

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC04-2024

CLAY CRAIG, ESQUIRE, as
Curator of the Estate of Antonio
R. Coba, Deceased,

Petitioner,

vs.

ROBERT COBA,

Respondent.

RESPONDENT'S AMENDED BRIEF ON JURISDICTION¹

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¹ On November 12, 2004, this Court entered an order striking the respondent's brief on jurisdiction for failure to include a statement of the case and facts. The respondent has included such a statement in his amended brief.

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STATEMENT OF CASE AND FACTS

The statement of the case and facts (*Petition*, 2-6) by the curator, Clay Craig, Esq., goes well beyond the “four corners” of the Third District’s decision. Based upon the decision below that has been made a part of the petition, the property in question passed to Robert Coba according to a recorded deed that the trial court later cancelled in 1996, nine years after the decedent passed away in 1987. *Coba v. Craig*, 881 So. 2d 733 (Fla. 3d DCA 2004). No claim adverse to Robert Coba’s legal title was made before the decedent passed away or before Richard Coba (Robert’s brother) commenced probate proceedings in 1992. *Id.* Based upon these facts the Third District reasonably concluded that Robert Coba’s claim to certain real estate is not subject to the non-claim statute, because “Robert Coba is not making a claim or demand against the decedent’s estate that arose before his death.” *Id.*

SUMMARY OF ARGUMENT

The petition should be denied because the decision below, 881 So. 2d 733, does not directly and expressly conflict with any other reported decision, including, without limitation, this Court’s decision in *May v. Ill. Nat’l Ins. Co.*, 771 So. 2d 1143 (Fla. 2000). The petition seeks review of the result below based upon alleged errors that do not appear on the face of the decision. The petition solicits a form of

record review long ago abolished in this state. The petition also misstates the reasoning in the decision below. The petition deems the question it presents important and decries the decision below, labeling it a “Pandora’s box,” yet the decision arrives here unadorned by any certification. In fact, the decision below is unremarkably predictable, fitting squarely within the body of case law that has construed section 733.710 of the Florida Statutes. Because final appellate jurisdiction is vested in the district courts, the efforts of the curator to pound this case into one of the narrow jurisdictional pigeon-holes created by section three of article five of the constitution should be rejected.

ARGUMENT

The curator has failed to demonstrate that the decision of the Third District falls within the circumscribed class of cases over which this Court may exercise its discretionary jurisdiction. The petition is based solely upon the “expressly and directly conflicts” criterion, Fla. R. App. 9.030(a)(2)(A)(iv), (v), which is not appropriate here.

No jurisdiction under Fla. R. App. 9.030(a)(2)(A)(iv): The petition fails to establish that conflict jurisdiction exists according to the “four corners” of the Third District’s decision. In fact, this failure is highlighted by improper techniques employed throughout curator’s brief on jurisdiction.

First, it is improper for the curator's petition to "search into the 'record proper'" to argue there is a conflict. *Whipple v. State*, 431 So. 2d 1011, 1014 (Fla. 2d DCA 1983)(explaining Art. V, § 3(b)(3), Fla. Const., as amended 1980)(superseding *Foley v. Weaver Drugs*, 177 So. 2d 221 (Fla. 1965)). "The record itself cannot be used to establish jurisdiction." *Martin v. State*, 2002 Fla. LEXIS 1653, *5 (July 15, 2000). "The only facts relevant . . . are those facts that were contained within the four corners of the decisions allegedly in conflict." *Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986).

Second, the curator seeks to "imply" a conflict, something that is impermissible, *Dep't of Health & Rehabilitative Servs. v. Nat'l Adoption Counseling Serv., Inc.*, 498 So. 2d 888, 889 (Fla. 1986), because only the actual language and citations in the opinion can be the basis for claiming a conflict exists. *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980). Instead of explicating the decision, the petition exaggerates and draws overstated conclusions about the meaning and effect of the decision. This is illustrated by the curator's reliance upon crutch-phrases such as "in effect" (*Petition*, p. 1), "in essence" (*id.*, p. 6), "effectively" (*id.*), or "essentially" (*id.*, p. 9). Although it may not be a prerequisite to conflict jurisdiction that a district court actually recognizes the conflict created by its decision, *Ford Motor Co. v. Kikis*, 401 So. 2d 1341, 1342

(Fla. 1981), a petitioner must nonetheless point to specific statements within the “four corners” of the decision that manifest the alleged conflict. *Gandy v. State*, 846 So. 2d 1141, 1144 (Fla. 2003).

Accordingly, conflicts are demonstrated on the face of a decision by a district court’s (1) explicit recognition of conflict, *e.g.*, *Hudson v. State*, 682 So. 2d 657, 658 n.2 (Fla. 3d DCA 1996), *affirmed in* 698 So. 2d 831, 832 (1997); (2) citation to overruled authority, *Jollie v. State*, 405 So. 2d 418 , 420 (Fla. 1981); (3) announcement of a rule of law that contradicts a holding of another state appellate court, *Nielsen v. Sarasota*, 117 So. 2d 731, 734 (Fla. 1960); or (4) obvious misapplication of a rule of law so as to obtain a different result on the same or a controlling set of facts. *E.g.*, *Crossley v. State*, 596 So. 2d 447, 449 (Fla. 1992). Nothing of the sort has been demonstrated in this petition, although it appears the curator is attempting to suggest conflict based upon points (3) or (4) above.

The curator attributes many legal announcements to the *Coba v. Craig* decision that do not appear to have been intended by the Third District and certainly are not found within the “four corners” of its decision, provided that decision is given a fair and balanced reading. For example, the curator states that the Third District has engaged in “judicial legislat[ion]” that “in effect nullified” section 733.710 by “abrogat[ing] this Court’s construction of it.” (*Petition*, p. 1,

9)(citing *May v. Illinois Nat'l Ins. Co.*, 771 So. 2d 1143 (Fla. 2000)). Nothing in the decision below, however, purports to limit, let alone nullify, either section 733.710 or this Court's decision in *May*.²

In *May*, this Court resolved a conflict in the case law about whether section 733.710 could ever be waived or extended by fraud or other inequitable conduct, *id.* at 1154-55, ruling that the two-year deadline in section 733.710, unlike the three-month deadline in section 733.702, could not be extended for any reason. *Id.* at 1156 (citing *Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.*, 673 So.2d 163, 165-67 (Fla. 4th DCA 1996)(emphasis added). Pivotal to the Court's reasoning in *May* was the statute's plain meaning, which bars "any claim or cause of action against the decedent." § 733.710(1).

The holding in *May* was followed in a prior decision of the Third District, *Dobal v. Perez*, 809 So. 2d 78, 79 (Fla. 3d DCA 2002), and the Third District's decision in *Coba v. Craig* accords only further deference to *May* by amplifying its reasoning with an obvious distinction already identified in the case law. In *Coba v. Craig*, the Third District explained that section 733.710 is applicable to claims against the estate that arise before the decedent's death. 881 So. 2d at 733. This is

² Similarly, the curator accuses the court below of "carv[ing] out an exception" that "toll[ed] the three year period from 1987, until such time that the deed was cancelled [in 1996]." (*Petition*, p. 6). The decision does not remotely suggest this.

consistent not only with the plain meaning of section 733.710, but also the reasoning in *May* and other decisions. The Third District ruled, just as have other appellate courts, that the absolute bar of section 733.710 does not apply, unless a claim falls within the statute's plain meaning. *Id.* (citing *Spohr v. Berryman*, 589 So. 2d 225, 228 (Fla. 1991) and decisions of the first district)). *See also In re Estate of Kulow*, 439 So. 2d 280, 282 (Fla. 2d DCA 1983)(section 733.710 inapplicable to claim arising after death or to claim against specific item of property under the "trust" exception), *followed and harmonized in Velzy v. Estate of Miller*, 502 So. 2d 1297, 1300 (Fla. 2d DCA 1987). *See also Meltzer v. Estate of Norris*, 705 So. 2d 957, 968 (Fla. 5th DCA 1998)(also applying that exception).

The curator also insists the result below cannot be reconciled with the result in *May*, and, therefore, that the lower court misapplied the law. But *May* did not explicitly involve the same set of facts that were reported in the decision below, i.e., a claim arising after the decedent's death to a specific item of property. The Third District distinguished that type of claim from the ordinary claim against a decedent or against an estate's general assets that arises before death. "Here, Robert Coba "is not making a claim or demand against the decedent's estate that arose before [his] death" 881 So. 2d at 733. The legislative policy advanced in *May*, viz., to ensure an outside time limit for claims arising before the decedent's

death against assets that indisputably belong to him alone, does not require the same curtailment be applied against claims to a particular asset in which the decedent never enjoyed any interest or that arise after the decedent's death.

Inapplicability of the criterion in Fla. R. App. P. 9.030(a)(2)(A)(v):

Although 9.030(a)(2)(A)(v) is not expressly referred to in either the notice to invoke this Court's jurisdiction or the subsequent petition, repeated efforts are made to describe the question presented by the petition as important. The curator importunes the Court to accept jurisdiction to prevent the opening of a "Pandora's box" in the state's probate system, arguing "the decision below . . . will throw the field of probate into an abyss of disarray . . ." (*Petition*, pp. 1-2). "The result in this case . . . will effectively leave all estates open to further claims for years . . . after the jurisdictional bar [in 733.710] . . . has run." (*Petition*, p. 6). "[T]he Third District's . . . decision should be reviewed by this Court to . . . avoid the unnecessary litigation that would surely result if the . . . decision is allowed to stand." (*Petition*, p. 10). These dire predictions are unfounded given the narrow basis for the decision articulated below. More importantly, if the curator really had believed his presage could come to pass, one would have expected him to move for certification in the district court, or at the very least to have sought clarification or en banc consideration to focus the Third District's attention on this issue. In fact,

the curator did not seek any relief below, waiting instead to petition this Court for the much narrower review based upon “conflict” jurisdiction. *See Chase Fed. Sav. & Loan Ass'n v. Schreiber*, 479 So. 2d 90, 91 (Fla. 1985)(“the district courts . . . , in exercising their *en banc* power, are not limited by the case-law standards adopted by the Supreme Court of Florida in the exercise of its discretionary conflict jurisdiction.”).

Although motions under Rules 9.330 and 9.331 of the Rules of Appellate Procedure may not be a prerequisite to “conflict” review, the curator’s suggestion that the question presented is one of great public importance rings hollow after no attempt was made to obtain any relief below. More importantly, the alleged importance of a question is not relevant unless such importance has been certified by the district court. Art. V, § 3(b)(4), Fla. Const. Thus, to argue public importance after doing nothing below is not only unpersuasive but also improper, *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 93 n.1 (Fla. 1995), particularly where as here the curator’s notice to invoke discretionary jurisdiction cited only 9.030(a)(2)(A)(iv). Florida, like only five other jurisdictions in the nation, permits discretionary review in its supreme court based upon constitutional pigeon-holes that are jurisdictional in nature. Cope, *Discretionary Review of the Decisions of Intermediate Appellate Courts: A Comparison of Florida’s System with Those of*

the Other States and the Federal System, 45 Fla. L. Rev. 21, 40-41 & n.126 (1993). Thus, whether or not a question is one of great public importance is absolutely not at issue unless so certified by a district court. *Bunkley v. State*, 2004 Fla. LEXIS 858, ** 39-41, 29 Fla. L. Weekly S 251 (May 27, 2004)(Wells, J., concurring).

From the very inception of the district courts in 1956, it was always intended “that there might not be any possibility of . . . two appeals . . .” England, Hunter, & Williams, *Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform*, 32 Fla. L. Rev. 147, 150 (1980)[hereinafter *1980 Reform*](citing First Annual Report of the Judicial Council of Florida at 5-6 (June 30, 1954)). In 1980 the constitution was amended, Art. V, § 3 (b), Fla. Const., to advance the very same principle. *1980 Reform* at 160, n.67 (citing *Proposed Amendment to Section 3, Art. V of the State Constitution: Tapes of Hearings on H.J. Res. 33-C before House Judiciary Comm.*, 6th Legis., Spec. C. Sess., Nov. 26, 1979. The instant petition seeks mere correction of an alleged error, which error does not appear on the face of the decision. In short, the curator has not shown any need for this Court’s structured, supervisory review to resolve a genuine “conflict.”

CONCLUSION

It is respectfully requested that the petition by the curator, Clay Craig, Esq. to invoke the discretionary jurisdiction of this Court be denied for the reason that

the requisite conflict has not been demonstrated in the curator's petition.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this revised brief has been prepared in complete compliance with all of the requirements in paragraph (a)(2) of Rule 9.210 of the Florida Rules of Appellate Procedure, including, without limitation, the requirement insofar as font size.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was sent by U.S. Mail on this ___ day of November 2004, to Carlos A. Battle, Esquire, at Steel Hector & Davis, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131 (Facsimile Number: 305-577-7001), and Gary E. Lehman, Esquire, at Broad and Cassel, Miami Center, Suite 3000, 201 South Biscayne Boulevard, Miami, Florida 33131 (Facsimile Number: 305-373-9443).

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