IN THE SUPREME COURT
STATE OF FLORIDA

S.Ct. CASE NO.: 05-1283

3DCA Case No.: 3D05-05

CAROL WILLIAMS,

Petitioner,

vs.

MICHAEL S. WILLIAMS,

Respondent.
_____/

PETITIONER'S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS[1]

Carol Williams ("the former wife") and Michael Williams ("the former husband") were married in November, 1988. (App. 2). In 1992, the former wife became a full time homemaker when she gave birth to the parties' first child. (App. 2). The parties had two more children in 1994 and 2000. (App. 2). Their birth years reflect that the children are all minors, aged 13, 11 and 5, respectively. (App. 2).

In June 2003, the former husband left the family home and moved in with his girlfriend. (App. 2). The former wife filed for divorce in February 2004, seeking *inter alia* permanent alimony. (App. 2). Thus, this case involves a marriage of 15½ years duration. (App. 2).

At the time of the dissolution proceeding, the former husband and wife were both only 37 years old. The former husband has worked continuously for Wal-Mart since 1992, is currently a Wal-Mart store manager, and has been the family's sole breadwinner since 1992. In contrast, the former wife's work history was at Publix, where she earned $6.50 per hour prior to the birth of the parties' first child. (App. 6). She was out of the work-force until recently and currently works part-time at her children's school in return for reduced daycare costs, and only $7.50 per hour. (App. 3).

[1] All references are to the Third District's opinion, appended to this brief. (App. 1-9).

At the dissolution hearing, the former wife requested an award of permanent periodic alimony. The former husband contested this, but characterized the wife as "intelligent" and presented a rehabilitation "plan" where the former wife would finish high school, and go to college to obtain a degree in accounting because she was "good with numbers." (App. 4).

The trial court found as fact that the former wife "currently lacks the education, training or skills to support herself," but awarded twenty-four months of "bridge the gap" alimony. On appeal, the Third District deemed this award to be "totally inappropriate." It agreed with the trial court's findings that "the former wife currently lacks the education, training or skills to support herself," did not possess even a high school education, and has "no special skills and training." (App. 6). However, the Third District also refused to order an award of permanent alimony. The District Court based its ruling specifically on the wife's age, and the fact that "this was a grey area marriage." It reversed and remanded with directions for the trial court to formulate an award of rehabilitative alimony. (App. 5). The former wife timely invoked this Court's jurisdiction.

SUMMARY OF THE ARGUMENTS

Permanent alimony awards are governed by §61.08, Fla. Stat. which mandates the consideration of all relevant economic factors.

The First District has squarely held that the recipient spouse's relative youth and mere ability to enter the job market, in isolation, are insufficient to defeat a permanent alimony claim. The Fourth and Fifth Districts have agreed with the First, while the Third District reached the exact opposite conclusion from the First, on cases involving substantially similar facts. There is thus express, direct conflict between the Districts on use of the wife's youth and mere ability to enter a job market, to defeat a permanent alimony award. This conflict warrants further review.

However, there is much more at stake here than one spouse's right to permanent alimony. The proper characterization of a marriage as "short term," "long term," or "grey area" is oft-central to a decision to award permanent alimony. Since there are currently no guidelines for such characterizations, District Courts have simply made *ad hoc* determinations, stretching the so-called "grey area" to subsume other categories. Further guidance from the Court is warranted to reconcile case law in this area, and ensure that persons similarly situated are treated similarly.

ARGUMENT

A RECIPIENT SPOUSE'S RELATIVE YOUTH AND MERE OPPORTUNITY TO ENTER THE JOB MARKET SHOULD NOT DEFEAT AN AWARD OF PERMANENT ALIMONY

This Court has discretionary jurisdiction to review a District Court decision which expressly and directly conflicts with a

decision of this Court on the same issue of law. Fla. Const. art V, §3(b)(3). Decisional conflict exists: (1) where an announced rule of law conflicts with other appellate expressions of law; or (2) where a rule of law is applied to produce a different result in a case involving substantially the same controlling facts. Neilson v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). It is **not** necessary that a district court explicitly identify conflicting district court decisions to create an express, direct conflict. It is sufficient that the district court's discussion of the legal basis for its decision reveals the conflict. Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981). Here, there is such a decisional conflict.

Section 61.08, Fla. Stat. governs the award of alimony in a dissolution of marriage action, and mandates a court's consideration of **all** relevant economic factors. These include the standard of living established during the marriage, the marriage's duration, each spouse's age, physical and emotional condition and financial resources, the time necessary for either party to acquire sufficient education and training for future employment, and the contribution of each party to the marriage, including but not limited to services rendered in homemaking and child care.

Several districts have held that a spouse's relative youth and mere opportunity to enter the job market are insufficient bases on

which to deny permanent alimony. Zeigler v. Zeigler, 635 So. 2d 50 (Fla. 1st DCA 1994); Burrill v. Burrill, 701 So. 2d 354 (Fla. 1st DCA 1997); Ghen v. Ghen, 575 So. 2d 1342 (Fla. 4th DCA 1991); Young v. Young, 671 So. 2d 1301 (Fla. 5th DCA 1996).

In Zeigler v. Zeigler, 635 So. 2d at 50, factually on point, the wife was a high school graduate who worked as a law firm receptionist prior to the marriage, and as a part-time receptionist for an insurance company for one year afterwards. In contrast, the husband worked as a pilot for Federal Express. The parties' marriage lasted 13½ years, during which time the wife devoted herself to rearing the parties' three minor children.

The wife presented no rehabilitation plan at trial. Nevertheless, the trial court awarded the wife seven years temporary, in lieu of permanent, alimony. It based its decision on the wife's relative youth, and the 13½ year length of the marriage, which it characterized as "short term." The trial court deemed it "gender bias" to allow the wife to remain at home with the children without pursuing a career.

On appeal, the First District **reversed**. In language directly on point, the Fifth District wrote:

> **The relative youth of the appellant also does not justify the total denial of permanent alimony unless there is some evidence that the appellant can attain a level of self support reasonably commensurate with the standard of living established during the marriage.** Ghen,

> supra. **A party is not self supporting because he or she has the opportunity to enter the job market without some evidence of the ability to earn a salary which would allow the party to live in accordance with the lifestyle established during the marriage.** Askegard v. Askegard, 524 So. 2d 736 (Fla. 1st DCA 1988), rev. denied, 536 So. 2d 243 (Fla.1988); Akers v. Akers, 582 So. 2d 1212 (Fla. 1st DCA 1991) rev. denied, 592 So. 2d 679 (Fla.1991). An award of rehabilitative alimony or temporary support should not result in a significant reduction in the standard of living of one spouse below the standard the parties enjoyed during the marriage. Steinberg v. Steinberg, 614 So. 2d 1127 (Fla. 4th DCA 1993). The disparate earning power of the parties is, therefore, a significant factor in determining whether permanent or temporary support is appropriate. Greely v. Greely, 583 So. 2d 1078 (Fla 1st DCA 1991), Akers, supra; Ghen, supra. In situations where the superior earning power of one spouse is achieved during a period when the other spouse is out of the job market as a result of an agreement that the nonworking spouse will care for the children, the courts of this state have reversed awards of temporary support in lieu of permanent alimony. Anderson v. Anderson, 617 So. 2d 1109 (Fla. 1st DCA 1993); Shudlick v. Shudlick, 618 So. 2d 740 (Fla. 4th DCA 1993); Wolff v. Wolff, 576 So. 2d 852 (Fla. 1st DCA 1991); Cruz v. Cruz, 574 So. 2d 1117 (Fla. 3rd DCA 1990). Raising children constitutes a significant contribution to the family and frees the other spouse to pursue the wage-earning functions. Id. at 53 (emphasis added).

The First District held that the trial court mischaracterized the 13½ year marriage as "short term" when it was in the "grey area" and that the wife's age and mere opportunity to enter the job market

were insufficient to warrant an outright denial of all permanent alimony.

The First District reached the same result in a case where the wife was only 40, was party to a 16 year marriage, and had almost completed a college degree. The wife worked only sporadically during the marriage, stayed home with the two children, while the husband supported the family. Even with a college degree, the wife would earn substantially less than the husband. Burrill v. Burrill, 701 So. 2d 354 (Fla. 1st DCA 1997).

In the instant case, the petitioner is 37, or two years older than Mrs. Ziegler. The petitioner did **not** graduate high school and thus has less education than Mrs. Ziegler, who was a high school graduate. The petitioner was married 15½ years, or two years longer than Mrs. Ziegler. Like Mrs. Ziegler, the petitioner stayed at home during the marriage and concentrated on raising the parties' three children. Like the Zieglers, there is a disparity in these parties' earnings. Mr. Williams' income is not listed in the Third District's decision, but it characterizes him as a Wal-Mart store manager, who has been the family's sole bread winner since 1992. In contrast, Mrs. Williams has been out of the work force for 12½ years, and has never earned more than $7.50 per hour which she currently receives from a part-time job.

The Third District nevertheless reached opposite conclusions from the First District. Holding the trial court did **not** abuse its discretion in refusing the award permanent alimony to Mrs. Williams, the Third District relied **specifically** on the fact that the parties were only thirty seven years old at the time of dissolution. It recognized that the wife "currently lacks the education, training or skills to support herself" and had little work experience, but assumed the wife could be further educated without proof of self-support.[2] There is express, direct conflict between the First and Third Districts, which thus have reached opposite conclusions on substantially similar facts. This conflict warrants further review.

However, there is more at stake here than one spouse's right to permanent alimony. In a dissolution of marriage action, proper characterization of the marriage is central to an award of permanent periodic alimony. When a marriage is characterized as "long term," there is a presumption in favor of such alimony. When a marriage is characterized as "short term," there is a presumption against such alimony. And when the marriage falls in between the so-called "grey area" there is **no** presumption either way. Pollock v. Pollock, 722 So. 2d 283 (Fla. 5th DCA 1998).

[2] This of course, is quite an assumption since the wife never finished high school and has the primary care for three children, the youngest of whom is five.

Recent governmental statistics show that most first marriages currently end in divorce after only eight years. U.S. Census Bureau: Number, Timing & Duration of Marriages and Divorce: 2001 (Issued Feb. 2005). http://www.census.gov/prod/2005pubs/p70-97.pdf. Our society has changed, but there are currently **no** guidelines to assist courts in determining proper characterization of a marriage. District Courts have simply considered the issue *ad hoc,* stretching the "grey area" to subsume other categories. See e.g. Pollock, 722 So. 2d at 285 (six year marriage arguably fell into "grey area," warranting affirmance of permanent alimony award); Thomas v. Thomas, 776 So. 2d 1092 (Fla. 5th DCA 2001) (same for 14 year marriage because fourteen years is in the "upper portion" of the grey area for alimony purposes); Greene v. Greene, 895 So. 2d 503 (Fla. 5th DCA 2005) (fifteen years "on the far upper side of grey area"); Burrill v. Burrill, 701 So. 2d 354 (Fla. 1st DCA 1997) (16 year marriage was "in the grey area"); *Cf.* Cardillo v. Cardillo, 707 So. 2d 350 (Fla. 2nd DCA 1998) (denial of permanent alimony reversed where parties were married for 14 years, had two children and wife was not employed outside the home during 9 years because "fourteen years is a long term marriage."), Knoff v. Knoff, 751 So. 2d 167 (Fla. 2nd DCA 2000) (clarifying that Cardillo should not be read to create a presumption in favor of alimony).

As the "grey area" is enlarged to subsume more and more territory, more and more people are affected. Further guidance is required to ensure that persons similarly situated are treated similarly.

Here, there is express direct conflict between the Districts on the use of the wife's youth and mere opportunity to enter the job market, to deny an award of permanent alimony without proof of self-support. Public policy also favors review because the Third District characterized the parties' 15½ year as "grey area" and there were insufficient standards for the Third District to make this determination.

CONCLUSION

For all of the foregoing reasons, petitioner respectfully requests the Court to: (1) accept jurisdiction under Fla. Cons. art V, §3(b)(3); (2) establish a briefing schedule on the merits; and (3) quash the decision of the District Court of Appeal, Third District on the denial of permanent alimony.

Respectfully submitted,

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