

PUBLICATION UPDATE

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 _____ _____ _____ _____

Florida Family Law Practice Manual

Publication 80643

Release 91

September 2023

HIGHLIGHTS

Legislation

- Parental Responsibility and Timesharing—Court must consider statutory factors in deciding whether detriment to child exists.
- Child Support—No incarcerated obligor may be considered voluntarily unemployed.
- Attorneys’ Fees—Lodestar amount is presumed to be reasonable.

Forms

- Grandparent Visitation—New petition is for use if one parent of the grandchild is deceased, the child’s other parent has been found criminally or civilly liable for the death, and the grandparent is a parent of the child’s deceased parent.

Cases

- Modification of Child Support—Sixth District certifies conflict regarding whether heavier burden of proof applies if child support was agreed-to by parties.

Legislation

Parental Responsibility and Timesharing

Shared Parental Responsibility—Detriment to Child—The statute requiring a court to order shared parental responsibility unless the court finds that shared responsibility would be detrimental to the child now contains a list of factors for a court to consider in determining whether detriment to the child exists [*see* Fla. Law ch. 2023-112, amending Fla. Stat. § 61.13(2)(c)2.; *see also* chs. 8, *Parental Responsibility and Timeshar-*

ing, 12, *Temporary Relief*, 15, *Modification*].

Domestic Violence Injunctions

A new statutory factor for a court to consider in determining whether to issue an injunction against domestic violence reads as follows: “[w]hether the respondent has or had engaged in a pattern of abusive, threatening, intimidating, or controlling behavior composed of a series of acts over a period of time, however short, which evidences a continuity of purpose and which reasonably causes the petitioner to believe that the petitioner or his or her minor child or children are in imminent danger of becoming victims of any act of domestic violence” [see Fla. Law ch. 2023-112, amending Fla. Stat. § 741.30(6)(b)]. Additionally, the statutory form of petition for an injunction against domestic violence has been amended to add an allegation that the respondent has engaged in “a pattern of abusive, threatening, intimidating, or controlling behavior” as a type of conduct constituting domestic violence or giving rise to a reasonable belief that the petitioner is in imminent danger of domestic violence [see Fla. Law ch. 2023-112, amending Fla. Stat. § 741.30(3)(h); see also Vol. 3, Florida Statutes].

Alimony and Child Support

Establishing or Modifying Child Support—Incarceration of any child support-obligor may not be deemed voluntary unemployment for purposes of establishing or modifying child support. Previously, there was an exception if the obligor was incar-

cerated for willful nonpayment of child support or for an offense against a child or child support-obligee. Now, following recent amendment of the applicable statute, the exception has been deleted and no incarcerated obligor may be deemed voluntarily unemployed [see Fla. Law ch. 2023-152, amending Fla. Stat. § 61.30(2)(c); see also ch. 2, *Child Support*; Vol. 3, Florida Statutes].

Enforcing Child Support—A child support obligor who is in default may avoid suspension of his or her driver’s license and registration by entering into a payment agreement. Such an agreement may contain a deferred start date based on good-faith job seeking or, pursuant to a recent statutory amendment, good-faith job *training* [see Fla. Law ch. 2023-152, amending Fla. Stat. § 61.13016(1)(c)1.b.; see also Vol. 3, Florida Statutes].

Depositories and Fees—The statutes governing support depositories have been amended in some respects. First, the definition of the term “depository” has been revised to clarify that the clerk of the circuit court establishes a depository in each county [see Fla. Law ch. 2023-152, amending Fla. Stat. § 61.046(4)]. Other amendments (1) pertain to the processing of fees charged in non-Title IV-D cases, and (2) prohibit depository fees from being imposed on payments made in Title IV-D cases [see Fla. Law ch. 2023-152, amending Fla. Stat. § 61.181; see also Vol. 3, Florida Statutes].

Attorneys’ Fees

A new statutory presumption that the lodestar amount is sufficient and reasonable applies to all civil actions, and may be overcome only in rare and exceptional circumstances on presentation of evidence that competent counsel could not be retained without payment of a higher fee [see Fla. Law ch. 2023-15, amending Fla. Stat. § 57.104; see also ch. 17, *Attorney's Fees*].

Rules

The Florida Supreme Court has adopted an amendment to Florida Family Law Rule of Procedure 12.530, which governs motions for new trial and rehearing and amendment of judgments. Subsection (a), which addresses the requirements for preserving a challenge to a trial court's findings for appeal, is amended to replace the words "sufficiency of a trial court's findings in the final judgment" with the words "failure of the trial court to make required findings of fact." According to the Court, the amendment makes the rule applicable to all orders, not just final judgments, and also clarifies that the rule applies only if the trial judge was required to make specific findings of fact, not if a party seeks to make other challenges to a trial court's order [see *In re Amendments to Fla. Rule of Civil Proc. 1.530 & Fla. Fam. Law Rule of Proc. 12.530*, 48 Fla. L. Weekly S69 (Fla. April 27, 2023); see also ch. 13, *Dissolution Trial/Final Judgment*; Vol. 3, *Family Law Rules*].

Documents that court clerks are required to maintain as confidential

now include documents relating to the settlement of a minor's claim or the settlement of a claim for a ward [see Fla. R. Gen. Prac. & Jud. Admin. 2.420(d)(1)(B)(xv); see also ch. 4, *Initiating the Dissolution*].

Forms

The Florida Supreme Court has adopted a new form of petition for grandparent visitation, to be used if one parent of the grandchild is deceased and the other parent of the grandchild has been found criminally or civilly liable for the death of the deceased parent [see Fla. Fam. L. R. P. Form 12.975(b); *In re Amendments to the Fla. Sup. Court Approved Fam. Law Form—12.975(a)–(c)*, 2023 Fla. LEXIS 371, 48 Fla. L. Weekly S39, ___ So. 3d ___ (Fla. March 2, 2023)]. The new form reflects a statutory presumption for granting reasonable visitation with such a petitioning grandparent or stepgrandparent if he or she is the parent of the child's deceased parent [see Fla. Stat. § 752.011(2)].

The new form, along with a revised version of the prior grandparent visitation petition [see Fla. Fam. L. R. P. Form 12.975(a)], and an order to use with either petition [see Fla. Fam. L. R. P. Form 12.975(c)], may be found in Volume 4, *Florida Family Law Forms*.

Cases

Attorneys' Fees—Chapter 17

Ced Capital Holdings 2000 Eb v. Ctcw-Berkshire Club, 2023 Fla. App. LEXIS 2026 (Fla. 6th DCA Feb. 3,

2023) (certifying conflict with Fourth District as to whether testimony by attorney who performed services is required to satisfy lodestar analysis of reasonable fees).

McArdle v. McArdle, 354 So. 3d 550 (Fla. 4th DCA 2023) (movant's request for attorneys' fees under Florida Statutes Section 61.16 instead of under provision of parties' MSA that allowed recovery of attorneys' fees incurred to enforce agreement provided notice of claim, and therefore did not result in waiver of claim).

Modification of Child Support— Chapters 9, 15

Mannella v. Mannella, ___ So. 3d ___, 2023 Fla. App. LEXIS 1635, 48 Fla. L. Weekly D526 (Fla. 6th DCA March 10, 2023) ((1) ruling that the burden of proof applicable to modification of agreed child support and court-ordered child support is the same, as mandated by Florida Statutes Section 61.14(7); (2) noting that some other district courts have ruled differently due to their erroneous reading of *Overbey v. Overbey* [698 So. 2d 811 (Fla. 1997)], which mentioned the heavier-burden issue only in dicta and has precedential value limited to its narrow ruling that an obligor-parent's voluntary pursuit of education does not preclude granting him or her a temporary reduction in child support; and (4) certifying conflict regarding whether heavier burden of proof applies if child support was agreed-to by parties.

Modification—Parental Respon-

sibility and Timesharing—Chapter 15

N.B. v. R.V., 353 So. 3d 1269, 1272 (Fla. 2d DCA 2023) (like Fifth District in *Rivera v. Purtell* [252 So. 3d 283, 287 (Fla. 5th DCA 2018)]), Second District holds that trial court could properly order modification in timesharing to occur when parties' child began kindergarten, because starting kindergarten is reasonably and objectively anticipated change in circumstances).

Parental Responsibility and Timesharing—Chapter 8

E.L. v. A.L., 357 So. 3d 792 (Fla. 2d DCA 2023) (in determining whether to terminate order granting temporary custody to extended family member, trial court is not required to *find* that there will be no detriment to child if he or she is returned to custody of his or her biological parent; however, trial court must *consider* issue of detriment in making its determination).

Coe v. Rautenberg, 358 So. 3d 24, 27 (Fla. 4th DCA 2023) (if parties have acrimonious parenting relationship, trial court errs if it declines to set holiday or school break timesharing schedule in final judgment and instead orders parties to establish schedule).

Other Recent Cases:

Horowitz v. Rossdale Cle, Inc., 357 So. 3d 260 (Fla. 5th DCA 2023) (if it is apparent from face of trial court's order that party who received award of attorneys' fees did not present sufficient evidence to support it,

then the appeals court may review despite lack of transcript).

A.G.W. v. C.L.C., 355 So. 3d 1062 (Fla. 2d DCA 2023) (child support received by parent may not be added to his or her income for purpose of determining whether parent should be awarded attorneys' fees).

New Topic Discussion—*Equitable Distribution of Intellec-*

tual Property—Chapter 10B

A new section has been added that addresses the equitable distribution of patents, patent applications, and other types of intellectual property [see *Gulbrandsen v. Gulbrandsen*, 22 So. 3d 640 (Fla. 3d DCA 2009); see also *Maddox v. Maddox*, 357 So. 3d 270 (Fla. 2d DCA 2023)].

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September 2023

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<input type="checkbox"/>	8-90.15 thru 8-100.4(1)	8-91 thru 8-100.4(5)
<input type="checkbox"/>	8-102.3 thru 8-102.6(3)	8-102.3 thru 8-102.6(3)
<input type="checkbox"/>	9-19	9-19
<input type="checkbox"/>	9-43	9-43 thru 9-44.1
<input type="checkbox"/>	9-50.3 thru 9-67.	9-51 thru 9-68.3
<input type="checkbox"/>	9-78.1 thru 9-79.	9-79 thru 9-80.1

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<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	10B-1 thru 10B-2.1	10B-1 thru 10B-2.1
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<input type="checkbox"/>	12-21 thru 12-34.1	12-21 thru 12-34.7
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<input type="checkbox"/>	14-4.1 thru 14-6.1	14-5 thru 14-6.1
<input type="checkbox"/>	14-109 thru 14-111	14-109 thru 14-111
<input type="checkbox"/>	15-1 thru 15-25	15-1 thru 15-26.13
<input type="checkbox"/>	15-39 thru 15-45	15-39 thru 15-46.1
<input type="checkbox"/>	15-58.9	15-58.9 thru 15-58.10(1)
<input type="checkbox"/>	17-1 thru 17-8.1.	17-1 thru 17-8.1
<input type="checkbox"/>	17-31 thru 17-40.2(1)	17-31 thru 17-40.2(1)

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<input type="checkbox"/>	61 thru 62.11	61 thru 62.12(3)
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<input type="checkbox"/>	114.1 thru 114.3.	114.1 thru 114.3
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