IN THE SUPREME COURT OF FLORIDA

CASE NO.: 96,853

BONNIE BARNETT,	)
	)
Petitioner,	)
	)
vs.	)
	)
HARRY BARNETT, etc.,	)
	)
Respondent.	)
_____	)

Discretionary Proceedings to Review a Decision by the
Fourth District Court of Appeal, State of Florida
Case No.: 98-0798

INITIAL BRIEF OF PETITIONER ON THE MERITS

Nancy Little Hoffmann
NANCY LITTLE HOFFMANN, P.A.
4419 West Tradewinds Avenue
Fort Lauderdale, Florida 33308
954-771-0606

Appellate Counsel for Petitioner

CERTIFICATE OF TYPE SIZE

Counsel for Petitioner certifies that the following type size and style is being utilized in this brief:

Times New Roman 14 pt

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POINT II

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DISSOLVING THE PARTIES' MARRIAGE AND DIVESTING THE WIFE OF HER SURVIVORSHIP RIGHTS BASED ON THE HUSBAND'S DYING WISH, IN THE ABSENCE OF EVIDENCE THAT BIFURCATING THE PROCEEDINGS WAS CLEARLY NECESSARY FOR THE BEST INTERESTS OF THE PARTIES. . . . . .

PREFACE

This brief is submitted on behalf of the Petitioner, BONNIE BARNETT, in support of her petition 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) (A.1-4), the Fourth District affirmed a partial final judgment dissolving her marriage to Elliott B. Barnett, now deceased, after granting his motion for bifurcation. The Fourth District rejected Mrs. Barnett's argument, based on Johnson v. Feeney, 507 So. 2d 722 (Fla. 3rd DCA 1987), that the marriage was dissolved by Mr. Barnett's death within hours after the partial judgment of dissolution was signed, rather than by the judgment itself.. The Fourth District certified to this Court the conflict between its decision and Johnson, as did the Second District Court of Appeal in Gaines v. Sayne, 727 So. 2d 351 (Fla. 2nd DCA 1999).[1] This Court issued its order postponing decision on jurisdiction and setting a briefing schedule on October 29, 1999.

In its opinion, the Fourth District also rejected Mrs. Barnett's argument that the trial court had abused its discretion in granting her late husband's motion to bifurcate, since there was no evidence before the trial court justifying such a decision. Mrs. Barnett seeks review of that ruling as well, since this Court, if it accepts jurisdiction to review the case based on the Fourth District's certified conflict, will also have the

[1] That case is pending before this Court as Gaines v. Sayne, Case #95,134.

power and prerogative to decide any issue presented by the case. Ocean Trail Unit Owners Assn., Inc. v. Mead, 650 So. 2d 4, 6 (Fla. 1994).

In this brief, the Petitioner will be referred to as Mrs. Barnett or the Wife; Elliott Barnett will be referred to as Mr. Barnett or as the Husband; and the Respondent, Harry Barnett, as personal representative of the estate of Elliott Barnett, deceased, will be referred to as the Estate. Reference to the Record on Appeal will be by the abbreviation "R." followed by the clerk's volume and page number. Reference to transcripts of various hearings, which appear in Volume V of the Record on Appeal, will be as follows:

T.1/1-34 - 01/30/98 hearing
T.2/1-28 - 02/02/98 hearing at 8:15 a.m.
T.3/1-8 - 02/02/98 hearing at 11:31 a.m.

Reference to the Appendix attached hereto will be by "A." followed by a page number.

Any emphasis appearing in quoted material is that of the writer unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

After 16 years of marriage, during which the Husband had engaged in a highly successful law practice and the parties enjoyed a luxurious lifestyle, the Husband

abandoned the marital home. The Wife alleged that he removed not only his personal effects, but also valuable artwork and jewelry, some of which was marital and some was the Wife's personal property (R.1/139-149; R.2/313-318). The Wife filed a petition for dissolution and the Husband counter-petitioned (R.1/5-9). The Wife further alleged that she had just discovered that her Husband had incurred substantial debts, both during the marriage and after their separation, and that he had fraudulently obtained money by improperly signing her name to certain obligations (R.1/17, 143; R.2/315). The Wife also alleged that her Husband had failed to provide any support since their separation, nor had he paid any of the bills. Accordingly, she requested that the Husband be required to provide support, make the payments on the various bills, and be prohibited from entering into any further contracts or agreements without her consent. The motion sought temporary alimony and attorney's fees (R.1/18).

The Wife also filed a motion for temporary injunction (R.1/12-15) seeking to prevent her Husband from disposing of any assets, specifically some very valuable artwork which the parties had acquired during the marriage (R.1/13). Meanwhile, the Husband filed a motion to require immediate sale of certain personal property to provide support and to pay legal expenses (R.1/10-11). The court entered an agreed order enjoining and restraining both parties from selling or pledging any assets without

written approval of the other party or by court order, including furniture, artwork and other personal property (R.1/40-41).

No order of temporary support was ever entered. The Husband, who had been removed from his former law firm, lost his subsequent employment (R.1/76-77) and obtained no employment thereafter, stated in his affidavit that his sole income was $4,233.00 net per month from rental income, although he showed a net worth of approximately 2.5 million dollars (R.1/78-90). The Wife, who was employed at an art gallery, had a net monthly salary of $3,439.00 (R.1/21-37). From time to time during the course of this litigation, either one or both of the parties applied for leave to sell various assets and to use the Husband's $218,000.00 IRA from his former law firm (R.1/59-60, 66-77, 101-102) and entered into various agreed orders allowing these disbursements (R.1/97-99; R.2/330; R.3/528-529). Substantial assets, including much valuable artwork, were liquidated in this manner.

Throughout this litigation, each of the parties accused the other of dissipating and secreting assets, including household furnishings, artwork and jewelry (R.2/313-318, 359-363).

The case was set for trial in April, 1997 (R.1/169-170), but was repeatedly continued at the Wife's request as a result of the Husband's failure to file his 1995

individual tax return (R.3/487, 555-556; R.4/575-578, 612, 627-632, 680).[2] The trial was then reset for September, 1997 (R.4/680). In early September, however, the Wife's counsel withdrew, and the court entered an order on September 10, 1997 striking the case from the September docket (R.5/801-802).

On January 5, 1998, the court entered an order resetting the trial beginning on February 4, 1998 (R.5/865). On January 30, 1998, the Husband's attorneys filed an emergency motion for bifurcation (R.5/881-882) on the basis that the Husband was hospitalized in critical condition. The motion alleged that if Mr. Barnett died during the proceedings prior to the court determining the parties' respective property rights, that their main asset, the Nantucket residence, would pass entirely to the Wife, and the court would be without jurisdiction to preserve his share of that asset for his heirs; that the Wife had been granted four or five continuances; and that she should not be permitted to benefit from those delays.

An emergency hearing was conducted that same day, although the Wife's counsel had only two hours' notice (T.1/31). At that hearing (transcript at T.1/1-34), the court took no testimony, but simply heard argument of the attorneys and some comments by Mrs. Barnett's CPA. The Husband's counsel represented to the court that Mr. Barnett

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[2] The court had previously held as a result of the Wife's motion to compel tax returns, that the case would not be tried until the Husband produced a copy of his filed 1995 tax return (R.2/297).

was seriously ill, that Mrs. Barnett had been granted a number of continuances, and that the court at the last continuance had indicated that it would protect Mr. Barnett's property interests by entering appropriate orders in the event his health should fail (T.1/4). No evidence was offered as to that representation,[3] nor could Mrs. Barnett's newly retained counsel respond to that unsubstantiated statement (T.1/6-7). The Wife's counsel also objected to Mr. Barnett appearing by telephone, and advised the trial court that he had just received the motion several hours previously (T.1/7). At that point, the court expressed its preliminary view of the equities involved, observing that from the Wife's point of view, it would be fair that she inherit, since Mr. Barnett had dissipated and encumbered the marital estate, so that creditors' liens would attach to his property as soon as they became tenants in common. On the other hand, the court observed that Mr. Barnett would consider it unfair if his Wife should inherit after two years of litigation (T.1/8).

The court recognized that it needed to know the status of the parties' assets, because the court's decision would depend to some extent on whether the assets would be taken by creditors in the event of dissolution, or whether there was sufficient equity so that Mr. Barnett's heirs could inherit (T.1/10-11). The court stressed that it wanted to know the specifics and not mere generalizations (T.1/13). From that point onward,

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[3] Nor do any prior orders of the court so indicate.

however, all the court heard was general discussion by the attorneys and by Mr. Karcinell, the Wife's accountant. The attorneys and the accountant were all uncertain about the facts (T.1/19-21). There was serious disagreement between the attorneys as to the value of various assets and liabilities (T.1/9-10, 14, 16, 17-18).

The trial court then, over the objection of the Wife's counsel, consulted the Husband's physician by telephone (T.1/27-30) and ascertained that Mr. Barnett was in fact critically ill. The court then recessed the proceedings since the Wife's counsel had such a short time to review the matter which the court noted would be "kind of trial by ambush" (T.1/32) and would reconvene the following Monday.

On Monday, February 2, 1998, the Wife's counsel argued that the economics proffered to the court on the previous Friday were incorrect (T.2/4) and that the only persons who would benefit by bifurcation would be the Husband's counsel (T.2/5). Mrs. Barnett's counsel further pointed out that Mr. Karcinell was present to testify that he had requested the tax returns from the Husband's accountant but had still not received them, and that it was not possible to determine what the liabilities were at this point (T.2/8). He pointed out that there was a further disagreement as to the value of the Nantucket property and whether the mortgage would attach to Mrs. Barnett's interest, since it was obtained without her knowledge and consent (T.2/9), but that if the bifurcation were granted, the mortgage would certainly attach to Mr. Barnett's

remaining share. Mrs. Barnett's counsel further pointed out that there was a great difference of opinion in the value of the artwork (T.2/10).

Mr. Barnett's attorney then stated his version of the various properties and what the effect would be if the proceedings were bifurcated (T.2/13-15). Again, however, none of this was substantiated by any evidence or other sworn testimony. At the conclusion of this argument, the trial judge decided that she did not want to interfere with Mr. Barnett's dying wishes to be divorced, and that she would bifurcate the case (T.2/22). Accordingly, the judge placed a telephone call to Mr. Barnett at the hospital and ascertained that he was a long-time resident of Florida and that he wanted to be divorced (T.2/25-26). The court orally granted the divorce (T.2/26). Thereafter, the court expressed its reasoning as follows:

> 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.

(T.2/27-28).

Several hours later, the court reconvened (transcript at T.3/1-8) because Mr. Barnett's comments had not been taken under oath. The court again placed a telephone

call to the hospital and received similar testimony after Mr. Barnett was duly sworn (T.3/4-5).

The court signed a partial final judgment of dissolution which was filed at 3:53 p.m. on February 2, 1998 (R.5/885-886). Mr. Barnett passed away at some point that day, although the record does not reflect the time of his death.[4] The following day, Mr. Barnett's counsel filed a suggestion of death (R.5/901).

On February 10, 1998, Mrs. Barnett filed a motion for rehearing as to the partial final judgment dissolving the marriage (R.5/906-907). The court entered a separate order granting the motion for bifurcation (R.5/912-913) and stayed the proceedings pending appeal (R.5/914-915). On February 27, 1998, the court denied the Wife's motion for rehearing and substituted Harry Barnett, Personal Representative of the Estate, as the Respondent in the case (R.5/918). The Wife filed her notice of appeal from both the partial final judgment of dissolution and the order granting bifurcation on the same day.

During the course of this appeal, the Wife filed a motion to relinquish jurisdiction to permit the trial court to entertain a rule 1.540(b) motion to vacate the

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[4] The statement in the Fourth District's opinion that "the partial final judgment was filed with the clerk at 3:53 p.m. on February 2, 1998. Later that day, the husband died (A.7)" is incorrect. The record does not reflect whether Mr. Barnett died before or after the judgment was filed.

partial final judgment. The basis for the motion was that research had revealed that the partial final judgment of dissolution was void as a matter of law since it did not become final until after Mr. Barnett's demise. The Fourth District denied that motion on August 4, 1998.

In its opinion of affirmance, the Fourth District held that decisions determining the finality of a dissolution of marriage judgment for the purpose of transferring jurisdiction to the appellate court should not be relied upon in determining the effective date of such a judgment when a party dies after entry of the judgment. According to the Fourth District, the date of "finality" will be different depending upon its context, i.e., the "effective date" of a divorce judgment will be different from the date a judgment becomes final for purposes of appeal. (A.3).

The Fourth District also rejected the Wife's argument that the trial court had abused its discretion in bifurcating the proceedings under the circumstances, simply stating without discussion that impending death or terminal illness was the type of exceptional circumstance which could justify bifurcation of a dissolution proceeding (A.3).

Mrs. Barnett has sought discretionary review of the Fourth District's rulings, based on that court's certification of conflict.

SUMMARY OF ARGUMENT

This Court has before it in the present case and in Gaines v. Sayne, Case. No. 95,134, the question of when a judgment dissolving a marriage takes effect. Both the Second District in Gaines and the Fourth District in Barnett have rendered decisions which conflict with Johnson v. Feeney, 507 So. 2d 722 (Fla. 3rd DCA), rev. denied, 518 So. 2d 1274 (Fla. 1987). Mrs. Barnett contends that the rule in Johnson is by far the better rule, and one which should be adopted by this Court.

To avoid confusion and uncertainty, there should be a bright line rule upon which litigants and the public in general may rely. The rule that a judgment becomes final when the labor of the trial judge is at an end – the familiar rule which governs a judgment's ripeness for appeal – may easily be applied in this context. A dissolution of marriage judgment would become effective to end the marriage ten days after the judge signed the judgment or, if either party moved for rehearing, when the court ruled upon that motion. In contrast, the Fourth District's decision in the present case calling for two separate rules and two separate dates for "finality" has little to recommend it.

As applied in the present case, adopting the Johnson rule would require that this Court quash the Barnett decision and remand with directions that the partial final judgment of dissolution be vacated as void.

This Court may also review the trial court's decision to grant bifurcation in this case, and we respectfully urge that it do so. Despite numerous opinions from this Court and other appellate courts holding that bifurcation should be granted only in extraordinary circumstances where it is clearly necessary for the best interests of the parties, the Fourth District approved the trial court's decision to bifurcate in the present case in the absence of any evidence whatsoever as to the best interests of the parties. Indeed, the trial court freely admitted that its decision was based solely upon a dying man's wish, and that the court lacked evidence of the actual facts. That decision was clearly an abuse of discretion; moreover, it would be of great assistance to the Bench and Bar should this Court address this issue and set forth guidelines as to when bifurcation may be appropriate in dissolution of marriage cases.

ARGUMENT

POINT I

THIS COURT SHOULD RESOLVE THE CONFLICT BETWEEN THE BARNETT AND JOHNSON DECISIONS BY HOLDING THAT A JUDGMENT OF DISSOLUTION OF MARRIAGE DOES NOT BECOME EFFECTIVE TO DISSOLVE THE MARRIAGE UNTIL 10 DAYS AFTER ITS ENTRY OR, IF A TIMELY MOTION FOR REHEARING IS FILED, UNTIL THAT MOTION

HAS BEEN DETERMINED; SO THAT THE DEATH OF EITHER PARTY PRIOR TO THAT DATE WOULD RENDER ANY SUBSEQUENT DISSOLUTION JUDGMENT VOID.

It is Mrs. Barnett's position that the partial final judgment signed by the trial court on February 2, 1998 is void as a matter of law, since Mr. Barnett died before the judgment became final. This is so because 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. Johnson v. Feeney, 507 So. 2d 722, 723 (Fla. 3rd DCA), rev. denied, 518 So. 2d 1274 (Fla. 1987). In Johnson, the wife died after the final judgment had been signed but before the trial court had ruled on a timely motion for rehearing filed by the husband. The Third District held that since a judgment is not final while a timely motion for rehearing remains pending, the death of one of the parties at that point in the litigation terminates the marriage by operation of law and divests the trial court of jurisdiction to make the judgment final. In the present case, Mr. Barnett passed away before the motion for rehearing was even filed; in fact, on the same day that the partial final judgment was signed. Since the ten-day period for filing a motion for rehearing had not yet expired, the judgment had not yet become final. GEICO Financial Services, Inc. v. Kramer, 575 So. 2d 1345, 1347 (Fla. 4th DCA), rev. denied, 589 So. 2d 291 (Fla. 1991); Wilson v. Clark, 414 So. 2d 526, 530 (Fla. 1st DCA 1982).

This Court's later decision in Fernandez v. Fernandez, 648 So. 2d 712 (Fla. 1995), distinguished but did not overrule Johnson v. Feeney. The Court noted in Fernandez that Johnson and other cases cited in its opinion were not applicable because the Fernandez court had entered a final judgment before Mrs. Fernandez died. Id. at 714. The judgment of dissolution in Fernandez became final without being appealed, whereas the finality of the Johnson judgment was postponed by the filing of a motion for rehearing and appeal.

Moreover, in the present case, as in Johnson v. Feeney, one of the parties died after the trial court signed a final judgment but before it became final. While the wife in Fernandez also died before the ten-day rehearing period had expired, it does not appear that this jurisdictional aspect was raised in the husband's motion to vacate, which dealt only with an alleged defect in establishing the wife's residency status. Fernandez, 648 So. 2d at 713.

The Fourth District in the present case chose not to follow Johnson v. Feeney, because the court concluded that Johnson confused two separate issues, namely 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 (A.3). The Fourth District cited this Court's decision in Berkenfield v. Jacobs, 83 So. 2d 265 (Fla. 1955), in which this Court reversed an order setting aside a divorce decree because the husband died in the

judge's chambers after the decree had been signed, but before it had been recorded by the clerk. The Berkenfield court recognized that the computation of time within which an appeal could be taken would be based upon the date of recordation rather than signing, but that in that particular case there was "no occasion for process or any further proceeding." Id. at 267. Later in the opinion, this Court stated:

> So, plainly, the final decree is effective as a basis for subsequent proceedings, only when recorded. But once that is stated it does not follow that it is effective for no purpose at all until it is recorded. To emphasize our problem we reiterate the present situation. Nothing whatever remained to be done to enforce the pronouncement that the relationship between the parties be forever severed.

Berkenfield, 83 So. 2d at 267-268.

The Fourth District was mistaken in concluding that its decision in the present case was controlled by Berkenfield. This is so because in the present case, unlike Berkenfield, the partial final judgment of dissolution was entered over the protest of the Wife, who had objected to the bifurcation procedure and did in fact file a motion for rehearing challenging entry of the dissolution and the bifurcation. In Berkenfield, this Court specifically noted that it determined the decree should be effective immediately upon signing because there was "no occasion for... any further proceeding." Id. at 267.

The Fourth District's decision to reject Johnson's holding in favor of a rule that establishes two separate concepts of "finality," and two separate dates therefor, will

result in a confusing rule which will depend for its application upon outside factors. The better rule, following Johnson, would be that a judgment dissolving a marriage would become final for all purposes at the same time it becomes final for commencement of appellate review. Thus, if neither party timely sought rehearing of the dissolution, it would become final for all purposes within ten days of its entry. Should either party timely seek rehearing, the judgment would become final for all purposes upon disposition of the motion for rehearing. Such a bright line rule is highly desirable, particularly in dissolution of marriage cases, where it may be very important to one or both of the litigants to know with certainty when their marriage has officially ended.

Such a bright line rule has much to recommend it. It would be simple and easy for both clients, attorneys, and third parties to understand. It is logical because it corresponds to the end of the judicial labor in the case. Whereas in Berkenfield, this Court noted that "the judicial labor in the instant case seems to have ended with the signing of the decree," Id. at 268, that is not so in every case, and certainly not in the present case.

On the other hand, a rule establishing two different dates for finality depending upon whether one of the parties subsequently challenged the dissolution itself (as in the

present case) or not (as was the case in Berkenfield) would be confusing and difficult of application without going beyond the four corners of the order itself.

For the above reasons, Mrs. Barnett respectfully requests this Court to resolve the conflict of decisions in favor of Johnson v. Feeney, and to quash the Fourth District's decision in the present case with directions that the partial final judgment of dissolution in the present case be set aside as a void decree.

POINT II

THE TRIAL COURT ABUSED ITS DISCRETION IN DISSOLVING THE PARTIES' MARRIAGE AND DIVESTING THE WIFE OF HER SURVIVORSHIP RIGHTS BASED ON THE HUSBAND'S DYING WISH, IN THE ABSENCE OF EVIDENCE THAT BIFURCATING THE PROCEEDINGS WAS CLEARLY NECESSARY FOR THE BEST INTERESTS OF THE PARTIES.

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 (T.1/10, 11, 13, 16). It heard no sworn testimony, nor did it receive any evidence as to the financial impact of bifurcation upon the respective parties. Although the lawyers

representing the parties made representations[5] to the court in the course of their arguments as to the value of various assets and liabilities, there was serious disagreement between them on these points (T.1/9-10, 14, 16, 17-18; T.2/4, 6-7, 9-11). The attorneys also made contradictory predictions as to what effect an immediate dissolution would have upon the Wife and the Husband's heirs and creditors should the Husband pass away before all issues had been resolved (T.1/12; T.2/6, 9-11, 14-16).

Nonetheless, the trial court decided to bifurcate the proceedings. The court acknowledged that its decision was not based upon financial considerations or the impact of the bifurcation on the assets and obligations of the parties, but rather was based on the court's wish to accommodate the desire of a man who was faced with death (T.2/27). No other reasons were expressed by the court in its oral ruling, nor in the later written order memorializing that ruling (R.5/912-913). In so doing, the trial court abused its discretion and improperly deprived Mrs. Barnett, who received no support from her husband throughout these dissolution proceedings, of any realistic opportunity to realize any financial security after 16 years of marriage.

The only case cited to the trial court by the Husband's attorneys as authority for bifurcating the present proceeding was Tunderman v. Lee, 585 So. 2d 354 (Fla. 2nd

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[5] The Wife's accountant also proffered certain information, but it was neither current nor in the form of sworn testimony (T.1/13-14, 16, 19).

DCA 1991). Tunderman did not, however, deal with the issue before the trial court and this Court, namely whether bifurcation was proper in the absence of any evidence that it was "clearly necessary for the best interests of the parties." In Tunderman, because the wife was gravely ill, her counsel filed a motion to bifurcate approximately 20 days before the trial date. The court orally granted the motion to bifurcate and moved the final hearing date ahead by eight days, leaving the time of the hearing to be agreed upon between the attorneys. However, the husband's attorney thereafter would not agree to a time until the bifurcation order was actually signed. The trial judge then went on vacation and did not sign the order until his return. As a result, the hearing on the dissolution of marriage was set for the same day the bifurcation order was signed. The husband's attorney thereafter claimed he did not have the full 30-day notice of trial required by rule 1.440, Florida Rules of Civil Procedure, and it was on that basis that he sought appellate review. The Second District rejected that argument, since the trial occurred more than 30 days from the original order setting the trial. Id. at 356. The Tunderman decision thus has nothing whatever to do with the question of whether bifurcation should have been granted, and does not even reflect that the husband objected or raised the propriety of the bifurcation at all. Id. at 355-357.

In its opposition to the Wife's motion to relinquish jurisdiction during this appeal, the Estate cited Fernandez v. Fernandez, 648 So. 2d 712 (Fla. 1995). In that

case, a terminally ill wife filed a motion to bifurcate the proceedings because she had not long to live. In Fernandez, however, in contrast to the present case, the parties stipulated to the granting of the motion to bifurcate, and thus that was not an issue before either the district court of appeal or this Court. Id. at 713.

This Court has made it clear that trial judges should avoid bifurcating dissolution of marriage cases, and that this split procedure should be used "only when it is clearly necessary for the best interests of the parties or their children." Claughton v. Claughton, 393 So. 2d 1061, 1062 (Fla. 1981). Interestingly, the Fourth District has gone on record as stating that it would not hesitate to reverse a judgment dissolving a marriage and reserving jurisdiction to determine property matters, if the case had been improperly bifurcated over the objection of one of the parties. Glazer v. Glazer, 394 So. 2d 140, 141 (Fla. 4th DCA 1981). That court's disapproval of the bifurcation procedure, and its insistence that bifurcation be restricted to cases where clearly necessary for the best interests of the parties, is reflected in its recent decisions as well. See Williams v. Williams, 659 So. 2d 1306, 1307-1308 (Fla. 4th DCA 1995) [reversing final judgment of dissolution because of erroneous bifurcation], and Woods v. Woods, 610 So. 2d 71 (Fla. 4th DCA 1992) [affirming judgment but expressly discouraging practice of bifurcation].

In Weasel v. Weasel, 419 So. 2d 698, 699, 700 (Fla. 4th DCA 1982), the Fourth District quashed an order of bifurcation and emphasized that to be entitled to bifurcation,

> ...it must be a most exceptional case reflecting at least equal or more hardship on the movant resulting from a non-bifurcation when compared to the damages and complications arising from bifurcation.

Id. at 700. The court observed that bifurcation, where the wealthy husband was heavily involved in complex financial affairs, had a girlfriend, and was 56 years of age, exposed the wife to hazards and prejudices. The court noted that should the husband die, remarry, or encumber, conceal or dispose of his property, any of those events in the interval between dissolution and a determination of the other issues could severely damage the wife's remaining claims. Id. at 699. Nonetheless, the Fourth District approved the bifurcation in the present case, even though the approaching demise of Mr. Barnett was the express reason for the bifurcation, which has indeed operated to the severe detriment of Mrs. Barnett.

The trial court initially recognized that it required specific factual information regarding the financial impact of a bifurcation order (T.1/10, 11, 13, 16). However, the court never received that information, having heard only the argument and unsworn representations of counsel. It is well established that such unsworn statements do not constitute competent evidence and should not be relied upon by the court. See Ladoff

v. Ladoff, 496 So. 2d 989, 989-980 (Fla. 4th DCA 1986); Leon Shaffer Golnick Advertising, Inc. v. Cedar, 423 So. 2d 1015, 1017 (Fla. 4th DCA 1982).

The trial court quite openly reached its decision based on its sense of compassion toward a dying man and his family. However, since that decision was not based on any evidence and did not consider the financial consequences to Mr. Barnett's wife of 16 years, it was an abuse of discretion. The Fourth District's affirmance was thus error and should be quashed, with directions that the partial judgment of dissolution be vacated.

CONCLUSION

For the reasons set forth above, this Court should adopt a bright line rule that a dissolution of marriage judgment becomes effective only when all judicial labor by the trial court is at an end. As applied here, the partial final judgment should thus be set aside as void because of Mr. Barnett's death prior to the conclusion of judicial labor in the trial court. Alternatively, the judgment should be set aside because of the trial court's abuse of discretion in bifurcating the proceedings under the circumstances of this case.

Respectfully submitted,

NANCY LITTLE HOFFMANN, P.A.
4419 West Tradewinds Avenue

Fort Lauderdale, Florida 33308
954-771-0606

By_____
Nancy Little Hoffmann
Fla. Bar #181238

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by mail this 22nd day of November, 1998, to: **ROBERT BLAIR GOLDMAN, ESQUIRE**, Shutts & Bowen, LLP, 250 Australian Avenue South, Suite 300, West Palm Beach, Florida 33401, Counsel for Appellee; and **BARBARA J. COMPIANI, ESQUIRE**, Caruso, Burlington, Bohn & Compiani, P.A., 1615 Forum Place, Suite 3-A, West Palm Beach, Florida 33401, Co-Counsel for Appellee..

By_____
Nancy Little Hoffmann
Fla. Bar #181238