SUPREME COURT OF FLORIDA

EUGENE F. GAINES, Petitioner	)	CASE NO. 95,134 (DCA NO. 97-00491)
vs.	)	
LYNN SAYNE, as personal representative of the estate of CHLODEL H. GAINES, deceased, Respondent	)	

ON PETITION TO REVIEW THE DECISION OF THE
SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

RESPONDENT'S ANSWER BRIEF ON THE MERITS

THEODORE J. RECHEL, ESQUIRE
Florida Bar No. 836893
DONALD A. FOSTER, ESQUIRE
Florida Bar No. 072631
RECHEL & ASSOCIATES, P.A.
1905 West Busch Boulevard
Tampa, Florida 33612
(813) 933-9632
ATTORNEYS FOR RESPONDENT
LYNN SAYNE, PERSONAL
REPRESENTATIVE FOR THE ESTATE
OF CHLODEL H. GAINES

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PRELIMINARY STATEMENT

In this Answer Brief, Petitioner, EUGENE F. GAINES, will be referred to as "Husband" or as "Petitioner." The Respondent, LYNN SAYNE, as personal representative of the estate of CHLODEL H. GAINES, will be referred to as "Wife", "Wife's Estate" or as "Respondent."

References to the Record-On-Appeal shall be made by the symbol "R" followed by the applicable page number, and references to the Transcript of the trial proceedings below shall be made by the symbol "T" and page number.

STATEMENT OF THE CASE AND FACTS

The respondent agrees with the Statement of the Case and Facts as set out in the petitioner's brief. However, the respondent would add that in the husband's petition for dissolution of marriage, he alleges that the marriage is irretrievably broken, (R.1) and in her answer, the wife admits that the marriage was irretrievably broken. (R.3) In the wife's counter petition, she alleges the marriage is irretrievably broken, (R.4) and the husband admitted the allegation in his answer. (R.19). The Final Judgment of Dissolution of Marriage entered below contains a finding that the marriage is irretrievably broken, (R.180) and dissolves the marriage (R.182).

SUMMARY OF ARGUMENT

In the instant case, neither party ever contested the divorce issue. The trial judge signed a written final judgment of dissolution of marriage finding the marriage irretrievably broken and dissolving the bonds of matrimony. The motions for rehearing filed involved collateral issues of property settlement. No motions for rehearing were ever filed contesting the divorce issue. The trial court had completed the judicial labor involved in terminating the marriage. While the final judgment was not in appealable form, this is not required for termination of a marriage. *Berkenfield*. This Honorable Court should affirm the Second District Court below.

Next, the Circuit Court did not abuse its discretion in awarding an equitable distribution to the Wife for the sale of the marital property in Georgia. The testimony of the Husband was sufficient competent evidence to support the decision of the Circuit Court awarding the Wife one-half of the proceeds remaining from the sale of the marital property in Georgia.

Finally, this was a long term marriage in which the Husband had supported the Wife throughout. The trial court's award of retroactive alimony to the date of filing of the petition instead of the counter-petition was appropriate because the Husband was on notice that alimony was an issue at the time he filed for a divorce.

ARGUMENT

I. THE SECOND DISTRICT COURT WAS CORRECT TO HOLD THAT THE PARTIES' MARRIAGE TERMINATED BY OPERATION OF THE FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE EVEN THOUGH THE WIFE DIED PRIOR TO FINAL DISPOSITION OF A MOTION FOR REHEARING, BECAUSE NEITHER PARTY CONTESTED THE DIVORCE ISSUE, THE FINAL JUDGMENT WAS REDUCED TO WRITING AND SIGNED BY THE TRIAL JUDGE, THUS COMPLETING ALL JUDICIAL LABOR NECESSARY TO TERMINATE THE PARTIES MARRIAGE PRIOR TO WIFE'S DEATH.

The marital relation is a personal one that terminates upon the death of either of the parties, and a suit for divorce is purely a personal action which cannot survive the death of either party. *Price v. Price*, 114 So2d 233, 153 So.904 (Fla.1934), *McKendree v. McKendree* 139 So.2d 173 (1st DCA 1962). The general rule is that the death of a party terminates the divorce suit in whatever stage it may be. That is, if a divorce is proceeding at the trial court level prior to the rendition of a judgment and a party dies, then the case is dismissed because the marital relation is terminated by operation of law, and if a judgment is entered during the lifetime of the parties and an appeal taken therefrom, and then one party dies, then the appeal is dismissed and the divorce decree stands. *Price* at 905. The death of a spouse, or rather, ex-spouse, subsequent to the rendition of a final judgment has no effect because the parties' marriage is already terminated by operation of judgment.

At the crux of this appeal is the question of when the trial court sufficiently renders its judgment to effect the termination of the marital relationship. It has long been held that in order for a judgment to be rendered to terminate a marriage, the judgment must be reduced to writing and signed by the judge prior to the death of either party. *Sahler v. Sahler*, 17 So.2d 105 (Fla. 1944), *Jaris v. Tucker*, 414 So.2d 1164 (Fla 3d DCA 1982). *Baggett v. Baggett*, 309 So.2d 223 (2d DCA 1975), *Messina v. Messina*, 421 So.2d 48 (Fla. 4th DCA 1982).

While the judgment must be in writing, there is no requirement that the final judgment be recorded or otherwise be in such final form as to be the basis for additional process or proceedings. *Berkenfield v. Jacobs*, 83 So.2d 265 (Fla. 1955). In *Berkenfield,* the wife filed for a divorce, and the husband joined in her request for dissolution of their marriage by way of countersuit. The final decree was signed on June 21, 1954 and very shortly thereafter the same morning, still in the chancellor's chambers, the husband expired. The chancellor then vacated the judgment because it had not yet been recorded. As in the instant case, if the marriage terminated by final judgment, then the husband's heirs or beneficiaries received the husband's estate. If the marriage terminated by death, then the wife inherited the husband's estate. The Supreme Court ruled that, while the judgment was not recorded and therefore not in such final form as to form the basis for subsequent process or proceedings, it does not

follow that the judgment was effective for no purpose at all. The judgment provided for a divorce only, and since the judicial labor had ended with the signing of the decree, the Supreme Court held that the judgment was sufficient to end the marriage prior to the husband's death. This conclusion was reached even though, at the time of the death of the husband, the time for either party to file a motion for rehearing and/or an appeal had clearly not yet expired, and even though, having not been recorded, the judgment was not in such form as to be considered rendered for purposes of appeal. The Court also indicated that in reaching its decision, it declined to adopt an absolute rule which would work hardship and injustice in many cases.

Florida Courts have long recognized the difference between a judgment "rendered" for appellate purposes and "rendered" sufficiently to dissolve a marriage. *Becker v. King*, 307 So2d 855 (Fla. 4th DCA 1975). In *Becker*, a partial final judgment of dissolution of marriage was entered granting a divorce to the parties. Later, the trial court made oral pronouncements as to issues of property settlement, but before the pronouncements could be reduced to writing, the husband died. The Fourth District Court held that the parties' marriage was dissolved by operation of the original written partial final judgment and that the oral pronouncements regarding property distribution were sufficiently rendered and could be reduced to written form even after the death of a party. In reaching this conclusion, the District Court drew a

sharp distinction between "rendition" for purposes of a valid judgment and "rendition" for appellate purposes. The District Court stated:

> However essential a filed writing is to an appeal, a judgment may be valid although not in such final form as is required for appeal purposes. Aside from its definition in the Florida Appellate Rules, rendition generally refers to the judicial act of the court in giving, returning, pronouncing, or announcing, orally or in writing, its conclusions and decision on the matter submitted to it for adjudication...Aside from the effect of a statute or court rule for particular purposes, a judgment exists as such when it is thus rendered and is valid and binding as between the parties and their privies...

Becker at 858, 859.

Further, an undisposed motion for rehearing does not prevent rendition of a judgment sufficient to dissolve a marriage. *Reopelle v. Reopelle*, 587 So.2d 508 (5th DCA 1991). While *Johnson v. Feeney*, relied upon by the Petitioner herein, is in direct conflict with *Reopelle*, the *Reopelle* decision is better reasoned and is more consistent with established principles of Florida law.

In *Reopelle*, as in the case *sub judice*, the husband died after rendition of a written final judgment but before the disposal of a timely filed motion for rehearing. The Fifth District Court noted the distinction between a valid judgment sufficient to terminate the marriage, and a judgment being final in form for appellate purposes,

citing *Becker*. The court further noted that the rehearing pertained to collateral issues of property distribution and did not directly challenge dissolution of the marital bond.

The District Court in the *Reopelle* decision then cites *Baggett v. Baggett*, 309 So.2d 223 (2d DCA 1975). In *Baggett*, the trial court entered a signed final judgment of dissolution of marriage and the judgment was recorded. The wife filed a motion for rehearing or in the alternative, a motion to set aside, amend or modify the final judgment. The *Baggett* court noted that the motion for rehearing did not involve the granting of the divorce itself, stating "we emphasize that there was no challenge to the judgment insofar as it relates to the dissolution of the marriage." *Baggett* at 224. A rehearing was held and the trial court made oral pronouncements as to its decision on the motion for rehearing. Prior to the trial court entering a written order on the rehearing, the Husband remarried, then died. The trial court then entered its order on the rehearing *nunc pro tunc* to the date of the rehearing. The husband's estate appealed, relying on the *Sahler* and *McKendree* decisions. The Second District first held that the marriage was terminated by the written and recorded final judgment. This decision was reached despite the fact that, as in the instant case, a motion for rehearing was pending at the time of the death of one of the parties. Second, the District Court followed *Becker* and held that the death of the Husband after oral

pronouncement, but prior to entry of a written order on the rehearing, did not deprive the trial court of its ability to enter the order on the rehearing.

The Petitioner states in his brief that the *Reopelle* court was misguided in relying on *Baggett*. He argues that *Baggett* can be distinguished from *Reopelle, Johnson v. Feeney* and the instant case in that in *Baggett,* an actual rehearing was held. Arguendo, if this is so then the distinction involves the second step of the analysis, i.e. whether the trial court can enter the order on the motion for the rehearing. There is no distinction between *Baggett, Reopelle* and the instant case involving the first step of the *Baggett* analysis, i.e. whether the marriage terminated by final judgment or by death. In all of the cases the signed final judgment terminated the marriage despite the pending motion for rehearing at the time of a party's death. The fact that in *Baggett* a rehearing was held can only speak to the trial court's ability to enter an order on the rehearing, not to the underlying question of the validity of the marriage itself. Relying on *Becker* and *Baggett*, the *Reopelle* court held that a judgment need not be in such final form as required for appellate purposes to extinguish a marriage, and that a pending motion for rehearing does not prevent a written final judgment for dissolution of marriage from ending the marital relation.

Petitioner argues that *Reopelle* is an aberration and should be ignored by this court. However, *Reopelle* is consistent with *Sahler*, *Jaris* and *Baggett* in that the

court required a judgment to be reduced to writing and signed in order for a marriage to be considered terminated by operation of judgment. *Reopelle* is also consistent with *Berkenfield v. Jacobs, Becker* and *Baggett* in that *Reopelle* recognizes the distinction between rendering a valid final judgment and rendering a judgment final for appeal purposes, holding that a final judgment need not be in final appellate form in order to extinguish a marriage. *Reopelle* is not an aberration, but is consistent with all prior case law on this matter.

The true aberration is the case of *Johnson v. Feeney*, 507 So.2d 722 (3d DCA 1987), on which petitioner relies heavily. *Johnson* involves a fact pattern similar to *Reopelle* and the case at bar in that a written final judgment was entered by the trial court. The husband filed a timely motion for rehearing, and the wife died before the trial court had ruled on the motion. No mention is made as to the contents or subject matter of the motion, whether the motion for rehearing involved property distribution, a collateral issue, or whether the motion challenges the dissolution itself, a factor that is emphasized in *Baggett, Becker*, and *Reopelle*. It is also not clear from the published case whether or not the trial court had actually held a rehearing. What is clear is that the Third District espoused an overly simplistic and faulty analysis.

First, the District Court states that "the death of a party to a marriage dissolution action before a final judgment is entered terminates the marriage relationship by

operation of law and divests the trial court of jurisdiction to issue a final decree", citing *Sahler*, *Price*, *Jaris* and *McKendree*. In *Sahler*, *Jaris* and *McKendree*, no written judgments were entered, only oral pronouncements were made prior to the party's death. *Price* never mentions the term "final judgment" or "final decree". The case deals with an appeal filed but unresolved at the time of the death of a party.

Second, the Third District states:

> . . .a judgment entered by a trial court is not final while a timely motion remains pending. *State ex rel Owens v. Pearson*, 156 So.2d 4, 7 (Fla. 1963); *Pruitt v. Brock*, 437 So.2d 768, 772 (Fla. 1st DCA 1983); *Dixon v. Dixon*, 184 So.2d 478, 482 (Fla. 2d DCA 1966), *cert. discharged*, 194 So.2d 897 (Fla. 1967); *Cocalis v. Cocalis*, 103 So.2d 230, 233 (Fla. 2d DCA 1958).

Johnson at 723. All of the cited cases involve an interpretation of when a judgment becomes "rendered" and final for appellate purposes. None of the cited cases have to do with the finality of a judgment for dissolution of marriage purposes, and the *Johnson* court is misguided in relying on those cases. Ironically, one of the cases cited, *Pruitt*, states that the rules of procedure must be construed in a manner which will further justice, not frustrate it, and that the intended purpose behind the adoption of the rules of procedure is that the case be determined on its merits. *Pruitt* at 774.

Finally, the *Johnson* court leaps to the conclusion that ". . . it therefore follows that the death of one of the parties to a marriage dissolution action after the entry of a judgment, but before the trial court rules on a timely motion for rehearing and thereby terminates all judicial labor at the trial court level, as here, terminates the marriage by operation of law and divests the trial court of jurisdiction to make the judgment final." *Johnson* at 723.

Essentially, the *Johnson* court holds that unless a judgment is in final form for appellate purposes, a written final judgment does not effect a divorce. As established earlier, this runs contrary to long held principles of Florida law. Johnson completely ignores the dictates of the Supreme Court in *Berkenfield*. In addition the District Court in *Johnson* fails to recognize the distinction between rendering a valid final judgment and rendering judgment for appeal, in conflict with *Becker* and *Baggett*. *Johnson* seeks to straight jacket the court, preventing the rendition of a valid order until a judgment is in appellate form. The Third District departs from all prior authority when it holds that the trial court's entry and recording of a written final judgment fails to terminate a marriage because of a pending motion for rehearing, in conflict with *Berkenfield, Sahler, Becker*, *Baggett, Jaris* and *Reopelle*. *Reopelle*, consistent with all of the previously cited case law, is by far the better reasoned opinion.

The respondent and the petitioner agree that the Supreme Court should clarify the issue of when a final judgment terminates a marriage. However, the respondent respectfully disagrees with the petitioner as to the rule which should be adopted. The petitioner asks this Court to follow *Johnson* and rule that the trial court must dispose of any pending timely filed motions for rehearing, regardless of subject matter or content, before the marriage can be terminated.

Besides representing a complete departure from previously established principles of Florida law, *Johnson* opens the door to abusive practices. While the Supreme Court in *Berkenfield* has declined to adopt an absolute rule which would work hardship and injustice in many cases, the petitioner seeks to impose such an absolute and unjust rule in the case at bar. For instance, if a divorce case involves a terminally ill spouse and a final hearing is held, the healthy spouse may use the filing of a motion for rehearing as a tactic to delay "rendition" of a final judgment in hopes that he or she may inherit the entire former marital estate. Or the ruling in *Johnson* may prevent a sick spouse from seeking a rehearing to correct an oversight by the court for fear of delaying the "rendition" of a final judgment. Johnson does not serve to ensure that cases are decided on the merits, but rather on the willpower and luck of a spouse to survive until all motions for rehearing are resolved regardless of whether directed at the validity of the actual divorce, or at collateral issues, are resolved.

Additionally, the rule proposed by the petitioner subjects parties in the vast majority of divorce cases in which the actual dissolution of marriage is never challenged, to delay in the termination of their marriages, while the trial court is disposing of motions for rehearing directed at issues involving property dissolution, attorney's fees or any countless numbers of collateral issues. The proposed rule is simply bad public policy which has the potential to affect a large number of citizens.

On the other hand, the rule proposed by the respondent is far more equitable, less susceptible to abusive practices, and would bring swift final resolution to a greater number of parties. The respondent asserts that in a case in which the dissolution of marriage itself is not contested, in order for a trial court to render a final judgment sufficient to break the bonds of matrimony, the trial court must simply enter a written final judgment of dissolution of marriage. That is, when both parties plead and admit that the marriage is irretrievably broken, and plead, admit and prove the residency requirements, the marriage is ended when the judge signs the final judgment of dissolution of marriage. In such a case, all judicial labor is concluded in order to terminate the marriage. No good faith motion for rehearing on the issue of the divorce itself can be brought. A motion for rehearing or appeal directed at collateral issues could not and would not affect the divorce issue if granted or affirmed. Abusive practices would be avoided because the temptation to delay a final judgment would be

alleviated and the possibility of a windfall at the death of a spouse precluded unless the divorce is genuinely contested from the initial pleading stage. The vast majority of cases would not be subject to delay because in the vast majority of cases the divorce itself is never contested.

In the instant case, neither party ever contested the divorce issue. The trial judge signed a written final judgment of dissolution of marriage finding the marriage irretrievable broken and dissolving the bonds of matrimony. The motions for rehearing filed involved collateral issues of property settlement. No motions for rehearing were ever filed contesting the divorce issue. The trial court had completed the judicial labor involved in terminating the marriage. While the final judgment was not in appealable form, this is not required for termination of a marriage. *Berkenfield*. This Honorable Court should affirm the Second District Court below.

Such a ruling would be consistent with established principles of Florida law. As the Second District has recognized in this case below, a divorce decree is essentially a two part order which first dissolves the bonds of marriage, then resolves the collateral issues of custody, visitation, support and property division. Despite the arguments of counsel for the petitioner, Florida courts have always recognized the dual nature of a divorce decree . See *Cone v. Cone, Evans v. Cone*, 62 So.2d 907 (Fla. 1955). In *Cone* this Court states: "Although decrees respecting the custody and support of children are,

ordinarily, concomitant to a decree of divorce, that portion of the decree respecting custody of the children stands on a different footing from that portion dissolving the bonds of matrimony." *Cone* at 909.

The Supreme Court has recognized that issues of property division and support are "collateral" to the divorce issue itself. In *Fernandez v. Fernandez*, 648 So.2d 712 (Fla. 1995), this Supreme Court held that, although the trial court in a divorce case had not completed its judicial labor in determining collateral issues at the time of death of one of the parties, a signed written final judgment concluding the parties marriage entered before the wife's death was valid. Notwithstanding the protestations of petitioner that it is "unrealistic and artificial" to view property division, child custody, support, alimony and the like as "collateral" to the issue of the dissolution of marriage, in *Fernandez v. Fernandez*, this Supreme Court has adopted the very same terminology when discussing property ownership and division, stating: "In *Becker*, prior to the husband's death, a partial final judgment of dissolution of marriage was entered which dissolved the collateral matters such as property ownership and division." *Fernandez* at 714. Perhaps it is because in this day of no fault divorce the proceedings focus so disproportionately on the "collateral" issues and minimized the importance of the actual dissolution of marriage and the grounds therefore, that petitioner's counsel believes that the collateral issues cannot be separated from the divorce itself. Yet the issues of

custody, child support, alimony and property division are now and have always been considered separate and distinct from the issue of the dissolution of marriage.

Further, in recognizing the dual nature of the dissolution of marriage, Florida courts have traditionally treated cases in which the divorce itself was resisted by one party differently from cases in which collateral issues were contested. See *Price v. Price*.

To affirm the Second District below, and the confirm the Fifth District's decision in *Reopelle*, holding that in a case in which the divorce aspect of a dissolution of marriage case is not contested, a marriage terminates upon the trial court's signing of a written final judgment, would be both consistent with all previous Florida case law (with the lone exception of *Johnson*) and would be a matter of excellent public policy.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING $5,500.00 IN EQUITABLE DISTRIBUTION AS THE WIFE'S SHARE OF PROCEEDS FROM THE SALE OF GEORGIA PROPERTY AS THE HUSBAND'S TESTIMONY WAS COMPETENT EVIDENCE TO SUPPORT THE TRIAL COURT'S AWARD OF SAME.

The parties sold their Georgia property and placed those funds in the parties' joint checking account. (T. 205). Those funds were then used to pay off the mortgage of the marital home. (T. 207). After the mortgage was paid, according the Husband, there was approximately $11,000.00 left in the joint checking account on November 1, 1995. (T. 207). Subsequent to November 1, 1995, the Husband had exclusive access and possession of the checkbook on the joint checking account. (T. 206-207). The Husband closed the parties' joint checking account in January, 1996. (T. 223-234). The Husband was working at the time, making $50,000 per year and receiving over $1,123.81 per month in retirement pay. (T-212) (R-22). His expenses (if taken at face value) ran at $3,072 per month. There was no testimony about any large expenses or any other expenditure of the funds from the sale of the Georgia property.

The Husband's testimony at trial in the dissolution action as to the value of the funds in the parties' joint bank account remaining from the sale of their Georgia property was competent evidence for the Court to consider for equitable distribution. See Beaty v. Gribble, 652 So.2d 1156, 1158 (Fla. 2d DCA 1995) citing Harbond, inc. v. Anderson, 134 So.2d 816 (Fla. 2d DCA 1961). In Beaty, the Second District Court of

Appeal held the Husband's testimony at trial was competent evidence of the value of a building sufficient to support the trial court's valuation of that property. Further, the Husband's statements as to the value of that marital property was sufficient to support the trial court's valuation for purposes of equitable distribution upon divorce, absent contrary evidence regarding value. See Noone v. Noone, 727 So.2d 972, 974 (Fla 5th DCA 1998). In Noone, the Fifth District Court of Appeal upheld the trial court's decision to consider the testimony of the Wife regarding the $10,000 value of jointly owned furniture. There, the Husband presented no testimony or other evidence regarding the value of the furniture, and as joint owner of the furniture, "the wife's statement as to its value is competent evidence, and thus, supports the trial court's valuation". Noone, at 975 citing Beaty.

It is uncontroverted that the funds from the sale of the Georgia property were a marital asset. A prima facie case was made to establish the existence of the funds on the date of filing of the petition. The Husband did not testify that he had dissipated the funds in the 2 months between November, 1995 and January, 1996. No rebuttal testimony was offered either at trial or at the rehearing. In fact, the Husband failed to even appear at the rehearing.

Finally, the determination of the valuation date of the property in dispute is squarely within the trial court's discretion. Noone at 974, citing Moore v. Moore, 543

So.2d 252 (Fla. 5th DCA 1989). Based upon the evidence in the record, the trial court did not abuse its discretion in equally distributing the $11,000.00 remaining from the sale of the Georgia property.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING TEMPORARY ALIMONY TO THE DATE OF FILING THE PETITION BECAUSE THE HUSBAND HAD NOTICE THAT ALIMONY WAS AN ISSUE IN THE CASE.

The Husband filed his petition for dissolution of marriage on January 25, 1996. On that day the Husband knew that he was petitioning the court for a dissolution of marriage. He knew that he had been married for 13 years, that his Wife was 68 years old, and that she was on social security making a total of $557.00 per month. He also knew that he had been supporting her for the entire marriage.

The Petitioner complains that somehow he was not on notice that alimony was an issue in this case. The Petitioner cited Hodge v. Hodge, 607 So.2d 510 (Fla. 5th DCA 1992) for the proposition that alimony should be retroactive to the date of filing the counter-petition. Hodge is a case wherein the trial court refused to order retroactive temporary alimony even though need and ability to pay existed prior to the time of the temporary relief hearing. The Fifth District reversed, holding that retroactive temporary alimony should have been ordered if the need and ability to pay existed. The question of retroactivity back to the counter-petition verses the petition was not an issue discussed and is clearly not the crux of Hodge.

The facts of the case and the divorce laws of this State combine to place the Husband on notice that alimony is an issue in this case. Petitioner even states **in his**

own appellate brief that ".. to believe that issues of property division, child custody, support, alimony and the like are 'collateral' to the issue of dissolution of marriage is unrealistic and certainly artificial." Petitioner's Initial Brief on Appeal, page 13. To argue that Petitioner was not aware that alimony was an issue at the date of filing of his petition is artificial as well. It is uncontroverted that the Wife had the need and the Husband had the ability to pay the award of alimony retroactive to the date Husband filed his petition is a proper exercise of the court's discretion.

CONCLUSION

In the case at bar, the trial court has taken all steps necessary to terminate the parties's marriage prior to the death of the wife. The motion for rehearing, which was directed to collateral issues of property division does not effect the trial court's ability to dissolve the parties' marriage. The District Court was correct to follow the holding of the *Reopelle* decision and the Supreme Court should rule that in cases wherein the divorce issue is not contested, a marriage is terminated by the entry of a written final judgment of dissolution of marriage. While such a final judgment might not be in final appellate form, the judgment is still valid and binding on the parties, and the marriage has been terminated by operation of judgment, not by reason of death. Also, the Trial Court did not abuse its discretion in the award of equitable distribution, for it had sufficient competent evidence, through the testimony of the Husband, to support its award of $5,500.00 to the Wife as equitable distribution of the remaining proceeds from the sale of the marital property in Georgia. Finally, the trial court did not abuse its discretion by awarding temporary alimony retroactive to the filing of the petition for the Husband was on notice of the possibility of an alimony award due to his continuous support of his wife throughout the course of their marriage.

WHEREFORE, for the foregoing reasons, the undersigned respectfully requests that this Court affirm the District Court's decision below.

Respectfully submitted,

_____
Theodore J. Rechel, Esquire

_____
Donald A. Foster, Esquire

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Respondent on the Merits has been furnished by regular U.S. Mail to Andrew J. Mirabole, Esquire, 4117 North Armenia Avenue, Tampa, Florida 33607 and John B. Gibbons, Esquire, 408 East Madison Street, Tampa, Florida 33602, this _____ day of _____, 1999.

WE ALSO HEREBY CERTIFY that the font style and size used in this brief is 14 point Times New Roman.

_____
Theodore J. Rechel, Esquire

_____
Donald A. Foster, Esquire