IN THE SUPREME COURT

STATE OF FLORIDA

THE HONORABLE JOHN E. CRUSOE,
As Acting Circuit Judge, of
the Second Judicial Circuit,

Petitioner,

vs. Case No. 66,179

TROY ROWLS,

Respondent.

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RESPONDENT'S ANSWER BRIEF

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ATTORNEY FOR RESPONDENT

On Discretionary Review of a
Question Certified to be of
Great Public Importance

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PRELIMINARY STATEMENT

TROY ROWLS, relator in the District Court of Appeal, is the respondent in this Court and is referred to in this brief as such.

THE HONORABLE JOHN E. CRUSOE, the duly elected judge of the County Court in and for Leon County, Florida, is the petitioner in this Court and is referred to herein as such.

The State of Florida, Department of Health and Rehabilitive Services, is an amicus in this Court. They are referred to herein as "HRS".

An appendix containing such portions of the record necessary to an understanding of the issue before this Court is filed with this brief. Reference thereto is by use of the letter "A" followed by the appropriate page number in parenthesis.

Administrative Order 84-20 (A-19), rendered by former Chief Judge Ben Willis of the Second Judicial Circuit of Florida, is referred to herein as "84-20". The order's predecessors, Administrative Orders 82-12 (A-27) and 84-7 (A-28), are referred to as "82-12" and "84-7".

STATEMENT OF THE CASE AND FACTS

Petitioner and HRS fail to make reference to appropriate pages of the record or any appendix containing necessary portions of the record.

Respondent rejects and disagrees with what petitioner and HRS assert was the purpose of the February 5, 1979, Amended Final Judgment, their contention that he "remained under valid court order to pay weekly child support" and that "several orders of contempt were entered against (him) for willful disregard of his court ordered payments." He also rejects and disagrees with the assertion that he "continued to disregard his financial responsibility toward his child" and the other unsupported inflamatory remarks found at page V of petitioner's and HRS's initial brief. Further, the unsupported statements at page vi and the first two paragraphs of page vii of the brief are neither relevant or material to the determination this Court is asked to make.

Respondent rejects and disagrees with petitioner's and HRS's characterization of the first prohibition petition he filed with the District Court of Appeal. The petition (A-1) speaks for itself.

I S S U E

DOES ADMINISTRATIVE ORDER 84-20 CONSTITUTE A VALID ASSIGNMENT OF THE NAMED COUNTY JUDGES TO TEMPORARY SERVICE IN THE CIRCUIT COURT PURSUANT TO RULE 2.050(b)(4) FLORIDA RULES OF JUDICIAL ADMINISTRATION?

ARGUMENT

DOES ADMINISTRATIVE ORDER 84-20 CONSTITUTE A VALID ASSIGNMENT OF THE NAMED COUNTY JUDGES TO TEMPORARY SERVICE IN THE CIRCUIT COURT PURSUANT TO RULE 2.050(b)(4) FLORIDA RULES OF JUDICIAL ADMINISTRATION?

In pertinent part, 84-20 states:

> "From the date of entry hereof, all hearings for enforcement of child support court orders ... shall be brought before County Judges ... The County Judges shall enter such orders and directives ... which shall be deemed by the County Judges to be lawful and proper ..."

The one word answer to the question certified, therefore, is "no". The order does not assign the county judges of Gadsden, Jefferson, and Leon Counties to the circuit bench at all. Instead, the cases are being assigned to the judges.

Such is evident from the plain language of the order. There is no ambiguity and, consequently, no need for interpretation or construction.

In their quest for sanction of the order, petitioner and HRS ignore the orders unequivocal assignment of cases and argue the order validly assigns the county judges to the circuit bench pursuant to the authority delegated in Florida Rules of Judicial Administration 2.050(b)(4). This position is not derived from the language used in the order or by observance of the rules of construction. It is derived by looking at what they argue is

the "practical effect" of the order's operation. In essence, their position is that it does not matter if the circuit cases are assigned to the county judges instead of the county judges being assigned to the circuit court because in either event, it is the same judges deciding the same cases.

But there is a difference. The difference is one of jurisdiction. Under the scheme provided by the Florida Constitution and the general law, circuit judges decide circuit cases and county judges decide county cases. Neither has lawful authority to decide cases committed to the exclusive jurisdiction of the other.

Eighty-four twenty's jurisdictional infirmity is similar to that which was found to exist in the administrative order under attack in Martinez v. Demers, 412 So.2d 5 (Fla. 2nd DCA 1981). In Martinez, the chief judge of the sixth judicial circuit entered an administrative order requiring all petitions for sanity inquisitions in misdemeanor cases be brought before the criminal administrator for determination. The criminal administrator was a circuit court judge. Because jurisdiction in misdemeanor cases is committed to the county courts, the second district held the administrative order invalid as contravening the jurisdictional authority of county judges.

This is a child support case and jurisdiction in child support cases is exclusively committed to the circuit court. Article V, Section 5(b), Florida Constitution, Sections 61.011, 61.013, 26.012 (2)(a) and (c), Florida Statutes. Inasmuch as

84-20 assigns the circuit court cases to the county court judges it contravenes the requirements of jurisdiction.

Even if this Court were to be swayed by the "practical effect" argument and find 84-20 to be assigning all of the county judges in three Second Judicial Circuit counties to the circuit bench to hear child support cases, it still must answer the certified question in the negative because the "assignments" are for too long a period of time to satisfy the temporary service limitation imposed by Florida Rules of Judicial Administration 2.050 (b)(4).

Eighty-four twenty will be effective for six months. Petitioner and HRS would have this Court look at that period in isolation; that is without consideration of its predecessors 84-7 and 82-12. They would contend that because 84-20 defines the period of its effectiveness, and six months is not that long, the "practical effect" assignments are temporary and lawful.

It would be inconsistent for this Court to look for the "practical effect" of 84-20's operation and find the administrative order is assigning judges, not cases, and not look at the "practical effect" of promulgating 82-12, 84-7, and 84-20 in succession.

Eighty-two twelve, entered on August 3, 1982, and the first of the three successive administrative orders, assigned the defined class of circuit court cases to the county court judges for an indefinite period. Eighty-four seven, promulgated on the Friday before the Monday on which petitioner's and HRS's District Court's show cause response was due, repealed the indefinite 82-12

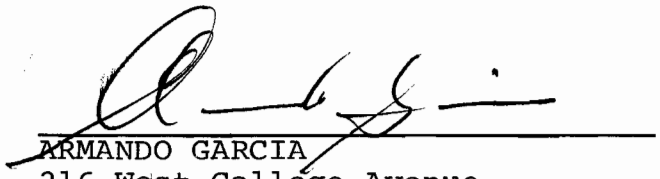
and gave itself effectiveness for six months.

Reality is that with the promulgation of 84-20, county judges will be hearing child support cases in Leon County, Florida, for two-and-a-half years. The two-and-a-half year period, when viewed in comparison with a county judges four year term of office, is too substantial a period of time to be considered brief or short lived. The "practical effect" assignments are not for temporary service and, therefore, they run afoul of the requirments of Florida Rules of Judicial Administration 2.050 (b)(4).

The Constitution reserves for the people the authority to elect circuit judges. Article V, Section 10(b), Florida Constitution. The organic law also provides for increasing the number of judges. Article V, Section 9, Florida Constitution. A circuit chief judge's authority to assign judges must also be constrained in light of these provisions.

CONCLUSION

The First Distirct Court of Appeal was correct in finding the administrative orders to be an abidication of jurisdiction. This Court, under the authority of the Constitution, is likewise compelled to answer the certified question in the negative.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail to Mr. Joseph R. Boyd and Ms. Susan S. Thompson, Boyd, Thompson & Williams, P. A. 2441 Monticello Drive, Tallahassee, Florida 32303; Mr. Chriss Walker, Attorney at Law, Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Tallahassee, Florida 32301; Mr. Kent A. Zaiser, Assistant Attorney General, Department of Legal Affairs, Civil Division, The Capitol, Suite 1501, Tallahassee, Florida 32301; and Mr. John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida 32301; this 8th day of January, 1985.

ARMANDO GARCIA