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Welcome to the NEWSLETTER of Fisher's Law Office, providing you with legal information you can use in your everyday life. If you have any questions about any of the articles in this newsletter please don't hesitate to contact us.

Gaining Popularity: Social Media Being Used More and More Often as Evidence in Courts of Law

Facebook, Instagram, SnapChat, Twitter, and WhatsApp are social media platforms that more and more people are using to communicate with friends and the rest of the world. As one would expect, Florida courts are being called upon to decide which social media posts are admissible in a court of law, and what showings have to be made for such admissibility. Although the Florida Evidence Code does not directly address authentication of social media posts or text messages, Florida has a strong body of law that helps govern and guide Florida's judges on such unclear matters.



One such case (*Root v. Balfour Beatty Construction*, 132 So. 3d 867, Fla. 2nd DCA, 2014) dealt with a court order to produce Facebook pages. The court ordered the Plaintiff in a personal injury case to produce all electronically stored information regarding her mental health, alcohol use, and relationships with friends.

What does this mean for our clients? Always be mindful about what you post on social media sites—especially if it deals with personal matters of health or criminal activity. If you are not careful, you may find that things you've posted on social media platforms can come back to haunt you in a court of law.

WHAT ARE THE HOTTEST ISSUES IN DIVORCE LAW IN 2018?

- Modern divorce cases are finally interpreting a 2011 law that established a new form of alimony called "durational alimony." This form of alimony is contained in Florida Statute §61.08(7), and allows a court to award alimony up to the length of the marriage. For example, if parties are married for 7 years, the court could award durational alimony for up to 7 years. The question for the appellate courts has been whether the court has the right to extend the length of durational alimony upon a showing of exceptional change in circumstances. The answer is: No, an award of "durational" alimony can not exceed



the length of the marriage. (see *Ispass v. Ispass*, 5th DCA, 2018, Case No: 5D17-425). However, a court can entertain a petition to increase or decrease the amount of durational alimony while it lasts.



- **"How do you prevent a former spouse from increasing an alimony award?"** Florida courts have long held that there is an absolute right to modify alimony *unless* that right is waived. In one case, (*Rosenthal v. id*, 199 So. 3d 541, Fla. 1st DCA, 2016), the court ruled that "the right to modify awarded alimony may be waived by either party, and this

waiver may be implied; however, an implied waiver must be clear and unambiguous.” We advise all clients to include a clause in their marital settlement agreements that waives any right to increase alimony, and makes such alimony “non-modifiable.” This way, it is much more difficult, if not impossible, for an ex-spouse to come back and increase alimony later on in life.

PLANNING YOUR ESTATE

- **“What is the elective share?”** Florida law provides that a spouse who writes a will must bequeath at least 30% of his/her estate to the spouse. (F.S. §732.201 and F.S. §732.2065.)
- **“When can the right to an ‘elective share’ be waived?”** In a validly written Prenuptial Agreement, parties may waive the right to inherit under their spouse’s will, including their right to the elective share.
- **“What is included in the ‘elective share’ in Florida?”** The right to take a 30% interest in a spouse’s estate applies not only to assets that go through probate, but also “Pay Upon Death” accounts, fractional interests in property, trust assets, “cash surrender value” of life insurance policies, pension benefits, and property transferred in the one year period preceding the decedent’s death. We always advise clients to give at least half of their estate to their spouse in their will to avoid an “elective share” claim.
- **“How are most simple wills structured for a couple in Florida?”** Most couples have separate wills that declare that all of their assets are bequeathed to their spouse upon death, with the children as contingent beneficiaries. What this means is that, if your spouse predeceases you (dies before you), his/her share of your estate is bequeathed equally unto your children. If your children are under the age of 18, you need to name a trustee in your will who can look over the assets until the child is an adult. It is also a good idea to name a “guardian” for minor children. This person will physically look after your child should you and your spouse die.



CAR INSURANCE UPDATE!

Our client was recently involved in an automobile crash and did not have personal injury liability insurance to cover the other driver. The other driver sought money from her own insurance company for uninsured motorist (UM) benefits. The other driver’s insurance company then sued our client to recover these benefits. After several months of litigation, the matter was settled for a fraction of the amount sought in the initial complaint.

However, we are advising all of our clients to make sure that they have plenty of liability insurance on their automobiles in case they are involved in a crash and another driver is injured. This will protect you from most lawsuits.

CASE OF THE MONTH

Our client was sued for foreclosure. The bank suing was a different bank from the bank that originally loaned money to our clients to buy their house. We investigated and found out the plaintiff bank was probably not the owner of the note.

In our client's case, we found that there were no “endorsements” on the Note, and the assignment was an *Assignment of Mortgage* only, and not an *Assignment of Note*. Moreover, the bank refused our request for proof of ownership. As a result, we have filed a motion with the court, asking this case to be dismissed for “lack of standing.”

These are almost identical to a recent appeals court case, (*Johnson v. U.S. Bank National Association*, 222 So.3D.635 2nd DCA, 2017) in which the bank was unable prove they owned the promissory note created when the loan was made.

In order to win a case, a bank must establish **standing** to foreclose a mortgage by submitting a Note with a blank or special endorsement, an *Assignment of Note*, or an affidavit otherwise proving the plaintiff’s status as holder of the note. (*Focht vs. Wells Fargo*, 124 So. 3d, 308. 2nd DCA, 2013). In our client’s case, as well as the Johnson case,

the bank does not have standing, and may not proceed with a foreclosure.

A New Federal Court Rule of Discovery has radically changed the way lawyers practice law

In December 2015, a Federal court rule called “Rule 34” that governs the exchange of information (called “discovery”) in a case changed dramatically. Under the new rule a party objecting to producing documents or electronically stored information must specifically state the grounds for objection, and must state whether there is any material being withheld because of the objection.

These changes to the law have caught many lawyers by surprise. In the past, Plaintiff lawyers “asked for everything,” and defendants often “objected to everything.” This is no longer the law in Federal courts, and probably soon in Florida State courts. Because of this change we expect fewer delays in court cases as attorneys wake up to the fact that they could be sanctioned for not cooperating in the discovery process.

STEPS TO TAKE WHEN A LOVED ONE DIES

After the death of a family member, it is a very difficult time. After the funeral, legal questions may arise. Many of our clients find the following list to be helpful in sorting out the steps to take when a loved one passes away:

1. Locate the *Last Will & Testament*. The original should be turned into the court within 10 days. (Always let your loved ones know where your will is kept—NOT in a safe deposit box!) Usually, a *Last Will & Testament* names the person to serve as “personal representative” of the estate. This person handles probate matters with the court and the creditors, and makes distribution of property to the people named in the *Will*.
2. Make an *Inventory* of the things the decedent owned at the time of death (e.g. bank accounts, vehicles, houses, land, etc.)
3. The court will want to see a *Paid Funeral Bill*, in addition to the *Inventory* of all the decedent’s assets.
4. The court will also want to have a list of debts, or an affidavit that there are no debts of the estate.

5. An original *Certificate of Death* must be turned into the court, along with a signed *Oath of Personal Representative*, in which he/she swears to faithfully carry out the probate process.
6. A notice must be sent to the “Agency for Healthcare Administration” so it can make a claim for Medicaid benefits paid for the decedent.
7. Lastly, a homestead can generally get transferred to heirs without paying the decedent’s debts under “Florida’s Homestead Exemption,” contained in Article X, Section 4 of the Florida Constitution, and in F.S. §732.4015.

Florida law reduces child support for visiting fathers who spend extra time with their kids!

Florida uses a "formula" for child support that is based on the incomes of both parents. (See F.S. section 61.30). What many parents don't know however is that the child support is *much less* if the child visits the non-custodial parent and stays overnight.

For example, if each parent earns \$2,000 a month the support for one child would be \$414 if the child doesn't have overnight visits with the non-custodial parent but the child support is reduced to only \$125 per month *if* the child visits 40% of the time on overnight visits with the non-custodial parent. The logic behind the difference is that a parent spends money on a visiting child for food, shelter and other expenses and the judges must recognize this when setting child support amounts in a divorce or paternity case.

GET READY FOR BIG INCREASES IN CAR INSURANCE RATES IN FLORIDA!

Many new residents are shocked at how much auto insurance costs in Florida. The problem isn't getting any better. In fact, because of more miles driven, more cars on the road (there are over 20 million registered vehicles on Florida's highways) and greater use of mobile phones by distracted drivers, the number of crashes is increasing every year. As a result there were 395,000 crashes in Florida in 2017! And the cost of repairing modern cars is skyrocketing due to the sensors and electronics imbedded in bumpers and other parts of modern cars.

For all these reasons, expect your insurance bill to go up in the coming years.

Education:

- 1977 Degree in Accounting,
University of Florida,
Gainesville, Florida.
- 1978 License Issued (currently inactive)
Certified Public Accountant
- 1983 Juris Doctorate Degree in Law,
University of Florida,
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Memberships:

- Florida Bar Association www.flabar.org
- BV rated by Martindale Hubbell
- Gaucho Association www.gauchoassn.com



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