

RECENT DEVELOPMENTS IN THE LAW



by Nancy Little Hoffman

U.S. SUPREME COURT STRIKES DOWN FLORIDA'S CAPITAL SENTENCING SCHEME.

In an opinion authored by Justice Sotomayor, the U. S. Supreme Court held that Florida's statutory sentencing scheme violates the Sixth Amendment's right to a trial by an impartial jury, in light of its 2002 opinion in *Ring v. Arizona*. As did *Arizona's*, the Florida statute provides that a judge and not the jury makes the critical findings necessary to impose the death penalty. In this case, the maximum punishment the defendant could receive as a result of the jury's verdict was life without parole. Because that punishment was increased by the judge's independent finding of aggravating circumstances, it violated his right to a jury trial. The Court found that the statute's provision for an advisory recommendation by the jury did not satisfy the Sixth Amendment.

Justice Breyer disagreed but concurred in the result, based on his view that the Eighth Amendment requires that the jury, and not a judge, impose the sentence of death. Justice Alito dissented because of the Supreme Court's prior opinions upholding the Florida procedure, and because he believed that if there were constitutional error, it was harmless. *Hurst v. Florida*, Case No. 14-7505 (January 12, 2016).

FLORIDA SUPREME COURT AMENDS FORECLOSURE RULES.


In 2013 the Florida Legislature adopted legislation amending pleading requirements for mortgage foreclosure complaints to expedite the process. It requested that the Court amend the procedural rules in conformity with the act. Accordingly, the Court has adopted new rule 1.115, which governs pleading requirements, as well as amending several forms and adopting new forms for use in the expedited proceedings. These amendments are effective immediately. *In re: Amendments to the Florida Rules of Civil Procedure*, Case No. SC13-2384 (Fla. January 14, 2016).

EVIDENCE OF AVAILABILITY OF LOW-COST CARE TO BRAIN-INJURED CHILD INADMISSIBLE; STATUTORY CAP ON NONECONOMIC DAMAGES UNCONSTITUTIONAL.

Upholding a substantial verdict, the Fourth District held that the trial court correctly refused to admit evidence that the child who suffered brain damage as a result of the defendant's medical malpractice could receive care paid by Medicaid. On cross-appeal, it reversed the trial court's reduction of the noneconomic damages awarded by the jury, based on unconstitutionality of the statutory cap on such damages. *Go v. Normil*, 41 Fla.

L. Weekly D91 (Fla. 4th DCA January 6, 2016).

FOURTH DISTRICT: DEFAMATION PER SE STILL EXISTS IN FLORIDA IN CASES NOT INVOLVING MEDIA DEFENDANTS.

After their attorney-client relationship broke down, the client in a dissolution of marriage proceeding posted derogatory reviews of the attorney on the internet. The attorney successfully sued her former client for libel as well as on other theories. On appeal, the Fourth District rejected arguments that the statements were protected by the First Amendment as "pure opinion," since they contained false information. Moreover, the court held, proof of damage and malice is required only as to media defendants; defamation per se still exists as to other types of defendants. *Blake v. Giustibelli*, 41 Fla. L. Weekly D122 (Fla. 4th DCA January 6, 2016). 



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