

OA 8.30.88

IN THE SUPREME COURT OF FLORIDA

GOLDIE SOBELMAN,

Petitioner,

v.

CASE NO. 71,683

ALAN SOBELMAN,

Respondent.

FILED
SID J. V. ...

JUN 30 1988

CLERK, SUPREME COURT
By: [Signature] Deputy Clerk

PETITIONER'S REPLY BRIEF ON THE MERITS.

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

ARTHUR D. GINSBURG and KEVIN P. SMITH
GINSBURG, BYRD, JONES & DAHLGAARD
1800 Main Street
Sarasota, Florida 34236
(813) 366-8100
Attorneys for Petitioner

TABLE OF CONTENTS

	<u>PAGE(S)</u>
Table of Citations.	ii
Preliminary Statement	1
Argument.	2
Point On Appeal	2
Conclusion.	5
Certificate of Service.	6

TABLE OF CITATIONS

<u>CASES:</u>	PAGE(S)
<u>Canakaris v. Canakaris</u> , 382 So. 2d 1197 (Fla. 1980)	3
<u>Fiveash v. Fiveash</u> , 13 F.L.W. 952 (Fla. 1st DCA April 15, 1988).	2,3
<u>Gepfrich v. Gepfrich</u> , 510 So. 2d 369 (Fla. 4th DCA 1987).	2
<u>Sobelman v. Sobeleman</u> , 516 So. 2d 7 (Fla. 2d DCA 1987)	2
<u>Walter v. Walter</u> , 464 So. 2d 538 (Fla. 1985).	3
 <u>STATUTES:</u>	
Section 61.08(3), Florida Statutes (1987)	2,3,4,5

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.

ARGUMENT

POINT ON APPEAL

WHETHER A PARTY OBLIGATED TO PAY ALIMONY
MAY BE ORDERED TO MAINTAIN LIFE INSURANCE
AS SECURITY FOR ALIMONY PURSUANT TO SEC-
TION 61.08(3), FLORIDA STATUTES, WITHOUT
LIMITING THE INSURANCE OBLIGATION AND THE
PAYMENT OF INSURANCE PROCEEDS TO ONLY
ACCRUED ALIMONY ARREARAGES.

The Husband presents two basic arguments to Wife's position. First, that the statutory language of Florida Statutes, section 61.08(3) mandates life insurance be utilized for only arrearages in alimony, and second, that there is an absence of evidence to support the trial court's award. The Husband seeks to limit the permissible scope of section 61.08(3) and trial court discretion, where the legislative intent in today's society is to protect former spouses and children. The language contained in the statute provides the trial court with the discretion to fashion a mechanism to protect an alimony award. The Husband naturally requests this court uphold the Second District position in Sobelman v. Sobeleman, 516 So. 2d 7 (Fla. 2d DCA 1987) which is a minority viewpoint in contrast with the Fourth District decision in Gepfrich v. Gepfrich, 510 So. 2d 369 (Fla. 4th DCA 1987) and the First District decision in Fiveash v. Fiveash, 13 F.L.W. 952 (Fla. 1st DCA April 15, 1988).

The fact is the legislature prescribed no limitation on how an alimony award may be secured by section 61.08(3), Florida Statutes. The trial court was provided the discretion to determine whether security is necessary and, if so, how best to protect the award. The trial court should properly be allowed broad discretion and flexibility on this issue as it is allowed in other matrimonial matters as addressed in the decisions of Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980) and Walter v. Walter, 464 So. 2d 538 (Fla. 1985).

The \$200,000.00 life insurance requirement in the case at bar is not post-mortem alimony. The Fiveash decision and the Wife's initial brief demonstrate that life insurance as required under section 61.08(3) is not a post-mortem obligation of the Husband.

The record on appeal, and the Wife's initial brief, respectively contain the evidence and present the facts sufficient to warrant the trial court's life insurance award. The facts show the Husband had a pre-dissolution life insurance policy, there existed a disparity in the parties' income, and the marital home remained titled in the parties' joint names after dissolution of marriage. The Husband's argument that the Wife will receive approximately \$100,000.00 when the home is sold is pure speculation. The Husband's argument that no evidence of a need for the \$200,000.00

insurance policy is incorrect as it ignores the fact that the parties remain tenants in common and the Wife is dependent on both alimony and child support.

The Husband would have this court disregard the subtle factors which constitute a trial court award and exercise of judicial discretion. The Husband concentrates solely on the amount of alimony to be paid (\$1,250.00 per month) and omits the other considerations. If the Husband were to die prior to the termination of child support, the Wife would be without the means to support herself, the child and her interest in the home. The language of section 61.08(3) can logically and without hesitation be interpreted to allow the trial court discretion to secure an alimony award by requiring life insurance after all elements of the marriage and final judgment, not simply the amount of alimony due, have been adequately considered.

The Husband neglects to address the fact that two other states, New Jersey and Nebraska, permit life insurance to secure periodic alimony by requiring one spouse to designate the other as a beneficiary on a life insurance policy. As set forth in the Wife's initial brief, both states provide the trial court with discretion to make such an award. The judicial interpretation afforded these statutes is to permit the designation of the other spouse as beneficiary when the facts support the need for this award.

CONCLUSION

The legislature of this state has provided the means to secure an award of alimony. This mechanism is section 61.08(3), Florida Statutes. A restrictive interpretation of this statutory provision would defeat the purpose intended by this legislation. To secure an award of alimony, the trial court must be afforded the discretion to consider all relevant factors of the marriage and final judgment in fashioning the proper security.

In the present case, Mrs. Sobelman has demonstrated a need for security justifying the trial court's requirement that the Husband maintain \$200,000.00 life insurance as security for periodic alimony. To promote the public policy of this state, protect Mrs. Sobelman's alimony award and provide harmony throughout the District Courts of Appeal, the trial court decision in this action should be affirmed.

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 and A. Matthew Miller, Esq., Post Office Box 7259, Hollywood, Florida 33081-1259, this 28 day of June, 1988.

GINSBURG, BYRD, JONES & DAHLGAARD
1844 Main Street
Sarasota, Florida 34236
(813) 366-8100
Attorneys for Petitioner

By:


ARTHUR D. GINSBURG