

SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

MATRIX EMPLOYEE LEASING, INC.
and FIRST COMMERCIAL CLAIMS
SERVICES,

Petitioners,

CASE NO.: SC07-1826

D/A: 12/14/04

vs.

DAVID WARD
and

BLUE STONE REAL ESTATE,
and

ENTERPRISE HR AND INSURANCE COMPANIES
OF AMERICA

Respondents.

RESPONDENT DAVID WARD'S BRIEF ON JURISDICTION

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This is Respondent, DAVID WARD'S Brief on Jurisdiction concerning the review of a decision of the First District Court of Appeal, Tallahassee, Florida, opinion rendered July 20, 2007.

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PRELIMINARY STATEMENT

The Petitioners, MATRIX EMPLOYEE LEASING, INC. and FIRST COMMERCIAL CLAIMS SERVICES, shall be referred to herein as the "E/C#1" or as "MATRIX".

The Respondent, DAVID WARD, shall be referred to herein as the "Claimant", or as "WARD".

The Respondent BLUE STONE REAL ESTATE shall be referred to herein as the "E/C#2" or as "BLUE STONE".

The Respondent ENTERPRISE HR AND INSURANCE COMPANIES OF AMERICA will be referred to herein as the "E/C#3" or as "ENTERPRISE".

References the Petitioner's Jurisdictional Brief shall be referred to by the letter "P" (Petitioner) followed by the applicable page number.

References to the Appendix attached to the Petitioner's Jurisdictional Brief will be referred to by the letters "AP" and followed by the applicable appendix page number. The appendix contains the opinion of the 1st DCA dated July 20, 2007.

References to the record on appeal, which is attached as an appendix to the Initial Brief of the Appellant, before the First District Court of Appeal, who was BLUE STONE REAL ESTATE, will be referred to by the letters "APP" followed by the applicable letter and page number.

STATE OF THE CASE AND STATEMENT OF THE FACTS

MATRIX, petitioner herein, is an employee leasing company within the meaning of F.S.468.520(5)(2004) that processes payroll checks, provides workers' compensation and unemployment insurance for client companies (APP-C-4,5).

On March 3, 2004 MATRIX and E & L CONCRETE PUMPING, INC. entered into a "client contract" (APP-C-42-51). The client contract provided, inter alia, that MATRIX would secure workers' compensation coverage in such amount as was required by applicable law (APP-C-44). The "client contract" also provided as follows:

"M. MATRIX EMPLOYEE LEASING INC. will notify all employees of this Agreement at inception and termination of Agreement. Client shall also immediately upon termination of this Agreement notify all employees of the termination of this Agreement for the purpose of informing them that they are no longer covered by MATRIX EMPLOYEE LEASING INC.'s workers compensation policy." (APP-C-49).

MATRIX began providing the payroll checks for E & L CONCRETE PUMPING effective 3/12/04 (APP-C-21,22,39).

Claimant, DAVID WARD, became employed with E & L CONCRETE PUMPING in late July or early August 2004 (APP-B-13,14,H-14. Prior to working for E & L CONCRETE PUMPING, Claimant filled out an employment application with MATRIX and subsequently became a MATRIX employee, leased to E & L CONCRETE PUMPING (A-2, APP-B-17). On 8/6/04 Claimant began receiving his payroll checks through MATRIX (APP-C-21,79).

The last payroll checks actually issued to E & L CONCRETE by MATRIX was on 10/4/04 (APP-C-21,22,39). The last payroll check issued to the Claimant by MATRIX was on 10/4/04 (APP-C-21,79).

On October 8, 2004, or October 9, 2004, Steven McMahon, President of E & L CONCRETE PUMPING INC. (APP-C-69), and Claimant went to New York (APP-G-17,18). Mr. McMahon testified that he spoke with an employee of MATRIX in October 2004 and was informed he could send a fax to MATRIX rendering his account inactive while in New York (A-3, APP-J-5). Mr. McMahon testified he was told he could bring his account back to active status by similarly faxing a written request when he returned to Florida (A-3, APP-J-5, 6, 75, 76). Claimant was paid by Mr. McMahon's brother while in New York, since they did work for him in New York (APP-G-18, H-18).

Claimant and Mr. McMahon returned from New York on 12/6/04 (APP-G-19). Upon their return, Mr. McMahon testified that he faxed MATRIX a written request to have his account reactivated (A-3, APP-J-14).

Eventually, following Mr. McMahon and Claimant's return from New York, E & L CONCRETE PUMPING, INC, was hired by BLUE STONE REAL ESTATE, a general contractor, to work on a residential house in Citrus County, Florida (APP-G-20, H-42,43, I-3,4). Mr. Demaria, president of BLUE STONE REAL ESTATE (APP-I-

4) had a certificate of insurance on file from 4/1/04 to 4/1/05 (APP-I-3). The certificate listed the insured as MATRIX EMPLOYEE LEASING and the insurer affording coverage was First Commercial Insurance Company (APP-I-3). Mr. Demaria testified he had received no cancellation notice from MATRIX indicating there was no longer a valid certificate (APP-I-3).

On 12/13/04 at 3:30 p.m. Claimant was involved in an accident which is the subject of this appeal (APP-B-31, F-16, G-22, H-20). Claimant fell fourteen feet, nine inches landing on concrete and fracturing his right leg and ankle (APP-B-12, G-22, H-22).

Mr. Ralph Perez, chief operating officer for MATRIX (APP-E-4), testified that MATRIX never terminated in writing or verbally their contract with E & L CONCRETE PUMPING (APP-E-13). MATRIX never advised DAVID WARD, the Claimant, that their contract with E & L CONCRETE PUMPING terminated (APP-E-14). Mr. McMahon testified that it was only after the accident that he got a notice of termination of his certificate of insurance (APP-J-63). Mr. McMahon testified that MATRIX never advised him that E & L CONCRETE PUMPING's Contract with MATRIX had been terminated prior thereto (APP-J-64,69).

The First DCA, in its opinion filed July 20, 2007, found, pursuant to F.S. 468.525(4)(f)(2004) and Payroll, Inc. v. Elicker 668 So.2d 1035 (Fla. 1st DCA 1996) that an employee

leasing company is required to provide notice of termination to each employee (A-7). The First DCA further found there was no CSE in the record which would support the conclusion that Claimant was given notice his employment had been terminated (A-9). As such, Claimant's employment with MATRIX was not effectively terminated and MATRIX and FIRST COMMERCIAL CLAIMS SERVICES was responsible for Claimant's workers compensation benefits.

POINT ON APPEAL

POINT I

WHETHER OR NOT THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY OR DIRECTLY CONFLICTS A DECISION ANOTHER DISTRICT COURT OF APPEAL, OR EXPRESSLY DECLARES VALID A STATE STATUTE.

SUMMARY OF ARGUMENT

Article V, Section 3(b)(3), Fla. Const., and Fla. R. App. P. 9.030(a)(2)(A)(iv) provides that the jurisdiction of this Honorable Court may be invoked to review any decision of a District Court of Appeal that expressly or directly conflicts with a decision of **another District Court of Appeal or of the Supreme Court on the same question of law.**

The E/C cite a conflict with Specialty Employee Leasing v. Davis, 737 So.2d 1170(Fla.1st DCA 1999), however that is another decision of the First District Court of Appeal. It therefore can not form the basis of conflict jurisdiction.

Petitioner also contends the opinion of the First DCA in the case at bar appears to expressly declare valid F.S.468.525(4)(f)(2004). However, there was never any constitutional challenge to the aforementioned statute, and the opinion does not in any way discuss the constitutionality of the aforesaid statute.

As such, Respondent respectfully requests that this Honorable Court decline to accept jurisdiction of this appeal and that this Honorable Court dismisses the E/C's Notice to Invoke Discretionary Jurisdiction.

POINT I

WHETHER OR NOT THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY OR DIRECTLY CONFLICTS A DECISION ANOTHER DISTRICT COURT OF APPEAL, OR EXPRESSLY DECLARES VALID A STATE STATUTE.

Article V, Section 3(b)(3), Fla. Const., provides that the jurisdiction of this Honorable Court may be invoked to review any decision of a District Court of Appeal that:

" . . . Expressly or directly conflicts with a decision of **another** District Court of Appeal or of the Supreme Court on the same question of law." See also Fla. R. App. P. 9.030(a)(2)(A)(iv). (emphasis mine).

Jurisdiction of this Honorable Court on a Notice to Invoke Discretionary Jurisdiction based upon a conflict depends on whether the conflict between decisions below is express, direct and irreconcilable, Aravena v. Miami Dade County, 928 So.2d

1163(Fla.2006), Department of Health and Rehabilitative Services v. National Adoption Counseling Service Inc., 498 So.2d 888(Fla. 1986).

Additionally, as indicated by the clear wording of Article V, Section 3(b)(3) of the Florida Constitution and Fla. R. App. P. 9.030(a)(2)(A)(iv) the conflict must be with the decision of "another" District Court of Appeal or of the Florida Supreme Court.

There was a time period between 1/1/1973 and 12/31/1979 when This Honorable Court did have jurisdiction to review an intradistrict conflict, Gilliam v. State, 267 So.2d 658 (Fla.2d DCA 1972). However the 1980 Amendment to Article V of the Florida Constitution once again precluded review of an intradistrict conflict. An intradistrict conflict is expected to be resolved by an "En Banc" proceeding under Fla.R.App.P. 9.331, see Jones v. State, 790 So.2d 1194 (Fla. 1st DCA 2001).

In the case at bar, Petitioner seeks to invoke jurisdiction of this Honorable Court based on a conflict between the opinion in the case at bar, issued by the First District Court of Appeal, and the case of Specialty Employee Leasing v. Davis, 737 So.2d 1170(Fla.1st DCA 1999), which is also a decision of the First District Court of Appeal. There can be no conflict jurisdiction between decisions of the same District Court of

Appeal, Article V, Section 3(b)(3), Fla. Const., Fla. R. App. P. 9.030(a)(2)(A)(iv).

Furthermore, Respondent would submit there is no conflict in the case at bar between the opinion rendered by the First DCA in the case at bar and Specialty Employee Leasing v. Davis, Supra. In Specialty Employee Leasing v. Davis, supra, the First DCA reversed a JCC's order finding Specialty Employee leasing (an employee leasing company) was responsible for the Claimant, William Davis's workers compensation benefits. However, in Specialty Employee Leasing v. Davis, supra, the Claimant voluntarily resigned from Specialty and Specialty sent Claimant a letter stating his employment with Specialty had been terminated immediately because of his resignation nearly a month prior to the Claimant's accident.

In the case at bar, Claimant never resigned from MATRIX and MATRIX never sent Claimant a letter indicating his employment with MATRIX had terminated.

Additionally, the First DCA's opinion the case at bar is directly on point with Payroll Inc. v. Elicker, 668 So.2d 1035(Fla.1st DCA 1996), a case which was relied upon by the First DCA in their opinion (AP-7).

Article V, Section 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(i) also provide that the jurisdiction of this

Honorable Court may be invoked to review any decision of the District Court of Appeal that:

". . . **Expressly** declare valid a state statute" (emphasis mine).

Petitioner contends the decision of the First DCA in the instant case appears to expressly declare valid F.S.468.525(4)(f)(2004) which provides that an employee leasing company's contract with its clients must provide for "written notice of the relationship between the employee leasing company and the client company to each leased employee it assigns to perform services at the client's worksite." Petitioner contends F.S.468.525(4)(f)(2004) intentionally does not address a requirement that employee leasing companies inform leased employees that the employment relationship has been terminated. (P-8).

The constitutionality of F.S.468.525(4)(f)(2004) was never raised by any party at any time during these proceedings below. The opinion of the First DCA in the case at bar does not in any way address the constitutionality of F.S.468.525(4)(f)(2004). The opinion clearly does not "**expressly**" declare F.S.468(4)(f)(2004) to be valid.

Additionally, the First DCA in Payroll, Inc. v. Elicker, supra has already determined that an employee leasing company is required to give notice to an employee that they are no longer

employed by the employee leasing company in order to effectively fire them.

CONCLUSION

Therefore, Respondent respectfully requests this Honorable Court deny the Petitioner's Notice to Invoke Discretionary Jurisdiction, and that this Honorable Court enter an order dismissing this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail on this _____ day of October, 2007 to: David Rickey, P. O. Box 4979, Orlando, Florida 32802, Katherine Stone, 1802 West Cleveland Avenue, Tampa, Florida 33606, Kristin J. Longberry, 100 South Orange Avenue, Suite 200, Orlando, Florida 32801, Gregory D. White, 1560 Orange Avenue, Suite 500, Winter Park, Florida 32789.

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CERTIFICATE OF TYPE FACE COMPLIANCE

I HEREBY CERTIFY that this Brief on Jurisdiction for Respondent, DAVID WARD, was computer generated using Courier New twelve font on Microsoft Word, and hereby complies with the font standards as required by Fla.R.App.P 9.210 for computer-generated briefs.

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