11-14-84

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,192

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

Petitioner,

vs.

JAMES WEBSTER QUIGLEY,

Respondent.

_____/

INITIAL BRIEF OF PETITIONER

APPEAL FROM THE DISTRICT COURT OF APPEAL
OF THE SECOND DISTRICT OF FLORIDA
CASE NO. 83-1501

JIM SMITH
ATTORNEY GENERAL

JAMES A. PETERS
ASSISTANT ATTORNEY GENERAL

Department of Legal Affairs
Civil Division
The Capitol - Suite 1501
Tallahassee, Florida 32301
(904) 488-9935

COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

The Petitioner, State of Florida, ex rel Orneta Quigley, will be referred to as "Petitioner." The Respondent, James Webster Quigley, will be referred to as "Respondent" or "ex-husband."

The Uniform Reciprocal Enforcement of Support Act will be referred to as "U.R.E.S.A."

Necessary portions of the Record - the Opinion of the Second District Court of Appeal, the Stipulated Statement of the record below which was submitted to the Second District, the Order of Dismissal, and the Motion to Dismiss - are attached to Petitioner's Brief on Jurisdiction.

STATEMENT OF THE CASE AND FACTS

The simple facts of this case are presented in the parties' Stipulated Statement which was filed in the District Court in lieu of a record on August 3, 1983. (The parties identified themselves as Plaintiff and Defendant before the Florida trial court). Orneta Quigley's petition was filed in Michigan to initiate support proceedings under the Uniform Reciprocal Enforcement of Support Act ("U.R.E.S.A.") to enforce a 1978 alimony order entered in her favor against James Webster Quigley (ex-husband) (Stipulated Statement, Exhibit A-1). A certificate and order was entered by the Circuit Court for the County of Wayne, Michigan on November 4, 1982, certifying that the petition sets forth facts from which it may be determined that the husband owes the duty of support of alimony and that the Circuit Court in Lee County, Florida may obtain jurisdiction over this issue.

In defense of the petition, the attorney for the ex-husband filed a motion to dismiss alleging that Ch. 88, F.S., provides remedies only for arrearages of child support and does not include alimony. An Order of Dismissal was entered on June 6, 1983 for this alleged jurisdictional deficiency. Notice of Appeal was filed on June 29, 1983.

The parties briefed the sole issue on appeal, whether the trial court erred in holding that it did not have jurisdiction to enforce a foreign judgment of alimony under U.R.E.S.A. In its'

March 16, 1984 Opinion, reported at 446 So.2d 1174, the Second District Court of Appeal affirmed the trial court's dismissal and held the Florida court lacks subject matter jurisdiction under Florida's U.R.E.S.A. to enforce an alimony provision of an out-of-state divorce judgment. That Opinion expressly acknowledges the decision of the First District Court of Appeal in Helmick v. Helmick, 436 So.2d 1122 (Fla. 5th DCA 1983) which held to the contrary. Its conclusion derives from a construction of the statement of intent inserted at §88.012, F.S. by a 1979 amendment to U.R.E.S.A. The Chapter Law effecting that amendment, Ch. 79-383, is attached hereto as Appendix A.

On April 10, 1984 Petitioner filed a Notice to Invoke the Discretionary Jurisdiction of this Court as the opinion of the Second District Court affects a class of constitutional officers who are assigned enforcement responsibilities pursuant to Ch. 88, F.S., and because the opinion conflicts with Helmick v. Helmick. Discretionary jurisdiction was granted by this Court on 9 July, 1984.

ARGUMENT

THE COURTS BELOW ERRED IN HOLDING THAT FLORIDA COURTS DO NOT HAVE JURISDICTION TO ENFORCE A FOREIGN JUDGMENT OF ALIMONY UNDER THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

Rules of construction, statements of purpose, definitions, other language in Ch. 88, F.S., Florida's U.R.E.S.A., and interpretations of the uniform act in this and other states require the conclusion that the trial court had jurisdiction to enforce the support order under U.R.E.S.A.

A. The decision below read too much into the statement of legislative intent made by Laws of Florida Ch. 79-383.

It has long been recognized that amendment by implication is not favored and will not be upheld in doubtful cases. State v. J.R.M., 388 So.2d 1227 (Fla. 1980). Contrary to this rule against implied amendments, the Court below decided

> it is logical to conclude that the Legislature's reason for injecting Section 88.012 was to evince its disapproval of that construction

that U.R.E.S.A. was to apply to both child support and alimony.

This conclusion overlooks the fact that there is another and less destructive "reason for injecting Section 88.012" into U.R.E.S.A. by the 1979 amendment. That reason was the Florida IV-D program in Ch. 409 which is recognized in the text of §88.012.

That program was implemented in 1976 by Ch. 76-220, Laws of Florida. By that law the Department of Health and Rehabilitative Services was designated the state agency responsible for the administration of the Child Support Enforcement Program under Title IV-D of the Social Security Act, 42 U.S.C. §1302. (See §409.2557, F.S.) The conclusion of the Second District Court, then, assigns an unsubstantiated and destructive motive to the statement where a more obvious motive of record exists. In so doing the Court amended by implication both the scope and the plain meaning of other portions of Ch. 88 which were untouched by the Ch. 79-383 amendment. Those portions had a history of constructions consistent with the holding of Helmick v. Helmick, i.e., that U.R.E.S.A. applies to alimony.

As was correctly noted in the Fifth District's opinion in Helmick and as was specifically noted in Justice Cowart's concurring opinion

> If this was the Legislature's intent in reenacting U.R.E.S.A. (to restrict the word support to only child support) it should have clearly expressed this intent by providing new definitions. Section 88.012 is the only section in the entire Act which emphasizes child support. No where else is it even attempted to distinguish between alimony and child support or any other type of support.
>
> If the Legislature had meant to distinguish between child support and alimony it would have defined this term, especially in light of previous

> judicial interpretation applying U.R.E.S.A. to alimony awards. (e. s.)

436 So.2d 1123, 1124. See also the opinion of Judge Cowart, concurring specially, at 436 So.2d 1126.

There is, in any event, broader language at §88.012 which states the statute provides a remedy "pertaining to family desertion and nonsupport of children" and that the state's existing common law and statutory remedies "shall be augmented by additional remedies" directed to resources of responsible parents as mandated by the Florida IV-D program in Ch. 409. The 1979 amendment clearly states

> the remedies provided herein shall be in addition to and not in lieu of existing remedies.

Clearly, that statement of intent cannot properly be construed to impliedly repeal alimony support actions which were previously available under the statute.

B. Conspicuously, the Legislature did not in 1979 amend the title of the Chapter to read "Uniform Recriprocal Enforcement of Child Support." Nor did the Legislature amend so as to restrict key definitions of "duty of support" [§88.031(3)][1];

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[1] Section 88.031(3) broadly provides:

> "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action

(cont'd on next page)

"petitioner" [§88.031(9)][2]; "respondent" [§88.031(15)][3]; or "support order" [§88.031(19)][4]. Indeed, the definition of "prosecuting attorney" at §88.031(11) continues to mean the state attorney "who has the duty to enforce laws relating to the failure to provide the support of any person". These words should be read in their plain meaning. Tatzel v. State, 356 So.2d 787 (Fla. 1978); Reino v. State, 352 So.2d 853 (Fla.

> for dissolution of marriage, separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

2 Subsection (9) provides:

> "Petitioner" means a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, who has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. . . .

3 Subsection (15) provides:

> "Respondent" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

4 Support order is defined by subsection (19) to mean:

> [A]ny judgment, decree, or order of support in favor of a petitioner, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered. (e.s.)

1977). If the Legislature meant "child" it would have substituted that word.

If, as the Second District Court of Appeal concluded, it was the intention of the Legislature to restrict the meaning of "support" to exclude alimony and to be limited to child support, there was, in the above-quoted passages, ample opportunity and a requirement to further amend other portions of U.R.E.S.A. to evidence that intention. Because there were no such changes, the drastic destructive amendment which the Second District has reached by implication should not be affirmed.

C. Other amendments made to Ch. 88, F.S., by Ch. 79-383 are consistent with the reading that "support" includes more than just child support. "Prosecuting attorney," as defined at §88.021(11), has a duty to enforce laws relating to the failure to provide "for the support of <u>any person</u>." Pursuant to §88.065(1) the Governor may demand the surrender of the person charged in this state with failing to provide for the support "of <u>a person</u>" and, pursuant to subsection (2) the Governor of another state may make a demand upon the Governor of Florida for the surrender of <u>a person</u> charged in another state with the failure to provide "for the support of <u>a person</u>." Surely the Legislature was aware of the difference between "person" and "child." Although all children are "persons," all "persons" are not children. The legislature is assumed to know the meaning of the

words used. Thayer v. State, 335 So.2d 815 (Fla. 1976); S.F.G. Corp. v. State, 365 So.2d 687 (Fla. 1979). Clearly the duty of support addressed by Ch. 88 after its 1979 amendments is to that broader population.

D. The alimony payment which this former spouse seeks is nothing but a 1978 support order of the Michigan court. Black's Law Dictionary, Revised Fourth Edition, defines alimony to be "the sustenance or support of the wife by her divorced husband and stems from the common-law right of the wife to support by the husband . . . ."

That the words alimony and support are synonymous was recognized in Attorney General Opinion No. 077-77:

> Alimony has long been recognized by the Florida courts as one type of sustenance and support, originally emanating from the common-law obligation of a husband to support his wife, and couched within the equitable powers of the court to grant an allowance to the wife from the husband for her support in a divorce action. Floyd v. Floyd, 108 So. 896 (Fla. 1926); Berger v Berger, 166 So.2d 433, conformed to 166 So.2d 694 (Fla. 1964); Simon v. Simon, 123 So.2d 41 (Fla. 3d DCA 1960). In reviewing the provisions of the act (U.R.E.S.A.) as embodied within Ch. 88, I find no express language or intent which would indicate that the support of the act should be limited to child support alone.

E. Consistent with this Attorney General's opinion, this Court ruled in Thompson v. Thompson, 93 So.2d 90 (Fla. 1957),

that alimony was a proper subject for a U.R.E.S.A. action because alimony is a "duty of support:"

> The 1953 Florida Act was of the type first brought into existence in New York in 1949; the 1955 Florida Act is based on the Uniform Reciprocal Enforcement of Support Act approved by the National Conference of Commissioners on Uniform State Laws in 1950, as amended in 1952. The purpose of the 1953 Florida Act was to secure support for "dependent wives and children" only, whereas the 1955 Florida Act applies to "any person to whom a duty of support is owed". The 1955 Florida Act specifically provides that "duty of support" includes a duty imposed or imposable "by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise." 93 So.2d 92, 93

Ironically, the Second District Court has enforced a Connecticut alimony pursuant to U.R.E.S.A. Friedly v. Friedly, 303 So.2d 50 (2d DCA 1974). More recently, the Fourth District Court of Appeal recognized in Wright v. Wright, 411 So.2d 1334, 1336 (Fla. 4th DCA 1982), that U.R.E.S.A. did not preclude an award of (even) retroactive alimony. Both the Fifth District Court's Helmick decision, 436 So.2d at 1123, and Quigley at 446 So.2d 1174 acknowledged that U.R.E.S.A. was previously construed to include alimony.

F. Section 88.311, F.S., requires that U.R.E.S.A. "shall be so construed as to effectuate its general purpose and to make uniform the law of those states which enact it." The purpose of

the act is "to improve and extend by reciprocal legislation the enforcement of duties of support." §88.021, F.S.

Because of this purpose and because U.R.E.S.A. is a uniform act, this Court may look beyond the territorial boundaries of Florida for constructions of it. Florida Statutes, §88.311 mandates this. Courts of appeal of other jurisdictions have enforced the act to include support for spouses and dependents. See, e.g., Oneill v. Oneill, 420 So.2d 264 (Ala. 1982); Davis v. Contorno, 234 So.2d 470 (La. 1st DCA); Davidson v. Davidson, 405 P.2d 261 (Wash. 1965); Government of Virgin Islands v. Lorillard, 358 F.2d 172 (3d Cir. 1966) ("the act is broad enough to authorize the enforcement of a duty to support a wife if such a duty is found to exist"); Porter v. Porter, 267 N.E.2d 299 (Ohio 1971); Weller v. Weller, 480 P.2d 379 (C.A. Ariz. 1971); Davidoff v. Davidoff, 115 A.2d 892 (Pa. 1955); Mullis v. Mullis, 669 P.2d 763 (Okl. 1983).

This conclusion should direct this Court to a broader definition of "support."

G. U.R.E.S.A. is a remedial act which provides redress to individuals whose attempts to establish family relationships have failed. The act was "designed to provide expedient and inexpensive interstate procedures for enforcing support of the family," Clark v. Clark, 139 So.2d 195, 197 (Fla. 2d DCA 1962). The act was "designed for the purpose of enforcing the legal

obligation of a husband and father to support his wife and children. . . ." Cox v. State, 180 So.2d 467, 470 (Fla. 2d DCA 1965).

U.R.E.S.A. is an act effectuating public policy and general welfare of the state as it intends to relieve the burden of support which would otherwise be borne by an entitled spouse or by the general citizenry through public assistance programs. Such statutes are entitled to liberal construction so as to advance the remedies provided. State v. Hamilton, 388 So.2d 561 (Fla. 1980); City of Miami Beach v. Berns, 45 So.2d 38 (Fla. 1971); Mullis v. Mullis, 669 P.2d 765 (Okl. 1983); Davidson v. Davidson, 405 P.2d 261 (Wash. 1965).

The conclusion that U.R.E.S.A. does not permit recovery of an alimony support order is anathema to that public policy. Florida's courts have an interest in enforcing foreign support decrees to prevent Florida from becoming a haven for fugitive spouses. Fugassi v. Fugassi, 332 So.2d 695 (Fla. 4th DCA 1976). Likewise, Florida citizens should, under this act be able to look to other participating states for enforcement of support orders entered by Florida courts. Inability to do so, under the restrictive construction of the Second District, will disserve the Florida public.

The restrictive implied amendment adopted by the Second District Court should not survive under these facts and this case law.

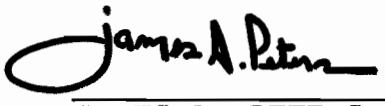
CONCLUSION

Since 1978 Orneta Quigley had a court ordered entitlement to support from her Michigan divorce decree. Section 88.081, F.S., provides that duties of support applicable under this act are those imposed under the laws of any state where respondent was present. Notwithstanding the Second District Court of Appeal's implied repeal, alimony was and is "support" under Florida law. Other courts' decisions and other parts of Ch. 88 attest to that conclusion.

The orders of the lower courts should be reversed, Florida jurisdiction should be accepted, and the ex-husband's adjudicated duty of support should be enforced under U.R.E.S.A. Florida courts have jurisdiction to enforce a foreign judgment of alimony under U.R.E.S.A.

Respectfully submitted,

JIM SMITH
Attorney General



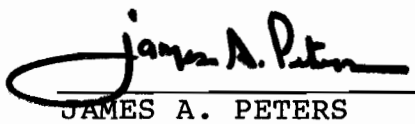
JAMES A. PETERS
Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS
The Capitol - Suite 1501
Tallahassee, Florida 32301
(904) 488-1573

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished to ROBERT L. DONALD, Pavese, Shields, Garner, haverfield, Dalton & Cottrell, Post Office Drawer 1507, Fort Myers, FL 33902, Counsel for Appellee, by U. S. Mail this 30th day of July, 1984.



JAMES A. PETERS
Assistant Attorney General

Counsel for Petitioner
(904) 488-1573