047 w/app

SUPREME COURT OF FLORIDA

DAVID L. HEILMAN	**	
Petitioner,	**	CASE NO: 78,502
vs.	**	DISTRICT COURT OF APPEAL, 4th DISTRICT- NO: 91-1508
BARBARA ANN HEILMAN,	**	
Respondent.	**	

/

PETITIONER'S RESPONSE BRIEF ON CERTIFIED QUESTION FROM THE FOURTH DISTRICT COURT OF APPEAL

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CERTIFIED QUESTION ON APPEAL

IS THE CONSENT OF BOTH PARTIES REQUIRED BEFORE CHILD SUPPORT ENFORCEMENT ISSUE MAY BE REFERRED TO A HEARING OFFICER UNDER RULE 1.491 FLORIDA RULES OF CIVIL PROCEDURE?

ARGUMENT

POINT ONE

Petitioner agrees with Respondent on one point- **Rule 1.491** is a **most important Rule**- Page 4 (Respondent Reply Brief).

Respondent has clearly misstated the reason that **Rule 1.491** was proposed by The Supreme Court of Florida. It was not as respondent claims "adopted solely for the purpose of enforcing child support orders in **Non-Title IV-D proceedings**" Page 3 (Respondent Reply Brief). Rather, the rule was adopted to **assure** compliance with the Social Security Act 42 USC 651 et seq.

Further, as this Court held in **Florida Rule of Civil Procedure 1.491 (child support enforcement)** 521 So.2d 118 (Fla 1988)

> " In the interim the state trial courts have taken great care to assure that the existing court system is complying with minimum time standards for hearings to enforce child support orders. The existing system is the one of choice and should be utilized. Nevertheless, it is appropriate to have an alternate system available to **assure** compliance with time standards in cases under Title IV-D of the Social Security Act(42 U.S.C. 651 et seq.)
>
> With these thoughts in mind, and noting that implementation is subject to the decision of the chief justice, **we approve the committee's recommended rule and adopt it, to be effective at 12:00 a.m., March 1, 1988. The rule and the ad hoc committee's notes are attached hereto.**
>
> **It is so ordered."**

Petitioners case is a **Non-Title IV-D** and is **a Secondary reason Rule 1.491 was adopted.** The Florida Supreme Court has **consistently held when adopting other Rules of Procedure** that the Committee Notes are supplemental only and are not part of the Rule. This has been stated in Re **Rules of Civil Procedure** 187 So.2d 596 (Fla 1966) **Rules of Civil Procedure** 391 So.2d 165 ,166 (Fla 1980)

Petitioner has consistently stated that Rule 1.491 is an **exception** to the other **rules of civil procedure,** as this Court, by failing to state that the Committee Notes in **Rule 1.491** were **not adopted** has by implication, **adopted the Ad-Hoc Committee Note.**

Further support for the proposition that the Ad-Hoc Committee Notes were adopted by implication is found in **Florida Rules of Civil Procedure (amendment to rules 1.490 and 1.611)** 503 So.2d 894

> " Pursuant to this legislative mandate, representatives from the Circuit Court Judge's Conference developed proposed amendments to rules 1.490 and 1.611 that provided for the appointment of special masters to deal with child support matters. These representatives submitted their proposals to this Court for our consideration. This Court subsequently solicited reactions and suggestions regarding these proposed amendments. The information we have thereby obtained form groups and individuals who deal with child support matters makes it clear that the proposed amendments, in their present form neither fulfill our legislative mandate nor serve the best interests of the people of Florida. Accordingly, we decline to adopt the proposed amendments to rules 1.490 or 1.611 as submitted. **Instead, we shall appoint by administrative order an ad hoc committee to study, draft, and propose a child support enforcement rule to this Court. This committee shall be required to submit a rule for our consideration no later than September 1, 1987.**

It is so ordered."

It would be implausible for The Florida Supreme Court to first **appoint** the Ad-Hoc Committee to **study, draft and propose** a child support enforcement rule and then **disregard** the Ad-Hoc Committee Notes.

POINT TWO

There can be no question that confusion exists between **Rule 1.491** and **Rule 1.490(c)** because the **Hearing Officers** and the **General Masters** have the same designation in Broward County. Many Non-Final Appeals have been taken to the Fourth District Court of Appeal regarding **General Masters** and **Rule 1.490(c)** from Broward County.

The problem in these cases from Broward County appears to be the May 12, 1988 Seventeenth Judicial Circuit Administrative Order of Chief Judge Miette F. Burnstein, 2.03.18 which states:

> "Pursuant to Administrative Order of the Chief Justice dated April 8, 1988, a copy of which is attached hereto, and pursuant to Florida Rules of Civil Procedure 1.491(b), it is ORDERED that for the purposes of considering proceedings for the establishment, enforcement or modification of support, both in those cases in which the party seeking support is receiving services pursuant to the Title IV-D of the Social Security Act and in those cases in which the party seeking support is not receiving such services, all **presently designated General Masters are designated hearing officers"**

The cases of **Slattery v. Slattery**, 528 So.2d 1377 (Fla 4th DCA 1988); **Rosenberg v. Rosenberg**, 566 So.2d 950 (Fla 4th DCA 1990); **Taylor v. Taylor**, 569 So.2d 1389 (Fla 4th DCA 1990); **Serge v. Robertson**, 573 So.2d 1072 (Fla 4th DCA 1991); **Lunger v. Hinckley Jr**, 572 So.2d 1042 (Fla 4th DCA 1991) all involve

reversals because the Trial Court referred a contempt issue to a **General Master** presumably under **Rule 1.490(c)**.

In any event, this Court should clarify the situation and issue an opinion which states that **Rules 1.490(c)** and **Rule 1.491** stand for the same proposition in Non-Title IV-D cases. **A Hearing Officer, Rule 1.491** or **General Master, Rule 1.490(c)**, may not **hear or make any recommendations regarding contempt, child support, or attorney fees** when an objection is filed by one of the parties.

CONCLUSION

The Trial Court erred when it overruled Petitioner's objection to the Family Hearing Officer presiding in a contempt hearing. The Committee note in **Rule 1.491** (subsection b) was adopted by implication by the Florida Supreme Court and any reference to either a hearing officer or master which is objected to by one of the parties requires that the general master or hearing officer decline to hear the case.

Chief Judge Daniel T. Hurley did not specifically adopt the non-Title IV-D cases, such as was done in Broward County by Chief Judge Miette F. Burnstein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following Barbara A. Heilman 1147 Rainwood Circle Palm Beach Gardens, FL 33410, Raymond Masciarella 340 U.S.1 Third Floor Law Office, North Palm Beach, FL 33408 this 14 day of October 1991.

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