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THE SUPREME COURT OF FLORIDA
Case No. 78,636

JUNE MILLER,

Petitioner,

vs. :

MICHAEL J. SCHOU, :

Respondent. :

Third District Case No. 91-1025

INITIAL BRIEF OF PETITIONER, JUNE MILLER

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PRELIMINARY STATEMENT

This is a petition filed by Petitioner/Former Wife, JUNE MILLER ("MILLER") to review an Opinion of the Third District Court of Appeal. Respondent/Former Husband, MICHAEL J. SCHOU, will be referred to as "SCHOU". Jurisdiction was accepted based upon an express and direct conflict between the Opinion below and opinions of other District Courts of Appeal and this Court, pursuant to Article V, §3(b)(3), Fla. Const. and Florida Rules of Appellate Procedure 9.030(2)(A)(iv).

References to the record will be by the symbol ("R.__"). All emphasis is ours unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

MILLER and SCHOU were divorced from each other on September 26, 1983. (R.90). They had one child of the marriage, a daughter, Dana, who was then three (3) years old and is now eleven (11) years old. (R.90).

At the time of the divorce, SCHOU was a medical resident earning only a modest income. (R.90). The Property Settlement Agreement executed by MILLER and SCHOU and incorporated into the Final Judgment of Dissolution of Marriage provided that MILLER was to have primary physical custody of the parties' daughter, Dana, (R.122) and SCHOU was to pay her $500.00 per month in child support. (R.125).

Shortly after the dissolution, SCHOU began his own private practice as an anesthesiologist. (R.15). MILLER has not obtained and did not seek an increase in child support since the divorce until on or about March, 1990 when she filed her Supplemental Petition for Modification out of which these proceedings arose, (R.15).

In her Supplemental Petition, MILLER alleged a substantial change in circumstances to support an increase in child support, to wit: increased needs of the child due to schooling; extracurricular activities and the like; SCHOU's substantial (but unspecified) increase in income; and the impact of inflation which has dramatically reduced the real value of the 1983 award of $500.00 per month. (R.15,16). MILLER did not request a specific amount of increased child support in her Supplemental Petition[1].

SCHOU counterpetitioned for a change in custody (R.134) which was denied, after

[1] In an abundance of caution, MILLER has since amended her Petition to include a specific claim for increased child support based upon SCHOU's "good fortune" alone.

trial. He did not appeal.

In June, 1990 MILLER served a Request for Production of Documents on **SCHOU,** seeking full and complete financial information in connection with her pending application for an increase in child support. (R.21–24). SCHOU responded by filing filed an unsworn Motion for Protective Order. (R.25). In it he claimed, through counsel, that based upon MILLER's financial affidavit, it "appears that she has a need of child support in the approximate amount of $3,000.00" and that while he "vigorously disagrees" that she needs that amount "he has the financial ability to pay that amount of child support if such is the award of this Court." (R.25). **SCHOU** therefore claimed that his financial condition was no longer an issue in the case and sought protection from any and all financial discovery.

Thereafter, the trial court held a hearing on **SCHOU's** Motion for Protective Order and MILLER's Motion to Compel. MILLER argued that she was entitled to financial discovery, not only on the issue of the child's "needs", but also because Dana was entitled to share in the good fortune of her father, which could not be measured without the discovery. The trial court agreed and ordered **SCHOU** to provide "a current and complete financial affidavit in the form and content approved by the Florida Supreme Court" but deferred ruling on MILLER's Motion to Compel "other financial document production." **(R.12).**

SCHOU then filed a Petition for Common Law Writ of Certiorari in the Third District Court of Appeal of Florida seeking to quash the order compelling production of his financial affidavit solely because of the stipulation contained in his Motion for Protective

Order. (R.1). MILLER responded in opposition arguing, in part, that SCHOU cannot be permitted to avoid financial disclosure by confession of ability to pay, where an increase in child support is requested, in part, based upon the good fortune of SCHOU. (R.88).

The Third District sided with SCHOU and quashed the order compelling him to provide a financial affidavit to MILLER. *Schou v. Miller,* 583 So.2d 805 (Fla. 3d DCA 1991). (R.189). The Third District reasoned that SCHOU's stipulated ability to satisfy any increase in Dana's needs sought by MILLER eliminated his personal finances as an issue in the case. The Third District also denied MILLER's application for appellate attorney's fees.

This Petition followed.

SUMMARY OF THE ARGUMENT

The Third District erred in concluding that the trial court departed from essential requirements of law in requiring **SCHOU, as** noncustodial parent of the minor child, Dana, to supply her mother, **MILLER,** the custodial parent, with a financial affidavit in connection with child support modification proceedings simply because SCHOU stipulated to his ability to pay any perceived increase in the child's needs.

All District Courts of Appeal of Florida have held that child support may be upwardly modified if ***either*** the needs of a child increase ***or*** there is a substantial increase in the noncustodial parent's income. In so holding, all Districts have embraced the concept that a child is entitled to share in the good fortune of ***both*** parents. The Opinion below, which precluded MILLER from obtaining any financial discovery from **SCHOU,** wittingly or not, emasculated the right of **SCHOU's** child to share in his good fortune by denying **MILLER** the necessary proof to establish it.

Other courts, including this Court, have expressed displeasure with the filing of stipulations to avoid financial discovery in dissolution and related cases. An end run around discovery is particularly abhorrent on these facts because **SCHOU's** financial condition is central and indispensable to the analysis involved with **MILLER's** motion for increased child support. If enhanced good fortune is to survive as a basis for increasing child support, financial discovery must never be abridged or short circuited by stipulation. In fact, the right to child support ***belongs*** to ***the child*** and a court has inherent authority to modify child support, regardless of any contract between the parties. If a father may not, by contract, impair his obligation to support his minor children, we submit he cannot

do so by unilateral stipulation either.

In addition to the foregoing reasons, the trial court correctly required SCHOU to supply a financial affidavit in accordance with Florida Rule of Civil Procedure 1.611(a) and Florida Statute §61.30(12) (1991). The Third District's suggestion that the Statute may be unconstitutional to the extent it conflicts with the Rule is erroneous.

First, the Statute and the Rule do not conflict. Although not identical, both require SCHOU to supply MILLER with a financial affidavit at least ten (10) days before the trial. The fact that the Statute requires less detailed information is of no import here.

Second, the Legislature has power to enact procedural statutes, especially for the implementation of substantive rights, which power is limited only in the event the proposed Statute conflicts with an existing Rule of Procedure adopted by this Court. Since §61.30(12) was enacted to implement the policy to set minimum guidelines for child support payments based upon the combined net income of the obligor and obligee parent and since the Statute cannot be implemented without financial disclosure, the Statute is not unconstitutional because it does not conflict with the Rule.

Finally, the Third District seemed to imply in its Opinion that its prior decisions have construed Rule 1.611(a) to apply only where a noncustodial parent does not stipulate to his ability to pay the increase in child support. Ergo, to the extent the Statute would override that judicially created exception to the Rule, it would be unconstitutional. Based upon the foregoing arguments that such stipulations are against public policy and should never preclude financial discovery, the Statute will not be in conflict with the Third District's interpretation of the Rule if this Court holds that a stipulation of financial ability

cannot preclude financial discovery.

The Opinion of the Third District should be quashed and the case remanded with instructions that SCHOU file a financial affidavit and full financial discovery may be permitted, subject to the control of the trial court, in accordance with the Florida Rules of Civil Procedure.

ARGUMENT

I. THE NONCUSTODIAL PARENT SHOULD NOT BE ALLOWED TO AVOID FINANCIAL DISCOVERY IN A POST DISSOLUTION PROCEEDING TO INCREASE CHILD SUPPORT BY MAKING AN UNSWORN ACKNOWLEDGEMENT SUGGESTING ABILITY TO PAY

Florida Statutes Section 61.13(1)(a)(1991) provides in pertinent part as follows:

> In a proceeding for dissolution of marriage, the court may at any time order either or both parents who owe a duty of support to a child to pay support as from the circumstances of the parties and the nature of the case is equitable. The court initially entering an order requiring one or both parents to make child support payments shall have continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments when the modification is found necessary by the court in the best interests of the child, when the child reaches majority, or when there is a substantial change in the Circumstances of the parties.

The five District Courts of Appeal of Florida are unanimous in interpreting a "substantial change in circumstances" necessary to modify a child support award under this Section as either an increase in the child's needs *or* a substantial increase in the noncustodial parents income. In so holding, all Districts have embraced the concept that a child is entitled to share in the good fortune of both parents. First District: ***Hosseini v. Hosseini,*** 564 So.2d 548 (Fla. 1st DCA 1990); Second District: ***Smith v.*** Smith, 474 So.2d 1212 (Fla. 2d DCA 1985), rev. ***den.,*** 486 So.2d 597 (1986); Third District: Creel ***v.*** Creel,

568 So.2d 942 (Fla. 3d DCA 1990); Fourth District: ***Asrani v. Asrani,*** 591 So.2d 283 (Fla. 4th DCA 1991); Fifth District: ***Wanstall v.*** Wanstall, 427 So.2d 353 (Fla. 5th DCA 1983)[2,3]. This Court has apparently not directly addressed this issue of good fortune. However, we believe that the unanimous conclusions of the District Courts of Appeal are consistent with natural and Florida law and policy. See *eg.* Florida Statutes Section 61.30 (Supp.1992) which was recently amended by the Legislature to allow for child support guidelines alone to provide a basis for a substantial change in circumstances upon which a modification of an existing child support order may be granted.

The issue here is whether the opinion of the Third District below, which precluded MILLER from obtaining any discovery into SCHOU's finances, wittingly or not, emasculated the right of SCHOU's child to share in his good fortune by denying MILLER (as a ***cestui qui*** trustee) the necessary proof to establish it[4]. The problem in denying

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[2] This is intended to be a representative, not an exhaustive list of District Court ***cases*** on the subject.

[3] See also Florida Statutes Section 61.14(1)(1991) which allows for a modification of child support if the "circumstances or the financial ability of ***either party*** changes" and provides that the equitable award should be based upon "changed circumstances or the financial ability of the parties ***or*** the child." In addition, *Bedell v. Bedell,* 583 So.2d 1005 (Fla. 1991) recently interpreted Section 61.14(1) to allow, in extraordinary cases, an increase in alimony based ***solely*** upon a substantial change in circumstances of the payor spouse.

[4] We note that multiple Third District cases have recognized the rights of children to share in either parent's good fortune. These cases allow an increase in child support based solely upon a substantial increase in the noncustodial parent's income. ***See Creel; Schottenstein v, Schottenstein,*** 384 So.2d 933 (Fla. 3d DCA), ***rev.*** den., 392 So.2d 1378 (1980); ***Meltzer*** v. ***Meltzer, 356*** So.2d 1263 (Fla. 3d DCA 1978), *cert.* den., 370 So.2d 460 (1979); ***Sherman v. Sherman,*** 279 So.2d ***887*** (Fla. 3d DCA), cert ***dismissed,*** 282 So.2d ***877*** (1973). However, at least one (1) Third District case has mysteriously denied an increase in child support based solely upon a substantial increase in the noncustodial parent's income by creating a rule that ***"there must*** also ***be an increase in the [child's] needs*** which may be met only by a change in the existing judicial award. Young ***v.*** Young, 456 So.2d 1282, 1289 (Fla. 3d DCA 1984); ***See also Schufflebarger v. Schufflebarger,*** 460 So.2d 982 (Fla. 3d DCA 1984). The Third District has never resolved the intradistrict conflict between Young and the other above-referenced Third District cases which are consonant with the positions of all other Districts. However, it was ***Young*** that was relied upon in the Third District opinion below, which was, coincidentally, authored by the author of Young.

MILLER the financial discovery she requested was eloquently identified by the trial court, which ordered SCHOU to provide a financial affidavit:

> If a child is entitled to the good fortune of a parent and if we never know what that good fortune is, how do we know what the child is entitled to? (R.50).

Without acknowledging the need for MILLER to have access to proof necessary to establish SCHOU's good fortune – or even whether his child was entitled to share in his good fortune – the Third District simply chose to eliminate from consideration any information concerning his financial condition solely on the strength of a non-verified unilateral stipulation contained in his Motion for Protective Order, signed only by his attorney, that he could afford to pay the increase in child support that he thought MILLER was requesting. Although not referenced in the opinion below, the Third District has adopted a rule of law that if a noncustodial parent stipulates to his/her ability to pay an increase in child support "a court can properly assume that his [/her] earnings and assets have substantially increased." *Schufflebarger v. Schufflebarger,* 460 So.2d 982,984 (Fla. 3d DCA 1984); *Schottenstein v. Schottenstein, 384* So.2d *933* (Fla. 3d DCA), *rev.* denied, 392 So.2d 1378 (1980). We can only speculate whether that presumption played a role in the decision below[5]. Regardless, the Third District held that requiring SCHOU to supply a financial affidavit in view of his stipulation, "represented a departure from the essential requirements of law."

Former Justice Boyd, in his concurrence in *Jones* v. *State,* 477 So.2d 566, 569

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[5] We will argue herein that such a presumption is inadequate for purposes of establishing the mount of "good fortune."

(Fla. 1985), defined "departure from essential requirements of law" as "far beyond legal error." "It means the inherent irregularity, an abuse of judicial power, an act of judicial tyranny perpetuated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error." Given that definition, it is obvious that the Third District's conclusion, that the order of the trial court was such a departure, was itself erroneous.

> A. The trial court did *not* depart from essential requirements of law in ordering SCHOU to file a financial affidavit, notwithstanding his stipulation, since his financial status is central to the issue of child support modification.

In *Orlowitz v. Orlowitz,* 199 So.2d 97 (Fla. 1967), this Court quashed a decision of the Third District which upheld a protective order in a divorce case prohibiting a wife from inquiring into any financial matters of her husband because of his stipulation that he could "answer to any reasonable order for costs, fees or other allowances." This Court held that the husband admitted nothing by his stipulation and that "the financial ability of the parties is one of the more important elements that enter into the determination of the amount of alimony and other allowances." *Id.* at 98.

There, as here, the husband/father argued that the stipulation eliminated all issues from consideration except "need". In *Orlowitz,* however, this Court held the husband's finances relevant to issues of his residency and claims of adultery. Here, the increased "needs" of the child is only one of several factors essential to a full, fair and complete

assessment of the amount of increase in support to which the child is entitled. Need and good fortune are disjunctive, not conjunctive criteria in the analysis. An increase in ***either alone*** may support an increase in the amount of child support. ***Hosseini; Smith;*** Creel; ***Asrani; Wanstall.***

Orlowitz also favorably cited ***Parker v.*** Parker, 182 So.2d 498 (Fla. 4th **DCA 1966)** where, despite an admission by the husband that he was worth five million dollars and was well able to satisfy the needs of the wife and child, the Fourth District affirmed the denial of his motion for protective order and held as follows:

> We must say, based upon our understanding of the Rules and philosophy behind them, that we do not look with favor upon the husband's position in not wishing to reveal any of the details of his financial position and his effort to bridle the dependents' discovery rights by substituting his secondary non-verifiable conclusion in lieu of primary detailed facts. The adversary and the court are entitled to the whole factual picture to the end that an independent, complete understanding and evaluation may be had.

182 So.2d at **500.**

Judicial disdain for stipulations which undermine the full and fair disclosure of financial information in these, archetypical equitable proceedings, has continued to the present day. In *Eyster v. Eyster,* 503 So.2d 340 (Fla. 1st DCA), rev. den., **513** So.2d 1061 (1987), the First District held in an alimony modification proceeding that the trial court did not depart from essential requirements of law in requiring a former husband to answer interrogatories concerning his income, notwithstanding his stipulation of ability to pay a reasonable amount of alimony determined by the court. *Eyster* strongly supports

our position because, as pointed out by its dissent, the only issue arguably remaining there – in view of the stipulation – was the former wife's need. Here, unlike a former spouse, a child is entitled to share in the ex-husband/father's good fortune and so a child support modification proceeding necessarily always embraces issues beyond need.

The First District reaffirmed its policy of presenting "the whole factual picture" in modification proceedings when it held in *Walton v. Walton,* 537 So.2d 658 (Fla. 1st DCA), *rev.* den., 545 So.2d 1370 (1989) that the trial court erred in unduly limiting discovery into the former husband's finances notwithstanding that he filed a financial affidavit.

Recently, this Court noted in Bedell *v.* Bedell, 583 So.2d 1005, 1006, n.2 (Fla. 1991), a case involving a petition to increase alimony where the former husband acknowledged his ability to pay any reasonable increase, as follows:

> By virtue of the wording of this concession, the husband was able to prevent the wife from discovering his current financial status, while at the same time preserving his right to appeal from an order which he deemed unreasonable. However, because this issue was not raised, we do not pass on the propriety of this or any concession which enables a spouse to preclude an inquiry into his or her actual financial circumstances.

Bedell, in interpreting Section 61.14(1), held that a substantial change in the financial ability of the payor spouse may, by itself in extraordinary cases, be sufficient to justify an increase in alimony. The above footnote suggests that this Court remains concerned with the lack of full financial disclosure in contested family law matters, consistent with its earlier pronouncements in *Orlowitz.*

Not only is the opinion below in conflict with the above cases which favor a

presentation of "the whole factual picture," but it effectively emasculates a substantive right of a child by preventing the introduction of an essential factual component in child support modification analysis; the extent of the noncustodial parent's good fortune.

In discussing the concept of "good fortune", the Fifth District in Wanstallstated as follows:

> A child is entitled to enjoy the mode of living that the parents set for themselves. [cite omitted]. The child's ***standard of living may not be*** relegated ***to*** the ***standard set by*** the ***parties during the marriage.*** It is entitled to share the good fortune of both parties.

427 So.2d at 355.

If the opinion below is allowed to stand, SCHOU's daughter, Dana, would be unable to share in his good fortune because she could not demonstrate exactly what it is. All she could use to show SCHOU's increased good fortune is the presumption created by his stipulation, i.e., that his income has increased substantially'. See ***Schufflebarger; Schottenstein.*** We submit that such an amorphous presumption would not aid any court in awarding an increase in child support based solely upon the non-custodial parent's good fortune. MILLER would thus realistically only be able to obtain an increase in child support based upon the same general criteria as for alimony; need[7].

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[6] "Substantial" is defined in Webster's Ninth New Collegiate Dictionary as encompassing everything from "not imaginary or illusory," "ample to satisfy and nourish," "possessed of means," to "considerable in quantity". It is hardly a term of precise calculation and can be correctly employed to define a broad spectrum of increases in income. It is almost as non-descript and chameleon-like as "nice". The presumption can therefore be interpreted to allow for just about any result, which may or may not bear any relationship to the true facts and would likely only be interpreted to supply a child with his or her needs,

[7] We recognize that *Bedell* now authorizes an increase in alimony based solely upon the substantial increase in the payor's income, but such was to be the rare exception, not the rule.

And "need" would be based upon the child's current life style, not the lifestyle her father has chosen to set for himself. Dana would wrongfully be relegated to the standard of living set at the time of her parents' divorce or her mother, MILLER, would be forced to deplete capital assets to provide her with the standard of living to which she is entitled. SCHOU will have thus effectively "divorced" himself, financially, from his daughter.

Some may question, as did the author of the Third District opinion at oral argument below, whether any child is entitled to a Ferrari or Rolls Royce simply because his parents can afford it. Some may also express concern that the custodial parent will derivatively and unjustly benefit from the child's right to share in the enhanced good fortune of the noncustodial parent. We submit that these and other similar dilemmas are not relevant to this Petition. Such decisions are properly remanded to the sound discretion (not to be abused) of the trial judge.

The issue here involves whether it is appropriate for the trial judge to make such a decision ***without*** information which is, on its face, indispensable and essential to a thorough analysis. The answer is obvious. If enhanced "good fortune" is to survive as a basis alone for increasing child support, full financial discovery must never be abridged or short circuited by disingenuous devices cleverly designed to frustrate the search for total equity and truth. This is especially so because the right to child support belongs to the child, ***Thompson v. Korupp, 440*** So.2d 68 (Fla. 1st DCA 1983) and "[t]he authority to modify child support ***regardless of any contract between the parties,*** is inherent in a court's authority." ***Bernstein v. Bernstein,*** 498 So.2d 1270 (Fla. 4th DCA 1986)(en banc).

Moreover, if a father may not, ***by*** contract, obviate or impair his obligation to

support his minor children, ***Lee*** v. ***Lee, 26*** So.2d ***177,*** 179 (Fla. 1946), we submit that he cannot do so by unilateral stipulation either. The trial court did not depart from essential requirements of law in ordering **SCHOU** to supply **MILLER** with a financial affidavit. In ***fact, it should have ordered SCHOU to produce the requested documents as well.***

> i. An established Rule of Civil Procedure and a Florida Statute expressly required SCHOU to file a financial affidavit, without exception.

Not only was the order of the trial court requiring **SCHOU** to file **a** financial affidavit consistent with ***Orlowitz,*** public policy, equity and basic discovery principles of relevancy and materiality, but it is also consonant with the requirements of Florida Rules of Civil Procedure 1.611(a) and Florida Statutes Section 61.30(12)(1991). Rule 1.611(a) provides as follows:

> (a) Financial Statement. Every application for temporary alimony, child support, attorney's fees or suit money shall be accompanied by an affidavit specifying the party's financial circumstances. The affidavit shall be served at the same time that notice of hearing on the application is served. The opposing party shall make an affidavit about his financial circumstances and shall serve it before or at the hearing. If ***no application for a temporary award is made, the parties shall make and serve the affidavits at least 10 days before the trial if permanent alimony, child support, attorneys' fees or suit money is sought.*** If a party is not represented by an attorney, sufficient time will be allowed the party to prepare the required affidavit at hearing or trial, The affidavits shall be in substantially the form approved by the

> Supreme Court. On the request of either party the affidavits and any other financial information may be sealed.

Nothing in this Rule prohibited the trial court from ordering SCHOU to serve and file his financial affidavit. The Rule only provides a deadline for filing and does not mandate that filing be delayed until 10 days before trial,

Section 61.30(12) provides as follows:

> Every petition for child support or for modification of child support shall be accompanied by an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The affidavit shall be served at the same time that the petition is served. The respondent shall make an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The respondent shall Include his affidavit with the answer to the petition.

This Section is part of a comprehensive substantive and procedural statute designed to protect and foster the financial rights and thereby the health and welfare of children. It similarly requires SCHOU to file a financial affidavit, without exception.

The Third District below suggested that if Section 61.30(12) conflicted with Rule 1.611(a), as previously interpreted by that court in Braverman *v.* Braverman, 549 So.2d 750 (Fla. 3d DCA 1989) and Young *v.* Young, 456 So.2d 1282 (Fla. 3d DCA 1984), it was an unconstitutional intrusion into this Court's rule making authority. Presumably, the Third District was interpreting its Braverman and Young opinions as holding that the requirements of Rule 1.611(a) may be waived by a unilateral stipulation of ability to pay,

notwithstanding that the Rule was not mentioned in either opinion.

Our response is threefold: **(1)** The statute does not conflict with the Rule on this issue; (2) Section 61.30(12) was enacted as part of and for the purpose of implementing a substantive/procedural statute designed to protect the rights of children and was not an unconstitutional intrusion into the rule making power of this Court; and **(3)** The Third District's "implied" interpretation of Rule 1.611(a) in *Braverman* and Young was erroneous.

1. *The* ***Statute and Rule do not conflict***

The only difference between the Statute and Rule relevant to this case is that the Rule would require SCHOU and MILLER to "make and serve the [financial] affidavit at least ten (10) days before the trial" while the Statute requires SCHOU to file his affidavit "with the answer to the petition". ***Both mandate*** that SCHOU file a financial affidavit. Since the Statute requires SCHOU to file a financial affidavit within the time frame specified in the Rule, they are not in conflict.[8]

2. The Statute is not an unconstitutional intrusion into the rule-making power of this court

This Court has repeatedly and recently held that a statute should "be construed to effectuate the express legislative intent and all doubts as to the validity of any statute should be resolved in favor of its constitutionality." *Lepai v. Milton, 595* So.2d 12, 14 (Fla. 1992)(see also cases cited therein). Where a statute has substantive and procedural

[8] **The Statute arguably only requires financial information related to income while the Rule requires additional information related to assets and liabilities. This difference is not material to our argument, especially since the Rule requires more detailed and comprehensive information.**

aspects which may be severed from each other, the procedural aspects are ineffectual only to the extent that they are inconsistent with rules of court. ***Id. See also The Florida Bar Re: Amendment to Rules of Civil Procedure, Rule 1.442*** (offer of judgment), 550 So.2d 442, 443 (Fla. 1989). ***See also Salvador v. Fennelly, 593*** So.2d 1091 (Fla. 4th **DCA 1992); *Williams v. First Union National Bank of Florida,* 591** So.2d **1137,** 1139 (Fla. 4th DCA 1992) ("the limitation upon the legislature enacting procedural law is not absolute. Rather, it is prohibited only in the event the proposed statute conflicts with an existing rule of procedure adopted by the Supreme Court.")

In this case, Section 61.30(12) was enacted to implement the stated public policy of Florida to set ***minimum*** guidelines for child support payments based upon the ***combined net income*** of the obligor and obligee parent. The Statute cannot be implemented without the requirement that both parties file financial affidavits. This is particularly important to the facts of this case now that the legislature has just expanded application of the guidelines to ***all*** cases, regardless of combined net income[9]. We can think of few policies more worthy of legislatively enacted procedures for their implementation than the policy to ensure that children are financially cared for. Since the Statute does not conflict with the Rule, the procedural aspects of Section 61.30(12) are constitutional.

3. The Third District's "implied" interpretation of Rule 1.611(a) is erroneous if this Court adopts our central thesis that stipulations in lieu of discovery are against public policy

The Third District opinion suggests that the Statute may be unconstitutional

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[9] **Previously, the minimum guidelines did not apply to parents with a combined net income in excess of $100,800.00 per year.**

because it conflicts with that court's prior ***interpretation*** of Rule 1.611(a). We surmise that the "interpretation" to which the Third District referred was that the requirements of the Rule can be avoided by a stipulation of ability to pay. If this Court agrees with our central thesis in this brief that such stipulations are inconsistent with *Orlowitz,* public policy, equity and basic discovery principles of relevancy and materiality, the Third District's interpretation of the Rule would be erroneous. Therefore, the Statute will not be in conflict with the Third District's interpretation of the Rule if this Court holds that stipulation of financial ability cannot preclude financial discovery.

CONCLUSION

The Opinion of the Third District should be quashed and the case remanded with instructions that SCHOU file a financial affidavit and full financial discovery may be permitted subject to the control of the trial court in accordance with the Florida Rules of Civil Procedure.

Respectfully submitted,

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By _____
ANDREW S. BERMAN

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this 20 day of July, 1992 to Paul Louis, Esq., Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A., 1125 Alfred I. DuPont Bldg., Miami, FL 33131 and Lyndall Lambert, Esq., Barwick, Dillian & Lambert, P.A., attorneys for Respondent, SCHOU, 9636 N.E. 2nd Avenue, Miami Shores, FL 33138 and Deborah Marks, Esq., counsel for Amicus Curiae, The Family Law Section of The Florida Bar, 12555 Biscayne Blvd., STE 933, North Miami, FL 33181.

By _____
ANDREW S. BERMAN