

**IN THE SUPREME COURT OF FLORIDA**

LAURIL L. STOUGH,

Petitioner,

v.

Case No. SC09-1158

L.T. No. 1D07-6367

WILLIAM M. STOUGH,

Respondent.

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**ON REVIEW FROM THE DISTRICT COURT  
OF APPEAL, FIRST DISTRICT  
STATE OF FLORIDA**

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**RESPONDENT'S JURISDICTIONAL BRIEF**

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## **STATEMENT OF THE CASE AND FACTS**

The Respondent (the “former husband”) accepts the Petitioner’s (the “former wife’s”) statement of the case and facts.

## **SUMMARY OF THE ARGUMENT**

The assertion of conflict is frivolous. The district court expressly recognized that the standard of review was for an abuse of discretion. It merely held, as a matter of law not discretion, that the factors identified by the trial court did not support an unequal distribution.

## **JURISDICTIONAL STATEMENT**

This Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of this Court or another district court of appeal on the same point of law. Art. V, § 3(b)(3) Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

## **ARGUMENT**

Nothing in the district court’s opinion directly conflicts with this Court’s opinions 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), the only bases asserted by the former wife for this Court’s jurisdiction. Contrary to the her arguments, the district court did not reweigh any evidence. It expressly applied the abuse of discretion standard. (Opinion at 5.) The court merely held, as a

matter of law, that the factors on which the trial court relied do not support an unequal distribution.

The district court did not, as the former wife argues, just conclude that in its judgment the trial court should have made an equal distribution. Instead, the court looked at each reason the trial court gave for the unequal distribution and concluded, as a matter of law, that none of the reasons legally supported an unequal distribution. The former wife's argument appears to be that once a trial court makes findings of fact regarding statutory factors, its decision is immune from appellate review. But that is not the standard set forth in *Canakaris* or elsewhere.

When some factors favor an equal distribution and others favor an unequal distribution, *Canakaris* and its progeny generally stand for the proposition that it is up to the trial court, in its discretion, to decide which factors predominate. But the question of whether a particular factor weighs in favor of or against an equal distribution is a pure question of law that is properly answered by the appellate court. That is all that happened in this case. The district court decided that, as a matter of law, the factors identified by the trial court do not support an unequal distribution. There is no conflict.

### **CONCLUSION**

This Court has no jurisdiction and should deny review forthwith.

Respectfully Submitted,

MILLS CREED & GOWDY, P.A.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **William S. Graessle, Esq.**, 219 Newnan Street, 4th Floor, Jacksonville, Florida 32202, attorney for Petitioner Lauril L. Stough, by U.S. mail this 28th day of July, 2009.

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Attorney

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing brief uses Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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Attorney