>> ALL RISE.
>> SUPREME COURT OF FLORIDA IS NOW IN SESSION, PLEASE BE SEATED.
>> NEXT CASE ON THE DOCKET IS NANCY HOOKER V. TIMOTHY I. HOOKER.
WHENEVER YOU ARE READY.
>> MAY IT PLEASE THE COURT.
ROBERT HAUSER FROM WEST PALM BEACH, ON BEHALF OF THE PETITIONER.
WITH ME IS SUSAN CHOPIN, MY COCOUNSEL.
THIS IS A DIVORCE CASE.
RELEVANT PARTIES THERE ARE TWO PIECES OF PROPERTY THAT WERE HELD BY THE TRIAL JUDGE THAT WERE MARITAL, EQUALLY DISTRIBUTED, FORMER HUSBAND APPEALED RULINGS TO THE FOURTH DCA.
THE FOURTH DCA SET ASIDE ONE OF THE TWO DETERMINATIONS.
>> KEEP YOUR VOICE UP PLEASE AND SPEAK INTO THE MIC.
>> LOUDER, YES WITH FORMER HUSBAND APPEALED THE DETERMINATION AS TO THE PROPERTY I AM GOING TO COLLEGE AND IN RELEVANT PART THE FOURTH DCA REVERSED SO THE HOLDING OF THE FOURTH DCA WAS PAGE 7 OF THE OPINION UNDER THE PREPONDERANCE OF THE CREDIBLE EVIDENCE STANDARD, THE FACTS FOUND BY THE TRIAL COURT DID NOT EVIDENCE A CLEAR INTENT BY THE HUSBAND.
THE SAME PARAGRAPH REFERRED TO A MORTGAGE SIGNED BY THE FORMER WIFE, EXPLANATIONS FOR THE CONSTRUCTION LOAN MORTGAGE DOCUMENT AND TRANSFER REFERRING TO HICKS DEAD.
AND THE TRIAL JUDGE, AND COMPETENT, SUBSTANTIAL EVIDENCE, THE STANDARD OF REVIEW FOR FACTUAL DETERMINATIONS.
ASSUMING THE COURT AGREES WITH US, THE STANDARD OF REVIEW,

APPLYING THAT STANDARD
FAITHFULLY, TWO RESULTS.
ON OUR APPEAL ON THE MERITS,
HICKS DEAD IS A MARITAL ASSET
AND THE ORIGINAL TRIAL JUDGE WAS
THE CROSS PETITION IS WITHOUT
MARIST.
THE STANDARD OF REVIEW, MERRILL
VERSUS MERRILL CITED IN OUR
BRIEF, THE PREPONDERANCE OF
CREDIBLE EVIDENCE STANDARD IS
FOR THE CHANCELLOR.
AND THE FOURTH DCA USED THE
ANALYSIS, AND WHETHER THERE IS A
GIFT.
IT IS A VERY CONTROVERSIAL,
ALMOST EVERY FACTUAL
DETERMINATION IN A CIVIL CASE IS
MADE BY THE PREPONDERANCE OF
CREDIBLE EVIDENCE.
PREPONDERANCE MEETING GREATER
THAN 50/50, THE TRIAL JUDGE IS
NOT SUPPOSED TO LISTEN TO
NON-CREDIBLE EVIDENCE IN THE
TRIAL JUDGE'S ESTIMATION.
THE THIRD DCA CASE, A CASE
REGARDING A GIFT, FINDING OF
FACT WILL BE AFFIRMED WHETHER IT
IS COMPETENT AND SUBSTANTIAL
EVIDENCE TO SUPPORT THOSE
FINDINGS.
THERE WAS CONFLICTING EVIDENCE,
AND THE TRIAL JUDGE RULED AS THE
TRIAL JUDGE RULED, AND THAT IS
PART ONE OF WHY WE NEED THE
COURT.
THE SECOND THING IS TO LOOK AT
THE COMPETENT SUBSTANTIAL
EVIDENCE IN THIS RECORD.
ON PAGE 13, THE FINAL JUDGMENT,
FOR MY BRIEF THERE WAS EVIDENCE
THE WIFE AND HUSBAND SIGNED
MORTGAGE ON THE HIXSON PROPERTY
AND THE WIFE SIGNED THE DEED TO
THE PROPERTY WHEN CHANGING
TITLE, AND THE WIFE SIGNED
CLOSING DOCUMENTS --
>> SOMETIMES THAT HAPPENS, THE
TITLE COMPANY REQUIRED THAT EVEN
IF THE SPOUSE IS NOT ON THE

TITLE JUST TO AVOID POTENTIAL
PROBLEMS DOWN THE ROAD.
>> THE POTENTIAL EXPLANATION.
IT IS NOT CONCLUSIVE.
ONE PROBLEM I HAVE WITH THE
FOURTH DCA DECISION IS THEY TAKE
AS FACT THE FORMER HUSBAND'S
EXPLANATION THAT WAS TO RESOLVE
THE HOMESTEAD PROBLEM AND DON'T
LISTEN TO ANYTHING WE HAD TO SAY
ABOUT IT AND IF YOU LOOK AT THE
MORTGAGE, THE TERMS OF THE
MORTGAGE ARE NOT CONSISTENT WITH
THE FORMER HUSBAND'S ARGUMENT
THE TITLE COMPANY MADE ME DO IT.
THIS IS THE MORTGAGE, COMPETENT,
SUBSTANTIAL EVIDENCE, TO ME THE
MOST PROBATIVE DOCUMENT IN THE
CASE, SIGNED BY THE FORMER
HUSBAND, WITNESSED BY TWO
PEOPLE, NOTARIZED, AND ADMISSION
BY THE FORMER HUSBAND CONTAINED
A REPRESENTATION THEREIN THAT
THE HUSBAND AND WIFE ARE
COLLECTIVELY THE MORTGAGOR.
THAT IS THEN COVENANT,
LAWFULLY SEIZED, THE ESTATE
CONVEYED AND THE RIGHT TO
MORTGAGE, GRANT AND CONVEY THE
PROPERTY.
I SUBMIT THAT THAT IS THE CASE
THAT AS OF 1991 --
>> LET ME ASK ABOUT THE SALE TO
HOOKER HOLLOW.
>> 97 DEED.
>> THAT IS THE ARGUMENT THAT THE
SALE TO HOOKER HOLLOW WHICH WAS
MARITAL PROPERTY AND BECAUSE OF
THAT, SHOULD BE TREATED AS
MARITAL PROPERTY.
>> ALREADY MARITAL PROPERTY WHEN
THAT HAPPENED.
IT KEPT ITS MARITAL
CHARACTERISTICS THROUGHOUT.
>> AN ALTERNATIVE ARGUMENT THAT
EVEN IF IT WASN'T BEFORE, IT
BECAME MARITAL PROPERTY UPON
SALE.
OR IS THAT NOT YOUR ARGUMENT?
>> THE MOST COMPELLING EVIDENCE

IS IT WAS ALREADY PROPERTY IN 1991 WHEN THEY WERE IN LOVE AND HE INTENDED HER TO SHARE TITLE WHICH IS WHY HE PUT HER ON THE MORTGAGE.
>> A LOT OF FINDINGS THE TRIAL COURT MADE, AGAIN THIS WOULD BE NOT A GIFT, THAT IS HOW THE JUDGE FOUND IT WAS MARITAL PROPERTY.
PURCHASED BY THE HUSBAND, THE WIFE'S FATHER, YOU HAVE EVIDENCE, PAID $25,000 FOR THE LOTTERY TICKET, ONE OF THESE LOTS IN WELLINGTON.
AND FOR 21 YEARS BOTH THE HUSBAND AND THE WIFE CONSIDERED IT EVEN THOUGH IT WAS HOMESTEAD AS A MARITAL HOME.
>> THAT HIS WIFE'S TESTIMONY.
>> THEY FIND THE MORTGAGE BUT ON TOP OF IT, CONTINUED TO BE CONSISTENT IN THE WAY THEY TRANSFERRED THE PROPERTY INTO THE LLC, CORRECT?
>> I DON'T DISAGREE WITH THAT.
>> IT IS MORE EVIDENCE, YOU WOULDN'T REJECT THAT IS EVIDENCE THAT IT IS CONSISTENT.
>> NOT AT ALL THE TIME TRYING TO HIT THE POINTS WHERE THE FOURTH DCA WITH MOST VERTICAL OF THE TRIAL JUDGE BECAUSE I THINK THE FOURTH DCA ERRED IN WEIGHING THE RELATIVE PROBATIVE VALUE OF THE MORTGAGE AND THE DEED.
THE MORTGAGE AND THE DEED --
>> WHAT THE FOURTH DISTRICT DID WAS ACTUALLY TAKE EVIDENCE THAT WAS THE OPPOSITE OF WHAT THE TRIAL JUDGE FOUND AND TO COME TO THEIR CONCLUSION THAT IT WAS NOT MARITAL PROPERTY BUT IF SUBSTANTIAL EVIDENCE IS THE STANDARD, IF THAT EVIDENCE IS THERE EVEN THOUGH THERE IS CONTRARY EVIDENCE YOU CAN'T JUST LOOK AT THE CONTRARY EVIDENCE AND SAY THAT IT WAS NOT MARITAL PROPERTY.

I THOUGHT THAT WAS YOUR
ARGUMENT.
>> I AGREE WITH YOU THAT THERE
WAS EXERCISES OPINION WRITING IN
THE FOURTH DCA, DID MAKE THE
CASE FOR WHY IT SHOULDN'T BE
MARITAL.
THAT DOESN'T BOTHER ME AS MUCH
IF THEY WERE NOT FAITHFUL TO THE
COMPETENT SUBSTANTIAL EVIDENCE
STANDARD.
THAT IS TRULY AN ERROR, TO
OVERLOOK THIS MORTGAGE THAT HAS
THIS REPRESENTATION THAT SHE IS
AN OWNER AND WORSE, UNDERTOOK TO
CAUSE THE BAR TO PAY THE
PRINCIPAL AND THE DEBT ON THAT
IN PARAGRAPH ONE OF THE
MORTGAGE.
SHE UNDERTOOK TO KEEP
IMPROVEMENTS ON THE PROPERTY NOW
EXISTING ON THE PROPERTY
INSURED.
SHE WAS LIABLE IF THERE WAS NO
INSURANCE.
>> BOTTOM LINE, THE APPELLATE
COURT USED THE STANDARD OF
COMPETENT SUBSTANTIAL EVIDENCE
STANDARD AND TRIED TO WEIGH THE
EVIDENCE THE SITTING TRIAL JUDGE
HAD THE OPPORTUNITY TO VIEW THE
PARTICIPANTS, CREDIBILITY AND
WEIGHING AND THE APPELLATE COURT
SHOULD GIVE DEFERENCE TO THE
TRIAL COURT OPINION AS LONG AS
THERE WAS COMPETENT EVIDENCE.
>> THAT IS THE BOTTOM LINE AND I
TRYING TO PROVIDE TIDBITS OF
COMPETENT SUBSTANTIAL EVIDENCE.
>> IT IS NOT SO MUCH YOU'RE
TALKING TALK BUT THE UNDERLYING
SUBSTANCE.
WE ARE HEADED INTO CHANGING
EXISTING FLORIDA LAW WITH REGARD
TO SIGNATURES ON PIECES OF PAPER
AND AS THE JUSTICE JUST
MENTIONED, CERTAIN TRANSACTIONS
REQUIRE BOTH HUSBAND AND WIFE TO
SIGN BECAUSE OF HOMESTEAD STATUS
AND NEVER IN THE WORLD DOES

ANYTHING SAY DONOR INTENT, YET
WE ARE GOING TO BE HOLDING THAT
IF YOU SIGN ON A MORTGAGE AS A
PROTECTIVE MEASURE THAT
DEMONSTRATES THE PROPERTIES WERE
TRANSFERRED TO YOU AND WE GOT TO
BE CAREFUL HERE THAT WE DON'T
TURN ON HEAD REAL PROPERTY
CONCEPTS, CONCEPT OF MORTGAGES,
HOMESTEAD OVER A BATTLE OVER A
FEW WORDS ABOUT THE LEVEL OF
EVIDENCE.
WOULD YOU TELL ME WHAT CASES
FLORIDA HAVE HELD A PARTY
SIGNING ONTO A DEED OR A
MORTGAGE, THAT THOSE ACTIONS IN
AND OF THEMSELVES CREATE A
TRANSFER OF INTEREST IN THOSE
PROPERTIES?
>> THERE ARE NO CASES THE WAY
YOUR HONOR IS DESCRIBING AND
THIS ISN'T ONE OF THEIR CASES
BUT THE SIGNATURE ON SOME OF THE
TRANSACTIONAL DOCUMENTS WAS ONE
FACTOR OUT OF 5 OR 6.
>> ON WHICH DOCUMENTS?
>> THE FACTS WERE THE HUSBAND
BOUGHT THE CONDO WITH NONMARITAL
FUNDS, THE WIFE WANTED TO
RELOCATE TO MIAMI, THE WIFE
ATTENDED CLOSING AND FIND THE
MORTGAGE BUT SHE WAS NOT ON THE
TITLE, THE HUSBAND SAID HE
BOUGHT THE CONDO FOR BOTH OF
THEM.
HUSBAND AND WIFE WERE NAMED ON
THE HOMEOWNERS INSURANCE POLICY,
THEY FURNISHED A HOME WITH
$29,000 AND I UNDERSTAND WHAT
YOUR HONOR IS SAYING.
I DON'T THINK MERELY SIGNING
THAT MORTGAGE IS THE END OF THE
CASE IN TERMS OF SHE OWNS IT BUT
HAS TO BE A FINDING OF FACT
BASED ON DISPUTED EVIDENCE.
WE HAVE A SITUATION WHERE
SOMEBODY LIVED IN A HOUSE FOR
DECADES.
>> DOES LIVING ON A PROPERTY FOR
TWO DECADES OPERATE AS A

TRANSFER OR DONATIVE INTENT?
>> NO BUT IF THEY SIGN THE MORTGAGE AND FIND A DEED AND THERE ARE OTHER FACTORS LIKE THE JUDGE FOUND THAN IT CAN BE.
I WOULDN'T BE AS CONCERNED AS YOUR HONOR SOUNDS ABOUT THIS WILL BE A PARADE OF HORRIBLES?
>> WHEN YOU START USING EACH OF THOSE STANDING ALONE, EACH OF THOSE STANDING ALONE ARE INSUFFICIENT YOU CANNOT IN MY VIEW GATHER THEM TOGETHER CUMULATIVELY AND SAY HIM RELATIVELY ALL OF US SIGNING ON A DEED OR LIVING IN THE PROPERTY OPERATES FOR DONATIVE INTENT.
>> WE ARE TRYING TO PROVE WHAT IS IN THE FORMER HUSBAND'S MIND.
>> VERY DIFFICULT.
>> WHEN HE SIGNED THE DOCUMENT.
>> DIFFICULTY AND BURDEN OF PROOF SHOULD NOT CHANGE THE FUNDAMENTAL LAW.
WE ARE CHANGING REAL PROPERTY LAW IN A DOMESTIC CASE.
THAT IS MY CONCERN.
>> WITH ALL DUE RESPECT I HAVE A DOCUMENT SIGNED FORMER HUSBAND WHO SAYS SHE IS THE MORTGAGOR AND IS LAWFULLY SEIZED WITH THE PROPERTY.
>> THEN EVERY MORTGAGE, HAVE YOU EVER SEEN A MORTGAGE THAT DOESN'T HAVE THAT CLAUSE IN IT?
>> I UNDERSTAND IS AN ARGUMENT FOR THE OTHER SIDE.
>> HAVE YOU EVER SEEN A MORTGAGE THAT DOESN'T HAVE THAT CLAUSE?
I HAVE NEVER AND I DID A FAIR AMOUNT OF REAL ESTATE PRACTICE SO TO SUGGEST THAT ONE PARAGRAPH.
IF WE ARE GOING TO RECOGNIZE WHERE WE ARE GOING.
IT MAY BE THAT IS WHAT WE WANT THE LAW TO BE BUT WE HAVE TO BE CAREFUL ABOUT DOING THAT AND PUTTING TOGETHER FOR EXAMPLE ON THE SECOND PIECE OF PROPERTY A

GIFT CARD THAT IS TOTALLY
DIFFERENT.
IN MY MIND, THAN MERELY SIGNING
A MORTGAGE.
DID SHE SIGN THE NOTE?
>> SHE'S NOT ON THE NOTE AND I
THINK THE FOURTH DISTRICT WAIVED
THE FACT THE WAY YOUR HONOR IS
THINKING AND THEN WE WILL
DISCOUNT THIS AS A MATTER OF LAW
BUT DON'T THINK YOU CAN DO THAT.
OF A HUSBAND, WHAT IS INSIDE HIS
HEAD SIGNED A DOCUMENT THAT SAYS
SHE IS LAWFULLY SEIZED WITH THE
PROPERTY SHE UNDERTAKES, SHE HAS
GOT TO BE A DONOR.
IT IS PRIMA FACIE EVIDENCE THAT
SHE IS A DONOR AND THE TRIAL
JUDGE HAS TO FIGURE OUT WHO HE
BELIEVES.
>> DON'T SPEND ALL YOUR TIME ON
MINE.
>> THIS POINT SOUNDS SALIENT.
THE OTHER THING THAT IS
IMPORTANT FOR THAT QUESTION IS
BOTH THE DEED AND THE MORTGAGE I
SIGNED AND EMPHASIZED HAVE A
SEPARATE RECITATION THAT THIS IS
NOT THE HOMESTEAD PROPERTY OF
THE OWNERS.
I CAN UNDERSTAND, SOMEONE COULD
COME IN AND SAY WE DID THAT TO
WAIVE HOMESTEAD BUT THERE IS A
RECITATION THAT SHOWS THE
HUSBAND DID NOT BELIEVE THIS WAS
THE HOMESTEAD PROPERTY OF THE
OWNERS.
IF IT IS NOT THE HOMESTEAD
PROPERTY AND HE IS STILL
RECITING THAT SHE IS AN OWNER,
THAT AT LEAST SUGGESTS FOR
PURPOSES WHETHER THIS IS
SUBSTANTIAL EVIDENCE THAT SHE IS
AN OWNER IN HIS MIND BACK IN
1991 WHEN PARTIES WERE IN LOVE
AND RELATIONS WERE GOOD AND IS
NOT SURPRISING 22 YEARS LATER OR
23 YEARS LATER WE HAVE A TRIAL
AND THE HUSBAND SAYS NO, I
DIDN'T INTEND.

>> MAY IT PLEASE THE COURT, JANE KREUSLER-WALSH, WE REPRESENT ACROSS APPELLANTS, TIMOTHY HOOKER.
LET'S DEAL FIRST WITH THE STANDARD OF REVIEW.
THE TRIAL COURT, THE APPELLATE COURT ON PAGE 5 OF THE DECISION ACCEPTED THE TRIAL COURT'S FINDINGS, CLEARLY SAY FACT SUPPORTED BY THE RECORD.
THE APPELLATE COURT HOLDS IMMEDIATELY AFTER RECITING THE FACT THE TRIAL COURT FOUND IN ITS AMENDED FINAL JUDGMENT SAYS, QUOTE, HOWEVER, NONE OF THESE FACTS EVIDENCE A CLEAR AND UNMISTAKABLE INTENTION ON THE PART OF THE HUSBAND TO MAKE A GIFT TO ESTABLISH DONATIVE INTENT.
>> THEREFORE THERE IS NOT COMPETENT SUBSTANTIAL EVIDENCE, THE SUPPORT OF THE JUDGE'S FINDINGS.
YOU BOTH AGREE, THEY WEIGHED THE EVIDENCE THAT WOULD BE IN ERROR.
MY QUESTION HERE IS WHETHER THE FACTS IN THIS CASE, WE TAKE EXTENT, LAKE GEORGE AND THE HOMESTEAD PROPERTY WHICH WAS THE WIFE, SHE AGREED THESE WERE -- THESE ARE VERY WEALTHY PEOPLE WE ARE TALKING ABOUT.
THE TRIAL COURT AS I UNDERSTAND IT 3 THE RESIDENTIAL PROPERTIES AS MARITAL ASSETS BUT OTHER PROPERTIES LOOKED AT HOW THE HUSBAND DEALT WITH OTHER NONRESIDENTIAL PROPERTIES THROUGHOUT THE MARRIAGE SO I GUESS WHAT I AM LOOKING TO IS I WOULD AGREE WITH WHAT JUSTICE LEWIS IS SAYING, SIGNS ON THE MORTGAGE, NOT A FACT THAT MAKES IT A GIFT OR THAT HE SIGNS A DEED THAT SAYS SHE OWNS IT, EVEN THOUGH IT WAS APPARENTLY WHEN HIS EXPLANATION WAS, WHY SHE HAD HER SON THE SPEED OVER, DIDN'T

HAVE TO SIGN ON THE DEED.
ISN'T IT THE TOTALITY, LOOKING AT THE JUDGE'S FINAL JUDGMENT, ISN'T IT THE TOTALITY OF ALL THE ASSETS, SPECIFIC ONES ON RESIDENTIAL PROPERTY THAT CAUSED THE TRIAL JUDGE A FINE, WHAT THE HUSBAND WAS SAYING WAS NOT CREDIBLE AND THE WIFE EXPLANATION WAS CREDIBLE, AND THAT IS WHERE THE TRIAL, FOURTH DISTRICT WENT OFF BY WEIGHING THE SIGNIFICANCE OF THE FACT THE JUDGE FOUND.
WE ALL AGREE COMPETENT AND SUBSTANTIAL EVIDENCE WOULD BE THE STANDARD BUT IT DOES APPEAR THE FOURTH DISTRICT WENT OFF AND WEIGHED THE EVIDENCE.
>> LET ME CORRECT SOMETHING THAT IS COMPETENT SUBSTANTIAL EVIDENCE, WHEN YOU ARE DEALING WITH DISPUTED QUESTIONS OF FACT, WE ARE NOT DEALING WITH DISPUTED QUESTIONS OF FACT BECAUSE THE APPELLATE COURT ACCEPTED TRIAL COURT FINDINGS OF FACT SO THAT THE CORRECT MY EARLIER STATEMENT WHEN YOU SAID THE REST OF THAT WOULD BE IF THEY APPLY COMPETENT SUBSTANTIAL EVIDENCE STANDARD OF REVIEW WE WOULD NOT BE HERE.
>> ALL THE FACTS FOUND BY THE JUDGE AS A MATTER OF LAW ESTABLISHED THERE COULD NOT BE DONATIVE INTENT.
>> THAT IS WHAT I AM SAYING.
>> INCLUDING SUCH THINGS AS THE HUSBAND, THE WIFE'S FATHER HAVING CONTRIBUTED $25,000, THEY DID NOT EQUITABLY DISTRIBUTE THIS 50/50 AM A SHE GOT 34%, WASN'T AN EQUAL EQUITABLE DISTRIBUTION ANYWAY.
BUT THOSE FACTS, HOW THEY RAISE THEIR FAMILY IN THIS MARITAL HOME OR WHAT SHE DID TO WORK ON THE PROPERTY, NONE OF THAT IS SIGNIFICANT, LOOKING AT WHETHER THERE WAS DONATIVE INTENT.

>> THAT IS CORRECT AND THE
REASON IS WITH REGARD TO THE
LOTTERY, NO PROOF OF THAT AT
TRIAL OTHER THAN THE WIFE'S
UNSUBSTANTIATED STATEMENT,
NOTHING TO VERIFY THAT FACT.
>> YOU ARE SAYING THAT FACT IS
NOT A FACT WE COULD CONSIDER.
>> A FACT THE TRIAL COURT COULD
CONSIDER BUT NOTHING THAT RISES
TO THE LEVEL OF SIGNIFICANCE.
IF YOU ARE GOING TO TAKE THAT
OUT AND COMPARE IT TO THE OTHERS
IT DOESN'T RISE TO THE LEVEL.
>> DOESN'T THE FINDER OF FACT
HAVE TO DETERMINE THE RELATIVE
SIGNIFICANCE OF DIFFERENT PARTS
OF THE EVIDENCE?
THAT IS WHAT FINDERS OF FACT DO.
>> YES, BUT THE APPELLATE COURT
DECIDES WHETHER THOSE FINDINGS
OF FACT ARE SIGNIFICANT TO
SUPPORT A CONCLUSION OF DONATIVE
INTENT AND THAT CONCLUSION OF
DONATIVE INTENT WOULD BE
RENEWED, IF YOUR HONORS WHERE TO
THINK THAT SIMPLY LIVING IN A
MARITAL HOME IS ENOUGH FOR
DONATIVE INTENT THEN WE ARE
ABSOLUTELY OBLITERATING THE LAW
OF FLORIDA, BECAUSE A PRENUP
COVERS THIS PROPERTY.
THE TRIAL COURT FOUND THAT
PRENUP APPLIES WHICH WE HAVEN'T
DISPUTED EVIDENCE THAT THIS
PROPERTY WAS IN THE HUSBAND'S
NAME THROUGHOUT THE COURSE OF
THE MARRIAGE PAID FOR BY HIM,
EVERY EXPENSE ASSOCIATED WITH
THE HOUSE WAS PAID FOR BY HIM.
SO ARE YOU GOING TO CONSIDER
ENACTING A LAW THAT SAYS JUST
BECAUSE THESE PEOPLE ARE LIVING
IN THIS HOUSE, THAT MEANS IT HAS
SOMEHOW MANIFESTED AN INTENT BY
THE HUSBAND IN THE FACE OF THIS
OTHER EVIDENCE THAT HE GIVE HER
AN INTEREST IN THAT PROPERTY,
THE ANSWER HAS TO BE NO.
BECAUSE THE LAW SAYS EQUITY WILL

NOT RECOGNIZE AN ORAL GIFT OF
LAND UNLESS YOU COMPLY WITH THE
STATUTE.
>> LET ME ASK ABOUT THE SAME
TRANSACTION, EVEN IF IT IS
TREATED AS THE HUSBAND'S
NONMARITAL PROPERTY, WHEN IT WAS
SOLD TO HOOKER HOLLOW, DID IT
LOSE ITS TREATMENT AS NONMARITAL
PROPERTY AT THAT POINT BECAUSE
OF HOOKER HOLLOW BEING
NONMARITAL PROPERTY?
>> NO.
AT THAT TIME THERE IS A
PROVISION IN THE PRENUP THAT
SAYS ANY TRANSFERS,
APPRECIATIONS, SUBSTITUTION,
ANYTHING OF THAT NATURE RETAINS
ITS NONMARITAL STATUS.
AT THE TIME THE PROPERTY WAS
TRANSFERRED INTO HOOKER HOLLOW
THE ARTICLES OF INCORPORATION
NAME ONLY THE HUSBAND AS OFFICER
AND DIRECTOR AND IT WAS ONLY HE
AND TRELAWNEY, THE ENTITY THAT
BECAME THE OTHER 50% SHAREHOLDER
THAT REMEMBERS.
>> YOU DISPUTE MARITAL PROPERTY.
>> IS IN THEIR TESTIMONY ABOUT
THE HUSBAND FROM THE WIFE TO
SAYING THIS WOULD BENEFIT US AND
ALL THIS DISCUSSION OF WE WE WE
WHEN IT COMES TO THEIR PROPERTY,
IS THAT OF NO SIGNIFICANCE AT
ALL?
>> NO SIGNIFICANCE, THE SAME,
THE FORMER HUSBAND -- IT IS
SWEET TALK.
THE FORMER'S POSITION --
>> SWEET TALK AND GET INTO
DONATIVE INTENT.
>> IF IT IS JEWELRY.
>> AND ANNIVERSARY CARD.
BUT WITH REGARD TO -- LOST MY
TRAIN OF THOUGHT WHICH
>> I LOST IT TOO.
>> WHEN YOU ARE DEALING -- I
KNOW WHAT IT WAS, THINGS OF THIS
NATURE, THOSE WORDS CANNOT
CONSTITUTE DONATIVE INTENT FOR

THE SAME REASON IN THE NEFARIOUS CASE, HUSBAND SAY WE HAD AN AGREEMENT THAT THERE IS NO YOURS OR MINE.
IT IS ALL HOURS AND THE SECOND DISTRICT IN THAT CASE SAID ORAL WORDS BETWEEN SPOUSES CANNOT CONSTITUTE A CONTRACT.
YOU ARE GOING TO HAVE THESE PEOPLE IN A SOCIAL SETTING, AND FRIENDS TO DINNER, AND AS A HUSBAND SUPPOSED TO INTERRUPT AND SAY NO, THIS IS NOT BY SEPARATELY TITLED HOUSE.
REALLY AND TRULY, HAVE TO BE TAKEN IN THE CONTEXT IN REMEMBERING WE ARE DEALING WITH WE THROUGH ELEMENTS TO PROVE A GIFT.
IT HAS TO BE PRESENT INTENT FOR IMMEDIATE TITLE AT THE TIME THE GIFT IS MADE.
THERE IS NO EVIDENCE OF THAT HERE.
THE MORTGAGE AND FEED WERE REQUIRED BY LAW, FLORIDA CONSTITUTION, THE MORTGAGE DID NOT GIVE INTEREST IN THE PROPERTY.
THERE IS NO LIABILITY.
>> THE CONSTITUTION REQUIRES IT IS NOT HOMESTEAD.
>> IT WAS HOMESTEAD.
THE FACT OF THE MATTER IT SAYS ON THE DEED THIS AND THE HOMESTEAD ISN'T CONCLUSIVE EVIDENCE, NOR SOMETHING A TITLE --
>> WAS THERE HOMESTEAD?
>> THEY WERE LIVING IN IT.
SHE SAYS THE REASON SHE IS ENTITLED TO THE EXTENT PROPERTY, IT IS OUR HOME.
IT IS WHERE WE RAISE OUR CHILDREN.
>> THERE WAS A HOMESTEAD -- THE HOMESTEAD EXEMPTION, THE CONDO THAT WAS SOLELY IN HER NAME THAT SHE AGREED WAS MARITAL.
>> NO.

THERE HOMESTEAD IS THE HICKS
DEAD PROPERTY.
>> DOES THE RECORD SHOW WHAT THE
HOMESTEAD TAX EXEMPT STATUS WAS?
>> NO, IT DOESN'T.
EVEN IF IT DID.
IF SHE HAD CHOSEN NOT TO CLAIM
IT AS A HOMESTEAD, THAT IS NOT
CONCLUSIVE, WE KNOW THAT FROM
THE THIRD DISTRICT DECISION, IT
CAN BE THE HOMESTEAD, ENTITLED
TO HOMESTEAD PROTECTION.
>> IF THERE IS ANY FINDING THE
WINTER WAY PLACE WHICH IS THE
CONDO, THAT IS THE HOMESTEAD,
THAT WOULD BE INCORRECT?
>> WINDSOR WAS OCCUPIED BY THE
WIFE'S PARENTS, WASN'T OCCUPIED
BY THE PARTIES, WITH REGARD TO
WINDSOR WAY THERE WAS
AFFIRMATIVE PROOF BY THE WIFE
AND INTEND TO GIVE MY HUSBAND
AND INFANT IN THIS PROPERTY.
APPLIED TO THAT AT TRIAL.
WE DON'T HAVE IN THIS INSTANCE
ANY AFFIRMATIVE ACTION BY THE
FORMER HUSBAND SAYING I INTEND
YOU TO HAVE AN INTEREST IN THIS
PROPERTY.
>> HOW IS IT DISTINGUISHABLE?
>> YOU HAD THE FORMER HUSBAND
TELLING HIS WIFE, I WANT THE
WIFE TO SHARE IN THIS.
>> WE DON'T REALLY KNOW.
AND OUT TO DINNER.
AND OFFHAND COMMENT BUT THAT IS
ENOUGH --
>> I AM NOT SAYING THAT.
>> THE DISTINGUISHING FACTOR IS
HE MADE A STATEMENT, THAT HE
INTENDED THIS TO BE JOINED
BECAUSE OF THE CROSS APPEAL, THE
ISSUE OF LAKE GEORGE, AND IN THE
FOURTH DISTRICT, THE PROPERTY IS
INTENDED TO BE A MARITAL
PROPERTY.
IF YOU ARE LOOKING AT THE
EQUITY, ALL THREE RESIDENTIAL
PROPERTIES OVER A 21 YEAR
MARRIAGE, ENOUGH ACTIONS BETWEEN

THE PARTIES, I AM STILL HAVING TROUBLE, IN ONE CASE THE HUSBAND MIGHT HAVE SAID SOMETHING.
THE TRIAL COURT'S FINDING AND FOURTH DISTRICT FINDING ON LAKE GEORGE.
>> LET ME ANSWER YOUR QUESTION, WITH REGARD TO THE GO, THE DISTINCTION IS THE SAME DISTINCT IN THE FOURTH DISTRICT CITED IN THEIR DECISION, I WOULD BE SO BOLD AS TO SAY IT IS WRONGFULLY DECIDED BECAUSE THE LAW SHOULD NOT BE THAT YOU COULD HAVE ORAL AGREEMENT FOR THE SALE TO REPRESENTED INTEREST IN REAL PROPERTY.
WITH REGARD TO THE ANNIVERSARY CARD AND THE LAKE GEORGE PROPERTY THE ANNIVERSARY CARD WAS STRICKEN BY THE TRIAL COURT AND TESTIMONY WITH REGARD TO THE ANNIVERSARY CARD WAS STRICKEN.
IT IS NOT EVIDENCE THE TRIAL COURT SHOULD HAVE BEEN CONSIDERING.
>> THE BASIS FOR THE EXCLUSION OF IT WOULD BE HEARSAY OBJECTION.
WOULD YOU EXPLAIN THAT TO ME, HOW THAT WAS HEARSAY.
>> IT IS OFFERED AS THE TRUTH OF THE MATTER THAT SHE DID NOT HAVE THE CARD, THE GIFT, THAT THE CARD HAD BEEN GIVEN, IT WAS ONLY HER BARE STATEMENT AND MY OPPONENT SAYS IT IS ADMISSIBLE AS A VERBAL ACT BECAUSE AS TRIAL COURT FOUND IT WAS BEING OFFERED THE TRUTH OF THE MATTER ASSERTED, THE NOTION THAT IT IS ADMISSIBLE AS ADMISSION AGAINST OPPONENTS, A HEARSAY EXCEPTION SHOULD HAVE BEEN RAISED AT THE TIME.
>> IF THE WIFE HAD TESTIFIED THE HUSBAND HAD TOLD HER THAT THIS IS WHAT THE CARD SAID THAT WOULD HAVE BEEN ADMISSIBLE.
>> IT WOULD HAVE BEEN

ADMISSIBLE.
WHETHER IT IS HEARSAY OR NOT --
>> I UNDERSTAND NOT GETTING BOGGED DOWN WITH THIS BUT IT IS A SIGNIFICANT ISSUE.
>> IT IS A SIGNIFICANT ISSUE, I WANT TO TALK ABOUT THE SUBSTANCE OF THE CARD ITSELF.
GIVEN IN SEPTEMBER 1997, FOR THEIR 10TH ANNIVERSARY.
AT THAT POINT, A MONTH LATER, THE HUSBAND PUTS THE PROPERTY INTO HIS NAME.
THE CASES ARE VERY CLEAR, SIEGEL CASE, A STATEMENT OF FUTURE INTENT IS NOT EVIDENCE OF A GIFT IF IT DOESN'T COME TO FRUITION BECAUSE THERE HAS TO BE PRESENT AND IRREVOCABLE VESTING OF THE GIFT BUT IF YOU CONSIDER THE ANNIVERSARY CARD ON THE MERITS.
AND WHETHER I INTEND TO GIVE YOU AN INTEREST IN THIS PROPERTY, COULD HAVE EASILY BEEN GIVEN I WOULD LIKE THIS TO BE WHERE OUR FAMILY VACATION IS.
>> I THOUGHT THE WORDING WAS PRETTY CLEAR.
WHAT DID SHE SAY THE WORDING WAS?
IF YOU CAN TESTIFY I RECEIVE -- THAT IS ACCEPTABLE.
>> THE TESTIMONY, LET ME GET IT FOR YOU.
HE SENT ME AN ANNIVERSARY CARD FOR MY 10TH ANNIVERSARY WITH A NOTE AND PICTURE HE FOUND FOR OUR FAMILY TO HAVE A SUMMER HOME.
THAT IS THE TESTIMONY.
A RECORD SITE, 1026.
LET ME BE MORE CLEAR.
ON THE NEXT PAGE, SHE SAYS SO I GOT THE ANNIVERSARY CARD WITH A PICTURE, THE 10TH ANNIVERSARY PRESENT TO THE FAMILY.
THAT IS THE OBJECTION MOTION TO STRIKE, IT IS HEARSAY.
SO CONSIDERING ALL THAT IF IT IS SUFFICIENT TO PROVE DONATIVE

INTENT YOU HAVE TO PROVE THE
NEXT TWO ELEMENTS OF THE GIFT,
YOU HAVE TO PROVE POSSESSION AND
DELIVERY.
ALL THAT HAS TO BE, WITH PRESENT
INTENT TO VEST IRREVOCABLE AND
IMMEDIATE TITLE, THAT IS NOT
PRESENT HERE.
WE HAVE A PREMARITAL AGREEMENT
THAT COVERS THESE PROPERTIES,
TRIAL COURT FINDING OF NO COMING
GOING, PURCHASED IN HIS NAME
WITH HIS NONMARITAL FUNDS AND
PAID WITH HIS NONMARITAL FUNDS
AND UNDER THOSE FACTS THE FOURTH
DISTRICT WAS RIGHT TO REVERSE
BUT WRONG AS TO LAKE GEORGE
BECAUSE WITH THE EXCEPTION OF
THE ANNIVERSARY CARD WHICH IS
NOT EVIDENCE, SHOULD NOT BE
EVIDENCE FOR REASONS I ARGUED
HERE TODAY THE FACTS ARE THE
SAME.
IF THIS COURT WERE TO DECIDE
DIFFERENTLY YOU WOULD CREATE
CHAOS AND INSTABILITY IN THE
STATE OF REAL PROPERTY LAW AS IT
DEALS WITH MARITAL SITUATIONS.
>> WITH REGARD TO THE HORSE
ACTIVITIES, THIS WAS SOMETHING
THE WIFE WAS INTO AND SHE
PARTICIPATED IN INCREASING THE
VALUE.
>> YOU SAY THERE IS AN AGREEMENT
BUT ABSENT AN AGREEMENT,
PARTICIPATED IN BRINGING THE
STABLES ALONG AND INCREASING
VALUE OF THE STABLE?
>> ALL OF THAT.
AND SOME INTEREST IN THIS
PROPERTY.
>> TO EXCLUDE THOSE FROM
CONSIDERATION, THE REASON YOU
SHOULD PREVAIL ON THAT PROPERTY.
>> AND LAKE GEORGE BECAUSE IT IS
THE SAME ARGUMENT.
>> IT WAS NOT A BUSINESS
ENTERPRISE.
>> IT WAS A FAMILY VACATION
HOME.

>> I THOUGHT THE TRIAL COURT, THE ISSUE OF THE HORSE PROPRIETOR, OWNERSHIP OF THE HORSE, THERE WAS SOME ARGUMENT MADE THE THAT SHOULD TREAT THE APPRECIATION AS A MARITAL ASSET AND THE JUDGE FOUND AGAINST THE WIFE.
IT SEEMED TO ME THAT THE WIFE AND TRIAL COURT WERE MAKING DISTINCTIONS BETWEEN PLACES THEY REGARDED AS THEIR ASSETS WHERE THEY LIVED LIKE LAKE GEORGE IS A SUMMER HOME AND THE CONDO AND THE HOME WHERE THE HORSE BUSINESS WAS DEVELOPED AND ALL OTHER PROPERTIES.
IS THAT NOT CORRECT?
>> TO BE CLEAR THE HORSE BUSINESS WAS ON THE MARITAL PROPERTY.
BUT TO BE CLEAR THE HORSE BUSINESS IS NOT IN THE APPRECIATION IS NOT A SUBJECT OF THIS APPEAL.
>> THAT IS CORRECT.
THANK YOU FOR CLARIFYING THAT BECAUSE THE TRIAL COURT FOUND THERE WAS NO CO-MINGLING AND NO CLAIM OF MARITAL ASSET, HE REJECTED THAT CLAIM AND SAID THE ONLY WAY THIS -- THAT THE WIFE COULD BE CONSIDERED HAVE AN INTEREST IS BY WAY OF A GIFT. APPRECIATION WOULD BE AN ASPECT OF BECOMING MARITAL ASSET AND THAT IS REALLY NOT RELEVANT TO THIS CASE BASED ON THE TRIAL COURT'S AMENDED FINAL JUDGMENT.
THE FOURTH DISTRICT DECISION SHOULD BE AFFIRMED AND QUASHED.
THANK YOU, YOUR HONORS.
>> IT IS NOT ITSELF A FINDING OF FACT.
DONATIVE INTENT IS WHAT THE TRIAL JUDGE FOUND LIKE HE COULD'VE FOUND THE LIGHT WAS RED IN A CAR CRASH FOR THE DOCTOR WAS NEGLIGENT, THE TRIAL JUDGE FOUND DONATIVE INTENT, OUR JOB

IN THE APPELLATE WORLD IS TO
LOOK FOR COMPETENT, SUBSTANTIAL
EVIDENCE THAT SUPPORTS IT.
MY OPPONENT TOLD YOU THE HOUSE
WAS TITLED IN THE NAME OF HER
FORMER HUSBAND, THE EXCEPTION TO
THAT IS WHEN IT WAS TITLED IN
THE NAME OF THE LLC.
THE TERMS WE OR US MIGHT IN SOME
CELLS BE TRIVIAL.
THE POINT IS THOSE DISCUSSIONS
OCCURRED WHEN IT WAS A
DISCUSSION WHETHER TO SELL THE
HOUSE OR CONVERT INTO AN LLC.
WHAT SEEM SALIENT TO ME IS NOT
JUST THAT IT IS WE, WE ARE GOING
TO DO SOMETHING REALLY
IMPORTANT, FORMER WIFE, I WANT
YOU TO KNOW ABOUT IT.
THAT IS WHY WE AND US ARE SO
SIGNIFICANT, THE HOMESTEAD
ISSUE, YOU WERE TOLD TWICE THAT
HICKSTEAD IS HOMESTEAD, THE DEED
AND MORTGAGE SAY, NOTARIZED BY
BOTH PARTIES, THAT IT ISN'T.
WE WILL ALL HAVE AN ARGUMENT
ABOUT MAYBE IT IS OR ISN'T BUT
THAT IS WHAT TRIAL JUDGES ARE
FOR.
THE TRIAL JUDGE'S JOB WAS TO
FIGURE OUT WHETHER THE FORMER
HUSBAND DID THE MORTGAGE AND THE
DEED BECAUSE --
>> ANY EVIDENCE IN THE RECORD
THAT SAYS THE WIND THEIR WAY
PROPERTY, THE HOMESTEAD
EXEMPTION ON THE WIND THEIR WAY
PROPERTY OR ANY OF THAT IN THE
RECORD?
>> IT IS NOT IN THE RECORD
BECAUSE I DON'T THINK THE TRIAL
JUDGE WAS THINKING ABOUT THAT.
IT DIDN'T COME UP.
WE ARE STUCK WITH WHAT HAPPENED
AT TRIAL.
>> LOOKING AT THE FOURTH
DISTRICT'S OPINION AND HOW THEY
LOOKED AT THE FINDINGS OF FACT
AS TO HOOKER, AND THE FINDINGS
OF FACT ON LAKE GEORGE.

HOW WOULD YOU, IN ONE, THEY
FOUND ALL THE FACTS NOT
ADEQUATE.
THE OTHER, THEY FOUND THE FACTS
ADEQUATE, I GUESS, BECAUSE OF
THIS WEDDING ANNIVERSARY CARD.
AND WE LEAVE THIS OPINION
INTACT, THE ERA OF WEIGHING
SOMETHING THE TRIAL COURT FOUND,
ONE VERSUS THE OTHER.
>> SEEMS TO ME THE FOURTH
DISTRICT WAS IMPRESSED AND
SATISFIED BY FORMER HUSBAND
TELLING THE FORMER WIFE HE WAS
BUYING THE LAKE GEORGE HOUSE FOR
THE 10TH ANNIVERSARY.
THAT IS IN THE JUDGMENT, THE
FOURTH DCA OPINION AND THE
TESTIMONY WAS READ ACCURATELY
FROM PAGE 350 OF THE TRANSCRIPT.
I GOT THE ANNIVERSARY CARD WITH
A PICTURE AND HE SAID AT WAS OUR
10TH ANNIVERSARY PRESENT TO THE
FAMILY.
HE SENT AN ANNIVERSARY CARD FOR
10TH ANNIVERSARY WITH A NOTE AND
A PICTURE HE FOUND FOR THE
FAMILY TO HAVE A SUMMER HOME.
THAT IS PARTY ADMISSION BY THE
OTHER SIDE.
>> YOU AGREE THIS ISSUE, THAT
REAL PROPERTY SAYING IN A CASUAL
WAY THIS IS YOUR HOME TOO, DOES
START, HAS THE POTENTIAL OF
INTERFERING WITH WHAT REAL
PROPERTY OWNERSHIP SHOULD BE.
UNIQUE TO DONATIVE INTENT
OR COULD THIS BE, BLEED OVER IN
ALL SORTS OF NON-MARITAL CASES?
>> I REALLY DON'T SEE SOME SORT
OF RISK THE THAT.
THIS SAME CASE ON VERY SIMILAR
FACTS DOESN'T CREATE SOME KIND
OF PROBLEM WITH REAL PROPERTY
TITLE EITHER.
>> WELL, HOW CAN YOU SAY THAT?
ARE YOU SAYING THEN THAT
DOMESTIC CASES HAVE A DIFFERENT
BODY OF LAW OR REAL PROPERTY
CONCEPTS IN FLORIDA?

THAT'S EASIER FOR ME TO ACCEPT
THAT THAN IT IS YOUR STATEMENT
THAT THIS HAS NOTHING TO DO WITH
REAL PROPERTY LAW.
>> WELL, IN A DIVORCE THE JUDGE
IS SITTING THERE EQUITABLY
TRYING WHO GETS WHAT.
THERE'S A LOT LESS POTENTIAL FOR
ABUSE THAN IN THE GENERAL--
JUST OUTSIDE OF THE DOMESTIC
ARENA, I DON'T SEE THIS KIND OF
CASE SUDDENLY BEING USED AS
PRECEDENT FOR A TRANSFER OF
PROPERTY BETWEEN--
>> WELL, MAYBE, WELL, MAYBE IF
IT'S LIMITED TO A MARITAL
CONTEXT, WE'RE GOING TO CREATE A
NEW BODY OF LAW THAT WOULD
NOT-- IF SPECIFICALLY STATES--
APPLY TO GENERAL FLORIDA REAL
PROPERTY CONCEPTS, HUH?
>> I DON'T THINK THAT WOULD BE
INCONSISTENT WITH CHAPTER 61,
SIR.
>> OKAY.
ALL RIGHT.
>> I'M OUT OF TIME.
>> YES, YOU ARE.
>> THANK YOU VERY MUCH.
>> THANK YOU FOR YOUR ARGUMENTS.
COURT IS IN RECESS UNTIL
TOMORROW, 9:00.