IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,078

RONALD L. MARCOUX,

PETITIONER,

VS.

CATHERINE M. MARCOUX,

RESPONDENT.

DISTRICT COURT OF APPEALS, FOURTH DISTRICT

CASE NO. 83-361

RESPONDENT'S ANSWER BRIEF

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STATEMENT OF THE CASE

THIS IS A DISSOLUTION OF MARRIAGE ACTION INSTITUTED BY THE WIFE (RESPONDENT HEREIN AND REFERRED TO AS WIFE HEREINAFTER) ON JUNE 16, 1981. BY HER PETITION THE WIFE SOUGHT THE DISSOLUTION OF THE MARRIAGE, TEMPORARY, PERMANENT, AND LUMP SUM ALIMONY, AND EQUITABLE DISTRIBUTION OF MARITAL ASSETS, TEMPORARY AND PERMANENT ATTORNEY'S FEES AND COSTS, TITLE AND POSSESSION OF THE HOME PREMISES, SPECIAL EQUITIES, CUSTODY AND SUPPORT FOR THE MINOR CHILDREN, AND INJUNCTIVE RELIEF.

THE HUSBAND (PETITIONER HEREIN AND REFERRED TO AS HUSBAND HEREINAFTER) ANSWERED THE PETITION ON JULY 8, 1981 SEEKING AN EQUITABLE DIVISION OF JOINTLY OWNED PROPERTIES AND/OR PARTITION, LIBERAL VISITATION RIGHTS WITH THE CHILDREN, AN ADJUDICATION OF THE LIABILITIES OF THE PARTIES, AND A DISSOLUTION OF THE MARRIAGE. THE HUSBAND AMENDED HIS ANSWER TO SEEK A PARTITION OF THE JOINTLY HELD MARITAL HOME THEREBY PLACING THE MATTER AT ISSUE.

GREAT EFFORTS WERE EXPENDED BY THE WIFE TO OBTAIN DISCOVERY IN THE CASE WHICH WAS NEVER FULLY SATISFACTORY TO THE WIFE.

THE ACTION WAS HEARD BEFORE THE HONORABLE J. CAIL LEE IN THE BROWARD COUNTY CIRCUIT COURT ON MAY 10, 1982, JUNE 7, 1982, AND JUNE 11, 1982.

On November 22, 1982, the learned Trial Judge entered his Final Judgment dissolving the marriage of the parties. Each party filed a Motion For Rehearing addressed to the Final Judgment which Motions were denied by the Trial Court in its Order dated February 8, 1983.

The Husband timely filed his Notice of Appeal directed to the Final Judgment dissolving the marriage and the Order denying the parties Motions For Rehearing and the Husband cited as error the Trial Court's "equitable" distribution of assets, the Trial Court's award to the Wife of permanent periodic alimony, the Trial Court's award of attorney's fees and costs to the Wife, and the Trial Court's award of sole custody of the minor children to the Wife instead of shared parenting.

The Wife filed her Notice of Cross-Appeal and cited as error the Trial Court's award of an interest rate on the lump sum award to the Wife of eight percent (8%) rather than the legal rate of twelve percent (12%), and the Trial Court's automatic reduction of permanent periodic alimony to the Wife at the time the children attained majority.

The Fourth District Court Of Appeals affirmed the decision of the Trial Court with a dissenting vote. The Fourth District Court

OF APPEALS CERTIFIED TO THIS COURT A QUESTION OF GREAT PUBLIC IMPORTANCE:

> "DO CONNER v. CONNER, SUPRA, AND KUVIN v. KUVIN, SUPRA, LIMIT THE SCOPE OF APPELLATE REVIEW ENUNCIATED IN CANAKARIS v. CANAKARIS, 382 So.2D 1197 (FLA. 1980)?

ABBREVIATIONS USED HEREIN SHALL INCLUDE "R", FOR RECORD ON APPEAL AND "A", FOR RESPONDENT'S APPENDIX.

STATEMENT OF THE FACTS

At the time of the Final Hearing the parties were married thirteen and one-half (13 1/2) years and had a son thirteen (13) years of age and a daughter eleven (11) years of age.

At the Temporary Relief Hearing on July 8, 1981, the parties stipulated that the Wife would have temporary exclusive possession of the marital home, that the Wife would have the temporary custody of the minor children, that the Husband would pay mortgage payments on the marital domicile, health, medical, and dental insurance with the Wife and minor children, automobile payments, tags, insurance, and repairs for the Wife's automobile, and that she would have the temporary exclusive use of her automobile. The Husband also agreed to pay for the gas and oil for the Wife's automobile. (R.Pgs. 117-119, 121-122) As additional temporary relief the Court Ordered the Husband to pay Two Hundred and Fifty Dollars ($250.00) per week as unallocated alimony and child support. By the Wife's Financial Affidavit without including the automobile payments the temporary award amounted to Twenty Two Hundred and Forty Five Dollars ($2,245.00) per month to the Wife and minor children.

THE HUSBAND COMPLAINED IN JANUARY OF 1982 IN HIS MOTION FOR RELIEF THAT HE WAS UNABLE TO COMPLY WITH THE COURT'S TEMPORARY ORDERS BECAUSE OF HIS DECLINING BUSINESS. (R.PGS. 143-144) IN REALITY THE HUSBAND'S BUSINESS AT THE TIME OF HIS MOTION FOR RELIEF WAS DOING VERY WELL. (R.PGS. 183-186, 393) THE FINANCIAL DATA THROUGH MARCH 31, 1982, IS THE LAST PRODUCTION MADE BY THE HUSBAND AND OFFERED INTO EVIDENCE. ALTHOUGH THE HUSBAND COMPLAINED AT THE TRIAL THAT HIS BUSINESS SUFFERED, NO BUSINESS RECORDS WERE PRODUCED OR ENTERED INTO EVIDENCE TO SUBSTANTIATE THESE CLAIMS, AND NO RELIEF FROM THE TEMPORARY ORDER WAS OBTAINED.

THE ASSETS OF THE PARTIES INCLUDED THE MARITAL HOME WITH AN EQUITY OF APPROXIMATELY FIFTY TWO THOUSAND DOLLARS ($52,000.00) (R.PGS. 490, 177-178) THE HUSBAND OWNED AN INTEREST IN SEVERAL BUSINESSES WHICH WERE ACQUIRED DURING THE MARRIAGE OF THE PARTIES INCLUDING DRAUGHON AND MARCOUX INTERIOR CONTRACTORS, INC., DRAUGHON AND MARCOUX, INC., AND OTHERS. ALTHOUGH THE HUSBAND SOUGHT TO ESTABLISH AT TRIAL THAT THESE BUSINESSES COMBINED WERE ONLY WORTH EIGHTY THOUSAND DOLLARS ($80,000.00), THE WIFE'S ACCOUNTANT TESTIFIED THAT THE FAIR MARKET VALUE OF THE HUSBAND'S INTEREST IN THESE BUSINESSES COMBINED TOTALED TWO HUNDRED AND NINETY TWO THOUSAND FIVE HUNDRED DOLLARS ($292,500.00). (R.PG. 394) THE HUSBAND NEVER PRODUCED THE RECEIVABLE LEDGERS OF THESE COMAPNIES BUT HE ADMITTED TO APPROXIMATELY FORTY THREE THOUSAND DOLLARS ($43,000.00) OF RECEIVABLES WHICH BROUGHT THE BOOK VALUE OF THE COMPANIES TOTAL TO TWO HUNDRED AND THIRTY THOUSAND DOLLARS ($230,000.00), NOT

INCLUDING ONE HUNDRED THOUSAND DOLLARS ($100,000.00) IN LOANS TO SHAREHOLDERS, OF WHICH THE HUSBAND'S INTEREST WOULD BE ONE HUNDRED AND FIFTEEN THOUSAND DOLLARS ($115,000.00). (R.PG. 695) THE HUSBAND AND HIS PARTNER HAD A BUY/SELL AGREEMENT WHICH INDICATED THE HUSBAND'S INTEREST IN THE BUSINESSES WAS TWO HUNDRED THOUSAND DOLLARS ($200,000.00), (R.PG. 709) AND THE HUSBAND'S ACCOUNTANT EVEN ADMITTED THAT THE STOCKHOLDERS' EQUITY IN THE COMPANY WAS THREE HUNDRED THOUSAND DOLLARS ($300,000.00) AFTER TAXES MAKING THE HUSBAND'S INTEREST ONE HUNDRED AND FIFTY THOUSAND DOLLARS ($150,000.00). (R.PG. 537)

THE HUSBAND ALSO OWNED INTERESTS IN DRAUGHON AND MARCOUX INVESTMENTS, INC. WORTH TO THE HUSBAND TWENTY NINE THOUSAND THREE HUNDRED DOLLARS ($29,300.00) (R.PG. 615) AND BELLA VISTA, INC. WORTH TO THE HUSBAND FIFTY ONE THOUSAND THREE HUNDRED DOLLARS ($51,300.00) (R.PGS. 490, 586) THE COURT SHOULD NOTE THAT THE HUSBAND EVALUATED HIS INTEREST IN BELLA VISTA, INC. AT FIFTY SIX THOUSAND DOLLARS ($56,000.00) (R.PG. 615).

TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE WIFE'S POSITION THE MAJOR ASSETS OF THE PARTIES HAD EQUITY OF APPROXIMATELY FOUR HUNDRED AND TWENTY FIVE THOUSAND DOLLARS ($425,000.00).

THE WIFE HAS LITTLE WORK EXPERIENCE, BUT WORKED DURING THE MARRIAGE DURING TIMES OF NEED SUCH AS WHEN THE HUSBAND WAS LAYED OFF OR STARTING HIS BUSINESS. THE WIFE NEVER MADE MORE

THAN A MINIMUM WAGE AND ALWAYS QUIT HER JOBS WHEN THE HUSBAND ASKED HER TO. (R.PGS. 371-372, 684-686) PRIMARILY, THE WIFE OCCUPIED THE ROLE OF THE TRADITIONAL HOUSEWIFE AND MOTHER AND HELPED THE HUSBAND WITH BOOK WORK AND ERRANDS WHILE HE STARTED HIS BUSINESS VENTURES. THE WIFE ALSO EXPRESSED A DESIRE TO STAY AT HOME AND CARE FOR HER CHILDREN DURING THEIR MINORITY, (R.PGS. 377-379) WHICH DURING THE MARRIAGE WAS THE HUSBAND'S PREFERENCE. (R.PG. 373)

ON THE OTHER HAND, THE HUSBAND HAD ACQUIRED SUBSTANTIAL ABILITIES TO MAKE A LIVING DURING THE MARRIAGE. FOR THE YEAR PRECEDING THE FINAL HEARING IN THIS CAUSE FROM APRIL 1, 1981, THROUGH MARCH 31, 1982, THE HUSBAND TOOK AN AVERAGE OF SEVENTY NINE HUNDRED AND SIXTY EIGHT DOLLARS ($7,968.00) PER MONTH FROM HIS BUSINESSES. (R.PG. 406) DESPITE THESE DRAWS, THE HUSBAND'S BUSINESSES WERE STILL IN A SOLVENT AND PRODUCING CONDITION. (R.PGS. 406-407) IN ADDITION, THERE IS UNREBUTTED EVIDENCE IN THE RECORD THAT THE HUSBAND HAD INCOME NOT REFLECTED ON HIS LEDGER SHEETS. (R.PGS. 702-703, 738-739) THE EVIDENCE FURTHER SHOWED THAT DRAUGHON AND MARCOUX, INC. HAD A BEFORE TAX INCOME FOR THE FISCAL SIX (6) MONTHS ENDING MARCH 31, 1982, OF ONE HUNDRED AND FIFTY EIGHT THOUSAND SIX HUNDRED DOLLARS ($158,600.00) (R.PG. 393).

THE FINAL JUDGMENT EXECUTED BY THE LEARNED TRIAL JUDGE ON NOVEMBER 22, 1982, PROVIDES, INTER ALIA, THAT AS AND FOR PERMANENT

PERIODIC ALIMONY THE HUSBAND SHALL PAY TO THE WIFE THE SUM OF TWELVE HUNDRED AND FIFTY DOLLARS ($1,250.00) PER MONTH WITH AN AUTOMATIC REDUCTION AT THE TIME THE MINOR CHILDREN OF THE PARTIES ARE EMANCIPATED TO SEVEN HUNDRED AND FIFTY DOLLARS ($750.00) PER MONTH. THE FINAL JUDGMENT ALSO AWARDS THE WIFE A ONE HUNDRED THOUSAND DOLLAR ($100,000.00) LUMP SUM ALIMONY PAYABLE ANNUALLY WITH ACCUMULATED INTEREST ON A DECLINING BALANCE AT THE RATE OF EIGHT PERCENT (8%) PAYABLE YEARLY FOR TEN (10) YEARS.

THE ONLY SUBSTANTIAL LUMP SUM AWARD WHICH THE WIFE RECEIVED AT THE TIME OF THE FINAL JUDGMENT WAS ONE-HALF OF THE FIFTY TWO THOUSAND DOLLAR ($52,000.00) EQUITY IN HER HOME. THIS LEFT THE HUSBAND WITH APPROXIMATELY THREE HUNDRED AND SEVENTY THREE THOUSAND DOLLARS ($373,000.00) IN ASSETS FROM WHICH HE WOULD HAVE TO PAY THE WIFE ONE HUNDRED THOUSAND DOLLARS ($100,000.00) WITH EIGHT PERCENT (8%) INTEREST OVER A PERIOD OF TEN (10) YEARS. IF THE HUSBAND'S DRAWS FROM HIS BUSINESS WERE TO CONTINUE AS THEY DID FOR THE YEAR PRIOR TO THE TRIAL OF THIS CAUSE, HIS FIRST YEAR'S PAYMENTS TO HIS WIFE INCLUDING THE LUMP SUM ALIMONY AWARD WITH INTEREST AND THE ATTORNEY'S FEE AWARD WOULD AMOUNT TO APPROXIMATELY ONE-HALF OF HIS DRAWS WITH THE AMOUNT IN THE SECOND YEAR FOR ALIMONY AND CHILD SUPPORT INCLUDING THE LUMP SUM AWARD BEING LESS THAN FORTY PERCENT (40%) OF HIS DRAWS.

THIS COURT SHOULD ALSO TAKE NOTE OF THE FACT THAT ALTHOUGH THE WIFE'S ATTORNEY AND EXPERTS WERE AWARDED NINETY SIX HUNDRED AND FIFTY DOLLARS ($9,650.00) THAT THE WIFE'S ATTORNEY EXPENDED 103.25 HOURS IN THE CASE THROUGH THE TRIAL AND SIXTY TWO HUNDRED AND TWENTY ONE DOLLARS AND THIRTY NINE CENTS ($6,221.39) IN COSTS. THE AMOUNTS AWARDED TO THE WIFE'S ATTORNEY ARE LESS THAN SIXTY FIVE PERCENT (65%) OF WHAT WAS SOUGHT. (R.PG. 307-311)

ARGUMENT

DO CONNER v. CONNER, 439 So.2D 887 (FLA. 1983) AND KUVIN v. KUVIN, 442 So.2D 203 (FLA. 1983), LIMIT THE SCOPE OF APPELLATE REVIEW ENUNCIATED IN CANAKARIS v. CANAKARIS, 382 So.2D 1197 (FLA. 1980)?

THE BRIEF FILED BY THE HUSBAND HEREIN, THE ACADEMY OF FLORIDA TRIAL LAWYERS, AND THE FAMILY LAW SECTION OF THE FLORIDA BAR ALL ARGUE THAT THE QUESTION CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE SHOULD BE ANSWERED IN THE NEGATIVE. THE WIFE AGREES. THE AREA OF DEPARTURE, WHICH IS WHY THE HUSBAND AND THE WIFE ARE HERE, IS IN THE INTERPRETATION OF THE FACTS WHICH WERE HEARD BY THE LEARNED TRIAL JUDGE UPON WHICH HE BASED HIS DECISIONS. THE WIFE SUBMITS THAT WHERE, AS HERE, THERE IS SUBSTANTIAL COMPETENT EVIDENCE IN THE RECORD FROM WHICH THE TRIAL COURT COULD HAVE REACHED THE CONCLUSION IT DID, THAT THE TRIAL COURT MUST BE AFFIRMED BY THE DISTRICT COURTS OF APPEAL, HOWEVER RELUCTANTLY, BECAUSE IT IS NOT THE FUNCTION OF APPELLATE TRIBUNALS TO SUBSTITUTE THEIR VIEW OF THE FACTS FOR THE TRIAL COURT'S.

IN SAFFOLD BROS. PRODUCE CO. v. WINN & LOVETT GROCERY CO. ET AL, 149 SO.1 (FLA. 1933) THIS COURT OPINED:

> "THE CASE TURNED UPON QUESTIONS OF FACT. THE EVIDENCE WAS FULL, NOT TO SAY VOLUMINOUS. THERE APPEAR IN IT MANY SUSPICIOUS CIRCUMSTANCES WHICH SEEM TO JUSTIFY THE

> BRINGING OF THE SUIT, BUT IT IS NOT PROPER NOR WITHIN THE POWER OF THIS COURT WHERE THE EVIDENCE DOES NOT CLEARLY DISCLOSE ERROR IN THE CHANCELLOR'S FINDINGS AND CONCLUSIONS TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE CHANCELLOR. NOR EVEN WHERE THE EVIDENCE IS CONFLICTING IS IT WITHIN THE PROVINCE OF THIS COURT TO SET ASIDE THE CHANCELLOR'S FINDINGS UPON THE FACTS AND SUBSTITUTE FOR THEM THE OPINION OF THIS COURT AS TO THE DEDUCTIONS WHICH SHOULD BE DRAWN FROM THE FACTS AS IT VIEWS THEM. SUCH IS NOT THE PROVINCE OF AN APPELLATE COURT. ITS DOMAIN OF AUTHORITY LIES WITHIN THAT FIELD IN WHICH THE APPELLANT HAS MADE IT CLEARLY TO APPEAR THAT THE CHANCELLOR HAS ERRED SUBSTANTIALLY TO THE INJURY OF THE APPELLANT. SEE WATERMAN v. HIGGINS, 28 FLA. 660, 10 So. 97; BOTHAMLY v. QUEAL, 58 FLA. 396, 50 So. 415; THEISEN v. WHIDDON, 60 FLA. 372, 53 So. 642; SHAD v. SMITH, 74 FLA. 324, 76 So. 897; GUGGENHEIMER v. DAVIDSON, 74 FLA. 485, 77 So. 266; SANDLIN v. HUNTER CO., 70 FLA. 514, 70 So. 553; ROUTH v. RICHARDS, 103 FLA. 757, 138 So. 72; HEINISCH v. MILLS, 100 FLA. 1600, 132 So. 109; LESNOFF v. BECKER, 101 FLA. 716, 135 So. 146; EMPIRE LUMBER CO. v. MORRIS, 102 FLA. 226, 135 So. 508."

SEE ALSO DURHAM v. DURHAM, 188 So. 609 (FLA. 1939) AND PARSONS ET AL. v. FEDERAL REALTY CORPORATION ET AL, 143 So. 912 (FLA. 1931).

INDEED, IN GOLDFARB v. ROBERTSON, 82 So.2D 504 (FLA 1955) THIS COURT HELD:

> "NO AUTHORITY NEEDS TO BE CITED FOR THE PROPOSITION THAT THIS COURT IS NOT ENTITLED TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COURT ON QUESTIONS OF FACT, LIKEWISE OF THE CREDIBILITY OF THE WITNESSES AS WELL AS THE WEIGHT TO BE GIVEN TO THE EVIDENCE BY THE TRIAL COURT."

In BRENNER v. SMULLIAN, 34 So.2d 44 (Fla. 1955) this Court again concluded:

> "On appeal this court does not decide a case based upon how they would have decided the case had they heard the original testimony, but only whether there was sufficient evidence in the record to justify the lower court's decision."

The Wife submits that there is nothing which has rendered antiquated the above stated general principles regarding the scope of Appellate review in areas committed to the Court's discretion. In fact, with the ever growing case loads in Appellate Courts it is submitted that the rationale behind the above stated principles is further embellished. More recently this Court has and continues to reverse District Courts Of Appeal where they seek in reviewing the facts to substitute their judgment for that of the Trial Judge. See CRAIN & CROUSE, INC. v. PALM BAY TOWERS CORPORATION, 326 So.2d 182 (Fla. 1976), SHAW v. SHAW, 334 So.2d 13 (Fla. 1976), HERZOG v. HERZOG, 346 So.2d 56 (Fla. 1977), ROSENBERG v. ROSENBERG, 371 So.2d 672 (Fla. 1979), CONNER v. CONNER, 439 So.2d 887 (Fla. 1983), and KUVIN v. KUVIN, 442 So.2d 203 (Fla. 1983).

In its decision in the instant case the Fourth District Court Of Appeal opines:

> "THE CRUX OF THIS CASE IS THE VALUATION PLACED ON DRAUGHON AND MARCOUX, INC. AT THE HEARING, THE TRIAL COURT HEARD TESTIMONY FROM EACH PARTY'S ACCOUNTANT. BOTH ACCOUNTANTS AGREED THAT THE HUSBAND'S CORPORATION HAS A BOOK VALUE OF $160,000 SO THAT UPON LIQUIDATION, THE HUSBAND WOULD RECEIVE APPROXIMATELY $80,000. HOWEVER, THE WIFE'S ACCOUNTANT WENT FURTHER AND ADDED $325,000 FOR GOOD WILL VALUING THE BUSINESS AT $585,000. THUS, ACCORDING TO THE WIFE'S ACCOUNTANT, THE HUSBAND'S INTEREST IN THE BUSINESS IS WORTH $292,500. ... BASED ON THIS AWARD, HOWEVER, WE CAN ASSUME THAT THE COURT DID DETERMINE THAT THE CORPORATION HAD SOME SUBSTANTIAL GOOD WILL VALUE. THIS CORPORATION WAS ESSENTIALLY A SMALL CLOSELY HELD PERSONAL SERVICE BUSINESS AND WE DOUBT ITS SUBSTANTIAL GOOD WILL VALUE." (EMPHASIS SUPPLIED)

THUS, IT IS APPARENT FROM THE FACE OF THE DISTRICT COURT'S OPINION THAT THE COURT IS SUBSTITUTING ITS VIEW OF THE FACTS REGARDING THE GOOD WILL VALUE OF THE BUSINESS FOR THAT OF THE TRIAL COURT. THE APPELLATE TRIBUNAL CONCEDES THAT IT CANNOT CONCLUDE THAT AS A MATTER OF LAW THE TRIAL JUDGE ERRED IN ATTRIBUTING SUBSTANTIAL GOOD WILL VALUE TO THE BUSINESS. THE WIFE SUBMITS THAT BASED UPON THE RECORD BELOW AND THE LAW THE FOURTH DISTRICT WOULD HAVE COMMITTED REVERSIBLE ERROR ITSELF HAD IT CONCLUDED THAT AS A MATTER OF LAW THE BUSINESS HAD NO SUBSTANTIAL GOOD WILL VALUE. SEE SWANN v. MITCHELL, 435 So.2D 797 (FLA. 1983).

THE APPELLATE TRIBUNAL AT BAR CONCLUDES THAT ALTHOUGH IN THEIR VIEW THE HUSBAND HAS BEEN SHORTCHANGED CONNER v. CONNER, SUPRA, AND KUVIN v. KUVIN, SUPRA, PRECLUDES THE DISTRICT COURT FROM REVERSING THE TRIAL COURT WHEN IT DETERMINES THAT A PARTY HAS BEEN SHORTCHANGED. THE WIFE SUBMITS THAT THE FOURTH DISTRICT COURT HAS MISREAD THE IMPACT OF CONNER v. CONNER, SUPRA, AND KUVIN v. KUVIN, SUPRA. THE PERTINENT LANGUAGE FROM CONNER IS:

> "NONETHELESS, THE DETERMINATION THAT A PARTY HAS BEEN 'SHORTCHANGED' IS AN ISSUE OF FACT AND NOT ONE OF LAW, AND IN MAKING THAT DETERMINATION ON THE FACTS BEFORE IT IN THE INSTANT CASE, THE DISTRICT COURT EXCEEDED THE SCOPE OF APPELLATE REVIEW." (EMPHASIS SUPPLIED)

CONNER HAS SIMPLY REANNOUNCED THE PRINCIPLES OF SHAW v. SHAW AND ITS PROGENITORS CITED HEREIN THAT:

> "THE CIRCUIT JUDGE WAS THE DECISION MAKER IN THE BEST POSITION TO DETERMINE WHAT WOULD BE AN EQUITABLE DISTRIBUTION OF THE MARITAL ASSETS AND THE EXTENT OF THE WIFE'S CONTRIBUTIONS TO THE ACQUISITION THEREOF, AS WELL AS THE FUTURE RESOURCES, PROSPECTS, AND NEEDS OF THE PARTIES. IN SUBSTITUTING ITS JUDGMENT FOR HIS, THE DISTRICT COURT EXCEEDED THE PROPER SCOPE OF APPELLATE REVIEW." CONNER v. CONNER, SUPRA, FROM JUSTICE BOYD'S CONCURRING DECISION.

NOR HAS KUVIN v. KUVIN, SUPRA, IN ANY WAY LIMITED THE SCOPE OF APPELLATE REVIEW IN MATRIMONIAL MATTERS AS IT MERELY

CITES SHAW FOR THE PRINCIPLE THAT:

> "'IT IS NOT THE FUNCTION OF THE APPELLATE COURT TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COURT THROUGH RE-EVALUATION OF THE TESTIMONY AND EVIDENCE BUT RATHER THE TEST IS 'WHETHER THE JUDGMENT OF THE TRIAL COURT IS SUPPORTED BY COMPETENT EVIDENCE'"

THE WIFE SUBMITS THAT THE FOURTH DISTRICT COURT OF APPEALS WAS WELL AWARE OF ITS LIMITED SCOPE OF REVIEW IN MATRIMONIAL MATTERS PRIOR TO THE DECISIONS WHICH HAVE BEEN SUBMITTED AS LIMITING SUCH REVIEW AS IN SCHUTTLER v. SCHUTTLER, 429 So.2D 1338 (FLA. 4TH DCA 1983) THE COURT HELD:

> "WE APPROVE THE PROVISIONS FOR ALIMONY AND DISTRIBUTION OF THE MARITAL ASSETS AS BEING WITHIN THE BOUNDS OF DISCRETION SET OUT IN CANAKARIS v. CANAKARIS, 382 So.2D 1197 (FLA. 1980). WE ARE SIMPLY NOT PERMITTED TO SUBSTITUTE OUR OPINION ON THOSE ISSUES IF REASONABLE PERSONS COULD DIFFER AS TO THE RESULTS."

CONCLUSION

BASED ON THE FOREGOING ARGUMENT AND AUTHORITIES, THE WIFE RESPECTFULLY SUBMITS THAT THE CERTIFIED QUESTION ON APPEAL SHOULD BE ANSWERED IN THE NEGATIVE AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL ON REVIEW HEREIN MUST BE AFFIRMED.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE RESPONDENT'S ANSWER BRIEF WAS MAILED TO GARY L. RUDOLF, ESQUIRE OF ENGLISH, MCCAUGHAN & O'BRYAN, 301 EAST LAS OLAS BOULEVARD, FORT LAUDERDALE, FLORIDA 33302, ATTORNEYS FOR PETITIONER; RIHCARD A. KUPFER, ESQUIRE, OF CONE, WAGNER, NUGENT, JOHNSON, HAZOURI & ROTH, P.A., SERVICE CENTRE EAST, SUITE 400, 1601 BELVEDERE ROAD, WEST PALM BEACH, FL 33402; CYNTHIA L. GREENE, LAW OFFICES OF MELVYN B. FRUMKES, P.A., 100 NORTH BISCAYNE BOULEVARD, MIAMI, FLORIDA 33132; AND EVAN LANGBEIN, ESQUIRE, 908 CITY NATIONAL BANK BUILDING, 25 WEST FLAGLER STREET, MIAMI, FLORIDA 33130, THIS 8TH DAY OF MAY, 1984.

WILLIAM I. ZIMMERMAN, P.A.