

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.

APPELLEE'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

Appellee, James Zingale, Executive Director, Florida Department of Revenue, by undersigned counsel, hereby submits as his second notice of supplemental authority, the attached decision in Ortiz v. LeBovidge, 2007 Mass. Super. LEXIS 100, Superior Court of Massachusetts, in which the court found that privacy, due process and equal protection claims directed to the state's alimony law were "not merely novel, (but) 'so untenable as to be frivolous.'" A copy of this decision is attached.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

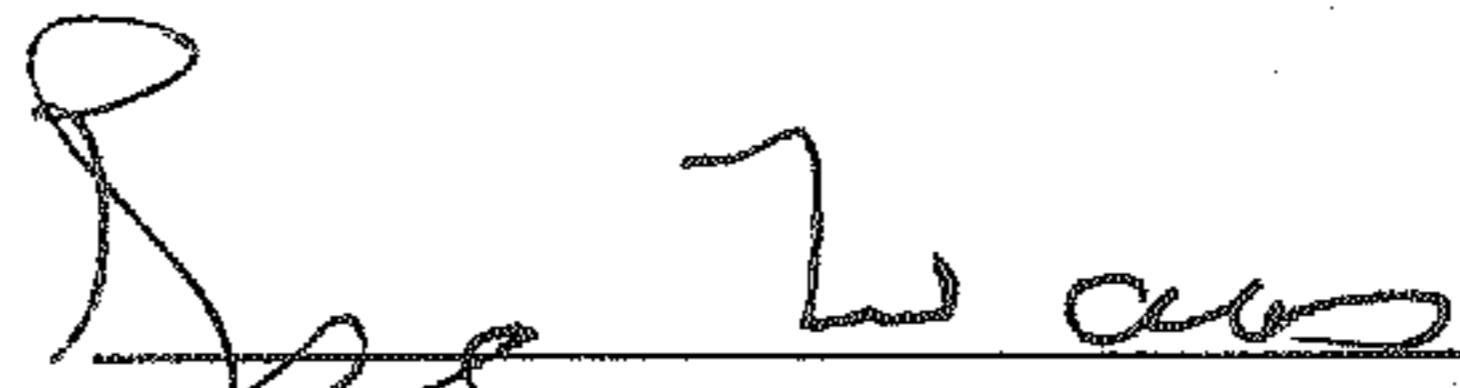


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to **William A. Cabana**, pro se, 1050 Capri Isles Blvd., Apt. F-105, Venice, FL 34292, this 24th day of April, 2007.



George Waas

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Ernest Ortiz v. Alan LeBovidge, as he is Commissioner of the Massachusetts
Department of Revenue et al.

Opinion No.: 97742, Docket Number: 06-1092

SUPERIOR COURT OF MASSACHUSETTS, AT BRISTOL

2007 Mass. Super. LEXIS 100

March 9, 2007, Decided

March 9, 2007, Filed

JUDGES: [*1] D. Lloyd Macdonald, Justice of the
Superior Court.

OPINION BY: D. Lloyd Macdonald

OPINION:

MEMORANDUM AND ORDER ON THE
DEFENDANT ALAN LeBOVIDGE'S MOTION TO
DISMISS

Before the Court is the defendant Commissioner of the Department of Revenue, Alan LeBovidge's (the "Commissioner's"), motion to dismiss the complaint. The complaint seeks a declaratory judgment that the alimony provisions of *G.L.c. 208, § 34* violate his various state and federal constitutional rights to privacy, due process and equal protection. The plaintiff also claims that the statute violates the separation of powers and basic rights provisions of *Articles 30* and *106*, respectively, of the Declaration of Rights.

The Court has reviewed the papers submitted by the parties, and a hearing was held. At the hearing the Attorney General, representing the Commissioner, addressed the plaintiff's opposition, and the plaintiff expanded on the state and federal constitutional interests upon which he has based his challenge to the authority of the Commonwealth and its judicial officers to enforce obligations of divorcing spouses to pay alimony.

The Court *ALLOWS* the Commissioner's motion for the following reasons. [*2]

The Appeals Court in a 2006 opinion issued pursuant to Rule 1:28 addressed a substantively identical claim. *Ganong v. Ganong*, 66 *Mass.App.Ct.* 1108, 847 *N.E.2d* 366 (2006). The Court observed: "The husband's argument that the statute [*G.L.c. 208, § 34*] impermissibly interferes with his constitutional right to autonomous privacy . . . are not merely novel, they are 'so untenable as to be frivolous.' *Allen v. Batchelder*, 17 *Mass.App.Ct.* 453, 454, 459 *N.E.2d* 129 (1984)." This

Court can perceive no reason to depart from the Appeals Court's conclusion.

The institution of marriage and the incidents of its dissolution deeply implicate the State's interest. This is directly reflected in the provisions of the Constitution of the Commonwealth. See Pt. 2, c. 3, art. 5 where "[a]ll causes of marriage, divorce, and *alimony*" [emphasis added] are provided to "be heard and determined by the governor and council, until the legislature shall, by law, make other provision." And the legislature, beginning in 1785, has made such provision by designating authority in the courts, most recently in 1986 by vesting exclusive original jurisdiction in the Probate and Family [*3] Court. St. 1986, c. 462, § 15.

In 2003 the SJC reaffirmed that the institution of marriage is "properly within the scope of [the Commonwealth's] police power." *Goodridge v. Department of Pub. Health*, 440 *Mass.* 309, 312, 798 *N.E.2d* 941 (2003). And arrangements for the terms of alimony fit comfortably within the exercise of such power. Further, there is no equal protection infirmity to the Commonwealth's statutory regime for alimony. *Saraceno v. Saraceno*, 369 *Mass.* 967, 341 *N.E.2d* 261 (1976).

The provisions of Pt. 2, c. 3, art. 5 of the Constitution of the Commonwealth and the cases cited above dispose of the plaintiff's *Article 30* separation of powers claim, as well.

ORDER

The defendant Alan LeBovidge, Commissioner of the Massachusetts Department of Revenue's motion to dismiss is *ALLOWED* and the Plaintiff's complaint is *DISMISSED* against all parties.

D. Lloyd Macdonald

Justice of the Superior Court

March 9, 2007