IN THE SUPREME COURT OF FLORIDA

IN RE:

MARY LOUIS THAYSEN and the
DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,

Petitioner,

vs. CASE NO. 76,136

DONALD J. THAYSEN,

Respondent.

PETITIONER'S JURISDICTIONAL BRIEF

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SUMMARY OF ARGUMENT

In the present case of Thaysen v. Thaysen, Fla. 3rd DCA, case numbers 89-1163 and 89-1503, Opinion filed February 13, 1990, the Third District Court of Appeal held that pursuant to Chapter 409, Florida Statutes, the Florida Department of Health and Rehabilitative Services does not have standing to participate in modification actions to increase child support where there are no allegations of child neglect, desertion, abandonment, or nonsupport, such actions not being enforcement of support actions under section 409.2551, Florida Statutes.

The Third District Court of Appeal in Wilkerson v. Coggin, 552 So.2d 348 (Fla. 5th DCA 1989) interpreted support enforcement to include actions seeking to increase the payor's child support obligations, and stated HRS has standing to participate in such actions.

The above decisions are in direct and clear conflict.

The Florida Supreme Court has the discretionary authority to accept jurisdiction when decisions of a district court of appeal expressly and directly conflict with a decision of another district court of appeal on the same question of law.

The present conflict between Thaysen and Wilkerson needs to be resolved in order to bring uniformity to this area of the law.

ARGUMENT

Article V, Sections 3(b)(3)-(5), Fla. Const, articulates certain areas of review by the Supreme Court of district court of appeal decisions. Exercise of such jurisdiction is not a matter of right, but is a matter within the sound discretion of the Supreme Court to accept or to reject a particular case. One such area of discretionary jurisdiction by the Supreme Court involves review of decisions of district courts of appeal which expressly or directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law. Article V, Section 3(b)(c), Fla. Const.

Jurisdiction pursuant to the above provision will exist only if:

1. The decision of the district court of appeal expressly or directly conflicts with a decision; and

2. The decision in conflict is a decision either from another district court of appeal or from the Supreme Court on the same question of law.

The test of jurisdiction under this provision is not whether the Supreme Court necessarily would have arrived at a conclusion different from that reached by the district court. Instead, the issue is whether the district court decision on its face so conflicts with an earlier decision of the Supreme Court or of another district court on the same point of law so as to create

an inconsistency or conflict among precedents. Kincaid v. World Insurance Co., 157 So.2d 517 (Fla. 1963).

> [J]urisdiction to review because of an alleged conflict requires a preliminary determination as to whether the Court of Appeals has announced a decision on a point of law which, if permitted to stand, would be out of harmony with a prior decision of this court or another Court of Appeal on the same point, thereby generating confusion and instability among the precedents.

Kyle v. Kyle, 139 So.2d 885, 887 (Fla. 1962). The Supreme Court went on to state that the conflict must be such that if both decisions were rendered by the same court, the later decision would have the effect of overruling the earlier decision. Id.

In the present case, there is an apparent conflict between the Third and Fifth District Courts of Appeal on the same issue of law. That issue is whether support enforcement as defined in Chapter 409, Florida Statutes, includes proceedings to increase the child support obligations of a payor, thereby conferring standing on the Florida Department of Health and Rehabilitative Services to participate in such a case.

In Wilkerson v. Coggin, 552 So.2d 348 (Fla. 5th DCA 1989), the Court stated that "support enforcement", as used in Section 409.2567, Florida Statutes, refers to the enforcement of a noncustodial parent's general obligation of support. Therefore, HRS has standing to proceed on behalf of a non-AFDC recipient and seek an increase of a child support obligation.

In Thaysen, the Third District Court of Appeal expressly and directly disagreed with Wilkerson. The Thaysen Court specifically stated that its decision is in conflict with Wilkerson.

The Third District Court of Appeal expressly and directly disagreed with the above statement in the present case.

The present case and the Wilkerson decision were both cases of first impression in their respective districts. They both set precedents as to the standing of HRS to participate as a party in child support modification actions.

The Florida Supreme Court has stated it will only accept conflict jurisdiction in "cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and . . . cases where there is a real and embarrassing conflict of opinion and authority." Ansin v. Ansin, 101 So.2d 808, 811 (Fla. 1958). Petitioner submits that such a conflict presently exists between the present decision and the Wilkerson decision, supra. In order to make case law uniform throughout the state, this Court should accept jurisdiction and resolve the issued raised.

WHEREFORE, this Honorable Court should exercise its discretionary jurisdiction in this Cause and resolve the existing conflict.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by U.S. Mail to **MELVIN A. RUBIN, ESQUIRE,** 2627 Biscayne Boulevard, Miami, Florida 33137 and **FRANK M. MARKS, ESQUIRE,** 141 N.E. 3rd Avenue, 10th Floor, Miami, Florida 33132, this 15th day of June, 1990.

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