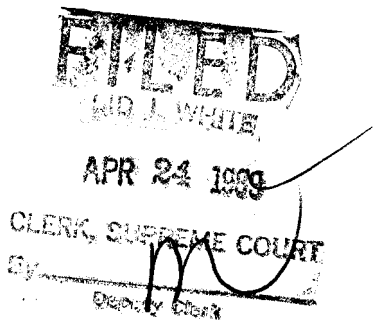
IN THE SUPREME COURT OF FLORIDA



STATE OF FLORIDA,
ex rel. Jed Pittman, etc.,

Appellant,

vs. Case No. **73,666**

JOHN W. STANJESKI,

Appellee.

On Appeal from the District
Court of Appeal,
Second District of Florida

THE APPELLEE, JOHN W. STANJESKI'S REPLY BRIEF

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STATEMENT OF THE FACTS

The Appellee, John W. Stanjeski, does not contest nor argue with the urgent need for each state to enact meaningful, practical, and constitutional legislation for the prompt and efficient collection of child support.

The issue of this appeal is not the desirability or the need for a child support collection statute, but rather a review of the Florida Legislature's actions in their attempt to meet that objective through their enactment of the amendments to Florida Statute Chapter 61.14 (1987). The statute under question became effective, July 1, 1987, and has been declared unconstitutional by the Honorable L. B. Vocelle, Circuit Judge of Indian River County, on November 19, 1987, in the D'Agosto v. Honorable Freda Wright, Clerk of Court, Indian River County, Florida, under Indian River Circuit Civil Case No. 87-495-CA-17-LBV and by the Honorable W. Lowell Bray, Pasco County Circuit Judge in this cause as affirmed by the 2nd District Court of Appeals.. The Attorney General's office has appealed the D'Agosto decision to the Fourth District Court of Appeal under their Case No. 87-3282, and as of the date of the filing of this brief, the Fourth DCA has not yet ruled on that cause.

The Appellant's voluminous references to the federal legislation, including Title IV-D of the Social Security Act involving the desirability of legislation, both state and

federal for the efficient collection of child support, while interesting, is irrelevant as to the constitutionality of the subject statute.

The Florida Legislature during their **1988** session amended the subject statute under Ch. **88-170,** Laws of Fla., and, although, the constitutionality of the **1988** amendments are not before this court, those amendments made by the legislature do not solve the unconstitutionality of the legislature's efforts.

The Appellant's apparent argument that the creation of the **1987** version of Florida Statute Chapter **61.14(5)** was enacted to comply with the federal requirements of **42** U.S.C. **666** requiring state legislation for the collection of child support payments, is totally irrelevant for the issue to be decided by this court, that is; the constitutionality of the subject state statute under the concept of due process, and denial of access to the Courts. The effect of such logic by the Appellant in seeking to justify the constitutionality of a state statute upon the Federal requirement to enact such a statute disregards the purpose and effect of the Florida and Federal constitutional requirements; in effect, the Appellant is arguing that because the Federal government required the enactment of State legislation for child support collection procedures that, therefore; the State statute must be constitutional.

The portion of the Appellant's statement of fact commencing on page XI through XII, of their belief concerning the factual circumstances *of* the Stanjeski family at the lower Court litigation level is accepted as accurate.

STATEMENT OF THE CASE

The Appellee adopts the Appellant's statement of the case with the additional notation: to wit: That after Judge Bray verbally entered his Order declaring the subject statute unconstitutional, KAREN DEBLAKER, Clerk of the Circuit Court, in and for Pinellas County, intervened in the subject Pasco County case for the express purpose of having Judge Bray's Order apply uniformly throughout the entire Sixth Judicial Circuit consisting of both Pasco and Pinellas Counties (R:121-126).

STATEMENT OF THE ISSUES

I. DOES SECTION 61.14(5) FLORIDA STATUTUES 1987 DENY ACCESS TO THE COURTS?

11. DOES SECTION 61.14 FLORIDA STATUTUES (1987) DENY DUE PROCESS OF LAW

SUMMARY OF THE ARGUMENT

ISSUE I

Section 61.14(5), Florida Statutes **(1987)** violates the Obligor's constitutional right of access to the Courts in that the statute seeks to'deprive the trial Court of the power to set aside, alter, or modify an administratively required final money judgments as entered by the Clerk of the Court. Therefore, an Obligor is denied the right to introduce any evidence pertaining to equitable defenses or legal defenses which pertain to any payment of money which accrued prior to the filing of a Motion by an Obligor.

ISSUE II

Section 61.14(5), Florida Statutes (1987), violates due process in that the statutory scheme mandates the rendition of an administratively entered final money judgment against an Obligor within thirty days from the date of an alleged delinquency without requiring actual notice of the alleged delinquency to the Obligor. That the statute is

unconstitutional and denies due process in that it does not afford an Obligor any meaningful hearing, unless he receives actual notice of the alleged arrearages; prior to the statute administratively creating a judgment lien on any and all real property in which the Obligor has a record title interest in the state of Florida.

ARGUMENT ON POINT I

42 U.S.C. 666 makes no reference to any rendition of a final judgment by a Clerk of Court for which execution may issue; nor does the Federal law require'the imposition of a lien on realty as does the subject Florida statute.

Section 61.14(5) (1987) (Subparagraph D) violates the access to the Courts guarantee of the Florida Constitution Article 1, Section 21, in that, the final money judgment as entered by the Clerk of the Circuit Court operates as a final money judgment as if entered by a Court, as to any unpaid payment which has accrued up to the time either party makes a Motion to Set Aside, Alter or Modify the Judgment. However, the Court does not have the power to set aside, alter or modify such Orders or any portion thereof, which provides for any payment of money which has accrued prior to the filing of such motion.

Those provisions of the subject statute seek to prevent the trial court, under all circumstances, from addressing or redressing the accuracy or validity of said final money judgment, which is expressly contrary to the Court's judicial authority as per Florida Rules of Civil Procedure 1.540, entitled "Relief from Judgments, Decrees or Orders".

As this Court stated in Ryan's Furniture Exchange v

McNair, 162 So. 483 (Florida, 1935):

> "In observing due process of law, the opportunity to be heard must be full and fair, not merely colorable or illusive. Fair notice and a reasonable opportunity to be heard shall be given interested parties before a judgment or decree is rendered. Due process of law means a course of legal proceedings according to those rules and principals which have been established in our system of jurisprudence for the protection and enforcement of private rights."

The subject statute attempts to divest the Court of it's inherit judicial discretion, and in addition, seeks to abolish numerous equitable defenses recognized at common law which would normally be arguable before the Court. Kluger vs White 281 So. 2d 1 (Florida, 1973); Smith vs Department of Insurance, 507 So. 2d 1080 (Florida, 1987), Francisco vs Francisco, 505 So. 2d 1102, (Florida 2nd DCA, 1987).

Under the subject statute, the Obligor is denied even the opportunity to present to an objective, informed Court his or her equitable defenses such as waiver, laches, estoppel, reprehensible conduct on the part of the custodial parent, or even payment of the claimed arrearages, which under the subject statute have already been memorialized as a final money judgment against the Obligor and creating a lien on any and all of his or her real property throughout the state of Florida.

The Appellant, on page 12 of their brief, acknowledges that although past due child support payments may be considered

a "vested right" for the child, the Florida case law clearly allows a Court of competent jurisdiction to cancel those past due, unpaid and vested child support obligations. Pottinger vs Pottinger, 182 So. 2d 762 (1938), Fox vs Haislett, 388 So. 2d 1265, Smithwick vs Smithwick, 343 So. 2d 945 (Florida 3rd DCA 1977), Ash vs Ash, 509 So. 2d 1146 (Florida 1st DCA 1987), O'Brien V. O'Brien, 424 So.2d 970 (Fla. 3d DCA 1983), wherein the 3d DCA said "claims for child support arrearages are generally enforceable, absent extraordinary or compelling circumstances, such as, waiver, laches, estoppel, or reprehensible conduct on the part of the custodial parent".

The clear language of Florida Statute 61.14(5) seeks to improperly and unconstitutionally prevent any judicial review of extraordinary circumstances and, therefore, clearly is unconstitutional as a denial of access to the court.

ARGUMENT ON POINT II

Section 61.14(5), Florida Statutes, denies due process of law.

Florida Statutes 61.14(5) does not require that the Notice to Obligor be served on the Obligor, and authorizes the perfunctory process of certified mail as a prerequisite to the entry of a final money judgment; which, historically, has required proof of actual personal service of process. Quay Development, Inc., v. Elegante Building Corporation, 392 So.2d 901 (Fla. 1981). Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

The subject Statute does not address nor provide for the reasonably anticipated situation where the Obligor does not actually receive notice, and is defacto unaware of the Notice to Obligor, when the Obligor is on vacation, working for an extended period of time away from his or her residence where the certified mail is sent, or is incapacitated as such, being hospitalized.

The statute seeks to circumvent the due process requirements of the state and federal constitutions by preventing the Obligor any meaningful access to the courts to address or redress those situations. Once the final money judgment of delinquency is entered, the statute seeks to prevent the court from setting aside, altering, or in any way

modifying some or any part of that money final judgment, and clearly violates his due process rights.

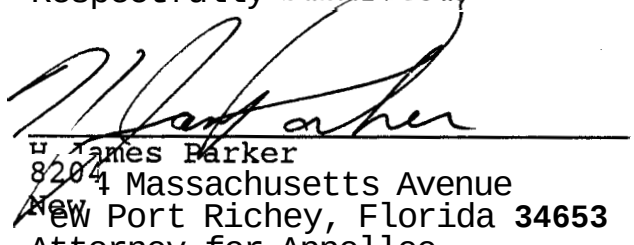
Additional deficiencies in the subject statute are that the Obligor is not given a realistic opportunity to be heard or to present testimony or confront witnesses against him or to produce evidence pertaining to the matter at hand, to wit, the previously entered money final judgment. court dockets, such as they are, are not contemplated by the statute, and in many of the Circuit Courts within Florida, it is impossible to schedule a hearing on domestic matters within the 15 day period provided for in the statute.

The subject statute denies both substantive and procedural due process to the Obligor in that the Obligor is deprived of his or her constitutionally protected property right, and is subjected to a lien on all of his or her real property without having a meaningful opportunity to be heard on the matter. Fickle v. Atkins, 394 So.2d 461 (Fla. 3d DCA 1981). Quay Development v. Elegante Building Corporation, supra. Pelle v. Diners Club, 287 So.2d 737 (Fla. 3d DCA 1974), Keating v. State of Florida, 173 So.2d 673 (Fla. 1965).

CONCLUSION

The Appellee respectfully submits that Section 61.14(5), Florida Statutes 1987, is blatantly unconstitutional because it denies the Obligor due process and reasonable access to the courts and, therefore, this court should affirm the lower court's decision and that decision of the Second District Court of Appeal.

Respectfully submitted,



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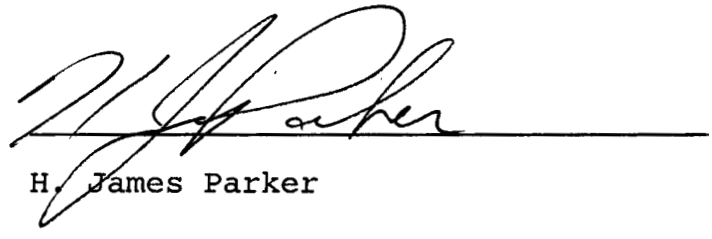
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by first class mail to Eric J. Taylor, Assistant Attorney General, Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050, this 20th day of April, 1989.



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