

**Waldera v. Waldera, 45 Fla. L. Weekly D1838, 2020 WL 4495317 (Fla. 3d DCA August 5, 2020)**

Dissolution of marriage - Income - Miscalculation

Trial court abused its discretion in its determination of husband's income for purposes of establishing his support obligations in dissolution proceeding by relying solely on husband's income for most recent year, which husband calculated as \$55,109.46 after discounting anomalous awards of nearly \$200,000 for representing clients in cases arising from an oil spill, rather than considering husband's historical earnings of most recent eight years, which ranged from a low of \$97,021 to a high of \$227,748; there was no evidence that husband's most recent and anomalous income either would continue or represented his current reality. Additionally, competent substantial evidence did not support trial court's imputation of income of wife, who had ceased working as a bookkeeper in order to focus on raising and homeschooling her and husband's child, which was based on imputed income proposed by husband's expert forensic accountant; expert admitted that he never met with wife nor evaluated her skills, and that he did not know wife's work history, including how long ago she had stopped working or what her income had ever been while working as a bookkeeper, and wife testified that she homeschooled child full time, as had been the agreement of parties years before, and that her available hours for work non-remotely or full time were very limited.

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**Fernandez v. Fernandez, 45 Fla. L. Weekly D1841, 2020 WL 4493410 (Fla. 3d DCA August 5, 2020)**

Dissolution of Marriage - Dependent adult support - Jurisdiction

Trial court erred in dismissing disabled adult child's petition seeking dependent adult support from her father on basis that circuit court, family law division was without subject matter jurisdiction because there was no provision in final judgment of dissolution of marriage that provided that child support would extend beyond age of majority, and there was no attempt, while child was still a minor, to extend child support beyond age of majority. Florida law imposes a duty of support upon a parent for an adult dependent child who is unable to support herself because of a mental or physical incapacity that began prior to the child reaching majority. Where father has fulfilled child support obligation as provided in judgment of dissolution, an independent action must be brought to adjudicate the father's support obligation for an adult dependent child. Whether petition should have been assigned to family division or some other division of circuit court is immaterial to question of court's subject matter jurisdiction. Trial court further erred in awarding attorney's fees upon finding that petition was frivolous.

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**Tavares v. Enoch, 45 Fla. L. Weekly D1857, 2020 WL4496134 (Fla. 4th DCA August 5, 2020)**

Dissolution of marriage - Delay in judgment - Child custody - Contempt - Indirect Civil contempt

Trial court did not err in taking eight-and-a-half months to issue final judgment where final judgment indicates the trial court's careful consideration of the testimony, admissible evidence, and child's best interest. Although final judgment contained one clear material error with regard to the parties' criminal histories, it could not be concluded from review of the record that the factual error necessarily resulted from the lengthy delay in issuing final judgment. However, case was remanded to correct the factual error and re-weight the correct facts in final judgment's credibility and parenting plan determinations given the factual error's possible materiality to those determinations. Trial court erred in failing to rule on father's pre-trial motion for indirect civil contempt alleging that mother violated temporary relief order by not

timely returning child to father so that she could enroll child in her preferred school, thereby gaining an advantage in trial court's parenting plan determination. Mother's alleged violation of temporary relief order, willful or not, unquestionably affected where the child became enrolled in school and because the final judgment is silent on whether the violation affected parenting plan determination, remand was necessary for this consideration to be expressly stated.

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**Reed v. Fla. Dept. of Revenue, 45 Fla. L. Weekly D1872, 2020 WL 4524651 (Fla. 1st DCA August 6, 2020)**

Modification - Ability to pay - Credits - Support Payments for later-born child - Adjustments - Time-sharing

In granting former wife's supplemental petition for upward modification, the trial court abused its discretion by applying a timesharing adjustment to father's credit for child support expenses paid on behalf of his child with new spouse pursuant to *Speed v. Fla. Dept. of Revenue ex re. Nelson*, 749 So. 2d 510 (Fla. 2d DCA 1999) (holding that a parent is entitled to a child support credit for expenses paid by the obligor to support other biological children). Remand warranted in order to recalculate father's child support obligation. There was no record evidence of any timesharing agreement between mother and father, and undisputed evidence showed that father and his new spouse lived with their child as an intact family.

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**A.V. v. T.L.L., 45 Fla. L. Weekly D1881, 2020 WL 4555254 (Fla. 2d DCA August 7, 2020)**

Child Custody - Evidence - Telephonic testimony

Magistrate erred by allowing telephonic testimony of mother's medical expert over father's objection and without determination of good cause. Error was compounded when magistrate allowed telephonic witness to testify without being properly sworn. Because testimony was central to magistrate's findings and mother failed to show that its admission was harmless, final judgment was reversed. (Interesting concurrence noting the acquiescence of mother's counsel in allowing her to bring parties' 6-year-old son to oral arguments, and noting that Fla. Fam. L. R. P. 12.407(a) (prohibiting children related to a family law case from attending any family law proceeding without prior order of the court and based on good cause shown) extends to appellate proceedings, stating "[i]f common sense, common decency, and professionalism are inadequate to put counsel and parents on notice that a small child should not be in attendance under these circumstances, the existence of this rule ought to make it clear to counsel that the child should not be there." (emphasis added)).

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**Constantino v. Genung, 45 Fla. L. Weekly D1883, 2020 WL 4555199 (Fla. 2d DCA August 7, 2020)**

Dissolution of marriage - Judgment - Newly discovered evidence

Successor judge erred in setting aside final dissolution of marriage based on newly discovered evidence. Record compelled conclusion that evidence would probably not have changed the result of the proceeding, and successor judge impermissibly substituted his judgment for that of judge who rendered final judgment.

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**Jacobs v. Jacques, 45 Fla. L. Weekly D1905, 2020 WL 4641424 (Fla. 2d DCA August 12, 2020)**

Contempt - Dissolution of marriage - Failure to pay alimony as required by marital settlement agreement

Order holding former husband in contempt for failing to pay bi-weekly alimony to former wife following dissolution of marriage failed to comply with requirements of rule governing contempt orders, as order did not include findings that former husband had present ability to pay alimony and willfully failed to comply with alimony obligations or to state any facts that would support such findings. Portion of order awarding attorney's fees and costs without including specific findings required by *Florida Patient's Compensation Fund v. Rowe* is fundamentally erroneous on its face. Statement of judicial proceedings submitted in lieu of transcript did not comply with procedural requirements of rule 9.200(b)(5), was unclear regarding evidence presented below, and appeared to omit portions of trial court's findings and rulings.

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**Ortiz v. Ortiz, 45 Fla. L. Weekly D1929, 2020 WL 4645699 (Fla. 3d DCA August 12, 2020)**

Dissolution of marriage - Equitable distribution

Trial court abused its discretion by failing to identify and distribute all marital assets as part of equitable distribution scheme and by failing to make requisite statutory findings. Likewise, trial court abused its discretion by awarding alimony without findings of need and ability to pay.

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**Diaz v. Kasinsky, 45 Fla. L. Weekly D1932, 2020 WL 4640773 (Fla. 3d DCA August 12, 2020)**

Attorney's fees - Sanction for bad faith conduct in course of litigation

Trial court did not abuse its discretion by denying motion to recover attorney's fees over and above those already awarded as a sanction for bad faith litigation as compensation for time incurred by movant in pursuit of the initial bad faith sanction. Record supported trial court's express finding that it could not justify imposing further sanctions based on defense presented at evidentiary hearing on sanctions motion.

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**Crespo v. Watts, 45 Fla. L. Weekly D1938, 2020 WL 4669776 (Fla. 1st DCA August 12, 2020)**

Child support - Voluntary unemployment - Imputed income

Administrative law judge erred by imputing income to mother in accordance with section 61.30 because ALJ could not determine whether mother's unemployment was voluntary in the absence of evidence concerning the reason behind mother's unemployment. Additionally, section 409.2563(6) required ALJ to presume mother was capable of earning federal minimum wage and impute the federal minimum wage where ALJ possessed little information about mother's income, information ALJ did possess was not reliable or current, and father failed to rebut presumption.

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**Mamonov v. Marrero, 2020 WL 4641661 (Fla. 3d DCA August 12, 2020)**

Sexual violence injunction

In a short decision, the appellate court affirmed, based on the record, and stated that the trial court did not abuse its discretion when it conducted an in-camera interview of the twelve-year-old victim.

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**Krapacs v. Bacchus, 2020 WL 4668046 (Fla. 4th DCA August 12, 2020)**

Stalking injunction

Appellant had an injunction dismissed against a former boyfriend, and then wrote an article about the opposing attorney, accusing him of lying during the hearing. The opposing attorney hired the appellee to represent him in a defamation suit against the appellant. The appellant then posted several negative things about the appellee, and the appellee filed for and was awarded an injunction against stalking. The appellate court reversed, stating that the appellant’s actions did not constitute a pattern of conduct as required by statute. Although she had retagged the other attorney in several media posts, the court saw that as only one instance of qualifying conduct. The other acts that were brought up during the hearing were constitutionally protected activities that did not qualify as repeated stalking. The court did note that other legal remedies may be available for the injured party.

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**Paul v. Paul, 45 Fla. L. Weekly D1941, 2020 WL 4720688 (Fla. 5th DCA August 14, 2020)**

Dissolution of marriage - Equitable distribution - Alimony - Life insurance - Child support - Attorney’s fees

Trial court erred (1) in calculating alimony because it failed to make a specific finding as to former husband's total net income; (2) by requiring former husband to maintain a life insurance policy where obligation was not supported by specific evidentiary findings regarding the availability and cost of insurance, former husband's ability to pay, and the special circumstances that warrant the requirement for security of support obligations; and (3) by calculating child support without including alimony award as part of former wife's income.

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**Niederkoher v. Kuselias, 45 Fla. L. Weekly D1941 (Fla. 5th DCA August 14, 2020)**

Dissolution of marriage - Equitable distribution - Dissipation of marital assets - Settlement funds

Former wife spent a substantial portion of those settlement funds on, among other things, cosmetic procedures at a Beverly Hills, California, dermatologist; the mortgage on the marital home; utilities; HOA fees; car insurance; and the parties’ health insurance. The trial court determined that former wife had dissipated the settlement funds and attributed to her the entire amount that she had used in its equitable distribution scheme. Based on that calculation, the trial court ordered former wife to make an equalizing payment to former husband. Trial court properly determined that former wife had intentionally dissipated the settlement funds and attributed those amounts to her, with the exception of the funds she spent on “marital expenses” (the mortgage, utilities, HOA fees, car insurance, and health insurance). Those marital expenditures not only benefitted both her and former husband, but were also related to the marriage.

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**Sweet v. Tucker, 2020 WL 4745285 (Fla. 1st DCA August 17, 2020)**

Repeat violence injunction.

The respondent appealed after the court denied his motion to vacate an injunction against repeat violence entered against him on April 30, 1998. He claimed that he had only been 17 years old when the injunction was issued, and therefore, the court did not have jurisdiction in 1998 to enter the order. The appellate court affirmed the denial, and noted that even if the original service of process upon the respondent was defective, he never denied that he had actual notice of the proceedings against him. Therefore, the injunction was voidable, but not automatically void. Also, the respondent waived any defects in the service of process by personally appearing at the hearing held in 1998, and by filing three motions with the court shortly after the hearing. None of these motions addressed his age or jurisdiction. Finally, the challenge to the 1998 injunction was moot because that injunction was superseded by a new injunction entered in 2002, which was based on an amended petition and new allegations, therefore the 1998 injunction was no longer in effect. The respondent was formally served with the amended 2002 final injunction and never appealed.

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**Malha v. Losciales, 45 Fla. L. Weekly D1978, 2020 WL 4810758 (Fla. 3d DCA August 19, 2020)**

Child custody - Parenting plan - Modification

Trial court did not impermissibly modify final judgment by authorizing the mother to re-enroll children in athletics and requiring the provision of transportation to certain competitive events. Instead, court merely enforced terms of judgment in order to effectively resolve a parental stalemate over extent of children's involvement and the provision of transportation.

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**Vicario v. Blanch, 45 Fla. L. Weekly D1985, 2020 WL 4810743 (Fla. 3d DCA August 19, 2020)**

Jurisdiction

Competing dissolution petitions filed in Spain and Florida by parties who are Spanish citizens but who live in Florida with their children . Although dissolution petition was first filed by husband in Spain, after voluntary dismissal of his earlier petition filed in Florida, Florida court erred in entering order finding that jurisdiction over divorce lies in Spain, and in granting husband's motion to dismiss, abate, or stay. Court in Spain has no authority or jurisdiction to determine anything other than the actual dissolution of parties' marriage, and cannot address matters pertaining to parties' assets and liabilities or children

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**Miller v. Miller, 45 Fla. L. Weekly D2000, 2020 WL 4915036 (Fla. 5th DCA August 21, 2020)**

Marital settlement agreement - Child custody - Parenting plan - Modification - Child support

Trial court erred in rewriting the parties' previously agreed-upon parenting plan in its entirety where the parties did not request modification of certain provisions or present evidence establishing a substantial change in circumstances to warrant modification of those provisions. No abuse of discretion in modifying provisions of parenting plan regarding parental responsibility and time-sharing because the parties placed

those issues squarely in front of the court. Trial court did not err in substantially revising section of parenting plan which focused on father's unaccompanied deployment procedures as part of father's military service where, although father did not address section specifically in his petition for modification, he effectively requested significant changes to that section through his proposed parenting plan. Court rejected argument that there was no substantial change of circumstances warranting modification of unaccompanied deployment procedures where original parenting plan specifically noted that issues relating to surrogate time-sharing would not be subject to the "substantial change" requirement. Trial court erred in awarding child support to mother as it was contrary to the parties' previous agreement and because mother did not prove a substantial change in circumstances.

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**Varchetti v. Varchetti, 2020 WL 5034373 (Fla. 4th DCA August 26, 2020)**

Dissolution of marriage - Child custody - Venue - Forum non conveniens

Trial court erred in denying as untimely husband's motion to change venue on grounds of forum non conveniens because it was not filed within 60 days after husband was served with process in accordance with Florida Rule of Civil Procedure 1.061(g). Appellate Court expressly stated that the Florida Family Law Rules of Procedure, as amended to create a stand-alone set of rules for family law proceedings as of March 1, 2017, provide no time limit for motions to dismiss for forum non conveniens and Florida Rule of Civil Procedure 1.061(g) is inapplicable in family cases. Likewise, section 47.122, Florida Statutes, is inapplicable because the statute governs changes of venue for convenience *within* Florida and husband's motion was filed pursuant to section 61.520, Florida Statutes, of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which provides that a Court may transfer a case based on inconvenient forum at any time, and sought transfer to another state. Florida Family Law Rule of Procedure 12.140(b)(3), which requires that a defense based on improper venue must be made by motion before filing an answer, is also inapplicable because husband's argument was that venue is inconvenient, not improper. Florida Family Law Rules of Procedure do not contain any time limit for raising the issue of inconvenient forum under the UCCJEA. Remand for trial court to rule on merits of husband's motion.

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**Root v. Feinstein, 2020 WL 5033297 (Fla. 4th DCA August 26, 2020)**

Dissolution of marriage - Temporary attorney's fees - Denial as sanction for misconduct - Lack of findings  
Trial court erred in denying former wife's request for temporary attorney's fees and costs as a sanction for her misconduct in accessing former husband's private emails because it failed to make express findings setting forth the amount of reasonable fees and costs resulting from former wife's misconduct that the trial court found not to be awardable for her modification proceeding.

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**Frank v. Frank and Frank, 2020 WL 5033010 (Fla. 3d DCA August 26, 2020)**

Dissolution of marriage - Equitable distribution - Marital debt - Foreign money judgment

Trial court erroneously failed to give full faith and credit to intervenor/foreign judgment creditor's domesticated money judgment where it reduced the damages award and refused to enforce the judgment jointly and severally in the full amount. No merit to contention that judgment creditor failed to properly intervene and assert her right to enforce foreign judgment. Where parties did not dispute validity

of money judgment, trial court was precluded from inquiring into merits of cause of action or logic or consistency of foreign court's decision. Claim that trial court was entitled to alter and reduce foreign judgment because creditor engaged in fraud and collusion with the former husband, who was creditor's son, to inequitably enforce the judgment was not raised before trial court and was unsupported by record. Remand for reallocation of equitable distribution giving full faith and credit to foreign judgment.

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***Pawley v. Marie, 2020 WL 5033021 (Fla. 3d DCA August 26, 2020)***

Domestic violence injunction

After a rehearing was granted, the court replaced the prior opinion with this affirmation of the lower court's decision. The respondent appealed after the court denied his motion to modify a permanent injunction for protection against domestic violence. The motion had been based upon the respondent's claim that the trial court had been without jurisdiction because of fraud on the court, which occurred because the petitioner claimed they had lived together when they did not, as required by statute. The appellate court disagreed and noted that since the respondent had agreed to the entry of the injunction, he had waived his right to contest the allegations in the petition. Further, the court held that even if the two had not lived together, relief was no longer available since the statutory limitations had passed, which are provided in Florida Rule of Civil Procedure 1.540(b).

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***Gonzales v. Reyes, 2020 WL 5083462 (Fla. 2d DCA August 28, 2020)***

Dissolution of marriage - Attorney's fees - Need and ability to pay - Income - Calculation

Order denying former wife's motion for attorney's fees reversed where denial was based on erroneous calculations of each party's monthly net income. While former husband's monthly alimony payments may be used to calculate his net income, record reflects that trial court already accounted for such payments in the final judgment, resulting in double counting of alimony payments. Furthermore, trial court erred in its inclusion of former husband's child support payments in its calculation of former wife's monthly net income because figure used in calculations differed from amount established in final judgment, and child support payments received from former husband are not income.

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***Webb v. Webb, 2020 WL 5079509 (Fla. 2d DCA August 28, 2020)***

Dissolution of marriage - Equitable distribution - Marital settlement agreement - Enforcement - Limitation of actions

No error in granting former wife's motion to enforce equitable distribution provision of nearly 20-year-old final judgment that was found within a MSA that was incorporated by reference, resulting in nearly one million dollars in arrearages (reflecting the agreed upon principal amount in MSA and accrued interest at the rate set forth in the MSA). When a MSA is incorporated into a final judgment and the court entering the judgment reserves jurisdiction to enforce it, the enforcement of the agreement through the judgment is generally subject to the 20-year statute of limitation for enforcing judgments found under section 95.11(1), Florida Statutes, and not the 5-year statute of limitations governing written contracts under section 95.11(2)(b), Florida Statutes. Court rejected argument that MSA must be merged into dissolution

judgment in order for the agreement's terms to be enforced as a judgment. The fact that MSA retains some legal existence apart from a dissolution judgment that incorporates it does not denude the judgment of its efficacy.

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**McVicker v. McVicker, 2020 WL 5088062 (Fla. 5th DCA August 28, 2020)**

Dissolution of marriage - Income - Imputed income - Failure to make appropriate findings supporting imputation of income

Final judgment dissolving parties' marriage imputed nearly \$72,000 of annual gross income to former husband. It is well-settled in Florida that a trial court must make appropriate findings that: 1) any termination of income was voluntary; and 2) the spouse's underemployment resulted from "less than diligent efforts" to find employment at a level equal to or better than that formerly received. Here, the trial court made no findings in support of its imputation of income to former husband. There was no transcript of the evidentiary portion of the hearing; however, the trial court's errors were apparent on the face of the judgment. Remanded for trial court to make appropriate findings to support an imputation of income after taking additional evidence, if necessary.

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**Frett v. Frett, 2020 WL 5088057 (Fla. 5th DCA August 28, 2020)**

Dissolution of marriage - Equitable distribution - Valuation of assets - Lack of findings

Trial court erred in distributing marital assets without entering specific findings as to their values.

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**Murphy v. Hutchens, 2020 WL 5264832 (Fla. 5th DCA September 4, 2020)**

Child custody - Appeals

Order approving report and recommendation of general magistrate regarding time-sharing and parenting plan affirmed. Appellate review is limited to errors on face of order where no exceptions to report and recommendation were filed.

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**Tordini v. Tordini, 2020 WL 5264813 (Fla. 5th DCA September 4, 2020)**

Dissolution of marriage - Alimony

Permanent alimony award reversed where, without explanation, the award falls short of former wife's basic monthly expenses while leaving former husband with a substantial surplus. Trial court also required to reconsider the attorney's fees award on remand.

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**Murphy v. Collins, 45 Fla. L. Weekly D2111a (Fla. 3d DCA September 9, 2020)**

Paternity - Jurisdiction - Forum non conveniens provision in UCCJEA - Judges - Disqualification



Trial court's written order denying mother's motion to dismiss petition for determination of paternity on basis of forum non conveniens, which deviated from oral pronouncement and was entered after judge improperly denied motion to disqualify, was void. The substantive changes in the written order were not ministerial and are considered void. (quoting *Godin v. Owens*, 275 So. 3d 700, 100-01 (Fla. 5th DCA 2019) (finding a trial court maintains the authority to perform the ministerial duty of preparing a written order that reflects the court's oral pronouncements made before a motion to disqualify)). Appellate court noted the concern as to the timing of what occurred. After denying the mother's motion to disqualify, which the appellate court found legally sufficient in a separate opinion (*Murphy v. Collins*, WL 4196656 (Fla. 3d DCA July 22, 2020)), the trial judge on the following day entered the order under review. Remanded for a new hearing before a new trial judge.

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***Walker v. Harley-Anderson*, 45 Fla. L. Weekly D2116a (Fla. 4th DCA September 9, 2020)**

Stalking Injunction - Evidence

Text messages which were the sole evidence supporting entry of injunction were not sufficiently authenticated and should not have been considered by trial court. Contextual clues in texts were insufficient to provide authentication that the texts were sent by the respondent, and messages did not show the respondent's telephone number as the sender. Good discussion of authentication of text messages.

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***Duhamel v. Duhamel*, 45 Fla. L. Weekly D2227a (Fla. 2d DCA September 25, 2020)**

Dissolution of marriage - Reopening of case

Trial court abused its discretion by denying wife's repeated requests to reopen her case in chief to enable her to call former husband as witness and introduce evidence through him based on conclusion that husband would be unfairly prejudiced. Although evidence sought to be admitted may have been unfavorable to former husband, granting motion would not have unfairly prejudiced him. Further, there was no dispute that former husband was aware of the evidence former wife wished to admit through his testimony; excuse justifying wife's request to reopen was reasonable; and request was timely made before conclusion of evidentiary portion of final hearing and before judgment had been entered.

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***L.E.B. v. D.D.C.*, 45 Fla. L. Weekly D2225a (Fla. 2d DCA September 25, 2020)**

Paternity - Counsel - Disqualification - Conflict of interest - Waiver

Putative father waived right to seek disqualification of mother's legal aid attorney by waiting more than a year to file motion to disqualify despite his knowledge of facts that supported disqualification from the outset of the proceedings. Putative father's status as a pro se litigant was not a basis for excusing untimely filing.