IN THE SUPREME COURT

OF THE STATE OF FLORIDA

MARGARET L. NICOLL,

Petitioner,

v. CASE NO. 85,493

THE HONORABLE FRANKLIN G. BAKER, Circuit Judge of the Twentieth Judicial Circuit in and for Hendry County, and FRANK S. NICOLL, JR.,

Respondents.

BRIEF OF RESPONDENT FRANK S. NICOLL, JR.

ON PETITION FOR REVIEW FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF THE STATE OF FLORIDA

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STATEMENT OF THE CASE AND OF THE FACTS

Respondent, Frank S. Nicoll, Jr., objects to the Statement of the Case and of the Facts in the Petitioner's initial brief, but only as to the fact that it contains irrelevant matter. The relevant facts are contained in the District Court's opinion. *See Nicoll v. Baker*, 652 So. 2d 417 (Fla. 2d DCA 1995). The Nicolls were divorced in Maryland in 1965. (Opinion at 2, 652 So. 2d at 418). In 1994, the former wife attempted to register a decree under the Uniform Reciprocal Enforcement of Support Act (URESA) to collect $1.9 million dollars in allegedly unpaid alimony. *Id.* In the District Court, the former husband sought a writ of prohibition to prohibit the Circuit Court from exercising subject matter jurisdiction. *Id.* at 1-2, 652 So. 2d at 418. He argued that the new definition of "support" in Florida's version of URESA limited jurisdiction under URESA to child support, and that it provided no jurisdiction for enforcement of alimony orders alone. *Id.* at 2, 652 So. 2d at 418. The District Court agreed and granted the petition, but it certified the following question as a question of great public importance:

> Whether the legislature, by enacting Section 88.031(20), Florida Statutes (1993), has abrogated the Supreme Court's holding in *State ex rel. Quigley v. Quigley*, 463 So. 2d 224 (Fla. 1985), and removed alimony orders from the jurisdiction of URESA unless they are accompanied by child support?

Id. at 4, 652 So. 2d at 419.

The former wife has brought the certified question before this Court on petition for review under Fla. R. App. P. 9.030(a)(2)(A)(v).

SUMMARY OF ARGUMENT

In *State ex rel. Quigley v. Quigley*, 463 So. 2d 224 (Fla. 1985), this Court held that the 1979 amendment to the URESA law did not sufficiently express the legislature's intent to exclude pure alimony claims from URESA enforcement. The decision suggested that the legislature needed to define the term "support" to exclude alimony in order to achieve that end. The legislature responded in 1992 with an amendment to the URESA law. That amendment specifically defined "support" in a manner which exludes alimony. The 1992 amendment is clearly a response to the *Quigley* result, and it indicates that the URESA law applies only to child support matters. The District Court properly recognized the legislative expression of intent and held that the Circuit Court exceeded its subject matter jurisdiction by applying the URESA provisions to a pure alimony matter. The certified question should be answered affirmatively in order to effectuate the clear intent of the legislature.

ARGUMENT

THE 1992 AMENDMENT TO THE URESA LAW WAS CLEARLY INTENDED TO REMOVE ALIMONY ORDERS FROM THE JURISDICTION OF URESA UNLESS THEY ARE ACCOMPANIED BY CHILD SUPPORT.

This case presents the next logical step in the development of the law regarding the application of the Uniform Reciprocal Enforcement of Support Act, found at Chapter 88, Florida Statutes (1993). Chapter 88 is Florida's version of the URESA. Section 88.011, Florida Statutes (1993). The Second District Court held that the URESA law does not confer subject matter jurisdiction on Florida's circuit courts to enforce alimony decrees of foreign jurisdictions. The subject matter jurisdiction conferred by the statutes relates solely to child support. The basis for the holding is a 1992 amendment to Chapter 88, which defines the term "support" for the purposes of URESA. *See* Ch. 92-138, § 13, Laws of Florida. Prior to the addition of this definition to the statute, the Second District Court had disagreed with the Fifth District Court of Appeal regarding whether URESA applied to alimony.

In *Helmick v. Helmick*, 436 So. 2d 1122 (Fla. 5th DCA 1983), the trial court had entered an order requiring the former husband to provide "support" to his former wife under the provisions of URESA under a Maryland divorce decree. On appeal, the husband argued that URESA applies only to child support and not to alimony. The Fifth District Court noted

that the URESA provisions had been applied to alimony in the past. The former husband asserted that a 1979 amendment to the statute indicated a contrary legislative intent. He referred specifically to Section 88.012, which states:

> Common-law and statutory procedures governing the remedies for the establishment and enforcement of orders of support for children by responsible parents under the Uniform Reciprocal Enforcement of Support Act have not proven sufficiently effective or efficient to cope with the increasing incidence of establishing and collecting *child-support obligations* when the petitioner and respondent reside in different states....
>
> 436 So. 2d at 1123 (emphasis by the court).

The quoted language is unchanged in the current statute. Mr. Helmick argued that by this reference only to child support in the 1979 amendment, the legislature had intended to alter existing law so that URESA would apply only to child support and no longer to alimony. The Fifth District Court rejected the argument, stating that if the legislature intended this result in reenacting URESA in 1979, it should have expressed this intent clearly by providing new definitions. 436 So. 2d at 1123. The Court stated:

> If the legislature had meant to distinguish between child support and alimony it would have defined this term, especially in light of previous judicial interpretation applying URESA to alimony awards.
>
> 436 So. 2d at 1124.

The Circuit Court's order applying the URESA law to alimony was affirmed. *Id.*

In *State ex rel. Quigley v. Quigley,* 446 So. 2d 1174 (Fla. 2d DCA 1984), *quashed,* 463 So. 2d 224 (Fla. 1985), the Second District Court disagreed with the *Helmick* decision. In *Quigley,* the trial court had dismissed the former wife's petition for enforcement of alimony under a Michigan divorce decree. On appeal, the Second District affirmed the dismissal based upon the determination that a Florida circuit court lacks subject matter jurisdiction under URESA to enforce such provisions. The Court rejected the *Helmick* holding, specifically finding that the legislative intent with regard to the URESA is manifested by Section 88.012. The Court stated:

> Contrary to our sister court's statement in *Helmick* that section 88.012 makes merely a "passing reference to child support only," 436 So. 2d at 1123, this section in fact plainly says several times that the URESA shall apply to enforcement of foreign child support judgments. This section not once remarks that the URESA shall also apply to alimony provisions of foreign divorce decrees.
>
> 446 So. 2d at 1175.

The Court reasoned that the legislature was presumed to be cognizant of the existing judicial construction of the statute when contemplating making changes in the statute. 446 So. 2d at 1176. It is presumed that when the legislature effects changes in a statute, it intends to accord the statute a

meaning different from that accorded it before the changes were made. *Id.* The Court concluded that the legislature's reason for enacting Section 88.012 was to evince its disapproval of prior constructions of the URESA. Reading the word "support" in subsequent sections of the URESA in pari materia with section 88.012 emphasized that the term "support" means only "child support."

On petition for discretionary review, this Court accepted the reasoning in *Helmick* and quashed the *Quigley* decision. *State ex rel. Quigley v. Quigley,* 463 So. 2d 224 (Fla. 1985). The Court acknowledged the logic of the Second District Court's reasoning, but it did not see that the legislature intended by the amendment in 1979 to exclude orders of alimony support from the scope of Florida's URESA. 436 So. 2d at 226. The Court stated:

> If the legislature had meant to distinguish between child support and alimony, it should have redefined this term, especially in light of the previous application of URESA to alimony awards.
>
> We cannot find that the statement of legislative intent impliedly meant to repeal alimony support actions previously available under URESA.
>
> 463 So. 2d at 226.

The Court rejected the District Court's interpretation of the URESA statutes in favor of the *Helmick* reasoning.

Both the Fifth District Court in *Helmick* and this Court in *Quigley* indicated that the legislature had to redefine "support" if it wanted to limit the applicability of URESA to

child support. The 1992 amendment to the statute accomplished exactly that end. It specifically defines "support" in terms which could not include alimony. The new subsection to Section 88.031 states:

> "Support" includes:
>
> (a) Support for a child, or child and spouse, or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under Title IV-D of the Social Security Act; or
>
> (b) Support for a child who is placed under the custody of someone other than the parent pursuant to s. 39.41.

Section 88.031(20), Florida Statutes (1993).

This amendment to the statute answers the questions raised in *Helmick* and in *Quigley*. By redefining "support," the legislature clearly indicated that the URESA provisions apply only to child support. As this Court noted in *Quigley*, the legislature is presumed to be cognizant of the judicial construction of a statute in contemplating making changes in the statute. 463 So. 2d at 226. With the 1992 amendment, it is clear that the changes to Chapter 88 evince an intent to exclude alimony from the meaning of the word "support." As suggested by the *Quigley* decision, the legislature has now redefined the term in order to distinguish between child support and alimony. The 1992 amendment is clearly a response to the *Quigley* result, and it indicates that the URESA law applies only with child support matters. The trial court in

the instant case exceeded its subject matter jurisdiction by purporting to apply the URESA law to pure alimony matters.

The former husband has not disputed the similarity of the facts in this case and in *Frazier v. Frazier,* 616 So. 2d 575 (Fla. 2d DCA 1993). The issue in this case, however, is the applicability of the 1992 amendment to the Uniform Reciprocal Enforcement of Support Act. If the definition of "support" in the 1992 amendment had been applicable to the situation in *Frazier v. Frazier,* the result would have been different. Similarly, the result in *State ex rel. Quigley v. Quigley,* 463 So. 2d 224, (Fla. 1985), would have been different under the 1992 definition of the term. The Petitioner has never addressed the obvious fact that the 1992 amendment is a legislative response to the *Quigley* decision. In *Quigley,* it was indicated that if the legislature had meant to distinguish between child support and alimony, it would have redefined the term. The statement of legislative intent in a prior amendment had not been sufficient to repeal implicitly the alimony support provisions previously available under URESA. However, the new subsection to Section 88.031 expressly defines "support" for the purposes of URESA in terms which cannot be interpreted to include alimony.

The Petitioner points out that the 1992 amendment also addressed alimony in Section 14. Chapter 92-138, §14, Laws of Florida. That undeniable fact does not support the former wife's position. In fact, it strongly indicates that the

legislature intended that only child support, and not alimony, can be enforced in a proceeding arising out of a foreign divorce decree under Chapter 88. Section 88.0515, Florida Statutes (1993), which is the Section added by Section 14 of Chapter 92-138, provides that orders or judgments for the payment of alimony or support "... entered by any court of this state may be enforced by another circuit court in this state in the following manner: ..." This provision addresses only judgments entered by circuit courts of this state. The statute was enacted in the same legislation which redefines "support" for the purposes of URESA enforcement of foreign support decrees. The legislature was well aware of the difference between alimony and child support, and specifically and expressly limited the enforcement of foreign decrees to child support decrees.

The Petitioner's brief overlooks the basic rule of statutory construction that expression of one thing in a statute implies exclusion of another. *PW Ventures, Inc. v. Nichols,* 533 So. 2d 281 (Fla. 1988). The language of inclusion in the definition of support implies exclusion of any other definition of the term. The legislature was aware that this Court held in *State ex rel. Quigley v. Quigley,* 463 So. 2d 224 (Fla. 1985), that it had to redefine "support" if it intended to exclude alimony from operation of the URESA law. The 1992 amendment redefined the term "support" to exclude alimony from operation of the URESA law. The

Petitioner has yet to offer any explanation for the purpose served by the new definition of the term in the 1992 amendment. The interpretation she offers renders the amendment meaningless. The Courts are not to presume that a given statute employs useless language. *Johnson v. Feder*, 485 So. 2d 409, 411 (Fla. 1986). Statutory interpretations which render statutory provisions superfluous are disfavored. *Id.* The 1992 amendment very specifically defined the term "support" for the purposes of the URESA law. The amendment cannot be interpreted to provide that the URESA law applies to alimony. Both responses to the petition for writ of prohibition essentially ask this Court to ignore the 1992 amendment.

CONCLUSION

The legislature clearly intended to remove alimony orders from the jurisdiction of URESA unless they are accompanied by child support. Respondent, Frank S. Nicoll, Jr., requests that the certified question be answered in the affirmative in order to effectuate the legislative intent. Respondent requests that the decision of the District Court be approved.

Respectfully submitted,

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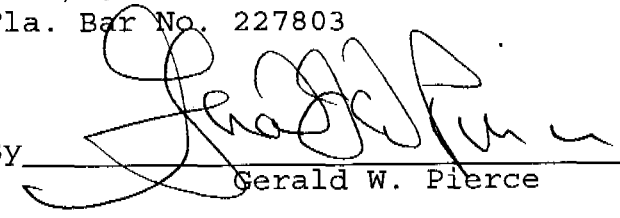
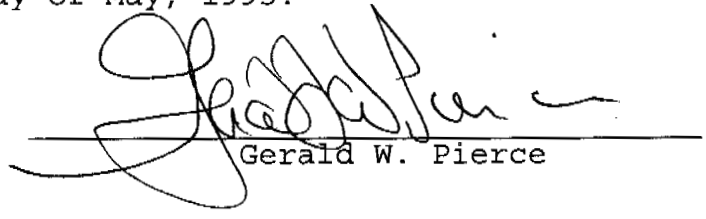


By _____
Gerald W. Pierce

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to THE HONORABLE FRANKLIN G. BAKER, Circuit Judge, Hendry County Courthouse, Post Office Box 1760, LaBelle, Florida, 33935, FRANK C. ALDERMAN, III, ESQUIRE, Post Office Box 1530, Fort Myers, Florida, 33902, and to OWEN L. LUCKEY, JR., ESQUIRE, Post Office Drawer 1820, LaBelle, Florida, 33935, by regular United States Mail this 31st day of May, 1995.



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