55

IN THE SUPREME COURT

OF THE STATE OF FLORIDA

CASE NO. 71,038

OSCAR DAVID GIBSON,
a/k/a JAMES PARKER,

Petitioner,

vs.

PATRICIA GIBSON BENNETT,

Respondent.
_____/

BRIEF OF AMICUS CURIAE

JOSEPH R. BOYD, ESQUIRE
WILLIAM H. BRANCH, ESQUIRE

BOYD *AND* BRANCH, P.A.
2441 Monticello Drive
Tallahassee, Florida 32303
(904) 386-2171

AND

CHRISS WALKER, ESQUIRE
DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES
1317 Winewood Boulevard
Tallahasse, Florida 32301
(904) 488-9900

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTEORITIES

FLORIDA SUPREME COURT DECISIONS

FLORIDA DISTRICT COURT OF APPEAL DECISIONS

FLORIDA CONSTITUTION

FLORIDA STATUTES

OTHER FLORIDA AUTEORITY

OTHER AUTHORITY

OTHER AUTHORITY CONTINUED

ISSUE ON APPEAL

The question certified by the Second District Court of Appeal for review is:

> Do the circuit courts of this state have jurisdiction to enforce a foreign judgment for arrearages of alimony or child support by means of equitable remedies including contempt.

STATEMENT OF TEE CASE AND FACTS

The State of Florida, Department of Health and Rehabilitative Services has filed this brief as amicus curiae, and will be referred to as HRS throughout.

HRS adopts the Statement of the Case and the Statement of the Facts as set forth in Respondent's Answer Brief.

SUMMARY OF ARGUMENT

The Second District Court of Appeal reversed the trial court's order that contempt is not a remedy available to enforce payment of a foreign money judgment for support arrearages. The district court relied primarily upon **Sackler vs. Sackler**, 47 So.2d 292 (Fla. 1950), in its opinion.

Petitioner claims that **Sackler** is not dispositive of the issue on appeal, because Sackler's reliance upon **McDuffie vs. McDuffie**, 19 So.2d 511 (Fla. 1944), is ill-founded. Petitioner claims Sackler and its progeny misconstrued **McDuffie**, because McDuffie did not involve the same issue and facts as **Sackler**.

HRS contends that **Sackler** is valid and expressly addresses the issue now before this Court. By relying on McDuffie, Sackler was focusing on the public policy rationale underlying **McDuffie**. These public policy arguments are clearly applicable to the Sackler case and the case before this Court.

Petitioner relies on Sokolsky vs. Kuhn, 405 So.2d 975 (Fla. 1981), and **Lamm vs. Chapman**, 413 So.2d 749 (Fla. 1982). The factual circumstances of Sokolsky are so dissimilar to the present appeal that its holding does not impact on the issue on appeal. Sokolsky does not even mention the question which is before this Court.

Lamm also does not address the issue on appeal. The

Second District Court of Appeal recognized that **Lamm** does not involve an attempt to enforce a judgment for child support arrearages by contempt proceedings. The language in **Lamm** relied upon by Petitioner is clearly dicta and cannot be taken as establishing a principle of law contrary to **Sackler** when **Lamm** neither cites, discusses, overrules nor expressly recedes from **Sackler**. Petitioner's position should be rejected and the **Sackler** holding reaffirmed.

Petitioner raises, although does not address, the issue of whether incarceration by contempt from a proceeding to enforce payment of a money judgment for support arrearages is a violation of Article I, Section 11 of the Florida Constitution. Petitioner claims such a judgment is a debt within the meaning of Section 11, therefore incarceration is prohibited.

HRS contends that a money judgment for support arrearages is another form of the support obligation. Several Florida District Courts of Appeal have addressed the issue of enforcement of payment of money judgments for support arrearages. In **Grotnes vs. Grotnes**, 338 So.2d 1122 (Fla. 4th DCA 1976), the district court stated:

> In **Clark vs. Muldrew**, supra, we held that contempt was not an appropriate or available remedy as it would constitute imprisonment for debt. We still believe this to be true in the normal debtor-creditor situation. However, after full consideration we believe that a special situation exists in

reference to money owed for alimony and support. There are considerations of public policy which place the enforcement of alimony and support payments in a special category. As stated by the Supreme Court in Sackler:

> "The mere transformation of an obligation to support into more specific form, such as a decree to pay, does not make it an ordinary debt but a continuing obligation." (47 So.2d 194)

Grotnes at 1127. HRS submits that the above rationale is logical and in line with the definitions of Florida courts regarding the nature of a Section 11 debt, and also in harmony with Florida public policy regarding enforcement of support obligations.

Section 61.17, Fla. Stat. (Supp. 1986), also allows the enforcement of payment of money judgments for support arrearages by contempt proceedings.

Petitioner claims this appeal is moot since all of the parties' children are emancipated. Whether contempt is available to enforce payment of support arrearages after the child is no longer a dependent is a question of first impression for this Court. Several Florida District Courts of Appeal have addressed this issue, however, holding contempt is not available. Schwarz vs. Waddell, 422 So.2d 61 (Fla. 4th DCA 1982); Gersten vs. Gersten, 281 So.2d 607 (Fla. 3d DCA 1973); Wilkes vs. Revels, 245 So.2d 896 (Fla. 1st DCA 1970)

HRS respectfully requests this Court reject the holdings and rationale of the foregoing cases. HRS submits the rule of law should be that all equitable remedies, including contempt, are available to enforce the payment of support arrearages, whether in the nature of a money judgment or decree for arrearages. Since such enforcement would be in equity, equitable defenses recognized in Florida in such actions should also be available to the obligor.

The principle rationale for the position HRS seeks this Court to take is articulated in Green vs. Green, 407 R2d 1178 (Md. Ct. Spec. App. 1979).

> '. . . in the absence of some statutory provision to the contrary, disobedience of a court order to pay child support remains as contumacious after the child loses his dependency as before. The affront to the court is the same. . . the mother had to expend her own money to maintain the children, and "[i]n all fairness . . . should not be denied the use of contempt proceedings as an effective means to enforce her husband's duty to support his children.'
>
> Yet another consideration, which may be especially germane in this case, is that if the custodial parent loses the remedy of contempt once the child becomes emancipated or of age, and is left only with the ability to execute judgment on the obligor's property, he or she may be left with no effective remedy at all. An obligor who has little or no property subject to attachment and who is crafty or simply fortunate enough to elude the law's grasp until his children are 18 or on their own may escape his legal and parental obligation entirely. The effect of this, of course, is to impose upon the

> custodial spouse, or, as in this case, largely upon society, the financial burden that is rightfully and lawfully his without any practical means of redress.
>
> We would not consider it sound judicial policy to encourage in any way the evasion of one's legal duty to support his or her minor children; and thus we believe the less restrictive view to be the better one.'

Id., at 1181, 1182.

See also; Lande vs. Bongiovanni, 688 P.2d 1012 (Ariz. 1984); Bassan-us. Wasson, 216 N.W. 2d 594 (Mich. Ct. App. 1974); State ex rel. Casey vs. Casey, 153 P.2d 700 (Or. 1944); Ex Parte Hooks, 415 S.W. 2d 166 (Tex. 1972); Johnson vs. State, 306 S.E. 2d 756 (Ga. Ct. App. 1983); Arnold vs. Arnold, 407 A.2d 190 (Conn. Super. Ct. 1979); Kaifer vs. Kaifer, 3 N.E. 886 (Ill. App. Ct. 1936).

The Florida Legislature has also authorized the use of contempt proceedings by nonresident parents to enforce child support arrearages after the child is no longer a dependent. See 87 - 95, Section 6, Laws of Florida; Section 88.101, Fla. Stat. (1985).

HRS requests this Court adopt the rationale and holding of the Green, supra, case.

Based upon the argument herein, HRS respectfully requests this Court affirm the decision of the Second District Court of Appeal.

ARGUMENT

THE CIRCUIT COURTS OF THIS STATE HAVE JURISDICTION TO ENFORCE A FOREIGN JUDGMENT FOR ARREARAGES OF ALIMONY OR CHILD SUPPORT BY MEANS OF EQUITABLE REMEDIES INCLUDING CONTEMPT.

The Second District Court of Appeal, in reversing the trial court's order of January 26, 1987, determined that Florida circuit courts have jurisdiction to enforce foreign money judgments for support arrearages by way of contempt or the exercise of the circuit court's other equitable powers. In reaching this conclusion, the Second District Court of Appeal relied upon the express language of the Florida Supreme Court in **Sackler v. Sackler,** 47 So.2d 292 (Fla. 1950), and the following subsequent cases: **Lanigan v. Lanigan,** 78 So.2d 92 (Fla. 1955); Haas v. Haas, 59 So.2d 640 (Fla. 1952); **Grotnes v. Grotnes,** 338 So.2d 1122 (Fla. 4th DCA 1976); **West v. West,** 301 So.2d 823 (Fla. 2d DCA 1974); **Miller v. Miller,** 105 So.2d 386 (Fla. 1st DCA 1958).

In **Sackler,** the wife sought enforcement in Florida, where the husband resided, of a New York judgment against the husband for alimony and child support arrearages. The Florida trial court entered a money judgment for the amount of the support arrearages. However, the court denied the wife's request that the judgment be enforced by equitable remedies. The Supreme Court, in reversing the trial court on the issue **of**

enforcement, stated:

> We hold, therefore, under the authority of **McDuffie v. McDuffie** supra, that the lower court erred in denying to the plaintiff equitable remedies, including contempt proceedings, for the enforcement of the New York judgment for the alimony arrearages.

Sackler at 293.

Sackler is factually on all four squares with the case presently under consideration. **Sackler** clearly answers the question submitted to this Court for review.

However, Petitioner argues that **Sackler** is not now nor ever has been viable law because he claims this Court misconstrued **McDuffie v. McDuffie**, 19 So.2d 511 (Fla. 1944), upon which **Sackler** relies for authority. Petitioner claims that as a result of the **Sackler** Court's alleged interpretive error, **Sackler**, and those later cases which cite **Sackler** with approval, are not dispositive of the question before this Court.

HRS contends that adoption of Petitioner's argument would result in forty years of Florida jurisprudence being turned on its head. Florida would be taking an enormous step back to an age when a parent or spouse could avoid his support obligations simply by moving to another state. Such a result would be contrary to Florida's longstanding leadership in the area of support enforcement.

Petitioner's contention that **Sackler** is not viable law and

does not address the issue before this Court is based on Petitioner's claim "that the **Sackler** court misconstrued the limited effect of **McDuffie** and incorrectly interpreted the **McDuffie** decision to authorize contempt proceedings to enforce foreign money judgments derived from a determination of support arrears." (Petitioner's Initial Brief, Page 6) According to Petitioner, although the **Sackler** "decision" pronounced a rule of law which affirmatively answers the question before this Court, it should not be given any precedential value because the **Sackler** "opinion" relied upon **McDuffie,** which did not involve substantially similar facts nor address the precise issue of law as Sackler. Petitioner's assertion, however, is not a legal basis for discounting the value and authority of **Sackler.**

The value of a case as a contribution to judicial authority lies not in the court's opinion, but in its decision. 3 Fla Jur 2d, Appellate Review Section **394.**

> Although the terms "opinion" and "decision" are often used synonymously and interchangeably by the courts, it is important that they be distinguished. From a juristic **standpoint, the** value of a case as **a** contribution to **judicial authority lies in the court's decision, not** in its opinion. Strictly speaking, the decision of the court is its adjudication of an issue, while the opinion is merely the medium through which the reasons for that adjudication are disclosed. (Emphasis supplied)

13 Fla Jur 2d, Courts and Judges Section 127.

In **Sackler,** the Court's decision was that the trial court had erred by denying the wife equitable remedies to enforce the foreign judgment for support arrearages. This decision is clear and unequivocable. **Sackler** has addressed the question presently before this Court, and answered it affirmatively. The rule in Florida is that when a principle or rule of law has been established by judicial decision of the court of controlling jurisdiction it will be followed in other cases involving similar situations. **Forman v. Florida Land Holding Corporation,** 102 So.2d 596 (Fla. 1958). **Sackler** announced such a rule, and it should be followed in the present appeal.

The **Sackler** "opinion" disclosed the reasons for the Court's decision. By citing **McDuffie** as authority for its decision and the rule of law enunciated therein, the **Sackler** Court was simply identifying the rationale for its decision. **Sackler** has precedential authority for the point it addressed, not for the authority upon which it relied.

In determining the general principles to be applied to the set of facts before it, the **Sackler** Court was not limited from relying upon or adopting statements of general principles enunciated in prior cases, such as **McDuffie.** If this were not so, how could a case of first impression ever be decided?

Although the factual circumstances of **McDuffie** were not the precise set of facts as in **Sackler,** this cannot limit the

Sackler Court's ability to adopt the reasoning underlying McDuffie and applying that reasoning to the Sackler factual situation.

By relying on McDuffie to establish the general rule of law that Florida court's have jurisdiction to enforce foreign money judgments for support arrears by equitable remedies including contempt, Sackler was focusing on the public policy rationale of McDuffie. The same public policy reasoning underlying McDuffie serves as a basis for Sackler.

> In the McDuffie case, this court quoted with approval the statement in the Fanchier case that "the theory. . . was that a judgment for alimony rests largely on public policy in that the husband should be required to support his wife and children, that they not become derelicts and a charge on the public, that a judgment in equity is more efficacious than a judgment at law in that it may be enforced by attachment or contempt, that a court of equity has sole jurisdiction in matters of divorce and alimony and that to hold that a foreign judgment for alimony can be enforced only by execution at law would amount to depriving it of its inherent power of enforcement by attachment and contempt.

Sackler at 293.

In relying upon McDuffie to enunciate its general rule of law, Sackler was not mistakenly construing McDuffie as Petitioner claims. Instead, the Sackler Court was using its collective wisdom to recognize that broad considerations involving public policy can apply to different factual situations. Certainly, the public policy argument set forth in McDuffie has no less an application to the facts of Sackler, or

the facts of the case before this Court. On the basis of Sackler, this Court should affirm the decision of the Second District Court of Appeal, and affirmatively answer the question presently before the Court.

This Court faced the same question concerning the equitable enforcement by a nonresident wife of a foreign money judgment for support arrearages in Haas v. Haas, 59 So.2d 640 (Fla. 1952). In Haas, the wife obtained a money judgment against the Husband in New York for alimony arrearages. The wife instituted an action in Florida, where the husband resided, seeking to invoke the equitable processes of the court to enforce the money judgment. The husband raised six defenses. The appellate court determined two of the defenses raised equitable claims which were entitled to consideration.

The thrust of the Haas decision is that in an equitable proceeding to enforce a foreign decree by a nonresident spouse, the resident spouse is entitled to raise any equitable defenses which are recognized in Florida in an equitable action to enforce a domestic support decree.

Petitioner contends that Haas is not authority for the Sackler rule. Although Baas does not address the McDuffie decision, Petitioner claims that the Haas Court "is guilty of the same misinterpretation of the McDuffie decision as Sackler." (Petitioner's Initial Brief, Page 8). In fact,

Petitioner contends that Haas does not even address the issue of enforcement of a foreign money judgment for support arrears by equitable remedies in Florida. This position is without basis since the factual circumstances of Haas concern the enforcement in Florida by a nonresident wife of a foreign money judgment for support arrearages by equitable remedies.

Petitioner further claims that Haas states that a nonresident wife has two separate enforcement remedies in Florida. This contention is based on the following language:

> A nonresident wife who seeks to enforce in the courts of this state a final alimony decree or money judgment based thereon entered by a court in another state may do so in a court of law by a common-law action to secure a money judgment for the delinquent alimony, or she may ask our equity court to exert its equitable remedies-in the enforcement of such decree.

Haas at 643

Petitioner contends the above language should be construed to mean that a plaintiff has one of two separate remedies; either reducing the arrearage to a money judgment and enforcing it in a court of law (presumably by execution), or enforce the original foreign decree by equitable remedies by establishing it as a Florida decree in a court of equity. According to Petitioner, the two methods are mutually exclusive, such that a foreign money judgment for support arrears cannot be enforced in Florida by equitable remedies. Petitioner's interpretation of Haas should not be accepted.

Petitioner's misinterpretation is made clear when the particular factual circumstances of Haas are taken into account. As previously stated, those circumstances involved the enforcement of a foreign money judgment in Florida by equitable remedies.

Haas recognized, as did Sackler, the principle that equitable remedies are available for the enforcement of foreign money judgments for support arrears when the Court stated:

> We say only that an equity court of this state, when called upon to enforce by equitable processes an alimony decree of another state, may entertain equitable defenses here recognizable in such matters in order to determine the extent to which the court equitably should go in enforcing the foreign judgment. (Emphasis supplied)

Haas, at 643.

The dual thrust of Haas is that equitable remedies are available to enforce foreign support decrees or foreign money judgments based on a support decree, and when such equitable processes are sought equitable defenses are available to the obligor.

In the present case, the Second District Court of Appeal also cited the case of Lanigan v. Lanigan, 78 So.2d 92 (Fla. 1955), as authority for its decision. In Lanigan, the wife sought in Florida to have a Nevada divorce decree obtained by the husband declared a nullity, and to establish a Rhode Island judgment for alimony arrearages as a Florida decree. The

husband moved to dismiss the wife's complaint, claiming that Florida had no jurisdiction of the cause of action concerning establishing and enforcing the Rhode Island judgment for support arrears. The **Lanigan** Court disagreed stating:

> It is clear that the lower court did not err in denying the motion to dismiss based on the ground that the court had no jurisdiction of the subject matter of the suit.

Lanigan, at **94**

Again, Petitioner claims **Lanigan** has no application to the question before this Court. However, in regard to the wife's attempt to enforce a foreign money judgment for support and the husband's opposition on jurisdictional grounds, Lanigan is factually substantially similar to Sackler, supra, Haas, supra, and the present action. **Lanigan** clearly states that the trial court had jurisdiction to address the enforcement of the foreign money judgment for support arrearages. Lanigan's reliance upon **Sackler** for this principle is well-founded in light of the principle of law set forth by Sackler on basically the same set of facts.

Once Petitioner completes his attempt to debunk the previous decisions of this Court in **Sackler,** supra, Haas, supra, and Lanigan, supra, he sets forth the case which he claims to control disposition of the issue presently before this Court. Petitioner submits **Sokolsky** v. Kuhn, **405** So.2d **975** (Fla. 1981), to be the controlling case. However, **Sokolsky**

is clearly distinguishable from the facts and issues present in the case sub judice, and the **Sackler** line of cases.

In Sokolsky, the ex-wife filed a complaint to establish a foreign divorce decree as a Florida judgment. The trial court entered a final judgment establishing the foreign divorce decree and reduced the child support arrearages to a final money judgment. The ex-wife then filed a motion for writ of garnishment of her ex-husband's wages, seeking to collect the money judgment for the support arrearages. A writ was issued. Prior to final judgment of garnishment, the ex-husband moved to dissolve the garnishment alleging by affidavit that as a head of household he was exempt from garnishment. The ex-wife did not file a controverting affidavit. The trial court entered a final garnishment, specifically stating that the ex-husband was not exempt from garnishment due to Section 61.12, Fla. Stat. (1979).

On appeal, the First District Court of Appeal affirmed.

This Court did not agree with the district court's conclusion, holding that when a money judgment for support arrearages has been obtained, the provisions of Section 61.12, Fla. Stat. (1979), do not apply to create an exception to the exemption from garnishment set forth in Section 222.11, Fla. Stat. (1979).

The foregoing holding of the Sokolsky Court has no application to the question of whether Florida courts have jurisdiction to enforce foreign money judgments for support arrearages by equitable remedies, including contempt. **Sokolsky** is specifically limited to the proposition that reducing support arrearages to a final judgment precludes resort to the garnishment provisions of Section 61.12, Fla. Stat. (1979). (It is important to note that the Florida Legislature, recognizing that all possible avenues should be made available to ensure that parents or ex-spouses meet their support obligations, amended Section 61.12(1), the provision specifically at issue in Sokolsky. Pursuant to Ch. **84-135,** Section 1, Laws of Fla., the Legislature amended Section **61.12(1)** to substitute the language "and satisfy the orders and judgments" for "the orders" in the first sentence of Section 61.12(1). The statute now allows for attachment or garnishment to enforce and satisfy judgments for alimony and child support arrearages.)

Sokolsky does not remotely address the issue before this Court in **Sackler** and the present appeal, although Petitioner claims **McDuffie,** Sackler, Haas and Sokolsky all involve the same issue. Petitioner claims that **Sokolsky** stands for the general rule of law that Florida courts have no jurisdiction to enforce by equitable remedies, including contempt, foreign money judgments for support arrearages. Petitioner's position is based on the following language from **Sokolsky:**

> We hold that the final money judgment entered by the trial court in the present case in favor of Kuhn against Sokolsky in the amount of $15,635.00 is not an order "of the court of this state for alimony, suit money, or child support" within the purview of Section 61.12. When a money judgment is entered providing for execution, the provisions of Section 61.12 are not applicable. In seeking garnishment, Kuhn was therefore governed by the general law relating to garnishment after judgment which included the requirement of Section 222.12 that she file a sworn denial to Sokolsky's affidavit. On the other hand, had the past-due child support not been reduced by Kuhn to a final money judgment subject to execution, the district court would have been entirely correct in holding that Section 61.12 constitutes an exception to Section 222.11 and that, therefore, it would not be necessary for an ex-spouse to follow the directive of Section 222.12 and to file a controverting affidavit claiming head of the family status.

Sokolsky, at 977.

Petitioner claims that the above language is a general rule of law "that by reducing child support arrears to a final money judgment, the judgment is no longer an order "of the court of this state for alimony, suit money, or child support." " (Petitioner's Initial Brief, Page 10). Therefore, according to Petitioner, **Sokolsky** implicitly recedes from the **Sackler** line of cases. Petitioner's argument is without foundation. It is based on an overly broad interpretation of **Sokolsky**, lifts words out of the factual context of **Sokolsky** and ignores fundamental notions of precedent.

The foregoing quoted language from **Sokolsky** must be reviewed in light of the factual circumstances of **Sokolsky**. In

evaluating Sokolsky, the language quoted herein and relied upon by Petitioner is lifted out of context. The Fourth District Court of Appeal, in its discussion concerning the construction and evaluation of the grounds of a decision, adopted the following language which applies to the present case:

> " '. . . . general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision, The reason for this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.' "

Coleman v. State, 215 So.2d 96, 99-100 (Fla. 4th DCA 1968).

The general expression from Sokolsky relied upon by Petitioner is not a broad, general rule of law regarding the enforcement of foreign money judgments for support arrearages in all factual situations. However, this is the all-inclusive scope which Petitioner seeks to attach to **Sokolsky**.

Where **Sokolsky** states that the money judgment for support arrearages "is not an order of the court of this state for alimony, suit money, or child support", the Court is referring solely to these terms as they exist in regard to the statute. In fact, the language "orders of the court of this state for alimony, suit money, or child support" is taken from Section 61.12(1), Fla. Stat. (1979). The Sokolsky Court is stating

that a money judgment for support arrearages is not an order enforceable by garnishment within the meaning of Section 61.12(1), Fla. Stat. (1979). This is made clear by Sokolsky stating the money judgment for support arrearages is not an order "within the purview of Section 61.12", such that garnishment under chapter 61 was not available. Id, at 977.

In light of the limited factual situation of Sokolsky, there is no basis for extending the Court's decision beyond its narrow application to Section 61.12(1), Fla. Stat. (1979), as attempted by Petitioner. It is interesting that Petitioner argues the Sackler Court misinterpreted McDuffie because of the dissimilar issue and factual circumstances between the two cases. Yet, Petitioner contends that Sokolsky has the practical effect of overruling Sackler and establishing a new general rule of law applicable to all circumstances involving the enforcement of foreign money judgments for support arrearages. This claim is made by Petitioner even though Sokolsky is so clearly limited to its particular set of facts, and never addresses the enforcement of foreign money judgments for support arrearages by equitable remedies, including contempt. HRS submits that this Court should not reverse forty years of case law and the trend of requiring a parent to support his children no matter what tactics the obligated parent uses (such as fleeing the state of his childrens' residence, changing his name and secreting himself for fifteen

years) on the basis of a case so factually limited as **Sokolsky**. Such decisions should be made with a view toward promoting justice. Petitioner does not seek a decision from this Court which promotes justice. He seeks a decision which rewards an obligor for abandoning his children and his moral and legal obligations toward them.

Petitioner also argues that **Lamm v. Chapman**, 413 So.2d 749 (Fla. 1982), is controlling on the issue presently before this Court. Just as he did with the Sokolsky case, Petitioner attempts to argue that Lamm addresses the same issue as Sackler. However, Lamm did not involve factual circumstances at all similar to **Sackler** or the present case under review. The Second District Court of Appeal clearly recognized the inapplicability of Lamm to the present case. The district court stated:

> **Lamm** primarily involved the issue of whether the Department of Health and Rehabilitative Services could assert a custodial parent's rights to child support through contempt proceedings against the support obligated parent. **Lamm did not** involve an attempt to enforce a judgment for child support arrearages by contempt proceedings.

Bennett v. Gibson, 510 So.2d 1234, 1236-1237 (Fla. 2d **DCA** 1987).

The essential holding of Lamm is expressed twice in the opinion:

> We hold, in agreement with the Second District Court in **Andrews**, that the department can

> constitutionally assert the custodial parent's right to enforce the child support obligation through a civil contempt proceeding...

Lamm, at 750.

> We hold that the acceptance of public assistance for the support of a dependent child vests in the department the authority to proceed with all remedies available to the child's custodian. The state must have the power to ensure that the responsible parent, to the extent that he or she has the ability to pay, reimburse the state for public assistance moneys expended for the benefit of a dependent child and provide continuing reasonable child support.

Lamm, at 753.

In reaching the above holding, Lamm rejects the argument that the term "debt" included in Section 409.2561(1), Fla. Stat., was intentionally included by the Legislature to prohibit the State's use of civil contempt to secure reimbursement of moneys owed to it. Petitioner seeks to expand Lamm's holding by focusing on the discussion concerning the use of the term "debt" in Chapter 409, Fla. Stat. However, in his attempt to expand Lamm to cover the factual situation and issue before this Court, Petitioner relies on the following language in Lamm:

> The contempt power of the court is no longer available to enforce the child support obligation for those arrearages which have been reduced to a judgment debt for which execution may issue, regardless of whether the judgment was obtained by the department or by the custodial parent.

Lamm, at 753.

Petitioner refers to the foregoing language as "this

holding in **Lamm** . . ." (Petitioner's Initial Brief, Page 13). That language is certainly not the holding of **Lamm**. It is clearly dicta. The statement is not essential to the holding of the **Lamm** decision. A statement not essential to the decision of the court is obiter dictum and without force as precedent. State ex rel. Biscayne Kennel Club v. Board of Business Regulation, 276 So.2d 823 (Fla. 1973). In relying upon the Biscayne Kennel Club case, the Fourth District court of Appeal stated:

> But a purely gratuitous observation or remark made in pronouncing an opinion and which concerns some rule, principle or application of law not necessarily involved in the case or essential to its determination is obiter dictum, pure and simple. While such dictum may furnish insight into the philosophical views of the judge or the court, it has no precedential value.

Bunn v. **Bunn**, 311 So.2d 387, 389 (Fla. 4th DCA 1975).

Such dicta is at most persuasive and cannot function as groundbreaking precedent. Continental Assurance Co. v. **Carroll**, **485** So.2d 406 (Fla. 1986). Such principles concerning dicta are even more applicable when there exists a previous contrary decision by the Court.

In the present appeal, **Sackler** is clearly contrary to the dicta in **Lamm** relied upon by Petitioner. The **Lamm** dicta cannot be used as a basis for establishing a new general principle of law concerning the enforcement of foreign money judgments for arrearages by equitable remedies contrary to **Sackler** and its

progeny, when Lamm "neither cites, discusses, overrules nor expressly recedes from Sackler, Lanigan and Haas." Bennett, at 1237.

Petitioner's position that Sokolsky and Lamm control resolution of the issue before this court, when neither of those cases addressed the issue, should be rejected and Sackler reaffirmed.

Petitioner has addressed the issue on appeal by interposing the further question of whether incarceration for contempt resulting from enforcement of a money judgment for support arrearages is a violation of Article I, Section 11 of the Florida Constitution's prohibition against imprisonment for debt. HRS contends that Lamm, supra, has determined that a support obligation is not a debt prohibiting incarceration by contempt for enforcement of support amounts due. However, the question of whether a support obligation becomes a debt prohibiting enforcement by contempt when the support arrearage has been reduced to a money judgment has not been addressed by this Court.

Article I, Section 11, Florida Constitution, (hereinafter Section 11) provides, "No person shall be imprisoned for debt, except in cases of fraud." While the language appears to be absolute on its face, this Court has not construed the word debt to mean any and every sum owed by one party to another. The word debt has been found to be a term of art that applies

to ex contractu sums. The term does not apply to damages arising in actions ex delicto (tort, fault, crime or malfeasance.) State ex rel Lanz v. Dowling, 92 Fla. 848, 110 So. 522 (Fla. 1926).

In Lanz, the appellant had been convicted and imprisoned for selling personal property that was subject to a lien. Her action violated Ch. 9288, Laws of Florida (1923). The appellant sought release by writ of habeous corpus, claiming that her punishment for violating a criminal statute was imprisonment for debt. The Court rejected this claim, stating that Section 11

> '. . . was designed to relieve from punishment honest debtors who were unable to fulfill their engagements, or who, honestly became indebted to another, are unable to pay as they promised, though the have acted in good faith towards their creditors.'

Id., at 525.

The Third District Court of Appeal followed Lanz when faced with the issue of whether nonpayment of taxes was a debt within the meaning of Section 11. Turner v. State ex rel. Gruver, 168 So.2d 192 (Fla. 3d DCA 1964). In Turner, Dade County imposed a garbage and waste collection fee which appellant refused to pay. The district court held that the fee was not a tax, but ". . . a charge imposed for a special service performed to the owner by the county . . . " Id, at 193. It therefore constituted a debt within the meaning of

Section 11.

In arriving at this conclusion, the district court relied on two definitions of debt.

> 1. The accepted definition of "debt" is: That which is done from one person to another, whether money, goods or services; that which one person is bound to pay to another; a thing owed.
>
> 2. An obligation to pay a sum certain, or sum which may be ascertained by simple, mathematical calculation from known facts; regardless of whether the liability arises by contract or implied or imposed by law.

Id., at 193.

The **Turner** court relied on **Lanz**, supra, to limit the foregoing definition to those debts arising ex contractu. The district court found that the service involved was ". . . such as ordinarily would be the basis of a contract." There was a debt ". . . more nearly in the ex contractu class." Id. at 194. The special service in **Turner** was a fee, not a tax (which arises out of an obligation to society).

This is much different from a money judgment for support arrearages. The money judgment is the result of the failure of an obligated parent to provide maintenance and support for an ex-spouse or a child. The amount owed is not an ex contractu sum. Such support arrearage, being the result of the failure to comply with a legal and moral obligation, is better thought of as arising from the tortious actions of the obligor.

The key factor in **Turner** is that a tax is an obligation

one owes to the government for the support and maintenance of our democratic way of life. Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950). This factor of support and maintenance

> '. . . is nothing more (nor less) than a bearing of the taxpayer's share of the necessary expenses of government. It is a contribution toward the governmental machinery of our democratic way of life and is essential to its preservation. Such payment or contribution does not amount to the satisfaction of a civil debt in the legal significance of that term. It is more in the nature of a privilege, or the fulfillment of a moral obligation, if not voluntarily enjoyed or discharged, may be enforced by the will of the majority through the exercise of inherent sovereign power.'

Id., at 579. It is this factor of an obligation of a person to contribute to, and provide for support and maintenance that characterizes certain money obligations, such as support arrearages, to be other than a debt within the meaning of Section 11.

In the marital relationship, the wage earner has an obligation of support and maintenance toward the non-wage earning spouse. It is because of this marital obligation that alimony is not a debt. In State ex rel. Krueger v. Stone, 137 Fla. 498, 138 So. 575 (19391, the husband was found in contempt of court and incarcerated for his failure to pay alimony, attorney's fees and court costs. He argued that imprisonment for failure to obey a court order commanding payment of alimony and suit money was imprisonment for debt. This Court, citing Bonk v. State, 43 Fla 461, 31 So. 238 (19011, dismissed the

husband's contention stating:

> It has been the law of Florida for many years and well settled that alimony or maintenance from the husband to the wife is not a debt within the meaning of the constitutional inhibition against imprisonment for debt.

Krueger, at 576. The rationale as stated in **Bonk** was that alimony

> '. . . is regarded more in the light of a personal duty due not alone from the husband to the wife, but from him to society, that the courts of equity have the power to enforce by detention of the person of the husband in cases where he can discharge it, but will not.'

Id., at 252. This language is essentially the same as that used in Gaulden to explain why a tax is not a debt within the meaning of Section 11.

In fact, the law feels that the obligation to provide support and maintenance is so important that a party who fails to pay court ordered attorney's fees in an action for alimony may be incarcerated for such failure. De Franci's . Knowles, 244 So.2d 168 (Fla. 2d DCA 1970).

The requirement that a wage-earning spouse pay the non-wage-earning spouse's attorney's fees in an alimony case is based squarely on the wage earner's obligation of support and maintenance. Only by allowing the dependent spouse to collect attorney's fees can that spouse be placed in a position of equality with the wage-earner. This equality is essential if the dependent spouse is to successfully litigate for alimony.

In other words, the right of a dependent spouse to collect attorney's fees does not stand on its own but rests on the foundation of the wage earner's obligation to provide support and maintenance for the dependent spouse.

As the Third District Court stated in Gottesman v. Gottesman, 220 So.2d 640 (Fla. 3d DCA 1966):

> Legislation authorizing an ex-husband to be charged for such fees clearly was enacted in the interest of the public policy that ex-wives and children dependent upon an ex-husband for support should not become public charges, as well they might if an ex-wife, unable to finance court proceedings for enforcement of such support orders, should thereby be hindered or precluded from obtaining needed support for herself or her child which an ex-husband had failed to pay although previously so ordered, and from maintaining proceedings to compel future compliance with support orders.

Id., at 643.

It is this fact of moral obligation of a wage-earning spouse to provide support and maintenance that prevents attorney's fees in alimony cases from being considered a debt within the meaning of Section 11.

Likewise, awards for child support are not debts within the meaning of Section 11, because child support involves the obligation of an absent parent to provide support and maintenance. It is clear that incarceration of an obligor who has defaulted in his child support payments is available through contempt proceedings. Bowen v. Bowen, 471 So.2d 1274 (Fla. 1985).

In the present appeal, the former wife is attempting to collect the obligation of support and maintenance owed by Petitioner. The difference between the present action and those previously cited cases allowing for incarceration for failure to make one's support payment is that in the present action the support arrearages have been reduced to a money judgment. The question, therefore, is whether a money judgment for support arrearages is a Section 11 debt. HRS contends that obtaining a money judgment for support arrearages should not alter the essential nature of the order as one rendered in a proceeding determining child support arrearages.

Sackler, supra, held that foreign money judgments for support arrearages are enforceable by equitable remedies, including contempt. Although **Sackler** did not expressly address whether a money judgment for support arrearages is a Section 11 debt, the fact that **Sackler** allows the use of contempt to enforce money judgments implicitly speaks to this issue. If the Sackler Court had viewed a money judgment for support arrearages as a Section 11 debt, a much different holding would have been forthcoming from the Court.

The enforcement of foreign money judgments for support arrearages was addressed in **Miller v. Miller,** 105 So.2d 386 (Fla. 1st DCA 1958.) In Miller, the former wife sought to enforce a foreign money judgment for support arrearages in

Florida where the former husband resided. She sought enforcement in equity. The former husband claimed the trial court was without jurisdiction to enter a money judgment in chancery, since the wife's action was one for debt cognizable only in a common law action, The district court, relying upon the Sackler line of cases, disagreed with the former husband's contention.

The **Miller** court stated that the equity courts are open for the enforcement of foreign money judgments for support arrearages. The court stated:

> The theory on which the foregoing principle of law is predicated is that a judgment for alimony rests largely on public policy in that the husband should be required to support his wife and children; that they not become derelicts and a charge on the public; that a judgment in equity is more efficacious than a judgment at law in that it may be enforced by attachment or **contempt;** that a court of equity has sole jurisdiction in matters of divorce and alimony and that to hold a foreign judgment for alimony enforceable only by execution at law would amount to depriving equity of its inherent power of enforcement by attachment and contempt. (Emphasis supplied).

Id,, at **387.** The district court did not view the foreign money judgment for support arrearages as a debt prohibiting contempt as means of enforcement. Although not specifically addressing whether a money judgment is a Section **11** debt, by authorizing contempt to enforce such judgments, the clear implication of **Miller** is that the essential nature of a money judgment for support arrearages is still that of a support and maintenance

order. Accordingly, there is no constitutional prohibition to enforcing the support obligation in the form of a money judgment by contempt and incarceration.

The Second District Court of Appeal in **West v. West**, 301 So.2d 823 (Fla. 2d DCA 1974), did not determine any prohibition against the use of equitable remedies to enforce a foreign money judgment for support arrearages. The district court construed **Sackler**, supra, to authorize the use of equitable remedies, stating:

> As we read that case and the authorities cited therein, we note first that a final decree and/or judgment of a sister state is entitled to "full faith and credit" only insofar as it adjudicates, finally, a past due and payable obligation or establishes a presently required performance. If it is the equivalent of an ordinary judgment at law it is enforceable by fieri facias. **If it is a decree relating to alimony and/or support, and it finally determines arrearages** or finally establishes a presently required performance, it is enforceable by either such execution at law or by such appropriate remedies as might be available through equitable processes. (Emphasis supplied).

West at 826.

In **Grotnes v.Grotnes**, 338 So.2d 1122 (Fla. 4th DCA 1976), the former wife obtained a money judgment in Georgia against the former husband for alimony and child support arrearages. The former wife filed an action to establish the judgment in Florida, where the former husband resided, and to enforce the foreign judgment by equitable remedies. The former husband claimed that the action was simply an attempt to collect on a

foreign money judgment and that equitable remedies for enforcement were not available. The district court disagreed.

In reaching its conclusion, the **Grotnes** court specifically receded from its previous holding in Clark v. Muldrew, **308** So.2d 136 (Fla. 4th **DCA** 1975). The district court relied upon Sackler, supra, Haas, supra, **Lanigan,** supra, Miller, supra, and **West,** supra, in stating that a nonresident wife may enforce in Florida by equitable remedies a foreign money judgment for support arrearages. In pronouncing this principle of law, Grotnes states:

> In Clark v. Muldrew, supra, we held that contempt was not an appropriate or available remedy as it would constitute imprisonment for debt. We still believe this to be true in the normal debtor-creditor situation. However after full consideration we believe that a special situation exists in reference to money owed for alimony and support. There are considerations of public policy which place the enforcement of alimony and support payments in a special category. **As** stated by the Supreme Court in **Sackler:**
>
> > "The mere transformation of an obligation to support into more specific form, such as a decree to pay, does not make it an ordinary debt but a continuing obligation." (47 So.2d 294)

Grotnes at 1127. **HRS** submits that the above rationale is logical and in line with the definitions of Florida courts regarding the nature of a Section 11 debt, and also in harmony with Florida public policy regarding enforcement of support obligations.

Other states have addressed the issue of whether a money judgment for support arrearages has the same status as any other debt, thereby limiting the obligee to collection as with any other judgment.

The Supreme Court of Utah rejected the contention that a money judgment for support arrearages has the same status as any other judgment at law or any other debt. Harmon v. Harmon, 491 P.2d 231 (Utah 1971). The Harmon court's rationale for its holding is as follows:

> In order to carry out the important responsibility of safeguarding the interests and welfare of children, it has always been deemed that the courts have broad equitable powers. To accept the plaintiff's contention that an adjudged arrearage is tantamount to a judgment at law, would in the long run tend to impair rather than to enhance the abilities of both the plaintiff and the court to accomplish the desired objective. Such a judgment at law does not have the valuable and useful attribute which allows its enforcement by contempt measures. For the foregoing reasons decrees and orders in divorce proceedings are of a different and higher character than judgments in suits at law: and by their nature are better suited to the purpose of protecting the interests and welfare of children.

Id., at 232, 233. In the enforcement of support obligations, Utah takes the approach that it is the satisfaction of the obligation which is paramount, not the method. See also, Finfrock v. Finfrock, 595 P.2d 189 (Ariz. Ct. App. 1979).

This Court's statement in Krueger, supra, that "alimony or maintenance from the husband to the wife is not a debt within the meaning of the constitutional inhibition against

imprisonment for debt", **Krueger,** 137 So.2d at 576, should be expanded to include money judgments for alimony and/or child support arrearages. Obtaining a money judgment for support arrearages should be viewed as another method for enforcing an equitable order. The money judgment remains an obligation of support and should be recognized as such by the Florida courts.

The Florida Legislature has recognized that the fundamental nature of a support obligation does not change simply by reducing the support arrearages to a money judgment. By statute, the Legislature has codified the case law set forth herein which allows for the equitable enforcement of money judgments for support arrearages.

> (3) The entry of a judgment for arrearages for child support, alimony, or attorney's fees and costs does not preclude a subsequent contempt proceeding or certification of a IV-D case for intercept, by the United States Internal Revenue Service, for failure of an obligor to pay the child support, alimony, attorney's fees, or costs for when the judgment was entered.

Section 61.17 Fla. Stat. (Supp. 1986).

If a money judgment for support arrearages is a debt within the meaning of Section 11, then Section 61.17, Fla. Stat. (Supp. 1986), is unconstitutional. It is a rule of statutory construction, that the courts will construe a statute toward finding it constitutionally valid, if possible. The statute can be found valid if the money judgment for support arrearages is not viewed as essentially different in character

as a support order, such that it does not fall within the meaning of debt in Section 11. Such a holding should also include foreign money judgments for support arrearages. There is no logical basis for distinguishing between a Florida money judgment and a foreign money judgment for support arrearages. To do so would cast Florida in the light of a state which limits remedies for enforcing support obligations, and as a haven for persons seeking to avoid such obligations.

Petitioner's final claim is that the appeal is moot since all of the parties' children are emancipated. This raises the issue of the availability of contempt as a method of enforcing the payment of child support arrearages once the child or children attain the age of majority. This issue goes beyond the factual situation presently before this Court. It effects the enforcement of **all** child support orders from which arrearages have accrued, whether such arrearages be from a domestic or foreign decree, or a domestic or foreign money judgment.

As best as HRS can determine, this is an issue of first impression for this Court. However, various district courts of appeal have addressed this issue. **Schwarz v. Waddell,** 422 So.2d 61, (Fla. 4th DCA 1982); **Gersten v. Gersten,** 281 So.2d 607 (Fla. 3d DCA 1973); **Wilkes v. Revels,** 245 So.2d 896 (Fla. 1st DCA 1970). These cases all stand for the principle that

contempt is not available as a method for enforcing payment of child support when the child or children in question have attained majority status.

The Wilkes case, quoting from Lowry v. Lowry, 189 Okl. 650, 118 P.2d 1015 (1941), set forth its rationale for the above principle as follows:

> The purpose of the order in this case was the support of the minor children. This purpose has been accomplished, and the matter of the care and custody of the minor children is finally disposed of. The force and life of the order expired on the date the youngest child attained majority. It makes no difference whether the one directed to pay has fully complied with such order or not, insofar as enforcing same by contempt proceedings. We hold, therefore, that the trial court does not have jurisdiction to enforce its order to pay child support by contempt proceedings on accrued unpaid installments commenced after the child has reached majority.
> (Emphasis supplied)

Wilkes at 898.

Gersten, supra, relied upon the same reasoning as Wilkes. Gersten further states that contempt is not available to enforce child support payments after the child has attained majority because the public necessity of support has been accomplished, "even though by the mother's sacrifice, she has only a debt remaining to her." Id. at 609.

Schwarz, supra, cited Gersten in holding contempt does not lie to enforce the payment of support arrearages once a child has attained the age of majority. Schwarz, however, is more factually limited. It involved enforcement of a money judgment.

Because of this fact, **Schwarz** further reasoned that contempt is not available to enforce money judgments due to the constitutional prohibition against imprisonment for debt. Article I, Section 11, Florida Constitution. Based upon previous argument in this brief, the "debt" rationale is without basis. Accordingly, this particular reasoning does not support the Schwarz holding.

The language quoted in the Wilkes case was that the "trial court does not have jurisdiction to enforce its order to pay child support by contempt proceedings on accrued unpaid installments commenced after the child has reached majority." Id. at 898. (Emphasis supplied). In the present case, Respondent filed her motion to enforce the foreign money judgment for support arrears on August 21, 1986, at a time when her youngest child had not attained the age of majority. This appeal is a continuation of the original action for enforcement.

According to the reasoning of **Wilkes**, supra, since Respondent commenced her action for enforcement before her youngest child reached majority, contempt is available as a method for enforcing payment of the support arrearages owed by Petitioner.

The First District Court of Appeal again addressed the issue of the availability of contempt to enforce payment of

support arrearages once the child reaches majority. State ex rel. Sipe v. Sipe, 492 So.2d 679 (Fla. 1st DCA 1986). Sipe involved a child support action pursuant to Florida's Uniform Reciprocal Enforcement of Support Act, Chapter 88, Fla. Stat. (1983). At the time the mother filed her URESA petition, the parties' children had reached majority. The district court held that URESA was not available as a method to collect child support arrearages once the child reaches majority. However, the district court further stated:

> Finally, we would add that the date of commencement of the URESA proceeding in the initiating state will determine whether, for purposes of the application of our holding, the child has reached majority.

Id. at 681. Sipe goes on to state at footnote 5:

> We rely, in part, upon the well recognized rule that an action is commenced by the filing of a complaint, Fla. R. Civ. P. 1.050 and 35 Fla. Jur 2nd Limitations of Actions, the consequences of which include the tolling of the applicable limitations period. Szabo v. Essex Chemical Corporation, 461 So.2d 128 (Fla. 3d DCA 1984); Klosenski v. Flaherty, 116 So.2d 767, 770 (Fla. 1959).

Id. at 681.

The rationale of Sipe, supra, and Wilkes, supra, concerning commencement of the enforcement action, is applicable to the present case. It further results in fairness and justice.

Petitioner secreted himself for fifteen years. During this time he never made any financial contribution to his childrens' support. Once Respondent was finally able to locate

him and initiate enforcement proceedings in Florida, all but one of the parties' children had attained majority. The delay in enforcement is certainly not Respondent's fault. If the commencement of the action for enforcement does not determine whether the child has reached majority, for purposes of the availability of contempt, Respondent will have removed from her a very potent method of enforcement. Petitioner will be rewarded for his unconscionable abandonment of his children, and a signal will be sent out to all defaulting obligors to delay judicial procedure by whatever tactics possible, until at least the youngest child attains majority. Such a result is totally unsupportable, and is in contravention to justice and public policy. Upon affirmance of the Second District Court of Appeal, Respondent should be allowed to continue her enforcement of the payment for support arrearages by all equitable remedies, including contempt.

The broader question of enforcement of payment of child support arrearages by contempt by an action commenced after the child attains majority is apparently one of first impression for this Court.

As previously stated, the Wilkes, supra, line of cases hold that contempt is not available to enforce payment of child support arrearages after the child has attained majority. Again, the principle underlying this rule of law is that the

public necessity of ensuring that children are supported from their parents' resources no longer exists when the child attains majority and the ongoing child support obligation ends. Therefore, the remedy of contempt, being justified by a parent's duty to support his children and society's interest in protecting the welfare of dependents, is no longer warranted.

HRS respectfully submits that this Court should reject the above reasoning. Instead, HRS contends the rule which should be set forth is that all equitable remedies, including contempt, are available to enforce the payment of support arrearages, whether in the character of a money judgment or decree for arrearages, whether the enforcement action is commenced before or after the child attains majority. Since such enforcement would be in equity, equitable defenses recognized in Florida in such actions should also be available to the obligor. (This would certainly address an obligor's possible concern that an obligee may commence an enforcement action years after the child attains majority. If so, the defense of laches would be available.)

The principal rationale for the position HRS seeks this Court to take is articulated in Green v. Green, 407 A.2d 1178 (Md. Ct. Spec. App. 1979).

> '. . . in the absence of some statutory provision to the contrary, disobedience of a court order to pay

> child support remains as contumacious after the child loses his dependency as before. The affront to the court is the same. . . . The mother had to expend her own money to maintain the children, and "[i]n all fairness . . . should not be denied the use of contempt proceedings as an effective means to enforce her husband's duty to support his children."
>
> Yet another consideration, which may be especially germaine in this case, is that if the custodial parent loses the remedy of contempt once the child becomes emancipated or of age, and is left only with the ability to execute judgment on the obligor's property, he or she may be left with no effective remedy at all. An obligor who has little or no property subject to attachment and who is crafty or simply fortunate enough to elude the law's grasp until his children are 18 or on their own may escape his legal and parental obligation entirely. The effect of this, of course, is to impose upon the custodial spouse, or, as in this case, largely upon society, the financial burden that is rightfully and lawfully his without any practical means of redress.
>
> We would not consider it sound judicial policy to encourage in any way the evasion of one's legal duty to support his or her minor children; and thus we believe the less restrictive view to be the better one.'

Id. at 1181, 1182.

The First District Court of Appeal also recognized the affront to the court when an obligor fails to obey a support order. Catches v. Catches, 409 So.2d 1199 (Fla. 1st DCA 1982). The district court stated:

> The issue now presented concerns the authority of the trial judge to preserve the effect of its past contempt orders for the purpose of protecting the dignity and force of such orders which were proper at the time entered. We find no decisions prohibiting the exercise of such authority in these circumstances.

Id. at 1200. However, the district court limited its decision to allow enforcement of contempt orders entered prior to the child attaining majority. HRS contends this limitation is too narrow. An obligor's disdain for a duly rendered order for child support is just as "contumacious after the child loses his dependency as before." Green at 1200

The Supreme Court of Arizona adopted the Green, supra, rationale in holding that the "use of contempt in support proceedings is appropriate even if the children have reached majority." Tande v. Bongiovanni, 688 P.2d 1012, 1015 (Ariz. 1984). The Arizona Supreme Court recognized that prohibiting the use of contempt to enforce payment of support arrearages after the child reaches majority is simply incentive to the obligor to remain unavailable for judicial processes until his child attains majority.

> We believe the trial court should be able to use the remedy of contempt to discourage attempts to stall payments until the children involved reach majority and thereby possibly avoid support obligations.

Id. at 1015.

The present appeal underscores the reason for allowing the use of contempt to enforce payment of support arrears after the child attains majority. In order to avoid his legal and moral obligations, Petitioner intentionally sought to avoid detection. To this end he changed his identity, moved from the state of his childrens' residence and made no attempt to main-

tain any contact with his offspring. If not for the diligent efforts of Petitioner to locate Respondent and seek justice by requiring Respondent to face that from which he sought to hide, Respondent would have successfully disappeared and avoided his responsibilities. Yet, it took fifteen years to locate Respondent and initiate enforcement proceedings. If contempt is not now available to enforce payment of the support arrearages because during the time Petitioner was in hiding his children reached adulthood, Petitioner has, in fact, accomplished what he set out to do; avoid his financial obligations to his children.

The State of Michigan has also held that support provisions entered during the minority of a child are enforceable by contempt proceedings initiated after the child has reached the age of majority. Wasson v. Wasson, 216 N.W.2d 594 (Mich. Ct. App. 1974). The court stated:

> The total arrearage was in fact reduced by the trial court, and defendant failed to argue that he does not owe the requested amount. Mrs. Wasson had to expend her own money to maintain her children, without receiving the requested assistance from her husband. In all fairness, Mrs. Wasson should not be denied the use of contempt proceedings as an effective means to enforce her husband's duty to support his children.

Id. at 596, 597.

See also; State ex rel. Casey v. Casey, 153 P.2d 700 (Or. 1944); Ex Parte Hooks, 415 S.W.2d 166 (Tex. 1972); Johnson v.

State, 306 S.E.2d 756 (Ga. Ct. App. 1983); Arnold v. Arnold, 407 A.2d 190 (Conn. Super. Ct. 1979); Kaifer v. Kaifer, 3 N.E. 2d 886 (Ill. App. Ct. 1936).

The Florida Legislature has spoken to this issue. In Chapter 88, the Revised Uniform Reciprocal Enforcement of Support Act, (hereinafter, URESA) the Legislature sets forth its intent for enacting URESA. See Section 88.012 of the Act. In 1986, the Legislature amended Section 88.012, adding the following language:

> It is further the legislative intent that the Revised Uniform Reciprocal Enforcement of Support Act is an appropriate statute under which to collect child support arrearages after the child is no longer dependent.

Ch. 87 - 95, Section 6, Laws of Florida.

URESA sets forth the method for enforcing payment of arrearages as follows, "all duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act, including a proceeding for civil contempt. Section 88.101, Fla. Stat. (1985).

In light of the specific legislative intent that child support arrearages may be collected through a URESA proceeding when the child is no longer dependent, that collection of arrearages may be by a civil contempt proceeding and there is no restriction in the statute on the use of civil contempt in collecting arrearages, it is apparent that in a URESA action a

nonresident parent can seek enforcement of payment of child support arrearages by civil contempt even after the child is no longer dependent.

This is the principle HRS seeks this Court to adopt in all proceedings for the payment of support arrearages. Such a general rule of law is necessary in order to bring uniformity and fairness to the state of support enforcement law. If the **Wilkes'** rule is adopted, the practical effect would be to give nonresident parents a greater remedy for the collection of support payments when the child has attained majority, through URESA, then would be available to Florida citizens. To bring logic and justice to this area of the law, the remedy of contempt must be made available to all persons seeking the enforcement of payment of support arrearages, whether the child has attained majority.

CONCLUSION

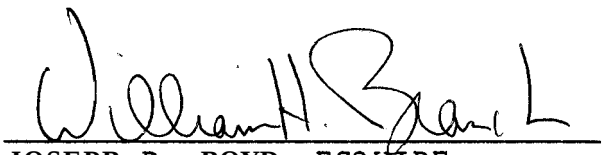
The issues raised by this appeal are important and far-reaching. This Court's decision will literally impact upon millions of persons within and outside the State of Florida.

On the basis of the argument contained herein, HRS respectfully requests this Honorable Court affirm the Second District Court of Appeal and hold:

1. The circuit courts of Florida have jurisdiction to enforce foreign money judgments for arrearages of alimony or child support by means of equitable remedies, including contempt.

2. Alimony or child support arrearages which have been reduced to a money judgment are not debts within the meaning of Article I, Section 11 of the Florida Constitution.

3. Payment for arrearages for child support, whether reduced to money judgment or not, is enforceable by contempt after the child has attained the age of majority; therefor, this appeal is not moot.



JOSEPB R. BOYD, ESQUIRE
WILLIAX 8. BRANCH, ESQUIRE

BOYD AND BRANCH, P.A.
2441 Monticello Drive
Tallahassee, Florida 32303
(904) 386-2171

AND

CBRISS WALKER, ESQUIRE
DEPARTMENT OF HEALTH AND
RERABILITATNE SERVICES
1317 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-9900

Attorneys for Amicus Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **MARK P. KELLY,** Freeman & Lopez, **P.A., 4600 W.** Cypress, Suite **410,** Tampa, Florida **33607,** and **PATRICIA GIBSON BENNETT, 7820** Ravenel Court, Springfield, **VA 22151,** this 23rd **day** of October, 1987, by **U.S.** Mail.

William H. Branch

WILLIAM H. BRANCH