

APPENDIX

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IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR ORANGE
COUNTY, FLORIDA

CASE NUMBER: 2012-DR-07744-O
DIV 45

DEPARTMENT OF REVENUE, O/B/O
SHARITA DENISE GOSA,

Petitioner

v.

KIONN ALLS

Respondent

**ORDER DENYING RESPONDENT'S MOTION
FOR RELIEF FROM JUDGMENTS AND
TO DISMISS**

THIS MATTER came before the Court on February 15, 2022, on Respondent's Motion for Relief from Judgments and to Dismiss ("Motion to Dismiss"), filed on February 17, 2021. The Court having heard testimony and argument, reviewing the Motion and case file, reviewing the pleadings, including the Department of Revenue's ("DOR") Response filed on July 12, 2021 and Respondent's Memorandum of Law Regarding the Department of Revenue's Lack of Standing to Bring Forth a

Paternity Action for a Child Born of an Intact Marriage filed on August 11, 2021, as well as Respondent's Amended Petition filed on December 9, 2021, finds as follows:

Procedural History

On July 5, 2012, the Department of Revenue (DOR), on behalf of Petitioner Sharita Gosa ("Ms. Gosa"), filed a "Petition to Establish Paternity, Child Support and for Other Relief" ("Petition"). The Petition alleged that while Respondent, Randy Gosa ("Mr. Gosa"), is the Legal Father of the child at issue, Cai Dean Gosa, Respondent Kionn Alls, is the Putative Father of the child. The Petition sought child support, retroactive child support, health insurance for the child, and assistance with non-insured medical expenses of the child from Mr. Alls. Ms. Gosa filed a Paternity Declaration¹ indicating she had sexual intercourse only with Mr. Alls from June through July 2011 when she believed her pregnancy began and thus believed Mr. Alls to be the biological father of her child. Additionally, Ms. Gosa stated that she was married at or about the time the child was conceived and when he was born and that her husband, Mr. Gosa, is named as the father on the child's birth certificate.

¹ The document is dated May 30, 2012, but does not appear in the record until August 10, 2012.

On July 17, 2012, Mr. Alls filed his Answer to the Petition. He denied the allegations, asserting he did not engage in sexual intercourse with Ms. Gosa and therefore was not the biological father of the child. On July 23, 2012, Mr. Gosa filed a statement denying that he is the (putative) father of the child as he was not in Florida during the time of conception.

On July 24, 2012, the DOR, on behalf of Ms. Gosa, filed a Motion to Compel Parentage (DNA) Testing. The Hearing Officer granted the Motion on October 12, 2012.

On October 26, 2012, Ms. Gosa filed a pro se Motion for Contempt regarding Mr. Alls' refusal to submit DNA for testing and failure to comply with the Court's October 12th Order, as well as a Motion to Impose Sanctions for Failure to Comply with Order on DNA/Motion for Entry of Final Judgment. On the same day, Ms. Gosa also filed a pro se Motion for Temporary Support.

On November 15, 2012, the Court entered its Final Order on Motion for Sanctions and Final Judgment of Paternity.² The Court held Mr. Alls

² The parties appeared before the Court on November 8, 2012, for a hearing on Ms. Gosa's "Motion to Impose Sanctions for Failure to Comply with Order on DNA/Motion for Entry of Final Judgment." The Notice of Hearing was filed on October 26, 2012.

willfully or deliberately disregarded its Order to appear for DNA testing and found him to be the legal father of the child. The Court reserved ruling on the issue of child support.

Mr. Alls filed a pro se Motion for Rehearing on November 19, 2012. He argued he did not receive proper notice of the hearing, counsel for the DOR refused to cooperate in scheduling the hearing, and the Court lacked personal jurisdiction over him, and thus the Court's orders cannot be enforced against him. The Court held a hearing on January 4, 2013, and subsequently denied his motion. Mr. Alls appealed. However, he voluntarily dismissed the appeal on April 24, 2013. (5D13-148).

On January 10, 2013, the parties appeared before Hearing Officer Groves.

On January 24, 2013, the Court entered an Amended Final Judgment, approving, confirming, and adopting the Hearing Officer's Report and Recommendation.

On April 24, 2013, Mr. Alls, by and through counsel, filed his Motion for Relief from Default Final Judgment of Paternity.

On July 9, 2013, the Court dismissed Mr. Alls' motion without prejudice for failure to perfect service within 120 days of filing.

On July 31, 2013, Mr. Alls, through counsel, filed Respondent's Motion to Vacate Paternity Judgment for Being Void as a Matter of Law.

On August 14, 2013, Mr. Alls filed a Motion to Stay Enforcement of Child Support Order.

On September 13, 2013, the DOR, on behalf of Ms. Gosa, filed an Amended Motion to Set Aside Dismissal³ requesting the Court set aside its Final Order of Dismissal entered on July 9, 2013.

On September 16, 2013, the parties appeared before the Court for a hearing. The Court granted Ms. Gosa's motion to set aside the dismissal⁴, reserved ruling on setting aside the final judgment subject to Mr. Alls taking a DNA test, ordered all the parties (Mr. Alls, Mr. Gosa, Ms. Gosa, and the child) to submit to a DNA test within 60 days, and stayed the child support order for 60 days.⁵

³ The initial Motion to Set Aside Dismissal was filed on August 20, 2013.

⁴ The Order solely setting aside the dismissal does not appear in the record until October 10, 2013.

⁵ The Court's "Order on Respondent's Motion to Vacate Paternity Judgment" was filed on September 25, 2013.

On October 17, 2013, Mr. Alls filed a Notice of Appeal of the Court's Order filed on September 25, 2013,⁶ which he stated denied his Motion to Set Aside the Judgment as Void. The Fifth District Court of Appeal ("Fifth DCA") treated this appeal as a petition for writ of certiorari. (5D13-3711). There is no Order in the record denying Mr. Alls' motion. His subsequent Motion to Stay Enforcement of Child Support Order Pending Appeal, filed on November 12, 2013, indicates he appealed because the Court "effectively denied the Motion to [S]et Aside the Judgment as [V]oid by exercising further jurisdiction and ordering [him] to undergo DNA testing." On February 3, 2014, the Court denied Mr. Alls' motion to stay enforcement of child support pending appeal.

On February 13, 2014, the DOR filed the Parentage Evaluation Laboratory Report.

On May 29, 2014, the Fifth DCA issued its mandate, granting the petition, quashing the trial court's order, and ordering the trial court to vacate the original paternity judgment and conduct a *Privette*⁷ hearing before ordering a paternity test.

⁶ The Notice indicates Mr. Alls is appealing "the order of this court rendered on September 19, 2013." The Order was signed by Judge Kest on September 19, 2013, and filed September 25, 2013.

⁷ *Dept. of Health and Rehabilitative Services, etc. v. Privette*, 617 So. 2d 305 (Fla. 1993).

Alls v. Dep't of Revenue, 138 So. 3d 592 (Fla. 5th DCA 2014).

On June 30, 2014, the parties appeared before the Court for a hearing. The Court vacated the Final Judgment and advised it would appoint a Guardian ad Litem (“GAL”)⁸ to investigate the legal father and putative father and provide a report.⁹

On July 2, 2014, Mr. Alls, through counsel, filed a Motion for Child Support Repayment and Attorney’s Fees Award.

On September 24, 2014, Ms. Gosa, through counsel, filed a Motion for Summary Judgment as to the Issue of *Privette*, as well as two affidavits in support of the motion.

On October 31, 2014, the parties appeared before the Court. The Court denied Ms. Gosa’s motion for summary judgment and stated it would not be ordering any attorney’s fees at that time.

On December 5, 2014, the GAL filed her report and recommendation.

⁸ The Order appointing the GAL was filed on October 2, 2014.

⁹ The Order reflecting the Court’s ruling was filed on August 6, 2014. Duplicates of this Order were filed on August 7, 2014.

On December 29, 2014, the parties appeared before the Court for the *Privette* hearing.¹⁰ The Court found Ms. Gosa's claim to be brought in good faith and her story to be consistent, credible, and reliable. (T 4). The Court found Mr. Alls' testimony that he is not taking the DNA test "to prove he didn't have relations with the mother is something that just defies logic . . . because the test would clearly prove" he was not the father if he took it and it was negative. (T 4–5) Additionally, the Court found that the *Privette* burden of proof was not required because the legal father is not intending to maintain his relationship with the child. (T 4). The Court ordered the parties to submit to DNA testing within fifteen (15) days, finding that Ms. Gosa had met her burden of proof under *Privette* and *Daniel*¹¹. (T 4–5).

The Court's Order reflecting these findings was filed on January 20, 2015.

On February 4, 2015, Mr. Alls filed a Notice of Appeal. The Fifth DCA treated this appeal as a petition for writ of certiorari (5D15-0412). The same day, Ms. Gosa, through counsel, filed a Motion for Contempt as to the Court's January 20, 2015, Order. On February 5, 2015, Mr. Alls filed a Motion

¹⁰ The portion of the transcript containing the Court's ruling was filed on January 5, 2015.

¹¹ *Daniel v. Daniel*, 695 So. 2d 1253 (Fla. 1997).

to Stay DNA Testing and Motion for Contempt Pending Appeal. The parties appeared before the Court on April 9, 2015, for a hearing on Mr. Alls' motion. The Court held that it would not stay the DNA test and ordered it to be done by April 20, 2015. The Fifth DCA granted Mr. Alls' Emergency Motion for Stay Pending Appeal on April 17, 2015. The Fifth DCA denied Mr. Alls' petition on April 27, 2015. The appellate case was disposed without a mandate on May 14, 2015.

On June 2, 2015, the Court entered an Order setting a hearing on Ms. Gosa's Motion for Contempt.

On June 18, 2015, the Court held its hearing. However, Mr. Alls failed to appear.¹² As a result, the Court issued a Writ of Bodily Attachment for Mr. Alls for failure to comply with the Court's June 2, 2015, Order.

On March 28, 2016, the Court held a hearing. Ms. Gosa and her attorney were present.

¹² The record indicates Mr. Alls' attorney was present and represented to the Court that she would be filing an Affidavit of Paternity "the following day." However, as record reflects, and as the Court noted in its Final Judgment, no such affidavit was filed and counsel later withdrew.

Mr. Alls failed to appear.¹³ The Court entered its Final Judgment of Determination of Paternity and Related Relief.

On May 3, 2016, Ms. Gosa, through counsel, filed a Motion for Contempt and Enforcement of Final Judgment of Determination of Paternity and Related Relief. Ms. Gosa stated that Mr. Alls had willfully failed to comply with the Court's Final Judgment by not making any good faith payments toward the outstanding balance of attorney's fees despite an ability to do so.

On June 14, 2016, Mr. Alls, through counsel, filed a Motion to Vacate and/or Set Aside Final Judgment of Determination of Paternity and Related Relief.

On July 8, 2016, Mr. Alls, through counsel, filed a Motion to Quash Writ of Bodily Attachment. On the same day, Mr. Alls also filed a Motion to Stay an upcoming hearing on a motion for enforcement and non-jury trial that had been set for July 27, 2016, on Ms. Gosa's Petition for Support As Ordered by the Court on March 28, 2016.

¹³ Mr. Alls was representing himself pro-se at this point. The Court granted his previous attorney's motion to withdraw on October 20, 2015. The Court noted that the active writ for Mr. Alls remained in place.

The parties appeared before the Court for a hearing on August 3, 2016. The Court noted that Ms. Gosa's Motion for Contempt was withdrawn and then rendered the following decisions:

- Denied Mr. Alls' "Motion to Vacate and/or Set Aside Final Judgment of Determination of Paternity and Related Relief" filed on June 14, 2016.
- Denied Mr. Alls' "Motion to Quash Writ of Bodily Attachment" filed on July 8, 2016.
- Denied Mr. Alls' Motion to Stay filed on filed on July 8, 2016.
- Granted Ms. Gosa's a "Motion for Contempt and Enforcement of Final Judgment of Determination of Paternity and Related Relief" filed on May 3, 2016.¹⁴

On September 1, 2016, Mr. Alls, through counsel, filed a Motion for Clarification of Writ of Attachment. On October 21, 2016, the Court entered its Order clarifying the writ. The Court stated that the writ is civil in nature and would remain in effect until Mr. Alls presented himself to

¹⁴ The corresponding "Final Judgment for Money Damages" was filed on August 17, 2016.

the Court and completed the DNA test.

On September 7, 2016, Mr. Alls, through counsel, filed a Motion to Stay Proceedings, or in the Alternative, Motion to Continue Hearing. The Court's Order denying the Motion was filed on October 4, 2016. Mr. Alls filed his Notice of Appeal on October 19, 2016. (5D16-3644). The Fifth DCA *per curiam* affirmed the trial court. The mandate issued on May 22, 2017. *Alls v. Dep't of Revenue*, 226 So. 3d 847 (Table) (Fla. 5th DCA 2017).

On September 14, 2016, the parties appeared before Hearing Officer Hepner for a non-jury trial to establish child support.

On September 16, 2016, the Court filed its Final Judgment approving, confirming, and adopting the Hearing Officer's Report and Recommendation.

On September 22, 2016, Ms. Gosa, filed a Motion for Contempt and Request for Attorney's Fees. She argued Mr. Alls had failed to provide her with a completed "Fact Information Sheet" as directed by the Court in its August 2016 Final Judgment. The Court held a hearing on October 19, 2016, and the Order granting the motion was filed on October 27, 2016. Mr. Alls filed his Notice of Appeal on November 21, 2016. The Fifth DCA initially treated this appeal as a petition for writ of certiorari and denied the petition. (5D16-4030). However, Mr. Alls' motion for reconsideration was granted and the appeal proceeded as a final appeal.

The Fifth DCA *per curiam* affirmed the trial court. The mandate issued on August 7, 2017. *Alls v. Dep't of Revenue*, 228 So. 3d 574 (Table) (Fla. 5th DCA 2017).

Between the filing of his Notice of Appeal and the issuance of the mandate by the 5th DCA the following motions were filed:

- Mr. Alls—Motion to Stay Execution of Final Judgment Entered March 28, 2016 and Proceedings on Driver's License Suspension and Petition to Contest Driver's License Suspension filed on December 8, 2016. The Court denied the motion at the April 12, 2017, hearing.
- Mr. Alls—Motion to Quash Writ of Bodily Attachment and Set Aside Award of Attorney's Fees filed on December 8, 2016. The Court denied the motion at the April 12, 2017, hearing as it pertained to the writ. The Court reserved ruling on attorney's fees.
- Ms. Gosa—Motion for Contempt of Court Order Dated October 25, 2016 filed on February 8, 2017.
- Ms. Gosa—Motion to Prohibit Testimony of Kionn Alls at Subsequent Hearings or in the Alternative, Compelling Kionn Alls to Appear Personally at a Deposition filed on February 8, 2017. The record does not reflect a disposition of this motion.

- Mr. Alls—Motion for Stay Pending Appeal, filed on March 8, 2017. He later filed an amended motion on March 31, 2017. The Court denied the motion at the April 12, 2017, hearing.
- Ms. Gosa—Motion for Sanctions Pursuant to Section 57.105, Fla. Stat. filed on March 30, 2017. The Court held a hearing on May 31, 2017, and entered an Order granting the motion on August 15, 2017.
- Mr. Alls—Motion to Strike Filings and to Prohibit Any Further Appearance by Jonathan Simon Esq. and The Orlando Family Firm filed on April 5, 2017. Mr. Alls withdrew this motion on May 25, 2017.
- Ms. Gosa—Motion to Compel Discovery Responses & Compliance with October 25, 2016 Order Granting Motion for Contempt and Request for Attorney’s Fees filed on June 1, 2017. The Court entered an Order granting the motion on July 12, 2017.

On September 15, 2017, Mr. Alls filed a pro se Motion to Vacate and/or Set Aside Final Judgment of Support.

The Court denied Mr. Alls’ motion on September 25, 2017. Mr. Alls filed his Notice of Appeal on October 25, 2017. (5D17-3379). The Fifth DCA *per*

curiam affirmed the trial court. The mandate issued on November 30, 2018. *Alls v. Dep't of Revenue*, 257 So. 3d 472 (Table) (Fla. 5th DCA 2018).

On February 17, 2021, Mr. Alls, through counsel, filed a Motion for Relief from Judgments and to Dismiss.

On June 16, 2021, the Court entered a Preliminary Order directing the parties to file a procedural memorandum outlining the entire procedural posture of the case.

On June 29, 2021, Mr. Alls, by and through counsel, filed his amended procedural memorandum. Mr. Alls stresses that the current issue before the Court for consideration is the issue of subject matter jurisdiction. He states that this issue was previously raised before the Court in his July 31, 2013, Motion to Vacate. However, at the September 16, 2013, hearing the Court focused on the matter of a renewed DNA test and counsel “was not even allowed to present case law to support her position as the Court was completely focused on the refusal to complete a DNA test.” Then, when the Fifth DCA addressed the Court’s ruling following the September 16, 2013, hearing it noted that the trial court deferred ruling on the issue of subject matter jurisdiction. *Alls v. Dep't of Revenue*, 138 So. 3d 592 (Fla. 5th DCA 2014). Therefore, Mr. Alls states that it has been almost eight years since

subject matter jurisdiction was raised and there is still no ruling on the issue. So, [i]t is Mr. Alls' position that the Court at this time should hold a hearing as to the issue of subject matter jurisdiction and allow Mr. Alls the ability to properly present all evidence and supporting case law for a final determination of that issue.

On July 12, 2021, DOR filed its Response and Memorandum of Law. DOR argues:

- A. The Court has and has always had subject matter jurisdiction in this case.
 - (1) A mother has standing to bring a paternity action under Chapter 742 of the Florida Statutes. And Chapter 742 provides that a paternity action may be brought in circuit court.¹⁵

¹⁵ Specifically, 742.12(2) provides:

In any proceeding to establish paternity, the court may, upon request of a party providing a sworn statement or written declaration as provided by s. 92.525(2) alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties or providing a sworn statement or written declaration denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties, require the child, mother, and alleged fathers to submit to scientific tests that are generally acceptable within the scientific community to show a probability of paternity. The court shall direct that the tests be conducted by a qualified technical laboratory.

- (2) Mr. Alls admits in his motion that a woman may file a paternity action on a child born during a marriage.¹⁶
- (3) The circuit court has the power to hear this cause of action based on its general jurisdiction power. It is an undisputed fact that all parties, including the child, were Florida residents at the time the initial petition. Therefore, it is clear from the record that the cause of action was raised in the appropriate court.

B. The issue of subject matter jurisdiction is *res judicata*.

- (1) The issue of subject matter jurisdiction was previously raised by Respondent and ruled on by the Court. Specifically, the Court found it had subject matter jurisdiction in its Final Judgment of Paternity entered on March 28, 2016, and in the Final Judgment of Support entered September 16, 2016.
- (2) Based on the doctrine of *res judicata*, Respondent cannot relitigate a matter that has been ruled upon by the court.

C. DOR has standing to file a paternity action.

¹⁶ Paragraph 6 of Respondent's Motion.

- (1) Respondent is incorrect in arguing DOR did not have standing to file a complaint for paternity because it failed to meet the five requirements under section 409.256(2), Florida Statutes.
- (2) The statute to which Respondent refers pertains to the administrative process, not the judicial process.
- (3) This cause of action was filed pursuant to section 409.2557(2), Florida Statutes¹⁷, which provides “The Department’s authority includes, but is not limited to, the establishment of paternity or support obligations....”
- (4) Therefore, DOR was required to meet the requirements enumerated in section 409.256(2), Florida Statutes.

D. Respondent has unclean hands.

¹⁷ “The department in its capacity as the state Title IV-D agency has the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department’s authority includes, but is not limited to, the establishment of paternity or support obligations...”

(1) Respondent has repeatedly violated the Court's orders. As exhibited by his refusal to submit to a paternity test, refusal to appear before the Court as ordered, refusal to keep an updated address and telephone number with the Court, and refusal to pay Court ordered child support.

E. DOR also notes the Writ of Attachment is still outstanding and has been for many years.

On July 21, 2021, the Court entered its Second Preliminary Order on Motion for Relief From Judgments and to Dismiss Filed 2/17/2021, wherein it cancelled the hearing scheduled for August 10, 2021, ordered Mr. Alls to provide his current address to the Court, ordered Mr. Alls to prepare and file a Memorandum of Law in Support of his allegations regarding the Court's alleged lack of subject matter jurisdiction, ordered DOR to file a response to Mr. Alls' Memorandum no later than September 1, 2021 should it wish to respond, and ordered Mr. Alls to file a Reply should he wish to, by September 10, 2021.

On August 11, 2021, Mr. Alls filed a Notice of Respondent's Address and a Memorandum of Law Regarding the Department of Revenue's Lack of Standing to Bring Forth a Paternity Action for a Child Born of an Intact Marriage.

On August 26, 2021, the DOR filed the Department of Revenue's Response to Respondent's

Memorandum of Law Regarding the Department of Revenue's Lack of Standing to Bring Forth a Paternity Action for a Child Born of an Intact Marriage.

On September 2, 2021, Mr. Alls filed his Reply to the DOR's Response.

On October 11, 2021, the Court issued a Preliminary Order requiring the parties to submit proposed orders to the Court no later than December 7, 2021.

On December 9, 2021, Mr. Alls filed a Motion for Leave to Amend, along with Respondent's Amended Motion for Relief from Judgment and to Dismiss.

On December 14, 2021, the Court held a hearing and entered an Order granting the Motion to Amend. The Court further ordered the parties had until January 24, 2022 to provide any draft orders for the motion to vacate.

On January 7, 2022, DOR filed its Response to Respondent's Amended Motion for Relief from Judgment and to Dismiss.

On January 18, 2022, Mr. Alls filed Respondent's Rebuttal to the Department of Revenue's Response to Respondent's Amended Motion for Relief from Judgment and to Dismiss. That same day, Mr. Alls filed an Amended Rebuttal.

On February 15, 2022, the Court conducted a hearing on Mr. Alls' Amended Motion for Relief

from Judgment and to Dismiss. At the conclusion of the hearing, the Court reserved ruling.

Respondent's Claims

Subject Matter Jurisdiction

Mr. Alls argues that all judgments entered in this action are void because the DOR and the Court lack subject matter jurisdiction to determine paternity of a child born to an intact marriage. Mr. Alls claims that he cannot be tested for paternity until Mr. Gosa's presumed paternity has first been disestablished. Further, he alleges that while "a woman may file a paternity action on behalf of a child born during her marriage, such paternity actions have been allowed only in cases in which the marriage was not an 'intact marriage' and therefore the rights of the child were not impacted."

According to Mr. Alls, under Section 742.011 a paternity action may only be brought when paternity has not been established by law or otherwise. Because the child in this case was born during a valid marriage, the child's paternity has been established as a matter of law.

Additionally, Mr. Alls argues that DOR cannot bring an action pursuant to Section 409.256(2), Florida Statutes because the statutory requirements have not been met.

Standing

Linked to the issue of subject matter jurisdiction is Mr. Alls' argument that the DOR lacks standing to bring a paternity action since paternity was established at the time of the child's birth because he was born into an intact marriage, and because none of the requirements of § 742.011 were met.

DOR's Response

Subject Matter Jurisdiction

DOR argues that this Court has jurisdiction and that Mr. Alls is confusing subject matter jurisdiction with standing. DOR further contends that a mother has standing to bring a paternity action regarding a child born during a marriage, pursuant to Chapter 742, and the Circuit Court has subject matter jurisdiction to hear such an action.

According to DOR, “[u]nder the Florida Constitution, the Circuit Court holds ‘general jurisdiction’ power to hear original actions not legislatively allocated to the County Court.” And that “[j]urisdiction over the subject matter refers to a court’s power to hear and determine a controversy.”

DOR further asserts that the issue of subject matter jurisdiction is *res judicata* as the trial court has previously found it has subject matter

jurisdiction as stated in its Final Judgment of Paternity entered on March 28, 3016 and in the Final Judgment of Support entered on September 16, 2016.

Additionally, DOR contends that Mr. Alls is incorrect in his claim that DOR cannot file an action for paternity unless it has met the requirements of § 409.256(2), Florida Statutes. This section, says DOR, relates only to the administrative process, not the judicial process. Rather, DOR is authorized to bring this action pursuant to § 409.2557(2), and thus is not subject to the requirements enumerated in § 409.256(2).

Finally, DOR argues that Mr. Alls' motion should be denied because he comes before the Court with unclean hands, having repeatedly refused to submit to a paternity test, refused to appear before the Court as ordered, and failed to pay court-ordered child support.

Law and Analysis

There is much confusion as to what constitutes “[s]ubject matter jurisdiction.” When dealing with subject matter jurisdiction, we look at the nature of the case and the type of relief sought. The Florida Supreme Court stated in *Paulucci v. Gen. Dynamics Corp.*, 842 So.2d 797, 801 n. 3 (Fla.2003): “[s]ubject matter jurisdiction

‘means no more than the power lawfully existing to hear and determine a cause.’ *Cunningham v. Standard Guar. Ins. Co.*, 630 So.2d 179, 181 (Fla.1994) (quoting *Malone v. Meres*, 91 Fla. 709, 109 So. 677, 683 (Fla.1926)).” “Subject matter jurisdiction is conferred upon a court by a constitution or statute, and cannot be created by waiver, acquiescence or agreement of the parties.” *Snider v. Snider*, 686 So.2d 802, 804 (Fla. 4th DCA 1997). “The term [subject matter jurisdiction] is inapplicable to the court’s jurisdiction over a specific case because of a contention that a party has not complied with a legal requirement not involving the general power of the court over the case.” *McGhee v. Biggs*, 974 So.2d 524, 526 (Fla. 4th DCA 2008).

Godfrey v. Reliance Wholesale, Inc., 68 So. 3d 930, 932 (Fla. 3d DCA 2011)

A party’s lack of standing does not deprive a court of subject matter jurisdiction. *Godfrey*, 68 So. 3d at 931; however, standing must be established as of the date the complaint is filed. *Corrigan v. Bank of America, N.A.*, 189 So. 3d 187, 190 (Fla. 2d DCA 2016).

In *Dep’t of Revenue o/b/o Tisdale v. Jackson*, 217 So. 3d 192 (Fla. 5th DCA 2017), the DOR petitioned, on behalf of a mother, to modify child

support to extend beyond the child's 18th birthday since the child was still in high school. The Circuit Court dismissed DOR's petition, adopting the hearing officer's conclusion that the DOR lacked standing because the petition was filed after the child's 18th birthday.

In reversing and remanding the case to the trial court, the appellate court held:

[a] parent, or, as in this case DOR, has standing to file for modification of the child support obligation to extend it beyond the child's eighteenth birthday, based on the high school provision of section 743.07(2), even though the dependent child turned eighteen before the petition for modification was filed.

Dep't of Revenue o/b/o Tisdale v. Jackson, 217 So. 3d 192, 194 (Fla. 5th DCA 2017)

However, standing is an affirmative defense and failure to raise it in a responsive pleading generally results in a waiver. *Phadael v. Deutsche Bank Trust Co. Americas*, 83 So. 3d 893, 895 (Fla. 4th DCA 2012); *Glynn v. First Union Nat'l Bank*, 912 So. 2d 357, 358 (Fla. 4th DCA 2005); *Kissman v. Panizzi*, 891 So. 2d 1147, 1150 (Fla. 4th DCA 2005); *Jaffer v. Chase Home Fin., LLC*, 155 So. 3d 1199, 1202 (Fla. 4th DCA 2015).

Further, Family Law Rule of Procedure 12.140(b) requires a party to include any affirmative defenses in the Answer, and Rule 12.110(d) states, in part, “Every defense in law or fact to a claim for relief in a pleading must be asserted in the responsive pleading, if one is required . . .”

Thus, Mr. Alls’ claim that the DOR lacks standing to bring this action is deemed waived for failure to raise this affirmative defense in his Answer.

The claim of lack of subject matter jurisdiction may be raised at any time, and unlike the issue of standing, cannot be waived. See *Wardell v. State*, 944 So. 2d 1089 (Fla. 5th DCA 2006); *Snider v. Snider*, 686 So. 2d 802, 804 (Fla. 4th DCA 1997).

Subject matter jurisdiction—the “power of the trial court to deal with a class of cases to which a particular case belongs”—is conferred upon a court by constitution or by statute. *Cunningham v. Standard Guar. Ins. Co.*, 630 So.2d 179, 181 (Fla.1994); *Jesse v. State, Dep’t of Revenue ex rel. Robinson*, 711 So.2d 1179 (Fla. 2d DCA 1998). It cannot be conferred by waiver, acquiescence, or agreement of the parties. *Ruble*, 884 So.2d 150. A trial court’s lack of subject matter jurisdiction makes its judgments void, and a void judgment can be attacked at any time,

even collaterally. Fla. R. Civ. P. 1.140(h); *Gonzalez v. Gonzalez*, 654 So.2d 257 (Fla. 3d DCA 1995).

Strommen v. Strommen, 927 So. 2d 176, 179 (Fla. 2d DCA 2006)

In the case at bar, DOR claims it has subject matter by virtue of § 409.2557(2) which provides as follows:

The department in its capacity as the state Title IV-D agency has the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department's authority includes, but is not limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to and signed by the parents, and the modification, enforcement, and collection of support obligations.

The Court agrees with DOR that it may bring either an administrative or court action in order to fulfill its duties. The Court further notes that case law supports DOR's position that it has standing and that the Court has jurisdiction.

In *Florida Dept. of Revenue v. Cummings*, 930 So. 2d 604, 609 (Fla. 2006), the issue was whether a legal father is an indispensable party in a paternity action brought by the State of Florida DOR under Chapter 409, to establish that a man other than the legal father is the child's biological father and as such, is obligated to provide child support. The court held that "a legal father is an indispensable party in an action to determine paternity and to place support obligations on another man unless it is conclusively establish that the legal father's rights to the child have been divested by some earlier judgment."

In *Dep't of Revenue ex rel. Garcia v. Iglesias and Garcia*, 77 So. 3d 878 (Fla. 4th DCA 2012), DOR filed a petition to establish paternity and child support, naming two respondents, one was the biological father of the child and the other was married to the mother at the time of the child's conception and birth.

At the trial court level, Iglesias, the biological father, filed a motion to dismiss, arguing that because the child was born during a legal marriage, Garcia, as the legal father, is presumed to be the biological father. The trial court granted the motion without making any factual findings.

On appeal, DOR argued that the presumption of legitimacy does not need to be rebutted at the outset of a paternity action, and that the dismissal

was premature. DOR claimed that it could file a paternity action against both the legal and biological fathers, and that the issues of the best interests of the child and the presumption of legitimacy should be dealt with during the proceedings. The appellate court agreed, holding as follows:

In addressing the child's legitimacy, we note the child was born during the mother's marriage to Garcia, although Garcia's name does not appear on the birth certificate. A child born to a legal marriage is legitimate. *See Daniel v. Daniel*, 695 So.2d 1253 (Fla.1997) (citing *In Re Adoption of Doe*, 572 So.2d 986 (Fla. 1st DCA 1990)). The presumption of legitimacy is in place to protect the best interests of the child and the interests of the legal father. *Cf. Dep't of Health and Rehabilitative Servs. v. Privette*, 617 So.2d 305, 307 (Fla.1993); *Fla. Dep't of Revenue v. Cummings*, 930 So.2d 604, 608 (Fla.2006).

A putative father seeking to avoid a blood test may raise the presumption in the context of his privacy interest. *See Privette*, 617 So.2d at 309 n. 8 (Fla.1993) ("By asserting a privacy interest the putative father necessarily puts in issue the child's best interests, which substantially implicates the presumption. If the child's best interests

require maintaining the presumption, then the presumption will prevail *because* the State will lack a compelling interest justifying the blood test.”).

The common denominator in these cases is the best interests of the child. To that end, the courts require a determination of the child’s best interests. Some circumstances require specific procedures be followed in evaluating a child’s best interests. For example, if paternity is contested, the child’s legitimacy is at issue, and the legal father has not had notice or an opportunity to be heard, the trial court is required to appoint a guardian ad litem and hear from the guardian and all the parties before proceeding. *See Privette*, 617 So.2d at 308; *Daniel*, 695 So.2d at 1255. At a minimum, the court must evaluate the best interests of the child. *See Hebner v. Barry*, 834 So.2d 305 (Fla. 4th DCA 2003) (reversing trial court’s order that putative father undergo blood testing where trial court failed to make findings of fact in regard to whether the paternity test was in best interests of the child); *Lander*, 906 So.2d at 1135 (remanding for a hearing in a case where the putative father brought the paternity action, and directing that the best interests of the child be considered).

A trial court may consider the child's need for support. *Cf. Privette*, 617 So.2d at 309–10; *Grant v. Jones*, 635 So.2d 47, 48 (Fla. 1st DCA 1994). If the court determines that there is no compelling interest in overcoming the presumption, it must dismiss the paternity action against the putative father. *Cf. M.R. v. A.B.C.*, 683 So.2d 629, 630 (Fla. 3d DCA 1996).

Dep't of Revenue ex rel. Garcia v. Iglesias, 77 So. 3d 878, 879–80 (Fla. 4th DCA 2012)

The 4th DCA reversed the dismissal and remanded the case for the trial court to determine whether, in light of the fact that the child's legitimacy would remain intact, it would be in the best interests of the child to allow DOR to pursue its paternity action against the biological father.

Mr. Alls argues that DOR only has standing to bring an action for paternity and support against a putative father when the mother is not in an intact marriage; however, the above-referenced caselaw holds otherwise.

Based on the statute and caselaw, the Court finds that DOR has standing to bring a paternity and child support action against Mr. Alls in this matter, and that the Court has subject matter jurisdiction to hear the case.

The Court notes that DOR claims that the issue of subject matter jurisdiction is *res judicata*; however that issue was not raised in Mr. Alls' appeal and was mentioned only in passing by the appellate court. It was not decided on the merits. The issue is therefore not *res judicata*.

As for DOR's unclean hands claim, "Unclean hands is an equitable defense that is akin to fraud; its "purpose is to discourage unlawful activity." *Original Great Am. Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd.*, 970 F.2d 273, 281 (7th Cir.1992). "It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief[.]" *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945).

The 4th District Court of Appeal has equated "sneaky and deceitful" with "unclean hands." "Equity will stay its hand where a party is guilty of conduct condemned by honest and reasonable men. Unscrupulous practices, overreaching, concealment, trickery or other unconscientious conduct are sufficient to bar relief." *Cong. Park Office Condos II, LLC v. First-Citizens Bank & Tr. Co.*, 105 So. 3d 602, 609 (Fla. 4th DCA 2013) (citing to 22 Fla.Jur.2d, Equity, § 50).

While Mr. Alls has continually refused to abide by this Court's orders, relying on claims that the

Court has no jurisdiction and that DOR lacks standing, the Court is not willing to hold that Mr. Alls is prohibited from raising the issues presented in his motion due to the doctrine of unclean hands.

For the foregoing reasons, it is ORDERED and ADJUDGED that Respondent's Motion for Relief from Judgments and to Dismiss, filed on February 17, 2021, is DENIED.

DONE AND ORDERED in Chambers, Orange County, Florida, this 14th day of March, 2022.

s/Barbara Leach

Barbara J. Leach
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, via e-portal, to **Gustavo E. Francis, Esquire**, gfrancis@launderdaledefense.com, and to **Ana Tangel-Rodriguez, Esquire**, ana@tangelrodriguez.com, this 14th day of March, 2022.

s/K. Pena

Judicial Assistant

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR ORANGE
COUNTY, FLORIDA

CASE NUMBER: 2012-DR-07744-O
DIV 45

DEPARTMENT OF REVENUE, O/B/O
SHARITA DENISE GOSA,

Petitioner

v.

KIONN ALLS

Respondent

**PRELIMINARY ORDER ON
RESPONDENT'S AMENDED MOTION FOR
RECONSIDERATION AND FOR REHEARING
OF PRIOR ORDERS AND PETITIONER'S
RESPONSE TO MOTION FOR
RECONSIDERATION AND FOR REHEARING
OF PRIOR ORDERS**

THIS CAUSE, comes for consideration in Chambers on April 12th, 2022, on Respondent's Amended Motion for Reconsideration and for Rehearing of Prior Orders (the "Motion") filed March 24, 2022, and the Petitioner's Response to Motion for Reconsideration and for Rehearing of

Prior Orders filed on April 4, 2022. The Court has reviewed the Motion, the file, and the applicable legal authorities. The Court FINDS, ORDERS, and ADJUDGES as follows:

1) Respondent's Motion is DENIED.

DONE AND ORDERED at Orlando, Orange County, Florida on this 13th day of April, 2022.

s/Barbara J Leach
Barbara J Leach
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was delivered to the below parties on this 13th day of April, 2022.

SHARITA DENISE GOSA Via Counsel

KIONN ALLS Via Counsel

ANA E. TANGEL RODRIGUEZ,
ESQUIRE

GUSTAVO E. FRANCES,
ESQUIRE

s/Kaley Pena
Kaley Pena,
Judicial Assistant to Judge Barbara J Leach

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No.: 6D23-1269
Lower Tribunal No.: 2012-DR-7744-O

KIONN ALLS,

Appellant

v.

DEPARTMENT OF REVENUE, O/B/O
SHARITA DENISE GOSA

Appellee

Appeal from the Circuit Court for Orange County.
Barbara J. Leach, Judge.

July 18, 2023

PER CURIAM.

AFFIRMED.

TRAVER, C.J., and STARGEL and SMITH, JJ.,
concur.

Gustavo E. Frances, of The Law Office of Gustavo
E. Frances, P.A., Ft. Lauderdale, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and
Toni C. Bernstein, Senior Assistant Attorney
General, Tallahassee, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE
MOTION FOR REHEARING AND DISPOSITION
THEREOF IF TIMELY FILED

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

August 11, 2023
CASE NO.: 6D23-1269
L.T. NO.: 2012-DR-7744-O

KIONN ALLS,
Appellant/Petitioner

v.

DEPARTMENT OF REVENUE, O/B/O
SHARITA DENISE GOSA
Appellee/Respondent

BY ORDER OF THE COURT:

Appellant's "Request for Leave to Amend and For Acceptance of the Amended Motion for Rehearing filed August 2, 2023" is granted to the extent that the amended motion is accepted as filed.

The amended motion for rehearing, motion for rehearing en banc, motion for written opinion and motion to certify question are denied.

I hereby certify that the foregoing is a true copy of the original court order.

s/Stacey Pectol

seal/

Stacey Pectol
Clerk

DISTRICT COURT OF APPEAL
STATE OF FLORIDA
SAT CITO SI RECTE
SIXTH DISTRICT

PANEL: TRAVER, C.J., and STARGEL and
SMITH, JJ.

cc:

GUSTAVO E. FRANCES, ESQ.
TONI C. BERNSTEIN, S.A.A.G.
CLERK DEPARTMENT OF REVENUE
TIFFANY RUSSELL, CLERK