

FILED

SID J. WHITE

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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT,

CASE NO. 65,181

By _____
Chief Deputy Clerk *pl*

ADRIANA BACARDI,

Petitioner,

vs.

ROBERT B. WHITE, Trustee,
and LUIS FACUNDO BACARDI,

Respondents.

RESPONDENT LUIS FACUNDO BACARDI'S BRIEF IN OPPOSITION
OF JURISDICTION

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I

INTRODUCTION

Respondent, LUIS FACUNDO BACARDI, submits that the decision of the Third District Court of Appeal in the instant case does not expressly and directly conflict with the decision of any other District Court of Appeal on the same question of law, and that this Court should not invoke its discretionary jurisdiction.

II

JURISDICTIONAL CONFLICT DOES NOT EXIST BETWEEN THE INSTANT THIRD DISTRICT COURT OF APPEAL CASE AND SECOND DISTRICT COURT OF APPEAL CASE, GILBERT V. GILBERT, SO.2D (FLA.2nd DCA 1984, 9 FLW 290) IN THAT THE DIFFERING RESULTS WERE DUE TO DISSIMILAR CONTROLLING FACTS

There is no question that the Second District Court of Appeal in Gilbert v. Gilbert, ___So.2d___ (Fla.2nd DCA 1984) 9 FLW 290, reached a different conclusion than the Third District Court of Appeal in the instant case on the question of whether a spendthrift trust can be garnished for alimony arrearages. Both courts recognized the validity of spendthrift trusts in Florida under Waterbury v. Munn, 32 So.2d 603 (1942) but reached differing conclusions because the underlying operative facts in each case were dissimilar enough to call for different conclusions. Thus, the apparent inconsistency between the two cases disappears when the underlying facts are examined.

There are obviously some similarities in the facts between Gilbert, supra and the instant case. In both cases the husband is a beneficiary of a spendthrift trust and in both cases the husband has fallen in arrears in alimony payments. At this point, the similarity of facts between the two cases ends. In Gilbert, supra the wife is a victim of multiple sclerosis, with enormous medical bills and the facts suggest she might become a ward of the state if the

alimony arrearages were not obtained from the spendthrift trust. In the instant case, there is no hint that the wife might become a ward of the state if the alimony arrearages were not obtained from the spendthrift trust. In Gilbert, supra the alimony and medical expenses were court ordered whereas in the case at bar the alimony was the result of a property settlement agreement between the husband and wife. In the instant case, the marriage was a short term one of two years suggesting that the wife had not become dependant on the husband for support. In Gilbert, supra it is apparent that the marriage was not short term as no mention was made of the fact. In Gilbert, supra the husband had removed all of his other assets from the state, and there was no similar finding in the present case. In Gilbert, supra the settlor of the spendthrift trust was aware of beneficiary/husband's wife and could have anticipated the possibility of alimony claim against the trust. In this case, the spendthrift trust was created several years before the marriage of the parties.

The Third District Court of Appeal in the present

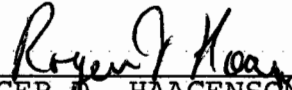
case recognized that there could be cases where a wife could reach a spendthrift trust for unpaid alimony. In note 7 of the decision the court limits its holding to the facts of the instant case and states that the holding might be different in another case, given different circumstances. The Court in the present case states in Note 7 to the finding that:

We do not decide whether the income of a spendthrift trust may be reached to support a wife where there has been no dissolution of marriage, or where there are dependant children. On these questions, public policy may be clearer. Neither do we decide whether there are any equitable circumstances where a spendthrift trust should be defeated, as a policy matter, in order to provide reasonably for an alimony-debtor ex-spouse. On the record before us no special circumstances are presented.

The Gilbert holding is based on compelling facts constituting equitable circumstances missing from the facts in the instant case, as outlined above.

In sum, the decision of the two District Courts of Appeal are not expressly and directly in conflict, because of the limited holding of the Third District Court's decision and the dissimilar controlling facts of the two cases.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing Respondent LUIS FACUNDO BACARDI'S BRIEF IN OPPOSITION OF JURISDICTION was furnished by mail to JOE N. UNGER, ESQ., Law Offices of Joe N. Unger, P. A., 606 Concord Building, 66 West Flagler Street, Miami, Florida 33130; NARD S. HELMAN, ESQ., 1401 Brickell Avenue, 11th Floor, Miami Florida 33131; and STEVEN NACLERIO, ESQ., 2100 Biscayne Boulevard, Miami, Florida 33137, this 4 day of May, 1984.


ROGER D. HAAGENSON