IN THE SUPREME COURT OF FLORIDA

Case No. SC00-2542
Lower Tribunal No. 2D98-3268

VIVIAN WEBB MACAR

Petitioner

v.

ALEX V. MACAR

Respondent

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT COURT OF FLORIDA

ANSWER BRIEF ON THE MERITS OF RESPONDENT, ALEX V. MACAR

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CERTIFICATE OF TYPE, SIZE AND STYLE

Counsel for the Respondent/Husband, Alex v. Macar, hereby certifies that this Answer Brief on the Merits has been prepared by using 14 point, proportionately spaced type, in Times New Roman font.

INTRODUCTION

The trial court erroneously set aside a Final Judgment of Dissolution of Marriage, which incorporated a Property Settlement Agreement, on the grounds of overreaching and duress. The Second District reversed, holding that overreaching and duress are not grounds for relief under Rule 1.540, and that Castro v. Castro, 508 So.2d 330 (Fla 1987), which sets out the basis for relief from a Marital Settlement Agreement, does not apply after a Final Judgment incorporating the Agreement has been entered.

The decision of the Second District is in conflict with Goodstein v. Goodstein, 649 So.2d 273 (Fla. 3d DCA 1995). The Second District certified the conflict.

This case is within the discretionary review of this Court to review conflict in the decisions of the district courts.

In this brief, the Petitioner, Vivian Webb Macar, will be referred to by name or as "the Wife"; the Respondent, Alex V. Macar, will be referred to by name or as "the Husband".

The designation (R:) will indicate a reference to the specific page of the record on appeal; the designation (T:) will indicate a reference to the transcripts of the hearings on the Wife's Motion for Relief from Judgment on May 29, 1998, July 13, 1998 and July 28, 1998. The designation (ST:) shall reference the transcript for the hearing held on June 12, 1998.

In this brief, a reference to Rule 1.540, Florida Rules of Civil Procedure shall be deemed to include a reference to Rule 12.540, Florida Family Law Rules.

STANDARD OF REVIEW

The standard of review in this case is de novo, to resolve the conflict between the districts as to the grounds by which a Final Judgment of Dissolution of Marriage which incorporates a Marital Settlement Agreement can be set aside under Rule 1.540. Rule 1.540 does not confer discretion on the trial court, but specifies the only grounds upon which relief can be granted.

STATEMENT OF THE CASE AND THE FACTS

This case arose from the dissolution of a short-term marriage. The parties had been married for a period of eight years when they first separated in 1994. The Wife filed a Petition for dissolution of the parties' marriage, which was dismissed when the parties reconciled. The parties separated again in 1996, and the Wife again filed the Petition for Dissolution of Marriage. (R: 1-3). The parties have three minor children. During the course of the dissolution proceedings, custody, support and equitable distribution were all vigorously contested. (R: 21-32).

During the parties' first separation, the Wife hired a forensic accountant, George Snyder, to assist with the financial aspects of the dissolution. (T: 20). When the Wife filed the dissolution of marriage at the time of the second separation, she once again retained the services of Mr. Snyder to determine the parties' standard of living, as well as the marital net worth and the Husband's ability to pay support. (T: 20).

The dissolution action continued for almost one year. Both parties were represented by counsel throughout the legal proceedings. There were over six hearings conducted during this time. (R: 41-43; 78-79; 91-108; 124-125; 141-143; 160-193; 199-200). There also was considerable discovery produced, and the Husband's deposition was taken on at least three separate occasions. (ST: 8).

Additionally, the Husband had produced all documents that had been requested. (ST: 52). The Husband filed three Financial Affidavits; each of which listed, along with the other assets, his non-marital accounts which included the Barnett Bank account, the Heritage Cash Trust, the Eaton Vance Trust and the Franklin Value 2 Trust account. (R: 31; 120; 144-153). A value was stated for each of these accounts, and each was disclosed are being a non-marital asset. Additionally, the Husband provided the records pertaining to these accounts. (T: 25-59). There were no demands made by the Wife for any additional documentation.

On August 6, 1997, there a hearing was held on the numerous pending motions, including the Husband's Amended Motion for Temporary Relief (R: 138-139); the Wife's Motion for Fees & Costs (R: 126-136); the Wife's Motion to Compel Discovery and the Husband's Motion to Set Trial. (R: 160-192). At the conclusion of the hearing, and without the prior knowledge of the Wife's counsel; the Wife presented a Stipulation for Substitution of Counsel, seeking to discharge her current attorney, and having already hired Donald McBath to represent her for the conclusion of the case. (R: 188-191). The pre-trial and trial dates had just been scheduled for October, however the Court approved the Stipulation for Substitution with the clear and express understanding that the trial would proceed as scheduled, and that the

Wife's new counsel would have to be prepared for trial at that time. This instruction was understood by, and agreed to as acceptable by the Wife. (R: 189; 200).

The parties then filed their Pretrial Memoranda as required by the court. The Wife's Pretrial Memorandum listed the records of the disputed accounts, as well as the schedules prepared by her expert, George Snyder, as anticipated exhibits to be used at trial. She also stated that no further discovery was necessary. (R: 201-207).

On October 13, 1997, four days prior to the commencement of the trial, the Wife filed several motions which included a Motion to Continue Trial (R: 208); a Motion for Temporary Attorney's Fees, Costs and Expert Witness Fees (R: 211); a Verified Emergency Motion for Temporary Change of Custody (R: 212-216); a Verified Ex Parte Motion for Temporary Change of Custody (R: 217-222); a Motion for a Court Appointed Psychiatrist (R: 222) and a Motion to Continue Psychological Evaluation. (R: 223-224).

On the morning that trial was scheduled to commence, October 17, 1997, the Wife filed two additional motions, a Motion for Appointment of Guardian Ad Litem (R: 225-226) and a Verified Motion to Disqualify Judge. (R: 227-229). All of the Wife's motions were heard during the morning of trial, during a period of over three and one-half hours. Each of the motions were denied. (R: 233).

Among the other rulings made during that time, Circuit Court Judge Vivian Maye found that the allegations accusing the Husband of child abuse and pedophilia were completely unfounded and maliciously filed. (R: 235). Based upon the Wife's actions, Judge Maye awarded the temporary sole custody of the minor children to the Husband. (R: 233). The Motion to Continue the Trial was denied, and Judge Maye ordered that the trial was to begin immediately after the lunch recess. (R: 244).

George Snyder had prepared various schedules for the Wife for use at trial, and was prepared to testify, although he had not been asked to appear. (T: 23; 54). Mr. Snyder's schedules reflected values higher than those that were used in the settlement agreement. (T: 24; 29).

After the lunch recess, counsel for the Wife approached the Husband's counsel in regard to the possibility of settlement. (ST: 63). The settlement offer came from the Wife's attorney, not from the Husband, nor his attorney. (ST: 64). The parties then entered into settlement discussions, which resulted in a settlement agreement that was read into the record. (R: 245-261). Pursuant to the settlement agreement, the parties agreed to exercise shared parental responsibility, with the Wife as the secondary residential parent. Additionally, the Wife received lump sum alimony, as well as a 24 month abatement of child support, a Corvette automobile and non-modifiable alimony. (R: 249-251).

The Wife testified at the final hearing that she was entering into the agreement freely and voluntarily (R: 254), and that she understood the terms of the agreement. She stated that while she did not like the terms because she felt that the distribution was not equal, nor as much as she would like to receive, nonetheless, she was in agreement with the settlement. (R: 255, 261).

The agreement was thereupon approved and incorporated into the Final Judgment of Dissolution of Marriage. Thereafter, an Amended Final Judgment was entered on June 2, 1998, *nunc pro tunc* to November 12,1997. (R: 434-436).

In May, 1998, the Wife again obtained new counsel and filed a Motion for Relief from the Final Judgment pursuant to Rule 1.540, Florida Rules of Civil Procedure, and Rule 12.540, Florida Family Law Rules of Procedure, alleging the following:

1. The agreement was entered through fraud, misrepresentation and overreaching. (R: 399-400).

2. The agreement was based upon coercion and duress. (R: 400-401).

3. The agreement was unreasonable, unfair and inequitable, as the Wife did not have general knowledge of the assets. (R: 402-403).

4. There was newly discovered evidence, specifically regarding the Husband's four brokerage accounts, that the accounts may have been marital. (R: 403).

A hearing was held on the Wife's Motion on May 22, 1998, which continued on May 27th, June 12th and July 13, 1998. The Wife admitted that the financial affidavits that had been previously filed by the Husband had listed the assets which she was now claiming were "newly discovered" accounts. (T: 78-80; 84-88). She testified that she did not feel pressured to settle the case by either the Husband, nor his attorney. (T: 98). The Wife's forensic accountant, George Snyder, testified that he had been hired by the Wife to assist in the financial aspects of the trial (T: 20) and that he had received the financial records for the disputed accounts (T: 26-27; 30-59). Mr. Snyder had prepared the schedules of the marital net worth which reflected the values of the assets as higher than those used in the settlement agreement. These schedules had been discussed with the Wife, and copies had been furnished to her attorney prior to the trial. (T: 24).

The Court relied primarily upon Castro v. Castro, 508 So.2d 330 (Fla. 1987) (T: 114), as well as what it considered was an unequal distribution, and granted the Wife's Motion to set aside the settlement agreement and Final Judgment of Dissolution of Marriage. (T: 116-117; R: 509-511). In Judge Maye's ruling, she specifically stated

that she found no fraud or coercion by the Husband, (R: 510; T: 115), only that his financial affidavits contained "errors". (R: 115).

The Husband thereupon appealed the decision to the Second District Court of Appeals, which reversed, in Macar v. Macar, FLW 25 D2591 (Fla. 2d DCA November 3, 2000). (R: 514-517).

That opinion is in conflict with the Third District in Goodstein v. Goodstein, 649 So.2d 273 (Fla. 3d DCA 1995). The Second District certified conflict.

SUMMARY OF THE ARGUMENT

Rule 1.540, Florida Rules of Civil Procedure and Rule 12.540, Florida Family Law Rules of Procedure set forth the only basis for granting relief from a Final Judgment. The grounds for relief are limited to fraud, misrepresentation or other misconduct of the adverse party, and do not include overreaching or duress.

Overreaching and duress may provide for the basis for setting aside a property settlement agreement prior to the entry of a Final Judgment pursuant to the holdings of Castro v. Castro, 508 So.2d 330 (Fla. 1987). However, the only avenue for relief from a Judgment; whether a dissolution of marriage incorporating a property agreement or otherwise, is pursuant to Rule 1.540.

The trial court erroneously applied the standards of Castro, setting aside the agreement by finding overreaching and duress. The Court specifically found that there was no fraud, coercion or misconduct on the part of the Husband.

There being no basis for relief under Rule 1.540, the Second District properly reversed.

ARGUMENT

I

RULE 1.540 PROVIDES THE ONLY MEANS BY WHICH A PARTY CAN BE GRANTED RELIEF FROM A FINAL JUDGMENT. THE FACTORS ENUMERATED IN *CASTRO* DO NOT APPLY TO A RULE 1.540 CHALLENGE.

Florida law has long recognized the power of the courts to set aside a property settlement agreement, whether antenuptial or postnuptial, if the agreement was a product of fraud, coercions, duress, overreaching or other misconduct. Belcher v. Belcher, 271 So.2d 7 (Fla. 1972); Del Vecchio v. Del Vecchio, 143 So.2d 17 (Fla. 1962).

Florida has also recognized the power of the courts to set aside a Final Judgment when it was obtained through fraud, or other grounds specifically provided in Rule 1.540, Florida Rules of Civil Procedure. Crowley v. Crowley, 678 So.2d 435 (Fla. 4th DCA 1996); Demaggio v. Demaggio, 317 So.2d 848 (Fla. 2d DCA 1975); McCormick v. McCormick, 181 So.2d 220 (Fla. 2nd DCA 1965).

This case comes before this Court to resolve an apparent conflict as to the grounds upon which a property settlement agreement can be vacated when it was the culmination of a contested litigation, and when the agreement was approved and incorporated into a Final Judgment.

The Second District held in the case below that once the agreement was incorporated into a Final Judgment, the contesting party, here the Wife, must meet the criteria of Rule 1.540, in order to set aside the Final Judgment. The only grounds which can be applicable to this situation are fraud and newly discovered evidence.

In this case, the Wife alleged that the Husband failed to disclose the existence of certain specific assets, and failed to list their true values and/or fraudulently listed the assets as being non-marital. Obviously, the Husband could not have both failed to disclose the assets, and also have listed them fraudulently with incorrect values. The trial court did not find that there was fraud, or coercion by the Husband. (R: 510; T: 115). There had been substantial compliance with discovery , although the Court found that there were "errors" in the Husband's financial affidavits. (T: 114). The Wife demonstrated no newly discovered evidence. The Wife admitted that she was not pressured by the Husband, nor his attorney to enter into the settlement agreement. (T: 98). Therefore, there was no basis for the trial judge to grant relief from the Judgment.

The trial court relied on Castro v. Castro, 508 So.2d 330 (Fla. 1987) to justify setting aside the Final Judgment. Castro set forth the method by which a party would be entitled to set aside a property settlement agreement. Specifically, this Court held that an agreement could be set aside if it makes an unfair or unreasonable provision

for the challenging spouse, declaring that an unreasonable agreement gives rise to the rebuttable presumption of fraud or duress. While the trial judge here did not, and could not, make a finding of fraud, she did find the agreement to be unfair to the Wife, and therefore implicitly a product of duress.

Castro, however, must be distinguished from the present case scenario in that the agreement in the case of Castro had not been incorporated into a Final Judgment. The wife therein was not seeking to set aside a Final Judgment under Rule 1.540, but was challenging the agreement before it had been accepted by the court.

The Second District in the case below, Macar v. Macar, 25 FLW D2591 (Fla. 2nd DCA Nov. 3, 2000), below specifically addressed this issue, and noted that Castro did not apply to a Rule 1.540 challenge.

There is a conflict with the Third District case of Goodstein v. Goodstein, 649 So.2d 273 (Fla. 3rd DCA 1995). In that case, a property settlement agreement that had been incorporated into a Final Judgment was set aside based upon overreaching and duress. The agreement had been entered into at a time when the wife was recovering from open heart surgery, was on a "mind altering" medication, and the agreement was reached outside of the presence of her counsel. The wife subsequently moved to set aside the agreement. The Court found that the agreement was entered into as the

result of the Husband's overreaching and duress, and it was set aside. The Third District affirmed.

While the outcome of Goodstein is in conflict with that of the Second District below, Goodstein is distinguishable. The Third District did not address Rule 1.540, and made no effort to reconcile the requirement of Rule 1.540 with the more liberal grounds as set forth in Castro. If it had, the facts in that case would clearly meet with the criteria of fraud as required by Rule 1.540. In the present case, however, there was clearly no fraud, coercion or other misconduct by the Husband. The most that the trial judge could do was to find that there were "errors" in the Husband's financial affidavits and that disclosure was "not complete". (T: 114).

Rule 1.540 provides for relief from a judgment when it was obtained by fraud. While there is no longer a distinction between intrinsic and extrinsic fraud as to the type that can be grounds for relief from a Judgment, it is important to understand what does not constitute fraud. As this Court explained in DeClaire v. Yohanan, 453 So.2d 375 (Fla. 1984), the filing of a false financial affidavit does not constitute fraud. The affidavits become part of the record in the case. The issue of the parties' net worth was before the court and could have been tried. As in the present case, the trial court in DeClarie found that the wife had information which would have given her notice

of the falsity in the husband's financial affidavit. In quashing the decision setting aside the Judgment, the Court went on to hold at page 380:

> Public policy has always favored the termination of litigation after a party has an opportunity for a trial and an appeal of the trial court's judgment. Consequently, the grounds upon which a final judgment may be set aside, other than by appeal, are limited in order to allow the parties and the public to rely on duly entered financial judgments. Rule 1.540 (b) broadens the grounds upon which final judgments may be attacked but we do not find it appropriate to further broaden these grounds by decision of this court. If there is to be any change, it should be achieved through the rule-making process.

Once the parties are involved in litigation over dissolution of property and support, they are necessarily dealing at arm's length. Petracca v. Petracca, 706 So.2d 904 (Fla. 4th DCA 1998).

There can be no question as to the adequacy of knowledge when a adversarial party has had the opportunity of financial discovery under the applicable rules of procedure. Petracca, supra; Zakoor v. Zakoor, 240 So.2d 193 (Fla. 4th DCA 1970). The logic of the Castro argument, which assumes a lack of knowledge where the agreement is unfair or unreasonable, cannot apply to a settlement agreement entered into during the course of contested litigation.

The law presumes that a settlement made in the course of litigation, after discovery and before trial, was done with the full knowledge by the challenging

spouse. Such settlements deserve and are entitled to great protection by the courts. Petracca; Dorson v. Dorson, 393 So.2d 632 (Fla. 4th DCA 1981); Robbie v. City of Miami, 469 So.2d 384 (Fla. 1985). There is also a presumption of knowledge when the parties were represented by counsel and had a CPA to assist in valuing the marital assets. Tubbs v. Tubbs, 648 So.2d 817 (Fla. 4th DCA 1995).

To allow a "reasonableness" challenge to settlement agreements that have been entered into during the course of litigation, then approved and incorporated into Final Judgments, threatens the likelihood of settlement. There would be little, if anything, to gain by settling a matter, if months later the agreement could be vacated and further litigation required because one party deemed that they were displeased with the results. Whenever a party finds himself or herself in a losing posture, he or she should settle on any terms, no matter how harsh, and later come back, set the agreement aside, and try the case again when the party is presumably in a better posture.

Unless there is a showing of fraud or other basis for relief under Rule 1.540, the courts must leave the parties to the agreement that was reached. The Florida Rules of Procedure, both 1.540 and 12.540, provide the only grounds for relief from judgment.

II

EVEN IF CASTRO DOES APPLY TO A RULE 1.540 CHALLENGE, THE EVIDENCE CLEARLY DEMONSTRATED THAT THE WIFE HAD A GENERAL AND PROXIMATE KNOWLEDGE OF THE PARTIES' FINANCES.

This Court clearly explained in Castro v. Castro, 508 So.2d 330 (Fla. 1987), that a property settlement agreement may be set aside if it is clearly established that it was reached by fraud, deceit, duress, coercion, misrepresentation or overreaching, or that the agreement makes an unfair provision for the challenging spouse. It was explained at page 333:

> Once the claiming spouse established that the agreement is unreasonable, a presumption arises that there was either concealment by the defending spouse or a presumed lack of knowledge by the challenging spouse of the defending spouse's finances at the time the agreement was reached. The burden then shifts to the defending spouse, who may rebut these presumptions by showing that there was either (a) a full, frank disclosure to the challenging spouse by the defending spouse before the signing of the agreement relative to the value of the marital property and the income of the parties, or (b) a general and approximate knowledge by the challenging spouse of the character and extent of the marital property sufficient to obtain a value by reasonable means, as well as a general knowledge of the income of the parties. The test in this regard is the adequacy of the challenging spouse's knowledge at the time of the agreement and whether the challenging spouse is prejudiced by the lack of information.

In this case, there was no evidence of fraud or duress. The parties engaged in full and substantial discovery. The Wife was, at all times, represented by counsel. She also had an expert forensic accountant to investigate and analyze the financial issues in this case. (T: 20). The evidence was clear that the Husband disclosed the existence of the accounts alleged by the Wife as the basis of her Motion for Relief. The Husband listed the accounts on all three of the financial affidavits that he filed. (R: 31; 120; 144-153). The Husband also provided at least three years of records for the accounts. (T:26-27), and he provided all documentation that was requested of him. (ST: 61). The Wife's expert had been provided with all of the necessary discovery to allow him to determine the marital assets, with the higher and more accurate values as asserted by the Wife. (T: 25-59). The Wife's expert has prepared the appropriate schedules for trial, which included the schedule of the parties' net worth, and which contained the higher values for the parties' assets that the Wife is now claiming were not disclosed. (T: 24). The schedules had been furnished to the Wife through by her counsel. (T: 24-25). In the Wife's Pretrial Memorandum, she stated that no further discovery was necessary. (T: 201-207).

The Wife had engaged in a practice of filing false and misleading motions. On at least two motions, she specifically set forth accusations of domestic violence and of child abuse. (R: 95; 138; 212-221), both of which the court found to be baseless,

and that were filed solely for the purpose of trying to manipulate the judicial process in order to obtain custody. (R: 235).

For whatever reason, the Wife's attorney did not want to proceed with this case to trial. All parties had been on notice since August that the trial was scheduled for October, and that no continuances would be allowed. (R: 189; 200). Four days before the trial was to commence, the Wife filed seven motions, (R: 208-229), all of which were designed to avoid the trial. (T: 18).

All of the Wife's motions were heard on the morning of the final hearing. After hearing testimony and arguments for over three hours, the judge found that the Wife had made false and scurrilous allegations, and temporary sole parental responsibility was awarded to the Husband. The Wife's motion to continue the trial was denied, as were all of her other motions. (R: 264-265). The final hearing was to begin after the lunch break. (R: 244).

After the lunch break, the Wife's attorney approached the Husband and his counsel about settlement. (ST: 63). The Wife's attorney made the settlement offer. (ST: 63-64). The parties, together with their counsel, met and agreed to the terms of the settlement. The agreement provided to the Wife what she most desperately wanted, shared parental responsibility and unsupervised visitation. (R: 246). For that right, the Wife willingly and knowingly gave up certain property rights. (R: 245-253).

There was no evidence that she did not understand the terms of the agreement, nor of her rights. In fact, a brief recess was held during the hearing in order to resolve a problem, when the Wife wanted to make a change in the property distribution. (R: 251-253). The Wife admitted that she was not being pressured by the Husband, nor by his attorney in entering into this agreement. (T: 98).

After receiving the benefit of her bargain, the Wife moved to vacate the financial aspects of the agreement. This is unfair and unconscionable, and is not the purpose of Rule 1.540.

The trial judge specifically found that the Husband's financial disclosure was incomplete, but did not find that he had defrauded the Wife. (R: 510; T: 115). She did not find any coercion by the Husband. However, the Court believed that the agreement was unfair, and for that reason determined that it should be set aside.

The distribution of assets and liabilities in this case was not equal; however, it does not have to be equal. Castro, does not authorize a court to set aside an agreement on the grounds that it is unreasonable if it was knowingly entered into by the parties.

The Courts have long acknowledged the right of a party to enter into a bad bargain. In Castro, the court noted at 508 So.2d, page 334, that:

> ...the fact that one party to the agreement apparently made a bad bargain is not a sufficient ground, by itself, to vacate or modify a settlement agreement...a bad fiscal bargain that

> appears unreasonable can be knowledgeably entered into for reasons other than insufficient knowledge of assets and income. There may be a desire to leave the marriage for reasons unrelated to the parties' fiscal position. If an agreement that is unreasonable is freely entered into, it is enforceable.

Similarly, in Brighton v. Brighton, 517 So.2d 53 (Fla. 4th DCA 1987), the appellate court reversed an order vacating a property settlement agreement that was grossly disproportionate against the Husband, stating that the parties were equably able to understand finances, and the husband "was not snookered or tricked . . . he wanted out; he wanted away from her; he wanted it over; he was willing to pay anything to extricate himself from the marital situation at that time." 517 So.2d at 54. The agreement having been knowingly and freely entered into was not subject to being set aside by the court.

Courts have also recognized that a party can have goals other than financial when negotiating a settlement. In this case, the Wife acknowledged that she entered into the agreement in order to maintain shared parental responsibility of the three minor children. (R: 246).

The facts leading up to the agreement are indispensable for a complete and accurate understanding. The parties had been in vigorous litigation for almost one year, excluding the previous separation and dissolution proceedings. The Wife had

previously filed at least two false and scurrilous motions designed to obtain custody, which accused the Husband of domestic violence and of child abuse. (R: 95; 233). The second such motion, filed the week before the trial was to begin, accused the Husband of child abuse, as well as being a pedophile, bisexual and homosexual. (R: 212-216). The Wife filed the motion in hope of obtaining sole custody and a continuance of the trial. The trial judge found the motions to be totally without merit, and awarded the Husband temporary sole custody for the minor children. (R: 264-265).

The Wife had been cautioned by the court in August when she changed attorneys, that the trial was set for October, and that her new attorney would have to be prepared at that time. (R: 189, 200). The week prior to the trial, the Wife advised her forensic expert, Mr. George Snyder, that the case had settled and she did not need for him to appear at the trial. (T: 23). Mr. Snyder had been prepared to testify if he had been requested to appear. (T: 23-24).

After the conclusions of the motions on the morning of trial, the Wife was obviously aware that the case was not going as she had hoped. Prior to the trial beginning after the lunch recess, the Wife's counsel approached the Husband about the possibility of settlement. (ST: 63). The settlement offer came voluntarily from the Wife's attorney, not from the Husband nor his attorney. (R: 64).

By her own admission, the Wife agreed to the settlement in order to have shared parental responsibility and unsupervised visitation with the minor children. (T: 91). This was more important to her than receiving a more favorable financial result. Regardless of the wisdom of the Wife's decision, it was one that was made knowingly and with the benefit of counsel and experts. The fact that the Wife later had second thoughts about her decision, or the fact that the trial court believed it was a bad bargain, does not give discretion to the court to set aside the agreement.

It should be noted that the benefit for which the Wife bargained, shared parental responsibility was not disturbed by the trial judge's order setting aside the property aspects of the settlement agreement. The Wife would thus receive the benefit of her bargain, while depriving the Husband of the benefits for which he compromised.

Although the Wife claimed duress, she testified that while she "felt pressured" at the time of the agreement, she was not pressured by the Husband or by his attorney. (T: 98).

If there is no fraud or misrepresentation, no duress or coercion, there is no basis to aside the agreement, either under Castro, or under Rule 1.540.

There is no factual or legal basis for the court to set aside the final judgment incorporating the settlement agreement. The order of the trial court must be reversed, and the opinion of the Second District in Macar approved.

CONCLUSION

The trial court's Order on the Former Wife's Motion for Relief from Judgment must be reversed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this _____ day of April, 2001 to Virginia R. Vetter of Vetter & Hunter, 4144 North Armenia Avenue, Suite 210, Tampa, Florida 33607.

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