OA 11-14-84

IN THE SUPREME COURT OF FLORIDA

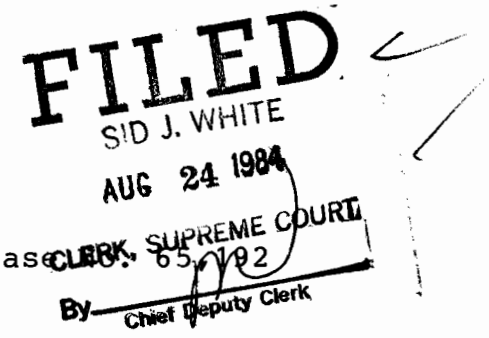
STATE OF FLORIDA, ex rel.
ORNETA M. QUIGLEY,

Petitioner,

v.

JAMES WEBSTER QUIGLEY,

Respondent.



Case No. 65,192

A PROCEEDING FOR DISCRETIONARY REVIEW OF
A DECISION OF THE DISTRICT COURT OF APPEAL
OF THE SECOND DISTRICT OF FLORIDA

ANSWER BRIEF OF RESPONDENT JAMES WEBSTER QUIGLEY

Robert L. Donald and
William C. Merchant
PAVESE, SHIELDS, GARNER,
HAVERFIELD, DALTON & HARRISON
Attorneys for Respondent
1833 Hendry Street
P.O. Drawer 1507
Fort Myers, FL 33902
(813) 334-2195

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INTRODUCTION

This is a proceeding for discetionary review of a decision of the Second District Court of Appeal, State ex rel. Quigley v. Quigley, 446 So.2d 1174 (Fla. 2d DCA 1984). Petitioner State of Florida ex rel. Orneta M. Quigley will be addressed herein as "the State" or "Ms. Quigley," as the situation dictates. Respondent James W. Quigley will be addressed by name or as the Respondent. Reference to the record on appeal will be indicated by "R" followed by a page number or numbers. There is an Appendix to this Answer Brief, and reference to it will be indicated by "App" followed by a page number or numbers.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Facts set forth in the State's Initial Brief.

ISSUE FOR DISCRETIONARY REVIEW

DID THE SECOND DISTRICT ERR IN HOLDING THAT CHAPTER 88 OF THE FLORIDA STATUTES CANNOT BE UTILIZED TO ENFORCE FOREIGN ALIMONY JUDGMENTS?

ARGUMENT

As the State notes in its Initial Brief, the opinion of the Second District directly conflicts with a case from the Fifth District on essentially the same question, Helmick v. Helmick, 436 So.2d 1122 (Fla. 5th DCA 1983). The Second District's

opinion in the instant case and the Fifth District's Helmick opinion explicitly set forth the rationales used by the respective courts, thereby allowing this Court to resolve the conflict in large part simply by reading and comparing the two opinions. Both have been included in the Appendix. (App 1-15)

The State's Initial Brief by-and-large reiterates the arguments made by the Fifth District in support of its decision in Helmick. Rather than setting forth the Second District's opposing rationale, the Respondent merely refers this Court to the Second District's opinion as being the more logically sound. Indeed, the Second District had the benefit of the Helmick case when the instant case was decided, and specifically rejected its holding. It is respectfully submitted that this Court will likewise reject Helmick after both opinions are considered.

Especially important in determining legislative intent is the legislative history of the statute in question. Florida adopted the original Uniform Reciprocal Enforcement of Support Act in 1955. Ch. 29901, Laws of Florida (1955). The National Conference of Commissioners of Uniform State Laws revised URESA in 1968. 9A Uniform Laws Annotated p.643 (1979). Florida adopted the revisions in 1979, and in so doing inserted the provision that is central to this proceeding. Ch. 79-383, Laws of Florida. Chapter 79-383 conformed Chapter 88 to the revised version of URESA, but it also added Section 88.012. There is no

similar provision in any other state's version of URESA.*

Section 88.012 is entitled "Legislative Intent," so there can be no doubt that this statute was enacted expressly for the purpose of reflecting the Legislature's intent. The statute provides in five different places that Chapter 88 is for the purpose of enforcing "orders of support for children." The Legislature could not have more plainly expressed its meaning.

The Fifth District in Helmick and the State in this proceeding contend that if the Legislature had truely intended to bar alimony judgments from the coverage of Chapter 88, it would have amended other sections that define "support." However, a review of the sections to which the State refers, i.e., Sections 88.031(3), .031(9), .031(15), and .031(19), shows that none of them define "support" as specifically including alimony. Section 88.031(19) does say that an order of support is "any judgment, decree, or order of support in favor of a petitioner," but of course a child-support award would be in favor of the child's custodial parent, and that parent would be the petitioner in the URESA action. So there is nothing in the body of URESA itself that conflicts with the plainly expressed legislative intent of Section 88.012 that the Florida version of URESA shall apply only to child-support awards.

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*So the interpretation that other states have placed upon their versions of URESA is irrelevant, since they do not contain provisions similar to Section 88.012.

The State contends that the term "support" naturally includes alimony, and that URESA should be so construed. Yet the case law does not support this assertion. The case of Schroeder v. Schroeder, 430 So.2d 604 (Fla. 4th DCA 1983) is closely analogous to the instant one. There the husband obtained a divorce decree in Illinois. The wife, who lived in Florida, brought a suit for alimony in Florida. She served the husband in Illinois pursuant to Section 48.193, which allows personal service on out-of-state defendants in "an independent action for support of dependents." The trial court held that the wife could not obtain jurisdiction over the husband under this statute because the term "support of dependants" was not synonymous with alimony. On appeal, the Fourth District framed the question thusly:

> The appellant contends that the emphasized portions of §48.193(1)(e) provides for personal service over appellee. The proposition is only true if the phrase "support of dependents" includes or is equivalent to the term "alimony." We conclude these concepts are neither synonymous nor mutually inclusive.

430 So.2d at 605. The court then considered the cases dealing with the meaning of the terms involved, and held: "Thus, if we interpret the statute in compliance with the ordinary meanings traditionally accorded these terms, support does not include alimony." Id. (Emphasis added.) Applying the logic of Schroeder to the instant case, the term "support" in Chapter 88 does not encompass alimony.

The State also relies upon 1977 Op.Att'y.Gen.Fla. 077-77 (July 26, 1977). Oddly enough, this Opinion actually supports

the position of the Respondent. As mentioned previously, Section 88.012 was added by the legislature in 1979. The crux of the Attorney General's Opinion, written in 1977, is the following: "In reviewing the provisions of the act as embodied within Chapter 88, supra, I find no expressed language or intent which would indicate that the scope of the act should be limited to child support alone." Thus the Attorney General based his opinion on the fact that there was nothing in Chapter 88 which indicated that the Act was to be limited to child support alone. Two years later the legislature added Section 88.012 to Chapter 88, and this Section contains "express language" indicating that the scope of the Act should be limited to child support. Therefore, the very logic of the 1977 Attorney General's Opinion supports the position of the Respondent.

The State also cites several Florida cases in support of its position. The first such case is Thompson v. Thompson, 93 So.2d 90 (Fla. 1957), where this Court enforced a combined alimony/child support provision under URESA. This Court did not confront the issue of whether alimony by itself was properly enforceable under URESA, this not being a point raised in the appeal. But more importantly, the court was not dealing with the revised URESA that was only adopted in 1979; rather, the court was dealing with the original version of URESA, which did not contain Section 88.012 or its equivalent.

The State also relies upon Wright v. Wright, 411 So.2d 1334 (Fla. 4th DCA 1982). A perusal of that case shows that it in no way addresses the issue of whether a foreign alimony decree is properly enforceable under Chapter 88. In fact, the case does not even deal with Chapter 88, other than mentioning it once in passing. So there is no authority from Florida, other than Helmick, that disagrees explicitly or implicitly with the Second District's holding in the instant case.

There are several reasons the Legislature chose to make URESA applicable only to child-support awards. As the State itself notes, Section 88.012 expressly mentions Chapter 409 of the Florida Statutes. Chapter 409 deals with Aid to Families with Dependent Children, a program jointly funded by the state and federal governments. Children 18 years old or younger are eligible for these benefits. Section 409.235, Florida Statutes (1983). Thus the states and the federal government have the financial burden of supporting children that are not being supported by their parents. There is no similar burden on behalf of the states to support impecunious ex-spouses. Thus the Legislature could legitimately have distinguished between alimony and child support--if the states don't assist each other in collecting child support, the taxpayers will suffer. But the same is not true for alimony.

There is still another facet of the AFDC issue that lends credence to the legislative determination that Chapter 88 should apply only to child support. 42 U.S.C. §658(a) provides that

when a state or one of its subdivisions assists in the collection of child support ordered by a court in another state, the assisting state gets a credit toward the share it owes for AFDC. So there might be a direct economic inducement to assist someone from another state to collect child support. There is no such inducement for alimony.

It is interesting to note in passing that 1984 Legislature made a distinction between alimony and child support in its revision of Chapter 61 of the Florida Statutes. See Chapter 84-110, Laws of Florida. So there is nothing unusual about such a distinction, since alimony and child support concern different societal policy considerations.

It must be emphasized that the Legislature's limitation of Chapter 88 to child support does not leave an ex-spouse without a remedy. The ex-spouse can always domesticate the foreign judgment, just like any other foreign-judgment holder. This is a rather simple procedure that consists of presenting the properly authenticated documents from the foreign jurisdiction to the Florida court. See Courtheoux v. George, 410 So.2d 532 (Fla. 2d DCA 1982). Recently the Legislature has passed a new law, Chapter 84-5, Laws of Florida, which provides that foreign judgments may now be domesticated by simply recording them in the office of the Clerk of the Circuit Court. So after the effective date of this new law (October 1, 1984) the domestication of a foreign judgment will not even require a court appearance.

So limiting Chapter 88 to child-support awards does not deprive an ex-spouse of a remedy; rather, it simply does not extend the extraordinary remedy to alimony awards that is accorded to child-support awards. Considering the economic realities of the situation, it makes eminent sense that the Legislature would not wish to provide gratis legal services to an ex-spouse from a foreign jurisdiction that already has available the same remedies as other foreign-judgment holders.

The Second District noted that legislative intent is the "polestar" of statutory interpretation. Here the legislative intent is plainly expressed in a statute aptly entitled "Legislative Intent." To accept the Helmick rationale would be to ignore the clear legislative expression. The Second District chose to honor the legislative intent, and the State has not produced any authority that would justify a departure from this traditional means of construing legislative enactments.

Wherefore, it is respectfully submitted that the decision of the Second District Court of Appeal should be approved.

Respectfully submitted,

PAVESE, SHIELDS, GARNER,
HAVERFIELD, DALTON & HARRISON
Attorneys for Respondent
1833 Hendry Street
P.O. Drawer 1507
Fort Myers, FL 33902
(813) 334-2195

By: Robert L. Donald
ROBERT L. DONALD and
WILLIAM C. MERCHANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief and Appendix have been furnished to JAMES A. PETERS, Assistant Attorney General, Department of Legal Affairs, Civil Division, The Capitol-Suite 1501, Tallahassee, Florida 32301, by U.S. Mail this 22nd day of August, 1984.

By: Robert L. Donald
ROBERT L. DONALD