SUPREME COURT OF FLORIDA

LINDA L. WATTENBARGER,

Petitioner,

-vs-CASE NO.: 95,228

J. FRANK WATTENBARGER,

Respondent.

ON APPEAL FROM THE FIRST DISTRICT COURT OF APPEAL

FIRST DISTRICT

RESPONDENT'S ANSWER BRIEF

SCOTT T. ORSINI

Florida Bar Number 855855

Post Office Box 118

St. Petersburg, Florida 33731-0118

(727) 826-3500

Counsel for Respondent

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CERTIFICATION OF TYPE STYLE AND SIZE

I hereby certify that 14 point proportionally spaced Times New Roman type has been utilized in this brief.

RESPONSE TO COURSE OF PROCEEDINGS, AND STATEMENT OF FACTS

The Petitioner has made several specific assertions in the Course of Proceedings section of her Initial Merits Brief which, according to the former wife, are important for consideration by this Court. Specifically, the former wife points out that her original petition had sought to extend child support "so long as that child remains in high school, not to exceed the child's nineteenth birthday." In Ratcliff v. Ratcliff, 679 So.2d 1279 (Fla.1st DCA 1996), the First DCA, citing Hunter v. Hunter, 626 So.2d 1069 (Fla. 1st DCA 1993), again declared this wording erroneous and that the duration of the child support obligation could not be extended beyond the child's 18th birthday. The Hunter court further directed that in the event one of the exceptions in §743.07(2) subsequently becomes applicable, a petition to modify the award of child support can then be filed.

In the section entitled Statement of Facts, page 4, the former wife incompletely presents the findings of the trial court by stating that "[t]he testimony before this court is that Scott Wattenbarger will be entitled to a diploma by the date of his 19th birthday." The petitioner has conveniently omitted the statements of fact contained in the first paragraph of the trial court's final order. Here the trial court acknowledges that Scott was held back a year to

"repeat kindergarten," and that he "did not graduate with his entry class," and that Scott is "'on track' to graduate at the conclusion of the spring 98 term."[1] The selective incorporation of a favorable portion of the trial court's findings, but not all of the findings, is being done in an attempt to mislead the court from the point of law being discussed. Additionally, by considering the entire order, it is obvious that these two portions contradict each other. On one hand, the findings clearly state that Scott will graduate at the end of the Spring term; while on the other hand the trial court attempts to establish that Scott will be entitled to a diploma before he turns 19 through some unexplained means. Both of these situations can not exist at the same time, i.e. if Scott is "on track" to graduate at the end of the Spring Term; then he will not have completed his requirements for graduation prior to his 19th birthday. Moreover, the trial court failed to set a specific date when the requirements for graduation would be met, for that date would then be the date for termination of the child support obligation. In other words, if the date of graduation occurs prior to the child's nineteenth birthday, child support must cease at graduation. See Murglo v. Frankart, 695 So.2d 881 (Fla. 5th DCA 1997).

As a prelude to the discussion of the question involved, it is pertinent to

[1] These circumstances are nearly identical to those found in Walworth v. Klauder, 615 So.2d 219 (Fla. 5th DCA 1993).

point out the fact that as to the parties to this litigation this question has become moot because the events, which led to contesting the interpretation of the word *graduation*, have already occurred. The trial court's order, dated October 23, 1997, was clearly prospective. That is, it was based on a sequence of events that the trial court viewed as likely to come about.

SUMMARY OF ARGUMENT

The meaning of the term *graduation* as it used in Florida Statutes §743.07(2) should be afforded its plain language meaning. The meaning of the term *graduation* is not effected by the in pari materia relationship between Florida Statutes §743.07(2) and Chapter 61. Furthermore, the plain language meaning of the term *graduation* is consistent with the legislative intent present at the time of enactment of the 1991 revision to Florida Law. To use any other, i.e. more "liberal", definition would be a failure to make a consistent application of the law to students who do not have an expectation of graduation from a public secondary school before they turn 19, and would be the same as judicial activism.

ARGUMENT

Introduction

The former wife argues that the word *graduation* as it used in Florida Statutes §743.07(2) is ambiguous and should be judicially construed in pari materia with related statutes dealing with child support. Further, she suggests that the statute should be liberally construed to effect the intent of the statute to provide child support in cases where the child is over 18 but will satisfy all of the requirements of a high school diploma prior to age 19.

The Respondent's argument addresses four separate and distinct areas. Firstly, the plain language interpretation of the statute. Secondly, the in pari materia relationship between Florida Statutes §743.07(2) and §61.13(1)(a). Thirdly, the legislative intent which existed during the 1991 legislative session when the statute was revised to its present form; and finally, the consistent application of the law to children who have attained their 18th birthday but who can not graduate from high school before they turn 19.

Plain Language Interpretation

The former wife argues that the word *graduation* is ambiguous. This is simply not the case. It is only ambiguous as it serves her needs to shift the focus from the facts that exist in the present case. A frequently encountered

rule of statutory interpretation asserts that a statute, clear and unambiguous on its face, need not and cannot be interpreted by a court and that only statutes which are of doubtful meaning are subject to the process of statutory interpretation. In an attempt to cause further judicial construction, the former wife perpetuates an erroneous representation of the definition of *graduation*, which is contained in Boot v. Sapp, 714 So.2d 579 (Fla. 4th DCA, 1998) and quotes Webster's Third New International Dictionary defining *graduation* as "the act of completing a phase of one's formal education, ***or*** the ceremony of conferring a degree or diploma." (emphasis added). The actual definition, quoted verbatim, as it applies to the instant case is:

> "2.a: the act of completing a phase of one's formal education; *esp:* the act of receiving a diploma, certificate, or degree from a school, college, or university <went to extension classes after ~ from high school> b: the act or ceremony of conferring academic diplomas, certificates, or degrees: COMMENCEMENT <many visitors were on campus for ~ >." Webster's Third International Dictionary of the English Language, Unabridged 985 (3d ed. 1981).

As can be plainly seen, the emphasized word "or" in the petitioner's definition does not exist in the dictionary citation.

When legislative intent is employed as the criteria for interpretation, the primary emphasis is on what the statute meant to members of the legislature who enacted it. As far back as 1918, the Florida Supreme Court held in Van

Pelt v. Hilliard, 75 Fla. 792, 78 So.693, 694-95 (1918) that:

> "The Legislature must be assumed to understand the meaning of words and to have expressed by use of the words employed their intent, and where words employed in a statute have a well-defined meaning, there is no place for construction as to the meaning of the words, but the courts must give to such words the popular or generally accepted meaning."

Moreover, according to Judge Wills writing for the majority:

> "Where a word used in a statute has a definite meaning, and the sense in which it is used is clear, the courts must give to such word its popular meaning, as the Legislature is assumed to have said what they intended by the use of such word, and there is nothing for the courts to construe.
>
> "The Legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms.
>
> "[A Court] will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. If a legislative enactment violates no constitutional provision or principle it must be deemed its own sufficient and conclusive evidence of the justice, propriety, and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction."

More recently, the Fourth District Court said in Beyel Brothers Crane and Rigging Company of South Florida, Inc., v. Ace Transportation, Inc., 644 So.2d 62 (Fla. 4th DCA 1995) where statute is clear and unambiguous, courts will not look behind statute's plain language for legislative intent. This principle is echoed in Hott Interiors, Inc. v. Fostock, 721 So.2d 1236 (Fla. 4th

DCA 1998) where the Fourth DCA said that if a statute is not ambiguous, unreasonable, or illogical, the court may not go beyond its clear wording and plain meaning to expand its reach; to do so would be to extend or modify the express terms of the statute, which would be an improper abrogation of legislative power. The Florida Supreme Court similarly held that where the legislature has not defined words used in phrase, language should usually be given its plain ordinary meaning. Aetna Casualty & Surety Company v. Huntington National Bank, 609 So.2d 1315 (Fla.1992). The Florida Supreme Court also said when interpreting statute, courts must determine legislative intent from plain meaning of statute. Moreover, if language of statute is clear and unambiguous, court must derive legislative intent from words used without involving rules of construction or speculating as to what legislature intended. State v. Dugan, 685 So.2d 1210 (Fla. 1996). Florida Birth-Related Neurological Injury Compensation Association v. Florida Division of Administrative Hearings, et al. 686 So.2d 1349 (Fla. 1997).

Accordingly, a review of the plain language definition of the term *graduation* establishes what the plain and ordinary meaning is. Dictionaries abound, and while each presents its own variation of the definition of the word *graduation,* they are all quite similar. A sampling is provided:

"1. The act or an instance of graduating or being graduated. 2. A ceremony

at which degrees are conferred." Oxford Dictionary and Thesaurus 637, (American Edition, 1996).

"The receipt or conferring of an academic degree, diploma, etc. Also the ceremony of conferring degrees." New Shorter Oxford English Dictionary on Historical Principles 1126, (1993).

"1. An act of graduating; the state of being graduated. 2. The ceremony of conferring degrees or diplomas, as at a college or school." Random House Dictionary of the English Language 827, (1987).

"1. The act of graduating." and, "3. The ceremony of conferring degrees or diplomas, as at a college or school." Random House College Dictionary 572, (Rev Ed. 1980).

"1. A graduating or being graduated from a school or college. 2. The ceremony connected with this; graduation exercises; commencement." Webster's New Universal Unabridged Dictionary 791, (2d ed. 1983).

"2.a: the award or acceptance of an academic degree or diploma; b: COMMENCEMENT." Webster's Ninth New Collegiate Dictionary 530, (1990).

"1.a. The conferring or receipt of an academic degree or diploma marking successful completion of studies. b. A ceremony at which degrees or diplomas are conferred: COMMENCEMENT." Webster's II New Riverside University Dictionary 542, (1984).

In addition, several accepted legal references also provide suitable definitions. West's Legal Thesaurus/Dictionary Special Deluxe Edition, 354 (1986) has the following entry: "See Commencement, Advancement (2), Certification." And while Blacks Law Dictionary (6^{th} Edition, 1990) does not define *graduation*, it defines *graduate* on page 698 as: "one who has received a degree or other evidence of completion, from a grade school, high school,

trade or vocational school, college, university, graduate or professional school, or the like."

From the above, it is obvious that the accepted definition of the word g*raduation* is the receipt or conferring of an academic degree, diploma; or the ceremony of conferring those degrees known as a commencement. The term *graduation* as used in Florida Statutes §743.07(2) is clear and unambiguous and is therefore not subject to judicial interpretation. Consequently, there is no room for doubt. The plain language interpretation of Florida Statute §743.07(2) demands that the child must have a reasonable expectation of attending the ceremony where his high school diploma is conferred, or otherwise receive his high school diploma before he turns 19. If he can not accomplish this, then child support stops when he turns 18.

Additionally, the rules of statutory construction allow the courts to look to other states to see how they have handled similar situations. The only case found throughout the fifty states where the issue of determining when graduation actually occurs comes from the Missouri Appellate Court. They deliberated on the definition of graduation from a secondary school and held that the date on which the child was awarded a certificate of high school equivalence was the date on which he "graduated from a secondary school" within the meaning of the statute. In Re Marriage of Copeland, 850 S.W.2d

422 (Mo.App.E.D. 1993).

In Pari Materia Relationship

The former wife asserts that Florida Statutes §743.07(2) is in pari materia with Chapter 61, Florida Statutes, and urges this court to construe §743.07(2) liberally in the "best interest of the child." The quoted phrase is found in Chapter 61, Florida Statutes, only once. The former wife has taken it out of context. Florida Statutes §61.13 (1997) is titled: Custody and support of children; visitation rights; power of court in making orders. Subsection (1)(a) reads:

> "In a proceeding for dissolution of marriage, the court may at any time order either or both parents who owe a duty of support to a child to pay support in accordance with the guidelines in s. 61.30. The court initially entering an order requiring one or both parents to make child support payments shall have continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments when the modification is found necessary by the court *in the best interests of the child, when the child reaches majority,* or when there is a substantial change in the circumstances of the parties. The court initially entering a child support order shall also have continuing jurisdiction to require the obligee to report to the court on terms prescribed by the court regarding the disposition of the child support payments." (Emphasis added).

Statutes are considered to be in pari materia when they relate to the same person or thing, to the same class of persons or things, or have the same

purpose or object. Characterization of the object or purpose is more important than characterization of subject matter in determining whether different statutes are closely enough related to justify interpreting one in light of the other. See Sutherland Stat. Const. §51.03 (5th Ed). It is the phrase "when the child reaches majority" that establishes the in pari materia relationship between Florida Statutes §743.07(2) and §61.13(1)(a) by defining when the court may modify child support for post majority high school students. Where two provisions are found to be in pari materia, each retains its independence and a violation of one is not necessarily a violation of the other. Also, a definition that relates specifically to a term (e.g. *graduation*) as used in a single article of a code cannot be used in pari materia with other articles. See Sutherland Stat. Const. §51.03 (5th Ed). Therefore, with respect to defining the age of majority and when child support may be ordered after a child reaches majority, Florida Statutes §743.07(2) prevails.

Legislative Intent

Should this Court nevertheless hold that the term *graduation* is ambiguous, then additional steps of statutory construction are in order. Difficult questions of statutory interpretation ought not to be decided by the bland invocation of abstract jurisprudential maxims. Accepted rules of statutory

construction can provide helpful guidance in uncovering the most likely intent of the legislature. After all, legislative intent is the polestar by which the court must be guided. See State v. Webb, 398 So.2d 820 (Fla. 1981). Courts may determine legislative intent by considering a variety of factors, including language used, subject matter, purpose designed to be accomplished, and all other relevant and proper matters. In discerning legislative intent, the statute must be considered as a whole, including evil to be corrected, language of act, including its title, history of its enactment, and the state of law already in existence bearing on subject. Hinn v. Berry, 701 So.2d 579 (Fla.5th DCA 1997). Also, where focusing on literal statutory language leads to absurd results or unreasonable conclusions that render the statute meaningless, court will look beyond the ordinary meaning of the statutory language; further, it is appropriate to focus on legislative staff analyses and staff summaries as significantly important in determining legislative intent. Carlos Badaraco v. Suncoast Towers V Associates, 676 So.2d 502 (Fla. 3rd DCA 1996).

Prior to the 1991 revision to Florida Statutes §743.07(2) there existed a hodgepodge of cases, some in direct conflict with each other, on the subject of support for post-majority high school students. The First DCA line of cases

was the most liberal,[2] but on four occasions, required a trial judge to make a specific finding of dependency.[3] The Second DCA recorded three opinions on the subject: two in direct conflict and one down the middle.[4] The Third DCA required a trial court to find dependency before ordering support.[5] The Fourth DCA twice held that still being in high school did not make an 18-year-old dependent.[6] The Fifth DCA in 1982 approved child support for a high school student who had turned 18.[7] A year later, the full Fifth DCA held there was no legal duty for parents to furnish an education – high school or otherwise for an 18-year-old who was not physically or mentally disabled.[8]

The present version of Florida Statutes §743.07 (2) was passed as part of some minor changes in family law at the very end of the 1991 legislative session. Chapter #91-246, Laws of Florida, amends Florida Statutes §743.07 (2) by deleting specific provisions for crippled children and adding in lieu

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[2] See Evans v. Evans, 456 So.2d 956, 957 (Fla. 1st DCA 1984) citing Keenan v. Keenan, 440 So.2d 643 (Fla. 5th DCA 1983); Bingemann v. Bingemann, 551 So.2d 1228 (Fla. 1st DCA 1989; Earnhardt v. Earnhardt, 533 So.2d 328 (Fla. 1st DCA 1988), *rev. denied*, 542 So.2d 988 (Fla. 1989).

[3] See Spurlock v. Spurlock, 552 So.2d 326 (Fla. 1st DCA 1989); Soles v. Soles, 536 So.2d 367 (Fla. 1st DCA 1988); Gelman v. Gelman, 512 So.2d 236 (Fla.1st DCA 1987); and Penton v. Penton, 564 So.2d 1114 (Fla. 1st DCA 1990).

[4] See Stulz v. Stulz, 504 So.2d 5 (Fla. 2d DCA, 1990); Thomasson v. Thomasson, 562 So.2d 428 (Fla. 2d DCA 1990); and Pitts v. Pitts, 566 So.2d 12 (Fla. 2d DCA 1990).

[5] See Plant v. Plant, 504 So.2d 44 (Fla. 3d DCA 1987).

[6] See Carter v. Carter, 511 So.2d 404 (Fla. 4th DCA 1987); and Privett v. Privett, 535 So.2d 663 (Fla. 4th DCA 1988).

[7] See Owens v. Owens, 415 So.2d 855 (Fla. 5th DCA 1982).

[8] See Keenan v. Keenan.

thereof "or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19." The law did not revise Florida Statutes §61.13(1)(a), the section that establishes the authority and conditions when child support obligations may be modified and is in pari materia with Florida Statues §743.07(2).

The Senate Staff Analysis and Economic Impact Statement for SB 1932, dated April 8, 1991 (Series 18 Carton 1901) (Annex B) states:

> "The committee substitute would allow an award of child support to a person between the ages of 18 and 19 if the person is dependent in fact and is still in high school and performing with a reasonable expectation of graduation before the age of 19. This provision would apply to both married and divorced parents whose children fulfill these requirements."

The initial versions of HB 341 did not address the issue of child support for post majority high school students. However, the House of Representatives Committee on Judiciary Final Bill Analysis & Economic Impact Statement for the final combined legislation, dated June 4, 1991 (Series 19 Carton 2145) (Annex C) echoes the Senate's analysis:

> "Parents are responsible for supporting their minor and "dependent" children. The district courts of appeal have issued conflicting decisions as to whether a high school student who has reached the age of eighteen is a dependent child. The Florida Supreme Court has addressed a related issue in holding that a college student over the age of eighteen is not a dependent child and a parent cannot be made to support the child absent

> a contractual duty to do so. Grapin v. Grapin, 450 So.2d 853 (Fla. 1984). The Florida Supreme Court has not addressed the issue as it relates to high school students; however the Grapin decision, relating to support through college was based on equal protection grounds. That is, the court found it fundamentally unfair and a denial of equal protection under the law to impose the duty of supporting a post-majority child on divorced parents but not on the parents who are married to each other."

The Section-by-Section Analysis asserts:

> "Section 8 amends section 743.07, Florida Statutes, to provide that a court may order support for a dependent child who is still in high school, is between the ages of 18 and 19 and has a reasonable expectation of graduation before the age of 19. This duty of support will apply to both married and unmarried parents."

In as much as there is no discussion on the definition of the term *graduation,* it follows that the legislature knew and understood the meaning of the word; and that the meaning they intended is consistent with the generally accepted plain language definition. Moreover, based on the actual legislature staff analyses presented above, the legislative intent was to remedy the inconsistent application of the of the pre-1991 Florida Law, as evidenced by the conflicting district court decisions, and require both married and unmarried/divorced parents to support their children. They did not intend the word *graduation* to have any other meaning than the generally accepted plain language definition. If they had, they would have said so.

As a case in point, California, when concerned about the equal protection

question raised by treating divorced and married parents differently, worded their law to extend parental obligation to both classes of parents. The duty of support, by the father and mother of a minor child "continues… until the time the child completes the 12th grade or attains the age of 19 years, whichever first occurs." California Family Code §3900. The Florida Legislature had an opportunity to use similar wording, but chose to draw a "line in the sand" by using the language as it exists today. High school graduation is that line.

Consistent Application of Florida Law

Petitioner claims that due to the conflict between the present case and Boot v. Sapp, that similarly situated children in the Fourth District will receive a mitigating benefit denied to similarly situated children in the First District. Indeed, they will if the law is not consistently applied to all. The 1991 revision to Florida Statutes §743.07(2) effectively remedied the conflicts cited earlier by more tightly defining a group of high school students who could receive support beyond their 18th birthday. By establishing a specific criterion to determine whether or not a child could qualify for support beyond his 18th birthday, i.e. reasonable expectation of graduation before age 19, the law applies consistently to the parents of all children who are in high school, beyond their 18th birthday. To modify this criterion by means of an inconsistent interpretation of the

definition of *graduation* would result in the situation where children having birthdays near their graduation date receiving support while those whose birthdays are significantly earlier than their graduation date would be denied support. This would result in an inconsistent application of the law to similarly situated 18-year-olds because it would treat them differently as a function of how close their 19th birthday is before their graduation date. Further, such interpretation would allow some children who could not graduate before turning 19 to receive child support, which would be in direct violation of Florida Statutes §743.07(2).

Furthermore, such an approach to interpreting the term *graduation* would put the judicial system in the role of determining when a student met the requirements for high school graduation -- a role now assigned to the district school boards in accordance with Florida Statute §232.246 General Requirements for High School Graduation. Here the law states that graduation requires successful completion of a prescribed course of study. Florida Statute §232.246(5) further directs that each district school board shall establish standards for graduation from its schools and those standards are to be expressed in terms of credits earned and grade point average attained. Students who have satisfactorily completed courses of instruction are entitled to a diploma or certificate. The time to complete the requirements for graduation

may be shortened through the application of one of several mechanisms available in Florida Statutes §240.116, which discusses "articulated acceleration." The articulated acceleration mechanisms are dual enrollment, early admission, advanced placement, credit by examination, and the International Baccalaureate Program. None of these mechanisms exist or were applied in the instant case.

The question before this court, then, is when does a student meet the requirements for high school graduation. The school districts say it is the date of graduation. The Fourth DCA in Boot v. Sapp, accepted the former wife's claim that the 12th grade in public schools is completed some two to three weeks prior to the graduation date. In the instant case, Scott's 19th birthday on May 21, 1998 was 12 days before the date of his graduation ceremony. If the Fourth DCA can find that the Sapp twins met the requirements for graduation three days before they were to graduate, then one must ask why not allow 12 days in the instant case to be acceptable? How about 15 days? Twenty days? Thirty days? Fifty days? One quickly starts down the "slippery slope" and wonders where do you stop?

By defining the graduation ceremony date as the date of graduation, there is no room for interpretation. The legislature established a hard line when they wrote "graduation by age 19." The legislature is the only body that can change

this line. This absolute line is a line that everyone must comply with; and, it is the only way that the law can be consistently applied to all. Any other interpretation of the term *graduation* does not provide a guidepost for a trial court to determine when the requirements for graduation are, or will be met. If the legislature had intended that the courts arbitrate when *graduation* occurs, then it would have made provisions in the law for them to do so and relieved the district school boards from that responsibility.

Since the 1991 revision to Florida Statutes §743.07(2) took effect, all five of Florida's District Courts of Appeal have had at least 14 separate opportunities (including the instant case) to review the law and evaluate its impact on post majority high school students. Until Boot v. Sapp, they were consistent in their interpretation of the law, especially in their interpretation of the term *graduation*.

In 1993, the First DCA directed the better practice is to resort to the general rule of no child support beyond the age of majority with the understanding that a petition to modify may be filed should it subsequently appear that one of the section 743.07(2) exceptions is applicable. The court further directed that in the event circumstances change and it appears that the parties daughter will graduate before her 19th birthday, a petition for

modification can be filled demonstrating this changed circumstance.[9] In July 1994, the court further defined the duration of child support as extending through June following the 18th birthday.[10] In January 1996, and again in January 1997, the First DCA reaffirmed the correct interpretation of the law by reversing the judgment awarding child support beyond the age of 18 when there was no evidence to support the child graduating from high school prior to reaching her 19th birthday.[11] In Ratcliff v. Ratcliff, the appeal court said the support provision should be modified to provide for the termination of support when the child reaches age 18, marries, becomes self-supporting or dies, whichever first occurs.

Elsewhere in Florida, the Second DCA held that the mother was not entitled to child support after a child reached the age of majority, even if the child had not yet finished high school absent evidence that the child labored under any mental or physical incapacity.[12] The Court also pointed out that although Florida Statutes §743.07(2) allows a trial court to order support to be paid for a dependent person between the ages of eighteen and nineteen who is

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[9] See Hunter v. Hunter.
[10] Goodwin v. Goodwin, 640 So.2d 173 (Fla. 1st DCA 1994)
[11] Irwin v. Perryman, 666 So.2d 959 (Fla. 1st DCA 1996); Ratcliff v. Ratcliff; and Drake v. Drake, 686 So.2d 753 (Fla. 1st DCA 1997).
[12] McCauley v. McCauley, 599 So.2d 1002 (Fla. 2nd DCA 1992).

still in high school, such an order is discretionary.[13] They further correctly recognized the legislature's authority in establishing that a parent's duty to support a child after age eighteen is a moral duty rather than a legal duty.[14] And in a decision filed September 3, 1999, the 2nd DCA again followed the correct interpretation of Florida statutes by denying child support after the age of 18 to a child whose 19th birthday was May 18, 1998, and whose high school graduation date was June 6, 1998.[15]

The Third DCA's sole case follows the lead of Florida's other districts. The Court's ruling states that the legal obligation of the parents end upon the child reaching his or her majority, unless the child is statutorily dependent.[16]

The Fourth DCA said that the trial court must include a finding that the child has a reasonable expectation of graduating, without defining the term, before age 19.[17] And finally, the Fifth DCA said: "Children who have early in the year birthdays and who will turn nineteen before a June graduation are entitled to no support during their eighteenth year even though they are in need, in school, and 'on track'."[18] They also established that if the date of graduation

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[13] Booth v. Booth, 625 So.2d 114 (Fla. 2nd DCA 1993).
[14] Clowdis v. Earnest, 629 So.2d 1044 (Fla. 2nd DCA 1993).
[15] Hesse v. Hesse, ___ So.2d ___ (Fla. 2nd DCA 1999)
[16] Carbonell v. Carbonell, 618 So.2d 326, 327 (Fla. 3rd DCA 1993).
[17] Moyer v. Moyer, 636 So.2d 125 (Fla. 4th DCA 1994).
[18] Walworth v. Klauder, 615 So.2d 219 (Fla. 5th DCA 1993).

occurs prior to the children's nineteenth birthdays, child support must cease at graduation.[19] While the above decisions may be viewed as harsh, they nevertheless represent a consistent application of Florida Statutes §743.07(2).

Only Boot v. Sapp departs from the plain language interpretations found in the cases above. Here the Fourth DCA failed to follow their own guidelines on plain language interpretation of statutes as set forth in Beyel Brothers Crane and Rigging Company of South Florida, Inc., v. Ace Transportation, Inc. and Hott Interiors, Inc. v. Fostock noted earlier. In their attempt to liberally define the term *graduation*, when they had previously accepted the plain language definition as it related to Moyer v. Moyer, they exacerbated the situation by paraphrasing the definition of *graduation* from Webster's Third New International Dictionary. Their opinion in Boot v. Sapp is nothing more than judicial activism. In addition, rather than directing a specific outcome, the Fourth DCA returned the matter to the trial court with a remand to "reconsider the final judgment in light of this *opinion*, recognizing that the *decision* is left to the discretion of the trial court (emphasis added)." In view of the above, Respondent respectfully requests that Boot v. Sapp be disapproved.

[19] See Murgolo v. Frankart.

CONCLUSION

The term *graduation* is not ambiguous. According to the plain language definition, it means the receipt or conferring of an academic degree, diploma, or the ceremony of conferring the degree known as a commencement. Fourteen times since 1991, Florida District Courts have rendered decisions defining the term graduation in consonance with its plain language meaning. Numerous decisions in Florida courts have held that where a statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent. Further, courts must derive legislative intent from the words used without involving rules of construction or speculating as to what the legislature intended. The in pari materia relationship between Florida Statutes §743.07(2) and §61.13(1)(a) focuses on the phrase "when the child reaches majority." With respect to defining the age of majority and the exceptions when child support may be ordered for a child after he/she reaches majority, Florida Statutes §743.07(2) prevails. The legislative intent concomitant with the passing of Chapter #91-246, Laws of Florida, was simply the that term *graduation* have its plain language meaning, and that a *"reasonable expectation of graduation before the age of 19"* is the "line in the sand" for determining the eligibility for continued child support. The law must be consistently applied to all post majority high school students. Child support

must stop at age 18 unless the child has a reasonable expectation of graduation before the age of 19.

Respectfully request that the First DCA decision in the instant case be upheld; that the Fourth DCA decision in Boot v. Sapp be disapproved; and that the term *graduation,* within the meaning of Florida Statutes §743.07(2), be established as the date of receipt or conferring of an academic degree, diploma or certificate, or the ceremony of conferring the degree known as a commencement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been provided this date to George W. Blow III, Esq., counsel for petitioner, at his address of record.

Dated: October 11, 1999.

Scott T. Orsini, Esquire
Fla. Bar Number 855855
P.O. Box 118
St. Petersburg, FL 33731-0118
(727) 826-3500
Fax: (727) 826-3550

APPENDIX

A Senate Staff Analysis and Economic Impact Statement, Bill No. SB 1932, dated April 8, 1991 (Series 18 Carton 1901).

House of Representatives Committee on Judiciary Final Bill Analysis & Economic Impact Statement, Bill # CS/SB 1932 (HB 341), dated June 4, 1991 (Series 219 Carton 2145).

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Lang	JU	
2.				
3.				
4.				

SUBJECT: Dissolution of Marriage

BILL NO. AND SPONSOR: SB 1932 by Senator Wexler and others

I. SUMMARY:

A. Present Situation:

Section 61.052, F.S., provides for dissolution of marriage. Evidence at the dissolution hearing need not be corroborated except to establish residency.

Section 61.075, F.S., provides for equitable distribution of marital assets and liabilities. In distributing the spouses' property, the court is to set apart to each spouse that spouse's nonmarital assets and liabilities and distribute the marital assets and liabilities among the spouses in such proportions as are equitable after considering the following factors:

1. The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.
2. The economic circumstances of the parties.
3. The duration of the marriage.
4. Any interruption of personal careers or educational opportunities of either party.
5. The contribution of one spouse to the personal career or educational opportunity of the other spouse.
6. The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
7. The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.
8. Any other factors necessary to do equity and justice between the parties.

For the purposes of equitable distribution of marital property, marital assets and liabilities include:

1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.
2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the

contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

3. Interspousal gifts during the marriage.

4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.

5. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset.

Nonmarital assets and liabilities include:

1. Assets acquired and liabilities incurred by either party prior to the marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities.

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets.

3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset.

4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities.

The court may provide for equitable distribution without regard to alimony for either party. After the determination of the equitable distribution of assets and liabilities, the court is to consider whether a judgment for alimony is to be entered.

To do equity between the parties, the court may order a monetary payment in either a lump sum or installment payments paid over a fixed period of time.

Section 61.08, F.S., provides for alimony. A court may award either rehabilitative or permanent alimony. In awarding alimony, the court is to consider all relevant factors, including but not limited to:

1. The standard of living established during the marriage.

2. The duration of the marriage.

3. The age and the physical and emotional condition of each party.

4. The financial resources of each party and the marital assets and liabilities distributed to each.

5. When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

6. The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

The court may also consider any other factor necessary to do equity and justice between the parties.

Section 61.14, F.S., provides that when a child support obligor is 15 days delinquent in making a payment, the local depository is to serve the obligor with a notice of the circumstances and his rights. The obligor may file a motion to contest the impending judgment on the delinquency within 15 days of service of the notice.

B. Effect of Proposed Changes:

The bill would amend s. 61.052, F.S., to provide that at a dissolution of marriage hearing, the evidence need not be corroborated to establish the residency requirement.

The bill would provide that the court is also to consider as one of the factors in making an equitable distribution of marital assets the desirability of retaining the marital home as a residence for a minor child of the marriage. The bill would further provide a presumption in favor of equal division of all marital assets. Any distribution which was unequal would have to be supported by findings of fact as to the statutory consideration and by competent and substantial evidence to support these findings.

The bill would require that every judgment distributing marital assets include specific findings of fact as to:

(1) Clear identification of nonmarital assets and ownership interests.

(2) Identification of marital assets including the valuation of major assets on an individual basis, and designation of which spouse is entitled to each asset.

(3) Identification of the marital liabilities and designation of which spouse is responsible for each liability.

The bill would provide that if the court awards a cash payment for the purpose of equitable distribution of marital assets, the full amount would vest when the judgment was awarded. The award would not terminate upon remarriage or death of either party but would constitute a debt owed from the obligor or the obligor's estate to the obligee or the obligee's estate.

The future earnings of one spouse would be considered marital assets if competent substantial evidence existed to support a finding that the other spouse invested in the potential of these future earnings by either:

(1) Financing the education that made those future earnings possible.

(2) Foregoing educational or career opportunities so as to make those potential future earnings possible.

(3) Making an extraordinary contribution to the marriage so as to make those potential future earnings possible.

The bill states that this would not prohibit an award of alimony to effect equitable distribution for reasons other than those enumerated.

The bill would amend s. 61.08, F.S., to create a presumption in favor of permanent periodic alimony when one spouse has significantly greater earnings or earning power and the marriage lasted for at least 10 years. The bill would also require that any alimony judgment include findings of fact relative to the statutory factors supporting an award or denial of alimony. The bill would provide that if the court awarded permanent periodic alimony for the purposes of equitable

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Lang	JU	Fav/CS
2.				
3.				
4.				

SUBJECT:

Dissolution of Marriage

BILL NO. AND SPONSOR:

CS/SB 1932 by Judiciary, Senator Wexler, and others

I. SUMMARY:

A. Present Situation:

Section 61.052, F.S., provides for dissolution of marriage. Evidence at the dissolution hearing need not be corroborated except to establish residency.

Section 61.075, F.S., provides for equitable distribution of marital assets and liabilities. In distributing the spouses' property, the court is to set apart to each spouse that spouse's nonmarital assets and liabilities and distribute the marital assets and liabilities among the spouses in such proportions as are equitable after considering the following factors:

1. The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

2. The economic circumstances of the parties.

3. The duration of the marriage.

4. Any interruption of personal careers or educational opportunities of either party.

5. The contribution of one spouse to the personal career or educational opportunity of the other spouse.

6. The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.

7. The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.

8. Any other factors necessary to do equity and justice between the parties.

For the purposes of equitable distribution of marital property, marital assets and liabilities include:

1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.

2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of

Section 61.14, F.S., provides that when a child support obligor is 15 days delinquent in making a payment, the local depository is to serve the obligor with a notice of the circumstances and his rights. The obligor may file a motion to contest the impending judgment on the delinquency within 15 days of service of the notice.

B. Effect of Proposed Changes:

The bill would amend s. 61.052, F.S., to provide that at a dissolution of marriage hearing, the evidence to establish the residency requirement could be corroborated by affidavit of a third party.

The bill would provide that the court is also to consider as one of the factors in making an equitable distribution of marital assets the desirability of retaining the marital home as a residence for any dependent child of the marriage or any other party.

The bill would provide that if the court awards a cash payment for the purpose of equitable distribution of marital assets, the full amount would vest when the judgment was awarded. The award would not terminate upon remarriage or death of either party but would constitute a debt owed from the obligor or the obligor's estate to the obligee or the obligee's estate.

The bill would expand the application of the child support guidelines.

The bill would provide that when child support is awarded in paternity cases, it must be awarded pursuant to the guidelines.

The bill would allow the court in paternity cases to award attorney's fees and costs.

The bill would allow an award of child support to a person between the ages of 18 and 19 if the person is dependent in fact and is still in high and performing with a reasonable expectation of graduation before the age of 19.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Indeterminable.

B. Government:

None.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

The bill would require support for children who are over age 18 in certain circumstances. This requirement would apply equally to both married and divorced parents whose children fulfill the requirements.

V. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1932

The committee substitute would expand the application of the child support guidelines.

The committee substitute would provide that when child support is awarded in paternity cases, it must be awarded pursuant to the guidelines.

The committee substitute would allow the court in paternity cases to award attorney's fees and costs.

The committee substitute would allow an award of child support to a person between the ages of 18 and 19 if the person is dependent in fact and is still in high school and performing with a reasonable expectation of graduation before the age of 19. This provision would apply to both married and divorced parents whose children fulfill these requirements.

Committee on Judiciary

Glenn Lang
Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

BILL VOTE SHEET

(VS-90: File with Secretary of Senate) BILL NO. SB 1932

COMMITTEE ON: Judiciary

DATE: April 11, 1991

TIME: 02:00 PM -- 05:00 PM

PLACE: Room H, Senate

OTHER COMMITTEE REFERENCES:
(in order shown)

Calendar

ACTION:

___ Favorably with _____ amendments

_X_ Favorably with Committee Substitute

___ Unfavorably

___ Submitted as a Committee Bill

___ Temporarily Passed

___ Reconsidered

___ Not Considered

___ No Quorum

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	04/11/91 Senator Wexler mvs. amd. & Title		04/11/91 Senator Langley mvs. amd. pg. 3 li.16-3		04/11/91 Senator Langley mvs. amd. strike all of said li		04/11/91 Senator Langley mvs. for CS			
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Dudley										
	X	Girardeau										
X		Grant										
X		Jenne										
X		Johnson										
X		Langley										
X		Scott										
X		Wexler										
X		VICE-CHAIRMAN Yancey										
X		CHAIRMAN Weinstein										
9	1	TOTAL	FWO	-	FWO	-	FWO	-	FWO	-		
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

Please Complete:

The Key sponsor appeared	(X)
A Senator appeared	(X)
Sponsor's aide appeared	( )
Other appearance	(X)

STORAGE NAME: s1932s1z.jud
DATE: June 4, 1991

AS PASSED BY THE LEGISLATURE
CHAPTER #: 91-246, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB 1932

RELATING TO: Dissolution of Marriage

SPONSOR(S): Committee on Judiciary and Senator Wexler

STATUTE(S) AFFECTED: Amends sections 742.031, 742.045, 743.07 and various sections in Chapter 61, F.S.

COMPANION BILL(S): HB 341

COMMITTEES OF REFERENCE:
(1) JUDICIARY
(2) APPROPRIATIONS
(3)
(4)
(5)

****

I. SUMMARY:

This bill includes several changes that affect dissolution of marriage. The bill provides that residency may be corroborated by an affidavit; requires the court to consider the desirability of retaining the marital home as a residence for a dependent child of the marriage; provides that cash payments which are awarded for the purposes of equitable distribution vest when the judgment is awarded; requires the court to make findings of fact regarding certain aspects of the equitable division of marital assets and liabilities; requires findings of fact which support an award or denial of alimony; and provides for equal consideration between the mother and father in determining custody. The bill also includes several child support issues. The use of the child support guidelines is expanded to cases up to $108,000; the child support guidelines are made applicable to support cases under the paternity chapter; attorneys fees are provided for in paternity cases; and a court is authorized to order support payments for a child who is between 18 and 19 in certain circumstances.

This bill will have only a minor impact on state or local governments. It addresses issues of family law and only secondarily affects the court system.

This bill contains some of the recommendations of the Gender Bias Study Commission in the area of family law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

On June 9, 1987, Chief Justice Parker Lee McDonald issued an administrative order which created the Gender Bias Study Commission. That Study Commission issued a report in March 1990 which contained its findings and recommendations. One area in the recommendations addresses gender bias in family law.

Florida adopted equitable distribution of marital assets in 1988. Section 61.075, F.S. Equitable distribution provides that each spouse retains nonmarital assets and liabilities and that marital assets and liabilities be equitably distributed between the parties. A list of factors for the court to consider in determining an equitable distribution is provided. In spite of that, the Study Commission found that men customarily retain more than half of the assets of the marriage and that a homemaker's contributions are minimized by Florida's courts. That study found that men generally receive 65 to 75% of the marital assets.

In making its determination on equitable distribution of the assets, the court is not required to make written findings of fact. Thus, litigants have no specific information about the judge's reasoning and there is not a clear basis upon which an appellate court can review the rationale of the lower court's order.

Before the enactment of no-fault divorce and equitable distribution, the Study Commission found that courts usually allowed the custodial parent and children to occupy the family home. The Study Commission further found that the common practice today is to order a sale of the home so that a cash settlement can be made for equitable distribution.

Alimony may be granted to either party. Section 61.08, F.S. Alimony may be permanent or rehabilitative. The Study Commission found that many courts do not award permanent alimony even in marriages of long duration.

In making an equitable distribution of the martial assets, the court may order one party to pay periodic alimony rather than a lump sum payment as a means of achieving equitable distribution. When the party receiving alimony remarries or dies, the alimony is terminated; thus, the receiving spouse does not receive an equitable distribution of the marital assets.

The child support guidelines in section 61.30, Florida Statutes became mandatory in 1989. The guidelines apply to parents with a combined net income up to $50,000.

Chapter 742 provides for the establishment of paternity and the payment of support for a child for whom paternity has been established. The child support guidelines do not specifically

apply to support cases under chapter 742. Chapter 742 does not contain a provision which authorizes the court to award attorney's fees.

Parents are responsible for supporting their minor and "dependent" children. The district courts of appeal have issued conflicting decisions as to whether a high school student who has reached the age of eighteen is a dependent child. The Florida Supreme Court has addressed a related issue in holding that a college student over the age of eighteen is not a dependent child and a parent cannot be made to support the child absent a contractual duty to do so. Grapin v. Grapin, 450 So.2d 853 (Fla. 1984). The Florida Supreme Court has not addressed the issue as it relates to high school students; however the Grapin decision, relating to support through college, was based not solely upon the question of dependency, but also on equal protection grounds. That is, the court found it fundamentally unfair and a denial of equal treatment under the law to impose the duty of supporting a post-majority child on divorced parents but not on the parents who are married to each other.

B. EFFECT OF PROPOSED CHANGES:

This bill affects several issues which arise when there is a dissolution of marriage. The bill provides that residency may be corroborated by an affidavit. This will relieve the party seeking the divorce from the requirement to bring a witness to court to verify that the party has been a resident of Florida for six months. This will free the court from this time consuming requirement and allow the court to rely upon an affidavit.

The bill requires the court to consider the desirability of retaining the marital home as a residence for a dependent child of the marriage in making an equitable distribution of the marital home. This may result in more cases where the custodial parent retains the marital home until the child reaches the age of majority.

The bill provides that cash payments which are awarded for the purposes of equitable distribution vest when the judgment is awarded unless otherwise agreed by the parties. If these types of awards are made, the right to receive the payment will continue after remarriage or death.

The bill requires the court in contested dissolution actions to make findings of fact regarding certain aspects of the equitable division of marital assets and liabilities. This should assist the court in making an equitable distribution. The requirement that the judgment include findings of fact will give the parties a basis for understanding the decision. When cases are appealed, the appellate court will have a specific basis for reviewing the lower court's decision.

The bill requires findings of fact which support an award or denial of alimony which will give the parties a basis for understanding the decision. When cases are appealed, the appellate court will have a specific basis for reviewing the lower court's decision.

The bill also provides for equal consideration between the mother and father in determining custody irrespective of the age or sex of the child.

The bill expands the application of the child support guidelines to cases where the combined net income of the parents does not exceed $108,000. This may result in less litigation because more cases will be under the guidelines.

The bill applies the child support guidelines to support cases under the paternity chapter. This will result in equitable treatment of children born in wedlock with those born out of wedlock.

The bill allows the court to award attorneys fees in a paternity action. This conforms to existing law in support cases.

The bill provides that a court can order support for a child who is between the ages of 18 and 19 if the child is still in high school. This will apply to both married and divorced parents.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends subsection (2) in section 61.052, F.S., relating to corroboration of the residence requirements. This section is amended to allow for corroboration of the residence requirements by affidavit of a third party.

Section 2 amends section 61.075, Florida Statutes, relating to equitable distribution of marital assets. Subsection (1) is amended to provide an additional factor for the court to consider in determining how to distribute assets equitably. The court is to consider whether it would be desirable to maintain the marital home as a residence for a dependent child of the marriage.

Subsection (2) is created to provide that if cash payments are awarded for the purposes of equitable distribution, the full amount ordered vests when the judgment is entered and the award does not terminate upon remarriage or death unless the parties agree otherwise.

Subsection (3) is created to provide that in a contested dissolution action, there must be findings of fact in the judgment which distributes the assets and liabilities, including:

(a) identification of nonmarital assets and ownership interests;

(b) identification of marital assets and designation of which spouse is entitled to the asset;

(c) identification of marital liabilities and designation of which spouse is responsible for each liability; and,

(d) any other findings necessary to advise the parties or the reviewing court of the trial court's rationale for the distribution.

Existing subsections are renumbered accordingly.

Section 3 amends section 61.08, Florida Statutes, relating to alimony. Subsection (1) is amended to require findings of fact which support the award or denial of alimony.

Subsection (2) is amended to clarify that the economic factors which the court is to consider in making an award of alimony include the nonmarital assets and liabilities of each party and the income available to either party.

Section 4 amends subsection (2) of section 61.13, Florida Statutes, relating to custody and support of children. Subparagraph (1) in paragraph (b) is amended to provide that the father is to be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of the child.

Section 5 amends section 61.30, Florida Statutes, relating to the child support guidelines. Subsection one is amended to expand the application of the guidelines to parents with a combined net income in excess of $108,000 per year.

Subsection (6) is amended to expand the child support schedules to show the monthly child support based upon the number of children and monthly income up to $8,400.

Section 6 amends section 742.031, Florida Statutes, to provide that the child support guidelines in section 61.30, F.S., apply to paternity child support cases.

Section 7 creates section 742.045, Florida Statutes, to provide for attorney's fees and costs to be awarded in paternity cases.

Section 8 amends section 743.07, Florida Statutes, to provide that a court may order support for a dependent child who is still in high school, is between the ages of 18 and 19 and has a reasonable expectation of graduation before the age of 19. This duty of support will apply to both married and unmarried parents.

Section 9 provides an effective date of October 1, 1991, except that sections 1, 2, 3 and 4 take effect July 1, 1991.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

To the extent that a judge is not already doing so, there may be some minimal additional time required to make findings of fact when the court makes an equitable distribution of the assets and when the court makes an award or denial of alimony.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

4. Total Revenues and Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

None anticipated.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

Minor children of a marriage will have their best interests considered when the court makes an equitable distribution of the marital home.

Parties to a divorce will benefit by the provisions in this bill which require findings of fact.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The provisions of Article VII, s. 18, Florida Constitution, are not applicable to this bill.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not affect the ability of local government to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

This bill contains some of the recommendations of the Gender Bias Study Commission in the area of family law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:
Prepared by: B. Elaine New

Staff Director: Richard Hixson

FINAL ANALYSIS PREPARED BY COMMITTEE ON JUDICIARY:
Prepared by: B. Elaine New

Staff Director: Richard Hixson

House of Representatives

SUBCOMMITTEE REPORT/INFORMATION RECORD

File with Parent Committee

AS REPORTED TO CLERK

TO: Chairman, Committee on JUDICIARY

Subcommittee on REAL PROPERTY & FAMILY LAW
Date of Meeting March 11, 1991
Time 3:30 p.m.
Place Room 413C

BILL NO. HB 341

FINAL ACTION:

_____ Favorable
_____ Favorable with _____ Amendments
_X_ Favorable with Proposed Substitute
_____ Unfavorable

VOTE:

YEA	MEMBER	NAY
X	Boyd	
X	Burke	
X	Hoffmann	
X	Press	
X	Sanderson	
X	Silver	
	Smith, C. R.	
X	Tobiassen	
X	Webster	
X	Ritchie, Chr.	

YEA	MEMBER	NAY

Total Yeas 9

Total Nays 0

IF PRESENT, MEMBER WOULD HAVE VOTED:

Robert D. Frommeel
Subcommittee Chairman

APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

Received by Parent Committee:

Date: _____

Received by: _____

H-74(1989)

(ATTACH TO FULL COMMITTEE REPORT WHEN FILED WITH THE CLERK)

House of Representatives
COMMITTEE INFORMATION RECORD **AS REPORTED TO CLERK**

Committee on JUDICIARY
Date of Meeting 3/21/91
Time 3:30 p.m.
Place 413 C Bill No.: HB 341

FINAL ACTION:
____ Favorable
____ Favorable with ____ Amendments
X Favorable with Substitute
____ Unfavorable

VOTE:

YEA	MEMBER	NAY
X	Arnold	
	Boyd	X
X	Burke	
	Cosgrove	
X	De Grandy	
X	Graber	
X	Graham	
X	Hoffmann	
X	Jones, Daryl	
X	Laurent	
X	Mitchell	
X	Press	
X	Ritchie	
X	Rojas	
X	Rush	
X	Sanderson	
X	Silver	
X	Smith, C. R.	
	Tobiassen	
X	Webster	
X	Trammell, Chr.	

YEA	MEMBER	NAY

Total Yeas 18 Total Nays 1

IF PRESENT, MEMBER WOULD HAVE VOTED:

Robert D. Trammell
Chairman

APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address
Donald J. Sasser	Acad. of Matrimonial Lawys.	West Palm Beach, FL
Sandy Karlan	Gender Bias Imple. Comm.	2701 S. Bayshore Dr. #305 Miami, FL
Anne Gannon	FL N.O.W.	411 E. College Ave., Tall., FL
Charlene Carres	Gender Bias Imple. Comm.	P.O. Box 1031, Tall., FL
Michael L. Hastings	FL Bar/Family Law Section	980 Tyrone Blvd. St. Petersburg, FL

Note: Please indicate by an "X" any State employee appearing at the request of the

(FILE WITH THE CLERK AND ATTACH SUBCOMMITTEE REPORT IF

distribution, the award would not terminate upon remarriage or death.

The bill would provide for payment of child support by credit card. All associated costs would be borne by the obligor.

The bill would provide that within 10 days after the local depository serves notice on a delinquent obligor, the court is to notify the appropriate credit bureau of the delinquency.

Delinquent child support obligors who are not subject to enforceable wage assignments would be required to file a security deposit in an amount determined by the court. The security deposit would be used to make payments on delinquent support and would be returned to the obligor after 2 consecutive years of timely child support payments.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Indeterminable.

B. Government:

None.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None.