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# SUPREME COURT OF FLORIDA

FRIDAY, OCTOBER 16, 1992

CASE NO. 80,~~846~~ 486

District Court of Appeal,
Fifth District No. 91-1992

SHERYL DYKSTRA-GULICK,

Petitioner,

vs.

DOUGLAS GULICK,

Respondent.
_____/

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REPLY BRIEF OF PETITIONER

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ON APPLICATION FOR REVIEW OF A QUESTION CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE BY THE FIFTH DISTRICT COURT OF APPEAL, DAYTONA, VOLUSIA COUNTY, FLORIDA.

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## ARGUMENT

WHERE ONE SPOUSE PRIOR TO MARRIAGE NEGLIGENTLY INJURES THE OTHER SPOUSE, THE DOCTRINE OF INTERSPOUSAL IMMUNITY SHOULD BE ABROGATED COMPLETELY TO ALLOW THE INJURED SPOUSE TO MAINTAIN A NEGLIGENCE ACTION AGAINST THE ALLEGEDLY NEGLIGENT SPOUSE FOR ALL OF THE INJURED SPOUSE'S DAMAGE, OR THE DOCTRINE SHOULD BE ABROGATED PARTIALLY TO ALLOW SUCH AN ACTION WHERE RECOVERY IS LIMITED TO THE EXTENT OF INSURANCE COVERAGE.

## SUMMARY OF ARGUMENT

This court has stated, and both Petitioner and Respondent have quoted in support of their position, the following in Sturiano v. Brooks, 523 So.2d 1126 (Fla. 1988):

> "In cases where these considerations apply, the doctrine of interspousal immunity shall continue to bar actions between spouses." Sturiano, Page 1128.

The Respondent argues that because both spouses are still living and that because they have not yet divorced in order to be able to file suit, that these considerations apply in the instant case. This is contrary to any logical analysis of the situation.

The present state of the law (if it is as stated in the decision appealed from) encourages them to get a divorce in order to obtain compensation for the wife's injuries. The present state of the law also encourages them to get that divorce even though the marriage is not "irretrievably broken" and at the same time precludes the Respondent from raising the collusive divorce as a defense. If the parties herein were willing to take such action, we would not be here, i.e. they would have obtained a divorce and filed suit. However any logical analysis of human nature would demonstrate upon which side of the issue the stresses and strains lie.

Thus, if Sturiano stands for the proposition that the application of interspousal immunity is to be done on a case-by-case analysis, from the facts of each case, then this action should be sent back to the trial court and be allowed to proceed forthwith to determine whether or not "these considerations apply," Sturiano, Page 1128.

More significantly however, isn't it time to recognize that this fiction, created by the courts, should now be abrogated by this court as has been done in the overwhelming majority of other courts.

Let Florida not be last.