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MAY 15 1995

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT  
By *[Signature]*  
Chief Deputy Clerk

MARGARET L. NICOLL, )

Petitioner, )

vs. )

THE HONORABLE FRANKLIN G. )  
BAKER, Circuit Judge of the )  
Twentieth Judicial Circuit )  
in and for Hendry County, )  
Florida, etc. )

Respondent. )

CASE NO. 85,493  
DISTRICT COURT OF APPEAL  
2ND District -No.02684

APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL  
TO THE FLORIDA SUPREME COURT

PETITIONER'S BRIEF ON THE MERITS

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PREFACE

The Petitioner, MARGARET L. NICOLL, is a person claiming an interest in these proceedings, and is an intervenor in the Lower Court, The Second District Court of Appeal, Lakeland, Florida, Case No. 94-02684. The Respondent is the Honorable FRANKLIN G. BAKER, Circuit Judge, Twentieth Judicial Circuit, in a Petition of Prohibition brought in the Lower Court by FRANK S. NICOLL, JR. The parties shall be referred to as Petitioner and Respondent.

The following symbols will be used:

R - Record

L - Line

A - Appendix

ISSUE PRESENTED FOR REVIEW

"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?"

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner filed with the Clerk of the Circuit Court in Hendry County a "Registration of Foreign Support Order," citing as authority Sections 88.321-.371, Florida Statutes (1993) (A 37-39). The registration claimed almost two million dollars in unpaid "support" under a 1965 decree of divorce from the State of Maryland. (A 38). Former husband, FRANK S. NICOLL, JR., filed a Petition to Vacate Registration and to Stay Enforcement and a Motion to Dismiss. (A 56-57). The basis of the former husband's petition and motion was the claim that Chapter 88 provides for enforcement solely of the duty of child support, and that it provides no remedy for enforcement of an alimony judgment. (A 51-53). It is the position of the Petitioner that she is owed a duty of "support" as defined in Chapter 88. (A 37-39).

The Petitioner filed an answer to the Petition to Vacate Registration. (A 56-57).

The Petitioner propounded to the former husband, FRANK S. NICOLL, JR., "Wife/Petitioner's First Request for Admissions". (A 67-81). The former husband, FRANK S. NICOLL, JR., propounded to the Petitioner "Respondent's Response to Petitioner's First Request for Admissions". (A 82-84). The Petitioner's Request for Admissions numbers 8, 13, 18, 13, 28, 33, 38, 43, 48, 53 and 58, asked the former husband, FRANK S. NICOLL, JR., to admit that the alimony payments made by the former husband, FRANK S. NICOLL, JR., to the Petitioner for the years 1965 - 1975, were for her support and for the support for the minor children. (A 67081). The former

husband, FRANK S. NICOLL, JR., in Respondent's response to Petitioner's First Request for Admissions, Paragraph 4, answers as follows, to-wit:

"..... Respondent therefore admits that alimony payments were made to the wife for her support, but denies that they were for the support of the minor children, as requested by admissions in numbered paragraphs 8, 13, 18, 23, 28, 33, 38, 43,48,53, 58." (A 82-84).

The matter was heard before the Honorable FRANKLIN G. BAKER, Circuit Judge, on May 31, 1994. (a 1). A transcript of the hearing on the Petition to Vacate Registration and Motion to Dismiss is included in the record at (A 1-21). The Court found that it had jurisdiction of the subject matter and of the parties hereto; the Court reserved ruling on the Respondent's Petition to Vacate Registration and to Stay Enforcement pending trial; and, the Court denied the Respondent/Former Husband's, FRANK S. NICOLL, JR., Motion to Dismiss, which order was signed July 5, 1994, and filed with the Clerk on July 6, 1994. (A 65-66).

A Petition for Writ of Prohibition was brought in the District Court of Appeal of Florida, Second District, Case No. 94-02684, by FRANK S. NICOLL, JR., then Petitioner, vs. The Honorable FRANKLIN G. BAKER, Circuit Judge of the Twentieth Judicial Circuit, in and for Hendry County, Respondent, seeking to prohibit him from continuing with the proceedings.

MR. NICOLL contended that a new definition in Chapter 88, Florida Statutes (1993) the Revised Uniform Reciprocal Enforcement of Support Act (URESA), has limited jurisdiction under Uresa to child support and thus provides no jurisdiction for the enforcement



of only alimony. The lower court agreed and granted the petition but certified to the Florida Supreme Court 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?"

### SUMMARY OF ARGUMENT

The legislature, by enacting Section 88.031(20), Florida Statutes (1993), has not abrogated the Supreme Court's holding in State ex rel. Quigley v. Quigley, 463 So. 2d, 224 (Fla. 1985). The legislature has not removed alimony orders from the jurisdiction of URESA. Florida Statutes 88.031(2) must be read with and in conjunction with Florida Statutes 88.0515 relating to alimony and child support which was adopted at the same time. In reviewing the remainder of the statute adopted as Florida Statute 92-138, it is rather obvious that the legislature did not intend to remove alimony from the purview of the Uniform Reciprocal Enforcement of Support Act. The public policy adopted by this Court in Quigley v. Quigley, 463 So. 2d, 224 (Fla. 1985), allowing support alimony to be pursued under the Uniform Reciprocal Enforcement of Support Act is still the law.

ARGUMENT

"WHETHER THE LEGISLATURE, BY ENACTING SECTION 88.031(20), FLORIDA STATUTES (1993), HAS ABROGATED THE SUPREME COURT'S HOLDING IN STATE EX REL. QUIGLEY VS. QUIGLEY, 463 SO. 2D, 224 (FLA. 1985), AND REMOVED ALIMONY ORDERS FROM THE JURISDICTION OF URESA UNLESS THEY ARE ACCOMPANIED BY CHILD SUPPORT?"

The legislature, by enacting Section 88.031(20), Florida Statutes (1993), has not abrogated the Supreme Court's holding in State ex rel. Quigley v. Quigley, 463 So. 2d, 224 (Fla. 1985), and has not removed alimony orders from the jurisdiction of URESA.

Petitioner responded to the Petition for Writ of Prohibition of former husband, FRANK S. NICOLL, JR., brought pursuant to Art. V, Section 4(b)(3), Fla. Const., and Florida R. App. P. 9.030(b)(3) & 9.100, which petition was brought seeking issuance of a writ of prohibition to prohibit the Respondent, The HONORABLE FRANKLIN G. BAKER, Circuit Judge of the Twentieth Judicial Circuit in and for Hendry County, Florida, from exercising subject matter jurisdiction under the Uniform Reciprocal Enforcement of Support Act for the purpose of enforcing a Maryland decree for alimony, and stated:

It is the position of the Petitioner that the trial court has subject matter jurisdiction to enforce the 1965 Maryland alimony decree under URESA based on Florida Statutes Chapter 88, part IV, Registration of Support Orders, Sections 88.321-.371, inclusive, Florida Statutes (1993); State ex rel. Quigley v. Quigley, 463 So. 2d 224 (Fla. 1985); and, Frazier v. Frazier, 616

So. 2d 575 (Fla. App. 2 Dist. 1993).

Petitioner filed with the Clerk of the Circuit Court in Hendry County a "registration of Foreign Support Order, " citing as authority Sections 88.321-.371, Florida Statutes (1993). (A 37-39). The registration claimed almost two million dollars in unpaid "support" under a 1965 decree of divorce from the State of Maryland. (A 38). Former husband, FRANK S. NICOLL, JR., filed a Petition to Vacate Registration and to Stay Enforcement and a Motion to Dismiss. (A 56-57). The basis of the Registration of Foreign Support Order by the Petitioner is that the Petitioner is entitled to the benefits of Chapter 88 to seek unpaid support alimony under the Maryland decree. (A 37-39). The basis of the former husband's, FRANK S. NICOLL, JR., petition and motion was the claim that Chapter 88 provides for enforcement solely of the duty of child support, and that it provides no remedy for enforcement of an alimony judgment. (A 51-53). It is the position of the Petitioner that she is owed a duty of "support" as defined in Chapter 88. (A 37-39).

The Petitioner filed an answer to the Petition to Vacate Registration. (A 56-57)

The Petitioner propounded to the former husband, FRANK S. NICOLL, JR., "Wife/Petitioner's First Request for Admissions". (A 67-81). The former husband, FRANK S. NICOLL, JR., propounded to the Petitioner's "Respondent's Response to Petitioner's First Request for Admissions". (A 82-84). The Petitioner's Request for Admissions numbers 8, 13, 18, 23, 28, 33, 38, 43, 48, 53 and 58,

asked the former husband, FRANK S. NICOLL, JR., to admit that the alimony payments made by the former husband, FRANK S. NICOLL, JR., to the Petitioner for the years 1965 - 1975, were for her support and for the support for the minor children. (A 67-81). The former husband, FRANK S. NICOLL, JR., in response to petitioner's first request for admissions, paragraph 4, answers as follows, to-wit:

".....Former husband, FRANK S. NICOLL, JR., therefore admits that alimony payments were made to the Petitioner for her support, but denies that they were for the support of the minor children, as requested by admissions in numbered paragraphs 8, 13, 18, 23, 28, 33, 38, 43, 48, 53, 58." (A 82-84).

The matter was heard before the Honorable FRANKLIN G. BAKER, Circuit Judge, on may 31, 1994. (A 1). A transcript of the hearing on the Petition to Vacate Registration and Motion to Dismiss is included in the record as (A 1-21). The Court found that it had jurisdiction of the subject matter and of the parties hereto; the Court reserved ruling on the former husband's, FRANK S. NICOLL, JR., Petition to Vacate Registration and to Stay Enforcement pending Trial; and, the Court denied the former husband's Motion to Dismiss, which order was signed July 5, 1994, and filed with the Clerk on July 6, 1994. (A 65-66).

The Petitioner, a party in interest in these proceedings, requested that the Court enter an order denying the former husband's, FRANK S. NICOLL, JR., request for an order to show cause why relief should not be granted. She further requested that the lower court deny the former husband's, FRANK S. NICOLL, JR., petition to enter a writ of prohibition prohibiting the Respondent,

The HONORABLE FRANKLIN G. BAKER, Circuit judge of the Twentieth Judicial Circuit in and for Hendry County, Florida, from exercising jurisdiction over this cause.

This case presents an almost identical set of facts to Frazier v. Frazier, 616 So. 2d 575 (Fla. App. 2d Dist. 1993). In the Frazier case the wife, a Colorado resident, sought to enforce under part IV of URESA Section 88.351(c), Florida Statutes (1991), an award of support alimony on a 1964 Colorado divorce decree. The Petitioner sought in the Circuit Court in and for Hendry county, Florida, to seek to register a foreign support order pursuant to part URESA Section 88.351(c), Florida Statutes (1993) for support alimony on a 1965 Maryland divorce decree. The former husband, FRANK S. NICOLL, JR., is a resident of Florida and the Petitioner is a resident of Maryland.

There is no question that the lower court has jurisdiction over former husband, FRANK S. NICOLL, JR. He appeared and raised objections as authorized by the statute. By filing his petition to vacate registration and by contesting the amount claimed by Petitioner, former husband, FRANK S. NICOLL, JR., effectively initiated the enforcement prong of part IV. In Frazier the Second District Court of Appeals, at Page 577 stated as follows:

".....There is no question that the trial court had jurisdiction over Mr. Frazier. He appeared and raised objections as authorized by the statute. By filing his petition to vacate the registration and by contesting the amount claimed by Mrs. Frazier, Mr. Frazier effectively initiated the enforcement prong of part IV....."

Petitioner seeks to enforce under URESA a support order for alimony. This court previously addressed its opinion of a support order with respect to alimony in Frazier at Page 578:

"URESAs provides a broad definition of "support." A support order is "any judgment, decree or order of support in favor of a petitioner, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered." Section 88.031(19), Florida Statutes. (1991). A "duty of support" includes a duty to pay arrearage, and also includes a duty to pay alimony without accompanying child support. Section 88.031(3), Florida Statutes. (1991); Quigley. As a result, it is clear that Mrs. Frazier is a person owed a duty of support and the Colorado judgment providing that support is a "support order."

It is thus clear from the District Court of Appeals' prior opinion that the party in interest, the Petitioner, is owed a duty of support from the former husband, FRANK S. NICOLL, JR., that part IV of URESA is a proper method of enforcing that.

This Court addressed the issue of the use of URESA to enforce foreign support orders for alimony in State ex rel. Quigley v. Quigley, 463 So. 2d 224 (Fla. 1985). This matter was apparently resolved on public policy grounds when the court addressed the issue as follows at page 226:

"Further, support for the inclusion of alimony within Florida's URESA is found in the nature of the statute itself. It is intended to be enforced both uniformly and reciprocally throughout the various states Section 88.311, 88.021, Florida Statutes (1981). The courts of other jurisdictions have construed the act to include support for spouses. E.g., Ex Parte O'Neal, 420 So. 2d 264 (Ala. 1982); Mehrstein v. Mehrstein, 245 Cal. App.2d 646, 54 Cal. Rptr. 65 (2d DCA 1966); Henry v.

Henry, 115 Ga. App. 211, 154 S.E. 2d 298 (1967); Mullis v. Mullis, 669 P.2d 763 (Okla. 1983); Aliq v. Aliq, 220 Va. 80, 255 S.E.2d 494 (1979). If Florida does not qualify as a reciprocating state in other jurisdictions, Florida citizens will not be able to look to those states for the enforcement through URESA of support orders entered by Florida courts. Thus, as a matter of judicial and public policy, Florida courts should enforce a foreign judgment of alimony under URESA."

The former husband, FRANK S. NICOLL, JR., in his Petition for Writ of Prohibition took the position that Florida Statutes 92-138 has redefined support and as such has negated Quigley and Frazier as applied to support alimony. However, a more close scrutiny of 92-138 fails to support that argument.

Section 13. Subsection (20) is added to Section 88.031, Florida Statutes, to read: 88.031. Definitions. - As used in this chapter, unless the context requires otherwise:

(20) "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 the 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 14. Section 88.0515, Florida Statutes, is created to read:

**88.0515. Alimony and child support; additional method of enforcing orders and judgments; costs; expenses**

1) An order or judgment 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:

(a) The person to whom such alimony or support is payable or for whose benefit it is payable may file a certified copy of the order



or judgment with a petition for enforcement or modification in the circuit court for the county in which the person resides or in the county where the person charged with the payment of the alimony or support resides or is found.

(b) If the pleadings seek to modify the amount of the alimony or support, the court shall have jurisdiction to hear and decide issues raised in the petition. The clerk of the circuit court in which the new order is entered shall transmit a certified copy of the new order or judgment to the court of original jurisdiction, and the new order or judgment shall be recorded and filed in the original action and become a part thereof. If the court determines that the action should be tried by the court entering the original order or judgment, it shall transfer the action to that court for determination.

(2) The court has jurisdiction to award costs and expenses as are equitable, including the costs of certifying and recording the judgment entered in the action in the court of original jurisdiction and reasonable attorney's fees.

(3) The entry of a judgment of arrearage for support, alimony, or fees and costs does not preclude a subsequent contempt proceeding or certification of a Title IV-D case for intercept by the United States Internal Revenue Service for the judgment, including costs or for subsequent failure of an obligor to pay support, alimony, or fees. In Title IV-D cases, any costs or fees shall only be assessed against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees.

Section 15. Section 88.331, Florida Statutes, is amended to read:

#### **88.331 Registration**

(1) The obligee may register the foreign support order in a circuit court of this state in the manner, with the effect, and for the purposes herein provided.

(2) Registration of a Title IV-D case under

these provisions shall allow the court the jurisdiction to address only those issues of support allowed under Title IV-D of the Social Security Act, and no other collateral issues.

An examination of 92-138 as it relates to Chapter 88 reflects that the definitions of support as reflected in Section 88.031(20) are to be used in this chapter, unless the context requires otherwise. The legislature also at the same time adopted 88.0515 relating to alimony and child support; additional methods for enforcing orders and judgments; costs; expenses. In that section which is also an addition to Chapter 88 the legislature addresses alimony or support as being enforceable under Chapter 88. The legislature also in Section 88.331 addressed the issue of registration of Title IV-D cases.

The Petitioner, does not seek to enforce a Title IV-D case. The Petitioner's petition is brought against the former husband, FRANK S. NICOLL, JR., on a duty of support based on a foreign support order. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Sections 88.331 - 88.371. Florida Statutes 88.321. The Petitioner has sought to register the Maryland foreign support order in the Circuit Court in and for Hendry county, Florida, for purposes of registering and enforcing the Maryland foreign support order. The obligee may register the foreign support order in a circuit court of this state in the manner, with the effect, and for the purposes herein provided. Florida Statutes 88.331. The Petitioner has sought this relief by registering a foreign support order not as a Title IV-D beneficiary but by herself. It is rather

clear when examining part IV that a registrant may seek relief either under Title IV-D or in their own private capacity. If the state is acting either as a rendering or a registering agent, the department shall represent the petitioner only in cases certified to Title IV-D of the Social Security Act in proceedings under this part. In Non-IV-D cases, the petitioner should be represented by himself or private counsel. Florida Statutes 88.345.

An examination of part IV of Chapter 88 makes it clear that the Petitioner had available to herself to seek to enforce the foreign support order for support alimony, that she did not need to seek relief under part IV under a Title IV-D theory and that the relief she seeks, is consistent with the Quigley holding of this Court, and is consistent with the Frazier holding of the Second District Court of Appeals.

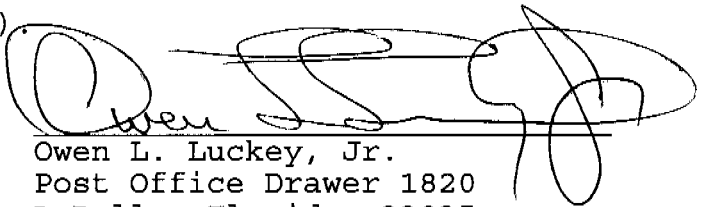
In the context of part IV the new subsection to 88.031 regarding support are inapplicable.

Pursuant to Florida Statutes Chapter 88.321 -.371, part IV of the Uniform Reciprocal Enforcement of Support Act relating to the registration of foreign support orders; pursuant to State ex rel. Quigley v. Quigley, 463 So. 2d 224 (Fla. 1985; and, pursuant to Frazier v. Frazier, 616 So. 2d 575 (Florida 2nd DCA 1993), the Circuit Court as it found had jurisdiction over the parties and over the subject matter and accordingly the Petition for Writ of Prohibition of FRANK S. NICOLL, JR., against the Honorable FRANKLIN G. BAKER, Circuit Judge of the Twentieth Judicial Circuit in and for Hendry County, Florida, Respondent, should have been denied

because the Circuit Court had subject matter jurisdiction over the cause.

CONCLUSION

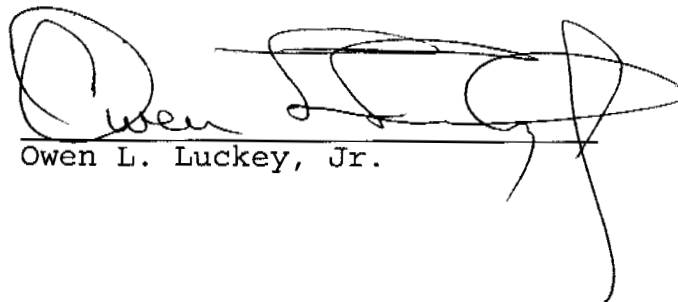
The legislature, by enacting Section 88.031(20), Florida Statutes (1993) has not abrogated this Court's holding in State ex rel. Quigley v. Quigley, 463 So. 2d, 224 (Fla. 1985), and therefore, alimony orders are still subject to the jurisdiction of URESA whether they are or are not accompanied by child support. Therefore, the writ of prohibition should be quashed and the lower trial court should be directed to proceed with the enforcement of Petitioner's registration of support order brought pursuant to Chapter 88, Florida Statutes (1993), the revised Uniform Reciprocal Enforcement of Support Act (URESAs).



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petitioner's Brief on the Merits has been furnished this 11 day of May, 1995, by U. S. Mail, to GERALD W. PIERCE, ESQUIRE, Henderson, Franklin, Starnes & Holt, P.A., Co-Counsel for FRANK S. NICOLL, JR., Post Office Box 280, Fort Myers, Florida, 33902-0280; JOHN JAY WATKINS, ESQUIRE, Watkins & Ramunni, P.A., Co-Counsel for FRANK S. NICOLL, JR., Post Office Box 250, LaBelle, Florida, 33935; and FRANK C. ALDERMAN, III, ESQUIRE, Alderman & Ahlbrand, Counsel for Respondent, Post Office Box 1530, Fort Myers, Florida, 33902-1530.

  
Owen L. Luckey, Jr.