

IN THE SUPREME COURT OF
THE STATE OF FLORIDA.

CASE NO. 67,106

FOURTH DISTRICT COURT
OF APPEAL NO. 84-1219

ELIZABETH ANNE NOAH,

Petitioner/Wife,

vs.

RICHARD ALAN NOAH,

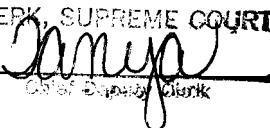
Respondent/Husband.

FILED

SID J. WHITE

AUG 5 1985

CLERK, SUPREME COURT

By: 
Chief Deputy Clerk

RESPONDENT'S BRIEF ON MERITS

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INTRODUCTION

Petitioner, ELIZABETH ANNE NOAH, was the petitioner in the trial court and the Appellee in the Fourth District Court of Appeal. She will be referred to as Wife.

Respondent, RICHARD ALAN NOAH, was the respondent in the trial court and the Appellant in the Fourth District Court of Appeal. He will be referred to as Husband.

STATEMENT OF THE FACTS
AND
STATEMENT OF THE CASE

The Respondent/Husband agrees with the Petitioner/Wife's Statement Of The Facts in case.

ISSUE

WHETHER THE TRIAL COURT ERRED BY DISTRIBUTING
TO A FAITHFUL WIFE VIRTUALLY ALL OF THE MARITAL
ASSETS IN PART BECAUSE THE HUSBAND WAS
UNFAITHFUL.

In this divorce action the trial court punished the Husband for his adultery by awarding the Wife virtually all (97%) of the parties marital assets, the total equity value of which was \$109,200.00, and by requiring the Husband to pay, in addition, \$500.00 per month permanent alimony, the Wife's attorney fees, and the bulk of the joint debts of the parties. The trial court

virtually stripped the Husband of everything acquired during the marriage, except for his car and a few personal effects. This award was so completely disproportionate that it was shocking to the conscience. Although the Final Judgment Dissolving Marriage indicates that the Husband's adultery was only one of several factors considered by the trial court in determining the amount of alimony, certainly the Husband's adultery was the primary theme of the Wife in this lawsuit and certainly the Husband's adultery was the factor which led the trial court to lash out against the Husband with such an excessive, punitive, distribution of the party's assets.

The Fourth District Court of Appeal has now asked this Court to interpret Williamson v. Williamson, 367 So.2d 1016 (Fla. 1979). Essentially, the problem presents itself on two levels. First, does the Williamson, decision permit the trial court to consider evidence of the adultery of a spouse not seeking alimony? If that answer to that question is affirmative, the second issue, is whether the trial court can punish the adulterous spouse by stripping that spouse of virtually all of the party's assets. The Husband asserts that both questions should be answered in the negative. First, evidence of the adultery of a party not seeking alimony should not be admissible for the purpose of increasing an alimony award. Second, regardless of the admissibility of adultery, neither alimony nor equitable distribution may be used punitively.

The Fourth District Court of Appeal's interpretation of Williamson v. Williamson, is correct. Certainly that opinion does not permit a party seeking alimony to use the other party's adultery as a means of increasing the alimony award, much less as a means of obtaining, in essence punitive damages against the party not seeking alimony. The Williamson opinion specifically approves the rule of law set forth by the Third District Court of Appeal in the cases of Escobar v. Escobar, 300 So.2d 702 (Fla. 3rd DCA 1974) and Cloughton v. Cloughton, 344 So.2d 944 (Fla. 3rd DCA 1977).

The basic rule that evidence of a spouse's adulterous conduct cannot be used as a means of increasing an alimony award to the nonadulterous spouse is set forth in the Escobar case. The Cloughton case does not change this rule, but merely carves out a necessary exception. The Cloughton case, therefore, permits evidence of the nonseeking party's adultery when both parties are adulterous. The Cloughton case does not, however, indicate that the court may then award all of the parties assets to one party or the other. Neither the Williamson opinion, nor the cases approved in it change the basic rules of equitable distribution, nor the long established rule that prohibits the use of alimony as a weapon to punish the misconduct of an errant spouse. Vilas v. Vilas, 153 Fla. 102, 13 So.2d 807 (Fla. 1943).

The Third District Court of Appeal case of Langer v. Langer,

463 So.2d 265 (Fla. 3rd DCA 1985), cited by the Wife is consistent with the Third District's previously cited opinions. Where there is a proper reason for consideration of the adultery of the party not seeking alimony, the courts will consider it. The Langer Court, therefore, found it proper to consider evidence of adultery when it was long standing and extensive and where it may have contributed to the depletion of the financial resources of the family. Again, the Langer Court does not indicate that such evidence of adultery may then be used as a basis of collecting punitive damages.

The Husband suggests that the Williamson case does not change at all the law that alimony may not be used punitively. Rather, the primary standard to be used in determining a proper alimony award is the need of the spouse seeking alimony, and the ability of the other spouse to pay. As set forth in this court's opinion in Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980):

A trial judge must insure that neither spouse passes from misfortune to prosperity or from prosperity to misfortune and, viewing the totality of the circumstances one spouse should not be shortchanged.

The goal is equitable distribution, not punishment. Canakaris v. Canakaris, supra, Tronconi v. Tronconi, 466 So.2d 203 (Fla. 1985).

Clearly the Husband, RICHARD NOAH, was shortchanged. The Fourth District, by reversing a portion of the trial court's Judgment has brought the distribution of assets more in line with the teachings

of the Canakaris, and Tronconi, opinions. Although the distribution of assets, coupled with the award of permanent periodic alimony, still weighs heavily in favor of the Wife, at least the scales of "equitable distribution" no longer strain under the weight of injustice.

SUMMARY OF ARGUMENT

Based upon the Williamson, decision it was improper for the trial court to consider the adultery of the Husband, who was not seeking alimony himself, when evidence of that adultery was used by the Wife merely as a means of obtaining a large, punitive distribution of property and alimony. Under the Williamson, opinion and the cases cited therein such was improper. Regardless of the admissibility of the Husband's adultery, however, the trial court is not permitted to use equitable distribution or alimony as a means of punishing the Husband by stripping him of all of his assets. Accordingly, the Fourth District's reversal of the lump sum of alimony should be affirmed.

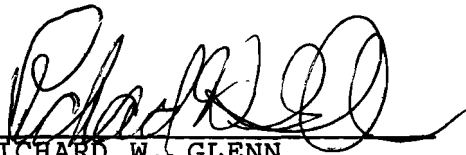
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 1st day of August, 1985, to Martin L. Haines, III, 636 U. S. Highway One, Penthouse 301, North Palm Beach, Florida 33408.



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