

IN THE DISTRICT COURT OF APPEAL  
FOR THE FIFTH DISTRICT

STATE OF FLORIDA

ROBERT W. RADLOFF,

Appellant,

vs.

CASE NO. 5D06-1998

CARMEN E. RADLOFF,

Appellee.

\_\_\_\_\_ /

ANSWER BRIEF OF APPELLEE

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On Appeal from the Circuit Court of the  
Ninth Judicial Circuit in and for  
Orange County, Florida  
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Stewart Cohen, Esq.  
Stewart Cohen, P. A.  
Florida Bar No. 198234  
1516 E. Hillcrest Street  
Suite 204  
Orlando, FL 32803  
(407) 894-1888  
Fax (407) 896-6149  
Attorney for Appellee

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## PRELIMINARY STATEMENT

In his brief Appellant, ROBERT W. RADLOFF, shall be referred to as “Appellant” or “former husband”, the Appellee, CARMEN E. RADLOFF, shall be referred to as “Appellee” or “former wife”. The Record will be referred to as “R- \_\_\_” with the Circuit Court document name. <sup>1</sup>

## ISSUE PRESENTED FOR REVIEW

Whether the Florida alimony statute is unconstitutional based on violation of right of privacy or separation of powers.<sup>2</sup>

## STATEMENT OF THE CASE AND FACTS

Ensnared in Texas, removed from arm of meaningful enforcement of the Florida alimony statute, Appellant files a frivolous brief veiled by the assistance of unnamed counsel undoubtedly to avoid the stick of attorney’s fees that would clearly flog him. Appellant/former husband, while facing the potential imposition of attorney’s fees, will likely feel no more compulsion to pay those fees than pay for the

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<sup>1</sup> Record has not been prepared in this case as Appellant’s Directions to the Clerk served June 13, 2006 filed after service of Appellant’s Brief, June 4, 2006. Appellant has not provided not directed preparation of transcript of the Rule to Show Cause hearing held April 4, 2006.

<sup>2</sup> Restated for clarity.

support of his previous wife of thirty-four (34) years. The parties were married for thirty-four (34) years, dissolution of marriage was entered pursuant to mediated settlement agreements between the parties. Mr. Radloff agreed to pay alimony in the Final Judgment of Dissolution of Marriage rendered June 14, 1990 not appealed. He properly sought modification of alimony and an Order of Modification was rendered on February 1, 2001 reducing his alimony obligation from \$1,000 to \$600 per month. The most recent litigation was a result of Mr. Radloff's unilateral reduction of his alimony payments in August, 2004 and ultimate cessation of making alimony payments on February 1, 2005. This led to the former wife's Motion for Contempt filed August 31, 2005, hearing held November 7, 2005 (former husband failed to appear after proper notice) and the Court's Order finding the former husband in contempt and establishing arrears and setting a time for repayment December 7, 2005. Former husband disregarded this Order and a Rule to Show Cause was issued by the Court on February 7, 2006. Rule to Show Cause hearing was held on April 4, 2006, (Order rendered April 27, 2006) the former husband again failed to appear. In the most recent spate of litigation the parties filed Financial Affidavits which indicate the former wife's current net income of \$1,895.02 and the former husband's current net

income of \$3,233.50.<sup>3</sup> The former wife has little assets while the former husband owns a ranch worth approximately \$220,000 according to the former husband's Financial Affidavit.

The former husband has not filed a Petition to Modify the Order of Modification rendered February 1, 2001 in spite of the ongoing attempts of the former wife to enforce his alimony obligation.

Former husband hastily files his Brief without even allowing the Clerk to prepare Record for this Court. Transcripts on the Motion for Contempt held November 7, 2005 and Rule to Show Cause held April 4, 2006 have not been directed to be prepared nor furnished to this Court.<sup>4</sup> See Bemenderfer v. Bemenderfer, 662 So. 2d 747 (Fla. 4th DCA 1995).

#### SUMMARY OF ARGUMENT

- Former wife would show the Florida alimony statute is constitutional.

#### ARGUMENT

Former husband has obviously sought to put this former wife to the task of employing counsel to respond to a non-meritorious frivolous brief with the

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<sup>3</sup> Former husband's affidavit indicates non-specific business loss of approximately \$400 per month.

<sup>4</sup> Court reporter was not present at hearings.

intent of requiring the former wife to expend unnecessary attorney's fees and continue an undercurrent of harassment. The former wife is now seventy-five (76) years old and the former husband is seventy (70) years old. Former husband urges this Court to ignore the holding in Barna v. Barna, 850 So. 2d 603 (Fla. 4<sup>th</sup> DCA 2003), review denied Barna v. Barna, 877 So. 2d 820 (Fla. 2004). More importantly former husband fails to mention the case of Blanchard v. Blanchard, 844 So. 2d 805 (Fla. 4<sup>th</sup> DCA 2003) review denied Blanchard v. Blanchard, 860 So. 2d 976 (Fla. 2003). In Blanchard, just as in the case at bar, the former husband appealed a long standing Final Judgment of Dissolution of Marriage rendered ten (10) years earlier, apparently at least filing an action to terminate or reduce alimony based on the same arguments raised by former husband in the case at bar. The Court held the former husband was estopped from asserting the alimony provision, was unconstitutional in view of the fact he had agreed to pay alimony in a Marital Settlement Agreement. See also Macar v. Macar, 779 So. 2d 497 (Fla. 2nd DCA 2000) requiring direct appeal.

The Court in Barna, seemed to show little patience for the arguments propounded by the former husband without lengthy discussion the Court deemed the former husband's arguments frivolous and imposed attorney's fees against counsel.

The Florida Supreme Court has in the landmark cases of Canakaris v.

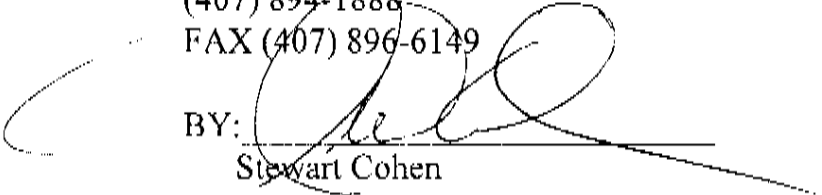
Canakaris, 382 So. 2d 1197 (Fla. 1980) as well as the more recent case of Rosen v. Rosen, 696 So. 2d 697 (Fla. 1997) provided the historical basis for alimony awards and the legal test to be utilized in determining the appropriateness of and amount of alimony. See also this Court's decision Bucknam v. Shelton, 849 So. 2d 1204 (Fla. 5th DCA 2003) The suggestion these cases overlook or choose to ignore that alimony is unconstitutional pursuant to State law is preposterous.

#### CONCLUSION

Former husband has shown his distaste and disdain for the for Florida Court system by a course of conduct intended to defy and thwart the law. He has unilaterally terminated paying his alimony obligation necessitating the former wife's employment of counsel, failed to appear after being properly noticed of enforcement proceedings, thereafter failing to comply with the Orders flowing from those proceedings. He now has the audacity to file a frivolous appeal obviously designed to force his already indigent former wife to incur needless attorney's fees with the obvious threat of continuing to pursue his frivolous activities in the Federal Court

system. It is respectfully submitted the Orders of the Trial Court should be affirmed.

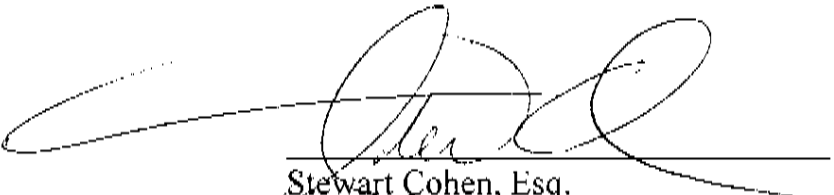
STEWART COHEN, P. A.  
Florida Bar No. 198234  
1516 E. Hillcrest Street  
Suite 204  
Orlando, FL 32803  
(407) 894-1888  
FAX (407) 896-6149

BY:   
Stewart Cohen

Attorney for Appellee


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed to Robert W. Radloff, Appellant, 434 C. R. 3821, Bridgeport, TX 76426 this 27<sup>th</sup> day of June, 2006.

  
Stewart Cohen, Esq.  
Florida Bar No. 198234

CERTIFICATE OF COMPLIANCE

I CERTIFY that Appellee's Answer Brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

  
Stewart Cohen, Esq.  
Florida Bar No. 198234

IN THE DISTRICT COURT OF APPEAL  
FOR THE FIFTH DISTRICT

STATE OF FLORIDA

ROBERT W. RADLOFF,

Appellant,

vs.

CASE NO. 5D06-1998

CARMEN E. RADLOFF,

Appellee.

\_\_\_\_\_ /

**APPELLEE'S MOTION FOR APPELLATE ATTORNEY'S FEES  
UNDER SECTION 57.105, FLORIDA STATUTES, FLORIDA RULE OF  
APPELLATE PROCEDURE 9.410, SECTION 61.16, FLORIDA STATUTES  
AND FLORIDA RULE OF FAMILY PROCEDURE 12.615**

COMES NOW Appellee, CARMEN E. RADLOFF, by and through her undersigned attorney and pursuant to §57.105, Fla. Stat., Fla. R. App. P. 9.410, §61.16, Fla. Stat. and Fla. Fam. L. R. P. 12.615, and as grounds therefore states as follows:

1. This appeal concerns Appellant's allegation that the Florida alimony statute is unconstitutional.
2. Appellant filed a brief that is frivolous and without serious merit.
3. This action arises out of the dissolution of marriage proceeding and

appellee/former wife's actions to enforce alimony. The former wife would show the former husband has not sought a modification of his alimony obligation, his actions as a non-compliant party is without justification and he has refused to follow the Orders of the Trial Court requiring him to fulfill his obligation to pay alimony to the former wife.

4. Former husband's attack on the alimony statute as unconstitutional, is irrelevant, frivolous and brought solely for the purposes of harassment and in an attempt to thwart the former wife's enforcement proceedings pursuant to Fla. Fam. L. R. P. 12.615.

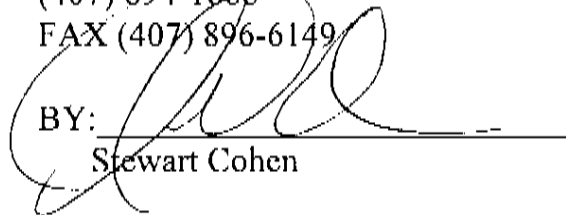
WHEREFORE, appellee moves for entry of an Order on Appeal granting appellate attorney's fees against appellant pursuant to Fla. R. App. P. 9.410, §57.105, Fla. Stat., §61.16, Fla. Stat., Fla. Fam. L. R. P. 12.615 and see Barna v. Barna, 850 So. 2d 603 (Fla. 4th DCA 2003).

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed to

Robert W. Radloff, Appellant, 434 C. R. 3821, Bridgeport, TX 76426 this 27<sup>th</sup> day  
of June, 2006.

STEWART COHEN, P. A.  
Florida Bar No. 198234  
1516 E. Hillcrest Street  
Suite 204  
Orlando, FL 32803  
(407) 894-1888  
FAX (407) 896-6149

BY:   
Stewart Cohen

Attorney for Appellee/former wife

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. DR89-3999

IN RE: THE FORMER MARRIAGE OF:

CARMEN E. RADLOFF,

Appellee,

and

ROBERT W. RADLOFF,

Appellant.

\_\_\_\_\_ /

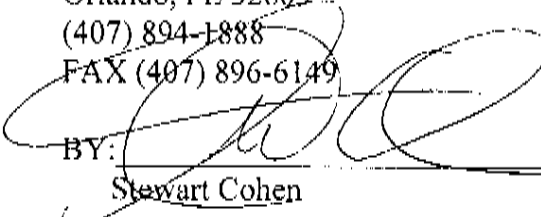
**APPELLEE'S DIRECTIONS TO CLERK**

Appellee, CARMEN E. RADLOFF, directs the Clerk to include the following additional items in the original record pursuant to rule 9.200(a)(1):

<u>ITEM</u>	<u>DATE FILED</u>
Financial Affidavit of petitioner/former wife	August 31, 2005
Financial Affidavit of respondent/former husband	October 28, 2005

I HEREBY CERTIFY that a true copy of the foregoing was mailed to Robert W. Radloff, Appellant, 434 C. R. 3821, Bridgeport, TX 76426 this 27<sup>th</sup> day of June, 2006.

STEWART COHEN, P. A.  
Florida Bar No. 198234  
1516 E. Hillcrest Street  
Suite 204  
Orlando, FL 32803  
(407) 894-1888  
FAX (407) 896-6149

BY:   
Stewart Cohen

Attorney for former wife