

OSCA/OCI'S FAMILY COURT CASE LAW UPDATE October 2014

Table of Contents

Baker Act/Marchman Act Case Law	3
Florida Supreme Court.....	3
First District Court of Appeals.....	3
Second District Court of Appeals	3
Third District Court of Appeals	3
Fourth District Court of Appeals	3
Fifth District Court of Appeals	3
Delinquency Case Law	4
Florida Supreme Court.....	4
First District Court of Appeals.....	4
Second District Court of Appeals	4
Third District Court of Appeals	4
Fourth District Court of Appeals	4
Fifth District Court of Appeals	6
Dependency Case Law.....	8
Florida Supreme Court.....	8
First District Court of Appeals.....	8
Second District Court of Appeals	8
Third District Court of Appeals	9
Fourth District Court of Appeals	9
Fifth District Court of Appeals	10
Dissolution Case Law	12
Florida Supreme Court.....	12
First District Court of Appeals.....	12
Second District Court of Appeals	12
Third District Court of Appeals	14
Fourth District Court of Appeals	15
Fifth District Court of Appeals	15
Domestic Violence Case Law.....	16
Florida Supreme Court.....	16
First District Court of Appeals.....	16

Second District Court of Appeals	16
Third District Court of Appeals	16
Fourth District Court of Appeals	16
Fifth District Court of Appeals	17
Drug Court/Mental Health Court Case Law	18
Florida Supreme Court.....	18
First District Court of Appeals.....	18
Second District Court of Appeals	18
Third District Court of Appeals	18
Fourth District Court of Appeals	18
Fifth District Court of Appeals	18

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

D.T.W. v. State, __ So. 3d __, 2014 WL 5100189 (Fla. 1st DCA 2014). **COMMITMENT REVERSED AND REMANDED WITH INSTRUCTIONS FOR THE TRIAL COURT TO RECEIVE A RECOMMENDATION FROM THE DEPARTMENT OF JUVENILE JUSTICE (DJJ) REGARDING A RESTRICTIVENESS LEVEL BEFORE COMMITTING THE JUVENILE.** In this *Anders* appeal, a *Causey* order (State v. Causey, 503 So. 2d 321 (Fla. 1987)) was issued directing the parties to brief the issue of whether the trial court erred in committing the juvenile to a moderate-risk placement when the Department of Juvenile Justice (DJJ) had recommended probation. The public defender recognized the error and asked the appellate court to reverse and remand pursuant to B.K.A. v. State, 122 So. 3d 928, 930 (Fla. 1st DCA 2013). The State conceded error. In B.K.A., the First District Court of Appeal found that after the trial court determines that commitment of the juvenile to the DJJ is appropriate, the DJJ must recommend the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. Probation is not a restrictiveness level. Accordingly, the First District affirmed the adjudication of delinquency, but reversed the commitment and remanded with instructions for the trial court to receive a recommendation from the DJJ regarding a restrictiveness level before committing the juvenile.

https://edca.1dca.org/DCADocs/2014/0633/140633_DC08_10132014_103453_i.pdf (October 13, 2014).

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

C.H. v. State, __ So. 3d __, 2013 WL 4853663 (Fla. 3d DCA 2014). **WITHHOLD OF ADJUDICATION ENTERED AFTER THE JUVENILE HAD TURNED 20 YEARS OLD WAS AFFIRMED BECAUSE IT WAS A CONFIRMATION OF A PREVIOUSLY ENTERED ORAL DISPOSITION MADE PURSUANT TO A PLEA AGREEMENT.** The juvenile appealed her withhold of adjudication, arguing that it was entered after she had turned 20 years old. The Third District Court of Appeal affirmed the withholding of adjudication, finding that it was a confirmation of a previously entered oral disposition made pursuant to a plea agreement. However, the Third District reversed the admonishment entered by the trial court simultaneously with that adjudication because the admonishment was not part of the previously entered sentence. Affirmed in part and reversed in part.

<http://www.3dca.flcourts.org/Opinions/3D13-2719.pdf> (October 1, 2014).

L.V. v. State, __ So. 3d __, 2013 WL 5088878 (Fla. 3d DCA 2014). **HABEAS CORPUS PETITION GRANTED WITHOUT PREJUDICE TO FURTHER PROCEEDINGS PERMITTING THE TRIAL COURT TO MAKE ADDITIONAL FINDINGS.** The Third District Court of Appeal, in light of the State's concession, granted the juvenile's emergency petition for writ of habeas corpus and ordered that the juvenile be released from secure detention and returned to the custody of the Department of Children and Families. The Third District cited Michaels v. Loftus, 139 So. 3d 324, 327 (Fla. 3d DCA 2014) ("The law requires a charge of direct criminal contempt to be proven beyond a reasonable doubt."). Accordingly, the petition was granted without prejudice to further proceedings permitting the trial court to make additional findings that would support its conclusion.

<http://www.3dca.flcourts.org/Opinions/3D14-2444.pdf> (October 10, 2014).

M.H. v. State, __ So. 3d __, 2013 WL 5462527 (Fla. 3d DCA 2014). **BURGLARY AND PETIT THEFT FINDING WAS REVERSED WHERE THE VICTIM SHOULD HAVE BEEN LISTED AS A "CATEGORY A" WITNESS, AND THE TRIAL COURT SHOULD HAVE CONDUCTED A FULL RICHARDSON HEARING.** The juvenile appealed a withholding of adjudication for burglary of an unoccupied dwelling and petit theft. The juvenile argued that the State committed a discovery violation by listing the victim as a Category B witness in its discovery exhibit instead of a Category A witness and that the trial court erred by failing to conduct a full Richardson v. State, 246 So. 2d 771 (Fla.1971), inquiry to address the discovery violation. The police investigation/incident report stated that the victim only told the investigating officer that he left his residence at approximately 8:00 p.m. and upon returning at 11:30 p.m., he discovered that he had been burglarized. In his deposition, the investigating officer confirmed that the victim stated that he left his apartment at 8:00 p.m. and discovered the theft upon his return at 11:30 p.m. Believing that the victim had merely discovered the theft and had no other relevant testimony, the juvenile did not attempt to depose the victim. However, at the adjudicatory hearing, the victim also testified that while he was out of his apartment, he saw the juvenile and several other individuals enter his apartment building. Defense counsel objected to the State's characterization of the victim as a Category B witness and requested a *Richardson* hearing. Defense counsel argued that the victim was an "eye witness" because the victim's testimony placed the juvenile in the vicinity and therefore should have been listed as a Category A witness in its discovery exhibit. The State argued that the victim was not an "eyewitness" because he did not witness the actual crime or any element of the crime being committed. The trial court found that there was no discovery violation and no need for a *Richardson* inquiry. The defense then moved for an emergency continuance in order to call the investigating officer to impeach the victim's testimony. The investigating officer had not been subpoenaed. Defense counsel proffered that the officer would testify that the victim told him only that he had left his apartment at 8:00 p.m. and that he discovered the burglary upon

returning at 11:30 p.m. The trial court denied the motion and ultimately found that the juvenile committed the offenses of burglary and petit theft. The juvenile appealed. The Third District Court of Appeal held that the victim should have been listed as a Category A witness, and that the *Richardson* hearing conducted by the trial court was inadequate. Florida Rule of Juvenile Procedure 8.060 classifies witnesses based on their level of knowledge concerning the charged offenses. Such classification is based upon the witness's ability to contribute towards determining the guilt or innocence of the defendant. The Third District concluded that a practical, common-sense application must be used when classifying witnesses under rule 8.060, taking into consideration the purpose of the discovery rules, the content of the witness's testimony, and the effect of the classification. In the instant case, the Third District found that the victim's testimony was highly material because the victim was able to place the juvenile in the vicinity of the crime. The classification of the victim as a Category B witness misled the defense as to materiality of the victim's testimony and precluded the defense from discovering this highly material evidence. The juvenile and his counsel were caught by surprise and were, in effect, ambushed by the victim's testimony at trial. Also, by classifying the victim as a Category B witness, the defense was precluded from deposing the victim absent leave of court and unless he could show good cause. Based on the information known to the defense, it would have been unreasonable to seek leave of court to depose the victim because the defense could not have shown good cause. Therefore, under the circumstances of this case, the Third District found that the trial court erred in finding that the State did not commit a discovery violation by listing the victim as a Category B witness. Since a discovery violation did occur, the trial court was then required to conduct a full *Richardson* inquiry as to whether the violation: (1) was willful or inadvertent, (2) was substantial or trivial, and (3) had a prejudicial effect on the aggrieved parties' trial preparation. The Third District noted that the failure to conduct an adequate *Richardson* inquiry is not per se reversible error. However, in the instant case, they could not say beyond a reasonable doubt that the juvenile was not procedurally prejudiced by the State's discovery violation. Accordingly, the Third District reversed and remanded for a new adjudicatory hearing.

<http://www.3dca.flcourts.org/Opinions/3D13-2371.pdf> (October 29, 2014).

Fourth District Court of Appeals

No new opinions for this reporting period.

Fifth District Court of Appeals

J.A.B. v. State, __ So. 3d __, 2013 WL 4929093 (Fla. 5th DCA 2014). [RESTITUTION ORDER REVERSED AND REMANDED BECAUSE THE VICTIM GAVE NO BASIS FOR HIS OPINION OF THE DAMAGES, AND BECAUSE THE REPAIR ESTIMATE ALLEGEDLY SENT BY THE VICTIM'S MOTHER NEVER REACHED THE COURT.](#) The juvenile was ordered to pay \$460 in restitution for damage to the victim's car. The juvenile appealed the restitution order. At the restitution hearing, the victim

stated that he believed it would cost between \$460 and \$490 to repair the damage to his vehicle. The victim gave no basis for his opinion and there was no testimony that the victim had any special knowledge concerning the costs of repairs. The victim's stepfather testified that the victim had obtained a repair estimate, which the victim's mother had sent to an office within the court system. The estimate did not reach the court. The Fifth District Court of Appeal held that the victim's testimony was insufficient to support the restitution award. The victim gave no basis for his opinion and the repair estimate allegedly sent by the victim's mother never reached the court. Therefore, the restitution award was not supported by competent, substantial evidence. Accordingly, the Fifth District reversed and remand for a new restitution hearing.

<http://www.5dca.org/Opinions/Opin2014/092914/5D14-312.op.pdf> (October 3, 2014).

Dependency Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

J.B. v. Department of Children and Families, ___ So. 3d ____, 39 Fla.L.Weekly D2100, 2014 WL 4976981 (Fla. 1st DCA 2014). [INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM DENIED; TWO QUESTIONS CERTIFIED TO SUPREME COURT](#). The First District Court of Appeal affirmed the termination of a mother's rights while addressing a claim of ineffective assistance of counsel. The Department of Children and Families had removed the child on March 14, 2011; the child was adjudicated dependent on June 22, 2011, based on the mother's consent. The trial court accepted a case plan with goal of reunification on July 13, 2011. On February 10, 2012, the department filed a petition for termination of parental rights. On July 18, 2013, the mother's counsel filed a motion for continuance. The adjudicatory hearing was held the following day. The trial court read the motion and heard argument from counsel. An exchange ensued in which the trial court denied the continuance because it was untimely, not proper in form, and did not show good cause sufficient to override the statutory mandates regarding the child's right to permanency. When asked to make an opening statement, the mother's counsel declined and stated he was not prepared to go forward. He stated he "was under the impression that things would have been different, but something changed." The mother's attorney also stated at trial that he was "really exhausted" and "the last few weeks ha[d] worn [him] down."

During closing argument, when asked about an applicable statute, counsel did not have a statute book with him and was provided one by the trial court. The mother's counsel responded, "Of course, I may be so—I'm so tired, I may be doing everything, again, wrong, but I believe that is—" The department's counsel attempted to assist the mother's counsel in finding the statute in question and the court called a recess to allow a review of the statute. The mother's counsel stated, "Yes. The statute she has pointed to is not the one I was thinking of. It may have changed. I've been doing this so dadgum long, I've been at this—put in 80 hours this week already, I can't think straight, so I withdraw that part of it." On August 9, 2013, the trial court terminated the mother's parental rights.

On appeal, the District Court noted that the constitutional right to counsel in termination cases implicitly requires the effective assistance of counsel. It further noted that claims of ineffective assistance of counsel must be in the form of a direct appeal or an authorized post-trial motion. A claim of ineffective assistance of counsel cannot be raised for the first time on appeal unless counsel's ineffectiveness is apparent on the face of the record. The District Court then noted that the applicable standard for ineffective assistance of counsel claims is the criminal standard announced in Strickland v. Washington. Therefore, to establish a claim ineffective assistance of counsel, counsel's performance must have been deficient and prejudiced the parent, i.e., there is a reasonable probability that parental rights would not have been terminated absent counsel's deficient performance.

The mother had raised her ineffective assistance of counsel argument for the first time on appeal and made ten specific claims of ineffectiveness. The District Court expressed concern with the trial court's decision to go forward with the adjudicatory hearing despite the repeated protestations of the mother's counsel that he was exhausted and not prepared to proceed. Nonetheless, the appellate court agreed with the department that the mother could not demonstrate that counsel was ineffective under the Strickland standard. The court reviewed each of the mother's ten claims and held that the face of the record failed to support them. The court summarized that the mother had failed to establish ineffectiveness.

The court also expressed its concern regarding the lack of any effective procedure for raising claims of ineffective assistance of counsel in termination of parental rights proceedings where the alleged ineffectiveness was not apparent on the face of the record. The court then discussed potential vehicles for such claims and urged the Florida Supreme Court to address the issue through its rulemaking power.

Although the District Court affirmed termination of the mother's parental rights, it certified two questions to be of great public importance: 1) Is the criminal standard of ineffective assistance of counsel announced in Strickland v. Washington applicable to claims of ineffective assistance of counsel in proceedings involving the termination of parental rights?; and 2) Is any procedure available following the termination of parental rights to raise claims of ineffective assistance of counsel that are not apparent on the face of the record?

On October 21, 2014, the Florida Supreme Court accepted jurisdiction in the case. J.B. v. Florida Department of Children and Families, 2014 WL 5420898 (Fla. 2014). The Florida Supreme Court heard oral argument on February 5, 2015.

https://edca.1dca.org/DCADocs/2013/4346/134346_1284_10072014_104750_i.pdf (October 7, 2014).

Second District Court of Appeals

No new opinions for this reporting period.

Third District Court of Appeals

A.F. v. Department of Children and Families, ___ So. 3d ____, 39 Fla.L.Weekly D2183, 2014 WL 5151623 (Fla. 3d DCA 2014). **TERMINATION OF PARENTAL RIGHTS AFFIRMED**. The Third District Court of Appeal affirmed the termination of a mother's parental rights in a case where the trial court appointed an attorney ad litem rather than a guardian ad litem (GAL) to represent the child's best interests. During the proceedings, the trial court had appointed an attorney ad litem for the child and specifically instructed the attorney ad litem to protect the best interests of the child. At the termination of parental rights trial, the attorney ad litem actively participated in the proceedings. On direct examination of the case manager, the attorney ad litem elicited a recommendation that the mother's rights be terminated. She also cross-examined the mother, called the child's foster mother to testify, and made a closing argument recommending termination of the mother's rights. The trial court terminated the mother's parental rights and found that the attorney ad litem had represented the child's best interests. The trial court further

found that it was in child's manifest best interests to terminate the mother's parental rights. On appeal the mother argued that the trial court erred by not appointed a GAL to represent the child's best interests. The District Court noted that the attorney ad litem had represented the child's best interests and that at no point in the proceedings did the mother request the appointment of a GAL or object to the appointment of the attorney ad litem. The District Court acknowledged that the trial court clearly erred by not appointing a GAL as required by section 39.808(2), Florida Statutes and Rule 8.510(a)(2)(D). However, the court held that the GAL is a right of the child, not the mother, and the mother never objected to the failure to appoint a GAL. Thus, reversal was only mandated if the effort was fundamental. The District Court noted that the attorney ad litem was appointed early in the proceedings and was directed to represent the child's best interests, which is the purpose of the rules requiring appointment of a GAL. The court opined that the attorney ad litem had actively participated in the case and had performed nearly all the functions required by a GAL. The court therefore held that the failure to appoint a GAL was not fundamental error.

<http://www.3dca.flcourts.org/Opinions/3D14-1382.pdf> (October 15, 2014).

Fourth District Court of Appeals

O.G. and C.P.V. v. Department of Children and Families, ___ So. 3d ____, 39 Fla.L.Weekly D2161, 2014 WL 5149083 (Fla. 4th DCA 2014). **ABANDONMENT FINDING REVERSED BUT TERMINATION OF PARENTAL RIGHTS AFFIRMED**. The Fourth District Court of Appeal affirmed an order terminating parental rights but remanded for the trial court to strike the portion of the order basing termination on abandonment.

<http://www.4dca.org/opinions/Oct%202014/10-15-14/4D14-841.op.pdf> (October 15, 2014).

Fifth District Court of Appeals

R.M.L. v. Department of Children and Families, 147 So. 3d 1108, 39 Fla.L.Weekly D2096, 2014 WL 4851786 (Fla. 5th DCA 2014). **ORDER REVERSED AND REMANDED**. The Fifth District Court of Appeal reversed an order adjudicating a mother's children dependent. The mother argued that the trial court's oral ruling had found the children dependent but had withheld adjudication. Because the transcript clearly reflected that adjudication was being withheld, the District Court reversed the order on appeal. The court remanded the case so the trial court could conform the written order to its oral pronouncement.

<http://www.5dca.org/Opinions/Opin2014/092914/5D14-2556.op.pdf> (October 1, 2014).

C.B. v. Department of Children and Families, 148 So. 3d 833, 39 Fla.L.Weekly D2193, 2014 WL 5304937 (Fla. 5th DCA 2014). **ANGER MANAGEMENT REQUIREMENT STRICKEN FROM CASE PLAN**. The Fifth District Court of Appeal reversed in part an order requiring a father to undergo anger management counseling. The court affirmed the trial court's disposition order but the Department of Children and Families conceded error because there was insufficient evidence to show that the father needed anger management counseling. The court therefore remanded for entry of an amended order.

<http://www.5dca.org/Opinions/Opin2014/101314/5D14-2578.op.pdf> (October 16, 2014).

J.S. v. Department of Children and Families, 148 So. 3d 832, 39 Fla.L.Weekly D2189, 2014 WL 5214739 (Fla. 5th DCA 2014). REHEARING GRANTED; PREVIOUS OPINION WITHDRAWN AND NEW OPINION SUBSTITUTED WHICH AFFIRMED TERMINATION OF PARENTAL RIGHTS. In a previous opinion (<http://www.5dca.org/Opinions/Opin2014/081114/5D14-882.op.pdf>) issued August 13, 2014, the Fifth District Court of Appeal affirmed termination of a father's parental rights but reversed the trial court's application of a particular ground for termination. The Department of Children and Families subsequently moved for hearing and clarification, which the court granted. The court withdrew its previous opinion and substituted the current opinion, which affirms the order terminating the father's rights.
<http://www.5dca.org/Opinions/Opin2014/101314/5D14-882.reh.op.pdf> (October 17, 2014).

Dissolution Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

McMullen v. McMullen, __ So. 3d __, 2014 WL 5139300, 39 Fla. L. Weekly D2158 (Fla. 1st DCA 2014). **COMPETENT, SUBSTANTIAL EVIDENCE DID NOT SUPPORT FINDING THAT THE DISTRIBUTION ONE SPOUSE RECEIVED FROM NONMARITAL JOINT VENTURE WAS MARITAL; HOWEVER, IT DID SUPPORT FINDINGS THAT SPOUSE’S EFFORTS AND CONTRIBUTIONS ENHANCED THE VALUE OF THE VENTURE; TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING AMOUNT OF ENHANCEMENT THE OTHER SPOUSE WAS ENTITLED TO.** Concluding that competent, substantial evidence did not support the trial court’s finding that certain funds were, “treated, used or relied on” as marital assets, the appellate court agreed with former husband that the trial court erred in determining that \$250,000 of the distribution he received from a non-marital joint venture and transferred into his checking account was subject to equitable distribution. A record must support the conclusion that non-marital assets are comingled with marital ones. The appellate court held that competent, substantial evidence did support the trial court’s findings that former husband’s “marital efforts and contributions enhanced the value of the non-marital joint venture.” The trial court did not abuse its discretion in determining the amount of enhancement to which former wife was entitled. Affirmed in part; reversed in part.

https://edca.1dca.org/DCADocs/2013/6027/136027_DC08_10142014_105814_i.pdf (October 14, 2014).

Payton v. Payton, __ So. 3d __, 2014 WL 5305542, 39 Fla. L. Weekly D2188 (Fla. 1st DCA 2014). **CONTEMPT REVERSED; TRIAL COURT INSTRUCTED ON REMAND TO RECALCULATE ARREARAGE AND REDETERMINE ENTITLEMENT TO FEE.** Former husband appealed an order finding him in contempt for failure to pay child support arrearage. This was the second order of contempt. The appellate court agreed with former husband that because the second order of contempt was based on the dissolution judgment and the first contempt order, both of which were reversed, it should be reversed as well. The trial court was instructed on remand to “recalculate the amount of new arrearage and purge, as necessary, upon consideration” of the appellate court’s earlier opinions. The appellate court vacated the fee award and instructed the trial court to make a de novo determination of entitlement on remand.

https://edca.1dca.org/DCADocs/2013/0287/130287_DC13_10162014_103703_i.pdf (October 16, 2014).

Byers v. Byers, __ So. 3d __, 2014 WL 5333479, 39 Fla. L. Weekly D2201 (Fla. 1st DCA 2014). **TRIAL COURT IS NOT PRECLUDED FROM ADOPTING A PROPOSED FINAL ORDER SO LONG AS THE ADOPTED ORDER DOES NOT SUBSTITUTE FOR ITS THOUGHTFUL AND INDEPENDENT ANALYSIS; TRIAL COURT WAS CORRECT TO AWARD SPOUSE IN NEED \$1 PERMANENT PERIODIC ALIMONY IN EVENT OTHER SPOUSE’S FINANCIAL POSITION IMPROVED; TRIAL COURT CORRECTLY INCLUDED BONUS CHECKS RECEIVED FROM SPOUSE IN MARITAL ASSETS.** The appellate court

affirmed a final judgment of dissolution which former husband had appealed on these three issues: the trial court adopted the proposed final order submitted by former wife's counsel; the trial court awarded former wife permanent periodic alimony award of \$1.00; and the trial court included certain assets as marital. With regard to the first point, the appellate court noted that Florida law does not preclude a trial court from adopting a proposed final order so long as the adopted order does not substitute for the trial court's thoughtful and independent analysis. Although "a verbatim adoption of a party's submission might raise a caution flag, it is lowered if the record shows that the trial court exercised independent judgment in entering the order." Here, the appellate court found no error because the proposed order appeared to reflect the trial court's oral rulings. On the second issue, the trial court's rulings establishing former wife's need for alimony were supported by clear and convincing evidence. Although former husband had filed for bankruptcy, it was appropriate to preserve her right to seek modification in the event his financial position improved. The trial court did not abuse its discretion by including as marital assets two bonus checks former husband received while employed as a banker. His claim that those funds were depleted due to mortgage payments, alimony, and child support was contradicted by former wife's showing that not only had he failed to list the amounts on his financial affidavit, he had stopped making mortgage payments a year before receiving the payments. He then stopped paying alimony and child support. At the time he received the bonuses, his annual salary was close to \$150,000; thus, he had sufficient funds from which he could have paid his obligations.

https://edca.1dca.org/DCADocs/2014/0368/140368_DC05_10212014_100208_i.pdf (October 21, 2014).

Schmidt v. Schmidt, __ So. 3d __, 2014 WL 5462423 (Fla. 1st DCA 2014). **ALTHOUGH SPOUSE WAS NOT ENTITLED TO NEW FINAL HEARING AFTER TEN-MONTH DELAY AND DISCREPANCIES BETWEEN ORAL RULINGS AND FINAL JUDGMENT, TRIAL COURT WAS NOT PRECLUDED FROM ORDERING THAT ON REMAND; NUMEROUS DEFICIENCIES IN FINAL JUDGMENT REGARDING ALIMONY AMOUNT; LIFE INSURANCE SPOUSE WAS ORDERED TO OBTAIN TO SECURE HIS OBLIGATIONS EXCEEDED WHAT WAS AVAILABLE; REMANDED FOR CORRECTION.** Former husband raised four issues in his appeal of a final judgment of dissolution and an order denying rehearing: 1) whether he is entitled to a new final hearing owing to the ten-month period between the trial court's oral rulings and the final judgment; whether the evidence supported the amount of 2) permanent periodic alimony and 3) the attorney's fees awarded to former wife; and 4) whether the trial court abused its discretion in ordering that he obtain a half-million dollar life insurance policy to secure his alimony and child support obligations. The appellate court remanded on the first and second issues, affirmed the third without comment, and remanded the fourth issue for the trial court to adjust the amount of insurance former husband must obtain as security. It noted that the written judgment included a number of findings and orders that conflicted with the oral rulings. Because both spouses stipulated to having a successor judge resolve the discrepancies, the appellate court held that former husband was not entitled to a new evidentiary hearing; however, it noted that its holding did not preclude the trial court from doing so on remand if the spouses stipulated to a new hearing or the court determined that one was necessary to resolve the issues. The appellate court found numerous deficiencies in the final judgment regarding alimony. With regard to life insurance, former wife agreed that the amount

the trial court ordered former husband to obtain as security for his obligation was in error because it exceeded the amount of insurance available to him; the appellate court instructed the trial court to correct this on remand.

https://edca.1dca.org/DCADocs/2014/1554/141554_DC08_10292014_103349_i.pdf (October 29, 2014).

Goslin v. Preisser, __So. 3d__, 2014 WL 5462517 (Fla.1st DCA, October 29, 2014). **APPELLATE COURT WITHOUT JURISDICTION TO REVIEW A NON-FINAL ORDER IN A TIME-SHARING DISPUTE BECAUSE IT DID NOT DETERMINE TIME-SHARING.** The appellate court held that it was without jurisdiction to review a non-final order denying former wife’s motion to compel former husband to undergo an independent psychosexual evaluation in an ongoing dispute over their time-sharing because the order did not determine time-sharing.

https://edca.1dca.org/DCADocs/2014/1608/141608_DA08_10292014_103445_i.pdf (October 29, 2014).

Second District Court of Appeals

Ayra v. Ayra, __So. 3d__, 2014 WL 4851732, 39 Fla. L. Weekly D2059 (Fla. 1st DCA 2014). **TRIAL COURT ERRED IN NOT AWARDING SPOUSE IN DISSOLUTION OF 20-YEAR MARRIAGE AT LEAST A NOMINAL AMOUNT OF PERMANENT ALIMONY; UNCOVERED MEDICAL EXPENSES FOR MINOR CHILD SHOULD BE ALLOCATED IN SAME PROPORTION AS CHILD SUPPORT OBLIGATION.** Former wife argued that the trial court abused its discretion in the dissolution of a twenty-year marriage in its failure to: award her nominal permanent alimony; order former husband to maintain medical and dental insurance for their minor child; allocate the child’s uncovered medical expenses; and require former husband to pay her attorney’s fees and costs. The appellate court reversed on the issues of alimony and allocation of the child’s uncovered medical expenses; it affirmed the remainder of the judgment without discussion. It found the trial court’s conclusion that former wife did not need alimony to be erroneous; the duration of the marriage plus the expenses former wife would encounter in the future warranted “at least a nominal amount of permanent alimony.” The trial court’s error regarding uncovered medical expenses for the minor child was due to its failure to address the issue. The appellate court instructed the trial court on remand to allocate these expenses in accordance with child support allocation.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/October/October%2001,%202014/2D13-262.pdf (October 1, 2014).

Herbst v. Herbst, __So. 3d__, 2014 WL 4851687, 39 Fla. L. Weekly D2059, (Fla. 1st DCA 2014). **MARITAL SETTLEMENT AGREEMENT PROVIDING FOR ALIMONY BEYOND RECIPIENT’S REMARRIAGE CONTROLS OVER S. 61.08; SPOUSES MAY ENTER INTO AGREEMENTS WHICH IMPOSE OBLIGATIONS A TRIAL COURT CANNOT.** Despite a marital settlement agreement (MSA) that former wife would receive non-modifiable alimony for the remainder of her life following their twenty-two year marriage, former husband moved to have his alimony obligation terminated when former wife remarried. She sought review of post-dissolution orders terminating his obligation, establishing his overpayment of alimony, and setting off her award of fees and costs against the overpayment. The appellate court reversed because the MSA unambiguously required payment beyond her remarriage; that provision controlled over section

61.08, F.S. (2011), upon which trial court relied. The appellate court reiterated that spouses in dissolution proceedings may enter into settlement agreements imposing obligations a trial court cannot otherwise impose under the statutes. If an MSA requires payment beyond the recipient's remarriage, the MSA controls over the statute.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/October/October%2014,%202014/2D13-2745.pdf (October 1, 2014).

Velaga v. Gudapati, __ So. 3d __, 2014 WL 5286514, 39 Fla. L. Weekly D2191 (Fla. 1st DCA 2014). **TRIAL COURT HAS DISCRETION TO ORDER OBLIGOR TO MAINTAIN LIFE INSURANCE TO SECURE OBLIGATION BUT MUST MAKE FINDINGS ON AFFORDABILITY AND SPECIAL CIRCUMSTANCES REQUIRING THE INSURANCE.** Former husband argued that the trial court abused its discretion in several areas in its final judgment of dissolution. The appellate court reversed on the issue of former husband being ordered to obtain life insurance to secure his child support obligation; it affirmed the remainder of the judgment without comment. Although a trial court has the discretion to order an obligor to maintain life insurance to secure an obligation, the trial court's order must include findings on the cost of the insurance and whether the obligor can afford it, in addition to including findings of special circumstances necessitating life insurance to secure the obligation. Here, the trial court failed to make any findings as to whether former husband could afford life insurance, nor did it make any findings of special circumstances which would necessitate life insurance. The appellate court instructed the trial court that if it obligated former husband on remand to obtain life insurance that it must make the required findings and specify when the insurance obligation will terminate.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/October/October%2014,%202014/2D13-2253.pdf (October 17, 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.

Domestic Violence Case Law

Florida Supreme Court

No new opinions for this reporting period.

First District Court of Appeals

Banks v. McFarland, ___ So. 3d ____, 2014 WL 5099431 (Fla. 1st DCA 2014). **REPEAT VIOLENCE INJUNCTION REVERSED**. A neighbor appealed when a temporary injunction against repeat violence was issued against him. The appellate court reversed the decision and held that the threatening statements were insufficient to support the injunction.

https://edca.1dca.org/DCADocs/2013/5825/135825_DC13_10132014_100213_i.pdf (October 13, 2014).

Second District Court of Appeals

Pashtenko v. Pashtenko, ___ So. 3d ____, 2014 WL 5151324 (Fla. 2d DCA 2014). **STALKING INJUNCTION REMANDED FOR HEARING**. The circuit court denied the wife's petition for protection against stalking against her husband and she appealed. The wife claimed that the husband threatened her with guns and repeatedly harassed and followed her. The court denied the petition and implied that since there was a contentious divorce occurring and no arrest or charges filed, there was not enough evidence to support the injunction. The appellate court reversed and remanded the case for a hearing and held that the trial court did not have legal grounds to deny the petition. The court also noted that the trial court incorrectly cited the law involved and specified that s. 784.0485(5)(b), F.S., was the applicable law. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/October/October%2015,%202014/2D13-4683.pdf (October 15, 2014).

Wyandt v. Voccio, ___ So. 3d ____, 2014 WL 5151322 (Fla. 2d DCA 2014). **STALKING INJUNCTION REVERSED**. A business owner filed a petition for protection against stalking violence against a neighboring business which was granted by the court; the neighbor appealed. Although there was evidence of verbal arguing, the appellate court held that the evidence did not support the issuance of the injunction because there was no proof of two incidents of stalking as required by the statute.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/October/October%2015,%202014/2D13-2778.pdf (October 15, 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

Brewer v. Chastain, ___ So. 3d ____, 2014 WL 5478057 (Fla. 5th DCA 2014). [REPEAT VIOLENCE INJUNCTION REVERSED](#). After reviewing the record, the appellate court held that there was insufficient evidence to support an injunction against repeat violence. (October 31, 2014).

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.