

OSCA/OCI'S CASE LAW UPDATE
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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

D.D. v. State, ___ So.3d ___, 2018 WL 3796487 (Fla. 2d DCA 2018). [MOTION FOR REHEARING OR CLARIFICATION GRANTED, OPINION REPLACED](#). The May 16, 2018 opinion in this case was withdrawn and replaced with a corrected opinion. The new opinion addresses a count of first degree criminal mischief that was not addressed in the previous opinion. Because the State did not present sufficient evidence to establish the value of a phone that D.D. destroyed, the matter was reversed and remanded for a finding that D.D. committed second-degree misdemeanor criminal mischief. While the sufficiency of the evidence argument as to the criminal mischief count was not preserved by D.D.'s attorney, the appellate court found that there could be no conceivable tactical explanation for failing to raise the argument, and therefore, it was clear from the face of the record that D.D.'s counsel was ineffective and D.D. was entitled to relief. https://edca.2dca.org/DCADocs/2017/0769/170769_39_08102018_08373441_i.pdf (August 10, 2018)

Third District Court of Appeal

No new opinions for this reporting period.

Fourth District Court of Appeal

T.T.S. v. State, ___ So.3d ___, 2018 WL 3913107 (Fla. 4th DCA 2018). [REVERSED AND REMANDED DUE TO INSUFFICIENT EVIDENCE TO VALUE STOLEN PROPERTY AT THE THRESHOLD FOR GRAND THEFT](#). The appellate court affirmed the disposition and finding of guilt on counts of burglary and grand theft of a firearm, but reversed the disposition on a count of third-degree grand theft due to the State's failure to establish the value of the stolen items related to the charge. Further, this was the rare case where defense counsel's ineffectiveness in failing to move for a judgment of dismissal appeared on the face of the record. https://www.4dca.org/content/download/401279/3440698/file/172821_1708_08152018_09360467_i.pdf (August 15, 2018)

T.T. v. State, ___ So.3d ___, 2018 WL 4147894 (Fla. 4th DCA 2018). [REVERSED AND REMANDED TO GRANT THE MOTION TO SUPPRESS](#). The plain touch exception to the Fourth Amendment does not permit an officer, without a warrant, to seize objects felt during a weapons search, when the objects felt are clearly not weapons and there is insufficient evidence of contraband. During a traffic stop, an officer spoke with T.T. who was in the back passenger seat of the car. The officer said T.T. had slurred speech, red bloodshot eyes, was nervous, and fidgeting with his waistband. The officer asked T.T. to step out of the car and conducted a pat-down search for weapons. At

that time the officer felt two hard cylindrical objects in T.T.'s groin area. The officer knew the objects were not weapons, and he could not feel what, if anything, was inside the objects. The officer removed the objects and determined that they contained marijuana. The appellate court noted that the plain touch exception to the Fourth Amendment allows officers to seize illegal objects discovered during a protective pat-down search when the illegality of the object is, using the sense of touch, immediately apparent. The officer's testimony in this case regarding his training and experience in identifying and dealing with contraband was not sufficient for the trial court to determine that his conclusion was more than just a feeling or a hunch. The trial court's decision denying the motion to suppress was reversed and the case remanded for the trial court to grant the motion to suppress.

https://www.4dca.org/content/download/402005/3446756/file/180442_1709_08292018_08590771_i.pdf (August 29, 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.S.H. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2018 WL 3672945 (Fla. 2d DCA 2018). **DENIAL OF PUTATIVE BIOLOGICAL FATEHR'S MOTION REVERSED; CASE REMANDED FOR EVIDENTIARY HEARING.** The Second District Court of Appeal reversed an order denying a father standing to seek custody of his children and remanded the case for further proceedings. The twins who are the subject of the trial court proceedings were born in April 2016 and the father, J.S.H., was named on their birth certificates. Because the mother was married to a different man, C.M, at the time of conception and birth, C.M. was the legal father of the children. J.S.H. lost his party status and his visitation was suspended. However, he had paternity test results showing he was the children's father, he had visited the children, and he had provided clothing and other material for them. Neither the mother nor C.M. were involved with the children. The trial court held that J.S.H. was not a party and had no standing. In proceeding both pro se and with the assistance of an attorney that he retained, J.S.H. attempted to seek party status, visitation, and custody of the children, which was ultimately unsuccessful, as the trial court entered an order denying J.S.H.'s motion seeking participant status. On appeal of the order, the district court analyzed the caselaw on paternity and presumption of legitimacy. It noted that in Simmonds v. Perkins, 247 So. 3d 397 (Fla. 2018), the Florida Supreme Court "rejected the premise that the presumption of legitimacy precludes a putative biological father from challenging the paternity of a child born to an intact marriage." Rather, a putative biological father may demonstrate a substantial and continuing concern for the welfare of the children. The district court noted that J.S.H. had continuously asserted his rights to the children from their birth, both with and without the assistance of counsel. The court therefore reversed the order denying J.S.H.'s motion and remanded the case for an evidentiary hearing on standing and other proceedings.

https://edca.2dca.org/DCADocs/2017/5072/175072_39_08032018_09093703_i.pdf (August 3, 2018)

C.H. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2018 WL 4100187 (Fla. 2d DCA 2018). **TERMINATION OF PARENTAL RIGHTS AFFIRMED.** The Second District Court of Appeal affirmed a trial court's termination of a father's parental rights based on the ground that he was incarcerated and had been designated as a sexual predator. The father had challenged the constitutionality of s. 39.806(1)(d)(2), F.S., the ground for termination that had been applied to him. The ground permits termination of a parent's rights when the parent is incarcerated and has been determined to be a sexual predator as defined in s. 775.21, F.S. The father argued on appeal that the ground was unconstitutional because it does not

require proof that a parent poses a substantial risk of significant harm to the child, which is an additional element that the Florida Supreme Court requires in cases involving s. 39.806(1)(i), F.S. See, Department of Children and Families v. F.L., 880 So. 2d 602 at 609 (Fla. 2004). However, the District Court, like the Florida Supreme Court in F.L., interpreted s. 39.806(1)(d)(2), F.S., as including the requirement of showing a substantial risk of significant harm to the child thereby establishing the ground's constitutionality. The court further concluded that the statute was constitutional under its decision in Department of Children and Family Services v. S.H., 49 So. 3d 846 (Fla. 2d DCA 2010). The court noted that under either analysis, and on the record before it, the department had established that the father posed a substantial risk of significant harm to the child. The appellate court therefore affirmed the trial court.

https://edca.2dca.org/DCADocs/2017/4921/174921_65_08292018_08372537_i.pdf (August 29, 2018)

Third District Court of Appeal

A.M., the mother v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 43 Fla.L.Weekly D1727, 2018 WL 3636459 (Fla. 3d DCA 2018).

A.G., the father v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 43 Fla.L.Weekly, D1724, 2018 WL 3636454 (Fla. 3d DCA 2018). **CERTIORARI GRANTED IN COMPANION CASES.** In a pair of companion cases, the Third District Court of Appeal issued separate opinions that granted petitions for certiorari and quashed a trial court's orders changing the case plan goal from reunification to adoption. The department had conceded that the trial court's orders departed from the essential requirements of the law because there was no evidentiary basis for the goal change. The parents were also denied due process due to lack of notice that a change of goal would be considered. The district court therefore granted the petitions and quashed the trial court's orders.

<http://www.3dca.flcourts.org/Opinions/3D18-0614.pdf> (August 1, 2018)

<http://www.3dca.flcourts.org/Opinions/3D18-0615.pdf> (August 1, 2018)

Florida Department of Children and Families v. A.L. and R.L., ___ So. 3d ___ (Fla. 3d DCA 2018). **DENIAL OF TERMINATION OF PARENTAL RIGHTS REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS.**

The Third District Court of Appeal reversed an adjudication of dependency of the child and remanded the case for a hearing to determine whether the father's rights should be terminated. The child who was the subject of the TPR petition had been adopted at the age of nine, and at age thirteen, she disclosed that she had been sexually abused by her father. The department sought to terminate the rights of both parents, alleging that the father sexually abused the child and that the mother failed to protect the child, knew of the abuse, and facilitated contact to manipulate the child. The trial court's final judgment that that was appealed made findings that, *inter alia*, the father and child had always been clothed during their horseplay or wrestling which resulted in incidental contact with the child's chest or breast area and that the child's therapist corroborated that the mother was completely surprised by the allegations in the petition. The court found by a preponderance of evidence that there was inappropriate contact between the father and the child, but that there was no credible evidence that the father engaged in conduct defined by the TPR grounds in ss. 39.806(1)(f) & (g), F.S. The trial court also found there was no credible evidence that the

mother failed to protect the child. The court therefore denied termination of parental rights, dismissed the petition as to the mother, and adjudicated the child dependent regarding the allegations against the father.

On review, the district court noted that while great deference was owed to the trial court's findings, no deference was owed if the findings were induced by an erroneous view of the law. The trial court had misapplied the law because the definition of "sexual abuse of a child" in s. 39.01(71), F.S., included the conduct that the trial court found that the father had engaged in. Moreover, the trial court misapprehended the relevance of the child's testimony about where she had been abused. The father had, in fact, sexually abused the child based on the definitions in chapter 39. The trial court's conclusion that it could not find clear and convincing evidence of sexual abuse was therefore erroneous. In addition, the trial court failed to consider and make findings regarding the statutory manifest best interest factors. Finally, the trial court made no findings about whether termination was the least restrictive means of protecting the child from harm.

The district court thus reversed the trial court's adjudication of dependency and remanded the case for entry of an order that the father sexually abused the child. The district court also ordered that the trial court hold an evidentiary hearing within thirty days regarding manifest best interests and whether termination of the father's rights were the least restrictive means of protecting the child. Because there was competent, substantial evidence to support the trial court's findings as to the mother, the district court affirmed dismissal as to the mother.
<http://www.3dca.flcourts.org/Opinions/3D17-2003.pdf> (August 3, 2018)

C.R. v. Department of Children and Families and Guardian ad Litem Program, ___ So. 3d ___, 2018 WL 3747893 (Fla. 3d DCA 2018). **TERMINATION OF PARENTAL RIGHTS REVERSED AND REMANDED.** The Third District Court of Appeal reversed termination of a mother's parental rights to one of her three children. The oldest child reached the age of majority during the course of the dependency case and a second child was reunified with the mother. The department filed a petition to terminate the mother's rights to the remaining child based on ss. 39.806(1)(e)1 & (1)(e)3, F.S. On appeal, the court reviewed the mother's case plan tasks and found that the mother had complied with her tasks and that the failure of the mother to complete family therapy was not attributable to her. Furthermore, the mother had remained drug-free for almost two years. Although the mother had engaged in an improper conversation with the child, it was the sole such conversation in approximately a year. The district court therefore found a lack of competent substantial evidence to support the trial court's application of both ss. 39.806(1)(e)1 and (1)(e)3, F.S. The court therefore reversed termination and remanded the case for further proceedings, including an attempt to reunify the mother and child slowly and to coordinate therapy for the child with the same therapist.
<http://www.3dca.flcourts.org/Opinions/3D18-0046.pdf> (August 8, 2018)

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

D.G. v. Department of Children and Families, ___ So. 3d ___, 2018 WL 3945998 (Fla. 5th DCA 2018). **TERMINATION OF PARENTAL RIGHTS AFFIRMED.** The Fifth District Court of Appeal affirmed termination of a father's parental rights. The court found that the record supported the trial court's findings of clear and convincing evidence of the termination ground in 39.806(1)(d)(3). The court declined to address the trial court's determination of other grounds. <http://www.5dca.org/Opinions/Opin2018/081318/5D18-1049.op.pdf> (August 15, 2018)

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 ___, No. SC17-1947, 2018 WL 4289149 (Fla. 2018). Form 12.961, the notice of hearing used in contempt/enforcement proceedings pursuant to Family Law Rule of Procedure 12.615, was revised to clearly notify an alleged contemnor that his or her present ability to pay is a critical issue in the proceeding and that he or she will be provided an opportunity during the contempt hearing to respond to allegations and questions about his or her financial status, in accordance with Turner v. Rogers, 564 U.S. 431 (2011). The revisions were in response to comments submitted to 12.961 as revised December 14, 2017.

<http://www.floridasupremecourt.org/decisions/2018/sc17-1947.pdf> (August 30, 2018)

First District Court of Appeal

McKnight v. McKnight, ___ So. 3d ___, 2018 WL 3638123 (Fla. 1st DCA 2018). **TRIAL COURT ABUSED ITS DISCRETION IN AMOUNT OF LIFE INSURANCE ORDERED.** Appellate court agreed with former husband that the trial court abused its discretion by requiring him to maintain a \$1 million life insurance policy to secure his alimony obligation in the absence of “special circumstances.” Appellate court noted the trial court did not find, nor would the record support a finding, that former wife would be left in “dire financial straits” on former husband’s death. Kotlarz v. Kotlarz, 21 So. 3d 892, 893 (Fla. 1st DCA 2009) (quoting Richardson v. Richardson, 900 So. 2d 656, 661 (Fla. 2d DCA 2005)). In addition, \$1 million was “not commensurate” with a child support obligation for a child turning 18 in less than two years. Reversed and remanded for the trial court to reduce the amount of life insurance to an amount commensurate with former husband’s remaining child support obligation.

https://edca.1dca.org/DCADocs/2017/5088/175088_1286_08012018_11431823_i.pdf (August 1, 2018)

Olivarez v. Olivarez, ___ So. 3d ___, 2018 WL 3911380 (Fla. 1st DCA 2018). **ERROR TO INCLUDE DISSIPATED ASSETS IN DISTRIBUTION ABSENT FINDING OF MISCONDUCT.** Former wife appealed a final judgment of dissolution which included \$23,000 of assets allegedly dissipated during the proceedings. Reiterating that it is error for a trial court to include assets in a scheme of equitable distribution that have been diminished or dissipated during the proceedings absent a showing of misconduct, appellate court reversed the equitable distribution portion of the judgment. The trial court’s determinations of alimony, child support, and fees were reversed for reconsideration due to the reversal of the equitable distribution.

https://edca.1dca.org/DCADocs/2017/4050/174050_1287_08162018_11120370_i.pdf (August 16, 2018)

Spikes v. Fonville, ___ So. 3d ___, 2018 WL 4139393 (Fla. 1st DCA 2018). **TRIAL COURT CANNOT ALLOCATE TAX EXEMPTION DIRECTLY; MUST ORDER PARENT TO WAIVE.** Appellate court affirmed portion of trial court’s order changing the minor child’s name, but concluded that the trial court “exceeded its authority” by directly allocating the dependency tax exemption, and reversed. A trial court has the authority to adjust child support by ordering a parent to execute a waiver of

the exemption, contingent upon the parent paying child support being current in their payments; however, it does not have the authority to make the allocation of exemption directly. Here, the trial court did not abuse its discretion in ordering the exemption to alternate between the parents, but it erred when it failed to follow the statute.

https://edca.1dca.org/DCADocs/2017/4860/174860_1286_08302018_10385987_i.pdf (August 30, 2018)

Second District Court of Appeal

Velez v. Montalvo-Velez, __ So. 3d __, 2018 WL 3795465 (Fla. 2d DCA 2018). **TRIAL COURT’S LACK OF SUFFICIENT FINDINGS HAMPERS MEANINGFUL REVIEW.** Former husband argued that the award of permanent alimony to former wife in their final judgment of dissolution was not supported by sufficient findings or evidence. Concluding that the trial court failed to make sufficient factual findings to allow for meaningful review and failed to make express findings required by s. 61.08(8), F.S., appellate court reversed the alimony portion of the judgment. In order to impute income to an unemployed or underemployed spouse, a trial court must rely on competent, substantial evidence as to the voluntariness of the spouse’s situation, as well as his or her diligence in finding replacement income. If there is insufficient evidence to determine the amount to impute, a presumption may arise based on the spouse’s historical earnings, which may be rebutted by that spouse. Lafferty v. Lafferty, 134 So. 3d 1142, 1144 (Fla. 2d DCA 2014). Here, former husband’s work history and salary were documented until approximately 15 months preceding the final hearing; he testified that he was paid exclusively in cash during those 15 months. In light of the trial court’s findings that former husband was “less than truthful” about his income and the fact that his work history was no longer documented, appellate court concluded that an imputation of income based on his historic income could be appropriate; however, the lack of required findings hampered its review. Reversed and remanded for the trial court to make sufficient findings of fact.

https://edca.2dca.org/DCADocs/2016/4794/164794_114_08102018_08343199_i.pdf (August 10, 2018)

Distefano v. Distefano, __ So. 3d __, 2018 WL 3862653 (Fla. 2d DCA 2018). **ONCE COMMINGLED WITH MARITAL ASSETS, NONMARITAL ASSETS BECOME MARITAL; ASSETS PURCHASED DURING A MARRIAGE WITH MARITAL FUNDS BECOME MARITAL ASSETS.** Appellate court agreed with former husband that the trial court erred in classifying the marital home and a Toyota purchased during the marriage as former wife’s non-marital property. Although former wife used funds from sale of a house she had owned before the marriage towards the purchase of the marital home, and traded in a car she owned prior to the marriage as partial payment for the Toyota, she also used funds for both purchases from a checking account which commingled funds acquired prior to the marriage with funds acquired during the marriage. Because marital funds were used to purchase the house and car, they each became a marital asset subject to equitable distribution. Reversed and remanded with instructions to the trial court to classify the house and car as marital assets and revise the scheme of equitable distribution accordingly, and to correct an internal inconsistency regarding a marital liability.

https://edca.2dca.org/DCADocs/2017/0967/170967_114_08152018_08430751_i.pdf (August 15, 2018)

Cooley v. Cooley, __ So. 3d __, 2018 WL 4039138 (Fla. 2d DCA 2018). [UNEQUAL EQUITABLE DISTRIBUTION MUST BE SUPPORTED BY THE EVIDENCE](#). Former wife challenged the unequal distribution of assets and liabilities in the final judgment dissolving her short-term marriage. Appellate court affirmed the portion of the judgment dissolving the marriage, but concluded that the unequal equitable distribution scheme was not supported by the evidence. Accordingly, it reversed and remanded for the trial court to effectuate an equal equitable distribution and to address the status of the marital home.

https://edca.2dca.org/DCADocs/2016/5614/165614_114_08242018_08191681_i.pdf (August 24, 2018)

Toth v. Miller, __ So. 3d __, 2018 WL 4167598 (Fla. 2d DCA 2018). [JUDGMENT MUST REFLECT JUDGE'S INDEPENDENT DECISION-MAKING](#). Appellate court agreed with former husband that the record as a whole created an appearance that the amended final judgment of dissolution did not reflect the judge's independent decision-making. The judge's adoption of former wife's 65-page proposed final judgment in toto, coupled with his comments at the final hearing, led the appellate court to conclude that it "face[d] a scenario much like the one [we] described in Bishop v. Bishop, 47 So. 3d 326 (Fla. 2d DCA 2010)." Accordingly, appellate court affirmed the portion of the judgment dissolving the spouses' marriage, but reversed and remanded the remainder of the judgment with directions that the judge enter a final judgment reflecting "his independent decision-making."

https://edca.2dca.org/DCADocs/2015/3835/153835_65_08312018_08494924_i.pdf (August 31, 2018)

Third District Court of Appeal

Denis v. Denis, __ So. 3d __, 2018 WL 3636470 (Fla. 3d DCA 2018). [PAYMENT OF UNINSURED EXPENSES SHOULD ACCORD WITH CHILD SUPPORT GUIDELINES WORKSHEET](#). Appellate court concluded that the trial court did not abuse its discretion in denying former wife's claims for alimony and attorney's fees in the final judgment of dissolution, but reversed and remanded for the trial court to either reduce her share of responsibility for the minor child's uninsured medical and dental expenses from 33.33% to 28.48%, or explain its rationale for requiring her to pay one-third. Former husband conceded that former wife should only be responsible for 28.48% in accordance with the child support guidelines worksheet.

<http://www.3dca.flcourts.org/Opinions/3D17-1219.pdf> (August 1, 2018)

Munoz v. Salgado, __ So. 3d __, 2018 WL 3747784 (Fla. 3d DCA 2018). [MODIFICATION WITHOUT AN OPPORTUNITY TO BE HEARD VIOLATED DUE PROCESS](#). Appellate court concluded that the trial court violated former husband's due process rights by modifying time-sharing without affording him a "meaningful opportunity to be heard." Appellate court held that the right to be heard is more than "being allowed to be present and speak"; it includes the right to offer evidence at a "meaningful time and in a meaningful manner." Cole v. Cole, 159 So. 3d 124, 125-6 (Fla. 3d DCA 2013). Here, there was not a risk of either physical harm to or improper removal of a child; the "emergency" alleged by former wife was the fact that the child faced a longer commute to school and might have to take public transportation. Petition for writ of certiorari

granted; the trial court was instructed to hold a hearing affording both parents a “meaningful opportunity to be heard.”

<http://www.3dca.flcourts.org/Opinions/3D18-1006.pdf> (August 8, 2018)

Fourth District Court of Appeal

Frank v. Frank, __ So. 3d __, 2018 WL 3769193 (Fla. 4th DCA 2018). **TRIAL COURT WITHOUT JURISDICTION TO TRANSFER PROPERTY ADJUDICATED IN JUDGMENT**. Appellate court agreed with appellee that her motion for contempt was served on the other spouse in accordance with Rule 12.615(b); therefore, the court’s order was not void for service of process. However, appellate court agreed with appellant that the trial court lacked continuing jurisdiction to modify the distribution of property in the final judgment. Once a trial court has rendered its final judgment of dissolution, property rights are fixed and vested; the court is without jurisdiction to modify those rights unless it specifically reserved jurisdiction to do so. Here, the trial court’s order was not limited to items for which it had retained jurisdiction, nor was it intended to “clarify or enforce” the final judgment. Because the final judgment provided that the spouses owned the marital residence as tenants-in-common, gave appellee exclusive use and possession, and provided that any sale of the property would be at a price mutually agreeable to both spouses, the trial court erred when it transferred full title in the home to appellee in the contempt order. The trial court lacked jurisdiction to determine property rights adjudicated in the final judgment. Appellate court vacated the contempt order and remanded for further proceedings.

https://www.4dca.org/content/download/401089/3438960/file/172201_1709_08082018_09454579_i.pdf (August 8, 2018)

Bauchman v. Bauchman, __ So. 3d __, 2018 WL 3912041 (Fla. 4th DCA 2018). **TRIAL COURT SHOULD HAVE CONSIDERED SPOUSE’S RETIREMENT IN MODIFICATION REQUEST**. Former husband appealed a final judgment denying his request for a downward modification of his alimony obligation, and awarding attorney’s fees to former wife. He argued that his approaching retirement coupled with former wife’s improved financial circumstances constituted a substantial change in circumstances warranting modification. The marital settlement agreement was silent as to the retirement of either spouse. Appellate court agreed with former husband that the trial court should have considered his voluntary retirement, and reversed. Citing Pimm v. Pimm, 601 So. 2d 534 (Fla. 1992), for its holding that a change in circumstances must not be anticipated by the spouses at the time of the final judgment, the trial court concluded that former husband’s potential retirement was hardly a surprise to either spouse given his age. Appellate court found that conclusion “directly” conflicted with Pimm. Silence as to retirement within a judgment or agreement “should not preclude consideration of a reasonable retirement as part of the total circumstances” when a trial court determines whether modification is warranted. *Id.* at 537. With regard to fees, the appellate court found that the record reflected that former wife had substantially the same ability to pay her attorney as former husband did; thus, she had *similar access* to counsel. [Italics in opinion]. Neither statute nor caselaw requires spouses to have legal counsel of equal experience or ability. Because the spouses’ financial resources were equalized through alimony and equitable distribution, and because former wife had substantial non-marital assets, appellate court concluded that awarding fees to her was improper.

Remanded for the trial court to consider former husband's retirement as a substantial change in circumstances in further proceedings, and to order each spouse to pay their own fees and costs. https://www.4dca.org/content/download/401271/3440626/file/170035_1709_08152018_09162895_i.pdf (August 15, 2018)

Masnev v. Masnev, __ So. 3d __, 2018 WL 3913416 (Fla. 4th DCA 2018). **TRIAL COURT FAILED TO CONSIDER IN-KIND CONTRIBUTION OR INCLUDE RENTAL INCOME.** Former husband appealed a final judgment of dissolution on several grounds; appellate court found merit in two. It reversed the lump sum child support award because it is not allowed by statute or "precedential authority." It also reversed the trial court's gross monthly income calculation because the trial court did not consider the in-kind contribution for health insurance former wife received from her business, nor the rental income she received. The trial court should have reduced former wife's living expenses by the amount her business paid for health insurance, and should have also included her rental income. Remanded for recalculation. The concurring judge would have also reversed the income imputed to former husband. https://www.4dca.org/content/download/401274/3440653/file/171238_1709_08152018_09243925_i.pdf (August 15, 2018)

Fifth District Court of Appeal

Buschor v. Buschor, __ So. 3d __, 2018 WL 3672309 (Fla. 5th DCA 2018). **MODIFICATION VIOLATED DUE PROCESS; TRIAL COURT CANNOT GRANT RELIEF NOT PLEAD; TRIAL COURT ABUSED ITS DISCRETION DENYING RELOCATION TO SPOUSE WHO MET BURDEN.** Appellate court agreed with former wife that a modification changing the primary residence of the spouses' minor child to that of former husband by awarding him seventy percent of the time-sharing violated her due process rights because former husband did not seek that relief in his pleadings. The record reflected that former wife did not receive notice that the trial court might change the child's primary residence or award more than equal time-sharing as former husband had requested in his petition for modification. Concluding that former wife had met her burden of establishing that relocation was in the child's best interest while former husband had failed to meet his burden that relocation was not in the child's best interest, appellate court held that the trial court had abused its discretion in denying her petition for relocation. Appellate court found that while former wife's relocation without consent or a court order was improper—a factor properly considered by the trial court—that that alone was insufficient to support denial of relocation. Reversed and remanded with directions to grant former wife's petition. <http://www.5dca.org/Opinions/Opin2018/073018/5D17-155.corr%20op.pdf> (August 1, 2018)

Cancel v. Montanez, __ So. 3d __, 2018 WL 3672286 (Fla. 5th DCA 2018). **WRIT OF PROHIBITION GRANTED; CASE ASSIGNED TO DIFFERENT TRIAL JUDGE.** Concluding that the facts presented in former wife's affidavit, taken as true, were sufficient to prompt former wife to fear she would not be able to get a fair hearing on her petition for relocation, appellate court granted her petition for a writ of prohibition, quashed the order denying the motion for recusal, and remanded for assignment to a different trial judge. <http://www.5dca.org/Opinions/Opin2018/073018/5D18-2355.op.pdf> (August 1, 2018)

Knecht v. Palmer, __ So. 3d __, 2018 WL 3672300 (Fla. 5th DCA 2018). **UNEQUAL DISTRIBUTION AFFIRMED; REQUEST FOR ATTORNEY'S FEES REMANDED.** At issue on appeal was the appreciation of a home purchased, financed, and renovated by former wife from her non-marital assets, and a note she negotiated prior to the marriage for artwork she sold. Despite spending over \$500,000 on renovations, the spouses agreed that the home appreciated \$163,000 in value. Former husband argued that he was entitled to one-half of that amount because the renovation funds had been commingled in a joint checking account to which he had also contributed. With regard to the note, he testified that former wife had promised to pay him twenty percent of its value in return for his assistance in negotiating its terms. The trial court found former wife entered the marriage with substantial non-marital assets and former husband with substantial debt. Because former wife had both purchased the home and funded its renovation, the trial court concluded that it would be "inequitable" to award former husband one-half of its appreciation. It denied former husband's claims for alimony, a percentage of money owed on the note, and attorney's fees. Appellate court agreed with former husband that the trial court incorrectly characterized the renovation funds as non-marital because they had been commingled, but affirmed because the case "called for" an unequal distribution of assets. Appellate court held that the trial court failed to specifically address the elements enumerated in s. 61.075(1)(a)-(j), F.S.; however, its belief that an unequal distribution of assets was necessary to do equity was "clear enough," and its findings were sufficient to justify unequal distribution. The trial court abused its discretion by failing to make findings as to each spouse's net worth or considering the spouses' relative financial resources in determining whether to award fees. Plus, its "implicit" ruling of imputation of income to former husband required reversal. Appellate court found no abuse of discretion in the trial court's characterization of the money owed on the note as former wife's non-marital asset. Reversed and remanded for reconsideration of fees, including findings on the spouses' relative financial resources, and to strike the "blanket reservation" of jurisdiction from the final judgment.

<http://www.5dca.org/Opinions/Opin2018/073018/5D17-553.op.pdf> (August 3, 2018)

Clausen v. Clausen, __ So. 3d __, 2018 WL 3946219 (Fla. 5th DCA 2018). **TRIAL COURT FAILED TO INCLUDE IMPUTED INCOME AND CHILD-RELATED EXPENSES.** Both spouses appealed the final judgment dissolving their marriage. Appellate court reversed and remanded the alimony award because the trial court erred in: 1) failing to include income imputed to former wife in its calculations; and 2) failing to consider child-related expenses incurred by former husband. Appellate court affirmed the remainder of the judgment.

<http://www.5dca.org/Opinions/Opin2018/081318/5D16-4114.op.pdf> (August 17, 2018)

Fields v. Fields, __ So. 3d __, 2018 WL 4038047 (Fla. 5th DCA 2018). **TRIAL COURT CANNOT GRANT RELIEF NOT PLEAD OR SET ASIDE VALID AGREEMENT.** The trial court entered former wife's proposed final judgment incorporating the spouses' settlement agreement without ruling on former husband's objections to it. On former husband's motion, the trial court set aside the judgment and ordered the spouses to attend mediation and re-notice the case for trial. Former wife argued that there was no reason to set aside either the judgment or the settlement agreement. Appellate court affirmed the trial court's decision to set aside the final judgment as it appeared that the trial court was unaware of former husband's objections; however, it

reversed the order to the extent that it ordered the spouses to attend mediation and re-notice the case for trial because that “effectively” set aside the spouses’ valid settlement agreement without justification, and also granted relief former husband did not request in his motion. Affirmed in part, reversed in part, and remanded.

<http://www.5dca.org/Opinions/Opin2018/082018/5D17-3751.op.pdf> (August 24, 2018)

Clements v. Clements, __ So. 3d __, 2018 WL 4168633 (Fla. 5th DCA 2018). **TRIAL COURT FAILED TO CONDUCT INDEPENDENT ANALYSIS OF ISSUES; REMANDED.** Former husband appealed a final judgment of dissolution on several grounds. Appellate court affirmed the dissolution, but reversed the remainder of the judgment. It agreed with former husband that the trial court erred: by denying him permanent alimony, in crafting its time-sharing schedule; in calculating child support; and in equitably distributing the marital assets and liabilities; however, the chief reason for reversal was the appellate court’s determination that the trial court failed to conduct an independent analysis of the issues raised by the spouses. Appellate court noted that the trial court adopted former wife’s proposed final judgment “almost verbatim.” Remanded for entry of an amended final judgment.

<http://www.5dca.org/Opinions/Opin2018/082718/5D17-2015.op.pdf> (August 31, 2018)

Keogh v. Keogh, __ So. 3d __, 2018 WL 4168553 (Fla. 5th DCA 2018). **TRIAL COURT ERRED IN CONCLUDING IT LACKED JURISDICTION; REVERSED AND REMANDED.** Former wife appealed a non-final order dismissing her claim for child support. Finding that the trial court erred in concluding that it did not have jurisdiction to award child support, appellate court reversed and remanded. Following the spouses’ separation, former wife moved to Ireland with their minor child. She requested child support, but not a determination of custody. The trial court agreed with former husband’s argument that Florida was not the child’s home state under the UCCJEA. Appellate court held that the plain language of s. 61.13(1)(a), F.S., provided the trial court with jurisdiction to award child support. Appellate court found that the trial court erred in concluding: one, that it lacked jurisdiction under the UCCJEA because the UCCJEA is a jurisdictional act that controls custody disputes, and here, there was none; and two, that it lacked jurisdiction to order child support because s. 61.13(1)(a), authorizes a trial court to order a parent with a duty of support to a child to pay child support in chapter 61 proceedings.

<http://www.5dca.org/Opinions/Opin2018/082718/5D18-1080.op.pdf> (August 31, 2018)

Torres v. Gomez, __ So. 3d __, 2018 WL 4169203 (Fla. 5th DCA 2018). **WRIT OF PROHIBITION GRANTED; CASE ASSIGNED TO DIFFERENT TRIAL JUDGE.** Concluding that the facts presented in appellant’s affidavit, taken as true, were sufficient to prompt her to fear she would not be able to get a fair hearing, appellate court granted her petition for a writ of prohibition, quashed the order denying the motion for recusal, and remanded for assignment to a different trial judge.

<http://www.5dca.org/Opinions/Opin2018/082718/5D18-2501.op.pdf> (August 31, 2018)

Woelk v. Woelk, __ So. 3d __, 2018 WL 4167828 (Fla. 5th DCA 2018). **REMANDED FOR FURTHER FINDINGS REGARDING SPOUSE’S ACTUAL NEED FOR ALIMONY.** Former husband appealed the alimony, child support, and equitable distribution in the final judgment of dissolution. He also appealed the trial court’s findings that former wife had the need for attorney’s fees and he had

the ability to pay; however, this issue was not ripe for review. The spouses agreed that the final judgment be remanded for the trial court to equitably divide the debts listed in a particular paragraph of their joint stipulation. Appellate court affirmed the award of durational alimony for the length of the marriage, but was unable to review the amount because it was not clear how the trial court reached the amount former wife needed. Accordingly, it remanded for further findings regarding her actual need, and to reconsider the child support depending on any changes to the amount of alimony awarded.

<http://www.5dca.org/Opinions/Opin2018/082718/5D17-1717.op.pdf> (August 31, 2018)

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

No new opinions for this reporting period.

Second District Court of Appeal

No new opinions for this reporting period.

Third District Court of Appeal

Carroll v. Goll, __ So. 3d __, 2018 WL 3999127 (Fla. 3d DCA 2018). [CHILD SUPPORT IN AN INJUNCTION ADDRESSED](#). A general magistrate, in a report adopted by the trial court, found that the respondent was ordered to pay child support, that included an amount for arrears, to the petitioner in a temporary injunction for protection against domestic violence. The respondent appealed, claiming that he owed a much smaller amount of child support than what was ordered, and that the magistrate based the calculations on an expired temporary domestic violence order. The appellate court agreed and noted that s. 741.30(6)(a)4, F.S., specifically states that temporary child support orders only remain in effect until the order expires or until a subsequent order is issued. In this case, the magistrate ordered child support arrears based upon an expired temporary injunction order and included an arrearage from before the order was issued. The court remanded the case for the magistrate to re-calculate the child support award based upon the limited time during which the order was valid, which included the period from when the temporary order was issued until it expired.

<http://www.3dca.flcourts.org/Opinions/3D17-0128.pdf> (August 22, 2018)

Fourth District Court of Appeal

No new opinions for this reporting period.

Fifth District Court of Appeal

No new opinions for this reporting period.