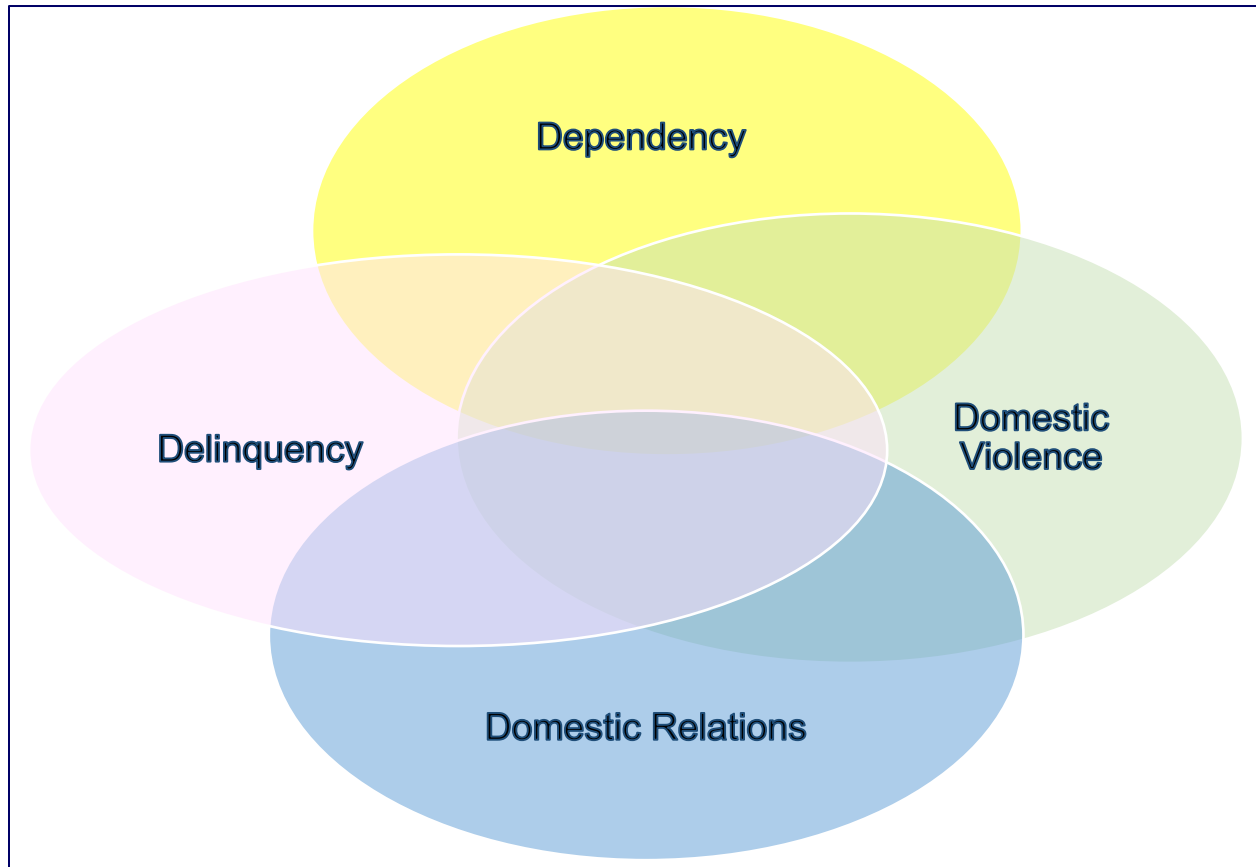


Understanding Unified Family Court



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Judge Ariana Fajardo Orshan was appointed to the Circuit Court of the Eleventh Judicial Circuit of Florida in April 2012 and is currently assigned to the Unified Family Court Division where she is the Administrative Judge. She has also served as a judge in the Criminal Division. Prior to her appointment, Judge Fajardo Orshan was a partner in her law firm where she specialized in the area of Family and Matrimonial Law. Judge Fajardo Orshan began her legal career as an Assistant State Attorney in Miami-Dade County and also worked in the area of civil litigation with the firm of Wilson Elser Moskowitz Edelman & Dicker LLP.

Throughout her legal and judicial career, Judge Fajardo Orshan has been involved with numerous civic and professional organizations, and in many, she assumed leadership positions. She continues to remain involved with Big Brothers Big Sisters, the Cuban American Bar Association, the Dade County Bar Association, the Federalist Society, and Kidside. As a member of the judiciary, Judge Fajardo Orshan is also involved with the Eleventh Judicial Circuit Professionalism Committee; the Florida Conference of Circuit Judges; the Florida Bar Family Law Rules Committee; and, the Florida Supreme Court Steering Committee on Families and Children.

Judge Fajardo Orshan also enjoys grooming future lawyers as adjunct professor at Florida International University College of Law where she teaches Family Law.

Judge Fajardo Orshan has been a member of the Florida Bar since 1996 and is a member of the Federal Bar for the Southern District of Florida. Judge Fajardo Orshan graduated from Nova Southeastern University Shepard Broad Law Center and received a Bachelor's in Science degree, from Florida International University.

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I. HISTORY OF UNIFIED FAMILY COURTS

A. *In re Report of the Commission on Family Courts*, 588 So. 2d 586 (Fla. 1991) (“*Family Courts I*”)

1. The Commission of Family Courts recommended to Florida Supreme Court:

a. Establishment of Family Divisions - each judicial circuit would submit to the court for approval:

1) Local rule – establishing a family division or

2) A means to coordinate family law matters that affect one family if the circuit or part of the circuit was of a limited size that it was unable to administratively justify such a division.

3) Jurisdiction of the family division should include:

a) Dissolution of marriage

b) Simplified dissolution of marriage

c) Child custody and support

d) URESA

e) Domestic violence

f) Name changes

g) Adoptions

h) Paternity suits

i) Modification proceedings

j) Juvenile dependency and delinquency (at least for administrative purposes)

b. Resources - family divisions should receive proper resources to fulfill their responsibilities, which include the following:

1) Court connected mediation

2) Domestic violence assistance programs

3) Guardian ad Litem to represent dependent children

4) Home assessment services

5) Staff to operate enforcement of support services

6) Case coordination

c. Pilot Circuits – three circuits of diverse needs were designated as pilot circuits by the Florida Supreme Court.

2. The Florida Supreme Court approved the recommendations of the Commission on Family Courts.

3. The Florida Supreme Court noted that geography, population, and available facilities are all factors that must be considered in tailoring a family division.

B. *In re Report of the Commission on Family Courts*, 633 So. 2d 14 (Fla. 1994) (“*Family Courts II*”)

1. The matter came before the Florida Supreme Court to further refine and implement family court divisions of the circuit courts initially established by *Family Courts I*.
2. By mid-1992, each judicial circuit had submitted a local rule or administrative order.
3. Based on the local rules and administrative orders received by the Florida Supreme Court, the Court further clarified its intent and expectations of the family court concept.
 - a. Intent – establish a comprehensive approach coordinating all judicial efforts in cases affecting the same family.
 - b. Family interactions with the courts in all circuits shall be administratively coordinated and monitored in one unified family division.
4. Circuit requirements
 - a. Each circuit must be staffed to screen, evaluate, and manage the cases through the justice system in a satisfactory conclusion (i.e. case management system).
 - b. In each circuit there must be a specific person who will be directly responsible for overseeing, coordinating, and guiding the development of each court’s comprehensive response to children and families in litigation (i.e. appointment of an administrative judge managing the family division).
5. Recognizing that there may be some time before all resources for effective family court operations are in place, the Florida Supreme Court provisionally approved the local rules and administrative orders submitted by each circuit.

C. *In re Report of the Commission on Family Courts*, 646 So. 2d 178 (Fla. 1994) (“*Family Courts III*”)

1. In 1994, the Florida legislature passed Chapter 94-134, Laws of Florida, which made the violation of a domestic violence injunction a first-degree misdemeanor.
 2. Chapter 94-134 placed domestic violence injunction violations within the jurisdiction of county court criminal judges and removed those violations from the jurisdiction of circuit court and family division judges unless those circuit judges were specifically assigned to hear those matters as county court judges.
 3. Administratively, this legislative change posed problems because all family issues were to be handled by judges assigned to family law divisions based on its 90-273 directive.
 - a. Some violations of a domestic injunction were in the jurisdiction of the criminal divisions of the county courts.
 - b. Other violations of a domestic violence injunction remained in the family law divisions of the circuit courts.
 4. The Florida Supreme Court established that the implementation of family law divisions, and the assignment of all family law matters, including domestic violence, are to be controlled through either local rules or administrative orders.
- D. *In re Report of the Family Court Steering Committee*, 794 So. 2d 518 (Fla. 2001)
1. The Florida Supreme Court:
 - a. adopted the recommendations of the Family Court Steering Committee;
 - b. reaffirmed its commitment to the principles addressed in *Family Courts I and Family Courts II*;
 - c. fostered its goal of a fully integrated comprehensive approach to handling all cases involving children and families while at the same time resolving family disputes in a fair, timely, efficient, and cost effective manner.
 2. **Recommendation #1 - Family Court Guiding Principles in implementing a model family court**
 - a. Children should live in safe and permanent homes.

- b. The needs and best interests of children should be the primary consideration of any family court.
- c. Cases involving interrelated family law issues should be consolidated or coordinated to maximize use of court resources to avoid conflicting decisions and to minimize inconvenience to the families.
- d. Therapeutic justice should be a key part of the family court process.
 - 1) Therapeutic justice is a process that attempts to address the family's interrelated legal and nonlegal problems to produce a result that improves the family's functioning.
 - 2) This process should empower families through skills development, assist them to resolve their own disputes, provide access to appropriate services, and offer a variety of dispute resolution forums where one family can resolve problems without additional emotional trauma.
- e. All persons are treated with objectivity, sensitivity, dignity, and respect.
- f. The court should utilize means to differentiate cases through case management techniques.
- g. Parties should be empowered to select ways to address their individual case.

3. Recommendation # 2 – Family Division Structure & Jurisdiction

A model family court should include the following types of cases:

- a. dissolution of marriage
- b. division and distribution of property arising out of a dissolution of marriage
- c. annulment
- d. support unconnected with dissolution of marriage
- e. paternity
- f. child support
- g. URESA/UIFSA
- h. custodial care of and access to children
- i. Adoption
- j. name change
- k. declaratory judgment actions related to premarital, marital, or postmarital agreements

- l. civil domestic and repeat violence injunctions
- m. juvenile dependency
- n. termination of parental rights
- o. juvenile delinquency
- p. emancipation of a minor
- q. CINS/FINS
- r. Truancy
- s. modification and enforcement of orders entered in these cases

4. Recommendation # 3 - Essential Elements

Some essential elements to a model family court consist of:

- a. Case management
- b. Self-Help Programs
- c. Domestic Violence
- d. Alternative Dispute Resolution
- e. Guardian Ad Litem
- f. General Magistrates/Hearing Officers
- g. Custody Evaluation
- h. Supervised Visitation
- i. Education Programs for Parents
- j. Security
- k. Technology

5. Recommendation # 4 - The Coordinated Management Model

- a. A coordinated management system: all pending family cases are coordinated and managed by a staff member or team of staff members to facilitate the delivery of appropriate social services, maximize judicial resources, avoid conflicting court orders, and prevent multiple court appearances by the parties on the same issues.
 - 1) Because judges rotate in and out of divisions, it is impossible to keep one judge with the same family.
 - 2) A staff member or team of staff provides continuity for the family instead of the judge.
- b. Intake and Referral: circuits should establish an intake process to provide information, make referrals to legal or social services, and assist self-represented litigants.

- c. Case management staff: division judges should have case management staff to coordinate all cases.
- d. Technology: integrated management information

6. Recommendation # 5 – Administrative Structure

- a. Establishment of a unified family division consistent with the model by a local rule or administrative order.
- b. Administrative Judge: oversee and coordinate the circuit's family initiative.
- c. Family Court Administrator: assist the chief judge, trial court administrator, and administrative family law judge in the management responsibilities of the family division.

7. Recommendation # 6 – Family Law Judges

- a. Judicial Commitment: the assignment of judges who are committed to children and families.
- b. Term in the Division: the assignment of judges for at least a three-year term.
- c. Preliminary Education: requirement of mandatory training in the fundamentals of family law, domestic violence, juvenile dependency, and juvenile delinquency before assuming the assignment or within 60 days after assuming the assignment.
- d. Continuing Education: judges should have continuing education in technical legal requirements of domestic relations and juvenile law, training in non-legal subjects (i.e. child development, family systems, mental health, behavioral sciences, social work).

8. Recommendation # 7 – Additional Family Court Staff

- a. Staff Attorneys: Family division judges should have access to staff attorneys.
- b. Education and Training: Quasi-judicial officers should receive mandatory of mandatory training in the fundamentals of family law, domestic violence, juvenile dependency, and juvenile delinquency before assuming the assignment or within 60 days after the assignment.

- c. Court staff: Training in both family court operations as well as child development, family systems, mental health, behavioral sciences, social work, mediation, and information on public benefits that are available for children and families.

9. Recommendation # 8 – Family Law Advisory Group

- a. Each circuit should create a family law advisory group that is open to court staff, judges, members of the bar, social services providers, local community leaders, and other organizations to support and advise the family court.
- b. A family law advisory group can resolve complaints, provide education, and facilitate transition into a unified family court.

10. Recommendation # 9 – Public Education

- a. Each circuit should provide regular public information through the internet and other media.
- b. Public Education includes information about the following:
 - 1) How to access the court
 - 2) Available services
 - 3) What the public can expect from the legal system
 - 4) Any limitations on the court's authority and resources

11. Recommendation #10 – Family Court Summit

- a. The Family Court Steering Committee should sponsor a Family Court Summit to develop plans to implement the Court's goals for the family court initiative.
- b. Outcome - \$500,000 in pilot money was made available for purpose of establishing models of best practices in case management, coordination and developing community services to support family court.

E. *In re Amendments to the Florida Rules of Judicial Administration*, 132 So. 3d 1114 (Fla. 2014)

- 1. The Florida Supreme Court considered two separate petitions to amend the Florida Rules of Court filed by the Florida Supreme Court's Steering Committee on Families and Children in the Court (Steering Committee).

a. SC 12-2007 - Steering Committee proposed amendments to Florida Rule of Judicial Administration 2.545(d) (Case Management; Related Cases):

- 1) Clarified the term family case
- 2) Subdivision (d)(2) of Rule 2.545 added “stalking” injunction to the definition of a family case
- 3) Subdivision (d)(4) of Rule 2.545:
 - a) provided that the Notice of Related Cases shall be filed in each open and pending related case and served on all parties in each of the related cases and as may be directed by the chief judge;
 - b) parties may file joint Notices of Related Cases;
 - c) clarified that a Notice of Related Cases filed pursuant to the rule is not an appearance;
 - d) If any related case is confidential and exempt from public access by law, a Notice of Confidential Information Within Court Filing must accompany the notice pursuant to Florida Rule of Judicial Administration 2.420.

b. SC 12-2030 - Steering Committee proposed five (5) new Florida Family Law Rules of Procedure (“Rule”)

- 1) Rule 12.003 (Coordination of Related Family Cases and Hearings)
 - a) all related family cases must be handled before one judge unless impractical;
 - b) to the extent that one judge is not handling all related family cases, the Florida Supreme Court urged each circuit to examine its practices;
 - c) allows for the court to order joint hearings or trials of any issues in related family cases.
- 2) Rule 12.004 (Judicial Access and Review of Related Family Law Files)
 - a) authorizes a judge hearing a family case to access and review the files of any related case, whether pending or closed;

- b) authorizes court staff to access and review related family case files;
 - c) defined a related family case as another pending or closed case separate from the pending case as defined in Rule of Judicial Administration 2.545(d);
 - d) provides that judges or authorized court personnel should not disclose confidential information and documents contained in case files except with state and federal confidentiality laws;
 - e) authorizes court staff may advise the court about the existence of legal proceedings.
- 3) Rule 12.006 (Filing Copies of Orders in Related Family Cases)
the court may file copies of court orders in related family cases involving the same parties.
- 4) Rule 12.007 (Access and Review of Related Family Files by Parties)
- a) access to confidential files in related cases shall not be granted except as authorized by Florida Rule of Judicial Administration 2.420;
 - b) petitioner for domestic violence injunction requests his or her address be kept confidential;
 - c) disclosure prohibited of parties' confidential information except in accordance with applicable state and federal confidentiality statutes.
- 5) Rule 12.271 (Confidentiality of Related Family Hearings)
- a) When related family cases are coordinated or joint hearings ordered, any hearings or proceedings involving more than one related family case are subject to applicable state and federal confidentiality statutes.
 - b) The confidentiality of a case or issue is not waived by coordination or a joint hearing.

II. IMPORTANCE OF UNIFIED FAMILY COURT

- A. Unified Family Court is a less adversarial approach to handling family cases that focuses on minimizing harm to the child while balancing due process concerns.
- B. There is collaboration between the judiciary and community resources to provide access to an array of services for families.
- C. There is judicial economy and the reduction of conflicting orders such that there is a coordination of multiple cases involving one family.

III. UNIQUE ISSUES AFFECTING UNIFIED FAMILY COURT CASES: WHICH HAT ARE YOU WEARING?

A. The Appointment of a Guardian Ad Litem

1. Chapter 39 Proceeding - § 39.822(1), Florida Statutes - “[a] guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.”
 - a. The Guardian Ad Litem is a party to the case. § 39.01(51), Fla. Stat. (2016).
 - b. In Chapter 39 proceedings, the Guardian Ad Litem does not investigate like in Chapter 61 proceedings.
 - c. Guardian Ad Litem’s information is confidential – cannot testify on family matter.
 - d. The Guardian Ad Litem does not question children – trained not to ask specific questions about the abuse, abandonment or neglect.
 - e. The Guardian Ad Litem’s position fluctuates based on the need of the child.
 - f. A Guardian Ad Litem’s attorney must be present when the Guardian Ad Litem is interviewed.
 - g. The Guardian Ad Litem must file a report 72 hours before dependency proceeding. § 39.822(4), Fla. Stat. (2016).
2. Chapter 61 Proceeding - § 61.401, Florida Statutes - “[I]n an action for dissolution of marriage or for the creation, approval, or modification of a parenting plan, if the court finds it is in the best interest of the child, the court may appoint a guardian ad litem to act as next friend of the child, investigator or evaluator, not as attorney or advocate.”

- a. The Guardian Ad Litem may investigate the allegations of the pleadings affecting the child, and, after proper notice to interested parties to the litigation and subject to conditions set by the court, may interview the child, witnesses, or any other person having information concerning the welfare of the child. § 61.403(1), Fla. Stat. (2016).
 - b. Under Chapter 61, Florida Statutes, the husband and wife are parties to the action unless a third party is joined for a specific purpose.
 - c. The Guardian Ad Litem's written report must be filed and served at least 20 days prior to the hearing at which it will be presented unless the court waives the time limit. § 61.403(5), Fla. Stat. (2016).
3. Case law: *O'Connor v. State, Dep't of Health & Rehab. Servs.*, 680 So. 2d 1137 (Fla. 3d DCA 1996) – held that the statute governing authority of guardian ad litem in dissolution, modification, parental responsibility, custody, or visitation cases did not apply to action to terminate parental rights prosecuted by guardian ad litem.

B. Children in Court

1. Under Chapter 39, Florida Statutes, children are a party to the action. § 39.01(51), Fla. Stat. (2016). Children can be active participants at the hearings.
2. Florida Rule of Juvenile Procedure 8.100 - provides that a child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests.
3. Under Chapter 61, Florida Statutes, children are not allowed in court without prior court order.
4. Florida Family Law Rule of Procedure 12.407 provides that no minor child shall be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing, or subpoenaed to appear at a hearing without prior order of the court based on good cause shown unless in an emergency situation.

C. Attorney's Fees

1. Determination of attorney's fees in various proceedings before Unified Family Court
 - a. In a Chapter 61 proceeding, "[t]he court may from time to time, after considering the financial resources of both parties, order a party to pay

a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings and appeals." § 61.16, Fla. Stat. (2016).

- b. Generally a court may only award attorney's fees when fees are expressly provided for by statute, rule, or contract. In a Chapter 39 proceeding, the Fifth District Court of Appeal held that the attorney's motion for attorney's fees after the Department of Children and Family Services was found in contempt for failing to complete a home study was improper where neither the mother nor the lower court cited any legal authority for awarding fees. See *Dep't of Children & Family Services v. J.B.*, 898 So. 2d 980 (Fla. 5th DCA 2005).

In State, Dep't of Health & Rehab. Servs. v. Johnson, 485 So. 2d 880 (Fla. 2d DCA 1986), the Second District Court of Appeal held that the trial court had no authority to make an award for attorney's fees in a juvenile dependency proceeding for enforcement of child support. The order on review was brought before the appellate court based on Chapter 39, Florida Statutes, and was not part of the dissolution of marriage suit.

- c. In a Chapter 741 proceeding, there is no statutory authority for an awards of attorney's fees. See *Cisneros v. Cisneros*, 831 So. 2d 257 (Fla. 3d DCA 2002); *Lewis v. Lewis*, 689 So. 2d 1271 (Fla. 1st DCA 1997); *Baumgartner v. Baumgartner*, 693 So. 2d 84 (Fla. 2d DCA 1997); *Belmont v. Belmont*, 761 So. 2d 406 (Fla. 2d DCA 2000).

2. Issues affecting Unified Family Court

- a. Judges handling related cases jointly have no specific direction on how to address an award of attorney's fees when representation is in both a Chapter 61 and a Chapter 39 proceeding. Example: Dependency case filed is the basis for modification of the related Family matter.
- b. Unified Family Court Judges recommend that lawyers keep very clear and accurate records and identify which case their fees are attributable to throughout the course that they are working on related case matters.

IV. ISSUES AFFECTING THE IMPLEMENTATION OF THE UNIFIED FAMILY COURT MODEL

- A. Florida Supreme Court Model vs. Realistic practices among different circuits in Florida – Each circuit has implemented a one family, one judge model, and adapted it in accordance with local needs, with the understanding that the long-term goal is to achieve a fully integrated Model Family Court, as opposed to having any bifurcation of specific court

divisions. Until implemented, related cases involving a family may be transferred to designated judges who have the requisite cross-training and expertise in all subject matter areas comprising the jurisdiction of Unified Family Courts.

- B. Availability of resources for families – Not all circuits have the same resources for families, and many circuits are comprised of multiple counties in which the resources for families vary. Services offered by state agencies also lack uniformity on a statewide basis.
- C. Complexity and time requirements for each case – Court hearings set on more than one related case matter simultaneously are often longer in duration. While the model promotes judicial economy and inconvenience to litigants by reducing court appearances in multiple parts of the court system, Unified Family Court Judges hearing complex related case issues must allocate sufficient time for these hearings in their court calendars, and to address emergencies which often arise regarding placement of children.
- D. The need for more judges cross trained in Unified Family Court cases – Not all judges are cross-trained on the scope of jurisdiction encompassing relating case matters involving families. In the spirit of the Florida Supreme Court mandate, subject matter experience and expertise is paramount. Training in these areas takes time, and is also comprised of hands-on training in court, and self-taught training to become fully versed.
- E. Forum shopping – In circuits where cases are transferred to Unified Family Court Judges upon filing related cases, some have indicated concern about forum or judge shopping in order to have a case transferred from the sitting judge. Some circuits may want to consider issuing a Standing Order on Forum or Judge Shopping in order to discourage such a practice.

V. CASE LAW

- A. *Wolfson v. Wolfson*, 185 So. 3d 1273 (Fla. 3d DCA 2016) – mother filed a private petition for dependency 12 days prior to a scheduled evidentiary hearing on child custody issues after the appellate court denied her recusal of the family trial court judge. The filing of the dependency petition triggered the automatic transfer of the case to the Unified Family Court Complex, Litigation Division and a new judge. However, in the family case, the same relief was requested in the mother's cross-petition for modification. Because the case would proceed quickly in Unified Family Court, the appellate court denied the father's motion to enforce the appellate court's mandate instructing the trial court in the family division to hear the pending cross-petitions for modification of child custody.

- B. *Coe v. Coe*, 39 So. 3d 542, 543 (Fla. 2d DCA 2010) – appellate court held that a trial court could not base its decision to grant former wife a permanent injunction against domestic violence on observations it made during a three-day custody hearing in postdissolution of marriage proceedings. The custody matter was a separate and distinct legal proceeding. The trial court’s observations in the custody matter were not part of the record in the proceeding on wife’s petition for an injunction against domestic violence. Further, the trial court did not follow the procedure for taking judicial notice of records and proceedings in the custody matter.
- C. *Department of Children and Families v. D.B.D.*, 42 So. 3d 916 (Fla. 4th DCA 2010) – the appellate court affirmed the family court judge’s decision to dismiss the dependency injunction based on section 39.504, Florida Statutes, because of due process concerns to the father. In dissolving the injunction under section 39.504, Florida Statutes, the family court judge inquired why the Department sought an injunction under the statute when the mother had a remedy available to her in the pending family court case. In addition, the judge who entered the injunction was not apprised of the pending proceedings in family court.
- D. *C.S. v. I.V.*, 899 So. 2d 444 (Fla. 4th DCA 2005) – former husband filed a petition to terminate the rights of the natural father so he could adopt a child who was residing with him after his former wife passed away. The family division dismissed the action on the grounds that the former husband lacked standing. The family division judge entered a final order that denied rehearing. However, the final order allowed the former husband to file a Chapter 39 petition for termination of parental rights. Instead of filing a Chapter 39 petition for termination of parental rights, the former husband filed an untimely notice of appeal. In affirming the trial court, the appellate court noted:
- This case provides a perfect example of the procedural quagmire faced by litigants in attempting to navigate the legal system within the independent divisions of the court. It is for this very reason that our supreme court has advocated the establishment of a Unified Family Court where one judge can resolve the various legal issues affecting one family.
- E. *Perlow v. Berg Perlow*, 875 So. 2d 383, 393 (Fla. 2004) – the Florida Supreme Court held that the trial court’s verbatim adoption of a proposed final judgment was reversible error. In the concurring opinion, Justice Pariente noted that the case served as a reminder of the importance of the guiding principles for a unified family court:
- [O]ur goal continues to be the creation of “a fully integrated, comprehensive approach to handling all cases involving children and families,” while at the same time resolving family disputes in a

fair, timely, efficient, and cost-effective manner. We also stress the importance of embracing methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. (citation omitted).

VI. CONCLUSION

A. Possible Expansion of Unified Family Court to include other proceedings – There is statewide discussion with respect to other types of proceedings being included in the Unified Family Court Model. At this time, these related case types are not included in the scope of jurisdiction pursuant to the Florida Supreme Court mandate, but frequently families with multiple related cases may have one or more of the following case types also pending before another judge:

1. Guardianship proceedings (Chapter 744, Florida Statutes)
2. Juvenile and/or Adult Marchman proceedings (Chapter 397, Florida Statutes)
3. General Jurisdiction matters
4. Domestic Violence criminal misdemeanor cases

B. Questions & Answers