

## Significant Case Law For Attorneys and Mediators

**Moralinda Rachid v. Omaira Torres Perez, 35 Florida Law Weekly D 204 (Fla. 3rd DCA, Opinion Filed on January 20, 2010):** In 1978, Rachid and Arnaldo Martell, the Decedent, entered into a prenuptial agreement, which provided that the past, present and future property of each spouse would remain the property of the respective spouse. Martell died in 2006 while divorce proceedings were pending. Rachid sought an elective share of the Decedent's estate, among other property. The trial court ordered mediation; the parties reached a mediated settlement; and the trial court approved the agreement. When Rachid failed to comply with the settlement agreement, the personal representative of the estate moved to enforce the settlement. The settlement provided that Rachid would receive \$300,000 in exchange for relinquishing her interest in two parcels of real property and the financial accounts of the Decedent and acknowledging the validity and enforceability of the Decedent's will and trust. The trial court granted the motion to enforce the settlement agreement. Subsequently, Rachid sought rescission of the settlement agreement based upon unilateral mistake. Citing *Tilden Groves Holding Corp. v. Orlando/Orange County Expressway*, 816 So. 2d 658, 660 (Fla. 5th DCA 2002) and *Sponga v. Warro*, 698 So. 2d 621, 625 (Fla. 5th DCA 1997), the Third District observed that "Cases settled in mediation are especially unsuited for the liberal application of a rule allowing rescission of a settlement agreement based on unilateral mistake." Similarly, the Third District found that Rachid had an obligation to read and know the legal parameters regarding the validity and application of the prenuptial agreement prior to mediation, citing *Leff v. Ecker*, 972 So.2d 965 (Fla. 3rd DCA 2007) (holding that where the plaintiff entered into a mediated settlement agreement with a limited knowledge of the relevant facts, the plaintiff bore the risk of mistake). The Third District found that the trial court did not abuse its

discretion in concluding that Rachid presented no valid basis for relief, and affirmed the trial court's order denying her motion for rehearing and her motion to set aside the order granting the motion to enforce the mediated settlement agreement.

### Practice Tip

This case demonstrates how challenging it can be to set aside a mediated settlement agreement. " 'Buyer's remorse' is not a sufficient basis for overturning a marital settlement agreement freely and voluntarily entered into.", *Tanner v. Tanner*, 975 So.2d 1190 (Fla. 1st DCA 2008)

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF APPELLATE PROCEDURE AND THE FLORIDA RULES FOR CERTIFIED AND COURT-APPOINTED MEDIATORS, 35 Fla. L. Weekly S 405 (Supreme Court of Florida Opinion Filed July 1, 2010):** Having considered the Committee on Alternative Dispute Resolution Rules and Policy's petition and the concerns presented by the ACRC, the Supreme Court adopted the proposed amendments to proposed rules 9.700, 9.720, and 9.730. The Supreme Court also adopted the Committee's proposed amendments to the Florida Rules for Certified and Court-Appointed Mediators. Rule 9.720 (Mediation Procedures) is modified to permit the parties to agree to attend mediation electronically. Rule 9.730 (Appointment and Compensation of the Mediator) requires that a certified appellate mediator, whether designated by the parties or appointed by the court, be licensed to practice law unless otherwise agreed to by the parties. Rule 10.100 (f) of the Florida Rules For Certified And Court-Appointed Mediators provides: "Appellate Mediators. For initial certification as a mediator of appellate matters, an applicant must be a Florida Supreme Court certified circuit, family or dependency mediator and successfully complete a Florida Supreme Court certified appellate mediation training program."

The amendments are effective immediately upon the release of this opinion on July 1, 2010.

## **MY “NEW” WEBSITE IS UP AND RUNNING**

The “new” website is now more than two years old. You can find it at these addresses:

[www.BABMediate.com](http://www.BABMediate.com) and [www.BruceBlitman.com](http://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.

### **RECOMMENDED READING**

“The Topic is Civility” by Robert C. Josephsberg is a “must read” article for all attorneys and judges. It should be required reading in every law school. Copies should be presented to new attorneys when they are admitted to The Bar and to new judges at their robing ceremonies. Josephsberg is a distinguished attorney with the Miami, Florida law firm of Podhurst Orseck and a past dean of the International Academy of Trial Lawyers. This excellent article is based on his annual dean’s address in 1996 and first appeared in the January, 1997 edition of The Florida Bar Journal. Josephsberg states “Civility is courtesy, dignity, decency and kindness.” He proposes nine ways that we can improve the environment of civility and suggests that if we will do any one, or a few of these, we can start to turn the tide against incivility. This thoughtful, well-written article is as relevant today (if not more so) as when it was first published.

“Be Proactive in Minimizing Risk of Workplace Violence” by Suzanne Bogdan was published in the March 15, 2010 issue of The Miami Herald. Bogdan, a partner in the Fort Lauderdale office of Fisher & Phillips, a management-side labor and employment law firm, suggests policies and practices which can help employers provide a safer workplace for their employees and reduce the risk of violence. Sadly, on August 3, 2010, in the latest outburst of workplace violence, a driver for a beer distributor fatally shot eight fellow workers, wounded two others and then killed himself at the company’s warehouse in Manchester, Connecticut. This is an important article to read during these

emotionally and economically challenging times.

## **DISPUTE RESOLUTION IN THE NEWS**

### **-PART I**

An article in the August 11, 2010 edition of The Miami Herald reported that the maker of a drug used to treat epileptic seizures will pay Florida \$3 million to settle allegations it marketed the drug for other conditions, including bipolar disorder and drug and alcohol addiction. Ortho-McNeil-Janssen Pharmaceuticals will pay a total of \$51 million to Florida and other state Medicaid programs, which paid for more Topamax prescriptions than necessary. The agreement settles allegations that Ortho-McNeil-Janssen engaged in a company-wide scheme to market Topamax for uses not approved by the Food and Drug Administration.

## **DISPUTE RESOLUTION IN THE NEWS**

### **-PART II**

An article in the July 23, 2010 edition of The Miami Herald reported that computer maker Dell Inc. is paying \$100 million to settle federal regulators’ charges of using fraudulent accounting to meet Wall Street earnings targets. Under the settlement announced by the Securities and Exchange Commission, company Chairman and CEO Michael Dell agreed to pay a \$4 million civil penalty. The SEC said the company also failed to disclose to investors large payments it received from Intel Corp. in exchange for not using equipment made by an Intel rival.

## **DISPUTE RESOLUTION IN THE NEWS**

### **-PART III**

An article in the July 24, 2010 edition of The Miami Herald reported that pilots at Spirit Airlines ratified a new five-year contract that includes pay raises and “industry-leading” work rules. The contract immediately increased hourly wages by an average of 10 percent for captains and 18 percent for first officers. All pilots will receive a signing bonus. The contract spells out existing work rules and gives the company additional flexibility in scheduling. The contract was reached after four years of negotiations and a five-day strike in June, 2010.

## **DISPUTE RESOLUTION IN THE NEWS**

### **-PART IV**

An article in the July 23, 2010 edition of The Miami

Herald reported that the family of a 12-year-old girl who died at Westview Middle School in 2007 settled a wrongful death lawsuit against the Miami-Dade School Board. The youngster was jostling with some friends when she fell and hit her head on the side of a portable classroom. The suit alleged that the school lacked adequate supervision, that school administrators failed to call 911 in a timely fashion and that employees trained in CPR were not called to the scene.

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### SIMPLY AMAZING

An article in the May 24, 2009 edition of The Miami Herald reported that a retired school teacher with multiple sclerosis has now climbed the tallest mountains on each of the seven continents. A dispatch from an expedition company reported that Lori Schneider reached the 29,035-foot-high peak of Mount Everest on May 22, 2009-the tallest point in the world. Schneider, 52 years old at the time and from northwestern Wisconsin, climbed six of the other peaks-including Mount Kilimanjaro and Mount McKinley-after being diagnosed with multiple sclerosis in 1999. Schneider is reported to be the first woman afflicted with the neurological disease to reach the Everest summit and the first person with MS to complete the Seven Summits.

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### 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.

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### NOTABLE QUOTATIONS

“Many people will walk in and out of your life,  
but only true friends leave  
footprints in your heart.”  
-Eleanor Roosevelt

“Our greatest responsibility is to be good ancestors.”  
-Jonas Salk

“When you get to the end of your rope,  
tie a knot and hang on.”  
-Franklin D. Roosevelt

“Failure is only the opportunity to begin again  
more intelligently.”  
-Henry Ford

“A wise man will make haste to forgive,  
because he knows the true value of time,  
and will not suffer it to pass away in  
unnecessary pain.”  
-Samuel Johnson

“I have noticed that people who are late are often  
so much jollier than the people who  
have to wait for them.”  
-Essayist E. V. Lucas

“Show me a thoroughly satisfied man and  
I will show you a failure.”  
-Thomas Edison

“You never think you're the age you are, and, as  
long as you don't look in the mirror, you aren't.”  
-Frank Gehry

“That old law about ‘an eye for an eye’ leaves  
everybody blind. The time is always  
right to do the right thing.”  
-Dr. Martin Luther King

“I've always worked very, very hard, and  
the harder I worked, the luckier I got.”  
-Alan Bond,  
Australian businessman and entrepreneur

“If you build a better mousetrap,  
you will catch better mice.”  
-George Gobel

“A film is never really good unless the camera  
is an eye in the head of a poet.”  
-Orson Welles

“I have always found that mercy bears  
richer fruits than strict justice.”  
-Abraham Lincoln

“No idea is so antiquated that it was not once  
modern. No idea is so modern that it will not  
someday be antiquated.”  
-Author Ellen Glasgow

“You’ve got to go out on a limb  
because that’s where the fruit is.”  
-Will Rogers

“The one thing more difficult than following a  
regimen is not imposing it on others.”  
-Marcel Proust

“Every production of genius must be the  
production of enthusiasm.”  
-Benjamin Disraeli

“Sometimes we stare so long at a door that is  
closing that we see too late the one that is open.”  
-Alexander Graham Bell

“There is no inevitability in history  
except as men make it.”  
-Supreme Court Justice Felix Frankfurter

“Our bravest and best lessons are not learned  
through success, but through misadventure.”  
-American educator Amos Bronson Alcott

“Victory is sweetest when you’ve known defeat.”  
-Malcolm Forbes

“Self-confidence is the first requisite  
to great undertakings.”  
-Samuel Johnson

“Always tell the truth-that way you don’t  
have to remember what you said.”  
-Mark Twain

“The longer you can look back, the farther you  
can look forward.”  
-Winston Churchill

“It is a general popular error to imagine the  
loudest complainers for the public to be  
the most anxious for its welfare.”  
-Edmund Burke

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**MESSAGES OF THANKS TO OUR TROOPS**  
To remember our troops in Iraq, Afghanistan 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](http://www.OperationDearAbby.net)**.

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**21 YEARS AS A SUPREME COURT  
CERTIFIED COUNTY AND CIRCUIT CIVIL  
MEDIATOR; 20 YEARS AS A CERTIFIED  
FAMILY MEDIATOR-AND STILL  
COUNTING!**

February marked another anniversary as a certified mediator and another milestone. In February, 2010, I celebrated my twenty-first anniversary as a Florida Supreme Court certified County and Circuit Civil mediator and my twentieth anniversary as certified Family 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 a certified County, Family and Circuit Civil Mediator.

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**“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.org](http://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. On Memorial Day, 2009, ESPN updated its story about this project and reported that more than 21,000 soccer balls inscribed with Nick’s name have been shipped to Iraq and delivered to Iraqi children. According to the most recent e-mail I received from Bill Madaras on August 9, 2010, the last count for balls distributed by our troops to Iraqi and Afghani children was up to 31,203 (and still going strong)!

#### **OUTSTANDING HBO DOCUMENTARY: “A SMALL ACT”**

If you have the chance, please watch this inspirational program, which shows how a small act of kindness by Ms. Hilde Back, who sponsored the education of a poor boy in a Kenyan village, had a profound impact upon her, the boy and the entire community in which he lived (and beyond). This fall, the producers are launching the film’s “What’s your Small Act?” screening campaign across the country. Through this initiative, the producers are hoping to facilitate as many screenings of the film across North America as possible, encouraging community organizations, churches, high schools, universities, and non-profits to use the film as a way to grow support not only for their own missions, but for the more universal notion that small acts really do have the power to effect great change. The hosting process is simple, and organizations are encouraged to band together with other co-sponsors to bring a screening about in their area. They are welcome to treat the screening event as a fundraiser, either for the Hilde Back Education

Fund, or for a charity or cause of their choice. For more information about how to host this film, please contact Caitlin Boyle, Outreach and Community Screening Producer, at (347) 682-2483 or e-mail her at: [asmallact@filmsprout.org](mailto:asmallact@filmsprout.org). There is also a HOST A SCREENING page on the website to download a brief hosting application.

#### **FSU CENTER BRINGS FUTURE DOCTORS AND ATTORNEYS TOGETHER**

An article in the May 15, 2010 edition of The Florida Bar News reported that Florida State University has created a new center that joins the medical and law schools in a spirit of cooperation. The Center for Innovative Collaboration in Medicine and Law, is based in the College of Medicine. The Center is headed by Dr. Marshall Kapp, a professor in the medical school’s Department of Geriatrics, a courtesy professor in the law school and an affiliate of the Claude Pepper Institute. College of Law Dean Don Weidner hopes this fledgling center will “help bridge the gap between the profession of law and medicine to improve the health and justice systems for all our citizens.”

#### **WOMEN IN DISTRESS PROVIDES VALUABLE RESOURCES**

As a member of The Florida Bar and a Supreme Court of Florida certified County, Family and Circuit Civil Mediator, I am required to complete a certain number of Continuing Legal Education and Continuing Mediation Education (CLE and CME) hours on the important subject of Domestic Violence. During the past six months, I have had the opportunity to attend two outstanding workshop presentations by Haley Cutler, Manager of Professional and Community Education for Women in Distress of Broward County, Inc. Women in Distress (WID) provides various services and resources to individuals who are victims of Domestic Violence and is ready and willing to share basic information about Domestic Violence with individuals and organizations for FREE. For articles about Domestic Violence, please visit [www.mediate.com/articles/vestalA3.cfm](http://www.mediate.com/articles/vestalA3.cfm) and [www.thegreenbook.info/documents/EC\\_Mediate\\_DV.pdf](http://www.thegreenbook.info/documents/EC_Mediate_DV.pdf). There is also an interesting protocol from Michigan for mediators in that state which

has some good screening tools that may be useful at <http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol.pdf>. Some of these resources may help to save the lives of your clients or loved ones who may be the victims of Domestic Violence. For more information, contact Women in Distress at [www.womenindistress.org](http://www.womenindistress.org). To contact Haley Cutler in Broward County, you can call her at (954) 760-9800 x1261 or e-mail her at: [hcutler@womenindistress.org](mailto:hcutler@womenindistress.org).

#### **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](http://feedingbroward.org). Thank you.

#### **THE GIFT OF LIFE:**

For information on how to become an organ donor, please visit [www.organdonor.gov](http://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](http://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](http://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.

#### **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 at [Lindaowen@davie-fl.gov](mailto:Lindaowen@davie-fl.gov). 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 Summer be over so quickly? I hate it when I start seeing all of the "Back to Schools" advertisements and commercials. Schools and colleges are now in session and soon it will be back to "business as usual" for everyone. It has been an exciting, and bittersweet, time for our family as we prepare to drop off our younger son at the University of Florida for the start of his freshman year, and our older son for his junior year at the University of Miami. This year we will be cheering hard for Gators and Canes. It should be an exciting college (and pro) football season, and the pro basketball season can't start early enough this year for Miami Heat fans. The "dog days" of summer will eventually subside and give way to the slightly lower heat and humidity of autumn. I hope you and the members of your family and staff are rested, relaxed and refreshed from an enjoyable summer and ready to enjoy the beauty of Fall. Have a Healthy and Happy Thanksgiving. I am truly grateful for your generous and loyal patronage for so many years. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2010 and beyond.

**BRUCE A. BLITMAN, ESQ.**

**Certified County, Family, Circuit Civil and  
Federal Mediator**

**Qualified Arbitrator and Member of Windstorm  
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**[www.BruceBlitman.com](http://www.BruceBlitman.com)**

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