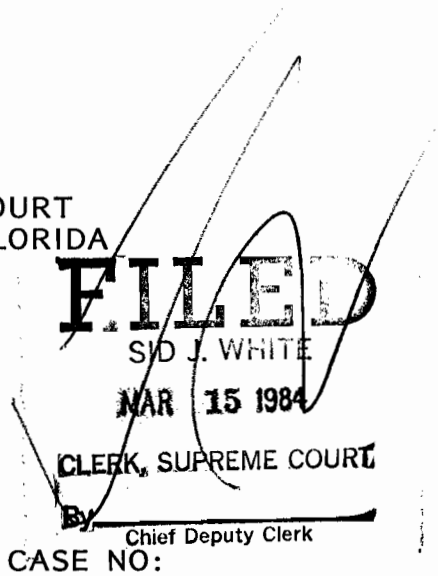
IN THE SUPREME COURT
OF THE STATE OF FLORIDA



EUGENIA BOWEN,
and the STATE OF FLORIDA
DEPARTMENT OF REHABILITATIVE
SERVICES,

Appellants,

vs.

FRANKIE L. BOWEN,

Appellee.

CASE NO:

APPELLEE'S JURISDICTIONAL BRIEF IN OPPOSITION
TO DISCRETIONARY REVIEW BY THE
SUPREME COURT OF FLORIDA

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JURISDICTIONAL ISSUE PRESENTED

MAY THE SUPREME COURT OF FLORIDA REVIEW A DECISION OF A DISTRICT COURT OF APPEAL WHICH IS NOT IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THE SUPREME COURT ON THE SAME QUESTION OF LAW?

ARGUMENT

THE FLORIDA SUPREME COURT MAY NOT REVIEW THIS DECISION OF THE SECOND DISTRICT COURT OF APPEAL BECAUSE IT IS NOT IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW[1]

The two principal situations in which a conflict could arise in this case are: (1) the second district court of appeal announced a rule of law in Bowen v. Bowen and HRS, No. 83-446 (Fla. 2d DCA, January 25, 1984), that conflicts with a rule of law previously announced by the Supreme Court; or (2) the second district court of appeal applied a rule of law to produce a different result in Bowen whose controlling facts were substantially similar to those in a prior case decided by the Supreme Court. Mancini v. State, 312 So. 2d 732 (Fla. 1975); Nielsen v. City of Sarasota, 117 So. 2d 731 (Fla. 1960). Of course, for jurisdictional purposes, that conflict must be of such magnitude that if both decisions were rendered by the same court the latter decision would have the effect of overruling the earlier decision. Kyle v. Kyle, 139 So. 2d 885 (Fla. 1962). And there can be no conflict where:

> "...the two cases are distinguishable in controlling factual elements" or "...the points of law settled by the two cases are not the same..." Id at 887.

Appellant argues that the Bowen decision is in express and direct conflict with the decision of this Court in Faircloth v. Faircloth, 339

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[1] The Florida Supreme Court has the authority to discretionarily review decisions of district courts of appeal in several instances under Article V, Section 3(b)(3) of the Florida Constitution. Appellee, not being aware of any other possible basis for a jurisdictional claim, will only address the alleged conflict raised and argued by Appellant.

So. 2d 650 (Fla. 1976).[2] Yet, the second district court of appeal noted the distinguishable elements between the Bowen case and the two topical, outstanding Supreme Court cases of Faircloth, supra, and Andrews v. Walton, 428 So. 2d 663 (Fla. 1983). First, unlike Faircloth and Andrews, the Bowen case concerned a parent who was sentenced to jail upon an express finding that the parent was unable to pay child support because the parent, through his own fault or neglect, was divested of the ability. Bowen, supra, at 6. Secondly, unlike Faircloth and Andrews, the point of law in the Bowen case was whether the parent has a right to counsel, when incarceration is the penalty imposed, upon a finding that the parent has inability to pay. Bowen, supra at 8.

Appellant beclouds the issue by arguing that it is continuing to have contemnors jailed in most other districts under alleged Faircloth guidelines. The issue is not whether contemnors can be jailed, Bowen, supra at 11, but whether indigent contemnors should be appointed counsel in such jail-threatening situations in order to help them with their burden of proof. The imprisonment in Bowen, as noted by the second district court of appeal, was not to coerce, but to punish; thus, converting the civil contempt proceeding into a criminal contempt proceeding. Bowen, supra at 10. Accordingly, greater procedural due process safeguards were required. Pugliese v. Pugliese, 347 So. 2d 422 (1977).

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[2] Appellant's argument is diluted to the extent that Faircloth, supra has been modified or expanded upon by the Supreme Court's decision in Andrews v. Walton, 428 So. 2d 663 (Fla. 1983).

CONCLUSION

Appellant has failed to raise just grounds for invoking this Court's jurisdiction to review the Bowen decision.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail, postage prepaid, to JOSEPH R. BOYD, ESQUIRE and SUSAN S. THOMPSON, ESQUIRE, Boyd, Thompson & William, P.A, 2441 Monticello Drive, Tallahassee, Florida 32303, and to CHRISS WALKER, ESQUIRE, Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Tallahassee, Florida 32301 on this 13th day of March, 1984.

Robert T. Connolly
ROBERT T. CONNOLLY

RTC/rl