

Significant Case Law For Attorneys and Mediators

Marjon v. Lane, 995 So. 2d 1086 (Fla. 2nd DCA Opinion filed November 26, 2008): The former husband argued that the trial court erroneously dismissed his amended motion to set aside a mediated settlement agreement. The parties had an infant daughter at the time of their dissolution. When the former husband returned to Florida after the dissolution, he sought to increase his visitation time because of his new proximity to the child. He also sought to reduce his child support obligations because of changed circumstances. Court-ordered mediation resulted in a mediated settlement agreement which provided that "...each party states that no duress, undue influence, fraud or overreaching has been utilized by any party in the negotiation, and that this Agreement is fair and reasonable to all parties." Subsequently, the former husband moved to set aside the mediated settlement agreement on these grounds, and later amended the motion. The former wife filed a motion to strike or dismiss, claiming that the final provision of the mediated settlement agreement barred relief. The trial court agreed with Ms. Lane, and dismissed the amended motion with prejudice.

However, the appellate court held that the clause at issue did not bar the trial court's consideration of whether the mediated settlement agreement was procured by fraud, duress or coercion. The court stated "...where a party, such as Mr. Marjon, sufficiently pleads duress, coercion, or fraud in the inducement, he or she is entitled to a hearing on the merits of the motion." Finding that this clause did not bar the trial court's consideration of whether the agreement was procured by fraud, duress or coercion, the Second District reversed the trial court's ruling and remanded with directions for a hearing on the merits.

Silver v. Silver, 992 So. 2d 886 (Fla. 2nd DCA Opinion Filed October 24, 2008): The former husband appealed from an amended final judgment of dissolution of marriage that ratified the parties' mediated settlement agreement and antenuptial agreement and incorporated them into the final judgment. The Second District agreed with the former husband's contention that the trial court erred

when it included in the amended final judgment an award to the former wife based on claims she raised for the first time after the parties had entered into a binding mediation agreement. The parties agreed to mediate and reached a settlement that they memorialized in a written mediation agreement. The parties and their attorneys signed the agreement, and the mediator filed it in the trial court. The appellate court agreed with the former husband that the language of the mediation agreement was unambiguous and that the trial court's interpretation of that language is contrary to its plain meaning. The mediation agreement stated it is a "full and complete settlement of the issues." The mediator reported that "all issues" had been settled. Where the parties entered into a mediation settlement agreement which on its face stated that it is a full and complete settlement, and where the mediator reported that all issues had been settled (rather than indicating pursuant to Rule 12.740(f) that any issues remained to be litigated), the trial court erred in allowing the wife to amend her petition and claim enforcement of the antenuptial agreement and request lump-sum alimony as well as receiving the benefits pursuant to the antenuptial agreement. The trial court's conclusion that the mediation agreement did not settle the issues of the antenuptial agreement because it did not mention the agreement was error. It was improper to also allow the former wife to pursue the provisions she wished to hand pick to enforce out of the antenuptial agreement.

Rosemary T. Learn v. The Financial Well, Inc.; 33 Fla. L. Weekly D 1915 (2nd DCA Opinion filed August 6, 2008): Ms. Learn appealed a final judgment that enforced the default provision of her Mediation Settlement Agreement with The Financial Well, Inc. The appellate court agreed with Ms. Learn that the result of the circuit court's decision to enforce the mediated settlement agreement's default provision in strict adherence to its terms seemed harsh under the circumstances of the case. However, the Second District affirmed the final judgment because Ms. Learn could not invoke the doctrine of substantial performance to escape the remedy that the parties chose as the consequence of a deficiency in her performance under the terms of the mediated settlement agreement.

PRACTICE TIP:

A trial court may conduct a full evidentiary hearing where a party sufficiently pleads that a mediated settlement agreement was procured through duress, coercion or fraud in the inducement. However, should a trial court determine that these grounds do not exist, it is highly probable that the trial court will enforce the mediated settlement agreement and the parties will be bound by all of the terms and conditions of their agreement. As always, please be careful out there.

PLEASE VISIT MY WEBSITE

The “new” website is now more than two years old. 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 caselaw, 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.

RECENT DEVELOPMENTS

I recently completed a full day of mediation training provided by The Collins Center for Public Policy. The seminar was intended to educate mediators on the use of “Court Authorized Foreclosure Managed Mediation.” In these disputes, the parties have been ordered to mediation by the trial court in an effort to assist homeowners/borrowers whose owner-occupied, residential property is the subject of a mortgage foreclosure action. The homeowners will meet with a mediator and the lender to try to reach an agreement.

Jason L. Steinman of the Law Offices of Sandler & Sandler in Hollywood and I recently presented “The Florida Bar’s Legal Guide For New Adults” to 120 high school juniors and seniors at Cooper City High School in Broward County. The Guide pamphlet is published as a public service for consumers by The Florida Bar’s Public Information and Bar Services Department. It contains practical information about Consumer Protection, Contracts, The Court System, Credit, Criminal Charges, Drinking Laws, Driving, Environmental Responsibility, Employment, Federal Income Tax, Jury Duty, Landlord/Tenant, Marriage, Paternity Issues and Voting. In order to make the presentations more “entertaining” for high school students, Mirieth Valenciano-Marin in The Florida Bar’s Public Information Department

has developed a visually interesting Powerpoint presentation of this material. For more information, you can contact Mirieth at 1-850-561-5773 or e-mail her at **mvalenciano-marin@flabar.org**.

RECOMMENDED READING

“**Mandatory Mediation**” by **Monica Hatcher (mhatcher@MiamiHerald.com)** was published in the April 23, 2009 edition of The Miami Herald’s Business section. This article reports that the Miami-Dade County Circuit Court is moving ahead with plans to require mediation between borrowers and lenders before foreclosures can proceed. Circuit Judge Jennifer Bailey, who chairs a special task force formed by The Florida Supreme Court to address potential solutions to the foreclosure crisis, stated that the court will launch the pilot mediation program on May 1, 2009 as a way of uncovering any faults and experimenting with it before it is considered as a statewide measure. Judge Bailey said this program will help ensure that borrowers have an opportunity to get a loan modification or other assistance before they lose their homes to foreclosure.

“**Foreclosure Mediation Is Gaining Momentum**” appears on page 16 of the March 15, 2009 edition of The Florida Bar News. This article reports that Chief Judge William Roby of the 19th Circuit signed an administrative order requiring prehearing mediation for residential properties in foreclosure. The circuit has faced the fastest growth of foreclosures in recent years, with the number of filings rising more than 1,400 percent. The 19th Circuit program requires the party filing for foreclosure to designate whether the property is owner-occupied. If so, the case will be referred to mediation through the Collins Center for Public Policy and the mortgage-holder will pay a \$750 fee to the center to cover the cost of mediation.

“**Mediation Could Be A Key To Reducing Court Caseloads**” by **Mark D. Killian** appears on page 17 of the March 15, 2009 edition of The Florida Bar News. I was fortunate to be one of three veteran mediators and dispute resolvers interviewed by Mark for this article. The others are mediator/arbitrator and Tampa lawyer Cary Singletary and Sharon Press, longtime director of the Supreme Court’s Florida Dispute Resolution Center. In this article, we discuss future trends for the utilization of mediation and alternative dispute resolution. This article is posted on my website.

DISPUTE RESOLUTION IN THE NEWS-PART I

An article in the Business Section of the February 28, 2009 edition of The Miami Herald reported that Florida joined 26 other states in a settlement with Coke, Nestle and Beverage Partnership Worldwide over deceptive advertising claims surrounding a green tea beverage that supposedly causes weight loss. The companies agreed to pay \$650,000 to the states involved in the probe and modify their advertising to include disclaimers about weight loss benefits.

DISPUTE RESOLUTION IN THE NEWS-PART II

An article in the Business Section of the February 28, 2009 edition of The Miami Herald reported that a company that sold some 80,000 tubes of toothpaste containing a poisonous ingredient pleaded no contest to violating California's health and safety code. The company pleaded no contest to a misdemeanor and will donate \$33,000 to charity.

DISPUTE RESOLUTION IN THE NEWS-PART III

In the last edition of this newsletter, I reported that Philadelphia Phillies first baseman Ryan Howard asked for \$18 million in salary arbitration, the third-highest figure submitted since the process began in 1974. Philadelphia offered \$14 million to Howard. Howard, who won the 2006 NL Most Valuable Player Award, hit 48 homeruns and drove in 146 runs during the 2008 season, and helped the Phillies win their first World Series title since 1980. Shortly after my newsletter was published, it was reported that the Phillies and Howard had signed a lucrative, long-term contract and avoided salary arbitration.

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.

NOTABLE QUOTATIONS

"Rudeness is the weak man's imitation of strength."

-Eric Hoffer

"The more elaborate our means of communication, the less we communicate."

-Scientist Joseph Priestly

"Unless a man undertakes more than he can possibly do, he will never do all that he can."

-Author Henry Drummond

"The learned man knows that he is ignorant."

-Victor Hugo

"Forgive your enemies, but never forget their names."

-John F. Kennedy

"Seven days without laughter makes one weak."

-Cartoonist Mort Walker

"Youth is happy because it has the ability to see beauty. Anyone who keeps the ability to see beauty never grows old."

-Franz Kafka

"Success is to be measured not so much by the position that one has reached in life as by the obstacles which he has overcome while trying to succeed."

-Booker T. Washington

"We can best get justice by doing justice."

-Theodore Roosevelt

"Time is really the only capital that any human being has, and the one thing that he can't afford to lose."

-Thomas Edison

"It's a recession when your neighbor loses his job; it's a depression when you lose yours."

-Harry Truman

"The heart of a fool is his mouth, but the mouth of a wise man is his heart."

-Benjamin Franklin

"Weakness of attitude becomes weakness of character."

-Albert Einstein

"There are two kinds of failures: those who thought and never did, and those who did and never thought."

-Laurence J. Peter

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.

20 YEARS AS A SUPREME COURT CERTIFIED COUNTY AND CIRCUIT CIVIL MEDIATOR-AND COUNTING!

In February, 2009, I celebrated my twentieth anniversary as a Florida Supreme Court certified County and Circuit Civil mediator. How quickly the years have passed. It doesn't seem possible that I completed the training course so many years ago. I greatly 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 (at least) another 20 years as as a certified County, Family and Circuit Civil Mediator.

“KICK FOR NICK” PROJECT

On May 26, 2008, Memorial Day, I watched a beautiful and moving story on ESPN's "Outside the Lines" program about Private First Class Nick Madaras, who was tragically killed while serving in Iraq. The story by Tom Rinaldi described a program called "Kick For Nick," which was established by Nick's father, Bill Madaras, and friends and neighbors, to honor Nick's memory and promote Nick's dream of improving relations between American soldiers and Iraqi children through the sport of soccer. Shortly before his death, Nick asked his father to send him some soccer balls so that he could play with the game with Iraqi youngsters. Nick was going to give these balls to the children so they could enjoy playing soccer with the troops and develop friendships with them. Sadly, Nick was killed before the soccer balls were delivered. The "Kick For Nick" Foundation was established to carry out Nick's vision for friendship and peace. Soccer balls are collected, they are each inscribed with Nick's name on them and they are shipped to American soldiers in Iraq. These soldiers personally deliver the soccer balls to Iraqi children and tell them about Nick's dream. To learn more about this wonderful project, please visit the website at www.kickfornick.com and www.kickfornick.org. The site contains video about the program, as

well as photographs of American soldiers and Iraqi children playing soccer and testimonial letters from American soldiers describing the positive affect this project has had on everyone.

OTHER WORTHY CAUSES

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 SOUTH- EASTERN UNIVERSITY CENTER FOR AU- TISM & 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.

EASE FOUNDATION, INC.: The mission of this 501(c)(3) non-profit foundation is "To aid those qualified residents who are in need of temporary emergency assistance with food and financial help. Our objective is to assist them back into a self-sustaining, productive life." EASE helps approximately one hundred families each month that come into the office for groceries. EASE only handles non-perishable items, paper products and canned goods for its pantry. The shelves are in need of food. If your business, church or organization would like to have food drive, please contact Linda Owen at (954) 797-1077 or e-mail Linda_owen@davie-fl.gov. Thank you.

MILES FORMONDAYS: The Miles For Mondays program was developed to encourage donors to give platelets on Mondays. Platelets are needed to treat patients who are in danger of bleeding and do not produce enough platelets themselves to protect against fatal internal bleeding. The program has now been expanded to include Saturday platelet donors as well. Just donate platelets two eligible Mondays or two eligible Saturdays in a row and earn American Airlines AAdvantage Miles. To schedule an appointment, please call the Community Blood Centers of South Florida at (800) 869-9628, ext. 5608 or visit online at www.cbcsf.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 is it possible that it is already springtime? The baseball season is now in full swing. The Marlins, after a torrid start, have returned to earth but remain in contention. Although the NBA playoffs are just getting started, the Miami Heat's basketball season is over. On the bright side, the team showed great improvement just to make it into the playoffs. Next year promises to be even better. The end of another school year is in sight. Summer (and summer vacation) is just around the corner. If you made any resolutions for the New Year, I hope you are still on track. If you have fallen off course, it is never too late to try again. Hang in there and don't give up. Relax and enjoy the wonders of Spring. Many thanks for your loyal patronage for so many years. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2009 and beyond.

BRUCE A. BLITMAN, ESQ.

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