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CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

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

Petitioner,

vs.

CASE NO. 65,192

JAMES WEBSTER QUIGLEY,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF CASE AND FACTS

The simple facts of this case are presented in the parties' stipulated statement in lieu of a record on August 3, 1983. Orneta Quigley's petition was filed in the State of Michigan to initiate support proceedings under the Uniform Reciprocal Enforcement Support Act (URESAs) to enforce a prior alimony order entered in her favor against James Webster Quigley. A certificate and order was entered by the Circuit Court for Wayne County, Michigan on November 4, 1982 certifying that the petition set forth facts from which it may be determined that James Webster Quigley 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 URESAs petition which was filed in Florida by the State Attorney on behalf of Orneta Quigley, James Quigley's attorney filed a Motion to Dismiss alleging that Chapter 88, Florida Statutes, provides remedies only for arrearages of child support and does not include the alimony support sought by Orneta Quigley. An order of dismissal was entered on June 6, 1983 because of this alleged jurisdictional deficiency. Notice of Appeal was filed on June 29, 1983. The parties briefed the sole issue on appeal to the Second District Court of Appeal, whether the trial court erred in holding that it did not have jurisdiction to enforce a foreign judgment of alimony under URESAs. In its

March 16, 1984 Opinion the Second District Court of Appeal affirmed the trial court's dismissal and held that the Florida court lacks subject matter jurisdiction under URESA to enforce an alimony provision of an out-of-state divorce judgment. On April 10, 1984 the State of Florida filed its Notice to Invoke the Discretionary Jurisdiction of this Court to decide this matter as the Opinion of the Court of Appeals affects a class of constitutional officers who are assigned enforcement responsibilities pursuant to Chapter 88, Florida Statutes, and because the Opinion expressly conflicts with the decision of the Fifth District Court of Appeal in Helmick v. Helmick, 436 So.2d 1122 (Fla. 5 DCA 1983).

Florida Statute Section 88.031(2) defines department to mean "the Department of Health and Rehabilitative Services". Florida Statute 88.031(11) defines prosecuting attorney to mean:

The state attorney or program attorney in the appropriate place who has the duty to enforce laws related to the failure to provide for the support of any person.
(e.s.)

Florida Statute 88.031(10) defines program attorney to mean:

An attorney employed or under contract with the department to provide legal representation for the department in a proceeding relating to the determination of paternity or child support enforcement brought pursuant to law.

Florida Statute 88.121 provides:

If this state is acting as an initiating state, the prosecuting attorney upon the request of the court or of the Department of Health and Rehabilitative Services shall

represent the petitioner in any proceeding under this Act. (e.s.)

Florida Statute 88.181(2) provides:

The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the respondent or his property and shall request the court to set a time and place for a hearing and give notice thereof to the respondent in accordance with law. (e.s.)

Florida Statute 88.191(2) and (3) provides:

If the respondent or his property is not found in the circuit, and the prosecuting attorney discovers that the respondent or his property may be found in another circuit of this state or in another state, he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from court in the initiating state to a court in the other circuit or to a court in another state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, he shall forthwith notify the initiating court. (e.s.)

If the prosecuting attorney has no information as to the location of the respondent or his property, he shall so inform the initiating court.

Florida Statute 88.211 provides:

If the responding court finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to the order. Support orders made pursuant

to this act shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any circuit in which the respondent is present or has property have the same powers and duties to enforce the order as have those of the circuit in which it was first issued. If enforcement is impossible or cannot be completed in the circuit in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any circuit in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order. (e.s.)

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION
PURSUANT TO RULE 9.030(2)(A)(iii) and
(iv), FLA. R. APP. P.

This Court's discretionary jurisdiction is sought by State of Florida pursuant to Rule 9.030(2)(A)(iii) and (iv), Fla. R. App. P. The Opinion of the Second District Court of Appeal expressly affects the class of Florida's State Attorneys and expressly and directly conflicts with a decision of the Fifth District Court of Appeal, Helmick v. Helmick as reported at 436 So.2d 1122 (Fla. 5 DCA 1983). That March 26, 1984 decision holds that a Florida circuit court lacks subject matter jurisdiction under the Uniform Reciprocal Enforcement of Support Act (URESA) to enforce an alimony provision of an out-of-state divorce judgment.

The civil enforcement aspects of URESA are set forth at Chapter 88, Part III, Florida Statutes. Sections 88.031(11), 88.121, 88.181(2), 88.191(2), (3), and 88.211 (the texts of which are fully stated in the Statement of Facts of this Brief), prescribe responsibility of Florida's State Attorneys to enforce URESA. Under their terms, then, the class of State Attorneys and their assistants in Florida's twenty (20) judicial circuits, are affected as their ability to appear on behalf of the state pursuant to Chapter 88, Part III is hampered by the ruling of the Second District Court of Appeal as enforcement of alimony support orders is barred.

Discretionary review of this Opinion is further appropriate because the Opinion expressly conflicts with Helmick v. Helmick which affirmed a trial court ruling and held "the trial court did not err in applying URESA to alimony support." 436 So.2d at 1124. That decision of the Fifth District Court of Appeal is particularly noteworthy because of the vigorous concurring opinion of Judge Cowart which elaborates on full faith and credit and historical considerations.

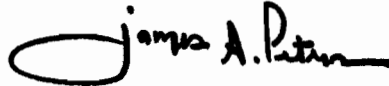
Although Petitioner has not asked the Second District to certify this issue as a question of great public importance, Petitioner submits this issue is worthy of review for that reason as well. Under the current case conflicts between the Second District and the Fifth District Courts, the ability of a spouse to seek the assistance of the Department of Health and Rehabilitative Services and of one of Florida's prosecuting attorneys will depend wholly upon the circuit of residence of the spouse who owes the duty of support. That resulting inconsistency is contrary to Florida's public interest.

CONCLUSION

For the reasons stated above State of Florida requests this court to review this matter under its discretionary jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S BRIEF ON JURISDICTION has been furnished by U.S. Mail to ROBERT DONALD, Esquire, Post Office Box 88, Cape Coral, Florida 33901, and MARTIN DEROVANESIAN, Assistant State Attorney, Post Office Drawer 399, Fort Myers, Florida 33902, this 20 day of April, 1984.


James A. Peters