
IN THE SUPREME COURT OF THE STATE OF FLORIDA

HOWARD MOSS,
Petitioner

v.

PATRICIA L. MOSS,
Respondent.

Supreme Court Case No.
Case No. 2D03-478
Case No. 2D03-2355
(Consolidated)

ANSWER BRIEF OF THE RESPONDENT REGARDING JURISDICTION

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INTRODUCTION

The Petitioner, HOWARD MOSS, was the Husband in the litigation below and the Respondent, PATRICIA L. MOSS, was the Wife. The parties will be referred to as AFormer Husband@ and AFormer Wife,@ respectively.

JURISDICTION

The Second District certified the question of, AMay the parties, by an express provision in a prenuptial agreement, contract away a future obligation to pay attorney=s fees and costs during the term of the marriage by providing for prevailing party attorney=s fees in actions seeking to enforce or prevent the breach of the prenuptial contract?@ Pursuant to Rule 9.120 of the Florida Rules of Appellate Procedure, when a District Court certifies a question, the filing of a Initial Jurisdictional Brief by a party is prohibited. The Former Husband chose to disregard this clear rule and file an Initial Brief. This Court should accordingly disregard the Former Husband=s Jurisdictional Brief and make its decision regarding exercising jurisdiction according to the established Appellate Rules.

STATEMENT OF THE CASE AND FACTS

The two major issues in the case were whether the Prenuptial Agreement waived the Wife=s rights in post-nuptial businesses which she was induced to work in by her husband, and what was the duration of the parties marriage under the Agreement. The trial court found for the Husband on the waiver issue and found for the Wife on the marriage duration issue. (FJ., 6.) The trial court entered an award of attorney=s fees to

the Wife on April 28, 2003, finding her fees to be reasonable. The Husband filed an appeal on January 16, 2003. (R. 2848.) The Second District Court of Appeal upheld the lower court's ruling in every aspect. As they have done on several prior occasions, the Second District certified the question of "May the parties, by an express provision in a prenuptial agreement, contract away a future obligation to pay attorney's fees and costs during the term of the marriage by providing for prevailing party attorney's fees in actions seeking to enforce or prevent the breach of the prenuptial contract?"

The District Court upheld the final judgment of the trial judge with regard to the denial of the Former Husband's request for fees pursuant to ' 57.105. The trial court summarily denied any request for attorney's fees by the Former Husband, stating that "Some of the tactics employed by the Former Husband in the course of these proceedings have, at the very least, necessitated significant expenditures of time and effort by the Former Wife's attorneys...Much of this time and expense could have and should have been reasonably avoided by a modicum of good faith cooperation by the Former Husband." (R. 2959).

SUMMARY OF THE ARGUMENT

Pursuant to Florida Rule of Appellate Procedure 9.120, since the Second District certified the question the Former Husband wishes this Court to address, no jurisdictional briefs are permitted by the parties. However, the Former Husband disregarded the rule and filed an Initial Brief, and the Former Wife feels obligated to respond. The denial of the Former Husband's request for fees pursuant to ' 57.105 was not based on the judge's perception that the lower court was prohibited in any way from awarding punitive fees because of the parties' marital relationship. The lower court rejected the Former Husband's fee request because it was unfounded and not supported by the evidence. Indeed, the trial judge found the Former Wife's conduct and request for attorney's fees to be reasonable. This court should disregard the Jurisdictional Brief of the Former Husband and entertain jurisdiction solely on the well established Florida Rules of Appellate Procedure.

ARGUMENT

Issue I.

THE FORMER HUSBAND LACKS STANDING TO FILE AN INITIAL BRIEF ON JURISDICTION AS THE ISSUE WAS CERTIFIED BY THE SECOND DISTRICT COURT OF APPEALS AS A QUESTION OF GREAT PUBLIC IMPORTANCE.

This issue was certified by the Second District Court of Appeals as an issue of great public importance as enumerated by Rule 9.030(a)(2)(A)(v). Pursuant to Rule 9.120(d), no jurisdictional briefs should be filed by the parties. The Former Husband, in his Notice to Invoke Discretionary Jurisdiction, has erroneously stated that the Appellate decision expressly and directly conflicts with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. That is simply not the case. Nowhere in his jurisdictional brief has the Former Husband stated or demonstrated which appellate or Supreme Court decision with which the current decision expressly and directly conflicts. In fact, the position espoused by the Former Husband has been expressly rejected by this Court. In *Belcher v. Belcher*, 271 So.2d 7 (Fla.1972); this Court noted that a husband's obligation for his wife's attorney's fees is part of his support obligation, and "ante or post-nuptial contracts are entered into subject to then existing law, including the law of this state that makes a husband responsible for the support of his wife while she is married to him." As is clear from the record and his jurisdictional brief, the Former Husband is endeavoring to extend, overturn, and/or modify existing case law with regard to the well established obligation of a spouse to support the other through the

pendency of a dissolution proceeding.

Moreover, the denial of the Former Husband's request for attorney's fees was not based on the trial judge's perception that he could not award ' 57.105 fees based on existing Florida law. The litigation below was not frivolous or made in bad faith. The Former Wife prevailed on two of the three contested issues.¹ In fact, the trial judge found that, "The reasonableness of the amount of attorney's fees and costs of the Former Wife's attorneys cannot be seriously contested." (R. 2957). The trial judge denied any request for attorney's fees by the Former Husband. (R. 2959). To suggest now that the trial court's denial of fees to the Husband was based on a perceived prohibition by the trial judge to award fees pursuant to ' 57.105 Fla. Stat. is a misstatement of the facts of the case.

¹ The "prevailing party" for purposes of awarding attorney's fees is the party determined by the trial court to have prevailed on significant issues in the litigation. *Zhang v. D.B.R. Asset Management, Inc.*, 878 So.2d 386, 387 (Fla. 3d DCA 2004). In addition, "an attorney's fee award is not required each time there is litigation involving a contract providing for prevailing attorney's fees." *KCIN, Inc. v. Canpro Inv., Ltd.*, 675 So.2d 222 (Fla. 2d DCA 1996). A trial court may properly determine that neither party has prevailed in a contract action under compelling circumstances. *Miller v. Jacobs & Goodman, P.A.*, 820 So.2d 438 (Fla. 5th DCA 2002).

Simply put, the trial court denied the Husband his fees based on the lack of merit of his claim, not on a prohibition by case law or statute. The Former Husband was not the prevailing party to the litigation and therefore not entitled to fees. The filing a jurisdictional brief by the Former Husband is improper in this case as Rule 9.120 of the Florida Rules of Appellate Procedure clearly prohibits parties from filing jurisdictional briefs when the question was certified as one of great public importance by the Second District.

CONCLUSION

This Court should make its determination to exercise jurisdiction solely on the question certified by the Second District Court of Appeals.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to David M. Wall, Two Prestige Place, Suite 130, 2650 McCormick Drive, Clearwater, Florida 33759 and Cynthia Greene, 7340 S.W. 61st Court, Miami, Florida 33143, on this ____ day of April, 2005.

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STATEMENT OF COMPLIANCE WITH RULE 9.210(a)(2)

WE HEREBY CERTIFY that this Answer Brief of the Respondent has been prepared in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure, using 14 point Times New Roman font.

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