

# **DOMESTIC VIOLENCE CASE LAW SUMMARY– CIVIL CASES**

**DECEMBER 2005**

**Presented by the Publications Committee of the  
Florida Court Education Council**

The Publications Committee of the Florida Court Education Council presents these summaries of both civil and criminal decisions primarily of the Florida Supreme Court and intermediate appellate courts. These summaries are written, edited, and reviewed quarterly by the judges of the Miami-Dade Domestic Violence Division, the Division Director and the Supervisor of its Case Management Unit. Since the summaries are written immediately after issuance of each decision, all readers are encouraged to Shepardize all cases cited before relying on them. This is a cumulative collection consisting primarily of cases from 1996 through the present, but a few cases before 1996 are included as well. This collection will be published quarterly; case summaries in **bold** indicate cases added in the last quarter. There is an Index after this title page.

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## DOMESTIC VIOLENCE CIVIL CASE SUMMARIES

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### Spano v. B.B., 30 Fla. L. Weekly D2822 (Fla. 3d DCA Dec. 14, 2005)

This was an appeal of an interim order entered by the domestic violence trial judge, granting a temporary injunction which in effect suspended petitioner's visitation rights with the minor, which had been granted in a custody proceeding in the Family Court. The appellate court held that a domestic violence proceeding should not be the primary forum in which custody and visitation issues are litigated. Although the proceeding may have the effect of limiting or halting visitation rights established by a preexisting custody agreement, the parties may file the appropriate motion under the circuit's administrative order to transfer the case from the domestic violence division to the family division of the circuit court. The interim order entered was not an appealable order. The petition for writ of certiorari was denied without prejudice to the parties filing of the motion under the administrative order of the circuit court to transfer the domestic violence petition to the family division.

### Ortola v. Alfonso, 30 Fla. L. Weekly D2824 (Fla. 3d DCA Dec. 14, 2005)

The appellate court affirmed the trial court's issuance of a repeat violence injunction where one neighbor sought an injunction against another. The court found that the trial court properly found that one incident of sexual assault had occurred when one neighbor fondled and groped the other. The appellant's actions of returning to the victim's home the next day, after being told not to, and remaining after being told to leave, satisfied the statutory requirements for stalking and the issuance of the injunction was proper. Repeat violence, as defined by section 784.046(1)(b), Florida Statutes, means two incidents of violence or stalking committed by the respondent against the petitioner, one of which must have occurred within six (6) months of the filing of the petition. It was clear to the court that a battery or sexual assault occurred, constituting the first incident. Appellant's "course of conduct" of returning to the victim's home after being told not to and refusing to leave, constituted a "continuity of purpose" under the stalking statute.

### Adili v. Adili, 913 So. 2d 1240 (Fla. 4th DCA 2005)

Wife requested and obtained an ex parte temporary injunction based on the allegation that her husband threatened to kill her if she filed for divorce. She was awarded exclusive use and possession of the Florida home. Husband contested the injunction, claiming that the wife lived in North Carolina, not in Florida, that she had not seen him for months, and there was no imminent danger to the wife. At the hearing, the trial court entered a permanent injunction in the wife's favor without allowing the husband to present any witnesses or evidence or cross-examine the wife's witnesses. The appellate court reversed, finding that respondent was denied his fundamental due process right to be heard.

### Bond o/b/o N.B and K.B. v. Bond, 30 Fla. L. Weekly D2840 (Fla. 5th DCA 2005)

Trial court erroneously declined to exercise jurisdiction when a father, on behalf of his minor children, filed petitions for injunction for protection against domestic violence against the children's grandparents. The trial court terminated the hearing without allowing the petitioner to demonstrate that the cases were properly within the court's jurisdiction. Pursuant to section 741.30(1)(e), Florida Statutes, a domestic violence injunction may be

sought by “family or household members”. Section 741.28(3), Florida Statutes, defines “family or household members” to include persons who are presently residing together as if a family or who resided together in the past as if a family. At the hearing, the court raised the jurisdictional issue because it did not understand how the parties came within the applicable statute since they did not currently reside together. The petitioner’s response that the parties “used to” live together should have been sufficient for the court to allow the petition for domestic violence to continue. Instead the trial judge abruptly dismissed the petitions. The appellate court reversed and remanded to afford the petitioner the opportunity to demonstrate that the cases were properly within the statute.

**Santiago v. Towle, 30 Fla. L. Weekly D2724 (Fla. 5th DCA 2005)**

Trial court entered a permanent injunction for protection against repeat violence based on evidence from three separate incidents involving neighbors in a dispute over a fence. The appellate court reversed, finding that the record did not support a finding of two incidents of violence or stalking as required by the applicable statute. While the activity that involved the throwing of a liquid could qualify as “violence” if proven, no evidence was presented to support that claim. The second incident that involved a hand gesture and obscenities is not violence as defined by statute, and the third incident of the neighbor saying that he had a gun and was not afraid to use it, would not constitute an act of violence unless followed by an overt act indicating the ability to carry out the threat, that would justify a belief that violence was imminent.

**Buckley v. Belott, 31 Fla. L. Weekly D99 (Fla. 1st DCA 2005)**

Appellant moved for reversal of an order granting a permanent injunction for protection against dating violence because although the hearing was recorded, a transcript could not be prepared as the recording was defective. This request was initially denied because appellant had not first attempted to obtain a statement of the evidence in accordance with Florida Rule of Appellate Procedure 9.200(b)(4), to serve as substitute for the transcript. When the statement was not approved because the judge had no recollection of the hearing, appellant renewed his motion. The appellate court reversed and remanded for a hearing de novo.

**Abuse of Discretion**

**Schmitz v. Schmitz, 890 So.2d 1248 (Fla. 4th DCA 2005)**

Petitioner sought judicial review of the trial court’s non-final order permitting the testimony of a court psychologist at a hearing for a temporary injunction against domestic violence. The Fourth District Court reversed and remanded, finding the court had erred as doing so denied the petitioner her due process and was an abuse of discretion. The psychologist’s testimony, based on her 35 page single spaced report, submitted the day before the hearing, recommended that the child be removed from the mother’s custody. The district court held that the extraordinary circumstances requiring the finding of an emergency warranting a transfer of custody were not present in this case.

## **Amendment of Petition**

### **Simpson v. City of Miami**, 700 So. 2d 87 (Fla. 3d DCA 1997)

Murder was committed by a person who was the subject of a domestic violence injunction, who was placed in a police cruiser by a law enforcement officer dispatched to the victim's home after the victim called the police department, and who was subsequently released after he promised the officer he would leave the victim alone. It was error to dismiss the complaint with prejudice. On remand, the plaintiff was given leave to amend her complaint to allege an arrest since the officer had no discretion under sovereign immunity principles to release a violator who had been arrested.

## **Appellate Review**

### **S.E.R. v. J.R.**, 803 So. 2d 861 (Fla. 4th DCA 2002)

The petitioners requested review of the circuit court's order denying their motion to dismiss a domestic violence injunction. The petitioners based their motion on the grounds that there was a pending dependency action in Palm Beach, in which a custody award was granted that was contrary to the custody award given during the domestic violence injunction hearing. The Fourth District found that no certiorari review is necessary where a party has failed to show that a denial of a motion to dismiss a domestic violence injunction caused irreparable harm. The Fourth District found that petitioners' argument claiming that the Palm Beach award had precedence over the domestic award was not sufficient harm to mandate certiorari review. (*The test for irreparable harm is set forth in Bared & Co., Inc. v. McGuire*, 670 So. 2d 153 (Fla. 4th DCA 1996).)

### **Wehbe v. Ueibe**, 744 So. 2d 572 (Fla. 3d DCA 1999)

Where appellant and appellee were half brothers who each filed for an injunction for protection against domestic violence against one another, the Third District held that the issue of whether the trial court should not have taken judicial notice of testimony presented in appellee's case without making such testimony a part of the record was not preserved for appellate review based on the fact that the issue was never raised as an objection before the trial court. There was also no abuse of discretion by the trial court in denying an oral motion for disqualification and request for new trial where it was raised at the conclusion of the hearing. The Third District noted that a motion for disqualification is not properly used to express disagreement with the trial court's rulings.

## **Attorney's Fees**

### **Cisneros v. Cisneros**, 831 So. 2d 257 (Fla. 3d DCA 2002).

Regardless of the fact that respondent's injunction was reversed by the Third District on respondent's appeal, no attorney's fees could be awarded based on section 57.105, Florida Statutes (frivolous-bad faith lawsuit), for either the trial level or the appellate level proceedings.

**Lewis v. Lewis**, 689 So. 2d 1271 (Fla. 1st DCA 1997)

It was error to enter a permanent injunction and award the wife temporary custody of the children without providing an adequate hearing as required by the domestic violence statute and Family Law Rules of Procedure. The law requires custody to be addressed at the permanent injunction hearing on the same basis as provided in chapter 61. The domestic violence statute requires a full evidentiary hearing prior to issuing a permanent injunction. The trial court erred in not allowing any testimony from witnesses who were present or cross-examination of the parties. The wife's request for appellate attorney's fees was denied. Neither the domestic violence statute nor Florida Rule of Appellate Procedure 9.400, provides authority for granting attorney's fees. Section 61.16(1), Florida Statutes, providing for attorney's fees for maintaining or defending proceedings under chapter 61, does not apply to chapter 741 proceedings, as domestic violence proceedings are independent of dissolution of marriage proceedings. Note: The court stated, "We are not unaware that the public policy reasons for granting attorney's fees in a chapter 61 proceeding exist in a domestic violence proceeding. This is a matter, however, that should be dealt with by the Legislature rather than the courts."

**Baumgartner v. Baumgartner II**, 693 So. 2d 84 (Fla. 2d DCA 1997)

It was error to award attorney's fees in an action to obtain an injunction for protection against domestic violence pursuant to section 741.30, Florida Statutes. There is no statutory authority for an award of attorney's fees in a chapter 741 proceeding. The statute clearly contemplates a streamlined pro se proceeding.

**Conditions Court May Order**

**Langner v. Cox**, 826 So. 2d 475 (Fla. 1st DCA 2002)

Respondent appealed the final judgment in this repeat violence action where he was prohibited from using or possessing firearms or ammunition. The First District held that the court can order respondent to surrender firearms if a permanent injunction for repeat violence is entered and where the court finds it is necessary to protect the petitioner. The appellate court further stated that the trial court must allow the presentation of evidence from either party, as part of the hearing for final judgment, in determining whether surrender of the firearms is necessary to protect the victim as the provisions for surrender are not mandatory when a final judgment for protection against repeat violence is entered.

**Roman v. Lopez**, 811 So. 2d 840 (Fla. 3d DCA 2002)

During a domestic violence injunction hearing, petitioner was ordered to parenting classes. Petitioner appealed the order. Section 61.13(4)(c)(2), Florida Statutes, in conjunction with section 741.30(6)(a)(3), Florida Statutes, grants the court the authority for the custodial parent to attend parenting classes. The Third District upheld the trial court's order.

## **Contempt (Violation of Injunction)**

**Tide v. State**, 804 So. 2d 412 (Fla. 4th DCA 2001)

The Fourth District held that in a case where a respondent is charged with indirect criminal contempt for a violation of a repeat violence injunction, the court may not shift the burden to the respondent to prove his innocence. The court held that to do so is a violation of the respondent's due process rights (relying on Feltner v. Columbia Pictures Television, Inc., 789 So. 2d 453 (Fla. 4th DCA 2001)).

**Schmidt v. Hunter**, 788 So. 2d 322 (Fla. 2d DCA 2001)

The Second District held that the defendant's claim that polygraph examination results were incorrectly admitted at contempt hearing for violation of a domestic violence injunction, presents a facially sufficient claim of error. The final hearing was not reported and the defendant has presented "a facially sufficient claim" of error that cannot be refuted by record, therefore adjudication of contempt is required to be reversed in accordance with Blalock v. Rice, 707 So. 2d 738, 739 (Fla. 2d DCA 1997), and Florida Rules of Criminal Procedure.

## **Costs**

**Harrison v. Francisco**, 884 So. 2d 239 (Fla. 2d DCA 2004)

The trial court erred in summarily denying respondent's motion for taxation of costs following petitioner's voluntary dismissal of a petition for an injunction for protection against domestic violence. The Second District Court held that although an award of costs is left to the discretion of the trial court, the trial court is required in a hearing, after argument and the presentation of evidence by both sides, to determine which expenses would have been reasonably necessary for an actual trial. Reversed and remanded.

## **Custody and Visitation**

**Spano v. B.B.**, 30 Fla. L. Weekly D2822 (Fla. 3d DCA Dec. 14, 2005)

This was an appeal of an interim order entered by the domestic violence trial judge, granting a temporary injunction which in effect suspended petitioner's visitation rights with the minor, which had been granted in a custody proceeding in the Family Court. The appellate court held that a domestic violence proceeding should not be the primary forum in which custody and visitation issues are litigated. Although the proceeding may have the effect of limiting or halting visitation rights established by a preexisting custody agreement, the parties may file the appropriate motion under the circuit's administrative order to transfer the case from the domestic violence division to the family division of the circuit court. The interim order entered was not an appealable order. The petition for writ of certiorari was denied without prejudice to the parties filing of the motion under the administrative order of the circuit court to transfer the domestic violence petition to the family division.

**McKinnon v. Staats**, 899 So. 2d 357 (Fla. 1st DCA 2005)

A non-custodial party seeking a modification of child custody has an extraordinary burden to show that 1) there is “competent and substantial evidence” that reveals “substantial or material changes in the parties’ circumstances” subsequent to issuance of the prior custody order, and 2) a change in custody would promote the “best interests” of the child involved. Absent an abuse of discretion, an appellate court should not reverse a trial judge’s determination without a showing that changing custody will promote or improve the child’s well being, and maintaining the status quo would be detrimental to the child.

**Poliandro v. Springer**, 899 So. 2d 441 (Fla. 4th DCA 2005)

Where a court’s decision to allow a sister state to exercise jurisdiction is based upon conversations the judge has with the judge of a sister state, then the court must allow the parties to be present during the conversation and set forth specific findings regarding the basis for concluding that jurisdiction in a sister state is appropriate. The Florida court failed to follow proper procedures when it allowed an Alabama court to exercise jurisdiction over the child custody action that resulted from an award of temporary custody to the mother in a Final Judgment of Permanent Injunction. The mother’s motion to transfer the subsequent custody action filed by the father for *forum non conveniens*, without providing the court with any supporting affidavits was improperly granted.

**Monacelli v. Gonzalez**, 883 So. 2d 361 (Fla. 4th DCA 2004)

The wife appealed the trial court’s award of custody of the parties’ four minor children to the husband who was on felony probation for domestic violence against the wife. The Fourth District Court affirmed the trial court’s decision finding that such a conviction does not create an absolute bar to being a primary residential parent, but rather a rebuttable presumption that may be, and here was, overcome.

**Doyle v. Owens**, 881 So. 2d 717 (Fla. 1st DCA 2004)

A statutory presumption against unsupervised visitation is created with a third degree felony conviction involving domestic violence. This rebuttable presumption of detriment to the child could not be overcome, here, regardless of the fact that the father took courses in anger management, parenting and CPR, worked full-time and complied with all court orders. The trial court erred in awarding unsupervised visitation as no evidence was presented to prove that such visits were safe, appropriate and would best protect the child from harm. Reversed and remanded.

**Rinas v. Rinas**, 847 So. 2d 555 (Fla. 5th DCA 2003)

The Fifth District found it improper for trial court to award custody, child support and alimony for petitioner’s mother and sister in a domestic violence action where petitioner was a minor child filing by and through her mother as “next best friend”. The Fifth District held that the trial court did not have jurisdiction to award custody, child support and alimony absent a dissolution of marriage proceeding as section 741.30, Florida Statutes (1997), does not authorize such awards. The Fifth District found that the trial court erred in not granting the father’s motion to vacate the awards ab initio as the requirement to file an appeal within 30 days does not apply when a final judgment is void at the onset.

**D.W.G. v. Department of Children and Families**, 833 So. 2d 238 (Fla. 4th DCA 2002)

Dependency adjudication affirmed based on a holding that it is not necessary for a child to witness violence in order to be harmed by it as children may be affected and aware that the violence is occurring without actually having to see it occur. This rule of law is to be considered in determining whether visitation or custody is appropriate where domestic violence is committed against a parent.

**Ryan v. Ryan**, 784 So. 2d 1215 (Fla. 2d DCA 2001)

The Second District held that it was error for the trial court to grant an injunction for protection against domestic violence in favor of petitioner, which injunction also awarded temporary custody of the parties' minor children to former husband and denied former wife any contact with children for one year. Former wife's rights of due process were violated when her rights of custody and visitation were terminated based upon pleadings that did not request such relief and did not provide notice that the court could take such action. The former husband did not mark appropriate boxes on the face of the petition to indicate he was seeking temporary exclusive custody or to determine visitation rights, nor did the former husband in the narrative portion of the petition, seek temporary exclusive custody of the children, or for the exclusion of visitation by the former wife. Additionally, the husband did not file Uniform Child Custody Jurisdiction Act Affidavit (UCCJA), despite petition form clearly stating UCCJA was required if petitioner was requesting the court to determine issues of temporary custody. § 741.30(3)(d), Fla. Stat. Finally, the best interests of the children were not addressed at the hearing for the injunction.

**Andrade v. Dantas**, 776 So. 2d 1080 (Fla. 3d DCA 2000)

The court erred in granting a temporary order denying the father the right to overnight visitation with his twenty-two month old child. There is nothing about overnight visitation which permits its treatment as an exception to the doctrine that both parents of children of any age must be treated equally. There is a lack of substantial competent evidence that would prevent more extensive visitation between the father and minor child. Thus, there is no basis to deny it. The decision of the trial court is reversed.

**Semple v. Semple**, 763 So. 2d 484 (Fla. 4th DCA 2000)

The Fourth District held that the trial court violated the husband's right to due process where it entered a permanent injunction for protection against domestic violence and awarded temporary custody of the parties' child to the mother without affording the husband a full evidentiary hearing in accordance with section 741.30(5), Florida Statutes. It was determined to be error for the trial court to deny the respondent the opportunity to conduct a full cross-examination of the petitioner, after cutting it short "because of the number of cases being heard that day," and suggesting instead that a full evidentiary hearing could take place once the parties filed for a dissolution of marriage. The Fourth District also found that it was error for the trial court to make a determination as to visitation without first ruling on who would serve as the temporary custodial parent.

**O'Neill v. Stone**, 721 So. 2d 393 (Fla. 2d DCA 1998)

In this case, a relocation issue arose in the domestic violence injunction proceeding involving unmarried parents, where no paternity judgment had been obtained. The parties appeared before a general master, who issued a report recommending that custody, visitation, and support be awarded

as part of the domestic violence injunction. Prior to the trial court entering an order adopting the report, the petitioner left the state with the minor child of the parties, who were unmarried. At a hearing where the petitioner was not present, the trial court granted a motion filed by the respondent to transfer custody to him and ordered law enforcement to pick up the minor child. The petitioner then filed a motion to set aside this order. The appellate court held that trial court abused its discretion by ordering the petitioner to return to Florida with the child, when it failed to conduct a full hearing and take testimony to consider the statutory factors regarding relocation. NOTE: The dicta in this opinion contain strong language to the effect that it is contrary to the intent of the legislature for domestic violence injunction proceedings to be the primary forum for custody, visitation, and child support issues to be addressed.

**Ford v. Ford**, 700 So. 2d 191 (Fla. 4th DCA 1997)

The trial court abused its discretion in awarding custody to the husband where it made no determination regarding the credibility of either party, failed to apply section 61.13, Florida Statutes, and the final judgment was devoid of all but the most “minimal mention” of the husband’s established pattern of domestic violence. The court noted that the record from the six day trial was replete with testimony regarding domestic violence, which was the “central focus” of the case. The final judgment stated, “The court has considered everything that each side has accused the other side of as well as all the good things that each side has presented about themselves.” The appellate court found that failure to give the domestic violence evidence the proper consideration and weight mandated a reversal of the custody award to the father and restoration of custody to the mother. Note: The 1997 amendment to section 61.13(2)(b)2, Florida Statutes, mandates the court’s consideration of the existence of any child abuse or spousal abuse as evidence of detriment to the child.

**Young v. Young**, 698 So. 2d 314 (Fla. 3d DCA 1997)

The restriction prohibiting either party from removing the children from the county without prior court order or written agreement of the parties is premature, where neither party sought to relocate and the court made no findings to support such a residential restriction.

**Baumgartner v. Baumgartner I**, 691 So. 2d 488 (Fla. 2d DCA 1997)

The parties were German citizens who had a pending divorce and custody action in Germany. They came to Florida on separate vacations. During the vacation, they had an altercation and the husband was arrested. The wife was awarded a temporary injunction. Thereafter, the court entered a permanent injunction, awarding custody of the children to the wife and ordering the surrender of the children’s passports pending resolution of a hearing in the German courts. However, prior to the Florida court’s order, the German court had ordered that the wife immediately return the children to Germany. The appellate court reversed and held that a domestic violence injunction may not grant custody of the children, who are subjects of a foreign custody order, or impound their passports. Rather, a hearing was required to determine the husband’s rights to custody of the children and return of the children’s passports under the German order.

**Lewis v. Lewis**, 689 So. 2d 1271 (Fla. 1st DCA 1997)

It was error to enter a permanent injunction and award the wife temporary custody of the children without providing an adequate hearing as required by the domestic violence statute and Family Law

Rules of Procedure. The law requires custody to be addressed at the permanent injunction hearing on the same basis as provided in chapter 61. The domestic violence statute requires a full evidentiary hearing prior to issuing a permanent injunction. The trial court erred in not allowing any testimony from witnesses who were present or cross-examination of the parties. The wife's request for appellate attorney's fees was denied. Neither the domestic violence statute nor Florida Rule of Appellate Procedure 9.400 provides authority for granting attorney's fees. Section 61.16(1), Florida Statutes, providing for attorney's fees for maintaining or defending proceedings under chapter 61, does not apply to chapter 741 proceedings, as domestic violence proceedings are independent of dissolution of marriage proceedings. Note: The court stated, "We are not unaware that the public policy reasons for granting attorney's fees in a chapter 61 proceeding exist in a domestic violence proceeding. This is a matter, however, that should be dealt with by the Legislature rather than the courts."

### **Dependency**

#### **D.R. v. Dep't of Children and Family Services**, 898 So. 2d 254 (Fla. 3d DCA 2005)

The District Court affirmed an adjudication of dependency, finding that the child was adversely affected by instances of domestic violence between the parents when the child was present in the house. Although there was insufficient evidence to show that the child actually witnessed the altercations, the evidence that the child tried to reconcile the parents was sufficient to prove that the child was aware of the domestic disputes and this knowledge had an adverse effect on the child.

#### **T.R. v. Dept. of Children and Families**, 864 So. 2d 1278 (Fla. 5th DCA 2004).

The Fifth District Court of Appeal affirmed the trial court's ruling that evidence supported adjudication of father's two children as dependents based upon the children being aware of an act of domestic violence. The children had been aroused from sleep by the screams of their father and his girlfriend who was yelling for the father to keep the knife away from her and the baby.

#### **D.W.G. v. Department of Children and Families**, 833 So. 2d 238 (Fla. 4th DCA 2002)

Dependency adjudication affirmed based on a holding that it is not necessary for a child to witness violence in order to be harmed by it as children may be affected and aware that the violence is occurring without actually having to see it occur. This rule of law is to be considered in determining whether visitation or custody is appropriate where domestic violence is committed against a parent.

#### **Y.G. v. Department of Children and Families**, 830 So. 2d 212 (Fla. 5th DCA 2002)

In a dependency case, the court affirmed the adjudication of dependency, but remanded for entry of written findings consistent with the trial court's oral announcement. The Fifth District provided specifically, "[t]he children's health was in danger of being significantly impaired by the acts of domestic violence that took place in the children's presence and by the mother's refusal to end her troubled relationship with the paramour."

**D.D. v. Department of Children and Families**, 773 So. 2d 615 (Fla. 5th DCA 2000)

Father (appellant) appealed trial court order finding his five-year-old child dependent. The court found that evidence that the child witnessed father's abuse of the mother, together with evidence indicating that parents will more likely than not resume their relationship in the future and resume the cycle of domestic violence in the presence of the child, established prospective neglect sufficient to support finding of dependency, even in absence of medical or other expert testimony. Pursuant to section 39.01(46), Florida Statutes (now section 39.01(45)), defining neglect, the court can make a finding that the child is neglected and adjudicated a dependent when the state has presented sufficient evidence that the child is living in an environment which causes mental, physical, or emotional impairment. It continued by finding that it is not necessary for finding of dependency that the court make finding that there is no reasonable prospect that parents can improve their behavior. The court affirmed the decision.

**Disqualification and Recusal of Judge**

**Tindle v. Tindle**, 761 So. 2d 424 (Fla. 5th DCA 2000)

The Fifth District held that the trial court erred in not granting the husband's motion for recusal where the trial judge showed strong disapproval of calling the children as witnesses of domestic violence occurring in their presence for purposes of determining custody issues.

**Wehbe v. Ueibe**, 744 So. 2d 572 (Fla. 3d DCA 1999)

Where appellant and appellee were half brothers who each filed for an injunction for protection against domestic violence against one another, the Third District held that the issue of whether the trial court should not have taken judicial notice of testimony presented in appellee's case without making such testimony a part of the record was not preserved for appellate review based on the fact that the issue was never raised as an objection before the trial court. There was also no abuse of discretion by the trial court in denying an oral motion for disqualification and request for new trial where it was raised at the conclusion of the hearing. The Third District noted that a motion for disqualification is not properly used to express disagreement with the trial court's rulings.

**Dissolution of Marriage (Connection of Domestic Violence Cases to)**

**Pope v. Pope**, 901 So. 2d 352 (Fla. 1st DCA 2005)

The issuance of a six-month temporary injunction without a full evidentiary hearing and over the objection of the respondent, violates the due process requirements of section 741.30, Florida Statutes. Extension of a temporary injunction for six months because the parties had a pending divorce, and refusing to allow respondent to testify because "the court was not issuing a permanent injunction" is not what was contemplated by the Florida Statute and is fundamental error.

**Rinas v. Rinas**, 847 So. 2d 555 (Fla. 5th DCA 2003)

The Fifth District found it improper for trial court to award custody, child support, and alimony for petitioner's mother and sister in a domestic violence action where petitioner was a minor child filing by and through her mother as "next best friend." The Fifth District held that the trial court did not have jurisdiction to award custody, child support, and alimony absent a dissolution of marriage proceeding as section 741.30, Florida Statutes (1997), does not authorize such awards. The Fifth District found that the trial court erred in not granting the father's motion to vacate the awards ab initio as the requirement to file an appeal within 30 days does not apply when a final judgment is void at the onset.

**Farr v. Farr**, 840 So. 2d 1166 (Fla. 2d DCA 2003)

Trial court erred in dismissing an injunction against domestic violence in the final judgment dissolving the parties' marriage where the petitioner did not move to vacate the injunction and where the parties were not noticed that the matter would be considered, thus failing to provide due process on the issue. Additionally, the court struck the trial court's order settling a motion for a rehearing as the court had lost jurisdiction on the matter when the wife filed an appeal.

**White v. Cannon**, 778 So. 2d 467 (Fla. 3d DCA 2001)

The trial court erred in dismissing temporary injunction for protection against domestic violence at hearing on husband's emergency motion for visitation by claiming that whether or not a restraining order should or should not be granted must be determined by the court in the parties' dissolution of marriage. The matter may be handled by one circuit judge, however, section 741.30, Florida Statutes, and the requirements of due process must be observed. The decision of the trial court was reversed.

**Kniph v. Kniph**, 777 So. 2d 437 (Fla. 1st DCA 2001)

Dismissal of a request for an injunction against domestic violence solely on the basis that there was a pending divorce action between the parties is contrary to section 741.30(1)(b), Florida Statutes (1999), and constituted error. The decision of the trial court was reversed.

**Belmont v. Belmont**, 761 So. 2d 406 (Fla. 2d DCA 2000)

The Second District held that the trial court hearing the dissolution case erred in requiring the husband to pay attorney's fees incurred by the wife in a separately filed domestic violence injunction case.

**Shaw-Messed v. Messed**, 755 So. 2d 776 (Fla. 5th DCA 2000)

The Fifth District held that the trial court erred in not conducting an evidentiary hearing on the issuance of an injunction for protection against domestic violence filed by the wife against the husband, and in entering a mutual injunction in the dissolution action, under Chapter 61, without any testimony that the husband had committed any conduct deserving such action. In reversing the lower court's ruling and remanding the case for further action, the Fifth District clearly maintained that section 741.30, Florida Statutes, was the appropriate vehicle for a domestic violence injunction, as opposed to Chapter 61 proceedings.

**Cleary v. Cleary**, 711 So. 2d 1302 (Fla. 2d DCA 1998)

When parties are involved in both an injunction and a dissolution case, matters governed by chapter 61 are controlled by the judge hearing the dissolution case, without regard to whether the family court action was filed before or after the injunction case.

**Due Process**

**Adili v. Adili**, 913 So. 2d 1240 (Fla. 4th DCA 2005)

Wife requested and obtained an ex parte temporary injunction based on the allegation that her husband threatened to kill her if she filed for divorce. She was awarded exclusive use and possession of the Florida home. Husband contested the injunction, claiming that the wife lived in North Carolina, not in Florida, that she had not seen him for months, and there was no imminent danger to the wife. At the hearing, the trial court entered a permanent injunction in the wife's favor without allowing the husband to present any witnesses or evidence or cross-examine the wife's witnesses. The appellate court reversed, finding that respondent was denied his fundamental due process right to be heard.

**Pope v. Pope**, 901 So. 2d 352 (Fla. 1st DCA 2005)

The issuance of a six-month temporary injunction without a full evidentiary hearing and over the objection of the respondent, violates the due process requirements of section 741.30, Florida Statutes. Extension of a temporary injunction for six months because the parties had a pending divorce, and refusing to allow respondent to testify because "the court was not issuing a permanent injunction" is not what was contemplated by the Florida Statute and is fundamental error.

**Samanka v. Brookhouser**, 899 So. 2d 1190 (Fla. 2d DCA 2005)

A non-moving party must be given a hearing before an injunction may be amended. Although a trial court need not set a date for a permanent injunction to expire under section 741.30(6)(b), Florida Statutes, respondent must be notified of a court date after the court receives a motion to extend the injunction. Because respondent was not afforded an opportunity to challenge the allegations that formed the basis of the modification, respondent was denied due process and the extension of a two year permanent injunction for an indefinite period of time was improper.

**Schmitz v. Schmitz**, 890 So.2d 1248 (Fla. 4th DCA 2005)

Petitioner sought judicial review of the trial court's non-final order permitting the testimony of a court psychologist at a hearing for a temporary injunction against domestic violence. The Fourth District Court reversed and remanded, finding the court had erred as doing so denied the petitioner her due process and was an abuse of discretion. The psychologist's testimony, based on her 35 page single spaced report, submitted the day before the hearing, recommended that the child be removed from the mother's custody. The district court held that the extraordinary circumstances requiring the finding of an emergency warranting a transfer of custody were not present in this case.

**Swanson v. Swanson**, 888 So. 2d 117 (Fla. 4th DCA 2004)

The Fourth District reversed the trial court's decision to require the wife to provide the husband with a report and picture of the parties' minor child every six months as an abuse of discretion and held that such an order violated the former wife's due process rights as no such modification was requested by the former husband. Additionally, the trial court was found to have abused its discretion when it suspended the former husband's child support obligation as he failed to establish, as required, substantial change in circumstances warranting such a modification. On remand, the trial court was ordered to address the issue of health care coverage for the child required by statute, as every child support order must address health care coverage for the child when it is reasonably available.

**G.P. v. Family Continuity Program**, 875 So. 2d 715 (Fla. 2d DCA 2004)

Section 39.402, Florida Statutes, requires a full evidentiary hearing, particularly when removal of children is ordered, as was in the case at bar. Section 39.402(5)(b)(1) mandates written notice to be given to parents or legal custodians in order to inform them of their opportunity to be heard and to present evidence at the shelter hearing. The Second District held that the parties must be granted the opportunity to address the possible determination of child abuse, neglect, abandonment or suffering from imminent danger of illness as a result. The trial court erroneously denied appellant his right to due process by finding probable cause for the shelter of the children after denying appellant's request to be heard. The Second District held that the trial court erroneously based its determination solely on written submissions of probable cause by the Sheriff's Department and erroneously denied appellant his right to due process by denying his request to be heard.

**Pierce v. Tello**, 868 So. 2d 1253 (Fla. 4th DCA 2004)

The Fourth District reversed the trial court because the trial judge entered an ex parte order suspending all contact between the appellant and his daughter after appellant's hair sample had tested positive for cocaine and metabolites. The Fourth District held that a lab report sent directly to the judge is an ex parte communication and the court must provide a copy to each party and allow each side to be heard before suspending visitation based upon said report. In addition, the appellate court found it had no jurisdiction over the state's attorney's office regarding prosecutions based upon an alleged violation, therefore denying a writ of mandamus.

## **Evidence**

**Buckley v. Belott**, 31 Fla. L. Weekly D99 (Fla. 1st DCA 2005)

Appellant moved for reversal of an order granting a permanent injunction for protection against dating violence because although the hearing was recorded, a transcript could not be prepared as the recording was defective. This request was initially denied because appellant had not first attempted to obtain a statement of the evidence in accordance with Florida Rule of Appellate Procedure 9.200(b)(4), to serve as substitute for the transcript. When the statement was not approved because the judge had no recollection of the hearing, appellant renewed his motion. The appellate court reversed and remanded for a hearing de novo.

**Santiago v. Towle**, 30 Fla. L. Weekly D2724 (Fla. 5th DCA 2005)

Trial court entered a permanent injunction for protection against repeat violence based on evidence from three separate incidents involving neighbors in a dispute over a fence. The

appellate court reversed, finding that the record did not support a finding of two incidents of violence or stalking as required by the applicable statute. While the activity that involved the throwing of a liquid could qualify as “violence” if proven, no evidence was presented to support that claim. The second incident that involved a hand gesture and obscenities is not violence as defined by statute, and the third incident of the neighbor saying that he had a gun and was not afraid to use it, would not constitute an act of violence unless followed by an overt act indicating the ability to carry out the threat, that would justify a belief that violence was imminent.

**In Re D.A.D. II v. Dep’t of Children and Family Services**, 903 So. 2d 1034 (Fla. 2d DCA 2005)  
Evidence of a father’s participation in the murder-for-hire plot to kill his brother-in-law, coupled with the father’s chronic drug abuse, alcoholism, lengthy criminal history, chronic abuse, and domestic violence constitutes “egregious conduct” and is sufficient evidence of the father’s unfitness to parent. The father’s acts of domestic violence, directed at both the children and the mother in the presence of the children, was abuse of the children.

**McKinnon v. Staats**, 899 So. 2d 357 (Fla. 1st DCA 2005)

A non-custodial party seeking a modification of child custody has an extraordinary burden to show that 1) there is “competent and substantial evidence” that reveals “substantial or material changes in the parties’ circumstances” subsequent to issuance of the prior custody order, and 2) a change in custody would promote the “best interests” of the child involved. Absent an abuse of discretion, an appellate court should not reverse a trial judge’s determination without a showing that changing custody will promote or improve the child’s well being, and maintaining the status quo would be detrimental to the child.

**Young v. Smith**, 901 So. 2d 372 (Fla. 2d DCA 2005)

Under section 741.30(1)(a), Florida Statute, a petitioner is required to establish either that he/she has been the victim of an act of domestic violence or has a reasonable belief he/she is in imminent danger of becoming the victim of an act of domestic violence. Petitioner must present a prima facie case for the issuance of the injunction. Harassing phone calls by respondent are insufficient evidence of violence for issuing a permanent domestic violence injunction when no testimony was presented as to a history of violence or any reasonable cause to believe that danger is imminent.

**D.R. v. Dep’t of Children and Family Services**, 898 So. 2d 254 (Fla. 3d DCA 2005)

The District Court affirmed an adjudication of dependency, finding that the child was adversely affected by instances of domestic violence between the parents when the child was present in the house. Although there was insufficient evidence to show that the child actually witnessed the altercations, the evidence that the child tried to reconcile the parents was sufficient to prove that the child was aware of the domestic disputes and this knowledge had an adverse effect on the child.

**Harrison v. Francisco**, 884 So. 2d 239 (Fla. 2d DCA 2004)

The trial court erred in summarily denying respondent’s motion for taxation of costs following petitioner’s voluntary dismissal of a petition for an injunction for protection against domestic violence. The Second District held that although an award of costs is left to the discretion of the trial court, the trial court is required in a hearing, after argument and the presentation of evidence

by both sides, to determine which expenses would have been reasonably necessary for an actual trial. Reversed and remanded.

**Monacelli v. Gonzalez**, 883 So. 2d 361 (Fla. 4th DCA 2004)

The wife appealed the trial court's award of custody of the parties' four minor children to the husband who was on felony probation for domestic violence against the wife. The Fourth District affirmed the trial court's decision finding that such a conviction does not create an absolute bar to being a primary residential parent, but rather a rebuttable presumption that may be, and here was, overcome.

**Doyle v. Owens**, 881 So. 2d 717 (Fla. 1st DCA 2004)

A statutory presumption against unsupervised visitation is created with a third degree felony conviction involving domestic violence. This rebuttable presumption of detriment to the child could not be overcome, here, regardless of the fact that the father took courses in anger management, parenting and CPR, worked full-time and complied with all court orders. The trial court erred in awarding unsupervised visitation as no evidence was presented to prove that such visits were safe, appropriate, and would best protect the child from harm. Reversed and remanded.

**T.R. v. Dept. of Children and Families**, 864 So. 2d 1278 (Fla. 5th DCA 2004).

The Fifth District affirmed the trial court's ruling that evidence supported adjudication of father's two children as dependents based upon the children being aware of an act of domestic violence. The children had been aroused from sleep by the screams of their father and his girlfriend who was yelling for the father to keep the knife away from her and the baby.

**Werner v. Scharlop**, 867 So. 2d 1172 (Fla. 4th DCA 2004)

The trial court entered a final order of injunction. The Fourth District affirmed its ruling because the injunction was supported with sufficient evidence. The Fourth District held that appellant's continuous calls, letters and e-mails to victim sufficiently caused and/or created substantial emotional distress. The Court held such substantial emotional distress is all that is required when the injunction is predicated upon repeated acts of stalking.

**Delopa v. Cohen**, 873 So. 2d 530 (Fla. 4th DCA 2004)

The Fourth District reversed the issuance of a permanent injunction based on repeat violence where the petitioner's sworn testimony about threatening phone-calls did not amount to sufficient evidence to constitute stalking. The Fourth District held that incidents of violence or stalking must be supported by competent substantial evidence in order to support an order for an injunction.

**Perez v. Siegal**, 857 So. 2d 353 (Fla. 3d DCA 2003)

Trial court, although refusing to enter a permanent injunction, erred in issuing a five and a half month temporary injunction for protection against repeat violence where petitioner failed to allege or prove two separate acts of violence. The Third District found that the two incidents alleged in the petition for injunction were insufficient to constitute two separate acts of violence under the statute. The Court found that the respondent's screaming at the petitioner did not constitute an assault and respondent's threat to kill petitioner was not an assault without respondent's apparent ability to do so or petitioner's belief that violence was imminent. Reversed and injunction vacated.

**Price v. City of Boynton Beach**, 847 So. 2d 1051 (Fla 4th DCA 2003)

It was reversible error to issue a temporary injunction for protection against repeat violence where the injunction was based on hearsay evidence. The Fourth District reversed the temporary injunction issued by the trial court and held that: (1) the deposition quoted by the trial court in the injunction failed to meet the requirements of hearsay exception for former testimony; (2) testimony by a witness that a workers' compensation mediator expressed concerns about appellant's threats was inadmissible hearsay ; and (3) trial court erred in admitting a letter from appellant's workers' compensation counsel where there was no showing that the harmful statement was within the scope of the attorney's agency.

**LaMarr v. Lang**, 796 So. 2d 1208 (Fla. 5th DCA 2001)

The Fifth District reversed a lower court's decision to enter a permanent injunction for repeat violence against the respondent on the grounds that the court erred in admitting certain evidence regarding the respondent's character and previous criminal convictions. At the original hearing, the court allowed the petitioner's attorney to "1) show that LaMarr had been arrested for violating an earlier injunction not involving Lang; 2) introduce a letter that LaMarr wrote to an old girlfriend apologizing for an incident that apparently led to charges being filed against him; 3) question LaMarr regarding prior injunctions filed against him by other people." The Fifth District held that this was improper for the lower court to admit this evidence pursuant to the Williams Rule regarding collateral evidence. Relying on Pastor v. State, 792 So. 2d 627 (Fla. 4th DCA 2001), the court commented that collateral crimes evidence is not admissible when its relevance goes only to prove a respondent's propensity.

### **Extension and Duration of Injunctions**

**Pope v. Pope**, 901 So. 2d 352 (Fla. 1st DCA 2005)

The issuance of a six-month temporary injunction without a full evidentiary hearing and over the objection of the respondent, violates the due process requirements of section 741.30, Florida Statutes. Extension of a temporary injunction for six months because the parties had a pending divorce, and refusing to allow respondent to testify because "the court was not issuing a permanent injunction" is not what was contemplated by the Florida Statute and is fundamental error.

**Sheehan v. Sheehan**, 853 So. 2d 523 (Fla 5th DCA 2003)

The petitioner was granted a temporary injunction for a period of six months. Thereafter, the petitioner timely motioned the court for an extension of the injunction because she was still in fear of the respondent. The trial court denied the motion because the petitioner did not allege any new act of violence since the entry of the six month temporary injunction. The Fifth District held that although the Section 741.30(6)(b), Florida Statutes, does not specifically require any allegation of a new act of violence, the moving party must prove to the trial court that a continuing fear exists and that such fear is reasonable based on the circumstances.

**Miguez v. Miguez**, 824 So. 2d 258 (Fla. 3d DCA 2002)

The appellate court affirmed the trial court's decision granting petitioner a second domestic violence injunction five days before the expiration of petitioner's one year previous injunction. The Third District held that the seven year duration of the second injunction was not defective and could only be challenged as an abuse of discretion. See Goodell v. Goodell, 421 So. 2d 736 (Fla. 4th DCA 1982). As there was no record of the proceeding to determine if there had been an abuse of discretion, the court affirmed the trial court's decision.

**Glenn v. Newman**, 780 So. 2d 334 (Fla. 3d DCA 2001)

Based upon the careful review of the record before it, the court did not conclude that Judge Deborah White-Labora abused her discretion when she declined to extend indefinitely the petitioner /appellant's petition for injunction for protection against repeat violence. The decision of the trial court was affirmed.

**Ribel v. Ribel**, 766 So. 2d 1185 (Fla. 4th DCA 2000)

The trial court did not err in extending the temporary injunction for two weeks and rescheduling the hearing by entering an order without a motion of notice of hearing, based solely on the ex parte communication of the wife's attorney with the judge's office. The Florida Statute permits an extension hearing to be set ex parte. The petitioner has not demonstrated how an order resetting the noticed hearing on a petition for temporary injunction for protection presents the possibility of any harm, let alone irreparable harm. The petition of writ of certiorari was dismissed.

**Patterson v. Simonik**, 709 So. 2d 189 (Fla. 3d DCA 1998)

In determining whether a permanent injunction for protection against domestic or repeat violence should be extended, no new violence is necessary. The court may consider the circumstances leading to the imposition of the original injunction, as well as subsequent events which may cause the petitioner to have continuing reasonable fear that violence is likely to reoccur in the future.

**Spiegel v. Haas**, 697 So. 2d 222 (Fla. 3d DCA 1997)

On a petition for an extension of an injunction, the trial court announced it felt constrained to grant the extension, based on the petitioner's continued professed fear of the respondent. The appellate court stated that although no specific allegations are required, the petitioner must show that an actual incident of violence has occurred or that he/she has a reasonable basis to believe that an act of violence is likely to occur or reoccur in the future. The court rejected the respondent's claim that the court may only review the time period during which the injunction was in effect, and held that the court may consider all the circumstances, including the facts which led to the initial granting of the injunction, in determining whether continued fear is reasonable. The case was remanded to the trial court for a further hearing. [Note: See current version of section 741.30, Florida Statutes, for duration of injunctions.]

**Goodell v. Goodell**, 421 So. 2d. 736 (Fla. 4th DCA 1982)

The appellate court affirmed the trial court's finding of contempt against the wife for violation of the injunction contained in the final judgment of dissolution of marriage against her claim that the injunction was void because it was perpetual. The court held that the injunction was properly

entered, valid, and enforceable and not overbroad despite the absence of a time limit. The Fourth District held that an injunction can be entered as long as the court feels the protection is necessary or until a modification is needed.

### **Jurisdiction**

#### **Bond o/b/o N.B and K.B. v. Bond**, 30 Fla. L. Weekly D2840 (Fla. 5th DCA 2005)

Trial court erroneously declined to exercise jurisdiction when a father, on behalf of his minor children, filed petitions for injunction for protection against domestic violence against the children's grandparents. The trial court terminated the hearing without allowing the petitioner to demonstrate that the cases were properly within the court's jurisdiction. Pursuant to section 741.30(1)(e), Florida Statutes, a domestic violence injunction may be sought by "family or household members". Section 741.28(3), Florida Statutes, defines "family or household members" to include persons who are presently residing together as if a family or who resided together in the past as if a family. At the hearing, the court raised the jurisdictional issue because it did not understand how the parties came within the applicable statute since they did not currently reside together. The petitioner's response that the parties "used to" live together should have been sufficient for the court to allow the petition for domestic violence to continue. Instead the trial judge abruptly dismissed the petitions. The appellate court reversed and remanded to afford the petitioner the opportunity to demonstrate that the cases were properly within the statute.

#### **Poliandro v. Springer**, 899 So. 2d 441 (Fla. 4th DCA 2005)

Where a court's decision to allow a sister state to exercise jurisdiction is based upon conversations the judge has with the judge of a sister state, then the court must allow the parties to be present during the conversation and set forth specific findings regarding the basis for concluding that jurisdiction in a sister state is appropriate. The Florida court failed to follow proper procedures when it allowed an Alabama court to exercise jurisdiction over the child custody action that resulted from an award of temporary custody to the mother in a Final Judgment of Permanent Injunction. The mother's motion to transfer the subsequent custody action filed by the father for *forum non conveniens*, without providing the court with any supporting affidavits was improperly granted.

#### **Pierce v. Tello**, 868 So. 2d 1253 (Fla. 4th DCA 2004)

The Fourth District reversed the trial court because the trial judge entered an ex parte order suspending all contact between the appellant and his daughter after appellant's hair sample had tested positive for cocaine and metabolites. The Fourth District held that a lab report sent directly to the judge is an ex parte communication and the court must provide a copy to each party and allow each side to be heard before suspending visitation based upon said report. In addition, the appellate court found it had no jurisdiction over the state's attorney's office regarding prosecutions based upon an alleged violation, therefore denying a writ of mandamus.

#### **Ellis v. Jenkins**, 800 So. 2d 742 (Fla. 5th DCA 2001)

Respondent moved to vacate a repeat injunction filed against him protecting the petitioner, a minor child. The motion to vacate was denied, and the respondent appealed on the grounds that the court lacked subject matter jurisdiction under section 784.046, Florida Statutes. The original

injunction was issued by stipulation and the respondent was represented by counsel at that hearing. In that stipulation, the respondent waived his right to an evidentiary hearing with regards to the allegations made by the minor. The respondent now argues contrary to that stipulation. The court held that the trial court had jurisdiction over the case because section 784.046, Florida Statutes, includes provisions against stalking and repeat violence, and affirmed the court's decision to deny the motion to vacate.

**Velez v. Selmar**, 781 So. 2d 1197 (Fla. 3d DCA 2001)

The Third District held that it was error for the trial court to enter final judgment of injunction for protection against repeat violence and supplemental order to permanent injunction where the trial court was without jurisdiction. Reversed.

**Abuchaibe v. Abuchaibe**, 751 So. 2d 1257 (Fla. 3d DCA 2000)

The Third District held that the courts in Florida had no jurisdiction over a child for the purpose of making a custody determination under section 61.1308(1)(b), Florida Statutes, where the child did not have any *significant connection* with the state of Florida. The child was born in Florida, and later moved to Colombia. He had lived about half of his thirty-three months in Florida, and about half in Colombia. The father is a dual citizen of the U.S. and Colombia, where he resides. The mother is a Colombian citizen and has resided in the U.S. while attempting to qualify for residency. The child was present in Florida visiting his mother for six days prior to the mother filing an injunction for protection against domestic violence. The Florida court asserted jurisdiction over the child, awarded her temporary custody, and ordered the child returned from Colombia by the father, who had sent him back to Colombia the day after the mother filed for the injunction. The father commenced formal proceedings in Colombia to determine custody of the child sometime after the final order of the Florida court in November 1998, awarding custody to the mother. Service of process on the mother for the Colombia proceedings was attempted, though unsuccessfully, through the Colombian Consulate in Miami. In December 1998, the mother filed for dissolution of marriage, seeking permanent custody of the child. The mother subsequently dismissed her dissolution petition while the issue of jurisdiction was being considered by the Family Court. The domestic violence trial court later held the father in contempt for his failure to return the child to the mother, despite the father's argument that Colombian law prevented him from removing the child from the country while custody proceedings were pending. The Third District reversed the trial court's custody order, finding that the court erred in asserting jurisdiction. The Third District held that there had been no showing of significant connections between the child and the state of Florida. Further, the Third District reversed the contempt order, since the father was barred from removing the child from Colombia by Colombian law.

**Moldoff v. Schneider**, 743 So. 2d 1210 (Fla. 4th DCA 1999)

Where the appellee filed an injunction for protection against repeat violence against the maternal grandfather of his minor children, who in turn filed his own injunction against the appellee, the Fourth District held that the trial court erred by expressly naming the maternal grandmother as an enjoined party, despite the fact that she was not under the court's jurisdiction.

**Baumgartner v. Baumgartner I**, 691 So. 2d 488 (Fla. 2d DCA 1997)

The parties were German citizens who had a pending divorce and custody action in Germany. They came to Florida on separate vacations. During the vacation, they had an altercation and the husband was arrested. The wife was awarded a temporary injunction. Thereafter, the court entered a permanent injunction, awarding custody of the children to the wife and ordering the surrender of the children's passports pending resolution of a hearing in the German courts. However, prior to the Florida court's order, the German court had ordered that the wife immediately return the children to Germany. The appellate court reversed and held that a domestic violence injunction may not grant custody of the children, who are subjects of a foreign custody order, or impound their passports. Rather, a hearing was required to determine the husband's rights to custody of the children and return of the children's passports under the German order.

**H.K. v. Vocelle**, 667 So. 2d 892 (Fla. 4th DCA 1996)

It was error to dismiss a fifteen-year-old high school student's petition for a repeat violence injunction against a seventeen-year-old classmate. The repeat violence statute applies to juveniles. It was error to conclude that the circuit court did not have jurisdiction to impose an injunction for protection against a juvenile.

**Blackwood v. Anderson**, 664 So. 2d 37 (Fla. 5th DCA 1995)

The petitioner filed for a domestic violence injunction against the respondent, but failed to appear at the final hearing. The court granted the respondent (the father) custody of the children and reset the case for final hearing. The order awarding custody to the father was quashed because the father did not properly plead for custody and the mother was not sufficiently notified of the custody issue. Note: See Judge Antoon's concurring opinion for an interesting discussion on jurisdiction and the frustration trial judges can experience in dealing with domestic violence injunction cases.

**Marital Home and Marital Property**

**Montemarano v. Montemarano**, 792 So. 2d 573 (Fla. 4th DCA 2001)

Without background, the court held that in domestic violence cases, where the petitioner did not seek exclusive use and possession of the marital home, it was an error to include in that order a requirement that the respondent vacate the premises. Due process requires that a party have proper notice of hearing, and the opportunity to be heard before such an order is entered requiring the party to vacate the marital home.

**Modification and Dismissal of Injunctions**

**Samanka v. Brookhouser**, 899 So. 2d 1190 (Fla. 2d DCA 2005)

A non-moving party must be given a hearing before an injunction may be amended. Although a trial court need not set a date for a permanent injunction to expire under section 741.30(6)(b), Florida Statutes, respondent must be notified of a court date after the court receives a motion to extend the injunction. Because respondent was not afforded an opportunity to challenge the

allegations that formed the basis of the modification, respondent was denied due process and the extension of a two year permanent injunction for an indefinite period of time was improper.

**Harrison v. Francisco**, 884 So. 2d 239 (Fla. 2d DCA 2004)

The trial court erred in summarily denying respondent's motion for taxation of costs following petitioner's voluntary dismissal of a petition for an injunction for protection against domestic violence. The Second District Court held that although an award of costs is left to the discretion of the trial court, the trial court is required in a hearing, after argument and the presentation of evidence by both sides, to determine which expenses would have been reasonably necessary for an actual trial. Reversed and remanded.

**Sumner v. Sumner**, 862 So. 2d 93 (Fla. 2d DCA 2003)

The Second District decided, inter alia, that the trial court committed reversible error by entering an order dismissing the wife's petition for a permanent injunction for protection against domestic violence at the end of its hearing on the petition for dissolution of marriage. Due process required that a hearing for the issuance of the permanent injunction occur and that the court erred when it dismissed the petition based solely upon its observations at the final hearing of the dissolution of marriage.

**York v. McCarron**, 842 So. 2d 281 (Fla. 1st DCA 2003)

The First District reversed the trial court's decision denying appellant's motion to dissolve the permanent injunction against repeat violence as either party may motion at any time to modify or dissolve an injunction, as provided for in section 784.046(7)(c), Florida Statutes. The court held that the trial court erred in not allowing the presentation of evidence "regarding the initial procurement of the injunction at a hearing."

**Tobkin v. State**, 777 So. 2d 1160 (Fla. 4th DCA 2001)

Petitioner's voluntary dismissal of an action for injunction for protection against domestic violence and an action for dissolution of marriage divested the trial judge of authority to continue with further proceedings on the wife's attorney's motion to withdraw, the husband's motion to disqualify the wife's counsel, and enforcement of the previously ordered requirement of counseling and attendance at the spouse batterers' program. No permanent injunction requiring counseling or attendance at the Glass House was ever entered. A voluntary dismissal does not divest the court of jurisdiction to conclude ancillary matters involved in the case such as outstanding and unresolved motions for attorney's fees and costs, and similar issues. The decision of the trial court was reversed.

**Kniph v. Kniph**, 777 So. 2d 437 (Fla. 1st DCA 2001)

Dismissal of a request for an injunction against domestic violence solely on the basis that there was a pending divorce action between the parties was contrary to section 741.30(1)(b), Florida Statutes (1999), and constituted error. The decision of the trial court was reversed.

**Mayotte v. Mayotte**, 753 So. 2d 609 (Fla. 5th DCA 2000)

The Fifth District held that it was error for the trial court to modify a permanent injunction for protection against domestic violence without the filing of a motion for modification, without a hearing, and without notice to the opposing party.

**Simonik v. Patterson**, 752 So. 2d 692 (Fla. 3d DCA 2000)

The Third District held that it was not error for the trial court, after conducting a hearing, to deny respondent's motion to modify an injunction for protection against repeat violence to allow him to possess firearms, in the absence of evidence that circumstances had changed since the injunction was entered.

**Madan v. Madan**, 729 So. 2d 416 (Fla. 3d DCA 1998)

The Third District reversed the lower court's denial of the husband's motion to dissolve the permanent injunction, holding that a trial judge must allow a respondent to present evidence of false allegations by the petitioner at the initial injunction hearing. Pursuant to section 741.30(6)(b), Florida Statutes (now section 741.30(6)(c)), either party may move *at any time* to dissolve an injunction. In this case, the appellate court interpreted this statute to permit what would appear to amount to a de novo rehearing *at any time*, to reopen the case with proof of falsehoods in the petitioner's "initial procurement of the injunction."

## **Mutual Injunctions**

**DeMaio v. Starr**, 791 So. 2d 1116 (Fla. 4th DCA 2000)

The trial court erred in entering a mutual restraining order without proper pleading by petitioner or testimony, and over respondent's objection. Upon proper pleading and a hearing in compliance with the Florida Rules of Civil Procedure, when notice is not given, or upon mutual agreement, a mutual restraining order may be appropriate. The decision of the trial court was reversed and remanded.

**Martin v. Hickey**, 733 So. 2d 600 (Fla. 3d DCA 1999)

The Third District held that the trial court erred in entering a domestic violence injunction on behalf of the appellee after the appellant had obtained an injunction against him, amounting in effect to mutual restraining orders, as the injunction was not independently supported by the pertinent evidentiary requirements.

**Hixson v. Hixson**, 698 So. 2d 639 (Fla. 4th DCA 1997)

The trial court erred in issuing mutual orders of protection. Section 741.30(1)(h), Florida Statutes (now 741.30(i)), prohibits courts from issuing mutual injunctions. The prohibition against such orders does not preclude the trial court from issuing separate injunctions for protection against domestic violence where each party has filed a separate petition and is entitled to an injunction under the law.

**Brooks v. Barrett**, 694 So. 2d 38 (Fla. 1st DCA 1997)

The wife filed a petition for an injunction and the husband answered and petitioned for dissolution of marriage, also seeking an injunction against the wife. The parties orally agreed to settle the matter by the entry of a mutual injunction for protection against domestic violence. Thereafter, each party was charged with violating the mutual injunction. The trial court dismissed the criminal charge against the wife, finding that the mutual injunction was unenforceable, since mutual injunctions are prohibited by section 741.30(1)(h), Florida Statutes (now 741.30(i)). Thereafter, the court entered a sua sponte injunction against the husband. The appellate court reversed, finding that it was error to amend the injunction without giving the husband notice and an opportunity to be heard.

**Paternity**

**Taylor v. Taylor**, 831 So. 2d 240 (Fla. 2d DCA 2002)

Trial court's sua sponte consolidation of the petition for an injunction with the petitioner's paternity action did not confer the trial court with the authority to prohibit the respondent from having contact with the petitioner or the minor children or to award the petitioner exclusive use and occupancy of the residence. The Second District quashed the part of the order that enjoined respondent from having contact with the petitioner or the minor children and awarding petitioner exclusive use and occupancy of the residence.

**Permanent Injunction**

**Santiago v. Towle**, 30 Fla. L. Weekly D2724 (Fla. 5th DCA 2005)

Trial court entered a permanent injunction for protection against repeat violence based on evidence from three separate incidents involving neighbors in a dispute over a fence. The appellate court reversed, finding that the record did not support a finding of two incidents of violence or stalking as required by the applicable statute. While the activity that involved the throwing of a liquid could qualify as "violence" if proven, no evidence was presented to support that claim. The second incident that involved a hand gesture and obscenities is not violence as defined by statute, and the third incident of the neighbor saying that he had a gun and was not afraid to use it, would not constitute an act of violence unless followed by an overt act indicating the ability to carry out the threat, that would justify a belief that violence was imminent.

**Procedure for Granting Injunction**

**Young v. Smith**, 901 So. 2d 372 (Fla. 2d DCA 2005)

Under section 741.30(1)(a), Florida Statute, a petitioner is required to establish either that he/she has been the victim of an act of domestic violence or has a reasonable belief he/she is in imminent danger of becoming the victim of an act of domestic violence. Petitioner must present a prima facie case for the issuance of the injunction. Harassing phone calls by respondent are insufficient evidence of violence for issuing a permanent domestic violence injunction when no

testimony was presented as to a history of violence or any reasonable cause to believe that danger is imminent.

**Guida v. Guida**, 870 So. 2d 222 (Fla. 2d DCA 2004)

The Second District held the trial court erred by issuing an injunction for protection against domestic violence against the appellant within the final judgment of dissolution of marriage. An injunction for protection against domestic violence must be issued as a separate order under the rules of Chapter 741, Florida Statutes, including service of process, proper pleadings and sufficient evidence to support an injunction or waiver.

**Farr v. Farr**, 840 So. 2d 1166 (Fla. 2d DCA 2003)

Trial court erred in dismissing an injunction against domestic violence in the final judgment dissolving the parties' marriage where the petitioner did not move to vacate the injunction and where the parties were not noticed that the matter would be considered, thus failing to provide due process on the issue. Additionally, the court struck the trial court's order setting a motion for a rehearing as the court had lost jurisdiction on the matter when the wife filed an appeal.

**Orth v. Orndoff**, 835 So. 2d 1283 (Fla. 2d DCA 2003)

The trial court's sua sponte entry of a permanent injunction where there was no petition before it was in "direct contravention of sections 741.30 (1)(l), (4), and (6)(a), which require the filing of a petition and a hearing on such prior to the issuance of an injunction." Reversed.

**Lee v. Delia**, 827 So. 2d 368 (Fla. 2d DCA 2002)

The trial court erred in denying the respondent's post judgment motions to vacate the final injunction where a stipulation was entered into to enter the final injunction and the final injunction was inconsistent with the terms of the stipulation. The denial of the post judgment motions to vacate was reversed and the case remanded to the trial court to hold a hearing on the merits of the motion.

**Vargas v. Vargas**, 816 So. 2d 238 (Fla. 2d DCA 2002)

Azra Rheman Vargas appealed from a non-final order issued without notice that temporarily enjoined her and her husband, David Vargas, from removing their children from the jurisdiction of the circuit court and required her to relinquish the children's passports to her attorney or to her husband. The Second District reversed the decision from the trial court because the trial court failed to conform to the requirements of Florida Rule of Civil Procedure 1.610. The Second District said that the party seeking a temporary injunction without notice must file a verified pleading or affidavit that alleges specific facts showing immediate and irreparable harm and must detail any efforts made to give notice and the reasons why notice should not be required. Fla. R. Civ. P. 1.610(a). Appellant's motion was not verified because he did not file an affidavit, and he did not detail any efforts made to give notice or state why notice should not be required. Note that this does not preclude a party from reapplying for injunctive relief in accordance with the requirements of rule 1.610.

**Cervieri v. Cervieri**, 814 So. 2d 528 (Fla. 4th DCA 2002)

Trial court erred in modifying the temporary injunction where petitioner did not receive prior notice of respondent's motion for modification of custody of the minor children or that said motion would be heard at the final hearing as doing so denied petitioner his due process, including notice and opportunity to be heard. Appellant/petitioner petitioned for and received a domestic violence injunction for protection against his wife where he was awarded exclusive possession of the parties' home and temporary custody of the parties' minor child. Prior to the final hearing and without noticing petitioner, respondent filed a pro se request to modify the injunction alleging she had been a victim of domestic violence and requesting custody of the minor child. At the final hearing, the trial court granted respondent's motion and modified injunction to prohibit violence by petitioner against respondent and awarding custody of the minor child to respondent regardless of petitioner's request for a continuance.

**Wooton v. Jackson**, 812 So. 2d 609 (Fla. 1st DCA 2002)

Parties before the court on a permanent injunction hearing shall be permitted to present evidence on the issue of entitlement to the requested injunction and it was an error for the trial court to issue the permanent injunction against respondent/appellant thereby denying respondent/appellant his constitutional right to due process of law.

**Melton v. Melton**, 811 So. 2d 862 (Fla. 5th DCA 2002)

Petitioner received a temporary injunction against domestic violence. She later received a permanent injunction against the respondent, alleging that respondent violated the terms of the injunction. Neither respondent nor his counsel was properly noticed of the hearing. Respondent then filed an ex parte motion to quash the injunction. The trial court turned the ex parte hearing into a full evidentiary hearing. The Fifth District held that the conversion of the ex parte hearing into a full evidentiary hearing infringed upon due process and therefore the injunction was vacated and the case remanded for a full hearing.

**Sanchez v. State**, 785 So. 2d 672 (Fla. 4th DCA 2001)

The Fourth District held in these consolidated opinions that it was error for the trial court to deny summarily a facially sufficient petition for ex parte injunction against domestic violence without a hearing and without explanation for the reason for summarily denying the petition. Section 741.30(5)(a), Florida Statutes, requires that a denial of a petition for an ex parte temporary injunction be "by written order noting the legal grounds for denial." The trial court provided as its sole reason for denying the petition, only that petitioner "failed to allege facts sufficient to support the entry of an injunction against domestic or repeat violence," but did not specify how the allegations were insufficient. Additionally, the denial of petitioner's facially sufficient petition without a hearing was a departure from the essential requirements of the law. Florida Family Law Rule of Procedure 12.610(b)(3) requires that where a petition for an ex parte temporary injunction against domestic or repeat violence is denied the petitioner must be given the opportunity to argue her case. The Fourth District also held that it was error for the trial judge to summarily dismiss an ex parte injunction for protection against domestic violence issued by a duty judge the previous day and to cancel the hearing which had been set by the duty judge. After an ex parte temporary injunction is entered, section 741.30(5)(c), Florida Statutes, requires that a full hearing be set on the

matter. Section 741.30(5)(b) requires that when a petition for injunction is denied because it does not present an “appearance of immediate and present danger of domestic violence, the court must set a full hearing on the petition, with notice, at the earliest possible time.” Before the denial of a petition and prior to dismissal of an injunction, where the trial court’s action is based on a finding of insufficient allegations, the trial court must give a specific basis for that finding.

**Cisneros v. Cisneros**, 782 So. 2d 547 (Fla. 3d DCA 2001)

The Third District held that the trial court was in error to enter a permanent domestic violence injunction without affording the appellant the opportunity for a full evidentiary hearing, in accordance with Florida Family Law Rule of Procedure 12.610(c)(1)(B).

**Jenkins v. Wessel**, 780 So. 2d 1006 (Fla. 4th DCA 2001)

The trial court erred in ruling that the respondent waived his Fifth Amendment right when testifying about a second alleged incident of violence and refusing to testify about the initial incident two days earlier for the purpose of demonstrating that there was repeat violence. Thus, the trial court also erred in entering a permanent injunction, since there was no proof of repeat violence within the meaning of the Florida Statute. The decision of the trial court was reversed.

**Semple v. Semple**, 763 So. 2d 484 (Fla. 4th DCA 2000)

The Fourth District held that the trial court violated the husband’s right to due process where it entered a permanent injunction for protection against domestic violence and awarded temporary custody of the parties’ child to the mother without affording the husband a full evidentiary hearing in accordance with section 741.30(5), Florida Statutes. It was determined to be error for the trial court to deny the respondent the opportunity to conduct a full cross-examination of the petitioner, after cutting it short “because of the number of cases being heard that day,” and suggesting instead that a full evidentiary hearing could take place once the parties filed for a dissolution of marriage. The Fourth District also found that it was error for the trial court to make a determination as to visitation without first ruling on who would serve as the temporary custodial parent.

**Shaw-Messed v. Messed**, 755 So. 2d 776 (Fla. 5th DCA 2000)

The Fifth District held that the trial court erred in not conducting an evidentiary hearing on the issuance of an injunction for protection against domestic violence filed by the wife against the husband, and in entering a mutual injunction in the dissolution action, under Chapter 61, without any testimony that the husband had committed any conduct deserving such action. In reversing the lower court’s ruling and remanding the case for further action, the Fifth District clearly maintained that section 741.30, Florida Statutes, was the appropriate vehicle for a domestic violence injunction, as opposed to Chapter 61 proceedings.

**Spurgiesz v. Graves**, 750 So. 2d 771 (Fla. 5th DCA 2000)

The Fifth District held that it was error for the trial court to enter a permanent injunction for protection against domestic violence without affording respondent the right to a full evidentiary hearing.

**Segui v. Nester**, 745 So. 2d 591 (Fla. 5th DCA 1999)

The Fifth District held that it was error for the trial court to dismiss a petition for injunction against repeat violence without providing an evidentiary hearing.

**Oravec v. Sharp**, 743 So. 2d 1174 (Fla. 1st DCA 1999)

The First District held that the trial court erred in entering a permanent injunction for protection against domestic violence where the entry of the order was inconsistent with the judge's statement that he intended only to extend the temporary injunction for 90 days, and the court denied the respondent an opportunity to present evidence in opposition to the entry of the injunction.

**Utley v. Baez-Camacho**, 743 So. 2d 613 (Fla. 5th DCA 1999)

The Fifth District held that the trial court erred in entering a permanent injunction for protection against repeat violence where the court did not conduct an evidentiary hearing on the merits of the case.

**Miller v. Miller**, 691 So. 2d 528 (Fla. 4th DCA 1997)

It was error to extend an ex parte temporary injunction for six months, prohibiting the husband from visiting his home or his child, without affording an evidentiary hearing.

**Snyder v. Snyder**, 685 So. 2d 1320 (Fla. 2d DCA 1996)

The trial court amended a domestic violence injunction and granted the paternal grandmother temporary custody of the child without motion, notice, or hearing afforded to the parties. The custody order was reversed and the court stated that the fact that the wife had obtained a hearing on a motion to dissolve the child custody order was not sufficient to satisfy due process requirements.

## **Stalking**

**Ortola v. Alfonso**, 30 Fla. L. Weekly D2824 (Fla. 3d DCA Dec. 14, 2005)

The appellate court affirmed the trial court's issuance of a repeat violence injunction where one neighbor sought an injunction against another. The court found that the trial court properly found that one incident of sexual assault had occurred when one neighbor fondled and groped the other. The appellant's actions of returning to the victim's home the next day, after being told not to, and remaining after being told to leave, satisfied the statutory requirements for stalking and the issuance of the injunction was proper. Repeat violence, as defined by section 784.046(1)(b), Florida Statutes, means two incidents of violence or stalking committed by the respondent against the petitioner, one of which must have occurred within six (6) months of the filing of the petition. It was clear to the court that a battery or sexual assault occurred, constituting the first incident. Appellant's "course of conduct" of returning to the victim's home after being told not to and refusing to leave, constituted a "continuity of purpose" under the stalking statute.

**Werner v. Scharlop**, 867 So. 2d 1172 (Fla. 4th DCA 2004)

The trial court entered a final order of injunction. The Fourth District affirmed its ruling because the injunction was supported with sufficient evidence. The Fourth District held that appellant's

continuous calls, letters, and e-mails to victim sufficiently caused and/or created substantial emotional distress. The Fourth District held such substantial emotional distress is all that is required when the injunction is predicated upon repeated acts of stalking.

**Delopa v. Cohen**, 873 So. 2d 530 (Fla. 4th DCA 2004)

The Fourth District reversed the issuance of a permanent injunction based on repeat violence where the Petitioner's sworn testimony about threatening phone-calls did not amount to sufficient evidence to constitute stalking. The Fourth District held that incidents of violence or stalking must be supported by competent substantial evidence in order to support an order for an injunction.

**Huch v. Marrs**, 858 So. 2d 1202 (Fla. 3d DCA 2003)

The Third District affirmed the trial court's issuance of a final judgment of injunction for protection against repeat violence based on a finding of stalking. The Third District found that respondent's repeated uninvited appearances at petitioner's home, workplace, and social activities and the fact that respondent followed petitioner from one state to the next constituted stalking.

**D.L.D. v. State**, 815 So. 2d 746 (Fla. 5th DCA 2002)

The court affirmed lower court's decision to adjudicate appellant delinquent based on a finding appellant had committed aggravated stalking with a credible threat. The court looked to the First District in McMath v. Biernacki, 776 So. 2d 1039 (Fla. 1st DCA 2001), agreeing with that court's finding that in deciding whether an incident or series of incidents creates substantial emotional distress, that distress should be judged on an objective, not subjective standard. Even if a subjective standard is used, a person does not need to be reduced to "tears or hysteria in order to be considered substantially emotionally distressed."

**Goosen v. Walker**, 714 So. 2d 1149 (Fla. 4th DCA 1998)

Repeated videotaping of a neighbor constituted stalking for purposes of the issuance of an injunction under chapter 784, and is not constitutionally protected conduct under the First Amendment.

**Biggs v. Elliot**, 707 So. 2d 1202 (Fla. 4th DCA 1998)

The court's finding that whether following and repeatedly telephoning the victim fell within the statutory definition of stalking under the domestic violence statute so as to permit the issuance of an injunction, was a question of fact for the trier of fact and was not clearly erroneous. The stalking statute was found not to be unconstitutionally vague or overbroad.

## **Standing**

**Peterman v. Meeker**, 855 So. 2d 690 (Fla. 2d DCA 2003)

Section 741.30, Florida Statutes, permitting family or household members to obtain an injunction prohibiting domestic violence applies to same sex couples, even though they can not marry. The trial court denied Respondent's motion to dismiss the petition for the injunction on an argument that section 741.30, Florida Statutes does not apply to homosexual couples. The Second District Court affirmed the trial court's decision and found that the statute was intended to protect intimate

partners and was not intended to exclude those who seek protection from someone of the same sex.

**Slovenski v. Wright**, 849 So. 2d 349 (Fla. 2d DCA 2003)

Girlfriend (“Wright”) filed a domestic violence injunction against her former boyfriend (“Slovenski”). The trial court dismissed Wright’s petition because she lacked standing as the parties never lived together as a family. In the very next case that day, the trial court heard a repeat violence petition filed by Wright’s new boyfriend (“Cohen”) against Slovenski. At the conclusion of this case, the trial court changed its decision in the Wright matter and granted her petition for a domestic violence injunction. The Second District reversed and remanded the lower court’s decision with instructions to enter an order denying Wright’s petition, holding that: (1) Wright lacked standing to bring action since the parties’ relationship was romantic in nature with overnight visits but both parties lived in separate residences and (2) no new evidence was presented in Cohen’s case that would provide a legal basis for the court to reverse its judgment in petitioner’s action and award a new trial.

**Rosenthal v. Roth**, 816 So. 2d 667 (Fla. 3d DCA 2002)

Petitioner and respondent were brother and sister. Petitioner sought injunctive relief from domestic violence and was granted the injunction. Respondent challenged the injunction on the grounds that he and the petitioner had not resided in the same home for more than 40 years, thus preventing the case from being “domestic” in nature. Petitioner contended that the statutory language in sections 741.28(1) and (2), Florida Statutes, were unambiguous and because the petitioner and respondent were related by blood, the injunctive relief was valid. Respondent agreed that the language was unambiguous but cited a single exception to normal plain meaning, set forth in Specialty Restaurants Corp. v. City of Miami, 501 So. 2d 101 (Fla. 3d DCA 1987), which states plain meaning should be avoided when it leads to an absurd conclusion. Respondent contended that the issuance of the injunction was an absurd conclusion. The Third District affirmed the injunction holding that if such animosity still existed after a 40 year separation, then protective relief was appropriate, and a plain meaning interpretation of the statute was appropriate.

**Partlowe v. Gomez**, 801 So. 2d 968 (Fla. 2d DCA 2001)

The petitioner, who is the maternal grandfather and who had custody of the grandchild, petitioned the court for a domestic violence injunction against the child’s father. The court, upon a finding that, pursuant to section 741.28, Florida Statutes, the grandfather and father did not share the child in common, dismissed the petition and vacated the initial ex parte injunction. The Second District found that the trial court properly construed section 741.28, Florida Statutes, in that the maternal grandfather lacked standing and that dismissal of the petition was proper.

**Kokoris v. Zipnick**, 738 So. 2d 369 (Fla. 4th DCA 1999)

The Fourth District held that the trial court properly issued a permanent injunction for protection against domestic violence on behalf of twin girls who were residing with their maternal aunt for one week under a temporary and emergency arrangement. Where the aunt was acting as a substitute parent during the one-week period, the trial judge properly concluded that the statutory requirement that the parties were residing in the same dwelling unit was satisfied for purposes of the issuance of the injunction.

**Andrews v. Byrd**, 700 So. 2d 1250 (Fla. 1st DCA 1997)

The entry of a domestic violence injunction under chapter 741 was affirmed, despite the claim that the respondent did not qualify as a “family or household member”, where the issue was not raised until after the injunction was entered.

**Sharpe v. Sharpe**, 695 So. 2d 1302 (Fla. 5th DCA 1997)

It was error to enter a domestic violence injunction against the petitioner's brother-in-law. Although the parties were related by marriage, the petitioner did not allege that she and the brother-in-law ever resided together, as required by the domestic violence statute. The Fifth District held that for parties to qualify under section 741.28(2), Florida Statutes, they must be spouses, former spouses, parties with a child in common, or relatives by blood or marriage who reside or who previously resided in the same house as if a family. Note: The court stated that the legislature's 1996 amendment of section 741.30(1)(e), Florida Statutes, while intended to allow all parties related by blood or marriage to have standing under chapter 741, is ineffective due to the failure to also amend section 741.28(1), Florida Statutes.

**H.K. v. Vocelle**, 667 So. 2d 892 (Fla. 4th DCA 1996)

It was error to dismiss a fifteen-year-old high school student's petition for a repeat violence injunction against a seventeen-year-old classmate. The repeat violence statute applies to juveniles.

It was error to conclude that the circuit court did not have jurisdiction to impose an injunction for protection against a juvenile.

### **Successive Petitions or Injunctions**

**Miguez v. Miguez**, 824 So. 2d 258 (Fla. 3d DCA 2002)

The appellate court affirmed the trial court's decision granting petitioner a second domestic violence injunction five days before the expiration of petitioner's one year previous injunction. The Third District held that the seven year duration of the second injunction was not defective and could only be challenged as an abuse of discretion. See Goodell v. Goodell, 421 So. 2d 736 (Fla. 4th DCA 1982). As there was no record of the proceeding to determine if there had been an abuse of discretion, the court affirmed the trial court's decision.

**Heck v. Heck**, 714 So. 2d 1200 (Fla. 4th DCA 1998)

An injunction, based on findings of elder abuse, requiring the son to vacate the house titled jointly in his name and his mother's name, to turn over to his mother exclusive use of an automobile registered in his name, and to pay his mother sums toward past due household expenses, was not barred by a prior ruling in which a different judge denied an injunction where different circumstances existed at the time the mother sought the prior injunction. The court also held that a party may not appeal a nonappealable ruling simply because it is contained within an order that also contains an appealable order.

## **Sufficiency of Allegations and Evidence**

### **Santiago v. Towle**, 30 Fla. L. Weekly D2724 (Fla. 5th DCA 2005)

Trial court entered a permanent injunction for protection against repeat violence based on evidence from three separate incidents involving neighbors in a dispute over a fence. The appellate court reversed, finding that the record did not support a finding of two incidents of violence or stalking as required by the applicable statute. While the activity that involved the throwing of a liquid could qualify as “violence” if proven, no evidence was presented to support that claim. The second incident that involved a hand gesture and obscenities is not violence as defined by statute, and the third incident of the neighbor saying that he had a gun and was not afraid to use it, would not constitute an act of violence unless followed by an overt act indicating the ability to carry out the threat, that would justify a belief that violence was imminent.

### **Bond o/b/o N.B and K.B. v. Bond**, 30 Fla. L. Weekly D2840 (Fla. 5th DCA 2005)

Trial court erroneously declined to exercise jurisdiction when a father, on behalf of his minor children, filed petitions for injunction for protection against domestic violence against the children’s grandparents. The trial court terminated the hearing without allowing the petitioner to demonstrate that the cases were properly within the court’s jurisdiction. Pursuant to section 741.30(1)(e), Florida Statutes, a domestic violence injunction may be sought by “family or household members”. Section 741.28(3), Florida Statutes, defines “family or household members” to include persons who are presently residing together as if a family or who resided together in the past as if a family. At the hearing, the court raised the jurisdictional issue because it did not understand how the parties came within the applicable statute since they did not currently reside together. The petitioner’s response that the parties “used to” live together should have been sufficient for the court to allow the petition for domestic violence to continue. Instead the trial judge abruptly dismissed the petitions. The appellate court reversed and remanded to afford the petitioner the opportunity to demonstrate that the cases were properly within the statute.

### **In Re D.A.D. II v. Dep’t of Children and Family Services**, 903 So. 2d 1034 (Fla. 2d DCA 2005)

Evidence of a father’s participation in the murder-for-hire plot to kill his brother-in-law, coupled with the father’s chronic drug abuse, alcoholism, lengthy criminal history, chronic abuse, and domestic violence constitutes “egregious conduct” and is sufficient evidence of the father’s unfitness to parent. The father’s acts of domestic violence, directed at both the children and the mother in the presence of the children, was abuse of the children.

### **Poindexter v. Springer**, 898 So. 2d 204 (Fla. 2d DCA 2005)

Springer, a private investigator, filed an injunction against Poindexter, a prison inmate who had previously employed her. The trial court granted Springer a permanent injunction against repeat violence based on Poindexter’s actions against Springer in which he filed a complaint to the licensing board, a small claims suit, a letter threatening to sue her, and an envelope containing three letters addressed to local attorneys intending to harass her. The appellate court reversed, holding that both the complaint to the licensing board and the filing of the small claims suit were constitutionally protected; that the letter threatening to sue was not in the record or in evidence and could not be considered; and that the mailing of three separate letters in one envelope only constituted one act and was insufficient to establish a course of conduct for stalking as required by section 784.048 (1) (b), Florida Statutes (2002).

**Ravitch v. Whelan**, 851 So. 2d 271 (Fla. 5th DCA 2003)

After the parties broke up, petitioner and respondent communicated with each other via e-mail and voice messages. Petitioner testified that she saw respondent at social events but that the respondent never made eye contact with her. Thereafter, respondent and respondent's attorney wrote to petitioner seeking re-payment of a loan to which petitioner never responded. Petitioner filed a petition for repeat violence against the respondent. The petition alleged that the two qualifying acts were (1) a diary entry documenting stalking and (2) petitioner's statement that the phone lines to her home were destroyed. Although the trial court held that the respondent had nothing to do with the phone lines, it entered a repeat violence injunction. The Fifth District reversed holding that none of these communications were found hostile or threatening and nothing in the record demonstrated a basis that a reasonable person would suffer substantial emotional distress from such incidents.

**Buerster v. Fermin**, 844 So. 2d 804 (Fla. 4th DCA 2003)

It was error to enter a permanent injunction against repeat violence where petitioner's own testimony established only one act, if any, occurred. Although petitioner testified that respondent threatened, yelled and screamed at the petitioner on a daily basis for two and one-half years, the Fourth District found this insufficient to hold that petitioner had a well-founded fear violence was imminent as petitioner admitted he was not in fear.

**Gianni v. Kerrigan**, 836 So. 2d 1106 (Fla. 2d DCA 2003)

Trial court erred in entering a repeat violence injunction as the court found that only one act of violence, independent from the phone calls respondent made to petitioner, actually occurred. The court held that the threatening phone calls by the respondent did not rise to even the level of an assault as defined by statute. Additionally, the petitioner testified that he was not frightened by the calls. The decision of the trial court was reversed.

**Orr v. Koutsogiannis**, 829 So. 2d 962 (Fla. 4th DCA 2002)

Reversed. Threats made by appellant, even with an act of violence proceeding it, which were admittedly not taken seriously by the victim, were not sufficient to support a finding of an act of violence within the meaning of section 784.046, Florida Statutes.

**Long v. Edmundson**, 827 So. 2d 365 (Fla. 2d DCA 2002)

The trial court erred in entering a permanent injunction for repeat violence after the original ex parte temporary injunction was denied, in a landlord tenant case where tenant did not establish that the landlord committed two acts of violence. Only qualifying incident was one in which the landlord waved a gun and pushed the tenant. Second incident did not qualify as act of violence where landlord left a threat on tenant's answering machine stating that if the tenant was not out by certain date landlord would "take care of you and your dog" and tenant testified that the incident did not cause her any fear. The decision of the trial court was reversed. For an identical holding, see Orr v. Koutsogiannis, 829 So. 2d 962 (Fla. 4th DCA 2002).

**Darrow v. Moschella**, 805 So. 2d 1068 (Fla. 4th DCA 2002)

Respondent appealed the lower court's order granting petitioner's request for a repeat violence injunction. Respondent contended that because the incidents alleged in the petition occurred all at one time, they do not meet the definition set forth in the statute for repeat violence. Petitioner and respondent were on the same golf course when the incident occurred. Petitioner claimed that because there was a brief pause in between the physical altercations, that constituted repeat violence under section 784.046, Florida Statutes. The Fourth District reversed the trial court's findings and ruled that the facts were insufficient for the issuance of a repeat violence injunction.

**Gonzales v. Clark**, 799 So. 2d 451 (Fla. 5th DCA 2001)

Petitioner requested an emergency writ of certiorari for review of two separate orders which denied her ex parte motion for a domestic violence injunction. The first petition was denied without a hearing. The second petition denied relief, holding that the first order issued by a different judge was controlling. The writ was granted and the judge issuing the first order admitted error because the petitioner's allegations were sufficient to issue the injunction. The Fifth District quashed both orders and remanded the case to the first judge with instructions to issue the temporary injunction.

**Kopelovich v. Kopelovich**, 793 So. 2d 31 (Fla. 2d DCA 2001)

The Second District held that it was error for the trial court to grant initial ex parte injunction and amended temporary injunction against respondent where petitioner failed to establish "immediate or present danger" or threat of or actual "domestic violence," in accordance with section 741.30(5), Florida Statutes (1999), and Florida Family Law Rule of Procedure 12.610. In order to balance respondent's due process rights against harm sought to be protected, evidence supporting an ex parte injunction should be "strong and clear." Additionally, it was error to enter a permanent injunction where petitioner amended her petition to include allegations sufficient to satisfy the statutory requirements, but where petitioner's testimony at hearing still failed to satisfy the requirement that she had "a reasonable cause to believe she was in imminent danger of domestic violence." Reversed.

**Giallanza v. Giallanza**, 787 So. 2d 162 (Fla. 2d DCA 2001)

The trial court erred in extending the injunction against domestic violence against the respondent because the petitioner had not established sufficient facts. The statutory definition of domestic violence requires some showing of violence or a threat of violence. General harassment does not constitute domestic violence under the statute. Here, the petitioner never alleged any further actual violence or threats of violence, nor showed any fear of domestic violence. Rather, they reflected that she was upset by the respondent's dealings with their children and that she believed that he was using the children to harass her.

**Moore v. Hall**, 786 So. 2d 1264 (Fla. 2d DCA 2001)

The trial court erred in finding that the verbal statement from the respondent saying "I should have killed her," made to a process server, did not provide the petitioner with an objectively reasonable fear of imminent domestic violence at the hands of the respondent. A pushing incident that occurred twelve years ago, along with a gift sent to the petitioner from the respondent containing a knife in the back of a statuette, may have given the petitioner a reasonable fear of imminent

domestic violence sufficient to support the issuance of an injunction at that time. However, at the time of the injunction hearing, twelve years had passed without further violence or threats despite continued litigation between the parties. The decision of the trial court was therefore reversed.

**Dudley v. Smith**, 786 So. 2d 630 (Fla. 5th DCA 2001)

The Fifth District held that it was error to enter an injunction against repeat violence prohibiting party from boarding any bus driven by other party, where there was insufficient evidence to support entry of injunction. Prior to entering an injunction for repeat violence, section 784.046(1)(b), Florida Statutes, requires at least four incidents of harassment. "Repeat violence requires two incidents of 'violence and stalking' and stalking itself requires 'repeated' harassment." In this case respondent followed petitioner to lunch, sat at a table with her and tried to talk to her, and then followed her back to the bus station. Respondent also boarded a bus driven by petitioner and spoke to her in a manner she described as threatening. In addition, there was testimony that respondent would write down bus drivers' tag numbers to discover where they lived. While this conduct is not condoned, the evidence was insufficient to support the injunction entered. While injunctions against repeat violence are important in appropriate cases, they should be carefully considered when the issuance of such an injunction prohibits a person from entering a public facility or from using a public conveyance. Reversed.

**Chanfrau v. Fernandez**, 782 So. 2d 521 (Fla. 2d DCA 2001)

The Second District held that it was error to dismiss permanent injunction against domestic violence where there was no motion, notice, or evidentiary hearing. "By dismissing the injunction without motion, notice, or evidentiary hearing, the court failed to accord appellant due process in this matter". Snyder v. Snyder, 685 So. 2d 1320 (Fla. 2d DCA 1996). Additionally, the trial court further erred in granting a counter-petition by appellee without a hearing. A trial court is required to hold a full evidentiary hearing prior to entering a permanent injunction against domestic violence. § 741.30 (5)(c), Fla. Stat. (1999). Reversed and remanded for further proceedings.

**McMath v. Biernacki**, 776 So. 2d 1039 (Fla. 1st DCA 2001)

That the petitioner received a letter from the respondent and flowers on the second occasion does not meet the burden for the repeat violence statute. There was no verbal threat, nor any physical harm to the victim. According to the court, these incidents did not show that the petitioner had a "well-founded fear that violence was imminent." Because these two incidents did not meet the statutory requirements for an injunction against repeat violence, the court was correct in refusing to grant the injunction.

**Cuiska v. Cuiska**, 777 So. 2d 419 (Fla. 1st DCA 2000)

The First District held that the trial court did not abuse its discretion in denying the entry of a temporary injunction for protection against domestic violence where the allegations in the petition did not demonstrate the existence of an "immediate and present danger of domestic violence" as required by section 741.30(5)(a), Florida Statutes. Although the appellate court did not rule on the issue of whether the trial court erroneously dismissed the petition without a hearing, due to the fact that such an order was not provided as part of the case on appeal, the opinion noted that in

accordance with section 741.30(5)(b), Florida Statutes, a hearing on the allegations of the petition would clearly be required before the case could be dismissed.

**Mossbrooks v. Advincula**, 748 So. 2d 382 (Fla. 3d DCA 2000)

The Third District reversed the entry of an injunction for protection against domestic violence because the evidence presented to the trial court of the alleged prior acts of violence were insufficient as a matter of law.

**Anderson v. McGuffey**, 746 So. 2d 1257 (Fla. 1st DCA 2000)

The First District held that it was error for the trial court to enter an injunction for protection against repeat violence where no act of violence within the statutory definition was offered in either the petition for injunction or at the final hearing at which the parties testified.

**Farrell v. Marquez**, 747 So. 2d 413 (Fla. 5th DCA 1999)

The Fifth District held that it was error for the trial court to enter a permanent injunction for protection against domestic violence where no evidence was presented that the former husband had physically harmed or threatened the former wife, and the facts alleged and proved did not support the conclusion that the former wife had reasonable cause to believe that she was in imminent danger of becoming a victim of domestic violence. The testimony revealed four encounters which did not involve any physical harm or threat of harm. During the first such encounter, the former wife discovered the former husband's parked car next to hers in the school parking lot; however, there was no evidence the former husband was present at the time. Second, the former wife saw the former husband three times at a school building where they both take classes. On one occasion he greeted her in passing. On another occasion, he offered her a birthday card, and she continued to exit the building. On the third occasion, following the conclusion of a lecture they had both attended, when attempting to cut through the crowd to leave and the former husband did not move out of her way, she reacted by pushing him out of the way with her bookbag. The testimony revealed, however, that it was impossible for him to move due to the fact that there were people on both sides of him.

**Gustafson v. Mauck**, 743 So. 2d 614 (Fla. 1st DCA 1999)

The First District held that the trial court erred in granting a permanent injunction for protection against domestic violence on the basis of telephone calls made to petitioner, where the calls did not give the petitioner objectively reasonable grounds to fear that she was in imminent danger of violence from the respondent, and there was no evidence of previous physical violence, although a permanent injunction had been previously entered which expired two years prior. The court reviewed the 1997 amendment to section 741.30(1)(a), Florida Statutes, which changed the standard for issuance of an injunction to require reasonable fear of *imminent* danger, as opposed to reasonable fear of violence at some indeterminate time in the future.

**Russell v. Hogan**, 738 So. 2d 1003 (Fla. 2d DCA 1999)

The Second District held that the trial court erred in entering a permanent injunction for protection against repeat violence where evidence of only one act of violence was presented at the final hearing, as opposed to two acts, in accordance with the statutory standard.

**Abravaya v. Gonzalez**, 734 So. 2d 577 (Fla. 3d DCA 1999)

The Third District held that the testimony of a former girlfriend alleging that her former boyfriend threatened her well-being by driving his truck on the expressway in an erratic and threatening manner, intentionally preventing her from exiting the highway at her desired exit, and rear-ending her vehicle, was internally consistent and sufficient to support the entry of a permanent injunction for protection against domestic violence. The Third District held that the testimony of the girlfriend alone was sufficient and the court expressly recognized the general “cycle of violence.”

**Rae v. Flynn**, 690 So. 2d 1341 (Fla. 3d DCA 1997)

A dog owner appealed an order: 1) denying her an injunction for protection against repeat violence, 2) granting her neighbor a repeat violence injunction, and 3) prohibiting her from housing her pets outdoors. The neighbor’s petition alleged that the dog owner appeared physically violent, was responsible for slanderous graffiti, and threatened to drive the neighbor out by playing loud music after the neighbor complained about the dogs kept in the kennel on a common property line. The appellate court affirmed the issuance of an injunction prohibiting the dog owner from repeat violence and requiring the pets to be housed indoors, finding that barking dogs can be considered a nuisance so as to justify relief where the petitioner was substantially and unreasonably disturbed. Note: Where are the two incidents of violence or stalking?

**Rey v. Perez-Gurri**, 662 So. 2d 1328 (Fla. 3d DCA 1995)

Chapter 741 does not require a petitioner to demonstrate that he or she has already been a victim of domestic violence. The petitioner’s evidence that her former husband recently threatened her was sufficient to establish “reasonable cause to believe that she was about to become a victim of domestic violence” in light of her former husband’s prior violent threatening behavior. Note: The 1997 statutory change requires that petitioner must either be a “victim of domestic violence or have reasonable cause to believe he or she is in imminent danger of becoming a victim...” Notwithstanding such change, the reasoning of this case should apply, provided the imminent standard is met.

**Campbell v. Campbell**, 584 So. 2d 125 (Fla. 4th DCA 1991)

The procedure outlined in chapter 741 is the *exclusive* method to obtain an injunction for protection against domestic violence. No other remedies, including Florida Rule of Civil Procedure 1.610, may be utilized to obtain an injunction against domestic violence.

**Johnson v. Brooks**, 567 So. 2d 34 (Fla. 1st DCA 1990)

The petitioner was not entitled to a repeat violence injunction where the sole allegations were that the respondent made numerous threatening telephone calls and that the respondent was known to be violent. Telephone threats do not constitute an assault. Note: Subsequent to Brooks, the legislature amended section 741.28(1), Florida Statutes, to include stalking in the enumerated list of offenses which could justify a repeat violence injunction. Since numerous threatening phone calls can constitute stalking, this inclusion effectively overrules Brooks.

## **Transcripts**

### **Buckley v. Belott**, 31 Fla. L. Weekly D99 (Fla. 1st DCA 2005)

Appellant moved for reversal of an order granting a permanent injunction for protection against dating violence because although the hearing was recorded, a transcript could not be prepared as the recording was defective. This request was initially denied because appellant had not first attempted to obtain a statement of the evidence in accordance with Florida Rule of Appellate Procedure 9.200(b)(4), to serve as substitute for the transcript. When the statement was not approved because the judge had no recollection of the hearing, appellant renewed his motion. The appellate court reversed and remanded for a hearing de novo.

### **Squires v. Darling**, 834 So. 2d 278 (Fla. 5th DCA 2002)

Appellate court affirmed the entry of injunction as moving party failed to provide the court with a transcript of the proceedings and failed to provide the court a record of the proceedings pursuant to Florida Rule of Appellate Procedure 9.200(b)(4). Respondent's failure to provide either a transcript or record preserved the presumption of correctness attached to the final judgment. Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150 (Fla. 1979).

### **Stevens v. Bryan**, 805 So. 2d 881 (Fla. 2d DCA 2001)

Respondent appealed a repeat violence injunction, as next best friend of her son. Because no record or transcript was provided, the Second District could not find error in the trial court's decision, as evidence had to be provided to the lower court for the injunction to be issued. The case was remanded only to correct scrivener's errors regarding the correct parties, and to remedy an error on the pre-printed form.

### **Ricketts v. Ricketts**, 790 So. 2d 1265 (Fla. 5th DCA 2001)

No transcripts were made available to determine whether or not error was committed, therefore injunction preventing appellant from contacting ex-husband was affirmed.

### **Lawrence v. Walker**, 751 So. 2d 68 (Fla. 4th DCA 1999)

The Fourth District affirmed the trial court's issuance of an injunction for protection against domestic violence where the contentions raised by the appellant could not be evaluated due to the fact that no transcript was ever made of the hearing in which the evidence was presented. In a special concurrence, the court observed that an injunction action is a civil proceeding, and there is no requirement as yet that such proceedings be transcribed at public expense, making it necessary for the party to arrange in advance for reporting and transcription. It was noted that with so much litigation being conducted pro se, the parties should be alerted in the notice for final hearing on the injunction that if they want the hearing reported, it was up to them to create a record by arranging for the services of a court reporter to transcribe the proceedings.

### **Pollock v. Couffer**, 750 So. 2d 659 (Fla. 5th DCA 1999)

The Fifth District affirmed the ruling of the trial court where the appellant/respondent contended that the evidence of record did not support the trial court's entry of a permanent injunction for protection against repeat violence, but failed to provide the appellate court with either a transcript of trial court

proceedings or stipulated statement of facts. Accordingly, the appellate court was prevented from reviewing the validity of the claim and held that no error of law was apparent.

### **Venue**

**Hill v. Fields**, 813 So. 2d 212 (Fla. 2d DCA 2002)

Petitioner and respondent, a divorced couple, resided in two jurisdictions, the petitioner in Pasco County, the respondent in Polk County. The petitioner filed for injunctive relief against domestic violence in Pasco County and was granted a temporary injunction for her and the minor children of the marriage. In the petition, the alleged incidents occurred in Polk County. Respondent challenged the venue and jurisdiction of the court in issuing the temporary injunction pursuant to chapter 741, Florida Statutes (1999) (see also Barr v. Fla. Bd. of Regents, 644 So. 2d 333, 335 (Fla. 1st DCA 1994)). In addition, section 47.011, Florida Statutes, mandates that the action must be brought in the jurisdiction where the incident occurred or where the respondent resides. Therefore, the proper venue for this case was in Polk, not Pasco County. However, the Second District held that dismissal of the injunction was not proper and ordered the case be transferred to the proper jurisdiction.