IN THE SUPREME COURT OF FLORIDA

WILLIAM C. SNEAD,

Petitioner,

versus

STATE OF FLORIDA,

Respondent.

S.CT. CASE NO. 80,067

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETXTIONER

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SOPHIA B. EHRINGER
ASSISIANT PUBLIC DEFENDER
Florida Bar No. 0938130
112-A Orange Avenue
Daytona Beach, FL 32114
Phone: 904-252-3367

COUNSEL FOR PETITIONER

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PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Petitioner Snead appealed to the District Court of Appeal, Fifth District, following his sentence of seven years incarceration as a habitual offender, imposed on a violation of probation. On appeal, Snead argued that the trial court erred in imposing a sentence as a habitual offender, pursuant to Florida Statutes § 775.084 (1989), on a sentence for a violation of probation, where the State never sought to "habitualize" Snead when he was originally sentenced to five years probation for possession of cocaine. The district court in its opinion affirmed the sentence, expressly acknowledging conflict with Scott v. State, 550 So. 2d 111 (Fla. 4th DCA 1989), rev. denied, 560 so. 2d 235 (Fla. 1990). Snead v. State, 17 F.L.W. 1291 (Fla. 5th DCA May 22, 1992) (Appendix A).

Snead had been charged by information in circuit court case number 89-5406 with one count of possession of cocaine, and one count of resisting arrest with violence (R4). On March 15, 1990,

Appellant entered a plea of nolo contendere to the charge of possession, and the State nolle prossed the second count of the information (R5-6, 11). The trial court adjudicated Snead guilty of the offense, and sentenced him to five years supervised probation (R7-8, 9-10).

On June 3, 1991, an amended affidavit of violation of probation was filed (R15-16). The affidavit alleged that Snead violated condition five of his probation, which provides that, "You will live and remain at liberty without violating any law. A conviction in a court of law shall not be necessary in order for such a violation to constitute a violation of your probation," when he was arrested on May 9, 1991 (R15). The affidavit also stated that Snead failed to report to his probation officer prior to changing his residence, and was in violation due to testing positive for the presence of cocaine in his system and due to his failure to pay certain monies owed to the State (R15-16).

After having been found guilty of the violation of probation, a sentencing hearing was held on October 10, 1991, before the Honorable Gayle Graziano (R52-58). The State filed notice of its intent to sentence Snead as a habitual offender on July 26, 1991 (R17). During the sentencing proceedings, the State entered into evidence certified copies of two prior Florida felony convictions (one conviction date falling within five years of the date of the instant offense) (R24-32, 52-53). Defense counsel objected to the enhancement of Snead's sentence as a

habitual offender on a sentence imposed for a violation of probation (R53). The objection was overruled, and the trial court found Snead to be a habitual offender and entered a written order pursuant to this ruling (R54, 39-40).

A written judgment was filed reflecting Snead's conviction of possession of cocaine in circuit court case number 89-5406 (R33-34)[1]. An order was entered revoking Appellant's probation on October 25, 1991 (R48).

Snead's recommended sentence according to his original guidelines scoresheet was for any nonstate prison sanction (R14). Fla. R. Crim. P. 3.988(g) (1989). A one cell level bump up for the violation of probation provides for a maximum recommended sentence of community control or twelve to thirty months incarceration, with a permitted range of up to three and one half years incarceration. Fla. R. Crim. P. 3.701(d)(14) & 3.988(g) (1989). Appellant was instead sentenced to seven years incarceration as a habitual offender with credit for time served (R58, 35-36).

On appeal, Snead argued that the trial court erred in sentencing him as a habitual offender upon revocation of his probation, where the State did not file its notice of intent to seek enhanced penalties until after Snead was charged with violating conditions of his probation. Snead cited Scott, supra,

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[1] Snead had been previously adjudicated guilty of possession in this case when he was placed on probation. The written judgement filed incorrectly indicates that Snead was tried and found guilty of the offense, where he had originally pled no contest to the charge in 89-5406.

and Lambert v. State, 545 So. 2d 838 (Fla. 1989), in support of this argument.

Snead additionally argued that the trial court's reliance on Williams v. State, 581 So. 2d 144 (Fla. 1991), in granting the State's motion to sentence him as habitual offender, was misplaced. This argument was based on the fact that Williams, supra, dealt with the propriety of a departure from a guidelines sentence in sentencing upon a violation of probation where the reasons for the departure existed prior to a defendant being placed on probation originally. A habitual offender classification is not grounds for departure from the guidelines, so Williams should not have been relied upon for authorizing the sentence imposed in the instant case.

Snead further argued that as opposed to Williams, supra, the State in the case sub judice, did not seek habitual offender penalties until after Snead was adjudicated guilty of the crime charged, and placed on probation. Therefore, a sentence under the habitual offender statute was not contemplated when Snead was originally placed on probation, and could not be imposed upon revocation of that probation.

The district court rejected these arguments, citing Williams, supra, and Poore v. State, 531 So. 2d 161 (Fla. 1988), for the proposition that the trial court was free on a violation of probation to impose any sentence it might have originally imposed, "that should include inter alia the imposition of a habitual offender sentence," and further provided, "We disagree

and acknowledge conflict with Scott v. State, 550 So. 2d 111 (Fla. 4th DCA 1989), rev. denied, 560 So. 2d 235 (Fla. 1990)." Snead v. State, 17 F.L.W. at 1292.

A notice of intent to seek discretionary review was timely filed. This petition follows.

SUMMARY OF THE ARGUMENT

Petitioner respectfully requests that this Honorable Court accept jurisdiction, because the opinion of the District Court of Appeal, Fifth District, in the instant case expressly and directly conflicts with cases of this Court and another district court, wherein a different result occurred on essentially the same facts so as to cause confusion among the precedents.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN SNEAD V. STATE, 17 F.L.W. 1291 (Fla. 5th DCA May 22, 1992), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN SCOTT V. STATE, 550 So. 2d 111 (Fla. 4th DCA 1989), rev. denied, 560 So. 2d 235 (Fla. 1990).

This Honorable Court should accept jurisdiction in the instant case, because the decision expressly and directly conflicts with Scott v. State, 550 So. 2d 111 (Fla. 4th DCA 1989), rev. denied, 560 So. 2d 235 (Fla. 1990).

The issue raised in Snead's appeal to the district court was squarely raised by the Fourth District Court of Appeal in Scott v. State, 550 So. 2d 111 (Fla. 4th DCA 1989), rev. denied. 560 So. 2d 235 (1990). The opinion provided in part;

> We doubt that the legislature ever intended that a person could be placed on probation and then, years later, if the probation failed, be subjected to the provisions of the habitual offender statute. In fact, the findings required to order probation are precisely opposite to the findings required to invoke the habitual offender statute. The purpose of habitualization is to protect society against habitual offenders. Probation, on the other hand, may only be imposed if it appears to the court that the defendant is not likely again to engage in a criminal course of conduct and the welfare of society do not require that the defendant presently suffer the penalty imposed by law.

Scott, 550 So. 2d at 112. The court in Scott, supra, found that the this Court's ruling in Lambert v. State, 545 So. 2d 838 (Fla. 1989), compelled a reversal of the defendant's habitual offender

sentence imposed on a sentence for a violation of probation. [2]

The district court based its finding on Williams v. State, 581 So. 2d 144 (Fla. 1991), which held that the existence of an escalating pattern of criminal conduct at the original sentencing was a proper basis for a departure sentence for a violation of the defendant's probation, and provided, "In Williams, as in this case, the court was imposing a sentence using facts in existence prior to the violation of probation." Snead, 17 F.L.W. at 1292,

The district court's opinion did not resolve the fact that the habitual offender sentence may not have been an option the trial court could have considered originally, because the State never filed its notice, or sought an enhanced penalty until after the affidavit of violation was filed. The notice of the State's intent to seek enhanced penalties was filed approximately one year and three months after Appellant was adjudicated guilty and sentenced on the charge of possession. The State also failed to provide Snead with the any notice prior to his entering his plea of no contest to the charged offense. See Inmon v. State, 383 So. 2d 1103 (Fla. 2d DCA 1980).

The district court also failed to address Snead's argument that Williams should not have been relied upon for authorizing

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[2] Petitioner recognizes that the holding in Lambert, supra, has been limited by Williams v. State, 594 So. 2d 273 (Fla. 1992), wherein this Court ruled that multiple violations of probation may authorize a sentencing court to impose corresponding multiple cell increases in a defendant's guideline sentence. This, however, is a separate issue than imposing a habitual offender classification after a defendant has been found in violation of conditions of probation.

the sentence imposed in the instant case, because it dealt with a departure from the guidelines, and not a habitual offender classification. This argument was based on the well established rule that a habitual offender classification is not grounds for departure from the guidelines.

The Fifth District Court of Appeal instead found that upon the revocation of probation "the trial court is free to impose any sentence it might have originally imposed, that should include inter alia the imposition of a habitual offender sentence. See Williams.... Accordingly, we affirm Snead's sentence but we note conflict with State v. Scott." Snead, 17 F.L.W. at 1292.

In conclusion, the decision of the district court of appeal in the instant case is in direct conflict with decision of this Court and another district court of appeal. The opinion allows for an overly expansive reading of Williams, supra, which concerned a guidelines sentence, as authority for imposing a habitual offender sentence on a violation of probation. The opinion also permits the State to avoid the notice requirement of the habitual offender statute, and renders a plea agreement in exchange for a probationary sentence invalid, This court should exercise its discretionary jurisdiction, and vacate the decision of the Fifth District Court of Appeal.

CONCLUSION

BASED ON the argument contained herein, and authorities cited in support thereof, Petitioner requests that this Honorable Court accept jurisdiction in this case.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER

ASSISTANT PUBLIC DEFENDER
Florida Bar No. **938130**
112 Orange Avenue, Suite **A**
Daytona Beach, Florida **32114**
Phone: 904/ **252-3367**

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave., Suite **447**, Daytona Beach, Florida **32114**, in his basket at the Fifth District Court of Appeal; and mailed to William C. Snead, Inmate No. 614376, Madison Corr. Inst., P.O. Box **692**, Madison, Fla. 32340-0692, on this 29th day of June, 1992.

ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

WILLIAM C. SNEAD, Petitioner,	)	
vs.	)	S.Ct. CASE NO.
STATE OF FLORIDA, Respondent.	)	

APPENDIX

th DCA 1984).[4] On remand, the husband must amend his petition for dissolution to allege the requisite jurisdictional requirements of section 48.193(1)(e) and the wife must be properly served pursuant to section 48.194 of the Florida Statutes (1991).

The wife also claims that the trial court erred in concluding that it has subject matter jurisdiction to rule upon the husband's claim for custody of the twins. The trial court concluded that it has subject matter jurisdiction over the issue of the custody of the children because the husband is a resident of Florida and the parties have had "continuing and substantial contact with the state of Florida". This conclusion is incorrect.

The trial court was required to decide whether it possessed the requisite subject matter jurisdiction to determine and decide the child custody matters involved in this case pursuant to the provisions of the Uniform Child Custody Jurisdiction Act, section 61.1302 *et seq.* of the Florida Statutes (1991).[5]

In summary, section 61.1308 provides that the Florida courts have jurisdiction to make a child custody determination if any of the following four grounds exist:

> (1) the *state* is the home state of the child at the time of the commencement of the proceeding or Florida had been the child's home state within six months before commencement of the proceeding; or
>
> (2) it is in the best interest of the child that Florida assume jurisdiction because *the* child and his parents or the child and at least one contestant have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present *or* future care, protection, training, and personal relationships; or
>
> (3) the child is physically present in Florida and (a) the child has been abandoned, or (b) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or
>
> (4) it appears that no other *state* would have jurisdiction or another state has declined to exercise jurisdiction on the ground that Florida is the more appropriate forum to determine the custody of the child and it is in *the* best interest of the child that a Florida court assume jurisdiction.

It is clear that jurisdiction is not available under the first ground because Florida is not the "home state" of the children and had not been the children's home *state* within six months before commencement of the proceeding. Home state is defined as "the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as a parent for at least six consecutive months". §61.1306(5), Fla. Stat. (1991). The fact that Florida may be the twins' legal residence or legal domicile does not necessarily mean that the children lived in Florida for six months as the statute defines home state for custody jurisdiction. See *Jackson v. Jackson*, 390 So.2d 787 (Fla. 1st DCA 1980).

The second ground requires that evidence be presented that the twins and the husband have a "significant connection" with Florida, *and* that there is available in Florida substantial evidence concerning the children's present or future care, protection, training, and personal relationships.[6] Here, there was no such evidentiary hearing conducted and, further, there were no appropriate findings made.

The third ground is not applicable because there has been no showing that the children have been abandoned or threatened with mistreatment or abuse or otherwise neglected by the wife.

The fourth ground does not apply because the state of North Carolina has exercised jurisdiction over the twins. In fact, the North Carolina court specifically stated that it is in the best interest of the children for the custody dispute *to* be litigated in North Carolina because the children and the wife have a "significant connection" with that state.

Because the trial court failed to apply the standards set forth in section 61.1308, we must remand with instructions that the court determine the issue of jurisdiction in compliance with the terms of the statute. Further, we note that section 61.1318(1) specifically provides that if the petitioner in an initial custody decree has wrongfully taken the children from another state or has engaged in similar "reprehensible conduct" the court may decline to exercise jurisdiction if this is just and proper under the circumstances. The wife's affidavit, which is presently unrefuted, states the husband absconded from North Carolina with the children, the family car and all of the family's funds, The trial court on remand must determine if the husband did wrongfully take the children or engage in similar reprehensible conduct and, if so, the court must determine whether the conduct was sufficient to decline to exercise jurisdiction. See *Brown v. Tan*, 395 So.2d 1249 (Fla. 3d DCA 1981).

Finally, upon remand the trial court shall comply with section 61.1314(3), which provides that "if the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum."

Accordingly, we vacate the order of the trial court denying the wife's motion to divest the trial court of jurisdiction and remand this cause for further proceedings consistent with this opinion.

Order VACATED; cause REMANDED. (SHARP, W. and GRIFFIN, JJ., concur.)

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[1] *See* Eckel v. Eckel, 522 So.2d 1018 (Fla. 1st DCA 1988); § 47.081, Fla. Stat. (1991). We express no opinion regarding whether *the* husband was a resident of Florida *for* the requisite six-month period prior to his filing of the instant action because this matter should be resolved in a full evidentiary hearing. The burden of proof would be upon the husband to establish residency and, therefore, subject matter jurisdiction over the dissolution action. Beaucamp v. Beaucamp, 508 So.2d 419 (Fla. 2d DCA 1987).

[2] *See* McIntyre v. McIntyre, 53 So.2d 824 (Fla. 1951). We note that in *McIntyre* the court equated domicile with the necessary residency requirement to file a dissolution of marriage action.

[3] If the husband cannot plead and sustain service under section 48.193(1)(e), service by publication pursuant to section 49.021, Florida Statutes (1991) would be proper only as to matters for which publication is authorized provided all procedural requirements are complied with. *See, e.g.* Montano v. Montano, 520 So.2d 52 (Fla. 3d DCA 1988); Whigham v. Whigham, 464 So.2d 674 (Fla. 5th DCA 1985); Burton v. Burton, 448 So.2d 1229 (Fla. 2d DCA 1984); Shefer v. Shefer, 440 So.2d 1319 (Fla. 3d DCA 1983); Gelkop v. Gelkop, 384 So.2d 195 (Fla. 3d DCA 1980); Palmer v. Palmer, 353 So.2d 1271 (Fla. 1st DCA 1978); Callaghan v. Callaghan, 337 So.2d 986 (Fla. 4th DCA 1976); Lahr v. Lahr, 337 So.2d 837 (Fla. 2nd DCA 1976).

[4] We have also considered the provisions of section 47.081 of the Florida Statutes (1991). This section provides that any person in the armed services of the United States, and the spouse of any such person, shall be *prima facie* a resident of this state for maintaining an action if such person lives in Florida. This section only applies to the matter of maintaining an action and does not address obtaining personal jurisdiction over a person not living in Florida. If we were to construe section 47.081 as somehow conferring personal jurisdiction over the wife, then a substantial issue of whether Florida could constitutionally exercise jurisdiction over the wife would arise. This constitutional issue would require a two-prong analysis: first, has the wife established sufficient "minimum contacts" with Florida to allow Florida to assert jurisdiction over her and, second, would the assertion of such jurisdiction offend "traditional notions of fair play and substantial justice." Thompson v. Doe, 17 F.L.W. D867 (Fla. 5th DCA April 3, 1992); Sun Bank. N.A. v. E.F. Hutton & Company, Inc., 926 F.2d 1030 (11th Cir. 1991), *citing* Burger King Corporation v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985).

[5] The wife has not raised any issue regarding the notice that she received in the instant case. After the trial court entered its *ex parte* custody order it afforded the wife a hearing. Section 61,1312 governs notice of custody proceedings. The notice provisions of section 61.1312 are specifically limited to acquiring personal jurisdiction over a person outside this state for purposes of child custody matters and have no application to acquiring personal jurisdiction over a person outside this state as to any other *issue.*

[6] *Cf.* Mondy v. Mondy, 428 So.2d 235 (Fla. 1983) and Reeve v. Reeve, 39 So.2d 789 (Fla. 1st DCA 1980).* * *

Criminal law—Sentencing—Habitual offender—Probation revocation—Trial court could properly classify defendant as an habitual offender when imposing sentence upon revocation of probation, despite failure to habitualize defendant at original sentencing, where habitual offender classification was predicated on prior record which preceded the offense for which probation had been imposed and for which sentence was being imposed—Conflict noted

WILLIAM C. SNEAD, Appellant, v. STATE OF FLORIDA, Appellee. 5 District. Case No. 91-2293. Opinion filed May 22, 1992. Appeal from

Circuit Court for Voluria County, Gayle S. Graziano, Judge. James B. Gibson, Public Defender, and Kenneth Witts, Assistant Public Defender, Daytona Beach, for Appellant. Robcn A. Butterworth, Attorney General, Tallahassee, and John W. Foster, Jr., Assistant Attorney General, Daytona Beach, for Appellee.

(SHARP, W., J.) Snead appeals from his sentence of seven years (with credit for time served), which was imposed pursuant to the habitual offender statute.[1] He argues that since the court did not originally sentence him as an habitual offender in 1990, the court could not "aggravate" his sentence by "habitualizing" him *after* he was found to have violated the terms of his probation in 1991. We disagree and acknowledge a conflict with *Scott v. State*, 550 So.2d 111 (Fla. 4th DCA 1989), rev. *denied*, 560 So.2d 235 (Fla. 1990).

In this case, Snead was charged in 1990 with possession of cocaine[2] and resisting arrest with violence.[3] He and the state entered into a plea bargain whereby he agreed to plead *nolo contendere* to the possession charge and the state *nolle prossed* the resisting charge. The plea bargain contemplated a guidelines sentence, but noted the judge could depart upward to a maximum of five years by giving valid written reasons. Nothing was said about the consequences of violating probation and the kind of sentence that might then be imposed.

The state dropped the resisting charge and Snead was adjudicated guilty of possession. Sentence was withheld, and Snead was placed on probation. Snead's scoresheet put him in the non-state prison bracket. The judge obviously did not elect to "depart" upwards.

On June 3, 1991, an amended affidavit of violation of probation was filed. Various conditions were alleged to have been violated and the court so found. The state then filed its notice to seek sentencing pursuant to the habitual offender statute because Snead had committed two prior Florida felonies, and one fell within five years of the 1990 possession crime.

Our sister court concluded in *Scott* that a court must sentence a defendant as an habitual offender at the first opportunity, and if it fails to do so, it cannot impose an habitual offender sentence after a later violation of probation. Judge Letts reasoned:

> The purpose of habitualization is to protect society against habitual offenders. Probation, on the other hand, may only be imposed if it appears to the court that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffers the penalty imposed by law. Indeed, in *Snead v. State*, 367 So.2d 264, 797 (Fla. 3d DCA 1979) the court noted that the required findings under the habitual offender statute and the probation statute are 'inconsistent and mutually exclusive.' [citations omitted]

Scott at 111. The court reversed a habitual offender sentence and remanded for imposition of a guidelines sentence with the sole possibility of a one-cell increase because of the violation of probation, relying on *Lambert v. State*, 545 So.2d 838 (Fla. 1989).

However, it appears to us that *Lambert* involved only the issue of whether or not *factors relating to violation of probation* could be used as grounds for departing upwards in imposing a guidelines sentence, after the defendant violated probation and was being sentenced for the original crime. The court held that the sentence could only be increased by one guidelines bracket for those reasons. Since *Lambert*, the Court has permitted multiple bracket increases to correspond with multiple probation violations.[4] But neither of these cases deal with the application of the habitual offender statute in sentencing for the original offense, after violation of probation,

In *Williams v. Stare*, 581 So.2d 144 (Fla. 1991), the supreme court held that after withholding imposition of sentence and placing a defendant on probation, if the defendant violates probation, the judge may in sentencing for the original violation, depart upwards *beyond* the one-cell bump-up, for reasons which would have initially supported such a departure. The court distinguished *Lambert* and *Rey v. Scare*, 565 So.2d 1329 (Fla. 1990) because both deal with the impropriety of using the circumstance which culminated in revoking a defendant's probation status, to depart "upwards" in imposing a guideline sentence. In *Williams*, as in this case, the court was imposing a Sentence using facts in existence prior to the violation of probation.

In *Poore v. State*, 531 So.2d 161 (Fla. 1988) the supreme court held that if a defendant violates probation after being placed on probation for a criminal offense the judge may return to "square one" and "impose any sentence it originally might have imposed, with credit for time served and subject to the guidelines recommendation." 531 So.2d at 164. This is consistent with section 948.06(1), Florida Statutes (1989) which provides:

> If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he has previously been adjudged guilty, and *impose any sentence which it might have originally imposed before placing the probanoner on probation or the offender into community control.*

If in this case, we have really returned to "square one," where the trial court is free to impose any sentence it might have originally imposed, that should include *inter alia* the imposition of a habitual offender sentence. See *Williams*. Such a sentence is based on the defendant's prior record which preceded the offenses for which the sentence is being imposed. It does not depend upon any aggravating factors as to how the defendant violated probation. Accordingly, we affirm Snead's sentence but we note a conflict with *State v. Scott*.

AFFIRMED. (GRIFFIN and DIAMANTIS, JJ., concur.)

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[1] § 775.084, Fla. Stat. (1989).
[2] § 893.13(1)(f), Fla. Stat. (1989).
[3] § 843.01, Fla. Stat. (1989).
[4] *See* Williams v. State, 594 So.2d 273 (Fla. 1992).

* * *

Dependent children — Permanent termination of parental rights — Abuse

LILIETH BOGUES and BARFIELD BOGUES, Appellants, v. DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, Appellee. 5th District. Case No. 91-2152. Decision filed May 22, 1992. Appeal from the Circuit Court for Orange County, Walter Komanski, Judge. Jane E. Carey of Morall & Carey, Orlando, for Appellants. Timothy A. Straus of Moyer & Straus. Longwood, for Appellee. Jeffrey M. Fleming of Rogers, Dowling, Fleming & Coleman, P.A., Orlando, Guardian Ad Litem.

(PER CURIAM.) AFFIRMED. (DAUKSCH and GRIFFIN, JJ., concur. COWART, J., concurs and concurs specially with opinion.)

(COWART, J., concumng specially.) We are affirming the permanent termination of the parental rights of a mother and father.

A parent has a duty to discipline and control a child yet the law will not permit the parent to use extreme measures to meet that duty. If, in attempting to meet its duty, a parent uses "excessive" measures of discipline in an effort to make the child obey and do the parent's will, the law calls it child "abuse" and penalizes the parent by the forfeiture of the parent's parental rights as to the abused child (and, perhaps on the theory of "prospective abuse," by forfeiting parental rights as to other, non-abused, children). In this case the child was headstrong and determined and the mother used excessive force in efforts to make her 3½ year old girl child obey. The mother's parental rights are being permanently terminated because she used excessive force in attempting to make the child obey the mother.

Apparently the law also places a duty on a husband to control his wife's actions relating to her disciplining their children. If the husband fails to meet that duty the law penalizes the husband by the forfeiture of his parental rights as to the child his wife abuses. In this case the wife was headstrong and determined and the father did not use measures sufficient to prevent his wife from us-