2015

CASE LAW
LEGISLATIVE
&
RULES
UPDATE

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PARENTAL RESPONSIBILITY

Parenting:

Assimenios v. Assimenios, 39 Fla. Law Weekly D2598 (Fla. 1st DCA 2014).

Court ordered Wife to be responsible for the full cost of all missed or canceled doctor's appointments for the children. This amounted to a sanction without the opportunity to be heard and was therefore impermissible.

Imputed Income: Court finding the Wife had the ability to work full time was contradicted by the list of appointments that the Husband indicated were necessary and required the Wife to keep.

Brummer v. Brummer, 39 Fla. Law Weekly D2570 (Fla. 5th DCA 2014).

Parenting Plan: Trial court erred in ordering the parties and the minor children to undergo a psychological evaluation prior to the implementation of the Parenting Plan. The Court further ordered the Husband to pay for the evaluation. There was no findings that the evaluation would be in the children's best interest nor that the Husband had the ability to pay and therefore reversed.

Equitable Distribution: Trial court must first identify Marital and Non-Marital property and distribute non-marital property to the appropriate party. Then the court must value marital property prior to distribution of same.

McGarvey v. McGarvey, 40 Fla.L.Weekly D650 (Fla. 5th DCA 2015).

Trial court erroneously believed that the Parenting Plan proposed by the Husband had been agreed to in mediation and therefore adopted the plan without independent consideration. As there was no such agreement the time sharing plan is reversed for the Court to determine a time sharing plan in the child's best interest.

Paternity:

B.W.P. v. A.L.H., 40 FLW D267 (Fla. 2nd DCA 2015).

Sperm donor has no parental rights per 742.14, Florida Statute and therefore court affirmed for dismissal of claim for parental rights by sperm donor even when there was no contract limiting these rights.

Attorney fees: Award of attorney fees under 57.105 Florida statute reversed as pleadings attempted in good faith to advance a novel question of law.

Corona v. Harris, 40 Fla. L. Weekly D1144 (Fla. 1st DCA 2015).

Father brought paternity action for two children living in his care. In answer Mother alleged that elder child was not the biological child of the "Father" but admitted both children had been living with "Father". Court entered order providing primary responsibility to the "Father". Court required to conduct a two part test to provide custody of a child to a non-relative third party: (1) determine that remaining with a biological parent would be detrimental to the child and (2) if so, determine the best interest of the child.

Trial Court failed to make initial determination of detriment to the child and therefore reversed as to elder child.

DOR o/b/o Corbitt v. Alletag, 40 Fla.L.Weekly D375 (Fla. 1st DCA 2015),
Father signed birth certificate at time of child's birth. When Mother plead for child support he requested paternity testing to be 100% sure. Paternity was not placed in issue because Father did not assert in his answer or testimony that he was not the child's biological father. Further, even if placed in controversy, the Father would have to establish good cause for paternity testing by proving that he signed the paternity affidavit on the birth certificate due to fraud, duress, or a material mistake of fact or that there had been newly discovered evidence. Reversed as to paternity test.

DOR o/b/o Haye v. Kerr, 40 Fla.L.Weekly D376 (Fla. 1st DCA 2015).
Father signed birth certificate at time of child's birth. Mother requested paternity test because Father constantly told the child he was not really the father. Paternity was not placed in issue because Father did not assert in his answer or testimony that he was not the child's biological father. Further, even if placed in controversy, the Mother would have to establish good cause for paternity testing. Reversed as to paternity test.

Drouin v. Stuber, 40 Fla. L. Weekly D1543 (Fla. 4th DCA 2015).
Procedure: Mother moved to vacate 2011 default judgment in 2014 based upon FL R.Civ.Pro. 1.540(b). Initially denied but then vacated on rehearing. Post decretal orders may be viewed as final judgments and the proper subject of a motion for rehearing as it completes judicial labor.
Paternity: In 2011 the court entered a default final judgment of paternity against Jordan Drouin. In 2014 the child's Mother moved to set aside the default judgment because, although she admitted that Drouin was the child's biological father, at the time the child was born she was in an intact marriage with Christopher Stuber and Stuber had not been joined to the paternity action as an indispensable party. Error for Court to grant Mother's Motion. Mother cannot assert Stuber's constitutional rights to due process in order to have judgment set aside, only Stuber can exert his rights.

J.A.I. and J.K.C. v. B.R., 40 Fla.L.Weekly D312 (Fla. 2nd DCA 2015).
J.K.C. signed an acknowledgment of paternity on 4/20/12. B.R. filed a petition to determine paternity on 6/26/12 (more than 60 days after acknowledgment of paternity). B.R. argued that the acknowledgment was based on mistake of fact because J.K.C. did not know that B.R. was having relations with J.A.I. at the time of conception. J.K.C. stated that he know of B.R.s claim of paternity and therefore no mistake of fact. Error to grant B.R.'s motion for genetic testing because B.R. was precluded from bringing a cause of action to challenge the paternity of the child.

Relocation:

Brooks v. Brooks, 40 Fla. L. Weekly D1140 (Fla. 2nd DCA 2015).
Contempt: There is no mandatory provision that a court must hold a party in contempt for violating provisions of a parenting plan.
Relocation: Fl. Stat. 61.13001 is read to require either parent (or third party with time-sharing rights) to file a Petition for Relocation if moving more than 50 miles from primary residence. Does not apply only to parent with majority time sharing with child. Certified Conflict with 1st DCA Decision, Raulerson v. Writghte, 60 So. 3d 487 (Fla. 1st DCA 2011)

Fosshage v. Fosshage, 40 Fla. L. Weekly D1621 (Fla. 3rd DCA 2015).
Parties divorced in FL and entered into a 50/50 timesharing. Former Husband later moved to Wisconsin. Former Husband filed Supplemental Petition to Modify Parenting Plan based upon allegations of substantial change of circumstances including child abuse by Former Wife's spouse, parental interference by Former Wife. Court found evidence did not support allegations of abuse but did determine Former Wife had interfered with contact. Court modified Parenting Plan providing Former Husband with primary residence. Reversed as wrong statute was used as this was clearly a Supplemental Petition for Relocation under F.S. 61.13001.

EQUITABLE DISTRIBUTION

Equitable Distribution:

Brummer v. Brummer, 39 Fla. Law Weekly D2570 (Fla. 5th DCA 2014).
Parenting Plan: Trial court erred in ordering the parties and the minor children to undergo a psychological evaluation prior to the implementation of the Parenting Plan. The Court further ordered the Husband to pay for the evaluation. There was no findings that the evaluation would be in the children's best interest nor that the Husband had the ability to pay and therefore reversed.
Equitable Distribution: Trial court must first identify Marital and Non-Marital property and distribute non-marital property to the appropriate party. Then the court must value marital property prior to distribution of same.

Caine v. Caine, 40 FLW D35 (Fla. 1st DCA 2014).
Final Judgment failed to consider the former husband's entitlement to a credit or setoff for half the rental value of the former wife's exclusive use and possession of the martial home. Florida Statute 61.077 is clear that the eight factors enumerated must be considered before determining the issue of credits or setoff in the final judgment.
Insurance for Alimony: No findings that the insurance ordered was reasonably available nor the ability to pay such insurance.

Dravis v. Dravis, 40 Fla. L. Weekly D1607 (Fla. 2nd DCA 2015).
Wife received non-marital gifts from her mother during the marriage but these were comingled with marital funds in a saving account. Thus the full account was marital. Equitable distribution awarded reversed because the trial court included double counting an account that had been closed and moved to another marital account. Also the equitable distribution had erroneously counted a dissipated account without factual findings as to whether the dissipation was due to misconduct.

Gilliard v. Gilliard, 40 Fla. L. Weekly D961 (Fla. 5th DCA 2015).
Equitable Distribution: Court erred in failing to value the agreed upon distribution of personal property between the parties, in failing to include a substantial debt of the parties and in double counting a specific distribution to the Wife. If the Court on remand makes an unequal distribution of assets and liabilities, the court must make specific findings of all factors in 61.075 to support the distribution
Alimony: The Court erred in considering Husband's gross income rather than net income when determining alimony. Court also erred in failing to make specific findings of fact to support permanent periodic alimony to the Wife in a 14 year marriage and in failing to impute full time income to the Wife without findings as to reason she could not be employed full time.
Procedure: Except as provided by specific rules, a trial court does not have separate authority, on its own initiative, to alter, modify, or vacate an order or judgment

Marcheck v Marcheck, 40 Fla. L. Weekly D766 (Fla. 2nd DCA 2015).
Equitable Distribution reversed because there was not competent, substantial evidence supporting the court's valuation of the business income. Trail court used the capitalization method to value the business but failed to deduct expenses from gross receipts to determine net income of the business.

McDuffie v. McDuffie, 40 FLW D272 (Fla. 1st DCA 2015).
Imputed Income: Court found Wife lacked credibility in her argument that she was medically incapable of full time work. However, Court's imputation of $10 per hour was without any substantial evidence to support the findings of current job market, work history, occupational qualifications and the prevailing earnings level in the local community.
Equitable Distribution: court failed to allocate credit card debt properly by providing to whom the former wife is to make payments. Simply listing credit card accounts and dividing them equally in equitable distribution schedule is insufficient.

Patel v. Patel, 40 Fla.L.Weekly D204 (Fla. 5th DCA 2015).
Equitable Distribution: Error for the Court to award the Husband the former marital residence but made no provision to require the Husband to refinance the existing mortgage and hold the Wife harmless until refinance. Court equally divided a debt owed by the parties to the Husband's parents but required the Wife to immediately repay her one half share from assets without finding that the wife lacked ability or willingness to repay the loan according to the historic terms of repayment.
Child Support: Uncovered medical expenses should be divided according to the child support percentages. Also monthly health insurance expenses for the children should be included in child support calculations.
Attorney fees: Error to deny attorney fees when the parties have significant disparity in income.

Platt v. Platt, 40 Fla. L. Weekly D1119 (Fla. 4th DCA 2015).
Assets sold during pendency of the proceedings should not be included in equitable distribution if the proceeds are used for reasonable living expenses and not based upon findings of misconduct.

Porter v. Porter, 39 Fla. Law Weekly D2580 (Fla. 2nd DCA 2014).
Error for Court to ignore joint stipulation made in court as to distribution of specific assets.

Smith v. Smith, 40 Fla. L. Weekly D1518 (Fla. 2nd DCA 2015).
Date for identifying marital assets is date of filing petition for dissolution. Therefore error to include in equitable distribution a vehicle purchased after the date of filing.
Appeals: Determination of entitlement to attorney fees without determination as to amount is a non-final non-appealable order. Appellate court lacks jurisdiction to review issue.

Somasca v. Somasca, 40 Fla. L. Weekly D1798 (Fla. 2nd DCA 2015).
Husband owned property prior to the marriage, the value of which depreciated during the marriage from $900,000 to $680,000. During the marriage, the Husband used marital funds to pay the mortgage on the building, reducing the indebtedness by $23,651. Appellate court found that the payment of the mortgage increased the equity in the property (the Husband would have received less proceeds but for the payment of the mortgage). Wife was entitled to credit for one-half of the amount by which the use of marital funds to pay down the mortgage on the non-marital property during the marriage. (BUT SEE Weaver v. Weaver released the same month by 4th DCA)

Stantchev v. Stantcheva, 40 Fla. L. Weekly D1561 (Fla. 5th DCA 2015).
Husband transferred $100,000 prior to the Wife's filing of Petition and there was a cost of $9,000 for the transaction. Wife entitled to one half share of funds but must pay one half of the cost of the transaction. Error to credit the Husband one half of the fees removed from the marital account by the Wife for payment of her attorney prior to filing when the final distribution provided each with sufficient funds to pay their own fees.

Walczak v. Walczak, 39 FL D2526 (Fla. 5th DCA 2014).
Final Judgment contained numerous errors in Equitable Distribution. Case remanded for appropriate determination of equitable distribution. Alimony and attorneys' fees should then be addressed following new equitable distribution.

Weaver v. Weaver, 40 Fla. L. Weekly D1923 (Fla. 4th DCA 2015).
Husband owned home valued at$300,000 at time of marriage. During marriage the parties took out a loan on the property in both names. At the time of the final hearing the mortgage had an outstanding amount of $136,000 but the property value had depreciated to $182,000. Court found that the Wife had invested $40,000 from the proceeds of her pre-marital property in the home but there was no competent evidence to support these findings. The court further found that as the property had decreased in value during the marriage and therefore there could be no enhancement in value of the property during the marriage to allow for a marital interest to be distributed. (BUT SEE Somasca v. Somasca released the same month by 2nd DCA)

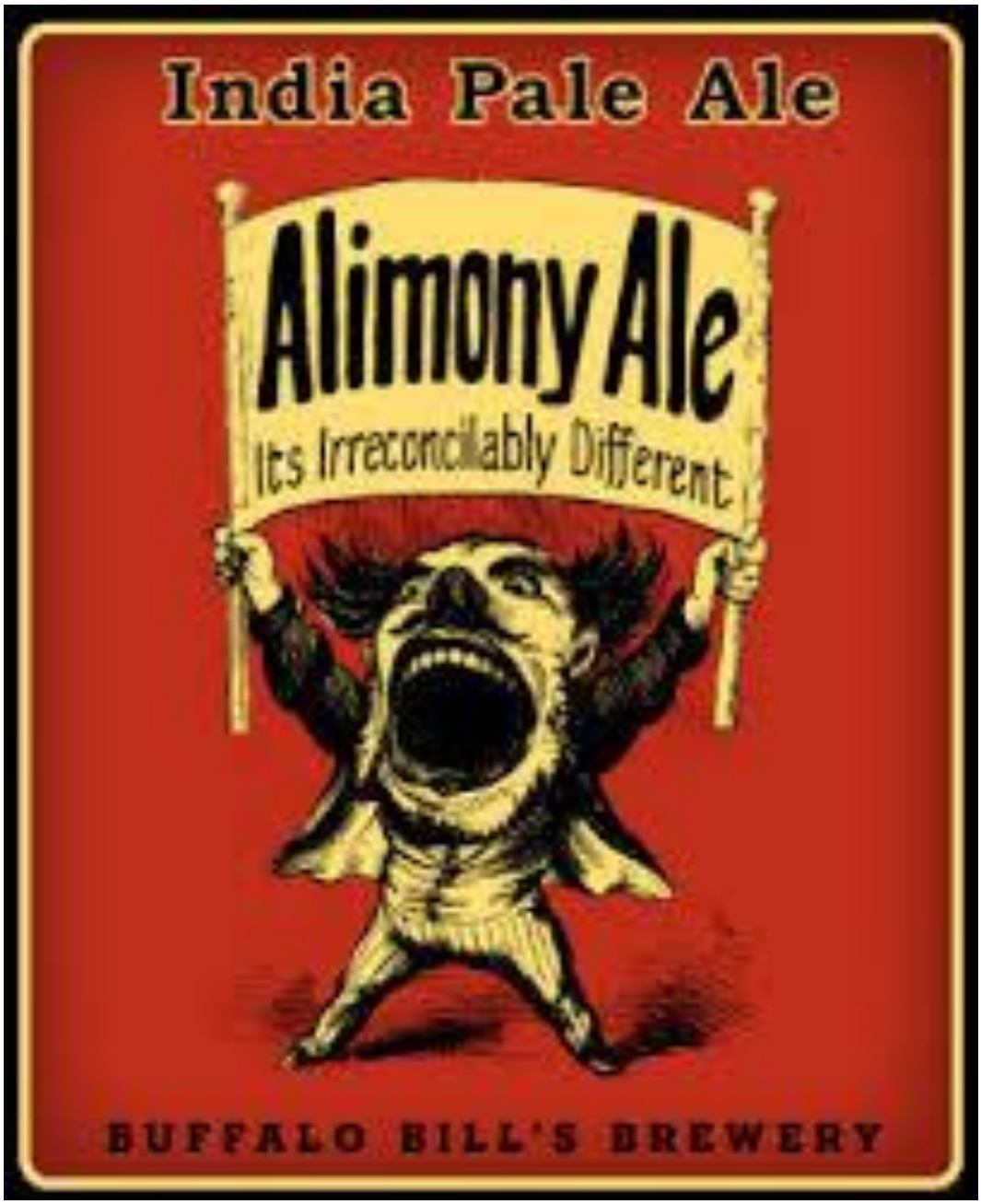
Williams v. Williams, 40 Fla. L. Weekly D1162 (Fla. 1st DCA 2015).
Equalizing payment is not explained with sufficient detail to permit meaningful review. Reversed for additional evidence to support equitable distribution.

Winder v. Winder, 39 Fla. Law Weekly D2587 (Fla. 1st DCA 2014).
Alimony: Court awarded permanent periodic alimony in 10 year marriage where wife had limited history of employment and some health concerns. The final judgment failed to include sufficient factual findings as required by section 61.08 to allow for a meaningful review of the alimony award. Award must also be reversed because final judgment failed to expressly find that no other form of alimony would be appropriate before awarding permanent periodic alimony.
Equitable Distribution: Error to include in equitable distribution a marital account used during the pendency of the proceedings to pay marital expenses including temporary support without finding of dissipation due to misconduct.

Partition:

Dottaviano v. Dottaviano, 40 Fla. L. Weekly D1507 (Fla. 5th DCA 2015).
Imputation of Income: To impute income the court must find that the spouse is voluntarily unemployed or underemployed and (2) that the party's unemployment is result of party's pursuit of own interest or less than diligent efforts to find employment. Party seeking imputation bears the burden to show both employability and availability of jobs. Final Judgment fails to meet these tests and must be reversed.
Partition: While appropriate to grant primary residential parent exclusive use of the marital home until the minor child reaches 18 years of age, partition is appropriate when as here, the parties had lived in the home a short while, the parties had limited other assets to be distributed, the cost of the home were high thus reducing the Husband's disposable income and there was a large difference in the parties incomes.

Richeson v. Richeson, 40 Fla. L. Weekly (Fla. 5th DCA 2015).
Error for Court to order real property sold and proceeds distributed between the parties when neither party had plead Partition. Reversed and directed that original ED schedule be reinstated. This schedule indicated that the investment property would continue to be owned jointly by the parties.


India Pale Ale
Alimony Ale
Its Irreconcilably Different
BUFFALO BILL'S BREWERY

ALIMONY

Alimony:

Atkinson v. Atkinson, 40 Fla.L.Weekly D404 (Fla. 2nd DCA 2015).

Parties entered into MSA in 2006 which was incorporated into their Final Judgment. MSA provided that the Husband was to pay $500 per month as permanent periodic alimony until the Wife's remarriage, or co-habitation with a male or the death of either party. In 2012 Husband filed a supplemental Petition for modification of alimony based upon the fact that the Wife had rented a room to a male tenant since 2010 and this act immediately terminated the alimony obligation. The Court found by substantial evidence that in fact the Wife had rented a room but that the relationship was strictly as landlord / tenant. The court found this did not rise to the level of a supportive relationship as defined by 61.14(1)(b) but did find that the mere presence of an unrelated male in the home amounted to cohabitation under the terms of the MSA. The appellate court considered the contract *de novo*, found the term "cohabitation" did not include the landlord/tenant meaning and must include more than the mere presence of another person under the recipient spouse's roof.

Banks v. Banks, 40 Fla. L. Weekly D1463 (Fla. 2nd DCA 2015).

Thirty-three year marriage, Husband earning $90,000 and Wife unemployed, Wife 63 years old & Husband 55 years old. ED resulted in Husband having negative net worth of $294,912 and Wife positive net worth of $29,142 with Husband retaining home which was substantially upside down. Appeal heard without transcript or statement of evidence. Thus, standard is limited to errors appearing on the face of the amended final judgment. Wife appeals denial of permanent periodic alimony reversed. Court had indicated standard of proof for permanent alimony was clear and convincing evidence. This in fact only applied to moderate term marriages and permanent alimony may be awarded following a long duration if such an award is appropriate upon consideration of the factors set forth in section (2). Thus issue of alimony reversed and remanded. Decision also required clarification of language on distribution of military retirement which had included both a specific amount and a percentage. Wife requested insurance to secure alimony in petition but because she had not included this in her pre-trial memorandum and limited record on appeal it was not considered by appellate court.

Diaz v. Diaz, 39 Fla. Law Weekly D2525 (Fla. 3rd DCA 2014).

Durational alimony cannot be ordered for a period that exceeds the length of the marriage. Here the order for 48 months of alimony on a marriage that lasted 40 months is not permitted by statute and must be reduced to 40 months, the maximum length allowed.

Dugan v. Dugan, 40 Fla.L.Weekly D650 (Fla. 5th DCA 2015).

Trial Court failed to consider the actual medical expenses Wife was required to pay that were not covered by Medicare in calculating alimony need due to Husband claiming that she had no medical expenses. Despite lack of transcript court can correct errors that appear on face of judgment.

Gilliard v. Gilliard, 40 Fla. L. Weekly D961 (Fla. 5th DCA 2015).
Equitable Distribution: Court erred in failing to value the agreed upon distribution of personal property between the parties, in failing to include a substantial debt of the parties and in double counting a specific distribution to the Wife. If the Court on remand makes an unequal distribution of assets and liabilities, the court must make specific findings of all factors in 61.075 to support the distribution
Alimony: The Court erred in considering Husband's gross income rather than net income when determining alimony. Court also erred in failing to make specific findings of fact to support permanent periodic alimony to the Wife in a 14 year marriage and in failing to impute full time income to the Wife without findings as to reason she could not be employed full time.

Juchnowicz v. Juchnowicz, 40 Fla.L.Weekly D422 (Fla. 2nd DCA 2015).
28 year marriage. Wife was primary income earner until 2008 when lost job and income reduced. Husband's income at time of divorce was $280,000 per year. Court found Wife's need was only $4,800 per month and awarded permanent alimony of $1,571 per month. The Court reviewed based on abuse of discretion standard. Found lower court had considered Wife's post separation standard of living as basis for alimony rather than lifestyle of the parties during the marriage which was error. Reversed and remanded for appropriate alimony amount. Court failed to make specific circumstances to justify the requirement for life insurance and therefore this too is reversed.

Kobe v. Kobe, 40 Fla.L.Weekly D694 (Fla. 1st DCA 2015).
Court awarded alimony in excess of Wife's stated need and without specific findings to justify higher amount. In addition court failed to make findings of Wife's needs following sale of home. Reversed and remanded.

Moore v. Moore, 40 Fla.L.Weekly D356 (Fla. 2nd DCA 2015).
Trial court used gross monthly receipts from business and gave no credit for reasonable business expenses in determining Husband's income for alimony and child support. Reversed and remanded for findings as to monthly income for Husband.

Purin v. Purin, 40 Fla.L.Weekly D497 (Fla. 2nd DCA 2015).
30 year marriage. Trial court awarded durational alimony based upon evidence presented of Husband's mandatory retirement age of 65. Court cannot consider facts that will not happen for 10 years. Court could award durational alimony with a nominal permanent element but error to deny permanent alimony to long term marriage when need and ability to pay is established

Sikora v. Sikora, 40 Fla. L. Weekly D1594 (Fla. 2nd DCA 2015).
34 year marriage. Trial court erred in awarding the Wife permanent periodic alimony in excess of her stated needs. The trial court also erred in imputing income to the wife at the rate of 3.5% on her retirement accounts without sufficient evidence presented to support this rate of return. The court

failed to consider any retroactive alimony to the date of filing the petition. The parties had stipulated to a temporary alimony award without prejudice and thus the court should have considered the sufficiency of this award. The court erred in ordering the Husband to secure the alimony with a $2 million policy without sufficient evidence to support this amount. The Court ordered a lump sum alimony award but failed to provide justification for the award and thus reversed. Finally, trial court erred in awarding as equitable distribution moneys that the wife had used during the pendency of the proceedings to pay necessary medical bills.

Solache v. Solache, 40 Fla.L.Weekly D632 (Fla. 3rd DCA 2015).
Trial court erred in ordering that, upon the minor child reaching the age of majority, alimony shall increase by $400 without explanation for prospective increase.

Stoltzfus v. Stoltzfus, 40 Fla. L. Weekly D1863 (Fla. 2nd DCA 2015).
The Court erred in failing to consider the interest earned on 401(k) retirement accounts as income to the Wife when determining her need for alimony even if she could not withdraw the money without penalty. 61.046(8) defines income as retirement benefits, pensions, dividends (and) interest."

Topel v. Topel, 40 FLW D50 (Fla. 5th DCA 2014).
Husband offered uncontroverted testimony about his income. Error for trial court to use gross income as basis for temporary alimony and to award temporary alimony in excess of Husband's ability to pay.

CHILD SUPPORT

Child Support:

Boyd v Boyd, 40 Fla. L. Weekly (Fla. 4th DCA 2015).
Where a party concedes that not all court-ordered child support was paid, the trial court errs in failing to resolve the amount of arrearages owed. When there is conflicting evidence about the amount of the arrearage, the court must determine the actual amount of arrearage.

Chamberlain v. Eisenger, 40 Fla.L.Weekly D389 (Fla. 4th DCA 2015).
Parental Responsibility: Parents with four children divorced in Maryland in 2007 with Mother having primary custody of children. Soon after, Father moved to Florida and parties stipulated that Father would have custody of eldest daughter. In 2010 Mother moved to Florida and Father filed Supplemental Petition for Modification of Timesharing and Support. Parent seeking to establish substantial change of circumstances to modify parenting plan has extraordinary burden to prevent parents from continually disrupting the lives of the children by repeatedly initiating custody disputes. Father met burden and was awarded primary residence of three of the children with the Mother being ordered to attend counseling for reunification with daughter. Court affirms finding that sufficient evidence to support modification.
Child Support Arrearage: In determining child support arrearage, court erred in including court ordered alimony as income to Wife when court found Father was $140,000 in arrears on alimony payments.
Modification of Alimony: Trial Court found that Father lacked credibility and imputed income of $73,000 consistent with the income he had earned at the time of Final Judgment. However, despite the evidence that the Father obviously had unreported sources of income, the trial court failed to state the specific factors the trial court considered in calculating the Father's income. Stating only that the number was determined based on all evidence presented is insufficient findings.

Chianese v. Brady, 40 Fla. L. Weekly D1823 (Fla. 4th DCA 2015).
Concurring opinion on PCA addresses that on child support modification Petitioner should not have to use her personal assets to pay attorney fees when she had limited income and Respondent had considerable income. However, Petitioner's attorney had already received $30,000 in attorney fees for child support modification and additional temporary fee request were not reasonable.

Clayton v. Clayton, 39 Fla. Law Weekly D2530 (Fla. 5th DCA 2014).
Final Judgment contains the following errors: (1) child support calculated using Husband's net income but Wife's gross income and used Grossed up method even though it does not apply in this case, (2) did not include schedule for reduction in child support as children aged out (3) did not allocate liabilities between the parties, and (4) Parenting Plan failed to set forth number of overnights and was vague as to exchange times.

DOR obo David v. Davis, 40 Fla. L. Weekly D1609 (Fla. 2nd DCA 2015).
Illinois Child Support Order registered in Florida in 2008. The obligor contested the validity of the arrearage but no hearing was heard. He subsequently filed a Supplemental Petition to Modify Child Support which was granted in 2010 back to the date of registration of the original order. The Court had jurisdiction to modify only to the date of registration but the Court had jurisdiction to adjudicate the arrearage because the Illinois order became enforceable in the same manner as a FL order once it was registered under UIFSA. The only reason that the arrearage was not determined at the time of the modification was because of an existing injunction from the Bankruptcy Court at the time of the hearing.

DOR obo K.A.N. v. A.N.J., 40 Fla. L. Weekly D1351 (Fla. 2nd DCA 2015).
Required reversal due to the Court's failure to include a child support guidelines worksheet in a final judgment establishing paternity and child support. A deduction for support of another child must be supported by evidence that the parent was actually paying the amount ordered. Retroactive child support should be awarded for period that parents did not live together up to a period of 24 months prior to the filing of the Petition.

Elias v. Elias, 40 Fla. L. Weekly D1543 (Fla. 4th DCA 2015).
Court must first establish appropriate amount of child support based upon guidelines. The court can then deviate from the guidelines based upon statutory factors. The Court cannot deny child support simply because one parent states that they will pay children's expenses directly to providers.

Gilroy v. Gilroy, 40 Fla. L. Weekly D985 (Fla. 2nd DCA 2015).
Discovery: The filing of a Financial Affidavit is mandatory and non-waivable in supplemental proceedings (FL Fam. R.Pro. 12.285(e)(1)) and service must be made within 45 days of service of the initial pleadings. Wife's failure to provide Financial Affidavit less than 24 hours before a hearing requires the granting of a continuance.
Child Support: Tuition can be included in child support calculations if private school has historically been part of the family's standard of living. The failure to file a Child Support Guidelines Worksheet at the time of initial child support calculations causes a factual dispute for the trial court to resolve when considering modification.

Gimeno v. Rivera, 40 FLW D1 (Fla. 3rd DCA 2014).
Subsequently born children is not basis for downward modification of existing child support order.

Harris v. Harris, 40 Fla.L.Weekly D603 (Fla. 5th DCA 2015).
Abuse of discretion for Court to use different methods in calculating each party's income for child support purposes. Court included Husband's retirement and disability income as well as imputed income in gross pay but failed to include Wife's Military Reserve pay in calculating her gross income.

Henderson v. Henderson, 40 Fla.L.Weekly D359 (Fla. 5th DCA 2015).
Parental Responsibility: Record contains sufficient evidence to support modification of parental responsibility granting Father sole parental responsibility, order lacks such findings and the issue is therefore reversed for such mandatory findings.
Attorney fees: Where an order denying attorneys' fees fails to contain sufficient factual findings to facilitate meaningful appellate review of the trial court's decision, the appellate court must reverse and remand for the trial court to make such findings.
Child Support: Order must include reductions of amount of support upon elder child reaching majority. Also order for temporary child support must include the number of overnights in the calculations.

Kemper v. D.O.R. o/b/o Kemper, 40 Fla.L.Weekly D602 (Fla. 5th DCA 2015).
SSI beneifts received by a parent due to the parent's disability should be included in the calculation of income for basis of child support pursuant to F.S. 61.30. F.S. 409.2561 does not prevent the inclusion of SSI in the determination of income but rather prevents an order of child support to be paid by a parent receiving SSI. In this case the Mother receives SSI and is requesting child support to be paid by the father so the Mother's SSI should be used in calculating child support.

Larwa v. DOR o/b/o Roush, 40 Fla. L. Weekly D1803 (Fla. 5th DCA 2015).
Once a child is emancipated, the court loses subject matter jurisdiction to modify or extend child support within the existing child support case. An independent action may be brought to adjuciate support of a dependent who has reached the age of majority but that cause belongs to the dependent person who may bring the action in accordance with FL. R.Civ.Pro 1.210(b).

Moore v. Moore, 40 Fla.L.Weekly D356 (Fla. 2nd DCA 2015).
Trial court used gross monthly receipts from business and gave no credit for reasonable business expenses in determining Husband's income for alimony and child support. Reversed and remanded for findings as to monthly income for Husband.

Patel v. Patel, 40 Fla.L.Weekly D204 (Fla. 5th DCA 2015).
Equitable Distribution: Error for the Court to award the Husband the former marital residence but made no provision to require the Husband to refinance the existing mortgage and hold the Wife harmless until refinance. Court equally divided a debt owed by the parties to the Husband's parents but required the Wife to immediately repay her one half share from assets without finding that the wife lacked ability or willingness to repay the loan according to the historic terms of repayment.
Child Support: Uncovered medical expenses should be divided according to the child support percentages. Also monthly health insurance expenses for the children should be included in child support calculations.
Attorney fees: Error to deny attorney fees when the parties have significant disparity in income.

Quinn v. Quinn, 40 Fla. L. Weekly D1598 (Fla. 2nd DCA 2015).
Child support calculation that is based upon the wrong number of overnights including reduction for substantial number of overnights to a parent is improper and requires reversal.

Rudnick v. Rudnick, 40 Fla.L.Weekly D291 (Fla 4th DCA 2015).
Income that is based upon one year's substantial bonus or, as in this case unusually high income due to the Presidential Election for political consultant, should not be used to establish child support. The trial court should look at previous year's income to determine regularly recurring income.

Sowell v. McConnell, 40 Fla. L. Weekly D1559 (Fla. 5th DCA 2015).
Florida Statute 61.30(8) requires parties to pay uncovered medical expenses of a child in accordance with their percentage share of child support. Error for the Court not to apportion the uncovered medical expenses for the children during the pendency of the proceedings.

Valdes v. Valdes, 40 FLW D121 (Fla. 2nd DCA 2015).
Court miscalculated child support (ongoing and retroactive) for two children each with a different parenting plan schedule.

Van Exter v. Diodonet-Molina, 39 Fla. Law Weekly D2476 (Fla. 3rd DCA 2014).
Child Support: Trial Court's failure to make findings of fact as to the income of the Mother or Father requires reversal for child support. Trial Court's failure to make findings as to Father's ability to pay arrearage as ordered requires reversal.
Attorney fees: Trial Court determined that the attorney fees were reasonable and necessary but failed to make any findings as to the Father's ability to pay the Mother's attorney fees and therefore requires reversal.

EVERYTHING ELSE

Agreements:

Elias v. Elias, 39 Fla. Law Weekly D2495 (Fla. 4th DCA 2014).

Parties entered into prenuptial agreement that allowed for sale of property owned by the parties as tenants in common, joint tenants with rights of survivorship or tenants by the entirety "if he parties become legally separated pursuant to judicial proceedings or an agreement". Trial court found that the perfection of service of process of a Petition for Dissolution was the event providing the court with jurisdiction over the parties and thus qualified as "separation pursuant to judicial proceedings". The 4th DCA found this phrase ambiguous as there is no legal separation in Florida and therefore reversed the lower Courts interpretation and remanded for proceedings on the meaning of the language used. The standard of review applicable to the determination of whether a contract is ambiguous is the *de novo* standard.

Geraci v. Geraci, 39 Fla. Law Weekly D2582 (Fla. 2nd DCA 2014). Parties entered into Prenuptial Agreement prior to marriage in 1982. Agreement waived all rights to support and most equitable distribution The Court found that during the course of the long marriage the prenuptial agreement was abandoned or rescinded by mutual consent as a result of the conduct of the parties. The Court then determined the bulk of the estate was husband's non-marital property, distributed the marital assets and provided for permanent periodic alimony.

Hahamovitch v. Hahamovitch, SC14-277 (Fla. 2014).

Fourth District Certified conflict with the 2nd & 3rd Districts and the question: Where a prenuptial agreement provides that neither spouse will ever claim any interest in the other's property, states that each spouse shall be the sole owner of property purchased or acquired in his or her name, and contains language purporting to waive and release all rights and claims that a spouse may be entitled to as a result of the marriage, do such provisions serve to waive a spouse's right to any share of assets titled in the other spouse's name, even if those assets were acquired during the marriage due to the parties' marital efforts or appreciated in value during the marriage due to the parties' marital efforts?

The issue is whether a general release to non-marital properties is sufficient to waive any active appreciation in value (i.e. value increase due to marital efforts). Supreme Court concluded where a contract is clear and unambiguous, it must be enforced pursuant to its plain language. "In such a situation, 'the language itself is the best evidence of the parties' intent, and its plain meaning controls.' Thus, if a prenuptial agreement generally waives all property solely owned by one spouse presently and in the future and waives all of the other spouse's rights and claims in such property, that waiver now includes a waiver of active marital enhancement even if not specified. By this decision, the Supreme Court disapproves the decisions by Second District in Irwin v. Irwin, 857 So. 2d 247 (Fla. 2d DCA 2003), and the Third District in Valdes v. Valdes, 894 So. 2d 264 (Fla. 3d DCA 2004).

Appeals:

Burkett v. Burkett, 40 FLW D230 (Fla. 1st DCA 2015).
Trial court erred in not including sufficient findings to support award of attorney fees but failed to file motion for Rehearing to alert the trial court and must be sustained on appeal. Appellate Court also limited because of a lack of transcript.

Kelly v. Snietka, 40 Fla.L.Weekly 0381 (Fla. 4th DCA 2015).
Appellate court could consider in appeal any matter or ruling occurring before the filing of the notice of appeal. Thus the court has jurisdiction to consider the order vacating the prior final judgment and the Motion to Disqualify the Judge.

Liberatore v. Liberatore, 40 Fla. L. Weekly D864 (Fla. 5th DCA 2015).
A lower court's function in implementing the directions in an appellate court's mandate are purely ministerial, and the court may not deviate from those instructions. The court cannot consider additional issues upon remand.

Lopez v. Lopez, 40 Fla. L. Weekly D1830 (Fla. 4th DCA 2015).
A Motion for Rehearing does not suspend rendition of a non-final order because rehearing is not authorized for non-final orders. Father's appeal of a post dissolution order establishing child contact conditioned on the outcome of reunification therapy was a non-final order and therefore Father's Notice of hearing was not timely filed and dismissed for lack of jurisdiction.

Panopoulis v. Panopoulis, 40 FLW D268 (Fla. 2nd DCA 2015).
An amended final judgment that corrects a scrivener's error does not toll the time for appeal.

Smith v. Smith, 40 Fla. L. Weekly D1518 (Fla. 2nd DCA 2015).
Date for identifying marital assets is date of filing petition for dissolution. Therefore error to include in equitable distribution a vehicle purchased after the date of filing.
Appeals: Determination of entitlement to attorney fees without determination as to amount is a non-final non-appealable order. Appellate court lacks jurisdiction to review issue.

Westwood v. Westwood, 40 Fla.L.Weekly D539 (Fla. 5th DCA 2015).
Court issued a partial final judgment with respect to relocation of minor children. 34 days later Wife filed a Verified Petition for Modification of Partial Final Judgment or in the Alternative Motion for Reconsideration". The pleadings were not served on Husband and therefore could only be treated by the court as a Motion for Rehearing which was not timely filed. Therefore appeal dismissed without prejudice for Wife to properly file and serve a Supplemental Petition for Modification.

Whissell v. Whissell, 40 Fla. L. Weekly D1829 (Fla. 4th DCA 2015).
Appeals will be dismissed in dissolution of marriage cases where the appealing party has been held in contempt for failure to pay court-ordered support, if the appealing party does not comply with the trial court's orders within a set time period. Here the Husband has been held in contempt three times, been

incarcerated and remains in contempt of the court order. Appeal is dismissed unless Appellant complies with previous support orders within 30 days of filing opinion.

Winder v. Winder, 39 Fla. Law Weekly D2587 (Fla. 1st DCA 2014).
Alimony: Court awarded permanent periodic alimony in 10 year marriage where wife had limited history of employment and some health concerns. The final judgment failed to include sufficient factual findings as required by section 61.08 to allow for a meaningful review of the alimony award. Award must also be reversed because final judgment failed to expressly find that no other form of alimony would be appropriate before awarding permanent periodic alimony.
Equitable Distribution: Error to include in equitable distribution a marital account used during the pendency of the proceedings to pay marital expenses including temporary support without finding of dissipation due to misconduct.

Attorneys' Fees:

Beckstrom v. Bekstrom, 40 Fla. L. Weekly D1014 (Fla. 4th DCA 2015).
The Court must make specific findings of fact to support the payor's ability to pay attorney fees and any payment plan imposed.

Butler v. Prine, 40 Fla.L.Weekly D487 (Fla. 2nd DCA 2015).
While Court found sufficient evidence to support some attorney fee award, the $93,202 award of attorney fees was not substantiated by the evidence presented to show consideration of the reasonableness and necessity of all of the legal work underlying the award.

B.W.P. v. A.L.H., 40 FLW D267 (Fla. 2nd DCA 2015).
Sperm donor has no parental rights per 742.14, Florida Statute and therefore court affirmed for dismissal of claim for parental rights by sperm donor even when there was no contract limiting these rights.
Attorney fees: Award of attorney fees under 57.105 Florida statute reversed as pleadings attempted in good faith to advance a novel question of law.

Caine v. Caine, 40 FLW D35 (Fla. 1st DCA 2014).
Final Judgment failed to consider the former husband's entitlement to a credit or setoff for half the rental value of the former wife's exclusive use and possession of the martial home. Florida Statute 61.077 is clear that the eight factors enumerated must be considered before determining the issue of credits or setoff in the final judgment.
Insurance for Alimony: No findings that the insurance ordered was reasonably available nor the ability to pay such insurance.

Card v. Card, 40 Fla.L.Weekly D322 (Fla. 2nd DCA 2015).
During argument before trial court Wife argued that her attorney fees should be equal to the amount that the Husband had paid his counsel. She is then barred from arguing that the Court failed to consider her need or her husband's ability to pay higher fees on appeal as she "invited the error"

Coleman v. Bland, 39 Fla. Law Weekly D2526 (Fla. 5th DCA 2014).
Trial court awarded Wife $5,000 towards her appellate fees and costs and post-judgment non-appellate fees and costs. The Appellate Court could not make meaningful review of the award without specific allocation of fees between appellate and post-judgment work. Remanded for specific findings.

Haywald v. Fougere, 40 Fla. L. Weekly D1285 (Fla. 1st DCA 2015).
It is an abuse of discretion to grant attorney fees where both parties are equally able to pay their own fees. Equalizing income through an alimony award and then awarding fees is an abuse of discretion.

Henderson v. Henderson, 40 Fla.L.Weekly D359 (Fla. 5th DCA 2015).
Parental Responsibility: Record contains sufficient evidence to support modification of parental responsibility granting Father sole parental responsibility, order lacks such findings and the issue is therefore reversed for such mandatory findings.
Attorney fees: Where an order denying attorneys' fees fails to contain sufficient factual findings to facilitate meaningful appellate review of the trial court's decision, the appellate court must reverse and remand for the trial court to make such findings.
Child Support: Order must include reductions of amount of support upon elder child reaching majority. Also order for temporary child support must include the number of overnights in the calculations.

Hutchinson v. Hutchinson, 40 Fla. L. Weekly D1731 (Fla. 1st DCA 2015).
Where the final judgement equalizes distribution of assets, liabilities and income through alimony, it is abuse of discretion to award attorney fees.

Kemp v. Kemp, 40 Fla. L. Weekly D1904 (Fla. 1st DCA 2015).
Trial court cannot distribute a marital asset equally to the parties and then deny a request for attorney fees to one party on temporary order (basically a partial equitable distribution). The Husband had made no request for attorneys' fees but was awarded $25,000 while the Wife had requested fees which were denied but she was provided the partial equitable distribution.

Lieberman v. Lieberman, 39 Fla. Law Weekly D2457 (Fla 4th DCA 2014).
Former Husband's attorney was his current wife. Court disqualified her from representing Former Husband in any proceedings as she was a potential witness in a contempt proceeding. Order was overly

broad and reversed for limited order disqualifying Wife from representing Former Husband in Contempt action only.
Attorney fees: Former Wife had obligation to concede error and as such should have conceded that order was overly broad and limited disqualification to contempt only. Sanctions imposed for appellate fees to Former Husband.

Patel v. Patel, 40 Fla.L.Weekly D204 (Fla. 5th DCA 2015).
Equitable Distribution: Error for the Court to award the Husband the former marital residence but made no provision to require the Husband to refinance the existing mortgage and hold the Wife harmless until refinance. Court equally divided a debt owed by the parties to the Husband's parents but required the Wife to immediately repay her one half share from assets without finding that the wife lacked ability or willingness to repay the loan according to the historic terms of repayment.
Child Support: Uncovered medical expenses should be divided according to the child support percentages. Also monthly health insurance expenses for the children should be included in child support calculations.
Attorney fees: Error to deny attorney fees when the parties have significant disparity in income.

Sisca v. Sisca, 40 Fla. L. Weekly D935 (Fla. 4th DCA 2015).
Former Husband requested downward modification of alimony based upon reduction in income. However Former Husband had income three times that of Former Wife and while Former Wife had substantial assets this was the source of her income. To require her to invade her principle to pay the fees would be abuse of discretion.

Spreng v. Spreng, 40 Fla.L.Weekly D309 (Fla. 5th DCA 2015).
Trial court committed error by not making written findings of fact as to the reasonable hourly rate and reasonableness of hours expended. However, Husband failed to file Motion for Rehearing and thus did not preserve issue on appeal.

Tucker v. Tucker, 40 Fla. L. Weekly D1246 (Fla. 4th DCA 2015).
Attorney may not use a charging lien to secure fees incurred in enforcing the charging lien. In addition, the attorney's charging lien should not be enforced against an award of permanent periodic alimony if to do so would deprive a former spouse of daily sustenance or minimal necessities of life.

Van Exter v. Diodonet-Molina, 39 Fla. Law Weekly D2476 (Fla. 3rd DCA 2014).
Child Support: Trial Court's failure to make findings of fact as to the income of the Mother or Father requires reversal for child support. Trial Court's failure to make findings as to Father's ability to pay arrearage as ordered requires reversal.

Attorney fees: Trial Court determined that the attorney fees were reasonable and necessary but failed to make any findings as to the Father's ability to pay the Mother's attorney fees and therefore requires reversal.

Wiesenthal v. Wiesenthal, 40 FLW D181 (Fla. 4th DCA 2015).
Attorney fees / Charging Lien: Court must make express findings regarding gross and net income to award attorney fees.
Contempt / Purge: Court must make specific findings of ability to pay purge for contempt. A finding that a party divested himself of assets does not substitute for finding of present ability to pay.

Discovery:

Gilroy v. Gilroy, 40 Fla. L. Weekly D985 (Fla. 2nd DCA 2015).
Discovery: The filing of a Financial Affidavit is mandatory and non-waivable in supplemental proceedings (FL Fam. R.Pro. 12.285(e)(1)) and service must be made within 45 days of service of the initial pleadings. Wife's failure to provide Financial Affidavit less than 24 hours before a hearing requires the granting of a continuance.
Child Support: Tuition can be included in child support calculations if private school has historically been part of the family's standard of living. The failure to file a Child Support Guidelines Worksheet at the time of initial child support calculations causes a factual dispute for the trial court to resolve when considering modification.

Medina v. Haddad, 40 Fla.L.Weekly D415 (Fla. 3rd DCA 2015).
Improper to require party to disclose information which was the property of a non-party law firm (her employer) or its non-party clients, and moreover which might result in a breach of confidentiality. No showing was made that the information requested could not be obtained from the client or her employer without disclosure of confidential client information.

Enforcement:

Brooks v. Brooks, 40 Fla. L. Weekly D1140 (Fla. 2nd DCA 2015).
Contempt: There is no mandatory provision that a court must hold a party in contempt for violating provisions of a parenting plan.
Relocation: Fl. Stat. 61.13001 is read to require either parent (or third party with time-sharing rights) to file a Petition for Relocation if moving more than 50 miles from primary residence. Does not apply only to parent with majority time sharing with child. Certified Conflict with 1st DCA Decision, Raulerson v. Writghte, 60 So. 3d 487 (Fla. 1st DCA 2011)

Castelli v. Castelli, 40 Fla.L.Weekly D570 (Fla. 4th DCA 2015).
Parties MSA included terms that provided that the Former Husband had the right of first refusal to purchase the former marital home for the same terms as any offer received from a disinterested third party. Upon receipt of an offer to purchase the Former Husband sent an e-mail indicating his intention to exercise his option. The Former Wife responded with additional terms that the Former Husband must comply with to exercise his right of first refusal. The Former Husband had properly exercised his option and the Former Wife breached the terms of the contract by adding additional terms. The lower courts order of contempt reversed and the remanded to allow Husband to exercise his right of first refusal to purchase the property.

Ford v. Ford, 39 Fla. Law Weekly D2463 (Fla. 4th DCA 2014).
Parties entered into parenting plan with shared parental responsibility and a timesharing plan for the parties' three children. Several months later the Former Husband brought an action for contempt alleging the Former Wife had interfered with the Former Husband's time sharing and had contributed to the hostile relationship between the children. The court found the Former Wife in contempt for these actions, ordered the child to therapy, ordered the Former Wife to "attend therapy until she could convince the minor children that it is her desire that they see their father and love their father and to create a loving and caring feelings toward their father in their minds". Further the Court ordered the Former Wife to pay the counseling fees and expert fees in the case. Order upheld except that the Appellate Court found that the terms for the Former Wife's therapy was too vague to be enforced. The Court further addressed that the lower court could not order such counseling although the Former Wife had not argued this on appeal.

Haeberli v. Haeberli, 40 Fla.L.Weekly D 429 (Fla. 5th DCA 2015).
Former Husband not provided with notice of hearing on contempt motions heard Therefore rulings on Motion Reversed and remanded for failure to provide due process.

Isaacs v. Isaacs, 40 Fla.L.Weekly D515 (Fla. 4th DCA 2015).
Order of Contempt failed to contained the necessary recitation of facts to support the findings that the Former Husband had the ability to comply with the court order (pay) and was therefore reversed.

Maguire v. Wright, 40 Fla.L.Weekly D430 (Fla. 5th DCA 2015).
Former Husband received order allowing him to remove minor children to England for summer but requiring return by August 7. On that date Former Husband told Former Wife that child refused to return. Court held emergency Motion to Return the Child and ordered the child returned to the Wife. Former Husband appealed because Ordered failed to address custody factors and best interest of the child. Order Affirmed. The court has specifically recognized that a true emergency exception to the general rule, concluding that the normal burden on the party seeking custody to show that the custody transfer is in the child's best interest need not be met when there is an improper removal of a minor child from the

state. While the Former Husband had permission to remove the child temporarily, his failure to return the child constituted an improper removal and thus best interest need not be addressed. However, lower court directed to hold a hearing within 20 days to address the ongoing custody issues and best interest of the child.

Najeeullah v. Peraza, 40 Fla.L.Weekly D564 (Fla. 2nd DCA 2015).
Court order of indirect criminal contempt and restricting Mother from contact with minor child until she brings herself into compliance with the prior court orders. Reversed as Mother did not have notice that child contact was to be addressed by Court and no findings that restrictions were in the child's best interest.

Strochak v. Strochak, 40 Fla. L. Weekly D1119 (Fla. 4th DCA 2015).
Trial Court abused discretion for not ordering payment of full amount of alimony owed at contempt hearing.

Wiesenthal v. Wiesenthal, 40 FLW D181 (Fla. 4th DCA 2015).
Attorney fees / Charging Lien: Court must make express findings regarding gross and net income to award attorney fees.
Contempt / Purge: Court must make specific findings of ability to pay purge for contempt. A finding that a party divested himself of assets does not substitute for finding of present ability to pay.

Williams v. Williams, 39 Fla. Law Weekly D2490 (Fla. 1st DCA 2014).
Former Husband failed to rebut presumption of ability to pay in hearing for contempt for failure to obtain life insurance, pay off a credit card, and pay alimony arrears. Former husband failed to raise issue through Motion for rehearing. Order on fees reversed because no findings of need and ability to pay in order.

Winton v. Saffer, 40 Fla.L.Weekly D410 (Fla. 3rd DCA 2015).
Order of Contempt reversed where record fails to establish the commencement of the arrearages, the total unpaid balance and the computation of the purge amount. The amount of arrearage ordered exceeds the amount calculable on the record and exceeds the amount recoverable based upon the pleadings. Reversed.

Wix v. Wix, 40 Fla.L.Weekly D588 (Fla. 2nd DCA 2015).
There is a presumption of ability to pay support for purposes of contempt. If arrearage is found to exist then Court should look to 401(k) assets as available to pay arrearage. Reversed and remanded.

Evidence:

In the Interest of A.B. v. R.B., 40 Fla.L.Weekly D591 (Fla. 2nd DCA 2015).
Trial court ordered 14 year old minor to be subject to videotaped interviewed by Children's Advocacy Center personnel. The Court then relied upon this video to support a finding of abuse and grant a Final Judgment for Protection Against Sexual Violence. Reversed on three counts: (1) Court erroneously received and relied upon the videotaped interview (hearsay) not an in camera interview with the judge or special master with court reporter present (2) injunction not supported by competent, substantial evidence and (3) by refusing to allow the Father to view the videotape the Father was deprived of due process.

Imputation:

Assimenios v. Assimenios, 39 Fla. Law Weekly D2598 (Fla. 1st DCA 2014).
Court ordered Wife to be responsible for the full cost of all missed or canceled doctor's appointments for the children. This amounted to a sanction without the opportunity to be heard and was therefore impermissible.
Imputed Income: Court finding the Wife had the ability to work full time was contradicted by the list of appointments that the Husband indicated were necessary and required the Wife to keep.

Broga v. Broga, 40 Fla. L. Weekly D867 (Fla. 1st DCA 2015).
Imputation of Income: 21 year marriage. Court imputed $80,000 per year income to Husband to calculate ability to pay alimony to Wife. Imputation requires (1) finding unemployment is voluntary and (2) the amount of income to impute. To determine amount of income the court must look to (1) past work history, (2) occupational qualifications and (3) job market. Here the court considered past work history but there was insufficient evidence to determine occupational qualifications nor the present job market. This is particularly relevant as Husband is a pilot and the Court awarded 50/50 timesharing which may impact available jobs.
Child Support: the court improperly allocated one third of the total child support to each child and reduced the ongoing support by one third as each child aged out. This is inconsistent with the guidelines and reversed.
Appeals: counsel chastised for raising 19 issues on appeal and advised to select and raise only meritorious claim and issues.

Cameron v. Cameron, 40 FLW D271 (Fla. 1st DCA 2015).
Wife is licensed attorney but unemployed at time of dissolution, partly because she had spent considerable time representing herself in the matter before the court. The court imputed income to the Wife but delayed the income for six months. This was abuse of discretion and reversed for imputation to begin immediately and recalculation of child support.

Dottaviano v. Dottaviano, 40 Fla. L. Weekly D1507 (Fla. 5th DCA 2015).
Imputation of Income: To impute income the court must find that the spouse is voluntarily unemployed or underemployed and (2) that the party's unemployment is result of party's pursuit of own interest or less than diligent efforts to find employment. Party seeking imputation bears the burden to show both employability and availability of jobs. Final Judgment fails to meet these tests and must be reversed.
Partition: While appropriate to grant primary residential parent exclusive use of the marital home until the minor child reaches 18 years of age, partition is appropriate when as here, the parties had lived in the home a short while, the parties had limited other assets to be distributed, the cost of the home were high thus reducing the Husband's disposable income and there was a large difference in the parties incomes.

McDuffie v. McDuffie, 40 FLW D272 (Fla. 1st DCA 2015).
Imputed Income: Court found Wife lacked credibility in her argument that she was medically incapable of full time work. However, Court's imputation of $10 per hour was without any substantial evidence to support the findings of current job market, work history, occupational qualifications and the prevailing earnings level in the local community.
Equitable Distribution: court failed to allocate credit card debt properly by providing to whom the former wife is to make payments. Simply listing credit card accounts and dividing them equally in equitable distribution schedule is insufficient.

Thompson v. McLaughlin, 40 Fla. L. Weekly D1593 (Fla. 2nd DCA 2015).
Imputation of income should be based upon the rework history, occupational qualifications, and prevailing earnings level in the community if such information is available. Judgment lacks sufficient findings to support wage imputed. Reliance on past work history alone is insufficient to support imputation of wage.

Winnier v. Winnier, 40 Fla. L. Weekly D1227 (Fla. 2nd DCA 2015).
Order on Modification of Alimony reversed when included imputed income on Former Husband's liquid assets but failed to include imputed income on Former Wife's liquid assets.

Injunctions:

Bennett v Abdo, 40 Fla. L. Weekly D1550 (Fla. 5th DCA 2015).
Respondent incarcerated and moved for modification of Injunction for Protection Against Domestic Violence. Court denied without hearing. Reversed as Motion was legally sufficient and required an opportunity to be heard.

Bristow v. Bristow, 40 Fla.L.Weekly D645 (Fla. 5th DCA 2015).
Petitioner failed to allege facts sufficient to show that his incarcerated brother had previously committed acts of domestic violence nor that the Petitioner had reasonable cause to believe he was in imminent danger and therefore Petition properly dismissed without hearing.

Corrie v. Keul, 40 Fla.L.Weekly D664 (Fla. 1st DCA 2015).
Situation between neighbors with one yelling obscenities and saying that "it hold 1 in the chamber and 8 more" does not support Injunction against repeat violence. Without overt act no sufficient evidence to support injunction.

Carrozza v. Stowers, 39 Fla. Law Weekly D2585 (Fla. 2nd DCA 2014).
Respondent moved for modification of Injunction against Domestic Violence as he was imprisoned, had completed several programs to address the underlying issues, had had no contact with Petitioner but wished contact only with respect to the child they had in common and also wished to participate in prison work program. Court erred in denying motion without hearing.

Floyd v. Walker-Gray, 40 Fla. L. Weekly D1905 (Fla. 1st DCA 2015).
Petitioner, a 14 year old in Junior High School brought action for Injunction for Protection Against Dating Violence. She and respondent had relationship in school where they told others they were "going out" and spent time together. This relationship was found to be sufficient to sustain Injunction.

Hair v. Hair, 40 Fla.L.Weekly D682 (Fla. 4th DCA 2015).
The fact that a daughter does not wish to see or interact with her mother is not sufficient to sustain an Injunction for Protection Against Domestic Violence. There were no allegations of domestic violence or that the Petitioner believed she was in imminent danger of become a victim of domestic violence.

Horowitz v. Horowitz, 40 Fla. L. Weekly D785 (Fla. 2nd DCA 2015).
Former Wife found "keylogger" program installed on her computer and her Former Husband indicated she was being watched. Soon after listening to music on her personal computer Former Husband posted the lyrics to the song she had listened to on his FB page. Former Husband also posted a private message between Former Wife and a 3rd party on his FB page. Former Wife learned of this because she was still friends with Former Husband on FB. This does not amount to "cyberstalking" because posts on FB are not directed to any one person but are public. Although the assertions that Former Husband somehow "hacked" in the Former Wife's FB account are disconcerting, that behavior alone does not amount to cyberstalking as it is not an electronic communication under the definition. Also, no evidence that posts caused her substantial emotional distress (testified that the posts were "a matter of some concern" and "prevented her from having any privacy within her own home". No danger of imminent harm because testimony of past physical harm was too remote in time and vague.

Leach v. Kersey, 40 Fla. L. Weekly D904 (Fla. 2nd DCA 2015).
Wife contacted Husband's girlfriend by e-mail and telephone when she learned of the affair and of repeated attempts to contact her husband. Contact was found to have a legitimate purpose, to keep girlfriend away from husband. Girlfriend testified she was not alarmed by contact. It was only when Wife posted on public blog "She's a Homewrecker" that girlfriend became upset because she was afraid her

children would learn of affair. While this may have no legitimate purpose and may cause emotional distress it is only one incident so cannot be basis for Injunction Against Cyberstalking.

Martinez v. Izquierdo, 40 Fla. L. Weekly D1405 (Fla. 4th DCA 2015).
Sufficient evidence to sustain the Injunction but trial court erred in ordering active duty police officer to surrender weapons. Reversed for order to allow Respondent to maintain weapons for official duties.

Plummer v. Forget, 40 Fla. L. Weekly D1097 (Fla. 5th DCA 2015).
Based upon review of the record Appellate court found that the incidents described by Petitioner when examined through the prism of the "reasonable person" standard, would not have caused "substantial emotional distress" to support a finding of stalking.

Robertson v. Robertson, 40 Fla. L. Weekly D1073 (Fla. 4th DCA 2015).
Former Husband went to Former Wife's home on three consecutive nights and looking into her home and then confirmed these actions by e-mail. This constituted a "course of conduct" sufficient to cause substantial emotional distress and serve no legitimate purpose. Injunction upheld.

Snead v. Ansley, 40 Fla. L. Weekly D870 (Fla. 1st DCA 2015).
Error to grant Injunction for Protection Against Repeat Violence because Respondent not given a full opportunity to present evidence in opposition to the Petition.

Putzig v. Bresk, 40 Fla. L. Weekly D899 (Fla. 4th DCA 2015).
Parties filed countervailing petitions for protection against dating violence. Court questioned each party separately. When Girlfriend said she had text messages showing Boyfriend was lying the court failed to review. The parties were not provided opportunity to cross-examine other side and Girlfriend's witness not called. Injunction Against Girlfriend reversed and remanded for full evidentiary hearing.

Jurisdiction:

McIndoo V. Atkinson, 40 Fla.L.Weekly D456 (Fla. 4th DCA 2015).
Parties divorced in 1999 in NY. Mother moved with child to FL in 2003. In December 2012 there was a child protection investigation regarding incident between mother and child and the child was removed to the Father's home pending the investigation. The Father immediately relocated to Arizona with the child. The case was dismissed in January 2013. Mother tried to regain custody and Father refused. Mother moved to domesticate NY order in May 2013. In August 2013 Court entered order denying Mothers Motion to Domesticate NY Order, finding it did not have jurisdiction based upon (1) Mother's failure to file Motion regarding a child custody proceeding, (2) FL was not the home state, and (3) AZ had already begun proceedings. This was error. Statute does not require there to be child custody proceedings to allow domestication of foreign state order. Error to apply "home state" rule to Motion to Domesticate as

this is not a child custody proceedings under the UCCJEA. Further the simultaneous proceedings in AZ did not prevent the domestication in FL of NY order. As the factual circumstances of the case meet the jurisdictional standards of the statute 6.526(1), and the NY Order has not been modified, the trial court should have granted the Mother's petition to domesticate the NY Order.

Modification:

Baker v. Baker, 40 Fla.L.Weekly D430 (Fla. 5th DCA 2015).
Court erred in transferring custody of minor child to Mother when issue had not been properly plead nor noticed for hearing.

Blevins v. Blevins, 40 Fla. L. Weekly D1945 (Fla. 5th DCA 2015).
Final Judgment granted parents equal timesharing and designated the Father's home as residence for school registration. Mother moved for modification because her home was a one hour drive from school. This fact was known at the time of the FJ and therefore there was no substantial change in circumstances to warrant a modification. Reversed.

Chamberlain v. Eisenger, 40 Fla.L.Weekly D389 (Fla. 4th DCA 2015).
Parents with four children divorced in Maryland in 2007 with Mother having primary custody of children. Soon after, Father moved to Florida and parties stipulated that Father would have custody of eldest daughter. In 2010 Mother moved to Florida and Father filed Supplemental Petition for Modification of Timesharing and Support. Parent seeking to establish substantial change of circumstances to modify parenting plan has extraordinary burden to prevent parents from continually disrupting the lives of the children by repeatedly initiating custody disputes. Father met burden and was awarded primary residence of three of the children with the Mother being ordered to attend counseling for reunification with daughter. Court affirms finding that sufficient evidence to support modification.
Child Support Arrearage: In determining child support arrearage, court erred in including court ordered alimony as income to Wife when court found Father was $140,000 in arrears on alimony payments.
Modification of Alimony: Trial Court found that Father lacked credibility and imputed income of $73,000 consistent with the income he had earned at the time of Final Judgment. However, despite the evidence that the Father obviously had unreported sources of income, the trial court failed to state the specific factors the trial court considered in calculating the Father's income. Stating only that the number was determined based on all evidence presented is insufficient findings.

Cheek v. Hesik, 40 Fla.L.Weekly D607 (Fla. 1st DCA 2015).
Court erred in modifying final judgment when issue had not been properly plead nor noticed for hearing.

Dickson v. Dial, 40 Fla. L. Weekly D1664 (Fla. 5th DCA 2015).
Following divorce Mother moved 49 miles "as the crow flies" from former residence and enrolled child in new school over Father's objection. This was not violation of relocation statute. To modify custody

Ervin v, DOR o/b/o Starr, 40 FLW D56 (Fla. 1st DCA 2014).
The Court must begin determination of child support by accepting the statutorily mandated guidelines as the correct amount. The court may then deviate from the guidelines pursuant to the stator criteria.

Fay v. Fay, 40 FLW D264 (Fla. 2nd 2015).
Parties divorced in 2006 with one minor child. At the time Mother provided primary residential custody and parties had shared parental responsibility. In 2010 Mother experienced psychological problems that resulted in her involuntary commitment. Court entered emergency order providing Father with sole custody and parental responsibility and granting mother supervised visitation. Father then filed Supplemental Petition for Modification. In 2012 Court awarded sole parental responsibility to Father and reduced Mother's supervised timesharing despite evidence that Mother was following medical direction and had suffered no incident since 2010. Court affirmed for providing primary residence to Father but reversed for sole parental decision making (not plead and not tried with consent) and timesharing without sufficient evidence to support reduction and no method for Mother to regain her significant timesharing.

Henderson v. Henderson, 40 Fla.L.Weekly D359 (Fla. 5th DCA 2015).
Parental Responsibility / Modification: Record contains sufficient evidence to support modification of parental responsibility granting Father sole parental responsibility, order lacks such findings and the issue is therefore reversed for such mandatory findings.
Attorney fees: Where an order denying attorneys' fees fails to contain sufficient factual findings to facilitate meaningful appellate review of the trial court's decision, the appellate court must reverse and remand for the trial court to make such findings.
Child Support: Order must include reductions of amount of support upon elder child reaching majority. Also order for temporary child support must include the number of overnights in the calculations.

Jarrard v. Jarrard, 40 FLW D127 (Fla. 2nd DCA 2015).
Husband's income dropped by 50% for a period of over 2 years after the entry of Final Judgment. The alimony awarded in initial proceedings would result in the Former Husband paying 70% of his income to the former Wife as alimony. Thus reduction in income was substantial and because of the period of time should be considered permanent for purposes of modification.

Jenkins v. Jenkins, 40 Fla.L.Weekly D587 (Fla. 2nd DCA 2015).
Circuit court erred by granting a downward modification of child support to the Father when there were no showing that he lacked ability to pay previously ordered support. The Court should have applied the

equitable doctrine of unclean hands to prevent modification of child support due to the Former Husband's child support arrearage in excess of $24,000.

Suleiman v. Yunis, 40 Fla. L. Weekly D1555 (Fla. 5th DCA 2015).
Former Wife moved 28 miles from former residence and moved the children's school. Former Husband alleged that he had been denied additional timesharing and filed Emergency Ex Parte Motion for Return of the Children which was granted by the court on these allegations. The Former Wife immediately moved to set aside order which was denied and the children were ordered to remain in the Former Husband's care until further order of the court. Former Wife was denied due process for Ex Parte Order without any evidence of true emergency (threat of physical harm or removal from the state) and order amounted to modification of time sharing without requisite findings of substantial change of circumstances and best interest of the child.

Wade v. Wade, 40 Fla. L. Weekly D750 (Fla. 3rd DCA 2015).
After a 38 day trial in Illinois, the court entered a 102 page Final Custody Judgment (FCJ) which was domesticated in Florida. The FCJ required the use of a Parenting Coordinator which the parties had not done. The court in their order modified the notice provisions for parenting contact. This did not amount to a modification of the comprehensive parenting plan. Order affirmed.

Wood v. Wood, 40 FLW D33 (Fla. 1st DCA 2014).
Trial Court found Husband had reduction in income for alimony modification purposes, but then reduced child support from $5,000 per month to zero was abuse of discretion. Elimination of arrearage without explanation was also error.

Procedure:

Barry v. Barry, 40 Fla.L.Weekly D605 (Fla. 5th DCA 2015).
Statements made by Father to minor child that he was contemplating suicide was sufficient to place his mental condition in controversy and therefore requiring Father to submit to psychological evaluation. Upon remand order should make specific findings that Father's mental condition is in controversy.

Bisel v. Bisel, 40 Fla. L. Weekly D1309 (Fla. 4th DCA 2015).
FL. Fam. L.R.Pro. 12.440(a) requires court to enter an order setting an action for trial. This was not done as Husband sent "notice of hearing" to wife. Notice was deficient in that it failed to notify Wife that the court would rule upon her supplemental petition. In addition, Wife did not receive timely notice of the hearing. Wife moved to set aside default was denied. Reversed and remanded to set aside default.

Clark v. Clark, 40 Fla.L.Weekly D376 (Fla. 1st DCA 2015).
Wife petitioned for dissolution and noticed husband for final hearing but husband failed to appear. Court then signed Wife's proposed order without modification. Order addressed issues not plead in the Wife's Petition including alimony and attorneys' fees. In addition, order failed to determine the value of the marital home or mortgage nor reasonableness of attorney hours spent or fees. Signing a proposed order without change lacked independent analysis of the facts, issues and law. Reversed. The failure of the Husband to appear at the final hearing is not equivalent to trying an issue by implied consent but is rather a trial of the issue in absentia. Reversed as to alimony, equitable distribution and attorneys' fees.

DOR o/b/o Williams v. Annis, 40 Fla.L.Weekly D565 (Fla. 2nd DCA 2015).
Successor judge lacked jurisdiction to enter amended final judgment based on erroneous analysis of imputed income. Rule 1.540(a) permits Court to enter amended judgment on its own initiative fixing clerical errors, it is not designed to permit substantive changes.

Drouin v. Stuber, 40 Fla. L. Weekly D1543 (Fla. 4th DCA 2015).
Procedure: Mother moved to vacate 2011 default judgment in 2014 based upon FL R.Civ.Pro. 1.540(b). Initially denied but then vacated on rehearing. Post decretal orders may be viewed as final judgments and the proper subject of a motion for rehearing as it completes judicial labor.
Paternity: In 2011 the court entered a default final judgment of paternity against Jordan Drouin. In 2014 the child's Mother moved to set aside the default judgment because, although she admitted that Drouin was the child's biological father, at the time the child was born she was in an intact marriage with Christopher Stuber and Stuber had not been joined to the paternity action as an indispensable party. Error for Court to grant Mother's Motion. Mother cannot assert Stuber's constitutional rights to due process in order to have judgment set aside, only Stuber can exert his rights.

Garcia v. Garcia, 40 Fla. L. Weekly D1865 (Fla. 3rd DCA 2015).
Fl. R.civ.Pro. 1.490(f) provides that in a hearing before a Magistrate, the evidence shall be taken in writing by the magistrate or some other person under the magistrate's authority… and shall be filed with the magistrate's report. In this case the recording of one of the hearings was inaudible and therefore no record of the Husband or his accountant was provided. Trial court abused its discretion when it ratified the magistrates report and denied Husband's exceptions to the report.

Gilliard v. Gilliard, 40 Fla. L. Weekly D961 (Fla. 5th DCA 2015).
Equitable Distribution: Court erred in failing to value the agreed upon distribution of personal property between the parties, in failing to include a substantial debt of the parties and in double counting a specific distribution to the Wife. If the Court on remand makes an unequal distribution of assets and liabilities, the court must make specific findings of all factors in 61.075 to support the distribution
Alimony: The Court erred in considering Husband's gross income rather than net income when determining alimony. Court also erred in failing to make specific findings of fact to support permanent

periodic alimony to the Wife in a 14 year marriage and in failing to impute full time income to the Wife without findings as to reason she could not be employed full time.
Procedure: Except as provided by specific rules, a trial court does not have separate authority, on its own initiative, to alter, modify, or vacate an order or judgment

Hall v. Hall, 40 Fla. L. Weekly D1884 (Fla. 4th DCA 2015).
Parties initialed and signed a two page MSA during mediation. The next day the Husband's attorney provided a "missing" third page to Wife's attorney indicating it had not been signed at the mediation. Wife denies knowledge of third page. Court found that Husband had not met burden to set aside MSA: (1) that the agreement was reached by fraud, deceit, duress, coercion, misrepresentation, or overreaching; or (2) that the agreement makes an unfair or unreasonable provision for that spouse, given the circumstances of the parties. Husband failed to establish either and therefore MSA upheld. However, Husband also moved to amend his pleadings 30 days prior to trial and court denied. This was abuse of discretion and reversed.

Jonas v. Jonas, 39 Fla. Law Weekly D2545 (Fla. 4th DCA 2014).
Principles of comity and priority require the court to decline jurisdiction, as the trial court properly found. The Former Husband can obtain the relief he seeks if he returns to New Jersey to pursue the litigation as ordered by the New Jersey Courts.

Lamb v. Lamb, 154 So.3d 465 (Fla. 5th DCA 2015).
Parties had prenuptial agreement entered into in Scotland with Scotland being choice of law. 18 months later Wife filed Petition for Dissolution and Husband Counter-Petitioned. When Husband failed to appear at pretrial conference or comply with certain court orders, Wife filed for contempt and court struck all of Husband's pleadings. At the final hearing court acknowledged that striking the pleadings had been an abuse of discretion and reinstated the pleadings. However, this does not remedy the denial of due process violation. Court also found Husband did not meet his burden under the choice of law burden. This was in error as the party seeking to avoid enforcement of the choice of law provision has the burden to demonstrate foreign law contravenes public policy. Upon rehearing court must apply Scottish choice of Law.

Ledoux-Nottingham v. Downs, 40 Fla. L. Weekly D799 (Fla. 5th DCA 2015).
Parties divorced in Colorado. After death of Former Husband Colorado court entered order granting Grandparents visitation rights. Former Wife moved to FL immediately after funeral and registered CO Final Judgment and moved for judicial determination that Grandparents have no rights in FL and Supplemental Petition to Modify CO order to deny GP contact. Court must uphold CO order of GP contact under full faith and credit clause. Petition for modification properly denied as there was no

substantial change in circumstances in the 13 days between entry of the CO order and the filing of the FL Supplemental Petition. 154 So.3d 465

Lieberman v. Lieberman, 39 Fla. Law Weekly D2457 (Fla 4th DCA 2014).
Former Husband's attorney was his current wife. Court disqualified her from representing Former Husband in any proceedings as she was a potential witness in a contempt proceeding. Order was overly broad and reversed for limited order disqualifying Wife from representing Former Husband in Contempt action only.
Attorney fees: Former Wife had obligation to concede error and as such should have conceded that order was overly broad and limited disqualification to contempt only. Sanctions imposed for appellate fees to Former Husband.

Rossi v. Rossi, 40 FLW D1662 (Fla. 5th DCA 2015).
Nine days after a Report and Recommendations on hearing before Magistrate, Wife filed a Motion for Rehearing. Magistrate issued recommendation to Court to enter Final Judgment without hearing on Motion as no Exceptions had been filed. Wife then filed Exceptions but Court ruled these were not timely filed. Where a party files a motion that would be unauthorized based on the motion's title, the courts should consider the substance in determining whether the motion is authorized. Trial Court should have treated Motion for Rehearing as List of Exceptions and should have held a hearing on the Magistrate's Report.

Wyckoff v. Cavanaugh, 40 Fla. L. Weekly D1143 (Fla. 1st DCA 2015).
Court refused to allow Former Husband to cross-examine Former Wife during the evidentiary hearing on her Emergency Motion to Temporarily Suspend Timesharing. Husband moved for disqualification of Judge. Court denied. Reversed and remanded as allegations were sufficient to sustain disqualification of judge. Grant Writ of Prohibition and remand of assignment of new trial judge.

Same Sex:
Brandon-Thomas v. Brandon-Thomas, 40 Fla. L. Weekly D971 (Fla. 2nd DCA 2015).
Same sex couple married in Massachusetts and moved to Florida. Respondent opposed and trial court dismissed the petition on grounds of Florida's Defense of Marriage Act (F.S. 741.212). Appellate Court reversed based upon Full Faith & Credit Clause of US Constitution. Equal Protection Clause prevents state court from giving Full Faith & Credit to some marriage and not others. Due Process Clause requires strict scrutiny in reviewing governmental actions that infringes upon fundamental rights of citizens. State must present rational basis for classification of same sex unions different than other marriages.
Argument that state has public policy in recognizing opposite sex marriage to reduce the percentage of children born outside of wedlock, ignores the fact that same sex couples cannot "accidentally conceive"

children. If Florida's public policy is to recognize only opposite sex marriages than allowing the divorce of a same sex couple limits the number of same sex marriages in the state.

Oliver v. Stufflebeam, 40 FLW D66 (Fla 3rd DCA 2014). Order dismissing dissolution affirmed. Parties argue that statute restricting marriage to between man and woman does not apply to divorce.

Family Law Rules:

In re: Amendments to Family Law Form, SC15-339 (Fla. 2015).
Revises instructions for Family Law Form 12.980(n), Petition for Injunction Against Dating Violence to reflect standard of Florida Statute Section 784.046(2)(b), that provides that a person who is either "the victim of dating violence and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence" or "has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence," has standing to file a petition for an injunction for protection against dating violence injunction.

In Re: Amendments to Family Law Rules of Procedure, SC 14-1507.
Creates rule 12.451 which allows video testimony at hearing by consent of the parties or good cause. Mirrors FL Rule of Civil Procedure 1.451.

In re: Amendments to Family Laws of Procedure, SC14-236 (Fla. 2014).
Creates rule 12.012 (minimization of sensitive information which requires compliance with Fl. R. Jud. Admin. Rule 2.425. Amends 12.070 (process) concerning constructive process. Amends 12.200 (case management) for consideration of agreements, objections, or form of production of electronically stored information. Adopts new rules 12.364 (social investigations) to address social investigations under 61.20. Amends 12.490 (general magistrate) to require appointment of specific magistrate. Amends 12.491 (Child Support Enforcement); and 12.560 (Discovery in Aid of Execution); and forms 12.901(a) (Petition for Simplified Dissolution of Marriage) to indicate need not file financial disclosure for simplified dissolution; 12.902(b) (Family Law Financial Affidavit (Short Form)); and 12.902(c) (Family Law Financial Affidavit (Long Form) to indicate that should include word "estimate" if expenses are estimated on FA for post-dissolution expenses rather than actual current expenses.

In Re: Amendments to Florida Supreme Court Family Forms, SC 15-44
In general, the amendments to the forms add language explaining e-service and e-filing to the instruction sections of the forms, add e-mail as method of service to the certificate of service for forms not requiring personal service, and add information about e-service and e-filing procedures to the General Instructions for Self-Represented Litigants. Amendments are also made to several forms in response to recent Court opinions or statutory changes. Other minor amendments are made to update the "non-lawyer clause" and the certificate of service in a number of forms.