

**OSCA/OCI'S CASE LAW UPDATE**  
**DECEMBER 2017**

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## **Baker Act/Marchman Act Case Law**

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

No new opinions for this reporting period.

### ***Second District Court of Appeal***

No new opinions for this reporting period.

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

No new opinions for this reporting period.

### ***Fifth District Court of Appeal***

No new opinions for this reporting period.



## **Drug Court/Mental Health/Veterans Court Case Law**

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

No new opinions for this reporting period.

### ***Second District Court of Appeal***

No new opinions for this reporting period.

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

No new opinions for this reporting period.

### ***Fifth District Court of Appeal***

No new opinions for this reporting period.



## Delinquency Case Law

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

No new opinions for this reporting period.

### ***Second District Court of Appeal***

T.K.O. v. State, \_\_ So. 3d \_\_, 2017 WL 6028008 (Fla. 2d DCA 2017). **AFFIRMED IN PART, REVERSED IN PART; REMANDED**. T.K.O. appealed the disposition order finding that he committed the delinquent acts of trespass in an unoccupied conveyance and resisting an officer without violence. The State conceded that the evidence was legally insufficient to support the trespass offense because it failed to establish that T.K.O. knew or should have known that the car from which he was seen fleeing was stolen. The trial court's finding that T.K.O. committed trespass was reversed and remanded to amend the disposition order accordingly. The trial court's order was affirmed in all other respects.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2017/December/December%2006,%202017/2D16-4154.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/December/December%2006,%202017/2D16-4154.pdf) (December 6, 2017)

Alfaro v. State, \_\_ So. 3d \_\_, 2017 WL 6598836 (Fla. 2d DCA 2017). **REVERSED AND REMANDED FOR RESENTENCING**. Alfaro appealed the summary denial of two motions for postconviction relief. Alfaro's first motion asserted that the concurrent thirty-year sentences he received for several armed robberies and attempted armed robberies he committed as a juvenile were unconstitutional under Graham v. Florida, 560 U.S. 48 (2010). His second motion asserted that he was entitled to resentencing pursuant to Kelsey v. State, 206 So. 3d 5 (Fla. 2016). The law interpreting Graham and the line of cases that followed has developed to clarify that a juvenile nonhomicide offender's term-of-years sentence must include a meaningful opportunity for early release based on a demonstration of rehabilitation and maturity. The orders denying postconviction relief were reversed and the matter remanded for resentencing.

[https://edca.2dca.org/DCADocs/2016/5013/165013\\_DC13\\_12272017\\_082103\\_i.pdf](https://edca.2dca.org/DCADocs/2016/5013/165013_DC13_12272017_082103_i.pdf) (December 27, 2017)

A.J.S. v. State, \_\_ So. 3d \_\_, 2017 WL 6598846 (Fla. 2d DCA 2017). **AFFIRMED IN PART, REVERSED IN PART; REMANDED**. A.J.S. admitted to the commission of the offenses of burglary and obstructing an officer without violence. The trial court withheld adjudication of delinquency and sentenced him to one day of probation. Thereafter, the trial court conducted a restitution hearing and determined that A.J.S. and his co-defendant owed restitution to the church they burglarized including the purchase of Lifelock, Inc., memberships for thirteen church employees whose personal information was on a thumb drive that was stolen but not recovered. Prudence may have suggested the purchase of Lifelock to prevent possible future damages to the church or the employees; however, there was no significant causal relationship between the burglary and the purchase of Lifelock so that portion of the restitution order was reversed.



[https://edca.2dca.org/DCADocs/2016/1642/161642\\_DC08\\_12272017\\_081737\\_i.pdf](https://edca.2dca.org/DCADocs/2016/1642/161642_DC08_12272017_081737_i.pdf) (December 27, 2017)

J.J.J. v. State, \_\_ So. 3d \_\_, 2017 WL 6598889 (Fla. 2d DCA 2017). **REVERSED AND REMANDED**. On appeal, the State conceded that the corpus delicti of the charge consisted solely of inadmissible hearsay evidence. Further, J.J.J.'s incriminating statements were inadmissible to prove his guilt unless the State separately proved the corpus delicti of the crime.

[https://edca.2dca.org/DCADocs/2015/2350/152350\\_DC13\\_12272017\\_080942\\_i.pdf](https://edca.2dca.org/DCADocs/2015/2350/152350_DC13_12272017_080942_i.pdf) (December 27, 2017)

N.D.W. v. State, \_\_ So. 3d \_\_, 2017 WL 6598641 (Fla. 2d DCA 2017). **AFFIRMED IN PART, REVERSED IN PART; REMANDED**. N.D.W.'s adjudication of delinquency for two counts of fleeing and eluding a law enforcement officer and one count of grand theft of a motor vehicle were affirmed without discussion. The disposition order, however, was reversed because the trial court appeared to have considered subsequent arrests for which N.D.W. had not been charged or convicted in imposing the disposition. The State also failed to meet its burden to show that the trial court did not rely on improper factors in imposing the disposition where it appears that the trial court may have done so. The appellate court reversed the disposition order and remanded for a new disposition hearing before a different judge.

[https://edca.2dca.org/DCADocs/2016/4521/164521\\_DC08\\_12272017\\_081955\\_i.pdf](https://edca.2dca.org/DCADocs/2016/4521/164521_DC08_12272017_081955_i.pdf) (December 27, 2017)

### ***Third District Court of Appeal***

K.M. v. State, \_\_ So. 3d \_\_, 2017 WL 6029004 (Fla. 3d DCA 2017). **AFFIRMED IN PART, REVERSED IN PART**. The finding of K.M. delinquent for first-degree misdemeanor petit theft was affirmed. A trial court may admit the testimony of an asset protection detective as to the contents of price tags indicating the value of merchandise in a retail theft case, as this testimony does not constitute hearsay. As to K.M.'s second issue on appeal, the juvenile court erred in imposing a \$65 additional court cost under s. 939.185(1)(a), F.S. The statute does not authorize the additional court cost when adjudication of delinquency is withheld.

<http://www.3dca.flcourts.org/Opinions/3D17-0184.pdf> (December 6, 2017)

T.M. v. State, \_\_ So. 3d \_\_, 2017 WL 6503203 (Fla. 3d DCA 2017). **AFFIRMED; REMANDED FOR WRITTEN FINDINGS**. The only issue raised on appeal was that the trial court failed to enter a written order setting forth the conditions of probation that were violated. T.M. was placed on probation for petit theft and was later held to have violated her probation. The trial court orally pronounced T.M. to have violated her probation, and imposed a new term of probation with conditions. The appellate court affirmed but remanded to the trial court for the sole purpose of rendering a written order specifying the conditions of probation it found were violated by T.M.

<http://www.3dca.flcourts.org/Opinions/3D17-1373.pdf> (December 20, 2017)

D.M. v. State, \_\_ So. 3d \_\_, 2017 WL 6598581 (Fla. 3d DCA 2017). **REVERSED AND REMANDED**. D.M. appealed from a withheld adjudication of delinquency on the charge of felony battery. D.M. punched the victim in the jaw, and the victim lost a baby tooth. The appellate court held that the



loss of a baby tooth that had been replaced by the adult tooth, without more, demonstrated no great bodily injury, no permanent disability or disfigurement, and was therefore insufficient as a matter of law to establish great bodily harm and sustain a conviction for felony battery.

<http://www.3dca.flcourts.org/Opinions/3D16-2838.pdf> (December 27, 2017)

#### ***Fourth District Court of Appeal***

Burger v. State, \_\_ So. 3d \_\_, 2017 WL 6368605 (Fla. 4th DCA 2017). **REVERSED AND REMANDED FOR RESENTENCING**. Burger was sentenced to life in prison for nonhomicide offenses he committed as a juvenile. He was resentenced pursuant to Graham v. Florida, 560 U.S. 48 (2010), to fifty-five years in prison followed by terms of supervision. Because Burger's new sentence contained no provision for obtaining early release based on a demonstration of maturity and rehabilitation before the expiration of the imposed term, the appellate court agreed that the sentence did not comport with Graham. Reversed and remanded for resentencing pursuant to chapter 2014-220, Laws of Florida.

[https://edca.4dca.org/DCADocs/2014/4886/144886\\_1709\\_12132017\\_08382575\\_i.pdf](https://edca.4dca.org/DCADocs/2014/4886/144886_1709_12132017_08382575_i.pdf)  
(December 13, 2017)

#### ***Fifth District Court of Appeal***

A.M. v. State, \_\_ So. 3d \_\_, 2017 WL 6542677 (Fla. 5th DCA 2017). **REVERSED**. A.M. appealed the trial court's denial of his motion to suppress a pistol that police found during a warrantless arrest. While investigating the theft of a "bait car" officers became suspicious of A.M. who leaned into the bait car twice but never went into or took anything from it. A.M. left the area of the bait car as a passenger in a different car, and officers eventually pulled over that car and conducted a search during which the pistol was found on A.M. The trial court erred in denying the motion to suppress because the officers had no independent probable cause to stop the car or to search the car and its occupants.

<http://www.5dca.org/Opinions/Opin2017/121817/5D17-1062.op.pdf> (December 22, 2017)

E.C. v. State, \_\_ So. 3d \_\_, 2017 WL 6624240 (Fla. 5th DCA 2017). **PETITION GRANTED; ORDER QUASHED**. E.C. petitioned for a writ of mandamus compelling the trial court to toll speedy trial, stay all proceedings, and appoint two experts to evaluate his competency. E.C.'s counsel filed five separate motions to determine competency, and the trial court denied all five motions as "legally insufficient." While several of the motions were legally insufficient, the final motion satisfied the requirements of Rule 8.095(a)(1) and s. 985.19, F.S., and should have been granted. The order denying the fifth motion to determine competency was quashed. On remand, the trial court was ordered to stay the proceedings and order an examination.

[www.5dca.org/Opinions/Opin2017/122517/5D17-3861.op.pdf](http://www.5dca.org/Opinions/Opin2017/122517/5D17-3861.op.pdf) (December 29, 2017)



## Dependency Case Law

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

No new opinions for this reporting period.

### ***Second District Court of Appeal***

No new opinions for this reporting period.

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

J.K., the mother v. Department of Children and Families, \_\_ So. 3d \_\_, 2017 WL 6506460 (Fla. 4th DCA 2017). **TERMINATION OF PARENTAL RIGHTS AFFIRMED BUT REMANDED**. The Fourth District Court of Appeal affirmed termination of a mother's parental rights but remanded the case for an amended judgment. One of the grounds upon which the trial court based its judgment terminating the mother's rights was s. 39.806(1)(j), F.S., which relates to the parent's history of abuse of alcohol or a controlled substance during the 3-year period immediately preceding the filing of the TPR petition. The District Court agreed with the mother that there was no clear and convincing evidence that the mother refused or failed to complete treatment during the requisite time period. Therefore, although the court affirmed the trial court, it remanded the case for the trial court to amend the judgment to exclude s. 39.806(1)(j) as a ground.

[https://edca.4dca.org/DCADocs/2017/1381/171381\\_1708\\_12202017\\_09580323\\_i.pdf](https://edca.4dca.org/DCADocs/2017/1381/171381_1708_12202017_09580323_i.pdf)

(December 20, 2017)

### ***Fifth District Court of Appeal***

No new opinions for this reporting period.



## Dissolution of Marriage Case Law

### ***Florida Supreme Court***

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms—Form 12.961, \_\_\_ So. 3d \_\_\_, 2017 WL 6379536 (Fla. 2017). [REVISION OF NOTICE OF HEARING ON MOTION FOR CONTEMPT/ENFORCEMENT \(12.961\)](#). Florida Supreme Court Approved Family Law Form 12.961, the Notice of Hearing on Motion for Contempt/Enforcement in Support Matters, was revised to accord with the United States Supreme Court's decision in Turner v. Rogers, 564 U.S. 431 (2011), and the current provisions of Florida Family Law Rule of Procedure 12.615, Civil Contempt in Support Matters. As revised, the form more clearly notifies an alleged contemnor that his or her present ability to pay is a critical issue in the proceeding. The form also advises the alleged contemnor whether the proceedings will be recorded electronically or by a court reporter, as required by rule 12.615. The revised form took effect December 14, 2017. There is a 60 day period in which interested persons may file comments. All comments must be filed with the Court on or before February 12, 2018.

<http://www.floridasupremecourt.org/decisions/2017/sc17-1947.pdf> (December 14, 2017)

### ***First District Court of Appeal***

Dennis v. Dennis, \_\_\_ So. 3d \_\_\_, 2017 WL 6043504 (Fla. 1st DCA 2017). [TRIAL COURT MUST MAKE SPECIFIC FINDINGS ON SPOUSES' NEED AND ABILITY TO PAY FEES](#). Former husband appealed the trial court's order enforcing a final judgment of dissolution; former wife appealed the trial court's denial of her request for attorney's fees. The appellate court affirmed without comment as to former husband's issues, but reversed and remanded on the fee issue. Noting that the general standard for awarding fees and costs is the requesting spouse's financial need and the other spouse's ability to pay, the appellate court concluded that the trial court's only finding related to fees was having declined to award fees after finding former husband not in contempt. Because the trial court neither held a hearing regarding fees nor made findings regarding the spouses' financial situations, the appellate court found itself unable to ascertain whether the trial court had abused its discretion in denying former wife's request for fees. Accordingly, the appellate court reversed and remanded for the trial court to make specific findings as to former wife's need for fees and costs and former husband's ability to pay.

[https://edca.1dca.org/DCADocs/2016/3350/163350\\_1286\\_12072017\\_08344788\\_i.pdf](https://edca.1dca.org/DCADocs/2016/3350/163350_1286_12072017_08344788_i.pdf)

(December 7, 2017)

### ***Second District Court of Appeal***

Dogoda v. Dogoda, \_\_\_ So. 3d \_\_\_, 2017 WL 6027961 (Fla. 2d DCA 2017). [EFFECTIVE DATE OF MARITAL SETTLEMENT AGREEMENT ESTABLISHES DATE TRIAL COURT SHOULD USE IN DETERMINING SUBSTANTIAL CHANGE IN CIRCUMSTANCES FOR ALIMONY MODIFICATION; AGREED-TO ALIMONY DOES NOT TRANSLATE INTO HEAVIER BURDEN OF PROOF FOR SPOUSE REQUESTING MODIFICATION; REASONABLENESS OF VOLUNTARY RETIREMENT DEPENDS ON OBLIGOR'S AGE, HEALTH, AND MOTIVATION FOR RETIREMENT AS WELL AS NORMAL RETIREMENT WORK FOR THE TYPE OF WORK HE OR SHE PERFORMS](#). Former husband appealed an order denying his request for a downward modification of the alimony agreed to in a marital settlement agreement (MSA). At issue was whether former husband's retirement from



firefighting could serve as a basis for modification because he had decided to retire after execution of the MSA, but before entry of the final judgment. Former wife argued that former husband's retirement could not serve as a basis for modification because it was contemplated prior to entry of the final judgment. The appellate court held that the trial court abused its discretion in concluding that the filing date of the dissolution final judgment was the "operative" date from which to determine whether there was a substantial change in circumstances justifying modification of alimony. In cases involving an MSA, the effective date of the agreement establishes the date the trial court should use when determining whether a substantial change in circumstances was contemplated by the spouses—especially in cases, such as here, where there is a delay between execution of the MSA and entry of the final judgment. A spouse does not bear a heavier burden because alimony is agreed-upon in an MSA rather than set by court order. The "reasonableness" of voluntary retirement depends upon an obligor's age, health, and motivation for retirement, and the normal retirement age for the type of work he or she performs. Reversed and remanded.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Pages\\_2017/December/December%2006,%202017/2D16-4447.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/December/December%2006,%202017/2D16-4447.pdf) (December 6, 2017)

Lockett v. Lockett, \_\_ So. 3d \_\_, 2017 WL 6598646 (Fla. 2d DCA 2017). **RULE 1.380(b)(2)(c) REQUIRES AN ORDER OF DISMISSAL OR DEFAULT TO CONTAIN AN EXPLICIT FINDING OF WILLFUL NONCOMPLIANCE ON THE RECORD; CHILD SUPPORT REQUIRES FORMULA SET FORTH IN S. 61.30(11)(b), F.S.; APPELLATE COURT WITHOUT JURISDICTION TO HEAR APPEAL IF TRIAL COURT FINDS ENTITLEMENT TO FEES WITHOUT SETTING AN AMOUNT.** The appellate court agreed with former husband that the trial court erred in entering a default judgment against him as to alimony for his failure to comply with discovery matters without having made a finding on the record that he was "willfully or deliberately noncompliant" with its discovery orders. Citing Commonwealth Fed. Sav. & Loan Ass'n v. Tubero, 569 So. 2d 1271, 1273 (Fla. 1990), the appellate court noted that Florida Rule of Civil Procedure 1.380(b)(2)(c) requires that an order of either dismissal or default contain an "explicit finding of willful noncompliance." The appellate court also agreed with former husband, and former wife conceded, that the trial court erred in failing to apply the time-sharing formula set forth in s. 61.30(11)(b), F. S. (2015). Accordingly, the appellate court reversed and remanded the child support award for recalculation. Because the trial court found former wife entitled to fees, but did not award an amount, the appellate court dismissed that portion of the appeal for lack of jurisdiction.

[https://edca.2dca.org/DCADocs/2016/0319/160319\\_DC08\\_12272017\\_081349\\_i.pdf](https://edca.2dca.org/DCADocs/2016/0319/160319_DC08_12272017_081349_i.pdf) (December 27, 2017)

### ***Third District Court of Appeal***

Ivko v. Ger, \_\_ So. 3d \_\_, 2017 WL 6503185 (Fla. 3d DCA 2017). **UNDER UIFSA, OUT-OF-STATE COURTS MAY ENFORCE, BUT NOT MODIFY, FLORIDA SPOUSAL SUPPORT ORDERS; TRIAL COURT NOT AUTHORIZED TO TRANSFER ENTIRE CASE OUT-OF-STATE.** This paternity appeal is included due to issues encountered in dissolution of marriage cases. The mother appealed a trial court order granting the father's motion to transfer the entire case from Florida to Pennsylvania, where the mother and children moved after her request to relocate was granted. Prior to the relocation, the trial court had issued a temporary order requiring the father to pay child support; however,



the mother's motion through the Uniform Interstate Family Support Act (UIFSA) for permanent child support was still pending at the time of the instant appeal. The appellate court reversed for two reasons: one, the trial court could not transfer the child support matters to Pennsylvania because the UIFSA requirements and procedures were not met; and two, the trial court had no authority under either civil procedure or family law rules to transfer the case out of Florida. Section 88.2051(1)(a), F.S. (2017), mandates that a Florida tribunal having issued a child support order retains jurisdiction to modify its order where Florida remains the residence of either the obligor, the obligee, or the child for whose benefit the support order was issued, or pursuant to s. 88.2051(2)(a), F.S., all parties have filed written consents with the Florida court for the tribunal of another state to modify the order and assume continuing exclusive jurisdiction. Here, the trial court retained continuing jurisdiction to modify the child support order, pursuant to the UIFSA, but did not have the authority to transfer the action to Pennsylvania absent a showing that the statutory modifications existed. Although the mother and children resided in Pennsylvania, the father was still a Florida resident. In addition, the parties had not consented that the Pennsylvania court could modify the Florida child support order and assume continuing jurisdiction. The appellate court cited Sootin v. Sootin, 41 So. 3d 993, 994 (Fla. 3d DCA 2010). Under UIFSA, out-of-state courts may enforce Florida spousal support orders, but not modify them. The correct procedure under UIFSA is to register the spousal support in another state for enforcement; however, the foreign court must return the case to Florida for consideration of modifications. The appellate court concluded that the trial court did not have authority to transfer the entire case to Pennsylvania. Under Florida Rule of Civil Procedure, 1.060(b), mirrored in Florida Family Law Rule of Procedure 12.060(b), a court may only transfer venue to any *county* in Florida where it might have been properly brought, not to another state. Reversed and remanded.

<http://www.3dca.flcourts.org/Opinions/3D17-0228.pdf> (December 20, 2017)

#### ***Fourth District Court of Appeal***

DOR o/b/o Baker v. Baker, \_\_ So. 3d \_\_, 2017 WL 6371165 (Fla. 4th DCA 2017). **SERVICE BY MAIL SUFFICIENT IN CIVIL CONTEMPT PROCEEDING FOR NON-PAYMENT OF COURT-ORDERED SUPPORT; HERE, EACH PARTY WAS PERSONALLY SERVED IN ACTION GIVING RISE TO THE SUPPORT AND REQUIRED TO KEEP ADDRESS CURRENT; TRIAL COURT HAS A DUTY, IF REASONABLY POSSIBLE, TO ADOPT A REASONABLE INTERPRETATION OF A STATUTE.** The Department of Revenue (DOR) appealed the trial court's denial of a motion for civil contempt in twenty-eight cases based on each appellee's non-payment of court-ordered child support in either dissolution of marriage or paternity cases. The hearing officer in each case recommended that the trial court grant DOR's motion for contempt and issue a writ of bodily attachment with purge amounts based on the facts of the individual case; however, the trial court denied each motion based on its conclusion that DOR's service by mail was insufficient. The cases were consolidated for appeal. Family Law Rule of Procedure 12.615(b) governs service for civil contempt in support matters; that rule requires that service of the motion and notice of hearing comply with Florida Rule of Judicial Administration 2.516. That rule, in turn, requires that service on all parties, either those who are unrepresented and have not designated an e-mail address, or those represented by an attorney excused from e-mail service, be made by delivering a copy of the document or mailing it to the party or attorney at their last known address, or, if no address



is known, leaving it with the clerk of court. Pursuant to rule 2.516, service is complete upon mailing. The appellate court noted that service by mail has been found to be sufficient in a civil contempt proceeding for failure to pay child support, (Pennington v. Pennington, 390 So. 2d 809 (Fla. 5th DCA 1980)), and that both chapter 61 and 742 expressly provide that service of process via mail in child support actions comports with due process. The appellate court reiterated that trial courts have a “duty, if reasonably possible . . . to adopt a reasonable interpretation of a statute which removes it farthest from constitutional infirmity.” State ex rel. Pittman v. Stanjeski, 562 So. 2d 673, 577 (Fla. 1990) (quoting Corn v. State, 332 So. 2d 4, 8 (Fla. 1976)). The appellate court cited its opinion holding that a person facing civil contempt, even if not entitled to all due process rights afforded to someone facing indirect criminal contempt, is still entitled to a proceeding that meets the fundamental fairness requirement of the due process clause of the Fourteenth Amendment—notice and an opportunity to be heard. Woolf v. Woolf, 901 So. 2d 905, 911 (Fla. 4th DCA 2005). Generally, cases in which notice by mail is sufficient for due process purposes are those in which the party being notified has an ongoing duty to maintain his or her correct address with the notifying agency and that agency has no indication that the address it has is incorrect. Here, each appellee was personally served in the underlying action giving rise to the judgment requiring child support; each appellee was required by statute to keep his or her mailing address updated. The appellate court held that under these circumstances, the trial court erred in ruling that notice by mail was inadequate. Reversed and remanded.

[https://edca.4dca.org/DCADocs/2016/3129/163129\\_1709\\_12132017\\_09294340\\_i.pdf](https://edca.4dca.org/DCADocs/2016/3129/163129_1709_12132017_09294340_i.pdf)  
(December 13, 2017)

Dufour v. Damiani, \_\_ So. 3d \_\_, 2017 WL 6371167 (Fla. 4th DCA 2017). **EXCLUSIVE POSSESSION GIVEN SPOUSE AND CHILDREN CONSTITUTES AN ASPECT OF CHILD SUPPORT IN KIND; CONTEMPT IS REMEDY IF PARTY FAILS TO FULFILL A SUPPORT OBLIGATION.** Former wife appealed the trial court’s denial of her motion for contempt after former husband failed to pay one-half of the mortgage on their marital home pursuant to a marital settlement agreement (MSA) incorporated into the final judgment of dissolution. Former wife argued that her exclusive use and possession of the home was an aspect of child support enforceable by contempt; former husband countered that his obligation to pay one-half of the mortgage ended when former wife filed a tax return claiming her mother as a dependent. Reiterating that exclusive possession of a home by a spouse with children of the marriage constitutes an aspect of child support in kind, the appellate court reversed the order denying former wife’s motion for contempt. Here, the MSA was “unambiguous” in its provision that no one would reside in the home other than the children and former wife; therefore, former husband’s obligation to pay one-half of the mortgage was an aspect of support. Contempt is a proper remedy when a party fails to fulfill a support obligation. Despite the magistrate’s conclusion that former wife falsely claimed her mother as a dependent, nothing in the MSA provided that “perpetrating a fraud on the IRS” would operate to suspend former husband’s obligation. Reversed and remanded.

[https://edca.4dca.org/DCADocs/2017/0656/170656\\_1709\\_12132017\\_09531727\\_i.pdf](https://edca.4dca.org/DCADocs/2017/0656/170656_1709_12132017_09531727_i.pdf)  
(December 13, 2017)

Reidy v. Reidy, \_\_ So. 3d \_\_, 2017 WL 6506456 (Fla. 4th DCA 2017). **UNDER RULE 9.600(c)(1), A LOWER COURT RETAINS JURISDICTION TO MAKE AWARDS NECESSARY TO PROTECT WELFARE**



AND RIGHTS OF ANY PARTY PENDING APPEAL; NEED AND ABILITY IS APPLICABLE TO PRE-JUDGMENT TEMPORARY ALIMONY, NOT POST-JUDGMENT. Former husband appealed a successor judge's award to former wife of temporary alimony pending appeal. The original trial judge had denied former wife's request for alimony and fees based upon findings that the spouses had been in dissolution proceedings for much of their short-term marriage, that former wife was due to receive a six-figure distribution, and that because of her conduct, the litigation was unnecessarily prolonged. The appellate court reversed the award of temporary alimony pending appeal because the trial court failed to apply the correct standard for an award of post-judgment temporary alimony. The appellate court held that an award of temporary alimony pending appeal where alimony was not been awarded in the final judgment is permitted in narrow circumstances. Although s. 61.16(1), F. S. (2017), is silent on the issue, Florida Rule of Appellate Procedure 9.600(c)(1) provides that a lower tribunal retains jurisdiction to make "awards necessary to protect the welfare and rights of any party pending appeal." The appellate court's reading of the rule in McPherson v. McPherson, 775 So. 2d 973, 974 (Fla. 4th DCA 2000), was that it did "not limit the court's power to award alimony pending appeal only to those cases where alimony has been awarded in the final judgment"; however, the appellate court noted that McPherson involved a stay of an equitable distribution award so that temporary alimony was necessary to protect the welfare of one of the spouses. Here, the appellate court reversed because the successor judge framed the issue as one of need and ability to pay, the test to be applied during a pre-judgment hearing for temporary alimony, instead of determining whether temporary alimony was necessary to protect former wife's welfare pending appeal. Reversed and remanded for further proceedings.

[https://edca.4dca.org/DCADocs/2017/0687/170687\\_1708\\_12202017\\_09550694\\_i.pdf](https://edca.4dca.org/DCADocs/2017/0687/170687_1708_12202017_09550694_i.pdf)  
(December 20, 2017)

#### ***Fifth District Court of Appeal***

Golchin v. Farzaneh, \_\_ So. 3d \_\_, 2017 WL 5906886 (Fla. 5th DCA 2017). **RETROACTIVE CHILD SUPPORT CANNOT BE ORDERED FOR PERIOD PRIOR TO FILING DATE.** Former husband appealed a trial court order to pay retroactive child support. The appellate court concluded that the trial court erred by granting retroactive child support including a period of time prior to the date former wife filed her motion for child support. Accordingly, it reversed and remanded for entry of an order correcting the arrearage amount by using the date former wife filed her motion for child support as the commencement date for retroactive support.

<http://www.5dca.org/Opinions/Opin2017/112717/5D17-1645.op.pdf> (December 1, 2017)

Stone v. Anderson, \_\_ So. 3d \_\_, 2017 WL 5907124 (Fla. 5th DCA 2017). **REMANDED FOR RECALCULATION OF CHILD SUPPORT BASED ON CORRECT OVERNIGHTS.** The appellate court agreed with former husband that the child support was erroneously calculated because he was to have 136 overnights, not 103 as relied upon in the calculations. Accordingly, that issue was remanded for calculations; the remainder of the order was affirmed.

<http://www.5dca.org/Opinions/Opin2017/112717/5D16-4066.op.pdf> (December 1, 2017)

Brunzman v. Brunzman, \_\_ So. 3d \_\_, 2017 WL 6542538 (Fla. 5th DCA 2017). **ABSENT AGREEMENT BETWEEN THE SPOUSES OR FINDINGS OF EXCEPTIONAL CIRCUMSTANCES, DURATIONAL**



ALIMONY CANNOT BE NON-MODIFIABLE; A TRIAL COURT MUST MAKE FINDINGS AS TO COST AND SPECIAL CIRCUMSTANCES WHEN ORDERING LIFE INSURANCE TO SECURE A SUPPORT OBLIGATION; ENTITLEMENT TO FEES WITHOUT AN AMOUNT NOT REVIEWABLE. Former husband argued that the trial court abused its discretion in its final judgment dissolving a fourteen-year marriage by awarding former wife alimony and fees and failing to make the requisite findings in imposing a life insurance requirement. At issue was former wife's need and former husband's ability to pay alimony. At the time of trial, former wife was in bankruptcy, due in part to former husband's failure to pay alimony upon losing his job and not having resumed payments after obtaining a new one. The trial court ordered former husband to begin paying \$48,000 in alimony arrears once the non-modifiable durational alimony of \$500 a month was paid in full. The appellate court affirmed the imposition of alimony and found no abuse of discretion in the determination of arrearages; however, it noted that absent an agreement of the spouses or findings of exceptional circumstances, it was error for a trial court to make durational alimony non-modifiable under s. 61.08(7), F.S. (2010). The trial court was instructed to strike any language in the alimony award precluding modification. The appellate court reversed and remanded the requirement that former husband obtain life insurance to secure his alimony obligation due to the trial court's failure to make findings as to the cost of the insurance and any special circumstances justifying the need for it. The trial court was instructed on remand to either make specific findings justifying the imposition of the insurance requirement or strike it from the final judgment. Because the trial court found that former wife was entitled to fees, but did not award an amount, the appellate court found that portion of the appeal not ripe for review. The appellate court commended the trial court for having done "the best it could with the information provided" in a "lengthy, contentious case" involving numerous judges.

<http://www.5dca.org/Opinions/Opin2017/121817/5D16-2300.op.pdf> (December 22, 2017)



## Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law

### ***Florida Supreme Court***

No new opinions for this reporting period.

### ***First District Court of Appeal***

Ashford-Cooper v. Ruff, \_\_ So. 3d \_\_, 2017 WL 6347368 (Fla. 1st DCA 2017). [STALKING INJUNCTION REVERSED](#). An injunction was entered against a woman at the request of her husband's girlfriend, and the woman appealed. The appellate court reversed, noting that there was no proof that the repeated calls and texts the woman made to her husband caused the girlfriend substantial emotional distress.

[https://edca.1dca.org/DCADocs/2017/0035/170035\\_1287\\_12132017\\_11390220\\_i.pdf](https://edca.1dca.org/DCADocs/2017/0035/170035_1287_12132017_11390220_i.pdf)

(December 13, 2017)

Reid v. Saunders, \_\_ So. 3d \_\_, 2017 WL 6454443 (Fla. 1st DCA 2017). [INJUNCTION AGAINST STALKING REVERSED](#). The appellant appealed after an injunction against stalking was entered against her. Because the injunction was not supported by competent, substantial evidence, the appellate court reversed. The petitioner did not provide documentation of the numerous phone calls, emails, and texts referenced during the hearing, and without those there was no way for the trial court to determine whether or not the communications would have created substantial emotional distress under a reasonable person standard.

[https://edca.1dca.org/DCADocs/2016/4732/164732\\_1287\\_12192017\\_08215941\\_i.pdf](https://edca.1dca.org/DCADocs/2016/4732/164732_1287_12192017_08215941_i.pdf)

(December 19, 2017)

Gaynor v. Gaynor, \_\_ So. 3d \_\_, 2017 WL 6623984 (Fla. 1st DCA 2017). [ORDER DENYING MOTION TO DISSOLVE INJUNCTION REVERSED](#). The appellant filed a legally sufficient motion alleging a change in circumstances, but it was summarily denied without a hearing. The appellate court reversed and remanded for further proceedings.

[https://edca.1dca.org/DCADocs/2017/1426/171426\\_1287\\_12292017\\_08523029\\_i.pdf](https://edca.1dca.org/DCADocs/2017/1426/171426_1287_12292017_08523029_i.pdf)

(December 29, 2017)

### ***Second District Court of Appeal***

Trowell v. Crawford, \_\_ So. 3d \_\_, 2017 WL 6625541 (Fla. 2d DCA 2017). [APPEAL FROM ORDER GRANTING A TEMPORARY INJUNCTION AGAINST REPEAT VIOLENCE DISMISSED](#). The trial court entered a temporary injunction against repeat violence in error because the petition failed to allege two incidents of violence; however, the trial court ultimately dismissed the petition, which made the appeal moot.

No link available. (December 29, 2017)

### ***Third District Court of Appeal***

No new opinions for this reporting period.

### ***Fourth District Court of Appeal***

No new opinions for this reporting period.



***Fifth District Court of Appeal***

Akin v. Jacobs, \_\_ So. 3d \_\_, 2017 WL 6542506 (Fla. 5th DCA 2017). **INJUNCTION AGAINST STALKING REVERSED**. A co-worker filed a petition against another co-worker after she received harassing anonymous letters, her work space was vandalized, and she discovered through an investigation at work that the co-worker had been tracking her social media pages. However, at trial, the petitioner's evidence was lacking, and she didn't testify that she suffered substantial emotional distress. Therefore, the injunction was reversed.

<http://www.5dca.org/Opinions/Opin2017/121817/5D17-1246.op.pdf> (December 22, 2017)