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IN THE SUPREME COURT
OF THE STATE OF FLORIDA
Case No.

JACK C. VANDERGRIFF,

Petitioner,

v.

WALLYCE V. VANDERGRIFF,

Respondent.

On Petition for Review from the First District Court of Appeal

DCA Docket No. AQ-277

INITIAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE

Petitioner, Jack C. Vandergriff, was the appellee/ respondent below in the dissolution of marriage proceeding and shall be referred to hereinafter as "Husband". The respondent, Wallyce B. Vandergriff, was the appellant/ petitioner below, and shall be hereinafter referred to as "Wife".

A dissolution of marriage proceeding resulted in a final judgment dated December 13, 1982, which is incorporated as Exhibit "A" in the Appendix.

The wife timely filed a notice of appeal from the final judgment, resulting in the entry of the opinion of the First District Court of Appeal filed on September 19, 1983, a copy of which is attached as Exhibit "B" in the Appendix. The opinion of the First District Court of Appeal reversed in part and affirmed in part the final judgment of dissolution of marriage. The husband timely filed a Motion for Rehearing/ Rehearing En Banc, which Motion was denied October 21, 1983.

The husband filed his Notice to Invoke Discretionary Jurisdiction to the Supreme Court for the state of Florida, on or about November 11, 1983, as well as his Jurisdictional Brief of Petitioner to the Supreme Court.

On April 5, 1984, the Supreme Court of the state of Florida issued an Order Accepting Jurisdiction and Dispensing with Oral Argument.

In this brief, the transcript of the appellate record will be referenced by the symbol "T.__", and the record on appeal will be referenced by the symbol "R.__".

STATEMENT OF THE FACTS

As of the date of the final hearing in the trial court, the parties, both fifty-two years of age (T.27), had been married thirty-one years, which marriage had produced three children, only one of whom remained a minor as of the final hearing, a daughter, age 15. (T.28).

The wife had received a degree in elementary education and taught school for several years following the marriage. (T.39,40 61). Over the years, the husband had repeatedly asked the wife to return to work but to no avail. (T.135). The wife is an award-winning artist, and as of the final hearing was desirous of becoming a commercial artist. She is also the director of an art gallery on a volunteer basis. (T.42,43). The wife makes most of her own clothes, as well as clothes for other people and is able to do such activities as repairing appliances, painting, wallpapering and repairing screen windows. (T.43-45).

Although at the final hearing the wife complained of a "bad back", a normal day for her consisted of rising at 6:00 A.M., cooking breakast and taking the minor child to school. She would then come home, make the bed and straighten the house. (T.62,63). The wife would then either proceed with her art paintings or go to the art gallery. She would spend approximately four hours a day painting on canvas, and would

sometimes stand as long as four hours for that purpose. (T.63,65). It was not unusual for the wife to take a one-hour nap in the afternoon two or three times per week. (T.63). The wife would often sew in the afternoon for three or four hours; sometimes her sewing was done the same day she had painted in the morning. (T.66,67). The wife admitted that the above activities do not bother her back. (T.86). Even though the wife described herself as an intelligent woman, she had not attempted to obtain employment. (T.61). As to her plans for future employment, the wife testified that she planned to go into commercial art painting on a remunerative basis. (T.70). At her deposition, however, she basically admits answering the following question as indicated:

"Q. Do you plan on trying to get a job?

A. No, I don't think so, I think I'll let Jack take care of me." (T.71)

Although there was some question as to the wife's health, the treating physician felt that her health situation would improve following the final hearing upon the dissolution of marriage proceeding. The wife had not seen a physician for twelve years prior to the institution of the dissolution of marriage proceedings. (T.27,64,66).

Now residing with the wife in the former marital home are the minor daughter, the two adult daughters, and the wife's mother. One of the adult daughters works, and has an income but does not contribute to the overhead expenses of the household. (T.53-55). The husband has substantially contributed to the two adult daughters' college education. The minor child has attended private school, and the husband has always paid for the private school tuition. (T.59). Over the husband's objection, the wife's mother, Mrs. Bonifay, has also resided in the marital home since 1961. (T.51,130). Mrs. Bonifay has an income of her own of $1,190 net per month, but only contributes $250 room and board to the expenses of the household. (T.117,121,122, 124).

The wife had submitted two financial affidavits to the Court for its consideration, one bearing date of June 16, 1982, and the other November, 1982. These financial affidavits were not based solely upon the monthly financial needs of the wife and the minor child, but also included the financial needs of the several adults who had resided in the household for some period of time. (T.84,85). The wife's financial affidavit of June 16, 1982, reflected total monthly financial needs for herself, the minor daughter, the adult daughters,

and Mrs. Bonifay of $593.00 per month. Her financial affidavit of November, 1982, for the same group of people reflected total monthly needs of $1,224.00 per month, which also included a monthly expense for hospitalization insurance for the wife. (T.83-88).

The husband's monthly net take home pay is approximately $1,511.00 (R.288).

The former marital home is paid for and is unencumbered. (T.146).

The trial court heard evidence of marital misconduct on the part of the wife. The wife had stabbed the husband with a pair of scissors, pointed a gun at the husband and pulled the trigger, thrown a beer can at him, sent him human teeth in the mail, and sent his secretary obscene mail. (T.76-81). The wife had also hit the husband, tried to kick him in the groin and the stomach many times, scratched his neck, hit him on the head with a flowerpot, hit him on the head with a gun, and bruised his ribs by pushing him into the staircase. (T.132,134). The wife, over the years, had further deliberately alienated the children against the husband. (T.129). The parties had a joint checking account at one time but the wife overdrew the account on occasions, and was ultimately closed. (T.13).

The final judgment of dissolution of marriage is included in the Appendix as Exhibit "A". The final judgment, in pertinent part, awarded the wife exclusive use of the marital home until the minor child attained majority, or until the wife dies or remarries, together with the use of the majority of the household furniture, fixtures, and appliances. The husband was ordered to pay to the wife rehabilitative alimony in the amount of $300.00 per month for a period of three years, followed by a reservation of jurisdiction to revise or extend the rehabilitative alimony. The husband was further ordered to pay child support for the minor child, in the amount of $180.00 per month, and was ordered to continue payments upon the child's private school tuition. The wife was awarded the automobile she customarily drove. The husband was required to accomplish certain repairs of the marital home, including the installation of a new furnace. The husband was required to maintain the minor child on his hospital and medical insurance.

The opinion of the First District Court issued in this case on September 19, 1983 is included in the Appendix as Exhibit "B". Judge Shivers authored the main opinion, which reversed and remanded the alimony award, the lack of provisions for the wife's health insurance, and the trial court's failure to divide the credit union savings plan. On page 3

of Judge Shiver's opinion, is the following:

> "We turn now to the wife's point that she should have been awarded permanent alimony. She should have been. A husband who has been married three decades to a wife whom he has supported, who has raised his three children and who has no present ability to support herself, but whom he can support, can provide her permanent alimony.... The trial court abused its discretion in awarding rehabilitative instead of permanent alimony and in making an inadequate award of only $300 per month."

On page 5 of the aforesaid opinion of the District Court of Appeal, the Honorable Robert Smith, wrote a concurring and dissenting opinion wherein is found in pertinent part, the following:

> "I also share the Court's concern over the amount of alimony awarded, there being no explanation in the trial court's judgment of a facially inadequate award of $300 per month;
>
> . . . .
>
> Yet I must respectfully disagree that, as a matter of law, the trial court must be held to have erred in awarding at this time rehabilitative alimony, only, and in not awarding permanent alimony. The significant factor in this judgment, indicating that chancellor's purpose more than any other, is his retention of jurisdiction .... to revise or extend said rehabilitative alimony within the three year period in which those sums are to be paid. Within the context of prior decisions of this Court, that provision represents a decision by the Circuit Court to motivate the college-trained and avocationally active wife to test and establish her financial dependence or independence, ... There is a view

> of the record evidence that would indicate a rather cavalier attitude by the wife toward rehabilitating her powers of self support. That view of the evidence, I take it, explains both the Court's choice of rehabilitative alimony, which I regard as a wholly permissable choice, and the rather parsimonious award, which I agree needs further consideration.
>
> . . . .
>
> ...I had not understood that this Court was wed to the invariable proposition that thirty-two years of marriage yields to a fifty-two year old wife an entitlement to permanent alimony regardless of what seems to be, in appellee's legitimate view of the record, her earning capacity and her determination not to exploit it. At 6.
>
> . . . .
>
> In appellee/husband's legitimate view of the record, which need not be recounted here in detail, the appellant/wife was anything but a model partner in this marriage. On this evidence, the Circuit Judge might have found that the wife constantly nagged and belittled her husband, committed physical violence upon him, and pointed a rifle at him and pulled the trigger. The wife's mother, who lived with the family without the husband's approval, contributed and still contributes financially to maintaining the home, so lessening the wife's financial dependency even now..... My colleagues seem to have discounted entirely the very factors appropriately considered under the statute, which most influence the Circuit Judge." At 6-7.

On page 8 of the aforesaid opinion, Judge Nimmons wrote a specially concurring opinion wherein is found the following:

"In Judge Smith's concurring and dissenting opinion, he posits a view of the evidence which he suggests would support the trial court's denial of permanent alimony. Had the trial court actually made the kinds of factual findings which such view of the evidence assumes, then I would be inclined to agree that the denial of permanent alimony would not be error. Short of such findings, however, I am of the view that the wife was entitled to an award of permanent alimony."

ISSUES PRESENTED

I. WHETHER THE INSTANT OPINION OF THE FIRST DISTRICT COURT OF APPEAL, BY DETERMINING THAT AS A MATTER OF LAW A FIFTY-TWO YEAR OLD UNEMPLOYED WIFE OF THIRTY-TWO YEAR MARRIAGE IS ENTITLED TO PERMANENT ALIMONY, REGARDLESS OF OTHER EVIDENCE, EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW, I.E., WHETHER THE TRIAL COURT HAS AUTHORITY TO EXERCISE DISCRETION IN DETERMINING ALIMONY MATTERS.

II. WHETHER THE INSTANT OPINION OF THE FIRST DISTRICT COURT OF APPEAL, BY DETERMINING THAT AS A MATTER OF LAW A FIFTY-TWO YEAR OLD UNEMPLOYED WIFE OF A THIRTY-TWO YEAR MARRIAGE IS ENTITLED TO PERMANENT ALIMONY, REGARDLESS OF OTHER EVIDENCE, EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW, I.E., WHETHER THE TRIAL COURT HAS AUTHORITY TO EXERCISE DISCRETION IN DETERMINING ALIMONY MATTERS.

III. WHETHER JUDGE NIMMONS' OPINION THAT THE TRIAL COURT MUST SET FORTH FACTUAL FINDINGS IN SUPPORT OF AN OTHERWISE PROPER RULING EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE SUPREME COURT AND OTHER DISTRICT COURTS OF APPEAL.

ARGUMENT

I. BY DETERMINING THAT, AS A MATTER OF LAW, A FIFTY-TWO YEAR OLD UNEMPLOYED WIFE OF A THIRTY-TWO YEAR MARRIAGE IS ENTITLED TO PERMANENT ALIMONY, REGARDLESS OF OTHER EVIDENCE, THE FIRST DISTRICT COURT OF APPEAL DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW, THAT IS, WHETHER THE TRIAL COURT HAS THE AUTHORITY TO EXERCISE DISCRETION IN DETERMINING ALIMONY MATTERS.

The opinion of Judge Shivers in this cause stands for the proposition that a wife of a long-term marriage, who, although well-educated, has not been gainfully employed in the job market for some years, has a desire to pursue a profession, and may be guilty of misconduct, is always entitled to a judicially established amount of permanent alimony. The legal effect of that proposition is to absolutely remove the discretion from the trial court in determining what, if any, alimony should be awarded in cases of that nature. Therefore, that proposition directly conflicts with the cases of the Florida Supreme Court on the same question of law which follow.

In the case of Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980), this Court stated, in pertinent part as follows:

> "... It is important the appellate courts avoid establishing inflexible rules that make the achievement of equity between the parties difficult, if not impossible. [at 1200]
>
> . . . .
>
> Our trial judges are granted this discretionary power because it is impossible to establish

> strict rules of law for every conceivable situation which could arise in the course of a domestic relations proceeding. The trial judge can ordinarily best determine what is appropriate and just because only he can personally observe the participants and events of the trial.[at 1202]."

The foregoing expressly and directly conflicts with the opinion of Judge Shivers, which holds as a matter of law that a husband who has been married over three decades to a wife whom he has supported, who has raised three children, and who is not presently supporting herself, but whom he can support, should provide her permanent alimony.

Judge Shivers' opinion removes all discretion from the trial court in matters such as this in long-term marriages. The most succinct statement of the test for review of a judge's discretionary power is set forth by this Court in Canakaris, supra, at 1203,

> "Discretion, in this sense, is abused when a judicial action is arbitrary, fanciful or unreasonable, which is another way of saying that discretion is abused where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion."

Judge Shivers' opinion essentially ignores the testimony presented at the trial of this cause that the wife was

guilty of continued misconduct, and that she is an active, capable woman who has devoted substantial hours of her time to activities outside of the household which could be converted to income-producing activities. Judge Shivers' opinion further ignores the fact that the wife's mother, who resides in the former marital home, is contributing only nominal room and board, even though she has more than sufficient income with which to carry her own weight. The same, of course, applies to the adult daughters who reside in the former marital home, one of whom is employed but not contributing to the overhead of the household.

This Court has stated in Williamson v. Williamson, 367 So.2d 1016 (Fla. 1979), that where there is not enough money available during dissolution, the Court may consider the conduct of either party which contributed to the difficult economic situation. There is an abundance of testimony in the record of conduct by the wife which would more than justify the husband's decision that he simply could not live under those conditions any longer, and hence the dissolution of marriage. To that extent, Judge Shivers' opinion directly and expresssly conflicts with Williamson, supra. Additionally, the trial court was justified in imputing a reasonable rental income to the wife for the adults residing in her household. See, Desilets v. Desilets, 377 So.2d 761 764 (Fla. 2nd DCA 1979).

The opinion of the First District Court of Appeal herein conflicts with Conner v. Conner and Smith, 439 So.2d 887 (Fla.1983), wherein this Court stated:

> "[T]he determination that a party has been "short-changed" is an issue of fact and not one of law, and in making that determination on the facts before it in the instant case, the district court exceeded the scope of appellate review."

The trial judge in the case at bar resolved conflicting testimony in favor of the husband. By substituting its factual finding for the trial court's findings, the First District Court of Appeal exceeds the scope of appellate review.

The opinion of Judge Shivers further directly and expressly conflicts with the opinion of this Court in Kuvin v.Kuvin, 442 So.2d 203 (Fla. 1983). In the Kuvin case, the wife was awarded rehabilitative alimony, and she appealled. The District Court of Appeal reversed the award of rehabilitative alimony, stating that she should have been awarded permanent alimony. This Court, in reversing the District Court of Appeal on that point stated as follows:

> "The reversal of the rehabilitative alimony award appears to elevate to a rule of law the proposition that a rehabilitatable wife who was awarded custody of minor children and who desires to forego rehabilitation and remain at home has a right to do so if her former husband can afford to support her.
>
> . . . .

> The husband's ability to support the wife is only part of the test. It is the role of the trial court to make a determination based not only on the ability of the husband, but also on the need of the wife and the best interest of the parties.
>
> . . . .
>
> When a trial court awards rehabilitative rather than permanent alimony, it is a reflection of the court's optimism concerning the likelihood of future rehabilitation.
>
> . . . .
>
> After careful review of the record, and mindful of the trial court's superior vantage point, we cannot say that no reasonable person would take the view adopted by the trial court. .... We therefore find no abuse of discretion. The District Court erred in substituting its judgment for that of the trial court." At 204, 205, 206.

Therefore, Judge Shivers' opinion conflicts with Kuvin, supra, in that the trial court, from its superior vantage point, determined that the wife, who essentially worked for free in numerous activities unrelated to her homemaking chores, could become gainfully employed. It cannot be said that no reasonable person would take the view adopted by the trial court. In fact, the Honorable Robert Smith, Judge, First District Court of Appeal, took the view of the trial court, and the Honorable Judge Nimmons, First District Court of Appeal, would have taken the view of the trial court had the trial court set forth findings upon which it based its ruling. The First District Court of Appeal in the instant case, in the opinion written by Judge

Shivers, substituted its judgment for that of the trial court.

It is submitted, therefore, the opinion written by Judge Shivers in the case at bar directly and expressly conflicts with the decisions of this Court as set forth in Canakaris, supra, and in Kuvin, supra.

II. BY DETERMINING THAT AS A MATTER OF LAW A FIFTY-TWO YEAR OLD UNEMPLOYED WIFE OF A THIRTY-TWO YEAR MARRIAGE IS ENTITLED TO PERMANENT ALIMONY, AND A SPECIFIC AMOUNT THEREOF, REGARDLESS OF OTHER EVIDENCE, THE OPINION HEREIN OF THE FIRST DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW, THAT IS, WHETHER THE TRIAL COURT HAS THE AUTHORITY TO EXERCISE DISCRETION IN DETERMINING ALIMONY MATTERS.

The opinion of Judge Shivers in the case at bar directly and expressly conflicts with the following cases of other District Courts of Appeal:

In the case of Markgraf v. Markgraf, 320 So.2d 27 (Fla. 2d DCA 1975), cert.denied 320 So.2d 726 (Fla.March 30, 1976), the Second District Court of Appeal stated that:

> "True it is, that because of a wife's age and certain physical disabilities, there is some indication that she may be incapable of that degree of rehabilitation within the prescribed period sufficient to enable her to maintain the standard of living to which she had become accustomed and to which she may be entitled. [footnote omitted]. If this fear materializes, however, she will still not be precluded from timely seeking within that rehabilitative period a modification of the decree relating to alimony as may be appropriate." At 27-28.

In the case of Moses v. Moses, 344 So.2d 1322 (Fla. 2d DCA 1977), the parties had two minor children, the husband was forty-one and the wife was forty-two years of age. The wife had a high school education, plus a year of night school, and had been a secretary for a few years after her marriage. For a short period of time before the divorce,

she had been performing part-time clerical and bookkeeping work for minimal pay. The wife's objective was to become a nurse. The trial court awarded the wife rehabilitative alimony and the wife appealed, contending she should have been awarded permanent alimony. In affirming the award of rehabilitative alimony, the Second District Court of Appeal held:

> "[T]he law vests broad discretion in a trial judge in determining amounts required for alimony ... absent a clear showing of abuse of discretion, the judgment of a trial court in these matters should be upheld regardless of the merits of the award when considered de novo.
>
> . . . .
>
> From the testimony, it appears that the wife has a potential for self-support. Commendably, she has the initiative to create a secure economic future for herself .... we cannot say that [the trial judge] abused his discretion in determining that the wife's potential could be realized through rehabilitative alimony and that permanent alimony is not required." At 1323-1324.

In the case of Jassy v. Jassy, 347 So.2d 478 (Fla. 2d DCA 1977), the husband was fifty-eight and the wife was fifty-five, and both in apparently good health. The wife had a high school education but had not worked for years. The District Court of Appeal recognized that the wife would have difficulty competing in today's job market. (p. 480). The wife's desire was to go back to school to pursue a profession. Ibid. The appellate court stated that,

> "We commonly think of rehabilitative alimony in terms of a somewhat younger spouse when it relates to retraining, yet the wife is in apparent good health, and considering the increased longevity of the female sex, it was within the trial judge's discretion to conclude her goal was an appropriate one and that she has the potential to realize her objective." At 481.

The District Courts of Appeal have recognized that fault may be considered by the trial court in deciding alimony questions. In Taylor v. Taylor, 378 So.2d 1352, 1353 (Fla. 3rd DCA 1980), the Third District Court of Appeal stated that:

> "Evidence of [physical abuse] may likewise be taken into account in determining which spouse should bear the brunt of the fact that the dissolution renders it economically impossible for the parties to live separately in the lifestyle they maintained when living together ... Williamson v. Williamson, 367 So.2d 1016, 1019 (Fla. 1979); cf. also, Smith v. Smith, 378 So.2d 11 (Fla. 3rd DCA 1979) ...."

See also McCallister v.McCallister, 345 So.2d 352 (Fla. 4th DCA 1977), which recognized that the trial court may consider whether the party seeking permanent alimony has demonstrated violence toward the other spouse in determining alimony questions.

In the case of Beville v. Beville, 415 So.2d 151 (Fla. 4th DCA 1982), the court held:

> "It appears from the record that this much respected trial judge may have made this pathetically small award of periodic alimony because the wife was shown to be a lifelong nag and intolerable companion during thirty-five years of marriage. If our supposition is correct, we can voice no objection, but we must ask the trial judge upon remand to make such a finding. Otherwise, reversible error was committed. Marital misconduct by a wife who seeks alimony may well limit or forestall any award, but such misconduct should be articulated, so that a reviewing court can discern what is afoot. [citing Williamson, supra]. Absent marital misconduct, the award here would be ridiculous. [emphasis added]

In the case of Campbell v. Campbell, 432 So.2d 666,668, (Fla. 5th DCA 1983), that court held as follows:

> "[T]hat where, as here, the prior education, skills, training and work experience of the wife clearly demonstrate that she has the capacity or potential for self-support in a manner similar to that enjoyed by her during the marriage, but may not be quite ready to weather the storm alone, rehabilitative alimony, not permanent, is the award of choice. It has been held that there can be no award of permanent alimony where the evidence does not reflect a permanent inability on the part of the wife to become self-sustaining."

In as much as the record in the case at bar contains ample evidence that the wife is very active inside as well as outside the home, is an award winning artist and wants to become a commercial artist, and that her health problems should dissappear following the entry of the dissolution of marriage, the opinion of Judge Shiver directly and expressly conflicts with the opinion of the Fifth District Court of Appeal in Campbell, supra. The record in the case at bar does not reflect a permanent inability on the part of the wife to become self-sustaining.

III. JUDGE NIMMONS' OPINION, SPECIFICALLY CONCURRING IN THE CASE AT BAR, THAT THE FINAL JUDGMENT MUST BE SUPPORTED BY FINDINGS, CONFLICTS WITH OTHER DECISIONS OF THIS COURT AND OF THE DISTRICT COURTS OF APPEAL, AND THEREFORE JUDGE SMITH'S DISSENTING OPINION ON THE QUESTION OF REHABILITATIVE VERSUS PERMANENT ALIMONY ACTUALLY IS THE MAJORITY OPINION, WHICH WOULD UPHOLD THE REHABILITATIVE ALIMONY AWARD.

As this Court held in State v. Bruno, 104 So.2d 588, 591 (Fla. 1958), except in an order granting a motion for new trial, the courts of this state are not required to state the grounds of reasoning upon which orders, judgments or decrees are based.

Therefore, Judge Nimmons' concurring opinion that he would have supported the trial court's denial of permanent alimony had the trial court made factual findings in support thereof is erroneous since the trial court is not required to set forth its findings. Thus, Judge Smith's opinion wherein he states that he would have upheld the rehabilitative alimony award, and Judge Nimmons' opinion wherein he states he would have upheld the rehabilitative alimony award would become the majority opinion in the instant case.

CONCLUSION

It is respectfully submitted that the opinion of the First District Court of Appeal in the case at bar stands for the ironclad proposition that the trial court in determining alimony questions does not have discretion to evaluate the following:

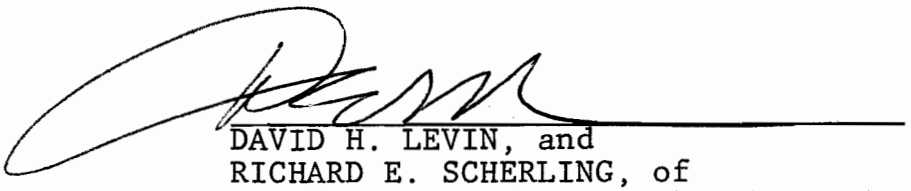
1. the skills, health and abilities and motivation of a spouse seeking alimony;

2. misconduct of a spouse seeking alimony, including violent assaults on the husband, and intentionally alienating the children against their father; and

3. imputing income to the spouse seeking alimony when that spouse has adults residing in her home who are not paying a reasonable room and board.

To that extent, the opinion in the case at bar directly and expressly conflicts with the cases of this Court, as well as those of other District Courts of Appeal. The record demonstrates that the trial court had before it substantial competent evidence to support its judgment, and the opinion of the First District Court of Appeal should be quashed.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief of Appellant has been furnished to John L. Myrick, Esquire, Kinsey, Myrick & Troxel, P.A., 438 East Government Street, Pensacola, Florida, by hand delivery, on this 23RD day of April, 1984.

Attorney