

IN THE SUPREME COURT  
STATE OF FLORIDA

CASE NO.: SC09-1158

L.T. CASE NO.: 1D07-6367

LAURIL L. STOUGH,

Petitioner,

v.

WILLIAM M. STOUGH,

Respondent.

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**PETITIONER'S BRIEF ON JURISDICTION**

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## STATEMENT OF THE CASE AND FACTS

The following facts appear in the decision for which review is sought here of the First District, Stough v. Stough (Fla. 1<sup>st</sup> DCA Case No. 1D07-6367; the “Opinion”), and are critical for this Court’s conflict determination.

The First District’s decision is the second appeal in this dissolution of marriage case. The Respondent/Former Husband was disabled and received Social Security disability benefits and the Petitioner/Former Wife received income from an irrevocable trust established by her father, which was admittedly non-marital (Opinion at 3). The initial final judgment held that what was referred to as the “Alabama Property” was the Petitioner’s non-marital property and that she was also entitled to a special equity in the marital home. Even though the funds for both purchases could be traced to the Petitioner’s trust (id. at 3), the district court reversed, finding that placing funds from her trust into a joint account “created a rebuttable presumption that the Former Wife intended one-half of the trust account funds to be a gift to the Former Husband,” which was not rebutted (Id. at 4, citing Stough v. Stough, 933 So. 2d 603, 607 (Fla. 1<sup>st</sup> DCA 2006)). The district court remanded the case for the trial court to “revisit the monetary awards in their totality.” (Id. at 4, citing 933 So. 2d at 608).

The trial court entered a judgment on remand which, *inter alia*, distributed more than half of the marital assets to the Petitioner. The district court, “the trial court listed the factors for equitable distribution found in Section 61.075 [sic], Florida Statutes (2007), and made findings regarding each factor,” (id. at 4) (e.s.) and that these findings were the basis for the trial court’s conclusion (id. at 6).

The First District acknowledged that Section 61.075(1), Fla. Stat., allows unequal distribution if there is justification “based on all relevant factors.” (Id. at 5) It recited that the trial court “relied on several factors to justify the unequal distribution: the contribution to the marriage by each spouse; the economic circumstances of the parties; the length of the marriage; the desirability of retaining the marital home as a residence for the parties’ dependent children,” and that the funds for the purchase of the Alabama Property and the marital home originated from the Petitioner’s trust. However, the district court concluded that “none of these factors weigh in favor of unequal distribution” (id. at 6), and reversed and remanded with directions that the trial court divide the assets equally.<sup>1</sup>

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<sup>1</sup> The district court also addressed the trial court’s award of alimony, not relevant for this Court’s conflict analysis (Opinion at 9-11).

## SUMMARY OF ARGUMENT

The decision of the First District *sub judice* explicitly acknowledges that the trial court made findings concerning each of the factors contained in Section 61.075, Florida Statutes, in its determination of the appropriate equitable distribution. The district court's decision also is clear that it simply made its own determination of what weight should be given to these factors in its reversal of the trial court's decision.

This Court's decisions in Walter V. Walter, 464 So. 2d 538 (Fla. 1985), Canakaris V. Canakaris, 382 So. 2d 1197 (Fla. 1980), and Shaw v. Shaw, 334 So. 2d 13 (Fla. 1976), make it clear that appellate courts are not to reweigh the evidence presented to the trial court, but instead are to determine whether those decisions are based upon competent evidence. This is of particular importance in the dissolution of marriage context, given the broad discretion granted trial courts and the interrelated nature of the financial issues that trial courts must resolve.

The First District's decision in this case is in irreconcilable conflict with this principle. Because this decision has now injected uncertainty into this previously settled principle, this Court should exercise its discretion and resolve the conflict.

## ARGUMENT

**THE DECISION OF THE DISTRICT COURT BELOW IS IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISIONS IN WALTER V. WALTER, 464 SO. 2D 538 (FLA. 1985); CANAKARIS V. CANAKARIS, 382 SO. 2D 1197 (FLA. 1980); AND SHAW V. SHAW, 334 SO. 2D 13 (FLA. 1976)**

### I. THE CONFLICT

The decision of the district court below explicitly recognizes that the trial court made factual findings concerning each of the factors found in Section 61.075 governing equitable distribution (Opinion at 4). This admission, coupled with the district court's discussion of what weight "should" be given to these factors, conclusively demonstrates that the district court simply reweighed the evidence and reached a result it believed was more preferable than that reached by the trial court. This holding is in irreconcilable conflict with decisions of this Court which explicitly hold that such reweighing is an improper usurpation of the trial court's authority.

Shaw v. Shaw, 334 So. 2d 13 (Fla. 1976), involved this Court's review of the Third District's decision, 314 So. 2d 205 (Fla. 3<sup>rd</sup> DCA 1975), based on conflict with Westerman v. Shell's City, Inc., 265 So. 2d 43 (Fla. 1972). Shaw was a dissolution action, the final judgment in which provided, *inter alia*, (i) the former wife was capable of supporting herself; (ii) ordering the husband to pay rehabilitative alimony for one year; (iii) granting the wife

exclusive use and occupancy of the marital home until the children moved out and making the wife responsible for all costs (mortgage payments, taxes, insurance, utilities, repairs and maintenance); (iv) making the wife responsible for one-half of the children's medical and dental bills; and (v) reserving jurisdiction to determine costs and attorneys' fees but for no other purpose. On appeal, the Third District reversed the trial court's (i) failure to reserve jurisdiction to consider extending the rehabilitative alimony based on the wife's testimony that she was limited in seeking employment due to her child care obligations and because of a physical problem; (ii) holding the wife solely responsible for all the costs of the marital home; and (iii) requiring the wife to pay one-half of all future medical and dental expenses of the minor children (id. at 16).

This Court reversed, holding that it is "not the function of the appellate court to substitute its judgment for that of the trial court through re-evaluation of the testimony and evidence from the record on appeal before it." (Id.) This Court concluded that the test, previously announced in Westerman, *supra*, is whether the judgment is supported by competent evidence. This Court recited evidence supporting the trial court's determination, quashed the Third District's decision, and ordered reinstatement of the trial court's judgment. This Court's rationale highlights



the conflict presented here: “Although the district court of appeal, and even this Court might honestly strike the financial balance and division of assets between the parties in a different fashion, we do not deem it error or an abuse of discretion for the trial court to arrive at the result it reached.” (Id. at 17). The decision of the First District in this case unequivocally conflicts with this principle as it simply determined what weight should be given to the statutory factors in order to reach a result it believed was preferable.

The First District’s decision also conflicts with Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980). Canakaris, of course, is the seminal decision from this Court on numerous family law issues, including the various tools available to a trial court in a dissolution of marriage proceeding in order to do equity (including the use of lump sum alimony) and clarifies the abuse of discretion standard of review. The conflict with the decision of the district court below is based upon the facts and actual holding of Canakaris.

Canakaris involved the dissolution of a 33 year marriage; the wife assisted the husband through college and worked in his medical office and in the hospital he started. The Final Judgment awarded her lump sum alimony of \$50,000.00, the husband’s interest in the former marital home, \$500.00 per week in permanent periodic alimony and her undivided one-half interest

in the real estate upon which the husband's business was located (id. at 1199). On appeal, the district court reversed the award of the marital home as lump sum alimony (claiming a lack of evidence supporting the wife's special equity claim) and the \$500.00 per week permanent period alimony; it remanded the case for determination of the former wife's need for a lesser amount, as well as the trial court's award of attorneys' fees, holding she had the ability to pay her attorney (id. at 1200, citing 356 So. 2d 858, 860 (Fla. 1<sup>st</sup> DCA 1978)).

This Court rejected each of these holdings (id.). After discussing the various tools available to a trial court, this Court held that the trial court's consideration of these remedies are interrelated and are part of one overall scheme, and that "it is extremely important that they also be reviewed by appellate courts as a whole, rather than independently." Id. at 1201. This Court explicitly held that its decision was not "engrafting upon the jurisprudence of this state the law of community property" which would require an equal division of marital assets. After addressing the abuse of discretion standard, this Court quashed the district court's decision reweighing the evidence and substituting its judgment for that of the trial court, and affirmed the trial court's equitable distribution awarding the

former wife approximately \$385,000.00 and the former husband in excess of \$3.3 million.

Walter v. Walter, 464 So. 2d 538 (Fla. 1985), was before this Court based on a conflict between the decision of the Fifth District (442 So. 2d 257 (Fla. 5<sup>th</sup> DCA 1983)), and Canakaris v. Canakaris, *supra*. In Walter, the district court held that permanent periodic alimony should be used as a “last resort,” which this Court held was an improper attempt to restrict the trial court’s discretion (*id.* at 538). This Court reaffirmed that appellate courts must not reweigh the facts (*id.* at 539). The judgment at issue was from a modification proceeding; the trial court awarded the wife exclusive use and possession of the marital residence until the last child reached the age of majority, and child support and permanent alimony; it required the husband, as an incident of child support, to make all of the mortgage payments, taxes and insurance and repairs on the residence. This Court quashed the Fifth District’s decision reversing the trial court, holding that the trial court’s award was tailored to the unique circumstances of the parties and was clearly reasonable. *Id.* at 542.

In each of these decisions, this Court affirmed the trial court’s findings and rejected the district court’s attempt to reweigh the evidence. In Canakaris, this Court affirmed the trial court’s unequal distribution.

Dispositive for the conflict analysis, the district court below explicitly acknowledged that the trial court specifically addressed the statutory factors under 61.075 and made findings regarding each factor, but simply disagreed with the weight given these findings by the trial court. Like in Walter, the district court here attempted to restrict the trial court's discretion by reversing the award of the former marital home to the former wife, citing to the "generally accepted practice" of allowing a spouse to maintain exclusive possession until the minor children reach the age of majority. (Opinion at 6-7). The conflict is manifest.

## **II. THIS COURT SHOULD EXERCISE ITS DISCRETION TO REVIEW THIS DECISION**

The district court's decision in this case constitutes a significant limitation on a trial court's ability to order an unequal distribution in a dissolution case. The district court's decision accomplished exactly what this Court in Canakaris took great pains to acknowledge it was not holding, turning Florida into a community property state. This issue is crucially important for family law cases, as providing the trial court with the discretion necessary to reach a determination based upon all of the evidence it has received, and the credibility of the witnesses it has observed and the totality of the circumstances, is at the heart of this Court's decisions. The

contrary holding of the district court below has now made previously settled law unclear and undermines the discretion vested in the trial courts.

It is noteworthy that the district court's decision explicitly acknowledges that two separate trial judges on two separate occasions both concluded that an unequal distribution was equitable under the unique facts of this case. Here, the determination by the district court that the trial court abused its discretion, is in undeniable conflict with this Court's holding in Canakaris: when reasonable people could differ as to the propriety of an action, discretion is not abused. 382 So. 2d at 1203.

The Petitioner respectfully submits that this Court should exercise its discretion and grant review of the decision of the First District below to resolve the conflict.

## **CONCLUSION**

Because the conflict between the decision of the First District in this case and this Court's decisions in Shaw v. Shaw, Canakaris v. Canakaris, and Walter v. Walter, *supra*, is manifest, and because the issue is crucially important in the law governing equitable distribution in dissolution of marriage cases, this Court should grant review to resolve the conflict.

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been furnished by U.S. mail, postage prepaid, to John S. Mills, Mills & Carlin, P.A. 865 May Street, Jacksonville, Florida 32207, on this 9<sup>th</sup> day of July, 2009.

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Attorney

**CERTIFICATE OF TYPEFACE**

I hereby certify that I have complied with Rule 9.210(a), Fla.R.App.P., and the font size of this brief is Times New Roman 14-point.

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Attorney