IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

BONNIE BARNETT,

Petitioner,

-vs- CASE NO. 96,853

HARRY BARNETT, as Personal Representative of the Estate of Elliott Barnett, deceased,

Respondent.
_____/

ANSWER BRIEF OF RESPONDENT ON THE MERITS

SHUTTS & BOWEN LLP
P.O. Box 3555
West Palm Beach, FL 33402-3555
and
CARUSO, BURLINGTON,
BOHN & COMPIANI, P.A.
Suite 3-A/Barristers Bldg.
1615 Forum Place
West Palm Beach, FL 33401
(561) 686-8010

Attorneys for Respondent

CERTIFICATE OF TYPE SIZE & STYLE

The undersigned certifies that the type size and style of this brief is 14 point Times New Roman.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PREFACE

This is a proceeding to invoke the discretionary jurisdiction of this Court to review a decision of the Fourth District Court of Appeal in BARNETT v. BARNETT, 24 Fla.L.Weekly D2176 (Fla. 4th DCA September 17, 1999), certified to be in direct conflict with JOHNSON v. FEENEY, 507 So.2d 722 (Fla. 3d DCA), rev. den., 518 So.2d 1274 (Fla. 1987). Conflict with JOHNSON v. FEENEY was also certified by the Second District Court of Appeal in GAINES v. SAYNE, 727 So.2d 351 (Fla. 2d DCA 1999), which is currently pending before this Court as GAINES v. SAYNE, Case No. 95,134. On October 29, 1999, this Court issued an order postponing a decision on jurisdiction and setting a briefing schedule in this case.

Herein, the Petitioner will be referred to as the Wife or by name; the Respondent, Harry Barnett, as personal representative of the estate of Elliott Barnett, deceased, will be referred to as the Estate; and Elliott Barnett will be referred to as the Husband or by name. The following symbols will be used:

(R) - Record-on-Appeal

(T1/) - Transcript of hearing held January 30, 1998 at 8:15 a.m.

(T2/) - Transcript of hearing held February 2, 1998 at 8:15 a.m.

(T3/) - Transcript of hearing held February 2, 1998 at 11:31 a.m.

(A) - Appendix attached hereto

STATEMENT OF THE CASE AND FACTS

Bonnie Barnett commenced this dissolution of marriage proceeding on April 10, 1996, but a series of continuances at her request postponed any final hearing from taking place (R3/462-64, 487, 523-27, 555-56; R4/575-82, 612, 613-20, 621, 627-37, 680, 726-40; R5/806-07). The concern of both spouses over dissipation or removal of assets during the pendency of these proceedings is evidenced early and repeatedly in the record (R1/4, 12-15, 40-41, 49-54, 57-58, 106-07, 153-56, 157-59, 164, 165, 182-83; R2/201-04, 222-23, 224-28, 262-64, 271-74, 279-84, 331-34, 357-58, 374; R3/375-78; R5/818-19, 859). Finally, on January 30, 1998, the Husband filed an emergency motion for bifurcation stating that the Husband was hospitalized in critical condition due to end stage renal failure, with complications including coronary disease, severe metabolic bone disease, and other weaknesses and abnormalities, as well as a recent fracture of the hip and pelvis (R5/881-82). The motion pointed out that if the Husband died prior to the conclusion of these proceedings, the Wife would benefit from her delays, to the detriment of the Husband's heirs (Id.).

At a hearing held at 2:00 p.m. on the same date as the filing of the motion for bifurcation, Friday, January 30, 1998, counsel for the Husband noted the trial court's familiarity with the problems and contentions between the parties during the prior two years, the multiple continuances at the Wife's request, and the court's representation at

the most recent continuance that it would protect the Husband's property interest if his health should fail (T1/4). Because the Husband's health had failed, counsel asked the court to bifurcate the divorce from the other issues, and to schedule an immediate hearing to dissolve the marriage (Id.). The court voiced the need for specifics as to financial issues, and went through the status of various assets and liabilities with counsel and the Wife's accountant (T1/15-22). Equitable considerations were raised concerning the fact that the Husband had been trying to get divorced for over two years and had noticed the case for trial over a year-and-a-half ago, but the case had been continued repeatedly at the Wife's insistence (T1/22).

The trial court noted that it was a court of equity, and that the equities weighed in favor of the Husband getting his divorce (T1/22):

> THE COURT: That's my first thought that the equities really weigh in favor of the husband getting his divorce. And since this thing has been pending so long and this is a court of equity, he is entitled to a divorce, but -- and that seems to me the strongest equity.
>
> However, that's mitigated by the fact that whether or not he's a single man can make a great deal of difference as to how the creditors lien up his property.

After speaking by telephone with the Husband's physician, and confirming that the Husband was in critical condition in the coronary care unit and had already suffered cardiac arrest requiring CPR, the court granted the Wife's request for a recess to allow the

Wife to prepare and "to consider whether or not to offer additional testimony" (T1/24-33). The court reset the matter for 8:00 a.m. Monday morning (T1/32).

At 8:15 a.m. on Monday morning, February 2, 1998, the Wife presented the trial court with a memorandum on the issue of bifurcation, and readdressed financial information discussed at the prior hearing which she asserted was "factually incorrect" (T2/3-12, 6). After the Husband's counsel was given an opportunity to address the financial issues and argue the equities, and the Wife's counsel had again responded, the court announced that the case would be bifurcated (T2/12-22). The court stated (T2/22):

> THE COURT: It's an unfortunate case and very unfortunate since the inception. If his dying wishes are to die a divorced man, I'm not going to interfere with it. Mrs. Barnett, I know this has been a difficult time for you and I'm going to bifurcate the case.

The court then contacted the Husband by telephone in the intensive care unit, and confirmed the Husband's residency, that the marriage was irretrievably broken, and that the Husband understood the effect of bifurcation on his assets and liabilities (T2/22-26). The court explained that the parties were divorced, and that the matter of the marital estate would be heard at a later time (T2/26). In conclusion, the court noted (T2/27-28):

> THE COURT: Well folks, I'm often [sic] sorry about this, and I know that it's been a long pending divorce and a very unhappy time for everyone, and I know the attorneys have worked diligently to do their best for their clients, and I would like to say that both attorneys are able and well respected by the Court, and I want you to understand my

> reasoning behind this so that you won't think that I have made my judgment lightly.
>
> I thought about it all weekend and I think that probably the obligations and the assets and the material possessions are inferior to the desire a man who is faced with death. And if I were in a position where I was faced with death, I would want the court to grant my dying wish. And I hope that if such an occasion happens to me, then I have a judge who is willing to at least put the acorn on the side of the dying wish.

A short hearing followed at 11:31 a.m. to take the Husband's sworn testimony in the presence of a notary (T3/1-8). The Husband reiterated his statements made during the 8:15 a.m. hearing as to his residency, the fact that the marriage was irretrievably broken, his desire to be divorced, and his desire to have the court bifurcate the proceedings and grant the divorce immediately (T3/3-5).

The Partial Final Judgment of Dissolution of Marriage was signed and entered on the same date as the hearings, February 2, 1998 (R5/885-86). A suggestion of death dated February 3, 1998, was filed on February 4, 1998 at 10:44 a.m. (R5/901). The Wife filed a motion for rehearing as to the final judgment on February 10, 1998, referencing the memorandum provided to the court at the February 2, 1998 hearing (R5/906-07). An order on the Husband's emergency motion for bifurcation was signed on February 17, 1998, nunc pro tunc to January 30, 1998 (R5/912-13). The Wife filed a notice of appeal from the partial final judgment and the order as to bifurcation on February 27, 1998 (R2/302-07). On the same date, the trial court signed an order, which

was not filed until March 2, 1998, denying the Wife's motion for rehearing and substituting the Husband's personal representative as the respondent (R5/918-19).

The Fourth District Court of Appeal affirmed the Partial Final Judgment, holding that it became effective once it was entered by the trial court (A1-4).[1] To reach this conclusion, the District Court relied on this Court's decision in BERKENFIELD v. JACOBS, 83 So.2d 265 (Fla. 1955), which distinguished between finality for appellate purposes and finality for purposes of effecting a dissolution of marriage. Because JOHNSON v. FEENEY, 507 So.2d 722 (Fla. 3d DCA), rev. den., 518 So.2d 1274 (Fla. 1987), relied on by the Wife, had failed to recognize this distinction, the Fourth District refused to conform to the holding in that case, and certified conflict. The District Court also found no abuse of discretion in the decision of the trial court to grant the Husband's motion to bifurcate, determining that the impending death or terminal illness of a party is the type of exceptional circumstance that justifies bifurcation of a dissolution proceeding (A1-4).

---

[1]/The Petitioner's assertion that the Fourth District was "incorrect" in stating that the partial final judgment was filed and the Husband died later that day, is unsupportable (Brief of Petitioner at 9). As the Petitioner acknowledges, the time of the Husband's death is not reflected in the record and, therefore, no assessment of the accuracy of the Fourth District's statement is possible, and no motion for rehearing was filed to allow the District Court an opportunity to address this issue.

The Wife sought discretionary review of the Fourth District's opinion based on its certification of conflict, and this Court issued an order postponing the decision on jurisdiction and setting a briefing schedule.

QUESTIONS PRESENTED

POINT I

WHETHER THIS COURT SHOULD ACCEPT JURISDICTION AND RESOLVE ANY CONFLICT BETWEEN THE BARNETT AND JOHNSON DECISIONS BY HOLDING THAT A JUDGMENT OF DISSOLUTION OF MARRIAGE BECOMES EFFECTIVE TO DISSOLVE THE MARRIAGE WHEN ENTERED BY THE TRIAL COURT SO THAT THE DEATH OF EITHER PARTY PRIOR TO THE EXPIRATION OF THE TIME FOR REHEARING DOES NOT RENDER THE DISSOLUTION JUDGMENT VOID.

POINT II

WHETHER THE TRIAL COURT PROPERLY GRANTED THE HUSBAND'S MOTION TO BIFURCATE THIS DISSOLUTION OF MARRIAGE PROCEEDING BASED ON THE HUSBAND'S IMPENDING DEATH SO AS TO ALLOW THE MARRIAGE TO BE DISSOLVED PRIOR TO HIS DEMISE.

SUMMARY OF ARGUMENT

This case is before the Court on conflict certified by the Fourth District Court of Appeal with JOHNSON v. FEENEY, 507 So.2d 722 (Fla. 3d DCA), rev. den., 518 So.2d

1274 (Fla. 1987). The critical issue concerns when a final judgment of dissolution of marriage becomes effective. This same issue is before this Court in GAINES v. SAYNE, Case No. 95,134, which the Second District Court of Appeal also certified to be in conflict with JOHNSON v. FEENEY. The Respondent suggests that jurisdiction should be declined in this case. Alternatively, the determination in this case and in GAINES that final judgment of dissolution becomes effective when signed, is consistent with principles long-established by this Court, and should be approved.

As noted by the Fourth District in this case, JOHNSON confuses the finality of a final judgment for appellate purposes with the effective date of a divorce judgment. Appellate "finality" is universally acknowledged as a distinct concept, and, contrary to the Wife's suggestion, recognition of this fact creates no confusion or uncertainty. Rather, it is JOHNSON's failure to address this distinction that has caused some confusion.

Alternatively, since JOHNSON did not involve a bifurcated divorce proceeding, it is factually distinguishable from this case. Also, the final judgment in JOHNSON addressed property rights, and the motion for rehearing had been pending in that case prior to the demise of one of the parties, further distinguishing it from this case.

While this Court may also review the decision to grant bifurcation in this case should jurisdiction be accepted, there is no error as to this decision. As recognized by the Fourth District, the circumstances here clearly constitute the type of exceptional

circumstance contemplated by the case law as justifying bifurcation in a dissolution of marriage proceeding.

ARGUMENT

POINT I

WHETHER THIS COURT SHOULD ACCEPT JURISDICTION AND RESOLVE ANY CONFLICT BETWEEN THE BARNETT AND JOHNSON DECISIONS BY HOLDING THAT A JUDGMENT OF DISSOLUTION OF MARRIAGE BECOMES EFFECTIVE TO DISSOLVE THE MARRIAGE WHEN ENTERED BY THE TRIAL COURT SO THAT THE DEATH OF EITHER PARTY PRIOR TO THE EXPIRATION OF THE TIME FOR REHEARING DOES NOT RENDER THE DISSOLUTION JUDGMENT VOID.

The Wife's argument that the partial final judgment of dissolution of marriage is void as a matter of law, is premised on her assertion that the Husband died before the judgment became final. To support her argument, the Wife relies on JOHNSON v. FEENEY, 507 So.2d 722 (Fla. 3d DCA), rev. den., 518 So.2d 1274 (Fla. 1987). However, as discussed by the Fourth District Court of Appeal in its opinion, JOHNSON confuses two separate issues: the finality of a final judgment for appellate purposes, and the effective date of a divorce judgment when a party dies after entry of the judgment (A1-4). Because of this confusion, JOHNSON does not support the Wife's argument that the final judgment dissolving the marriage in this case is void.

This Court has long recognized that while certain circumstances may preclude a final decree from being effective as a basis for subsequent proceedings, this does not equate with lack of effectiveness for every purpose. BERKENFIELD v. JACOBS, 83

So.2d 265 (Fla. 1955). In BERKENFIELD, this Court held that in the context of a dissolution of marriage, the judicial labor is ended with the signing of the decree, since nothing remains to be done to enforce the pronouncement that the relationship between the parties has been severed. Thus, although a party to a divorce proceeding dies subsequent to the signing of the final decree, but before it could even be recorded, the marriage was nonetheless dissolved by the decree. BERKENFIELD v. JACOBS, supra. This Court specifically distinguished cases which involved the determination of an effective date of a final decree for purposes of computing the time within which an appeal may be taken. BERKENFIELD v. JACOBS, supra, at 268.

As noted in the opinion of the Fourth District, this case is controlled by the decision in BERKENFIELD. The finality of the divorce decree for appellate purposes is not the issue here, just as it was not the issue in BERKENFIELD. Rather, the issue here concerns the effectiveness of a divorce judgment when a party dies after entry of the judgment. The Fourth District also noted that cases since BERKENFIELD have recognized that a final divorce judgment is effective where it was entered prior to the death of a party. See REOPELLE v. REOPELLE, 587 So.2d 508 (Fla. 5th DCA 1991); JARIS v. TUCKER, 414 So.2d 1164 (Fla. 3d DCA), appeal dismissed, 419 So.2d 1198 (Fla. 1982); BECKER v. KING, 307 So.2d 855 (Fla. 4th DCA), cert. dism'd., 317 So.2d 76 (Fla. 1975); McKENDREE v. McKENDREE, 139 So.2d 173 (Fla. 1st DCA 1962).

Consistent with this, the Fourth District held that the Partial Final Judgment here became effective once it was entered by the trial court, even if the Husband died within the ten day period for filing a motion for rehearing.

The Wife attempts to distinguish this case from BERKENFIELD, arguing that while there was no need for any further proceeding in BERKENFIELD, the Wife here had objected to the bifurcation and filed a motion for rehearing challenging entry of the dissolution and the bifurcation (Brief of Petitioner at 15-16). However, the Wife's motion for rehearing is clearly directed at the distribution of property, not at any deficiency in the basis for the divorce. The Wife's motion and the memorandum it references, which had been provided to the trial court at the February 2, 1998 hearing, focus on the propriety of the bifurcation due to the impact on her property distribution. The only reference to the validity of the final judgment is the statement in the motion that the Husband's initial testimony had been unsworn, but the motion acknowledges that the Husband's testimony was sworn to just three hours later.

Obviously, the statutory requirements as to residency and the fact that the marriage was irretrievably broken were not contested issues since the Wife alleged these factors in her verified petition, and the Husband admitted these factors and realleged them in his answer and counterpetition. §§61.021, 61.052, Fla. Stat. In any event, the Husband testified by telephone as to these requirements, and his daughter provided his driver's

license at the hearing as corroboration (T2/21-22, 23, 27; T3/4). According to the standard delineated in FERNANDEZ v. FERNANDEZ, 648 So.2d 712, 713 (Fla. 1995), this is sufficient:

> We further point out that a party is bound by the party's own pleadings. There does not have to be testimony from either party concerning facts admitted by the pleadings. Admissions in the pleadings are accepted as facts without the necessity of further evidence at the hearing. Carvell v. Kinsey, 87 So.2d 577 (Fla. 1956); City of Deland v. Miller, 608 So.2d 121 (Fla. 5th DCA 1992). Our decision here does not lessen the requirement mandating corroboration as to the party's residency. We do note that pursuant to section 61.052(2), Florida Statutes (1991), corroborating evidence can be presented either by testimony at a hearing or by affidavit.

Thus, it is clear that judicial labor as to the dissolution of the marriage of the parties in this case was ended with the signing of the decree by the trial court.

The same conclusion was reached by the Second District Court of Appeal in GAINES v. SAYNE, 727 So.2d 351 (Fla. 2d DCA 1999), which is also before this Court on certified conflict. In GAINES, a final judgment finding the marriage to be irretrievably broken was entered in October, 1996. Although both parties sought rehearing as to financial issues, the portion of the judgment dissolving the marriage was not challenged. While the wife's motion for rehearing was still pending, the wife died. On appeal by the husband, the Second District determined that the marriage had been dissolved with sufficient finality prior to the wife's death. Applying the same reasoning

as was voiced by this Court in BERKENFIELD and the Fourth District in this case, the Second District noted that the issue was not whether the order was sufficiently final at the wife's death for jurisdiction to be transferred from a trial court to an appellate court, but rather, the issue was whether the marriage had been sufficiently dissolved by the time of her death to allow for her to be treated as a divorced woman. GAINES v. SAYNE, supra at 353.

Contrary to the Wife's suggestion that separate concepts of finality will result in confusion, the confusion in this area has resulted from the failure of the court in JOHNSON to recognize that finality for appellate purposes has always been a concept that is unique and subject to the application of distinct rules. The more reasoned approach recognizes these well-established distinctions, and restricts application of appellate principles to issues relevant to appeals. This approach provides consistency, rather than confusion, as suggested by the Wife (Brief of Appellant at 16). Further, application of these rules has never involved any dependency on "outside factors," but simply an awareness of the procedural setting which is clearly necessary for the operation of the judicial system (Id.). A "bright line rule," which the Wife suggests to avoid confusion and uncertainty, is already applicable here, and it recognizes that the meaning of finality for appellate purposes is distinct (Brief of Petitioner at 11, 16-17). What the

Wife is actually suggesting is that the applicable rules be varied. Adhering to them is the more desirable approach.

JOHNSON v. FEENEY, is also factually distinguishable in that it did not involve a situation where the court had bifurcated the dissolution of marriage issue from all remaining issues, and had entered final judgment simply as to dissolution of the marriage. To the contrary, the opinion in JOHNSON v. FEENEY points out that the final judgment had affected the property rights of the parties in addition to dissolving the marriage. Moreover, the motion for rehearing in JOHNSON v. FEENEY had been pending prior to the wife's demise, while the Wife's motion here was not filed until after the Husband's death, eight days after entry of the final judgment. These factual differences supply additional support for the Fourth District's refusal to conform to JOHNSON v. FEENEY.

This case is more factually analogous to FERNANDEZ v. FERNANDEZ, 648 So.2d 712 (Fla. 1995), where, as here, the trial court bifurcated the dissolution of marriage issue and entered a final judgment of dissolution due to the terminal illness of a spouse, but reserved jurisdiction over all other issues contained in the pleadings. The Second District Court of Appeal affirmed (632 So.2d 638 (Fla. 2d DCA 1994)), and this Court agreed. In upholding the procedure utilized by the trial court in bifurcating the dissolution of marriage issue and entering final judgment dissolving the marriage prior

to the wife's death while retaining jurisdiction to deal with the property issues, this Court noted that: "By retaining jurisdiction to deal with the property, the court did not render the final judgment dissolving the marriage any less final." 648 So.2d at 714. This Court specifically distinguished JOHNSON v. FEENEY, finding it inapplicable "because in this case the court had dissolved the marriage prior to the wife's death by entry of the final judgment of dissolution" 648 So.2d at 714.

Here, as in FERNANDEZ, the marriage was dissolved by the entry of the partial final judgment of dissolution of marriage prior to the Husband's death. As noted above, it has long been held that a dissolution of marriage takes effect when the final judgment is signed. BERKENFIELD v. JACOBS, supra. The marriage terminates on the date of the final judgment dissolving it, notwithstanding the pendency of motions for rehearing which deal with matters involving property rather than the dissolution. REOPELLE v. REOPELLE, supra.

For the reasons discussed above, the Respondent respectfully requests that this Court either refuse jurisdiction, or resolve any conflict of decisions in favor of the approach adopted in this case, as opposed to the decision in JOHNSON v. FEENEY, and approve the decision of the Fourth District Court of Appeal.

POINT II

WHETHER THE TRIAL COURT PROPERLY GRANTED THE HUSBAND'S MOTION TO BIFURCATE THIS DISSOLUTION OF MARRIAGE PROCEEDING BASED ON THE HUSBAND'S IMPENDING DEATH SO AS TO ALLOW THE MARRIAGE TO BE DISSOLVED PRIOR TO HIS DEMISE.

In essence, the Wife's argument that bifurcation constituted an abuse of discretion in this case is premised on her disagreement with the trial court as to whether bifurcation was in the best interest of the parties. The Wife's position is that the best interest determination should focus on the financial impact of bifurcation, while the trial court took a broader view and considered this factor as well as other relevant criteria in exercising its discretion as a court of equity. The Wife has failed to show any basis for finding that this discretion was abused.

The Wife's suggestion that "Before reaching its decision, the trial court recognized that it lacked sufficient information to determine whether bifurcation would be in the interests of the parties," is not supportable (Brief of Petitioner at 18). The transcript references cited to as the basis for this statement simply reflect the trial court's remarks at the outset of the first of three hearings as to bifurcation, indicating the information that would be required in order to make a decision on the Husband's motion (T1/10, 11, 13, 16). While the Wife accurately notes that the discussion as to the financial impact of bifurcation did not include any evidence, the case law she relies on does not indicate what

formal sworn testimony or evidence, if any, is a prerequisite to bifurcation. Moreover, the Wife ignores the fact that, at her request, the court granted a recess of the initial hearing to allow both parties the opportunity to present any evidence that they wanted to bring before the court (T1/31-32):

> THE COURT: All right. I'm going to recess until Monday morning at eight o'clock. I'll be back here at eight o'clock Monday morning and I'll hear anything that anyone wants to bring in.
>
> And if I decide to bifurcate and Mr. Barnett is able to testify by phone, I'll proceed in that direction.
>
> MS. BIRNBAUM: You'll proceed at that point with the divorce?
>
> THE COURT: Yes.

Nevertheless, the parties continued to present information to the court through counsel at the second hearing, some in the form of proffer by Wife's counsel as to the substance of the testimony of named witnesses (T2/3-12). This method of presenting information to the court was treated as testimony even by the Wife's attorney who, in requesting a recess at the first hearing, stated (T1/31-32):

> MR. STOLBERG: I would like a recess to consider whether or not we would offer <u>additional</u> <u>testimony</u>. I've been -- this has been sprung on me in two hours, Your Honor. I haven't had a chance to prepare or review -- I shouldn't say that, but I'd like to consider whether or not to offer <u>additional testimony</u>.

(Emphasis added). In any event, the Husband's critical medical condition was never seriously in question, and was confirmed by his physician during the hearing. It was the Husband's condition, and his sworn desire to be divorced prior to his demise, that provided the basis for the bifurcation.

The lengthy discussion between the trial court and counsel in connection with the bifurcation appropriately reflects an awareness and concern by the court as to the impact of exercising its power and jurisdiction to "fashion an equitable solution to an unusual and exceptional situation." KAYLOR v. KAYLOR, 466 So.2d 1253, 1254 (Fla. 2d DCA 1985). Even the authorities relied on by the Wife to suggest that bifurcation here was an abuse of discretion, recognize that this split procedure is appropriate when it is clearly necessary for the best interests of the parties or their children. See CLAUGHTON v. CLAUGHTON, 393 So.2d 1061 (Fla. 1980); WILLIAMS v. WILLIAMS, 659 So.2d 1306 (Fla. 4th DCA 1995); WOODS v. WOODS, 610 So.2d 71 (Fla. 4th DCA 1992); WEASEL v. WEASEL, 419 So.2d 698 (Fla. 4th DCA 1982); GLAZER v. GLAZER, 394 So.2d 140 (Fla. 4th DCA 1981). Contrary to WILLIAMS v. WILLIAMS, supra, the record here reveals justification for the trial court to dissolve the parties' marriage before dealing with the property issues.

It is beyond dispute that the Husband was in critical condition; the suggestion of death is dated one day after the partial final judgment of dissolution of marriage. If a

spouse's imminent demise does not constitute an "unusual" or "exceptional" circumstance, and his dying wish does not satisfy the best interest criteria, it is difficult to imagine what situation would be sufficient to justify bifurcation. See TUNDERMAN v. LEE, 585 So.2d 354 (Fla. 2d DCA 1991). In fact, in making its determination, the Fourth District specifically recognized that the type of exceptional circumstance contemplated by the case law as justifying bifurcation of a dissolution proceeding encompasses the impending death or terminal illness of a party. None of the cases relied on by the Wife involve bifurcation based on the imminent death of a party to the litigation. Further, this divorce action had been pending for two years prior to the Husband's motion for bifurcation. Both the fact that the marriage was irretrievably broken and that residency requirements had been met were affirmatively alleged by the Wife in her verified petition for dissolution of marriage, and were admitted by the Husband in his answer and counterpetition. Under these circumstances, the hardship to the Husband which would have resulted from the denial of his request to be divorced before he died and to leave his property to his family, would "at least equal" any complications arising from the bifurcation. WEASEL v. WEASEL, supra. In fact, the bifurcation has no impact on the Wife's rights to distribution of marital property and, as such, created no hardship on the Wife. The Wife's opposition to the bifurcation was a blatant attempt to delay the divorce proceedings long enough to acquire all of the marital

estate after the Husband's demise, rather than her equitable share upon divorce. Her subsequent attempts to void the final judgment and to reverse the bifurcation order stem from the same motivation. The equities certainly weigh in favor of granting the Husband's dying wish and allowing him to leave his estate to his family, as opposed to granting a windfall to the Wife over and above her rightful share of the marital estate. Consequently, the trial court's decision to exercise its discretion to bifurcate the proceedings in order to dissolve the marriage of the parties, did not constitute an abuse of that discretion, and the Fourth District appropriately found no such abuse.

CONCLUSION

For the reasons discussed above, either jurisdiction should be declined, or any conflict between this case and JOHNSON v. FEENEY should be resolved in favor of the approach adopted in this case, which recognizes that a final judgment of dissolution of marriage becomes effective once it is entered by the trial court, even though one of the spouses dies prior to expiration of the time frame for a motion for rehearing. Moreover, the bifurcation should be recognized as appropriate under the extraordinary circumstances of this case. Thus, the decision of the Fourth District Court of Appeal should be approved, and the Final Judgment of Dissolution of Marriage should be upheld.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished by mail this 10th day of December, 1999, to: NANCY LITTLE HOFFMANN, ESQ., 4419 West Tradewinds Avenue, Ft. Lauderdale, FL 33308.

DAVID A. GART, ESQ.
SHUTTS & BOWEN LLP
P. O. Box 3555
West Palm Beach, FL 33402-3555
and
CARUSO, BURLINGTON,
BOHN & COMPIANI, P.A.
1615 Forum Place, Ste. 3A
West Palm Beach, FL 33401
Tel: (561) 686-8010
Attorneys for Respondent

BY:_____
BARBARA J. COMPIANI
FL BAR NO: 290701