PUBLICATION UPDATE

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FLORIDA FAMILY LAW

Publication 513 Release 68 December 2021

HIGHLIGHTS

2021 Statutory Amendments

- **Incarceration of Child Support Obligor Does Not Qualify As Voluntary Unemployment Except in Limited Circumstances**
- **"Parents' Bill of Rights" Reiterates Established Rights and Creates New Ones**

Rule Amendments

- **Summary Judgment Rule 12.510 Is Revised to Mirror Federal Rule**

Case Law

- **Florida Supreme Court: Final Judgment Need Not State "Concrete Steps" to Restore Lost Timesharing (*C.N. v. I.G.C.*)**
- **Second District Court of Appeal: Enhanced Value of Nonmarital Retirement Plan Is Marital Asset If It Results from Marital Effort or Assets (*Murphy v. Murphy*)**

2021 Statutory Amendments

The following legislation enacted in 2021 is pertinent to family law and is covered in this release:

1. Parental Responsibility and Timesharing

a. Parenting Courses. Amendments to Florida Statutes Section 61.21, which requires parents to take a parenting course in dissolution and paternity actions, require that parents who have children with special needs or emotional problems take a course that incorporates information relevant to their child's condition [*see* 2021 Fla. Laws, ch. 2021-103, amending Fla. Stat. § 61.21; *see also* chs. 32, *Parental Responsibility and Timesharing*; 50, *Representing Clients in Dissolution Cases*].

b. Presumption of Detriment. In actions concerning shared parental responsibility and timesharing, there

is now a rebuttable presumption of detriment to the child that arises from a parent's conviction of one of the sexual crimes enumerated in Florida Statutes Section 943.0435(1)(h)1.a., if the victim was a minor child or the parent believed the victim was a minor child [*see* 2021 Fla. Laws, ch. 2021-139, § 1, amending Fla. Stat. § 61.13(2)(c); *see also* chs. 32, *Parental Responsibility and Timesharing;* 81, *Modification of Parental Responsibility and Timesharing*].

c. Parents' Bill of Rights. An act entitled the "Parents' Bill of Rights" became law during the Covid epidemic [*see* 2021 Fla. Laws, ch. 2021-199, creating Fla. Stat. §§ 1014.01–1014.06]. The act enumerates rights held by parents with regard to their children's upbringing and moral training, education, and health. Many of the rights previously existed in statutes or case law, but the new law establishes new, particularized rights in parents, such as rights to consent in writing to (1) biometric scans of their children, (2) records concerning their children's blood or DNA, and (3) video or voice recordings of their children. One significant provision of the new law expressly and broadly requires written parental consent to "health care services" that are provided, solicited, or arranged to be provided by a health care practitioner or individual employed by a health care practitioner. Previously, Florida law did not expressly require parental consent to medical treatment, but instead allowed persons and health care providers in certain circumstances to consent to, or provide, medical care without parental consent. Under the Parents' Bill of Rights, any health care practitioner or health care facility who violates the written parental-consent requirement is subject to disciplinary action by state regulatory agencies and conviction of a first-degree misdemeanor, with a fine up to $1,000 and imprisonment for up to one year. Another provision entitles a parent to be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has been reported to law enforcement officials or the Department of Children and Families and notifying the parent would impede the investigation. The new Parents' Bill of Rights provides that a parent of a minor child has inalienable rights that exceed those set forth in it [*see* Final Bill Analysis, House of Representatives Staff, HB 241; *see also* ch. 32, *Parental Responsibility and Timesharing*].

2. Child Support

a. Incarceration of Obligor. Amendments to the child support guidelines statute supersede a conflict among the district courts of appeal as to whether incarceration of a child support obligor may be considered voluntary unemployment that will justify imputation of income to him or her. The statute now provides that incarceration may not be treated as voluntary unemployment in establishing or modifying a support order,

unless the incarceration is for (1) willful nonpayment of child support, or (2) an offense against a child or person who is owed child support [*see* 2021 Florida Laws, ch. 2021-103, § 4, creating Fla. Stat. § 61.30(2)(c); *see also* chs. 33, *Child Support*, 82, *Modification of Child Support*].

b. Social Security Benefits. Amendments to the guidelines statute codify the principle that Social Security benefits received by a minor child due to the retirement or disability of the child's parent must be included in the parent's gross income [*see* 2021 Florida Laws, ch. 2021-103, § 4, creating Fla. Stat. § 61.30(2)(d)]. The amendments also establish a procedure for crediting an obligor-parent with payment of such Social Security benefits [*see* 2021 Florida Laws, ch. 2021-103, § 4, creating Fla. Stat. § 61.30(10)(b); *see also* ch. 33, *Child Support*].

3. Domestic Violence

a. Public Records. Pursuant to 2021 statutory amendments, a final judgment for injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, stalking, or sexual cyberharassment must be recorded in official records [Fla. Stat. § 28.29]. Also, after entry of a final judgment for an injunction for the protection of a minor, the county recorder or clerk of the court must publicize the fact that the judgment has been entered and the identity of the respondent, unless he or she is a minor. The publication must occur on an Internet website to which the general public possesses access [Fla. Stat. § 28.2221(6)(a); *see* 2021 Fla. Laws ch. 2021-231, §§ 2–3; *see also* ch. 12, *Domestic Violence Injunctions and Other Injunctions for Personal Protection*].

Rule Amendments

Summary Judgment. This release adds discussion of summary judgments to Chapter 58, *Trial Preparation and Discovery*. The new discussion focuses on Florida Family Law Rule of Procedure 12.510. That rule, like Florida Rule of Civil Procedure 1.510, was recently amended to substantially incorporate Federal Rule of Civil Procedure 56 and expressly require that a trial court deciding a motion for summary judgment construe and apply the family law standard in accordance with the federal summary judgment standard [*see* In re Amendments to Fla. Fam. Law Rule of Proc. 12.510, 2021 Fla. LEXIS 1136, 46 Fla. L. Weekly S 224 (Fla. July 8, 2021); *see also* Fla. Fam. L. R. P. 12.510(a)].

Case Law

Florida Supreme Court

Modification of Timesharing. This release covers a Florida Supreme Court opinion in which the Court addressed a certified conflict as to whether a final judgment that modifies a preexisting parenting plan must give a parent "concrete steps" to restore lost timesharing and return to the premodification *status quo*. The Supreme Court held that there is no such requirement [*see* C.N. v. I.G.C., 316 So. 3d 287 (Fla. 2021)]. In so

ruling, the Supreme Court approved the Fifth District decision below. However, the Supreme Court expressly did not address the Fifth District's additional ruling that under Florida Statutes Section 61.13(3), trial courts have no discretion to include such steps in a modification judgment [*see* C.N. v. I.G.C., 291 So. 3d 204, 207 (Fla. 5th DCA 2020)]. Therefore, whether a trial court may order concrete steps to restore timesharing is uncertain.

The Supreme Court's decision is covered in Chapters 32, *Parental Responsibility and Timesharing*, and 81, *Modification*.

Florida District Courts of Appeal

The most significant district court opinions covered in this release are the following:

Alimony. The First District ruled that for purposes of determining the duration of parties' marriages under the alimony statute, if the parties have been married multiple times, the marriages are considered to be one marriage under the statute. That is, the numbers of years of each marriage should be added together and the total considered to be the duration of the parties' marriage for purposes of determining what type of alimony to award [*see* Potter v. Potter, 2021 Fla. App. LEXIS 3717, 46 Fla. L. Weekly D 573 (Fla. 1st DCA March 15, 2021); *see also* ch. 31, *Alimony*].

Cohabitation Agreements. The First District Court of Appeal has expressly ruled that a contract between cohabiting persons must be in writing to be enforceable. The court rejected a party's argument that her same-sex spouse could properly be ordered to pay her permanent alimony because the parties had an oral support agreement prior to their marriage that allowed consideration of their 24 years of cohabitation in determining what type of alimony to award. Accordingly, because the parties were married for only three years, the trial court was restricted to awarding alimony based on the criteria governing an alimony award to the spouse of a short-term marriage [*see* Taylor v. Davis, 2021 Fla. App. LEXIS 10683, 46 Fla. L. Weekly D 1634 (Fla. 1st DCA July 15, 2021)]. This case is covered in Chapter 3, *Cohabitation*, and 3A, *Representing LGBT Clients*. Additionally, sample provisions allowing consideration of parties' time cohabiting to be added to the time they are married for purposes of determining the duration of marriage and the appropriate type of alimony to award have been added to Chapters 20 and 22 regarding premarital and postmarital agreements, respectively.

Equitable Distribution. A noteworthy decision by the Second District concerning the enhanced value of nonmarital retirement plans is covered in Chapter 34, *Equitable Distribution*. The court ruled that any enhancement or appreciation in the value of a nonmarital retirement plan is a marital asset if the increased value resulted from the efforts of either party during the marriage or the contribution of marital assets, or both [*see* Murphy v. Murphy, 313 So.

3d 237 (Fla. 2d DCA 2021)].

Parental Responsibility and Timesharing. The Fourth District has held that timesharing could be modified in one case based on the parties' relationship, which was "beyond acrimonious." The district court also held that the "beyond acrimonious" nature of the parties' relationship, coupled with the father's conduct and lack of knowledge concerning the child's health care, provided sufficient evidentiary support for the trial court's modification of shared parental responsibility to give the mother ultimate decision-making authority over nonemergency medical decisions concerning the child [*see* Aiala v. Larkin, 312 So. 3d 936 (Fla. 4th DCA 2021); *see also* chs. 32, *Parental Responsibility and Timesharing;* 81, *Modification of Parental Responsibility and Timesharing*].

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