

FILED

SID J. WHITE

AUG 29 1995

CLERK, SUPREME COURT

By *[Signature]*
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

REPLY BRIEF OF THE APPELLANT

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

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Attorney for Appellant

ARGUMENT

I. THE SUPREME COURT SHOULD ACCEPT JURISDICTION OVER THIS CAUSE SINCE THE DISTRICT COURT'S DECISION IS IN DIRECT CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL

Appellee contends that the instant case as decided by the Second District Court of Appeal is not in direct conflict with decisions from other districts, notwithstanding the express certification of conflict. A review of the cases cited by the Second District in conflict clearly indicate that reversal of the summary judgment trial court was mandated if followed. Further, as addressed in Appellant's initial brief, the cases cited in conflict support judgment for the Appellant. The "evolution" in the law as announced by the Second District is materially different from the cited decisions of other districts and is therefore in conflict with them. The Court should exercise its discretion to review the instant appeal.

II. WHETHER 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

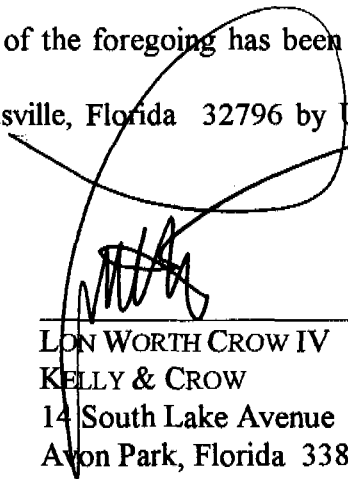
Appellant would reply only in stating that given the Second District's decision, it has departed from one of the more prevalent rules of contract construction--i.e. the intent of the parties controls. Thus, as the intent of the parties to contracts remains a highly relevant issue in contract interpretation, the Appellant believes that it is also highly relevant in disputes involving divorce settlement agreements as in this case. Therefore, the decision of the Second District should be reversed.

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

As is discussed in Appellant's Initial Brief, the decision of the Second District is a radical departure from current Florida Law. Under that decision, any time there is a dispute over a property settlement agreement and one party is deceased, the strict language of the agreement shall govern regardless of any ambiguities. What becomes of the ambiguities? Are they simply discarded as irrelevant or are they clarified by reference to any other document? If the latter, does that not return us to the search for the intent of the parties? Why should silence never constitute an ambiguity? If a party can release an expectancy interest in a life policy by specifically mentioning it in the agreement, how can a general release clause not without an understanding of the parties intent? The rule announced in this case does not make interpretation of divorce settlement agreements any easier. It simply streamlines the determination at the expense of the parties true intentions. Divorce actions are unique in contract law in that in most cases the parties are attempting to fully and completely separate and terminate their affairs and connections with each other. To hold that intent of the parties is not relevant in cases such as the instant one is to ignore the obvious intent of the parties and re-write the contract. The cases cited by the Second District Court as being in conflict do not support this draconian method of contract interpretation, but rely more on the more just determination of what the intent of the parties was at the time of execution of the agreement. Thus, the decision of the Second District should be reversed.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished to Kurt Erlenbach, Esq., 503 S. Palm Avenue, Titusville, Florida 32796 by U.S. Regular Mail this 28th Day of August, 1995.



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