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IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,407

ANA SILVIA GOEDMAKERS,)

Petitioner,)

vs.)

HARRY GOEDMAKERS,)

Respondent.)

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JURISDICTIONAL BRIEF OF PETITIONER ANA SILVIA GOEDMAKERS

From The Third District Court Of Florida

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JURISDICTIONAL POINT II

THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH KALMAN V. KALMAN, 393 So. 2d 641 (Fla. 4th DCA 1981); 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, 89 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.

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CITATION OF AUTHORITIES

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STATEMENT OF THE CASE AND OF THE FACTS

This is a discretionary proceeding pursuant to Rule 9.120(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.

Petitioner seeks to invoke 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, 89 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 involves substantially the same controlling facts as a prior case creates conflict and uncertainty which should be resolved by this Court.

The opinion in the Third District Court created a conflict in the application of a correctly stated rule of law. The undisputed facts established that both the Husband and Wife resided in Broward County, Florida, where the marital home was located, where the separation occurred, and where the marriage became irretrievably broken. The Husband filed a simple Petition For Dissolution Of Marriage in Dade County seeking only a dissolution of marriage. The Wife filed a timely Motion To Abate For Improper Venue, requesting that the action be transferred to Broward County, together with a supporting Affidavit. On the evening before the hearing on the Motion To Abate, the Husband served an Affidavit in opposition to the Motion alleging that, because a non-party corporation, in which the parties owned all of the stock, was doing business in Dade County, Florida, there was "property" located in Dade County, for purposes of venue (Section 47.011 of the Florida Statutes).

The Trial Court denied the Motion To Abate and the District Court affirmed, apparently disregarding the corporate entity of the non-party corporation, unconcerned that the 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 where the property in litigation is located is generally not a controlling factor in determining the proper venue for a dissolution of marriage action.

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 a 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!

All emphasis is the writer's unless otherwise indicated.

SUMMARY OF ARGUMENT

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, 89 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).

The opinion in the Third District Court created a conflict in the application of a correctly stated rule of law. The undisputed facts established that both the Husband and Wife resided in Broward County, Florida, where the marital home was located, where the separation occurred, and where the marriage became irretrievably broken. The Husband filed a simple Petition For Dissolution Of Marriage in Dade County seeking only a dissolution of marriage.

The Trial Court denied the Motion To Abate because a non-party separate corporate entity in which the parties owned all of the stock was doing business in Dade County, and the District Court affirmed, apparently disregarding the corporate entity of the non-party corporation, unconcerned that the 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 where the property in litigation is located is generally not a controlling factor in determining the proper venue for a dissolution of marriage action.

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!

ARGUMENT

JURISDICTIONAL POINT I

THE DECISION OF THE DISTRICT COURT EXPRESSLY AND 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) WITH RESPECT TO THE APPROPRIATE CRITERIA TO BE CONSIDERED IN DETERMINING VENUE IN A DISSOLUTION OF MARRIAGE ACTION.

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 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 action, 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 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 understook 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)."

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.

JURISDICTIONAL POINT II

THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH KALMAN V. KALMAN, 393 So. 2d 641 (Fla. 4th DCA 1981); 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, 89 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.

The Third District panel below upheld venue solely on the basis of the provisions of Section 47.011 F.S. allowing an action to be maintained in the county where the property in

litigation is located, notwithstanding that the parties to the action, i.e., the Husband and the 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 undisputably 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.

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."

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).

CONCLUSION

The preceding jurisdictional points clearly establish that this Court has jurisdiction to review the decision of the Third District Court of Appeal, in that it directly conflicts on the same points of law with the cases cited herein.

The decision of the District Court has produced conflict and discord in the decisional law of Florida and endangers the important public interests of having a clear and consistent application of the venue statute (Section 47.011 of the Florida Statutes) in dissolution of marriage actions.

A spouse filing a Petition For Dissolution Of Marriage should not be allowed to choose a forum in which to file the action solely on the basis that a corporation in which either party owns stock does business in that county. This Court should exercise its discretion and accept this case for review in order to bring harmony to the law of this State, to enforce the public's confidence in the administration of justice and to avoid an inconsistent application of the venue statute in dissolution of marriage actions.

Respectfully submitted,

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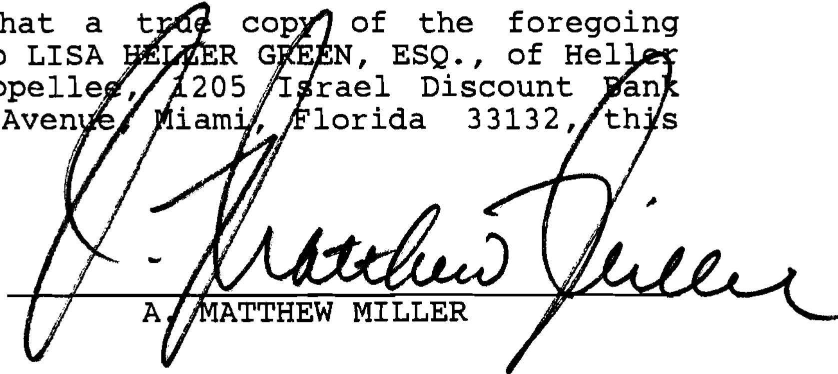
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief was furnished by mail to LISA HELLER GREEN, ESQ., of Heller and Kaplan, Attorneys for Appellee, 1205 Israel Discount Bank Building, 14 Northeast First Avenue, Miami, Florida 33132, this 24th day of April, 1987.



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