

**FILED**

SID J. WHITE

MAY 21 1996

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CRISELDA LOPEZ, :

Petitioner, :

vs. :

Case No. 86,594

THE HONORABLE E. RANDOLPH :

BENTLEY, Circuit Judge of  
the Tenth Judicial Circuit, :

Respondent. :

\_\_\_\_\_ :

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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OTHER AUTHORITIES

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STATEMENT OF THE CASE AND FACTS

Petitioner relies on the Statement of the Case and Facts as set forth in her initial brief on the merits.

## SUMMARY OF THE ARGUMENT

The word "shall" in Section 784.046(9)(a), Florida Statutes (Supp. 1994), should be interpreted as mandatory because it is clear from the statute that the legislature wished to enforce violations of repeat violence injunctions through civil contempt proceedings only instead of through indirect criminal contempt proceedings. In doing so the legislature did not encroach on the power of the judiciary. The regulation of repeat violence overlaps the constitutional domain of the legislature and the judiciary, and taking this regulation away from the judiciary's indirect criminal contempt power did not deprive the courts of any essential power. Thus, the legislature did not unconstitutionally encroach on the judiciary's powers by enacting this statute. Because there is no encroachment, the courts must honor the unambiguous statute.

## ARGUMENT

### ISSUES

IS THE WORD "SHALL" AS USED IN SECTION 784.046(9)(A), FLORIDA STATUTES (SUPP. 1994), TO BE INTERPRETED AS MANDATORY RATHER THAN AS PERMISSIVE OR DIRECTORY?

IF INTERPRETED AS MANDATORY, IS SECTION 784.046(9)(A), FLORIDA STATUTES (SUPP. 1994), AN UNCONSTITUTIONAL ENCROACHMENT ON THE CONTEMPT POWER OF THE JUDICIARY IN VIOLATION OF ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION?

(Certified Questions presented in Walker but modified by undersigned counsel for Lopez.)

Before even addressing the issues (which Respondent does in Point II of his brief), Respondent questions the application of the Walker v. Bentley, 660 So. 2d 313 (Fla. 2d DCA 1995), certified questions pertaining to Section 741.30, Florida Statutes (Supp. 1994), to the statute at issue in this case of Section 784.046 (9) (a), Florida Statutes (Supp. 1994). Respondent argues that because the legislature didn't specifically say its intent was to do away with indirect criminal contempt in Section 784.046 as it did in Section 741.2901(2), Florida Statutes (Supp. 1994), in reference to Section 741.30, then the legislature did not do away with the alternative use of indirect criminal contempt proceedings. This is a novel concept, but not one shared by the Second District Court of Appeal or Petitioner. The statute in Section 784.046 (9) (a) clearly states that "[t]he court shall enforce, through a civil contempt proceeding, a violation of an injunction for protection."

(Emphasis added.) This is exactly how Section 741.30(8)(a) begins. In Lopez v. Bentley, 20 FLW D2147 (Fla. 2d DCA Sept. 13, 1995), the Second District compared the two sections and applied their reasoning in Walker and Section 741.30 to Lopez and Section 784.046(9)(a). Even though the legislative intent was clearly stated in Section 741.2901(2), the failure to make the same statement in Chapter 784 doesn't mean the legislative intent was not the same. Clearly, Section 784.046(9)(a) requires the use of civil contempt proceedings in repeat violence injunction violations to the exclusion of other options--indirect criminal contempt. The Second District's application of the Walker reasoning to Lopez demonstrates the Second District's belief that the two statutory provisions are similar in their intent and purpose. Thus, the legislature's failure to state the intent to do away with criminal contempt proceedings in Chapter 784 as it did so state in Chapter 741 is not fatal to this case. The language in Section 784.046 (9) (a) clearly demonstrates an intent to make civil contempt the only avenue to pursue when a repeat violence injunction is violated.

Petitioner relies on her initial brief in regards to Respondent's point II.

CONCLUSION

Based on the foregoing argument and authorities, this Court should grant Petitioner's Writ of Prohibition.

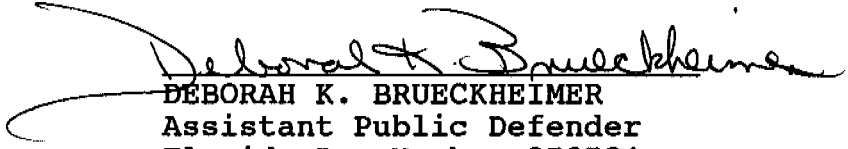


CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Thomas C. MacDonald, Jr., P.O. Box 3324, Tampa, Florida 33601, (813) 273-5000, on this 17<sup>th</sup> day of May, 1996.

Respectfully submitted,

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