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IN THE SUPREME COURT OF FLORIDA

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CASE NO. 65,181

CLERK, SUPREME COURT

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Chief Deputy Clerk

ADRIANA BACARDI,

Petitioner,

vs.

ROBERT B. WHITE, etc., et al.,

Respondents.

REPLY BRIEF OF PETITIONER ON MERITS TO  
THE ANSWER BRIEF OF LUIS FACUNDO BACARDI  
AND THE ANSWER BRIEF OF R.B. WHITE

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	:	
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_____	:	

I.

REPLY TO THE ANSWER BRIEF OF LUIS FACUNDO BACARDI

Respondent Luis Facundo Bacardi does not agree with the issue which is presently before the Court, does not respond to the argument on the merits made by the petitioner, and contends only that since this case and the Gilbert case ". . . can be reconciled with each other. . .", this Court should let both decisions stand. (Brief of Respondent Bacardi, p. 14.)

As framed in the Brief of Petitioner, the issue involved in determination of the merits of the instant case is whether income to be paid the beneficiary of a spendthrift trust should be subject to garnishment for alimony arrearage. This statement of the issue is drawn from the language contained in the majority decision which is here sought to be reviewed.

In the opening paragraphs of that decision, the District Court of Appeal states the issue with which it was faced: "The main issue is whether the income from a spendthrift trust is exempt from legal process to enforce a court-ordered payment of

alimony and attorney's fees to an ex-wife." White v. Bacardi, 446 So.2d 150, 152 (Fla. 3d DCA 1984).

The holding of the district court is found in the last full paragraph of the opinion: "We hold that a former wife of a spendthrift trust beneficiary may not reach the income of that trust for alimony before it reaches the beneficiary unless she can show by competent and substantial evidence that it was the settlor's intent that she participate as a beneficiary." White v. Bacardi, supra at 156.

These expressions of both the issue and holding are ignored by Respondent, Bacardi, who argues that what the District Court of Appeal actually determined was that circumstances can exist which would permit the invasion of a spendthrift trust for alimony, but such circumstances were not present in this case.

This "restatement" of the issue is based upon footnote 7 of the District Court's opinion which states in pertinent part:

"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." White v. Bacardi, supra at page 156.

An examination of this footnote in the context of the previous statement of the issue and holding discloses unquestionably that the question of "need" or "equitable circumstances" by which a former spouse could prove entitlement to the proceeds of a spendthrift trust was not decided by the court because it had determined that a former wife of a spendthrift trust beneficiary may not under any circumstances reach the income of that trust

unless she can show that it was settlor's intent she participate as a beneficiary. The statement in the footnote that no special circumstances were presented is gratuitous because even if such special circumstances were presented, the ex-wife could not prevail and reach the income of the trust in the absence of a showing that such was the settlor's intent.

That "circumstances" or "need" were not a part of this decisions is apparently the view of the editors of the West Publishing Company who, in the case summary, reiterate the holding as later announced by the Court in the opinion. No headnote mentions or alludes to "need" as a basis for reaching the income of a spendthrift trust by the ex-wife of the beneficiary.

Respondent incorrectly states that the holding of the District Court of Appeal in the instant case bars the petitioner from the spendthrift trust under the facts of this particular case but leaves the door open to other wives to get at a spendthrift trust for alimony given the right circumstances. The holding of the District Court of Appeal in the instant case precludes petitioner and any other ex-wife, needy or not, from reaching the income of a spendthrift trust with only one exception--where that ex-wife can show by competent, substantial evidence that it was the settlor's intent that she participate as a beneficiary.

Respondent incorrectly states that this case and the Gilbert decision stand for the proposition that given the right circumstances a spendthrift trust can be attached for unpaid alimony. While it is true that the decision in Gilbert mentions

the necessitous situation of the former wife and the absence of the former husband from the country, the holding in Gilbert is not limited to circumstances involving a necessitous former wife.

The Gilbert holding is directly contrary to the decision in the instant case. This was recognized by the Gilbert court in the order on rehearing which certified the question to this Court. That question is whether a spendthrift trust can be garnished for the collection of arrearages in alimony because of the strong public policy requiring persons to support their dependents.

The content of the question before this Court is discussed in the concurrence and dissent to the Gilbert decision which criticizes the majority opinion for not specifically limiting application of the decision to cases with facts like those then before the Court; that is, where a wife can show a need for invading a spendthrift trust.

Petitioner will rely on the argument previously presented that income to be paid the beneficiary of a spendthrift trust should be subject to garnishment for alimony arrearage. The present financial circumstances of the former Mrs. Bacardi are not at issue. At issue is that her former husband agreed to pay \$2,000 a month as permanent alimony. This agreement was incorporated into a final judgment of dissolution of marriage which was not appealed. Mrs. Bacardi's need for \$2,000 a month is the law of this case until changed by a subsequent order of the trial judge. In the event Mr. Bacardi wants to contest the agreed amount of permanent alimony based upon a substantial change in

circumstance, he can utilize the facilities of the appropriate circuit court to do so.

II.

REPLY TO BRIEF OF RESPONDENT R.B. WHITE ON THE MERITS

Respondent, R.B. White, does respond to the merits of the argument made by petitioner concerning entitlement of an ex-wife to the proceeds of a spendthrift trust. Petitioner will rely on the arguments made in her main brief in support of her position. This respondent also asserts that the decision of the District Court of Appeal in the instant case was "undoubtedly due" to a failure by the petitioners to show a need for alimony. As stated above, the decision of the District Court of Appeal specifically declined to decide whether there could be any equitable circumstances which might entitle an ex-wife to receive proceeds of a spendthrift trust because the determination of the court obviated the necessity for such ruling.

This Respondent concludes his brief with the statement that should this Court reverse the determination of the District Court of Appeal in the instant case, the cause should be remanded to the District Court for its consideration ". . .of those important issues which it did not reach in its Opinion of January 24, 1984." (Brief of Respondent R.B. White on the Merits, at page 11.) This statement indicates, and correctly so, that the District Court of Appeal did not consider the need of the former wife as it might bear upon the issue of entitlement to benefits from the spendthrift trust.



III.

CONCLUSION

The issue squarely before this Court is whether the public policy of this state will insulate the proceeds of a spendthrift trust from the legitimate claims of a former wife in the absence of an express intent by the settlor of the trust to make the proceeds so available. Whether or not a former wife "needs" the alimony awarded by a judgment of dissolution of marriage is an issue to be taken up either by appeal from the final judgment of dissolution or in subsequent modification proceedings.

The "need" of the former spouse is not the issue before this Court, nor should it be. Two district courts of appeal of this state have disagreed on one legal issue. That legal issue is whether the income to be paid the beneficiary of a spendthrift trust should be subject to garnishment for alimony arrearage. This is the issue which must be decided in these proceedings.

Petitioner asks this Court to rule that spendthrift provisions of a trust should not be given effect to bar claims of a beneficiary's wife for alimony. This determination is easily accommodated within the overriding public policy of this state expressed in innumerable decisions of this Court and the district courts of appeal.

IV.

CERTIFICATE OF SERVICE

I THEREBY CERTIFY that a true and correct copy of the foregoing was served by mail upon Steven Naclerio, Esquire, 2100 Biscayne Boulevard, Miami, Florida 33137; Roger D. Haagenson,

Esquire, 601 Cumberland Building, 800 East Broward Boulevard, Ft. Lauderdale, Florida 33301; Ginsburg, Byrd, Jones & Dahlgaard, 1844 Main Street, Sarasota, Florida 33577; George R. McLain, Esquire, P.O. Box 2999, Sarasota, Florida 33578; Larry H. Spalding, Esquire, 6624 Gateway Avenue, Sarasota, Florida 33581, A. Matthew Miller, Esquire, 4040 Sheridan Street, Hollywood, Florida 33021; and William L. Hyde, Esquire, P.O. Box 1794, Tallahassee, Florida 32301, this 31st day of August, 1984.

Respectfully submitted,

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