A 11-4-92 047

IN THE SUPREME COURT OF FLORIDA

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

Petitioner/Plaintiff

Case No. 78,837
DCA No. 91-00536

vs.

WILLIAM PRIVETTE

Respondent/Defendant

PETITIONER'S REPLY BRIEF

On Review from the District Court of Appeal, Second District, State Of Florida

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

ATTORNEYS FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner, State of Florida, Department of Health and Rehabilitative Services, will be referred to herein as HRS.

A. S. will be referred to as the mother.

Respondent, William Privette, will be referred to herein as respondent.

ARGUMENT I.

A PUTATIVE FATHER DOES NOT HAVE STANDING IN A PATERNITY ACTION TO RAISE THE PRESUMPTION OF LEGITIMACY.

Respondent sets the tone of his argument on the first page of his reply brief when he states:

> A. S. has no interest in this case. The case was instigated by HRS. HRS instituted this action with one of its preprinted forms, churned out in vast multitudes, typed in A. Sease's name, and presented it to her for her signature to get the ball rolling.

The word instigate is defined as follows: "To stimulate or goad to an action, especially a bad action; one of its synonyms is "abet". Black's *Law* Dictionary, 4th Edition Revised. Black's Law Dictionary further defines abet as "[t]o encourage, incite, or set another on to commit a crime. This word is always applied to aiding the commission of a crime." Id.

With his opening paragraphs, respondent seeks to change the focus of this appeal from the substance of the important issues before this court, to an indictment of the Department Of Health and Rehabilitative Services. At page 6 of his brief, respondent further engages in his condescending and offensive attacks on HRS personnel. Respondent refers to HRS workers as "HRS mandarins". (Respondent's Answer Brief, page 6) The issues to be resolved by this court are important issues that will effect many men, women, and, of course, children. This Court, and the child support enforcement program employees of the Department of Health and

Rehabilitative Services deserve better than the unfounded and spurious statements in respondent's brief attacking HRS, and implicitly, HRS counsel.

Respondent's focus upon HRS incorrectly presumes that resolution of the issues only will effect those mothers who are reliant upon the State of Florida for their support of their children, often because the father has avoided his child support obligation. What respondent fails to discuss is that HRS's services are available to all persons who are in need of establishing or enforcing an obligation to pay child support, whether that parent is receiving State financial assistance. Thaysen v. Thaysen, 583 So.2d 663 (Fla. 1991).

Respondent's implicit characterization of A. S. as a welfare mother who has no interest in seeking what is best for her child, is not only an insult to A. S., but is an insult to all of the women, and, yes, men, whether on welfare or not, who rely upon HRS for assistance in collecting child support payments for a recalcitrant parent.

It is important to look simply beyond the style of the paternity action, and look at the paternity complaint. The complaint clearly reflects that A. S. executed the complaint under oath. A. S. specifically alleged that she and respondent engaged in sexual intercourse during the month of December, 1988, she became pregnant as a result of the sexual relations, and gave birth to B S.. To claim A. S. has no interest in this case is simply without record basis.

In the opening pages of his answer brief, respondent not only seeks to shift focus from the important issues, he leaps to conclusions that are not supported by the record. For instance, respondent states:

> The only reason this case is being appealed, indeed, the only reason that it was ever filed in the first place, is because HRS furnished child support money to A. S. for her minor child, B. S.. HRS has no interest in A. S. and B. S. other than using them as a vehicle to recover monies expended. HRS paid these monies, and is now attempting to recoup them. Nothing more and nothing less.

Respondent's Answer Brief, page 2.

The cynicism expounded by respondent in the foregoing statement is not likely shared by the hundreds of tireless, overworked, and dedicated HRS employees who view their work in Florida's Child Support Enforcement Program as making the difference in whether a child eats a proper meal, or has decent clothes to wear to school. Again, it is an unfair, unjustified, and certainly, irrelevant portrait respondent attempts to paint.

However, it is the following statement in which respondent expresses his true feelings regarding the children of "welfare mothers", and, in particular, of B. S., the child who is the real party in interest in this matter. Respondent states:

> Thus, HRS' fixated financial focus induces a hollow ring to all of its arguments in its brief. The fact is that whether or not William Privette is ultimately compelled to submit to a Human Lerbocyte (sic) Antigen test as a result of this court's decision, B. S. will still live with her mother and A. S. will still receive money for her

support, assuming she qualifies under HRS guidelines.

The bottom of line of respondent's argument is apparent. It condones and supports the continuation of mother's and children on Florida's welfare program. As long a3 "A. S. will still receive money for her support, assuming she qualifies under HRS guidelines," respondent is satisfied with the status quo, and believes this court and the people of the State of Florida should also be so satisfied. However, the point is more than simply support. It is requiring parents to take responsibility for the support of their children, and not that obligation to the State, and ultimately the citizens of Florida. Respondent's position has no concern for the dignity of the child, nor for other important concerns.

As this court noted in Gammon v. Cobb, 335 So.2d 261 (Fla. 1976), the real party in interest in a paternity action is the minor child. It is the child's best interests which are paramount. In addition to entitling a child to financial support, paternity establishment is an essential element of a child's eligibility for many public and private benefits stemming from the father-child relationship. for instance, in cases in which the father has been employed and has contributed to Social Security, the child is entitled to receive benefits through the Social Security system until the age of eighteen in the event of the father's death, disability, or retirement during the child's minority. Non-marital children may be eligible for dependent

benefits under worker's compensation if the father is inured on the job. HRS admits that there are important financial concerns which drive the initiation and prosecution of paternity cases. However, these concerns, effect all children in paternity actions, not just those in actions in which HRS is a party.

Furthermore, contrary to respondent's attempt to argue otherwise, the issues raised by this appeal involve more than money.

> Critical rights and consequences result from a valid judgment establishing paternity that affect not only the parties to the action, but also the minor child, that child's children, and other persons. . . We do not view this action as if it were simply a claim between private parties to enforce a monetary obligation because these are often substantial but then unknown collateral consequences that will obviously flow from any judgment establishing the fact of paternity. For example, the **fact of paternity should be reliably established because the minor child's parental medical history might become important or even critical in the medical treatment of the child and his or her offspring.** Rights of inheritance are affected. In some instances even citizenship status may be affected by a determination of paternity. Undoubtedly, there are other collateral consequences that might result from a judgment establishing paternity.

Locklear v. Sampson, 478 So.2d 1113 (Fla. 1st DCA 1985).

It is without argument in the child's best medical interests to know the identity of her father. HRS addressed this point in depth in its initial brief. Respondent has in effect chosen to ignore this crucial aspect of a proper determination of paternity. Instead, respondent seeks to focus solely on the

financial aspects of this issue. This points out that it is really respondent who is solely concerned with the financial repercussions of a finding of paternity.

Respondent uses another tactic in his argument rather than directly addressing the issues raised by HRS. He constantly refers to the paternity action as one in which HRS seeks to "bastardize" the minor child. At no time does the Second District Court in the Privette opinion use this term. No longer is this term used in Florida law. The paternity statute was amended in 1975 to delete the term "bastard" from the statute. Chapter 75-166, Laws of Florida. The use of this phrase is nothing more than a subtle technique to inject innuendo and stigma into an area in which Florida has made progressive strides over the past two decades. It does not do justice to the mother, daughter, or HRS to frame the issue in such an inflammatory manner. Contrary to respondent's assertion that HRS'primary goal seems to be to pin the label of "bastard" upon the minor child, HRS, and the child's mother, seek to insure that minor child knows who her father is. Respondent never addresses this important issue. Instead, respondent betrays his true concerns when he states, "There will be no damage to the child in this case if the decision of the lower court here is upheld - HRS will continue to send the support." (Respondent's Answer Brief, page 10) In other words, leave the welfare child and mother as dependents of the State. Do not seek to establish paternity and

assist them in possibly achieving a better life. Respondent is indignant that HRS is seeking to "bastardize" a child However, respondent apparently is not concerned with the possible loss of dignity a minor child may experience as one who is totally dependent on the State for her means of survival. The minor child certainly deserves better, and HRS through its statutory obligations seeks to achieve this.

Respondent states that he is a "stranger" to A. S 's marriage. In light of the allegations of A. S. under oath that respondent engaged in sexual relations with her while she was married to another man, and those relations resulted in the birth of a child, respondent's claim that he is a "stranger" is hollow. The thrust of respondent's entire argument is that if a male is going to engage in sexual intercourse outside the marriage relationship, he is better to do so with a woman who is married. That male can father a child under those circumstances, and raise the legitimacy presumption to avoid his obligations. This is not the purpose of the legitimacy presumption. However, it is the effect if respondent's argument is adopted, and the Second District Court's decision is not reversed.

Respondent does not seek to raise the presumption for the purpose of furthering the best interests of the minor child. He raises the presumption as an obstacle to the determination of truth. By raising the presumption, respondent effectively shifts the burden of proving any defense to the mother, and requires her to prove the negative of his defense. This is not the purpose of

an affirmative defense. Certainly affirmative defenses have not been used in the past to prohibit what has generally been accepted methods of discovery; as the HLA blood test is in paternity actions.

HRS does agree with respondent when he states, "The consequences of what HRS seeks from this Court, in this action, will, at least to the natural persons involved, be permanent, far reaching, and life-long." (Respondent's Answer Brief, page 19) However, the balance of page 19 of respondent's answer brief again illustrates respondent's attempt to reel in as many red herrings as possible to obscure the issues addressed by this appeal. It is interesting that respondent implies at page 19 of his brief that if he is found to be the natural father of B S. his privacy rights will have been irreparably invaded. Obviously, under Florida law, every parent has a moral and legal obligation to support their children. Respondent has not demonstrated how any alleged right to privacy would be impacted by enforcement of a support obligation to a natural child.

At page 21 of his answer brief, respondent states that "HRS is silent as to how its efforts to overturn the presumption goes to the best interests of the child." Actually, HRS spent several pages in its initial brief and again in this brief, explaining in detail the numerous ramifications involved in a correct paternity decision. HRS's reference to Locklear v. Sampson, supra, explains in part why it is in a child's best interest to know the

identity of her biological father, Respondent has failed to clearly explain why so many obstacles should be erected to hinder that determination.

Finally, respondent raises as an issue one not addressed in the trial court or district court in this particular case. The issue raised is whether HRS has standing in this action. This issue has been resolved by this Court in Thavsen v. Thavsen, 583 So.2d 663 (Fla. 1991). HRS clearly has standing.

ARGUMENT 11.

A PETITIONING MOTHER IS NOT REQUIRED TO OVERCOME THE PRESUMPTION OF LEGITIMACY IN A PATERNITY ACTION BEFORE A DISCOVERY ORDER CAN BE ENTERED DIRECTING THE PUTATIVE FATHER TO SUBMIT TO A SCIENTIFIC TEST TO DETERMINE PATERNITY.

Respondent argues that HRS has not demonstrated any compelling state interest in compelling a putative father in a paternity action to submit to an HLA blood test. HRS contends that it has expressed numerous reasons, any one of which justifies the ordering of the blood test. Specifically, HRS directs the Court's attention to its argument concerning the health history concerns as expressed by the First District Court of Appeal in Locklear v. Sampson, supra. In addition, the State of Florida has a compelling interest to ensure that children are supported from the resources of their parents, not by the taxpayers of the State. See State, Department of Health and Rehabilitative Services, o/b/o Gillespie v. West, 378 So.2d 1220,

1227 (Fla. 1979); Gammon v. Cobb, 335 So.2d 261, 265 (Fla. 1976); Section 409.2551, Florida Statutes (1991). Such a financial interest is ridiculed throughout respondent's brief. However, when hundreds of millions of dollars are spent annually by the State for the support of dependent children, HRS's efforts to ensure children are supported by their parents should be commended, not mocked.

HRS stands by its original argument that the HLA is a reasonable method for determining paternity. Respondent's attempts to argue otherwise simply go against the weight of case law supporting the use of blood tests for the purpose of determining paternity.

Respondent places great weight upon Public Health Trust of Dade County v. Wons, 541 So.2d 96 (Fla. 1989), to support his conclusion that an HLA test is an unwarranted intrusion into a citizen's right to privacy. However, Wons is so clearly distinguishable from the present action so as to have no precedential value.

In Wons, this court stated, "[A] individual has a fundamental right to be left alone so that he is free to lead his private life according to his own beliefs free from unreasonable governmental interference. Surely, nothing, in the last analysis, is more private or sacred than one's religion or view of life. . ." Id, at page 98. In the present case, respondent does not seek protection from governmental interference into his religious practices or his view of life. Respondent seeks to

clothe himself in the protection of the Florida Constitution to avoid the possibility of having to support a child in whose procreation he participated. Contrary to the circumstances in Wons, there is nothing "sacred" about respondent's actions.

HRS reaffirms its argument that the HLA test is the least intrusive means of accomplishing the public policy and compelling state interests of Florida government and Florida's citizens.

CONCLUSION

Petitioner respectfully requests this Honorable Court reverse the Second District Court of Appeal's order quashing the order requiring the HLA testing.

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 furnished 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., **2120** Lakeland **Hills** Boulevard, Lakeland, Florida, 33805, this 27th day of July, 1992.

WILLIAM H. BRANCH, ESQUIRE
Fla. Bar No. **401552**