

In the Supreme Court of Florida

CASE NO. SC06-1808

GARY DOEHLA,

Petitioner,

v.

JAMES J. CLINTON, III,

Respondent.

ON DISCRETIONARY REVIEW FROM THE
THIRD DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

Respectfully submitted,

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STATEMENT OF THE CASE AND FACTS

Over fifteen years ago, on February 6, 1991, Petitioner Gary Doehla obtained a money judgment against Respondent James Clinton in Miami-Dade County Circuit Court. (A 2).¹ The judgment was based on a stipulated settlement of debt that dated back yet *another* ten years, to 1981. (A 2). On February 7, 1991, the day after entry of the judgment, Petitioner Doehla recorded a certified copy with the Miami-Dade Circuit Court Clerk. (A 2). The judgment went uncollected for eleven years, until Doehla learned that Clinton had bought real property in Monroe County. (A 2).

Doehla then attempted to collect on the judgment by recording it in Monroe County and obtaining a lien on Clinton's real property. (A 2). Doehla first obtained certified copy of the judgment and a writ of execution from the Miami-Dade County Circuit Court. (A 2). Doehla then went to the Clerk's office in Monroe

¹ The Third District decision as to which review is sought is attached as an Appendix to this brief, and all facts stated herein appear on the face of the decision. References to the Appendix appear as (A __). All emphasis in this brief has been supplied by undersigned counsel unless otherwise indicated.

County to record the judgment. (A 2). The first time Petitioner Doehla attempted to have the judgment recorded, on July 30, 2002, the Clerk recorded a certified copy of the judgment, but it did not have Doehla's home address on it. (A 2). Upon learning that it was necessary to record his home address along with the judgment, Doehla returned the next day, on July 31, 2002, at which time the Clerk recorded a copy of the judgment and Petitioner's home address, but, unnoticed, the copy of the judgment recorded by the Clerk that day was not a *certified* copy. (A 2).

Pursuant to the recording and to the writ of execution issued by the Miami-Dade County Circuit Court, the Monroe County Sheriff began execution proceedings by issuing a Notice of Sheriff's Levy on October 1, 2002, and publishing a Notice of Sheriff's Sale on October 2, 2002. (A 3). The Sheriff's Sale was set for November 6, 2002. (A 3). Although it has never been disputed by Clinton that he had notice of the Sheriff's Levy and Sale from the date of publication on October 2, 2001, Clinton waited until the day before the sale, November 5, 2002, and then filed an "Emergency Petition to Enjoin Sheriff's Levy and Sheriff's Sale" in the Monroe County Circuit Court. (A 3). Clinton's petition asked the trial court to enter an order finding that Doehla had not perfected the lien on the real property, and to temporarily and permanently enjoin the Sheriff's sale. (A 3). Upon receipt of Clinton's petition noting the Clerk's recording error, Doehla

went back to the Monroe County Clerk's office and had the Clerk record a certified copy of the judgment and the affidavit as to his address. (A 3).

The trial judge then *granted* Clinton a temporary stay, conditioned on Clinton posting a bond in the amount required by statute for staying execution based on a contention that the writ is defective. (A 3). Clinton, however, did *not* post the bond. (A 3). The Sheriff's sale accordingly proceeded as scheduled on November 6, 2002, and the property was sold. (A 3).

A *year* later, on October 28, 2003, Clinton filed what he called an "Amended Motion for Partial Summary Judgment", seeking exactly the same relief he had requested in his original "Emergency Petition", now claiming that the sale should be held invalid. (A 3). The trial court eventually issued orders holding that while the first two recordings did not comply with the provisions of the recording statute, §55.10, Fla. Stat., the recording was not thereby rendered void, but only voidable and that the defects were correctable and corrected before the Sheriff's sale took place. (A 3-4). On September 7, 2005, the trial court entered an order ruling that under the circumstances presented the Sheriff's sale would not be set aside. (A 4).

Clinton appealed the trial court's order, and the Third District Court of Appeal

reversed. (A 1-5).² The Third District's decision nowhere mentioned the applicable abuse of discretion standard of review, and instead focused only on the legal error the Clerk made in recording the judgment, stating, *inter alia*:

When Doehla recorded a certified copy of the corrected judgment and corrected holder's affidavit that complied with section 55.10, on November 5, 2002, the re-recording created a lien on Clinton's property from November 5, 2002 onward and did not relate back to July of 2002.

Consequently, the notice of the Sheriff's Levy published on October 2, 2002 cannot stand because a lien had not been perfected on Clinton's real property in Monroe County at that time. Accordingly, we reverse the trial court's order and remand with instructions that the Sheriff's sale be vacated.

(A 5). As Petitioner Doehla believes that the Third District's decision creates express and direct conflict, Petitioner filed a timely notice to invoke this Court's jurisdiction, and these proceedings ensued.

SUMMARY OF ARGUMENT

Florida law has always protected its courts' judgments and their enforcement. While statutes prescribe formal requirements for collection processes, Florida

² The decision has been published at *Clinton v. Doehla*

933 So. 2d 1215 (Fla. 3d DCA 2006) Clinton v. Doehla, 933 So. 2d 1215 (Fla. 3d DCA 2006).

gives trial courts broad discretionary powers to exercise in overseeing execution and judicial sales - including discretion to decide whether any judicial sale should be set aside due to deficiencies in the process leading to the sale. The Third District's decision conflicts with the established law by disregarding the trial court's exercise of its discretion and overturning a judicial sale on the strength of a defect in execution the trial court had found to be amendable.

Further, the Third District's conflict decision runs directly counter to Florida law's established policy of upholding judicial sales. The Third District's decision instead favors judgment debtors who are abusing Florida's court system. Respectfully, the Court should accept jurisdiction and quash the Third District's decision.

ARGUMENT

This Court may exercise discretionary jurisdiction over the decision of the Third District issued in this case based on express and direct conflict with decisions of this Court and of other Florida district courts of appeal. See art. V, § 3(b)(3), Fla. Const.

The Third District's decision conflicts with established Florida law holding that trial courts may use their discretion and consider all circumstances surrounding a judicial sale in determining whether it should be set aside, including

whether the judgment debtor failed to comply with conditions set for contesting the propriety of a scheduled sale. *See, e.g.,* Northern Inv. Corp. v. Coppock, 183 So.

635 (Fla. 1938)(in determining whether to set aside a judicial sale, the trial court “has a large discretion which will only be interfered with by the appellate court in a clear case of injustice”); Maule Industries, Inc. v. Seminole Rock & Sand Co., 91 So.2d 307, 311 (Fla. 1956)(same); Fernandez v. Suburban Coastal Corp., 489 So. 2d 70 (Fla. 4th DCA 1986)(same); American Finance Corporation v. Murrhee, 367 So. 2d 742 (Fla. 1st DCA 1979)(same); Griffin v. Lacourse, 12 So. 665, 667 (Fla. 1893)(“We cannot hold that the refusal of the court to quash an execution on the ground of illegality in its issuance is error, where ... defendant has [failed to comply] with those conditions which are prerequisites to his right to suspend the execution at all”); Adams v. Higgins, 1 So. 321, 328 (Fla. 1887)(“Defects in writs of execution do not vitiate sales unless they are such as to render the writs void, and are not amendable”); Thomas v. Goodbread, 82 So. 835 (Fla. 1919)(mistake in writ of execution does not render the sale void).

Petitioner respectfully submits that the Third District’s decision also runs perversely counter to the policy behind the law. “It is the policy of the law to uphold judicial sales and this is done despite slight defects in the proceedings.”

Edward A. Lashins, Inc. v. Baumann, 201 So. 2d 495, 496 (Fla. 2d DCA 1967), *citing* Cox v. Hart, 145 U.S. 376 (1891). *See also, e.g., Maule Industries, supra.*

The policy of the law does not require courts to scrutinize the proceedings of a judicial sale with a view to defeat them. On the contrary, every reasonable inducement will be made in their favor, so as to secure, if it can be done consistently with legal rules, the object they were intended to accomplish.

Id. Barring a defect that would render *the judgment itself* void (which this judgment undisputedly was not), Florida law favors treating claimed defects in the process of executing on the judgment as amendable. *See Adams v. Higgins, supra.*

Setting the general rule that has since been followed by Florida courts - except the Third District here - this Court's decision in *Adams* affirmed a trial court's *nunc pro tunc* amendments to certain judgments ***and writs of execution*** and the accompanying ruling that the sale of the judgment debtor's real property to the *Adams* judgment creditor would therefore not to be set aside:

'Whenever the irregularity is such that the [judgment debtor] can be deemed to have waived it by his laches, or where it is of such a character that it can be cured by amending the writ, we think it cannot render the sale void, although the plaintiff may have purchased.' We are of the opinion that the sale was valid, and that, as between the parties, the amendment of the judgment and execution has adjudicated the question.

1 So. at 331, *citing* Freeman on Executions, Section 340.

Here, as in *Adams*, the trial court concluded that under all of the circumstances of the case, the irregularities in the issuance of the Sheriff's notices of levy and sale made them only voidable rather than void, such that they were amendable. The circumstances before the trial court included: (1) Respondent Clinton's decades of evading his debt to Doehla; (2) the fact that it was the Clerk's mistakes that created any question at all about the recording of what was undisputedly a valid judgment; (3) the insignificance as a practical matter of the imperfections in the July 30/31, 2002 recordings, which Clinton could have raised for cure right after the Sheriff's October 2, 2002 Levy and Notice of Sale; (4) the fact that Clinton *waived* the right to attack the legality of the Sheriff's process by declining to post the required bond before the sale, and then waiting a year after the sale before filing anything further with trial or appellate court; (5) the fact that Clinton had full notice of the scheduled Sheriff's sale for the statutorily required period; and (6) the fact that the Clerk corrected the recording so there was a perfected judgment lien on the property before the Sheriff's sale. Under such circumstances, the trial court's order declining to set aside the Sheriff's sale was fully in accord with *Adams* and the above Florida law. It is the Third District's reversal that cannot be reconciled with *Adams* and the existing law, and conflict has thus been created.

Moreover, this entire, decades-long saga of a judgment debtor flouting the authority of Florida's courts is actually recited in full in the Third District's opinion. And yet the Third District ends the opinion with the expressed conclusion that the judgment debtor should prevail here and that the judgment against him should continue unsatisfied, notwithstanding the abundant Florida law and policy supporting the trial court's contrary conclusion that the judicial sale should stand under the circumstances.

The Third District's decision, if left to stand, thus also has the potential for leading Florida courts in the direction of affording undue deference to judgment debtors under circumstances where no such deference is warranted. Judgment debtors are persons or entities who have been afforded a full panoply of rights and processes by Florida's trial and appellate courts, and who have been found owing to another as reflected in a duly entered final judgment. The resources of Florida's courts, and therefore its people, have been employed to provide judgment debtors full opportunity to present defenses which have ultimately been found lacking as reflected in the final judgments. A judgment debtor's only proper course after entry of judgment is to pay as a matter of honoring the final adjudication.

Judgment debtors who do *not* pay fall into two categories: the unable and the *unwilling*. The law of executions and judicial sales centers on the latter, for those

who are unable have nothing upon to execute. It is those who are *unwilling* to pay who further burden Florida's courts by generating execution issues. Judgment debtors who have assets but are nonetheless unwilling to honor the judgments against them generate unnecessary litigation. In the end, they are scofflaws acting for their own advantage at the expense of the courts and their judgment creditors. And, it is precisely because so much needless exertion has gone into the occurrence of a judicial sale that Florida policy favors upholding judicial sales and that Florida law affords the trial courts such broad discretion in deciding whether judicial sales should be set aside.

Disregarding policy and law, the Third District's decision here overtly stands for the proposition that a judicial sale may readily be set aside based only on a statutory deficiency in execution that the trial court found to be amendable. Petitioner submits that the Third District decision creates both conflict and bad precedent. This Court should accept jurisdiction and quash the decision of the Third District to restore uniformity to the law of judicial sales.

CONCLUSION

Based on the foregoing facts and authorities, Petitioner respectfully submits that the conflicts identified above present a basis for exercise of the Court's discretionary review jurisdiction. Petitioner also respectfully submits that jurisdiction should be exercised to maintain the uniformity of Florida law in its policies of upholding sheriffs' sales and promoting enforcement of judgments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Petitioner's Brief on Jurisdiction was sent by facsimile and by U.S. mail this 18th day of September, 2006 to: Nicholas Mulick, Esquire, 91645 Overseas Highway, Tavernier, Florida 33070.

CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

Undersigned counsel hereby respectfully certifies that the foregoing Brief on Jurisdiction complies with Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14 Point.