

045

FILED

SID J. WHITE

MAY 3 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 81,610

CURTIN R. COLEMAN, II,

Petitioner

vs.

MARIE PRESTON LAND COLEMAN

Respondent

RESPONDENT'S REPLY BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL
DCA Case Number 92-1582 (Combined with Number 92-0826)

DONALD K. CORBIN, ESQUIRE
Counsel for Respondent
727 N.E. 3rd Avenue, Suite 301
Fort Lauderdale, Florida 33304
305-523-4112
Florida Bar Number 179710

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS.....	ii
ISSUE ON REVIEW	
WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN <u>SCHORB V. SCHORB</u> , 547 So.2d 985 (Fla. 2d DCA, 1989)	
PREFACE.....	1
STATEMENT OF THE CASE AND OF THE FACTS.....	1
SUMMARY OF ARGUMENT.....	1-2
ARGUMENT.....	2-4
CONCLUSION.....	4
CERTIFICATE OF SERVICE.....	5

TABLE OF CITATIONS AND AUTHORITIES

<u>Cases Cited</u>	<u>Page(s)</u>
<u>Schorb v. Schorb</u> 547 So.2d 985 (Fla. 2d DCA, 1989).....	1,2, & 3
<u>Aetna Casualty & Surety Company vs.</u> <u>Huntington National Bank</u> 17 Fla. L. Weekly S750, S751 (Fla. Dec. 17, 1992).....	2 & 3
<u>Streeter vs. Sullivan</u> 509 So.2d 268, 271 (Fla. 1987).....	2
 <u>Statutes Cited</u>	
Florida Statute 61.1301 (1987).....	2
Florida Statute 61.1301 (1991).....	2 & 3
Florida Statute 61.1301 (1)(a).....	3
 <u>Authorities</u>	
Florida Rules of Appellate Procedure 9.030.....	1 & 4

PREFACE

This brief is the Respondent's reply brief to the Petitioner's Brief on Jurisdiction on discretionary review from the Fourth District Court of Appeal, DCA Case Number 92-1582 (Combined with DCA Case Number 92-0826). The brief filed by the Petitioner is accompanied with an appendix containing the two opinions by the Fourth District Court and the conflict case by the Second District Court, the page numbers which will be indicated by the prefix "A" reference made to the Petitioner's appendix. In this brief, the Petitioner/Defendant/Former Husband will be referred to as "Husband", while the Respondent/Plaintiff/Former Wife will be referred to as "Wife".

STATEMENT OF THE CASE AND THE FACTS

The Wife does not contest the Statement of the Case and the Facts that are set out in the Husband's brief for the purposes of this brief on jurisdiction.

SUMMARY OF ARGUMENT

The Wife does not argue that the decision of the Fourth District Court (A3-4) does not conflict with the decision of the Second District Court in Schorb v. Schorb 547 So.2d 985 (Fla. 2d DCA, 1989) (A6-10). However, the Husband proceeds under Florida Rules of Appellate Procedure 9.030 (a)2(iv). The Fourth District Court of Appeals refused to certify its opinion issued in the instant cause to be in direct conflict with the decision of

another district court of appeal, and consequently, the decision to grant jurisdiction in this cause lies completely within the discretionary powers of this Court.

ARGUMENT

ISSUE ON REVIEW

WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN SCHORB V. SCHORB, 547 So.2d 985 (Fla. 2d DCA, 1989)

The Wife does not argue that the Fourth District Court of Appeal indicated in dicta that there was a disagreement with Schorb v. Schorb:

"We simply disagree with Schorb v. Schorb, 547 So.2d 985 (Fla. 2d DCA, 1989), to the extent that it holds otherwise. The text of the legislation is broad enough to include impecunious former spouses even if they have no minor children living with them. The fact that the primary motive was to protect young children does not at all mean that there was no desire to give the same protection to a needy former spouse living alone. In any event, the legislative history of the statute is irrelevant where the wording of the statute is, as here, clear and unambiguous. Aetna Casualty & Surety Company vs. Huntington National Bank, 17 Fla. L. Weekly S750, S751 (Fla. Dec. 17, 1992). An inquiry into legislative intent may be conducted only where the statute is ambiguous on its face. Streeter v. Sullivan, 509 So. 2d 268, 271 (Fla. 1987)." (Appendix A-4)

While the Husband proceeds to argue in his brief on jurisdiction, several matters that are more properly addressed in a brief after this Court accepts jurisdiction, his brief does point out that there were different controlling statutes. The Schorb court construed Florida Statute 61.1301 (1987). The Fourth District, in the case at bar, construed Section 61.1301, Florida Statutes (1991). The Husband argues that the legislature added

subsection (3) in order to adopt the reasoning in the Schorb decision. Subsection 3, the addition in the 1991 version of 61.1301, Florida Statutes, provides:

"It is the intent of the legislature that the section may be used to collect arrearages in child support payments which have accrued against an obligor."

The Wife would argue that if it was the legislative intent to adopt the Schorb reasoning, the wording of the amendment to the statute would be much clearer than that cited above and inserted into the statute.

It is interesting to note that because of the amendments to the statute, the Fourth District Court of Appeals, when requested by the Husband to certify the question as conflict with another District Court of Appeal Opinion, refused to do so.

Consequently, this Court has within its full discretionary power the decision to accept jurisdiction in this cause.

The Wife would argue that in the case at bar, because of the enforcement procedures that were undertaken by the Wife at trial court level, Florida Statutes 61.1301 (1)(a) demands an Income Deduction Order be entered in the present cause. That statute is clear that an Income Deduction Order should be entered in establishing, enforcing, or modifying an alimony obligation. The Schorb court had no right to examine the legislative history of a statute where the wording of the statute is clear and unambiguous. Aetna Casualty & Surety Company vs. Huntington National Bank, supra. Apparently, the conflict in the two decisions is more bounded in whether the statute is clear or ambiguous. The Wife submits that the statute is clear, a position obviously adopted by

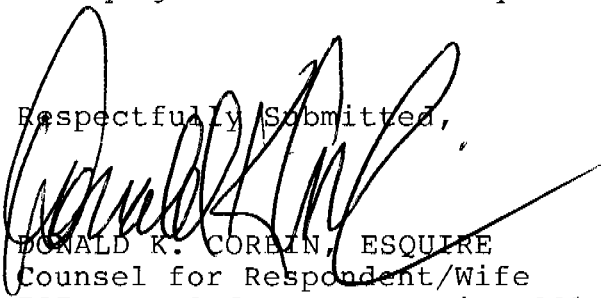
the Fourth District Court of Appeal.

The decision to accept the jurisdiction in this cause is clearly within the expressed discretionary review of the Supreme Court pursuant to Rule 9.030, Florida Rules of Appellate Procedure. The Wife respects the discretionary decision of the Court.

CONCLUSION

Pursuant to Florida Rule of Appellate Procedure 9.030, the Court possesses in its sole discretionary decision, has the power to accept jurisdiction in this cause. The Wife would submit, however, that the statute is clear and unambiguous and further review by this Court is unnecessary given such clarity in the statute.

Respectfully Submitted,



DONALD K. CORBIN, ESQUIRE
Counsel for Respondent/Wife
727 N.E. 3rd Avenue, Suite 301
Fort Lauderdale, Florida 33304
305-523-4112
Florida Bar Number 179710

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Curtin R. Coleman, Esquire, P.O. Box 1625, 609 East Market Street, Suite 206, Charlottesville, Virginia 22902 this 28th day of April, 1993.


DONALD K. CORBIN, ESQUIRE