

THE FLORIDA SUPREME COURT

S. Ct. Case No. SC09-1969
CASE No.: 3D08-2251

LINDA CRAWFORD,

Petitioner.

vs.

JANNIE BARKER, as Personal
Representative of the Estate of
Manuel R. Crawford,

Respondent.

_____ /

PETITIONER'S BRIEF ON JURISDICTION

Respectfully submitted,

James L. Weintraub, Esq.
(Fla. Bar. No. 795046)
James L. Weintraub, P.A.
7777 Glades Road, Suite 210
Boca Raton, Florida 33434
(561) 487-1201

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STATEMENT OF THE CASE AND FACTS

While married, Manuel Crawford designated his ex-wife, Linda Crawford, the designated beneficiary of one of his financial accounts, a deferred compensation fund. (App. 2)

Preliminary to the dissolution of their marriage, the Crawfords entered into an Amended Family Mediation Unit Agreement that was adopted by the trial court and incorporated into a final judgment of dissolution. (App. 2).

The agreement contained a provision stating that “*Husband shall retain* retirement money with the Town of Surfside and *Deferred Compensation Fund f/k/a Pepso*”. (Emphasis added). (App. 2).

Manuel Crawford died without ever changing Linda Crawford as the designated beneficiary of the Deferred Compensation Fund.

Both Jannie Barker, as the Personal Representative of Manuel Crawford’s estate, and Linda Crawford claimed that they were entitled to the proceeds of the Deferred Compensation Fund.

The general master that initially reviewed this matter agreed with Jannie Barker and stated in his report and recommendations that:

“During the course of the marriage, ‘Linda Crawford – wife’ was named as the designated beneficiary of the Deferred Compensation Fund. However, Linda Crawford and Manuel R. Crawford agreed at the time of the signing of the amended

mediated settlement agreement that Manuel R. Crawford should get the money from this fund and that he should be the beneficiary. Manuel R. Crawford could have reaffirmed the designation of Linda Crawford had he chosen to do so following the dissolution of marriage. The fact that he did not reaffirm Linda Crawford as the beneficiary of this account confirms his intent that he was the beneficiary and that the money from the fund remained his at all times following the dissolution.” (App. 2).

Linda Crawford filed [her] Exceptions to the General Master’s Report and Recommendations. (App. 2).

The trial court entered an order sustaining Linda Crawford’s exceptions finding that no reference was made in the Amended Family Mediation Unit Agreement to Linda Crawford’s rights as a beneficiary to the proceeds of the Deferred Compensation Fund. (App. 2).

The Third District summarily reversed the trial court finding that the statement in the Amended Family Mediation Unit Agreement that “Husband shall retain retirement money with the Town of Surfside and Deferred Compensation Fund f/k/a Pepso” was sufficient to waive Manuel Crawford’s pre-dissolution designation of Linda Crawford as a beneficiary. (App. 2).

The Third District indicated that it based its ruling on this Court’s decision in Cooper v. Muccitelli, 682 So. 2d 77 (Fla. 1996) and the Fifth District’s decision in Smith v. Smith, 919 so. 2d 525 (Fla. 5th DCA 2005). (App. 3).

STATEMENT OF JURISDICTION

Crawford seeks further review based on the Third District's misapplication of Cooper v. Muccitelli, 682 So.2d 77 (Fla. 1996) and Smith v. Smith, 919 So.2d 525 (Fla. 5th DCA 2006).

The misapplication of the aforesaid decisions creates express, direct conflict.

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction to review any decision of a district court that expressly and directly conflicts with a decision of another district court of appeal or supreme court on the same question of law. Art. V., §3(b) (3), Fla. Const.

Decisional conflict may be created by a conflict in legal principles appearing on the face of the decision OR the misapplication of a specific holding previously announced by this Court. See Rosen v. Florida Ins. Guar. Ass'n, 802 So. 2d 291, 292 (Fla. 2001); Vest v. Travelers Ins. Co., 753 So. 2d 1270, 1272 (Fla. 2000); Arab Termite and Pest Control of Florida, Inc. v. Jenkins, 409 So. 2d 1039, 1040 (Fla. 1982).

This Court resolved a similar legal conflict when it decided Cooper v. Muccitelli, 682 So.2d 77 (Fla. 1996).

This Court's affirmance of the Second District's decision in Cooper v. Muccitelli made it clear that it was improper to examine a marital settlement agreement to determine if the parties intended to release the life insurance benefit expectancy. Instead, it held that without specific reference in a property settlement agreement to life insurance proceeds, the beneficiary of the proceeds is determined by looking only to the insurance contract. Cooper v. Muccitelli, 661 So.2d 52, 54 (Fla. 1996).

Because the Third District's decision in the instant case is based in part upon the general master's analysis as to Manuel Crawford's "intent that he was the beneficiary of this fund" (App. 2), it creates express and direct conflict with this Court's decision in Cooper v. Muccitelli, 682 So.2d 77 (Fla. 1996).

The Third District's decision also conflicts with the Fifth District's decision in Smith v. Smith, 919 So. 2d 525 (Fla. 5th DCA 2006).

In Smith, the Fifth District made it clear that no distinction should be made between the rights of beneficiaries of life insurance policies and other types of financial accounts such as IRAs and retirement plans.

Accordingly, it held that the wife was entitled to the proceeds of various retirement plans and accounts for which she was the named beneficiary.

As a result, the Third District's decision also conflicts with the Fifth District's decision in Smith v. Smith, 919 So. 2d 525 (Fla. 5th DCA 2006).

Because insurers and managers of other financial accounts need a bright line rule for quickly and easily determining the rights of designated beneficiaries, this Court should exercise its discretion, accept jurisdiction and resolve this matter in favor of Linda Crawford.

ARGUMENT

There are two independent bases for exercising discretionary jurisdiction here.

A. THE DECISION OF THE THIRD DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION BY THIS COURT ON THE SAME ISSUE OF LAW.

This Court may exercise its discretionary jurisdiction where the decision expressly and directly conflicts with a decision of the supreme court on the same question of law. Art. V., §3(b) (3), Fla. Const.

This Court has already resolved a similar legal conflict that arose between the Second District *and* the Third and Fourth Districts.

In Cooper, a life insurer brought an interpleader action to determine whether an ex-spouse or sister of the deceased was entitled to the proceeds of a term life insurance policy. Cooper v. Mucitelli, 661 So.2d 52 (Fla. 2nd

DCA 1995). (This case shall hereinafter be referred to as “Cooper I”).

The deceased husband named his ex-wife as the designated beneficiary of the term life insurance policy prior to their divorce. The final judgment of dissolution incorporated a separation agreement between the deceased husband and ex-wife that contained a mutual release of all claims either party might have against the other but made no specific mention of life insurance. The husband died without ever changing the beneficiary on the policy in question. Both Cooper and Muccitelli claimed the proceeds. Cooper v. Mucitelli, 661 So.2d 52, 53 (Fla. 2d DCA 1995).

The Second District held that “without specific reference in a property settlement agreement to life insurance proceeds, the beneficiary of the proceeds is determined by looking only to the insurance contract.” Cooper v. Mucitelli, 661 So.2d 52, 54 (Fla. 2d DCA 1995).

Several years before the Second District’s decision in Cooper I, the Third and Fourth Districts each held that the named beneficiary ex-spouse was entitled to the life insurance proceeds. However, each of those cases reached this decision by looking beyond the life insurance policies to the express language contained in the subject settlement agreements to determine if the parties intended to release the life insurance benefit expectancy. Davis v. Davis, 301 So.2d 154 (Fla. 3rd DCA 1974); Aetna Life

Insurance Co. v. White, 242 So.2d 771 (Fla. 4th DCA 1970); and Raggio v. Richardson, 218 So.2d 501 (Fla. 3rd DCA 1969).

This court accepted jurisdiction to resolve the conflict between Cooper I and Davis, Aetna and Raggio.

In Cooper v. Muccitelli, 682 So.2d 77 (Fla. 1996) (hereinafter “Cooper II”), this Court disagreed with the aforesaid analysis and resolved the aforesaid conflict between the District Courts by affirming the holding in Cooper I.

The Third District’s decision here creates conflict with Cooper II as it is based in part upon the general master’s analysis of Manuel Crawford’s intent with regard to his disposition of the Deferred Compensation Fund. (App. 2).

B. THE DECISION OF THE THIRD DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION BY THE FIFTH DISTRICT ON THE SAME ISSUE OF LAW.

The Florida Constitution allows this Court to exercise discretionary jurisdiction where the decision expressly and directly conflicts with a decision of another district court on the same question of law. Art. V., §3(b)(3), Fla. Const.

The decision of the Third District also expressly and directly conflicts with the Fifth District’s decision in Smith v. Smith, 919 So. 2d 525 (Fla. 5th

DCA 2006), a case involving precisely the same issue of law and based on practically the same facts.

In *Smith*, the decedent and Mrs. Smith entered into a marital settlement agreement preliminary to the dissolution of their marriage. The agreement was adopted by the trial court and incorporated into a final judgment of dissolution. The agreement contained a general release of all claims. At the time the marriage was dissolved, each party was the named insured on certain term insurance policies having no present cash value, certain retirement plans, joint bank accounts, and other financial accounts for which one spouse was designated the primary beneficiary in the event of the death of the other spouse. The marital settlement agreement identified insurance policies in dispute, as well as various retirement plans, and as to the items in question indicated that “Husband shall receive as his own and Wife shall have no further rights or responsibilities regarding these assets.” The agreement, however, made no mention of the *proceeds* or death benefits of the policies and plans. The decedent never took the steps necessary to accomplish a change of beneficiary on the disputed policies and retirement plans. After the death of the former husband, Ms. Smith and the decedent’s Estate both made claims to the disputed funds generated by the policies and plans. *Smith v. Smith*, 919 So. 2d 525, 526 (Fla. 5th DCA 2006).

The Fifth District held that the wife was entitled to the proceeds of the retirement plans and accounts for which she was the named beneficiary.

Accordingly, the Fifth District's decision in Smith also expressly and directly conflicts with the Third District's decision in the instant case.

CONCLUSION

The impact of the Third District's decision here cannot be minimized because it again puts insurance companies and managers of financial institutions in an impossible position as they can no longer be certain whom to pay without going to court, in spite of what the subject policy or financial account says, or how clearly it may be worded.

For all of the foregoing reasons, petitioner respectfully invokes this Court's jurisdiction under Art. V, §3(b) (3), Fla. Const. and requests the Court to (1) accept jurisdiction; (2) establish a briefing schedule on the merits; and (3) quash the decision of the District Court of Appeal, Third District.

CERTIFICATE OF TYPE SIZE AND STYLE

Undersigned counsel certifies that the size and style of the type used in this brief is Times New Roman 14-point font.

Respectfully submitted,

James L. Weintraub, Esq.
James L. Weintraub, P.A.
7777 Glades Road, Suite 210
Boca Raton, Florida 33434
(561) 487-1201

By: _____
James L. Weintraub, Esq.
Florida Bar No. 795046

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was via U.S. Mail this 10th day of November, 2009 to:

Thomas F. Pepe, Esquire
Pepe & Nemire, P.A.
1450 Madruga Avenue, Suite 202
Coral Gables, Florida 33146.

By: _____
James L. Weintraub, Esq.