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Monthly Florida Family Law Case Law Update & Florida Family Law Appeals Guide

Summaries of 2015 Family Law Cases

Brought to you by:

NUGENT ZBOROWSKI & BRUCE

Divorce & Appellate Lawyers

(561) 844-1200

Website: NugentLawFirm.com

Appeals Website: DivorceCourtAppeals.com

Email: Chris@DivorceCourtAppeals.com

Main Office: North Palm Beach

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Nugent Zborowski & Bruce

Divorce & Appellate Lawyers

Using These Summaries

Clicking the case name in the summaries that follow allow you to view the copy of the appellate opinion from the appellate court's website. Also, if you press "cntrl-f", you can search the text of these summaries for key words, including names of lawyers, judges, and cases. Also, while great care is put into the summaries that follow, the summaries are not to be used as a substitute for the independent legal research of you or your attorney.

About Nugent Zborowski & Bruce

Nugent Zborowski & Bruce is a law firm located in North Palm Beach, Florida. The firm's attorneys, Matthew S. Nugent, Adam M. Zborowski, Christopher R. Bruce & Curt Sanchez, limit their practice to resolution of marital and family law matters in Florida's trial and appellate courts. The firm represents clients at the trial court level in South Florida and provides appellate court representation throughout the state. For more information about the firm, call (561) 844-1200 or visit NugentLawFirm.com or DivorceCourtAppeals.com.

The firm pays [referral fees](#) in accordance with Florida Bar Rules for appellate matters when handled on a [fixed fee basis](#). To help curb against excessive delays on appeal, the firm designed a [limited money back promise](#) if the brief is not filed within 30 days of the firm receiving the transcript and record on appeal.

About DivorceCourtAppeals.com

DivorceCourtAppeals.com was created by Christopher R. Bruce and is supported by the partners of Nugent Zborowski & Bruce as a resource to practitioners and the public on the process and procedure for appealing a divorce or child custody matter in Florida. One of the highlights of the website is the [Florida Divorce and Custody Appeals Overview](#), which outlines the appellate process, explaining everything from the applicable deadlines to the specifics of appealing divorce and child custody matters. The Florida Divorce and Custody Appeals Overview is included in full at the end of this material.

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NOTE: CLICKING ON THE NAME OF A CASE IN THE SUMMARIES THAT FOLLOW ALLOW YOU TO VIEW THE WRITTEN OPINION OF THE CASE ON THE APPELLATE COURT’S WEBSITE.

TIP: THE PDF FILE IS TEXT SEARCHABLE. PRESSING “CNTRL-F” OPENS A TEXT SEARCH UTILITY.

ABANDONMENT

Case: [A.D., Jr. v. D.C.F.](#)
Court: Fifth District Court of Appeal.
Trial Judge: Elizabeth A. Morris.
Attorneys: Richard J. D'Amico, Ward L. Metzger, Thomas Wade Young.
Issues: Termination, Abandonment.

Holding: Florida statutes provide that a child is abandoned, or that abandonment occurs, when the parent or legal custodian of a child or the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

In this case, the trial court erred in determining that the Father abandoned the child when there was no clear and convincing evidence to support such a finding. While the Father made little effort to comply with the case plan until the petition for termination of parental rights was filed, following that he partially completed his required steps. DCF conceded he had substantially complied. Further, though the evidence showed he was volatile, this is not sufficient to justify the termination of parental rights. Additionally, while the Father had not provided financial support for the child, DCF had not established his ability to do so. Moreover, he had remained in contact with the child, who resided with the Father's sister. The appeals court reversed and remanded.

ADOPTION

Case: [Kemp & Associates v. Chisholm et al](#)
Court: Fifth District Court of Appeal.
Trial Judge: C. McFerrin Smith, III.
Attorneys: Richard L. Pearse, Jr., Jonathan D. Kaney III, Jonathan D. Kaney Jr..
Issues: Adoption, Retroactivity.

Holding: While due process generally requires notice of adoptions to putative biological fathers, such notice is not an absolute right. In Florida, the unmarried father must take some statutorily mandated steps to protect his inchoate due process rights. An unwed father obtains a protected interest if he establishes a full commitment to the responsibilities of parenthood and participates in the upbringing of his child. Under the Full Faith and Credit Clause, Florida is obligated to recognize judgments, including adoption judgments, which have been validly rendered in the courts of sister states, an exception exists when the laws of the foreign state seriously depart from Florida's core values.

The retroactive application of case law holding that notice to an unwed father of the pending adoption is required pursuant to the United States Supreme Court's decision of *Stanley v. Illinois*, 405 U.S. 645 (1972). However, full retroactive effect in cases still open on direct review could invalidate an adoptions finalized many years ago. This conflicts with intent to create permanence with adoption. Adoptive children have a right to permanence in their adoptive placements, as adoptive parents have an interest in retaining custody of a legally adopted child.

In this case, the trial court erred as it refused to recognize a 1961 Texas adoption judgment under which the claimant was adopted and the putative biological father, now deceased. The trial court decision would permit the claimant here, and an adopted child in general, to inherit from a biological father decades after the adoption was finalized. The effect of the trial court's decision calls into question the validity of adoption judgments under the laws of Florida and other states that did not require notice to putative fathers at the time of the child's adoption. This would lead to increased litigation and disruptions to many families, both adoptive and biological. Public policy requires that adoption decrees that have been entered without the consent of the natural father must be honoured as family and financial decisions are, and have been, made in reliance on the validity of those decrees. Those reliance interests foreclose retroactive application of the above-noted ruling.

The appeals court reversed the trial court's decision to refuse a Texas adoption judgment from 1961 and remanded with directions to enter judgment in favour of the opposing party.

Case: [Makaros v. Cichocki](#)
Court: Fifth District Court of Appeal.
Trial Judge: James H. Earp.
Attorneys: Elizabeth Siano Harris.
Issues: Adoption.

Holding: Under Florida statute, jurisdiction of an adoption may be vested in the Florida courts by virtue of the fact that a child, or children, and the petitioner resided within the court's jurisdiction and the natural parent gave the required consent. An adoption proceeding is not barred merely because a competent court of another jurisdiction has validly exercised its authority by awarding custody of the child sought to be adopted when the court before whom adoption is sought otherwise has jurisdiction to proceed. A relative (ie: aunt, uncle or even grandparent) with visitation rights procured in a different state, is not necessarily entitled to notice of the stepparent adoption proceedings. The interest that entitles a person to notice of an adoption must be direct, financial, and immediate, and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of an indirect, inconsequential, or contingent interest is inadequate, and a person with this indirect interest lacks standing to set aside a judgment of adoption.

In this case, the trial court did not err in determining that Florida was the child's home state when the final judgment was entered. Even though the "Home State" Rule was raised as a ground in the appeals process, under the "Topsy Coachman" Rule, the appeals court concluded that the resolution of the case did not turn on whether Florida was the "Home State" of the child under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") at the time the court entered the adoption. Rather, regardless of whether Florida was the "Home State" of the child at the time the court entered the adoption, under Florida statute (as cited and relied on in Florida case law), the trial court had subject matter jurisdiction to enter the final judgment of adoption.

Here, the Father had sole custody of the child at the time the petition for stepparent adoption was filed. Therefore, he was the only person required to consent to the adoption. Insofar as the Father had consented, the appeals court affirmed the trial court's denial of the motion to set aside the final judgment of stepparent adoption.

Case: [M.N. Jr. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Lawrence Mirman.
Attorneys: Chet E. Weinbaum, Karla Perkins, Laura E. Lawson.
Issues: Adoption.

Holding: Florida Statutes (2013) provides that an action or proceeding of any kind to vacate, set aside, or otherwise nullify a judgment of adoption . . . may not be filed more than 1 year after entry of the judgment terminating parental rights. In this case, the trial court erred in dismissing a biological Father's second motion to set aside the termination order in the adoption of his biological child on procedural grounds (ie: notice). In fact, the motion in issue was statute-barred as it was filed more than one year after the termination order was entered. The appeals court affirmed.

ALIMONY

Case: [Niekamp v. Niekamp](#)
Court: Second District Court of Appeal.
Trial Judge: John S. Carlin.
Attorneys: Sam R. Assini, Matthew P. Irwin, Luis E. Insignares.
Issues: Alimony, Equitable Distribution, Time-sharing, Spousal Support, Child Support, Imputing Income, Attorney's Fees.

Moneys from retirement accounts which are distributed to the parties are considered income for the purpose of determining alimony where the principal of the retirement account will not be invaded for the purpose of support. It does not matter whether the party has attained the age at which funds may be withdrawn without penalty. Under Florida Statutes (2013), income includes retirement benefits, pensions, dividends, and interest. In this case, the trial court erred in not considering as income interest from pension accounts distributed to the Former Wife and interest-generating equalization payments from the Former Husband. The interest earned on the equalization payments fell within the statutory definition of income and should have been considered in calculating the Former Wife's income. The amended final judgment also contained a mathematical error in the calculation of the Former Wife's need. The appeals court reversed and remanded for a redetermination and recalculation.

Case: [Hutchinson v. Hutchinson](#)
Court: First District Court of Appeal.
Trial Judge: Monica J. Brasington.
Attorneys: Stephen K. Johnson, Emily A. Snider, Jonathan P. Culver.
Issues: Alimony, Attorney's Fees.

An award of attorney's fees is reviewed for an abuse of discretion. Under Florida Statute, such awards are to ensure that both parties have a similar ability to obtain competent legal counsel. The general consideration is the requesting spouse's financial need and the other spouse's ability to pay. Where the parties are equally able to pay attorney's fees, the trial court abuses its discretion by requiring one spouse to pay the other's fees. Where marital property has been equitably distributed and alimony is awarded such that the parties' incomes have been equalized, a trial court abuses its discretion by awarding attorney's fees. In this case, the trial court erred in that it awarded the Former Wife attorney's fees after it had rendered final judgment by which equitable distribution and alimony left the parties in substantially the same financial position. The appeal court reversed the award of attorney's fees and costs.

Case: [Earl v. Earl](#)
Court: Fourth District Court of Appeal.
Trial Judge: Thomas H. Barkdull, III.
Attorneys: Jane Kreuzler-Walsh, Stephanie L. Serafin, Troy William Klein.
Issues: Alimony, Procedure.

The written findings of a trial court must conform with the oral pronouncement. In this case, the trial court erred in failing to provide that the Former Husband obtain and maintain life insurance in the (written) final judgment of dissolution despite having made such a determination in the oral pronouncement. The appeals court reversed and remanded to allow the trial court to include the Former Husband's requirement to maintain life insurance.

Case: [Cameron v. Cameron](#)
Court: First District Court of Appeal.
Trial Judge: T. Michael Jones.
Attorneys: J. Rod Cameron, Ross A. Keene.
Issues: Alimony.

Holding: In a dissolution of marriage proceeding, each party's sources of income and ability to pay are factors to be considered in determining whether alimony, child support, or attorney's fees are appropriate, and if so, in what amounts. Where a parent is underemployed, the court is required to impute income to that parent unless the lack of employment is the result of the parent's physical or mental incapacity or other circumstances beyond the parent's control. The decision of whether to impute income must be supported by competent, substantial evidence. In this case, the trial court erred in delaying ruling imputed income to the Former Wife for six months in the absence of any competent, substantial evidence to support the decision. The record contained no evidence of involuntary underemployment by the Former Wife for the relevant time period. To the extent that her underemployment was due to her status as a pro se litigant in her own divorce proceeding, there is no evidence that this decision was anything other than a voluntary one on her part, and one that was not due to physical or mental incapacity or other circumstances beyond her control. The appeals court reversed on this point.

Case: [McDuffie v. McDuffie](#)
Court: First District Court of Appeal.
Trial Judge: Mark J. Borello.
Attorneys: Lester Makofka, Cindy L. Lasky.
Issues: Alimony.

Holding: To impute income for the purposes of child support and alimony, a trial court must first find the parent is voluntarily underemployed or unemployed, not due to a physical or mental incapacity or other circumstance beyond the parent's control. If the court makes this finding, it must impute income. To support the amount, the parent's employment potential and probable earnings level must be based on particularized findings relating to factors such as the current job market, recent work history, occupational qualifications, and the prevailing earnings level

in the local community. A trial court must make specific findings of fact or, in the absence of findings, look for record support of the factors and affirm on that basis. A finding of voluntary unemployment is only part of imputing income. The party seeking to impute income must support the income figure for which it advocates.

In this case, the trial court erred in making a finding as to imputed income on the part of the Former Wife in the absence of sufficient evidence to support the amount of imputed income. Despite the Former Wife explaining there was no job outside the home she could perform, the trial court—as trier of fact and judge of credibility—found the former wife and doctor’s testimony not credible and made an order as to imputation. However, the record was devoid of evidence support for this imputed amount. There was no evidence of the local job market, the area minimum wage, or the type of job the Former Wife could secure that would pay the required amount per hour. The record presented facts which were not competent, substantial evidence of the current job market, work history, occupational qualifications, and the prevailing earnings level in the local community. The appeals court reversed the imputation and remanded for the circuit court to take further evidence on the amount of income to impute. Also on remand, because the improperly imputed income played into the alimony and equitable distribution amount determinations, the court was directed to consider revising those amounts if appropriate. Finally, while the court did not abuse its discretion in distributing the parties’ credit card and loan debt equally, the court did not delineate how each party would be responsible. On remand, the circuit court was instructed to revise the final judgment to allocate each account so as to accomplish equal distribution, or devise some other delineated system for allocating responsibility for the debt and the method of payment.

Case: [Panopoulos v. Panopoulos](#)
Court: Second District Court of Appeal.
Trial Judge: Daniel D. Diskey.
Attorneys: John A. Shahan, Johnny D. Drizis.
Issues: Alimony, Procedure.

Holding: Under the Florida Rules regarding appeals procedures, a notice of appeal must be filed within 30 days of rendition of the order to be reviewed. The timing of the filing of the notice of appeal is a jurisdictional matter. Where a judgment is amended to correct only a scrivener's error, the time for appeal is counted from the date of the initial order. When a party wishes to challenge a judgment by motion or appeal the time to challenge the judgment runs from the original judgment unless an amendment changes or clarifies a matter of substance. The court may review any ruling or matter occurring before filing of the notice.

In this case, in a highly unusual procedure, the circuit court trifurcated the parties' dissolution proceedings. Part of the proceedings involved the Former Wife's petition for alimony, which the court denied overall but in its "partial final judgment," it awarded alimony to be paid starting on a particular date. There was a scrivener's error and the parties contacted the judge's judicial assistant, rather than filing a motion for rehearing, recognizing the date in the order set out the incorrect year. The court issued an amended order correcting the error. The Former Husband filed his notice to appeal that order on the amended order, which did not effect a substantive change. Accordingly, the Former Husband's notice of appeal was not timely and the appeals court dismissed the appeal for lack of jurisdiction. However, the appeals court noted that, fortunately for Former Husband, due to the unusual trifurcation proceedings, the issues raised in this appeal may be within the scope of review of an appeal from a final order of dissolution.

Case: [Niekamp v. Niekamp](#)
Court: Second District Court of Appeal.
Trial Judge: John S. Carlin.
Attorneys: Sam R. Assini, Matthew P. Irwin, Luis E. Insignares.
Issues: Equitable Distribution, Time-sharing, Spousal Support, Child Support, Imputing Income, Attorney's Fees.

Holding: Parental Responsibility

Final judgment that provides sole parental responsibility to one party and denies contact to the other must set out for the parent who losing contact what must be done to reconnect with the children. An order that does not do so is deficient as it fails to advise the parent what is expected and prevents a successor judge from monitoring the parent's progress.

Marital Assets

When an asset is acquired during the marriage, it is presumed to be marital unless specifically established otherwise. In considering a business as a marital asset, enterprise goodwill is a distributable marital asset and personal goodwill is non-marital. When a trial court makes an equitable distribution award of a business, characterized as a marital asset, a value must be assigned to the asset.

Alimony

A twenty-two-year marriage is presumed to be long-term. This places a presumption in favor of alimony when warranted by one party's need and the other party's ability to pay. In determining an alimony award, a trial court shall consider the parties' respective physical and emotional conditions and employability.

Dissipation of Assets

When a spouse depletes marital assets during the pendency of dissolution proceedings to pay for support, living expenses and litigation expenses, it is error to include the assets in the equitable distribution scheme unless there is a specific finding of intentional misconduct. Such a finding must be based on evidence showing that the marital funds were used for one party's own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown.

In this case, the trial court erred in that:

- a. The final judgment failed to prescribe any schedule or benchmarks for re-establishing the Former Husband's parenting of the children.
- b. It classified the Former Wife's business as a non-marital asset, which although it depended heavily on her personal expertise and goodwill had tangible assets (bank accounts, instructional books and enterprise goodwill).
- c. It distributed a non-existent asset to the Former Husband (being money that he withdrew from retirement accounts spent on attorney's fees).
- d. It determined the Former Husband was voluntarily unemployed when there was evidence showing he was unemployed for mental health reasons.
- e. It imputed income to him in relation to child support and in its determination regarding payment of attorney's fees.

The appeals court reversed and remanded for further proceedings.

Case: [Moore v. Moore](#)
Court: Second District Court of Appeal.
Trial Judge: Paul L. Huey.
Attorneys: Virginia R. Vetter, Lorena L. Kiely.
Issues: Alimony, Child Support.

Holding: For the purpose of determining the amount of income that is attributable to a spouse in computing alimony, Florida law defines "income" as any payment to an individual, including wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuities, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal, state government, or local government. An award of alimony must be based on the income that is available to the party (ie; net monthly income). Additionally, in calculating a party's monthly income, business expenses must be deducted from the party's gross income.

In determining the amount of income that is attributable to a parent in computing child support, Florida statute defines "gross income" to include

business income from self-employment, partnership, close corporations, and independent contracts. 'Business income' means gross receipts minus ordinary and necessary expenses required to produce income. A trial court's determination of a party's income has to be supported by substantial, competent evidence. Where there is a significant dispute in a party's income, meaningful appellate review is hampered by the absence of findings as to how the trial court determined the income amount.

In this case, the trial court abused its discretion in determining the Former Husband's monthly income because it failed to consider his business expenses. Although the trial court found that the Former Husband's testimony lacked credibility and that his business expenses were "grossly inflated," the trial court failed to give the Former Husband credit for any of his business expenses. The appeals court reversed the financial aspects of the final judgment and remanded for determination of the Former Husband's net monthly income and the amount of permanent alimony and child support to be awarded.

Case: [Broga v. Broga](#)
Court: First District Court of Appeal.
Trial Judge: Karen Gievers.
Attorneys: Emilian "Ian" Bucataru, Marilyn K. Morris.
Issues: Alimony, Child Support.

Holding: Imputing income is a two-step analysis: (1) the determination of whether the parent's underemployment is voluntary; and (2) if so, the calculation of imputed income. Florida statute provides that monthly income shall be imputed to an unemployed or underemployed parent if the court finds such unemployment or underemployment is voluntary. The employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available. The same factors are applied for awards of child support and of alimony.

Given the uncertain nature of future employment, a court must make particularized findings regarding work history, occupational qualifications, and the current job market in the community. Failure to do so results in reversal. The prevailing income 'in the community,' not income that could have been earned from a relocation, is to be used.

In this case, the trial court erred in imputing income as the evidence of (1) the former husband's occupational qualifications and (2) the prevailing earning level in the community was sparse and conflicting. Also, while there was no dispute concerning the Former Husband's past work history, reliance on this factor alone

was insufficient to impute income. While there were sufficient findings and competent substantial evidence of the Former Husband's prior earnings, the same could not be said regarding the Former Husband's occupational qualifications and the prevailing earning levels for similar positions within the relevant community. The appeals court reverse and remanded for the trial court to further address imputation of income.

Case: [Harris v. Harris](#)
Court: Fifth District Court of Appeal.
Trial Judge: Heather L. Higbee.
Attorneys: Jeffrey A. Conner.
Issues: Alimony, Attorney's Fees.

Holding: A trial court's use of different standards for calculating each spouse's income is an abuse of discretion. Courts properly impute income from a second job or secondary source where record evidence clearly reveals that such secondary income has been earned on a recurrent or steady basis. As for attorney's fees, evidence is required to establish the claim. In this case, the trial court erred when it considered Former Husband's secondary sources of income while ignoring Former Wife's. The error was in its failure to consider her secondary income when there was sufficient evidence to demonstrate that she was able to earn a recurrent and steady secondary salary, in addition to working full-time. There was no abuse of discretion in the trial court's decision to impute the minimum wage for a full-time workweek. The trial court also erred in awarding Former Wife attorney's fees, as no evidence supported the reasonableness of the fee award. The appeals court remanded.

Case: [Sisca v. Sisca](#)
Court: Fourth District Court of Appeal.
Trial Judge: Thomas H. Barkdull, III.
Attorneys: Roger Levine, Amy D. Shield, Jonathan M. Streisfeld, Michael B. Gilden.
Issues: Alimony, Attorney's Fees.

Holding: Under Florida statute, awards of attorney's fees must be based on evidence that demonstrates the requisite need and ability to pay. An obligor should not be made to invade certain assets and investments if there is evidence the obligee has their own assets upon which he or she could rely. In this case, the trial court erred in ordering the Former Wife to pay the Former Husband's attorney's fees despite evidence showing her net income was lower than his. Rather, the trial court based its decision on financial evidence showing her investments, liquid assets, were worth more than his. However, based on their respective net monthly incomes, to pay his fees, the Former Wife would have to invade the liquid assets, while his financial evidence showed he had investments and other assets on which he could

rely. Under these circumstances, it was an abuse of the trial court's discretion to require the Former wife to pay the Former Husband's fees. The appeals court reversed the fee awards.

Case: [Gilliard v. Gilliard](#)

Court: Fifth District Court of Appeal.

Trial Judge: Linda Schoonover.

Attorneys: David L. Robold, Shannon L. Akins, Nicholas A. Shannin, Patrick John McGinley.

Issues: Alimony, Equitable Distribution, Attorney's Fees.

Holding: Alimony

In order to award alimony, a court must make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance. The burden to show his or her financial need and the spouse's ability to pay is on the party requesting alimony. A marriage having a duration of greater than 7 years but less than 17 years is considered a moderate-term marriage and there is no presumption for or against permanent alimony. Permanent alimony may be awarded following a moderate-term marriage if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set out by statute. The purpose of permanent alimony is to provide the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties. The ability to pay alimony should be based on the party's net, not gross, income.

In this case, the trial court erred in awarding alimony based on the Former Husband's gross income. The trial court also erred in considering Former Husband's future retirement benefits as both current income and a marital asset, included in its distribution of the parties' marital assets when the future retirement benefits should be considered in the division of marital assets. The trial court erred further when it failed to make specific written findings regarding the standard of living established during the marriage, the contributions of each party to the marriage, or the tax treatment and consequences of awarding alimony.

Equitable Distribution

Under Florida statute, in distributing marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal. Although a trial court may distribute marital assets and liabilities unequally, it is required to justify such an award based on all relevant factors under statute. A court should make enumerated findings related to each factor under statute. While parties

may agree to a specific distribution of some of their assets and liabilities in a mediated or other settlement agreement, the court should place values on the various items of personal property because each division and distribution of a marital asset and liability is interrelated to form an overall scheme fair to both parties.

The trial court erred in awarding an asset to the Former Wife firstly in the equitable distribution scheme and then a second time in the attorney's fees. The trial court erred in failing to place a value on the parties' automobiles, furniture, and furnishings distributed pursuant to the partial mediation agreement and erred when it ordered the Former Husband to make mortgage payments if he failed to make his alimony payments. Proper recourse there would have been to impose sanctions for wilfully failing to comply with a court order. The trial court also erred in failing to consider the consolidation loan as a marital liability.

Attorney's Fees

An award of attorney's fees must be based on clear and cogent evidence of the parties' respective need and ability to pay. Such findings must be based on specific factual findings which also include those regarding the attorney's work (ie: reasonable number of hours spent and the reasonable hourly rate.) In this case, the trial court did not err in that regard, but did improperly include an asset that was already distributed when it conducted the ability to pay analysis.

The appeals court reversed the entire distribution plan and remanded for reconsideration.

Case: [Badgley v. Sanchez](#)
Court: Fourth District Court of Appeal.
Trial Judge: Steven B. Feren.
Attorneys: J. Scott Gunn, Sue-Ellen Kenny, Scott D. Glassman.
Issues: Equitable Distribution, Alimony.

Holding: Equitable Distribution
Florida Statutes (2013), governing distribution of marital assets and liabilities, provides that the trial court must begin with the premise that the distribution should be equal and requires consideration and factual findings in the judgment regarding nine specified factors in assessing whether an unequal distribution is warranted. In this case, trial court erred in awarding a 60/40 distribution which was premised solely on the parties' income and which failed to contain the factual findings required by statute.

Alimony

Florida Statutes (2013), authorizes the award of alimony, based on consideration of a variety of factors that the court shall consider in determining the amount and type. A trial court errs where it fails to make the findings required by statute. In this case, the trial court erred as the final judgment regarding alimony failed to reference the statutory provision and the relevant factors, despite the fact that some of the findings could be fairly read to correlate with the relevant factors. The appeals court reversed on both above issues.

Case: [Tucker v. Tucker](#)
Court: Fourth District Court of Appeal.
Trial Judge: Merrilee Ehrlich.
Attorneys: Theresa Yuricic.
Issues: Equitable Distribution, Alimony, Contempt.

Holding: A trial court's property valuation must be supported by competent, substantial evidence. By entering the final order before a party has had an opportunity to be heard, a trial court deprives him or her of the due process guaranteed by the Florida Constitution. Facts are not established for consideration by the trial court, or by appellate review, when attorneys make representations in their arguments before the trial court. Same does not constitute evidence. In setting the value of assets, a trial court must base its decision on proper evidence and provide findings as to the valuation. In this case the trial court erred as its stock valuation for an equitable distribution was not supported by competent, substantial evidence because of three errors. The trial court erred in determining the value of the stock:

1. before the Former Wife finished presenting her evidence;
2. without hearing the Former Husband's evidence, instead, relying on his attorney's unsworn statement;
3. by making its own assessment, without providing a factual explanation.

The appeals court reversed and remanded for the court to resume and complete the evidentiary hearing.

Case: [Sikora v. Sikora](#)
Court: Second District Court of Appeal.
Trial Judge: Richard A. Nielsen.
Attorneys: Christine A. Hearn, Steven L. Brannock, Mark F. Baseman.
Issues: Alimony, Equitable Distribution, Imputation.

Holding: Permanent Periodic Alimony

Permanent periodic alimony is used to provide the needs and the necessities of life to a Former Spouse as they have been established by the marriage of the parties. Absent special circumstances, an alimony award should not exceed a Recipients Spouse's need (excessive awards constitute an abuse of discretion). In the absence of special circumstances, a trial court errs by awarding permanent, periodic alimony in an amount that exceeds a Former Spouse's established needs. In this case, the trial court failed to include findings detailing any special circumstance that would explain why alimony was awarded in an amount exceeding the amount necessary to meet the Former Wife's need. The appeals court reversed and remanded for the trial court to either include such findings or reconsider the issue in its entirety.

Imputation

Trial courts may impute income from interest earned on retirement accounts if the income is readily available to a Former Spouse without penalty and without the need to reduce the principal. However, any decision to impute income must be supported by competent, substantial evidence. In this case, the trial court erred by imputing income to the Former Wife from her retirement accounts where there was no evidence to support the specific rate of return used by the trial court. Nor was there an agreement of the experts on the rate of return for the retirement accounts or evidence of the historical rate of return. Rather, the trial court selected the same rate of return used for imputing income on the Former Wife's investment accounts. The appeals court remanded with directions to adjust the alimony award accordingly.

Retroactivity

Generally, when a trial court awards alimony, it abuses its discretion if it fails to make the award retroactive to the date of filing the petition for dissolution. There is an exception where the trial court enters a temporary alimony award during the pendency of the case. In that situation, a retroactive award is limited to the date that the request for an increased award is filed. However, a temporary alimony award can be readdressed at a final hearing if the temporary award was made "without prejudice."

In this case, the parties stipulated that the Former Husband would pay temporary alimony, and the court awarded temporary alimony "without prejudice" such that the issue of temporary alimony could be readdressed at the final hearing. The

appeals court ordered the reversal of the permanent, periodic alimony award, and on remand, directed the trial court reconsider the issue of retroactivity of any newly imposed permanent, periodic alimony award (after comparing such award to the stipulated temporary alimony).

Life Insurance

A trial court must include findings relating to a Former Spouse's insurability at the time of trial and the cost of an insurance policy. In this case the trial court erred when it ordered the Former Husband to secure an insurance policy in the absence of any explanation for how this amount was arrived at or what it was based on. Moreover, trial court's failure to explain how it arrived at the specific dollar requirement was troublesome because the specific amount of coverage bore no correlation to projected alimony amounts and it was not possible for the appeals court to ascertain if the trial court ordered life insurance for purposes other than securing alimony due at the time of the Former Husband's death.

Lump Sum Alimony

Courts have previously reversed lump sum alimony awards that have no evidentiary support. In this case, there was no evidence to justify the lump sum alimony award, and the trial court made no findings to explain its rationale. The appeals court reversed and remanded for the trial court to reconsider the award based on the evidence on the record.

Attributing Dissipated Assets as Part of Equitable Distribution

It is error to include assets in an equitable distribution scheme that have been diminished or dissipated during the dissolution proceedings. However, an exception to this general proposition exists when misconduct during the dissolution proceedings results in the dissipation of a marital asset. The misconduct necessary to support inclusion of dissipated assets in an equitable distribution scheme does not include mismanagement or simple squandering of marital assets in a manner of which the other spouse disapproves. Instead, to include a dissipated asset in the equitable distribution scheme, there must be evidence of the spending spouse's intentional dissipation or destruction of the asset, and the trial court must make a specific finding that the dissipation resulted from intentional misconduct.

In this case, the trial court erred failing to apply to the standard for attributing dissipated assets to a spouse in dissolution proceedings. Specifically, the trial court erred in attributing monies to the Former Wife in the equitable distribution in such a way that amounted to a sanction for failing to comply with a documenting requirement. The appeals court reversed the trial court's equitable distribution awards and remanded for further proceedings.

Case: [Banks v. Banks](#)
Court: Second District Court of Appeal.
Trial Judge: Tracy Sheehan.
Attorneys: E. Jane Brehany, Allison M. Perry.
Issues: Alimony, Equitable Distribution.

Holding: Alimony

An appellant must provide, for the record, a statement of the evidence prepared in accordance with Florida Rules of Appellate Procedure. When the appellant fails to provide this court with a record that is sufficient to evaluate the appellant's contentions of error, the appeals court must presume that the trial court's decision is correct. However, the absence of a transcript and a statement of the evidence do not preclude reversal where an error of law is apparent on the face of the judgment. In such cases, the appeals court must limit consideration of the arguments on appeal to errors appearing on the face of the amended final judgment. A trial court can award permanent alimony in a marriage of moderate duration if such an award is based upon clear and convincing evidence after consideration of the factors set forth in relevant statutory provisions. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in the relevant statutory provisions, however there is no requirement that such an award meet the clear and convincing standard of proof.

In this case, the trial court erred in failing to award the Former Wife in a long term (33 year) marriage permanent alimony on the basis that she had failed to meet the clear and convincing standard of proof. As this was a long term marriage, the trial court ought to have simply assessed the evidence based on the relevant statutory factors. The appeals court reversed the amended final judgment regarding the denial of the Former Wife's claim for an award of permanent periodic alimony and remanded for reconsideration with directions the trial court on remand should consider making an award of at least a nominal amount of permanent periodic alimony.

Former Husband's Military Retirement Pay

Language in final judgments needs to be specific, unambiguous and allow for intended changes in the amount of such awards tied to cost of living increases or other such considerations. In this case, the trial court erred in ordering an amount, and an indexed award, of the Former Husband's military pension payable to the Former Wife, such amount being expressed as both a percentage and specific dollar figure, thereby creating ambiguity as the dollar amount could change as certain specific adjustments are based on the order are made. The appeals court directed, on remand, that the wording be amended.

Case: [Dottaviano v. Dottaviano](#)
Court: Fifth District Court of Appeal.
Trial Judge: Clyde E. Wolfe.
Attorneys: Daniel A. Bushell, Shachar D. Spiegel, Stefani K. Nolan, Brian P. North, David Merritt.
Issues: Child Support, Equitable Distribution, Alimony.
Holding: Imputing Income

Florida Statutes provide that monthly income shall be imputed to an unemployed or underemployed parent if such unemployment or underemployment is found by the court to be voluntary on that parent's part. A trial court must employ a two-step analysis when deciding whether to impute income to a former spouse. Firstly, the trial court must determine that termination of employment was voluntary. Secondly, the trial court must determine whether the individual's subsequent unemployment or underemployment resulted from the pursuit of his or her own interests or through less than diligent and *bona fide* efforts to find employment paying income at a level equal to or better than that formerly received. Further, the former spouse claiming that income should be imputed to the unemployed or underemployed spouse bears the burden of showing both employability and the availability of jobs.

In this case, the trial court erred in imputing monthly income to the Former Wife when it failed to make a specific finding that she was voluntarily unemployed or underemployed. Nor did the trial court properly address that the Former Husband did not discharge the onus upon him to show that she was employable and there were available jobs for her. Finally, the trial court failed to properly address the Former Wife's evidence as to her *bona fide* efforts to obtain employment. The appeals court reversed and remanded with direction to reconsider alimony and child support, as those awards were tied to the improper imputation of income.

Matrimonial Home

Generally, the trial court should award the primary residential parent exclusive use and possession of the marital residence until the child reaches majority or is emancipated. However, special circumstances may justify partition and sale of the marital home where the parties' incomes are inadequate to meet their debts, obligations, and normal living expenses, as well as the expense of maintaining the marital residence. Special circumstances that justify the partition of the marital home can include instances where the parties resided in the marital residence for a short period of time, lacked other significant marital assets, and a large differential in relative earning power existed between the former spouses. In this case, the trial court erred in granting exclusive possession of the matrimonial home to the Former Husband, despite the residence of the minor child being there with him, insofar as this circumstance fell into one of those special circumstances warranting partition of the marital home. Specifically, the family had lived in the marital home for a short period of time when the parties separated, the parties do not have any other significant marital assets, and there is a large difference in the parties' earning capacity. Moreover, the payments related to the marital home are significant and the Former Husband could find a place for himself and the minor child to live that is less expensive. The appeals court ordered, on remand, that the trial court order the marital home be partitioned.

Case: [Atkinson v. Atkinson](#)

Court: Second District Court of Appeal.

Trial Judge: Ashley B. Moody.

Attorneys: Elizabeth S. Wheeler, Christian D. Denmon, Nicole Denmon, Andrew Plagge.

Issues: Alimony.

Holding: The court may reduce or terminate an award of alimony upon making specific written findings that, since the granting of a divorce and the award of alimony, a supportive relationship has existed between the payee and a person with whom the payee resides. Cohabitation often constitutes a change in circumstance. However, the definition of cohabitation and what facts, beyond a common residence, establish a supportive relationship rather than that of roommates or tenant/lodger. A trial court's decision concerning whether or not cohabitation has been established involves a mixed question of law and fact requiring a mixed standard of review, limited to determining whether they are supported by competent, substantial evidence. However, the appeals court reviewed the trial court's construction of the term "cohabitation" and its legal conclusions, de novo. Matrimonial settlement agreements providing for the termination of alimony upon cohabitation are intended to protect the payor spouse from a continuing obligation to pay alimony when the payee spouse is residing with another person under circumstances similar or tantamount to marriage. Therefore, a finding of cohabitation requires more than the mere presence of another person under the payee spouse's roof.

In this case, the trial court erred in ruling that a male living in the Former Wife's residence amounted to "cohabitation with a male" within the meaning of the parties' MSA, such that the Former Wife's alimony award would terminate. On the evidence, the Former Wife and the man maintained a relationship more akin to his being a lodger or tenant. The appeals court reversed and remanded for, among other things, an amended order denying the Former Husband's petition to terminate his obligations to pay alimony and maintain a life insurance policy as security for its payment.

Case: [Clark v. Clark](#)
Court: First District Court of Appeal.
Trial Judge: John L. Miller.
Attorneys: E. Jane Brehany.
Issues: Alimony, Property Distribution.

Holding: Under Florida statutes, the date the petition for dissolution of marriage was filed is an appropriate date for classifying the parties' assets as marital, and the date for determining value of assets classified as marital is the date, or dates, as the court deems is just and fair in the circumstances. In this case, the trial court did not err in using the petition filing date as the date for valuing a marital asset, an investment account, which was lower in value at the end of the marriage than at the beginning. The appeals court reversed that portion of the final judgment equitably distributing the parties' marital assets and liabilities, and remanded for correct determination of the value of the asset

Case: [Juchnowicz v. Juchnowicz](#)
Court: Second District Court of Appeal.
Trial Judge: Rochelle T. Curley.
Attorneys: W. Russell Snyder, Susan J. Silverman, Cynthia L. Greene, Deborah J. Blue.
Issues: Alimony.

Holding: Permanent alimony is to allow the requesting spouse to maintain the standard of living established by the parties during the marriage. In viewing the totality of the circumstances, one spouse should not be "shortchanged." Each party's standard of living must come as close as possible to the prior lifestyle, given the available financial resources. An award of permanent alimony is reviewed pursuant to the abuse of discretion standard. An award of permanent periodic alimony typically terminates upon the death of the obligor. However, Florida statutes allows a trial court to order an alimony obligor to purchase or maintain a life insurance policy to the extent necessary to protect an award of alimony.

In this case, the trial court erred in making the alimony award without adequate consideration of the substantial income disparity between the parties. The award

was not commensurate with the parties' marital standard of living and created a gross disparity. Nor was the award secured. The appeals court reversed the award of permanent periodic alimony and remanded for proceedings and to mandate the Husband to secure the alimony award with a life insurance policy.

Case: [Dugan v. Dugan](#)
Court: Fifth District Court of Appeal.
Trial Judge: Shawn L. Briese.
Attorneys: John N. Bogdanoff, Elizabeth Siano Harris.
Issues: Alimony, Equitable Distribution, Attorney's Fees.

Holding: An error on the face of a final judgment should be corrected. Findings related to alimony awards must have a proper evidentiary basis. A trial court must give its rationale, based on trial evidence, for a finding which forms part of the final judgment. In this case, the trial court erred in finding that all of Former Wife's medical expenses were entirely covered by Medicare, and entering such finding on the face of the judgment without sufficient rationale. Specifically, the trial court based its finding on what it described as the Former Husband's "uncontroverted testimony" notwithstanding that the Former Wife provided authority suggesting that she is responsible for Medicare premiums, deductibles, and noncovered expenses. The appeals court reversed on the issue of Former Wife's medical expenses and remanded.

Case: [Kobe v. Kobe](#)
Court: First District Court of Appeal.
Trial Judge: John L. Miller.
Attorneys: Ross A. Keene, E. Jane Brehany.
Issues: Alimony.

Holding: When a court awards more alimony than requested without sufficient findings in the final judgment to support the increased award, the award must be reversed and remanded for further proceedings. In this case, the trial court erred when it awarded alimony, both before and after the sale of the marital home, which, when coupled with the amount of income imputed to the Former Wife, exceeded her stated need. Further the trial court made no findings to support this award. In addition, while there was ample evidence that the parties enjoyed a high standard of living during the marriage, there was little specific evidence in the record concerning the Former Wife's expected expenses after the marital home sold, and the trial court did not make specific findings concerning this matter. The matter was reversed and remanded for further proceedings concerning the amount of alimony needed by the Former Wife.

Case: [Polcz v. Polcz](#)
Court: Fourth District Court of Appeal.
Trial Judge: Timothy P. McCarthy.
Attorneys: E. Ross Zimmerman, Doreen Inkeles.
Issues: Alimony.

Holding: The mathematical findings behind a modification order must support the court's final decision as to a reduction in arrearages. In this case, the trial court erred insofar as within the modification order, the amount of alimony arrearages purportedly owed was inconsistent with the findings regarding the amount of alimony paid. Although the trial court may have had some other compelling reason for eliminating arrearages owed by the Former Husband, it was not apparent in the modification order. The appeals court reversed and remanded for clarification of arrearages.

Case: [Beckstrom v. Beckstrom](#)
Court: Fourth District Court of Appeal.
Trial Judge: Amy Smith.
Attorneys: Betty C. Resch, Sean P. Sheppard.
Issues: Alimony, Attorney's Fees.

Holding: Attorney's Fees
Despite the lack of a transcript and an adequate record, when the error appears on the face of the judgment, it should be corrected. A trial court may order a party to pay a reasonable amount for attorney's fees. The trial court is required to consider the financial resources of both parties and make findings regarding their respective financial needs and abilities to pay. Failure to do so requires reversal. The trial court also has discretion to allow payment of an award of attorney's fees over time, but it must set out a factual basis for imposing the specific payment plan selected. In this case, the trial court found the Former Wife was in need of attorney's fees, but did not make a finding as to the Former Husband's ability to pay and did not set forth any factual basis for imposing this specific payment plan. The appeals court reversed the judgment on this issue and remanded the case to the trial court to make the requisite written findings.

Life Insurance Policy

Under the invited error rule, a party cannot successfully complain about an error for which he or she is responsible or of rulings that he or she invited the court to make. In this case, the trial court did not err in ordering the Former Husband to purchase a life insurance policy and include such a provision in his proposed final judgment when the Former Husband so agreed earlier in the proceedings. The appeals court affirmed on this point.

Case: [Dorworth v. Dorworth](#)
Court: Fifth District Court of Appeal.
Trial Judge: George B. Turner.
Attorneys: John N. Bogdanoff, Shannon McLin, Stephen M. Brewer.
Issues: Alimony, Equitable Distribution.

Holding: Equitable Distribution

The valuation of an asset or debt in connection with equitable distribution is generally reviewed for an abuse of discretion. Valuation not supported by competent substantial evidence cannot stand. Settlement agreements are governed by the rules of contract interpretation. The trial court's interpretation of a contract in a dissolution proceeding is a matter of law subject to *de novo* review. When reversible error occurs with regard to valuation or distribution, the entire distribution scheme must be reversed and remanded to allow the trial court to ensure both parties receive equity and justice. In this case, the trial court erred, and abused its discretion, when it utilized the incorrect figure for a certain debt (a judgment resulting from a defunct land deal and which the parties agreed was a marital asset). In its final judgment, the trial court concluded the value of the asset in the absence of any reasoning. The trial court then equitably distributed the parties' assets and liabilities and made an associated award of lump sum alimony to the Former Wife. As the trial court erred in calculations on point and as alimony flowed, the appeals court remanded for reconsideration and recalculation.

Durational Alimony

An alimony award should not exceed a Former Spouse's need. An order awarding alimony in excess of the Recipient Spouse's needs will be reversed as an abuse of discretion, absent special circumstances. In this case, the trial court erred when it listed specific items of expense (such as student loan expenses) in the final judgment while it determined Former Wife's monthly needs. The calculations of the Former Wife's expenses and income were unclear. The appeals court remanded for reconsideration of the amount of durational alimony to be paid based upon the Former Wife's needs and Former Husband's ability to pay.

Lump Sum Alimony

The trial court must also reconsider the entire distribution plan because each division and distribution of a marital asset or liability is interrelated in order to achieve a fair result to both parties. Similarly, the trial court should reconsider alimony awards and other orders in the final judgment that were based on the

incorrect debt amount. In this case, the trial court erred in awarding Former Wife a specific amount of lump sum alimony, which was coordinated with her equitable distribution awards. The appeals court remanded for reconsideration of lump sum alimony in all the associated circumstances.

Case: [Rutan v. Rutan](#)
Court: Second District Court of Appeal.
Trial Judge: Peter Ramsberger.
Attorneys: Matthew R. McLain, Jane H. Grossman.
Issues: Alimony.

Holding: A trial court may award alimony upon sufficient evidence and factual findings regarding the respective parties' need and ability to pay. The burden to show financial need and the former spouse's ability to pay lies with the party requesting alimony. In this case, the trial court erred in awarding alimony as it failed to make findings sufficient to allow meaningful appellate review, particularly regarding the Former Husband's income. The Former Wife failed to meet her burden of proving the Former Husband's ability to pay. The appeals court reversed.

Case: [Corcoran v. Corcoran](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Leonard R. Ross, Sara E. Glover, Deborah L. Greene, Andrea C. Jevic.

Issues: Alimony, Attorney's Fees, Equitable Distribution, Parenting.

Holding: A trial court shall make findings of fact as to modification of alimony. When determining attorney's fees, a trial court considers the parties' respective financial situations. A trial court must indicate what evidence it relied on for its findings regarding shared parental responsibilities and contempt of court. After a dissolution of marriage, the parties are equally responsible for all payments necessary to maintain their ownership of the marital property until its sale, including mortgage payments, taxes, insurance and repairs.

In this case, the trial court erred as it:

- a. reduced the Former Wife's monthly in the absence of specific findings of fact.
- b. awarded attorney's fees in the absence of specific findings as to the parties' financial need and ability to pay.

- c. failed to identify the evidence it relied on in making an order regarding shared parental responsibilities and the Former Wife being contempt of court.
- d. failed to hold the Former Wife solely responsible only for repairs to the marital home or, in the alternative, to indicate an evidentiary basis to hold her responsible for all future repairs.

The appeals court reversed and remanded for reconsideration.

Case: [Hutchinson v. Hutchinson](#)
Court: First District Court of Appeal.
Trial Judge: Monica J. Brasington.
Attorneys: Stephen K. Johnson, Emily A. Snider, Jonathan P. Culver.
Issues: Alimony, Attorney's Fees.

Holding: A trial court's award of attorney's fees is governed by statute. Such awards are to ensure that both parties will have a similar ability to obtain competent legal counsel. The general standard for awarding attorney's fees and costs is the requesting spouse's financial need and the other spouse's ability to pay. Awards of attorney's fees are reviewed for an abuse of discretion. Where marital property has been equitably distributed and the parties' incomes have been equalized through an alimony award, a trial court abuses its discretion by awarding attorney's fees. In this case, the trial court erred in awarding attorney's fees to the Former Wife after it had equitably distributed the marital property and further awarded her alimony, thereby equalizing the parties' incomes. The parties were in substantially the same financial positions and equally able to pay the fees and costs. The appeals court reversed the award of attorney's fees and costs

Case: [Taylor v. Taylor](#)
Court: Second District Court of Appeal.
Trial Judge: Jalal A. Harb.
Attorneys: Jean M. Henne, Karie L. Sanoba.
Issues: Alimony.

Holding: Generally, trial courts may not consider future or anticipated events in making alimony awards, due to the lack of an evidentiary basis or the uncertainty surrounding such future events. Under statute, when determining alimony, a trial court considers: (1) a party's need for support; (2) the other party's ability to pay; (3) the type of alimony or the types of alimony appropriate in the case; and (4) the amount of alimony to award.

The first two considerations involve questions of fact to be supported by competent, substantial evidence. Once need and ability are determined, the court determines which type, or types, of alimony are appropriate. The court can award (1) bridge-the gap alimony; (2) rehabilitative alimony; (3) durational alimony; (4) permanent alimony or a combination. Statute limits a trial court's discretion in this regard by making the court consider also the duration of the marriage. The trial court must demonstrate on the record or in its order that it has applied the correct law when selecting its choice of alimony. Under Florida statute, there lies a rebuttable presumption that a marriage of seventeen years or greater is a long-term marriage, for which permanent alimony may be awarded upon consideration of the statutory factors. There is no special burden of proof applicable to the award of permanent alimony in a long-term marriage, however, the court must include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. Durational alimony may be awarded when permanent periodic alimony is inappropriate or if there is no ongoing need for support on a permanent basis. The length of an award of durational alimony can be extended only under exceptional circumstances. There may be need to award a combination of the two.

In this case, the trial court erred in that it did not expressly find that permanent periodic alimony was inappropriate. The trial court erred further in that the judgment failed to contain the necessary findings to support durational alimony. The findings were so deficient as to hinder appellate review. The appeals court reversed and remanded with special instructions.

Case: [Vinsand v. Vinsand](#)
Court: Second District Court of Appeal.
Trial Judge: Tracy Sheehan.
Attorneys: Robert W. Bauer, Maria Perez Youngblood, Lawrence J. Hodz.
Issues: Procedure, Alimony.

Holding: Procedure – Venue

Florida Statutes (2012), provide that to obtain a dissolution of marriage, one of the parties must reside 6 months in the state before filing the petition. Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located. A proceeding for dissolution of marriage is regarded as a transitory action. Generally, in a dissolution of marriage action, venue lies in the county where the parties last lived with a common intent to remain married as that is where the cause of action is deemed to have accrued. If there is no legal basis to support the plaintiff's choice of venue, the trial court must

dismiss the case or transfer it to a forum that is authorized under the applicable venue statute. In this case, the trial court erred in denying the Former Husband's motion for transfer of venue to the county where he lived after it determined that the last place where the parties lived with the intent to remain married was another state. The appeals court reversed, set aside the final judgment, and remanded for transfer to said county.

Alimony

Florida Statute identifies the various forms of alimony, characterizes marriages by their duration, and sets out the factors to be considered and findings to be made in awarding alimony. Permanent alimony may be awarded following a marriage of moderate duration if the trial court determines that such an award is appropriate based on clear and convincing evidence after consideration of the enumerated factors. In awarding permanent alimony following a marriage of any duration, the trial court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. In this case, the trial court erred in that, while the seven-year marriage qualified as a moderate-term marriage, it was not apparent from the record that the trial court applied a clear and convincing standard. Also, the trial court failed to make a finding that no other form of alimony was fair or reasonable under the circumstances of this case when such a finding is statutorily required. Finally, in order to allow for meaningful appellate review, trial courts must identify on the record that the appropriate evidentiary standard was applied in determining the appropriate form of alimony. The appeals court reversed and remanded with instructions.

Case: [Gurdian v. Gurdian](#)
Court: Second District Court of Appeal.
Trial Judge: Ramiro Mañalich.
Attorneys:
Issues: Child Support, Alimony.

Holding: A trial court has the discretion to modify alimony effective as of the date of the petition for modification or subsequent thereto. A trial court's decision to modify child support and alimony retroactively is reviewed for abuse of discretion. A presumption of retroactivity applies unless the circumstances of the case dictate otherwise. Evidence may demonstrate a substantially different condition at the hearing on the petition than that which existed on the date of its filing. Wages and salary are specifically included in the definition of "income" under Florida Statutes (2011), and should be considered in determining child support and alimony obligations. Damages awarded for future loss of wages, on a worker's compensation claim, may be taken into account.

In this case, the trial court erred in modifying the Former Husband's child support and alimony obligations retroactively to the date of his filing a petition for modification, and in awarding the him judgment based upon his overpayment of past support, when he had a severance settlement sufficient to cover his support obligations while supplemental petition was pending. The retroactive application of the modification also resulted in a hardship on the Former Wife and the parties' children, who were not receiving any support. The retroactive application of the modification of the child support and alimony awards amounted to an abuse of discretion in the circumstances. The appeals court reversed.

Case: [Lake v. Lake](#)
Court: Fourth District Court of Appeal.
Trial Judge: Jeffrey Dana Gillen.
Attorneys: John E. Schwencke, Christopher R. Bruce, Edward J. Jennings.
Issues: Alimony, Attorney's Fees.

Holding: Temporary support orders do not create vested rights, can be modified, and inequities in them can be resolved in the final judgment. While an order on appeal may raises certain questions, a party may be prevented from pursuing an appeal if he or she has failed to preserve errors for appeal. In this case, the trial court may have rendered an order that erred with regard to temporary alimony, costs, attorney's fees and suit money, however, the Former Husband failed to preserve any errors for appeal. The appeals court affirmed without prejudice to the Former Husband's challenging the fees at the time of the final judgment.

Case: [Addie v. Coale](#)
Court: Fourth District Court of Appeal.
Trial Judge: Charles E. Burton.
Attorneys: Troy William Klein.
Issues: Child Support, Alimony.

Holding: The amount of a child support award partly depends on the alimony determination, as spousal alimony received by a party is considered income when determining child support. In a dissolution of marriage case, in which alimony is required because of a disparity in income between the parties, the court must first determine the amount of alimony and then, considering alimony as income, determine the amount of child support. In this case, the trial court erred in its calculation of the alimony award by considering only two of the ten factors outlined under Florida Statutes (2011) and departed from the essential requirements of law by making limited findings of fact based upon unsworn statements made during a hearing. The appeals court reversed.

Case: [Jericka v. Jericka](#)
Court: Second District Court of Appeal.
Trial Judge: Lisa S. Porter.
Attorneys: Allison M. Perry, Susan G. Wright.
Issues: Permanent Periodic Alimony, Procedure.

Holding: Florida Statutes (2012), requires a trial court to make specific factual determinations as to whether either party has an actual need for alimony and whether either party has the ability to pay alimony. Failure to make these findings is reversible error. A critical impediment to meaningful review of a trial court's decision is not the absence of findings, but the absence of a transcript. A harmless error review is required in alimony cases - a lack of a transcript frustrates the court's ability to properly conduct the review. In this case, the trial court erred in failing to make the requisite factual findings. However, the appeals court was compelled to affirm as the Former Husband failed to provide a transcript or statement as required by the rules of procedure. This failure precluded the appeals court from reviewing the factual or legal basis for the trial court's decision. The appeals court affirmed.

Case: [Nicholson v. Nicholson](#)
Court: Second District Court of Appeal.
Trial Judge: Amy M. Williams.
Attorneys: Jane H. Grossman.
Issues: Alimony.

Holding: Under Florida Statutes (2014) social security benefits may be considered as income to a party when calculating alimony. In this case, the trial court erred as it failed to consider the Former Husband's social security benefit as income. The appeals court reversed and remanded.

Case: [Quinones v. Quinones IV](#)
Court: Fifth District Court of Appeal.
Trial Judge: C. Jeffery Arnold.
Attorneys: Brandon M. Tyson, Gina R. Perez-Calhoun.
Issues: Alimony.

Holding: When determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage. Upon the dissolution of a long-term marriage, there is a rebuttable presumption that permanent alimony is appropriate. Individual factors like age and income, standing alone, will not rebut

the presumption. Permanent alimony is awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. In this case, the trial court erred in finding the parties' marriage was of moderate duration and subsequently denying the Former Wife's request for alimony. The trial court's final judgment did not address why the rebuttable presumption that a seventeen-year marriage is a long-term marriage would not apply in this case. The appeals court reversed.

Case: [Rhoads v. Rhoads](#)
Court: First District Court of Appeal.
Trial Judge: Dan Wilensky.
Attorneys: William S. Graessle, Jonathan W. Graessle, Brian P. North, Mary Esther.
Issues: Alimony.

Holding: An award of alimony is reviewed for abuse of discretion. It must provide for the needs and necessities of life for a Former Spouse as they were established during the marriage of the parties and be considered in the context of the parties' respective need and ability to pay. In this case, the trial court erred in its determination of the amount of permanent alimony as it was not supported by competent, substantial evidence, particularly regarding its determination that the Former Wife had a need for alimony and the Former Husband had the ability to pay alimony. Nor did it properly review that standard of living of the parties during and after the marriage. The appeals court reversed that portion of the final judgment.

Case: [Pollack v. Pollack](#)
Court: Fifth District Court of Appeal.
Trial Judge: Charles Hood.
Attorneys: Richard J. D'Amico, Philip J. Bonamo.
Issues: Alimony.

Holding: In this case, the trial court erred by terminating alimony retroactively to the date when the recipient Former Wife Appellant began residing with her significant other, as opposed to the date when the payor Former Husband filed his petition to terminate alimony. The appeals court reversed and remanded with directions to the trial court to enter a new order terminating alimony retroactively to the date of the supplemental petition for modification.

APPELLATE COSTS

Case: [Perez v. Fay](#)
Court: Second District Court of Appeal.
Trial Judge: Elisabeth Adams.
Attorneys: Robert L. Donald, Robert J. Coleman.
Issues: Appellate Costs.

Holding: Under the Florida Rule of Appellate Procedure, appellate costs shall be taxed in favor of the prevailing party unless the court orders otherwise. The term "court" refers to the court making the order, whether it is the appeals court or the circuit court. If the motion to tax appellate costs is timely filed in the lower tribunal, appellate costs must be taxed in favor of the party who prevailed in the appeal unless the appellate court has ordered otherwise. The circuit court does not have discretion to refuse to award appellate costs when the appellate court has not ordered that costs be denied, although the circuit court is charged with determining which party prevailed and does have discretion in determining the amount to be allowed based on the evidence in the record. Costs are properly awarded to the party who prevailed on the "significant issues" in the appeal, even if the party did not obtain all of the relief sought. The determination of whether a party is the "prevailing party" is not an all-or-nothing proposition.

In this case, certain trial court proceedings had been previously appealed. After a thorough review, the Mother successfully obtained a reversal on significant substantive aspects of the Amended Supplemental Final Judgment. Subsequently, she filed a timely motion for taxation of appellate costs in the circuit court pursuant to the Rule. The Mother was the prevailing party on the significant issues in the appeal, and was entitled to an award of her appellate costs. The dispositive question is not whether the Mother prevailed on all of the issues in the appeal—it is whether she prevailed on the "significant issues." The appeals court reversed the order denying costs and remand for entry of a cost judgment in favor of the Mother.

ARREARAGES

Case: [Winton v. Saffer](#)
Court: Third District Court of Appeal.
Trial Judge: George A. Sarduy.
Attorneys: Chantale L. Suttle, Holly A. Aliprandi, John B. Agnetti, Armand Murach
Issues: Arrearages.

Holding: When considering a petition regarding arrearages, the trial court must make its findings based on substantial, competent evidence showing that the payor spouse failed to make support payments as required despite an apparent ability to do so. The record must disclose the calculations and evidence establishing the commencement of the arrearages, the total unpaid balance, and the computation of the purge amount. As to the purge amount, the court must make a separate, affirmative finding that the contemnor possesses the present ability to comply with the purge conditions. The amount itself must be supported by substantial, competent evidence. Relief exceeding the amount which is pled is impermissible.

In this case, the trial court erred when it awarded an amount in excess of the amount calculable on the record and which exceeded the amount recoverable, based on the Former Wife's pleadings. While there was substantial, competent evidence to support the court's findings that the Former Husband failed to make support payments as required, despite an apparent ability to do so, the record did not disclose the calculations and evidence establishing the commencement of the arrearages, the total unpaid balance, and the computation of the purge amount. The appeals court reversed in part and remanded for further proceedings.

ATTORNEY'S FEES

Case: [Chianese v. Brady](#)
Court: Fourth District Court of Appeal.
Trial Judge: Timothy Bailey.
Attorneys: Nancy A. Hass, Cynthia L. Greene.
Issues: Attorney's Fees.

Holding: The award of attorney's fees is premised on the parties' respective need and ability to pay. Notwithstanding, the trial court must also determine the reasonableness of the fees before ordering a party to pay fees. In this case, the trial court did not err in denying the Mother further attorney's fees. The trial court determined that the case was "out of control", the Mother had failed to prove the reasonableness of the fees requested, and the Father has already paid her temporary attorney's fees. Specifically, it had previously awarded the Mother \$30,000.00 for temporary fees, then denied a subsequent request for more, which denial was affirmed on appeal. She then filed an additional (third) motion for temporary attorney's fees on the grounds that further substantial financial discovery was required as the Father was objecting and new and novel theories to obtain an increase in child support were being advanced. The appeals court affirmed the denial of additional fees.

Case: [Kemp v. Kemp](#)
Court: First District Court of Appeal.
Trial Judge: Daniel F. Wilensky.
Attorneys: Seth Schwartz, Eric Lawson, Allison E. Folds.
Issues: Equitable Distribution, Attorney's Fees.

Holding: A trial court may not order an interim partial equitable distribution in the absence of a verified motion requesting same. In this case the trial court erred when, after a hearing on the Former Wife's motion for temporary attorney's fees (past due and prospective) issued an order finding that the Former Husband lacked the ability to pay her attorney's fees and directed what was effectively an interim partial equitable distribution instead. The trial court lacked authority to do so as the relevant statutory requirements for such an order were not met. The trial court misapplied the law and failed to make proper findings to support its order. The appeals court reversed and remanded for reconsideration of the Former Wife's motion for temporary attorney's fees.

Case: [Hutchinson v. Hutchinson](#)
Court: First District Court of Appeal.
Trial Judge: Monica J. Brasington.
Attorneys: Stephen K. Johnson, Emily A. Snider, Jonathan P. Culver.

Issues: Alimony, Attorney's Fees.

Holding: An award of attorney's fees is reviewed for an abuse of discretion. Under Florida Statute, such awards are to ensure that both parties have a similar ability to obtain competent legal counsel. The general consideration is the requesting spouse's financial need and the other spouse's ability to pay. Where the parties are equally able to pay attorney's fees, the trial court abuses its discretion by requiring one spouse to pay the other's fees. Where marital property has been equitably distributed and alimony is awarded such that the parties' incomes have been equalized, a trial court abuses its discretion by awarding attorney's fees. In this case, the trial court erred in that it awarded the Former Wife attorney's fees after it had rendered final judgment by which equitable distribution and alimony left the parties in substantially the same financial position. The appeal court reversed the award of attorney's fees and costs.

Case: [Burkett v. Burkett](#)
Court: First District Court of Appeal.
Trial Judge: Thomas R. Santurri.
Attorneys: Sharon K. Wilson, Autumn O. Beck.
Issues: Attorney's Fees.

Holding: Awards of attorney's fees to a former spouse for proceedings to modify a final judgment of dissolution of marriage, and any associated income deduction order effectuating the fee order, must be based on sufficient evidence. A party seeking to alert the court to the deficiencies in the findings must file a motion to do so, and transcripts, if available, failing which, an appeals court may be constrained from review of the issue. In this case, the trial court erred when it failed to include sufficient findings to support the fee award and associated income deduction order effectuating the fee order. However, the appeals court was constrained to affirm as to this issue because the Former Husband did not file a motion for rehearing alerting the trial court to the deficiencies in the findings and no transcript was available.

Case: [B.W.P. v. A.L.H.](#)
Court: Second District Court of Appeal.
Trial Judge: James R. Thompson, R. Thomas Corbin.
Attorneys: Luis E. Insignares, Theresa Daniels.
Issues: Paternity, Attorney's Fees.

Holding: Attorney's fees should not be awarded pursuant to Florida statute when the losing party attempted in good faith to advance a novel question of law. Further, Florida statute precludes a sperm donor from asserting parental rights, whether or not a valid written contract between the parties limits his ability to do so. In this case, the

trial court did not err in dismissing the petitioner Donor's amended petition with prejudice, because even if he, as the Donor, is correct that there was no valid written contract between the parties limiting his ability to assert parental rights, Florida statute precludes him from asserting such rights. However, the trial court erred in awarding attorney's fees to the respondent Mother. The trial court based the award on its finding that the petitioner Donor knew or should have known that his petition and amended petition were insufficient on the facts and the law. Under Florida statute, notwithstanding whether an action is not supported by the facts or the application of then-existing law, fees may not be awarded if the claim was presented to advance the law. The appeals court affirmed the order dismissing the amended petition to determine paternity with prejudice, but reversed the order granting respondent Mother an award of attorney's fees.

Case: [Card v. Card](#)
Court: Second District Court of Appeal.
Trial Judge: Olin W. Shinholser.
Attorneys: Mark A. Sessums, Lauren E. Jenson.
Issues: Attorney's Fees.

Holding: The appeals court maintains jurisdiction over trial court's orders capping the amount of attorney's fees recovered in dissolution proceedings. If a party agrees to the methodology used by the trial court in determining the award, the award will likely be affirmed, considering all other aspects are properly determined. Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal.

In this case, the trial court did not err in making its determination as to matching attorney's fees without making factual findings as to the need of the Former Wife and the Former Husband's ability to pay. Specifically, at trial, the Former Wife argued that the court did not need to assess reasonableness because of a Joint Stipulation Provision between the parties as to fees, and particularly that they would match. On appeal, the Former Wife sought an order beyond the scope of the Joint Stipulation Provision on the ground that the trial court erred in failing to make factual findings as to her need or the Former Husband's ability to pay attorney's fees and costs. The appeals court determined that the trial court did not err in awarding a final amount of attorney's fees on a matching basis without specific factual findings about a need for attorney's fees, the corresponding ability to pay, and the reasonableness of the award given the Former Wife's position at trial, which relied on the matching provision. She was not now allowed to argue against the position upon which she previously relied.

Case: [Spreng v. Spreng et al](#)
Court: Fifth District Court of Appeal.
Trial Judge: Dawn D. Nichols.
Attorneys: Shimene A. Shepard-Ryan, Horace Smith, Jr., Sheila M. Ennis.
Issues: Attorney's Fees.

Holding: In making an award for attorney's fees and costs, a trial court is required to make written findings of fact as to the attorney's reasonable hourly rate and the reasonableness of the hours expended. Failure to do so constitutes reversible error. The order must also be based on factual findings, supported by substantial and cogent evidence regarding the recipient party's financial circumstances and the payor's ability to pay. Finally, a party must properly preserve an error for appeal by filing a motion for rehearing, or taking other necessary and timely procedural steps. Failure to do so can prove fatal to an appeal.

In this case, the trial court did not err in failing to consider the Former Wife's ability to pay her own legal fees and costs and in failing to set forth the reasonableness of the time expended and the hourly rate used to calculate the fee. The order under review detailed the history of the marriage and the present financial circumstances of the parties and established that the Former Husband had a significant net worth and income stream while the Former Wife did not. The appeals court affirmed the trial court order despite the fact that the written order did not clearly consider the Former Wife's financial circumstances and needs as well as Former Husband's ability to pay. Despite this deficiency in its factual findings, the error was not preserved for appeal because the Former Husband failed to file a motion for rehearing.

Case: [Waheed v. Brummer](#)
Court: Fifth District Court of Appeal.
Trial Judge: Clyde E. Wolfe.
Attorneys: Robert S. Walton III.
Issues: Attorney's Fees.

Holding: Objections raised on appeal must be the same as those raised below. In order to be preserved for appeal, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation. In this case, the trial court did not err in taking judicial notice of affidavits filed by the opposing parties in support of the requested attorney's fees. Doing so did not effect a situation where the trial court made an award of attorney's fees despite a lack of competent, substantial evidence to support its findings as to the amount of hours reasonably expended and the reasonableness of the hourly rate and the fact that a witness was not properly sworn in at trial. The appeal was dismissed as the appellant failed to preserve any of the arguments for appeal. He

did not object to the trial court taking judicial notice of the two affidavits, both of which were sworn, or to the unsworn testimony of the particular witness. The appeals court noted, in taking into consideration the numerous proceedings initiated by the self-represented appellant related to the overall dissolution proceedings, that it was “close to reaching” a point where it would prohibit him from filing additional appeals without being represented by a member of the Florida Bar.

Case: [Henderson v. Henderson](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Beth M. Terry, Reese J. Henderson, Jr..
Issues: Custody, Child Support, Attorney’s Fees.

Holding: Custody Order

The standard of review for the trial court's findings and determination regarding primary parental responsibility is abuse of discretion. A trial court's findings regarding the best interest of the child must be supported by competent, substantial evidence. Awarding sole parental responsibility to one parent is inappropriate without a specific finding that shared responsibility would be detrimental to the child. In this case the trial court erred regarding the custody order as it failed to contain a specific finding that shared responsibility would be detrimental to the children.

Attorney’s Fees

Florida statutes, expressly requires the court to make findings regarding each party's financial needs and ability to pay. Where an order denying attorneys' fees fails to contain sufficient factual findings to facilitate meaningful appellate review of the trial court's decision, the appellate court must reverse and remand for the trial court to make further findings. The standard of review for an award or denial of attorney's fees in a dissolution of marriage proceeding is abuse of discretion. In this case, the trial court further erred when it denied attorneys' fees without findings as to the parties' needs, abilities to pay, and misconduct. Here, the evidence presented a clear disparity in income between the parties, which was not considered or referred to in the order.

Child Support

a. Trial court orders modifying child support are reviewed for an abuse of discretion. Florida statutes requires that all child support orders and income deduction orders entered on or after October 1, 2010, must provide for child support to terminate when a child turns eighteen years of age, if the child is between the

ages of 18 and 19 and still in high school, or subject to an agreement between the parties. The trial court erred in awarding continuing child support obligations when it failed to provide an automatic decrease in child support once the parties' older child reached majority. Further, a Settlement Agreement between the parties as well as a prior Judgment and the Custody Order all contemplated reducing support payments when the older child reached majority and terminating the payments when the younger child reached majority.

b. A trial court must reduce the support obligation of a parent who has visitation for a "substantial amount of time" with a child. Florida statutes, provides that a substantial amount of time means that a parent exercises time-sharing at least 20 percent of the overnights of the year. The trial court erred in its calculation of Former Wife's temporary child support obligation because it failed to credit her with any overnights.

The appeals court reversed the custody order, award as to attorney's fees, continuing child support obligations, and temporary child support obligation.

Case: [Harris v. Harris](#)
Court: Fifth District Court of Appeal.
Trial Judge: Heather L. Higbee.
Attorneys: Jeffrey A. Conner.
Issues: Alimony, Attorney's Fees.

Holding: A trial court's use of different standards for calculating each spouse's income is an abuse of discretion. Courts properly impute income from a second job or secondary source where record evidence clearly reveals that such secondary income has been earned on a recurrent or steady basis. As for attorney's fees, evidence is required to establish the claim. In this case, the trial court erred when it considered Former Husband's secondary sources of income while ignoring Former Wife's. The error was in its failure to consider her secondary income when there was sufficient evidence to demonstrate that she was able to earn a recurrent and steady secondary salary, in addition to working full-time. There was no abuse of discretion in the trial court's decision to impute the minimum wage for a full-time workweek. The trial court also erred in awarding Former Wife attorney's fees, as no evidence supported the reasonableness of the fee award. The appeals court remanded.

Case: [Sisca v. Sisca](#)
Court: Fourth District Court of Appeal.
Trial Judge: Thomas H. Barkdull, III.
Attorneys: Roger Levine, Amy D. Shield, Jonathan M. Streisfeld, Michael B. Gilden.
Issues: Alimony, Attorney's Fees.

Holding: Under Florida statute, awards of attorney’s fees must be based on evidence that demonstrates the requisite need and ability to pay. An obligor should not be made to invade certain assets and investments if there is evidence the obligee has their own assets upon which he or she could rely. In this case, the trial court erred in ordering the Former Wife to pay the Former Husband’s attorney’s fees despite evidence showing her net income was lower than his. Rather, the trial court based its decision on financial evidence showing her investments, liquid assets, were worth more than his. However, based on their respective net monthly incomes, to pay his fees, the Former Wife would have to invade the liquid assets, while his financial evidence showed he had investments and other assets on which he could rely. Under these circumstances, it was an abuse of the trial court’s discretion to require the Former wife to pay the Former Husband’s fees. The appeals court reversed the fee awards.

Case: [Gilliard v. Gilliard](#)

Court: Fifth District Court of Appeal.

Trial Judge: Linda Schoonover.

Attorneys: David L. Robold, Shannon L. Akins, Nicholas A. Shannin, Patrick John McGinley.

Issues: Alimony, Equitable Distribution, Attorney’s Fees.

Holding: Alimony

In order to award alimony, a court must make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance. The burden to show his or her financial need and the spouse’s ability to pay is on the party requesting alimony. A marriage having a duration of greater than 7 years but less than 17 years is considered a moderate-term marriage and there is no presumption for or against permanent alimony. Permanent alimony may be awarded following a moderate-term marriage if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set out by statute. The purpose of permanent alimony is to provide the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties. The ability to pay alimony should be based on the party’s net, not gross, income.

In this case, the trial court erred in awarding alimony based on the Former Husband’s gross income. The trial court also erred in considering Former Husband’s future retirement benefits as both current income and a marital asset, included in its distribution of the parties’ marital assets when the future retirement benefits should be considered in the division of marital assets. The trial court erred

further when it failed to make specific written findings regarding the standard of living established during the marriage, the contributions of each party to the marriage, or the tax treatment and consequences of awarding alimony.

Equitable Distribution

Under Florida statute, in distributing marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal. Although a trial court may distribute marital assets and liabilities unequally, it is required to justify such an award based on all relevant factors under statute. A court should make enumerated findings related to each factor under statute. While parties may agree to a specific distribution of some of their assets and liabilities in a mediated or other settlement agreement, the court should place values on the various items of personal property because each division and distribution of a marital asset and liability is interrelated to form an overall scheme fair to both parties.

The trial court erred in awarding an asset to the Former Wife firstly in the equitable distribution scheme and then a second time in the attorney's fees. The trial court erred in failing to place a value on the parties' automobiles, furniture, and furnishings distributed pursuant to the partial mediation agreement and erred when it ordered the Former Husband to make mortgage payments if he failed to make his alimony payments. Proper recourse there would have been to impose sanctions for wilfully failing to comply with a court order. The trial court also erred in failing to consider the consolidation loan as a marital liability.

Attorney's Fees

An award of attorney's fees must be based on clear and cogent evidence of the parties' respective need and ability to pay. Such findings must be based on specific factual findings which also include those regarding the attorney's work (ie: reasonable number of hours spent and the reasonable hourly rate.) In this case, the trial court did not err in that regard, but did improperly include an asset that was already distributed when it conducted the ability to pay analysis.

The appeals court reversed the entire distribution plan and remanded for reconsideration.

Case: [Edgar v. Firuta](#)
Court: Third District Court of Appeal.
Trial Judge: Luis M. Garcia.
Issues: Parenting, Attorney's Fees.

Holding: Florida procedural Rules authorize a court to permit testimony at a civil hearing or trial by audio or video communication equipment by agreement of the parties or for good cause shown on written request of a party and reasonable notice to all other parties. In this case, the trial court erred in denying the Mother's petition to telephonically appear at the hearing addressing timesharing and related matters, because the Father objected. The Mother, who was unemployed and had not received child support for the parties' four children from the Father, lived in North Carolina, had made her petition to appear via technological communications, some 2 months after the procedural rules were amended to so allow such appearance. The court below was not, therefore, barred from considering the mother's request to testify by telephone simply because the father objected but could have allowed the testimony for good cause shown. The appeals court reversed.

Case: [Smith v. Smith](#)
Court: Second District Court of Appeal.
Trial Judge: Gilbert A. Smith, Jr., Diana L. Moreland.
Attorneys: Edward B. Sobel, Angela D. Flaherty.
Issues: Equitable Distribution, Attorney's Fees.

Holding: Equitable Distribution

An appeals court reviews *de novo* a trial court's determination of whether an asset is marital or non-marital. Where parties did not enter into marital settlement agreement, the applicable date for determining whether assets and liabilities are classified as marital or non-marital is the date of the filing of the petition for dissolution of marriage. Assets and liabilities not in existence on that date should not be classified as marital.

In this case the trial court erred when it included as marital assets in the equitable distribution scheme both a vehicle, which was owned by the Former Husband at the time the petition was filed but sold during the pendency of the divorce, and a second vehicle, which was purchased by him after the date of filing but prior to the final judgment. The appeals court concluded that it was error to include the second vehicle in the equitable distribution scheme. The appeals court reverse and directed the trial court to strike the second vehicle from the equitable distribution scheme and reduce the equalizing payment owed to the Former Wife accordingly.

Attorney's Fees

An appeals court does not have jurisdiction to review attorney's fees if the trial court's ruling only addresses entitlement but does not set an amount. In this case,

the trial court's ruling on attorney's fees and costs only addressed the relative position of the parties and entitlement but failed to set an amount. As a result, the appeals court lacked jurisdiction to review.

Case: [Stantchev v. Stantcheva](#)
Court: Fifth District Court of Appeal.
Trial Judge: Jonathan D. Ohlman.
Attorneys: Jonathan P. Culver, Robert H. Mclean.
Issues: Equitable Distribution, Attorney's Fees.

Holding: Non-Marital Assets

Non-marital assets are excluded from equitable distribution. In this case, the trial court erred in making a distribution scheme which did include a particular account as a marital asset when it should have been excluded as it belonged to the Former Husband before the parties were married. The appeals court remanded and directed the trial court to revise the distribution scheme accordingly.

Valuation of Assets

The date for determining value of marital assets is the date or dates as the judge determines is just and equitable under the circumstances. In this case, the trial court erred in valuing an amount of money the Former Husband transferred to a Hungarian bank weeks prior to the Former Wife initiating divorce proceedings as at the date of the transfer rather than the date it was converted back (at a lower rate of exchange resulting in a substantial loss in value). The trial court should have ordered both parties bear an equal share of the resultant loss in value of the account rather than have it lie with the Former Husband (particularly as the Former Husband did not know she intended to commence proceedings). Note that the appeals court found that the trial court was properly within its discretion in assessing the value of such moneys but the error lay in the date the trial court applied to value the asset. The appeals court directed that the loss resulting from the currency exchange be considered on remand.

Attorney's Fees

In considering equitable distribution, the trial court may consider any amounts paid by a Former Spouse to his or her attorney which are sourced from marital assets and taken and paid in advance of the commencement of proceedings. In this case, the trial court erred in ordering the Former Husband to pay one-half of the Former

Wife's attorney's fees when she used marital funds for the down payment for her attorney's fees while the parties were still living together. After they separated, the Former Husband commenced paying temporary alimony which was specifically designed to include Former Wife's fees. Given the subsequent equitable distribution of assets, each party had the ability to pay his or her own fees and the trial court was directed to reconsider the matter on remand.

Case: [Butler v. Prine](#)
Court: Second District Court of Appeal.
Trial Judge: Linda R. Allan.
Attorneys: Tori A. Butler, Kathryn Marie Welsh.
Issues: Attorney's Fees.

Holding: An award of attorney's fees post-dissolution is within the jurisdiction of the trial court but must be based on substantial and cogent evidence for the court. Among such evidence is that regarding the reasonableness and necessity of all the legal work underlying the attorney fees forming the basis of such an award. Further, the trial court must adequately consider this particular factor. In this case, the trial court erred insofar as, while the evidence before it justified a fee award of some amount, the trial court did not establish that it had adequately considered the reasonableness and necessity of all of the legal work underlying the attorney fees. The appeals court reversed the award of attorney's fees and remanded for the trial court's reconsideration with authorization to receive additional evidence

Case: [McGarvey v. McGarvey](#)
Court: Fifth District Court of Appeal.
Trial Judge: Hubert L. Grimes.
Attorneys: Brian J. Lee, William R. Alexander.
Issues: Time-sharing, Child Support, Attorney's Fees.

Holding: In determining timesharing, a trial court must make an independent assessment of a timesharing arrangement that is in the best interests of the child or children. Such an assessment must be based on substantial cogent evidence. In this case, the trial court erred in finding that the parties had reached an agreement addressing, among other things, parenting, and ruled on timesharing and child support. The parties later conceded that no such agreement had been reached. The appeals court reversed the ruling on timesharing and, as a result, determined that child support may also need reconsideration.

Case: [Dugan v. Dugan](#)
Court: Fifth District Court of Appeal.
Trial Judge: Shawn L. Briese.
Attorneys: John N. Bogdanoff, Elizabeth Siano Harris.
Issues: Alimony, Equitable Distribution, Attorney's Fees.

Holding: An error on the face of a final judgment should be corrected. Findings related to alimony awards must have a proper evidentiary basis. A trial court must give its rationale, based on trial evidence, for a finding which forms part of the final judgment. In this case, the trial court erred in finding that all of Former Wife's medical expenses were entirely covered by Medicare, and entering such finding on the face of the judgment without sufficient rationale. Specifically, the trial court based its finding on what it described as the Former Husband's "uncontroverted testimony" notwithstanding that the Former Wife provided authority suggesting that she is responsible for Medicare premiums, deductibles, and noncovered expenses. The appeals court reversed on the issue of Former Wife's medical expenses and remanded.

Case: [Ledoux-Nottingham v. Downs](#)
Court: Fifth District Court of Appeal.
Trial Judge: Bob LeBlanc.
Attorneys: Jamie Billotte Moses, Leigh Anne Miller, Andrew T. Windle.
Issues: Grandparent Visitation, Attorney's Fees.

Holding: Jurisdiction
A Florida court shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this part or the determination was made under factual circumstances meeting the jurisdictional standards of Florida laws. In this case, trial court did not err when it enforced the Colorado order determining visitation for the Grandparents after the Mother moved from Colorado to Florida. Since the Colorado order was a final judgment and emanated from a "child custody proceeding" within the meaning of Florida Statutes (2013), it became enforceable in Florida pursuant to the Full Faith and Credit Clause. Accordingly, the trial courts was required, without discretion, to give recognition to final judgments of another state.

Modification

A party seeking modification of a time-sharing schedule has the burden of proving (1) a substantial and material change in circumstances, and (2) that the best interests of the child will be promoted by such modification. The substantial and material

change in circumstances must have occurred subsequent to the last order addressing time-sharing. In this case, the trial court properly determined that there had not been a substantial and material change in circumstances during the 13 days between the entry of the Colorado order and the filing of Mother's petition.

Make-Up Visitation

In such circumstances, a trial court is not necessarily precluded from ordering make-up visitation. On remand, the trial court was directed to promptly address the Grandparents' motion for make-up visitation.

Attorney's Fees

Florida Statutes (2013) provides that if a court has personal jurisdiction over the party against whom attorney's fees are being assessed, the court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including attorney's fees unless the party from whom fees are sought establishes that the award is clearly inappropriate. In this case, the trial court erred in summarily denying the Grandparents' request for attorney's fees, because it did not consider whether assessing attorney's fees against Mother would be "clearly inappropriate." On remand, the trial court was directed to make specific findings as to the entitlement to attorney's fees.

Case: [Beckstrom v. Beckstrom](#)
Court: Fourth District Court of Appeal.
Trial Judge: Amy Smith.
Attorneys: Betty C. Resch, Sean P. Sheppard.
Issues: Alimony, Attorney's Fees.

Holding: Attorney's Fees

Despite the lack of a transcript and an adequate record, when the error appears on the face of the judgment, it should be corrected. A trial court may order a party to pay a reasonable amount for attorney's fees. The trial court is required to consider the financial resources of both parties and make findings regarding their respective financial needs and abilities to pay. Failure to do so requires reversal. The trial court also has discretion to allow payment of an award of attorney's fees over time, but it must set out a factual basis for imposing the specific payment plan selected. In this case, the trial court found the Former Wife was in need of attorney's fees, but did not make a finding as to the Former Husband's ability to pay and did not set forth any factual basis for imposing this specific payment plan. The appeals court reversed the judgment on this issue and remanded the case to the trial court to make the requisite written findings.

Life Insurance Policy

Under the invited error rule, a party cannot successfully complain about an error for which he or she is responsible or of rulings that he or she invited the court to make. In this case, the trial court did not err in ordering the Former Husband to purchase a life insurance policy and include such a provision in his proposed final judgment when the Former Husband so agreed earlier in the proceedings. The appeals court affirmed on this point.

Case: [D.C.F. v. N.M.](#)
Court: Third District Court of Appeal.
Trial Judge: Martin Zilber.
Attorneys: Karla Perkins, Kevin Coyle Colbert, Donna Pike.
Issues: Attorney's Fees.

Holding: An appeals court has jurisdiction to review a contempt order against the Department in relation to improper filing of a case plan in advance of a reunification hearing. A finding of contempt must be made pursuant to relevant procedural rules, and after allowing the parties, including the party against which the finding of contempt is being sought, an opportunity to be heard. In this case, the trial court erred in making a finding of contempt against the Department without providing a reasonable opportunity to respond. The appeals court reversed and remanded with instructions to vacate an order imposing a related fine.

Case: [Berg v. Young](#)
Court: Fourth District Court of Appeal.
Trial Judge: David E. French.
Attorneys: Nancy W. Gregoire, Howard S. Friedman, Andrew A. Harris, Curtis L. Witters.
Issues: Equitable Distribution, Attorney's Fees.

Holding: The passive appreciation of a non-marital asset is a marital asset and subject to division where marital funds, or the efforts of either party, contributed to the appreciation. Where a prenuptial agreement does not address the right to enhanced value of a non-marital asset, the value is subject to equitable distribution. If a separate asset is unencumbered and no marital funds are used to finance its acquisition, improvement, or maintenance, then no portion of its value should be included in the marital estate (save for improvements arising from marital labor). A final judgment may be affirmed pursuant to the tipsy coachman doctrine because the trial court reached the right result, but for the wrong reasons. A trial court's interpretation of a prenuptial agreement is reviewed *de novo*, as such agreements are governed by the law of contracts. So, too, is its legal conclusion that an asset is

marital or non-marital. The standard of review of a trial court's determination of equitable distribution is abuse of discretion.

Florida statutes determine the review and award of attorney's fees in family law matters and seek to ensure that both parties will have a similar ability to obtain competent legal counsel. It can be an abuse of discretion to grant only a partial attorney's fee award where there is a substantial disparity between the parties' incomes. However, the trial court cannot award fees based solely on disparity of income. A trial court must make specific findings of fact, either at the hearing or in the written judgment, supporting its determination of entitlement to an award of attorney's fees and the factors that justify the specific amount awarded. Prenuptial agreement provisions awarding attorney's fees and costs to the prevailing party in pieces of litigation concerning the validity and enforceability such an agreement are enforceable. A trial court's ruling on attorneys' fees in family law actions is reviewed for an abuse of discretion.

In this case, although the trial court erred in its interpretation of the prenuptial agreement (in that it failed to consider the pertinent title presumption), it properly declined to award the Former Wife any interest in the Former Husband's company. Specifically, the trial court relied on competent, substantial evidence that the Former Husband's corporation (acquired via a bank account and moneys which, pursuant to the agreement, were non-marital) and appreciation in its value were non-marital and not subject to equitable distribution. The trial court erred as to its award of attorney's fees as it failed to make findings of fact on point. Further, the prenuptial agreement set out that the party seeking to avoid its terms would bear all the attorney's fees and costs incurred by the other. As the Former Wife sought, unsuccessfully, to void the agreement the Former Husband was entitled to an award of fees against her. The appeals court reversed and remanded on the issue of fees.

Case: [Jackson v. Jackson](#)
Court: Second District Court of Appeal.
Trial Judge: Kimberly Carlton Bonner.
Attorneys: Jaime L. Wallace.
Issues: Attorney's Fees.

Holding: An order for summary judgment which includes the words "go hence without day" is final. Florida Rules of Appellate Procedure currently require a notice of appeal of a final summary judgment on a claim for breach of contract to be filed within 30 days of rendition of the order to be reviewed. Florida statute provides for an award of reasonable attorney's fees when the court finds that the losing party knew, or

should have known, that a claim or defense, when initially presented to the court or any time prior to trial:

a. Was not supported by material facts necessary to establish the claim or defense; or

b. Would not be supported by the application of then-existing law to those material facts.

In making an order for fees, a trial court must make findings on both a party's entitlement to recover attorney's fees under the relevant statute, based upon substantial, competent evidence and facts to justify the award.

A record on appeal will typically contain a transcript of the hearing from the court below. While it is the appellant's burden to provide an adequate record, even when this burden is not met, a fee award without adequate findings to justify the amount is reversible. In this case, the notice of appeal of a final summary judgment was not filed in a timely fashion pursuant to the Rules and was not reviewable. The trial court erred in making its order for fees as it contained no factual findings to support its making and was therefore deficient. The appeals court reversed and remanded.

Case: [Corcoran v. Corcoran](#)

Court: Fifth District Court of Appeal.

Trial Judge: John M. Alexander.

Attorneys: Leonard R. Ross, Sara E. Glover, Deborah L. Greene, Andrea C. Jevic.

Issues: Alimony, Attorney's Fees, Equitable Distribution, Parenting.

Holding: A trial court shall make findings of fact as to modification of alimony. When determining attorney's fees, a trial court considers the parties' respective financial situations. A trial court must indicate what evidence it relied on for its findings regarding shared parental responsibilities and contempt of court. After a dissolution of marriage, the parties are equally responsible for all payments necessary to maintain their ownership of the marital property until its sale, including mortgage payments, taxes, insurance and repairs.

In this case, the trial court erred as it:

- a. reduced the Former Wife's monthly in the absence of specific findings of fact.
- b. awarded attorney's fees in the absence of specific findings as to the parties' financial need and ability to pay.

- c. failed to identify the evidence it relied on in making an order regarding shared parental responsibilities and the Former Wife being contempt of court.
- d. failed to hold the Former Wife solely responsible only for repairs to the marital home or, in the alternative, to indicate an evidentiary basis to hold her responsible for all future repairs.

The appeals court reversed and remanded for reconsideration.

Case: [Hutchinson v. Hutchinson](#)
Court: First District Court of Appeal.
Trial Judge: Monica J. Brasington.
Attorneys: Stephen K. Johnson, Emily A. Snider, Jonathan P. Culver.
Issues: Alimony, Attorney's Fees.

Holding: A trial court's award of attorney's fees is governed by statute. Such awards are to ensure that both parties will have a similar ability to obtain competent legal counsel. The general standard for awarding attorney's fees and costs is the requesting spouse's financial need and the other spouse's ability to pay. Awards of attorney's fees are reviewed for an abuse of discretion. Where marital property has been equitably distributed and the parties' incomes have been equalized through an alimony award, a trial court abuses its discretion by awarding attorney's fees. In this case, the trial court erred in awarding attorney's fees to the Former Wife after it had equitably distributed the marital property and further awarded her alimony, thereby equalizing the parties' incomes. The parties were in substantially the same financial positions and equally able to pay the fees and costs. The appeals court reversed the award of attorney's fees and costs

Case: [Cozzo v. Cozzo](#)
Court: Third District Court of Appeal.
Trial Judge: Barbara Areces.
Attorneys: Kimberly L. Boldt, Teresa Abood Hoffman, Maggie A. Berryman.
Issues: Attorney's Fees.

Holding: Florida law requires a party seeking attorney's fees to provide proof detailing the nature and extent of the services performed and expert testimony regarding the reasonableness of the fees. Where a party has provided sufficient, admissible proof of these two components, a trial court will not further mandate direct testimony from the attorney who performed the services. In this case, the trial court failed to provide a record which reveals sufficient evidence to support an award of attorney's fees. The appeals court reversed the trial court's order denying the Former Wife's

motion for attorney's fees, and remanded for entry of an award of fees in accordance with the evidence presented.

Case: [Lake v. Lake](#)
Court: Fourth District Court of Appeal.
Trial Judge: Jeffrey Dana Gillen.
Attorneys: John E. Schwencke, Christopher R. Bruce, Edward J. Jennings.
Issues: Alimony, Attorney's Fees.

Holding: Temporary support orders do not create vested rights, can be modified, and inequities in them can be resolved in the final judgment. While an order on appeal may raise certain questions, a party may be prevented from pursuing an appeal if he or she has failed to preserve errors for appeal. In this case, the trial court may have rendered an order that erred with regard to temporary alimony, costs, attorney's fees and suit money, however, the Former Husband failed to preserve any errors for appeal. The appeals court affirmed without prejudice to the Former Husband's challenging the fees at the time of the final judgment.

Case: [Cozzo v. Cozzo](#)
Court: Third District Court of Appeal.
Trial Judge: Barbara Areces.
Attorneys: Kimberly L. Boldt, Teresa Abood Hoffman, Maggie A. Berryman.
Issues: Attorney's Fees.

Holding: Florida law requires a party seeking attorney's fees to provide:
(a) proof detailing the nature and extent of the services performed; and
(b) expert testimony regarding the reasonableness of the fees.

Where a party has provided sufficient, admissible proof of these two components, no court has further mandated direct testimony from the attorney who performed the services. In this case, the trial court erred in denying the Former Wife's motion for attorney's fees when there was expert testimony given that the fees sought were reasonable, even though the testimony did not come from the attorney that actually performed the work. The appeals court reversed and remanded for further proceedings.

CERTIORARI

Case: [K.K. v. D.C.F.](#)
Court: Second District Court of Appeal.
Trial Judge: Emily A. Peacock.
Attorneys: Jennifer S. Paullin, Pamela Jo Bondi, Meredith Hall.
Issues: Dependency, Certiorari.

Holding: To be entitled to certiorari relief, the petitioner must show that the trial court's order departs from the essential requirements of the law and results in material harm that cannot be corrected on post-judgment appeal. The question of whether the order results in material harm that cannot be corrected on post-judgment appeal constitutes a jurisdictional test, while the question of whether the order departs from the essential requirements of the law constitutes a decision on the merits. It is improper, and a denial of due process, for a court to order relief not requested in any of the pleadings. As a general rule, case plan tasks and related activities imposed on parents and children must be meaningful and designed to address the facts and circumstances upon which the court based its determination regarding dependency, or, in some circumstances, a no-contact order. Further, those tasks must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case.

In this case, the trial court erred when it ordered the dependent children undergo therapeutic assessments in connection with the denial of the Mother's motion to amend a safety plan which prohibited her current husband, from having any contact with the children - his stepchildren. (In previous proceedings, the current husband, stepfather, was not a party per the statute. The trial court therefore entered a no-contact order as between him and the children.) Any error in requiring the children to undergo therapeutic assessments results in material harm that cannot be corrected on post-judgment appeal. Once the children undergo the assessments, the damage is done. The trial court's ruling departs from the essential requirements of the law in two ways. First, the ruling denied the Mother due process by ordering relief not requested in any of the pleadings. Neither the Mother nor the Department nor the Guardian ad Litem requested further assessments of the children in connection with this motion. The entry of an order imposing conditions about which the parents had no notice or opportunity to be heard violates due process. Requiring the children undergo therapeutic assessments which are unrelated to the reasons that resulted in the initial dependency (or, here, the no-contact order) is neither meaningfully designed to address the circumstances that brought them into care nor the least intrusive means possible to protect them. The appeals court quashed that portion of the dependency order.

Case: [Temares v. Temares](#)
Court: Third District Court of Appeal.
Trial Judge: Rosa C. Figarola.
Attorneys: Ronald H. Kauffman.
Issues: Time-sharing, Certiorari.

Holding: Under Florida Rules of Civil Procedure, compulsory psychological evaluation or drug testing is authorized only when the party submitting the request has good cause for the examination regarding matters in controversy. The “in controversy” and “good cause” requirements entail an affirmative showing by the movant that each condition as to which the examination is sought is genuinely in controversy and that good cause exists for ordering each particular examination. Conclusory allegations, alone, are insufficient to demonstrate either “in controversy” or “good cause” for submission to examination. A court may order testing, sua sponte, on sufficient record evidence.

In this case, the trial court erred in ordering testing in the absence of any showing by the movant (in any pleading or otherwise at the hearing) that the opposing Party’s mental condition was in controversy. Nor did the movant establish any good cause. Finally, there was nothing in the record to support a sua sponte order requiring testing. The appeals court (granted Petitioner’s motion for certiorari and) quashed the trial court order for testing.

Case: [D.C.F. v. N.H.](#)
Court: Third District Court of Appeal.
Trial Judge: Martin Zilber.
Attorneys: Karla Perkins, Sharon Wolling.
Issues: Dependency, Certiorari.

Holding: Certiorari may be granted where a trial court’s actions exceed its judicial authority by encroaching on the powers of the executive branch by ordering it to take some action not permitted by law. The DCF bears the burden of demonstrating that a trial court departed from the essential requirements of law, thereby causing irreparable injury which cannot be adequately remedied on appeal after final judgment. Florida statutes (2015) authorize the amendment of a case plan by the trial court or by agreement of all parties in certain limited circumstances.

In this case, the trial court erred, and the appeals court quashed a portion of its order relieving the Father from complying with an earlier case plan. Specifically, violence

in the presence of the child contradicted the claim that the Father no longer needed services and no competent, substantial evidence supported amending the case plan.

Case: [Wolfson v. Wolfson](#)
Court: Third District Court of Appeal.
Trial Judge: Stanford Blake.
Attorneys: Sandy T. Fox, Karen B. Weintraub, Robert W. Sidweber.
Issues: Parenting, Certiorari.

Holding: Child custody determinations in a judgment of dissolution of marriage may be varied only if a movant can prove modification is required by a substantial and material change in circumstances, and that the child's best interest will be promoted by such a modification. Generally, both parties must be given notice and opportunity to be heard prior to any modification, unless there is an actual, demonstrated emergency situation, such as where a child is threatened with physical harm or is about to be improperly removed from the state. Even in such instances, every reasonable effort should be made to ensure both parties have an opportunity to be heard. In this case, the trial court erred as it departed from the essential requirements of law when it entered an order granting an emergency request for temporary supervised visitation without providing both parties an opportunity to be heard. The appeals court granted a petition for certiorari with respect to the order and remanded for further proceedings.

Case: [Bailey v. Bailey](#)
Court: Fourth District Court of Appeal.
Trial Judge: Nicholas R. Lopane.
Attorneys: John E. Schwencke, Adam M. Zborowski, Michael J. Alman, Jamie D. Alman.
Issues: Time-sharing, Certiorari, Notice.

Holding: Certiorari
Certiorari will lie if an order compels production of confidential records and requires compulsory examination pursuant to Florida Rules of Civil Procedure. The issue on certiorari review is whether the order departs from the essential requirements of law and results in material injury which cannot be adequately remedied on appeal.

Notice

Proper notice of a motion must be given to opposing parties failing which the resulting order may be reviewed. Twenty-four hours' notice of a hearing on a motion may be inadequate.

Evaluations and Release of Records

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Motions for the compulsory production of confidential records and the appointment of a social investigator may be subject to certiorari review. Parties to such motions must be provided adequate notice. In this case, the trial court improperly ordered the appointment of a social investigator in regards to the Father, and improperly compelled him to produce confidential records and undergo a compulsory examination. The appeals court quashed these portions of the order as the Father was not provided adequate prior notice of the motion, which was filed on the same day as the hearing. Psychotherapist-patient privilege may be asserted to preclude compulsory production of certain mental health records. It would be open to the trial court to make a determination on point.

The granting or denying of an order for a psychological evaluation is a discretionary act and may be reversed only upon a conclusion that no judge could reasonably have ordered such an evaluation. Such an order may be upheld if it is based on factual findings supported by record evidence. A trial court may order a new psychiatric or psychological examination instead of than ordering disclosure of existing mental health records as this balances the court's need to determine the parents' mental health as it relates to the best interest of the child, and the duty maintain the psychotherapist-patient privilege. In this case, the trial court made factual findings based on the record, which put the Father's mental condition in controversy and provided good cause to compel his evaluation.

A trial court may consider, but is not bound by, the testimony or recommendations of a social investigator. In this case, the trial court erred in tying the Father's time-sharing with the minor children "subject to" the investigator's recommendations. This was an improper delegation of the court's authority to the investigator. The appeals court quashed this portion of the order.

CHANGE OF NAME

Case: [Airsman v. Airsman](#)
Court: Second District Court of Appeal.
Trial Judge: Joseph G. Foster.
Attorneys: Cynthia B. Hall.
Issues: Change of Name.

Holding: The test for changing a child's name is whether it is in the child's best interests or is necessary for the welfare of the child. A child's surname should remain unchanged absent evidence on point. The party seeking to change a child's name bears the burden of proof. Conclusory assertions are insufficient. In this case the trial court erred as the change of surname was not supported by competent, substantial evidence that the child's best interests were served, or that the welfare of the child was at risk. The appeals court reversed and remanded.

CHILD SUPPORT

Case: [Garcia v. Garcia](#)
Court: Third District Court of Appeal.
Trial Judge: Barbara Areces.
Attorneys: Douglas Isenberg.
Issues: Child support.

Holding: Florida Rules of Civil Procedure provide that a magistrate is responsible for creating an accurate and complete record of proceedings. A trial court may not adopt or ratify a magistrate's report if he or she fails to file a complete record of the evidence with the report, regardless of whether exceptions have been filed to that report. If a trial court has not received a complete record, all subsequent actions based on such reports and recommendations may be deemed erroneous. In this case, the trial court erred when it ratified the general magistrate's report despite having an incomplete record of the proceedings. A transcript from the hearing during which the testimony of the Former Husband and his accountant could not be prepared as the recording was inaudible. The testimony was absent from the record provided to the trial judge. The appeals court reversed and remanded with instructions to conduct further proceedings.

Case: [Lascaibar v. Lascaibar](#)
Court: Third District Court of Appeal.
Trial Judge: Bertila Soto.
Attorneys: Robert I. Spiegelman, Steven Grossbard.
Issues: Child Support.

Holding: A party may contest a general magistrate's recommendation by filing an exception to the recommendation within ten (10) days from the date the recommendation is served. If a party fails to file an exception, he or she cannot later claim entitlement to the interest accrued prior to the date of the recommendations/order at issue. While a general magistrate's findings of fact are presumed correct, a trial court is duty bound to examine and consider the evidence for itself and to make a judicial determination as to whether under the law and the facts the court is justified in entering the judgment recommended by the master. Furthermore, a trial court should carefully determine whether the general master's findings and determinations were supported by competent, substantial evidence or whether there was any other departure from the essential requirements of applicable law. A trial court is not bound to accept findings which are clearly erroneous. In this case the trial court erred when it abused its discretion and denied the Mother's exceptions to the general magistrate's recommendations at issue. The appeals court reversed the trial court's orders denying exceptions and remanded, directing that the Mother

be permitted to present evidence as to the amount of interest that accrued from the date the Father submitted the final lump-sum payment to the registry.

Case: [Rudnick v. Rudnick](#)
Court: Fourth District Court of Appeal.
Trial Judge: Martin H. Colin.
Attorneys: Robin Bresky, Jonathan Mann, Seth E. Schneiderman.
Issues: Child Support.

Holding: A trial court can include a party's bonus, or other form of elevated income, when calculating child support obligations if there is evidence establishing the bonus, or elevated income, is regular and continuous. In this case, the trial court erred when it relied strictly on the Former Husband's total annual income, including the bonus, for the previous year when calculating his child support obligation when there was uncontroverted evidence that the bonus was due to a specific non-recurring event (i.e., the 2012 presidential election). The appeals court reversed and remanded for the trial court to make additional findings consistent with this opinion.

Case: [Gonzalez v. Parisi](#)
Court: Fourth District Court of Appeal.
Trial Judge: Renee Goldenberg.
Attorneys: Jacqueline R. Hernandez-Valdes, Claudia Moncarz.
Issues: Child Support, Foreign Judgment.

Holding: A petitioner seeking to domesticate and enforce a foreign decree or judgment pertaining to child support obligations and arrearages must present a trial court with competent, substantial evidence in support of his or her claims. In this case, the trial court erred in finding that the Former Wife's assertions regarding a purported document providing for the payment of child support, with annual indexed increases, was the same agreement given effect in a foreign decree, when there was no competent, substantial evidence on point. The appeals court reversed as to the trial court's order granting the petition to domesticate because of the lack of competent substantial evidence of the document purporting to create the support obligation.

Case: [Niekamp v. Niekamp](#)
Court: Second District Court of Appeal.
Trial Judge: John S. Carlin.
Attorneys: Sam R. Assini, Matthew P. Irwin, Luis E. Insignares.

Issues: Equitable Distribution, Time-sharing, Spousal Support, Child Support, Imputing Income, Attorney's Fees.

Holding: Parental Responsibility

Final judgment that provides sole parental responsibility to one party and denies contact to the other must set out for the parent who losing contact what must be done to reconnect with the children. An order that does not do so is deficient as it fails to advise the parent what is expected and prevents a successor judge from monitoring the parent's progress.

Marital Assets

When an asset is acquired during the marriage, it is presumed to be marital unless specifically established otherwise. In considering a business as a marital asset, enterprise goodwill is a distributable marital asset and personal goodwill is non-marital. When a trial court makes an equitable distribution award of a business, characterized as a marital asset, a value must be assigned to the asset.

Alimony

A twenty-two-year marriage is presumed to be long-term. This places a presumption in favor of alimony when warranted by one party's need and the other party's ability to pay. In determining an alimony award, a trial court shall consider the parties' respective physical and emotional conditions and employability.

Dissipation of Assets

When a spouse depletes marital assets during the pendency of dissolution proceedings to pay for support, living expenses and litigation expenses, it is error to include the assets in the equitable distribution scheme unless a there is a specific finding of intentional misconduct. Such a finding must be based on evidence showing that the marital funds were used for one party's own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown.

In this case, the trial court erred in that:

- a. The final judgment failed to prescribe any schedule or benchmarks for re-establishing the Former Husband's parenting of the children.
- b. It classified the Former Wife's business as a non-marital asset, which although it depended heavily on her personal expertise and goodwill had tangible assets (bank accounts, instructional books and enterprise goodwill).
- c. It distributed a non-existent asset to the Former Husband (being money that he withdrew from retirement accounts spent on attorney's fees).

- d. It determined the Former Husband was voluntarily unemployed when there was evidence showing he was unemployed for mental health reasons.
- e. It imputed income to him in relation to child support and in its determination regarding payment of attorney's fees.

The appeals court reversed and remanded for further proceedings.

Case: [Moore v. Moore](#)
Court: Second District Court of Appeal.
Trial Judge: Paul L. Huey.
Attorneys: Virginia R. Vetter, Lorena L. Kiely.
Issues: Alimony, Child Support.

Holding: For the purpose of determining the amount of income that is attributable to a spouse in computing alimony, Florida law defines "income" as any payment to an individual, including wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuities, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal, state government, or local government. An award of alimony must be based on the income that is available to the party (ie; net monthly income). Additionally, in calculating a party's monthly income, business expenses must be deducted from the party's gross income.

In determining the amount of income that is attributable to a parent in computing child support, Florida statute defines "gross income" to include business income from self-employment, partnership, close corporations, and independent contracts. 'Business income' means gross receipts minus ordinary and necessary expenses required to produce income. A trial court's determination of a party's income has to be supported by substantial, competent evidence. Where there is a significant dispute in a party's income, meaningful appellate review is hampered by the absence of findings as to how the trial court determined the income amount.

In this case, the trial court abused its discretion in determining the Former Husband's monthly income because it failed to consider his business expenses. Although the trial court found that the Former Husband's testimony lacked credibility and that his business expenses were "grossly inflated," the trial court failed to give the Former Husband credit for any of his business expenses. The appeals court reversed the financial aspects of the final judgment and remanded for determination of the Former Husband's net monthly income and the amount of permanent alimony and child support to be awarded.

Case: [Henderson v. Henderson](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Beth M. Terry, Reese J. Henderson, Jr..
Issues: Custody, Child Support, Attorney's Fees.

Holding: Custody Order

The standard of review for the trial court's findings and determination regarding primary parental responsibility is abuse of discretion. A trial court's findings regarding the best interest of the child must be supported by competent, substantial evidence. Awarding sole parental responsibility to one parent is inappropriate without a specific finding that shared responsibility would be detrimental to the child. In this case the trial court erred regarding the custody order as it failed to contain a specific finding that shared responsibility would be detrimental to the children.

Attorney's Fees

Florida statutes, expressly requires the court to make findings regarding each party's financial needs and ability to pay. Where an order denying attorneys' fees fails to contain sufficient factual findings to facilitate meaningful appellate review of the trial court's decision, the appellate court must reverse and remand for the trial court to make further findings. The standard of review for an award or denial of attorney's fees in a dissolution of marriage proceeding is abuse of discretion. In this case, the trial court further erred when it denied attorneys' fees without findings as to the parties' needs, abilities to pay, and misconduct. Here, the evidence presented a clear disparity in income between the parties, which was not considered or referred to in the order.

Child Support

a. Trial court orders modifying child support are reviewed for an abuse of discretion. Florida statutes requires that all child support orders and income deduction orders entered on or after October 1, 2010, must provide for child support to terminate when a child turns eighteen years of age, if the child is between the ages of 18 and 19 and still in high school, or subject to an agreement between the parties. The trial court erred in awarding continuing child support obligations when it failed to provide an automatic decrease in child support once the parties' older child reached majority. Further, a Settlement Agreement between the parties as well as a prior Judgment and the Custody Order all contemplated reducing support payments when the older child reached majority and terminating the payments when the younger child reached majority.

b. A trial court must reduce the support obligation of a parent who has visitation for a "substantial amount of time" with a child. Florida statutes, provides that a substantial amount of time means that a parent exercises time-sharing at least 20 percent of the overnights of the year. The trial court erred in its calculation of Former Wife's temporary child support obligation because it failed to credit her with any overnights.

The appeals court reversed the custody order, award as to attorney's fees, continuing child support obligations, and temporary child support obligation.

Case: [Broga v. Broga](#)
Court: First District Court of Appeal.
Trial Judge: Karen Gievers.
Attorneys: Emilian "Ian" Bucataru, Marilyn K. Morris.
Issues: Alimony, Child Support.

Holding: Imputing income is a two-step analysis: (1) the determination of whether the parent's underemployment is voluntary; and (2) if so, the calculation of imputed income. Florida statute provides that monthly income shall be imputed to an unemployed or underemployed parent if the court finds such unemployment or underemployment is voluntary. The employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available. The same factors are applied for awards of child support and of alimony.

Given the uncertain nature of future employment, a court must make particularized findings regarding work history, occupational qualifications, and the current job market in the community. Failure to do so results in reversal. The prevailing income 'in the community,' not income that could have been earned from a relocation, is to be used.

In this case, the trial court erred in imputing income as the evidence of (1) the former husband's occupational qualifications and (2) the prevailing earning level in the community was sparse and conflicting. Also, while there was no dispute concerning the Former Husband's past work history, reliance on this factor alone was insufficient to impute income. While there were sufficient findings and competent substantial evidence of the Former Husband's prior earnings, the same could not be said regarding the Former Husband's occupational qualifications and the prevailing earning levels for similar positions within the relevant community. The appeals court reverse and remanded for the trial court to further address imputation of income.

Case: [Santos v. Santos](#)
Court: Second District Court of Appeal.
Trial Judge: Amy Smith.
Attorneys: Christine Greider, Justin C. Carlin, James W. Chandler.
Issues: Parenting, Child Support.

Holding: The use of outdated financial information in calculating a child support award can constitute reversible error. In this case, the trial court erred in its modification of the child support plan in the final judgment when it used outdated financial information from both the Former Wife and the Former Husband in calculating the amount of child support. The appeals court reversed the final judgment with respect to the child support modification and remanded for the trial court to reconsider the support award in light of the parties' updated financial information.

Case: [Elias v. Elias](#)
Court: Fourth District Court of Appeal.
Trial Judge: David E. French.
Attorneys: Howard M. Rudolph, Caryn A. Stevens, Joel M. Weissman.
Issues: Child Support.

Holding: Florida Statutes present Guidelines as the starting point for determining child support orders (both temporary and final). Awards of child support shall be based on the application of these Guidelines. After calculating a Guideline amount based on each parent's net monthly income and the children's need for support, the trial court may deviate from the Guideline amount based on a variety of factors, however, child support pursuant to the Guidelines must be determined before the trial court deviates.

In this case, the trial court erred in failing to apply the Guidelines despite the Former Husband's objections. Specifically, it erred in determining that neither party needed to pay child support; in concluding that the Former Wife's annual income of over \$1 million allowed her to provide for most of the children's needs by direct payments to vendors and providers, as she volunteered to do; and by treating expenditures for the three minor children made by the Former Husband (who had fifty-percent time-sharing) as largely incidental. The appeals court reversed and remanded with directions to the trial court to follow the statutory procedure.

Case: [Boyd v. Boyd](#)
Court: Fourth District Court of Appeal.
Trial Judge: Renee Goldenberg.
Attorneys: Robert D. Burgs, Catherine L. Roselli.

Issues: Child Support.

Holding: A trial court's decision to accept or reject a magistrate's conclusions is generally reviewed for an abuse of discretion. A magistrate's findings are subject to being set aside by the trial court when they are clearly erroneous or the magistrate misconceived the legal effect of the evidence. In this case, the trial court erred in approving the general magistrate's report and recommendation where the evidence showed the magistrate was expected, but failed, to set an arrearage amount (and there was sufficient evidence available to do so). The appeals court reversed and remanded for the trial court to resolve the issue of arrearages.

Case: [Sowell v. McConnell](#)

Court: Fifth District Court of Appeal.

Trial Judge: S. Sue Robbins.

Attorneys: Christina D'Amato-Miller, Mark D. Shelnutt, Rebecca A. Guthrie.

Issues: Child Support.

Holding: Florida Statutes (2013) require parties to pay the uncovered medical expenses of a child according to their percentage share of child support. In this case, the trial court erred by failing to require the Former Husband to reimburse the Former Wife for a portion of the minor children's medical expenses incurred during the parties' separation. Although the Former Husband asserts that the Former Wife did not present any evidence regarding the medical bills (including the dates of medical service, nature, necessity, or reasonableness of those bills) the bills were admitted into evidence during trial and the Former Husband voiced no objections when the Former Wife testified as to amounts. As such, the Former Wife was entitled to receive partial reimbursement for the medical bills she introduced into evidence. The appeals court reversed and remanded for the trial court to calculate and award her portion of the medical bills she paid.

Case: [Thompson v. Malicki](#)

Court: Second District Court of Appeal.

Trial Judge: Lee Ann Schreiber.

Attorneys: Christopher R. Bruce.

Issues: Relocation, Modification, Child Support.

Holding: A trial court's imputation of income must be supported by competent, substantial evidence. When calculating child support, Florida Statutes (2011) provide that the trial court shall impute income to a voluntarily unemployed or underemployed parent absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. Where income is to be imputed,

the employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available.

In this case the trial court did not err as to its modification of timesharing and the denial of relocation as those findings were based on cogent, substantial evidence. However, the trial court erred when it based an award of child on imputed income of the Former Wife which was not supported by sufficient findings or evidence. Reliance on past work history alone is insufficient to support imputation of income. Particularized findings are required regarding work history, occupational qualifications, and the current job market in the community to support the imputation of income. Failure to make these findings results in reversal.

The appeals court remanded for the trial court to take further evidence on this issue and recalculate the amount of child support as necessary.

Case: [Quinn v. Quinn](#)
Court: Second District Court of Appeal.
Trial Judge: John A. Schaefer.
Attorneys: Ingrid Anderson.
Issues: Child Support, Equitable Distribution.

Holding: When a parenting plan provides that the children will spend a "substantial amount of time" with each parent, defined as at least twenty per cent of the overnights per year, the award of child support should be adjusted as set forth in Florida Statutes (2013), requiring calculation based in part on the percentage of overnights the children spend with each parent. While the statute presumptively establishes the amount of child support, the court may deviate from the presumptive amount based on numerous factors, including the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan and whether all of the children are exercising the same time-sharing schedule. If the trial court wishes to deviate from the presumptive amount by more than five percent, the final judgment must include findings of fact to support the deviation and explain why the guidelines amount is unjust or inappropriate.

In this case, the trial court erred in ordering a number of overnights to each parent that contradicted those ordered in the parenting plan without explaining the discrepancy. This was an error on the face of the judgment requiring the appeals court to reverse and remand.

Case: [Bisel v. Bisel](#)
Court: Fourth District Court of Appeal.
Trial Judge: Laura M. Watson.
Attorneys: Kim L. Picazio.
Issues: Procedure, Child Support.

Holding: Florida law clearly holds that a trial court lacks jurisdiction to hear and to determine matters which are not the subject of proper pleading and notice. To allow a court to rule on a matter without proper pleadings and notice violates a party's due process rights. In this case, the trial court erred in that the notice of hearing had several problems, the first of which is that the description failed to notify Former Wife that the trial court would consider and rule upon her supplemental petition for upward modification of child support. Secondly, the Former Wife did not receive timely notice of the hearing as it related to her supplemental petition. Finally, pursuant to Florida Family Law Rules of Procedure, the trial court (not the Former Husband) was required to enter an order setting the action for trial. The appeals court reversed and remanded for further proceedings.

Case: [Heard v. Perales](#)
Court: Fourth District Court of Appeal.
Trial Judge: F. Shields McManus.
Attorneys: E. Christopher DeSantis, Michael Rebuck.
Issues: Child Support, Imputation.

Holding: In imputing income, the trial court engages in a two-step process. Firstly, the trial court must conclude that the termination of income was voluntary. Secondly, the trial court must determine whether the subsequent unemployment is the result of the Former Spouse's pursuit of his or her own interests or through less than diligent and *bona fide* efforts to find employment paying income at a level equal to or better than that formerly received. The trial court must make factual findings as to both steps. The trial court must set also forth factual findings as to the probable and potential earnings level, source of imputed and actual income, and adjustments to income. The party claiming income should be imputed to the other party, on purported grounds of unemployment or underemployment, bears the burden of showing both that the other party is employable and that there is employment available to him or her.

In this case, the trial court properly engaged on the first step, as is it determined, on proper evidence, that the Former Wife lost her employment because of her particular conduct. Such finding was sufficient to support a conclusion that she was

voluntarily unemployed. However, the trial court erred regarding the second step as it made no findings regarding the Former Wife's diligence in seeking new employment. Nor did the evidence support a finding that her subsequent unemployment resulted from less than diligent and *bona fide* efforts to find employment as the Former Husband did not introduce evidence as to these issues. Given the lack of necessary findings and evidence, the appeals court reversed and remanded for a redetermination of child support.

Case: [Dottaviano v. Dottaviano](#)

Court: Fifth District Court of Appeal.

Trial Judge: Clyde E. Wolfe.

Attorneys: Daniel A. Bushell, Shachar D. Spiegel, Stefani K. Nolan, Brian P. North, David Merritt.

Issues: Child Support, Equitable Distribution, Alimony.

Holding: Imputing Income

Florida Statutes provide that monthly income shall be imputed to an unemployed or underemployed parent if such unemployment or underemployment is found by the court to be voluntary on that parent's part. A trial court must employ a two-step analysis when deciding whether to impute income to a former spouse. Firstly, the trial court must determine that termination of employment was voluntary. Secondly, the trial court must determine whether the individual's subsequent unemployment or underemployment resulted from the pursuit of his or her own interests or through less than diligent and *bona fide* efforts to find employment paying income at a level equal to or better than that formerly received. Further, the former spouse claiming that income should be imputed to the unemployed or underemployed spouse bears the burden of showing both employability and the availability of jobs.

In this case, the trial court erred in imputing monthly income to the Former Wife when it failed to make a specific finding that she was voluntarily unemployed or underemployed. Nor did the trial court properly address that the Former Husband did not discharge the onus upon him to show that she was employable and there were available jobs for her. Finally, the trial court failed to properly address the Former Wife's evidence as to her *bona fide* efforts to obtain employment. The appeals court reversed and remanded with direction to reconsider alimony and child support, as those awards were tied to the improper imputation of income.

Matrimonial Home

Generally, the trial court should award the primary residential parent exclusive use and possession of the marital residence until the child reaches majority or is emancipated. However, special circumstances may justify partition and sale of the marital home where the parties' incomes are inadequate to meet their debts, obligations, and normal living expenses, as well as the expense of maintaining the marital residence. Special circumstances that justify the partition of the marital home can include instances where the parties resided in the marital residence for a short period of time, lacked other significant marital assets, and a large differential in relative earning power existed between the former spouses. In this case, the trial court erred in granting exclusive possession of the matrimonial home to the Former Husband, despite the residence of the minor child being there with him, insofar as this circumstance fell into one of those special circumstances warranting partition of the marital home. Specifically, the family had lived in the marital home for a short period of time when the parties separated, the parties do not have any other significant marital assets, and there is a large difference in the parties' earning capacity. Moreover, the payments related to the marital home are significant and the Former Husband could find a place for himself and the minor child to live that is less expensive. The appeals court ordered, on remand, that the trial court order the marital home be partitioned.

Case: [Chamberlain v. Eisinger](#)
Court: Fourth District Court of Appeal.
Trial Judge: Paul B. Kanarek.
Attorneys: A. Julia Graves
Issues: Child Support, Imputed Income, Time-Sharing, Reunification.
Holding: Modification of Custody & Timesharing

When modifying a parenting and timesharing plan, the primary considerations are the best interests of the children. To modify an order of custody, the movant must show that: the circumstances have substantially and materially changed since the original custody determination; this change could not be contemplated by the parties at the time of the original judgment; and it is in the child's best interests to change custody. While this onus on the party seeking to modify is intended to preclude repeated custody disputes, it should not preclude legitimate review of the petition. Courts must evaluate all relevant statutory factors affecting the welfare and interests of the child. A trial court's order changing custody enjoys a presumption of correctness on appellate review and will only be disturbed for abuse of discretion.

In this case, the trial court did not err in concluding a substantial change in circumstances existed and that such change warranted the modification of

timesharing because it trial court considered evidence relevant to the best interests of the children.

Reunification

A custodial parent has an affirmative obligation to encourage and nurture the relationship between the child and the noncustodial parent. This entails encouraging the child to interact with the noncustodial parent, taking good faith measures to ensure that the child visit and otherwise have frequent and continuing contact with the noncustodial parent and refraining from doing anything likely to undermine the relationship naturally fostered by such interaction. In this case, the trial court did not err in holding that the Former Husband was not thwarting the Former Wife's efforts at reunification with the children insofar as he provided evidence to support his position while the Former Wife provided none.

Child Support

The standard of review for a child support award is abuse of discretion. In this case, the trial court erred in factoring in the Former Husband's alimony payments into child support for months where he failed to pay alimony. The appeals court reversed and remanded for a determination of the amount of alimony paid to determine an offset to the retroactive child support obligation.

Imputing Income

When imputing income, the trial court must set forth factual findings, based on cogent evidence, concerning the probable and potential earnings level, source of imputed and actual income, and adjustments to income. In this case, the trial court erred in imputing income to the Former Husband in the absence of evidence.

Case: [Kelly v. Snietka](#)

Court: Fourth District Court of Appeal.

Trial Judge: Thomas Barkdull, III.

Attorneys: Craig A. Boudreau, Scott D. Glassman, Sue-Ellen Kenny.

Issues: Paternity, Child Support.

Holding: Under Florida Rules of Appellate Procedure, the court may review any ruling or matter occurring before filing of a notice of appeal. A notice of appeal of a final judgment does not include orders entered after the final judgment unless they are specifically appealed. In this case, the trial court did not err in taking jurisdiction to consider an order vacating a prior final judgment and a motion to disqualify a trial judge, as both were issued before the final judgment, which is under appeal.

Case: [Solache v. Ibarra](#)
Court: Third District Court of Appeal.
Trial Judge: Valerie R. Manno Schurr.
Attorneys: Harvey D. Rogers, Nory Diaz, Nancy A. Hass.
Issues: Child Support, Contempt.

Holding: Prospective Increase in Alimony

It is improper for a trial court to grant a final judgment which provides for an automatic prospective increase in alimony in the absence of specific factual findings, or the failure to articulate any reason, for same.

The trial court erred with regards to the provision in the final judgment that, upon the child of the marriage reaching the age of majority (and the termination of child support payments), the monthly alimony payments to Former Wife would automatically increase. The final judgment failed to make any specific factual findings, or articulate any reason, for such an automatic prospective increase in alimony. The appeals court concluded it was error to provide for this automatic increase, affirmed the contempt order and reversed that portion of the final judgment providing for an automatic increase in alimony.

Contempt Order

An initial determination of a support obligation by a trial court, which must be supported by competent substantial evidence, creates a presumption of a payor's ability to pay. At a contempt hearing, it is open for a trial court to determine whether a payor alleged to have defaulted on such obligations, has overcome this presumption. The trial court must, on competent substantial evidence, determine that the payor has the present ability to pay and failed or refused to comply with the support order to pay.

In this case, the trial court did not err with regard to the trial court's contempt order. The final judgment was predicated upon an affirmative finding of the Former Husband's ability to pay the support amount ordered. This initial determination, which was supported by competent substantial evidence, created a presumption of the Former Husband's ability to pay. The trial court's determination, at the contempt hearing, that former husband failed to overcome this presumption, had the present ability to pay, and failed to comply with this order, was also supported by competent substantial evidence.

Case: [McGarvey v. McGarvey](#)
Court: Fifth District Court of Appeal.
Trial Judge: Hubert L. Grimes.
Attorneys: Brian J. Lee, William R. Alexander.
Issues: Time-sharing, Child Support, Attorney's Fees.

Holding: In determining timesharing, a trial court must make an independent assessment of a timesharing arrangement that is in the best interests of the child or children. Such an assessment must be based on substantial cogent evidence. In this case, the trial court erred in finding that the parties had reached an agreement addressing, among other things, parenting, and ruled on timesharing and child support. The parties later conceded that no such agreement had been reached. The appeals court reversed the ruling on timesharing and, as a result, determined that child support may also need reconsideration.

Case: [Suarez v. Orta](#)
Court: Third District Court of Appeal.
Trial Judge: John Schlesinger.
Attorneys: Leonardo G. Renaud.
Issues: Child Support.

Holding: Florida courts emphasize substance over form. Generally, if a motion is improperly titled, a court should focus on its substance. Pleadings by pro se litigants should only be defined by their function. In this case, the trial court erred in declining to consider the Former Husband's motion notwithstanding that he had intended it as a timely-filed exception to a report, pursuant to Florida Family Law Rules of Procedure ("Rules"). The motion, filed on the same day the report and recommendation was entered, was filed within the ten-day window prescribed by the Rules. The appeals court reversed and remanded with instructions for the trial court to treat his pro se motion as a timely-filed exception pursuant to the Rules.

Case: [Wells v. Whitfield](#)
Court: First District Court of Appeal.
Trial Judge: E. McRae Mathis.
Attorneys: Seth Schwartz, Eric Lawson, Valarie Linnen.
Issues: Child Support.

Holding: In awarding child support, a trial court must make findings of fact based on record evidence in support. Meaningful appellate review is facilitated by such findings. In this case, while the trial court did not err (abuse of discretion) by refusing to allow the Father (Payor) to present additional evidence on rehearing, it erred when the

amended final judgment did not justify the amount of the child support obligation. Specifically, the trial court properly found the Father failed to show that certain monies should be excluded from his income for child support purposes but failed to state in the amended final judgment how much of that money was part of his income for child support calculations. The appeals court could not meaningfully review the child support award to determine whether it is within the guidelines. The appeals court reversed and remanded for the trial court to make specific findings on point.

Case: [Rosenblum v. Rosenblum](#)
Court: First District Court of Appeal.
Trial Judge: W. Gregg McCaulie.
Attorneys: Geraldine C. Hartin.
Issues: Child Support.

Holding: A party is entitled to have his or her motion to modify child support or alimony heard and resolved before, or simultaneously with, a hearing on another party's later-filed motion for contempt. In this case, the trial court erred in proceeding only on a motion for contempt filed by the Former Wife, when the Former Husband had filed a prior motion for modification of child support, despite his repeatedly objecting to proceeding without first or simultaneously resolving the issues raised in his earlier-filed motion. The appeals court reversed and remanded for further proceedings on the Former Husband's motion to modify child support.

Case: [Horrisberger, Jr. v. Horrisberger N/K/A Abbe](#)
Court: Second District Court of Appeal.
Trial Judge: Laurel Moore Lee.
Attorneys: Kathy C. George.
Issues: Child Support.

Holding: A trial court errs in determining child support based on a comparison of the gross income of one party to the net income of the other. In this case, the trial court erred in considering separate worksheets filed by the parties, which submitted respectively, figures which represented gross income net income. The appeals court reversed and remanded.

Case: [Gurdian v. Gurdian](#)
Court: Second District Court of Appeal.
Trial Judge: Ramiro Mañalich.
Attorneys:

Issues: Child Support, Alimony.

Holding: A trial court has the discretion to modify alimony effective as of the date of the petition for modification or subsequent thereto. A trial court's decision to modify child support and alimony retroactively is reviewed for abuse of discretion. A presumption of retroactivity applies unless the circumstances of the case dictate otherwise. Evidence may demonstrate a substantially different condition at the hearing on the petition than that which existed on the date of its filing. Wages and salary are specifically included in the definition of "income" under Florida Statutes (2011), and should be considered in determining child support and alimony obligations. Damages awarded for future loss of wages, on a worker's compensation claim, may be taken into account.

In this case, the trial court erred in modifying the Former Husband's child support and alimony obligations retroactively to the date of his filing a petition for modification, and in awarding the him judgment based upon his overpayment of past support, when he had a severance settlement sufficient to cover his support obligations while supplemental petition was pending. The retroactive application of the modification also resulted in a hardship on the Former Wife and the parties' children, who were not receiving any support. The retroactive application of the modification of the child support and alimony awards amounted to an abuse of discretion in the circumstances. The appeals court reversed.

Case: [Tluzek v. Tluzek](#)

Court: Fifth District Court of Appeal.

Trial Judge: John D. Galluzzo.

Attorneys: Sara Howeller, Jennifer A. Jacobs.

Issues: Child Support.

Holding: Florida's adoption subsidy statute is intended to encourage individuals to adopt special-needs children by assisting parents in providing the extra care a special-needs child requires. An adoption subsidy paid by the State of Florida may not be considered as a credit against a spouse's child support obligation. To hold otherwise would be inconsistent with the expressed intent of the legislation. In considering situations involving such subsidies, a trial court should initially determine a parents' child support obligation, then apportion the adoption subsidy between the parents, according to their proportionate amount of timesharing. It should not be credited or offset against the child support award.

In this case, the trial court erred in ordering that the monthly adoption subsidy received by the parties from the State of Florida for their children be offset against the Former Husband's child support obligation. In doing so, the trial court essentially negated the legislatively intended supplemental benefit of the subsidy

by terminating Former Husband's child support obligation and leaving the children financially shortchanged while with Former Wife. The appeals court reversed, finding this to be inconsistent with the supplementary purpose of the subsidy, and remanded with directions to reinstate the Former Husband's monthly child support obligation and calculate accrued child support arrearages and fashion an equitable remedy as to the accrued arrearages.

Case: [Morris-Piard v. Piard](#)
Court: Second District Court of Appeal.
Trial Judge: R. Thomas Corbin.
Attorneys: Stephanie M. Martin, Christina E. Blood.
Issues: Child Support.

Holding: Courts apply the statutory judgment interest rate from the date of loss or entitlement under Florida statutes for purposes of calculation of prejudgment interest. Child support obligations vest at the time payments are due. In this case, the trial court erred in calculating the prejudgment interest award on support payments the Former Wife owed. Specifically, the court improperly assessed a rate of 6% interest for the dependent Social Security Disability Insurance payments she owed when Florida's Chief Financial Officer decreased the judgment interest rate to 4.75% (Florida statutes (2011), effective October 1, 2011). The appeals court reversed and remanded with directions on that issue.

Case: [Brown v. Brown](#)
Court: First District Court of Appeal.
Trial Judge: Elizabeth A. Senterfitt.
Attorneys: William S. Graessle, Jonathan Graessle, Jeanine B. Sasser.
Issues: Time-sharing, Parenting, Child Support.

Holding: A trial court's decision on whether to modify a parenting plan is reviewed under an abuse of discretion standard. The modification of a parenting plan requires a substantial, material, and unanticipated change in circumstances since the original judgment or order, and must be in the best interests of the child. A trial court's denial of a petition to modify child support is also reviewed for abuse of discretion. Generally, a substantial change of circumstances is a prerequisite to bringing an action to modify child support. In this case, the trial court did not err (ie: abuse its discretion) in concluding that the Former Husband failed to demonstrate a substantial, material, and unanticipated change of circumstances as would warrant modification of the existing parenting plan. It did err, however, as it made four modifications to the parenting plan in the absence of changed circumstances. It also erred in making a final judgment of indirect civil contempt and order of

enforcement which was based on income calculations not supported by the record. The appeals court reversed and remanded.

Case: [Addie v. Coale](#)
Court: Fourth District Court of Appeal.
Trial Judge: Charles E. Burton.
Attorneys: Troy William Klein.
Issues: Child Support, Alimony.

Holding: The amount of a child support award partly depends on the alimony determination, as spousal alimony received by a party is considered income when determining child support. In a dissolution of marriage case, in which alimony is required because of a disparity in income between the parties, the court must first determine the amount of alimony and then, considering alimony as income, determine the amount of child support. In this case, the trial court erred in its calculation of the alimony award by considering only two of the ten factors outlined under Florida Statutes (2011) and departed from the essential requirements of law by making limited findings of fact based upon unsworn statements made during a hearing. The appeals court reversed.

Case: [Theodorides v. Theodorides](#)
Court: Third District Court of Appeal.
Trial Judge: Mindy S. Glazer.
Attorneys: Catherine L. Roselli, Pamela Jo Bondi, Toni C. Bernstein.
Issues: Child Support.

Holding: Florida Family Rules of Procedure permits a trial court to correct clerical mistakes and errors arising from oversight or omission in a judgment, decree or other part of the record at any time on its own initiative or on the motion of any party. The type of mistake subject to correction under this subsection includes only mistakes from an accidental slip or omission. Once the time for filing a written motion for rehearing has expired, the trial court is without jurisdiction to vacate a final judgment unless it is based on the narrow grounds for vacating a final judgment under the Rules. An order changing a child support award is a substantive change. In this case, the trial court erred as it lacked authority to grant the Former Wife relief pursuant the Rules. The mistake in this case cannot be classified as “clerical” in nature or a simple oversight. The appeals court reversed and remanded with directions.

Case: [Taylor v. Taylor](#)
Court: Fifth District Court of Appeal.

Trial Judge: Sally D. M. Kest.
Attorneys: Brett Meltzer, Matthew R. McLain.
Issues: Child Support, Custody.

Holding: Interpretation of a marital settlement agreement is a matter of law and the standard of review is *de novo*. A latent ambiguity exists where the language of an agreement is facially clear but an extrinsic fact or extraneous circumstance creates a need for interpretation or reveals an insufficiency in the contract or a failure to specify the rights or duties of the parties in certain situations. When a contract contains a latent ambiguity, the trial court must hear parol evidence to interpret the writing and to explain, clarify or elucidate the ambiguous term. In this case, the trial court erred by ordering the Former Husband to pay funds from his pension plan on a continuing monthly basis without considering parol evidence regarding the pertinent provision of the parties' marital settlement agreement ("MSA") (which contained a latent ambiguity with regard to the terms of payment). The appeals court reversed and remanded.

CONTEMPT

Case: [Whissell v. Whissell](#)
Court: Fourth District Court of Appeal.
Trial Judge: Jeffrey Dana Gillen.
Attorneys: Karen J. Haas, Jonathan S. Root.
Issues: Contempt, Procedure.

Holding: Where an appellant has disobeyed an order of the trial court, the appellate court may, in its discretion, either entertain or dismiss an appeal. However, where a dismissal is ordered it is mandatory that the non-compliant appellant must be given a period of grace, prior to the effective date of the dismissal, in which to comply with the order(s) at issue.

In this case, the appellant repeatedly refused to comply with the trial court's orders regarding temporary support and discovery, resulting in four findings of contempt and three writs of bodily attachment. The appellant (Former Husband) was incarcerated for such conduct and was released only after he made some payment on arrearages and promised the trial court future compliance, which he ultimately breached. The appeals court ordered the appeal be dismissed unless he established substantial compliance with the extant orders within 30 days of the appeal court decision. Jurisdiction was relinquished to the trial court for 30 days to determine the appellant's compliance and provide a status report.

Case: [Tucker v. Tucker](#)
Court: Fourth District Court of Appeal.
Trial Judge: Merrilee Ehrlich.
Attorneys: Theresa Yuricic.
Issues: Equitable Distribution, Alimony, Contempt.

Holding: A trial court's property valuation must be supported by competent, substantial evidence. By entering the final order before a party has had an opportunity to be heard, a trial court deprives him or her of the due process guaranteed by the Florida Constitution. Facts are not established for consideration by the trial court, or by appellate review, when attorneys make representations in their arguments before the trial court. Same does not constitute evidence. In setting the value of assets, a trial court must base its decision on proper evidence and provide findings as to the valuation. In this case the trial court erred as its stock valuation for an equitable distribution was not supported by competent, substantial evidence because of three errors. The trial court erred in determining the value of the stock:

1. before the Former Wife finished presenting her evidence;

2. without hearing the Former Husband's evidence, instead, relying on his attorney's unsworn statement;
3. by making its own assessment, without providing a factual explanation.

The appeals court reversed and remanded for the court to resume and complete the evidentiary hearing.

Case: [Haeberli v. Haeberli](#)
Court: Fifth District Court of Appeal.
Trial Judge: Bob Leblanc.
Attorneys:
Issues: Contempt.

Holding: While a person facing civil contempt sanctions is not entitled to the full panoply of due process rights afforded to a person facing indirect criminal contempt charges, he or she is nonetheless entitled to a proceeding that meets the fundamental fairness requirements of the due process clause of the Fourteenth Amendment to the United States Constitution. Such fundamental fairness includes providing the alleged contemnor with adequate notice and an opportunity to be heard. The failure to provide the Former Husband with any notice that motions for contempt would be considered justifies a reversal and a new hearing. An order finding the alleged contemnor to be in contempt shall contain a finding that a prior order of support was entered, the alleged contemnor has failed to pay part or all of the support ordered, the alleged contemnor had the present ability to pay support, and the alleged contemnor wilfully failed to comply with the prior court order. The order shall contain a recital of the facts on which these findings are based. In this case, the trial court erred when it denied the Former Husband due process by ruling on motions that had not been noticed for hearing. The appeals court reversed.

Case: [Castelli v. Castelli](#)
Court: Fourth District Court of Appeal.
Trial Judge: Laura M. Watson.
Attorneys: John H. Pelzer, Robert J. Moraitis, Peter M. Raimondi
Issues: Contempt, Matrimonial Property.

Holding: A right of first refusal is a right to elect to take specified property at the same price and on the same terms and conditions as those contained in a good faith offer by a third person if the owner manifests a willingness to accept the offer. When the holder of a right of first refusal attempts to exercise his right but adds or deletes terms and/or conditions that render the offer different than that submitted by the third party prospective purchaser, the right of first refusal has not been

properly exercised. However, a right of first refusal ripens into an option and is governed by the law of options when the owner of the property in question manifests a willingness to accept a good faith offer for the purchase of the property. In that case, a party need not recite the terms of the third party contract he is agreeing to match when he exercises his right of first refusal; rather it is simply enough to announce an intent to match them. In this case, the trial court erred in rejecting the Former Husband's attempt to exercise a right of first refusal with respect to the purchase of the former matrimonial home when, the right of first refusal had transformed into an option contract to which the Former Husband had agreed in principle (both before and after he invoked his "right of first refusal"). The trial court also erred in finding him in contempt for not executing a third party offer on the property. In this situation, the right of first refusal effectively transformed into an option contract when the Former Wife agreed in principle to accept the third party purchaser's offer, both before and after the Former Husband had invoked his "right of first refusal." The Former Husband had emailed indicating he would match the terms of another offer. This was sufficient to trigger the exercise of his right. The appeals court reversed and remanded to the trial court to strike the Former Husband's contempt order, insofar as he was seeking to invoke and exercise his right of first refusal in the circumstances, and enforce the exercise of his right of first refusal.

Case: [Solache v. Ibarra](#)
Court: Third District Court of Appeal.
Trial Judge: Valerie R. Manno Schurr.
Attorneys: Harvey D. Rogers, Nory Diaz, Nancy A. Hass.
Issues: Child Support, Contempt.

Holding: Prospective Increase in Alimony

It is improper for a trial court to grant a final judgment which provides for an automatic prospective increase in alimony in the absence of specific factual findings, or the failure to articulate any reason, for same.

The trial court erred with regards to the provision in the final judgment that, upon the child of the marriage reaching the age of majority (and the termination of child support payments), the monthly alimony payments to Former Wife would automatically increase. The final judgment failed to make any specific factual findings, or articulate any reason, for such an automatic prospective increase in alimony. The appeals court concluded it was error to provide for this automatic increase, affirmed the contempt order and reversed that portion of the final judgment providing for an automatic increase in alimony.

Contempt Order

An initial determination of a support obligation by a trial court, which must be supported by competent substantial evidence, creates a presumption of a payor's ability to pay. At a contempt hearing, it is open for a trial court to determine whether a payor alleged to have defaulted on such obligations, has overcome this presumption. The trial court must, on competent substantial evidence, determine that the payor has the present ability to pay and failed or refused to comply with the support order to pay.

In this case, the trial court did not err with regard to the trial court's contempt order. The final judgment was predicated upon an affirmative finding of the Former Husband's ability to pay the support amount ordered. This initial determination, which was supported by competent substantial evidence, created a presumption of the Former Husband's ability to pay. The trial court's determination, at the contempt hearing, that former husband failed to overcome this presumption, had the present ability to pay, and failed to comply with this order, was also supported by competent substantial evidence.

Case: [Hofschneider v. Hofschneider](#)
Court: Second District Court of Appeal.
Trial Judge: Richard A. Nielsen.
Attorneys: Jeremy T. Simons.
Issues: Contempt.

Holding: Pre-judgment civil contempt orders are properly reviewed by certiorari. In this case, as the issue involved review of a contempt order by the trial court, the appeals court converted the matter to a petition for writ of certiorari. It was, however, declined as the Appellant / Applicant did not demonstrate suffering a material injury that could not be corrected on post-judgment appeal.

Case: [Timmons v. Timmons](#)
Court: Second District Court of Appeal.
Trial Judge: Lisa S. Porter.
Attorneys: Mira Staggers White.
Issues: Contempt.

Holding: Notwithstanding an appellant's failure to provide a transcript, an appellate court may reach errors that appear on the face of a trial court's order. Florida Statute provides that, upon the entry of an order establishing, enforcing, or modifying an obligation for alimony or child support, the trial court shall enter a separate order

for income deduction if one has not been entered. An income deduction order shall state the amount of the arrearage owed and direct a payor to withhold an additional 20% or more of the periodic amount specified in the order until full payment is made of any arrearage.

In this case, the trial court erred in entered an order holding Former Husband in contempt for failure to pay alimony and entering an income deduction order requiring withholdings of 10% of his monthly periodic alimony obligation from his income despite Florida Statutes (2014), requiring that the arrearage be satisfied through monthly deductions of 20%. The appeals court reversed the contempt and income deduction orders to the extent they provide for income deduction at a rate of less than 20%. The absence of a transcript presented no impediment.

Case: [Cockrell v. Kinnett](#)
Court: Fifth District Court of Appeal.
Trial Judge: C. David Hood, Jr..
Attorneys: Therese Misita Truelove, Douglas A. Kneller.
Issues: Contempt.

Holding: A party is entitled to a modification of a timesharing schedule if he or she pleads and proves: (1) a substantial change of circumstances since entry of the final judgment of paternity; and (2) the requested change would be in the best interests of the child. In this case, the trial court erred in when it found the Mother in contempt and modified timesharing. Particularly, while the Father filed a motion for contempt, which alleged the Mother had wrongfully prevented him from exercising his timesharing rights, the motion did not seek a modification of timesharing. Nor did it allege that there had been a substantial change in circumstances, or that a modification would be in the child's best interest. The Mother was not placed on proper notice that a modification of the timesharing schedule would be at issue. The appeals court reversed.

Case: [Lynch v. Lynch](#)
Court: Fifth District Court of Appeal.
Trial Judge: Robert T. Burger.
Attorneys: Joshua D. Ferraro.
Issues: Equitable Distribution, Contempt.

Holding: An award subject to equitable distribution is not enforceable by contempt. The only remedies are those available to creditors against debtors. In this case, the trial court erred in granting the Former Wife's motion for contempt after she sought to enforce a portion of the Former Husband's disability benefits which were granted to her in

the final dissolution. Such order was error as contempt is not a remedy – rather, the remedies are those available to creditors against debtors. The appeals court reversed.

CUSTODY/TIME-SHARING

Case: [Lopez v. Lopez](#)
Court: Fourth District Court of Appeal.
Trial Judge: Arthur M. Birken, Merrilee Ehrlich.
Attorneys: Venol C. Adams, Susan R. Brown.
Issues: Custody, Time-sharing.

Holding: Orders determining the rights or obligations of a party regarding child custody or time-sharing under a parenting plan can be non-final orders. A timely motion for rehearing will suspend the rendition of a final order until the order disposing of the motion for rehearing is entered. However, a motion for rehearing does not suspend the rendition of a non-final order. Notice must be timely. In this case, the appellant (Father) appealed an order for custody, visitation and proposing a time-sharing schedule, which was conditioned on the successful outcome of reunification therapy. This was a non-final order. His notice of appeal was not filed within the procedural timelines (in this case, within thirty days) after the non-final order was rendered. The appeals court was required to dismiss for lack of jurisdiction.

Case: [Felipe v. Rincon](#)
Court: Fifth District Court of Appeal.
Trial Judge: C. Jeffery Arnold.
Attorneys: Alejandro L. Marriaga, Gisela Then Laurent.
Issues: Procedure, Paternity, Custody, Time-sharing.

Holding: Florida Family Law Rules of Procedure require sufficient notice to parties of final hearings. In this case, the trial court erred when it entered default judgment against the Mother despite her not being properly served with the motion and receiving insufficient notice. The trial court relied on its own certificate of service noting the wrong address for the Mother despite her having filed an updated address several weeks prior. The record does not reflect that Mother received proper service of the counter-petition, the motion for default, the order granting default, or notice of the final hearing. The appeals court reversed the default final judgment and remanded for the trial court to vacate the judicial default.

Case: [Blevins v. Blevins](#)
Court: Fifth District Court of Appeal.
Trial Judge: Scott C. Dupont.
Attorneys: Brian P. North, Mary Esther, Philip J. Bonamo.
Issues: Time-sharing.

Holding: A final divorce decree providing for the custody of a child can be materially modified only if there are facts concerning the welfare of the child that the court did not know at the time the decree was entered, or if there has been a substantial change in circumstances shown to have arisen since the decree. The petitioning parent bears an extraordinary burden to prove a substantial change in circumstances. Substantial, competent evidence of a substantial change of circumstances is required for modification. The parents' inability to communicate does not satisfy the substantial change requirement for modification. In this case, the trial court erred in modifying because the location of the parties' respective residences was known at the time of the final judgment. The parties' evidence established an inability to communicate but this fails to satisfy the substantial change requirement for modification. The appeals court reversed the modification order and remanded with instructions to reinstate the equal time-sharing schedule set forth in the final judgment of dissolution

Case: [Niekamp v. Niekamp](#)

Court: Second District Court of Appeal.

Trial Judge: John S. Carlin.

Attorneys: Sam R. Assini, Matthew P. Irwin, Luis E. Insignares.

Issues: Equitable Distribution, Time-sharing, Spousal Support, Child Support, Imputing Income, Attorney's Fees.

Holding: Parental Responsibility

Final judgment that provides sole parental responsibility to one party and denies contact to the other must set out for the parent who losing contact what must be done to reconnect with the children. An order that does not do so is deficient as it fails to advise the parent what is expected and prevents a successor judge from monitoring the parent's progress.

Marital Assets

When an asset is acquired during the marriage, it is presumed to be marital unless specifically established otherwise. In considering a business as a marital asset, enterprise goodwill is a distributable marital asset and personal goodwill is non-marital. When a trial court makes an equitable distribution award of a business, characterized as a marital asset, a value must be assigned to the asset.

Alimony

A twenty-two-year marriage is presumed to be long-term. This places a presumption in favor of alimony when warranted by one party's need and the other

party's ability to pay. In determining an alimony award, a trial court shall consider the parties' respective physical and emotional conditions and employability.

Dissipation of Assets

When a spouse depletes marital assets during the pendency of dissolution proceedings to pay for support, living expenses and litigation expenses, it is error to include the assets in the equitable distribution scheme unless there is a specific finding of intentional misconduct. Such a finding must be based on evidence showing that the marital funds were used for one party's own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown.

In this case, the trial court erred in that:

- a. The final judgment failed to prescribe any schedule or benchmarks for re-establishing the Former Husband's parenting of the children.
- b. It classified the Former Wife's business as a non-marital asset, which although it depended heavily on her personal expertise and goodwill had tangible assets (bank accounts, instructional books and enterprise goodwill).
- c. It distributed a non-existent asset to the Former Husband (being money that he withdrew from retirement accounts spent on attorney's fees).
- d. It determined the Former Husband was voluntarily unemployed when there was evidence showing he was unemployed for mental health reasons.
- e. It imputed income to him in relation to child support and in its determination regarding payment of attorney's fees.

The appeals court reversed and remanded for further proceedings.

Case: [Perez v. Fay](#)
Court: Second District Court of Appeal.
Trial Judge: Elisabeth Adams.
Attorneys: Robert L. Donald, Robert J. Coleman.
Issues: Custody, Procedure.

Holding: Claims for relief consisting of modification of residence of a minor child, time-sharing, or other parenting matters must be supported by substantial and sufficient evidence showing a change of circumstances not anticipated at the time of the order to be modified. A parent has a constitutionally protected inherent right to a meaningful relationship with his or her children. Time-sharing privileges should not be denied to either parent as long as his or her conduct, while in the presence of the children, will not adversely affect the children. Given of the constitutional right to a meaningful parent-child relationship, there must be competent, substantial evidence in the record that demonstrates that any restrictions or limitations on time-

sharing are in the best interests of the child. It is the trial court's responsibility to ensure that an appropriate relationship is maintained between a parent and his or her children. When the court exercises its discretion to reduce or eliminate time-sharing with a parent's children, the court must give the parent the key to reconnecting with his or her children. An order that does not set forth the specific steps a parent must take to re-establish time-sharing, thus depriving the parent of that key, is deficient because it prevents the parent from knowing what is expected and prevents any successor judge from monitoring the parent's progress. The trial court cannot delegate its authority to rule on the visitation details to a person such as a supervisor of a parent's time-sharing. Such a delegation of authority constitutes an abuse of discretion that must be reversed. A parent's visitation rights may not be conditioned on the payment of the parent's financial obligations. The expenses of visitation are part of the parties' childrearing expenses that must be addressed as part of the parties' child support obligations.

In modification proceedings, as in other civil matters, courts are not authorized to award relief not requested in the pleadings. To grant unrequested relief is an abuse of discretion and reversible error. Additionally, a court should not grant such relief absent proper notice to the parties. Moreover, a court errs in granting relief on issues not tried with the consent of the parties.

In this case, the trial court erred in several ways. The trial court ruled on matters not requested in the pleadings. The trial court sua sponte awarded the Father sole parental responsibility and sole decision-making authority despite the fact that the Father did not raise the issues in his pleadings, and the issues were not tried by consent. Even if the Father had requested such relief in his pleadings, no evidentiary basis existed to support it. The trial court abused its discretion in making any change to this portion of the original final judgment. The appeals court reversed and remanded for the trial court to reinstate shared parental responsibility and shared parental decision-making responsibility as to all issues. The same analysis applied to other aspects of the trial court's order including rulings requiring the Mother speak only English to the minor child, reduced time-sharing to the Mother and the costs of time-sharing. Finally, the trial court's ruling was legally deficient as it failed to set forth what was required of the Mother to regain primary residential custody and/or meaningful unsupervised time-sharing with her daughter. The appeals court reversed and remanded for reconsideration.

Case: [Henderson v. Henderson](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Beth M. Terry, Reese J. Henderson, Jr..
Issues: Custody, Child Support, Attorney's Fees.

Holding: Custody Order

The standard of review for the trial court's findings and determination regarding primary parental responsibility is abuse of discretion. A trial court's findings regarding the best interest of the child must be supported by competent, substantial evidence. Awarding sole parental responsibility to one parent is inappropriate without a specific finding that shared responsibility would be detrimental to the child. In this case the trial court erred regarding the custody order as it failed to contain a specific finding that shared responsibility would be detrimental to the children.

Attorney's Fees

Florida statutes, expressly requires the court to make findings regarding each party's financial needs and ability to pay. Where an order denying attorneys' fees fails to contain sufficient factual findings to facilitate meaningful appellate review of the trial court's decision, the appellate court must reverse and remand for the trial court to make further findings. The standard of review for an award or denial of attorney's fees in a dissolution of marriage proceeding is abuse of discretion. In this case, the trial court further erred when it denied attorneys' fees without findings as to the parties' needs, abilities to pay, and misconduct. Here, the evidence presented a clear disparity in income between the parties, which was not considered or referred to in the order.

Child Support

a. Trial court orders modifying child support are reviewed for an abuse of discretion. Florida statutes requires that all child support orders and income deduction orders entered on or after October 1, 2010, must provide for child support to terminate when a child turns eighteen years of age, if the child is between the ages of 18 and 19 and still in high school, or subject to an agreement between the parties. The trial court erred in awarding continuing child support obligations when it failed to provide an automatic decrease in child support once the parties' older child reached majority. Further, a Settlement Agreement between the parties as well as a prior Judgment and the Custody Order all contemplated reducing support payments when the older child reached majority and terminating the payments when the younger child reached majority.

b. A trial court must reduce the support obligation of a parent who has visitation for a "substantial amount of time" with a child. Florida statutes, provides that a substantial amount of time means that a parent exercises time-sharing at least 20 percent of the overnights of the year. The trial court erred in its calculation of Former Wife's temporary child support obligation because it failed to credit her with any overnights.

The appeals court reversed the custody order, award as to attorney's fees, continuing child support obligations, and temporary child support obligation.

Case: [Suleiman v. Yunis](#)
Court: Fifth District Court of Appeal.
Trial Judge: Alan S. Apte.
Attorneys: Adam H. Sudbury.
Issues: Time-Sharing, Procedure.

Holding: Pursuant to the Florida Rules of Appellate Procedure, the appeals court has jurisdiction to address matters of denials of due process. Failure to give notice of a hearing to the opposing party absent a true emergency deprives the opposing party of its right to procedural due process. Courts reverse those temporary custody orders which are entered without notice; or with insufficient notice; or with insufficient opportunity to be heard. In order to prevail on a request for a temporary modification of custody, the moving party must meet the burden of proving that (1) a substantial change in the condition of one or both of the parties has occurred, and (2) the best interests of the child will be promoted by the change although the entry of an emergency ex parte order temporarily changing custody might be warranted under certain circumstances, such as where a child is threatened with physical harm or is about to be improperly removed from the state.

In this case, the trial court erred insofar as it denied, at the hearing on Former Wife's motion to vacate, her requested relief notwithstanding that she presented sufficient and cogent evidence on point; the Former Husband failed to provide sufficient evidence in support of the ex parte order; a substantial change of circumstances had occurred; and that the best interests of the children would be promoted by modifying the timesharing schedule. The lower court abused its discretion in its failure to properly resolve the issue given the lack of evidence in support of the order it issued. The appeals court reversed and vacated the orders.

Case: [Herman v. Herman](#)
Court: Third District Court of Appeal.
Trial Judge: Mindy S. Glazer.
Attorneys: Evan L. Abramowitz, Cynthia L. Greene.
Issues: Parenting, Time-sharing.

Holding: Florida Statutes (2015), provide that the trial court shall order the parental responsibility for a minor child be shared by both parents unless it finds that shared parental responsibility would be detrimental to the child. The trial court shall evaluate the evidence to determine if both parents are equally capable of providing

for the minor child or children, and are capable of making paramount the child's or children's needs.

In this case, the trial court did not err in that it articulated its findings in a Supplemental Judgment, such findings being supported by competent substantial evidence. Nor did the trial court abuse its discretion by ordering shared parental responsibility. The appeals court affirmed the timesharing schedule established by the trial court in the Supplemental Judgment.

Case: [Fosshage v. Fosshage](#)
Court: Third District Court of Appeal.
Trial Judge: Tegan Slaton.
Attorneys: Samuel J. Kaufman, Lawrence E. Harkenrider, Giulio Margalli.
Issues: Time-sharing, Modification (Permanent Residence).

Holding: Under Florida Statutes (2013), there is a clear distinction between modification based on changed circumstances and modification based on relocation. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. In determining whether a change in circumstances has occurred, a trial court must consider a statutorily enumerated list of factors. A petition for relocation, on the other hand, requires a different procedure with specific statutory requirements governing the content of the petition, service on the other parent, burdens of proof, and factors to be considered by the court.

In this case, the trial court erred in treating what was a petition for relocation as a change in circumstances and therefore did not adhere to or consider the correct process and factors. The appeals court reversed and remanded for the proper proceedings.

Case: [Dickson v. Dickson](#)
Court: Fifth District Court of Appeal.
Trial Judge: Mark J. Hill.
Attorneys: Nicholas A. Shannin, Lauren M. Ilvento, Barry P. Burnette, Matthew B. Capstraw.
Issues: Timesharing.

Holding: A trial court's order modifying a parenting plan and timesharing schedule is reviewed for an abuse of discretion. The trial court has less authority and discretion to modify timesharing than it does to make the initial timesharing determination. Under Florida Statutes (2013), relocation is a change in the location of the principal

residence of a parent or other person from his or her principal place of residence at the time of the last order establishing or modifying time-sharing. Further, the change of location must be at least 50 miles from that residence. In the absence of a statutory or contractual provision to the contrary, the proper method to measure the distance between two points is the straight-line or “as the crow flies” measure. Under the principle of shared parental responsibility, major decisions affecting the welfare of a child are to be made after the parents confer and reach an agreement. If the parents reach an impasse, the dispute should be presented to the court for resolution whereby the court must resolve the impasse by determining the best interests of the child.

In this case, the trial court abused its discretion by modifying the timesharing agreement without evidence that the welfare of the minor child would be promoted by a return to the school the minor child had previously attended and modifying the timesharing arrangement so that the Father assumed the primary timesharing responsibilities. The Mother’s move did not violate the marital settlement agreement or the relocation statute. While the timesharing schedule largely met the statutory requirements, it did not include a school designation, and the marital settlement agreement did not expressly prohibit a move. Further, the parties agreed that the Mother moved forty-nine miles “as the crow flies,” using the straight-line test and was not required to file a petition to relocate. However, the dissolution final judgment gave the parties shared parental responsibility on major decisions, including educational matters. Because the parties were unable to agree on the minor child’s school, the Mother was required to obtain court approval before unilaterally changing the schools the minor child attended. The appeals court reversed and remanded with directions.

Case: [Chamberlain v. Eisinger](#)
Court: Fourth District Court of Appeal.
Trial Judge: Paul B. Kanarek.
Attorneys: A. Julia Graves
Issues: Child Support, Imputed Income, Time-Sharing, Reunification.
Holding: Modification of Custody & Timesharing

When modifying a parenting and timesharing plan, the primary considerations are the best interests of the children. To modify an order of custody, the movant must show that: the circumstances have substantially and materially changed since the original custody determination; this change could not be contemplated by the parties at the time of the original judgment; and it is in the child’s best interests to change custody. While this onus on the party seeking to modify is intended to preclude repeated custody disputes, it should not preclude legitimate review of the petition. Courts must evaluate all relevant statutory factors affecting the welfare

and interests of the child. A trial court's order changing custody enjoys a presumption of correctness on appellate review and will only be disturbed for abuse of discretion.

In this case, the trial court did not err in concluding a substantial change in circumstances existed and that such change warranted the modification of timesharing because it trial court considered evidence relevant to the best interests of the children.

Reunification

A custodial parent has an affirmative obligation to encourage and nurture the relationship between the child and the noncustodial parent. This entails encouraging the child to interact with the noncustodial parent, taking good faith measures to ensure that the child visit and otherwise have frequent and continuing contact with the noncustodial parent and refraining from doing anything likely to undermine the relationship naturally fostered by such interaction. In this case, the trial court did not err in holding that the Former Husband was not thwarting the Former Wife's efforts at reunification with the children insofar as he provided evidence to support his position while the Former Wife provided none.

Child Support

The standard of review for a child support award is abuse of discretion. In this case, the trial court erred in factoring in the Former Husband's alimony payments into child support for months where he failed to pay alimony. The appeals court reversed and remanded for a determination of the amount of alimony paid to determine an offset to the retroactive child support obligation.

Imputing Income

When imputing income, the trial court must set forth factual findings, based on cogent evidence, concerning the probable and potential earnings level, source of imputed and actual income, and adjustments to income. In this case, the trial court erred in imputing income to the Former Husband in the absence of evidence.

Case: [Baker v. Baker](#)
Court: Fifth District Court of Appeal.
Trial Judge: Bob Leblanc.
Attorneys:
Issues: Custody.

Holding: To succeed on a petition for a change of custody, whether permanent or temporary, the petitioner must plead and prove, AND the trial court must find on the evidence, the following:

- a) that a substantial change of circumstances occurred since entry of the previous custody order, which was not reasonably contemplated when the previous order was entered; and
- b) the requested change of custody is in the best interests of the child.

If the first requirement is not met, the trial court need not address the second. A modification petition must be properly pled. Failure to plead properly is fatal, such that a modification order can be reversed on that basis by an appeals court. In this case, the trial court erred in temporarily changing custody because Former Wife failed to plead and prove a substantial change in circumstances since the previous custody determination and by modifying custody at a hearing that that was not properly noticed as being for a modification proceeding.

Case: [Maguire v. Wright](#)
Court: Fifth District Court of Appeal.
Trial Judge: Alan A. Dickey.
Attorneys: Sarah H. Bolinder.
Issues: Custody.

Holding: Florida statutes set out the factors a trial court must consider in creating a parenting plan that governs each parent’s relationship with his or her minor child and the relationship between each parent with regard to his or her minor child. While separate findings as to each factor are not required to sustain a temporary award, the record must reflect that the custody determination was made in the best interest of the child. However, the appeals court has also specifically recognized a “true emergency” exception to the general rule, concluding that the normal burden on the party seeking custody to show that the custody transfer is in the child’s best interest need not be met when there is an improper removal of a minor child from the state. If a court grants permission for a parent to remove a child from the jurisdiction for a date specific, the child must be returned by that date, failing which the removal becomes improper. Based on the context in which the removal is granted, it can be construed to be an interlocutory order determining the right to custody. As such, the appeals court has jurisdiction under Florida Rules of Appellate Procedure. A further hearing may be necessary to resolve the issues of temporary shared parental responsibility and temporary timesharing in accordance with the relevant statutory criteria holding that the best interests of the child are paramount. In this case, the trial court did not err in granting temporary custody of the minor child to the Former Wife. The appeals court affirmed and remanded for an evidentiary hearing on temporary shared parental responsibility and temporary time-sharing.

Case: [McIndoo v. Atkinson](#)
Court: Fourth District Court of Appeal.
Trial Judge: Laura M. Watson.
Attorneys: *Pro Se.*
Issues: Custody, Foreign Judgments.

Holding: The general purposes of the UCCJEA are to avoid jurisdictional competition and conflict with other courts in child custody matters; promote cooperation with other courts; insure that a custody decree is rendered in the state which enjoys the superior position to decide what is in the best interest of the child; deter controversies and avoid relitigation of custody issues; facilitate enforcement of custody decrees; and promote uniformity of the laws governing custody issues.

If the factual circumstances of a case meet the jurisdictional standards of the statute, and the foreign order has not been modified, then a trial court should exercise jurisdiction to grant a party's petition of domesticate the foreign order. Specifically, in a child custody proceeding under commenced under Florida statute, if the Home State Rule applies, and if there are no proceedings in another state, or if there are proceedings in the another state which are not identical to those in Florida, then a Florida trial court may exercise jurisdiction.

A child custody proceeding involves legal custody, physical custody, residential care, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.

Under Florida statute, "Home State" means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. In the case of a child younger than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period. The "Home State" rule applies to child custody proceedings.

A Florida court may not exercise its jurisdiction for custody if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state.

In this case, the trial court erred when it found that it did not have subject-matter jurisdiction because: (1) the Petitioner Mother did not file a motion regarding a "child custody proceeding" as defined by Florida statute; (2) Florida was not the

“home state” of the child; and (3) proceedings “in substantial conformity with the UCCJEA” had been commenced in another jurisdiction.

Child Custody Proceeding

The trial court erred when it declined to exercise jurisdiction to act upon the petition to domesticate a foreign custody order in the absence of any statutory, or other, authority requiring that a proceeding be a “child custody proceeding” under the definition in the UCCJEA before it could act. To the contrary, both the statute governing domestication of a foreign judgment and registration of a judgment are contained within Florida’s UCCJEA statutes. Therefore, the fact that the mother’s filings were not regarding a child custody proceeding is irrelevant to the question of jurisdiction to domesticate a foreign custody order.

Home State Rule

The trial court also erred in its interpretation of the proceedings and its application of the Home State Rule by denying the Petitioner Mother’s application to domesticate the foreign order and seeking to rely on the Respondent Father’s opposition to the petition, which relied in large part on this section of the UCCJEA. The child custody proceeding was properly within the domain of Florida statute because, as was in fact found by the trial court, the petitions filed by the mother did not constitute “child custody proceedings.” This means that the “home state” rule did not apply to the mother’s petitions.

Simultaneous Proceedings

The trial court further erred as it failed to specifically cite to this statute in its order, since it stated that the proceedings in the other state (ie: Arizona) were in substantial conformity with the UCCJEA. However, the proceedings before the trial court could have been entertained as they were for domestication of the foreign order. When the trial court concluded it did not have subject-matter jurisdiction based, at least in part, upon the simultaneous proceedings statute, it misapplied the statute.

The appeals court reversed the trial court’s order and remanded for the trial court to enter an order granting the Petitioner Mother’s petition to domesticate the foreign order and confirming its registration.

Case: [Gilroy v. Gilroy](#)
Court: Second District Court of Appeal.
Trial Judge: Amy M. Williams.
Attorneys: Jane H. Grossman, Peter N. Meros.

Issues: Time-sharing, Child Support.

Holding: Florida Family Law Rules of Procedure require the filing of a financial affidavit in supplemental dissolution proceedings, with service within 45 days of service of the initial pleading on the respondent. The Rules provide a continuing duty to supplement financial affidavits upon a material change in financial circumstances. The requirement to provide a financial affidavit in supplemental proceedings is mandatory and cannot be waived by the parties. As well, a request for a continuance must be entertained, in order to properly present evidence regarding the relevant issues. In this case, the trial court erred in denying the Former Husband's request for a continuance when the Former Wife did not serve and file her financial evidence in compliance with the Rules and giving the Former Husband sufficient time to properly review it and prepare. The appeals court reversed and ordered a new hearing on the issue of child support and directed that discovery be conducted prior to the final hearing on remand.

Case: [Vaelizadeh v. Hossaini](#)

Court: Fourth District Court of Appeal.

Trial Judge: Dale C. Cohen.

Attorneys: John J. Shahady, John M. Ross, Steven D. Miller.

Issues: Custody, Relocation.

Holding: In determining a petition for relocation, the trial court must concern itself as to whether the relocation is in the best interests of the child. An appellate court reviews relocation determinations for abuse of discretion; however, the question of whether the trial court properly applied the relocation statute is a matter of law, reviewed *de novo*. Child custody issues should be determined upon child's best interests, and such issues should not be foreclosed on technical pleading defaults. Florida statutes (2014) provide that, unless the parties have entered into agreement, the parent seeking relocation must file and serve a petition to relocate. The pleadings must conform to statutory requirements including that it be signed under oath or affirmation under penalty of perjury and include a specific statement (in prescribed typographic form) set out under statute, providing notice and direction to the parent upon whom the petition is served. Procedurally, if the parent upon whom the petition has been properly served fails to respond in a timely and proper manner, it is presumed that the relocation is in the best interest of the child and that the relocation should be allowed. The trial court shall, absent good cause, enter an order specifying that the order is entered as a result of the failure to respond to the petition. Additional procedural matters are as prescribed by statute.

In this case, the trial court erred in entering the relocation judgment when good cause existed to preclude the Mother's relocation despite the Father's untimely response to the Mother's petition. Good cause included that:

- a. Despite filing a late response, the Father had a pending petition to domesticate and modify an out-of-state order to seek residential custody before the Mother filed her relocation petition.
- b. He had filed a motion contesting the petition raising allegations requiring hearing.
- c. His untimely response was not due to wilful inaction but his attorney's unavailability while tending to an ill family member.
- d. An order should not be rendered based on defaults which do not consider the child's best interests.
- e. The relocation judgment was inconsistent with the trial court's oral ruling and written order from earlier that day stating that an evidentiary hearing to determine best interests would be set.

The appeals court reversed and remanded for an evidentiary hearing.

Case: [Temares v. Temares](#)
Court: Third District Court of Appeal.
Trial Judge: Rosa C. Figarola.
Attorneys: Ronald H. Kauffman.
Issues: Time-sharing, Certiorari.

Holding: Under Florida Rules of Civil Procedure, compulsory psychological evaluation or drug testing is authorized only when the party submitting the request has good cause for the examination regarding matters in controversy. The "in controversy" and "good cause" requirements entail an affirmative showing by the movant that each condition as to which the examination is sought is genuinely in controversy and that good cause exists for ordering each particular examination. Conclusory allegations, alone, are insufficient to demonstrate either "in controversy" or "good cause" for submission to examination. A court may order testing, sua sponte, on sufficient record evidence.

In this case, the trial court erred in ordering testing in the absence of any showing by the movant (in any pleading or otherwise at the hearing) that the opposing Party's mental condition was in controversy. Nor did the movant establish any good cause. Finally, there was nothing in the record to support a sua sponte order

requiring testing. The appeals court (granted Petitioner's motion for certiorari and) quashed the trial court order for testing.

Case: [Bailey v. Bailey](#)
Court: Fourth District Court of Appeal.
Trial Judge: Nicholas R. Lopane.
Attorneys: John E. Schwencke, Adam M. Zborowski, Michael J. Alman, Jamie D. Alman.
Issues: Time-sharing, Certiorari, Notice.

Holding: Certiorari
Certiorari will lie if an order compels production of confidential records and requires compulsory examination pursuant to Florida Rules of Civil Procedure. The issue on certiorari review is whether the order departs from the essential requirements of law and results in material injury which cannot be adequately remedied on appeal.

Notice

Proper notice of a motion must be given to opposing parties failing which the resulting order may be reviewed. Twenty-four hours' notice of a hearing on a motion may be inadequate.

Evaluations and Release of Records

Motions for the compulsory production of confidential records and the appointment of a social investigator may be subject to certiorari review. Parties to such motions must be provided adequate notice. In this case, the trial court improperly ordered the appointment of a social investigator in regards to the Father, and improperly compelled him to produce confidential records and undergo a compulsory examination. The appeals court quashed these portions of the order as the Father was not provided adequate prior notice of the motion, which was filed on the same day as the hearing. Psychotherapist-patient privilege may be asserted to preclude compulsory production of certain mental health records. It would be open to the trial court to make a determination on point.

The granting or denying of an order for a psychological evaluation is a discretionary act and may be reversed only upon a conclusion that no judge could reasonably have ordered such an evaluation. Such an order may be upheld if it is based on factual findings supported by record evidence. A trial court may order a new psychiatric or psychological examination instead of than ordering disclosure of existing mental health records as this balances the court's need to determine the parents' mental health as it relates to the best interest of the child, and the duty maintain the psychotherapist-patient privilege. In this case, the trial court made factual findings based on the record, which put the Father's mental condition in controversy and provided good cause to compel his evaluation.

A trial court may consider, but is not bound by, the testimony or recommendations of a social investigator. In this case, the trial court erred in tying the Father's time-sharing with the minor children "subject to" the investigator's recommendations. This was an improper delegation of the court's authority to the investigator. The appeals court quashed this portion of the order.

Case: [Russell v. Pasik](#)

Court: Second District Court of Appeal.

Trial Judge: Marc B. Gilner.

Attorneys: Paul F. Grondahl, Cristina Alonso, Jessica Zagier Wallace, Michael P. Sampson, Ashley Filimon, Elliot H. Scherker, Brigid F. Cech Samole, Jay A. Yagoda, Luis E. Insignares, Elizabeth Lynn Littrell, Paolo Annino, Brion Blackwelder, Michael J. Dale, Nancy Dowd, Shani M. King, Barbara Bennett Woodhouse.

Issues: Time-sharing.

Holding: To be entitled to certiorari relief, a party must demonstrate: (1) a departure from the essential requirements of the law; (2) resulting in material injury for the remainder of the case; (3) that cannot be corrected on post-judgment appeal. The second and third elements are jurisdictional and thus must be evaluated first. Typically, certiorari will not be granted from a denial of a motion to dismiss because there is not a material injury that cannot be corrected on post-judgment appeal.

A psychological parent is not recognized in law. Only natural and adoptive parents have a legal duty to support minor children. When there is no biological connection between a petitioner and a child and that nonparent is seeking to establish legal rights to the child, there is no clear constitutional interest in being a parent.

In this case, the trial court erred as it failed to conduct the proper analysis to determine standing. Further in order to prevent irreparable harm, the trial court must fully assess that issue. In denying the motion to dismiss, the trial court merely opined that a cause of action arose based on the facts set out in the petition. However, the petition showed that it was legally impossible for the Respondent to establish standing to petition the trial court for timesharing as she asserted she was a *de facto* or psychological parent and not a biological parent. As a cause of action does not exist in the absence of standing, the trial court departed from the essential requirements of the law by not dismissing the petition for timesharing. Additionally, the trial court improperly addressed the Applicant / Biological Parent's constitutional privacy interest in the raising of her children, including determining with whom they are allowed to spend time. This would enable the

State's interference with a constitutional right—here, the right to privacy, and an injury that cannot be corrected on post-judgment appeal.

The appeals court granted the petition for certiorari.

Case: [T.B. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Peter Evans.
Attorneys: Andrew A. Holness, Rosemarie Farrell, Patricia Murphy Propheter.
Issues: Guardianship, Visitation.

Holding: Florida Statutes (2014), provide that a written order establishing a permanent guardianship must list the circumstances or reasons why the child’s parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact adjudicating the child dependent or by making separate findings of fact. A general reference to the dependency findings does not satisfy the statute. In this case, the trial court erred by failing to conduct an evidentiary hearing and make findings of fact to support establishing the permanent guardianship and modifying the visitation when a hearing is required to permit the guardian to relocate. The appeals court reversed.

Case: [George v. Lull](#)
Court: Fourth District Court of Appeal.
Trial Judge: Jeffrey Dana Gillen.
Attorneys: Michael D. Cirullo, Jr., Jason A. Brodie, Joshua K. Friedman, Andrew Harris, Georgia T. Newman.
Issues: Timesharing.

Holding: Timesharing may be modified if the petitioner can show, on the evidence: a) a substantial change in circumstances; b) since the original agreement; c) that was not contemplated at the time of the original timesharing plan. Simply alleging a change in circumstance is not sufficient.

In this case, the trial court erred in finding a substantial change in circumstances that would justify a modification from the parties’ original mediated settlement agreement when there was no competent material evidence of a substantial change in circumstances. While the Father’s petition alleged changes to his work schedule, the evidence was such that he could not make out the tests for modification. Specifically, his petition that his work schedule changed and that he was “primarily” working from home, but his testimony revealed that he could change his work schedule “if necessary” and other inconsistencies. Nor was there evidence

showing that the shifting of residences caused a negative effect on the parties' child, as he alleged. The appeals court reversed.

Case: [Brown v. Brown](#)
Court: First District Court of Appeal.
Trial Judge: Elizabeth A. Senterfitt.
Attorneys: William S. Graessle, Jonathan Graessle, Jeanine B. Sasser.
Issues: Time-sharing, Parenting, Child Support.

Holding: A trial court's decision on whether to modify a parenting plan is reviewed under an abuse of discretion standard. The modification of a parenting plan requires a substantial, material, and unanticipated change in circumstances since the original judgment or order, and must be in the best interests of the child. A trial court's denial of a petition to modify child support is also reviewed for abuse of discretion. Generally, a substantial change of circumstances is a prerequisite to bringing an action to modify child support. In this case, the trial court did not err (ie: abuse its discretion) in concluding that the Former Husband failed to demonstrate a substantial, material, and unanticipated change of circumstances as would warrant modification of the existing parenting plan. It did err, however, as it made four modifications to the parenting plan in the absence of changed circumstances. It also erred in making a final judgment of indirect civil contempt and order of enforcement which was based on income calculations not supported by the record. The appeals court reversed and remanded.

Case: [K.J. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Kathleen J. Kroll.
Attorneys: Andrew A. Holness, Meredith K. Hall.
Issues: Termination, Guardianship.

Holding: A general reference to dependency findings does not satisfy the statutory requirements to establish permanent guardianship. In this case, the trial court did not err in its adjudication of the child as dependent given the existence of a prior similar order and the court's determination that circumstances had not changed. An order of permanent guardianship was a permissible case plan under Florida Statutes (2015). The trial court's order was in response to D.C.F. filing a case plan for a permanent guardianship and the order was entered after a hearing with notice and an opportunity for all parties to be heard. While the appeals court noted that the earlier order did not contain the findings of fact required by Florida Statutes (2015) as to permanent guardianship, per the record, there was competent substantial evidence to support the court's permanent guardianship determination. The appeals court reversed and remanded for the court to enter an order, based on testimony and

evidence already taken, that includes the specific findings of fact required by statute.

Case: [Taylor v. Taylor](#)
Court: Fifth District Court of Appeal.
Trial Judge: Sally D. M. Kest.
Attorneys: Brett Meltzer, Matthew R. McLain.
Issues: Child Support, Custody.

Holding: Interpretation of a marital settlement agreement is a matter of law and the standard of review is *de novo*. A latent ambiguity exists where the language of an agreement is facially clear but an extrinsic fact or extraneous circumstance creates a need for interpretation or reveals an insufficiency in the contract or a failure to specify the rights or duties of the parties in certain situations. When a contract contains a latent ambiguity, the trial court must hear parol evidence to interpret the writing and to explain, clarify or elucidate the ambiguous term. In this case, the trial court erred by ordering the Former Husband to pay funds from his pension plan on a continuing monthly basis without considering parol evidence regarding the pertinent provision of the parties' marital settlement agreement ("MSA") (which contained a latent ambiguity with regard to the terms of payment). The appeals court reversed and remanded.

DATING VIOLENCE

Case: [Putzig v. Bresk](#)
Court: Fourth District Court of Appeal.
Trial Judge: Michael G. Kaplan.
Attorneys: Richard F. Della Fera.
Issues: Dating Violence.

Holding: Florida statute requires a full hearing before entry of permanent injunction against dating violence. A full evidentiary hearing includes direct examination of witnesses, cross-examination of witnesses, and the presentation of any other evidence. A trial court abuses its discretion when it denies parties to a petition for a dating violence injunction the opportunity to call witnesses, present evidence, or cross-examine witnesses. In this case, the trial court violated due process rights by not affording both parties the opportunity to do so. The appeals court reversed and remanded for a hearing.

DEPENDENCY AND TERMINATION

Case: [J.C. v. D.C.F.](#)
Court: Third District Court of Appeal.
Trial Judge: Rosa C. Figarola.
Attorneys: Richard F. Joyce, Karla F. Perkins, Laura E. Lawson (Sanford).
Issues: Termination, Case Plan.

Holding: An order for termination must sufficiently articulate the trial court's considerations and findings. However, if record evidence and the detailed considerations of the trial court support a finding of termination, the wording of the order in that regard may be viewed as harmless error. In this case, the trial court erred in rendering an order that did not sufficiently articulate that the Mother: (i) materially breached her case plan, and (ii) would be unlikely or unable to comply substantially with the case plan prior to its expiration. However, the appeals court determined this was harmless error as record evidence, together with the trial court's detailed consideration of the Mother's conduct, supported such an order for termination. The appeals court affirmed.

Case: [W.L. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Edward H. Merrigan, Jr..
Attorneys: Antony P. Ryan, Melanie L. Casper, Paulina Forrest, Pamela Jo Bondi, Carolyn Schwarz, Patricia Murphy Propheter.
Issues: Termination.

Holding: Florida Statutes (2013) require trial courts ordering termination of parental rights to enter written orders which contain findings of fact and conclusions of law. In order to terminate on the grounds that a child's life, safety, or health would be threatened by continued interaction with a parent, irrespective of the services being provided in support of the parent, a trial court must find that any provision of services would be futile or that the child would be threatened with harm nonetheless. In this case, the trial court erred in failing to recite which of the petitioned grounds it relied on in entering the final judgment; it failed to make the necessary factual findings; and it omitted key conclusions of law. The appeals court vacated the termination order and remanded.

Case: [D.C.F. & A.H. v. T.S. & R.H.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Roger B. Colton.
Attorneys: Rosemarie Farrell, Alexandra St. Pierre.

Issues: Dependency.

Holding: All procedures in a dependency case must comport with due process principles. Procedural due process requires fair notice and a real opportunity to be heard. An arraignment provides the opportunity for the parent or legal custodian to admit, deny, or consent to findings of dependency alleged in the petition. When due process is denied, fundamental error occurs. Notice and an opportunity to be heard are the hallmarks of due process. A trial court commits an abuse of discretion when it denies a party the opportunity to be heard. Further, the best interests of the child ground all dependency proceedings. When the court obtains jurisdiction of any child who has been found to be dependent, it shall retain jurisdiction, unless relinquished by its order, until the child reaches twenty-one (21) years of age, subject to a few exceptions. A trial court errs when it fails to consider the best interests of a minor child in the dependency proceeding before it. If a trial court adjudicates a child dependent, the court is not divested of jurisdiction over the child upon his or her turning eighteen (18), and could provide needed services. Thus, if a trial court fails to make a best interests determination, its dismissal can be adverse to a child's best interests.

In this case, the trial court committed fundamental error and violated the rights of the minor child to due process insofar as it dismissed the petition without notice and without an opportunity to be heard. Here, the arraignment was reset three times previously but no notice was presented to the child or the DCF that the case might be dismissed. Neither the child nor DCF was allowed to present evidence or recommend what disposition was in the best interests of the child. Furthermore, the trial court neglected to consider the best interests of the child, which are paramount. The appeals court reversed and remanded.

Case: [B.K. v. D.C.F.](#)

Court: Fourth District Court of Appeal.

Trial Judge: Hope Bristol.

Attorneys: Lori D. Shelby, Pamela Jo Bondi, Carolyn Schwarz, Patricia Murphy Propheter.

Issues: Termination.

Holding: A parent has a fundamental liberty interest in the care, custody and companionship of his child. The only limitation on this right is the ultimate welfare of the child itself. To terminate a parent's rights in his or her child, the state must first meet the statutory requirements to prove a statutory ground for termination and prove that termination is in the manifest best interest of the child. Then, to satisfy constitutional concerns, it also must prove that termination is the least restrictive means to protect the child from serious harm. The state must present clear and convincing evidence to support each element. Florida statute further provides that

incarceration, or expected incarceration, for a significant portion of the child's minority is a ground for termination.

In this case, the trial court did not err given that the Biological Father would have been incarcerated for nearly fifty percent of the child's life. This, combined with the fact that the child was currently in foster care and the fact that Biological Father could not take custody of the child for several years, weighed in favor of termination.

Case: [D.S. v. D.C.F.](#)

Court: Fourth District Court of Appeal.

Trial Judge: Hope Bristol.

Attorneys: Antony P. Ryan, Paulina Forrest, Pamela Jo Bondi, Carolyn Schwarz, Patricia Murphy Propheter.

Issues: Termination.

Holding: Termination of parental rights by the state requires clear and convincing evidence establishing one of the enumerated statutory grounds including risk to the child; that termination is in the manifest best interest of the child; and that termination is the least restrictive means of protecting the child from harm. Grounds for establishing termination can include the incarceration of a parent and whether the period of time for which the parent will be incarcerated will constitute a significant portion of the child's minority. In determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration. The court must look both at the length of the incarceration as well as its effect on the child's need for permanency. The state must prove that termination is in the best interest of the child and the least restrictive means of protecting him or her from harm. In this case the trial court was correct in terminating for the minor child who had been in foster care, the foster parents anticipated adopting him and he did not wish to see his father. The state proved same by clear and convincing evidence. That child's need for permanency (being adopted) was paramount, supported by competent substantial evidence, in the manifest best interest of the child and was the least restrictive means to prevent harm to him.

As for the children living with a relative, the trial court erred in terminating as the state did not establish grounds for same. The children were living with a relative, and the Father maintained as close a relationship as his incarceration has allowed and the finding that his incarceration amounted to a significant portion of the children's minorities was not supported by substantial and competent evidence. Nor was it shown that termination was in the children's best interest nor the least restrictive means to prevent harm to the children. The appeals court affirmed the

termination regarding the one child parental but we reversed the termination as to the other children.

Case: [B.K. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Hope Bristol.
Attorneys: Lori D. Shelby, Pamela Jo Bondi, Carolyn Schwarz.
Issues: Termination.

Holding: Florida statute provides incarceration as a ground for termination. Specifically, under statute, termination may be ordered when the parent of a child is incarcerated and the period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration. In addition, the trial court must find that termination is in the manifest best interests of the child. In making this determination, Florida statute sets forth a list of non-exclusive relevant factors, including, but not limited to: (1) any suitable permanent custody arrangement with a relative; (2) the ability the parent to provide the child with food, clothing, medical care or other remedial care; (3) the capacity of the parent or parents to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home; and others. Finally, the Department must show, by clear and convincing evidence, that termination is the least restrictive means to prevent serious harm to the child. In this case, the trial court did not err as it considered the relevant factors and made the required factual findings. In so doing, the court found termination of parental rights was the least restrictive means of protecting the minor child from harm because the child had not seen the Father since tiny infancy and did not know him. The appeals court affirmed but remanded to the trial court to consider access between the Father and the minor child.

Case: [M.M. v. D.C.F.S](#)
Court: Third District Court of Appeal.
Trial Judge: Rosa C. Figarola.
Attorneys: Eugene F. Zenobi, Kevin Coyle Colbert, Cathi Gordon Graham, Angela D. Flaherty, Karla Perkins.
Issues: Procedure, Dependency.
Holding: Procedure

Any party can request termination of agency supervision or the jurisdiction of the court by a written motion or in a written report to the court. In this case, the trial

court did not err in granting the order for cessation of supervision of the dependent children by the DCF despite being ordered without a motion. Here, the Father argued the order denied him due process because departmental supervision was terminated without a motion. In fact, the DCF requested termination of supervision in a Judicial Review and Social Study Report filed with the trial court, the receipt of which was acknowledge by the Father's attorney prior to the Judicial Review Hearing. No challenge of the request for termination of supervision was raised. The appeals court denied the petition insofar as it was determined there was no departure from the essential requirements of law and due process as the Father received notice via the filed report.

Dependency/Visitation

Florida Statutes affords a parent the unqualified ability to return to the dependency court to seek modification or elimination of any court ordered restrictions on his or her visitation rights. If a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall hold a hearing. Notwithstanding that the wishes of the dependent children, who may be at or near their teenage years, may, practically, affect a parent's future contacts and relationship with them, the dependency court has a non-delegable duty to consider any motion for modification or for increased contact filed by a parent in the future. In this case, the trial court erred when it departed from the essential requirements of law by restricting decisions concerning the Father's future contact with his children solely to its discretion. The appeals court reversed that portion of the order which limited the Father's ability to seek contact with his children in the future.

- Case:** [D.W.Q. v. A.B.](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Robert L. McLeod II, Leslie H. Morton, William S. Graessle, Jonathan W. Graessle, John L. Whiteman, J. Stephen Alexander.
Issues: Termination, Procedure.
- Holding:** It is a denial of procedural due process rights of notice and fair hearing to terminate parental rights on a ground not pleaded. Adequate notice and meaningful hearing are required before a trial court can properly order the termination of substantive rights. Additionally, a trial court's written order must establish that it considered and evaluated each of the relevant statutory factors in reaching its decision as to the manifest best interests of the child. Finally, a trial court must consider all the evidence admitted at trial before rendering its decision. In this case, the trial court erred as it terminated the Father's parental rights on a ground not alleged in the Mother's petition. The petition did not allege termination

for egregious conduct under the relevant provisions of Florida statute, (it simply alleged that termination was warranted under other statutory provisions.) Termination for egregious conduct was not tried by consent because it was not mentioned in opening or during the presentation of Mother's evidence at trial. Further, the trial court's order of termination was deficient in that it failed to include findings for the each relevant statutory factor regarding the child's manifest best interests. Finally, the trial court erred in that it did not, ostensibly, review all evidence before it prior to making the order. The appeals court reversed and remanded for the trial court to reconsider its ruling after reviewing all admitted evidence.

Case: [J.B. etc v. Florida D.C.F.](#)

Court: Florida Supreme Court.

Trial Judge:

Attorneys: Stephanie Christina Zimmerman, Dwight Oneal Slater, Ryan Thomas Truskoski, George E. Schulz, Jr., Robin L. Rosenberg, Wendie Michelle Cooper, Kelley Ruth Schaeffer.

Issues: Termination, Process.

Holding: The right to counsel in termination of parental right (TPR) proceedings includes the right to effective assistance and requires a means of vindicating that right.

The Supreme Court considered two questions.

1. Is the criminal standard of ineffective assistance of counsel applicable to claims of ineffective assistance of counsel in proceedings involving the termination of parental rights? The SC answered in the negative.
2. Is any procedure available following the termination of parental rights to raise claims of ineffective assistance of counsel that are not apparent on the face of the record? The SC answered in the affirmative.

The Supreme Court:

- a. established the appropriate standard for determining whether counsel provided constitutionally ineffective assistance in termination of parental rights proceedings;
- b. provided a temporary process for bringing such claims of ineffective assistance; and
- c. directed the development of rules providing the procedure for vindicating that right.

1. The Right to Counsel

Under Florida statutory law, parents have a right to counsel in both dependency and TPR proceedings. While the appointment of counsel is not required by the constitution, it is required under the due process clause of the United States and Florida Constitutions, in proceedings involving the permanent termination of parental rights to a child.

2. The Right to Effective Assistance of Counsel

The right of indigent parents to counsel under the Florida Constitution in TPR proceedings necessarily includes the constitutional right to the effective assistance of counsel.

3. The Standard for Ineffective Assistance

The standard for determining ineffective assistance of counsel claims is that the parent must establish that the result of the TPR proceeding would have been different but for the attorney's deficient performance. Once this is established, then the order terminating parental rights should be vacated, and the case returned to the circuit court for further proceedings.

4. Temporary Procedure for Ineffective Assistance Claims in TPR Cases

Post-TPR proceedings must be expeditious. A permanent such process will be developed. The Supreme Court set an interim process for bringing claims of ineffective assistance of counsel following the termination of parental rights. This interim process requires that claims of ineffective assistance first must be raised by the parent and ruled on by the trial court. The trial judge must ensure that the parents whose rights are at issue are informed of those rights such that at the end of each TPR adjudicatory hearing, the circuit court shall orally inform the parents for whom counsel was appointed regarding the right to:

(1) appeal the order entered at the end of the TPR proceedings to the district court; and

(2) file a motion in the circuit court alleging that appointed counsel provided constitutionally ineffective assistance (if the court terminates parental rights).

In addition, a written order terminating parental rights shall include a brief statement informing the parents of the right to effective assistance and a brief

explanation of the procedure for filing such a claim. Indigent parents (likewise without the assistance of appointed counsel) must file a motion in the circuit court claiming ineffective assistance of trial counsel in the TPR proceeding. Appeal from an order denying a motion alleging the ineffective assistance of counsel will be raised and addressed within any appeal from the order terminating parental rights. A parent, without assistance of appointed counsel, shall have twenty (20) days after the termination judgment issues within which to file a motion in the trial court alleging claims of ineffective assistance of counsel. The motion must contain the case name and number; the date the order of termination of parental rights issued; the specific acts or omissions in trial counsel's representation of the parent during the TPR proceedings that the parent alleges constituted a failure to provide reasonable, professional assistance; and an explanation of how the errors or omissions prejudiced the parent's case to such an extent that the result would have been different absent the deficient performance.

If a parent files an ineffective assistance of counsel motion, rendition of the order in the TPR proceeding will be tolled for purposes of appeal until the circuit court issues an order on the pro se ineffective assistance motion. If a parent chooses to file a motion claiming ineffective assistance of counsel, then counsel of record cannot continue representation.

If the parent chooses to appeal, the attorney must certify, among other things, that:

- a. the parent so chose;
- b. a notice of appeal signed by counsel;
- c. the parent has been filed; and
- d. an order appointing appellate counsel, if any, has been entered.

Further, the appointed attorney representing an indigent parent, must, after issuance of an order terminating parental rights, discuss appellate remedies and determine whether the parent wants to appeal the TPR order. If the answer is affirmative, counsel must also inquire whether the parent intends to file a motion claiming ineffective assistance of counsel. If the parent responds affirmatively, then counsel must immediately seek withdrawal on this basis. In addition, if the parent subsequently files a motion alleging ineffective assistance despite the parent's prior expression of a contrary intent, if counsel of record is also appellate counsel withdrawal is required at that time, and new counsel will be appointed for any appeal from the TPR order and from the disposition of the ineffective assistance of counsel motion.

When a parent files a motion alleging ineffective assistance of counsel, rendition of the trial court's TPR order will be tolled for purposes of appeal until the trial court rules on any claim of ineffective assistance of counsel. The trial court shall review the ineffective assistance motion and order compilation of the record regarding the termination of parental rights proceedings on an expedited basis.

Further, the trial court shall conduct proceedings, including an evidentiary hearing if necessary, to determine whether the motion should be granted or denied. The circuit court shall render an order within twenty-five (25) days after the motion alleging ineffective assistance was filed or the motion shall be deemed denied.

On appeal, the district court will review claims regarding the parent's appeal from the trial court's TPR order and from the disposition of the ineffective assistance motion. This process will apply to any case in which a judgment terminating parental rights is entered after this case becomes final. Creation of the permanent process and development of the attendant rules will be the task of a special committee.

In this case, the Supreme Court determined, that the appellant failed to present any basis for setting aside the order terminating her parental rights and affirmed the trial court's decision.

Case: [S.V. v. D.C.F.](#)
Court: Third District Court of Appeal.
Trial Judge: Alan S. Fine.
Attorneys: Karla F. Perkins, Kele Stewart, Laura E. Lawson.
Issues: Dependency, Reunification.

Holding: A certiorari review of the trial court's non-final order is limited to whether the trial court departed from the essential requirements of law in conducting its review of the general magistrate's report and recommendations, resulting in irreparable harm to the petitioner that cannot be remedied on direct appeal.

In this case, the trial court did not err as it adhered to the essential requirements of law and applied the correct legal standards when it reviewed the general magistrate's recommendations. Specifically, the trial court found that competent substantial evidence did not support the general magistrate's finding that the Father, at this time, had the capacity to meet the children's extensive and unremitting therapeutic needs. The appeals court denied the petition to review the lower court decision.

Case: [J.B. etc v. Florida D.C.F.](#)
Court: Florida Supreme Court.
Trial Judge:

Attorneys: Stephanie Christina Zimmerman, Dwight Oneal Slater, Ryan Thomas Truskoski, George E. Schulz, Jr., Robin L. Rosenberg, Wendie Michelle Cooper, Kelley Ruth Schaeffer.

Issues: Termination, Process.

Holding: The right to counsel in termination of parental right (TPR) proceedings includes the right to effective assistance and requires a means of vindicating that right.

The Supreme Court considered two questions.

1. Is the criminal standard of ineffective assistance of counsel applicable to claims of ineffective assistance of counsel in proceedings involving the termination of parental rights? The SC answered in the negative.
2. Is any procedure available following the termination of parental rights to raise claims of ineffective assistance of counsel that are not apparent on the face of the record? The SC answered in the affirmative.

The Supreme Court:

- a. established the appropriate standard for determining whether counsel provided constitutionally ineffective assistance in termination of parental rights proceedings;
- b. provided a temporary process for bringing such claims of ineffective assistance; and
- c. directed the development of rules providing the procedure for vindicating that right.

1. The Right to Counsel

Under Florida statutory law, parents have a right to counsel in both dependency and TPR proceedings. While the appointment of counsel is not required by the constitution, it is required under the due process clause of the United States and Florida Constitutions, in proceedings involving the permanent termination of parental rights to a child.

2. The Right to Effective Assistance of Counsel

The right of indigent parents to counsel under the Florida Constitution in TPR proceedings necessarily includes the constitutional right to the effective assistance of counsel.

3. The Standard for Ineffective Assistance

The standard for determining ineffective assistance of counsel claims is that the parent must establish that the result of the TPR proceeding would have been different but for the attorney's deficient performance. Once this is established, then the order terminating parental rights should be vacated, and the case returned to the circuit court for further proceedings.

4. Temporary Procedure for Ineffective Assistance Claims in TPR Cases

Post-TPR proceedings must be expeditious. A permanent such process will be developed. The Supreme Court set an interim process for bringing claims of ineffective assistance of counsel following the termination of parental rights. This interim process requires that claims of ineffective assistance first must be raised by the parent and ruled on by the trial court. The trial judge must ensure that the parents whose rights are at issue are informed of those rights such that at the end of each TPR adjudicatory hearing, the circuit court shall orally inform the parents for whom counsel was appointed regarding the right to:

(1) appeal the order entered at the end of the TPR proceedings to the district court; and

(2) file a motion in the circuit court alleging that appointed counsel provided constitutionally ineffective assistance (if the court terminates parental rights).

In addition, a written order terminating parental rights shall include a brief statement informing the parents of the right to effective assistance and a brief explanation of the procedure for filing such a claim. Indigent parents (likewise without the assistance of appointed counsel) must file a motion in the circuit court claiming ineffective assistance of trial counsel in the TPR proceeding. Appeal from an order denying a motion alleging the ineffective assistance of counsel will be raised and addressed within any appeal from the order terminating parental rights. A parent, without assistance of appointed counsel, shall have twenty (20) days after the termination judgment issues within which to file a motion in the trial court alleging claims of ineffective assistance of counsel. The motion must contain the case name and number; the date the order of termination of parental rights issued; the specific acts or omissions in trial counsel's representation of the parent during the TPR proceedings that the parent alleges constituted a failure to provide reasonable, professional assistance; and an explanation of how the errors or omissions prejudiced the parent's case to such an extent that the result would have been different absent the deficient performance.

If a parent files an ineffective assistance of counsel motion, rendition of the order in the TPR proceeding will be tolled for purposes of appeal until the circuit court issues an order on the pro se ineffective assistance motion. If a parent chooses to file a motion claiming ineffective assistance of counsel, then counsel of record cannot continue representation.

If the parent chooses to appeal, the attorney must certify, among other things, that:

- e. the parent so chose;
- f. a notice of appeal signed by counsel;
- g. the parent has been filed; and
- h. an order appointing appellate counsel, if any, has been entered.

Further, the appointed attorney representing an indigent parent, must, after issuance of an order terminating parental rights, discuss appellate remedies and determine whether the parent wants to appeal the TPR order. If the answer is affirmative, counsel must also inquire whether the parent intends to file a motion claiming ineffective assistance of counsel. If the parent responds affirmatively, then counsel must immediately seek withdrawal on this basis. In addition, if the parent subsequently files a motion alleging ineffective assistance despite the parent's prior expression of a contrary intent, if counsel of record is also appellate counsel withdrawal is required at that time, and new counsel will be appointed for any appeal from the TPR order and from the disposition of the ineffective assistance of counsel motion.

When a parent files a motion alleging ineffective assistance of counsel, rendition of the trial court's TPR order will be tolled for purposes of appeal until the trial court rules on any claim of ineffective assistance of counsel. The trial court shall review the ineffective assistance motion and order compilation of the record regarding the termination of parental rights proceedings on an expedited basis. Further, the trial court shall conduct proceedings, including an evidentiary hearing if necessary, to determine whether the motion should be granted or denied. The circuit court shall render an order within twenty-five (25) days after the motion alleging ineffective assistance was filed or the motion shall be deemed denied.

On appeal, the district court will review claims regarding the parent's appeal from the trial court's TPR order and from the disposition of the ineffective assistance motion. This process will apply to any case in which a judgment terminating parental rights is entered after this case becomes final. Creation of the permanent process and development of the attendant rules will be the task of a special committee.

In this case, the Supreme Court determined, that the appellant failed to present any basis for setting aside the order terminating her parental rights and affirmed the trial court's decision.

Case: [D.W.Q. v. A.B.](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Robert L. McLeod II, Leslie H. Morton, William S. Graessle, Jonathan W. Graessle, John L. Whiteman, J. Stephen Alexander.
Issues: Termination, Procedure.

Holding: It is a denial of procedural due process rights of notice and fair hearing to terminate parental rights on a ground not pleaded. Adequate notice and meaningful hearing are required before a trial court can properly order the termination of substantive rights. Additionally, a trial court's written order must establish that it considered and evaluated each of the relevant statutory factors in reaching its decision as to the manifest best interests of the child. Finally, a trial court must consider all the evidence admitted at trial before rendering its decision.

In this case, the trial court erred as it terminated the Father's parental rights on a ground not alleged in the Mother's petition. The petition did not allege termination for egregious conduct under the relevant provisions of Florida statute, (it simply alleged that termination was warranted under other statutory provisions.) Termination for egregious conduct was not tried by consent because it was not mentioned in opening or during the presentation of Mother's evidence at trial. Further, the trial court's order of termination was deficient in that it failed to include findings for the each relevant statutory factor regarding the child's manifest best interests. Finally, the trial court erred in that it did not, ostensibly, review all evidence before it prior to making the order. The appeals court reversed and remanded for the trial court to reconsider its ruling after reviewing all admitted evidence.

Case: [McGarvey v. McGarvey](#)
Court: Fifth District Court of Appeal.
Trial Judge: Hubert L. Grimes.
Attorneys: Brian J. Lee, William R. Alexander.
Issues: Time-sharing, Child Support, Attorney's Fees.

Holding: In determining timesharing, a trial court must make an independent assessment of a timesharing arrangement that is in the best interests of the child or children. Such an assessment must be based on substantial cogent evidence. In this case, the trial court erred in finding that the parties had reached an agreement addressing, among other things, parenting, and ruled on timesharing and child support. The parties later conceded that no such agreement had been reached. The appeals court reversed the ruling on timesharing and, as a result, determined that child support may also need reconsideration.

Case: [K.K. v. D.C.F.](#)
Court: Second District Court of Appeal.
Trial Judge: Emily A. Peacock.
Attorneys: Jennifer S. Paullin, Pamela Jo Bondi, Meredith Hall.
Issues: Dependency, Certiorari.

Holding: To be entitled to certiorari relief, the petitioner must show that the trial court's order departs from the essential requirements of the law and results in material harm that cannot be corrected on post-judgment appeal. The question of whether the order results in material harm that cannot be corrected on post-judgment appeal constitutes a jurisdictional test, while the question of whether the order departs from the essential requirements of the law constitutes a decision on the merits. It is improper, and a denial of due process, for a court to order relief not requested in any of the pleadings. As a general rule, case plan tasks and related activities imposed on parents and children must be meaningful and designed to address the facts and circumstances upon which the court based its determination regarding dependency, or, in some circumstances, a no-contact order. Further, those tasks must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case.

In this case, the trial court erred when it ordered the dependent children undergo therapeutic assessments in connection with the denial of the Mother's motion to amend a safety plan which prohibited her current husband, from having any contact with the children - his stepchildren. (In previous proceedings, the current husband, stepfather, was not a party per the statute. The trial court therefore entered a no-contact order as between him and the children.) Any error in requiring the children to undergo therapeutic assessments results in material harm that cannot be corrected on post-judgment appeal. Once the children undergo the assessments, the damage is done. The trial court's ruling departs from the essential requirements of the law in two ways. First, the ruling denied the Mother due process by ordering relief not requested in any of the pleadings. Neither the Mother nor the Department nor the Guardian ad Litem requested further assessments of the children in connection with this motion. The entry of an order imposing conditions about which the parents had no notice or opportunity to be heard violates due process. Requiring the children undergo therapeutic assessments which are unrelated to the reasons that resulted in the initial dependency (or, here, the no-contact order) is neither meaningfully designed to address the circumstances that brought them into care nor the least intrusive means possible to protect them. The appeals court quashed that portion of the dependency order.

Case: [C.D. v. D.C.F.](#)
Court: First District Court of Appeal.

Trial Judge: David M. Gooding.
Attorneys: Jeffrey E. Lewis, Crystal McBee Frusciante, Kelley Schaeffer, Ward L. Metzger.
Issues: Termination.

Holding: In termination of parental rights cases, the standard of review is highly deferential. The trial court's findings must be supported by competent substantial evidence. In order for parental rights to be permanently and involuntarily severed, the state must show by clear and convincing evidence that reunification with the parent poses a substantial risk of significant harm to the child. As parental rights constitute a fundamental liberty interest, the state must establish in each case that termination of those rights is the least restrictive means of protecting the child from serious harm. Florida statutes provide that the availability of a placement with a relative may not be considered as a ground to deny the termination of parental rights. However, in this case the applicable test was whether termination was the least restrictive means of protecting a child from serious harm. In this case, the trial court erred as it found the least restrictive means of achieving permanency and held that termination was the least restrictive means of protecting the children from harm. The appeals court reversed.

Case: [In the interest of M.P., a child.](#)
Court: Second District Court of Appeal.
Trial Judge: Joseph G. Foster.
Attorneys: C. Carolina Maluje, Anna E. Galeano Guzman, Stephanie C. Zimmerman, Bradenton, Dwight O. Slater.
Issues: Dependency, Jurisdiction.

Holding: A trial court may lack jurisdiction to conduct an adjudicatory hearing if the child / children for which relief is being requested attain the age of majority prior to the hearing. In this case, the trial court did not err in denying a private petition for dependency based on the ground, among others, that the child who was being cared for by a relative did not qualify as dependent by virtue of age.

Case: [R.T. v. D.C.F.](#)
Court: Third District Court of Appeal.
Trial Judge: Martin Zilber.
Attorneys: Sanford Rockowitz, Karla Perkins, Laura E. Lawson.
Issues: Termination.

Holding: Florida statute governs termination of parental rights based on abandonment. A trial court asked to order termination shall consider relevant statutory requirements with a view to finding that termination is the least restrictive means to protect the child

and is in the best interests of the child. In this case, the trial court did not err in ordering termination because it considered requisite provisions and record evidence and found that, although the Father had maintained telephone contact with the child, the record firmly showed that he was unable to care for, support, and parent the child; he had no suitable family members to care for the child; it was in the child's best interest to be raised with her siblings, with whom she has bonded, and to achieve permanency with a pre-adoptive family that wished to adopt all four siblings. The appeals court affirmed.

Case: [D.C.F. v. N.H.](#)
Court: Third District Court of Appeal.
Trial Judge: Martin Zilber.
Attorneys: Karla Perkins, Sharon Wolling.
Issues: Dependency, Certiorari.

Holding: Certiorari may be granted where a trial court's actions exceed its judicial authority by encroaching on the powers of the executive branch by ordering it to take some action not permitted by law. The DCF bears the burden of demonstrating that a trial court departed from the essential requirements of law, thereby causing irreparable injury which cannot be adequately remedied on appeal after final judgment. Florida statutes (2015) authorize the amendment of a case plan by the trial court or by agreement of all parties in certain limited circumstances.

In this case, the trial court erred, and the appeals court quashed a portion of its order relieving the Father from complying with an earlier case plan. Specifically, violence in the presence of the child contradicted the claim that the Father no longer needed services and no competent, substantial evidence supported amending the case plan.

Case: [A.D., Jr. v. D.C.F.](#)
Court: Fifth District Court of Appeal.
Trial Judge: Elizabeth A. Morris.
Attorneys: Richard J. D'Amico, Ward L. Metzger, Thomas Wade Young.
Issues: Termination, Abandonment.

Holding: Florida statutes provide that a child is abandoned, or that abandonment occurs, when the parent or legal custodian of a child or the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

In this case, the trial court erred in determining that the Father abandoned the child when there was no clear and convincing evidence to support such a finding. While the Father made little effort to comply with the case plan until the petition for termination of parental rights was filed, following that he partially completed his required steps. DCF conceded he had substantially complied. Further, though the evidence showed he was volatile, this is not sufficient to justify the termination of parental rights. Additionally, while the Father had not provided financial support for the child, DCF had not established his ability to do so. Moreover, he had remained in contact with the child, who resided with the Father's sister. The appeals court reversed and remanded.

Case: [B.L. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Michael Heisey.
Attorneys: Antony P. Ryan, Richard G. Bartmon, Karla Perkins.
Issues: Dependency.

Holding: An adjudication of dependency based entirely, or largely, on inadmissible hearsay, must be reversed. In this case, the trial court erred in determining dependency on the basis of hearsay allegations of domestic violence by the Father. The allegations came through the Mother's statements as conveyed through the investigating officers. The appeals court reversed.

Case: [B.R. v. D.C.F.](#)
Court: Second District Court of Appeal.
Trial Judge: Sonny Scaff.
Attorneys: Donald K. Rudser, Ward L. Metzger, Dave Krupski.
Issues: Dependency.

Holding: An amendment or modification of an order or judgment in an immaterial, insubstantial way does not re-start the clock to file an appeal. Even substantial or material modifications in an amended judgment do not provide grounds sufficient to appeal issues adversely decided in the earlier judgment. In this case, the appeal was filed in excess of the thirty-days from the date the orders were rendered, one of which contained immaterial changes. The immaterial changes did not re-start the time for proper filing of an appeal.

Case: [J.B.-L v. D.C.F.](#)
Court: Second District Court of Appeal.
Trial Judge: Suzanne Bass.
Attorneys: Robert W. Keep, Jr., Joshua Goldsborough, Niki Guy, Ward L. Metzger, Wendie Michelle Cooper.
Issues: Dependency.

Holding: A trial court order finding a child dependent but withholding an adjudication of dependency is properly reviewable by the appeals court pursuant to the Florida Rules of Appellate Procedure. In this case, the trial court did not err in adjudicating only two of seven minor children, dependent but finding all seven of them dependent. The fact that adjudication hearings were conducted on only two matters was not an error. The appeals court affirmed.

Case: [S.J. v. D.C.F.](#)
Court: First District Court of Appeal.
Trial Judge: David M. Gooding.
Attorneys: Robert W. Keep, Jr., Tricia L. Meisner, Stephanie C. Zimmerman.
Issues: Dependency.

Holding: An arraignment provides the opportunity for the parent or legal custodian to admit, deny, or consent to findings of dependency alleged in the petition. In this case, the trial court erred as it denied the Mother due process when it ordered her to comply with a case plan at an arraignment hearing without providing notice that adjudication or disposition of the D.C.F.'s petition would occur. The appeals court accepted the D.C.F.'s concession of error on this point, and reversed and remanded for further proceedings under Florida statutes.

Case: [N.W. v. D.C.F.](#)
Court: Second District Court of Appeal.
Trial Judge: Elizabeth G. Rice.
Attorneys: Pamela Jo Bondi, Mary Soorus, Thomasina Moore, Dennis W. Moore.
Issues: Dependency.

Holding: A dependency court's findings of fact in a termination of parental rights proceeding is reviewed for competent, substantial evidence. A trial court's finding of clear and convincing evidence is presumed correct but should be reversed if clearly erroneous or not supported by competent, substantial evidence. The determination of whether a statutory amendment can be applied retroactively is an issue of law subject to *de novo* review. The legislature's inclusion of an effective date for an amendment is considered to be evidence rebutting intent for retroactive application of a law. In

the absence of clear legislative expression to the contrary, a law is presumed to operate prospectively. While statutory changes in the law are normally presumed to apply prospectively, procedural or remedial changes may be immediately applied to pending cases. In this case, the trial court erred in its application of a statutory amendment retroactively to certain evidentiary findings. Specifically, it erroneously tethered its decision to terminate the Mother's parental rights entirely to a 2014 statutory amendment. By applying the amendment retroactively, the trial court effectively changed the Department's burden of proof in termination of parental rights proceedings although the amendment was not enacted for such purpose. The appeals court reversed the trial court's final judgment but declined to disturb factual findings as they were supported by competent, substantial evidence.

Case: [R.W.M. v. D.C.F.](#)
Court: Second District Court of Appeal.
Trial Judge: Scott Brownell.
Attorneys: Stephanie C. Zimmerman, Laura Lawson.
Issues: Termination.

Holding: The Department must prove the allegations supporting termination of parental rights by clear and convincing evidence. A trial court's factual findings cannot be sustained unless they are supported by substantial, competent evidence. Determining a termination of parental rights by default for failure to appear is disfavored. Where the record reflects that the parent was making a reasonable effort to appear at the scheduled hearing, the trial court should either grant a short continuance or permit the parent to appear by telephone. In a termination of parental rights case, where a fundamental right is at stake, a trial court should not find that a parent has consented by virtue of nonappearance unless there is clear and convincing evidence that the failure to appear was willful. In this case, the trial court erred as no clear and convincing evidence was found to demonstrate that the Father willfully failed to appear. The appeals court reversed and remanded for a new trial.

Case: [S.L. v. D.C.F.](#)
Court: Second District Court of Appeal.
Trial Judge: Lee A. Schreiber.
Attorneys: Toni A. Butler, Meredith K. Hall, Laura Lawson.
Issues: Termination.

Holding: There are strict time frames in cases involving the termination of parental rights. Under the Florida Rule of Judicial Administration, there is a sixty-day time requirement for decisions by courts in such matters. There is also public policy of

expediting termination proceedings. In this case, the trial court rendered its final judgment over eight months after the termination hearing (and only after the Guardian Ad Litem filed a motion for ruling on petition for termination of parental rights). During the eight-month delay, several events occurred that required judicial review, including a change of custody that separated the younger children from the older ones. The appeals court affirmed but wrote to emphasize that strict compliance with the rules and statutes governing the time frames in dependency and termination cases is required.

[EQUITABLE DISTRIBUTION](#)

Case: [Kyriacou v. Kyriacou](#)
Court: Second District Court of Appeal.
Trial Judge: John S. Carlin.
Attorneys: Matthew S. Toll, Stephen N. McGuire, II, Robert B. Burandt.
Issues: Equitable Distribution.

Holding: Florida Statutes prescribe terms for the distribution of marital assets. The presumption is the distribution should be equal, unless there is a justification otherwise based on the statutorily enumerated factors including the economic circumstances of the parties and any other equitable considerations. Wage earning ability is one such factor although disparate earning capacity, without more, cannot be the sole basis for unequal distribution. In this case, the trial court erred when it made an unequal equitable distribution award when the record contained no indication that it considered the statutory factors listed in doing so. Specifically, it focused on the parties' earning ability and little else. The appeals court reversed as to equitable distribution and the valuation of certain marital assets.

Case: [Weaver v. Weaver](#)
Court: Fourth District Court of Appeal.
Trial Judge: Amy L. Smith.
Attorneys: Paul M. Herman, Jr., Jeffrey M. Kirsch.
Issues: Equitable Distribution.

Holding: Florida Statutes (2013) provide that when determining equitable distribution a trial court shall consider the contribution of each spouse to the acquisition, enhancement, and production of income, or the improvement of (or the incurring of liabilities to) both the marital assets and the non-marital assets of the parties. Florida Statutes (2013) also provide that the division of marital assets shall be equal unless there is a reason for unequal distribution. In this case, the trial court erred in awarding the Former Wife an interest in the marital home, which the Former Husband acquired prior to marriage, when there was no evidence that she had invested money in the home. Nor was there evidence to show an increase or enhancement of the value of the home during the marriage. The evidence most favorable to the Former Wife showed that she and the Former Husband pooled their incomes and paid the mortgage and other household expenses from their pooled funds. She had sold her own home prior to the marriage and spent the proceeds on their wedding, honeymoon, a boat, and a motor home. The trial court also failed to make the required factual determinations to equitably distribute the proceeds from out of state properties they owned. The appeals court reversed for further proceedings as to the real property.

Case: [Hooker v. Hooker](#)
Court: Fourth District Court of Appeal.
Trial Judge: Gregory M. Keyser.
Attorneys: Jane Kreuzler-Walsh, Rebecca Mercier Vargas, Stephanie L. Serafin, Melinda P. Gamot, Susan G. Chopin.
Issues: Equitable Distribution.

Holding: Florida Statutes allow for unequal distribution of an asset when a trial court finds it is justified based on a non-exhaustive list of relevant factors including, among other things, the contributions of each spouse to the marriage; each spouse's economic circumstances; desirability of retaining an asset; the contribution of each spouse to the acquisition and enhancement of an asset; and any other factors necessary to do equity and justice between the parties.

The statutes also require any distribution of marital assets to be supported by factual findings in the judgment based on competent substantial evidence in the record with reference to these statutory factors.

The fact that an asset is determined to be an interspousal gift and then characterized as a marital asset does not mandate that the asset be split equally if an unequal split is will create equity and justice between the parties. An interspousal gift is established by showing donative intent; delivery or possession of the gift; and surrender of dominion and control of the gift. The burden is on the party seeking to prove an interest in the property to show it was an interspousal gift on a preponderance of credible evidence. An appeals court reviews the determinations of a trial court in regards to a dissolution judgment for an abuse of discretion, and the review of the legal conclusions is de novo. When reversible error occurs with regard to valuation or distribution, the entire distribution scheme must be reversed and remanded to allow the trial court to ensure both parties receive equity and justice.

In this case, the trial court was correct in determining one property was gifted to the Former Wife. It erred, however, in determining the other property was an interspousal gift when the evidence did not show a clear and unmistakable intention on the part of the Former Husband to gift it.

With regard to the erroneous determination, there was no testimony that the Former Husband expressly stated or affirmatively acknowledged that the Former Wife had an interest in the property. The evidence only showed that the Former Wife believed that she had an interest because the family home and family business were situated on it. Specifically, the trial court erred in relying on evidence that:

- a. The Former Husband did not convey to the Former Wife that she did not have an interest in the properties;
- b. He did not contradict her belief that it was a gift; and

c. She had made significant contributions to the property.

The trial court did not properly consider evidence that showed that the Former Wife's name was kept off the title and the original mortgage for the property and off the corporation created by the Former Husband related to the property (formed solely in his name). The fact that he subsequently included the Former Wife's name in the final sale of the property did not evidence donative intent. It simply showed the Former Husband ensuring the buyer of unburdened title.

As for the property that was gifted, the evidence provided sufficient donative intent to uphold the trial court's determination. The Former Husband's actions showed clear and unmistakable intent as the property was where the Former Wife desired to live; he told her the home was for both of them; they both contributed to furnishing the home; he provided her with keys to it; and she had unfettered access. The appeals court reversed the amended final judgment as to the trial court's determination that the Former Husband gifted an interest in the one property to the Former Wife and remanded for a recalculation of the entire equitable distribution.

Case: [Hall v. Hall](#)

Court: Fourth District Court of Appeal.

Trial Judge: Timothy L. Bailey.

Attorneys: Virginia R. Vetter, Susana Rice Roque, Linda M. Jaffe.

Issues: Equitable Distribution, Marital Settlement Agreements.

Holding: Two grounds lie for setting aside or modifying a Marriage Settlement Agreement (MSA):

1. By establishing that it was reached under fraud, deceit, duress, coercion, misrepresentation, or overreaching.
2. By establishing the MSA makes an unfair or unreasonable provision for a former spouse, given the circumstances of the parties as shown by evidence of the parties' relative situations (including their respective ages, health, education, and financial status). For this, determination, the trial court must find that the agreement is disproportionate to the means of the defending spouse, shown by record evidence of his or her financial means. If the MSA is found to be unreasonable, a presumption arises that either the defending spouse concealed relevant information or the challenging spouse lacked information regarding the defending spouse's finances when the MSA was reached. The defending spouse can rebut by showing that there was full, frank disclosure or that the challenging spouse had a general and approximate knowledge of the marital property. The test is the challenging spouse's such knowledge at the time of the MSA and whether he or she is prejudiced by lack of information.

Refusal to allow an amendment is an abuse of the trial court's discretion unless it clearly appears that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile.

MSA Was Valid & Enforceable

Regarding the first ground, the Former Husband did not present evidence that the Former Wife or her attorney engaged in any fraud, duress, etc during the relevant proceedings. Rather, his position is that his attorney forgot to present an alleged first (missing) page of a draft version of the MSA to the Former Wife for her to consider.

As to the second ground, the Former Husband did not present evidence as to the parties' relative situations to allow a trial court to make a decision as to its being unreasonable. The form of the MSA accepted by the trial court contained the style of the case, a clear heading, the parties' initials, a signature page, and addressed the parties' financial accounts by stating that they agreed to certain aspects of distribution. As such, and since he did not provide evidence of a purported additional page, the trial court did not err by ruling that the MSA filed by Former Wife was a valid, enforceable agreement.

Permission to Amend

The trial court erred when it denied the Former Husband's motion to amend his answer on the grounds that it had been 18 months since the Former Wife filed her petition and the case was 30 days from trial. On the facts, it is not clear that allowing Former Husband leave to amend would have prejudiced Former Wife. Nor did he abuse the privilege to amend as this was his first such request. Finally, he sought to amend to raise and address relevant issues.

The appeals court reversed and remanded with instructions to allow Former Husband to file his amended answer.

Case: [Kemp v. Kemp](#)
Court: First District Court of Appeal.
Trial Judge: Daniel F. Wilensky.
Attorneys: Seth Schwartz, Eric Lawson, Allison E. Folds.
Issues: Equitable Distribution, Attorney's Fees.

Holding: A trial court may not order an interim partial equitable distribution in the absence of a verified motion requesting same. In this case the trial court erred when, after a hearing on the Former Wife's motion for temporary attorney's fees (past due and prospective) issued an order finding that the Former Husband lacked the ability to

pay her attorney's fees and directed what was effectively an interim partial equitable distribution instead. The trial court lacked authority to do so as the relevant statutory requirements for such an order were not met. The trial court misapplied the law and failed to make proper findings to support its order. The appeals court reversed and remanded for reconsideration of the Former Wife's motion for temporary attorney's fees.

Case: [Somasca v. Somasca](#)
Court: Second District Court of Appeal.
Trial Judge: John S. Carlin.
Attorneys: J P. Brandon Perkins, Kristen D. Perkins, Brett C. Powell, Alexander Brockmeyer, Katheryn E. Smith.
Issues: Equitable Distribution.

Holding: When marital assets are used during the marriage to reduce the mortgage on non-marital property, the increase in equity on the property is a marital asset subject to equitable distribution. The increase in equity is not to be confused with the concept of the appreciation in the overall value of the asset. The enhancement in equity is captured under Florida Statute, which holds that marital assets and liabilities include, among other things, the enhancement in value and appreciation of non-marital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

In this case, the trial court erred in its treatment of the reduction in the mortgage indebtedness on a building the Former Husband purchased prior to the marriage, which had depreciated in value (a non-marital asset). The parties used marital funds to reduce the mortgage on the building, which resulted in the Former Husband obtaining enhanced equity in the building despite the building depreciating in value during the parties' marriage. The trial court erred in failing to give the Former Wife a credit for the use of marital funds to pay down the mortgage. The appeals court reversed the equitable distribution and remanded for correction.

Case: [Johnson v. Johnson](#)
Court: First District Court of Appeal.
Trial Judge: David C. Wiggins.
Attorneys: Lawrence C. Datz, Neal Betancourt.
Issues: Equitable Distribution.

Holding: Parties to a dissolution action can agree that the determination of their respective shares of retirement proceeds will be made pursuant to an agreed-upon formula to be applied once disbursement of retirement proceeds begins. A trial court should

uphold and maintain such agreements. In this case, the trial court erred when it failed to comply with the unambiguous terms of the parties' Consent Final Judgment. The issue of pension division was reversed and remanded for the trial court to enforce the Former Wife's entitlement to the Former Husband's military pension as required by the express terms of the parties' agreement set forth in the Consent Final Judgment.

Case: [Lamb v. Lamb](#)

Court: Fifth District Court of Appeal.

Trial Judge: Mark J. Hill.

Attorneys: Nicholas A. Shannin, Richard Valle.

Issues: Equitable Distribution, Procedural Fairness, Choice of Law.

Holding: Procedural Fairness

Procedural due process guarantees every person the right to fair and impartial treatment throughout the administration of justice. It also guarantees a party fair notice and a meaningful opportunity to be heard before judgment is rendered. In this case, the trial court erred when it allowed the Former Wife's motion requesting that the Former Husband's pleadings be struck. The matters proceeded to trial without the Former Husband's position being fully presented and articulated.

In this case, the trial court erred in that its order was not supported by proper and adequate findings and it forged a situation whereby the Former Husband was 'unheard' at trial. While the trial court conceded error after the fact and tried to rectify the situation, in actuality, the Former Husband was deprived of full access to justice. The appeals court remanded for a new trial and directed the specific determination of issues regarding the choice-of-law and an alleged payment to the Former Wife.

Choice-of-Law

When determining whether to apply Florida law or foreign law to a contract, a court must first apply Florida's choice-of-law rules. Generally, Florida courts enforce contractual choice-of-law provisions unless enforcing the chosen forum's law would contravene strong Florida public policy. The party seeking to avoid enforcement of the choice-of-law provision has the burden of demonstrating that the foreign law contravenes public policy. Here, the trial court erred when it found that the Former Husband did not meet his burden to apply Scottish law, and went on to apply Florida law. In finding that Former Husband "did not meet his burden," the trial court improperly shifted the burden of proof from the Former Wife who

was challenging the application of the parties' ante-nuptial agreement (created in another jurisdiction).

Case: [Niekamp v. Niekamp](#)

Court: Second District Court of Appeal.

Trial Judge: John S. Carlin.

Attorneys: Sam R. Assini, Matthew P. Irwin, Luis E. Insignares.

Issues: Equitable Distribution, Time-sharing, Spousal Support, Child Support, Imputing Income, Attorney's Fees.

Holding: Parental Responsibility

Final judgment that provides sole parental responsibility to one party and denies contact to the other must set out for the parent who losing contact what must be done to reconnect with the children. An order that does not do so is deficient as it fails to advise the parent what is expected and prevents a successor judge from monitoring the parent's progress.

Marital Assets

When an asset is acquired during the marriage, it is presumed to be marital unless specifically established otherwise. In considering a business as a marital asset, enterprise goodwill is a distributable marital asset and personal goodwill is non-marital. When a trial court makes an equitable distribution award of a business, characterized as a marital asset, a value must be assigned to the asset.

Alimony

A twenty-two-year marriage is presumed to be long-term. This places a presumption in favor of alimony when warranted by one party's need and the other party's ability to pay. In determining an alimony award, a trial court shall consider the parties' respective physical and emotional conditions and employability.

Dissipation of Assets

When a spouse depletes marital assets during the pendency of dissolution proceedings to pay for support, living expenses and litigation expenses, it is error to include the assets in the equitable distribution scheme unless a there is a specific finding of intentional misconduct. Such a finding must be based on evidence showing that the marital funds were used for one party's own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown.

In this case, the trial court erred in that:

- a. The final judgment failed to prescribe any schedule or benchmarks for re-establishing the Former Husband's parenting of the children.
- b. It classified the Former Wife's business as a non-marital asset, which although it depended heavily on her personal expertise and goodwill had tangible assets (bank accounts, instructional books and enterprise goodwill).
- c. It distributed a non-existent asset to the Former Husband (being money that he withdrew from retirement accounts spent on attorney's fees).
- d. It determined the Former Husband was voluntarily unemployed when there was evidence showing he was unemployed for mental health reasons.
- e. It imputed income to him in relation to child support and in its determination regarding payment of attorney's fees.

The appeals court reversed and remanded for further proceedings.

Case: [Gilliard v. Gilliard](#)

Court: Fifth District Court of Appeal.

Trial Judge: Linda Schoonover.

Attorneys: David L. Robold, Shannon L. Akins, Nicholas A. Shannin, Patrick John McGinley.

Issues: Alimony, Equitable Distribution, Attorney's Fees.

Holding: Alimony

In order to award alimony, a court must make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance. The burden to show his or her financial need and the spouse's ability to pay is on the party requesting alimony. A marriage having a duration of greater than 7 years but less than 17 years is considered a moderate-term marriage and there is no presumption for or against permanent alimony. Permanent alimony may be awarded following a moderate-term marriage if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set out by statute. The purpose of permanent alimony is to provide the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties. The ability to pay alimony should be based on the party's net, not gross, income.

In this case, the trial court erred in awarding alimony based on the Former Husband's gross income. The trial court also erred in considering Former Husband's future retirement benefits as both current income and a marital asset, included in its distribution of the parties' marital assets when the future retirement benefits should be considered in the division of marital assets. The trial court erred further when it failed to make specific written findings regarding the standard of

living established during the marriage, the contributions of each party to the marriage, or the tax treatment and consequences of awarding alimony.

Equitable Distribution

Under Florida statute, in distributing marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal. Although a trial court may distribute marital assets and liabilities unequally, it is required to justify such an award based on all relevant factors under statute. A court should make enumerated findings related to each factor under statute. While parties may agree to a specific distribution of some of their assets and liabilities in a mediated or other settlement agreement, the court should place values on the various items of personal property because each division and distribution of a marital asset and liability is interrelated to form an overall scheme fair to both parties.

The trial court erred in awarding an asset to the Former Wife firstly in the equitable distribution scheme and then a second time in the attorney's fees. The trial court erred in failing to place a value on the parties' automobiles, furniture, and furnishings distributed pursuant to the partial mediation agreement and erred when it ordered the Former Husband to make mortgage payments if he failed to make his alimony payments. Proper recourse there would have been to impose sanctions for wilfully failing to comply with a court order. The trial court also erred in failing to consider the consolidation loan as a marital liability.

Attorney's Fees

An award of attorney's fees must be based on clear and cogent evidence of the parties' respective need and ability to pay. Such findings must be based on specific factual findings which also include those regarding the attorney's work (ie: reasonable number of hours spent and the reasonable hourly rate.) In this case, the trial court did not err in that regard, but did improperly include an asset that was already distributed when it conducted the ability to pay analysis.

The appeals court reversed the entire distribution plan and remanded for reconsideration.

Case: [Williams v. Williams](#)
Court: First District Court of Appeal.
Trial Judge: Kelvin C. Wells.
Attorneys: Jerome M. Novey, Shannon L. Novey, Christin F. Gonzalez, John F. Greene.
Issues: Equitable Distribution.

Holding: A trial court's fair market value determination of marital assets must be supported by competent, substantial evidence. Equalization payments and asset distribution must be supported by competent, substantial evidence and trial court must provide sufficient findings and documentation to allow the appellate court meaningful review. In this case, the trial court erred as it did not base its equitable distribution of marital assets and an equalization payment to the Former Wife on competent and substantial evidence. The error was such that the appeals court could not conduct meaningful review of the judgment at issue. The appeals court reversed and remanded those parts of the judgment which were erroneous.

Case: [Badgley v. Sanchez](#)

Court: Fourth District Court of Appeal.

Trial Judge: Steven B. Feren.

Attorneys: J. Scott Gunn, Sue-Ellen Kenny, Scott D. Glassman.

Issues: Equitable Distribution, Alimony.

Holding: Equitable Distribution
Florida Statutes (2013), governing distribution of marital assets and liabilities, provides that the trial court must begin with the premise that the distribution should be equal and requires consideration and factual findings in the judgment regarding nine specified factors in assessing whether an unequal distribution is warranted. In this case, trial court erred in awarding a 60/40 distribution which was premised solely on the parties' income and which failed to contain the factual findings required by statute.

Alimony

Florida Statutes (2013), authorizes the award of alimony, based on consideration of a variety of factors that the court shall consider in determining the amount and type. A trial court errs where it fails to make the findings required by statute. In this case, the trial court erred as the final judgment regarding alimony failed to reference the statutory provision and the relevant factors, despite the fact that some of the findings could be fairly read to correlate with the relevant factors. The appeals court reversed on both above issues.

Case: [Smith v. Smith](#)

Court: Second District Court of Appeal.

Trial Judge: Gilbert A. Smith, Jr., Diana L. Moreland.

Attorneys: Edward B. Sobel, Angela D. Flaherty.

Issues: Equitable Distribution, Attorney's Fees.

Holding: Equitable Distribution

An appeals court reviews *de novo* a trial court's determination of whether an asset is marital or non-marital. Where parties did not enter into marital settlement agreement, the applicable date for determining whether assets and liabilities are classified as marital or non-marital is the date of the filing of the petition for dissolution of marriage. Assets and liabilities not in existence on that date should not be classified as marital.

In this case the trial court erred when it included as marital assets in the equitable distribution scheme both a vehicle, which was owned by the Former Husband at the time the petition was filed but sold during the pendency of the divorce, and a second vehicle, which was purchased by him after the date of filing but prior to the final judgment. The appeals court concluded that it was error to include the second vehicle in the equitable distribution scheme. The appeals court reverse and directed the trial court to strike the second vehicle from the equitable distribution scheme and reduce the equalizing payment owed to the Former Wife accordingly.

Attorney's Fees

An appeals court does not have jurisdiction to review attorney's fees if the trial court's ruling only addresses entitlement but does not set an amount. In this case, the trial court's ruling on attorney's fees and costs only addressed the relative position of the parties and entitlement but failed to set an amount. As a result, the appeals court lacked jurisdiction to review.

Case: [Richeson v. Richeson](#)
Court: Fifth District Court of Appeal.
Trial Judge: Sally D.M. Kest.
Attorneys: Jeffrey A. Conner, Frank J. Bankowitz.
Issues: Equitable Distribution.

Holding: Partitioning

A trial court has no authority to partition jointly-held property in the absence of the parties' agreement or a specific pleading requesting partition. In this case, the trial court erred in ordering the sale of certain real property in the absence of any pleading for partition of the property. The appeals court reversed the portion of the trial court's order directing partition and directed the reinstatement of the equitable distribution scheme set forth in the original final judgment.

Credit for Moneys Paid During Pendency

Claims for credit on moneys paid on assets during pendency must be supported by competent and sufficient evidence. In this case, the trial court did not err when it denied to award the Former Husband credit for moneys he allegedly paid to maintain joint investments during pendency. At trial, the Former Husband's only evidence with regard to his claim was a summary statement listing numerous deposits he made to an account maintained for management of the parties' investment properties. However, he presented no evidence as to the source of the funds, including whether any of the funds derived from rental income on those properties. The trial court recognized this deficiency and directed him to provide supplemental documentation, but he failed to do so. The appeals court affirmed this portion of the order.

Case: [Stantchev v. Stantcheva](#)
Court: Fifth District Court of Appeal.
Trial Judge: Jonathan D. Ohlman.
Attorneys: Jonathan P. Culver, Robert H. Mclean.
Issues: Equitable Distribution, Attorney's Fees.
Holding: Non-Marital Assets

Non-marital assets are excluded from equitable distribution. In this case, the trial court erred in making a distribution scheme which did include a particular account as a marital asset when it should have been excluded as it belonged to the Former Husband before the parties were married. The appeals court remanded and directed the trial court to revise the distribution scheme accordingly.

Valuation of Assets

The date for determining value of marital assets is the date or dates as the judge determines is just and equitable under the circumstances. In this case, the trial court erred in valuing an amount of money the Former Husband transferred to a Hungarian bank weeks prior to the Former Wife initiating divorce proceedings as at the date of the transfer rather than the date it was converted back (at a lower rate of exchange resulting in a substantial loss in value). The trial court should have ordered both parties bear an equal share of the resultant loss in value of the account rather than have it lie with the Former Husband (particularly as the Former Husband did not know she intended to commence proceedings). Note that the appeals court found that the trial court was properly within its discretion in assessing the value of such moneys but the error lay in the date the trial court applied to value the asset.

The appeals court directed that the loss resulting from the currency exchange be considered on remand.

Attorney's Fees

In considering equitable distribution, the trial court may consider any amounts paid by a Former Spouse to his or her attorney which are sourced from marital assets and taken and paid in advance of the commencement of proceedings. In this case, the trial court erred in ordering the Former Husband to pay one-half of the Former Wife's attorney's fees when she used marital funds for the down payment for her attorney's fees while the parties were still living together. After they separated, the Former Husband commenced paying temporary alimony which was specifically designed to include Former Wife's fees. Given the subsequent equitable distribution of assets, each party had the ability to pay his or her own fees and the trial court was directed to reconsider the matter on remand.

Case: [Tucker v. Tucker](#)
Court: Fourth District Court of Appeal.
Trial Judge: Merrilee Ehrlich.
Attorneys: Theresa Yuricic.
Issues: Equitable Distribution, Alimony, Contempt.

Holding: A trial court's property valuation must be supported by competent, substantial evidence. By entering the final order before a party has had an opportunity to be heard, a trial court deprives him or her of the due process guaranteed by the Florida Constitution. Facts are not established for consideration by the trial court, or by appellate review, when attorneys make representations in their arguments before the trial court. Same does not constitute evidence. In setting the value of assets, a trial court must base its decision on proper evidence and provide findings as to the valuation. In this case the trial court erred as its stock valuation for an equitable distribution was not supported by competent, substantial evidence because of three errors. The trial court erred in determining the value of the stock:

1. before the Former Wife finished presenting her evidence;
2. without hearing the Former Husband's evidence, instead, relying on his attorney's unsworn statement;
3. by making its own assessment, without providing a factual explanation.

The appeals court reversed and remanded for the court to resume and complete the evidentiary hearing.

Case: [Quinn v. Quinn](#)
Court: Second District Court of Appeal.
Trial Judge: John A. Schaefer.
Attorneys: Ingrid Anderson.
Issues: Child Support, Equitable Distribution.

Holding: When a parenting plan provides that the children will spend a "substantial amount of time" with each parent, defined as at least twenty per cent of the overnights per year, the award of child support should be adjusted as set forth in Florida Statutes (2013), requiring calculation based in part on the percentage of overnights the children spend with each parent. While the statute presumptively establishes the amount of child support, the court may deviate from the presumptive amount based on numerous factors, including the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan and whether all of the children are exercising the same time-sharing schedule. If the trial court wishes to deviate from the presumptive amount by more than five percent, the final judgment must include findings of fact to support the deviation and explain why the guidelines amount is unjust or inappropriate.

In this case, the trial court erred in ordering a number of overnights to each parent that contradicted those ordered in the parenting plan without explaining the discrepancy. This was an error on the face of the judgment requiring the appeals court to reverse and remand.

Case: [Sikora v. Sikora](#)
Court: Second District Court of Appeal.
Trial Judge: Richard A. Nielsen.
Attorneys: Christine A. Hearn, Steven L. Brannock, Mark F. Baseman.
Issues: Alimony, Equitable Distribution, Imputation.

Holding: Permanent Periodic Alimony

Permanent periodic alimony is used to provide the needs and the necessities of life to a Former Spouse as they have been established by the marriage of the parties. Absent special circumstances, an alimony award should not exceed a Recipients Spouse's need (excessive awards constitute an abuse of discretion). In the absence of special circumstances, a trial court errs by awarding permanent, periodic alimony in an amount that exceeds a Former Spouse's established needs. In this case, the trial court failed to include findings detailing any special circumstance that would explain why alimony was awarded in an amount exceeding the amount

necessary to meet the Former Wife's need. The appeals court reversed and remanded for the trial court to either include such findings or reconsider the issue in its entirety.

Imputation

Trial courts may impute income from interest earned on retirement accounts if the income is readily available to a Former Spouse without penalty and without the need to reduce the principal. However, any decision to impute income must be supported by competent, substantial evidence. In this case, the trial court erred by imputing income to the Former Wife from her retirement accounts where there was no evidence to support the specific rate of return used by the trial court. Nor was there an agreement of the experts on the rate of return for the retirement accounts or evidence of the historical rate of return. Rather, the trial court selected the same rate of return used for imputing income on the Former Wife's investment accounts. The appeals court remanded with directions to adjust the alimony award accordingly.

Retroactivity

Generally, when a trial court awards alimony, it abuses its discretion if it fails to make the award retroactive to the date of filing the petition for dissolution. There is an exception where the trial court enters a temporary alimony award during the pendency of the case. In that situation, a retroactive award is limited to the date that the request for an increased award is filed. However, a temporary alimony award can be readdressed at a final hearing if the temporary award was made "without prejudice."

In this case, the parties stipulated that the Former Husband would pay temporary alimony, and the court awarded temporary alimony "without prejudice" such that the issue of temporary alimony could be readdressed at the final hearing. The appeals court ordered the reversal of the permanent, periodic alimony award, and on remand, directed the trial court reconsider the issue of retroactivity of any newly imposed permanent, periodic alimony award (after comparing such award to the stipulated temporary alimony).

Life Insurance

A trial court must include findings relating to a Former Spouse's insurability at the time of trial and the cost of an insurance policy. In this case the trial court erred when it ordered the Former Husband to secure an insurance policy in the absence of any explanation for how this amount was arrived at or what it was based on. Moreover, trial court's failure to explain how it arrived at the specific dollar requirement was troublesome because the specific amount of coverage bore no correlation to projected alimony amounts and it was not possible for the appeals court to ascertain if the trial court ordered life insurance for purposes other than securing alimony due at the time of the Former Husband's death.

Lump Sum Alimony

Courts have previously reversed lump sum alimony awards that have no evidentiary support. In this case, there was no evidence to justify the lump sum alimony award, and the trial court made no findings to explain its rationale. The appeals court reversed and remanded for the trial court to reconsider the award based on the evidence on the record.

Attributing Dissipated Assets as Part of Equitable Distribution

It is error to include assets in an equitable distribution scheme that have been diminished or dissipated during the dissolution proceedings. However, an exception to this general proposition exists when misconduct during the dissolution proceedings results in the dissipation of a marital asset. The misconduct necessary to support inclusion of dissipated assets in an equitable distribution scheme does not include mismanagement or simple squandering of marital assets in a manner of which the other spouse disapproves. Instead, to include a dissipated asset in the equitable distribution scheme, there must be evidence of the spending spouse's intentional dissipation or destruction of the asset, and the trial court must make a specific finding that the dissipation resulted from intentional misconduct.

In this case, the trial court erred failing to apply to the standard for attributing dissipated assets to a spouse in dissolution proceedings. Specifically, the trial court erred in attributing monies to the Former Wife in the equitable distribution in such a way that amounted to a sanction for failing to comply with a documenting requirement. The appeals court reversed the trial court's equitable distribution awards and remanded for further proceedings.

Case: [Banks v. Banks](#)
Court: Second District Court of Appeal.
Trial Judge: Tracy Sheehan.
Attorneys: E. Jane Brehany, Allison M. Perry.
Issues: Alimony, Equitable Distribution.

Holding: Alimony

An appellant must provide, for the record, a statement of the evidence prepared in accordance with Florida Rules of Appellate Procedure. When the appellant fails to provide this court with a record that is sufficient to evaluate the appellant's contentions of error, the appeals court must presume that the trial court's decision is correct. However, the absence of a transcript and a statement of the evidence do not preclude reversal where an error of law is apparent on the face of the judgment. In such cases, the appeals court must limit consideration of the arguments on appeal to errors appearing on the face of the amended final judgment. A trial court can award permanent alimony in a marriage of moderate duration if such an award is based upon clear and convincing evidence after consideration of the factors set forth in relevant statutory provisions. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in the relevant statutory provisions, however there is no requirement that such an award meet the clear and convincing standard of proof.

In this case, the trial court erred in failing to award the Former Wife in a long term (33 year) marriage permanent alimony on the basis that she had failed to meet the clear and convincing standard of proof. As this was a long term marriage, the trial court ought to have simply assessed the evidence based on the relevant statutory factors. The appeals court reversed the amended final judgment regarding the denial of the Former Wife's claim for an award of permanent periodic alimony and remanded for reconsideration with directions the trial court on remand should consider making an award of at least a nominal amount of permanent periodic alimony.

Former Husband's Military Retirement Pay

Language in final judgments needs to be specific, unambiguous and allow for intended changes in the amount of such awards tied to cost of living increases or other such considerations. In this case, the trial court erred in ordering an amount, and an indexed award, of the Former Husband's military pension payable to the Former Wife, such amount being expressed as both a percentage and specific dollar figure, thereby creating ambiguity as the dollar amount could change as certain specific adjustments are based on the order are made. The appeals court directed, on remand, that the wording be amended.

Case: [Dottaviano v. Dottaviano](#)
Court: Fifth District Court of Appeal.
Trial Judge: Clyde E. Wolfe.
Attorneys: Daniel A. Bushell, Shachar D. Spiegel, Stefani K. Nolan, Brian P. North, David Merritt.
Issues: Child Support, Equitable Distribution, Alimony.
Holding: Imputing Income

Florida Statutes provide that monthly income shall be imputed to an unemployed or underemployed parent if such unemployment or underemployment is found by the court to be voluntary on that parent's part. A trial court must employ a two-step analysis when deciding whether to impute income to a former spouse. Firstly, the trial court must determine that termination of employment was voluntary. Secondly, the trial court must determine whether the individual's subsequent unemployment or underemployment resulted from the pursuit of his or her own interests or through less than diligent and *bona fide* efforts to find employment paying income at a level equal to or better than that formerly received. Further, the former spouse claiming that income should be imputed to the unemployed or underemployed spouse bears the burden of showing both employability and the availability of jobs.

In this case, the trial court erred in imputing monthly income to the Former Wife when it failed to make a specific finding that she was voluntarily unemployed or underemployed. Nor did the trial court properly address that the Former Husband did not discharge the onus upon him to show that she was employable and there were available jobs for her. Finally, the trial court failed to properly address the Former Wife's evidence as to her *bona fide* efforts to obtain employment. The appeals court reversed and remanded with direction to reconsider alimony and child support, as those awards were tied to the improper imputation of income.

Matrimonial Home

Generally, the trial court should award the primary residential parent exclusive use and possession of the marital residence until the child reaches majority or is emancipated. However, special circumstances may justify partition and sale of the marital home where the parties' incomes are inadequate to meet their debts, obligations, and normal living expenses, as well as the expense of maintaining the marital residence. Special circumstances that justify the partition of the marital home can include instances where the parties resided in the marital residence for a short period of time, lacked other significant marital assets, and a large differential in relative earning power existed between the former spouses. In this case, the trial court erred in granting exclusive possession of the matrimonial home to the Former Husband, despite the residence of the minor child being there with him, insofar as

this circumstance fell into one of those special circumstances warranting partition of the marital home. Specifically, the family had lived in the marital home for a short period of time when the parties separated, the parties do not have any other significant marital assets, and there is a large difference in the parties' earning capacity. Moreover, the payments related to the marital home are significant and the Former Husband could find a place for himself and the minor child to live that is less expensive. The appeals court ordered, on remand, that the trial court order the marital home be partitioned.

Case: [Dravis v. Dravis](#)
Court: Second District Court of Appeal.
Trial Judge: Keith Spoto.
Attorneys: Jean Marie Henne, Shelley Harrell Shelton.
Issues: Marital Assets, Equitable Distribution.

Holding: Cash Gifts

An appeals court will review *de novo* a trial court's characterization of an asset as marital or nonmarital, and any factual findings necessary to make this legal conclusion, for competent, substantial evidence. Nonmarital assets may lose their nonmarital character where they have been commingled with marital assets. This is especially true with respect to money because money is fungible, and once commingled, loses its separate character. It is irrelevant that a bank account is titled in the name of one Former Spouse, alone, as it may become marital if both marital and nonmarital funds are commingled in that account. It is not necessary for commingled funds to be used to pay marital expenses in order to be treated as entirely marital; it is enough that the funds be commingled.

Dissipated Proceeds

The appeals court reviews a trial court's equitable distribution decisions for abuse of discretion and examines its valuation of marital assets to determine whether it is supported by competent, substantial evidence. Generally, it is error to include in an equitable distribution scheme any assets that have been diminished or dissipated during the dissolution proceedings. The exception, however, is where misconduct during the divorce case results in the dissipation of a marital asset. To determine whether such misconduct occurred, the trial court must assess whether one spouse used marital funds for a purpose unrelated to the marriage at a time when the marriage was undergoing an irreconcilable breakdown. Further, such misconduct must be supported by the record evidence, and by specific factual findings of the trial court.

In this case, the trial court did not err in its determination as to misconduct and characterization of marital assets. The trial court did, however, err regarding the equitable distribution of the parties' marital assets. Competent, substantial evidence demonstrated that certain nonmarital assets (being the proceeds of monetary gifts to the Former Wife) were commingled with proceeds that were marital assets. The monetary gifts therefore lost their nonmarital character and became marital assets subject to equitable distribution. However, the trial court failed to make specific factual findings on the matter. This necessitated the reversal of the judgment on that issue. The appeals court affirmed as to the cash gifts and alimony, but reversed and remanded for further proceedings on equitable distribution.

Case: [Rossi v. Rossi](#)
Court: Fifth District Court of Appeal.
Trial Judge: Kelly J. McKibben.
Attorneys: Joe Teague Caruso.
Issues: Equitable Distribution.

Holding: A trial court's determination that a motion or other filing is improper, as labelled, is a question of law and is reviewed *de novo*. Where it is apparent that an improperly-labelled motion is intended to operate as an authorized motion, an appellate court must consider the motion as if it were properly labelled. Where a party files a motion that would be unauthorized based on the motion's title, Florida courts will consider the motion's substance in determining whether the motion was authorized. The mislabelling of a motion will not preclude consideration. In this case, the trial court erred as it failed to consider the content of an improperly-labelled motion for rehearing and treated the motion as a list of exceptions. Specifically, the trial court found no issue with the substantive content of the Former Wife's list of exceptions. That finding necessarily implied that the substantive content of the motion for rehearing—which was identical to the list of exceptions was also sufficient. The trial court should have treated Former Wife's unauthorized motion for rehearing as an authorized list of exceptions and should have held a hearing on the magistrate's report. The appeals court reversed the trial court's entry of final judgment and remanded for a hearing on the Former Wife's list of exceptions to the magistrate's report.

Case: [Dugan v. Dugan](#)
Court: Fifth District Court of Appeal.
Trial Judge: Shawn L. Briese.
Attorneys: John N. Bogdanoff, Elizabeth Siano Harris.
Issues: Alimony, Equitable Distribution, Attorney's Fees.

Holding: An error on the face of a final judgment should be corrected. Findings related to alimony awards must have a proper evidentiary basis. A trial court must give its rationale, based on trial evidence, for a finding which forms part of the final judgment. In this case, the trial court erred in finding that all of Former Wife's medical expenses were entirely covered by Medicare, and entering such finding on the face of the judgment without sufficient rationale. Specifically, the trial court based its finding on what it described as the Former Husband's "uncontroverted testimony" notwithstanding that the Former Wife provided authority suggesting that she is responsible for Medicare premiums, deductibles, and noncovered expenses. The appeals court reversed on the issue of Former Wife's medical expenses and remanded.

Case: [Liberatore v. Liberatore](#)
Court: Fifth District Court of Appeal.
Trial Judge: Bob Leblanc.
Attorneys: Robin I. Bresky, Cynthia Greene.
Issues: Equitable Distribution.

Holding: On remand, a lower court must strictly follow the instructions of an appellate court. Typically, when a lower court commits reversible error in valuing or distributing marital assets, the entire distribution plan must be reversed and reconsidered on remand. This is because each division and distribution of a marital asset and liability is interrelated to form an overall scheme fair to both parties. However, in some instances, an error in an equitable distribution plan can be corrected in isolation; in those circumstances, an appellate court may direct the lower court to correct only that error in isolation. In this case the trial court erred in moving away from the instructions of the appeals court in reconsideration of equitable distribution. The trial court proceeded, at the request of the Former Husband, to address a post-judgment sale of the parties' marital residence while reconsidering the distribution of the marital assets. The appeals court reversed and remanded for reconsideration of the entire equitable scheme.

Case: [Matteson v. Matteson](#)
Court: First District Court of Appeal.
Trial Judge: Robert M. Foster.
Attorneys: John F. Kattman, Valarie Linnen, Lee J. Pickett.
Issues: Equitable Distribution.

Holding: Specific findings are required for equitable distribution awards, and are required in the record on appeal in order to facilitate meaningful appellate review. If a final

judgment provides that certain attachments address an equitable distribution award, such attachments are to be included in the record on appeal. In this case, the final judgment provided for certain attachments as to the award but same were not included in the record on appeal. The appeals court reversed and remanded to the trial court with instructions to make specific findings on equitable distribution.

Case: [Berg v. Young](#)

Court: Fourth District Court of Appeal.

Trial Judge: David E. French.

Attorneys: Nancy W. Gregoire, Howard S. Friedman, Andrew A. Harris, Curtis L. Witters.

Issues: Equitable Distribution, Attorney's Fees.

Holding: The passive appreciation of a non-marital asset is a marital asset and subject to division where marital funds, or the efforts of either party, contributed to the appreciation. Where a prenuptial agreement does not address the right to enhanced value of a non-marital asset, the value is subject to equitable distribution. If a separate asset is unencumbered and no marital funds are used to finance its acquisition, improvement, or maintenance, then no portion of its value should be included in the marital estate (save for improvements arising from marital labor). A final judgment may be affirmed pursuant to the tipsy coachman doctrine because the trial court reached the right result, but for the wrong reasons. A trial court's interpretation of a prenuptial agreement is reviewed *de novo*, as such agreements are governed by the law of contracts. So, too, is its legal conclusion that an asset is marital or non-marital. The standard of review of a trial court's determination of equitable distribution is abuse of discretion.

Florida statutes determine the review and award of attorney's fees in family law matters and seek to ensure that both parties will have a similar ability to obtain competent legal counsel. It can be an abuse of discretion to grant only a partial attorney's fee award where there is a substantial disparity between the parties' incomes. However, the trial court cannot award fees based solely on disparity of income. A trial court must make specific findings of fact, either at the hearing or in the written judgment, supporting its determination of entitlement to an award of attorney's fees and the factors that justify the specific amount awarded. Prenuptial agreement provisions awarding attorney's fees and costs to the prevailing party in pieces of litigation concerning the validity and enforceability such an agreement are enforceable. A trial court's ruling on attorneys' fees in family law actions is reviewed for an abuse of discretion.

In this case, although the trial court erred in its interpretation of the prenuptial agreement (in that it failed to consider the pertinent title presumption), it properly declined to award the Former Wife any interest in the Former Husband's company. Specifically, the trial court relied on competent, substantial evidence that the Former Husband's corporation (acquired via a bank account and moneys which, pursuant to the agreement, were non-marital) and appreciation in its value were non-marital and not subject to equitable distribution. The trial court erred as to its award of attorney's fees as it failed to make findings of fact on point. Further, the prenuptial agreement set out that the party seeking to avoid its terms would bear all the attorney's fees and costs incurred by the other. As the Former Wife sought, unsuccessfully, to void the agreement the Former Husband was entitled to an award of fees against her. The appeals court reversed and remanded on the issue of fees.

Case: [Dorworth v. Dorworth](#)
Court: Fifth District Court of Appeal.
Trial Judge: George B. Turner.
Attorneys: John N. Bogdanoff, Shannon McLin, Stephen M. Brewer.
Issues: Alimony, Equitable Distribution.

Holding: Equitable Distribution

The valuation of an asset or debt in connection with equitable distribution is generally reviewed for an abuse of discretion. Valuation not supported by competent substantial evidence cannot stand. Settlement agreements are governed by the rules of contract interpretation. The trial court's interpretation of a contract in a dissolution proceeding is a matter of law subject to *de novo* review. When reversible error occurs with regard to valuation or distribution, the entire distribution scheme must be reversed and remanded to allow the trial court to ensure both parties receive equity and justice. In this case, the trial court erred, and abused its discretion, when it utilized the incorrect figure for a certain debt (a judgment resulting from a defunct land deal and which the parties agreed was a marital asset). In its final judgment, the trial court concluded the value of the asset in the absence of any reasoning. The trial court then equitably distributed the parties' assets and liabilities and made an associated award of lump sum alimony to the Former Wife. As the trial court erred in calculations on point and as alimony flowed, the appeals court remanded for reconsideration and recalculation.

Durational Alimony

An alimony award should not exceed a Former Spouse's need. An order awarding alimony in excess of the Recipient Spouse's needs will be reversed as an abuse of discretion, absent special circumstances. In this case, the trial court erred when it listed specific items of expense (such as student loan expenses) in the final judgment while it determined Former Wife's monthly needs. The calculations of the Former Wife's expenses and income were unclear. The appeals court remanded for reconsideration of the amount of durational alimony to be paid based upon the Former Wife's needs and Former Husband's ability to pay.

Lump Sum Alimony

The trial court must also reconsider the entire distribution plan because each division and distribution of a marital asset or liability is interrelated in order to achieve a fair result to both parties. Similarly, the trial court should reconsider alimony awards and other orders in the final judgment that were based on the incorrect debt amount. In this case, the trial court erred in awarding Former Wife a specific amount of lump sum alimony, which was coordinated with her equitable distribution awards. The appeals court remanded for reconsideration of lump sum alimony in all the associated circumstances.

Case: [Terry v. Terry](#)
Court: Third District Court of Appeal.
Trial Judge: Amy L. Smith.
Attorneys: Jeffrey Begens, Benjamin T. Hodas, Michelle North Berg.
Issues: Equitable Distribution.

Holding: A trial court shall equitably divide assets properly subject to such an award, after considering any conduct by the parties that will affect the asset value (such as dissipation). So too will consideration be given to agreements between the parties which stipulate assets are not to be so divided. In this case, the trial court erred in: (1) equitably dividing and awarding the Former Husband's pension despite the parties having dissipated it during the action's pendency; (2) equitably dividing the parties' furniture despite the parties' having previously stipulated that such property would not be subject to equitable distribution; and (3) failing to equitably value or divide another pension asset belonging to the former husband when it was open and proper to do so. The appeals court remanded for revision to the equitable distribution.

Case: [Gentile v. Gentile](#)
Court: Fourth District Court of Appeal.
Trial Judge: Timothy L. Bailey.
Attorneys: Stephen H. Butter, Jason H. Haber, Caryn Goldenberg Carvo.
Issues: Equitable Distribution.

Holding: A trial court should adhere to the terms of a settlement agreement in making an equitable distribution of assets, including provisions as to matters for which mediation is sought. A trial court should conduct an evidentiary hearing if there is dispute. In this case, the trial court erred in granting the Former Wife's motion and ordering certain real property (a marital asset) be divided pursuant to appraisals for mediation proceedings when the record did not show that property division was subject to mediation. The parties had a settlement agreement that may have addressed the matter and upon which they may need to rely. The appeals court reversed and remanded to determine whether the settlement agreement contemplated resolution and proper division and valuation of the property.

Case: [Corcoran v. Corcoran](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Leonard R. Ross, Sara E. Glover, Deborah L. Greene, Andrea C. Jevic.

Issues: Alimony, Attorney's Fees, Equitable Distribution, Parenting.

Holding: A trial court shall make findings of fact as to modification of alimony. When determining attorney's fees, a trial court considers the parties' respective financial situations. A trial court must indicate what evidence it relied on for its findings regarding shared parental responsibilities and contempt of court. After a dissolution of marriage, the parties are equally responsible for all payments necessary to maintain their ownership of the marital property until its sale, including mortgage payments, taxes, insurance and repairs.

In this case, the trial court erred as it:

- e. reduced the Former Wife's monthly in the absence of specific findings of fact.
- f. awarded attorney's fees in the absence of specific findings as to the parties' financial need and ability to pay.
- g. failed to identify the evidence it relied on in making an order regarding shared parental responsibilities and the Former Wife being contempt of court.

- h. failed to hold the Former Wife solely responsible only for repairs to the marital home or, in the alternative, to indicate an evidentiary basis to hold her responsible for all future repairs.

The appeals court reversed and remanded for reconsideration.

Case: [Kelley v. Kelley](#)
Court: Fourth District Court of Appeal.
Trial Judge: Timothy P. McCarthy.
Attorneys: Troy William Klein, Bernice Marie Kelley.
Issues: Equitable Distribution, Alimony, Child Support.

Holding: Equitable Distribution

In distributing marital assets and liabilities, the presumption is an equal division, however, the court may order an unequal distribution based on factors enumerated under Florida Statutes. Unequal distribution must be based on record evidence. In this case the trial court erred in awarding the Former Wife a greater share of the marital assets when it had already awarded her a balancing payment from the Former Husband in an effort to equalize the parties' respective shares of the marital assets.

Alimony

An award of alimony will usually not be reversed on appeal absent an abuse of discretion. Under Florida Statutes (2014), the trial court must consider the list of factors set out including any other consideration necessary to do justice between the parties. Failure to do so is reversible error. In this case the trial court erred in failing to make the requisite factual findings in support of the alimony award to Former Wife. Specifically, it failed to identify or make findings of fact relative to: the standard of living established during the marriage; the contributions of each party to the marriage; the tax treatment and consequences of the alimony award; and all sources of income available to either party. Without these findings, the appeals court was unable to make a proper determination as to the appropriateness of durational alimony. The appeals court reversed and remanded.

Case: [Malave v. Malave et al](#)
Court: Fifth District Court of Appeal.
Trial Judge: Mark J. Hill.
Attorneys: William Glenn Roy, III, Tyler J. Chasez, Nichole J. Segal, Andrew A. Harris.
Issues: Equitable Distribution, Procedure.

Holding: Ancillary relief is generally available in dissolution of marriage cases. However, the ancillary relief must relate to matters which are personal and proper to the divorce action itself. The common thread between them is a distinct relationship linking the parties and the subject of the litigation. A circuit court does not lack jurisdiction simply because a case is filed or assigned to the wrong division within the circuit court. All circuit court judges have the same jurisdiction within their respective circuits. The filing of an action in the wrong division should be remedied by reassignment to the correct division as opposed to a dismissal of the action.

In this case, the family (trial) court erred as it found that it lacked jurisdiction over the divorce action because the Former Husband died before a judgment dissolving the marriage was entered and dismissed, with prejudice, the Former Wife's ancillary petition. The parties were in the midst of divorce proceedings when the Former Husband and the parties' children were tragically killed in a car accident. The divorce petition was abated by his death. Subsequently, the Former Wife discovered that he had allegedly made a substantial number of property and money transfers to his relatives shortly before his death. She deduced that the disposal of marital assets was intentional and that other parties, including his lawyer, had assisted in the allegedly fraudulent transfers. She moved to reopen the abated divorce case and to file an ancillary petition naming as defendants the parties whom she believed had assisted him, including his lawyer. The family court granted the motion. The parties named did not file a response. The clerk entered a default against the non-lawyer while the Former Husband's previous lawyer filed a motion to dismiss the ancillary petition asserting that the family court lost jurisdiction over the divorce case when the husband died. The family court agreed and dismissed the ancillary petition. The appeals court reversed and found that the dismissal with prejudice was improvidently entered, and directed the circuit court to transfer the ancillary petition from its family division to its civil division. The Former Wife's attempt to sue the Former Husband's former lawyer for fraud in the divorce action was misplaced, as no judgment had been entered dissolving the marriage at the time of the Former Husband's death. Therefore, the divorce action ended when the Former Husband died. The Former Wife's ancillary petition itself was not ancillary to the divorce because the Former Husband's former lawyer was not a party to the divorce litigation. However, the family court should have transferred the matter to the civil division of the circuit court. By dismissing the action with prejudice the trial court completely denied the Former Wife the opportunity to raise her claims anywhere. The appeals court reversed the dismissal with prejudice of the ancillary

petition and remanded for further proceedings in the appropriate division of the circuit court.

Case: [Gromet v. Jensen](#)
Court: Third District Court of Appeal.
Trial Judge: Pedro P. Echarte.
Attorneys: George R. Baise Jr., Brian C. Tackenberg, Robin Buckner, Robert F. Kohlman.
Issues: Equitable Distribution.

Holding: A trial court's determination that an asset is marital or non-marital involves mixed questions of law and fact. Although an appeals court defers to the trial court's factual findings if they are supported by competent, substantial evidence, it will review the trial court's legal conclusions *de novo*.

Non-marital assets include assets acquired separately by either party by non-interspousal gift, bequest, devise, or descent, and asset acquired in exchange for such assets. Non-marital assets may lose their non-marital character and become marital assets where they have been commingled with marital assets. This is especially true with respect to money because money is fungible, and once commingled it loses its separate character.

Florida Statutes (2014), provide that marital assets include the enhancement in value and appreciation of non-marital assets resulting from the efforts of either party during the marriage. Where a former spouse seeks to establish that marital efforts were utilized to enhance the value of the other party's non-marital business, he or she also has the burden of proving that assertion and the value, based on competent, substantial evidence.

In this case, the trial court erred by treating the Former Husband's accounts as marital assets subject to equitable distribution, when the accounts were entirely funded with an inheritance he received; the Former Wife failed to present competent, substantial evidence that marital funds were deposited into or commingled with any of the Former Husband's accounts; and the evidence showed that, despite actively managing his accounts, they decreased in value. The appeals court reversed the equitable distribution portion of the final judgment.

Case: [Miggins v. Miggins](#)
Court: Fourth District Court of Appeal.
Trial Judge: Krista Marx.
Attorneys: Doreen Truner Inkeles, Adam M. Zborowski.

Issues: Equitable Distribution.

Holding: A party seeking equitable distribution of a military Survivor Benefit Plan shall provide evidence concerning assertions as to the Plan including the cost of maintaining it and how equitable distribution or alimony would be affected. In this case, the trial court was incorrect when it found that the Former Husband’s military Survivor Benefit Plan was not marital property subject to equitable distribution. However, it was correct in its treatment of the Plan. Specifically, the Former Wife presented no evidence concerning the cost of maintaining the Plan and how equitable distribution or alimony would be affected. The appeals court reversed on the issue and remanded for the entering of a second amended final judgment containing language referring to the “existence of a supportive relationship” pursuant to Florida Statutes (2014).

Case: [Noormohamed v. Noormohamed](#)
Court: Fifth District Court of Appeal.
Trial Judge: Sally D.M. Kest.
Attorneys: Brandon M. Tyson, Andrea Black.
Issues: Equitable Distribution.

Holding: In a dissolution action, the trial court does not have jurisdiction to adjudicate property rights of non-parties. A trial court can determine the existence of marital liabilities and allocate them as part of its equitable distribution scheme. In this case, however, the trial court erred when it ordered the return of property to a non-party (the same relief that the non-party could have secured in a replevin action). The appeals court reversed the challenged portions.

Case: [Paulick v. Paulick](#)
Court: Fifth District Court of Appeal.
Trial Judge: James H. Earp.
Attorneys: John N. Bogdanoff, Shannon McLin Carlyle, B.C.S..
Issues: Equitable Distribution, Parenting.

Holding: Determinations as to parenting are to be made on competent, substantial evidence. Parenting plans can be fashioned or modified on such evidence; even primary caregiver roles. A party that is the primary caregiver of his or her children can, if he or she continually rejects trial court orders, have that role altered so that the children could be placed with the other party, particularly if the other party complies with the letter and the spirit of the court’s orders. In this case, the trial court did not err in its equitable distribution of the parties’ assets (specifically the

marital home and the Former Husband's savings plan); the parenting plan (which made Former Husband the primary caregiver of the parties' children); and the denial of alimony and attorney's fees. The trial court made its determinations based on competent, substantial evidence.

Case: [Lynch v. Lynch](#)
Court: Fifth District Court of Appeal.
Trial Judge: Robert T. Burger.
Attorneys: Joshua D. Ferraro.
Issues: Equitable Distribution, Contempt.

Holding: An award subject to equitable distribution is not enforceable by contempt. The only remedies are those available to creditors against debtors. In this case, the trial court erred in granting the Former Wife's motion for contempt after she sought to enforce a portion of the Former Husband's disability benefits which were granted to her in the final dissolution. Such order was error as contempt is not a remedy – rather, the remedies are those available to creditors against debtors. The appeals court reversed.

Case: [Goldman v. Goldman](#)
Court: Fifth District Court of Appeal.
Trial Judge: Bob Leblanc.
Attorneys: James M. Campbell, Melanie M. Demps.
Issues: Equitable Distribution.

Holding: A trial court must categorize divorcing parties' assets as nonmarital and marital. If a trial court determines assets are marital assets and thereafter makes an unequal distribution, it must specifically address the facts pertinent to each statutory consideration to support its decision. A trial court may order the obligated spouse to maintain a life insurance policy as security for an alimony award but not in the absence of evidence or findings as to the cost, amount, or the availability of such insurance. In this case, the trial court erred in failing to designate whether the Former Wife's checking account and certificate of deposit were marital or nonmarital property when both were in her name when making an unequal distribution of the assets. The appeals court reversed and remanded.

Case: [Felice v. Felice](#)
Court: Second District Court of Appeal.
Trial Judge: Christine Greider.
Attorneys: *Appellant was pro se.*
Issues: Equitable Distribution, Parenting.

Holding: Equitable distribution

An inter-spousal agreement can expressly waive a Former Spouse's rights and claims in property, including the appreciated or enhanced value of property that occurs during the marriage. In this case, the trial court erred in including a portion of the value of the Former Husband's premarital home as a marital asset in the equitable distribution scheme. Even though the agreement did not specifically refer to any right to the appreciation or enhancement of his premarital home, the broad language of the agreement expressly waived the Former Wife's rights and claims in the property and was considered to include the appreciated or enhanced value of the property that occurred during the marriage. The appeals court reversed.

Parenting

If a trial court modifies a parenting plan in an order on motions for rehearing it must also implement the new parenting plan in the amended final judgment. In this case, the trial court erred in failing to incorporate into the amended final judgment the amended parenting plan that was ordered on rehearing from the original final judgment. The appeals court reversed the amended final judgment to the extent that the parenting plan language and attached parenting plan were inconsistent with the trial court's rulings on rehearing and directed the trial court to amend to be consistent with same.

FINAL ORDER

Case: [Guevara v. Guevara et al](#)
Court: Third District Court of Appeal.
Trial Judge: Maria E. Dennis.
Attorneys: Jay M. Levy, Ira B. Price, Mark E. Pollack.
Issues: Procedure, Final Order.

Holding: Leave of court to amend a pleading shall be given freely when justice so requires. In this case, trial court erred when it abused its discretion in dismissing the Former Wife's petition to set aside a Final Judgment (approving and ratifying the parties' Marital Settlement Agreement, "MSA") with prejudice to her claim that she did not receive moneys in exchange for her interest in the sale of certain real estate, as was provided for in the MSA. The appeals court reversed that portion of the trial court order and, on remand, the Former Wife was permitted to amend the portion of her claim as to the moneys to which she is entitled under the MSA.

FOREIGN JUDGMENT

Case: [Gonzalez v. Parisi](#)
Court: Fourth District Court of Appeal.
Trial Judge: Renee Goldenberg.
Attorneys: Jacqueline R. Hernandez-Valdes, Claudia Moncarz.
Issues: Child Support, Foreign Judgment.

Holding: A petitioner seeking to domesticate and enforce a foreign decree or judgment pertaining to child support obligations and arrearages must present a trial court with competent, substantial evidence in support of his or her claims. In this case, the trial court erred in finding that the Former Wife's assertions regarding a purported document providing for the payment of child support, with annual indexed increases, was the same agreement given effect in a foreign decree, when there was no competent, substantial evidence on point. The appeals court reversed as to the trial court's order granting the petition to domesticate because of the lack of competent substantial evidence of the document purporting to create the support obligation.

Case: [Tucker v. Tucker](#)
Court: Fourth District Court of Appeal.
Trial Judge: Merrilee Ehrlich.
Attorneys: Theresa Yuricic.
Issues: Equitable Distribution, Alimony, Contempt.

Holding: A trial court's property valuation must be supported by competent, substantial evidence. By entering the final order before a party has had an opportunity to be heard, a trial court deprives him or her of the due process guaranteed by the Florida Constitution. Facts are not established for consideration by the trial court, or by appellate review, when attorneys make representations in their arguments before the trial court. Same does not constitute evidence. In setting the value of assets, a trial court must base its decision on proper evidence and provide findings as to the valuation. In this case the trial court erred as its stock valuation for an equitable distribution was not supported by competent, substantial evidence because of three errors. The trial court erred in determining the value of the stock:

1. before the Former Wife finished presenting her evidence;
2. without hearing the Former Husband's evidence, instead, relying on his attorney's unsworn statement;
3. by making its own assessment, without providing a factual explanation.

The appeals court reversed and remanded for the court to resume and complete the evidentiary hearing.

Case: [Jonas v. Jonas](#)
Court: Fourth District Court of Appeal.
Trial Judge: Lucy Chernow Brown.
Attorneys: Roderick V. Hannah, Eric C. Christu.
Issues: Jurisdiction, Foreign Judgments.

Holding: Comity requires courts state to refrain from exercising jurisdiction in certain cases. When a court is confronted with an action that would involve it in a serious interference with or usurpation of this continuing power, considerations of comity and orderly administration of justice demand that the non-rendering court should decline jurisdiction and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there. As for the principle of priority, or where a foreign court is first to assert jurisdiction, the usual remedy in such cases is to stay the subsequent proceeding in favor of the prior proceeding. The interests of judicial economy and finality may require that subsequent actions come to an end. The appeals court affirmed and required a former spouse to return to the original jurisdiction to conclude proceedings.

Case: [McIndoo v. Atkinson](#)
Court: Fourth District Court of Appeal.
Trial Judge: Laura M. Watson.
Attorneys: *Pro Se.*
Issues: Custody, Foreign Judgments.

Holding: The general purposes of the UCCJEA are to avoid jurisdictional competition and conflict with other courts in child custody matters; promote cooperation with other courts; insure that a custody decree is rendered in the state which enjoys the superior position to decide what is in the best interest of the child; deter controversies and avoid relitigation of custody issues; facilitate enforcement of custody decrees; and promote uniformity of the laws governing custody issues.

If the factual circumstances of a case meet the jurisdictional standards of the statute, and the foreign order has not been modified, then a trial court should exercise jurisdiction to grant a party's petition of domesticate the foreign order. Specifically, in a child custody proceeding under commenced under Florida statute, if the Home State Rule applies, and if there are no proceedings in another state, or if there are proceedings in the another state which are not identical to those in Florida, then a Florida trial court may exercise jurisdiction.

A child custody proceeding involves legal custody, physical custody, residential care, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity,

termination of parental rights, and protection from domestic violence, in which the issue may appear.

Under Florida statute, “Home State” means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. In the case of a child younger than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period. The “Home State” rule applies to child custody proceedings.

A Florida court may not exercise its jurisdiction for custody if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state.

In this case, the trial court erred when it found that it did not have subject-matter jurisdiction because: (1) the Petitioner Mother did not file a motion regarding a “child custody proceeding” as defined by Florida statute; (2) Florida was not the “home state” of the child; and (3) proceedings “in substantial conformity with the UCCJEA” had been commenced in another jurisdiction.

Child Custody Proceeding

The trial court erred when it declined to exercise jurisdiction to act upon the petition to domesticate a foreign custody order in the absence of any statutory, or other, authority requiring that a proceeding be a “child custody proceeding” under the definition in the UCCJEA before it could act. To the contrary, both the statute governing domestication of a foreign judgment and registration of a judgment are contained within Florida’s UCCJEA statutes. Therefore, the fact that the mother’s filings were not regarding a child custody proceeding is irrelevant to the question of jurisdiction to domesticate a foreign custody order.

Home State Rule

The trial court also erred in its interpretation of the proceedings and its application of the Home State Rule by denying the Petitioner Mother’s application to domesticate the foreign order and seeking to rely on the Respondent Father’s opposition to the petition, which relied in large part on this section of the UCCJEA. The child custody proceeding was properly within the domain of Florida statute because, as was in fact found by the trial court, the petitions filed by the mother did not constitute “child custody proceedings.” This means that the “home state” rule did not apply

to the mother's petitions.

Simultaneous Proceedings

The trial court further erred as it failed to specifically cite to this statute in its order, since it stated that the proceedings in the other state (ie: Arizona) were in substantial conformity with the UCCJEA. However, the proceedings before the trial court could have been entertained as they were for domestication of the foreign order. When the trial court concluded it did not have subject-matter jurisdiction based, at least in part, upon the simultaneous proceedings statute, it misapplied the statute.

The appeals court reversed the trial court's order and remanded for the trial court to enter an order granting the Petitioner Mother's petition to domesticate the foreign order and confirming its registration.

GRANDPARENT VISITATION

Case: [Ledoux-Nottingham v. Downs](#)
Court: Fifth District Court of Appeal.
Trial Judge: Bob LeBlanc.
Attorneys: Jamie Billotte Moses, Leigh Anne Miller, Andrew T. Windle.
Issues: Grandparent Visitation, Attorney's Fees.

Holding: Jurisdiction

A Florida court shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this part or the determination was made under factual circumstances meeting the jurisdictional standards of Florida laws. In this case, trial court did not err when it enforced the Colorado order determining visitation for the Grandparents after the Mother moved from Colorado to Florida. Since the Colorado order was a final judgment and emanated from a "child custody proceeding" within the meaning of Florida Statutes (2013), it became enforceable in Florida pursuant to the Full Faith and Credit Clause. Accordingly, the trial courts was required, without discretion, to give recognition to final judgments of another state.

Modification

A party seeking modification of a time-sharing schedule has the burden of proving (1) a substantial and material change in circumstances, and (2) that the best interests of the child will be promoted by such modification. The substantial and material change in circumstances must have occurred subsequent to the last order addressing time-sharing. In this case, the trial court properly determined that there had not been a substantial and material change in circumstances during the 13 days between the entry of the Colorado order and the filing of Mother's petition.

Make-Up Visitation

In such circumstances, a trial court is not necessarily precluded from ordering make-up visitation. On remand, the trial court was directed to promptly address the Grandparents' motion for make-up visitation.

Attorney's Fees

Florida States (2013) provides that if a court has personal jurisdiction over the party against whom attorney's fees are being assessed, the court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including attorney's fees unless the party from whom fees are sought establishes that the award is clearly inappropriate. In this case, the trial court erred in summarily denying the Grandparents' request for attorney's fees,

because it did not consider whether assessing attorney's fees against Mother would be "clearly inappropriate." On remand, the trial court was directed to make specific findings as to the entitlement to attorney's fees.

GUARDIANSHIP

Case: [T.B. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Peter Evans.
Attorneys: Andrew A. Holness, Rosemarie Farrell, Patricia Murphy Propheter.
Issues: Guardianship, Visitation.

Holding: Florida Statutes (2014), provide that a written order establishing a permanent guardianship must list the circumstances or reasons why the child’s parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact adjudicating the child dependent or by making separate findings of fact. A general reference to the dependency findings does not satisfy the statute. In this case, the trial court erred by failing to conduct an evidentiary hearing and make findings of fact to support establishing the permanent guardianship and modifying the visitation when a hearing is required to permit the guardian to relocate. The appeals court reversed.

Case: [K.J. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Kathleen J. Kroll.
Attorneys: Andrew A. Holness, Meredith K. Hall.
Issues: Termination, Guardianship.

Holding: A general reference to dependency findings does not satisfy the statutory requirements to establish permanent guardianship. In this case, the trial court did not err in its adjudication of the child as dependent given the existence of a prior similar order and the court’s determination that circumstances had not changed. An order of permanent guardianship was a permissible case plan under Florida Statutes (2015). The trial court’s order was in response to D.C.F. filing a case plan for a permanent guardianship and the order was entered after a hearing with notice and an opportunity for all parties to be heard. While the appeals court noted that the earlier order did not contain the findings of fact required by Florida Statutes (2015) as to permanent guardianship, per the record, there was competent substantial evidence to support the court’s permanent guardianship determination. The appeals court reversed and remanded for the court to enter an order, based on testimony and evidence already taken, that includes the specific findings of fact required by statute.

IMPUTING INCOME

Case: [Niekamp v. Niekamp](#)
Court: Second District Court of Appeal.
Trial Judge: John S. Carlin.
Attorneys: Sam R. Assini, Matthew P. Irwin, Luis E. Insignares.
Issues: Equitable Distribution, Time-sharing, Spousal Support, Child Support, Imputing Income, Attorney's Fees.

Holding: Parental Responsibility

Final judgment that provides sole parental responsibility to one party and denies contact to the other must set out for the parent who losing contact what must be done to reconnect with the children. An order that does not do so is deficient as it fails to advise the parent what is expected and prevents a successor judge from monitoring the parent's progress.

Marital Assets

When an asset is acquired during the marriage, it is presumed to be marital unless specifically established otherwise. In considering a business as a marital asset, enterprise goodwill is a distributable marital asset and personal goodwill is non-marital. When a trial court makes an equitable distribution award of a business, characterized as a marital asset, a value must be assigned to the asset.

Alimony

A twenty-two-year marriage is presumed to be long-term. This places a presumption in favor of alimony when warranted by one party's need and the other party's ability to pay. In determining an alimony award, a trial court shall consider the parties' respective physical and emotional conditions and employability.

Dissipation of Assets

When a spouse depletes marital assets during the pendency of dissolution proceedings to pay for support, living expenses and litigation expenses, it is error to include the assets in the equitable distribution scheme unless there is a specific finding of intentional misconduct. Such a finding must be based on evidence showing that the marital funds were used for one party's own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown.

In this case, the trial court erred in that:

- a. The final judgment failed to prescribe any schedule or benchmarks for re-establishing the Former Husband's parenting of the children.
- b. It classified the Former Wife's business as a non-marital asset, which although it depended heavily on her personal expertise and goodwill had tangible assets (bank accounts, instructional books and enterprise goodwill).
- c. It distributed a non-existent asset to the Former Husband (being money that he withdrew from retirement accounts spent on attorney's fees).
- d. It determined the Former Husband was voluntarily unemployed when there was evidence showing he was unemployed for mental health reasons.
- e. It imputed income to him in relation to child support and in its determination regarding payment of attorney's fees.

The appeals court reversed and remanded for further proceedings.

Case: [Sikora v. Sikora](#)
Court: Second District Court of Appeal.
Trial Judge: Richard A. Nielsen.
Attorneys: Christine A. Hearn, Steven L. Brannock, Mark F. Baseman.
Issues: Alimony, Equitable Distribution, Imputation.

Holding: Permanent Periodic Alimony

Permanent periodic alimony is used to provide the needs and the necessities of life to a Former Spouse as they have been established by the marriage of the parties. Absent special circumstances, an alimony award should not exceed a Recipients Spouse's need (excessive awards constitute an abuse of discretion). In the absence of special circumstances, a trial court errs by awarding permanent, periodic alimony in an amount that exceeds a Former Spouse's established needs. In this case, the trial court failed to include findings detailing any special circumstance that would explain why alimony was awarded in an amount exceeding the amount necessary to meet the Former Wife's need. The appeals court reversed and remanded for the trial court to either include such findings or reconsider the issue in its entirety.

Imputation

Trial courts may impute income from interest earned on retirement accounts if the income is readily available to a Former Spouse without penalty and without the need to reduce the principal. However, any decision to impute income must be supported by competent, substantial evidence. In this case, the trial court erred by imputing income to the Former Wife from her retirement accounts where there was

no evidence to support the specific rate of return used by the trial court. Nor was there an agreement of the experts on the rate of return for the retirement accounts or evidence of the historical rate of return. Rather, the trial court selected the same rate of return used for imputing income on the Former Wife's investment accounts. The appeals court remanded with directions to adjust the alimony award accordingly.

Retroactivity

Generally, when a trial court awards alimony, it abuses its discretion if it fails to make the award retroactive to the date of filing the petition for dissolution. There is an exception where the trial court enters a temporary alimony award during the pendency of the case. In that situation, a retroactive award is limited to the date that the request for an increased award is filed. However, a temporary alimony award can be readdressed at a final hearing if the temporary award was made "without prejudice."

In this case, the parties stipulated that the Former Husband would pay temporary alimony, and the court awarded temporary alimony "without prejudice" such that the issue of temporary alimony could be readdressed at the final hearing. The appeals court ordered the reversal of the permanent, periodic alimony award, and on remand, directed the trial court reconsider the issue of retroactivity of any newly imposed permanent, periodic alimony award (after comparing such award to the stipulated temporary alimony).

Life Insurance

A trial court must include findings relating to a Former Spouse's insurability at the time of trial and the cost of an insurance policy. In this case the trial court erred when it ordered the Former Husband to secure an insurance policy in the absence of any explanation for how this amount was arrived at or what it was based on. Moreover, trial court's failure to explain how it arrived at the specific dollar requirement was troublesome because the specific amount of coverage bore no correlation to projected alimony amounts and it was not possible for the appeals court to ascertain if the trial court ordered life insurance for purposes other than securing alimony due at the time of the Former Husband's death.

Lump Sum Alimony

Courts have previously reversed lump sum alimony awards that have no evidentiary support. In this case, there was no evidence to justify the lump sum alimony award, and the trial court made no findings to explain its rationale. The appeals court reversed and remanded for the trial court to reconsider the award based on the evidence on the record.

Attributing Dissipated Assets as Part of Equitable Distribution

It is error to include assets in an equitable distribution scheme that have been diminished or dissipated during the dissolution proceedings. However, an exception to this general proposition exists when misconduct during the dissolution proceedings results in the dissipation of a marital asset. The misconduct necessary to support inclusion of dissipated assets in an equitable distribution scheme does not include mismanagement or simple squandering of marital assets in a manner of which the other spouse disapproves. Instead, to include a dissipated asset in the equitable distribution scheme, there must be evidence of the spending spouse's intentional dissipation or destruction of the asset, and the trial court must make a specific finding that the dissipation resulted from intentional misconduct.

In this case, the trial court erred failing to apply to the standard for attributing dissipated assets to a spouse in dissolution proceedings. Specifically, the trial court erred in attributing monies to the Former Wife in the equitable distribution in such a way that amounted to a sanction for failing to comply with a documenting requirement. The appeals court reversed the trial court's equitable distribution awards and remanded for further proceedings.

Case: [Heard v. Perales](#)
Court: Fourth District Court of Appeal.
Trial Judge: F. Shields McManus.
Attorneys: E. Christopher DeSantis, Michael Rebuck.
Issues: Child Support, Imputation.

Holding: In imputing income, the trial court engages in a two-step process. Firstly, the trial court must conclude that the termination of income was voluntary. Secondly, the trial court must determine whether the subsequent unemployment is the result of the Former Spouse's pursuit of his or her own interests or through less than diligent and *bona fide* efforts to find employment paying income at a level equal to or better than that formerly received. The trial court must make factual findings as to both steps. The trial court must set also forth factual findings as to

the probable and potential earnings level, source of imputed and actual income, and adjustments to income. The party claiming income should be imputed to the other party, on purported grounds of unemployment or underemployment, bears the burden of showing both that the other party is employable and that there is employment available to him or her.

In this case, the trial court properly engaged on the first step, as is it determined, on proper evidence, that the Former Wife lost her employment because of her particular conduct. Such finding was sufficient to support a conclusion that she was voluntarily unemployed. However, the trial court erred regarding the second step as it made no findings regarding the Former Wife's diligence in seeking new employment. Nor did the evidence support a finding that her subsequent unemployment resulted from less than diligent and *bona fide* efforts to find employment as the Former Husband did not introduce evidence as to these issues. Given the lack of necessary findings and evidence, the appeals court reversed and remanded for a redetermination of child support.

Case: [Chamberlain v. Eisinger](#)
Court: Fourth District Court of Appeal.
Trial Judge: Paul B. Kanarek.
Attorneys: A. Julia Graves
Issues: Child Support, Imputed Income, Time-Sharing, Reunification.
Holding: Modification of Custody & Timesharing

When modifying a parenting and timesharing plan, the primary considerations are the best interests of the children. To modify an order of custody, the movant must show that: the circumstances have substantially and materially changed since the original custody determination; this change could not be contemplated by the parties at the time of the original judgment; and it is in the child's best interests to change custody. While this onus on the party seeking to modify is intended to preclude repeated custody disputes, it should not preclude legitimate review of the petition. Courts must evaluate all relevant statutory factors affecting the welfare and interests of the child. A trial court's order changing custody enjoys a presumption of correctness on appellate review and will only be disturbed for abuse of discretion.

In this case, the trial court did not err in concluding a substantial change in circumstances existed and that such change warranted the modification of timesharing because it trial court considered evidence relevant to the best interests of the children.

Reunification

A custodial parent has an affirmative obligation to encourage and nurture the relationship between the child and the noncustodial parent. This entails encouraging the child to interact with the noncustodial parent, taking good faith measures to ensure that the child visit and otherwise have frequent and continuing contact with the noncustodial parent and refraining from doing anything likely to undermine the relationship naturally fostered by such interaction. In this case, the trial court did not err in holding that the Former Husband was not thwarting the Former Wife's efforts at reunification with the children insofar as he provided evidence to support his position while the Former Wife provided none.

Child Support

The standard of review for a child support award is abuse of discretion. In this case, the trial court erred in factoring in the Former Husband's alimony payments into child support for months where he failed to pay alimony. The appeals court reversed and remanded for a determination of the amount of alimony paid to determine an offset to the retroactive child support obligation.

Imputing Income

When imputing income, the trial court must set forth factual findings, based on cogent evidence, concerning the probable and potential earnings level, source of imputed and actual income, and adjustments to income. In this case, the trial court erred in imputing income to the Former Husband in the absence of evidence.

[INJUNCTION FOR PROTECTION](#)

Case: [Robertson v. Robertson](#)
Court: Fourth District Court of Appeal.
Trial Judge: Merrilee Ehrlich.
Attorneys: John T. David, Rhoda Sokoloff.
Issues: Injunction for Protection.

Holding: Florida Statutes (2013), criminalizes a person who wilfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. To harass, is to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. This “course of conduct” includes “a series of acts over a period of time, however short, which evidences a continuity of purpose.” In this case, the trial court did not err in entering the injunction insofar as surveillance-based evidence showed three incidents, which were further verified by Appellant’s e-mail to Appellee admitting to being at her residence, established a course of conduct sufficient to support the trial court’s entry of the injunction against Appellant.

Case: [Plummer v. Forget](#)
Court: Fifth District Court of Appeal.
Trial Judge: Dan Traver.
Attorneys: Patrick Michael Megaro, Jennifer M. Manyen.
Issues: Injunction for Protection.

Holding: A person commits the act of stalking by wilfully, maliciously, and repeatedly following, harassing, or cyberstalking another person. To harass another person means to engage in a course of conduct directed at that specific person which causes substantial emotional distress to him or her and serves no legitimate purpose. A course of conduct is a series of actions, over a period of time, which evidences a continuity of purpose. Each incident of stalking must be proven by competent, substantial evidence. When evaluating whether competent, substantial evidence supports a trial court’s ruling, legal sufficiency, as opposed to evidentiary weight, is the appropriate concern of an appellate tribunal. In determining whether each incident of harassment causing substantial emotional distress has been established to support a finding of stalking, courts use a reasonable person standard, not a subjective standard. In this case the trial court erred in entering the injunction for protection as the evidence was legally insufficient to support doing so. The appeals court reversed.

Case: [Ardis v. Ardis](#)
Court: First District Court of Appeal.

Trial Judge: T. Michael Jones.
Attorneys: Nancy A. Daniels, Glenna Joyce Reeves, Pamela Jo Bondi, Michael McDermott.
Issues: Protection Against Domestic Violence.

Holding: A judgment of contempt is presumed correct on appeal and will not be disturbed unless there is insufficient evidence in the record to support it. Indirect criminal contempt may be found for violation of a court order, but only if the order clearly and definitely advises the person of its command and direction. In this case, all of the malfeasance alleged in the Former Wife's petition post-dated the entry in of a Dissolution of Marriage (DOM) Order. Here, the continued compliance by the Former Husband with the courteous conduct provision in the domestic violence order, after the court entered the DOM order, renders the appeals court unable affirm the criminal contempt judgment and sentence entered against the Former Husband based upon a wilful violation of that order. The appeals court reversed and remanded.

Case: [Martinez v. Izquierdo](#)
Court: Fourth District Court of Appeal.
Trial Judge: Laura M. Watson.
Attorneys: Blanca Rosa Sordo.
Issues: Protection Against Domestic Violence.

Holding: A trial court may enter an injunction for protection against domestic violence if it properly finds, on consideration of sufficient evidence, that the petitioner has an objectively reasonable cause to believe that he or she is in imminent danger of becoming a victim of an act of domestic violence. Under Florida Statute, the party being enjoined shall surrender any firearms of ammunition in his or her care or possession, unless he or she is a law enforcement officer, in which case, the prohibition may apply to them personally but not regarding their employment.

In this case, the trial court did not err given that the evidence was sufficient to establish that the Petitioner had an objectively reasonable cause to believe she was in imminent danger of becoming the victim of an act of domestic violence. However, in issuing the injunction, the court erroneously required the Respondent to surrender his ammunition and firearms notwithstanding that he was a law enforcement officer. The appeals court affirmed the trial court's entry of the underlying injunction, but reversed and remanded with instructions that the trial court remove the prohibition on ammunition and firearms based on his status as a law enforcement officer, without prejudice for the trial court to provide limitations on any personal firearms or ammunition in his possession.

Case: [Bristow v. Bristow](#)
Court: Fifth District Court of Appeal.
Trial Judge: Michelle T. Morley.
Attorneys:
Issues: Injunction for Protection Against Domestic Violence.

Holding: A petition for the dismissal of an injunction for protection against domestic violence must state a cause of action. It cannot make vague allegations. Rather, it must allege sufficient facts to show that a party has reasonable cause to believe he or she is in imminent danger of being a victim of domestic violence.

In this case the trial court did not err when it declined to set an evidentiary hearing regarding a petition filed by the Appellant on the grounds that the petition was deficient on the facts required to establish jurisdiction of the Florida courts pursuant to statute. The appeals court's affirmance was without prejudice to the Appellant filing, if able to do so in good faith, a new, legally sufficient petition.

Case: [Hair v. Hair](#)
Court: Fourth District Court of Appeal.
Trial Judge: Timothy P. McCarthy.
Attorneys: Michael L. Cohen.
Issues: Domestic Violence Injunction.

Holding: Florida Statutes provide that a family or household member may file a petition for protection against domestic violence if that person is either the victim of domestic violence as defined under statute or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence. Domestic violence is any assault, including but not limited to, aggravated assault, battery, sexual assault, stalking, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. To determine whether the victim's fear of imminent domestic violence is reasonable, the trial court must consider the current allegations, the parties' behaviour within the relationship, and the history of the relationship as a whole. In this case, the trial court erred in granting the injunction when the petitioner failed to present sufficient evidence that she was a victim of domestic violence or was in imminent danger of becoming a victim of domestic violence. The appeals court reversed the final judgment of injunction for protection against domestic violence.

Case: [Horowitz v. Horowitz](#)
Court: Second District Court of Appeal.
Trial Judge: Jalal Harb.
Attorneys: Rafael J. Echemendia.

Issues: Injunction for Protection Against Domestic Violence.

Holding: Cyberstalking is a form of domestic violence against which a person may obtain an injunction. The petition for injunction must be supported by competent, substantial evidence. Florida law defines cyberstalking as engaging in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

Unlike email communication, posts to one's own Facebook page are not directed at a specific person but are instead posted for all of the user's Facebook "friends" to see, depending on a user's privacy settings. "Hacking" into a Facebook account is not cyberstalking as it is not an electronic communication. A Petitioner must also show sufficient emotional distress related to the conduct complained of.

In this case, the trial court erred in granting the petitioner an injunction against the Respondent for cyberstalking because there was insufficient evidence regarding the specific elements of the offence.

The Respondent's Facebook posts were not "directed at a specific person". The evidence showed he had posted the questionable comments to his own Facebook page and the Petitioner was neither tagged nor identified. The pertinent allegations of the Respondent's "hacking" into Petitioner's account were insufficient insofar as hacking is not cyberstalking. Finally, although she testified that the posts were a concern, the Petitioner failed to establish she suffered substantial emotional distress as a result. The appeals court reversed.

Case: [Bush v. Henney](#)

Court: Fourth District Court of Appeal.

Trial Judge: Laura M. Watson.

Attorneys: Troy W. Klein.

Issues: Domestic Injunction.

Holding: Under Florida statute, a party to a domestic violence injunction may move at any time to modify or dissolve the injunction. No specific allegations are required. If the scenario underlying the injunction no longer exists so that the continuation of the injunction would serve no valid purpose, then the injunction should be modified or dissolved. In this case, the trial court erred in denying the Appellant's motion to dissolve an injunction from approximately 14 years ago when he had never violated

it, had never tried to contact the Appellee and he testified that he has no desire or intention of doing so. The appeals court remanded.

Case: [De Leon v. Collazo](#)
Court: Third District Court of Appeal.
Trial Judge: Leon M Firtel.
Attorneys: David W. Macey, Lindsey M. Alter, Jessica B. Reilly.
Issues: Permanent Injunction for Protection, Process.

Holding: Due process serves as a vehicle to ensure fair treatment through the proper administration of justice. It requires that litigants be given proper notice and a full and fair opportunity to be heard. To be sufficient, notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must convey the required information, afford a reasonable time for those interested to make their appearance, and indicate the witnesses and the evidence expected.

In this case, the trial court erred when, at the final hearing, it permitted the Applicant, over objection, to testify to substantial and significant acts of domestic violence that were never pleaded in the petition. Nor was the Respondent put on notice that these additional acts would form a part of the allegations relied upon. This violated the Respondent's due process rights. The appeals court vacated the permanent injunction and remanded for a new final hearing.

Case: [Lippens v. Powers, etc](#)
Court: Fifth District Court of Appeal.
Trial Judge: Theotis Bronson.
Attorneys: Elizabeth L. Littrell, Mary Meeks.
Issues: Injunction.

Holding: Florida Statutes provide that a person who wilfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking. Harass means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. To support an injunction against stalking, each alleged incident must be proven by competent, substantial evidence. The appellate court should consider legal sufficiency as opposed to evidentiary weight when evaluating whether competent, substantial evidence supports the lower court ruling. Courts apply a

reasonable person standard to determine whether each incident of harassment is sufficient to support a finding of stalking.

In this case, the trial court erred in granting the injunction when the evidence failed to meet the legal requirement to support an injunction. No evidence was led to show that any act caused, or was likely to cause, the Child to experience emotional distress. The alleged incidents, separately or together, did not amount to stalking under the controlling statute. The appeals court reversed and order the trial court to vacate and terminate the injunction.

Case: [Mantell v. Rocke](#)
Court: First District Court of Appeal.
Trial Judge: Robert M. Foster.
Attorneys: Michael R. Yokan.
Issues: Injunction for Protection Against Domestic Violence.

Holding: A person who is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence has standing to file a petition for an injunction against domestic violence. While a petitioner does not have to wait for abuse to occur in order to seek an injunction, under Florida Statutes, a party seeking an injunction must present sufficient evidence to establish the objective reasonableness of his or her fear that the danger of violence is imminent. An isolated incident of domestic violence that occurred years before a petition for injunction is filed will not usually support the issuance of an injunction in the absence of additional current allegations. In this case, the trial court erred because no evidence or testimony was introduced by the Petitioner/Appellant, in support of her petition for an injunction. The appeals court reversed.

JURISDICTION

Case: [Jonas v. Jonas](#)
Court: Fourth District Court of Appeal.
Trial Judge: Lucy Chernow Brown.
Attorneys: Roderick V. Hannah, Eric C. Christu.
Issues: Jurisdiction, Foreign Judgments.

Holding: Comity requires courts state to refrain from exercising jurisdiction in certain cases. When a court is confronted with an action that would involve it in a serious interference with or usurpation of this continuing power, considerations of comity and orderly administration of justice demand that the non-rendering court should decline jurisdiction and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there. As for the principle of priority, or where a foreign court is first to assert jurisdiction, the usual remedy in such cases is to stay the subsequent proceeding in favor of the prior proceeding. The interests of judicial economy and finality may require that subsequent actions come to an end. The appeals court affirmed and required a former spouse to return to the original jurisdiction to conclude proceedings.

Case: [In the interest of M.P., a child.](#)
Court: Second District Court of Appeal.
Trial Judge: Joseph G. Foster.
Attorneys: C. Carolina Maluje, Anna E. Galeano Guzman, Stephanie C. Zimmerman, Bradenton, Dwight O. Slater.
Issues: Dependency, Jurisdiction.

Holding: A trial court may lack jurisdiction to conduct an adjudicatory hearing if the child / children for which relief is being requested attain the age of majority prior to the hearing. In this case, the trial court did not err in denying a private petition for dependency based on the ground, among others, that the child who was being cared for by a relative did not qualify as dependent by virtue of age.

Case: [Horton v. Horton](#)
Court: First District Court of Appeal.
Trial Judge: Elizabeth A. Senterfitt.
Attorneys: Michael J. Korn, A. Russell Smith, Bryan S. Gowdy, Jessie L. Harrell.
Issues: Jurisdiction.

Holding: Jurisdiction

A determination of personal jurisdiction is reviewed de novo on appeal. If a party does not challenge personal jurisdiction until after a general appearance in the case, the party has waived the right to contest personal jurisdiction. A presumption exists that an attorney, as an officer of the court, is duly authorized to act for a client whom he or she professes to represent. In the absence of some pleading questioning the attorney's acts upon the ground of fraud or otherwise, the presumption of authority is conclusive and explaining. A ne exeat petition seeks enforcement of the dissolution judgment (rather than its modification) and need not be served on an opposing party. In this case, the trial court was correct when it ruled that the Former Husband waived his right to challenge personal jurisdiction as his legal counsel had taken steps in the matter and no evidence was presented to rebut the presumption that his attorney acted on his behalf and with his authority. In the alternative, the Former Husband would not have been entitled to relief on the merits of the issue. The Former Wife's ne exeat petition appropriately sought enforcement of the dissolution judgment rather than modification (which he asserted, but could not claim, was the intention of her petition.) Service of the petition on the Former Husband would be required if she sought modification but was not required in the case of enforcement. The appeals court affirmed.

Attorney's Fees

A trial court reversibly errs when it awards attorney's fees without making the requisite findings as to the proper amount. However, even if a trial court fails to include sufficient findings to support the attorney's fee award, a party is required to file a motion for rehearing alerting the trial court to the deficiencies in the findings. In this case, while the trial court erred in failing to make requisite findings in its award of attorney's fees, the appeals court affirmed as the Former Husband's filings failed to challenge the trial court's lack of findings.

MARITAL ASSETS

Case: [Dravis v. Dravis](#)
Court: Second District Court of Appeal.
Trial Judge: Keith Spoto.
Attorneys: Jean Marie Henne, Shelley Harrell Shelton.
Issues: Marital Assets, Equitable Distribution.

Holding: Cash Gifts

An appeals court will review *de novo* a trial court's characterization of an asset as marital or nonmarital, and any factual findings necessary to make this legal conclusion, for competent, substantial evidence. Nonmarital assets may lose their nonmarital character where they have been commingled with marital assets. This is especially true with respect to money because money is fungible, and once commingled, loses its separate character. It is irrelevant that a bank account is titled in the name of one Former Spouse, alone, as it may become marital if both marital and nonmarital funds are commingled in that account. It is not necessary for commingled funds to be used to pay marital expenses in order to be treated as entirely marital; it is enough that the funds be commingled.

Dissipated Proceeds

The appeals court reviews a trial court's equitable distribution decisions for abuse of discretion and examines its valuation of marital assets to determine whether it is supported by competent, substantial evidence. Generally, it is error to include in an equitable distribution scheme any assets that have been diminished or dissipated during the dissolution proceedings. The exception, however, is where misconduct during the divorce case results in the dissipation of a marital asset. To determine whether such misconduct occurred, the trial court must assess whether one spouse used marital funds for a purpose unrelated to the marriage at a time when the marriage was undergoing an irreconcilable breakdown. Further, such misconduct must be supported by the record evidence, and by specific factual findings of the trial court.

In this case, the trial court did not err in its determination as to misconduct and characterization of marital assets. The trial court did, however, err regarding the equitable distribution of the parties' marital assets. Competent, substantial evidence demonstrated that certain nonmarital assets (being the proceeds of monetary gifts to the Former Wife) were commingled with proceeds that were marital assets. The monetary gifts therefore lost their nonmarital character and became marital assets subject to equitable distribution. However, the trial court failed to make specific factual findings on the matter. This necessitated the reversal of the judgment on that

issue. The appeals court affirmed as to the cash gifts and alimony, but reversed and remanded for further proceedings on equitable distribution.

MARITAL SETTLEMENT AGREEMENTS

Case: [Hall v. Hall](#)
Court: Fourth District Court of Appeal.
Trial Judge: Timothy L. Bailey.
Attorneys: Virginia R. Vetter, Susana Rice Roque, Linda M. Jaffe.
Issues: Equitable Distribution, Marital Settlement Agreements.

Holding: Two grounds lie for setting aside or modifying a Marriage Settlement Agreement (MSA):

1. By establishing that it was reached under fraud, deceit, duress, coercion, misrepresentation, or overreaching.
2. By establishing the MSA makes an unfair or unreasonable provision for a former spouse, given the circumstances of the parties as shown by evidence of the parties' relative situations (including their respective ages, health, education, and financial status). For this, determination, the trial court must find that the agreement is disproportionate to the means of the defending spouse, shown by record evidence of his or her financial means. If the MSA is found to be unreasonable, a presumption arises that either the defending spouse concealed relevant information or the challenging spouse lacked information regarding the defending spouse's finances when the MSA was reached. The defending spouse can rebut by showing that there was full, frank disclosure or that the challenging spouse had a general and approximate knowledge of the marital property. The test is the challenging spouse's such knowledge at the time of the MSA and whether he or she is prejudiced by lack of information.

Refusal to allow an amendment is an abuse of the trial court's discretion unless it clearly appears that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile.

MSA Was Valid & Enforceable

Regarding the first ground, the Former Husband did not present evidence that the Former Wife or her attorney engaged in any fraud, duress, etc during the relevant proceedings. Rather, his position is that his attorney forgot to present an alleged first (missing) page of a draft version of the MSA to the Former Wife for her to consider.

As to the second ground, the Former Husband did not present evidence as to the parties' relative situations to allow a trial court to make a decision as to its being unreasonable. The form of the MSA accepted by the trial court contained the style of the case, a clear heading, the parties' initials, a signature page, and addressed the

parties' financial accounts by stating that they agreed to certain aspects of distribution. As such, and since he did not provide evidence of a purported additional page, the trial court did not err by ruling that the MSA filed by Former Wife was a valid, enforceable agreement.

Permission to Amend

The trial court erred when it denied the Former Husband's motion to amend his answer on the grounds that it had been 18 months since the Former Wife filed her petition and the case was 30 days from trial. On the facts, it is not clear that allowing Former Husband leave to amend would have prejudiced Former Wife. Nor did he abuse the privilege to amend as this was his first such request. Finally, he sought to amend to raise and address relevant issues.

The appeals court reversed and remanded with instructions to allow Former Husband to file his amended answer.

MATRIMONIAL PROPERTY

Case: [Castelli v. Castelli](#)
Court: Fourth District Court of Appeal.
Trial Judge: Laura M. Watson.
Attorneys: John H. Pelzer, Robert J. Moraitis, Peter M. Raimondi
Issues: Contempt, Matrimonial Property.

Holding: A right of first refusal is a right to elect to take specified property at the same price and on the same terms and conditions as those contained in a good faith offer by a third person if the owner manifests a willingness to accept the offer. When the holder of a right of first refusal attempts to exercise his right but adds or deletes terms and/or conditions that render the offer different than that submitted by the third party prospective purchaser, the right of first refusal has not been properly exercised. However, a right of first refusal ripens into an option and is governed by the law of options when the owner of the property in question manifests a willingness to accept a good faith offer for the purchase of the property. In that case, a party need not recite the terms of the third party contract he is agreeing to match when he exercises his right of first refusal; rather it is simply enough to announce an intent to match them. In this case, the trial court erred in rejecting the Former Husband's attempt to exercise a right of first refusal with respect to the purchase of the former matrimonial home when, the right of first refusal had transformed into an option contract to which the Former Husband had agreed in principle (both before and after he invoked his "right of first refusal"). The trial court also erred in finding him in contempt for not executing a third party offer on the property. In this situation, the right of first refusal effectively transformed into an option contract when the Former Wife agreed in principle to accept the third party purchaser's offer, both before and after the Former Husband had invoked his "right of first refusal." The Former Husband had emailed indicating he would match the terms of another offer. This was sufficient to trigger the exercise of his right. The appeals court reversed and remanded to the trial court to strike the Former Husband's contempt order, insofar as he was seeking to invoke and exercise his right of first refusal in the circumstances, and enforce the exercise of his right of first refusal.

MODIFICATION

Case: [Thompson v. Malicki](#)
Court: Second District Court of Appeal.
Trial Judge: Lee Ann Schreiber.
Attorneys: Christopher R. Bruce.
Issues: Relocation, Modification, Child Support.

Holding: A trial court's imputation of income must be supported by competent, substantial evidence. When calculating child support, Florida Statutes (2011) provide that the trial court shall impute income to a voluntarily unemployed or underemployed parent absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. Where income is to be imputed, the employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available.

In this case the trial court did not err as to its modification of timesharing and the denial of relocation as those findings were based on cogent, substantial evidence. However, the trial court erred when it based an award of child on imputed income of the Former Wife which was not supported by sufficient findings or evidence. Reliance on past work history alone is insufficient to support imputation of income. Particularized findings are required regarding work history, occupational qualifications, and the current job market in the community to support the imputation of income. Failure to make these findings results in reversal.

The appeals court remanded for the trial court to take further evidence on this issue and recalculate the amount of child support as necessary.

Case: [Fosshage v. Fosshage](#)
Court: Third District Court of Appeal.
Trial Judge: Tegan Slaton.
Attorneys: Samuel J. Kaufman, Lawrence E. Harkenrider, Giulio Margalli.
Issues: Time-sharing, Modification (Permanent Residence).

Holding: Under Florida Statutes (2013), there is a clear distinction between modification based on changed circumstances and modification based on relocation. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. In determining whether a change in circumstances has occurred, a trial court must consider a statutorily enumerated list of factors. A

petition for relocation, on the other hand, requires a different procedure with specific statutory requirements governing the content of the petition, service on the other parent, burdens of proof, and factors to be considered by the court.

In this case, the trial court erred in treating what was a petition for relocation as a change in circumstances and therefore did not adhere to or consider the correct process and factors. The appeals court reversed and remanded for the proper proceedings.

NOTICE

Case: [Bailey v. Bailey](#)
Court: Fourth District Court of Appeal.
Trial Judge: Nicholas R. Lopane.
Attorneys: John E. Schwencke, Adam M. Zborowski, Michael J. Alman, Jamie D. Alman.
Issues: Time-sharing, Certiorari, Notice.

Holding: Certiorari
Certiorari will lie if an order compels production of confidential records and requires compulsory examination pursuant to Florida Rules of Civil Procedure. The issue on certiorari review is whether the order departs from the essential requirements of law and results in material injury which cannot be adequately remedied on appeal.

Notice

Proper notice of a motion must be given to opposing parties failing which the resulting order may be reviewed. Twenty-four hours' notice of a hearing on a motion may be inadequate.

Evaluations and Release of Records

Motions for the compulsory production of confidential records and the appointment of a social investigator may be subject to certiorari review. Parties to such motions must be provided adequate notice. In this case, the trial court improperly ordered the appointment of a social investigator in regards to the Father, and improperly compelled him to produce confidential records and undergo a compulsory examination. The appeals court quashed these portions of the order as the Father was not provided adequate prior notice of the motion, which was filed on the same day as the hearing. Psychotherapist-patient privilege may be asserted to preclude compulsory production of certain mental health records. It would be open to the trial court to make a determination on point.

The granting or denying of an order for a psychological evaluation is a discretionary act and may be reversed only upon a conclusion that no judge could reasonably have ordered such an evaluation. Such an order may be upheld if it is based on factual findings supported by record evidence. A trial court may order a new psychiatric or psychological examination instead of than ordering disclosure of existing mental health records as this balances the court's need to determine the parents' mental health as it relates to the best interest of the child, and the duty maintain the psychotherapist-patient privilege. In this case, the trial court made factual findings based on the record, which put the Father's mental condition in controversy and provided good cause to compel his evaluation.

A trial court may consider, but is not bound by, the testimony or recommendations of a social investigator. In this case, the trial court erred in tying the Father's time-sharing with the minor children "subject to" the investigator's recommendations. This was an improper delegation of the court's authority to the investigator. The appeals court quashed this portion of the order.

PARENTAL RIGHTS

Case: [P.C. v. D.C.F. and Guardian ad litem](#)
Court: Fourth District Court of Appeal.
Trial Judge: Kenneth L. Gillespie.
Attorneys: Denise E. Kistner, Pamela Jo Bondi, Carolyn Schwarz.
Issues: Parental Rights.

Holding: When considering the termination of parental rights, the court must do so on the basis of:

- a) competent, substantial evidence of the grounds alleged by the Department of Children and Families under Florida statute;
- b) upon making statutorily-required findings of fact and conclusions of law; and
- c) ensuring that the termination of parental rights is not the least restrictive means to protect the child from harm.

The termination order should address which grounds form the basis for the termination.

In this case, the trial court erred in making the termination order which did not specify the grounds for the basis on termination in that competent, substantial evidence did not support one of the grounds alleged by the D.C.F. under Florida statute for termination. However, there was such evidence under the remaining allegations. The appeals court affirmed the termination of parental rights, but remanded with instructions to the court to amend the final judgment to indicate in its conclusions of law that the termination was based on the grounds alleged and substantiated.

Case: [A.S. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: Kathleen J. Kroll.
Attorneys: Frank A. Kreidler, Rosemarie Farrell, Jorge Anton, Patricia M. Propheter.
Issues: Termination of Parental Rights.

Holding: Florida statutes establish that: a) the termination of parental rights because of abandonment must be based on clear and convincing evidence; b) a prospective parent cannot be determined to have abandoned his child until paternity is established; c) the DCF must make good faith efforts to reunification; and e) establish that termination is the least restrictive means of protecting a child from harm. Specifically, DCF must show by clear and convincing evidence that reunification with the parent poses a substantial risk of significant harm to the child. The trial court must make a specific inquiry when

the identity or location of a parent is unknown and a petition for termination of parental rights has been filed. The trial court must direct the DCF to conduct a diligent search for the prospective parent if the prospective parent's location is unknown. When such a search fails to locate a prospective parent, then DCF can proceed with a petition for termination of parental rights.

In this case, the trial court erred in ordering termination against the Father in the absence of clear and compelling evidence. The trial court erred further as it determined he abandoned the child based on inquiries of conduct prior to paternity being established. Finally the trial court erred in ordering termination when there was no evidence that reunification was not possible and that termination was the least restrictive means available to protect the child from harm.

PARENTING

Case: [Santos v. Santos](#)
Court: Second District Court of Appeal.
Trial Judge: Amy Smith.
Attorneys: Christine Greider, Justin C. Carlin, James W. Chandler.
Issues: Parenting, Child Support.

Holding: The use of outdated financial information in calculating a child support award can constitute reversible error. In this case, the trial court erred in its modification of the child support plan in the final judgment when it used outdated financial information from both the Former Wife and the Former Husband in calculating the amount of child support. The appeals court reversed the final judgment with respect to the child support modification and remanded for the trial court to reconsider the support award in light of the parties' updated financial information.

Case: [Bronstein v. Bronstein](#)
Court: Third District Court of Appeal.
Trial Judge: Scott M. Bernstein.
Attorneys: Liliana Loebel, Daniel Kaplan, Daniels Kashtan, Lorne E. Berkeley.
Issues: Parenting, Procedure.

Holding: To obtain a writ of certiorari, there must exist: (1) a departure from the essential requirements of the law; (2) resulting in material injury; (3) that cannot be corrected on postjudgment appeal. Further, a motion for modification of timesharing must be given notice of the hearing, and present the relief being sought. Specifically, it should be based, and established, on competent and substantial evidence, a material change in circumstances. Such a motion must also involve the taking of evidence and any order that arises should include factual findings. If an order grants relief of an emergency nature, there should be evidence of a true emergency (ie: that the minor child involved is at risk of harm or will be removed from the jurisdiction.)

In this case, the trial court erred in ordering a modification of the parties' parenting plan on application by the Former Husband insofar as although the Former Wife was given notice of (and attended) the hearing in this matter, the Former Husband's motion did not seek a modification of the timesharing arrangement, and Former Wife was not on notice that such relief was within the scope of the motion or the hearing. Further, the motion was unverified; the motion did not seek emergency relief; and the trial court did not take any testimony or rely upon any sworn evidence. There was nothing provided by Former Husband to establish a true emergency or to suggest that Child was being threatened with physical harm or about to be improperly removed from the State of Florida. There was nothing

presented even to establish the existence of a substantial change of circumstances such that Child's temporary relocation to Colorado pending the evidentiary hearing was warranted and in Child's best interest. The court's Order, which contained no factual findings, was based solely on argument from counsel and the unverified allegations in the Former Husband's Motion. In rendering its emergency Order upon this basis, and scheduling the evidentiary hearing some four months later, the court departed from the essential requirements of the law, causing irreparable harm that cannot be remedied on post-judgment appeal.

The appeals court granted the Former Wife's petition, issued the writ of certiorari, and quashed the impugned order below, with instructions that minor child be returned to Former Wife's care and remanded for further proceedings.

Case: [Edgar v. Firuta](#)
Court: Third District Court of Appeal.
Trial Judge: Luis M. Garcia.
Issues: Parenting, Attorney's Fees.

Holding: Florida procedural Rules authorize a court to permit testimony at a civil hearing or trial by audio or video communication equipment by agreement of the parties or for good cause shown on written request of a party and reasonable notice to all other parties. In this case, the trial court erred in denying the Mother's petition to telephonically appear at the hearing addressing timesharing and related matters, because the Father objected. The Mother, who was unemployed and had not received child support for the parties' four children from the Father, lived in North Carolina, had made her petition to appear via technological communications, some 2 months after the procedural rules were amended to so allow such appearance. The court below was not, therefore, barred from considering the mother's request to testify by telephone simply because the father objected but could have allowed the testimony for good cause shown. The appeals court reversed.

Case: [Herman v. Herman](#)
Court: Third District Court of Appeal.
Trial Judge: Mindy S. Glazer.
Attorneys: Evan L. Abramowitz, Cynthia L. Greene.
Issues: Parenting, Time-sharing.

Holding: Florida Statutes (2015), provide that the trial court shall order the parental responsibility for a minor child be shared by both parents unless it finds that shared parental responsibility would be detrimental to the child. The trial court shall

evaluate the evidence to determine if both parents are equally capable of providing for the minor child or children, and are capable of making paramount the child's or children's needs.

In this case, the trial court did not err in that it articulated its findings in a Supplemental Judgment, such findings being supported by competent substantial evidence. Nor did the trial court abuse its discretion by ordering shared parental responsibility. The appeals court affirmed the timesharing schedule established by the trial court in the Supplemental Judgment.

Case: [Wolfson v. Wolfson](#)
Court: Third District Court of Appeal.
Trial Judge: Stanford Blake.
Attorneys: Sandy T. Fox, Karen B. Weintraub, Robert W. Sidweber.
Issues: Parenting, Certiorari.

Holding: Child custody determinations in a judgment of dissolution of marriage may be varied only if a movant can prove modification is required by a substantial and material change in circumstances, and that the child's best interest will be promoted by such a modification. Generally, both parties must be given notice and opportunity to be heard prior to any modification, unless there is an actual, demonstrated emergency situation, such as where a child is threatened with physical harm or is about to be improperly removed from the state. Even in such instances, every reasonable effort should be made to ensure both parties have an opportunity to be heard. In this case, the trial court erred as it departed from the essential requirements of law when it entered an order granting an emergency request for temporary supervised visitation without providing both parties an opportunity to be heard. The appeals court granted a petition for certiorari with respect to the order and remanded for further proceedings.

Case: [Corcoran v. Corcoran](#)
Court: Fifth District Court of Appeal.
Trial Judge: John M. Alexander.
Attorneys: Leonard R. Ross, Sara E. Glover, Deborah L. Greene, Andrea C. Jevic.

Issues: Alimony, Attorney's Fees, Equitable Distribution, Parenting.

Holding: A trial court shall make findings of fact as to modification of alimony. When determining attorney's fees, a trial court considers the parties' respective financial situations. A trial court must indicate what evidence it relied on for its findings regarding shared parental responsibilities and contempt of court. After a dissolution of marriage, the parties are equally responsible for all payments necessary to

maintain their ownership of the marital property until its sale, including mortgage payments, taxes, insurance and repairs.

In this case, the trial court erred as it:

- a. reduced the Former Wife's monthly in the absence of specific findings of fact.
- b. awarded attorney's fees in the absence of specific findings as to the parties' financial need and ability to pay.
- c. failed to identify the evidence it relied on in making an order regarding shared parental responsibilities and the Former Wife being contempt of court.
- d. failed to hold the Former Wife solely responsible only for repairs to the marital home or, in the alternative, to indicate an evidentiary basis to hold her responsible for all future repairs.

The appeals court reversed and remanded for reconsideration.

Case: [Nicolas v. Blanc](#)
Court: Third District Court of Appeal.
Trial Judge: John Schlesinger.
Attorneys: Hegel Laurent, Yolande Henry Van Dam, Barbara Green.
Issues: Parenting, Relocation.

Holding: In considering relocation applications, a trial court must properly consider and apply the enumerated factors under Florida Statutes (2014) to the record evidence. It must also articulate findings of fact based on such. In this case, the trial court did not err as it properly considered and applied the requisite and applicable factors under Florida Statutes (2014), and articulated findings of fact, supported by the competent substantial evidence presented. The appeals court affirmed the trial court's order granting relocation.

Case: [Brown v. Brown](#)
Court: First District Court of Appeal.
Trial Judge: Elizabeth A. Senterfitt.
Attorneys: William S. Graessle, Jonathan Graessle, Jeanine B. Sasser.
Issues: Time-sharing, Parenting, Child Support.

Holding: A trial court's decision on whether to modify a parenting plan is reviewed under an abuse of discretion standard. The modification of a parenting plan requires a

substantial, material, and unanticipated change in circumstances since the original judgment or order, and must be in the best interests of the child. A trial court's denial of a petition to modify child support is also reviewed for abuse of discretion. Generally, a substantial change of circumstances is a prerequisite to bringing an action to modify child support. In this case, the trial court did not err (ie: abuse its discretion) in concluding that the Former Husband failed to demonstrate a substantial, material, and unanticipated change of circumstances as would warrant modification of the existing parenting plan. It did err, however, as it made four modifications to the parenting plan in the absence of changed circumstances. It also erred in making a final judgment of indirect civil contempt and order of enforcement which was based on income calculations not supported by the record. The appeals court reversed and remanded.

Case: [Paulick v. Paulick](#)
Court: Fifth District Court of Appeal.
Trial Judge: James H. Earp.
Attorneys: John N. Bogdanoff, Shannon McLin Carlyle, B.C.S..
Issues: Equitable Distribution, Parenting.

Holding: Determinations as to parenting are to be made on competent, substantial evidence. Parenting plans can be fashioned or modified on such evidence; even primary caregiver roles. A party that is the primary caregiver of his or her children can, if he or she continually rejects trial court orders, have that role altered so that the children could be placed with the other party, particularly if the other party complies with the letter and the spirit of the court's orders. In this case, the trial court did not err in its equitable distribution of the parties' assets (specifically the marital home and the Former Husband's savings plan); the parenting plan (which made Former Husband the primary caregiver of the parties' children); and the denial of alimony and attorney's fees. The trial court made its determinations based on competent, substantial evidence.

Case: [Felice v. Felice](#)
Court: Second District Court of Appeal.
Trial Judge: Christine Greider.
Attorneys: *Appellant was pro se.*
Issues: Equitable Distribution, Parenting.

Holding: Equitable distribution

An inter-spousal agreement can expressly waive a Former Spouse's rights and claims in property, including the appreciated or enhanced value of property that occurs during the marriage. In this case, the trial court erred in including a portion

of the value of the Former Husband's premarital home as a marital asset in the equitable distribution scheme. Even though the agreement did not specifically refer to any right to the appreciation or enhancement of his premarital home, the broad language of the agreement expressly waived the Former Wife's rights and claims in the property and was considered to include the appreciated or enhanced value of the property that occurred during the marriage. The appeals court reversed.

Parenting

If a trial court modifies a parenting plan in an order on motions for rehearing it must also implement the new parenting plan in the amended final judgment. In this case, the trial court erred in failing to incorporate into the amended final judgment the amended parenting plan that was ordered on rehearing from the original final judgment. The appeals court reversed the amended final judgment to the extent that the parenting plan language and attached parenting plan were inconsistent with the trial court's rulings on rehearing and directed the trial court to amend to be consistent with same.

PATERNITY

Case: [Felipe v. Rincon](#)
Court: Fifth District Court of Appeal.
Trial Judge: C. Jeffery Arnold.
Attorneys: Alejandro L. Marriaga, Gisela Then Laurent.
Issues: Procedure, Paternity, Custody, Time-sharing.

Holding: Florida Family Law Rules of Procedure require sufficient notice to parties of final hearings. In this case, the trial court erred when it entered default judgment against the Mother despite her not being properly served with the motion and receiving insufficient notice. The trial court relied on its own certificate of service noting the wrong address for the Mother despite her having filed an updated address several weeks prior. The record does not reflect that Mother received proper service of the counter-petition, the motion for default, the order granting default, or notice of the final hearing. The appeals court reversed the default final judgment and remanded for the trial court to vacate the judicial default.

Case: [B.W.P. v. A.L.H.](#)
Court: Second District Court of Appeal.
Trial Judge: James R. Thompson, R. Thomas Corbin.
Attorneys: Luis E. Insignares, Theresa Daniels.
Issues: Paternity, Attorney's Fees.

Holding: Attorney's fees should not be awarded pursuant to Florida statute when the losing party attempted in good faith to advance a novel question of law. Further, Florida statute precludes a sperm donor from asserting parental rights, whether or not a valid written contract between the parties limits his ability to do so. In this case, the trial court did not err in dismissing the petitioner Donor's amended petition with prejudice, because even if he, as the Donor, is correct that there was no valid written contract between the parties limiting his ability to assert parental rights, Florida statute precludes him from asserting such rights. However, the trial court erred in awarding attorney's fees to the respondent Mother. The trial court based the award on its finding that the petitioner Donor knew or should have known that his petition and amended petition were insufficient on the facts and the law. Under Florida statute, notwithstanding whether an action is not supported by the facts or the application of then-existing law, fees may not be awarded if the claim was presented to advance the law. The appeals court affirmed the order dismissing the amended petition to determine paternity with prejudice, but reversed the order granting respondent Mother an award of attorney's fees.

Case: [J.A.I and J.K.C. v. B.R.](#)
Court: Second District Court of Appeal.
Trial Judge: R. Thomas Corbin.
Attorneys: Luis E. Insignares, Robert L. Donald.
Issues: Paternity.

Holding: Orders compelling DNA testing to establish paternity are appropriate for certiorari review. Florida statute provides the procedures to be used in determining paternity when children are born out of wedlock. These include establishing that a signed and notarized voluntary acknowledgment of paternity creates a rebuttable presumption of paternity. Any challenge to this voluntary acknowledgment of paternity must be commenced before the sixty (60) day limitation period expires, after which, this acknowledgment of paternity becomes an establishment of paternity, to be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger.

A man who believes that he may be the father of a child may bring an action to determine the paternity of the child when paternity has not been established by law or otherwise. Paternity would be established "by law" when there has been an adjudication of paternity or by the filing of affidavits or stipulation acknowledging paternity as provided by Florida statute. Paternity would otherwise be established when a child is born to an intact marriage and recognized by the husband and the mother as being their child. In such a case, the husband would be the child's legal father to the exclusion of all others. Under any other interpretation, a husband could never be more than a presumptive father absent an adjudication of paternity.

Courts have extended this principle courts to children whose parents are both listed on the birth certificate at the time of birth and who were married two months later. However, where a mother married her husband and they signed the acknowledgement of paternity after the challenger had filed his paternity action, the acknowledgement of paternity created only a rebuttable presumption of paternity.

In this case, the trial court erred when it departed from the essential requirements of the law in the Petitioner's motion for genetic testing despite the fact that he was precluded from bringing a cause of action to challenge the paternity of the child. The Petitioner was barred insofar as he filed outside the required sixty-day limitation period and by virtue of the fact that the Mother and her Husband signing an acknowledgment of paternity. The appeals court granted the petition for writ of certiorari and quashed the trial court's order requiring the parties to submit to genetic testing.

Case: [Kelly v. Snietka](#)
Court: Fourth District Court of Appeal.
Trial Judge: Thomas Barkdull, III.
Attorneys: Craig A. Boudreau, Scott D. Glassman, Sue-Ellen Kenny.
Issues: Paternity, Child Support.

Holding: Under Florida Rules of Appellate Procedure, the court may review any ruling or matter occurring before filing of a notice of appeal. A notice of appeal of a final judgment does not include orders entered after the final judgment unless they are specifically appealed. In this case, the trial court did not err in taking jurisdiction to consider an order vacating a prior final judgment and a motion to disqualify a trial judge, as both were issued before the final judgment, which is under appeal.

PRENUPTIAL AGREEMENTS

Case: [Hamamovitch v. Hamamovitch](#)

Court: Florida Supreme Court.

Trial Judge: Martin Colin.

Attorneys: Jeanne C. Brady, Frank R. Brady, Robert Sideweber, Karen Weintraub, Jane Kreuzler-Walsh, Rebecca Vargas, Stephanie Serafin, Joel Weissman, Sarah Saull.

Issues: Prenuptial Agreements.

Holding: In short, the Court approved of the [Fourth District's prior opinion](#), and determined that a general waiver of all marital claims and property rights in a prenuptial agreement is sufficient to waive any interest in property created during a marriage due to marital efforts despite there not being a specific waiver of marital claims related to a spouse's earnings, assets acquired with those earnings, or the enhanced value of the other spouse's property resulting from marital labor or funds. The decision resolves a conflict that existed between the Fourth District (no specific waiver required) and the Second and Third Districts (which required a specific waiver).

PROCEDURE

Case: [Freiha v. Freiha](#)
Court: First District Court of Appeal.
Trial Judge: Charles W. Arnold.
Attorneys: William S. Graessle, Jonathan W. Graessle, Rebecca Bowen Creed.
Issues: Procedure.

Holding: An appeal on a non-final Final Judgment of Dissolution of Marriage is premature. Where judgment is partial; reserves jurisdiction to expend additional judicial labor over further matters, such as non-collateral issues of child support and parental responsibility; or retains jurisdiction over integrally related issues, an appeal may be premature and improper. In this case, the appellant pursued appeal on a Final Order of Judgment that did not finally resolve integral matters. The appeal was dismissed without prejudice to the appellant to file a notice of appeal upon the rendition of a final order.

Case: [Whissell v. Whissell](#)
Court: Fourth District Court of Appeal.
Trial Judge: Jeffrey Dana Gillen.
Attorneys: Karen J. Haas, Jonathan S. Root.
Issues: Contempt, Procedure.

Holding: Where an appellant has disobeyed an order of the trial court, the appellate court may, in its discretion, either entertain or dismiss an appeal. However, where a dismissal is ordered it is mandatory that the non-compliant appellant must be given a period of grace, prior to the effective date of the dismissal, in which to comply with the order(s) at issue.

In this case, the appellant repeatedly refused to comply with the trial court's orders regarding temporary support and discovery, resulting in four findings of contempt and three writs of bodily attachment. The appellant (Former Husband) was incarcerated for such conduct and was released only after he made some payment on arrearages and promised the trial court future compliance, which he ultimately breached. The appeals court ordered the appeal be dismissed unless he established substantial compliance with the extant orders within 30 days of the appeal court decision. Jurisdiction was relinquished to the trial court for 30 days to determine the appellant's compliance and provide a status report.

Case: [Felipe v. Rincon](#)
Court: Fifth District Court of Appeal.
Trial Judge: C. Jeffery Arnold.

Attorneys: Alejandro L. Marriaga, Gisela Then Laurent.
Issues: Procedure, Paternity, Custody, Time-sharing.

Holding: Florida Family Law Rules of Procedure require sufficient notice to parties of final hearings. In this case, the trial court erred when it entered default judgment against the Mother despite her not being properly served with the motion and receiving insufficient notice. The trial court relied on its own certificate of service noting the wrong address for the Mother despite her having filed an updated address several weeks prior. The record does not reflect that Mother received proper service of the counter-petition, the motion for default, the order granting default, or notice of the final hearing. The appeals court reversed the default final judgment and remanded for the trial court to vacate the judicial default.

Case: [Earl v. Earl](#)
Court: Fourth District Court of Appeal.
Trial Judge: Thomas H. Barkdull, III.
Attorneys: Jane Kreuzler-Walsh, Stephanie L. Serafin, Troy William Klein.
Issues: Alimony, Procedure.

Holding: The written findings of a trial court must conform with the oral pronouncement. In this case, the trial court erred in failing to provide that the Former Husband obtain and maintain life insurance in the (written) final judgment of dissolution despite having made such a determination in the oral pronouncement. The appeals court reversed and remanded to allow the trial court to include the Former Husband's requirement to maintain life insurance.

Case: [Panopoulos v. Panopoulos](#)
Court: Second District Court of Appeal.
Trial Judge: Daniel D. Diskey.
Attorneys: John A. Shahan, Johnny D. Drizis.
Issues: Alimony, Procedure.

Holding: Under the Florida Rules regarding appeals procedures, a notice of appeal must be filed within 30 days of rendition of the order to be reviewed. The timing of the filing of the notice of appeal is a jurisdictional matter. Where a judgment is amended to correct only a scrivener's error, the time for appeal is counted from the date of the initial order. When a party wishes to challenge a judgment by motion or appeal the time to challenge the judgment runs from the original judgment unless an amendment changes or clarifies a matter of substance. The court may review any ruling or matter occurring before filing of the notice.

In this case, in a highly unusual procedure, the circuit court trifurcated the parties' dissolution proceedings. Part of the proceedings involved the Former Wife's petition for alimony, which the court denied overall but in its "partial final judgment," it awarded alimony to be paid starting on a particular date. There was a scrivener's error and the parties contacted the judge's judicial assistant, rather than filing a motion for rehearing, recognizing the date in the order set out the incorrect year. The court issued an amended order correcting the error. The Former Husband filed his notice to appeal that order on the amended order, which did not effect a substantive change. Accordingly, the Former Husband's notice of appeal was not timely and the appeals court dismissed the appeal for lack of jurisdiction. However, the appeals court noted that, fortunately for Former Husband, due to the unusual trifurcation proceedings, the issues raised in this appeal may be within the scope of review of an appeal from a final order of dissolution.

Case: [Perez v. Fay](#)
Court: Second District Court of Appeal.
Trial Judge: Elisabeth Adams.
Attorneys: Robert L. Donald, Robert J. Coleman.
Issues: Custody, Procedure.

Holding: Claims for relief consisting of modification of residence of a minor child, time-sharing, or other parenting matters must be supported by substantial and sufficient evidence showing a change of circumstances not anticipated at the time of the order to be modified. A parent has a constitutionally protected inherent right to a meaningful relationship with his or her children. Time-sharing privileges should not be denied to either parent as long as his or her conduct, while in the presence of the children, will not adversely affect the children. Given of the constitutional right to a meaningful parent-child relationship, there must be competent, substantial evidence in the record that demonstrates that any restrictions or limitations on time-sharing are in the best interests of the child. It is the trial court's responsibility to ensure that an appropriate relationship is maintained between a parent and his or her children. When the court exercises its discretion to reduce or eliminate time-sharing with a parent's children, the court must give the parent the key to reconnecting with his or her children. An order that does not set forth the specific steps a parent must take to re-establish time-sharing, thus depriving the parent of that key, is deficient because it prevents the parent from knowing what is expected and prevents any successor judge from monitoring the parent's progress. The trial court cannot delegate its authority to rule on the visitation details to a person such as a supervisor of a parent's time-sharing. Such a delegation of authority constitutes an abuse of discretion that must be reversed. A parent's visitation rights may not be conditioned on the payment of the

parent's financial obligations. The expenses of visitation are part of the parties' childrearing expenses that must be addressed as part of the parties' child support obligations.

In modification proceedings, as in other civil matters, courts are not authorized to award relief not requested in the pleadings. To grant unrequested relief is an abuse of discretion and reversible error. Additionally, a court should not grant such relief absent proper notice to the parties. Moreover, a court errs in granting relief on issues not tried with the consent of the parties.

In this case, the trial court erred in several ways. The trial court ruled on matters not requested in the pleadings. The trial court sua sponte awarded the Father sole parental responsibility and sole decision-making authority despite the fact that the Father did not raise the issues in his pleadings, and the issues were not tried by consent. Even if the Father had requested such relief in his pleadings, no evidentiary basis existed to support it. The trial court abused its discretion in making any change to this portion of the original final judgment. The appeals court reversed and remanded for the trial court to reinstate shared parental responsibility and shared parental decision-making responsibility as to all issues. The same analysis applied to other aspects of the trial court's order including rulings requiring the Mother speak only English to the minor child, reduced time-sharing to the Mother and the costs of time-sharing. Finally, the trial court's ruling was legally deficient as it failed to set forth what was required of the Mother to regain primary residential custody and/or meaningful unsupervised time-sharing with her daughter. The appeals court reversed and remanded for reconsideration.

Case: [Bronstein v. Bronstein](#)
Court: Third District Court of Appeal.
Trial Judge: Scott M. Bernstein.
Attorneys: Liliana Loebel, Daniel Kaplan, Daniels Kashtan, Lorne E. Berkeley.
Issues: Parenting, Procedure.

Holding: To obtain a writ of certiorari, there must exist: (1) a departure from the essential requirements of the law; (2) resulting in material injury; (3) that cannot be corrected on postjudgment appeal. Further, a motion for modification of timesharing must be given notice of the hearing, and present the relief being sought. Specifically, it should be based, and established, on competent and substantial evidence, a material change in circumstances. Such a motion must also involve the taking of evidence and any order that arises should include factual findings. If an order grants relief of an emergency nature, there should be evidence of a true emergency (ie: that the minor child involved is at risk of harm or will be removed from the jurisdiction.)

In this case, the trial court erred in ordering a modification of the parties' parenting plan on application by the Former Husband insofar as although the Former Wife was given notice of (and attended) the hearing in this matter, the Former Husband's motion did not seek a modification of the timesharing arrangement, and Former Wife was not on notice that such relief was within the scope of the motion or the hearing. Further, the motion was unverified; the motion did not seek emergency relief; and the trial court did not take any testimony or rely upon any sworn evidence. There was nothing provided by Former Husband to establish a true emergency or to suggest that Child was being threatened with physical harm or about to be improperly removed from the State of Florida. There was nothing presented even to establish the existence of a substantial change of circumstances such that Child's temporary relocation to Colorado pending the evidentiary hearing was warranted and in Child's best interest. The court's Order, which contained no factual findings, was based solely on argument from counsel and the unverified allegations in the Former Husband's Motion. In rendering its emergency Order upon this basis, and scheduling the evidentiary hearing some four months later, the court departed from the essential requirements of the law, causing irreparable harm that cannot be remedied on post-judgment appeal.

The appeals court granted the Former Wife's petition, issued the writ of certiorari, and quashed the impugned order below, with instructions that minor child be returned to Former Wife's care and remanded for further proceedings.

Case: [M.M. v. D.C.F.S](#)
Court: Third District Court of Appeal.
Trial Judge: Rosa C. Figarola.
Attorneys: Eugene F. Zenobi, Kevin Coyle Colbert, Cathi Gordon Graham, Angela D. Flaherty, Karla Perkins.
Issues: Procedure, Dependency.

Holding: Procedure

Any party can request termination of agency supervision or the jurisdiction of the court by a written motion or in a written report to the court. In this case, the trial court did not err in granting the order for cessation of supervision of the dependent children by the DCF despite being ordered without a motion. Here, the Father argued the order denied him due process because departmental supervision was terminated without a motion. In fact, the DCF requested termination of supervision in a Judicial Review and Social Study Report filed with the trial court, the receipt of which was acknowledge by the Father's attorney prior to the Judicial Review Hearing. No challenge of the request for termination of supervision was raised. The appeals court denied the petition insofar as it was determined there was no departure

from the essential requirements of law and due process as the Father received notice via the filed report.

Dependency/Visitation

Florida Statutes affords a parent the unqualified ability to return to the dependency court to seek modification or elimination of any court ordered restrictions on his or her visitation rights. If a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall hold a hearing. Notwithstanding that the wishes of the dependent children, who may be at or near their teenage years, may, practically, affect a parent's future contacts and relationship with them, the dependency court has a non-delegable duty to consider any motion for modification or for increased contact filed by a parent in the future. In this case, the trial court erred when it departed from the essential requirements of law by restricting decisions concerning the Father's future contact with his children solely to its discretion. The appeals court reversed that portion of the order which limited the Father's ability to seek contact with his children in the future.

Case: [Suleiman v. Yunis](#)
Court: Fifth District Court of Appeal.
Trial Judge: Alan S. Apte.
Attorneys: Adam H. Sudbury.
Issues: Time-Sharing, Procedure.

Holding: Pursuant to the Florida Rules of Appellate Procedure, the appeals court has jurisdiction to address matters of denials of due process. Failure to give notice of a hearing to the opposing party absent a true emergency deprives the opposing party of its right to procedural due process. Courts reverse those temporary custody orders which are entered without notice; or with insufficient notice; or with insufficient opportunity to be heard. In order to prevail on a request for a temporary modification of custody, the moving party must meet the burden of proving that (1) a substantial change in the condition of one or both of the parties has occurred, and (2) the best interests of the child will be promoted by the change although the entry of an emergency ex parte order temporarily changing custody might be warranted under certain circumstances, such as where a child is threatened with physical harm or is about to be improperly removed from the state.

In this case, the trial court erred insofar as it denied, at the hearing on Former Wife's motion to vacate, her requested relief notwithstanding that she presented sufficient and cogent evidence on point; the Former Husband failed to provide sufficient evidence in support of the ex parte order; a substantial change of circumstances had occurred; and that the best interests of the children would be promoted by

modifying the timesharing schedule. The lower court abused its discretion in its failure to properly resolve the issue given the lack of evidence in support of the order it issued. The appeals court reversed and vacated the orders.

Case: [D.W.Q. v. A.B.](#)

Court: Fifth District Court of Appeal.

Trial Judge: John M. Alexander.

Attorneys: Robert L. McLeod II, Leslie H. Morton, William S. Graessle, Jonathan W. Graessle, John L. Whiteman, J. Stephen Alexander.

Issues: Termination, Procedure.

Holding: It is a denial of procedural due process rights of notice and fair hearing to terminate parental rights on a ground not pleaded. Adequate notice and meaningful hearing are required before a trial court can properly order the termination of substantive rights. Additionally, a trial court's written order must establish that it considered and evaluated each of the relevant statutory factors in reaching its decision as to the manifest best interests of the child. Finally, a trial court must consider all the evidence admitted at trial before rendering its decision. In this case, the trial court erred as it terminated the Father's parental rights on a ground not alleged in the Mother's petition. The petition did not allege termination for egregious conduct under the relevant provisions of Florida statute, (it simply alleged that termination was warranted under other statutory provisions.) Termination for egregious conduct was not tried by consent because it was not mentioned in opening or during the presentation of Mother's evidence at trial. Further, the trial court's order of termination was deficient in that it failed to include findings for the each relevant statutory factor regarding the child's manifest best interests. Finally, the trial court erred in that it did not, ostensibly, review all evidence before it prior to making the order. The appeals court reversed and remanded for the trial court to reconsider its ruling after reviewing all admitted evidence.

Case: [Bisel v. Bisel](#)

Court: Fourth District Court of Appeal.

Trial Judge: Laura M. Watson.

Attorneys: Kim L. Picazio.

Issues: Procedure, Child Support.

Holding: Florida law clearly holds that a trial court lacks jurisdiction to hear and to determine matters which are not the subject of proper pleading and notice. To allow a court to rule on a matter without proper pleadings and notice violates a party's due process rights. In this case, the trial court erred in that the notice of hearing had several

problems, the first of which is that the description failed to notify Former Wife that the trial court would consider and rule upon her supplemental petition for upward modification

of child support. Secondly, the Former Wife did not receive timely notice of the hearing as it related to her supplemental petition. Finally, pursuant to Florida Family Law Rules of Procedure, the trial court (not the Former Husband) was required to enter an order setting the action for trial. The appeals court reversed and remanded for further proceedings.

Case: [Medina v. Haddad](#)
Court: Third District Court of Appeal.
Trial Judge: Marcia B. Caballero.
Attorneys: Brandon A. Rotbart.
Issues: Procedure.

Holding: In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interest that would be served by granting discovery or denying it. Overall, means less intrusive than the release of confidential information should be used where available. In this case, the trial court erred by ordering the Former Wife to disclose settlement agreements between the law firm to which she was contracted and third parties. Such was the property of a non-party law firm or its non-party clients. Moreover, to do so might result in a breach of confidence. The appeals court quashed the order.

Case: [Guevara v. Guevara et al](#)
Court: Third District Court of Appeal.
Trial Judge: Maria E. Dennis.
Attorneys: Jay M. Levy, Ira B. Price, Mark E. Pollack.
Issues: Procedure, Final Order.

Holding: Leave of court to amend a pleading shall be given freely when justice so requires. In this case, trial court erred when it abused its discretion in dismissing the Former Wife's petition to set aside a Final Judgment (approving and ratifying the parties' Marital Settlement Agreement, "MSA") with prejudice to her claim that she did not receive moneys in exchange for her interest in the sale of certain real estate, as was provided for in the MSA. The appeals court reversed that portion of the trial court order and, on remand, the Former Wife was permitted to amend the portion of her claim as to the moneys to which she is entitled under the MSA.

Case: [Malave v. Malave et al](#)
Court: Fifth District Court of Appeal.
Trial Judge: Mark J. Hill.
Attorneys: William Glenn Roy, III, Tyler J. Chasez, Nichole J. Segal, Andrew A. Harris.
Issues: Equitable Distribution, Procedure.

Holding: Ancillary relief is generally available in dissolution of marriage cases. However, the ancillary relief must relate to matters which are personal and proper to the divorce action itself. The common thread between them is a distinct relationship linking the parties and the subject of the litigation. A circuit court does not lack jurisdiction simply because a case is filed or assigned to the wrong division within the circuit court. All circuit court judges have the same jurisdiction within their respective circuits. The filing of an action in the wrong division should be remedied by reassignment to the correct division as opposed to a dismissal of the action.

In this case, the family (trial) court erred as it found that it lacked jurisdiction over the divorce action because the Former Husband died before a judgment dissolving the marriage was entered and dismissed, with prejudice, the Former Wife's ancillary petition. The parties were in the midst of divorce proceedings when the Former Husband and the parties' children were tragically killed in a car accident. The divorce petition was abated by his death. Subsequently, the Former Wife discovered that he had allegedly made a substantial number of property and money transfers to his relatives shortly before his death. She deduced that the disposal of marital assets was intentional and that other parties, including his lawyer, had assisted in the allegedly fraudulent transfers. She moved to reopen the abated divorce case and to file an ancillary petition naming as defendants the parties whom she believed had assisted him, including his lawyer. The family court granted the motion. The parties named did not file a response. The clerk entered a default against the non-lawyer while the Former Husband's previous lawyer filed a motion to dismiss the ancillary petition asserting that the family court lost jurisdiction over the divorce case when the husband died. The family court agreed and dismissed the ancillary petition. The appeals court reversed and found that the dismissal with prejudice was improvidently entered, and directed the circuit court to transfer the ancillary petition from its family division to its civil division. The Former Wife's attempt to sue the Former Husband's former lawyer for fraud in the divorce action was misplaced, as no judgment had been entered dissolving the marriage at the time of the Former Husband's death. Therefore, the divorce action ended when the Former Husband died. The Former Wife's ancillary petition itself was not ancillary to the divorce because the Former Husband's former lawyer was not a party to the

divorce litigation. However, the family court should have transferred the matter to the civil division of the circuit court. By dismissing the action with prejudice the trial court completely denied the Former Wife the opportunity to raise her claims anywhere. The appeals court reversed the dismissal with prejudice of the ancillary petition and remanded for further proceedings in the appropriate division of the circuit court.

Case: [Lalonde v. Lalonde](#)
Court: Fourth District Court of Appeal.
Trial Judge: Arthur M. Birken.
Attorneys:
Issues: Procedure.

Holding: Under Florida Rules of Procedure, the requiring thirty days' notice is mandatory and applicable to final hearings as well as to jury trials. In this case, the trial court erred in proceeding with the hearing and rendering final judgment when the Former Husband did not have at least thirty days' advance notice. The appeals court remanded with instructions to the circuit court to set a new final hearing, giving the parties at least 30 days' notice.

Case: [Vinsand v. Vinsand](#)
Court: Second District Court of Appeal.
Trial Judge: Tracy Sheehan.
Attorneys: Robert W. Bauer, Maria Perez Youngblood, Lawrence J. Hodz.
Issues: Procedure, Alimony.

Holding: Procedure – Venue

Florida Statutes (2012), provide that to obtain a dissolution of marriage, one of the parties must reside 6 months in the state before filing the petition. Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located. A proceeding for dissolution of marriage is regarded as a transitory action. Generally, in a dissolution of marriage action, venue lies in the county where the parties last lived with a common intent to remain married as that is where the cause of action is deemed to have accrued. If there is no legal basis to support the plaintiff's choice of venue, the trial court must dismiss the case or transfer it to a forum that is authorized under the applicable venue statute. In this case, the trial court erred in denying the Former Husband's motion for transfer of venue to the county where he lived after it determined that the last place where the parties lived with the intent to remain married was another

state. The appeals court reversed, set aside the final judgment, and remanded for transfer to said county.

Alimony

Florida Statute identifies the various forms of alimony, characterizes marriages by their duration, and sets out the factors to be considered and findings to be made in awarding alimony. Permanent alimony may be awarded following a marriage of moderate duration if the trial court determines that such an award is appropriate based on clear and convincing evidence after consideration of the enumerated factors. In awarding permanent alimony following a marriage of any duration, the trial court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. In this case, the trial court erred in that, while the seven-year marriage qualified as a moderate-term marriage, it was not apparent from the record that the trial court applied a clear and convincing standard. Also, the trial court failed to make a finding that no other form of alimony was fair or reasonable under the circumstances of this case when such a finding is statutorily required. Finally, in order to allow for meaningful appellate review, trial courts must identify on the record that the appropriate evidentiary standard was applied in determining the appropriate form of alimony. The appeals court reversed and remanded with instructions.

Case: [Jericka v. Jericka](#)
Court: Second District Court of Appeal.
Trial Judge: Lisa S. Porter.
Attorneys: Allison M. Perry, Susan G. Wright.
Issues: Permanent Periodic Alimony, Procedure.

Holding: Florida Statutes (2012), requires a trial court to make specific factual determinations as to whether either party has an actual need for alimony and whether either party has the ability to pay alimony. Failure to make these findings is reversible error. A critical impediment to meaningful review of a trial court's decision is not the absence of findings, but the absence of a transcript. A harmless error review is required in alimony cases - a lack of a transcript frustrates the court's ability to properly conduct the review. In this case, the trial court erred in failing to make the requisite factual findings. However, the appeals court was compelled to affirm as the Former Husband failed to provide a transcript or statement as required by the rules of procedure. This failure precluded the appeals court from reviewing the factual or legal basis for the trial court's decision. The appeals court affirmed.

PROCESS

Case: [J.B. etc v. Florida D.C.F.](#)

Court: Florida Supreme Court.

Trial Judge:

Attorneys: Stephanie Christina Zimmerman, Dwight Oneal Slater, Ryan Thomas Truskoski, George E. Schulz, Jr., Robin L. Rosenberg, Wendie Michelle Cooper, Kelley Ruth Schaeffer.

Issues: Termination, Process.

Holding: The right to counsel in termination of parental right (TPR) proceedings includes the right to effective assistance and requires a means of vindicating that right.

The Supreme Court considered two questions.

1. Is the criminal standard of ineffective assistance of counsel applicable to claims of ineffective assistance of counsel in proceedings involving the termination of parental rights? The SC answered in the negative.
2. Is any procedure available following the termination of parental rights to raise claims of ineffective assistance of counsel that are not apparent on the face of the record? The SC answered in the affirmative.

The Supreme Court:

- a. established the appropriate standard for determining whether counsel provided constitutionally ineffective assistance in termination of parental rights proceedings;
- b. provided a temporary process for bringing such claims of ineffective assistance; and
- c. directed the development of rules providing the procedure for vindicating that right.

1. The Right to Counsel

Under Florida statutory law, parents have a right to counsel in both dependency and TPR proceedings. While the appointment of counsel is not required by the constitution, it is required under the due process clause of the United States and Florida Constitutions, in proceedings involving the permanent termination of parental rights to a child.

2. The Right to Effective Assistance of Counsel

The right of indigent parents to counsel under the Florida Constitution in TPR proceedings necessarily includes the constitutional right to the effective assistance of counsel.

3. The Standard for Ineffective Assistance

The standard for determining ineffective assistance of counsel claims is that the parent must establish that the result of the TPR proceeding would have been different but for the attorney's deficient performance. Once this is established, then the order terminating parental rights should be vacated, and the case returned to the circuit court for further proceedings.

4. Temporary Procedure for Ineffective Assistance Claims in TPR Cases

Post-TPR proceedings must be expeditious. A permanent such process will be developed. The Supreme Court set an interim process for bringing claims of ineffective assistance of counsel following the termination of parental rights. This interim process requires that claims of ineffective assistance first must be raised by the parent and ruled on by the trial court. The trial judge must ensure that the parents whose rights are at issue are informed of those rights such that at the end of each TPR adjudicatory hearing, the circuit court shall orally inform the parents for whom counsel was appointed regarding the right to:

- (1) appeal the order entered at the end of the TPR proceedings to the district court; and
- (2) file a motion in the circuit court alleging that appointed counsel provided constitutionally ineffective assistance (if the court terminates parental rights).

In addition, a written order terminating parental rights shall include a brief statement informing the parents of the right to effective assistance and a brief explanation of the procedure for filing such a claim. Indigent parents (likewise without the assistance of appointed counsel) must file a motion in the circuit court claiming ineffective assistance of trial counsel in the TPR proceeding. Appeal from an order denying a motion alleging the ineffective assistance of counsel will be raised and addressed within any appeal from the order terminating parental rights. A parent, without assistance of appointed counsel, shall have twenty (20) days after the termination judgment issues within which to file a motion in the trial court

alleging claims of ineffective assistance of counsel. The motion must contain the case name and number; the date the order of termination of parental rights issued; the specific acts or omissions in trial counsel's representation of the parent during the TPR proceedings that the parent alleges constituted a failure to provide reasonable, professional assistance; and an explanation of how the errors or omissions prejudiced the parent's case to such an extent that the result would have been different absent the deficient performance.

If a parent files an ineffective assistance of counsel motion, rendition of the order in the TPR proceeding will be tolled for purposes of appeal until the circuit court issues an order on the pro se ineffective assistance motion. If a parent chooses to file a motion claiming ineffective assistance of counsel, then counsel of record cannot continue representation.

If the parent chooses to appeal, the attorney must certify, among other things, that:

- a. the parent so chose;
- b. a notice of appeal signed by counsel;
- c. the parent has been filed; and
- d. an order appointing appellate counsel, if any, has been entered.

Further, the appointed attorney representing an indigent parent, must, after issuance of an order terminating parental rights, discuss appellate remedies and determine whether the parent wants to appeal the TPR order. If the answer is affirmative, counsel must also inquire whether the parent intends to file a motion claiming ineffective assistance of counsel. If the parent responds affirmatively, then counsel must immediately seek withdrawal on this basis. In addition, if the parent subsequently files a motion alleging ineffective assistance despite the parent's prior expression of a contrary intent, if counsel of record is also appellate counsel withdrawal is required at that time, and new counsel will be appointed for any appeal from the TPR order and from the disposition of the ineffective assistance of counsel motion.

When a parent files a motion alleging ineffective assistance of counsel, rendition of the trial court's TPR order will be tolled for purposes of appeal until the trial court rules on any claim of ineffective assistance of counsel. The trial court shall review the ineffective assistance motion and order compilation of the record regarding the termination of parental rights proceedings on an expedited basis. Further, the trial court shall conduct proceedings, including an evidentiary hearing if necessary, to determine whether the motion should be granted or denied. The circuit court shall render an order within twenty-five (25) days after the motion alleging ineffective assistance was filed or the motion shall be deemed denied.

On appeal, the district court will review claims regarding the parent's appeal from the trial court's TPR order and from the disposition of the ineffective assistance

motion. This process will apply to any case in which a judgment terminating parental rights is entered after this case becomes final. Creation of the permanent process and development of the attendant rules will be the task of a special committee.

In this case, the Supreme Court determined, that the appellant failed to present any basis for setting aside the order terminating her parental rights and affirmed the trial court's decision.

Case: [J.B. etc v. Florida D.C.F.](#)

Court: Florida Supreme Court.

Trial Judge:

Attorneys: Stephanie Christina Zimmerman, Dwight Oneal Slater, Ryan Thomas Truskoski, George E. Schulz, Jr., Robin L. Rosenberg, Wendie Michelle Cooper, Kelley Ruth Schaeffer.

Issues: Termination, Process.

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circuit court shall render an order within twenty-five (25) days after the motion alleging ineffective assistance was filed or the motion shall be deemed denied.

On appeal, the district court will review claims regarding the parent's appeal from the trial court's TPR order and from the disposition of the ineffective assistance motion. This process will apply to any case in which a judgment terminating parental rights is entered after this case becomes final. Creation of the permanent process and development of the attendant rules will be the task of a special committee.

In this case, the Supreme Court determined, that the appellant failed to present any basis for setting aside the order terminating her parental rights and affirmed the trial court's decision.

Case: [Cheek v. Hesik](#)
Court: First District Court of Appeal.
Trial Judge: A. C. Soud, Jr..
Attorneys: William S. Graessle, Jonathan W. Graessle.
Issues: Process.

Holding: If a trial court issues an order adjudicating an issue not presented by the parties, or the pleadings, due process is infringed. The order, therefore, departs from the essential requirements of law. Further, where there has been no pleading requesting modification, then the modification of a judgment constitutes a jurisdictional defect. In this case, the trial court erred when it temporarily suspended the Former Husband's one-half obligation toward travel costs and ordered that all timesharing less than four days in duration occur in the vicinity of his residence when such issues were neither properly raised by the pleadings nor set for hearing. In doing so, the Former Wife's due process rights were violated. The appeals court reversed and remanded with instructions to vacate those portions of the order.

Case: [M.P. v. D.C.F.](#)
Court: Fourth District Court of Appeal.
Trial Judge: James Martz.
Attorneys: Antony P. Ryan, Paulina Forrest, Rosemarie Farrell.
Issues: Process.

Holding: Dependency Order

Courts are duty-bound to ensure that their dependency orders reflect only facts proved by competent, substantial evidence presented at the dependency hearing.

In this case, the trial court erred when it included, as a factual basis for the dependency, verbatim from the “prior history” summaries of call-out investigations that were set forth in the dependency petition, being uncorroborated reports not supported by evidence at trial. The appeals court affirmed the overall order but remanded with instructions for the trial court to strike the unsupported findings from its orders.

Random Drug Testing

A court may order a parent to submit to a mental or physical examination in circumstances where (1) the parent has requested custody of the child, (2) the parent’s mental or physical condition is in issue, and (3) there is good cause shown for the examination. An mental or physical examination may be ordered any time after a shelter petition or petition for dependency is filed and the mental or physical condition of a parent, caregiver, legal custodian, or other person who has custody or is requesting custody of a child, is in issue. A qualified professional must conduct the examination. Such matters, including a case plan, must be considered by the court having regard to whether the plan is meaningful and designed to address facts and circumstances upon which the court based the finding of dependency.

In this case, the trial court erred in requiring the Father to submit to random drug testing. While the Father sought custody, and the dependency petition alleged that the father had a criminal history of drug possession, sufficient to place the issue of his substance use in issue, the trial evidence did not show that he abused drugs. There was also no evidence at trial regarding the Father’s alleged arrest for possession of drugs. The trial court relied, erroneously, on allegations of drug use, however this reliance fails to satisfy the good cause standard. Nor was there any showing that a substance abuse evaluation would meaningfully address the facts and circumstances which resulted in the adjudication of dependency as to the Father. The appeals court reversed for the trial court to strike the task of random drug testing from the Father’s case plan.

Case: [Shah v. Shah](#)
Court: Third District Court of Appeal.
Trial Judge: Mindy S. Glazer.
Attorneys: Bryant Miller Olive, Elizabeth W. Neiberger, Clayton D. Simmons, Andrew Rier, Daniel Tibbitt.
Issues: Process.
Holding: Due process requires proper notice and an opportunity to be heard. In this case, the trial court erred when it noticed the hearing on the petition for dissolution of

marriage as a status conference but, instead, conducted a final hearing and entered final judgment. The appeals court reversed.

Case: [De Leon v. Collazo](#)
Court: Third District Court of Appeal.
Trial Judge: Leon M Firtel.
Attorneys: David W. Macey, Lindsey M. Alter, Jessica B. Reilly.
Issues: Permanent Injunction for Protection, Process.

Holding: Due process serves as a vehicle to ensure fair treatment through the proper administration of justice. It requires that litigants be given proper notice and a full and fair opportunity to be heard. To be sufficient, notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must convey the required information, afford a reasonable time for those interested to make their appearance, and indicate the witnesses and the evidence expected.

In this case, the trial court erred when, at the final hearing, it permitted the Applicant, over objection, to testify to substantial and significant acts of domestic violence that were never pleaded in the petition. Nor was the Respondent put on notice that these additional acts would form a part of the allegations relied upon. This violated the Respondent's due process rights. The appeals court vacated the permanent injunction and remanded for a new final hearing.

Case: [Rodriguez, Jr. v. Rodriguez](#)
Court: Fourth District Court of Appeal.
Trial Judge: Heather Pinder Rodriguez.
Attorneys:
Issues: Due Process.

Holding: Due process rights require that a party be allowed to appear telephonically for a final hearing if he or she has filed a proper and timely motion for same. In this case, the trial court erred as it denied the Former Husband's due process rights when it failed to allow him to appear telephonically for the final hearing, despite his filing a proper and timely motion for a telephonic appearance. The appeals court reversed.

PROPERTY DISTRIBUTION

Case: [Clark v. Clark](#)
Court: First District Court of Appeal.
Trial Judge: John L. Miller.
Attorneys: E. Jane Brehany.
Issues: Alimony, Property Distribution.

Holding: Under Florida statutes, the date the petition for dissolution of marriage was filed is an appropriate date for classifying the parties' assets as marital, and the date for determining value of assets classified as marital is the date, or dates, as the court deems is just and fair in the circumstances. In this case, the trial court did not err in using the petition filing date as the date for valuing a marital asset, an investment account, which was lower in value at the end of the marriage than at the beginning. The appeals court reversed that portion of the final judgment equitably distributing the parties' marital assets and liabilities, and remanded for correct determination of the value of the asset

RELOCATION

Case: [Thompson v. Malicki](#)
Court: Second District Court of Appeal.
Trial Judge: Lee Ann Schreiber.
Attorneys: Christopher R. Bruce.
Issues: Relocation, Modification, Child Support.

Holding: A trial court's imputation of income must be supported by competent, substantial evidence. When calculating child support, Florida Statutes (2011) provide that the trial court shall impute income to a voluntarily unemployed or underemployed parent absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. Where income is to be imputed, the employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available.

In this case the trial court did not err as to its modification of timesharing and the denial of relocation as those findings were based on cogent, substantial evidence. However, the trial court erred when it based an award of child on imputed income of the Former Wife which was not supported by sufficient findings or evidence. Reliance on past work history alone is insufficient to support imputation of income. Particularized findings are required regarding work history, occupational qualifications, and the current job market in the community to support the imputation of income. Failure to make these findings results in reversal.

The appeals court remanded for the trial court to take further evidence on this issue and recalculate the amount of child support as necessary.

Case: [Vaelizadeh v. Hossaini](#)
Court: Fourth District Court of Appeal.
Trial Judge: Dale C. Cohen.
Attorneys: John J. Shahady, John M. Ross, Steven D. Miller.
Issues: Custody, Relocation.

Holding: In determining a petition for relocation, the trial court must concern itself as to whether the relocation is in the best interests of the child. An appellate court reviews relocation determinations for abuse of discretion; however, the question of whether the trial court properly applied the relocation statute is a matter of law, reviewed *de novo*. Child custody issues should be determined upon child's best interests, and such issues should not be foreclosed on technical pleading defaults. Florida statutes (2014) provide that, unless the parties have entered into agreement,

the parent seeking relocation must file and serve a petition to relocate. The pleadings must conform to statutory requirements including that it be signed under oath or affirmation under penalty of perjury and include a specific statement (in prescribed typographic form) set out under statute, providing notice and direction to the parent upon whom the petition is served. Procedurally, if the parent upon whom the petition has been properly served fails to respond in a timely and proper manner, it is presumed that the relocation is in the best interest of the child and that the relocation should be allowed. The trial court shall, absent good cause, enter an order specifying that the order is entered as a result of the failure to respond to the petition. Additional procedural matters are as prescribed by statute.

In this case, the trial court erred in entering the relocation judgment when good cause existed to preclude the Mother's relocation despite the Father's untimely response to the Mother's petition. Good cause included that:

- a. Despite filing a late response, the Father had a pending petition to domesticate and modify an out-of-state order to seek residential custody before the Mother filed her relocation petition.
- b. He had filed a motion contesting the petition raising allegations requiring hearing.
- c. His untimely response was not due to wilful inaction but his attorney's unavailability while tending to an ill family member.
- d. An order should not be rendered based on defaults which do not consider the child's best interests.
- e. The relocation judgment was inconsistent with the trial court's oral ruling and written order from earlier that day stating that an evidentiary hearing to determine best interests would be set.

The appeals court reversed and remanded for an evidentiary hearing.

Case: [Nicolas v. Blanc](#)

Court: Third District Court of Appeal.

Trial Judge: John Schlesinger.

Attorneys: Hegel Laurent, Yolande Henry Van Dam, Barbara Green.

Issues: Parenting, Relocation.

Holding: In considering relocation applications, a trial court must properly consider and apply the enumerated factors under Florida Statutes (2014) to the record evidence. It must also articulate findings of fact based on such. In this case, the trial court did not err as it properly considered and applied the requisite and applicable factors

under Florida Statutes (2014), and articulated findings of fact, supported by the competent substantial evidence presented. The appeals court affirmed the trial court's order granting relocation.

RETROACTIVITY

Case: [Kemp & Associates v. Chisholm et al](#)
Court: Fifth District Court of Appeal.
Trial Judge: C. McFerrin Smith, III.
Attorneys: Richard L. Pearse, Jr., Jonathan D. Kaney III, Jonathan D. Kaney Jr..
Issues: Adoption, Retroactivity.

Holding: While due process generally requires notice of adoptions to putative biological fathers, such notice is not an absolute right. In Florida, the unmarried father must take some statutorily mandated steps to protect his inchoate due process rights. An unwed father obtains a protected interest if he establishes a full commitment to the responsibilities of parenthood and participates in the upbringing of his child. Under the Full Faith and Credit Clause, Florida is obligated to recognize judgments, including adoption judgments, which have been validly rendered in the courts of sister states, an exception exists when the laws of the foreign state seriously depart from Florida's core values.

The retroactive application of case law holding that notice to an unwed father of the pending adoption is required pursuant to the United States Supreme Court's decision of *Stanley v. Illinois*, 405 U.S. 645 (1972). However, full retroactive effect in cases still open on direct review could invalidate an adoptions finalized many years ago. This conflicts with intent to create permanence with adoption. Adoptive children have a right to permanence in their adoptive placements, as adoptive parents have an interest in retaining custody of a legally adopted child.

In this case, the trial court erred as it refused to recognize a 1961 Texas adoption judgment under which the claimant was adopted and the putative biological father, now deceased. The trial court decision would permit the claimant here, and an adopted child in general, to inherit from a biological father decades after the adoption was finalized. The effect of the trial court's decision calls into question the validity of adoption judgments under the laws of Florida and other states that did not require notice to putative fathers at the time of the child's adoption. This would lead to increased litigation and disruptions to many families, both adoptive and biological. Public policy requires that adoption decrees that have been entered without the consent of the natural father must be honoured as family and financial decisions are, and have been, made in reliance on the validity of those decrees. Those reliance interests foreclose retroactive application of the above-noted ruling.

The appeals court reversed the trial court's decision to refuse a Texas adoption judgment from 1961 and remanded with directions to enter judgment in favour of the opposing party.

REUNIFICATION

Case: [S.V. v. D.C.F.](#)
Court: Third District Court of Appeal.
Trial Judge: Alan S. Fine.
Attorneys: Karla F. Perkins, Kele Stewart, Laura E. Lawson.
Issues: Dependency, Reunification.

Holding: A certiorari review of the trial court’s non-final order is limited to whether the trial court departed from the essential requirements of law in conducting its review of the general magistrate’s report and recommendations, resulting in irreparable harm to the petitioner that cannot be remedied on direct appeal.

In this case, the trial court did not err as it adhered to the essential requirements of law and applied the correct legal standards when it reviewed the general magistrate’s recommendations. Specifically, the trial court found that competent substantial evidence did not support the general magistrate’s finding that the Father, at this time, had the capacity to meet the children’s extensive and unremitting therapeutic needs. The appeals court denied the petition to review the lower court decision.

Case: [Chamberlain v. Eisinger](#)
Court: Fourth District Court of Appeal.
Trial Judge: Paul B. Kanarek.
Attorneys: A. Julia Graves
Issues: Child Support, Imputed Income, Time-Sharing, Reunification.

Holding: Modification of Custody & Timesharing

When modifying a parenting and timesharing plan, the primary considerations are the best interests of the children. To modify an order of custody, the movant must show that: the circumstances have substantially and materially changed since the original custody determination; this change could not be contemplated by the parties at the time of the original judgment; and it is in the child’s best interests to change custody. While this onus on the party seeking to modify is intended to preclude repeated custody disputes, it should not preclude legitimate review of the petition. Courts must evaluate all relevant statutory factors affecting the welfare and interests of the child. A trial court’s order changing custody enjoys a presumption of correctness on appellate review and will only be disturbed for abuse of discretion.

In this case, the trial court did not err in concluding a substantial change in circumstances existed and that such change warranted the modification of timesharing because it trial court considered evidence relevant to the best interests of the children.

Reunification

A custodial parent has an affirmative obligation to encourage and nurture the relationship between the child and the noncustodial parent. This entails encouraging the child to interact with the noncustodial parent, taking good faith measures to ensure that the child visit and otherwise have frequent and continuing contact with the noncustodial parent and refraining from doing anything likely to undermine the relationship naturally fostered by such interaction. In this case, the trial court did not err in holding that the Former Husband was not thwarting the Former Wife's efforts at reunification with the children insofar as he provided evidence to support his position while the Former Wife provided none.

Child Support

The standard of review for a child support award is abuse of discretion. In this case, the trial court erred in factoring in the Former Husband's alimony payments into child support for months where he failed to pay alimony. The appeals court reversed and remanded for a determination of the amount of alimony paid to determine an offset to the retroactive child support obligation.

Imputing Income

When imputing income, the trial court must set forth factual findings, based on cogent evidence, concerning the probable and potential earnings level, source of imputed and actual income, and adjustments to income. In this case, the trial court erred in imputing income to the Former Husband in the absence of evidence.

SAME-SEX MARRIAGE

Case: [Brandon-Thomas v. Brandon-Thomas](#)
Court: Second District Court of Appeal.
Trial Judge: John E. Duryea, Jr..
Attorneys: Luis E. Insignares, Brian J. Kruger, Michael E. Chionopoulos, Pamela Jo Bondi, Allen Winsor, Adam S. Tanenbaum.
Issues: Same-Sex Marriage.

Holding: The trial court was reversed for dismissing a same-sex divorce case based on lack of jurisdiction. The appellate court remanded to the trial court to consider the merits of the divorce petition.

Like those federal court decisions recognizing same-sex marriages, a same-sex divorce must be analysed principally for compliance with the Equal Protection and Due Process Clauses of the federal constitution to the extent that the trial court's order denied relief to the appellant. The application of the constitutional principles of equal protection and due process apply to the dissolution of same-sex marriages. The issues at hand require key focus. The primary issues at hand involve the rights of a same-sex couple, validly married in another state and now living in Florida, to seek a dissolution of marriage in Florida. A heterosexual couple under similar circumstance could easily invoke a Florida trial court's jurisdiction. More precisely defining the issue and the right enables easier application of the constitutional principles of equal protection and due process.

In this case, the court is petitioned to assist in returning the parties to single status – to adjust the parties' financial and property relationships and provide some judicial direction concerning child custody. The parties are not asking a Florida court to form a marital union, they seek disengagement from a broken relationship. Upon dissolution of marriage, the parties will each be single. Apart from the mandates of any final judgment, any state or federal obligations or benefits attendant to marriage presumably will cease. A well-settled general framework is utilized for the constitutional analysis. The substantive component of the Due Process Clause checks state authority to enact untenable measures, even if enacted with appropriate procedural safeguards. Substantive due process protects fundamental rights. As the Florida Constitution and legislation classify same-sex couples differently than heterosexual couples for purposes of dissolution of marriage, the proper definition of the right sought plays a leading role. In this case, the state failed to identify and argue the proper right. Rather, it pursued analysis and argument related to Florida's ban of same-sex marriage and regarding Florida laws, under which, sexual orientation is not a protected class entitled to strict-scrutiny analysis. As the state bears the burden of presenting only a rational basis for its legislation, on the arguments presented, it fell short and tied the analysis to the need to promote procreation and have children raised in a particular family

situation. The state made this a same-sex issue when it is not. Once the real issues are defined that becomes apparent. However, even if Florida's purported interest in procreation and having children raised in a heterosexual household were rational reasons to ban same-sex marriage, the state did not establish why or how prohibiting a validly married same-sex couple from seeking a divorce in Florida advances either of these interests. The state has not articulated how prohibiting a trial court from dissolving a same-sex marriage, validly entered into in another state, will promote a rise in procreation. Nor does the state explain how denying a couple a divorce will optimize what it sees as an ideal environment for raising children. Indeed, in the context of a marriage dissolution, the trial court will be in an ideal situation to protect the best interest of the child parented by this couple. The appeals court did not discount the state's reason for enacting its laws and noted that a court should defer to the state when it has provided a basis for its statutory and constitutional classifications. However, such deference presupposes that the state has a rational basis for its position, which in this case, was not established.

[DIVORCECOURTAPPEALS.COM's FLORIDA DIVORCE & CUSTODY APPEALS OVERVIEW](#)

Below is the [Florida Divorce & Custody Appeals Overview](#) from DivorceCourtAppeals.com and Nugent Zborowski & Bruce. Clicking on the hyperlinks (blue font) in the text below will take you to the indicated material on [DivorceCourtAppeals.com](#).

FLORIDA DIVORCE AND CUSTODY APPEALS OVERVIEW

Knowledge is power. Before you start throwing money at lawyers to appeal the ruling in your Florida divorce or child custody case you need to understand the laws, deadlines and procedures involved with the process.

For starters, the process of prosecuting an appeal is much different than everything that happened leading up to and including the trial in your divorce or child custody case.

You should read the [Appellate Basics](#) tutorial to learn the major ways that an appellate case is different than what happens at the trial court level. [Click here to learn the Appellate Basics.](#)

[DEADLINES, REHEARING, "APPEALABILITY" & STAYS PENDING APPEAL](#)

The most important things to "get right" with an appeal is knowing the filing deadline and making sure to appeal all relevant orders. If you miss the deadline to file your notice of appeal, barring any extreme emergency, you will be "out of luck" as the appeals court will not have jurisdiction to decide your case. Also, if you fail to include the relevant orders on your notice of appeal, the appeals court might not be able to decide the issues that really matter. The bottom line is this: make sure you appeal everything that needs to be appealed without missing any deadlines. For more information, [click here for the tutorial on Appellate Deadlines.](#)

Before you file your appeal, you need to be make sure you've done the right things with the trial court. Depending on your situation, it may be preferred, or even required, to raise certain faults with the judge's ruling in a Petition for Rehearing or Motion for Reconsideration, or to ask the judge to give additional findings to support their ruling. Everything you need to know about this process can be found by [clicking here for the tutorial on Rehearing & Required Findings.](#)

Another preliminary issue that needs to be assessed early on is whether or not your judge's ruling can be immediately appealed, or if you need to wait until a final order has been entered to pursue an appeal. A detailed analysis of whether your judge's ruling is "appealable" can be found by [clicking here for the tutorial on What Decisions Can I Appeal?](#)

In some cases, the divorce court judge may have issued a ruling with "irreversible consequences" that cannot be undone if the ruling becomes effective before an appeal is finalized. Fortunately,

there is a process for requesting a “stay”, or temporary halt to trial judge’s order becoming effective. [Click here to read everything you need to know about obtaining a stay pending the outcome of your appeal.](#)

NUTS AND BOLTS OF APPELLATE PROCEDURE

The basics of appellate practice and procedure are probably more important for lawyers to understand than for clients to read about. That said, you will likely be a more comfortable and informed client if you have a basic understanding of the processes involved with each step of your appeal. For this reason, you should click the links below and read up on the tutorials for appellate briefs, appellate motion practice, oral argument and reviewing and appealing the appeals court’s decision:

- [Tutorial on Appellate Briefs;](#)
- [Tutorial on Appellate Motion Practice;](#)
- [Tutorial on Oral Arguments;](#) and
- [Tutorial on Reviewing and Appealing the Appellate Court's Decision](#)

APPEALING SPECIFIC ISSUES

Once you understand the basic ground rules and procedures, it is time to go into more detail to learn about appealing specific aspects of your judge’s decision. Listed below are detailed tutorials on the areas most commonly appealed in Florida divorce and family law cases. Clicking on the tutorials listed below will take you to a section of the website that explains the topic and most frequently asked questions in greater detail:

- [Appealing Child Custody Decisions;](#)
- [Appealing Alimony Orders;](#)
- [Appealing Child Support Decisions;](#)
- [Appealing Equitable Distribution \(Property Distribution\) Orders;](#)
- [Appealing Attorney’s Fee Awards;](#)
- [Appealing Temporary Relief Orders;](#)
- [Appealing Domestic Violence Injunctions;](#)
- [Appealing Discovery Orders \(Writs of Certiorari\);](#)
- [Appealing to Disqualify a Biased Judge \(Writs of Prohibition\);](#) and
- [Appealing to Make a Judge Take Action \(Writs of Mandamus\)](#)