IN THE SUPREME COURT OF FLORIDA

JAMIE BARDOL AND LORI BARDOL,

Petitioners,

-v-

MARY MARTIN,

Respondent.
_____/

CASE NO. SC00-600
4DCA CASE NO. 98-02918

ON REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

STATE OF FLORIDA

ANSWER BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND OF THE FACTS

Respondent adopts the Statement of the Case in Petitioners' brief as essentially accurate, with the following clarification and elaboration. The facts which follow are believed to be undisputed.

As stated in Petitioners' initial brief, the original Petition was filed in the Trial Court prior to their 18th birthday, with an Amended Petition having been filed subsequent to the attainment of the age of 18 years by the twin Petitioners. The propriety of this procedure was not challenged in the "Motion for Summary Judgment, Partial Summary Judgment, or Judgment on the Pleadings." At time of argument on the Motion, the parties stipulated, as set forth in the Final Order appealed from that Summary Judgment should be granted if, as a matter of law, the Trial Court were unwilling to order support retroactive to a time prior to the date of filing of the original Petition.

The parties and the Trial Court were all in accord in the understanding that the underlying action, which had been pending for over four years at the time the Order was entered, was an original action for support seeking to recognize a legal obligation on the part of parents of twin girls born out of wedlock in 1976, and to obtain a formal Order of Support, retroactive to a date of up to ten years prior to the filing of the action.

While not mentioned in the Trial Court's Order, the parties also stipulated, at time of argument, and in response to inquiry by the Court, that legislation enacted subsequent to the filing of the action which provided for limited retroactivity in Petitions for Paternity, dissolution of marriage, or support during the marriage, (F. Stat. Sec.61.30 (17) (1997) was not applicable herein.

The Petitioners were raised in the physical custody of, and supported by, a third party, ANN McNUTT, at all times pertinent hereto. McNUTT had, at one time, years earlier, been awarded temporary custody of the Petitioners pursuant to proceedings brought in the Juvenile Division of the same Court. McNUTT was not a party to the proceedings below and did not, during any time, seek an Order of Child Support or bring an action for necessaries.

In affirming the Trial Court, the District Court of Appeal adopted the arguments set forth in Respondent's brief, to the extent that it held that there is no basis in existing law for the action to be maintained by Petitioners, but certified the referenced question to this Court, in the event "the Florida Supreme Court wishes to recognize an adult child's standing to sue a parent for retroactive support under the circumstances presented by this case..."

SUMMARY OF ARGUMENT

The District Court of Appeal was correct in affirming the Trial Court. The concept of children, upon attaining their majority, being permitted to maintain a cause of action against their parents for retroactive child support, when there has never been an agreement or Court Order, is unknown to American juris prudence. There are, on the other hand, numerous policy reasons for not permitting such a suit. In order to avoid a windfall, the Court would have to attempt to divine the level at which the children had actually been supported. This would be difficult, at best, and potentially impossible. Moreover, and most importantly, Equal Protection would require that the same right be afforded to legitimate children, even those who were entirely raised in an intact marriage, by both parents.

ARGUMENT

ADULT CHILDREN SHOULD NOT HAVE STANDING TO BRING SUIT ON THEIR OWN BEHALF AGAINST A PARENT FOR RETROACTIVE CHILD SUPPORT, ABSENT AN AGREEMENT OR COURT ORDER PREVIOUSLY ESTABLISHING A CHILD SUPPORT OBLIGATION.

The question certified to this Court by the District Court of Appeal, while extremely broad in scope, arises out of a fact pattern which is sui generis. Stemming from an allegation that the biological parents did not provide support to the Petitioners, the Petitioners themselves sought an Order of retroactive support. They were raised and supported by a third party volunteer who, although having been granted legal custody, never sought an Order of Child Support and was neither joined, nor intervened as a party to the underlying proceedings. Although she was the one who expended moneys on behalf of the Petitioners, the claim did not seek reimbursement on her behalf. There is no public agency seeking reimbursement for public assistance, and no adult ever brought proceedings on behalf of the Petitioners, during their minority, to obtain an Order of Support. It is submitted that to answer the certified question in the affirmative, on this narrow fact pattern would result in opening the flood gates of the Family Court to a tidal wave of mischievous litigation.

The decision of the District Court of Appeal in the within matter, **Bardol v. Martin**, 25 Fla. L. Weekly D1 (4th DCA January 7th, 2000), adopts the reasoning set forth in Respondent's brief

filed therein, and Respondent will, therefore, refrain from reiterating certain of the arguments raised in that brief. It is noteworthy, however, that the decision in **Bardol v. Martin**, Supra., provides in pertinent part as follows:

> While the dissent argues the Appellants have a common-law right to retroactive support, our research reveals no case anywhere in which adult children have successfully maintained a suit against their parents for retroactive support. In fact, it seems there would be good policy reasons why an adult child would not have standing to sue a parent under these circumstances.

Respondent points out that the dissenting opinion also fails to cite any direct authority for the proposition that adult children should have the right to sue their parents under these circumstances and further points out the fact that Petitioners, in their brief filed herein, disclose that they have researched out-of-state case law, but have also failed to find any case which allows the relief sought herein, conceding that the cases that they found in other jurisdictions indicate "that there should not be a double recovery and that therefore, an action for retroactive support such as is urged in the case at hand, must fail." (Petitioners' brief, Page 6). Petitioners then take issue with the out-of-state authority they have cited, urging that the argument put forth by Judge Farmer in the dissenting opinion provides the better analysis. It is therefore the intention of Respondent to demonstrate to this Court that the logical extension of the position urged in the dissent, if applied in a matter which

comports with Constitutional law, will run afoul of the very policy reasons to which the majority opinion must have been alluding.

The dissenting opinion in the case at bar is a rhapsody extolling the virtues of child support. In building to a crescendo, it cites numerous decisions which are, at best, tangential to the issues herein, but not a single case in the entire body of American jurisprudence which authorizes the relief sought by the Petitioners herein. While Respondent does not take issue with the fact that child support is an important right, it is pointed out that, as far as these Petitioners are concerned, their raising and their support was already a "done deal." No one having an actual or theoretical right to bring an action for child support ever did so at any time during which such an action could have been maintained. Respondent has urged, and the District Court of Appeal, has opined, that the maintenance of this suit by persons who have already been supported throughout their minority, and who are not seeking reimbursement on behalf of the person who supported them, would constitute a windfall.

Citing **Cole v. Cole**, 723 So. 2d 925 (Fla. 3rd DCA 1999), the Petitioners concede that: "The law in the State of Florida recognizes the fact that the rights of children born within wedlock should be the same as those born out of wedlock with regard to child support obligations." (Petitioners' brief, Page 7). This consideration is important to Respondent's argument and, in fact, echoes a long line of cases from the United States Supreme Court

and from this Court which demonstrate the strong policy that modern American law abhors distinctions based upon legitimacy. See, e.g., **HRS v. West** 378 So. 2d 1220 (Fla. 1979); **Levy v. Louisiana**, 391 U.S.68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968) **Gammon v. Cobb**, 335 So.2d 261 (Fla.1976); **Glona v. American Guarantee and Liability Insurance Co.**, 391 U. S. 73, 88 S. Ct. 1515, 20 L.Ed.2d 441 (1968); **Weber v. Aetna Casualty & Surety Co.**, 406 U.S. 164, 92 S.Ct.1400, 31 L.Ed.2d 768 (1972); **Gomez v. Perez**, 409 U.S. 535, 93 S. Ct. 872, 35 L.Ed.2d 56 (1973), **Jimenez v. Weinberger**, 417 U.S. 628, 94 S.Ct.2496, 41 L.Ed.2d 363 (1974); **Trimble v. Gordon**, 430 U.S. 762, 97 S. Ct. 1459, 52 L.Ed.2d 31 (1977).

The climax of the dissenting opinion is its discussion of the windfall objection to the maintenance of this suit by the Petitioners. The language of the dissent as follows, must be read in light of the equal protection argument which is at the core of each of the above-cited cases:

> ...I cannot understand the recovery of unpaid child support by children after they reach their majority as a windfall. It is entirely possible that if such support had been regularly paid as it accrued during minority, the standard of living of these children would have been improved. Were they living on the edge of poverty during their minority? Were they deprived of intangibles beyond food and shelter, the payment of which would have enabled them to achieve aspects of ordinary life while widely enjoyed by even the less economically favored in our society? Would a payment of such support clearly owed now enable them to acquire advanced education or improve their skills for the job market? The answers to these inquiries do not seem to me to amount to windfalls for children in the circumstances of these Plaintiffs.

The dissenting opinion does not elaborate on whether, if the Court were to have allowed the claim and made a retroactive award of child support, the Court would then be required to go forward and examine the support provided to these Petitioners during their minority under a microscope. Clearly, without doing so, the Court would not be in a position to know at what level these children had been supported. Presumptively, in order to avoid a windfall, the Court would have to figure out how much money was spent on them and, if it fell short of guidelines child support, make an award of the surplus to the Petitioners, while deducting the amount which had actually been provided by the third party volunteer who was not seeking reimbursement. This would provide the Court with a rather complex and time-consuming task! The windfall argument cannot be overcome absent such a thorough analysis, as the now adult children, if provided with the entire amount of retroactive child support, would receive an amount which entirely ignores the fact that they most certainly were fed, clothed, sheltered and entertained for the first eighteen years of their lives. This may well be one of the "policy reasons" alluded to by the District Court of Appeal.

Coming around, full circle, to the fact that this case is, as previously noted, sui generis, we arrive at what must certainly be the more important policy reason for not permitting such suit. It is the very existence of the necessity for providing equal

protection to all children, regardless of whether they were born within, or outside wedlock. Equal Protection would certainly require that, if the certified question were answered in the affirmative, adult children who were not born out of wedlock be afforded the same rights. Numerous scenarios giving rise to the right to sue one's parents would then come to mind. However, the most outrageous (but one which, of necessity, would have to be permitted if the certified question were to be answered in the affirmative) would involve the right of each and every child in the State of Florida, merging from an intact marriage, to sue his or her parents, alleging that he or she had not been adequately provided for in accordance with the Florida Child Support Guidelines. Respondent believes that no further elaboration is needed in order to envision the incredible mischief which would then arise, and the volume of vexatious and complex lawsuits which would then follow.

CONCLUSION

For all of the foregoing reasons, this Honorable Court should:

1. Affirm the District Court of Appeal; and
2. Answer the certified question in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail to JEROME L. TEPPS, P. A., Attorney for Petitioners, 3411 Powerline Road, Suite 701, Fort Lauderdale, Fl.33309, this 2nd day of May, 2000.

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