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FEB 10 1992

CLERK, SUPREME COURT

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Chief Deputy Clerk



IN THE SUPREME COURT OF FLORIDA

DEE ANN TERRY MIZE,  
Petitioner,

vs.

5th DCA CASE NO.: 91-57

DANNY WADE MIZE,  
Respondent.

79,256

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RESPONDENT'S ANSWER TO JURISDICTIONAL BRIEF

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ON REVIEW FROM THE DISTRICT COURT OF APPEAL  
FIFTH DISTRICT, STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

The Circuit Court in and for Orange County, Florida, entered an order modifying the final judgment in this cause and permitted the Petitioner, Dee Ann Mize, to relocate in California and take with her the minor child born to the parties.

This final order was appealed by the Respondent, Danny Mize, and the District Court of Appeal, Fifth District of Florida after reading the briefs and hearing argument of counsel the Court in Per Curiam Opinion reversed the lower court and cited four cases to support their Opinion.

The 5th DCA received motions from the Petitioner, which included a Motion for Rehearing, Motion for Rehearing En Banc, Motion to Certify Questions and Certify Conflict to the Supreme Court. All of these Motions were denied.

#### SUMMARY OF THE ARGUMENT

The Respondent in this Brief is attempting to point out to the Court that there is no basis for the Supreme Court to exercise its discretionary jurisdiction, since the only basis for same would be that this case is in conflict with the remaining DCA cases. The controlling issue in this case as well as in all of the other cases on this point is, "what is in the best interest of the child".

The 5th DCA felt that it was not in the best interest of the child, under the circumstances that existed, to be moved to California.

#### JURISDICTIONAL STATEMENT

The Respondent agrees that the Supreme Court in conflict cases certainly has discretionary jurisdiction, but that conflict has to be direct, open and obvious. That is not the situation here and the 5th DCA ruling should stand.

## ARGUMENT

THERE IS NO CONFLICT BETWEEN THIS CASE AND  
ANY OTHER DISTRICT COURT OF APPEAL CASES  
WHICH WOULD GIVE JURISDICTION TO THE SUPREME  
COURT.

The Respondent would respectfully point out to this Court that one of the primary criteria that the District Courts in this State apply to a party's request to relocate a minor child outside the State of Florida has been, "what is in the best interest of the child".

That doctrine runs throughout all of the cases in the other District Court opinions and has been specifically set forth by the 5th DCA in the cases of Mast v. Reed, 578 So.2d 304 (Fla. 5th DCA 1991); Cole v. Cole, 530 So.2d 467, (Fla. 5th DCA 1988); Jones v. Vrba, 513 So.2d 1080, (Fla. 5th DCA 1987); Giachetti v. Giachetti, 416 So.2d 27 (Fla. 5th DCA 1982).

In this particular case the Respondent feels certain that the Justices of the 5th DCA did not feel from the facts that it was in the best interest of this minor child to be relocated in Northern California. The mother is an acknowledged lesbian and her father, the child's grandfather, is an acknowledged homosexual. The record has substantial evidence to support the fact that the lesbian mother has misbehaved in the presence of the child by her conduct with her lesbian lovers.

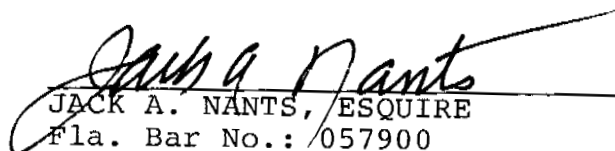
All the other criteria for the Court permitting the child's relocation out of the State may have been met by the Petitioner, however, this most important of all of the criteria was not met, namely, that it was not in the best interest of the minor to be moved to California to live under conditions that do not appear

to be favorable for the upbringing of a young girl. The 5th DCA was immanently correct in its Opinion and although these particular words, "best interest of the minor" do not appear in the Opinion, it was cited in the Opinion of the four cases previously referred to in support of the Opinion, and one can only conclude that the Justices of the 5th DCA felt that the best interest of the minor was not served by the relocation. Thus, we have the Per Curiam Opinion based upon the cited cases.

CONCLUSION

Respondent concludes that there is no conflict upon which the Supreme Court can invoke discretionary jurisdiction and therefore the Respondent request that Petitioner be denied the relief sought.

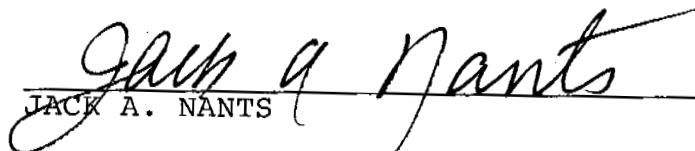
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to Brenda Lee London, Esquire, 1051 Winderley Place, 4th Floor, Maitland, FL 32751 and Kelvin L. Averbuch, Esquire, 3008 East Robinson Street, Orlando, FL 32803, this 13 day of February, 1992.

  
JACK A. NANTS