

Stephens'Squibs

Family Law Case Law Updates

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S&S Monthly Florida Family Law CLE Episode 27 - Released September, 2023

Presented by:

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Course No. 2309916N

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2.0 Marital & Family Law Certification Credits

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Episode 27 - Agenda:

00:00:00 - 00:57:42 Family Law Case Law Update for all Florida reported cases from March 2023 through May 2023. Topics include; Alimony, Attorney's Fees, Enforcement, Equitable Distribution, Income, Injunctions, Modification, Procedure, and Support. Presented by EDDIE STEPHENS & CARYN A. STEVENS

00:57:42 – 01:30:00 - “New Alimony Statute and Family Law Software” with Ana Tait, Esquire and Eddie Stephens

HOST BIOS

Eddie Stephens, author of *Stephens' Squibs – Florida Family Law Updates*, is an equity partner at Stephens & Stevens, PLLC. He is a Board Certified Family Law attorney who specializes in high-conflict divorces. Most important to Stephens is litigating in a manner that minimizes the impact of divorce on children.

Caryn A. Stevens is an equity partner at Stephens & Stevens, PLLC, and focuses her practice exclusively in the areas of marital & family law. Prior to becoming a divorce attorney, she spent 12 years working in the mental health & counseling fields. Caryn has assisted thousands of children, families and couples through difficult circumstances and life changes, providing a wealth of experience that allows her to bring a unique and compassionate perspective to her clients. Caryn is a native South Floridian, and currently lives in Palm Beach County with her husband. She comes from an extensive family of attorneys, including her father, brother, several uncles and cousins. Caryn is a proud alumni of Florida State, and in her spare time she loves watching FSU football, traveling the world, and going to the theater.

Ana Taitt - Attorney (FL) and Director of Family Law Sales & Training with Family Law Software. Ana Taitt is a member of the Florida bar focused on the practice of family law, probate administration, and mediation services. As an attorney, with an undergraduate degree in Finance, her passion is to demystify financial principles to guide practitioners and ultimately their clients to sound resolution. Ana travels the country presenting and educating family law practitioners, mediators, and judges on the importance of software and technology in the practice of family law. After 7 years of law practice, Ana became a full-time product ambassador for Family Law Software, now a Centerbase company, <https://www.familylawsoftware.com>.

Florida Family Law Case Law Summaries

March 2023 – May 2023

Agreements:

1. *Vera v. Toledo*, 48 Fla.L.Weekly D476 (Fla. 3rd DCA 2023). Trial court erred finding a letter designed to be preliminary negotiations, designed to lead to an agreement, is an offer which is binding upon acceptance. *Judge Ivonne Cuesta, reversed.*

Alimony:

2. *Brutus v. Giles*, 48 Fla.L.Weekly D1030 (Fla. 5th DCA 2023). Trial court erred granting alimony of \$100 per month for 60 months, when oral pronouncement was to deny alimony. *Judge Brian Welke affirmed in part, dismissed in part.*

3. *Hawryluk v. Hawryluk*, 48 Fla.L.Weekly D1028 (Fla. 5th DCA 2023). Trial court reversed for entering a financial award that exceeds or nearly exhausts party's income. Here, court found Husband had a surplus of "at least \$6,000.00," and ordered him to pay \$6,350 per month in attorney's fees and alimony. *Judge Sandra S. Upchurch, affirmed in part, reversed in part.*

4. *Bernardo v. Biemer*, 48 Fla.L.Weekly D1013 (Fla. 4th DCA 2023). Award of bridge-the-gap alimony reversed when wife makes more than husband, no imputation of income to husband, and husband does not have significant non-marital assets. Award of inequitable conduct fees remanded for trial judge to correlate billing records with inequitable conduct. *Judge Michael C. Heisey, affirmed in part, reversed in part.*

5. *Reese v. Reese*, 48 Fla.L.Weekly D 993 (Fla. 6th DCA 2023). Trial court erred by not making specific findings of need and ability to pay. Court also erred finding husband's income was as stated on financial affidavit when he testified he had an additional \$5,000 per month in income. Trial court affirmed for (a) denying continuance request made on day of trial; and (b) allowing husband to make equalizing payment from retirement when no evidence of tax consequences presented. *Judge Kelly Butz affirmed in part, reversed in part.*

6. *Goodman v. Goodman*, 48 Fla.L.Weekly D437 (Fla. 6th DCA 2023). Third appeal on this case; and third time the trial court failed to make finding of income for retroactive support. Court also erred finding assets given to wife for equitable distribution should be credited as alimony and included as income. *Judge John S. Carlin, reversed.*

Appeals:

7. *Williams v. Williams*, 48 Fla.L.Weekly D927 (Fla. 5th DCA 2023). Order granting motion to stay is not an appealable non-final order per 9.130. Certiorari is not appropriate, as no irreparable harm. Appeal dismissed.

8. *Sanz v. Saenz*, 48 Fla.L.Weekly D907 (Fla. 3rd DCA 2023). Motion for rehearing on non-final order is not authorized and does not toll time for appeal.

9. *Decius v. Decius*, 48 Fla.L.Weekly D756 (Fla. 4th DCA 2023). Fourth DCA recedes from prior opinions treating pre-judgment contempt orders as appealable final orders. It is only appealable if sanctions fall within Rule 9.130(a)(3), Florida Rule of Appellate Procedure. *Appeal redesignated as petition for writ of certiorari.*

Attorney's Fees:

~~10. *Martinez v. Martinez*, 48 Fla.L.Weekly D500 (Fla. 3rd DCA 2023). Trial court erred refusing to hold a contempt hearing because party failed to pay attorney's fees awarded as a sanction. Order denying motion for contempt without prejudice, reversed. Judge Stacy D. Glick, reversed.~~

Child Support:

11. *Innocent v. Innocent*, 48 Fla.L.Weekly D1019 (Fla. 4th DCA 2023). Trial court erred failing to address temporary support and failing to attach guidelines to final judgment. *Judge Natasha DePrimo, reversed.*

12. *Velasco v. Solley*, 48 Fla.L.Weekly D701 (Fla. 4th DCA 2023). Order of support reversed when Court failed to subtract allowable deductions from gross income. *Judge Laura C. Burkhardt, reversed.*

13. *J.H.M. v. E.A.G.*, 48 Fla.L.Weekly D683 (Fla. 2nd DCA 2023). Trial court's child support award reversed because Court failed to make deductions from gross income for mandatory union dues, mandatory retirement contribution, and health insurance expense. *Judge Thomas W. Krug, affirmed in part, reversed in part.*

Discovery:

14. *Flynn v. Flynn*, 48 Fla.L.Weekly D529 (Fla. 2nd DCA 2023). Trial court erred denying post-judgment discovery on assets awarded to Husband in an enforcement action, when Husband was not meeting his court-ordered financial obligations. Writ of certiorari granted. *Judge Allison Ellison's order quashed.*

Due Process:

15. *Rankin v. Lounsbury*, 48 Fla.L.Weekly D543 (Fla. 3rd DCA 2023). Husband complained Court erred by granting Wife sole decision-making authority over education and non-emergency medical care, when wife requested "shared parental responsibility if appropriate." The issue of Husband refusing to cooperate in joint decisions was extensively litigated, and decision is supported by undeniable competent and substantial evidence. *Judge Sharon I. Hamilton, affirmed.*

16. *Maddox v. Maddox & Petronex Technologies, LLC v. Maddox*, 48 Fla.L.Weekly D441 (Fla. 2nd DCA 2023). Trial court violated company's due process rights by awarding 50% of an oil filtration design concept when business had claim to it, and business was not included in lawsuit until after final judgment entered. Thus, the business was therefore deprived the opportunity to

be heard, to testify and to present testimony. This is fundamental error. *Judge Christine A. Marlewski, affirmed in part, reversed in part.*

Enforcement:

17. *Thornton v. Thornton*, 48 Fla.L.Weekly D625 (Fla. 4th DCA 2023). Trial court erred holding party in contempt on issues resolved by parental coordinator. *Judge Jennifer Alcorta Waters, affirmed in part, reversed in part.*

Equitable Distribution:

18. *Brutus v. Giles*, 48 Fla.L.Weekly D1030 (Fla. 5th DCA 2023). Court erred in using parties' separation date as the date to classify what is marital. Court erred not equitably distributing student loans and other loans incurred during intact marriage. *Judge Brian Welke affirmed in part, dismissed in part.*

19. *Innocent v. Innocent*, 48 Fla.L.Weekly D1019 (Fla. 4th DCA 2023). Final judgment that states "Father's request for \$30,000 from mother's dissipation of marital assets is granted" when court provides no further explanation, does not specify asset dissipated, and conflicts with court's oral pronouncement. *Judge Natasha DePrimo, reversed.*

20. *Bernstein v. Bernstein*, 48 Fla.L.Weekly D818 (Fla. 4th DCA 2023). Trial court erred classifying premarital residence as marital based on donative intent. However, improvements or expenditures of marital funds to non-marital assets does not transform property to marital. Because Husband presented no evidence as to active appreciation, Wife receives ½ of all appreciation. *Judge Scott Ryan Kerner, affirmed in part, reversed in part.*

21. *Leger v. Leger*, 48 Fla.L.Weekly D761 (Fla. 4th DCA 2023). All issues affirmed, but remanded back to court to include provision that equitable distribution must be distributed "in accordance with all federal laws and regulations" because there are radio stations that need to be transferred under FCC regulations. *Judge Karen Miller, affirmed.*

22. *Dunkel v. Dunkel*, 48 Fla.L.Weekly D484 (Fla. 3rd DCA 2023). Trial court erred charging Husband with full amount of student debt for benefit of parties' adult child and child from another marriage, when debt was marital liability incurred during the marriage. *Judge Daniel F. Wilensky, affirmed in part, reversed in part.*

Grandparent Visitation:

23. *E.L. v. A.L. & I.L.*, 48 Fla.L.Weekly D490 (Fla. 2nd DCA 2023). Trial court erred terminating grandparent visitation by finding husband was fit but disregarding unrebutted expert testimony that Father sexually abused the child. A trial court may reject unrebutted expert testimony when ruling on case, but may not do so arbitrarily and the Court must explain why such rejection is made. *Judge James A. Pierce, reversed.*

Income:

24. *Holland v. Holland*, 48 Fla.L.Weekly D712 (Fla. 5th DCA 2023). Trial court erred imputing amount of income to Wife which she never earned before, and excluding wife's medical expert on *Daubert* grounds when grounds did not support exclusion. Wife's forensic accountant properly excluded as witness when accountant had no final opinions two weeks before trial. *Judge Daniel F. Wilensky, affirmed in part, reversed in part.*

Injunctions:

25. *Blanco v. Santana*, 48 Fla.L.Weekly D1040 (Fla. 6th DCA 2023). Trial court did not err when considering facts not in petition, when respondent fails to object. *Judge Elisabeth Adams, affirmed.*

26. *Klein v. Manville*, 48 Fla.L.Weekly D715 (Fla. 6th DCA 2023). Permanent stalking injunction affirmed, when respondent created social media accounts and web domains registered respondent's name, and then tried to sell it back. Court also affirmed for requiring respondent to complete batterers intervention program. *Judge Kyle S. Cohen, affirmed.*

27. *Larios v. Larios*, 48 Fla.L.Weekly D688 (Fla. 3rd DCA 2023). Court erred failing to dissolve indefinite domestic violence injunction, when injunction was entered in 2004 and no longer served a valid purpose, as there was no evidence former wife was in imminent fear. *Judge Carlos H. Gamez, reversed.*

28. *Spencer v. Kelner*, 48 Fla.L.Weekly D518 (Fla. 4th DCA 2023). Trial court erred proceeding with injunction hearing where respondent was served the day before the hearing. Florida courts have routinely held that service made to a party only a few days or less before an adversarial hearing on the merits, such notice is not fair and reasonable unless it is an emergency. *Judge Stefanie C. Moon's judgment vacated.*

29. *Woods v. Woods*, 48 Fla.L.Weekly D436 (Fla. 5th DCA 2023). Trial court affirmed for denying request for permanent domestic violence injunction, when court found domestic violence occurred but it was too remote in time to support imminent fear of becoming a victim. *Judge Robert Segal, affirmed.*

Modification:

30. *Mannella v. Mannella*, 48 Fla.L.Weekly D526 (Fla. 6th DCA 2023). Opinion clarified the "heavier burden" to modify child support which was originally agreed to, and was superseded by statute 61.14(7). Conflict certified with 2nd, 3rd and 4th DCA who are still applying heavier burden. *Judge John C. Carlin, affirmed.*

Name change:

31. *In Re: Name Change of Y.M.X*, 48 Fla.L.Weekly D920 (Fla. 4th DCA 2023). Trial court affirmed for denying name change when petition only contains conclusory allegations and does not demonstrate how best interests of child would be served. Trial court erred denying rehearing when attached affidavits demonstrated, in great detail, how changing name would benefit child. *Judge Karen Miller affirmed in part, reversed in part.*

Parenting:

32. *Brutus v. Brutus*, 48 Fla.L.Weekly D1030 (Fla. 5th DCA 2023). Timesharing provision providing “the parents shall alternate one week on and one week off, exchange on Monday, with parent starting visitation starting timesharing by picking up child from school or bus stop, and regular timesharing for entire year (no holiday)” is too general and undetailed. Court also erred by failing to specify how parents should be responsible for child’s daily tasks, who is responsible for health and education decisions, and the means for the parties to communicate with child. *Judge Brian Welke affirmed in part, dismissed in part.*

33. *Mooningham v. Mooningham*, 48 Fla.L.Weekly D877 (Fla. 5th DCA 2023). Trial court erred modifying final judgment and granting ultimate decision-making authority over child’s education and non-emergency medical without a finding of detriment, and matter not properly noticed as modification at hearing. *Judge Joan Anthony, reversed.*

34. *Torres Rios v. Arias*, 48 Fla.L.Weekly D422 (Fla. 4th DCA 2023). Paternity judgment reversed because provisions in judgment conflicted with provisions in attached parenting plan. Judgment ordered shared parental responsibility, but failed to allow either party to seek mental health treatment for child pursuant to 61.13(2)(b)(3)(a). Court also prorated expense when petition only asked for base support, and court denied Father’s request to add his name to child’s birth certificate per 382.013(3)(b). *Judge Maxine Chessman, affirmed in part, reversed in part.*

Paternity:

35. *Moritz v. Stonecipher*, 48 Fla.L.Weekly D576 (Fla. 4th DCA 2023). Trial court erred granting Father’s emergency motion to compel Mother to re-enroll child in previous school after mother moved and changed schools, because this was a paternity case and there was not an order entered establishing Father’s parental rights. *Judge James Martz, reversed.*

Partition:

36. *Blew v. Blew*, 48 Fla.L.Weekly D653 (Fla. 4th DCA 2023). Trial court erred partitioning marital residence before final judgment. While parties are married, property is owned as tenants in the entirety, and cannot be partitioned. *Judge Brett M. Waronicki, reversed.*

Procedure:

37. *Viera v. Viera*, 48 Fla.L.Weekly D853 (Fla. 3rd DCA 2023). Trial court affirmed for denying multiple disqualification motions. Court reversed in part on giving Wife three years to refinance. Wife filed confession of error. Court should not grant more than 2 years to try and refinance. *Judges Stacy D. Glick and Christina Marie DiRaimondo affirmed in part, reversed in part.*

38. *Fulcher v. Allen*, 48 Fla.L.Weekly D836 (Fla. 6th DCA 2023). Trial court erred modifying custody at a case management conference where relief was not noticed. *Judge John S. Carlin, reversed.*

39. *Tucker v. Tucker*, 48 Fla.L.Weekly D822 (Fla. 4th DCA 2023). Final judgment is confusing and inconsistent. Alimony remanded as it appears court awarded \$9,630 in alimony, when Husband's income was \$15,464, and no findings of exceptional circumstances that would justify award. Also, judgment says parties are to split proceeds equally, but attached distribution schedule gives proceeds to one party. *Judge Maxine Cheesman, affirmed in part, reversed in part.*

40. *In Re: Amendments to the Rule of Civil Procedure 1.530 & Florida Family Law Rule of Procedure 12.530*, 48 Fla.L.Weekly S69 (Fla. 2023). Clarifies motion for rehearing is required to preserve objection of insufficient findings of fact in a final judgment.

41. *Rosen v. Rosen*, 48 Fla.L.Weekly D760 (Fla. 4th DCA 2023). Trial court reversed for significantly rewriting parties' settlement agreement. *Judge James Martz, reversed.*

42. *Waite v. Milo-Waite*, 48 Fla.L.Weekly D702 (Fla. 4th DCA 2023). Trial court erred making findings that conflicted with parties' pretrial stipulation and partial settlement agreement. Also, court erred when trying the issue of whether Husband concealed his income, when the parties' pretrial stipulation listed the only issue for determination was the wife's income. *Judge Renatha Francis, reversed.*

43. *Dussan v. Zoghbi*, 48 Fla.L.Weekly D686 (Fla. 3rd DCA 2023). Under the circumstances of this case, the trial court erred in denial of continuance and exclusion of all of wife's exhibits. *Judge Ivonne Cuesta, reversed.*

44. *White v. Morris*, 48 Fla.L.Weekly D629 (Fla. 1st DCA 2023). Party waived right to appeal order from Magistrate's report when party did not first seek review of report before circuit judge by way of motion to vacate or exceptions. *Judge Brandon J. Young, affirmed.*

45. *Stephanos v. Stephanos*, 48 Fla.L.Weekly D511 (Fla. 4th DCA 2023). Trial court affirmed for not addressing party's claims of unjust enrichment and breach of contract on remand, when party never obtained a ruling on their claim while matter pending before trial court, rendering such claim being deemed abandoned. *Judge Laura C. Burkhart, affirmed.*

46. *Erren v. Marin*, 48 Fla.L.Weekly D509 (Fla. 4th DCA 2023). Writ of prohibition granted on Judge who denied motion for disqualification, which was legally sufficient. The fact that Court signed a verbatim ex-parte order, and made findings of fact at a non-evidentiary hearing, was sufficient to create a well-founded fear that Former Wife would not receive fair and impartial adjudication. *Judge Darren Shull, reversed.*

47. *Delgado v. Miller*, 48 Fla.L.Weekly D405 (Fla. 3rd DCA 2023). Writ of prohibition filed after denial of Mother's 8th motion for disqualification. Limited judicial resources demand vigilance in thwarting any potential misuse of disqualification motions for strategic reasons. Standard of review of motion on a motion to disqualify successor judge is abuse of discretion. Prohibition does not

lie unless “the record clearly refutes the successor judge’s decision to deny the motion.” In this case, motion was based on Court’s finding in 56-page order that Mother’s “writing style is histrionic” and “Mother is directing this litigation.” A judge’s adverse ruling or factual findings following an evidentiary hearing cannot ordinarily serve as basis for disqualification. *Writ of prohibition denied.*

48. *In Re: Amendments to the Florida Supreme Court Approved Forms*, 48 Fla.L.Weekly S39 (Fla. 2023). New forms for grandparent visitation.

Relocation:

49. *Davis v. Davis*, 48 Fla.L.Weekly D1041 (Fla. 6th DCA 2023). Judgment granting modification and relocation reversed and remanded, when no findings that change in circumstances was material or unanticipated. *Judge John S. Carling, reversed and remanded.*

Supportive Relationship:

50. *Proveaux v. Proveaux*, 48 Fla.L.Weekly D657 (Fla. 1st DCA 2023). Trial court erred finding a supportive relationship does not exist, when former wife was in a romantic relationship for 10 years, former wife purchased property with this romantic partner, and they shared household expenses and obligations. *Judge Melissa G. Olin, reversed.*