INJUNCTIONS AGAINST DISSIPATION OF ASSETS

A "DISSENTING OPINION??"

Recently there has been a trend to deny prejudgment injunctions against dissipation of assets. This trend is a result of a recent article which appeared in the May 2002 Florida Bar Journal entitled "Freezing Your Assets Off: A Powerful Remedy on Thin Ice. The authors conclude that section 61.11(1) does not authorize a prejudgment injunction against dissipation of assets except to secure alimony or support awards.

Section 61.11(1) states:

> (1) When either party is about to remove himself or herself or his or her property out of the state, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against the party or the property and make such orders as will secure alimony or support to the party who should receive it.

The authors of the Bar Journal Article emphasize the portion of this section pertaining to ***"alimony and support".*** The preceding statement states "the court may award a ne exeat or injunction against the party or the property and make such orders as will secure alimony or support to the party who should receive it."

The authors claim "It is the extension of this statutory injunctive relief to protect equitable distribution claims that, upon closer scrutiny, is not authorized by either the statute or the case law." The statute's plain language grants the court the authority to injunction against the person or the property. If you look into the footnotes of the article and examine the case law interpreting section 61.11(1) you will see that the 1st, 3rd 4th and 5th District Courts have interpreted this section as permitting temporary injunctions prohibiting the dissipation of assets for the purpose of preserving the marital estate. There is not one Florida case cited in the Bar Journal Article.

In Leonard v. Leonard, 678 So.2d 497 (Fla. 5th DCA 1996), the wife revoked a trust which had control over the parties' lottery winnings, emptied the parties' joint safe deposit box of all documents related to the trust and lottery winnings, and denied husband access to the documents and lottery winnings. The 5th DCA upheld the trial court's finding that there was a danger of dissipation of the funds and the entry of a temporary injunction to preserve the status quo. The court after quoting section 61.11, Florida Statutes (1995), stated:

> This statute applies where there is an attempt to dissipate marital assets. Sandstrom v. Sandstrom, 565 So.2d 914 (Fla. 4th DCA 1990). Examples abound of the use of injunctions to prevent the dissipation of property *498 which is or may later be determined to

be marital property. Gooding v. Gooding, 602 So.2d 615, 616 (Fla. 4th DCA 1992), citing, Woodrum v. Woodrum, 590 So.2d 1093, 1094 (Fla. 3d DCA 1991); Stefanowitz v. Stefanowitz, 586 So.2d 460, 463 (Fla. 1st DCA 1991); Sandstrom; Rouse v. Rouse, 313 So.2d 458, 460 (Fla. 3d DCA 1975).

The authors cite to Widom v. Widom, 679 So.2d 74, *76 (Fla. App. 4 Dist.,1996), as support for their restrictive view of the statute, but they have to take the court's ruling out of context in order to do so. The 4th District in Widom said:

> We recognize that section 61.11, Florida Statutes (1995), provides authority for the trial court to enter an injunction to secure alimony or support when a party is about to leave the state, or conceal or convey property. We also recognize that section 61.11 applies whether a spouse is attempting to dissipate marital assets before or after the final dissolution judgment. See, Sandstrom v. Sandstrom, 565 So.2d 914 (Fla. 4th DCA 1990). Here, the prohibition against disposing of assets was to secure attorney's fees, not alimony or support. Section 61.11, Florida Statutes (1995), does not empower the trial court to enter an injunction to secure an attorney's fee award. In addition, there is no indication that either party was about to leave the state or dispose of assets, or that their welfare and interests were otherwise endangered. See, § 61.11, Fla. Stat. (1995); Rosasco, 641 So.2d at 494. The trial court did not specify the reason for entry of the injunction in accordance with Florida Rule of Civil Procedure 1.610(c). The amount and reasonableness of the fee had not yet been established when the court restricted the parties' use of their assets. A contingent claim for fees, by itself, is not a sufficient basis for injunctive relief. Rosasco, 641 So.2d at 495.

Emphasis supplied.

The authors then go on to point out that prejudgment injunctive relief is an extra ordinary relief, and that under common law (as distinct from statutory law) these types of injunctions have been greatly disfavored. That's true, any prejudgment relief is considered extra ordinary; however, that does not mean that it should be as impossible to obtain as the authors would lead you to believe. Further, we are not dealing with the common law and the "lack of adequate remedy standard" applied to common law injunctions, we are dealing with a statute passed by the legislature for the purpose of granting the courts the authority to guard against specific abuses prevalent in family law cases. In addition to section 61.11, there are other statutory provisions for prejudgment relief – lis pendens (section 48.23, Florida Statutes), prejudgment writs of garnishment (section 77.031, Florida Statutes), and prejudgment writs of attachment (chapter 76, Florida Statutes pertains to debts currently due and debts not yet due). None of these sections have been held to be unconstitutional, none of them require an allegation of a common law "lack of an adequate remedy at

law", and all of which grant relief prior to an adjudication of, and vesting of a claim. Even the authors of this article, if you look hard enough, admit that "when there is a specific statute [i.e. like section 61.11(1)], the violation of the statute itself constitutes a showing of irreparable harm and inadequate remedy at law, and the litigant need only show that the facts underlying the statute are in existence to obtain the injunctive relief."

While injunctions (particularly ex parte injunctions) prohibiting the dissipation of assets should not necessarily be granted on the basis of vague apprehensions or fear on the part of a spouse, unsupported by specific facts that show that harm is imminent, real and not just a possibility, there are some instances where, but for the injunction, there would be nothing left of the marital estate to divide. For instance: In Sandstrom v. Sandstrom, 565 So.2d 914, (Fla. App. 4 Dist.,1990), the husband, who was an attorney, just prior to the filing of the divorce proceeding, conveyed his interest in the martial residence, a ranch in Wyoming and an office building to his girlfriend. The court entered an injunction based upon section 61.11. In Bansal v. Bansal, 748 So.2d 335 (Fla. 5th DCA 1999), Husband's alleged attempt to transfer over eight million dollars out of the country from spouses' account by forging wife's signature justified dissolution court's temporary injunction without notice to the husband and without certification of efforts to give notice. The court entered an injunction based upon section 61. 11. In Gooding v. Gooding, 602 So.2d 615 (Fla. 4th DCA 1992), husband wrote unexplained checks to himself from a corporation in which the wife was claiming a special equity. The court entered an injunction based upon section 61.11.

In most cases, there is rarely a justifiable reason to liquidate, leverage or convey a marital asset without the prior knowledge and consent of the other party, and little prejudice caused by requiring court authorization in the event the other party unreasonably withholds their consent.