

OSCA/OCI'S CASE LAW UPDATE
JUNE 2018

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No new opinions for this reporting period.

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

D.F. v. State, __ So. 3d __, 2018 WL 2746296, 43 Fla. L. Weekly (Fla. 5th DCA 2018). **STATE MUST PROVE THAT INVOLUNTARY COMMITMENT IS NECESSARY BY CLEAR AND CONVINCING EVIDENCE.** Petitioner filed a petition for writ of habeas corpus alleging that he was unlawfully detained because the State failed to present substantial, competent evidence to justify his detention. Finding that Petitioner was entitled to immediate relief, the Fifth District Court of Appeal granted the petition by unpublished order. This opinion followed to explain the decision. Petitioner was admitted for involuntary examination under the Baker Act. Petitioner was diagnosed with schizophrenia. At the Petitioner's hearing, the doctor testified that the most concerning issue was poor oral intake, as Petitioner would not eat food that was not pre-packaged or drink water that was not bottled. The doctor characterized this as a "self-care deficit." Other than Petitioner's preference for pre-packaged food and bottled water, the only other evidence offered was Petitioner's diagnosis and the fact that he was no longer taking his medications due to insurance issues. Petitioner declined to testify on his own behalf. The trial court indicated at the close of evidence that Petitioner's silence had "hurt him" and ordered the Petitioner to remain at the medical facility. The Fifth District found that the State must prove by clear and convincing evidence that involuntary commitment is necessary. In re Lehrke, 12 So. 3d 307, 308 (Fla. 2d DCA 2009). The mere fact that an individual might suffer from a mental illness is not sufficient to justify involuntary commitment. Singletary v. State, 765 So. 2d 180, 181 (Fla. 1st DCA 2000). Instead, the State must also show that the party is likely to suffer neglect without treatment or that a substantial likelihood exists that the party will inflict serious bodily harm on himself in the near future, based upon recent behavior such as causing, attempting, or threatening to do such harm. Lehrke, 12 So. 3d at 308–09. In the instant case, the Fifth District held that the State's evidence fell woefully short. First, there was no evidence that Petitioner's insistence on pre-packaged food and bottled water would lead to his neglect or harm others. This

evidence, without some substantial explanation as to how and why it would lead to neglect or harm to others, is inadequate to justify Petitioner's continued involuntary commitment. Second, the Petitioner had no obligation to testify or even speak at the hearing, and his decision to remain silent cannot be used to support his continued confinement. See s. 394.467(6)(a) 3., F.S., ("The patient may refuse to testify at the hearing."). The trial court's suggestion to the contrary was improper. Accordingly, the petition was granted.

<http://www.5dca.org/Opinions/Opin2018/060418/5D18-1720.op.pdf> (June 5, 2018)

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

S.G. v. State, __ So. 3d __, 2018 WL 3151240 (Fla. 1st DCA 2018). [THE MANNER IN WHICH A SHARD OF BROKEN MIRROR WAS USED CAN QUALIFY IT AS A DEADLY WEAPON TO SUPPORT A CHARGE OF AGGRAVATED BATTERY WITH A DEADLY WEAPON](#). S.G. appealed her conviction for aggravated battery with a deadly weapon claiming, among other things, that a 6-8 inch shard of broken mirror did not constitute a deadly weapon. The appellate court held that because the shard from the broken mirror was likely to cause great bodily harm as used by S.G. against her father, the trial court correctly determined it was a deadly weapon and properly denied her motion for judgment of acquittal.

https://edca.1dca.org/DCADocs/2017/3596/173596_1284_06282018_10065096_i.pdf (June 28, 2018)

Second District Court of Appeal

A.P. v. State, __ So. 3d __, 2018 WL 3192545 (Fla. 2d DCA 2018). [STATE MUST ESTABLISH CORPUS DELICTI OF THE CRIME BEFORE AN ADMISSION MAY BE ALLOWED INTO EVIDENCE](#). A.P. appealed from the order finding him guilty of being a minor in possession of a firearm and felon in possession of a firearm but declining to adjudicate him delinquent. After a traffic stop, A.P., the driver, was removed from the car, handcuffed, and placed in the back of a patrol car. During a search of the car A.P. was driving, a holstered firearm was found under the floor mat of the front passenger seat. At trial, A.P. objected to the introduction of an admission he allegedly made on the grounds that the State had failed to establish the corpus delicti of the crime. The trial court overruled the objection. At the close of the State's case and at the conclusion of the trial, A.P. moved for a judgment of dismissal again arguing that absent his admission, the State had failed to present prima facie evidence that he actually or constructively possessed the gun. The trial court denied A.P.'s motions. The appellate court held that A.P.'s admission should not have been allowed into evidence, and without his admission, the State's evidence was insufficient to prove that A.P. possessed the gun.

https://edca.2dca.org/DCADocs/2016/0979/160979_39_06292018_09273258_i.pdf (June 29, 2018)

Third District Court of Appeal

T.M. v. State, __ So. 3d __, 2018 WL 2708362 (Fla. 3d DCA 2018). [PER CURIAM AFFIRMED](#). Cites to precedence that a person is not justified in the use or threatened use of force to resist an arrest by a law enforcement officer; that criminal mischief is not a specific intent crime; and that intent is a question for the jury which is often inferred from the surrounding circumstances.

<http://www.3dca.flcourts.org/Opinions/3D17-1854.pdf> (June 6, 2018)

J.D. v. State, __ So. 3d __, 2018 WL 3040242 (Fla. 3d DCA 2018). **PER CURIAM AFFIRMED**. Cites to precedence that when a defendant moves for a judgment of acquittal based upon insufficiency of the evidence, all reasonable inferences and conclusions that may be drawn from the evidence must be viewed in the light most favorable to the State.

<http://www.3dca.flcourts.org/Opinions/3D17-2359.pdf> (June 20, 2018)

Fourth District Court of Appeal

State v. T.M., __ So. 3d __, 2018 WL 3198553 (Fla. 4th DCA 2018). **CONTRABAND ABANDONED DURING FLIGHT FROM POLICE IS NOT FRUIT OF AN IMPROPER SEARCH**. When a detective approached T.M. and two other males, they fled the area. The detective commanded them to stop, but they did not. During the chase, the detective saw T.M. reach into his pocket and throw out a clear plastic bag. The detective caught T.M., took him into custody, recovered the plastic bag which later had its contents test positive for cocaine. At a suppression hearing, the trial court found that the officer lacked reasonable suspicion to stop T.M. and suppressed the plastic bag as the fruit of an unlawful seizure. On appeal, the appellate court held that contraband that was abandoned during a flight from police is not fruit of an improper seizure and thus not subject to suppression. Once appellee abandoned the bag—which the detective, based on the totality of the circumstances and his experience, believed contained drugs—the police could lawfully seize it and later introduce it into evidence.

https://www.4dca.org/content/download/244171/2149984/file/172735_1709_06272018_09264672_i.pdf (June 27, 2018)

Fifth District Court of Appeal

No new opinions for this reporting period.

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

J.W. v. Department of Children and Families and Guardian ad Litem Program, __ So. 3d __, 2018 WL 2041484 (Fla. 2d DCA 2018). [TERMINATION OF SUPERVISION AND JURISDICTION REVERSED](#). The Second District Court of Appeal reversed a trial court's termination of supervision and jurisdiction. The father had appealed the order in question, which also reunified the child with the mother. The District Court noted that the trial court failed to comply with the statutory requirements of ss. 39.521(7) & 39.522, F.S., and therefore reversed and remanded the case. https://edca.2dca.org/DCADocs/2017/5088/175088_39_06202018_08071339_i.pdf (June 20, 2018)

Third District Court of Appeal

C.H.-C., a juvenile, et. al. v. Miami Herald Publishing Co., et. al., __ So. 3d __, 43 Fla.L.Weekly D1298, 2018 WL 2708374 (Fla. 3d DCA 2018). [APPEAL DISMISSED FOR LACK OF JURISDICTION](#). The Third District Court of Appeal dismissed consolidated appeals arising out of a Miami Herald request for access to a transcript of a judicial review hearing. The trial court entered an order setting out a procedure for an *in camera* examination of the transcript. The District Court held that it lacked jurisdiction because the trial court's order was non-final because although it set out a procedure for a review of objections, an order actually granting access would only be entered, if at all, after a hearing. The court likewise lacked jurisdiction to issue a writ of certiorari because the order presented no irreparable harm that could not be remedied if the trial court granted access. The court therefore dismissed the appeals. <http://www.3dca.flcourts.org/Opinions/3D18-0645.pdf> (June 6, 2018)

Fourth District Court of Appeal

C.J.L-M., father v. Department of Children and Families, __ So. 3d __, 43 Fla.L.Weekly D1248, 2018 WL 2716717 (Fla. 4th DCA 2018). [CONSENT FOR FAILURE TO APPEAR AT ARRAIGNMENT AFFIRMED](#). The Fourth District Court of Appeal affirmed an adjudication of dependency of a mother's child based on the mother's failure to appear at the arraignment hearing. The mother had appeared at the shelter hearing and was appointed counsel. The shelter order and notice of hearing listed the date, time, and location of the arraignment hearing and contained language warning the mother that her failure to appear at the arraignment hearing would constitute consent to adjudication of the child. The department did not file the dependency petition until the day before the arraignment hearing. At the arraignment hearing, the mother did not appear although her attorney did. The department argued that notwithstanding that the mother had not been served with the dependency petition, the mother's personal appearance at the shelter

hearing obviated the need for service of the petition on her under s. 39.502(2), F.S. The trial court agreed and entered an order of dependency, finding that the mother had consented by failing to appear. The mother moved to vacate the adjudication of dependency but the trial court denied the motion. On appeal, the District Court held that the mother's personal appearance at the shelter hearing indeed obviated the need for personal service of the petition, noting that the mother signed for notice of the date and time of the arraignment hearing. The court therefore affirmed the adjudication of dependency.

https://www.4dca.org/content/download/214454/1911602/file/180836_1257_06062018_09294069_i.pdf (June 6, 2018)

Fifth District Court of Appeal

K.C., father v. Department of Children and Families, __ So. 3d __, 2018 WL 3075283 (Fla. 5th DCA 2018). **TERMINATION OF PARENTAL RIGHTS AFFIRMED BUT CASE REMANDED FOR AMENDED ORDER.** The Fifth District Court of Appeal affirmed termination of a father's parental rights but remanded the case for entry of an amended order. The trial court had granted termination based on grounds found in ss. 39.806(1)(b), (1)(c), and (1)(e), F.S. On appeal, the court agreed with the father that the department failed to establish grounds under ss. 39.806(1)(b) & (1)(c), F.S., by clear and convincing evidence. However, the court held that the ground from s. 39.806(1)(e), F.S., was supported by clear and convincing evidence. The District Court therefore affirmed termination of the father's right but remanded the case for entry an order striking two of the grounds.

<http://www.5dca.org/Opinions/Opin2018/061818/5D18-712.op.pdf> (June 22, 2018)

Dissolution of Marriage Case Law

Florida Supreme Court

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms—12.913(a)(3), ___ So. 3d ___, 2018 WL 3062239 (Fla. 2018). **REVISIONS TO SEVERAL FAMILY LAW FORMS AND ADOPTION OF NEW NOTICE OF ACTION**. The Court adopted revisions to several existing forms and one new form, 12.913(a)(3), a notice of action to be used in cases involving a joint petition for adoption by a stepparent. The revised forms include: 12.902(j), notice of Social Security Number; 12.913(a)(2), notice of action for family cases with minor or dependent child(ren); 12.915, designation of current mailing and e-mail address; 12.921, notice of hearing (child support enforcement hearing officer); 12.924, notice for trial; and 12.980(h), request for confidential filing of address. The forms took effect June 21, 2018; interested persons have sixty days from that date to file comments.

<http://www.floridasupremecourt.org/decisions/2018/sc18-696.pdf> (June 21, 2018)

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms-12.951(a) and (b), ___ So. 3d ___, 2018 WL 3062201 (Fla. 2018). **PETITION AND ORDER TO DISESTABLISH PATERNITY AND TERMINATE SUPPORT REVISED**. The Court adopted revisions to two forms relating to disestablishment of paternity: 12.951(a), the petition to disestablish paternity and/or terminate child support obligation; and 12.951(b), the order disestablishing paternity and/or terminating the child support obligation. Both forms took effect June 21, 2018; interested persons have sixty days from that date to file comments.

<http://www.floridasupremecourt.org/decisions/2018/sc18-698.pdf> (June 21, 2018)

Simmonds v. Perkins, ___ So. 3d ___, 2018 WL 3153671 (Fla. 2018). **BIOLOGICAL FATHER MAY REBUT PRESUMPTION OF LEGITIMACY OVER SPOUSES' OBJECTION**. On conflict cert, at issue was whether a biological father is entitled to rebut the common law presumption that a mother's husband is the legal father of a child born to an intact marriage, if the mother or her husband object to allowing rebuttal. The Court held that a biological father has standing to rebut the presumption of legitimacy when he has "manifested a substantial and continuing concern" for the child's welfare, Kendrick v. Everhart, 390 So. 2d 53, 61 (Fla. 1980); it held that the presumption is overcome when there is a "clear and compelling reason based primarily on the child's best interests." Dept. of Health & Rehabilitative Servs. V. Privette, 617 So. 2d 305, 309 (Fla. 1993). The Court agreed with the Fourth District in Perkins v. Simmonds, 227 So. 3d 646 (Fla. 4th DCA 2017), that the presumption of legitimacy does not create an "absolute bar" to a biological father's quest to establish parental rights to a child born during an intact marriage—even if the spouses object. Accordingly, it disapproved Slowinski v. Sweeney, 64 So. 3d 128 (Fla. 1st DCA 2011) and Tijerino v. Estrella, 843 So. 2d 984 (Fla. 3d DCA 2003).

<http://www.floridasupremecourt.org/decisions/2018/sc17-1963.pdf> (June 28, 2018)

First District Court of Appeal

Smith v. Daniel, ___ So. 3d ___, 2018 WL 2472584, (Fla. 1st DCA 2018). **TRIAL COURT ABUSED ITS DISCRETION IN AWARDING SHARED PARENTING AND TIME-SHARING TO A PARENT PROHIBITED FROM CONTACT WITH CHILD; REVERSED AND REMANDED**. Former wife appealed shared parental responsibility and supervised

time-sharing awarded to former husband, who was prohibited by a domestic violence protective order entered in Kentucky, from coming within 500 feet of their child. Although a trial court has broad discretion in determining parental responsibility and time-sharing, here, it abused its discretion by failing to give full faith and credit to the Kentucky protective order. Granting parenting time to a parent prohibited from coming within 500 feet of his child “directly contravenes” a protective order. The appellate court noted that the trial court’s finding that former husband should share parenting and enjoy time-sharing could not be reconciled with former wife’s credible testimony that the domestic violence had emotionally damaged the child and required the trial court’s special consideration. Finding that the trial court failed to consider the other statutory factors in s. 61.13(3)(a)-(t), F.S. (2016), regarding a child’s best interest, the appellate court concluded the trial court’s award of shared parental responsibility and time-sharing was not based on competent, substantial evidence. Reversed and remanded for the trial court to make findings on the protective order and the child’s best interest, with additional evidence, if necessary.

https://edca.1dca.org/DCADocs/2017/4240/174240_1286_06042018_10505700_i.pdf (June 4, 2018)

New v. Bennett, __ So. 3d __, 2018 WL 2472555 (Fla. 1st DCA 2018). **TRIAL COURT ERRED IN NOT RECOGNIZING GEORGIA ORDER; REVERSED AND REMANDED.** Former wife relocated to Georgia following the spouses’ dissolution in Florida. The dissolution final judgment obligated former husband to pay child support and provide insurance. Appellate court agreed with former wife that pursuant to the full faith and credit clause, the trial court should have recognized an order from Georgia holding former husband in contempt and ordering his incarceration until payment of child support arrearages, in absence of any proof on his part of jurisdictional invalidity or extrinsic fraud. Appellate court concluded that the trial court correctly applied the laws of the foreign state in analyzing jurisdiction, but erred in finding that the Georgia court lacked jurisdiction because nothing on the face of the order indicated “any form of jurisdictional invalidity.” The trial court also “initiated an improper substantive review of the Georgia judgment.” Reversed and remanded for domestication of the Georgia order.

https://edca.1dca.org/DCADocs/2017/3196/173196_1287_06042018_10495578_i.pdf (June 4, 2018)

Ness v. Martinez, __ So. 3d __, 2018 WL 2945625 (Fla. 1st DCA 2018). **TRIAL COURT’S DENIAL OF PETITION TO RELOCATE AFFIRMED; TIME-SHARING MODIFICATION AFFIRMED; CHILD SUPPORT REVERSED AND REMANDED; NO JURISDICTION REGARDING FEES.** Disagreeing with former wife that the trial court erred in denying her petition to relocate, appellate court held that the trial court’s findings regarding the “benefits and detriments” of relocation were supported by competent, substantial evidence, and supported its conclusion that relocation would remove the child from extended family without increasing educational opportunities. Appellate court noted that although its view might differ from that of the trial court, the purpose of appellate review is limited to reviewing the record for supporting evidence, not to reweigh the evidence. Modification must be supported by competent, substantial evidence showing a substantial and material change in circumstances that is in the child’s best interest; relocation alone cannot support modification. Appellate court reversed and remanded child support; rather than make an express finding as to the spouses’ gross or net incomes, the trial court based the child support on a child support guidelines worksheet submitted by former husband which failed to take into account some of the allowable deductions listed on former wife’s affidavit. Appellate court lacks jurisdiction to review a fee award until both entitlement and amount have been ruled on; here, the trial court reserved jurisdiction to determine former husband’s request for fees, but did not rule on the amount.

https://edca.1dca.org/DCADocs/2017/2742/172742_1286_06132018_10213569_i.pdf (June 13, 2018)

Burch v. Burch, __ So. 3d __, 2018 WL 3015329 (Fla. 1st DCA 2018). **AFFIRMED; MODIFICATION OF TIME-SHARING REQUIRES SHOWING OF SUBSTANTIAL AND UNANTICIPATED CHANGE IN CIRCUMSTANCES.** Appellate court held that the trial court properly denied former husband’s motion to modify the time-

sharing component of the dissolution final judgment because he failed to show a substantial and unanticipated change of circumstances. Affirmed.

https://edca.1dca.org/DCADocs/2017/4868/174868_1284_06182018_09520370_i.pdf (June 18, 2018)

Moody v. Moody, __ So. 3d __, 2018 WL 3153671 (Fla. 1st DCA 2018). [ARREARAGE SHOULD HAVE BEEN REDUCED DUE TO ONE CHILD LIVING WITH OBLIGOR](#). Appellate court agreed with former husband that an order requiring him to pay a child support arrearage in full to former wife should be reversed because one of the children for whom the trial court ordered payment lived with him; thus the amount should have been reduced.

https://edca.1dca.org/DCADocs/2017/2477/172477_1287_06282018_09395503_i.pdf (June 28, 2018)

Second District Court of Appeal

Johnson v. Johnson, __ So. 3d __, 2018 WL 2749974 (Fla. 2d DCA 2018). [THIRTY-THREE MONTH DELAY BETWEEN HEARING AND RULING RESULTED IN NEW TRIAL](#). Appellate court agreed with former wife that: 1) she should have been awarded permanent periodic alimony; and 2) that a new trial was necessary because the trial court failed to issue a ruling in the case for over two and one-half years following the final hearing. In McDaniel v. McDaniel, 780 So. 2d 227, 228 (Fla. 2d DCA 2001), the appellate court concluded that a forty-month delay between a hearing on a motion to clarify a dissolution judgment and the order granting the ruling was “per se unreasonable and unacceptable.” It found the thirty-three month delay here “unreasonable and unacceptable” as well. Due to the “unreasonable delay,” appellate court found itself unable to conclude that the judgment “accurately or fairly addressed the equities of the case or the needs and abilities of the parties;” accordingly, it affirmed the dissolution and reversed and remanded the remainder for a new trial before a successor judge.

https://edca.2dca.org/DCADocs/2016/4890/164890_114_06082018_08285459_i.pdf (June 8, 2018)

Malowney v. Malowney, __ So. 3d __, 2018 WL 3040380 (Fla. 2d DCA 2018). [REMANDED FOR RECONSIDERATION OF MODIFICATION OF NOMINAL ALIMONY](#). Former wife appealed an order denying her petition for modification of nominal alimony. Appellate court found no error in the trial court having denied the petition based on the magistrate’s report and recommendation finding that the “alleged inability” of former wife’s daughter and sister to continue providing for her needs was not a substantial change in circumstances; however, it concluded that the petition and evidence presented at the hearing raised factors which might constitute a substantial change in circumstances, which were apparently not considered by the magistrate or trial court. Accordingly, it reversed and remanded for the trial court to reconsider modification in light of these additional factors.

https://edca.2dca.org/DCADocs/2017/2875/172875_114_06202018_08060860_i.pdf (June 20, 2018)

Third District Court of Appeal

Rodriguez v. Roca, __ So. 3d __, 2018 WL 2708481 (Fla. 3d DCA 2018). [REMANDED FOR EVIDENTIARY HEARING AND FINDINGS PER CASTRO V. CASTRO](#). Former husband appealed a non-final order granting former wife’s motion to vacate and amend the spouses’ marital settlement agreement. Appellate court vacated the order and remanded for an evidentiary hearing pursuant to Castro v. Castro, 508 So. 2d 330 (Fla. 1987). It instructed the trial court to provide written findings that “comport with the analysis set forth in Castro.”

<http://www.3dca.flcourts.org/Opinions/3D17-1746.pdf> (June 6, 2018)

Gutierrez v. Gutierrez, __ So. 3d __, 2018 WL 2708443 (Fla. 3d DCA 2018). **REVERSED WITH DIRECTIONS TO REINSTATE MARITAL SETTLEMENT AGREEMENT**. Former wife appealed a trial court order granting former husband's motion to set aside a final judgment of dissolution based on a marital settlement agreement (MSA). Appellate court reversed because the trial court's findings of fraud, misrepresentation, and coercion were not supported by competent, substantial evidence. Appellate court held: 1) any misunderstanding former husband might have had with his own interpreter did not constitute fraud; 2) any "alleged misrepresentation in discovery" related to nondisclosure of former husband's assets, not former wife's; and 3) evidence of "pressure to settle" did not prove coercion. In addition to rejecting former husband's argument that none of these matters rose to the level of fraud, misrepresentation, or coercion, appellate court noted that all were completely within former husband's control. Reversed with directions for the trial court to reinstate the MSA.

<http://www.3dca.flcourts.org/Opinions/3D17-1923.pdf> (June 6, 2018)

Solomon v. Solomon, __ So. 3d __, 2018 WL 3040327 (Fla. 4th DCA 2018). **REMANDED FOR THE TRIAL COURT TO SPECIFY STEPS TO UNSUPERVISED TIME-SHARING**. Appellate court found merit in one of the issues raised by former husband in his appeal of a final judgment of dissolution: that the trial court failed to set forth specific steps he must take in order to obtain unsupervised time-sharing. Citing its language in Witt-Bahls v. Bahls, 193 So. 3d 35, 38 (Fla. 4th DCA 2016), quoting Ross v. Botha, 867 So. 2d 567, 571 (Fla. 4th DCA 2004), that failure to set forth any specific requirements or standards for the "alleviation of timesharing restrictions is error," appellate court reversed and remanded for the limited purpose of the trial court setting forth such steps; it affirmed the remainder of the judgment.

<http://www.3dca.flcourts.org/Opinions/3D17-1553.pdf> (June 20, 2018)

Fourth District Court of Appeal

Castleman v. Bicaldo, __ So. 3d __, 2018 WL 2716715 (Fla. 4th DCA 2018). **REVERSED IN PART FOR FUNDAMENTAL ERRORS RE RELOCATION AND DURATIONAL ALIMONY**. Former husband raised multiple issues in his appeal of a final judgment of dissolution; appellate court affirmed in part, reversed in part, and remanded. In absence of a transcript, review was limited to fundamental errors on the face of the judgment. Appellate court found that the trial court fundamentally erred in having: 1) found the relocation statute inapplicable to former wife in the event she was deported, in absence of any language in the statute, "granting a presumption in favor of a request to relocate with the child merely because the parent's relocation was involuntary"; 2) making a future-based projection of a minor child's best interests by allowing former wife to take the child with her if she were deported, in contravention of Arthur v. Arthur, 54 So. 3d 454 (Fla. 2010); and 3) awarding former wife durational alimony for a period longer than the marriage, although the statute expressly limits durational alimony to the period between the date of the marriage and the date of filing. Reversal of the relocation was without prejudice; former wife may file a petition to relocate pursuant to chapter 61, if "her involuntary relocation from the United States is imminent." The durational alimony was reversed and remanded with instructions to limit it to twenty-six months; however, the trial court was instructed it could "reconfigure" the alimony award.

https://www.4dca.org/content/download/214440/1911476/file/170827_1708_06062018_09134456_i.pdf (June 6, 2018)

Amro v. Gazze, __ So. 3d __, 2018 WL 2716713 (Fla. 4th DCA 2018). **REMANDED TO TRIAL COURT TO DETERMINE HOURLY RATE AND NUMBER OF HOURS FOR FEES.** Former wife raised four issues in her appeal of final orders entered after former husband moved to enforce the final judgment dissolving their marriage and approving their marital settlement agreement (MSA). Appellate court affirmed on the first three, but reversed on the fourth. It found that the fee award was made pursuant to the provisions within the MSA, but that the trial court had failed to articulate the required findings as to a reasonable hourly rate and a reasonable number of hours expended. Reversed and remanded for the trial court to make the findings and determination as to the amount of fees to award former husband and, if necessary, to conduct further proceedings regarding the amount, but not entitlement to fees.

https://www.4dca.org/content/download/214435/1911431/file/163610_1708_06062018_09325212_i.pdf (June 6, 2018)

Gelber v. Brydger, __ So. 3d __, 2018 WL 2715350 (Fla. 4th DCA 2018). **ABILITY TO ACCESS RETIREMENT ACCOUNT WITHOUT PENALTY A FACTOR IN DETERMINING DOWNWARD MODIFICATION IF ACCOUNT WAS NOT CONSIDERED IN SETTING ALIMONY.** Former husband sought a downward modification of alimony once former wife reached age 59 ½ and could access retirement accounts without penalty. Concluding that the trial court had not abused its discretion in granting modification, appellate court held that a spouse's ability to access retirement accounts without penalty is a factor the trial court may consider when determining whether there has been a sufficient change to warrant downward modification--so long as the retirement account was not taken into consideration in determining alimony.

https://www.4dca.org/content/download/214438/1911458/file/170295_1257_06062018_09115649_i.pdf (June 6, 2018)

Bouin v. DiSabatino, __ So. 3d __, 2018 WL 2974527 (Fla. 4th DCA 2018). **TRIAL COURT ERRED IN DISMISSING COMPLAINT AGAINST SPOUSE WITH PREJUDICE; REVERSED.** Former husband appealed the dismissal of his complaint against former wife while a separate dissolution proceeding was pending before another judge. Appellate court concluded the trial court erred in dismissing the complaint with prejudice without allowing leave to amend; accordingly, it reversed. Recognizing the trial court's concern that "maintaining a separate suit in a collateral proceeding" might be seen as forum-shopping, appellate court held that whether former husband's complaint could be brought separately or was exclusively within the jurisdiction of the court handling the dissolution case depended on whether the allegations involved marital or non-marital assets. Noting that the remedy for dissipation of marital assets "lies via" chapter 61, the appellate court found no allegations within the "four corners" of former husband's complaint, that "indisputably" classified the money or property in question as marital. Reiterating that a motion to dismiss, "analyzes questions of law to test the legal sufficiency of a complaint, not the facts," the appellate court concluded that the trial court's determination that this case dealt with marital assets was essentially a fact-finding "endeavor," which was "improper at the motion to dismiss stage." Reversed and remanded.

https://www.4dca.org/content/download/214953/1915684/file/172250_1709_06132018_09021402_i.pdf (June 13, 2018)

Lovell v. Hutchinson, __ So. 3d __, 2018 WL 3159166 (Fla. 4th DCA 2018). **TRIAL COURT'S VALUING OF SPOUSE'S PENSION AFFIRMED; OTHER RULINGS REVERSED.** Former wife raised three issues in her appeal of a final judgment of dissolution: whether the trial court incorrectly valued the marital portion of former husband's pension; whether it erred in not allowing her to reopen the evidence to present an exhibit relating to former husband's accrued annual and sick leave which he had not disclosed on his financial affidavits; and whether the trial court erred in *sua sponte* eliminating the unequal distribution it had previously awarded to her. Appellate court held that the trial court did not err in relying on the multiplier in effect at the time of filing when valuing the pension; however, it did err in not allowing the admission of former husband's accrued annual and sick leave, and in eliminating the unequal distribution award on the basis that it was not pled. Appellate court concluded that relying on the lower multiplier was consistent with the Supreme Court's statement in Boyett v. Boyett, 703 So. 2d 451 (Fla. 1997), that the "valuation of a vested retirement plan is not to include any contributions made after the original judgment of dissolution." Accordingly, appellate court affirmed on the first issue; it reversed on the second and third issues.

https://www.4dca.org/content/download/244168/2149957/file/171905_1708_06272018_09151360_i.pdf (June 27, 2018)

Fifth District Court of Appeal

Haywood v. Bacon, __ So. 3d __, 2018 WL 2746312 (Fla. 5th DCA 2018). **NOT ALLOWING A PARTY TO FINISH PRESENTING EVIDENCE IS GENERALLY A DENIAL OF DUE PROCESS.** Former wife appealed a supplemental final judgment modifying time-sharing and child support. Appellate court reversed because the trial court failed to allow her to complete presentation of her case at the evidentiary hearing. Entering a final order without allowing a party to complete presenting evidence is generally a denial of due process. Bielling v. Bielling, 188 So. 3d 980, 981 (Fla. 1st DCA 2016), citing Julia v. Julia, 146 So. 3d 516, 520 (Fla. 4th DCA 2014). Parenting plan reversed and remanded for further proceedings, with reconsideration of child support if the trial court denies former husband's petition for modification after further proceedings.

<http://www.5dca.org/Opinions/Opin2018/060418/5D17-1899.op.pdf> (June 8, 2018)

Rivera v. Purtell, __ So. 3d __, 2018 WL 3075554 (Fla. 5th DCA 2018). **PROSPECTIVELY MODIFYING TIME-SHARING AS OF CERTAIN DATE DOES NOT VIOLATE ARTHUR.** A paternity case that prospectively modified time-sharing as of the time a child starts kindergarten does not violate Arthur v. Arthur, 54 So. 3d 454 (Fla. 2011). Appellate court held that Arthur prohibits a trial court from *predicting* a change in a child's best interest as of some future date or event; however, it does not prohibit a time-sharing plan which applies the child's best interests as determined *at the time of the final hearing* to an event that is "reasonably and objectively certain to occur at an identifiable time in the future" (emphasis in opinion). A trial court's determination based on the facts before it at the final hearing does not require use of a crystal ball. Reversed and remanded to reinstate the final judgment.

<http://www.5dca.org/Opinions/Opin2018/061818/5D17-2198.op.pdf> (June 22, 2018)

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

Florida Supreme Court

In re Amendments to Florida Supreme Court Approved Family Law Forms—12.980(b)(1), ___ So. 3d ___, 2018 WL 3062259 (Fla. 2018). **FORM AMENDED**. The Court amended form 12.980(b)(1) to clarify that the court must record both domestic violence and stalking hearings and the recording can be transcribed at either parties' expense. Hearings on a petition for an injunction for protection against repeat violence, dating violence, and sexual violence are not required to be recorded, but can be recorded if the party's arrange to do so at their expense.
<http://www.floridasupremecourt.org/decisions/2018/sc18-697.pdf> (June 21, 2018)

First District Court of Appeal

Smith v. Daniel, ___ So. 3d ___, 2018 WL 2472584 (Fla. 1st DCA 2018). **TRIAL COURT ABUSED DISCRETION BY NOT GIVING FULL FAITH AND CREDIT TO KENTUCY DV ORDER**. A mother appealed a portion of the Final Judgment of Dissolution of Marriage that awarded the father shared parental responsibility and supervised parenting time between the father and the minor child. The appellate court reversed the part of the judgment that allowed this contact, and found that the trial court abused its discretion by not giving full faith and credit to an unexpired Kentucky injunction for protection against domestic violence that prohibited the father from coming within 500 feet of the minor child. The court also noted that there was nothing in the order showing that the trial court seriously considered the prior domestic violence when determining the best interests of the child.
https://edca.1dca.org/DCADocs/2017/4240/174240_1286_06042018_10505700_i.pdf (June 4, 2018)

Sager v. Holgren, ___ So. 3d ___, 2018 WL 3151291 (Fla 1st DCA 2018). **ATTORNEY FEES NOT ALLOWED IN DOMESTIC VIOLENCE INJUNCTION CASE**. The father filed a petition for an injunction for protection against domestic violence on behalf of the child against the mother. A temporary injunction was entered but then dismissed, and a permanent injunction was denied because the court determined there was insufficient evidence to support the injunction. Following the dismissal, the trial court awarded the mother \$500.00 in attorney's fees pursuant to s. 57.105, F.S. The father appealed, claiming that s. 741.30(1)(g), F.S., prohibits an award of attorney's fees. The mother responded that the action was brought under the repeat violence statute found in s. 784.046, F.S., not s. 741.30, F.S., and therefore, attorney's fees were allowable. The appellate court reversed, and noted that the petition and orders used in this case were standard Florida Supreme Court approved family law forms which consistently referred to domestic violence, not repeat violence. The record also showed that the parties and the trial court proceeded under s. 741.30, F.S., and therefore, the award of attorney's fees was prohibited.
https://edca.1dca.org/DCADocs/2017/3607/173607_1284_06282018_10100566_i.pdf (June 28, 2018)

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.