

ALIMONY AND TIME SHARING

WHAT YOU KNOW

DOES NOT WORK

ANY MORE





HIGHLIGHTS ALIMONY

- No retro application - allegedly
- Durational alimony changes
- No prospective permanent
- Written findings required, and more and more
- Retirement (Pimm) codified, and “will retire”
- A Formula -ISH!



HIGHLIGHTS TIME SHARING

- Remove “unanticipated” from mod standard
- Moving within 50 miles is now basis for mod
- REBUTTABLE PRESUMPTION (preponderance of the evidence standard) that 50/50 time-sharing is in the best interest of the child.
- ALL factors must be evaluated with specific written findings of fact

ALIMONY

- SB 1416 NOW THE LAW





EFFECTIVE DATE

- FJ entered on/after July 1, 2023
- Stated to apply to “initial” actions only -
 - *Bachman v McLinn*, 197 So.3d 123 (Fla 2nd DCA 2016) (mod applied as of date of filing mod petition)
 - *Hahn v. Hahn*, 42 So.3d 945 (Fla. 4th DCA 2010) (error to apply statute criteria retroactive when statute not call for it).
- BUT . . .

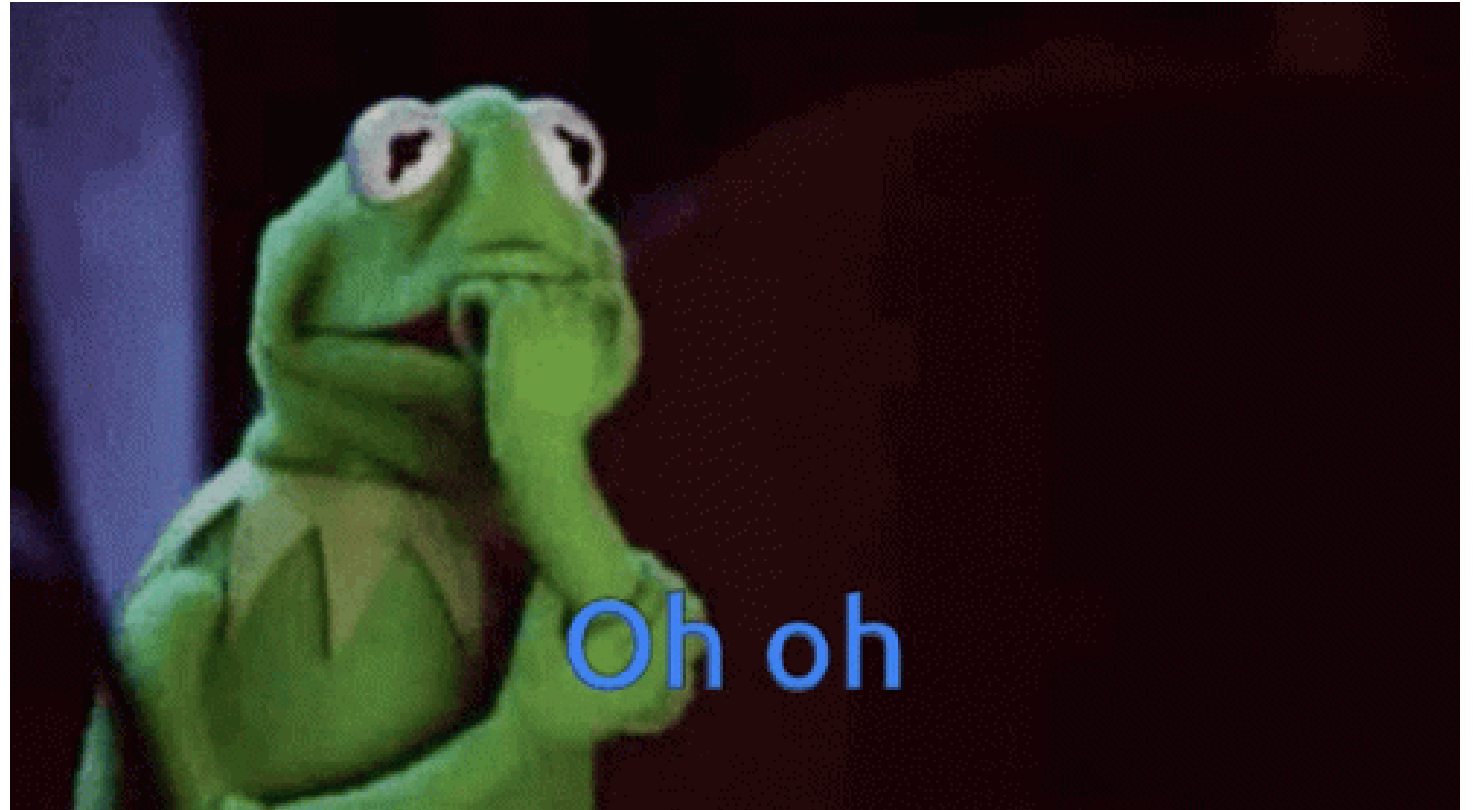
D'OH! WHAT'S THIS DCA???

Valby v. Valby, 317 So.3d 147 (Fla. 4th DCA 2021)

Allowed Obligor to successfully modify alimony from permanent to durational even though durational **did not exist at the time of the initial award.**



MUTTER
(OR CHEER)
AMONGST YOURSELVES



“

I KNOW YOU THINK YOU UNDERSTAND WHAT
YOU THOUGHT I SAID BUT I'M NOT SURE YOU
REALIZE THAT WHAT YOU HEARD IS NOT WHAT I
MEANT.

”

- ALAN GREENSPAN

DURATION OF MARRIAGE

- SHORT – Less than 10 years
- MODERATE – Up to 20 years
- LONG TERM – 20 years or more



PERMANENT ELIMINATED

WHAT SURVIVES

- Temporary
- Bridge-the-gap
- Rehabilitative
- Durational

Can still award lump sum!



REHAB CHANGES

- Limited to 5 years
- Can terminate early if rehab plan ends before anticipated



HERE WE GO Y'ALL



DURATIONAL CHANGES

- Length of marriage changes duration options
- **May not** be awarded for a marriage of less than 3 years
- Must apply a formula



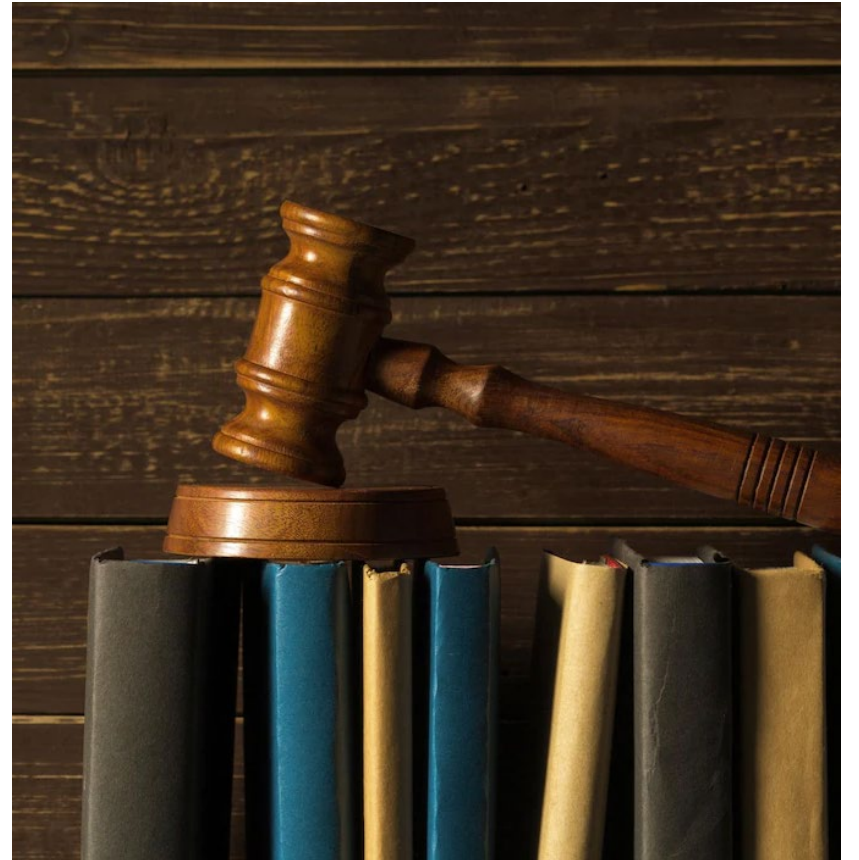
THE FORMULA – PART I

Durational Caps:

- 50% length of short-term marriage
- 60% length of moderate marriage
- 75% length of long-term marriage

Court may award longer only with “exceptional factors” (listed in the new statute)

NEED: Exceptional Circumstances and Clear and Convincing evidence findings





THE FORMULA – PART II

- Amount may not exceed 35% difference of the net incomes of the parties
 - Spouse A Income MINUS Spouse B Income = Sum
 - Sum x 35% = max alimony award
- If actual need is less than that, must go with actual need figure

“

THE ONLY WAY TO LEARN MATHEMATICS
IS TO DO MATHEMATICS

”

- PAUL HALMOS



ALIMONY FACTOR CHANGES

- Standard of living weakened. Focus shifted to post DOM needs and alimony should only be for necessities (two homes cannot run on same \$\$ as one)
- Additional areas of consideration including:
 - Mental health/physical health of the parties
 - Care of children with disabilities
 - Income from assets (both marital and non-marital)
 - Ability to become self-supporting
- Elimination of tax treatment factor (to reflect federal change)

ALIMONY FACTOR CHANGES

- Adultery may be considered **and** “any resulting economic impact” defines scope? Appears also only to apply to amount. Maybe.
- Existence of supportive relationship or reasonable retirement now included in the “any other factor necessary” section.



OTHER TINKERINGS

- If there is child support and alimony was not included in the original IDO, the order of support MUST state either party may seek entry of Amended IDO to include alimony if arrears accrue.
- There are more specifics related to Health Insurance security and can allow for apportionment on need and ability (reflection of case law).





SUPPORTIVE RELATIONSHIP

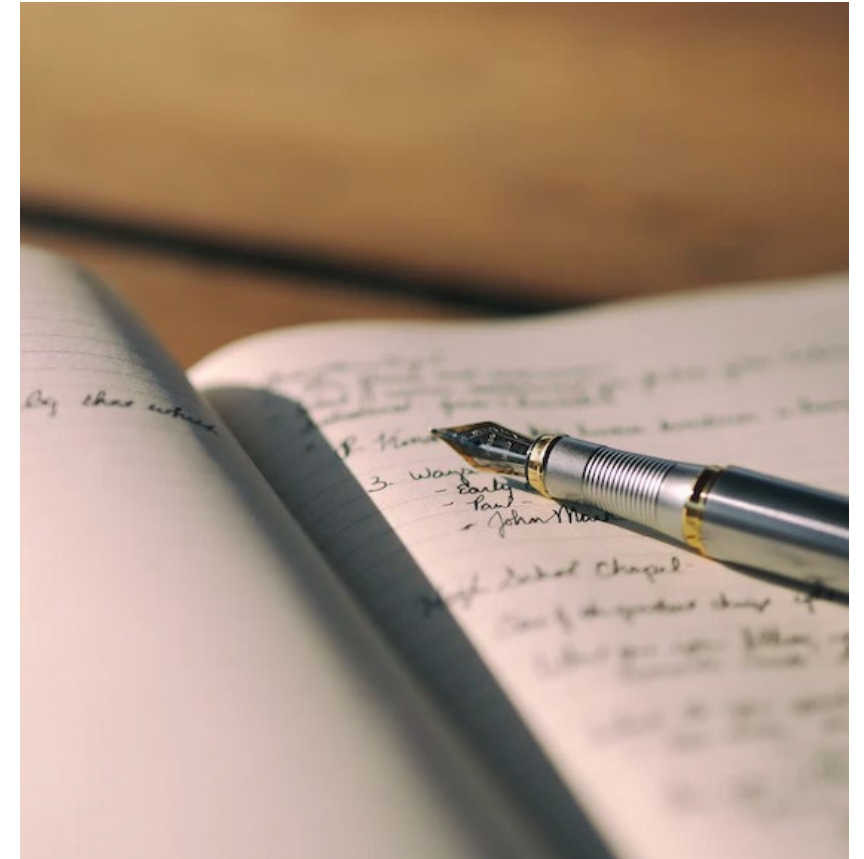
- Applies if relationship “has existed” in year prior to filing with a non-related individual.
- No longer discretionary if there is a finding
- Burden on Obligor to prove relationship existed in the 365 days before filing for DOM, separate maintenance, or modification
 - If proven, burden shifts to Obligee to prove by preponderance of evidence court should not deny or reduce an initial award or terminate an existing award.
- Calls back to 61.08(3) factors and considers whether the Obligor is current.



RETIREMENT

(*PIMM* CODIFIED)

- Must be filed “not more than 6 months” prior to either “normal” retirement age as defined by SSA or as customary for Obligor’s profession.
- “Demonstrable and measurable efforts or actions” must have been taken to retire or retirement has occurred.
- Requires written findings of fact (factors included in the statute)
- Discretionary – burden on Obligor to prove by preponderance of evidence retirement reduces ability to pay.
 - If proven, burden shifts to Obligee to prove by preponderance of evidence should not be terminated/reduced.



BONUS – MOD TS CHANGES!

- Removes “unanticipated” from modification standard (now requires showing of “substantial and material change of circumstances” (NOTE: This is also in HB 1301)
- Adds language that if parents are more than 50 miles apart at the time of last court established time-sharing and a parent moves within the 50-mile radius then that may be considered a “substantial and material” change of circumstance so long as modification in best interest of the child.



SPEAK OF THE DEVIL.....



TIME SHARING

THE THING
NO ONE SAW COMING
WHILE LOOKING AT
THE SHINY – SHINY
OF ALIMONY.



“

IDEALISM INCREASES IN DIRECT
PROPORTION TO ONE'S DISTANCE FROM
THE PROBLEM.

”

- JOHN GALSWORTHY

TS - MODIFICATION CHANGES

- Modification Standard has changed (61.13(2)(c) - SEE ALSO 61.13(3))
- Modification of a parenting plan and time-sharing schedule now only requires a showing of a **substantial and material change of circumstances**
- **UNANTICIPATED** has been removed

TS - MODIFICATION CHANGES

- Where a parent moves within 50 miles that now may be considered a “substantial and material change” and time-sharing may be modified - provided it is in the child’s best interest.

INVALIDATES STUFF LIKE:

- *Moore v. McIntosh*, 128 So.3d 985 (Fla. 1st DCA 2014)
- *Izquierdo v. Del Valle*, 294 So.3d 946 (Fla. 4th DCA 2020)
- *Lyles v. Guffey*, 45 Fla. L. Weekly D2618a (Fla. 1st DCA 2020)
- *Bryan v. Wheels*, 295 So.3d 889 (Fla. 1st DCA 2020)

A wooden gavel with a fluted head and a smooth handle rests on a stack of several books. The books have spines of various colors, including dark grey, blue, and tan. The background is a dark, textured wooden surface.

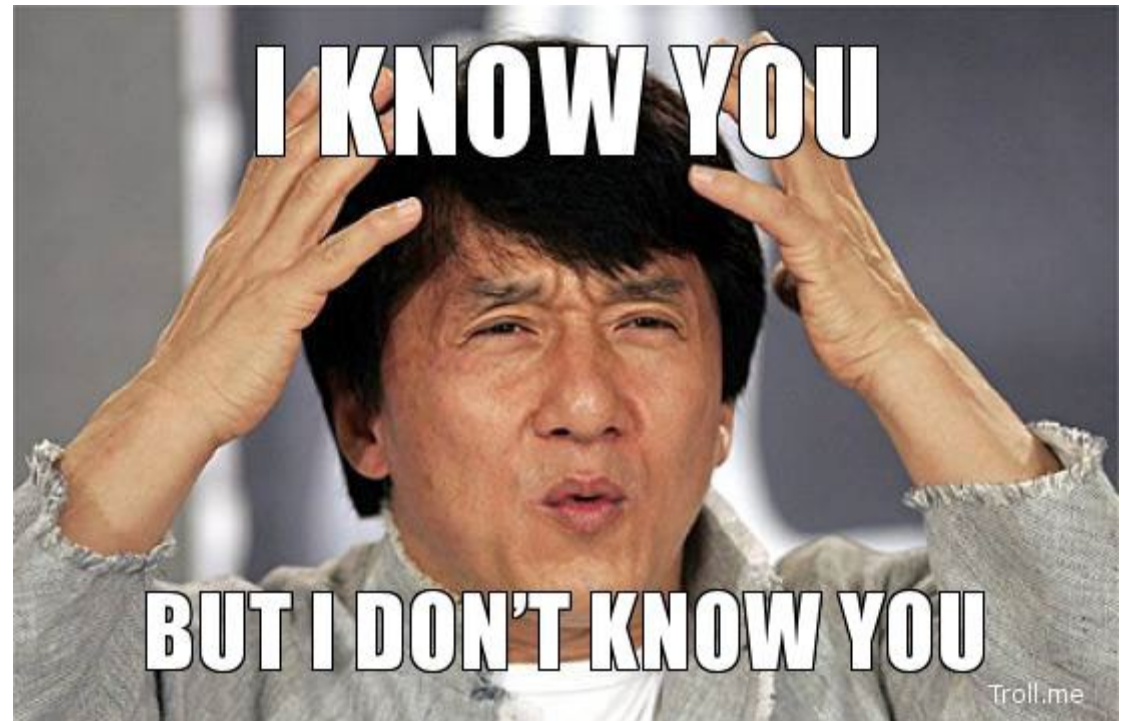
REBUTTABLE PRESUMPTION OF EQUAL TIME

- There is a **rebuttable presumption** equal time-sharing is in the best interest of the child.
61.13(2)(c)(1))
- A party must prove by a preponderance of the evidence that equal time-sharing is not in the best interest of the child.

FAMILY LAW



ALL OF US



Mother as “natural guardian”

- 744.301
- IF father has not established Paternity via 742.011 (getting adjudication in court) or 742.10(1) (signing affidavit or acknowledgement witnessed) then Mother is natural guardian and entitled primary residence.

WHY WOULDN'T BC QUALIFY

742.10

“[i]f and affidavit, a
notarized voluntary
acknowledgement of
paternity, or...”

This would mean no more
Nelson v. Mirra

Mother would not have
right to ex-parte pick up
Order when Father on
birth certificate.

Nelson 335 So.3d 236 5th DCA
2022

MANDATORY WRITTEN FINDINGS ON FACTORS

- Except for those cases where a time-sharing schedule is by agreement, the court **must evaluate all of the factors and make specific written findings of fact** when creating or modifying a time-sharing schedule.

(i.e. no more *Bruce v Bruce*, 243 So.3d 461 (Fla. 5th DCA 2018) stating factors must merely be “considered”).



BREVITY IS THE SOUL
OF WI.....



Is it too late
to switch
specialties?



YOUR HOSTS



HONORABLE
DIANA M. TENNIS

MAGISTRATE
LISA SMITH BEDWELL

