

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

FORD MOTOR COMPANY,
a foreign corporation, et al.,

Petitioners,

-vs-

CASE NO. SC08-2062
LT Cons. Case Nos. 4D07-2515, 4D07-1797

ANIBAL OSCAR PAPANDOPLES, etc., et al.

Respondents.

FORD MOTOR COMPANY,

Petitioners,

-vs-

HORTENSIA PALMIRA GARCIA, etc., et al.,

Respondents.

BRIEF OF RESPONDENTS ON JURISDICTION

On Appeal from the Fourth District Court of Appeal of the State of Florida

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PREFACE

This is a proceeding seeking to invoke this Court's jurisdiction to review a decision of the Fourth District Court of Appeal on the grounds that the decision creates express decisional conflict in Florida. The parties will be referred to by their proper names or as they appeared in the trial court. The following designation will be used:

(A) - Petitioner's Appendix

STATEMENT OF THE CASE AND FACTS

This case involves four automobile accidents which occurred in Argentina involving Ford Explorers with Firestone tires as standard equipment (A2). The vehicles contained a total of 20 occupants, and eight of them died and 12 were injured (A2). Plaintiffs filed their actions against, inter alia, Ford and Bridgestone/Firestone in the Circuit Court in Broward County (A2).

Defendants filed a Motion to Dismiss the actions based on forum non conveniens ("FNC"). Thereafter, the parties submitted conflicting affidavits on whether Argentine courts would have jurisdiction over the actions if they were dismissed, and other factors relevant to the analysis authorized by this Court in Kinney System, Inc. v. Continental Ins. Co., 674 So.2d 86 (Fla. 1996). After reviewing the conflicting affidavits, the trial court denied the motions, concluding that

the Defendants had not carried their burden of persuasion on all of the Kinney factors (A4).

The Defendants appealed the trial court's order and the Fourth District affirmed, concluding that the trial court's decision that the Defendants had not carried their burden of persuasion on the issue of whether Argentina was an available and adequate form was not an abuse of discretion (A6).

The Defendants have filed Petitions for Review in this Court contending that the Fourth District's decision creates express decisional conflict.

SUMMARY OF ARGUMENT

The Fourth District's decision does not create express and direct conflict of any other appellate decision in Florida on the doctrine of forum non conveniens. The Fourth District did not create any new principle of law, but simply reviewed the trial court's decision under the abuse of discretion standard, applying the principles of the law established by this Court in Kinney, supra, and Fla.R.Civ.P. 1.061. Necessarily, the result was dependent upon the contents of the record before the trial court, and its resolution of the conflicts therein. In this case, there were conflicting affidavits regarding whether Argentine courts could exercise jurisdiction over the Plaintiffs' claims, as well as the other Kinney factors including adequacy of that forum. The Fourth District's affirmance of the trial court's decision did not establish a rule of law regarding availability or adequacy of the alternative forum, but only determined that the trial court was not unreasonable in resolving the conflicts in the record before it. For these reasons, there is no conflict with Kinney, nor of the District Court decisions upon which Ford relies, which involve different records and different resolutions of the conflicts therein.

Therefore, this Court should decline to exercise jurisdiction in this case.

ARGUMENT

THE FOURTH DISTRICT'S DECISION DOES NOT CREATE EXPRESS AND DIRECT CONFLICT WITH ANY OTHER APPELLATE DECISION IN FLORIDA.

Ford contends that the Fourth District's decision expressly and directly conflicts with this Court's decision in Kinney, supra, and the Third District's decision in Aerolineas Argentinas, S.A. v. Gimenez, 807 So.2d 111 (Fla. 3d DCA 2002). Ford contends that the Fourth District applied a different test to determine adequacy, and contends that the Fourth District erred by "formulating a test that considers whether procedural nuances e.g., filing fees, render Argentina inadequate."

Initially, it should be noted that the Fourth District did not formulate a different standard for analyzing adequacy, but rather relied completely on this Court's decision in Kinney, which it quoted extensively and properly applied. It is also significant that the decision below did not establish any principle of law, but simply affirmed based on application of the abuse of discretion standard of review.

The Fourth District's decision noted that conflicting affidavits were submitted regarding the adequacy and availability of Argentina as a form, and that the trial court had not erred in its decision to accept the position expressed in the affidavits of Plaintiffs' experts on Argentina law (A5-6). The Fourth District found that the trial court had not abused its discretion in concluding that the Defendants had failed in

their burden of persuasion to demonstrate the availability and adequacy of Argentina as a forum.

Ford contends that there is conflict because the Fourth District ruled that the trial court did not abuse its discretion in considering the 3% filing fee as a factor in analyzing the adequacy of the Argentine forum (A-B p.6). The Fourth District determined that the trial court's consideration of that factor was unreasonable, stating (A6):

We find this conclusion to be reasonable in light of the affidavits submitted by appellees' experts. The three percent filing fee may deprive appellees of a remedy in Argentina, particularly in cases such as these, where appellees are seeking a substantial amount of monetary damages. [Emphasis supplied.]

Ford characterizes this as a determination of law which conflicts with the Third District's decision in Aerolineas Argentinas, S.A. v. Gimenez, 807 So.2d 111 (Fla. 3d DCA 2002). However, it was not a ruling of law, but simply a determination that the trial court was not unreasonable in considering that one factor "in light of the affidavits" in its forum non-conveniens analysis (A6).

This Court has repeatedly stated that in reviewing opinions to determine the existence of conflict jurisdiction, it is necessary that the opinion "contain a statement or citation effectively establishing a point of law upon which the decision rests," and that there must be direct conflict between that decision and a previous ruling "on the same point of law," see Ansin v. Thurston, 101 So.2d 808, 810 (Fla. 1958); The

Florida Star v. B.J.F., 530 So.2d 286, 288 (Fla. 1988). Ford cites Wainwright v. Taylor, 476 So.2d 669, 670 (Fla. 1985), where this Court stated:

Our concern in cases based on our conflict jurisdiction is the precedential effect of those decisions which are incorrect and in conflict with decisions reflecting the correct rule of law.

The conflict claimed by Ford does not involve a “rule of law” as described in Wainwright, but rather is limited to whether the Fourth District properly determined that the lower court did not abuse its discretion in considering the 3% filing fee as a factor in the context of the record in the forum non-conveniens analysis.

Ford claims there is conflict with the Gimenez case, but that case is factually distinguishable and, thus, there is no conflict on a rule of law. In Gimenez, 74 people died when a plane crashed while en route from Posados, Argentina to Buenos Aires, Argentina (807 So.2d at 112). Personal representatives of 49 of those killed filed wrongful death actions in an Argentine federal court against the airlines. The next day, the personal representatives of 52 of those killed filed actions in the circuit court of Miami-Dade County. Simple math demonstrates there was obviously significant overlap, i.e., some plaintiffs filed in both courts.

In Gimenez, the airlines filed a motion in the Florida circuit court to dismiss the actions based on forum non-conveniens. The trial court denied the motion, relying solely on the fact that the 3% filing fee precluded the plaintiffs from litigating in

Argentina (807 So.2d at 113). The Third District reversed noting, inter alia, that (807 So.2d at 114):

The adequacy of the Argentinian forum is evident from the plaintiff's own conduct in filing forty-nine wrongful death suits against Austral in Argentina.

In essence, the plaintiffs' own conduct in that case fatally undermined their argument that Argentina was not an available forum. Obviously, the plaintiffs did not find the filing fee to be a complete impediment, because they had already filed the actions.

While Ford claims that Gimenez established a rule of law that filing fees do not render a forum inadequate, the Fourth District did not establish any rule of law on the issue; it simply determined that the trial court did not abuse its discretion in finding Argentina an inadequate forum based on the filing fee "in light of the affidavits submitted by appellees' experts" (A6). It is also significant to note that once the Fourth District determined that the trial court did not abuse its discretion in finding that Argentina was not an available forum for this case, it was unnecessary to reach the issue of adequacy, see Kinney, supra, 674 So.2d at 90.

Ford also contends that the Fourth District's decision conflicts with Tananta v. Cruise Ships Catering and Services International, N.V., 909 So.2d 874 (Fla. 3d DCA 2005), with respect to the availability analysis. However, in that case, the defendants "stipulated to jurisdiction before a tribunal of competent jurisdiction in these other countries" and "not one of the plaintiffs has disputed why either the Netherlands

Antilles or their respective homelands would not entertain their claims, or why they could not pursue remedies there” (909 So.2d at 885). The trial court dismissed the actions and the Third District affirmed, finding no abuse of discretion. Thus, in that case, the trial court was upheld because there was absolutely no showing that the alternative forms were either inadequate nor unavailable.

Ford contends that this Court should accept jurisdiction, because the conflict issues are of great importance. However, as noted above, there is no decisional conflict in Florida law regarding the standards applicable to the forum non conveniens analysis. As established by the cases cited above, and other decisions applying the forum non conveniens analysis, the trial court’s decision must be reviewed under the abuse of discretion standard based on the record presented before it. Depending upon the contents of the affidavits and other relevant materials presented, there may be differences in result that appear to create inconsistencies. However, that is not the result of different principles of law, since Kinney and Fla.R.Civ.P. 1.061 clearly establish them, but rather is a function of the contents of the record before each trial judge. The Fourth District did here did not deviate from the principles of law established in Kinney, nor did it misapply Fla.R.Civ.P. 1.061. Therefore, there is no decisional conflict created and no basis for this Court to exercise its discretionary jurisdiction.

CONCLUSION

For the reasons stated above, this Court should decline to exercise jurisdiction and deny the Petition for Review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished to WENDY LUMISH, ESQ., and ALINA ALONSO, ESQ., 100 SE Second St., Ste. 4000, Miami, FL 33131; CHRISTOPHER N. BELLOWS, ESQ., and REBECCA PLASENCIA, ESQ., 701 Brickell Ave., Ste. 300, Miami, FL 33131, by mail, on January 20, 2009.

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CERTIFICATE OF COMPLIANCE

Respondents hereby certify that the type size and style of the Brief of Respondents on Jurisdiction is Times New Roman 14pt.

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