

**FILED**

SID J. WHITE

OCT 1 1999

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

IN THE FLORIDA SUPREME COURT

CASE NUMBER 76,431

RUTH JURMU HARTWELL,  
Appellant/Petitioner,

vs.

Circuit Court 89-2510-ES-4  
District Court 89-2859

JANE BLASINGAME,  
personal representative  
of the Estate of Reino  
Wilho Jurmu,

Appellee/Respondent.

RESPONDENT'S REPLY BRIEF ON JURISDICTION  
ON DISCRETIONARY PROCEEDING TO  
REVIEW A DECISION OF THE DISTRICT  
COURT OF APPEAL, SECOND DISTRICT

THE HONORABLE CHRIS W. ALTENBRAND, JUDGE

THE HONORABLE HERBOTH S. RYDER & JERRY  
R. PARKE, CONCURRING JUDGES

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Issues Presented for Review:

The question to be construed was whether a decedent had the power to devise homestead property when survived by a surviving spouse who had waived her homestead rights and where such decedent was also survived by an adult child.

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STATEMENT OF THE CASE AND FACTS

The Statement of the Case and Facts as set forth in Petitioner's Brief on Jurisdiction is an accurate and complete statement of the matters stipulated to in this proceeding and also as to the Conclusion reached by the Second District Court of Appeals. The Respondent acknowledges and agrees to the facts as set forth in Petitioner's Brief on Jurisdiction.

#### SUMMARY OF ARGUMENT

The issue involved in the case at bar, has been decided by three separate District Courts of Appeal in the State of Florida, all of whom have reached the same conclusion. There is no need for the Supreme Court of Florida to invoke discretionary jurisdiction to decide an issue in which all District Courts of Appeal, considering the matter to date have agreed upon.

## ARGUMENT

The Petitioner seeks to invoke discretionary jurisdiction of the Florida Supreme Court under the reasoning that the Second District Court of Appeal opinion has expressly construed a provision of the State Constitution and that while the result of the decision is in conformity with other District Court of Appeal Opinions the reasoning applied in obtaining such results was not identical in each District. The question to be construed was whether a decedent had the power to devise homestead property when survived by a surviving spouse who had waived her homestead rights and where such decedent was also survived by an adult child. The Petitioner is correct in that the Court's in City National Bank vs. Tescher, 557 So. 2d 615 (3d DCA Fla. 1990), and Wadsworth vs. First Union National Bank, No. 89-272, (5th DCA Fla. 2/2/90) [15 FLW D1989 (substituted on en banc rehearing for Wadsworth vs. First Union National Bank, 15 FLW D511.)], applied different legal theories to reach the same conclusion.

However, the specific legal theories applied by the various District Courts does not change the fact that the ultimate conclusion reached was identical in each instance. Respondent would argue that each of the three Courts of Appeals involved were all, in fact, correct and that each of the legal theories relied upon were non-exclusive valid reasons for reaching the correct conclusion.

Respondent would further argue that Florida law concerning the issue involved in the instant case is settled and that the Florida Supreme Court should not invoke discretionary jurisdiction simply to resolve which underlying legal theory leads to a conclusion which is undisputed.

## CONCLUSION

Three District Courts of Appeal in the State of Florida have addressed the issue involved in the instant case and all of such courts agree as to the ultimate conclusion. Any variance as to the specific legal theory applied in reaching the conclusions involved is not sufficient to warrant the Supreme Court exercising discretionary jurisdiction in order to "resolve" District Court of Appeal decisions which are not in conflict.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by regular U.S. mail to Philip W. Dann, P.A. Suite 570, NCNB Building, 3839 Fourth Street No., St. Petersburg, Florida 33703, this 25<sup>th</sup> day of SEPTEMBER, 1990.



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