IN THE SUPREME COURT OF FLORIDA

CASE NO. 00-1577

SAMUEL SHAW,

Petitioner,

vs.

ELIZABETH SHAW,

Respondent.
_____/

PETITIONER'S BRIEF ON JURISDICTION

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INTRODUCTION

This brief is filed on behalf of the Petitioner, SAMUEL SHAW, Appellant in the Fourth District, hereafter "Petitioner." As will be demonstrated herein, the decision of the district court expressly and directly conflicts with several decisions of other district courts of appeal on the same question of law. This Court is urged to accept jurisdiction and consider the case on the merits, as this case presents an important issue, statewide, regarding the ability of a trial court in a child custody scenario to order certain types of relief as part of its final judgment where said relief was never requested in the pleadings.

References to the opinion of the district court in this case, which is appended to this brief, will be designated "A."

Respondent, Appellee below, ELIZABETH SHAW, will be referred to as "Respondent."

STATEMENT OF THE CASE AND FACTS

The district court affirmed a final judgment of the trial judge which resolved all child custody and visitation issues between the parties by denying Petitioner any visitation with his daughter, unless and until Respondent agreed to said visitation, and denying him shared parental responsibility until he attended a thirty-six week parenting course. (A. 1). Upon Petitioner's completion of this four-month parenting course, the trial court agreed to conduct a status conference to reconsider these rulings. (A. 1).

Among the issues raised by Petitioner on appeal was the fact that the trial judge made its ruling in regard to the parenting class when neither party sought such relief in its pleadings and thus the parties were not on notice that such action could be taken. (A. 1). Acknowledging that another district court of appeal had reversed a trial court order which required a parent to attend a parenting course where such relief exceeded the scope of relief sought by the pleadings, the Fourth District expressly stated in its panel opinion that it did not agree with the holding in that case.

SUMMARY OF THE ARGUMENT

It is improper and a violation of due process for a trial court to go beyond the scope of requested relief without providing a party notice that such action is being considered by the court. Especially in the context of child custody, a party must be provided with an opportunity to be heard and to oppose any contemplated relief.

There is a conflict among the districts on this issue.

ARGUMENT

THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FOLLOWING DECISIONS, ON THE ISSUE OF WHETHER A TRIAL COURT IS AUTHORIZED TO REQUIRE A PARENT TO ATTEND A LENGTHY PARENTING COURSE WHEN SUCH RELIEF HAS NEVER BEEN SOUGHT BY EITHER PARTY IN THEIR PLEADINGS:

Williams v. Williams, 690 So. 2d 601 (Fla. 1st DCA 1996)

Silvers v. Silvers, 504 So. 2d 30 (Fla. 2d DCA 1987)

It is fundamental and has consistently been held that it is improper for a trial court to hear and determine matters which were not the subject of appropriate pleadings or notice. ***Winddancer v. Stein***, 25 F. L.W. D298 (Fla. 1st DCA 2000); ***Moody v. Moody***, 721 So. 2d 731 (Fla. 1st DCA 1998); ***Barreiro v, Barreiro***, 377 So. 2d 999 (Fla. 3d DCA 1979). This is true because it is a violation of due process for a judge to go beyond the scope of the requested relief and in the process deny a party the right and opportunity to be heard on an issue prior to the court making a ruling thereon. ***Little v. Little***, 718 So. 2d 341 (Fla. 4th DCA 1998); ***Brady v. Jones***, 491 So. 2d 1272 (Fla. 2d

DCA 1986).

Specifically in regard to the subject of a parenting course within the child custody context, both the First and the Second District Courts of Appeal have utilized this analysis to reverse trial court orders which required a parent to attend a parenting course where such relief was not requested and the party was thus not provided with an opportunity to be heard with respect to the proposed relief. In ***Silvers v. Silvers***, 504 So. 2d 30 (Fla. 2d DCA 1987), after the mother filed a motion for contempt for the father's failure to pay child support, the trial judge denied the requested relief and ordered the parents to attend several different parenting classes. In reversing, the Second District ruled that it was error to impose these conditions on the parties in the absence of a motion or other notice to be heard on the issues.

Similarly, in ***Williams v. Williams***, 690 So. 2d 601 (Fla. 1st DCA 1996), the First District considered the same issue and concluded that the trial judge had erred in requiring a father to undergo alcohol counseling and to attend a parenting class where neither the pretrial statement nor the pleadings sought such relief. In support of its ruling, the ***Williams*** court relied on the fact that

the father had never been afforded notice that such relief was being contemplated by the trial judge and thus he was unable to oppose the relief in any meaningful way. ***Id.*** at 603.

While the panel's decision in the present case only acknowledges conflict with ***Williams***, its decision directly conflicts with both ***Silvers*** and ***Williams***, both of which denied the availability of the same relief under substantially the same circumstances that were found acceptable to the Fourth District herein.

CONCLUSION

Based on the foregoing, this Court is urged to accept jurisdiction on the basis that the district court opinion expressly and directly conflicts with decisions of other district courts of appeal. The opinion in this case sets a dangerous and confusing precedent by authorizing trial judges to require a parent to undergo a lengthy parenting class as a pre-condition to exercising custody and visitation despite a complete lack of notice that such relief was being contemplated by the court, thereby denying the parent the ability to oppose such relief.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction was furnished by mail this 7th day of August, 2000 on ABBE COHN, ESQUIRE, Riverwalk Plaza, Suite 2000, 333 North New River Drive East, Fort Lauderdale, Florida 33301 and NANCY W. GREGOIRE, ESQUIRE, Bunnell, Woulfe, Kirschbaum, Keller, Cohen & McIntyre, P.A., 888 E. Las Olas Boulevard, 4th Floor, Fort Lauderdale, Florida 33301.

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 2000

SAMUEL SHAW,

Appellant,

v.

ELIZABETH SHAW,

Appellee.

CASE NO. 4D00-0195

Opinion filed May 31, 2000

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Richard D. Eade, Judge; L.T. Case No. 97-5401 (42)(90).

Diane H. Tutt and Sharon C. Degnan of Diane H. Tutt, P.A., Plantation, for appellant.

Abbe Cohn of Abbe Cohn, P.A., Fort Lauderdale, and Nancy W. Gregoire of Bunnell, Woulfe, Kirschbaum, Keller, Cohen & McIntyre, P.A., Fort Lauderdale, for appellee.

KLEIN, J.

Appellant father raises a number of issues involving the trial court's resolution of custody and visitation of the parties' child. We affirm the order in all respects.

The trial court concluded that shared parental responsibility would be "detrimental to the minor child and not in her best interest at this time." The court accordingly awarded the mother temporary sole parental responsibility, ordered the father to attend a thirty-six week parenting course, and agreed to have a status conference after the father completed the course to revisit shared parental responsibility.

The trial court found that from the period when the mother filed the petition for dissolution of marriage, in April 1997, until the trial of this case almost two and one-half years later, the father had exercised visitation with his child only four times. The court further found that the mother would frequently attempt to schedule visitation but that the father would refuse it or sabotage it when it occurred. The court specifically found the mother to be credible and the father to be not credible.

One of the issues the father raises on appeal is that the court erred in ordering him to attend a parenting course because the mother had not requested that relief. He relies on Williams v. Williams, 690 So. 2d 601, 603 (Fla. 1st DCA 1996), in which the court stated:

> As to point three, we must reverse the provision of the order requiring the former husband to obtain alcohol abuse counseling and to attend parenting classes. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief.

We do not agree with Williams to the extent that it requires that attendance at parenting classes must be plead. Section 61.13(4)(c) authorizes a court to "order the custodial parent to attend the parenting course approved by the judicial circuit." Although this father is not a custodial parent at this time, we see no reason why the court could not have required the father to attend a parenting class, as a condition to the court's reconsideration of custody. Nor do we agree with the father that the trial court erred in granting sole parental responsibility to the mother until he completes the parenting course. There was ample evidence to support both requiring the father to attend the parenting course and granting sole parental responsibility for now.

The father also complains that the trial court gave the mother complete control over his

visitation. Although that may generally be error, Latourneau v. Latourneau, 564 So. 2d 270 (Fla. 4th DCA 1990), it was not improper under the specific facts in this case. The trial court found that the mother had at all times been attempting to maintain a relationship between the father and his child and had gone above and beyond the call of duty. Vesting her with control under those circumstances, which was only temporary until the father completed the parenting course, was not an abuse of discretion. Once the father completes the parenting course, the visitation must then be set by the court.

We have considered the other issues raised by the father and find them to be without merit. Affirmed.

STEVENSON and HAZOURI, JJ., concur.

NOT FINAL UNTIL THE DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.