

**FILED**

SID J. WHITE

MAR 9 1984

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk



**JEAN L. ABBE,**  
**Petitioner,**

**Vs.**

**MARNON F. ABBE,**  
**Respondent.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Case Number 64,794**

---

**RESPONDENT'S ANSWER BRIEF ON THE MERITS**

---

**JOHN M. HATHAWAY**  
Counsel for Respondent  
Post Office Drawer 1537  
Punta Gorda, Florida 33951-1537  
(813) 639-4147

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>CITATION OF AUTHORITIES</b>	<b>ii.</b>
<b>STATEMENT OF THE CASE AND THE FACTS</b>	<b>1</b>
<b>ARGUMENT</b>	<b>2</b>
<b>CONCLUSION</b>	<b>3</b>

TABLE OF CASES AND AUTHORITIES

	<u>PAGE</u>
<u>COURT OPINIONS</u>	
<u>Canakaris V. Canakaris,</u> 382 So. 2d 1197 (Fla. 1980) . . . . .	2
<u>Florida Statutes</u> §61.08 (1981) . . . . .	2

**PRELIMINARY STATEMENT**

In this case, **JEAN L. ABBE, Petitioner**, will be referred to as the Wife.  
**MARNON F. ABBE**, will be referred to as the Husband.

An Appendix accompanies this Answer and references to the material therein shall be made by using the designation [A. - \_\_\_\_].

**STATEMENT OF THE FACTS AND THE CASE**

Respondent accepts the statement of Case and Facts contained in Petitioner's Brief On The Merits. Any necessary additional facts will be brought out in the Argument.

## ARGUMENT

The certified questions of the Second District Court seemingly are an attempt to clear up the conflicts between the Fourth and Fifth and the Second District Courts and perhaps other District Courts and therefore giving this Court jurisdiction.

In the case at bar, the Husband asked for an equitable distribution. [Had he wanted a distribution in accord with the parties legal interests, as suggested by Petitioner, he would not have requested an equitable distribution.] According to Canakaris V. Canakaris, 382 So. 2d 1197 (Fla. 1980),:

"The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose, including lump sum alimony, permanent periodic alimony, rehabilitative alimony, child support, a vested special equity in property, and an award of exclusive possession of property. As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one over all scheme."

The award to the Husband of the Wife's interest in the business and business premises could be characterized as lump sum alimony. Florida Statute §61.08 (1981) states:

"(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, . . .

(2) In determining a proper award of alimony or maintenance, the court may consider all relevant economic factors, . . ."

The Florida Supreme Court has stated:

"While permanent periodic alimony is most commonly used to provide support, in limited circumstances its use may be appropriate to balance such inequities as might result

from allocation of income generating properties acquired during the marriage" [citation omitted] Canakaris, supra.

The Petitioner has gone to great extremes to complain about the fact that she has not had her day in Court. It would appear from the ruling of the Second District Court that she will have her day in Court and therefore the question is moot.

". . . we reverse the award of lump sum alimony to appellee in this case. As to appellant's claim that she was denied her right to trial, we find no merit. Nor did the lower court err by failing to award permanent alimony to appellant."

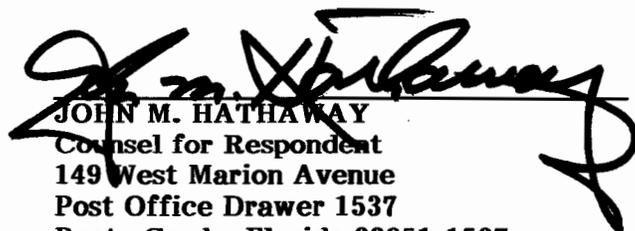
". . . we reverse all of the property awards to the parties and remand to the lower court for reconsideration in accordance with this opinion." Second District Court of Appeal's Opinion filed November 9, 1983. [A. - 1 ]

The Second District Court has remanded a hearing before the trial court relating to lump sum alimony and all property awards of the parties. Thusly guaranteeing that both parties will have a right to present evidence to the Chancellor to make a decision in relation to these matter.

If the parties pleaded a new as the dicta of the Second District Court suggests, with regard to the parties' property rights, then naturally under the Florida Rules of Civil Procedure, a trial de novo thereby guarantees the Petitioner her day in Court again.

CONCLUSION

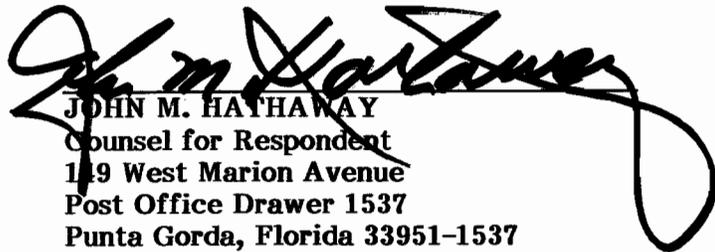
Inasmuch as the Second District Court has reversed and remanded the trial court's decision on lump sum alimony and property awards, it is evident that Petitioner will have her day in Court and will have an opportunity to produce whatever evidence necessary for the trial court's consideration. Any further proceedings would be a waste of judicial time and energy and unnecessary cost to the litigates.



**JOHN M. HATHAWAY**  
Counsel for Respondent  
149 West Marion Avenue  
Post Office Drawer 1537  
Punta Gorda, Florida 33951-1537  
813/639-4147

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Answer Brief On The Merits, has been furnished unto CHARLES J. CHEVES, Counsel for Petitioner, Post Office Box BI, Venice, Florida 33595, by United States Mail, on this 8th day of March, 1984.

  
JOHN M. HATHAWAY  
Counsel for Respondent  
149 West Marion Avenue  
Post Office Drawer 1537  
Punta Gorda, Florida 33951-1537  
813/639-4147