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SUPREME COURT OF FLORIDA

FILED
SEP 21 1987

OSCAR DAVID GIBSON, ETC.

Petitioner,

vs.

PATRICIA GIBSON BENNETT,

Respondent.

CLERK OF SUPREME COURT

CASE NO. 71,038

DCA CASE NO. 87-600

INITIAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

	<u>PAGE</u>
Citation of Authorities	ii
Statement of the Case	1
Argument	3
Conclusion	15
Certificate of Service	16

CITATION OF AUTHORITIES

	<u>PAGE</u>
<u>Cases</u>	
<u>Andrews v. Walton</u> 400 So.2d 790 (Fla. 2nd DCA 1981)	12
<u>Frachier v. Gammill</u> 148 Miss. 723, 114 So. 813 (1927)	4,5
<u>Haas v. Haas</u> 59 So.2d 640 (Fla. 1952)	7,8,9 10,11
<u>Lam v. Chapman</u> 413 So.2d 749 (Fla. 1982)	3,11 12,13
<u>Lanigan v. Lanigan</u> 78 So.2d 92 (Fla. 1955)	9,10
<u>McDuffie v. McDuffie</u> 19 So.2d 511 (Fla. 1944)	4,5,6 8,9, 10,11
<u>Patterson v. Patterson</u> 348 So.2d 592 (Fla. 1st DCA 1977)	14,15
<u>Sackler v. Sackler</u> 47 So.2d 292 (Fla. 1950)	3,4,5 6,8,9 10,11
<u>Sokolsky v. Kuhn</u> 405 So.2d 975 (Fla. 1981)	3,4,9 10,11
<u>Schwartz v. Waddell</u> 422 So.2d 61 (4th DCA 1982)	14,15
<u>Florida Statutes</u>	
Section 409.2561 (1)	13
Section 409.2561 (1)-3	12
<u>Florida Constitution</u>	
Article 1, Section 11	5,6,7 9,13, 15

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CLERK, SUPREME COURT

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SUMMARY OF ARGUMENT TO INITIAL BRIEF OF PETITIONER


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SUMMARY OF ARGUMENT

In compliance with Rule of Appellate Procedure 9.210(B)(4) and as a supplement to the conclusion attached to the Petitioner's Initial Brief, Petitioner submits the following summary of argument:

In the case sub judicie, the Second District Court of Appeals has assumed that Sackler and its progeny are still the law of this State. It is the position of counsel for the Petitioner that first of all, the Sackler court was in error in interpreting that McDuffie stood for the proposition that foreign money judgments for arrearages were enforceable in Florida courts of equity by way of contempt. McDuffie did not deal with a foreign money judgment, but rather with a foreign alimony decree that had never been reduced to a money judgment. The mistaken reliance of the Sackler court was carried forward in the Haas decision once again. As such, it is the Petitioner's position that the issue before the Court in the case sub judicie, as to whether or not foreign money judgments predicated on a determination of support arrears are enforceable in Florida by way of contempt, was not considered in the McDuffie, Sackler, Lanigan, and Haas decisions. More to the point, neither McDuffie, Sackler, Haas or Lanigan ever considered whether or not Article 1, Section 11 of the Florida Constitution would prohibit imprisonment for debt in those situations where support arrears were reduced to a money judgment.

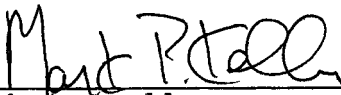
In Sokolsky, it is submitted that this Court departed from any supposed interpretation of McDuffie, Sackler, Haas, or Lanigan authorizing enforcement in equity by contempt in connection with money judgments for support arrearages. The entire rationale of

McDuffie, Sackler, Haas, and/or Lanigan is predicated upon the theory of the Mississippi Supreme Court in Fanchier to the effect that:

" . . . a judgment in equity is more efficacious than a judgment at law in that it may be enforced by attachment or contempt, that a court of equity has sole jurisdiction in matters of divorce and alimony and that to hold that a foreign judgment for alimony can be enforced only by execution at law would amount to depriving it of its inherent power of enforcement by attachment and contempt." Fanchier.

If it is forgotten that Fanchier only entailed an ex-wife's attempts to enforce in Mississippi by way of a show cause hearing a Nevada divorce decree awarding her \$100.00 per month alimony, then Fanchier, McDuffie, Sackler, Haas and Lanigan are rendered susceptible of being misconstrued on the basis of the above-quoted language. Nonetheless, it is submitted that this Court's decision in Sokolsky emasculates the conclusion that money judgments predicated upon support arrearages are enforceable by way of contempt in equity on the basis of the theory as quoted above by the Supreme Court of Mississippi in Fanchier. This is true because in Sokolsky this Court expressly stated that the final money judgment entered therein was no longer an order of the court of this state for alimony, suit money or child support. As such, it is submitted that once this obligation has been converted into a debt it no longer carries the public necessity for enforcement by imprisonment. Further, as recognized by this Court in Lamm, once the obligation is converted to a money judgment and a debt is created, enforcement by way of contempt is no longer available and it is submitted that this is for the reason that Article 1, Section 11 of the Florida Constitution prohibits any such imprisonment.

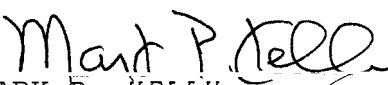
Lastly, it is argued that the entire issue on appeal is moot on the basis of the rationale in Schwarz and Patterson since at the time of the hearing below two of the children had reached the age of majority and the third child reached the age of majority shortly thereafter.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, to Patricia Ann Bennett, 7820 Ravenel Court, Springfield, VA 22151, this 21ST day of September, 1987.



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STATEMENT OF THE CASE

Petitioner and Respondent were married in Virginia on December 26, 1964. Three children were born: the first on September 5, 1966, the second on November 8, 1967, and the last on January 20, 1969. On August 28, 1968, the Petitioner abandoned the Respondent who thereafter received public assistance for two years. Respondent has returned to college, obtained a degree and employment with the Internal Revenue Service, and has raised and supported the parties' minor children.

Petitioner was arrested in Virginia in January of 1969 after failing to make child support payments. He was ordered to pay \$50.00 per week as and for child support, but after making two weekly payments, disappeared. The Respondent obtained a final divorce decree in Virginia in June of 1972 on the grounds of desertion and abandonment.

In 1985, the Petitioner was located in Pasco County, Florida. The Fairfax County, Virginia, District Court issued a rule to show cause to the Petitioner regarding arrearages in child support on June 6, 1985. Petitioner filed an answer to the rule to show cause, but failed to appear at the hearing on the rule on July 11, 1985. The Virginia Court reduced the child support arrears, per the request of the Respondent as of July 11, 1985, to a Final Judgment in the amount of \$106,073.58. This Virginia judgment for arrearages was not appealed. It was domesticated in Florida by filing the same with the Clerk of the Circuit Court of Pasco County on December 23, 1985.

On January 27, 1986, the Clerk of the Circuit Court of Pasco County mailed the notice of the recording of the judgment to the Petitioner as required by Section 55.505 of Florida Statutes. The Petitioner has never contested the jurisdiction of the Virginia Court, nor the validity of the Final Judgment of Arrears entered on July 11, 1985 pursuant to the request of the Respondent.

The Respondent filed a motion seeking to enforce the Virginia Final Judgment for Arrears by invoking the contempt and equitable powers of the Circuit Court of Pasco County, Florida, on August 21, 1986. On January 26, 1987, Circuit Judge Ray E. Ulmer, Jr. entered his Order (see Appendix 1 to Petitioner's Appendix on Appeal) denying the Respondent's request seeking to hold the Petitioner in contempt of Court.

The Respondent sought review of Judge Ulmer's Order of January 26, 1987, denying her the remedy of contempt and on August 14, 1987 the Second District Court of Appeals did file its opinion reversing the lower court and certifying to the Supreme Court as a question of great public importance, the following question:

DO THE CIRCUIT COURTS OF THIS STATE HAVE JURISDICTION TO ENFORCE A FOREIGN JUDGMENT FOR ARREARAGES OF ALIMONY OR CHILD SUPPORT BY MEANS OF EQUITABLE REMEDIES INCLUDING CONTEMPT?

ARGUMENT

In reversing the trial court's order of January 26, 1987, finding that the power of contempt did not lie for the enforcement of a foreign judgment for arrears that has been domesticated in Florida, the Second District Court of Appeals assumed that Sackler v. Sackler, 47 So.2d 292 (Fla. 1950) and its progeny are still the law of the State of Florida and were applicable to the case sub judicie.

"We must, therefore, assume that Sackler and its progeny is still the law of this state." (See page 6 of the Second District Court of Appeals decision of August 14, 1987 attached as Appendix 2.)

The Court concluded that since the Sackler decision was neither cited in nor discussed in this Court's decision of Lamm v. Chapman, 413 So.2d 749 (Fla. 1982), that the Sackler line of cases were not overruled nor expressly receded from. As such, the Second District Court of Appeals held that the language in Lamm, that:

"We note that, although contempt may be the most generally used means of enforcing the child support obligation, it is not the only remedy available to the state or to the child's custodian. Either could obtain a judgment for an arrearage of child support. In the event that such a judgment is obtained, it constitutes a judgment debt upon which execution may issue and for which traditional enforcement remedies, including liens and levies, may be utilized. The contempt power of the court is no longer available to enforce the child support obligation for those arrearages which have been reduced to a judgment debt for which execution may issue, regardless of whether the judgment was obtained by the department or by the custodial parent."

was dicta.

It is submitted, however, that the language set forth hereinabove in Lamm was not dicta, but a reiteration of this Court's

prior holding in Sokolsky v. Kuhn, 405 So.2d 975 (Fla. 1981), wherein the Sackler line of cases relied upon by the Second District Court of Appeals in reversing the lower court's ruling were receded from by necessary inference. In order to properly understand the Sokolsky decision as it relates to Sackler and its progeny, it is necessary to pay particular attention to the facts presented and arguments made (or not made) in the Sackler heraldry.

Review of the Sackler decision reveals that it is grounded in a prior Supreme Court decision known as McDuffie v. McDuffie, 19 So.2d 511 (Fla, 1944). In McDuffie, the petitioner/wife filed a bill of complaint in Florida asking the Court to take equity jurisdiction and adjudicate the amounts due to her for support arrears and enter an order requiring the ex-husband to pay the same and to make available to her "all other equitable remedies," The lower court refused to entertain the cause in equity and transferred it to the law side of the docket for litigation and adjudication.

The issue on appeal was stated by the Supreme Court to be whether or not under the Full Faith and Credit Clause (Section 1, Article 4) of the Federal Constitution, a court of equity in Florida should entertain jurisdiction of cause of action based on the decree of a sister state for alimony and support of minor children against a former husband who has relocated to the State of Florida. The McDuffie Court adopted the rationale enunciated in Frachier v. Gammill, 148 Miss. 723, 114 So. 813 (1927), and held that the lower court was in error and directed that the cause should be transferred back to the equity side of the docket.

It should be noted in the McDuffie decision that this case did not involve a situation wherein a foreign judgment for arrears had already been obtained and domesticated in Florida. When the matter was presented in the lower court, the complaintant was seeking an accounting and proceeding in the nature of contempt by requesting that all equitable remedies be made available to her. At no time, in the McDuffie case, was the issue raised as to whether or not Article 1, Section 11 of the Florida Constitution would bar the lower court's ability to hold him in contempt and imprison him for "debt." It must also be noted at this juncture that in the Frachier decision an examination of the Supreme Court of Mississippi opinion reveals that likewise there was no reduction of any support arrears to a final money judgment. Frachier only dealt with the fact of a Nevada divorce awarding \$100.00 per month alimony and an ex-wife seeking to enforce the initial decree and alimony award in the equity courts of Mississippi. Thus both Frachier and McDuffie only stand for the limited proposition that initial foreign decrees for support are enforceable in equity when equitable proceedings are initiated from the outset seeking in essence an order to show cause in the context of an arrearage determination. Neither Frachier nor McDuffie stand for the proposition that foreign money judgments which were entered and based on support arrears are enforceable in equity via contempt!

When this Court was next presented with Sackler, in 1950, a money judgment for arrears had been obtained in New York, however, again the issue of whether or not Article 1, Section 11 of the Florida Constitution bars the remedy of contempt and imprisonment for

enforcement of a foreign judgment based on support arrearages was not reached. In Sackler, a judgment was obtained in New York for past due support and the ex-wife filed a bill in Dade County, praying that the defendant be required to pay to her all sums of money due and owing under the initial New York decree for support and further requesting that the decree for alimony entered by the New York Court be established and enforced by the equity courts of the State of Florida. The defendant in Sackler denied that he was financially able to pay the full amount of support money awarded by the New York decree and further alleged that insofar as the provisions of the New York decree respecting support money was subject to modification in New York from time to time that such a decree was not enforceable in the State of Florida.

In pertinent part this Court in Sackler held that per the authority of McDuffie, the lower court erred in denying the ex-wife equitable remedies, including contempt proceedings, for the enforcement of the New York judgment for arrearages. However, in Sackler the issue as to whether or not Article 1, Section 11 of the Florida Constitution would bar the imprisonment of the recalcitrant husband for "debt" was never addressed and Sackler is therefore not dispositive of the issue on appeal. It is further submitted that the Sackler court misconstrued the limited effect of McDuffie and incorrectly interpreted the McDuffie decision to authorize contempt proceedings to enforce foreign money judgments derived from a determination of support arrears. Again, McDuffie never dealt with a situation that entailed a foreign money judgment, but rather was from

its inception in the Florida courts, a bill praying that the Court take jurisdiction and adjudicate the amount of arrears due and make available all other equitable remedies failing payment; i.e., a classical equitable proceeding ab initio seeking an arrearage determination based on a foreign divorce/support decree.

Likewise in Haas v. Haas, 59 So.2d 640 (Fla. 1952) the issue of the application and effect of Article 1, Section 11 of the Florida Constitution was never addressed. In Haas, this Court's opinion reveals that an ex-wife reduced alimony arrearages to a money judgment in New York and filed a petition to envoke the equitable process of the Orange County Circuit Court for the enforcement of the same. The respondent/ex-husband counterclaimed and filed six defenses, to which the petitioner moved to strike respondent's answer and defenses. Petitioner's motion to strike respondent/ex-husband's answer was granted as to the first and sixth defenses and as to the counterclaim, thereby framing the issue on appeal as the consideration of the legal sufficiency of the second, third, fourth and fifth defenses of the respondent/ex-husband. The second and third defenses by the ex-husband alleged that since the initial divorce decree was subject to modification in New York, it was not a final judgment and further that it was void for lack of notice, Respondent/ex-husband argued that for these reasons the New York decree was not entitled to full faith and credit. This Court held that these defenses were properly stricken because the procedural history of the New York proceedings reflected that the respondent/ex-husband had submitted to the jurisdiction of the New

York courts and that the New York courts had expressively litigated the same thereby rendering a determination that became res judicata on jurisdictional points and thus protected by the Full Faith and Credit Clause of the Constitution, In the respondent/ex-husband's fourth and fifth defenses, procedural facts were set forth attempting to show the injustice that the respondent/ex-husband contended would result from enforcing the 1950 New York judgment for arrearages. This Court held that in keeping with the familiar equitable maxim that, "he who seeks equity must do equity" the respondent/ex-husband should be allowed to entertain equitable defenses. The Haas court went on to note that based on the authority of Sackler:

"It is established in the jurisprudence of this state that our equity courts are open to nonresident wives for the enforcement by equitable process of final decrees for alimony for the wife and support money for the children awarded by the courts of other states."
Haas, p. 642-643.

To the extent that this above-quoted language in the Haas decision is submitted as authority for the proposition that a foreign money judgment for support arrears is subject to enforcement by way of contempt in an equity court of Florida it is guilty of the same misinterpretation of the McDuffie decision as Sackler. Thus both Sackler and Haas are guilty of the same misinterpretation of the correct, limited area of operation of the McDuffie decision, It is interesting to note that the Haas court goes on to state that:

"A nonresident wife who seeks to enforce in the courts of this state a final alimony decree or money judgment based thereon entered by a court in another state, they do so in a court of law by a common law action to secure a money judgment for the delinquent amount or she may ask our equity court to exert its equitable remedies in the enforcement of such decree,"
Haas, pg. 643. (Emphasis added.)

It is submitted that the Haas court's use of the disjunctive "or" is a further recognition of the effect of the election of remedies occasioned by reducing arrearages to a money judgment thereby converting the same into a debt for which imprisonment is barred under Article 1, Section 11 of the Florida Constitution.

Again in Lanigan v. Lanigan, 78 So.2d 92 (Fla. 1955) this Court never reached the issue of whether or not Article 1, Section 11 of the Florida Constitution would bar imprisonment by way of contempt as a remedy for the enforcement of a Rhode Island divorce granting support to a wife for herself and the children of the marriage. Lanigan serves only to reiterate the decision in Sackler and quoted in Haas that the equity courts are open to nonresident wives for the enforcement by equitable process of final decrees for alimony for the wife and support money for the children awarded by the courts of other states, and in keeping with Haas, states that such suits are subject to any equitable defenses including laches. As such, the application of the Lanigan decision to the case sub judicie is limited by the same constraints involved in the review of the McDuffie, Sackler, and Haas decisions, in that in none of these cases is the issue reached as to whether or not Article 1, Section 11 of the Florida Constitution renders inapplicable contempt as a method to enforce a foreign money judgment that has been domesticated and established in the State of Florida.

However, in Sokolsky, a case involving the filing of a Complaint to establish a foreign divorce decree as a Florida judgment wherein the trial court in Florida entered a Final Judgment

establishing the foreign divorce decree and reduced the child support arrearages to a final money judgment and collection was attempted by way of a Writ of Garnishment, the Florida Supreme Court did hold that:

" . . . the final money judgment entered by the trial court in the Present case in favor of Kuhn against Sokolsky in the amount of \$15,635 is not an order of the court of this state for alimony, suit money, or child support' within the purview of Section 61.12. When a money judgment is entered providing for execution, the provisions of 61.12 are not applicable. In seeking garnishment, Kuhn was therefore governed by the general law relating to garnishment after judgment which included the requirement of Section 222.12 that she file a sworn denial to Sokolsky's affidavit. On the other hand, had the past due child support not been reduced by Kuhn to a final money judgment subject to execution, the District Court would have been entirely correct in holding that Section 61.12 constitutes an exception to Section 222.12 and that therefore, it would not be necessary for an ex-spouse to follow the directives of Section 222.12 and to file a controverting affidavit to the other ex-spouse's affidavit claiming head of the family status." (Emphasis added; Sokolsky p. 977.)

This holding and the rationale upon which it is predicated as set forth hereinabove is the point at which this Court for the first time expressly holds that by reducing child support arrears to a final money judgment, the judgment is no longer an order "of the court of this state for alimony, suit money, or child support." In so doing, the Sokolsky court in effect debunks the supposed holdings in McDuffie, Sackler, Haas, and Lanigan, as perceived by the Second District Court of Appeals in the case sub judicie, that an order for support continues to remain as such even after the same is reduced to a final money judgment.

Thus, it is submitted that even if we assume arguendo that Sackler and its progeny stand for the proposition that the equitable remedy of contempt is available to enforce payment of a money judgment entered for support arrears, which Petitioner argues for the reasons set forth hereinabove is an incorrect interpretation, that Sokolsky dispels this myth and has the practical effect of overruling Sackler, et al. if they are to be so interpreted. Since McDuffie, Sackler, Haas, and Sokolsky all involve the same question of arrearages, money judgments entered for arrearages, and the availability of contempt as an equitable remedy for enforcement, it is submitted that Sokolsky is in hopeless conflict with any proposed interpretation of Sackler, et al. that contempt does lie as an equitable remedy for enforcement of a money judgment for support arrears. This is so since Sokolsky clearly states that by reducing child support arrears to a final money judgment, the judgment is no longer an order "of the court of this state for alimony, suit money, or child support." Thus, since Sokolsky is in hopeless conflict with Sackler, et al. it has the practical effect of overruling the Sackler line of cases because as this Court has previously stated:

"In order for one case to have the effect of overruling another, the same questions must be involved, the cases must be effected by a like state of facts, and a conclusion must be reached in hopeless conflict with that in former case." See State ex rel. Garland v. City of West Palm Beach, 193 So. 297 (Fla. 1940).

When the Supreme Court next considered this issue in Lamm, the Florida Department of Health and Rehabilitative Services was seeking to assert a custodial parent's right to enforce a child support obligation through a civil contempt proceeding as authorized

by Section 409.2561(1)-3 of the Florida Statutes. The District Court held that such an enforcement proceeding infringed upon the constitutional right to be free from imprisonment for debt proscribed by Article 1, Section 11 of the Florida Constitution. Jurisdiction in the Lamm case was accepted by the Supreme Court on the basis of conflict with the Second District Court of Appeals' holding in Andrews v. Walton, 400 So.2d 790 (Fla. 2nd DCA 1981). The Supreme Court held in agreement with the Second District Court in Andrews that the department could constitutionally assert a custodial parent's right to enforce support obligations through a civil contempt proceeding and disapproved the Third District Court of Appeals' opinion in Lamm to the contrary. However, it must be noted again that the Second District's Andrews decision did not involve enforcement of a money judgment, but rather entailed the classical arrearage hearing and the trial court's entrance of a show cause order as to said arrearages. The narrow question decided in Andrews by the Second District Court of Appeals and approved by this Court in Lamm was whether or not in the context of an arrearage hearing, the Department of Health and Rehabilitative Services could proceed by way of contempt.

As such, the Second District's holding in Andrews which was adopted in the Lamm decision by this Court is not applicable to the facts presented in the instant case in that it did not deal with the effect of reduction of support arrears to a money judgment. However, the rationale of this Court's analysis in Lamm as to whether or not civil contempt would be available for enforcement of "debt" was

germane to this Court's reviewing the issue of the correctness of the Third District Court's holding below in Lamm that contempt was constitutionally impermissible due to the fact that Florida Statutes Annotated Section 409.2561(1), upon which the Department of Health and Rehabilitative Services was proceeding, stated that the acceptance of public assistance created a "debt" due to the Department by the responsible parent. The Lamm court rejected the District Court's decision by finding that the legislature did not intentionally use the term "debt" in Section 409.2561(1) so as to restrict the State's use of civil contempt when seeking reimbursement for monies paid for Aid to Families with Dependent Children.

This Court in Lamm as an essential element of its reasoning and holding, stated that the "debt" created under Chapter 409 was to be distinguished from the traditional "debt" effectuated by obtaining a judgment for arrears of child support. The Court reasoned that in the case of Chapter 409 "debt," Article 1, Section 11 of the Florida Constitution did not prohibit imprisonment by way of contempt, which was in effect an exception to the general rule that:

"The contempt power of the court is no longer available to enforce the child support obligation for those arrearages which have been reduced to a judgment debt for which execution may issue, regardless of whether the judgment was obtained by the department or by the custodial parent." Lamm, p. 753.

This holding in Lamm was germane to its analysis and in keeping with the Court's holding in Sokolsky that a final money judgment even if predicated on support arrears is not "an order of the court of this state for alimony, suit money, or child support."

As such, it is submitted that given the analysis contained herein, the Second District Court of Appeals erred in not affirming the action of the trial court in its order of January 26, 1987 denying the Respondent equitable relief in the nature of contempt given the effect of the money judgment for arrears occasioned by the domestication of the foreign judgment for the same.

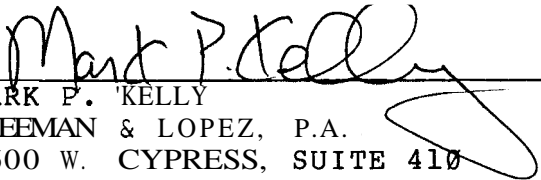
Lastly, as is evidenced by the Memorandum in opposition to the trial court's invocation of contempt authority to enforce payment of child support arrears, which is attached as Appendix 3 to the Petitioner's brief and considered by the trial court below, contempt was not available to force the payment of child support for the parties' two minor children who had already reached the age of majority at the time of the lower court's initially considering the availability of contempt to enforce payment of the foreign judgment for arrears that has been domesticated in Florida. This issue was again suggested to the Second District Court of Appeals and rejected. Nonetheless, again it is submitted that the trial court was correct in refusing to consider contempt as a vehicle to enforce a judgment for arrearages in that two of the children had attained the age of majority. See Schwartz v. Waddell, 422 So.2d 61 (4th DCA 1982); Patterson v. Patterson, 348 So.2d 592 (Fla. 1st DCA 1977). Moreover, since the third child has reached the age of majority it is submitted that the entire issue on appeal is moot.

CONCLUSION

Based upon the analysis contained in Petitioner's brief, it is submitted that the Second District Court of Appeals erred in reversing the trial court's decision that contempt is not available as an equitable remedy to enforce a foreign judgment for arrears of alimony or child support given that the same would constitute imprisonment for debt in violation of Article 1, Section 11 of the Florida Constitution; and further, given that at the time of the hearing below two of the children had reached the age of majority and because the last child has reached the age of majority immediately preceding the trial court's hearing below, the entire issue of the availability of contempt in equity as a means by which to enforce a money judgment for support arrears is moot insofar as the rationale of Schwartz and Patterson, supra, should be adopted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, to Patricia Ann Bennett, 7820 Ravenel Court, Springfield, VA 22151, this 18th day of September 1987.



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