

IN THE SUPREME COURT OF FLORIDA

GOLDIE SOBELMAN,

Petitioner,

v.

ALAN SOBELMAN,

Respondent.

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CASE NO.

71,683

SECOND DISTRICT COURT OF  
APPEALS CASE NO. 86-3072

**FILED**

SID J. WHITE

JAN 11 1988

CLERK, SUPREME COURT

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PETITIONER'S BRIEF ON JURISDICTION

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APPEAL FROM THE DISTRICT COURT OF APPEALS  
FOR THE SECOND DISTRICT OF FLORIDA

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PRELIMINARY STATEMENT

The Petitioner is Goldie Sobelman, who shall be referred to throughout this brief as Wife. The Respondent is Alan Sobelman, who shall be referred to throughout this brief as Husband. "A" means reference to the Appendix accompanying this brief.

STATEMENT OF THE CASE AND OF THE FACTS

The marriage between the parties was dissolved by Final Judgment entered March 4, 1985. The Final Judgment required the Husband to maintain life insurance "in the face amount of \$200,000 with the Wife as beneficiary." (A - 1)

The Husband appealed the Final Judgment contesting among other things the requirement to maintain life insurance on the Wife. The Second District Court of Appeals rendered the first Sobelman decision on June 25, 1986. Sobelman vs. Sobelman, 490 So. 2d 225 (Fla. 2nd DCA 1986). In Sobelman, the Second District Court remanded the case directing the trial court to either eliminate the life insurance requirement or amend the Final Judgment so that the provision conformed with the Section 61.08(3), Florida Statutes or "pertinent decisional law". Sobelman vs. Sobelman, 490 So. 2d 225, 226.

On remand, the trial court seeing a need for life insurance because of the Husband's claimed poor health, concern for the minor child and the mortgage on the former marital home, entered an Amendment to the Final Judgment which provided in part as follows:

As security for permanent, periodic alimony, the Husband shall maintain life insurance in the face amount of Two Hundred Thousand (\$200,000.00) Dollars with the Wife as beneficiary. (A - 4)

The Husband then appealed the requirement to maintain life insurance as provided in the Amendment to Final Judgment dated November 12, 1986. The Second District filed an opinion on October 30, 1987, wherein the Court remanded the case with directions to strike the provision relative to life insurance. (A - 5)

The Wife filed a Motion for Rehearing and said Motion was denied by Order of the Court on December 1, 1987. (A - 9) The Wife filed her Notice to Invoke Discretionary Jurisdiction of this Court on December 30, 1987.

SUMMARY OF ARGUMENT

The present case and Gepfrich vs. Gepfrich, 510 So. 2d 369 (Fla. 4th DCA 1987) are in express and direct conflict over the permissible extent to which a trial court can order a party to maintain life insurance as security for protection of alimony pursuant to Section 61.08(3), Florida Statutes (1985). The discretionary jurisdiction of this Court should be exercised to resolve the conflicting interpretation of this statute.

## ARGUMENT

The Wife invokes the discretionary jurisdiction of this Court to review a decision rendered by the Court of Appeals for the Second District, which expressly and directly conflicts with a decision of the District Court of Appeals for the Fourth District in Gepfrich vs. Gepfrich, 510 So. 2d 369 (Fla. 4th DCA 1987).

The case at bar, Sobelman vs. Sobelman, 12 FLW 2503 (Fla. 2nd DCA Oct. 30, 1987) and the Gepfrich decision are in conflict on the interpretation and application of Section 61.08(3), Florida Statutes, and thereby provide conflicting rules of law. Section 61.08(3), Florida Statutes, provides in part:

To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy . . . (A - 23)

In Gepfrich, the Fourth District held that Section 61.08(3) should not be limited to securing awards of lump sum alimony, or to other circumstances where the beneficiary's (Wife) rights terminate upon death. Gepfrich vs. Gepfrich, 510 So. 2d 369, 370. The Court in Gepfrich found that the purpose of the life insurance provision was to secure or "protect the support provisions of the judgment." Gepfrich, 510 So. 2d 369, 370.

The Second District Court of Appeals in Sobelman has limited the use of life insurance, when ordered as security for permanent alimony pursuant to Section 61.08(3), to providing only security for arrearages in payment of permanent alimony. Sobelman vs. Sobelman, 12 FLW 2503 (Fla. 2nd DCA Oct. 30, 1987). Although the Sobelman opinion states that there is "no reason to limit the provisions of Section 61.08(3), Florida Statutes (1985), to securing the payment of lump sum alimony," the Court then proceeds to limit its use when ordered to secure permanent periodic alimony. Sobelman, 12 FLW 2503.

The Gepfrich decision affirmed the trial court's order requiring the Husband maintain life insurance to secure rehabilitative alimony (terminable upon death of either party) without restriction because the insurance was to protect the alimony award. Previously, the Fourth District Court of Appeals had approved the use of life insurance to secure permanent alimony. Clark vs. Clark, 509 So. 2d 364 (Fla. 4th DCA 1987). The Husband in Gepfrich was ordered to pay \$3,500 per month in alimony for seven (7) years and required to maintain life insurance equal to the outstanding balance of the rehabilitative alimony (and lump sum alimony) award. Gepfrich, 370.

In Sobelman, the Wife was awarded and the Husband was obligated to pay permanent periodic alimony of \$1,250 per

month. In addition, the Husband was ordered to pay \$500 per month to the Wife as child support for the minor child of the parties. (A - 1)

The Sobelman and Gepfrich decisions expressly and directly conflict in that both decisions construe Section 61.08(3), Florida Statutes, but apply different interpretations of the statute to substantially similar facts.

If the Gepfrich interpretation of Section 61.08(3), Florida Statutes were applied to the facts in Sobelman, the Husband would be ordered to maintain life insurance in an amount reasonably calculated to secure his permanent alimony obligation and not simply limited to satisfaction of arrearages nor would he be released from the obligation altogether.

The case at bar should be reviewed by this Court to eliminate conflict with the Gepfrich opinion and provide harmony among all District Courts on the interpretation of Section 61.08(3), Florida Statutes. The Third District and the Fifth District Courts of Appeal have also rendered opinions on the application of Section 61.08(3), in the respective decisions, Benson vs. Benson, 503 So. 2d 384 (Fla. 3rd DCA 1987) and Kooser vs. Kooser, 506 So. 2d 81 (Fla. 1st DCA 1987). The Benson decision affirmed the use of life insurance as security for alimony when the dissolution order obligated the Husband to maintain insurance until his retirement, and the alimony award terminated upon payor's death. Benson vs.

Benson, 503 So. 2d 384, 385. In Kooser, the First District affirmed trial court's failure to require the Husband to maintain life insurance as security for his alimony obligation. The Court stated in its opinion as dictum that insurance would be appropriate for protection of alimony in circumstances such as lump sum alimony awards. Kooser vs. Kooser, 506 So. 2d 81, 82. These cases illustrate that judicial interpretation of the permissible use of life insurance pursuant to Section 61.08(3), Florida Statutes, is not harmonious in the State of Florida.

CONCLUSION

This Court has jurisdiction to review this case as the decision rendered herein is in express and direct conflict with a decision of another Court of Appeals. This Court should exercise discretionary jurisdiction so as to resolve the conflict in interpretation of Section 61.08(3), Florida Statutes as between the present case and the Gepfrich decision, but also in consideration of promoting consistency in the decisions of all Courts on this issue.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail to Daniel Joy, Esq., 900 First Florida Bank Plaza, 1800 Second Street, Sarasota, Florida 34236, this 8 day of January, 1988.

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