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OCT 29 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,
o/b/o A [REDACTED] S [REDACTED]

Petitioner,

va .

CASE NO. 78,837

WILLIAM PRIVETTE,

Respondent.

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court
of Appeal, Second District
State of .

✓ ~~JOSEPH~~ R. BOYD, ESQUIRE
WILLIAM H. BRANCH, ESQUIRE
BOYD E BRANCH, P.A.
1407 Piedmont Drive East
Tallahassee, Florida 32312
(904) 386-2171

and

CHRISS WALKER, ESQUIRE
DEPARTMENT OF WEALTH AND
REHABILITATIVE SERVICES
1317 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-9900

ATTORNEYB FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

A paternity action was brought by the Department of Health and Rehabilitative Services on behalf of the mother, A. S., against the respondent, William Privette. HRS filed a request for the entry of an order requiring respondent to submit to a blood test for the purposes of determining a probability of paternity. The trial court granted the motion for the paternity test.

Respondent filed a petition for writ of certiorari claiming that the trial court's order constituted an departure from the essential requirements of law.

On August 9, 1991, the Second District Court of Appeal granted respondent's petition for writ of certiorari, and quashed the circuit court's order requiring the blood test. The district court held that "before ordering HLA or similarly intrusive testing in a contested paternity action, a threshold showing that the complaint is brought in good faith and is likely to be supported by reliable evidence. . . the trial court should also determine whether the child's interest will be adversely affected by allowing a party to circumvent that presumption."

Rehearing was denied on September 20, 1991. Petitioner's notice to invoke the discretionary jurisdiction of this court was timely filed on October 18, 1991.

SUMMARY OF ARGUMENT

In this case, the district court of appeal held the

respondent had standing to raise the presumption of legitimacy in avoidance of the paternity claim. The decision of the district court cannot be reconciled with the previous decision of Pitcairn v. Vowell, 580 So.2d 219 (Fla. 1st DCA 1991), wherein the court stated, "Furthermore, it is our view that a putative father does not have standing to raise the presumption of legitimacy in avoidance of the potential ordering of support for the child." Id at 222. Thus, the petitioner contends that the decision of the district court expressly and directly conflicts with a decision of another district court of appeal on the same issue of law.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court of another district court of appeal on the same point of law. Art. V, Sec. 3(b)(3) Fla.Const.; Fla.R.App.P. 9.030(a)(2)(A)(iv).

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN PITCAIRN V. VOWELL, 580 SO.2D 219 (FLA. 1ST DCA 1991).

Article V, Sections 3(b)-(5), Fla. Const., articulates certain areas of review by the Supreme Court of district court of appeal decisions. Exercise of such jurisdiction is not a matter of right, but is a matter within the sound discretion of the

Supreme Court to accept or reject a particular case for review. One such area of discretionary jurisdiction by the Supreme Court involves review of decisions of district courts of appeal which expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Article V, Section 3(b)(3), Fla. Const.

The test of jurisdiction under this provision is not whether the Supreme Court necessarily would have arrived at a conclusion different from that reached by the district court. Instead, the issue is whether the district court decision on its face so conflicts with an earlier decision of the Supreme Court or of another district court on the same point of law so as to create an inconsistency or conflict among precedents. Kincaid v. World Insurance Co., 157 So.2d 517 (Fla. 1963).

[J]urisdiction to review because of an alleged conflict requires a preliminary determination as to whether the Court of Appeals has announced a decision on a point of law which, if permitted to stand, would be out of harmony with a prior decision of this court or another Court of Appeal on the same point, thereby generating confusion and instability among the precedents.

Kyle v. Kyle, 139 So.2d 885, 887 (Fla. 1962).

In the present case, there is a conflict between the First and Second District Courts of Appeal on the same issue of law. That issue is whether a putative father in a paternity action has standing to raise the presumption of legitimacy as a defense.

In Pitcairn v. Vowell, 580 So.2d 219, 222 (Fla. 1st DCA

1991, the First District Court stated, "Further, it is our view that a putative father does not have standing to raise the presumption of legitimacy in avoidance of the potential ordering of support for the child."

In Privette v. Department of Health and Rehabilitative Services, ___So.2d ___, 16 F.L.W. 2107 (Fla. 2nd DCA 1991), the Second District Court expressly and directly disagreed with the majority decision in Pitcairn. The Second District Court states:

The facts of this case are remarkably similar to those which recently divided our sister court in Pitcairn v. Vowell [citation omitted]. Were we to follow the majority's reasoning in that case our inquiry would proceed no farther . . . However, we believe the better view regarding standing is expressed in the dissenting opinion . . .

[We conclude] that Privette does have standing to challenge the order requiring blood testing . . .

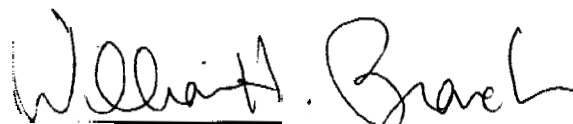
Privette, at page 2107.

This Court has stated it will only accept conflict jurisdiction in "cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and . . . cases where there is a real and embarrassing conflict of opinion and authority. Ansin v. Ansin, 101 So.2d 808, 811 (Fla. 1958). Petitioner submits that such a conflict presently exists between the Privette and the Pitcairn decisions. In order to make case law uniform throughout the state, this Court should accept jurisdiction and resolve the

issue raised.

CONCLUSION

Petitioner respectfully requests this Honorable Court exercise its discretionary jurisdiction and resolve the existing conflict.



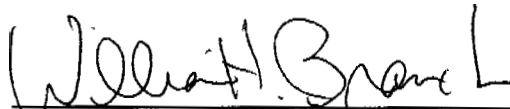
JOSEPH R. BOYD, ESQUIRE
WILLIAM H. BRANCH, ESQUIRE
BOYD & BRANCH, P.A.
1407 Piedmont Drive East
Tallahassee, Florida 32312
(904) 386-2171

and

CHRISS WALKER, ESQUIRE
Department of Health and
Rehabilitative Services
1317 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-9900

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to DANIEL A. DAVID, ESQUIRE, First Florida Bank Building, 1800 Second Street, Suite 918, Sarasota, Florida, 34236, and CHARLES L. CARLTON, ESQUIRE, Carlton & Carlton, P.A., 3120 Lakeland Hills Boulevard, Lakeland, Florida, 33805, this 20th day of October, 1991.



WILLIAM H. BRANCH
Fla. Bar No. 401552

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