SUPREME COURT OF FLORIDA

BONNIE BELAIR,

Petitioner,

vs.

MARY FRANCIS DREW,

Respondent.

_____/

CASE NUMBER: 96,168
District Court of Appeal
5th District - No. 99-1265

PETITIONER'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

18 point proportionately spaced Times Roman

TABLE OF CITATIONS

STATEMENT OF THE CASE and FACTS

This is an appeal from a July 5, 1999 opinion by the Fifth District Court of Appeal declining to issue a Writ of Certiorari.

On August 22, 1997 the trial court signed the Final Judgment dissolving the marriage. The Judgment awarded to Bonnie Belair, the mother, sole care, custody and control of the minor child. The former husband was awarded visitation as determined solely by the wife (App, pg. 28).

On May 11, 1998 the paternal grandmother, MARY FRANCIS DREW, field a Petition for Grandparent Visitation requesting the court award visitation to the grandmother regarding the minor child. The grandmother relied upon Florida Statute 752.01(1)(b) as authority for the Court to order visitation (App, pg. 31).

On February 1, 1999 the mother filed a Motion to Declare

Florida Statute 752.01(1)(b) Unconstitutional. The hearing was set for March 10, 1999 (App. pg. 35).

At the hearing the court declined to rule on the constitutionality of Florida Statute 752.01(1)(b) (pg. 9-10 tsp).

On March 26, 1999 the Court signed an Order giving the grandmother temporary visitation with two (2) Thursdays and one overnight visit per month. (App. pg. 49)

On April 21, 1999 the court signed the order denying the Motion to Declare Florida Statute 752.01(1)(b) Unconstitutional. (App. pg. 38).

On May 12, 1999 the mother filed a Petition for Writ of Certiorari asking the Fifth District to review the trial courts order. (App. pg. 39).

On July 5, 1999 the Fifth District filed its opinion declining to issue a Writ of Certiorari. The court ruled that the mother would

have an adequate remedy at the end of the case. The court certified conflict with William v. Spears, 719 So.2d 1236 (Fla. 1st DCA 1998). (App. pg. 44).

On July 26, 1999 the mother filed her Notice to Invoke Discretionary Jurisdiction. On August 12, 1999 this Court issued an order postponing a decision on jurisdiction and set deadlines for briefs on the merits. (App. pg. 47)

On September 8, 1999 the mother filed an Amended Petitioner's Initial Brief. On November 29, 1999 Petitioner was notice to serve a supplemental brief addressing the certified conflict issue.

SUMMARY OF ARGUMENT

Failing action by a higher court the trial court will proceed with a hearing to determine grandparent visitation. The trial court has already issued an order compelling for temporary visitation.

An evidentiary hearing to determine if the State should impose grandparent visitation on the mother would of necessity invade the proctel privacy rights of the family. This would create an irreparable injury and therefore this court should intervene.

ARGUMENT

The First District in Williams v. Spears, 719 So.2d 1236 (Fla. 1st DCA 1998) granted the Petition for Writ of Certiorari in decided that holding a hearing under Florida Statute 752.01 would violate a parents right to privacy.

The Fifth District in the instant case below Belair v. Drew 734 So.2d 1190 (Fla. 5th DCA 1999) took a contrary position in agreeing with Judge Webster's dissent in Williams and held there would be an adequate remedy after the hearing.

The mother asserts that holding the hearing would result in irreparable harm to her and her family.

In a hearing the parent would be called to the stand to justify every parental decision that the grandparent disagrees with. Perhaps the parent and grandparents disagree whether the child should learn to surf or fish or play football or read the Bible or the

Koran. The parent says "no video games" the grandparents disagree. Examples are easy to think of and endless. The parents would have to explain each decision. Then the court would determine what they think is in the child's best interest.

This results in the state prying into every aspect of a parent child relationship. What could be more intrusive than having to explain the inner workings of your heart and mind regarding your parenting decisions.

Once a parent's private life has been opened for public display there can be no repair. No edict by the Court can erase memories or repair the scars that this type of hearing leaves.

In Williams the dissent distinguishes Williams from S.S. v. J.M.N. 703 So.2d 1212 (Fla 1st DCA 1997) on the lack of temporary visitation. See Williams at 1243. In the instant case, the trial court ordered visitation pending a final hearing.

There is an ongoing intrusion into the privacy of the mother, to hold a hearing would be a further intrusion into her private decision making process.

CONCLUSION

The Fifth and First Circuits disagree over whether an adequate remedy would exist if a hearing was held. The holding of the hearing is an intrusion that cannot be remedied on appeal. The mother asks this Court take jurisdiction of this matter and grant her motion to dismiss.

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I HEREBY CERTIFY that a true and correct copy of the

foregoing Brief has been sent via U.S. Mail to Alan Landman, Attorney for Respondent, 2955Pineda Causeway, Suite 110, Melbourne, Florida 32940, this 17 day of December, 1999.

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APPENDIX

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