OA 4-10-85 017

26

IN THE SUPREME COURT OF FLORIDA

CASE NO: 65,499

SUSAN M. STREGACK, as Personal Representative of the Estate of MANUEL MOLDOFSKY, Deceased,

Petitioner,

vs.

SALLY D. MOLDOFSKY,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

Review from the Third District Court of Appeal Case 83-1725 and 83-1754

An Appeal from Dade County Circuit Court Case No.: 82-9188 (CP 04) and 83-13648 (CA-11) Judge Edmund Newbold and Judge Milton Friedman

FERDIE AND GOUZ
Attorneys for Petitioner
717 Ponce de Leon Boulevard
Suite 215
Coral Gables, Florida 33134
Telephone: (305) 445-3557

TABLE OF CONTENTS

TABLE OF CASES AND OTHER AUTHORITIES

CONTINUATION OF TABLE OF CASES AND OTHER AUTHORITIES

TABLE OF OTHER AUTHORITIES

FLORIDA STATUTES

STATEMENT OF THE FACTS AND THE CASE

"R" refers to Record on Appeal in the Third District Court; "A" refers to Appendix filed by Petitioner in connection with Jurisdiction Brief; AA to the Appendix filed with Brief; D to the Deposition of Sally Moldofsky which is part of the Record.

Sally Goldberg a resident of New Jersey and previously married desired to marry Manuel Moldofsky, a resident of New York and also previously married. Sally had no children and Manuel had a daughter Susan Stregack (formerly Susan Rhoda Maldon).

Sally had her lawyer prepare a written Pre-Nuptial Agreement and she signed it and had it acknowledged on November 17, 1966, and had it dated November 17, 1966.

The agreement recited that "Sally is the owner of Personal Property in her own right" and "Manuel is the owner of Real and Personal Property in his own right".

The agreement provided in paragraph 3 for a complete waiver by Sally of "all claims to any allowance, dower or any other rights in and to the real and personal estate of Manuel". Paragraph 2 is a reciprocal waiver by Manuel. Paragraph 4 is an additional waiver of "any right to claim in and to the real or personal property of the other, but the estate of such shall descend...as may be directed by his or her Last Will and Testament". (AA-1)

The parties, Sally and Manuel, were married in New York on or after November 23, 1966.

The agreement recites that Manuel signed the agreement on November 17, 1966. The acknowledgement was dated January 13, 1967.

In November 1966, Sally had some money, some stock, (which she still had) which she inherited from her mother and her late husband (Goldberg) (R130, D14). The only disclosure by either party was the recital in the agreement. Sally did not tell Manuel or her Lawyer what she had at the time (D35, R151).

About 6 months or a year after the marriage Sally gave up her apartment in New Jersey and moved to Manuel's house in Brooklyn, New York, (D39, R155). Sometime later Sally moved to Florida (D40, R156).

On April 16, 1973, an agreement was signed in Florida by which Manuel gave Sally $10,000.00. The agreement excepted the Ante-Nuptial Agreement (D-Exhibit 2; R173-176).

Manuel died testate on November 1, 1982 leaving his estate to Susan (R12). The will specifically excluded Sally and referred to the Pre-Nuptial Agreement (¶8). The will was dated, witnessed and notarized in Florida on January 18, 1977.

Susan was appointed Personal Representative and Letters of Administration were issued November 30, 1982 (R8) Formal Notice of Letters of Administration and Notice of Letters of Administration with Petition for Administration reciting the Ante-Nuptial Agreement waiver were served on Sally (R12,13) and Proof of Service was filed on December 20, 1982.

Sally D. Moldofsky filed a document entitled Election to Take Elective Share dated March 4, 1983 and filed on March 7, 1983 (R23). On March 23, 1983 an Objection to Election to Take Elective Share and Motion to Strike Election to take Elective Share was filed (R25-32). A Response to the Objection was filed April 18, 1983 (R34-35). On May 26, 1983 the Probate Judge entered an Order Striking Election to Take Elective Share. (R235-237, A1-3) Motion for Rehearing was filed on June 3, 1983 and denied by the Order filed on June 29, 1983. (R238)

On April 18, 1983 during the pendency of the above, a Complaint was filed in the General Jurisdiction Division (R180-192). The complaint provided in part the following:

> " 6. On or about November 17, 1966, just prior to the marriage of the Plaintiff and the decedent, the parties entered into an Antenuptial Agreement, a copy of which is attached hereto and made a part hereof, marked Exhibit "C".

The copy of the Pre-Nuptial Agreement which was attached to the Complaint is the same agreement referred to above and filed with the Objection to take Elective Share. (R25-32)

On May 6, 1983 the Defendant in that case filed Motion to Dismiss (R198). The Motion was granted with Prejudice by the Order filed June 24, 1983. (R239, A4) A Motion for Rehearing was filed on July 5, 1983 (R230-231) and the Motion for Rehearing was denied on July 22, 1983. (R240) Appeals were filed in both cases, and the appeals were consolidated. The Appellee Moved to Dismiss the Probate appeal on jurisdictional grounds (A5-7) but

the Appellate Court denied that Motion. (A8) The appeal resulted in an opinion on April 24, 1984 reversing the Trial Court's Orders, by a divided panel 2-1. (A9-14) Motion for Rehearing was denied (A15) and Petition for Review was filed in this Court and Review was granted by Order dated January 9, 1985.

The record reflects that no response was made by Sally D. Moldofsky to the Formal Notice of the Petition for Administration and Notice of Administration.

Sally D. Moldofsky did not serve any formal notice of any proceedings in the probate and never obtained a determination that any probate proceeding was adversary.

POINT I

DOES SECTION 732.702 FLORIDA STATUTE (1983) WHICH ELIMINATES THE NEED FOR FAIR DISCLOSURE FOR A VALID ANTE-NUPTIAL AGREEMENT IN THE PROBATE CONTEXT, PRECLUDE THE SURVIVING SPOUSE FROM CHALLENGING SUCH AN AGREEMENT ON THE GROUNDS OF FRAUDULENT NON DISCLOSURE.

ARGUMENT

The above language is how Judge Nesbit in his opinion stated the question decided by the Third District. The question should perhaps be divided into subparts as follows:

a) The basic question.

b) The application of the question to the facts of this particular case.

c) The purposes and underlying policy involved.

The question really contains a non-sequitar. If there is no duty to disclose, how can non disclosure be fraudulent in an actionable sense? As will be shown later, Judge Nesbit's interpretations could result in all Pre-Nuptial Agreements being subjected to attack on the death of either party.

The statute provides as follows:

> "(1) The right of election of a surviving spouse, the rights of the surviving spouse as intestate successor or as a pretermitted spouse, and the rights of the surviving spouse to homestead, exempt property, and family allowance, or any of them, may be waived wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation,

> dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead property, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to either from the other by intestate succession or by the provisions of any will executed before the waiver or property settlement."
>
> "(2) Each spouse shall make a fair disclosure to the other of his or her estate if the agreement, contract, or waiver is executed after marriage. No disclosure shall be required for an agreement, contract, or waiver executed before marriage."
>
> "(3) No consideration other than the execution of the agreement, contract, or waiver shall be necessary to its validity whether executed before or after marriage."

The case arises because Sally Moldofsky against the will and Ante-Nuptial Agreement filed a Notice of Elective Share.

An Ante-Nuptial Agreement bars elective share, even though the right to elective share arose after marriage. Estate of Garcia v. Garcia, 399 So.2d 486 (Fla. 3rd DCA 1981) Cert. den 407 So.2d 1103. In Garcia, the Court upheld as a valid waiver the right to an Elective Share, declining to accept an argument of "after acquired rights." The Court disagreed for the following reasons:

> "We disagree for reasons based on logic as well as law. It is obvious that at the time the husband relinquished his rights he could not predict the condition or size his wife's estate would attain twenty years later. He was, in effect, surrendering rights to unknown or undetermined assets, not only because the future is unforeseable, but also because under section 732.702, Florida Statutes (1977), disclosure in antenuptial agreements is unnecessary."

FS. 732.702(2) has displaced the standard of disclosure of Del Vecchio v. Del Vecchio, 143 So.2d 17 (Fla. 1962), in a Probate matter, In Re Estate of Reed, 354 So.2d 864 (Fla. 1978).

Failure to make full and fair disclosure cannot void an Ante-Nuptial Agreement in Probate context. Topper v. Stewart, 388 So.2d 1270 (Fla. 3rd DCA 1980). FS. 732.702(2) is constitutional and has altered one of the elements that a court may consider. Estate of Roberts, 388 So.2d 216 (Fla. 1980). The statute abrogates the requirement of full, fair and open disclosure required by Del Vecchio. The present case is based solely on disclosure and not coercion or other grounds as are allowed, Roberts, supra.

An oral Antenuptial Agreement made before marriage and reduced to writing after will be enforceable. Flagship National Bank v. King, 418 So.2d 275 (Fla. 3rd DCA 1982). The Court cited as rationale:

> "The obvious reasons for the statute's elimination of the disclosure requirement in the antenuptial situation only are simultaneously to encourage marriage and to recognize that the respective financial duties and responsibilities which marriage itself entails are sufficient bulwarks against the possibility of a spouse's being disadvantaged by an agreement which is not based upon a reasonable understanding of the extent of the other's resources".

In footnote #8 of that case this Court looked with approval to the language in Re Estate of Davis, 20 N.Y. 70, 281 N.Y. S.2d 767, 228 NE.2d 768 (1967) a New York decision.

> "She now asserts that she was not informed of the value of the husband's property and was therefore defrauded, when she well knew at the time she was getting no property at all. If she knew that she was to get nothing, as she did, a failure to disclose the value of the husband's property appears to have been of little consequence to her at the time"); In re Estate of Davis, 20 N.Y.2d 70, 281 N.Y.S.2d 767, 228 N.E.2d 768, 770 (1967) (no requirement of disclosure even if husband wealthier than wife, since "[i]f she had predeceased her husband he could have asserted no claim against her estate. It requires more than the circumstances here to rule that this agreement gave her the option to abide the event of which died before the other, being sure that if she predeceased him he could not take any of her estate against her children, but leaving it open to her, if old mortality turned the other way, to take against his will...as though no agreement had been made.")

New York was the place of the Moldofsky marriage although the Antenuptial Agreement was prepared for Sally Moldofsky by her New Jersey attorney at her request.

In Weintraub v. Weintraub, 417 So.2d 629 (Fla. 1982) the Court pointed out that even in Del Vecchio the absence of a fair and reasonable provision, the agreement "...may still be upheld if the less secure party entered into it with an understanding of the rights waived." Sally made no assertion of lack of understanding of the rights waived, and indeed filed separate tax returns and maintained separate assets.

The sole substantive claim is related to disclosure. The agreement specifically recites that the decedent had real estate

and personal property, without detailing the same. The statutory provision is applicable to bar attempts to void the agreement after death on grounds of public policy. The attempt to circumvent the clear language of the agreement and judicial precedents constitute a frivolous effort to circumvent clear and present law.

In the case of Coleman v. Estate of Coleman, 439 So.2d 1016 (Fla. 1st DCA 1983), the Appellate Court considered an appeal from the Circuit Court of Alachua County, which had struck a document entitled "Election of surviving spouses' elective share under Florida Statute 732.201." The trial court further had denied the Appellant's motion to amend her pleadings since the claims would not constitute a valid avoidness of the Pre-Nuptial Agreement. In discussing the law the 1st District Court of Appeal held as follows:

> "Appellant's arguments center around Del Vecchio v. Del Vecchio, 143 So. 2d 17 (Fla. 1962) and the effect on that case of Section 732.702, Florida Statutes. In Del Vecchio the court held, in the probate context, that in order for an antenuptial agreement to be valid, it must contemplate fair and reasonable provision for the wife or full and fair disclosure to her, before signing the agreement, of the husband's worth, or absent disclosure, a general knowledge by her of the husband's property. This rule was extended to the dissolution context in Posner v. Posner, 233 So. 2d 381 (Fla. 1970). Subsequent to these decisions, however, the legislature added Section 732.702(2) pertaining to antenuptial agreements and a surviving spouse's rights:

> Each spouse shall make a fair disclosure of the other of his or her estate if the agreement, contract, or waiver is executed after marriage. No disclosure shall be required for an agreement, contract, or waiver executed before marriage. (e.s.)'

This nullified the holding in Del Vecchio in the probate context. See Weintraub v. Weintraub, 417 So. 2d 629 (Fla. 1982): Flagship National Bank v. King. 418 So. 2d 275 (Fla. 3dDCA 1982).

Appellant has attempted to set forth two requirements derived from Del Vecchio-(1) disclosure and (2) knowledge of the rights being waived, and to argue that only the first requirement has been abrogated by statute. It has been held, however, that in "(t)he absence of a statutory disclosure requirement for ante nuptial agreements...a spouse may waive a right to unknown assets." Estate of Garcia v. Garcia, 399 So. 2d 486 (Fla. 3rd DCA 1981).

Appellant also relies on language in Estate of Roberts, 388 So. 2d 216 (Fla. 1980), that "(t)he legislature has not abolished the wife's right to sue; it has only altered one of the elements that the court may consider in determining the validity of an antenuptial agreement." The Roberts court also said "(t)he right to have an antenuptial agreement set aside still exists. For example, if a wife were able to show that her signature on such an agreement had been coerced or otherwise improperly obtained or that she was incompetent at the time she signed, section 732.702(2) would not bar her challenge to the validity of the agreement." Appellant has not suggested similar attacks on the validity of the instant agreement, however, her challenges are all variations on the disclosure theme.

Appellant argues her husband affirmatively misled her as to his worth and that this situation is not encompassed within the nondisclosure rule. Appellee responds that appellant's allegations of affirmative misrepresentation, consisting of Howard's alleged statements to her, would be inadmissible because of the Dead Man Statute, and we agree. Section 90.602(1), Florida Statutes provides:

> No person interested in an action or proceeding against the personal representative, heir-at-law-, assignee, legatee, devisee, or survivor of a deceased person...shall be examined as a witness regarding any oral communication between the person and the person who is deceased....

Appellant does not fit within any of the exceptions to this provision listed in section 90.602(2). See Estate of Parson, 416 So. 2d 513 (Fla. 4th DCA 1982).

Finally, appellant argues that by the terms of the agreement, Howard agreed to make full disclosure as a condition precedent to the agreement despite the statutory provision that no disclosure is required. The agreement states:

> Each party does specifically agree that this agreement is entered into with a full disclosure by the other and with a full knowledge by the other of the extent and probable value of the estate of each and all rights conferred by law upon each party in the estate of the other by virtue of the said marriage.

We agree with appellee, however, that this was not an agreement to disclose nor a condition precedent to the agreement but a statement that disclosure had been made before the parties entered the agreement and a waiver as to any other rights of disclosure.

To summarize, since no disclosure is required in order for an antenuptial agreement to be valid in the probate context, and appellant's arguments focus on disclosure, we think the trial court did not abuse its discretion in denying leave to amend."

The above principles are in keeping with the policy principles in this State.

The Second District agreed with those principles and arrived at the same results in Ellis First Nat. Bank of W. Pasco v.

Downing, 443 So.2d 337 (Fla. 2nd DCA 1983). Ellis discussed Lutgert v. Lutgert, 338 So.2d 1111 (Fla. 2nd DCA 1976) concluding the test was inapplicable to the Probate Context. That principal was also involved In Re Estate of Edsell, 447 So. 263 (Fla. 3rd DCA 1983) which is believed to be presently before this Court for review.

In Edsell, Judge Ferguson in his dissent cited Ellis and said as follows:

> "The policy reasons are obvious. In most cases the only witness to circumstances surrounding execution of the ante-nuptial agreement is the other party whose lips are sealed by death."

The statement is even more obvious as to disclosure prior to the preparation of the agreement. However, these are not applicable in any event, because overreaching and coercion are not issues in Moldofsky. Indeed, if there was any coercion it was on Salley's part since she insisted on the agreement.

The history of spousal rights is repleat with historical principals since the first descent and distribution law was declared by Moses in the wilderness and was soon amended by reason of a woman's disaffection.

English primogeniture and widow's rights have their place in history,too. Eleanor brought aquitaine as dower to Henry II. Her dower did not extend to Henry's Crown Lands.

Rights were further defined by the Statute of Wills:

> "In English law. The statute 32 Hen. VIII. c, 1, which enacted that all persons being seised

> in fee-simple (except femes covert, infants, idiots, and persons of non-sane memory) might, by will and testament in writing, devise to any other person, except to bodies corporate, two-thirds of their lands, tenements, and hereditaments, held in chivalry, and the whole of those held in socage".
>
> Blacks Law Dictionary

Indeed the checkered history of curtesy and dower, Elective Share, Law of Descent and Distribution, has resulted in the present substantive governing law being reduced to the writing collectively known as the Florida Probate Code. Thus by direction and implication historical theories and common law become relegated to the musty museums of study and have no place in the practical, pragmatic, problems of contemporary Florida society in the Probate context.

Florida is among the state leaders in numbers where marriage occurs among the older population, and frequently such marriages and shared living are for purposes of companionship and reduced living costs with Pre-Nuptial Agreements for the preservation of family assets to descend to children and family otherwise acquired prior to this subsequent marriage.

The device most commonly used to accomplish this is an Ante-Nuptial agreement, although other devices i.e. trusts etc. might be used. Faced with attacks based on disclosure made after one spouse's death, the legislature modified the Del Vecchio standards by the Probate Code, Florida Statute 732.702. This court has upheld the constitionality of the act in the Probate Context.

The dead spouse is not able to anticipate, defend, or testify in his order own behalf when an attack is not made on the agreement until after death. The marriage in this case lasted 16 years but the wife was already in her 60's when the marriage was contracted.

The response to request for admission dated April 15, 1983 places the wife's claim of "fraud" in perspective by stating as follows:

> "...nor does she admit that the document so attached constitutes the agreement of the parties, inasmuch as no disclosure of financial worth was furnished by the decedent to the widow, except for decedent's statement that he was substantially without funds; had no appreciable assets; and "could do nothing for her".

The sands of this illusive claim do not provide a foundation to build a house of fraud. The elements of Common-Law Fraud are false statement by Defendant regarding material fact, Defendant's knowledge of its falsity and intention that the lie be acted on, and injury caused by reasonable reliance on representation. A.S.J. Drugs, Inc., v. Berkowitz, 459 So.2d 348 (Fla. 4th DCA 1984).

Since Sally is the one who insisted on the agreement and made no disclosure, if there was fraud, it is her fraud which she should not benefit from. After the Husband told her he would do nothing for her, the Wife waived all her rights notwithstanding such knowledge. If the parties were not married,

there would be no rights. Consequently, even under any standard, there could be no reliance.

What was in 1966 and what is in 1985 are two different things. The Federal Cost of Living Index on January 1, 1967, immediately after the marriage was 100. When Manuel died on November 1, 1982 it was standing at 293.6, or almost triple. In 1973 as part of the community living habits and condominium claims Manuel gave Sally $10,000.00 (The condominium as tenants by the Entireties and was not subject to Probate and went to Sally by operation of law).

It is fundamental that a court will enforce an agreement made by the parties, particularly where as here the marriage was terminated by the death of one spouse.

It is the evil of manufactured fraud after death that outweighs the claimed evil that there might be some fraud in the disclosure in connection with the original marriage.

How should the above principals be applied to this case? The fraud asserted is "non disclosure". The wife contracted the marriage despite the Husband's flat statement he "could do nothing for her". She did not disclose her assets. She did not mingle her bonds and cash with his. She did not disclose to him her inheritance. She knew he had a job with the State of New York. She knew he had retirement fund rights. She knew he had a house in Brooklyn. (See D)

If he had no duty to disclose, how can a lack of disclosure be fraudulent? If non-disclosure is no longer a factor in

attacking Ante-Nuptial Agreements, why go further? The Estoppel of 16 years, acceptance of the $10,000.00 in 1973, and the other benefits indicate that the Trial Courts even if not right on the first basis, are right because of estoppel? Even if estoppel were not apparent the rules require fraud to be pled with particularity. The pleadings avoid it but the admissions of counsel in the pleadings, and Answer to Request for Admissions and Sally in her deposition made it clear that Sally had the agreement prepared and the disclosure or lack of it was because (a) She did not even tell her attorney what she had; (b) she did not tell Manuel what she had; (c) Manuel did not tell her what he had; (d) she did not require Manuel to tell her, but only to sign the agreement, which she had prepared as a condition to marriage.

The I "could do nothing for you", whether as a statement based on obligation to his deceased Wife and the child of that union, or as an opinion, does not constitute a basis for fraud sufficient to set aside a performed contract, or a waiver of rights voluntarily entered into. The consideration for the agreement was the marriage relationship itself.

It is therefore clear that the certainty of the law in Florida on Ante-Nuptial Agreements requires an upholding of the principal enunciated in Coleman supra and the affirmance of Judge Newbold and Judge Friedman's orders, and the adoption of Judge Barkdull's dissent.

There in nothing more likely to lead to fraud than to advocate a position that allows the fortune hunter in the silver

haired community the chance to roll the dice, survive the spouse, and attack the Ante-Nuptial Agreement, and take the lifetime of work away from the children of the blood and avoid the agreement.

Why not full disclosure? Will that provide the tool to cajole, entice, coerce, and dispose assets from the living spouse until the fruit has been pressed dry, and then discard the remaining core? Such could well be the effect of holding that "fraudulent non-disclosure" is a grounds to set aside an agreement. The only defense would then be "full disclosure", an evil the legislature abrogated. It is our belief that the holdings of this court have upheld that principal i.e., that disclosure not being required in the probate context, non-disclosure whether "fraudulent" or "non fraudulent" is not grounds to attack a prenuptial agreement voluntarily entered into in the probate context. The holding of In Re Estate of Reed, 354 So.2d 864 (Fla. 1978), that the element of disclosure as a basis of action has been displaced should still be followed.

POINT II

BASED ON THE PROBATE PROCEDURES THE CLAIM WAS PROPERLY BARRED

The Trial Court found, in part, as follows:

> 4. Formal notice of the Petition for Admininistration and the Notice of Administration were served in accordance with the law on Sally D. Moldofsky on December 4, 1982. The Election to to Take Elective Share is dated March 4, 1983 and was filed March 7, 1983.
>
> 5. The Petition for Administration specifically makes reference to the (above) Antenuptial Agreement. No action or pleading questioning the Antenuptial Agreement was filed until Sally D. Moldofsky's response to the Personal Representative objection to the election to take elective shares, such response being dated April 15, 1983.
>
> 7. That Sally D. Moldofsky is further estopped in that having had formal notice that she had waived her rights pursuant to the Antenuptial Agreement she took no steps in a timely fashion to question such assertion in the Petition for administration paragraph 9 and by the specific recital in the will admitted to probate on November 23, 1982, in which will in paragraph 8 specific reference to the Antenuptial Agreement dated November 17, 1966 is made."(R235-237)

The Notice was published in compliance with §733.701, Florida Statutes, as well as being served on Sally D. Moldofsky, providing that claimants must present their claims within three months of the first publication. Section 733.702(1) provides that no claim including a claim founded "on fraud" may be made unless it is presented within three months of the first publication. Moreover, §733.702(2) provides that no action, including an action for fraud, may survive the death of the decedent unless

filed within three months and unless it otherwise complies with the procedures for presenting claims.

By Formal Notice, time for action may be shortened In Re Estate of Ballett, 426 So.2d 1196 (Fla. 4th DCA 1983). The first time Sally D. Moldofsky asserted a Claim of Fraud in Disclosure, was on the Response to the Objection to Election to take Elective Share (April 18, 1983) (R25-32) and by the Complaint filed April 18, 1983 (R180-192). This was clearly untimely. However, even if timely, since the substance of the Claim was statutorily barred, and no sufficient claim of avoidance was made at any time, and the challenges were only "Variations of the disclosure theme", the claims were subject to be stricken and dismissed.

Sally D. Moldofsky in this appeal has attempted to avoid the requirements of Florida Statutes by asserting that the no-claim statute and the requirement of formal notice response do not apply to the application for elective share based on §732.212, which permits the filing of an elective share within four months from the first publication. This four month period, however, is not relevant to the time period for presenting a claim based on challenging the validity of an Antenuptial Agreement. Particularly this does not apply after formal notice of administration which specifically recites that the widow has waived all rights to the estate. Procedurally Sally D. Moldofsky was required to present a challenge based on fraud in the marriage contract within (a) 20 days from service of a Formal Notice of

the Will and Petition asserting the waiver by Antenuptial Agreement (by December 24, 1982) or (b) at least three months from the service of the Notice of Administration (by March 4, 1983) or (c) three months of the first publication (March 10, 1983). While Appellee believes (a) is the appropriate time, the Appellant has not demonstrated compliance with either (a),(b) or (c). The claim for elective share did not constitute an avoidance of the already admitted prenuptial agreement waiver or in the alternative the admission amounted to an estoppel against asserting such claim.

The striking of the claim was appropriate under Coleman, supra.

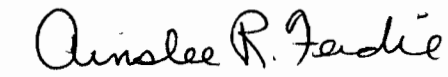
CONCLUSION

The historical purpose of protecting the female has vanished from our contemporary jurisprudence. World War II saw women in numbers in the workforce, and the 1970s and 1980s have seen their upward mobility in government, business, finance, and investment. The even handed equality in our laws seek to eliminate sexism and stereotypes. The legislature fully intended by enacting Florida Statute 732.702 to eliminate disclosure as a requirement and factor in Ante-Nuptial Agreements in the Probate context.

In the present review the court should reverse the majority opinion under review and adopt Judge Barkdull's dissent, and direct the reinstatement of the Orders of Judge Newbold and Friedman in the circuit court. The court should adopt the reasoning of Coleman v Estate of Coleman, 439 So.2d 1016 (Fla. 1st DCA, 1983) and Ellis First Nat. Bank of W. Pasco v. Downing, 443 So.2d 337 (Fla. 2nd DCA 1983).

The public policy of this state is best served by such a decision which is in keeping with the legislative mandate.

RESPECTFULLY SUBMITTED



AINSLEE R. FERDIE
(F.B. 024273)

FERDIE AND GOUZ
Attorneys for Petitioner
717 Ponce de Leon Boulevard
Suite 215
Coral Gables, Florida 33134
Telephone: (305) 445-3557

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 29th day of January, 1985 to: SHORENSTEIN & LEWIS, Attorneys for the Respondent, 799 Brickell Plaza, #702, Miami, Florida 33131-2704.

FERDIE AND GOUZ
Attorneys for Petitioner
717 Ponce de Leon Boulevard
Suite 215
Coral Gables, Florida 33134
Telephone: (305) 445-3557

By: Ainslee R. Ferdie
AINSLEE R. FERDIE