2019

CASE LAW REVIEW

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AGREEMENTS

Corrigan v. Vargas, 444 Fla. L. Weekly D889a (Fla. 5th DCA April 5, 2019)

The parties entered a mediated agreement providing for the parties to have equal timesharing for their minor child and for there to be no child support paid by either parent to the other. Following the mediation, the Father moved to set aside the agreement with respect to child support, stating that it was based upon fraud because he was unemployed, the mediator and the Mother knew this and that they had all entered into the agreement based upon this fraudulent child support worksheet. The Father and his attorneys all presented affidavits attesting to these facts. The Court granted this relief. Fla. Fam. L. R. P. Rule 12.540 allows a court to set aside a final order, including one ratifying and incorporating an agreement, on the basis of fraud, misrepresentation, or other misconduct of an adverse party. To demonstrate fraud, a moving party is required to establish four elements: an adverse party made a false statement regarding a material fact; with knowledge that the statement was false; with the intention to induce another's reliance; which consequently injured the party who acted in reliance on the false statement. Here, Father's Rule 12.540 motion alleged that he, Mother, their respective lawyers, and the mediator engaged in fraud to waive child support. However, the only evidence presented, in the light most favorable to Father, was that any alleged fraud was perpetrated by Father and his lawyers. In his motion and accompanying affidavits, Father alleged that: he agreed to a false statement about the material fact of his income; he knew his designated income was false; he agreed to the misrepresentation to obtain as much timesharing as possible; and he injured the court and the child by doing so. It is clear that Father proceeded through this case with unclean hands. The doctrine of unclean hands is designed to prevent courts from granting a party relief from a result the party brought about through its own voluntary acts. The court erred in granting the Father relief from a result brought about by his own misdeeds. The Father was aware of his financial situation when he agreed to the mediated parenting plan. Reversed and remanded.

Dipasquale v. Dipasquale, 44 Fla. L. Weekly D1078a (Fla. 2nd DCA, April 24, 2019)

Husband's Motion to Set Aside Partial Marital Settlement Agreement denied without prejudice for Husband to file a Supplemental Petition for Modification. Affirmed.

Famiglio v. Famiglio, 44 Fla. L. Weekly D1260d (Fla. 2nd DCA, May 10, 2019)

Prior to their marriage, the parties entered into a premarital agreement which provided in pertinent part "5.3 Mark shall pay to Jennie, within ninety (90) days of the date either party file a Petition for Dissolution of marriage the amount listed below next to the number of full years they have been married at the time a Petition for Dissolution of Marriage is filed". The agreement then provided an escalating schedule of payments based upon the number of years of marriage. Seven years after the parties marriage, the Wife filed a Petition for Dissolution but then dismissed the action without ever having the petition served on the husband. Then, ten years after the marriage, the Wife filed a second Petition for Dissolution. Husband sought declaratory relief to determine the amount of lump sum alimony arguing that the date of the earlier petition should be effective, while wife argued the date of the second petition relevant to this action should be the effective date. Trial court erred in determining the effective date was the filing of the Petition subject to this action. The use of the indefinite article "a" in paragraph 5.3 (rather than using the word "the") is the heart of the problem. The use of the word "a"

required the court to consider the filing of the first Petition as the date. Had the paragraph been considered as a latent ambiguity then parole evidence could have been presented, but it was considered as clear and unambiguous. Reversed with direction to determine lump sum alimony based upon first filing date.

Kenney v. Goff, 43 Fla. L. Weekly D2735a (Fla. 4th DCA, December 12, 2018)

The parties entered into an MSA which provided in pertinent part as follows: The parties hereto do specifically agree that "the Husband shall pay directly to the Wife as full and final settlement of all claims between the parties for spousal support, property settlement and all other matters, lump sum rehabilitative alimony in the amount of THREE HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS ($360,000.00), payable as follows: the sum of THREE THOUSAND THREE HUNDRED THIRTY-THREE AND 33/100 DOLLARS ($3,333.33) per month on the 1st day of each month for a period of 108 months, commencing June 1, 2003." Upon Husband's Motion for Clarification, the trial court found that the lump sum payment under Paragraph 5 of the MSA was in the nature of a property settlement or equitable distribution. The trial court further ruled that because the lump sum payments was for an equitable distribution obligation, it never should have been included as part of the CSE ledger. The trial court thus directed the clerk of court to make various adjustments to the CSE ledger. This appeal ensued. To determine if lump sum payments are alimony or equitable distribution, the court should consider the following factors: whether (1) alimony payments are made in exchange for a property interest,(2) the payments are modifiable, (3) the payments terminate upon remarriage or death, and (4) the payments are deductible from the payor's federal income tax and taxable to the payee. In this case, the lump sum payments were not in exchange for property interests and therefore, despite the remaining issues suggesting property settlement, the first controls and this was alimony. Reversed.

Pagliaro v. Pagliaro, 44 Fla. L. Weekly D390f (Fla. 4thd DCA, February 6, 2019)

Parties attended mediation and signed an agreement that specifically contemplated additional negotiations and stated: "The Respondent/Husband's counsel, shall prepare a more formalized global Marital Settlement Agreement and Parenting Plan which outlines the terms and conditions set forth herein. Said Agreements shall be prepared within twenty days of the date of this Agreement. In the event the parties' [sic] are unable or unwilling to execute a more formalized Marital Settlement Agreement and Parenting Plan, this Agreement shall be incorporated into, ratified and approved by the Court and made a part of the Final Judgment of Dissolution of Marriage." Later the Wife moved to set aside the agreement. At the hearing the Wife attempted to introduce additional evidence regarding domestic violence committed by the Husband against his new girlfriend. The Court refused to hear additional evidence and ratified the mediated agreement. The court erred in not allowing the Wife the opportunity to be heard and introduce evidence when she moved to set aside the agreement. Further, the court erred in not hearing evidence and considering the best interest of the child when entering the parenting plan. Reversed and remanded.

Walsh v. Walsh, 43 Fla. L. Weekly D2779a (Fla. 5th DCA, December 14, 2018)

The parties entered into a MSA which provided the Wife with the following alimony terms: "The Husband shall pay to the Wife for her support and maintenance as permanent, periodic alimony thirty percent (30%) of the Husband's gross income. Gross income is to be defined as the periodic income that Husband receives as a direct result of his employment efforts, before considering any deferrals and tax

affected retirement savings husband may elect to have deducted from his pay." The MSA was subsequently modified to indicate that Husband agrees to pay Wife "periodic alimony in the minimum amount of $2,000.00 per month inclusive of the 30% of Husband's income until she dies or remarries or cohabitates with another individual per section 3 below." Wife later moved to enforce the alimony clause claiming Husband violated the Final Judgment by paying Wife alimony based upon his adjusted gross income after deferrals were made. During the hearing on the Motion for Enforcement, the court granted the motion in limine and refused to consider parol evidence, finding that paragraph 8 of the MSA clearly defines the term "gross income. The term "periodic income" is susceptible to two reasonable interpretations, those terms are ambiguous, and the court erred in finding otherwise. Reversed.

Wilson v. Wilson, 44 Fla. L. Weekly D2076a (Fla. 4th DCA, August 14, 2019)

The couple entered into a prenuptial agreement, waiving their right to an elective share but reserving the right to make testamentary gifts by will or codicil. Subsequently, the husband executed a last will and testament and created a trust agreement, directing the trustee to set aside "as much property as is necessary to satisfy the Wife's elective share" pursuant to the elective share statute. After the husband's death, the wife filed a notice of election to take elective share. The trial court struck the election. The language of the prenuptial agreement unambiguously waived the wife's elective share. The creation of the trust agreement could not modify the prenuptial agreement since it was not signed by both parties as required by the prenuptial agreement. The controlling Florida Statute also states that modification of a prenuptial agreement is valid only if signed by both parties. Thus, if the decedent intended to give the wife a testamentary gift, he could have done so by will or codicil without relying on an elective share and specifically the requirements of the elective share statute. Affirmed.

Ziegler v. Natera, 44 FLA. L. WEEKLY D1770a (Fla. 3rd DCA, July 10, 2019)

Six days prior to the wedding future husband presented pregnant future wife with a premarital agreement. At the time the future Wife requested he produce evidence regarding his holdings and net worth which he promised would be provided. Instead, the day before the wedding, the future husband demanded execution, with the ultimatum of no agreement, no wedding. He also indicated without execution they would not follow through on the plans to begin a new life with their children in the U.S. These circumstances are sufficient to support a finding of duress supporting the court's order invalidating the premarital agreement. Affirmed.

ALIMONY

AlvarezREyes v. Fernandez-Gil, 44 Fla. L. Weekly D387b (Fla. 3rd DCA, February 6, 2019)

The record contains competent substantial evidence to support the trial court's determinations regarding Alvarez-Reyes' voluntary underemployment and imputation of income. The final judgment evidences that the trial court thoughtfully considered and addressed each of the statutory factors enumerated in section 61.08(2)(a)-(j), and rightfully found a need and ability to pay permanent periodic alimony. Affirmed.

Cooper v. Cooper, 44 Fla. L. Weekly D1988c (Fla. 2nd DCA, August 2, 2019)

The trial court erred in considering Husband's gross income but making no finding as to his net income nor considering the tax consequences of alimony on the husband's net income. Trial Court erred in ordering Husband to maintain a life insurance policy to secure alimony without making necessary findings. Reversed and remanded.

Dorsey v. Dorsey, 44 Fla. L. Weekly D875a (Fla 1st DCA, April 3, 2019)

Where wife had only worked for the family business, which was then distributed to the Husband, it was not an abuse of discretion to impute only minimum wage to the wife rather than the slightly higher income she had earned from working sporadically for the family business. Affirmed.

Engle v. Engle, 44 FLA. L. WEEKLY D1710a (Fla. 2nd DCA, July 3, 2019)

The trial court erred in awarding Wife permanent periodic alimony where the trial court failed to make findings required by section 61.08(8). Husband not required to file a motion for rehearing as the lack of findings required by statute requires reversal regardless of the filing of such a motion. Conflict certified.

Erskine v. Erskine, 43 Fla. L. Weekly D2784d (Fla. 1st DCA, December 14, 2018)

Trial court erred in awarding temporary alimony and fees in excess of Wife's need. The court is required to make specific findings as the parties' need and ability to pay. The trial court also erred in not distinguishing the amount of support allocated to child support and to alimony. Finally, the trial court erred in ordering Husband to invade the principal of non-marital assts for payment of support. Reversed and remanded.

Frerking v. Stacy, 44 Fla. L. Weekly D717a (Fla. 5th DCA, March 15, 2019)

This was a 19-year marriage. The court imputed to wife $43,000 salary as a full-time schoolteacher. Permanent alimony is presumed to be appropriate after a long-term marriage, and a marriage lasting seventeen years or more is presumed to be long-term. It is an abuse of discretion to not award permanent periodic alimony in a long-term marriage unless the presumption favoring such an award is overcome by competent, substantial evidence. With respect to the imputation of income, both Appellee's expert and the trial court overlooked the legal requirement that Appellant would have to be certified before she could become a permanent, full-time public-school teacher, even at the elementary school level. When imputing income, trial courts must consider the spouse's "recent work history, occupational qualifications, and prevailing earnings level in the community." Before imputing income, a trial court must make a finding that the party has not used its best efforts to secure income "at a level equal to or better than that formerly received." A party's best efforts to find work "do not include

retraining, but only finding a job for which one is already qualified." The evidence did not overcome the presumption in favor of permanent alimony, nor did the evidence support imputing an annual income of $43,000 to Appellant. Reversed and remanded.

Fox v Fox, 44 Fla. L. Weekly D27a (Fla. 4th DCA, December 19, 2018)

Despite the other districts' decisions requiring a party to file a motion for rehearing to preserve the issue of a trial court's failure to make statutorily-required findings in alimony, equitable distribution, and child support, we adhere to our precedent that a party may raise the issue without having previously filed a motion for rehearing. This is because the rules do not require the filing of a motion, many dissolution appeals are pro se, and a family court judge should be aware of the statutory requirements in rendering a decision on alimony, equitable distribution, and child support. Court recedes from opinions in Farghali and Kuchera to the extent they adopted a new rule requiring a motion for rehearing to raise a trial court's failure to make statutorily-required findings on appeal. Reversed and remanded for statutory findings. Trial court erred in not ordering Wife to submit to a vocational evaluation. The Husband is entitled to evaluation pursuant to Fla. Fam. L.R.P. 12.360(a)(1) in order to provide substantial, competent evidence regarding Wife's employability. Reversed and remanded to allow for evaluation.

Gilliland v. Gilliland, 44 Fla. L. Weekly D720a (Fla. 5th DCA, March 15, 2019)

The trial court erred in failing to award Wife permanent periodic alimony and in reducing Wife's requested attorney's fees without making findings of fact in the Final Judgment. There is a rebuttable presumption that permanent periodic alimony is appropriate after a long-term marriage. The "[d]isparate earning capacity of the parties is a significant factor' in deciding whether permanent alimony is warranted. When a dissolution judgment gives no guidance as to why permanent periodic alimony is inappropriate in a long-term marriage and why durational alimony was awarded, reversal is proper. Although the court found that Wife is middle aged, in good health, and has the education and work experience to be self-supporting, it made no finding regarding whether Wife had an ongoing need for support on a permanent basis as required by Florida Stat. section 61.08(7). It is error to award durational alimony instead of permanent periodic alimony. Reversed and remanded.

Griffitts v. Griffitts, 44 Fla. L. Weekly D234a (Fla. 5th DCA, January 11, 2019)

The evidence reflected that this was a long-term marriage, in which Former Wife sacrificed a career to be the primary caregiver for the parties' four children. Even after imputation of income to Former Wife, the parties will have a significant income disparity. In denying Former Wife's request for permanent periodic alimony, the trial court relied primarily on the grounds that it had awarded a greater amount of the parties' marital assets to Former Wife and that because of the "investment" made by Former Wife's parents, she would be able to remain in the marital home indefinitely without having to make mortgage payments. While these factors support the trial court's decision not to award a greater monthly alimony amount, they fall far short of justifying its decision to deny an award of permanent periodic alimony. Here, even assuming Former Wife earns the income imputed to her by the trial court, the evidence reflects that Former Wife will still have the need for periodic alimony beyond three years. Reversed.

Horowitz v. Horowitz, 44 FLA. L. WEEKLY D1382a (Fla. 2nd DCA, May 29, 2019)

Seventeen-year marriage and wife only worked part time since 2010. Vocational expert testified that Wife could make $22,000 to $35,000 per year but needed six months of therapy or life coaching to help her work through her depression and transition to full time employment. Court imputed full time employment at $13 per hour immediately, provided 12 months of bridge-the-gap alimony to pay for counseling, and durational alimony for 69 months. Trial court erred in imputing income immediately to wife after finding vocational expert as credible and finding wife needed counseling to before obtaining full time employment. Further, court erred in not making specific findings as to her monthly living expenses (need) and his monthly expenses (ability to pay). These findings are necessary for meaningful review. Reversed and remanded.

Horton v. Horton, 43 Fla. L. Weekly D468b (Fla. 1st DCA, November 6, 2018)

Trial court erred in failing to make sufficient factual findings to support alimony award. Reversed.

Jackson v. Jackson, 44 FLA. L. WEEKLY D1743a (Fla. 1st DCA, July 9, 2019)

The wife was unemployed at the time of hearing but collecting retirement and disability. The trial court in evaluating the Wife's income found that she was not underemployed or unemployed in one portion but then found that she did not need alimony because she was voluntarily unemployed and imputed income to her. These inconsistent findings lead to a lack of clarity as to the determination of alimony, child support and attorney fees. Further, the court erred in not including the wife's retirement and disability in the child support calculations. Reversed and remanded.

Julia v. Julia, 44 Fla. L. Weekly D242b (Fla. 4th DCA, January 16, 2019)

The trial court failed to make the statutorily-mandated finding that no form of alimony, other than permanent alimony, was fair and reasonable under the parties' circumstances pursuant to Fl. Stat. Section 61.08(8). The trial court erred when it based the alimony award amount on the husband's gross income, rather than his net income. Reversed and remanded.

King v. King, 44 Fla. L. Weekly D1337a (Fla. 2nd DCA, May 22, 2019)

This was a short term marriage and therefore a presumption again an award of alimony. The record does not show that the wife rebutted the presumption. The Court made full findings regarding the factors considered in denying alimony. Therefore, the court was correct in denying alimony. Affirmed.

Levy v. Levy, 44 Fla. L. Weekly D983a (Fla. 4th DCA, April 17, 2019)

Wife petitioned the court for alimony unconnected with dissolution pursuant to section 61.09, Florida Statutes. Wife attached a marital property settlement agreement providing that Husband agreed to pay Wife the requested amount of monthly alimony. The settlement agreement was signed on behalf of Husband by his agent as designated in Husband's durable power of attorney. The durable power of attorney, which was also attached to the petition, specifically provided that Husband authorized the agent to, amongst other things, "support and/or continue to support any person whom I have taken to support or to whom I may owe an obligation of support, in the same manner and in accordance with the same standard of living as I may have provided in the past." The court ultimately denied the petition, reasoning that it was unable to legally order alimony due to concerns regarding Husband's potential

incapacity. By denying alimony based on Husband's potential incapacity, the court failed to give effect to Husband's intent under the durable power of attorney to designate an agent to act on his behalf notwithstanding his subsequent incapacity. Reversed and remanded.

Lizzmore v. Lizzmore, 44 Fla. L. Weekly D366a (Fla. 1st DCA, February 4, 2019)

This was a 36 year marriage and at the time of the divorce, the Wife was in poor health and the Wife had minimal assets compared to the Husband while the Husband was earning more income per month. There was no abuse of discretion in awarding Wife permanent periodic alimony as Wife had need and Husband had ability to pay. However, error to award the Wife more than had been requested in her petition. Reversed with direction to award Wife amount requested.

McDaniels v. McDaniels, 44 FLA. L. WEEKLY D1884a (Fla. 1st DCA, July 23, 2019)

The dissolution judgment provided that the former husband's alimony obligation was non-modifiable for a certain period of time unless he became permanently disabled "as determined by a physician or the social security administration." As the trial court found, none of the medical records upon which former husband relied stated that he was permanently disabled. Nor did former husband file for social security disability as a result of his conditions. Given such, the trial court did not abuse its discretion in denying the petition to modify. The trial court failed to make a finding that the former husband had the present ability to pay the purge amount ordered, however, former husband failed to raise the issue below and therefore failed to preserve the issue for appeal. Affirmed.

Molina v. Perez, 44 FLA. L. WEEKLY D1558b (Fla. 3rd DCA, June 19, 2019)

This was a 22-year marriage. Husband was employed outside the home and the Wife was the homemaker. The court erred in awarding the wife durational alimony for 15 years. The court seemed to consider the Husband's vocational expert report, however the report was never entered into evidence and the expert's deposition was in the record but not entered into evidence. There was no substantial evidence that the Wife had the ability to earn income would increase sufficiently in 15 years. Reversed and remanded for an award of permanent periodic alimony.

Perez v. Perez, 44 Fla. L. Weekly D1282a (Fla. 3rd DCA, May 15, 2019

The record contains competent substantial evidence to support the trial court's findings of the Husband's annual income. No abuse of discretion as to the courts award of rehabilitative alimony. Affirmed.

Rawson v. Rawson, 44 Fla. L. Weekly D359a (Fla. 1st DCA, February 4, 2019)

This was a 28-year marriage. There were four children born to the marriage but only one remained a minor at the time of the final hearing. The Husband appeals the courts award to the wife of the husband's share of the wife's military retirement as lump sum alimony. The husband claims the trial court failed to make sufficient findings of both a "special necessity" and "unusual circumstances" in awarding the wife his marital share of her military pension as lump sum alimony. The trial court did impute income to the husband, which reflected the court's conclusion that the former husband was intentionally avoiding employment. The trial court also found that the former husband's dissipation of the parties' assets and his withholding of the rental income from the former wife -- as well as his threat that he would rather kill the former wife than support her -- underscored the court's "significant

concerns about the enforceability of its alimony award." Those findings were sufficient to show both a "special necessity" and "unusual circumstances" to support awarding the wife the husband's marital share of her military pension as lump sum alimony. Furthermore, the wife was left with significant property expenses as a result of the final judgment. Affirmed as to alimony, reversed as to child support.

Rowe-Lewis v. Lewis, 44 Fla. L. Weekly D844a (Fla. 4th DCA, April 3, 2019)

Trial court failed to make necessary findings of fact relative to the factors enumerated in section 61.08(2) supporting an award or denial of alimony. Reversed and remanded.

Sarazin v. Sarazin, 44 Fla. L Weekly D365a (Fla. 1st DCA, February 5, 2019)

The trial court erred in considering past gifts of support made by the Wife's family when determining her anticipated future income and need for alimony. Reversed and remanded.

Shaw v. Shaw, 44 FLA. L. WEEKLY D1412a (Fla. 2nd DCA, May 31, 2019)

Wife is a veterinarian but had worked only part time during the marriage and unemployed at the time of trial. It was anticipated that the Wife would earn half the husband's income and the court awarded bridge the gap and durational alimony. It was error for the court to not award nominal permanent periodic alimony to allow the court to increase the alimony award should the wife find that she is unable to secure employment, after using her best efforts, in the imputed amount.

Troike v. Troike, 44 Fla. L. Weekly D313c (Fla, 3rd DCA January 30, 2019)

Order requiring Husband to pay $3,351 in alimony and child support is less than 40% of his total monthly earnings of $8,393 and therefore not an abuse of discretion. Affirmed.

Tritschler v. Tritschler, 44 FLA. L. WEEKLY D1457a (Fla. 2nd DCA, June 7, 2019)

The court erred in basing alimony on the parties' gross income rather than their net incomes. Further, the court failed to identify the time and manner for termination of alimony. Reversed and remanded.

Walker v. Walker, 44 FLA. L. WEEKLY D1410a (Fla. 2nd DCA, May 31, 2019)

The record supports the trial court's general finding of former wife's need and the former husband's ability to pay alimony. However, the record does not support whether the parties' incomes and expenses are properly calculated or whether the award based on those calculations are correct; specifically, the amount the former husband is able to earn working overtime. The court erred in not addressing Husband's request the deductibility of temporary alimony paid and not determining if ongoing support is deductible. Reversed and remanded.

Walsh v. Walsh, 43 Fla. L. Weekly D2779a (Fla. 5th DCA, December 14, 2018)

Trial court erred in awarding Husband credit for overpayment of alimony. The issue was not raised in the pleadings nor tried by consent.

Will v. Will, 44 FLA. L. WEEKLY D1671b (Fla. 2nd DCA, June 28, 2019)

Trial court erred in determining husband's ability to pay alimony without taking husband's living expenses into account. Reversed and remanded.

Zubricky v. Zubricky, 44 Fla. L. Weekly D1286a (Fla. 4th DCA, May 15, 2019)

Prior to filing the Petition for Dissolution, the parties entered into a Marital Settlement Agreement providing that the Husband would pay the Wife $1,600 per month, would contribute $550 toward her car payment and would give her $125,000 from his Thrift Savings Plan (TSP). In December 2015 the Court entered an order on the Wife's Motion for Temporary Relief finding that the Wife was living with her paramour who provided support. The parties then signed a Partial Marital Settlement Agreement regarding equitable distribution and stipulating that the issues to be resolved by the court included alimony. The court found that the Wife did not have a need and the Husband did not have an ability to pay alimony. Further the court found that the Wife was cohabitating making her ineligible for alimony under 61.14. The court may modify a settlement agreement even if not incorporated into a final decree. Court made appropriate findings as to alimony and did not abuse discretion in considering cohabitation in determining alimony. Affirmed.

APPEALS

Brown v. Brown, 44 FLA. L. WEEKLY D1673c (Fla. 5th DCA, June 28, 2019)

Absence of a transcript or showing of fundamental error on the face of the final judgment that is subject to the appeal precludes further review. Affirmed.

Browner v. Browner, 44 Fla. L. Weekly D1020c (Fla. 1st DCA, April 22, 2019)

Appeal of order denying motion for rehearing on timesharing is dismissed as premature because, although the order did not reserve jurisdiction on issues of timesharing and parental responsibility, the order reserved jurisdiction over the related claims of child support and equitable distribution and therefore was a nonfinal order. Dismissed

Burch v. Burch, 44 Fla. L. Weekly D2122a (Fla. 1st DCA, August 21, 2019)

Premature to appeal Order on entitlement to attorney fees but a reservation to determine the amount of fees. Dismissed.

Cammarata v. Cammarata, 43 Fla. L. Weekly D2647a (Fla. 4th DCA, November 28, 2018)

The appeal of the portion of the final judgment with respect to child support was premature as the court had referred the parties to attend mediation and then present the child support issue to the Magistrate if agreement was not reached. This was a non-final order and therefore not subject to review. Dismissed.

Diogo v. Diogo, 44 Fla. L. Weekly D2135a (Fla. 3rd DCA, August 21, 2019)

In the absence of a transcript the trial court's finding that premarital agreement was valid and enforceable must be affirmed.

Engle v. Engle, 44 FLA. L. WEEKLY D1710a (Fla. 2nd DCA, July 3, 2019)

The trial court's failure to make specific factual findings that are required by statute as set forth in chapter 61 is reversible error regardless of whether the error was first raised in the trial court by means of a motion for rehearing. Reversed and remanded. Conflict with the 1st, 5th and 3rd DCAs certified.

Johnston v. Johnston, 44 Fla. L. Weekly D2303a (Fla. 5th DCA, September 13, 2019)

Premature to appeal Order on entitlement to attorney fees but a reservation to determine the amount of fees. Dismissed.

Joyner v. Worley, 44 Fla. L. Weekly D260a (Fla. 1st DCA, January 22, 2019)

Absence of a transcript or showing of fundamental error on the face of the final judgment that is subject to the appeal precludes further review. Affirmed.

McFall & McFall v. Welsh, 44 Fla. L. Weekly D2038a (Fla. 5th DCA, August 8, 2019)

McFalls have petition seeking certiorari relief regarding nonfinal order that compels them to produce their jointly filed federal income tax return. Because a motion to stay enforcement of order is pending

in the trial court, the instant motion is denied without prejudice to filing a subsequent motion, if necessary, after trial court ruling

McGee v. McGee, 44 Fla. L. Weekly D364b.

The Husband appealed without a transcript. The record as provided fails to reveal a miscarriage of justice or an abuse of the trial court's discretion on the face of the judgment such that reversal of child support award is required. While the judgment on appeal lacks written findings as to some statutory factors, without a transcript of the hearing we cannot presume that the trial court's determination of the former husband's share of the child's need for support was unsupported by sufficient evidence presented at trial or that the child support ordered was otherwise the result of harmful error. The portion of this appeal challenging the trial court's reservation of jurisdiction to determine the amount former husband will pay for former wife's attorney's fees is dismissed for lack of jurisdiction as the judgment does not make an award of fees but only determines entitlement and is therefore nonfinal. Affirmed.

Padgett v. Padgett, 44 Fla. L. Weekly D1167b (Fla. 1st DCA, May 2, 2019)

Denial of the Former Husband's Supplemental Petition for Modification of Alimony must be affirmed when Former Husband fails to provide a transcript of the hearing and court cannot determine if the court's findings were supported by evidence without the transcript.

Perez v. Perez, 44 Fla. L. Weekly D587d (Fla. 3rd DCA, February 27, 2019)

Trial Court's order suspending the Mother's timesharing is affirmed given the lack of a transcript of the hearing conducted by the trial court and the lack of error on the face of the order. Affirmed.

Rayess v. Bitar, 43 Fla. L. Weekly D2367b (Fla. 5th DCA, October 19, 2019)

Absence of a transcript or showing of fundamental error on the face of the final judgment that is subject to the appeal precludes further review. Affirmed.

S.B.B. & B.B.B. v. The adoption of J.M.B.S, 43 Fla. L. Weekly D2554a (Fla. 5th DCA, November 16, 2018)

Absence of a transcript or showing of fundamental error on the face of the final judgment for stepparent adoption precludes further review. Affirmed.

Wolf v. Wolf, 44 Fla. L. Weekly D1221a (Fla. 2nd DCA, May 8, 2019)

Premature to appeal Order on entitlement to attorney fees but a reservation to determine the amount of fees. Dismissed.

ATTORNEY FEES / COSTS

Accardi v. Accardi, 44 FLA. L. WEEKLY D1491a (Fla. 4th DCA June 12, 2019)

In contempt hearing regarding lack of payment of alimony, trial court also awarded the former wife attorney fees of $52,578 without a finding of need or ability to pay. The court must make these findings and therefore the award is reversed and remanded for further findings.

Allen v. Allen, 44 Fla. L. Weekly D2046b (Fla. 2nd DCA, August 9, 2019)

The trial court failed to make the statutorily required findings as to the parties' respective financial situation when denying Wife's request for attorney fees. Reversed potion of Final Judgment that denied the Wife's request for attorney's fees under section 61.16.

Dood v. Dood, 44 Fla. L. Weekly D969b (Fla. 2nd DCA, April 12, 2019)

The trial court failed to make the statutorily required findings when ordering Husband to pay Wife's attorney fees.

Dorsey v. Dorsey, 44 Fla. L. Weekly D875a (Fla 1st DCA, April 3, 2019)

The trial court failed to make the statutorily required findings to justify the attorney fees award. Reversed.

Fleming v. Fleming, 44 Fla. L. Weekly D2216a (Fla. 1st DCA, August 29, 2019)

Trial Court erred in awarding wife $200,000 of her requested $360,837 attorney fees. Trial court based decision on expert witness that the case should have only required $200,000 in fees and that some of Wife's attorney fees were based on duplicative work. Court failed to make findings as to what specific hours should have been deducted for being duplicative or excessive.

George v. Gilbert & Singh 44 Fla. L. Weekly D508a (Fla. 4th DCA, February 20, 2019)

The former counsel to a spouse, whose marriage to an incapacitated person was annulled, appeals from the circuit court's order directing the former counsel to pay 50% of the incapacitated person's attorney's fees incurred in obtaining the annulment. The court ordered the attorney and the spouse should have to pay the incapacitated person's attorney's fees, because the spouse's opposition to the annulment was disingenuous. After the former counsel withdrew as attorney of record, he was not provided with notice and an opportunity to be heard regarding the court's decision to impose attorney's fees against him. Notice of hearing for determination and assessment of the amount of fees sent to former counsel by incapacitated person's counsel a month after the trial did not provide due process as due process had already been denied by the court's initial order.

Gilliland v. Gilliland, 44 Fla. L. Weekly D720a (Fla. 5th DCA, March 15, 2019)

The trial court must make findings of fact in the Final Judgment when awarding attorney's fees in a dissolution proceeding. Although the court sets forth the way Husband should pay Wife's attorney, there is no explanation for the court's rationale in awarding Wife only half of the attorney's fees she requested. The Final Judgment also lacks any factual findings regarding Wife's need for fees, Husband's ability to pay those fees, Wife's attorney's hourly rate, the number of hours he expended, whether that

number of hours was reasonable, or whether any factors support reducing or enhancing the fee amount. The failure to include these findings requires reversal of the attorney's fees award for the trial court to hear evidence and make the required findings in support of its ruling. Reversed and remanded.

Hollonbeck v. Hollonbeck, 44 Fla. L. Weekly D2060a (Fla. 1st DCA, August 13, 2019)

In determining whether and how much to award fees under section 61.16(1) the financial resources of the parties are the primary factor to be considered. The trial court did not consider or make any findings regarding her former husband's ability to pay attorney's fees and the former wife's need to have the fees paid. Reversed.

Ingram v. Ingram, 44 FLA. L. WEEKLY D1792a (Fla. 2nd DCA, July 10, 2019)

The equitable distribution and alimony awards in the final judgment placed the parties in similar financial position. It was therefore error for the court to award the Wife attorneys fees without an indication that the Husband otherwise had an ability to pay. There was some indication that the award of fees to the Wife was a sanction against the Husband. However, the court made no specific and necessary findings regarding the husband's behavior as it related to fees as required by Rosen. Reversed and remanded.

Joost v. Joost, 44 Fla. L. Weekly D1242a (Fla. 4th DCA, May 8, 2019)

The court erred in not making findings as to the complexity of the case, the Wife's need for temporary fees, the Husband's ability to pay temporary fees or the reasonableness of the fees sought. Comparing the amount each had paid for their fees alone is not sufficient to warrant denial of fees to the wife. Reversed and remanded.

Joyner v. Worley, 44 Fla. L. Weekly D260a (Fla. 1st DCA, January 22, 2019)

The trial court erred in awarding attorney's fees and costs without first conducting a hearing and offering the father the opportunity to dispute the reasonableness of the fees claimed. Reversed and remanded.

King v. King, 44 Fla. L. Weekly D1337a (Fla. 2nd DCA, May 22, 2019)

The court awarded costs of $400 but denied attorney fees. The court made no findings as to the denial of attorney fees. Reversed and remanded.

Laux v. Laux, 44 Fla. L. Weekly D635a (Fla. 4th DCA, March 6, 2019)

The parties were divorced in 2014 following a long-term marriage. They resolved the typical issues associated with dissolving a marriage by entering into a MSA, which was incorporated into the final judgment of dissolution of marriage. The MSA contained the following provision: "Attorney's Fees. Each party shall be responsible for their respective attorney's fees, if any are incurred". The MSA was silent as to attorney's fees in future enforcement or modification proceedings. Wife moved for enforcement of the MSA and sought fees as sanction pursuant to 61.16 and Rosen. When an attorney's fees provision in a marital settlement agreement does not contain specific language waiving attorney's fees in future enforcement or modification proceedings, Florida courts have found that these fees are not waived.

Trial court erred in denying fees to Wife when MSA was silent as to future fees. Reversed and remanded.

Manko v. Manko, 44 FLA. L. WEEKLY D1932a (Fla. 5th DCA, July 23, 2019)

Court erred in making an award for attorney fees in a contempt hearing without a specific finding as to "need and ability to pay". Reversed and remanded as to attorney fees.

Medalie v. Sparks, 44 FLA. L. WEEKLY D1785a (Fla. 4th DCA, July 10, 2019)

Remand for the trial court to award father a credit towards the attorney fees owed to the mother's former counsel where the time sought by former counsel inadvertently included hours of work performed for a different client.

Miron v. Richardson, 44 FLA. L. WEEKLY D1828f (Fla. 1st DCA, July 16, 2019)

The trial court abused its discretion in requiring the former husband to pay the former wife's attorney's fees without making factual findings on need and ability to pay. In considering the financial resources of both parties, as required by section 61.16, it is not enough to simply show that the adverse party's ability to pay the fees is greater than the party seeking relief or that an award is based on the relative financial strain of paying attorney's fees. Reversed and remanded.

Pansky v. Barry S. Franklin & Assoc. P.A., 44 FLA. L. WEEKLY D447a (Fla. 4th DCA, February 13, 2019)

Daniel Pansky owed funds to the law firm for his dissolution. The firm requested a charging order and transfer of Pansky's interest in an LLC in which he had an ownership interest. At the hearing the parties agreed to the entry of the charging order, but the court reserved on the issue of the transfer of the interest in the LLC. The Court then entered an order granting the charging order but also transferring Pansky's right, title and interest in the LLC. Whether the charging order was the sole remedy by which the law firm could satisfy the judgment from Pansky's interest in the LLC or his rights to distributions from the LLC depended upon whether the LLC was a single or multiple member LLC. Reversed and remanded.

Pelphrey-Weigand v. Weigand, 44 Fla. L. Weekly D973a (Fla. 2nd DCA, April 17, 2019)

Following the entry of Final Judgment, the Wife filed a Motion to set aside the judgment. The Husband filed for attorney fees under 57.105. Fees were denied. The Wife then filed a Motion for Contempt. The Husband filed for attorney fees pursuant to the parties MSA enforcement clause and requesting fees under both motions pursuant to 61.16. The court granted fees for both actions. Trial court erred in awarding fees for motion to set aside as these were res judicata. Court correctly ordered fees under contempt motion. Reversed and remanded to determine fees specifically for contempt motion.

Perault v. Perault, 44 Fla. L. Weekly D1135a (Fla. 4th DCA, May 1, 2019)

Trial court erred in including a "prevailing party clause" in the final judgment of dissolution should either party bring an action to enforce the Final Judgment or Parenting Plan. Reversed and remanded.

R.M.A. v. J.A.S., 44 Fla. L. Weekly D1107a (Fla. 2nd DCA, April 26, 2019)

The trial court erred in failing to make specific findings as to the reasonable number of hours expended by the Mother's attorney. Reversed.

Reidy v. Reidy, 43 Fla. L. Weekly D2654a (Fla. 4th DCA, November 28, 2018)

The attorney represented the former wife in a dissolution action. He was replaced after the trial court entered a final dissolution judgment and while the direct appeal of that judgment was pending. He then filed a notice of intention to impose and enforce a charging lien. The trial court erred in determining that the Notice was timely. The attorney filed the notice after the final judgment was entered. Also, the final judgement had denied both parties' fee requests and therefore did not retain jurisdiction to adjudicate fees. Reversed.

Rotunda v. Rotunda, 43 Fla. L. Weekly D2463a (Fla. 5th DCA, November 2, 2018)

In order for temporary attorney fees and costs, trial court failed to include findings regarding reasonable hourly rate and number of hours expended. Trial Court also failed to including monies for prospective fees and monies for expert accountant. Trial court ordered only a lump sum amount of award without delineating if this was for past fees or prospective fees or expert fees. Reversed and remanded.

Subramanian v. Subramanian, 43 Fla. L. Weekly D2681a (Fla. 4th DCA, December 5, 2018)

Husband was given notice that the court would determine entitlement to attorney's fee during the trial in the dissolution or at the least, tried by consent. There was no violation of Husband's due process. Affirmed.

Sarazin v. Sarazin, 44 Fla. L Weekly D365a (Fla. 1st DCA, February 5, 2019)

Trial court affirmed for denial of attorney fees to the Wife when the evidence supported that her family had paid her attorney fees and no repayment was expected. This was distinguished from the cases where a person barrowed the funds to pay their attorney from family and continued to have a need for contribution to the attorney fees from the spouse. Affirmed.

Scire v. Hochman, 44 Fla. L. Weekly D950a, (Fla. 4th DCA, April 10, 2019).

The father appeals an attorney's fees award entered following a modification order in a paternity action. The court erred in failure to make findings concerning the payment plan; and the court erred in failing to determine the hours expended by the mother's counsel in awarding fees. Neither the fee order, the transcript, nor the fee affidavit contained the requisite findings of the number of hours spent nor how the trial court determined the total amount of attorney's fees owed. "In circumstances where the record may contain competent, substantial evidence to support these specific findings, but the trial court's order omits such findings, the case should be remanded for entry of an appropriate order. We therefore reverse and remand the case to the trial court for further proceedings. The trial court orally stated "[y]our client is going to need a payment plan." "I'll break it up over five years with no interest. That's a month." But the order did not make findings to support the court's conclusion. Factual findings for the payment plan must be made.

Seligsohn v. Seligsohn, 43 Fla. L. Weekly D2637c (Fla. 4th DCA, November 28, 2018)

Trial court erred in ordering Wife to sell the parties' marital home to satisfy the guardian ad litem's fees. The GAL fees are a third-party liability unrelated to the homestead property. Reversed.

Szurant v. Aaronson, 44 FLA. L. WEEKLY D1851a (Fla. 2nd DCA, July 17, 2019)

Court entered a charging lien in favor of wife's former counsel which stated the attorney is entitled to the equitable distribution of funds wife received from the marital dissolution action and "all of her money and/or personal property in her possession." This is overly broad because it does not limit the charging lien to the proceeds recovered by wife as a result of attorney's efforts in the dissolution action. Reversed and remanded.

Troike v. Troike, 44 Fla. L. Weekly D313c (Fla, 3rd DCA January 30, 2019)

Section 61.16(1) of the Florida Statutes requires that the trial court take into consideration the parties' financial ability to pay when imposing attorney's fees and costs. While Appellee's need is present in the record, Appellant's ability to pay is not thoroughly established. Reversed and remanded.

Williams v. Kerr, 44 Fla. L. Weekly D532a (Fla. 3rd DCA, February 20, 2019)

Trial court affirmed in authorizing disbursement of escrowed settlement funds to satisfy charging lien where the appellant failed to provide a transcript of the hearing below and there is no error on the face of the judgment. Affirmed.

CHILD SUPPORT

Alexander v. Harris, 44 Fla. L. Weekly D1311d (Fla. 2nd DCA, May 17, 2019)

The Father is the sole beneficiary of a special needs trust established from the settlement of a product liability action brought on the Father's behalf after he was catastrophically injured in a car accident as a minor. In 2009 the Court entered an order for child support. By 2017 the Father was in arrears on the order by $91,780. The court denied the Mother's motion for contempt finding that the Father had no ability to pay the arrearage or his ongoing support obligations. The trial court erroneously concluded that it could not garnish the discretionary payments made for the benefit of the Father from a special needs trust. The special needs trust does not protect the Father from his legal obligation to support his child. A continuing writ of garnishment is appropriate in this case and the court may limit the award to such relief as is appropriate under the circumstances. Reversed and remanded.

Cairns v. DOR, 44 Fla. L. Weekly D230a (Fla. 1st DCA, January 10, 2019)

Because the judge's findings regarding the number of overnights the child spends with the Father is correct and supported by competent, substantial evidence, Affirmed.

Carmack v. Carmack, 44 FLA. L. WEEKLY D1714a (Fla. 2nd DCA, July 3, 2019)

Trial Court failed to make findings of fact regarding the parties' incomes when determining child support. The trial court must also include a child support guidelines worksheet with the final judgment. Because the court must consider alimony and child support payments when determining whether a party has the ability to pay attorney fees, the court must consider motion for attorney fees upon remand. Reversed and remanded.

D.O.R. v. Amico, 44 Fla. L. Weekly D554a (Fla. 5th DCA, February 22, 2019)

The trial court properly included in the Father's gross income the payments his employer made toward his health insurance because these payments reduced his living expenses, but then erred in not providing a corresponding deduction when calculating father's net income. The trial court erred in not deducting the Father's mandatory pension payments from gross income. Trial court erred in including other payments by the employer in Father's gross income without findings that these payments reduced Father's living expenses. Reverse the trial court's order granting Mother's motion to vacate and remand for recalculation of Father's child support obligation.

D.O.R. v. Begassiere, 43 Fla. L. Weekly D2691a (Fla. 3rd DCA, December 5, 2018)

Trial court's order modifying father's child support obligation based on findings that the father was underemployed is affirmed where the state did not object to the downward modification nor the procedure trail court used to ascertain the modified amount. Any alleged error was not preserved for appeal. Affirmed.

D.O.R. v. Vobroucek, 43 Fla. L. Weekly D2507a (Fla. 2nd DCA, November 9, 2018)

Minor child turned 18 years old in December 2016. In February 2017 DOR filed a supplemental petition pursuant to 743.07(2) seeking to extend child support to date of graduation from high school (May 2017). Trial court erred in denying the petition stating that they were without jurisdiction as the petition was filed after the child turned 18 years of age. Florida Stat. 743.07(2) provides that a

supplemental petition can be filed if the child is between ages of 18 and 19 and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19. Reversed and remanded.

Dorsey v. Dorsey, 44 Fla. L. Weekly D875a (Fla 1st DCA, April 3, 2019)

Trial court erred in using parties' gross income to calculate child support. Trial court erred in equally dividing medical expenses between the parties contrary to statute. It was not an abuse of discretion to order Husband to pay private school tuition for elder child where the parenting plan ordered shared parental responsibility including to determine if it was financially feasible to have either child in private school. Private school tuition can be included in child support calculations upon remand. Reversed.

Ellis v. Allen 44 Fla. L. Weekly D786d (Fla. 5th DCA, March 22, 2019)

Remanded for trial court to allocate responsibility for the payment of the child's noncovered medical, dental, and prescription medication expenses as required by Fla. Stat. Section 61.30(8). Remanded.

Gay v. Gay, 44 Fla. L. Weekly D150c (Fla. 1st DCA, December 31, 2018)

According to the statute, monthly income can be imputed to an unemployed parent only if such unemployment "is found . . . to be voluntary." § 61.30(2)(b), Fla. Stat. (2017). The Wife was let go from her previous two employers but there was no evidence that the loss of employment was voluntary. Evidence was also submitted to show that Wife was applying for work and intended to take classes to increase her employability. Rreverse and remand for reconsideration of the decision to impute income and of the child support calculation.

Hogan v. Aloia, 43 Fla. L. Weekly D2281a (Fla. 4th DCA, October 10, 2018)

The trial court erred in the determination of the Wife's income from rental property. It appears the court erroneously split the difference between the parties' testimony as to the amount of income. The court also erred in calculation of presumptive guidelines. Then the court failed to make the requisite findings to support a deviation from guidelines. Finally, the Court failed to attach a child support guidelines worksheet to the Final Judgment. Reversed and remanded.

Holley v. D.O.R., 44 FLA. L. WEEKLY D1541c (Fla. 2nd DCA, June 14, 2019)

DOR erred in computing his retroactive child support to a period in excess of 24 months. Further DOR erred in calculating retroactive child support based upon his current income rather than his monthly income during the retroactive time period. Reversed and remanded.

Hollonbeck v. Hollonbeck, 44 Fla. L. Weekly D2060a (Fla. 1st DCA, August 13, 2019)

The trial court failed to calculate pre-judgment interest for its award of retroactive child support. Reversed.

J.A.D. v. K.M.A., 44 Fla. L. Weekly D346a (Fla. 2nd DCA, February 1, 2019)

The Father is a CEO of a company owned by his mother. The trial court erred by failing to make specific findings concerning each parent's net monthly income and relying only on each parent's gross monthly income. Additionally, the trial court did not include in the final judgment a child support guidelines

worksheet. Competent substantial evidence was not provided to support the trial court's addition of $40,628.46 to the gross annual income figure the Father. Reversed and remanded.

Johansson v. Johansson, 44 Fla. L. Weekly D1133b (Fla. 4th DCA, May 1, 2019)

Trial court erred in failing to prepare a child support guidelines worksheet, to make findings regarding the parties' incomes, and failing to determine if the wife was voluntarily underemployed as plead by Former Husband in child support modification case. Reversed and remanded.

Johnson v. Johnson, 44 Fla. L. Weekly D890a (Fla. 5th DCA, April 5, 2019)

The trial court erred in calculating the ongoing child support award. Florida Statutes 61.13 requires that every child support order "shall contain a provision for health insurance for the minor child when health insurance is reasonable in cost and accessible to the child" and that the trial court "shall apportion the cost of health insurance, and any noncovered medical, dental, and prescription medication expenses of the child, to both parties by adding the cost to the basic obligation determined pursuant to s. 61.30(6). The trial court also erred in calculating the retroactive child support award. The child support guidelines worksheet, upon which the trial court relied, did not consider the mortgage and bankruptcy payments that had been ordered and that the former husband made during the retroactive period. Reversed.

Joost v. Joost, 44 Fla. L. Weekly D1242a (Fla. 4th DCA, May 8, 2019)

Trial Court erred in failing to make an express award of child support after finding she had established a need. The court had awarded support but failed to identify the amount of the award that was alimony and the amount that was for child support. Further, the Court failed to identify the parties' respective incomes in the temporary support order. Reversed and remanded.

Julia v. Julia, 44 Fla. L. Weekly D242b (Fla. 4th DCA, January 16, 2019)

The trial court erred in ordering the parties to pay for the children's noncovered health, dental, and extracurricular expenses in an 80/20 split, where the regular child support allocation was split 60/40. The trial court did not provide a "logically established rationale" for the disparity in the allocations. The trial court erred in awarding retroactive child support without considering the former husband's mortgage payments during the dissolution's pendency. Reversed and remanded.

Knapp v. Knapp, 44 Fla. L. Weekly D599g (Fla. 1st DCA, February 28, 2019)

Husband testified that he was being deployed and would only have 30 days leave during his deployment. The court granted the Husband 30 days timesharing as well as part of Thanksgiving, Winter and Spring break. The court then calculated child support based upon the Husband having 120 overnights. This was error based upon the parenting plan. Reversed and remanded.

Lennon v. Lennon, 44 Fla. L. Weekly D350a (Fla. 2nd DCA, February 1, 2019)

The court failed to make the necessary findings that explain how the court arrived at the figures it included in the "allowable deductions" section of the child support guidelines worksheets incorporated in the final judgment. The worksheets included an amount for the former wife's deductions that are greater than what would be supported by her financial affidavits or, for that matter, any other evidence of those deductions. The amount of the former husband's deductions was substantially lower than indicated by his affidavits. In addition, the trial court used the wrong number of overnights in the

guideline's worksheets. Trial court can base retroactive support on the earlier guidelines worksheet that was used for the wife's motion for temporary relief but must include the worksheet with the order to support the findings. Reversed and remanded.

Marini v. Kellett, Fla. L. Weekly D2105a (Fla. 5th DCA, August 16, 2019)

The trial court abused its discretion in calculating the parties' financial circumstances in regard to child support and child-related expenses in the following ways: (1) the court used the parties gross rather than net incomes; (2) the court failed to include the Mother's health insurance expenses for herself and the child; (3) failing to consider the timesharing schedule in place when calculating retroactive child support; (4) imputing full time income to the Mother when the court ordered timesharing travel schedule made full-time employment impossible; and (5) failing to consider the travel costs for contact which amounted to more than $2,700 per month under the court's timesharing schedule. Reversed and remanded.

Mattison v. Mattison, 44 Fla. L. Weekly D665a (Fla. 5th DCA, March 8, 2019)

The parties have 2 minor children and reached an agreed parenting plan to equally share time with the children. The Court erred in determining Husband's income from self-employment based upon gross receipts without consideration of the expenses of the business. The court erred in failing to take into consideration the fact that the Husband was involuntarily unemployed for a period of time during the pendency of the action when calculating child support arrearage. The court also erred in allocating uncovered medical expenses equally rather than according to the parties' proportional share of income. Reversed and remanded.

Paulette v. Rosella, 44 Fla. L. Weekly D887c (Fla. 5th DCA, April 5, 2019)

Parties entered into an MSA providing that the Mother was not paying child support because she was unemployed, but she was to advise the Father when she became employed full time. When the Mother became employed, the Father moved to modify child support. Trial Court erred in denying modification finding that the Mother's employment was not a change in circumstances as it was contemplated by the MSA. This was contrary to statute and the clear meaning of the MSA. Reversed and remanded.

Pierce v. Pierce, 44 Fla. L. Weekly D303b (Fla. 1st DCA, January 25, 2019)

Trial court failed to make requisite factual determinations justifying amount of child support and arrears awarded. Reversed and remanded.

Rawson v. Rawson, 44 Fla. L. Weekly D359a (Fla. 1st DCA, February 4, 2019)

This was a 28-year marriage. There were four children born to the marriage but only one remained a minor at the time of the final hearing. The trial court erred in not setting a monthly child support amount and failing to determine the retroactive child support amount. Reversed and remanded

Rosenblum v. Rosenblum, 44 FLA. L. WEEKLY D1697b (Fla. 1st DCA, June 28, 2019)

Court's finding in the order as to the husband's income was different than the income included on the child support worksheet. Reversed and remanded for the trial court to attach to the order a child support guidelines worksheet which reflects the former husband's correct monthly income and child support obligation as found by the trial court.

Silva v. Silva, 44 FLA. L. WEEKLY D470b (Fla. 3rd DCA, February 13, 2019)

The trial court did not commit reversible error when it denied the former husband's Motion to Vacate. There was no basis upon which to impute income to the mother, and the DOR established a substantial change in circumstances requiring an increase in the father's child support obligation. Affirmed.

Smith v. Smith, 44 FLA. L. WEEKLY D1470a (Fla. 1st DCA, June 7, 2019)

The parties entered into an agreement providing the Wife with majority timesharing and ordered the Husband to pay child support substantially below the guidelines based upon the Husband paying 100% of the transportation costs of the children for his timesharing. Wife then filed a supplemental petition seeing modification of timesharing and retroactive child support based upon the Husband not exercising his timesharing and therefore not paying transportation costs. The Wife then filed a motion to suspend father's summer timesharing and determination of the father's retroactive child support. The court heard the motion and established retroactive support. The father argued that the court lacked the authority to establish retroactive support based upon a motion. The issue was raised in the petition and the Husband failed to preserve this issue for appeal. The court need not find a change in circumstances where the retroactive support was based on failure to exercise timesharing. Florida Statute 61.30(11)(c) provides that the retroactive calculations can be back to the time that the parent failed to exercise their timesharing rather than just to the date of the petition to modify. Finally, the award of attorney fees affirmed as the Husband failed to raise the issue on a motion for rehearing. Affirmed.

Stokes v. D.O.R., 44 FLA. L. WEEKLY D1445a (Fla. 5th DCA, June 7, 2019)

DOR did not err in failing to transfer administrative paternity proceedings when the father failed to comply with the opt-out provisions in section 409.25. DOR also did not err in failing to transfer the administrative child support proceedings where the father failed to comply with the opt-out provisions of 409-2563 and 409.256. However, DOR erred in failing to consider the father's properly filed financial affidavit in determining the father's income. Reversed and remanded.

Stout v. Stout, 44 Fla. L. Weekly D1140a (Fla. 4th DCA, May 1, 2019)

Parties had an MSA which provided in pertinent part the Husband "would pay child support continuing as each child reaches the age of 18 or graduates highs school, whichever is later." Husband had become arrears in child support for his three children and his wages were being garnished even beyond his youngest child graduating high school. Husband moved to close his child support case. Court erred in failing to reduce his child support obligation as each child graduated high school when calculating appropriate arrearage. The MSA was clear that child support was allocated per child and should have been reduced as each aged out. Reversed and remanded.

Tritschler v. Tritschler, 44 FLA. L. WEEKLY D1457a (Fla. 2nd DCA, June 7, 2019)

The child support order did not include a step down when the order child aged out. The judgment also failed to account for the number of overnights with each parent and failed to credit the father for the proper amount for the cost of medical and dental insurance. Reversed and remanded.

Walker v. Walker, 44 FLA. L. WEEKLY D1410a (Fla. 2nd DCA, May 31, 2019)

Court erred in using the gross-up method and should reconsider child support after reconsideration of alimony. Trial court erred in failing to order child support to continue if the children are still in high school upon turning eighteen and reasonably expected to graduate before the age of nineteen. Trial court erred in determining arrearage without specific findings. Reversed and remanded.

Wilcox v. D.O.R., 44 Fla. L. Weekly D862a (Fla. 3rd DCA, April 3, 2019)

The child was born on September 22, 2016, and the petition was filed on February 7, 2018. Under section 61.30(17), Florida Statutes (2018),1 a court has the discretion to award retroactive child support up to 24 months prior to the date of the filing of the petition. In the instant case, if retroactive child support had been awarded for the full 24-month period preceding the filing of the petition, this would date back to February 7, 2016, more than seven months before the child was born. And although the order does state that retroactive child support "is calculated back two (2) years prior to the date of filing" (which would mean February 7, 2016), when read in context, we conclude there is no error. The entirety of that portion of the order provides: The retroactive child support is calculated back two (2) years prior to the date of filing, which is September 22, 2016 [i.e., the date of the child's birth]. The retroactive child support is set at $8182.18 as of February 07, 2018 [i.e., the date of the filing of the petition].

Windsor v. Windsor, 44 Fla. L. Weekly D124a (Fla. 1st DCA, December 28, 2018)

Modification of child support. Husband sold his restaurant and opened a small not-profitable coffee shop with his new wife because they were ready to "slow down". This supports the finding of voluntary underemployment. The court erred in imputing income in the amount of $100,000 per year without substantial, competent evidence that the Husband had the ability to earn $100,000 per year in his community. Reversed and remanded for findings as to the amount of income to impute.

DEPENDENT CHILDREN

J.D, the mother v. D.C.F., 44 Fla. L. Weekly D167a (Fla. 4th DCA, January 2, 2019)

Where the Mother was the victim of domestic violence on several occasions by her boyfriend and the Mother continued the relationship with her boyfriend, relied on him for financial support and recanted her prior reports of domestic violence in order to protect the boyfriend, the trial court did not err in adjudicating the two minor children as dependent. It is not necessary to establish that the children were aware of the domestic violence for a finding of neglect. Affirmed.

ENFORCEMENT

Accardi v. Accardi, 44 FLA. L. WEEKLY D1491a (Fla. 4th DCA June 12, 2019)

Wife awarded $26,700 per month in permanent non-modifiable alimony with a cost of living adjustment in 2004. Husband stopped paying in 2008. Son indicated in deposition that he would pay $100,000 to Husband if needed to avoid incarceration. Court found Husband in contempt for $2,730,439, ordered payment of $100,000 as purge within 30 days and ordered that a writ of arrest and bodily attachment would issue "in the event that the former husband fails to pay any of the purge amount or any other monthly payments." Thus, the trial court unconditionally ordered incarceration based on future noncompliance to pay alimony. This is improper and therefore reversed. Trial court also awarded the former wife attorney fees of $52,578 without a finding of need or ability to pay. The court must make these findings and therefore the award is reversed and remanded for further findings.

Andre v. Abreu, 44 Fla. L. Weekly D810a (Fla, 34d DCA, March 27, 2019)

The trial court found the Mother in contempt regarding timesharing and in the order modified timesharing when no motion was pending. It is error to modify timesharing as a sanction for contempt. Reversed and remanded.

Akre-DesChamps v. Smith, 44 Fla. L. Weekly D756a (Fla. 2nd DCA, March 20, 2019)

This is a paternity action domesticated from a Canadian decision. The Mother lives in France and the minor child lives with her Father in Florida. At the conclusion of timesharing with the Mother in France for spring break, the Mother took the child to the airport in Paris for return of the child to the Father who was there with his girlfriend to retrieve the child. The child refused to go with the Father and the Mother interfered with the Father and his girlfriend from causing (coaxing or encouraging) the child to board the plan. The court correctly found the Mother in contempt for physically and intentionally preventing father from causing the child to board the plan and preventing the girlfriend from speaking to the child to encourage her to board the plan. However, the court was in error in finding the Mother in contempt for failing to attempt to arrange exchange of the child to the Father after the initial transfer failed where the domesticated order did not specifically direct what actions needed to be taken if the child refused to leave on an exchange. Affirmed in part and reversed in part.

Alonso v. Zarraga, 44 FLA. L. WEEKLY D1390a (Fla. 3rd DCA, May 29, 2019)

Trial court imposed a sanction of $12,500 against the former wife. There was no indication of a purge amount and there was no indication that it was intended to coerce the former wife's compliance with any order or obligation. Thus, it is concluded that the $12,500 are a fine as indirect criminal contempt. It was improper to impose indirect criminal contempt sanctions without strictly complying with the procedure established in the Rules of Criminal Procedures. Award vacated.

Bordonaro v. Bordonaro, 44 Fla. L. Weekly D319d (Fla. 1st DCA, May 21, 2019)

Former Wife brought motion for contempt and enforcement against Former Husband for failure to pay child support. The increase of Appellant's monthly child support payments is improper for two reasons. First, it did not use the requisite separate pleading, financial affidavits, or worksheet. Second, a trial court cannot modify child support on a party's motion for contempt for nonpayment of child support. Moreover, the trial court's order found that Appellant effectively abandoned his minor child. A motion

for contempt or enforcement for failure to meet one's support obligations is not the proper vehicle to request a finding of abandonment. Abandonment must be established by clear and convincing evidence and is usually requested through a petition for termination of parental rights.

Cancino v. Cancino, 44 Fla. L. Weekly D453a (Fla. 3rd DCA, February 13, 2019)

The parties entered into an MSA which included the following language: "Both parties shall share parental responsibility for the children consistent with Florida Statute". The Husband later filed a Verified Motion for Sanctions and for Order To Show Cause for Indirect Criminal Contempt Against Respondent / Wife for Intentional Violations of the Courts Final Judgment of Dissolution" alleging that the Mother had violated shared parental responsibility by obtaining a diagnosis of ADD without telling the Husband of the appointment or the diagnosis as well as other non-emergency medical, dental and educational decisions. The trial court erred in finding the wife in indirect criminal contempt because the evidence failed to establish that she intentionally violated a clear and precise order of the court. Implied or inherent provisions of a final judgment cannot serve as a basis for an order of contempt. Reversed.

Dowell v. Knoras, 44 Fla. L. Weekly D1182d (Fla. 2nd DCA, May 3, 2019)

Paternity action. Mother indicated she intended to move from Naples to Tampa. Father Petitioned to determine paternity and establish a parenting plan. The Mother was served on June 30 in Naples with the Petition and the Court's standing order requiring parties to remain with the child in Collier County. At the hearing she established that she had moved to her new address in Tampa on June 29 and was only in Naples to clean out her old apartment when she was served. Court erred in finding her in contempt for moving contrary to the standing order. Reversed.

Farid v. Rabbath, 44 Fla. L. Weekly D1307a (Fla. 1st DCA, May 16, 2019)

Former Wife filed a Motion for Contempt & Enforcement and Husband filed a cross Motion for Enforcement. The Court found both parties had violated the terms of the Final Judgment with respect to equitable distribution. However, instead of enforcing the final judgment, the trial court changed the terms of distribution. Once the final judgment becomes final, the lower court does not retain the power to modify the equitable distribution of property. Affirmed as to contempt but reversed as to redistribution of equitable distribution.

Godwin v. Godwin, 44 Fla. L. Weekly D1296a (Fla. 4th DCA, May 15, 2019)

The Husband filed a Motion for Contempt against the Mother for inappropriate communication through Our Family Wizard unrelated to the children and refusal to transport the children to activities. The Mother filed a Motion for Contempt for the Father not consulting with the Mother as required for parenting decisions and for allowing his girlfriend to participate in medical appointments. The Court found the Mother in contempt for the inappropriate communication and found the Father in contempt for allowing his girlfriend to participate in medical appointments. The court then modified the prior court order to provide that the girlfriend can transport the children to medical appointments and activities but not participate. The court erred in finding the Husband in contempt for allowing his girlfriend to participate in the medical appointments when there was no prohibition specifically provided for in the agreement against this. Further the Court erred in rewriting the agreement of the parties to include language prohibiting the girlfriend's participation when no pleadings had requested

this order. Court erred in denying Husband's request for attorney fees as these were required upon a finding of contempt. Reversed and remanded.

Hart v. Hart, 44 FLA. L. WEEKLY D1908b (Fla. 3rd DCA, July 24, 2019)

The former wife failed to provide proper notice for the contempt hearing pursuant to Fl. Fam. L. R. P. 12.615. Therefore, the civil contempt order entered after the hearing which the former husband failed to attend violated the former husband's due process rights. Where the alleged contemnor fails to appear at the hearing after proper notice, the determinations of both the alleged contemnor's "present ability to pay support" and "whether the failure to pay such support is willful" shall be made at a subsequent hearing at which, upon execution of the writ of bodily attachment, the alleged contemnor is present before the court. Order vacated.

Kohl v. Rammacca, 43 Fla. L. Weekly D2557a (Fla. 5th DCA, November 16, 2018)

For enforcement on child support, Trial court erred in providing Former Husband set-off credit for payment of dental bills which he was required to pay under the Final Judgment and for set-off credits for moneys voluntarily paid for the purchase of a car for son. Reversed.

Lapciuc v. Lapciuc, 44 FLA. L. WEEKLY D1722a (Fla. 3rd DCA, July 3, 2019)

Parties entered into MSA providing husband with 85% and Wife with 15% of DVB. Subsequently the parties entered into a settlement agreement (SA) after a dispute regarding the purchase of another company by husband, pledging DVB assets as collateral. Husband then applied for an increased line of credit (LOC) for DVB and Wife objected as not commercially reasonable as required by the SA. Husband filed a motion to enforce the SA. The court erred in granting the Husband's Motion over the Wife's objection and without an evidentiary hearing on the commercial reasonableness of the increased LOC. Reversed and remanded.

Lattanzio v. Hoffman, 44 Fla. L. Weekly D1947a (Fla. 3rd DCA, July 31, 2019)

Wife filed for dissolution and Husband filed an answer and counter petition through counsel. Counsel then withdrew and parties attended mediation and entered into an MSA. Court issued an order scheduling the case for a final hearing or, in the alternative, a case management conference ordering the parties to attend. The Husband failed to attend and the court issued an order to show case requiring the Husband to appear in court on May 24. The Court sent the order to Husband's former counsel and, therefore, Husband failed to appear at the show cause hearing. The Court then set the matter for final hearing on August 17 and, at the hearing, struck all of Husband's pleadings as sanction for failing to appear at the earlier hearings. Since the final hearing went forward without the Husband being permitted to present a defense because his pleadings had been stricken and a default entered against him, the portions of the final judgment relating to the equitable distribution of the parties' marital assets and liabilities is reversed and remanded with instructions for the trial court to conduct a final hearing, allowing the Husband to present a defense.

Mayo v. Mayo, 43 Fla. L. Weekly D2711a (Fla. 2nd DCA, December 7, 2018)

Wife filed a Petition by Affidavit for Order to Show Cause for a Violation of Final Judgment of Injunction. Husband was not served with the Petition and Court issued a show cause order to Husband indicating a hearing was to be held to show cause why he should not be held in contempt. At the hearing Husband

was pro se and requested a continuance to allow him to seek counsel which was denied. Husband was then held in indirect criminal contempt and sentenced to jail. The trial court erred in finding Husband in indirect criminal contempt where the court failed to following Rule of Criminal Proceedings 3.840. Court failed to advise Husband of his rights to counsel, advise him of the charges against him, nor advise him if the hearing was for civil or criminal contempt. Reversed.

Orban v. Rorrer, 44 Fla. L. Weekly D2091a (Fla. 3rd DCA, August 14, 2019)

Trial court erred in holding former husband in contempt for failure to make timely attorney's fees and costs payments to the former wife without making findings as to the former husband's ability to pay or his willful violation of the fees orders. Only evidence presented was that former husband did not have the ability to pay. The trial court erred in failing to include a purge provision. Reversed and remanded.

Portwood v. Portwood, 43 Fla.L. Weekly D2675a (Fla. 5th DCA, November 30, 2018)

The parties entered into an MSA that provided in pertinent part that the Husband would pay the Wife nonmodifiable monthly alimony and additional alimony equal to the monthly mortgage payment on the marital residence. The Wife brought an enforcement action for the Husband's failure to pay the nonmodifiable alimony. The court granted the Wife's motion, finding the Husband in contempt. The Wife then brought a Motion for Contempt regarding the Husband's payment of the mortgage. The Court erred in denying the contempt finding that the Wife could have brought the contempt motion in the first proceedings and therefore was barred by res judicata. Four identities must exist for Res Judicata to apply: 1) identity in the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the actions; and (4) identity of the quality or capacity of the persons for or against whom the claim is made. Here the Wife had two distinct motions related to two distinct alimony provisions and the evidence to prove each was distinct. Reversed and remanded.

Preudhomme v. Bailey, 44 Fla. L. Weekly D2373a (Fla. 4th DCA, October 24, 2018)

Trial court erred in holding Wife in contempt for bringing the children to school late when the Final Judgment which included the parties' parenting plan. The plan did not include an express provision on school attendance and did not address the issue of school tardiness. Implied or inherent provisions of a final judgment cannot serve as a basis for an order of contempt. Reversed.

Rokosz v. Haccoun, 44 FLA. L. WEEKLY D1435b (Fla. 3rd DCA, June 5, 2019)

Parties entered into an MSA that provided the Husband would receive the parties marital NY property and Hialeah. However, a lis pendens would remain in effect on the Hialeah property to secure the payment of the wife's attorney fees to be determined later (reserved in MSA). Husband then entered into a 1031 Exchange Agreement whereby they agreed to exchange the NY property for a Pompano Beach property and land owned in Duval County owned by the Father. Wife then filed a motion for leave to file lis pendens on these new Florida properties which was granted by the court. The Husband then filed a motion to discharge the lis pendens on the Pompano Beach property as it was his homestead. The court erred in treating this as a motion for reconsideration of the wife's motion and denied the husband's motion without hearing or consideration of evidence. This was a denial of due process for the Husband. Reversed and remanded for evidentiary hearing.

Seaman v. Seaman, 44 Fla. L. Weekly D787b (Fla 5th DCA, March 22, 2019)

It was error to find Respondent had present ability to pay and that his failure to pay was willful when Responded was not present at the contempt hearing. Reversed and remanded.

Schroll v. Schroll, 43 Fla. L. Weekly D2795a (Fla. 1st DCA, December 14, 2018)

Trial court lacked authority to hold former husband in contempt and incarcerate him for failure to transfer full amount of funds ordered by the court as part of an equitable distribution schedule. Reversed.

Vinson v. Vinson, 44 Fla. L. Weekly D189a (Fla. 1st DCA, January 7, 2019) (corrected order)

The parties entered into a Stipulated Temporary Child Support Order on January 7, 2016. They then entered into a Temporary Parenting Plan on September 26, 2016 but this was not entered into an order. The Husband complied with the new parenting timesharing. Therefore, the court found the Husband was not in willful contempt for failing to pay the higher child support amount based upon his new timesharing plan. Affirmed.

Walsh v. Walsh, 43 Fla. L. Weekly D2779a (Fla. 5th DCA, December 14, 2018)

In enforcement action, the trial court found that, because the Husband did not fail to comply with the alimony provisions of the MSA, the Wife was not entitled to attorney fees. The trial court erred by denying Wife's request for attorney's fees pursuant to section 61.16, Florida Statutes. There was no provision in the MSA that specifically states that the parties waived their right to attorney's fees under section 61.16. Moreover, none of the provisions discussing attorney's fees can be read as an implicit waiver of the right to recover fees pursuant to section 61.16. Because the language of the MSA does not specifically waive the right to pursue fees under section 61.16, it was error for the lower court to deny Wife's motion for attorney's fees without considering her need for fees and Husband's ability to pay.

EQUITABLE DISTRIBUTION

Adams v. Adams, 44 FLA. L. WEEKLY D521a (Fla. 4th DCA, February 20, 2019

Trial court entered order for equitable distribution eight months after hearing on the matter. Husband filed Motion for Rehearing requesting credit for certain expenses which he had continued to pay after the evidentiary haring up to the time of the hearing. The trial court erred in dismissing the motion for rehearing. Reversed and remanded with direction that the Husband be given credit for any expenses he paid from the time of the hearing to the time of the recalculation.

Blackburn v. Wissner, 43 Fla. L. Weekly D2465b (Fla. 5th DCA, November 2, 2018)

Trial Court erred in ordering the equal division of net proceeds from the sale of the marital home without providing credits to each husband and wife for payments made on the jointly held property subsequent to the entry of the final judgment. Reversed and remanded to award credit.

Bolden v. Bolden, 44 Fla. L. Weekly D229a (Fla. 1st DCA, January 10, 2019)

The trial court erred in calculating the marital portion of retirement pay for the purposes of equitable distribution. To determine the amount of a retirement fund a party has accumulated during a marriage, a trial court must create a fraction where the numerator is the amount of time the employee was married while participating in the plan, and the denominator is the total time the employee has in the plan.' The trial court then multiplies the plan's present value by the coverture fraction to calculate the total present value of the retirement fund which accrued during the marriage. The judgment is inconsistent in several areas in calculating the number of months of marriage during service, the amount of the retirement pay and the amount to be deducted from the retirement pay for the portion owed to first wife. The court was correct in deducting the amount Husband owed to his first Wife as the first wife was already entitled to a portion of appellee's retirement benefits via court order when the first marriage was dissolved, this Wife cannot make a claim to the portion of the funds that were already allocated to Husband's first wife. Reversed and remanded.

Bowen v. Volz, 44 Fla. L. Weekly D957a (Fla. 1st DCA, April 11, 2019)

The parties failed to provide proper evidence to allow a proper valuation of the parties' family business. Therefore, the court awarded each party a 50% interest in the business. The court cannot order the parties to remain in business together. Reversed and remanded for the parties to present proper evidence of the value of the business to allow the Court to award the business to one party. Reversed.

Bro v. Bro, 43 Fla. L. Weekly D2765a (Fla. 2nd DCA, December 14, 2018)

Trial court erred in ordering the sale and distribution of the proceeds from the assets of CK Holdings LLC, a real estate holding company, as the company was not a party to the action. Trial court erred in distributing the Wife's 2013 tax refund to the Wife as she had offered unrefuted testimony that the funds were used for her support during the pendency of the action and the court made no specific findings of misconduct by the Wife. Reversed.

Dorsey v. Dorsey, 44 Fla. L. Weekly D875a (Fla 1st DCA, April 3, 2019)

Both Husband and Wife appeal aspects of the equitable distribution scheme of court but neither alleged that the overall scheme was unequal. The appellate court is prohibited from engaging in a piecemeal

approach to review of the equitable distribution and may only reverse upon a showing that the judgment entered by the court, when taken as a whole, constituted an abuse of discretion. Even if the distribution of a business debt to the Husband would result in an unequal distribution as alleged by Husband, the court has discretion when one spouse incurred a business debt and the other spouse was not actively involved in the business. Affirmed.

Erdman v. Erdman, 44 Fla. L. Weekly D2299c (Fla. 5th DCA, September 13, 2019)

Soon after the parties' marriage the Husband received a substantial bonus from his employer for services he had provided prior to the marriage. Husband used the funds to purchase a home titled in both homes. The trial court erred in providing the Husband with credit for the down-payment as nonmarital. The Husband had the burden of establishing that the down-payment was not a marital gift and he failed to carry this burden. The trial court also erred in using the date of filing as the valuation date for the former marital home when the only appreciation in the value of the home was passive during the pendency of the dissolution. Reversed and remanded.

Garrison v. Garrison, 43 Fla. L. Weekly D2275a (Fla. 4th DCA, October 10, 2018)

The court found that Former Husband's closely held business, Garrison's Prosthetic Services ("GPS"), was a marital asset subject to equitable distribution. The court then awarded each party a fifty percent ownership interest in GPS and, in doing so, explicitly declined to "assign a value to GPS." It is well settled in Florida that "compelling former spouses to remain in business together 'creates [an] intolerable situation" and constitutes an abuse of discretion. Reversal is also required on the valuation issue. Section 61.075 of the Florida Statutes provides that in any contested dissolution action, the court must make specific written findings identifying, valuing, and distributing marital assets. Reversal and remand.

Goley v. Goley, 44 Fla. L. Weekly D1203a (Fla. 1st DCA, May 6, 2019)

The parties purchased a piece of real property with the Wife's parents. The Wife's parents contributed $15,000 and took a loan on the property. The parties had an unwritten agreement that, when the loan was paid off, the parents would transfer title to the parties. After paying the loan of in the amount of $45,000 the wife's parents refused to transfer title. When the parties filed for divorce, the Husband claimed the property, now worth $240,000, as marital property. The Wife objected to consideration of the property as the court had no jurisdiction as her parents were not parties to the suit. The court determined that the parties had an equitable interest in the property with a value of $45,000 and awarded it to the Wife. The trial court awarded an unequal distribution in favor of the Wife in consideration of the wife's claim for alimony and attorney fees. The trial court erred in finding that the property is a marital asset and that the parties had an equity interest and claim to it. Nevertheless, the order is affirmed as it's otherwise supported by evidence, and the final judgment contains sufficient specificity to outline the trial court's intent in the equitable distribution scheme. As the evidence supports that the Husband could not pay additional alimony, the property did not affect the ultimate alimony award or denial of fees.

Greenshields v. Greenshields, 43 Fla. L. Weekly D2676a (Fla. 5th DCA, November 30, 2018)

Following dissolution, the Former Husband lent the Former Wife funds to purchase a home near him for the benefit of the co-parenting. As part of the loan, the Former Wife gave the Former Husband POA

including over her interest in former marital residence which she received in the dissolution. Upon the sale of the 2nd home the Wife repaid funds to the Husband but retained $20,000 for alimony arrearage as agreed to by the parties. Husband then filed lis pendes when Wife attempted to sell the former marital residence. Trial court erred in requiring former wife to place monies from real property sale into escrow and failing to require former husband to post bond where, despite trial court's finding that former husband was entitled to an injunction, the relief fashioned effectively enjoined former wife's use and benefit from sale proceeds while parties disputed status of the loan. Reversed and remanded.

Griffin v. Griffin, 44 FLA. L. WEEKLY D1477a (Fla. 1st DCA, June 7, 2019)

Trial court did not abuse its discretion in determining that the Husband's workers' compensation settlement was a marital asset subject to distribution. However, the trial court erred in awarding the full settlement when it had been depleted during the pendency of the action without a finding that there had been misconduct. Reversed and remanded.

Gudur v. Gudur, 44 FLA. L. WEEKLY D1668c (Fla. 2nd DCA, June 28, 2019)

Wife held a 6.4% interest in a medical practice and building. The trial court determined the interest to be worth $38,000 and awarded the Husband $190,000. However, the court found that the wife did not have to pay the Husband "unless and until her interest is turned into cash funds or otherwise liquidated. Further they found that if the Wife later received less than $380,000 for her share in the future she only had to pay ½ of what she received, but if she received more than $380,000 she only had to pay the Husband $190,000. It was error for the court to make the award of the husbands share at an indefinite time in the future. It was also error to order husband to be exposed to any loss in the value but allow the Wife to retain any appreciation in the value at some later date. The Husband also had some premarital student loans, some student loans taken out during the marriage and some student loans taken out after the date of filing. The Court used the Husband's demonstrative aid to determine the amount of loans that were marital. This chart was not based upon substantial evidence of the amount of the loans that were marital. If on remand the court can determine the valuation of the marital portion of the student loan debt based on competent substantial evidence of record, then the court should reconsider allocation of the marital student loan debt. Finally, alimony and attorney fees must be reconsidered after determination of the equitable distribution consistent with the directions. Reversed and remanded.

Hardy v. Hardy, 44 Fla. L. Weekly D2256b (Fla. 1st DCA, September 9, 2019)

The unique facts of this case support the trial court's exercise of discretion despite recommendations of the magistrate to divide the assets equally and freezing husband's entire employee stock ownership plan and trust. The evidence showed that Former Husband was an unemployed alcoholic with a history of domestic violence, who had not supported his family for over a year and lacked any means to do so. After the magistrate heard the issues and before the trial judge entered final judgment, Former Husband repeatedly violated a domestic-violence injunction and burned the marital home to the ground. He is now serving a 20-year prison sentence for arson, burglary, and aggravated stalking. After becoming aware of Former Husband's crimes, the trial court was within its discretion to freeze the entire stock ownership plan to protect Former Wife's rights to meaningful financial relief, including making up for the loss of the marital home. Affirmed.

Horton v. Horton, 43 Fla. L. Weekly D468b (Fla. 1st DCA, November 6, 2018)

Trial court properly valued 401(k) as of date of trial where funds were used during the pendency of the proceedings for normal family expenses. However, court does not have to update the value to the date of entry of the final judgment if funds continue to be used following trial and prior to entry of the final judgment. Affirmed.

Hubbard v. Berth, 44 Fla. L. Weekly D2104a (Fla. 5th DCA, August 16, 2019)

The parties were first divorced in 1989 and in their MSA the Wife waived any interest in the Husband's pension. The parties then remarried in 1991 and divorced in 2004. In the second divorce, the MSA provided that the Wife would receive one half of the pension benefits the Husband received between 1991 and 2004. The trial court erred in including the duration of both the first and second marriage when calculating the Wife's share of the Husband's pension. To do so would allow the court to rewrite both settlement agreements. Distinguished from Cox v. Cox, 659 So. 2d 1051 (Fla. 1995) as this case involved a specific waiver in the first agreement and a specific calculation in the second agreement. Reversed and remanded.

Julia v. Julia, 44 Fla. L. Weekly D242b (Fla. 4th DCA, January 16, 2019)

The trial court erred in awarding the former wife a one-half interest in the portion of the former husband's pension which accrued before the parties' second marriage to each other. Reversed and remanded.

King v. King, 44 Fla. L. Weekly D1337a (Fla. 2nd DCA, May 22, 2019)

The Husband purchased a house during the marriage and titled it in his sole name. The court made no findings with respect to the house regarding whether it was marital or non-marital and did not state any reason to award the house solely to the husband. This was error. Reversed and remanded.

Kvinta & Kvinta v. Kvinta, 44 FLA. L. WEEKLY D1678a (Fla. 5th DCA, June 28, 2019)

Former Husband and Wife were married in Ohio in 1966 and divorced in 1969. They then began to cohabitate and established a common law marriage in the 1980s. They separated again in 1992 and the Former Husband moved overseas. In 1995 the Former Wife filed for separation and in 2003 the Ohio Court granted the parties a separation and awarded the Former Wife the parties' Ohio home. In 2004 Ohio granted a dissolution and awarded the Former Wife half of a Charles Swab account that the Former Husband had fraudulently transferred to his current Wife. In 2009 the Former Wife petitioned the Florida Court to determine and distribute marital assets and to award her alimony. The court found that the parties separated in 1995 and this would be the valuation date for equitable distribution. During the period from separation to the trial, the Husband had retired from his employer and elected to take a pension with survivor benefits, naming his new wife as the survivor. The court did not abuse its discretion in distributing the pension payments as if the former husband had elected a live annuity without survivor benefits based upon the findings that the former husband's election would unfairly shortchange the Former wife based upon the survivor benefits being $228 less per month. However, the court erred in failing to consider the tax consequences for the distribution of the pension. The trial court erred in ordering the former Husband to maintain a life insurance policy when they had not awarded alimony. The trial court erred in giving the Former Husband credit for the Charles Schwab

account distributed under the Ohio order when the full account had been awarded to the Former Husband in the Ohio case. Trail court did not abuse its discretion in accepting the former husband's expert's valuation of his former business interest in 1995 as the court included a reasonable explanation of how the valuation was determined. Affirmed in part and reversed and remanded in party.

Martin v. Martin, 44 FLA. L. WEEKLY D1585a (Fla. 1st DCA, June 20, 2019)

Husband raises issues regarding the distribution of his pension. First he argues that the court should provide an offset for amounts he would have received in social security benefits had he not participated in the federal pension plan. This is without merit and denied. The Husband also argued that the pension accrued for the period of time he worked for the military prior to the marriage. However here the husband had worked for the military for 8 years. The expert testimony showed that the husband would not have been eligible for retirement benefits for only 8 years of service and thus this had no value. However, the parties agreed, during the marriage, to pay $9,866 to purchase his years of military service so they would count towards his civil service pension. While the military service was clearly non-marital, the use of marital funds to purchase the additional pension during the marriage, made the additional pension benefits marital. Affirmed.

Matthew v. Mattehew, 44 Fla. L. Weekly D418a (Fla. 2nd DCA, February 8, 2019)

The parties entered into an MSA which distributed their marital assets. At the final hearing the Husband requested credits for the mortgage and HELOC payments he had made on behalf of the Wife. The court denied the request. Necause the court failed to provide adequate justification for an unequal distribution, it is an abuse of discretion in not crediting the Former Husband for the Former Wife's half of the mortgage and HELOC obligations. Reversed and remanded.

Mattison v. Mattison, 44 Fla. L. Weekly D665a (Fla. 5th DCA, March 8, 2019)

The court erred in distributing dissipated marital asset, a bank account, to the Husband, without making an express finding that the dissipation resulted from intentional misconduct. The court also erred in valuation of Husband's 401(k) on the date of trial. Trial court erred in valuing the marital home as of the date of filing but then crediting the Wife with one half of the mortgage payments, taxes and insurance payments between the date of filing and the date of trial. If the Wife is to be credited with the payments, then the Husband should be entitled to the appreciation in the property through the date of trial. Reversed and remanded.

Moody v. Newton, 44 Fla. L. Weekly D337a (Fla. 5th DCA, February 1, 2019)

Given the evidence presented at trial, it was error to treat the engagement ring and wedding ring (purchased prior to the marriage) as marital property subject to equitable distribution. On remand, the trial court shall enter an amended judgment excluding the engagement ring and wedding ring from equitable distribution. The third ring, which Former Wife purchased a year after the marriage is marital. Wife argues that the court used improper values for vehicles but failed to raise the issue on rehearing below so the issue is waived on appeal. The court did not err in failing to award the marital home to the wife during the minor child's minority as the parties could not afford to maintain the home over this extended period. Affirmed.

Palmeteer v. Palmeteer, 43 Fla. L. Weekly D2690c (Fla. 2nd DCA, December 5, 2018)

Trial court erred in ordering Income Deduction Order to order payment of the Wife's share of the Husband's municipal pension under equitable distribution scheme despite parties agreement to same. Florida Stat. 61.1301 and 185.25 prevents such an IDO. Suggested that legislature revisit the issue. Reversed and remanded.

Pearson v. Pearson, 44 Fla. L. Weekly D795a (Fla. 2nd DCA, March 22, 2019)

Based upon the record it is not possible to determine whether the trial court abused its discretion when it included the trust account funds in the equitable distribution scheme. Therefore, the equitable distribution is reversed and remanded. On remand, the parties shall present evidence and the trial court shall make findings regarding whether and how the trust funds were distributed or dissipated. If the funds were dissipated during the dissolution proceedings, then the trial court shall not include the funds in the equitable distribution scheme, without findings of misconduct. The trial court incorrectly classified the Wife's FRS pension as non-marital. She had begun to contribute to FRS prior to the filing of the petition but was not vested. Although she had been placed on administrative leave and subsequently terminated, the record does not indicate if and how administrative leave or termination affected the pension. The court is to value all vested and non-vested retirement plans. Remanded for determination of what portion of the pension should be classified as a marital asset.

Sarazin v. Sarazin, 44 Fla. L Weekly D365a (Fla. 1st DCA, February 5, 2019)

The Husband sent his family in Croatia $80,000 just prior to the Wife filing for dissolution. The Court found the Wife credible that she did not know or agree to the gift. However, the court found the Husband credible that he did not know of the dissolution and therefore this was not an intentional dissipation of marital assets. Affirmed (reversed as to other issues)

Socarras v. Vassallo, 44 Fla. L. Weekly D452a (Fla. 3rd DCA, February 13, 2019)

Trial court erred in concluding that an equity line of credit secured by the Husband's Miami non-marital property effectively commingled funds and transformed the property into a marital asset. The Husband owned the property prior to the marriage. During the marriage, the Husband used the property to secure a line of credit. He used the funds from the LOC for an investment in Peru which resulted in a financial loss. The recovered funds were used to pay off the LOC but a small balance remained. On these facts, only an enhancement in value of the property, if any, minus any indebtedness would become a marital asset for equitable distribution purposes. The property should be classified as marital and the Wife would be entitled only to her share of any appreciation in the value of the marital interest in the property. Affirmed in part and reversed in part.

Stewart v. Stewart, 44 FLA. L. WEEKLY D1885a (Fla. 1st DCA, July 23, 2019)

Reversed and remanded the portion of the order and distribution table that incorrectly listed certain real property as marital when both parties concede it was nonmarital.

Tritschler v. Tritschler, 44 FLA. L. WEEKLY D1457a (Fla. 2nd DCA, June 7, 2019)

The Court identified assets in liabilities in the final judgment, but this then conflicted with the sections that purported to distributed assets and liabilities and also conflicted with the accountant's spreadsheet

attached to the final judgment. Also, the valuations given to the assets was not supported by competent substantial evidence. Trial court also erred in creating an equitable distribution scheme using multiple valuation dates for different assets without explanation and failing to identify the non-marital assets. Reversed and remanded.

Vinson v. Vinson, 44 Fla. L. Weekly D189a (Fla. 1st DCA, January 7, 2019)

The trial court erred in classifying the Husband's noneconomic damage award for pain and suffering in his discrimination lawsuit against his former employer as a marital asset. The trial court erred in using speculative evidence of the Husband's back pay rather than the competent evidence provided by the Husband. The court correctly used the date of filing rather than separation to determine the value of the Husband's back pay. The court erred in ordering that, if the Husband failed to make the equalizing payment within 10 days, the amount would be converted to alimony but not to terminate upon the remarriage or death of the wife. There is no basis to convert the clear equitable distribution to alimony. Reversed and remanded.

Walker v. Walker, 44 FLA. L. WEEKLY D1410a (Fla. 2nd DCA, May 31, 2019)

The court was correct in ordering the sale of the marital residence as the parties incomes is insufficient to support maintaining the residence following the dissolution. Case remanded on a number of other issues and on remand, the court should address the issue of the deductibility of the interest on the marital residence.

Welton v. Welton, 44 Fla. L. Weekly D636a (Fla. 4th DCA, March 6, 2019)

The trial court erroneously included dissipated assets in the distribution scheme without a specific finding of intentional misconduct by the Husband. Assets used to pay marital debts during the pendency of the action should not be included in the equitable distribution scheme. The trial court erred in determining the husband's share of his mother's estate without taking into consideration the costs, debts and expenses to be paid prior to distribution. Finally, the court erred in failing to address the items of personal property requested by husband. Reversed and remanded.

Will v. Will, 44 FLA. L. WEEKLY D1671b (Fla. 2nd DCA, June 28, 2019)

Trial court erred in including $10,000 spent during the pending action without a finding that there was misconduct. Reversed and remanded.

Zubricky v. Zubricky, 44 FLA. L. WEEKLY D1286a (Fla. 4th DCA, May 15, 2019)

Prior to filing the Petition for Dissolution, the parties entered into a Marital Settlement Agreement providing that the Husband would pay the Wife $1,600 per month, would contribute $550 toward her car payment and would give her $125,000 from his Thrift Savings Plan (TSP). Rather than making the monthly payments for the car, the parties agreed to remove $40,425 from their joint account to buy a new car. It is inconsistent with the marital settlement agreement and the testimony of the parties to require the Wife to repay the funds to the Husband relating to the vehicle. Reversed and remanded.

EVIDENCE

Delgado v. Miller, 44 Fla. L. Weekly D309a (Fla. 3rd DCA, January 29, 2019)

The Mother, seeks certiorari review of an order compelling both her and the Father to submit to psychological evaluations in the underlying paternity action. Because the trial court departed from the essential requirements of the law in failing to comply with the requirements set forth in the Florida Rules of Civil Procedure and the Florida Family Law Rules of Procedure, we grant the Petition for Writ of Certiorari and quash the order under review. The proposed order, which Father's counsel drafted, was originally titled "CONFIDENTIAL AGREED ORDER FOR BOTH PARTIES TO UNDERGO PSYCHOLOGICAL EVALUATIONS." However, when the trial court allowed the Mother to review the proposed order, she did not agree to its terms, so the trial court crossed out "CONFIDENTIAL AGREED" from the title and signed it anyway. Although the Mother had conditionally agreed to a psychological evaluation at an earlier case management conference, the proposed order did not reflect the conditions of that agreement. Because there was no agreement, a psychological evaluation could only be ordered in compliance with rules 1.360 and 12.360. Failure to comply with these rules is a departure from the essential requirements of the law. Petition granted, order quashed.

Estape v. Seidman, 44 Fla. L. Weekly D1065a (Fla. 4th DCA, April 24, 2019)

In a contested dissolution of marriage proceeding, Estape and his wife agreed to use Dr. Seidman as a reunification therapist for their children, and the court approved their agreement. Estape contends that he had a psychologist-patient relationship with Dr. Seidman, evidenced by a document that the doctor had him sign. He asserts that any communications between them were required by statute to be confidential, but the doctor breached that confidentiality, causing Estape damage. Dr. Seidman claimed that because the communications occurred within the litigation, he was entitled to absolute immunity based upon the litigation privilege. Trial Court erred in granting summary judgment in favor of psychologists based on litigation privilege. The statutory grant of confidentiality prevails over the litigation privilege, a common law doctrine, and there remains a question of fact as to the existence of the psychologist-patient relationship. After meeting with the Father, the psychologist emailed the GAL objecting to the first scheduled visitation based upon lack of time to evaluate and the children's apprehension to have visit. Psychologist argued that as he had been a court-appointed reunification therapist he was protected by absolute immunity for statements made during the judicial proceeding. The statute clearly establishes the confidentiality of psychotherapist communications and very limited means of waiving that privilege. None of the grounds for waiver set forth in the statute apply to the communications made by Dr. Seidman in the dissolution case. Unlike a court appointment of an expert to assist the court in evaluating custody or other matters in dissolution proceedings, it does not appear in this record that any reports were to be made to the court itself. Therefore, we cannot conclude as a matter of law that Dr. Seidman had absolute immunity under the circumstances of this case. The final summary judgment entered by the trial court is reversed. There exist material issues of fact as to whether a psychotherapist-patient relationship existed between Estape and Dr. Seidman or whether other statutes applied which would preclude the assertion of absolute immunity.

Hall v. Hall and Brevard Physician Associates, PLLC, 44 Fla. L. Weekly D1543b (Fla. 5th DCA, June 14, 2019)

Husband petitions the court to issue a writ of certiorari quashing the circuit court's discovery order which granted BPA's motion for protective order regarding Husband's request for non-party's production. The order denied husband's access to certain financial records to allow valuation of the Wife's interest in BPA. Court erred in not ordering production of certain documents to allow for valuation. BPA argued that BPA's Operating Agreement defined the valuation of the Wife's share as the Book value to be determined by BPA's accountant under certain circumstances. As the circumstances did not include dissolution of marriage, and in dissolution the fair market value should be used to determine the marital interest. Petition granted in part.

Oldham v. Green, 44 Fla. L. Weekly D103a (Fla. 1st DCA, December 27, 2019)

The Father seeks certiorari review of an order compelling him to undergo psychological testing as part of dissolution of marriage and custody proceedings with Mother. Mother filed a Motion for Social Investigation pursuant to Florida Stat. 61.20 and Fla. Fam. L.R.P. 12.360. Mother alleged that the Father suffered from fits of rage when he experienced computer issues, a dog barking outside or watching a Clinton-Trump debate. Court determined that the Wife was requesting a psychological evaluation of the Father under Rule 12.360. Seeking custody, in and of itself, does not place the parent's mental condition in controversy. No evidence was presented to show the Father's mental health was in controversy. Further, Wife failed to satisfy the requirement of a showing of good cause, showing that the party's mental condition cannot adequately be evidenced without the assistance of expert medical testimony. Finally, the Order failed to provide sufficient parameters regarding the time, place, manner, conditions, and scope of an examination. Petition granted.

Phillips v. Phillips, 44 FLA. L. WEEKLY D494a (Fla. 2nd DCA, February 20, 2019)

Wife sought records from three trusts for which Husband was a beneficiary in order to establish Husband's ability to pay alimony, child support and attorney fees. The Husband stipulated that he could afford to pay whatever the trial court ordered. Based upon this the trust moved to quash the Wife's subpoenas stating that the records were confidential and irrelevant to any issue before the court. The court erred in granting the motion to quash. The Husband's stipulation can neither dispense with the trial court's statutory obligation to make findings of fact concerning the parties' financial resources nor trump the Wife's right to the financial discovery necessary to prove her case. The writ of certiorari is appropriate when the requested discovery is relevant or is reasonably calculated to lead to the discovery or admissible evidence and the order denying that discovery effectively eviscerates a party's claim. Petition for Certiorari granted.

EXTENDED FAMILY MEMBERS

Mendez v. Lopez & Mendez, 44 Fla. L. Weekly D387a (Fla. 3rd DCA, February 6, 2019)

Brother filed petition for temporary custody of his minor sister pursuant to chapter 751. The petition is legally sufficient and complies with the requirements of section 751.03 and includes the consent of each parent. Because the petition in the underlying case has been consented to by the parents, this extra step is unnecessary, and the trial court is under no obligation to determine whether the child has been abused, abandoned, or neglected, or whether the child is dependent. The trial court erred in denying the petition and dismissing the action finding "That almost identical allegations of abuse by the minor child's parents in the home country (Guatemala) have been seen previously in other similar Petitions. 2. That in each, the terribly abusive offenders have somehow been convinced to sign consents basically admitting to these terrible acts, giving up their parental rights and surrendering custody to a family member residing in the United States. 3. That there are certain immigration benefits to these Petitions being granted in circumvention of existing immigration laws. Reversed and remanded.

INCOME WITHHOLDING ORDER

Rodriguez v. Rodriguez, 44 Fla. L. Weekly D611b (Fla. 5th DCA, March 1, 2019)

IWO failed to provide a date for Husband's employer to discontinue the withholding and remittance of money at the conclusion of the durational alimony and IWO contains the wrong date for when the child support should be reduced once the obligation to support the eldest child ends. Remanded.

INJUNCTIONS FOR PROTECTION

Caldwell v. Caldwell O/B/O K.C., 43 Fla. L. Weekly D2462a (Fla. 5th DCA, November 2, 2019)

Trial court properly entered Injunction Against Domestic Violence on behalf of minor child pursuant o Fl. Stat. 741.30 where minor child, CPT and counselor testified as to acts of sexual battery against child.

Campanhac v. Lauramore, 44 Fla. L. Weekly D663a (Fla. 5th DCA, March 8, 2019)

There was no competent, substantial evidence to support a finding of stalking. Reversed.

Caterino v. Torello, 44 FLA. L. WEEKLY D1628c (Fla. 2nd DCA, June 26, 2019)

Case involves an injunction against stalking between neighbors. The evidence showed that the neighbors had a highly contentious relationship. It was shown that the Respondent entered Petitioner's property on two occasions, once to remove a building permit and the second time it was unclear if it was to leave a letter or some other purpose. However, the court made no findings as to emotional distress and it was error to find that these acts would have caused substantial emotional distress. Reversed and remanded.

Counsil v. Anderson, 44 Fla. L. Weekly D2a (Fla. 1st DCA, December 18, 2018)

Respondent seeks review of the order extending a temporary injunction for protection against domestic violence for 90 days. We reverse because there was no factual basis to enter or extend the injunction because, as the trial court orally found, there had been no violence between the parties. Accordingly, even though the injunction has now expired, we remand for entry of an order vacating the injunction.

Curl v. Robert, 44 Fla. L. Weekly D2235c (Fla. 1st DCA, August 30, 2019)

Daughter filed for injunction against domestic violence against her mother alleging that the mother had been abusive of her when she was a child and that the Mother had attempted to interfere with the paternity action of the daughter regarding the grandchild and filed unfounded complaints with DCF in attempt to remove daughter's children from her. Allegations of abuse of daughter when she was a child were too distant to be evidence. There was no evidence that Mother had ever been abusive of her grandchild (petition brought on behalf of granddaughter) and any concerns of future abuse were speculative. Unfounded reports to authorities or requests for judicial relief, even if repeated or for malicious purposes, do not support the entry of an injunction against domestic or other violence. Reversed.

Di Stefano v. Long, 44 Fla. L. Weekly D2047a (Fla. 2nd DCA, August 9, 2019)

Parties had dated for over a year and lived near each other. Respondent did not refute that one evening he had grabbed Petitioner by the arm and thrown her across the room. The parties both testified that at another incident at Respondent's home the parties had an argument and when Petitioner left in her car, Respondent ran after her down the road, but disputed the cause of the argument. The petitioner must show that he or she has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence in the future. The evidence was insufficient to establish that Petitioner has reasonable cause to believe that she is in imminent danger of becoming the victim of another act of dating violence. Record shows that both parties had difficulty controlling their tempers,

but judge erred in entering the injunction stating "you obviously all need an injunction to stay apart". Reversed.

Dailey v Roth, 44 Fla. L. Weekly D206b (Fla. 1st DCA, January 22, 2019)

The evidence presented below showed an acrimonious relationship between Dailey and Roth, whose ex-wife was engaged to Dailey. The two men exchanged uncivil text messages and had a tense exchange at a Little League game. The evidence proved the men behaved badly, but it was insufficient to support the injunction. Reversed.

Emile v. Excellent 44 Fla. L Weekly D983c (Fla. 4th DCA, April 17, 2019

Petitioner filed a Petition for protection against stalking. During a hearing, the parties verbally agreed to an injunction for no contact for one year. Respondent also agreed to surrender his gun and ammunition. The trial court entered a written final judgment, but included a finding that Petitioner was a victim of stalking, which was not a part of the agreement. Because of the discrepancies between the face of the written order and the parties' verbal agreement, case is remanded for the trial court to strike the second paragraph in which the trial court found that appellee was a victim of stalking, as well as all conditions not verbally agreed to by the parties. Affirmed and remanded.

Hussey v. Lara, 44 Fla. L. Weekly D940a (Fla. 3rd DCA, April 10, 2019)

Mr. Hussey is the paternal uncle, and Ms. Lara is the mother, of the alleged victim, J.H., age nine at the time of an alleged incident. At the hearing on Ms. Lara's petition, Ms. Lara was the only witness. The child did not testify and there was no attempt to introduce any out-of-court statement from her under section 90.803(23), as an alleged child victim. At the conclusion of the hearing, the trial court entered a permanent restraining order, finding Ms. Lara credible in her effort to protect her child. The Final Order is reversed because there was insufficient admissible evidence to support it. To support granting an injunction under section 784.046, Florida Statutes, a petitioner must prove the statutory elements by competent, substantial evidence. The "evidentiary requirements present in section 784.046(4)(a)1. [state] that the petitioner must be an eyewitness, provide direct physical evidence, or provide an eyewitness affidavit to the sexual battery, to obtain an injunction for protection.

Hutsell v. Hutsell, 44 Fla. L. Weekly D363a (Fla. 1st DCA February 4, 2019)

Wife's truck had "On-Star" installed and the Husband was the registered recipient of information regarding location, fuel and oil usage and even lock and unlock the doors remotely. Insufficient evidence was admitted to establish that the Husband was actually accessing the information to stalk Wife. Reversed.

Klenk v. Ransom, 44 Fla. L. Weekly D1270a (Fla. 1st DCA, May 13, 2019)

The parties were co-workers. Petitioner alleged that Respondent had made sexually-oriented comments about her body, asked her to help him with errands outside of work, and meet him for lunch. She had reported his sexual harassment and he was ultimately terminated. Although behavior such as that alleged here can be valid grounds for employment action, it does not rise to the level of conduct justifying a stalking injunction. Reversed and remanded.

Logue v. Book, 44 Fla. L. Weekly D2083b (Fla. 4th DCA, August 14, 2019)

Petitioner is an advocate for child abuse victims and for strict laws against sex offenders. Respondent is an outspoken opponent of sex offender laws. Petitioner requested an Injection Against Stalking against Respondent alleging that Respondent had (1) attended a protest against a rally attended by Petitioner, (2) attended a film festival where Petitioner was the speaker and asked her a question, and (3) posted Petitioners address online as well as a picture of a tombstone with an obscene reference to Petitioner and an obscene song which he tweeted perfectly depicted Petitioner. Trial Court erred in granting the Petition. Respondent's peaceful protests of petitioner's advocacy of sex offender laws served a legitimate purpose and is protected speech. Website and social media posts which were not specifically directed at petitioner did not meet the statutory definition of cyberstalking. The courts have interpreted "a course of conduct directed at a specific person" to exempt social media messages from qualifying as the type of conduct covered by the statute. "We live in times where violence occurs all too frequently and an ordinary day may turn into a horrific tragedy. So, it is necessary for courts to be vigilant in reviewing petitions such as the one filed in this case. Notwithstanding that vigilance, courts must also adhere to the Constitution and the laws enacted by our legislature." Reversed.

Lopez v. Regalado, 257 So. 3d 550 (Fla. 3rd DCA, 2018)

Wife files Petition for Injunction Against Domestic Violence against Husband, claiming several incidents of Husband acting bizarre and assaulting her on at least one occasion. Husband avoided service but then showed up at the hearing and addressed the allegations. Injunction affirmed as Husband had opportunity to be heard despite lack of service. However, modification of timesharing and child support not proper where Wife had not pled for the changes. Reversed in part.

McCafrey v. Ashley, 44 FLA. L. WEEKLY D548c (Fla. 5th DCA, February 22, 2019)

Petitioner alleged in her petition that, over the span of several days, respondent had sent her over 160 unwanted photographs, videos and messages which she described as graphic, obscene sexual statements and that she had asked respondent to stop communicating. The trial court erred in denying the petition without an order specifying the deficiencies in her allegations or providing for an evidentiary hearing. Reversed and remanded.

Olson v. Olson, 43 Fla. L. Weekly D2527a (Fla. 4th DCA, November 14, 2018)

Trial court erred in granting injunction freezing all of Husband's assets including impending inheritance when no evidence was offered to support the petition. Unsupported statements by counsel are not evidence. A verified motion is insufficient to establish the necessary proof where there is notice and a contested evidentiary hearing. Reversed.

Robinson v. Robinson, 43 Fla. L. Weekly D2464b (Fla. 5th DCA, November 2, 2018)

Insufficient evidence presented to support entry of an Injunction for Protection Against Domestic Violence. Wife testified to one incident, where Husband insisted on returning to her some personal belongings and then abruptly dropped off these items at her parents' house at midnight, and to a second incident, where the parties were meeting at their bank and Husband started acting irate and yelling profanities at Wife. Wife also testified that Husband had called her several times at home, at her parents and at work. However, none of these calls was threatening and no evidence was presented as

to the frequency of the calls. While these events were upsetting to Wife, mere uncivil behavior or annoyance is not sufficient to obtain an injunction against domestic violence. Reversed.

Shannon v. Smith, 44 FLA. L. WEEKLY D1878b (Fla. 1st DCA, July 23, 2019)

Case involved petition for stalking injunction under Sec. 784.0485 between contentious neighbors. Trial court erred in entering injunction based upon a video of the two neighbors having an altercation at an HOA meeting and the Respondent having another altercation with another neighbor at another time. There was also an anonymous email but no proof this was from Respondent. This is insufficient evidence of two incidents of stalking by Respondent against Petitioner. Also there was no testimony that the Respondent's actions caused substantial emotional distress.

Stone v. Germann 44 Fla. L. Weekly D2192b (Fla. 3rd DCA, August 28, 2019)

Respondent moved for a continuance of the final hearing on the Petition for Injunction. The Notice of Hearing was mailed to Respondent's address although he had moved to Japan in the interim. Service by mail of documents subsequent to the initial petition is permitted in injunctions. Responded also filed numerous motions in the court evidencing that he had knowledge of the proceedings and the final hearing date. Respondent's due process rights were not violated. Affirmed.

Stone v. McMillian, 44 Fla. L. Weekly D1171a (Fla. 1st DCA, May 2, 2019)

Parties were hostile neighbors. However, it was error to grant a Petition for Injunction against stalking against Stone for walking his dog around the neighborhood, putting his dog waste in McMillian's trash can when it was on the curb, stepping on McMillian's driveway to avoid being hit by a bus, and reviving his car engine near McMillian's home. Reversed.

Sumners v. Thompson, 44 Fla. L. Weekly D1272a (Fla. 1st DCA, May 13, 2019)

A four year sexual relationship qualifies as "dating" under the statute, even if the parties never went on a "date". However, at the conclusion of the relationship, posting on social media, texting and showing up at the other's house in order to find out why they broke up is insufficient to support the entry of an injunction when there had been no threats or violence. A reasonable person would not have a subjective fear. Reversed.

Tate v. Tate, 43 Fla. L. Weekly D2766a (Fla. 2nd DCA, December 14, 2018)

Trial court erred in granting injunction against domestic violence because the finding that the Petitioner had an objectively reasonable fear of becoming the victim of domestic violence is not supported by competent substantial evidence. Petitioner's only allegation was that Respondent had broken into her home when she was not there and stolen her two cats. Reversed.

TAYLOR V. PRICE, 44 Fla. L. Weekly D1330a (Fla. 4th DCA, May 22, 2019)

Wife provided uncontroverted testimony that the Husband had physically forced himself on her and that the Husband had scratched her breast during the incident. Where the testimony on the pivotal issues of fact is not contradicted or impeached in any respect, and no conflicting evidence is introduced, these statements of fact cannot be wholly disregarded or arbitrarily rejected. Rather, the testimony should be accepted as proof of the issue for which it is tendered, even though given by an interested party. Based upon the evidence, the court erred in denying the petition. Reversed and remanded.

Traficante v. Lambert 44 FLA. L. WEEKLY D1660b (Fla. 3rd DCA, June 26, 2019)

The petitioner established by competent evidence the two incidents of violence. The respondent failed to demonstrate legal error and the record provides competent, substantial evidence supporting the final judgment of injunction for protection against repeat violence (after notice). Affirmed.

Trice v. Trice, 44 Fla. L. Weekly D754e (Fla. 2nd DCA, March 20, 2019)

In 2011 Wife filed for dissolution and an injunction for protection against domestic violence alleging that the Husband had held her at gunpoint and threatened to kill her in front of their 9 month old child. The husband was criminally charged and at the hearing on the injunction declined to testify due to the pending criminal case. A permanent injunction was granted. In 2016 Former Husband filed a motion to dissolve the injunction stating that he had moved to Kansas and had no contact with this former wife or daughter. Further he testified that he could not obtain employment in law enforcement due to the existing injunction. At the time of the Motion to Dissolve the Former Wife was stationed in Japan. The trial court erred in denying the Motion to Dissolve the Injunction. Under these facts, the trial court's conclusion that these circumstances were not "such that dissolution of the injunction is warranted" could only have rested on a theoretical possibility that Mr. Trice -- after six years with no attempt at contact with Ms. Trice, living far away from Ms. Trice, and no longer sharing marriage or employment with Ms. Trice -- might someday seek Ms. Trice out and harm her. To the extent the trial court impliedly found that this possibility of Mr. Trice contacting and harming Ms. Trice was something more than theoretical, it abused its discretion because there is no competent substantial evidence in the record to support such a finding. The Wife's mere speculative fear of contact with the Former Husband is not sufficient to prolong the injunction. Reversed and remanded.

Venn v. Fowlkes, 43 Fla. L. Weekly D2455b (Fla. 1st DCA, October 31, 2018)

Petitioner alleged numerous acts of harassment by Respondent, but he did not sufficiently establish his case that Respondent's conduct caused him substantial emotional distress. The "substantial emotional distress" that is necessary to support a stalking injunction is greater than just an ordinary feeling of distress. Reversed.

JURISDICTION

Abitbol v. Benarroch, 44 FLA. L. WEEKLY D535a (Fla. 3rd DCA, February 20, 2019)

Wife and children lived in Ontario and Husband lived in Venezuela. Husband brought dissolution proceedings in Canada. The Canadian court entered a Mareva Injunction prohibiting Husband from transferring, alienating, assigning, mortgaging encumbering, pleading, disposing or otherwise dealing with any property of any kind in any jurisdiction worldwide. Wife filed a complain in Miami to enforce the Mareva injunction and for violations of the Florida Uniform Fraudulent Transfer Act, conspiracy to commit violations of FUFTA, constructive fraud, unjust enrichment and injunctive relief. The complaint was amended to include 15 causes of action and 13 defendants. The dissolution f marriage statute provides the exclusive remedy where one spouse has intentionally dissipated marital property during the marriage. The complaint is expressly based on the marital relationship. Therefore, the court properly dismissed the action because the Canadian court has exclusive jurisdiction over the dissolution proceedings and the Florida proceedings were ancillary to the Canadian proceedings. Wife's right to seek enforcement of the Mareva injunction is preserved. Affirmed.

Awad v. Noufal, 44 Fla. L. Weekly D2310f (Fla. 2nd DCA, September 13, 2019)

In December 2017 Wife moved with the children to Massachusetts and filed for an Abuse Prevention Order which was granted providing her with temporary custody of the minor children. In April 2018 the Husband filed a Petition for Dissolution in FL. The Wife moved to dismiss the action asserting that FL lacked jurisdiction under the UCCJEA. The court dismissed the wife's motion, finding that FL had jurisdiction over the dissolution and the children as Florida was the home state for the children and the Wife's departure had been temporary. However, the court erred in not contacting MA court concerning whether FL is the most convenient forum for determining custody pursuant to FL Stat. 61.517(4). Affirmed and remanded with instructions.

Bell v. Bell, 44 Fla. L. Weekly D1943d (Fla. 1st DCA, July 29, 2019)

The order under review is not appealable pursuant to Fl. R. of Appellate Pro. 9.130(a)(3)(C)(iii)b., because it does not fully determine the rights or obligations of a party regarding child custody or timesharing. Appeal is dismissed for lack of jurisdiction.

Bock v. Vilma, 44 Fla. L. Weekly D2277a (Fla., 3rd DCA, September 11, 2019)

Parties entered into a consent paternity decree in Louisiana in 2015. The parties moved to FL in 2016 and domesticated the LA decree. Father filed for modification of the child support provisions in May 2018. Mother then moves with the child to MD in August 2018. Father amended his petition requesting additional parenting time and responsibility. Mother filed an action in MD to have MD determined to be the child's home state. When the child was visiting the Father in FL the father retained the child past the agreed return date and Mother filed an emergency motion to return the child. The Court denied the motion and the Mother filed an Emergency Prohibition request under UCCJEA. UCCJEA does not divest a court of continuing jurisdiction unless virtually all contacts have been lost from the forum state. FL was the home state of the child when the father raised the custody issues. Petition denied.

Godin v. Owens, 44 FLA. L. WEEKLY D1401c (Fla. 5th DCA, May 31, 2019)

Court held hearing on paternity and child support and made oral findings as to paternity and income of the parties. However, there were no oral rulings as to the child support guidelines. The court then held another hearing to consider child support but made no oral findings. The Mother then filed a motion to recuse the judge. Judge then ruled on the issue of child support and then issued order recusing itself. Consequently, the trial court exceeded its authority when it ruled on the child support obligation after the Mother filed the Motion to Recuse. Reversed and remanded.

Haskell v. Haskell, 44 Fla. L. Weekly D61a (Fla. 2nd DCA, December 21, 2018)

The court lacks jurisdiction to review ruling determining entitlement to attorney fees but reserving jurisdiction to determine the amount of the award. Dismissed for lack of jurisdiction.

Llanso v. Cordova, 44 Fla. L. Weekly D21a (Fla. 3rd DCA, December 19, 2018)

The Final Judgment, as well as orders entered subsequent to the Final Judgment, are void under Florida Rule of Civil Procedure 1.540(b)(4), as the Final Judgment was entered while an interlocutory appeal in the case was pending before this Court. We reverse the entry of Final Judgment and subsequent orders entered by the trial court, as the trial court lacked jurisdiction to render a final order disposing of the case while an appeal was pending before this Court. When a pending appeal becomes moot by reason of a settlement, Rule 9.350(a) requires counsel to notify the appellate court immediately by filing a signed stipulation for dismissal of the appeal. Reversed, however court may enter a similar final judgment and subsequent orders as the interlocutory appeal has been dismissed.

McBee v. McBee, 43 Fla. L. Weekly D2743a (Fla. 4th DCA, December 12, 2018)

Parties had an ongoing dissolution including issues of child custody determination ongoing in Virginia for years. The Father had admitted to sexual abuse of the child (allegedly under duress by Mother) and the VA court had awarded supervised contact but then entered an order allowing unsupervised contact. Both parties had moved to Florida but VA retained jurisdiction over the divorce and parenting issues. In April 2017 the VA court awarded the Father sole physical custody based upon the Wife absconding with the child to NC. In June 2017 the Mother filed a Petition for Protection from Domestic Violence OBO the minor child. The court erred in granting the permanent injunction and ordering no contact with the Father through the child's minority. The trial court had emergency jurisdiction under the UCCJEA for an initial determination. However, the court had a mandatory duty to communicate with VA court prior to terminating father's contact with the child. Reversed and remanded.

Rector v. Rector, 44 Fla. L. Weekly D293a (Fla. 5th DCA, January 25, 2019)

Parties entered an MSA and divorced in 1999. In 2005 the parties entered into a joint stipulation for modification of the final judgment which was approved by the court. The Wife brought this action for contempt and enforcement of the MSA and joint stipulation and the Former Husband brought a supplemental petition to modify his support and requirement for life insurance. The former Wife sought temporary attorney fees to defend the Former Husband's action. The Magistrate found the court lacked jurisdiction as the life insurance was to secure alimony which had been paid in full. This was error as the court reserved jurisdiction in the Final Judgment to modify the MSA by agreement of the parties in writing which was done by their joint stipulation approved by the Court. Determination that husband's

obligation to maintain life insurance policy was to secure lump sum award was contrary to clear and unambiguous terms of parties' MSA. The joint stipulation obligating husband to pay wife's monthly Medicare and supplemental health insurance premiums up to a stated amount was simply a modification of a provision specifically handwritten and initialed by parties in exhibit incorporated into the MSA, and did not, as husband contended, create a new and different alimony obligation. Reversed.

Skelly v. Skelly, 44 FLA. L. WEEKLY D1809a (Fla. 5th DCA, July 12, 2019)

Former husband argued that the trial court lacked subject matter jurisdiction to hear the former wife's petition for modification of child support for a child who had turned 18 and who had not been adjudicated dependent prior to turning 18. This is properly raised in a writ of prohibition. However, former husband failed to demonstrate that the trial court was clearly proceeding in excess of its jurisdiction. Further, former husband did not demonstrate that the denial of his motion to dismiss caused him irreparable harm. Petition for Writ of Prohibition denied. Petition for Writ of Certiorari dismissed.

LIFE INSURANCE

Dorsey v. Dorsey, 44 Fla. L. Weekly D875a (Fla 1st DCA, April 3, 2019)

The trial court failed to make the necessary findings when requiring the former husband to maintain a life insurance policy for the former wife's benefit. Reversed.

Fleming v. Fleming, 44 Fla. L. Weekly D2216a (Fla. 1st DCA, August 29, 2019)

The trial court failed to make the necessary findings when requiring the former husband to maintain a life insurance policy for the former wife's benefit. Reversed.

Grasso v. Grasso, 44 FLA. L. WEEKLY D488a (Fla. 1st DCA, February 18, 2019)

A trial court is authorized to order a party to purchase or maintain a life insurance policy to the extent necessary to protect an award of child support but the court must make factual findings regarding the necessity of such coverage. The trial court erred in not making the necessary factual findings. Reversed and remanded.

Vinson v. Vinson, 44 Fla. L. Weekly D189a (Fla. 1st DCA, January 7, 2019)

Former Husband pled for both parties to maintain life insurance as security for child support. Therefore, it was not error for the court to order same. Further, the Husband failed to raise the issue on a Motion for Rehearing and therefore the issue is waived.

Walker v. Walker, 44 FLA. L. WEEKLY D1410a (Fla. 2nd DCA, May 31, 2019)

The record indicates that the Husband had life insurance through his employer and additional private life insurance. There was no evidence that the Husband could not afford to continue this insurance. The court failed to address the wife's request that the Husband continue to maintain the life insurance for security of the alimony and child support. This shall be addressed on remand (ordered remand on several issues).

Will v. Will, 44 FLA. L. WEEKLY D1671b (Fla. 2nd DCA, June 28, 2019)

The court erred in ordering the Husband to maintain life insurance as security for alimony absent the required findings. Reversed and remanded.

MODIFICATION / TERMINATION

Dunn v. Dunn, 44 FLA. L. WEEKLY D1813a (Fla 5th DCA, July 12, 2019)

Parties divorced in 1999 and the Wife was awarded $1,342, 526 in equitable distribution and $12,000 per month in permanent periodic alimony. In October 2014 Former Husband petitioned for a modification of alimony. At trial the court found that the Wife had failed to disclosure $63,000 that she had inherited from her father and found that her monthly expenses had been reduced to $8,488 for which she had monthly income of $7,015 from investments and Former Husband's military pension. The Court therefore reduced Wife's alimony to $1,819 and ordered her to pay $400,000 in alimony overpayment for the period between the filing and final judgment on modification. The court erred in reducing the alimony by 85%. The court used the wrong standard in determining the Former Wife's needs without considering the lifestyle of the parties during the marriage. The court effectively punished the Wife for her decision to live a more modest lifestyle than enjoyed during the marriage. "While Former Husband is no responsible for funding Former Wife's investment account, she should not be penalized for attempting to ensure her financial future by limiting her expenditures." The trial court also erred in the retroactive award as it failed to specify whether Former Wife was to pay the amount in a lump sum, installments or another manner and did not state when such payments were due. Also, as this repayment would consume nearly 25% of the Former Wife's investments, then any reduction in investments should be considered in determining Former Wife's income when calculating her ongoing need. Reversed and Remanded.

Holder v. Lopez, 44 FLA. L. WEEKLY D1473a (Fla. 1st DCA, June 7, 2019)

Husband was ordered to pay permanent periodic alimony in 2003. In 2017 Husband retired at age 65 years and petitioned for modification or termination of alimony. The trial court modified the alimony downward after imputing expenses to the former wife for housing that she was not paying (living with her son) and for imputed some income to the Husband. Trial court erred in finding the Wife had a need for ongoing alimony as her income was sufficient. The Court also erred in imputing income to the Husband when his retirement from work as a truck driver was reasonable. (But see long dissent). Reversed and remanded.

Inman v. Inman, 44 Fla. L. Weekly D127a (Fla. 2nd DCA, December 28, 2018)

The stipulated final judgment provided for alimony as follows: "That as and for spousal support, Defendant shall pay to Plaintiff in the form of Military Allotment, the sum certain Eight Hundred Dollars ($800) per month. Said payments shall commence immediately and continue in effect each month thereafter for the remainder of Plaintiff's life." The Former Husband sought termination of his alimony obligation based on section 61.08(8), which provides in pertinent part, "An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony." If a marital settlement agreement provides for the continuing payment of alimony despite the remarriage of the recipient, then its terms will control over those in section 61.08(8). Here, because the agreement provided for alimony for the remainder of Wife's life, it would not terminate upon remarriage. The Former Husband alternatively sought modification under section 61.14(1)(a), based on the changed circumstances of the parties' financial positions. In considering the Former Wife's alleged increased financial ability due to her remarriage, the court reasoned: "However, because Former Husband's alimony obligation was set by a voluntary agreement of the parties, the Former Husband's burden is

exceptionally heavy. These findings reflect that the trial court imposed a heavier burden of proof on the Former Husband because the alimony provision was set forth in a stipulated divorce decree. Reversed and remanded.

Morley v. Puhl, 43 Fla. L. Weekly D2634a (Fla. 4th DCA, November 28, 2018)

The Former Husband alleges the Former Wife is taking the child to therapy that the child does not need. But a medical professional diagnosed the child with the condition for which the Former Wife seeks treatment. And the record supports a finding that the child's issue arose before entry of the final judgment of dissolution. The Former Husband also conceded in his second petition that the child was diagnosed with certain issues before the entry of the final judgment of dissolution. These facts do not support a finding of a substantial, material, and unanticipated change in circumstances requiring a modification of the parenting plan. Reversed.

Nuttle v. Nuttle, 43 Fla. L. Weekly D2525a (Fla. 4th DCA, November 14, 2018)

On November 6, 2015 parties entered into an MSA which provided for alimony. On January 15, 2016 Husband filed Supplemental Petition for Modification of alimony based upon termination of his employment on January 31, 2016. On October 26, 2016 court entered Final Judgment of Dissolution Nunc Pro Tunc to date of MSA. On November 28, 2016 Husband filed an Amended Supplemental Petition for Modification, reasserting the allegations of earlier petition. Trial court erred in granting retroactive modification of alimony only to date of filing Amended Supplemental Petition without reason for not granting to the date of the original Supplemental Petition.

Preudhomme v. Bailey, 44 Fla. L. Weekly D2373a (Fla. 4th DCA, October 24, 2018)

Trial Court erred in modifying mode of communication between the parents (from Our Family Wizard to Talking Parents) when the issue was not pled nor tried with consent. Reversed.

Tisdale v. Tisdale, 44 Fla. L. Weekly D481a (Fla. 1st DCA, February 15, 2019)

The parties entered into a MSA on September 1, 2015. The MSA was entered into a Final Judgment on August 16, 2016. On November 29, 2016 the Former Husband filed a Supplemental Petition for Modification of Child Support alleging that his annual income had dropped significantly. By May 2017 it was acknowledged that his income had improved significantly and was better than at the time of the MSA. The trial court granted the Former Husband's modification of his child support between November 29, 2016 and May 31, 2017 resulting in an overpayment and ordered this amount to be credited to the Wife's attorney fees and costs. As the Former Husband's loss of income between the filing of his petition and the date of increase in income was not a full year, the court erred in granting a downward modification. The Former Husband also know of the loss of income prior to entering into the MSA and therefore the earlier date could not be used. Reversed and remanded.

NAME CHANGE

Bowman v. Hutto, 44 Fla. L. Weekly D822a (Fla. 1st DCA, March 28, 2019)

Trial court abused its discretion by ordering that the surname of the parties' 2 year old child be changed from the Mother's surname to that of both parents, separated by a hyphen, where there was no evidence that the name change was required for the welfare of the minor child. Reversed with respect to name change of child.

In Re: The Name Change of Ronald Russell Johnson, 43 Fla. L. Weekly D2600c (Fla. 4th DCA, November 21, 2018)

The circuit court erred in two respects: (1) by denying Petitioners facially sufficient petition without setting forth a factual basis for what appears, from the face of the order, to have been the circuit court's conclusion that Petitioner sought the name change for an ulterior or illegal purpose; and (2) by denying his request to have a court reporter record the hearing. Reversed.

Marini v. Kellett, Fla. L. Weekly D2105a (Fla. 5th DCA, August 16, 2019)

Changing a child's name "is a serious matter and such action may be taken only where the record affirmatively shows that such change is required for the welfare of the minor." Here, neither the trial court, Father, nor the record affirmatively show that a change in the child's surname from Mother's to Father's is in the child's best interest. Reversed and remanded.

ORDERS / JUDGMENTS

Carlton v. Zanazzi, 44 Fla. L. Weekly D640a (Fla. 2nd DCA, March 6, 2019)

The Wife filed an action for dissolution in 2015 which was voluntarily dismissed in May 2016. The Wife then filed a new Petition for Dissolution in August 2016, but listing the original case number. The parties reached a MSA which was incorporated into a Final Judgment. In November 2017 the Husband filed a Petition for Modification of the parenting plan but then in December 2017 moved to vacate the original judgment claiming the court lacked jurisdiction to enter the judgment as the case had been dismissed in May 2016. The trial court erred in granting the motion to vacate. This case involves an administrative matter of the court, not a jurisdictional one. The court had subject matter jurisdiction over the matter. Also, be agreeing to the final judgment of dissolution and by seeking affirmative relief, the Husband waived any claim that the trial court erred in entering judgment using the wrong case number. Reversed and remanded.

Erskine v. Erskine, 43 Fla. L. Weekly D2784d (Fla. 1st DCA, December 14, 2018)

Trial court erred in adopting a proposed order for temporary support where some findings in the order contradict the trial judge's oral ruling. Reversed.

Moore v. Holton, 44 Fla. L. Weekly D696a (Fla. 2nd DCA, April 12, 2019)

The income deduction order entered by the court calls for a deduction of sixty-five percent of former husband's monthly disposable income but it fails to explain how much of that monthly deduction and in what priority the amount deducted is to apply to each current obligation and each arrearage (alimony, child support, or attorney's fees). Nothing in this opinion should be read as precluding the use of percentages rather than exact dollar amounts to determine the amount of the monthly income deduction and its application to the various obligations the income deduction order enforces as long as those percentages are sufficiently stated to show the allocations and priorities described above. Remanded.

Rowe-Lewis v. Lewis, 44 Fla. L. Weekly D844a (Fla. 4th DCA, April 3, 2019)

Following trial court entered a Final Judgment of Dissolution. Wife moved to set aside the final judgment pursuant to Fl. Fam. LRP. 12. 540(c) based upon specific and documented allegations of fraud committed by Husband. Trial court erred in treating the motion as a motion for rehearing and denying the motion without an evidentiary hearing. Sufficiently pled fraud allegations are ordinarily not suitable for summary disposition and require a full explanation of the facts and circumstances of the alleged wrong.

Saboff v. Saboff, 44 FLA. L. WEEKLY D1447c (Fla. 5th DCA, June 7, 2019)

No error in granting new trial after trial judge acknowledged on the record that there was no justification for judge's failure to rule on the case for over a year and a half after the parties' submitted written closing arguments and proposed final judgments. Remanded for a new trial and directed to assign a new judge.

Singer v. Singer, 44 FLA. L. WEEKLY D1708a (Fla. 4th DCA, July 3, 2019)

Court improperly transferred the case to another circuit because it was a more convenient forum without putting the former husband on notice that it was closing the case or ordering a change of venue. (BTW this case generated 25 proceedings in the appellate court and six reported opinions since May 2009)

Thomas v. Cromer, 44 FLA. L. WEEKLY D1511a (Fla. 3rd DCA, June 12, 2019)

The mother filed a petition to establish paternity and child support. The father admitted paternity but a trial ensued regarding a parenting plan and support. The court entered an order establishing paternity, determining a parenting plan and ordering support. The Mother then filed a Motion for Rehearing and submitted a proposed final judgment and parenting plan. The Father objected. No hearing was held. The court then entered an amended parenting plan limiting the Father's parenting time. The trial court erred in entering an amended final judgment without affording the parties an opportunity to be heard on the merits of the motion for rehearing. Reversed and remanded.

Toth v. Miller, 43 Fla. L. Weekly D2429a (Fla. 2nd DCA, October 31, 2018)

The judge adopted Wife's proposed sixty-five-page final judgment without a single alteration. While this fact alone might not convince us the judge had failed to exercise independent decision-making, when viewed in the context of the record as a whole, and in particular some of the judge's comments at the final hearing it is clear that the judgment does not reflect the independent decision -making of the judge. Reversed and remanded.

Trainor v. Cisneros, 44 FLA. L. WEEKLY D1510b (Fla. 3rd DCA, June 12, 2019)

The trial court did not improperly adopt the Husband's proposed order, but rather made significant additions and deletions to the husband's proposed order. Also, the Court did not improperly fail to rule on the open issues but rather stated that the order is entered without prejudice to either party's claims or defenses in connection with any such pending matters. Finally, the court correctly made specific findings as to the parties' incomes as evidence upon the completed child support guidelines worksheet in the record. Affirmed.

PARENTING

Beck v. Lewis & Howard, 44 Fla. L. Weekly D2045c (Fla. 2nd DCA, August 9, 2019)

Grandmother had Temporary custody of J.B.. The Mother of J.B. then filed to dissolve the temporary custody order and reestablish her custody. The Father then filed to dissolve the marriage with Mother and requested timesharing with J. B. The court held one hearing and entered a Temporary Custody Order Between the Parents. The Order granted the Father with one weekend per month and summer and holiday contact. The Father appealed, arguing that the weekend contact impaired his ability to earn a living because his employment required weekend work. The court affirmed the decision but noted that the trial court must consider the parties circumstances, including financial, before it enters a final judgment that establishes a parenting plan with a time-sharing schedule and child support.

Cappola v. Cappola, 44 Fla. L. Weekly D2200a (Fla. 4th DCA, August 28, 2019)

The parties entered into a private agreement whereby their minor child, A.C., was to return to live with the former husband in Pasco County. Subsequently, the Mother filed a Motion to Set Aside the agreement and a "Motion For Status Quo Order Pending The Determination Of The Modification Proceedings" to have the child continue residing with her in Broward County until final modification proceedings concluded. At the conclusion of the hearing on the Motion, the Court denied the Mother's Motion, finding that it was bound by the agreement reached between the parties. In the subsequent written order, the court found that agreement was in the best interest of the child as the reason it was denying the motion. A trial court's oral pronouncement must control over a later written order and the subsequent order must accurately reflect the record. The fact that the court did not include the consideration of best interest of the child in the oral pronouncement required reversal.

Clark v. Stofft, 44 Fla. L. Weekly D206a (Fla 4th DCA, January 9, 2019)

Regarding parental responsibility, the final judgment incorporated a parenting plan, which states in relevant part: "Shared Parental Responsibility with Ultimate Decision Making Authority: It is in the best interest of the children that the parents confer and jointly make all major decisions affecting the welfare of the child. Major decisions include, but are not limited to, decisions about the children's education, healthcare, and other responsibilities unique to the family. If the parents cannot agree as to any major decision; the Mother shall have ultimate decision-making authority." Here, the final judgment failed to identify specific areas over which the [wife] had final decision-making authority. Accordingly, we reverse and remand for the trial court to address this issue.

Ducali v. Ducali, 44 FLA. L. WEEKLY D1758a (Fla. 1st DCA, July 9, 2019)

The trial court abused its discretion by awarding the former husband sole parental responsibility over education and health care decisions for children where the issues were not raised by pleadings or tried by consent. Affirmed.

E.V. v D.M.V.H., 44 FLA. L. WEEKLY D1381a (Fla. 2nd DCA, May 29, 2019)

The trial court failed to specifically describe in "adequate detail the methods and technologies that the parents will use to communicate with the child" in the parenting plan. Therefore the case is reversed and remanded and court should also address other deficiencies in the parenting plan identified by the father.

Hollis v. Hollis, 44 FLA. L. WEEKLY D1569c (Fla. 2nd DCA, June 19, 2019)

Six months after the entry of the Final Judgment each party filed for a modification based upon a substantial change in circumstances. The Husband had moved 47 miles away. Parties also indicated that there was a breakdown in communication. Court erred in modifying parenting plan to provide husband with majority of the parenting time. The breakdown in communication does not constitute a substantial and marital change in circumstances. The court also erred in emphasizing the distance between the homes, however a relocation does not amount to a substantial change in circumstances, particularly where husband testified that the distance did not impact the minor children's routine.

Hollonbeck v. Hollonbeck, 44 Fla. L. Weekly D2060a (Fla. 1st DCA, August 13, 2019)

The trial court abused its discretion when it ordered shared parental responsibility, but gave the former husband ultimate decision-making authority over the child without making findings required by the law to grant on party the ultimate responsibility over specific aspects of the child's welfare. Reversed and remanded.

Horton v. Horton, 43 Fla. L. Weekly D468b (Fla. 1st DCA, November 6, 2018)

Evidence presented showed that Mother and son had strong bond while Father's relationship deteriorated during pendency of action and their relationship was strained. Court erred in ordering a graduated time sharing with Father having limited time initially and eventually reaching equal timesharing after one year. Because the trial court did not discuss the son's current best interests, see section 61.13(3), Florida Statutes, it is unclear whether or not it would have found the first phase of the schedule to be in his best interests. A prospective approach to timesharing is prohibited. Reversed.

Johnson v. Johnson, 44 Fla. L. Weekly D890a (Fla. 5th DCA, April 5, 2019)

At the trial the parties stated that they had a stipulation regarding timesharing. The Husband indicated that they agreed to continue the temporary parenting plan ordered by the court providing the Husband with 12 – 14 overnights per month. The Wife indicated that they would continue what the Husband had actually been exercising, nine overnights per month. The court erred in ordering nine overnights per night as the parties clearly did not have a meeting of the minds based upon their stated version of the stipulation. Reversed.

Lightsey v. Davis, 44 Fla. L. Weekly D628a (Fla. 4th DCA, March 6, 2019)

The trial court ordered the Mother to have sole parental responsibility for the minor child. The court must find that shared parental responsibility would be a detriment to the child. However, this determination may be made on the record or in the final judgment. As no transcript was provided it cannot be ascertained whether the trial court made a finding of detriment at trial and therefore the order is affirmed. The judgment ordered supervised timesharing to the father at the discretion of the mother until the father could demonstrate that he is able to properly parent the child. A trial court's failure to set forth any specific requirements or standards with which the parent must comply in order to reduce the timesharing restrictions -- whether those restrictions constitute a total prevention of timesharing altogether or are only a limitation of timesharing -- is error. Further, a court may not

delegate its responsibility to determine timesharing to a third party. Therefore the timesharing is reversed and remanded.

Marini v. Kellett, Fla. L. Weekly D2105a (Fla. 5th DCA, August 16, 2019)

As part of pending paternity case, Mother sought relocation to North Carolina which was granted. The Court then entered a long distance parenting plan that allowed the Father to receive three weekends per month plus holiday and summer vacation time. The parties advised the court that the child could not fly unaccompanied as he was under 5 years of age (judge had indicated the child should fly alone) and that the cost of the tickets would be $2,700 per month, interfered with their employment, and was exhausting for the child. The trial court abused its discretion in establishing this time-sharing and travel schedule as it is unreasonable to require a young child to take two or three dozen annual airplane flights. Such frequent flights with the predictable occasional delays are not in the best interest of the child. Additionally, both parents testified that they cannot afford the expense of the airline tickets nor the time and income lost from work associated with the travel. Reversed and remanded.

Mclendon v. D'Amico, 44 Fla. L. Weekly D894b (Fla. 1st DCA, April 5, 2019)

Parties divorced in 2015 and Husband was provided supervised visitation due to Husband's substance addiction. In 2016 Husband filed for a modification of timesharing requesting unsupervised contact. Substantial, competent evidence was presented supporting court's order awarding Husband with unsupervised contact. Affirmed.

Pagliaro v. Pagliaro, 44 Fla. L. Weekly D390f (Fla. 4thd DCA, February 6, 2019)

Parties attended mediation and signed an agreement that specifically contemplated additional negotiations. Later the Wife moved to set aside the agreement and attempted to introduce additional evidence regarding domestic violence committed by the Husband against his new girlfriend. The Court refused to hear additional evidence and ratified the mediated agreement. The court erred in not hearing evidence and considering the best interest of the child when entering the parenting plan. Reversed and remanded.

Pierre v. Bueven, 44 FLA. L. WEEKLY D1668a (Fla. 3rd DCA, June 26, 2019)

Court ordered father have supervised contact with the minor child. Because the final judgment failed to provide the father with the specific steps he must undertake in order to obtain unsupervised timesharing with the minor child. Reversed and remanded.

R.B. v. B.T., 43 Fla. L. Weekly D2506c (Fla. 2nd DCA, November 9, 2018)

Trial court erred in restricting Father's parental contact to Texas or Florida where there are no factual findings that establish that such geographic restrictions were necessary. Reversed.

Ryan v. Ryan, 43 Fla. L. Weekly D2413a (Fla. 3rd DCA, October 31, 2018)

Trial court did not abuse its discretion by renewing limitations on wife's unsupervised timesharing until such time as wife's compliance with certain conditions and substance abuse evaluations supported restoration of unsupervised timesharing. Trial court provided clear path toward reconsideration of timesharing limitations if enumerated conditions were met by expressly directing parties to schedule case management conference within 30 days to address wife's compliance with various requirements

imposed by order. Trial court did not err in ordering Wife to undergo monitoring for substance abuse and ordering Wife to pay for same.

Schot v. Schot, 44 FLA. L. WEEKLY D1367a (Fla. 4th DCA, May 29, 2019)

The parties divorced in 2015. Subsequently the Husband Petitioned for modification of the timesharing plan and seeking ultimate decision-making authority for healthcare and educational decisions. There was no error in the modification of the timesharing plan and award of ultimate decision making where the Wife failed to report the pediatrician's diagnosis of one child for three weeks, failed to advise the Husband of the pediatrician's feeding instructions, was feeding the child laxatives before the father's time to cause explosive diarrhea, enrolled the child in an unlicensed school and then caused the court ordered school to refuse to take the child. However, the court erred in other modifications to the parenting plan that had not been plead by the Husband nor tried by consent (no evidence presented). Affirmed in part and reversed as to unpled modifications.

Seligsohn v. Seligsohn, 43 Fla. L. Weekly D2637c (Fla. 4th DCA, November 28, 2018)

The trial court erred in awarding the Husband blanket ultimate decision-making authority over all issues. The court must delineate specific areas of ultimate decision making in the final judgment. Trial court ordered Wife to attend parent effectiveness training (PET) classes weekly until she could demonstrate to the court that she understood what she has been taught and that she can put into practice what she has been taught. This order is vague and ambiguous about the scope and termination date of the ordered treatment. Because the court neither provided a duration for the compelled weekly classes nor identified a standard to judge the compliance, the order is vague and unenforceable. Reversed.

Sringer v. Springer, 44 FLA. L. WEEKLY D1855a (Fla. 2nd DCA, July 19, 2019)

The case involves the child born to Nicole while she was in a relationship with Christy. Prior to the birth of the child the women signed a "co-parenting agreement" expressing their intention to jointly and equally share parental responsibility. When the parties' relationship ceased Christy brought an action to seek recognition of her parental rights and timesharing. The Court dismissed the action for lack of standing. A coparenting agreement between a biological parent and a nonparent is not enforceable under Florida Law. Affirmed.

Vinson v. Vinson, 44 Fla. L. Weekly D189a (Fla. 1st DCA, January 7, 2019) (corrected order)

The former wife has not carried her burden of demonstrating that the trial court "abdicated" its duty to determine the best interests of the child in adopting the parties' parenting plan. The court's decision to do so --following an evidentiary hearing -- was based on competent, substantial evidence. The trial court did not fundamentally err in denying the former wife's motion to set aside the time-sharing plan in formally adopting it, and incorporating it into the final judgment.

Walker v. Walker, 44 FLA. L. WEEKLY D1410a (Fla. 2nd DCA, May 31, 2019)

Trial court applied the incorrect standard in determining the parenting timesharing. The court found that the husband did not have adequate physical space to have the children for extended periods of time and made no other findings. It is error to equate the child's environment as referenced in section 61.13(3)(d) with the physical structure where the child lives. It was error for the court to order the Husband to provide all transportation for the children. It was error for the court to allow either parent

to enroll the children in extracurricular activities but then requiring the parents to equally share the costs of these activities without adequate input. The court correctly determined shared parental responsibility despite the clear acrimony of the parties. Reversed and remand.

PATERNITY

Llanos & Llanos v. Huerta, 43 Fla. L. Weekly D2704a (Fla. 3rd DCA, December 5, 2018)

The Llanos' were having marital issues and separated. During the period of separation Ms. Llanos had a relationship with Mr. Santos. The Llanos' then reconciled and Ms. Llanos gave birth to a child. Mr. Santos filed a petition asserting he was the father of the child but the Petition was dismissed with prejudice. Both Ms. & Mr. Llanos brought injunctions against stalking against Mr. Santos. During the hearing the trial judge sua sponte raised the question about the biological paternity of the child stating that if Mr. Santos believed he was the father of the child it may impact his alleged conduct. The Court then ordered a paternity test of the minor child. No party to any family law proceeding is entitled to an order requiring another party to submit to genetic testing unless (1) the proceedings place paternity 'in controversy' and (2) 'good cause' exists for the testing. In addition, Florida law has a strong public policy against genetic testing to establish biological paternity where such testing could overcome the presumption of legal paternity and legitimacy; therefore, prior to ordering paternity testing, the trial court must also determine that the testing would be in the child's best interest. In these circumstances, paternity was not in controversy and proof that Santos or some third party was the biological father would not provide a legitimate purpose for Mr. Santos' alleged conduct of stalking the family, writing threatening letters that contained personal photographs of Ms. Llanos to her husband and others, threatening to send those photos and other private video footage to Mr. Llanos' employer and neighbors, or violating an existing anti-stalking injunction. Under the same reasoning, the paternity of the child is not implicated in Mr. Santos' motion to set aside the agreed permanent anti-stalking injunction. Writ of certiorari quashing order for paternity test is granted.

PROCEDURE

Erskine v. Erskine, 43 Fla. L. Weekly D2784d (Fla. 1st DCA, December 14, 2018)

Trial court erred in denying Husband a hearing on his Exceptions to the Magistrate's Report and Recommendations. A hearing is mandatory. Reversed.

Goff v. Goff, 44 FLA. L. WEEKLY D1635a (Fla. 2nd DCA June 26, 2019)

Attorney Bass filed a Notice of Appearance on behalf of Former Husband during post-judgment proceedings with Former Wife. Former Wife moved to have Attorney Bass disqualified under Rule 4-1.9 and the Court granted the Motion. The trial court erred in disqualifying the attorney. The attorney had represented the Wife in an unrelated matter (a dispute with her separate family). The Former Wife had filed a financial affidavit which disclosed all of her assets and liabilities, so the attorney had no confidential information regarding her finances. The attorney had been listed as a witness on the original dissolution witness list, but he was not called as a witness and therefore clearly was not a necessary witness at trial. The trial court did not apply the appropriate rule for determining whether a conflict of interest exists involving a former client, and because no conflict of interest exists, the trial court departed from the essential requirements of law. Reversed and remanded.

Holt v. Holt, 43 Fla. L. Weekly D2455a (Fla. 1st DCA, October 31, 2018)

DOM action filed in 2009 and Husband subsequently suffered traumatic brain injury. While hospitalized, Wife had Husband sign MSA. A FJ of DOM was entered in 2010. Wife then filed a stipulation to vacate the FJ. The parties reconciled and moved to MD where they purchased a home together and had two children. In 2016 Wife filed for DOM in MD. Husband then claimed that this was the first he learned that their marriage had been dissolved in 2010 and then the FJ vacated. Husband filed to set aside the order vacating the DOM pursuant to Fl. RCP 1.540(b) asserting the order was the result of fraud on the court because the wife forged his signature on the stipulation. Trial Court erred in granting Husband's motion to set aside the order vacating the FJ and reinstated the FJ. A motion to set aside an order on grounds of fraud pursuant to 1.540(a) must do so within one year. A party alleging fraud on the court, extrinsic fraud, may seek relief more than one year after the order only by filing an independent action. Husband could only seek relief from the 2010 order by filing an independent action. Reversed.

Jeancharles v. DOR, 44 Fla. L. Weekly D1291b (Fla. 4th DCA, May 15, 2019)

DOR began an administrative proceeding to establish child support. The letter from DOR indicated that a party seeking a continuance of the hearing should make the request in writing at least five days prior to the hearing Thirteen days prior to the hearing Father requested a continuance to locate an attorney. The ALJ denied the continuance. The Court considered the factors in assessing a courts denial of a continuance: (1) whether the denial of the continuance creates an injustice for the movant (here the denial of the injustice to seek counsel did create an injustice), (2) whether the cause of the request for continuance was unforeseeable by the movant and not the result of dilatory practices (the Father made reasonable effort to seek counsel given that he lived in Tallahassee and the hearing was in Broward); and (3) whether the opposing party would suffer any prejudice or inconvenience as a result of the continuance (Mother conceded that she would suffer no prejudice or inconvenience). ALJ abused discretion in denying the continuance. Reversed.

In re Marriage of Charles W. Kirby, 44 Fla. L. Weekly D2080a (Fla. 4th DCA, August 14, 2019)

In 2015 Husband moved for modification of his alimony. As a result of a discovery issue, the trial court determined that the former husband would be awarded attorney's fees in the matter and a hearing was held on May 19, 2017. On May 30, 2017 Former Wife died and her counsel filed a suggestion of death the next day. On June 19, 2017 the trial court entered an order on the attorney fees award, acknowledging the Wife's death but intending to bind her estate. The former wife's estate was opened the following day and attorneys filed a notice of appearance and, after 2 judicial reassignments, moved to vacate the order and dismiss the case because the estate was not substituted within 90 days of suggestion of death. The trial court correctly vacated the order granting attorney's fees to the former husband as neither the Former Wife nor her estate were properly before the court making the order void ab initio. The trial court should have abated the proceedings until the substitution of the estate was made. Trial Court improperly applied Fl. Rule of Civil Pro. 1.260 requiring dismissal if substitution is not made within 30 days. The correct rule was 12.260(a)(1) which does not have the substitution timeframe. Reversed as to dismissal.

Lamadrid v. Rivera, 44 Fla. L. Weekly D1310a (Fla. 5th DCA, May 17, 2019)

In September 2013, a court in Puerto Rico issued a judgment dissolving the marriage between Petitioner and Respondent. As part of the division of property, Petitioner received real property located in Orlando, Florida. In August 2017, Petitioner sought to domesticate the foreign judgment. Bowles moved to intervene in the domestication action to "prevent perpetration of frauds on the court and dissipation of assets subject to intervenor's judgment liens." Bowles alleged that in 2008, it obtained a county court judgment against Petitioner and Former Wife. Court domesticated the judgement and Bowles moved to vacate. The circuit court granted Bowles's motion, vacated the judgment domesticating the foreign judgment, and granted, in part, Bowles's second amended motion to intervene "to the extent necessary to protect its interest in the county court judgment. A party cannot moved to intervene after a judgment is entered with limited exceptions. The order granting the motion to intervene causes Petitioner irreparable harm and is a departure from the essential requirements of law. Certiorari granted, order to intervene is quashed.

Manko v. Manko 44 Fla. L. Weekly D1249a (Fla. 5th DCA, May 10, 2019)

Final Judgement ordered Husband to obtain life insurance to protect the alimony award. Former Husband filed a motion to reopen the evidence pursuant to Fl. R.C.P 1. 530(a) and proffered evidence that he could not obtain the life insurance. Florida Rule of Civil Procedure 1.530(a) enables a trial court to evaluate matters that it did not consider prior to judgment, and to correct any error if the trial court becomes convinced that it has erred. The first predicate is that the presentation of evidence will not unfairly prejudice the opposing party and, second, that reopening will serve the best interests of justice. There is no indication that Wife would suffer any prejudice were the trial court to reopen the evidence on this limited issue. Reversed and remanded. jean

Pardes v. Pardes, 44 Fla. L. Weekly D239a (Fla. 3rd DCA, January 16, 2019)

Wife sought certiorari review of a trial court order denying her motion to disqualify the attorney of Husband. The factual findings in the trial court's order are supported by competent substantial evidence

in the record, and the trial court's legal conclusions do not depart from the essential requirements of law. Petition denied.

Pena v. Rodriguez, 44 Fla. L. Weekly D1346a (Fla. 3rd DCA May 22, 2019)

Father filed a Petition for Determination of Paternity and Mother Counter-Petitioned. Father failed to appear at court ordered mediation and his pleadings were struck. Trial proceeded on Mother's pleadings. Court unsuccessfully attempted to resolve the case based upon proffered statement by Mother's counsel and Father's statements about his income. No sworn testimony was offered. The court then entered a Final Judgment of Paternity and Parenting Plan. To enter a Final Judgment without a proper hearing was a denial of due process. Reversed and remanded.

Ripley v. Ripley, 44 FLA. L. WEEKLY D1934a (Fla. 5th DCA, July 23, 2019)

The parties divorced in 2016. Husband subsequently filed a Supplemental Petition for Modification of Alimony, and had this served upon the parties' adult daughter who resided with Wife. The Wife failed to respond and the clerk entered a default. Wife filed a motion to enforce the final judgment, a motion to quash services and a motion to set aside the default and set these for hearing. Husband cross-noticed a motion for default judgment, however as this had not been properly cleared Wife objected. The court, without hearing, entered the default and canceling the wife's motion for contempt. Wife filed an emergency motion to set aside the default. On hearing the court found the substitute service was correct and denying Wife's motion. Wife then filed a Motion to Disqualify the Judge and when this was denied a Writ of Prohibition. Although the court erred in granting husband's motion for default judgment prior to resolving the Wife's motion to quash service and set aside the default, the error did not demonstrate bias as the court subsequently granted a hearing on the Wife's motion and determined the motion was without merit. All other claims were time barred. Petition denied.

Skelly v. Skelly, 43 Fla. L. Weekly D2408a (Fla. 5th DCA, October 28, 2018)

Trial Court referred the Wife's Supplemental Petition on Modification of Child Support to the Magistrate. Husband timely filed an objection to the referral pursuant to Fl. Fam. L.R.P 12.490. The Magistrate heard the matter over the Husband's objection and the court entered an order on the R & R of the Magistrate. This was an error as a violation of the Husband's due process. The Circuit Court administrative order requiring a party to include in their objection to the magistrate a date and time for mediation is null and void as it places a burden on a party beyond required by the rule. Reversed.

Sweet v. Tucker, 44 Fla. L. Weekly D188a (Fla. 1st DCA January 7, 2019)

On December 20, 2017, the trial court issued an order of recusal in Appellant's case, and subsequently issued an order denying Appellant's motion to dissolve injunction, without prejudice to refile. In the order of recusal, the judge indicated that he was aware of the grounds for recusal at the hearing on Appellant's motion, but still issued the order denying Appellant's motion after the hearing. We therefore vacate the order denying Appellant's motion to dissolve injunction and remand to the trial court for a new hearing on the motion.

Writght v. Wright, 43 Fla. L. Weekly D2708b (Fla. 5th DCA, December 6, 2018)

Wife petitions for a writ of prohibition to preclude the assigned trial judge from further presiding over the dissolution of marriage litigation now pending against her husband. Wife alleged that the judge

suggested to Husband's counsel to file a motion to allow Husband access into storage sheds to discover certain assets that Wife allegedly was selling to a third person and to serve this person with a “motion and a hearing on [a] rule to show cause, and [the judge would be] happy to drag him in [to court].” Wife also asserted that during this hearing, the trial judge dissuaded Husband's counsel from seeking to amend his pleadings to interject Husband's business entity into the litigation. Here, assuming Wife's allegations to be true, the judge's suggestions to Husband's counsel on how to proceed reasonably created the appearance of favoring one party and, thus, was a departure from the judge's role as a neutral arbiter. Petition for Writ Of Prohibition Granted.

RELOCATION

Allende v. Veloz, 44 Fla. L. Weekly D533a (Fla. 3rd DCA, February 20, 2019)

Parents divorced in 2010. MSA provided that any relocation must be in compliance with section 61.13001. In November 2105 the Mother relocated with the child to Orlando after obtaining the Father's oral consent. In November 2017 the Father failed to return to the child to the mother after Thanksgiving and filed an Emergency Motion stating that the child was malnourished and requesting immediately physical custody of the child and appointment of a GAL. Mother countered with a Motion for Emergency Pick-up. The Court denied the Father's motion for physical custody and to suspend the Mother's timesharing, granted the request for the GAL, modified the parties timesharing to address transportation and denied the Mother's emergency pick-up order. The court specifically ordered that the child be permitted to return to Orlando as it was the least disruptive means of dealing with the child at this time and is in the best interest of the child. Section 61.13001 does not mandate that a child must be returned to the non-violating parent when the other parent relocates without following the requirements of the section. The trial court has certain discretion in fashioning appropriate relief in such situations. The trial court did not abuse its discretion in denying the Father's emergency motion for physical custody and allowing the child to return to Orlando. Affirmed.

Couperthwatte v. Couperthwaite, 44 Fla. L. Weekly D1211a (Fla. 1st DCA, May 6, 2019)

No abuse of discretion in denying Father's petition to relocate with the minor child but modifying the timesharing schedule base don the Father's permanent relocation to another state. Affirmed.

Hull v. Hull, 44 FLA. L. WEEKLY D1406a (Fla. 5th DCA, May 31, 2019)

Husband petitioned for relocation with the children to a 40-acre farm in Oregon. Prior to the court hearing the matter, the husband relocated to the farm without the children. At the conclusion of the hearing, the court found that the relocation was not in the best interest of the children pursuant to FL Statute 61.13001. Husband argues that court erred in not modifying his timesharing awarded to the Husband under the original order (every other weekend and dinner one night per week). Fl. Statute 61.13001 applies to the change in principal residence of a parent to a location more than 50 miles from the original residence. If the relocation is approved, then the court can determine a new timesharing. However, here, the court found that the relocation of the father was not in the best interest of the children. Therefore, the court had no jurisdiction to modify the timesharing when the relocation is not approved absent the husband filing a petition or count to modify timesharing under section 61.13. Husband's argument that the order violated husband's constitutional rights was not raised below and argument that order is against public policy to encourage contact with both parents could not be used to countermand the requirements of the plan language of the statute. Affirmed.

Miller v. Miller, 44 FLA. L. WEEKLY D1832a (Fla. 1st DCA, July 16, 2019)

Court granted father's temporary relocation with the minor children. However, the court engaged in unsound, prospective-based analysis of the children's best interest where there was uncertainty regarding the father's chief exam results, when the court acknowledged that this was a factor that needed to be resolved prior to relocation. Further, the courts determination of blanket neutrality regarding the statutory factors was not supported by competent, substantial evidence, as the court did not articulate how it reached it conclusions of neutrality. Reversed and remanded.

Parris v. Butler, 44 Fla. L. Weekly D417a (Fla. 2nd DCA, February 8, 2019)

The Wife moved with the parties two minor children to St. Croix on August 21, 2017. The Husband filed for divorce on December 14, 2017 and requested return of the children to Florida. The trial court failed to consider the statutory relocation factors in 61.13001 in ordering that the children be returned to Florida. The court's determination that the best interests of the children are served by their being in Florida to effectuate a time-sharing plan is not supported by the evidence presented at the hearings. Reversed and remanded.

Pearce v. Boudreaux, 44 FLA. L. WEEKLY D605a (Fla. 1st DCA, February 28, 2019)

Former Wife filed Supplemental Petition for Relocation and Former Husband filed objection pro se. Former Wife requested and court entered a order allowing relocation based upon Former Husband's objection be insufficient. Former Husband filed a Motion for relieve and an amended objection. A hearing was held and the court denied Former Husband's motion based upon insufficiency of initial objection. Fl. Stat. 61.13001 states that a relocation can only be granted without hearing if the respondent fails to file a timely objection, it does not say that the objection must be flawless in terms of legal sufficiency (lacks verification or specific facts). Trial court erred in granting relocation without a hearing. Reversed and remanded.

Sanabria v. Sanabria, 44 FLA. L. WEEKLY D540a (Fla. 3rd DCA, February 20, 2019)

Mother filed a Supplemental Petition for Relocation with minor children. Father retained counsel who filed a Motion for Additional Time to File a Responsive Pleading. The Mother then moved for an Order Allowing the relocation and a hearing was held. The trial court determined that the Father's failure to file the objection was due to the Attorney filing the motion and therefore good cause was show for the trial court to not enter an order allowing the relocation and a hearing was ordered on the relocation. At the hearing the court determined that, because a timely objection was not filed, the presumption is that the relocation is in the best interest of the children and the burden to establish that the relocation was not in the best interest of the children had shifted to the Father. Once the court found that good cause existed for the failure of the objection to be timely filed and determined the matter would proceed to hearing, the burden of proof in 61.13001(8) indicating the burden is on the parent seeking the relocation applied. In this case the court did not require the Mother to put on any evidence and required the Father to carry the burden of showing the relocation was not in the interest of the children. Reversed and remanded.

Saponara v. Saponara, 43 Fla. L. Weekly D2592a (Fla. 4th DCA, November 21, 2018)

During pending dissolution the Mother relocated with the child to Maryland. The Father was stationed with the Coast Guard in California. The court order a long distance parenting plan for contact in MD as part of the Final Judgment for Dissolution. The Wife then petitioned to relocate with the child to North Carolina. The Father objected because there is no coast guard base in NC. Trial Court did not err in allowing mother to relocate to NC. Under the statute 61.13001 the court has discretion to adjust timesharing without the need for finding of a change in circumstances required under 61.13(3). Therefore, the court did not abuse its discretion to adjust the timesharing and provide contact in CA for the Father. Affirmed.

STATUTES & RULES

In Re: Amendments to the Florida Evidence Code 90.204. 44 Fla. L. Weekly S161a

90.204. Determination of Propriety of Judicial Notice and Nature of Matter Noticed. --

(4) In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

In Re: Amendments To Florida Family Law Rule Of Procedure 12.407. 43 Fla. L. Weekly S637a

RULE 12.407. TESTIMONY AND ATTENDANCE OF MINOR CHILD

(a) Prohibition. Unless otherwise provided by law or another rule of procedure, children who are witnesses, potential witnesses, or related to a family law case, are prohibited from being ~~No minor child shall be~~ deposed or brought to a deposition, ~~brought to court to appear as a witness or to attend a hearing, or~~ from being subpoenaed to appear at any ~~hearing~~ family law proceeding, or from attending any family law proceedings without prior order of the court based on good cause shown ~~unless in an emergency situation.~~

(b) Related Proceedings. In a family law proceeding held concurrently with a proceeding governed by the Florida Rules of Juvenile Procedure, the Florida Rules of Juvenile Procedure govern as to the child's appearance in court.

(c) Uncontested Adoption. This ~~provision~~ rule shall does not apply to uncontested adoption proceedings.