

# OSCA/OCI'S FAMILY COURT CASE LAW UPDATE December 2014

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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***

No new opinions for this reporting period.

### ***Second District Court of Appeals***

K.A. v. State, \_\_ So. 3d \_\_, 2014 WL 6789898 (Fla. 2d DCA 2014). **PROBATION ORDER WAS REMANDED FOR THE DETERMINATION OF LENGTH WHERE THE RECORD WAS UNCLEAR AS TO THE TRIAL COURT'S INTENTION.** The juvenile was placed on probation for the improper exhibition of a weapon and simple battery. The trial court failed to specify the length of the probationary term, and the juvenile appealed. The Second District Court of Appeal found that pursuant to s. 985.435(5), F.S., the probationary period for an adjudicated child may not exceed the term for which a sentence could be imposed if the child were committed for the offense. The juvenile was adjudicated delinquent for the first-degree misdemeanor of the improper exhibition of a weapon. A first-degree misdemeanor is punishable by a term not exceeding one year. Therefore, the longest the juvenile could have been placed on probation for the improper exhibition of a weapon was one year. Adjudication was withheld for the simple battery. Section 985.35(4), F.S., allows a trial court to withhold adjudication and place a child on probation. This section does not provide for a limitation on the length of the probation, and the trial court may impose probation until a juvenile's nineteenth birthday. In the instant case, the record was unclear as to whether the trial court intended to place the juvenile on an indefinite period of probation or whether it was an oversight that the length of probation was not specified. Accordingly, the Second District reversed and remanded for determination of the length of the juvenile's probation.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/December/December%2003,%202014/2D13-67.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/December/December%2003,%202014/2D13-67.pdf) (December 3, 2014).

### ***Third District Court of Appeals***

M.M. v. State, \_\_ So. 3d \_\_, 2014 WL 6789909 (Fla. 3d DCA 2014). **CONVICTION FOR POSSESSION OF DRUG PARAPHERNALIA WAS REVERSED WHERE THE STATE FAILED TO DEMONSTRATE USE OR POSSESSION WITH INTENT TO USE THE ALLEGED PARAPHERNALIA.** The juvenile appealed his conviction for possession of drug paraphernalia. A police officer knocked on the juvenile's apartment door. The juvenile answered the door holding a pipe. The officer could smell marijuana from inside the apartment. The officer did not see the juvenile smoking marijuana, nor was there any smoke emanating from the pipe. There was no marijuana discovered on the juvenile's person. Although the pipe contained residue, the officer never tested the residue to confirm that it was a controlled substance. The officer admitted that the pipe in question could

also be used to smoke tobacco. Marijuana was found in the apartment. The juvenile's sister claimed possession of the marijuana and was charged separately. At the close of the State's case, the juvenile moved for a judgment of dismissal, arguing that there was no evidence that linked the pipe to an illegal substance. The juvenile's motion was denied. The juvenile's sister then testified and identified the residue in the pipe as marijuana, but claimed that she was the only one who smoked it in the apartment. She took responsibility for the marijuana and the pipe. She claimed the pipe was never in the juvenile's possession. Nevertheless, the juvenile was found guilty of possessing drug paraphernalia. The juvenile appealed. The Third District Court of Appeal found that s. 893.147(1), F.S., required the State to prove that the juvenile used or had in his possession with intent to use drug paraphernalia. Further, the State could not establish the requisite intent without evidence linking the presence of an illegal substance to the alleged paraphernalia. In the instant case, at the time of the juvenile's motion, the State failed to establish that the residue was a controlled substance. The sister's testimony, that identified the residue as marijuana, was given after the State's case-in-chief and after the juvenile's motion had already been denied. The State also failed to show that the juvenile had knowledge of or constructive possession of the marijuana confiscated from the apartment. Without evidence linking the presence of an illegal substance to the alleged paraphernalia, the State had failed to establish the requisite intent. Therefore, the trial court should have granted the juvenile's motion for dismissal. Accordingly, the Third District reversed the conviction and remanded with instructions to discharge.

<http://www.3dca.flcourts.org/Opinions/3D13-3012.pdf> (December 3, 2014).

#### ***Fourth District Court of Appeals***

A.D. v. State, \_\_\_ So. 3d \_\_\_, 2014 WL 6910844 (Fla. 4th DCA 2014). **RESTITUTION FOR A CAMERA WAS REVERSED WHERE THERE WAS NO MENTION OF THE CAMERA IN THE ARREST AFFIDAVIT, THE PETITION FOR DELINQUENCY, OR AT THE PLEA HEARING.** The juvenile appealed from a restitution order following his plea of no contest to burglary of a dwelling and grand theft. First, the juvenile argued that there was not sufficient valuation evidence to support the trial court's restitution order. Second, the juvenile argued that the trial court erred in awarding restitution for a camera that was not specifically listed as an item stolen in the grand theft count contained in the petition for delinquency. The Fourth District Court of Appeal held that the record evidence supported the trial court's valuations. The Fourth District then found that, in order for the court to require restitution, either the arrest affidavit or the facts admitted by the juvenile at the time of the plea must include the items for which the court orders restitution. In the instant case, there was no mention of a camera in the arrest affidavit, the petition for delinquency, or at the plea hearing. Accordingly, the Fourth District reversed the restitution order as it pertained to the camera and remanded for the trial court to recalculate the amount of restitution.

<http://www.4dca.org/opinions/Dec%202014/12-10-14/4D12-4656.op.pdf> (December 10, 2014).

P.J.A. v. State, \_\_\_ So. 3d \_\_\_, 2014 WL 6910701 (Fla. 4th DCA 2014). **DENIAL OF MOTION FOR JUDGMENT OF DISMISSAL AFFIRMED WHERE THE STATE ESTABLISHED EACH ELEMENT OF THE OFFENSE OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON.** The juvenile appealed the denial of his motion for judgment of dismissal as to the charge of aggravated assault with a deadly weapon. The juvenile argued that the State failed to prove that the assault was made with a “deadly weapon.” The juvenile encountered the victim in his home, where the victim and her mother were also residing. The victim's mother took three of four knives away from the juvenile, slightly cutting herself in the process. The juvenile commenced twisting the remaining knife in his hand and told the victim that he was going to kill her. This statement was made while the victim was standing only two or three feet from the juvenile. The knife was described as a food preparation or steak knife. The Fourth District Court of Appeal found that the juvenile’s holding and twisting of the knife in his hand while saying that he was going to kill the victim was a threat to use the weapon in a way likely to produce death or great bodily harm. The fact that the juvenile did not step toward the victim nor raise the knife in a threatening fashion did not lead to a contrary conclusion. The Fourth District held that the facts, viewed in the light most favorable to the State, established each element of the offense of aggravated assault with a deadly weapon, including that the assault was made with a deadly weapon. Therefore, there was no error by the trial court in denying of the juvenile’s motion for judgment of dismissal. Accordingly, the trial court’s denial was affirmed.

<http://www.4dca.org/opinions/Dec%202014/12-10-14/4D13-3437.op.pdf> (December 10, 2014).

***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***

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.

## Dissolution Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

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

Williams v. Williams, \_\_ So. 3d \_\_, 2014 WL 6755963 (Fla. 1st DCA 2014). FINDING OF CONTEMPT AFFIRMED; CONTRIBUTION TO FEES REVERSED AND REMANDED; OBLIGOR IN DEFAULT MUST SHOW THAT CIRCUMSTANCES BEYOND HIS CONTROL PREVENTED HIM FROM COMPLYING WITH A PRIOR ORDER; TRIAL COURT MUST MAKE FINDING OF CONTEMNOR'S PRESENT ABILITY TO PAY PURGE; PARTY MUST ALERT THE TRIAL COURT OF AN ERROR ON FACE OF AN ORDER WHEN IT FIRST APPEARS TO PRESERVE ISSUE ON APPEAL; FILING NOTICE OF APPEAL DIVESTS TRIAL COURT OF JURISDICTION TO AMEND ITS ORDER. Former husband appealed a trial court order finding him in contempt for failing to comply with prior orders requiring that he: obtain and maintain a life insurance policy; pay off a specified credit card account; and pay alimony. He also appealed a separate order awarding former wife a contribution towards her attorney's fees for prosecuting the contempt motion. The appellate court held that when an obligor in default faces contempt proceedings, he must show circumstances beyond his control prevented him from complying. Concluding that the trial court had correctly found that former husband had failed to sustain that burden, it affirmed the contempt. The appellate court agreed with former husband that a trial court must make a finding of a contemnor's present ability to pay the purge, but found that former husband failed to preserve that issue for appeal. A party must alert the trial court of an error on the face of an order when it first appears by a motion for rehearing or other appropriate motion to preserve the issue for appeal. Here, former husband failed to draw the trial court's attention to the error and his immediate filing of a notice of appeal divested the trial court of jurisdiction to amend the contempt order. Finding the trial court's statement that former husband was in a "superior position" to contribute to attorney's fees insufficient, the appellate court reversed and remanded for the trial court to consider the "relative financial standing" of the spouses and "articulate" its findings.

[https://edca.1dca.org/DCADocs/2013/0803/130803\\_DC08\\_12022014\\_110753\\_i.pdf](https://edca.1dca.org/DCADocs/2013/0803/130803_DC08_12022014_110753_i.pdf) (December 2, 2014).

Winder v. Winder, \_\_ So. 3d \_\_, 2014 WL 7010314 (Fla. 1st DCA 2014). EXCEPTION TO GENERAL RULE THAT FUNDS DIMINISHED DURING DISSOLUTION PROCEEDINGS ARE NOT INCLUDED WITHIN EQUITABLE DISTRIBUTION EXISTS WHEN THERE IS MISCONDUCT LEADING TO DISSIPATION; TRIAL COURT ABUSES DISCRETION IF IT ASSIGNS FUNDS TO SPENDING SPOUSE WITHOUT SPECIFIC FINDING OF MISCONDUCT ON PART OF THAT SPOUSE; TRIAL COURT'S FACTUAL FINDINGS PARTICULARLY IMPORTANT WHEN MARRIAGE IS IN "GREY AREA;" TRIAL COURT'S FINDINGS MUST AFFORD MEANINGFUL REVIEW; IF A SPOUSE'S PRESENT ABILITY TO PAY ALIMONY IS AT ISSUE, TRIAL COURT MAY AWARD NOMINAL ALIMONY TO PRESERVE JURISDICTION IF CIRCUMSTANCES CHANGE. Former husband argued that the trial court erred in its final judgment of dissolution by including funds that were used to pay living expenses and temporary support in the equitable distribution in absence of a finding that the funds were dissipated as a result of misconduct. He also argued error in the trial court's award of permanent

alimony and a portion of attorney's fees to former wife without proper support. The appellate court reversed and remanded for further proceedings consistent with its opinion. The general rule is that it is error for a trial court to include assets in an equitable distribution scheme that have been diminished during dissolution proceedings. The exception to the rule is when the dissipation results from misconduct during the proceedings; in that case, the misconduct may be used as a basis for assigning the dissipated asset to the spending spouse. A trial court must make a specific finding of intentional misconduct to determine that a spouse has dissipated marital assets. Mismanagement or spending assets in a way the other spouse disapproves of does not equal misconduct; there must be evidence of intentional dissipation or destruction of the asset. Because the trial court did not find any misconduct and the evidence showed that the funds had been used to pay marital expenses, the trial court abused its discretion by assigned the funds to former husband. On remand, the trial court was to exclude the funds from its equitable distribution scheme. Because the length of this marriage was in the "grey area" in which there is no presumption for or against alimony, the trial court's factual findings were "particularly important." The appellate court found that the final judgment lacked sufficient factual findings to afford it meaningful review. There were no "clear findings" as to how the trial court reached the alimony award and no express finding that no other form of alimony was appropriate before awarding permanent alimony. The appellate court reversed and remanded the award of permanent alimony and instructed the trial court to consider how the excluded funds impacted the spouses financially. Finding that former husband's present ability to pay alimony at issue, the appellate court suggested that the trial court consider a nominal award of permanent alimony to preserve jurisdiction in the event of a substantial change in the spouses' financial circumstances. [https://edca.1dca.org/DCADocs/2013/4658/134658\\_DC13\\_12122014\\_104716\\_i.pdf](https://edca.1dca.org/DCADocs/2013/4658/134658_DC13_12122014_104716_i.pdf) (December 12, 2014).

Assimenios v. Assimenios, \_\_ So. 3d \_\_, 2014 WL 7106422 (Fla. 1st DCA 2014). **PROVISION OF FINAL JUDGMENT MAKING SPOUSE RESPONSIBLE FOR FULL COST OF MISSED OR CANCELLED APPOINTMENTS REQUIRED UNDER PARENTING PLAN WAS AN IMPROPER AUTOMATIC PROSPECTIVE SANCTION; IMPUTATION OF INCOME TO SPOUSE WAS ERROR; FINDING THAT SHE HAD ABILITY TO WORK FULL-TIME WAS NOT SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.** Former wife appealed an amended final judgment of dissolution. The appellate court reversed the portions of the judgment: 1) making her responsible for the full cost of missed or cancelled appointments required under the parenting plan as an improper automatic, prospective sanction; and 2) imputing income to her because the finding that she had the ability to work full-time was not supported by competent, substantial evidence. The appellate court reversed the first condition "outright" and reversed and remanded the second for further consideration of that issue. [https://edca.1dca.org/DCADocs/2013/6158/136158\\_DC08\\_12162014\\_115153\\_i.pdf](https://edca.1dca.org/DCADocs/2013/6158/136158_DC08_12162014_115153_i.pdf) (December 16, 2014).

Caine v. Caine, \_\_ So. 3d \_\_, 2014 WL 7202923 (Fla. 1st DCA 2014). **FACTORS IN S. 61.077 MUST BE CONSIDERED IN REQUESTS FOR CREDIT OR SET OFF OF RENTAL VALUE OF MARITAL HOME; REASONABLE AVAILABILITY, COST, AND SPOUSE'S ABILITY TO PAY MUST BE CONSIDERED IF INSURANCE IS ORDERED.** Former husband appealed the final judgment of dissolution on several

grounds; the appellate court reversed on two. The trial court's order did not reflect that it had considered: 1) the factors enumerated in s. 61.077, F.S. (2010), before denying former husband's request for a credit or set off for half the rental value of the former marital home; and 2) the reasonable availability, cost, and former husband's ability to pay before requiring that he maintain a life insurance policy. The trial court was instructed on remand to address the statutory factors in order to determine whether former husband was entitled to a credit or set off on the marital home and to make the necessary findings regarding a requirement to maintain coverage. Equitable distribution and alimony and child support awards could be reconsidered if necessary. [https://edca.1dca.org/DCADocs/2013/5517/135517\\_DC08\\_12172014\\_023547\\_i.pdf](https://edca.1dca.org/DCADocs/2013/5517/135517_DC08_12172014_023547_i.pdf) (December 17, 2014).

Wood v. Wood, \_\_So. 3d\_\_, 2014 WL 7202927 (Fla. 1st DCA 2014). IF INSURANCE IS ORDERED TO SECURE OBLIGATIONS, AN AMOUNT MUST BE SPECIFIED; IMPUTATION OF INCOME BASED SOLELY ON SPOUSE HAVING QUIT A JOB WITHOUT TAKING INTO ACCOUNT SPOUSE'S DILIGENT EFFORTS TO SEEK REEMPLOYMENT IS ABUSE OF DISCRETION; ONE-PAGE CHART INSUFFICIENT TO ELIMINATE CHILD SUPPORT ESPECIALLY IF AMOUNT OF SUPPORT IS AGREED-UPON; IF SUBSTANTIAL CHANGE IN FINANCIAL CIRCUMSTANCES JUSTIFIES MODIFICATION OF SUPPORT, CHILD SUPPORT GUIDELINES WORKSHEET MUST BE USED; IMPUTATION OF INCOME MUST BE BASED ON REQUISITE FINDINGS. Both spouses appealed the modification of the final judgment dissolving an eleven-year marriage. At the time of the final judgment, both spouses were employed by a business solely owned by former husband. Former husband petitioned for a downward modification two years later based on a substantial change in his financial circumstances. He sought reduction of his alimony and child support obligations, elimination of the requirement of securing the obligations with insurance, and termination of his obligations to pay former wife's health insurance and private school tuition for the child. Former wife responded with motions for contempt and enforcement due to arrearages in support. Former husband argued that the trial court's reduction in alimony was inadequate. The appellate court found that the trial court did not abuse its discretion: by relying on former husband's sworn financial affidavits for a comparison of his income at the time of the final judgment and at the time of the modification judgment; by declining to modify the requirement that former husband secure the alimony; or by denying modification of the requirement that former husband continue paying former wife's health insurance until she found employment which included it. The trial court was instructed on remand to specify an amount for the life insurance. The appellate court found the trial court abused its discretion by imputing income to former wife based solely upon her quitting a new job after one month without taking into account whether she was making diligent, bona fide efforts to find new employment. It concluded that the one-page chart the trial court relied on in lieu of the Child Support Guidelines Worksheet (Florida Family Law Rules of Procedure Form 12.902(e)), was insufficient to support elimination of child support—especially in light of an agreed-upon amount in the marital settlement agreement. Likewise, the trial court's elimination of coverage to secure the child support was error. The appellate court found no explanation for the trial court's ruling that former husband was current in his obligations; accordingly, it reversed and remanded for additional findings of fact. If the trial court were to determine that the change in former husband's financial circumstances justified modification of

child support, it must use the Child Support Guidelines Worksheet. Imputation of income to former wife, if any, it must be supported by requisite findings.

[https://edca.1dca.org/DCADocs/2013/5778/135778\\_DC08\\_12172014\\_023751\\_i.pdf](https://edca.1dca.org/DCADocs/2013/5778/135778_DC08_12172014_023751_i.pdf) (December 17, 2014).

Berry v. Berry, \_\_ So. 3d \_\_, 2014 WL 7331186 (Fla. 1st DCA 2014). **CASE REMANDED TO ALLOW SPOUSE 20 DAYS TO FILE 2.330(h) MOTION TO REQUEST SUCCESSOR JUDGE TO RECONSIDER DISQUALIFIED JUDGE'S ORDER.** While former wife's appeal of the denial of her motion to vacate the final judgment of dissolution and set aside the marital settlement agreement was pending, the appellate court granted her petition for writ of prohibition after finding that an ex parte conference held by the judge during the hearing on former wife's motion to vacate was reason to disqualify the judge. (Berry v. Berry, 139 So. 3d 508 (Fla. 1st DCA 2014)). The case was remanded with instructions that a new judge be assigned to hear further proceedings; however, noting that the correct procedure, pursuant to Florida Rule of Judicial Administration 2.330(h), is for former wife to file a motion requesting the successor judge to reconsider the order issued by the disqualified judge, the appellate court remanded with directions that former wife be given twenty days from its mandate to file a 2.330(h) motion.

[https://edca.1dca.org/DCADocs/2014/0935/140935\\_DC13\\_12242014\\_021055\\_i.pdf](https://edca.1dca.org/DCADocs/2014/0935/140935_DC13_12242014_021055_i.pdf) (December 24, 2014).

Johnson v. Johnson, \_\_ So. 3d \_\_, 2014 WL 7384141 (Fla. 1st DCA 2014). **TRIAL COURT ERRED IN CALCULATING SPOUSE'S PORTION OF OTHER SPOUSE'S MILITARY RETIREMENT BENEFIT; NIX NOT BOYETT SHOULD CONTROL; REMANDED FOR CALCULATION OF BENEFITS PER SPOUSES' AGREEMENT.** Former wife appealed a trial court final judgment enforcing a 1995 consent final judgment dissolving the marriage. She argued that the trial court erred when it deviated from the spouses' agreement regarding how her portion of former husband's military retirement benefit would be calculated; more specifically, that the trial court had erroneously concluded she was not entitled to the benefit of former husband's increase in military pay after the date of dissolution. Former husband conceded error, but urged remand for the trial court to take additional evidence as to the spouses' intent. The appellate court agreed with the spouses that the trial court had erred, but held that it was remanding strictly to allow the trial court to comply with what the appellate court termed the "unambiguous terms" of the consent final judgment. It held that the trial court's reliance on Boyett v. Boyett, 703 So. 2d 451 (Fla. 1997), was misplaced because in Boyett, the trial court was determining entitlement to benefits in absence of a marital settlement agreement. Instead, Nix v. Nix, 930 So. 2d 711 (Fla. 1st DCA 2006), should have controlled because the spouses in Nix had entered into an agreement "almost identical to the formula agreed upon" here. The appellate court noted that the Nix court had distinguished Boyett. Reversed and remanded for the trial court to calculate former wife's benefit using the formula set forth in the consent final judgment.

[https://edca.1dca.org/DCADocs/2014/1644/141644\\_DC13\\_12302014\\_121344\\_i.pdf](https://edca.1dca.org/DCADocs/2014/1644/141644_DC13_12302014_121344_i.pdf) (December 30, 2014).

### ***Second District Court of Appeals***

Geraci v. Geraci, \_\_ So. 3d \_\_, 2014 WL 7009684 (Fla. 2d DCA 2014). **REMANDED FOR TRIAL COURT TO ADDRESS FUNDS FROM CERTIFICATE OF DEPOSIT; AN ANTENUPTIAL AGREEMENT MAY BE ABANDONED OR RESCINDED.** Both spouses appealed the judgment dissolving their nearly thirty-year marriage. With the exception of a \$220,000 certificate of deposit owned by former husband, but removed by former wife shortly before filing for divorce, the appellate court affirmed. The appellate court was unable to discern whether the trial court factored this amount into support provided during the proceedings or whether it had been overlooked in the calculations. Accordingly, it remanded to the extent that the trial court address this issue. Noting that it has “long recognized” the fact that an antenuptial agreement may be abandoned, the appellate court found the trial court’s determination that the antenuptial agreement executed by the spouses before their marriage had been either abandoned or rescinded to be supported by competent, substantial evidence.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/December/December%2012,%202014/2D13-1206.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/December/December%2012,%202014/2D13-1206.pdf) (December 12, 2014).

Porter v. Porter, \_\_ So. 3d \_\_, 2014 WL 7009723 (Fla. 2d DCA 2014). **STIPULATIONS ARE BINDING ON THE COURT AS WELL AS THE SPOUSES.** Former husband appealed the final judgment of dissolution; specifically, he challenged the equitable distribution of one of the spouses’ cars; the trial court’s decision to allow the youngest child to be placed in daycare; and imputation of income to him. The appellate court affirmed on the second two issues without comment, but reversed the equitable distribution scheme due to the trial court refusal to enforce the spouses’ agreement that the particular car and its debt would be distributed to former wife. Agreements regarding equitable distribution bind the court as well as the spouses. The appellate court reversed and remanded the equitable distribution scheme for the trial court to distribute the car and its debt to former wife and to “refashion” the elements of the scheme that the spouses had not stipulated to in an attempt to distribute the debt as equally as possible.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2014/December/December%2012,%202014/2D13-4224.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/December/December%2012,%202014/2D13-4224.pdf) (December 12, 2014).

### ***Third District Court of Appeals***

Diaz v. Diaz, \_\_ So. 3d \_\_, 2014 WL 6865303 (Fla. 3d DCA 2014). **IN ABSENCE OF A TRANSCRIPT, REVIEW IS LIMITED TO ERRORS ON THE FACE OF THE JUDGMENT; UNDER STATUTE, LENGTH OF DURATIONAL ALIMONY MAY NOT EXCEED LENGTH OF THE MARRIAGE; REMANDED TO REDUCE ALIMONY.** Former husband appealed a final judgment of dissolution. The appellate court held that in the absence of a transcript of the hearing or a statement of the evidence, it was unable to evaluate his arguments that the durational alimony award was error and that the equitable distribution of his bank account was unsupported by the record; however, it found an issue on the face of the final judgment to have merit. Section 61.08(7), F.S. (2010), specifies that the length of durational alimony may not exceed the length of the marriage. Here, the marriage lasted three years and four months; thus, the durational alimony award of 48 months exceeded the amount permitted by statute. Remanded for the trial court to reduce the durational alimony to 40 months.

<http://www.3dca.flcourts.org/Opinions/3D14-0882.pdf> (December 12, 2014).

Gimeno v. Rivera, \_\_So. 3d\_\_, 2014 WL 7156964 (Fla. 3d DCA 2014). PARTY MOVING FOR DOWNWARD MODIFICATION OF CHILD SUPPORT HAS BURDEN OF PROVING SUBSTANTIAL CHANGE IN CIRCUMSTANCES, NOT CONTEMPLATED AT TIME OF ORDER, WHICH IS SUFFICIENT, MATERIAL, INVOLUNTARY, AND PERMANENT; BEGETTING A CHILD IS NOT AN INVOLUNTARY ACT; ABSENT SPECIAL CIRCUMSTANCES, PRESENCE OF SUBSEQUENT CHILDREN WILL NOT JUSTIFY DEVIATION FROM CHILD SUPPORT GUIDELINES; UPWARD MODIFICATIONS ARE TREATED DIFFERENTLY. Although this is a paternity action rather than a dissolution, it is included for the appellate court's comment that it is "settled law" that a party moving for a downward modification of child support has the burden of proving a substantial change of circumstances not contemplated at the time of the final judgment of dissolution or paternity that is sufficient, material, involuntary, and permanent. The appellate court held "[b]egetting a child is not an involuntary act. Absent some special circumstance, the presence of subsequent children will not justify a deviation from child support guidelines." A footnote indicates that upward modifications of child support are treated differently. Pohlmann v. Pohlmann, 703 So. 2d 1121 (Fla. 5th DCA 1997).

<http://www.3dca.flcourts.org/Opinions/3D14-0774.pdf> (December 17, 2014).

Oliver v. Stufflebeam, \_\_So. 3d\_\_, 2014 WL 7331241 (Fla. 3d DCA 2014). APPEAL BY SAME-SEX SPOUSES MARRIED IN IOWA TO DISMISSAL OF PETITION FOR DISSOLUTION OF MARRIAGE; PETITION LACKED CASE OR CONTROVERSY; A MARRIAGE CANNOT BE DISSOLVED IF THERE IS NO MARRIAGE TO DISSOLVE; HOWEVER, IN GRANTING ANNULMENTS FLORIDA COURTS TYPICALLY DETERMINE VALIDITY OF MARRIAGE IN ACCORDANCE WITH LAWS WHERE MARRIAGE TOOK PLACE. The spouses, married in Iowa in 2009, appealed the trial court's dismissal of their petition for dissolution pursuant to s. 741.212, F.S. The spouses did not challenge the validity of the statute, but argued on appeal that a plain reading made it applicable to marriages, not divorces. Acknowledging the on-going debate regarding same-sex marriage, the appellate court affirmed the dismissal because the petition lacked "a case or controversy requiring the expenditure of judicial labor." It concluded that a marriage cannot be dissolved if there is no marriage to dissolve. The granting of a divorce "concedes that a valid marriage in fact exists." Kuehmsted v. Turnwall, 138 So. 775 (Fla. 1932). The appellate court suggested the spouses seek an annulment rather than divorce, because in granting an annulment, Florida courts typically determine the validity of the marriage in accordance with the laws where the marriage took place. Johnson v. Lincoln Square Props, Inc., 571 So. 2d 541 (Fla. 2d DCA 1990).

<http://www.3dca.flcourts.org/Opinions/3D12-2159.pdf> (December 24, 2014).

#### ***Fourth District Court of Appeals***

No new opinions for this reporting period.

#### ***Fifth District Court of Appeals***

Coleman v. Bland, \_\_So. 3d\_\_, 2014 WL 6835084 (Fla. 5th DCA 2014). MEANINGFUL REVIEW PRECLUDED BY TRIAL COURT'S FAILURE TO SPECIFY WHAT FEE AWARD APPLIED TO; REMANDED FOR APPORTIONING OF FEE AWARD. Former wife argued that the trial court erred in not awarding her the full amount of her appellate attorney's fees and in denying her request for

appellate costs. The appellate court found itself unable to conduct meaningful review due to the trial court's failure to specify whether the amount it awarded to former wife applied to appellate attorney's fees, appellate costs, or post-mandate attorney's fees for litigation of former husband's pension on remand; therefore, it remanded for the trial court to apportion attorney's fees and/or costs between appellate and trial work.

<http://www.5dca.org/Opinions/Opin2014/120114/5D10-1326.op.mot.rev.pdf> (December 5, 2014).

Walczak v. Walczak, \_\_So. 3d\_\_, 2014 WL 6834844 (Fla. 5th DCA 2014). **REMANDED FOR RECONSIDERATION OF EQUITABLE DISTRIBUTION AND, IF NECESSARY, ALIMONY AND ATTORNEY'S FEES.** Due to numerous errors in the final judgment, the appellate court reversed and remanded for reconsideration of equitable distribution and, if necessary, alimony and attorney's fees.

<http://www.5dca.org/Opinions/Opin2014/120114/5D13-2227.op.pdf> (December 5, 2014).

Clayton v. Clayton, \_\_So. 3d\_\_, 2014 WL (Fla. 5th DCA 2014). **ERRORS IN JUDGMENT REQUIRED REVERSAL; REMANDED FOR CORRECTIONS.** Former husband appealed a final judgment of dissolution. The appellate court found four errors in the judgment requiring reversal: 1) incorporation of an erroneous child support worksheet which relied on net income for former wife and gross income for former husband and used a calculation method not supported by the time-sharing; 2) failure to provide a schedule for child support showing a reduction in support as each child ages out of the need for support; 3) failure to allocate the liabilities between the spouses; and 4) a lack of clarity in the parenting plan as to when former husband would have the children on a particular day and as to the total number of overnights the spouses would have the children throughout the year. Remanded for the trial court to make the necessary corrections; the remainder of the judgment was affirmed.

<http://www.5dca.org/Opinions/Opin2014/120114/5D14-1402.op.pdf> (December 5, 2014).

Brummer v. Brummer, \_\_So. 3d\_\_, 2014 WL 6990551 (Fla. 5th DCA 2014). **TRIAL COURT FAILED: TO SHOW EVALUATION WAS IN CHILDREN'S BEST INTEREST; TO DETERMINE IF SPOUSE COULD PAY FOR EVALUATION; TO PROPERLY CLASSIFY AND ESTABLISH VALUE OF CERTAIN ASSETS; AND TO BASE IMPUTATION OF INCOME ON COMPETENT, SUBSTANTIAL EVIDENCE.** Former husband appealed the final judgment of dissolution, arguing that the trial court: 1) improperly conditioned his time-sharing upon payment for psychological evaluation and counselling for the spouses and the children; 2) erred in its characterization of marital and nonmarital property and its scheme of equitable distribution; and 3) imputed income to him which was not supported by sufficient findings of fact or competent, substantial evidence. The appellate court reversed on the first issue because the trial court made no findings as to whether the evaluation was in the best interests of the children and whether former husband had the ability to pay for the evaluation. It held that, on the second issue, the trial court erred in failing to designate certain items as nonmarital assets of former husband and failed to properly establish the value of former husband's firearm collection. It instructed the trial court on remand to award the nonmarital assets to former husband and properly determine the value of the firearm collection. The appellate court agreed with former husband that the imputation of income for purposes of child support was not

supported by competent, substantial evidence; it remanded for the trial court to correctly determine the amount of income to be imputed to former husband for child support purposes. <http://www.5dca.org/Opinions/Opin2014/120814/5D14-192.op.pdf> (December 12, 2014).

Topel v. Topel, \_\_\_So. 3d\_\_\_, 2014 WL 7191033 (Fla. 5th DCA 2014). TEMPORARY SUPPORT AWARD TO SPOUSE EXCEEDED OTHER SPOUSE'S ABILITY TO PAY; TRIAL JUDGES HAVE BROAD DISCRETION WITH TEMPORARY AWARDS; ANY AWARD MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; TEMPORARY ORDER VACATED; REMANDED FOR TRIAL COURT TO RECONSIDER. This case addresses an appeal stemming from an action for support unconnected with dissolution in which the issue of temporary support awarded to a wife exceeding a husband's ability to pay. Although trial judges have broad discretion in setting temporary alimony awards, any award must be supported by competent, substantial evidence of need and the paying spouse's ability to pay. Here, the appellate court attributed the trial court's error to its reliance on an incorrect income figure for the husband and using gross rather than net income. As in a prior case, the appellate court vacated the temporary relief order and remanded for the husband to make a full disclosure of his income and expenses so that the trial court could reconsider its temporary support award. <http://www.5dca.org/Opinions/Opin2014/121514/5D14-742.op.pdf> (December 19, 2014).

## **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.