

IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

**FILED**  
SID J. WHITE  
AUG 29 1990  
CLERK, SUPREME COURT  
By *[Signature]*  
Deputy Clerk

LINDA EARLINE ALVAREZ,

Petitioner,

vs.

CASE NO. 76,418

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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**PETITIONER'S INITIAL BRIEF**

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

On May 31, 1988, the Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa received "NOTICE TO EMPLOYER" and "YOUR RIGHTS, REMEDIES AND DUTIES REGARDING THE INCOME DEDUCTION ORDER." (R-57-59)

June 9, 1988, the Board of Trustees filed "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". A hearing was held on said Verified Motion on June 21, 1988. (R, 5-12). One year thereafter, on June 21, 1989, the Circuit Court entered "ORDER DENYING VERIFIED MOTION TO DISMISS 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).

On June 27, 1989, the Board of Trustees filed "Board of Trustees' Motion for Rehearing." (R 17-20). After the rehearing held on September 25, 1989, the Court entered "ORDER DENYING BOARD OF TRUSTEES' MOTION FOR REHEARING" on October 5, 1989 (R-52).

The Board of Trustees filed its "NOTICE OF APPEAL" on October 17, 1989, to the Second District Court of Appeal. (R-53-54).

On June 24, 1990, the Second District Court of Appeal filed its opinion reversing the circuit court, certifying the

following question to the Florida Supreme Court:

Does Section 61.1301, which mandates the entry of income deduction orders for child support pursuant to a trial court order, implicitly repeal the provisions of a special act of the legislature prohibiting such garnishment of pension benefits for debt or other legal process?

Appellee/petitioner timely invoked the discretionary jurisdiction of this Court.

## STATEMENT OF THE FACTS

The City Pension Fund for Firefighters and Police Officers in the City of Tampa was initially established by Chapter 21590 Laws of Florida, Special Acts of 1941. Section 20 of the Special Act provides:

"Section 20. No pension provided for herein shall be assignable or subject to garnishment for debt or other legal process."

The pension contract/pension plan was changed by Ordinance #4746-A, enacted September 30, 1969, and was codified in Section 28-17 of the City of Tampa Code.

Thereafter, the Florida Legislature enacted Chapter 74-618 Laws of Florida, Section 3 of which provides:

"Section 3. The City of Tampa Firefighters and Police Officers Pension Contract as prescribed by Section 28-17 of the City of Tampa Code [Ordinance #4746-A, enacted September 30, 1969] pursuant to Chapter 31310, Laws of Florida, 1955, is in all other respects approved, ratified, validated and confirmed."

Therefore, the pension contract/pension plan is pursuant to a Special Act of the Florida Legislature.

The City of Tampa Firefighters and Police Officers Pension Contract, in pertinent parts, provides:

"SECTION 5. The general administration are responsibility for the proper operation of the pension system and for making effective the provisions of this Act are hereby vested in a Board consisting of nine (9) persons,. . . (E.S.)

SECTION 18. No pension provided for herein shall be assignable or subject to garnishment for debt or for other legal process."

On October 1, 1969, Phillip M. Alvarez, a firefighter with the City of Tampa, entered into a "City of Tampa Firefighters and Police Officers Pension Contract." (R 9-12). On April 18, 1973, the Board of Trustees granted Phillip M. Alvarez a line of duty disability pension pursuant to Section 7(B) of said Pension Contract. Said Pension Contract contains language identical to Section 5 and Section 18 quoted above.

Phillip and Linda Alvarez were later divorced. Pursuant to section 61.1301, Florida Statutes, an income deduction order was entered on October 2, 1987, contemporaneously with an order modifying the final judgment of dissolution of marriage. (R-13) The income deduction order was served upon respondent in May, 1988, directing respondent to deduct child support payments from Phillip Alvarez's pension benefits he was receiving through respondent. (R-13)

In June, 1988, respondent moved to dissolve the income deduction order on the ground that special act 74-613 prohibited the garnishment of the pension benefits for debt or other legal process, and that the income deduction order violated section 175.241, Florida Statutes (1987). (R-5-12)

The circuit court recognized the conflict between the

special act, section 175.241 and section 61.1301, Florida Statutes. However, the circuit court determined from a reading of section 61.1301, that the wording of section 61.1301 illustrated the intent of the Florida Legislature to override any exemption statute as to child support and alimony orders. (R-16) The circuit court found respondent subject to the income deduction order.

After respondent's appeal to the Second District Court of Appeal, the circuit court was reversed. The Second District agreed with the circuit court that as a matter of public policy section 61.1301 should generally apply to disability or retirement pensions. However, in the present case, the special act, ch. 74-613, prevailed over the general act of chapter 61. The Second District Court determined that the pension benefits were exempt and the trial court erred in failing to dissolve the income deduction order.



## SUMMARY OF ARGUMENT

The special act exempting pension benefits from garnishment and legal process conflicts with the later enacted section 61.1301, Florida Statutes, which directs that child support obligations payments be deducted directly from such retirement and pension benefits. Section 61.1301 implicitly repeals the special act.

A general act repeals or modifies an existing special act if the general act is a complete revision of the whole subject matter. Jackson v. Consolidated Government of the City of Jacksonville, 225 So.2d 497 (Fla. 1969). Section 61.1301 was such a revision.

A special act is implicitly repealed by a general act "where the two acts are so repugnant and irreconcilable as to indicate a legislative intent that one should repeal the other." City of Miami v. Kinchinko, 22 So.2d 627, 630 (Fla. 1945). In the present case the special act and section 61.1301 are repugnant and irreconcilable. In construing section 61.1301 to effect the legislative intent that children be supported by their parents, section 61.1301 implicitly repeals the special act.

The Second District Court of Appeal's certified question should be answered affirmatively.

## ARGUMENT

### SECTION 61.1301, FLORIDA STATUTES, IMPLICITLY REPEALS CHAPTER 21590, LAWS OF FLORIDA, SPECIAL ACTS OF 1941, REGARDING THE GARNISHMENT OF PENSION BENEFITS FOR THE PAYMENT OF CHILD SUPPORT OBLIGATIONS.

The City Pension Fund for Firefighters and Police Officers in the City of Tampa was initially established by chapter 21590, Laws of Florida, Special Acts of 1941. Section 20 of the Special Act provides:

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

Chapter 74-613, Laws of Florida, was subsequently enacted.

Section 3 of the Chapter provides:

The City of Tampa Firefighters and Police Officers Pension Contract as prescribed by Section 28-17 of the City of Tampa Code [Ordinance No. 4746-A, enacted September 30, 1969] pursuant to chapter 31310 Laws of Florida, 1955, is in all other respects approved, ratified, and confirmed.

It is clear that the pension fund was ratified by a special act of the legislature. Section 18 of the pension contract states:

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

This language tracks the language of section 20 of chapter 21590, Laws of Florida, Special Acts of 1941.

Section 61.1301, Florida Statutes, was enacted subsequent to

all the foregoing statutes. Chapter 84-110, Section 3 Laws of Florida (1984). In pertinent part the statute reads:

In addition and together with any such child support or modification thereof. . . the court shall issue an income deduction order which directs the employer or former employer, or other person or agency providing or administering income to the person obligated for payment of child support, as specified in S. 61.181(3)(b)3, to deduct from all moneys due and payable to such person, the entitlement to which moneys is based upon, but not limited to, remuneration for present on past employment. . . retirement benefits, pensions. . . such amounts as are required to meet the obligation as provided in S.61.181(3)(b).

Chapter 84-110, Section 4, Laws of Florida, set forth the procedure for entry, service and administration of income deduction orders entered pursuant to section 61.1301. It too directed deduction "from all moneys due and payable to the responsible party, the entitlement to which moneys is based upon, but not limited to, remuneration for present or past employment . . . retirement benefits, pensions. . . Section 61.181(3)(b)3, Florida Statutes (1984).

Sections 61.1301 and 61.181 were subsequently amended, such that language regarding income deduction orders is presently set forth solely in section 61.1301.

The definition of income as used in chapter 61 was created by chapter 86-220, Section 113, Laws of Florida (1986) and reads:

(4) "Income" means any form of payment to an individual, regardless of source, including, but not limited to: . . . disability benefits, annuity and retirement benefits, pensions. . . and any other payments, made by any person, private entity, federal or state government, or any unit of local government.

Section 61.046(4), Florida Statutes (1989)

The income deduction statute in its present form provides in part:

(a) Upon entry of an order establishing, enforcing or modifying alimony or a child support obligation, the court shall enter a separate order for income deduction. . .

(b) The income deduction order shall:

1. Direct a payor to deduct from all income due and payable to an obligor the amount required by the court to meet the obligor's support obligation.

Section 61.1301(1)(a) and (b), Florida Statutes (1989).

The "obligor" is the person responsible for making support payments. Section 61.046(9), Florida Statutes (1989). The "payor" is defined as "an employer or former employer or any other person or agency providing or administering income to the obligor." Section 61.046(10), Florida Statutes (1989).

Pursuant to the scheme set forth in the foregoing sections from chapter 61, the Board, as payor, is required to deduct from income due Phillip Alvarez, as obligor, amounts sufficient to meet the child support obligation amount listed in the income deduction order. However, respondent argues the Board is exempt by special act of the legislature. Ch. 74-613. Petitioner

contends chapter 61 clearly evinces the legislature's intent that section 61.1301 implicitly repeals the provisions of any special act exempting pension benefits from garnishment on legal process for child support obligations.

The income deductions statute enacted pursuant to chapter 84-110, section 3, Laws of Florida (1984), clearly applies on its face to retirement benefits and pensions. The statute contains no exemption. Section 61.1301(1), (a) and (b) as amended continue to direct deduction from all income due an obligor. Income includes disability benefits, annuity and retirement benefits and pensions. Section 61.046(4), Florida Statutes. There are no exemptions in section 61.130, as amended. Clearly, the income deduction statute as originally enacted and subsequently amended conflicts with the exemption in the special act relied upon by respondent. Petitioner contends that section 61.1301 implicitly repeals the special act.

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. . .

Jackson v. Consolidated Government of the City of Jacksonville,  
225 So.2d 497, 501 (Fla. 1969).

When section 61.1301 was enacted in 1984 it was a complete revision of the law in regard to the manner in which child support obligations are enforced. The obvious purpose of the

statute was and is to ensure that child support obligations are enforced. Being a complete revision of the law in this area, section 61.1301 repeals the special act exempting certain income from garnishment or legal process.

A special act may also be impliedly repealed "where the two acts are so repugnant and irreconcilable as to indicate a legislative intent that the one should repeal the other." City of Miami v. Kinchinko, 22 So.2d 627, 630 (Fla. 1945), citing Langston v. Lundsford, 122 Fla. 813, 165 So.898 (1936). Petitioner contends that the special act which would exempt Phillip Alvarez's income from the income deduction is clearly repugnant and irreconcilable with section 61.1301, which states such pension and retirement benefits are subject to income deduction orders. The two simply cannot be reconciled. Because of the irreconcilable differences, an implicit legislative intent to repeal special acts granting exemptions is evinced through the enactment of section 61.1301. Accordingly the Second District Court's certified question should be answered affirmatively.

In its argument below, respondent strongly relied on Buzzard v. Buzzard, 412 So.2d 388 (Fla. 2d DCA 1982) for its position that section 61.1301 did not implicitly repeal the special act. However, petitioner contends that the circuit court's interpretation of Buzzard is correct.

In Buzzard, the district court held that by virtue of section 121.131, Florida Statutes, a former husband's state retirement benefits were exempt against a former wife's attempt to secure alimony payments from those benefits. The former wife sought to enforce payment of an obligation through a continuing writ of garnishment on the former husband's retirement funds. She argued section 61.12, Florida Statutes, allowed such garnishment and was an exception to the section 121.131 exemption. The district court determined, however, that section 61.12 exception overrode the exemption solely with regard to the salary of a public employee. Pension benefits did not constitute salary for purposes of the exception.

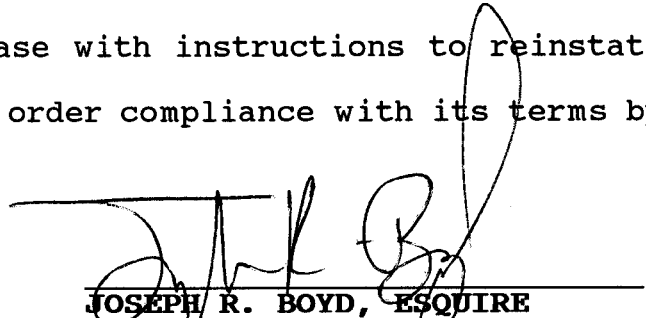
As the circuit court in the present action recognized, Buzzard is distinguishable to the present case. Whereas Buzzard was limited to an exception solely for salary, section 61.1301 by definition is applicable to retirement benefits and pensions. As originally enacted an income deduction order could be directed toward "retirement benefits" and "pensions". Chapter 84-110, section 3, Laws of Florida (1984). By subsequent amendment, section 61.1301 directs deduction "from all income due and payable to an obligor." Section 61.1301(1)(b)1, Florida Statutes (1989). Income is defined as "any form of payment to an individual, regardless of source, including, but not limited to; . . . annuity and retirement benefits, pensions. . ."

Section 61.046(4), Florida Statutes (1989). (Emphasis supplied).  
In light of the differences in the statutes which were the  
subject of Buzzard and those which are the subject of the present  
case, Buzzard is distinguishable on its facts and not applicable  
to the present action.



**CONCLUSION**

Petitioner respectfully requests this Honorable court answer the Second District Court of Appeal's certified question in the affirmative and remand this case with instructions to reinstate the income deduction order and order compliance with its terms by respondent.



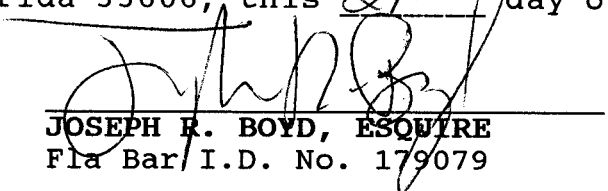
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to **JAMES B. LOPER, ESQUIRE**, 612 Horatio Street, Tampa, Florida 33606, this 29<sup>th</sup> day of August, 1990.

  
\_\_\_\_\_  
**JOSEPH R. BOYD, ESQUIRE**  
Fla Bar I.D. No. 179079