

Zoom Meeting 07/21/2023 @ noon
FL Legislative Changes Affecting Family Law Cases
Meeting Chat

- 00:53:08 Richard West: Is it sufficient to say factor considered but not relevant or is neutral?
- 00:56:03 Lusan Llabona: Is the presumption of equal timesharing effective to pending cases, which may have been filed prior to July 1, 2023?
- 00:59:07 Gabriela Bonilla: Fla bar legislative update briefly discussed case law that may be applicable: Arrow Air v. Walsch (but they didn't provide the cite)
- 01:00:41 Judge Susan Stacy: It seems to me, if you have an agreement before the statute changes, you're bound to the signed MSA unless not in the best interest of the child. Thoughts?
- 01:01:32 Ilvento Law: What if you have a trial before July 1st, but the FJ doesn't get entered until after that date? Would you have to go back to trial?
- 01:02:30 Attorney Gina Perez-Calhoun: How about filing to amend on pending cases that involve alimony particularly for the equities of extending beyond the confines of the 60% of the length.
- 01:03:02 Irene Pons: **Arrow Air v. Walsh 645 So. 2d 422**
- 01:03:52 Maria Espinosa: How can you entertain a Motion to Set Aside a previously signed Mediation Agreement without also ordering the parties and the mediator to testify, and if so, is a change in the law enough to breach confidentiality of the mediation process?
- 01:04:53 Richard West: Do you think it is necessary to amend pending petitions where permanent alimony is requested removing that request so as not to have a "frivolous" request?
- 01:06:00 Gabriela Bonilla: Replying to "Arrow Air v. Walsh..."

Because it accords with widely held intuitions about how statutes ordinarily operate, a presumption against retroactivity will generally coincide with legislative and public expectations. Requiring clear intent assures that the legislature itself affirmatively considers the potential unfairness of retroactive application and determines that it is an acceptable price to pay for the countervailing benefits. Such a requirement allocates to the legislature responsibility for fundamental policy judgments concerning the proper temporal reach of statutes, and has the additional virtue of giving legislators a predictable background rule against which to legislate. The mere fact that retroactive application of a new statute would vindicate its purpose more fully is not sufficient to rebut the presumption against retroactivity.

01:08:04 Mike Snure: How does the statute affect temporary support, if at all?

01:09:20 Judge Sprysenski:
Mike Snure, good question! In speaking with Elisha Roy, we agree that a plain reading of the statute would suggest that the "calculation" would NOT apply to temporary, and the Court may use its discretion applying the 61.08 factual considerations.

01:09:34 Mary Zogg: Does durational period include payments of (1) voluntary support or (2) temporary support paid by way of temporary order?

01:09:58 Attorney Gina Perez-Calhoun: [Maronda Homes 127 So.3rd 1258 \(Fla. 2013\)](#) talking about vested rights [Spiewak 73 So.3d 125-30](#)

01:10:57 John Wallace: great question Mary Zogg

01:11:28 Attorney Gina Perez-Calhoun: Equity: disable dependent children and disabled spouse

01:12:35 Emily Konicek: It is gross income or net for the formula?

01:12:56 Matthew Capstraw: Net Income is used

01:12:58 Attorney Gina Perez-Calhoun: You can combine the caps with lumpsum if you need more, correct?

01:13:46 Tristan Sanders: How is "actual need" defined?

01:14:23 Gary Israel, Esq: Will the pretrial orders include the requirement for these calculations in the pretrial memos?

01:15:09 Mary Zogg: How do we assist you (judges) on cases for which we've already provided a pretrial statement? Should we be filing amendments to give you this math?

01:15:26 Matthew Capstraw: Amendments to the pleadings are supposed to be discussed in case management

01:16:10 Susan Williams, Esq. & Mediator: Would like to request your power point slides. Thanks!

01:16:28 Montine Long, FRP: Replying to "Would like to reques..." Me too please

01:16:31 Camy B. Schwam-Wilcox: slides will be posted on Judge Tennis' page on the website

01:16:56 Gary Israel, Esq: In calculating alimony is the payment of child support included in the definition of "net" income?

01:17:26 Michael Vaghaiwalla: In the case of temporary alimony orders entered prior to the law going into effect that might have led to a higher alimony award that is otherwise available under the new statute are the Courts going to retroactively correct what was owed on the temp. Orders pursuant to the statute at the final award?

01:21:56 Judge Mikaela Nix Walker: I agree Judge Tennis.

01:24:12 Judge Sprysenski: Richard West, as to the filing of amended pleadings, take a look at an oldie but a goodie, [Ryter v. Brennan, 291 So. 2d 55, 57 \(Fla. 1st DCA 1974\)](#). I would suggest that the pleadings be amended based on changes to proper relief based on the change of law (precedent or statute).

01:25:03 Aurora McCreary: In regards to cases where there is a current temporary support award and you are saying those payments deducts time from the ultimate award cap, would that calculate from the date the award was given or from July 1.

01:25:04 Matthew Capstraw: Isn't the adultery just moved up, look at lines 89-94

01:26:22 Mark Rabinowitz: In every case concerning a modification of alimony a motion stating it is improper for the court to retroactively apply the new statute the party contesting the supplemental petition should attack application of the statute. Failure to do so waives the possibility that the Sixth might disagree with the Valby decision.

01:26:43 Judge Sprysenski: Reacted to "In every case concer..." with 👍

01:29:39 Paul W. Darby, Holden & Darby, P.A.: Not sure if we're going to get back to timesharing, but for modification actions, the "unanticipated" requirement for substantial change is now out. Also, moving closer to the other party (when the original order had the parties living more than 50 miles apart), "may" now be a substantial change (and moving closer to the other party can be presumed to be a voluntary action). So where do we land on the requirement that a substantial change be "involuntary"? Is the "involuntary" substantial change requirement (impliedly) out too?

01:29:40 Irene Pons: I am assuming, Friends with benefits, doesn't count? Just if the supportive relationship provides financial support?

01:29:43 Judge Sprysenski: For folks asking about the relationship between durational and temporary alimony, it's critical to review, [Ogle v. Ogle, 334 So. 3d 699, 705 \(Fla. 1st DCA 2022\)](#), which is the latest on this issue.

01:29:52 Amy Goodblatt: What if prior Agreement and Order supportive relationship doesn't count-- Apply Arrow v Walsh?

01:31:13 Judge Sprysenski: Replying to "Does durational peri..."

Mary, read Ogle, which cite is provided below.

- 01:31:36 Judge Sprysenski: Reacted to "Net Income is used" with 👍
- 01:35:20 Vermotta Hall Jackson, Esq.: And DROP was just extended from 5 years to 8 years
- 01:36:38 Karen Middlekauff: Do you anticipate doing more downward modification to "\$1.00" per month to protect from that scenario occurring?
- 01:36:59 Irene Pons: Replying to "Does durational peri..." What if you're already retired when you file? Still do the 61.08 analysis?
- 01:37:23 Judge Sprysenski: Replying to "In the case of tempo..."
Mike, I would also check out [Ogle \(334 So.3d 699\)](#). It does a good job of explaining the difference between temporary alimony awards and other types of support.
- 01:37:33 Karen Middlekauff: Replying to "Do you anticipate do..." I withdraw my question!
- 01:37:52 Kristina Monaco: Replying to "In the case of tempo..." If alimony is modified can it retain its permanent status?
- 01:38:31 Judge Sprysenski: Replying to "In calculating alimo..."
Gary, pursuant to the new statute "Net income shall be calculated in conformity with s. [61.30\(2\) and \(3\)](#), excluding spousal support paid pursuant to a court order in the action between the parties."
- 01:39:26 Mary Zogg: what forms of retirement income will be considered for the mod based on retirement? For example, if H and W split a retirement and each are getting their portion through equitable distribution, will this be income available for payment of support? I presume yes, but the last iteration of the bill went into great detail to muddy the waters in defining income in retirement. With this language not included, is it all income received during retirement?
- 01:40:01 Mary Zogg: I appreciate the findings that need to be included on litigated cases. What level of detail do we need to get into on an uncon?
- 01:40:09 Aurora McCreary: Does this now contradict the prior caselaw related to a parent's rehabilitation (such as sobriety) can be a basis for modification as unanticipated is removed?
- 01:42:29 Aurora McCreary: Does the 50/50 presumption force ramp up schedules or allow it to be unequal due to the current relationships of the parties - for example when the other parent has a lack of a relationship and working through reunification?
- 01:43:37 Nick Shannin: 50 Mile "as the crow flies" case is [Dickson v. Dickson, 169 So. 3d 287](#)

01:43:53 Paul W. Darby, Holden & Darby, P.A.: Okay, so I asked too soon (above). With "unanticipated" now gone, and moving closer if outside 50 miles (presumably a voluntary act) now a substantial change, is the requirement that the substantial change be involuntary now dead too?

01:44:20 Lori Pieper: Does the presumption apply to cases pending before July 1st? For example, could a petition for modification based on a work schedule change that allows for more timesharing filed prior to the new law be amended to request the 50/50?

01:48:31 Attorney Gina Perez-Calhoun: Yesterday's FLA BAR CLE- they gave us the 3 A for Established Paternity: Adjudication, Affidavits or Acknowledgments

01:48:49 Judge Gisela Laurent: I agree

01:49:04 Judge Mikaela Nix Walker: I agree

01:49:12 Judge Barbara Leach: I agree

01:49:35 Karen Middlekauff: I think you can get on the birth certificate WITHOUT doing the notarized form though

01:49:36 Attorney Gina Perez-Calhoun: Will the Court require the copy of the acknowledgement or just copy of the regular birth certificate

01:49:54 Karen Middlekauff: Its the "Long Form" birth certificate - not the generic one, correct?

01:49:57 Judge Gisela Laurent: birth certificate is good for me

01:50:00 Michele M. Bernard, Esq.: The dumb question in the room for clarity: so under this new standard, Father can get a pick up order or have timesharing granted if an Injunction is entered? (if he's on the birth certificate). and do you need to file a copy of the birth certificate into the court file?

01:50:21 Judge Sprysenski: Replying to "How can you entertai..."

Maria, these are great observations. It will not be an easy hearing for sure.

01:50:46 Paul W. Darby, Holden & Darby, P.A.: Replying to "I think you can get ..."

I agree with you - I've seen it, but yesterday at the Fla Bar CLE they said no, it's not possible.

01:50:54 Christopher V. Butler Esq.: Can pick up orders be filed as a stand alone pleadings? (ie no paternity case is filed and dad is on BC but no Ct Ordered timesharing is established)

01:51:34 Natalia Scott: At cert review they made the distinction that in order to get on the BC they're supposed to sign the formal form along with it.

01:52:16 Frank P. Remsen, Esq.: But isn't there case law that says being on the birth certificate doesn't establish paternity without the signed acknowledgment?

01:52:21 Aurora McCreary: Does that somehow now open up relocation problems for parties that are not married if there is a filing around the same time period?

01:52:35 Christine Lomas: Are standing admin. Orders going to indicate 50/50 during pendency of divorce and paternity cases given the presumption?

01:52:42 Judge Sprysenski: Replying to "You can combine the ..."

Not per my plain reading of the new statute. **New statute states: "In an award of alimony, the court may order periodic or lump sum payments." It specifically removes both.**

01:52:46 Irene Pons: You can get the affidavit from Vital Statistics

01:54:12 Judge Sprysenski: Replying to "Will the pretrial or..."

For Division K in Seminole County, I will not be requiring the underlying calculation. Be careful though. Opposing parties may jump on 57.105, Hallac, or other attorney fee mechanisms if positions are taken in litigation that do not comply with calculation.

01:54:54 Judge Sprysenski: Replying to "How do we assist you..."

Mary, I think Demonstratives provided at the time of trial showing the math would be helpful for us. Excel is a cool thing.

01:56:50 Judge Sprysenski: Replying to "I am assuming, Frien..."

Correct Irene. **Supportive relationship = Fla. Stat. 61.14(1)(b).**

01:57:50 Private Corporate Counsel: 2308061N

01:57:53 Judge Diana Tennis: 2308061N

01:58:10 Camy B. Schwam-Wilcox: this was GREAT.. thanks!

01:58:13 Brenda London: Thank you so much Judge Tennis, GM Bedwell and Judge Spry!

01:58:21 Denaro Allen: Thank you!!

01:58:34 Lisa S: Wonderful seminar- thank you!

01:58:39 France Lopez: THANK YOU!!!

01:58:43 Michele M. Bernard, Esq.: I've filed stand alone pick ups several times, but for the mom.

01:58:46 Rachel Gorenflo: Thank you!

01:58:47 Doctor Jones: Thank you Judge Tennis!

01:58:50 Lori Pieper: Thank you so much!

01:59:13 Susan Williams, Esq. & Mediator: Thank you everyone especially Judge Tennis and other Judges THANK YOU.

01:59:17 John Wallace: Thanks the Judges and GMs today for great presentation

01:59:18 Nick Shannin: Bravo! Great seminar; Happy Summer, y'all!

01:59:19 Michael Cortes: Thank you so much for the "brief" overview of all the changes

01:59:55 Christie Lou Mitchell: I thought you need superior right to custody for pick up

02:00:02 Lisa Franchina: Thank you judges and GMs! Great presentation!

02:00:03 Vermotta Hall Jackson, Esq.: Some circuits don't entertain stand alone pick-up actions.

02:00:09 Christopher V. Butler Esq.: Replying to "I've filed stand alo..." I've had a judge in Seminole refuse to address the stand alone

02:00:45 Michele M. Bernard, Esq.: clarity: in cases where child was taken from unwed mother was withheld, I've gotten independent pick up orders entered several times. that's all going away now.

02:01:19 Julia McKee: Do the timesharing changes apply to cases pending as of 7/1 or only to those filed after 7/1 since the statute does not say it impacts pending cases (as opposed to the alimony bill which specifies it applies to filed or pending as of July 1st)?

02:02:15 Susan Williams, Esq. & Mediator: This could be a monthly zoom meeting discussing the practice of these changes. 🗣️

02:02:21 Michele M. Bernard, Esq.: Replying to "I've filed stand alo..." Yeah, I had one in Orange who denied.

02:02:42 Christopher J. Shipley: The trial judge would not allow me to write or modify the proposed final judgment written by Wife's attorney in Bruce v. Bruce. The judge literally flipped a coin at the conclusion of the trial and before announcing his ruling to determine who would draft the final judgment. Wife's attorney "lost" the coin flip and was tasked to write the final judgment even though the ruling was against her client as to alimony and school boundary determination. The judge DID consider all the statutory factors but wife's attorney had not motivation to write the final judgment correctly. The judge signed the final judgment literally on the eve of his retirement so it could not be corrected. Ugh!

02:05:39 Susan Staggs: I would love to see a follow up webinar with this amazing judicial panel as we see more filings and cases tried 😊

02:05:42 Matthew Capstraw: How about a case that is not final, such as pending a motion for rehearing? Is it pending?

02:05:51 John Wallace: what is the definition limits of "pending" ? appeal pending? rehearing pending?

02:07:13 Attorney Gina Perez-Calhoun: The statute provide for the court not needing to do 50/50 as best interest when parties agree, correct?

02:09:20 Lori Pieper: So the 50/50 presumption does apply to cases that are pending as of July 1?

02:10:37 Mark S. Troum, Esq.: What about pending final judgment for dissolution of marriage within which permanent alimony was argued?

02:10:43 Michele M. Bernard, Esq.: [Wheeler v. State 344 So. 2d 244 \(1977\)](#). FL Sup Court case (case Judge Sprysenski just talking about)

02:11:26 General Magistrate Linda Skipper:

Take a look at [Smiley v. State, 966 So. 2d 330 Fla. 2007](#) regarding substantive vs. procedural retroactivity.

02:11:38 Mercedes Wechsler: Is there a way to preserve all the chat questions so we can review later?

02:12:08 Judge Susan Stacy: Vested right cases in civil litigation

02:12:15 Judge Sprysenski: Reacted to "Vested right cases i..." with 👍

02:12:41 Aurora McCreary: What happens if you have a pending Motion for Rehearing/Motion to Vacate, argued that permanent alimony was inappropriate, but not specifically based on the law change since it hadn't yet, can we still put that within the argument at the hearing or amend prior to the hearing?

02:12:54 Karen Middlekauff: Do we know if any lower court decisions have been made and/or is anyone working on an appeal yet regarding modification of alimony on a supplemental petition and if permanent can be awarded on a modification? It has been nearly impossible as a mediator to resolve those in the last weeks without case law.

02:13:08 Susan Williams, Esq. & Mediator: Would love to be able to print out the chat dialogue. Anyone know how to do that?

02:13:36 Deborah Cook: Thank you Tennis, Bedwell, Spry! I am sure we are not finished with discussing these statutory changes.

02:13:52 Judge Susan Stacy: Thank you J Tennis and Bar. I have 1:30 hearings. 🙌

02:14:02 Ilvento Law: Thank you for all of the great information.

02:14:18 Susan Williams, Esq. & Mediator: Thank you

02:14:58 Vanette Augustin: can you repeat the citations

02:15:42 Vermotta Hall Jackson, Esq.: Please include the last cite in the chat

02:15:50 Attorney Gina Perez-Calhoun: Love case on the stand your ground, Arrow and MA RONDA homes and Spiewak

02:16:14 Vermotta Hall Jackson, Esq.: Actually the Hahn case is included on one of the slides

02:16:27 Christine Lomas: Replying to "The trial judge woul..." The Record warranted the reversal by the 5th.

02:17:02 Sonica Cinami: Any guidance for GAL's and how the new presumptions impact our role?

02:17:10 General Magistrate Linda Skipper: **Hahn v. Hahn, 42 So. 3d 945 (Fla. 4th DCA 2010) Smiley v. State, 996 So. 2d 330 (Fla. 2007)**

02:17:20 Attorney Gina Perez-Calhoun: Replying to "The trial judge woul..."
Change in statute that incarceration due to failure to pay child support not a defense any longer

02:20:03 Mark OMara: pls share

02:20:14 Paul Shafranski: Replying to "pls share" seconded

02:20:27 Andrea Zeitune: @Attorney Gina Perez-Calhoun pls!

02:20:42 Deborah Cook: Share!! Awesome research.

02:20:44 Krystal A. Nunez, Esq: Please share

02:20:45 HeatherStewart: Very helpful, thank you Judge Tennis and other honorable contributors to our questions.

02:20:47 Cynthia Winter: Replying to "pls share" Yes please!

02:20:47 Mitzi Motsinger: Thank you so much!

02:20:48 Attorney Gina Perez-Calhoun: Replying to "The trial judge woul..." thank you to everyone

02:20:48 Carina M. Leeson, Esq.: Thank you!!

02:20:49 Bogin, Munns & Munns, P.A.: Please share, thank you!

02:20:50 Irene Pons: Thank you! It was super informative.

02:20:51 Krystal A. Nunez, Esq: thank you

02:20:52 Sophia Marcano: Thank you!

02:20:52 Aurora McCreary: Can we have a quick seminar/email etc on the new GM/Motion to Vacate? Ie specifically timing of Motion to Vacate and Motion for Rehearing of Order?

02:20:52 Vanette Augustin: thank you!!!

02:21:02 La-Zondra Randolph: Thank you!!

02:21:05 Michael Cortes: Thank you! Hope you all have a great weekend!

02:21:06 Marivette G. Rivera, Esq.: Thank you!

02:21:07 Juanita LaRochelle: Thank you!

02:21:09 Bogin, Munns & Munns, P.A.: Thank you!

02:21:14 Judge Barbara Leach: Great info!!!!

02:21:16 Jerrie G Magruder: Thanks.

02:21:17 Lori Pieper: Thank you so much!!

02:21:19 Montine Long, FRP: Thank you!

02:21:21 Vermotta Hall Jackson, Esq.: Thanks!

02:21:24 Meghan McShane-Davis, M.A., J.D.: Thank you!

02:21:31 Megan Malec: Thank you!

02:21:32 Paul Shafranski: Thank you!

02:21:39 Joseph Baker: Thank you! This was very helpful. I hope everyone has a great weekend!

02:21:41 Joel Wilson: Thank you, have a great weekend :)

02:21:43 Ingrid Keller: Thank you - we really appreciate all of the presentation!

02:21:48 Maria Rondel, Esq.: Thank you!

02:21:50 Rachel Licon, Staff Attorney: Thank you for from Pinellas! The sixth circuit thanks you 😊

02:21:56 Janelise Gastell: This was very helpful. Thank you so much!!!

02:22:18 Christopher J. Shipley: CLE info?

02:22:32 Mercedes Wechsler: Ms. Calhoun - please share your MOL

02:22:39 April Phillips, FRP: Thank you! Very helpful!

02:22:56 Denaro Allen: What's the email address for OCBA?

02:23:00 Jessica Sullivan: 2308061N

02:23:03 Cheri Hobbs: 2308061N

02:23:08 Christopher V. Butler Esq.: Thanks!