2020

CASE LAW REVIEW

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AGREEMENTS

FOREST v THE ESTATE OF NORMAN DEAN KOHL, 45 FLA LAW WEEKLY D2598a (Fla. 4th DCA, October 23, 2019)

Trial Court erred in finding the express language of the settlement agreement is limited to the post-judgment sanctions and fee claims that the former husband asserted, and preserved to the former husband the right to proceed against the former wife on the second amended final judgment. The former wife's motion sought to prevent further post-judgment collection actions against the former wife. The former wife argues that the circuit court erred in not construing the settlement agreement as a full resolution of the parties' disputes. The Court based it's analysis on only one paragraph. The plain language of the other three paragraphs unambiguously indicated that the settlement agreement's scope was intended to resolve all claims which the former husband raised or could have raised against the former wife and the former wife's counsel, and that the paragraph upon which the circuit court relied was intended to simply describe the case. Reversed and remanded for entry of order granting wife's motion for order adopting settlement agreement and release, to enjoin and for protective order and to order closing of case.

HAEBERLI v HAEBERLI, 45 FL. LAW WEEKLY D992a (Fla. 5th DCA, April 24, 2020)

Parties entered into an agreement in 2008 which provided for alimony and child support for the parties severely disabled child. In 2017 Former Wife moved for modification of child support and alimony based upon a substantial change in circumstances. Former Husband argued that the court should be limited to the language of the MSA which provided for reasons to modify alimony or child support. The Court found that the Wife had established that she had greater needs for both alimony and child support and that the Husband had the ability to meet these greater needs. There was nothing in the MSA that made the provisions exclusive nor in any way limited or prohibited the application of the modification considerations found in F.S. 61.14. Affirmed.

HELLARD v SIEGMEISTER, 44 FLA LAW WEEKLY D2584a (Fla. 3rd DCA, October 23, 2019)

The parties were married in 1997 and separated in 2000. At that time the Wife filed for divorce and the parties entered into an MSA. The parties then reconciled without a final judgment of dissolution. In 2016 the parties filed a second Petition for Dissolution. The court granted Husband's Motion for Summary Judgment, dissolving the marriage and enforcing the terms of the MSA. The trial court properly considered the MSA as the Wife had raised it in her affirmative defenses. The Court considered the case of Cox v Cox, 659 So. 2d 1051 (Fla. 1995) holding that reconciliation or remarriage abrogates the executory provisions of a prior marital settlement agreement unless there is an explicit statement in the agreement that the parties intended otherwise. However, executed provisions of a prior settlement agreement are not affected by reconciliation or remarriage absent a reconveyance or a new written agreement to the contrary. Thus the transfers of property accomplished at the time of the initial MSA were upheld but the case is remanded for consideration of the property acquired by the parties following the execution of the MSA. Affirmed in part and reversed and remanded.

JUDY v JUDY, 45 FL LAW WEEKLY D501a (Fla. 2nd DCA March 4, 2020)

Parties entered into an MSA in 2012 providing the Wife with durational alimony for eight years. The alimony was non-modifiable except that "Husband's involuntary loss of employment shall be considered a substantial change in circumstances or an exceptional circumstance for purposes of modification." When Husband lost his job he moved for modification. Trial court imputed minimum wage to wife in determining reduced alimony. Nothing in the MSA indicated the parties intended to impute income to the wife in the event she failed to obtain employment following the divorce and so the trial court erred in failing to give effect to the MSA and the parties intentions. Reversed and remanded.

NISHMAN v STEIN, 45 FL L WEEKLY D907b (Fla 2nd DCA, April 17, 2020)

Parents had two children together but were never married. Mother had filed for dissolution claiming the parties were "married" under Colorado's common law. The parties came to an agreement to dismiss the dissolution of marriage and reserve jurisdiction on all parenting issues (timesharing & support). Each moved for temporary attorney fees. Father argued that the Mother had waived attorney fees in the language of the agreement: " Ms. Stein forever waives any and all claims for… attorney fees or any other possible claim associated with her relationship with Mr. Nishman except for timesharing, parenting plan and child support matters". Court erred in determining that the agreement was ambiguous as to temporary attorney fees with respect to parenting issues and because all waivers of attorney fees must be unambiguous attorney fees were allowed. This language was not ambiguous as to any waiver of fees with respect to parenting issues. However, temporary attorney's fees may not be contracted away or waived prior to final judgment in a paternity action. While the reasoning was in error the Court came to the correct conclusion (tipsy coachman doctrine). Affirmed.

PACK v WIECHERT, 44 FLA LAW WEEKLY D2929a (Fla. 1st DCA, December 10, 2019)

The trial court erred as a matter of law by granting the former husband's motion to compel and ordering the former wife to sign the lease, contrary to the unambiguous terms of the Final Judgment of Dissolution which ratified the parties' Marital Settlement Agreement. The parties owned property in Maryland which was rented at the time of the dissolution in 2013 but they agreed to attempt to sell. The trial court erred by denying the former wife's motion to dismiss. The terms of the Final Judgment and MSA clearly state the parties' agreement in regard to the Maryland property: The parties agreed to lease the property for no more than 12 months and to share the expenses of the Maryland property "commencing on July 1, 2013, and continuing for no more than 12 months." And the parties agreed that "[u]nder no circumstances shall either party have any obligation to contribute to this joint rental account or to directly make any mortgage payments on this property after July 1, 2014." Thus, the language of the Final Judgment and MSA is plain and unambiguous in that it requires the parties to cooperate to sell the property, but there was no obligation to continue to lease the property after the period outlined in the agreement. Although the Maryland property was still being leased in 2018, neither party was given a right under the MSA to lease the property after July 1, 2014. Here, the trial court's jurisdiction was reserved for the specific and limited purpose of assisting a sale of the property. Because the trial court's order is in direct conflict with the express terms of the parties' agreement, the court erred as a matter of law by granting the former husband's motion to compel and ordering the former wife to sign the lease, contrary to the terms of the Final Judgment of Dissolution and the MSA. Reversed and remanded.

ROMAINE v ROMAINE, 45 FLA. LAW WEEKLY D578b (Fla. 5th DCA March 13, 2020)

Husband sent Wife email with proposed terms of settlement agreement and equitable distribution spreadsheet. Husband signed all pages of proposed settlement. Wife made five handwritten changes to the agreement and then signed the agreement. When Wife attempted to obtain mandatory disclosure Husband moved to enforce the agreement. Court erred in concluding that the handwritten changes did not change the essential terms of the agreement. MSAs are subject to the law of contracts. An acceptance must be a mirror image of the offer in all material respects. The handwritten changes changed the essential terms with respect to alimony and child support. Therefore, it was a counter-offer and not an acceptance. Reversed and remanded.

RUDNICK v HARMAN, 45 FLA LAW WEEKLY D1748a (Fla. 4th DCA, July 22, 2020)

The parties entered into an MSA requiring mediation prior to filing any supplemental petition for modification of child support. Wife filed a Supplemental Petition to Modify Child Support. Husband moved to dismiss the Petition based upon not mediating prior the filing. The Husband refused to mediate prior to having his motion heard. The Wife then moved to waive mediation because Husband refused to schedule same. Court departed from essential requirements of the law in granting wife's motion to waive compliance with the MSA's pre-suit mediation requirement without holding an evidentiary hearing on the issue. Order granting motion to waive compliance quashed.

SOCOL v SOCOL, 45 FL LAW WEEKLY D482a (Fla. 4th DCA March 4, 2020)

At trial the parties stipulated regarding the amount of attorney fees to be paid by the Husband to the Wife. The Court then erred in entering an amount greater than had been stipulated. A stipulation properly entered into and relating to a matter upon which it is appropriate to stipulate is binding upon the parties and upon the Court. The court must not disturb the stipulation unless found to be ambiguous or in need of clarification, modification or interpretation. Reversed and remanded.

STEPHANOS v STEPHANOS, 45 FLA LAW WEEKLY D1515a (Fla. 4th DCA, June 24, 2020)

Parties were married in 1977, they separated in 1994 but reconciled in 1995 then in 1996 they entered into an Agreement so that the Wife could protect her assets. They separated again in 2003 they reconciled again. Then in 2013 they filed for dissolution again. Husband argued to enforce the Agreement but Wife argued that the agreement was void based upon the reconciliation in 2003. Court granted summary judgement stating that the executory provisions of the agreement were void. Trial court erred in treating the agreement as a marital settlement agreement and determining that the executory provisions of the agreement were unenforceable. The agreement was a postnuptial agreement where it was executed wile the parties were married with no evidence of a pending divorce. Thus their later separation and reconciliation did not abrogate the executory provisions of the postnuptial agreement as it would have abrogated a MSA. Reversed and remanded.

SUESS v SUESS, 44 FLA LAW WEEKLY D3028b (Fla. 2nd DCA, December 20, 2019)

Parties entered into a settlement agreement which provided "Wife will receive 50% of ***all*** retirement benefits from Husband; and she will remain the death beneficiary on each of these retirement accounts." Following dissolution in 2009 no QDRO was entered. In 2016 Wife moved for entry of a QDRO and clarification of the MSA. Trial court erred in finding that Wife was only entitled to 50% of the

retirement plan as of the date of the final judgment. Trial court relied upon Fl. Stat. Section 61.075(7) which provides that the Court can only award the marital portion of the retirement plans (the amount earned during the marriage). It is well-settled that parties to a dissolution of marriage may enter into settlement agreements imposing obligations that the trial court could not otherwise impose under applicable statutes. The subject provision of the MSAS is clear and unambiguous. The term "all" means "the whole amount, quantity or extent of". Thus, the clear meaning is that the Wife is entitled to 50% of all retirement benefits regardless of when earned (before, during or after the marriage). The trial court also erred in finding that the Wife was not entitled to the survivor benefits of the retirement plan. The Court interpreted the Fl. State Retirement Act (the Act) as only providing survivor benefits to the present wife and the parties did not provide for survivor benefits but rather "death benefits". The Act and the implementing rules expressly allow for someone other than the member's current spouse to be named beneficiary of the member's retirement account. Further, the fact that the pro se parties used the term "death benefit" rather than "surviving benefit" does not negate the clear intent of the parties with respect to the survivor benefits.

THILLOY v CICCONE-CAPRI, 44 FLA LAW WEEKLY D2835a (Fla. 3rd DCA, November 27, 2019)

Husband filed for dissolution in 2009. Parties reached a settlement in 2012 and the MSA was filed in the case. However, no final judgement was entered and the case was dismissed in 2013 for lack of prosecution. In 2017 Husband again filed for dissolution and Wife filed a motion for adoption and enforcement of the 2012 MSA. The court temporarily ordered Husband to pay the alimony and child support amounts from the MSA and ordered Husband to file a petition for modification of the MSA. The question presented in this case is whether the 2012 MSA terms may be enforced nunc pro tunc five years later and (in the case of arrearages of child support and alimony) via contempt, as opposed to enforcement in an ordinary civil money judgment for the months of non-compliance prior to the filing of the 2017 dissolution and the Former Wife's enforcement case. The trial court declined to consider or apply the Former Husband's affirmative defenses of laches and ruled without consideration of the Former Husband's petition for modification of the monthly child support and alimony amounts (based on the 2017 financial affidavits and alleged materially adverse changes in his ability to pay). The trial court's conclusion in open court that the doctrine of laches has been abolished in Florida is likely based on the heavy burden that must be borne by a party pleading laches in a dissolution proceeding, out it is legally incorrect. The Former Husband's pending petition for modification and affirmative defenses to the Former Wife's motion for enforcement of the 2012 MSA should have been considered before findings of contempt were entered. Contempt requires the contemnor's disobedience of a court order and may not be used to enforce what amounts to an intentional breach of a civil contract that has not been approved or adopted by a court. Contempt order vacated and case remanded for (a) enforcement of contractual remedies applicable to the period before the current action was filed, as available to creditors against debtors; and (b)determination of appropriate amounts of alimony and child support in the current proceeding, after considering the Former Husband's petition for modification and evidence regarding the financial circumstances of the parties and other considerations detailed in Chapter 61, Florida Statutes

ALIMONY

BARON v BARRON, 45 FLA LAW WEEKLY D1705a (Fla. 1st DCA July 15, 2020)

Trial court erred in not awarding permanent periodic alimony based on long-term marriage of twenty years. Because the presumption in favor of permanent alimony was not rebutted, the trial court abused its discretion in awarding durational alimony for twelve months instead of permanent periodic alimony. Further wife erred in denying wife's request for attorney fees. Reversed and remanded.

CURA v CURA, 45 FLA LAW WEEKLY D47a (Fla. 3rd DCA, January 2, 2020)

Trial court erred in awarding Wife alimony retroactive to the date of the initial petition without making specific findings of fact that the Wife had need for alimony back to that date. Reversed and remanded.

GILES v GILES, 45 FLA LAW WEEKLY D1658a (Fla. 2nd DCA, July 10, 2020)

Parties were married for sixteen years, eleven months before Husband filed for dissolution. Trial Court did not err in finding that this was a moderate term marriage. However, trial court erred in awarding rehabilitative alimony when wife did not expressly request rehabilitative alimony and insufficient evidence was presented as to the cost of necessary education and length of need. On remand court may consider the amount, the length of the award and the impact of the educational expenses. The Court also erred in the award of durational alimony. The court failed to make findings as to the Wife's need and there was no evidence presented as to what salary the wife might expect if she were employed following graduation from school or employed after the trial. Reversed and remanded.

HARKNESS v HARKNESS, 45 FLA LAW WEEKLY D1823a (Fla. 4th DCA, July 29, 2020)

Parties married for over nineteen years. Former Husband earned over $200,000 per year and Former Wife stayed home to care for the children. Pending the case Wife obtained employment earning $55,000 per year. The trial court determined that there was no legal basis for permanent alimony because there was no permanent impediment to the Wife financially sustaining herself. The trial court erred by failing to address the former husband's ability to pay alimony, as such a finding is mandatory under 61.08(2). The trial court did not address the former wife's need in terms of her expenses or her necessities as they were established during the marriage of the parties. Finally, it is not clear that the trial court applied the rebuttable presumption in favor of permanent alimony. Reversed and remanded.

MEJIA v MEJIA, 45 FLA LAW WEEKLY D1033a (Fla. 4th DCA, April 29, 2020)

Trial court erred in using his gross income and in failing to factor in his child support obligation to determine his net income. It was also unclear whether the trial court considered the $2,000 per month imputed to the Wife when it determined her need. Reversed and remanded.

ORTIZ v ORTIZ, 45 FLA LAW WEEKLY D1929a (Fla. 3rd DCA, August 12, 2020)

Fifteen year marriage and the court awarded $500 per month in alimony for three years. When making determination of alimony, a trial court is required to make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony. Failure to make specific factual findings as to the reasoning behind the award of alimony is abuse of discretion. Reversed and remanded.

PAUL v PAUL, 45 FLA LAW WEEKLY D1941a (Fla. 5th DCA, August 14, 2020)

The trial court failed to make a specific finding as to the Husband's net income. It failed to include the Husband's income from his 95% ownership in a closely held business. Reversed and remanded for specific findings as to the Husband's total net income.

PRICHER v PRICHER, 45 FLA LAW WEEKLY D1707c (Fla. 5th DCA, July 17, 2020)

Trial Court erred in awarding permanent periodic alimony in the case of a 13 year marriage without evidence of a need for permanent alimony. Trial court also erred in ordering Husband to make the Wife irrevocable beneficiary of his Life Insurance when no evidence was presented to warrant this order. Reversed and remanded.

RHODEN v RHODEN, 45 FLA LAW WEEKLY D1035b (Fla. 1st DCA, April 29, 2020)

This was a thirty-five year marriage. Wife's suffered from several ailments and her last income was $200 per week working for Husband. Trial court awarded Wife $610 per month as durational alimony for ten years. Trial court erred in not addressing the issue of presumption of permanent alimony nor explain why the presumption had been overcome. Trial court failed to justify its decision not impute income to the Wife without finding the wife was voluntarily underemployed and was not unemployed due to a physical incapacity beyond her control. Trial court erred in considering the parties' anticipated receipt of social security retirement benefits in ten years and using that date as an end for durational alimony. Trial court misapplied the law of durational alimony in stating the wife could seek to extend the durational alimony period as this can only be extended in exceptional circumstances. Reversed and remanded.

SCHROLL v SCHROLL, 44 FLA LAW WEEKLY D2734a (Fla. 1st DCA, November 13, 2019)

The parties' marriage of 32 years raised the rebuttable presumption that permanent alimony was appropriate, particularly considering the parties' relative roles in the family retail business and management of the family finances. In determining the Wife's need for alimony, the trial court overlooked the wife's testimony at the hearing that she received some investment income in the amount of $2,500 per month from her equitably distributed accounts. The trial court's finding in general that the former wife needed permanent alimony to pay her reported expenses was not an abuse of discretion, given the rebuttable presumption that permanent alimony is appropriate for a long-term marriage. However, because the trial court failed to consider the former wife's income resulting from the equitable distribution, the cause must be remanded for reconsideration of her unmet need for income. Reversed and remanded.

TORDINI v TORDINI, 45 FLA LAW WEEKLY D2089a (Fla. 5th DCA, September 4, 2020)

Trial court erred in awarding Wife permanent alimony in an amount that did not meet her basic needs when the Husband's income was sufficient to meet the Wife's and leaving him with a surplus. Reversed.

VAN MAERSSEN v GERDTS, 45 FLA LAW WEEKLY D1104a (Fla. 4th DCA, May 6, 2020)

Trial court erred in awarding wife an amount of permanent periodic alimony without determining the income she could receive from her share of certain equitably distributed marital assets. Trial court did

not consider the income wife would earn from the investment account and retirement account distributed to her

WALKER v WALKER, 45 FLA LAW WEEKLY D1067a (Fla. 1st DCA, May 1, 2020)

In making its determination to award permanent alimony, it failed to include findings that no other form of alimony was fair and reasonable under the circumstances as required by the statute. Reversed.

WILLIAMS v JONES, 45 FLA LAW WEEKLY D255a (Fla. 1st DCA, February 3, 2020)

This is a 16 year 11 month marriage. Wife suffered from health issues that the trial court found precluded employment. One month short of a long term marriage is not de minimis period and the trial court was permitted to overcome the presumption as to the length of the marriage necessary to qualify as a long term marriage. The Wife is 53 years of age but the party's age is not a valid basis to deny permanent alimony absent evidence that the receiving spouse's relative youth out allow that spouse to earn an income sufficient to support a life-style consistent with that enjoyed during the marriage. Affirmed as to alimony.

APPEALS

A.J.S. v E.D.E., 45 FLA. LAW WEEKLY D567b (Fla. 2nd DCA, March 11, 2020)

Appeal of judgment finding entitlement to attorney's fees without determining amount is premature and therefore dismissed.

ALBRA v SZENDY, 45 FLA LAW WEEKLY D1741a (Fla. 4th DCA, July 22, 2020)

Injunction for Protection Against Domestic Violence affirmed where Respondent failed to provide a transcript of the final hearing.

CROSIER v CROSIER, 44 FLA LAW WEEKLY D2883b (Fla. 1st DCA, December 4, 2020)

Appellant's having been given ample time to supplement the record with the hearing transcript, yet having failed to do so, we must affirm the trial court's order denying her motion to dismiss the Final Judgment of Injunction for Protection Against Domestic Violence with Minor Children.

DELGADO v MOREJON, 45 FLA LAW WEEKLY D1045a (Fla. 5th DCA, May 1, 2020)

Trial Court's order striking Former Husband's Amended Petition was done by mistake when Court believed Former Wife had answered the Petition and the Former Husband needed court leave to amend. Former Husband failed to raise the issue via a motion for rehearing or challenge the adverse ruling in any way. Therefore affirmed.

EATON v EATON, 45 FLA LAW WEEKLY D674d (Fla. 1st DCA, March 23, 2020)

The Wife challenges a final judgment of dissolution of marriage on the basis that the basis that the written judgment is inconsistent with the trial court's oral pronouncement. Because the alleged inconsistencies were never brought to the trial court's attention via a motion for rehearing the matter is not preserved for appellate review. Absent fundamental error, issues must be preserved for appeal. Affirmed.

KYLE v CARTER, 45 FLA LAW WEEKLY D375b (Fla. 1st DCA, February 19, 2020)

Former Wife was found in contempt for failure to following timesharing schedule. The case then proceeded to hearing on Former Husband's petitioned for modification of parenting plan to provide him with unsupervised and additional timesharing. The Court found that modification was appropriate. Former Wife then appealed both orders. The appeal of the order of contempt was not timely as it was an appealable final order and no notice was filed within 30 days.

LEOS v HERNANDEZ, 45 FL LAW WEEKLY D881a (FLA, 3rd DCA, April 15, 2020).

Mother petitions for relocation with minor child following Final Judgment. The matter is heard by the Magistrate and the Magistrate recommends the relocation. The Father timely files exceptions. Prior to the decision on the exceptions, the Mother relocates to a different location than what she requested in her petition. The Father appeals the decision. The appeal is dismissed for lack of jurisdiction as no final order of relocation was ever entered by the court. Dismissed without prejudice.

MURPHY v HUTCHENS, 45 FLA LAW WEEKLY D2085b (Fla. 5th DCA, September 4, 2020)

Mother appeals an order approving the report and recommendation of general magistrate regarding parenting plan in paternity action. She also complains that the magistrate was rude and her two attorneys incompetently represented her. As she failed to file exceptions to the R&R, review is limited to error on face of the order. No errors found. Affirmed.

NORTON v D.O.R., 45 FLA LAW WEEKLY D1672d (Fla. 1st DCA, July 13, 2020)

Notice of appeal was untimely where it was filed more than thirty days after rendition of administrative order to be reviewed.

O'STEEN v D.O.R., 45 FLA LAW WEEKLY D559a (Fla. 3rd DCA, March 11, 2020)

O'Steen failed to participate in the administrative proceedings by returning the forms for financial and parent information supplied to him by the D.O.R. and failed to provide a written change of address after being advised of the need to and the consequences for failing to do so. Thus he failed to preserve any issue for appeal. Affirmed.

PONOMARENKO v ESENOVA, 45 FLA LAW WEEKLY D1826b (Fla. 4th DCA, July 29, 2020)

Appeal from order denying relief from judgment dismissed as the notice of appeal was filed over four months after the court issued the order. Order denying the petition for modification is affirmed as the only issued raised in the initial brief were ones attacking the initial final judgment and not the modification proceedings. The trial court also did not abuse its discretion in allowing limited time to prepare a motion for disqualification of the judge during a trial.

RUOZZI v. WULFF, 45 FLA LAW WEEKLY D825c (Fla. 3rd DCA, April 8, 2020)

The former husband, appeals the trial court's March 25, 2019 "Order Adopting and Ratifying Report and Recommendation of General Magistrate Dated October 22, 2018." While the March 25, 2019 order "ratified and adopted" the general magistrate's report and recommendations, the order also specifically states that "[a] separate money judgment shall be entered." The Appellate Court lacks jurisdiction to review the March 25, 2019 order because it is a non-final, non-appealable order. Dismiss without prejudice to either party seeking timely appellate review.

SERNA v BOTEROB,45 FLA LAW WEEKLY D95a **(**Fla. 5th DCA, January 10, 2020)

Attorney's fees award not ripe for appellate review when trial court determined entitlement to fees but did not determine amount.

SMITH V. COOPER, 45 FLA. LAW WEKLY D411c (Fla. 5th DCA, February 21, 2020)

Record suggest that there was a lack of sufficient notice of the motion for contempt and hearing. However, Husband failed to raise the issues in initial appeal brief and therefore waived or abandoned any claim for relief. Affirmed.

THOMPSON v MELANGE, 45 FLA LAW WEEKLY D150b (Fla. 1st DCA, January 21, 2020)

Parties' marriage was dissolved in 2010 and the Final Judgment modified in 2017 providing Mother with majority timesharing and decision-making authority. In 2018 Father Petitioned for Temporary

Emergency and Ongoing Timesharing and other relief. Father also moved for immediate relief and a Motion to find the Mother in contempt. After a hearing on the motions, trial court entered in order finding the Mother in contempt for violating timesharing and certain parenting decision. The court reserved jurisdiction to determine make-up timesharing for the Father. Although not requested by either party, the Court also ordered a punishment schedule which the Mother was to impose should the minor child refuse to participate in the timesharing. The Court did not rule on the Father's request for modification, ordering the matter to be set for final hearing. This is a nonfinal order and therefore not subject to appeal under Rule 9.130 as it did not grant or terminate visitation rights or determine Father's right to immediate custody. However, trial court did depart from the essential requirements of law when it ordered a punishment schedule to be imposed if the minor child refused to attend timesharing with the Father. The writ of certiorari is granted with respect to the punishment provisions and denied other wife.

ATTORNEY FEES / COSTS

BENTRI v BENTRIM, 45 FLA LAW WEEKLY D485a (Fla. 4th DCA March 4, 2020)

The trial court declined to award attorneys' fees, simply stating "Neither party is awarded attorney fees and costs." The court erred by denying the Wife's motion for attorney fees without making findings of fact within the subject order. Reversed and remanded.

BOLLIGER v FRIES, 45 FLA LAW WEEKLY D1830a (Fla. 2nd DCA July 31, 2020)

One year after the trial for dissolution of marriage, the court issued a judgment which provided that each party will be responsible for paying their respective attorney's fees. The trial court failed to make necessary findings regarding the parties' respective financial needs and ability to pay attorney fees nor any other findings necessary for ruling on attorney fees. Reversed and remanded.

CARROLL v BRENNAN, 45 FLA LAW WEEKLY D71b (Fla. 4th DCA, January 8, 2020)

Attorney Carroll represented Wife Brennan in her dissolution of marriage action. At the conclusion of the action Attorney sought entry of a charging lien which was denied. This was appealed and affirmed. Court imposed attorney fees against Carroll as sanction but also for other factual determinations. The appeal as to the attorney fees was dismissed without prejudice as the court had awarded fees but not determined the amount so not a final order.

CHRISTENSEN v CHRISTESEN, 45 FLA LAW WEEEKLY D520a (Fla. 2nd DCA, March 6,2020)

Wife prevailed on motion for contempt and enforcement of Final Judgment but court denied her attorney fees request. The MSA provided that "if either party fails to comply with the provisions of this agreement, the defaulting party must pay all attorney's fees and costs incurred, including any fees and costs incurred for appeals, as a result of any enforcement action." Trial court erred in denying fees based upon the clear language of the MSA. Reversed and remanded.

DELGADO v MOREJON, 45 FLA LAW WEEKLY D1045a (Fla. 5th DCA, May 1, 2020)

Trial court did not commit error in granting Former Wife attorney fees based upon Former Husband's bad fait litigation when Former Husband filed Supplemental Petition for Modification of Child Support after quitting his job. Although attorney fee order lacked necessary findings as to reasonableness of hourly rate and hours expended, the issue was not raised in a timely motion for rehearing and therefore not preserved for appeal.

DIAZ-SIVEIRA v DIAZ-SILVEIRA, 45 FLA LAW WEEKLY D1013b (Fla. 3rd DCA, April 29, 2020)

Trial court erred in ordering husband to provide security for attorney's fees award where Wife had not requested such relief.

DUHAMEL v FLUKE, 45 FLA LAW WEEKLY D1061a (Fla. 2nd DCA, May 1, 2020)

Wife's former attorney withdrew prior to the conclusion of the case and her attorney entered a charging lien. At the conclusion of the case Wife's former attorney moved to impost the charging lien against the assets received by the wife in equitable distribution. Former Attorney admitted at the hearing that the "fruits of his labor" related only to the temporary support hearing as they had not gotten to equitable distribution when he withdrew. Trial Court erred in granting the charging lien in the amount of $18,466

and order no funds to be distributed to Wife until the attorney was paid. AS the only financial relief secured by attorney's efforts was temporary relief, the court could not impose the lien against assets distributed to Wife. Reversed.

HELINSKI v HELINSKI, 45 FLA LAW WEEKLY D1154b (Fla. 3rd DCA, May 13, 2020)

Parties entered into an MSA which provided for contribution by the Former Husband towards the Former Wife's initial fees and then each to pay their ongoing fees, except in any action for default, the prevailing party is to pay the other parties fees and costs. Four years later Former Husband filed a Petition for Modification of Parental Responsibility and timesharing and 18 months later Former Husband voluntarily dismissed the supplemental petition. Former Wife then moved for attorney fees pursuant to FL L R. Fam Proc. 12.420(c). Court denied the fees and costs under the terms of the MSA. Where the issue in litigation requires the trial court to determine what is in the best interest of the child, the trial court has the discretion to award attorneys' fees and costs pursuant to 61.16, notwithstanding any agreement between the parties purporting to prospectively waive the right to seek an award of attorneys' fees. Court found that Former Wife had no need for attorney fees under 61.16. However, Fl. Fam. L R. Pro. 12.420 required the trial court to award taxable costs to the former wife following the former husband's voluntary dismissal of his petition. Affirmed as to attorney fee denial but reversed as to assessment of costs.

J.A.L. v R.M.A., 4 FLA LAW WEEKLY D1633a (Fla. 2nd DCA, July 8, 2020)

No error in awarding appellate fees to Mother. Trial Court erred in allowing the father to wait until he has fulfilled his obligation to pay the mother's attorney's fees and costs before he is required to begin making $200 per monthly payments to the mother's appellate attorneys. Under this schedule it would be over twelve years before the fees were paid and the attorneys compensated. Reversed and remanded.

JOHANSSON v JOHANSSON, 45 FL LAW WEEKLY D780a (Fla. 4th DCA, April 1, 2020)

Former Wife brought two motions for contempt against Former Husband and sought attorney fees pursuant to 61.16. Court found Former Husband in contempt, awarded Former Wife reasonable attorney fees but reserved on the amount. The initial order was appealed and the DCA affirmed Per curium. The lower court then held an evidentiary hearing and found that while the former wife had a need, the former husband had no ability to pay former wife's attorney fees under 61.16.. The Husband then appeals the award of attorney fees from the initial order. The initial appeal did not decide the issue of attorney fees as the court had not issues as final order on the issue. The court erred in ordering the award of attorney fees when it later found that the Former Husband lacked the ability to pay. Reversed (Note, Former Wife never requested attorney fees as a sanction pursuant to the contempt motion)

KALIS v KALIS, 44 FLA LAW WEEKLY D2579b (Fla. 4th DCA, October 23, 2019)

Trial court erred in including with the assessment of attorney's fees and costs amounts for clerical work which the former Wife's attorney secretary performed. Reversed and remanded.

KOTLARZ v. KOTLARZ, 45 FLA LAW WEEKELY D996b Fla 1st DCA, April 27, 2020).

In Final Judgment of Dissolution Wife was awarded equalizing payment for equitable distribution. Former Husband never paid and Wife obtained a money judgment and then sought a writ of garnishment and writ of execution in supplementary proceedings. Wife requested attorney fees and costs pursuant to 61.16 to pursue the collections. Once Wife obtains money judgement she is a judgment creditor and subject to the same remedies as any other judgment creditor. Chapter 61 does not provide remedies for judgment creditors and therefore Former Wife cannot seek attorney fees under 61.16 for actions to collect the debt through Writ of Garnishment or Writ of Execution. Reversed.

LEVY v LEVY, 45 FLA LAW WEEKLY D1680a (Fla. 3rd DCA, July 15, 2020)

Parties had an MSA that provided "in the event that either party should take legal action against the other by reason of the other's failure to abide by this Agreement, the party who is found to be in violation of this agreement shall pay to the other party who prevails in said action, the prevailing party's reasonable expenses incurred in the enforcement of this Agreement". Husband brought action for contempt. The court denied the contempt but denied Wife's request for attorney fees. Pursuant to Fl. Stat. 57.105(7) "if a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract." Thus court erred in denying Wife attorney fees. Reversed and remanded.

McVETY V. McVETY, 45 FL L WEEKLY D842a (Fla. 2nd DCA, April 15, 2020)

Court ordered Husband to pay fees and costs totaling $181,735 including $45,401 in accounting fees. The parties stipulated to the Husband paying $28,000 towards the Wife's accountant fees. Husband objected to entry of evidence of the amount of fees in excess of the agreed amount. Court erred in awarding the higher amount. Reversed.

NAVARRO v VELOZ, 4 FLA LAW WEEKLY D2625a (Fla. 3rd DCA, 2020)

Trial court erred in denying Wife attorney fees based upon the fact that she had not properly plead for fees. Husband raised no objection to the demand for fees during the hearing and therefore was on notice. Reversed and remanded.

NISHMAN v STEIN, 45 FL L WEEKLY D907b (Fla 2nd DCA, April 17, 2020)

Parents had two children together but were never married. Mother had filed for dissolution claiming the parties were "married" under Colorado's common law. The parties came to an agreement to dismiss the dissolution of marriage and reserve jurisdiction on all parenting issues (timesharing & support). Each moved for temporary attorney fees. Father argued that the Mother had waived attorney fees in the language of the agreement: " Ms. Stein forever waives any and all claims for… attorney fees or any other possible claim associated with her relationship with Mr. Nishman except for timesharing, parenting plan and child support matters". Court erred in determining that the agreement was ambiguous as to temporary attorney fees with respect to parenting issues and because all waivers of attorney fees must be unambiguous attorney fees were allowed. This language was not ambiguous as to any waiver of fees with respect to parenting issues. Further, temporary attorney's fees may not be contracted away or waived prior to final judgment in a paternity action. While the reasoning was in error the Court came to the correct conclusion (tipsy coachman doctrine). Affirmed.

OFFICE v OFFICE, 45 FLA LAW WEEKLY D82b (Fla. 4th DCA, January 8, 2020)

The trial court's order awarding attorney fees simply stated Former wife was entitled to fees and cited Rosen v. Rosen to support that assertion. However, it is not apparent from the record that Former Wife had a need for fees. Further, the order does not list the specific factual findings necessary to conclude that the Former Husband engaged in inequitable conduct warranting fees based upon his conduct. Reversed.

ROOT v FEINSTEIN, 45 FLA LAW WEEKLY D2022a (Fla. 4th DCA, August 25, 2020)

Trial court denied Former Wife's request for attorney fees as a sanction for her misconduct in accessing the private emails of her former husband. Trial court failed to make specific findings setting forth the amount of reasonable fees and costs resulting from her misconduct. Reversed and remanded for appropriate findings.

SCHURR & HERTZ v SILVERIO & HALL, 45 FLA LAW WEEKLY D367b (Fla.2nd DCA, February 14, 2020)

Shurr and Hertz were the original attorneys for the Wife in the underlying dissolution action. Silverio & Hall were the attorneys for the Husband. Silverio withdrew as counsel and then filed notice of attorneys' charging lien. Husband entered Stipulation Judgment for attorney fees on Charging Lien. Husband and Wife then participated in mediation and entered into an MSA and Silvero was notified the same day. Attempts for collection against Husband was unsuccessful. Silverio then filed a motion to adjudicate a charging lien against Schurr and Hertz as well as Husband new counsel arguing that both counsel had an affirmative duty to notify Silverio of the settlement and to protect and cause Silverio's lien interest to be paid by the Husband in any settlement. Schurr and Hertz filed a motion against Silverio under 57.105. Both motions were denied. A charging lien can only attach to the proceeds that are awarded to the client as part of the equitable distribution of property. Silverio testified that he had no admissible evidence to establish that Schurr and Hertz ever held any assets that were awarded to the Husband in the dissolution judgment. Further Silverio had notice one month of the settlement before the final judgement was entered. Under the circumstances, Silverio's claim was not support by the material facts necessary to establish its claim and was not supported by the application of the then existing law to the material facts. Section 57.105 requires the court to award attorney fees when the losing attorney knew or should have known that the claim o defense when initially presented was not support by the marital facts necessary to establish the claim or would not be support by the application of then-existing law to those marital facts. Trial Court erred in denying Schurr & Hurtz motion for attorney fees under Section 57.105. Reversed and remanded.

SCHUTT v SCHUTT, 44 FLA LAW WEEKLY D3055a (Fla. 1st DCA, December 23, 2019)

Successor judge erred in increasing former wife's income beyond that established in the final judgment of dissolution. Trial court also erred in denying Wife's request for attorney fees where there was significant disparity in the parties' incomes and assets.

STEWART v STEWART, 45 FLA LAW WEEKLY D254a (Fla. 1st DCA, February 3, 2020)

In first appeal Court granted provisional attorney fees. Trial Court found Husband had ability to pay from his share of the equitable distribution of assets. This was error. The court made no findings to

support finding that Husband had superior financial position from income or other sources to support award of attorney fees.

SOLOMON v SOLOMON, 44 FLA LAW WEEKLY D2494c (Fla. 3rd DCA, October 10, 2019)

Trial Court properly considered the party's need and ability to pay when awarding Wife's attorney fees and costs. Affirmed.

TUTT v HUDSON, 45 FLA LAW WEEKLY D1498a (Fla. 2nd DCA, June 24, 2020)

Trial court erred in limited Husband's award of attorney fees from the Wife based upon the Husband's contentiousness without making findings explaining what portion of the former husband's fees were occasioned by his misconduct.

VERGNE v GLIDEWELL, 44 FLA LAW WEEKLY D2748a (Fla. 4th DCA, November 13, 2019)

Trial Court erred in ordering the Wife to pay 100% of the attorney fees and costs incurred by the Husband in the partition action following the divorce of the parties. Pursuant to Florida Statute 64.081 attorney fees must be assessed in proportion to he party's interest in the property.

WILLIAMS v JONES, 45 FLA LAW WEEKLY D255a (Fla. 1st DCA, February 3, 2020)

Trial Court erred in awarding Wife attorney fees after equal distribution of assets and liabilities and when incomes were relatively equal after consideration of alimony and child support. Reversed and remanded.

ZHOU v IN RE: THE MARRIAGE OF YUWEN CHEN & YAN LIU, 45 FL LAW WEEKLY D509a (Fla. 3rd DCA, March 4, 2020)

The court erred in entering sanctions when attorney Zhou failed to appear for a scheduled divorce trial. Zhou had filed a Motion to Continue the trial indicating she had a scheduling conflict with a federal immigration proceeding. Zhou sent an attorney to argue her motion on the date of the trial. Attorney Zhou did not have notice and an opportunity to be heard and present evidence prior to the imposition of sanctions. Further the court made none of the requisite findings of bad faith when imposing the sanctions.

ZIEGLER v ZIEGLER, 45 FLA LAW WEEKLY D1644d (Fla. 5th DCA, July 10, 2020)

Trial court correctly entered a writ of garnishment finding that the wife failed to meet her burden of proving that she is the head of household such that the statutory exemption applies. Trial court erred in ordering the Wife to pay his attorney fees pursuant to Section 57.115.

CHILD SUPPORT

BOUKZAM v JUGO & D.O.R., 45 FLA LAW WEEKLY D635a (Fla. 4th DCA, March 18, 2020)

In paternity action, parties entered into an agreement that Father would pay child support directly to the Mother despite the fact that the mother was on public assistance. D.O.R. approved the agreement in error. D.O.R. moved to set aside the Final Judgment and court denied the motion but modified the Final Judgment to order payment through the state depository. Court erred in modifying the Final Judgment without a finding that there was a substantial change in circumstances. However, Court is directed to reconsider the Motion to Set Aside pursuant to Fl. R. Fam. Pro. 12.540(b)(1) on the grounds of mistake, inadvertence, surprise, or excusable neglect. Reversed and remanded. Long discussion of need for Title IV-D cases to require payments through the depository.

CARTER v CARTER, 45 FLA LAW WEEKLY D868a (Fla. 4th DCA, April 15, 2020)

The court erred in calculation of child support by miscalculating childcare costs. The Court court further failed to give credit to Husband for amounts he paid to Wife for the children's benefit during the retroactive period. The Husband was providing support of $900 per month to the Wife in children including payment of the mortgage and he should have been credit for this amount. Reversed and remanded with respect to child support calculations and retroactive support.

CRESPO v WATTS, 45 FLA LAW WEEKLY D1938b (Fla. 1st DCA, August 12, 2020)

Mother was receiving public assistance and D.O.R. brought child support action. Mother provided no income information. Court erred in imputing mother's 2018 income to her as the ALJ could not determine if mother's unemployment was voluntary. Section 409.2563(6) required ALJ to presume mother was capable of earning federal minimum wage. Therefore, ALJ was required to impute minimum wage income to the Mother.

FERNANDEZ v FERNANDEZ, 45 FLA LAW WEEKLY D1841a (Fla. 3rd DCA, August 5, 2020)

Minor child was born with Downs Syndrome. When the parties divorced they entered into an MSA which provided support until the child turned 18 years. When the child was 26 years old, she filed a Petition for Support from her Father as an adult dependent child as she was unable to support herself and was reliant on her mother for support. Trial Court erred in dismissing the Petition for lack of subject matter jurisdiction, finding that the case should have been brought before the child turned 18 years of age. FL law provides a duty of a parent to support an adult dependent child who is unable to support herself because of a mental or physical incapacity that began prior to the child reaching majority. Whether the case should have ben heard in the family division or some other division of he circuit court is immaterial to the question of the courts subject matter jurisdiction. Court erred in awarding attorney fees pursuant to Fl. Stat. 57.105. Reversed and remanded.

IANNI v IANNI, 45 FLA LAW WEEKLY D1120b (Fla. 5th DCA, May 8, 2020)

In determining Husband's retroactive child support obligation, the trial court erred in failing to consider the mortgage payments paid by Husband during the pendency of the litigation. Reversed.

JONES v JONES, 44 FLA LAW WEEKLY D3021c (Fla. 1st DCA, December 20, 2019)

Trial court erred in improperly allocating medical expenses. Trial court also erred in calculating ongoing child support for three children when the eldest had already aged out. Finally trial court erred in calculating retroactive child support when guidelines worksheets showed Husband's income had increased for part of the retroactive period.

JORGENSEN v TARGARELLI, 45 FLA LAW WEEKLY D1599b (Fla. 5th DCA, July 2, 2020)

Trial court incorrectly imputed income to the Wife by relying solely on her past earnings. Competent and substantial evidence supported the findings that the Wife was underemployed. However, the Husband bore the burden to show both employability and that jobs are available. Trial court further erred in classifying Husband's monthly payments to the Wife for equalizing payments as a business expense. Reversed and remanded.

LEWIS v D.O.R., 45 FLA LAW WEEKLY D1443a (Fla. 1st DCA, June 15, 2020)

DOR concedes error regarding determination of total retroactive child support. Reversed and remanded for recalculation.

MARENCO v MARENCO, 45 FLA LAW WEEKLY D1798b (Fla. 2nd DC, July 29, 2020)

Trial court erred in failing to allow wife to include the loss from her nonmarital rental property as negative income in calculating her gross income for child support purposes. Reversed and remanded.

MIRABELLA v MIRABELLA, 44 FLA LAW WEEKLY D2981a (Fla. 2nd DCA, December 18, 2019)

On June 2, 2016 Husband fled Petition for Dissolution. On December 9, 2016 D.O.R. filed a notice of proceeding to establish an administrative support order. On February 28, 2017 a final administrative support order was entered, establishing the Wife's child support at $1,598 and her arrearage at $16,388. In September 2017 Wife filed a motion to adjust temporary child support based upon alleged inaccuracies and changes to temporary timesharing and income. In June 2018 the court entered an order for temporary support finding that the husband should have imputed income of $15 per hour for 40 hours per week, arrearages were now $20,452 and changes to child support would only be perspective, and reserving jurisdiction to determine any changes to the retroactive child support. Child support was then retroactively reduced to $877 to April 2017 (the date of the final hearing in the dissolution proceedings). The administrative support order is a final order that may only be retroactively modified as provided by FL. Stat. 61.14(1)(a) which does not allow modification prior to the date that the modification was sought and allows modification of retroactive support is supported by change of circumstances. If found to be warranted support can only be modified to date Wife filed motion for modification. No error to impute income to the Husband at $15 per hourand implicit finding that Husband was under employed. Childcare expenses are deducted from child support not from income, therefore no error in calculating Husband's imputed income. Also, childcare expenses are only deducted from anticipated child support when actually paid so no error in failing to deduct anticipated child care expenses as no evidence was presented. Reversed and remanded as to modification of retroactive support. Affirmed as to imputation of income to Husband.

NEIGHBORS v NEIGHBORS, 45 FLA LAW WEEKLY D199b (Fla. 1st DCA, January 23, 2020)

Parties entered into MSA that provided that the parties would divide all medical expenses not covered by insurance except that, if either party utilized a non-approved provider, that party is to be solely

responsible for any resulting expenses unless the other party has provided written consent for the treatment. Former Wife took child to non-covered provider when she knew it was not covered and the Former Husband had not consented in writing. The insurance covered some of the expense and Former Wife sought to recover Former Husband's share from him. Trial Court erred in finding that the clinic was a covered provider because the insurance had paid a portion of the outstanding bill. There was no evidence that the clinic was an "in network" or approved provider and there was no evidence that the Former Husband had approved the use of the clinic. Reversed and remanded.

PAUL v PAUL, 45 FLA LAW WEEKLY D1941a (Fla. 5th DCA, August 14, 2020)

Trial Court erred in failing to include the alimony the Wife was to receive in her income for purposes of calculating child support. Reversed and remanded.

PHAGAN v McDUFF, 45 FLA LAW WEEKLY D1161d (Fla. 5th DCA, May 15, 2020)

Four days before the minor child turned 18 Mother filed a Supplemental Petition to establish dependency and ongoing support for child. Child had been seriously disabled and unable to care for herself since she was 3 weeks old. Trial court dismissed the petition finding that the Father had fulfilled his support obligation when the child turned 18 years of ag and the child had not been adjudicated dependent before she turned 18 years old. Trial court erred as Mother had filed her supplement petition before the child turned 18 years old.

TUTT v HUDSON, 45 FLA LAW WEEKLY D1498a (Fla. 2nd DCA, June 24, 2020)

Trial court erred in imputing income to the Husband based upon Husband's testimony that he could earn $500 per day if he started a limousine business as this amount is aspirational. The Husband had not earned more than $60,000 per year prior to the hearing. The courts imputation of income in the amount of $125,000 per year starting in 2017 is not supported by competent substantial evidence.

WILLIAMS v BOSSICOT, 45 FLA LAW WEEKLY D1612a (Fla. 4th DCA, July 8, 2020)

Trial court found that the Father had 23% of the overnights with the child but failed to calculate the child support using the grossed-up method for substantial timesharing. Because child support will differ between even and odd years based upon the timesharing schedule, the court may order an award that averages the two figures. Reversed and remanded.

WILLIAMS v. GONZALEZ, 45 FLA LAW WEEKLY D960a, (Fla. 4th DCA, April 22, 2020)

Court erred in using Father's gross income rather than his net income, taking into consideration of the North Carolina state taxes he is paying where he lives. Trial court erred in allocating all expenses for transportation costs and supervision costs for visitation to the Father. The cost of transportation and supervision should be shared by the parents in accordance with the financial means of each parent. Retroactive child support should be based upon the income each parent was earning at the time of the obligation rather than using present income going back to time of separation. Reversed.

DISCOVERY

LAFOREST v LAFOREST, 44 FLA LAW WEEKLY D2952a (Fla. 4th DCA, December 11, 2019)

Husband's petition for writ of certiorari is granted in part and trial court's order requiring disclosure of his mental health treatment records. The trial court departed from the essential requirements of law in failing to provide for the mandatory in camera inspection to ensure that only relevant documents and information are disclosed.

McFALL v WELSH, 44 FLA LAW WEEKLY D2608a (Fla. 5th DCA, October 25, 2019)

In a child support modification proceeding, Former Wife provided to Former Husband her tax returns but redacted information regarding her new husband's income. Former Husband moved to compel Former Wife to provide an unredacted copy of the return. The trial court erred in granting the motion to compel. The new husband had a constitutional right to prevent disclosure of his privacy regarding his information in the joint return unless Former Husband can show it's relevancy. Reversed and remanded.

STIVELMAN v STIVELMAN, 45 FLA LAW WEEKLY D1624b (Fla. 3rd DCA, July 8, 2020)

Wife sought a writ of certiorari in order to quash the order granting certain third party motions for protective orders and sanctions. Wife sought discovery from several third parties by subpoena. Court quashed the subpoenas finding wife had not sought the records from the Husband. Days before trial, Wife served trial subpoenas to the same third parties seeking same documents for trial. Court granted motion for protective order and sanctions against wife for attorney fees for 3rd parties. Any modification of alimony ordered at trial could be remedied by appeal. Wife failed to show any irreparable harm resulting from the orders and therefore certiorari denied.

ENFORCEMENT

ALLEN v. ALLEN, 45 FLA L WEEKLY D963a (Fla. 4th DCA, April 22, 2020)

Parties entered into Marital Settlement Agreement which provided in pertinent parts (1) a full waiver of alimony, (2) an equalizing payment of $5,000 per month for 120 months (totaling $600,000), and (3) Life insurance on the Husband's life in the amount of $400,000. If the Life Insurance was insufficient to cover the full equalizing payment at the time of the Husband's death, the Husband's estate would pay the amount still owed. Husband died shortly after the entry of the Final Judgment. Wife received the $400,000 from the Life Insurance. Husband's estate paid only $140,000 as the remaining amount owed claiming that the fact that the Wife was receiving the full sum in advance they were entitled to reduction in the amount for the present value of money. (Relying on Buoniconti v. Buoniconti, 36 So. 3d 154, (Fla. 2d DCA 2010)). As this was clearly by the terms of the contract an equalizing payment and not lump sum alimony paid over-time Buoniconti does not apply. Property settlement is not subject to modification and the plain language provides for full payment. Reversed.

BELL v BELL, 45 FL LAW WEEKLY D978a (Fla 1st DCA, April 23, 2020).

Court failed to provide time for the Wife to present evidence related to her Motion for Enforcement for payment of child related expenses after hearing Husband's Supplemental Petition to Modify Timesharing. She neither abandoned nor is the issue moot and therefore reversed to allow her to present evidence relevant to her motion.

BISS v BISS, 45 FLA LAW WEEKLY D577a (Fla. 5th DCA, March 13, 2020)

Court properly found Husband in in civil contempt for claiming both children on his Federal Taxes. However, Court erred in ordering the payment in an amount that was in excess of what was necessary to compensate the Former Wife for her actual loss. Reversed and remanded as to sanction.

CARTER v HART, 45 FLA LAW WEEKLY D366 b (Fla. 5th DCA, February 14, 2020)

Trial court's contempt order affirmed to the extent it found that Former Husband had the ability to pay his alimony obligation, but willfully failed to do so. However, reversed the contempt order to the extent that it required Former Husband to pay a purge amount of $6000. The amount was based upon finding that Former Husband owned a motorcycle worth $6,000 but failed to account for the lien against the motorcycle in excess of that amount. Reversed.

CHEVALIER v EMMERSON, 45 FL LAW WEEKLY D1687a (Fla. 4th DCA, July 15,2020)

Parties divorced in TX and Mother moved with children to FL. Father filed contempt against Mother for failing to denying timesharing and a Supplemental Petition for Modification. Mother was found in contempt and ordered to provide Father with makeup timesharing. Mother again failed to facilitate timesharing and Father again brought contempt motion. Mother's attorney withdrew and Mother requested continuance on motion hearing and trial claiming medical reasons. Hearing proceeded and Mother found in contempt. Father provided custody of the children and sole parental responsibility. Trial Court abused its discretion by temporarily changing timesharing where the timesharing schedule was already established by the final judgment, the Petition to modify timesharing was pending and the Father had not plead nor proven an emergency. Reversed and remanded.

D.O.R. O/B/O BEAN v ROBINSON, 44 FLA LAW WEEKLY D3040a (Fla. 5th DCA, December 20, 2019)

The D.O.R. appeals an order denying a petition for contempt brought against the Father for failure to pay child support arrearages. The trial court erred in denying the petition because the Mother was not present at the hearing. Mother's presence nor testimony was necessary for the hearing.

FOREMAN v JAMES, 45 FLA LAW WEEKLY D1681a (Fla. 3rd DCA, July 15, 2020)

The underlying order upon which a contempt was found was reversed on appeal. The order for attorney's fees and costs is also reversed as these were based upon the contempt order. Writ of Certiorari granted and underlying orders quashed.

GREEN v LOSADA, 44 FLA LAW WEEKLY D2710a (Fla. 3rd DCA, November 6, 2019)

We find no abuse of discretion in the trial court entering a composite post-judgment order enforcing the terms of a mediated marital settlement agreement ("MSA") ratified in the final judgment dissolving the parties' marriage, and a final judgment awarding child support arrearages and attorney's fees and costs. Affirmed.

JACOBS v JACQUES, 45 FLA LAW WEEKLY D1905 (Fla. 2nd DCA, August 12, 2020)

Parties entered into an MSA providing the Wife with $1,000 bi-weekly alimony for eight years. The Wife later brought an action for contempt. The trial court found the Husband in contempt and ordered him to continue to pay the alimony as well as attorney fees and travel costs. The trial court erred in failing to include findings that the Former Husband had the present ability to pay alimony and that he willfully failed to comply with his alimony obligations. The ruling was also deficient as to findings as to need and ability to pay.

KOZEL v KOZEL, 44 FLA LAW WEEKLY D2865a (Fla. 2nd DCA, November 7, 2019)

Parties entered into an MSA which provided in party that Husband was to transfer certain shares of stock to Wife and provide her with certain information for tax purposes. When Husband failed to provide the stocks and provided the wrong tax information Wife brought action to enforce. Trial court found in wife's favor and awarded over $38,000 in damages to the Wife. Trial court erred in awarding money damages to Wife where agreement did not specify the damages sought by Wife. The question in this case is whether and to what extent a court's continuing jurisdiction to enforce a final judgment extends to claims for money damages for breaches of a settlement agreement that it incorporated into the final judgment and retained jurisdiction to enforce. The supreme court has determined that if a party is claiming a breach of the agreement and is seeking general damages not specified in the agreement, the appropriate action would be to file a separate lawsuit. When a court awards damages as a substitute for a party's performance, it is not engaged in legitimate post judgment enforcement but rather is considering a separate claim for breach. Reversed as to money damages not permitted under the terms of the MSA or reserved by the court in the final judgment.

MANZARO v D'ALESSANDRO, 44 FLA LAW WEEKLY D2597a (Fla. 4th DCA, October 23, 2019)

The court held the Father in direct criminal contempt after the father's repeated uncontrollable interruptions and outbursts during a hearing. The court did not comply with Florida Rule of Criminal Procedure 3.830's requirements before entering the order and sentence. The circuit court did not

inquire as to whether the father had any cause to show why he should not have been adjudged guilty of contempt by the circuit court and sentenced therefor. The circuit court also did not give the father the opportunity to present evidence of excusing or mitigating circumstances as required by the statute. Appeal court was sympathetic to the trial judge's need to maintain order and safeguard the participants in the courtroom but the statute requirements were not met. Reversed and remanded.

MUSZYNSKI v MUSZYNSKI, 45 FLA LAW WEEKLY D65a (Fla. 5th DCA, February 14, 2020)

While competent, substantial evidence supports the trial court's conclusion that Former Husband breached his post-judgment obligations, the order on appeal did not actually impose sanctions. Rather, it warned Former Husband of the potential for sanctions if he did not comply in thirty days. Accordingly, this is not a final order, and we dismiss the appeal and remand for further proceedings.

PACE v PACE, 45 FLA LAW WEEKLY D1046a (Fla. 5th DCA, May 1, 2020)

Trial court erred in ordering Former Husband jailed pending payment of purge when there was insufficient evidence of his present ability to pay. The fact that Former Husband occasionally barrows money from his various friends to satisfy the purge orders is not an appropriate consideration in determining a purge amount. Trail court also failed to make findings that Former Husband failed to make the required payments while having the ability to make such payments.

PEREZ v BORGA, 44 FLA LAW WEEKLY D2595e (Fla. 4th DCA, October 23, 2019)

Former Husband found in willful contempt and ordered incarcerated as a sanction for failure to make ordered alimony payments. The contempt order failed to make the required separate affirmative finding that the Former husband had the present ability to pay the purge amount and the factual basis for such findings. No Motion for Rehearing is required because this rule is too restrictive and frustrates the requirement of the findings in the order. Reversed and remanded.

PERNETTI v PERNETTI, 45 FLA LAW WEEKLY D446a (Fla. 3rd DCA, February 26, 2020)

Former wife petitions for a writ of certiorari, seeking relief from the trial court's order finding her in indirect criminal contempt for her failure to comply with prior orders and directing that she serve a weekend in the county jail, complete anger management, and pay a sanction toward the attorney's fees of the former husband. The trial court failed to comply with procedural requirements for indirect criminal contempt proceedings and deprived the former wife of the constitutional due process protections to which she is entitled. Reversed.

SOSA v PORTILLA, 45 FLA LAW WEEKLY D1765a (Fla. 3rd DCA, July 22, 2020)

Husband failed to appear at a number of hearings in dissolution. Court issued an Order to Show Cause and when Husband again failed to appear a Writ of Bodily Attachment was issued and Husband was ordered to surrender his passports as contempt provisions. The Court then vacated the Order to Show Cause as Husband had not been properly served but retained the passports without a purge provision. Civil contempt requires a purge provision. Reversed and remanded.

VINSON v VINSON, 45 FLA LAW WEEKLY D1172a (Fla. 1st DCA, May 18, 2020)

Trial court initially ordered Husband to make an equalizing payment of $78,196 and if he failed to make timely payment it would be converted to alimony in the amount of $2,000 per month until the Wife's

death or remarriage. This was appealed and determined to be equitable distribution not alimony. The court then could not find Husband in contempt for failure to make the payments s equitable distribution can not be enforced by contempt.

WEBB v WEBB, 45 FLA LAW WEEKLY D2051a (Fla. 2nd DCA, August 28, 2020)

Former Husband appeals from a final judgment that awarded Former Wife nearly one million dollars in arrearage arising from the nearly twenty-year-old judgment that had dissolved the parties' marriage and incorporated their marital settlement agreement. The Former Husband maintains that the Former Wife's motion to enforce, which precipitated the judgment he now appeals, was barred by the statute of limitations. The question is whether enforcement of a marital settlement agreement's equitable distribution, when incorporated into a final judgment that reserved jurisdiction for its enforcement, is generally subject to the five-year statute of limitations governing written contracts or the twenty year statute of limitations for enforcing judgments. Trial court correctly found that the Final Judgment of Dissolution is subject to 20 year statute of Limitations and denying motion to dismiss. Former Husband's argument that the MSA must be merged into the Final Judgment in order for the agreement's terms to be enforce as a judgment. The fact that a MSA retains some legal existence apart from a final judgment that incorporates it does not denude the judgment of its efficacy. Affirmed.

WOLF v WOLF, 45 FLA LAW WEEKLY D622b (Fla 2nd DCA March 18, 2020)

Parties entered into an MSA and Parenting Plan in 2011. In 2014 the Wife cut off timesharing with the Husband and court ordered parties to attend family therapy. After another contempt motion the court found the Wife in willful contempt for violations of the Parenting Plan and Final Judgment. The Court found the Husband was entitled to 670 makeup days and ordered that the child shall live with the Husband and the Wife would have alternating weekends. Because the order contains no end date for the Husband to have all timesharing other than alternating weekends, it appears to effect a permanent change. The Court erred in permanently modifying the timesharing without a finding that the modification is in the best interest of the minor child. Modification in a contempt proceeding is permitted when there is affirmative pleading of a substantial change, that the modification is in the child's best interest, and there is sufficient notice of the proposed modification. If the Court was merely providing makeup time the order must calculate when the makeup time is completed. The court erred in finding the Wife in contempt on denial of timesharing. The parties could not agree upon a location for exchange of the child but the Wife offered a safe location and the Husband refused to meet her at the proposed location for exchange. The Court was correct in finding the Wife in willful contempt on refusal to participate in therapy. The Husband had offered several alternatives for the therapy and the Wife refused all. Reversed and remanded.

EQUITABLE DISTRIBUTION

BURNS v COLE, 44 FLA LAW WEEKLY D2834 (Fla. 1st DCA, November 26, 2019)

The only issue the parties asked the trial court to resolve regarded $125,000 they received from the former husband's mother. The agreement stated that the "Husband claims it is a loan," while "the Wife asserts that it was a gift to the parties," and "reserved this one issue for determination by the Court." The parties executed a promissory note to borrow funds from husband's mother to purchase a condominium during the marriage. Husband, his mother and brother all testified and the promissory notes was entered into evidence. Trial court erred in not treating this as a marital debt to be shared by the parties. On remand, the trial court need not make any determinations as to the true value of the promissory note securing the loan where the issue was not previously put before the court at trial.

DIAZ v DIAZ, 45 FLA LAW WEEKLY D600a (Fla3rd DCA, March 18, 2020)

Despite there being no transcript, an appellate court is authorized to reverse a judgment as a matter of law where an error of law is apparent on the face of the judgment. Here the trial court failed to make the requisite findings listed in Fl. Stat. 61.075(1) for making an unequal distribution of assets. Further the trial court erred in awarding the Wife "special equity" in the property. Special equity was abolished in 2008. Finally, the trial court failed to identify all significant marital and non-marital assets of the parties in the final judgment. Reversed and remanded.

DIAZ-SIVEIRA v DIAZ-SILVEIRA, 45 FLA LAW WEEKLY D1013b (Fla. 3rd DCA, April 29, 2020)

The parties had a Discover credit card debt in the amount of $14,200 which had been discharged by the credit card company. It was error for the court to distribute this debt to the Husband. The Husband argues that he may be liable for taxes on the discharged debt but that he had not received a 1099 form from the credit card company. The Husband had the burden to establish that this was a debt and he failed to carry this burden. Reversed and remanded.

DUBOSE v DUBOSE, 44 FLA LAW WEEKLY D3021b (Fla. 1st DCA, 2020)

Wife challenges the equitable distribution scheme in the amended final judgment dissolving the parties' marriage. In pertinent part, the trial court found that Mr. Dubose sold timber on marital land for $29,000 but did not share any of the proceeds with Ms. Dubose. Despite treating these proceeds as a marital asset, the trial court, likely through oversight, failed to include the proceeds in the equitable distribution plan. This was error. Reversed

FRANK v FRANK, 45 FLA LAW WEEKLY D2041a (Fla. 3rd DCA, August 26, 2020)

During the marriage the parties borrowed money from Husband's mother. The debt was not repaid and a money judgment was entered. Trial court erred in failing to give full faith and credit to intervenor/foreign judgment creditor's domesticated money judgment. Trial court erred in reducing the money judgment and refused to enforce the judgment against both parties jointly and severally in the full amount. The parties had not disputed the validity of the money judgement and therefore the trial court was precluded from inquiring into the merits of the cause of action.

FRETT v FRETT, 45 FLA LAW WEEKLY D2059c (Fla. 5th DCA, August 28, 2020)

Trial court erred in awarding Wife proceeds from the sale of marital home and undeveloped land and a vehicle and Husband two vehicles without making any findings as to the value of any of these assets as required by statute. Reversed.

GILES v GILES, 45 FLA LAW WEEKLY D1658a (Fla. 2nd DCA, July 10, 2020)

Trial court abused its discretion in determining property purchased during the marriage with the Wife's nonmarital funds was marital. The court had found the wife lacked credibility regarding the property, but the Husband's own testimony supported that nonmarital funds were used for purchase of one of the properties. The court also abused its discretion in valuing the marital residence because competent substantial evidence does not support the value assigned by the trial court. The court averaged the value provided by the Wife and the Husband, this is not appropriate. Reversed and remanded.

JOHNSON v JOHNSON, 44 FLA LAW WEEKLY D2649b (Fla. 1st DCA, October 30, 2019)

In the Final Judgment issued in 1998, the order stats "at the Husband's retirement, the Wife is entitled to receive one-half (1/2) of each [retirement] plans value as of the date of the filing of the Petition for Dissolution of Marriage. One-half of the value of both plans is $27,906, approximately." Twenty years later Former Wife filed a "Motion for Clarification and Motion for Entry of a Qualified Domestic Relations Order". The Trial court entered the QDRO stating the Former Wife was to receive the amount defined in the FJ plus or minus any appreciation or depreciation thereon. When a Final Judgment contains a sum certain or references the dollar value of a retirement plan, a monetary interest in the plan is created and the spouse with that interest is not considered an owner of the assets. Therefore, without ownership, a spouse cannot collect appreciation as to the plan's value. Wife was therefore not entitled to appreciation on the fixed sum. Reversed and remanded.

JONES v JONES, 45 FLA LAW WEEKLY D1043b (Fla. 5th DCA, May 1, 2020)

During the trial, Husband presented an equitable distribution chart and the Wife stipulated that she agreed with the "numbers and the columns that they were in". However, she stated in her closing argument that she did not have any funds to make an equalizing payment as indicated on the equitable distribution worksheet. Trial court erred in attaching the ED worksheet as a stipulated agreement as Wife clearly did not agree to making an equalizing payment. Reversed and remanded.

MARCONI v ERTURK, 45 FLA LAW WEEKLY D639a (Fla. 4th DCA, March 18, 2020)

The trial court entered a judgment of dissolution of marriage, but it declined to fashion an equitable distribution scheme, finding that it lacked sufficient evidence to do so. Case remanded for the trial court to take additional testimony to determine proper valuation of the properties and liabilities.

MARTINEZ-NODA v PASCUAL, 45 FL L. WEEKLY D751a (Fla. 3rd DCA, April 1, 2020)

The parties entered into an MSA which provided the Wife would transfer her ownership in their jointly owned home and property upon the Husband paying off certain debts to third parties. The Husband then filed bankruptcy to avoid the debts. The Wife then filed for partition of the real property still held as tenants in common. The Court granted the partition, ordered the sale and order the proceeds be used to payoff any outstanding mortgage and then divided equally. The partition was affirmed

however, the Court should have provided credit to the Husband for the property taxes and mortgage payments he made on the property for the decade between the dissolution and the partition. Affirmed in part and reversed in part.

NATHEY v NATHEY, 45 FLA LAW WEEKLY D420a (Fla. 2nd DCA, February 26, 2020)

Prior to the marriage the Husband owned a home titled in his sole name and encumbered by a mortgage. During the marriage the parties paid down the mortgage and then obtained a Home Equity Line of Credit (HELOC) which they then paid down. The trial court erred in finding the home to be marital. However, the increase in equity resulting from the payment of the mortgage was marital subject to distribution. Reversed and remanded.

NIEDERKOHR v KUSELIAS, 45 FLA LAW WEEKLY D1941b (Fla. 5th DCA, August 14, 2020)

Husband receive a large settlement from his previous employer. Wife spent substantial portions of these funds on cosmetic procedures, mortgage on the marital home, utilities, HOA fees and parties' health and car insurance. Trial court allocated these funds to the Wife in the equitable distribution scheme. Trial court erred in allocating the mortgage payments, utilities, HOA fees and insurances to the Wife as they benefited both parties and were marital expenses. The court properly determined the expenditures for the wife's personal benefits including for cosmetic procedures. Reversed and remanded.

ORTIZ v ORTIZ, 45 FLA LAW WEEKLY D1929a (Fla. 3rd DCA, August 12, 2020)

The parties stipulated that the marital component of the Wife's nonmarital home subject to equitable distribution was $116,403. The final judgment acknowledged the amount as marital property but failed to distribute the sum in the equitable distribution scheme. The Final Judgment does not include the requisite statutory findings pursuant to Sec. 61.075. Reversed and remanded.

RHOULHAC V. FRANCOIS, 45 FL L. WEEKLY D937b (Fla. 4th DCA, April 22, 2020).

The Final Judgment entered in 2009 provided that "the parties lived in a home that was purchased during the marriage. Only the Husband's name is on the mortgage. The marital home is marital property… The parties did not present any evidence as to the value of the marital home… The Wife shall have exclusive use and possession of the home until the youngest child turns 18. The Wife shall be responsible for all mortgage payments on the marital home... The Wife is entitled to credit for half of the payments made to reduce the mortgage principle… the court retains jurisdiction to enforce and modify and clarify the terms of this Judgment." In 2018 when the child turned 18 the Wife filed a Supplemental Petition to recover her interest in the martial home which the Husband had provided to his brother. The Wife also moved to join the Husband's brother and his wife to the case based upon the alleged fraudulent transfer. It was error to grant the Husband's motion to dismiss with prejudice and deny the Wife's Motion to amend her petition to allege the final judgment was ambiguous. Even without the reservation of jurisdiction, "where terms of a final judgment are ambiguous as applied to facts developing after the judgment, a court may clarify what is implicit in the judgment and enforce the judgment. This is not a modification of equitable distribution. Reversed to allow the Wife to amend her petition to allege ambiguity in the final judgment, for the court to value the home and to determine if the Wife is entitled to credits or set-offs upon the home's sale.

SAGER v SAGER, 45 FLA LAW WEEKLY D538a (Fla. 4th DCA, March 11, 2020)

The court intended an unequal distribution of assets and provided reasons for this unequal distribution, but it failed to identify the value of the marital home and the percentages to be apportioned. Further, the trial court made the requisite special circumstances warranting the need for a life insurance policy on the Husband, but the final judgment and record are devoid of any findings required regarding the current availability and cost of a policy and the former husband's ability to pay for it. Reversed and remanded.

STREET v STREET, 45 FLA LAW WEEKLY D1057b (Fla. 2nd DCA, May 1, 2020)

Trial court erred in classifying certain bank accounts and stocks as marital when they had been opened / purchased prior to the marriage and were listed solely in the Husband's name and there was no evidence that the accounts had been comingled. Other accounts were opened by the Husband during the marriage but funded solely with funds from his non-marital accounts and therefore should have been classified as non-marital. Trial court erred in classifying vehicles purchased with non-marital funds and titled solely in the Husband's name as marital. Trial court also erred in classifying the Wife's investment account as marital when it was inherited and there was no evidence of co-mingling. Reversed and remanded.

SUMLIN v SUMLIN, 45 FLA LAW WEEKLY D94b (Fla. 5th DCA, January 10, 2020)

Trial court erred in tax affecting Wife's retirement accounts but not tax affecting Husband's retirement accounts for equitable distribution. Trial Court also erred in calculating the correct allocation for a withdraw from Wife's retirement account for purchase of non-marital home. Reversed and remanded.

VAN MAERSSEN v GERDTS, 45 FLA LAW WEEKLY D1104a (Fla. 4th DCA, May 6, 2020)

Trial court erred in equitably distributing as marital assets to Husband certain accounts, even though they had been liquidated and spent prior to the final hearing. There was no evidence presented that the accounts had been depleted due to misconduct. Husband testified that the accounts had been liquidated to pay the Wife's temporary fees. The trial court made no findings as to whether the Husband could have paid the temporary fee awards without liquidating the accounts. Trial court also erred in awarding Wife a survivor benefit attached to Husband's pension without determining the value of the survivor benefit and determining who bears the cost of the benefit. Reversed and remanded.

YON v YON, 44 FLA LAW WEEKLY D2678a (Fla. 1st DCA, November 5, 2019)

Trial Court erred by applying the wrong cut-off date for determining whether assets were marital or nonmarital. Parties separated in September 2013. Wife filed petition for dissolution in May 2015 and the Final Judgment was entered in May 2017. In the final judgement, the court identified the numerous assets of both parties and identified the "premarital/nonmarital" assets to e excluded from equitable distribution, frequently reference the date of separation as the date for determining whether an asset was nonmarital. Florida Statute 61.075(7) clearly defines the cut-off date for determining assets and liabilities to be identified as marital is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution. Revocable trust funded by the Husband prior to the marriage did not become a marital asset when the funds were transferred from one investment company to another

during the marriage. Liquidation of funds in a nonmarital account and placing them in a joint account, even if for only 3 months, does comingle the transferred funds and cause them to be marital. However, court may consider the totality of the circumstances in determining whether an unequal distribution of marital assets is justified. Removing the transferred funds back to the account in the Hsuband's sole name does not then necessarily commingle all the funds in the Husband's investment account. The Husband maintains the burden of proof to establish what portion of the account remains nonmarital. Reversed and remanded.

EVIDENCE

A.V. v T.L.L., 45 FLA LAW WEEKLY D1881e (Fla. 2nd DCA, August 7, 2020)

Trial court erred in allowing the Mother's medical expert to testify by telephone over the Father's objection without a determination of good cause as required by FL Fam. L.R. Proc. 12.451(b). The error was not harmless and therefore Reversed and remanded.

DE HOYOS v BAUERFEIND, 44 FLA LAW WEEKLY D2970b (Fla. 1st DCA, December 16, 2019)

Mother brought Petition for Injunction Against Domestic Violence against Father for allegedly hitting the child in the head causing his head to hit the car window. Child reported incident to his therapist. Trial court erred in allowing the therapist to testify regarding the child's statements. The court found that it need not determine whether the child's statements to his therapist were admissible under Section 90.803(23) because a child's therapist can assert or waive the therapist patient privilege for communications relating to abuse of a child. However, the case relied upon was not an issue of hearsay but rather an issue of waiving privilege. Therapist's waiver of privilege did not obviate the need for the court to determine the admissibility under the hearsay statute. Unlike the sexual violence injunction statute, the domestic violence injunction statute contains no language suggesting that child hearsay statements in a sworn petition filed by a parent can support an injunction. The error to admit the testimony was not harmless when the only evidence ob abuse presented came from the child's hearsay statements. Reversed.

MAMONOV v MARRERO, 45 FLA LAW WEEKLY D1933d (Fla. 3rd DCA, August 12, 2020)

This is an appeal from a final judgment of injunction for protection against sexual violence. We affirm, based on substantial competent evidence in the record, section 784.046,Florida Statutes (2017), and our conclusion that the trial court did not abuse its discretion in conducting an in-camera interview of the twelve-year-old victim and considering the child's statements under section 90.803(23) of the Florida Evidence Code.

PERRAULT v ENGLE, 45 FL L WEEKLY D857a (Fla 4th DCA, April 15, 2020)

Child Testimony: The parents of a 3 year old child had a dysfunctional relationship. The Mother claimed that the child reported that the Father had sexually abused the child. In support of an injunction, the mother sought to admit statements allegedly made by the child to the mother, her parents and a statement made to a crisis center employee while law enforcement officers watched through video feed. Considering Fl. Stat. 90.803(23) regarding child hearsay statements, the court found there was no corroborating evidence of the child's statements to support admission of the statements. Because the court erred in admitting the child hearsay statements there was also error in granting the petition for domestic violence injunction. Reversed.

WALKER v HARLEY-ANDERSON, 45 FLA LAW WEEKLY D2116a (Fla. 4th DCA, September 9, 2020)

Text messages where were the sole evidence supporting the entry of an injunctions against stalking were not sufficiently authenticated and should not have been considered by trial court. Hardley-Anderson filed for Petition Against Stalking based upon 20 harassing text messages received over 6 months culminating in 15 messages in one day many of which were threatening. Respondent claimed she did not recognize the phone number on the texts and Petitioner claimed she knew they were from

Respondent because of the content and the fact that Respondent had said she would harass Petitioner's family after Respondent broke up with Petitioner's nephew. Testimony that a person received a text or email from another person is not sufficient, by itself, to authenticate the identity of the sender. In this case, there was no direct evidence that the messages were sent by Respondent. No one saw or heard Respondent send the messages. The messages appear to be from different phone numbers, and none of the origination numbers match the phone number of Respondent, according to her phone bill placed into evidence. The trial court did not analyze the content of the messages but simply found no other explanation as to who sent them. This is insufficient, particularly after our review of the messages themselves. As the proponent of admission of the evidence, it was the appellee's burden to prove the authenticity of the text messages as being sent by appellant. Thus, the trial court's rationale that no other explanation for the messages was offered placed on appellant the obligation of disproving their authenticity. This was error. Reversed and remanded.

FINAL JUDGMENTS

JENKINS v JENKINS, 45 FLA L WEEKLY D976a (Fla. 3rd DCA, April 22, 2020)

Court erred in finding the marriage was of a "short term" duration. All evidence supported that the marriage was a moderate term. The amendment on this point does not alter the substance or correctness of the other findings and conclusions within the final judgment. Remanded solely to correct this one point.

GUARDIAN AD LITEM

BOUCHARD v BOUCHARD, 45 FLA LAW WEEKLY D1642a (Fla. 2nd DCA July 8, 2020)

Parties stipulated to appointment of a Guardian Ad Litem (GAL) in dissolution case with minor children. The GAL filed a motion for protective order against the Husband's discovery requests and a motion to define the terms for payment of GAL fees. Husband then filed to have the GAL removed. The Court granted the Husband's motion for removal without hearing. Wife sought certiorari review of the order. The removal of the GAL would result in material injury that cannot be corrected on appeal therefore certiorari is appropriate. The court erred in granting the Motion to remove the GAL without hearing. The court also erred in granting the Motion to Remove the GAL generally. To disqualify an agreed upon guardian, the facts must be egregious, and the burden heavy. To do otherwise would invite any litigant who anticipates even a mildly unfavorable report by a guardian to seek the guardian's removal. Order quashed.

IMPUTATION OF INCOME

CARTER v CARTER, 45 FLA LAW WEEKLY D868a (Fla. 4th DCA, April 15, 2020)

Husband quit his job soon after Wife filed for dissolution and started his own business. Court then imputed income to him including what he was making with his previous job and additional income available to him including $6,000 for occasional yard work. While the appellate court determined that there was insufficient evidence regarding the income from the yard work the error was harmless as there was sufficient other evidence of Husband's income from other sources to substantiate the amount used in determining alimony and child support. Affirmed as to income.

JONES v JONES, 45 FLA LAW WEEKLY D1043b (Fla. 5th DCA, May 1, 2020)

The trial court found that, based upon Wife's resume and past job experience, Wife as able to work. Further the court found that the Wife could work full time as the minor children were no longer homeschooled. These findings were supported by substantial evidence. However, trial court made no findings about the Wife's employment potential, probable earnings based on work history, qualifications, or the prevailing wages in the community. Husband failed to present any evidence of available jobs that wife would qualify for or the salaries for those jobs. Instead he relied solely on her testimony regarding her previous jobs and salaries. Trial court erred in imputing Wife with income of $17.50 per hour as this was based solely on her past income.

WILLIAMS v. GONZALEZ, 45 FLA LAW WEEKLY D960a, (Fla. 4th DCA, April 22, 2020)

In paternity action, Father was living in North Carolina and Mother was living with child in Florida. Court found Father was underemployed and imputed to him the last income he earned when living in Florida. This was error as the relevant job market was North Carolina, and no evidence was presented at trial establishing the Father's earning potential in the area of his residence. Reversed and remanded.

INCOME

BROWN v NORWOOD, 45 FLA LAW WEEKLY D471a (Fla. 5th DCA, February 28, 2020)

Trial Court failed to consider Husband's ordinary and necessary business expenses when determining his grows income for purposes of alimony and child support. Court correctly determined that, as Husband was merely transporting goods and not selling the goods, he was not entitled to deductions for "cost of good sold" but he was entitled to other regular and ordinary business expenses. Reversed and remanded.

CURA v CURA, 45 FLA LAW WEEKLY D47a (Fla. 3rd DCA, January 2, 2020)

Trial court found Husband was voluntarily unemployed when he was living a very luxurious lifestyle financed by his mother and had not secured employment. No abuse of discretion. Affirmed

GONZALEZ v REYES, 45 FLA LAW WEEKLY D2050a (Fla. 2nd DCA, August 28, 2020)

Trial court erred by including child support payments received by Former Wife in calculation of her income for purposes of establishing her need for attorney fees contribution from Former Husband. Trial Court further erred in subtracting alimony payments from Former Husbands income when calculating his ability to pay Former Wife's attorney fees when the alimony amount had already been subtracted in the Final Judgment when determining his net income (double counting). Reversed and remanded.

HAUPT v HAUPT, 45 FLA LAW WEEKLY D212a (Fla. 1st DCA, January 29, 2020)

Former Husband had received variable bonus income over the three years prior to the entry of the final judgment of dissolution. Trial court erred in failing to include bonus income in Husband income for purposes of calculating child support. Reversed and remanded.

MARENCO v MARENCO, 45 FLA LAW WEEKLY D1798b (Fla. 2nd DC, July 29, 2020)

Trial court erred in failing to allow wife to include the loss from her nonmarital rental property as negative income in calculating her gross income for child support purposes. Reversed and remanded.

McVICKER v McVICKER, 45 FLA LAW WEEKLY D2059a (Fla. 5th DCA, August 28, 2020)

The trial court made no findings that supported its imputation of $72,000 annual income to the Husband. Findings of fact are required by the statute. Reversed and remanded.

MELDRUM v BERGAMO-MELDRUM, 44 FLA. LAW WEEKLY D2470a (Fla. 4th DCA, October 2, 2019)

The court erred in failing to make a finding of the Husband' net income for purposes of establishing temporary support. Reversed and remanded.

WALDERA v WALDERA, 45 FLA LAW WEEKLY D1838a (Fla. 3rd DCA, August 5, 2020)

Trial court erred in only considering Husband's income from 2016 which was a drastic reduction from his income in previous years. The trial court failed to provide an explanation or competent, substantial evidence sufficient to rebut the inference that he could earn higher income based upon past years. Trial court erred in imputing twenty hours per week work income to the Wife. The Wife offered unrebutted testimony as to the hours needed for homeschooling the children. The hourly rate imputed was consistent with what she had previously earned. Reversed and remanded.

INJUNCTIONS FOR PROTECTION

ADAMCZYK v HERMAN, 44 FLA LAW WEEKLY D2958b (Fla. 4th DCA, December 11, 2019)

Trial Court erred in granting the injunction for protection against repeat violence issued pursuant to section784.046(2), Florida Statutes (2019), because there was not competent, substantial evidence of two acts of violence within the meaning of the statute. This case arose out of a disagreement between appellant and a condominium association over the parking of appellant's truck in the community. The first alleged incident involved Respondent shouting profanities at Petitioner when telling him to get off his property. There was no threat of violence so there was no assault. Therefore, this did not qualify as an incident under the terms of the statute. The second incident occurred some weeks later at the association's office. This angry outburst may have been an act of violence under the definition, it was only one so there is no repeat violence as required by the statute.

ALOBAID v KHAN, 45 FLA LAW WEEKLY D1278a (Fla. 3rd DCA, May 27, 2020)

Parties were married. Khan filed Petition Against Domestic Violence alleging 4 incidents of violence by Khan. Khan first argued the court lacked jurisdiction, however he was personally served when in Florida so there was jurisdiction. Further two of the incidents of domestic violence occurred in Florida so there was long arm jurisdiction. Finally, the UCCJEA provides temporary emergency jurisdiction over the children to determine a temporary timesharing plan. The evidence presented substantiated that Alobaid was a victim of domestic violence. Affirmed.

AUGUSTE v AGUADO, 44 FLA LAW WEEKLY D2419a (Fla. 3rd DCA, September 25, 2019)

Auguste was the nanny for the Aguado family. When she was terminated Auguste began sending threatening texts and emails to Mr. & Ms. Aguado as well as their family. She also impersonated Mrs. Aguado to cancel a scheduled cruise trip planned. The court did not abuse it's discretion n finding that Auguste's repeated harassing conduct was such as to cause a reasonable person substantial emotional distress and thereby granting a permanent injunction against stalking. Affirmed.

BERKLEY v ROY, 45 FLA LAW WEEKLY D1995a (Fla. 1st DCA, August 19, 2020)

At hearing on Petition for Injunction Against Stalking, trial court questioned the Petitioner and Respondent and entered the injunction. Trial court erred in not allowing Respondent to present documents, videotapes and witnesses at the hearing. Trial Court erred in not allowing Respondent a meaningful opportunity to present his defense. Reversed and remanded.

BOUCHER v WARREN, 45 FLA LAW WEEKLY D491a (Fla. 4th DCA March 4, 2020)

Wife filed Petition for Injunction and alleged that Husband had committed acts of domestic violence in 2015 and 2016 as well as recent act in 2018 (Husband threatened to put a bullet in Wife's head). A temporary injunction was entered but the final hearing was postponed for 6 months. Wife supplemented the petition before the final hearing (Husband came to child's school and acted intimidating to Wife). Husband did not appear at the final hearing so only testimony was Wife and a police officer regarding prior incident in 2016. Trial Court erred in denying injunction based upon no recent acts of violence. Because the only evidence presented was that of the wife, which was uncontroverted and because the court did not make findings of fact concerning the credibility of the

wife, the court was required to accept the wife's testimony and grant the petition for injunction. Reversed and remanded.

BRUNGART v PULLEN, 45 FLA LAW WEEEKLY D1328a (Fla. 2nd DCA, June 3, 2020)

Pullen filed Petition for Protection Against Dating Violence. On May 2 Brungart attacked Pullen when she refused to give him the passcode to her phone. Soon after they broke up but Brungart continued to contact Pullen by text criticizing her, went to her apartment attempting to learn more about her including representing himself as a furniture mover to the apartment manager to obtain information about where she had moved. He also contacted her son and ex-husband to learn more about her whereabouts and sent her ex-husband videos of Pullen and Brungart having sex. Trial court found there had been dating violence and entered injunction. Statute requires not only that there was an act of dating violence, but also that the petitioner have a reasonable cause to believe she is in imminent danger of become the victim of an act of dating violence in the future. No evidence was presented that Brungart had threatened new acts of violence. Further there was no evidence to support a conclusion that Pullen had a reasonable cause to believe that she was in imminent danger of being stalked. Given the couple's history of breaking up and then getting back together, it would be reasonable to expect Brungart to try to contact Pullen. Nothing suggested that Brungart would continue to contact Pullen in the future. Sending the messages and videos to Pullen's ex-husband and son does not qualify as harassment as the communications were not direct to Pullen. Reversed and remanded.

COOK v McMILLAN, 45 FLA LAW WEEKLY D1611a (Fla. 4th DCA, July 8, 2020)

Parties met to rekindle their dating relationship. During the dinner they got into a dispute and Respondent attacked Petitioner when she attempted to leave. The following day Respondent sent a number of emails to Petitioner, but they contained no direct threats. The court erred in granting the injunction. A Petition for Protection Against Dating Violence requires Petitioner to have a reasonable fear of a future violent act. This was not present in this case. As Petitioner had not plead any facts indicating a threat of future violence. Therefore, court erred in not granting the Respondent's motion to dismiss. Reversed.

CRAFT v FULLER, 45 FLA LAW WEEKLY D1272b (Fla. 2nd DCA, May 27, 2020)

Craft and Fuller had been business partners and friends. After their relationship soured they had multiple petitions for injunction against each other. The agreed to dismiss their last petitions and leave each other alone. But then Craft began to post on his Twitter account alluding to Fuller but never referring to Fuller by name. Fuller learned of these tweets and brought a new petition for injunction against cyberstalking. Court granted petition. Posting on one's own social media page do not constitute actions directed at a specific person as a matter of law. Further, no evidence was presented that place a reasonable person in substantial emotional distress from the tweets. Finally, Fuller failed to sustain his burden of proving that the tweets served no legitimate purpose. Reversed and remanded.

GONZALEZ v FUNES, 45 FLA LAW WEEKLY D1811a (Fla. 4th DCA, July 29, 2020)

It was error to enter an Injunction Against Stalking where Respondent's contacts were related to a legitimate purpose addressing a real estate transaction between Respondent and Petitioner's boyfriend (Respondent's ex-boyfriend). Further the communication would not have cause a reasonable person to be put in substantial emotional distress.

HART v GRIFFIS, 45 FLA LAW WEEKLY D112a (Fla. 1st DCA, January 15, 2020)

Former Husband filed a Petition for Injunction for Protection Against Domestic Violence against Former Wife. He alleged incidents of assault and stalking which had occurred more than four years earlier. Recently, Former Husband alleged that Former Wife had contacted the court administrator and the State Attorney to have Former Husband investigated and prosecuted (FH is sitting judge). Former Husband claimed he had suffered severe emotional distress as he had lost sleep over the potential impact these actions could have on his career. Former Wife's communications had a legitimate purpose related to reports to the authorities. Even unfounded reports to authorities or requests for judicial relief, even if repeated or for malicious purposes do not support entry of an injunction against domestic or other violence. Reversed.

HEGEDUS v WILLEMIN, 44 FLA LAW WEEKLY D2712b (Fla. 5th DCA, November 8, 2019)

Willemin and Hegedus worked for a non-profit until Hegedus was terminated. Willemin alleges that (1) a few days after termination Hegedus drove her vehicle into the parking lot where a public event was being held and (2) hegedus was following Willemin while he was driving in his residential neighborhood six months later. Willemin sought an injunction for protection against stalking. Trial court erred in entering the injunction. The first incident of driving in a public parking lot when a public event was taking place was insufficient to establish one of the two required incidents of stalking. Reversed.

HOBBS v HOBBS, 45 FLA LAW WEEKLY D452a (Fla. 1st DCA, February 27, 2020)

Former Husband appeals an order denying his motion to dissolve an almost twenty-year-old injunction against domestic violence. In the intervening 20 years, Former Husband had no contact with the Former Wife, even during the last six months when the parties lived in the same town. Trial court erred in denying the motion to dissolve the injunction because the evidence was legally insufficient to show that the Former Wife's continued fear of domestic violence was objectively reasonable. Former Wife's speculative fear of future violence is legally insufficient to justify the permanent injunction. Reversed and remanded.

HOLTON v HOLTON, 45 FLA LAW WEEKLY D1543a (Fla. 1st DCA, June 25, 2020)

Wife appeals the entry of an injunction for protection against domestic violence, the primary basis of which was allegations of cyber-stalking arising from her social media posts concerning her husband, the Appellee. The trial court ordered that Wife was prohibited from posting derogatory posts or videos about her husband for a year. Upon review of the record, including the hearing transcript, it is evident that an insufficient factual basis existed for entry of the injunction and that the injunction was overbroad. Reversed.

J.A.F. v A.J.R., 45 FLA LAW WEEKLY D367a (Fla. 2nd DCA, February 14, 2020)

Former Husband petitioned for Injunction Against Repeat Violence on behalf of himself and his 5 year old minor child against Former Wife's new boyfriend. Former Husband alleged that boyfriend had struck the minor child twice. Evidence showed that boyfriend "tapped" the child on the bottom on two occasions after the child ran into a busy parking lot and Former Wife was present and approved of the actions and child suffered no injury. Former Husband also alleged that boyfriend had a verbal

confrontation during a custody exchange and boyfriend "clenched" his fist. Neither of these allegations supported a finding of repeat violence. Reversed.

J.G.G. v M.S., 45 FLA LAW WEEKLY D1601a (Fla. 5th DCA, July 2, 2020)

In her petition for an injunction, Wife alleged two specific acts of domestic violence by Husband, one involving non-consensual sex and the other involving an incident when Husband allegedly pushed a door into her. However, at the final hearing, Wife testified not only about these two incidents, but also about two other incidents, one when Husband allegedly injured her finger in Argentina and another when Husband allegedly kicked her. The trial court erred by allowing Wife to testify, over his objection, about the two alleged incidents not included in her petition for injunction. Adequate notice must provide "some indication of the witnesses to be called and the evidence to be utilized to prove entitlement to relief." When the trial court admits improper evidence over objection, it must expressly state on the record that it did not rely on the erroneously admitted evidence in making its final determination. We reverse and remand with directions to vacate the permanent injunction, reissue the temporary injunction, and conduct a new final hearing, either upon the existing petition, or upon any properly amended petition.

Logue v. Book, 45 FLA LAW WEEKLY D1500a (FLA. 4TH DCA, June 24, 2020)

New opinion on Motion for Rehearing En Banc. Petitioner is an advocate for child abuse victims and for strict laws against sex offenders and a State Senator. 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. Law enforcement testified at the hearing stating that they found Respondent to be a credible threat to Petitioner. The FBI also investigated Respondent. His criminal history and the existence of an injunction against domestic violence was entered into evidence. 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 need not be sent directly to the Petitioner but must be targeted to the Petitioner (tagging or other way of bringing to their attention). Although the posting of the vulgar song and cartoon may have been directed at Petitioner and was certainly intended to be insulting, it was not credibly or objectively threatening. Considering the various events alleged, it cannot be said that they were so devoid of a legitimate purpose as to make them actionable under the statute. This case is a balancing test between harassing behaviors and the 1st Amendment Freedom of Speech. This is particularly acute in cases between public figures. Rather than being harassing or threatening, Respondent's online speech was more of a rant, that is, a hyperbolic rhetorical response to the opposing views of a political actor. Reversed.

MILLS v RILEY, 45 FLA LAW WEEKLY D1229a (Fla. 1st DCA, May 26, 2020)

Ongoing neighborhood fracases resulted in an anti-stalking injunction against Mills, who engaged in a course of harassing conduct directed at Riley and her family members that served no legitimate purpose. However, the evidence did not support a finding that the conduct was such as would cause substantial emotional distress to a reasonable person. Reversed and remanded.

MUSGRAVE v MUSGRAVE, 44 FLA LAW WEEKLY D2861a (Fla. 2nd DCA, November 27, 2019)

Trial court erred in effectively awarding the Wife an injunction against domestic violence in the final judgment for dissolution. The court ordered that, due to the animosity between the parties, the Husband shall not go to the Wife's work, go onto her property except for exchange of the children and with invitation and shall not go within 100 feet of her vehicle. Wife had not pled for an injunction against domestic violence and there was no substantial evidence to support the de facto injunction language in the final judgment.

PASKERT v STEFFENSMEIER, 45 FLA LAW WEEKLY D1055b (Fla. 2nd DCA, May 1,2020)

Trial Court erred in entering Judgments for Protection Against Stalking providing that Respondent was not allowed to go within 500 feet of Petitioners' home and 100 fee of Petitioners' vehicles when the oral pronouncements did not include these provisions. Reversed.

PATIN v DAVIS, 45 FLA LAW WEEKLY D373a (Fla. 1st DCA, February 18, 2020)

Respondent seeks review of the trial court's Final Judgment of Injunction for Protection Against Stalking, arguing a lack of competent, substantial evidence in the record supporting entitlement. A careful review of the record reveals that Petitioner did not satisfy her burden of proof under section 784.0485, Florida Statutes. The trial court's oral pronouncement of its decision makes clear that issuance of the injunction was based on cell phone videos the court viewed during the hearing. However, these videos were not admitted into evidence and are not in the record before us. The evidence that was admitted was legally insufficient to support the issuance of the injunction. Reversed.

PAWLEY v MARIE, 45 FLA LAW WEEKLY D2040b (Fla. 3rd DCA, August 26, 2020)

Respondent agreed to the entry of a permanent injunction against domestic violence in 2012. In 2018 Respondent moved to dissolve the injunction based upon the fact that the court lacked subject matter jurisdiction to issue the injunction because the parties had never lived together as required by the statute. Respondent waived his right to contest the factual basis for the injunction when he agreed to it's entry. Even if true, this would not limit the court's subject matter jurisdiction. Trial court correctly denied motion. Affirmed.

PRICE v TAYLOR, 45 FLA LAW WEEKLY D1412a (Fla. 4th DCA, June 10, 2020)

Taylor Petitioned for Injunction for Protection Against Domestic Violence which was denied without testimony from Price, finding that Taylor had presented a prima facia case for the injunction. Taylor appealed and DCA reversed and remanded for entry of Injunction finding that Taylor had presented sufficient evidence to warrant an injunction. Trial court, following direction of DCA, entered the injunction and Price moved to have the injunction dissolved arguing that he had never been given the opportunity to present his case in chief. Trial court determined that a party cannot move to dissolve an injunction by attacking the underlying facts that resulted in the injunction. While this is generally true, in the instant case the injunction was entered effectively ex parte as Price had never been given an opportunity to be heard. Reversed and remanded for full hearing on initial incident.

QUINONES-DONES v MASCOLA, 45 FLA LAW WEEKLY D201a (Fla. 5th DCA, January 24, 2020)

The parties have a child together but have been separated for several years. Three events appear to have precipitated Mother filing her petition for injunction against domestic violence (1) Father began picking up the child at Mother's home for timesharing, when previously, the paternal grandmother had been picking up the child ; (2) the paternal grandmother gave the child a cellphone to communicate with Father which apparently upset Mother. Mother utilized a parental control app to stop the child from using the phone and refused to provide Father the PIN for that app; and (3) Mother received thirty-eight text messages from Father's cellphone stating, "Hello. Hello. Hello." Eight to nine years ago Mother alleged Father had committed acts of violence against her but admitted that he had not committed or threatened any acts of violence since then. The prior acts were to remote in time to substantiate an injunction. The recent acts were not sufficient to cause a reasonable person to be in fear of domestic violence. Reversed.

REID v SAUNDERS, 44 FLA LAW WEEKLY D2416b (Fla. 1st DCA, September 25, 2019)

Mr. Saunders had a child with Reid while still married. Saunder's wife and Reid did not get along. Ms. Saunder's previously received an injunction which was vacated. Ms. Saunders again petitioned for injunction against stalking which was granted. The underlying communication, while worded harshly, were related to a legitimate purpose, the collection of child support. Also, there was no evidence that the communications would cause substantial emotional distress in a reasonable person. Reversed and remanded.

SANTIAGO v LEON, 45 FLA LAW WEEKLY D48a (Fla. 3rd DCA, January 2,2020)

Santiago and Leon were in a long distance relationship during which M.L. was born through a surrogate. When the relationship ended the child M.L. was living with Leon, his father. Leon then brought a Petition against Stalking on behalf of ML against Santiago alleging that he (i) got a tattoo of M.L.'s name on his body; (ii) posted images of M.L. on his social media accounts (including Facebook and Instagram)and representing thereon that M.L. is Santiago's son; (iii) mailed packages to M.L.; (iv) twice emailed the father to express his love for M.L.; (v) contacted the father's surrogate in search of information about M.L.; (vi)appeared once outside the father and M.L.'s home; and (vii) drove by a restaurant the father and M.L. were patronizing and making eye contact with the father and M.L. The trial court erred in granting the Petition Against Stalking as there was no competent substantial evidence in the record to support a legal determination that Santiago stalked M.L. There was no evidence of "following" under the common definition. M.L., being less than 2 years old was unaware of any of Santiago's actions and therefore suffered no substantial emotional distress. Further there was no evidence that Santiago's actions were malicious as required by the statute. Posts on social media are not cyberstalking as they are for the general public and not directed to one individual and none of the posts caused emotional distress to M.L. Reversed.

SCHULTZ v. MOORE, 44 FLA LAW WEEKLY D2434a (Fla. 5th DCA, September 27, 2019)

Schultz and Moore were dating. During their relationship Schultz was alleged to have committed three acts of dating violence. After the third one, Moore broke off the relationship. Schultz continued to communicate by email and through Moores roommate, although none of the communication was threatening. Unlike injunctions for protection against repeat violence and sexual violence under 784.046(2)(a) and (c), injunctions for protection against stalking under 784.0485, dating violence injunctions under 784.046(2)(b) requires the reasonable prospect of future violence. The evidence

adduced at the hearing was legally insufficient to support a determination that Moore had a reasonable fear of imminent danger of another act of dating violence. Reversed and remanded.

SINOPOLI v CLARK, 45 FLA LAW WEEKLY D296a (Fla. 2nd DCA February 7, 2020)

Petition for Injunction Against Stalking entered against Sinopoli, Clark's neighbor. Clark alleged that Sinopoli had (1) cut down the foliage on his property and would sit on his porch from early morning to late at night, watching every move Clark made, (2) had shredded his pool cage with a razor and (3) installed floodlights that faced directly at Clark's backdoor and outdoor shower. Trial court found Sinopoli's reasons for these actions to lack credibility. Trial Court erred in entering an injunction against stalking as Clark had failed to allege any action that could be found to cause a reasonable person substantial emotional distress. Reversed and remanded.

STANLICK v STANLICK, 45 FLA LAW WEEKLY D581e (Fla. 2nd DCA March 13, 2020)

The vast majority of Wife's testimony and evidence related to unpled maters, and because the facts of the petition, standing alone, would support the entry of a permanent injunction, the trial court erred in entering the permanent injunction. Reversed and remanded for the court to vacate the permanent injunction but Wife could file an amended petition.

SWEET v TUCKER, 45 FLA LAW WEEKLY D1961a (Fla. 1st DCA, August 17, 2020)

In 1998, when Respondent was 17 years old, an Injunction Against Repeat Violence was entered against him. Respondent moved to vacate the Order because the original injunction was void for lack of jurisdiction over his person. Even if the original service of process was defective, he had notice of the proceedings against him and therefore the injunction was voidable not void. Also, as he appeared at the hearing and filed motions following the order, thus waiving the issue of defect in service. Finally, the 1998 injunction was superseded in 2002 and is no longer in effect and therefore the issue is moot. Affirmed.

WASHINGTON v BROWN, 45 FLA LAW WEEKLY D1627a (Fla. 2nd DCA, July 8, 2020)

Washington's ex-Wife is Brown's girlfriend. When the ex-Wife blocked Washington he began to try to communicate regarding the children through Brown. Brown told him to stop. The messages became enflamed and Brown posted messages threatening Washington and Washington sought an injunction. Brown retaliated by filing a for an injunction as well. The Court erred in granting injunctions for both men. Washington's initial texts served a legitimate purpose. While the communications may have been offensive, none of Washington's texts or messages would cause a reasonable person to experience substantial emotional distress. Reversed and remanded.

WHITLOCK v VELTKAMP, 45 FLA LAW WEEKLY D1115c (Fla. 1st DCA, May 6, 2020)

In support of her petition, Veltkamp testified about multiple incidents of Whitlock's following, harassing, and cyberstalking her. Three of these incidents occurred in the month prior to the hearing. Veltkamp testified about numerous other, earlier incidents and obscenity-laced text messages accusing Veltkamp of having a disease, urging her to hang herself, stating that Whitlock "checked on" the minor child every day while the child was with Veltkamp, describing his sexual activities with girlfriends, and other offensive and disturbing communications with no legitimate purpose. The messages included photos of a noose, firearms, and a shell casing

Whitlock instructed Veltkamp to show to their son. The trial court admitted composite exhibits of text messages into evidence. Also admitted was a video Veltkamp recorded after she had moved from the martial home showing Whitlock's uninvited entry into her apartment and his refusal to leave for approximately eight minutes while she repeatedly told him to "get out." Whitlock stated that he opposed the entry of an injunction because it would cause him to lose his civilian employment related to the military because that employment involved weapons and explosives. Trial Court affirmed in entry of Injunction Against Domestic Violence. the statutory definition of "domestic violence" in section 741.28 is not limited to only threats of violence to the person of the petitioner amounting to an assault or touching or striking the petitioner's person against her will amounting to a battery. The inclusion of stalking as an act of domestic violence "causes the statutory definition to diverge considerably from the colloquial meaning" of violence. Affirmed.

YAKLIN v YAKLIN, 45 FLA LAW WEEKLY D1118d (Fla. 2nd DCA, May 8, 2020)

Former Wife filed Petition for Protection Against Domestic Violence alleging that Former Husband had a history of domestic violence. She alleged the only recent incident was when she observed Former Husband being arrested while his girlfriend stood nearby with black eyes. Based upon this evidence trial court erred in granting the injunction against former Husband in favor of Former Wife. Former Wife presented no evidence that she had an objectively reasonable fear of becoming a victim of domestic violence. Reversed and remanded.

YEHEZKEL & YEHEZKEL v ARAL, 45 FLA LAW WEEKLY D875a (Fla. 3rd DCA, April 15, 2020)

The Yehezkel brothers sent compromising pictures of Aral's former girlfriend to Aral. The men then become engaged in a back and forth of threats and confrontation. Three months later the brothers were in a bar where Aral was also imbibing. The men got into a confrontation in the bar which was broken up by the bouncer. Somewhere between ten to sixty minutes later the brothers confronted Aral in the courtyard outside the club where he was beaten. These two confrontations were sufficient to establish two separate incidents of violence as required by FL Stat. section 784.046(1)(b). The two incidents were sufficiently separated by both time and location. Aral also testified about another incident that occurred later in the night at another club but as he had not amended his pleadings to include the allegations and the brothers objected at the trial, the evidence could not be considered as the brothers did not have notice of the allegations. Affirmed.

JUDGMENTS

MUSGRAVE v MUSGRAVE, 44 FLA LAW WEEKLY D2861a (Fla. 2nd DCA, November 27, 2019)

Trial court did not abuse its discretion in signing the proposed final judgment provided by the Wife at the conclusion of the hearing. The parties were instructed to each provide proposed final judgments. The signed the Wife's proposed judgment after making handwritten changes to it. Further, the judge was actively involved in the final hearing. Evidence substantiated that trial court exercised independent decision making. Affirmed as to final judgment (reversed as to parental responsibility, injunction language and life insurance, see below).

JURISDICTION / VENUE

CLAFLIN v CLAFLIN, 45 FLA LAW WEEKLY D147a (Fla. 1st DCA, January 21, 2020)

Wife was previously married in the Philippines when she was 17 years old in an arranged marriage. She did not attend the ceremony, never lived with her husband and eventually fled back to her family home. She later met and married the husband in this action and they had three children together and moved to Florida. At the time of divorce, Husband attempted to dismiss the action for dissolution as Florida Court lacks jurisdiction to dissolve a marriage that was never legal in the Philippines. There were competing Philippine judgements, one stating that the original marriage was void under Philippine law and the other stating that the second marriage was void as bigamous. The trial court determined that the present marriage was valid and could be dissolved under Florida Law. There is a presumption of correctness to the second marriage. Philippine judgement (second judgment) declaring parties' marriage invalid because no judicial decree of nullity of prior fraudulent marriage was obtained prior to the present marriage offends Florida public policy. Affirmed.

DLIN v DLIN, 44 FLA LAW WEEKLY D2801a (Fla. 3rd DCA, November 20, 2019)

Proper venue for a dissolution of marriage is the last county where the parties lived together with the intent to remain married. In this case the parties were living in Volusia County until the Wife moved to Miami to escape domestic violence. Wife filed for dissolution in Miami and Husband then filed in Volusia (prior to being served). Miami directed to transfer the action to Volusia.

D.O.R. v SINAWA, 44 FLA LAW WEEKLY D2510b (Fla. 5th DCA, October 11, 2019)

D.O.R. brought administrative proceeding to establish child support and an order was entered. Father then filed a separate paternity action and a DNA test proved he was not the Father. The Father dismissed the Paternity action and the Court entered an order setting aside the administrative support order and terminating Father's child support obligation. Trial Court lacked jurisdiction to set aside administrative order where trail court order vacated the father support obligation and was not a superseding order prospectively modifying a child support award.

JOHNSON v JOHNSON, 45 FLA LAW WEEKLY D22a (Fla. 2nd DCA, December 27, 2019)

Parties had multiple proceedings that had occurred in the dissolution action in Pasco County. Former Wife filed a Petition for Injunction for Protection on behalf of the minor child in Pasco. The Petition was denied. Several days later she filed a similar Petition in Hillsborough County. Trial Court properly transferred the case to Pasco county where the parties had been litigating for several years and remained in ongoing litigation.

LAUTERBACH v LAUTERBACH, 45 FL LAW WEEKLY D848a (Fla. 2nd DCA, April 15, 2020)

Parties split their time between homes in Florida and Germany. In 2016 Wife suffered a stroke and received treatment in Germany, Switzerland and Indiana. In August 2017 Wife filed for divorce in Florida and Husband filed petition in Germany. Wife moved to rehabilitation center in Palm Harbor in 2018. Wife maintained her FL driver's license since 2002. Court found they had jurisdiction and granted Wife exclusive use of the home and temporary alimony. Court erred in finding that it had subject matter jurisdiction. Residency requires physical presence in Florida and an intention to make Florida your home. Reversed and remanded.

LUNSFORD v ENGLE & PHILLIPS, 45 FLA LAW WEEKLY D163a (Fla. 4th DCA, January 22, 2020)

Child born in Florida when parents were living with maternal grandmother. When child was 3 months old, parents then took the child to move to Oregon and shortly after arriving in Oregon the parents had an incident of domestic violence. The Oregon court exercised emergency jurisdiction, removed the child and the mother returned with the child to live with her mother. The Oregon court then fostered the child to live with his step-grandmother because the mother was living with the grandmother. The grandmother then petitioned the FL court for temporary custody of the child. Florida Court had telephone conference with Oregon court, refused to allow grandmother to meaningfully participate and agreed to allow Oregon to maintain jurisdiction over the child and the case. Oregon then ordered the mother's rights terminated and indicated the child should be placed with other relatives. Grandmother, through new counsel, filed a motion to disregard Oregon order based on the lack of jurisdiction under UCCJEA as Florida was the home state of the child, Oregon only had temporary emergency jurisdiction over the child, and the fact that the parents had conceded to Oregon jurisdiction was irrelevant because parties cannot confer jurisdiction under UCCJEA and the FL and OR courts violated the Grandmother's due process by not allowing her to be heard during the hearing. The Florida court erred in: (1) failing to exercise initial custody jurisdiction during the hearing with the Oregon court after the grandmother filed her temporary custody petition; (2) denying the grandmother's motion to disregard the Oregon court's orders based on the Oregon court's lack of initial custody jurisdiction; and (3) dismissing the Florida case for lack of initial custody jurisdiction. Further, given the ultimate mandatory nature of both Oregon's and Florida's statutes that a party has a due process right to be heard, the Florida court had a mandatory duty to correct the Oregon court and ensure that the grandmother's argument was heard. Reversed and remanded.

MARTINEZ v LERON, 44 FLA LAW WEEKLY D2765a (Fla. 5th DCA, November 15, 2019)

In paternity action parties moved from New York to Florida but after disagreement Mother returned with child to New York. Mother filed paternity action in New York and two days later Father filed paternity action in Florida. A Florida court may not exercise jurisdiction under the UCCJEA if, at the time of the commencement of the proceeding in Florida, a child custody proceeding concerning the child had been commenced in another state having jurisdiction substantially in conformity with the UCCJEA, unless the court of the other state terminated or stayed the proceeding because Florida is a more convenient forum. In May 2017, the New York court declined to exercise jurisdiction, finding that Florida was a more convenient forum. Therefore, Florida court had jurisdiction under the UCCJEA. Affirmed.

MEJIA v MEJIA, 45 FLA LAW WEEKLY D1033a (Fla. 4th DCA, April 29, 2020)

Parties lived in Florida until 2014 when they moved to Dominican Republic for Husband's job and leased out their Florida home. However, they kept Florida as their base of operations with their driver's license and voter registration in Florida. Husband also spent some time each week in Florida. This was sufficient to establish that Florida had jurisdiction over the subject matter. Affirmed.

ROBINSON v CHRISTIANSEN, 45 FLA LAW WEEKLY D702b (Fla. 3rd DCA, March 25, 2020)

Trial court did not abuse discretion in dismissing the Petition for Dissolution where neither of the parties were a resident of Florida. Both lived in Denmark and Sweden. Owning a vacation home in Florida was insufficient. Affirmed.

SCUDDER v SCUDDER, 45 FLA LAW WEEKLY D1111a (Fla. 4th DCA, May 6, 2020)

The parties entered into a MSA and the Court in Collier County entered a Final Judgment of Dissolution. The case was appealed and it was determined that Collier County had jurisdiction over the marriage and equitable distribution but not the children who were living in Palm Beach County with the Father. Husband then filed Petition in the 15th Judicial Circuit. Wife stipulated that the 20th Judicial Circuit had vacated the existing parenting plan and provided for further proceedings to be considered as an initial proceeding. Because the 20th Judicial Circuit had no jurisdiction to decide the children's issues, the 15th Circuit correctly started with a clean slate.

VARCHETTI v VARCHETTI, 45 FLA LAW WEEKLY D2021a (Fla. 4th DCA, August 26, 2020)

Parties moved with their minor children in 2018. In 2019 Wife Petitioned for dissolution. Husband filed a Motion for change of venue on the grounds of forum non-convenient. Trial Court found that motion was not timely because filed more than 60 days after husband was served. Florida family law rules of procedure do not contain any time limit for raising the issue of inconvenient forum under the UCCJEA. Rules of civil procedure do not apply as there are stand alone Family Law Rules of Procedure. Section 47.122 does not apply because this relates to venue within Florida.

VICARIO v BLANCH, 45 FLA LAW WEEKLY D1984a (Fla. 3rd DCA, August 19, 2020)

Parties are Spanish citizens, but they reside with their children in Florida for over five years. After a dispute Wife moved from Miami to Naples and Husband filed for dissolution in Miami. The court docket shows more than 150 entries and five court orders in the one month following the filing of the petition. One month later Husband filed for dissolution in Spain and then dismissed his action in FL. Wife then filed a Petition for Dissolution in Miami, FL. The Spanish Court took jurisdiction and the Husband moved to have the FL case dismissed, abated or stayed pending the outcome in Spain prior to the Wife's petition being served on Husband. The Court erred in granting the Motion to Dismiss finding the Spanish Court had jurisdiction over the parties and the dissolution and would determine all issues except for the Children's issues. According to the principle of priority the court which first exercises its jurisdiction acquires exclusive jurisdiction to proceed with the case. Here, the Husband filed the first case in FL and did not seek distribution of assets nor advise the Spanish Court of the pending case in FL. Because the court in Spain has no authority or jurisdiction to determine anything other than the actual dissolution of marriage, the scope of the proceeding in Spain is limited, and, therefore, cannot be said to involve substantially similar parties and substantially similar claims. Reversed and remanded.

LIFE INSURANCE

MUSGRAVE v MUSGRAVE, 44 FLA LAW WEEKLY D2861a (Fla. 2nd DCA, November 27, 2019)

Trial court erred in ordering Husband to name the Wife as the beneficiary to his existing life insurance policy absent any special circumstances requiring him to maintain such policy and absent any evidence showing his ability to pay the insurance premiums. Husband's advanced age of seventy with two young children is insufficient to warrant the order. Reversed and remanded.

PAUL v PAUL, 45 FLA LAW WEEKLY D1941a (Fla. 5th DCA, August 14, 2020)

Trial Court erred in require Husband to maintain life insurance as not supported by specific evidentiary findings regarding availability and cost of insurance, the obligor's ability to pay and the special circumstances that warrant the requirement for security. Reversed and remanded.

VAN MAERSSEN v GERDTS, 45 FLA LAW WEEKLY D1104a (Fla. 4th DCA, May 6, 2020)

Trial court failed to make any findings that there was a demonstrated need to protect Wife's alimony award. Absent such findings of special circumstances, requires reversal.

MODIFICATION / TERMINATION

BEFANIS BEFANIS, 45 FLA L. WEEKLY D920b (Fla. 5th DCA April 17, 2020)

Final Judgment was entered in 2010 providing the Wife with permanent periodic alimony in the amount of $12,500. In 2015 Husband sought downward modification of alimony based upon the fact that he had sold his business, was under a 5 year employment contract with the purchaser and hoped to eventually retire. The parties came to an agreement reducing alimony to $7,500. Sixteen months after the agreement, the Husband petitioned for modification of alimony claiming that he had now retired and his income had been substantially reduced. Wife objected stating that the retirement was anticipated when they entered into the first modification. The agreement was silent as to the basis for the original modification and there was no evidence that there was an anticipation of another reduction of income at retirement. Court erred in denying the second request for modification as there was no evidence that the retirement had been considered when the first modification was made. Reversed and remanded.

BELL v BELL, 45 FL LAW WEEKLY D978a (Fla 1st DCA, April 23, 2020).

The parties were divorced in 2014 and a parenting plan was entered providing the Father with every other weekend. The Father filed a Supplemental Petition for Modification of the Parenting Plan alleging that he had undergone substantial therapy and was taking medication which allowed his mental health to progress to the point that he should be allowed more time with the children. Improved life circumstances do not constitute a substantial change in circumstances sufficient to allow for a modification of timesharing arrangements. While recognizing the evidence of the father's improved mental health, life circumstances, and prospects for having a stable family life, this evidence is not sufficient to grant the petition to modify timesharing. Reversed.

BRYAN v BRYAN, 45 FLA LAW WEEKLY D1067b (Fla. 1st DCA, May 1, 2020)

Parties divorced in 2012 and have 2 minor children. The Wife moved to 2017 and the parties adopted a long-distance parenting plan. The Wife moved back to Florida in 2018 and moved for modification of the parenting plan. Trial court erred in finding the Mother's return from New Jersey to be a substantial change in circumstances warranting a timesharing modification. Mother failed to provide competent substantial evidence to support the court's best-interest findings. Reversed and remanded.

CORIAT v CORIAT, 45 FLA LAW WEEKLY D1620a (Fla. 3rd DCA, July 8, 2020)

Parties entered into an agreed upon Parenting Plan providing the Husband with 82 overnights and agreed to a child support based upon the Husband having 146 overnights. Four years later the Wife Petitioned for modification of child support based upon the actual number of overnights in the parenting plan. The Husband Petitioned for modification of the parenting plan to allow him more overnights. Court denied Husband's request and recalculated child support retroactive to the date of the original order. Court erred in ordering retroactive child support to date of original order when Husband had exercised timesharing as agreed to by the parties. Court should have only ordered retroactive child support to date of filing Supplemental Petition. Reversed and remanded.

GORE v SMITH, 45 FLA LAW WEEKLY D1800a (Fla. 3rd DCA, July 29, 2020)

In a 2008 paternity action, parties entered into mediated settlement agreement for child support. Father was a professional football player. The Mother filed a Supplemental Petition for Modification of child support. In 2019 the Father filed a motion in limine to exclude the testimony of the Mother's forensic accountant. Trial court denied the motion. Father argued that the accountant did not use the FL Stat. 61.30 method to determine his income in 2008. This is not required as the accountant was looking back to 2008 and not determining income for ongoing child support. Court also correctly granted the upward modification finding that the circumstances had substantially changed based upon Father's increase in income and increasing need for the minor child. Parties previous agreement required child support to terminate upon the child's 18th birthday. Therefore, court erred in extending child support by four months. Court erred in awarding accounting fees for the full amount when accountant testified that his former firm would take a reduced amount. Reversed as to termination date of child support and award of accounting fees.

HAEBERLI v HAEBERLI, 45 FL. LAW WEEKLY D992a (Fla. 5th DCA, April 24, 2020)

Parties entered into an agreement in 2008 which provided or alimony and child support for the parties severely disabled child. In 2017 Former Wife moved for modification of child support and alimony based upon a substantial change in circumstances. Former Husband argued that the court should be limited to the language of the MSA which provided for reasons to modify alimony or child support. The Court found that the Wife had established that she had greater needs for both alimony and child support (higher needs based upon her full time care of disabled child) and that the Husband had the ability to meet these greater needs (successful lawyer who had remarried and started a new family). There was nothing in the MSA that made the provisions exclusive nor in any way limited or prohibited the application of the modification considerations found in F.S. 61.14. Affirmed.

HUTCHINSON v HUTCHINSON, 45 FLA LAW WEEKLY D28a (Fla. 1st DCA, December 27, 2019)

Parties divorced in 2011 and timesharing schedule was entered with limited timesharing for the Father. However, the parties agreed informally to the Father exercising additional timesharing for several years. In 2017 Mother moved and did not tell Father of child's new school. At that time, she also reduced Father's time to that which was provided in the original Final Judgment. Father Petitioned for Modification of Timesharing which was granted by the court. Trial court erred in modifying timesharing as there was no substantial change in circumstances. The existence of periodic communication failures (resulting in the Mother not telling the Father of the new school) is not a basis for finding a substantial change in circumstances. Denial of additional time given under informal agreement is not change in circumstances. Reversed and remanded.

IZQUIERDO v DEL VALLE, 45 FL. LAW WEEKLY D964a (Fla. 4th DCA, April 22, 2020)

Father obtained relocation with child in 2016. In 2018 Mother petitioned for modification of timesharing. Court dismissed the petition for failure to state a cause of action. It is error to dismiss the Mother's petition for modification without giving the mother the opportunity to amend her pleadings. While the relocation alone is not sufficient to find a change in circumstances, the Mother also alleged that she could not make the exchange times because she had other children in school and she alleged

that the Father's new wife had attached her during an exchange. Reversed to allow Mother to amend her pleadings.

KYLE v CARTER, 45 FLA LAW WEEKLY D375b (Fla. 1st DCA, February 19, 2020)

Former Husband failed to properly plead a substantial, material and unanticipated change in circumstances or allege that a modification of the timesharing would be in the child's best interest in his petition for modification of timesharing. Further, trial court failed to make necessary proper findings of fact to support modification. Trial Court then erred in granting modification. Reversed and remanded.

LIGHT v KIRKLAND, 45 FLA LAW WEEKLY D150a (Fla. 1st DCA, January 21, 2020)

Trial court erred in considering the acrimonious relationship between the parties, finding they could not effectively co-parent with each other, as a basis for modifying the timesharing parenting plan. This is not a substantial change in circumstances warranting a modification of timesharing. The court did find that the child's school performance was also suffering but tied this to the impermissible grounds of the parent's relationship. Reversed and remanded for the court to determine if the child's school performance during the prior school year alone was a sufficient basis to find a substantial, material and unanticipated change in circumstances since the entry of the final judgment. Reversed and remanded.

MALHA v LOSCIALES, 45 FLA LAW WEEKLY D1978c (Fla. 3rd DCA, August 19, 2020)

The parties divorced in Portugal in 2007 but the court failed to enter a parenting plan. In 208 the parties entered into a stipulated parenting plan. In 2019 the Father filed a motion to enforce the parenting plan, seeking to curtail extra-curricular activities and eliminating his obligation to transport the children to competitive events during his timesharing. The stipulated plan allows for shared decisions over extracurricular activities. Nevertheless, because the parties' efforts to reach a mutually satisfactory arrangement proved futile, the dispute was properly submitted to the court. Further, as the agreement prohibited the unreasonable withholding of consent, the court was properly permitted to explore the facts and circumstances surrounding both continued participation and transportation. Affirmed.

MILLER v MILLER, 45 FLA LAW WEEKLY D2000a 9Fla. 5th DCA, August 21, 2020)

Parties had a stipulated parenting plan providing each parent with 50/50 timesharing. In 2019 Father filed for modification based upon his move from CA to Japan and asking to have residential custody of the children. Mother counter-petitioned for same. Father filed a proposed parenting plan that actually divided time equally between the parents on a annual rotating basis. Trial court entered an entirely different parenting plan. Trial court was correct in modifying timesharing and parental responsibility as Father had placed these issues before the court in his petition. Also, court correct in modifying section of parenting plan which focused on the Father unaccompanied deployment procedures as part of his military service where the Father had presented a proposed parenting plan that addressed this issue. However, court erred in rewriting portions of parenting plan not plead for modification and for which no evidence was presented. Trial Court erred in awarding child support to Mother where it was contrary to the previous MSA and the Mother had not proven a substantial change in circumstances.

MYERS v LAND, 44 FLA LAW WEEKLY D2600a (Fla. 4th DCA, October 23, 2019)

Father failed to exercise his court ordered timesharing with the middle child. Therefore, Mother is entitled to modification of child support based upon the limited timesharing Father has exercised pursuant to Fl Stat. 61.30(11)(c). Trial Court erred in denying modification. Reversed and remanded.

NANGLE v NANGLE, 44 FLA LAW WEEKLY D2988a (Fla. 4th DCA, December 18, 2019)

Former Husband's income at the time of originally determining his alimony was based upon redemption payments from the sale of a business he had owned. When the payments ceased he moved for modification of alimony. Trial court erred in finding that the original court must have known that the redemption payments would stop and therefore found that this was an anticipated event which did not show a change in circumstances from the original order. Trial court erred in not considering Former Husband's present ability to pay and the Former Wife's present need. There was no indication that the original court considered the redemption payments as temporary. Reversed and remanded.

REED v D.O.R., 45 FLA LAW WEEKLY D1872a (Fla. 1st DCA, August 6, 2020)

Former Wife Petitioned for an upward modification of child support. At the hearing the Hearing Officer announced that she was granting a "Speed" adjustment (holding that a parent is entitled to a child support credit for expenses paid by the obligor to support other biological children). Although Former Husband was married and living with his new Wife and child, the Hearing Officer applied a 50/50 timesharing allocation to the adjustment for afterborn child. Because the Former Husband lives full time with the child and his wife there should have been no adjustment to the former husband's "speed" credit. Reversed and remanded.

SKELLY v SKELLY, 45 FLA LAW WEEKLY D1650a (Fla. 5th DCA, July 10, 2020)

Parties divorced in 2005 with 3 minor children. In February 2017 Mother moved for modification of child support based upon daughter's physical disability. Daughter turned 18 on March 29, 2017. Trial court correctly determined that former wife had standing to bring action for support of parties' adult child who was legally competent and was not adjudicated dependent prior to her eighteenth birthday. The case need not be adjudicated prior to the birthday. Trial court erred in failing to make factual findings as to the parties' respective net incomes. Court also erred in failing to give Husband credit for payments made after the child turned 18 years. The trial court had indicated in oral pronouncement that they would give credit but then failed to provide credit in order issued 5 months later. Reversed and remanded.

SUAREZ v SUAREZ, 44 FLA LAW WEEKLY D2745a (Fla. 4th DCA, November 13, 2019)

The former husband and wife entered into a marital settlement agreement ("MSA"). The MSA divided the former couple's major assets and created a schedule for the former wife's alimony payments to the former husband. The MSA provided for each parent to spend equal amounts of time with the children; the former wife agreed to pay nearly all childcare expenses. Wife later filed for modification of alimony, timesharing and child support. The trial court correctly found the former wife had a substantial change in income to warrant modification. The change was not a mere fluctuation in the industry, but an unanticipated substantial decline in income due to the loss of a major client, changed regulations, and the fluctuation in the market. Those changes were involuntary and permanent. The trial court failed to

address: (1) whether the former wife had an ability to pay; and (2) whether the former husband had any need for any amount of alimony payments. Trial court is required to make statutory findings thus requiring reversal. Trial court further failed to address issue of contempt for failure to pay back alimony after announcing at the conclusion of the trial that this would be addressed. A court cannot modify a timesharing schedule without a "determination that the modification is in the best interests of the child. Here, the trial court failed to make the requisite finding of whether the timesharing change would be in the best interest of the children. The court noted the limited time (30%) the former husband spent with the children and that he was estranged from his son. The court ordered reunification therapy and joint counseling sessions. But, the trial court fell short of finding whether the 30% timesharing was in the best interest of both children. For this reason the case must be reversed. Trial court erred in using the grossed up method to calculate child support arrearage when the son was spending less than 20% of overnights with the father. Reversed and remanded.

ORDERS / JUDGMENTS

BIGELOW v RITSEMA, 45 FLA LAW WEEKLY D202b (Fla. 5th DCA, January 24, 2020)

Ten months after issuing the final judgment, the trial court rendered an amended final judgment, which made substantive changes to the final judgment and included findings of fact related to relevant statutory factors. Trial court lacked jurisdiction to enter an amended final judgment substantially changing the findings and the order after the time for rehearing had expired. Vacate Amended Final Judgment.

ZIEGLER v ZIEGLER, 45 FLA LAW WEEKLY D1644d (Fla. 5th DCA, July 10, 2020)

At trial Husband was awarded a money judgment against the Wife. Trial court correctly entered a writ of garnishment finding that the wife failed to meet her burden of proving that she is the head of household such that the statutory exemption applies. Trial court erred in ordering the Wife to pay his attorney fees pursuant to Section 57.115.

PARENTING

A.V. v T.L.L., 45 FLA LAW WEEKLY D1881e (Fla. 2nd DCA, August 7, 2020)

Decisions regarding parental responsibility must be supported by competent substantial evidence, including decisions regarding ultimate decision making over education and medical care. While evidence was presented related to medical care, no evidence was presented regarding education. Therefore, trial court erred in awarding ultimate decision making regarding education to the Mother. Reversed and remanded.

BOOTH v WILLIAMS, 45 FLA LAW WEEKLY D615a (Fla 2nd DCA March 18, 2020)

The Father Petitioned for paternity and requested shared parental responsibility and timesharing. The Mother did not appear at the paternity trial. The Court found that the father had arranged for the child to be enrolled in a new school and had been diligent in petitioning the court for timesharing. Without any other findings the court ordered the Father sole parental responsibility and exclusive timesharing. The court erred in sanctioning the Mother by denying her timesharing. The Court erred in not making specific findings as to best interest of the child. Finally, the court erred in denying the Mother's motion for rehearing or any opportunity to be heard. Reversed and remanded.

BUSTAMANTE v O'BRIEN, 44 FLA LAW WEEKLY D2873a (Fla. 1st DC, November 27, 2019)

Trial court erred in requiring Former Husband to arrange air travel for he minor children at least sixty days before his timesharing and making failing to do so a waiver of his timesharing rights. This order improperly modified the final judgment without proper pleading or proof of a substantial change in circumstances. Parties settlement agreement provided only that they would share the cost of air travel 70/30 but did not include directions on purchase of the tickets. Wife moved for "clarification" of the parenting plan indicating she could not afford tickets bought less than 60 days prior to departure. Including the 60 day provision is more than just a method or procedure for compliance. The modification would shift the burden to the Husband to negotiate and purchase the tickets. Reversed and remanded.

CLARK v MELZLIK, 45 FLA LAW WEEKLY D214c (Fla. 4th DCA, January 29, 2020)

Trial Court granted relocation and included language that "any additional relocation of daughter outside of Vero Beach or St. Augustine is subject to and must be sought in compliance with seciotn 61.13001. As this language is not consistent with the statute that applies only to relocations in excess of 50 miles, it was error to enter this order. Reversed and remanded.

C.N. v I.G.C., 45 FLA LAW WEEKLY D516a (Fla. 5th DCA, March 6, 2020)

Parties entered into a parenting plan in paternity action in 2014. Mother failed to follow the plan and began to exhibit paranoid behavior regarding the safety of the child. Father brought an Petition for modification. The trial court found there had been a substantial, material and permanent change in circumstances since the last entry of Final Judgment in this matter, and that it was in the best interest of the minor child to grant modification. The court gave Father majority time with the child and limited Mother's contact. Mother objected that the Court did not provide steps for Mother to reestablish timesharing. DECISION AFFIRMED AND CONFLICT CERTIFIED WITH CASES HOLDING THAT COURT MUST PROVIDE STEPS TO REGAIN TIMESHARING.

EDKIN v EDKIN, 45 FLA LAW WEEKLY D661a (Fla. 5th DCA, March 20, 2020)

It was error to order rotating custody where neither party requested rotating custody in their pleadings or at any time during the trial. The trial court's actions violated the mother's due process rights because she was never given notice that the issue of rotating custody would be considered, nor was she given an opportunity to address that issue. Reversed and Remanded.

EZRA v EZRA, 45 FLA LAW WEEKLY D262c (Fla. 3rd DCA, February 5, 2020)

Father appeals trial courts order awarding Mother sole decision making authority as to the educational and medical needs of the two minor children of the marriage. The father has consistently failed to cooperate with obtaining a scholarship for the children to continue to attend their private religious school. Father also unilaterally adjusted the dosage of the children's medication and obstructed professional medical intervention. Father has both passively and overtly hindered the mother's arduous attempts to foster the happiness, mental health, academic prowess and overall stability of the children. Consequently the decision of the court is supported by competent substantial evidence. Affirmed.

FOREMAN v JAMES, 44 FLA LAW WEEKLY D1095a (Fla. 3rd DCA, May 6, 2020)

Parties entered into a Paternity Settlement Agreement in 2010 providing the Mother with sole decision making and primary parenting duties to the Mother. Father brought a Petition for Modification. At a Case Management Conference the court asked the parties to explore the Family Bridges Program to address Mother's alienating behaviors. At the next Case Management Conference the family therapist indicated that reunification was going slowly and the Court ordered the parties to attend Family Bridges. The program would require the Father and daughter to spend 94 days together without contact with Mother. Mother sought certiorari review of the order. Because the trial courts Order on Case Management Conference modified the custody of the parties' minor child for a period of ninety-four days, the trial court was required to conduct an evidentiary haring preceded by appropriate notice. Proper notice did not precede the hearing that resulted in the trial court order and therefore the hearing did not comport with due process requirements. Trial Court order quashed. (Original Order 44 Fla. Law Weekly D2473 withdrawn)

FRYE v CUOMO, 45 FLA LAW WEEKLY D1358a (Fla. 4th DCA June 3, 2020)

Husband had a lengthy history of alcohol abuse. Trial court awarded Husband unsupervised timesharing with the children with the condition that the Husband abstain completely from all alcohol use at all times and submit to BAC testing at the beginning and end of his timesharing. The Wife was also given authority to reasonably demand periodic and immediate BAC tests from Husband even when not having the children in his care and ordered the Husband to pay the entire cost of the BAC device. The Court also granted the Wife ultimate decision-making regarding education for the children. The order for BAC testing before and after the children were in the Husband's care was affirmed however, it was unreasonable to allow Wife to require testing at any time and unreasonable to require Husband to pay all costs of the BAC equipment. Finally, the record reflected that the Husband is actively involved in the children's education and school activities. Therefore, it was unreasonable to award the Wife ultimate decision-making authority for education decisions. Reversed and remanded.

HUGHES v BINNEY, 44 FLA LAW WEEKLY D2872a (Fla. 1st DCA, November 27, 2019)

Parties agreed to an equal timesharing schedule for the minor children. Later Husband suffered from active addition and the Wife moved for modification of the plan. The court agreed and reduced Husband's time with the children substantially and ordered that when Husband completed Veterans' Court, obtains his own residence and has no motor vehicle violations for a calendar year commencing March 30, 2019, visitation shall revert to 50/50 timesharing as outlined in the original Final Judgment. This prospective change in timesharing is in error. By enumerating conditions precedent to an automatic future modification of the timesharing schedule, the court effectively made a prospective determination of what course of action would be in the best interest of the children in the future. Reversed and remanded to remove automatic future modification of timesharing.

LANE-HELPBURN v HELPBURN, 45 FLA LAW WEEKLY D243a (Fla. 2nd DCA, January 31, 2020)

At time of marriage Wife had a child by a prior relationship and during the marriage the parties had the child's name changed to that of the Husband. Parties then had two children born during the marriage. Husband received a default judgment of dissolution granting him sole custody of all three children. Wife moved to set aside the Final Judgment which was denied. She then kept the eldest child and refused to return the child to the Husband. The Court issued a pick up order. The Husband had no legal rights to custody of the eldest child who was not his biological nor adopted child. The Court erred in not granting the Wife's Motion to Vacate the Final Judgment as the Court failed to make any findings as to the best interest of the children. Reversed and remanded.

MARTINEZ v LERON, 44 FLA LAW WEEKLY D2765a (Fla. 5th DCA, November 15, 2019)

Trial court is not required to make findings of a change in circumstances in modifying timesharing where the previously ordered timesharing was a temporary order. Findings that the ordered timesharing was in the best interest of the child is supported by competent substantial evidence. Affirmed.

McGOVERN V. CLARK, 45 FLA LAW WEEKLY D1434a (Fla. 5th DCA June 12, 2020)

The parties were in a same sex committed relationship when, in 2012 and 2013, Clark gave birth to their first two children. Both children were given McGovern's last name. In 2013 the parties married and then had two more children born during the marriage. In 2018 McGovern filed for divorce naming all four children as children of the marriage. Clark moved to dismiss all claims related to the children arguing that McGovern was not related to any of the children by biology and the children born during the marriage had a biological father whose parental rights had not been terminated. The trial court determined that the third and fourth children were children of the marriage and subject to the action. However, the Court dismissed as to the first two children finding that they were not adopted by McGovern and she had no biological relationship to the children. Fl. Stat. 742.091 provides that there is no presumption of legitimacy for a child born before marriage, but the subsequent marriage of the mother and the "reputed father" legitimates the child. The parties and the children are, by statute, given the same status that they would have had if the child had been born during the marriage. It is held that "reputed father" means the individual generally or widely believed or considered to be the biological father of a particular child. Contrary to the trial court's determination, section 742.091 does not require a biological connection. Reversed and remanded.

MUSGRAVE v MUSGRAVE, 44 FLA LAW WEEKLY D2861a (Fla. 2nd DCA, November 27, 2019)

Trial Court erred in awarding Wife sole parental responsibility. Husband had pled for sole parental responsibility but after extensive trial conceded that he had not established the detriment necessary to warrant sole parental responsibility. Trial court then made findings that "the wife should not be compelled to co-parent with someone who is spiteful, vengeful, and not credible. Therefore, the Court awards sole parental responsibility [to the Wife]. The trial court failed to make any of the necessary findings of detriment to the children to have shared parental responsibility. Further the Wife never requested sole parental responsibility. Therefore, abuse of discretion to award Wife sole parental responsibility. Reversed and remanded.

RAMIREZ v RAMIREZ, 45 FLA LAW WEEKLY D640a (Fla. 4th DCA, March 18, 2020)

Wife moved to Ohio and the following day the Husband Petitioned for dissolution. Court ordered children returned and awarded Husband sole physical custody and sole parental responsibility on a temporary basis. Husband had pled for shared parental responsibility in his Petition and "sole care" of the children in his emergency motion. This was insufficient to put the Wife on notice that her parental rights were at stake. Reversed and remanded.

SCUDDER v SCUDDER, 45 FLA LAW WEEKLY D1111a (Fla. 4th DCA, May 6, 2020)

A parenting plan that fails to address all factors in Fl. Stat. 61.13 is legally insufficient. The parenting plan failed to address school registration nor other details of the children's education. The judgment also failed to address responsibility for extracurricular activities and details about health care decisions and costs. The court also failed to address the costs of travel expenses. The court also ordered the parties to utilize Our Family Wizard for communication despite the fact that neither party had requested this relief. Reversed and remanded.

T.D. v K.F., 44 FLA LAW WEEKLY D2719c (Fla. 2nd DCA, November 8, 2019)

The original paternity judgment, which was rendered on April 3, 2014, gave the parties shared parental responsibility and rotating time-sharing, and it ordered the Father to pay child support. In February 2017 DCF began investigation of Mother because of allegations of inappropriate sexual activity and drug usage in the presence of the child. Court entered a final order making the Father primary residential parent and providing Mother with unsupervised timesharing in Lee county only. The final order contains no explanation for this modification of the nature and location of the Mother's time-sharing, and it provides no steps for the Mother to follow to regain any time-sharing -- whether supervised or not -- with the child in Orange County. Reversed for Order providing Mother with steps to regain timesharing. CONFLICT CERTIFIED.

THOMPSON v MELANGE, 45 FLA LAW WEEKLY D150b (Fla. 1st DCA, January 21, 2020)

Trial court erred in ordering punishment schedule for minor child if the child refused to follow timesharing schedule where neither party requested this relief.

PATERNITY

SCHMIDT v NIPPER, 45 FLA LAW WEEKLY D153a (Fla. 1st DCA, January 21, 2019)

A child was born to Ms. Nipper while she was married to Mr. Nipper. In 2016 the child was removed from Ms. Nipper in a dependency action and placed with Mr. Nipper. Schmidt then filed a paternity action alleging that he was the biological father of M.C.S. Trial court denied the petition finding that the child was born to an intact marriage and that the legal father had asserted his rights. More than a year after this order, Schmidt filed a motion to vacate the order denying his paternity petition alleging that the order was void as it violated his due process rights. Trial court's failure to appoint a GAL in paternity action would make the order voidable, not void. Trial court affirmed for denying purported biological father's motion to vacate paternity order. Schmidt did not demonstrate that his rights had been deprived that would render the paternity order void and subject to challenge at any time. Further the evidence that Schmidt tried to introduce as evidence that the order was not equitable had actually happened prior to the entry of the original order. Affirmed.

PROCEDURE

AFANASIV v ALVAREZ, 45 FLA LAW WEEKLY D442a (Fla. 3rd DCA, February 26, 2020)

After multiple evidentiary hearings on Appellee's petition for domestic violence injunction, the trial court found there was insufficient evidence to issue a permanent injunction and dismissed the petition. In an abundance of caution, however, the court sua sponte issued a stay away order in the parties' pending dissolution of marriage action and granted Appellee temporary exclusive use and possession of the marital home. There was no pending motion or hearing noticed in the dissolution of marriage action. The granting of relief, which is not sought by the notice of hearing or which expands the scope of a hearing and decides matters not noticed for hearing, violates due process. Reversed and remanded.

BARRETT v BUSSER, 45 FLA LAW WEEKLY D1886a (Fla. 2nd DCA, August 7, 2020)

Case arising from a Final Judgment of Injunction for Protection Against Stalking. A temporary injunction was entered in July 2018 and the case was continued a number of times. When the final hearing was held in April 2019 Respondent failed to appear. Respondent filed a Motion for Reconsideration and counsel stated that he had inadvertently told the Respondent he did not need to appear because he thought it was a status conference not final hearing. Trial court erred in denying the motion without hearing. Reversed and remanded.

BENEDICT v BENEDICT, 45 FLA LAW WEEKLY D1114a (Fla. 4th DCA, May 6, 2020)

Trial court erred in failing to allow Former Husband to elicit Former Wife's testimony at the hearing on his amended petition for modification of alimony and failing to issue written findings as required under section 61.08.

BRADNER v BRADNER, 45 FLA LAW WEEKLY D24a (Fla. 1st DCA, December 27, 2019)

Summary Judgment: Parties divorced in 2017 and Husband was ordered to pay alimony for 35 months. Judgment provided that alimony would terminate if Wife entered into a supportive relationship as defined by statute. Husband brought action to terminate alimony alleging that Wife was living in a supportive relationship. Wife was living with her employer with whom she was having a romantic relationship, had rented the home from her employer, and entered into a lease to buy agreement with him. Trial Court erred in granting a summary judgement in favor of Husband and terminating alimony. A court's granting of a summary judgment must be based on a conclusive showing by the moving party that there are no genuine issues of material facts. There was sufficient evidence from which it could be inferred that the lease was a good-faith lease arrangement entered for reasons other than as part of a supportive relationship. Further her employment with her boyfriend's business could be seen as a normal employment relationship. Reversed.

CONSTANTINO v GENUNG, 45 FLA LAW WEEKLY D1883a (Fla. 2nd DCA, August 7, 2020)

Trial Court erred in setting aside the initial final judgment of the court based upon newly discovered evidence. The record shows that the newly discovered evidence would not probably have changed the result of the proceedings and that the successor judge instead impermissibly substituted his judgment for that of the judge who rendered the initial final judgment. Reversed and remanded.

D.O.R. v ASHBY AND TUITT, 45 FLA LAW WEEKLY D920a (Fla. 5th DCA April 17, 2020)

Mother became pregnant with Ashby's child while married to Tuitt. She then divorced Tuitt and D.O.R. brought action against Ashbey for support of minor child. At the hearing D.O.R. voluntarily dismissed the action without prejudice. Ashby argued for the case to be dismissed with prejudice and the Court agreed. Error to dismiss the case with prejudice because when D.O.R. voluntarily dismissed the action it ended the litigation and instantly divested the trial court of jurisdiction.

D.S. v A.L.H. 45 FLA LAW WEEKLY D1644a (Fla. 5th DCA, July 10, 2020)

Final Judgment for Injunction for Protection Against Domestic Violence is reversed where the trial court failed to provide Respondent reasonable opportunity to present evidence or any opportunity to cross-examine the witnesses against him. Reversed and remanded.

DUHAMEL v DUHAMEL, 45 FLA LAW WEEKLY D2227a (Fla. 2nd DCA, September 25, 2020)

During final hearing Wife appeared pro se. She attempted to introduce certain documents and Husband's counsel objected. Trial court told her that the documents would have to come in through the Husband. Husband's counsel stated that she might introduce them through the Husband during case in chief and the trial court told the wife that she could cross-examine the husband on the documents then. The Wife then rested. When the Husband's counsel did not raise the issue Wife attempted to on cross and was told she could not introduce the evidence in Husband's case. Wife requested several times to reopen her case and court denied. Trial court abused its discretion to deny the wife's request to reopen her case so that she could call the husband as a witness and introduce evidence e through him. Reversed and remanded.

EWELL v TRAINOR, 45 FLA LAW WEEKLY D2513a (Fla. 5th DCA, October 11, 2019)

Trainor filed Petition for Injunction for Protection Against Stalking Violence against Ewell and had Ewell served. Ewell appeared at the hearing and the Court granted the injunction. However, years earlier Ewell had been found to be incompetent and a Guardian had been appointed. Ewell moved for relief from the final judgment based upon improper service as the original petition had not been served on the Guardian. The Court erred in denying the Motion for Relief from Judgment. The Injunction was void for lack of proper service. Reversed and remanded.

FAGEN v MERRIL, 45 FLA LAW WEEKLY D904a (Fla. 2nd DCA, April 17, 2020)

Parties were divorced in April 2014. The Wife then moved to set aside the final judgment pursuant to Fl. Rule of Civ. Pro. 1.540(b) and Fl. Fam. L. R. Pro. 12.540(b) based upon fraud committed by Husband. Wife did not pursue motion but in 2018 filed for temporary attorney's fees and requested discovery of financial information. Court granted certain discover related to ability to pay and Husband filed Writ of Certiorari. The order compelling discovery is premature as the court has not ruled upon the merits of the Wife's motion to set aside the final judgment. Petition granted, order quashed.

HUMPHREY v HUMPHREY, 45 FLA LAW WEEKLY D1124e (Fla. 1st DCA, May 8, 2020)

The parties were married in 2003 but quickly committed a murder for which they remain incarcerated. The case was referred to the General Magistrate. Husband provided his objection to the Dept. of Corrections for mailing within 10 days of entry of the referral. On November 9, 2017 the parties

appeared by telephone and agreed to dissolve the marriage. On December 7, 2017 at the final hearing the court proceeded finding that the Husband had waived the objection when appearing on November 9 without objection. Once Husband filed a timely objection, the general magistrate had no authority to continue with the case. Reversed and remanded. Reversed and remanded.

JOSEPH v D.O.R., 44 FLA LAW WEEKLY D2394a (Fla. 4th DCA, September 25, 2019)

A final support order was entered after Father failed to respond to proposed order because D.O.R. sent it to the wrong address. For this reason support order is vacated and the case is remanded.

L.E.B. v D.D.C., 45 FLA LAW WEEKLY D2225a (Fla. 2nd DCA, September 25, 2020)

Legal Aid was representing Mother in paternity action. Legal Aid filed the petition, attended mediation and attended the trial in front of the magistrate. At the beginning of the trial Father moved to disqualify Legal Aid as he had consulted with them before the beginning of the action. Trial court erred in granted the Motion to Disqualify. Because Father was aware of the facts that supported the disqualification for over a year before he moved to disqualify legal aid from representing Mother, he waived his right to have Legal Aid disqualified. Reversed and remanded.

LEWIS v SORIANO, 45 FLA LAW WEEKLY D1396a (Fla. 3rd DCA June 10, 2020)

Parties divorced in 2015 but in 208 the parties required a hearing to determine the distribution from the sale of the former marital home. The Wife requested a continuance due to illness but the court denied the Motion and held the hearing without the Wife's presence. Wife moved for a rehearing and provided letters from her doctors as well as records from her admission to the hospital as the reason for her absence from the initial hearing. The Court erred in denying the motion for rehearing. Reversed and remanded.

MARWAN v SAHMOUD, 45 FLA LAW WEEKLY D1461b (Fla. 3rd DCA, June 17, 2020)

During Wife's hearing on Motion for Contempt against Husband for failure to pay alimony and other payments as required by the MSA, the judge intervened to question Husband extensively on his income and assets going beyond questions by Wife's own counsel. The Husband moved to recuse the judge and when this was denied he Petitioned for a Writ of Prohibition. The test for determining the legal sufficiency of a motion for disqualification is whether 'the facts alleged (which must be taken as true) would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. Here, the record reveals that, before the parties rested, no one elicited any evidence that would support a contempt order. The sole evidence relevant to the finding of present ability to pay, without which he could not be held in contempt, was generated directly by the court's inquiry and requests for production, not only after the parties had both rested, but even after they had ceased following up on the court's initial inquiry. The record supports the former husband's assertion of reasonable fear that he would not receive a fair hearing based on the nature and extent of the court's questioning.

MEZEL v TZYNDER, 45 FLA LAW WEEKLY D1683a (Fla. 3rd DCA, July 15, 2020)

Trial court erred in modifying father's timesharing without properly noticing father's motion for hearing as this divested the mother of her procedural due process rights. Reversed and remanded.

MURPHY v COLLINS, 45 FLA LAW WEEKLY D1775a (Fla. 3rd DCA, July 22, 2020)

Murphy filed Writ of Prohibition seeking to disqualify the trial judge from continuing to preside over her child custody proceedings. After dispute Murphy took the couples child to PA where she initiated a paternity suit and Collins initiated paternity action in FL. The court ordered a hearing on Murphy's motion to dismiss and ordered Murphy to appear. Murphy requested to appear by telephone. Court held Murphy in contempt for failing to appear at the hearing without taking any evidence. The Motion was reset for one month later and Murphy again requested to appear by telephone due to difficulty traveling due to COVID. Court refused to rule on the motion so Murphy attended and the court denied her motion to dismiss. The judge, at an unrelated hearing announced to one of Murphy's attorneys that she hand instructed her staff not to accommodate their scheduling requests as a matter of internal policy due to animosity with co-counsel. Murphy moved to disqualify the judge which was denied. Trial judge erred in refusing to disqualify from the case where it was clear that Murphy had reasonable fear that the judge lacked impartiality.

PRATT v DOR, 45 FLA LAW WEEKLY D852b (Fla. 4th DCA, April 15, 2020)

DOR brought administrative proceedings for child support. Father requested a hearing on the proposed order. DOR sent the order setting the hearing to the wrong address and the Father was never notified of the hearing. The final order was entered without due process. Reversed and remanded.

ROMERO v BRABHAM, 45 FLA LAW WEEKLY D1746a (Fla. 4th DCA July 22, 2020)

Parties entered MSA to alternate tax deduction for minor child. Contrary to the agreement the Wife took the deduction in the Husband's year. Court ordered Wife to amend her federal tax return to remove the child from her form. The Wife failed to amend her taxes. Husband filed for contempt. Before the scheduled hearing the Wife amended her return and provided to Husband's counsel. Wife moved to appear at the hearing by telephone as Husband planned to proceed with the hearing for purposes of attorney fees. At the hearing the Court denied Wife's motion to appear by telephone and found Wife in contempt. Wife moved to vacate the order which was denied without hearing. Wife had been given time to call in but the court did not allow her to appear by telephone. The court erred in denying request to appear by telephone when the court had allowed her to schedule the call thus implying she would be allowed to appear. Further the Wife had a meritorious defense to the motion for contempt as she had already complied with the order. Reversed and remanded.

RUSSELL v RUSSELL, 45 FLA LAW WEEKLY D838b (Fla. 1st DCA April 9, 2020)

Challenges to the sufficiency of the findings of fact with respect to alimony and equitable distribution were not preserved for appellate review by filing a Motion for Rehearing. The appellant also did not preserve the issue of the court using the wrong valuation date for assets in the final judgment. Where an error by the court appears for the first time on the face of a final order, a party must alert the court of the error via a motion for rehearing or some other appropriate motion in order to preserve the appeal.

SINGER v Singer, 45 FLA Law WEEKLY D849b (Fla. 4th DCA, April 15, 2020)

This is the twenty-seventh time this case has come before the Appellate Court! The last time the lower court sent the case back because the Broward County Court transferred venue to Palm Beach County

sua sponte because there existed a separate action in PB County separate civil action between the parties and a third party (Wife's mother) regarding title to property in PB County. There the court indicated they could not transfer venue of the family law case simply because there was a similar civil action in another county. Now this time the PB County *sua sponte* transferred venue of the separate civil case to Broward. This is again a violation of due process and not allowed.

SINGER v SINGER, 45 FLA L WEEKLY D901a (Fla. 2nd DCA, April 17, 2020)

At the conclusion of the trial the court orally announced its ruling finding that the Wife was provided $20,800 per year from her long-term boyfriend and her father. After the trial but before the Final Judgment was entered, both the boyfriend and father died. The Wife sought relief under Florida Fam. L.R.P. 12.530(a), Motion for Rehearing. This requires showing that (1) the presentation of the evidence will not unfairly prejudice the opposing party and (2) the reopening will serve the best interest of justice. In this case the court erred in denying the Motion for Rehearing as both elements were established. The Wife also moved for relief from judgment under Fl. Fam. L.R.P. 12.540(b) based upon newly discovered evidence. Again, court abused discretion in denying the motion as clearly the newly discovered evidence should have been allowed on the timely motion. Reversed.

S.S. v DEPT. OF CHILDREN & FAMILIES, 45 FLA LAW WEELY D257b (Fla. 3rd DCA, February 5, 2020)

Trial court erred in failing to recuse after the judge's commentary concerning the credibility of the Petitioner and her family the completion of the petitioner's direct examination or presentation of any of her witnesses was sufficient to create a reasonably prudent person a well-founded fear that she would not receive a fair hearing before this judge. (Dependency case). Petition for Writ of Prohibition granted.

STEWERT v SETWERT, 45 FLA LAW WEEKLY D1483a (Fla. 5th DCA June 19, 2020)

The magistrate entered a report and recommendation ("R&R"), recommending that the trial court deny Husband's motion to recuse because the motion was legally insufficient (merely claiming that magistrate's rulings disfavored the Husband). Husband filed exceptions to the R&R. However, the trial court incorrectly found that no exceptions had been filed and, thus, approved and adopted the magistrate's recommendation. Here, the magistrate's R&R was based on a point of law -- the legal sufficiency of the motion --rather than its factual findings. Accordingly, despite the trial court's error in failing to hold a hearing on Husband's timely-filed exceptions, we are nevertheless able to review the merits of Husband's claim. Although the trial court erred in failing to hold a hearing, we nevertheless affirm the trial court's denial of Husband's motion because it was meritless as a matter of law. When a party files exceptions to a magistrate's R&R, the trial court must hear the motion.

STOVER v STOVER, 45 FLA LAW WEEKLY D62b (Fla. 2nd DCA, January 3, 2020)

Trial court erred in granting Mother exclusive timesharing of the parties' minor children when the Mother had not requested the relief in her pleadings and the Father had not notice that limitations on his timesharing would be adjudicated. Ruling violated Father's due process rights. However, the injunction had expired before the court heard the matter and therefore the matter is dismissed as moot.

TALARICO v TALARICO, 45 FLA LAW WEEKLY D970a (Fla. 3rd DCA April 22, 2020)

The parents initially had a parenting plan entered with their dissolution in 2009. The Father then moved to suspend the Mother's timesharing based upon a dispute. The court held an in camera interview with

the minor child which was not recorded. No summary of the interview was provided to the parties. The Court then order the reduction in the Mother's contact with the children FL Stat. 61.13(2)(c) allows the court to consider the reasonable preference of the child. The preferred method of receiving such evidence is to obtain the child's view in an in camera interview. However, the Court must balance the due process rights of the parents and the privacy and best interest of the children. This is normally accomplished by either recording the interview and providing the transcript or by providing a summary of the testimony of the child. The Court erred in basing the parenting decision on the testimony without providing a summary of the testimony to both parties. Reversed and Remanded.

TAVARES v ENOCH, 45 FLA LAW WEEKLY D1857a (Fla. 4th DCA, August 5, 2020)

Trial Court took 8.5 months to issue it's ruling on the Petition for Dissolution. However, the Court issued a 17 page judgment which indicates the Court's careful consideration of the testimony, admissible evidence and the child's best interest. As three are not numerous discrepancies between the evidence and the terms of the final judgment reversal is not required. However, the Court failed to rule on the Father's indirect civil contempt motion as it related to the schooling issue. By not ruling on the motion, the Mother hoped to gain an advantage in school selection. Also, the final judgment contains one clear material error in it's finding of fact: finding that the father had one incident of criminal conduct before the child was born when in reality it was the mother who testified that she was fired from a job for identity theft and fraud. The case is remanded for the court to consider these two issues with respect to the parenting plan.

TOLER v PRAY, 45 FLA LAW WEEKLY D780a (Fla. 2nd DCA April 3, 2020)

Parties appeared at an Injunction hearing *pro se*. Petitioner testified and then Judge allowed Petitioner to call her witnesses without allowing Respondent the opportunity to cross-examine Petitioner. This was a violation of Respondent's due process rights. Reversed.

VALSAINT v ALPHONSE, 45 FLA LAW WEEKLY D1683d (Fla. 3rd DCA, July 15, 2020)

Trial court did not abuse its discretion in denying Father's request for continuance of hearing nor did the trial court err in dismissing the Father's petition for failure to effect service of his petition on the minor child's mother.

WIENDL v WIENDL, 45 FLA LAW WEEKLY D1643a (Fla. 2nd DCA, July 8, 2020)

Magistrate held hearing finding Former Husband in contempt for failure to pay child support. Former Husband timely filed Motion to Vacate the Order entered adopting the R & R of the magistrate. Former Husband sited FL Fam. L. R. P. 12.491(f). Trial Court erred in denying the Motion to Vacate without a hearing. 12.491(f) provides that "a motion to vacate the order shall be heard within 10 days after the movant applies for hearing on the motion. Former Husband had emailed the motion to the JA and asked the JA to please advise as to the hearing. This was sufficient to trigger the need for the hearing.

STATUTES & RULES

IN RE: AMENDMENTS TO THE FLORIDA SUPREME COURT APPROVED FMAILY LAW FORMS – FORM 12.948(a)-(e), 45 FLA LAW WEEKLY S215a (July 9, 2020)

Forms amended for corrections and to clarify and add online notary provisions.

IN RE: AMENDMENTS TO THE FLORIDA RULES FOR QUALIFIED AND COURT APPOINTED PARENTING COORDINATORS, 44 FLA LAW WEEKLY s234A (November 7, 2019)

The Alternative Dispute Resolution Rules and Policy Committee amends Part II (Discipline) of Rules for Qualified and Court Appointed Parenting Coordinators.

IN RE: AMENDMENTS TO THE FLORIDA FAMILY LAW RULES OF PROCEDURE – FORMS 12.996(A) AND 12.996(D), 44 FLA LAW WEEKLY s273b (December 5, 2019)

The instructions to Form 12.996(a) are amended so that it may be used in both Title IV-D and non-Title IV-D cases.

IN RE: AMEDNMENTS TO THE FLORIDA SUPREME COURT APPROVED FAMILY LAW FORMS – FORMS 12.948(a)-(e), 44 FLA LAW WEEKLY S273a (December 5, 2019)

Five forms are created to implement the Uniform Deployed Parents Custody and Visitation Act, codified as Part IV of Florida Statute, Chapter 61.