

IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

FILED  
SID J. WHITE  
SEP 17 1990  
FLORIDA SUPREME COURT  
Deputy Clerk

LINDA EARLINE ALVAREZ,

Petitioner,  
vs.

CASE NO. 76,418  
2nd District Court Case No. 89-02898

BOARD OF TRUSTEES OF THE  
CITY PENSION FUND FOR  
FIREFIGHTERS AND POLICE  
OFFICERS IN THE CITY OF TAMPA,

Respondent.

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RESPONDENT'S ANSWER BRIEF

-----  
AN APPEAL FROM THE  
SECOND DISTRICT COURT  
OF APPEAL  
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STATEMENT OF THE CASE

Respondent does not believe that Petitioner's Statement of the Case needs to be clarified or corrected.

STATEMENT OF THE FACTS

Respondent believes that Petitioner's Statement of the Facts needs to be clarified in the following aspects.

Respondent indicates:

". . . Pursuant to § 61.1301, Fla. Stat., an income deduction order was entered on October 2, 1987, . . . The income deduction order was served upon respondent in May, 1988, directing respondent to deduct child support payments from Philip Alvarez's pension benefits he was receiving through respondent."

The Immediate Income Deduction Order (R 4) entered by Circuit Judge Peter J.T. Taylor on October 2, 1987, on its face does not indicate that it was being issued pursuant to § 61.1301, Fla. Stat.. Such Immediate Income Deduction Order, in part, indicates:

". . . such amounts as are required to meet Employee's obligation under this Court's Order, which ordered Employee to pay alimony or child support."

Respondent, having never been served with the Order Modifying Final Judgment of Dissolution of Marriage, is uncertain as to whether or not the Immediate Income Deduction Order was for alimony or child support, or both. However, such is immaterial for purposes of Respondent's argument.

As further clarification, the Immediate Income Deduction Order was first received by Respondent on May 31, 1988, and on June 9, 1988, Respondent filed their "Verified Motion to Dissolve Income Deduction Order Sent to the Board of Trustees of the Firefighters and Police Officers Pension Fund of the City of Tampa". (R 5-12).

The Circuit Court's "Order Denying Verified Motion to Dissolve Income Deduction Order Sent to the Board of Trustees of the Firefighters and Police Officers Pension Fund of the City of Tampa"

(R 13-16) is the most complete and accurate indication of the position of the Circuit Court. Likewise, the Opinion filed June 29, 1990, by the Second District Court of Appeal is the most complete and accurate indication of the position of the Second District Court of Appeal.

With these minor clarifications, Respondent has no objections to Petitioner's Statement of the Facts.

### SUMMARY OF ARGUMENT

Section 61.1301 does not implicitly repeal a special act which provides:

"No pension provided for herein shall be assignable or subject to garnishment for debt or other legal process."

"When a special act . . . and a general law conflict, the special act will prevail." Rowe vs. Pinellas Sports Authority, 461 So.2d 72 at 77 (Fla. 1984), and State ex rel Johnson vs. Vizzini, 227 So.2d 205 (Fla. 1969). Likewise, "[a] special act . . . takes precedence over a general act . . . when the two cannot be harmonized." Hillsboro Island House Condominium, Inc. vs. Town of Hillsboro Beach, 263 So. 2d 209 at 212 (Fla. 1972), and City of St. Petersburg vs. Carter, 39 So.2nd 804 (Fla. 1949).

Pursuant to § 11(a)(21), ART. III of the Florida Constitution, the Florida Legislature had the authority to prohibit by general law passed by a three-fifths (3/5) vote of the membership of each house any special law or general law of local application. However, the Florida Legislature, in enacting § 61.1301 or in subsequent amendments thereto, did not repeal or prohibit any special acts in conflict therewith. Therefore, the Florida Legislature did not "implicitly repeal" that provision of the special act providing that no pension of retired City of Tampa Firefighters or Police Officers shall be assignable or subject to garnishment for debt or other legal process.

There is nothing in the general acts which created, substantially rewrote, or amended § 61.1301 that indicate that any laws or parts of laws otherwise in conflict are repealed.



The enactment of § 61.1301 concerning income deduction orders was not a complete revision of the subject concerning pension benefits, or the assignability, garnishment, attachment, or other legal process of pension benefits.

As stated by the Second District Court of Appeal, "[a]lthough a special act may be repealed by a subsequent general act in some circumstances, legislative intent to repeal the original act must be clearly shown. . . . Section 61.1301, . . . does not address the exemption from garnishment of retirement or disability proceeds under the firemen's and policemen's funds or otherwise demonstrate legislative intent to repeal the special act."

Sections 61.046 and 61.1301 conflict with § 175.241 and 185.25, which are more specific statutes concerning the right to garnish or attach or by other legal process obtain pension benefits of municipal firefighters and municipal police officers, respectively. Sections 175.241 and 185.25 were neither explicitly or implicitly repealed by the amendments to Chapter 61. Therefore, it cannot be held that the legislative intent was to repeal a special act with similar provisions.

Although there may be "public policy" arguments for the garnishment of pension benefits for the payment of alimony and child support, neither the Board of Trustees nor the court can amend, modify or repeal the Special Act/Pension Contract.

## ARGUMENT

### POINT I

SECTION 61.1301, Fla. Stat., DID NOT "IMPLICITLY" REPEAL CHAPTER 21590, LAWS OF FLORIDA, SPECIAL ACTS OF 1941, OR CHAPTER 74-613, LAWS OF FLORIDA, SPECIAL ACTS OF 1974, REGARDING THE GARNISHMENT OF PENSION BENEFITS FOR THE PAYMENT OF CHILD SUPPORT OBLIGATIONS.

The Pension Contract/Pension Act "... is a special act of the Florida Legislature". Sections 61.046 and 61.1301, Fla. Stat., are general acts of the Florida Legislature. As stated by the Supreme Court of Florida in Rowe vs. Pinellas Sports Authority, 461 So.2d 72 at 77 (Fla. 1984):

"When a special act (such as the PSA charter) and a general law conflict, the special act will prevail. State ex rel Johnson vs. Vizzini, 227 So.2d 205 (Fla. 1969)".

Likewise, the Supreme Court of Florida in Hillsboro Island House Condominium Apartments, Inc. vs. Town of Hillsboro Beach, 263 So.2d 209 at 212 (Fla. 1972), stated:

"A special act (the Town Charter) takes precedence over a general act (Fla. Stat. Ch 169) when the two cannot be harmonized. City of St. Petersburg vs. Carter, 39 So.2d 804 (Fla. 1949)".

There is no language in Chapter 61, Fla. Stat., or specifically in § 61.046 and 61.1301, Fla. Stat., that any provisions thereof, to the extent there are conflicts, prevail over the provisions of existing law, special acts and local ordinances. Therefore, there is no provision in Chapter 61, Fla. Stat., to indicate that the Florida Legislature intended to repeal Section 18 of the Pension Act/Pension Contract.

To the extent that the Pension Act/Pension Contract is in

conflict with Chapter 61, Fla. Stat., the special act prevails. The maxim "generalalia specialibus non derogant" (general words do not derogant from special) applies. This maxim retains the effectiveness of a special act notwithstanding a subsequent general act on the same subject.

Pursuant to its authority under ART. III, § 11(a)(21), Fla. Const., the Florida Legislature, as part of Chapter 61, Fla. Stat., did not prohibit special laws or general laws of local application in conflict with the provisions of Chapter 61, Fla. Stat.

Paragraph (21) of § 11(a) of ART. III of the Florida Constitution was new to the 1968 Constitution. See Commentary by Talbot "Sandy" D'Alemberte to ART. III, § 11 of the Florida Constitution.

Section 11 of ART. III, in part, provides:

"(a) There shall be no special or general law of local application pertaining to:

.  
.  
.

(21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote."

According to the note to paragraph (21) of § 11(a) of ART. III, on twelve (12) occasions, the Florida Legislature has passed a general law by three-fifths (3/5) vote prohibiting or repealing special laws in conflict therewith. For example, § 112.67, Fla. Stat., provides:

"112.67 Special Acts Prohibited. - - Pursuant to s.11(a)(21) ART. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application in

conflict with the requirements of this part."

Section 112.67 is part of the "Florida Protection of Public Employee Retirement Benefits Act" found at § 112.60 -- 112.67, Fla. Stat.

As further example, § 121.191, Fla. Stat., which is part of the "Florida Retirement System Act", provides:

"121.191 Special Acts Prohibited. - - After July 1, 1972, there shall not be enacted any special act or general law of local application which proposes to amend, alter or contravene the provisions of any state-administered retirement system or any state-supported retirement system established by general law."

Although the 1968 Constitution gave the Florida Legislature the authority by general law to explicitly prohibit or repeal a special act, the Florida Legislature, in enacting § 61.1301, Fla. Stat., or subsequent amendments thereto, did not prohibit special laws in conflict therewith. In other words, the Florida Legislature did not prohibit or repeal the provisions of that special act that provides that no pension shall be assignable or subject to garnishment for debt or other legal process, or any similar provisions found in other special acts. Because of the Florida Legislature's failure to exercise its constitutional authority, it cannot be held that § 61.1301 implicitly repealed the special act.

Petitioner relies on and cites three (3) cases for the following proposition:

"It is settled that a general act does not repeal or modify an existing special act unless the general act is a complete revision of the whole subject or unless the two acts are so irreconcilable as to clearly demonstrate a legislative intention to repeal." Jackson vs. Consolidated Government

of City of Jacksonville, 225 So.2d 497 at 501 (Fla. 1969).  
(E.S.)

The three (3) cases cited by Petitioner are:

1. Jackson vs. Consolidated Government of City of Jacksonville, 225 So. 2d 497 at 501 (Fla.1969).
2. City of Miami vs. Kichinko, 22 So.2d 627 at 630 (Fla. 1945),  
and,
3. Langston vs. Lundsford, 165 So. 898 at 900 (Fla. 1936).

These three (3) cases precede the cases relied upon by Respondent, to-wit: Rowe vs. Pinellas Sports Authority, 461 So.2d 72 at 77 (Fla. 1984), and Hillsboro Island House Condominium Apartments, Inc. vs. Town of Hillsboro Beach, 263 So.2d 209 at 212 (Fla. 1972)., which make no exception to the rule that a special act takes precedence over a general act when the two cannot be harmonized or when the two conflict.

Furthermore, the amendments to Chapter 61, Fla. Stat., including § 61.1301, were not "a complete revision of the whole subject". As an example of a general act that is an overall revision or general restatement of the law on the same subject in which it is presumed that a special act has been superceded or repealed is Town of Palm Beach vs. Palm Beach Local 1866 of the International Association of Firefighters, 275 So.2d 247 (Fla. 1973). In that case, a special act (Chapter 70-1004) was passed authorizing firefighters employed by any municipality, fire district, port authority, or other governmental entity in Palm Beach County to organize and collectively bargain through an agent secured by them with respect to wages and working conditions. However, in 1972 the Legislature enacted a general law (Chapter 72-

275) which became § 447.20--447.35, Fla. Stat., and was known as the Firefighter's Bargaining Act. This general act provided that any full-time permanently employed classified member of any fire department or firefighting unit of any municipality, county, metropolitan government, or fire district shall have the right to bargain collectively.

Therefore, the Court held:

"Thus we have before us a general act that is such an overall revision and re-enactment that the Legislature must have intended for the latter general act to govern." (Town of Palm Beach supra at 249).

The special act dealt with collective bargaining for firefighters in Palm Beach County, and the general act dealt with collective bargaining for firefighters throughout the state, including Palm Beach County.

Therefore, by way of comparison, it cannot be held that the amendments to Chapter 61, Fla. Stat., concerning income deduction orders, were an overall revision of a special act relating to pension benefits.

Section 61.1301 only dealt with income deduction orders as it relates to the payment of alimony and child support, and did not deal with the assignability, garnishment or attachment of pension benefits for any other purposes. Therefore, § 61.1301 was not even an overall revision or general statement of the law on the subject of the assignability, garnishment, attachment, or other legal process of pension benefits.

In City of St. Petersburg vs. Siebold, 48 So.2d 291 (Fla. 1950), the Court stated that a general act may operate to repeal

repugnant local or special laws, though containing no general repealing clause, where the Legislature intended to repeal all conflicting local or special laws, is made plain by the terms and purposes of the general act. However, in that case, the general act in its title contained the following pertinent language:

"Repealing Chapter 21769, Laws of Florida, Acts of 1943, and all laws or parts of laws in conflict herewith". (Siebold supra at 293)

Likewise, in the body of the general act was found the following pertinent language:

". . . all laws or parts of laws otherwise in conflict herewith are hereby likewise repealed". (Siebold supra at 293)

There is nothing in the general acts which created, substantially rewrote, or amended § 61.1301, Fla. Stat., that indicate that the Chapter 21590, Laws of Florida, Special Acts of 1941, or Chapter 74-613, Laws of Florida, are repealed, or that any laws or parts of laws otherwise in conflict are likewise repealed. (See Chapters 84-110, 85-178, 86-220, 87-95, 88-176 and 89-183, Laws of Florida).

In sum, as stated by the Second District Court of Appeal in its Opinion filed on June 29, 1990:

"Section 61.1301, . . ., does not address the exemption from garnishment or retirement or disability proceeds under the firemen's and policemen's funds or otherwise demonstrate legislative intent to repeal the special act."

Sections 61.046 and 61.1301, Fla. Stat., also conflict with § 175.241 and 185.25, Fla. Stat., all of which are general acts of the Florida Legislature. Sections 175.241 and 185.25 provide:

" The pensions, annuities, or other benefits accrued or

accruing to any person under the provisions of this act and the accumulated contributions and the cash securities in the funds created under this act are hereby exempted from any state, county, or municipal tax and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable." (E.S.)

As stated by the Second District Court of Appeal in State vs. Billie, 497 So.2d 889 at 894 (Fla. 2d DCA 1986):

"It is a general rule of statutory construction that a more specific statute covering a particular subject is controlling over one covering the same subject in general terms. Kiesel vs. Graham, 338 So.2d 594 (Fla. 1st DCA 1980)".

Sections 175.241 and 185.25, Fla. Stat., and Section 18 of the Pension Act/Pension Contract are more specific statutes covering the right to garnish or attach or by other legal process obtain pension benefits of municipal firefighters and municipal police officers, respectively. Therefore, to the extent that they are in conflict, § 175.241 and 185.25, Fla. Stat., and Section 18 of the Pension Act/Pension Contract prevail over § 61.046 and 61.1301, Fla. Stat.

Because the amendments to Chapter 61, including those relating to income deduction orders, make no reference to § 175.241 or 185.25, it cannot be clearly shown that § 61.1301 was a complete revision of the whole subject of garnishment of pension benefits or intended to repeal all provisions in conflict therewith.

Finally, to the extent that § 61.046 and 61.1301, Fla. Stat., are in conflict with Section 18 of the Pension Contract/Pension Act, such sections of Chapter 61, Fla. Stat., are void as applied herein in that they impair the obligations of contract (the Pension Contract) in violation of ART. I, § 10, Fla. Const.



POINT II

THE COURT CANNOT AMEND, MODIFY OR REPEAL  
SECTION 18 OF THE PENSION ACT/PENSION CONTRACT  
BECAUSE OF THEIR PERSONAL PUBLIC POLICY BELIEFS

The Board of Trustees recognizes that there are "public policy" arguments which may support the garnishment of pension benefits for the payment of alimony and child support. However, the Board of Trustees is charged by law with the "general administration and responsibility for the proper operation of the pension system and for making effective the provisions of..." the pension Act/pension contract. Likewise, courts are not to substitute their social and economic beliefs for the judgment of the legislative bodies who are elected to pass laws. Kahn vs. Shevin, 416 U.S. 351, 40 L.Ed. 2d 189, 94 S.Ct. 1734. Additionally, courts are never permitted to strike down an Act of the legislature merely because it fails to square with their individual, social or economic theories on what they deem to be sound public policy. Barnes vs. B.K. Credit Services, Inc., 461 So.2d 217 (Fla. 1st DCA 1984).

Finally, the courts cannot use the machinery of construction to amend, modify, or repeal valid statutes. 49 Fla. Jur. 2d "Statutes" Section 110, page 146. The courts cannot amend, modify or repeal Section 18 of the Pension Act/Pension Contract.

In sum, Section 18 of the Pension Act/Pension Contract is a special act of the Florida Legislature. Since it cannot be clearly shown that the subsequent general act was intended to repeal the special act relating to the garnishment of pension benefits,

neither the Court nor the Board of Trustees can repeal the special act despite their personal, political, social or philosophical beliefs, or despite "public policy" arguments.

Finally, under the pension plan in question, firefighters and police officers can begin receiving longevity pension benefits as early as 46 years of age and receive disability benefits immediately upon disability regardless of age. The disability standard does not preclude them from obtaining other employment. Therefore, retired firefighters and police officers may have other income which would be subject to an income deduction order.

CONCLUSION

The Opinion filed June 29, 1990, by the Second District Court of Appeal should be affirmed and the question certified to the Florida Supreme Court should be answered in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the Respondent's Answer Brief have been furnished by regular U.S. Mail Hand delivery to the Clerk of the Supreme Court of the State of Florida, Supreme Court Building, Tallahassee, Florida, 32399; and a copy has also been furnished to Joseph R. Boyd, Esq. and William H. Branch, Esq., Boyd & Branch, P.A., 1407 Piedmont Drive East, P. O. Box 14267, Tallahassee, Florida 32317, and to Chriss Walker, Esq., Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Tallahassee, Florida, 32301, Attorneys for Petitioner, this 14th day of September, 1990.

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