IN THE SUPREME COURT
STATE OF FLORIDA

BOBBIE SUE WISHART, and
CHARLES F. WISHART,

Appellees, Cross-Appellants,
and Petitioners,

v.

LESLIE M. BATES (BOGGS),
Appellant, Cross-Appellee,
Respondent.

v.

RANDALL A BATES,

Cross-Appellee, Respondent.

CASE NO. 71,370

2d DCA CASE NO. 86-2408

PETITIONERS' BRIEF

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished this 15th day of March 1988 to **LESLIE M. BATES (BOGGS)**; Post Office Box 4; Seffner, Florida 33584; and to **RANDALL A. BATES**; 410 West Bloomingdale; Brandon, Florida 33511-7402.

Delivery by HAND [*] MAIL [x]

Bobbie Sue Wishart
BOBBIE SUE WISHART

Charles F. Wishart
CHARLES F. WISHART, Esquire

* Hand delivery to RANDY.
x Mail delivery to LESLIE.

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CITATIONS & APPENDICES:

Factual cites will be to Petitioners' 5 Volume Appendix as (A: p. 518).

Copies of the case decisions, statutes, etc., in the table of citations have a prefix, as for example III-484, showing a copy of the **King v. Daniel** report it precedes is in the WISHARTS' (CHARLES') Appendix in Volume III beginning at page 484.

Volume- I contains pages 1 to 200; II contains pages 201 to 407; III contains pages 408 to 601; IV contains pages 602 to 800; and V contains pages 801 to 957.

STATEMENT OF THE CASE AND OF THE FACTS:

PARTIES:

Charles F. (**CHARLES**) and his wife Bobbie S. (**BOBBIE**) Wishart (**WISHART** or **the WISHARTS**), are step-father (A: p. 55 lns. 17-18) and mother of Randall A. Bates (**RANDY**) (A: p. 10 ¶ 1), they are also the step-grandfather, paternal grandmother (A: p. 18 ¶ 1), and by RANDY'S letter(s) of guardianship (A: p. 20 & p. 596) were, and though disputed, are the legal guardians of Tiffany Michelle Bates (**TIFFANY**), standing in RANDY'S shoes as it were, by operation of **Section 39.01(27), Fla. Stat. (1977).**

In addition, BOBBIE claims temporary primary residency status under the Order of Judge Steinberg (A: pp. 201-202) which position CHARLES supports, with the proviso that Judge Steinberg, in distingishing him as a step-parent, erred, for his standing was as a guardian of TIFFANY, and not from blood relationship.

TIFFANY parents are, RANDY and his former wife (A: p. 213 ¶ 2) Leslie Michelle Bates [BOGGS] (**LESLIE**) (A: p. 5 ¶ 6).

Because the WISHARTS received not only the letter(s) of guardianship, but also physical custody of TIFFANY from RANDY (A: p. 6 ¶ 7, p. 17 First Affirmative Defense ¶ 1); , and could not capitulate to LESLIE'S demands (A: p. 6 ¶ 7 & Counterclaim pp. 18-19), they were joined as necessary parties in LESLIE'S Dissolution of Marriage/Child Cus-

tody petition (A: pp. 5-8) against RANDY, and themselves (A: pg. 58 lns. 20-25) as required by **In The Interest of K. S. K., a Minor Child**, 294 So.2d 50, 51 (Fla. 1st DCA 1974), and by **Section 61.131, Fla. Stats.** wherein it reads:

> **Notice and opportunity to be heard.** - Before a decree is made under this act,...(an) opportunity to be heard shall be given to...any person who has physical custody of the child....

PRELIMINARY BACKGROUND:

CHARLES' Affadavit (A: pp. 34-51) reflects the early developments with particularity, and WISHARTS' which was supplemented in his motion delivered to Judge Rawlins on the 1st of December 1983 (A: 96-99), but suffice it to say that the WISHARTS were given a commission to care for TIFFANY, from RANDY (A: p. 20), and as well from her physician Dr. Hough (A: p. 16 ¶ 2) to provide her medical and hygenic care as would prevent the otitus media (A: p. 579-580) from becoming chronic which would have required surgery (A: p. 16); but they lost custody (A: pp. 12-13) of TIFFANY without ever being afforded the required notice (A: pp. 14-15) and an opportunity to be heard and present evidence (A: pp. 14-15, p. 59 lns. 8-9, p. 60 l. 24-25 to p. 61 l. 1), as required by **Section 61.131, Fla. Stats. (1983)**, and thereby, the opportunity, with rare and frustrating (A: pp. 90-91) exception, to even see TIFFANY, much less protect or care for her (A: p. 76 lns. 13-20, p. 80 ¶¶ 1-6, p. 81, p. 82 last line of ¶ 1, p. 83 ¶ 2, pp. 86 -87, and pp. 89-91) from June 1, 1983 (A: pp. 12-13) through Saturday the 10th day of December 1983 which was denied them (A: p. 125 ¶ 4; p. 58 ln. 16 - p. 59 ln. 13; p. 61 lns. 2-3; p. 92 ¶ 93; pp. 65-76; & p. 431 lns. 14-24).

So when Judge Knowles recused himself (A: p. 93) on the same day TIFFANY'S surgery was being scheduled (A: pp. 94 ¶ 6) and in the process made a finding of fact that "...the ends of justice would be best served if the case were to be tried de nova before a different judge.", the WISHARTS relied on the meaning of the term "de nova", (Blacks Law Dictionary, 4th Ed. pg. 483, **DE NOVA**; and, **Loisville and Jefferson Co.**

Planning and Zoning Comm., 273 S.W.2d 563, 565 (Ky. CA 1954) which states, "A hearing de nova means 'trying the dispute anew as if no decision had been previously rendered.")

The WISHARTS' considered the 2 June 1983 Order entitled "Temporary Order" (A: p. 431 lns. 14- 20, 24), if not originally void, then voided and moved to show they had the right to immediate custody of TIFFANY, first by the motion to Judge Knowles' successor Judge Rawlins (A: pp. 96-99) who did not even read the motion (A: p. 443 lns. 19-23), by petition to Judge Burnside (A: pp. 100-121), by petition to the Second District Court of Appeal which came to nothing (A: pp. 124 & 131 ¶ 6 - p. 134), and when all else failed in the law, fortuitously LESLIE gave TIFFANY to RANDY who gave her to the WISHARTS (A: p. 131 ¶¶ 6-7), who kept her, refused to give her back to LESLIE until they were afforded a hearing as would protect TIFFANY, and waited for response.

That response came in the form of Judge Rawlins Temporary Restraining Order (A: 127-128) in response to LESLIE'S ex-parte petition (A: 125-126).

WISHART was faced with the choice of giving up TIFFANY, having never lost custody lawfully, placing TIFFANY who was ill again at risk of unnecessary surgery and further neglect, or go to jail which he did, rather than submit to the tyranny (A: p. 598) of obeying the void and voided order by surrender of TIFFANY to LESLIE, to TIFFANY'S hurt (A: pp. 125-128; pp. 135-200).

It should be noted that by devine intervention the clerk's seal, required by **Section 28.071, Fla. Stat. (1983)** was not embossed on the Temporary Restraining Order (A: p. 128) so the Sheriff sent to execute the Order by summarily taking TIFFANY from the WISHARTS and giving her to LESLIE declined on his own initiative (A: p. 167 ln. 1 to p. 169 ln. 15), such that CHARLES was given the opportunity to assure a hearing by phoning Judge Rawlins secretary (A: p. 6-9), finding time he had reserved earlier was available the next day (A p. 123), to make one more attempt to assure a fair hearing through a

petition before the 2d DCA (A: p. 130-134) which was denied (A: p. 129), and then to appear before Judge Rawlins at the time appointed on the 14th of December.

Judge Rawlins perceived the 2 June 1983 Temporary Order valid, and Charles considered it void, Judge Rawlins wanted TIFFANY returned to LESLIE, but CHARLES, while willing to accomodate the Court by delivering her into the Court's protection, and custody, if it were coupled with a hearing the WISHARTS had so long been denied.

CHARLES was imprisoned (A: p. 177 lns. 14-23) but released the next day (A: p. 182 ln. 12 to p. 183 ln. 23, and p. 187 ln. 5 to p. 190 line 25), when Judge Rawlins took TIFFANY into custody, gave her to HRS (A: pp. 199-200), ordered them to have her examined by a physician, and to bring TIFFANY and the report to Judge Steinberg at the time set for a hearing before Judge Steinberg (A: p. 197-198 ¶ 2) on the 20th day of December 1983.

WISHART was to give their evidence to HRS (A: p.189 l. 9, to p. 190 l. 25) who was to present it to the examining physician, and as well, to be allowed to explain the significance of the evidence as it showed a pattern wherein LESLIE did not give TIFFANY her medicine, renew prescriptions, or take TIFFANY to the Doctor when she was sick, or for that matter did not recognize when she was sick.

By such extraordinary action (A: pp. 130-196), compelled by the circumstances, the WISHARTS received their first hearing on their claim to custody of TIFFANY, and therein Judge Steinberg, who stood in for Judge Rawlins, awarded BOBBIE Temporary Primary Residency of TIFFANY (A: pp. 201-202).

Charles was distinguished, one would assume for the record does not say, that his status as a step-grandparent made the difference, but that is one of the problems, the Court has repeatedly treated this as a grandparents case, while the WISHARTS drew their standing from **61.131, Fla. Stat. (1983)**, which allows a hearing when the Court finds the anomaly of someone other than the natural parents caring for their child.

As an example, Judge Rawlins insisted CHARLES did not have standing (A: p. 150 l. 9 to p. 151 l. 19), but the statute required it his joinder.

The report of HRS'S physician Dr. Lipschutz (A: p. 203) was delivered with TIFFANY to Judge Steinberg at the hearing, but it followed the reccommendations of the preceeding physicians, but only because the WISHARTS' evidence was deliberately withheld from him by HRS (A: p. 204, and p. 246 ¶ e), as was the WISHARTS' request that he contact them for a full explanation of the evidence and their knowledge.

Notwithstanding the attempt by HRS and LESLIE to thwart justice by that deception that made the medical neglect ineffective, nevertheless, Judge Steinberg gave TIFFANY to BOBBIE because of LESLIE'S immoral conduct and environment.

For example, Her live in boy friend (A: p. 278 ln. 23 to p. 279 ln. 3) at the time was Lam Ray Yarborough (YARBOROUGH), a child molestor (A: p.269 ln. 18-21, p. 273 ln. 15) whom the HRS workers knew personally since they had his children in their custody at the time (A: pp. 261-293) and passed off as TIFFANY'S father before Dr. Lipschutz.

After, Judge Rawlins left the division, Judge Menendez came in, put the case to trial after "allowing" the WISHARTS' their "request" to convert certain outstanding motions directed at inter-alia the Court's right to extend equity jurisdiction to LESLIE due to the clean hands doctrine, and the lies told on her behalf and by her to the Court (A: p. 245 ¶ 3, and p. 246 ¶ c).

Wishart filed their amended complaint (A: pp. 248-251), docmenting LESLIE'S lies from the record, and Paul Tabio (TABIO), LESLIE'S new attorney, filed a Motion to Strike their Affirmative Defenses (A: pp. 252-253).

That motion was never heard, much less disposed of.

Judge Menendez was in a hurry to dispose of this "troublesome" case before he also left the division.

However, Since the matter was not at issue as required by **Rule 1.440, Fla.R.Civ. P.**, the **Leeds v. C. C. Chemical Corp.**, 280 So.2d 718, 719 (Fla. 3d DCA 1973), decision which cited **Ellis. Ellis,** 242 So.2d 745 (Fla. 4th DCA 1971), and all of which expressly forbade either a trial or for that matter a pretrial until all motions directed against the WISHARTS' last pleading are disposed of, so, the WISHARTS objected to the trial (A: pp. 258 -259), partly because a material witness, Carole Priede (PRIEDE), who wrote three social reports was ill and unavailable, and also because the WISHARTS' did not trust a judge who did not care that HOFT had lied, and that HRS had withheld the evidence from their own physician Dr. Lipschutz, and who also treated them with less than cordial respect.

Judge Menendez went forward with the trial anyway (A: p. 212 ¶ f, and pp. 213-214 ¶ 5 and p. 325) over WISHARTS' objections, and he dictated his "Final Judgement of Dissolution of Marriage (JUDGEMENT) on the 5th day of December 1983.

That was in spite of the fact a material witness, PRIEDE, who had written those social reports as contemplated by **61.20, Fla. Stat. (1985 Supp.)** was ill (and in the hospital under subpoena) (A: p. 306 ¶ 1) and could not attend the trial wherein the WISHARTS wished to examine her as to her reports that the Court entered into evidence over objection, for while they had protested her failure to fully investigate the medical neglect issue, and further the WISHARTS considered the moral question of greater importance than the medical, none the less she finally did provide in her last report the test for placing TIFFANY with the WISHARTS namely:

> What is of most importance is the medical neglect. The Court can determine if the medical information produced sbstantiates the medical neglect of the mother and the conclusion is not based on only what the doctors said to the Doctors, then counsellor reccommends that the Wisharts retain custody of Tiffany with the mother having visitation rights.... (A: p. 306 ¶ 3)

By that time the medical neglect was concurred in by Drs. Hough (A: p. 16, 205-206) [It was he that had appeared to testify at the 1 June 1983, and the 3 August 1983

hearings before Judge Knowles, and was turned away without testifying both times, and he finally testified before Judge Menendez on the 23rd of August 1984 (A: p. 312 ¶ 5).], Lipschutz (A: p. 204), and Dr. Hedrick (A: pp. 207, 958).

It must be noted that Dr. Hedrick so testified before Judge Menendez who had compelled him by Rule to Show Cause for Contempt to appear on the 3rd of December 1983 (A: p. 259), when he had a 105° temperature because he had ordered that LESLIE'S visitation with TIFFANY away from the WISHARTS' home and TIFFANY'S primary residency not be allowed (A: 958) for a specified period.

Dr. Herrick testified emphatically that TIFFANY should be with the WISHARTS due to LESLIE'S neglect.

Dr. Hedrick had that authority as treating physician for TIFFANY, and was given it pursuant to BOBBIE'S authority granted under Judge Steinberg's Order (A: p. 201 ¶ 1 and 202 ¶ 6 and P. 301), and he was not found in contempt (A: p. 212 ¶ d, and p. 213 ¶ 3).

Many errors committed, are set forth in the WISHARTS' response to the JUDGEMENT (A: pp. 304-342) but the heart of the matter was that CHARLES knew the proceeding was a mistrial, since Judge Menendez had violated **Rule 1.440, Fla.R.Civ.P.** and he treated the trial as a mistrial, to the point that he allowed even Dr. Jeansonne, Dr. Hough' associate (A: p. 16, p. 205-206) to testify in spite of her refusal even speak with the WISHARTS, much less to be prepared as the WISHARTS' expert witness (A: pp. 254-255) partly because Dr. Hough had other committments, which CHARLES honored at his request, and as well to find out what she would say (A: p. 94-95) and CHARLES was not surprised (A: p. 312 ¶ 6 to end of page).

As, the trial was held in violation of **Rule 1.440, Fla. R. Civ. P.**, and since "The plain language of the rules promulgated by the Supreme Court of Florida are binding upon the trial and appellate courts." **State v. Battle,** 302 So.2d 782, 783 (Fla. 3d DCA 1974) WISHART considered the trial to be a mistrial, and the JUDGEMENT to be void ab-initio,

as had been Judge Knowles' Temporary Order of 2 June 1983 and Judge Rawlins' Temporary Restraining Order of 13 December 1983.

However as before, they waited, until TIFFANY was reported to have the otitus media again after she had been well throughout the year 1985, until LESLIE had her in December, and LESLIE'S live in boy friend Richard Larry Boggs (BOGGS) informed, or rather bragged that the surgery was going to be performed, and then the WISHARTS took action by moving to enforce the Steinberg Order since the JUDGEMENT was not signed as yet, and that it was based on an illegal trial (A: pp. 343-347).

WISHART asked Judge Menendez's successor the Honorable Donald C. Evans to hear the motion but he declined since Judge Menendez had not released the case.

CHARLES went to Judge Menendez, and petitioned in open court that the motion be heard and he refused since "His office was being painted."

On the 9th day of February, 1985 TIFFANY was brought to the WISHARTS' home by RANDY, the WISHARTS found her to be sick and kept her pursuant to their authority of the Steinberg Order, and as well the fact that the JUDGEMENT was not even executed, let alone rendered as required by Rule 9.020(g), Fla. R. App. P which reads:

> Rule 9.020. **Definitions**
>
> The following terms have the meaning shown as used in these rules:
>
> **(g) Rendition** (of an order): the filing of a signed, written order with the clerk of the lower tribunal. Where there has been filed in the lower tribunal an authorized and timely motion for new trial or rehearing,...the order shall not be deemed rendered until disposition thereof.

BOGGS attacked BOBBIE with an axe handle on the 25th day of February 1985 at a vantage point over a quarter of a mile from where LESLIE and BOGGS were living in violation of the JUDGEMENT (A: p. 218 ¶ 19).

On the following day LESLIE caused the JUDGEMENT to be rendered on the 26th day of February 1985 (A: p. 218), immediately married BOGGS, and then tried to use it to regain TIFFANY with the Sheriff the following day.

WISHART refused, and since the Judgement was not self enforcing (A: p. 346 ¶ 29), the Sheriff declined to take any action (A: p. 336 lns. 22-23).

CHARLES immediately put BOBBIE in a sanctuary so he could move about without fear of BOGGS attacking the only witness to his aggravated battery.

CHARLES also set a hearing for the 5th of March 1985 before Judge D. Evans, and contacted TABIO to confirm the date, TABIO declined (A: pp. 361-362 and p. 397 lns. 8-12), and he would not promise to use ex-parte proceedings as HOFT had, but he refused for he on that same day filed for a Writ of Habeas Corpus with no return and no rule to show cause, and Judge D. Evans executed it, and it was attempted to be served on the WISHARTS that evening.

BOBBIE was secure from BOGGS, and CHARLES was in the law library so no service was made.

CHARLES appeared at the hearing he set on the 5th and Judge D. Evans had him served the "Writ", and then declined to hear the WISHARTS ntil they obeyed the void and unrendered JUDGEMENT, and the "WRIT" which had no return or rule to show case, but merely instructed the Sheriff to remove TIFFANY from the WISHARTS or RANDY and to return her to LESLIE was left outstanding, leaving the WISHARTS fugitives to justice (A: pp. 445-463).

It took 35 days for CHARLES to file in the 2d DCA (A: p. 363), to have a petition rejected without docketing in the Florida Supreme Court, and finally to file a civil rights action in the U. S. District Court, Middle District Court, Tampa on April 5, 1985 (A: p. 584), and then having done the work CHARLES felt confident enough to walk into the County Court House to file papers for a client, he was served a rule to show cause order by Judge D. Evans, which delighted him for what he had pursued for those 35 days was a hearing on the case rather than having the Sheriff pursuing he and his wife while the court house doors were closed.

Judge D. Evans recused himself, and CHARLES had the Chief Judge set the hearing by rotary before Judge V. Evans.

On the 17th day of April 1985 CHARLES appeared before Judge V. Evans, and argued the JUDGEMENT was void since the Court violated **Rule 1.440, Fla. R. Civ. P.**, but Judge Evans declined to consider that since TABIO told him that "The Court has already overruled this." (A: p. 391 lns. 10-11)

CHARLES then argued that the JUDGEMENT was not rendered as required by **Rule 9.020(g), Fla. R. App. P.** since the motions directed against it were not disposed of, and the discussion was:

> THE COURT: I have the authority to enforce a Judgement.
>
> MR. WISHART: It has to be rendered first. It hasn't been.
>
> MR. TABIO: It has been rendered Mr. Wishart.

Since Judge V. Evans was new to the case, but not to it's notoreity, he believed TABIO and sentenced CHARLES to 60 days for contempt of Court (A: p. 369-370).

He read the files that evening, found TABIO had lied to him, the motions directed against the JUDGEMENT were not rendered, brought CHARLES from jail, asked him to reargue the matter, CHARLES said "You can't enforce an order that is not rendered.", Judge V. Evans said, "I thought yo said that." and CHARLES was released from custody and the adjudication of contempt was vacated (A: pp. 408-409), and WISHART was ordered yo appear before Judge Menendez on the motions (A: p. 410).

Judge Menendez rendered the JUDGEMENT on the 25th of April, 1985 (A: p. 411), WISHART appealed (A: p. 412) and the 2d DCA reversed the JUDGEMENT on April 2, 1986, reh. den. May 1, 1986 (A: p. 219) stating as the grounds:

> Appellants appeal the denial of their petition for custody of their granddaughter.
>
> The court having reviewed the record finds that appellants should have been afforded an opportunity to be heard and present evidence at the custody hearing.

We therefore reverse and remand for further proceedings consistent herewith.

Clearly on the face of the record the WISHARTS won, they reversed the decision of the lower court, but a plain letter reading of the opinion leaves one to wonder what they won.

The trial courts construed the opinion as though the WISHARTS had not been afforded a hearing, that LESLIE and RANDY were found to be fit parents in a proceeding in which they did not participate, and that therefore, while the JUDGEMENT is valid, LESLIE retains custody, and the finding that she is fit, but the WISHARTS must be afforded a hearing to overturn that finding.

Of course, had the Judges read the Record on Appeal (A: pp. 737-751) it would be clear that there was a trial with a substantial record, and that record included the following relevant items.

A 4 page pleading entitled "Pre-trial Conference Order", filed September 6, 1984 (A: p. 746) numbered as pages 545-548 in the Record on Appeal, that corresponds to Judge Menendez's Order of the same name and with the same page numbers as well (A: pp. 244-247).

A 4 page pleading entitled "Grandparents' Amended Answer and Affirmative Defense", filed September 4, 1984 (A: p. 746), numbered as pages 498-501 in the Record on Appeal, that corresponds to the WISHARTS' pleading of the same name and with the same numbers as well (A: pp. 248-251).

A 2 page pleading entitled "Motion to Strike First Affirmative Defenses Alleged in Grandparents' Amended Answer", filed September 21, 1984 (A p. 746), numbered as pages 551-552 in the Record on Appeal, that corresponds to LESLIE'S pleading of the same name and with the same numbers as well (A: pp. 252-253).

So, the WISHARTS were not denied the opportunity to be heard and present evidence, but rather were afforded a mistrial that the 2d DCA reversed.

The language of that opinion is that of the general definition of due process, notice and the opportunity to be heard, and the 2d DCA abstracted the violation of **Rule 1.440, Fla. R. Civ. P.**, into the concept that the WISHARTS had been denied due process of law, which they had, but in doing so the Court confused anyone who did not look behind the face of the order as may be seen by reading the keynote which reads:

Parent and Child > 2(7, 4)

> Grandparents who had petitioned for custody of their granddaughter were entitled to opportunity to be heard and present evidence at granddaughter's custody hearing.

That makes this a landmark case, if in fact that was what happened.

Due to the Judges refusal to listen, but only at the face of the Judgement while it was on appeal, and none would consider declaring it void, even though it was on it's face void, the WISHARTS lost their guardianship status and function since April 1985.

Judge Taylor in the Order LESLIE took an interlocutory appeal to the 2d DCA in the case of **Bates v. Wishart,** 512 So.2d 977 (Fla. 2d DCA 1987) construed the opinion of **Wishart, v. Bates,** 487 So.2d 342 (Fla. 2d DCA 1986) as follows:

> 6. The court finds that the opinion of the Second District Court of Appeal dated the 2nd day of April 1986, manfate issued the 16th day of April 1986, did not completely reverse the Final Judgement dated the 25th day of Febrary 1985, nunc pro tunc, December 4, 1984, and therefore did not require a return to the temporary primary residency and/or custody status enjoyed by the WISHARTS immediately prior to the Final Judgement dated 2-26-85 and that the WISHARTS are not entitled to the restoration of either temporary custody or primary residency in either or both of them, but only the opportunity to be heard on their petition for Custody of their granddaughter. (A: p. 224 ¶ 6)

Examining the case of **Bates v. Wishart,** 512 So.2d 977 (Fla. 2d DCA 1987) there are certain anomalies manifest which are inconsistent with the facts above.

In the case of **Wishart v. Bates,** 487 So.2d 342 (Fla. 2d DCA 1987) the panel had the record on appeal (A: pp. 737-751) while the **Bates v. Wishart** case did not for it is

the practice of the 2d DCA to return the record to the lower cort after the mandate and time for appeals has run.

At the same time the Court retains copies of the briefs, motions, appendices, and like pleadings in it's archives.

An examination of that record in the 2d DCA would have shown that WISHART had presented one issue to show a mistrial and thereby grounds for the reversal their brief produced (A: p. 588 Question I), namely that Judge Menendez put the case to trial while there was a motion to strike the WISHARTS' last pleading which had not been disposed of, which was a violation of Rule 1.440, Fla. R. Civ. P.

An examination of Judge V. Evans "Order Granting Motion for Involntary Dismissal of the Wishart Counter-claim for Custody of Tiffany (A: pp. 925-927, p. 925 ¶ 2 to p. 927) reflects clearly what the Judges of Hillsborough County who construed the JUDGEMENT were thinking, WISHART lied to the first panel of the 2d DCA, for Judge Evans set that forth "clearly" in his order when he said:

> It is clear from this opinion that the Second District Court of Appeals was under the impression that Judge Menendez had not afforded the Wisharts a hearing on their counter-claim. (A: p. 926 ¶ 6)

WISHART filed their motion for New Trial and Rehearing... (A: pp. 928-941) and in their argument showed from their supporting appendix, that contained the WISHARTS' brief from the JUDGEMENT appeal (A: p. 588, Question I, 589, 591-594), that the Opinion of the 2d DCA (A: p. 219) had in fact spoken of a denial of due process of law, that the Court had broken a rule of procedure that required a reversal (A: p. 929 ¶ 12, to p. 932 ¶ s) and nowhere were the WISHARTS saying more that they did not get a fair hearing.

Judge V. Evans denied the WISHARTS motion.

The Docket sheet (A: p. 768) reflects the following pleadings were filed:

a. LESLIE'S Notice of Appeal filed 9/19/86 (A: p. 768)

b. LESLIE'S Amended Notice of Appeal filed 9/25/86 (A: p. 767)

c. WISHARTS' Notice of Cross Appeal filed 9/25/86 (A: p. 768)

d. LESLIE'S Initial Brief filed 10-10-86 (A: p. 768) which was stricken with her appendix 11-13-86 (A: p. 768, 775)

e. WISHARTS' Motion to Quash Appeal as Frivolous and for Other Remedies filed 10-21-86 (A: pp. 768, 769-774)

f. WISHARTS' Motion for Attorney's fees filed 10-21-86 (A: p. 768)

g. WISHARTS' Motion for Oral Argument filed 10-21-86 (A: p. 768)

h. WISHARTS' Cross Appellants' Brief filed 12-15-86 (A: pp. 768, 777-796) with Appendix (A: pp. 796-798)

i. LESLIE'S Motion for Extension of Time to File Initial Brief Certified mailed 12-30-86 (A: p. 799-800) which was granted 1-12-87 (A: p. 801)

j. LESLIES' (Amended Brief) filed 1-21-87 (A: p. 768, pp. 802-821) with her Attached Exhibit (A: pp. 223-225)

k. WISHARTS' Motion for Rehearing, to Strike Brief, and to Dismiss filed 2-9-87 (A: p.768) (A: pp. p. 768, 822-833), denied 2-27-87 (A: p. 768)

l. Opinion and Judgement 8-7-87, rev'd in part, aff'd in part Ryder (A: pp. 226-229)

m. WISHARTS' Motion for Rehearing filed 8-24-87 (A: p. 768, 822-833)

n. LESLIE'S Response to Motion for Rehearing filed 9-8-87 (A: p. 768, pp. 895-924)

o. Denial of Motion for Rehearing 9-23-87 (A: p. 768)

p. Mandate Issued and sent down 10-9-87 (A: p. 768)

After LESLIE'S filing of her Amended Notice of Appeal (A: pp. 766-767), she neither certified nor made service of her pleadings on RANDY, a violation of Rule 9.020(f)(2), Fla. R. App. P. and Rule 9.420(b), Fla. R. App. P. which read:

Rule 9.020. **Definitions**

(f) Parties:

(2) Appellee: every party in the proceeding in the lower tribunal other that an appellant.

Rule 9.420. ...Service of Copies....

(b) Service. ...A copy of all docments filed pursuant to these rules shall, before filing or immediately thereafter, be served on each of the parties.

The WISHARTS never received a copy of her Motion for Extension of Time (A: pp. 799-800, 823 ¶¶ 2-4), nor of the Order granting the extension of time (A: p. 801).

So they filed their Cross-Appellants' Brief on the filing date ordered the 15th of December 1986 with no response to the Brief they had not received.

Having received the order granting the extension of time, they responded (A: pp. 822-833) by showing that they had not received the Motion nor was RANDY an appellee served (A: p. 800, 824 ¶ 9) as required by **Rules 9.020(f) & 9.420, Fla. R. App. P.**.

They also requested an order requiring proof of mailing, since in this appeal alone they did nor receive 2 pieces of mail, and a third, the opinion was misdirected to 401 rather than 410 W. Bloomingdale, and that by the 2d DCA.

There were other substantive matters presented, but the 2d DCA denied the motion with a rebuke, citing **Dubowitz v. Century Village East, Inc.**, 381 So.2d 252, 253 (Fla. 3d DCA 1979) to infer the WISHARTS had abused the motion practice.

Yet, for example the mailing was diverted or never sent thereafter, LESLIE cited cases that were overturned in 1982 by amendment of **Ch. 82-96, § (2)(b) 2 c, Laws of Fla.**, as to grandparents, so long as they received the visitation without petition, and clearly the WISHARTS never petitioned for visitation but were given it, first to BOBBIE (A: p. 216 ¶ 13.) by Judge Menendez, which was protected by Judge Falsone (A: p. 754) and then enlarged to include CHARLES, and when LESLIE disobeyed it, protected and modified by Judge Hodges (A: pp. 755-756) so both CHARLES and BOBBIE had visitation they did not petition for, and Judge Taylor was merely modifying what they already had by his order (A: pp. 223-225) which LESLIE appealed in the **Bates v. Wishart**, but since

she is standing on the JUDGEMENT she cannot now attack that JUDGEMENT and it's modifications, based on estoppel and res judicata principles.

LESLIE could attack Judge Taylor's Order since it modified the prior visitations, but she used it to cancel all visitation by failing to tell the 2d DCA of the existence of the other orders granting and modifying the WISHARTS visitation (A: p. 826 ¶ 24-25).

WISHART was offended, uunderstands that service on all appellees is necessary, so they did not respond beyond their own brief on the basis that the Opinion was void, since the rules were being violated, and further that their BRIEF which LESLIE did not answer, set forth the fact that they never lawfully lost the temporary primary residency status over TIFFANY, and therefore, pursuing that, the visitation was irrelevant, except perhaps for CHARLES.

SUMMARY OF ARGUMENT

The WISHARTS went into court with temporary primary residency over TIFFANY, which gave them the ability to care for, and offset LESLIE'S neglect.

They came out with a 24 hour visit bi-monthly, and TIFFANY at hazard.

The trial was held in violation of **Rule 1.440, Fla. R. Civ. P.** and the ensuing JUDGEMENT was ipso facto void.

No judge has declared it void, save for the first 2d DCA panel, but that victory was of no value for it has been distorted by gossip until the decision is held to stand for the proposition that the WISHARTS lied to the 2d DCA in saying they did not have a hearing when they did, rather than the truth, that a rule was violated.

At the same time CHARLES is at trial before the Bar grievance system because he refused to obey void and unrendered orders that put TIFFANY at jeopardy.

The law is simple, you cannot put a case to trial while it is not at issue.

You cannot take a child from a person who has physical custody, lawfully received from the father without giving them a due process hearing.

The problem manifest by this case, stems from the fact that the moral values we were raised with have fallen into disrespect, and that without mutually agreed upon values, the Christian Ethic underlying our laws, we have no laws, for that was the root of our law.

Without a proper moral yardstick, commonly agreed upon, everyone's sense of justice is outraged.

The judges being aware of this, and left, more to administrate than to judge, become defensive, and when a "troublemaker" like CHARLES who is really only trying to protect TIFFANY and keep the family intact, in an era when divorce cannot be defended, where the clean hands doctrine is not understood, mch less understood, and where social

workers cannot even mention morals, for fear of offending their clients sensibilities, and losing their jobs, is it small wonder that a clash has occured.

CHARLES wants TIFFANY protected and she has not been.

The courts want the case to go away, rather than face how far we have come from sound principles of justice.

The only difference in this case came about because CHARLES was made a necessary party, and he doesn't handle all that easily.

At the present time CHARLES is being attacked in the bar for refusing to obey void and unrendered orders that jeopardized TIFFANY.

WISHART has just lost the last trial since they had only old evidence, and that because they had not been allowed to see TIFFANY, much less have her in their custody as the law if followed would require.

The JUDGEMENT is void and voided but the WISHARTS have not been restored.

They have even been stripped of their visitation for the courts wold not enforce even that.

The question is can the law be made to work, or not?

ARGUMENT

There are several points, some simple, some novel, and some of first impression, and all complicated by the matters set out in The Fla. Bar Jour. Vol. LXI, No. 10, November 1987, page 11, article entitled "Family Law Judicial System, Indictment from within" to be dealt with in this appeal based upon the discretionary jurisdiction of the Supreme Court, granted by Rule 9.030(a)(2)(A)(iii-iv) wherein they read:

> RULE 9.030. **Jurisdiction of Courts**
>
> (a) **Jurisdiction of Supreme Court.**
>
> (2) **Discretionary Jurisdiction.** The discretionary jurisdiction of the Supreme Court may be sought to review:
>
> (A) decisions of district courts of appeal that:
>
> (iii) expressly affect a class of constitutional...officers;
>
> (iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

Beginning with the first question we ask:

QUESTION I

WHEN A MATTER IS PUT TO TRIAL IN VIOLATION OF RULE 1.440, FLA. R. CIV. P., OVER OBJECTIONS, SHALL NOT THE JUDGEMENT THAT ENSUES BE VOID AND THE PARTIES RESTORED TO THEIR STATUS AS THOUGH THE TRIAL NEVER OCCURED AND THE JUDGEMENT WAS NEVER RENDERED?

The Record on Appeal in the case of Wishart et ux, v. Bates, et al., 487 So.2d 342 (Fla. 2d DCA 1986) shows that by order of Court (A: p. 746, p. 245 ¶ 3, p. 246 ¶ 10(c)) WISHART amended their pleading to allow them to prove up LESLIE'S unclean hands to bar her from (A: p. 248-251) the Court of Chancery Section 61.011, Fla. Stat. (1985), LESLIE responded by a motion to strike (A: pp. 252-253) and it was never disposed of (A: p. 258 ¶ 1 to p. 259 ¶ 5) which fact is found on the face of the JUDGEMENT (A: p. 212 ¶ f, p. 213 ¶ 5, and p. 353).

Rule 1.440, Fla. R. Civ. P. (1985) provides in relevant part:

Rule 1.440. Setting Action for Trial

(a) **When at issue.** An action is at issue after any motions directed to the last pleading served have been disposed of....

(b) **Notice for Trial.** Thereafter any party may file and serve a notice that the action is at issue and ready to be set for trial....The Clerk shall then submit the notice and the case file to the Court.

(c) **Setting for Trial.** If the Court finds the action ready to be set for trial, it shall enter an Order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice specified in subdivision (b)....

The case of **Leeds v. C. C. Chemical** Corp., 280 So.2d 718, 719 (Fla. 3d DCA 1973), citing **Ellis v. Ellis, 242** So.2d 745 (Fla. 4th DCA 1971), after noting various motions to strike various pleadings which were not disposed of reads in relevant part:

> The determinative question is whether a cause is at issue where, with the last responsive pleading reuired under the rules, there also in simltaneously filed a motion to strike all or a part of the pleading to which such responsive pleading is directed....(W)e hold that the cause is not at issue while such motions directed to pleadings remain undisposed of. /in holding to the contrary the trial court was incorrect.
>
> Until the cause is at issue it may not be set for pretrial conference or for trial. See Rule 1.440 F.R.Civ.P., 30 F.S.A.; Ellis v. Ellis, Fla.App. 1971, 242 So.2d 745.
>
> The orders appealed from is reversed.

The law is settled, the factual situation is cleaner than in the LEEDS case, and the JUDGEMENT is void and must of needs to have been reversed.

State v. Battle, 302 So.2d 782, 783 (Fla. 3d DCA 1974) reads:

> ...The plain language of the rules promulgated by the Supreme Court of Florida are binding upon the trial and appellate courts.

Johnson v. McKinnon, 284 So.2d 231 (Fla. 2d DCA 1973) reads:

> The objections to the introduction of this decree are that it is void, not authorized by law, and that the court was without authority or jurisdiction to render...in the cause wherein it was rendered.
>
> A decree rendered by a court having jrisdiction of the parties and the subject matter, unless reversed...in some proper porceeding, is not open to contradiction or impeachment, in respect to its validity, verity,

or binding effect, by parties or privies in any collateral action or proceeding.

When the decree is such a one as the court has jurisdiction to render, the presumptions are all in favor of its reularity and validity until vacated by some proper proceeding instituted directly for the purpose of correcting errors therein, and cannot be attacked collaterally. (Cited del.) A decree that is absolutely null and void, however, may be collaterally assailed....

Jurisdiction is simply power. Any power possessed by the judicial tribunal, either affirmative or negative, is jurisdiction....

"It is a well-settled rule that, jurisdiction being obtained over the person and the subject matter, no error in its exercise can make the judgement void. The authority to decide being shown, it cannot be divested by being improperly or incorrectly emplowed." (pg. 25)

Though the court may possess jurisdiction of a cause, of the subject-matter, and of the parties, it is still limited in its modes of procedure (Emphasis added) and in the extent and character of its judgements. It must act judicially in all things, and cannot then transcend the power conferred by the law. (Examples Deleted)....Instances of this kind show that the general doctrine stated by counsel is subject to many qualifications. The jdgements mentioned, given in the cases supposed, would not be merely erroneous. They would be absolutely void, because the court in rendering them would transcend the limits of its authority in those cases." ...We must hold therefore (Because Equity Rule 89 had been violated), that this decree was absolutely void, not simply erroneous, irregular, or voidable, and that it was sbject to collateral attack herein. It was not erroneously made in the exercise of jurisdiction. It was rendered without power, without authority, without jurisdiction...We cannot presume...the court had jurisdiction of the sbject matter, because the record disproves it....(Cites del.) (pg. 26)

The plaintiffs read in evidence the mandate of this court,...showing the reversal in this court...of the decree of the circuit court....(pg. 27)

Now the rule is that, when a judgement or decree is reversed, the defendant is entitled to be restored to all things which he has lost thereby.

The law and facts are not justiciable. Judge Menendez's "Final Judgement of Dissolution of Marriage" dated 26 February nunc pro tunc, December 4, 1984 (A: p. 211-218) is on it's face (A: p. 212 ¶ f and pg. 213 ¶ 5) shown to be void ab-initio. Blacks Law Dictionary, 4th Ed. pg. 1745, VOID JUDGEMENTS; Blacks Law Dictionary, 4th Ed. pg. 1746,

VOIDABLE JUDGEMENT; 46 Am Jur 2d Judgements, D. Effect of Invalidity, § 49 Void judgements.; and, § 50 Validation of judgements.

In the case of **Esch et al. v. Forester et al.**, 127 So. 336 (Fla. 1930) we find the law under we find a similiar case wherein it reads:

> The complaintant filed a petition for rehearing, in which it was alleged that the cause had not been set down on bill and answer,...that the court heard the case on bill and answer before the demurrer and motion to strike were disposed of, and failed to observe the rules of chancery practice in the proceeding.
>
> Rule 85 and 86 of the Rules of Circuit Court Equity Actions provide for the setting of cases down for hearing by either party after the cause is at issue....
>
> Causes in court shold be conducted in an orderly manner in accordance with the rules prescribed.
>
> While it is the duty of the court to facilitate and not retard the determination of causes, (Cites del.), the rules are made to facilitate that duty.
>
> The appellant court is bound by the rules (Cite del.).
>
> All rules are binding on the court and its clerk as well as on the litigants and their counsel Cite del.) (pg. 337-338)

Historically this issue of putting a case to trial while not at issue was long settled and established as a Rule of the Court of Equity, and has the same effect today, namely to make any decree, order or judgement void ab-initio, and subject to attack anywhere and at any time as thouh it did not exist.

Ipso facto, we are led into the next nnn questions.

QUESTION II

DID THE SECOND DISTRICT COURT OF APPEAL OPINION AND MANDATE IN THE WISHART V. BATES, 487 SO.2D 342 (FLA. 2D DCA 1986) IN REVERSING THE "FINAL JUDGEMENT OF DISSOLUTION OF MARRIAGE" THEREBY VOID THAT JUDGEMENT?

As has been shown above, the JUDGEMENT was void ab-initio, and that should have been the intention of the first panel, and as well it's duty.

An examination of the Record on Appeal from the trial court (A: pp. 737-751), and the appellate courts (A: pp. 586-594), and in particular the WISHARTS' brief (A: p. 586-594) shows that was the grounds the WISHARTS put forth, a violation of Rule 1.440, Fla. R. Civ. P. (A: p. 588).

The law was settled, and the 2d DCA reversed and remanded the JUDGEMENT, thereby declarin it void wherein they said:

> Appellants appeal the denial of their petition for custody of their granddaughter.
>
> The court having reviewed the record (emphasis added) finds that appellants should have been afforded an opportunity to be heard and present evidence at the cstody hearing.
>
> We therefore reverse and remand for further proceedings consistent herewith.

Since WISHART moved to reverse the void JUDGEMENT since it was put to trial in violation of Rule 1.440, Fla. R. Civ. P. it must follow that the Court agreed with him.

Why then did they not expressly say so?

First they no doubt determined that LESLIE'S dissolution of marriage action was none of the WISHARTS' business, for that is the normal course of things.

Secondly, as is well known, the concept of denial of due process of law is defined in Sheffey v. Futch, 250 So.2d 907, 910-911 (Fla. 4th DCA 1971) as follows:

> ...(D)ue process has been defined in non-criminal situations as contemplating reasonable notice and an opportunity to appear and be heard.
>
> ...Due process is a relative term which must be shaped to the requirements of each class of litigation. Specifically, in removal proceedings it means no more that notice and a trial according to the rules set by constitution and statute.

The first panel in reading the record (A: pp. 737-751) which contained inter-alia WISHARTS letter to Judge Menendez objecting to the form and substance of TABIO'S proposed "Final Judgement of Dissolution of Marriage" (A: pp. 304-342) found more that the violation of the rule cited for reversal, and so they abstracted the rule violation into

the definition of due process. **Article I, Decl. of Rts., § 9.** Due Process, Fla. Const.; U. S. Const. **Article VI; U. S. Const. amend. V,;** and, U. S. Const. amend. XIV, Due Process.

Blacks Law **Dictionary, 4th Ed. pg. 1482,** REVERSE; Atlantic Coast Line Railroad **v. St. Joe Paper Co., 216 F.2d 832, 833** (U.S.C.A. 5th Cir. 1954); and, **Securities** and **Exchange Commission v. C. M. Joiner Leasing** Corp, et al., 53 Fed.Supp. 714, 715 (U.S. Dist. Ct. N. D. **Texas 1944) are dispositive** of the question of what the reversal in the **Bates v. Wishart** opinion meant.

Blacks Law Dictionary, 4th Ed. pg. 1482, defines REVERSE to mean:

> REVERSE. To overthrow, vacate, set aside, make void, annul, repeal, or revoke, as to reverse a judgement, sentence or decree, or to change to the contrary or to a former condition. (Cites del.)

In defining the term "to reverse a judgement", **Atlantic Coast Line Railroad v. St.** Joe Paper Co., 216 F.2d 832, 833 (U.S.C.A. 5th Cir. 1954) cites Webster, as saying:

> ...To reverse a judgement...means to overthrow it by a contrary decision, to make it void, to undo or annul it for error.

Securities and Exchange Commission v. C. M. Joiner Leasing Corp, et al., 53 Fed. Supp. 714, 715 (U.S. **Dist. Ct. N. D. Texas** 1944) addresses the language of the opinion which says:

> We therefore reverse and remand for further proceedings consistent herewith.

The court in the S. E. C. case reflected:

> There is a paucity of decision to light the way. Probably because it does not need any more light. "Reversed" means "setting aside, annuling, [or] vacating." (Cite del.) Where a judgement is reversed and the cause remanded, the effect of the reversal is only to set aside the judgement, unless it is apparent from the opinion of the court that the adjdication was intended to be a final disposition. (Cite Del.) When the words "reversed" and "remanded" are used, it wold be error...for the court below not to award a new trial. To the same effect is a direction by the appellate court that the case is "reversed for proceedings consistent with this opinion."

Would it befair to say that the void JUDGEMENT was voided by the 2d DCA in it's opinion cited as **Wishart et ux, v. Bates, et al.,** 487 So.2d 342 (Fla. 2d DCA 1986).

QUESTION III

ARE THE WISHARTS ENTITLED TO THE AWARD OF APPELLATE COSTS AFTER HAVING PREVAILED BEFORE THE 2D DCA IN THE CASE OF WISHART V. BATES, 487 487 So.2d 342 (Fla. 2d DCA 1986)?

The WISHARTS reversed the void JUDGEMENT and obtained a retrial.

Fla. R. App. P. 9.400(a) provides:

Rule 9.400(a) **Costs....**

(a) **Costs.** Costs shall be taxed in favor of the prevailing party unless the court orders otherwise....

Di Teodoro v. Lazy Dolphin Development Company, 432 So.2d 625, 626 (Fla. 3d DCA 1983) provides the rule as it reads:

> Under Florida Rule of Appellate Procedure 9.400(a), the prevailing party in this court is automatically entitled to taation of certain enumerated costs unless otherwise directed by the respective courts of appeal. the rule expressly provides:
>
> > Costs shall be taxed by the lower tribunal on motion served within 30 days after issuance of the mandate.

The WISHARTS prevailed and are entitled to the $1,261.77 taxed as costs below by Judge Taylor (A: p. 223 ¶ 1 and 224 ¶ 10).

QUESTION IV

DOES NOT THE PRINCIPLE OF RES JUDICATA BAR THE SECOND PANEL WHICH HAD NO ACCESS TO THE RECORD OF APPEAL TO OVERTURN THE JUDICIAL WORK OF THE FIRST PANEL OVER 16 MONTHS LATER AND PARTICULARLY WHEN THE PLAIN MEANING OF THE PRIOR OPINION OF THE FIRST PANEL WAS LOST ON THE SECOND PANEL SINCE THEY CLEARLY DID NOT LOOK BEHIND IT?

WISHART properly appealed and overtrned the JUDGEMENT citing the violation of Rule 1.440, Fla. R. Civ. P..

What the second panel has done is to try to discern the whole opinion from it's cryptic wording.

WISHART won, the magic word "reversed" is there, but the court refuses even to read WISHARTS' brief which set forth the basis for their prior success, the violation of the rule (A: p. 788-794) which the first panel called a violation of due process.

The appendix accompanying WISHARTS' brief sets forth the facts relied on by WISHART, the Rule violation (A: pp. 796-798).

If the second panel will not respond to substantive matters, they procedural requirements will work as well.

Sixteen months had gone by and res judicata bars the courts from trying to overturn the prior decision**Gray v. Gray**, 107 So. 261 (Fla. 1926); **Coleman v. Coleman**, 190 So.2d 332 (Fla. 1966), but rather it is their duty to enforce it's mandate so as to restore TIFFANY to BOBBIE'S primary residency status, and as well to provide such protective orders as will undo the results of not seeing her for so long contrary to law.

QUESTION V

COULD LESLIE RAISE THE ISSUE OF CHANGE OF VISITATION IN THE GUISE OF AN ILLEGAL GRANTING OF CUSTODY WITHOUT AN EVIDENTIARY HEARING WITHOUT RUNNING AFOUL OF THE CLEAN HANDS DOCTRINE?

LESLIE changes sides of the argument and argued that Judge Taylor could not grant visitation without an evidentiary hearing (A: pp. 805) and went on to reflect that CHARLES never had visitation (A: p. 812) when in fact he had (A: pp. 752-757).

LESLIE used CHARLES law, but added her own deceit, for had she presented the truth, the Taylor visitation order would be voided as it deserved, for it reduced the WISHARTS visitation arbitrarily, and the WISHARTS would have returned to the schedule set bu Judge Hodges (A: p. 757).

The only legal point LESLIE raised on her inter-locutory appeal she tainted with her deceit.

This was hardly the first time (A: pp. 248-251).

Judge Falsone even mentioned her deception in one of his orders (A: p. 752 ¶ 2).

How can LESLIE continue to lie to the court and not be expelled from the Court of Chancery due to the clean hands doctrine?

Ryan v. Ryan, 277 So.2d 266 (Fla. 1973) speaks to that question where on page 272 it reads:

FRAUD

> Now we find, however, that by virtue of the new legislative action that the clean hands principle has been eliminated in marriage dissolution except for fraud and deceit which are always available in our courts.

However, it is clear that CHARLES was jailed twice because of lies.

For note, that in spite of LESLIE'S proclevity to prevarication, the Courts are still after closing out the WISHARTS by any means at hand.

How, otherwise could the second panel have arrived at the conclusion that WISHARTS were claiming they did not have a hearing when in fact they had two days of a hearing which was from the beginning a mistrial becase it was held in violation of the rules that govern such things.

QUESTION VI

WHAT ARE THE CAUSES THAT LED TO THE BREAKDOWN OF THE FAMILY LAW COURT IN THE STATE OF FLORIDA, AND WHAT ARE THE REMEDIES?

The Fla. Bar Jour. Vol. LXI, No. 10, November 1987, page 11, article entitled "Family Law Judicial System, Indictment from within" has sounded the alarm of what everyone knew to be true.

In the present case, RANDY'S first attorney uit the family law practice because of inter-alia what he experienced in this case.

The attorney who replaced him left the practice of law to attend bible school so as to provide an alternative to the corts which have failed.

If one were to read the grand words in Sections 61.001 and 61.011, Fla. Stats. (1983), and in Ryan v. Ryan, 277 So.2d 266 (Fla. 1973) concerning how seriously the irretrievably broken question would be addressed, which was crushed by Riley v. Riley,

271 So.2d 181 (Fla. 1st DCA 1972), the only attempt to deny a dissolution petition, and see what happened to the clean hands doctrine in Johnson v. Johnson, 284 So.2d 231, where even the outrage against lying was ignored.

Attorneys are constitutional officers pursuant to Art. V, § 15, Fla. Const. and as such have the right to petition the Supreme Court with or without a conflict decision, and the Supreme Court has the discretionary to hear it's attorneys, so CHARLES now petitions the Court in his capacity as an officer of the Court to consider, that it is not better administration abd specialiation that is needed, for that can only produce a technocrat, with great skill perhaps, but with no great values.

The following situations make the family law practice imposible.

First liars go unpunished.

Second, HRS and the other social workers state that they cannot make moral judgements because that would be imposing religion upon persons in violation of the separation of Church and state.

The consequence is that a woman can as one worker said, "Sleep with 5 men at a time, and still be fit to keep her child.

Isn't it obvious what that daughter will grow up to be like?

Don't the Courts know that humans bond to their mates?

It is imperative that the clean hands doctrine be restored, that the Christian ethic be applied in deciding custody issues, for that is the foundation of our law. King v. Daniel, 11 Fla. 91, 99 (1864-5); Randolph v. Randolph, 1 So.2d 480, 481 (Fla. 1941); State ex rel. Singleton v. Woodruff, 13 So.2d 704, 705, (Fla. 1943).

CONCLUSION

The WISHARTS started out with a responsibility for TIFFANY, and ended up with CHARLES going to jail twice just to get a hearing.

The Courts have lost their respect in direct proportion to the degree they have let the moral values fall into disrepute.

HRS writes reports from whole cloth without talking to witnesses, etc..

Now we have aids, drug wars, broken homes, and do not where to turn.

WISHART won the appeal because the courts had a zeal to handle the case rather that to address the fact that the WISHARTS were carrying the responsibilities for TIFFANY that LESLIE had discarded in pursuit of her rights.

The whole concept of clean hands, is to help, take jurisdiction if you will, when the petitioner is willing to take up his responsibilities as well as demand his rights.

When the Courts are too busy handling cases, rather than searching out the truth, they also get careless with their procedures as well, and so CHARLES has kept the case alive, when all the WISHARTS desire is to see that TIFFANY is cared for.

WISHART has never lost custody of TIFFANY lawfully, and the Court has the power, since it has failed to help the family in the past, to invoke the clean hands doctrine against LESLIE, and deliver TIFFANY into the WISHARTS hands, who will then go about what they were doing at the beginning, trying to maintain the falily relationships.

CHARLES does not like to tell clients that what the law is cannot be practiced in the courts without great sacrifice, much less what others say, it is wrong but there is nothing you can do.