047

FILED
SID J. WHITE
JUL 10 1995
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

SUPREME COURT OF FLORIDA

SANDRA COOPER, etc.,

Petitioner,

v.

KARIN MUCCITELLI, etc.,

Respondent.

CASE NO. 85,840

District Court of Appeal,
2nd District - No. 94-03048

INITIAL BRIEF OF THE APPELLANT

An Appeal from an Order of the
Second District Court of Appeal, State of Florida

LON WORTH CROW IV
KELLY & CROW
14 South Lake Avenue
Avon Park, Florida 33825
(941) 453-7509
Florida Bar No. 0898228
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF CITATIONS AND AUTHORITY iii

PREFACE v

STATEMENT OF FACTS AND CASE 1

SUMMARY OF ARGUMENT 4

ARGUMENT

I. **THE DISTRICT COURT ERRED AFFIRMING THE TRIAL COURT SINCE THERE WERE DISPUTED ISSUES OF FACT REGARDING THE INTENT OF THE PARTIES TO THE SETTLEMENT AGREEMENT** 5

II. **THE DISTRICT COURT ERRED IN CONCLUDING THAT MUCCITELLI COULD NOT RELEASE HER EXPECTANCY INTEREST IN THE LIFE INSURANCE PROCEEDS BY SIGNING THE PROPERTY SETTLEMENT AGREEMENT** 10

CONCLUSION 16

CERTIFICATE OF SERVICE 17

TABLE OF CITATIONS AND AUTHORITY

CASES:

Aetna Life Insurance v. White,
242 So. 2d 771 (Fla. 4th DCA 1971) 10, 12, 13
American Home Assur. Co. v. Larkin General Hospital, Ltd.,
593 So. 2d 195 (Fla. 1992). 6
Butler v. Small Fry, Inc.
610 So. 2d 54 (Fla. 3rd DCA 1992) 5
Davis v. Davis,
301 So. 2d 154 (Fla. 3rd DCA 1974) 10, 14, 15
Fecteau v. Southeast Bank, N.A.,
585 So. 2d 1005 (Fla. 4th DCA 1991) 6, 7, 8
Gomes v. Stevens,
548 So. 2d 1163 (Fla. 2nd DCA 1989) 5
Gulf Cities Gas Corp. v. Tangelo Park Service Co.,
253 So. 2d 744 (Fla. 4th DCA 1971) 9
Holland v. Verheul,
583 So. 2d 788 (Fla. 2nd DCA 1991) 5
Hornsby v. Anderson,
567 So. 2d 1047 (Fla. 5th DCA 1990) 6
Jones v. Directors Guild of America, Inc.,
584 So. 2d 1057 (Fla. 1st DCA 1991) 5
Kenyon v. Kenyon,
496 So. 2d 839 (Fla. 2nd DCA 1986) 6
Lane v. Talloni,
626 So. 2d 316 (Fla. 5th DCA 1993) 5
Lashley v. Bowman,
561 So. 2d 406 (Fla. 5th DCA 1990) 5
Moore v. Morris,
475 So. 2d 666 (Fla. 1985). 5
Neumann v. Brigman,
475 So. 2d 1247 (Fla. 2nd DCA 1985) 9
O'Brien v. Elder,
250 F. 2d 275 (5th Cir. 1957) 10, 11, 12
Southern Crane Rental, Inc. v. City of Gainesville,
429 So. 2d 771 (Fla. 1st DCA 1983) 9

RULES:

1.510(c) Fla. R. Civ. P. 5
9.030(a)(2)(A)(vi) Fla. R. App. P. 3

OTHER AUTHORITY:

Couch on Insurance 2d (Rev. Ed.) §27:112 10

PREFACE

For purposes of this appeal, the relevant portions of the record are reproduced in the appendix attached hereto. All references to the appendix shall be made with "A" and the corresponding page number. The Appellant, SANDRA COOPER f/k/a SANDRA PASQUINO, shall be referred to as "COOPER". The Appellee, KARIN MUCCITELLI, f/k/a KARIN PASQUINO, shall be referred to as "MUCCITELLI".

STATEMENT OF FACTS AND CASE

On July 4, 1984, Thomas A. Pasquino and MUCCITELLI were married in Adana, Turkey. Thomas A. Pasquino was a member of the United States military serving overseas. In October 1984, the parties moved to Tampa, Florida, to be closer to MacDill Air Force Base where Thomas A. Pasquino was transferred. (A 53). On May 13, 1987, Thomas A. Pasquino made application for a life insurance policy to Academy Life Insurance Company. (A 120). Sometime thereafter, a life insurance policy number 78-9435921 was issued by Academy Life Insurance Company naming Thomas A. Pasquino as the insured with MUCCITELLI his "wife" as primary beneficiary and COOPER his "sister" as secondary beneficiary. (A 119).

In June 1988, the parties moved to Ramstein Air Force Base in Germany. On or about May 28, 1992, MUCCITELLI returned to Florida to reside with her parents in Palm Bay. In July 1988, Thomas A. Pasquino returned to Florida. After returning to Florida, MUCCITELLI hired an attorney to file for dissolution of her marriage with Thomas A. Pasquino. MUCCITELLI's attorney drafted the necessary divorce documents which included the Separation Agreement. (A 72, 92-94). MUCCITELLI mailed the divorce papers to Thomas A. Pasquino under cover letter on July 6, 1992. (A 42-43). In the cover letter sent by MUCCITELLI, she indicates that she "ha[s] given up everything" and threatened to claim a portion of Thomas A. Pasquino's military pension if he did not agree and sign the papers. (A 42-43). Prior to MUCCITELLI contacting her lawyer and sending the dissolution papers to Thomas A. Pasquino, she knew of the existence of the Academy Life Insurance policy and that she was the named primary beneficiary. (A 57,

89). Thomas A. Pasquino signed the Separation Agreement on July 8, 1992. (A 131). The agreement provided that "the parties desire to settle their financial, property, and other rights and obligations arising out of the marriage and otherwise." (A 125). The agreement further provided that

> each party hereby waives, releases and discharges all claims, causes of action, rights or demands, known or unknown, past, present or future, which he or she now or hereafter has, might have, or could claim to have against the other by reason of any matter, thing or cause whatsoever, prior to the date of this Agreement.

(A 128). On July 30, 1992, the circuit court of Brevard County, Florida entered an order dissolving Thomas A. Pasquino and MUCCITELLI's marriage and incorporated the Separation Agreement, ordering the parties to comply with the terms and conditions thereof. (A 122). On August 7, 1992, MUCCITELLI remarried. (A 69). On August 17, 1992, MUCCITELLI and her new husband relocated to Bonn, Germany. (A 68). In December 1992, Thomas A. Pasquino removed MUCCITELLI from a Service Group Life Insurance policy and named his children and his parents as beneficiaries. (A 37-38, 83).

On or about January 1993, Thomas A. Pasquino died by suicide. Upon notification of Thomas A. Pasquino's death, MUCCITELLI made claim to the proceeds of the Academy Life Insurance policy. (A 66). COOPER also made claim to the life insurance proceeds as secondary beneficiary due to the waiver by MUCCITELLI of her expectancy interest in the Separation Agreement.

Based upon the conflicting claims, Academy Life Insurance Company filed an interpleader action naming MUCCITELLI and COOPER as defendants. On February 22, 1994, the proceeds of the life insurance policy in the amount of $102,175.33 were

deposited in the registry of the court. On May 10, 1994, MUCCITELLI filed a motion for summary judgment. On July 18, 1994, COOPER filed an affidavit in opposition to the motion for summary judgment. On July 26, 1994, the trial court heard MUCCITELLI's motion for summary judgment. On August 1, 1994, the trial court entered an order granting MUCCITELLI's motion for summary judgment. (A 36). On August 9, 1994, COOPER timely filed a notice of appeal. (A 35). On September 19, 1994, the trial court entered final judgment for MUCCITELLI. (A 34). On September 28, 1994, COOPER timely filed an amended notice of appeal. (A 33). On May 31, 1995, the Second District Court of Appeal entered an order affirming the trial court and certifying a conflict to the Supreme Court. (A 134). On June 2, 1995, COOPER filed her Notice to Invoke Discretionary Jurisdiction of the Supreme Court pursuant to Rule 9.030(a)(2)(A)(vi) Fla. R. App. P. (A 139).

SUMMARY OF ARGUMENT

MUCCITELLI and Thomas A. Pasquino signed a Separation Agreement which contained a general mutual release. At the time of signing the agreement the parties knew of the existence of the Academy Life Insurance policy and MUCCITELLI being named as primary beneficiary. It was the intent of the parties that the Separation Agreement completely resolve all issues of the marriage. While the Separation Agreement did not specifically name the life insurance policy, there was a material question of fact presented as to whether the parties intended that the agreement apply to MUCCITELLI's expectancy interest in the life insurance proceeds. Further, the agreement could reasonably be construed to apply to the expectancy interest. Given the disputed issues of material facts and the possibility of two reasonable constructions, summary judgment was improper. Further, the language of the agreement as well as the circumstances surrounding its execution indicate that the parties intended the agreement to apply to MUCCITELLI's expectancy interest. The language of the instant agreement is consistent with Florida cases which have held that a property settlement agreement can extinguish an expectancy interest even though not specifically mentioned in the agreement.

The Second District Court of Appeal erred in affirming the summary judgment of the trial court. The Second District Court acknowledged that reversal was mandated if it followed the decisions of other Florida district courts, but chose to create a new rule regarding interpretation of contracts and affirmed the summary judgment below. The District Court's decision ignores the prevailing rules of contract construction and the prevailing case law which supports COOPER's claim to the insurance proceeds.

ARGUMENT

I. THE DISTRICT COURT ERRED AFFIRMING THE TRIAL COURT SINCE THERE WERE DISPUTED ISSUES OF FACT REGARDING THE INTENT OF THE PARTIES TO THE SETTLEMENT AGREEMENT:

A. Standard For Summary Judgments:

In order to grant a motion for summary judgment, the trial court must determine that the pleadings, depositions, answers to interrogatories, and admissions together with affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 1.510(c) Fla. R. Civ. P. This court is well aware of the burden that a moving party must bear in seeking to deny a litigant the right to a trial through summary judgment. It is not enough that the facts lean in the movant's favor. Rather, the facts must be so crystallized that nothing remains but questions of law. Moore v. Morris, 475 So. 2d 666 (Fla. 1985). Furthermore, every possible inference must be drawn by the court in favor of the non-moving party. Butler v. Small Fry, Inc., 610 So. 2d 54 (Fla. 3rd DCA 1992); Lashley v. Bowman, 561 So. 2d 406 (Fla. 5th DCA 1990). And in considering a motion for summary judgment, the trial court cannot weigh the evidence. Lane v. Talloni, 626 So. 2d 316 (Fla. 5th DCA 1993). If the record raises the slightest doubt that material issues could be present or the possibility of any issue, the doubt must be resolved against the movant and the motion for summary judgment must be denied. Holland v. Verheul, 583 So. 2d 788 (Fla. 2nd DCA 1991); Jones v. Directors Guild of America, Inc., 584 So. 2d 1057 (Fla. 1st DCA 1991); Gomes v. Stevens, 548 So. 2d 1163 (Fla. 2nd DCA 1989).

b. Existence of Material Issues of Fact:

It is the general rule that separation agreements entered into by a former husband and wife and ratified by a court are contracts and should interpreted like any other contract. Kenyon v. Kenyon, 496 So. 2d 839 (Fla. 2nd DCA 1986). The intent of the parties to a contract will govern its construction. American Home Assur. Co. v. Larkin General Hospital, Ltd., 593 So. 2d 195 (Fla. 1992). To determine intent, the court must consider language, subject matter, and the object and purpose of the agreement. Id. When the construction of an agreement requires a consideration of the intent of the parties, summary judgment is not appropriate. Hornsby v. Anderson, 567 So. 2d 1047 (Fla. 5th DCA 1990). Further, where there are two reasonable interpretations of an agreement, summary judgment is inappropriate because there is a genuine issue of material fact. Fecteau v. Southeast Bank, N.A., 585 So. 2d 1005 (Fla. 4th DCA 1991).

In Hornsby, supra, a child brought action against his father's estate seeking to enforce the terms of a child support agreement. The estate moved for summary judgment. The trial court granted the motion and the child appealed. The Hornsby court reversed, holding that since the child support agreement was not clear on the issues presented, there was no basis for summary judgment and a trial would be required to determine the intention of the parties. Id. at 1048.

Hornsby is similar to the instant case in that there is a question of fact as to whether the Separation Agreement was intended by the parties to apply to MUCCITELLI's expectancy interest in the Academy Life Insurance policy. The material

issues of fact regarding the intent of the parties are created by the testimony by MUCCITELLI, the affidavit of COOPER, and the Separation Agreement.

Specifically, MUCCITELLI testified that by signing and sending the Separation Agreement to Thomas A. Pasquino, her intent was to resolve all of the property and liability matters of the marriage. (A 71-72). MUCCITELLI also knew of the Academy Life Insurance policy at the time she signed the Separation Agreement. (A 57, 89). If MUCCITELLI wanted to preserve her expectancy interest she would have specified in the agreement that she be maintained as the primary beneficiary on the policy. Her failure to so provide further evidences MUCCITELLI's intent to relinquish the expectancy interest. The affidavit filed by COOPER also indicates that Thomas A. Pasquino's intent was that the Separation Agreement terminated MUCCITELLI's interest in the insurance proceeds.[1] (A 37). The intent to completely resolve all property issues of the marriage is borne out by the language of the Separation Agreement. It provided that the parties desired to "settle their financial, property and other rights and obligations arising out of the marriage and otherwise" (emphasis added). (A 125). The Agreement further provided that each party

> waives, releases and discharges all claims, causes of action, rights or demands, known or unknown, past, present, or future, which he or she now or hereafter has, might have or could claim to have against the other by reason of any matter, thing, cause whatsoever, prior to the date of this Agreement.

(emphasis added). (A 128).

[1] MUCCITELLI argued at trial that the affidavit was inadmissible hearsay. MUCCITELLI moved to strike the affidavit and objected to its admissibility. The trial court, however, never entered a ruling on the motion or the objection and therefore the admissibility of the affidavit is not before the court and can be considered as evidence for purposes of this appeal. See, Fecteau v. Southeast Bank, N.A., 585 So. 2d 1005 (Fla. 4th DCA 1991).

Additionally, the language of the agreement can be reasonably interpreted two different ways. COOPER maintains that the release language was intended by the parties to apply to MUCCITELLI's expectancy interest in the insurance proceeds. MUCCITELLI contends that the release does not affect her expectancy interest. Because there are two reasonable interpretations to the agreement, summary judgment was improper. In Fecteau, supra, the parties executed a property settlement agreement incident to divorce which provided that the husband would furnish a house to the wife. The wife was given the exclusive possession of the home so long as the terms and conditions of the agreement were fully complied with. The husband was obligated to pay the expenses of the home. Id. at 1006. The agreement was later modified to provide that the husband would build a home for the wife on property he owned. The home was built and was occupied by the wife. After the husband's death, the personal representative paid off the mortgage on the property and filed suit to evict the wife. The estate moved for summary judgment and the trial court determined that the provision in the agreement concerning the home was not ambiguous and was clearly a support obligation which terminated on the husband's death. The wife appealed. Id. at 1007.

Notwithstanding the strong evidence which supported the conclusion that the provision in the agreement related to property division, the Fecteau court recognized the conflicting interpretations and reversed. The court concluded that, given the different reasonable interpretations of the agreement, an issue of fact was presented which precluded summary judgment. Id. at 1009.

The District Court, in the instant case, acknowledges that there are disputed issues of fact presented by the evidence in the record. Thus, on its face, the decision of the District Court is flawed. When interpreting divorce settlement agreements, as with any other contract, the intent of the parties is key. The decision of the District Court carves out an exception to contract interpretation that where an agreement containing a general release which does not specifically mention an interest being released, the intent of the parties is never an issue regardless of the conflicting reasonable interpretations of the agreement. This rule of construction ignores the possibility that silence in a contract can create an ambiguity which would require parole evidence and the fact finder to determine the intent of the parties. Southern Crane Rental, Inc. v. City of Gainesville, 429 So. 2d 771 (Fla. 1st DCA 1983); Neumann v. Brigman, 475 So. 2d 1247 (Fla. 2nd DCA 1985). The District Court cites no authority for the proposition that silence in a contract precludes the determination of the intent of the parties. Only where a contract is silent as to particular matter and it cannot by reasonable implication be said that the parties intended the document to cover that particular matter, should the court conclude as a matter of law that the contract not cover the particular matter. Gulf Cities Gas Corp. v. Tangelo Park Service Co., 253 So. 2d 744 (Fla. 4th DCA 1971). In the instant case, it is a reasonable implication that the parties intended the settlement agreement to cover the expectancy interest of MUCITELLI.

Therefore, in the instant case, given the existence of material issues of fact regarding the intention of the parties as to whether the Separation Agreement applied to

expectancy interests in life insurance proceeds, the District Court erred in affirming the trial court.

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT MUCCITELLI COULD NOT RELEASE HER EXPECTANCY INTEREST IN THE LIFE INSURANCE PROCEEDS BY SIGNING THE PROPERTY SETTLEMENT AGREEMENT:

It is the general rule in Florida that while divorce alone will not automatically divest a former spouse of an expectancy interest in proceeds of a life insurance policy, a property settlement agreement can based on the intention of the parties. O'Brien v. Elder, 250 F.2d 275 (5th Cir. 1957); Davis v. Davis, 301 So. 2d 154 (Fla. 3rd DCA 1974); Aetna Life Insurance v. White, 242 So. 2d 771 (Fla. 4th DCA 1971); Couch on Insurance 2d (Rev. Ed.) §27:112. Thus, the critical inquiry is whether the parties to the property settlement agreement "intended" to divest the expectancy interest. However, the decision of the District Court, in the instant case, completely forecloses a determination of the intent of the parties where the property settlement agreement does not specifically name the expectancy interest. This holding is in direct conflict with the decisions of other every other Florida case which has addressed this issue.

The critical authority which controls the resolution of the instant case is O'Brien v. Elder, 250 F.2d 275 (5th Cir. 1957). In O'Brien, the parties were divorced in 1955. During the marriage, the husband had obtained three life insurance policies designating his wife as the primary beneficiary. The policies were maintained by him throughout the marriage and, upon his death in February 1956, were found among his effects with his ex-wife as the named beneficiary. The probate court ordered that the policies be paid to the ex-wife. The administratrix filed suit to obtain the insurance proceeds asserting, inter alia, that the parties separation agreement (which made no specific mention of the insurance

policies) incorporated into the divorce decree effected a relinquishment by the ex-wife of her interest in the insurance proceeds. The ex-wife moved for summary judgment asserting that she had never waived her right to the insurance proceeds. The trial court found that the pleadings and affidavits presented no genuine issue of fact and determined, as a matter of law, that the ex-wife was entitled to the insurance proceeds. The administratrix appealed. Id. at 277.

The O'Brien court reversed and entered judgment for the administratrix. The court held that even though the construction of the agreement did not raise factual questions, the trial court erred in concluding that the agreement was not intended to and did not embrace the proceeds of the insurance policies. Id. at 279. The court concluded that "it is plain that the [ex-wife] relinquished any interest in the proceeds of her husband's insurance." Id. As support for this conclusion, the court relied upon the language of the separation agreement and the contemplation of the parties at the time it was executed. The separation agreement provided that "upon the performance of all the conditions contained in this stipulation, neither party hereto shall have any claim on the other party of any kind whatsoever, including that for alimony." Id. The court went on to define an expectancy interest in insurance proceeds as a "claim" contemplated by the language of the agreement. Since a beneficiary's expectancy interest is derived from the insured, it was a claim which was subsumed under the release language of the agreement. Id. Further, due to the contemplation of the parties that the agreement be a final property agreement and the completeness of the terms, the agreement demonstrated the intention of the parties to

effect a complete settlement as well as a final one, including any expectancy interest of the ex-wife. Id.

The similarities between the instant case and O'Brien are undeniable. In the instant case the release language in the Separation Agreement is even more encompassing than in O'Brien. In the instant case, the Separation Agreement provided that each party

> waives, releases and discharges all claims, causes of action, rights or demands, known or unknown, past, present or future, which he or she now or hereafter has, might have, or could claim to have against the other by reason of any matter, thing or cause whatsoever, prior to the date of this Agreement.

(emphasis added) (A 128). Clearly, under the definition of "claim" as announced in O'Brien, the expectancy interest MUCCITELLI had at the time she signed the Separation Agreement was intended to be subsumed in the language of the release. Further, the testimony of MUCCITELLI confirms that by signing the agreement the parties intended it to be final and a complete resolution of all issues between them, including any expectancy interests.

MUCCITELLI relied on Aetna Life Insurance Co. v. White, 242 So. 2d 771 (Fla. 4th DCA 1971), to suggest that the trial court's decision was proper. In Aetna, the decedent purchased a life insurance policy during the course of his first marriage naming his wife as beneficiary. The decedent divorced his first wife and remarried. After remarrying, the decedent changed the beneficiary on the life insurance policy to his second wife and naming his sister as secondary beneficiary. The decedent then divorced his second wife and died two months later. The decedent did not change the beneficiary designations prior to his death. A declaratory judgment action was filed by the curator to

the decedent's estate to determine who was entitled to the insurance proceeds. The trial court granted the secondary beneficiary's motion for summary judgment finding that the second wife was precluded from taking under the insurance policy by virtue of a property settlement agreement entered into between her and the decedent. The second wife appealed. Id. at 772.

The Aetna court reversed finding that the language of the settlement agreement did not specifically mention insurance and contained only a unilateral release by the decedent of claims against the wife. The court determined that the general language of the "Whereas" clause which indicated an intention to fix their relations with respect to property and financial matters by the agreement, was limited by the more specific unilateral release of the decedent. The court concluded that since the wife did not sign a corresponding release, the only reasonable interpretation of the agreement was that she released only those items specifically provided for in the agreement. And since the insurance was not specifically mentioned, the agreement did not effect a release of her expectancy interest in the insurance proceeds. Id. at 773. The dissent, citing O'Brien, argued that the trial court should have been affirmed given the finality of the language in the agreement. Id. at 275.

As applied to the instant case, Aetna does not mandate affirming the District Court. Unlike in Aetna, the Separation Agreement in the instant case contains a mutual release which does reasonably evidence the parties intent that MUCCITELLI's expectancy interest was released. Further, the "Whereas" clauses in the instant case clearly evidence the parties intent that the Agreement would completely resolve every claim that the parties

had. The concerns of the Aetna court are not present in the instant case. Rather, based upon the finality of the language and the mutual release contained in the instant case, a reasonable construction can be made that MUCCITELLI relinquished her right to the insurance proceeds.

MUCCITELLI also relied on Davis v. Davis, 301 So. 2d 154 (Fla. 3rd DCA 1974). In Davis, the decedent and his wife were divorced on May 18, 1973. The divorce decree specifically incorporated a property settlement agreement that the parties had signed. During the marriage the decedent accumulated a pension account and life insurance policy naming his wife as beneficiary. On September 9, 1973, the decedent died intestate and his son was appointed as administrator of his estate. The ex-wife remained as the named beneficiary of the pension account and life insurance policy. A complaint for declaratory judgment was filed by the administrator to determine entitlement to profit sharing and life insurance proceeds. Id. at 155. Both the administrator and the ex-wife moved for summary judgment. The trial court granted the ex-wife's motion and entered final judgment for the ex-wife. The administrator appealed. Id. at 156.

The Davis court affirmed, finding that it could not be reasonably inferred from the language contained in the property settlement agreement that the ex-wife released an expectancy interest in the profit sharing trust and life insurance policy. The court noted that the property settlement agreement was a release to "only three specific matters: dower, alimony, and special equities to which she might be entitled." Id. at 157. Further, the court relied upon the affidavit offered by the administrator that the decedent had knowingly not changed the beneficiary of his life insurance policy because of his fear that

his employer would look down upon the failure of his marriage. The decedent had also indicated to his son that he intended on changing the beneficiary designation in the future but there was no need to make an immediate change because he was going to live for a long time. Id. The court concluded that the statements by the decedent coupled with the limiting release language of the agreement illuminated the actual intent of the parties that the agreement was not to effect the expectancy interest in the life insurance proceeds. Id.

As applied to the instant case, Davis does not require affirming the District Court. In Davis, the property settlement agreement did not contain the all encompassing release language which is present in the instant case. (A 128). Further, the reason Thomas A. Pasquino did not make any attempt to change the beneficiary designation was that he understood the Separation Agreement to have extinguished MUCCITELLI's interest in the insurance policy. (A 38). Thus, unlike in Davis, the agreement in the instant case, coupled with the conduct of the parties, can reasonably support the construction that the agreement was intended to relinquish MUCCITELLI's interest in the insurance proceeds.

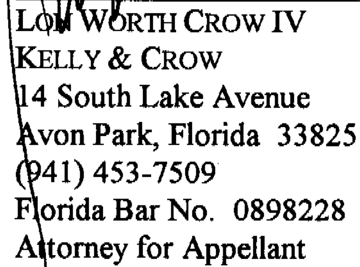
Based on the language of the Separation Agreement in the instant case and the testimony of the parties, O'Brien is on all fours and requires reversal of the District Court.

CONCLUSION

The Appellant, SANDRA COOPER f/k/a SANDRA PASQUINO, respectfully requests that the Order of the Second District Court of Appeal be reversed and judgment be entered for the Appellant or in the alternative the matter be remanded for further proceedings.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished to Kurt Erlenbach, Esquire, 503 S. Palm Avenue, Titusville, Florida 32796 by U.S. Regular Mail this 7th day of July, 1995.



LON WORTH CROW IV
KELLY & CROW
14 South Lake Avenue
Avon Park, Florida 33825
(941) 453-7509
Florida Bar No. 0898228
Attorney for Appellant