

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

## Table of Contents

Baker Act/Marchman Act Case Law .....	3
Florida Supreme Court.....	3
First District Court of Appeal .....	3
Second District Court of Appeal.....	3
Third District Court of Appeal.....	3
Fourth District Court of Appeal.....	3
Fifth District Court of Appeal.....	3
Delinquency Case Law .....	4
Florida Supreme Court.....	4
First District Court of Appeal .....	4
Second District Court of Appeal.....	4
Third District Court of Appeal.....	4
Fourth District Court of Appeal.....	6
Fifth District Court of Appeal.....	7
Dependency Case Law.....	8
Florida Supreme Court.....	8
First District Court of Appeal .....	8
Second District Court of Appeal.....	8
Third District Court of Appeal.....	8
Fourth District Court of Appeal.....	8
Fifth District Court of Appeal.....	8
Dissolution Case Law .....	9
Supreme Court .....	9
First District Court of Appeal .....	9
Second District Court of Appeal.....	9
Third District Court of Appeal.....	11
Fourth District Court of Appeal.....	12
Fifth District Court of Appeal.....	12
Domestic Violence Case Law.....	15
Florida Supreme Court.....	15

First District Court of Appeal .....	15
Second District Court of Appeal.....	15
Third District Court of Appeal.....	15
Fourth District Court of Appeal.....	16
Fifth District Court of Appeal.....	16
Drug Court/Mental Health Court Case Law .....	17
Florida Supreme Court.....	17
First District Court of Appeal .....	17
Second District Court of Appeal.....	17
Third District Court of Appeal.....	17
Fourth District Court of Appeal.....	17
Fifth District Court of Appeal.....	17

## **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**

No new opinions for this reporting period.

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

S.M. v. State, \_\_ So.3d \_\_, 2015 WL 1088436 (Fla. 2d DCA 2015). RESTITUTION ORDER AFFIRMED WHERE THE TRIAL COURT DID NOT ACTUALLY TAKE JUDICIAL NOTICE OF A VALUE ESTABLISHED BY A WEBSITE, BUT INSTEAD, RELIED ON EXTENSIVE TESTIMONY FROM THE OWNER THAT INCLUDED INFORMATION FROM THE WEBSITE. The juvenile appealed a restitution order of \$8629 for a stolen car. The Second District Court of Appeal disagreed with the trial court's finding that the State presented the predicate information needed to take judicial notice of an online "Kelley Blue Book" valuation of a used car under s. 90.202(12), F.S. (2012). However, the Second District found that the owner of a stolen vehicle could express an opinion as to the value based, in part, upon information obtained from such a website. In the instant case, the trial court did not actually take judicial notice of a value established by the website, but instead, relied on extensive testimony from the owner that included information from the website. Accordingly, the Second District held that the trial court's restitution award was supported by competent, substantial evidence presented by the owner of the vehicle and affirmed.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2013,%202015/2D13-2947.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2013,%202015/2D13-2947.pdf) (March 13, 2015).

J.C. v. State, \_\_ So.3d \_\_, 2015 WL 1088444 (Fla. 2d DCA 2015). PETITION FOR WRIT OF CERTIORARI GRANTED WHERE THE TRIAL COURT HAD NO AUTHORITY TO ENTER RESTITUTION ORDER PRIOR TO ADJUDICATION AND DISPOSITION AS PART OF A DIVERSION PROGRAM AFTER THE FILING OF A PETITION. The juvenile appealed a restitution order in the amount of \$1791. The State had a pending delinquency petition against the juvenile charging him with burglary and grand theft. The juvenile entered a guilty plea, but no adjudicatory order of any sort was entered. The court set a restitution hearing for March 3, 2014, and a disposition hearing for March 19, 2014. The restitution hearing took place on March 3. The trial court set restitution at \$1791 and granted "parental sanctions." At the restitution hearing, the juvenile was recommended for a diversion program referred to as "JDAT." The trial court granted the request. It explained that the restitution would become a part of the diversion program and that to successfully complete the program, the juvenile would have to pay the full amount of restitution by August 13, 2014. The trial court reset the disposition hearing to occur on that date. The trial court entered an order

for restitution on March 18, requiring the restitution be paid on or before August 13, and making the juvenile's mother jointly responsible for the payment. The juvenile appealed the order of restitution, primarily arguing that the amount of restitution was too high. The Second District Court of Appeal questioned its jurisdiction to review the order of restitution because the trial court had not yet entered any of the appealable orders described in Florida Rule of Appellate Procedure 9.145(b). The Second District found that a trial court was authorized to enter an order of restitution for "an adjudicated delinquent child." See s. 985.437, F.S. (2013). The State provided no authority for a trial court to enter such an order prior to adjudication and disposition as part of a diversion program after the filing of a petition. In the instant case, the juvenile and his mother did not stipulate or agree to reimbursement as a part of a diversion program. Instead, the trial court entered the order over their objection, making its payment essentially a condition to avoid an adjudication and disposition. The Second District held that the trial court departed from the essential requirements of the law when it entered the order without any legal authority to do so. The Second District concluded that the proper remedy was certiorari. Accordingly, the appeal was transformed into a petition for writ of certiorari and granted.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2013,%202015/2D14-1262.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2013,%202015/2D14-1262.pdf) (March 13, 2015).

D.G. v. State, \_\_ So.3d \_\_, 2015 WL 1312646 (Fla. 2d DCA 2015). **TRIAL COURT'S COMMITMENT DECISION MADE WITHOUT THE DEPARTMENT OF JUVENILE JUSTICE'S RECOMMENDATION IDENTIFYING THE RESTRICTIVENESS LEVEL MOST APPROPRIATE FOR THE CHILD AS REQUIRED BY S. 985.433(7)(A), F.S. WAS IN ERROR.** The juvenile was found to have committed sexual battery. At disposition, the Department of Juvenile Justice (DJJ) recommended that adjudication be withheld and that the juvenile be placed on two years' probation with several conditions, including sex offender evaluation and treatment. Instead, the trial court adjudicated the juvenile and committed him to a high-risk sex offender program. At the disposition hearing, the DJJ gave a bare recommendation for probation while making no reference to a comprehensive evaluation of the juvenile. The juvenile appealed arguing that the trial court was required to justify its departure from the DJJ's probation recommendation and that it failed to state any reasons other than what was already contained in the DJJ's predisposition report (PDR). The Second District Court of Appeal found that the problem with the trial court's commitment order was not that it disregarded the probation recommendation but that it prescribed a restrictiveness level without first obtaining a recommendation from the DJJ. Section 985.433, F.S. (2011), F.S. governs the disposition hearing when a court has found that a juvenile offender committed a delinquent act; and s. 985.441, F.S. governs the commitment. The disposition statute requires a two-step process. In the first step, the court must decide whether to adjudicate and commit the child to the custody of DJJ or instead to withhold adjudication and place the child on probation. DJJ

provides a recommendation that the court must consider, and the statute provides criteria to guide DJJ's recommendation. In this case, the DJJ recommended that adjudication be withheld and that the juvenile be placed on probation. Having properly decided that the juvenile should be adjudicated and committed, the trial court was obliged in the second step of the disposition process to determine the appropriate restrictiveness level of the commitment. In this step, the DJJ is required by s. 985.433(7)(a), F.S. to recommend a placement and treatment plan and specifically identify the restrictiveness level most appropriate for the child. Under s. 985.433(7)(b), F.S., the trial court must commit the child at the level recommended by the DJJ unless it provides reasons, supported by a preponderance of the evidence, for disregarding the recommendation. The Florida Supreme Court's decision in E.A.R. v. State, 4 So.3d 614 (Fla.2009), set forth the type of reasons that would warrant a court's disregard of DJJ's recommended commitment level. In the instant case, the DJJ did not recommend a placement and treatment plan and specifically identify the restrictiveness level most appropriate for the child as required by s. 985.433(7)(a), F.S. Therefore, the trial court's commitment decision, made without this recommendation by DJJ, was in error. See J.B.S. v. State, 90 So.3d 961, 962 (Fla. 1st DCA 2012); and B.K.A. v. State, 122 So.3d 928, 930 (Fla. 1st DCA 2013). The Second District also rejected the State's assertion that juvenile sex offenders are not governed by the same statutory scheme that requires deference to the DJJ's recommendation regarding the restrictiveness level. Accordingly, the commitment was reversed and remanded for further proceedings.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2025,%202015/2D13-404.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2025,%202015/2D13-404.pdf) (March 25, 2015).

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

K.E. v. State, \_\_ So.3d \_\_, 2015 WL 1048283 (Fla. 3d DCA 2015). JUDGMENT AFFIRMED WHERE THE JUVENILE WAS NOT PROCEDURALLY PREJUDICED BY STATE'S FAILURE TO TIMELY PROVIDE PHOTOGRAPHS OF THE INJURIES SUFFERED BY THE VICTIM AS DISCOVERY MATERIALS. The juvenile seeks reversal of her conviction based on a claim that the trial court failed to conduct an adequate Richardson v. State, 246 So.2d 771 (Fla.1971) hearing regarding the State's failure to timely provide certain discovery materials. The discovery materials in question were photographs of the injuries suffered by the victim during the altercation at issue in the proceedings below. The Third District Court of Appeal held that under the circumstances, the juvenile was not procedurally prejudiced by the discovery violation. Even if the trial court's Richardson inquiry was inadequate, any error was harmless beyond a reasonable doubt. See State v. Schopp, 653 So.2d 1016, 1021 (Fla.1995). Affirmed.

<http://www.3dca.flcourts.org/Opinions/3D14-1867.pdf> (March 11, 2015).

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

R.E.C., III. v. State, \_\_ So.3d \_\_, 2015 WL 1046264 (Fla. 4th DCA 2015). **RELIEF IS AVAILABLE TO CONTEST THE PLEA IN JUVENILE PROCEEDINGS ONLY BY HABEAS CORPUS.** Through an Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) appeal, the juvenile challenged a disposition order that followed violation of probation and commitment proceedings. The Fourth District Court of Appeal affirmed the disposition order without discussion. The Fourth District noted that appellate counsel had addressed issues concerning an order that denied a motion to withdraw a plea. That order was entered after the notice of appeal was filed, at which point the trial court lacked jurisdiction to proceed. The Fourth District found that even if the court had jurisdiction, the motion to withdraw a plea was unauthorized, as relief is available to contest the plea in juvenile proceedings only by habeas corpus. See C.C. v. State, 150 So.3d 216 (Fla. 4th DCA 2014); D.M. v. State, 84 So.3d 1242 (Fla. 2d DCA 2012). Affirmed.  
<http://www.4dca.org/opinions/March%202015/03-11-15/4D14-3139.op.pdf> (March 11, 2015).

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

M.B. v. State, \_\_ So.3d \_\_, 2015 WL1071057 (Fla. 5th DCA 2015). **THE JUVENILE COULD ONLY BE REQUIRED TO REGISTER AS A SEXUAL OFFENDER FOR VIOLATIONS OF S. 800.04(5)(C)1., F.S., IF THE COURT FOUND MOLESTATION INVOLVED UNCLOTHED GENITALS.** The juvenile was adjudicated delinquent of lewd or lascivious molestation of two children under the age of twelve, in violation of s. 800.04(5)(c)1, F.S. (2012). The juvenile was fourteen years old at the time of the offenses. The trial court expressly found that the juvenile had touched clothed, rather than unclothed, parts of the victims. At disposition, the trial court determined, over objection, that the juvenile would be required to register as a sexual offender. The juvenile appealed. The Fifth District Court of Appeal found that under s. 943.0435(1)(a)1.d., F.S. (2012), the juvenile could only be required to register as a sexual offender for violations of s. 800.04(5)(c)1., F.S., if the court found the molestation involved unclothed genitals. In the instant case, the trial court expressly found that the juvenile had touched clothed, rather than unclothed, parts of the victims. Thus, it was error for the trial court to have imposed a sexual offender registration requirement on the juvenile. The Fifth District further observed that there was a scrivener's error in the trial court's Second Amended Findings on Specified Sex Offenses that needed to be corrected on remand. The trial court's written findings indicated that the victims were fourteen years old at the time of the offenses. However, the trial court had previously made an oral pronouncement, consistent with the uncontroverted evidence that the victims were under the age of twelve when the juvenile committed the charged crimes. Accordingly the disposition was reversed and remanded.  
<http://www.5dca.org/Opinions/Opin2015/030915/5D14-2979.op.pdf> (March 13, 2015).

## Dependency Case Law

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

No new opinions for this reporting period.

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

W.W. v. Guardian Ad Litem Program, \_\_\_ So.3d \_\_\_, 2015 WL 1281631 (Fla. 1st DCA 2015). **APPELLATE PROCEDURE CHANGE.** The appellant appealed an order denying the father's motion to reinstate supervised visitation and his motion to declare section 39.0139, Florida Statutes, unconstitutional by a petition for writ of certiorari. The appellate court held that review of this post-dependency final order is properly by appeal rather than by petition for writ of certiorari. Rule 9.130(a)(4), Florida Rules Appellate procedure was recently amended to remove the phrase "orders entered after final order on authorized motion." Due to this change, the court held that future orders entered on post-dependency motions seeking authorized relief that fully resolve the issues raised in the motions shall be reviewed as final orders pursuant to Florida Rule of Appellate Procedure 9.110(a)(1).

[https://edca.1dca.org/DCADocs/2015/0369/150369\\_NOND\\_03232015\\_100151\\_i.pdf](https://edca.1dca.org/DCADocs/2015/0369/150369_NOND_03232015_100151_i.pdf) (March 23, 2015).

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

M.P. v. Department of Children and Families, \_\_\_ So.3d \_\_\_, 2015 WL 1044156 (Fla. 4th DCA 2015). **DEPENDENCY AFFIRMED.** DCF filed a shelter petition and a dependency petition with regard to mother and father's four minor children due to allegations they were abused, neglected, or abandoned. The mother consented and the court adjudicated the children dependent following a trial. The father appealed. The appellate court affirmed the adjudication, but remanded the case for the court to strike several unsupported findings and to remove the task of random drug testing from the father's case plan since there was no evidence presented at trial that the father abused drugs.

<http://www.4dca.org/opinions/March%202015/03-11-15/4D14-3439.op.pdf> (March 11, 2015).

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

No new opinions for this reporting period.

## Dissolution Case Law

### **Supreme Court**

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms, \_\_So.3d\_\_, 2015 WL 1343088, (Fla. 2015). SUPREME COURT APPROVED FAMILY LAW FORMS AMENDED TO PERMIT THOSE NOT REQUIRING PERSONAL SERVICE TO BE FILED AND SERVED ELECTRONICALLY; SELF-REPRESENTED LITIGANTS MAY, BUT ARE NOT REQUIRED TO, FILE AND SERVE FORMS ELECTRONICALLY. The Supreme Court adopted revisions to roughly one-hundred fifty family law forms to enable those not requiring personal service to be filed and served electronically. Self-represented litigants may, but are not required to, file and serve electronically. Minor revisions were also made to update some of the forms.

<http://www.floridasupremecourt.org/decisions/2015/sc15-44.pdf> (March 26, 2015)

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

Cheek v. Hesik, \_\_So.3d\_\_, 2015 WL 1003940, (Fla. 1st DCA 2015). COURT CANNOT GRANT RELIEF NOT PLEAD; VIOLATION OF DUE PROCESS. Citing case law that granting relief not plead results in a violation of due process, appellate court reversed a trial court final judgment to the extent it: 1) temporarily suspended former husband's one-half obligation toward travel costs; and 2) ordered that all time-sharing of fewer than four days in duration occur in the vicinity of former husband's residence. Appellate court remanded with instructions that those portions of the judgment be vacated and affirmed the remainder.

[https://edca.1dca.org/DCADocs/2014/2892/142892\\_DC08\\_03092015\\_020218\\_i.pdf](https://edca.1dca.org/DCADocs/2014/2892/142892_DC08_03092015_020218_i.pdf) (March 9, 2015).

Kobe v. Kobe, \_\_So.3d\_\_, 2015 WL 1223698, (Fla. 1st DCA 2015). REVERSAL IS REQUIRED IF COURT AWARDS MORE ALIMONY THAN REQUESTED WITHOUT SUFFICIENT FINDINGS IN THE JUDGMENT TO SUPPORT THE INCREASE. Both spouses appealed final judgment of dissolution. Appellate court found that the amount of alimony awarded before and after sale of the marital home, coupled with the amount of income imputed to former wife, exceeded her stated need. The trial court made no findings to support its award. Citing its opinion in *Gray v. Gray*, 103 So.3d 962, 966 (Fla. 1st DCA 2012), appellate court held that reversal and remand is required when a court awards more alimony than requested without sufficient findings in the final judgment to support the increased award. Appellate court noted there was ample evidence regarding the high standard of living enjoyed by the spouses during the marriage, but little evidence concerning former wife's expected expenses once the marital home was sold. Reversed and remanded as to alimony; remainder affirmed.

[https://edca.1dca.org/DCADocs/2013/5699/135699\\_DC08\\_03182015\\_113326\\_i.pdf](https://edca.1dca.org/DCADocs/2013/5699/135699_DC08_03182015_113326_i.pdf) (March 18, 2015).

Clark v. Clark, \_\_So.3d\_\_, 2015 WL 1334079, (Fla. 1st DCA 2015). A MOTION TO DISQUALIFY IS LEGALLY SUFFICIENT WHEN FACTS ALLEGED WOULD PLACE REASONABLY PRUDENT PERSON IN FEAR OF NOT RECEIVING A FAIR TRIAL; AN ADVERSE RULING IS NOT SUFFICIENT TO SHOW BIAS. Concluding that the trial judge correctly ruled that a motion to disqualify was legally insufficient, appellate court denied former husband's petition for a writ of prohibition. Appellate court

reiterated that a motion to disqualify is legally sufficient when “the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial.” *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1334-35 (Fla. 1990). Noting it is “well-settled” that adverse rulings are not sufficient to show bias, appellate court found that former husband’s allegations amounted to “no more than complaints over an adverse ruling”.

[https://edca.1dca.org/DCADocs/2014/5949/145949\\_DC02\\_03252015\\_113233\\_i.pdf](https://edca.1dca.org/DCADocs/2014/5949/145949_DC02_03252015_113233_i.pdf) (March 25, 2015).

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

*Jenkins v. Jenkins*, \_\_ So.3d \_\_, 2015 WL 968495, (Fla. 2d DCA 2015). TRIAL COURT ERRED IN FAILING TO APPLY UNCLEAN HANDS DOCTRINE TO SPOUSE WITH ARREARAGE SEEKING DOWNWARD MODIFICATION WHO DID NOT DEMONSTRATE INABILITY TO COMPLY WITH PREVIOUS SUPPORT ORDER; ONE WHO SEEKS EQUITY MUST DO EQUITY; AN ARREARAGE PER SE DOES NOT REQUIRE DENIAL OF A MODIFICATION PETITION IF RESPONDENT CAN SHOW INABILITY TO COMPLY WITH PREVIOUS SUPPORT ORDER. Appellate court agreed with former wife that the trial court erred in granting former husband’s petition for downward modification of child support by failing to apply the equitable doctrine of unclean hands. Former husband was in arrears over \$24,000 in child support and had failed to show that he was unable to comply with the previous support order. Appellate court cited its opinion in *Ohmes v. Ohmes*, 200 S.2d 849, 856 (Fla.2d DCA 1967), for the rule that: “It is axiomatic that one who seeks equity must do equity.” That rule has frequently been applied against former husbands who seek downward modification only to find “the doors of chancery are closed to him so long as he is in such wilful default.” *Ohmes* at 856. Appellate court noted that “an arrearage does not per se require denial of a modification petition so long as respondent can show that he or she was unable to comply with the previous support order”, *Blender v. Blender*, 760 S.2d 950, 952 (Fla.4th DCA 1999); however, if the party in default fails to demonstrate his or her inability to comply, the petition for modification should not be considered. *Watson v. McDowell*, 110 So.2d 680, 682 (Fla.2d DCA 1959). Reversed.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2006,%202015/2D13-6175.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2006,%202015/2D13-6175.pdf) (March 6, 2015).

*Wix v. Wix*, \_\_ So.3d \_\_, 2015 WL 968574, (Fla. 2d DCA 2015). SPOUSE’S 401k SHOULD HAVE BEEN CONSIDERED AS PART OF HIS ABILITY TO PAY ALIMONY ARREARAGES; ERROR NOT TO CONSIDER Former wife appealed a post-dissolution order denying her motions to vacate the magistrate’s findings and find former husband in contempt for failure to pay alimony. Appellate court concluded that the failure to consider former husband’s 401k as part of his ability to pay the arrearages was error; accordingly, it reversed. Appellate court found the magistrate’s apparent distinction between requiring an asset to pay a regular alimony obligation or to satisfy a purge amount incorrect in light of the case law, and that the trial court had abused its discretion in adopting the magistrate’s report and recommendations and denying former wife’s motions.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2006,%202015/2D14-22.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2006,%202015/2D14-22.pdf) (March 6, 2015).

Marcheck v. Marcheck, \_\_ So.3d \_\_, 2015 WL 1381146, (Fla. 2d DCA 2015). **COMPETENT, SUBSTANTIAL EVIDENCE MUST SUPPORT EQUITABLE DISTRIBUTION SCHEME**. Former husband appealed the values reflected in the equitable distribution worksheet in his dissolution final judgment. Appellate court reversed that portion of the final judgment because there was no competent, substantial evidence supporting the trial court's valuation of the business income; it affirmed the remainder of the judgment without comment. The equitable distribution scheme was reversed and remanded for further proceedings.  
[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2027,%202015/2D14-749.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2027,%202015/2D14-749.pdf) (March 27, 2015).

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

Guevara v. Guevara, \_\_ So.3d \_\_, 2015 WL 903953, (Fla. 3d DCA 2015). **TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING WITH PREJUDICE; UNDER RULE 1.190(a) LEAVE TO AMEND SHOULD BE FREELY GIVEN IF JUSTICE REQUIRES**. Former wife appealed trial court order dismissing with prejudice her petition to set aside a final judgment on the basis of fraud; appellate court affirmed in part and reversed in part. Pursuant to a marital settlement agreement (MSA), the former spouses would continue to own an apartment building in Miami as tenants in common. Former husband had the right to purchase former wife's interest in the apartments for \$250,000 any time within three years from the date of execution of the MSA. Former wife filed her petition seven years later, alleging that former husband had orchestrated a "sham sale" of her interest in the apartments and that she never received the \$250,000 due under the MSA. Appellate court found that the trial court abused its discretion in dismissing her petition with prejudice; under Florida Rule of Civil Procedure 1.190(a), leave to amend a pleading should be freely given in the interest of justice. Remanded to permit former wife to amend only with regard to her claim that she did not receive the \$250,000.  
<http://www.3dca.flcourts.org/Opinions/3D14-0701.pdf> (March 4, 2015).

Solache v. Ibarra, \_\_ So.3d \_\_, 2015 WL 1042282, (Fla. 3d DCA 2015). **TRIAL COURT ERRED BY ORDERING AUTOMATIC INCREASE IN ALIMONY WITHOUT MAKING FINDINGS OF FACT OR GIVING ANY REASON FOR IT; COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTED COURT'S OTHER FINDINGS**. Former husband appealed final judgment of dissolution and a post-judgment order finding him in contempt for failure to pay alimony and child support as ordered in the dissolution. Appellate court affirmed with one exception; it found the trial court erred in providing for an automatic increase in monthly alimony payments when the child reached majority and child support payments terminated. The final judgment failed to make any findings of fact or give any reason for the automatic increase; thus, the trial court erred in providing for it. Appellate court concluded that competent, substantial evidence supported the trial court's other findings.  
<http://www.3dca.flcourts.org/Opinions/3D14-0097.pdf> (March 11, 2015).

Wolfson v. Wolfson, \_\_ So.3d \_\_, 2015 WL 1227498, (Fla. 3d DCA 2015). **JUDGE MAY FORM MENTAL IMPRESSIONS AND OPINIONS WHILE HEARING THE EVIDENCE, BUT MAY NOT PREJUDGE THE CASE**. Former wife sought a writ of prohibition to prevent the trial judge from presiding over a post-dissolution proceeding after the trial judge denied her verified motion to disqualify. Appellate court found her motion legally sufficient as the trial judge's comments indicated that

she had prejudged the case. Citing *Barnett v. Barnett*, 727 So. 2d 311,312 (Fla.2d DCA 1999): “While it is well-settled that a judge may form mental impressions and opinions during the course of hearing evidence, he or she may not prejudge the case,” appellate court granted the writ. <http://www.3dca.flcourts.org/Opinions/3D15-0630.pdf> (March 18, 2015).

*Wade v. Wade*, \_\_ So.3d \_\_, 2015 WL 1313251, (Fla. 3d DCA 2015). **COUNSEL CAUTIONED AS TO THE TONE OF THEIR EMAILS; SPOUSES AND COUNSEL URGED TO USE JUDGMENT’S PARENTING COORDINATION PROVISIONS.** Appellate court disagreed with former wife that a post-judgment order on time-sharing and custody contradicted and impermissibly modified the terms of a 100-page final custody judgment entered in Illinois in 2011 and domesticated in Florida in 2012; however, it cautioned counsel as to several of their e-mail exchanges which became in the appellate court’s eyes, “abrasive and accusatory”. Accordingly, it encouraged both former spouses and their counsel to follow the parenting coordination provisions of the final judgment, which were “plainly intended to offer a path of confidentiality and non-judicial resolution for the benefit of the children”. Affirmed. <http://www.3dca.flcourts.org/Opinions/3D14-1909.pdf> (March 25, 2015).

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

*Castelli v. Castelli*, \_\_ So.3d \_\_, 2015 WL 894466, (Fla. 4th DCA 2015). **TRIAL COURT ERRED IN NOT ALLOWING SPOUSE TO EXERCISE RIGHT OF FIRST REFUSAL; IF HOLDER OF RIGHT OF FIRST REFUSAL ADDS OR DELETES TERMS WHEN EXERCISING HIS OR HER RIGHT, RIGHT IS NOT PROPERLY EXERCISED; HERE, ONCE SPOUSE EXERCISED HIS RIGHT, IT CREATED BINDING CONTRACT.** The husband appealed a non-final order finding him in contempt and compelling him to execute a contract to sell the marital home formerly shared with his wife from whom he was separated. The wife conceded that the trial court erred in entering the contempt order. The trial court had entered an agreed order to list and sell the home which granted the husband a right of first refusal for an offer acceptable to the parties--without payment of commission--so long as the wife was paid all cash for her interest. When a third party offered to buy, the husband, through counsel, communicated his intent to the wife to exercise his right of first refusal. Appellate court stated the law is clear: when the holder of a right of first refusal adds or deletes terms when exercising his or her right, the right has not been properly exercised. Here, it found that although the husband’s counsel’s e-mail to the wife’s attorney did not explicitly state the husband was matching the third party’s offer, by not offering different terms and conditions, but stating that he was exercising his right of first refusal, the husband implicitly adopted the third party’s terms. Once the husband exercised his right, a binding contract between him and the wife was created. Reversed and remanded to strike the contempt and enforce the husband’s exercise of first refusal.

<http://www.4dca.org/opinions/March%202015/03-04-15/4D14-1687.op.pdf> (March 4, 2015).

*Polcz v. Polcz*, \_\_ So.3d \_\_, 2015 WL 1241022, (Fla. 4th DCA 2015). **MATHEMATICAL FINDINGS IN ORDER DID NOT SUPPORT JUDGMENT REDUCING ARREARAGES; REMANDED FOR CLARIFICATION OF ARREARAGES.** Both spouses appealed an order granting former husband’s petition for downward modification of alimony. Appellate court found the order erroneous because its mathematical findings did not support the court’s judgment on arrearages, nor did the order give

any reason for eliminating the arrearages. Appellate court remanded for clarification of arrearages and affirmed the remainder.

<http://www.4dca.org/opinions/March%202015/03-18-15/4D14-546.op.pdf> (March 18, 2015).

Marvin v. Marvin, \_\_So.3d\_\_, 2015 WL 1260130, (Fla. 4th DCA 2015). **TEMPORARY ALIMONY AREA OF BROADEST DISCRETION FOR TRIAL COURTS.** Temporary awards are an area where trial courts have very broadest discretion; appellate courts are reluctant to interfere except under most compelling circumstances. *Pedraja v. Garcia*, So.2d 461,462 (Fla.4th DCA 1996). Spouses may present issues, including request for retroactive support, for the trial court's consideration in its final judgment. Affirmed without prejudice.

<http://www.4dca.org/opinions/March%202015/03-18-15/4D14-2665.op.pdf> (March 18, 2015).

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

Harris v. Harris, \_\_So.3d\_\_, 2015 WL 965621, (Fla. 5th DCA 2015). **TRIAL COURT ABUSED ITS DISCRETION IN INCLUDING SECONDARY SOURCES OF INCOME FOR ONE SPOUSE BUT NOT THE OTHER; AWARD OF FEES WITHOUT EVIDENCE OF REASONABLENESS REMANDED FOR EVIDENTIARY HEARING.** Former husband appealed final judgment of dissolution. The trial court's imputation of income to former wife included full-time minimum wage, but not her pay from the Air Force and Army Reserves; however, it included former husband's military pension and disability payments plus full-time imputed minimum wage in his income. Appellate court found that the trial court had abused its discretion by using different standards for calculating each spouse's income. It was error to consider one spouse's secondary sources of income, while ignoring the other spouse's. Appellate court directed the trial court on remand reconsider the amount former wife earned from the Reserves as her testimony gave a lower amount than that reflected in her tax returns and W-2s. Concluding that the trial court awarded former wife attorney's fees without evidence supporting the reasonableness of the award, it reversed and remanded for an evidentiary hearing.

<http://www.5dca.org/Opinions/Opin2015/030215/5D14-223.op.pdf> (March 6, 2015).

Barry v. Barry, \_\_So.3d\_\_, 2015 WL 965571, (Fla. 5th DCA 2015). **TRIAL COURT DID NOT DEPART FROM ESSENTIAL REQUIREMENTS OF LAW IN ORDERING PSYCHOLOGICAL EVALUATION OF SPOUSE TO ENSURE SAFETY OF MINOR CHILDREN WHILE IN SPOUSE'S POSSESSION, BUT FAILED TO SPECIFY SCOPE OF EXAM; REMANDED FOR TRIAL COURT TO SPECIFY SCOPE OF EXAM.** Former husband sought certiorari review of a trial court order requiring that he submit to a psychological evaluation in the wake of former wife's allegations that he had made comments to one of their children suggesting that he was contemplating suicide. Although the trial court's order did not specifically state that former husband's mental condition was in controversy or that former wife had demonstrated good cause, appellate court concluded that the trial court's factual findings supported these conclusions; thus, former husband had not demonstrated the trial court departed from essential requirements of law in ordering the evaluation. However, appellate court agreed with former husband that the scope of the evaluation was not clearly defined. The person requesting an examination has the burden of establishing good cause for each examination; failure to specify the manner, conditions and scope of an examination effectively gives the examiner "carte blanche" to perform any psychological inquiry or analysis. Here, the

order narrowed the subject matter of the evaluation to the safety of the minor children while in former husband's care; however, it did not identify the length or type of the examination. Appellate court granted the petition in part for the trial court to specify the scope; it also directed the trial court to include a specific finding that former husband's mental condition was in controversy.

<http://www.5dca.org/Opinions/Opin2015/030215/5D14-3190.op.pdf> (March 6, 2015).

Dugan v. Dugan, \_\_So.3d\_\_, 2015 WL 1071127, (Fla. 5th DCA 2015). **ERRORS ON THE FACE OF A JUDGMENT SHOULD BE CORRECTED EVEN IN THE ABSENCE OF A TRANSCRIPT OR ADEQUATE RECORD.** Former wife appealed a final judgment of dissolution and numerous rulings entered during the proceedings. With the exception of an erroneous finding on the face of the final judgment that all of former wife's medical expenses were covered by Medicare, appellate court affirmed without discussion. It remanded for the trial court to correct its calculation of former wife's monthly expenses and determine whether the revised calculations warranted an increase in alimony.

<http://www.5dca.org/Opinions/Opin2015/030915/5D13-2425.op.pdf> (March 13, 2015).

McGarvey v. McGarvey, \_\_So.3d\_\_, 2015 WL 1071124, (Fla. 5th DCA 2015). **TRIAL COURT MUST DETERMINE TIME-SHARING IN CHILD'S BEST INTEREST.** Appellate court agreed with former wife that the trial court erred in adopting an agreed-upon parenting plan with equal time-sharing when in fact, the spouses had not agreed to it. The trial court failed to make an independent assessment of what time-sharing arrangement would be in the child's best interest. Remanded for the trial court to determine the time-sharing that is in the child's best interest and if necessary, to recalculate the child support award.

<http://www.5dca.org/Opinions/Opin2015/030915/5D13-3421.op.pdf> (March 13, 2015).

## Domestic Violence Case Law

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

In re Amendments to Florida Supreme Court Approved Family Law Forms, \_\_ So.3d \_\_, 2015 WL 1343088 (Fla. 2015). **FORMS AMENDED**. Several forms were amended to include language and instructions explaining e-service and e-filing, including but not limited to the petition and final judgment for an injunction for protection against domestic violence, the order setting hearing on petition for injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, and stalking without issuance of an interim temporary injunction, and the temporary injunction for protection against domestic violence with and without minor children. <http://www.floridasupremecourt.org/decisions/2015/sc15-44.pdf> (March 26, 2015).

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

Corrie v. Keul, \_\_ So.3d \_\_, 2015 WL 1402317 (Fla. 1st DCA 2015). **INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE REVERSED**. The trial court entered an order for protection against repeat violence and the respondent appealed. The appellate court reversed, stating that shouting and obscene hand gestures, without an overt act that caused fear and showed that the appellant would or could follow through on the threats, were not sufficient to support an injunction. [https://edca.1dca.org/DCADocs/2014/1146/141146\\_DC13\\_03162015\\_024320\\_i.pdf](https://edca.1dca.org/DCADocs/2014/1146/141146_DC13_03162015_024320_i.pdf) (March 16, 2015).

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

In re A.B., \_\_ So.3d \_\_, 2015 WL 968556 (Fla. 2d DCA 2015). **INJUNCTION FOR PROTECTION AGAINST SEXUAL VIOLENCE REVERSED**. The ex-wife petitioned the court for a domestic violence injunction against the ex-husband. The court ordered an injunction for protection against sexual violence, and the ex-husband appealed, claiming that the court committed reversible error by allowing a video of the victim to be admitted as evidence and that his due process rights were violated when the court failed to allow him to view the video. The appellate court agreed with the ex-husband and reversed, noting that the video-taped interview was not admissible under section 92.53, Florida Statutes since the court did not conduct the interview itself or appointed a special master. Since the child did not testify at the hearing but was available and there was no corroborative evidence, the video was also not admissible under the statement of a child victim exception to the hearsay rule found in section 90.803(23), Florida Statutes. The court also noted that the father's due process rights were violated since he did not have an opportunity to view the video. [http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2006,%202015/2D14-1020.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2006,%202015/2D14-1020.pdf) (March 6, 2015).

McDonough v. Carver, \_\_ So.3d \_\_, 2015 WL 968481 (Fla. 2d DCA 2015). **REPEAT VIOLENCE INJUNCTION REVERSED**. Male and female next-door neighbors obtained injunctions for protection against repeat violence against one another and both appealed. The cases were consolidated. The appellate court held that there was sufficient evidence to support the injunction entered against the male due to multiple occurrences of stalking and harassment, but not against the female.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2015/March/March%2006,%202015/2D13-5401.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/March/March%2006,%202015/2D13-5401.pdf) (March 6, 2015).

***Third District Court of Appeal***

Hawxhurst v. State, \_\_ So.3d \_\_, 2015 WL 1319800 (Fla. 3d DCA 2015). **ARREST RELATED TO VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE**. Although primarily a criminal case revolving around a charge of possession of cocaine, the court noted that section 901.15(6), Florida Statutes, authorizes law enforcement to perform an arrest without a warrant when there is probable cause to believe that the person has committed a criminal act which violates an injunction for protection against domestic violence.

<http://www.3dca.flcourts.org/Opinions/3D13-0527.pdf> (March 25, 2015).

***Fourth District Court of Appeal***

Hair v. Hair, \_\_ So.3d \_\_, 2015 WL 1223692 (Fla. 4th DCA 2015). **INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE REVERSED**. The petitioner failed to present sufficient evidence that she was a victim of domestic violence or was in imminent danger, and the court reversed. The court also noted that it is not a valid basis for an injunction just because a child does not want to visit with her parent, or because the appellant violated an order that was entered as part of a domestic relations case.

<http://www.4dca.org/opinions/March%202015/03-18-15/4D13-2063.op.pdf> (March 18, 2015).

***Fifth District Court of Appeal***

Hair v. Hair, \_\_ So.3d \_\_, 2015 WL 1223692 (Fla. 4th DCA 2015). **INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE REVERSED**. The petitioner failed to present sufficient evidence that she was a victim of domestic violence or was in imminent danger, and the court reversed. The court also noted that it is not a valid basis for an injunction just because a child does not want to visit with her parent, or because the appellant violated an order that was entered as part of a domestic relations case.

<http://www.4dca.org/opinions/March%202015/03-18-15/4D13-2063.op.pdf> (March 18, 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.