

IN THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

WILLIAM A. CABANA,

Appellant,

Case No. 2D06-5577

Trial Court Case No. 2006 CA 5063 SC

VS.

JAMES ZINGALE,  
EXECUTIVE DIRECTOR,  
FLORIDA DEPARTMENT  
OF REVENUE,

Appellee.

---

Appeal from the Circuit Court of the Twelfth Judicial Circuit  
In and For Sarasota County, Florida

---

---

APPELLEE'S ANSWER BRIEF

---

BILL McCOLLUM  
ATTORNEY GENERAL

GEORGE WAAS  
SPECIAL COUNSEL  
FLORIDA BAR NO. 0129967  
OFFICE OF THE ATTORNEY GENERAL  
PL-01 THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-1050  
(850) 414-3662  
(850) 488-4872 (FAX)  
COUNSEL FOR APPELLEE ZINGALE

IN THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

WILLIAM A. CABANA,

Appellant,

Case No. 2D06-5577

Trial Court Case No. 2006 CA 5063 SC

vs.

JAMES ZINGALE,  
EXECUTIVE DIRECTOR,  
FLORIDA DEPARTMENT  
OF REVENUE,

Appellee.

---

Appeal from the Circuit Court of the Twelfth Judicial Circuit  
In and For Sarasota County, Florida

---

---

APPELLEE'S ANSWER BRIEF

---

BILL McCOLLUM  
ATTORNEY GENERAL

GEORGE WAAS  
SPECIAL COUNSEL  
FLORIDA BAR NO. 0129967  
OFFICE OF THE ATTORNEY GENERAL  
PL-01 THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-1050  
(850) 414-3662  
(850) 488-4872 (FAX)  
COUNSEL FOR APPELLEE ZINGALE

TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

TABLE OF CITATIONS ..... ii, iii

SUMMARY OF THE ARGUMENT ..... 1

ARGUMENT

THE TRIAL COURT CORRECTLY DISMISSED WITH  
PREJUDICE APPELLANT’S CHALLENGE TO THE  
STATE’S ALIMONY STATUTE, §61.08, FLA. STAT,;  
THIS POLICE POWER ENACTMENT DOES NOT  
INFRINGE UPON THE RIGHT OF PRIVACY, ART. I,  
§23, FLA. CONST.; DOES NOT VIOLATE THE  
SEPARATION OF POWERS DOCTRINE; AND THE  
ABROGATION OF THE DOCTRINE OF NECESSARIES  
HAS NO EFFECT ON THE AWARDING OF ALIMONY ..... 2

CONCLUSION ..... 10

CERTIFICATE OF SERVICE ..... 12

CERTIFICATE OF COMPLIANCE ..... 12

## TABLE OF CITATIONS

### CASES

<u>Barna v. Barna</u> , 850 So. 2d 603, 604 (Fla. 4 <sup>th</sup> DCA 2003) .....	5, 7
<u>Barron v. Florida Freedom Newspapers</u> , 531 So. 2d 113 (Fla. 1988) .....	8
<u>Beers v. Beers</u> , 724 So. 2d 109 (Fla. 5 <sup>th</sup> DCA 1998), <u>reh. denied, rev. denied</u> , 735 So. 2d 1283 (Fla. 1998) .....	3
<u>Connor v. Southwest Florida Regional Medical Center, Inc.</u> , 668 So. 2d 175 (Fla. 1995) .....	2, 9, 10
<u>Daniel v. Daniel</u> , 922 So. 2d 1041 (Fla. 4 <sup>th</sup> DCA 2006) .....	6, 7
<u>Ellison v. City of Fort Lauderdale</u> , 175 So. 2d 198 (Fla. 1965) .....	10
<u>Fernandez v. Fernandez</u> , 710 So. 2d 223, 224 (Fla. 2d DCA 1998) .....	10
<u>Fort v. Fort</u> , 90 So. 2d 313 (Fla. 1956) .....	4
<u>Gogola v. Zingale</u> , 141 Fed. Appx. 839 (11 <sup>th</sup> Cir. 2005) .....	7
<u>Greenberg v. Zingale</u> , 138 Fed. Appx. 197 (11 <sup>th</sup> Cir. 2005) .....	7, 10
<u>Groover v. Groover</u> , 383 So. 2d 280 Fla. 5 <sup>th</sup> DCA 1980) .....	4
<u>In Re: Commitment of Duane Edwin Sutton</u> , 884 So. 2d 198 (Fla. 2d DCA 2004) .....	5
<u>Martyak v. Martyak</u> , 378 F. Supp. 2d 1365 (S.D. Fla. 2005) .....	8
<u>McRae v. McRae</u> , 52 So. 2d 908 (Fla. 1951) .....	3, 9

Pacheco v. Pacheco, 246 So. 2d 778, 782 (Fla. 1971) ..... 5

Peyton v. Browning, 541 So. 2d 1341 (Fla. 1<sup>st</sup> DCA 1989) ..... 7

Ryan v. Ryan, 277, So. 2d 266, 273 (Fla. 1973) ..... 2, 9

Winfield v. Division of Pari-Mutuel Wagering, 477 So. 2d  
544, 547 (Fla. 1985) ..... 6

**CONSTITUTION**

Article I, §23, Fla. Const. .... 2, 6

**STATUTES**

§61.08, Fla. Stat. .... passim

§382.025(2), Fla. Stat. .... 4

**RULES**

R. Jud. Admin. 2.051 ..... 4

Fam L. R. P. 12.280 and 12.400 ..... 4, 7

**MISCELLANEOUS**

10A Fla. Jur. 2d Constitutional Law, §203 ..... 9

## SUMMARY OF THE ARGUMENT

In his initial brief, Appellant goes to great lengths in arguing that payment of alimony is a decision that is to be made solely by the divorced or divorcing spouses, and that the government is prohibited from being involved in this matter. What Appellant is actually contending is that if a spouse decides not to pay alimony, the state is powerless to address this through the Legislature and/or the courts.

Appellant premises his novel and incredible argument on three grounds: that Florida's alimony statute, §61.08, Fla. Stat., (1) infringes on the right of privacy, (2) violates the separation of powers doctrine, and (3) is contrary to the case law that abrogates the doctrine of necessities.

In his prolix narrative, Appellant fails to cite to a single case involving alimony that supports his argument. Pointedly, with regard to two cases destructive of his privacy claim, Appellant simply says the appellate court wrongly decided those cases.

The case law set out below is uniform in rejecting a privacy claim to an alimony statute, and demonstrates the baselessness of Appellant's separation of powers and doctrine of necessities claims.

Florida's alimony statute is a manifestation of the State's police power designed to protect the needy spouse; Appellant's notion that he—and by extension others similarly situated—has the constitutional right to decide whether or not to pay

alimony is alien to our jurisprudence.

### ARGUMENT

THE TRIAL COURT CORRECTLY DISMISSED WITH PREJUDICE APPELLANT'S CHALLENGE TO THE STATE'S ALIMONY STATUTE, §61.08, FLA. STAT.; THIS POLICE POWER ENACTMENT DOES NOT INFRINGE UPON THE RIGHT OF PRIVACY, ART. I, §23, FLA. CONST.; DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE; AND THE ABROGATION OF THE DOCTRINE OF NECESSARIES HAS NO EFFECT ON THE AWARDING OF ALIMONY.

Stripped of its gloss, Appellant contends that the decision to pay alimony is none of the government's business; that because Florida's alimony statute, §61.08, Fla. Stat., violates the privacy amendment and the separation of powers doctrine, and is contrary to Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995) which abrogates the common law doctrine of necessities, it remains up to the spouses to decide the question of alimony.<sup>1</sup>

What Appellant overlooks initially is that, unlike marriage and decisions regarding children and child-rearing, alimony is a result of a broken marriage which necessarily involves legislation and a judicial process born of the State's police power to deal with the aftermath of this broken relationship.

As the Court said in Ryan v. Ryan, 277, So. 2d 266, 273 (Fla. 1973):

---

<sup>1</sup>This is the clear implication of Appellant's position. See pg. 7 of Initial Brief.

