047 OA 10-7-92 9/7

IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO.: 79.256
FIFTH DCA CASE NO.: 91-57

DEE ANN TERRY MIZE,

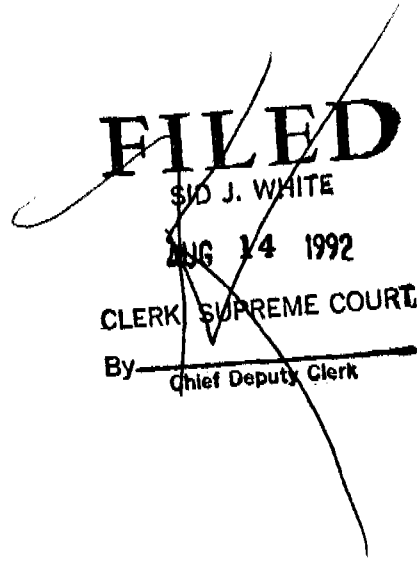
Petitioner,

vs.

DANNY WADE MIZE,

Respondent.

_____/



RESPONDENT'S ~~INITIAL~~ Answer BRIEF ON MERITS

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PRELIMINARY STATEMENT

Respondent reincorporates in this brief the Preliminary Statement contained in the Appellant's Initial Appeal on the Merits.

STATEMENT OF THE CASE AND FACTS

The Respondent incorporates in his brief the Statement of Case and Facts as set forth in the Petitioner's Initial Brief on the Merits except that Respondent takes issue with the sentence on Page 4 which states,

> "As a result, not only did the Fifth District Court of Appeal reverse the trial court's final judgment which allowed the Mother to relocate to California with Lauren; by implication, the Fifth District Court of Appeal awarded custody to the respondent! Accordingly, on November 14, 1991, the Mother filed a Motion for Rehearing to which the Respondent filed a reply on November 22, 1991. (A.10,11) On December 17, 1992, the Fifth District Court of Appeal denied the Motion for Rehearing.(A12). As a result, the trial court entered an Order on Petition to Enforce Final Judgment which required the Mother to place Lauren on an airplane and send her back to Florida to reside with the respondent, notwithstanding the fact that the Fifth District Court of Appeal had completely failed to address the issue of change in residential custody.(A.13).

The Fifth District Court of Appeal in no way awarded custody to the Respondent, but merely said in their opinion that the order to relocate the child in California was improper and cited the four cases contained in this brief in support of same. The order requiring the mother to return the child to Florida was for visitation pursuant to the final judgment.

ISSUE ON APPEAL

I. WAS NOT THE DISTRICT COURT OF APPEAL CORRECT IN FINDING UNDER THE CIRCUMSTANCES THAT IT WAS NOT IN THE BEST INTEREST OF THE MINOR FOR THE CHILD TO BE RELOCATED IN CALIFORNIA?

SUMMARY OF THE ARGUMENT

The Respondent points out to this Honorable Court that the Fifth District Court of Appeal from all of the facts presented felt that the Motion to Relocate filed by the Petitioner did not fit the criteria required for the necessary showing that the relocation was, "in the best interest of the child".

ARGUMENT

I. WAS NOT THE DISTRICT COURT OF APPEAL CORRECT IN FINDING UNDER THE CIRCUMSTANCES THAT IT WAS NOT IN THE BEST INTEREST OF THE MINOR FOR THE CHILD TO BE RELOCATED IN CALIFORNIA?

The Respondent would respectfully point out to this Court that one of the primary criteria that the District Courts in this State apply to a party's request to relocate a minor child outside the State of Florida has been, "what is in the best interest of the child".

That doctrine runs throughout all of the cases in the other District Court opinions and has been specifically set forth by the 5th DCA in the cases of Mast v. Reed, 578 So.2d 304 (Fla. 5th DCA 1991); Cole v. Cole, 530 So.2d 467, (Fla. 5th DCA 1988); Jones v. Vrba, 513 So.2d 1080, (Fla. 5th DCA 1987); Giachetti v. Giachetti, 416 So.2d 27 (Fla. 5th DCA 1982).

In this particular case the Respondent feels certain that the Justices of the 5th DCA did not feel from the facts that it was in the best interest of this minor child to be relocated in Northern California. The mother is an acknowledged lesbian and her father, the child's grandfather, is an acknowledged homosexual. The record has substantial evidence to support the fact that the lesbian mother has misbehaved in the presence of the child by her conduct with her lesbian lovers.

All the other criteria for the Court permitting the child's relocation out of the State may have been met by the Petitioner, however, this most important of all of the criteria was not met,

namely, that it was not in the best interest of the minor to be moved to California to live under conditions that do not appear to be favorable for the upbringing of a young girl. The 5th DCA was immanently correct in its Opinion and although these particular words, "best interest of the minor" do not appear in the Opinion, it was cited in the Opinion of the four cases previously referred to in support of the Opinion, and one can only conclude that the Justices of the 5th DCA felt that the best interest of the minor was not served by the relocation. Thus, we have the Per Curiam Opinion based upon the cited cases.

CONCLUSION

The Respondent realleges that all of the cases cited by the 5th DCA referred to the principal that the Motion to Relocate is based upon what may be in the best interest of the minor. The Court felt that the Petitioner did not offer satisfactory proof that the criteria of, "best interest of the minor", was met.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by United States Mail to Brenda Lee London, Esquire, 1051 Winderley Place, 4th Floor, Maitland, FL 32751 and to Kelvin L. Averbuch, Esquire, 3008 East Robinson Street, Orlando, FL 32803, this 12 day of August, 1992.

JACK A. NANTS