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NOTE

***Canakaris v. Canakaris*: An Examination of Aspects of Florida's Law on the Dissolution of Marriage**

In this casenote, the author examines the recent decision of Canakaris v. Canakaris, in which the Supreme Court of Florida addressed three issues that ordinarily arise in a case of dissolution of marriage: the proper scope of appellate review, the award of attorney's fees, and the relation of the special equities doctrine to lump sum alimony. The author finds the decision consistent with prior case law, but concludes that unpredictability may yet surround the equitable distribution of marital property by lump sum award.

The Supreme Court of Florida, in an attempt to stabilize the law on the disposition of property and the granting of alimony upon the dissolution of a marriage, recently established criteria for use by judges when determining the proper division of marital assets.¹ In *Canakaris v. Canakaris*² the supreme court clarified the limits of appellate review of alimony awards and the appropriate basis for awarding attorney's fees in divorce proceedings. Most importantly, the court attempted to harmonize and clarify conflicting rules of law on the awarding of lump sum alimony.³

In 1963, Elaine Canakaris initiated judicial proceedings against her husband, John Canakaris, by filing a complaint for separate maintenance on the grounds of adultery and extreme cruelty.⁴ The circuit court thereupon issued a temporary support order. Both parties complied with this order until a final judgment for dissolution of their thirty-three-year marriage was entered thirteen years later.⁵

Throughout the marriage, Elaine had abandoned her own education and assisted her husband in achieving his goal of becoming a successful medical doctor.⁶ Once John began his own medical

1. *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980) (pronounced Can-ak' -a-ris).

2. *Id.*

3. *Id.*

4. *Id.* at 1199.

5. *Id.*

6. *Canakaris v. Canakaris*, 356 So. 2d 858, 861 (Fla. 1st DCA 1978) (McCord, C.J., dissenting).

practice, Elaine worked in his office as a receptionist, performed a variety of tasks in his private hospital, and entertained to further his career. Over the years, John's financial status improved dramatically. As of December 31, 1975, his net worth exceeded \$3,700,000,⁷ and his annual income exceeded \$130,000.⁸ Elaine's assets on the same date, however, totaled less than \$300,000, the majority of which was her joint holding of hospital realty. Her only independent income, approximately \$1,000 annually, derived from a \$15,000 inheritance. Throughout the entire marriage, John was virtually her sole source of support.⁹

During the period of separate maintenance, between 1963 and 1976, Elaine remained in the jointly owned marital home valued at \$75,000. John, on the other hand, acquired another residence on 80 acres of land valued at \$430,000.¹⁰ The trial court granted a dissolution of marriage in December of 1976 and awarded Elaine lump sum alimony consisting of \$50,000 in cash, and John's interest in their jointly owned home. The court also awarded Elaine \$500 per week in permanent periodic alimony, attorney's fees, and allowed her to keep her undivided half interest in the Bunnell General Hospital real estate.¹¹

The District Court of Appeal, First District, reversed the lump sum award to Elaine of John's interest in the marital home. Citing *Cann v. Cann*,¹² the court asserted that the required special equity of the wife in the home was not present.¹³ The court also found the evidence of the wife's needs insufficient to warrant permanent periodic alimony of \$500 per week, and remanded the case to the trial court to consider the evidence on the needs of the wife.¹⁴ Finally, the court concluded that the award of attorney's fees was improper, because the wife had the ability to pay for her attorney without assistance.¹⁵ On certiorari review, the Supreme Court of Florida *held, reversed*: (1) The doctrine of special equity previously used to justify lump sum alimony awards is a misnomer and

7. *Id.*

8. 382 So. 2d at 1199.

9. *Id.*

10. *Id.*

11. *Id.* at 1199-200.

12. 334 So. 2d 325 (Fla. 1st DCA 1976). "A further element of lump sum alimony is that it be awarded only where special equities require it or make it advisable." *Id.* at 328 (citation omitted).

13. 356 So. 2d at 859-60.

14. *Id.* at 860.

15. *Id.* at 861.

should be used only in analyzing vested property interests; lump sum awards should be guided by all circumstances relevant to ensure equity and justice in the distribution of marital property. (2) Permanent periodic alimony that is not arbitrary or unreasonable in light of the circumstances is not an abuse of discretion and should not be disturbed on review. (3) The inability of a spouse to pay is not a necessary condition for requiring the other spouse to pay attorney's fees. A court may properly award attorney's fees to avoid inequitable diminution of the fiscal sums granted. *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).

I. APPELLATE REVIEW

Traditionally, trial courts have awarded alimony on the basis of the needs of the wife, the ability of the husband to pay,¹⁶ and the standard of living enjoyed by the wife while married.¹⁷ Case law¹⁸ and section 61.08(2) of the Florida Statutes,¹⁹ however, have expanded these criteria to include the length of marriage, the number of children, the health of the parties, the wife's contribution to the marriage and to the husband's career, the conduct of the parties during the marriage, and the avoidance of a dramatic change in financial status. Given these criteria, and the statutory charge that the court must consider any factor necessary to do equity and justice,²⁰ the question raised is, What standards may the appellate court apply to review the broad discretion given the trial court to

16. The husband's ability to pay has been determined by his net income and capital assets. *Firestone v. Firestone*, 263 So. 2d 223, 226 (Fla. 1972).

17. *McAllister v. McAllister*, 345 So. 2d 352 (Fla. 4th DCA 1977), *cert. denied*, 357 So. 2d 186 (Fla. 1978).

18. *See id.* at 354 n.2.

19. FLA. STAT. § 61.08(2) (1979) provides:

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

(a) The standard of living established during the marriage.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of both parties.

(d) The financial resources of each party.

(e) Where applicable, the time necessary for either party to acquire sufficient education or training to enable him or her to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education and career building of the other party.

The court may consider any other factor necessary to do equity and justice between the parties.

20. *Id.*

determine and fashion appropriate alimony relief?²¹

In *Bosem v. Bosem*,²² the Supreme Court of Florida, without establishing a definitive standard for appellate review, quashed a district court decision that the trial judge had abused his discretion by awarding lump sum and substantial periodic alimony. Justice Adkins, writing for the court, asserted that the trial judge had wide discretion as the trier of fact to decide what is equitable for the parties, and had not abused this discretion on the basis of the evidence.²³

In subsequent cases,²⁴ the supreme court again stated that the award of alimony is within the discretion of the trial court and could not be disturbed unless there was no supporting evidence, or discretion was abused. In each of these cases, the supreme court held that the district courts had exceeded the proper limits of appellate review by substituting their judgment for that of the trial court.²⁵ Although abuse of discretion had been the firmly established standard of review,²⁶ appellate courts have, on occasion, vacated alimony awards when they differed with the trial court on the propriety of the awards.²⁷ In *Rosenberg v. Rosenberg*,²⁸ the District Court of Appeal, Third District, held that the record did not support an award of \$300 per month for permanent periodic alimony. In a well-reasoned dissent, adopted by the supreme court on certiorari review, Judge Hubbart asserted that "[t]he alimony award herein is well within the realm of reasonable justification and the only way that it could be reversed is by substituting our judgment for that of the trial court in re-evaluating and weighing the testimony and evidence in this cause."²⁹

21. In *Canakaris*, the supreme court defined judicial discretion as: "The power exercised by courts to determine questions to which no strict rule of law is applicable but which, from their nature, and the circumstances of the case, are controlled by the personal judgment of the court." 382 So. 2d at 1202 (quoting 1 *BOUVIER'S LAW DICTIONARY AND CONCISE ENCYCLOPEDIA* 884 (8th ed. 1914)).

22. 279 So. 2d 864 (Fla. 1973).

23. *Id.* at 864.

24. *Herzog v. Herzog*, 346 So. 2d 56 (Fla. 1977); *Sisson v. Sisson*, 336 So. 2d 1129 (Fla. 1976); *Shaw v. Shaw*, 334 So. 2d 13 (Fla. 1976).

25. *Herzog v. Herzog*, 346 So. 2d at 58; *Sisson v. Sisson*, 336 So. 2d at 1130; *Shaw v. Shaw*, 334 So. 2d at 16.

26. *E.g.*, *Hall v. Hall*, 363 So. 2d 137 (Fla. 2d DCA 1978), *cert. denied*, 370 So. 2d 459 (Fla. 1979); *Burnett v. Burnett*, 197 So. 2d 854 (Fla. 1st DCA 1967); *Klaber v. Klaber*, 133 So. 2d 98 (Fla. 2d DCA 1961). See FLA. STAT. § 61.08 (1979).

27. *Shaw v. Shaw*, 334 So. 2d 13 (Fla. 1976); *see, e.g., In re Marriage of Stevens*, 327 So. 2d 851 (Fla. 4th DCA 1976).

28. 352 So. 2d 867 (Fla. 3d DCA 1977), *rev'd*, 371 So. 2d 672 (Fla. 1979).

29. 352 So. 2d at 869 (Hubbart, J., dissenting).

The First District decision in *Canakar* reflected the reasoning of the *Rosenberg* majority when it stated that the record did not show that the wife needed \$500 per week in permanent periodic alimony.³⁰ On review, the supreme court clarified the discretionary nature of the trial court's decision, emphasizing that no rule of law was applicable; instead, the trial judge has broad discretion to do equity between the parties. The trial court's decision could be overturned only if it had abused its discretion.³¹ Recognizing the need to establish a test for reviewing the discretionary power of a trial judge, the supreme court stated that:

Discretion, in this sense, is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.³²

With this "reasonable man test" the court reemphasized the discretion vested in the trial court and provided a means by which the appellate court could better gauge abuse of this discretion. The test provided in *Canakar* requires that the appellate court affirm an alimony award if reasonable men could differ on its propriety. Rather than overturning an award because of a vague notion of abuse of discretion, the appellate court must defer to the trial court, which hears the facts and fashions its award on broad equitable considerations. This "reasonable man test," therefore, adds needed clarity and emphasis to already established law.

II. ATTORNEY'S FEES

The purpose of awarding attorney's fees in litigation on the dissolution of marriage is to ensure that both parties will have similar ability to secure competent legal counsel.³³ To this end, courts will consider the financial resources of both parties in determining whether a party is entitled to attorney's fees.³⁴ The question before

30. 356 So. 2d at 860.

31. 382 So. 2d at 1202-03.

32. *Id.* at 1203.

33. *Cummings v. Cummings*, 330 So. 2d 134 (Fla. 1976); *Mertz v. Mertz*, 287 So. 2d 69 (Fla. 2d DCA 1973).

34. *See, e.g., Droubie v. Droubie*, 374 So. 2d 1331 (Fla. 2d DCA 1980); *Robinson v. Robinson*, 336 So. 2d 1210 (Fla. 1st DCA 1979). FLA. STAT. § 61.16 (1979) provides: "The court may from time to time, after considering the financial resources of both parties, order

the supreme court in *Canakaris* was whether a spouse who could pay for counsel, but only by liquidating resources or using a much greater percentage of assets than the opposing spouse would have to use, had a similar ability to secure counsel.

If the requesting spouse is completely unable to pay for counsel or has very limited financial resources, and the other spouse is in a better financial position and can afford the fees, courts will generally award attorney's fees.³⁵ But if *both* spouses have substantial assets, as in *Canakaris*,³⁶ the Florida District Courts of Appeal have not reasoned uniformly in determining entitlement to attorney's fees. Some courts have focused primarily on the ability of the requesting party to pay the fees,³⁷ while others have considered the relative financial positions of both spouses.³⁸

The Second District has focused upon the relative financial resources of the parties in determining whether a spouse is entitled to attorney's fees.³⁹ In *Jassy v. Jassy*,⁴⁰ the court held that when the wife had substantial assets, but would have to liquidate these assets prematurely, the trial court had not abused its discretion by ordering the husband to pay \$2,500 in attorney's fees. The Second District has also held that it is not an abuse of discretion to require the husband to pay the wife's attorney's fees when he is able to do so and such fees would deplete the wife's meager savings.⁴¹

The Third District also considers the relative ability of the parties to pay attorney's fees and will award fees even though the requesting party has substantial assets. In *Pfohl v. Pfohl*,⁴² the court affirmed the trial court's award of \$30,000 in attorney's fees

a party to pay a reasonable amount for attorney's fees"

35. See, e.g., *Mahoney v. Mahoney*, 380 So. 2d 497 (Fla. 2d DCA 1980); *Tiffany v. Tiffany*, 305 So. 2d 798 (Fla. 4th DCA 1975).

36. The husband's admitted net worth was \$3,749,930, and his annual income ranged from \$130,000 to \$147,000 during the five years prior to the dissolution of the marriage. The wife's annual income during this period was approximately \$1,000. Her net worth prior to dissolution, however, totalled \$292,000. 382 So. 2d at 1199.

37. See notes 39-44 and accompanying text *infra*.

38. See notes 45-48 and accompanying text *infra*.

39. *Droubie v. Droubie*, 379 So. 2d 1331 (Fla. 2d DCA 1980) (disparity in parties' relative financial position justified award of attorney's fees); *Gray v. Gray*, 362 So. 2d 294 (Fla. 2d DCA 1978).

40. 347 So. 2d 478 (Fla. 2d DCA 1977). In upholding the award of attorney's fees to the wife, the court characterized the award as an attempt by the trial judge to equalize the ability of the wife to secure representation with that of the husband. *Id.* at 480-82.

41. *Suarez v. Suarez*, 373 So. 2d 716 (Fla. 2d DCA 1979).

42. 345 So. 2d 371 (Fla. 3d DCA 1977). The court granted the husband attorney's fees, although he had a net worth of \$200,000 and was awarded lump sum and rehabilitative alimony totalling \$120,000, when the wife's net worth totalled \$4,250,000. *Id.* at 379.

to the husband, stating that the husband's possession of nonliquid, non-income-producing assets did not preclude his need for financial assistance to hire competent counsel. And in *Creel v. Creel*,⁴³ the district court affirmed an award of attorney's fees to a wife who had substantial assets, because those assets were "not . . . readily accessible financial sources for payment of attorneys fees."⁴⁴

The First District, on the other hand, has focused more on the ability of the requesting party to pay attorney's fees than on the relative financial positions of the parties. In *Patterson v. Patterson*,⁴⁵ the court declared that the requesting party must prove financial inability, though not destitution, to be entitled to an award of attorney's fees.⁴⁶ The First District has also held, when both parties had substantial assets, that it is improper to award attorney's fees to a wife if she is able to pay for counsel.⁴⁷ And, in the recent case of *Robinson v. Robinson*,⁴⁸ the court again stated that when the requesting party can pay for legal services, it is improper to require the other party to do so.

43. 378 So. 2d 1251 (Fla. 3d DCA 1979).

44. *Id.* at 1252. The court stated that although the wife received substantial assets, \$15,000 lump sum alimony, and the husband's interest in the marital home, her position was not similar to that of her husband's for the purpose of making attorney's fee payments. Her assets were not readily accessible; in addition, her husband was continuously earning income, but she had not done so for several years. *Id.* at 1252-53.

45. 348 So. 2d 592 (Fla. 1st DCA 1977).

46. *Id.* at 596. The First District reversed the award of attorney's fees to the wife because there was no testimony at trial concerning her inability to pay for counsel. *See also Johnson v. Johnson*, 346 So. 2d 591, 593 (Fla. 1st DCA 1977) (Boyer, C.J., concurring) (requesting party must prove financial inability to pay for legal services and ability of the other party to pay).

47. *Butts v. Butts*, 362 So. 2d 349 (Fla. 1st DCA 1978) (per curiam). The court distinguished its previous decision in *Valparaiso Bank & Trust Co. v. Sims*, 343 So. 2d 967 (Fla. 1st DCA 1977), which charged the wife's attorney's fees to the deceased husband's estate, despite the wife's financial parity. In *Valparaiso*, the husband's estimated wealth was \$10,000,000. Before the husband's death, the parties reached an agreement whereby the wife received a half interest in her husband's assets, which were to remain in trust until ten years after his death. The court commented that an award of attorney's fees is usually inappropriate when both parties have substantially equal ability to pay for counsel. Here, however, three unique factors supported the trial court's decision to award fees: (1) it appeared that the objective of the trust arrangement, which was to divide equally the properties acquired during the marriage, was not fully attained; (2) it was not clear that the wife had the ability to pay for counsel because the trust properties were not liquid assets; and (3) attorney's fees were more readily awarded to divorced wives during the period in which the legal services were rendered and the judgment entered than when the fee issue finally came before the court. *Id.* at 969-71.

48. 366 So. 2d 1210 (Fla. 1st DCA 1979).

In *Canakaris*,⁴⁹ the First District, citing decisions in *Patterson* and *Johnson v. Johnson*⁵⁰ for the proposition that the party requesting a fee award must prove both his or her inability to pay and the financial ability of the other party to pay, reversed the trial court's award of attorney's fees to the wife. On review, the supreme court clarified the issue and held, to the contrary, that complete inability to pay is not necessary for a spouse to be entitled to an award of attorney's fees. When the husband has greater resources and the fees would inequitably diminish the wife's assets, it is proper to require the husband to pay attorney's fees.⁵¹ Thus, even when both parties have substantial assets, the court must refer to the relative financial position of the parties to determine whether they have "similar ability" to secure legal counsel.

This decision is consistent with the supreme court's overall emphasis on achieving equity between the parties.⁵² When awarding lump sum and periodic alimony, courts must look beyond a party's need to other equitable considerations. Likewise, when determining if an award of attorney's fees is proper, even when the requesting spouse has substantial assets, the courts must look beyond the bare need of the requesting party and assess the relative financial situations of both parties in the context of the property and support award as a whole. The court will not permit a denial of attorney's fees to vitiate the objective of an otherwise equitable distribution of property.

III. LUMP SUM ALIMONY

Lump sum alimony is a payment of a definite sum by one spouse to the other, which may be paid all at once or in installments over a period of time.⁵³ It may consist of either money or property⁵⁴ and, upon final judgment, becomes a vested right.⁵⁵

In Florida, the circumstances that justify an award of lump sum alimony have been unclear and contradictory. Much of this

49. 356 So. 2d 858.

50. See notes 45-46 *supra*.

51. 382 So. 2d at 1204-05.

52. "[I]t is important that appellate courts avoid establishing inflexible rules that make the achievement of equity between the parties difficult, if not impossible." *Id.* at 1200.

53. *Morris v. Morris*, 272 So. 2d 202, 203 (Fla. 2d DCA 1973).

54. See *Halberstadt v. Halberstadt*, 72 So. 2d 810 (Fla. 1954); *Cann v. Cann*, 334 So. 2d 325, 328 (Fla. 1st DCA 1976).

55. *Benson v. Benson*, 369 So. 2d 99, 100-01 (Fla. 4th DCA 1979). Periodic alimony, unlike lump sum, is modifiable and is not a vested property right. See *Canakaris v. Canakaris*, 382 So. 2d 1201-02 (Fla. 1980).

confusion stems from the court's use of the term "special equity" to refer both to the equities justifying lump sum alimony awards and to the vested interest that a spouse may acquire in property accumulated during the course of the marriage.⁵⁶ In the latter usage, a spouse may claim a vested interest in property held by the other spouse at dissolution if he or she has made a contribution of funds or services, beyond the ordinary marital duties, that materially contributed to the acquisition of the property.⁵⁷ When used in this sense, special equity is a vested right, not alimony.⁵⁸ The supreme court introduced the concept of special equities in regard to lump sum alimony in the case of *Yandell v. Yandell*.⁵⁹ The court stated that a lump sum alimony award was justified if special equities existed and if the husband could make payment in gross without endangering his economic status. The court did not offer an exhaustive definition of these special equities, but indicated that they included situations in which the wife brought property to the marriage, or contributed to its acquisition.⁶⁰ In *Calligarich v. Calligarich*,⁶¹ the District Court of Appeal, Fourth District, expressed an often-cited basis⁶² for determining the suitability of lump sum awards. In that case, the court stated that a lump sum award is justified only when it serves a reasonable purpose, such as rehabilitation, or when the length of the marriage or the financial situation of the parties makes the award advantageous to both. The wife's need and the husband's ability to pay are determinative.⁶³

In 1971, the same year *Calligarich* was decided, the Florida Legislature revised the law on dissolution of marriage. Revised section 61.08 of the Florida Statutes provides that alimony may be rehabilitative or permanent, paid periodically or in lump sum, and

56. *Meridith v. Meridith*, 352 So. 2d 72, 73 (Fla. 4th DCA 1977) (Downey, J., dissenting).

57. *Ball v. Ball*, 335 So. 2d 5, 7 (Fla. 1976). When spouses held property in a tenancy by the entirety during the marriage, the court would divide it equally between them at dissolution unless one spouse established a special equity. In such a case, the court would award the property to that spouse, "as if the tenancy were created solely for survivorship purposes during coverture, in the absence of contradictory evidence that a gift was intended." *Id.*

58. *Eakin v. Eakin*, 99 So. 2d 854, 855 (Fla. 1958).

59. 39 So. 2d 554 (Fla. 1949).

60. *Id.* at 556.

61. 256 So. 2d 60 (Fla. 4th DCA 1971).

62. The District Court of Appeal, First District, has repeatedly referred to the rationale for lump sum alimony awards expressed in *Calligarich*. *E.g.*, *Baggett v. Baggett*, 347 So. 2d 1063 (Fla. 1st DCA 1977); *Cann v. Cann*, 334 So. 2d 325, 328 (Fla. 1st DCA 1976); *Jones v. Jones*, 330 So. 2d 536, 538 (Fla. 1st DCA 1976).

63. 256 So. 2d at 61.

that *any factor* necessary to do equity and justice between the parties may be considered.⁶⁴ Despite this broad language, the Fourth District continued to reiterate the *Yandell* special equity requirements for a lump sum alimony award.⁶⁵

The District Court of Appeal, First District, on the other hand, established a broader basis for lump sum alimony in *Brown v. Brown*.⁶⁶ Chief Judge Rawls, writing for the court, asserted that the trial court could use lump sum awards to adjust the material wealth of the parties at the time of dissolution of the marriage.⁶⁷ The court noted that alimony payments are based on more than the support *needs* of one spouse and the ability of the other to pay; indeed, "the contributions of each party to the accumulation of material assets must be considered in dissolving the marital partnership."⁶⁸ Chief Judge Rawls concluded that a wife's contribution to the marital partnership as a homemaker and mother should be compensated by a lump sum alimony award.⁶⁹ Thus, under *Brown*,

64. FLA. STAT. § 61.08 (1979) provides:

61.08 Alimony.—

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of a spouse and the circumstances thereof in determining whether alimony shall be awarded to such spouse and the amount of alimony, if any, to be awarded.

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

(a) The standard of living established during the marriage.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of both parties.

(d) The financial resources of each party.

(e) Where applicable, the time necessary for either party to acquire sufficient education or training to enable him or her to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education and career building of the other party.

The court may consider any other factor necessary to do equity and justice between the parties.

65. *White v. White*, 314 So. 2d 187 (Fla. 4th DCA 1975). The court awarded the wife, as lump sum alimony, the marital residence, mortgage payments, and 75 acres of other property. Both properties were jointly owned as an estate by the entireties. The Fourth District modified the judgment, finding that because the wife possessed a separate estate from which she derived ample income, she had failed to show a need for alimony. The court also stated that there was no showing that she had a *special equity* in the property and that neither party had properly requested the court to partition the property. *Id.* at 188-89.

66. 300 So. 2d 719 (Fla. 1st DCA 1974).

67. *Id.* at 725-26.

68. *Id.* at 726.

69. *Id.*

marital property not jointly held may be divided for a lump sum award based on the wife's nonmonetary contribution to the marriage as a whole, rather than on a showing of special equity and need alone. The Florida Legislature, in an apparent approval of the reasoning in *Brown*,⁷⁰ amended section 61.08 of the Florida Statutes to include these criteria in determining the proper award of alimony.⁷¹

In *Goldman v. Goldman*,⁷² Chief Judge Rawls followed the precedent he set in *Brown* and declared that the trial court had abused its discretion by denying the wife lump sum alimony to compensate her for her contribution to a nineteen-year marriage. Noting that the husband was "entering his most productive years"⁷³ with assets double those of the wife, Chief Judge Rawls asserted that the wife, who had devoted her time during the marriage to child-rearing and homemaking rather than to acquiring material goods, had been short-changed. Subsequent cases in the First District⁷⁴ and the Fourth District⁷⁵ have explicitly followed *Brown*. Other cases, although not citing *Brown*, have recognized that special equity is not necessary to justify a grant of lump sum alimony.⁷⁶

One month before⁷⁷ and one month after⁷⁸ the decision in *Goldman*, other panels of the First District issued decisions that were inconsistent with Judge Rawls' rationale, harkening back to *Yandell's* special equity requirements and *Calligarich's* requirement that the lump sum award be rehabilitative or advantageous to both parties. Quoting *Calligarich*, Judge Boyer in *Cann v. Cann* stated, "The wife's need and the husband's ability are still the cor-

70. Lee & Altfater, *Family Law, 1978 Developments in Florida Law*, 33 U. MIAMI L. REV. 1069, 1074 n.29 (1979).

71. 1978 Fla. Laws ch. 78-339 (codified at FLA. STAT. § 61.08(2) (1979)). The statute is quoted in full at note 64 *supra*.

72. 333 So. 2d 120 (Fla. 1st DCA 1976).

73. *Id.* at 121.

74. *Ruse v. Ruse*, 351 So. 2d 81 (Fla. 1st DCA 1977) (per curiam).

75. *Johnston v. Johnston*, 349 So. 2d 682 (Fla. 4th DCA 1977) (per curiam).

76. *E.g.*, *Keller v. Keller*, 302 So. 2d 795, 796 (Fla. 3d DCA 1974).

77. *Jones v. Jones*, 330 So. 2d 536 (Fla. 1st DCA 1976). Judge Mills, writing for the court, asserted that the award to the wife of the husband's interest in the marital home was unwarranted absent special equities or when the award was not rehabilitative or advantageous to both parties. *Id.* at 538.

78. *Cann v. Cann*, 334 So. 2d 325 (Fla. 1st DCA 1976). Judge Boyer, who dissented in *Brown*, stated that lump sum alimony is justified when it serves a reasonable purpose such as rehabilitation or where it is advantageous to both parties and special equities require or make it advisable. *Id.* at 328.

rect equation to follow."⁷⁹ Subsequent cases have followed this rationale.⁸⁰

In 1976, the Supreme Court of Florida addressed the issue of lump sum alimony in *Cummings v. Cummings*.⁸¹ The court held that in light of the equal incomes of the parties and the absence of a positive showing of need by the wife, the husband's pecuniary ability to pay was not sufficient to justify an award of lump sum alimony. This reasoning clearly fits the *Calligarich* line of cases requiring need, but the facts of this case—equal incomes and the absence of a large disparity in the financial position of the parties—also make the decision compatible with the *Brown* policy of equitable division of property.

The supreme court once again addressed the propriety of lump sum awards in the recent case of *Meridith v. Meridith*.⁸² Adopting the dissenting opinion of the Fourth District, the supreme court held that there had been no showing of necessity that would justify awarding the wife the husband's only asset: his undivided one-half interest in the marital home.⁸³ Once again, the court focused on the positive duty of the wife to show necessity when the facts demonstrate that the property is already divided equitably. The case, which uses the language of need, is not inconsistent with *Brown*.

In *Canakaris*,⁸⁴ the First District confronted a case in which there was a long-term marriage, a widely disparate financial situation, and a wife who had contributed to the marriage as a helpmate and homemaker. Judge Boyer, writing for the court, cited *Calligarich*, *Jones*, and *Cann*, and despite distinguishing the special equities of vested property interests from those involved in lump sum awards, nevertheless denied Elaine Canakaris the marital home as lump sum alimony because the record revealed no special equity in the marital home.⁸⁵ On certiorari review, the supreme court had a clear-cut case with which to clarify the special equities doctrine,

79. *Id.* at 328.

80. *E.g.*, *Baggett v. Baggett*, 347 So. 2d 1063 (Fla. 1st DCA 1977).

81. 330 So. 2d 134 (Fla. 1976).

82. 366 So. 2d 425 (Fla. 1978).

83. 352 So. 2d 72, 73 (Fla. 4th DCA 1977). The husband was a well drilling supervisor with a net income of \$179.35 per week. His only asset was an undivided one-half interest in the marital home and furniture worth approximately \$15,500. The wife received a salary of \$70 per week, the use of a fully maintained and insured automobile, and \$2,000 per year in dividends from a corporation that managed the advertising for her father's automobile dealership. *Id.* at 72.

84. 356 So. 2d 858 (Fla. 1st DCA 1978).

85. *Id.* at 860.

and an opportunity to adopt either the *Brown* or the *Calligarich* rationale.⁸⁶

The supreme court reversed the First District and upheld the trial judge's award of lump sum alimony, in the form of the marital home, to Elaine Canakaris.⁸⁷ The court based the award of lump sum alimony (1) on distinguishing the special equities doctrine as it applied to vested property interests and negating its application to lump sum alimony, and (2) on adopting the *Brown* rationale, which defines lump sum alimony as a means for equitable distribution of marital property, provided that alimony is justified and the paying spouse has the ability to make a payment in gross.⁸⁸

In distinguishing the special equities doctrine, the supreme court examined the language of the *Yandell* decision, which speaks of contribution to the marriage as a whole, not necessarily of a specific property, and does not mention services that are beyond the normal marital duties.⁸⁹ Further, the examples listed by the court are not exhaustive, but merely illustrative of equities that might justify a lump sum award. The *Yandell* decision, as the supreme court asserted, does not require specific special equities, but gives the trial judge broad discretion to achieve equity and justice for the parties.⁹⁰ The trial court, therefore, should not use the term

86. *Calligarich* views "need" as an essential basis for a lump sum award, while under *Brown*, lump sum alimony can be a means for redistribution of marital property to compensate a spouse for contributions to the marital partnership. See notes 55-66 and accompanying text *supra*.

87. 382 So. 2d at 1204.

88. *Id.* at 1200-01, 1203-04.

89. 39 So. 2d at 556. See *Eakin v. Eakin*, 99 So. 2d 854 (Fla. 1958). In *Yandell* the court stated that:

[A] lump award should be made only in those instances where some special equities might require it or make it advisable; for instance, where the wife may have brought to the marriage, or assisted her husband in accumulating, property and where it is clearly established that the husband has assets sufficient in amount to pay the gross award.

39 So. 2d at 556. This standard is quite different from the vested interest requirement imposed by some courts that the claiming spouse show a contribution of funds or services beyond normal marital duties, which materially contributed to the acquisition of the claimed property. 99 So. 2d 854, 855.

90. The supreme court also asserted that *Yandell* "does not limit the use of lump sum alimony to instances of support or vested property interests." 382 So. 2d at 1201. Although this conclusion may follow from the statement in *Yandell* that the trial court may award lump sum alimony when it is "equitable and just," 39 So. 2d at 556, it is misleading to say the court does not limit lump sum awards to support and vested property interests. Although support was and still is a reason for a lump sum award, a vested property interest has not been, and is not now, a justification for alimony. *Eakin v. Eakin*, 99 So. 2d 854 (Fla. 1958).

"special equities" when considering lump sum alimony.⁹¹ Henceforth, in lump sum as in other alimony, courts must consider all relevant circumstances to ensure equity between the parties⁹² and may make an award in gross if those circumstances justify it.

The elimination of special equities as a basis for lump sum alimony was a needed clarification of Florida law. Despite the oft-repeated caveat that one should not confuse special equities in lump sum alimony with special equities creating a vested property interest,⁹³ the identical language had misled courts.⁹⁴ The supreme court's assertion that the special equities required by *Yandell* for lump sum alimony referred to the "general equities of the case"⁹⁵ and not special equities of property contribution was both a logical conclusion and one suggested by the language of the *Yandell* decision itself.⁹⁶ If the special equities were the same for a vested interest and for a lump sum award, the alimony award would be unnecessary, since the claiming spouse would already have a vested right to the property recognized by law.

A question remains, however, whether *Canakaris* also means that need is no longer an essential basis for the granting of a lump sum award. Generally, alimony has been grounded on the wife's needs and adjusted by other considerations.⁹⁷ In *Cummings*⁹⁸ and *Meridith*,⁹⁹ however, the supreme court required a showing of need for a lump sum award. Although the *Canakaris* court does not explicitly recede from that position, the decision raises some doubt¹⁰⁰ about whether the court intends to eliminate need as an essential

91. 382 So. 2d at 1200-01.

92. See note 64 *supra*.

93. *E.g.*, *Cann v. Cann*, 334 So. 2d at 328.

94. *E.g.*, *Canakaris v. Canakaris*, 356 So. 2d at 860.

95. 382 So. 2d at 1201.

96. The *Yandell* decision had cautioned that

[t]here may be other situations which might justify or possibly require a lump sum award, but it should never be made unless the husband is in a financial position to make payment of such gross award without endangering or actually impairing his economic status. A lump sum allowance of permanent alimony is not "fit, equitable and just" unless the husband is in a position to make payment of the sum so granted over and above the requirements attendant upon the maintenance of his business or employment, or the preservation of his professional activities.

39 So. 2d at 556.

97. See notes 16-20 and accompanying text *supra*.

98. 330 So. 2d 134.

99. 366 So. 2d 425.

100. *Costich v. Costich*, 383 So. 2d 1141 (Fla. 4th DCA 1980). This case, decided after *Canakaris*, interprets *Canakaris* as continuing to require a showing of need as well as justification and ability to pay.

element of the lump sum formula.

An examination of the *Meridith* and *Cummings* cases in light of the language of the *Canakaris* opinion indicates, however, that a lump sum award may now go beyond need and redistribute property to give a spouse equitable compensation for contributions to the marriage.¹⁰¹ The facts of the *Cummings* and *Meridith* cases indicate that the marital property was already equitably distributed, and, consequently, any award would have had to rest on need. The absence of need mandated the denial of lump sum alimony.¹⁰² These cases, therefore, are not inconsistent with the *Brown* rationale;¹⁰³ although discussing them may have added clarity to the *Canakaris* opinion, the court had no reason to recede explicitly from their holdings. The court could drop need as a requirement for lump sum alimony when spouses have widely disparate financial resources, without conflicting with these previous decisions. Indeed, the court's assertion that *Yandell* does not limit lump sum awards to instances of support¹⁰⁴ and the court's reliance on *Brown*¹⁰⁵ clearly indicate this liberal position abrogating the requirement of need. *Canakaris* most likely means that both special equities and need are no longer essential to lump sum alimony awards.¹⁰⁶

A serious question raised by the more liberal reading of *Canakaris* is whether the court may properly, in its discretion, redistribute marital property when ownership of property located in Florida is determined by record title¹⁰⁷ and when no specific statute calls for equitable distribution of community property.¹⁰⁸ One may answer this question affirmatively by reading section 61.08(2)(f) of the Florida Statutes¹⁰⁹ as a legislative mandate to adjust marital property equitably. The statute provides that in determining the proper award, the courts shall consider, but not limit themselves to, the contribution each party makes to the marriage. Also, the courts may consider any factor necessary to do justice

101. 382 So. 2d at 1200-01.

102. See notes 81-83 and accompanying text *supra*.

103. See notes 66-71 and accompanying text *supra*.

104. 382 So. 2d at 1201.

105. *Id.* at 1204.

106. *MacDonald v. MacDonald*, 382 So. 2d 50 (Fla. 2d DCA 1980). Decided after *Canakaris*, this case asserts that the court clearly tempered the requirement of a positive showing of necessity.

107. See note 57 *supra*.

108. See FLA. STAT. § 689.15 (1979).

109. (1979); see note 64 *supra*.

between the parties.¹¹⁰ Alimony may be periodic or in lump sum or both,¹¹¹ and lump sum alimony may be in property.¹¹² Therefore, if a spouse has made a contribution to the marriage, under section 61.08(2)(f) the spouse may be compensated beyond need by a lump sum award of property. Equitable distribution is apparently not legislatively mandated in all cases, but it is legislatively permitted by a lump sum award when the court thinks it justified. The relatively unguided and discretionary nature of this equitable distribution of property by lump sum award makes this kind of "alimony" extremely unpredictable at present. Further clarification and definition will be needed in this area.

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110. *Id.*

111. *Id.*

112. *Halberstadt v. Halberstadt*, 72 So. 2d 810 (Fla. 1954).