

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-277

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

Petitioner,

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

v.

HARRY H. HAHAMOVITCH,

Respondent.

_____ /

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>Page</u>
Preface	1
Statement of the Case and Facts	1
Summary of Argument	5
Argument	6
 THIS COURT SHOULD DISCHARGE JURISDICTION BECAUSE THERE IS NO CONFLICT OR QUESTION OF GREAT PUBLIC IMPORTANCE ON WHETHER A SPOUSE CAN EXPRESSLY WAIVE THE RIGHT TO APPRECIATION OF NON-MARITAL PROPERTY.	
Conclusion	10
Certificate of Service	11
Certificate of Font	11

TABLE OF CITATIONS

<u>Case</u>	<u>Page</u>
<i>Doig v. Doig</i> , 787 So. 2d 100 (Fla. 2d DCA 2001)	9
<i>Hahamovitch v. Hahamovitch</i> , 39 Fla. L. Weekly D102 (Fla. 4th DCA Jan. 8, 2014)	<i>passim</i>
<i>Irwin v. Irwin</i> , 857 So. 2d 247 (Fla. 2d DCA 2003)	1, 4, 5, 6, 8, 9
<i>Owens-Corning Fiberglas Corp. v. Ballard</i> , 749 So. 2d 483 (Fla. 1999)	7
<i>State v. Lovelace</i> , 928 So. 2d 1176 (Fla. 2006)	6
<i>State v. Sowell</i> , 734 So. 2d 421 (Fla. 1999)	6-7
<i>Valdes v. Valdes</i> , 894 So. 2d 264 (Fla. 3d DCA 2004)	1, 4, 5, 6, 8, 9
<i>Witowski v. Witowski</i> , 758 So. 2d 1181 (Fla. 2d DCA 2000)	9
<i>Worley v. Worley</i> , 855 So. 2d 632 (Fla. 2d DCA 2003)	9

PREFACE

Petitioner, Dianne L. Hahamovitch (“former wife”), seeks to review the decision of the Fourth District affirming a final judgment of dissolution of marriage in *Hahamovitch v. Hahamovitch*, 39 Fla. L. Weekly D102 (Fla. 4th DCA Jan. 8, 2014).¹ Respondent is Harry H. Hahamovitch (“former husband”). The Fourth District certified “[t]o the extent that this decision is in conflict with” *Irwin v. Irwin*, 857 So. 2d 247 (Fla. 2d DCA 2003), and *Valdes v. Valdes*, 894 So. 2d 264 (Fla. 3d DCA 2004) (A:8). The Fourth District certified the same issue as a question of great public importance. This Court should decline to exercise jurisdiction because there is no conflict for this Court to resolve and the answer to the certified question is already well-settled.

STATEMENT OF THE CASE AND FACTS

The parties entered a prenuptial agreement in 1986 (A:3). The Fourth District affirmed the trial court’s findings that former wife failed to prove the prenuptial agreement was invalid due to fraud or misrepresentation (A:2). In addition, the prenuptial agreement was fair when entered (A:2).

The Fourth District explained that “[t]he main issue concerning the interpretation of the prenuptial agreement is whether the wife waived any claim to

¹ The citations to the Fourth District’s decision are to the slip opinion in the appendix to wife’s jurisdictional brief (A:1-10). All bolded emphasis is supplied. All italicized emphasis was provided by the Fourth District in its decision.

assets titled solely in the husband's name at the time of the divorce, 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:3). The prenuptial agreement provides:

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 the 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:3-4).

The Fourth District recognized that, in general, the appreciation or enhancement of non-marital property is considered marital property subject to equitable distribution (A:5). In a prenuptial agreement, a spouse can expressly waive the right to the appreciation or enhancement of the other spouse's non-marital property (A:5).

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:7). 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:7).

The decision distinguished the decisions in *Valdes v. Valdes*, 894 So. 2d 264 (Fla. 3d DCA 2004), and *Irwin v. Irwin*, 857 So. 2d 247 (Fla. 2d DCA 2003), as involving prenuptial agreements that failed to expressly waive the right to appreciation or enhancement of non-marital property (A:5). The Fourth District recognized that the prenuptial agreement in *Valdes* stated that the parties would have no interest in the other spouse's premarital property and that assets acquired during the marriage titled in the spouse's individual names are presumed to be non-marital (A:5). *See Valdes*, 894 So. 2d at 265. The Fourth District distinguished *Valdes* as holding "that the wife did not waive her right to seek equitable distribution of the enhanced value of non-marital property where the parties' prenuptial agreement **was silent** on the issue of enhancement or appreciation of the parties' non-marital property." (A:5).

For similar reasons, the Fourth District distinguished *Irwin* (A:5). The Fourth District described *Irwin* as holding "that if a prenuptial agreement **does not specifically designate a spouse's earnings as separate property**, the assets acquired with those earnings will be treated as marital." (A:5). *See Irwin*, 857 So. 2d at 248. Unlike *Irwin*, the prenuptial agreement in this case "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:7).

The Fourth District “acknowledge[d] that both the Second and Third Districts 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:8). The decision certified conflict, but only “[t]o the extent that this decision is in conflict with” *Valdes* and *Irwin* (A:8). 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:9-10).

SUMMARY OF ARGUMENT

This Court should exercise its discretion to discharge jurisdiction. This case presents a narrow legal issue regarding the interpretation of the parties’ prenuptial agreement. In the parties’ prenuptial agreement, former wife waived and released her right to former husband’s premarital property. This waiver expressly encompassed non-marital property former husband would acquire in the future. The Fourth District held that this language was broad enough to expressly waive former wife’s right to

share in the appreciation of former husband's non-marital assets. The Fourth District distinguished decisions from the Second and Third Districts as involving premarital agreements that were silent on appreciation of non-marital assets. Despite this distinction, the Fourth District certified, "[t]o the extent" one existed, a conflict with these decisions from the Second and Third Districts. No conflict exists for this Court to resolve.

The Fourth District also certified the same issue as one of great public importance. It is not. It involves a narrow legal issue which is well-settled. There is no conflict or need to answer the certified questions.

ARGUMENT

THIS COURT SHOULD DISCHARGE JURISDICTION BECAUSE THERE IS NO CONFLICT OR QUESTION OF GREAT PUBLIC IMPORTANCE ON WHETHER A SPOUSE CAN EXPRESSLY WAIVE THE RIGHT TO APPRECIATION OF NON-MARITAL PROPERTY.

There is no conflict or question of great public importance to resolve. The district court qualified its certification "[t]o the extent that this decision is in conflict with" *Irwin* and *Valdes* (A:8). This Court often discharges jurisdiction when it finds no conflict and the certified question is not one of great public importance. *See, e.g., State v. Lovelace*, 928 So. 2d 1176, 1177 (Fla. 2006) (discharging jurisdiction where the certified conflict cases "address different situations and are not in conflict"); *State v. Sowell*, 734 So. 2d 421, 422 (Fla. 1999) (discharging jurisdiction of a certified question that "deals with an extremely narrow principle of law and, as phrased, does

not present an issue of ‘great public importance’”). That is true here. There is no reason for this Court to accept jurisdiction simply to rubber-stamp the conclusions of the Fourth District. *See Owens-Corning Fiberglas Corp. v. Ballard*, 749 So. 2d 483, 485 n.3 (Fla. 1999) (discouraging district courts from certifying a question merely to request “approval of the conclusion reached by the court below” when the issue is not of great public importance). This Court should discharge jurisdiction.

This case presents a narrow legal issue—whether the language in the prenuptial agreement expressly waived former wife’s right to appreciation or enhancement of former husband’s non-marital property (A:5-8). In the prenuptial agreement, the former wife “*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:3, ¶ 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 the marriage will remain the respective separate property of each*” (A:3, ¶ 9). Former wife also expressly agreed that former 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:3, ¶ 5). The prenuptial agreement also provided, “*If HARRY purchases, acquires, or otherwise obtains, property in his own name, then HARRY shall be the sole owner of same.*” (A:3-4, ¶ 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:7). 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:7).

There is no conflict with *Valdes*, 894 So. 2d at 267, and *Irwin*, 857 So. 2d at 248-49. Unlike the agreement here, the prenuptial agreements in those cases used different language that was silent on the appreciation of non-marital property. *See Valdes*, 894 So. 2d at 265-67; *Irwin*, 857 So. 2d at 248-49. 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 “hereby waives and releases all rights in the property and estate of” the husband. 857 So. 2d at 248. The Second District reasoned that “[t]he agreement did not specifically reserve [the husband’s] marital earnings as his separate property and thus did not exclude [the

wife's] claim to share in the value of assets purchased with those earnings." *Id.* at 248-49.

Unlike *Valdes* and *Irwin*, former wife here expressly waived her right to future enhancement of former husband's non-marital property "*now owned or hereby acquired*" and agreed that if former husband "*purchases, acquires, or otherwise obtains, property in his own name, then HARRY shall be the sole owner of same.*" (A:3-4, ¶¶ 5, 17). This prenuptial agreement expressly contemplates enhancement of non-marital property in the future (A:7).

Former wife also urges this Court to accept jurisdiction to resolve a different alleged conflict not certified by the Fourth District. Wife claims conflict with Second District decisions² holding that a simple waiver of appreciation in value waives only passive appreciation, but not active appreciation. The Fourth District distinguished these cases because the agreement here used language that "does address property acquired by the husband in the future," which is broad enough to "waive future enhancement of non-marital property, even if it is due to marital earnings or labor." (A:7). A contrary interpretation would "read the title presumption provision out of the agreement." (A:7). There is no direct and express conflict with the decisions in *Worley*, *Witowski*, and *Doig*.

² See *Worley v. Worley*, 855 So. 2d 632 (Fla. 2d DCA 2003); *Doig v. Doig*, 787 So. 2d 100 (Fla. 2d DCA 2001); *Witowski v. Witowski*, 758 So. 2d 1181 (Fla. 2d DCA 2000).

CONCLUSION

There is no conflict or need to answer the certified question. This Court should exercise its discretion and discharge its discretionary jurisdiction.

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CERTIFICATE OF FONT

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

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