

**OSCA/OCI'S CASE LAW UPDATE  
SEPTEMBER 2018**

Baker Act/Marchman Act Case Law ..... 2  
Drug Court/Mental Health/Veterans Court Case Law ..... 3

**Family Court**

Delinquency Case Law.....4  
Dependency Case Law.....6  
Dissolution of Marriage Case Law.....8  
Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law ..... 14

## **Baker Act/Marchman Act Case Law**

### ***Florida Supreme Court***

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

### ***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.

## **Drug Court/Mental Health/Veterans Court Case Law**

### ***Florida Supreme Court***

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

### ***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.

## Delinquency Case Law

### **Florida Supreme Court**

No new opinions for this reporting period.

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

B.E. v. State, \_\_ So.3d \_\_, 2018 WL 4573206 (Fla. 1st DCA 2018). **ONCE COMPETENCY IS REASONABLY IN QUESTION, A HEARING AND ORDER REGARDING COMPETENCY ARE REQUIRED.** B.E.'s counsel filed a notice of incompetency and moved for an updated expert evaluation on the basis the child may be incompetent to stand trial. The trial court granted the motion and appointed an expert who previously found B.E. to be competent to conduct an updated evaluation. Following this appointment, no further proceedings regarding B.E.'s competency were conducted, and no further orders were entered addressing the issue. The appellate court said that because the trial court granted counsel's motion and appointed an expert to conduct an updated evaluation, it had reasonable grounds to question B.E.'s competency at which point it was required to conduct a hearing on the issue and enter an order independently finding her competent to proceed before conducting an adjudicatory hearing.  
[https://edca.1dca.org/DCADocs/2018/0043/180043\\_1287\\_09252018\\_08464204\\_i.pdf](https://edca.1dca.org/DCADocs/2018/0043/180043_1287_09252018_08464204_i.pdf)  
(September 25, 2018)

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

M.P. v. State, \_\_ So.3d \_\_, 2018 WL 4517222 (Fla. 2d DCA 2018). **RESTITUTION JUDGMENT REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.** M.P. was adjudicated delinquent for, among other things, burglary and grand theft of a motor vehicle. On appeal, M.P. argued that there was insufficient competent and substantial evidence to support the restitution judgment entered by the trial court with regard to several items that were missing from the vehicle M.P. stole. The victim testified to his recollection of the cost of many of the stolen items and the years they were purchased. The victim's testimony, however, provided little or no detail as to condition of some of the items, any depreciation, or their current fair market value. The restitution judgment was reversed and remanded to address the items for which insufficient competent evidence was provided. Additionally, the trial court must also make findings as to the amount M.P. or his parents or guardians could reasonably be expected to make or pay toward restitution.  
[https://edca.2dca.org/DCADocs/2017/0871/170871\\_39\\_09212018\\_08321294\\_i.pdf](https://edca.2dca.org/DCADocs/2017/0871/170871_39_09212018_08321294_i.pdf)  
(September 21, 2018)

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

L.M. v. State, \_\_ So.3d \_\_, 2018 WL 4495368 (Fla. 3d DCA 2018). **TRESPASS ON SCHOOL GROUNDS AFFIRMED.** L.M. appealed his adjudication for trespass on school grounds and the trial court's denial of his motion for a judgment of dismissal. L.M.'s argument relied on the notion that his suspension never became effective. The evidence presented at the adjudicatory hearing was that L.M. was given a written notice of suspension with the details of the suspension and a warning that returning to campus could result in arrest for trespassing, and that L.M. was verbally told that he could not return to school until a parent or guardian spoke with the principal. The

appellate court held that L.M.'s motion for a judgment of dismissal was properly denied and it affirmed the trial court's conclusion that the State proved the trespass beyond a reasonable doubt.

<http://www.3dca.flcourts.org/Opinions/3D15-0893.pdf> (September 20, 2018)

S.B. v. State, \_\_ So.3d \_\_, 2018 WL 4608788 (Fla. 3d DCA 2018). **SHIFTING THE BURDEN TO THE DEFENSE RESULTS IN REVERSAL**. S.B. appealed the trial court's finding of delinquency for strong-arm robbery. The only issue he raises is that the state improperly shifted the burden of proof during its cross examination when it asked S.B. if he had any other witnesses who could corroborate that he was somewhere else at the time of the robbery. The appellate court found that the State's cross examination improperly shifted the burden, that such an error was not harmless, and reversed and remanded for a new adjudicatory hearing.

<http://www.3dca.flcourts.org/Opinions/3D17-1206.pdf> (September 26, 2018)

D.O. v. State, \_\_ So.3d \_\_, 2018 WL 4608764 (Fla. 3d DCA 2018). **AFFIRMED WITH CITATION**. In a case where fingerprint evidence is the sole evidence relied upon to establish the identity of the defendant as the perpetrator of the crime, the court, viewing the evidence most favorably to the State, must decide whether reasonable-minded jurors could find beyond a reasonable doubt that the fingerprints were made at the time the crime was committed.

<http://www.3dca.flcourts.org/Opinions/3D18-0381.pdf> (September 26, 2018)

M.P. v. State, \_\_ So.3d \_\_, 2018 WL 4608997 (Fla. 3d DCA 2018). **AFFIRMED WITH CITATION**. A traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will.

<http://www.3dca.flcourts.org/Opinions/3D17-1697.pdf> (September 26, 2018)

#### ***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

### **Florida Supreme Court**

No new opinions for this reporting period.

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

J.S.C., father of G.I.C. v. T.I.R. and M.A.N., \_\_ So.3d \_\_, 2018 WL 4573189 (Fla. 1st DCA 2018). **APPEAL DISMISSED FOR LACK OF JURISDICTION**. The First District Court of Appeal dismissed a father's appeal for lack of jurisdiction because the order did not finally dispose of the TPR issue.

[https://edca.1dca.org/DCADocs/2018/2557/182557\\_1279\\_09252018\\_08530510\\_i.pdf](https://edca.1dca.org/DCADocs/2018/2557/182557_1279_09252018_08530510_i.pdf)

(September 25, 2018)

T.W., father of B.L. and S.W. v. Department of Children and Families, \_\_ So.3d \_\_, 2018 WL 4656266 (Fla. 1st DCA 2018). **APPEAL DISMISSED AS UNTIMELY**. The First District Court of Appeal dismissed a father's appeal as untimely because it was not filed within 30 days of rendition of the order. The trial court's acceptance of an adoption case plan does not interfere with finality for appellate purposes. The therefore dismissed the appeal.

[https://edca.1dca.org/DCADocs/2018/2775/182775\\_1279\\_09282018\\_10115531\\_i.pdf](https://edca.1dca.org/DCADocs/2018/2775/182775_1279_09282018_10115531_i.pdf)

(September 28, 2018)

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

M.W. v. Department of Children and Families and Guardian ad Litem Program, \_\_ So.3d \_\_, 2018 WL 4372976 (Fla. 2d DCA 2018). **DEPENDENCY ADJUDICATION AFFIRMED BUT CASE REMANDED FOR ADDITIONAL FACTUAL FINDINGS**. The Second District Court of Appeal affirmed in part and reversed in part a dependency adjudication order based on a mother's substance abuse and mental health problems. The trial court had adjudicated the child as dependent and found only that "the mother has issues with substance abuse, stability and mental health which if left unaddressed would place the child at harm." The district court reversed and remanded the case because the trial court failed to provide both a statutory and evidentiary basis for its findings. The court further agreed with the mother that the trial court lacked competent substantial evidence about mental health, noting that the only evidence about the mother's mental health was the mother's testimony about being diagnosed at some point as having anxiety and depression. The district court noted that a diagnosis without evidence of risk of harm to the child is an insufficient basis for an adjudication of dependency. However, the district court affirmed the trial court's finding that the mother's substance abuse posed a prospective risk of abuse or neglect, noting there was competent substantial evidence of the mother's current substance abuse. The court therefore affirmed adjudication of dependency based on substance abuse and stability but reversed the order regarding the mother's mental health. The case was remanded to the trial court for additional findings.

[https://edca.2dca.org/DCADocs/2018/0378/180378\\_114\\_09142018\\_08585200\\_i.pdf](https://edca.2dca.org/DCADocs/2018/0378/180378_114_09142018_08585200_i.pdf)

(September 14, 2018)

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

G.F., the father v. Department of Children and Families, \_\_ So.3d \_\_, 2018 WL 4495358 (Fla. 3d DCA 2018). **TERMINATION OF PARENTAL RIGHTS REVERSED**. The Third District Court of Appeal reversed termination of a father’s parental rights. The father’s rights had been terminated based on s. 39.806(1)(e)1, F.S., although the department had petitioned under both subsections (1)(e)1 and (1)(e)2. The trial court found clear and convincing evidence for termination under section (1)(e)1 but made no ruling as to section (1)(e)2. On appeal, the district court noted that the father had not had twelve months to complete his case plan. The district court rejected the department’s argument that the trial court had been “right for the wrong reason” and that the court could affirm termination because the father materially breached his case plan. The district court did so because there were no findings as to section (1)(e)2. The district court therefore reversed termination of the father’s parental rights and remanded the case for further proceedings.

<http://www.3dca.flcourts.org/Opinions/3D18-0292.pdf> (September 20, 2018)

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

## Dissolution of Marriage Case Law

### **Florida Supreme Court**

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms—Form 12.961, \_\_\_ So.3d \_\_\_, 2018 WL 4656644 (Fla. 2018). [INSTRUCTIONS REVISED IN FORM 12.961 USED IN CONTEMPT/ENFORCEMENT PROCEEDINGS](#). The instructions to the notice of hearing used in rule 12.615 contempt/enforcement proceedings were revised to replace the word “should” with “must” in the first paragraph and to remove language requiring personal service on an alleged contemnor from the paragraph under “What should I do next?” in accordance with the Fourth District Court of Appeals’s ruling in Department of Revenue v. Baker, 232 So. 3d 1045 (Fla. 4th DCA 2017). The form now allows service by mail but advises litigants that in some circumstances a court may not consider service by mail to be adequate. The effective date is issuance of the opinion. There is a 60-day comment period.

<http://www.floridasupremecourt.org/decisions/2018/sc18-984.pdf> (September 27, 2018)

In Re: Amendments to the Florida Supreme Court Approved Family Law Forms—Forms 12.905(d) and 12.993(d), \_\_\_ So.3d \_\_\_, 2018 WL 4656643 (Fla. 2018). [FORMS 12.905\(d\) AND 12.993\(d\) DELETED DUE TO REPEAL OF S. 61.13002, F.S.](#) Forms 12.905(d) and 12.993(d), the Supplemental Petition for Temporary Modification of Parenting Issues for Children of Parents Activated, Deployed or Assigned to Military Service, and its temporary final judgment, were deleted due to the repeal of their underlying authority, s. 61.13002, F.S., by chapter 2018-69, Laws of Florida. There is a 60-day comment period.

<http://www.floridasupremecourt.org/decisions/2018/sc18-1087.pdf> (September 27, 2018)

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

Swearingen v. Swearingen, \_\_\_ So.3d \_\_\_, 2018 WL 4211178 (Fla. 1st DCA 2018). [ERRORS IN OVERNIGHTS REQUIRE REMAND FOR RECALCULATION OF CHILD SUPPORT](#). Former wife appealed a final judgment supplementing a previously approved parenting plan, due to absence of a time-sharing schedule and other provisions regarding the spouses’ contact with their child. The appellate court found no legal error in the trial court’s decision to supplement the plan but agreed with former wife that the errors in the number of overnights in the new plan required remand for recalculation of child support.

[https://edca.1dca.org/DCADocs/2017/5011/175011\\_1286\\_09052018\\_09313744\\_i.pdf](https://edca.1dca.org/DCADocs/2017/5011/175011_1286_09052018_09313744_i.pdf) (September 5, 2018)

Garcia v. Guiles, \_\_\_ So.3d \_\_\_, 2018 WL 4211173 (Fla. 1st DCA 2018). [TRIAL COURT’S FINDING OF NO SUBSTANTIAL CHANGE IN CIRCUMSTANCES AFFIRMED](#). Former husband appealed a final judgment denying his supplemental petition to modify time-sharing for failure to demonstrate a substantial change in circumstances. He argued that the trial court abused its discretion in allowing the child’s treating psychotherapist to testify, and that it denied him due process when it provided inadequate notice before deciding to appoint a guardian ad litem. Concluding that the trial court did not err in allowing the psychotherapist to testify, did not violate former husband’s due process rights when it appointed a guardian ad litem, and did not abuse its discretion in finding that there was no substantial change in circumstances, the appellate court

affirmed. In response to former husband's argument that it would be in the child's best interest to live with him the majority of the time, the appellate court noted that the question of a substantial change in circumstances "is a prerequisite to considering the best interests of the child." Mesibov v. Mesibov, 959 So. 2d 890, 892 (Fla. 5th DCA 2009).

[https://edca.1dca.org/DCADocs/2017/5125/175125\\_1284\\_09112018\\_11095214\\_i.pdf](https://edca.1dca.org/DCADocs/2017/5125/175125_1284_09112018_11095214_i.pdf)

(September 5, 2018)

Masino v. Masino, \_\_\_ So.3d \_\_\_, 2018 WL 4374805 (Fla. 1st DCA 2018). **IMPUTATION OF INCOME, ALIMONY, AND FEES REVERSED AND REMANDED.** Former wife appealed final judgment of dissolution on several grounds; appellate court reversed as to imputation of income but affirmed the remainder of the judgment. A trial court may impute income to a spouse who is either voluntarily unemployed or underemployed, or who is not making a diligent effort to find employment paying at a level of that previously enjoyed. Swain v. Swain, 932 So. 2d 1214 (Fla. 1st DCA 2006). Its "particularized" findings regarding work history, occupational qualifications, and the current job market in the community must be supported by competent, substantial evidence. Broga v. Broga, 166 So. 3d 183 (Fla. 1st DCA 2015) and Rabbath v. Farid, 4 So. 3d 778 (Fla. 1st DCA 2009). Here, the trial court based the amount of the imputation on data from the Bureau of Labor Statistics that was not in the record; it also failed to make "particularized" findings on the local job market for a person with former wife's qualifications. Accordingly, appellate court reversed and remanded the imputation, the alimony award on which it was based, and attorney's fees.

[https://edca.1dca.org/DCADocs/2018/0450/180450\\_1286\\_09142018\\_11082285\\_i.pdf](https://edca.1dca.org/DCADocs/2018/0450/180450_1286_09142018_11082285_i.pdf)

(September 14, 2018)

Department of Revenue v. Magloire, \_\_\_ So.3d \_\_\_, 2018 WL 4496362 (Fla. 1st DCA 2018). **CHILD SUPPORT AWARD AFFIRMED; RETROACTIVE CHILD SUPPORT AWARD REVERSED.** Department of Revenue (DOR) argued that the administrative law judge (ALJ) erred in calculating child support and retroactive child support in a final administrative support order. The appellate court affirmed the child support award but reversed the retroactive child support award. With regard to child support, the appellate court noted that an appellant cannot "concede error" on behalf of an appellee when the appellee has not raised that error. Dep't of Revenue v. Lopez, \_\_\_ So. 3d \_\_\_, 2018 (Fla. 1st DCA 2018). With regard to retroactive child support, the appellate court found that the ALJ applied the deduction allowed by s. 61.30(3)(f), F.S., for "court-ordered support for other children which is actually paid" to an eight-month period of time before the support order for Magloire's other children went into effect and in absence of any evidence in the record that these payments were actually made. Reversed and remanded.

[https://edca.1dca.org/DCADocs/2017/4595/174595\\_1286\\_09202018\\_10545110\\_i.pdf](https://edca.1dca.org/DCADocs/2017/4595/174595_1286_09202018_10545110_i.pdf)

(September 20, 2018)

Cherry v. Viker, \_\_\_ So.3d \_\_\_, 2018 WL 4766895 (Fla. 1st DCA 2018). **AWARD OF APPELLATE ATTORNEY'S FEES REVERSED; TRIAL COURT ABUSED ITS DISCRETION.** Former husband appealed award of appellate attorney's fees to former wife; appellate court reversed. Former wife sought temporary attorney's fees during the course of litigation on former husband's petition to modify a parenting plan and change his child support obligation. The trial court's award of fees totaling

\$25,000 was reversed and remanded for not having been supported by competent, substantial evidence. Cherry v. Viker, 197 So. 3d 1292 (Fla. 1st DCA 2016). During the pendency of that appeal, former wife sought appellate attorney's fees. On the same day that it issued its opinion reversing the award of temporary fees, appellate court remanded former wife's motion to the trial court, authorizing it to award appellate attorney's fees if former wife could prove entitlement pursuant to s. 61.16, F.S., and Rosen v. Rosen, 696 So. 2d 697 (Fla. 1997). The trial court found on remand that the spouses had a "relatively equal ability" to pay, but that former wife was entitled to fees in equity pursuant to Rosen; the appeal was unnecessary in light of former wife's offer to former husband that she would be willing to set aside the order awarding her temporary fees and have another hearing on the matter if he dismissed the appeal. Appellate court concluded that the trial court abused its discretion when it found that former husband's conduct was a basis to award appellate fees; equity did not "warrant" requiring former husband to pay former wife's appellate attorney's fees. Reversed.

[https://edca.1dca.org/DCADocs/2016/0689/160689\\_1287\\_09252018\\_08112192\\_i.pdf](https://edca.1dca.org/DCADocs/2016/0689/160689_1287_09252018_08112192_i.pdf)

(September 25, 2018)

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

Frederick v. Frederick, \_\_\_ So.3d \_\_\_, 2018 WL 4374249 (Fla. 2d DCA 2018). TRIAL COURT ERRED: 1) IN FINDING MORTGAGE ON NONMARITAL HOME TO BE MARITAL; AND 2) NOT CREDITING SPOUSE WITH ONE-HALF OF FUNDS USED TO PAY DOWN MORTGAGE. In absence of a transcript, appellate court limited its review to errors on the face of the judgment. It concluded that the trial court erred: 1) in determining that a mortgage taken out during the marriage on former husband's nonmarital home was a marital debt; and 2) in failing to treat the reduction in mortgage debt as a marital asset. The trial court's reliance on Kaaa v. Kaaa, 58 So. 3d 867 (Fla. 2010), as its reason for not crediting former wife with a pay down of the mortgage because the home decreased in value during the marriage was misplaced. The appellate court concluded that the trial court's factual findings did not support its characterization of the mortgage on the home as a marital debt; its finding on rehearing that the home had no value was "clearly erroneous." Accordingly, the appellate court reversed the trial court's determination that the mortgage was marital and remanded to recalculate the equitable distribution. With regard to the pay down issue, appellate court cited its explanation in Somasca v. Somasca, 171 So. 3d 780 (Fla. 2d DCA 2015), that Kaaa addressed "passive, market-driven appreciation in a nonmarital asset, not the payoff of or a reduction in the amount of a mortgage on the property." Kaaa did not "affect the general rule" that when marital assets are used to reduce a mortgage on a nonmarital property, the resulting increase in equity is considered a marital asset. Ballard v. Ballard, 158 So. 2d 641, 643 (Fla. 1st DCA 2014). Reversed and remanded to credit former wife with one-half of the funds used to pay down the mortgage and to recalculate the equitable distribution if necessary.

[https://edca.2dca.org/DCADocs/2017/3668/173668\\_114\\_09142018\\_08541850\\_i.pdf](https://edca.2dca.org/DCADocs/2017/3668/173668_114_09142018_08541850_i.pdf)

(September 14, 2018)

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

Engstrom v. Engstrom, \_\_\_ So.3d \_\_\_, 2018 WL 4344373 (Fla. 3d DCA 2018). REMANDED FOR EVIDENTIARY HEARING ON SPOUSE'S RULE 12.540 PETITION. Former wife appealed two orders and a final judgment. One order granted former husband's motion for summary judgment on

former wife's rule 12.540 petition for relief from judgment for fraud on financial affidavit; the other denied her motion for rehearing. The final judgment denied her rule 12.540 petition and her motion for fees and costs. Concluding that former wife's petition set forth a proper claim for relief from judgment based on submission of a fraudulent affidavit in a marital case, and that there were "genuine issues of material fact" as to whether the affidavit was fraudulent and whether former wife relied on a draft of it when she entered into a marital settlement agreement, appellate court reversed and remanded for an evidentiary hearing on former wife's rule 12.540 petition.

<http://www.3dca.flcourts.org/Opinions/3D17-1243.pdf> (September 12, 2018)

Vartumyan v. Bean, \_\_ So.3d \_\_, 2018 WL 4344172 (Fla. 3d DCA 2018). **MODIFICATION OF PARENTING PLAN SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; NO JURISDICTION TO REVIEW CHILD SUPPORT BECAUSE TRIAL COURT RESERVED JURISDICTION.** Appellate court found no abuse of discretion by the trial court when it entered its supplemental final judgment modifying a parenting plan because it was supported by competent, substantial evidence; however, appellate court found itself without jurisdiction to review the portion of the judgment in which the trial court ordered that child support be set in accordance with the child support guidelines, and reserved jurisdiction to determine the amount, any retroactive period, and life insurance to secure the obligation. Affirmed in part; dismissed in part.

<http://www.3dca.flcourts.org/Opinions/3D17-2502.pdf> (September 12, 2018)

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

McKenzie v. McKenzie, \_\_ So.3d \_\_, 2018 WL 4212167 (Fla. 4th DCA 2018). **REVERSED AND REMANDED FOR THE TRIAL COURT TO CORRECT ITS FINAL JUDGMENT.** Former wife appealed the final judgment of dissolution and the trial court's order denying her motions for rehearing and to reopen the evidence based on allegations that former husband engaged in fraud or conversion of funds. Appellate court concluded the trial court erred by: 1) awarding a dissipated asset to former wife in the equitable distribution in absence of a specific finding of misconduct; 2) by using the spouses' gross incomes rather than net to calculate child support and by failing to consider former wife's self-employment taxes; 3) by incorrectly describing former husband's pension plan; and 4) by failing to rule on the spouses' agreement regarding life insurance and incorporate the agreement into the final judgment. The remainder of the final judgment was affirmed. Affirmed in part, reversed in part, and remanded for the trial court to correct its final judgment consistent with the appellate court's opinion.

[https://www.4dca.org/content/download/402132/3448005/file/172413\\_1708\\_09052018\\_09342181\\_i.pdf](https://www.4dca.org/content/download/402132/3448005/file/172413_1708_09052018_09342181_i.pdf) (September 5, 2018)

Maio v. Clarke, \_\_ So.3d \_\_, 2018 WL 4356074 (Fla. 4th DCA 2018). **FINDING OF NO ORAL COHABITATION AGREEMENT AFFIRMED; FEE AWARD REVERSED.** Appellant (Lenore) argued that the trial court erred in: 1) failing to find that an oral cohabitation agreement existed before she and appellee (Patti) married; and 2) awarding attorneys' fees to Patti as a sanction. The appellate court affirmed the trial court's determination with respect to the oral cohabitation agreement and its decision not to impose a constructive trust on Patti's retirement account or award Lenore a share of Patti's premarital retirement earnings but reversed the fee award. Existence of an oral

contract is an issue for the trier of fact; an appellate court reviews a trial court's factual findings for competent, substantial evidence. Armao v. McKenney, 218 So. 3d 481, 485 (Fla. 4th DCA 2017). The appellate court distinguished Armao, in which it affirmed the trial court's finding of an oral cohabitation agreement, from this case. Here, the trial court "explicitly indicated" in its final judgment that it did not find Lenore's testimony credible, but instead believed Patti; although the two shared expenses through the years, "their income and assets were not pooled." The appellate court found that the trial court erred in awarding Patti attorney's fees as a sanction as Patti did not plead a need for fees, nor did the trial court make an express finding of bad faith and include facts justifying the award. Accordingly, the appellate court reversed and remanded the fee award with instructions to the trial court as to the necessary findings and modifications it must make regarding fees.

[https://www.4dca.org/content/download/402398/3450604/file/172305\\_1708\\_09122018\\_09170413\\_i.pdf](https://www.4dca.org/content/download/402398/3450604/file/172305_1708_09122018_09170413_i.pdf) (September 12, 2018)

Fry v. Fry, \_\_ So.3d \_\_, 2018 WL 4356081 (Fla. 4th DCA 2018). **TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING MOTION FOR CONTINUANCE.** The appellate court affirmed all issues regarding the parenting plan in a final judgment of dissolution; it found that the trial court had not abused its discretion in denying former husband's motion for continuance to allow his expert to complete her report in light of the expert's "dilatatory conduct" and the need to settle the child's parenting arrangements.

[https://www.4dca.org/content/download/402400/3450622/file/172435\\_1257\\_09122018\\_09280725\\_i.pdf](https://www.4dca.org/content/download/402400/3450622/file/172435_1257_09122018_09280725_i.pdf) (September 12, 2018)

Matyjaszek v. Matyjaszek, \_\_ So.3d \_\_, 2018 WL 4356087 (Fla. 4th DCA 2018). **WHEN A NONMARITAL HOME IS FINANCED ENTIRELY BY BORROWED MONEY WHICH MARITAL FUNDS ARE USED TO REPAY, 100% OF VALUE OF PASSIVE APPRECIATION IS A MARITAL ASSET.** The appellate court agreed with former wife that the trial court erred by using an improper fraction to measure the marital portion of the passive appreciation of her nonmarital home, which was encumbered by two mortgages when the spouses married. Marital funds were used to make payments on the first mortgage, but not the second. Although former husband made renovations to the home, the value of those renovations was not quantified. The appellate court concluded that because former wife entered the marriage with a home "encumbered entirely" by a mortgage which marital funds were used to repay, per Kaaa v. Kaaa, 58 So. 3d 867 (Fla. 2010), the entire value of the passive appreciation of the home was a marital asset subject to equitable distribution. Reversed and remanded for the trial court to value the marital portion of passive appreciation at \$44,000 - the difference in the home's value at the time of dissolution and at the time of the marriage, and to adjust the scheme of equitable distribution accordingly.

[https://www.4dca.org/content/download/402402/3450640/file/173575\\_1709\\_09122018\\_09325867\\_i.pdf](https://www.4dca.org/content/download/402402/3450640/file/173575_1709_09122018_09325867_i.pdf) (September 12, 2018)

Stein v. Stein, \_\_ So.3d \_\_, 2018 WL 4356091 (Fla. 4th DCA 2018). **TRIAL COURTS HAVE BROAD DISCRETION WITH TEMPORARY RELIEF AWARDS.** In affirming the trial court's award of temporary fees and costs to former wife, the appellate court recognized the broad discretion that trial courts have with temporary relief awards. Appellate courts are reluctant to interfere with temporary

relief awards “except under the most compelling of circumstances.” Schmitz v. Schmitz, 891 So. 2d 1140, 1142 (Fla. 4th DCA 2005).

[https://www.4dca.org/content/download/402404/3450658/file/180493\\_1257\\_09122018\\_10084863\\_i.pdf](https://www.4dca.org/content/download/402404/3450658/file/180493_1257_09122018_10084863_i.pdf) (September 12, 2018)

***Fifth District Court of Appeal***

No new opinions for this reporting period.

## **Interpersonal Violence Injunctions (DV, SV, Dating, Repeat, Stalking) Case Law**

### ***Florida Supreme Court***

No new opinions for this reporting period.

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

No new opinions for this reporting period.

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

No new opinions for this reporting period.

### ***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.