2023
CASE LAW
REVIEW

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O'Day Resolutions

941-228-8571

Table of Contents

AGREEMENTS

BAUERLE v BAUERLE, 48 FLW D1713c (FLA 5TH DCA, August 25, 2023)

Trial court erred in ordering Husband to transfer the marina property, described in an MSA executed by the parties and incorporated into the FJ, to Codisco, a family -owned company, pursuant to a bankruptcy court's order. The MSA expressly provided tha the marina property would remain in a family trust and that the value of the marina property would be considered when determing the value of the Wife's stock under the MSA's buyout provisions. Wife's argument that the Husband concealed the bankruptcy order is without merit as she was a party to the bankruptcy proceedings and the order was part of the public docket of the proceedings. Res judicata barred the Wife from relitigating the property transfer issue because she settled the matter in the fully executed MSA. Court also erred in awarding Wife attorney fees under the prevailing party clause as each party prevailed in a part of the litigation. Reversed.

DUCHATEAU v DUCHATEAU, 48 FLW D1120a (FLA 5TH DCA, June 2, 2023)

The parties entered into a marital settlement agreement in 2018 and this was incorporated into their final judgment of dissolution. In 2021 the former husband filed a motion under FL Fam Law rule of Pro. 12.540 to set aside the final judgment and MSA. During depositions the parties reached a settlement on their pending litigation. The settlement which would have the effect of modifying the MSA was orally announced, confirmed by the parties, and transcribed by the court reporter. However no written agreement modifying the 2018 MSA was executed bye the former wife. Several months later the former husband moved to ratify and enforce the new agreement. The trial court denied former husband's motion. FL Rule of App Pro. 9.130(a)(3)(C)(ix) permits the appeal of non-final orders that determine "that, as a matter of law, a settlement agreement is unenforceable, is set aside, or never existed." As the trial court never expressly determined, as a matter of law, that the settlement agreement in 2021 was not enforceable, never existed, or was set aside, the order is not appealable. Moreover, on the face of the order, the trial court, following the presentation of evidence, made a factual finding that former husband did not prove the exception to the rule that otherwise precludes the oral modification of a written agreement when the written agreement expressly prohibits oral modification. Appeal dismissed.

FENDRICH v FENDRICH, 48 FLW D164a (FLA 4TH DCA, January 18, 2023)

The parties entered into an MSA which provided under child support in part that "each party shall pay one half of all of the college expenses of each child. The child support shall be reviewed and readjusted if necessary when the rehabilitative alimony ceases commensurate with the income of the parties at that time." The Former Wife moved for contempt and enforcement when the Former Husband refused to pay one-half of the college expenses for the children. A latent ambiguity exists where a contract's language is understandable but fails to specify the parties' rights or duties. Here the term "all college expenses" fails to define what that includes, provides no limitation on attendance duration, school choice, or either parent's consent or ability to pay. Therefore the court should consider parole evidence to determine what the parties intended by using the term "all college expenses". The court must also consider each parties' ability to pay when considering these expenses.

GJOKHILA v SEYMOUR, 47 FLW D2022a (FLA 1ST DCA, October 6, 2022)

Parties entered into a mediated settlement agreement which provided for the Father to pay child support to the Mother based on the parties' incomes. The agreement included an downward calculation of support based upon an income adjustment that reflected a future increase in Mother's work hours based on her expected switch to full-time employment. Seven months later the Mother moved to set aside the Final Judgment because her employer did not increase her hours as contemplated in the agreement. She asserted that the future income was imputed to her and the court erroneously entered a speculative modification of support and that this is an error as a matter of law. The Mother provided a reasonable assessment of her future earning capacity and therefore it was lawful for the court to rely upon this to entered the consent judgment. The court did not impute income to the Mother but rather relied upon her stipulated earning estimate. Trial courts should not grant a motion to set aside a judgment when the judgment was the result of the movant's freely negotiated agreement or stipulation. AFFIRMED

HASKIN v HASKIN, 48 FLW D1628a (FLA 3RD DCA, August 16, 2023)

When Eugene and Judith Haskin divorced they entered into an MSA which provided in pertinent part that "Husband agrees to promptly make and execute a Last Will and Testament containing such provisions as he may deem proper except that such Will shall contain a provision providing for the distribution of not less than 50% of his net estate to be divided equally among all of the Husband's then living children… The provisions of this article are not to be deemed to require the Husband to include as such beneficiaries any children other than the children of the Husband and Wife but the provisions hereof permit such inclusion at the option of the Husband." Following the divorce Eugene remarried and had two additional children. Several years later he changed his estate plan and disinherited three of his children born to Judith. Upon Eugene's death the three children brought suit for their share of the estate. Trial court correctly granted partial summary judgment in favor of the children from first marriage on claim that Husband breached the MSA by disinheriting them. MSA was unambiguous as a contract. Affirmed.

ROSEN v ROSEN, 48 FLW D760b (FLA 4TH DCA, April 12, 2023)

The parties entered into an MSA which was incorporated into their final judgment. The MSA provided in pertinent part that the parties would jointly defend anticipated litigation regarding property owned by the wife's revocable trust and each would pay 50% of attorney fees and costs incurred in any litigation on this matter. Trial court erred in completely rewriting the terms of this agreement. Reversed and remanded with instructions.

SHOBOLA v SHOBOLA, 47 FLW D253a (FLA 2ND DCA, December 7, 2022)

Parties entered into a premarital agreement weeks prior to marriage. The PMA provided for $3,000 per month as temporary support until entry of a FJ of DOM. The Husband was also to pay $3,000 per month as alimony for 24 months based upon the length of the marriage. Trial court correctly considered the PMA and the Wife's need and Husband's ability to pay temporary support when ordering $3,000 per month in temporary support between the date of separation and at of FJ. However, the court incorrectly calculated the length of temporary support and

permanent support. Reversed and remanded for proper calculation. Affirmed in part and reversed in part.

WINROW v HEIDER, 48 FLW D1066a (FLA 4TH DCA, May 24, 2023)

Prior to the parties marriage they entered into a premarital agreement which provided in pertinent part that the Shady Pond Lane property would be the husband's separate property and he had the right to dispose of or incumbent as he desired. During the marriage the husband secured a HELOC loan encumbering the Shady Pond property. The proceeds of the loan were used to pay marital debts. The trial court erred in classifying the HELOC loan as marital and dividing it equally between the parties. Although the husband elected to spend the amount borrowed on marital expenses the loan itself was incurred solely by him as non-marital debt against his separate non marital property pursuant to the terms of the prenuptial agreement. Reversed.

ALIMONY

ALIZZI v ALIZZI, 47 FLW D2287b (FLA 4TH DCA, November 9, 2022)

Temporary Support: This was a 23 year marriage. Trial court erred in ordering temporary support not supported by competent substantial evidence. Wife had a need of $3,434 per month based upon her actual rent paid to her daughter and other expenses. These were not liquid assets available to the Wife and therefore should not be considered in analysis of temporary fee award. Reversed.

BEAUCHAMP v BEAUCHAMP, 48 FLW D1160a (FLA 6TH DCA, June 9, 2023)

Trial court did not abuse its discretion in awarding wife durational alimony in light of the substantial assets she received, and in finding that the wife's mental health condition, while preventing her from working, was not permanent. Affirmed.

BERNARDO v BIEMER, 48 FLW D1013a (FLA 4TH DCA, May 17, 2023)

In an appeal of a final dissolution judgment, the sufficiency of the evidence supporting a trial court's ruling on an alimony claim or a fee claim may be asserted for the first time on appeal. The award of bridge-the-gap alimony to the wife was an abuse of discretion where Wife's net income exceeded that of her Husband. The Wife presented no evidence to impute income to the Husband and his modest income suggested that he did not have the ability to pay.

BRUTUS v GILES, 48 FLW D1030c (FLA 5TH DCA, May 19, 2023)

Trial court erred in awarding durational alimony to the wife in the written final judgment after trial court had denied former wife's claim for alimony in its oral pronouncement.

CROUSE v CROUSE, 48FLW D1468a (FLA 4TH DCA, July 26, 2023)

Trial court determination of the amount of alimony was insufficient as the court failed to make specific findings regarding the parties net income. Without the finding of net income for each party it is not possible for the appellate court to make a determination as to whether the alimony award left the husband with significantly less income than the wife. Reversed and remanded.

FRANXMAN v FRANXMAN, 48 FLW D1186a (FLA 1ST DCA, June 14, 2023)

On remand the trial court is instructed to explain why it did not require the husband to pay back due temporary support it had previously ordered. It is possible the trial court intended to forgive the husband's past due amounts given the unequal distribution but this is not clear in the order. Reversed and remanded.

GAYER v NICITA, 48 FLW D1220c (FLA 6TH DCA, June 16, 2023)

The trial court erred in failing to make specific findings as to need and ability to pay in determining alimony. Further the court erred in basing alimony on the husband's gross income rather than net income. Reversed and remanded

GOODMAN v GOODMAN, 48 FLW D437b (FLA 6TH DCA, February 24, 2023)

Trial court erred in failing to make findings regarding wife's need for temporary alimony and the parties respective net income for the period while the case was pending. The trial court further erred in considering an account that was provided to the wife as part of equitable distribution as income to the wife for determination of child support. Reversed and remanded

HAWRYLUK v HAWRYLUK, 48 FLW D1028a (FLA 5TH DCA, May 19, 2023)

Trial court found husband had monthly income of between 10,000 and $12,000 and living expenses of $5000 per month. This resulted in the husband having a surplus of $6,000 per month. Trial court erred in ordering the husband to pay a combination of support and attorney fees totaling $6,350 per month as this is clearly above the Husband's ability. Reversed and remanded.

HUETE v HUETE-SIERRA, 48 FLW D1064a (FLA 4TH DCA, May 24, 2023)

Final judgment is facially inconsistent with respect to whether the husband owes retroactive alimony. Remanded for clarification as to whether retroactive alimony is owed.

IARUSSI v IARUSSI, 47 FLW D2079a (FLA 1ST DCA, October 12, 2022)

Trial court failed to consider Wife's investment income when calculating alimony. FL Stat. 61.08(2)(i) requires that the court consider all sources of income available to either party, including income available to either party through investments of any asset held by that party. Concurring opinion addresses that there is no such thing as retroactive alimony back to the date of filing the Petition. All judges on the panel agreed but as durational alimony was reversed and Husband did not raise the issue, it was remanded to be addressed below. The opinion provides that if there is a need for alimony pending the outcome of the case it must be addressed under FL Stat. 61.14 for temporary support. Reversed and remanded.

LEE v LEE, 47 FLW D2455a (FLA 2ND DCA, November 30, 2022)

Parties married in 1996. In 2014 Wife moved with agreement of the parties to Finland and Husband was to follow but this did not happen. Wife filed for divorce in Finland in 2015 and court granted just the divorce and determined child custody issues but did not resolve alimony or equitable distribution. Finland law requires each aspect of a divorce to be tried separately. Husband filed for ED and alimony in FL and wife refused service stating petition was not in Finish. Trial court erred in dismissing Husband's claim for alimony saying it was barred by entry of Final Judgment in Finish matter. All evidence supported finding that Finish case did not address alimony so it was still ripe for FL consideration. Reversed and remanded.

MIKLER v MIKLER, 47 FLW D2556a (FLA 2ND DCA, December 2, 2022)

Parties were married for over 23 years. At trial the wife testified that she was considering buying a home or renting a home but that she did not know exactly what the costs would be. The court determined that she had a need for $1,800 per month in permanent periodic alimony. The trial court was correct in the award of permanent periodic alimony but given the lack of concrete

information as to the Wife's needs in the future the court should have awarded nominal modifiable alimony and addressed the Wife's long term needs when they were better established. Reversed and remanded.

REESE v REESE, 48 FLW D993a (FLA 6TH DCA, May 12, 2023)

Trial court erred in failing to consider parties' net incomes and failing to consider the raise that the Husband received and testified to at trial.

STORANDT v BRYAN, 47 FLW D2433a (FLA 1ST DCA, November 23, 2022)

The trial court ordered the sale of the former marital home over the Husband's objection. The court then found that the Husband had the ability to pay $649 per month in permanent alimony until the sale of the home but then found that his expenses should be reduced when the home was sold and ordered an automatic increase in alimony to $800 per month once the property was sold. While the court can order the sale of the home, it is speculative to determine what the Husband's expenses would be after the sale and therefore an error to order an automatic increase in alimony. Reversed and remanded.

WILLIAMS v WILLIAMS, 48 FLW D1331a (FLA 1ST DCA, July 5, 2023)

The trial court is not required to include specific factual findings to support an award of temporary alimony pursuant to Florida Statute 61.071. This is required for a final award of alimony it is not required for temporary awards. The trial court is further not required to explain how it determines the amount of temporary alimony provided there is some evidence in the record to support it. The husband in this case was a member of the US military and as such received Early Return Dependent (ERD) funds when his wife returned from Germany to give birth to their child in Florida. The trial court erred in ordering the husband to provide a portion of this amount of money to the wife. These funds were a marital asset and any distribution of marital assets or liabilities must be supported by factual findings. Further a partial interim equitable distribution requires that the wife requests the relief in her motion which was not done.

APPEALS

BOKSA v HOGAN, 48 FLW D1823a (FLA 3RD DCA, September 13, 2023)

Husband's appeal of the FJ of Dissolution is dismissed where he failed to file an initial brief which complied with FL R. of App Pro. 9.210 after several opportunities to do so.

CARTER v MEADOWS, 48 FLW D142a (FLA 1ST DCA, July 19, 2023)

Petition for Writ Certiorari review of order permitting discovery of his psychotherapist records is dismissed as moot because the parties reached a full settlement resolving all outstanding issues between them.

DECIUS v DECIUS, 48 FLW D756a (FLA 4TH DCA, April 12, 2023)

Husband failed to provide necessary documents related to property located in Haiti. Trial court found husband in contempt for failure to comply with court orders and husband appeals the order of contempt. Appeals court recedes from prior opinions permitting non-final appeals of all prejudgment contempt orders. Prejudgment contempt orders are appealable nonfinal orders only if the ordered sanction falls within subsection of Florida rule of appellate procedure 9.130 (a)(3). Pre-judgment order finding the husband in contempt for failure to comply with discovery orders is redesignated as a Petition for Writ of Certiorari and husband is ordered to file the Petition and appendix.

DIASOLWA v BURNEIKIS, 47 FLW D2492a (FLA 3RD DCA, November 30, 2022)

In paternity action court entered Final Judgment on October 22, 2019. On November 24, 2019 counsel for the Father sent an email to the JA asking where the FJ had been sent as he had not received it. However, Father did not file a motion for relief from judgment pursuant to FL Fam. L.R. of Pro. 12.540(b)(4). The court then entered an amended FJ based upon a typographical error in the original FJ and the Father appealed this amended FJ. An amended FJ cannot be treated as a new FJ for purposes of appellate jurisdiction when there is no material change to the FJ. Appeal dismissed as untimely without prejudice for Father to file motion for relief from judgment. Dismissed.

HIATT v MATHIEU, 47 FLW D2292a (FLA 4TH DCA, November 9, 2022)

Motion for Rehearing and Hearing En Banc denied. Trial court erred in ordering both parties to share the cost of international travel when the parties were without sufficient ability to pay the cost of the travel. Trial court erred in failing to attach a child support guideline worksheet to the Final Judgment. FL Fam. L. Rule 12.530(a) amended to require a party to raise the issue of a trial courts failure to make findings of facts or attach a child support guidelines worksheet to the Final Judgment. Denied.

OBERMARK v OBERMARK, 48 FLW D1891a (FLA 5TH DCA, September 22, 2023)

Former Husband appeals the trial court's Final Order dismissing his supplemental petition for modification of child support without holding an evidentiary hearing, depriving him of due process. The appealed order dismissed the petition without prejudice and is thus a non-final

order. Husband could file an Amended Supplemental Petition for Modification. Use of the words "Final Order" in the title lacks sufficient finality to constitute a final order. Appeal dismissed.

PEREZ v DOR, 47 FLW D2092a (FLA, 1ST DCA, October 12, 2022)

Departments confession of error related to the absence of a paternity order before the entry of an administrative child support order is rejected where appellant father failed to raise the alleged error to which the department confessed. The error relating to the calculation of child support which the Father actually claimed was not preserved for appellate review. AFFIRMED.

SANZ v SAENZ, 48 FLW D907a (FLA 3RD DCA, May 3, 2023)

On January 12 trial court entered a non final order awarding temporary professional fees and cost to the wife. Wife filed a motion for rehearing on January 26. Wife filed an appeal on March 27. The January 12th order was a appealable non final order and therefore the motion for rehearing did not told the time and the notice of appeal was untimely. Appeal dismissed.

STEPHANOS v STEPHANOS, 48 FLW D511a (FLA 4TH DCA, March 8, 2023)

In dissolution action, Wife claimed unjust enrichment and breach of contract. However, she requested the court to not reach the merits of these claims and therefore they were abandoned. (Dissent argues that the Wife made an election of remedies but when the remedy proves unsuccessful on appeal the party is not precluded from pursuing the alternatives on remand). Affirmed.

VAKULOVSKA v VAKULOVSKYI, 48 FLW D1700a (FLA 3RD DCA, August 23, 2023)

Wife filed her Motion to Amend the Final Judgment more than 15 days after the entry of the FJ. As the motion to amend was not timely, it did not toll rendition of the FJ. Therefore the appeal filed more than 30 days after the entry of the FJ is untimely. Dismissed.

WILLIAMS v WILLIAMS, 48 FLW D927c (FLA 5TH DCA, May 1, 2023)

Trial court did not err in granting stay of proceedings pending resolution of petitions to determine whether former husband was incapacitated and, if so, to appoint plenary guardian. The proper remedy for an alleged erroneous entry of a stay is certiorari relief. As the wife would suffer no irreparable harm by the granting of the stay certiorari relief is denied.

ATTORNEY FEES / PROFESSIONAL FEES / COSTS

ALI v KHAN, 48 FLW D1762b (FLA 6TH DCA, September 1, 2023)

Trial court erred in awarding attorney fees to Former Wife for defending against Former Husband's Supplemental Petition for Modification of Alimony, Parenting Plan and Child Support. Court based award on actions of Former Husband and the denial of the Supplemental Petition. Court is required to make findings as to the parties' financial positions. Remanded.

ALIZZI v ALIZZI, 47 FLW D2287b (FLA 4TH DCA, November 9, 2022)

Temporary Alimony: This was a 23 year marriage. Trial court erred in denying Wife's request for temporary attorney fees based upon Wife's Financial Affidavits which reported her net worth as $3.8 million. This was based upon the reported net worth of the former marital home worth $3.5 million and where the Husband resides. These were not liquid assets available to the Wife and therefore should not be considered in analysis of temporary fee award. Reversed.

BEAUCHAMP v BEAUCHAMP, 48 FLW D1160a (FLA 6TH DCA, June 9, 2023)

No abuse of discretion in denying the wife's claim for attorney fees given the findings that the wife received sufficient assets in equitable distribution. Affirmed

BERNARDO v BIEMER, 48 FLW D1013a (FLA 4TH DCA, May 17, 2023)

The trial court was within its discretion to sanction the husband for his bad faith conduct when representing himself in the dissolution action, which resulted in the wife unnecessarily incurring some amount of attorney's fees. However, the Wife's attorney's timekeeping records, without more, were insufficient to establish the reasonable amount of attorney's fees to be awarded for the husband's inequitable conduct. Remanded for additional findings.

CLETCHER v CLETCHER, 47 FLW D2043a (FLA 2nd DCA, October 7, 2022)

Parties had engaged in post-dissolution litigation since the Final Judgment was entered in 2014. In 2021 the court held a hearing to resolve all outstanding issues. At that time the Wife was earning $15,083 per month and the Husband was earning $4,300 per month. The Wife was also delinquent in transferring $30,000 in retirement assets to the Husband. Trial court erred in awarding the Wife $7,110 in attorney fees and ordering that she could exclude these from the retirement funds owed to the Husband. The trial court erred when it awarded the fees despite specifically finding that the Husband did not have the ability to pay the Wife's attorney fees based upon his income. The consideration that the Husband should deplete his equitably distributed assets to pay the Wife's fees was also an error. There was no finding of bad faith on the Husband's part to warrant an award of fees. Reversed and remanded.

DUNSON v DUNSON, 48 FLW D1654a (FLA 5TH DCA, August 18, 2023)

Trail court failed to make necessary findings about the reasonableness of Mother's counsel's hourly rate in awarding attorney fees in contempt action. Reversed for necessary findings.

EADIE v GILLIS, 47 FLA D2378b (FLA 5TH DCA, November 18, 2022)

Petitioner consented to a charging lien when her previous attorney withdrew from the case. The charging lien attached to all property in the matter. Trial court erred by imposing a charging lien that attached to all property including homestead property. A homeowner cannot waive her homestead exemption rights in an unsecured agreement. Reversed.

ERNFRIDSSON v WARD, 48 FLW D1343a (FLA 5TH DCA, July 7, 2023)

The trial court abused its discretion in denying the wife's additional fees request without making the necessary findings of fact. In denying the additional fees request, the trial courts analysis was limited to a finding that the case involved a short term marriage with minimal marital assets. This restricted evaluation was deficient because it failed to contain sufficient findings on the parties respective financial resources to facilitate meaningful appellate review. Remanded.

GABLE v GABLE, 48 FLW D1146a (FLA 1ST DCA, June 7, 2023)

In awarding attorney fees the trial court must make specific findings as to hourly rate, the number of hours reasonably expended, and the appropriateness of reduction or enhancement factors. The record does not contain any evidence presented below concerning these factors. Reversed.

GOULDING v GOULDING, 48 FLW D1448a (FLA 2ND DCA, July 26, 2023)

Trial court erred in ordering the former wife to pay attorney fees as a sanction for contempt where it failed to include an affirmative finding that the former wife had the ability to pay the fees as a sanction. Trial court erred in ordering the wife to pay husband's appellate attorney fees without a specific finding as need and ability to pay. Trial court further erred an ordering an award of attorney fees for the appeal which included fees incurred prior to the filing of the appeal. Trial court erred in basing any part of its ruling regarding fees on a finding that the wife had moved for written opinion in a prior appeal when no such motion was filed. Trial court erred in refusing to strike the statement that the wife was living with her paramour when it was undisputed that this was in fact false. Trial court pronounced its findings of fact and conclusion of law orally at the conclusion of the hearing and requested the husband to prepare the order. Thus, the trial court entering of the proposed order verbatim including mistakes and factual errors without giving the wife the opportunity to object is not reversible error. Reversed and remanded

JESSUP v WERNER, 48 FLW d55B (FLA 1st DCA, December 30, 2022)

Trial court made a finding of the Mother's need and the Father's ability to pay the Mother's attorney fees in a paternity action but as the final determination of the amount of reasonable fees had not been determined, this issue was not ripe for appeal. However, in a paternity proceeds the "loan" from the Mother's father counts as a financial resource that the trial court should account for when determining the Mother's need. Section 742.045 is not a reimbursement provision, but rather requires trial court to consider whether the mother needed money from the Father to hire counsel and should be addressed in a temporary hearing. Affirmed.

JOHNSON v JOHNSON, 47 FLW D2243a (FLA 5TH DCA, November 4, 2022)

Trial court erred in failing to address Wife's request for attorney fees based upon the Husband's bad faith behavior. Reversed and remanded

LEE v LEE, 47 FLW D2455a (FLA 2ND DCA, November 30, 2022)

Parties married in 1996. In 2014 Wife moved with agreement of the parties to Finland and Husband was to follow but this did not happen. Wife filed for divorce in Finland in 2015 and court granted just the divorce and determined child custody issues but did not resolve alimony or equitable distribution. Finland law requires each aspect of a divorce to be tried separately. Husband filed for ED and alimony in FL and wife refused service stating petition was not in Finish. Trial court erred in awarding Wife attorney fees based upon *Rosen* factors. In fact it was the Wife that filed a second-in-time suit after she learned that the Husband was seeking ED and alimony. Further, courts finding of fact lacked the high degree of specificity required. Reversed for determination of need and ability to pay.

MCARDLE v MCARDLE, 48 FLW D118a (FLA 4TH DCA, January 11, 2023)

Parties entered into an MSA that provided in pertinent party that the Wife would conduct an inventory of the former marital home. When the Wife failed to comply with this term the Husband filed a Motion to Compel the Wife to conduct the inventory. In his motion he requested fees pursuant to FL Stat. 61.16 rather than under the enforcement provisions of the MSA. The court denied the fees stating that the Husband had failed to request fees under the MSA terms. When making a claim for attorney's fees, "the specific statutory or contractual basis for a claim for fees need not be specifically pled, and that failure to plead the basis of such a claim will not result in waiver of the claim". The Wife had sufficient notice that there was a claim for attorney fees and the fact that the husband pled for them under 61.16 rather than the contract did not warrant a waiver of his claim. The Wife was a signatory to the MSA, the court took judicial notice of the MSA and the Husband stated a claim to attorney fees in his pleadings. Thus it was error for the court to reject the claim. Reversed and remanded.

MOLLERSTROM v ZAMBRANA, 48 FLW D1728a (FLA 4TH DCA, August 30, 2023)

Trial court erred in denying Father's motion to tax costs as untimely. Court found that even though the court had entered its involuntary dismissal order on July 6, 2022, the Father's waiting until July 25, 2022 to file his Motion to Tax Costs was unreasonable under the fact and circumstances of the case. FL Fam. L. R. Pro. 12.420 provides that costs shall be assessed in the case of a dismissal, whether voluntary or involuntary. Even if a reasonable time standard were to be applied, the trial court should have reviewed the timeliness using the dismissal order date which was less than 20 days and thus reasonable.

NASEF v EDDY, 48 FLW D1567a (FLA 4TH DCA, July 26, 2023)

Trial court erred in awarding attorney fees to the mother without first making a finding as to the reasonableness of the hours expended. Reversed

NUNEZ v RAONA, 48 FLW D49b (FLA 5TH DCA, December 30, 2022)

Award of entitlement to attorney fees without determining the amount is not ripe for appeal and therefore dismissed.

POLO v HERNANDEZ, 48 FLW D1739a (FLA 3RD DCA, August 30, 2023)

The reservation of jurisdiction in the operative final judgment was sufficient to vest the trial court with jurisdiction to award attorney fees. In addition, FL Stat. 61.16 provides jurisdiction for the court to award fees. Provision characterizing the fees as a form of support that shall not be dischargeable in bankruptcy proceedings is in error as the finding of dischargeability is premature. Federal law does not allow a state court to decide the federal issue of discharge prior to the filing of any bankruptcy proceeding. Remanded with instructions.

RAMAKRISHNAN v RAMAKRISHNAN, 48 FLW D49a (FLA 5TH DCA, December 30, 2022)

Award of entitlement to attorney fees without determining amount is not ripe for appeal and therefore dismissed.

REESE v REESE, 48 FLW D993a (FLA 6TH DCA, May 12, 2023)

There was no error in denying attorney fees to the Wife where she failed to present any billing statements or specific evidence regarding her attorney fees incurred. Affirmed as to attorney fees.

SANTIAGO v POSEY, 48 FLW D484b (FLA 5TH DCA, March 2, 2023)

In paternity action, the Petitioner pled for attorney fees under FL Stat. 61.16 rather than FL Stat. 742.045. Accordingly, the motion for appellate attorney's fees is denied.

STEPHANOS v STEPHANOS, 48 FLW D511a (FLA 4TH DCA, March 8, 2023)

Award of entitlement to attorney fees without determining amount is not ripe for appeal and therefore dismissed.

T.T.L. v F.A.L., 48 FLW D1445b (FLA 2ND DCA, July 26, 2023)

The trial court denied the mother's request for attorney fees in the paternity action. They did this based on the fact that her initial petition had not pleaded for attorney fees. The trial court overlooked the fact that the mother was unrepresented by counsel when she filed her petition and was not entitled to fees at that time period thereafter the issue of attorney fees was raised or addressed numerous times in filings, orders, and at the evidentiary hearing. Thus the father was aware that the mother sought attorney fees and never objected to the failure to plead attorney fees and costs in an amended petition. Reversed and remanded.

WELLS v WELLS, 48 FLW D327b (FLA 2ND DCA, February 15, 2023)

Because the trial court erred in relying on the inadmissible affidavit of the Wife's accountant when it awarded $5,342 in costs, the order is reversed and remanded.

WILLIAMS v WILLIAMS, 48 FLW D1331a (FLA 1ST DCA, July 5, 2023)

The trial court abused its discretion awarding temporary attorney fees to the wife. Wife's council filed an affidavit with the court but failed to enter it into evidence in the hearing. Without any testimony given at the hearing about the amount of fees, there is no evidentiary basis to support the trial courts determination as to how much to award the wife. Award as to temporary attorney fees reversed and remanded.

CHILD SUPPORT

A.G.W. v C.L.C., 48 FLW D388c (FLA 2ND DCA, February 17, 2023)

The parties had a child in 2009. In 2012 the court entered a FJ of paternity ordering the Mother to have full time custody and ordering child support of $2,000. In 2016 the Father became a professional baseball player and the parties entered into a settlement agreement for the Father to pay $8,000 per month in child support for the duration of his contract to be paid as two lump sum payments. The parties are to exchange financial information in 2018 to assess whether a modification is appropriate. In 2019 the Mother files for modification as the Father had signed a new contract for $9.7MM per year. The Father counter-petitioned for a reduction in child support based upon the Mother's increase in income from $46,000 to $66,700 per year. The court denied the Mother's petition and granted the Father's counter petition based upon a determination that the child's monthly need was $3,891 and therefore reduced her child support accordingly. FL Sup. Ct. addressed good fortune child support in Finley v. Scott, 707 So. 2d 1112 (Fla. 1998). In denying the Mother's petition without explanation, the trial court appears to have ignored the supreme court's unequivocal holding that an increase in ability to pay is itself sufficient to warrant an increase in child support. The court also failed to property apply the good fortune factor that child support in cases like this one will exceed the child's baseline needs. Moreover the court failed to address the Father's heavier burden to establish a reduction from the parties agreed amount when the Father clearly had the ability to pay more not less child support. The trial court also erred in denying the Mother's request for attorney fees finding that she can pay the fees from her savings when the unrefuted testimony showed that the savings in question were actually the remaining funds from the lump sum child support previously paid by the Father. Reversed and remanded.

ALLISON v ALLISON, 48 FLW D1227a (FLA 2ND DCA, June 21, 2023)

In 2014 the parties entered into a marital settlement agreement and parenting plan which provided in pertinent part that the former wife would have majority time sharing with the children and home schooled the children. In 2019 the former husband petitioned to modify the time sharing and child support. The magistrates findings and analysis make clear that the burden was placed on the former wife to avoid imputation of income Florida law places the burden of proof on the party requesting imputation, in this case the former husband. The trial court further erred in accepting the findings that the former wife was voluntarily underemployed because she failed to prove that she could not relocate or pick up additional shifts with her employer, Or that her mother could not babysit the minor children while she worked full time. Reversed and remanded.

COE v RAUTENBERG, 48 FLW D353a (FLA 4TH DCA, February 15, 2023)

Trial court erred in failing to include amount of child support for remaining child after the eldest child aged out. Trial court also erred in failing to provide for retroactive child support back to the date the parties stopped living together. Reversed and remanded.

DUNSON v DUNSON, 48 FLW D1654a (FLA 5TH DCA, August 18, 2023)

Trial court erred in basing child support calculations on Father's gross income rather than net income.

HARVEY v HILL, 48 FLW D1338a (FLA 1ST DCA, July 5, 2023)

Then the income included on the Child Support guideline worksheet. Reversed with direction for the trial court to attach a new and corrected child support guideline worksheet with the correct income and child support obligation.

HUETE v HUETE-SIERRA, 48 FLW D1064a (FLA 4TH DCA, May 24, 2023)

Final Judgment is facially inconsistent with respect to how much husband owes in retroactive child support and how much he is to pay in monthly retroactive child support. Case is remanded to clarify this issue.

INNOCENT v INNOCENT, 48 FLW D1019c (FLA 4TH DCA, May 17, 2023)

Trial court erred in making findings as to retroactive child support. Trial court further erred in failing to include the child support guidelines worksheet or make findings as the parties incomes. Reversed and remanded.

J.H.M. v E.A.G., 48 FLW D683a (FLA 2ND DCA, April 5, 2023)

In determining the father's net income for purposes of child support the trial court failed to deduct the father's mandatory union dues mandatory retirement payments health insurance payments and court ordered support for prior born children. The trial court further failed to make adjustments to child support when the father had significant overnights with the child pursuant to Florida statute 61.30(11)(b). The parenting plan in this case provided the father with every other weekend from Friday after school till Monday returned to school and this is more than 20% of the overnight. Reversed and remanded.

JOHNSON v JOHNSON, 47 FLW D2243a (FLA 5TH DCA, November 4, 2022)

Trial court's denial of Wife's request for retroactive child support lacked sufficient findings of fact. Court had awarded temporary support for the Wife and child to be paid by Husband but as this was not distinguished as to amount for child support there should have been specific findings as to any retroactive child support. Trial court erred in not ordering support to be paid through the State Disbursement Unit as Husband had been inconsistent in his temporary support payments as agreed to by the parties and ordered by the court.

M.D. v T.T., 48 FLW D1439b (FLA 2ND DCA, July 21, 2023)

In 2018 the parents in this paternity action entered a mediated settlement agreement which provided the father with graduated time sharing over a five month period and determined child support being reduced as the father's time increased. In 2019 the father filed a supplemental petition to modify parental responsibility, time sharing, and other relief. The parties then entered into a stipulation to modify the parenting plan and the parties agreed to waive child support

payments based upon the father's purported change in financial condition. The stipulation was ratified and the order entered in April 2020. In 2021 the mother moved to reinstate child support and for retroactive child support. The magistrate, finding that Florida law prohibits a parent from waiving child support on the child's behalf, deemed the prior order void without invalidating the entire agreement. The father's prior child support obligation remained in effect and the father was determined to have an arrearage for the period from October 2019 through December 2021. In 2022 the mother filed a motion for contempt and enforcement alleging that the father was late in child support payments and requesting that the court enter an income deduction order. Trial court erred in denying mother's request for income deduction order as father was delinquent in child support payments for period of arrearage which was more than 10 days as provided for in the settlement agreement. The finding that an income deduction order was unnecessary because the father is self-employed and handles his own payroll is irrelevant to the determination of an entitlement to an ID O. The finding that the father was not delinquent in his 2022 child support payments because there was no specific due date is also unsupported by the record as the father had consistently made payments on the 1st of each month and the prior order indicated that child support was due on the 1st of each month. Reversed and remanded

PARKER v PARKER, 48 FLW D1204a (FLA 6TH DCA, June 4, 2023)

Court properly allowed both parties to present all evidence and husbands claim that his time was limited is devoid of merit. Trial courts order that husband pay child support arrearages is also supported by the evidence. The issue was tried by consent as the evidence was presented without objection. There was no error in awarding retroactive child support despite the fact that wife had not pled for same, the statute provides for child support to be ordered retroactive to the date the parties no longer resided together. Any error in the Child Support calculations was both invited and unpreserved. Trial court erred in including daycare costs in calculation of retroactive child support as this amount had previously been ordered as a separate reimbursement. Remanded for correction of calculation of retroactive child support.

PUKIN v PUKIN, 48 FLW D1203a (FLA 6TH DCA, June 12, 2023)

Trial court erred in basing the findings for the parties gross incomes for purposes of child support on the most recent financial affidavits. The wife testified at trial that her income was substantially higher than that included on her most recent financial affidavit. Reversed and remanded.

T.T.L. v F.A.L., 48 FLW D1445b (FLA 2ND DCA, July 26, 2023)

Mother filed a petition to determine paternity and to establish child support. The father was not forthcoming with his financial discovery and failed to comply with numerous orders compelling the same. With the limited information obtained by subpoena it was established that the father's net monthly income was at least $74,317. Based upon this the father's child support amount would be $4,627 according to the Child Support Guideline Worksheet. The trial court erred when it deviated from the guidelines to order an amount of $2,110 per month. The court reduced its award of child support based upon the principle of good fortune. The trial courts written findings are legally insufficient to base the departure from the guidelines amount. Nor does the mother's

ability to provide the child with her basic needs excuse the father from supporting the child. Further, the trial court erred in departing from statutory guidelines even though the father did not appear at the final hearing and made no request for a reduction in child support. Reversed and remanded.

VELASCO v SOLLEY, 48 FLW D701c (FLA 4TH DCA, April 5, 2023)

Trial court erred in calculation of temporary child support as the child support guideline worksheet failed to show the allowable deductions from the mother's gross income in calculating support. Reversed and remanded.

VARCHETTI v VARCHETTI, 48 FLW D165a (FLA 4TH DCA, January 18, 2023)

Parties divorced in Michigan and entered into an MSA as part of their dissolution providing that Husband would pay Wife $3,500 per month in alimony and property settlement and $300 per month as child support. While the MSA had sections on parenting time and child support the judge had crossed them out and therefore there was no ruling on these issues. The Wife moved to Florida with the children and filed a petition to establish child support. The Florida Court entered an order for $2,851 in temporary child support. Florida court had jurisdiction to establish child support as the Michigan order did not incorporate the parties' prior agreement. Further, the Wife merely had to establish a substantial change in circumstances similar to that required in the modification of dissolution judgments which do not incorporate a settlement agreement. The court erred in finding that the $3,500 was as property settlement rather than alimony and therefore income to the Wife. The court erred in imputing only minimum wage to the Wife after she had testified that she had been earning $2,000 per month in her most recent job. The court further erred in failing to take into consideration the in-kind payments that the Wife was receiving from her fiancé and uncle.

VIERA v VIERA, 48 FLW D853a (FLA 3RD DCA, April 26,2023)

Retroactive child support must also consider and provide credit for sums paid for the benefit of the minor children during the retroactive period. Reversed.

DISCOVERY / EVIDENCE

DUKE v DUKE, 48 FLW D1013b (FLA 4TH DCA, May 7, 2023)

Parties entered into a a marital settlement agreement which was incorporated into their final judgment. Wife later filed hey motion to set aside the MSA based on fraudulent disclosure by the husband. Wife claimed that the husband had opened two bank accounts in the months before the parties entered into the MSA which he failed to disclose and the supplemental financial affidavit. The motion detailed two bank account numbers the related business entities associated with the accounts, the amount of funds deposited and transferred among the entities, and the real estate which the former husband purchased with the funds. Husband objected to the subpoenas issued against the financial institutions to obtain records related to these accounts. The husband's petition for certiorari is granted the order for discovery is quashed and the case is remanded for further proceedings.

FLYNN v FLYNN, 48 FLW D529a (FLA 2ND DCA, March 10, 2023)

The parties entered into an MSA in 2008 which provided Wife with $13,000 per month in permanent periodic alimony. In 2019 Husband filed for modification of alimony. Wife sought discovery related to the Former Husband's financial situation and when the Former Husband refused to provide the discovery or sit for an examination by a vocational expert, the Former Wife filed multiple motions for contempt and sanctions. The Court entered an order on discovery finding that the Husband need not provide information regarding proceeds from the sale of an office building awarded to him in the initial dissolution. Wife filed Writ of Certiorari. Assets awarded in the initial dissolution may be considered in determining the proper amount of alimony, specifically in the context of a motion to reduce alimony. This information is also relevant to the Former Wife's Motion for Contempt related to the Former Husband's failure to pay ongoing alimony.

GAY v GAY and MANN, 48 FLW D1479a (FLA 5TH DCA, July 28, 2023)

At issue is a motion for protective order sought by a non-party, Michael Gay, who is married to Malleana Gay, the former wife in this case. Her former husband, Timothy Mann, sought to depose Mr. Gay regarding the latter's personal financial situation and the support he provided to the former wife. The trial court denied Mr. Gay's motion for protective order and he sought A Writ of Certiorari. The information sought from the current husband by the former husband is constitutionally protected. The current husband has shown that he will suffer a material injury and no other adequate remedy will undo the intrusion into his private financial affairs. Trial court erred in denying the motion for protective order. Ordered denying motion for protective order is quashed.

HAKIM v HAKIM, 48 FLW D1620a (FLA 3RD DCA, August 16, 2023)

During dissolution proceedings, Wife subpoenaed Husband's psychological and medical records. Husband objected but the trial court correctly granted the request. Husband had repeatedly and specifically placed his mental and physical condition at issue by referring to his poor health

when seeking exclusive use of the marital home, special conditions for his deposition, distribution of funds and other relief. Affirmed.

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ENFORCEMENT & CONTEMPT

EADIE v GILLIS, 48 FLW D1207a (FLA 5TH DCA, June 16, 2023)

Father filed contempt motion against the mother for her interference with his time sharing with the minor children. In the motion the father had requested compensatory time sharing for the missed time particularly from the date of the motion to present. Trial court was correct in awarding 13 make-up overnights to the father. Mother's argument that the motion had not requested make up time sharing was inaccurate. Further the issue was tried by consent of the parties. Affirmed.

HASON v HASON, 48 FLW D1665a (FLA 2ND DCA, August 18, 2023)

Parties entered into an MSA providing that the Husband would pay his alimony and child support through the Florida Disbursement Unit. Husband failed to pay through FDU and Wife brought enforcement action. Husband was again ordered to pay through FDU and the order indicated that he would receive no credit for payments made in any manner other than through FDU. When he failed to pay through FDU and paid directly to Wife she again brought contempt action. The court found Husband in contempt and ordered Husband to pay all amounts not paid through the FDU. Trial court properly found Husband in civil contempt for failure to follow the court order but the court was concerned about the remedy of not providing credit for the payments made directly to the Wife. However, the challenge to the remedy was not preserved for appeal. Therefore, Affirmed.

HOLLEY v ERWIN-JENKINS, 48 FLW D1681a (FLA 2ND DCA, August 23, 2023)

Husband and Wife had one child together and divorced in 1994. Pursuant to the FJ Husband was to pay child support of $195 per week until the child reached age 18 in 2005. Husband failed to pay the court-ordered support beginning in 1995. When Husband sold houses he had inherited in 2016 the title agent acknowledged the outstanding Judgment/Certificate of Delinquency for child support but the certificate had expired and Husband received the full net proceeds from the sale. Wife then filed a Motion for Contempt/ Enforcement but this was dismissed because Wife had failed to seek an adjudication of the child support arrearage before contempt could be found because the child had reached majority. In 2019 Wife filed a motion to have the arrearage calculated but the Husband died prior to adjudication. His girlfriend was named the PR and beneficiary of Husband's estate but then she died and her sister was named the PR. PR moved to dismiss Wife' claim against the estate based upon laches. Wife presented sufficient evidence entitling her to a judgment for arrearages. Estate failed to establish defense of laches. A mere delay in filing an enforcement suit is not sufficient to constitute laches which requires (1) conduct by the defendant that gives rise to the complaint; (2) that the plaintiff had knowledge of the defendant's conduct and did not assert the opportunity to institute suit; (3) lack of knowledge by the defendant that the plaintiff will assert the right upon which suit is based; and (4) extraordinary injury or prejudice. Requirement 1 was met because Husband failed to pay his support but all other factors not met by estate. Further, Husband would be barred from using

defense of laches due to unclean hands. Wife did not move forward earlier because Husband had indicated that if Wife did not pursue the arrearage he would leave the house to their son. Reversed with order to transfer the case from Pobate to Family Court for calculation of arrearages.

HOWARD v HOWARD, 48 FLW D1926a (FLA 1ST DCA, September 27, 2023)

PCA, Concurrence. Temporary Order granted Wife temporary exclusive use and possession of the parties' rental property. Husband did not appeal this order which would have been appealable under 9.130(a)(3)(C)(ii). Husband then found in civil contempt for failing to vacate the property. The civil contempt order is not a final order because it does not alter any legal status, does not adjudicate any rights as between the parties, and does not conclusively resolve any dispute between the parties. As a Petition for Writ of Certiorari it fails because it fails to set forth a basis for relief as Husband has already vacated the property. Appeal dismissed.

KRITZMAN v KRITZMAN, 48 FLW D227c (FLA 3RD DCA, February 1, 2023)

The Husband failed to pay his alimony as provided in the parties MSA. The Wife filed for Contempt and Enforcement and the court entered an order requiring that the vested alimony arrearage be secured by imposition of an equitable lien on the balance in the Husband's retirement funds. The case law requires the trial court to set forth specific findings of special circumstances before imposing an equitable lien to protect payment of alimony. Reversed and remanded.

MARTINEZ v MARTINEZ, 48 FLW D500a (FLA 3RD DCA, March 8, 2023)

Parties were divorced in 2000. Following the entry of the FJ sanctions were entered against the Wife eventually resulting in the entry of two money judgments against her, awarding Husband attorney's fees and costs. The court reserved jurisdiction to determine how much the amounts awarded in attorney fees would be subject to the court's contempt power. Trial court declined to hear the motion for the determination of fees. The law is clear that trial court had authority to address the merits of Husband's motion and if appropriate exercise its broad discretion and contempt power as necessary to enforce its two prior orders awarding attorney's fees. Reversed and remanded.

NASEF v EDDY, 48 FLW D1567a (FLA 4TH DCA, July 26, 2023)

The trial court abused its discretion by finding the father in contempt when the issue was not before the court. Father had filed a supplemental petition to modify time sharing. The issue of contempt was not tried by consent when the testimony offered was relevant to the father's petition. Trial court properly found that the Father had failed to establish a substantial, material, and unanticipated change in circumstances warranting a modification. Reversed as to attorney fees and contempt affirmed as to denial of supplemental petition.

THORTON v THORNTON, 48 FLW D625a (FLA 4TH DCA, March 22, 2023)

The parties had difficulty co-parenting following the divorce. The Wife filed a motion for contempt and the Husband requested the appointment of a parenting coordinator which was

granted. During the 5 months that the parties participated in parenting coordination they entered into 16 written agreements. The Mother then filed an amended motion for contempt incorporating all previous allegations. The entire purpose of a parenting coordinator would be defeated if a parent could ignore agreements when pursuing a motion for contempt. For this reason, the trial court erred in holding the Father in contempt for his prior conduct that was the subject of the parenting coordination agreements. However, there is no error for the court to hold the Father in contempt for previous actions that were not addressed in agreements reached with the parenting coordination process. Reversed in part.

T.W. v T.H., 48 FLW D174a (FLA 2ND DCA, January 20, 2023) **

The original FJ provided the parents with SPR with the Mother having ultimate decision making on all issues. The FJ further ordered the Father to pay 70% of uncovered medical, dental, psychiatric, counseling, insurance, day care, education, or other like expenses of the minor child and 50% of extra-curricular expenses. The mother filed a motion for contempt stating that the father had failed to pay for his share of the child's private school and private tutoring (Kumon). At the first hearing the Magistrate determined that the FJ was ambiguous as to the father's responsibility to pay for private school. As to the Kumon the magistrate found that the Father should pay 50% of this (as an extra-curricular expenses) but as the Mother had failed to provide adequate documentation on these expenses the Father could not be held in contempt. The Mother then filed a second Motion for Contempt for failure to pay a number of the child's expenses including 70% of the cost of Kumon. The Court then found the Father was in contempt for failing to pay 70% of Kumon as an educational expense but this was not willful as the ongoing litigation made the amount to be paid undetermined. The court then awarded the Mother attorney fees under the prevailing party clause. The difference in how the same trial judge treated the Kumon expenses on two separate occasions an the fact that even the magistrate referred in a footnote to Kumon as an educational program while at the same time treating Kumon payments as an extracurricular expense reveals an ambiguity surrounding the definition of educational expenses as used in the final judgment. Consequently, there was no "clear and precise" requirement that the father was obligatd to pay 70% of the Kumon expenses as "educational expenses". Because the portion of the order holding the Father in contempt for failing to pay the 70% of the Kumon expense is reversed, the fee award based upon this finding must also be reversed.

VARNER v VARNER, 48 FLW D387a (FLA 5TH DCA, February 17, 2023)

The parties divorced in 2015. The FJ incorporated a parenting plan that provided in pertinent part that the parties were to meet a specific location for exchange of the child. The court later entered a contempt order against the Mother because she has been returning to Columbia County on a regular basis without bringing the parties' child with her so that Father could exercise timesharing and the mother did not personally transport the child to the designated meeting spot for a March 2022 timesharing. There exists a no contact order so the mother could not attend the exchange of the child so she should not be found in contempt to arrange for another person to transport the child. Further no order exists requiring the Mother to bring the child with her every time she is in Columbia County. Therefore the Mother could not be in contempt for this as there

is no court order requiring this. The issue of make up timesharing is moot because the dates have already passed. Reversed and remanded.

EQUITABLE DISTRIBUTION

ARONOFF v ARONOFF, 48 FLW D352b (FLA 4TH DCA, February 15, 2023)

Wife had opened a Florida Prepaid college account and a 529 plan for the benefit of the parties minor child. In the FJ the court found that the Wife was the custodian of the child's 529 plan valued at over $305,000 and that the Husband had not contributed to the account. The Court properly designated the Wife the sole trustee of the accounts as the evidence supported that the Wife would manage the funds in the best interest of the minor child. To the extent tha the designation amounts to an unequal distribution of marital assets, there was sufficient justification for it as insuring the child's educational future in light of the child's particular needs. Affirmed.

BEAUCHAMP v BEAUCHAMP, 48 FLW D1160a (FLA 6TH DCA, June 9, 2023)

The trial court abused its discretion when it included in the equitable distribution calculations for the wife her total cash assets which also included a share of the proceeds from the sale of the parties' boat. Reversed.

BRUTUS v GILES, 48 FLW D1030c (FLA 5TH DCA, May 19, 2023)

The court correctly determined that the marital home was a marital asset. However, it is not clear from the final judgment how the trial court treated the mortgage, taxes, and maintenance expenses paid following the filing of the petition and how they were allocated to each spouse. Trial Court also erred in using the date of separation as the critical date for calculation of equalizing payment rather than the date of filing the petition for dissolution as required by statute. Trial court further erred in allocating the husband's entire student loan debt to the husband as this had been incurred during the marriage and was a marital liability. Trial court further erred in allocating a loan taken by the husband and used to pay marital liabilities.

CARDARELLI v CARDARELLI, 47 FLW D2420a (FLA 4TH DCA, November 23, 2022)

Court entered a Final Judgment of Dissolution in 2014 that provided in part that the Husband's Florida State Retirement Plan/Pension would be equally divided by a QDRO. The court then entered a QDRO providing the Wife with 50% of the benefits that accrued from the date of the parties' marriage to the date of the final judgment of dissolution, including COLA paid. Former Husband objected to the inclusion of COLA to the Wife. As the COLA was a benefit earned during the marriage it was appropriate for the court to award the Wife her share of the COLA assigned to her share of the pension. Affirmed

CHOU, CHOU, AND FLORIDA GRINDING GROUP, INC. v SHI, CHOU AND BORG INC., 48 FLW D1147d (FLA 5TH DCA, June 9, 2023)

This is a consolidated appeal about a family business and a dissolution of marriage. While her parents dissolution case was pending, Kate brought a shareholder derivative action on behalf of Borg against her Father and Florida Grinding Group. The suit was based on allegations that her Father stole money from Borg's bank accounts and gave Borg's property to her brother, Tim, to use at Florida Grinding instead of selling that property on behalf of Borg. The court entered a Final Judgement in Kate's favor in the derivative suit with a judgment against the Father for

$2,272,677 and against Tim and Florida Grinding for $1,222,302. The Amended FJ also dissolved the marriage and awarded Borg to the Father but did not include the amount of the derivative suit damages. The ED worksheet is inconsistent with the final judgment where the final judgment distributed all assets and liabilities but the ED worksheet did not identify the amount of the liability for the derivative suit. Part of the trial court's work on remand should include considering whether any portion of the derivative suit damages should be a marital liability as it appears the Mother was unaware of the Father's tortious conduct against the business and the Father, as a 50% owner of Borg, will receive 50% of the proceeds of the damages he pays to Borg. Reversed and remanded.

COE v RAUTENBERG, 48 FLW D353a (FLA 4TH DCA, February 15, 2023)

Parties owned 10 Bitcoins. Husband was ordered to pay 1.2 Bitcoins in past due child support. The court then in ED reduced the number of Bitcoins to 8.8 and divided these between the parties. This was error as the court should have divided the 10 Bitcoins and then required the Husband to pay the 1.2 Bitcoins from his share.

CROCKER v CROCKER, 48 FLW d1431B (FLW 5TH DCA, July 21, 2023)

The trial court erred by awarding the wife a share of the husband's pre age 62 Federal Employee Retirement System (FERS) disability retirement benefits as marital property subject to equitable distribution. Considerable discussion of state law and federal law related to the determination of what portion of disability benefits are subject to equitable distribution. Based upon a review of the law and the evidence presented the benefits at issue were disability benefits and not subject to equitable distribution because the benefits were meant to replace income husband lost based on his disability. Remanded.

CUPO v CUPO, 47 FLW D13a (FLA 4TH DCA, December 21, 2022)

The Husband was a member of the US Military from 1991 to 2018. The parties were married in 2001. The court entered a final judgment including equitable distribution but failed to distribute the Husband military pension finding that it lacked sufficient evidence of the value of the pension and therefore could not distribute it. This was error as the court should have ordered division of the pension as a percentage of the pension that was marital. Reversed and remanded.

DOUGLAS v DOUGLAS, 48 FLW D1134d (FLA 4TH DCA, June 7, 2023)

In 2016 the trial court entered a final judgment of dissolution finding that the wife's financial accounts were opened prior to the marriage and the wife continued contributing to those accounts during the marriage. The trial court ordered that to the extent the Wife could actuarially demonstrate the premarital portion of the accounts those portions were non marital and would be distributed 100% to the wife. The court reserved jurisdiction as to the wife's financial accounts and ordered that if the parties could not agree the wife was to unilaterally hire an actuary to conduct the calculations and the husband was ordered to pay 1/2 of the accountant's cost and fees. In 2022 the court determined the distribution of the financial accounts to the Wife based upon her accountant's evidence. Trial court erred in allowing only the wife to present evidence regarding the value of non marital portion of the financial accounts. The trial court further erred

in failing to make specific findings on the record or in writing as to why it found certain real estate titled in the Husband's sole name to be marital.

DUNKEL v DUNKEL, 48 FLW D484a (FLA 5TH DCA, February 28, 2023)

The parties had consolidated student loans in the amount of $190,859 taken out for the benefit of the parties' adult daughter and the Husband's adult son from a prior relationship. The Court ordered the Husband to be solely responsible for all of the student loans and awarded him sufficient assets to offset the Wife's equitable share of the loans. The court failed to consider the possibility that the loans would never be repaid or will be repaid in whole or in part by the adult children (no payments had been made for several years). Reversed,

FORD v FORD, 47 FLW D2520a (FLA 5TH DCA, December 2, 2022)

Husband requested reimbursement of one-half of the funds he had paid towards the former marital home before it was sold. The Husband's attorney held the amount in trust pending determination of the court. The court ordered the parties to equally divide the amount held in trust. Trial court failed to make any factual findings as to how it arrived at the determination. Reversed.

FRANXMAN v FRANXMAN, 48 FLW D1186a (FLA 1ST DCA, June 14, 2023)

Trial court erred in including a dollar specific amount for the husband's Tampa pension. The pension was properly designated as a marital asset but the value should not have been set or included in the equitable distribution chart as it is a future asset subject to change in value. Trial court further erred in designating the husbands AT&T stock as non marital. The only evidence provided was that the stock was purchased during the marriage. Reversed and remanded.

GAYER v NICITA, 48 FLW D1220c (FLA 6TH DCA, June 16, 2023)

The parties lived separately for six years prior to the filing of the petition for dissolution. During the separation husband withdrew funds from his Florida retirement system and his IRA. The trial court erred in giving credit to the wife for the payment of the tax liability. Neither the court's final judgment nor its oral ruling at the trial included any findings that the former wife paid any amounts towards the former husband's tax liability. The trial court appears to have obtained the amount of $6000 from the wife's suggested equitable distribution spreadsheet, but the spreadsheet was admitted only as a demonstrative aid not as evidence. The trial court erred in classifying an SBA loan taken out by the husband as non-marital. The loan was taken out prior to the date of filing the petition and as a matter of law was marital. The trial court erred in failing to include the husband's credit card in equitable distribution. There were further inconsistencies between the final judgment and the equitable distribution worksheet attached thereto. Reversed and remanded

GOODMAN v GOODMAN, 48 FLW D437b (FLA 6TH DCA, February 24, 2023)

Trial court erred in treating husbands Ameritrade account as both temporary alimony to the wife and granting the same account to the wife as part of equitable distribution. If the account was

provided to the wife as temporary alimony from the husband to the wife then it cannot be included in the equitable distribution. Reversed and remanded.

HAYATT v ZIMMERMAN, 48 FLW D1424a (FLA 4TH DCA, July 19, 2023)

After the entry of the final judgment a trust containing the mortgages on the marital home was discovered. The wife's attempt to characterize the trust and mortgages as non-marital are without merit as the trust beneficiaries were both the former husband and wife as joint tenants with rights of survivorship and the sole assets of the trust were two mortgages on the marital home. Because the former husband died shortly after the final judgment of dissolution, the former wife was the sole beneficiary of the trust. The Trial Court's order requiring the former wife to terminate the trust of which she was the sole beneficiary and requiring her to satisfy the mortgage the trust held on the marital home is affirmed. The trial court had jurisdiction to order the former wife to dissolve the trust and compel her to quit claim title of the marital home to the former husband's estate in order to enforce the sale of the marital home even though the trial court did not have jurisdiction over the trustee. Affirmed

HEARN v HEARN, 47 FLW D2474a (FLA 2ND DCA, November 30, 2022)

In 2015 the Husband was terminated from his employment for cause and required to repay a bonus that had been given to him pursuant to his employment contract. The Husband refused to repay the bonus and there was litigation resulting in a termination judgment requiring him to repay the funds which he did using marital funds. The Wife filed for dissolution in 2017. Trial court erred in finding that the Husband's termination of employment resulted from his misconduct and therefore the repayment of the bonus using marital money was a dissipation of marital assets. There was no evidence that the misconduct occurred when the marriage was irreconcilably broken and therefore the court should not have considered this debt as dissipation. Reversed and remanded.

IARUSSI v IARUSSI, 47 FLW D2079a (FLA 1ST DCA, October 12, 2022)

Husband founded LobbyTools a successful company prior to marriage. The parties then both worked in executive positions in LobbyTools during the marriage and each owned shares of the company although the Husband owned significantly more shares. Upon separation the Wife stopped working at the company. The court was then faced with valuing both the marital shares owned by the couple as well as the marital appreciation of the Husband's premarital shares. The court found the Wife's expert to be more credible and ordered the Husband to pay $1,709,141 in equitable distribution to the Wife plus prejudgment interest on this amount to the date of the filing of the Petition. The order for prejudgment interest was in error. Because both parties jointly owned all of the marital assets subject to distribution, it necessarily follows that neither could have suffered a deprivation of property warranting prejudgment interest prior to the entry of final judgment. Both Husband and Wife had an equal interest, possessory or otherwise, in all of the marital shares. Further, the statute does not provide for prejudgment interest on equitable distribution. Reversed and remanded.

INNOCENT v INNOCENT, 48 FLW D1019c (FLA 4TH DCA, May 17, 2023)

The final judgment provides Husband with $30,000 based upon the Wife's dissipation of assets but the judgment fails to specify which assets were dissipated, nor does it find whether the dissipated assets were marital or non-marital. Further, the FJ conflicts with the oral findings that the $30,000 was for the Husband's share of the marital home and personal assets in it when the home was sold.

JOHNSON v JOHNSON, 47 FLW D2243a (FLA 5TH DCA, November 4, 2022)

Trial court erred in awarding Husband credit in equitable distribution for payments made on Wife's behalf when he then contested the charges on his credit card and the Wife ended up paying the expenses. There was no error in finding that tax liabilities incurred after the date of filing were nonmarital. Trial court erred in failing to account for payments Husband made toward the forensic accountant when this had been ordered by the court and paid by the Husband. Trial court did not err in failing to distribute Husband's post-filing debts when this was not preserved for appeal and the trial court did not err in distributing Wife's post-filing debts as findings were sufficient to show debt was needed to support wife and child when Husband was not providing sufficient support.

LEE v LEE, 47 FLW D2455a (FLA 2ND DCA, November 30, 2022)

Parties married in 1996. In 2014 Wife moved with agreement of the parties to Finland and Husband was to follow but this did not happen. Wife filed for divorce in Finland in 2015 and court granted just the divorce and determined child custody issues but did not resolve alimony or equitable distribution. Finland law requires each aspect of a divorce to be tried separately. Husband filed for ED and alimony in FL and wife refused service stating petition was not in Finish. She then filed a separate action for Partition of FL property. Husband moved to have partition action consolidated with domestic action. Wife filed for summary judgment of partition. Husband moved to amend his answer and request an accounting. Court denied Husband's motions, ordered the sale of the home and ordered proceeds divided equally. Trial court erred in failing to consolidate the partition and domestic relations matters as they involved the same parties and issues and would have avoided additional legal expenses and duplicative trials. Trial court erred in dismissing petition for equitable distribution finding that the partition action had resolved all aspects of ED. The parties had credit card debt, bank accounts and a home in Finland that had not been resolved by the partition action. With respect to Partition case, trial court erred in denying Husband's request to amend his answer and erred in refusing to provide Husband with credits for amounts he had paid toward the property without contribution from the Wife. Reversed and remanded.

LEGER v LEGER, 48 FLW D761a (FLA 4TH DCA, April 12, 2023)

At issue is the distribution of radio stations and related assets belonging to the parties. The Wife argues that the FCC regulations prohibit the transfer of the radio stations' broadcast licenses without FCC approval. She argues that the Husband is not permitted to own the stations because

he is not a US citizen. The transfer of the radio stations should have been conditioned on compliance with federal laws and regulations. Remanded.

MADDOX v MADDOX, 48 FLW D441b (FLA 2ND DCA, February 24, 2023)

In her petition for dissolution, the Wife requested ED of known and hidden assets but did not seek distribution of any intellectual property or claim as marital assets any intellectual property. The Husband worked for a company to design an oil filtration system and at trial Wife claimed Husband had an ownership interest in the company and the intellectual property he was developing. Trial court found the oil filtration to be intellectual property owned by the Husband and provided the wife with one-half the value in ED. After entry of the FJ Petronex, the company the Husband worked for to develop the oil filtration system, intervened in the case and moved to set aside the judgment, arguing that their due process was violated because the judgment substantially affected its interest in the oil filtration system. Trial court erred in distributing the intellectual property as a marital asset when no evidence it was owned by the Husband, that it actually existed and Wife had not pled for distribution of intellectual property. Trial court erred in distributing intellectual property owned by a company without providing company notice and an opportunity to be heard regarding ownership of the asset. Trial court erred in valuing the Husband's business and setting his income based upon speculative figures not supported by the evidence. Reversed.

NARANJO v OCHOA, 48 FLW D1317a (FLA 4TH DCA, July 5, 2023)

Over the course of several years the wife received pre inheritance gifts from her mother totaling over $800,000. The wife invested these funds in a separate brokerage account in her name in for mutual funds. Trial court erred in finding that the appreciation on this account was marital. Husband argued that the appreciation was based on the fact that the parties discussed the wife's investments and had decided to invest in the mutual funds with a buy and hold strategy. The husband did not meet his burden to prove that either the party's efforts resulted in enhancing the value and appreciation of the wife's advanced inheritance. The increase in value was based upon the market factors and the person managing the four mutual funds. Reversed and remanded

PRINCE v HONORE, 48 FLW D1566a (FLA 4TH DCA, August 9, 2023)

Trial court erred in accepting a date of valuation of the marital home that was three years after the date of filing the petition after initially finding that the date of filing the petition is the date for equitable valuation of assets and liabilities and that there was no evidence presented or testimony taken that would support another date. Reversed.

PUKIN v PUKIN, 48 FLW D1203a (FLA 6TH DCA, June 12, 2023)

Trial court erred when it failed to include in equitable distribution a promissory note executed by the parties' during the marriage and owed to Husband's father. Wife offered no evidence to rebut the testimony. Reversed and remanded.

REESE v REESE, 48 FLW D993a (FLA 6TH DCA, May 12, 2023)

Trial court did not err in failing to consider tax consequences of ordering equalizing payment from Husband's 401(k) as neither party presented evidence on the issue. Trail court did not err in determining value of marital home as of the date of filing the petition when neither party presented competent evidence regarding the value on another date. Trial court erred in classifying the Wife's medical bills as non-marital when there was no evidence presented to show that they were incurred after the date of filing the petition. Reversed and remanded.

RIVERA v RIVERA, 48 FLW D1505a (FLA 3RD DCA, August 2, 2023)

Prior to, or during the pendency of the dissolution action, the husband inherited a house from his grandmother. The wife was not identified on the deed, never resided in the house, did not contribute to the house maintenance, and there is no evidence in the record that marital funds were used to pay down the mortgage. During the pendency of the divorce the husband sold the house and use the proceeds to purchase a used vehicle. Trial court erred in finding that the proceeds from the sale including the proceeds used to purchase the vehicle were marital. Proceeds from the sale of a non marital asset remain non marital so long as they are not commingled. Reversed.

ROBERTSON v HOCHSTATTER, 48 FLW D1508f (FLA 4TH DCA, August 2, 2023)

In 2004 the parties entered into an MSA which provided in pertinent part "The wife shall receive a lump sum equitable distribution payment in the amount of three hundred thousand dollars ($300,000) on January 1, 2017. Said payment shall not bear or accrue interest." When the former husband did not pay the $300,000 as provided the former wife filed an action to reduce the sum to a money judgment. In 2022 the court entered a money judgment in favor of the wife including prejudgment interest for the period from January 1 2017 to May 31 2022 and post judgment interest to accrue at a rate determined by the state's chief financial officer. The sentence "said payment shall not bear or accrue interest" is silent as to what time period that sentence applies. Faced with that silence, the court properly interpreted the MSA's language to prohibit interest for the period from 2004 to 2017 but permitting prejudgment interest accrued on the lump sum payment from 2017 to the entry of the money judgment. The case is remanded for correction regarding the interest rate charged on the prejudgment accrual.

ROGERS v ROGERS, 47 FLW D2466a (FLA 2ND DCA, November 30, 2022)

Husband argued that a boat purchased with funds provided by his father made the boat a non-marital asset of the Husband. However, the funds provided by the Father were placed in a joint bank account over a three month period and this account was used to pay marital bills as well as used for the purchase of the boat. By placing the funds in the joint account it was co-mingled and therefore marital making the purchase of the boat marital. Reversed and remanded.

SAKOW v BLAYLOCK, 47 FLW D52c (FLA 1ST DCA, December 30, 2022)

Parties divorced in 2010, and the FJ incorporated the terms of an MSA. The MSA provided that the Wife was to receive 50% of Husband's retirement benefits from the State of GA. GA would

not recognize a QDRO. In 2020 Wife filed motions to enforce and at the hearing Husband reported that he had recently applied for the retirement pension. The court ordered him to terminate his application and not take any further actions. Trial court determined that the survivor benefits of the bension and not been addressed in the MSA. The Court ordered Wife to receive the survivor benefits but Husband had not terminated his application so this could not be accomplished. Wife presented expert testimony regarding the value of the pension and survivor benefits and Wife requested lump sum payout. Trial court erred in denying Wife lump sum payout of the Husband's GA pension and survivor benefits.

VIERA v VIERA, 48 FLW D853a (FLA 3RD DCA, April 26,2023)

Trial court erred in allowing Wife three years to refinance the mortgage and line of credit on the former marital home. Trial court must articulate a methodology by which the Wife shall refinance the home within a reasonable time, not to exceed two years, failing which the property shall be sold and the proceeds distributed accordingly.

WAITE v MILO-WAITE, 48 FLW D702a (FLA 4TH DCA, April 5, 2023)

During trial the wife claimed that the husband had received income as a personal injury attorney that had not been disclosed. Husband claimed that the funds had been received but had been spent towards a family vacation and renovations of the marital residence. Trial court erred in awarding the wife 1/2 of these funds finding it willfully concealed or undervalued. This issue had not been included in the wife's pleadings nor in the joint pretrial stipulation and therefore should not have been decided by the court. The parties had entered into a partial settlement agreement prior to trial which stipulated as to the husband's income and the wife's employment income but had left in dispute the wife self-employment income. The trial court erred in determining an income for the husband that was greater than the stipulated amount. Trial court erred in using the parties gross incomes rather than net income in determining alimony. Trial court erred in ordering the father to pay 70% of the children's costs when the stipulation had agreed that they would share the cost for errata. Burst in romantic

INCOME

EADIE v GILLIS, 47 FLA D2378b (FLA 5TH DCA, November 18, 2022)

The Wife had last earned $65,000 per year in sales and then stayed home to raise the parties children. A vocational evaluated testified that she could now earn $80,000 per year in sales. Trial court erred in imputing income to the Wife at a level greater than she had ever earned. Reversed.

GOLDBERG v GOLDBERG, 48 FLW D347b (FLA 4TH DCA, February 15, 2023)

No abuse of discretion to imput income to the Husband of $200,000 per year but error to base alimony on Husband's gross income rather than his net income as required by statute. Reversed and remanded.

HOLLAND v HOLLAND, 48 FLW D712a (FLA 5TH DCA, April 6, 2023)

Wife is an optometrist and Husband is a plaintiffs' personal injury trial lawyer. Two weeks prior to trial Wife's expert forensic accountant stated in deposition that he had no opinion regarding a livestyle and accounting analysis of Wife's earnings. Trial court did not abuse its discretion in excluding testimony from the accountant. Wife's physician testified that the Wife had medical conditions that would render her disabled from a full-time practice as an optometrist. Trail court erred in excluding the physician's testimony based upon problems with his report. This should have been the subject of cross-examination not exclusion. The exclusion of the testimony prevented the Wife from presenting her case with respect to her ability to work full-time for which the court was imputing income. Reversed and remanded

LEYTE-VIDAL v LEYTE-VIDAL, 47 FLW D2160b (FLA 4th DCA, October 26, 2022)

Trial court erred in determining Husband's income for purposes of alimony. Husband was a pilot and had historically earned $250,000 per year between 2015-2017. In 2018 he received a one-time signing bonus of $79,000 after his union renegotiated his contract. The new contract reduced the Husband's flight hours but increased his hourly pay. The court erred in considering the bonus which was not regular and continuous. The court further erred in relying upon the Wife's expert who testified that he was testifying outside his field and who provided speculative opinion about how much the Husband could make if flying more hours. With respect to Child Support, the court erred in utilizing out of date minimum wage numbers for calculating Wife's income for support purposes. Reversed as to alimony and child support.

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INJUNCTIONS

BLANCO v SANTANA, 48 FLW D1040b (FLA 6TH DCA, May 19, 2023)

Petitioner testified about prior incidents of violence which went beyond the allegations in her petition. However, Respondent failed to object to the testimony. The trial court made clear that it was granting the injunction based on the specific allegations of abuse underlying the petition. Affirmed.

BROWN v ARMSTRONG, 47 FLW D2005b (FLA 5th DCA, October 3, 2022)

Trial Court erred in summary denial of Brown's Motion to Modify or Dissolve Final Judgment of Injunction for Protection Against Domestic Violence entered in 2010 without a hearing. The Motion was legally sufficient and alleged a change in circumstances.

CARDON v HALMAGHI, 47 FLW D2134a (FLA 1st DCA, October 19, 2022)

Cardon & Halmaghi are very contentious neighbors resulting in an altercation wherein Cardon was convicted of misdemeanor battery. Halmaghi was granted an injunction against repeat violence based upon the conviction and another verbal exchange. The injunction provided that Cardon who lived catty-cornered across the street from Halmighi was provided ingress and egress to his home and access to his mailbox which is located at the northern edge of Halmaghi's property. The injunction was set to expire in August 2021. Just before the expiration Halmaghi's wife filed a letter with the clerk alleging that Cardon walked to a neighbor's house and pointed at Halmaghi and was seen smirking at them "trying to prove he is above the law", although not doing anything threatening. The court issued an order to show cause and held a hearing. Halmaghi petitioned for an extension of the injunction and Cardon asked for modification to allow him to visit neighbors and go into his fenced backyard. Trial court held a hearing and found Cardon in contempt and permanently extended the injunction. Trial court erred in permanently extending the injunction. Halmaghi failed to show an objectively reasonable fear of future violence. A party seeking to extend a nonpermanent injunction involving repeat violence must, at a minimum, show that another act of violence has occurred or that there is a continuing reasonable fear that an act of violence is likely to occur in the future. Because the extension is reversed and the original injunction has expired the court need not reach the issue of modification or contempt. Reversed.

FINGERS v FINGERS, 48 FLW D183a (FLA 5TH DCA, January 20, 2023)

Parties were divorced in Missouri in October 2021. In April 2021 wife moved from Missouri to Florida alleging that she was afraid of the Husband. In January 2022 Wife filed for a DV injunction alleging that in October 2020 the parties daughter heard Husband tell someone that he had purchased a silencer. In March 2021 Husband told Wife that he "did not need a silencer to kill her, she would never see him coming". However, Wife testified that she had never seen Husband in Florida and Husband had never attempted to directly contact her while she was living in Florida. Trial court erred in entering an injunction. Any alleged threat made before January 2021 was too remote in time to be relevant and the March 2021 event is insufficient to support entry of an injunction. Reversed.

KAYE v WILSON, 48 FLW D1265b (FLA 2ND DCA, June 23, 2023)

Petitioner obtained a one-year Injunction For Protection Against Domestic Violence in May 2021. Three days before the original injunction was set to expire the petitioner filed a motion for extension. Trial court erred in extending the injunction finding that the respondent had committed domestic violence based on three incidents that constituted stalking. The court found that the respondent had sent a doctored recording to petitioners family and friends, had sent a locksmith to a rental cottage on property that Respondent owned but very close to petitioners residence, And had sent an e-mail to petitioners ex-husband seeking information about her parents. While petitioner exhibited signs of subjective distress she presented no evidence that respondents conduct had caused substantial emotional distress. Further there was no evidence that petitioner had a reasonable fear of imminent domestic violence based upon these actions. Reversed.

LANIGAN v LANIGAN, 48 FLW D167a (FLA 4TH DCA, January 18, 2023)

Injunction to Prevent Dissipation of Assets: Trial court erred in entering an ex-parte order temporarily freezing assets in dissolution action. The order failed to make the four necessary findings to support injunctive relief: (1) irreparable harm will result if the temporary injunction is not entered, (2) an adequate remedy at law is unavailable, (3) there is a substantial likelihood of success on the merits, and (4) entry of the temporary injunction will serve the public interest.

LARIOS v LARIOS, 48 FLW D688a (FLA 3RD DCA, April 5, 2023)

The court entered a permanent injunction for protection against domestic violence without minor children in April of 2004. In March of 2021 the former husband filed a motion to dissolve the injunction he indicated that since the entry of the injunction he had had no contact with his former wife, that he had remarried and resides with his new family, and that he had spent the 20 years in the United States air force. He further indicated that he planned to retire and utilize his intelligence experience and civilian roles and that the injunction would hinder him. Trial court erred in denying his request to dissolve the injunction. While the former wife testified that she still feared her former husband, this fear was not reasonable. Reversed and remanded

MALONE v MALONE, 48 FLW D1587a (FLA 1ST DCA, August 9, 2023)

Husband 's allegations and evidence were legally insufficient to support the entry of an injunction against domestic violence. The expiration of the one-year injunction does not make the issue on appeal moot as a domestic violence injunction has collateral consequences. Trial court erred in determining the husband had met his burden of establishing harassment by showing that the wife had made false allegations of abuse against him to the United States Air Force Office Of Special Investigations. The husband failed to show that the wife's conduct was directed towards him or that the alleged reports served no legitimate purpose. The wife denied making reports to OSI and indicated the only way OSI could have become aware was after she legitimately sought medical care and reported a potential crime. Even if she made unfounded reports to OSI her conduct was not directed at Husband Reversed. to constitute harassment

PIPHER v PIPHER, 48 FLW D1087b (FLA 6TH DCA, May 26, 2023)

The trial court in an injunction hearing is required to determine the credibility of witnesses. Trial court did not err in granting the injunction for protection against domestic violence on behalf of the wife despite the fact that husband had a witness that testified that the wife was the aggressor. Affirmed.

PYRINOVA v DOYLE & PYRINOVA, 48 FLW D1250a (FLA 4TH DCA, June 21, 2023)

Inna Pyrinova, a non-party to the litigation below, appeals a temporary injunction that requires half of the proceeds from the sale of property titled solely in her name to be held in an escrow account pending further court order. This case involves an action for paternity between Mark Doyle, the father and Olga Pyrinova, the mother. During an enforcement action the mother was found to be in contempt and the father was found to be entitled to attorney fees. No order had yet been issued determining the amount of the fees. During the pending action the mother took title to real property with Inna and then conveyed her interest in the property to Inna. The father then moved to preserve his fee award and to void the mother's transfer of the property to Inna as a fraudulent conveyance. The trial court entered an order granting the father's motion for temporary injunction and requiring half the proceeds from any sale of the property to be held in escrow pending further order of the court. The temporary injunction fails to comply with FL Fam Law Rule of Pro 12.605 for two reasons. First the order did not require the father to post a bond. Second the order failed to set forth the reasons for the entry of the temporary injunction. Because the appellant has been granted intervenor status, on remand, the trial court shall consider any appropriate arguments which she raises to challenge the injunction. Reversed and remanded.

WOODS v WOODS, 48 FLW D436c (FLA 5TH DCA, February 24, 2023)

Denial of a domestic violence injunction affirmed where wife established that there had been domestic violence in the past but the court found it was too remote in time to support the entry of an injunction. No evidence of an objectively reasonable risk of imminent domestic violence. Affirmed.

JUDGMENTS / ORDERS

EADIE v GILLIS, 47 FLA D2378b (FLA 5TH DCA, November 18, 2022)

Concurrence has good analysis of adoption of a proposed Final Judgment verbatim. In this matter the court questioned the Wife extensively showing independent thought. However, such verbatim adoption on one side's proposed order should be avoided. Affirmed as to this issue.

GOULDING v GOULDING, 48 FLW D1448a (FLA 2ND DCA, July 26, 2023)

Trial court pronounced its findings of fact and conclusion of law orally at the conclusion of the hearing and requested the husband to prepare the order. Thus, the trial courts entering of the proposed order verbatim including mistakes and factual errors without giving the wife the opportunity to object is not reversible error. Order reversed on other grounds.

JURISDICTION / VENUE

BEEHLER v BEEHLER, 47 FLW D2561a (FLA 1ST DCA, December 2, 2022)

Husband is a member of the military living outside of FL but claims FL as his home state of residence and his parents live in FL. The Wife was granted relocation with the minor children to Idaho. The Wife then requested the court to transfer jurisdiction of the children issues to Idaho as Florida had become an inconvenient forum under FL Stat. 61.520. The Court denied this request. The court made the initial custody determination under FL Stat. 61.515(1) (UCCJEA). The jurisdiction continues until the court determines that the children, the children's parents and any person acting as a parent do not have significant connection with the state and that substantial evidence is no longer available in the state concerning the children's care, protection, training, and personal relationships. The trial court correctly determined that it had continuing exclusive jurisdiction regarding the children as the Father still is a resident of Florida. Affirmed.

FAY v CARTER, 47 FLW D2519a (FLA 5TH DCA, December 2, 2022)

The trial court erred in dismissing Petitioner's Petition for Protection Against Domestic Violence based upon the fact that the alleged acts of DV occurred in GA. Chapter 47 provides that jurisdiction for DV injunction exists where event occurred, or where either party resides. Petitioner resides in Florida. Reversed.

STIVELMAN v STIVELMAN, 48 FLW D1738a (FLA 3RD DCA, August 30, 2023)

Trial court granted Husband's motion to set off Husband's monthly alimony payments against a debt that wife owned him and failed to pay (a setoff). Wife had previously appealed an order of the lower court challenging an order modifying the Husband's alimony and an order making the modification retroactive. The Wife's filing of the appeal deprived the lower court of case jurisdiction to enter additional orders with limited exceptions. The Setoff order is vacated because the first notice of appeal divested the trial court of case jurisdiction to further adjudicate the challenged setoff order.

TEMPLE v MELCHIONE, 48 FLW D1481a (FLA 6TH DCA, July 28, 2023)

In 2020 the trial court dismissed the mother's claim for child support finding that the trial court lacked subject matter jurisdiction. The matter was appealed and the trial court was affirmed. The successor judge erred by retaining jurisdiction over the action after it had been properly dismissed and the order affirmed on appeal. Writ of Prohibition granted.

LIFE INSURANCE

ARONOFF v ARONOFF, 48 FLW D352b (FLA 4TH DCA, February 15, 2023)

Trial court erred in ordering Father to maintain five insurance policies with death benefits of $7MM with the wife as a 50% beneficiary for so long as the Father has an obligation to support the 16 year old minor child. The life insurance payout was substantially more than the Husband's support obligation. The court failed to make the necessary findings as to the availability and cost of the policies, the impact of such costs on the Husband's finances or the circumstances requiring security for the Husband's financial obligations. Reversed as to Life Insurance.

MODIFICATION / TERMINATION

ALI v KHAN, 48 FLW D1762b (FLA 6TH DCA, September 1, 2023)

Former Husband filed Supplemental Petition to Modify Alimony, Child Support and Parenting Plan. Trial court correctly found that the Husband failed to establish a substantial change in circumstances based upon two motorcycle accidents.

ALLAIRE v ALLAIRE, 48 FLW D1845a (FLA 2ND DCA, September 15, 2023)

Parties entered into an MSA and divorced in 2016. The MSA provided for the Husband to pay durational alimony to the Wife. In 2020 Husband filed for modification of alimony based upon a change in circumstances. Husband owned a business that upholstered dental chairs for resale. He had only one client and worked out of the client's premises. Due to the COVID closures, Husband lost his one client and sold his equipment to minimize his losses. In the sale of his business to his previous client, he signed a non-compete agreement that he would not upholster used dental chairs. He then became employed in the insurance adjusting business. Trial court erred in denying Husband's request for modification of alimony. Court found that Husband's income had not significantly changed but ignored the fact that the Husband no longer had shareholder distributions from his previous business. Trial court erred in finding that the Husband's change in circumstances was unanticipated. The court conflates contemplated with foreseeability. While having one client could foresee a loss in income it is certainly not contemplated when the MSA was signed. Record does not support court findings that the change in circumstances was not permanent. Reversed and remanded.

AYALA v VEGA, 48 FLW D1392b (FLA 4TH DCA, July 12, 2023)

Father filed a supplemental petition to relocate with the minor child. The final judgment granted the father's relocation petition, but changed the parties previously agreed upon 50/50 time sharing arrangement to the mother having majority time sharing. Father argues that the trial court abused its discretion in modifying the parties previously agreed upon time sharing, because the mother never filed a pleading seeking modification, and the father did not try the modification issue by consent, thus violating his due process rights. The record indicates the mother's answer requested that she be given majority time sharing. Further the father did not object during the trial on the grounds that the mother had not requested majority time sharing. Trial courts order affirmed.

BRANHAM v BRANHAM, 47 FLW D2521a (FLA 5TH DCA, December 2, 2022)

Former Husband moved to modify alimony based upon his short-term disability, anticipated upgrade to permanent disability and wife's increased income. Findings of fact support courts denial of Former Husband's supplemental petition. Court's finding that the Former Husband's sale of the former marital home resulting in increased "available" funds was not relevant to the determination, however it was not dispositive in the final ruling. Affirmed.

DAVIS v DAVIS, 48 FLW D1041a (FLA 6TH DCA, May 19, 2023)

Trial court failed to make any factual findings relative to the statutory factors set forth in Florida statute 61.13. While the court found there had been a substantial change in circumstances regarding modification of the parenting plan the court did not set forth a finding that the change in circumstances was material or unanticipated. Reversed and remanded.

DUNSON v DUNSON, 48 FLW D1654a (FLA 5TH DCA, August 18, 2023)

Trial court did not err in finding that there had been a substantial and material change in circumstances that warranted modification of the Final Judgment. In his Answer Father acknowledged that there had been a substantial change in circumstances and at trial the parties stipulated to the change. Further the judgment includes numerous factual findings that support modification. To whatever extent the court's judgment lacks findings of fact, the parties induced that error by asking the court to accept their stipulation. Affirmed as to this issue.

FUNDERBURK v RICENBAW, 48 FLW D112c (FLA 2ND DCA, January 6, 2023)

In MSA Husband agreed to pay $6,000 per month as child support and that child support for the children shall never fall below the sum of $2,000 per month or the FL statutory amount, whichever is more. Father moved for modification of parenting timesharing and child support based upon substantial change in circumstances. The GM granted modification of timesharing and found that the court had authority to modify child support and the absolute floor in the MSA provided a windfall to the Mother because she had no income at the time of the MSA but now had substantial income. Mother filed exceptions and court granted exceptions with respect to modification of child support. Trial court erred in finding the court lacked jurisdiction to modify child support below floor established in MSA, the GM was correct. Reversed and remanded.

GIRARD v GIRARD, 47 FLW D2485c (FLA 4TH DCA, November 30, 2022)

The parties entered into a MSA in 2013 which provided that the Husband would pay the Wife $13,500 per month as permanent periodic alimony. In 2020 the Husband moved for modification of alimony based upon the Wife's alleged increased earning ability, the fact that the Wife's mother lived rent-free in a condominium provided to the Wife as part of the divorce, and a clerical error in listing the Wife's investment income as $837/month instead of the reported $837 per year. Trial court erred in imputing income to the Wife as the Wife had not completed higher education or obtained full time employment. Here the Wife had not worked outside the home during the marriage and the MSA did not require her to work, therefore imputing income to her was an error. Further, the Wife's mother lived in the condominium during the marriage rent free and therefore it was an error to impute income to the Wife for this asset when there was no change from the Final Judgment. Finally, the investment income was not consistent with a reduced need for alimony. Reversed and remanded.

HARRINGTON v KEMP, 48 FLW D1707d (FLA 2ND DCA, August 25, 2023)

Trial court erred in dismissing Wife's Petition for Modification of Child Support based solely on the fact that Wife failed to demonstrate an increased needs of the children. Wife had pled for a

modification based upon a change in circumstances including a change in her income as well as the income of the Husband and the overall disparity in the parties' incomes. Trial court failed to provide the Wife with an opportunity to present evidence regarding the change in incomes. Reversed and remanded.

MANGO v MANGO, 48 FLW D1760a (FLA 5TH DCA, September 1, 2023)

PCA. Concurrence: In modification proceedings trial court is not required to make findings regarding FL Stat. 61.08 factors as FL Stat. 61.14 requirements of a showing of a change in circumstances warranting modification must be met first. Husband pled for modification based upon the Wife's recent increase in income. Wife testified that she continued to have a need for support based upon increase in cost of living. Court denied Husband's request for modification., Affirmed.

MANNELLIA v MANNELLA, 48 FLW D526a (FLA 6TH DCA, March 10, 2023)

Parties entered into an MSA which procied in pertinent part that the Former Husband would pay $2,000 per month in durational alimony and $250 per month in child support. Two years later the Former Husband Petitioned to modify child support based upon the Former Wife's increased income and the Former Husband's decline in income. Trail court did not err in failing to modify child support where the Former Wife's income had increased but the evidence also showed that the Former Husband's income had also increased. The evidence also supported the finding that the Former Husband had modified his employment in an attempt to show a decline in income where was not supported by the evidence. The burden on the party seeking a reduction in an agreed upon child support amount is a substantial change of circumstances pursuant to the Florida Statute. The heavier burden of proof no longer applies. Reversed and remanded.

RUSSELL v ARONOWICZ, 48 FLW D1396a (FLA 3RD DCA, July 12, 2023)

The trial courts well written order found there was substantial, material, and unanticipated change of circumstance that warranted the time sharing and parental responsibility modification and was in the best interest of the minor child. There was no error in the trial courts detailed 17 page final judgment, as it thoroughly considered the modification pursuant to the requisite 20 statutory factors. Affirmed.

VUCHINICH v VUCHINICH, 48 FLW D1077b (FLA 2ND DCA, May 26, 2023)

The party's divorced in 2016 and the husband was ordered to pay the wife durational alimony. Two years later the husband was granted a modification of the alimony. At that time the husband's income was fluctuating with some evidence showing his income at $250,000 annually and other evidence showing his income at $187,500 annually. In 2020 the husband lost his job but obtained a new job with an income of $130,000. Trial court denied husband's request for modification finding that there was no persuasive or credible evidence that the current reduction in base salary is anything less than typical as the husband has changed jobs frequently over the years with little effect on his lifestyle. Trial court was required to assess the husband's income in 2018 in order to make a determination as to whether the change in circumstances was sufficient, material, permanent, and involuntary in order to support the modification request.

NAME CHANGE

IN RE: NAME CHANGE OF Y.M.X. 48 FLW D920a (FLA 4TH DCA, May 3, 2023)

The parents of a seventeen-year-old petitioned the court to change the minor child's first name. The petition averred that neither the child's history, nor the parents' history, included any factor which would disqualify the parents from seeking to change the child's first name and averred that the parents had no ulterior or illegal purpose for seeking to change the child's first name. However, the petition did not show how changing the child's first name would be in the child's best interest. Thus, there was no abuse of discretion in denying the parents' petition. The parents then filed a Motion for Rehearing wherein they filed affidavits from both parents and the child indicating how changing the child's name would be in the child's best interest. The denial of the Motion for Rehearing was in error. Reversed with instructions to grant the motion for rehearing and grant the petition to change the child's name.

PARENTING

ALLYN v ALLYN, 47 NFLW D2460a (FLA 2ND DCA, November 30, 2022)

In a paternity action, Father filed a supplemental petition to modify timesharing alleging that there had been inappropriate sexual contact between the minor child and his half-sisters while in the Mother's care. The Mother filed a counter-petition to modify timesharing. As there was no transcript provided of the hearing, the court does not disturb the finding that there had been a material, substantial change warranting modification of timesharing. However, in the FJ the court ordered that the Mother's time be limited until an assigned therapist determines that it is in the best interest of the child to expand the Mother's time. Trial court erred in delegating authority to determine a parenting plan to the therapist. Reversed and remanded.

BOWERS v SMITH, 47 FLW D2277A (FLA 5TH DCA, November 7, 2022)

Trial court erred in suspending timesharing for the Mother where the relief had not been requested by the Father. Reversed.

BRUTUS v GILES, 48 FLW D1030c (FLA 5TH DCA, May 19, 2023)

The parenting plan ordered by the court was deficient in several areas: (1) it failed to provide for how the parties would share daily tasks associated with the children, (2) designate responsibility for health care school related matters and extracurricular activities, and (3) state methods and technologies the parties would use to communicate with the children. Reversed and remanded for an order consistent with statutory requirements

COE v RAUTENBERG, 48 FLW D353a (FLA 4TH DCA, February 15, 2023)

Trial court erred in failing to set a holiday and school break timesharing schedule despite recognizing at the hearing that the parties had an acrimonious relationship. Reversed and remanded.

E.L. v A.L. and L.L., 48 FLW D490a (FLA 2ND DCA, March 3, 2023)

E.L., the maternal grandmother appeals from a FJ terminating her temporary custody of her grandchildren and return custody to their biological father, A.L. Trial court erred by failing to address E.L.'s expert's testimony and to provide an explanation for rejecting it. In considering this testimony, trial court failed to address whether returning the children to their father would be detrimental to the children's welfare as this was intertwined with the expert's testimony. When the trial court, acting as fact-finder, renders a decision that rejects the unrebutted testimony of an expert, it must offer a reasonable explanation for doing so, such as impeachment of the witness or conflict with other evidence. In this case the expert testified that it was her belief that the children had been sexually abused by the Father and that the children were terrified of seeing their father and that it would be detrimental for them to do so at that time. Reversed and remanded.

GREEN v FARMER, 48 FLW D1737a (FLA 4TH DCA, August 30, 2023)

Grandmother filed Petition for Temporary Custody of Minor Child, but the child was not living with her at the time and she did not have the consent of the parents. Trial court erred in granting petition. FL Stat. 751 allows extended family members to seek temporary custody only with the consent of the parents or when the child is living with the relative in the role of substitute parent. Reversed.

MOONINGHAM v MOONINGHAM, 48 FLW D877d (FLA 5TH DCA, April 28, 2023)

Wife plead for sole parental responsibility but the parties subsequently entered into a consent partial judgment signed and filed by the trial court. The agreement awarded shared parental responsibility without conditions. At trial on the outstanding issues the husband requested that the court modify a provision in the consent partial judgment related to reunification therapy. Trial court denied husband's request to modify the reunification therapy provisions, ordered shared parental responsibility, but in the parenting plan provided wife with ultimate decision-making regarding education academics and non-emergency healthcare. Trial court erred in providing ultimate decision making when this was inconsistent with the parties agreement and there was no finding of detriment to the child as would be required by section 61.13 (2) (C) 2. Husband was deprived of due process when the trial court included conditions on parental responsibility without notice and the opportunity to be heard regarding these issues. Reversed and remanded

N.B. v R.V., 48 FLW D150a (FLA 2ND DCA, January 18, 2023)

Trial court granted Mother's right to relocate to Orlando from Hillsborough. Court ordered equal timesharing for the minor child until such time as child begins school at which time the Father would have every other weekend and extended timesharing on school breaks. Father argues that the court cannot prospectively modify timesharing based upon a future event. Prospective modification is permissible when based on the child's best interest as determined at the final hearing and in consideration of an event that is reasonably and objectively certain to occur. Affirmed.

PUKIN v PUKIN, 48 FLW D1203a (FLA 6TH DCA, June 12, 2023)

Trial court erred in not providing unilateral parental consent for mental health treatment for the minor children pursuant to FL Stat. 61.13(2)(b)(3)(a). Reversed.

QUICENO v BEDIER, 48 FLW D1702a (FLA 3RD DCA, August 23, 2023)

Wife had a child born prior to the marriage and identified a man, not her future husband, as the father. After the marriage the Wife filed to disestablish putative father's paternity however Husband did not adopt the child. Upon the dissolution of marriage, court provided shared parental responsibility and timesharing for the parties' two children and the child born prior to the marriage. In support the court sited the best interest of the child and three factors: (1) the disestablishment of paternity, (2) the child identifying the Husband as his father and (3) the support provided by the Husband for the child. Trial court erred in granting parental rights to the

Husband who is not the biological or legal father of the child and without evidence of demonstrable harm to the child. Reversed.

RANKIN v LOUNSBURY, 48 FLW D543b (FLA 3RD DCA, March 15, 2023)

Trial court's order awarding the Mother sole decision-making authority as to educational and non-emergency medical needs of the child in the event the parties are unable to agree is supported by competent, substantial evidence. Affirmed.

STUART v LAPETE, 48 FLW D1826a (FLA 1ST DCA, September 13, 2023)

Father filed petition to establish paternity and establishment of a long-distance parenting plan. In his petition he requested a week on / week off schedule. At trial Father stated that a two-week plan would reduce the travel for the contact. Trail court violated the Mother's due process rights by establishing a two-week rotating timesharing schedule without giving the Mother notice and an opportunity to be heard regarding the best interest of the child for such a contact schedule. There was no evidence presented that a two week rotating schedule would be in the best interest of a 16 month old child.

TICKTIN v GUARDIANSHIP OF STEVEN HOWARD TICKTIN, 47 FLW D2489a (FLA 4TH DCA, November 30, 2022)

Father appeals summary judgment which denied his motion to discharge his former wife as guardian advocate for their adult son. However, this ruling does not preclude the lower court from considering Father's motion for interim judicial review, where he raised issues related to timesharing with his son. Affirmed.

TUCKER v TUCKER, 48 FLW D1339d (FLA 5TH DCA, July 7, 2023)

The wife filed an amended petition for dissolution requesting sole parental responsibility, alleging that the husband suffers from significant anger and alcohol issues and has made disturbing statements pertaining to the child. There was testimony at trial establishing numerous instances of physical and severe verbal abuse directed at the wife, the party's child, and even their nanny. Husband further had a documented history of severely abusing alcohol, which exacerbates his bouts of extreme rage. At the conclusion of the trial the court determined that supervised timesharing with the father would be in the best interest of the minor child. Based upon the evidence and testimony presented there is no indication that the trial court abused its discretion in awarding supervised visitation. Husband argued that he should be given a path forward as to how to obtain unsupervised time sharing. There is no such requirement that the trial court must give a parent concrete steps to restore lost time sharing. The court specifically found that shared parental responsibility would be detrimental to the child and awarded the mother's ultimate decision making on decisions regarding education, health care, and any religious training. Competent substantial evidence supports the court's findings. The trial court erred in crafting a plan to control the father's future alcohol consumption by ordering that he refrained from consuming alcohol and requiring him to attend weekly AA meetings. The alcohol-related prohibitions and mandates imposed by the trial court, being completely untethered to the best interest of the child, or an abuse of the court's discretion. Affirmed in part, reversed in part.

PATERNITY

ENRIQUEZ v VELAZQUEZ, 47 FLW D2251a (FLA 5TH DCA, November 3, 2023)

The parties successfully conceived a child using an at-home artificial insemination process. When the child was 7 the Father petitioned to establish a timesharing schedule. Mother acknowledged paternity and that a timesharing schedule was necessary. The court ordered temporary timesharing to the Father pending final hearing. Trial court found Father was appropriate for timesharing and child support. However, on the court's own initiative, the court found that FL Stat. section 742.14 precluded it from granting the Father relief and denied and dismissed the petition for paternity with prejudice. Section 742.14 applies to paternity actions when the child was born as a result of "assisted reproductive technology". An at-home do-it-yourself method of artificial insemination does not meet the statutory definition of "assisted reproductive technology" because there was no laboratory handling of human eggs or pre-embryos as defined in FL Stat. 742.13(1). Reversed.

MILLER v GORDON, 48 FLW D1333a (FLA 1ST DCA, July 5, 2023)

After an extensive hearing, the trial court entered a temporary parenting plan pending the final hearing. A trail court need not make specific findings of best interest of the child or other factors of 61.13(3) in deciding a temporary parenting plan. In fact, the court considered several of the factors to establish it was in the best interest of the child for the mother to have majority timesharing. The Father did not have a statutory entitlement to timesharing rights (FL Stat. 744.301(1)) and therefore, he could not claim a violation of due process in the court's decision.

MORITZ v STONECIPHER, 48 FLW D576a (FLA 4TH DCA, March 15, 2023)

In paternity action, court erred in granting Father's emergency motion to compel the Mother to re-enroll the minor child in a Delray Beach elementary school. At the time the order was entered, no order had established the Father's parenting rights. Consequently, the Mother was entitled to primary residential care and custody of the child, which includes the decision as to where the child would attend school. At the time of this decision, FL Stat. 742.10 created a "rebuttable presumption" of paternity if unchallenged after sixty days. But that section did not vest the Father with any custodial rights regarding the child. Reversed and remanded.

SANTIAGO v POSEY, 48 FLW D484b (FLA 5TH DCA, March 2, 2023)

The FJ dismissing Petition to determine paternity is affirmed where the legal father was not made a party to the action. Affirmed.

STABLER v SPICER & SPICER, 47 FLW D2230a (FLA 1st DCA, November 2, 2022)

Misty Stabler and Amy Spicer were in a committed same sex relationship. They had two children, one the result of fertilization of Stabler by Spicer's brother and the other the result of impregnation of Stabler by a friend. When the parties split up there was a custody dispute regarding the children resulting in a mediated agreement related only to the first child. Spicer was paying child support and providing housing. However, the non-biological person (Spicer) had no parental rights under Florida law. Therefore, the mediated agreement was unenforceable

as the court could not determine any custody or visitation rights in the best interest of the children. Reversed.

TORRES RIOS v ARIAS, 48 FLW D422b (FLA 4TH DCA, February 22, 2023)

In paternity action, trial court erred in refusing to change the minor child's last name on the birth certificate once paternity was established. FL Stat. 382.013(2)(d) requires that if the parents disagree about the selection of a surname, the name selected by the Father and the name selected by the Mother shall be listed in alphabetical order separated by a hyphen. Trial court also neglected to include required language regarding mental health treatment in the parenting plan. The final judgment also required all child expenses be split according to the pro rata share of income but the Mother failed to plead for any support beyond child support. Finally, the court order regarding health insurance conflicts with the parenting plan.

PROCEDURE

CHAMBERLAIN v DEGNER, 48 FLW 1525a (FLA 1ST DCA, August 2, 2023)

Trial court erred in concluding that the judgment was void for due process reasons because the husband was not served with notice of trial in the manner set forth by the rule. Because the husband had actual notice of the proceedings and a meaningful opportunity to be heard on all matters for which relief was granted there were no due process violations that would justify setting aside the final judgment. Husband's claim that the final judgment was voided because it granted relief that allegedly was not pled was also insufficient as wife's petition sufficiently alleged facts that encompassed granting her sole parental responsibility.

DUNCAN v FRANKLIN, 47 FLW D2053a (FLA 3rd DCA, October 12, 202)

Trial court relied upon competent, substantial evidence in approving and adopting the Report and Recommendation of the General Magistrate awarding retroactive child support. Affirmed.

DUSSAN v ZOGHBI, 48 FLW D686a (FLA 3RD DCA, April 5, 2023)

Trial court ordered father to furnish several missing financial documents by a date certain as part of discovery. Mother then filed a motion seeking appointment of a forensic accountant which the magistrate then ordered. Parties agreed to provide father additional time to provide the missing documents and father filed exceptions to the magistrates report. Trial was set to begin September 9, 2021 parties entered into a mediated agreement for a parenting plan but reserved on child support and attorney fees. Mother then filed a motion for continuance citing the pending exceptions to the magistrates report for the forensic accountant. The court then overruled the father's exceptions but also denied the request for the forensic accountant. At trial the court refused to allow the wife to admit any evidence because her exhibits have been provided past the deadline previously ordered by the court. Repeated oral request for continuance were denied. Trial court erred in denying the continuance giving the conflicting orders regarding the forensic accountant. Trial court further erred in refusing to admit wife evidence given the confusion regarding the timing of exhibits and conflicting orders. Reversed and remanded

EDMONDS v EDMONDS, 48 FLW D398a (FLA 6TH DCA, February 17, 2023)

Wife filed Petition and the case was heard by the Magistrate. Upon entry of the Report and Recommended Order both parties filed exceptions which were heard by the trial judge and the case was remanded to the Magistrate for further findings and corrections. Upon the entry of the Supplemental Report and Recommended Order, both parties again filed exceptions. However, the trial court erred in entering a Final Judgment incorporating the Supplemental Report and Recommended Order without giving the parties an opportunity to be heard on the exceptions. Reversed and remanded.

FULCHER v ALLEN, 48 FLW D836d (FLA 6TH DCA, April 21, 2023)

The trial court appointed a parenting coordinator at the request of the mother and indicated that if the parent coordinator was unable to successfully resolve outstanding issues between the parents the PC could request a status conference. The PC requested such a status conference indicating

that court assistance was needed with respect to the father's communication with the children. Trial court erred in ordering a temporary change in custody of the children and limiting the mother's contact with the children as this had not been noticed and was a violation of the mother's due process rights. Neither the father nor the parenting coordinator had filed any paper requesting the court to alter the parenting plan. Reversed and remanded.

GATCHELL v KRYVOSHEIA, 48 FLW D1759a (FLA 5TH DCA, September 1, 2023)

Former Husband failed to file a Motion To Vacate the entry of the Magistrate's Recommended Order as required by FL Fam. L. R. of Pro. 12.490(e)(3)(as amended in 2022). Failure to move to vacate the order constitutes failure to preserve the issues for appeal. Appeal dismissed.

HIGGINS v HIGGINS, 47 FLW D2527a (FLA 2ND DCA, December 2, 2022)

Wife filed her petition for dissolution on January 5, 2020. On May 12, 2021 the cour, sua sponte, set the trial for July 29, 2021 via Zoom. The Wife moved for a continuance, stating she was in Colombia visiting family and did not have reliable internet connection and stating she was returning to the US on August 3, 2021. The court denied the motion and proceeded to trial on remaining issues after parties reached a partial settlement. Wife could not attend the hearing as she did not have adequate internet. Trial court abused it's discretion in denying the continuance. The Wife's request for a short continuance was not foreseeable nor dilatory and would not have prejudiced the Husband. Reversed.

JOHNSON v JOHNSON, 47 FLW D2243a (FLA 5TH DCA, November 4, 2022)

At the conclusion of one day of trial, the parties agreed to provide the Court with memorandums regarding the remaining issues to save time and funds. Wife then attached information provided by the parties' CPA regarding issues of previously filed tax returns. Husband objected on appeal claiming this was hearsay evidence. However, the parties had stipulated to filing of the memorandum and therefore no abuse of discretion to consider evidence attached. Affirmed as to this issue.

KING v KING, 48 FLW D1240c (FLA 4TH DCA, June 21, 2023)

At conclusion of hearing on child support, trial court requested the parties to submit proposed final judgments. The court entered the Father's proposed order without any changes. While there is no transcript of the hearing it is apparent that the trial court did not exercise independent decision-making. Further it is not apparent that the mother had the opportunity to comment on the proposed order. Reversed.

LEYTE-VIDAL v LEYTE-VIDAL, 47 FLW D2160b (FLA 4th DCA, October 26, 2022)

Trial court erred in entering a written injunction that was inconsistent with the oral pronouncements of the court. The Court had indicated that the injunction would not prevent the Husband from attending the minor child's legitimate activities at school but the written injunction simply referred to the family law dissolution of marriage case without specifying that the Husband could attend school functions. Reversed.

LYONS v STEINER, 48 FLW D217a (FLA 5TH DCA, January 23, 2023)

Trail court erred in barring pro se litigant from filing further pleadings in his post judgment paternity action without first issuing an order to show cause providing the litigant with reasonable notice and an opportunity to respond before imposing the sanction. Writ of Certiorari granted, order quashed.

OLIVA v OLIVA, 48 FLW D543a (FLA 3RD DCA, March 15, 2023)

Trial court erred in entering an order on the Report and Recommendations of the Magistrate without a hearing on the Former Husband's timely filed exceptions. Reversed and remanded.

R.B. v B.T., 48 FLW D141a (FLA 2ND DCA, January 13, 2023)

The trial court abused its discretion in relying on an unpled, unraised and unargued "unclean hands" defense to deny the Father's petition for modification of child support. Because the court erred in denying the petition based upon unclean hands the court failed to address several other issues raised by the Father's petition. Reversed and remanded.

REESE v REESE, 48 FLW D993a (FLA 6TH DCA, May 12, 2023)

Wife had changed attorneys three times. At the pretrial conference she was without an attorney and requested a continuance to secure new counsel. There was no error for trial court to deny the oral motion as rule 2.545(e) requires that motions for continuance be made in writing. There was also no error in denying the oral motion for continuance made by the Wife at trial as she had agreed to the trail date and had 60 days following the pretrial conference to hire counsel and/or file a written motion to continue the trial. Affirmed as to denial of motion for continuance.

SALAZAR v DOMINGUEZ, 47 FLW D2363b (FLA 2ND DCA, November 16, 2022)

Father filed Supplemental Petition to Modify Timesharing and Mother filed an Answer denying that modification was in the best interest of the child. Father then moved to Amend his Petition. Mother's counsel withdrew. Court then ordered Mother to respond to the Amended Petition which she failed to do. Father sought a default and a final hearing was held where Mother failed to appear. Court erred in entering a FJ Modifying Timesharing based upon Mother's failure to appear at the hearing. Florida law is clear that child custody cannot be decided on the basis of a default. Reversed.

SAENZ v SANCHEZ, 48 FLW D798a (FLA 3RD DCA, April 19, 2023)

Trial court erred in granting the father uninterrupted time sharing with the two younger children, directing the eldest child to be enrolled in military school and directing the Father and the children's guardian ad litem to file police reports against two of the children for an incident where the children attacked the father. Neither parent had requested the remedies ultimately ordered by the trial court. Further the hearing had been noticed as a case management conference and no order had been set for an evidentiary hearing. This order violated the mother's due process. Reversed and remanded.

SCHENAVAR v SCHENAVAR, 47 FLW D2291a (FLA 4TH DCA, November 9, 2022)

Husband filed Petition for Dissolution with Minor Children. Wife failed to file an Answer and a Default was entered. The Court held a hearing on the Petition and Wife failed to appear. The court entered an FJ and the Husband moved for rehearing based upon deficiency in the FJ. Wife moved to set aside the FJ alleging that she was suffering from diminished mental capacity that was known to her Husband but not known to her family until she moved out of the home. Wife presented medical evidence to support her allegations. Trial court erred in denying the Wife's Motion without hearing. The motion asserted colorable entitlement to relief. The FJ was also deficient in that it did not set forth a time-sharing schedule, set child support, right to claim the children for tax purposes and apportion the cost of health insurance for the children. Reversed.

SPENCER v SPENCER, 48 FLW D518a (FLA 4TH DCA, March 8, 2023)

Petitioner filed a Petition for Injunction for Protection Against Dating Violence. Respondent hired counsel and the Petition was dismissed after a hearing. One month later the Petitioner filed a second petition, this time alleging he was the victim of Respondent's cyberstalking. The Petition was served on Respondent's Father at the Father's house but not on Respondent personally or on his counsel, although counsel was listed on the petition. A copy of the dismissed Petition was attached to the served copy of the second petition. Two weeks later Respondent was served with a copy of the trial court's order setting an in-person hearing the following day. At that time Respondent was under house arrest at his Father's home. Respondent did not attend the hearing and the court entered the injunction. Trial court erred in failing to vacate the injunction. Respondent was justifiably confused given that his counsel was listed on the Petition but not served, that the first order was attached to the second petition and that he had less than 24 hours notice of the hearing.

STEPHENS v STEPHENS, 48 FLW D1530a (FLA 1ST DCA, August 2, 2023)

In November 2021 the mother filed a notice that the case was at issue and ready for trial and the same day the court issued an order scheduling the trial for December of 2021. Neither the father nor counsel appeared at the trial. Following the trial the father's counsel filed a motion requesting that the final judgment be set aside because the trial proceeded in the father's absence and that his absence was the result of excusable neglect. Father's counsel had advised wife's counsel that he was unavailable on the day set for trial. Fathers counseled then contracted anemonia and was out of the office for several weeks and upon his return was overwhelmed and inadvertently overlooked the trial schedule. Trial court erred in denying father's request to set aside the final judgment without a hearing. Reversed and remanded for a hearing on the father's motion.

VALCARCEL v VALCARCEL, 48 FLW D1103a (FLA 4TH DCA, May 31, 2023)

Magistrate entered an order on temporary time sharing and an order on temporary child support. Husband timely moved to vacate the recommended orders and requested a hearing pursuant to Florida Family Law Rules Of Procedures 12.490 (e) and (f). Trial court erred in entering an order without providing husband the opportunity of a hearing on his motions to vacate. Reversed and remanded.

WHITE v WHITE, 48 FLW D629a (FLA 1ST DCA, March 22, 2023)

There was no error in applying amendments to FL Fam. L. R. of Pro. 12.490 to trial court proceedings after effective date of the amendments. The Mother, who was pro se, was advised verbally in court and in the recommended order that she would have to file a motion to vacate the order within 10 days if she wished to challenge the recommended order. She failed to file a motion to vacate nor exceptions under the previous rule. Affirmed.

PSYCHOLOGICAL EVALUATION / SOCIAL INVESTIGATION

CHILDS v CRUZ-CHILDS, 48 FLW D34c, (FLA 2ND DCA, December 28, 2022)

Trial court did not depart from the essential requirements of law when it required the Former Husband to submit to a psychological evaluation. However, the trial court erred in failing to specify the time, place, manner, conditions and scope of the psychological evaluation and failed to establish the person by whom the interview is to be made. Petition for Writ of Certiorari denied in part and affirmed in part.

CRANE v CRANE, 48 FLW D130c (FLA 3RD DCA, January 11, 2023)

In competing Supplemental Petitions for Modification of Parental Responsibility, the trial court appointed a GAL who recommended that the Court order each party to undergo a psychological evaluation. The Mother objected and two days prior to the hearing the Father moved for a social investigation including a psychological evaluation of both parties. The trial court made appropriate findings that the mental health of each party was in controversy to warrant psychological evaluations. Mother was not prejudiced by order of social investigation at hearing two days after the filing of the motion. Affirmed.

KING v ESCOBAR, 47 FLW D2631a (FLA 4TH DCA, December 14, 2022)

Mother appeals order requiring her to undergo psychological testing. The trial court's order in this case departs from the essential requirements of the law by failing to "specify the time, manner, conditions, and scope of the examination" as required by rule 12.360(a)(1)(B). The order allows the court-appointed doctor to conduct "necessary testing, including any testing the [doctor] may deem necessary, in his/her discretion, based on the allegations of the parties." It does not specify the length of the evaluation, the subject matter of the evaluation, or the type of testing to be conducted. This type of open-ended order departs from the essential requirements of the law and results in a miscarriage of justice because it "effectively gives the doctor 'carte blanche' to perform any type of psychological inquiry, testing, and analysis. Certiorari granted and order quashed.

RECUSAL / DISQUALIFICATION

DELGADO v MILLER, 48 FLW D405a (FLA 3RD DCA, February 22, 2023)

In paternity action Mother seeks Writ of Prohibition to prevent the assigned trial judge from further presiding over the case. This action follows the Mother's 8th motion for disqualification and she had successfully disqualified at least one prior judge. Denial of disqualification of a successor judge is reviewed under a different standard than initial assigned judge. Mother moved for disqualification because judge in 56 page ruling granting the Mother less attorney fees than she had requested. In the order the court described the mother's writing style as "histrionic" and found the mother was directing the litigation strategy. The mother argues that these finding reveal gender bias by the judge (histrionic is derived from the Greek work for hysteria meaning uterus). The record does not clearly refute the decision by the trial judge to deny disqualification. Writ of Prohibition denied.

DOMNINA v DOMNINA, 48 FLW D1060b (FLA 4TH DCA, May 24, 2023)

The wife filed a motion for temporary alimony and temporary attorney fees. The hearing had to be continued for a second hearing as the allotted time expired. At the conclusion of the second hearing the judge requested the parties submit closing arguments. Husband 's counsel objected as he had failed to be provided time to present his case in chief. Trial court abused its discretion in denying the husband the opportunity to present his case and to be heard. Husband then moved for qualification of the judge which was denied. Writ of prohibition is granted the judge is disqualified.

ERREN v MARIN, 48 FLW D509b (FLA 4TH DCA, March 8, 2023)

Former Husband filed Supplemental Petition for Upward Modification of Alimony. After some extended period the court ordered the parties to mediation and Former Wife filed a Motion to Vacate the referral to mediation and dismiss the petition for lack of prosecution. Trial court's action of entering an order submitted by Former Husband to the Judge ex parte and without the Wife having the opportunity to review the order and Judge's entry of an order making evidentiary ruling following a scheduled non-evidentiary hearing were sufficient to create well-founded fear that the Former Wife would not receive a fair and impartial adjudication of her claims. Writ of Prohibition Granted and case remanded for further proceedings.

LEVY v LEVY, 47 FLW D2495b (FLA 3RD DCA, November 30, 2022)

Trial court did not err in denying Wife's request to disqualify Husband's counsel when there was a complete and total failure of proof of any of the allegations or claims set forth therein and the motion was completely groundless. Affirmed.

VIERA v VIERA, 48 FLW D853a (FLA 3RD DCA, April 26,2023)

Allegations of erroneous pretrial rulings made without a proper evidentiary foundation are an insufficient basis for disqualification. Nothing in the record suggests that the trial court erred in denying the disqualification of the judge. Affirmed.

RELIEF FROM JUDGMENT

MASON v MASON, 48 FLW D773a (FLA 1ST DCA, April 12, 2023)

The parties prepared their own MSA and obtained a final judgment of dissolution in January of 2010. 11 years later in December of 2020 the former wife filed a motion under Florida family law rules of procedure 12.540 (b) for relief from the MSA stating that the former husband had committed fraud on his financial affidavit and disclosure. Rule 12.540 pren b) does not provide for any time limit in the filing of a motion based on fraud. Trial court erred in dismissing the action as wife is entitled to a hearing. Reversed and remanded

RELOCATION

INNOCENT v INNOCENT, 48 FLW D1019c (FLA 4TH DCA, May 17, 2023)

The trial court erred when it allowed the Husband to exercise timesharing in Georgia. FL Stat. 61.13001 required the Husband to file a pleading seeking permission to relocate the children to Georgia. Reversed and remanded.

LOJARES v SILVA, 48 FLW D105d (FLA 1ST DCA, January 4, 2023)

In paternity action parties had two minor children. After parties broke up but prior to the initiation of any action by the Father, the Mother moved with the children to another county more than 50 miles away. The Mother was temporarily allowed to remain in St. Johns County while the children enjoyed 50/50 timesharing and attended online school. At trial the Father requested children to return to Alachua County. Trial court erred in penalizing the Mother for moving with her to children when there was no pending action and granting majority timesharing to the Father. FL Stat. 61.13001 does not apply to a change of principal place of residence before any paternity order has been issues. Reversed and remanded.

PUN v PUN, 48 FLW D1187a (FLA 1ST DCA, June 14, 2023)

The trial court applied the correct standard in reaching the conclusion that relocation was not in the best interest of the children, and competent substantial evidence supported that conclusion. The former wife's contention that the court applied a presumption against relocation was not supported by the evidence. Affirmed.

FLORIDA RULES OF FAMILY PROCEDURE

IN RE: AMENDMENTS TO THE FLORIDA SUPREME COURT APPROVED FAMILY LAW FORMS 12.975(a) Petition for Grandparent Visitation with Minor Children, 12.975(b) creating Petition for Grandparent Visitation with Minor Child(ren) When One Parent Has Been Found Criminally or Civilly Liable for the Death of the Other Parent and renumbering 12.975(b) Order on Grandparent's Petition for Visitation with Minor Child(ren).

IN RE: AMENDMENTS TO FLORIDA RULE OF CIVIL PROCEDURE 1.530 AND FLORIDA FAMILY LAW RULE OF PROCEDURE 12.530 Motion for New Trial and Rehearing; Amendments to Judgments: changes language as follows: To preserve for appeal a challenge to the ~~sufficiency of a trial court's findings in the final judgment~~ failure of the trial court to make required findings of fact, a party must raise that issue in a motion for rehearing under this rule.

IN RE: AMENDMENT TO THE FLORIDA RULES FOR QUALIFIED AND COUR-APPOINTED PARENTING COORDINATORS. Changes to Rules 15.205, 15.210, 15.230, and 15.251

IN E: AMENDMENTS TO FLORIDA SUPREME COURT APPROVED FAMILY LAW FORMS 12.980(a) PETITION FOR INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE (additional factor to be considered pursuant to FL Stat. 741.30(3)(b)), 12.980(f), 12.980(n), 12.980(q) AND 12.980(t). Restoring reference to Deputy Clerk in notary block of all forms.

IN RE: AMENDMENTS TO FLORIDA FMAILY LAW RULES OF PROCEDURE 12.070(l) (summons, time limit to include supplemental pleadings); 12.280(b) (redaction only applies to documents filed with the clerk of the court); 12.340(h) to clarify the requirements for serving answers to interrogatories.

IN RE: AMENDMENTS TO FLORIDA FAMILY LAW RULES OF PROCEDURE 12.285 (Mandatory Disclosure) and FORMS 12.902(k) (Notice of Filing Joint Verified Waiver of Filing Financial Affidavits) and 12.902(l) (Affidavit of Income for Child Support). Filing FAs may be waived by the parties in certain circumstances but the affidavits must still be exchanged by the parties.

FLORIDA STATUTORY CHANGES

FLORIDA STATUTE 61.08 ALIMONY

FLORIDA STATUTE 61.1255 SUPPORT FOR DEPENDENT ADULT CHILDREN

FLORIDA STATUTE 61.13 PARENTAL RESPONSIBILITY & PARENTING PLANS

FLORIDA STATUTE 61.31 AMOUNT OF SUPPORT OF DEPENDENT ADULT CHILD

FLORIDA STATUTE 61.5175 UCCJEA TEMPORARY EMERGENCY JURISDICTION, SEX-REASSIGNMENT PRESCRIPTIONS OR PROCEDURES

FLORIDA STATE 61.534 WARRANT FOR PHSYICAL CUSTODY OF CHILD

FLORIDA STATUTE 741.30 DOMESTIC VIOLENCE INJUNCTIONS

FLORIDA STATUTE 744.301 PATERNITY