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Delinquency Case Law

Florida Supreme Court

In re: Amendments to Florida Rules of Juvenile Procedure, __ So. 3d __, 2011 WL 4975440 (Fla. 2011). THE FLORIDA SUPREME COURT ADOPTED AMENDMENTS TO JUVENILE PROCEDURE FORM 8.947 (DISPOSITION ORDER -- DELINQUENCY). The amendments conform form 8.947 to recent amendments to ss. 985.47 and 985.441, F.S., effective October 1, 2011. See Ch. 2011–54, § 1, Laws of Fla. (amending s. 985.441 -- Commitment); and Ch. 2011–70, § 4, Laws of Fla. (amending s. 985.47 -- Repeal of Serious or Habitual Juvenile Offender statute). The Florida Supreme Court also adopted amendments to the Rules of Juvenile Procedure: 8.820 (Hearing), 8.825 (Order and Judgment), 8.987 (Petition for Judicial Waiver of Parental Notification of Termination of Pregnancy), and 8.990 (Final Order Granting Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy). The Court also adopted a new rule 8.840 (Remand of Proceedings), and replaced the existing form, 8.992 (Clerk's Certificate Pursuant to Section 390.01114(4)(b), Florida Statutes), with a new form, 8.992 (Minor's Petition to Chief Judge to Require a Hearing on Her Petition for Judicial Waiver of Notice).


First District Court of Appeal

K.G. v. State, __ So. 3d __, 2011 WL 4598213 (Fla. 1st DCA 2011). TRIAL COURT'S ANALYSIS FAILED TO MEET THE REQUIREMENTS OF E.A.R. v. STATE, 4 SO. 3D 614, 638 (FLA. 2009). The juvenile appealed the trial court's order placing him in a moderate-risk residential program. The Department of Juvenile Justice (DJJ) had recommended a minimum-risk day treatment program. The juvenile argued that in departing from the recommendation by the DJJ, the trial court failed to engage in the appropriate level of analysis as set forth in E.A.R. v. State, 4 So. 3d 614, 638 (Fla. 2009). The First District Court of Appeal agreed and found that the trial court did not articulate on the record why a moderate-risk residential program was better suited than the DJJ's recommendation to serving the juvenile's rehabilitative needs, in the least restrictive setting, and to protecting the public. Accordingly, the disposition was reversed and remanded. The trial court was provided instructions to enter an order in compliance with E.A.R., or, if the trial court could not, to impose the probation recommended by the DJJ.


Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

M.S. v. State, __ So. 3d __, 2011 WL 4949981 (Fla. 3d DCA 2011). THE TRIAL COURT'S DECISION TO PROHIBIT THE JUVENILE'S SELF-DEFENSE ARGUMENT IN CLOSING WAS NOT AN ABUSE OF DISCRETION. The juvenile appealed a withholding of adjudication for battery. The juvenile was at a temporary shelter for children. A supervisor saw a young girl crying because she had been
in an altercation with other girls at the shelter. The supervisor took the young girl to a hallway outside the dorm and the juvenile followed them. A verbal altercation between the girl and the juvenile ensued, and the juvenile reached around the supervisor and slapped the young girl. The State’s only witness was the supervisor. She testified that she did not know if the young girl had struck the juvenile first or if they were striking each other in mutual combat. The defense moved several times for dismissal. In closing, the defense tried to argue self-defense, but was prohibited. The trial judge ruled that she would not “be hearing any references in closing argument to a defense that was not raised.” The juvenile appealed, arguing that the trial court abused its discretion and erroneously prohibited argument of self-defense during closing arguments. The Third District Court of Appeal found that closing arguments are improper where they cannot be reasonably inferred from the evidence presented at trial. For the juvenile to have acted in self-defense, it must appear to a reasonable person in her situation that the juvenile needed to defend herself from “imminent use of unlawful force.” In the instant case, it could not be reasonably inferred that the juvenile acted in self-defense where the young girl was being escorted away from the juvenile and was being separated from the juvenile by a supervisor. Thus, the trial court did not abuse its discretion by prohibiting the juvenile from arguing self-defense in closing. Accordingly, the trial court’s judgment was affirmed.


Fourth District Court of Appeal
M.M. v. State, __ So. 3d __, 2011 WL 5061354 (Fla. 4th DCA 2011). THE TRIAL COURT ERRED IN DENYING THE JUVENILE’S MOTION FOR JUDGMENT OF DISMISSAL BECAUSE THE POLICE OFFICER WAS NOT EXECUTING A LAWFUL DUTY WHEN HE ORDERED THE JUVENILE TO STOP. The juvenile was found guilty of the lesser included offense of resisting arrest without violence. The juvenile appealed, arguing that the police officer was not executing a lawful duty when he was ordered to stop because the officer lacked reasonable suspicion that the juvenile had engaged or would engage in illegal activity. A police officer received a dispatch from an anonymous caller regarding a large group of juveniles fighting. The tip did not include a description of the individuals involved. When the officer arrived, he saw four youths. One of the youths, not the juvenile, looked disheveled, as if he had been in a fight. The disheveled youth’s hair was “messsed up,” and his T-shirt was stretched out and the collar ripped. These observations led the officer to conclude that the youth had been in a fight. The officer asked the four youths to speak with him about a fight in the area. Two of the youths, including the disheveled youth, stopped. The other two youths, including the juvenile, ignored the officer’s request to stop. A backup officer arrived and observed the two youths walking away. The officer then instructed the backup officer to stop the two youths who were walking away. The backup officer approached and instructed the two youths to stop, but they kept walking. The backup officer yelled “stop,” and the juvenile continued walking. The backup officer again yelled “stop.” This time the juvenile turned around, responded, and stood in an aggressive manner. The backup officer testified that the juvenile resisted and attempted to strike him several times. The juvenile was eventually apprehended and handcuffed. The Fourth District Court of Appeal found that to conduct an investigatory stop, a law enforcement officer must have a reasonable suspicion that a person has committed, is committing, or is about to commit a crime. To determine whether an officer had reasonable suspicion for an investigatory stop,
the court looks at the totality of circumstances. Law enforcement must be able to articulate a well-founded suspicion of criminal activity in light of the officer’s training and experience. Mere suspicion is not enough. An anonymous tip to police will justify a stop as long as it can be corroborated. This requires the officers to observe unlawful acts, unusual conduct, or suspicious behavior when they arrive on scene. The Fourth District held that there was no reasonable suspicion. The two police officers responded to an anonymous tip that failed to provide a description of any of the juveniles involved. When the officer arrived on the scene, he saw only four youths, one of whom looked disheveled. That disheveled youth stopped to talk to the officer when requested. The juvenile and another youth continued walking. Neither of them appeared disheveled, and no one witnessed any unlawful act, unusual conduct, or suspicious behavior. There was insufficient corroboration of the anonymous tip to provide reasonable suspicion for the backup officer to conduct an investigatory stop of the juvenile. The juvenile’s adjudication was reversed and remanded for entry of a judgment of dismissal.


C.R. v. State, __ So. 3d __, 2011 WL 5061361 (Fla. 4th DCA 2011). THE RECORD DID NOT SUPPORT THE TRIAL COURT’S FINDING THAT THE KNIFE’S FEATURES DISTINGUISHED IT FROM A “COMMON POCKETKNIFE” WITHIN THE DEFINITION SET FORTH IN S. 790.001(13), F.S. (2008). The juvenile appealed a finding of possession of a weapon on school property in violation of s. 790.115(2), F.S. (2008). The juvenile indicated that he brought the knife to school and intended to use it for protection against a bully. The juvenile argued that it was error for the trial court to deny the motion for judgment of dismissal, because the knife was a common pocketknife and not a weapon. The Fourth District Court of Appeal found that s. 790.001(13), F.S.(2008), defines a “weapon” as being “any dirk, knife, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.”In L.B. v. State, 700 So. 2d 370, 372 (Fla. 1997), the Florida Supreme Court defined a “common pocketknife” as “[a] type of knife occurring frequently in the community which has a blade that folds into the handle and that can be carried in one’s pocket.” In a footnote, the Court declined to state that four inches was a bright-line cutoff for determining whether a particular knife is a “common pocketknife.” Since L.B., some courts have found that knives with distinctive weapon-like characteristics do not fall within the common pocketknife exception, even though the blades at issue were less than four inches. In the instant case, the trial court considered several weapon-like characteristics of the knife: a clip to attach to a belt, a knob that makes the blade easy to open, a locking mechanism, and a textured handle to determine the knife was a weapon. The Fourth District held that the record did not support the ultimate conclusion of the trial court that these features distinguished the knife from a “common pocketknife,” and thus the trial court erred in its determination. The juvenile’s adjudication was reversed and remanded for entry of a judgment of dismissal.


V.P. v. State, __ So. 3d __, 2011 WL 4949883 (Fla. 4th DCA 2011). THE 5-DAY DETENTION LIMITATION IN S. 985.27(1)(B), F.S. (2011), ONLY APPLIES TO THE SECURE DETENTION OF JUVENILES AWAITING PLACEMENT IN MODERATE-RISK PROGRAMS. The juvenile petitioned for a writ of habeas corpus, arguing that home detention cannot exceed five days unless the
Department of Juvenile Justice (DJJ) requests an additional ten days, which did not occur. The trial court placed the juvenile on home detention with electronic monitoring and imposed a curfew until his placement into a moderate-risk residential program. Section 985.27(1)(b), F.S. (2011), provides that a child who is awaiting placement in a moderate-risk residential program must be removed from “detention” within 5 days unless DJJ receives an order from the court authorizing continued detention not to exceed 15 days after entry of the commitment order. Detention is not specifically defined. The Fourth District Court of Appeal held that the “detention” that may be continued, and is limited to five days by the first sentence of s. 985.27(1)(b), F.S., applies only to the secure detention of juveniles awaiting placement in moderate risk programs. Accordingly, the petition was denied. http://www.4dca.org/opinions/Oct%202011/10-19-11/4D11-3001.op.pdf (October 19, 2011).

A.H. v. State, __ So. 3d __, 2011 WL 4809171 (Fla. 4th DCA 2011). UNLOADED BB GUN FOUND ON THE JUVENILE WAS NOT A “WEAPON” UNDER S. 790.001(13), F.S. (2010). The juvenile appealed the denial of his motion for judgment of dismissal on the charge of possession of a weapon at a school bus stop under s. 790.115(2)(a), F.S. (2010). The juvenile argued that there was insufficient evidence to prove that the unloaded BB gun was a “weapon” as defined in 790.001(13), F.S. (2010). The Fourth District Court of Appeal found that whether or not the unloaded BB gun was “deadly” was a factual question to be resolved by the trier of fact. The trial court held that the BB gun was a weapon because it could be used in a blunt fashion to pistol whip somebody, which would cause serious injury or ultimately death if used in such a fashion. The Fourth District held that the evidence, taken in the light most favorable to the state, did not support a conviction. There was no evidence that the juvenile used, or threatened to use, the BB gun as a bludgeon to engage in the act of pistol whipping. The appellate court held that the trial court should have granted the motion for judgment of dismissal on the charge of possession of a weapon at a school bus stop. Accordingly, the denial was reversed and remanded. http://www.4dca.org/opinions/Oct%202011/10-12-11/4D10-4193.op.pdf (October 12, 2011).

A.S.F. v. State, __ So. 3d __, 2011 WL 4577833 (Fla. 4th DCA 2011). THE EVIDENCE WAS INSUFFICIENT TO SUPPORT AN ADJUDICATION FOR AGGRAVATED BATTERY AND STRONG-ARM ROBBERY BASED UPON AN AIDING AND ABETTING THEORY. The juvenile appealed his adjudication for aiding and abetting an aggravated battery and strong-arm robbery. The crime occurred in the victim’s backyard. While purchasing beer, the victim ran into a friend and two other boys he knew from school, all of whom joined him back at his home to drink the beer. Within an hour, the victim’s friend left while the two individuals, one of whom was the juvenile, remained at the house. An older male, unknown to the victim but friendly with the other two, arrived at the home. At some point, the victim was attacked from behind, stabbed in the head, and robbed. The victim did not know who attacked him. After the attack, the victim’s mother saw two of the males jumping the backyard fence while the juvenile ran through the front of the house. The victim’s mother found the victim’s wallet on the other side of the fence after the incident. The Fourth District Court of Appeal found that to secure a conviction on an aiding and abetting theory, the State must establish that the defendant helped the person who actually committed the crime and that the defendant intended to participate in the crime.
Circumstantial evidence may be admitted, but that evidence must satisfy the requisite standard of proof. Merely being present at a scene and fleeing when an offense is committed does not sufficiently establish participation to support a conviction based on an aiding and abetting theory. The Fourth District held that there was insufficient evidence that the juvenile was involved or a knowing participant in the crime. The State presented no evidence that the juvenile had any participation in the attack and merely showed that he might have, at some point, been aware that an attack was going to occur. Without additional evidence to eliminate the hypothesis of innocence concerning a defendant who is present at a scene and flees when an offense is committed, the trial court’s conviction must be reversed. Accordingly, the juvenile’s adjudication was reversed and remanded.

Fifth District Court of Appeal
J.H. v. State, __ So. 3d __, 2011 WL 4716330 (Fla. 5th DCA 2011). DISPOSITION ORDER WAS REVERSED AND REMANDED WHERE WITHDRAWAL OF ORIGINAL DISPOSITION ORDER AND IMPOSITION OF HARSHER SENTENCE VIOLATED DOUBLE JEOPARDY. The juvenile entered a plea of no contest to one count of lewd or lascivious conduct. At the initial disposition hearing, the court orally sentenced the juvenile to probation until he turned 19 years old and ordered 23 hours of community service. The court signed the Department of Juvenile Justice’s (DJJ) proposed plan and the matter concluded. Fourteen minutes later, the juvenile was summoned back to the courtroom at the request of the assistant state attorney, who thought that the sentence needed to be re-addressed because a commitment staffing evaluation that had been previously ordered was never completed. The court withdrew the disposition order and ordered that another disposition hearing be held after the commitment staffing was completed. The commitment staffing was held, and the case proceeded to a second disposition hearing several weeks later. This time, the DJJ recommended that the juvenile be placed in residential treatment in a moderate-risk program. The court imposed three years in a level six program, ordered 23 hours of community service to cover court costs, and added 20 hours of community service that had not been included in the first order. The State argued that the original sentence was invalid because the court did not have before it a fully completed, statutorily-required predisposition report at the time of sentencing as required under s. 985.229(1), F.S. Missing from the predisposition report was a comprehensive evaluation. The Fifth District Court of Appeal found that the State was correct that the predisposition report to which it referred was incomplete—it noted on its face the absence of the comprehensive evaluation at the time it was prepared. However, the record also contained a subsequent, complete predisposition report and comprehensive evaluation. This complete report, along with the DJJ's proposed plan for probation, was stamped as “Filed in Open Court” on the day of the first disposition hearing. Hence, the State advanced an erroneous argument in support of its contention that the original sentence was improper. As noted above, the juvenile was originally sentenced to probation. Without proof that a probationer has violated probation, a trial court cannot alter an order of probation by revoking or enhancing the terms thereof; if it does so, it has violated the prohibition against double jeopardy. Probation cannot be revoked or enhanced without first a determination that the probationer violated probation. Because this original sentence was valid, the court violated the constitutional proscription against double jeopardy.
by sentencing the juvenile a second time to a harsher sentence. Accordingly, the Fifth District reversed the second disposition order and remanded this case for reinstatement of the initial disposition order and sentence originally imposed. 

Dependency Case Law

Florida Supreme Court
No new opinions for this reporting period.

First District Court of Appeal

M.A.C. v. Department of Children and Families, ___ So. 3d ____, 2011 WL 5101367 (Fla. 1st DCA 2011). INTERSTATE COMPACT VIOLATION.

The First District Court of Appeal reversed an order that terminated protective supervision and placed a child permanently with her father in another state. The mother had appealed the trial court’s order and argued, inter alia, that the court violated the Interstate Compact for the Placement of Children (“ICPC”). The Department and Guardian ad Litem both conceded error. Per a previous order of the trial court, the child had been on an extended visit with her father; her permanent residence was with her mother, half-siblings, and the mother’s paramour. On appeal, the court noted that the ICPC and Florida law require that a receiving state concur in the placement of the child as well as a statutorily-compliant home study. Because neither requirement was fulfilled by the date of the hearing and trial court’s order on appeal, the trial court erred by placing the child permanently with the father and terminating supervision. The District Court agreed that the mother was entitled to an evidentiary hearing and further noted that the record reflected that the child was residing with her father in another state. The court concluded by stating that its decision did not require the child to return to Florida pending further evidentiary hearings pursuant to the opinion. 

Second District Court of Appeal

C.M. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ____, 2011 WL ______ (Fla. 2d DCA 2011). ORDER REVERSED.

The Second District Court of Appeal reversed a pair of orders that denied a mother’s motion for reunification, and that terminated protective supervision with the child in the custody of the father. The child had been adjudicated dependent in June 2009, was reunified with his father in Georgia in December 2009, and had resided with the father since then. At a judicial review hearing in May 2011, the trial court found both parents substantially compliant with the case plan. The mother filed a motion for reunification, whereas the Department filed a motion for termination of supervision as to the child’s placement with the father. In June 2011, the trial court denied the mother’s motions without findings of fact or explanation beyond the handwritten word “Denied” on an order. The trial court’s order granting the Department’s
motion made a number of findings, including that the child was in a stable and permanent placement with the father, that both parents had substantially complied with their case plans, and that the child’s best interests were to remain in the father’s long-term custody. On appeal, the court noted the requirements of sections 39.610(10) and 39.522(2), Florida Statutes, regarding reunification of a child with a parent. The order denying the mother’s motion for reunification failed to include any of the required statutory findings. In addition, the order granting the Department’s motion failed to include findings of three of the five statutory factors in section 39.610(10), Florida Statutes. Moreover, the two factors that were addressed were done so in the context of justifying placement with the father rather than with respect to denying reunification with the mother. Thus, both orders were facially deficient. The appellate court therefore reversed both orders and remanded the case for the trial court to determine whether reunification with the mother would endanger the child. The trial court was required to address all applicable factors in section 39.621(10), Florida Statutes. 


G.M. v. Department of Children and Family Services and Guardian ad Litem Program, ___ So. 3d ___, 2011 WL 4809058 (Fla. 2d DCA 2011). TERMINATION OF PARENTAL RIGHTS REVERSED. The Second District Court of Appeal reversed termination of a father’s parental rights in a case in which the Department and the Guardian ad Litem Program conceded error. The trial court had found that the father failed to complete his case plan tasks and had abandoned his child. The father is incarcerated, scheduled for release in early 2012, and argued on appeal that termination of parental rights was inappropriate because the failure to substantially comply with the case plan was due to the failure of the department to make reasonable efforts to reunify. The District Court noted that although the father had been incarcerated throughout the case, the department failed to communicate with him on the case plan, seven case managers assigned to the case made no attempt to confer with him, and the department did not send him a copy of his case plan. Moreover, the father’s signature line on the case plan was blank and the department ignored his written requests for assistance. Nevertheless, the father took steps to improve himself and sought transfer to participate in a parenting class and other programs. The appellate court held that the father’s inability to comply with the case plan was due to his incarceration and the department’s failure to assist him. On the issue of abandonment, the appellate court noted that incarceration is not abandonment but rather is a factor for consideration. The father had established communication with the child and termination of parental rights was improper. The appellate court noted that although it was reversing termination of parental rights, the child remained dependent. The case was remanded back to the trial court for further proceedings. 


Third District Court of Appeal

No new opinions for this reporting period.
Fourth District Court of Appeal

L.W. v. Department of Children and Families, ___ So. 3d ____, 2011 WL 4578311 (Fla. 4th DCA 2011). TERMINATION OF PARENTAL RIGHTS AFFIRMED.

The Fourth District Court of Appeal affirmed an order terminating the mother’s parental rights. The mother had argued on appeal that the trial court should have dismissed the petition, that termination of her parental rights was not the least restrictive means of protecting the child, and that the mother was not responsible for the lack of contact with the child. At the trial level, the father had surrendered his parental rights and the department alleged that the mother had abandoned the child. Before the trial, the parties stipulated that the mother did not have a case plan and the child had not been adjudicated dependent. They also stipulated that the child had not seen the mother for three years and nine months. The mother went five years without paying support or providing clothing, housing, and medical treatment for the child. The mother did not write to the child, and last visited the child nearly four years before the petition was filed. During that visit, the mother engaged in sexual activity her boyfriend in the child’s presence. The trial court had found that the child was mature and happy in her placement with the maternal grandparents who wanted to adopt her. On appeal, the court held that the trial court’s findings of fact were supported by competent, substantial evidence, that the mother had no contact with the child for nearly four years, and that the length of time without contact established abandonment by the mother. On the issue of least restrictive means, the appellate court noted that both the child and the child’s therapist testified about the lack of bond between the child and the mother. Also, the appellate court had previously held in another case that termination may be the least restrictive means under similar circumstances. The appellate court therefore affirmed termination of the mother’s parental rights.


K.I. v. Department of Children and Families, ___ So. 3d ____, 2011 WL 4578271 (Fla. 4th DCA 2011). UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT APPLIED BY TRIAL COURT.

The Fourth District Court of Appeal relied on the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) to decide a case involving a final order transferring jurisdiction from Florida to Virginia to determine placement of the child in a dependency case. In reviewing the order on appeal, the District Court noted that it is bound by the UCCJEA and that the court that has initial child custody jurisdiction to decide child placement under the UCCJEA is “the home state of the child on the date of the commencement of the proceeding.” The dependency case began in 2001 in Broward County, and the child originally lived in Florida with her mother. The child was adjudicated dependent and placed with her father in Pennsylvania, although he and the child eventually moved to Virginia. The mother was granted visitation. In 2003, the Florida court terminated supervision over the child with the father retaining custody and the court retaining jurisdiction. In 2010, the father was arrested for child abuse in Virginia and the child was placed with the paternal aunt in Virginia. The mother sought to reopen the dependency case to have the child returned to Florida and placed with her. The Florida court temporarily ordered the child’s return. The Virginia court held a hearing attended by child advocates from ChildNet, the child, the guardian ad litem, and the Virginia Department of
Human Services but not the mother, who was not notified of the hearing. The Virginia court ordered the child to stay in Virginia with the aunt and declined to enforce the Florida order. With the mother present at a hearing, the Florida court subsequently terminated jurisdiction based on the Virginia findings. On appeal, the District Court disagreed with the mother’s arguments that Florida was the only proper forum for modification of placement and that the trial court improperly transferred jurisdiction to Virginia (due to Virginia being a more convenient forum). The court held that the trial court considered all of the relevant information and properly applied the UCCJEA statutory factors and therefore did not abuse its discretion in terminating jurisdiction over the child and transferring the case to Virginia. However, the Department conceded error to the mother’s argument that she was denied the opportunity to be heard in the Virginia proceedings. Therefore the court reversed the order on appeal and remanded the case for further proceedings, noting that after due notice to all parties, the trial court should rule on whether retaining jurisdiction in Florida is proper based on its factual findings.


**Fifth District Court of Appeal**

H.B. v. Department of Children and Families, ___ So. 3d ____, 2011 WL _______ (Fla. 5th DCA 2011). **DEPENDENCY ADJUDICATION REVERSED AND REMANDED.**

The Fifth District Court of Appeal reversed an adjudication of dependency due to inadequate findings of fact by the trial court. The trial court had cursorily stated in its order that “[t]he factual basis for the adjudication of dependency is as follows: as outlined on the petition for dependency and incorporated herein as if stated.” The Department conceded that this failed to meet the requirements of section 39.507(6), Florida Statutes. The court therefore reversed and remanded the case.

http://www.5dca.org/Opinions/Opin2011/101011/5D11-863.op.pdf (October 14, 2011).

**Dissolution Case Law**

**Florida Supreme Court**


Proceedings for temporary or concurrent custody of minor children by extended family were added to Florida Rule of Judicial Administration 2.545(d)(2), and to the list of actions to which family law rules apply as enumerated in Florida Family Law Rule of Procedure 12.010(a)(1).


**First District Court of Appeal**

No new opinions for this reporting period.
Second District Court of Appeal

Fotinos v. Fotinos, __ So. 3d __, 2011 WL 4953426 (Fla. 2d DCA 2011).

TRIAL COURT MUST DISTRIBUTE ASSETS EQUALLY AND MUST JUSTIFY ANY UNEQUAL DISTRIBUTION; TRIAL COURT HAS DISCRETION TO ORDER PAYMENT OF EQUITABLE DISTRIBUTION OVER TIME, BUT PAYMENT OVER 18 YEARS EFFECTIVELY DEPRIVED SPOUSE OF HER INTEREST IN MARITAL ASSETS.

The appellate court agreed with former wife that the trial court had erred in making an unequal distribution to former husband without providing specific findings of fact in support. The appellate court noted that section 61.075(1), Florida Statutes, requires distribution of marital assets to be equal and that any disparate treatment be justified. The appellate court reiterated that the final distribution, whether equal or unequal, must be supported by findings of fact based on competent, substantial evidence. Failure to include the required findings of fact renders appellate review of the distribution impossible and requires reversal. Here, the trial court characterized the home acquired by the spouses during their marriage as marital, but then awarded former wife’s interest to former husband without justification or valuation; it also allowed former husband to pay former wife’s portion of the distribution over 18 years without explanation, “effectively depriving” her of her one-half interest in the marital assets. Reversed and remanded.

Hunter v. Hunter, __ So. 3d __, 2011 WL 4863698 (Fla. 2d DCA 2011).

APPELLATE RULE 9.130(f), DIVESTED TRIAL COURT OF JURISDICTION; TRIAL COURT ERRED IN ENTERING SUBSTANTIALLY SAME ORDER AS ONE APPEALED.

For a second time, former husband appealed the trial court’s order in which former wife replaced him as primary residential parent. Hunter v. Hunter, 65 So. 3d 1213 (Fla. 2d DCA 2011), referred to as Hunter I, resulted in a reversal; this second appeal resulted in reversal as well. The appellate court held that Florida Rule of Appellate Procedure 9.130(f), “divested the trial court of jurisdiction to enter the second order”. That rule provides that, during the course of review of a nonfinal order, and in the absence of a stay, a trial court may proceed with all matters, but may not render a final order which disposes of the cause pending appellate review. Here, the second order on appeal was substantially the same as the one previously appealed and there was no stay.

Third District Court of Appeal

Bedoya v. Bedoya, __ So. 3d __, 2011 WL 4949907 (Fla. 3d DCA 2011).

TRIAL COURT ERRED IN HAVING AGREED-UPON AMOUNT OF ALIMONY RUN FROM DATE OF FILING OF ACTION INSTEAD OF DATE SEPARATION AGREEMENT WAS ENTERED INTO; ALSO ERRED IN DENYING PREJUDGMENT INTEREST.

This was a short opinion in which the appellate court reversed and remanded the final judgment of dissolution of marriage because it: 1) ordered that former wife would receive the
agreed-upon amount of alimony beginning on the date of filing of the action (September 2009) instead of the date the separation agreement was entered into (January, 2004); and 2) denied prejudgment interest. http://www.3dca.flcourts.org/Opinions/3D10-2161.pdf (October 19, 2011).

Fourth District Court of Appeal  
Harris v. Hampton, __ So. 3d __, 2011 WL 4578275 (Fla. 4th DCA 2011).  
CONTEMPT ORDER MUST CONTAIN AFFIRMATIVE FINDING THAT CONTEMNOR IS ABLE TO COMPLY WITH THE ORDER; IMPLIED OR INHERENT PROVISIONS IN A JUDGMENT CANNOT SERVE AS BASIS FOR AN ORDER OF CONTEMPT.  
The appellate court agreed with former wife that the trial court erred in entering a post-dissolution order of contempt requiring that she enroll the former couple’s minor child in a particular school, because the contempt order did not contain an affirmative finding as to her ability to comply and the underlying order was not explicit. The appellate court noted that neither the consent judgment which had dissolved the parties’ marriage in Michigan nor the mediation settlement agreement entered into in Florida contained a requirement that the child attend a particular school. Noting that a judgment of contempt carries with it a presumption of correctness and will not be overturned without a clear showing of either abuse of discretion or fundamental error, the appellate court reiterated that a contempt order cannot be based upon noncompliance with something an order does not say. “Implied or inherent provisions of a final judgment cannot serve as a basis for an order of contempt.” (Keitel v. Keitel, 716 So. 2d 842, 844 (Fla. 4th DCA 1998)). http://www.4dca.org/opinions/Oct%202011/10-05-11/4D11-966.op.pdf (October 5, 2011).

Fifth District Court of Appeal  
Crowell v. Crowell, __ So. 3d __, 2011 WL 5109615 (Fla. 5th DCA 2011).  
SPOUSE WHOSE PETITION SUFFICIENTLY ALLEGED GROUNDS FOR MODIFICATION SHOULD HAVE BEEN ALLOWED TO TRY TO PROVE CASE; TRIAL COURT ERRED IN DISMISSING SUPPLEMENTAL PETITION; FEE ISSUE NOT RIPE.  
Former wife appealed an order dismissing her supplemental petition for modification which was entered at the conclusion of the opening statements; the appellate court reversed. The appellate court held that because her petition sufficiently alleged grounds for modification of child support, time-sharing, and parental responsibility for healthcare decisions, the trial court should have afforded her the opportunity to try to prove her case. The fee issue was not ripe and was dismissed. http://www.5dca.org/Opinions/Opin2011/101711/5D10-2198.op.pdf (October 21, 2011).

Cortese v. Cortese, __ So. 3d __, 2011 WL 5108468 (Fla. 5th DCA 2011).  
A SPOUSE WHO MAKES MORTGAGE AND RELATED PAYMENTS ON MARITAL HOME AS TEMPORARY ALIMONY CANNOT ALSO RECEIVE CREDIT FOR THEM.  
The appellate court agreed with former wife that the trial court erred in crediting former husband with one-half of the mortgage payments and house-related expenses he paid on the
marital home during the parties’ separation. Former husband did not request credit in his pleadings; therefore, it was improper for the trial court to have awarded it. Because former husband had a significantly higher income and had been paying the mortgage and related expenses during the parties’ marriage, it was inappropriate for the trial court to have credited him for continuing to make those payments during the separation, especially in light of the parties’ agreement that he would continue to be responsible for payments on the marital home. The trial court had specifically ruled that the expenses former husband paid toward the marital home were temporary alimony; he was not entitled to a credit when the payments constituted his support obligation. The trial court erred in simultaneously crediting former husband’s payments on the marital home towards alimony while requiring former wife to repay him for one-half of those expenses.


Kish v. Kish, __ So. 3d __, 2011 WL 5108480 (Fla. 5th DCA 2011).

TRIAL COURT DID NOT ABUSE ITS DISCRETION BY GRANTING RELOCATION BUT SHOULD HAVE FORMALLY ADOPTED TIME-SHARING PLAN WITHIN ITS ORDER.

The appellate court found no abuse of discretion in the trial court’s decision to grant former wife’s motion to relocate with the parties’ minor children to California, but agreed with former husband that the detailed time-sharing plan upon which the relocation order was based should have been memorialized within the order. The time-sharing plan included a provision for former husband to have frequent internet contact with the children and an agreement that former wife would bear most of the costs of the children’s regular return visits to Florida. The appellate court also held that a reasonable deadline should have been set for former wife to pay her half of the fee for the expert who testified at the hearing. Affirmed, but remanded for the trial court to formally adopt the time-sharing plan and to set a deadline for former wife to pay her share of the expert’s fees.


**Domestic Violence 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**

State v. Wright, --- So. 3d ----, 2011 WL 4578536 (Fla. 2d DCA 2011) PRIOR BAD ACTS OF DOMESTIC VIOLENCE SHOULD BE ADMITTED INTO EVIDENCE. Wright was charged with armed kidnapping with intent to commit bodily harm or terrorize. The victim had previously obtained an injunction for protection against domestic violence, but the trial court excluded the victim’s testimony based upon §90.404(2), F.S. The State requested a writ of certiorari to quash the trial
court's order which precluded the State from presenting evidence of Wright's prior acts of domestic violence. The appellate court concluded that the trial court departed from the essential requirements of the law by applying §90.404(2), F.S., to exclude the evidence and granted the State's petition. The appellate court noted that the evidence of Wright's prior acts of domestic violence and threats was relevant to the issues of motive and intent. Although the prior acts might not have born a striking similarity to the charged offense of armed kidnapping, they are generally relevant pursuant to §90.402. The court also stated that relevancy is not the only issue in determining whether to admit evidence of prior acts; the trial court must also consider whether the probative value outweighs the danger of unfair prejudice, confusion of the issues, or misleading the jury. However, in this case, while it was true that the evidence of Wright's prior acts of domestic violence and threats would be prejudicial, it was also true that without this evidence, the jury might not understand what motive or intent Wright had in kidnapping the victim. Accordingly, under the facts of this case, the probative value of the evidence outweighed the prejudicial effect.


**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.