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# Florida Family Law Practice Manual

Publication 80643

Release 86

April 2021

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## HIGHLIGHTS

### Cases

- *Florida District Courts*
- Fourth District Court of Appeal has joined the Third District in ruling that the executory provisions of a postnuptial agreement, unlike those of a marital settlement agreement, are not voided by the parties' reconciliation or remarriage. [Stephanos v. Stephanos]
- The court could credit the father's expenses for his children of a previous marriage, which were not reduced to support order, to his basic support obligation. [Robbins v. Kerns]
- When a marital settlement agreement is incorporated into a final judgment and the court that entered the judgment retains jurisdiction to enforce it, enforcement of

the agreement through the judgment is generally subject to the 20-year statute of limitations for enforcing a judgment, rather than the five-year statute of limitations for enforcing a written agreement. [Webb v. Webb]

- A trial court also has discretion to award fees incurred pursuing a *Moakley* award, but only if it finds that the other party's defense of the *Moakley* motion was conducted in bad faith. In other words, the underlying bad faith conduct that supported the *Moakley* award cannot, without more, be the basis for fees on fees. [Diaz v. Kasinsky]

### Cases

#### **Florida District Courts**

#### **VENUE—SELECTING PROPER COUNTY**

For purposes of applying Section

47.011 in actions for dissolution of marriage, a cause of action for dissolution of marriage arises in the county where the parties last lived together with an intent to remain married. However, if the marriage was last intact out-of-state, the defendant's county of residence is the proper venue. [See *Vinsand v. Vinsand*, 179 So. 3d 366, 368 (Fla. 2d DCA 2015); see also *Huber v. Huber*, 2020 Fla. App. LEXIS 14864 (Fla. 3d DCA Oct. 21, 2020) (venue was proper in Broward County, where marriage was last intact, even though neither party continued to live there).]

### **Conduct Endangering Child**

It is well within a court's discretion to order a parent with a history of alcohol abuse to abstain from drinking alcohol and to submit to blood alcohol content (BAC) testing as a condition of timesharing. However, it is not reasonable to give the non-alcoholic parent unfettered discretion in requesting BAC testing from the other parent at any time. [*Frye v. Cuomo*, 296 So. 3d 939 (Fla. 4th DCA 2020).] Further, although the court may require an alcoholic parent to submit to BAC testing in connection with time-sharing visits, it may not make the parent solely responsible for the cost of the BAC device, but must instead treat the device as part of the parent's child support obligation. In contrast, it is permissible for an order imposing restrictions on a parent's timesharing to require the parent to pay for monitoring and treatment of his or her alco-

hol and drug use, if the monitoring and treatment is ordered as a result of the parent's violation of prior agreed orders. Under these circumstances, ordering the parent to pay for the services is improper only if the parent shows an inability to pay the expenses and to resume unsupervised timesharing if the services are not provided. [*Ryan v. Ryan*, 257 So. 3d 1168 (Fla. 3d DCA 2018).]

The Fifth District Court of Appeal held that a trial court erred in denying a mother's request for an order restricting exposure of the parties' child to dogs while he was visiting the father, because the evidence at trial showed that the child was allergic to dogs and the testimony of more than one physician established that the child should avoid exposure to dogs as much as possible. [*Palmer v. Palmer*, 199 So. 3d 919 (Fla. 5th DCA 2016).]

### **Parental Alienation**

The Second district held that the court should have set specific steps that the parent must take in order to reestablish time sharing. The court may completely suspend the parent's time sharing when a parent's actions in alienating the child from the other parent are sufficiently egregious. [*Perez v. Fay*, 160 So. 3d 459, 466 (Fla. 2d DCA 2015); *Grigsby v. Grigsby*, 39 So. 3d 453 (Fla. 2d DCA 2010), *receded from on other grounds*, *Mallick v. Mallick*, 2020 Fla. App. LEXIS 14596 (Fla. 2d Oct. 16, DCA 2010) (court erred in suspending mother's timesharing until father determined she should be per-

mitted to exercise timesharing again).]

### **Elimination of Restrictions**

The appellate districts are split as to whether a trial court that denies or restricts timesharing must specify steps for the parent to take to regain meaningful timesharing. The Third and Fourth Districts have held that a trial court that denies or restricts timesharing must set forth specific requirements or standards with which the parent must comply in order to lift the restrictions.

### **Child Support**

Retroactive child support is an obligation both parents owe to their child, and a parent may not waive a child's right to retroactive support. Consequently, the trial court abuses its discretion when it fails to fully consider retroactive child support and to award such support upon finding need and an ability to pay. [Johnson v. Johnson, 297 So. 3d 700 (Fla. 1st

DCA) (when husband had provided no child support since separation, trial court erred in denying wife's request for retroactive child support based only on her unilateral decision to enroll children in private school, without considering children's needs or husband's ability to pay).]

### **Alimony**

According to the Fifth District, the court must consider the parties' standard of living over the entire course of the marriage. In a case involving a moderate-term marriage, the Fifth District found that the trial court erred in awarding the wife permanent periodic alimony based only on the comfortable standard of living the parties enjoyed shortly before they separated, without taking into account the parties' modest standard of living during their first ten years of marriage. [Pricher v. Pricher, 300 So. 3d 1258, 1261 (Fla. 5th DCA 2020).]

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