IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,533

STATE OF FLORIDA,

Petitioner,

vs.

CHARLES YOUNG,

Respondent.

****

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

****

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the prosecution and Respondent the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. In the Fourth District Court of Appeal, Respondent was the appellant, and Petitioner the appellee.

In the brief, the parties will be referred to as they appear before this court except that Petitioner may also be referred to as the State.

The following symbols will be used.

"R" Record on Appeal

All emphasis has been added by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

On December 9, 1987, Respondent was charged by indictment with First Degree Murder, three counts of Burglary, Robbery, and Grand Theft (R2806-2809). The burglary counts were later refiled under Case No. 90-4392 pursuant to Respondent's pro se motion which correctly pointed out that said counts were improperly charged under the wrong statute (R 855-858, 3165-3170).

The public defender's office was originally appointed on December 6, 1987 (R 7-8). On February 18, 1988, Respondent moved for a continuance; trial was reset to September 19, 1988 without objection by the State (R14). On August 24, 1988, the State requested a continuance and trial was reset for October 11, 1988. On September 27, 1988, assistant public defenders, Carol Haughwout and Richard Greene, as well as investigator Gayle Martin, filed affidavits with the trial court indicating that the Respondent was refusing to speak with them and come out of his jail cell (R 2933-2943). On September 28, 1988, **thirteen days prior to trial**, Respondent asked to fire his public defenders because he did not "trust" them although he would not specify as to why (R40-56). The trial court advised the Respondent that the public defender's office often has greater resources than private counsel and that it is not always easy to find a lawyer to take a case that carries the responsibility that this one does (R48). Judge Mounts further stated that he thought the Respondent is making a mistake and that he should not expect the same ruling if he is displeased with his next attorney (R55). The court then granted his request over objection by the State (R55).

Donnie Murrell was subsequently appointed. Respondent again requested a trial continuance and the case was passed to January 23, 1989 (R3004-3008). On January 23, 1989, Respondent requested yet another trial continuance and the request was granted over objection by the State (R181-194). On April 12, 1989, Respondent requested another trial continuance and again his request was granted over objection by the State (R 253-259). On June 19, 1989, Respondent requested another trial continuance and once again his request was granted over the objection of the State (R 2634B-M, 265-268). Finally, on June 27, 1989, a year and a half after charges were filed, the trial commenced.

On June 28, 1989, Respondent moved for a mistrial after both parties presented their opening statements to the jury (R 720-725). Respondent's court-appointed counsel, Donnie Murrell, learned that fingerprints had, in fact, been compared to standards of James Riley, an individual Respondent was claiming actually committed the crime, despite counsel having told the jury that the police never bothered to check him out. Respondent moved for a mistrial stating that the State had notified the public defender of this information, but that the public defender never provided him with this information. Respondent's counsel noted that there was no discovery violation by the State. The court granted the mistrial finding that no discovery violation had occurred.

On August 23, 1989, Respondent, for the second time, asked to fire his court-appointed attorney citing lack of "trust" (R

734-747). The judge again advised the Respondent as to his lawyer's competence and explained that the mistrial was not the fault of his lawyer (R734-35). Nonetheless, Respondent filed a civil suit and a Bar complaint against attorney Donnie Murrell (R736-737). The trial court noted its concern that clients could manipulate the system and have a "free ticket to get rid of a person who is thoroughly competent and thoroughly prepared" (R737). Mr. Murrell stated that the court can tell the Respondent "one more court-appointed lawyer is all he's going to get and he either accepts the services of that lawyer..." (R743). The court then once again indulged the Respondent and granted his request and appointed Robert Fallon as his **third and last court-appointed attorney**. Respondent was granted another trial continuance and filed a Motion for Discharge stating that the State deliberately caused the mistrial. A hearing was held on September 25, 1989 (R 757-809). On October 6, 1989, the trial court entered an Order denying the motion. In denying Respondent's motion, the court specifically found that the State was not trying to goad the Respondent into a mistrial and that the mistrial was brought about, in part, by the communication problems created by Respondent's failure to communicate with his court-appointed lawyers (R3171-3173). Respondent then filed a pro se petition for writ of prohibition, despite the fact that he had court-appointed counsel who had not joined in this action. This Court entered an order on January 4, 1990 denying the prohibition.

On February 15,1990 pursuant to the Respondent's motion, the Honorable Marvin Mounts, Jr. recused himself (R817-821). On February 28, 1990 a hearing was held on Respondent's motion to withdraw his **third** court-appointed lawyer (R825). A lengthy discussion ensued concerning the history of this case and Respondent's firing of attorneys based on lack of trust.

Attorney Fallon then filed a motion to determine Respondent's pretrial competency (R831). This motion was granted (R832). Respondent then advised the court of the numerous pleadings that he filed pro se and that he was, in fact, competent (R832). The Honorable Walter Colbath agreed that Respondent appeared "perfectly competent" (R833). The court advised Attorney Fallon that his status is "what they call... in the business world, a consultant" (R834).

On March 20, 1990 the court noted Respondent's refusal to go to the competency evaluation and ordered that he go. The court also noted that the Respondent's motions are articulate and that he understands them better that a lot of people that write their own motions (R844). On April 12, 1990 there was thorough discussion concerning Respondent's desire to represent himself and his belief that Fallon is ineffective (R883-891). The State continued to make every attempt to make a record of Respondent's representation and was clearly concerned about this issue as to the jury's perception and for appellate purposes (R 886). The court decided it would let the Respondent make a handwritten statement that the judge would read to the jury if he so approved (R888). The trial court then stated:

> "...as far as I am concerned, upon the record in this case, that you have created a conflict between you, yourself, and each and every counsel and when you get to the twelfth hour you want to change it and no attorney, Clarence Darrow, could not be prepared to go to trial in a first-degree murder case on such short notice. That you are, you are being able to obtain continuance after continuance on the ground, stop right then and there. That's why you're representing yourself (R888).

Respondent did not want Fallon sitting with him at counsel table but the court stated he would be available to him and present in the courtroom if he needed his assistance (R884). The State, once again in an effort to make the record clear' asked the Respondent if he would rather represent himself than have Fallon, to which the Respondent stated yes because "I feel he is ineffective" (R890-891). He was further advised that he has the right to hire another lawyer (R890).

On April 13, 1990 the court discussed the statement that the Respondent prepared concerning his representation (R895-901). On April 18, 1990, the day of trial, two and a half years after the crimes occurred, Respondent advised the court that attorney Lasley was ostensibly hired on his behalf and, therefore, he would need a continuance (R1362). However, the court questioned this since there was no written agreement between the woman allegedly hiring Lasley, and Lasley (R1369). The prosecutor once again objected and made a record of this case's protracted history (R1365-1368). The court denied the continuance because

of the "last-minute nature" and "a very serious statute-of-fraud problem regarding the guaranteeing of the fee to Mr. Lasley and Mr. Gable" [sic] (R1369). However, the judge offered to discharge Fallon and allow Lasley and Grable to assist the Respondent to which they refused since "we do not know anything about the case" (R1370).

Respondent appealed his conviction and sentence to the Fourth District Court of Appeal, which reluctantly reversed due to the trial court's failure to conduct a Faretta inquiry. Young v. State, 17 F.L.W. D2120 (Fla. 4th DCA September 9, 1992). That court certified to this court a question of great public importance regarding the need for a Faretta inquiry in the situation presented here:

> the question apparently implicated by the facts is instead whether a *Faretta*-type inquiry is really required where the defendant deliberately uses his right to counsel to frustrate and delay the trial.

Id., 17 F.L.W. at 2121. The state sought review by this honorable court. The Fourth District Court of Appeal has granted a stay of mandate until this court considers this case.

SUMMARY OF THE ARGUMENT

The court correctly denied Respondent's eleventh hour motion for continuance, resulting in his proceeding pro se. It is entirely within the discretion of the trial judge to grant or deny a motion for continuance. Respondent's trial had been continued for over three years, during which time he recused one judge and discharged three attorneys. Based on the incredibly protracted history of the case, the judge did not abuse his discretion in denying the motion for continuance. No Faretta inquiry was necessary under the circumstances of this case. The certified question should be answered in the negative.

ARGUMENT

A FARETTA TYPE OF INQUIRY IS NOT REQUIRED WHERE A DEFENDANT DELIBERATELY USES HIS RIGHT TO COUNSEL TO FRUSTRATE AND DELAY HIS TRIAL.

On April 15, 1990, after jury selection but prior to opening statements, Respondent advised the court that he wanted William Lasley to represent him. At that time, Respondent was appearing pro se with standby counsel Fallon, due to Respondent's latest motion to fire his third court appointed attorney. Of course, Mr. Lasley was totally unprepared for this case and, therefore, needed a continuance. The trial court correctly denied this midtrial motion for continuance.

It is well within the discretion of the trial court to grant a continuance and the exercise of this discretion will not be disturbed in the absence of a showing of abuse. Henderson v. State, 90 So.2d 447 (Fla. 1956). Almost three years after the crimes occurred, after two different judges and four different attorneys, when opening statements were finally about to begin, Respondent asked for yet another continuance so attorneys Lasley and Grable could represent him. The judge advised the Respondent that he would permit such representation but would not grant any more continuances based on the incredibly prolonged history of this case.

In Jones v. State, 449 So.2d 253 (Fla. 1984), cert. denied 459 U.S. 893, this court held that the refusal to grant a motion for appointment of counsel and motion for continuance, made on

the second day of trial, after the jury was selected and the State commenced its case, was proper, since Respondent previously fired court-appointed counsel, refused other counsel, and chose to exercise his constitutional right to represent himself after proper inquiry.

Similarly, the instant ruling was rightfully within the discretion of the trial judge and cannot be deemed an abuse of discretion. Denial of a continuance on the ground that the Respondent had been dissatisfied with his court-appointed counsel was not reversible error. Tilly v. State, 256 So.2d 547 (Fla. 3d DCA 1972). Refusal of a continuance to permit the obtaining of private counsel by a Respondent whose defense counsel had been appointed at least two and a half months previously, was prepared to proceed with trial and gave a very vigorous and comprehensive defense, was also not an abuse of discretion. Fuller v. State, 268 So.2d 431 (Fla. 4th DCA 1972). Also see, Mena v. State, 451 So.2d 1012 (Fla. 3d DCA 1984) (no error in denying continuance and allowing defense counsel to withdraw, where motions were untimely presented at outset of trial and entire matter was transparent ploy by Respondent to avoid going to trial).

This case is a classic example of the flagrant abuse of the legal system by a Respondent. The instant offenses occurred in December 1987, yet through a multitude of motions and eleventh hour continuances, the Respondent was able to postpone the trial for approximately two and a half years and exhaust the efforts of two public defenders and two court-appointed lawyers. (See

Petitioner's Statement of Case and Facts, infra.) After firing these competent attorneys based on his claim of "lack of trust" and "ineffectiveness", Respondent argued below that Respondent should have been permitted another continuance so that other attorneys could prepare his case, rather than allow him to proceed pro se.

It is well-settled that an indigent Respondent cannot have the attorney of his choice. Bundy v. State, 455 So.2d 330 (Fla. 1984). It is further established that a Respondent must not be allowed to refuse to cooperate with his attorney and then attempt to create an issue of ineffective counsel on the basis of his refusal to cooperate. Boudreau v. Carlisle, 549 So.2d 1073, 1077 (Fla. 4th DCA 1989).

The dictates of Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) require that the court inquire of a Respondent concerning his waiver of counsel. Also see Fla.R.Crim.P. 3.111(d). In this case, Respondent ultimately proceeded pro se when he decided he no longer trusted the fourth lawyer provided to him. While no hearing entitled "Faretta Hearing" occurred, it can hardly be said that the trial judge did not inquire as to the Respondent's firing of two public defenders and court-appointed attorneys Murrell and Fallon.

Respondent originally caused Assistant Public Defenders Carol Haughwout and Richard Greene to withdraw when he refused to meet with them and claimed he could no longer trust them (R44). The court expressed great praise for these attorneys but

ultimately granted the Respondent's motion when Respondent insisted he could not trust them (R40-56). When the Respondent fired his next two lawyers, the court again advised the Respondent of the ramifications of his actions (R732-747, 880-901). The State took great pains to make a record of this Respondent's actions in firing every competent lawyer he had. In the face of such a blatant manipulation of the system, the state asserts that no Faretta type of inquiry was required sub judice. However, if one looks at the extensive inquiry made by both trial court judges in its totality, a proper knowing waiver was made by Respondent.

While at times Respondent claimed he did not want to represent himself, what other options were there? This case proceeded for nearly three years. During that time not only were various lawyers involved but also two different judges due to Respondent's motion to recuse Judge Mounts. At some point consideration must be given to the costs of such delays and shifting of attorneys and judges. How many judges and lawyers should the Respondent have tested before he ultimately proceeded pro se in front of Judge Colbath? Respondent's second lawyer, Donnie Murrell, insisted that Respondent was entitled to "one more court-appointed lawyer is all..."(R743). Mr. Murrell's statement should thus have waived any further claim on this issue.

Further, assuming arguendo that the lower court did not adhere to the technical dictates of Faretta, what would such

adherence have accomplished? The Respondent did not want any of his lawyers and no more continuances were going to be granted. He did not waive counsel but rather fired them yet still wanted assistance. He had the assistance of Fallon but did not want it.

The trial judge did not abuse its discretion in denying Respondent's countless continuance. Thus, even if the technical dictates of Faretta were not followed, the court was correct in allowing the Respondent to proceed pro se.

The state requests that this court take this opportunity to address this issue, and rule that under this type of situation, there should be no per se rule of reversal. This case should be remanded with directions that the opinion of the Fourth District Court of Appeal be quashed, and Respondent's conviction and sentence should be affirmed.

CONCLUSION

WHEREFORE, based on the foregoing this Court should QUASH the decision of the Fourth District Court of Appeal, and remand with directives that the conviction and sentence be AFFIRMED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to: **PETER GRABLE, ESQUIRE**, 811 N. Olive Ave., Suite 250, West Palm Beach, Florida this 20 day of October, 1992.

Joan Fowler
Joan Fowler

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,533

STATE OF FLORIDA,

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Respondent.

****

A P P E N D I X

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Appellee. 4th District. Case No. 91-2103. Opinion filed September 2, 1992. Appeal of a non-final order from the Circuit Court for Broward County; C. Lavon Ward, Judge. Claire Cubbin, Fort Lauderdale, for appellant. Mark H. Goldberg, Plantation, for appellee.

(PER CURIAM.) Robert D. Wallace appeals an order in an action for dissolution of marriage, granting the motion of appellee, Susanne M. Wallace, for temporary and exclusive use and possession of the marital domicile, alimony, child support, attorney's fees and suit money.

The order granting temporary relief required the husband to "bring the rent and all utility payments on the marital domicile current forthwith." Such relief is neither requested in the pleadings nor supported by the evidence adduced at the hearing below. Because the wife's motion did not request the relief awarded, and the wife submitted no evidence on this issue, it was error to award such relief. *Gleason v. Gleason*, 453 So. 2d 941 (Fla. 4th DCA 1984); *see also Cooper v. Cooper*, 406 So. 2d 1223 (Fla. 4th DCA 1981).

An award of attorney's fees in an action for dissolution of marriage must rest upon well-settled legal principles. *See Nichols v. Nichols*, 519 So. 2d 620 (Fla. 1988); *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980); *Georgiton v. Georgiton*, 545 So. 2d 421 (Fla. 4th DCA), *rev. denied*, 554 So. 2d 1168 (Fla. 1989). We reverse the award here and remand for reconsideration in light of the requirements of *Robbie v. Robbie*, 591 So. 2d 1006, 1010 (Fla. 4th DCA 1991) (relying on *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985)).

We affirm the award of undifferentiated temporary alimony and child support and the requirement that the husband provide the wife with functioning transportation forthwith.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED. (GLICKSTEIN, C.J., and HERSEY, J., concur. POLEN, J., concurs specially with opinion.)

(POLEN, J., concurring specially.) I agree with everything contained in the majority opinion, save one point. The majority has relied in part on *Robbie v. Robbie*, 591 So.2d 1006 (Fla. 4th DCA 1991), in reversing the award of temporary attorney's fees. As noted in my partial dissent in *Robbie*, I would not require trial courts to make detailed findings of fact on temporary attorney's fees awards.

The attorney's fee award in this case, however, is erroneous for yet another reason. Here the attorney for whom the fee was sought never testified. In the absence of any excusal or reason for the omission of such testimony, I would hold it error to award temporary attorney's fees in this case, and remand for further proceedings. *Cooper v. Cooper*, 406 So. 2d. 1223 (Fla. 4th DCA 1981). I thus join my colleagues as to the result reached.

* * *

Unemployment compensation—Competent substantial evidence supports referee's conclusion that claimant left employment for good cause attributable to the employer—Employer's insistence on substantial change in employee's working hours was material and unilateral breach of specific terms of parties' employment agreement

TAMMY G. WILSON, Appellant, v. FLORIDA UNEMPLOYMENT APPEALS COMMISSION and WILLIAMS ISLAND, a private club limited, Appellees. 4th District. Case No. 91-3098. Opinion filed September 9, 1992. Appeal from the State of Florida Unemployment Appeals Commission. Maurice J. Baumgarten, Miami, for appellant. William T. Moore, Tallahassee, for Appellee-Unemployment Appeals Commission.

(PER CURIAM.) We reverse the commission's order overturning the referee's decision to grant unemployment benefits. The record reflects substantial competent evidence supporting the referee's conclusion that appellant left her employment for good cause attributable to her employer. The referee found that the employer's insisting on a substantial change in the employee's work hours was a material and unilateral breach of specific terms of the parties' employment agreement. The referee further concluded that this breach constituted good cause for her leaving and was attributable to the employer. *See Kralj v. Florida Unemployment Appeals Comm'n.*, 537 So.2d 201 (Fla. 2d DCA 1989). Under such circumstances, the fact findings of an appeals referee must be upheld. *E.g., Public Employees Rel. Comm'n. v. Dade County Police Benevolent Ass'n.*, 467 So.2d 987 (Fla. 1985); *Trinh Trung Do v. Amoco Oil Co.*, 510 So.2d 1063 (Fla. 4th DCA 1987); *Lovett v. Florida Unemployment Appeals Comm'n.*, 547 So.2d 1253 (Fla. 1st DCA 1989). (DOWNEY, STONE and FARMER, JJ., concur.)

* * *

Criminal law—Counsel—Trial court committed reversible error by refusing to appoint new counsel to represent defendant at first-degree murder trial after defendant refused the services of his third appointed counsel; refusing to continue the already much delayed trial, thereby requiring defendant to represent himself with only a "stand-by" lawyer; and failing to conduct appropriate *Faretta* inquiry—Question certified whether *Faretta*-type inquiry is required where defendant deliberately uses his right to counsel to frustrate and delay trial

CHARLES YOUNG, Appellant, v. STATE OF FLORIDA, Appellee. 4th District. Case No. 90-2186. Opinion filed September 9, 1992. Appeal from the Circuit Court for Palm Beach County, Walter N. Colbath, Jr., Judge. Peter Grable, of Lasley & Grable, P.A., West Palm Beach, for appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Patricia G. Lampert, Assistant Attorney General, West Palm Beach, for appellee.

(FARMER, J.) In understandable frustration with the defendant's refusal to accept the services of his third appointed counsel to represent defendant at his first-degree murder trial, the trial judge refused a new appointment of counsel and also refused an eleventh-hour continuance of the already much delayed trial, thereby requiring defendant to represent himself with only a "stand-by" lawyer to advise him. Unfortunately, and despite the prosecution's suggestion to do so, the judge failed to conduct a *Faretta* hearing. *See Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). We reverse.

Our cases make apparent the danger of foregoing a *Faretta* inquiry. In *Crutchfield v. State*, 454 So.2d 1074 (Fla. 4th DCA 1984), we expressed "extreme sympathy" with the judge's response to a defendant's repeated refusals to accept three appointed lawyers. Nevertheless, we reversed on account of the failure to make the appropriate inquiry, saying that we did so "with a great degree of reluctance." 454 So.2d at 1076. Similarly, in *DiBartolomeo v. State*, 450 So.2d 925 (Fla. 4th DCA 1984), we also reversed a trial judge's decision to compel a defendant to proceed on his own behalf because of the lack of *Faretta* findings.

To the same effect are *Jones v. State*, 584 So.2d 120 (Fla. 4th DCA 1991); *Burns v. State*, 573 So.2d 1047 (Fla. 4th DCA 1991); *Bentley v. State*, 415 So.2d 849 (Fla. 4th DCA 1982). The inquiry rule extends even to *denials* of the right of self-representation. *Kleinfeld v. State*, 568 So.2d 937 (Fla. 4th DCA 1990), *rev. denied*, 581 So.2d 167 (Fla. 1991), *appeal after remand*, 587 So.2d 592 (Fla. 4th DCA 1991).

The trial judge's frustrations were not diminished by the fact that this defendant appeared to him to be manipulating the system. He "fired" three of his appointed lawyers. At one time, he sued the discharged lawyer and filed a grievance with the Florida Bar against the lawyer. When the state objected to this and the resulting appointment of a new lawyer, as well as the resulting continuance of the trial, the judge asked the prosecutor (somewhat plaintively) what he might otherwise do and not face certain reversal. To this question the prosecutor responded:

> I don't know, Judge. Maybe it needs to be tested. Until it's tested, what is preventing these guys from coming in and filing Bar complaints and civil suits and delaying these things indefinitely?

Perhaps this is the case to test the wisdom of requiring as a per se rule that a conviction be reversed wherever the court fails to

conduct a *Faretta* inquiry. After all, *Faretta* really answers a slightly different question, viz., whether the state can force a lawyer on a defendant who knowingly and intelligently decides to represent himself. Here, the question apparently implicated by the facts is instead whether a *Faretta*-type inquiry is really required where the defendant deliberately uses his right to counsel to frustrate and delay the trial.

Bound as we are to do, however, we reverse the conviction. We certify the above question to the Florida Supreme Court as a question of great public importance.

REVERSED. (POLEN and GARRETT, JJ., concur.)

* * *

WEBB v. STATE. 4th District. #91-0903. September 9, 1992. Appeal from the Circuit Court for Broward County. AFFIRMED. As to the first issue, *see Warren v. State*, 499 So.2d 55 (Fla. 4th DCA 1986); *May v. State*, 472 So.2d 890 (Fla. 4th DCA 1985). As to the second issue, *see Watts v. State*, 593 So.2d 198 (Fla. 1992).

AVANT v. STATE. 4th District. #91-1966. September 9, 1992. Appeal from the Circuit Court for St. Lucie County. We reverse appellant's conviction and remand for a new trial on the authority of *Gibson v. State*, 17 F.L.W. D1989 (Fla. 4th DCA, August 26, 1992), involving a codefendant.

* * *

Name change—Facially sufficient name change petition should be granted where there is no evidence to support any ulterior or illegal purpose—Reversible error to summarily deny prisoner's facially sufficient petition—Concerns about problems for Department of Corrections and other law enforcement agencies and officials resulting from name change does not support denial of petition unless the record supports such concerns—Remand for further proceedings

CHARLES LAMONT CASEY, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 91-1887. Opinion filed September 11, 1992. Appeal from the Circuit Court for Lake County, Jerry T. Lockett, Judge. Charles Lamont Casey, Crestview, Pro se. No Appearance for Appellee.

(DIAMANTIS, J.) Appellant Charles Lamont Casey appeals from the trial court's order denying his petition for a name change. We reverse and remand for further proceedings consistent with this opinion.

While incarcerated at Okaloosa Correctional Institution appellant petitioned to change his name to Shabazz Abdul Malik. Appellant's petition was verified and facially complied with the requirements of section 68.07, Florida Statutes (1991). The trial court's order, rendered fifteen days after the petition was filed, indicates that the matter was heard and that the petition was denied, but the order did not provide any reason for denying the petition. The record in this case fails to indicate whether a hearing was in fact held, whether appellant was afforded an opportunity to be present for the hearing, and whether any evidence was presented. Appellant's motion for rehearing was denied by the lower court without specifying any reason other than a citation to *Carnell v. Carnell*, 398 So.2d 503 (Fla. 5th DCA) *rev. denied*, 407 So.2d 1102 (Fla. 1981).[1]

In the instant case the trial court, apparently without having received evidence, summarily denied appellant's facially sufficient petition and committed reversible error in doing so. *In Re Keppro*, 573 So.2d 140 (Fla. 1st DCA 1991); *Davis v. State*, 510 So.2d 1124 (Fla. 2d DCA 1987); *Isom v. Circuit Court of the Tenth Judicial Circuit*, 437 So.2d 732 (Fla. 2d DCA 1983). A facially sufficient petition for a name change should be granted where there is no evidence to support any ulterior or illegal purpose. *Keppro*, 573 So.2d at 142; *Isom*, 437 So.2d at 733-734.

We recognize that the trial court may have been concerned that granting the change of name might create problems for the Department of Corrections and other law enforcement agencies and officials. However, in order for the trial court to deny appellant's petition based on this concern, there must be record support for this conclusion. *Isom*, 437 So.2d at 733.

A trial court has the discretion to order a hearing to determine whether the allegations in a name change petition are true. *Gosby v. Third Judicial Circuit*, 586 So.2d 1056, 1057 (Fla. 1991). If the trial court is concerned that the name change may create problems for the Department of Corrections and law enforcement agencies, it should give those agencies notice and an opportunity to be heard in such a hearing. Additionally, appellant would have the right to be heard and present evidence at any such hearing. We note that the supreme court in *Gosby, supra*, suggested several procedures for conducting such a hearing when a petitioner seeking a name change is incarcerated. Naturally, any procedures utilized by the trial court should comport with procedural due process.

Accordingly, we reverse and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED. (SHARP, W. and HARRIS, JJ., concur.)

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[1]In Carnell v. Carnell, 398 So.2d 503 (Fla. 5th DCA) *rev. denied*, 407 So.2d 1102 (Fla. 1981), this court held, among other things, that in a non-jury trial a court could deny, without oral argument, a motion for rehearing which contained no matters with merit that had not been previously argued to the court during trial.

* * *

Torts—Trial court properly held that wife's action against husband for injuries negligently caused by husband prior to the parties' marriage was barred by doctrine of interspousal immunity—Proper disposition of case under such circumstances is to abate action until such time as doctrine is rendered inapplicable by death or dissolution of marriage—Question certified: Where one spouse prior to marriage negligently injures the other spouse, should the doctrine of interspousal immunity be abrogated completely to allow the injured spouse to maintain a negligence action during the marriage against the allegedly negligent spouse for all of the injured spouse's damages, or should the doctrine be abrogated partially to allow such an action where recovery is limited to the extent of insurance coverage?

SHERYL DYKSTRA-GULICK, Appellant, v. DOUGLAS GULICK, Appellee. 5th District. Case No. 91-1992. Opinion filed September 11, 1992. Appeal from the Circuit Court for Marion County, William T. Swigert, Sr., Judge. Dock A. Blanchard of Blanchard, Custureri, Merriam, Adel & Kirkland, P.A., Ocala, for Appellant. Anthony J. Salzman of Moody & Salzman, Gainesville, for Appellee.

(PER CURIAM.) Appellant Sheryl Dykstra-Gulick was injured while riding as a passenger in an automobile owned and operated by appellee Douglas Gulick. Appellant and appellee were married after the accident, and appellant subsequently filed a negligence action against appellee seeking damages for injuries she sustained in the accident. The trial court granted appellee's motion to dismiss the complaint with prejudice holding that appellant's action was barred by the doctrine of interspousal immunity. We reverse the final judgment only to the extent that it provides for a dismissal with prejudice and remand with instructions to abate this action.

The doctrine of interspousal immunity bars an action between a husband and wife based upon negligence. *See Snowten v. United States Fidelity & Guaranty Co.*, 475 So.2d 1211 (Fla. 1985); *Raisen v. Raisen*, 379 So.2d 352 (Fla. 1979) *cert. denied*, 449 U.S. 886, 101 S.Ct. 240, 66 L.Ed.2d 111 (1980). *See also Sturiano v. Brooks*, 523 So.2d 1126 (Fla. 1988). However, if the parties' marriage should terminate by death[1] or dissolution[2] appellant could then maintain her action for negligence. In a case such as this, where the cause of action accrues prior to marriage, abatement of the action pending the possible termination of the marriage by dissolution or death is the proper disposition. *See Gaston v. Pittman*, 224 So.2d 326 (Fla. 1969); *Dykstra-Gulick v. Gulick*, 579 So.2d 406 (Fla. 5th DCA 1991); *Shoemaker v. Shoemaker*, 523 So.2d 178 (Fla. 3d DCA 1988); *Chatmon v. Woodward*, 492 So.2d 1115 (Fla. 3d DCA 1986).

Because of the important social implications of the interspousal immunity, we certify the following question to the Florida Supreme Court as one of great public importance:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Appendix" has been furnished by United States Mail to: **PETER GRABLE, ESQUIRE,** 811 N. Olive Ave., Suite 250, West Palm Beach, Florida this 20 day of October, 1992.

Joan Fowler

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