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Florida Family Law Practice Manual

Publication 80643 Release 56

June 2006

HIGHLIGHTS

Highlights in this release include:

- Amended Uniform Cost Guidelines
- Amended Family Law Standard Form: Certificate of Compliance With Mandatory Financial Disclosure
- Notice of Related Family Law Cases
- Florida Supreme Court Case: Subchapter S “Pass-Through” Income [*Zold v. Zold*]

Florida District Court Cases:

- Spouse’s Waiver of Rights to Life Insurance or Retirement Benefits [*Smith v. Smith*]
- Goodwill As Component of Business Value [*Held v. Held*]
- Oral Settlement Agreements [*Matos v. Matos*]
- Subject Matter Jurisdiction in Dissolution of Marriage Proceedings [*Jenkins v. Jenkins*]
- Interference With Visitation [*Morales v. Morales*]

Amended Uniform Cost Guidelines: This release contains coverage of the amended Uniform Guidelines for Taxation of Costs in Civil Cases that took effect January 1, 2006. According to the Florida Supreme Court in its opinion approving the new guidelines [see *In re* Amendments to Unif. Guidelines for Taxation of Costs, 915 So. 2d 612 (Fla. 2005)], their enhanced simplicity will likely make recovery of costs more predictable and, in turn, decrease costs. The revised guidelines eliminate many of the restrictive, detailed attributes of costs recommended for taxation under the previous guidelines, thereby broadening the costs that the guidelines advise “should” be taxed. However, the amended guidelines also increase the list of costs that “should not” be taxed, which now includes expenses associated with experts who serve only as consultants, long distance telephone calls to witnesses for any purpose, and all travel expenses and travel time charges of attorneys [see Chapter 17, *Attorney’s Fees*].

Amended Rules and Standard Forms:

Certificate of Compliance With Mandatory Disclosure: The newest version of this Florida Supreme Court Approved Family Law Form is included in this release and is set forth in Volume 4 [see Fla. S. Ct. Approved Fam. L. Form 12.932].

Disclosure From Nonlawyer: The newest version of this Florida Supreme Court Approved Family Law Form is added to the set in this release and may be found in Volume 4 [see Fla. S. Ct. Approved Fam. L. Form 12.900 (a)].

Notice of Related Family Law Cases: This release discusses a new statewide procedural requirement under which a notice of related family law cases must be filed with the petition in a family law case and must be served on (1) all parties in the related cases, (2) the presiding judges, and (3) the chief judge or family law administrative judge [see Fla. R. Jud. Admin. 2.085(d)]. Additionally, each party in a family law case must inform the court on a continuing basis of any proceedings in Florida or another state that could affect the case before the court [see Fla. R. Jud. Admin. 2.085 (d)(5)] This release incorporates a form for use in complying with the new notice-of-related-cases requirement [see Ch. 4, *Initiating the Dissolution*].

Florida Supreme Court Case:

Spouse's Income from Subchapter S Corporation [See Chs. 9, Child Support, 10, Spousal Support, 17, Attorneys' Fees]

Zold v. Zold, 911 So. 2d 1222, 1231 (Fla. 2005) (Subchapter S pass-through income may not be attributed to shareholder-spouse as income available for purposes of alimony, child support, or attorneys' fees if income is needed for corporate purposes; however, burden is on shareholder-spouse to prove that undistributed pass-through income was retained for corporate purposes; trial court may

consider following three factors in deciding whether shareholder has met his or her burden: (1) extent to which shareholder has access to or control over pass-through income retained by corporation, (2) limitations on corporate distributions to shareholders set forth in Florida Statutes Section 607.06401(3), and (3) purpose or purposes for which pass-through income was retained by corporation).

District Court of Appeal Cases:

Alimony [see Ch. 10]

Sussman v. Sussman, 915 So. 2d 281 (Fla. 4th DCA 2005) (disparity in monthly financial deficits of spouses who had been married for 47 years and who had similar expenses required increase in amount of permanent alimony awarded to wife, who had larger deficit).

Byers v. Byers, 910 So. 2d 336 (Fla. 4th DCA 2005) (in action involving "gray area" marriage and large disparity in parties' earning potentials, with husband's superior earning power having been achieved during time when wife was out of job market due to parties' agreement she would stay home and care for their children, refusal to award permanent alimony was error).

Griffin v. Griffin, 906 So. 2d 386 (Fla. 2d DCA 2005) (parties' standard of living during "gray-area" marriage was significant factor militating in favor of award of permanent, periodic alimony; also, substantial competent evidence supported trial court's determination that husband could be employed, but did not support trial court's finding that he could be employed fulltime).

Nichols v. Nichols, 907 So. 2d 620, 623 (Fla. 4th DCA 2005) (if spouses spent beyond their means during marriage, their marital standard of living is not useful in determining alimony).

Williams v. Williams, 904 So. 2d 488 (Fla.

3d DCA 2005) (award of bridge-the-gap alimony to ease transition from married to single status is improper if obligee-spouse needs to be rehabilitated; in other words, to justify award of alimony merely to ease transition after dissolution of marriage, recipient-spouse must be employed and have more than adequate employment skills).

Greene v. Greene, 895 So. 2d 503 (Fla. 5th DCA 2005) (indicating that award of lump-sum alimony for support requires not only proof of special circumstances, but also showing that other forms of alimony are not available or are inappropriate; in addition, award of interim alimony to help wife pay basic expenses after parties' house was sold and before she could become reemployed as registered nurse was proper).

Child Custody and Visitation [see Chs. 8 & 15]:

Morales v. Morales, 915 So. 2d 247 (Fla. 5th DCA 2005) (Noncustodial parent who proceeds under Florida Statutes Section 61.13(4)(c)5., which allows change of custody as remedy for interference with visitation without proper cause, must establish substantial change in circumstances other than interference with visitation, and must show that child's best interests will be served by modification of custody).

Fredman v. Fredman, 917 So. 2d 1038 (Fla. 2d DCA Jan. 11, 2006) (Second District holds that in action to enforce implied restriction on relocation of child that arises from specific visitation provisions of final judgment, trial court may base its decision on relocation factors set forth in Florida Statutes Section 61.13(2)(d)4.; Second District's decision is contrary to recent decisions of Third and Fourth Districts, respectively, which indicate that if custodial parent seeks to relocate despite implied restriction in final judgment, he or she must show grounds for

modification--i.e. substantial changes in circumstances and that modification would serve children's best interests [see *Bazan v. Gambone*, 902 So. 2d 174 (Fla. 3d DCA 2005); *Shafer v. Shafer*, 898 So. 2d 1053 (Fla. 4th DCA 2005)]; Second District's decision also differs from Fourth District's opinion with respect to what constitutes adequate substitute visitation that will weigh in favor of allowing relocation [cf. *Fredman v. Fredman*, 917 So. 2d 1038 (Fla. 2d DCA Jan. 11, 2006) (focus should not be on maintaining same relationship, but rather should be on maintaining meaningful relationship, between noncustodial parent and child) with *Shafer v. Shafer*, 898 So. 2d 1053 (Fla. 4th DCA 2005) (indicating that proposed substitute visitation may be inadequate if it will not foster same type of relationship that currently exists between noncustodial parent and child)]).

Equitable Distribution [see Ch. 10B]

Held v. Held, 912 So. 2d 637 (Fla. 4th DCA 2005) (If spouse shows that business cannot be sold unless seller enters into nonsolicitation agreement or covenant not to compete with buyer, then excess value of business over its assets consists of seller's personal goodwill and it is not subject to equitable distribution).

Marital Settlement Agreements [see Ch. 11]

Smith v. Smith, 2005 Fla. App. LEXIS 19953, - Fla. L. Weekly -, - So. 2d -(Fla. 5th DCA Dec. 16, 2005) (Spouse's waiver of rights to other spouse's IRA or retirement plan funds or life insurance benefits in marital settlement agreement is effective only if waiver constituted specific relinquishment of rights to account or policy proceeds; if no specific waiver of proceeds is set forth in agreement, then beneficiary designation filed with bank, insurer, or other entity with whom account is held prevails).

Matos v. Matos, 2006 Fla. App. LEXIS 1162, – Fla. L. Weekly –, – So. 2d –(Fla. 4th DCA Feb. 1, 2006) (Marital settlement agreements entered into between spouses who are acting without counsel and without full and fair disclosure of each other’s assets, “should be viewed with skepticism,” especially if spouses (1) enter into oral settlement agreement years before dissolution of their marriage, and (2) later reconcile after agreeing to its terms).

Subject Matter Jurisdiction in Dissolution of Marriage Proceedings [see Chs. 3 & 4]

Jenkins v. Jenkins, 915 So. 2d 1248 (Fla. 4th DCA 2005) (For purposes of establishing Florida trial court’s subject matter jurisdiction in action for dissolution of marriage, it is not necessary that one spouse has been

continuously, physically present in Florida for six months prior to filing of petition; trial court in instant case had jurisdiction even though husband’s actual presence in Florida for six-month period preceding filing of petition for dissolution of marriage was “de minimus”)

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