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**FILED**  
SID J. WHITE  
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IN THE SUPREME COURT OF FLORIDA

Case No. 81,765  
DCA No. 92-01456, Third District  
L.T. No. 92-3925 CA 27 DADE  
Honorable S. Peter Capua

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

ALEXDEX CORPORATION, a  
Florida Corporation,

Petitioner,

vs.

NACHON ENTERPRISES, INC.,  
a Florida Corporation,

Respondent.

\_\_\_\_\_ /

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**BRIEF OF THE FAMILY LAW SECTION OF THE  
FLORIDA BAR AS AMICUS CURIAE**

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**THE FAMILY LAW SECTION  
OF THE FLORIDA BAR**  
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**The Family Law Section of The Florida Bar**

## INTRODUCTION

Although the instant case involves mechanics lien foreclosure actions, The Family Law Section of the Florida Bar believes that the determinations made in this case with reference to the respective responsibilities for equitable actions between the county and circuit courts will have direct impact upon family law cases, and in particular, dissolution of marriage actions. This brief will not address the direct issues raised by the Appellant in this action, but will focus upon what The Family Law Section believes to be a logical extension of the theory enunciated by the Third District Court of Appeal below.

The Family Law Section would like to express its appreciation to this Court for its willingness to allow The Family Law Section to participate in a non-family law case when it became apparent that family law issues could be affected.

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## **SUMMARY OF THE ARGUMENT**

### **ALL DISSOLUTION OF MARRIAGE ACTIONS, OTHER THAN SIMPLIFIED DISSOLUTION PROCEEDINGS, SHOULD BE FILED IN CIRCUIT COURTS**

The court's analysis in this case regarding the jurisdiction of circuit and county courts relative to matters of equity should take into consideration the fact that this analysis might subsequently be applied to a determination as to the proper court in which to file dissolution of marriage cases involving relatively small amounts of assets.

Accordingly, the analysis undertaken by the court in this case should be carefully constructed to avoid any argument that the ruling in this case supports a position that contested dissolution cases involving relatively small assets should properly be brought in county court.

Based upon a reasonable interpretation of the statutes related to the jurisdiction of the county and circuit courts, all dissolution of marriage cases (other than those filed in accordance with the rules

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related to simplified dissolution actions) should be required to be filed in circuit court. To otherwise hold would be to abandon the supervisory control of the court over support and property distribution issues and to leave open too vast an area of interpretation as to what constitutes "amount in controversy" in the context of a dissolution of marriage case.

The express language of the legislature in granting certain powers to the county courts with reference to dissolution of marriage actions, by itself, suggests that no further extension of power was meant or should be implied.

## **ARGUMENT**

### **ALL DISSOLUTION OF MARRIAGE ACTIONS, OTHER THAN SIMPLIFIED DISSOLUTION PROCEEDINGS, SHOULD BE FILED IN CIRCUIT COURTS**

The Third District Court of Appeal has held, in this case, that all mechanic's lien foreclosure cases where the amount of the lien is less than the jurisdictional limits of the county courts must be filed in the county courts, as they have exclusive jurisdiction to hear that class of cases. They predicate that determination on the change in F.S. §34.01 which granted jurisdiction to the county courts to hear "all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida."

A possible extension of that argument would be a holding that in all dissolution of marriage actions (other than simplified dissolution cases for which an express grant of jurisdiction exists in the county courts) a determination at the filing stage must be made as to whether

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the "amount in controversy" is more or less than \$15,000. Motions to dismiss for lack of subject matter jurisdiction would become commonplace. Questions as to what constitutes "amount in controversy" would require preliminary evidentiary hearings in order to determine which court had "exclusive jurisdiction." Does allocation of debt create an amount in controversy or just asset division? If real property is involved, is the equity in the property or the total value of the property controlling? Does the amount in controversy mean the total value of all assets and liabilities, or only those assets and liabilities which are not initially stipulated to by the parties? Do you value the potential alimony at present value or absolute value based upon a payment stream? An attempt to answer these questions prior to determining where to file a case could result in havoc. Temporary relief could not be accomplished until challenges to jurisdiction were resolved. No good could come of this result.

A review of F.S. §26.012 shows that exclusive jurisdiction still

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exists in circuit courts where matters relate to juveniles; thus, where children exist, the cases would still appear to be within the exclusive jurisdiction of the circuit courts.<sup>1</sup> Absent the filing of a settlement agreement with the petition, all cases where children exist would contain pleadings directed to the juveniles, resulting in the clear requirement that the filing be in circuit court.

The problem exists in those cases where there are no children, and the value of the contested assets, liability or support scheme could arguably be in the \$15,000 range. Currently, no pleading rule exists which requires assets, liabilities, or claims for spousal support to be specifically identified by value in the complaint. Absent that requirement, nothing on the face of the complaint indicates where the cause must be filed. Without an appropriate definition of "amount in controversy", an answer could be filed which admits part of the claim and thus contends that the only "controversy" is less than the

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<sup>1</sup> The use of the word "appear" is not accidental. Despite this exclusive grant of jurisdiction, county court judges can still enter final orders in dissolution cases where the matters are uncontested. No exception exists where children are involved.

jurisdictional amount and the cause must be transferred.

Further confusion arises when the language of F.S. §34.01(2) is factored into the equation. In that subdivision, the legislature granted the county courts the power to "issue a final order for dissolution in cases where the matter is uncontested." Nothing contained in that paragraph permits the hearing of non-final proceedings or post judgment proceedings based upon jurisdictional amount. What does that express grant of power mean if the court were empowered to hear these cases anyway? Does that language only relate to those matters which would otherwise be cognizable exclusively by the circuit court based upon jurisdictional amount?

The Family Law Section of The Florida Bar believes that it would be an unreasonable interpretation of the jurisdiction of the circuit and county courts, and of F.S. §34.01, to stratify the filing of dissolution of marriage cases based upon any interpretation of amount in controversy. The legislature clearly wished to cure the problems of crowded calendars by shifting simplified dissolution proceedings to

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county court. It also wished to cure the problems inherent in a case by case assignment of uncontested calendars to county court judges. Had the legislature wished to extend the jurisdiction further into the domestic arena, they would not have been so specific in their grant of power.


The Family Law Section of The Florida Bar believes that the statute can be reconciled by the requirement that in all dissolution of marriage cases, until such time as there is a final judgment, there is a potential that the amount in controversy is within the jurisdiction of the circuit courts and to accommodate that potential, all filings should be made in that court. This requirement would maintain the proper supervision of the court over support issues and over the distribution of property and debt.

## CONCLUSION

It is respectfully requested that this Court hold that, with the exception of simplified dissolution proceedings, all dissolution of marriage filings regardless of the amount of the estate or the status of the parties are to be filed in circuit courts.

Respectfully submitted.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 20<sup>th</sup> day of December, 1993, to the following parties:

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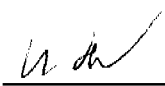
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