

OFFICE COPY

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF
FLORIDA SECOND DISTRICT**

Case No.: 2D11-2862

L.T. No.: 91-3036-CA

DEBORAH J. SPOOR and MAXWELL SPOOR

Appellants,

v.

WILLIAM R. RATCLIFF

Appellee.

APPELLANT'S JURISDICTIONAL BRIEF

On Review from the Twentieth Judicial Circuit Court in and for Collier
County, Florida
Case No. 91-3036-CA

NIKKI A. URI, LLC
FBN 0670367
P.O. Box 770356
Naples, FL 34107
Office: 239.287.1753
Fax: 239.593.0437
Counsel for Appellants

TABLE OF CONTENTS

CITATIONS OF AUTHORITIES..... ii

I. STATEMENT OF THE FACTS..... 1

II. STATEMENT OF THE CASE 1

III. SUMMARY OF ARGUMENT 2

IV. ARGUMENT 3

V. CONCLUSION..... 10

CERTIFICATE OF SERVICE..... 11

CERTIFICATE OF COMPLIANCE 11

CITATIONS OF AUTHORITIES

STATE CASES

CASE LAW

<u>Miller v. Smart</u> , 636 So. 2d 836, 837 (Fla. 5 th DCA 1994)	2, 3, 4, 10
<u>Strod v. Lewenstark</u> , 958 So. 2d 1138, 1139 (Fla. 4 th DCA 2007)	3
<u>Paulucci v. Gen. Dynamics Corp.</u> , 842 So. 2d 797, 801(Fla. 2003)	3
<u>Phenton Development Group, Inc. v. Love</u> , 940 So. 2d 1179, 1182 (Fla. 5 th DCA 2006)	3
<u>Henderson v. Henderson</u> , 882 So. 2d 499, 500 (Fla. 1 st DCA 2004)	4, 5, 6, 10
<u>Boot v. Sapp</u> , 714 So. 2d 579, 580 (Fla. 4th DCA 1998).....	5
<u>Wattenbarger v. Wattenbarger</u> , 767 So. 2d 1172, 1173 (Fla. 2000).....	5
<u>Hill v. Hooten</u> , 776 So. 2d 1004, 1008 (Fla. 5th DCA 2001).....	5, 10
<u>Robinson v. Robinson</u> , 657 So. 2d 958, 960 (Fla. 1st DCA 1995)	6, 10
<u>Ruiz v. Ruiz</u> , 783 So. 2d 361 (Fla. 5 th DCA 2001).....	7, 10
<u>Brown v. Brown</u> , 714 So. 2d 475 (Fla. 5th DCA 1998).....	7, 8, 9, 10
<u>State, Dep't of Transept. v. Bailey</u> , 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992).....	9

STATUTES

Fla. Stat. 743.07(2)	2, 3, 4, 5, 10
Fla. Stat. Section 61	7, 5,10

I. STATEMENT OF THE FACTS:

MAXWELL SPOOR is a dependent adult child. He suffers from Cystic Fibrosis, which is an un-curable deadly disease. **DEBORAH SPOOR** is the sole caregiver of **MAXWELL SPOOR**. **WILLIAM RATCLIFF** has never met his son.

MAXWELL'S health continues to deteriorate with each passing year, as a result of the Cystic Fibrosis, which will make employment unstable and eventually impossible. He will always be dependent on his parents for financial support. **MAXWELL'S** life expectancy is twenty nine years.

II. STATEMENT OF THE CASE:

DEBORAH SPOOR filed a Supplemental Petition for Modification of Child Support when **MAXWELL SPOOR** was eighteen years old and still attending high school. **MAXWELL SPOOR** graduated from high school prior to reaching the age of nineteen. The trial Court entered an Order to Join **MAXWELL SPOOR** as an Indispensable Party, on March 23, 2011. On March 24, 2011, the trial court entered an Order on Respondent's Renewed Motion to Dismiss the Supplemental Petition for Modification of Child Support for Lack of subject matter Jurisdiction. On

April 1, 2011, the Petitioners filed a Motion for Rehearing. However, the trial court denied the Motion for Rehearing on May 16, 2011. The Petitioners filed a Notice of Appeal on June 6, 2011.

III. SUMMARY OF ARGUMENT:

Fla. Stat. Section 743.07(2) creates two separate situations upon which child support may be extended beyond the age of 18. First, where a child is dependent due to mental or physical incapacity that began prior to age 18 and secondly, where a child is, in fact, dependent but still in high school and attempting to graduate before age 19. Miller v. Smart, 636 So. 2d 836, 837 (Fla. 5th DCA 1994).

MAXWELL SPOOR satisfies both causes of action set forth in Section 743.07(2). First, **MAXWELL SPOOR** is an adult dependent child, because he suffers from Cystic Fibrosis. Cystic Fibrosis is a genetic condition, which begins at birth and is a fatal disease. Second, **DEBORAH SPOOR** filed a Supplemental Petition for Modification of Child Support, after **MAXWELL SPOOR** was eighteen and before he graduated from high school. **MAXWELL SPOOR** graduated from high school prior to reaching the age of nineteen. Therefore, it was improper for the trial court to dismiss the Supplemental Petition for Modification of Child Support for lack of

subject matter jurisdiction.

IV. ARGUMENT:

A. Legal Issue

Whether the trial court erred in dismissing the Supplemental Petition for Modification of Child Support for lack of subject matter jurisdiction, based on its interpretation of Fla. Stat. section 743.07(2).

B. Standard of Review

Where the issue involves the interpretation of a statute, the de novo standard of review applies. Strod v. Lewenstark, 958 So. 2d 1138, 1139 (Fla. 4th DCA 2007).

C. The Trial Court Erred in Granting the Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

In general, there are two aspects of subject matter jurisdiction. The first "concerns the power of the trial court to deal with the class of cases to which a particular case belongs." Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 801(Fla. 2003). The second "requires that a court's jurisdiction be lawfully invoked by the filing of a proper pleading." Phenton Development Group, Inc. v. Love, 940 So. 2d 1179, 1182 (Fla. 5th DCA 2006).

1. MAXWELL SPOOR satisfies both requirements for Subject Matter Jurisdiction, Which Are Set Forth in

Fla. Stat. Section 743.07(2).

Miller v. Smart, 636 So. 2d 836, 837 (Fla. 5th DCA 1994), held that Section 743.07(2) creates two separate situations upon which child support may be extended beyond the age of 18. First, where a child is dependent due to mental or physical incapacity that began prior to age 18 and second, where a child is, in fact, dependent but still in high school and attempting to graduate before age 19.

In addition, Henderson v. Henderson, 882 So. 2d 499, 500 (Fla. 1st DCA 2004), Mrs. Henderson filed a petition to modify, alleging that the parties' then eighteen-year-old daughter was still in high school, with a reasonable expectation of graduating in May of 2003, before her nineteenth birthday. The court in Henderson reasoned that, "The right to child support belongs to the child and she should not be shortchanged because of a failure to establish this simple fact at the first hearing. If it is established that the child will be in her senior year at the time she turns 18, the trial court should award child support until the date she graduates or set forth findings of fact explaining why such relief is denied." Although Fla. Stat. 743.07(2) gives the trial court discretion whether to award extended child support beyond the age of 18, if the child is dependant in fact and reasonably expected to

graduate before the age of 19, the denial of such support should be the exception rather than the rule. As the Fourth District has explained, children who are still attending high school at age 18 are in need of financial support. See Boot v. Sapp, 714 So. 2d 579, 580 (Fla. 4th DCA 1998).

The court in Henderson held that "A parent of a dependent, adult child is the proper party to seek support for that child." Section 743.07(2), Florida Statutes (2003), which is to be read in conjunction with chapter 61 of the Florida Statutes as it relates to child support, see Wattenbarger v. Wattenbarger, 767 So. 2d 1172, 1173 (Fla. 2000). These statutes "should be interpreted liberally in order to provide such support, thereby mitigating any potential harm to the child resulting from the lack of support." Hill v. Hooten, 776 So. 2d 1004, 1008 (Fla. 5th DCA 2001). Henderson at 500.

The facts in the instant case are substantially similar to the facts in Henderson. **DEBORAH J. SPOOR** filed a Supplemental Petition for Modification of Child Support, after **MAXWELL SPOOR** was eighteen and before he graduated from high school. **MAXWELL SPOOR** graduated from high school prior to reaching the age of nineteen. In addition, **MAXWELL SPOOR** is an adult dependent child, because he

suffers from Cystic Fibrosis. Cystic Fibrosis is a genetic condition, which begins at birth and is a fatal disease.

The second requirement for subject matter jurisdiction is satisfied because the Supplemental Petition for Modification of Child Support was proper. If this Court follows the ruling in Henderson, than the Respondent's Renewed Motion to Dismiss for Lack of Subject Matter Jurisdiction should be reversed, because the trial court had jurisdiction over the case, and dismissal was improper.

2. **Alternatively, Even If This Court Determines That Maxwell Was Required to Sue on His Own Behalf, The Fact That Maxwell was Joined as an Indispensable Party Relates Back to The Date of The Initial Filing, Thus Satisfying The Requirements of a Proper Pleading.**

The trial court entered an Order to Join **MAXWELL SPOOR** as an Indispensable Party, on March 23, 2011. "The court may modify an order of support ... retroactively to the date of the filing of the action . . . for modification." Robinson v. Robinson, 657 So. 2d 958, 960 (Fla. 1st DCA 1995) (holding "that the trial court abused its discretion in failing to make the order granting increased child support retroactive to the date of the filing of the petition for modification because the undisputed evidence

demonstrated the need for support, and the husband's ability to pay existed at the time of the filing of the petition"). In the instant case, **MAXWELL SPOOR** will always be in need of financial support, from his parents.

DEBORAH SPOOR'S ability to earn has been substantially hampered, due to the demands of taking care of a terminally ill child. **WILLIAM RATCLIFF** has always earned substantially more than **DEBORAH SPOOR**. Therefore, it would be an abuse of discretion for the court to refuse to make the child support retroactive to the date of the initial filing of the Supplemental Petition for Modification of Child Support.

The court in Ruiz v. Ruiz, 783 So. 2d 361 (Fla. 5th DCA 2001), held that since the divorce court has jurisdiction to award support for children (and there is no limitation contained in chapter 61 relating to the age of the child), and since chapter 61 specifically gives the court "continuing jurisdiction" to modify "the amount and terms and conditions" of the support obligation when in the best interest of the child, and since reaching majority does not prevent the court from doing so in this case, the court had proper jurisdiction. Child was never adjudicated dependent in FJ, but was in fact dependent.

The Respondent relies on Brown v. Brown, 714 So. 2d 475 (Fla. 5th

DCA 1998), for the proposition that the jurisdiction of a dissolution court to modify child support terminates after the child attains majority. The facts in Brown are distinguishable from the case, because in Brown the mother sought child support a full five years after the child reached the age of majority.

In Brown, the Fifth District Court pointed out that the right to such support from the father belongs to the dependent adult child, not to the mother. "Indeed, the mother, as well as the father, is a potential defendant in the support action." Brown at 477. Thus a dependent person may bring an independent action to enforce her or his right to support from his or her parents.

In summary, the right to support belongs to the mentally or physically disabled adult child, whose disability began prior to her or his majority, and the duty of support lies with both parents, throughout their lives. Thus the issue of support is not totally resolved in divorce actions wherein the mother and father allocate (or have allocated for them) the support payments for their dependent child as such a dependent person can bring an action in accordance with the rule establishing appropriate parties in actions involving legal incompetents. Id.

Since **MAXWELL SPOOR** was joined as a party, no basis exist for the Supplemental Petition for Modification of Child Support to be dismissed, for failure to join an indispensable party, because the amended petition dates back to the date of the filing of the Petition.

In the instant case, no reference was ever made that **MAXWELL SPOOR** had Cystic Fibrosis, in the court pleadings. However, both parties have always been aware of his condition, since the time **MAXWELL SPOOR** was an infant. According to the holding in *Brown*, **MAXWELL SPOOR** is entitled to bring a child support action against one or both of his parents. *brown* at 477. For this reason, it is permissible that **DEBORAH SPOOR** and **MAXWELL SPOOR** are joined as Petitioners. When considering the income of both parents, the fact that **DEBORAH SPOOR** provides all the housing, food, clothing, utilities and transportation for **MAXWELL SPOOR**, it is clear that in order to equalize the child support, **WILLIAM RATCLIFF** must continue to contribute to the support of his son.

When the underlying judgment is "void," the trial court has no discretion, but is obligated to vacate the judgment. *State, Dep't of Transept. v. Bailey* , 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992). Based on all of the above arguments, the previous Order on Respondent's Renewed Motion

to Dismiss Supplemental Petition of Child Support for Failure to Join an Indispensable Party and for Lack of Jurisdiction is void, and must be vacated as a matter of law.

V. CONCLUSION:

Fla. Stat. Section 743.07(2) makes it clear that both parents have a continuing duty of support for an adult dependent child. Although Fla. Stat. 743.07(2) gives the trial court discretion whether to award extended child support beyond the age of 18, the denial of such support should be the exception rather than the rule. Henderson at 500. Furthermore, Since the divorce court has jurisdiction to award support for children , and since chapter 61 specifically gives the court "continuing jurisdiction" to modify "the amount and terms and conditions" of the support obligation when in the best interest of the child, and since reaching majority does not prevent the court from doing so, the court had proper jurisdiction. Ruiz v. Ruiz, 783 So. 2d 361 (Fla. 5th DCA 2001).

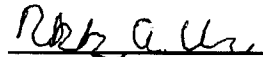
The holding in Brown is disfavored by the majority of cases, because to deny an adult dependent child support, on the basis of his parents' failure to provide for such support after the age of majority, offends the notions of justice and equity, and is not in the best interest of the child.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was mailed by prepaid United States postage to the Following:

PHILLIP A. ROACH, ESQUIRE
28179 Vanderbilt Dr., Suite 1
Bonita Springs, FL 34134


Dated: August 5, 2011



NIKKI A. URI, LLC
FBN 0670367
P.O. Box 770356
Naples, FL 34107
Office: 239.287.1753
Fax: 239.593.0437

CERTIFICATE OF COMPLIANCE

Counsel for Appellants, **MAXWELL SPOOR** and **DEBORAH J. SPOOR**, certifies that this brief has been prepared in Times New Roman 14 point font, in compliance with the requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).



NIKKI A. URI, LLC
Attorney for Appellants