

Significant Case Law For Attorneys and Mediators

D.B. v. W.J.P., 32 Fla. Law Weekly D 1737 (Fla. 5th DCA Opinion Filed on July 20, 2007):

The underlying action began as a private dependency action under Chapter 39 of the Florida Statutes when the paternal grandmother filed a dependency petition against the parents. Pursuant to a mediation agreement, the parties agreed to dismiss the dependency action and obtain an order granting petition for temporary custody to the grandmother under Chapter 751. The mother appealed this order and argued that the trial court erred by awarding custody without conducting a hearing to address her objections. The Fifth District agreed, and reversed the trial court. Procedurally, this case is interesting. The dependency mediation resulted in an agreement in which the paternal grandmother was given temporary custody of her grandchild. Before the court entered its order approving the agreement, the biological mother objected. The mother stated that she did not agree with the mediation and did not want to settle the case. She felt pressured into going to mediation because her attorney told her it would look good in front of the judge and she would get to keep custody of the child. She wanted to fire her attorney and hire a private attorney to regain custody. The Fifth District Court of Appeal reversed the trial judge's order awarding custody to the grandmother because, among other reasons, the biological mother withdrew her consent to the agreement prior to the entry of the court order and she was entitled to a hearing. The Fifth District stated that it has previously held that the grounds for setting aside an agreement reached through mediation are limited to fraud, misrepresentation in discovery and coercion. Citing *Crupi v. Crupi*, 784 So. 2d 611 (Fla. 5th DCA 2001). However, the Court determined that the *Crupi* standard did not apply in the instant case because the mediated agreement in this case was between the parents and a third party. Under these circumstances, the rule of parental preference allowed the mother to withdraw her consent at any time prior to the court ap-

proving the agreement.

PRACTICE TIP:

The footnote in the court's opinion is instructive: "Because of our reversal on other grounds, we need not reach the mother's additional argument that the mediation agreement was subject to attack on ineffective assistance grounds. However, we note that this argument lacks merit. Generally, a party to an agreement may not move to set it aside on the ground that he or she has received incompetent legal advice. *Casto v. Casto*, 508 So. 2d 330 (Fla. 1987); *Tubbs v. Tubbs*, 648 So. 2d 817, 818 (Fla. 4th DCA 1995). Furthermore, in *S.B. v. Department of Children & Families*, 851 So. 2d 689 (Fla. 2003), the supreme court held that the right to collaterally challenge ineffective assistance of counsel in dependency proceedings is not automatic...."

TRAGEDY AT VIRGINIA TECH

April 16, 2007 will be remembered as one of the darkest days in the history of the Virginia Tech community and the world beyond. To remember and honor the victims of those tragic events, the university has established the Hokie Spirit Memorial Fund to aid in the healing process and generate financial support. The fund will be used to cover expenses including but not limited to: Assistance to victims and their families, Grief counseling, Memorials, Communication expenses and Comfort expenses. If you wish to contribute to this Memorial Fund, please go to www.vt.edu/tragedy/memorial-fund.php and choose "Hokie Spirit Memorial Fund" from the dropdown menu. Thank you.

MY NEW WEBSITE IS UP AND RUNNING

After years of procrastination, I have finally done it. I have my own website. You can find it at these addresses: www.BABMediate.com and www.BruceBlitman.com. The website contains past issues of mediation newsletters, as well as information about current mediation case law, ADR articles I've written and announcements about upcoming mediation seminars and presentations.

Many thanks to Webmaster Gio Gutierrez for his invaluable expertise in designing this site. Please visit this site and let me know what you think. I hope you like it.

DISPUTE RESOLUTION IN THE NEWS-PART I

The October 1, 2007 issue of Sports Illustrated reported that Floyd Landis, the winner of the 2006 Tour de France, the world's most famous cycling event, forfeited his title after an independent arbitration panel upheld his positive doping result obtained during the race. Landis was also banned from the sport for two years, retroactive to January 30, 2007. After a four-month review, the panel ruled that a test that revealed Landis's testosterone level to be artificially high was accurate. Landis, who has a month to appeal the decision, is the first rider in the 105-year history of the Tour to lose his title for a doping violation. Landis proclaims his innocence.

DISPUTE RESOLUTION IN THE NEWS-PART II

The June 14, 2007 issue of The Sun-Sentinel reports that Starbucks Corp. agreed to pay \$85,000 to settle a disability discrimination lawsuit filed in 2006 by the U.S. Equal Employment Opportunity Commission after the company fired a Seattle barista with bipolar disorder. The EEOC stated that Starbucks gave Christine Drake extra training and support while she worked as a barista in its coffee shop for more than two years, starting in 2001. However, in her third year, new management at the coffee shop discontinued the extra support and then fired her, which the EEOC said violated the Americans With Disabilities Act.

FLORIDA LEGISLATURE AMENDS MANDATORY PRE-SUIT MEDIATION PROTOCOL FOR COMMUNITY ASSOCIATION-PARCEL OWNER DISPUTES

Under recent amendments to Chapter 720, Florida Statutes, which became effective on July 1, 2007, the Division of Florida Land Sales, Condominium, and Mobile Homes no longer administers the homeowners' association mandatory mediation program created under section 720.311, Florida Statutes. Chapter 2007-173, Laws of Florida, ended

the Division's mandatory HOA mediation program and replaced it with a private mediation program. Should you have any questions about the new private mediation program, you can visit the Division's web site at <http://www.myflorida.com/dbpr/lsc/hoa/index.shtml> or call (850) 414-6867.

RECOMMENDED READING

The cover story in the August-October 2006 issue of Dispute Resolution Journal, "Mediating The Storm of Katrina/Rita Insurance Claims," by Susan Zuckerman, chronicles the massive effort in which the American Arbitration Association provided an impartial and fair process for mediating the deluge of homeowner insurance claims which arose from the storms, facilitated claims payments and assisted in the process of recovery.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA IS STILL GOING STRONG

In previous issues, I've reported on The Collins Center's long history of assisting the State of Florida with hurricane recovery. The Collins Center, which has served as the administrator for the Florida Department of Financial Services (DFS) Hurricane Mediation Program, has concluded its 2004 hurricane mediation program. Mediation requests from consumers exceeded 12,000 and the program generated an overall settlement rate of 92%.

The DFS and Collins Center's 2005 hurricane mediation program is still fully operational. The Department of Financial Services opened its newest Hurricane Mediation Center in Davie (Broward County), Florida in mid-February, 2006. This Center continues to mediate claims arising out of Hurricane Wilma as well as prior hurricanes, and is now operating Mondays through Fridays. Additional information about these programs is available at www.collinscenter.org or by calling the DFS at 1-800-22-STORM.

MEDIATION AND NEGOTIATION

SEMINARS AVAILABLE

FOR CONTINUING EDUCATION CREDITS

For years, I have written and spoken extensively about mediation and negotiation-related topics, including: “Florida’s Mediation Case Law”; “Ingredients For A Successful Mediation Process”; “The Alternative Dispute Resolution Continuum”; “What Is Your Negotiating Style?”; and “Effective Negotiating Tips And Tactics”. If you want to put on a seminar for your law firm, clients and/or staff, please contact me for details.

RECENT WORKSHOPS

I recently facilitated a group discussion about the movie “Hoosiers” at Nova Southeastern University in Fort Lauderdale. This classic film, starring Gene Hackman as the new basketball coach at a tiny high school in Indiana, is one of my favorite movies. The movie was presented as part of Nova Southeastern University’s inaugural celebration of its International Week of Peace, which provided members of the community with five days of free activities, lectures and special events with peace-related themes.

RECENT APPOINTMENTS

I have been appointed to serve on the City of Cooper City’s newly created Education Advisory Board (EAB). The EAB makes recommendations to the City Commission on matters pertaining to the education of the City’s public school students from elementary school through high school. The EAB and the Broward County Public Schools’ Office of Prevention Programs recently sponsored two parent awareness workshops titled “Bullying Prevention: Who Holds The Real Power?” These programs provided parents and students from elementary school through high school with a number of useful intervention strategies and tips for proactively dealing with bullying issues.

KIWANIS CLUB OF COOPER CITY PARTNERING WITH “RICK CASE BIKES FOR KIDS” PROJECT

I have been elected Secretary for the newly chartered Kiwanis Club of Cooper City. Kiwanis

International is a global organization dedicated to “Serving the Children of the World” through a variety of service projects. As one of our club’s current community service projects, we are working with automobile dealer Rick Case on the “Rick Case Bikes For Kids” program. This program started back in 1982, and has provided thousands of less fortunate children with bicycles each year during the holidays. Together with the Boys & Girls Club and other charities, “Rick Case Bikes For Kids” annually strives to bring joy to the homes of children in Florida, Georgia and Ohio each holiday season. If you have a bicycle in good condition that you no longer need, please “Recycle Your Bicycle” and let me know or bring it to any Rick Case dealership. We will try to find a good home for all of these unwanted bicycles. Bicycles will be collected until the middle of December, and distributed in time for the holidays. Thank you for your generous support.

LITIGATION ALTERNATIVES COMMITTEE

I have previously reported on my appointment to the Litigation Alternatives Committee for the Florida Patient Safety Corporation. This Committee is charged with exploring alternative methods for resolving medical malpractice disputes. I continue to welcome your suggestions, ideas or recommendations on this matter. If you’d like to share, please contact me.

NOTABLE QUOTATIONS

“People do not decide to become extraordinary. They decide to accomplish extraordinary things.”

- Sir Edmund Hillary

“It is amazing how complete is the delusion that beauty is goodness.”

- Leo Tolstoy (1828-1910)

“The beaten path is the safest, but the traffic’s terrible.”

- Jeff Taylor

“People will accept your ideas much more readily if you tell them Benjamin Franklin said it first.”

- David H. Comins

“Flattery is like chewing gum.
Enjoy it, but don’t swallow it.”
- Hank Ketcham

“A synonym is a word you use when you can’t
spell the first word you thought of.”
- Burt Bacharach

“Twenty years from now you will be more
disappointed by the things you didn’t do than by
the ones you did do. So throw the bowlines. Sail
away from the safe harbor. Catch the trade winds
in your sail. Explore. Dream. Discover.”
- Samuel L. Clemens

“If no one ever took risks, Michelangelo
would have painted the Sistine Floor.”
- Neil Simon

“Nobody cares if you can’t dance well.
Just get up and dance.”
- Dave Barry

“I spent my 30s fixing everything
I broke in my 20s.”
- Eddie Murphy

“Fashion is something that goes in
one year and out the other.”
- Denise Klahn

“The nice thing about being a celebrity is that
when you bore people, they think it’s their fault.”
- Henry Kissinger

“Directing is really exciting. It’s more fun to be
the painter than the paint.”
- George Clooney

“A bookstore is one of the only pieces of evidence
we have that people are still thinking.”
- Jerry Seinfeld

SEMINAR PRESENTATION

I am an approved instructor for Florida Atlantic University’s Small Business Development Center (FAU SBDC), which is based in Boca Raton. In October, 2007, I presented a two-hour seminar titled “The Mediation Advantage: Getting Ahead By Getting Along In Business” at the Southwest County Regional Library in Boca Raton. The FAU SBDC is an outstanding resource, providing free

business assistance to small businesses in Florida. These SBDC programs are free and the public is welcome to attend. Sadly, these resources are sometimes underutilized and programs are not always well attended. Please let your business clients and colleagues know about the existence of the FAU SBDC (and other) Business Development Centers in Florida. Please visit the FAU SBDC web site at: www.fausbdc.com or call (561) 297-1140 for more information. Thank you.

MESSAGES OF THANKS TO OUR TROOPS

To remember our troops in Iraq and around the world who risk their safety every day on our behalf, messages of appreciation and support can be sent via www.OperationDearAbby.net.

25 YEARS AS A FLORIDA LAWYER - AND COUNTING!

In May, 2007, I celebrated my twenty-fifth anniversary as a member of the Florida Bar. How quickly the years have passed. I appreciate your patronage and generous support through the years. It is always an honor and privilege to be of service to you and your clients. I am looking forward to another 25 years as a member of The Florida Bar and as a certified County, Family and Circuit Civil Mediator.

WORTHY CAUSES

2008 DAVIE-COOPER CITY RELAY FOR LIFE: The Relay For Life is the American Cancer Society’s Signature Event. This is a fun-filled overnight event designed to bring together those who have been touched by cancer in our community. At the event, people celebrate survivorship and raise money to help the American Cancer Society in its mission to save lives, help those who have been touched by cancer, and empower individuals to fight back. During the event, teams of people gather at Cooper City High School and take turns walking laps. Each team tries to keep at least one member on the track at all times. The Relay is a time to remember those lost to cancer and to celebrate those who have survived. By joining

together as volunteers and donors, we are helping the American Cancer Society strive towards a future where cancer doesn't take the lives of friends and family. The 2008 Relay For Life will be held on March 15 through March 16, 2008 at Cooper City High School. Volunteers at all levels are needed. City Commissioner Elliot Kleiman chairs this event. For more information, you can call him at (954) 434-4300. Donations can be made payable to: American Cancer Society, whose toll free number is 1-800-ACS-2345, or to the attention of Commissioner Kleiman or me. Thank you.

THE COOPERATIVE FEEDING PROGRAM:

This 20-year-old agency, which dishes out more than a million meals a year, also provides free haircuts and other services to the needy, such as food stamp information and legal advice, with the help of volunteers. The agency also has an emergency food pantry that periodically supplies families with enough groceries to get them by for a few days. The program has seen a 25% increase in the demand for free food over the last year, but funding has been flat for the same period. Checks can be mailed to: The Cooperative Feeding Program, 1 NW 33 Terrace, Fort Lauderdale, Florida 33311. For more information, call (954) 792-2EAT (2328) or visit feedingbroward.org. Thank you.

THE GIFT OF LIFE: For information on how to become an organ donor, please visit www.organdonor.gov. Thank you.

UNIVERSITY OF MIAMI-NOVA SOUTHEASTERN UNIVERSITY CENTER FOR AUTISM & RELATED DISABILITIES (UM-NSU CARD):

Is dedicated to optimizing the potential of people with autism, dual sensory impairment and related disabilities. In 1993, the legislature passed a statute that appropriated startup funds to establish the Center for Autism and Related Disabilities (CARD) at sites throughout Florida, including the University of South Florida, the University of Miami, Florida State University, University of Florida at Gainesville and Jacksonville, and the University of Central Florida. Individuals of any age with autism, pervasive developmental disorder,

dual sensory impairment or sensory impairment with other disabling conditions, their family members, friends and professionals are eligible to receive CARD's free service. For contributions or information, please contact UM-NSU CARD's main office at: 5655 Ponce de Leon Boulevard, Coral Gables, Florida 33125-0725 Telephone: (305) 284-6563, 1-800-9-AUTISM, Fax: (305) 284-6555 www.umcard.org. Thanks.

MAKE-A-WISH FOUNDATION:

Since 1980, the Make-A-Wish Foundation has granted more than 144,000 wishes for children with life-threatening medical conditions. It is the largest wish-granting charity in the world, with 74 chapters across the United States and its territories and 28 international affiliates on five continents. For more information, please visit the Make-A-Wish web site at: www.wish.org or call (866) 880-1382 (toll-free). You can also support the Make-A-Wish Foundation by returning a generous tax-deductible contribution to the Gift Processing Center at: P.O. Box 97104, Washington, DC 20090-7104. Thank you.

PEDIATRIC BRAIN TUMOR FOUNDATION:

The Pediatric Brain Tumor Foundation is dedicated to supporting the search for the cause and cure of childhood brain tumors. For more information, please contact the Foundation at: Pediatric Brain Tumor Foundation, 302 Ridgefield Ct, Asheville, North Carolina 28806, (800) 253-6530, www.curethekids.org. Thank you.

NATIONAL CANCER FOUNDATION FOR CANCER RESEARCH:

Founded in 1973 to support cancer research and public education relating to the prevention, early diagnosis, better treatments and ultimately, a cure for cancer. For more information, please visit www.NFCR.org or call 1-800-321-CURE. Thank you.

EASTER SEALS DISABILITY SERVICES:

Easter Seals mission is to provide exceptional services to ensure that all people with disabilities or special needs and their families have equal opportunities to live, learn, work and play in their communities. For more information, please

visit www.easterseals.com or call 1-800-221-6827.
Thank you.

PACE CENTER FOR GIRLS, INC.:

Provides girls and young women an opportunity for a better future through education, counseling, training and advocacy. PACE values all girls and young women, believing each one deserves an opportunity to find her voice, achieve her potential and celebrate life defined by responsibility, dignity, serenity and grace. Since its inception, PACE Center for Girls, Inc. has played a critical role in promoting gender responsive programming, influencing juvenile justice policy and changing the lives of over 12,000 at-risk girls. PACE is a not for profit, 501(c)(3) minority provider that has 22 locations in Florida (19 direct care centers and 3 outreach locations), with its headquarters in Jacksonville. For more information, please visit the website at www.pacecenter.org or call Aggie Pappas, MSW, Executive Director of the PACE Center for Girls Broward at (954) 561-6939. Thank you.

AMERICAN LUNG ASSOCIATION:

It's mission is to prevent lung disease and promote lung health. To learn more, please call 1-800-LUNG-USA (1-800-586-4872) or visit www.lungusa.org. Thank you.

DO YOU HAVE A FAVORITE CHARITY?

I am always interested in informing our readers about worthy causes. If there is some cause you want me to share with our readers in future issues of this newsletter, please send me an e-mail or a brochure which describes the charitable organization and its mission. I will be pleased to help you share this information.

MAY I ASK A FAVOR?

IF YOU HAVE A QUESTION OR SUBJECT you'd like me to address in this newsletter, please send me an e-mail with your suggestion. Thanks.

PLEASE FORWARD: If you'd like to share this newsletter with your partners, associates, clients, friends and colleagues, feel free to forward this issue including the copyright notice.

ADDRESS CHANGES:

If you want to continue to receive my newsletter, please make sure I have your current e-mail address.

QUESTIONS? COMMENTS? IDEAS? OPINIONS?

I'm always happy to hear from you. How can it be Autumn already? The kids have almost completed one-quarter of the new school year. Fields are ablaze in bright orange as pumpkin patches have sprouted everywhere. Halloween is just around the corner, and the holiday season is rapidly approaching. It has been a remarkable season for college football (Congratulations to USF on an amazing season-so far. For the rest of our Florida teams, there's still a lot of football to be played this season). As far as professional football is concerned, the Miami Dolphins can still make it to the playoffs-if they win their remaining ten games. Baseball is winding down, and hockey and pro basketball are gearing up. I hope that you and the members of your family and staff are well. The air is a little bit dryer and a (little) bit cooler. Enjoy the beauty of autumn and the upcoming celebration of the holidays with family and friends. Have a very safe Halloween and a Happy Thanksgiving. I am grateful and thankful for your loyal patronage through the years. As always, Best wishes for much Good Health, Good Luck and Good Mediation in 2007 and beyond.

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