

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF
FLORIDA, FIFTH DISTRICT

KATHY REAKES,

CASE NO. 5D01-1693

Petitioner,

v.

CAPE PUBLICATIONS, INC.,
etc., et al.,

Respondents.

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

Notice is given that Kathy Reakes, Petitioner, invokes the discretionary jurisdiction of the supreme court to review the decision of this court rendered on January 31, 2003. The decision expressly and directly conflicts with a decision of the supreme court on the same question of law.

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CERTIFICATE OF SERVICE

I certify that a copy of this Notice to Invoke Discretionary Jurisdiction has been provided by U.S. mail on April _____, 2003, to

IN THE SUPREME COURT OF FLORIDA

KATHY REAKES,

CASE NO. 5D01-1693

Petitioner,

v.

CAPE PUBLICATIONS, INC.,
etc., et al.,

Respondents.

PETITIONER’S JURISDICTIONAL BRIEF

On Review from the District Court

Of Appeal, Fifth District

State of Florida

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STATEMENT OF THE CASE AND FACTS

A jury found that the respondents, Florida Today, Melinda Meers and Phil Currie, were guilty of defamation against the petitioner. The jury also found that the respondent, Florida Today, was guilty of conversion of the personal property of the petitioner.

On January 21, 2003, the Fifth District Court of Florida reversed the judgments for defamation against respondents, Florida Today, Melinda Meers and Phil Currie and affirmed the judgment for conversion against respondent, Florida Today, in a 2-1 decision.

Rehearing was denied on March 18, 2003, and petitioner's notice to invoke the discretionary jurisdiction of this court was timely filed on April 16, 2003.

SUMMARY OF THE ARGUMENT

In this case, the district court of appeal held that the petitioner as a matter of law committed a criminal trespass and, therefore, there was no defamation

by the respondents. The decision of the district court cannot be reconciled with the previous decision of this Court in *Fletcher v. Florida Pub. Co.*, 340 So.2d 914 (Fla. 1976), wherein the court found that a reporter's entry into a private residence could not support even a claim of *civil* trespass as *a matter of law*. Thus, the petitioner contends that the decision of the district court conflicts with a previous decision of this Court.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court on the same point of law. Art. V, Section 3(b)(3) Fla.Const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iv). A district court need not explicitly identify a conflicting supreme court decision in its opinion in order to create an express conflict under section 3(b)(3). *See Ford Motor Company v. Kikis*, 401 So.2d 1341 (Fla. 1981).

ARGUMENT

THE LONGSTANDING PRACTICE ACCEPTED BY THE GENERAL PUBLIC OF ALLOWING THE PRESS SOME ACCESS TO A NEWSWORTHY AREA DOES NOT CONSTITUTE A CRIMINAL TRESPASS AS A MATTER OF LAW.

The petitioner submits that the majority failed to apply the only case in Florida—*Fletcher v. Florida Pub. Co.*, 340 So.2d 914 (Fla. 1976)—that is controlling on the facts. *See Ford Motor Company v. Kikis*, 401 So.2d 1341 (Fla. 1981).

As Judge Griffin's dissent notes, five justices of the Florida Supreme

Court adopted the dissent of one district court judge and found that a reporter's entry into the private residence in *Fletcher* could not support even a claim of *civil* trespass as a *matter of law*. See *Fletcher v. Florida Pub. Co.*, 340 So.2d 914 (Fla. 1976). The Florida Supreme Court refused to substitute its opinion for that of the jury.

The jury found as a matter of fact that the defendants defamed the plaintiff when they said that she committed a crime. If one follows the logic of the majority, a jury in a criminal case involving the charge of trespass would never be allowed to determine whether a crime was committed. In this scenario, the court would take testimony about an alleged trespass and make a finding as a matter of law, without considering the decision of the jury, as to whether a trespass had occurred. By analogy, this is what the majority has done in this case. High hurdles were set by the trial court in the form of detailed special verdict forms. The petitioner cleared these hurdles. The judgments for defamation against Meers, Florida Today and Currie should be affirmed.

The *Fletcher* opinion stands for the proposition that the actions taken by Ms. Reakes were a "widespread practice of long standing" "accepted by the general public" to allow the press some access to the scene of a newsworthy area. If the majority's decision is allowed to stand, then longstanding journalistic practices will not be criminal acts. In this case, the petitioner followed the long established policy of respondent, Florida Today, regarding newsgathering and was branded a criminal as a result by the respondents.

This case is one of exceptional importance in the jurisprudence of Florida and the rest of the nation. Critical issues regarding the role of the jury; the ethical role of journalists in their pursuit of their first amendment rights; and the first amendment rights of the public are central in the decision.

The effects of the majority decision have far reaching ramifications and have extraordinary first amendment implications.

Judge Griffin's dissenting opinion is the correct decision pursuant to *Fletcher* and sets forth a reasonable standard for newsgathering and the first amendment rights of journalist and their readers. The judgments for defamation against Meers, Florida Today and Currie should be affirmed.

CONCLUSION

This court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the petitioners' argument.

CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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