

MARCH 2020

APPEAL-TIMELINESS: Former Husband's appeal of a subsequent order requiring him to do what he had previously been ordered to do is untimely. The subsequent order does not revive those portions of the earlier order which the Former Husband had not timely appealed. Sitaram v. Alley, 5D19-2536 (3/20/20)

https://www.5dca.org/content/download/632244/7184192/file/192536_DAO8_03202020_081239_i.pdf

ATTORNEY'S FEES: An order determining entitlement to attorney's fees without setting the amount is a non-final, non-appealable order. Sitaram v. Alley, 5D19-2536 (3/20/20)

https://www.5dca.org/content/download/632244/7184192/file/192536_DAO8_03202020_081239_i.pdf

CHILD CUSTODY: Court may not order rotating custody when neither party requested such arrangement in the pleadings or at any time during the trial. Edkin v. Edkin, 5D19-2590 (3/20/20)

https://www.5dca.org/content/download/632246/7184216/file/192590_DC13_03202020_081348_i.pdf

TIME SHARING-CONTEMPT: Court erred in awarding Father primary custody after Wife denied him visitation. Modification of time-sharing is prohibited as a sanction for a parent's contempt of a custody order unless the moving party has affirmatively alleged and proven a substantial change in circumstances, the minor child's best interests require the modification, and sufficient notice of the proposed modification was afforded to the nonmoving party. Wolf v. Wolf, 2D18-1645 (3/18/20)

CONTEMPT: The Wife cannot be found in contempt when Child repeatedly refused to get out of car for visitation with the Father. Wolf v. Wolf, 2D18-1645 (3/18/20)

https://www.2dca.org/content/download/632030/7181840/file/181645_DC08_03182020_085612_i.pdf

CHILD CUSTODY: Court may not give Father sole parental responsibility when he only requested partial timesharing and shared parental responsibility. Court violates due process when it grants a party relief that the party did not request. Court cannot sanction a parent by modifying a custody order because doing so punishes the child for the parent's misconduct (here, missing hearing). Booth v. Hicks, 2D18-4651 (3/18/20)

https://www.2dca.org/content/download/632033/7181876/file/184651_DC13_03182020_084901_i.pdf

CHILD SUPPORT-ENFORCEMENT: IWO must set forth a schedule establishing when the Payor's child support obligation expires. Moore v. Holton, 2D19-3098 (3/18/20)

https://www.2dca.org/content/download/632038/7181936/file/193098_DC13_03182020_090238_i.pdf

EQUITABLE DISTRIBUTION-SPECIAL EQUITY: Court may not make an unequal distribution award without making sufficient factual findings so justifying. Court may not find that the Wife has a special equity based on the Husband's dissipation of marital assets on his girlfriend. In 2008, special equity was abolished. Diaz v. Diaz, 3D19-493 (3/18/20)

https://www.3dca.flcourts.org/content/download/632011/7181605/file/190493_DC08_03182020_101958_i.pdf

CHILD SUPPORT: Court may not modify the final judgment, which provided the child support be paid directly to the mother, by requiring that the payments be made to the depository absent a substantial change in circumstances, that upon remand may redirect payments based on provision in the original final judgment being an error. Boukzam v. Jugo, 4D19-1240 (3/18/20)

https://www.4dca.org/content/download/632022/7181744/file/191240_DC13_03182020_094220_i.pdf

EQUITABLE DISTRIBUTION: Court must make a factual findings justifying its award of equitable distribution. In determining the value of assets, a trial court may rely on one spouse's testimony where neither presents expert testimony. Marconi v. Erturk, 4D19-2022 (3/18/20)

https://www.4dca.org/content/download/632024/7181768/file/192022_DC08_03182020_094619_i.pdf

CHILD CUSTODY: Court may authorize the emergency pickup of the children and Wife removes them to Ohio, but may not award the Husband sole parental responsibility based on his arrest for “sole care” in his emergency motion. Ramirez v. Ramirez, 4D19-3260 (3/18/20)

https://www.4dca.org/content/download/632025/7181780/file/193260_DC08_03182020_094926_i.pdf

INJUNCTION-HEARING: De process prohibits evidence of incidents of domestic violence that were not alleged in the petition. Stanlick v. Stanlick, 2D18-4938 (3/13/20)

https://www.2dca.org/content/download/631683/7178117/file/184938_DC13_03132020_084152_i.pdf

APPEAL-CHILD SUPPORT: Payor who failed to participate in the administrative proceedings by returning the forms for financial and parent information supplied to him and waived his right to a hearing waives any issue on appeal. O'steen v. DOR, 3D19-1181 (3/11/20)

https://www.3dca.flcourts.org/content/download/631217/7173996/file/191181_DC05_03112020_102953_i.pdf

INJUNCTION-HEARING: Due process prohibits evidence of incidents of domestic violence that were not alleged in the petition. Stanlick v. Stanlick, 2D18-4938 (3/13/20)

https://www.2dca.org/content/download/631683/7178117/file/184938_DC13_03132020_084152_i.pdf

EQUITABLE DISTRIBUTION: Court may order unequal distribution of assets if it provides reasons, but must identify the value of the marital home and the percentages to be apportioned. Sager v. Sager, 4D19-1722 (3/11/20)

https://www.4dca.org/content/download/631232/7174190/file/191722_DC13_03112020_092354_i.pdf

LIFE INSURANCE: Court may not Husband to obtain life insurance without evidentiary support or the requisite findings on the former husband's insurability and ability to purchase a policy. Sager v. Sager, 4D19-1722 (3/11/20)

https://www.4dca.org/content/download/631232/7174190/file/191722_DC13_03112020_092354_i.pdf

MSA: Handwritten alterations to the marital settlement agreement changed the essential terms of Former Husband's proposal and thus was not an acceptance but rather a counteroffer that Former Husband never accepted. Romaine v. Romaine, 5D18-2521 (3/13/20)

https://www.5dca.org/content/download/631726/7178647/file/182521_DC08_03132020_084949_i.pdf

CONTEMPT-SANCTIONS: Court may not give Wife all the child dependency tax deductions as a sanction for contempt. Biss v. Biss, 5D19-1112 (3/13/20)

https://www.5dca.org/content/download/631727/7178659/file/191112_DC08_03132020_085442_i.pdf

CHILD CUSTODY-MODIFICATION: Domestic violence between the Father and his new girl friend where the Father is the victim, witnessed by the Child, is harm warranting a modification of timesharing. Meyers v. Meyers, 2D18-4931 (3/6/20)

https://www.2dca.org/content/download/630327/7164110/file/184931_DC08_03062020_085033_i.pdf

ATTORNEY' S FEES: Provisions in MSA awarding attorney's fees and costs to the prevailing party must be enforced. Christensen v. Christensen, 2D19-1292 (3/6/20)

https://www.2dca.org/content/download/630329/7164134/file/191292_DC08_03062020_085244_i.pdf

TIMESHARING-MODIFICATION: Modification of parenting plans requires 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. Modification Order does not require or authorize the court to set forth the specific steps necessary to reestablish timesharing. Conflict Certified. C.N. v. I.G.C., 5D19-473 (3/6/20)

https://www.5dca.org/content/download/630372/7164681/file/190473_DC05_03062020_090036_i.pdf

IMPUTED INCOME: Where MSA did not contemplate or require the Former Wife to seek employment after the dissolution of marriage, income should not be imputed to her based on her failure to seek employment. Judy v. Judy, 2D18-1566 (3/4/20)

https://www.2dca.org/content/download/630177/7162460/file/181566_DC08_03042020_082926_i.pdf

ATTORNEY'S FEES: Court may not deny motion for attorneys' fees without making findings of fact as to one spouse's ability to pay fees and the other spouse's need to have fees paid. Bentrim v. Bentrim, 4D18-2620 (3/4/20)

https://www.4dca.org/content/download/630135/7161919/file/182620_DC08_03042020_085541_i.pdf

ATTORNEY'S FEES: Court must accept the parties' stipulation as to the relevant dates for which attorney's fees may be awarded. Appropriately made stipulations entered into by the parties are generally binding on the court as well as on the parties. Socol v. Socol, 4D18-3565 (3/4/20)

https://www.4dca.org/content/download/630139/7161967/file/183565_DC08_03042020_091337_i.pdf

SOLE PARENTAL RESPONSIBILITY: Court may not award sole parental responsibility in the absence of a finding that shared parental responsibility would be detrimental to the child. Socol v. Socol, 4D18-3565 (3/4/20)

https://www.4dca.org/content/download/630139/7161967/file/183565_DC08_03042020_091337_i.pdf

INJUNCTION-DOMESTIC VIOLENCE: Unrebutted testimony that the Respondent had committed acts of domestic violence in previous years and had recently threatened to put bullets in the Petitioner's head requires that the Court enter an injunction against domestic violence. Boucher v. Warren 4D19-356 (3/4/20)

https://www.4dca.org/content/download/630142/7162003/file/190356_DC1

[3_03042020_092000_i.pdf](#)

INCOME: Court must consider Husband's business expenses as a self-employed commercial truck driver in setting alimony and child support. Brown v. Norwood, 5D18-3836 (2/28/20)

https://www.5dca.org/content/download/607746/6892268/file/183836_DC08_02282020_085944_i.pdf

INJUNCTION-DISSOLUTION: Respondent is entitled to dissolution of injunction for protection after 20 years with no contact between the parties and the original injunction was granted after the Respondent pushed the petitioner/wife after finding her in bed with another man. "Subjective fear is not enough to maintain a permanent injunction." Only objectively reasonable fear justifies maintaining an injunction against domestic violence. Hobbs v. Hobbs, 1D19-1269 (2/27/20)

https://www.1dca.org/content/download/602573/6830262/file/191269_DC13_02272020_085601_i.pdf

CONTEMPT: There is nothing that requires a trial court to hold a person in contempt. Fluhrer v. Fluhrer, 1D19-752 (2/25/20)

https://www.1dca.org/content/download/598934/6786713/file/190752_DC05_02252020_100541_i.pdf

INJUNCTION-EVIDENCE: Court may not enter injunction against stalking based on cell phone videos which the Court viewed but did not admit into evidence. Patin v. Davis, 1D18-5061 (2/18/20)

https://www.1dca.org/content/download/597468/6769313/file/185061_DC13_02182020_144806_i.pdf

EQUITABLE DISTRIBUTION-NONMARITAL PROPERTY: Home purchased before the marriage is nonmarital property, but any marital assets to pay down the property's equity is a marital asset subject to equitable distribution. The value of the passive, market-driven appreciation of the property that accrues during the course of the marriage is a marital asset subject to equitable distribution. Nathey v. Nathey, 2D 19-441 (2/26/20)

https://www.2dca.org/content/download/602403/6828307/file/190441_DC08_02262020_085756_i.pdf

INJUNCTION: A verbal confrontation where Respondent (Father) clenched his fists and an incident of a mild spanking (tapping) is insufficient to warrant a domestic violence injunction. Testimony that the Child was afraid of the Father, absent an overt act which creates a well-founded fear, is insufficient to warrant an injunction. Threats without an overt act that places the victim in fear do not constitute the type of violence required for an injunction. J.A.F. v. A.J.R., 2D18-475/64 (2/14/20)

https://www.2dca.org/content/download/588726/6664769/file/184764_DC13_02142020_080703_i.pdf

CONTEMPT-PURGE: \$6000 purge for failure to pay alimony is excessive absent evidence of ability to pay. Carter v. Hart, 5D18-609 (2/14/20)

https://www.5dca.org/content/download/588729/6664812/file/180609_1259_02142020_08090298_i.pdf