate with the standard of living established by the parties during the marriage or with the Husband's ability to pay." The trial court's determination of former wife's need based on her lifestyle after separation rather than during the marriage was error. The resulting disparity in monthly incomes: \$4800 for former wife compared with \$21,761 for former husband, after the alimony payment, was inadequate and an abuse of discretion. Reversed and remanded for further proceedings, including a new hearing if necessary.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2013,%202015/2D13-4657.pdf (February 13, 2015).

Butler v. Prine, __So. 3d__, 2015 WL 719803 (Fla. 2d DCA 2015). APPELLATE COURT "UNCONVINCED" THAT TRIAL COURT ADEQUATELY CONSIDERED REASONABLENESS AND NECESSITY OF LEGAL WORK UNDERLYING FEES AWARDED TO SPOUSE; REMANDED FOR RECONSIDERATION OF FEES. Former husband appealed a supplemental final judgment entered

in post-dissolution proceedings. The appellate court affirmed the judgment except as to the attorney's fees awarded to former wife as it was "unconvinced" that the trial court fully considered the reasonableness and necessity of the legal work underlying the fees. Reversed and remanded for reconsideration of attorney's fees.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%202015/2D14-2561.pdf (February 20, 2015).

Purin v. Purin, __ So. 3d __, 2015 WL 774604 (Fla. 2d DCA 2015). AN OBLIGOR'S RETIREMENT DOES NOT MANDATE TERMINATION OF ALIMONY; IT ALLOWS A TRIAL COURT TO REVISIT RESPECTIVE NEEDS OF THE SPOUSES INCLUDING THE ABILITY TO PAY; A COMBINED AWARD OF DURATIONAL AND NOMINAL ALIMONY COULD REDUCE LITIGATION UPON ONE SPOUSE'S RETIREMENT WHILE PRESERVING OTHER SPOUSE'S RIGHT TO SUPPORT. Former wife appealed an award of durational rather than permanent alimony in the dissolution of a thirty-year marriage; the appellate court reversed the alimony award and affirmed the remainder. It concluded that the trial court improperly denied permanent alimony based on the fact that former husband would be required to retire ten years down the road. Citing Suarez v. Sanchez, 43 So. 3d 118 (Fla. 3d DCA 2010), the appellate court held that an obligor's retirement does not mandate termination of alimony; retirement allows a trial court to "revisit" the respective needs of the spouses including the ability to pay alimony. The appellate court suggested the trial court consider a combined award of durational and nominal alimony to minimize the need for litigation at former husband's retirement while preserving former wife's right to support if her need continued.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%202015/2D13-6070.pdf (February 25, 2015).

Third District Court of Appeals

Winton v. Saffer, __ So. 3d __, 2015 WL 548563 (Fla. 3d DCA 2015). RELIEF EXCEEDING THAT WHICH IS PLED IS IMPERMISSIBLE; TRIAL COURT MUST MAKE SEPARATE, AFFIRMATIVE FINDING THAT CONTEMNOR HAS PRESENT ABILITY TO PAY PURGE AND THE AMOUNT ITSELF MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE. Former husband appealed an order finding him in contempt for failing to pay arrearages, setting a purge, and directing he show cause as to why he should not be incarcerated if he failed to pay the purge. The appellate court found that competent, substantial evidence supported the trial court's findings that former husband failed to make the required support payments despite an apparent ability to do so, but that the amount awarded by the trial court exceeded the amount calculated by the appellate court from the record as well as the amount recoverable based on former wife's pleadings. Reiterating that relief exceeding that which is pled is impermissible, the appellate court reversed and remanded for further proceedings for the trial court to substantiate the net amount of any arrearage and purge, and to show support for the finding that former husband had the present ability to pay the purge amount. <http://www.3dca.flcourts.org/Opinions/3D14-1122.pdf> (February 11, 2015).

Fourth District Court of Appeals

Chamberlain v. Eisinger, __ So. 3d __, 2015 WL 542990 (Fla. 4th DCA 2015). TRIAL COURT ORDER CHANGING CUSTODY CARRIES PRESUMPTION OF CORRECTNESS; WILL NOT BE DISTURBED ABSENT SHOWING OF ABUSE OF DISCRETION; HEAVY BURDEN ON SPOUSE SEEKING MODIFICATION OF CUSTODY IS INTENDED TO PRECLUDE SPOUSES FROM CONTINUALLY DISRUPTING LIVES OF CHILDREN; IT SHOULD NOT PRECLUDE REVIEW OF CHILD'S BEST INTEREST. After divorcing in Maryland, former husband relocated to Florida; former wife followed a few years later. By the time former wife moved to Florida, the Maryland court had already found former husband in contempt for alimony arrearage. Once she moved, former husband petitioned for full custody of the four minor children; however, the spouses stipulated to time-sharing. Former husband filed an amended petition several months later. Finding a substantial change in circumstances, the trial court granted his petition to modify time-sharing, and based upon that modified the child support; however, it denied his petition to modify alimony. Both spouses appealed. The appellate court affirmed the modification of time-sharing, reversed the calculation of former wife's child support arrearage, and remanded that arrearage and the issue of imputation of income to former husband to the trial court. The appellate court reiterated that a trial court's order changing custody carries a presumption of correctness and will not be disturbed absent a showing of abuse of discretion. The "extraordinary burden" of demonstrating a substantial change in circumstances on a party seeking to modify custody is intended to preclude parties from continually disrupting the lives of their children; however, that high burden should not preclude legitimate review of a child's best interest by a trial court. The appellate court concluded that the trial court correctly found a substantial change in circumstances warranting modification of time-sharing, but erred in factoring in alimony payments former husband had failed to make and in imputing income to former husband without making findings to support the amount imputed.

<http://www.4dca.org/opinions/Feb%202015/02-11-15/4D12-4457.op.pdf> (February 11, 2015).

McIndoo v. Atkinson, __ So. 3d __, 2015 WL 671167 (Fla. 4th DCA 2015). TRIAL COURT SHOULD HAVE APPLIED S. 61.526, F.S., IN CUSTODY CASE. Although not styled as a dissolution case, this case is included for the appellate court's instruction as to which statute the trial court should have been applied in determining whether it had jurisdiction in a child custody case. The appellate court agreed with the mother that the trial court erred in determining it did not have jurisdiction over the case; accordingly, it reversed.

<http://www.4dca.org/opinions/Feb%202015/02-18-15/4D13-3374.op.pdf> (February 18, 2015).

Isaacs v. Isaacs, __ So. 3d __, 2015 WL 775455 (Fla. 4th DCA 2015). CONTEMNOR MUST HAVE HAD PRESENT ABILITY TO PAY SUPPORT AND WILLFULLY FAILED TO COMPLY WITH PRIOR ORDER; IF TRIAL COURT ORDERS INCARCERATION, IT MUST MAKE SEPARATE, AFFIRMATIVE FINDING THAT CONTEMNOR HAS PRESENT ABILITY TO PAY PURGE AND FACTUAL BASIS. A contempt order must contain findings that a contemnor had the present ability to pay support and willfully failed to comply with a prior court order; if a trial court decides incarceration is appropriate, the contempt order must contain a separate, affirmative finding that the contemnor has the present ability to pay the purge and factual basis for that finding.

<http://www.4dca.org/Website/opinions/Feb%202015/02-25-15/4D14-416.op.pdf> (February 25, 2015).

Fifth District Court of Appeal

Henderson v. Henderson, __ So. 3d __, 2015 WL 477876 (Fla. 5th DCA 2015). TRIAL COURT'S FINDINGS REGARDING CHILD'S BEST INTEREST MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; TRIAL COURT CANNOT AWARD SOLE PARENTAL RESPONSIBILITY WITHOUT A SPECIFIC FINDING THAT SHARED PARENTAL RESPONSIBILITY WOULD BE DETRIMENTAL TO CHILDREN; TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO MAKE FINDINGS AS TO SPOUSES' NEEDS AND ABILITY REGARDING FEES WHERE THERE WAS "CLEAR DISPARITY" IN THEIR INCOMES; ALL SUPPORT ORDERS ENTERED AFTER OCTOBER 2010 MUST PROVIDE FOR AUTOMATIC TERMINATION OF SUPPORT ONCE EACH CHILD REACHES MAJORITY, ABSENT OTHER FACTORS SUCH AS ENROLLEMENT IN HIGH SCHOOL; TRIAL COURT MUST REDUCE SUPPORT OBLIGATION FOR A PARENT WHO EXERCISES 20% OF THE OVERNIGHTS OVER COURSE OF A YEAR. Former wife appealed several trial court orders including one which: changed the primary residency of the spouses' minor children from her to former husband; allocated sole decision-making authority over the children to him; ordered her to pay child support; and denied her request for attorney's fees. The appellate court reversed because the order lacked a specific finding that shared responsibility would be detrimental to the children and lacked findings as to the spouses' needs and ability to pay fees. The appellate court found the evidence showed a "clear disparity" in income between the spouses; the trial court's failure to make any findings as to the need and ability to pay was an abuse of discretion. Former wife also appealed a subsequent order setting continuing child support obligations and a prior one setting temporary child support obligations. The appellate court reversed the subsequent order because it failed to provide an automatic decrease in support once the older child reached majority; it reversed the prior order because it failed to credit former wife with any overnights which was contradicted by the evidence. Section 61.13(1)(a)1a, F.S. (2010), requires all support orders entered after October 1, 2010, to provide for automatic termination of support once a child reaches majority, absent other factors, such as enrollment in high school. A trial court must also reduce the support obligation for a parent who exercises time-sharing at least 20% of the overnights in a year, which here former wife did. Affirmed in part, reversed in part, and remanded with instructions.

<http://www.5dca.org/Opinions/Opin2015/020215/5D12-4633.op.pdf> (February 6, 2015).

Haeberli v. Haberli, __ So. 3d __, 2015 WL 585530 (Fla. 5th DCA 2015). FUNDAMENTAL FAIRNESS INCLUDES ADEQUATE NOTICE AND AN OPPORTUNITY TO BE HEARD; IN CONTEMPT PROCEEDINGS A TRIAL COURT MUST MAKE FACTUAL FINDINGS THAT A PRIOR SUPPORT ORDER WAS ENTERED, THAT THE CONTEMNOR HAD THE PRESENT ABILITY TO PAY SUPPORT, AND THAT THE CONTEMNOR WILLFULLY FAILED TO COMPLY WITH PRIOR COURT ORDER. The appellate court agreed with former husband that he was denied due process when the trial court ruled on motions not noticed for hearing. Former wife's attorney filed three post-dissolution motions for contempt, only one of which was set for a hearing. Former husband asked to appear telephonically at that hearing; former wife objected. The trial court never ruled on former husband's request, and he did not attend. The hearing proceeded; however, the trial court failed to rule on the contempt motion that had been noticed for hearing, ruling instead on the two

motions that had not been noticed. Former wife conceded that the motions ruled on were not noticed for the hearing. The appellate court held that fundamental fairness includes providing the alleged contemnor with adequate notice and an opportunity to be heard. Noting that the trial court's order failed to include any factual findings, the appellate court reiterated that an order finding an alleged contemnor to be in contempt shall contain findings that: a prior order of support was entered; the contemnor had the present ability to pay support; and the contemnor willfully failed to comply with the prior court order. Reversed and remanded for a new hearing. <http://www.5dca.org/Opinions/Opin2015/020915/5D14-1727.op.pdf> (February 13, 2015).

Baker v. Baker, __So. 3d__, 2015 WL 585473 (Fla. 5th DCA 2015). TRIAL COURT ERRED IN TRANSFERRING CUSTODY; SPOUSE'S MOTION WAS NOT A PROPERLY-PLED MODIFICATION PETITION AND DID NOT PLACE OTHER SPOUSE ON NOTICE THAT MODIFICATION OF PREVIOUS CUSTODY WAS BEING SOUGHT. The appellate court agreed with former husband that the trial court erred in temporarily transferring custody of the spouses' minor children to former wife pending its further order. The appellate court noted that the spouses had been "engaged in years of contentious litigation" concerning their children. It found former wife's motion for "Court Assistance" was not a properly-pled modification petition because it did not allege a substantial and material change in circumstances not reasonably contemplated when the previous custody order was entered and did not place former husband on notice that modification of the prior custody order was being sought. Concluding that the trial court abused its discretion in placing the children in the temporary custody of former wife, the appellate court reversed and remanded for further proceedings. <http://www.5dca.org/Opinions/Opin2015/020915/5D14-2989.op.pdf> (February 13, 2015).

Maguire v. Wright, __So. 3d__, 2015 WL 585459 (Fla. 5th DCA 2015). GENERAL RULE IS THAT RECORD MUST REFLECT THAT A CUSTODY DETERMINATION WAS MADE IN A CHILD'S BEST INTEREST; HOWEVER, COURTS HAVE RECOGNIZED A "TRUE EMERGENCY" EXCEPTION TO GENERAL RULE THAT NORMAL BURDEN ON PARENT SEEKING CUSTODY TO SHOW TRANSFER OF CUSTODY IS IN CHILD'S BEST INTEREST NEED NOT BE MET WHEN THERE IS AN IMPROPER REMOVAL OF A MINOR CHILD FROM THE STATE; HERE, WHEN CHILD WAS NOT RETURNED ON THE DAY ORDERED, REMOVAL BECAME IMPROPER. Former husband argued that the trial court erred in granting former wife "immediate and on-going physical care and physical custody" of their minor child without having taken the child's best interest into consideration. The judgment dissolving the marriage in the UK did not determine child support, time-sharing, or parental responsibility; however, the spouses resolved these issues informally. When the spouses moved separately to Florida and lived one mile apart, they continued to have informal time-sharing with their daughters. Eleven years after their divorce, former wife petitioned to domesticate the foreign divorce decree, which the court did through a final order. She petitioned separately to establish a parenting plan and sought primary time-sharing with the children. Former husband countered with a request for equal time-sharing with the younger daughter and to relocate to the UK with both children. He filed a motion for temporary relocation and/or summer time-sharing to take the children to the UK for the summer or until a final order was entered on his request for permanent relocation. The trial court granted former husband's motion to take the children to the UK for the summer, but ordered the younger child returned to the US on a

particular day in time for the new school year. The trial on former husband's petition for permanent relocation would resume on their return. Things went awry when former husband purchased plane tickets for the minor child to return to Florida on the day the judge ordered, but the daughter refused to board the plane. This prompted a hearing on former wife's emergency motion followed by the grant of custody to her due to former husband's failure to return the minor. Although neither the transcript of the hearing nor the order addressed the child's best interest, the appellate court noted it had specifically recognized a "true emergency" exception. The normal burden on a parent seeking to show a custody transfer (the child's best interest) need not be met when there is an improper removal of the child from the state; when the child was not returned on the day ordered, her removal became improper. The appellate court affirmed the grant of temporary custody to former wife, but instructed the trial court hold an evidentiary hearing on temporary shared parental responsibility and temporary time-sharing within 20 days unless the spouses agreed to a later date or to have it in conjunction with the trial on their petitions to establish shared parental responsibility and time-sharing.

<http://www.5dca.org/Opinions/Opin2015/020915/5D14-3310.op.pdf> (February 13, 2015).

Westwood v. Westwood, __ So. 3d __, 2015 WL 803907 (Fla. 5th DCA 2015). **SPOUSE'S PETITION TO MODIFY OR RECONSIDER A PARTIAL FINAL JUDGEMENT OF DISSOLUTION WAS AN UNTIMELY MOTION FOR REHEARING OR RECONSIDERATION; TRIAL COURT CORRECTLY DENIED IT WITHOUT A HEARING.** In another case of a spouse wishing to move to the UK, former wife argued that the trial court violated her due process rights by denying her petition to modify or reconsider the partial final judgment of dissolution. At issue was whether her petition was actually a petition or an untimely motion for reconsideration. Although not US citizens, the spouses were residing in the US at the time of their trial. In its partial final judgment of dissolution, the trial court ruled that the minor children should be allowed to move to the UK with former husband. It reserved jurisdiction to provide for a parenting plan and child support. Neither spouse appealed; however, thirty-four days later, former wife filed a petition challenging the trial court's finding that relocation was in the children's best interest. The appellate court held that the trial court was correct in viewing her pleading as an untimely motion for rehearing or reconsideration and denying it without a hearing. The appellate court noted that former wife could refile and properly serve a petition for modification; if so, she would need to plead and prove a substantial, material, and unanticipated change of circumstances and establish that modification was in the children's best interest.

<http://www.5dca.org/Opinions/Opin2015/022315/5D14-2087.op.pdf> (February 27, 2015).

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.

Drug Court/Mental Health Court Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

No new opinions for this reporting period.

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

No new opinions for this reporting period.