67,216

IN THE SUPREME COURT OF FLORIDA

EDWIN L. KOON

Appellant, Petitioner,

vs. CASE NO. _____

BOULDER COUNTY, DEPARTMENT OF SOCIAL SERVICES, ex rel. ANNA KOON,

Appellee, Respondent.

EDWIN L. KOON,

Appellant, Petitioner,

vs. CASE NO. _____

ANNA SMITH,

Appellee, Respondent.

JURISDICTIONAL BRIEF

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SUMMARY OF ARGUMENT

The trial court, on petition under chapter 88, Florida Statutes, URESA, by order raised the amount of support from $60.00, contained in underlying final decree of dissolution of marriage to $300.00.

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

While case was pending in said District Court, the Second District published its opinion in Hartley v. Hartley, 465 So. 2d 593 (Fla. 2nd DCA, 1985). Hartley holds that support order can not be adjusted upward. The opinion here sought to have reviewed says that a support can be adjusted upward.

The two opinions are expressly and directly in conflict.

STATEMENT OF CASE

This action commenced in the trial court, as a responding state court, under Chapter 88, Florida Statutes, Uniform Reciprocal Enforcement of Support Act (URESA). The action came on the petition of Anna R. Smith and certificate of Kenneth G. Hamm of the State of Wyoming, filed July 27, 1982.

The District Court in and for Boulder County, Colorado, in 1977, had dissolved the marriage of Appellant, Petitioner Edwin L. Koon and Anna Smith. The final decree in that case, among other things, provided that Edwin L. Koon pay to Anna for the support of the parties' minor children $60.00 per month.

On November 30, 1982, the trial court ordered Edwin L. Koon to pay $300.00 per month. In a subsequent hearing, at which Petitioner Koon was represented by his undersigned attorney, the court rejected the argument that the trial court, under URESA, was not authorized to change the amount of the support order issued in the dissolution of marriage action.

An appeal was taken to the District Court of Appeal, First District, with a resulting decision that conflicts with Stephens v. Stephens, 402 So. 2d 1301 (Fla. 1st DCA 1981) and with Hartley v. Hartley 465 So. 2d 592 (Fla. 2nd DCA 1985).

The question presented to the District Court is presented here as threshold information seeking to invoke the exercise by this court of its discretion to accept jurisdiction:

DOES THE CIRCUIT COURT IN FLORIDA HAVE AUTHORITY TO MODIFY A PRIOR JUDGMENT OF ANOTHER STATE FIXING THE AMOUNT OF CHILD SUPPORT UNDER CHAPTER 88, FLORIDA STATUTES, URESA?

In the trial court and the District Court Petitioner Koon contended that the trial court had no authority to increase the amount requirred to be paid by him over that required to be paid in the Colorado final decree of dissolution.

Petitioner, heretofore and presently, relies on Stephens v. Stephens, supra:

> "Although 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."

While the instant cause was pending in the First District Court, the Second District published its opinion in Hartley v. Hartley, supra. In Hartley the Second District Court after quoting Section 88.271, Florida Statutes (1983), said, in part:

> "(Emphasis added.) 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. Cf. Stephens v. Stephens, 402 So2d 1301 (Fla. 1st DCA 1981) (responding court in URESA action cannot determine duty of support where previous order in dissolution of marriage proceeding established support obligation)."

With the foregoing background, Petitioner now calls this court's attention to the opinion here sought to have reviewed the consolidated cases of Koon vs. Boulder County, Department of Social Services, ex rel. Anna Smith, dated March 28, 1985, and corrected June 6, 1985, contained in the

appendix herein.

The order here sought to have reviewed, after stating the facts, quoted from Section 88.281. Florida Statutes, and used underscoring to emphasize and the underscoring indicates that the First District Court failed to comprehend the significant words. Petitioner, quotes, in part, the same statutes with different underscoring.

> 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 . . .

The Legislature, obviously, is referring to court orders made "pursuant to this act," and by a courtof any other state "pursuant to substantially similar act.", and not to underlying dissolution of marriage actions. The Colorado District Courts' final decree of dissolution in not a URESA action!

In this connection, Petitioner, in the courts below argued that Section 88.013, Florida Statutes, defines "duty of support";

> "'Duty of support" means a duty to support whether imposed or imposable."

In this case the Colorado District Court imposed a duty. It is no longer imposable by a court of another state under URESA. This distinction is the key to the solution of this case. The duty having been imposed, it is no longer imposable. Having been imposed, it becomes a final judgment - not under URESA - entitled to full faith and credit.

The opinion here sought to have reviewed makes a distinction between duty to support and the amount of support. The distinction is real when con-

sideration is made in instances where the parent with an obligation has not had the obligation defined and imposed by a judgment of a court of competent jurisdiction, as distinguished, as here, from a situation where the obligation is imposed on the obligee and he goes places and fails to pay. As was said in Thompson vs. Thompson, 93 So. 2d 90 (Fla. 1957):

> "... it 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." (Underscoring added)

A final judgment of a sister state is not subject to modification., except in keeping with due process. In the case of Helmick v. Helmick, 436 So. 2d 1122 (Fla. 5 DCA, 1983), the portion of Judge Cowart's concurring opinion quoted, refers to Judgments entered in URESA actions. Read on where the judge discusses enforcement of foreign support orders, (page 1131);

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

and

> "However, as can be seen from the above section, the statute is concerned with enforcement and satisfaction of the foreign support order and does not specifically provide for modification."

The opinion here sought to have reviewed makes the following observation:

> "In Stephens, we held that the trial court violated section 88.281 when the trial court--as a responding court in an action brought under URESA--determined the duty of support, even though there was a previous order establishing support in the underlying marital dissolution proceeding. The order on appeal before

us does not attempt to determine initially the duty of support."

The last sentence of the above quotation makes the point Petitioners contends for viz: "The order on appeal before us does not attempt to determine initially the duty of support." That duty had been done in the underlying dissolution of marriage action. It had been imposed. It was no longer impossable. The court would not be authorized to initially determine the duty of support – that was done in Colorado.

Finally, the opinion here sought to have reviewed expressly and directly conflicts with, the opinion in Hartley v. Hartley, supra, viz:

> "...we disagree with the Second District's statement that the legislature intended 'to forclose upward adjustment of foreign support orders in a civil enforcement proceeding.'"

WHEREFORE this court should accept jurisdiction of this cause and resolve the existing conflict.

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CERTIFICATE OF SERVICE

I DO CERTIFY that copy hereof has been furnished to Joseph R. Boyd, Susan S. Thompson and William H. Branch, 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 28th day of June, 1985.

Halley B. Lewis