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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

CASE NO.: 4D16-2319
L.T. No: 502010DR003810XXXXSB

JULIE M. GONZALEZ v. LLOYD G. WICKBOLDT

Appellant / Petitioner(s) Appellee / Respondent(s)

INITIAL BRIEF OF APPELLANT JULIA M. GONZALEZ

On Appeal to the 4th District Court of Appeals from the Order of Judge David French dated June 29, 2016 appointing a Receiver, David Ryder, conferring all powers under Florida law to sell real property owned by Appellant Julia M. Gonzalez which has been claimed as Homestead Property protected by the Florida Constitution and was purchased and owned by Appellant approximately 7 years prior to a 2.5 year marriage to one Lloyd Wickboldt and was not deemed as marital property in the Final Judgment of Dissolution.

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PRELIMINARY STATEMENT

This is an Appeal of a non-final Order of Judge David French dated June 29, 2016 appointing a Receiver, David Ryder, to forcibly sell real property, Homestead property, protected by the Florida Constitution. Julia M. Gonzalez is the Appellant and Lloyd Wickboldt is the Appellee. The Appendix herein is divided into several volumes; Volume 1 - The Record on Appeal from the underlying marital Dissolution case; Volume 2 - The Initial Appendix filed with the Initial Brief on the Merits in an Appeal by Appellant Julia Gonzalez's attorney Craig Dearr on the Dissolution case seeking a new Trial; Volume 3 - Initial Brief of Appellant by Counsel Craig Dearr in the Dissolution case; Volume 4- Appellee's Answer Brief on Dissolution Case; Volume 5 - Appellee's Appendix on Dissolution case; Volume 6 - Appellant's Reply Brief on Dissolution case; Vol. 7 - Writ of Prohibition against Judge French;

STATEMENT OF THE CASE AND FACTS

Nature of the Appeal and Standard of Review

This is an Appeal of a non-final Order of Judge David French dated June 29, 2016 appointing a Receiver, David Ryder, to forcibly sell real property owned by Appellant which is Homestead property protected by the Florida Constitution. The standard of review is abuse of discretion and competent substantial evidence. The

standard of review for Homestead protection is de novo. Under each standard, this appeal shall be determined in favor of the Appellant.

Factual Background

This appeal comes after the lower court issued an Order appointing a Receiver to forcibly sell real property that is protected by the Florida Constitution Article X, Section 4, the Homestead Act. This Order appointing a Receiver occurred after Judge French knew that Appellant had Discharged her attorney and that her attorney also moved to withdraw. The Order appointing the Receiver also occurred after a mandatory Disqualification had been filed against Judge French who had interfered in the Attorney-Client relationship. See, Appendix Vol. 7. The Order to Appoint a Receiver arose after a Final Judgment had been issued on July 29, 2013 in a Marital Dissolution case out of a very short term marriage of less than three years with Appellee being in Rehab services many times due to various addictions. See Appendix Vol. 1 - Pages 0285-0289. Appellant has been repeatedly threatened with jail, incarceration and contempt for exercising rights protected by the Florida and US Constitution despite never having been arrested before and having protection by the Florida State Address Confidentiality Program administered by the Florida State Attorney General. See Appendix Vol 7 - Writ. The marriage at issue was not the first marriage for either party. In fact, this was the 3rd marriage for the Appellee Lloyd Wickboldt who had 5 adult children by the

time of the marriage to Appellant, none of whom chose to attend the marriage and were not actively involved in the Appellee's life.

The marriage was of very short duration, approximately 2.5 years due to Domestic violence and abuse by Appellee against the Appellant resulting in Appellant obtaining the protections of the State Address Confidentiality Program. See in part Appendix 1 Original Petition for Dissolution Pages 0001-0018.

The Appellee is an admitted alcoholic and addict to narcotic pain prescriptions.

The Appellant and Appellee were working together at the time the relationship formed. The Appellant is the only daughter of a Cuban refugee mother who passed away many years before the marriage. Appellant had always worked very hard throughout her lifetime supporting herself economically and had purchased the real property that is Homestead Property approximately 7 years prior to the marriage. Prior to the marriage the Appellant had strong Credit, had bought and paid for her own car and paid her own bills in addition to buying her Homestead property. The Appellee is a Medical doctor not able to work due to his disabilities but received significant disability income during the short-lived marriage. See Appendix Vol. 1 pages 0001-0018. The parties were married on or around April of 2007 and were separated permanently on or around December of 2009. The Appellant was 54 years old at the time of the marriage while the Appellee was 55.

Law enforcement authorities were involved in at least 2 separate incidents during the very short term marriage and on the first incident the Appellant was provided an option by law enforcement to have the Appellee arrested or have Appellee submit to a Rehab facility through PRN. Because this incident was so short in time after the marriage and because of Appellant's caring nature, the Appellee was allowed to leave the home after admission to a Rehab was arranged. Appellee had often carried various knives (weapons) around Appellant including in the vehicles and even had trouble taking a cruise for carrying such weapons. Appellee had told Appellant that she would be the one to turn his life around after his bankruptcies, losing homes, not having his adult children in his life, having prior Restraining Orders against him from prior spouses, not being able to take care of his financial affairs, and his addictions. Appellee did not want the Appellant to work during the marriage outside the home and instead the Appellant was the Home Maker and caretaker, making meals, taking Appellee to Rehabs and doctor's appointments, ensuring all the household bills were paid although these were paid by funds from Appellee's disability payments. Appellee's relationship with his own adult children was so bad that he wanted Appellant to help try to repair the relationships. Appellant later learned of the Restraining Orders and abuse in Appellee's prior family relationships. Appellee also had significant Gambling addictions and Appellee wanted Appellant to help save his monies away so his life could change

around. After other abusive activities by Appellee including ransacking of the marital home and threats with a baseball bat, Appellant left the marital home permanently in Dec. of 2009. Appellant feared for her life from Appellee due to physical assault and threats, and the short history and knowledge of what Appellee did in his other relationships and his controlling abusive nature.

It is critically important to note that despite the one-sided nature of proceedings at "Trial" where Appellant was Pro Se despite seeking a continuance to retain a new attorney, contrary to Appellee's claims of fraud and a scheme by Appellant, in the week prior to the Marriage it was the Appellee who took the Appellant to Orlando, Florida allegedly to see his good friend Accountant to invite him to their wedding. Instead the Appellant was faced with a remarkably uncomfortable solicitation by the Appellee's Accountant to use her real property purchased nearly 7 years prior as a way to obtain a second mortgage so the Appellee could pay off a very large debt to the IRS of over $40,000.00. This was very embarrassing and uncomfortable for the Appellant and came "out of the blue". Proper due process proceedings would thus show it was the Appellee and not the Appellant who had a pre-marriage plan to take real property of the Appellant, property subject to Florida Constitutional Homestead protection.

Appellee filed for Divorce on or around March 2010 and Appellant shortly after Answered and counter-filed for Divorce as well. See Appendix Vol. 1, pages

0001-0018 and 0034-0036. Both parties ended up having multiple attorneys during the course of proceedings, approximately 3 separate attorneys each over the course of litigation. See, Appendix Vol. 1.

Appellant was in the Florida State Attorney General administered Address Confidentiality Program throughout the proceedings and is still a valid member of the program which by State law under FS §741.403(1)(b) Designates the Attorney General as a Registered Agent for Service of Process and receipt of Mail. The Dissolution proceedings were fairly balanced until shortly after Appellee's 3rd attorney Anthony Aragona III came into the case shortly after Judge David French became involved with the case. All of a sudden the case quickly got moved for Trial with issues of Appellant's address arising despite the protections of the State Attorney General run Address Confidentiality Program. Appellant had found out on a Friday about a Pre-trial proceeding from the Palm Beach County Clerk's Office to be held the following Monday. See, Appendix Vol. 4. When appearing in the Courtroom, Appellee's attorney Aragona was surprised to see Appellant there and even asked her how she found out about the proceeding. Attorney Aragona was having Ex Parte communications about the case with Judge David French at the time.

Appellant had only recently been without an attorney who had moved to withdraw after complaints by Appellant over the recent handling of the case that eventually resulted in a Bar complaint being filed.

Appellant filed Pro Se for a Continuance of the Trial in order to obtain an attorney but was denied by Judge David E. French. This does not appear in the official records other than reference to this denial in the Trial Transcripts where even Judge Harrison admits that Judge's French's Judicial Assistant had already advised no continuances even though Judge French had only been on the case a relatively short time, requests for continuances had been made by both sides, Appellee had filed his 3rd complaint (Second Amended Complaint) See, Appendix Vol 2, Item 5. Ultimately, Appellant was denied a reasonable continuance to obtain a new attorney and a clearly one-sided "Trial" took place where Appellant was not only denied the opportunity to have the Witnesses testify but also denied an opportunity to present her Direct case. The Trial proceeded despite no confirmation or verification by the Trial Judge Harrison about alleged attempts at some compliance with Uniform Pre-Trial procedures by Appellee's attorney Aragona and this violated procedural and substantive due process. See Appendix Vol. 2 Trial Transcripts pages 4-5. The Final Judgment of Dissolution which gives rise to these attempts to take Appellant's property protected by the Homestead act clearly violates Florida statutes and is void. These violations directly involve the proper

equitable distribution in the marriage and either party's claim to proceeds and property. Judge French knew or should have known this. Instead, a series of proceedings occurred forcibly attempting to take Appellant's Homestead property which involved threats of contempt and incarceration and lead to the improper interference in Attorney-Client relations. Judge French knew or should have known that he should have mandatorily Disqualified at the time the Receiver was appointed. Appellant has been a resident of the State of Florida for 48 years and all proof shows the intent to remain a permanent resident of Florida.

SUMMARY OF ARGUMENT

The Lower Court abused its discretion in appointing a Receiver to forcibly sell Appellant's Homestead protected property which was purchased 7 years prior to a very short-term marriage of 2.5 years which included serious acts of domestic violence resulting in Appellant being granted protections of the State Address Confidentiality Program. Appellant is still in the program having been renewed despite attempts at a defective "trial" to claim she should not have these protections. The Lower Court knew or should have known by any fair review of the Final Judgment of Dissolution that this was defective in violation of Florida Statutes on equitable distribution. Lower Court Judge French knew or should have known that he should have mandatorily disqualified prior to issuance of the Order

to appoint a Receiver. Alternative injunctive powers were also available to preserve status quo while a new Trial and new hearings should be granted. Appellant's property is Homestead property and thus the Order appointing a Receiver must be reversed and vacated.

ARGUMENT

I. THE LOWER COURT ABUSED ITS DISCRETION IN APPOINTING A RECEIVER

A. The Final Judgment of Dissolution which gives rise to the attempts to forcibly take through a Receiver the Appellant's Homestead Protected property purchased by Appellant nearly 7 years prior to the marriage clearly violates F.S. §61.075 and is Void; Lower Court Judge French knew or should have known this prior to efforts to take the property through Receivership.

It is undisputed that Florida Statutes §61.075 Equitable Distribution of marital assets and liabilities applied to the Final Judgment of Dissolution in this case. The requirements of this Statute are very specific. Judge David E. French and Judge Harrison who issued the Judgment knew and should have known that this statute has mandatory requirements to be followed by the Court in a marital dissolution case. Judge French knows and should know that it is this Judgment of Final

Dissolution that is relied upon as the basis to forcibly sell the Homestead protected property in this case through the current appointment of a Receiver, David Ryder, which is the subject of this appeal. Notwithstanding other arguments herein relating to due process violations in the pre-trial and Trial proceedings, Judge French knows and should know that this Final Judgement is seriously flawed and defective and void as a matter of statutory law under FS §61.075.

As this Court said in Lagstrom v. Lagstrom, 662 So. 2d 756 (4th DCA 1995), "We reverse the equitable distribution of property because the court failed to follow the statutory requirements. Section F.S. §61.075(3), Florida Statutes (1993), requires the trial court to set apart to each spouse his or her nonmarital assets and liabilities before making an equitable distribution of the marital assets. See, e.g., Embry v. Embry, 650 So.2d 190 (Fla. 2d DCA 1995). This requires the trial court to identify what items are marital and nonmarital assets and liabilities. The marital assets are then subject to equitable distribution. Id. at 191. The trial court did not make such an identification as to each asset including the main asset, which is the marital home. The marital home consists of a mobile home and lot that the trial court valued between $34,000 and $35,000 and awarded exclusively to the wife thus giving her a disproportionate share of the marital assets. The failure to designate each asset makes it impossible to review the fairness of the court's one-sided distribution and requires reversal of this equitable distribution scheme.

The starting point in equitably distributing marital assets is an even division of such assets unless the trial court expresses justifications for an unequal division. The trial court must express a justification for an unequal division which comports with reason and logic. Shepard v. Shepard, 584 So.2d 1123 (Fla. 4th DCA 1991). In the instant case, the trial court articulated no reason for the disproportionate award to the wife. We therefore reverse the equitable distribution of the marital estate on this ground as well. On remand, the trial court is instructed to express its justification if it determines that an unequal award is warranted under the facts of this case."

Judge French who is relying upon such Judgment to appoint a Receiver knows and should know and Judge Harrison knows and should have known, the Final Judgement of Dissolution is void by statute for failing to determine under F.S. §61.075:

1. "F.S. §61.075(1)(a); (a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker."

   The Final Judgment makes no Findings with regard to the contributions to the marriage by Appellant specifically as "services as homemaker". While there were no children, Appellant contributed to the marriage in numerous ways including but not limited to; making regular meals and general

housekeeping; taking Appellee to medical appointments and Rehab clinics, ensuring that all bills of the marital home were being paid albeit from Appellee's funds, attempting to keep Appellee on a positive track and away from his serious addictions, providing affection and caring for the Appellee and other services. The Judgment is devoid of any findings on this factor regarding the Appellant.

2. F.S. §61.075(1(b), "(b) The economic circumstances of the parties." The Final Judgment is wholly devoid of the required factual findings based on this statutory factor and thus is void. Appellant had worked her entire life prior to the marriage and was forced by Appellee to give up her job to be the homemaker. Appellant would earn up to approximately $30,000.00 a year prior to the marriage. The Final Judgment is wholly devoid and defective on this factor and thus void.

3. F.S. §61.075(1)(c), "the duration of the marriage". Again the Final Judgment is wholly devoid on this factor and thus is void. The marriage lasted barely 2.5 years which does not account for times when Appellee was in Rehabs due to his significant addictions. Appellant still maintained the marital home during these times. The Final Judgment is devoid of findings on this factor and void.

4. F.S. §61.075(1)(d), "Any interruption of personal careers or educational opportunities of either party." Again the Final Judgment is entirely devoid of any required finding on this factor. Appellant had always been a strong, working individual prior to the marriage for years having purchased her own home protected by Homestead years prior to the marriage, purchased her own car and paying her own bills and planning to finish school to become a Registered Nurse. Because of the serious domestic abuse in the marriage and the abusive litigation lasting years, Appellant's personal careers and educational opportunities have been severely damaged. The Judgment is void for failure to make required findings on this factor.

5. F.S. §61.075(1)(g), "(g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties." The Final Judgment is devoid of any findings regarding the Appellant's contributions on this factor. While it is true the funds that were used to maintain and enhance the marital home and assets were funds obtained by Appellee's disability payments, but for the contributions of the Appellant in ensuring that bills were actually paid and accounts maintained, such assets and properties would be lost. Appellee already had a history of bankruptcy and losing property by not paying bills.

Appellant's contributions ensured the marital home and property were maintained particularly when Appellee was in Rehabs or off Gambling. The Judgment is void for failure to make findings on this factor.

6. F.S. §61.075(1)(j), "(j) Any other factors necessary to do equity and justice between the parties.". The Final Judgment failed to properly consider the impacts of domestic violence upon the Appellant at the hands of the Appellee and determine equities due Appellant on this factor. The Final Judgment is void based on this failure.

7. F.S. §61.075(3) which mandates in part as follows, "any distribution of marital assets or marital liabilities ***shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1). The distribution of all marital assets and marital liabilities, whether equal or unequal, shall include specific written findings of fact as to the following:***

   a. " (a) Clear identification of nonmarital assets and ownership interests;" The Final Judgment failed to identify the marital home listed by Appellee as a marital home in Par. 7 of his original Complaint and Financials and yet further improperly ordered a 50/50 split of Appellant's Homestead home purchased 7 years before this short 2.5 year marriage as if this was "marital property" when such

property was never claimed in Pleadings as “marital property” by Appellee thus depriving Appellant of due process notice at Trial.

b. “(b) Identification of marital assets, including the individual valuation of significant assets, and designation of which spouse shall be entitled to each asset;” The Final Judgment failed to identify how or why the Court was ordering a 50/50 split on Appellant’s clearly pre-marital property purchased 7 years in advance of the marriage and protected by Homestead. The Final Judgment references No Specific Financial findings to arrive at this award and this property in Miramar, Fl clearly was never claimed by Appellee as “marital property”. The Final Judgment is void in this regard and has no specific dollar amounts found and determined that went to Appellant’s Homestead property from Appellee’s funds. This part of the Judgment is void and a new trial must be Ordered.

<u>The Numbers do Not Add up for Competent and Substantial Evidence and the Final Judgment is void</u>

By Appellee’s own admissions and statements in his financial Disclosures, the numbers adduced at Trial do not add up nor does the Final Judgment specify with sufficient clarity the financial accounting and in this regard again the Judgment is void under FS §61.075. Appellee stated Net Monthly Income of $16,747 and

Monthly Expenses of $12,671. See, Appendix Vol. 1 Record on Appeal Dissolution case page 000013. This was a document signed under oath by Appellee in March of 2010. See Appendix Vo1 1 Record on Appeal page 000018. By averaging those amounts over the 2.5 year marriage there was Net Income of approximately $502,410.00 and Net Expenses of approximately $380,130 solely for expenses of the Appellee leaving $122,280.00 in monies not directly identified based on the Sworn Financials to Expenses to benefit the Appellee. The expenses did not include the large IRS debt owed by Appellee which Appellant provided the Services to ensure was paid for Appellee, nor does it include mutual Vacation expenses and other items. Again there is also to be considered the Appellant was forced into full time homemaker by Appellee and thus loss the Income for 2.5 years of approximately $50,000 to $75,000.00, approximate. Then there is the Personal Property of Appellant lost and secreted or destroyed by Appellee valued at over $92,000 as listed on Appellant Disclosure all not accounted for in the Final Judgment rendering it Void based on Statute. See Appendix Vol 1, page 000050. Thus there is no clear entitlement to appointment of a Receiver and Judge French knowing or who should have known of these Statutory deficiencies renders the Order to Appoint a Receiver an Abuse of Discretion. A review of the Final Judgment shows no proof of how the Court came to the numeric conclusions it

reached. The appointment of a receiver must now be reversed and vacated or alternatively stayed until proper hearings back at the trial level occur.

B. **Any rationale review of the Record clearly shows a "one-sided" Trial in violation of Due Process**

Appellant incorporates by Reference the Initial Brief and Answer Brief filed by former counsel in the original Appeal under Case No. 13-4051 as further support to show the Appointment of a Receiver was an Abuse of Discretion and reserves all rights to further support this argument in an Answer Brief.

Appellant submits any rationale review of the Trial Transcripts show a "one-sided" "Trial" that violated both procedural and substantive due process clearly cutting off Appellant's ability to provide a case in chief and fair evidence before the Court in violation of US Constitution 5th and 14th Amendments. See, Appendix Vol. 2 Trial Transcripts.

C. **The Final Judgment of Dissolution was not supported by competent and substantial evidence on any of the issues of the marriage including claims to conversion of funds and should be voided.**

Because the Trial lacked almost the entire case of the Appellant who was forced to proceed pro se instead of having a continuance, there lacks sufficient competent substantial evidence to uphold use of Receivership at this time. Even the one-sided

evidence that was provided lacks competent and substantial basis to uphold use of a Receivership at this time as shown by the numbers from Financials above.

Appellant points out to this Court that many of the Trial "Exhibits" that were listed in the Record on Appeal of the original appeal were not actually produced for the Record such as the Marriage License claimed in the Trial. This was in violation of Florida Rules of Appellate Procedure 9.200 The Record which provides, "(a) Contents. (1) Except as otherwise designated by the parties, the record shall consist of all documents filed in the lower tribunal, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal,". These Trial Exhibits are what Appellee and his attorney Aragona used to apparently convince Judge Harrison of Appellant's lack of truthfulness and that this was some scheme to defraud and yet many of the Exhibits claimed at Trial were either never provided to the Clerk or not Produced by the Clerk, nor filed by Appellee's attorney in the original appeal.

One of the Exhibits that was produced is a Passport Document that ***clearly shows Appellant's Date of Birth as Oct. 1, 1952 and name as Julia Marie Gonzalez. This shows Appellee and his attorney as untruthful and fraudulent before the Court and upholds Appellant's truthfulness.*** See Appendix Vol 1 - Record on Appeal Vol. 3 page 000066. The alleged Marriage Record Document at the same Volume pages 0014-0015 has No Signature by Appellant and is an incomplete

document not verified or sworn to and appears to be a male's handwriting. The only other document in the Record from the Trial is an unsworn document that at best appears to have been written in a hurry with an incorrect birth date. No "official" documents are in the Record or were ever provided.

The Florida Supreme Court has said, "Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. Becker v. Merrill, 155 Fla. 379, 20 So. 2d 912; Laney v. Board of Public Instruction, 153 Fla. 728, 15 So. 2d 748."

Yet, in the Record of Appeal on the Dissolution Appeal and in the Records of the case, not only are many of the alleged Trial Exhibits missing and not in the Record, but clear, coherent testimony is lacking to show financial numbers with sufficient specificity and as shown above the Judgment clearly lacks the Statutory factors that are mandated to be considered rendering the Judgment void. Thus, there is no basis for a Receiver and the appointment was an abuse of discretion that must be reversed and vacated.

Still, once again Appellee's own documents and statements under oath undermine Appellee's case and clear claim to Appellant's property sufficient to support appointment of a Receiver. In Appellee's original complaint for Divorce in Par. 11

he states that "Wife and at all times had the confidence of Husband." See Appendix 1, Record on Appeal page 00003. Appellant attempted to show the Trial Court by question and statement that this was "common sense" as Appellee not only knew what the wife was doing but also common sense that no one would allow this alleged scheme to go on for years with this much money at stake and not know and permit and consent that it happen and thus not be conversion or fraud. See, Appendix Vol. 2 Trial Transcripts. Any finding to the contrary by the Final Judgment lacked a rationale basis as unless Appellee was incapacitated for 2.5 years, a rationale person would believe he knew and was consenting to the actions with the finances. The appointment of a receiver must be vacated and reversed at this time.

D. **Injunctive powers to preserve status quo should have been used while new hearings were granted instead of use of Receivership which is a "last resort" power.**

The use of Receivership is not proper where there is no "clear right" to the property at issue. See, See, Decumbe v. Smith, 196 So. 9, 143 Fla. 5 (1940); Mirror Lake Co. v. Kirk Securities Corp., 98 Fla. 946, 124 So. 719, (1929). A receiver should not be appointed unless there is strong reason to believe that the party asking for such relief will prevail at the final hearing on the merits. See, Carolina Portland Cement Co. v. Baumgartner, 99 Fla. 987, 128 So. 241 (1930).

As shown above, there is insufficient competent evidence to support such clear right to Appellee especially since the Trial lacked the direct case in chief by Appellant. Where the Court has other powers such as injunctive powers in a Dissolution case, use of Receivership is an abuse of discretion. Because there is no clear right to the property for the Appellee at this time, there should be no Receiver. Receivership is a last resort only where clear right to the property is present which is not present in this case. Mirror Lake Co. v. Kirk Securities Co., 98 Fla. 496, 124 So. 719; Apalachicola Northern R. Co. v. Sommers, 79 Fla. 816, 85 So. 361;

E. **Lower Court Judge French had already interfered in the proper Attorney-Client relationship with Appellant and counsel Dearr at the time the Receiver was appointed and should have mandatorily Disqualified himself from the case.**

Appellant incorporates by reference the arguments raised in a recent Writ of Prohibition filed against Judge French to demonstrate the improper denial of Appellant's absolute right to Discharge her attorney and the "re-writing" of the Rules of Professional Conduct which require an attorney to discontinue representation after Discharge. Said actions have the effect of changing the law of the Florida Supreme Court on the important statewide issue of Attorney-Client relations and it was clearly shown that Counsel Dearr was improperly used by the

Court to forcibly represent Appellant who is a normal, competent adult with the free right to make choices creating communication difficulties and compromised representation with attorney Dearr in Violation of US Constitution 1st Amendment, 5th Amendment and 14th Amendment. While this Writ was recently denied by this Court, the timeframe for Re-hearing has not expired and Appellant will be moving for formal re-hearing within the timeframes allowed. See, Vol. 7 Writ of Prohibition.

Judge French should have mandatorily Disqualified prior to appointing a Receiver. The Order appointing a Receiver must now be reversed and vacated.

II. The property at issue is protected by the Florida Constitution as Homestead property and all attempts to take the property should be stayed until a new Trial and new Hearings are granted.

Appointment of a Receiver is an abuse of discretion as the property at issue is Homestead Property and not subject to the instant action to collect by an alleged creditor with a judgment. The Miramar property was purchased in or about the year 2000, 7 years prior to the 2.5 year marriage and was purchased by Appellant owning the property as an individual who not only has resided in the State of Florida for decades but always had the intent to permanently reside in Florida.

Once a home obtains “homestead” status it remains homestead until it is abandoned. Appellant first filed for Homestead protection in 2011 after returning to the Home after the Domestic abuse and violence and breakup of the marriage with this becoming effective in 2012. Appellant had previously had Homestead protection on the property in the years before the relationship with Appellee began dating back to after the property was first purchased by Appellant.

There was no abandonment of Homestead by renting it out for a few years. The debtor’s failure to continue to occupy the residence he or she occupied at the time of judgment is not necessarily equivalent to abandonment and, thus, will not necessarily cause the homestead to lose its protected status. The general rule appears to be that if a debtor leaves his home due to financial, health, or family reasons the debtor will not be considered to have abandoned the homestead. For example, In re Herr, 197 B.R. 939 (Bankr. S.D. Fla. 1996), the court noted the following do not necessarily constitute abandonment: 1) mere absence from the homestead for financial reasons; 2) posting a “for sale” or offering the property for sale; or 3) failing to maintain the property for extended periods. Similarly, homestead status is not lost when a debtor leaves the home with no intention of returning but has a good faith intent to reinvest the proceeds of a future sale of the house in a new homestead. See, La Croix, 137 So. 2d at 204.

Appellant had established Homestead prior to any Judgment and the Judgment is otherwise void for the reasons stated above and thus the appointment of a Receiver must be vacated and reversed.

A. **Because the Final Judgment of Dissolution is void and was issued in fraud upon the Court, any claim that such Judgment precedes the Appellant's Homestead claims should be denied.**

As shown above, not only is the Final Judgment void for statutory violations under F.S. §61.075, but the Transcript shows Mr. Aragona falsely claiming to the Court at Trial about Pre-Trial procedure attempts he allegedly took and yet both the Record on Appeal produced by the Clerk and Mr. Aragona's own Appendix produced in his Reply brief on the original appeal are wholly devoid of any records or documents to support Mr. Aragona's statements to the Court which must be viewed as false and fraudulent. See, Appendix Vol. 2 Transcripts pages 4-5 and Appendix Volumes 4 and 5. Thus, not only was Appellant denied procedural and substantive due process but this made the proceeding a Sham Trial. As shown, likewise both the Record on Appeal found at Appendix Vol. 1 and Aragona's Appendix found at Appendix Vol.5 are wholly devoid of any verifiable proof of any efforts at pre-trial procedure attempts by Appellee's attorney Aragona much less the Exhibits that allegedly showed Appellant as untruthful and acting in a scheme. This fraud is sufficient to render the Final Judgment void.

Moreover, Appellant's Homestead was filed and granted prior to the 2013 void Judgment. The appointment of a Receiver must now be reversed and vacated.

CONCLUSION

For all the reasons set forth herein, Appellant respectfully prays that this Court reverse and vacate the appointment of a Receiver at this time or alternatively Stay all powers of the Receiver to act pending the filing in the lower Court of appropriate motions to vacate and for such other and further relief as to this court may seem just and proper

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

Dated: September 2, 2016

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CERTIFICATE OF SERVICE

Petitioner does hereby certify that the foregoing Petition was served on all parties below by e-file and email with the clerk of the court this 2nd day of September, 2016.

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