

**OSCA/OCI'S CASE LAW UPDATE**  
**August 2022**

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## DELINQUENCY CASELAW UPDATE

Prepared by Avron Bernstein, OSCA Senior Attorney – [bernsteina@flcourts.org](mailto:bernsteina@flcourts.org)

### **Florida Supreme Court**

*In Re: Amendment to Florida Rule of Criminal Procedure 3.220, Florida Rule of Civil Procedure for Involuntary Commitment of Sexually Violent Predators 4.310, and Florida Rule of Juvenile Procedure 8.060*, \_\_\_ So. 3d \_\_\_, 2022 WL 3650791 (Fla. 2022).

FLORIDA RULE OF JUVENILE PROCEDURE 8.060 AMENDED

The Florida Supreme Court amended Juvenile Rule 8.060 regarding depositions for discovery.

<https://www.floridasupremecourt.org/content/download/846192/opinion/sc22-312.pdf>  
(August 25, 2022)

### **First District Court of Appeal**

*I.M.W. v. State of Florida*, \_\_\_ So. 3d \_\_\_, 2022 WL 3134142 (Fla. 1st DCA 2022).

HABEAS CORPUS PETITION GRANTED

Appellate court granted a petition for a writ of habeas corpus because the trial court failed to make the appropriate findings pursuant to Fla. R. Juv. Proc. 8.150(c)(6). The Appellate court refused to entertain any motion for rehearing and ordered the petitioner to be released immediately.

[https://www.1dca.org/content/download/844862/opinion/222378\\_DC03\\_08052022\\_160410\\_i.pdf](https://www.1dca.org/content/download/844862/opinion/222378_DC03_08052022_160410_i.pdf)  
(August 5, 2022)

*J.H. v. State of Florida*, \_\_\_ So. 3d \_\_\_, 2022 WL 3441451 (Fla. 1st DCA 2022).

PROBATION ORDER AFFIRMED IN PART AND REVERSED IN PART

Appellate court reversed the trial court's disposition order, affirmed in part, reversed in part, and remanded the case for entry of a corrected order regarding probation. The trial court had denied the juvenile's motion to suppress, finding that his *Miranda* waiver was knowing, intelligent, and voluntary. Appellate court affirmed on the issue of the waiver after considering several factors on waiver and under the totality of the circumstances. However, as to the period of probation, because the lower court failed to indicate whether the probation was for an indeterminate period or state a specific length of time, appellate court reversed the order and remanded the case for entry of a corrected order.

[https://www.1dca.org/content/download/845692/opinion/211114\\_DC08\\_08172022\\_142022\\_i.pdf](https://www.1dca.org/content/download/845692/opinion/211114_DC08_08172022_142022_i.pdf)  
(August 17, 2022)

### **Second District Court of Appeal**

*J.B.E.C. v. State of Florida*, \_\_\_ So. 3d \_\_\_, 2022 WL 3638089 (Fla. 1st DCA 2022).

RESTITUTION ORDER REVERSED AND REMANDED

Appellate court reversed an order of restitution because there was insufficient evidence to establish the victim actual loss of income. The court held that the victim's testimony regarding his lost wages was insufficient to establish by a preponderance of evidence that he lost \$2,880.00 in income. The court affirmed the trial court's order in all other respects but remanded the case for a new restitution hearing.

[https://www.2dca.org/content/download/846067/opinion/210374\\_DC08\\_08242022\\_083340\\_i.pdf](https://www.2dca.org/content/download/846067/opinion/210374_DC08_08242022_083340_i.pdf)  
(August 24, 2022)

***Third District Court of Appeal*** (no new opinions for this reporting period)

***Fourth District Court of Appeal*** (no new opinions for this reporting period)

***Fifth District Court of Appeal*** (no new opinions for this reporting period)

## DEPENDENCY CASE LAW UPDATE

Prepared by Avron Bernstein, OSCA Senior Attorney – [bernsteina@flcourts.org](mailto:bernsteina@flcourts.org)

### **Florida Supreme Court** (no new opinions for this reporting period)

#### **First District Court of Appeal**

*L.F., Mother, v. Department of Children and Families*, \_\_\_ So. 3d \_\_\_, 2022 WL 3097557 (Fla. 1st DCA 2022).

##### TERMINATION OF PARENTAL RIGHTS AFFIRMED

Appellate court affirmed termination of a mother's parental rights to her three children. The trial court reasonably concluded there was clear and convincing evidence that the mother engaged in egregious conduct, as well as that termination of parental rights was in the manifest best interests of the children. Finally, appellate court held that termination was constitutional upon proof of manifest best interest without using a least restrictive means element, concluding that there were no services to increase the parent's protective capacities or ensure the children's safety.

[https://www.1dca.org/content/download/842625/opinion/210991\\_DC05\\_07072022\\_112726\\_i.pdf](https://www.1dca.org/content/download/842625/opinion/210991_DC05_07072022_112726_i.pdf)

(August 4, 2022)

*J.J.Z., Mother, v. Department of Children and Families*, \_\_\_ So. 3d \_\_\_, 2022 WL 3097558 (Fla. 1st DCA 2022).

*J.S.N., Father, v. Department of Children and Families*, \_\_\_ So. 3d \_\_\_, 2022 WL (Fla. 1st DCA 2022).

##### TERMINATION OF PARENTAL RIGHTS AFFIRMED

In a pair of related cases, appellate court affirmed termination of both parents' parental rights where there was competent substantial evidence that the parents were the exclusive caregivers and no one else had the opportunity to cause the many fractures suffered by one of the children. Appellate court held it was irrelevant which parent was physically abusing and which parent stood by. The court concluded there was no legal error by the trial court.

[https://www.1dca.org/content/download/844798/opinion/220466\\_DC05\\_08042022\\_141646\\_i.pdf](https://www.1dca.org/content/download/844798/opinion/220466_DC05_08042022_141646_i.pdf)

[https://www.1dca.org/content/download/844799/opinion/220468\\_DC05\\_08042022\\_141917\\_i.pdf](https://www.1dca.org/content/download/844799/opinion/220468_DC05_08042022_141917_i.pdf)

(August 4, 2022)

*A.W., Mother, v. Department of Children and Families*, \_\_\_ So. 3d \_\_\_, 2022 WL 3222792 (Fla. 1st DCA 2022).

##### ADJUDICATION OF DEPENDENCY AFFIRMED

Appellate court affirmed an adjudication of dependency because the mother failed to raise the issue with the trial court that the written order failed to include factual findings supporting the adjudication of dependency. Rather, the mother raised the issue for the first time on appeal. Appellate court held that the trial court included sufficient factual findings in its order granting the dependency petition, and that order satisfied the requirements of Rule 8.331(a), Fla. R. Juv. Proc.

[https://www.1dca.org/content/download/845195/opinion/211476\\_DC05\\_08102022\\_140547\\_i.pdf](https://www.1dca.org/content/download/845195/opinion/211476_DC05_08102022_140547_i.pdf)

(August 10, 2022)

## **Second District Court of Appeal** (no new opinions for this reporting period)

### **Third District Court of Appeal**

*M.M.W., the Mother, v. J.W., the Father*, \_\_\_ So. 3d \_\_\_\_, 2022 WL (Fla. 3rd DCA 2022).

#### TERMINATION OF PARENTAL RIGHTS REVERSED

Appellate court reversed termination of a mother's parental rights that had been granted in a private petition, filed by the father. The parties had been divorced and the parties had entered into a post-judgment mediated settlement agreement that required, *inter alia*, the mother to continue outpatient treatment and comply with further recommendations and treatment plans. The father's petition to terminate the mother's rights alleged abandonment and chronic substance abuse by the mother. The trial court granted the petition due to chronic substance abuse and conduct threatening the lives, safety, well-being, or health of the children irrespective of services, and the mother appealed. Appellate court noted that abandonment is not a ground for single parent termination of parental rights under section 39.811(6), Florida Statutes, but that the statutory grounds cited by the trial court are. Appellate court also held that the father satisfied the statutory requirement by showing the mother's chronic substance abuse disorder. However, the father failed to present competent substantial evidence that the mother refused or failed to complete available treatment. Because the father failed to satisfy the least restrictive means test, appellate court reversed and remanded the final judgment.

[https://www.3dca.flcourts.org/content/download/844663/opinion/212419\\_DC13\\_080320\\_22\\_101424\\_i.pdf](https://www.3dca.flcourts.org/content/download/844663/opinion/212419_DC13_080320_22_101424_i.pdf)

(August 3, 2022)

*M.S., v. Department of Children and Families and Guardian ad Litem Program*, \_\_\_ So. 3d \_\_\_\_, 2022 WL (Fla. 3rd DCA 2022).

#### PETITION FOR CERTIORARI DENIED

Appellate court denied a petition for certiorari that sought relief from an order prohibiting a deposition of a recanting child witness. The child witness had stated multiple times that the petitioner had sexually abused her over the span of several years. The Department of Children and Families filed a petition to terminate the parental rights of the petitioner as well as the parental rights of the witness's own parents, whom she claimed were aware of the abuse. At trial, the witness confirmed the allegations but claimed she lied when she said her parents were aware of the abuse. After the trial court terminated parental rights, the child e-mailed the judge claiming she had fabricated the abuse claims, causing the trial court to vacate the final judgment and set an evidentiary hearing. The petitioner sought to depose the child prior to the hearing, resulting in the protective order which was the subject of the petition for certiorari. Appellate court noted that the order had findings in compliance with the pertinent statutes. Furthermore, the trial court has broad discretion to consider any relevant factors in limiting the number of times a child is interviewed and imposed other appropriate limitations. Rather than denying access to the child, the trial court required that the recantation examination occur in open court. The appellate court concluded the Petitioner failed to establish a departure from the essential requirements of the law that resulted in irreparable harm, appellate court denied the petition.

[https://www.3dca.flcourts.org/content/download/845671/opinion/221108\\_DC02\\_081720\\_22\\_105612\\_i.pdf](https://www.3dca.flcourts.org/content/download/845671/opinion/221108_DC02_081720_22_105612_i.pdf)

(August 17, 2022)

**Fourth District Court of Appeal** (no new opinions for this reporting period)

**Fifth District Court of Appeal**

J.C. v. Dept. of Children and Families, 343 So.3d 659 (Fla. 5<sup>th</sup> DCA, 2022)

TERMINATION OF PARENTAL RIGHTS AFFIRMED

Mother appeals final judgment terminating her parental rights on the ground that the trial court failed to orally advise her of her right to file a motion for ineffective counsel.

Appellate court denied motion and affirmed.

[https://www.5dca.org/content/download/844580/opinion/221142\\_DC05\\_08012022\\_085512\\_i.pdf](https://www.5dca.org/content/download/844580/opinion/221142_DC05_08012022_085512_i.pdf)

(August 1, 2022)

## **DISSOLUTION OF MARRIAGE CASE LAW UPDATE**

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### **Florida Supreme Court**

*In re: Amendments to Florida Rule of Civil Procedure 1.530 and Florida Family Law Rule of Procedure 12.530*, \_\_\_ So.3d \_\_\_, 2022 WL 3650789 (Fla. 2022).

#### **FLORIDA RULE OF CIVIL PROCEDURE 1.530 AND FLORIDA FAMILY LAW RULE OF PROCEDURE 12.530 WERE AMENDED**

The Florida Supreme Court amended Florida Rule of Civil Procedure 1.530 (Motions for New Trial and Rehearing; Amendments and Judgements) and Florida Family Law Rule of Procedure 12.530 (Motions for New Trial and Rehearing; Amendments and Judgements) to clarify that filing a motion for rehearing is required to preserve an objection to insufficient trial court findings in a final judgement order. The following sentence was added to rules 1.530(a) and 12.530(a): “To preserve for appeal a challenge to the sufficiency of a trial court’s findings in the final judgement, a party must raise that issue in a motion for rehearing under this rule.”

<https://www.floridasupremecourt.org/content/download/846193/opinion/sc22-756.pdf>  
(August 25, 2022)

### **First District Court of Appeal**

*Allen v. Allen*, \_\_\_ So.3d \_\_\_, 2022 WL 3051658 (Fla. 1st DCA 2022).

#### **TRIAL COURT’S RULING ON A RULE 12.530(A) MOTION WAS NOT AN ABUSE OF DISCRETION**

Former husband appealed the supplemental final judgment of dissolution of marriage. The parties divorced pursuant to a consent judgment. Former wife filed a motion to modify child support and compel payments. The motion requested clarification of former wife’s entitlement to former husband’s pension from his participation in a deferred retirement option program. The trial court heard testimony from former husband, former wife, and the benefits manager for the pension fund. The trial court entered a supplemental final judgment which specified former husband’s pension obligations to former wife under the consent judgment. Former husband moved to reopen the evidence alleging that the supplemental judgment awarded former wife a greater share of the pension benefits than what she was entitled and that additional testimony from the benefits manager was necessary to enable the court to separate the marital and non-marital components of the pension benefits. The trial court denied the motion and former husband appealed. Former husband challenged the treatment of his pension benefits and the denial of his motion to reopen the evidence. The appellate court affirmed as to both issues and wrote only to address former husband’s claim that the court should have granted his motion to reopen the evidence so that he could recall a witness who previously testified at trial. The appellate court found that the standard of review of a trial court’s ruling on a Florida Family Law Rule of Procedure 12.530(a) motion is an abuse of discretion. The appellate court found that the trial court did not abuse that discretion when it denied former husband’s request to reopen his case to present additional testimony from a witness who had already testified. Judgement affirmed.

[https://www.1dca.org/content/download/844708/opinion/212652\\_DC05\\_08032022\\_140331\\_i.pdf](https://www.1dca.org/content/download/844708/opinion/212652_DC05_08032022_140331_i.pdf)

(August 3, 2022)



*McGowan v. McGowan*, \_\_\_ So.3d \_\_\_, 2022 WL 3441442 (Fla. 1st DCA 2022).

TRIAL COURT MISCLASSIFIED AND MISVALUED MARITAL AND NONMARITAL ASSETS AND DEBTS

Former wife appealed the final judgment of dissolution of marriage. She argued that the trial court erred in distributing the parties' assets and liabilities and in the denial of her requests for alimony and attorney's fees. The appellate court found that the trial court erred by misclassifying marital and nonmarital debts and assets, also erred in valuing the parties' assets. After making errors in the classification and valuation, the trial court determined that it was appropriate to distribute the marital assets and liabilities unequally. The appellate court found that when making an unequal distribution, the court must make factual findings to justify the disparity. Unless the assets and liabilities were properly classified and valued, the trial court would have no way of knowing whether its distribution was equal or unequal. The appellate court reversed the distribution of the assets and liabilities and remanded with instructions. The appellate court found that when an equitable distribution scheme is reversed, the trial court must consider on remand the other financial aspects of the judgment. Thus, on remand, the trial court must reconsider its rulings on alimony and attorney's fees as both depend on the distribution of the marital assets and liabilities.

[https://www.1dca.org/content/download/845690/opinion/210966\\_DC13\\_08172022\\_141508\\_i.pdf](https://www.1dca.org/content/download/845690/opinion/210966_DC13_08172022_141508_i.pdf)

(August 17, 2022)

*Martin v. Martin*, \_\_\_ So.3d \_\_\_, 2022 WL 3441473 (Fla. 1st DCA 2022).

MILITARY DISABILITY PAYMENTS ARE NOT SUBJECT TO DISTRIBUTION

In post-dissolution case, the former husband appealed an order requiring him to pay the former wife a portion of his "military retirement" referenced in the final judgment of dissolution. The former husband argued he receives military disability, and not military retirement. The former husband contended he was medically retired after sixteen years and nine months of service and had not reached twenty years of service to qualify for military retirement benefits. The appellate court found that former husband never reached retirement eligibility and any payments he receives from the military are disability payments not subject to distribution. His non-taxable disability benefits are not divisible property, and under *Howell v. Howell*, 137 S.Ct. 1400 (2017), the trial court could not order him to indemnify the former wife from other assets. The order on appeal was reversed.

[https://www.1dca.org/content/download/845690/opinion/210966\\_DC13\\_08172022\\_141508\\_i.pdf](https://www.1dca.org/content/download/845690/opinion/210966_DC13_08172022_141508_i.pdf)

(August 17, 2022)

## ***Second District Court of Appeal***

*Shavers v. Shavers*, \_\_\_ So.3d \_\_\_, 2022 WL 3868022 (Fla. 2d DCA 2022).

APPEAL OF ORDER DENYING MOTION TO SET ASIDE A SIGNED MEDIATION MEMORANDUM WAS DISMISSED BECAUSE IT WAS A NONFINAL, NONAPPEALABLE ORDER

Wife appealed the denial of her a motion to set aside a signed mediation memorandum in a pending dissolution. The appellate court dismissed the appeal because it was from a nonfinal, nonappealable order. See Fla. R. App. P. 9.130(a)(3)(C); see also Fla. R. App. P. 9.030(b)(1)(B).



[https://www.2dca.org/content/download/847959/opinion/213190\\_DA08\\_08312022\\_084239\\_i.pdf](https://www.2dca.org/content/download/847959/opinion/213190_DA08_08312022_084239_i.pdf)

(August 31, 2022)

*Rich v. Rich*, \_\_\_ So.3d \_\_\_, 2022 WL 3868024 (Fla. 2d DCA 2022).

ATTORNEY FEES AWARD REVERSED BECAUSE MANY OF THE FINDINGS ON WHICH THE TRIAL COURT BASED ITS AWARD WILL BE REVISITED ON RETRIAL

Former wife appealed the trial court's nonfinal order awarding the former husband attorney's fees and costs and denying her amended motion for attorney's fees and costs. The trial court based its ruling on "the Former Wife's inequitable conduct regarding her meritless defenses to the establishment and enforcement of the parties' Antenuptial Agreement" and the former wife's "inequitable conduct regarding documents she allegedly procured from a dumpster on the private property of the Third-Party Defendants and their accountant." In *Rich v. Rich*, 337 So. 3d 138 (Fla. 2d DCA 2022), this court concluded that the trial court's findings regarding the interpretation of the antenuptial agreement and the admissibility of the "dumpster documents" were erroneous and that a new trial was required. The appellate court reversed the fee award and remanded for reconsideration because many of the findings on which the trial court based its attorney's fee award will be revisited on retrial. The appellate court also reversed the denial of the former wife's amended motion for attorney's fees. On remand, the trial court shall consider the relative financial positions and conduct of the parties during the proceedings.

[https://www.2dca.org/content/download/847954/opinion/192721\\_DC13\\_08312022\\_083657\\_i.pdf](https://www.2dca.org/content/download/847954/opinion/192721_DC13_08312022_083657_i.pdf)

(August 31, 2022)

*Mitchell v. Flatt*, 2022 WL 3129170 (Fla. 2<sup>nd</sup> DCA 2022)

ATTORNEY'S FEE AWARD REVERSED

Former husband brought action against former wife concerning alleged loan between them. County Court denied motion for reconsideration and later granted award of fees against counsel in amount submitted by former husband's counsel. Former wife appealed. Appellate court found trial court erred in determining the amount of attorney's fees without expert testimony as to reasonableness and that [F]ee awards must be supported by "a predicate of substantial competent evidence in the form of testimony by the attorney performing services and by an expert as to the value of those services." *Cooper v. Cooper*, 406 So. 2d 1223, 1224 (Fla. 4th DCA 1981) (emphasis added) (citing *Cohen v. Cohen*, 400 So. 2d 463, 465 (Fla. 4th DCA 1981)). Appellate court affirmed in part and reversed in part, specifically reversing the part of the order awarding a fee without remand for further hearing.

[https://www.2dca.org/content/download/844827/opinion/210487\\_DC08\\_08052022\\_090605\\_i.pdf](https://www.2dca.org/content/download/844827/opinion/210487_DC08_08052022_090605_i.pdf)

(August 5, 2022)

*Green v. Bordiuk*, 2022 WL 3638044 (Fla. 2<sup>nd</sup> DCA 2022)

REVERSAL OF DENIAL OF MOTION TO DISSOLVE INJUNCTION

Appellate court reversed the trial court's denial of the fifth attempt in six years to modify or dissolve an injunction. The woman protected by the injunction no longer feared being a victim of domestic violence and neither party bound by the injunction wanted it to continue. Appellate court therefore reversed and remanded the case with instructions to dissolve the injunction.

[https://www.2dca.org/content/download/846075/opinion/212592\\_DC13\\_08242022\\_083](https://www.2dca.org/content/download/846075/opinion/212592_DC13_08242022_083)

August 2022

Update provided by the OSCA's Office of Court Improvement

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### ***Third District Court of Appeal***

*Loginov v. Samoiloova*, \_\_\_ So.3d \_\_\_, 2022 WL 3221244 (Fla. 3d DCA 2022).

APPELLANT COULD NOT COLLECT DEBT FROM DEBTOR'S FORMER WIFE

Appellant appealed a trial court order in favor of appellee. In 2016, former husband entered into a loan agreement with appellant in Russia for 67,000,000.00 rubles which were used to purchase a condominium in Sunny Isles Beach, Florida. Appellant obtained a Russian judgment against former husband based on the loan agreement. In 2019, former husband commenced a divorce action in Russia. As part of the divorce, former husband sought for the Russian court to recognize the debt he owed to appellant, his stepbrother, as a joint debt of the spouses to be divided equally. The Russian court found in favor of former husband and recognized the “monetary liability” to the stepbrother as a “community debt” of husband and wife. The Russian court, however, declined to allocate the debt between the husband and wife because the wife was not a party to the loan agreement underlying the debt. The decision was upheld on multiple appeals in Russia. In 2020, former husband and wife entered into a settlement agreement in Florida to sell the Sunny Isles Beach condominium and split the profits equally. Appellant filed a complaint against former husband and wife for: (1) domestication of Russian court judgments in the amount of 67,000,000.00 rubles; (2) an equitable lien on the Sunny Isles Beach condominium; and (3) foreclosure of that equitable lien. Appellant was awarded summary judgment against former husband after he admitted to every allegation in the complaint. Following a three-day non-jury trial, the trial court found: (1) the Russian judgments could be domesticated but they did not grant appellant a right to collect from former wife; (2) appellant’s claim for an equitable lien was improper because he had an adequate remedy at law; and (3) appellant could not seek foreclosure because he was not entitled to an equitable lien. On appeal, the main issue was whether the Russian court’s “recognition” of the debt as a community debt gave appellant a monetary judgement entitling him to recover from former wife. The appellate court found that the trial court properly weighed the relative experience of the two expert witnesses, the contradictory testimony provided and the plain language of the Russian judgments when it determined the Russian judgments did not grant appellant a monetary liability against former wife. The appellate court found that the trial court properly denied the appellant’s claim for an equitable lien. Appellant had a remedy at law because he already obtained a judgment in Russia against former husband for the 67,000,000.00 rubles based on the loan agreement. Appellant could not pursue an equitable lien based on unjust enrichment because an express contract existed governing the loan.

Finally, the appellate court found the final judgment was not inconsistent with the prior summary judgment order. Essentially the two judgments established the appellant had an equitable lien against former husband but not former wife.

[https://www.3dca.flcourts.org/content/download/845136/opinion/212457\\_809\\_08102022\\_141942\\_i.pdf](https://www.3dca.flcourts.org/content/download/845136/opinion/212457_809_08102022_141942_i.pdf)

(August 10, 2022)

*Kraus v. Kraus*, \_\_\_ So.3d \_\_\_, 2022 WL 3640452 (Fla. 3d DCA 2022).

MODIFICATION OF ALIMONY AND DENIAL OF MOTION FOR JUDGEMENT ON THE PLEADINGS AFFIRMED

Former wife challenged the denial of her motion for judgment on the pleadings and the

granting of former husband's Third Supplemental Petition for Modification of Alimony. The appellate court found that the trial court properly denied the former wife's motion for judgment on the pleadings. The appellate court found the alleged changes in the former wife's ability to pay was sufficient to petition for a modification of alimony. Further, it was not error for the trial court to consider evidence of financial hardship due to the former husband's medical condition and loss of income. The former wife argued that these issues were not included in the pleadings and that the trial court's consideration of such evidence was a violation of her right to fair notice. The appellate court found that when an issue is tried by implied consent, due process concerns are alleviated. In this case, the former husband's financial hardship due to his medical condition and loss of income were tried by consent. Finally, the appellate court found the trial court's order modifying alimony was supported by competent substantial evidence.

[https://www.3dca.flcourts.org/content/download/846089/opinion/210740\\_DC05\\_08242022\\_102030\\_i.pdf](https://www.3dca.flcourts.org/content/download/846089/opinion/210740_DC05_08242022_102030_i.pdf)

(August 24, 2022)

*Bates v. Bates*, \_\_\_ So.3d \_\_\_, 2022 WL 3904315 (Fla. 3d DCA 2022).

MOTION FOR REHEARING EN BANC DENIED WHERE THERE WAS A TIE VOTE

Wife petitioned for dissolution of marriage and sought to invalidate a prenuptial agreement. Following a bench trial, the trial court invalidated the prenuptial agreement. Husband appealed. The appellate court affirmed the trial court's order finding there was no evidence that the wife signed the prenuptial agreement under duress, but sufficient coercive circumstances indicated that the wife did not execute the agreement of her own free will. See *Bates v. Bates*, \_\_\_ So.3d \_\_\_, 2021 WL 358188 (Fla. 3d DCA February 3, 2021). On husband's motion for rehearing en banc, seven members of the appellate court voted to rehear the matter en banc. Upon en banc consideration, the appellate court was evenly divided concerning disposition of the appeal. Judges Emas, Logue, Scales, Miller and Lobree voted to deny rehearing en banc and Judges Fernandez, Lindsey, Hendon, Gordon and Bokor voted to grant the motion for rehearing en banc. In accordance with the requirements of Florida Rule of Appellate Procedure 9.331(a), in the event of a tie vote, the panel decision shall stand as the decision of the appellate court. Accordingly, the motion for rehearing en banc was denied and the panel opinion affirming the trial court's order remained the opinion of the appellate court.

[https://www.3dca.flcourts.org/content/download/847978/opinion/191884\\_NOND\\_08312022\\_100922\\_i.pdf](https://www.3dca.flcourts.org/content/download/847978/opinion/191884_NOND_08312022_100922_i.pdf)

(August 31, 2022)

### ***Fourth District Court of Appeal***

*Mandelko v. Lopresti*, \_\_\_ So.3d \_\_\_, 2022 WL 3378790 (Fla. 4th DCA 2022).

FORMER WIFE'S MOTION WAS NOT TIME BARRED BECAUSE THE UNDERLYING ACTION WAS SEEKING ENFORCEMENT OF THE FINAL JUDGMENT

Former wife appealed the denial of her motion to set aside, clarify, and/or enforce the final judgment of dissolution of marriage. The trial court ruled that it lacked jurisdiction to consider the motion. The marital settlement agreement provided that wife was entitled to half of the husband's pension benefit. The marital settlement agreement was silent as to the method for valuing and paying the pension benefits. The agreement reserved the trial court's jurisdiction over the parties and over all matters contained in the final judgment as permitted by law for purposes of enforcement. Former wife filed a motion to set aside, clarify, and/or enforce the final judgment. Former wife argued that former husband is a

participant of a municipal pension plan which is not subject to the Employee Retirement Income Security Act, and as a result, the municipal pension plan will not pay her a share of the pension benefits pursuant to a Qualified Domestic Relations Order. Former's wife's motion was heard before a magistrate who issued a recommended order finding that former wife was entitled to \$164.54 per month. Former husband filed an exception to the magistrate's recommendation. The trial court granted the exception and rejected the magistrate's recommendation on the grounds that the court did not have jurisdiction because the former wife's motion was not filed within one year after the entry of the final judgment. The appellate court found that former wife's motion was essentially a motion to enforce a final judgment, as opposed to a motion seeking to set aside or amend the final judgement. A motion to enforce the final judgment has no time limitation. Therefore, the trial court had jurisdiction to consider the motion. However, due to the incorporated marital settlement agreement's ambiguity, enforcement was not possible until the trial court first determined the parties' intent at the time they entered the agreement. Accordingly, the appellate court reversed and remanded so the trial court could hold an evidentiary hearing to determine the parties' intent regarding the distribution/payment of former husband's pension benefits.

[https://www.4dca.org/content/download/845648/opinion/212041\\_DC13\\_08172022\\_100517\\_i.pdf](https://www.4dca.org/content/download/845648/opinion/212041_DC13_08172022_100517_i.pdf)

(August 17, 2022)

*Inman v. Inman*, \_\_\_ So.3d \_\_\_, 2022 WL 3390899 (Fla. 4th DCA 2022).

TRIAL COURT'S FINDING OF FORMER HUSBAND'S INCOME AND ON THE DETERMINATION OF FORMER WIFE'S ALIMONY AWARD REVERSED AND REMANDED

Former wife appealed the trial court's final judgment establishing a \$900.00 monthly equitable distribution payment plan and a \$100.00 per month permanent periodic alimony award. The appellate court reversed and remanded the trial court's finding of former husband's income and on the determination of former wife's alimony award. They affirmed on all other issues without comment. Former husband testified that he needed hip surgery and planned to reduce his work hours to thirty-two hours per week, thereby decreasing his income. The trial court calculated his monthly income based on former husband's future plans. The appellate court found the trial court's calculation of former husband's income based on a reduction in his potential future salary was not supported by competent, substantial evidence. While a reduced future workload and the resulting diminished future income may be grounds for a petition to modify alimony and obtain a reduction in the amount to be paid, it cannot support calculations regarding current alimony payments. Therefore, the appellate court reversed and remanded for a recalculation of former husband's income by the trial court. The appellate court found the trial court erred in its determination of alimony. The trial court calculated the former wife's need for alimony as \$1,000.00 per month and then subtracted the \$900.00 monthly equitable distribution payment to determine the \$100.00 per month permanent periodic alimony. The appellate court found that a court should not require a [former] spouse in need of alimony to deplete or invade capital assets to maintain his or her standard of living. The appellate court reversed and remanded to the trial court for recalculation of the monthly alimony payment.

[https://www.4dca.org/content/download/845650/opinion/212265\\_DC08\\_08172022\\_10829\\_i.pdf](https://www.4dca.org/content/download/845650/opinion/212265_DC08_08172022_10829_i.pdf)

(August 17, 2022)



*Edwards v. Alphonse*, \_\_\_ So.3d \_\_\_, 2022 WL 3904314 (Fla. 4th DCA 2022).

#### FINAL JUDGEMENT OF DISSOLUTION AFFIRMED

Former husband appealed the final judgment of dissolution of marriage. He challenged credibility determinations, the weight given to the evidence by the fact finder, and certain evidentiary rulings, and argued that there were factual findings not supported by the evidence. The dissolution of marriage petition and counterpetition were heard by a general magistrate. The appellant did not file any exceptions to the magistrate's report. Consequently, the trial court did not hold a hearing before adopting the magistrate's report and recommendations. The appellate court found that even if former husband's arguments were preserved for review, it would be improper for the appellate court to substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court. To the extent former husband argued the evidence did not support the trial court's factual findings, the appellate court could not review for competent substantial evidence because former husband failed to provide a trial transcript. Judgement affirmed.

[https://www.4dca.org/content/download/847988/opinion/212910\\_DC05\\_08312022\\_095747\\_i.pdf](https://www.4dca.org/content/download/847988/opinion/212910_DC05_08312022_095747_i.pdf)

(August 31, 2022)

### ***Fifth District Court of Appeal***

*Brown v. Norwood*, \_\_\_ So.3d \_\_\_, 2022 WL 3129767 (Fla. 5th DCA 2022).

#### CHILD SUPPORT REVERSED AND REMANDED BECAUSE OF MATHEMATICAL ERRORS IN CALCULATING NET INCOME

Former husband appealed the second amended final judgment of dissolution of marriage. Former husband argued that the trial court erred by incorrectly calculating former husband's net income and retroactive child support obligation, and by awarding ongoing child support. The appellate court found that the second amended final judgment contained mathematical errors on the face of the judgement with respect to former husband's income. The appellate court found that any retroactive child support owed should be modified according to the correct income calculations. The appellate court reversed and remanded with instructions to recalculate former husband's income for the period between 2014 and 2016 and make the proper adjustments to retroactive child support. The appellate court found that the trial court erred in ordering ongoing child support because the parties' child had reached the age of majority at the time the court entered the second amended judgment. Accordingly, the appellate court reversed the ongoing child support obligation.

[https://www.5dca.org/content/download/844833/opinion/210385\\_DC05\\_08052022\\_083359\\_i.pdf](https://www.5dca.org/content/download/844833/opinion/210385_DC05_08052022_083359_i.pdf)

(August 5, 2022)

*Fetchick v. Fetchick*, \_\_\_ So.3d \_\_\_, 2022 WL 3691312 (Fla. 5th DCA 2022).

#### DISMISSAL OF MOTION TO DETERMINE AMOUNT OF ATTORNEY'S FEES BASED UPON LACK OF JURISDICTION WAS REVERSED AND REMANDED

Father appealed two orders concerning his request for attorney's fees. The first order determined he was entitled to attorney's fees but did not establish the amount owed. The second order dismissed his motion to determine the amount of attorney's fees based upon lack of jurisdiction. The final judgment of dissolution included a time-sharing plan. Mother filed a petition to modify the final judgment. Father filed a motion for contempt alleging that the mother violated the time-sharing plan. Father's motion included a request for attorney's

fees. The trial court found mother in contempt and ruled that father was entitled to attorney's fees. Father's attorney was not permitted to testify as to his hours expended and hourly rate. The trial court did not establish the amount of the attorney's fees because it believed that the father needed corroborating expert testimony. The trial court invited father to file another motion for attorney's fees, which he did. Before that motion was heard, the parties went to trial and the trial court entered a modified final judgment. The modified final judgement did not address attorney's fees. Father filed a memorandum of law in support of his motion to determine the amount of attorney's fees. Mother moved to dismiss father's motion to determine the amount of attorney's fees based upon lack of jurisdiction. She argued that the trial court had lost jurisdiction because it did not reserve jurisdiction to award fees in either the initial contempt order or the modified final judgment. The trial court dismissed father's attorney's fee motion for lack of jurisdiction. On appeal, the appellate court found it was irrelevant whether the modified final judgment contained a reservation of jurisdiction to rule on father's request for attorney's fees stemming from the earlier contempt proceeding. The appellate court found that the trial court did not lose jurisdiction to enter a fee award in the contempt proceeding where the trial court failed to reserve jurisdiction to do so in its contempt order. Following entry of the final judgment, the trial court retained continuing jurisdiction to enforce that judgment, including by finding mother in contempt and establishing the associated fees owed. At the contempt proceeding, the trial court ruled that father was entitled to fees and invited him to file another motion to determine the amount. Thus, specific to the award of attorney's fees, the contempt order was a non-final order, merely prefatory to another order establishing the fees mother owed. As such, the trial court did not need to reserve jurisdiction to set the amount of the award. The appellate court also found the trial court erred in the first instance by refusing to establish father's fee award without corroborating expert testimony. Section 61.16, Florida Statutes, expressly states that such evidence is not required. Moreover, the appellate court found it was error to exclude father's counsel's testimony as to the reasonableness of counsel's hours expended and hourly rate. Accordingly, the appellate court reversed the trial court's order dismissing father's motion to determine amount of attorney's fees based upon lack of jurisdiction. Reversed and remanded for further proceedings consistent with this opinion. Judge Nardella concurred in part; dissented in part.

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(August 26, 2022)