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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-277

DIANNE L. HAHAMOVITCH
n/k/a DIANNE LYNN,

Petitioner,

v.

HARRY H. HAHAMOVITCH,

Respondent.
_____/

L.T. CASE NOS:
4DCA CASE NO. 4D10-3051
15th CASE NO. 2008DR001392SBFY

RESPONDENT'S ANSWER BRIEF ON MERITS

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PREFACE

Petitioner, Dianne L. Hahamovitch ("wife"), seeks review of the decision of the Fourth District interpreting a prenuptial agreement in a dissolution of marriage action. *Hahamovitch v. Hahamovitch*, 133 So. 3d 1008 (Fla. 4th DCA 2014) (A-4).[1] Respondent is Harry H. Hahamovitch ("husband"). The Fourth District certified as a question of great public importance whether a spouse can waive his or her claim to the enhanced value of nonmarital assets that may have resulted from marital income or efforts through plain waiver and release language in a prenuptial agreement. The Fourth District also certified possible conflict on this issue with *Irwin v. Irwin*, 857 So. 2d 247 (Fla. 2d DCA 2003), and *Valdes v. Valdes*, 894 So. 2d 264 (Fla. 3d DCA 2004).

The bulk of wife's Initial Brief addresses the validity of the prenuptial agreement and a discovery issue. This Court should decline to reach these issues, which are not the basis of this Court's jurisdiction.

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[1] The following symbols are used: (A-[tab]:[page]) refers to the Appendix to Petitioner's Initial Brief on the Merits; (IB:[page]) refers to wife's Initial Brief on the Merits; (R[volume]:[page]) refers to the Record in the Fourth District Court of Appeal and (R[volume] T[volume or date]:[page]) refers to trial or hearing transcripts. All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Wife's Statement of Facts is misleading and irrelevant to the certified question and conflict. The trial court and Fourth District resolved these facts against wife and found the agreement was fair and wife had adequate knowledge.[2] Rather than dignify each of wife's misstatements with a response, husband limits this Statement of the Case and Facts to the facts relevant to the certified question and conflict that provides this Court with jurisdiction.

A. The relevant provisions of the prenuptial agreement

In 1986, the parties negotiated and signed a prenuptial agreement that specifically waived and relinquished any rights to each other's separate property owned then or acquired in the future (A-1, Ex. A). The agreement provided that if the parties divorced, each would retain his or her sole property "now owned or hereby acquired" (A-1, ¶ 5). Both parties "waive[d] and release[d]" each other from claiming any interest in the other's separate property (A-1, ¶¶ 1, 2; *see* A-1, ¶ 9). Property titled in either party's individual name was presumed to be separate property (A-1, ¶ 17). If the property were titled in the parties' joint names, it was presumed to be owned 50%-50% (A-1, ¶ 17). The agreement made financial provisions for wife if the parties

[2] Former husband addresses the relevant facts in his response to this argument in Point III.

divorced, with the exact amount wife received dependent on the length of the marriage and the Consumer Price Index (A-1, ¶¶ 12-13, 16; A-5:11).

The pertinent provisions of the prenuptial agreement provided as follows:

> 2. DIANNE'S RELEASE. Except as otherwise provided for herein, in the event either of the Parties hereto institutes legal proceedings for . . . dissolution of marriage . . . , DIANNE **hereby waives and releases, and is hereby barred from any and all rights and claims of every kind, nature and description that she may acquire or to which she may be entitled under the laws of any jurisdiction as a result of the marriage between the Parties, in and to any of HARRY's property**, including, but without intending thereby to limit the generality of the foregoing, any and all right to . . . **equitable distribution, division of property**, special equities, attorney's fees, or any other rights that DIANNE may have against HARRY relative to financial issues.
>
> . . . .
>
> 5. RETENTION OF SOLE PROPERTY. Except to the extent that the Parties may otherwise desire, HARRY and DIANNE shall, during their respective lifetimes, keep and retain sole ownership, control, enjoyment and power of disposition with respect to **all property, real, personal or mixed, now owned or hereby acquired by each of them respectively**, free and clear of any claim by the other . . . .
>
> . . . .
>
> 9. MUTUAL RELEASE. In consideration of the marriage of the Parties to each other, and in consideration of the other provisions herein contained, each party agrees that **neither will ever claim any interest in the other's property and that the property of every kind, nature**

> **and description which either one has on the date of their marriage** will remain the respective separate property of each after said marriage, and each agrees not to make any claim against the property of the other . . . .
>
> . . . .
>
> 17. TITLE PRESUMPTIONS. It is additionally understood that if HARRY purchases, acquires, or otherwise obtains, property and title to said property is in HARRY's name with DIANNE and no explanation is made as to the percentages of interest that either party has, then it shall be presumed that they shall be 50%–50% owners of said property. **If HARRY purchases, acquires, or otherwise obtains, property in his own name, then HARRY shall be the sole owner of same.** If DIANNE purchases property in her name, then DIANNE shall be the sole owner of same.

(A-1).

B. The dissolution proceedings

The trial court found that wife failed to prove that the prenuptial agreement was invalid due to fraud or misrepresentation (A-5:14-15). The Fourth District affirmed this factual finding (A-4:5).

The parties stipulated that the agreement was clear and unambiguous and that the trial court should not consider extrinsic evidence of intent (A-6:2; R38 T1:46, 88;

R42 T6:811; R43 T 6/15/09:5, 76-77).[3] Husband argued that wife waived any interest in the appreciation of his separate property (R38 T1:47-52; R43 T 6/15/09:5-15, 18-61, 114-26). Wife responded that the language in the agreement was not specific enough to waive her right to share in the appreciation of husband's separate property that resulted from marital efforts or income (R38 T1:88-92, 103-09; R43 T 6/15/09:62-98).

The trial court found that "the plain language of the Hahamovitch Agreement, taken as a whole, waived and released the Wife's claims to property/assets owned by the Husband at the time of the agreement, or acquired in his own name thereafter, including any enhancement of its value" (A-6:9).

The Fourth District affirmed the trial court's interpretation of the agreement (A-4:6-10). The court recognized that, in general, the appreciation or enhancement of nonmarital property is considered marital property subject to equitable distribution (A-4:7). However, a spouse can waive the right to the appreciation or enhancement of the other spouse's nonmarital property in a prenuptial agreement (A-4:7-10). The Fourth District held that "under the plain language of the prenuptial agreement, the wife waived and released claims to property or assets owned by the husband at the time of

[3] The hearing on the interpretation of the prenuptial agreement occurred on June 15, 2009 (R43 T 6/15/09).

the agreement, or acquired in his own name thereafter, including any enhancement in the value of such property." (A-4:9). This agreement "was broad enough to waive the wife's right to any asset titled in the husband's name that was acquired during the marriage or that appreciated in value due to marital income or efforts during the marriage" (A-4:9).

The Fourth District distinguished the decisions in *Irwin v. Irwin*, 857 So. 2d 247 (Fla. 2d DCA 2003), and *Valdes v. Valdes*, 894 So. 2d 264 (Fla. 3d DCA 2004), as involving prenuptial agreements that failed to expressly waive the right to appreciation or enhancement of nonmarital property (A-4:7-10). The Fourth District "acknowledge[d] that both the Second District [*Irwin*] and Third District [*Valdes*] have construed prenuptial agreements with substantially similar title provisions as being insufficient to waive a spouse's claim to the enhanced value of the other spouse's non-marital property that resulted from marital earnings" (A-4:10). The Fourth District certified conflict, "**[t]o the extent** that this decision is in conflict with" *Irwin* and *Valdes* (A-4:10). The decision also certified the same issue as a question of great public importance:

> Where a prenuptial agreement provides that neither spouse will ever claim any interest in the other's property, states that each spouse shall be the sole owner of property purchased or acquired in his or her name, and contains language purporting to waive and release all rights and

> claims that a spouse may be entitled to as a result of the marriage, do such provisions serve to waive a spouse's right to any share of assets titled in the other spouse's name, even if those assets were acquired during the marriage due to the parties' marital efforts or appreciated in value during the marriage due to the parties' marital efforts?

(A-4:11).

SUMMARY OF ARGUMENT

Florida's public policy and a long line of decisions from Florida appellate courts support the Fourth District's interpretation of the Hahamovitch prenuptial agreement. The trend in Florida is toward greater freedom of contract for post-dissolution support and equitable distribution. Florida courts consistently recognize that spouses can waive all claims to nonmarital property, including passive and active appreciation, in a prenuptial agreement.

The Hahamovitch prenuptial agreement contains this waiver. The parties negotiated and signed their prenuptial agreement in which they waived and released any right to each other's nonmarital property, whether owned at that time or acquired in the future. The plain language of this waiver included all appreciation and enhancement of nonmarital property. The trial court and the Fourth District correctly interpreted the agreement and held that wife waived any claim to husband's nonmarital

property, including any appreciation in its value during the marriage.

There is no conflict between this case and *Valdes v. Valdes*, 894 So. 2d 264 (Fla. 3d DCA 2004), and *Irwin v. Irwin*, 857 So. 2d 247 (Fla. 2d DCA 2003). Unlike the Hahamovitch agreement, the *Valdes* and *Irwin* agreements were silent on the right to future appreciation of nonmarital property. The Fourth District properly distinguished these cases.

This Court should decline to address wife's other arguments. They are beyond the scope of the certified question and conflict. This Court should approve the decision of the Fourth District and answer the certified question in the affirmative.

ARGUMENT

POINT I

THE RIGHT TO APPRECIATION OF NONMARITAL PROPERTY THAT OCCURS DURING THE MARRIAGE AS A RESULT OF MARITAL EFFORTS OR INCOME CAN BE WAIVED BY PLAIN WAIVER AND RELEASE LANGUAGE IN A PRENUPTIAL AGREEMENT.

Every district court that has addressed this issue agrees that spouses can waive their right to share in the appreciation of nonmarital property that resulted from marital

income or efforts through a prenuptial agreement. The Fourth District correctly held that the language in the Hahamovitch agreement waived the right to appreciation and enhancement of nonmarital property.[4] Wife "waived[d] and release[d], and [was] hereby barred from any and all rights and claims of every kind" in husband's property "now owned or hereby acquired" (A-1, ¶¶ 2, 5). The law requires nothing more.

A. The Fourth District's holding that the language in the prenuptial agreement is sufficient to waive wife's right to appreciation of nonmarital assets comports with the trend toward greater freedom of contract.

The trend in Florida law is toward greater freedom of contract for post-dissolution distribution and support. *See Lashkajani v. Lashkajani*, 911 So. 2d 1154, 1157-58 (Fla. 2005). The prenuptial agreement defines the "'mutual equities, and the trial judge is not free to ignore its provisions or to render them ineffective.'" *Turchin v. Turchin*, 16 So. 3d 1042, 1044 (Fla. 4th DCA 2009) (quoting *Hannon v. Hannon*, 740 So. 2d 1181, 1187 (Fla. 4th DCA 1999) (en banc)). The provisions in chapter 61, Florida Statutes, "do not exist to displace nuptial agreements; rather the statutes exist to

[4] Nuptial agreements are interpreted using the same rules as other contracts. *See Crawford v. Barker*, 64 So. 3d 1246, 1250-51 (Fla. 2011); *Lashkajani v. Lashkajani*, 911 So. 2d 1154, 1158 (Fla. 2005). The interpretation of an unambiguous contract is an issue of law this Court reviews de novo (A-4:6). *See Crawford*, 64 So. 3d at 1251.

set the principles when there is no agreement." *Hannon*, 740 So. 2d at 1187.

Following this trend, courts have recognized that parties can waive any right to share in the appreciation of nonmarital assets in a marital agreement. *See, e.g.*, *Heiny v. Heiny*, 113 So. 3d 897, 900 (Fla. 2d DCA 2013); *Ledea-Genaro v. Genaro*, 963 So. 2d 749, 752 (Fla. 4th DCA 2007); *Valdes v. Valdes*, 894 So. 2d 264, 267 (Fla. 3d DCA 2004); *Irwin v. Irwin*, 857 So. 2d 247, 248-49 (Fla. 2d DCA 2003); *Stern v. Stern*, 636 So. 2d 735, 740 (Fla. 4th DCA 1993); *Timble v. Timble*, 616 So. 2d 1188, 1189 (Fla. 4th DCA 1993); *Cameron v. Cameron*, 591 So. 2d 275, 277 (Fla. 5th DCA 1991).

Here, the parties waived the right to appreciation of nonmarital property in their prenuptial agreement through clear waiver and release language. Wife relies heavily on the definition of "marital assets" in section 61.075(5)(a)2., Florida Statutes (2007), as including the appreciation of nonmarital assets to support her argument. However, the wife ignores that section 61.075(5)(b)4. defines "nonmarital assets" as including "[a]ssets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties." This is exactly what the parties accomplished here through their prenuptial agreement. Further, the relevant question is not whether section

61.075 applies to this prenuptial agreement. The threshold question is what the agreement requires as to distribution of nonmarital property.

In *Cameron*, the Fifth District affirmed an order finding that the wife waived her right to share in the appreciation of the husband's nonmarital assets. 591 So. 2d at 277-78. The prenuptial agreement in *Cameron* provided:

> [I]t is the intention of Phyllis Y. Karr to waive, relinquish and bar her **rights of dower and other statutory rights and interests** as wife or widow of Richard E. Cameron in and to real, personal and mixed **property owned by Richard E. Cameron at the present time or to be acquired by him in the future.**
>
> . . . .
>
> A. Each agrees that the other **may keep and retain what was his or her own property before marriage**, and each agrees to execute, in favor of the other, such quitclaim deeds or other release or conveyance as may be required to carry out the purposes hereof.
>
> B. Richard Cameron will absorb any expenses in relation to alterations to the residence incurred by the parties.
>
> C. Each party hereto expressly relinquishes any claim for alimony or support, each against the other.

Id. at 276 (emphasis in original). The Fifth District reasoned that if the agreement is "to effectively shield such [nonmarital] properties from [the wife's] claims, it must also include any appreciation in value." *Id.* at 277.

Much like the prenuptial agreement in *Cameron*, wife in the instant agreement "**waives and releases,** and is hereby barred from any and all rights and claims of every kind . . . in and to any of HARRY's property, including, . . . any and all right to . . . equitable distribution, [and] division of property" (A-1, ¶ 2). Both spouses agreed that "neither will ever claim any interest in the other's property and that the property of every kind, nature and description which either one has on the date of their marriage will remain the respective separate property of each" (A-1, ¶ 9).

Wife also agreed that husband will "keep and retain sole ownership, control, enjoyment and power of disposition with respect to all property, real, personal or mixed, now owned **or hereby acquired** by each of them respectively" (A-1, ¶ 5). Further, "If HARRY purchases, acquires, or otherwise obtains, property in his own name, then HARRY shall be the sole owner of same" (A-1, ¶ 17).

The Fourth District held that "under the plain language of the prenuptial agreement, the wife waived and released claims to property or assets owned by the husband at the time of the agreement, or acquired in his own name thereafter, including any enhancement in the value of such property" (A-4:9). The agreement "was broad

enough to waive the wife's right to any asset titled in the husband's name that was acquired during the marriage or that appreciated in value due to marital income or efforts during the marriage" (A-4:9).

This holding aligns with the Fourth District's earlier decisions recognizing that parties can waive an interest in or appreciation of nonmarital property. *See Ledea-Genaro*, 963 So. 2d at 752; *Stern*, 636 So. 2d at 740; *Timble*, 616 So. 2d at 1189.

In *Ledea-Genaro*, the parties entered into a prenuptial agreement that provided: "In the event of a divorce initiated by either party, [the wife] shall vacate the martial home and deliver a Quitclaim Deed to the subject property to [the husband] in exchange for a complete, absolute release" of any obligation under the parties' mortgage. 963 So. 2d at 751. The Fourth District held that the wife waived her right to any share in the equity in the marital home. *Id.* at 752. "Under the plain meaning of the agreement, the wife conveyed her entire interest in the martial home, and there was no need for a separate provision dealing with 'equity' in the home." *Id.*

The prenuptial agreement in *Timble* granted the husband "full rights, liberty, authority . . . as he would have if not married to use, enjoy, [and] manage, ... any

stock" in the company that he "owns directly or indirectly, **or may hereafter acquire**." 616 So. 2d at 1189. In a broad release, the wife waived her interest in the stock:

> Each party shall and does hereby disclaim, release, quitclaim and relinquish to the other, and their heirs . . . all and every right, claim, and estate . . . of every kind and character . . . which either might, would or could have, hold or acquire in, to, or upon the above described property of the other by reason of said marriage or by reason of being or having been the husband or the wife of the other.

Id. The Fourth District held the agreement precluded the wife from sharing in any post-marital enhancement or value of the husband's stock. *Id.*

The *Stern* decision involved a waiver of rights to premarital stock. 636 So. 2d at 740. In the prenuptial agreement, the husband "waive[d] any right to any stock in NRC Electronics, Inc. currently belonging to [wife] as of this date." *Id.* at 737. By the time of the divorce, the wife's interest in the stock had grown to include interests in several other businesses "which had grown out of the mother company." *Id.* The Fourth District held the "trial court properly concluded that, based on the prenuptial agreement, the former husband waived the right to share in any enhancement in value of the wife's interest in her businesses." *Id.* at 740.

The Fourth District's holding here also comports with the Second District's holding in *Heiny v. Heiny*, 113 So. 3d 897 (Fla. 2d DCA 2013). The prenuptial agreement in *Heiny* provided that the wife's premarital house was to remain titled in her name, alone. *Id.* at 899. The husband waived any "right, title or interest in and to the House or any of [the wife's] Separate Property contained herein." *Id.* The wife agreed to pay the husband at the time of dissolution "a sum equal to one-half of all principal payments and any capital improvements made with respect to the House" during the marriage. *Id.* at 900. The Second District held that the trial court erred in awarding the husband half of the appreciated value of the house resulting from capital improvements because that appreciation "was not contemplated by the terms of the antenuptial agreement." *Id.* The court further held that the husband's interest in the wife's premarital home was limited to the interest specifically set forth in the agreement. *Id.*

Wife's distinction of *Timble*, *Stern*, and *Ledea-Genaro* as involving agreements that waived the right to a specifically identified asset is not meaningful (IB:37-40). The critical factor in these cases was that the spouses waived their entire interest in the nonmarital asset, which included the right to share in appreciation of the asset. *See Ledea-Genaro*, 963 So. 2d at 752; *Stern*, 636 So. 2d at 740; *Timble*, 616 So. 2d at

1189. In other words, the language of the agreements was broad enough to waive the right to assets titled in one spouse's name that were acquired or enhanced during the marriage with marital labor or earnings.

B. There is no conflict with *Valdes* and *Irwin* because the language in those agreements is distinguishable.

Even the "conflict" cases wife relies upon recognize that a spouse can waive the right to share in the appreciation of a nonmarital asset. *See Valdes*, 894 So. 2d at 267; *Irwin*, 857 So. 2d at 248-49. Unlike the prenuptial agreement here, however, the prenuptial agreements in *Valdes* and *Irwin* were silent on the appreciation of nonmarital property and involved different language (A-4:7-10). *See Valdes*, 894 So. 2d at 265-67; *Irwin*, 857 So. 2d at 248-49. For **that** reason, the agreements in *Valdes* and *Irwin* are not, as wife claims, "virtually identical" to the agreement here (IB:38).

In *Valdes*, the prenuptial agreement provided that when a spouse acquires property in his or her individual name, the property "shall be presumed to be non-marital," but was silent on enhancement or appreciation of the non-marital property. 894 So. 2d at 265-67. For this reason, the Third District concluded that the former wife "did not waive her right to seek equitable distribution of the enhanced value of non-marital properties, despite the prenuptial agreement." *Id.* at 267.

Similarly, in *Irwin*, the prenuptial agreement provided that the wife "waives and releases all rights in the property and estate of" the husband. 857 So. 2d at 248. The Second District held that the agreement did not limit the wife to recovering only property titled solely in her name. "The agreement did not specifically reserve [the husband's] marital earnings as his separate property. . . ." *Id.* at 248-49. "Nor did the agreement waive [the wife's] claim to her rightful share of the marital asset consisting of the enhanced value of [the husband's] separate property that resulted from the contribution of marital funds or labor." *Id.* at 249.

Unlike *Valdes* and *Irwin*, wife here expressly waived her right to future enhancement of husband's nonmarital property "**now owned or hereby acquired**" and agreed that if husband "**purchases, acquires, or otherwise obtains, property in his own name, then HARRY shall be the sole owner of same**" (A-1, ¶¶ 5, 17). The Hahamovitch prenuptial agreement expressly contemplated the waiver of enhancement of nonmarital property in the future (A-1).

C. Wife waived the right to all appreciation and enhancement of nonmarital assets in the prenuptial agreement.

Wife alternatively argues that if the Court finds a waiver, the waiver should be limited to passive appreciation. She cites the Second District's decisions in *Irwin*,

Witowski v. Witowski, 758 So. 2d 1181 (Fla. 2d DCA 2000), and *Worley v. Worley,* 855 So. 2d 632 (Fla. 2d DCA 2003) (IB:33-35). The Fourth District distinguished these cases because the agreement here used language that "does address property acquired by the husband in the future" (A-4:8-9). The Fourth District deemed this language broad enough to "waive future enhancement of non-marital property, even if it is due to marital earnings or labor" (A-4:9). The Fourth District correctly stated that a contrary interpretation "would read the title presumption provision out of the agreement" (A-4:9). Wife's argument on this point fails.

Kaaa v. Kaaa, 58 So. 3d 867, 870 (Fla. 2010), lends no support to wife's argument. The *Kaaa* decision recognized that under section 61.075, the passive appreciation of a nonmarital home is considered a marital asset subject to equitable distribution. *Id.* at 868. *Kaaa*, however, did not involve a prenuptial agreement and sheds no light on whether a prenuptial agreement waived appreciation of a nonmarital asset.

D. Earlier drafts are not relevant to the interpretation of the prenuptial agreement, which wife stipulated is unambiguous.

Wife argues that an earlier draft of the agreement shows that the parties could have included different waiver language (IB:30, 41; A-3). This Court need not address

this argument. In the trial court and Fourth District, wife **stipulated** that the Court could not consider parol evidence because the agreement was unambiguous (IB:27; R38 T1:46, 88; R42 T6:811; R43 T 6/15/09:5, 76-77; A-6:2). Thus, wife waived her argument that this Court should consider parol evidence because the agreement is ambiguous. *See, e.g.*, *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005); *Markham v. Neptune Hollywood Beach Club*, 527 So. 2d 814, 814 n.2 (Fla. 1988).

But, even if preserved, wife's reliance on the earlier draft does not support her interpretation of the agreement. When a contract is clear and unambiguous, the Court cannot resort to extrinsic or parol evidence to vary or explain the plain meaning of the contract. *See, e.g.*, *Taylor v. Taylor*, 1 So. 3d 348, 350-51 (Fla. 1st DCA 2009). Husband's previous attorney prepared the earlier draft (A-5:3-4; R41 T5:517-18). Husband hired new counsel, who substantially rewrote the earlier draft (A-5:3-4; R41 T5:519-20, 599). If anything, the earlier draft shows that the parties felt that the broad waivers in the agreement made more specific language unnecessary.

The Fourth District correctly found that the parties in this prenuptial agreement expressly waived the right to appreciation of nonmarital property. This Court should

either discharge jurisdiction or approve the decision of the Fourth District.

POINT II

THIS COURT SHOULD DECLINE TO ADDRESS THE DISCOVERY ISSUE, WHICH IS MOOT AND NOT THE BASIS OF THIS COURT'S JURISDICTION.

Wife argues that the trial court erroneously restricted discovery of husband's nonmarital assets. The Fourth District did not discuss this discovery issue, except to conclude that "in light of our interpretation of the prenuptial agreement, the trial court did not abuse its discretion in limiting the scope of discovery" (A-4:11).

This Court routinely declines to address issues that are beyond the basis of jurisdiction or were not reached by the district court. *See, e.g., Chames v. DeMayo*, 972 So. 2d 850, 853 n.2 (Fla. 2007) (citing cases). If this Court approves the Fourth District's interpretation of the prenuptial agreement in Point I, this discovery issue is moot. *See, e.g., Stern v. Stern*, 636 So. 2d 735, 740 (Fla. 4th DCA 1993). If this Court quashes the Fourth District's interpretation in Point I, it should remand for the Fourth District to reconsider the discovery issue in the first instance.

POINT III

THIS COURT SHOULD DECLINE TO ADDRESS THE VALIDITY OF THE PRENUPTIAL AGREEMENT, WHICH IS NOT THE BASIS OF THIS COURT'S JURISDICTION.

Wife challenges the validity of the prenuptial agreement under *Casto v. Casto*, 508 So. 2d 330 (Fla. 1987). This Court should decline to reach this issue, which is beyond the scope of the certified question and conflict. *See, e.g., Chames v. DeMayo*, 972 So. 2d 850, 853 n.2 (Fla. 2007) (citing cases). This is a fact-sensitive issue that does not impact litigants other than the parties in this case.

There is no need for this Court to review this issue because the Fourth District correctly determined that the prenuptial agreement was valid (A-4:5). The Fourth District correctly found that competent, substantial evidence supported the trial court's factual finding that husband did not procure the agreement by fraud or misrepresentation (A-4:5). The Fourth District further held that the agreement was fair to wife, which made it unnecessary for the court to reach whether husband made a full, frank disclosure or whether wife had an approximate knowledge of husband's assets and income (A-4:5).[5]

[5] The trial court found that wife had approximate knowledge of husband's property and resources and was not prejudiced if some information was lacking (A-5:14-15).

When the parties met, husband was a well-respected entrepreneur and the president of four corporations (A-5:2-3; R39 T2:164-65, T3:352-53; R41 T5:507-09). The parties lived and worked together for five years before becoming engaged (A-5:2; R39 T3:356-58, 365; R41 T5:509-10). While living together, husband paid for all the living expenses and the parties' high-end lifestyle, including many international trips (A-5:2-3; R39 T3:345-46, 360-61, 366; R41 T5:509-12, 547-48).

In the prenuptial agreement, husband disclosed that his net worth was approximately $10 million (A-1, Ex. A). Wife claims that this was a misrepresentation because, during this litigation, husband's accountant prepared an exhibit showing a lower net worth (IB:48-49; A-2; A-5:9). The trial court considered and rejected this argument because the accountant "testified that his net worth statement was not a fair market value analysis of the Husband's net worth as of 1985, but instead was a net book value" (A-5:9-10). The Fourth District affirmed this factual finding because it was supported by competent, substantial evidence (A-4:5; R40 T5:485-89; A-2).

The Fourth District also affirmed the trial court's factual finding that the agreement was fair to wife when the agreement was entered (A-4:5). Wife's accountant agreed that under the agreement, she would receive just under $2 million,

paid in monthly installments over 7 years (A-4:6 n.2; A-5:11). Competent, substantial evidence supports the trial court's factual finding that this agreement was fair when it was entered into (R42 T6:640-41). *See, e.g., Gordon v. Gordon*, 25 So. 3d 615, 616 (Fla. 4th DCA 2009); *Francavilla v. Francavilla*, 969 So. 2d 522, 526 (Fla. 4th DCA 2007).

This Court should decline to reach the validity of the prenuptial agreement, which is a fact-specific question. The resolution of this issue will have no impact beyond the parties in this case.

CONCLUSION

There is no conflict or need to answer the certified question. This Court should exercise its discretion and discharge its discretionary jurisdiction. Alternatively, this Court should approve the decision of the Fourth District and answer the certified question in the affirmative.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been e-mailed this 13th day of August, 2014, to:

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Respondent's Answer Brief on Merits has been typed using the 14-point Times New Roman font.

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