IN THE FLORIDA SUPREME COURT

S. Ct. Case No. SC09_1969
DCA NO: 3D-08-2251

LINDA CRAWFORD,
Petitioner,

vs.

JANNIE BARKER
as Personal Representative of
the Estate of Manuel R. Crawford,
Respondent.
_____/

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
THIRD DISTRICT

RESPONDENT'S JURISDICTIONAL BRIEF

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STATEMENT OF CASE and FACTS

In the district court below, Jannie Barker, the daughter and personal representative of the Estate of Manuel R. Crawford, filed an appeal. In that appeal the Third District was asked to decide whether a waiver of a wife's beneficiary rights to the proceeds from a deferred compensation plan could be implied from the language of a marital settlement agreement in which the same spouse agreed that her husband should receive the proceeds of the plan.

The Third District, in the case at bar, reversed the trial court's order in which the trial court overruled the General Magistrates Report and Recom-mendations. The General Magistrate had found that during the course of the marriage, Manuel Crawford had designated his wife, Linda Crawford, as the designated beneficiary of Mr. Crawford's Deferred Compensation Fund. The Magistrate also found that "Linda Crawford and Manuel R. Crawford agreed at the time of the signing of the amended mediated settlement agreement that Manny should get the money from this fund and that he should be the beneficiary."

The trial court overruling the General Magistrate simply because the marital settlement agreement did not mention Mrs. Crawford's beneficiary rights to the retirement fund proceeds. The Third District disagreed. It held that when Mrs. Crawford agreed that her "Husband shall **retain retirement money with** the Town

of Surfside and **the Deferred Compensation Fund** f/k/a Pepsco" [emphasis added], this was sufficient to act as a waiver, by Mrs. Crawford, of her beneficiary rights to the money or proceeds of the Deferred Compensation Fund.

STATEMENT OF JURISDICTION

The petitioner is seeking discretionary review on the basis of misapplication of the law. The opinion of the Third District in *Barker v. Crawford*, No. 3D08-2251 (Fla. 3rd DCA 2009) did not misapply the law as set forth in *Cooper v. Muccitelli*, 682 S.2d 77 (Fla. 1996)("*Cooper II*") or *Smith v. Smith*, 919 So. 2d 525 (Fla. 5th DCA 2005). Therefore, conflict jurisdiction does not exist.

SUMMARY OF ARGUMENT

There is no conflict between the *Barker* case and the *Cooper II* or the *Smith* case, whether under a theory of misapplication, or otherwise. First of all, the same question of law addressed in the *Barker* case was not the same question of law addressed in either the *Cooper II* or the *Smith* case.

The question of law in the *Barker* case was whether a spouse can waive her beneficiary rights to the proceeds of a retirement fund by implication when the parties have agreed as to who should be the beneficiary of the fund and receive the proceeds. *Cooper II* is distinguishable since it involved a different issue of law. There, the court was confronted with a marital settlement agreement that did not

even mention a fund, which was a life insurance policy, let alone who should receive the proceeds of that policy. Thus, *Cooper II* is unlike the *Barker* case since the *Barker* agreement specifically identified the fund and specifically identified who should receive the proceeds of that fund.

The question of law in the *Cooper II* case was whether the claim of the designated beneficiary of a life insurance policy should take precedence over the claims of the heirs to the death benefits of the policy solely because of vague and general waiver language in the marital settlement agreement in which the policy was never even mention. The waiver agreement in *Cooper II* stated that each spouse waived all claims **as a surviving spouse** and it merely stated that "each party hereby waives ... **all claims** ... which he or she ... **might have** ... against the other...by reason of any matter... **prior to the date of this agreement**." Thus, in *Cooper II*, the waiver did not include the life insurance policy since the ex-spouse had a right to the proceeds, not by being a **surviving spouse**, but by being the designated beneficiary of the policy. Furthermore, the ex-spouse's claim did not exist "**prior to the date of the agreement"** since her husband was, obviously, still alive at that time and he had the right to change the designated beneficiary of the policy.

In *Cooper II*, the court found, upon an analysis of the facts of that case, if "... the general language in the separation agreement trumps the specific language in the policy, [it] would place Academy [the insurance company] in an impossible position...." [Explanation added]. However, the Supreme Court indicated that the insurance company would not be in an impossible position if the settlement agreement designated who should receive the proceeds and if the insurance company was put on notice of this fact. See fn 1, *Cooper v. Muccitelli*, 682 So.2d at 77.

Hence, the Florida Supreme Court stated that: " ... we approve the results in Cooper [*Cooper I*] on this issue." There, in *Cooper I* (*Cooper v. Muccitelli*, 66I So. 2d 52 (Fla. 2d DCA I995)) the Second District held that: "... **without specific reference** in a property settlement agreement **to** life insurance **proceeds**, the beneficiary of the proceeds is determined by looking only to the insurance contract." [Explanation added]. Consequently, the legal question in *Cooper I* and *Cooper II* is different than the legal question in *Barker* since in *Barker* the settlement agreement did make specific reference to the money or proceeds from the retirement fund.

The *Smith* case is equally distinguishable from the *Barker* case. In *Smith*, once again the parties failed to designate, in the marital settlement agreement, who should receive the proceeds of a retirement plan.

Additionally, the court does not have "misapplication jurisdiction" since the *Barker* decision does not state that the *Cooper* or the *Smith* decisions stand for any particular holding. The Third District, in *Barker*, merely cited *Cooper II* and *Smith* as source material. Therefore, the petition seeking conflict jurisdiction should be denied.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THE FLORIDA SUPREME COURT OR ANOTHER DISTRICT COURT ON THE SAME ISSUE OF LAW.

The Third District's decision in *Barker* held that a wife can waive her beneficiary interest in the proceeds of a retirement fund when she signs a marital settlement agreement giving those specific retirement proceeds to her husband. This decision is not expressly and directly in conflict with either *Cooper* or *Smith* since the issues of law are different.

In *Cooper I* and *Cooper II*, the agreement did not even mention the existence of any death benefits. There Mrs. Cooper was the sister of the deceased husband. Mrs. Muccitelli was the husband's ex-wife. Husband and Muccitelli were married in 1984. Husband purchased a life insurance policy in 1987. Muccitelli was named as primary beneficiary. Husband and Muccitelli were separated and entered

into a **separation agreement** but the separation agreement **did not mention the life insurance policy**. The Husband died after the marriage was dissolved.

The Second District in the case of *Cooper v. Muccitelli*, 661 So. 2d 52 (Fla. 2d DCA 1995) ("*Cooper I*") held that the rights to the **PROCEEDS** can be fixed by a separation agreement approved by the court. However, the Second District held that "... without specific reference in a property settlement agreement to the insurance **proceeds**, the beneficiary of the **proceeds** is determined by looking only to the insurance contract." *A fortiori*, where the Settlement Agreement makes specific reference to the proceeds of the policy, the beneficiary is determined by the Settlement Agreement.

The court in *Cooper I*, certified what it believed to be conflict with other district courts, whose decisions it perceived to require an evidentiary determination of intent when the settlement agreement failed to make a specific reference to the proceeds. The court in *Cooper I* held that "...without specific reference in a property settlement agreement to life insurance proceeds, the beneficiary of the proceeds is determined by looking only to the insurance contract." However, in the case at bar, there was specific reference to the proceeds and to whom the retirement proceeds were to go.

The Florida Supreme Court, in *Cooper II*, agreed with *Cooper I* to the extent that the property separation agreement was general and did not mention who was to get the **proceeds** of the policy nor did it even mention the policy itself. The court found that such **general language**, as found in the *Cooper I* separation agreement, which merely provided for the general release of claims between the parties and which **did not** mention who should get the proceeds, did not trump the **specific language of the policy**. See *Cooper v. Muccitelli*, 682 S.2d at 77.

Contrary to the petitioner's contention, the Florida Supreme Court did not specifically analyze the holding in the decisions of *Davis v. Davis*, 301 So.2d 154 (Fla. 3rd DCA 1974); *Aetna Life Insurance Co. v. White*, 242 So.2d 771 (Fla. 4th DCA 1970); or *Raggio v. Richardson*, 218 So.2d 501 (Fla. 3rd DCA 1969). Also contrary to petitioner's contention, the Florida Supreme Court **did** indicate that the language of the settlement agreement would be controlling if the agreement makes a specific reference to the proceeds of the life insurance policy and if the insurance company is put on notice of this fact. See *Cooper*, 661 So.2d at 77, fn1.

As in the case of *Cooper I* and *Cooper II* , the Third District's decision is **not** in conflict with *Smith v. Smith*, 919 So. 2d 525 (Fla. 5th DCA 2005), either. In *Smith*, the husband had policies of insurance and retirement plans to which the wife was named as the beneficiary. When the parties dissolved their marriage, they entered into a property settlement agreement that provided that: "Husband

shall receive as his own and Wife shall have no further rights or responsibilities regarding these assets". This was very general language and very confusing, as was also the case in *Cooper I* and *II*.

The Fifth District, in *Smith*, acknowledge that a spouse could waive her designated beneficiary rights but then the court made specific note of the fact that "The agreement [in *Smith*], however, made no mention of the proceeds or death benefits of the policies and plans." [Emphasis and explanation added]. Thus, the court in *Smith*, held that a spouse can enter into a settlement agreement and waive her beneficiary rights to a retirement fund when she agrees that her husband should receive the proceeds of the retirement fund.

In the instant case, Mr. and Mrs. Crawford's Settlement Agreement **did address the proceeds of the** Deferred Compensation **Fund.** The Settlement Agreement **did** specifically address who should get the proceeds of this fund. Therefore, the case at bar is distinguishable by its facts from the *Cooper II* and *Smith* decisions and, thus, there is no misapplication of either *Cooper II* or *Smith*, as alleged by the petitioner.

Also, the *Barker* decision is not in conflict with *Cooper II* or *Smith* since the Third District did not misapply the holdings in either of those cases. In *Barker*, the Third District merely cited *Cooper II* and *Smith* as general source material. The use of the notational signal "*See*" preceding the Third District's citation to the

Cooper II and the *Smith* decisions merely provides an indication that the decision in *Barker* will be suggested by an examination of the *Cooper II* and the *Smith* cases. THE HARVARD LAW REVIEW ASSOCIATION, Garnnett House, A Uniform System of Citation, 87, Eleventh Edition, 1970. Therefore, the case at bar is distinguishable from the *Cooper II* and *Smith* decisions and there is no misapplication of either *Cooper II* or *Smith*.

CONCLUSION

The petition seeking discretionary review of the decision of the Third District Court of Appeal in the instant case should be denied for a number of reasons. The decision of the Third District does not involve the same legal question or facts as the cases cited by the petitioner. Unless the legal question is the same there can not be any conflict jurisdiction. Florida Constitution, Art. V, §3(b)(3).

In addition, the Third District's decision is distinguishable because it concerns whether the waiver of beneficiary rights of a designated beneficiary can be implied when the settlement agreement specifically refers to the proceeds of a retirement fund and specifically designates the person who is to receive those benefits. This is distinguishable from the cases cited by the petitioner for conflict, since in those cases the settlement agreements never mentioned the policy or fund and/or never mentioned who should receive the proceeds of the policy or fund.

Finally, the Third District's citation to the *Cooper* and *Smith* decisions did not suggest that these cases were **precedence** for the Third District's holding. Instead, the Third District merely cited these cases with the notational signal "See" which merely provides an indication that the decision in *Barker* will be suggested by an examination of the *Cooper* and the *Smith* cases.

The *Barker* holding does not create a problem for insurance companies or fund managers since the bright line test is whether they were put on notice of the settlement agreement. Furthermore, the retirement fund administrator was not a party to the *Barker* case. There was no need to involve the retirement fund directly since the family court is a court of equity and it had the power to require that the funds be transferred between the parties. Therefore, the respondent respectfully requests that the court find that there is no conflict jurisdiction and deny the petition.

Dated: _____, 2009.

Respectfully submitted,
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PROOF OF SERVICE

I hereby certify, under penalty of perjury, that on this _____ day of _____, 2009, I caused to be placed in the United States First Class Mail, Postage Prepaid copies of “Respondent’s Jurisdictional Brief" addressed as follows:

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CERTIFICATE OF COMPLIANCE

Counsel for the Appellant certifies that the brief complies with font requirements of Fla. R. Civ. P. 9.210(2).

By _____
Thomas F. Pepe, Esquire