

IN THE SUPREME COURT OF FLORIDA

CRISELDA LOPEZ, :
 :
 Petitioner, :
 :
 vs. : Case No. 86,594
 :
 THE HONORABLE E. RANDOLPH : DCA No. 95-01430
 BENTLEY as Circuit Judge :
 Judge of the Tenth Judicial :
 Circuit, :
 :
 Respondent. :
 :
 _____ :

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE FACTS

The parties will be referred to herein as "petitioners" and "respondent." The respondent does not contradict the statement of facts by the petitioner insofar as it deals with the events in the trial court. As appears in the argument section, the respondent strongly disputes the petitioner's interpretation of the opinion of the District Court of Appeal in this case.

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction because the opinion below did not involve the statute cited in the certified questions in Walker v. Bentley, 660 So.2d 313 (Fla. 2d DCA 1995), nor does it even discuss the constitutionality of the statute which is involved in this case.

ARGUMENT

Walker v. Bentley, 660 So.2d 313 (Fla. 2d DCA 1995) solely involved an interpretation of Section 741.30(8)(a), Florida Statutes (1994 Supp.) whereas, the present case involves an interpretation of Section 784.046(9)(a), Florida Statutes (1994 Supp.).

Florida has two entirely different mechanisms for dealing with the domestic aspects of our violent society. One is the statutory scheme found in Section 784.046, Florida Statutes, which deals with repeat violence by any person (whether or not a family member of the victim) against the same victim or a member of that victim's immediate family, Section 784.086(1)(b), Florida Statutes. This is the only statute involved in this case.

The other mechanism is found in Sections 741.28, 741.29, 741.2901, 741.2902, and 741.30, Florida Statutes, the statute involved in Walker. This requires no prior violent act, but does require that the violator and victim be members of the same family or household, who have resided or are residing in the same dwelling unit. That statute is not involved here; however, it significantly contains a legislative pronouncement that its provisions are not to be enforced by indirect criminal contempt, Section 741.2901(2),

Florida Statutes, a significant difference recognized by the District Court of Appeal, in this case, Lopez v. Bentley, No. 95-01430, September 13, 1995, p. 3, by holding:

Unlike Section 741.2901(2), there is no legislative prohibition against a trial court exercising its indirect criminal contempt powers to enforce an injunction for protection against repeat violence under Section 784.046(9)(a).

The decision in this case therefore could not logically involve the same issues certified to this Court by the District Court of Appeal as involving questions of great public importance. It would be a linguistic non-sequitur. Although there are indeed certain analogies to be drawn by way of argument from the Walker precedent, this falls short of creating jurisdiction in this Court. In other words, a case involving apples may be similar to one relating to oranges, but unless they conflict on a common issue of law (and no such argument is made here), there is no jurisdiction.

The fact that the District Court of Appeal cited Walker might in some instances create jurisdiction, see State v. Lofton, 534 So.2d 1148 (Fla. 1988). However, such a citation does not serve that purpose here because in this case the District Court of Appeal expressly distinguished Walker, as quoted above, based upon differences in the statutes.

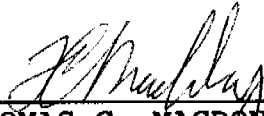
Petitioner argues that this case upholds the validity of a Florida statute; claiming that "the Second District's opinion expressly found the statute on repeat violence valid . . ." (emphasis supplied) (Petitioner's brief on jurisdiction p.5). There is no such language in the opinion in this case, and therefore no constitutional basis for jurisdiction can exist on

this basis. Indeed, in this case the statutory interpretation makes it unnecessary to reach a constitutional issue.

CONCLUSION

Jurisdiction should be denied, and the petition dismissed.

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 U.S. Mail to: Deborah K. Brueckheimer, Esquire, Public Defender's Office, Polk County Courthouse, Post Office Box 9000, Drawer-PD, Bartow, Florida 33830-9000; and, Margot Osborne, Esquire, Assistant State Attorney, State Attorney's Office, Bartow, Florida 33830; this 16th day of November, 1995.



Attorney

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