2018 Children's Law

Jurisprudence and Legislation

Agenda

I. Review of caselaw reported in 2018 advance sheets
(case briefs attached)

II. Review of 2018 legislation impacting juvenile jurisdiction
(legislation summaries attached)

III. Overview and discussion of select topics

A. School shooting proceedings (Act 716)
B. Juvenile Delinquency - Raise the Age legislation
C. Foster Care – extension of services beyond age 18
D. Hearing Officers and HCR 21
E. Legal representation in child protection cases

Table of Contents

Child in Need of Care:

State in Interest of K.K., 243 So.3d 1155 (2 Cir. 2017)

Child was placed in the custody of her adult half-brother due to mother's neglect. Mother objected to permanency plan of guardianship instead of reunification. The Court granted **guardianship**, finding that the mother had refused to acknowledge her past behavior instability, domestic violence, and need for mental health treatment and did not act reasonably in exercising court-ordered contact with her child. "The child's interest in the stability and structure offered by her adult brother is clearly paramount to the desire of the mother to disrupt this placement without having worked to alleviate her mental health needs and her physical abuse issues." Affirmed.

State in Interest of K.P., I.P., K.C., 246 So.3d 627 (2 Cir. 2017)

Mother appeals from order granting **guardianship** of three child to their godparents/foster parents as a permanent plan. Despite numerous DCFS interventions and multiple drug treatment programs, mother was unable to maintain sobriety and care for her children's needs and did not accept responsibility for her actions. Although the guardians lived out of state, the placement was determined to be the least restrictive, considering the children's health, safety and best interests. [Note: While the opinion clearly identifies why reunification was no longer the permanent plan, there is no discussion of how/why adoption was ruled out as per Ch.C. art. 702.] **CASA** provided a valuable role in this case; footnote 18 points out that the extremely dedicated CASA volunteer had remained a constant figure for the children throughout the turmoil of the past four years.

State in Interest of K.B., B.B., A.B., S.B., K.B. and A.B., 247 So.3d 942 (2 Cir. 2018)

Father appeals changing of **case plan** from reunification to adoption. The father made some progress toward completing his case plan, but the extraordinary special needs of the children and the stability the children had received in foster care supported a finding that the best interests of the children strongly favored adoption.

State in Interest of E.M.J., 249 So.3d 170 (2 Cir. 2018)

Mother appeals change of **case plan** from reunification to adoption. Child was removed as a drug-affected newborn and after 3 years, mother continued to have issues with substance abuse, although she completed a great deal of her case plan other than treatment and rehabilitation. Affirmed.

State in Interest of D.E. and H.E., 253 So.3d 877 (2 Cir. 2018)

Biological parents appeal permanent plan of **guardianship** to mother's cousin and spouse with visitation at the discretion of the guardians. The appellate court found no legal impediment to the court awarding guardianship within three months after the adjudication, considering that the parents continued to battle drug addiction and the children needed stability. Although the trial

court did not specifically address the required findings in Ch.C. art. 722(A), the appellate court held that the findings were implicit in the court's ultimate conclusion. Guardianship is affirmed on appeal, and case remanded for court to set specific supervised visitation in accordance with Ch.C. art. 723(B).

State in Interest of Z.P., 255 So.3d 727 (2 Cir. 2018)
After child had been in state custody for more than four years after removal from mother with significant **mental health** issues, court refused to **change the permanent plan** from adoption to reunification, restricted visitation, and ordered DCFS to file for termination. Mother appealed. Although mother had made progress with her case plan, she still required assistance and supervision to care for her children. The testimony of the **new DCFS worker** (supporting reunification) was not credible. The children needed permanency and stability. "Forcing them to remain in foster care indefinitely, where there is no hope of reunification, runs afoul of state and federal mandates to further the best interests of the child." Affirmed

*State in Interest of C.C., Jr., P.B., M.**B**. and J.B.,* 256 So.3d 565 (5 Cir. 2018)
Where no allegations were made against the **incarcerated alleged father** of child, and alleged father made a plan for child to live with his sister in Texas, court found it had no jurisdiction to determine best interest of child to stay with foster parents. Appellate court reversed, finding that the court committed legal error by allowing the possibility of paternity to equate to filiation, which prejudiced the outcome. In *dicta*, the opinion goes on to say that if the father was properly filiated, the court would have jurisdiction over him under Ch.C. art. 604.

Certification for Adoption/Termination of Parental Rights/Surrender:

State in the Interest of J.A., 237 So.3d 69 (La.App. 3 Cir. 2018).

Mother appealed termination of parental rights which freed child for adoption. Trial court found that the child was a victim of neglect secondary to mother's **substance abuse and mental illness**, along with the absence of the father. More than a year after CINC adjudication, DCFS filed petition for TPR. The trial court balanced the fundamental interest of the parents with the best interest of the child and terminated parental rights. The appellate court held that this termination was not manifestly erroneous and that it was in the child's best interest.

In re J.L.C.K., 238 So.3d 559 (La.App. 5 Cir. 2018).

After mother voluntarily surrendered her parental rights to minor child and another family sought to adopt child, **father filed opposition** to adoption. Trial court terminated father's parental rights and declared the child available for adoption, finding that mother had acted to promote the child's safety by not having child around father and that father had not manifested a substantial commitment to his parental responsibilities or shown that he was a fit parent. Father appealed, arguing that he had met his burden to show commitment and fitness, and that

the mother and her agents had thwarted him in his efforts to manifest a parental commitment. Appellate court affirmed the trial court, finding no manifest error in its findings.

State in the Interest of J.S., 238 So.3d 600 (La.App. 4 Cir. 2018).

Following a trial on State's petition to terminate parental rights of the mother, the **trial court denied the termination** on the grounds that it was not in the child's best interest. State appealed, arguing that the trial court erred in not allowing the State to treat the mother as a hostile witness and thereby question her concerning her 16-year-old conviction out of Alaska relating to abuse of another child. State also contends it was error to prohibit use of the treating psychiatrist as an expert witness to impeach testimony of mother as to the manner in which she physically assaulted her child at issue in this case. Finally, the state argued that the trial court was manifestly erroneous by not finding it in the child's best interest to terminate the mother's rights.

The Fourth Circuit found that any error by the trial court in not declaring the mother hostile was harmless, as evidence of the conviction was admitted into the record. Further, the court found that the doctor was properly excluded from offering expert testimony to impeach the mother, as the testimony from the doctor would not have been an opinion based using her specialized knowledge and training to aid the court in understanding the evidence or determining a factual issue. Finally, the appellate court did not find manifest error in the trial court's refusal to terminate the mother's parental rights. In reviewing the record, they noted the high level of success the mother has had in her case plan, including seeking additional resources in the community, and the close relationship between mother and child. The court also noted there was no evidence presented that the mother could not be rehabilitated, and that it was the child's wish to be reunited with her mother.

In re: Termination of Parental Rights to the Minor Child Baby A, 241 So.3d 1182 (1 Cir. 2018)

Mother filed notice of intent to surrender and 1 of 2 alleged fathers filed an objection to the adoption. Alleged father was living in a court-ordered drug rehabilitation program and could not show that he would be able to assume custody of the baby. Although the father wanted to be involved in the child's life, provided some support for the mother during the pregnancy and made continuous efforts to get sober, the court held that his serious drug problem prevented him from being able to take custody and provide support and care for the child. Insofar as he did not meet his burden under Ch.C. art. 1138, termination of alleged father's parental rights is affirmed.

State in Interest of A.N., 243 So.3d 696 (4 Cir. 2018)

Termination of mother's parental rights under Ch.C. art. 1015(5) is affirmed on appeal. Mother had not been caring for the child for the three years prior to the CINC adjudication due to her mental illness (schizophrenia and bipolar disorder). Mother's established pattern of non-compliance with the case plan and her mental illness demonstrated that there was no reasonable expectation of improvement. Alternatives to termination had been explored, but the history of

the case and the mother's failure to rehabilitate, together with the child's need for a stable environment, supported termination.

State in Interest of M.L.H., 247 So.3d 929 (2 Cir. 2018)

Termination of parental rights is affirmed on appeal. Although mother loved her child and wanted to raise her, the mother's **intellectual disability** rendered her incapable of parenting without exposing the child to a substantial risk of serious harm. CASA supervisor had advocated that mother have more time and additional services, but the mental health evaluator testified that her condition and behavior would not improve and that the mother was not suitable as a parent for any child.

State in Interest of B.A.T., 248 So.3d 524 (2 Cir. 2018)

Appellate court affirms termination of mother's parental rights. Although the permanent plan had not yet been changed from reunification to adoption, termination was authorized and was proper under Ch.C. art. 1036.2 regarding **incarcerated parents**. Mother's imprisonment was not an excuse for her failure to compete her case plan. The best interest of the child was clearly served by termination, "allowing this child to chance of a secure, drug-free, and violence-free life" with the foster parents desiring to adopt her.

State in Interest of N.B., I.B., and P.B., 248 So.3d 532 (2 Cir. 2018)

Pending murder charges for the death of one child, mother's parental rights to her 3 other children were terminated. Termination pursuant to Ch.C. 1015(4) (criminal conduct) and Ch.C. 1015(6) affirmed.

Appellate court held that the trial court did not err in refusing to **recuse** herself from the termination action: "…this Court is not aware of any law that prevents a judge from presiding over both the CINC and the termination of parental rights proceedings." In addition, mother's criminal attorney was allowed to enroll as **co-counsel** in the termination but was limited to areas of the trial where knowledge of criminal law was crucial and only to the extent that the representation did not conflict with existing trial dates.

Alexander v. State, 249 So.3d 95 (3 Cir. 2018)

Mother petitioned to **annul** termination alleging that DCFS committed fraud and ill practice by failing to arrange **transportation** of the mother to the hearing and by filing to disclose this inability to her attorney or the court. Because mother failed to provide DCFS with current contact information and failed to notify anyone (including her attorney) that transportation had not been arranged, mother's petition was denied. Affirmed.

State in Interest of J.F. and K.F., 249 So.3d 939 (2 Cir. 2018)

Mother appeals termination of her parental rights. Appellate court affirms, finding that the record supports **lack of substantial compliance** with the case plan and lack of reasonable expectation of reformation. The mother's cooperation with DCFS "will not overcome poor compliance with the case plan'" and her love for the children "will not overcome failure to follow the critical aspects of the case plan." Termination was found to be in the best interest of the children, although the children were in separate foster homes with foster parents who wished to adopt them.

*State in Interest of A.L.D. and L.S.D.,*251 So.3d 554 (2 Cir. 2018)

Termination of father's rights is **reversed** on appeal. Father had made progress with overcoming **substance abuse, housing and employment**, which the appellate court found was "in furtherance of his case plan and show an attempt to comply." ("**substantial compliance**") In addition, the father efforts "show a more positive trend than negative. It is not as if he made no improvement in his condition; thus it is more reasonable than not that he would make significant improvement in the future." The opinion notes that the trial court did not articulate specific reasons to support its findings and that the position of the children's attorney was that termination was premature.

The case was remanded to the trial court for further CINC proceedings including implementation of a case plan focused on substance abuse, housing and steady employment. The opinion concludes that although the "parental rights are reinstated as of now," the father must strictly comply with the trial court's orders and the case plan of DCFS for the future well-being of his young children.

State in Interest of R.J., R.T., and R.A.T., 255 So.3d 1138 (3 Cir. 2018)

Mother's parental rights were terminated for **lack of substantial compliance** with her case plan and no reasonable expectation of reformation. Mother appealed, and the appellate court affirmed the termination. The mother failed to meet her housing and income requirements, intentionally used drugs after release from prison to get into a substance abuse facility, failed to pay support, failed to visit for more than 7 months (due in part to incarceration, and failed to maintain contact with the case worker. Although she "lately obtaining housing and the chance of stable employment, this is four years into the case plan" and she admitted that she was only capable of caring for one child at this time.

Despite little direct testimony regarding the best interests of the children, numerous reports from DCFS and CASA indicating that termination was in their best interests. "perhaps the most poignant consideration here is the position of the children"… that they have permanence at the earliest possible time.

State in Interest of C.D.W. v. T.R.W., 255 So.3d 1147 (3 Cir. 2018)

State initiated termination of mother's parental rights through appointed counsel for the minor child pursuant to Ch.C. art. 1004(B) (abandonment). Mother appealed. The appellate court affirmed, finding no procedural error in the appointment of the attorney even though he had previously served as counsel for the custodians of the child. Although the mother acknowledged lack of contact and support, she argued that lack of significant contact would have been unavoidable since the parties had sought a protective order against her. However, mother was neither aware of nor served with the protective order prior to the termination.

With regard to best interest of the child, the court found that in the 7 years since his removal from the mother due to a severe drug problem, the mother has been in treatment working toward recovery; however, the child had been with the custodians since birth. Given the age and mental health needs of the child, his attachment to them as parents, and their ability to provide the child with a safe and secure environment that will ensure his well-being, the record supported the finding as to the child's best interests.

Adoption:

In re: J.L.C.K., 238 So.3d 559 (5 Cir. 2018)

Mother voluntarily surrendered child for private adoption by family friends, and **biological father filed an opposition** to the proposed adoption. After the **Ch.C. art. 1137 hearing**, the court found that the father failed to prove his substantial commitment to parental responsibilities and his fitness as a parent. The father appeals termination of his parental rights. The appellate court affirms the termination, finding no error in the juvenile court's determinations of credibility and findings of fact, but declines to award damages for frivolous appeal.

A.M.C. v. Caldwell, 239 So.3d 948 (3 Cir. 2018)

Same-sex married couple's case for intra-family adoption include a §1983 action against the state. Appellate court held that the district court had jurisdiction to decide both the adoption matter and the constitutionality claims. However, the issue of attorney fees and costs was not raised prior to the original judgment of adoption, and thus was considered *res judicata*.

In re: ALR and BAR, 240 So.3d 273 (3 Cir. 2018)

Biological mother's rights were terminated in stepparent adoption. Decree was annulled to cure a procedural defect, where curator for mother was not provided information to locate her, but the matter was retried after personal service. Appellate court held that relitigation of adoption was not barred by *res judicata or lis pendens,* and that decree of adoption was supported by evidence of failure to support and best interest of the children.

State in Interest of K.N., 250 So.3d 325 (1 Cir. 2018)

Interfamily adoption by paternal aunt and uncle is appealed by mother, who alleges that they were not authorized to petition for intrafamily adoption since the biological father was never legally filiated to the child. The appellate court found that a judgment of **filiation** and paternity was filed in the record and nothing in the record disclosed that it was an absolute nullity. Appellate court further found that **voluntary transfer of custody** to petitioners by grandparents (then legal custodians) satisfied the requirements of Ch.C. art. 1245 that petitioners have been granted custody of the child by a court of competent jurisdiction. Incarcerated mother's consent was not required, although she alleged that she wrote letters and sent cards and pictures to the grandparent's address.

In re: S.D. and L.D., 250 So.3d 1097 (2 Cir. 2018)

Biological father challenged the constitutionality of Ch.C. art. 1138, the trial court upheld the constitutionality, and the appellate court denied writs. A separate concurring opinion addresses the equal protection issue raised by the father: that unwed biological fathers have an undue burden to prove their fitness that unwed mothers and married parents do not have. The opinion reviews state and U.S. jurisprudence to conclude that the additional burden "merely puts the unwed parents on equal footing. This is not too much to ask when balanced against the mother's commitment to carry the child to term."

State in Interest of E.A.D., 250 So.3d 1237 (3 Cir. 2018)

Grandparents of child challenged child's adoption by foster parents and moved to supplement the appellate record to include the CINC proceeding. Despite the assertion of DCFS that the adoption proceedings were separate from the adoption proceedings, the appellate court found that "DCFS, as appellee, designated the record first, [so] it would be unjust to disallow the grandparent appellants an opportunity to also delegate the portions of the record they deem necessary." *See* Code of Civil Procedure arts. 2128 and 2132 and Rule 2-1.17 of the Uniform Rules of Courts of Appeal regarding designation of the record. Motion to supplement granted.

In re: K.S.S. Applying for Interfamily Adoption, 253 So.3d 1311 (5 Cir. 2018)

Appellate court reverses intrafamily adoption for failure of the trial court to appoint an attorney to represent the child at all times after the father's opposition was filed, as mandated by Ch.C. art. 1244.1(B).

In re: Warner Applying for Intrafamily Adoption, 256 So.3d 342 (3 Cir. 2018)

Intrafamily adoption vacated on appeal based on the absence of the criminal background check required by Ch.C. arts. 1243.2(C) and 1253.

Delinquency:

State in the Interest of H.J., 238 So.3d 586 (4 Cir. 2018).

Juvenile appealed adjudication of delinquency for simple burglary of a car based on three assignments of error; the appellate court found no merit in the first two, which involved burden of proof and procedure. It did, however, remand the case to the juvenile court based on the third assignment of error, which it deemed patent error: that the juvenile court did not instruct the minor child of the two-year prescriptive period for filing an application for post-conviction relief following his adjudication. The Fourth Circuit remanded the case to the trial court with specific instructions to advise the minor in writing in accordance with La. Code of Crim. Proc. Ann. Art. 930.8.

State in Interest of R.M., 239 So.3d 820 (La. 2018)

In a delinquency case where competency had been raised, the 90-day time limit for the state to commence adjudication under Ch.C. art. 877(B) was suspended as a matter of law during the time period in which competency was in question [as per Ch.C. art. 832] and during appellate review. Although the state had not made a showing of good cause or requested an extension, the delay was not attributable to the state and was beyond the state's control.

State in Interest of T.L., 240 So.3d 310 (5 Cir. 2018)

Juvenile passenger in vehicle was adjudicated for possession of handguns found in the vehicle. Circumstantial evidence was found to be sufficient to support the adjudications: the guns were found under the backseat near where the juvenile had been sitting, the juvenile had leaned toward the floorboard during the stop, and juvenile had said repeatedly that the weapons were his. The investigatory stop based on an anonymous tip was held constitutional, and the driver's consent to the search was found to be free and voluntary, and the juvenile's spontaneous utterances were admissible.

State in Interest of D.M., 242 So.3d 1233 (1 Cir. 2018)

Disposition committing juvenile to OJJ until his 21st birthday was not excessive for commission of a simple burglary. Juvenile had a history of prior adjudications and placements, as well as substance abuse, and had previously stolen a gun after release from OJJ custody. "based on the juvenile's history, there is an undue risk that he will commit another crime during a period of suspended commitment or probation."

In Interest of J.J., 244 So.3d 7 (1 Cir. 2018)

Eleven-year-old juvenile was adjudicated for simple arson of a school. Appellate court conducted an *Anders* review and found no reversible errors and no non-frivolous issues or rulings. Affirmed.

State in Interest of W.V., 246 So.3d 34 (4 Cir. 2018)

Juvenile appealed adjudication for **simple battery** against his mother. Despite numerous discrepancies in the mother's testimony, evidence was sufficient to establish that juvenile used force against his mother without her consent and that juvenile, as the aggressor, did not establish that he acted in **self-defense**. The disposition was vacated, insofar as the court did not hold a **dispositional hearing** nor did the juvenile waive delays. In addition, the imposition of **court costs** and probation fee was vacated for failure to hold a dispositional hearing and for exceeding the statutory limit in R.S. 13:1595.2(A).

State in Interest of R.W., 246 So.3d 619 (4 Cir. 2018)

Juvenile appeals adjudication based on expiration of the **time limits for adjudication**. Because counsel for the juvenile did not object to the setting of the hearing date, he acquiesced in the delay, serving as the functional equivalent of a good cause extension of the time limits as authorized under Ch.C. art. 877(D).

State in Interest of D.M., 247 So.3d 133 (2 Cir. 2018)

Juvenile appeals adjudication for **armed robbery**. Victim's identification of juvenile was sufficient evidence despite alleged deficiencies in victim's testimony. Victim's **identification** of juvenile was sufficiently reliable because of their prior acquaintance, and the **photographic lineup** was not unduly suggestive. Error patent: Failure to advise juvenile of prescriptive period for **post-conviction relief**.

State in Interest of W.S., 250 So.3d 1060 (4 Cir. 2018)

Juvenile's adjudication for **theft** of a bicycle is affirmed on appeal. Although the victim gave the juvenile permission to ride the bike and return it, intent to permanently deprive victim of the bike was reasonably inferred from the circumstances where juvenile abandoned the bike rather than return it.

State in Interest of C.B., 251 So.3d 562 (2 Cir. 2018)

Adjudication of delinquency for aggravated battery and aggravated assault with a **firearm** affirmed on appeal. Juvenile denied having a gun, which was not found, but credible testimony supported use of a gun. The fact that the gun was inoperable was not determinative, since the manner in which it was used and the effect it had to excite fear and apprehension by the victims was enough to classify it as a dangerous weapon under R.S. 14:2(3) and 14:64.

State in Interest of H.H., 252 So.3d 507 (1 Cir. 2018)

State appeals disposition of reprimand and warn in an **indecent behavior with juvenile** case. The juvenile had successfully completed individual sex offender treatment, was low risk for violence or reoffending, , completed high school, consistently tested negative for drugs, and obtained employment. Affirmed.

State in Interest of G.D., 255 So.3d 1130 (3 Cir. 2018)

OJJ took writs on court order that juvenile be held in **secure custody** pending a review hearing. Citing several cases authorizing the court to recommend secure confinement, the appellate court concludes that the court was not in error in mandating that the juvenile be placed in a secure setting, particularly in light of the fact that a modification of disposition can be filed.

State in Interest of D.J.S., 255 So.3d 1177 (3 Cir. 2018)

Juvenile appeals adjudication of delinquency for **telephone harassment** of his school principal after his expulsion. Adjudication based on R.S. 14:285(B) rather than with R.S. 14:285(A) as petition charged was not error where the facts were sufficient to put the juvenile on notice that state would introduce evidence of repeated phone calls to support R.S. 14:285(B). Although cell phone records submitted by the juvenile provided conflicting information, the court gave greater weight to the testimony of the victim who recognized the juvenile by voice as the caller who made the threatening call immediately prior to the repeated hang up calls that followed.

State in Interest of D.S., 255 So.3d 1209, 4th Cir. (2018)

Juvenile was adjudicated delinquent for simple battery and appealed. The appellate court affirmed the **in-court identification** of the juvenile despite inconsistencies in use of juvenile's street name and actual name, finding that D.S.'s counsel had ample opportunity and ability to cross-examine the victim and all the State's witnesses.

Statements made by the juvenile while **detained but not *Mirandized*** were deemed admissible. The court found that D.S. was not under arrest nor did Officer Bean conduct a custodial interrogation at the time D.S. made statements and his mother was present the entire time. Officer Bean testified that the appellant's mother knew that D.S. had the right to remain silent and that he had informed her that he was going to ask D.S. some questions. She gave Officer Bean permission to question D.S. in her presence. Officer Bean stated that he would not have asked D.S. any questions without the mother's approval and presence.

Custody:

Panaro v. Hoskin, 239 So.3d 997 (4 Cir. 2018)

Award of sole custody to father is upheld on appeal. Mother's history included drug abuse, incarceration and bi-polar disorder. Evidence presented to the court was sufficient to support award of sole custody as in the best interests of the children.

Loya v. Loya, 239 So.3d 1048 (5 Cir. 2018)

Father incarcerated for committing various sex acts with minor step-daughter filed for contact with his minor biological children, despite sentence prohibiting contact with minor children. Court considered the provisions of R.S. 9:364.1 and found that "all factors indicate that the best

interests of the children would be for them to not have any contact with their father." Denial of visitation upheld on appeal.

LeBlanc v. Welch, 240 So.3d 291 (3 Cir. 2018)

Joint custody award with shared physical visitation was affirmed, although the feasibility was dependent on the assistance of the child's extended family. Matter was remanded for a determination of whether a domiciliary parent should be designed pursuant to R.S. 9:335.

Lowe v. Lowe, 244 So.3d 670 (2 Cir. 2017)

Appellate court reverses award of domiciliary status to father in joint custody case. A review of the record demonstrated that the father had no steady income or employment, no remaining pension and no savings; therefore, he did not meet his burden of proving his capacity to provide the children with their basic material needs independent of his own father.

Lucky v. Way, 245 So.3d 110 (2 Cir. 2017)

After protracted litigation over many years where both parents contributed to deterioration of their relationship, **joint/shared custody** was no longer feasible. Based in part on the testimony of the 10- year- old child and the recommendations of the mental health evaluator, the court found that the best interests of the child were best served by the structure and stability provided by the father and ordered that the father have sole legal custody and the mother have supervised visitation. Affirmed.

Dawes v. Dawes, 245 So.3d 1050 (3 Cir. 2018)

Court ordered **visitation** for non-domiciliary father totaling 62 days per year was insufficient to assure frequent and continuing contact as per R.S. 9:335(A)(2)(a). Reversed and remanded.

Vidrine v. Vidrine, 245 So.3d 1266 (3 Cir. 2018)

Appellate court conducts a *de novo* review of custody matter, finding that the trial judge erroneously failed to find a **material change in circumstances** and failed to designate a domiciliary parent. The opinion recites findings of fact to support its judgment designating the father as domiciliary parent and ordering a joint custody implementation plan.

Prevo v. Mosby, 246 So.3d 622 (2 Cir. 2017)

Father filed a *pro se* appeal of the trial court's award of joint custody with mother designated as the domiciliary parent. **Unrepresented** at trial and on appeal, father was unsuccessful in arguing that the court lacked jurisdiction, that the judge was biased, that the mother had kidnapped the child, and that 3 witnesses did not attend the hearings when subpoenaed. Affirmed.

Hudson v. Strother, 246 So.3d 851 (3 Cir. 2018)

Father appeals denial of his action to change custody. On appeal, the court found no evidence that the trial court improperly held the father to the higher ***Bergeron* standard** of proof required in modification of a considered decree. Neither did the trial court err when it considered many factors in denying the modification although it did not evaluate all the Civil Code **art. 134 factors**. Failure to apply the **Post—Separation Family Violence Relief Act** was not an error where the mother had allegedly been a victim of a fight with her boyfriend. Although the mother did not call her boyfriend to testify at trial, the situation did not trigger the **adverse presumption rule**, since the testimony would have been cumulative and the boyfriend was available for the father to call as a witness.

Evans v. Evans, 247 So.3d 120 (4 Cir. 2018)

In modification of custody matter, trial court's consideration of **evaluator's report** which was never introduced into evidence was legal error, warranting a *de novo* review on appeal. The appellate court found that multiple violations of court ordered visitation by father based on father's concern for the child's welfare, did not constitute a **material change of circumstances** to warrant modification. Failure of the trial court to award attorney's fees and costs was not error, where the contempt was based on failure to pay prior fees and costs and not on failure to allow visitation.

Parentage:

Chaisson v. DHH/Vital Records, 239 So.3d 1074 (4 Cir. 2018)

Post-*Obergefell* and *Robicheaux* amendment of birth certificate to include name of same-sex married partner was proper, where registrar consistently applied the same procedure to amend a birth certificate of a child born to a married couple, regardless of sexual orientation. Appellate opinion notes that this decision comports with *Pavan v. Smith*, 137 S.Ct. 2584 (2017)

Kinnett v. Kinnett, 243 So.3d 745 (5 Cir., 2018)

Putative father intervened in divorce proceedings to establish paternity more than one year after the child's birth and asserted that the time limits in C.C. art. 198 are constitutionally invalid. Because the attorney general had not been timely notified, the court did not consider the constitutional arguments and sustained an exception of preemption. The appellate court remanded the matter to the trial court to allow the parties to properly challenge the constitutionality of art. 198, "in the interest of justice and judicial economy."

Support:

McGatlin v. Salter, 246 So.3d 750 (2 Cir. 2018)

Mother appeals trial court's **calculation of gross income** for purposes of setting child support. Appellate opinion affirms: deducting father's attorney fees from his gross income when no sums for attorney's fees were assigned to the mother as income was not an abuse of discretion; deducting a sum as a loan from father's father was not an abuse of discretion; and court's determination of average monthly gross income for father was based on all the information provided.

Pellerin v. Pellerin, 249 So.3d 77 (3 Cir. 2018)

Appellate court reverses trial court's finding that father's rule to **modify child support** was frivolous and awarding attorney's fees. Appellate court found that father's reduced income, which would have resulted in a reduction of his support obligation $1000/month if calculated under the guidelines, constituted a change in circumstances. A dissenting opinion notes that, without a transcript, the findings and rulings of the trial court should be affirmed.

Child victim cases:

State v. Kelly, 239 So.3d 432 (5 Cir. 2018)

Sufficient evidence supported conviction of mother's boyfriend for second degree murder of two-year-old. Defendant did not establish that his right to put on a defense was adversely affected by denial of his motion for an independent autopsy.

State v. Gros, 239 So.3d 448 (5 Cir. 2018)

Convictions for 2 counts of sexual battery of a juvenile under 13 and 1 count of indecent behavior are affirmed on appeal. Defendant was boyfriend of one victim's aunt and the other victim's grandmother. Disclosure had been delayed for several years, and no physical evidence corroborated the victims' allegations. Defendant's request to question one of the victim's prior sexual assault allegations was properly denied, where none of the C.E. art. 412 exceptions applied and there was no evidence that the prior allegations were false.

State v. Williams, 240 So.3d 355 (4 Cir. 2018)

Conviction of defendant for aggravated rape of his minor step-daughter is affirmed. Appellate court found no error in denial of defendant's motion to introduce into evidence a picture of his penis, in disallowing evidence of a particular act of the victim to attack her truthfulness, in failure of the forensic interviews to be transcribed, or in admission of arguably inconsistent victim statements between the forensic interview and trial testimony.

State v. Banks, 241 So.3d 1240 (5 Cir. 2018)

Conviction of father for aggravated rape of his minor daughter is affirmed despite lack of physical evidence (there was a three year delay in disclosure) and sine inconsistencies in victim's statements.

Quatrevingt v. State, 242 So.3d 625 (1 Cir. 2018)

Military conviction for conduct prejudicial to good order and discipline was based on possession of child pornography and subjected the defendant to register as a sex offender. Although a district court found that defendant had not pled to a specific sex offense, defendant did not appeal the Bureau's determination within the one year preemptive period under R.S. 15:542.1.3 and therefore his cause of action to challenge his obligation to register was extinguished.

State v. Aguillard, 242 So.3d 765 (3 Cir. 2018)

Evidence was sufficient to support conviction of a driving school teacher on 2 counts of indecent behavior with juveniles. Defendant's history of making blatant sexual comments and requests to driving students (other acts evidence) indicated a motive for sexual gratification rather than comedy.

State v. Hardouin, 242 So.3d 795 (5 Cir. 2018)

After conducting an Anders review, appellate court affirmed conviction (based on guilty pleas) of two counts of pornography involving juveniles under 13. The trial court's failure to advise defendant of the mandatory minimum sentence did not invalidate the guilty pleas since defendant was advised of the actual sentences he would receive under the plea agreement.

State v. Frith, 243 So.3d 633 (3 Cir. 2018)

Defendant convicted of aggravated incest of his 5 step-grandchildren moved for recusal of trial judge based on comments invoking Christian Scripture and ideology during sentencing. In accordance with C.Cr.P. art. 673-675, the motion for recusal (which was denied by the trial judge) should have been referred to another judge for determination.

State v. Lee, 243 So.3d 1133 (2 Cir. 2017)

Evidence was sufficient to support 46-year-old defendant's conviction for indecent behavior with juveniles, contributing to the delinquency of juveniles and aggravated battery of his 14 year old "girlfriend."

State v. Robertson, 243 So.3d 1196 (2 Cir. 2017)

Defendant was convicted of the aggravated rape of his daughter after a delayed report of almost 40 years. The victim's testimony was credible and supported by other crimes evidence.

State v. Griffin, 243 So.3d 1205 (2 Cir. 2017)

Forty year sentence for aggravated incest of daughter is not constitutionally excessive, based on defendant's lengthy criminal history, the seriousness of the offense, and his previous failures at rehabilitation.

State v. Larkins, 243 So.3d 1220 (2 Cir. 2017)

Testimony of victim and his sister was sufficient to support defendant's conviction for aggravated rape of his girlfriend's young son.

State v. VanNortrick, 244 So.3d 810 (2 Cir. 2018)

Evidence was sufficient to support conviction for molestation of a juvenile involving children with whom he lived. The testimony of the victims was consistent and corroborative of each other.

State v. Pittman, 244 So.3d 830 (2 Cir. 2018)

Father is convicted of indecent behavior, molestation and pornography involving his daughter. Evidence of the victim's sexual relationship with her boyfriend was properly excluded. Considering 1) that the father sexually abused his biological daughter over a four-year period, beginning when the victim was 10, 2) had vaginal, oral and anal intercourse with her, 3) texted sexually explicit conversations and 4) influenced the victim to film a pornographic video of herself, consecutive sentences of 5 years, 60 years and 25 years was not unconstitutionally excessive.

State v. Kelly, 244 So.3d 1251 (2 Cir. 2018)

Rape of 15 -year-old developmentally disabled child

State v. Drummer, 245 So.3d 93 (3 Cir. 2018)

Second degree murder of 2-year-old; admissibility of statement of 4-year-old sister of victim

State v. Steines, 245 So.3d 224 (2 Cir. 2017)

Pornography and aggravated incest of 10-year-old child

State v. Stephenson, 245 So.3d 296 (2 Cir. 2017)

Sexual battery of teen daughter of girlfriend

State v. Davis, 245 So.3d 1125 (2 Cir. 2018)

Second degree murder of 17-month-old son of girlfriend

State v. Thomas, 245 So.3d 1174 (2 Cir. 2018)

Attempted aggravated crime against nature of 3-year-old stepdaughter

State v. Kurz, 245 So.3d 1219 (2 Cir. 2018)

Aggravated rape of 11-year-old boy

State v. Washington, 245 So.3d 1234 (2 Cir. 2018)

Molestation of 11-year-old juvenile by stepfather

State v. Meadows, 246 So.3d 639 (2 Cir. 2018)

Second degree cruelty to juveniles in the death of girlfriend's 2-year-old child

State v. Robinson, 246 So.3d 725 (2 Cir. 2018)

Molestation of juvenile under 17 and molestation of juvenile under 13

State v. Collins, 247 So.3d 212 (5 Cir. 2018)

Pornography involving juveniles

State v. Baker, 247 So.3d 990 (2 Cir. 2018)

Pornography involving juveniles

State v. Meadows, 247 So.3d 1018 (2 Cir. 2018)

Second degree cruelty to juvenile – habitual offender

State v. Jones, 247 So.3d 1066 (2 Cir. 2018)

Indecent behavior with a juvenile under 13 (9-year-old granddaughter)

State v. Anderson, 248 So.3d 413 (1 Cir. 2018)

Sexual battery of 8-year-old

State v. Pittman, 248 So.3d 573 (2 Cir. 2018)

Molestation of 12-year-old stepdaughter and 7-year-old niece

State v. Clifton, 248 So.3d 691 (5 Cir. 2018)

Sexual battery of 9-year-old by stepfather

State v. Gonzales, 249 So.3d 129 (3 Cir. 2018)

Attempted aggravated crime against nature of teen daughter

Miller cases:

State v. Schane, 239 So.3d 239 (La. 2018)

Sentence is vacated and case remanded for Montgomery proceedings and resentencing under C.Cr.P. art. 878.1.

State v. Nash, 239 So.3d 866 (3 Cir. 2018)

Life sentence of defendant convicted of second degree murder as a 15 year old was amended to include eligibility for parole, as per Miller. Defendant is not entitled to be resentenced to the next lesser included penalty for manslaughter at the time of the offense.

State v. Harvin, 239 So.3d 907 (3 Cir. 2018)

Resentencing a defendant to life imprisonment with benefit of parole complies with the US Supreme Court opinion in Miller and the Louisiana Supreme Court's interpretation of that holding in Montgomery. Defendant is not entitled to resentencing under a lesser and included offense.

State v. Comeaux, 239 So.3d 920 (3 Cir. 2018)

Defendant who was 17 years old and mildly mentally retarded at the time of the offense was convicted of murder and sentenced to death. His sentence was commuted to life, and after *Miller*, the defendant was granted the possibility of parole. Sentence was upheld.

State ex rel. Harris v. State, 242 So.3d 563 (La. 2018)

Life sentence for second degree murder committed as a juvenile is vacated and remanded to district court for a determination in accordance with C.Cr.P. art. 878.1 If the district attorney timely filed notice of intent to seek a life sentence, a hearing would be conducted. If not, the defendant would be eligible for parole without the need for a hearing.

State v. Harper, 243 So.3d 1084 (2 Cir. 2017)

Defendant was resentenced under *Miller* to include parole eligibility, and he appealed. The appellate court affirmed, noting that defendant received the mandatory minimum sentence available under Miller, R.S. 14:31 and C.Cr.P. art. 878.1. "The sole question to be answered in a *Miller* hearing is whether the defendant should have a chance for parole."

State v. Jackson, 243 So.3d 1093 (2 Cir. 2017)

A court's obligation to consider youth-related mitigating factors during sentencing is limited to cases in which the court imposes a sentence of life, or its equivalent, without parole. Access to the parole board for consideration of parole meets the requirements of *Miller*.

State v. Bradley, 243 So.3d 1253 (2 Cir. 2018)

Juvenile defendant's original life sentence without benefit of probation, parole, or suspension for second degree murder was vacated and he was resentenced to life with parole. Defendant's argument that he should have been resentenced to the lesser responsive verdict of manslaughter is rejected.

State v. Lewis, 244 So.3d 527 (4 Cir. 2018)

Defendant appeals outcome of his *Miller* resentencing hearing, arguing that he should be sentenced under the lesser included offense. Opinion notes rejection of the claim across circuits.

State v. Hudson, 245 So.3d 277 (2 Cir. 2017)

State v. Thompson, 245 So.3d 302 (2 Cir. 2017)

State v. Marshall, 245 So.3d 336 (2 Cir. 2017)

State v. Harris, 245 So.3d 1036 (La. 2018) – state funding for expert witness services

State v. Evans, 245 So.3d 1112 (2 Cir. 2018)

State v. Looney, 245 So.3d 1143 (2 Cir. 2018)

State v. Palmer, 246 So.3d 660 (2 Cir. 2018)

State v. Williams, 247 So.3d 1129 (4 Cir. 2018)

State v. Barrett, 247 So.3d 164 (2 Cir. 2018)

State v. Francis, 247 So.3d 199 (5 Cir. 2018)

State v. Brooks, 247 So.3d 1071 (2 Cir. 2018)

State v. Alridge, 249 So.3d 260 (4 Cir. 2018)

2018 Legislation Impacting Juvenile Court Jurisdiction

STATUTE(S) AFFECTED	ACT	ADDITIONS OR CHANGES
		CHILD IN NEED OF CARE
Ch.C. arts. 424.2, 424.4, 616	Act 320	Provides for CASA involvement in CINC cases, including access to child, attendance at meetings, and child abuse background checks
Ch. C. art. 616(B)	Act 556	DCFS central registry records no longer deemed confidential, but rather provides that a name shall not be released until all of that individual's administrative appeals are exhausted
Ch.C. art. 672	Act 189	DCFS has authority over placement of child but court can disapprove placement based on best interests of child and order a more appropriate placement
Ch.C art. 610(A)	Act 104	Requires DCFS in cases of abuse or neglect involving active duty military families to notify the United States Department of Defense Family Advocacy Program concerning the investigation
R.S. 49:964(A)(2), 49:992 (B)(3) Ch.C art. 616.1.1	Act 90	Adds exception to present law & authorizes DCFS to seek judicial review in appeals brought pursuant to Ch.C. art. 616.1.1 (Appeal and review; correction of central registry entries; procedure)
Ch.C. art. 606(C)	Act 193	Provides limitations on diagnosing of the disorder commonly known as "Munchausen syndrome by proxy", and on initiation of child welfare proceedings; stipulates that a diagnosis of factitious disorder imposed on another shall not constitute grounds for a determination that a child is in need of care unless that diagnosis is made in accordance with R.S. 37:1745.2.
Ch.C. art. 610(A) and (D)	Act 207	Mandatory reporters of child abuse shall report through the DCFS designated child protection reporting hotline, via the DCFS Services Mandated Reporter Portal, or in person at any child welfare office. Making a report of suspected child abuse or neglect to DCFS by facsimile does not relieve the reporter of his duty to report in accordance with the law. If a mandatory reporter's initial report was in oral form, then it shall be followed by a written report made within five days
Ch.C. arts. 502, 603, 606	Act 458	Adds female genital mutilation as abuse and as ground for CINC
Ch.C. arts. 1150, 1151, 1152	Act 134	Makes revisions to Safe Haven law
R.S. 46:286.24 R.S. 1403.1	Act 649	Adds authorization that a child housed in a residential home or in foster care may stay until their 21st birthday to complete any educational course that they began while a resident of the home/ facility; specifies applicability of benefits including receipt after achieving age of majority. Requires that DCFS notify all foster children, their foster parents/ other custodians in writing of the availability of these benefits/services upon the child's 17th birthday, and every 90 days thereafter until the child's 18th

		birthday, unless the foster child and the foster parents/ custodians have already consented in writing to participate
		ADOPTIONS/TERMINATIONS
Ch.C arts. 1131(A), 1200, 1201, 1223, 1223.1 and R.S. 14:286	Act 562 (also HR 204)	Changes expense payments that may be made to a birth mother surrendering her child for adoption from reasonable expenses to actual. Requires preliminary estimate of fees to be filed at time of surrender, along with actual fees and itemized charges (disclosure affidavit) to be filed at time petition for adoption is filed. Caps living expenses that may be given to a birth mother/family at $7500. Provides limited reimbursement of payments made to birth mother by petitioners, gives court authority to increase living expenses paid to birthmother that the court deems "reasonable and necessary"
Ch.C art. 1036(C)	Act 237	Paragraph 8 has been added to specify a parent's failure to provide a negative drug test result as evidence of lack of parental compliance with case plan.
		DELINQUENCY
Ch.C. art. 408	Act 453	Provides procedure for use of restraints in courtroom
Ch.C. art. 804(1)(b)	Act 654	Raise the Age legislation effective 3/1/2019
Ch.C. arts 116, 801, 897.1,901	Act 467	Makes changes to mandatory juvenile life dispositions
Ch.C. arts. 898, 906	Act 355	Provides for duration of juvenile dispositions
Ch.C. art. 911	Act 321	Clarifies procedure for modification of disposition to release child from OJJ custody
		SUPPORT
Ch.C art. 313(B) , R.S. 46:236.2	Act 373	Provides that DCFS is authorized to receive and disburse support payments made on behalf of each child who is a recipient of public assistance, and is authorized to administratively change the payee of a support order to the department; provides that DCFS shall give notice of such change to the obligee and the obligor and shall file a copy of such notice with the court by which the order was issued or last registered
R.S. 9:311(A)(1), (C), and (F)	Act 379	This provision specifies that for a modification of child support, the material change in circumstances must be substantial and continuing; also creates a rebuttable presumption that a material change of circumstances exists where there is a 25% change in the award calculations; provides that the court has the discretion to adjust the award of support without a material change if it is in the best interest of the child
R.S. 40:34.2(2)(a), 40:34.5(A), 40:34.5.1, 40:34.5.2, 40:46.4(A), 40:46.9 C.C. Art. 190.1	Act 21	Provides for the filiation of a child. Specifically, the husband or former husband of the mother is not presumed to be the father of the child if the mother, presumed father, and biological father execute a three-party acknowledgment regarding the paternity of the child and a DNA test confirms the paternity of the third party; the acknowledgment shall be executed no later than 10 years from the day of the birth of the child but never more than 1 year from the day of the death of the child (time periods are preemptive)
Ch.C art 313(B), R.S. 46:236.2	Act 373	Provides that DCFS is authorized to receive and disburse support payments made on behalf of each child who is a recipient of public assistance, and is

		authorized to administratively change the payee of a support order to the department; provides that DCFS shall give notice of such change to the obligee and the obligor and shall file a copy of such notice with the court by which the order was issued or last registered
R.S. 9:311(A)(1), (C), and (F)	Act 379	This provision amends LA R.S. 9:311(A)(1)(C) and (F), holding that for a modification of child support, the material change in circumstances must be substantial and continuing. It also creates a rebuttable presumption that a material change of circumstances exists where there is a 25% change in the award calculations. It further provides that the court has the discretion to adjust the award of support without a material change if it is in the best interest of the child.
Amends Act No. 264 of the 2017 R.S.; Repeals R.S. 9:311.1(J) R.S. 9:315.11	Act 136	Amends effective date of Incarcerated Parent's Act 264 from 2017 Legislative session. Expedites effective date of the provisions of R.S. 9:315.11, relative to voluntary unemployment or under-employment to become effective on Aug. 1, 2018, instead of Jan. 1, 2019; adds factors the court shall include in making determinations of whether to impute income; repeals the rule-making authority provided to DCFS in Act No. 264 (R.S. 9:311.1(J)), and provides for such rule-making authority in proposed law, to be effective upon signature of the governor
R.S. 46:236.1.1(9), (10), (11), (12), (13), & (14); and 46:236.1.2(L) & 3; and R.S. 46:236.1.1(15) & (16)	Act 166	New provision defines "health insurance" and "healthcare coverage" as well as further defined the 5% reasonable cost as "the cost of adding the child to an existing policy, the difference in the cost between a single and a family policy, or the cost of acquiring a separate policy to cover the child;" allows a court to order a noncustodial parent to pay cash medical support when a minor child has no healthcare coverage, is covered by public health insurance, or is covered by private health insurance but there remains a need for additional funds to cover the child's healthcare costs
R.S. 46:236.15(C) and (9	Act 194	Provides relative to access to certain information for purposes of child support enforcement in that it includes the ability to access records of electronic communications and Internet service providers
		MISCELLANEOUS
Ch.C. arts 612(A)(2), 624(D), (E), (F), and (G), 634(A), 749(A) and (B), 1019(A) and (B), 1122(A)(3), and 1515(B), enacts arts. 103.1, 116(6.1) and (6.2), 624(H), 624.1, 661.1, 767.1, 767.2, 1034.1, 1034.2, 1515(A)(8) and (C) and	Act 296	Adds federal ICWA considerations into relevant articles of Children's Code

1518(C), and provide Comments to art. 680		
Ch.C. art. 1570.1	Act 264	Changes statutory wording regarding payment of costs by a perpetrator of domestic violence
R.S. 46:2136.3	Act 367	Provides for transfer of firearms in domestic violence cases
R.S. 14:133.7	Act 385	Prohibits the publication of certain criminal records, and juvenile records, by a person or business entity without written consent from the minor after retaining age of majority. Details application of prohibition, as well as penalties for violation and exceptions to the prohibition
R.S. 46:2185(A)	Act 433	Provides for juvenile court to have jurisdiction over protective orders related to sexual assault
R.S. 40:1734(C)	Act 528	Requires multistory courthouses to have at least one half of all elevators in proper working order and accessible according to ADA standards. Provides time limitations for repair and penalties for failure to comply
R.S. 14:403(A)(4)(b), Ch. C. arts. 502(1)(d) and (4)(r), 603(2)(e) and (12)(t) and 606(A)(8)	Act 458	Adds female genital mutilation as a crime requiring mandatory reporting
R.S. 49:964(A)(2), 49:992 (B)(3) Ch.C. art. 616.1.1	Act 90	Adds exception to present law & authorizes DCFS to seek judicial review in appeals brought pursuant to Ch.C. art. 616.1.1 (Appeal and review; correction of central registry entries; procedure
R.S. 17:416.16(A)(3)	Act 168	Requires school crisis management and response plans to provide for parental notification in the event of a shooting or other violent incident or emergency situation
C.Civ.P. art. 1392	Act 184	Removes the requirement of submitting printed books or pamphlets in order for the court to take judicial notice of statutes, and provides that the court shall take judicial notice of the laws of the United States, of every other state, territory, and other jurisdiction of the United States pursuant to existing law C.E. art. 202