O/a 1-6-88. 29

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,407

ANA SILVIA GOEDMAKERS)

Petitioner,)

vs.)

HARRY GOEDMAKERS,)

Respondent.)

INITIAL BRIEF ON THE MERITS OF PETITIONER, ANA SILVIA GOEDMAKERS

From The Third District Court Of Florida

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STATEMENT OF THE CASE AND OF THE FACTS

This is a discretionary proceeding pursuant to Rule 9.210(c) of the Florida Rules of Appellate Procedure to review the decision of the Third District Court of Appeal filed March 3, 1987, the Order dated April 8, 1987 denying the timely Motion For Rehearing/Reconsideration, and denying, pursuant to Rule 9.331(c)(3) of the Florida Rules of Appellate Procedure, the timely filed Motion For Rehearing En Banc, decision reported at 504 So. 2d 24 (Fla. 3d DCA 1987). (A1-2)

Petitioner has invoked the discretionary jurisdiction of the Supreme Court upon the basis of conflict within the meaning of Article V, Section 3(b)(3) of the Florida Constitution. The decision of the Third District Court of Appeal directly conflicts with Crawford v. Crawford, 415 So. 2d 870 (Fla. 1st DCA 1982); and Carroll v. Carroll, 322 So. 2d 53 (Fla. 1st DCA 1975), cert. denied with opinion 341 So. 2d 771 (Fla. 1977), with respect to the appropriate criteria to be considered in determining venue in a dissolution of marriage action and directly conflicts with Kalman v. Kalman, 393 So. 2d 641 (Fla. 4th DCA 1981), following Feldman v. Feldman, 390 So. 2d 1231 (Fla. 3d DCA 1980); Rosselle v. Rosselle, 366 So. 2d 1197 (Fla. 3d DCA 1979); St. Anne Airways, Inc. v. Webb, 142 So. 2d 142 (Fla. 3d DCA 1962); and Freidus v. Freidus, 80 So. 2d 604 (Fla. 1956), with respect to the Court's jurisdiction over the assets of a non-party separate corporate entity in a dissolution of marriage action. See also Couture v. Couture, 307 So. 2d 194 (Fla. 3d DCA 1975).

Petitioner also believes, based upon a reasoned and studied professional judgment, that the decision of the Third District Court of Appeal filed March 3, 1987 is of obvious importance to the public in that it deals with the application of the venue statute (Section 47.011 of the Florida Statutes) in dissolution of marriage actions. The application of the venue statute to produce a different result in a case which creates conflict and uncertainty which would be resolved by this Court.

The opinion of the Third District Court created a conflict in the application of a correctly stated rule of law, and jurisdiction was accepted by this Court by Order dated September 15, 1987.

An Appeal from a non-final Order pursuant to Rule 9.130(a) of the Florida Rules of Appellate Procedure to review the Order of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, Judge Edward M. Moore, presiding, dated October 9, 1986, was filed in the Third District Court of Appeal. The Order appealed denied the Petitioner's (Wife's) Motion To Abate/Dismiss For Improper Venue in a dissolution of marriage action.

The parties will be referred to by their designation in the Trial Court; that is, Petitioner will be called "Wife," and Respondent will be called "Husband".

"A" refers to Appendix To Initial Brief On The Merits Of Petitioner.

All emphasis is the writer's unless otherwise indicated.

The Husband filed a simple Petition For Dissolution Of Marriage in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, Case No. 86-35738 FC (Judge Moore) (A3), on or about August 15, 1986. The Husband's simple Petition For Dissolution Of Marriage states only:

> "Petitioner/Husband, HARRY GOEDMAKERS, through his undersigned counsel, files his Petition For Dissolution Of Marriage and as grounds therefor alleges:
>
> 1. This is an action for dissolution of marriage between Petitioner/Husband and Respondent/Wife, ANA SILVIA GOEDMAKERS.
>
> 2. Petitioner has been a resident of Florida for more than six months next preceding the filing of this Petition For Dissolution Of Marriage.
>
> 3. The parties were married to each other in Miami, Florida in 1959.
>
> 4. There are no minor children of this marriage.
>
> 5. The parties have been separated for one year and the marriage between the parties is irretrievably broken.
>
> WHEREFORE, Petitioner/Husband prays for a judgment dissolving the marriage and for such other and further relief as may be meet and proper."

The Wife was served with the Husband's Petition For Dissolution Of Marriage on August 18, 1986 (A4), and timely filed her Motion To Abate/Dismiss For Improper Venue, together with an Affidavit in support thereof (A5), on or about September 11, 1986, alleging that the Husband's Petition For Dissolution Of Marriage was not filed in the County where either party resides, where the cause of action, if any, accrued, or where any property

in litigation is located, affirmatively showing that both the Husband and Wife reside in Broward County, Florida, that the cause of action, if any, accrued in Broward County, Florida, where the parties last cohabited as Husband and Wife with a common intent to remain married, where the separation was effectuated, where the marriage became irretrievably broken, and where the marital home is located. (A5-18)

On the eve of hearing on the Wife's Motion To Abate/Dismiss For Improper Venue, the Husband served upon the Wife's attorney an Affidavit in opposition to the Wife's Motion, which alleged that the parties own stock in a corporation, the business of which corporation is located in Dade County, Florida; that all corporate and personal financial planning records are in Dade County, Florida; that all legal and other professional advisors are in Dade County, Florida; and that if the matter (the Husband's simple Petition For Dissolution Of Marriage) cannot be amicably resolved, the Husband will direct his attorney to amend the Complaint to pray for a division of property, including the corporation, or its dissolution, as well as a special equity in the corporate stock issued in the Wife's name. (A19-21) The Husband's simple Petition For Dissolution Of Marriage raises no property or support issues, and does not, in any manner, place in controversy any property of the parties.

The Wife's Affidavit (A17-18) established, prima facie, that the Husband's Petition For Dissolution Of Marriage was not brought in the County where any of the parties' property in

litigation is located, and the Husband's Affidavit (A19-21), in an effort to rebut that prima facie showing, merely "anticipates" that there will be "property in litigation" in the future, once his pleadings are amended (and apparently a non-party, separate corporate entity properly brought within the Court's jurisdiction) and seeks to create the "illusion" that there is property of the parties "in litigation" and located in Dade County, Florida, i.e., the business and assets of the non-party corporation, the stock in which (intangible personal property) is presumably owned by the parties.

The Record does not reflect the pendency of any cause of action against the non-party separate corporate entity, its business or its assets.

The Record does not reflect that the corporation's existence is fraudulent, that it is under-capitalized, or that personal assets of the parties have been commingled with the corporation.

The Record does not reflect that the activities and conduct of either the Husband or the Wife are so intimate with the corporation as to establish the presumption that their finances are so inextricably intertwined as to declare the corporation a necessary party to the dissolution of marriage action.

The Record does not reflect that an adjudication of marital property rights (equitable division and distribution) or an adjudication of the Husband's promised claim for a special

equity in the stock issued in the Wife's name, requires the Trial Court to obtain jurisdiction over the corporation or that the corporation be a party to the dissolution of marriage action.

The Trial Court denied the Wife's Motion To Abate/Dismiss For Improper Venue, apparently disregarding the corporate entity of the non-party corporation, unconcerned that that Husband's Petition sought only a dissolution of the marriage of the parties, and unconvinced that Carroll v. Carroll, supra, was persuasive authority to establish that where the property "in litigation" is located is generally not a controlling factor in determining the proper venue for a dissolution of marriage action. (A22)

The facts recited in the panel's opinion below only refer to the "property" located in Dade County, Florida, as a "thriving business operated by the Husband and in which the Wife holds a substantial ownership interest." The opinion does not reflect that the thriving business is owned by the non-party corporation, notwithstanding that the Wife's two (2) Briefs, the Husband's Brief, the Wife's Motion For Rehearing/Reconsideration, the Wife's Motion For Rehearing En Banc, and the Husband's Response to the Wife's Motions all clearly concede, as an undisputed fact, that the business is owned by the non-party corporation, which also does business in several other Florida counties. The parties' stock in the corporation is located in Broward County, Florida, where both of the parties reside, another undisputed fact overlooked by the panel below in its

opinion.

The panel below has redefined the meaning of "where the property in litigation is located" for purposes of determining venue in dissolution of marriage actions. Now a spouse may properly file an action in any county where any corporation, in which either party owns stock, does business!

POINTS ON APPEAL

POINT I

BROWARD COUNTY IS THE ONLY PROPER VENUE IN A DISSOLUTION OF MARRIAGE ACTION WHERE IT IS UNCONTROVERTED THAT BOTH THE HUSBAND AND WIFE RESIDE IN BROWARD COUNTY, WHERE THE CAUSE OF ACTION FOR DISSOLUTION OF MARRIAGE ACCRUED IN BROWARD COUNTY (WHERE THE PARTIES LAST COHABITED AS HUSBAND AND WIFE WITH A COMMON INTENT TO REMAIN MARRIED, WHERE THE SEPARATION OF THE PARTIES OCCURRED, AND WHERE THE MARRIAGE BECAME IRRETRIEVABLY BROKEN), AND WHERE THE MARITAL HOME IS LOCATED IN BROWARD COUNTY AND THERE IS NO PROPERTY OF THE PARTIES LOCATED IN ANY OTHER COUNTY.

POINT II

THE BUSINESS AND ASSETS OF A NON-PARTY CORPORATION ARE NOT "PROPERTY IN LITIGATION" FOR PURPOSES OF DETERMINING PROPER VENUE IN A DISSOLUTION OF MARRIAGE ACTION SIMPLY BECAUSE THE HUSBAND AND/OR WIFE MAY OWN STOCK IN THAT CORPORATION.

SUMMARY OF ARGUMENT

In a dissolution of marriage action, the dissolution of the marriage is the "focal point" of the action! It is the principal right asserted and the primary relief sought for venue purposes.

The Wife established that Broward County, Florida was the only proper venue for the dissolution of marriage action and venue should have been transferred accordingly.

For purposes of divorce actions, venue is determined by the county in which the breach occurred or by the county where the marriage last existed. "Property in litigation" is not the "focal point" of such action and generally, where the property in litigation is located is not, and should not be the basis upon which venue is determined, in order to avoid forum shopping and manipulation of the Courts and the judicial system in marriage dissolution actions.

The business and assets of a non-party corporation are not "property in litigation" for purposes of determining proper venue in a dissolution of marriage action simply because the Husband and/or Wife may own stock in that corporation. Unless a corporation is an alter ego of a spouse, a Court, upon dissolution of marriage, may award only shares of stock, and not corporate assets. An adjudication of a non-party corporation's rights in a dissolution of marriage action is a denial of due process of law.

The Husband's initial choice of venue was wrong and both the Trial Court and the District Court erroneously construed the facts and erroneously applied the law. Error in law cannot be permitted to stand and must be corrected.

ARGUMENT

POINT I

BROWARD COUNTY IS THE ONLY PROPER VENUE IN A DISSOLUTION OF MARRIAGE ACTION WHERE IT IS UNCONTROVERTED THAT BOTH THE HUSBAND AND WIFE RESIDE IN BROWARD COUNTY, WHERE THE CAUSE OF ACTION FOR DISSOLUTION OF MARRIAGE ACCRUED IN BROWARD COUNTY (WHERE THE PARTIES LAST COHABITED AS HUSBAND AND WIFE WITH A COMMON INTENT TO REMAIN MARRIED, WHERE THE SEPARATION OF THE PARTIES OCCURRED, AND WHERE THE MARRIAGE BECAME IRRETRIEVABLY BROKEN), AND WHERE THE MARITAL HOME IS LOCATED IN BROWARD COUNTY AND THERE IS NO PROPERTY OF THE PARTIES LOCATED IN ANY OTHER COUNTY.

The proper venue of an action is determined by the nature of the principal right asserted and relief sought. See McMullen v. McMullen, 122 So. 2d 626 (Fla. 2d DCA 1960). In this case, the nature of the Husband's principal right asserted (in fact his only right asserted in his Petition) and relief sought is a dissolution of marriage. The dissolution of the parties' marriage is the "focal point" of the action.

The initial choice of venue is the Husband's, as the Petitioner, and as long as that choice is correct, a change of venue can only be obtained upon discretionary grounds as set forth in Chapter 47 of the Florida Statutes, such as inconvenient forum or inability to obtain a fair trial in the county where the action is pending. If the Husband's initial choice of venue is incorrect, the Wife is entitled to dictate a change of venue, as a matter of privilege and right, upon meeting the burden of pleading and proving that venue is improper. See Brennan v. Brennan, 192 So. 2d 782 (Fla. 3d DCA 1966).

Venue refers to the geographical area in which the defendant to a suit generally has the right to be sued, see Stewart v. Carr, 218 So. 2d 525 (Fla. 2d DCA 1969), and the intent and primary purpose of venue statutes is to require that litigation be instituted in that forum which will cause the least amount of inconvenience and expense to those parties required to answer and defend the action. See Kilpatrick v. Boynton, 374 So. 2d 557 (Fla. 4th DCA 1979); and Gaboury v. Flagler Hospital, Inc., 316 So. 2d 642 (Fla. 4th DCA 1975), and the cases cited therein.

In Crawford v. Crawford, 415 So. 2d 870 (Fla. 1st DCA 1982), the Court stated:

> "Generally, the defendant's privilege of venue permits him to object to an action being maintained in a county other than the one where he resides, where the cause of action accrued, or where the property in litigation is located. Section 47.011, Fla. Stat. If he is sued in one of these three places, he may not object on the ground of 'improper venue.' (citation omitted) However, in a dissolution of marriage, the trial court is to look to the single county where 'the intact marriage was last evidenced by a continuing union of partners who intended to remain and to remain married, indefinitely if not permanently,'" citing Carroll v. Carroll, 322 So. 2d 53 (Fla. 1st DCA 1975), cert denied with opinion 341 So. 2d 771 (Fla. 1977). (Emphasis added)

In Carroll v. Carroll, the District Court, in commenting on where the property in litigation is located as a basis for proper venue in a dissolution of marriage action, stated

> "This provision is commonly understood to refer only to actions local in nature (e.g., Hendry Corp. v. State, 313 So. 2d 453 [Fla. App. 2nd, 1975]), which a marriage dissolution proceeding is not. Evans v. Evans, 141 Fla. 860, 194 So. 215 (1940); McGowin v. McGowin, 122 Fla. 394, 165 So. 274 (1936), affd. 131 Fla. 247, 172 So. 927 (1937)."

This Court, in denying cert. with opinion, reported at 341 So. 2d 771 (Fla. 1977), approved the decision of the District Court in Carroll, not merely the result reached, stating:

> "We agree with the reasoning of the First District Court of Appeal and adopted it as our own."

To avoid forum shopping and manipulation of the Courts and the judicial system in dissolution of marriage actions, this Court should once again confirm the Carroll/Crawford rationale.

In Eisenberg v. Eisenberg, 453 So. 2d 83 (Fla. 1st DCA 1984), the First District followed its previous decisions in Carroll, and Crawford, holding that where venue is contested, the locus of the cause of action must be decided by the trier of fact consistent with the meaning and application of Section 47.011 of the Florida Statutes. There the parties resided in Jacksonville until the husband moved to Tallahassee alone where he rented an apartment and brought a few personal items over from the marital home during weekend trips to visit family. The wife maintained the jointly owned marital home and remained there with the parties' daughter. The District Court affirmed the Trial Court's denial of the husband's motion to change venue to Tallahassee and stated:

> "This Court established its position on the issue of venue in divorce cases through Judge Robert Smith's opinion in Carroll v. Carroll, supra, where he stated:
>
> 'To protect the beneficial purposes of both the marriage dissolution legislation and the venue statute, we are required to look, not for the county or the scattered counties where the breach may be said to have occurred, but to the single county where the marriage last existed. In that county the intact marriage was last evidenced by a continuing union of partners who intended to remain and to remain married, indefinitely if not permanently.'"

The Florida Bar CLE Manuel, Second Edition, 1985, entitled "Dissolution Of Marriage," at Section 3.58, Page 3-54, III, VENUE, states:

> "For purposes of divorce actions, venue is determined by the county in which the breach occurred or by the county where the marriage last existed. Carroll v. Carroll, 322 So. 2d 53 (Fla. 1st DCA 1975), aff'd 341 So. 2d 771. See also Eisenberg v. Eisenberg, 453 So. 2d 83 (Fla. 1st DCA 1984); Thames v. Thames, 449 So. 2d 402 (Fla. 2d DCA 1984)."

Here, it was uncontroverted that both the Husband and the Wife resided in Broward County, that the Husband's cause of action for dissolution of marriage accrued in Broward County, and that the marital home was located in Broward County. There are no allegations in the Husband's Petition that make it appear that there is property of the parties in litigation in Dade County, if that be an appropriate criterion, and, in fact, the Husband's Petition does not introduce in the litigation any property rights whatsoever.

In Winter v. Curtis, 311 So. 2d 815 (Fla. 3d DCA 1975), the District Court affirmed the dismissal of a complaint on the

basis of improper venue where there were no allegations in the complaint that made it appear that a cause of action accrued in Dade County. Here, the Husband's Petition contains no allegations that make it appear that there is property of the parties in litigation located in Dade County. See also Thames v. Thames, 449 So. 2d 402 (Fla. 2d DCA 1984), where property in litigation was not considered as a statutory basis for laying venue because it appeared in the pleadings that no property was in litigation.

The Husband must be bound and restricted by his Petition which seeks only a dissolution of the parties' marriage. The Wife has the right to rely upon the allegations of the Husband's Petition as defining the issues and scope of the Husband's cause of action to avoid, inter alia, "trial by ambush." The Husband's illusory or phantom property of the parties in litigation and located in Dade County cannot be utilized to circumvent the legislative intent and purpose of the venue statutes.

The Wife met the burden of establishing that the Husband's initial choice of venue was improper, and the Trial Court incorrectly denied the Wife's Motion To Abate/Dismiss For Improper Venue. Where the Court may change venue, it's a matter of the Court's sound discretion. However, it is the Court's duty to change venue when required by statute, thus that is not a

discretionary act. It is proper and the duty of an Appellate Court to reverse an Order when it is determined that the Court's findings or conclusions upon which it was made is clearly wrong either because it is contrary to the manifest weight of the evidence or contrary to the legal effect of the law applicable thereto. See Leonard v. Leonard, 259 So. 2d 529 (Fla. 2d DCA 1972). Application of the correct legal rule is not a matter of discretion. Error of law cannot be permitted to stand. See Wagner v. Wagner, 383 So. 2d 987 (Fla. 4th DCA 1980).

The venue statutes govern and prescribe when a venue change must be granted and when a venue change may be granted in the Court's discretion. Here, it was not a matter of discretion, it was a clear matter of an erroneous construction of the facts and an erroneous application of the law by both the Circuit Court and the District Court. However, where the initial choice of venue is wrong, the Court does have the discretion to transfer the action to the proper venue. See Rule 1.060(b) of the Florida Rules of Civil Procedure.

Here, the Husband obtained an adjudication by the lower courts not on the basis of the issues raised by his Petition, but on the basis of his "illusory" grounds set forth in his Affidavit. In addition to asserting the existence of property in litigation in Dade County, the Husband also asserted the convenience of many witnesses and professional advisors, as well as the existence of documents and records in Dade County.

Documents and records, although perhaps necessary for discovery and for preparation and use in trial, are not the "focal point" of the action and cannot constitute "property in litigation" for purposes of determining proper venue.

The Trial Court cannot order that an action be maintained in the wrong venue for the convenience of the Plaintiff and/or the Plaintiff's witnesses. See Kilpatrick v. Boynton, supra.

Venue is not proper in Dade County merely because it may be convenient to the Husband's attorneys and other advisors, see Brennan v. Brennan, supra, or because the Husband may work in Dade County. See Barr v. Barr, 343 So. 2d 1326 (Fla. 3d DCA 1977).

The Husband's Petition does not seek equitable division and distribution of marital property or a special equity in any property. A future claim for a special equity in the stock in the non-party corporation would not provide a basis for determining that there is property of the parties in litigation located in Dade County. The stock is intangible personal property and is deemed to be located in the county of the parties' residence absent evidence to the contrary. Here, there is no evidence to the contrary.

A suit where the conveyance of real property is the "focal point"of the action is governed by the "local action" rule

requiring that suit be brought in the county where the real property is located. See Franklin v. Sherwood Park, Ltd., Inc., 380 So. 2d 1323 (Fla. 3d DCA 1980). Here, the marital home is located in Broward County, Florida. A partition action pursuant to Chapter 64 of the Florida Statutes or an adjudication acting or operating as the conveyance of the real property, pursuant to Rule 1.570(d) of the Florida Rules of Civil Procedure and pursuant to an overall scheme of equitable distribution, must be in the county where the real property is located.

ARGUMENT

POINT II

THE BUSINESS AND ASSETS OF A NON-PARTY CORPORATION ARE NOT "PROPERTY IN LITIGATION" FOR PURPOSE OF DETERMINING PROPER VENUE IN A DISSOLUTION OF MARRIAGE ACTION SIMPLY BECAUSE THE HUSBAND AND/OR WIFE MAY OWN STOCK IN THAT CORPORATION.

The Third District panel below upheld venue solely on the basis of the provision of Section 47.011 F.S., allowing an action to be maintained in the County where the property in litigation is located and notwithstanding that the Husband's Petition sought only a dissolution of marriage and raised no issue regarding any property anywhere.

The Husband and Wife own no property in litigation located in Dade County. The panel relied upon the existence of a "thriving business" located in Dade County, Florida, which business was indisputably owned by a non-party separate corporate entity. For the District Court to construe this as property in litigation, the District Court necessarily must have construed the Circuit Court to presently have jurisdiction over this corporate asset in the dissolution of marriage action.

It is well-established that unless a corporation is an alter ego of a spouse, a Court, upon dissolution of marriage, may award only shares of stock, and not corporate assets!

In Freidus v. Freidus, 89 So. 2d 604 (Fla. 1956), this Court stated:

> "A corporation is a 'person' within the meaning of the due process of law clause of the Fourteenth Amendment of the federal constitution, at least insofar as property rights are concerned. (citation omitted) Counsel for the husband has cited no case - - and our independent research has revealed none - - where it has been held that an ordinary money judgment may be entered against a corporation, not made a party to the cause nor served with process, simply because its principal stockholder was a party to the cause. Moreover, there was nothing in the complaint to indicate that the plaintiff husband sought to collect the debt owing to him from the corporation - - even if it be assumed, arguendo, that service against the wife was sufficient to bind the corporation and make it 'constructively a party' to the cause, and if it be further assumed that such a cause of action, even if stated, could with propriety be joined with that stated cause against the wife." (emphasis added)

The panel below was unconcerned that the Husband's Petition sought only a dissolution of the parties' marriage and failed to indicate that the Husband was raising any issue concerning the assets owned by the non-party separate corporate entity in which the parties presumably held the stock.

St. Anne Airways, Inc. v. Webb, 142 So. 2d 142 (Fla. 3d DCA 1962) held that to take a corporation's money and abrogate its contract rights in a suit in which the corporation had not been joined, served or given the opportunity to be heard, amounted to a taking without due process of law in violation of the constitutional guarantees. Although the decision of the panel below did not yet reach the issue of adjudicating any rights affecting the non-party separate corporate entity, the essence of its decision, in effect, joined the corporation to the

dissolution of marriage action without service or summarily pierced the corporate veil, disregarded the corporate entity, and treated it as a non-entity, simply because its principal stockholders (the Husband and Wife) were parties to the dissolution of marriage action, notwithstanding that the requirements for piercing the corporate veil were not met. See Dania Jai-Alai Palace, Inc. v. Sykes, 450 So. 2d 1114 (Fla. 1984); and Eig v. Ins. Co. of North America, 447 So. 2d 377 (Fla. 3d DCA 1984).

In Kalman v. Kalman, 393 So. 2d 641 (Fla. 4th DCA 1981), the Fourth District Court followed Feldman v. Feldman, 390 So. 2d 1231 (Fla. 3d DCA 1980), which in turn followed Couture v. Couture, 307 So. 2d 194 (Fla. 3d DCA 1975), in holding that the trial court in a dissolution of marriage action is without jurisdiction to transfer the assets of a non-party separate corporate entity. See also Rosselle v. Rosselle, 366 So. 2d 1197 (Fla. 3d DCA 1979).

In Feldman, the District Court properly held that the Trial Court, although well within its authority to order, as it did, the husband to transfer stock owned by him in his corporation to his wife, was not empowered to order the transfer of assets of a corporation which was not a party to the litigation. See also Noe v. Noe, 431 So. 2d 657 (Fla. 2d DCA 1983).

The business of the Husband's corporation cannot be considered property of the parties "in litigation" for purposes of the venue statute. The Husband would be the first to voice opposition if the Wife were to ask the Trial Court to award her assets of the corporation as part of an equitable division and distribution of marital property notwithstanding that the Court did not acquire jurisdiction over the corporation. It is not necessary for the corporation to be a party or for the assets to the corporation to be "in litigation" for the Husband to be able to amend his pleadings to assert a claim of special equity in the Wife's stock in the corporation.

The Husband has simply failed to establish in his Affidavit in opposition to the Wife's Motion To Abate/Dismiss the actual existence of any property of the parties "in litigation." The Husband's initial choice of venue was wrong and both the Trial Court and the District Court erroneously construed the facts and erroneously applied the law. A trial judge must recognize and acknowledge facts which, by statute, mandate a change of venue, and if these facts are present, it is his duty to abate/dismiss the action, and it is within his discretion to transfer the action to the county of proper venue.

The decision of the Third District Court below inherently invalidates, strains to the breaking point, or improperly expands the meaning of "property in litigation" as set

forth in the venue statute (Section 47.011 F.S.) in marriage dissolution actions. The decision is predicated upon facts disparate from, and irreconcilable with, the Record, and the panel's confusion over the controlling facts has created a constitutionally improper result. A spouse seeking a dissolution of marriage should not be permitted to forum shop or to manipulate the Courts and the judicial system by being allowed to file a dissolution of marriage action in any county where any corporation, in which either party owns stock, does business. The abuses such a rule of law would engender defy the imagination. Frauds on the court and on the other spouse would become commonplace. Shell corporations would spring up "overnight" in whatever county a spouse desired to file an action.