IN THE SUPREME COURT OF FLORIDA

JOSEPH THOMPSON,

Petitioner,

v. CASE NO. 83,064

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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FLA. BAR NO. 0513253

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IN THE SUPREME COURT OF FLORIDA

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JURISDICTIONAL BRIEF OF PETITIONER

I PRELIMINARY STATEMENT

This is an appeal from the decision of the First District Court of Appeal below, Thompson v. State, 627 So.2d 74 (18 Fla.L.Weekly D2464) (Fla. 1st DCA 1993).

Petitioner, appellant in the district court and defendant in the circuit court, will be referred to by name or as petitioner. Respondent, appellee in the district court and prosecutor in the circuit court, will be referred to as the state.

II STATEMENT OF THE CASE AND FACTS

For a single act of sexual battery, petitioner, Joseph Thompson, was convicted of two counts of sexual battery - on a physically incapacitated person and by a person in custodial authority - and was sentenced to concurrent 9-year prison terms.

On appeal, the First District Court affirmed on the basis of its previous opinion in Slaughter, infra, which affirmed multiple convictions for a single act of sexual battery on the basis of a Blockburger, infra, analysis. While affirming, the First District nevertheless recognized apparent conflict with George, infra, wherein the Second District held that only one sexual battery conviction was proper where the evidence established only one act of penetration. The First District distinguished George on the grounds 1) it involved charges of sexual battery by force or violence likely to cause serious personal injury and slight force sexual battery, and the latter is a "permissive lesser-included offense to the first," and 2) it was decided before enactment of the anti-Carawan amendment. 18 Fla.L.Weekly at D2465, citing § 775.021(4)(b), Fla.Stat. (1991); Carawan, infra.

Rehearing was denied December 20, and this appeal follows.

III SUMMARY OF ARGUMENT

In George, infra, the Second District held that a single act of sexual battery would support only a single conviction of sexual battery. In the instant case below, the First District affirmed dual convictions of sexual battery on the basis of a single act of sexual battery.

This is the heart of the conflict alleged here, but the explanation behind this "simple" conflict ranges over a wide area. It includes the effect of the statute which overruled this court's decision in Gould, infra on the previous decision of the First District in Slaughter, infra, which approved dual convictions of slight force and familial authority sexual battery for a single act. In Gould, this court ruled that slight force sexual battery was not a lesser-included offense of sexual battery on a physically incapacitated person, as the latter required no force. Soon after Gould, however, the Florida Legislature amended the statutes to say that slight force sexual battery is intended as a lesser-degree offense of every other kind of sexual battery.

Petitioner asserts that the decision of the First District Court below is in direct and express conflict with the decision of the Second District in George, and this court should accept this case for review, to resolve the conflict with George, and to provide guidance to Florida courts on an issue that is certain to be repeated.

IV ARGUMENT

ISSUE PRESENTED

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL BELOW IS IN DIRECT AND EXPRESS CONFLICT WITH THE DECISION OF THE SECOND DISTRICT IN GEORGE V. STATE, 488 SO.2D 589 (FLA. 2D DCA 1986).

For a single act of sexual battery, petitioner, Joseph Thompson, was convicted of two counts of sexual battery - on a physically incapacitated person and by a person in custodial authority. The victim was a profoundly retarded, physically handicapped, non-ambulatory 14-year-old girl, and Thompson was an employee of the care facility where she resided.

The question here is whether a defendant can be convicted of two counts of sexual battery for a single sexual act. The First District has addressed the issue before and held that dual convictions were permissible. Slaughter v. State, 538 So.2d 506 (Fla. 1st DCA 1989), cause dism., 557 So.2d 34 (Fla. 1990). It reached the same result here. Thompson v. State, 627 So.2d 74 (18 Fla.L.Weekly D2464) (Fla. 1st DCA 1993). This court has not yet addressed the issue.

For two acts of sexual battery, Slaughter was convicted of two counts of sexual battery by slight force, two counts of sexual battery by a person in familial authority, and one count of incest. Since Slaughter was decided while Carawan was extant, the district court applied a Blockburger test (the different elements test) and concluded that each sexual battery charge contained an element which the other did not, and approved the dual convictions. 538 So.2d at 511; Blockburger

v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932); Carawan v. State, 515 So.2d 161 (Fla. 1987). The district court's conclusion was based heavily on its analysis that the two statutory sections addressed different evils. 538 So.2d at 509-10. The basis for this conclusion has been called into question by a seemingly unrelated sequence of events.

In Gould v. State, 577 So.2d 1302 (Fla. 1991), this court held that slight force sexual battery was not a lesser-included offense of sexual battery on an incapacitated person, because the latter required no force at all. As a consequence, because the state had failed to prove the victim was in fact physically incapacitated, and slight force sexual battery was not a lesser-included offense, Gould could be convicted only of the sole necessarily-included lesser offense, which was misdemeanor battery.

In response to Gould, the legislature created a new statute, codified at section 794.005, Florida Statutes (1992 supp.), effective April 8, 1992. Ch. 92-135, Laws of Fla. It provides:

> Legislative findings and intent as to basic charge of sexual battery. The Legislature finds that the least serious sexual battery offense, which is provided in s. 794.011-(5), was intended, and remains intended, to serve as the basic charge of sexual battery and to be necessarily included in the offenses charged under subsections (3) and (4), within the meaning of s. 924.34; and that it was never intended that the sexual battery offense described in s. 794.011(5) require any force or violence beyond the force and violence that is inherent in the accomplishment of "penetration" or "union."

Assuming arguendo that the explicit language of the statute were not sufficient, it is also a rule of statutory construction that, when a statute is amended soon after controversy arises concerning its interpretation, the court should treat the amendment as a statement of legislative intent as to the original law, and not a substantive change thereto. Lowry v. Parole and Probation Comm'n, 473 So.2d 1248 (Fla. 1985). Ergo, slight force sexual battery is a lesser-included offense of all sexual batteries, contrary to the First District's ruling in Slaughter.

Petitioner, of course, was not convicted of slight force sexual battery, but he contends that the statutory amendment supports his argument that one act of sexual battery supports only one conviction of sexual battery.

Florida courts have previously held that a single act of aggravated battery will support only one conviction of aggravated battery, even though battery can be "aggravated" in two different ways - great bodily harm, or use of a deadly weapon - both of which can occur in a single act of aggravated battery. Bryant v. State, 480 So.2d 665 (Fla. 5th DCA 1985); Llanos v. State, 401 So.2d 848 (Fla. 5th DCA 1981).

It has also been long settled that one death will support only one conviction of murder. State v. Chapman, 625 So.2d 838 (Fla. 1993)(reaffirming Houser post-Carawan); Houser v. State, 474 So.2d 1193 (Fla. 1985). See also, generally, Baker v. State, 425 So.2d 36, 59-60 (Fla. 5th DCA 1982), for Judge Cowart's very interesting discussion in his dissent concerning

how attempted and completed acts, felony murder and the underlying felony, and degree offenses, such as homicide, fail a literal interpretation of Blockburger, but yet must be found to be mutually exclusive crimes to have any rational criminal code, approved in part, quashed in part, 456 So.2d 419 (Fla. 1984).

Petitioner contends the rule of Houser should apply to sexual batteries also. While there may be a number of ways to determine what constitutes discrete crimes (different kinds of sex acts, oral and vaginal for example, or the same kind of acts, but separated in time), where there is only one act of sexual battery, there should be only one conviction of sexual battery. In fact, Houser was the basis for the Second District's decision in George, that dual convictions for slight force and great force sexual battery were invalid where there was only one act of sexual battery. George v. State, 488 So.2d 589 (Fla. 2d DCA 1986). In its opinion in the instant case, the First District ignored George's reliance on Houser and, instead, distinguished George on a different basis. This is the heart of the conflict between the instant case and George.

Unquestionably, the two charges here are each aggravated versions of "basic" sexual battery. They are aggravated, on the one hand, by the physical and mental infirmities of the victim, and on the other, by the authoritative position of the person in custodial authority, which enhances his ability to coerce the victim to submit, or in this case, just to have access to the victim. On the facts of the instant case, the two

aggravators are virtually indistinguishable. The victim's physical and mental disabilities, on the one hand, and the defendant's position as caretaker, on the other hand, are two sides of a single fact which unfortunately made her vulnerable to the offense, and put him in the position to commit the offense. These unfortunate facts hardly mean, however, that petitioner should be convicted of two counts of sexual battery for a single act of sexual battery.

Before 1984, sexual battery by one in familial or custodial authority was in the same statutory section as the other kinds of sexual battery. It was changed by chapter 84-86, Laws of Florida, codified as section 794.041, Florida Statutes. Sexual battery by one in familial or custodial authority was placed in a separate statute not to allow dual convictions, but for two reasons - to omit the element of lack of consent and to criminalize not only the sex act itself, but even the solicitation of a sex act. The statute provides in its enacting clause:

> WHEREAS, the defense of consent is inappropriate if a defendant charged with a sexual offense stands in familial or custodial authority over a young victim....

Likewise, sexual battery on a physically incapacitated person does not include the element of lack of consent. There is no indication the legislature intended, however, to permit dual convictions of sexual battery where the victim was incapacitated and the defendant had custodial authority over her.

The decision of the First District Court of Appeal conflicts with the decision of the Second District in George. Moreover, this conflict is symptomatic of a general conflict and lack of guidance in the statutes as to when, if ever, a single act of sexual battery will support multiple convictions of sexual battery. This question will arise again, and the statute which overruled Gould also destroyed the basis for the decision in Slaughter, leaving Florida courts with no clear guidance on this significant double jeopardy issue.

V CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this court accept review of this case to resolve the conflict with George, supra.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to James W. Rogers, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to Mr. Joseph Thompson, inmate no. 563337, Jackson Correctional Institution, P.O. Box 4900, Malone, FL 32445, this 31 day of January, 1994.

KATHLEEN STOVER

IN THE SUPREME COURT OF FLORIDA

JOSEPH THOMPSON,

Petitioner,

v. CASE NO. 83,064

STATE OF FLORIDA,

Respondent.

APPENDIX

NANCY A. DANIELS
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FLA. BAR NO. 0513253

Criminal law—Probation—Revocation—Error to revoke probation based on defendant's failure to complete substance abuse class where no evidence rebutted defendant's contention that his attendance at restitution center's substance abuse class fulfilled condition, and same failure had been used to revoke defendant's probation before

PATRICK WENDELL THOMAS, Appellant, v. STATE OF FLORIDA, Appellee. 1st District. Case No. 92-2601. Opinion filed November 19, 1993. Appeal from the Circuit Court for Gadsden County. Charles McClure, Judge. Nancy A. Daniels, Public Defender; Jamie Spivey, Assistant Public Defender, Tallahassee, for Appellant. Robert A. Butterworth, Attorney General; Joseph S. Garwood, Assistant Attorney General, Tallahassee, for Appellee.

(PER CURIAM.) After pleading no contest to an extortion charge and being adjudicated guilty, Appellant received a suspended 10-year prison sentence and 10 years' probation on January 25, 1990, after which his probation officer met to discuss the conditions of probation. In a May 1990 affidavit, Appellant was found to be in violation of Condition 11, *inter alia*, which had specified: "Complete Department of Corrections Substance Abuse Class." The affidavit stated that Appellant had been verbally instructed in early March to report to the DOC's drug abuse class beginning March 6, 1990, and had failed to do so. On July 30, 1990, the trial court ordered a modification of probation based on violations of Condition 11 and five other conditions. Appellant was ordered to reside at the Tallahassee Probation and Restitution Center ("Center") for 11 months, 29 days. A second affidavit, dated November 30, 1990, alleged a violation of Condition 11 and two other conditions. At the June 2, 1992, violation of probation hearing, the probation officer testified that the class that Appellant had been ordered to attend was held at the public library in Gadsden County in March 1990, but he acknowledged that the written order showing the conditions of probation was not sent out until May 1990.

On his own behalf, Appellant testified that he did not remember the probation officer's telling him to attend a specific class at the library, and that while in residence at the Center, Appellant had attended a substance abuse class that he thought would satisfy Condition 11. The state recognized that the key probation violation was the failure to attend the DOC class, and the trial court found Appellant to be in violation of Condition 11 only. He was sentenced to 10 years in prison.

Appellant argued on appeal that the state had failed to demonstrate that his noncompliance with the conditions of probation was willful. The state offered no evidence to rebut Appellant's contention that attendance at the substance abuse class at the Center fulfilled the requirements of Condition 11. The same failure to act, on which Appellant's probation was revoked on July 30, 1990, was used again to revoke probation on June 2, 1992. The state concedes that, under the instant facts, the challenged order revoking probation was error. We agree.

Accordingly, we REVERSE the order revoking probation, and REMAND with directions for the trial court to reinstate the order of probation. (SMITH, MICKLE and LAWRENCE, JJ., CONCUR.)

* * *

Estates—Wills—Attempted devise and bequest contained in residuary clause of will lapsed where devise was conditioned upon certain person predeceasing or dying simultaneously with the testator, and that person survived testator—Facts of case do not meet requirements of anti-lapse statute—Where will does not otherwise provide for disposition, residuary estate descends by law of intestate succession

IN RE: ESTATE OF ARTHUR H. BOVEE, Deceased. CINDY TELLIA and LISA TELLIA, Appellants, v. JOSEPH BOVEE, Personal Representative of the Estate of Arthur H. Bovee, Appellee. 1st District. Case No. 92-2868. Opinion filed November 19, 1993. An Appeal from the Circuit Court for Holmes County, Russell Cole, Judge. Gerald S. Lesher of Cooney, Ward, Lesher & Damon, P.A., West Palm Beach, for appellants. William S. Howell, Jr., Chipley, for appellee.

(PER CURIAM.) Cindy and Lisa Tellia appeal an order construing the residuary clause in the will of decedent Arthur H. Bovee. The residuary clause provides:

> 6. RESIDUARY ESTATE: I give, devise, and bequeath the rest, residue and remainder of my estate, wherever located to the said Jill Bovee, the said Joseph Bovee, and the said Lisa Tellia, in equal shares, should said Cindy Tellia, predecease me or she and I die in circumstances where there is no clear evidence we died other than simultaneously.

Joseph and Jill Bovee are decedent's children. Cindy Tellia, a former friend of decedent, is a beneficiary under Paragraph 5 of the will. Lisa Tellia is the daughter of Cindy Tellia. Stacy Bovee, the testator's daughter from a prior marriage, is the beneficiary of a specific bequest in Paragraph 5.

Joseph Bovee, the personal representative, called on the trial court to interpret the residuary clause of the will. Neither Joseph Bovee nor the Tellias presented any evidence as to the testator's intent. The trial court without explanation determined that Joseph and Jill Bovee would equally share the entire residuary estate. In so doing, the trial court determined that Paragraph 6 is ambiguous. Paragraph 6 is not ambiguous but merely ineffectual.

The devise to Joseph, Jill, and Lisa was conditioned upon Cindy Tellia predeceasing the testator or dying simultaneously with the testator. Since Cindy Tellia survived the testator and no alternate beneficiary was designated, the attempted devise and bequest lapsed. Section 732.603, Florida Statutes, the anti-lapse statute, does not save the gift because its requirements are not met by the facts of this case. Since the will does not otherwise provide for disposition of the residuary estate, it must descend by the law of intestate succession. *See In re Estate of Lubbe*, 142 So.2d 130 (Fla. 2d DCA 1962), *overruled on other grounds, In re Estate of Johnson*, 359 So. 2d 425 (Fla. 1978); 96 C.J.S. *Wills* § 1226 (1957).

REVERSED and REMANDED for further proceedings consistent with this opinion. (SMITH, KAHN and LAWRENCE, JJ., CONCUR.)

* * *

Criminal law—Double jeopardy—Separate convictions of sexual battery on physically incapacitated victim and sexual activity with child while in position of custodial authority, based on single sexual act, not improper

JOSEPH THOMPSON, Appellant, vs. STATE OF FLORIDA, Appellee. 1st District. Case No. 92-3331. Opinion filed November 19, 1993. An Appeal from the Circuit Court for Leon County. N. Sanders Sauls, Judge. Nancy A. Daniels, Public Defender, Abel Gomez, Assistant Public Defender, Tallahassee, for Appellant. Robert A. Butterworth, Attorney General, Laura Rush, Assistant Attorney General, Department of Legal Affairs, Tallahassee, for Appellee.

(ERVIN, J.) Appellant was convicted of sexual battery on a physically incapacitated victim, in violation of Section 794.011(4)(f), Florida Statutes (1991), and sexual activity with a child while in a position of custodial authority, in violation of Section 794.041(2)(b), Florida Statutes (1991), and sentenced to concurrent nine-year terms. He urges reversal of one of the two convictions, because both offenses were based on a single sexual act. We affirm the convictions and sentences based on *Slaughter v. State*, 538 So. 2d 509 (Fla. 1st DCA 1989), *appeal dismissed*, 557 So. 2d 34 (Fla. 1990), in which this court, after applying a *Blockburger*[1] analysis, affirmed separate convictions and sentences for sexual battery by force not likely to cause serious personal injury and sexual activity with a child by a person in familial authority based on evidence of a single penetration.

In so doing, we recognize that our decision appears to be in conflict with *State v. George*, 488 So. 2d 589 (Fla. 2d DCA 1986), wherein the Second District held that only one sexual battery conviction was proper once the evidence established only one penetration. We consider *George* distinguishable, because it involved charges of sexual battery by force or violence likely to cause serious personal injury and sexual battery by force or vio-

lence *not* likely to cause serious personal injury, the latter being a permissive lesser-included offense to the first. Moreover, *George* was decided before the enactment of Section 775.021(4)(b), Florida Statutes, wherein the legislature stated its intent to convict and punish for each crime.

AFFIRMED. (JOANOS and WOLF, JJ., CONCUR.)

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[1]*Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 2d 306 (1932).

* * *

Criminal law—Sentencing—Correction of sentence—Amendments to habitual offender statute did not apply to offense committed prior to effective date of amendments—Defendant who would have qualified as habitual offender under pre-amendment statute not entitled to relief on basis of constitutional infirmities of amendments—Order denying motion to correct sentence affirmed—Mandamus petition filed by defendant during pendency of appeal from order denying motion to correct sentence denied

RONALD D. ATKINSON, Appellant, v. STATE OF FLORIDA, Appellee. 1st District. Case No. 92-3017. Opinion filed November 19, 1993. Appeal from the Circuit Court for Duval County. R. Hudson Olliff, Judge. Pro Se, for Appellant. Robert A. Butterworth, Attorney General; Gypsy Bailey, Assistant Attorney General, Tallahassee, for Appellee.

(PER CURIAM.) Appellant was tried and adjudicated guilty of sale or delivery of cocaine. The trial court imposed an enhanced sentence after classifying him as a habitual felony offender and making the required statutory findings. We affirmed the conviction and sentence as well as the trial court's subsequent order summarily denying post-conviction relief. After that, Appellant filed a motion to correct sentence under Fla. R. Crim. P. 3.800(a), based on the sole ground that the 1989 version of the habitual felony offender statute violated the constitutional "single subject" rule and was void prior to its reenactment in May 1991. The motion was denied on the authority of *Tims v. State*, 592 So. 2d 741 (Fla. 1st DCA 1991), in which we held that, despite the constitutional infirmities in the 1989 statute, a defendant who would have qualified under the immediately preceding version of the statute would not be entitled to relief. During the pendency of this appeal, Appellant sought mandamus relief, apparently seeking to require us to order ourselves to expedite the ruling.

Appellant has not demonstrated any basis for relief. First, we note that when sentencing a habitual offender, the trial court is required to use the version of § 775.084, Fla. Stat., in effect when the offense was committed. *Marion v. State*, 582 So. 2d 115 (Fla. 3d DCA 1991). Appellant committed the instant offense on August 24, 1989. The 1989 statute did not become effective until October 1, 1989. *See* Laws of Florida 1989, c. 89-280, § 1. Our review of the record indicates that Appellant would have qualified as a habitual felony offender under the 1988 statute and, therefore, is not entitled to relief. Second, without deciding whether Appellant followed the appropriate procedures for seeking mandamus relief, we find no merit to his petition under the present circumstances.

Accordingly, we AFFIRM the order denying the motion to correct sentence, and we DENY the petition for writ of mandamus. (SMITH, MICKLE and LAWRENCE, JJ., CONCUR.)

* * *

Workers' compensation—Competent substantial evidence supported finding that claimant's illness was causally related to employment—Employer/carrier to be ordered to pay claimant's out-of-pocket medical expenses

CITY OF TAMPA and ALEXSIS MANAGEMENT SERVICES, Appellants, v. DAVID COSTELLO, Appellee. 1st District. Case No. 92-2879. Opinion filed November 19, 1993. An appeal from an order of the judge of compensation claims. William Douglas, Judge. Stephen M. Barbas and L. Gray Sanders, Assistant City Attorneys, Tampa, for appellants. James R. Hooper and Peter D. Weinstein of O'Brien & Hooper, P.A., Tampa, for appellee.

(PER CURIAM.) Employer, City of Tampa, raises one issue o appeal: Whether there is competent substantial evidence to sup port the judge of compensation claims' finding that the claimant' illness is causally related to his employment. We find that ther is, and affirm. *Florida Power Corp. v. Stenholm*, 577 So. 2d 97 (Fla. 1st DCA 1991).

Claimant, Costello, argues on cross appeal that the employe carrier (E/C) should be ordered to pay all of claimant's out-of pocket medical expenses. The E/C does not dispute the amoun that is due, but only asserts that the claimant is not entitled to th payment of any medical bills because the injury should not hav been determined to be compensable. In light of our affirmance a to the issue on direct appeal, we reverse as to the issue on cros appeal, and order the E/C to pay claimant's out-of-pocket medi cal expenses. (ERVIN, JOANOS and WOLF, JJ., concur.)

* * *

Dissolution of marriage—Equitable distribution—Record unclear as to basis for disproportionate distribution of marita assets—Error to deduct estimated costs of selling marital hom from value of home where there was no evidence that sale o home was imminent or that the value was based solely on th ability to sell the home—Record unclear as to basis for tria court's award of credit to husband for one-half of mortgag payments made prior to entry of dissolution judgment durin period when property was still held by parties as tenants by th entireties—Remanded for reconsideration of entire distributio scheme, including reevaluation of marital home

CYNTHIA ALLYN YOUNG TABER, Appellant, v. JOHN STEPHE TABER, Appellee. 1st District. Case No. 93-459. Opinion filed November 19 1993. An appeal from the Circuit Court for Alachua County. Thomas Elwell Judge. Zelda J. Hawk of Gainesville for appellant. Michael W. Jones o Gainesville for appellee.

(PER CURIAM.) Cynthia Taber, the wife, appeals from a fina judgment of dissolution of marriage. Appellant raises four point on appeal, only one of which has merit and needs to be discusse herein: Whether the trial court abused its discretion by providin for an inequitable distribution of marital assets.

In the final judgment of dissolution of marriage, the trial cour awarded the husband net assets that the court valued at $32,136 The net assets awarded to the wife were valued at $15,262. N justification is provided for the unequal distribution scheme. I addition, there is some controversy concerning the value of th home awarded to the husband. A real estate agent testified tha the fair market value of the home was $82,000. From this mark value, the trial judge made deductions for outstanding debt on th home, closing costs incurred if the home was to be sold (at .08 percent as testified to by a real estate sales expert) and gave addi tional credit to the husband for one-half of the house payment since the wife left the home in June 1990, but prior to the dissolu tion. Appellant challenges the deductions for closing cos ($6,806), and the credit for payments ($9,960). No explanatio was provided as to the reasons for these deductions, and no ev dence was presented that the house was to be sold in the near fu ture. In addition, the credits on payments were for payment made while the house was still held by the parties as tenants b the entireties.

In *Collinsworth v. Collinsworth*, 18 Fla. L. Weekly D177 (Fla. 1st DCA Aug. 12, 1993), this court was presented with a unequal distribution of assets by the trial court without any wri ten findings to support the method of distribution. The distribu tion scheme in the instant case is similar. As in *Collinsworth* "the entire distribution of assets must be reversed and this ca remanded with directions to reconsider the equitable distributio scheme in light of the factors set forth in section 61.075, and make the written findings required by subsection 61.075(3) th justify an unequal distribution of marital assets." *Id.* at 1780.

In determining the value of real estate, it is entirely appropr ate to deduct the estimated cost of selling the property where th value of the property is based on the prospective sale of the pro