2014 FAMILY LAW LEGISLATION UPDATE

By General Magistrate Robert J. Jones www.leg.state.fl.us

CS/CS/HB 755

This Bill amends certain provisions of the law dealing with Child Support, Judicial Notice and Admission to The Florida Bar. The Bill was signed by the Governor on 5/12/14 and became effective on that date.

A. Child Support (Child Support Guidelines).

1. The Bill amends **Section 61.13(11)(a)10., Florida Statues,** to provide that the Court may deviate from the total minimum child support award, or either parent's share of the total minimum child support award, based upon: "The particular *parenting plan,* **a court-ordered time-sharing schedule, or a timesharing arrangement exercised by agreement of the parties,** such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child."

2. The Bill amends **Section 61.13(11)(b), Florida Statutes,** to provide require the Court to adjust the a child support award "Whenever a particular *parenting plan,* **a court-ordered time-sharing schedule, or a timesharing arrangement exercised by agreement of the parties,** *provides that each child spend a substantial amount of time with each parent***."** Pursuant to **Section 61.13(11)(b)8., Florida Statutes,** a "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year.

3. The Bill amends **Section 61.13(11)(b)(7), Florida Statutes** and **Section 61.13(11)(c), Florida Statutes** to conform with the amendments to **Section 61.13(11)(b), Florida Statutes.**

4. The above statutory changes were proposed and enacted in response to the decision of the Court in the case of ***Department of Revenue ex. rel. Sherman v. Daly,* 74 So.2d 165 (Fla. 1st DCA 2011).** As a result of the ***Department of Revenue ex. rel. Sherman v. Daly*** decision, and the cases following the Daly decision, the Court and the Administrative Child Support Process have been unable to consider a substantial time-sharing arrangement, exercised in the past or presently being exercised by the parties, in determining the appropriate child support amount unless the substantial time-sharing was pursuant to a **"Parenting Plan,"** the definition of which is in **Section 61.046(13), Florida Statutes**. In short, a "**Parenting Plan"** is a **Court approved or Court created document**. However, the above mentioned statutory changes brought about by the enactment of **CS/CS HB 755** basically overrule the decisions of the Court in the cases of ***Department of Revenue ex. rel. Sherman v. Daly,* 74 So.2d 165 (Fla. 1st DCA 2011), *State Dept. of Revenue v. Kline,* 95 So.3d 440 (Fla. 1st DCA 2012), *Department of Revenue v. Dorkins,* 91 So.3d 278 (Fla. 1st DCA 2012*), *Department of Revenue v. Aluscar,* 82 So.3d 1165 (Fla. 1st DCA 2012), *Department of Revenue v. Williams,* _____ So.3d _____ (Fla. 2nd DCA January 17, 2014), *and Department of Revenue v. Varrette,* _____So.3d _____ (Fla. 2nd DCA January 17, 2014).**

5. It should be noted that before the **2008** amendments to Chapter 61 **(2008 CS/CS/SB 2532) relating to parenting plans**, the Court or administrative process considered the evidence regarding the visitation being exercised by the parties (according to their informal or formal "**shared parental arrangement**") and if the visitation met the substantial shared time threshold (at that time 40% of the overnights per year), the Court or administrative process, **after taking into consideration that substantial shared time,** would enter an appropriate order for temporary child support, permanent child support and/or retroactive child support. However, as part of the 2008 global changes to Chapter 61, which removed references to "custody," "primary residence" and "visitation" and inserted references to "Parenting Plan" and "Time-Sharing Schedule," the words "shared parental arrangement" in **Section 61.13(11)(a)10., Florida Statues,** and **Section 61.13(11)(b), Florida Statutes,** were replaced with the words "parenting plan," **which resulted in certain unintended consequences.** See the ***Department of Revenue ex. rel. Sherman v. Daly*** **decision, and the cases following the Daly decision.** Those unintended consequences have, for the most part, been resolved by the enactment of CS/CS/HB 755.

B. <u>Judicial Notice (Evidence Code).</u>

1. Under **Subsection 90.202(6)** of the Evidence Code, the Court may take judicial notice of the **"Records of any court of this state or of any other court of record of the United States or of any state, territory, or jurisdiction of the United States."**

2. However, **Section 90.204(1**) of the Evidence Code provides, in part, that: "When a court determines upon its own motion that judicial notice of a matter should be taken…, the court shall afford each party reasonable opportunity to challenge such information, and to offer additional information, **<u>before judicial notice of the matter is taken</u>**." (emphasis added)

3. This Bill amends **Section 90.204** (Determination of propriety of judicial notice and nature of matter noticed) of the Evidence Code by adding a new subsection. The new subsection is, in effect, an exception to the general requirements of Subsection 90.204(1). That new subsection is subsection (4) and it provides that:

"In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration."

4. This Bill also makes conforming changes to **Section 741.30** (injunctions for protection against domestic violence), **Section 784.046** (injunctions for protection against repeat violence, sexual violence or dating violence), and **Section 784.0485** (injunctions for protection against stalking).

C. Admission to The Florida Bar.

1. This Bill amends **Section 454.021, Florida Statutes,** (Attorneys; admission to practice law; Supreme Court to govern and regulate) by **adding a new subsection (3).** That new subsection (3) provides that:

"Upon certification by the Florida Board of Bar Examiners that an applicant who is an unauthorized immigrant who was brought to the United States as a minor; has been present in the United States for more than 10 years; has received documented employment authorization from the United States Citizenship and Immigration Services (USCIS); has been issued a social security number; if a male, has registered with the 154 Selective Service System if required to do so under the Military Selective Service Act, 50 U.S.C. App. 453; and has fulfilled all requirements for admission to practice law in this state, the Supreme Court of Florida may admit that applicant as an attorney at law authorized to practice in this state and may direct an order be entered upon the court's records to that effect."

2. It appears that this amendment in the Bill was in response, in part, to an Advisory Opinion issued by the Supreme Court of Florida in Case No. SC11-2568 on March 6, 2014. That Advisory Opinion, including the concurring opinion, is 27 pages in length and provides, in part, that: **"Accordingly, we answer the Florida Board of Bar Examiners' question by holding that unauthorized immigrants are ineligible for admission to The Florida Bar. Applicants are required to demonstrate that they are legally present in the United States."** It should be noted that Footnote 8 of the Court's opinion states: "During the Court's consideration of this matter, numerous public policy arguments were offered in favor of extending state public benefits to unlawful or unauthorized aliens. Arguments of this nature are properly presented to the Florida Legislature and the United States Congress. See generally Equal Access Educ. v. Merten, 305 F. Supp. 2d 585, n.32 (E.D. Va. 2004)."

SB 386

This Bill amends Chapter 61, Florida Statutes, by creating a new Section 61.40, Florida Statutes, related to the application of the law of a foreign country. If signed by the Governor or allowed to become law without the Governor's signature, the provisions of the Bill will be effective on 10/1/14.

A. The new Section reads as follows:

61.040 Application of the law of a foreign country in courts relating to matters arising out of or relating to chapters 61 and 88.—

(1) As used in this section, the term "strong public policy" means public policy of sufficient importance to outweigh the policy of protecting freedom of contract.

(2) A court may not enforce:

(a) A choice of law provision in a contract selecting the law of a foreign country which contravenes the strong public policy of this state or that is unjust or unreasonable.

(b) A forum selection clause in a contract that selects a forum in a foreign country if the clause is shown to be unreasonable or unjust or if strong public policy would prohibit the enforceability of the clause under the specific facts of the case.

(3) Before enforcing a judgment or order of a court of a foreign country, a court must review the judgment or order to ensure that it complies with the rule of comity. A judgment or order of a court of a foreign country is not entitled to comity if the parties were not given adequate notice and the opportunity to be heard, the foreign court did not have jurisdiction, or the judgment or order of the foreign court offends the public policy of this state. As used in this subsection, a "foreign court" or "court of a foreign country" includes any court or tribunal that has jurisdiction under the laws of that nation over the subject of matters governed by chapter 61 or chapter 88.

(4) Any attempt to apply the law of a foreign country is void if it contravenes the strong public policy of this state or if the law is unjust or unreasonable.

(5) A trial court may not dismiss an action on the grounds that a satisfactory remedy may be more conveniently sought in a foreign country unless the trial court finds in accordance with all the applicable rules of civil procedure and this section that an adequate alternate forum exists.

(6) This section applies only to matters governed by or relating to chapter 61 or chapter 88.

The purpose of this section is to codify existing case law, and that intent should guide the interpretation of this section.

B. Chapter 61, Florida Statutes, addresses dissolution of marriage, distribution of assets and liabilities, alimony, child support, parenting plans, including time-sharing, and attorney's fees and costs.

C. The Uniform Interstate Family Support Act (UIFSA) is codified in chapter 88, Florida Statutes.

CS/CS/HB 561

This bill amends Chapter 39, Florida Statutes, by creating in new Section 39.1305, Florida Statutes, related to the appointment of an attorney for a dependent child with special needs. If signed by the Governor or allowed to become law without the Governor's signature, the provisions of the Bill will be effective 7/1/14.

A. The new Section reads as follows:

39.01305 Appointment of an attorney for a dependent child with certain special needs.—

(1)(a) The Legislature finds that:

1. All children in proceedings under this chapter have important interests at stake, such as health, safety, and well-being and the need to obtain permanency.

2. A dependent child who has certain special needs has a particular need for an attorney to represent the dependent child in proceedings under this chapter, as well as in fair hearings and appellate proceedings, so that the attorney may address the child's medical and related needs and the services and supports necessary for the child to live successfully in the community.

(b) The Legislature recognizes the existence of organizations that provide attorney representation to children in certain jurisdictions throughout the state. Further, the statewide Guardian Ad Litem Program provides best interest representation for dependent children in every jurisdiction in accordance with state and federal law. The Legislature, therefore, does not intend that funding provided for representation under this section supplant proven and existing organizations representing children. Instead, the Legislature intends that funding provided for representation under this section be an additional resource for the representation of more children in these jurisdictions, to the extent necessary to meet the requirements of this chapter, with the cooperation of existing local organizations or through the expansion of those organizations. The Legislature encourages the expansion of pro bono representation for children. This section is not intended to limit the ability of a pro bono attorney to appear on behalf of a child.

(2) As used in this section, the term "dependent child" means a child who is subject to any proceeding under this chapter. The term does not require that a child be adjudicated dependent for purposes of this section.

(3) An attorney shall be appointed for a dependent child who:

(a) Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;

(b) Is prescribed a psychotropic medication but declines assent to the psychotropic medication;

(c) Has a diagnosis of a developmental disability as defined in s. 393.063; 70

(d) Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or

(e) Is a victim of human trafficking as defined in s. 787.06(2)(d).

(4)(a) Before a court may appoint an attorney, who may be compensated pursuant to this section, the court must request a recommendation from the Statewide Guardian Ad Litem Office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the Statewide Guardian Ad Litem Office informs the court that it will not be able to recommend an attorney within that time period.

(b) After an attorney is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under this section to represent the child shall provide the complete range of legal services, from the removal from home or from the initial appointment through all available appellate proceedings. With the permission of the court, the attorney for the dependent child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney under this section must be in writing.

(5) Except if the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated and provided with access to funding for expert witnesses, depositions, and other costs of litigation. Payment to an attorney is subject to appropriations and subject to review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per child per year.

(6) The department shall develop procedures to identify a dependent child who has a special need specified under subsection (3) and to request that a court appoint an attorney for the child.

(7) The department may adopt rules to administer this section.

(8) This section does not limit the authority of the court to appoint an attorney for a dependent child in a proceeding under this chapter.

(9) Implementation of this section is subject to appropriations expressly made for that purpose.
