

**FILED**

SID J. WHITE

MAR 22 1994

CLERK, SUPREME COURT

By DC  
Chief Deputy Clerk

THE SUPREME COURT OF FLORIDA

LAWRENCE FERNANDEZ, JR.,

Petitioner,

vs.

CASE NO.: 83392  
(Second District Court of  
Appeal Case No.: 93-00802)

SUSAN E. FERNANDEZ, GEORGE MURPHY,  
MICHAEL A. MURPHY, DAVID MURPHY,  
ANN NASH, LAURIE SOMESON, JANE  
BOURKARD, ESTATE OF SUSAN E.  
FERNANDEZ, deceased, and E.  
RICHARD BOURKARD, JR., Personal  
Representative of the ESTATE OF  
SUSAN E. FERNANDEZ,

Respondents.

---

BRIEF OF PETITIONER  
AS TO JURISDICTION

HARRY M. HOBBS, P.A.  
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Post Office Box 18225  
Tampa, Florida 33679-8225  
(813) 879-8333  
Attorneys for Petitioner

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STATEMENT OF THE CASE

Susan E. Fernandez filed a Petition for Dissolution of Marriage on November 26, 1991 (R, 1-4). Appellee filed his Answer and Counter-Petition for Dissolution on December 27, 1991 (R, 9-18). On January 21, 1992, Susan E. Fernandez filed a Motion to Bifurcate and a Notice of Hearing (R, 27-29). The Motion and Notice of Hearing were hand delivered on Appellee's attorney and gave the Appellee two (2) days notice of the hearing. A hearing was held on January 23, 1992, and on that date the trial court entered an order granting the bifurcation (R, 30-31) and a Final Judgment of Dissolution of Marriage (R, 32-33). The Final Judgment of Dissolution recites that neither party appeared at the Final Hearing on January 23, 1991.

A second Final Judgment was entered on December 17, 1992, purportedly distributing the marital assets (R, 64-72). On December 28, 1992, the Appellee filed his Motion for Relief from Judgment Pursuant to Rule 1.540 and Rule 1.530 of Florida Rules of Civil Procedure (R, 73-75). On February 10, 1993, the trial court entered its Order Granting Motion for Relief from Judgment (R, 81-82) (Appendix, exhibit #1).

On January 21, 1994 the Second District Court of Appeals rendered its opinion in favor of Appellants and reversed the decision of the lower Court (Appendix, exhibit #2). On January 31, 1994, Appellee filed a timely motion for Rehearing, Certification and Rehearing en Banc (Appendix, exhibit #3). On March 2, 1994, the Second District Court of Appeal denied Appellee's motion for

Rehearing, Certification, and Rehearing en Banc (Appendix #4). On March 11, 1994 Appellee filed a timely Notice to Invoke the Discretionary Jurisdiction of this Court (Appendix #5).

### STATEMENT OF THE FACTS

At the January 23, 1992, Final Hearing, neither the Husband or Susan E. Fernandez testified or even appeared. Susan E. Fernandez died two (2) days later (page 21 of Transcript of Testimony of Proceedings; R, 174-202). According to the testimony of the attorney for the Appellants, the father of Susan E. Fernandez testified as to the Wife's residency at the January 23, 1992, hearing. There is no transcript of that hearing. The Final Judgment of Dissolution of Marriage does not recite that any witness testified and makes no specific finding concerning the residency of either Susan E. Fernandez or Lawrence Fernandez, Jr. (R, 32-33). At the initial hearing no testimony was taken concerning the remaining issues of distribution of the marital property and all the lower Court attempted to do at that time was dissolve the marriage. The lower Court reserved jurisdiction to have a hearing on the property issues at a later date. Before that hearing could be held Susan E. Fernandez died.

The Final Judgment of Dissolution of Marriage attempted to dissolve the marriage between Susan E. Fernandez and Appellee and reserved jurisdiction over all other matters and issues. Appellee filed his Motion for Relief from Judgment Pursuant to Rule 1.540 and Rule 1.530 of Florida Rules of Civil Procedure. Basically, it was and is the Appellee's position that since neither party testified as to their residency or that their marriage was irretrievably broken, Florida Statutes 61.021 and 61.052 were not complied with and the trial court was without jurisdiction and

the Final Judgment of Dissolution and all subsequent orders were void and that the death of Susan E. Fernandez on January 25, 1992 divested the trial court of further jurisdiction.

As is reflected in that order, and the transcript of testimony from that hearing (R, 174-202), the Appellee did not complete presenting his evidence on his Motion for Relief from Judgment. After the limited testimony that was presented, the trial court felt that the Motion might be disposed of on purely legal argument once it was established that neither party testified and that Susan E. Fernandez died two days after the Final Hearing. Thus, the parties were ordered to submit memoranda of law on the residency issue.

On February 10, 1993, the trial court entered an Order Granting Motion for Relief from Judgment (R, 81-82). The order was prepared by the trial court itself. In that order, the trial court found that it was without jurisdiction on this matter, and set aside the Final Judgment of Dissolution of Marriage and all subsequent Orders based upon the Final Judgment of Dissolution of Marriage.

SUMMARY OF ARGUMENT

The opinion of the Second District Court of Appeal in the instant case is in direct conflict with the opinions of other District Courts of Appeal. The Second District Court of Appeals has ruled in this case that live testimony as to the issue of residency in a divorce proceeding is not always required. This is in direct conflict with Fourth District in Gillman v. Gillman, 413 So. 2d 412 (Fla. 4th DCA 1982), and the First District in Wise v. Wise, 310 So. 2d 431 (Fla. 1st DCA 1975).

The Second District further ruled that the lower Court retained jurisdiction to distribute marital assets after the death of the Susan Fernandez, the petitioner in the lower Court. This ruling is in direct conflict with the Third District Court in Jaris V. Tucker, 414 So. 2d 1164 (Fla. 3rd DCA 1982).



## ARGUMENT

The primary issue before the District Court in this case was whether a party seeking a dissolution of marriage is required to testify in court as to their residency and the fact that their marriage is irretrievably broken. The Second District in rendering their opinion held that a party was not required to so testify in every case and recognized that they were in conflict with the Fourth District in Gillman v. Gillman, 413 So. 2d 412 (Fla. 4th DCA 1982). The Second District did not distinguish Gillman, but explained since there was a sworn petition in a dissolution of marriage in this case, the admission in the answer as residency obviated the need for live testimony as to residency. The ruling by the Second District that pleadings can replace live testimony is in direct conflict with the ruling of Wise v. Wise, 310 So. 2d 431 (1st DCA 1975) where the Court ruled that residency can not be proven by an admission in the pleadings.<sup>1</sup> The conflict is not as to dicta but is a direct conflict on the law and was the basis for the decision of the Second District Court.

The decision rendered by the Second District demonstrates on its face an express and direct conflict with another District Court of Appeal and therefore this Court has jurisdiction to review the decision rendered by the Second District Court of Appeal in this case. Kincaid v. World Insurance Company, 157 So. 2d 517 (Fla.

<sup>1</sup>In Wise v. Wise, id it is not apparent if the divorce petition was verified. However the Court did not consider the pleadings as evidence. In the instant case there is no record of the verified pleading being moved and accepted into evidence.

1963). The Second District Court stated in its opinion in the instant case that it recognized that it was in conflict with the Fourth District in Gillman v. Gillman, supra.

Additionally, the Second District in rendering their decision determined that in spite of the death of Appellant, Susan Fernandez, during the pendency of her divorce<sup>2</sup> the lower court nonetheless had jurisdiction to enter a final judgment of divorce and as to the division of the marital assets. The Second District mistakenly relied on the case of Becker v. King, 307 So. 2d 855 (Fla. 4th DCA 1975) and in so doing created a conflict with the First District as regards its decision in Jaris v. Tucker, 414 So. 2d 1164 (Fla. 3rd DCA 1982). The Second District determined that the lower Court, by reserving jurisdiction to try the property issues, had jurisdiction to later enter a final judgment as to those matters in spite of the fact that no evidence had been taken prior to Susan Fernandez' death. Interestingly the Third District in Jaris v. Tucker, id referred to Becker v. King supra as recognizing that the general proposition was that the death of a party does not deprive a court of jurisdiction. However the Jaris Court however went on to say that the "general principal does not apply to actions to dissolve a marriage since the death itself has

<sup>2</sup>The divorce was bi-furcated, the Lower Court held a hearing as to dissolution of the marriage only, ruled on that issue alone and reserved jurisdiction to have a hearing on the issue of distribution of the marital assets until a later date. Appellant, Susan Fernandez did not attend or testify at the dissolution hearing, the Court Relied upon the pleadings. Susan Fernandez died after the Court ruled as to the dissolution but before a hearing could be conducted as to the distribution of marital assets.

already terminated the marriage." In Becker supra the lower Court had already tried the issues of asset distribution and orally announced its ruling prior to the death of the party. The Court in Jaris supra thoughtfully considered Becker supra and distinguished it. On Petition for Rehearing Appellee demonstrated to the Court the conflict that it was creating between its ruling in the instant case and Jaris supra. The Second District Court has not distinguished its decision from Jaris supra and the conflict is express and direct and therefore this Court has discretionary jurisdiction to resolve the conflict. Soloman v. Sanatarians' Registration Board, 155 So. 2d 353 (Fla. 1963); Williams v. Duggan, 153 So. 2d 726 (Fla. 1963).


### CONCLUSION

There exist two express and direct conflicts in the decision of the Second District Court of Appeal in this case with the decisions of two other District Courts. The conflicts are not as to collateral issues or in dicta, but are as to the law upon which the Second District based its decision. As such the Appellee is entitled to invoke the jurisdiction of this court to resolve said conflicts. Resolution of this conflict is important to the administration of justice. As a result of the conflict lawyers and judges are bound to be confused as to what testimony is required in order to dissolve a marriage, or pursuant to the Second District's opinion when such testimony is required and when it is not. Furthermore it is important for judges to know when divorce litigation may or must continue after the death of a party. The result of the Second District's ruling in the instant case creates conflict and confusion with regard to these issues and as such this Court should invoke its jurisdiction to resolve the conflicts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Simson Unterberger, Esquire, Suite 707, One Mack Center, 501 East Kennedy Blvd., Tampa, Florida 33602; Hon. Sid J. White, Clerk of the Supreme Court, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, and Richard L. Ake, Clerk of Circuit Court, Hillsborough County, 419 Pierce Street, Tampa, Florida 33602 this 21st day of March, 1994.

HARRY M. HOBBS, P.A.

By:  (for)  
Robert S. Hobbs, Esquire  
Florida Bar No.: 303641  
Post Office Box 18225  
Tampa, Florida 33679-8225  
(813) 879-8333  
Attorneys for Petitioner

FEB 11 1993

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA, STATE OF FLORIDA  
FAMILY LAW DIVISION

SUSAN E. FERNANDEZ,  
PETITIONER,

CASE NO.: 91-12971

AND

DIVISION: E

LAWRENCE FERNANDEZ, JR.,  
RESPONDENT.

ORDER GRANTING MOTION FOR RELIEF FROM JUDGMENT

THIS MATTER having come on before this Court on Wednesday, January 20, 1993 and the Former Husband, Lawrence Fernandez, Jr. having personally appeared along with his attorneys, Robert Hobbs and Harry Hobbs, and Simson Unterberger having appeared on behalf of the deceased Former Wife and the Court having heard testimony and argument of counsel and having reviewed the file makes the following findings:

1. That on January 21, 1992 the Former Wife filed a Motion to Bifurcate seeking an immediate hearing.
2. That the Motion to Bifurcate was GRANTED.
3. That on January 23, 1992 a hearing to dissolve the marriage only and to reserve as to all other issues.
4. That attorneys for both parties were present before the Court and the attorneys advised the Court of their client's consent and agreement that the Court could accept the verified Petition for Dissolution of Marriage as proof of both the Wife's residency and that the marriage was irretrievably broken.
5. That a witness appeared, to wit: George Murphy, Former Wife's father, who corroborated residency of the Former Wife.
6. That the Former Wife did not appear and did not offer live

EXHIBIT 1

testimony.

7. That counsel for both parties stipulated to the Court granting a Dissolution of Marriage based on the above presentation of evidence and assured the Court that it had jurisdiction.

8. That on December 28, 1992 (less than 1 year since the entry of the Final Judgment) Former Husband filed this Motion for Relief from Judgment alleging among other things that the Court did not have jurisdiction because of the failure of the Former Wife to offer testimony at said hearing. That the Court relied upon the good faith representations of the attorney's as to their client's consent.

9. That the Case of Gillman v. Gillman, 413 So. 2d 412 (1982 - 4th DCA) is the controlling authority in this matter.

Based upon the foregoing Findings of Fact, it is  
ORDERED AND ADJUDGED

1. That the Court was without jurisdiction in this matter and the Final Judgment of Dissolution of Marriage is hereby set aside.

2. That all subsequent Orders based upon the Final Judgment of Dissolution of Marriage are therefore null and void and are also set aside.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, on this 10<sup>th</sup> day of February, 1993.

/s/ Robert J. Simms

ROBERT J. SIMMS, CIRCUIT COURT JUDGE

Copies:  
Robert Hobbs, Esq.  
Harry Hobbs, Esq.  
Simson Unterberger, Esq.

93-00802

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

SUSAN E. FERNANDEZ, GEORGE )  
MURPHY, MICHAEL A. MURPHY, DAVID )  
MURPHY, ANN NASH, LAURIE SOMESON, )  
JANE BOURKARD, ESTATE OF SUSAN E. )  
FERNANDEZ, deceased, and E. )  
RICHARD BOURKARD, JR., Personal )  
Representative of the ESTATE OF )  
SUSAN E. FERNANDEZ, )

Appellants, )

v. )

LAWRENCE FERNANDEZ, JR., )

Appellee. )

CASE NO. 93-00802

---

Opinion filed January 21, 1994.

Appeal from the Circuit Court  
for Hillsborough County; Robert  
J. Simms, Judge.

Simson Unterberger, Tampa,  
for Appellants.

Robert S. Hobbs of Harry M.  
Hobbs, P.A., Tampa, for  
Appellee.

SCHOONOVER, Judge.

The appellants, Susan E. Fernandez, George Murphy,  
Michael A. Murphy, David Murphy, Ann Nash, Laurie Someson, Jane  
Bourkard, Estate of Susan E. Fernandez, deceased, and E. Richard

EXHIBIT 2



Bourkard, Jr., Personal Representative of the Estate of Susan E. Fernandez, have challenged an order granting a motion to set aside a final judgment of dissolution of marriage. We find that the trial court erred in setting aside the final judgment dissolving Susan E. Fernandez's marriage to Lawrence Fernandez, Jr., the appellee, and, accordingly, reverse.

On November 20, 1991, Susan E. Fernandez, now deceased, filed a petition seeking a dissolution of marriage to the appellee, Lawrence Fernandez, Jr. The appellee filed an answer and a counter-petition also seeking a dissolution of the marriage. After the action was at issue, Mrs. Fernandez, on January 21, 1992, filed a motion to bifurcate the proceedings. She alleged that she was terminally ill and that her doctors advised her that her life expectancy was countable in weeks. The parties stipulated to the granting of this motion and it, as well as a final judgment of dissolution of marriage, was granted on January 23, 1992. The final judgment dissolved the marriage and reserved jurisdiction over all other issues contained in the parties' pleadings. Susan E. Fernandez passed away on January 25, 1992.

After Mrs. Fernandez's death, the pleadings were amended, parties were added, and a stipulated final judgment which dealt with the parties' property was entered on December 17, 1992.

On December 28, 1992, the appellee filed a motion for relief from judgment pursuant to Florida Rules of Civil Procedure

1.540 and 1.530. In his verified motion, the appellee alleged that since the requirements of section 61.052, Florida Statutes (1991), were not met the court did not have jurisdiction to grant a final judgment on January 23, 1992, and therefore, the court was without jurisdiction to enter the stipulated final judgment dated December 17, 1992. The appellee did not allege or offer any evidence that Mrs. Fernandez was not a resident of Florida at the appropriate times and did not allege he was wrong when he in his sworn answer and counter-petition alleged that the court had jurisdiction.

Mrs. Fernandez's first attorney testified that at the original hearing George Murphy, Mrs. Fernandez's father, testified as a corroborating witness to residency. Although no record of the dissolution proceeding was introduced into evidence, it appears that no other witnesses were called to testify at that hearing. The court granted the husband's motion, and the appellants filed a timely notice of appeal from the trial court's final order.

In order to obtain a dissolution of marriage in Florida, one of the parties to the marriage must reside in the state six months before the filing of a petition for dissolution. § 61.021, Fla. Stat. (1991). Furthermore, evidence establishing a party's residence must be corroborated. § 61.052(2), Fla. Stat. (1991).

Florida's residency requirement is jurisdictional and must be alleged and proved. Jurisdiction cannot be acquired or

exercised by, or pursuant to, the agreement of the parties. Phillips v. Phillips, 1 So. 2d 186 (Fla. 1941). The requirement that evidence of residence must be corroborated also cannot be waived by an admission that the residence requirement has been met. Wise v. Wise, 310 So. 2d 431 (Fla. 1st DCA 1975). When Mrs. Fernandez filed her verified petition she alleged residency. The husband filed a sworn answer and counter-petition admitting his wife was a resident and alleging that he was also. If Mrs. Fernandez's father had not testified concerning her residence, this case would be similar to the case of Speigner v. Speigner, 621 So. 2d 758 (Fla. 1st DCA 1993), and we would hold, as our sister court did in Speigner, that the trial court did not have jurisdiction to dissolve the marriage.

In Speigner both parties alleged residence and admitted that the other was a resident, but at the final hearing neither of them testified that they were residents of Florida. Furthermore, neither party presented the testimony of a third person either live or by affidavit to corroborate that either party had been a resident of Florida for the six months immediately before either the petition or the counter-petition had been filed. The court held that the residence requirement may not be established by an admission by one party of the other's allegation and may not be established by uncorroborated testimony, whether it be of a party or another. In this case, however, in addition to the sworn allegations and admission of both parties, Mrs. Fernandez's father corroborated the residency requirement and that testimony together with the sworn pleadings

established jurisdiction. See Speigner.

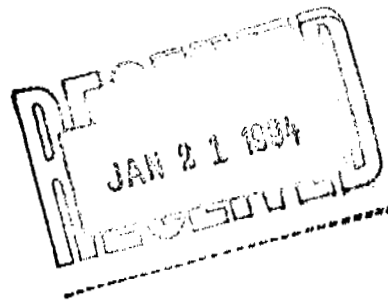
Generally, the one filing an action and seeking a dissolution of the marriage testifies and while doing so testifies as to residency. In such a case that testimony must be corroborated. Lemon v. Lemon, 314 So. 2d 623 (Fla. 2d DCA 1975). No hardship can be worked on the parties by requiring corroboration of a plaintiff's testimony as to bona fide residence. If a plaintiff is a bona fide resident, some of his friends and acquaintances will know about it and be in a position to give corroborating testimony. Phillips. The fact that the parties generally testify, however, does not mean that a party must always testify. As long as there is evidence, e.g. sworn pleadings, that one of the parties is a bona fide resident and that evidence is corroborated, the jurisdictional requirement has been met. §§ 61.021, 61.052(2). See also Speigner; Phillips.

We recognize that by not requiring the party seeking to invoke the court's jurisdiction to testify in all circumstances we are in conflict with Gillman v. Gillman, 413 So. 2d 412 (Fla. 4th DCA 1982). We do not, however, believe that the law requires such testimony in every case.

Since the trial court had jurisdiction to enter the final judgment of dissolution and did so before Mrs. Fernandez died, by reserving jurisdiction to deal with the remaining issues, it had jurisdiction to enter the subsequent final judgment, and the court erred by holding otherwise. Becker v. King, 307 So. 2d 855 (Fla. 4th DCA), cert. denied, 317 So. 2d 76 (Fla. 1975).

We, accordingly, reverse and remand with instructions to reinstate the above-mentioned final judgments.

DANAHY, A.C.J., and PATTERSON, J., Concur.



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT OF THE STATE OF FLORIDA

SUSAN E. FERNANDEZ, GEORGE MURPHY,  
MICHAEL A. MURPHY, DAVID MURPHY,  
ANN NASH, LAURIE SOMESON, JANE  
BOURKARD, ESTATE OF SUSAN E.  
FERNANDEZ, deceased, and E.  
RICHARD BOURKARD, JR., Personal  
Representative of the ESTATE OF  
SUSAN E. FERNANDEZ,

CASE NO.: 93-00802

Appellants

v.

LAWRENCE FERNANDEZ, JR.,

Appellee/Husband.

---

MOTION FOR REHEARING, MOTION FOR CERTIFICATION,  
AND MOTION FOR REHEARING EN BANC

COMES NOW, Appellee/Husband, Lawrence Fernandez, Jr., by and through his undersigned attorney pursuant to Florida Rules of Appellate Procedure, Rules 9.330 and 9.331 and files this Motion for Rehearing, Motion for Certification, and Motion for Rehearing En Banc, and in support thereof would state the following:

1. This Court misapprehended the effect and application of Becker v King, 307 So. 2d 855 (Fla. 4th DCA), cert. denied, 317 So. 2d 76 (Fla. 1975). In Becker, the issues ruled upon and decided in the post-mortem Final Judgment had been tried, considered and orally ruled upon prior to the husband's death.

2. This Court overlooked, and/or failed to consider the case of Jarvis v Tucker, 414 So. 2d 1164 (Fla. 3rd DCA 1982) dism. 419 So. 2d 1198 (Fla. 1982) and its explanation of Becker v King at page 1166.

3. The Appellee/Husband respectfully requests that the following questions be certified to the Supreme Court of Florida as questions of great public interest and/or exceptional importance.

Questions No.1: WHETHER OR NOT THE INDIVIDUAL INVOKING THE JURISDICTION OF THE COURT IN A DISSOLUTION ACTION MUST TESTIFY AS TO HIS OR HER ACTUAL PRESENCE IN THE STATE AND THE INTENTION TO MAKE FLORIDA HIS OR HER RESIDENCE AT THE TIME.

Question No. 2: WHETHER A DIVORCE COURT MAY RESERVE JURISDICTION TO DECIDE PROPERTY ISSUES NOT PREVIOUSLY LITIGATED AND/OR RULED UPON AFTER THE DEATH OF A PARTY IN A BIFURCATED DISSOLUTION.

4. The Appellee/Husband respectfully requests that this Court grant an En Banc Rehearing. In support thereof, I the undersigned attorney, express a belief based upon research and studied professional judgment, that the panel decision is of exceptional importance.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Simson Unterberger, Esquire, Suite 707, One Mack Center, 501 East Kennedy Blvd., Tampa, Florida 33602 this 31<sup>st</sup> day of January, 1994.

HARRY M. HOBBS, P.A.

By: 

Robert S. Hobbs, Esquire  
Post Office Box 18225  
Tampa, Florida 33679-8225  
(813) 879-8333  
Attorneys for Appellee/Husband

IN THE SECOND DISTRICT COURT OF APPEAL, LAKE LAND, FLORIDA

MARCH 2, 1994

SUSAN E. FERNANDEZ, )  
 et al., )  
 )  
 Appellant(s), )  
 )  
 v. )  
 )  
 LAWRENCE FERNANDEZ, JR., )  
 )  
 )  
 Appellee(s). )

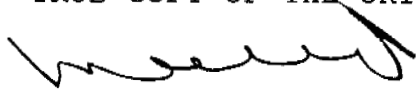
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Case No. 93-00802

BY ORDER OF THE COURT:

Counsel for the appellee, Lawrence Fernandez, Jr.,  
 having filed a motion for rehearing, certification and rehearing  
 en banc in the above-styled case, upon consideration, it is  
 ORDERED that the motion is hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.



WILLIAM A. HADDAD, CLERK

c: Simson Unterberger, Esq.  
 Robert S. Hobbs, Esq.  
 Richard Ake

/JM

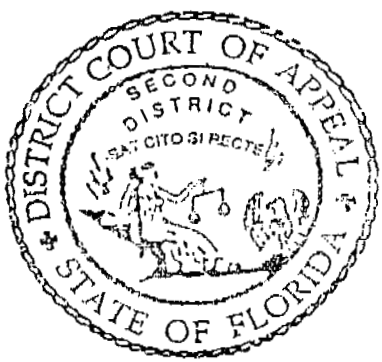


EXHIBIT 4



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT OF THE STATE OF FLORIDA

SUSAN E. FERNANDEZ, GEORGE MURPHY,  
MICHAEL A. MURPHY, DAVID MURPHY,  
ANN NASH, LAURIE SOMESON, JANE  
BOURKARD, ESTATE OF SUSAN E.  
FERNANDEZ, deceased, and E.  
RICHARD BOURKARD, JR., Personal  
Representative of the ESTATE OF  
SUSAN E. FERNANDEZ,

CASE NO.: 93-00802

Appellants

v.

LAWRENCE FERNANDEZ, JR.,

Appellee/Husband.

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that LAWRENCE FERNANDEZ, JR.,  
Appellee/Husband, invokes discretionary jurisdiction of the supreme  
court to review the decision of this court rendered March 2, 1994.  
The decision expressly and directly conflicts with a decision of  
another district court of appeal.

I HEREBY CERTIFY that a true and correct copy of the foregoing  
has been furnished by U.S. Mail to Simson Unterberger, Esquire,  
Suite 707, One Mack Center, 501 East Kennedy Blvd., Tampa, Florida  
33602; William A. Haddad, Clerk of Court, Second District Court of  
Appeal, P.O. Box 327, Lakeland, Florida 33802-0327, and Richard L.  
Ake, Clerk of Circuit Court, Hillsborough County, 419 Pierce  
Street, Tampa, Florida 33602 this 11th day of March, 1994.

HARRY M. HOBBS, P.A.

By: 

Robert S. Hobbs, Esquire  
Post Office Box 18225  
Tampa, Florida 33679-8225  
(813) 879-8333  
Attorneys for Appellee/Husband

1\92-517.nt1

EXHIBIT 5