O/A 36-86

SUPREME COURT OF FLORIDA

EDWIN L. KOON,

Petitioner,

vs.

BOULDER COUNTY, DEPARTMENT OF SOCIAL SERVICES,

Respondent.

CASE NO. 67,216

DISTRICT COURT OF APPEAL, 1ST DISTRICT - NO. BC-114 & BC-115

INITIAL BRIEF

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STATEMENT OF THE CASE.

This case has been accepted for review pursuant to order dated October 31, 1985, under authority Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure, by the Supreme Court of Florida.

The exercise of this court's discretion is predicated upon a conflict, express and direct, between the decision in the case of Koon v. Boulder County, Department of Social Services, 468 So. 2d 1007 (Fla. 1 DCA 1985) and the decision in the case of Hartley v. Hartley, 465 So. 2d 592 (Fla. 2 DCA 1985).

On the question of whether or not, under URESA proceedings originating in Colorado, a Florida circuit court is authorized to raise the amount of child support fixed by a Colorado final decree of Dissolution, the First District Court of Appeal in Koon, supra, said, page 1008:

> "... a responding court in such proceedings may enter a support order that is greater than a prior foreign judgment ..."

and, in so deciding made the following observation about Hartley, supra:

> "... (W)e disagree with the Second district's statement that the legislature intended to foreclose upward adjustment of foreign support orders in civil enforcement proceedings'."

FACTS OF THE CASE

This action arose in the trial court when Anna R. Smith as Petitioner from Wyoning commenced an action under the Uniform Reciprocal

Enforcement of Support Act, and obtained an Order to Appear and Show Cause. Petitioner Edwin L. Koon, as Respondent appeared without counsel, received an order, defaulted thereon, with the result that a second order to appear and show cause was issued on June 22, 1983, citing, among other things, the fact that he, Koon, had been ordered on November 29, 1982, to pay $300.00 per month, beginning January 1, 1983. (Appendix i). Respondent, at this hearing, through counsel, raised the question of lack of authority of the court to raise amount of support over that contained in the Colorado Final Decree of dissolution. (Appendix ii).

The court entered the order dated September 2, 1983, after having received record showing $19,953.00 A.D.C. grant accummulation prior to the entry of the Colorado Final Decree of Dissolution, (Appendix iii and iv) and the order dated October 12, 1983, as amended November 17, 1983, (Appendix v and vi). Which continued requirement of Petitioner to pay $300.00 rather than as directed by Colorado Final Decree and to pay $25.00 per month on arreage.

COURSE OF THE PROCEEDINGS.

On Motion in District Court the two cases were consolidated on Appeal, 1st District - No. BC-114 & BC-115.

THE NATURE OF THE CASE, DISPOSITION

The two cases above cited, of which this is one, created a conflict, expressly and directly, viz: Koon and Hartley.

The First District Court of Appeal of Florida by its decision aforesaid held the circuit court is authorized to increase the amount of child support above that called for in the Colorado Final Decree. The Hartley case, supra, held that the legislature foreclosed upward adjustment of Foreign support orders.

Petitioner here requests this court, under the authority stated, to resolve the conflict.

ISSUE

WHETHER 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 SUPPORT ORDER IN THE UNDERLYING DISSOLUTION OF MARRIAGE PROCEEDING.

SUMMARY OF ARGUMENT

The trial court, on petition under chapter 88, Florida Statutes URESA, by order raised the amount of monthly support from $60.00, an amount specified underlying Colorado final decree of dissolution of marriage to $300.00, plus $25.00 per month on arrearage.

Petitioner's contention that trial court was not authorized to increase the monthly child support provision was rejected. Appeal was taken to the District Court of Appeal, First District of Florida, relying on Stephens v. Stephens, 402 So. 2d 1301 (Fla. 1st DCA 1981).

While case was pending in said Destrict Court, the Second District published its opinion in Hartley v. Hartley, 465 So. 2d 593 (Fla. 2nd DCA 1985). Hartley holds that foreign support order can not be adjusted upward. The relief here sought to have the conflict between the two cited cases resolved by ruling, in effect, that a support provision contained in an underlying final judgment of a sister state is entitled to full faith and credit and is other than a URESA order.

ARGUMENT

WHETHER 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 SUPPORT ORDER IN THE UNDERLYING DISSOLUTION OF MARRIAGE PROCEEDING.

THE ISSUE ISOLATED.

As an approach to argument the Initial Brief writer discusses points on which the decesion found and studied shed too little light, contain too much vagueness.

In the First District Court of Appeal Koon's attorney, the undersigned, relied confidently on the decision in Stephens v. Stephens, 402 So. 2d 1301 (Fla. 1 DCA 1981) where it was said with reference to Florida's Uniform Reciprocal Enforcement of Support Act, Chapter 88, Florida Statutes:

> "Although the statute is broad enough to permit a responding court in 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."

Confidence was further bolstered by what was stated in Stephens with reference to Section 88.281 as it existed before and after its amendment in 1979, as reflected in Ray v. Pentlicki, 375 So. 2d 875 (Fla. 2 DCA 1979):

> "The result we reach here is not compelled, as appellant argues, by the language of Section 88.281, Florida Statutes (1977) which provides that an order of support issued by a

> Florida court in a URESA proceeding where Florida is the responding state shall not supersede any previous order issued in a dissolution of marriage or separate maintenance action. Nor is our conclusion in conflict with the 1979 amendment to Section 88.281 effective October 1, 1979, as appellee argues. Section 88.281, as amended, provides that a support order made by a court of this state pursuant to URESA 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 other law, regardless of the priority of issuance, unless otherwise specifically provided by the court."

In the order by Judge Tench, dated October 12, 1983, (Appendix vi) he cited the case of Fowler v. State, Fla. App., 275 So. 2d 879; it is an obvious error, because the language used indicates he was referring to Ray, next above quoted.

The reference to the 1979 Act as amended is significant. Judge Ervin in Koon, supra, used italics to describe the court's interpretation, viz:

> "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 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."

The undersigned believes a more appropriate underscoring would be as follows:

> "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 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."

Chapter 88, Florida Statutes was enacted with four parts. The first part, Section 88.011-88.051 deals with legislative intent, and definitions; Part III, Sections 88.081-88.311, deals with civil enforcement; and Part IV, Sections 88.321-371, deals with Registration of Foreign Support orders. In Section 88.031(3) two types of orders are contemplated, viz: Imposed or Imposable.

The case of Hodge v. Maith, 435 So. 2d 387 (Fla. 5 DCA 1983), in footnote 5, refers to the duty of support whether imposed or imposable, that the Act creates no duty of support and does not depend on a pre-existing court order. This quoted observation makes sense:

> "(It is not) only orders of support of one state (that) will be enforced under the Act. In fact, it is 'all duties' and the duty, of course, may grow out of the order of support or a judgment or decree but is equally a duty if it never has received judicial attention and now is the basis of litigation for the first time under the Act."

With the last above described observation it is well to review the expressed legislative intent, Section 88.012, Florida Statutes, viz:

> "It is declared to be the public policy of this state ... that children residing in this state or some other state shall be maintained from the resources of responsible parents ..."

It is clear that the purpose is to uniformly enforce the duty of support. Therefore, when chapter 88, Florida Statutes, is viewed in this light, the purpose of the four parts appear, although, not set forth in writing among the cases studied, viz:

Part I. An unmet duty of support may result from a default on a

court order or in the absense of such an order – thus, imposed or imposable.

Part II. There may be revealed the need to employ criminal proceedings. (Here, mentioned only for clearity)

Part III. Proceedings under this Part deal with imposable duties under the act. This is made clear by the language of Section 88.081

> "88.081 Choice of law.—Duties of support applicable under this act are those imposed under the laws of any state where the respondent was present for the period during which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown."

Part IV. This Part deals with "duty of support" based on a foreign support order.

Chapter 88, Florida Statutes, in summary, is for enforcement of the duty of support, recognized in the state where the obligor is. If there is no existing known order, one can be fashioned. If, there is an existing order, it may be enforced when registered. With this summary, a reading of Section 88.281, with underscoring as was done hereinabove and here repeated for emphasis, it is submitted, is a reasonable interpretation.

In discussing cases and in reading cases, care must be taken to note if the order under study is an existing one under the act, of which enforcement is sought or one based on a duty under the laws of the state where the need is and there is no order.

SUPPORT ORDERS UNDER THE ACT.

Hereinabove, reference is made to Judge Ervin's quotation of Section 88.281, Florida Statutes, with emphasis in italics. The court's attention is again directed to this quotation because it discloses the fallacy of the court's thinking with support orders under URESA and those issued in underlying dissolution of marriage actions. The words immediately following states that the order on appeal does not provide that it nullifies the Colorado divorce decree. With this we come to the focal point of the appeal to the First District Court of Appeal in Koon, can a URESA order nullify an existing final judgment of a sister state, entered in a divorce action?

Before making argument on that point a discussion is in order in relation to the conflict between Koon and Hartley. In Koon, The First District Court of Appeal stated:

> "... a responding court in such proceedings (URESA) may enter a support order that is greater than a prior foreign judgment ..."

Speaking about URESA actions, (without conceding that the Colorado support was a URESA action) the First District's conclusion is in conflict with the decision in Hartley.

Hartley, like Koon, involved a support order contained in a Final Judgment in divorce. Hartley said the Legislature had "foreclosed upward adjustment of foreign support orders." The opinion in both Hartley and Koon refer to the support order as a foreign support order. Whereas, in

both separately were a provision in a final judgment of divorce. Hartley found in Section 88.271, Florida Statutes, the lack of authority to adjust "upward" a foreign support order, viz:

> "Because this section refers only to defenses, we infer a legislative intent to foreclose upward adjustment of foreign support orders in a civil enforcement proceeding."

Assuredly, there is conflict, express and direct, between the decision in Hartley and that of Koon, each involved with a support order as a part of a final judgment of a sister state.

It seems that Hartley contains better reasoning which resolves the conflict without passing on the question of a support provision contained in a final judgment of divorce being entitled to full faith and credit in a sister state.

A SUPPORT ORDER CONTAINED IN A FINAL JUDGMENT OF A SISTER STATE ISSUED IN AN UNDERLYING DISSOLUTION OF MARRIAGE ACTION.

This court has the opportunity here to stabilize and harmonize the administration and enforcement of child support by deciding that such is entitled to full faith and credit, when such order is a part of final judgment of divorce or dissolution of marriage. This court has an opportunity, it is submitted, to affirm the principle announced in Stephens, supra, viz:

> "... the statute is broad enough 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."

The statue is broad enough to permit a responding state in a URESA

action to initially determine the duty of support except when there is a previous order establishing support in the underlying dissolution of marriage proceeding.

In the case of Hamilton v. Hamilton, 476 S. W. 2d 197 (Ky. 1972), a wife, a Kentucky resident, sought child support from her child's father, in Florida. Much legal action is described, but the essential point is that the Court of Appeals of Kentucky, under the Act as it existed prior to 1979, stated that the Florida court had no authority to change or alter the Kentucky Judgment.

In Helmick v. Helmick, 436 So 2d 1122 (Fla. 5 DCA 1983);

> "The act cannot, and does not attempt to, give the Florida court jurisdiction to modify the support order of another jurisdiction."

West's Florida Statutes Annotated quotes Florida Attorney General for the proposition that

> "... a child support award entered in a dissolution of marriage action may not be modified in a proceeding under that Uniform act but may be maintained otherwise." 83-93, November 29, 1983.

The opinion in Koon views a URESA support order greater than a support order contained in a Final Judgment of divorce not a modification.

The people of Florida are entitled to better treatment. A URESA order that is greater than a support order contained in a final judgment of divorce, if given effect, is a modification. To say it isn't doesn't help. As the saying goes, a rose by any other name is still a rose. An efficacious

order that calls for payments greater than that called for in the final judgment of a sister state is a modification of that other court's final judgment.

CONCLUSION.

A final judgment in a dissolution of marriage action which contains an order of support should be given full faith and credit in a sister state. This can be accomplished within the frame work of Hartley. Hartley like Koon, speaks of "foreign support orders." Both, obviously, relate to foreign support orders under URESA; Koon holding that an adjustment upward is permissible; Hartley, holding such is not permissible. The conclusion should be that neither can be adjusted upward, because each case is based upon a provision contained in a final judgment in dissolution of marriage issued by a ~~sister~~ state.

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CERTIFICATE OF SERVICE

I CERTIFY that copy hereof has been furnished to JOSEPH R. BOYD Esquire, SUSAN S. THOMPSON, Esquire, WILLIAM H. BRANCH, Esquire, of BOYD, THOMPSON & WILLIAMS, P.A., 2441 Monticello Drive, Tallahassee, Florida 32303 and CHRISS WALKER, Esquire, Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Tallahassee, Florida 32301 by mail this 13th day of November, 1985.

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