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CLERK, SUPREME COURT
By _____ Deputy Clerk

IN THE SUPREME COURT
STATE OF FLORIDA

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| BOBBIE SUE WISHART, and CHARLES F. WISHART, Appellees, Cross-Appellants, Petitioners | CASE NO: 71,370 |
| v. | 2ND DISTRICT COURT OF APPEALS NO: 86-2408 |
| LESLIE BATES (BOGGS), Appellant, Cross-Appellee, Respondent | THIRTEENTH JUDICIAL CIRCUIT COURT NO: 83-7250 |

# RESPONDENTS BRIEF

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## STATEMENT OF THE CASE AND OF THE FACTS

PARTIES in this case:

TIFFANY BATES, minor daughter,

LESLIE BATES (BOGGS), Tiffany's mother,

RANDALL BATES, Tiffany's father,

BOBBIE SUE WISHART, paternal grandmother,

CHARLES WISHART, Bobbie Sue's husband (Disqualified as Attorney of Record for Bobbie Sue Wishart).

Factual cites will be to:
Petitioners' five (5) volume Appendix as (A: p. 1-4);
Petitioners' Brief as (B: p. 14);

Respondent would first direct this courts attention to "THE FLORIDA BAR'S AMENDED COMPLAINT" (A:p.1-4) which stems from Petitioners conduct in this case wherein it is alleged that Charles F. Wishart has violated eight (8) of the Florida Bar Code of Professional Responsibility and Disciplinary Rules; specifically:

1-102(A)(4) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

DR 1-102(A)(5) engage in conduct prejudicial to the administration of justice;

DR 7-102(A)(1) file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure;

DR 7-102(A)(3) conceal or knowingly fail to disclose that which he is required to reveal;

DR 7-102(A)(7) counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent;

DR 7-106(C)(4) assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocense of of an accused; but he may argue on his analysis of the evidence for any position or conclusion with respect to the matters stated herein;

DR 7-106(C)(6) engage in undignified or discourteous conduct which is degrading to a tribunal;

DR 7-106(C)(7) intentionally or habitually violate any established rule of procedure or of evidence.

Respondent has been found repeatedly, by the courts, to be a fit and proper parent, but has been in litigation for almost five (5) years due directly to Petitioners obsession to have possession of Tiffany by any means, and regardless of how detrimental it is to Tiffany.

Respondent filed her "PETITION FOR DISSOLUTION OF MARRIAGE AND FOR CHILD CUSTODY" (A:p. 5-8) on 1 June 1983, the Petitioners were included as Respondents in the initial petition because they refused to relinquish physical possession of Tiffany, stating that Randall "gave" Tiffany to them and instructed Respondent to "take us to court".

The issue was ready for a final hearing in November 1983, as is evidenced by the letter of the Honorable Phillip L. Knowles to Petitioners dated 21 November 1983 wherein he states:

> "....Mr. Hoft has filed a motion for a final hearing." (A: p. 84)

Petitioners were successful in delaying the Final Hearing until December of 1984 by abuse of the motions practice, misleading the courts, and refusal to obey court orders. (A: p. 1-4)

The "PRE-TRIAL CONFERENCE ORDER" dated 22 August 1984, set this case for trial in December 1984. (A: p. 244-247). This order states:

> "...the WISHARTS' shall have the right to file an amendment to their pleadings to prove the doctrine of unclean hands, to be filed within ten (10) days from the Date of this Order".

In Petitioners "MOTION FOR FINAL JUDGEMENT REGARDING THE HABEAS CORPUS, and CONTEMPT" (A: p. 413-421) they state:

> "On the 4th days of December 1984 WISHART filed, pursuant to Court Order, their GRANDPARENTS' AMENDED ANSWER FIRST AFFFIRMATIVE DEFENSE".

Being aware of the Petitioners abuse of the motions practice, the Honorable Manuel Menendez disposed of Respondents "MOTION TO STRIKE FIRST AFFIRMATIVE DEFENSE ALLEGED IN GRANDPARENTS' AMENDED ANSWER (A: 211-218) wherein:

> "The Court finds that the Wife's Motion to Strike the grandparents' Amended Answer should be denied and instead, treated as a denial of the allegations contained in the Affirmative Defenses filed by the WISHARTS."

The final hearing of December 1984 granted the natural mother and father shared custody, with primary residency to be with the mother.

Petitioners appealed the Final Judgement, and because the Second District Court of Appeals was of the understanding that Petitioners had been denied the opportunity to be heard, its mandate of 2 April 1986 granted Petitioners:

> "only the opportunity to be heard on their petition for Custody of their granddaughter" (A: p. 925-927)

Petitioners delayed this "opportunity to be heard" until hearings commenced on 23 June 1987.

Five (5) days of further hearing, before the Honorable Judge Vernon Evans, resulted in the "ORDER GRANTING MOTION FOR INVOLUNTARY DISMISSAL OF THE WISHART COUNTER-CLAIM FOR CUSTODY OF TIFFANY BATES" being rendered on 17 December 1987. (A: p. 925-927)

Respondent prevailed again because she is a fit and proper parent.

Petitioners state that the courts have tried to shut them out. However, it appears that the courts are very open to Petitioners. For example, their Brief for this appeal was due on 14 March 1988. This court accepted their "MOTION FOR EXTENSION TO FILE BRIEF" on 15 March 1988 in contradiction of it's guidlines which state:

> "Motions for extension filed on the due date or after a brief is due will be denied."

On 19 March 1988, Respondent received Petitioners "NOTICE OF APPEAL" directed at the "ORDER GRANTING MOTION FOR INVOLUNTARY DISMISSAL OF THE WISHART COUNTER-CLAIM FOR CUSTODY OF TIFFANY BATES" dated 17 December 1987, Nunc Pro Tunc, 14 December 1987, reh. den. 16 February 1988. (A: p. 925-927)

Petitioners Brief and Appendix is but another example of Petitioners inability to state true and actual facts.

Petitioners INDEX TO APPENDIX - VOLUME IV reflects that there is a document entitled ADJUDICATION OF CONTEMPT, ORDER REGARDING TEMPORARY CHANGE OF CUSTODY, and NOTICE OF HEARING, by Judge Falsone, dated 25 Feb. 86 on page 755-756.

When in actual fact, the document on pages 755-756 is "ADJUDIATION OF CONTEMPT, ORDER REGARDING TEMPORARY CHANGE OF VISITATION, and NOTICE OF HEARING" by Judge John C. Hodges dated 25 February 1986.

## ARGUMENT

This entire case is lacking merit.

If not for the professional misconduct of the Petitioners, this litigation would not be in the judicial system.

On 2 April 1986 Petitioners were granted an opportunity to further hearing on the custody portion of the Final Judgement, which was not altered.

Petitioners delayed having a hearing until June 1987. "Further hearing" consisted of two days in June, 2 days in September and concluded on 14 December 1987. Custody portion of Final Judgement was not altered.

Now, April of 1988, Petitioners object to the 1984 hearing, the 2 April 1986 2D DCA mandate, the 7 August 1987 2D DCA mandate, and the 1987 hearing on the custody portion of the Final Hearing.

Respondent objects to Tiffany's welfare being sacrificed and overlooked because of Petitioners ambitious attempts to undermine the legal system.

The Clean Hands Doctrine to which the Petitioners refer must be applied to Petitioners conduct in this issue, and is further evidence that the issues in this appeal must be dismissed and this case brought to an end.

## 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?

With reference to this case, Petitioners insist on, then object to, being heard. If an attorney continually files motions in order to keep an issue from coming to trial, and to maintain the status quo, then there must be some relief in order for the issue to move forward.

Petitioners had insufficient evidence and testimony to prevail, otherwise they would have been anxious to bring it to trial, rather than file motions, raise objections, and use other delaying tactics to prevent a speedy trial and conclusion.

The parties cannot be restored to their status as though the trial never occured. Shortly after the final hearing in December 1984, both Respondent and Randy were remarried. Shortly thereafter, Randall and his new wife became parents of two daughters, and Respondent and her new husband became parents of a son.

Tiffany is with her mother and brother where she rightly belongs.

Randall, Respondent and Tiffany are going forward with their lives. It is only the Petitioners who want to go back five (5) years in time.

## 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?

No. That opinion and mandate did not reverse nor void the "FINAL JUDGEMENT OF DISOLUTION OF MARRIAGE".

This case was remanded to the trial court for further hearing on the Custody issue only.

Petitioners did not have evidence to support their allegations at the onset of this case, and five (5) years of litigation has not changed that fact.

Since the Second District Court of Appeals filed their opinion 16 May 1986, the mandate has been repeatedly clarified for the Petitioners in that the Final Judgement was neither voided nor reversed.
(A: p. 219, 221-222, 223-225,226-229)

## 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 SO.2D 342 (FLA. 2D DCA 1986)?

Petitioners did not prevail and are entitled to nothing.

The outcome of the final hearing was not altered.

Through deceit and dishonesty they gained an opportunity to present further evidence and testimony on the custody portion of the Final Judgement, neither of which they had.

It was not a retrial, but further hearing which was actually Petitioners resubmitting old testimony and old evidence which were already in the records. (A: p. 925-927)

Respondent has been unduly subjected to five years of slander and vile allegations and harassment from the Petitioners but they have not prevailed.

## 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 MONTH 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?

Each issue stands on its own merit.

Petitioners did not prevail at the first panel. The Final Judgement was not overturned.

Respondent prevailed at the second panel.

Petitioners refuse to comprehend, understand, or accept any order that is contrary to their demands, but deliberate misinterpretation does not alter legal documents.

## 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?

Petitioners have never had legal custody of Tiffany.

The courts have consistantly established that the Respondent is a fit and proper parent; that the Petitioners allegations are without merit; and has further documented that contact with the Petitioners is detrimental to Tiffany.

## 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?

Respondent would suggest that if this is a valid question, Petitioners misconduct may be the cause; removing Petitioners from the System may be the remedy.

Petitioners are abusing the Family Law Courts, they caused the final hearing to be delayed from mid 1983 until December 1984, were granted "further hearing" April 1986, and then delayed that "opportunity" until June 1987.

Petitioners insist on, then object to, being heard.

Charles Wishart, officer of the court, was jailed twice, and rightly so, because of his flagrant, deliberate CONTEMPT OF COURT as is referenced throught Petitioners Appendix. (A: p.1-4)

## SUMMARY OF ARGUMENT

This litigation is lacking merit and is a sham, the issues of this appeal are frivolous as these questions are not a true reflection of this case, and Petitioners are now attempting to mislead the higher court.

Petitioners have never had legal custody of Tiffany.

The issue was ready for trial in November 1983, but Petitioners delayed it until December 1984, wherein Respondent prevailed at Final Hearing.

Petitioners appealed. The mandate of the first panel has been repeatedly clarified by the 2D DCA and trial judges in that the Final Judgement was neither voided nor reversed.

The courts have established that visitation with Petitioners is detrimental to Tiffany, mostly because of their repeated abductions and defiant refusal to obey court orders.

The second panels mandate was unrelated to the first panels mandate, as the second mandate was in reference to appellate costs and visitation being granted at a procedural hearing.

Respondent has consistantly prevailed on the true issue. Petitioners have succeeded in abusing rights, priveledges, delaying justice, and abusing and misusing the legal system.

Every man is entitled to a day in court, but five years? Every man is entitled to an appeal, but five years?

The Principle of Justice implies that one cannot pervert justice, and justice delayed is justice denied.

The Courts attention must be rediverted to Tiffany and what is in her best interest.

This litigation is not in Tiffanys best interest but instead is detrimental to her as this extensive litigation has acknowledged her place is with her mother.

Florida Statute 61.13, the Uniform Child Custody Jurisdiction Act, and the Clean Hands Doctrine should serve to protect Leslie and Tiffanys God given and legal rights to a peaceful life and protection from Petitioners.

## CONCLUSION

The issues before this court have no merit.

Respondent is a fit and proper parent that needs the Petitioners out of her life so she can devote her all of energies to being a mother.

The Florida Bar Associations Amended Complaint, facts in Petitioners five (5) volume appendix, the Clean Hands Doctrine, and because Petitioners Brief and Appendix as presented to this court are not true and accurate are sufficient to show that the Petitioners, and this case, are both out of order and should be dismissed.

Petitioners now have this case in the Florida Supreme Court objecting to the mandate that gave them five additional days of hearing on the custody issue, and simultanously in the Second District Court of Appeals objecting to the outcome of that hearing. This case was back in the Trial Court in 1987, because of the mandate in 1986, for Petitioners to repeat what they said at the Final Hearing in 1984, that they have been saying since 1983.

Petitioners failed to get two trial judges on this case simultanously. (A: p.102)

Respondent prays this Honorable Supreme Court of the State of Florida will direct its attention to Tiffany and issue its mandate to that effect. To close, seal and destroy this case file would also be in Tiffanys best interest since this case is based soley on slanderous allegations about her mother.

Respectfully submitted,

Respondent
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Ph. (813) 623-6893

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished this 8th day of April by U. S. Mail to Bobbie Sue and Charles F. Wishart, 410 W. Bloomingdale, Brandon, Florida 33511-7402.

Leslie Bates Boggs
Leslie Bates (Boggs)