

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE November 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

C.W. v. State, ___ So. 3d ___, 2014 5783849 WL (Fla. 2d DCA 2014). **RESTITUTION ORDER WAS REVERSED AND REMANDED BECAUSE THE STATE FAILED TO PROVE THAT THE JUVENILE WAIVED HIS RIGHT TO BE PRESENT AT THE RESTITUTION HEARING.** The juvenile entered a plea of no contest to grand theft. The juvenile was ordered to pay \$664 in restitution at the rate of \$25 per month. The juvenile appealed the restitution order. The juvenile argued that the trial court held the restitution hearing without his presence and failed to make a finding that he had the ability to pay. The State conceded that reversal was required if the juvenile was not present at the restitution hearing and his presence was not waived. The Second District Court of Appeal found that the record revealed that the juvenile was not present at the restitution hearing. Further, the State failed to prove that the juvenile's presence was waived. Accordingly, the Second District reversed and remanded for a new hearing. Since the ruling on the juvenile's presence was dispositive, the court did not reach the issue of the juvenile's ability to pay.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2007,%202014/2D13-6156.pdf (November 7, 2014).

A.B. v. State, ___ So. 3d ___, 2014 WL 5783855 (Fla. 2d DCA 2014). **FINDING THAT JUVENILE DELIVERED COCAINE WITHIN 1000 FEET OF A CHURCH WAS REVERSED AND REMANDED WHERE THE EVIDENCE WAS INSUFFICIENT TO SHOW THAT THE BUILDING WAS A CHURCH.** The juvenile appealed his adjudication for delivery of cocaine within 1,000 feet of a church. At the adjudicatory hearing, a detective testified that a church was located between 700 and 800 feet from the place where the drug transaction occurred. The detective further testified that he had never been inside the building but that he had been to the location and that it was a church, it looked like a church, and that it held itself out to be a church through its outside signage. Defense counsel objected to the testimony based on a lack of personal knowledge. The objection was overruled. At the close of the State's case, the defense moved for a judgment of dismissal, claiming that the State failed to present sufficient evidence to support the requisite statutory element that regularly conducted religious services were held at the church building located within 1000 feet of the delivery of the cocaine. The motion was denied and the juvenile appealed. The Second District Court of Appeal found that s. 893.13(1)(e), F.S. (2011), provided that it was

unlawful for any person to sell, manufacture, or deliver a controlled substance not authorized by law within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services. The Second District held that the testimony of the detective was insufficient to establish that the church building was a physical place of worship at which religious services were regularly conducted. Therefore, the trial court erred in denying the juvenile's motion for judgment of dismissal. Accordingly, the Second District reversed and remanded for the entry of a disposition based on the necessarily lesser-included offense of delivery of cocaine.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2007,%202014/2D14-298.pdf (November 7, 2014).

Third District Court of Appeals

No new opinions for this reporting period.

Fourth District Court of Appeals

A.H. v. State, ___ So. 3d ___, 2014 WL 5614888 (Fla. 4th DCA 2014). **TRESPASS OF A CONVEYANCE ADJUDICATION WAS REVERSED WHERE THERE WAS NO EVIDENCE THAT THE JUVENILE KNEW OR SHOULD HAVE KNOWN THE SUBJECT VEHICLE WAS STOLEN OTHER THAN HIS FLIGHT FROM LAW ENFORCEMENT.** The juvenile appealed his adjudication for trespass of a conveyance. The juvenile argued that the trial court erred in denying his motion for judgment of dismissal. The juvenile was riding as a passenger in a stolen vehicle and allegedly fled when police pulled over the vehicle. The police had run the tag of the vehicle and found that it was reported stolen. The juvenile was charged with grand theft auto and resisting arrest without violence. At trial, the State proceeded on the lesser included charge of trespass of a conveyance instead of grand theft auto. The juvenile's co-defendant, also a passenger, testified that the driver told him that the vehicle was a rental. The co-defendant also testified that he did not notice any signs of theft-type damage to the vehicle. The juvenile moved for a judgment of dismissal, arguing that the State failed to submit any evidence that the juvenile knew or should have known the vehicle was stolen. The trial court denied the motion. The juvenile then testified that he did not know the car was stolen and that the driver had told him it was his girlfriend's car. The juvenile further testified that he did not flee and complied with the officers' commands. Following his testimony, the juvenile renewed his motion for judgment of dismissal, which the trial court again denied. The juvenile was adjudicated on the trespass of a conveyance charge, but acquitted of the resisting charge. On appeal, the Fourth District Court of Appeal found that to support a conviction for trespass of a conveyance, the State had to prove that the juvenile willfully entered or remained in a conveyance without being authorized, licensed, or invited by the owner or a person authorized to give permission. The "willful" element required the State to establish that the passenger knew or should have known that the vehicle was stolen. Standing alone, evidence that

a passenger in a stolen vehicle fled upon interaction with law enforcement was not enough to meet this burden. In the instant case, the Fourth District held that there was no evidence to establish that the juvenile knew or should have known the vehicle was stolen other than that he fled when approached by law enforcement. The juvenile and his co-defendant both testified that they did not know the car was stolen and there was no physical damage to the car indicating that it was stolen. While the evidence of the juvenile's flight was admissible and relevant, this evidence standing alone was insufficient to establish that the juvenile knew the vehicle was stolen. Accordingly, the adjudication for trespass of a conveyance was reversed.

<http://www.4dca.org/opinions/Nov.%202014/11-05-14/4D13-637.op.pdf> (November 5, 2014).

J.R. v. State, ___ So. 3d ___, 2014 WL 5613918 (Fla. 4th DCA 2014). **POSSESSION OF MARIJUANA FINDING WAS REVERSED BECAUSE THE EVIDENCE WAS OBTAINED AS THE RESULT OF AN UNLAWFUL STOP AND DETENTION FOR TRUANCY.** The juvenile appealed the trial court's denial of his motion to suppress evidence and statements. At the suppression hearing, a police officer testified that he saw the juvenile walking away from his bus stop with another juvenile on a school day at around 8:15 a.m. The officer knew from previous encounters that the juvenile attended school and that this was his bus stop. The officer observed the juvenile continue walking away from the bus stop and go up to a residence which was not the juvenile's. The officer subsequently stopped and questioned the juvenile, and his explanations were inconsistent with what the officer observed. The officer patted down the juvenile. The officer felt what he believed to be a buck knife in the juvenile's pocket. The object did turn out to be a knife. As he pulled the knife from the juvenile's pocket, the officer also discovered a baggie of marijuana. The officer took the juvenile into custody. The juvenile later stated that he bought weed at the house and added that he and the other juvenile were going to smoke the marijuana instead of going to school. The officer testified that he initiated the stop based upon what he believed to be truancy and patted the juvenile down for the officer's safety. On cross-examination, the officer testified that the juvenile's bus usually shows up around 8:15 a.m., which was the time he saw the juvenile walking away from the bus stop. The officer acknowledged that he did not know whether the bus came before or after he stopped the juvenile because he was busy following the juvenile. The officer acknowledged that there were other bus stops in the area. Although the officer was not sure when school started, he conceded that school could have started at 9:30 a.m. The juvenile filed a motion to suppress evidence and statements. The juvenile argued that there was no reasonable basis to stop him for truancy when he was not yet "absent" from school and further that there was no justification for the pat down. The trial court denied the juvenile's motion and found him guilty of possession of marijuana, less than twenty grams. On appeal, the Fourth District Court of Appeal found that the officer initiated the stop of the juvenile for truancy without reasonable grounds to believe that the child was absent from school. Section 984.13,

F.S., does not authorize an officer to preemptively detain a child who may be plotting to skip school later. In the instant case, the officer detained the juvenile for truancy well over an hour before school was scheduled to start. The juvenile could not have been “absent” from school before it began or was scheduled to begin. Moreover, merely missing the bus could not be considered truancy where, as in this case, the officer did not know whether the juvenile had already missed the bus, or whether he could have taken a bus at one of the other bus stops in the area or relied on some other means of getting to school that day. The trial court should have suppressed the marijuana evidence and incriminating statements resulting from the unlawful search and seizure as “fruit of the poisonous tree.” Accordingly, the Fourth District reversed the denial of the juvenile’s motion to suppress and remanded for further proceedings.

<http://www.4dca.org/opinions/Nov.%202014/11-05-14/4D13-2941.op.pdf> (November 5, 2014).

S.M. v. State, __ So. 3d __, 2014 WL 5834702 (Fla. 4th DCA 2014). **THE EVIDENCE WAS SUFFICIENT TO SHOW THAT THE JUVENILE KNEW, OR SHOULD HAVE KNOWN, THAT THE BICYCLE HE POSSESSED WAS STOLEN.** The juvenile was adjudicated for second degree petit theft of a bicycle. The juvenile argued that the trial court erred in denying his motion for judgment of dismissal. The juvenile contended that the State failed to prove that he knew or should have known that the bicycle was stolen. The juvenile further claimed that the trial court erred in admitting into evidence a DVD and photograph that were copies of an “original” video. After a new bicycle was stolen, a boy from the neighborhood showed the victim a cell phone video of the juvenile riding the bicycle. The police arrived and watched the cell phone video. An officer went to the juvenile’s home. The juvenile denied ever being in possession of the bicycle or knowing anything about the incident. The officer told the juvenile that there was a video of him on the bike and that it would probably be to his best interest to return the bike if he knew its whereabouts. The juvenile brought the bicycle back to the victim's house thirty to forty minutes later. At trial, the juvenile testified that he was jumping bicycles with his friends in the canal when a kid named “Jeffrey” brought over the bicycle in question. The juvenile said that Jeffrey lived in a nearby neighborhood and that he had seen Jeffrey with the same bicycle three to four times before. The juvenile then rode the bicycle and jumped into the canal. The juvenile testified that he had no reason to believe the bicycle was stolen. The juvenile testified that he told the officer that he knew the kid who took the bike and that he would find him and return the bike. The juvenile said he spoke with Jeffrey, and Jeffrey told him that the bicycle was in another canal. The juvenile found the bicycle and returned it to the victim. The juvenile stated he did not know Jeffrey's last name, home address, or telephone number. In rebuttal, the officer stated that the juvenile never told him that he knew who took the bicycle. The Fourth District held that the evidence was sufficient to show that the juvenile knew or should have known that the bicycle he possessed was stolen as required to support a conviction for second-degree petit theft. Further, the trial court did not err in

admitting the DVD and photograph into evidence. Florida law provides that proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen. Mere possession of stolen property is insufficient to establish guilt when there is an unrefuted, exculpatory, and not unreasonable explanation for the possession. However, unless it is grounded in credibility, an accused's explanation does not automatically entitle him or her to a judgment of acquittal. Thus, even when not clearly contradicted by direct evidence, a judgment of acquittal is not required if a common sense view of the circumstantial evidence might lead a jury to disbelieve the defendant's explanation. In the instant case, the trial court, as the trier of fact, was allowed to make a credibility determination and disbelieve the juvenile's proffered explanation for his possession of the stolen bicycle. Therefore, the trial court did not err in denying the juvenile's motion for judgment of dismissal; the juvenile's adjudication was affirmed.

<http://www.4dca.org/opinions/Nov.%202014/11-12-14/4D13-1099.pdf> (November 12, 2014).

C.G.K. v. State, __ So. 3d __, 2014 WL 5834431 (Fla. 4th DCA 2014). **IN CRIMINAL PROCEEDINGS, WHERE THE TRIAL COURT'S ORAL PRONOUNCEMENT IS UNAMBIGUOUS, THE ORAL PRONOUNCEMENT CONTROLS OVER THE WRITTEN ORDER.** At the juvenile's violation of probation hearing, the trial court's oral pronouncement was that it would withhold adjudication. However, the written disposition order indicated that the child was adjudicated delinquent. The Fourth District Court of Appeal found that in criminal proceedings, where a trial court's oral pronouncement is unambiguous, the oral pronouncement controls over the written order. Accordingly, the Fourth District affirmed the juvenile's withholding of adjudication of delinquency for violation of probation without discussion and remanded for correction of the written order to reflect the trial court's oral pronouncement.

<http://www.4dca.org/opinions/Nov.%202014/11-12-14/4D13-3436.pdf> (November 12, 2014).

R.M.O. v. State, __ So. 3d __, 2014 WL 6674741 (Fla. 4th DCA 2014). **ANY EVIDENTIARY ERRORS COMMITTED BY THE TRIAL COURT DURING THE JUVENILE'S BENCH TRIAL WERE HARMLESS.** The Fourth District Court of Appeal affirmed the trial court's order finding the juvenile guilty as charged in the delinquency petition and the subsequent withholding of adjudication. The Fourth District found that after reviewing the record, any evidentiary errors committed by the lower court during the bench trial were harmless. However, the Fourth District wrote a brief opinion to remind all concerned of the special attention required of trial courts when making evidentiary rulings during non-jury trials.

<http://www.4dca.org/opinions/Nov.%202014/11-26-14/4D13-3944.op.pdf> (November 26, 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

R.C. v. Department of Children and Family Services, ___ So. 3d ____, 2014 WL 6679008 (Fla. 3d DCA 2014). [ORDER REQUIRING PREGNANCY TEST REVERSED](#). The court ordered a mother in a dependency case to submit to a pregnancy test; the mother appealed. The appellate court quashed the sua sponte order because the lower court failed to notice the mother or allow due process, nor there was no showing of good cause as required by law.

<http://www.3dca.flcourts.org/Opinions/3D14-2247.pdf> (November 26, 2014).

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

Giddins v. Giddins, __So. 3d__, 2014 WL 5741080 (Fla. 1st DCA 2014). **DENIAL OF DUE PROCESS IS FUNDAMENTAL ERROR**. The appellate court agreed with former wife that the trial court erred in entering its final judgment of dissolution of marriage, which adopted the spouses' marital settlement agreement (MSA), over her objection and pending motion to set it aside without first giving her an opportunity to be heard and present evidence. It held that the trial court should have either permitted former wife to present her argument and evidence contesting the adoption of the MSA during the dissolution hearing or deferred entering a final judgment until after having held a hearing on her motion to set aside the MSA. Citing Slotnick v. Slotnick, 891 So. 2d 1086 (Fla. 4th DCA 2004), the appellate court reversed. Due process requires that a party be given the opportunity to be heard and to testify and call witnesses on his behalf; denial of this right is fundamental error.

https://edca.1dca.org/DCADocs/2014/0653/140653_DC13_11062014_101521_i.pdf

(November 6, 2014).

Daoud v. Daoud, __So. 3d__, 2014 WL 6478811 (Fla. 1st DCA 2014). **ABSENT APPROPRIATE PLEADINGS FILED BY SPOUSE OR SPECIFIC RESERVATION OF JURISDICTION, TRIAL COURT CANNOT ALTER DISTRIBUTION OF PROPERTY**. Former wife appealed a contempt order resulting from her failure to comply with the final judgment dissolving her marriage to former husband. The appellate court reversed and remanded on the issue of the trial court's modification of property rights previously adjudicated in the dissolution judgment and affirmed the remainder. Citing Work v. Provine, 632 So. 2d 1119 (Fla. 1st DCA 1994), the appellate court held that, absent appropriate pleadings filed by former husband, the trial court lacked jurisdiction to modify property rights awarded to former wife in the dissolution judgment. It also cited Fort v. Fort, 951 So. 2d 1020 (Fla. 1st DCA 2007), for its holding that a trial court's general reservation of jurisdiction to enforce a dissolution judgment does not empower it to redistribute vested property between the spouses. Here, former husband failed to properly plead for modification of the real property distribution addressed in the dissolution judgment, and the trial court failed to specifically reserve jurisdiction to alter its prior distribution of property.

https://edca.1dca.org/DCADocs/2014/1487/141487_DC08_11202014_103431_i.pdf

(November 20, 2014).

Kirkland v. Kirkland, __So. 3d__, 2014 WL 6612095 (Fla. 1st DCA 2014). **TRIAL COURT ORDER RESERVING JURISDICTION AND CONTEMPLATING ADDITIONAL JUDICIAL LABOR REGARDING CHILD SUPPORT IS NOT A FINAL ORDER**. A trial court order reserving jurisdiction and contemplating exercise of additional judicial labor with regard to the issue of child support is not a final order; thus, the appeal was dismissed for lack of jurisdiction.

https://edca.1dca.org/DCADocs/2014/4917/144917_DA08_11242014_095401_i.pdf

(November 24, 2014).

Wood v. Blunck, __So. 3d__, 2014 WL 6611986 (Fla. 1st DCA 2014). **TRIAL COURT’S ORDER WAS INSUFFICIENT TO SUPPORT THE RESULT REACHED IN DENIAL OF SPOUSE’S REQUEST FOR MODIFICATION OF ALIMONY AWARD.** The appellate court agreed with former husband that the trial court abused its discretion in denying former husband’s petition for modification of the alimony. The appellate court reiterated that a spouse seeking modification must establish a substantial change in circumstances which is permanent and involuntary, and which was not contemplated at the time of the final judgment of dissolution. The substantial change of circumstances necessary to modify an alimony award must have a bearing on either the receiving spouse’s need for alimony or the paying spouse’s ability to pay it. Although an increase in the receiving spouse’s income does not necessarily justify modification, the appellate court concluded here that a substantial change of circumstances was evident in the improvement of former wife’s financial condition. There was no improvement in former husband’s ability to pay. The appellate court held the trial court’s finding of no substantial change of circumstances was “inconsistent” with its findings concerning former wife’s income and expenses. The appellate court did not rule on whether modification was required, but held that the trial court’s order was insufficient to support the result reached without further explanation. Accordingly, it reversed and remanded for reconsideration.

https://edca.1dca.org/DCADocs/2014/0051/140051_DC13_11242014_094925_i.pdf

(November 24, 2014).

Second District Court of Appeals

Vazquez v. Vazquez-Robledo, __So. 3d__, 2014 WL 5653398 (Fla. 2d DCA2014). **BEST INTERESTS OF CHILDREN IS FOREMOST IN ESTABLISHING TIME-SHARING PLAN.** Former husband appealed a trial court order temporarily granting his petition to relocate. In the midst of what the appellate court termed a “very contentious divorce,” former husband received military orders assigning him to a post in Virginia. At that time, he had majority time-sharing with the two minor children while former wife had limited visitation at a supervised visitation center. The trial court granted former husband’s temporary petition but ordered daily phone contact between former wife and children and awarded former wife monthly overnight time-sharing, to be supervised by her mother in Orlando. It also ordered former wife to schedule monthly counseling sessions with the children during her time-sharing; the costs of the sessions would be split between the spouses. The appellate court affirmed in part and reversed in part. It reversed the award of overnight time-sharing and the requirement that former husband pay \$500 per month towards his share of counseling expenses for former wife and children because they were not supported by the evidence. Pursuant to 61.13(3), F.S. (2013), the prime consideration in establishing a time-sharing schedule is the best interests of the children; here, there was no evidence that monthly overnight visits with former wife were in the children’s best interests. Former wife’s temporary time-sharing schedule would be reconsidered on remand.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2005,%202014/2D14-1084.pdf (November 5, 2014).

Gerber v. Gerber, __So. 3d__, 2014 WL 5900055 (Fla. 2d DCA 2014). **INDEFINITE OR AMBIGUOUS ORDERS MAY NOT BE ENFORCED BY CONTEMPT.** Former husband appealed the trial court’s

orders approving the magistrate's report and recommended order and denying his motion to vacate. The appellate court concluded that because the magistrate's finding concerning the amount former husband owed for medical expenses was not supported by competent, substantial evidence, the trial court approved it in error; the appellate court also concluded that the order of civil contempt was premature because the partial settlement agreement (PSA) was not clear enough regarding objections to medical expenses. The appellate court cited its prior case, Loury v. Loury, 431 So. 2d 701 (Fla. 2d DCA 1983), for its holding that indefinite or ambiguous orders may not be enforced by contempt. Remanded.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2014,%202014/2D14-1059.pdf (November 14, 2014).

Clark v. Clark, __ So. 3d __, 2014 WL 6464512 (Fla. 2d DCA 2014). **NONFINAL ORDER REDUCING SPOUSE'S TEMPORARY SUPPORT WAS REVERSED BECAUSE SHE HAD NO NOTICE THAT MODIFICATION OF SUPPORT WOULD BE CONSIDERED AT THE HEARING; REMANDED FOR REINSTATEMENT OF SUPPORT.** Former wife appealed the trial court's non-final order that did not rule on her motion for contempt but reduced her previously ordered temporary support; former husband had not requested that the temporary support be reduced. The appellate court reversed because former wife had no notice that modification of temporary support would be considered at the contempt hearing; it also remanded for reinstatement of the previously ordered temporary support.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2019,%202014/2D14-1514.pdf (November 19, 2014).

Third District Court of Appeals

Betancourt v. Nunez, __ So. 3d __, 2014 WL 5682942 (Fla. 3d DCA 2014). **TRIAL COURT ORDER REGARDING MODIFICATION OF ALIMONY MAY NOT BE DISTURBED ON APPEAL ABSENT A SHOWING OF A CLEAR ABUSE OF DISCRETION.** A trial court's order regarding modification of alimony may not be disturbed on appeal absent a showing of a clear abuse of discretion. Lopez v. Lopez, 920 So. 2d 1165 (Fla. 3d DCA 2006). The appellate court concluded here that the trial court did not abuse its discretion in denying former husband's petition to modify alimony; accordingly, it affirmed the denial of his petition.

<http://www.3dca.flcourts.org/Opinions/3D14-0770.pdf> (November 5, 2014).

Fourth District Court of Appeals

Garcell v. Garcell, __ So. 3d __, 2014 WL 5615910 (Fla. 4th DCA 2014). **TRIAL COURT ABUSED ITS DISCRETION BY ENTERING A FINAL JUDGMENT OF DISSOLUTION WHILE DISCOVERY WAS PENDING; REVERSED AND REMANDED.** Former wife appealed the trial court's final order dissolving her marriage and its denial of her motions to vacate the judgment of dissolution. At the conclusion of the final hearing, before entry of the judgment, the trial judge granted former wife forty-five days to conduct additional discovery; however, twenty-seven days later the trial court issued its final order without explanation as to why it was being issued before the forty-five days had run. The appellate court agreed with former wife that the trial court improperly entered its order while discovery was still pending; accordingly, the appellate court held that because former wife was unable to complete discovery or present her case, the trial court's alimony and

child support awards were not based on its meaningful review of all competent, substantial evidence. Reversed and remanded.

<http://www.4dca.org/opinions/Nov.%202014/11-05-14/4D12-3528.op.pdf> (November 5, 2014).

Krift v. Obenour, __So. 3d__, 2014 WL 5614809 (Fla. 4th DCA 2014). TRIAL COURT ERRED IN ORDERING ROTATING TIME-SHARING; NEITHER SPOUSE HAD REQUESTED IT; DUE PROCESS VIOLATIONS; NO NOTICE GIVEN THAT ROTATING TIME-SHARING WOULD BE CONSIDERED; NO OPPORTUNITY TO PRESENT EVIDENCE. Both spouses appealed the judgment of dissolution of marriage. Former wife argued that the trial court violated her right to due process by ordering a rotating time-sharing schedule requiring the minor child to move between the parents' home every two months without either spouse having requested it and without her being afforded an opportunity to present evidence concerning time-sharing. Former husband argued that the trial court erred by classifying the credit card debt he incurred during the marriage as non-marital. The appellate court affirmed on his issue, but reversed and remanded on hers. It held that the two-month rotating time-sharing schedule was such a "significant departure" from time-sharing requested by either spouse, the trial court erred in ordering it. It agreed with former wife that her due process rights were violated because she had no notice that rotating time-sharing would be considered, nor was she given an opportunity to present evidence. Reversed and remanded for further proceedings on the time-sharing schedule and to reconsider the low transportation costs awarded to former wife, taking into account the spouses' financial situations and the actual travel costs. The appellate court held that the trial court's decision regarding the child's residence upon reaching kindergarten age was not a ruling on a request for relocation as former wife had argued, but was an order that former husband become the primary residential parent once the child started kindergarten. Neither spouse was seeking to change their residence.

<http://www.4dca.org/opinions/Nov.%202014/11-05-14/4D13-1151.op.pdf> (November 5, 2014).

Albu v. Albu, __So. 3d__, 2014 WL 6460709 (Fla. 4th DCA 2014). TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REDUCING BUT NOT TERMINATING SPOUSE'S ALIMONY OBLIGATION AFTER A CHANGE IN CIRCUMSTANCES; NEED OF ONE SPOUSE AND ABILITY OF THE OTHER TO PAY ARE THE MOST IMPORTANT FACTORS IN CONSIDERATION OF MODIFICATION. Former husband argued that the trial court should have terminated his alimony instead of reducing it based on its finding of a substantial change in circumstances due to his loss of business after suffering a heart attack. The appellate court found that former wife, who had never worked outside the home during the spouses' long-term marriage, was solely dependent on the alimony for support. The appellate court concluded that the trial court did not abuse its discretion in choosing to reduce alimony rather than eliminate it entirely. Need of one spouse and the ability of the other to pay are the most important factors for a trial court to consider in modification proceedings. The appellate court authorized former husband to again petition for modification once former wife began receiving Social Security—two years from the filing of the petition under review.

<http://www.4dca.org/opinions/Nov.%202014/11-19-14/4D13-3558.op.pdf>

(November 19, 2014).

Moore v. Kelso-Moore, __So. 3d__, 2014 WL 6460576 (Fla. 4th DCA 2014). AMOUNT OF FEES APPEARED INCONSISTENT WITH TRIAL COURT'S ORAL PRONOUNCEMENTS; IT IS NOT PER SE

REVERSIBLE ERROR WHEN A TRIAL COURT FAILS TO MAKE EXPLICIT FINDINGS IN SUPPORT OF TEMPORARY FEE AWARD; HOWEVER, HERE THE RECORD DID NOT SUPPORT THE FEES AWARDED; REVERSED . Unable to “decipher” the amounts that the trial court ordered former husband to pay in attorney’s fees to former wife, the appellate court reversed and remanded for further proceedings. It concluded that the amount awarded appeared inconsistent with the trial court’s oral pronouncements. The appellate court distinguished this case from the case Piluso v. Piluso, 622 So. 2d 117 (Fla. 4th DCA 1993), in which it held that it is not per se reversible error when a trial court fails to make explicit findings in support of a temporary fee award. The record in Piluso had sufficient evidence to support the amount of fees awarded; this case did not.
<http://www.4dca.org/opinions/Nov.%202014/11-19-14/4D14-1189.op.pdf>
(November 19, 2014).

Castillo v. Castillo, __ So. 3d __, 2014 WL 6520801 (Fla. 4th DCA 2014). SWORN ALLEGATION THAT WOULD PLACE A REASONABLY PRUDENT PERSON IN FEAR OF NOT RECEIVING A FAIR HEARING LED TO WRIT OF PROHIBITION; THE TRIAL COURT ORDER ENTERED AFTER SPOUSE’S MOTION TO DISQUALIFY WAS VACATED. Finding that former husband’s sworn allegation was sufficient to place a reasonably prudent person in fear of not receiving a fair hearing, the appellate court granted former husband a writ of prohibition. It directed the case be reassigned to a successor judge and vacated the order granting former wife’s motion for temporary relief and fees entered after former husband’s motion to disqualify.
<http://www.4dca.org/opinions/Nov.%202014/11-19-14/4D14-2522.co-op.pdf>
(November 19, 2014).

Ford v. Ford, __ So. 3d __, 2014 WL 6674771 (Fla. 4th DCA 2014). CONTEMPT AFFIRMED; THERE WAS COMPETENT, SUBSTANTIAL EVIDENCE TO SHOW SPOUSE HAD ABILITY TO COMPLY WITH PARENTING PLAN BUT REFUSED TO DO SO; TRIAL COURT MAY ORDER SPOUSE TO PAY EXPERT AND ATTORNEY FEES INCURRED BY OTHER SPOUSE IN ENFORCING PARENTING PLAN; ORDER THAT SPOUSE ATTEND THERAPY VAGUE AND IMPRECISE; REVERSED. Former wife appealed an order finding her in contempt and imposing sanctions for her failure to comply with the parenting plan. Attendance by one child at a wilderness program was moot because that child had turned eighteen during the pendency of the appeal. The appellate court affirmed the finding of contempt and payment of costs; it concluded that there was competent, substantial evidence to show that former wife had the ability to comply with the parenting plan, but “affirmatively refused to do so.” It concluded that the trial court had the authority to order former wife to pay both attorney and expert fees incurred by former husband in enforcing the parenting plan. The appellate court reversed the order requiring former wife to attend therapy because it was imprecise and vague as to its duration and because it relied on a change in attitude of the children as opposed to a change in former wife’s psychological condition.
<http://www.4dca.org/opinions/Nov.%202014/11-26-14/4D13-1369.op.pdf>
(November 26, 2014).

Lieberman v. Lieberman, __ So. 3d __, 2014 WL 6674733 (Fla. 4th DCA 2014). DISQUALIFICATION OF COUNSEL DEPARTED FROM ESSENTIAL REQUIREMENTS OF LAW BECAUSE IT WAS NOT LIMITED TO PROCEEDING IN WHICH COUNSEL COULD BE CALLED AS A WITNESS; OPPOSING

COUNSEL HAD AN OBLIGATION TO CONFESS ERROR AS TO THE OVERBROAD DISQUALIFICATION ORDER; APPELLATE ATTORNEY'S FEES AWARDED AS SANCTION. Former husband petitioned for a writ of certiorari seeking review of the trial court's order disqualifying his attorney, also his current wife, from representing him in post-dissolution proceedings involving his former wife. Former wife had asserted that because the current wife would be a witness in the contempt proceedings, she should not be allowed to represent former husband in contravention of Rule 4-3.7(a) of the Rules Regulating the Florida Bar. The appellate court concluded that the order of disqualification departed from the essential requirements of the law because it was not limited to the current wife's participation during the contempt hearing, but was a general disqualification. The appellate court held that there was no legal basis for disqualifying the current wife from representing former husband in any proceeding subsequent to the contempt hearing. It also held that former wife's counsel had an obligation to confess error as to the trial court's general disqualification. His failure to meet that obligation resulted in the appellate court awarding appellate attorney's fees as a sanction. Remanded to assess fees.
<http://www.4dca.org/opinions/Nov.%202014/11-26-14/4D14-509.op.pdf> (November 26, 2014).

Fifth District Court of Appeals

Terkeurst v. Terkeurst, __ So. 3d __, 2014 WL 5782228, (Fla. 5th DCA 2014). **TRIAL COURT INCORRECTLY CALCULATED CHILD SUPPORT BASED ON BOTH CHILDREN LIVING WITH ONE SPOUSE AS OPPOSED TO ONE CHILD WITH EACH SPOUSE; REMANDED TO RECALCULATE ONGOING AND RETROACTIVE SUPPORT.** The appellate court agreed with former husband that the trial court had improperly calculated the child support based on both children residing with former wife, although one of the two children resided with former husband. The appellate court remanded for the trial court to recalculate both the ongoing support and the retroactive support.
<http://www.5dca.org/Opinions/Opin2014/110314/5D13-1640.op.pdf> (November 7, 2014).

Ellisen v. Ellisen, __ So. 3d __, 2014 WL 6488839 (Fla. 5th DCA 2014). **TRIAL COURT ERRED IN NARROWLY CONSTRUING SPOUSE'S PETITION TO MODIFY ALIMONY AS ONE TO TERMINATE; IT RELIED ON INCORRECT BURDEN OF PROOF; REMANDED TO RECONSIDER PETITION AND APPLY CORRECT BURDEN.** The appellate court agreed with former husband that the trial court erred by "narrowly construing" his petition for modification of alimony as a request to terminate alimony and thereby refusing to consider his petition. Former husband also argued, and former wife conceded, that the trial court relied on an incorrect burden of proof when evaluating the evidence. Accordingly, the appellate court reversed the portion of the trial court's order denying the petition to modify or terminate alimony and remanded for the trial court to reconsider the petition applying the correct burden of proof.
<http://www.5dca.org/Opinions/Opin2014/111714/5D14-123.op.pdf> (November 21, 2014).

Arquette v. Rutter, __ So. 3d __, 2014 WL 6488784, (Fla. 5th DCA 2014). **TRIAL COURT LACKED JURISDICTION TO MODIFY CALIFORNIA CHILD SUPPORT.** The appellate court agreed with former wife that the trial court lacked subject matter jurisdiction to modify the child support order because neither she nor the child resided in Florida. The former spouses married in Florida and relocated to California with their child. Former wife obtained a dissolution of marriage and child support order in California. Subsequent to their divorce, the spouses each relocated: former

husband to Florida, and former wife and the child to Georgia. The trial court granted former husband's petition to domesticate the California judgment and modify the child support order; former wife moved to vacate. The appellate court concluded that because neither the parents nor the child live in California, that state has lost continuing, exclusive jurisdiction; however, California's loss does not automatically confer jurisdiction on Florida to modify the California support order. The appellate court reversed and remanded for trial court to vacate order.

<http://www.5dca.org/Opinions/Opin2014/111714/5D14-496.op.pdf> (November 21, 2104).

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

Spaulding v. Shane, ___ So. 3d ____, 2014 WL 5652588 (Fla. 2d DCA 2014). [DENIAL OF MOTION TO DISSOLVE A DOMESTIC VIOLENCE INJUNCTION REVERSED](#). The trial court denied a motion to dissolve a permanent injunction for protection against domestic violence filed by a prisoner serving a forty-year term who had no contact with the victim for over 10 years. The appellate court reversed and noted that the party must show that there has been a change in circumstances since the injunction was entered in order to get an injunction dissolved. In this case, the prison term constituted a change in circumstances that showed that the scenario underlying the injunction no longer existed.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2005,%202014/2D12-1963.pdf (November 05, 2014).

Phillips v. Phillips, ___ So. 3d ____, 2014 WL 5784553 (Fla. 2d DCA 2014). [DOMESTIC VIOLENCE INJUNCTION REVERSED](#). The trial court entered an injunction for a wife against her estranged husband; the husband appealed, claiming that the wife had no reasonable cause to believe she was in imminent danger. The appellate court agreed with the husband and reversed, stating that the evidence was legally insufficient to meet the statutory requirements. There had been no violence or threat of violence, and the couple had been separated for several months before she filed the petition.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2007,%202014/2D13-1233.pdf (November 07, 2014).

Phillips v. Hughes, ___ So. 3d ____, 2014 WL 5784561 (Fla. 2d DCA 2014). [DOMESTIC VIOLENCE INJUNCTION REVERSED](#). The trial court entered an injunction for protection against domestic violence for a mother against the father of a child in common; the father appealed. The court reversed the order and held that the mother failed to present sufficient evidence of her fear that violence was imminent. There had been no actual violence between mother and father and no evidence admitted to support the mother's fear.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/November/November%2007,%202014/2D13-1238.pdf (November 07, 2014).

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.