

D.A. 6-1-98

047

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**FILED**

SID J. WHITE

NOV 25 1998

CLERK, SUPREME COURT

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

Sid J. White, Clerk  
Supreme Court of Florida  
Tallahassee, Florida 32399-1927

Re: Amendments to the Florida Family Law Rules of Procedure.

89955

Dear Mr. White:

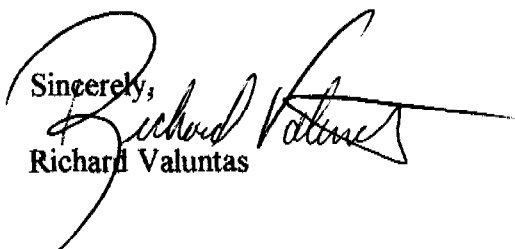
I am writing to file a comment on Rule 12.491-Child Support Enforcement. According to Section 742.031 of the Florida Statutes, "If a paternity judgment contains no such provisions, custody shall be presumed to be with the mother." I see several problems that may arise from such a provision and do not believe any Family Rule of Procedure should be based upon such a problematic statute.

First of all, petitions for paternity and support may be brought by the natural father of a child. Under this statute, a mother will be granted custody of a child if the court does not explicitly provide for custody in its order. This result seems problematic because it may deprive a custodial father of his parental rights. It does not make sense to blindly award custody to the mother of a child when she may not even want custody of the child.

Secondly, providing for this default rule seems to establish a preference for mothers to be granted custody of a child. This is a problem because such a preference is discriminatory in nature. The preference seems to be based on a perception that a mother is a more appropriate custodial parent for a child than a father. Not only is such a presumption discriminatory, it also violates the Florida and United States Constitutions. Such sexist preferences should not be allowed to exist in the Florida Family Rules of Procedure.

Finally, there are numerous occasions where a petition for paternity and child support are brought by a child's grandparents, relatives, or other guardians. If a judge fails to expressly grant custody in such a case, why should a mother (who may have abandoned the child) be granted custody in such a situation? Such a result surely defies logic. Therefore, the preference provided as discussed by Justice Overton on October 29, 1998 should be abolished.

Perhaps a better preference than the one currently established would be to grant custody to the party bringing the paternity/child support action when no explicit award of custody is granted. I hope this situation will be addressed accordingly.

Sincerely,  
  
Richard Valuntas