



# Stephens' Squibs 2011

## Florida Family and Marital Cases

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**squib:** (skw ĩb): n. *a short, sharp, usually witty impression, a short news story. v. The act of squibbing.*

2011 Case Law Update:

Family Law #####

**Course Number #####**

Course Type **R**

Max. CLE Credits **2.50**

Ethics Credits **0.00**

**Certification Areas**

**Max. Credit: 2.00**

Marital and Family Law **2.00**

[Eddie Stephens](#), Esq. is a third generation Floridian. Mr. Stephens was admitted to The Florida Bar in 1997 and is Board Certified in Family and Marital Law.

Mr. Stephens is a past chair of the Marital & Family Law Board certification committee which oversees the creation, administration and grading of the Marital & Family Board Certification Examination.

Mr. Stephens currently works as a Marital & Family litigation specialist for the Law Offices of John T. Christiansen, P.L.

**Agreements:**

Bedoya v. Bedoya, 36 FLW D2318 (Fla. 3<sup>rd</sup> DCA 2011). Final judgment reversed as it provided alimony from date of filing divorce instead of from date prenuptial agreement was signed as provided for in the agreement.

Crawford v. Barker, 64 So. 3d 1246 (Fla. 2011). Resolves conflict with Smith, 919 So. 2d 525 (Fla. 5<sup>th</sup> DCA 2005). Husband pre-dissolution made wife beneficiary of retirement. In divorce, husband received retirement but there was no mention of death benefit. Husband never changed beneficiary. Husband dies. 3<sup>rd</sup> DCA opinion saying Marital Settlement Agreement waived wife's beneficiary interest quashed. Absent the Marital Settlement Agreement providing who is to receive death benefits, court should not look further than named beneficiary on policy, in this case, the wife.

Adams v. Adams, 58 So. 3d 340 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for requiring husband to pay wife one half of insurance proceeds from wife's column on marital expenses prior to separation. Parties entered into settlement that did not address proceeds. A pure property settlement agreement is not modifiable.

Moree v. Moree, 59 So. 3d 205 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for denying Husband's motion to set aside agreement without evidentiary hearing when motion adequately alleged a claim of relief based upon mutual mistake.

Schlifstein v. Schlifstein, 52 So. 3d 841 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for requiring former husband to make \$130,000 payment which was conditioned upon Husband selling or refinancing. Court found former husband made less than a good faith effort. Agreement was ambiguous and did not require former husband to make a good faith effort.

Ferguson v. Ferguson, 54 So. 3d 553 (Fla. 3<sup>rd</sup> DCA 2011). Court reversed for voiding portion of mediated agreement which required former husband to refinance or sell property because it was "impossible". Decline in the real estate market is not the sort of unanticipated circumstances that would trigger doctrine of impossibility.

**Alimony:**

Zambuto v. Zambuto, 36 Fla.L.Weekly D2758 (Fla. 2<sup>nd</sup> DCA 2011). Award of alimony reversed when Court failed to attribute an earning capacity to the Wife based upon the evidence.

Witt v. Witt, 36 FLW D2352 (Fla. 2<sup>nd</sup> DCA 2011). Final judgment denying alimony because wife was to receive equalizing payment and it was a short term marriage. Court required to make findings of fact per 61.08.

Wu v. Xing, 36 FLW D2444 (Fla. 3<sup>rd</sup> DCA 2011). Trial court reversed for awarding permanent alimony without any findings of fact that would support such an award.

Draulans v. Draulans, 36 Fla. L. Weekly D2065, 2011 Fla. App. LEXIS 14675 (Fla. 2<sup>nd</sup> DCA 2011). Award of rehabilitative alimony reversed when judgment did not include termination date for alimony.

Sellers v. Sellers, 68 So. 3d 348 (Fla. 1<sup>st</sup> DCA 2011). Trial court reversed for awarding equity in home as permanent alimony instead of a periodic amount. A decision to award permanent alimony must be based on assessment of the needs of one spouse and the ability of the other spouse to pay.

Bell v. Bell, 68 So. 3d 321; 2011 (Fla. 4<sup>th</sup> DCA 2011), Rehearing denied by Bell v. Bell, 2011 Fla. App. LEXIS 15209 (Fla. 4<sup>th</sup> DCA, Sept. 21, 2011). Judge Stern reversed for failing to award "bridge the gap" alimony in ten year marriage without adequate findings of fact to explain his rationale.

Demont v. Demont, 67 So. 3d 1096 (Fla. 1<sup>st</sup> DCA 2011). Nominal alimony award affirmed when husband lacked ability. Court correctly ruled wife was in need of permanent alimony and nominal award served to allow wife to seek income in event husband's financial position improves or if parties' respective financial positions change substantially.

Horton v. Horton, 62 So. 3d 689 (Fla. 2<sup>nd</sup> DCA 2011). Error for court to award rehab alimony for educational expenses but not living expenses when wife had need. Remanded for court to reconsider in light rehabilitative plan was for only two (2) years.

Lule v. Lule, 60 So. 3d 567 (Fla. 4<sup>th</sup> DCA 2011). Judge Lewis reversed for awarding Husband's interest in marital residence to Wife as lump sum alimony for "abandoning the marriage". Court made no findings of fact relating to alimony or equitable distribution. In order to award lump sum alimony Court must make findings of special need for lump sum payment and unusual circumstances that would require non-modifiable award of support.

Mills v. Mills, 62 So. 3d 672 (Fla. 2<sup>nd</sup> DCA 2011). Court reversed for failing to include business income (gross receipts less ordinary business expenses) and in kind payments which reduced Husband's living expenses in calculating income for purposes of determining alimony.

Fortune v. Fortune, 61 So. 3d 441 (Fla. 2<sup>nd</sup> DCA 2011). Error not to award Wife nominal alimony in 16 year marriage where Husband did not possess present ability. When one spouse is entitled to permanent alimony, and the other does not have current ability to pay, the trial court should award nominal alimony which gives the court jurisdiction to reconsider the award should the parties' financial circumstances change.

Grimm v. Grimm, 58 So. 3d 428 (Fla. 1<sup>st</sup> DCA 2011). Failure to award husband alimony reversed when Court failed to consider wife's non-marital assets.

Liebrecht v. Liebrecht, 58 So. 3d 415 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for failing to award nominal permanent alimony in marriage of 15 years 8 months (gray area) when parties agreed wife would be stay at home mother.

Brathwaite v. Brathwaite, 58 So. 3d 398 (Fla. 1<sup>st</sup> DCA 2011). Trial Court reversed for including mortgage payment in wife's needs when house was going to be sold and husband was paying mortgage.

Kennedy v. Kennedy, 60 So. 3d 466 (Fla. 2<sup>nd</sup> DCA 2011). Denial of permanent alimony in "gray area" case reversed for lack of findings of fact. Gray area marriage in itself not sufficient to deny permanent alimony.

Delate v. Iler, 50 So. 3d 1242 (Fla. 4<sup>th</sup> DCA 2011). Judge Oftedal's award of permanent alimony affirmed when Husband did not have ability to support wife at her determined needs. In event former husband's circumstances change, former wife can seek a modification based upon 1) substantial, 2) unanticipated and 3) sufficient, material, permanent and involuntary.

Roth v. Cortina, 59 So. 3d 163 (Fla. 3<sup>rd</sup> DCA 2011). Post Judgment award of alimony that preceded property division reversed. A Trial Court must first fashion equitable distribution, then make determination whether alimony should be awarded.

Janssens v. Janssens, 51 So. 3d 1183 (Fla 5<sup>th</sup> DCA 2011). Nominal alimony of \$1 reversed because of debt allocated to Husband which caused him not to be able to pay alimony. Finding was not supported by record. Case remanded.

Betancourt v. Betancourt, 50 So. 3d 768 (Fla 3<sup>rd</sup> DCA 2011). Award of alimony reversed when it was based on Husband's \$3,500 per month rental income, but failed to deduct ordinary and necessary expenses to maintain property.

### **Appeals:**

Rushetsky v. Rushetsky, 36 FLW D2568 (Fla. 4<sup>th</sup> DCA 2011). Failure to provide transcript or proper substitute requires affirmance except where there is a clear error on the face of the judgment.

Mcgrath v. Puckett, 36 FLW D2541 (Fla. 1<sup>st</sup> DCA 2011). Non final order denying relocation which was part of dissolution action was a non-appealable order because it did not dispose of a claim that is separate and distinct from divorce action.

Wright v. Wright, 36 FLW D2424 (Fla. 1<sup>st</sup> DCA 2011). Appeal of final judgment that reserved jurisdiction over integrally related issues dismissed as premature. Traditional test for finality requires "no further action by the Court is necessary".

Crowell v. Crowell, 36 FLW D2336 (Fla. 5<sup>th</sup> DCA 2011). Appeal of order awarding entitlement to fees but not amount dismissed as premature. Until amount determined, order on entitlement was non-appealable final order.

Hunter v. Hunter, 36 FLW D2274 (Fla 2<sup>nd</sup> DCA 2011). Final judgment reversed because it was entered while an appeal of non-final order was pending. Per 9.130(f) trial court was divested of jurisdiction to enter final judgment until appeal concluded.

Shinitzky v. Shinitzky, 36 Fla. L. Weekly D1820; 2011 Fla. App. LEXIS 12893 (Fla. 4<sup>th</sup> DCA 2011). Judge Lewis reversed for exceeding mandate and modifying a judgment that had been affirmed. A modification seeks to change status quo and

seeks a new benefit for one of the parties. A clarification does not seek to change rights and obligations but to make the judgment more clear and precise.

Doran v. Doran, 57 So. 3d 933 (Fla. 1<sup>st</sup> DCA 2011). Appeal dismissed as premature when final judgment reserved jurisdiction to expend additional judicial labor in determining child support.

Furr v. Furr, 67 So. 3d 1181 (Fla. 1<sup>st</sup> DCA 2011). Trial Court affirmed when party failed to seek rehearing on failure to make findings of fact. Appellate Court unable to determine statutorily required findings of fact without transcript.

Pennywell v. DOR, 62 So. 3d 19 (Fla. 1<sup>st</sup> DCA 2011). Appeal dismissed as untimely. Second motion for rehearing is not authorized and does not toll time to file appeal.

Kinney v. Kinney, 49 So. 3d 343 (Fla. 2<sup>nd</sup> DCA 2011). Appeal challenging final judgment of modification dismissed as judgment reserved to determine retroactive alimony arrearage. Because additional judicial labor was contemplated, appeal was premature.

Williamson v. Cowan, 49 So. 3d 867 (Fla. 5<sup>th</sup> DCA 2011). Final judgment imputing income with no finding of facts and no transcript affirmed because lack of findings was not challenged in a motion for rehearing.

### **Attorneys' Fees:**

Jurasek v. Jurasek, 67 So. 3d 1210 (Fla. 3<sup>rd</sup> DCA 2011). Trial court's denial of attorneys fees reversed when parties agreed to reserve jurisdiction on issue.

Tummings v. Francois, 36 Fla. L. Weekly D1737; 2011 Fla. App. LEXIS 12556 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for denying fee request because each party received \$90,000 in property division. Trial court failed to consider disparate incomes.

Mincy v. Mincy, 66 So. 3d 1075 (Fla. 5<sup>th</sup> DCA 2011). Awarded costs of \$5,000 for business valuation reversed when Wife abandoned valuation. Other attorneys fees remanded as Court did not including finding they were reasonable.

Tilchin v. Tilchin, 65 So. 3d 1207 (Fla. 2<sup>nd</sup> DCA 2011). Order granting attorneys fees reversed and remanded for reconsideration when underlying final judgment

has been reversed and remanded. On remand trial court to determine issue of attorneys' fees after it decides issues of alimony and equitable distribution on remand as it may impact parties' financial conditions.

Foster v. Foster, 36 Fla. L. Weekly D1486; 2011 Fla. App. LEXIS 10653 (Fla. 5<sup>th</sup> DCA 2011), Rehearing denied 2011 Fla. App. LEXIS 14192 (Fla. 5<sup>th</sup> DCA Aug. 10, 2011). Award of attorneys' fees reversed after trial court places parties in relatively same financial position. One party should not have to substantially deplete his or her overall equitable distribution.

Jankowski v. Dey, 64 So. 3d 183 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for amending final order awarding fees to wife who then refused to pay her attorney and experts. Law firm had no standing to challenge satisfaction. Illustrates importance of making award of fees and costs payable directly to attorney where party has not paid for all of their fees yet.

Diaz v. Diaz, 66 So. 3d 983 (Fla. 3<sup>rd</sup> DCA 2011). Trial courts income deduction order reversed for including attorneys fees for collateral matters. An income deduction order is appropriate vehicle to collect attorneys' fees "incurred as a result of securing and/or collecting child support or alimony."

Robinson v. Robinson, 36 Fla. L. Weekly D1337; 2011 Fla. App. LEXIS 962 (Fla. 4<sup>th</sup> DCA 2011). Judge Diana Lewis reversed for awarding legal fees in amount of \$13,683.42 when total bill was \$20,310.92 and \$15,000 was already paid from joint account. Matter remanded to determine why wife would need more than \$5,310.92.

Morris v. Morris, 62 So. 3d 1215 (Fla. 5<sup>th</sup> DCA 2011). Trial court erred in not setting fee award off husband's overpayment in alimony.

Thomas v. Thomas, 61 So. 3d 1282 (Fla. 5<sup>th</sup> DCA 2011). Trial court reversed for awarding spouse two (2) days wages as sanction for other spouse missing mediation. Order on fees remanded. Entitlement was appropriate, but court failed to include findings as to reasonableness of time and rate.

Kemp v. Kemp, 61 So. 3d 481 (Fla. 5<sup>th</sup> DCA 2011). Award of attorneys fees reversed. When you are seeking award from other party, as opposed to your client, Court must make findings as to reasonableness of rate and time expended.

Santini v. Miller, 65 So. 3d 22 (Fla 4<sup>th</sup> DCA 2011). Order adjudicating charging lien on contingency fee (not family case) reversed because attorney had to withdraw due to being suspended from the practice of law before the occurrence of the contingency. Ergo, no fruits produced by his labor. Appellants awarded appellate attorneys fees sua sponte by Fourth DCA.

Grover v. Grover, 59 So. 3d 333 (Fla. 5<sup>th</sup> DCA 2011). Trial Court reversed for partially denying fees for multiple attorneys used by requesting party. Question is not whether there is a need to hire more than one attorney. Rather, did the attorneys engage in duplicative work. Here, no evidence two attorneys did duplicative work.

Flores v. Flores, 36 Fla. L. Weekly D724; 2011 Fla. App. LEXIS 4769 (Fla. 4<sup>th</sup> DCA 2011). Trial Court reversed for not addressing wife's request for fees or reserving jurisdiction on issue when matter was properly pled.

LaVere-Alvaro v. Syprett, Meshad, Resnick, Lieb, Dumbaugh, Jones, Krotec & Westheimer, P.A., 54 So. 3d 1056 (Fla. 2<sup>nd</sup> DCA 2011). Charging lien reversed because Court failed to determine whether attorney provided services that produced a positive judgment.

Ingram v. Ingram, 59 So. 3d 147 (Fla. 1<sup>st</sup> DCA 2011). Award of fees reversed when order lacked specific findings regarding hourly rates and number of hours expended.

Higginbotham v. Higginbotham, 52 So. 3d 806 (Fla. 3<sup>rd</sup> DCA 2011). Court was not limited by prenuptial agreement to award the Wife \$5,000 in temporary fees, however, award of \$305,640 was excessive and reversed.

Glass v. Glass, 49 So. 3d 867 (Fla 4<sup>th</sup> DCA 2011). Contempt order awarding fees because there was no finding as to recipients needs.

### **Child Support:**

Pomeroy v. Pomeroy, 36 FLW D2748 (Fla. 1<sup>st</sup> DCA 2011). Trial Court reversed for requiring parent to provide health insurance for child over the age of 18.

Capo v. Capo, 36 FLW D2465 (Fla. 3<sup>rd</sup> DCA 2011). Order on support reversed when it did not make findings of fact as to parties' net incomes or otherwise explain how calculation was performed.

Burnett v. Burnett, 66 So. 3d 1102 (Fla. 5<sup>th</sup> DCA 2011). Trial court reversed for requiring support in an amount that exceeds husband's imputed income.

Vanzant v. Vanzant, 36 Fla. L. Weekly D1797; 2011 Fla. App. LEXIS 12794 (Fla. 1<sup>st</sup> DCA 2011). Order of support reversed when Court confused gross income with net.

Tummings v. Francois, 36 Fla. L. Weekly D1737 ; 2011 Fla. App. LEXIS 12556 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for dividing uncovered medical expenses by percentage of overnight visits. Percentage must be based on ratio of income, not number of overnights.

Newberry v. Newberry, 67 So. 3d 1123 (Fla. 1<sup>st</sup> DCA 2011). Child support award reversed as it failed to include day care in calculations.

Finch v. DOR, 65 So. 3d 1150 (Fla. 3<sup>rd</sup> DCA 2011). Child support order reversed as findings were inconsistent to husband's income. Further retroactive support can only be based on current income when obligor fails to determine actual income during retroactive period. Diaz v. Diaz, 36 Fla. L. Weekly D1392 (Fla. 3<sup>rd</sup> DCA 2011). Income deduction order garnishing 60% of net income remanded to ensure obligor had sufficient monies to live. 60% is not *per se* unreasonable, but requires careful analysis.

Nilsen v. Nilsen, 63 So. 3d 850 (Fla. 1<sup>st</sup> DCA 2011). Trial court erred in awarding temporary undifferentiated support (alimony and child support combined in one amount). Court must apply child support guidelines, even to temporary support.

Russell v. McQueen, 62 So. 3d 683 (Fla. 4<sup>th</sup> DCA 2011). Child support award reversed because: 1) failed to include cost to father of child's insurance; 2) court used incorrect figure to calculate interest; and 3) husband double charged for uncovered medical expenses, among others.

Palewsky v. DOR, 61 So. 3d 1227 (Fla. 3<sup>rd</sup> DCA 2011). Order of child support reversed when no guidelines filed.

Grillo v. Clay, 59 So. 3d 337 (Fla. 4<sup>th</sup> DCA 2011). Judge Burton reversed for modifying child support without evidentiary hearing. Further, order conditioned timesharing on payment of support which renders order fundamentally defective.

Peters v. Blackshear, 53 So. 3d 1233 (Fla. 1<sup>st</sup> DCA 2011). Trial court reversed for requiring Father to maintain \$400,000 in life insurance to insure monthly child support obligation of \$750 when child emancipates in 2 years. Amount of insurance bears no reasonable relationship to amount of child support.

Coristine v. Coristine, 53 So. 3d 1204 (Fla. 5<sup>th</sup> DCA 2011). Trial court affirmed for granting partition of home instead of exclusive use and possession until child emancipates. As a general rule, Court should award primary parent exclusive use of residence until child emancipates unless there are special circumstances. Special circumstances exist where parties incomes are inadequate to meet their debts, expenses and cost of maintaining residence.

Rowe v. Rodriguez-Schmidt, 51 So. 3d 1238 (Fla. 2<sup>nd</sup> DCA 2011). 50/50 allocation of medical expenses reversed. Must be pro rata based on income unless otherwise factored into child support.

Maslow v. Edwards, 59 So. 3d 299 (Fla. 5<sup>th</sup> DCA 2011). Revised opinion. When husband receives veteran's disability payments for child, amount received should be added to father's income for purposes of calculating child support.

Brend v. Brend, 56 So. 3d 923 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for calculating support on gross incomes. Child support calculating based on net so Court must decide who gets child dependency to calculate correctly.

Lampert v. Lampert, 57 So. 3d 287 (Fla. 4<sup>th</sup> DCA 2011). Trial Court affirmed for approving magistrate's report child support agreement was void as it was not in child's best interest. Trial Court reversed for granting exceptions as to child support credit. Magistrate's findings of fact or conclusions of law may not be rejected by Trial Court in the absence of clear error.

### **Domestic Violence:**

Reese v. Marcus, 36 FLW D2454 (Fla. 5<sup>th</sup> DCA 2011). Domestic violence injunction affirmed when respondent alleged due process violations but failed to provide transcript. Without transcript, appellate court unable to ascertain if trial court erred.

Hasey v. Metzger, 36 FLW D2394 (Fla. 4<sup>th</sup> DCA 2011). Summary denial of costs (not attorney's fees) for respondent reversed after petitioner voluntarily dismissed domestic violence injunction.

G.C. v. R.S., 36 Fla. L. Weekly D2060; 2011 Fla. App. LEXIS 14629 (Fla. 1<sup>st</sup> DCA 2011). Injunction against domestic violence reversed when based on Father's single spank on child's buttocks in response to disrespectful behavior. Parents have right to discipline children in reasonable manner. Corporal discipline of a child by a parent or legal guardian does not constitute abuse when it does not result in harm to the child.

Deale v. Deale, 68 So. 3d 432 (Fla. 5<sup>th</sup> DCA 2011). Denial of injunction for insufficient evidence affirmed. Appellate Court cannot substitute its judgment for trial court.

McFarr v. McKee, 36 Fla. L. Weekly D1950; 2011 Fla. App. LEXIS 13902 (Fla. 5<sup>th</sup> DCA 2011) Denial of motion to dissolve injunction reversed when petitioner not afforded evidentiary hearing. Section 784.046(10) allows court to modify/dissolve injunction from time to time on motion on interested party.

Nieder Korn v. Trivino, 68 So. 3d 991 (Fla. 5<sup>th</sup> DCA 2011). Denial of dating violence injunction remanded when trial court did not afford a full evidentiary hearing.

Furry v. Von Arb Rickles, 68 So. 3d 389 (Fla. 1<sup>st</sup> DCA 2011). Domestic violence injunction reversed when Judge did not allow full evidentiary hearing on matter.

Jones v. Jackson, 67 So. 3d 1203 (Fla. 2<sup>nd</sup> DDCA 2011). Order if injunction against repeat violence reversed when harassment would not cause reasonable person to suffer emotional distress.

LC v. AMC, 36 Fla. L. Weekly D1853; 2011 Fla. App. LEXIS 13084 (Fla. 2<sup>nd</sup> DCA 2011). Final judgment of injunction against domestic violence reversed for inadequate notice. Respondent was served 25 hours before hearing, tried to obtain a lawyer but couldn't, promptly filed for rehearing with counsel and alleged victim was not in imminent harm.

Barker v. Rodriguez, 36 Fla. L. Weekly D1805; 2011 Fla. App. LEXIS 12972 (Fla. 4<sup>th</sup> DCA 2011). Final judgment of injunction against domestic violence that granted mother temporary custody of child affirmed where no transcript present that supported Husband's claim he was denied due process.

Parrish v. Price, 36 Fla. L. Weekly D1233; 2011 Fla. App. LEXIS 8458 (Fla. 2<sup>nd</sup> DCA 2011). Parent is authorized to file domestic violence injunction on behalf of their minor child.

Moriggia v. Moriggia, 62 So. 3d 1151 (Fla. 2<sup>nd</sup> DCA 2011). Trial court erred in granting injunction against domestic violence when there was no evidence to support respondent was physically abusive and no evidence to support respondent will be victim of domestic violence.

Horton v. Horton, 62 So. 3d 689 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for failing to use Parry coverture method in valuing husband's marital portion of retirement. Trial court erred in awarding husband non-marital portion of residence when proceeds from sale were deposited into joint accounts and comingled.

Konz v. Konz, 63 So. 3d 845 (Fla. 4<sup>th</sup> DCA 2011). Judge Brunson reversed for valuing mortgage at \$145,000 when only evidence valued it at \$105,000. Court also failed to distribute certain liabilities.

Stewmon v. Stewmon, 66 So. 3d 312 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for ruling property distribution equalizing payment "nondischargeable" in bankruptcy. Further equitable distribution scheme reversed due to inconsistent valuation dates and insufficient findings of fact. 61.075(3) requires the following findings: 1) identification of non-marital assets; 2) identification of marital assets, including valuation of significant assets and designation of who asset is awarded to; 3) designation of marital liabilities and designation of responsible spouse; and 4) any other finding necessary to explain distribution.

L.C. c. A.M.C., 67 So. 3d 1181 (Fla. 2<sup>nd</sup> DCA 2011). Domestic violence injunction against child's grandfather reversed because respondent only received one day's notice of hearing, could not obtain an attorney and Court did not provide opportunity for evidentiary hearing.

Fortune v. Fortune, 61 So. 3d 441 (Fla. 2<sup>nd</sup> DCA 2011). Error to award tax exemption to Father without making it contingent upon support being current.

Power v. Boyle, 60 So. 3d 496 (Fla. 1<sup>st</sup> DCA 2011). In support of repeat violence injunction allegations of yelling obscenities, flipping off, dog urinating on property, yelling obscenities while drunk is not legitimate basis for issuance of injunction per 784.046. Judge's desire "to keep the peace" not sufficient to support injunction.

Cox v. Deacon, 36 Fla. L. Weekly D733; 2011 Fla. App. LEXIS 4788 (Fla. 4<sup>th</sup> DCA 2011). Trial Court affirmed for granting jurisdiction in excess of one year. One year limitation removed from statute in 1997.

Kugler v. Joosten, 58 So. 3d 323 (Fla. 1<sup>st</sup> DCA 2011). Error for Court to summarily dismiss motion to dissolve injunction without an evidentiary hearing. Moving party deserves meaningful opportunity to be heard.

Murphy v. Reynolds, 55 So. 3d 716 (Fla. 1<sup>st</sup> DCA 2011). Injunction against repeat violence reversed when no evidence respondent conducted events of cyber stalking.

Alkhoury v. Alkhoury, 54 So. 3d 641 (Fla. 1<sup>st</sup> DCA 2011). Order denying motion to dissolve injunction affirmed when moving party failed to demonstrate scenario underlying injunction no longer exists or continuation of the injunction would serve no valid purpose.

Monteiro v. Monteiro, 55 So. 3d 686 (Fla. 3<sup>rd</sup> DCA 2011). Court affirmed for ordering in camera interview of children of alleged sexual abuse. Trial Court has inherent and authority to protect a child witness. Court may implement procedures not expressly authorized by law to further public interest.

Randolph v. Rich, 58 So. 3d 290 (Fla. 1<sup>st</sup> DCA 2011). D.V. injunction reversed. Parties had acrimonious relationship, former wife complained former husband harassed her and there was an incident where former husband grabbed papers from former wife's hands but did not touch or verbally threaten her. Law requires more than general relationship problems and uncivil behavior to support issuance of injunction. Party seeking injunction must present sufficient evidence to establish objective fear of imminent harm.

Fleshman v. Fleshman, 50 So. 3d 797 (Fla. 2<sup>nd</sup> DCA 2011). Error to enter domestic violence injunction between Father and son when they have never lived together.

Gill v. Gill, 50 So. 3d 772 (Fla. 2<sup>nd</sup> DCA 2011). DV injunction reversed when there was insufficient evidence on objective fear of imminent danger. An isolated incident of domestic violence that occurred years before the petition for injunction was filed will not support injunction without current allegations of abuse.

**Enforcement:**

Hernandez v. Frontiero, 36 FLW D2427 (Fla. 4<sup>th</sup> DCA 2011). Judge Diana Lewis reversed for requiring former husband to pay \$20 per month towards arrears. Former Husband was not present at hearing and did not rebut presumption of ability. There was no evidence to justify trial court's ruling.

Phillip v. DOR, 36 FLW D2381 (Fla. 3<sup>rd</sup> DCA 2011). Contempt order reversed as trial court did not have competent substantial evidence of present ability to pay. Levy v. Jacobs, 36 Fla. L. Weekly D2099; 2011 Fla. App. LEXIS 14981 (Fla. 4<sup>th</sup> DCA 2011). Injunction against repeat violence affirmed. In order to support injunction against repeat violence there must be at least two qualifying acts of violence. Multiple acts stemming from a single violent incident do not constitute repeat violence where acts are not separated by time or distance. In this case, there were two separate attacks, one outside, one inside, and they were separated by five minutes.

Jackmore v. Estate of Jackmore, 36 Fla. L. Weekly D2217; 2011 Fla. App. LEXIS 15783 (Fla. 1<sup>st</sup> DCA 2011). Dismissed action against estate for unpaid alimony reversed. Florida does not have statute of limitations on alimony. Remanded for evidentiary hearing to ensure laches does not apply.

Harris v. Hampton, 36 Fla. L. Weekly D2183; 2011 Fla. App. LEXIS 15740 (Fla. 4<sup>th</sup> DCA 2011). Contempt order requiring former wife to enroll child in specific private school reversed when underlying order did not make it clear who was going to pay for school and no findings as to ability to afford private school.

Brown v. Brown, 68 So. 3d 964 (Fla. 2<sup>nd</sup> DCA 2011). Contempt order requiring Husband to pay less support than he agreed to affirmed. Amount agreed to exceeded Husband's ability to pay. Trial Court authorized to fashion purge provision on party's ability. Court did not modify obligation, it just would not enforce an amount Husband could not afford despite his agreement.

Opatz v. Opatz, 67 So. 3d 446 (Fla. 4<sup>th</sup> DCA 2011). Court reversed for failing to hold Former Husband in contempt after matter referred to magistrate who never issued report. Court also reversed for improperly modifying support when it had not been pled.

Simpson v. Simpson, 68 So. 3d 958 (Fla. 4<sup>th</sup> DCA 2011). Court did not err denying motion for contempt seeking to enforce payment of vehicle loan which was not incident of support.

Keeler v. Keeler, 66 So. 3d 1081 (Fla. 3<sup>rd</sup> DCA 2011). Order finding party in criminal contempt reversed when trial court found past ability to pay versus present.

Hunter v. Hunter, 65 So. 3d 1213 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for granting change in custody as based on 2<sup>nd</sup> motion for contempt when relief was not requested and Court did not find modification in child's best interest.

Hill v. Hill, 65 So. 3d 143 (Fla. 5<sup>th</sup> DCA 2011). Trial court erred in entering judgment for \$90,000 when wife requested partition to enforce settlement. Former wife never requested money judgment as relief. Remanded to trial court to treat motion for partition as a motion for relief from judgment.

Lustgarten v. Lustgarten, 65 So. 3d 85 (Fla. 4<sup>th</sup> DCA 2011). Judge Makemson reversed for holding former husband in contempt for failing to pay \$300,000 for former wife's kidney transplant. Former husband agreed to pay former wife's uncovered expenses. However, wife's first doctor did not recommend transplant so former husband had enough concern his refusal to pay was not "intentional". Fact agreement did not specify medical expenses must be "reasonable and necessary" does not waive defense that expenses must be "reasonable and necessary." Former husband still required to pay cost of transplant (\$169,000) but order of contempt reversed.

Galpern v. DOR, 58 So. 3d 438 (Fla. 4<sup>th</sup> DCA 2011). Judge Burton reversed for purge provision required father to pay \$700 immediately and \$20,000 every sixty days thereafter when only evidence of ability was father made \$400 a week plus commissions plus food stamps. Order is facially deficient.

Elliot v. Bradshaw, 59 So. 3d 1182 (Fla. 4<sup>th</sup> DCA 2011). Judge Brunson reversed for considering husband's equity in house of 2.25 million which is listed for sale. In present distressed house it is uncertain is husband could sell property even at discount. Present ability to pay not supported by evidence.

Morena v. Morena, 57 So. 3d 995 (Fla. 3<sup>rd</sup> DCA 2011). Court reversed for not granting contempt based upon agreed order neither party would disparage. Wife wrote a book, did interviews and disparaged husband. Trial Court had no

discretion to deny any motion. However, in footnote, Appellate Court suggests nominal fine as parties failed to agree on sanction.

Powell v. Powell, 55 So. 3d 708 (Fla. 4<sup>th</sup> DCA 2011). Trial Court's order on fees and order on contempt for failure to pay fees reversed. Order lacked findings of fact on reasonableness of rate and hours. Husband cannot be held in contempt for violating improper fee award.

Pirelli v. Bolanos, 54 So. 3d 1047 (Fla. 4<sup>th</sup> DCA 2011). Judge Brunson reversed because she failed to identify source of purge in commitment order.

Criollo v. Criollo, 53 So. 3d 391 (Fla. 5<sup>th</sup> DCA 2011). Error to incarcerate former husband for 100 days or until he paid full \$67,000 purge when there was no evidence former husband had ability to meet purge.

### **Equitable Distribution:**

Zambuto v. Zambuto, 36 FLW D2758 (Fla. 2<sup>nd</sup> DCA 2011). Trial court erred in assigning \$90,000 in gambling losses in absence of misconduct. Misconduct is not shown by mismanagement or simple squandering of assets in a manner other spouse disapproves. Rather, there must be a specific finding of intentional misconduct and money was used for one's benefit for a purpose unrelated to marriage at a time when marriage is undergoing an irreconcilable breakdown.

Kerzner v. Kerzner, 36 FLW D2608 (Fla. 3<sup>rd</sup> DCA 2011). Trial court affirmed for affording homestead protection on husband's proceeds from sale of homestead property. A protected homestead may be voluntarily sold and funds will be protected so long as they are not commingled and are held for the sole purpose of acquiring another home within a reasonable period of time. Former Husband did not waive this protection for child support arrears from another relationship by agreeing to "pay any lien or encumbrance against marital home from proceeds".

Tuomey v. Tuomey, 36 FLW D2539 (Fla. 5<sup>th</sup> DCA 2011). Trial court reversed for offsetting former husband's obligation to pay expenses on residence with the value of received by his use of the property when there are no findings as to fair market rental value.

Witt v. Witt, 36 FLW D2352 (Fla. 2<sup>nd</sup> DCA 2011). Final judgment with equitable distribution reversed as it was unclear. Trial court failed to assign \$100,000 contingent tax liability, failed to accept parties' stipulation on value of premarital portion of business, and made a number of other mistakes.

Wu v. Xing, 36 FLW D2444 (Fla. 3<sup>rd</sup> DCA 2011). Trial court reversed for awarding marital residence, the only significant marital asset, to one party without findings of fact that would justify unequal distribution.

Fotinos v. Fotinos, 36 FLW D2287 (Fla. 2<sup>nd</sup> DCA 2011). Judgment awarding exclusive use and possession of marital property to husband reversed when property not included in equitable distribution scheme and no findings of fact to support unequal distribution.

Cortese v. Cortese, 36 FLW D2272 (Fla. 5<sup>th</sup> DCA 2011). Trial Court reversed for granting husband credit for one half of the mortgage and house related expenses during pendency of divorce because; 1) credit not requested in pleadings, 2) inappropriate to credit husband with payment of these expenses when he is the bread winner and 3) husband's payments were part of temporary alimony award.

Coleman v. Bland, 36 Fla. L. Weekly D2110; 2011 Fla. App. LEXIS 15174 (Fla. 5<sup>th</sup> DCA 2011). Final Judgment reversed because judgment contained no findings of fact on husband's pension (i.e. whether it was marital or non-marital). Remanded only as to disposition of pension.

Jurasek v. Jurasek, 67 So. 3d 1210 (Fla. 3<sup>rd</sup> DCA 2011). Trial court reversed for awarding husband "special equity" in marital residence based upon his investment of non-marital inheritance. Husband did not overcome presumption of gift.

Joshi v. Joshi, 66 So. 3d 1101 (Fla. 5<sup>th</sup> DCA 2011). Trial court reversed for assigning \$1,800 stimulus to Husband in equitable distribution when record contained no support Husband received check.

Vanzant v. Vanzant, 36 Fla. L. Weekly D1797; 2011 Fla. App. LEXIS 12794 (Fla. 1<sup>st</sup> DCA 2011). Trial court reversed for failing to make equalizing payment. No findings of fact to support unequal distribution. Trial court's valuation of business reversed when not supported with findings and it looks like Court split difference between competing experts.

Bell v. Bell, 68 So. 3d 321 (Fla. 4<sup>th</sup> DCA 2011). Judge Stern reversed for failing to include \$660,000 in receivables from Husband's business. Court erred in finding house husband inherited from mother as marital even when Husband helped his Mother pay mortgage before she died.

Tummings v. Francois, 36 Fla. L. Weekly D1737; 2011 Fla. App. LEXIS 12556 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for including Wife's bonuses in equitable distribution scheme. It is error to include assets that have been dissipated or diminished during the pendency of action. An exception exists is dissipation is based on misconduct. Court must make finding of intentional dissipation or destruction resulting from intentional misconduct.

Morenberg v. Morenberg, 65 So. 3d 1199 (Fla. 4<sup>th</sup> DCA 2011). Judgment requiring Husband to equally divide all future text book royalties reversed on Husband's fourth edition of text book which was started after divorce was filed. A former spouse is not entitled to receive benefits that accrue after dissolution.

Bush v. Bush, 65 So. 3d 1101 (Fla. 2<sup>nd</sup> DCA 2011). It was error to award Wife with full value of account which was depleted during pendency of divorce. Wife was not awarded temporary alimony and Court made no finding of misconduct or waste.

Demont v. Demont, 67 So. 3d 1096 (Fla. 1<sup>st</sup> DCA 2011). Trial court affirmed for rejecting wife's claim husband depleted accounts during pendency when husband demonstrated monies spent were not for his own personal enjoyment but to pay usual and customary household and other family expenses established during marriage. Court erred in classifying payment for non-compete after divorce as compensation was based on future promises as opposed to marital labor.

Mills v. Mills, 62 So. 3d 672 (Fla. 2<sup>nd</sup> DCA 2011). Court reversed for failing to include assets purchased post filing that were funded by the sale of marital assets. Further, Court failed to provide findings of fact to support depletion of marital funds were for living expenses of parties as opposed to property distribution.

Fuentes v. Fuentes, 59 So. 3d 1204 (Fla. 2<sup>nd</sup> DCA 2011). Equitable distribution reversed because Court failed to allocate \$40,000 Husband withdrew during proceedings. If Court meant unequal distribution, findings of fact are required. Court should also address Husband's claim money was spent on family living expenses and he should not be credited with the amount in property division.

Fortune v. Fortune, 36 So. 3d 441 (Fla. 2<sup>nd</sup> DCA 2011). Error to classify \$150,000 "loan" made from Husband to his employer as marital liability just before filing. Only corroborating evidence was affidavit of employer of affidavit. Affidavit should not have been admissible and there was no other evidence supporting Husband's contention.

Lacoste v. Lacoste, 58 So. 3d 404 (Fla. 1<sup>st</sup> DCA 2011). Trial Court's award of unequal distribution based on 1) short term marriage and 2) party used non-marital assets to enhance.

Brathwaite v. Brathwaite, 58 So. 3d 398 (Fla. 1<sup>st</sup> DCA 2011). Trial Court reversed for classifying entire military retirement as marital when most of it was earned before marriage.

Kight v. Kight, 61 So. 3d 415 (Fla. 3<sup>rd</sup> DCA 2011). Trial Court reversed for treating \$6,000.00 contribution to IRA made after date of filing as marital property.

Wagner v. Wagner, 61 So. 3d 1141 (Fla. 1<sup>st</sup> DCA 2011). Trial Court reversed for failing to distribute home furnishings even when neither party presented evidence of value. Court has to categorize and value, even if no evidence. Unequal distribution without explanation reversed.

Orloff v. Orloff, 67 So. 3d 271 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court reversed for classifying husband's business as marital. Entity was formed as sole proprietorship and incorporated before marriage. After marriage, husband re-incorporated in Florida. This did not make company marital and new Florida corporation came from assets acquired before marriage.

David v. David, 58 So. 3d 336 (Fla. 5<sup>th</sup> DCA 2011). Trial Court reversed for unequal distribution of credit card debt based upon disparity of income of parties.

Kaaa v. Kaaa, 58 So. 3d 867 (Fla. 2011). Revised opinion. Adopts Stevens. Formula for passive appreciation for a non-marital property.

Lee v. Lee, 56 So. 3d 819 (Fla. 2<sup>nd</sup> DCA 2011). Equitable Distribution reversed because it failed to delineate marital and non-marital property and not all assets are assigned values. Further, the findings an unequal distribution is "equitable under the circumstances" is insufficient to articulate basis for unequal distribution.

Randall v. Randall, 56 So. 3d 817 (Fla. 2<sup>nd</sup> DCA 2011). Trial Court erred in awarding engagement ring to former husband because engagement ring is generally a premarital gift. In addition, husband listed ring as wife's non-marital property on his financial affidavit.

Belford v. Belford, 51 So. 3d 1259 (Fla 2<sup>nd</sup> DCA 2011). Trial Court reversed for charging Husband with \$44k depleted during pendency. In the absence of misconduct, it is error to charge to a party's share of equitable distribution assets dissipated during the dissolution proceeding.

Dybalski v. Dybalski, 52 So. 3d 825 (Fla 5<sup>th</sup> DCA 2011). Trial court affirmed for modifying a judgment of consent when issue wasn't really resolved and matter was tried by consent. Court reversed for unequal distribution without adequate explanation.

Santiago v. Santiago, 51 So. 3d 637 (Fla 2<sup>nd</sup> DCA 2011). Unequal equitable distribution reversed when Court failed to value marital waste. Remanded for Court to determine actual amount of waste.

Tilchin v. Tilchin, 65 So. 3d 1207 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for awarding disproportionate share of property distribution when husband paid off a mortgage on a residence during the pendency of the action.

### **Income:**

Beasley v. Beasley, 36 Fla. L. Weekly D2680 (Fla. 4th DCA December 7, 2011). Trial Court affirmed for imputing \$50,000 per year when Former Wife never grossed more than \$25,000 a year as a landscape architect. In this case, the evidence showed that Former Wife chose not to use her degrees, license, and 25 years of marketing experience to actualize her earning capability. Former Wife's hourly billing was below market rate. Former Husband's vocational expert testified that Former Wife was well qualified as a landscape architect and had skills that exceeded a typical landscape architect. The median income for landscape architects was \$59,638 at the time of trial. Former Wife had not sacrificed her career to rear children, to maintain a home, or to promote Former Husband's career. In the final judgment, the trial judge concluded: "There is no question from the evidence that the wife has made little or no effort to earn an income consistent with the level of her work experience, education, and ability for years prior to and during the

pendency of this divorce litigation.” The judge’s finding that Former Wife is capable of earning \$50,000 a year is reasonable and supported by competent substantial trial evidence. Trial Court affirmed for denying permanent alimony in 21 year marriage and awarding bridge-the-gap alimony for 1 year.

Torres v. Torres, 36 Fla. L. Weekly D2151; 2011 Fla. App. LEXIS 15254 (Fla. 2<sup>nd</sup> DCA 2011). Order imputing income reversed when no basis to impute in judgment. Mere allegations of employability do not constitute competent substantial evidence to impute income. Here former husband did not take exceptions. Appellate court reversed because it is clear on judgment findings were insufficient to support imputation.

Halawy v. Halawy, 67 So. 3d 447 (Fla. 2<sup>nd</sup> DCA 2011). Support order reversed when both parties imputed minimum wage income and Husband had to pay full obligation for both incomes. Wife had conceded error.

Cissel v. Cissel, 36 Fla. L. Weekly D1351; 2011 Fla. App. LEXIS 9602 (Fla. 4<sup>th</sup> DCA 2011). Finding of income reversed when court failed to deduct undisputed legitimate business expenses and including income of a non-recurring nature.

Fuesy v. Fuesy, 64 So. 3d 151 (Fla. 2<sup>nd</sup> DCA 2011). Trial court’s determination of wife’s income reversed when it failed to include wife’s voluntary retirement contributions.

Mudafort v. Lee, 62 So. 3d 1196 (Fla. 4<sup>th</sup> DCA 2011). Trial court’s imputation to wife of \$500 per week reversed when no evidence to rebut wife’s testimony of her income. The burden of proof is on the party seeking to impute.

Fischer v. Fischer, 55 So. 3d 725 (Fla. 5<sup>th</sup> DCA 2011). Trial Court affirmed for imputing income of \$60,000 to Husband when Husband represented he made \$45,000 in income on loan application, he had additional rental income and had 2 new jobs.

### **Jurisdiction:**

Gray v. Bresler, 53 So. 3d 1043 (Fla. 4<sup>th</sup> DCA 2011). Judge Stein affirmed for denying husband’s motion to vacate final judgment based on fact he was not Florida resident 6 months prior to filing. Wife filed counter-petition 6 months after husband moved to Florida which satisfied residency requirement.

**Miscellaneous:**

Irvin v. Irvin, 36 Fla.L.Weekly D2667 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for failing to hold Former Husband in contempt when he failed to pay Former Wife her share of receivables from a note. Parties settled divorced and agreed proceeds would be divided. A modification was filed and resolved and provided all unmodified provisions in first provision remain in effect. Modification did not involve receivables and Former Wife did not divest her interest.

Matteis v. Matteis, 36 Fla. L. Weekly D2029; 2011 Fla. App. LEXIS 14561 (Fla. 4<sup>th</sup> DCA 2011). Judge Burton reversed for failing to resolve issues with marital home. Remanded for clarification of payment of expense pending sale as well as contingency if house does not sell in specified period.

In Re: Oath of Admission to Florida Bar, 36 Fla. L. Weekly S505 (Fla. 2011). Adds to oath; "To opposing parties and their counsel, I pledge fairness, integrity and civility, not only in Court, but also in written and oral communications".

Comstock v. Comstock, 36 Fla. L. Weekly D1742; 2011 Fla. App. LEXIS 12505 (Fla. 4<sup>th</sup> DCA 2011). Final post judgment order enforcing mediated agreement which was not approved by court in an order or judgment was affirmed in part and reversed in part. Issues concerning property enforcement are enforceable under contract law. That part of judgment affirmed. Portion enforcing issues relating to child custody and support reversed because court never determined stipulation to be in children's best interest.

Estate of King v. King, 67 So. 3d 387 (Fla. 4<sup>th</sup> DCA 2011). Trial court reversed for denying Husband's estate's motion to substitute in seeking to enforce final judgment on a property issue. Here, Husband died after entry of final judgment and Court reserved jurisdiction. This was not a claim against the estate. Rather, the estate was making a claim against the Former Wife.

Taylor v. Taylor, 67 So. 3d 359 (Fla. 4<sup>th</sup> DCA 2011). Trial court's order denying 1.540 motion for relief from judgment reversed because husband never received notice of final hearing therefore judgment is void. Wife's claim her attorney mailed notice of final hearing to husband's last known address pursuant to Rule 1.080 defeated on rebutted evidence wife led husband to believe she was not pursuing divorce.

Foster v. Foster, 36 Fla. L. Weekly D1486; 2011 Fla. App. LEXIS 10653 (Fla. 5<sup>th</sup> DCA 2011). Final judgment requiring life insurance to insure alimony obligation reversed because court failed to make findings of facts regarding availability and cost of insurance, obligor's ability to pay, and special circumstances that warrant requirement of security.

Glanz v. Glanz, 63 So. 3d 936 (Fla. 4<sup>th</sup> DCA 2011). Judge Burton reversed for refusing to strike a lis pendens on a property titled in name of a business owned by husband. Because business was not a named party, court had no jurisdiction.

Ross v. Ross, 61 So. 3d 479 (Fla. 4<sup>th</sup> DCA 2011). Court reversed for violating Perlow rule and adopting parties' proposed order verbatim and not providing other party opportunity to review or object.

Fortune v. Fortune, 61 So. 3d 441 (Fla. 2<sup>nd</sup> DCA 2011). Error to deny Wife's request to restore maiden name.

Teague v. Gritman, 67 So. 3d 284 (Fla. 5<sup>th</sup> DCA 2011). Motion to disqualify judge based on events at hearing two months prior rendered motion legally insufficient. Motion must be filed within 10 days.

Hughes v. Krueger, 67 So. 3d 279 (Fla. 5<sup>th</sup> DCA 2011). Trial Court reversed for ordering an accounting on a property two divorced people owned as tenants in common. The husband was using the property for his business and never excluded, ousted former wife from property. A tenant in common who has exclusive possession of real property and uses it for his own benefit is not liable or accountable to a co-tenant out of possession unless possession is adverse or result of ouster.

Hill v. Hill, 36 Fla. L. Weekly D475; 2011 Fla. App. LEXIS 11777 (Fla. 3<sup>rd</sup> DCA 2011). Court reversed for awarding alimony after reserving jurisdiction for 18 years. Court never determined need or awarded nominal alimony. No limited or reasonable duration on reservation.

R.M.F. v. D.C., 55 So. 3d 684 (Fla. 2<sup>nd</sup> DCA 2011). Appeal with no transcript. Lack of transcript precludes review of visitation. Attorney fees reversed due to lack of findings.

Sullivan v. Hoff-Sullivan, 58 So. 3d 293 (Fla. 1<sup>st</sup> DCA 2011). Florida trial court reversed for interpreting child support provisions when exact issue was previously litigated in Georgia based on *res judicata*.

Schang v. Schang, 53 So. 3d 1168 (Fla. 1<sup>st</sup> DCA 2011). Trial court reversed for issuing final judgment over a year after trial and judgment did not reflect full and accurate consideration of pertinent facts.

Beharry v. Drake, 52 So. 3d 790 (Fla 5<sup>th</sup> DCA 2011). Trial Court affirmed for adopting proposed judgment verbatim. Requirement to maintain life insurance in excess of support obligation reversed.

### **Modification:**

Khutorsky v. Iina, 36 FLW D2715 (Fla. 3<sup>rd</sup> DCA 2011). Trial court reversed for requiring Former Husband to pay portion of private school when only relief requested was former husband's request to remove restriction to live in particular school district. When relief is not sought in pleadings, it should not be granted, unless tried by consent.

Buhler v. Buhler, 36 FLW D2653 (Fla. 5<sup>th</sup> DCA 2011). Trial Court reversed for modifying child support retroactive to date of filing when it should have modified it retroactive to date parent first failed to regularly exercise court ordered visitation.

Delivorias v. Delivorias, 36 FLW D2711 (Fla. 1<sup>st</sup> DCA 2011). \*Clarifying opinion. Order on contempt providing modification of final judgment affirmed even when trial court failed to include "magic words of a substantial change of circumstances. Here, competent substantial evidence supports the result and trial court's failure to explain reasoning does not compel reversal if it is readily apparent why the trial court ruled in the manner it did.

Crowell v. Crowell, 36 FLW D2336 (Fla. 5<sup>th</sup> DCA 2011). Final judgment dismissing modification entered after opening statements but before the introduction of evidenced reversed. Party who makes sufficient allegations in pleading is entitled to evidentiary hearing.

Simpson v. Simpson, 68 So. 3d 958 (Fla. 4<sup>th</sup> DCA 2011). Modification of alimony reversed after Husband suffered temporary unemployment, even though Wife

acquiesced to modification in an email because she did not have full disclosure of husband's income and Husband would not have otherwise passed *Pimm* test. A temporary reduction may have been appropriate if Husband suffered temporary loss of income without deliberately seeking to avoid alimony and acting in good faith to return income to previous level.

Ragle v. Ragle, 36 Fla. L. Weekly D1790; 2011 Fla. App. LEXIS 12738 (Fla. 1<sup>st</sup> DCA 2011). Order modifying custody reversed when based on Mother's decision to relocate 28 miles, failure to allow frequent and liberal timesharing, and unilaterally changing school. A desire to relocate is not a substantial change in circumstances. Parties' inability to co-parent does not constitute change. Trial court failed to make findings of fact and record did not support contention of visitation interference.

Estate of Reale v. Horwitz, 67 So. 3d 1145 (Fla. 3<sup>rd</sup> DCA 2011). Trial court affirmed for bringing alimony modification to an end after former husband's death and denying attorney fees occurred post mortem. However, order denying fees pre mortem reversed.

Talbi v. Essoufi, 65 So. 3d 1207 (Fla. 2<sup>nd</sup> DCA 2011). Portion of final judgment which provides a list of specific tasks Wife needed to complete to modify custody does not limit or prohibit future court from considering traditional modification factors governed by case law in determining future modifications. Courts cannot modify appropriate standard to be used in future modifications.

Hahn v. Hahn, 66 So. 3d 345 (Fla. 4<sup>th</sup> DCA 2011). Order modifying alimony from \$1,000 to \$450 reversed when based on court's finding of fact, former husband lacked ability to pay any alimony at all.

Bachman v. McLinn, 65 So. 3d 71 (Fla. 2<sup>nd</sup> DCA 2011). Trial court reversed for applying 61.13 as amended in 2008 in reaching ultimate conclusion on modification as opposed to heavy burden required to modify judgment. Error to apply new statute as if it were initial determination.

Shelden v. Shelden, 63 So. 3d 78 (Fla. 2<sup>nd</sup> DCA 2011). Crazy procedural nightmare of a case involving two pro se litigants. Court ultimately reversed for accepting magistrate's report where Husband had burden but was not permitted opportunity to present evidence.

Poe v. Poe, 63 So. 3d 842 (Fla. 5<sup>th</sup> DCA 2011). Trial court affirmed for modifying support based on Husband's testimony he lost job based on Husband's testimony he lost job one month after the final judgment and change was not anticipated, even though credible evidence supported contention Husband lost his job the day before he signed the agreement, and therefore the change was anticipated. Credibility of witness is within trial court's exclusive purview.

Denker v. Debroski, 60 So. 3d 1104 (Fla. 4<sup>th</sup> DCA 2011). Judge Stern affirmed for modifying custody when former wife did not attend final hearing or present evidence. Here, case was not decided by default. There was a full presentation of evidence that supported Court's decision.

Morrison v. Morrison, 60 So. 3d 410 (Fla. 2<sup>nd</sup> DCA 2011). Upward modification reversed when circumstances did not meet "Bedell" exception. Bedell exception allows an upward modification upon a change in circumstances when court was legally obligated to order an amount of alimony that did not meet the needs of the recipient in original final judgment, based on standard of living at marriage, due to payor's limited ability. In case at hand, parties entered into a settlement agreement (and contractually agreed on alimony amount). Court further erred in finding former husband's income increased based on temporary trust payments that were known about when parties entered into original settlement.

Doran v. Doran, 49 So. 3d 1290 (Fla. 1<sup>st</sup> DCA 2011). Order denying custody modification reversed when party was not allowed to present evidence of abuse. Remanded for new trial.

### **Parenting:**

Sparks v. Sparks, 36 FLW D2760 (Fla. 1<sup>st</sup> DCA 2011). Trial Court's final judgment reversed because trial court did not allow Father to challenge whether parenting aspects of settlement agreement were in best interests of child. Trial Court's responsibility cannot be abdicated to any parent or expert.

Cheek v. Hesik, 36 FLW D2378 (Fla. 1<sup>st</sup> DCA 2011). Trial Court's order on contempt awarding former husband 150 consecutive days of makeup time sharing reversed in part when not found to be in child's best interest and order basically changed child's residence and allowed relocation. No error in trial court's determination that former husband was entitled to makeup time sharing. Further

61.34(4)(c) unequivocally provides Court SHALL award sufficient amount of extra timesharing to compensate for time missed.

Otto-Jones v. Jones, 36 Fla. L. Weekly D1941; 2011 Fla. App. LEXIS 13893 (Fla. 2<sup>nd</sup> DCA 2011). Order requiring child to attend private school for first half of school year and public school for second half reversed when no evidence to support rotating custody in child's best interest. Remanded for court to decide appropriate school.

Bainbridge v Pratt, 68 So. 3d 310 (Fla. 1<sup>st</sup> DCA 2011). Order rotating custody on an annual basis reversed. Neither party requested this arrangement. Despite trial court using magic words that this arrangement was in child's best interest, there is no record evidence to support trial court's conclusion.

Leneve v. Leneve, 64 So. 3d 196 (Fla. 4<sup>th</sup> DCA 2011). Judge Brunson reversed for denying motion to dismiss motion invoking Keeping Children Safe Act, Section 39.0139, Florida Statutes. This does not apply to Chapter 61 proceedings and other courts have found statute unconstitutional.

A.M.M v. J.M.M, 63 So. 3d 910 (Fla. 2<sup>nd</sup> DCA 2011). Order awarding grandmother temporary custody under Chapter 751 reversed as facially deficient. It appears court decided issue solely on default. A mother's fundamental liberty interest in care, custody and management of their child cannot be taken because she failed to file pleadings or hire an attorney. Court required to provide findings that mother abused, neglected, or abandoned clear child by clear and convincing evidence as opposed to relying on default.

Mudafort v. Lee, 62 So. 3d 1196 (Fla. 4<sup>th</sup> DCA 2011). Statutory changes in past few years have abrogated any judicial presumption against equal time-sharing.

Sotero v. Sullivan, 60 So. 3d 512 (Fla. 3<sup>rd</sup> DCA 2011). Non final order appointing parental coordinator reversed because it delegated authority to make binding decision to therapist, allowed therapist to impose monetary sanctions and waived confidentiality.

Straney v. Floethe, 58 So. 3d 374 (Fla. 2<sup>nd</sup> DCA 2011)/ Trial Court reversed for granting modification after considering factors in 61.13(3). Court must find substantial change of circumstances since entry of final judgment.

Winters v. Brown, 51 So. 3d 656 (Fla. 4<sup>th</sup> DCA 2011). Court affirmed for granting Father exclusive decision making on health/medical issues because Mother was proponent of holistic medicine who believed anything introduced into the body to prevent disease or illness is against God's will.

Arcot v. Balaraman, 57 So. 3d 907 (Fla. 5<sup>th</sup> DCA 2011). Trial Court reversed for interpreting visitation schedule to provide husband had only 2 exclusive weeks in summer. Parties alternated weekends and per agreement that was only superseded by holidays.

### **Paternity:**

P.G. v. E.W., 36 FLW D2577 (Fla. 2<sup>nd</sup> DCA 2011). Order denying disestablishment of paternity reversed. Even though Father had primary residency, he is a male ordered to pay support because he was ordered to share in health expenses. Did not require newly discovered evidence other than DNA test. Conflicts with Hooks v. Quaintance.

Hooks v. Quaintance, 36 Fla. L. Weekly D2214 (Fla. 1<sup>st</sup> DCA 2011). Petition to disestablish paternity reversed because petitioner did not allege "newly discovered evidence". In this case, the alleged Father knew there was 50% chance he was not father when paternity established. Newly discovered evidence is evidence that by due diligence could not have been discovered in time to more for a new trial or rehearing. Here because alleged father did not challenge paternity initially, he lost chance to disestablish, even though he has a DNA test that proves he is not the biological father.

McKee v. Sinco, 36 Fla. L. Weekly D2162; 2011 Fla. App. LEXIS 15436 (Fla. 5<sup>th</sup> DCA 2011). Even though parties still reside together, Court affirmed for requiring Father to pay pro rata share of health insurance, day care and agreed upon extracurricular activities.

Slowinski v. Sweeney, 64 So. 3d 128 (Fla. 1<sup>st</sup> DCA 2011). J.S. and C.L. v. S.M.M., 36 Fla. L. Weekly D1941 (Fla. 2<sup>nd</sup> DCA 2011). Order giving putative father standing to seek genetic testing quashed when child born into intact marriage.

DOR v. Kathcart, 36 Fla. L. Weekly D1880 (Fla. 4<sup>th</sup> DCA 2011). Non-final order requiring genetic testing quashed when respondent signed acknowledgment of paternity and paternity was not at issue. Child was born in intact marriage. Judgment awarding custody to biological father reversed as fundamental error. A putative father has no cause of action to challenge child's paternity.

Calloway v. Shirley, 61 So. 3d 1240 (Fla. 1<sup>st</sup> DCA 2011). Order on paternity changing name of child to Father reversed because there was no evidence it was in the child's best interest.

DOR v. Robinson, 67 So. 3d 442 (Fla. 1<sup>st</sup> DCA 2011). Trial Court reversed for ordering DNA testing when paternity not an issue.

DOR v. Lynch, 53 So. 3d 1154 (Fla. 1<sup>st</sup> DCA 2011). Trial court reversed for ordering genetic paternity testing in post judgment case where there was no disestablishment action pending.

### **Procedure:**

Rodriguez v. Santana, 36 FLW D2732 (Fla. 4<sup>th</sup> DCA 2011). Trial Court reversed for entering final judgment of paternity at a hearing scheduled as status conference. This violated due process.

Miranda v. Munoz-Ortiz, 36 FLW D2699 (Fla. 2<sup>nd</sup> DCA 2011). Final order on parental responsibility reversed when Father was incarcerated and denied opportunity to participate in evidentiary hearing telephonically.

Fradly v. Deringer, 36 FLW D2678 (Fla. 4<sup>th</sup> DCA 2011). Trial court's order granting relief from judgment 7 years after entry reversed. A certificate of service raises a presumption of delivery. A denial of receipt does not overcome presumption. Evidentiary hearing is necessary.

In Re: Fla. Family Law Rules, 36 FLW S646 (Fla. 2011). New forms for notice of action of dissolution of marriage, and notice of family law case with minor child.

Achurra v Achurra, 36 Fla. L. Weekly D2104; 2011 Fla. App. LEXIS 15029 (Fla. 1<sup>st</sup> DCA 2011). Income deduction order used to garnish husband's pay to replenish children's college funds reversed as that is an obligation that may not be enforced

by income deduction order. IDO's may only be used to collect support and attorneys fees related to support.

In Re: Amendments to Fla. SC Forms, 36 Fla. L. Weekly S547 (Fla. 2011). New family law forms that include disability notice pursuant to Rule of Judicial Administration Rule 2.540.

Smith v. Smith, 36 Fla. L. Weekly D1379 (Fla. 4<sup>th</sup> DCA 2011). Judge Makemson reversed for allowing husband to obtain wife's medical therapy records because wife attempted suicide ten (10) months prior to filing petition. Remanded for an evidentiary hearing to determine whether mental health is at issue. If not, court should order psychological examination.

In Re: Rules of Family Law Procedure, 36 Fla. L. Weekly S267 (Fla. 2011). Approved new Income Deduction Order ("IDO") form. Also confirms IDO payments must be made through support depository.

Swor v. Swor, 56 So. 3d 825 (Fla. 2<sup>nd</sup> DCA 2011). Retroactive child support reversed due to erroneous calculation. Court included alimony Wife never received in making calculation.

Webber v. Webber, 56 So. 3d 822 (Fla. 2<sup>nd</sup> DCA 2011). Court erred by making support retroactive to date custody changed (January 2007) when it should have been on date modification (May 2007).

Roth v. Cortina, 36 Fla. L. Weekly D457 (Fla. 3<sup>rd</sup> DCA 2011). Order denying attorney's motion to withdraw reversed. Approval by the Court should be rarely withheld and then only upon a determination that to grant withdrawal would interfere with efficient and proper functioning of the Court.

Laussermair v. Laussermair, 36 Fla. L. Weekly D448 (Fla. 4<sup>th</sup> DCA 2011). Judge Brunson reversed for dismissing petition for upward modification based on attorney's "representation" former husband was unemployed at hearing. Representation by attorney exceeded the four corners of the petition.

Spano v. Bruce, 62 So. 3d 2 (Fla. 3<sup>rd</sup> DCA 2011). Trial Court reversed for awarding retroactive relief to date of amended petition as opposed to date of filing. Need for modification was present at time of filing.

### **Relocation:**

Kish v. Kish, 36 Fla. L. Weekly D2228 (Fla. 5<sup>th</sup> DCA 2011). Relocation to California affirmed. However, order remanded to Court to include detailed visitation schedule relocation was premised on.

Wraight v. Wraight, 36 Fla. L. Weekly D1898; 2011 Fla. App. LEXIS 13492 (Fla. 5<sup>th</sup> DCA 2011). Relocation to UK affirmed. So long as trial court make findings of fact, appellate court cannot re-weigh evidence.

Valqui v. Rodriguez, 36 Fla. L. Weekly D1855; 2011 Fla. App. LEXIS 13230 (Fla. 3<sup>rd</sup> DCA 2011). Relocation of child from Florida to California affirmed as appellate court could not find an abuse of discretion. Entire order under appeal published. Good pro-relocation case.

Rossman v. Ghuman-Profera, 67 So. 3d 363 (Fla. 4<sup>th</sup> DCA 2011). Order modifying custody to Father affirmed when final judgment contained a provision prohibiting relocation and Mother Mata v. Mata, 36 FLW D2465 (Fla. 3<sup>rd</sup> DCA 2011). Trial Court's order granting emergency motion to permit temporary relocation reversed as it did not hold evidentiary hearing as required by statute.

A.F. v. R.P.B., 36 FLW D2414 (Fla. 2<sup>nd</sup> DCA 2011). 61.13001 does not apply where wife lived in Florida and Husband lived in Pennsylvania. New version of statute only applies if one parent seeks to relocate with child.

Rossman v. Ghuman-Profera, 67 So. 3d 363 (Fla. 4<sup>th</sup> DCA 2011). Order modifying custody to Father affirmed when final judgment contained a provision prohibiting relocation and Mother ignored provision and relocated child anyway. Analysis is fact intensive. Mother moved after Father objected to notice of intent to relocate. Mother said she would not return to Florida regardless of Court's decision. Father was active in child's life, talking to her every day, coaching her sports team, regular visitation, camping trips. Granting relocation solely on best interests of party (as opposed to child) is reversible. Trial court's decision denying relocation affirmed Modification also affirmed even the Court did not state "a substantial change in circumstances occurred". Change of circumstances can be found in trial court's detailed findings. Generally, Court's cannot base substantial change on relocation alone. This is different, Mother has already relocated, FJ prohibited relocation and Mother stated she would not return.

Orta v. Suarez, 63 So. 3d 936 (Fla. 4<sup>th</sup> DCA 2011). Trial court's order denying relocation reversed. Very lengthy relocation opinion. In this case, wife met her

burden because parties always intended to relocate to California where wife had dental license and could work.

Raulerson v. Wright, 60 So. 3d 487 (Fla. 1<sup>st</sup> DCA 2011). Trial Court reversed for granting relocation when petitioner failed to strictly comply with 61.13001.

Galpern v. DOR, 58 So. 3d 438 (Fla. 4<sup>th</sup> DCA 2011). Trial court reversed for purge provision required father to pay \$700 immediately and \$20,000 every sixty days thereafter when only evidence of ability was father made \$400 a week plus commissions plus food stamps. Order is facially deficient.

Arthur v. Arthur, 54 So. 3d 454 (Fla. 2011). Revised opinion. Trial Court reversed for granting relocation when 16 month old turns 3. Court does not have a crystal ball.

### **UCCJEA:**

Schaffer v. Ling, 36 Fla. L. Weekly D2152 (Fla. 4<sup>th</sup> DCA 2011). Judge Burton affirmed for dismissing a paternity case where child conceived in Florida but never lived here. Father sought time sharing and shared parental responsibility. Florida was not home state of child pursuant to UCJEEA.

Wigley v. Hares, 67 So. 3d 363 (Fla. 4<sup>th</sup> DCA 2011). 36 Fla. L. Weekly D1624 (Fla. 4<sup>th</sup> DCA 2011). Order denying petition for return of child affirmed even when Court misapplied Convention when it found child had settled in new environment because Court concluded child would be placed in harm's way if returned. Courts can only determine rights per convention and cannot address underlying custody issues. Trial Court found as fact Father brandished a gun towards Wife and child and Father threatened to kill child. Detailed discussion of Hague convention.

Douglas v. Johnson, 65 So. 3d 605 (Fla. 2<sup>nd</sup> DCA 2011). Trial court erred in granting non-final order requiring mother to return child to jurisdiction without allowing mother opportunity to challenge subject matter jurisdiction.

Sarpel v. Elflani, 65 So. 3d 1080 (Fla. 4<sup>th</sup> DCA 2011). Judge Burton affirmed for declaring Florida child's home state when child was in Turkey seven (7) weeks during six-month period. Trip to Turkey was temporary and no evidence move was intended to be permanent.

Holub v. Holub, 54 So. 3d 585 (Fla. 1<sup>st</sup> DCA 2011). Trial court affirmed for accepting jurisdiction when child lived in Florida for previous six months. Former husband was allowed to challenge subject matter jurisdiction for the first time on appeal.