OA 11-14-84

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IN THE SUPREME COURT OF FLORIDA

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

Petitioner,

vs. CASE NO. 65,192

JAMES WEBSTER QUIGLEY,

Respondent.

_____/

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

REPLY BRIEF OF PETITIONER

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INTRODUCTION

Respondent's Answer Brief contains eight arguments allegedly supporting the destructive interpretation of the Second District Court of Appeal which led to the dismissal of Orneta Quigley's petition to enforce her Michigan alimony support order. Each of those arguments is rebutted below.

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

1. Respondent argues that the unique provisions of section 88.012 containing a restrictive statement of legislative intent which has no counterpart in any other state's version of U.R.E.S.A., preclude consideration of the interpretations that other states have placed upon U.R.E.S.A.. Section 88.311, Florida Statutes, providing "this act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it" directly contradicts Respondent's assertion.

2. Respondent states the Legislature could not have more plainly expressed its meaning because "the statute provides in five different places that Chapter 88 is for the purpose of enforcing 'orders of support for children'". Respondent does not point out that the language which he quotes is limited, with one exception, to the text of section 88.012. That language is not spread throughout Chapter 88. As stated in Argument B and C of Petitioner's initial brief, other key definitions in Chapter 88 do not suggest or support Respondent's restrictive definition of "support".

Chapter 88, at section 88.235, specifically addresses "paternity" as an adjudicable issue should paternity be presented as a defense when support of a child is sought. That section anticipates a defense procedure which a court will likely

encounter as one type of support order is to be forced. It is not contrary to the broader definition of "support" recognized by the Fifth District Court of Appeal in Helmick.

3. Schroeder v. Schroeder, 430 So.2d 604 (Fla. 4th DCA 1983) cannot be fairly regarded as dispositive of the issue before this court. It construes the words "support of dependents" in the context of the personal service of the process statute, section 48.193(1)(e). Its analysis is clearly and expressly dependent upon the two disjunctive clauses at section 48.193(1)(e)

> On its face, the statute contains two disjunctive clauses: one in conjunction with dissolution proceedings and the second regarding independent actions for support. Clause (2) applies solely to actions for support of dependents whereas clause (1) states it is applicable to claims for alimony and division of property in addition to support. Logically if the Legislature intended clause (2) as well as clause (1) to apply to alimony, it would so state.
> 430 So.2d 606.

More importantly, Schroeder is not a U.R.E.S.A. case. A definition of support for U.R.E.S.A. purposes was not considered or decided in Schroeder.

Judge Anstead's dissenting opinion, at 430 So.2d 606, recognizes the "distinction without a difference" assertion that the ex-husband advocates. "Alimony is designed primarily to

provide sustenance such as food, clothing, and other necessities for support of a wife when living apart from her spouse, either pursuant to a decree of divorce or one of separate maintenance". Judge Anstead recognizes that the service of process decision in Schroeder favors desertion and nonsupport. So too does Respondent's argument toward a restrictive definition of "support" favor irresponsible conduct. Florida courts have an interest in enforcing foreign support decrees to prevent Florida from becoming a haven for fugitive spouses.

4. Respondent surveys sections 88.031(3), .031(9), .031(15), and .031(19) and concludes there is nothing in them or in the body of U.R.E.S.A. that conflicts with "the plainly expressed legislative intent" of section 88.012. His argument begs the question. Obviously the statement of legislative intent was not so "plainly expressed" as to require the Fifth District panel to reach the destructive construction advocated by Respondent.

None of the sections cited, nor anything else in the body of U.R.E.S.A. with the arguable exception of section 88.012, specifically exclude alimony. All of the rules of construction cited in Petitioner's initial brief require that alimony be implicitly included in the word "support" because there is no plainly expressed exclusion of it.

5. Respondent's reference to this court's holding in Thompson v. Thompson, 93 So.2d 90 (Fla. 1957) again begs the question. It is so obvious as to be of no import that this court was not in 1957 dealing with a U.R.E.S.A. which did not then contain the controversial section 88.012 passages. What is important is that Thompson enforced an alimony support provision under U.R.E.S.A. Had that construction troubled the Legislature there was ample opportunity between 1957 and 1969 to clearly and unambigiously amend the definitions of support and other language in Chapter 88 so as to expressly exclude alimony support orders. The Legislature did not. This court should not based on Respondent's tortured arguments.

6. Petitioner's current reading of Wright v. Wright requires it to concede this case does not deal with the issue here presented.

7. Respondent argues, as a reason to make U.R.E.S.A. applicable only to child support awards, that taxpayers would not suffer if impecunious ex-spouses are not assisted by U.R.E.S.A.. Petitioner concedes that the direct funding established by Chapter 409, Aid to Families with Dependent Children (AFDC), is a more immediate and direct financial incentive for the state to assist in enforcing child support orders. Petitioner rejects Respondent's argument, however, that legislative considerations are tied solely to financial rewards

and to the existence of jointly funded federal programs. Impecunious ex-spouses, for whom support orders have been judicially entered, pose an equally significant burden on Florida society and, if public assistance is sought where the ex-spouses have been permitted to abdicate and void their support responsibilities, on taxpayers who fund that public assistance.

Respondent would have the creation of the AFDC Chapter 409 programs wipe the slate clean, as if Chapter 88 did not exist previously. Yet, the text of Chapter 88 does not suggest that it was intended that its motives and purposes be so drastically changed. Chapter 88 preexisted AFDC. The reasons for its existence (including enforcement of alimony support and child support awards) existed in 1950, 1960 and 1970, and continuing today. With the arguable exception of controversial language in section 88.012, there are no provisions to remotely suggest that the Legislature now chose to make U.R.E.S.A. applicable only to child support awards.

8. Contrary to the ex-husband's naked assertion, recent amendments to Florida Statutes, Chapter 61 in session Law 84-110 do not sustain his position. Those amendments reaffirm that Florida's policy is that its agencies, be they the court's depository or the state's prosecuting attorney, are to play a central role in ensuring that duties of support originating in the marriage contract are met. Florida Statute 61.001(2)(c)

expressly affirms the purpose of Chapter 61 is "to mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage."

The session law further affirms that the Legislature has the ability to distinguish between "alimony support" and "child support" obligations when it intends to make that distinction. The definition of "duty of support" stated at section 88.031(3) clearly evidences it did not intend to make that distinction for U.R.E.S.A. purposes.

CONCLUSION

The Second District Court of Appeal's opinion by implication restrictively repeals the scope of Florida's U.R.E.S.A.. If repeal is intended by the Legislature, for the arguments presented in Repsondent's brief, those arguments should be submitted to the 1985 legislative session. Virtually all rules of statutory construction and all of the language in Chapter 88, with the arguable exception of section 88.012, clearly require that Arnetta Quigley be permitted to enforce her Michigan support order in a Florida court by U.R.E.S.A..

Respectfully submitted,

JIM SMITH
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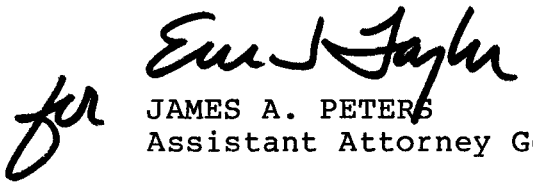

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Petitioner has been forwarded by United States Mail to Robert L. Donald, Post Office Drawer 1507, Fort Myers, Florida 33902, this 17th day of September, 1984.

for James A. Peters