

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE MAY 2015

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Baker Act/Marchman Act Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Delinquency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

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.

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 re M.W., __ So.3d __, 2015 WL 2261693 (Fla. 2d DCA 2015). [CASE REMANDED TO AMEND CASE PLAN](#). The father agreed with the court's finding of dependency, but appealed the order accepting the case plan that included more than just a parenting class. The Department conceded error and admitted that nothing in the record supported the imposition of other case plan tasks. The appellate court affirmed the adjudication, but remanded the case so the Department could amend the case plan.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/May/May%2015,%202015/2D15-59.pdf (May 15, 2015).

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.

Dissolution Case Law

Supreme Court

No new opinions for this reporting period.

First District Court of Appeal

Williams v. Williams, __ So.3d __, 2015 WL 2375278, 40 Fla. L. Weekly D1162, (Fla. 1st DCA 2015). FAIR MARKET VALUE IS WHAT A BUYER IS WILLING TO PAY ON AN OPEN MARKET IN AN ARM'S-LENGTH TRANSACTION; HERE, TRIAL COURT'S VALUE WAS BASED ON COMPETENT, SUBSTANTIAL EVIDENCE; EQUALIZATION PAYMENTS AND ASSET DISTRIBUTIONS MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE AND DETAILED ENOUGH TO PERMIT MEANINGFUL REVIEW; SPECIFIC ITEMS OMITTED FROM SCHEME OF EQUITABLE DISTRIBUTION SHOULD BE ADDED TO SCHEME ON REMAND. Former wife challenged the trial court's equitable distribution in the dissolution of a fifty-plus year marriage on four issues. Concluding that the trial court's determination of the fair market value of the spouses' art collection was supported by competent, substantial evidence, appellate court affirmed the first issue. Black's law dictionary defines fair market value as "what a buyer is willing to pay on the open market and in an arm's-length transaction." Agreeing with former wife on the second issue, appellate cited its holding in an appeal by the same spouses in *Williams v. Williams*, 133 So.3d 605, 606 (Fla.1st DCA 2014). An equalization payment and asset distribution must be supported by competent, substantial evidence and the trial court's findings must be sufficient enough to allow for meaningful review; here, they were not. On the third issue, appellate court found no competent, substantial evidence supported the trial court's distribution of money received by former husband from FEMA; it remanded to the trial court to revalue the asset. As to the fourth issue, the spouses agreed that the trial court failed to include two sculptures (each worth \$5000) in its scheme of equitable distribution; appellate court remanded for the trial court to add them. https://edca.1dca.org/DCADocs/2014/4676/144676_DC08_05192015_112344_i.pdf (May 19, 2015).

Fowler v. Fowler, __ So.3d __, 2015 WL 2260620, 40 Fla. L. Weekly D1145, (Fla. 1st DCA 2015). JUDGMENT RESERVING JURISDICTION NOT FINAL; APPEAL DISMISSED. Because Partial Final Judgment of Dissolution of Marriage reserved jurisdiction, it was not final; appeal was premature. https://edca.1dca.org/DCADocs/2015/0843/150843_DA08_05152015_064340_i.pdf (May 15, 2015).

Wyckoff v. Cavanaugh, __ So.3d __, 2015 WL 2260662, 40 Fla. L. Weekly D1143, (Fla. 1st DCA 2015). TRIAL COURT'S REFUSAL TO ALLOW ONE SPOUSE TO QUESTION OTHER DURING EVIDENTIARY HEARING LEGALLY SUFFICIENT TO DISQUALIFY; PETITION FOR WRIT OF PROHIBITION GRANTED; REMANDED FOR ASSIGNMENT OF NEW JUDGE. Former husband petitioned for a writ of prohibition to review the trial court's order denying his verified motion to disqualify the trial judge. The motion alleged that the judge refused to allow former husband to cross-examine former wife during an evidentiary hearing on her emergency motion to temporarily suspend former husband's time-sharing and visitation. Appellate court agreed with former husband that, based on his allegation, the motion to disqualify was legally sufficient and

should have been granted. Petition granted; remanded for assignment of a new trial judge. https://edca.1dca.org/DCADocs/2015/1646/151646_DC03_05152015_064727_i.pdf (May 15, 2015).

Haywald v. Fougere, __So.3d__, 2015 WL 3408093, (Fla. 1st DCA 2015). [EQUALIZING INCOME AND THEN AWARDING FEES IS AN ABUSE OF DISCRETION](#). Equalizing income through an alimony award and then awarding fees is an abuse of discretion. *Galligar v. Galligar*, 77 So.3d 808 (Fla.1st DCA 2011). Appellate court reiterated that a trial court’s job is to determine whether one spouse has a need for alimony and the other has the ability to pay. Although the amounts of former husband’s alimony and child support obligations should not have been added to former wife’s resources to cover attorney’s fees, they should have been deducted from former husband’s ability to pay as he no longer had those funds within his resources. Considered in that light, the spouses’ relative abilities to pay fees were essentially equal; thus, the award of fees to former wife was an abuse of discretion.

https://edca.1dca.org/DCADocs/2014/5447/145447_DC13_05282015_103156_i.pdf (May 28, 2015).

Second District Court of Appeal

Santos v. Santos, __So.3d__, 2015 WL 2078463, 40 Fla. L. Weekly D1057, (Fla. 2d DCA 2015). [USE OF OUTDATED FINANCIAL INFORMATION WHEN CALCULATING CHILD SUPPORT CAN CONSTITUTE REVERSIBLE ERROR](#). Former wife appealed a final judgment modifying the parenting and child support plans. Appellate court reversed the modification of child support due to the trial court’s use of outdated financial information to calculate child support. Although both spouses filed updated financial affidavits with their modification petitions, the trial court apparently relied on the affidavits filed in connection with the original dissolution. Appellate court held that a trial court’s use of outdated financial information when calculating child support can constitute reversible error.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/May/May%2006,%202015/2D13-5566.pdf (May 6, 2015).

Brooks v. Brooks, __So.3d__, 2015 WL 2260654, 40 Fla. L. Weekly D1140, (Fla. 2d DCA 2015). [TRIAL COURT NOT REQUIRED TO HOLD A PERSON IN CONTEMPT FOR VIOLATING A TIME-SHARING PLAN; “NONCUSTODIAL” PARENT MUST PETITION FOR RELOCATION; APPELLATE COURT CERTIFIED CONFLICT WITH FIRST DISTRICT](#). Appellate court found that the trial court had not abused its discretion in denying former husband’s motion for contempt and ordering him to file a petition to relocate. When the spouses’ dissolution was finalized in 2011, they shared parental responsibility for their children. The children lived with former wife during the week and with former husband every other weekend. Contrary to the parenting plan, former wife took the children out-of-state without informing former husband; former husband moved within the state without filing a petition to relocate. Both spouses moved for contempt. The trial court denied both motions, but ordered former husband to file a petition to relocate. Appellate court held that under Florida law, nothing *requires* a trial court to hold a person in contempt for violating a time-sharing plan. Here, the trial court exercised its prerogative not to do so as a means of discouraging continued litigation between the spouses. With regard to relocation, appellate court held when

chapter 61 was “overhauled” in 2008, the legislature changed the focus from primary residential parent to a time-sharing parent; thus, a “noncustodial” parent must now petition for relocation. A trial court does not abuse its discretion to compel a parent to petition for relocation after the fact. Recognizing its interpretation of the relocation statute differs from that of the First District in *Raulerson v. Wright*, 60 So.3d 487 (Fla.1st DCA 2011), appellate court certified conflict.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/May/May%2015,%202015/2D14-908.pdf (May 15, 2015).

Winnier v. Winnier, __ So.3d __, 2015 WL 3395766, (Fla. 2d DCA 2015). **NOT IMPUTING INCOME REASONABLY PROJECTED FROM ASSETS IS ERROR.** Former husband appealed supplemental final judgment granting in part and denying in part his petition for modification of alimony and installment payments to former wife. Appellate court found that the trial court erred in failing to impute income to former wife for earnings that could “reasonably” be projected based on her liquid assets. Accordingly, it reversed and remanded for recalculation of alimony.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/May/May%2027,%202015/2D14-2754.pdf (May 27, 2015).

Third District Court of Appeal

Edgar v. Firuta, __ So.3d __, 2015 WL 2393633, (Fla. 3d DCA 2015). **GUIDING PRINCIPLE FOR TRIAL COURTS EVEN IF PARENT VIOLATES A RELOCATION ORDER IS STILL BEST INTERESTS OF THE CHILDREN; RULE 1.451 ALLOWS WITNESS TO TESTIFY REMOTELY UPON EITHER AGREEMENT OF THE PARTIES OR A PARTY’S WRITTEN REQUEST WITH GOOD CAUSE AND NOTICE.** Former wife appealed a parenting plan and order awarding former husband fees and costs associated with the remand of *Edgar v. Firuta*, 100 So.3d 255 (Fla.3d DCA 2012). Appellate court reversed both orders and remanded for an expedited hearing to set a parenting plan for the spouses’ youngest child and to “make express findings of fact not only with regard to any parenting plan ordered but also as to any fee and cost award.” Quoting from its earlier opinion, appellate court held that a parent may invite “swift and firm judicial action” if he or she violates a relocation order; however, “the guiding principle in the aftermath must continue to be the best interests of the children.” Appellate court found that the trial court erred in determining that it was without discretion to allow former wife to testify by telephone at the hearing after remand because former husband had objected. It noted that Florida Rule of Civil Procedure 1.451, which allows a witness to testify via audio or video communication equipment upon agreement of the parties or for good cause shown upon a party’s written request with notice to all other parties, took effect January 1, 2014—almost two months before former wife’s motion was denied.

<http://www.3dca.flcourts.org/Opinions/3D14-1019.pdf> (May 20, 2015).

Estevez v. Estevez, __ So.3d __, 2015 WL 3397620, (Fla. 3d DCA 2015). **CERTIORARI REQUIRES DEPARTURE FROM ESSENTIAL REQUIREMENTS OF LAW CAUSING IRREPARABLE INJURY.** Former husband sought certiorari review of a trial court order, arguing that former wife’s proposed discovery on him was “onerous, burdensome, harassing, and irrelevant.” Noting that it “entertain[ed] some doubt” concerning the breadth of the discovery, appellate court denied the

petition because the trial court had not departed from the essential requirements of law to the extent that irreparable injury was caused, warranting certiorari.

<http://www.3dca.flcourts.org/Opinions/3D15-0340.pdf> (May 27, 2015).

Fourth District Court of Appeal

Platt v. Platt, __So.3d__, 2015 WL 2214423, 40 Fla. L. Weekly D1119 (Fla. 4th DCA 2015). **GENERALLY, ASSETS DIMINISHED OR DEPLETED DURING DISSOLUTION PROCEEDINGS CANNOT BE INCLUDED IN THAT SPOUSE'S ASSETS FOR EQUITABLE DISTRIBUTION ABSENT A FINDING OF INTENTIONAL MISCONDUCT.** The trial court incorporated what former wife received from the sale of jewelry and former husband's guns, taken from the house after the petition for dissolution was filed, into her equalizing amount of the equitable distribution; however, it did not make a finding that she engaged in intentional misconduct when she sold them. Appellate court cited its prior opinions for the general rule that it is error to include assets that have been diminished or depleted during dissolution proceedings in absence of a specific finding of intentional misconduct. Both spouses conceded on appeal that the trial court erred by assigning the values of the items to former wife because they were sold to pay reasonable living expenses stemming from debts incurred during the marriage and the dissolution proceedings. Remanded to the trial court to recalculate the equitable distribution and to deduct the values from former wife's share. <http://www.4dca.org/opinions/May%202015/05-13-15/4D13-1578.op.pdf> (May 13, 2015).

Strochak v. Strochak, __So.3d__, 2015 WL 2214549, Fla. L. Weekly D1119, (Fla. 4th DCA 2015). **ALTHOUGH IT IS WITHIN THE DISCRETION OF A TRIAL COURT TO REFRAIN FROM HOLDING A DEFAULTING SPOUSE IN CONTEMPT FOR NON-PAYMENT, THE RECEIVING SPOUSE IS ENTITLED TO SEEK ENFORCEMENT OF PAYMENT.** Appellate court found the trial court abused its discretion in denying former wife's motion for civil contempt/enforcement against former husband; it remanded for the trial court to enter an order awarding alimony arrearages to her. A spouse's right to payment of alimony and child support in arrears is vested. Although it is within a trial court's discretion to refrain from holding the paying spouse in contempt for non-payment, the receiving spouse is entitled to enforcement of payment by legal process and "such equitable remedies as the trial court may determine appropriate or necessary." *Smithwick v. Smithwick*, 343 So.2d 945,947 (Fla. 3d DCA 1977).

<http://www.4dca.org/opinions/May%202015/05-13-15/4D13-4707.op.pdf> (May 13, 2015).

Tressel v. Gatta, __So.3d__, 2015 WL 2214586, 40 Fla. L. Weekly D1119, (Fla. 4th DCA 2015). **THE FACT THAT A TRIAL COURT DOES NOT FIND EVIDENCE SUFFICIENT TO WARRANT CONTEMPT DOES NOT PRECLUDE OTHER RELIEF.** Appellate court affirmed trial court's denial of former husband's motion for contempt against former wife for failure to pay his award of temporary attorney's fees. The trial court relied on former wife's proof of her inability to pay the purge in denying the motion. Appellate court concluded that the fact that a trial court does not find evidence sufficient to warrant contempt does not preclude other relief. Its affirmance of the trial court's order was without prejudice to former husband securing a judgment for the unpaid temporary award in the final judgment or filing an amended complaint for a purge amount within former wife's present ability to pay.

<http://www.4dca.org/opinions/May%202015/05-13-15/4D14-3048.op.pdf> (May 13, 2015).

Badgley v. Sanchez, __So.3d__, 2015 WL 2393332, (Fla. 4th DCA 2015). AN UNEQUAL DISTRIBUTION BASED SOLELY ON SPOUSES' INCOME WITHOUT REQUIRED STATUTORY FACTORS IS ERROR; TRIAL COURT MUST MAKE REQUISITE FINDINGS OF FACT IN DETERMINING ALIMONY; SPOUSE CANNOT BE CREDITED WITH RENTAL INCOME IF HE OR SHE IS LIVING IN THAT HOME. Former husband appealed final judgment of dissolution which resulted in a 60/40 distribution of the marital assets and liabilities in favor of former wife and an award of durational alimony. In absence of a transcript, appellate court concluded that neither the 60/40 distribution nor the alimony were supported by sufficient findings of fact. A 60/40 distribution based solely on the spouses' income without the required statutory factors is error. Disparate earning abilities, standing alone, cannot justify unequal distribution of assets and liabilities. Appellate court also found the alimony award lacking. A trial court errs if it fails to make findings of fact required by section 61.08, Florida Statutes (2013); here the trial court never referenced that statute. Appellate court found that the trial court erred in setting the amount of alimony by crediting former husband with rental income he would not receive until four months after entry of the judgment. Pursuant to the spouses' agreement, former husband was awarded both the marital home and a condominium the spouses had used as rental property. Former wife was given four months from entry of the judgment to vacate the marital home. Appellate court agreed with former husband that the trial court could not simultaneously acknowledge the rental income would not be available to him for four months and fail to make an allowance for unavailability. <http://www.4dca.org/opinions/May%202015/05-20-15/4D13-4829.op.pdf> (May 20, 2015).

Tucker v. Tucker, __So.3d__, 2015 WL 3396664, (Fla. 4th DCA 2015). A CHARGING LIEN IS AN EQUITABLE RIGHT FOR COSTS AND FEES DUE AN ATTORNEY FOR SERVICES IN A SUIT; HOWEVER, AN ATTORNEY MAY NOT USE THE LIEN TO SECURE FEES INCURRED IN ENFORCING THE LIEN NOR SHOULD THE LIEN BE ENFORCED AGAINST AN ALIMONY AWARD IF DOING SO WOULD DEPRIVE THE SPOUSE OF DAILY SUSTENANCE OR MINIMAL NECESSITIES OF LIFE. Former wife argued that an order imposing an attorney's charging lien imposed in favor of her former attorney for work performed during former wife's divorce should be dissolved because the work did not produce a tangible positive result. Appellate court affirmed the order; however, it agreed with former wife that the trial court erred in awarding attorney's fees and costs incurred in perfecting the lien and in ordering the lien to be impressed upon former wife's permanent periodic alimony award. A charging lien is an equitable right to have costs and fees due an attorney for services in a suit secured in the judgment or recovery in that suit when those services produce a positive judgment or settlement for the client; however, an attorney may not use a charging lien to secure fees incurred in enforcing the lien nor should a charging lien be enforced against an award of permanent periodic alimony if doing so would deprive a spouse of "daily sustenance or the minimal necessities of life." *Dyer v. Dyer*, 438 So.2d 954, 955 (Fla. 4th DCA 1983). Affirmed to the extent the order imposed a charging lien, remanded with instructions to the trial court to deduct the amount incurred in the prosecution of the charging claim from the order, and reversed and remanded for the trial court to determine whether enforcement of the charging lien against the alimony award would deprive former wife of daily sustenance or minimal necessities of life. <http://www.4dca.org/opinions/May%202015/05-27-15/4D14-105.op.pdf> (May 27, 2015).

Fifth District Court of Appeal

Levitt v. Levitt, __ So.3d __, 2015 WL 1942924, 40 Fla. L. Weekly D1021, (Fla. 5th DCA 2015). **FINAL JUDGMENT REMANDED FOR CORRECTION TO EQUITABLE DISTRIBUTION.** Former husband conceded trial court error regarding the amount of debt on certain property which in turn adversely affected former wife's share of the equitable distribution. Appellate court reversed and remanded the portion of the final judgment determining equitable distribution for correction. The remainder of the final judgment was affirmed.

<http://www.5dca.org/Opinions/Opin2015/042715/5D14-1390%20op.pdf> (May 1, 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

Robertson v. Robertson, __ So.3d __, 2015 WL 2089078 (Fla. 4th DCA 2015). **STALKING INJUNCTION AFFIRMED**. A former wife received an injunction for protection against stalking against her former husband and the former husband appealed. The court affirmed the injunction and found that there was sufficient evidence to show that the former husband's conduct constituted stalking. On three occasions, he had gone to the former wife's house at night, walked around her property, and shined a flashlight into the windows.

<http://www.4dca.org/opinions/May%202015/05-06-15/4D13-4716.op.pdf> (May 6, 2015).

Fifth District Court of Appeal

Plummer v. Forget, __ So.3d __, 2015 WL 2129218 (Fla. 5th DCA 2015). **STALKING INJUNCTION REVERSED**. The respondent appealed an order of protection against stalking entered on behalf of his former girlfriend. The appellate court reversed and found that the incidents described by the victim would not have caused a reasonable person to suffer substantial emotional distress.

<http://www.5dca.org/Opinions/Opin2015/050415/5D14-3669.op.pdf> (May 8, 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.