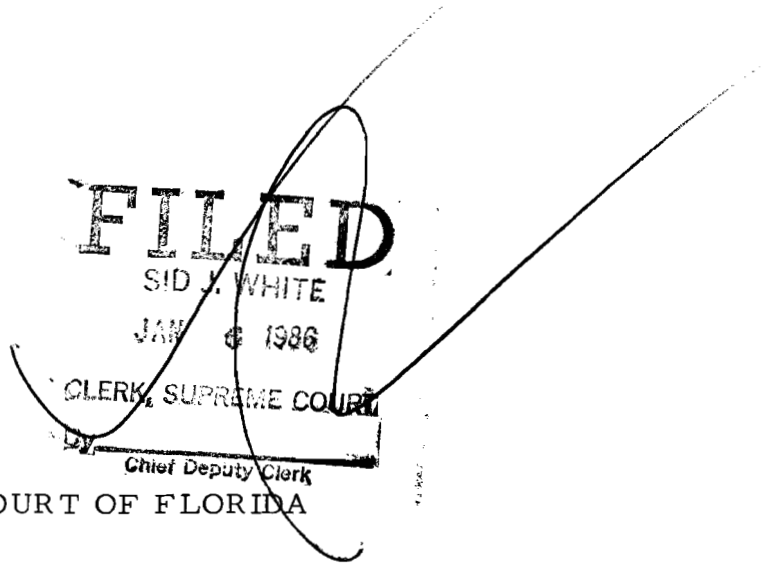

SUPREME COURT OF FLORIDA

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

REPLY BRIEF

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SUMMARY OF ARGUMENT IN REPLY

Petitioner re-states his view of the issue in this case. Petitioner sees the need to do so because Respondent, in the first paragraph of his Summary of argument in the Answer Brief, views the issue as being whether or not a Florida circuit court, as a responding court in a URESA action can enter an order different from that of the original decree. As Petitioner sees it, that's not the issue. The issue is whether or not a Florida court, as a responding court in a URESA action, can enter a support order greater than that fixed in the underlying final judgment or decree of dissolution of marriage action.

In the conclucing paragraph of Respondent's Summary of Argument, Respondent contends that Petitioner doesn't have a Florida case on which to rely. Petitioner re-asserts, as he asserted in the Initial Brief, page 5, that he relied on Stephens v. Stephens, 402 So. 2d 1301 (Fla 1 DCA 1981) initially in the courts below, even though Respondent says it has no application.

Petitioner re-affirms, as he affirmed in the Initial Brief, page 6, that Chief Judge Ervin by the emphasis use in the court's opinion in Koon v. Boulder County Department of Social Services, 468 Sl. 2d 1007 (Fla. 1 DCA 1985, indicated the First District Court failed to limit the scope of the statute as the words of the statute require - that there can be no doubt that a Florida court, as a responding court, in giving consideration to a

URESA action sent by a sister state can change it, raise the amount of child support suggested or lower it, unless the support order under consideration is a provision in a final judgment of dissolution of marriage action; that the Florida Act, Chapter 88, Florida Statutes, does not indicate an intent on the part of the Legislature, in enacting it into law, to amend by implication the existing requirements for domesticating a foreign judgment which contains child support provisions.

Petitioner re-asserts, as he asserted in his Initial Brief, pages 7 and 8 that Florida's uniform act deals with the duty of support "imposed" or "imposable". Under URESA a duty may be imposed if no order exists, or, if an order exists it may be enforced, whether it be a URESA order from another state or a provision in an existing final judgment of dissolution of marriage.

Petitioner says Respondent misread Thompson v. Thompson, 93 So. 2d 90, (Fla. 1957) - that Thompson says it is the decree (as distinguished from the amount of the decree) that is enforced.

Finally, Petitioner says, that Hartley contains better reasoning than Koon. Respondent didn't write much about Hartley. Hartley concluded that the Legislature in Chapter 88, foreclosed upward adjustment of foreign support orders - all of them.

Petitioner states here anew his statement of the issue as was done on page 3 of the Initial Brief:

> 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.

In the concluding paragraph of Respondent's Summary in the Answer Brief, page ix, Respondent asserts that there is no Florida case upon which Petitioner can rely. Petitioner disagrees. Petitioner relies on many cases dealing with Chapter 88, Florida Statutes. Petitioner primarily relied on Stephens v Stephens, 402 So. 2d 1301 (Fla. 1DCA, 1981) initially, in the lower courts, succinctly stated thusly:

> "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."

Respondent in Answer Brief, page 23, states, "This statement (the above quotation from Stephens, supra) ... has no application to the case at hand." Petitioner disagrees. Therefore, the respective positions of Petitioner and Respondent are clearly stated.

Petitioner contends that, under URESA, the trial court was not authorized to enter an order calling for child support payments greater in amount than that ordered by the court which rendered the support order in the underlying dissolution of marriage proceeding. Respondent agrees

with the decision in Koon v. Boulder County Department of Social Services, 468 So. 2d 1007 (Fla. 1DCA 1985), which holds that in a URESA action in Florida, the circuit judge can increase the provision for child support above that set in the final judgment in an underlying dissolution of marriage action.

Petitioner directs the courts attention to Respondent's statement, first paragraph, page vi of 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." (Underscoring added)

Petitioner's statement of the issue, page 3, Initial Brief, is as first herein stated. The two expressions, "greater ... than" and "different from" are profoundly important to Petitioner's contention in this case. Petitioner's position, it is submitted, is in keeping with the language of Section 88.281, Florida Statutes, which, in part, 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 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." (Underscoring added)

Petitioner in the Initial Brief, page 9, contended that Chief Judge Ervin by emphasis used indicated the First District Court in Koon failed to limit consideration to URESA actions.

The next above statutory language clearly allows a circuit judge in Florida to enter a URESA order - order "pursuant to this act" - even though

a judge of a court of equivalent jurisdiction in a sister state has entered a URESA order "pursuant to a substantially similar act." Specifically, if Petitioner Koon had deserted his family in Colorado before a final decree of dissolution of marriage with child support provisions had been entered, and Wyoming had received Respondent Anna Smith's Petition, as was done here, and sent to Florida its URESA order of need, Petitioner says there could be no doubt that Florida Circuit Judge, in a case properly presented, could have entered a URESA order, different from Wyoming.

Petitioner, in this case, presents argument in support of the proposition that under the Uniform Reciprocal Enforcement of Support Act (URESA) the courts of Florida, as the responding state, cannot order child support payments in a greater amount than that ordered in the underlying dissolution of marriage proceeding. A final judgment of a sister state is not a URESA action. It is a final judgment – if it is one at all. Even though it contains provisions for child support, it is a final judgment, one entered by the court after having complied with the requirements of due process.

It is proper for a circuit judge in Florida to consider a complaint which seeks to domesticate a foreign judgment of dissolution of marriage which contains a child support provision. Lliteras v. Lliteras, 413 So. 2d 859 (Fla. 4 DCA 1982)

Petitioner asserts as shown by Lliteras that a foreign final judgment of dissolution of marriage may be modified in Florida as a result of proper proceeding. Respondent, in the Answer Brief, page 13, cites

Pacheco v. Pacheco, 554 P. 2d 720 (Colo.App. 1972) for authority for the existence of a like rule in Colorado.

Furthermore, in the case of Helmick v. Helmick, 436 So. 2d 1122 (Fla. 5 DCA 1983) cited in the specially concurring opinion by Judge Cowart/ cited with approval by Respondent on page 5 of the Answer Brief. Judge Cowart at page 1127, discussing Florida law absent URESA said, viz:

> "... In Lopez v. Avery, 66 So. 2d 689 (Fla. 1953), the Florida Supreme Court recognized that a Florida court could not 'modify' a foreign decree in this respect. ..."

Therefore, a foreign final judgment can be domesticated in Florida, and, after satisfying the requirements of due process and acquiring jurisdiction of the parties, may modify the domesticated foreign judgment.

Petitioner contends that a final judgment of a sister state falls into a category apart from URESA orders. Actually, Respondent did not coment on Petitioner's contention in the Initial Brief, page 7, that Chapter 88, Florida Statutes, creates parts; that Part I defines duty of support "imposed" and duty of support "imposable"; that Part III (Section 88.081) deals with duties of support imposable under the laws of any state where the defendant was present for the period during which support is sought; and, that Part IV (Section 88.371, Florida Statutes deals with foreign support orders imposed, viz:

> "Effect of Registration; enforcement procedure. - (1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. ..."

This contention of the statutory scheme contained in chapter 88 is in a way supported by Judge Cowart's specially concurring opinion in Hel-

mick, supra, as revealed in the portion quoted page 5, Answer Brief. Petitioner agrees with Respondents' assessment of Helmick , as being one of the better discussions, though, apparently, Respondent reads Judge Cowart's concurrence as applying to a final judgment of a sister state. This, even though the portion quoted clearly states that it is dealing with a URESA action. And, following Judge Cowart's writing further, he notes that (page 1131):

> "The act does not even give the trial court personal jurisdiction over the obligee such that the trial court's relitigation of the support issue could arguably be viewed as 'superseding' the foreign decree."

The issue, as seen by Petitioner, is exactly as was stated by him in the Initial Brief, page 3, that the trial judge was not authorized to increase the amount of support originally set in the underlying dissolution of marriage decree in Colorado. Respondent correctly states the issue in Argument 1, except for conclusion opposite to view of Petitioner.

Respondent, pages 6 and 25, Answer Brief, cites the case of Florida Department of Health and Rehabilitative Services v. Ciferni, 429 So. 2d 92 (Fla. 2d DCA 1983) supposedly in support of the proposition that since Florida circuit court exercised the authority to enforce less than what the fowarding state court provided in an underlying dissolution of marriage action, such could in a like manner raise the amount as was approved in Koon, supra. Petitioner declines to speculate concerning such. The lower court in the instant case raised the amount provided by the Colorado trial court in the

dissolution of marriage case. An increase in the pay requirement must be considered as other than a recognition of the final judgment of the sister state of Colorado. Section 88.031 (19) defines court order in terms broad enough to include a support order in a final decree of dissolution of marriage. Petitioner wants to direct argument exclusively to the point that a trial judge in Florida under URESA is not authorized to increase the amount of child support over that provided in an underlying final judgment of dissolution of marriage. It is Petitioner's contention that the Florida court under URESA can properly enforce an existing support order, be it a foreign URESA action, properly brought forth as provided by the Act, or a support provision in a final judgment issued in an underlying dissolution action. Section 88.031 (19), Florida Statutes, defines Support order thusly:

> "'Support order' means any judgment, decree, or order of support in favor of a petitioner, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered."

The proposition here argued by Petitioner is that under URESA the amount provided in a final judgment can not be raised; that such constitutes a failure to accord the provision of an existing final judgment of a sister state proper recognition. After all the Colorado court had jurisdiction of the children and determined that Petitioner was not able to pay more than $60.00 and failed to give judgment for adc advances. If another court is to change those provisions, it is necessary to show a compliance with due process.

In this Reply, Petitioner makes an effort to hold the argument strictly on the point of whether or not a circuit judge in Florida, in a URESA case is authorized to raise the amount of child support above that provided in an underlying foreign final judgment of dissolution of marriage. Petitioner finds no language in Chapter 88, Florida Statutes, that indicates an intention on the part of the framers of the Uniform act to change the existing laws of Florida with reference to modifying a final decree or judgment. Parenthetically, Petitioner says there would exist the question of disregard for the doctrine of full faith and credit if such an effort was made. Yet, there appears no language that tends to show that the laws relating to a modification were changed or attempted to be changed. The logic of State ex Rel. Quigley v. Quigley, 463 So. 2d 224 (Fla. S. Ct. 1985) applies, in discounting the assumption of an amendment of existing law by implication, viz:

> "... It is well established that amendment by implication is not favored and will not be upheld in doubtful cases. ..."

In reply to Respondent's Argument I on page 1 of Answer Brief, Respondent loosely refers to "original order". Petitioner rightly expected Respondent to be specific and distinguish between original orders which could refer to URESA orders from support orders contained in underlying dissolution of marriage actions. Petitioner's whole contention is that there is a difference.

Respondent's reliance upon Thompson v. Thompson, 93 So. 93 (Fla. 1957) is misplaced as Petitioner sees it. In Thompson the Duval County Florida Circuit Court had dismissed a URESA action petition from Connecticut because the judge felt that Volusia County, Florida, Circuit Court which had entered the original support order was in a better position to handle the case. The court should be understood to have said:

> "... (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. ..."
> (Underscoring used for court's italics - Capital letters supplied for emphasis)

On page 8, Answer Brief, Respondent refers to Petitioner's reliance on Section 88.281 (1984). The critism is coupled with the assertion that the Section would be unnecessary if the Florida Court, as a responding court, were merely a collecting agency. Petitioner does not view the Florida courts, in URESA, as a collecting agency. Petitioner, however, is aware that Section 88.012, Florida Statutes, expresses an existing legislative dissatisfaction with the sufficiency of prior collection efforts. Therefore, collection is an element regardless of whether the responding court is enforcing a URESA support order or a support order contained in a final judgment of dissolution of marriage.

Petitioner asserted in the Initial Brief, page 7, that Part III deals with "imposable" orders and Part IV is designed to deal with "imposed"

orders. Petitioner reasserts the same anew here. Respondent does make the unsupported statement, page 20, Answer Brief, that Part III contemplates enforcement of "all" duties of support.

Judge Cowart in his specially concurring opinion in Helmick, seems to agree with Petitioner's view of the statutory scheme as demonstrated in the portion quoted by Respondent at page 5, Answer Brief, viz:

> "... 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 to support. ..."

And, that which is stated on the same page with reference to foreign support orders, viz:

> "... Section 88.321 specifically provides that this portion of the act provides an additional remedy if the duty of support is based on a foreign support order. ..."

On page 21, Answer Brief, Respondent contends Hartley v. Hartley 465 So. 2d 592 (Fla. 2 DCA 1985) is in error in saying that Florida's Legislature intended to foreclose upward adjustments of support orders. Petitioner, at Page 10, Initial Brief, suggested that Hartley contains better reasoning than Koon, and that this court may approve Hartley without deciding if an increase in support payment above that contained in a final decree of divorce would conflict with the full faith and credit provision of the United States Constitution. Hartley concluded that the Legislature in Chapter 88, foreclosed upward adjustments of foreign support orders - all

of them. It is interesting to note that Respondent did not discuss in detail Hartley's finding that the Legislature "foreclosed upward adjustments of foreign URESA orders. Then, too, Respondent's contention that Hartley's rule is an unconstitutional limitation on equity jurisdiction of Florida's circuit courts is a novel assertion.

Petitioner emphasizes his Reply to Respondent's Argument V. Respondent, on page 5, Answer Brief, accused Petitioner of Arguing that the Florida circuit court modified the Colorado final decree of dissolution insofor as the child support provisions are concerned. Then, the amazing statement, viz: "Respondent contends that Stephens 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 was quoted in part:

> "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 of marriage proceeding."

Then, Respondent makes the bold statement, "This statement (the above quotation) has no application to the case at hand."

Again petitioner says the respective positions are clear. Stephens, Hartley and Koon were involved with support provision in an existing final judgment of dissolution of marriage. Apparently, Respondent makes a distinction between a provision that declares duty and a provision that provides

the amount as a result of misreading Thompson. Under chapter 88, the requesting court declares the duty and determines the need. The responding court decides how much the obligor can pay. A final judgment of dissolution with provision for support has already decided both the duty and the amount. In the latter case the order is sent for enforcement only.

There is no way, as Petitioner sees it, to separate "duty of support" from "amount of support" in the same final judgment without indulging in an assumption of an amendment of Florida's requirements for domesticating a foreign judgment by passage of the Uniform Act, when, as Judge Cowart observed in Helmick, the uniform act does not propose to give the Florida Court jurisdiction over the parties to the Colorado Final Judgment.

Under URESA, in this case, the Wyoming court declared Anna Smith's children's needs. Later Colorado sent the Colorado order for enforcement.

The real question presented to the First District Court in Case NO. BC-114 relates to the authority of the Florida Court to modify, under chapter 88, URESA, a prior judgment of another state fixing the amount of child support, and in Case NO. BC-115, the question relates to the authority of the Florida court to enter final judgment on claims for advances made by the forwarding state, prior to entry of the final judgment in the forwarding state.

CONCLUSION

The circuit court in Florida as a responding state under URESA is not authorized to raise the child support amount provided in an underlying final judgment of dissolution of marriage action of a sister state.

I DO CERTIFY that a copy of the foregoing has been furnished to Joseph R. Boyd, Susan S. Thompson, William H. Branch - Boyd, Thompson & Williams, P.A., P.A., 2441 Monticello Drive, Tallahassee, Florida 32303 and Chris Walker, Department of Health and Rehabilitative Services, Child Support Enforcement, 1317 Winewood Boulevard, Tallahassee, Florida 32301 by mail this 2nd day of January, 1986.

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