OIA 3-6-86

IN THE SUPREME COURT OF FLORIDA

EDWIN L. KOON,

Petitioner,

vs. CASE NO. 67, 216

BOULDER COUNTY, DEPARTMENT OF SOCIAL SERVICES,

Respondent.
_____/

ANSWER BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

The issue for resolution on appeal is whether a Florida circuit court as the responding state in a URESA proceeding can enter an order of support different from that of the original decree.

Petitioner contends that this question must be answered in the negative. Petitioner argues that an order increasing child support payments amounts to an unlawful modification of the original order, and is in violation of the full faith and credit clause of the United States Constitution. Accordingly, Petitioner contends that this Court should affirm the decision of Hartley v. Hartley, 465 So. 2d 592 (Fla. 2d DCA 1985), and overrule the decision of the First District Court of Appeal in the present action.

Respondent argues that it is the Hartley decision which is contrary to the law, and requests this Court to affirm Koon v. Boulder County, Dept. of Social Services, 468 So. 2d 1007 (Fla. 1st DCA 1965). Respondent contends that the Koon decision is supported by the weight of authority, including Florida law and the law of other jurisdictions.

A URESA action is a method by which a duty of support decreed in a foreign order can be enforced by Florida courts. The purpose of URESA is to simplify support enforcement when the parties to an enforcement action reside in separate

states. Thompson v. Thompson, 93 So. 2d 90 (Fla. 1957). In order to accomplish its purposes, URESA must be liberally construed. Rohrer v. Kane, 609 P.2d 1121 (Colo. App. 1980).

The duty of support may be enforced in any responding state where jurisdiction over the obligor can be obtained. Hodge v. Maith, 435 So. 2d 387 (Fla. 5th DCA 1983), and it is the law of the responding state which defines the duty of support. Hodge, supra; Ray v. Pentlicki, 375 So. 2d 875 (Fla. 2d DCA 1979).

This Court has stated:

> [I]t appears to be the duty of support imposed by a divorce or separate maintenance decree (as distinguished from the amount of the support so decreed) that is enforced by the responding state under the act in question.

Thompson, supra, at 93. Respondent claims this is a clear statement that a Florida court, as the responding state, can fashion a support order which increases the amount of support. One of the better discussions in Florida case law in regard to the authority of a Florida court to increase support amounts pursuant to a URESA action is found in the concurring opinion of Judge Cowart in Helmick v. Helmick, 436 So. 2d 1122 (Fla. 5th DCA 1983). Judge Cowart stated, "The responding court is free to enter an award higher than a previous award . . .this determination does not modify the

initiating state's, or any other state's previous order of support." Id, at 1129.

An order increasing the support amount does not modify the origianl support decree as claimed by Petitioner. Other jurisdictions have concluded that URESA allows a responding state to make its own determination as to the amount of support which justice requires. Murphy v. Murphy, 395 So. 2d 1047 (Ala. App. 1981); State of Georgia v. McKenna, 315 S.E. 2d 885 (Ga. 1984); Olson v. Olson, 534 S. W. 2d 526 (Mo. App. 1975).

The change in the amount of support ordered by the responding state does not violate the doctrine of full faith and credit. Full faith and credit need only be given to those orders which are final and permanent. If an order is subject to modification in the jurisdiction in which it was rendered, it is entitled to no more a degree of finality in the responding state in which it is being enforced. Only the duty of support is entitled to full faith and credit; not the amount of support. Thompson, surpa.

Colorado allows ongoing support to be modified. Pacheco v. Pacheco, 554 P.2d 720 (Colo. Ct. App. 1976). Accordingly, the Florida trial court in the instant case did not violate the full faith and credit doctrine when it rendered an order increasing Petitioner's monthly support payments.

Petitioner's and the Hartley court's interpretation of URESA unlawfully limits the equity powers of the Florida circuit courts. The circuit court's have jurisdiction over actions in equity. Section 26.012, Fla. Stat. (1984). A URESA action is an equitable proceeding. Abb v. Crossfield, 326 A.2d 234 (Md. App 1974).

However, Hartley, supra, and Petitioner would limit the equity power of the circuit courts by refusing them the authority to consider the facts and circumstances surrounding the URESA action and rendering an independent decision based on the requirements of justice. Hartley and Petitioner convert the circuit courts from courts of general equity power to mere collection agencies. This clearly was not the intent of the legislature. Any limitation on the equity power of the circuit courts is unlawful. Petitioner's argument must therefore fall, and Hartley must be reversed.

There is no Florida case authority upon which Petitioner can rely. The primary authority in regard to the question of the trial court's power in a URESA action to enter an increased amount of support is found in Thompson, supra. By stating that it is the duty of support as compared to the amount of support which is enforced, this Court has confirmed Respondent's position.

ARGUMENT I

UNDER THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA), THE COURTS OF FLORIDA, AS THE RESPONDING STATE, CAN ORDER CHILD SUPPORT PAYMENTS IN A GREATER AMOUNT THAN THAT ORDERED BY THE COURT WHICH RENDERED THE INITIAL CHILD SUPPORT DECREE.

Petitioner asserts that under the Uniform Reciprocal Enforcement of Support Act (URESA), child support payments cannot be ordered by Florida courts in an amount greater than that ordered by the Colorado court which dissolved the marriage of the parties. Such an increase in support amounts to an unauthorized modification by the Florida courts of the Colorado child support order, according to Petitioner.

Respondent contends that URESA allows a responding state to enter a support order establishing a child support amount different from that of the state which rendered the original order. Furthermore, the order of the responding state does not act to modify the order of the foreign jurisdiction. In support of this contention, Respondent will not only look to the law of Florida in regard to URESA actions, but will also review court decisions from sister states which construe URESA. It is necessary to note that the Act adopted by the various jurisdictions, including Florida, is substantially "uniform". Hence, an application of the law in one of these jurisdictions, in regard to an issue arising under URESA, is

enlightening if not persuasive when addressing a similar issue in Florida. As such, Respondent requests this Court look to these foreign cases in determining its decision in the present appeal.

A short background on URESA is in order.

The general purposes of the Uniform Reciprocal Enforcement of Support Act are to improve and extend the enforcement of support obligations between the various states. Section 88.012, Florida Statutes (1984). The intent of URESA is to simplify the procedure by which an obligor's support duties can be enforced by an obligee residing in another state. The Act is designed to assist the obligee in enforcing that obligation expeditiously and with a minimum of expense. Thompson v. Thompson, 93 So. 2d 90 (Fla. 1957). To achieve this end, the Act provides that any remedies under the Act are in addition to, and are not in substititution of any other remedies. Thompson, supra; Section 88.012, Florida Statutes (1984).

> [The] Act is designed to provide a remedy entirely separate from and independent of any remedies existing under other applicable provisions of law . . .

Thompson, at 93. URESA recognizes the fact that the support obligation may arise out of a dissolution or separate

maintenance decree rendered by another jurisdiction. To this end the Act states:

> A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

Section 88.281, Florida Statutes (1984).

In order to accomplish the legislative intent as set forth in Section 88.012, Respondent contends that URESA must be liberally construed. Sister states, in construing URESA, have concluded that such liberal construction is necessary and justified. Commonwealth of Virginia Ex Rel. Halsey v. Autry, 441 A.2d 1056 (Md. App. 1982); Rohrer v. Kane, 609 P.2d 1121 (Colo. App. 1980); Olson v. Olson, 534 S.W. 2d 526 (Mo. App. 1976).

> In light of the purposes of the act and the legislative grant of broad powers to fashion the necessary remedies, we conclude that URESA must be liberally construed.

Roher, supra, at 1122.

The duty of support which URESA is fashioned to enforce may be enforced in any responding state where jurisdiction over the obligor can be obtained. Hodge v. Maith, 435 So. 2d 387 (Fla. 5th DCA 1983). It is clearly the law of the responding state which defines the duty of support. Hodge, supra; Ray v. Pentlicki, 375 So. 2d 875 (Fla. 2nd DCA 1979). The issue presented in the instant case is whether the law of Florida, as the responding state, allows for an increase in the support obligation under URESA.

The Florida Supreme Court alluded to this question when it stated:

> [I]t appears to be the duty of support imposed by a divorce or separate maintenance decree (as distinquished from the amount of the support so decreed) that is enforced by the responding state under the act in question.

Thompson, supra, at 93. When the above is read in conjunction with the Court's statement that "the Act is designed to provide a remedy entirely separate from and independent of any remedies existing under other applicable provisions of law", Id. at 93, it becomes evident that the Florida courts possess the authority and discretion to increase Petitioner's child support obligation. Florida courts can enter a child suport order separate from that entered by the Colorado court before which the dissolution

proceeding of the parties took place. In the process, the Florida courts are enforcing the duty of support imposed by the Colorado court.

One of the better discussions in Florida case law regarding URESA is found in the concurring opinion of Judge Coward in Helmick v. Helmick, 436 So. 2d 1122 (Fla. 5th DCA 1983). The succinctness and clarity of Judge Cowart's concurrence, in regard to its application to the issues presented in the instant case, bears repeating.

> Although a URESA action under the Civil Enforcement provisions may be based on previously entered orders of support, a previous support order is not essential, only facts giving rise to a duty of support. Furthermore, regardless of any previous support order, it is the responding court and not the initiating court that makes the final determination of the amount of support required to be paid by the respondent in the responding state. Although an initiating court's determination of an amount of support needed by the petitioner and that respondent is able to provide may be prima facie evidence of this need and ability, this determination is not binding on the respondent court. The responding court is free to enter an award higher than a previous award or lower than a previous award. Although the responding court determines the amount of support required in the URESA proceeding, this determination does not modify the initiating state's, or any other state's previous order of support. Amounts paid under the order of a responding state are merely credited against amounts due under the unmodified

> support order of an initiating state. (Emphasis supplied).

Id. at 1129. A clearer statement in regard to the issues presented on appeal cannot be found. The First District Court of Appeal recognized this by citing Judge Cowart's concurrance in its opinion in the present action. Koon v. Boulder County, Department of Social Service, 468 So. 2d 1007 (Fla. 1st DCA 1985).

There is Florida case authority which implicitly recognizes that Florida courts have the authority to enforce an amount of child support less than the amount imposed by a sister state. Florida Department of Health and Rehabilitative Services v. Ciferni, 429 So. 2d 92 (Fla. 2nd DCA 1983); Friedly v. Friedly, 303 So. 2d 50 (Fla. 2nd DCA 1974). Accordingly,

> If the court of the responding state can diminish the financial obligation it must have the corresponding power to increase it, for it is a poor rule that does not work both ways.

Olson v Olson, 534 S. W. 2d 526, 529 (Mo. App. 1976).

Numerous jurisdictions, as responding states in URESA proceedings, recognize the authority of their courts to order an amount of child support greater than that ordered by the original decree. Ainbender v. Ainbender, 344 A.2d 263 (Del. Super. Ct. 1975); Balenstine v. Jordan, 272 S.E. 2d 438 (S.C.

1980); Moore v. Moore, 107 N.W. 2d 97 (Iowa 1961); Fitzwater v. Fitzwater, 294 N.W.2d 249 (Mich. Ct. App 1980); Ibach v. Ibach, 600 P.2d 1370 (Ariz. 1979); Chisholm v. Chisholm, 251 N.W. 2d 171 (Neb. 1977); Menetrez v. Menetrez, 147 A.2d 772 (D.C. 1959); State Ex. Rel. State of Nebraska v. Brooks, 583 P.2d 12 (Or. Ct. App 1978); Jaramillo v. Jaramillo, 618 P.2d 528 (Wash. Ct. App. 1980); Despain v. Despain, 300 P.2d 500 (Idaho); State On Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn. 1983); State of Georgia v. McKenna, 315 S. E. 2d 885 (Ga. 1984); Commonwealth v. Byrne, 243 A.2d 196 (Pa. 1968); Abb v. Crossfield, 326 A.2d 234 (Md. Ct. Spec. App. 1974).

Numerous federal courts have also recognized that a responding state, under URESA, has the power to make an independent order fixing the amount of support different from that called for by the original decree. Government of Virgin Islands v. Lorillard, 385 F.2d 172 (3d Cir. 1966); Sheres v. Engelman, 534 F. Supp 286 (S.D. Tex. 1982); United States v. Stephens, 472 F. Supp 14 (E. D. Tenn. 1979).

In addition, the United States Supreme Court stated that a California resident seeking additional child support from a New York resident may either pursue the action in New York, or utilize URESA to "facilitate both her prosecution of a claim for additional support and collection of any support

payment found to be owed by appellant. "Kulko v. Superior Court of California, 436 U.S. 84, 100 (1978).

According to 67A C.J.S. Parent and Child, Section 96, pp. 452-453:

> While a duty of support previously determined elsewhere will not be redetermined in the responding state, and a support order may not be superseded in the responding state, the amount of support previously ordered is not final and binding, and the court of the responding state has the authority to enter an independent order fixing a different amount of support than that previously set or recommended; the court my not erroneously fail to exercise its discretion in this respect. (Emphasis suplied).

Petitioner relies on Section 88.281, Fla. Stat., (1984), as authority for his argument attacking the order of the trial court and the First District Court of Appeal. In pertinent part, the Section provides:

> A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of a substantially similar act or any other law, regardless of priority of issuance provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of this state shall be credited against the amounts accruing or accrued for the same period under order made by the court of this state.

Respondent contends there is nothing in this Section which supports Petitioner's claim. The foregoing Section would not be necessary if the Florida court, as the responding court, is merely a collection agency to gather sums due on a previous order. The application of such amount to the former judgment would be automatic. However, URESA is not merely a collection statute.

The Iowa Supreme Court in construing a similar provision in its URESA stated:

> [W]e think a reasonable interpretation of the entire act fairly shows it was intended to give an additional remedy, in the application of which the respondent court might make its own determination of the needs of the petitioning party and make such order as justice might require.

Moore, supra at 101. The Iowa Supreme Court continued in Moore to state that the foregoing opinion was also the holding of the Florida Supreme Court in Thompson, supra.

The United States Court of Appeals, Third Circuit, has construed the intention of the framers of URESA.

> The framers of the Uniform Act doubtless took into account the fact that a court decree which is entered in a divorce or other proceeding involving the question of support is ordinarily final and definitive with respect to the duty of support which it imposes for the period of time during which the law requires such support be given. But the amount of support to be given in discharge of that duty is another matter.

> The amount of support to be given in the future by the person obligated to give it, as distinguished from the duty to give it, is almost universally subject to modification from time to time by the court in light of changing circumstances of the parties. Accoridngly, it is only the duty of support determined by the foreging judgment, and not the amount of support thereby decreed, which is binding on the court of the responding state. . . (Emphasis supplied).

Government of Virgin Islands, supra at 177. The above statement is clearly the position which the Florida Supreme Court took in Thompson, supra.

The Minnesota Supreme Court construed provisions in its URESA similar to Sections 88.271 and 88.281, Fla. Stat., (1984). State On Behalf of McDonnell, supra. The Court construed the language of those provisions to mean that the foreign order is simply evidence of a duty to support. The Court did not find the language compelled the responding state to award the same level of support. Id. The Court continued by stating, "We adopt the view of those courts which have held that a responding state may independently determine an appropriate level of support to impose on the obligor." Id at 649.

Respondent contends this Court should reaffirm its previous holding in Thompson, supra, and specifically adopt the holding of Koon, supra, that a responding court in a

URESA proceeding may enter a support order that is greater than a prior judgment.

ARGUMENT II

THE CHILD SUPPORT PROVISION OF THE UNDERLYING DISSOLUTION OF MARRIAGE ACTION WAS NOT ENTITLED TO FULL FAITH AND CREDIT.

Petitioner argues that the child support provision of the underlying dissolution of marriage decree is entitled to full faith and credit. Accordingly, Petitioner claims a Florida court does not have the authority to order an amount of child support different from that ordered by the Colorado court in the present action. Respondent contends that the principle of full faith and credit does not impact on the decision of the First District Court of Appeal in the present action.

Article IV, Section 1, of the United States Constitution requires the courts of each state to give full faith and credit to the judicial proceedings of every other state. Thus, the courts of Florida must enforce a valid final judgment of a sister state as they would a Florida judgment, unless it violates some public policy of the State of Florida. Berger v. Hollander, 391 So.2d 716 (Fla. 2nd DCA 1980).

The doctrine of full faith and credit only applies to those issues that are finally determined by a foreign judgment. Lopez v. Avery, 66 So. 2d 689 (Fla. 1953).

However, a judgment rendered in a foreign state need not be recognized or enforced by Florida courts insofar as the judgment remains subject to modification in the state of rendition. Sistare v. Sistare, 218 U.S. 1 (1910). As this Court has stated:

> As the matter is stated in one of the general authorities on the subject: "Where [a provision in a divorce decree for the support of a child] is, either under the statute or by its very terms, subject to modification, in the discretion of the court...[where rendered]...as to installments to fall due in the future, it is obvious that the decree is not final and therefore not entitled to full faith and credit in another state... as to installments not yet accrued...they are not entitled to the protection of the the full faith and credit clause because in such case no money is yet due and as to such installments the decree is generally understood to be subject upon proof of changed conditions, to modification by the court rendering it.

Avery, supra at 692.

In the present case, the Final Decree of Dissolution was rendered by a court of the State of Colorado. The law of Colorado allows for the modification of child support orders upon the showing of a change in circumstances. Pacheco v. Pacheco, 554 P.2d 720 (Colo. App. 1972).

Hence, the Colorado child support decree does not possess such a degree of finality or permanence as to be entitled to

the full faith and credit mandate of the Federal Constitution. The full faith and credit clause does not stand as a constitutional bar to the order of the Florida trial court in the present action increasing Petitioner's child support obligation. What Colorado can do by way of making new provisions for child support payments, Florida may also do;

> [F]or the decree has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the jurisdiction where rendered.

Avery, supra at 693. Petitioner's arguments to the contrary are clearly without merit. It is interesting to note that Petitioner does not explain how the rendering of an order by a Florida court decreasing the amount of child support payments does not violate the full faith and credit doctrine. See Section 88.271, Fla. Stat., (1984).

ARGUMENT III

THE FLORIDA DECREE INCREASING PETITIONER'S CHILD SUPPORT PAYMENTS DOES NOT MODIFY THE COLORADO CHILD SUPPORT ORDER.

The subsequent child support order rendered by the Florida court does not modify the Colorado decree as Petitioner contends. See Judge Cowart's concurring opinion in Helmick, supra, at 1129. Various other states have also addressed the question of modification. They have all concluded that an order entered by a responding state under URESA does not modify the previous order of a sister state. Murphy v. Murphy, 395 So. 2d 1047 (Ala. App. 1981); State of Georgia v. Ex. Rel. Halsey v. Autry, 441 A.2d 1056 (Md. App. 19820; Olson v. Olson, 534 S.W. 2d 526 (Mo. App. 1976). "The court in a responding state may make its own determination of the needs of the party invoking URESA and has the power to make such support orders as justice requires," Olson, supra, at 531, "and if a different amount is ordered paid, the other judgment is not modified but sums paid under either are credited to the other". State of Georgia, supra, at 887. "There being no modification, the [sister state's] decree remains in effect for whatever it is worth." Murphy, supra at 1049.

Section 88.281, Fla. Stat., (1984), states a support

order of this state does not nullify the support order of a foreign jurisdiction. Petitioner construes this to mean that a Florida court, as a responding court, cannot issue an order which is different from that of the original order; that to do so acts a modification of the original order.

The courts of the State of Washington have addressed this issue under its similar URESA. Jaramillo, supra. The court stated that "the purpose of this statute is not to protect the obligor from increased payments, but from double payments, as any payments made is credited against the amount owed under any order." Id, at 530.

Delaware has also addressed the construction of a provision in its URESA similar to Section 88.281, Fla. Stat., (1984). Ainbender, supra. The court stated that under the language of URESA, a responding state's order would not invalidate the original order. The provision "is designed merely to prevent duplication of payment and in no way limits the ability of the court in the responding state to order support payments in an amount in excess of the original order." Id, at 265. It is clear that other jurisdictions do not view an order issued by a responding state in a URESA action as a modification of the original order.

While Florida courts are not bound by the decisions of sister states, they are particularly persuasive because they

are interpreting a reciprocal uniform law which Florida has adopted.

Florida case law has not directly addressed the issues of whether a Florida court, acting as the responding state under URESA, may enter a child support order in an amount greater than the initiating state, and that the Florida order does not modify the previous order. However, because of the important public policy concerns involved in the area of child support and the frequency of URESA actions, guidance is needed in regard to the issues presently before this Court. Therefore, a clear and definite statement should be rendered by this Court as a step toward clarifying the questions presented by this appeal.

ARGUMENT IV

PETITIONER'S CONSTRUCTION OF URESA UNLAWFULLY RESTRICTS THE JURISDICTION OF FLORIDA CIRCUIT COURTS.

Florida circuit courts are "superior courts of general jurisdiction, and nothing is intended to be outside their jurisdiction except that which clearly and specifically appears so to be." English v. McCray, 348 So. 2d 293, 297 (Fla. 1977). Circuits courts have jurisdiction over actions at law not cognizable by the county and all cases in equity. Section 26.012, Fla. Stat., (1984); Southern Records and Tape Service v. Goldman, 458 So. 2d 325 (Fla. 3rd DCA 1984).

This Court has stated:

> The circuit courts of the State of Florida are courts of general jurisdiction--similar to the court of King's Bench in England--clothed with the most generous powers under the Constitution, which are beyond the competency of the legislature to curtail. Ex Parte Henderson, 6 Fla. 279; Lamb v. State, 91 Fla. 396, 107 So. 535. They are superior courts of general jurisdiction, subject of course to the appellate and supervisory powers vested in the Supreme Court by the Constitution, and as a general rule it might be said that nothing is outside the jurisdiction of a superior court of general jurisdiction except that which is clearly vested in other courts or tribunals, or is clearly out side of and beyond the jurisdiction vested in such circuit courts by the Constitution and the statutes enacted pursuant thereto. Chapman v. Reddick, 41

Fla. 120, 25 So. 673; Curtis v. Albritton, 101 Fla. 853, 132 So. 677.

English, supra at 297.

Respondent contends that a Florida circuit court exercises its general equity powers when reviewing a URESA proceeding. Maryland courts have construed their URESA as equitable actions. Abb v. Crossfield, 326 A.2d 234 (Md. App. 1974). In reaching this conclusion, the Maryland court construed a URESA which is similar to the Florida Act.

In Abb, the defendant argued that the mother could have sought enforcement of her support decree by registering it pursuant to URESA. Accordingly, the defendant claimed the regular and ordinary civil enforcement provisions of URESA were not available to the mother as enforcement mechanisms.

The Maryland court stated that the defendant's argument would clearly prevent the hearing court from exercising its general equity powers. The court held:

> [T]hat the court in a URESA action has at its disposal whatever equitable powers are necessary to effectuate the purpose of the Act.

Id, at 238.

In the instant case, Petitioner argues that URESA does not enable the Florida circuit courts to exercise their full equity powers. Petitioner contends that an imposed duty (i.e.--a duty existing as the result of a foreign decree) can

only be enforced through Part IV of URESA. Part IV involves inforcement of foreign decrees by registration. Petitioner's position is groundless and acts to unlawfully limit the jurisdiction of Florida circuit courts in an equitable action. A reading of the Act illustrates that enforcement of a foreign support order through its registration is not the sole mechanism under the Act for enforcing an imposed duty. Section 88.321, Fla. Stat., (1984), clearly states:

> If the duty of support is based on a foreign support, the obligee has the additional remedies provided in Section 88.331-88.371. (Emphasis supplied).

Furthermore, Section 88.271, Fla. Stat., (1984), states:

> In any hearing for the civil enforcement of this act, the Court is governed by the rules of evidence applicable in a civil court action in the circuit court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support. . . (Emphasis supplied)

It is clear that the Act contemplates the use of Part III's civil enforcement provisions for the enforcement of all duties of support.

In order to fully exercise its equitable powers under URESA, a Florida circuit court must have the discretion to review the facts and circumstances surrounding the case and make an independent determination of the amount of child

support the obligor must pay. Respondent contends that any other position is in contravention to the Constitution and general law. Respondent's narrow construction also conflicts with the remedial nature of the statute and defeats the intent of the legislature "to improve and extend by reciprocal legislation the enforcement of duties of support." Section 88.021, Fla. Stat., (1984).

For the foregoing reasons, Respondent also contends that the decision of Hartley v. Hartley, 465 So. 2d 592 (Fla. 2nd DCA 1985), is error. By inferring that the legislature intended to foreclose upward adjustment of support orders, the Hartley court has approved the limitation of the general equity powers of Florida's circuit courts.

If the legislature intended to foreclose upward adjustment of support orders through URESA, then Respondent contends URESA is an unconstitutional infringement on the general equity powers of Florida's circuit courts. It is a well known general rule of law that a statute will be construed if possible to give it a constitutional effect. URESA can be construed in such a manner so as not to infringe on the circuit courts' general equity powers. As stated by the First District Court of Appeal in the present case:

> While the Second District inferred that intent from Sections 88.271 and 88.255, we believe that section 88.281 supports

> our view that since URESA is an independent proceeding which does not modify, and is not bound by, prior foreign judgments, the responding court may enter a support order that is higher or lower than a prior judgment.

Koon, supra at 1009.

The foregoing language clearly recognizes the power of the circuit courts to exercise their equitable powers according to their discretion. This Court should adopt the above language and find Hartley, supra, to be in error, so as to continue to allow the equity courts of this state to fully exercise their equity power.

ARGUMENT V

THE FLORIDA CASE AUTHORITY CITED BY PETITIONER DOES NOT SUPPORT HIS CONTENTION THAT THE FLORIDA CIRCUIT COURT WAS WITHOUT AUTHORITY TO INCREASE PETITIONER'S SUPPORT OBLIGATION.

Petitioner argues that the Florida circuit court attempted to modify the child support order of the Colorado court. In support of this contention, Petitioner cites the following Florida case: Stephens v. Stephens, 402 So. 2d 1301 (Fla. 1 DCA 1981). Respondent contends that Stephen does not prevent Florida courts from entering an order of support greater than that established by the Colorado court which heard the original dissolution action.

Stephens, supra, stated that, "Although the statute is broad engough to permit a responding court in a URESA action to initially determine the duty of support this is not permitted when there is a previous order establishing support in the underlying dissolution of marriage proceeding." Id., at 1302. This statement, which Petitioner cites in support of his position, has no application to the case at hand.

Respondent recognizes that an order of support was previously rendered by the Colorado court, pursuant to a dissolution of marriage proceeding. However, the Florida circuit court was never acting to "initially determine the duty of support." As previously stated, URESA does not

create a duty of support, but is a means of enforcing a duty of support. Hodge v. Maith, 435 So. 2d 387 (Fla. 5th DCA 1983). In the present case, the duty of support had been established by the Colorado court. Florida, as the responding state in a URESA action, was simply enforcing this duty of support. Since Petitioner is presumed to have been present in Florida during the period for which support is sought, the laws of Florida are controlling in determining and enforcing Petitioner's duty of support. Clark v. Blackburn, 151 So. 2d 325 (Fla. 2nd DCA 1963). The question of raising or lowering that support obligation, therefore, has nothing to do with the issue presented in Stephens. Petitioner's reliance upon Stephens is clearly unjustified.

As mentioned earlier, the Colorado order remains in effect. What takes place when there are two support orders is established by Section 88.281, Florida Statutes.

> Amounts paid for a particular period pursuant to any support order made by a court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

Simply stated, the sums collected from Petitioner pursuant to one support order are credited towards the other support order. It is clear that the Colorado order remains in effect subsequent to the rendering of the Florida order increasing

support. This is further demonstrated by the fact that if the Florida circuit court had ordered a lower support amount the difference between that amount and the sum ordered by the Colorado court would still accrue. Florida Department of Health and Rehabilitative Services v. Ciferni, 429 So. 2d 92 (Fla. 2nd DCA 1983). It is interesting that Petitioner does not view an order decreasing the amount of child support as a modification of the original order.

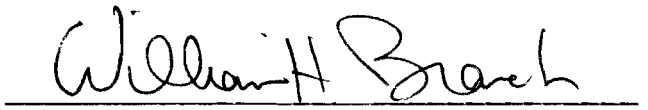
Stephens does not support Petitioner's position that Florida circuit courts are without authority to increase child support amounts. Stephens does not demonstrate that the order of the Florida trial court modified the Colorado decree. To the contrary, Respondent contends that no such modification took place and the Colorado child support decree remains viable and intact. Therefore, Petitioner's reliance upon Stephens is ill founded.

CONCLUSION

Petitioner argues that Florida courts cannot enter an order, pursuant to URESA, requiring an obligor to pay an amount of child support different from that originally ordered by a sister state, because such an order amounts to an unlawful modification of the previous order. Respondent disagrees with Petitioner's claim. Case law demonstrates that the responding state in a URESA action is required to enforce only the obligor's duty of support, not the specific child support amount. As such, the responding state can apply its law in determining the amount of child support the obligor should pay, by either increasing or decreasing the child support payments of the obligor. The support provision of the original decree is not entitled to full faith and credit if it is subject to modification in the rendering state.

Any change by the responding state of the previous child support decree does not operate to modify that decree. The previous decree clearly remains intact and enforceable, with credit being given for any sums collected under the subsequent order.

Wherefore, Respondent respectfully requests this Honorable Court affirm the Koon decision and overrule Hartley.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **HALLEY B. LEWIS, ESQUIRE,** Downing-Frye Building, 16 Bonita Beach Road, Bonita Springs, Florida 33923, this 13th day of December, 1985, by U. S. Mail.

William H Branch

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