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ARGUMENT

Respondent suggests that Petitioner's point regarding denial of a trial is moot because the "Second District Court has remanded [for] a hearing before the trial court relating to lump sum alimony and all property awards of the parties."

Actually, the Second District remanded "for treatment consistent with this opinion." The opinion rejects the contention that there was no trial, proceeds on the apparent erroneous assumption that the trial judge decided the case based on evidence presented at a trial, and stated "We can find no fault with the fairness and equity of the manner of his division of the parties' properties." Noting that it might "be necessary for the parties to plead anew in regard to their property interests," the District Court commented that "the trial court may well end up with the same result," and urged an amicable settlement.


None of these comments were consistent with a remand for a trial that never occurred, and that is what Petitioner is entitled to have.

Counsel for Respondent is suggesting that there should be a "trial de novo" but unless the fallacious Second District comments which ignore the lack of a trial are reversed or expunged, a trial de novo will not benefit Petitioner. She needs and is entitled to a first trial, with the trial judge not influenced by the original judgment or by the erroneous comments in the Second District's opinion.

Respondent's brief does not contest Petitioner's argument that she was denied any trial, nor does it suggest that the Second District's position with respect to denial of a trial were correct.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished, by mail, to John M. Hathaway, P.O. Drawer 1537, Punta Gorda, Florida 33951 this 19th day of March, 1984.



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