

IN THE DISTRICT COURT OF APPEALS OF FLORIDA  
SECOND DISTRICT

WILLIAM A. CABANA, *pro se*,

v.

Case No.: 2D06-5577

JAMES ZINGALE, EXECUTIVE  
DIRECTOR, FLORIDA  
DEPARTMENT OF REVENUE  
(In his official capacity)

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MOTION FOR REHEARING, REHEARING EN BANC  
AND FOR REASONED OPINION

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Appellant, with assistance of counsel, pursuant to Fl. Rules App. Proc. Rules 9.330 and 9.310 moves this court for a reasoned opinion in this appeal and rehearing of its decision rendered May 25, 2007.

Because of the great importance of the matters at issue,--his statutory right to a declaratory judgment (Chapter 86), the constitutionality of the alimony statute (§61.08 Fla. Stat) as impermissibly infringing Art. I sec 23, Right of Privacy, and Art. III sec 3 Separation of Powers, as well as conflicting with the public policy of the state of Florida (*Connor v Southwest* 668 So. 2d 175 (Fla. 1995) the Appellant moves for a rehearing en banc.

The Appellant expresses a belief, based upon a reasoned and studied professional judgment through consultation, that a written opinion will provide a legitimate basis for Supreme Court review for the following reasons.

1. Chapter 86 Declaratory Judgment is to be construed liberally. For the Appellant not to have received a reasoned opinion by both the trial court and this court conflicts with §86.101 Fla. Stat and *Olive v. Mass*, 811 So.2d 644 (Fla. 2002) i.e. the declaratory judgment statute is to be liberally construed.
2. Two provisions of Chapter 61 have already been declared unconstitutional as impermissible infringing Art. I sec 23 Fla. Const Right of Privacy.—it is not unreasonable that a third provision also is unconstitutional.
3. The Issues presented to the trial court and this court have not received a reasoned opinion. The issues are of great importance to thousands of Floridians because their liberty interests and massive property rights are at issue when the Florida courts apply § 61.08 Fla. Stat.
3. There are no precedential Florida court rulings on whether the alimony statute conflicts with Art. I sec 23 Fla. Const. Right of Privacy and/or Art. III sec 3 Fla. Const. Separation of Powers.
4. The Florida Supreme Court has not ruled on the constitutionality of § 61.08 Fla. Stat. for over thirty years—last being at the time of the legislature’s passage of the no fault dissolution statute.

5. The sentinel case law on § 61.08 is *Canakaris v Canakaris*, 382 So. 2d 1197, 1204 (Fla. 1980)--- a ruling rendered prior to the passage of Art. I. sec 23 Fla. Const. Right of Privacy.

6. Innumerable circuit and appellate rulings today rely on caselaw established prior to the passage of Art. Sec 23 Fla. Const. Right of Privacy. Those rulings ignore the intervening passage of the Right of Privacy Amendment to the detriment of Floridians altering their associational interest when they exercise their fundamental right to change their marital status.

7. If this court does not wish to render a reasoned opinion justice cries that this court certify the issues in this appeal to the Florida Supreme Court for review.

### Conclusion

“Furman v. United States, 720 F.2d 263, 266 (2d Cir. 1983) (‘A great many cases do not present any new or significant issue for which there are not ample precedents already in the published reports . . . . The use of summary orders permits judges to devote more time to the remaining cases that truly merit fully developed exercises of judicial craftsmanship’).”<sup>1</sup>

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<sup>1</sup> The Honorable Monterey Campbell, III, Chair, Judicial Management Council Committee on Per Curiam Affirmed Decisions in the Final Report and Recommendations, May 2000 citing the unpublished decision of the Eleventh U.S. Circuit Court of Appeals, in *United States of America v. Vicki Lopez-Lukis*, No. 98-2179.

The issues in his action are issues of first impression before this appellate court and no reasoned opinion exists on them to date. The issues truly merit this court's fully developed exercise of judicial craftsmanship.

**Prayer for Relief**

Wherefore the Appellant, for the above stated crucial reasons prays this court will either certify the issues in this appeal to the Florida Supreme Court for review, or, will render a decision with opinion, and finally will rehear or rehear en banc the issues in this appeal as well as rule that § 61.08 Fla. Stat. impermissibly infringes Art. I sec 23, Fla. Const. Right of Privacy, Art. III sec 3 Separation of Powers, conflicts with Connor v Southwest, 668 So. 2d 175 (Fla. 1995) and rule that in cases of constitutional challenges to statutes that it is proper under Chapter 86 to enter decisions with an opinion.

Respectfully submitted,



May 29, 2007

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Certificate of Service

I hereby certify that on this 29<sup>th</sup> day of May 2007, I caused a true and accurate copy of this Motion For Rehearing, Rehearing En Banc And For Reasoned Opinion to be sent by U.S. mail to:

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