

IN THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA
IN AND FOR _____ COUNTY

CIRCUIT CIVIL NUMBER: 03
JUDICIAL DIVISION: UCN

STATE OF FLORIDA DEPARTMENT
OF REVENUE ON BEHALF OF
MOTHER,
Petitioner,

Vs.

FATHER

MEMORANDUM OF LAW

INCOME BASED CHILD SUPPORT IS UNCONSTITUTIONAL

**FLORIDA STATUTES §61.13 and §61.30 IMPERMISSIBLY INFRINGE
FLORIDA CONSTITUTION ARTICLE I SECTION 23 RIGHT TO PRIVACY**

"The liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interests recognized by this Court." - *Troxel v. Granville*, 120 S.Ct. 2054, 2060-61, (2000)

INTRODUCTION

How much money a parent spends on his child (child support) is a fundamental State and Federal constitutionally guaranteed right. The State government is not permitted to intrude in this fundamental right without proof of demonstrable harm to the child. Mandating child support based on income (§ 61.13, § 61.30) exceeds the constitutionally permitted right of the State to intrude in the Privacy Right of a parent.

FATHER'S equal protection rights are impermissibly infringed compared with married parents. A parent is a parent... married, single, or divorced.

I. LIBERTY INTERESTS INFRINGED

The Liberty interest of FATHER and other Floridians, impermissibly infringed by §61.13, §61.30, this court and the Department of Revenue is the Right to Privacy, Article I Section 23 Florida Constitution and the Fourteenth Amendment of the Federal Constitution. The protected Privacy Zones are parenting (care, custody and control of his child) and family relationships.

II. FACTS

FATHER and MOTHER are the self acknowledged parents of CHILD born out of wedlock DATE.

FATHER has acknowledged, and voluntarily is committed to accepting and fulfilling, his parental interest of care, custody and control of his child, CHILD.

To date no evidence has been presented to this court that any harm has befallen CHILD let alone any harm caused by the father's failure to care for her.

MOTHER filed a petition to this court and asked it and the Department of Revenue to enforce §61.13 and § 61.30 against FATHER.

This court, on _____, 2003, without any evidence of harm caused by FATHER to CHILD, ordered that FATHER pay back support of \$0000.00 and \$000 monthly until his CHILD is 18 years old, inter alia; issued an income deduction order, levied against him a health insurance and medical cost order, and in the event of unemployment mandated criteria of job seeking frequency in order to avert a contempt order by the State against him.

This court imposed no support obligation on MOTHER, mother of CHILD.

III. ARTICLE I SECTION 23 RIGHT TO PRIVACY

“Right of privacy.--Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.”¹

North Florida Women’s Health & Counseling Services, Inc., et al. v. State of Florida, et al. (Case No: SC01-843, July 10, 2003) is now the sentinel case controlling the application of the Privacy Amendment (Article I Section 23) to Florida law.

North Florida Women’s solidifies strict scrutiny as the standard of review to be applied when the constitutional nature of a statute is challenged under the Privacy amendment.

“A legislative act impinging on this right [Privacy] is presumptively unconstitutional unless *proved* valid by the State...This is the settled law that we applied in T.W. and that we again apply today.” (Emphasis added) page 25.

A challenging plaintiff’s burden is to attach the Privacy amendment to the challenged statute. Once done the statute is presumed unconstitutional. The burden shifts to the State to *prove* a compelling state interest applied in the least intrusive manner. *North Florida Women’s* crystallizes the State’s burden,

“...the State cannot meet its heavy burden simply by stating that the interests are compelling without proof from the State that the compelling interests are in fact furthered by the statutory intrusion into the protected fundamental rights, and that the statutory intrusion is the least intrusive means to achieve that goal.” (Emphasis is not added) page 71.²

¹ Florida Constitution Article I Section 23

² Citing *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030, 1033 (Fla. 1999) (quoting *Florida Bd. of Bar Examiners Re: Applicant*, 443 So. 2d 71, 74 (Fla. 1983));

If the State does not fulfill that burden the statute remains unconstitutional and unenforceable. The State has never met that burden in any case challenged under the Privacy Amendment.

II

The Privacy Amendment Attaches to § 61.13 and §61.30

A. Child Support and Guidelines Statutes (§ 61.13 and §61.30)

The Statutes effectively are substituting the State's judgment for the parents in the privacy zone "care, custody and control" of the child. The State is substituting its judgment for the parents on the amount of money a parent must spend for his child.

The challenged statutes mandate a parent must support his child (children) based on his income or risk going to jail, having his income garnished, having his driver's license or having his profession license suspended.

The Statutes contains no language about the standard used by the State for selection of the amount of money the State mandates the parent spend (pay in support), i.e. best interest of the child or prevention of demonstrable harm. The Statues do say the best interest of the child is the standard to have the original court order of support modified. (§ 61.13 (1)(a)).

The State, through the statues challenged, mandates how much money income a parent will spend on his child or go to jail, have that money taken from his salary and

even tell him how many times he must go for job interviews in the event he is unemployed.³

The Statutes mandate that the more income a parent makes, the more he must spend (support) on his child.

B. Privacy Protected Zone of Parenting

For the Federal attachment of the Privacy Amendment to §61.13 (Support) and § 61.30 (Support guidelines) we rely on the reasoning and the authority established in; *Planned Parenthood v. Casey*, 505 U.S. 833, 859 (1992),

For the State attachment of the fundamental Privacy Right to the child support statutes we note the cases summarized in *Belair v. Drew*, (Fla. 5th DCA 2001)

“The Florida Supreme Court has likewise recognized that decisions relating to child rearing and education are clearly established as fundamental rights within the Fourteenth Amendment of the United States Constitution. See *Beagle*, 678 So. 2d at 1275; *Padgett v. Department of Health & Rehabilitative Serv.*, 577 So. 2d 565, 570 (Fla. 1991). These rights may not be intruded upon absent a compelling state interest. *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla.1980).”

C. Privacy Protected Zone of Family Relationships

For the Federal attachment of the Privacy Amendment to §61.13 9 (Support) and § 61.30 (Support guidelines) we rely on the reasoning and the authority established in; *Planned Parenthood v. Casey*, 505 U.S. 833, 859 (1992),

“Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, *family relationships*, child rearing, and education.Our precedents "have respected the private realm of family life which the state cannot enter." These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence,

³ Final Judgment of Paternity and Child Support for FATHER.

of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.” (Emphasis Supplied)

For the State attachment of the fundamental Privacy Right to marriage we note *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla.1985)., citing *Roe v. Wade*, 410 U.S. 113, 152-53, 93 S.Ct. 705, 726-27, 35 L.Ed.2d 147 (1973) and *Shevin v. Byron*, 379 So. 2d 633, 636 (Fla. 1980),

“Unwarranted governmental intrusion on decisions in these ‘fundamental’ areas is a deprivation of the "liberty" secured by the due process clause of the fourteenth amendment.” (recognizing privacy interests in marriage, procreation, contraception, and family relationships).”

III. Spending (child support) by a parent is a Parenting Decision

How much money a parent spends on child is a personal decision. The State cannot tell a married parent to spend (child support) a certain amount of money on a child based on the parent’s income. It only follows, that a single parent cannot be told how much money to spend on a child...except to prevent harm to the child.

The State through § 61.30’s guidelines is mandating to a parent how much to spend on the child simply based on income of the parent without any showing that the guideline amount are needed to prevent harm to the child.

Simple logic leads to the conclusion that if the guidelines were drawn up to act in the best interest of the child, the amount to prevent harm to the child would be less.

Simple logic also says that the amount on the first line of the guidelines, if selected to be an amount in the best interest of the child then also prevents harm to the child. This first line amount (\$74 for one child) should be the only amount mandated to prevent harm to the child.

Admittedly there are costs to prevent harm to a child, i.e. food, shelter, clothing, education and health care. The analysis for the amount of money needed to meet these goals should form the basis for determining a monthly amount of money needed to prevent harm. That amount should be divided between the parents. It cannot be based on income of the parent other than to review if the parent has the capacity to provide that amount.

In the alternative, one can argue the amount of money monthly the State provides a welfare child is the same amount a parent should provide. If the monthly amount paid by the state is good enough for the State to prevent harm to the child, then the same amount paid by the parent is good enough for the parent to prevent harm to the child.

V. State Burden

The Privacy amendment having attached to the child support provisions the burden shifts to the State to *prove* a compelling state interest exists, that it is applied in the least intrusive manner, and that the statute--in fact-- furthers the state interest.

A. Standard for State intrusion is prevention of demonstrable harm

The state can no longer intrude in the privacy zone of parenting except to prevent harm. The old standard of the State intruding to act in the "best interest of the child" is no longer valid. This change in standard has been noted by the Florida Supreme Court. The Court did so when invalidating statutes on grandparent visitation and child custody statutes *Richardson v. Richardson*, (Fla. 2000),

"We further explained that "the state can satisfy the compelling state interest standard [only] when it acts to prevent demonstrable harm to a child." Id. at 515 (quoting *Beagle*, 678 So. 2d at 1276). Accordingly, we

held that a trial court may not intrude upon the parent-child relationship by awarding visitation rights to a grandparent without evidence of a demonstrable harm to the child. Id.; see also *Beagle*, 678 So. 2d at 1276.”

“In ruling that section 61.13(7) was unconstitutional, the Richardson court stated: Under our prior holdings, including *Von Eiff* and *Beagle*, it is apparent that section 61.13(7) unconstitutionally violates a natural parent's fundamental right to raise his or her child absent a compelling state justification.”

The standard to validate State intrusion in parenting is likewise applicable to parent spending on behalf of a child (child support) just as it is for grandparent visitation and child custody.

The Federal Supreme Court also established the new standard to be prevention of harm before the State can interfere in the privacy zone of parenting, *Troxel v. Granville*, (2000). It recognized other areas of parenting beside grandparent visitation were on the legal horizon and wished to wait for those cases to extend the standard beyond grandparent visitation.

VII.

Gender Bias

Not only does the income based child support statute impermissibly infringe the Right to Privacy of parents, it applied to deprive this fundamental right in the most remarkable forum.

Chapter 61 provisions are applied in a court of chancery, with a judicial standard of equity, applied by judges given a wide degree of discretion amid a cloud of Gender Bias. To subject Florida's parents' and childrens'' constitutional rights to that judicial climate must itself be unconstitutional.

The Report of the Florida Supreme Court Gender Bias Study Commission

(1990), that resulted from the Florida Supreme Court's appointed commission on gender bias in the Court system, contains the follows observations and conclusions.

“Most of Florida's circuit court judges dislike dealing with family law matters. This attitude can affect the outcome of cases.” (page 6)

“As a result of their almost unlimited discretion, trial courts distribute marital assets either as property or alimony with a lack of certainty and consistency. This may lead to inappropriate property settlements between the parties.” (page 7)

The Report of the Florida Supreme Court Gender Bias Study Commission (1990)

states,

“...gender bias permeates Florida's legal system today.” (page 42)

“After reviewing this monograph, the Chief Justice of Florida and his colleagues on the Florida Supreme Court concluded that gender bias does in fact exist in the state's legal system.” (page 42)

“Apparently, most judges really do not want to hear family law matters and it shows...It cannot be comforting to find that the one who holds the future of your access to your children and your financial future in his or her hands has, at best, little interest in that role, or, at worst, a distaste for it.” (page 54)

Need anything more be said?

VII. Jennings Reservation

FATHER reserves all his constitutional claims for subsequent litigation in federal court by making on the record, at this outset, a reservation as to the disposition of the entire case by the state courts to preserve access to the federal forum. *Fields v. Sarasota Manatee Airport Authority*, 953 F.2d 1299, 1303 (11th Cir. 1992) citing *Jennings v. Caddo Parish School Bd.*, 531 F.2d 1331 (5th Cir. 1976).

FATHER is before this court involuntarily because the State of Florida has applied, and is enforcing §61.13 and § 61.30 against him. The plaintiff must defend himself because the statutes authorize, and this Circuit Court has retained continued jurisdiction.

VII.

Conclusion

Based on the Privacy amendment attaching to the Chapter 61 alimony provisions and the State failing to demonstrate a compelling state interest applied in the least intrusive manner this court must declare the noted Chapter 61 alimony provisions unconstitutional, grant immediate injunctive relief by holding FATHER no longer bound by them.

Certificate of Service

IT IS HEREBY CERTIFIED that a copy of this memorandum has been hand delivered to ATTORNEY Counsel for interested party MOTHER and , Assistant Attorney General, this th Day of , 2003.

Respectfully submitted,

[NAME]
Florida Bar #000000

Counsel for FATHER as Cooperating Attorney for the Center for Liberty and Privacy.