

IN THE SUPREME COURT OF FLORIDA

Karyn Lee Bond,
Petitioner/Appellant, Pro Se

vs.
Michael W. Bond, Esq.,
Respondent/Appellee

SUP. CT. CASE NO. _____

ON REVIEW FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF
FLORIDA, SECOND DISTRICT (CASE NO. 02-1534)

Jurisdiction Brief of Petitioner/Appellant

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TABLE OF CONTENTS

Statement of Font Size	iii
Table of Citations	iv-v
Statement of the Case and Facts	1-3
Summary of the Argument	4
Argument:	4-10
THE SUPREME COURT OF FLORIDA HAS DISCRETIONARY JURISDICTION OVER THIS SECOND DISTRICT CASE DUE TO THE CONFLICTS WITH OTHER DISTRICT COURTS' DECISIONS AND THE SECOND DISTRICT APPELLATE COURT'S PRIOR DECISIONS, AND THE FLORIDA STATUTES THEMSELVES.	
Conclusion	10
Certificate of Service	vi
Appendix of Lower Court Rulings	

Statement of Font Size

I understand that I am swearing or affirming that the following computer generated brief is being submitted in Courier New 12Pt Font in compliance with the January 1, 2001 amendments regarding Florida Rules of appellate Procedure, Rule 9.100(1) and 9.210(a)(2), and satisfies the requirements of the foregoing rules.

Karyn L. Bond
Pro Se Litigant/Appellant
State of Florida
County of St Johns

Table of Citations

<u>Allen v. Heinrich</u> 623 So.2d 540 (Fla. 2 nd DCA 1993)	10
<u>Armstrong v. Armstrong</u> 623 So.2d 1216 (Fla.4 th DCA, 1993)	8
<u>Beers v. Beers</u> 724 So.2d 109 (Fla.5 th DCA 1998)	7,9
<u>Bible v. Bible</u> 597 So.2d 359 (Fla.3 rd DCA 1992)	9
<u>Cardillo v. Cardillo</u> 707 So.2d 350 (Fla.2 nd DCA 1998)	9
<u>Dake v. Kirkley</u> 767 So.2d 1289 (Fla.5 th DCA 2000)	10
<u>Ford v. Ford</u> 700 So.2d 191 (Fla.4 th DCA 1997)	4,5,6
<u>Gregoire v. Gregoire</u> 615 So. 2d 694 (Fla. 2d DCA 1992)	9
<u>Hill v. Hooter</u> 776 So.2d 1006 (Fla.5 th DCA 2001)	9
<u>In Re Camm</u> 294 So.2d 318, 320 (Fla.), cert denied, 419 US 866 S.Ct. 121 (1974)	6
<u>McAliley v. McAliley</u> 704 So.2d 611 (Fla. DCA 1997)	10
<u>Miner v. Miner</u> 727 So.2d 1080 (Fla. DCA 1999)	7
<u>Nelson v. Nelson</u> 721 So.2d 388 (Fla. 4 th DCA 1998)	9
<u>Rosen v. Rosen</u> 696 So.2d 697 (Fla.1997)	10

<u>Sasnett v. Sasnett</u>	
679 So.2d 1265 (Fla. 2 nd DCA 1996)	10
<u>St. Pierre v. Greenberg</u>	
697 So.2d 218 (Fla. 4 th DCA 1997)	10
<u>Strickland v. Strickland</u>	
567 So.2d 525 (Fla. 2 ^d DCA 1990)	8
<u>Tanck v. Tanck</u>	
675 So.2d 1039 (Fla. 1 st DCA 1996)	10
<u>Warren v. Warren</u>	
629 So.2d 1079 (Fla. 3 rd DCA 1994)	9
<u>Wilkinson v. Wilkinson</u>	
714 So.2d 524 (Fla. 5 th DCA 1998)	9
<u>Wismar v. Wismar</u>	
522 So.2d 552 (Fla. 5 th DCA 1998)	9
<u>Young v. Young</u>	
677 So.2d 1301 (Fla. 5 th DCA 1996)	9
Florida Statutes, Chapter 61:	1,3,4,7,8,9,10
Florida Rules of Appellate Procedure, Rule 9.0303	1

Statement of Case and Facts

Karyn Lee Bond, the petitioner/wife, seeks review pursuant to the discretionary jurisdiction of the Florida Supreme Court under Rule 9.0303(a)(2)(A) of the decision rendered by the Second District Court of Appeals in Bond v. Bond. The focus of this jurisdictional brief is the conflict between the decision of the Second District Court of Appeal and the applicable legal precedent set by other cases in that district, in other districts, and in the Florida Statutes themselves.

This is an appeal from a per curiam affirmation, by the District Court of Appeals for the Second District, of a Final Judgment in the dissolution of marriage action known as Bond v. Bond. The Final Judgment in this case was filed in Lee County District Court on April 1, 2002, after nearly 2.5 years of continuous litigation. Following this Final Judgment, the wife immediately filed notice of appeal and an affidavit of indigency. She submitted her 50 page appellate brief with more than 40 cases supporting her arguments to the District Court of Appeals for the Second District on April 30, 2003. In June 2002, the wife was declared indigent for purposes of appeal and a nine volume record of trial was submitted to the District Court. Meanwhile, the husband filed motion after motion before finally being granted

until October 31, 2002 to submit his Response Brief. Husband's 11 page response was submitted on October 28, 2002.

The Second District Court of Appeals rendered a per curiam affirmation of the trial court's Final Judgment on July 23, 2003. The Appellant/Wife immediately motioned for clarification of this decision, but her motion was denied by the Court on August 28, 2003. Appellant/wife now appeals her case to the Florida Supreme Court.

The affirmed Final Judgment in this case (See attached Appendix) awarded 60-day unsupervised visitation between abuser/attorney/father and son, with no contact for mother; shared parenting after initial visitation; total dismissal of wife's Permanent No Contact Injunction (without notice); minimal child support with no back child support owed from father; and an equitable distribution leaving the wife with over \$50,000 in debt for medical, counseling, and other support not included; no income; no alimony; and no home if the one remaining asset granted her was sold to pay some of the unaccounted for debt. (See *Final Judgment and Record- Items 130 & 131 "Karyn Bond's Motion for Indigency" and "Family Law Financial Affidavit Karyn Bond"*, pages 1745-1751.)

This case began in December 1999 when the husband evicted the wife from the family home and retained control of all the

couple's financial assets and documentation. The next 2.5 years of litigation involved a great deal of testimony and other evidence concerning the main issue in this lengthy action, namely the husband's mental illness, visitation, and custody of the minor child given the history of domestic violence and child abuse perpetrated by Mr. Michael Bond upon his wife and child. Numerous witnesses testified and documentation of this abuse was provided to court, beginning with the wife's initial petition for dissolution and separate Permanent No Contact Injunction.

The financial aspects of the Final Judgment merely exacerbated the wife's situation by rendering the abused wife financially destitute. Despite the existing statute and contrary case law, the trial court allowed, after 14 years of marriage, that the husband, a JD/MBA, should be allowed to testify rather than submit accurate and timely documentation for all the couple's assets; be required to commence only minimal child support payments 2.5 years after the wife filed based upon his "new income", and pay no alimony to the woman who supported him through all his education and who was a stay-at-home mother at the time of separation.

Summary of the Argument

The Supreme Court of Florida has discretionary jurisdiction to review the decision in Bond v. Bond because it directly conflicts with decisions made in the Second District Court of Appeal, other District Courts of Appeal, Florida Statutes, Section 61.

Argument

CUSTODY/VISITATION: This case clearly falls under the precedent set by Ford v. Ford 700 So.2d 191 (Fla.4th DCA 1997). The Appellate Court decision to affirm the trial court's Final Judgment presents a glaring conflict to the rule of law presented by Ford. In Ford, a case also dealing with visitation, custody and an abusive husband, the court stated:

"We expressly decline the former husband's invitation to accept without comment a final judgment devoid of all but the most minimal mention of what undoubtedly became the central focus of the testimony presented to the trial court: an established pattern of domestic violence perpetrated by the former husband against the former wife...in many cases the interests of the minor child are served by the absence of findings in a final judgment of dissolution regarding a history of domestic abuse. Having said that, we note the instant record is replete with testimony during this six-day trial regarding domestic violence and spousal abuse; however, the final judgment meets this abundance of evidence with the single statement: The Court has considered everything that each side has accused the other side of as well as all the good things that each side has presented about themselves". Under the compelling facts of this case, this statement, standing alone as it does, is insufficient, and bolsters our finding an abuse of discretion. We are troubled not only by the absence of any meaningful analysis of the extensive evidence of domestic violence, but also by the apparent misapplication of record evidence to the statutory factors contained in section 61.13(3), Florida Statutes (1995). . . As to factors (3) (a) and (j), the trial court's expressed concern regarding difficulties encountered in visitation reflects a problem commonly occurring in cases where evidence demonstrators

a pattern of domestic violence. The trouble occurs when a court attempts to harmonize the non-abusive parent's conduct with the "friendly parent" provisions. Here, the trial court failed to offset what it perceived to be the mother's violation of Florida's friendly-parent provisions, with what was recognized in the temporary order as the mother's "justifiable reason to fear the Husband." This failure resulted in an unbalanced final judgment that found "the Mother has manipulated the visitation during this litigation to the detriment of the Father" and failed to recognize the probability that the mother's actions were justified.

The court in the Bonds' case clearly abused its discretion when it failed consider and make findings on the overwhelming evidence regarding the history of domestic violence and child abuse by the attorney/husband in making its determination of custody and ordering a lengthy unsupervised periods of visitation to compensate for mother's perceived failures to facilitate visitation. Like the trial court in Ford, the court here makes no mention of weeks of testimony regarding Mr. Bond's violence towards his wife and child, testimony provided by numerous witnesses, including the mental health professionals who have counseled the child, the parenting evaluator, and the Child and Family Services Report. The only reference to domestic violence and child abuse in the Final Judgment is the line whereby the judge dismisses the wife's Permanent No Contact Injunction stating that it will "interfere with the shared parenting ordered". (See *Final Judgment*) No findings regarding the parties or the various witnesses relative credibility, as required by Ford, were made by the trial court. Moreover, the trial court's actions over the course of the trial and its final order show an extreme prejudice against the abused wife, and apartiality towards allowing her attorney/husband undue privileges simply for being member of the bar.

The Second District Appellate Court's upholding such a judgment is clearly contrary to the ruling in Ford. It also stands in direct violation of the "best interest of the child" standard and the court in In re Camm, 294 So.2d 318 (Fla) cert denied, 419 US 866 S.Ct 12 (1974) which reaffirmed that

" while the parents' interest in maintaining parental ties is essential, the child's entitlement to an environment free of physical and emotional violence at the hands of his or her most trusted caretaker is more so. The state has a compelling interest in protecting all its citizens—especially its youth—against the clear threat of abuse, neglect and death."

EQUITABLE DISTRIBUTION: Nor are the financial aspects of the Final Judgment and Equitable Distribution capable of withstanding scrutiny without encountering multiple conflicting court opinions. Nearly every aspect of the financial distribution has been skewed to the husband's advantage with no regard to either statutory elements involved or prior court rulings regarding these types of financial considerations:

In Miner v. Miner, 727 So.2d 1080 (Fla. Dist Ct. App.1999), the court clearly indicates that the expenses for treatment of all medical conditions caused during the marriage are to be considered marital debt. Yet, the court in this case is allowed to dismiss healthcare costs for both wife and child, costs that were the direct result of the husband's abuse, as irrelevant and solely the injured wife's responsibility.

Florida Statute 61.075 (1)(i) clearly states that parties will be held accountable for the dissipation of marital assets during the timeframe from at least two years prior to the divorce. The Fifth District Appellate Court in Beers v. Beers, 724 So.2d 109 (Fla. 5th DCA 1998), expanded upon this, and stated that this is not a statute of limitation, and that the more remote dissipation is a factor which must be considered by trial court in determining equitable distribution. Yet, the upheld Bond v. Bond ruling flies in the face of both these requirements.

In fact, the trial judge states clearly that the husband does not even have to comply with Florida law requiring financial discovery. (See *Transcript from April 30, 2001, pg. 8, line 8*) Despite statutory and case law, as well as, numerous motions for financial documentation by the wife, the attorney/husband is allowed to simply testify that assets either never did or no longer exist and no accounting is required or considered in the Final Judgment's "equitable distribution".

The Appellate Court's affirmation of the trial court's failure to consider the possibility of hidden assets, despite wife's submitted documentary evidence, is also in direct violation of the 4th Appellate Court and the 2nd Appellate Court's own rulings. See Armstrong v. Armstrong, 623 So.2d 1216 (Fla. 4th DCA 1993, citing Strickland v. Strickland, 567 So.2d 525 (Fla. 2nd DCA 1990), which remanded the case on the grounds that "There were other assets about which the trial court learned during final trial, but did not value or distribute."

The Appellate Court affirmation also allows the trial court to clearly abuse its discretion when granting no alimony without considering and ruling on all the factors enumerated in Florida Statutes. Clearly the presumption in this case based upon the facts should be for alimony for the wife. Florida law §61.08 states that alimony will be considered and granted based on

these seven qualifications:

"Adultery of either spouse; the standard of living established during the marriage; duration of the marriage; age, physical, and emotional condition of each party; financial resources of each party, non-marital and marital assets and liabilities distributed to each; Time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment; the contribution of each party to the marriage including but not limited to services rendered in homemaking, child care, education, and career building of other party."

Additionally, in allowing the judgment to stand, the court's ruling for no alimony is in direct conflict with the standards for alimony previously espoused in the Second District's own Gregoire v. Gregoire, 615 So.2d 694 (Fla. 2nd DCA 1992, as well as, the elements defined in Hill v. Hooter, 776 So.2d 1006 (Fla.5th DCA 2001), Bible v. Bible, 597 So.2d 359 (Fla.3rd DCA 1992), Cardillo v. Cardillo, 707 So.2d 350 (Fla. 2nd DCA 1998), Wismar v. Wismar, 522 So.2d 552 (Fla.5th DCA 1998, Nelson v Nelson, 721 So.2d 388 (Fla.4th DCA 1998), and Young v. Young, 677 So.2d 1301 (Fla.5th DCA 1996). Clearly, these should be the prevailing standards in this case, yet the trial court was not held to them.

The Appellate Court's affirmation also confirms that the trial court was allowed to let the husband remain "underemployed" without imputing income for support purposes. This is in direct conflict with the rulings of the Fifth and Third Districts. Beers

v. Beers, 724 So.2d 109 (Fla.5th DCA 1998) cites Warren v. Warren, 629 So.2d 1079 (Fla.3rd DCA 1994), saying income shall be input to a spouse based upon past earnings and earning potential for purposes of child support and alimony. In this case, the husband was a lawyer earning over \$50,000 when served. He possesses both an MBA and a JD. Yet, the trial court was allowed to ignore legal precedent and input nothing.

Finally, the Appellate Court confirmed the trial court's decision to assign inequitable attorney's fees to each party, including extra and undocumented fees to the wife. Trial court was allowed to ignore cases like McAliley v. McAliley, 704 So.2d 611 (Fla. DCA 1997); St. Pierre v. Greenberg, 697 So.2d 218 (Fla.4th DCA 1997); and Wilkinson v. Wilkinson, 714 So2d 524 (Fla. 5th DCA 1998). Nor was the conflict with rulings in Dake v. Kirkley, 767 So.2d 1289 (Fla. 5th DCA 2000) or Rosen v. Rosen, 696 So.2d 687 (Fla. 1997) which specifically stated that improper conduct of one spouse, which creates a need for expensive litigation should be considered in determining the amount of attorney's fees awarded, considered or distinguished by the trial court. Instead a Judgment which ignores the disparity of income tests of both Allen v. Heinrich, 623 So.2d 540 (Fla.2nd DCA 1993) and Tanck v. Tanck, 675 So.2d 1039 (Fla.1st DCA 1996)was permitted to stand.

Conclusion

The Supreme Court of Florida should exercise its discretionary jurisdiction and grant review of the Second District Appellate Court's decision to affirm a Final Judgment, where as in this case such a Judgment is so clearly contrary to the standards set forth by both the Second District's own cases and those of other Florida Appellate Courts, as well as, the elements of Florida Statutes themselves.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this ___ day of October 2003 to:

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APPENDIX OF LOWER COURT RULINGS

Attachment to

**JURISDICTIONAL BRIEF OF PETITIONER /APPELLANT
2ND DCA 02-1534**