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IN THE SUPREME COURT OF FLORIDA

DAVID L. HEILMAN,

Petitioner,

vs. Case Number: 78,502

BARBARA ANN HEILMAN,

Respondent.
_____/

RESPONDENT'S BRIEF ON THE MERITS

Raymond M. Masciarella II, Esquire
Florida Bar Number 441716
840 U.S. One, Suite 340
North Palm Beach, FL 33408
(407) 627-4448

Attorney for Respondent.

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Preliminary Statement

In this brief, David L. Heilman will be referred to as the Petitioner and Barbara Ann Heilman will be referred to as the Respondent. References to the Petitioner's appendix shall be made by the word "Exhibit" and the appropriate letter.

Statement of Facts and Case

A final judgment was entered dissolving the marriage of the parties and requiring the Petitioner to pay to the Respondent the sum of $1,000.00 per month in child support. The Respondent filed a verified motion for contempt alleging that the Petitioner was in arrears in the payment of child support in the amount of $15,000.00. (Exhibit C). Since Rule 1.491 of the Florida Rules of Civil Procedure has been invoked by the Chief Judge of the Fifteenth Judicial Circuit (Exhibit A), the matter was referred to a hearing officer to conduct the appropriate proceeding and make findings of fact and recommendations of law.

At the hearing before the hearing officer, the Petitioner objected to the entire proceeding claiming that consent of the parties was required before the hearing officer was empowered to conduct such proceedings. The hearing officer overruled the Petitioner's objection and he declined to participate any further. (Exhibit E). After considering the findings and recommendations of the hearing officer, the Circuit Court entered an order adjudicating the Petitioner in contempt of court and specifically overruled his objection regarding the consent issue. (Exhibit B). The Circuit Court specifically found that consent

of the parties was not required in a proceeding pursuant to Rule 1.491.

The Petitioner sought review of the Circuit Court's order by incorrectly filing an emergency petition for writ of prohibition which the Fourth District Court of Appeal treated as a non-final appeal pursuant to Rule 9.130(a)(4) of the Florida Rules of Appellate Procedure. (Exhibit F). The Fourth District Court of Appeal affirmed the Circuit Court's order, but certified the following question of great public importance to this court:

> Is the consent of both parties required before a child support enforcement issue may be referred to a hearing officer under Rule 1.491, Florida Rules of Civil Procedure.

Summary of Argument

Relying on the committee notes to Rule 1.491, the Petitioner contends that the hearing officer herein was without jurisdiction to enforce the child support provisions of a final judgment of dissolution of marriage pursuant to Rule 1.491 of the Florida Rules of Civil Procedure without the consent of the parties. This contention is without merit because no where in the body of the Rule is there a provision requiring such consent.

Argument

Rule 1.491 does not require the consent of the parties before a hearing officer can make a determination to enforce child support provisions of a final judgment in a non-Title IV-D proceeding.

The Petitioner contends that a hearing officer under Rule 1.491 is without power to make findings of fact and

recommendations of law to the Circuit Court to enforce child support provisions of a final judgment without the consent of the parties. Based upon that argument, the Petitioner contends that the Circuit Court erred in entering an order of contempt for failure to pay child support.

In support of his argument, the Petitioner relies upon Subsection (b) of the Ad Hoc Committee Notes to Rule 1.491 which provides in pertinent part:

> It is the position of the representative of the Family Law Section of the Florida Bar that reference of non-Title IV-D proceedings should require the consent of the parties as is required by RCP 1.490 (c).

However, the Petitioner cites no authority holding that our courts are bound by the recommendation of a committee and concedes that committee notes are not binding upon our courts. (Petitioner's Brief, page 5). In effect, the Petitioner claims that since Rule 1.490 (c) requires the consent of the parties, the same is true for proceedings conducted pursuant to Rule 1.491. This argument is without merit because, unlike Rule 1.490, Rule 1.491 was adopted solely for the purpose of enforcing child support orders in non-Title IV-D proceedings. There is no provision in that rule requiring the consent of the parties. The consent requirement in Rule 1.490 should not be read into Rule 1.491 because these rules were adopted for distinctly different reasons. Rule 1.490 was adopted to permit Masters to make findings of fact and recommendations of law in a wide variety of cases involving a wide variety of issues. On the other hand, Rule 1.491 was adopted solely for the purpose of permitting

Circuit Courts to expedite the enforcement of child support orders. As the Committee Notes to Rule 1.491 indicate, the terminology "hearing officer" was utilized rather than "Master" to avoid confusion or conflict with Rule 1.490. This shows that the intention behind the adoption of Rule 1.491 was not merely to supplement Rule 1.490, but rather to provide effective case management of non-Title IV-D support proceedings. The adoption of Rule 1.490 was clearly the result of the large number of child support enforcement proceedings that have inundated our circuit courts. To require the consent of the parties in such proceedings would only twart and hinder the process. To permit the party who is violating a child support order to control the proceedings by withholding his or her consent would in effect allow the fox to guard the henhouse. This was clearly not the intention behind the adoption of this most important rule.

In Oliveri v. Oliveri, 541 So. 2d 174 (Fla. 4th DCA 1989), the Fourth District Court of Appeal was presented with a similar situation as here. There, a hearing officer, pursuant to Rule 1.491, made determinations and recommendations with regards to child support, temporary alimony, and temporary attorney's fees which were adopted and ratified by the Circuit Court. The court held that while the issues of temporary alimony and attorney's fees could not be determined without the consent of the parties, such consent was not required to decide the issue of child support. This holding is consistent with Rule 1.491 because there is no provision in that rule requiring the consent of the parties. In the present case, the only issue decided by the

hearing officer was the enforcement of child support and the trial court did not err in entering its order of contempt adopting the findings and recommendations of the hearing officer.

The Petitioner's contention that the decisions in Slattery v. Slattery, 548 So. 2d 1377 (Fla. 4th DCA 1988) and Rosenberg v. Rosenberg, 566 So. 2d 950 (Fla. 4th DCA 1990) have created confusion and conflict with the holding of Oliveri is without merit. The facts of Slattery and Rosenberg are clearly distinguishable from those in Oliceri because the former involved proceedings under Rule 1.490, not 1.491.

Conclusion

In light of the foregoing, it is respectfully requested that this Honorable Court dismiss the petition seeking to revoke this Court's discretionary jurisdiction or, in the alternative, affirm the descision of the Fourth District Court of Appeal.

Respectfully submitted,

RAYMOND M. MASCIARELLA II, PA

By: _____

Raymond M. Masciarella II, Esquire
Florida Bar Number 441716
840 U.S. One, Suite 340
North Palm Beach, FL 33408
(407) 627-4448

Attorney for Respondent.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to STEPHEN L. COOK, ESQUIRE, 311 W. Indiantown Road,#4, Jupiter, Florida 33458 by U.S. Mail this 1 day of October, 1991.

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Raymond M. Masciarella II, Esquire