

OSCA/OCI'S CASE LAW UPDATE
July 2024

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BAKER ACT/MARCHMAN ACT LAW UPDATE

Prepared by Marc J. Antoine, OSCA Senior Attorney II

Florida Supreme Court (no new opinions for this reporting period)

First District Court of Appeal (no new opinions for this reporting period)

Second District Court of Appeal (no new opinions for this reporting period)

Third District Court of Appeal (no new opinions for this reporting period)

Fourth District Court of Appeal

J.J.J. v. D.G., --- So.3d ----2024 WL 3514424 (Fla. 4th DCA 2024)

Note: This opinion has not yet been released for publication. Until released, it is subject to revision or withdrawal.

APPEAL ON NEUTRALITY AND IMPARTIALITY AFFIRMED

Respondent in a Marchman Act proceeding appeals the circuit court's order arguing the trial court abandoned judicial neutrality at the Marchman Act hearing when the trial court sua sponte directed a mental health counselor to testify regarding the assessment. The pro se petitioners, who are the respondent's parents, file the Marchman Act petition for involuntary assessment and later filed a petition for involuntary services and treatment pursuant section 397.6951, Florida Statutes. At the hearing the petitioners testified about the respondent's drug use but did not call any other witnesses or the person who completed the assessment. The respondent moved for dismissal. The trial court sua sponte questioned the mental health counselor noting respondent's objections. The appellate court noted that [section 397.6957, Florida Statutes \(2023\)](#), entitled "Hearing on petition for involuntary services," pertinently provides: At a hearing on a petition for involuntary services, the court **shall** hear and review all relevant evidence, including the review of results of the assessment completed by the qualified professional in connection with the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The appellate court upon review of relevant case law determined that the trial court did not depart from neutrality or the requirements of [sections 397.6957\(1\)](#) and [\(3\)](#) by directing the mental health counselor to testify regarding the assessment. The appellate court also found conflict with [R.S. v. C.P.T.](#), 333 So. 3d 1190 (Fla. 5th DCA 2022), [J.W. v. R.W.](#), 351 So. 3d 1243 (Fla. 5th DCA 2022), [C.W.R.K. v. Stewart Marchman Act Behavioral Healthcare](#), — So.3d —, 2024 WL 2952822 (Fla. 5th DCA June 12, 2024). Affirmed and conflict certified.

Dissent opinion by J. Warner.

https://4dca.flcourts.gov/content/download/2438091/opinion/Opinion_2023-2185.pdf
(July 24, 2024)

Fifth District Court of Appeal (no new opinions for this reporting period)

Sixth District Court of Appeal (no new opinions for this reporting period)

DELINQUENCY CASE LAW UPDATE

Prepared by Avron Bernstein, OSCA Senior Attorney – bernsteina@flcourts.org

Florida Supreme Court (no new opinions for this reporting period)

First District Court of Appeal (no new opinions for this reporting period)

Second District Court of Appeal (no new opinions for this reporting period)

Third District Court of Appeal (no new opinions for this reporting period)

Fourth District Court of Appeal (no new opinions for this reporting period)

Fifth District Court of Appeal (no new opinions for this reporting period)

Sixth District Court of Appeal (no new opinions for this reporting period)

DEPENDENCY CASE LAW UPDATE

Prepared by Marc J. Antoine, OSCA Senior Attorney II

Florida Supreme Court (no new opinions for this reporting period)

First District Court of Appeal (no new opinions for this reporting period)

Second District Court of Appeal (no new opinions for this reporting period)

Third District Court of Appeal

S.M. v. Dep't of Child. & Fams., --- So.3d ----2024 WL 3280702 (Fla. 3rd DCA 2024)

Note: This opinion has not yet been released for publication. Until released, it is subject to revision or withdrawal.

MOTION FOR WRIT OF CERTIORARI DENIED

On July 4, 2023, the Department filed a Dependency Shelter Petition requesting an order for shelter of the Mother's three minor children. The Shelter Petition alleged the family suffered from substance misuse. The trial court found probable cause to shelter the children and at the trial hearing the Mother entered a consent plea. The Order of Adjudication as to the minor children did not contain any specific findings relating the Mother's substance misuse. On November 14, 2023, the Department filed its Family Functioning Assessment-Ongoing in which the Department referenced the initial report that "both parents do marijuana." The Family Functioning Assessment indicated that an out-of-home safety plan was the only protective intervention possible at the time. [T]he Department set forth the following pertinent conditions for return: "Both the Mother and Father suffer from mental health issues and/or substance misuse; they have a history of domestic violence. On November 15, 2023, the trial court held a disposition hearing pursuant to [Florida Rule of Juvenile Procedure 8.340](#) and [section 39.521, Florida Statutes](#). At the hearing, the Department advised the trial court that a Family Functioning Assessment had been submitted for the court's approval. The Mother objected to the Family Functioning Assessment's requirement that she successfully complete substance misuse services as a condition for return. The Mother argued substance misuse was not an issue in her consent plea and there should have been a trial on the issue. After the trial court considered the Mother's argument and the Department's response, the trial court noted the concerns regarding substance misuse were reflected in the circumstances that brought the case to care and the surrounding situations. The trial court stated it would be addressing the issue further as part of the case plan. The appellate court noted [Section 39.521\(1\)](#) requires a trial court to conduct a disposition hearing after a parent has consented to a finding of dependency, as occurred here. A "disposition hearing" is defined as "a hearing in which the court determines the most appropriate protections, services, and placement for the child in dependency cases." [§ 39.01\(24\), Fla. Stat.](#) The appellate court stated as part of the disposition hearing, the trial court is also required to review and approve the Department's Family Functioning Assessment. [§ 39.521\(1\)\(a\), Fla. Stat.](#) The appellate court noted that while the

Mother is correct that her consent plea did not reference the Mother’s substance misuse issues, this does not mean the trial court was required to ignore the reports made in the Shelter Petition and the Dependency Petition that the Mother “used to shoot up” unknown substances in the past. Nor was the trial court required to ignore the reports from the Child Protective Investigator contained in the ongoing Family Functioning Assessment stating law enforcement advised that the Mother “appeared to be drugged when she was found” and arrested on child neglect charges. The appellate court concluded that the Mother’s contention that the trial court deprived her of due process by failing to entertain her objections is without merit and the trial court properly exercised its discretion to approve the Family Functioning Assessment. The petition is denied.

https://3dca.flcourts.gov/content/download/2436774/opinion/Opinion_2023-2213.pdf
(July 3, 2024)

Fourth District Court of Appeal (no new opinions for this reporting period)

Fifth District Court of Appeal (no new opinions for this reporting)

Sixth District Court of Appeal (no new opinions for this reporting period)

DISSOLUTION OF MARRIAGE CASE LAW UPDATE

Florida Supreme Court (no new opinions for this reporting period)

First District Court of Appeal (no new opinions for this reporting period)

Second District Court of Appeal (no new opinions for this reporting period)

Third District Court of Appeal (no new opinions for this reporting period)

Fourth District Court of Appeal (no new opinions for this reporting period)

Fifth District Court of Appeal (no new opinions for this reporting period)

Sixth District Court of Appeal (no new opinions for this reporting period)

FAMILY LAW – INTERPERSONAL VIOLENCE CASE LAW UPDATE

Prepared by Stephany Espinosa, OSCA Senior Attorney I – espinosas@flcourts.org

Florida Supreme Court (no new opinions for this reporting period)

First District Court of Appeal (no new opinions for this reporting period)

Second District Court of Appeal (no new opinions for this reporting period)

Third District Court of Appeal (no new opinions for this reporting period)

Fourth District Court of Appeal

Fifth District Court of Appeal (no new opinions for this reporting period)

Sixth District Court of Appeal (no new opinions for this reporting period)