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IN THE SUPREME COURT OF FLORIDA

ANA SILVIA GOEDMAKERS, **

Petitioner, ** CASE NO. 70,407

v. **

HARRY GOEDMAKERS, **

Respondent. **

_____/



# RESPONDENT'S BRIEF ON JURISDICTION

Petition For Discretionary Review
From The District Court Of Appeal
Of Florida, Third District.

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## STATEMENT OF THE CASE AND FACTS

We shall refer to petitioner as the wife and to respondent as the husband. References to the wife's appendix are designated as "A." We herewith attach a portion of the husband's appendix in the District Court which we refer to as "AA."

The issue in the Third District was whether or not "the trial court abused its discretion in denying [the wife's] motion to dismiss a dissolution action as having been brought in an improper venue" (A-2). The District Court found that it did not (A-2).

The wife's motion to dismiss was heard by the trial court on the basis of affidavits filed by the parties. Those affidavits were before the District Court as part of the parties' appendices to their briefs.

In his affidavit, the husband alleged that the parties are and have been, since March, 1981, the "owners and operators" of Best Blueprint & Supply Company, Inc., a Florida corporation, in Miami, Dade County, Florida, that he [and another] run the day-to-day business affairs of that corporation and the husband is a director and holds two offices. One-half of the corporate stock is titled in the wife's name. He further alleged that in the event this cause could not be amicably resolved, he would seek a division of the corporation's assets or its dissolution as well as the imposition of

a special equity in his favor in the corporate stock issued in his wife's name (AA-1).

In addition, in his affidavit, the husband described the parties' additional substantial business and property connections with Dade County, Florida. That is, that their property affairs are conducted in and their property records are maintained in Dade County; that all of their corporations have been formed in Miami; that their financial records are provided to the parties in Dade County; and that all these activities have been so conducted for the last six to nine years (AA-1).

Thus, the trial court was presented with unrebutted evidence which established the existence of property in litigation in Dade County, Florida as well as other evidence, although not required, establishing the propriety of the choice of Dade County as the forum for this action.

In its decision, the Third District concluded that "there is statutory support" for the husband's choice of venue and that the wife "has not demonstrated that the court, for any other reason, should have ordered the case tried in [nearby] Broward County," citing the applicable Florida venue statute, § 47.011, Fla. Stat. (1985); Groome v. Abrams 448 So.2d 82 (Fla. 4th DCA 1984); and Thames v. Thames, 449 So.2d 401 (Fla. 2d DCA 1984) (A-2).

## SUMMARY OF ARGUMENT

1. The Court does not have discretionary conflict jurisdiction to review the decision of the District Court of Appeal because there is no express and direct conflict between the decision of the District Court and those cases upon which the wife relies to establish a conflict.

2. The Crawford and Carroll decisions are clearly distinguishable. Those cases, unlike the decision of the District Court in the instant case, address themselves solely to the issue of where a cause of action for dissolution of marriage accrues, only one of the three venue bases under § 47.011, Fla. Stat. (1985). There was no property in litigation in Crawford and Carroll.

3. There is nothing in the decision of the District Court which conflicts with the law established in Kalman, Feldman, Rosselle, St. Anne Airways, Inc., and Freidus. In fact, as the wife's brief admits, the Third District's decision does not even reach the issue decided by those cases.

4. The discretionary jurisdiction of the Court does not extend to intradistrict conflict. Therefore, even if there is a conflict between the decision in this case and other decisions of the Third District cited by the wife, which there is not, such conflict is reserved for resolution exclusively by the District Court.

Furthermore, the wife's motion for rehearing en banc, alleging intradistrict conflict, was denied by the District Court (A-1).

## ARGUMENT

## JURISDICTIONAL POINT

THE COURT DOES NOT HAVE DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT.

The wife seeks to invoke the Court's discretionary jurisdiction by alleging that the decision of the Third District expressly and directly conflicts with decisions of other district courts of appeal, with a decision of this Court and with other decisions of the Third District on the same question of law. However, there is no conflict between the decision sought to be reviewed and those decisions cited by the wife.

### A. There is no express and direct conflict between the Third District's decision and the decisions in Crawford v. Crawford, 415 So.2d 870 (Fla. 1st DCA 1982), and Carroll v. Carroll, 322 So.2d 53 (Fla. 1st DCA 1975); aff'd., 341 So.2d 771 (Fla. 1977).

The issue decided in Carroll was whether the cause of action for dissolution of marriage arose in Okaloosa County because the petitioner alleged that the marriage became irretrievably broken there when her husband took away the car keys. 341 So.2d 771, 772 (Fla. 1977). The Carroll decision established the criteria which a trial court should use in determining where a cause of action accrues in a dissolution

proceeding, only one of three venue bases under § 47.011, Fla. Stat. (1985). See, 341 So.2d at 772, fn.2.

Crawford v. Crawford, 415 So.2d 870 (Fla. 1st DCA 1982), which relies upon Carroll, simply restates the standard established by the Carroll decision for determining where the cause of action accrues.

The holding of the courts in Carroll and Crawford is limited to a consideration of only one venue basis. Neither Carroll not Crawford abrogates where the property in litigation is located as an equally proper basis for venue under § 47.011, Fla. Stat. (1985). In fact, the case law indicates that property in litigation is a relevant venue consideration in dissolution cases. See, e.g., Thames v. Thames, 449 So.2d 402 (Fla. 2d DCA 1984); Smith v. Smith, 430 So.2d 521 (Fla. 2d DCA 1983). Thus, the District Court's decision that a venue based upon where property in litigation is located is proper, is not only not in conflict with Carroll and Crawford, but it is in accord with other decisions.

Furthermore, the decision of the Third District does not expressly and directly conflict with the rule of law established by the Carroll decision, which is followed in Crawford. It does not decide the issue of where the cause of action accrued differently from Carroll or Crawford. It does not directly address that consideration because, unlike the Carroll and Crawford cases, where there is no property in

litigation and the actions were not filed where the respondents resided, "there is statutory support for the [husband's] choice of venue" (A-2).

B. The decision of the Third District does not expressly and directly conflict with the decisions in 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).

In Freidus v. Freidus, 89 So.2d 604 (Fla. 1956), the chancellor had entered a money judgment against a corporation, not a party to the cause, in favor of the husband. The judgment against the corporation was reversed.

Similarly, in Kalman v. Kalman, 393 So.2d 641 (Fla. 4th DCA 1981), a final judgment directing a corporation, not a party to the action, to transfer its interest in a particular mortgage to the wife, was reversed.

The other cases cited by the wife are decided by the Third District and do not therefore create a conflict which this Court may resolve. However, these cases stand for the same general proposition set forth in Freidus and Kalman, that a trial court may not enter a judgment against a corporation, or order the transfer of its assets, without the corporation being made a party to the litigation.

There is nothing in the decision of the Third District which conflicts with this bedrock principle of law. In fact, that issue was not even before the District Court. Even the wife concedes in her brief (p. 8), that the decision of the District Court did not reach the issue of adjudicating any rights affecting a non-party corporate entity.

The wife seems to argue, however, that somehow the Third District must necessarily have reached this issue or that the "essence" of its decision in effect, reaches this issue. But in order for the Court to have discretionary jurisdiction, the conflict must be express and direct, it cannot be implied or based upon what one surmises to be the reasoning behind the decision.

> [i]t is conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari. (Emphasis in original.)

Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980) citing Justice Adkins in Gibson v. Maloney, 231 So.2d 823, 824 (Fla. 1970).

C. The wife's reliance on other Third District decisions, allegedly in conflict with the decision below, does not create the type of conflict which gives rise to the Court's discretionary jurisdiction.

The wife argues that three decisions[1/] of the Third

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1/ Feldman v. Feldman, 390 So.2d 1231 (Fla. 3d DCA 1980); (Footnote continued.)

District expressly and directly conflict with the decision of the Third District here.

These decisions stand for the same principle of law expressed by the courts in Freidus and Kalman, supra, and, as discussed above, they do not in any way conflict with the District Court's decision here.

More importantly, such intradistrict conflict is reserved exclusively for resolution in the District Court. Rule 9.331(c), Fla.R.App.P. Conflict among decisions within the same district does not constitute the type of conflict required to invoke the Court's discretionary jurisdiction. Article V, § 3(b)(3), Florida Constitution (1980); Rule 9.030(a)(2)(A)(iv), Fla.R.App.P.

Furthermore, petitioner's motion for rehearing en banc, filed pursuant to Rule 9.331(c), Fla.R.App.P., relying on the Feldman decision, and arguing the principle of law set forth therein, was denied by the District Court (A-1).

(Footnote 1 Continued)
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).

## CONCLUSION

The decisions relied upon by the wife in her brief do not expressly and directly conflict on the same question of law with the decision sought to be reviewed. No other basis for invoking the Court's discretionary jurisdiction is urged by the wife. Therefore, the Court does not have discretionary jurisdiction to review the decision of the Third District. Review should be denied.

Respectfully submitted,

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By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing, together with Appendix to Respondent's Brief on Jurisdiction, was mailed to A. Matthew Miller, Esq., Miller and Schwartz, P.A., 4040 Sheridan Street, Post Office Box 7259, Hollywood, Florida 33081-1259, attorneys for Petitioner, on this 26th day of May, 1987.

Lisa Heller Green