

LEXSEE 751 SO.2D 103

**STEVE THOMSON, Petitioner, v. LORI THOMSON, Respondent.**

**CASE NO. 99-2585**

**COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT**

*751 So. 2d 103; 1999 Fla. App. LEXIS 17276; 25 Fla. L. Weekly D 72*

**December 29, 1999, Opinion Filed**

**SUBSEQUENT HISTORY:** [\*1] Released for Publication January 14, 2000.

**PRIOR HISTORY:** Petition for writ of certiorari to the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Mary Lupo, Judge;. L.T. Case No. CD 98-5965 FB.

**DISPOSITION:** Petition denied.

**COUNSEL:** James S. Margulis of Law Offices of Matthew S. Nugent, West Palm Beach, for petitioner.

Rosemarie Guerini of Martin L. Haines, III, Chartered, Lake Park, for respondent.

**JUDGES:** WARNER, C.J. STONE and GROSS, JJ., concur.

**OPINION BY:** WARNER

**OPINION**

WARNER, C.J.

The husband in a marital dissolution case seeks certiorari review of an order dissolving a *lis pendens* as to a parcel of real property of the marriage so that it can be sold to a third party. He claims that he is entitled to this property

under a property settlement agreement and that the wife will now be able to dispose of the property prior to the determination on the merits of his claim in the dissolution action.

The particular piece of property upon which the *lis pendens* was filed is owned by a construction company which was run as a family business by both husband and wife.<sup>1</sup> Unfortunately, the business was having serious financial problems, and the wife desired [\*2] to sell the property to resolve some of these difficulties. The property settlement agreement, which the parties executed a few years prior to the dissolution, provided that the husband would be solely entitled to the property and/or proceeds from the sale of the property. However, as this was marital property, the debts of the marriage, including those of the family business, far exceeded the value of the property and all the assets of the marriage.

1 A *lis pendens* against the property filed by the husband in a separate lawsuit against the corporation itself was also dissolved by the court. The order dissolving that *lis pendens* does not appear to have been appealed. Instead, the husband filed the *lis pendens* in the dissolution proceedings.

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As the husband's interest is not founded upon a duly recorded instrument, *section 48.23(3), Florida Statutes* (1997) provides that "the court may control and discharge the notice of lis pendens as the court may grant and dissolve injunctions. [\*3] " After a full hearing on the issues, the trial court entered an order dissolving the lis pendens so that the wife

could sell the property and attempt to save the business. The trial court gave cogent reasons for its decision. The husband has not shown any departure from the essential requirements of law or any abuse of discretion. We therefore deny the petition.

STONE and GROSS, JJ., concur.