

IN THE SUPREME COURT OF FLORIDA

EDWIN L. KOON,

Appellant/Petitioner,

vs.

CASE NO. 67,216

BOULDER COUNTY, DEPARTMENT
OF SOCIAL SERVICES, ex rel.
ANNA KOON,

Appellee/Respondent.

EDWIN L. KOON,

Appellant/Petitioner,

vs.

ANNA SMITH,

Appellee, Respondent.

FILED

SID J. WHITE

JUL 23 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

JURISDICTIONAL BRIEF

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SUMMARY OF ARGUMENT

In the instant case, the First District Court of Appeal held that a Florida court, as the responding court in a URESA proceeding, may enter a support order that is greater than a prior foreign judgment.

On or about the same date that the present decision was rendered, the Second District Court of Appeal rendered a decision stating that the legislature intended "to foreclosure upward adjustment of foreign support orders in a civil enforcement proceeding." Hartley v. Hartley, 465 So. 2d 593 (Fla. 2nd DCA 1985).

The above decisions are in clear conflict.

The Florida Supreme Court has the discretionary power to accept jurisdiction when decisions of a district court of appeal expressly and directly conflicts with a decision of another district court of appeal on the same question of law.

The Respondent agrees that the present conflict needs to be resolved in order to bring uniformity to this area of the law.

ARGUMENT

Article V, Sections 3(b)(3)-(5), Fla. Const, articulates certain areas of review by the Supreme Court of district courts of appeal decisions. Exercise of such jurisdiction is not a matter of right, but is a matter within the sound discretion of the Supreme Court to accept or to reject a particular case. One such area of discretionary jurisdiction by the Supreme Court involves review of decisions of district courts of appeal which expressly or directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law. Article V, Section 3(b)(3), Fla. Const.

Jurisdiction pursuant to the above provision will exist only if:

1. The decision of the district court of appeal expressly or directly conflicts with a decision; and
2. The decision in conflict is a decision either from another district court of appeal or from the Supreme Court on the same question of law.

The test of jurisdiction under this provision is not whether the Supreme Court necessarily would have arrived at a conclusion different from that reached by the district court. Instead, the issue is whether the district court decision on its face so conflicts with an earlier decision of the Supreme

Court or of another district court on the same point of law so as to create an inconsistency or conflict among precedents. Kincaid v. World Insurance Co., 157 So. 2d 517 (Fla. 1963).

[J]urisdiction to review because of an alleged conflict requires a preliminary determination as to whether the Court of Appeals has announced a decision on a point of law which, if permitted to stand, would be out of harmony with a prior decision of this court or another Court of Appeal on the same point, thereby generating confusion and instability among the precedents.

Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962). The Supreme Court went on to state that the conflict must be such that if both decisions were rendered by the same court, the later decision would have the effect of overruling the earlier decision. Id.

In the present case, there is an apparent conflict between the First and Second District Courts of Appeal on the same issue of law. That issue is whether a responding court in a URESA proceeding may enter a support order that is higher or lower than a prior judgment in the initiating state.

In the case of Hartley v. Hartley, 465 So. 2d 592, 593 (Fla. 2d DCA 1985), the Second District Court of Appeal stated that the legislature intended "to foreclose upward

adjustment of foreign support orders in a civil enforcement proceeding." The First District Court of Appeal expressly and directly disagreed with the above statement in the present case.

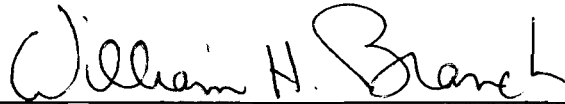
The present case and the Hartley decision were both cases of first impression in their respective districts. They both set precedents as to the ability of the responding court to set levels of support higher than that entered by the court of initiating state.

The Florida Supreme Court has stated it will only accept conflict jurisdiction in "cases involving principles the settlement of which is of importance to public as distinguished from that of the parties, and ... cases where there is a real and embarrassing conflict of opinion and authority. Ansin v. Ansin, 101 So. 2d 808, 811 (Fla. 1958). Respondent submits that such a conflict presently exists between the present decision and the Hartley decision, supra. In order to make case law uniform throughout the state, this Court should accept jurisdiction and resolve the issue raised.

WHEREFORE, this Honorable Court should exercise its discretionary jurisdiction in this Cause and resolve the existing conflict.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **HALLEY B. LEWIS, ESQUIRE**, Downing-Frye Building, 6 Bonita Beach Road, Bonita Springs, Florida 33923, this 23rd day of July, 1985, by U. S. Mail.



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