

SUPREME COURT OF FLORIDA

CASE NO. SC10-1370

JACKIE STETSON LEDERER
Petitioner

v.

MARIE ONEILL FRAVEL
Respondent

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT
CASE NO. 4D08-2136

BRIEF OF PETITIONER ON JURISDICTION

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September 6, 2010

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JURISDICTION

This Honorable Court has jurisdiction to review the case pursuant to Article V Section 3(b)(3) of the Florida Constitution and FRAP 9.030(a)(2)(A)(iv). Although for approximately five years there has been a dispute between the 4th DCA and the Circuit Court of the 15th Judicial Circuit sitting in its appellate capacity as to the appropriate appellate jurisdiction, the Fourth District Court of Appeals after rejecting all five the Petitioners appeals in the past asserting that it did not have jurisdiction has now decided that it is the appropriate appellate court and this decision is in direct conflict with other decisions issued by this Honorable Court.

STATEMENT OF CASE AND FACTS

In order to fully understand the nature of the conflict jurisdiction one must look at the procedural history of the case and the jurisdictional ping-pong that resulted, unfortunately the 4th DCA refused to do so. The final opinion of the 4th DCA states in part, "...The tenant now asks us to sort through a procedural quagmire... We decline to do so."

The original action was filed in County Court. During the trial, the action was transferred to the Circuit Court. However, through oversight, the Order of Transfer did not comply with the circuit's administrative order nor did it contain a reservation of jurisdiction for the County Court Judge to

continue presiding over the matter. To further compel the problem, the County Court Judge executed in the capacity of a County Court Judge the four separate final orders/judgments in disposition of the action. Therefore, as a result of the foregoing errors, the Petitioner for approximately the past five years has been attempting to pursue her appeals of the four separate final orders/judgments to no avail and has yet to receive an appeal of any of the four separate orders/judgments by a court with appropriate appellate jurisdiction according to the 4th DCA's most recent opinion.

As stated, approximately 5 years ago, the Trial Court entered four separate final orders/judgments in disposition of this matter. With each one, the Petitioner filed timely notice of appeal when rendered and paid all fees. Three of the four notices of appeal were timely filed in the Circuit Court to invoke the jurisdiction of the 4th DCA. One of the notices of appeals was filed timely with the County Court and was transferred by the Circuit Court to the 4th DCA as the court with appropriate jurisdiction.

The 4th DCA, upon review, determined that the final orders/judgments were in fact rendered by the County Court and issued an order to Show Cause why the appeals should not be transferred to the Circuit Court Appellate Division as the Court with appropriate jurisdiction. In response, the Petitioner presented the Order of Transfer originally entered by

the County Court Judge to demonstrate appropriate jurisdiction with the 4th DCA as the matter had been consolidated and transferred to the Circuit Court. However, the 4th DCA decided after reviewing the Order of Transfer and the final orders/judgments that the final orders/judgments were in fact entered by the Judge sitting in a County Court capacity and transferred over time all four of the appeals to the Circuit Court Appellate Division. On two of the four appeals, the Circuit Court asserted appellate jurisdiction. On the other two appeals the Circuit Court declined to act.

Therefore, the Petitioner moved the Trial Court to vacate all of the final orders/judgments for improper jurisdiction as she could not have her appeals heard. The Trial Court denied the Petitioner's request and instead entered an amended order nunc pro tunc to transfer the action from County Court to Circuit Court in an effort to clarify the jurisdictional problem. A timely appeal (the 5th appeal) was filed with the Circuit Court to again invoke the jurisdiction of the 4th DCA who once again transferred the appeal back to the Circuit Court on the premise that it lacked jurisdiction as the rendering Court was the County Court and therefore proper jurisdiction would be with the Circuit Court Appellate Division.

Upon the Trial Court discovering that the fifth appeal had been transferred back to the Circuit Court, the Trial Court ordered the Petitioner

to file a motion with the 4th DCA for reinstatement of the appeals. The Petitioner complied with the Trial Court's Order and the 4th DCA reinstated.

Upon reinstatement, the 4th DCA rescinded from its five previous holdings that it lacked jurisdiction and held that the Trial Judge was acting in the capacity of a Circuit Court Judge and therefore appropriate appellate jurisdiction would lie with the 4th DCA. However, the 4th DCA also held that it would not hear the appeals asserting that the matters were final and or untimely although the 4th DCA never addressed any of the issues that were originally presented in the Petitioner's timely notices of appeal invoking the jurisdiction of the 4th DCA.

SUMMARY OF ARGUMENT

In the instant appeal the challenged opinion is in conflict with the holdings of this Honorable Court

The opinion holds that the 4th DCA will not consider the merits of the Petitioner's appeal although the Petitioner filed 4 timely notices of appeal regarding the final orders/judgments with the proper court and therefore deprives the Petitioner of her right to review.

Furthermore, the opinion holds that the presiding Judge was acting as a Circuit Court Judge although on 5 prior appeals regarding the same issue

the 4th DCA determined the he was sitting as a County Court Judge in conformity with his actions.

ARGUMENT

I. MUST A DISTRICT COURT OF APPEALS HEAR THE MERITS OF AN APPEAL WHEN A TIMELY NOTICE OF APPEAL IS FILED IN THE APPROPRIATE COURT

The present case is in direct conflict with this Honorable Court's holding in KAWEBLUM v. THORNHILL ESTATES HOMEOWNERS ASSOCIATION, INC., et al., 755 So.2d 85 (2000). In this case the Honorable court held that when a timely notice of appeal was filed, even in the wrong circuit, the appeal must be transferred to the proper court for review as the appellate court's jurisdiction would be invoked.

In the instant case Petitioner filed her notices of appeal timely in the Circuit Court to invoke the jurisdiction of the 4th DCA. Although it was originally determined by the 4th DCA that the 4th DCA lacked jurisdiction, both the Circuit Court and the 4th DCA have attempted to comply with the requirements of KAWEBLUM over the preceding five years by transferring the appeal back and forth in an effort to determine which would have the appropriate jurisdiction. However, upon the 4th DCA's final determination that it is the appellate court with appropriate jurisdiction, it now refuses to hear the case on the merits.

In KAWEBLUM, this Honorable Court held that because the notice of appeal was timely, although filed in the wrong court, the court must reinstate the appeal. In the instant case the notices of appeal were filed with the proper court although the 4th DCA originally believed otherwise. Now that the 4th DCA has held that it was the proper court it must hear the merits. If the 4th DCA Opinion is correct, one must conclude all four (4) of Petitioner's judgments are presently pending review by the 4th DCA and are not yet final. FRAP 9.030(b)(1)(A), as timely notices of appeal were filed with the appropriate court who has yet to hear or rule on the merits.

The 4th DCA's assertion that the case is either final or that the appeals or untimely is unfounded. Since the time final orders/judgments were rendered the Petitioner has complied with the appellate rules in an effort to have appellate review. Although some time has transpired in determining which court would be the appropriate appellate court, the 4th DCA, who now claims to have been the appropriate court all along, has not and refuses to hear the matter on the merits.

The Petitioner **did file** five (5) timely appeals and paid five (5) filing fees for same. Because of the constant ping-pong action between the 4th DCA and the Circuit Court to determine appellate jurisdiction a clear miscarriage of justice now exists. Proper notice was originally filed in a

timely manner. Since the 4th DCA Opinion now concludes the judgments on appeal are Circuit Court judgments, proper jurisdiction for review of Petitioner's appeals is now vested with the 4th DCA. Therefore, Petitioner's four (4) appeals have never been properly disposed by a court with proper jurisdiction to do so. They must be disposed of properly by the court. FRAP 9.030(b)(1)(A). However, the 4th DCA states in part, "...The tenant now asks us to sort through a procedural quagmire... We decline to do so." The 4th DCA's Opinion declining to review Appellant's Appeal is inconsistent with Florida's long standing policy in favor of resolving disputes on the merits.

The Petitioner did nothing to create the *who has the Appellate Jurisdiction ping- pong game* the 4th DCA, Circuit Court and County Court have played with her appeals for the past five years. She simply followed the Orders of three different Courts to the best of her ability in an attempt to have her appeals reviewed by the proper court but all her efforts are indeed futile. This is not a twelfth hour attempt to resuscitate issues resolved long ago but rather a long and diligent struggle by Petitioner to reach a resolve to long-standing unsettled issues.

II. DOES THE DOCTRINE OF A DE FACTO JUDGE APPLY TO A JUDGE WHO APPEARS TO BE PRESIDING IN A SPECIFIC CAPACITY

The decision also conflicts with this Honorable Courts holding in STEIN v. FOSTER, 557 So.2d 861 (1990). In this case this Honorable Court held that when a Judge appears to all to have the authority then his authority will not be disturbed.

In the present case the Judge appeared to all to be sitting as a County Court Judge. This problem originated by the failure to use the mandated order prescribed for transferring a cause. It was then further complicated by the fact that the Order of Transfer did not retain jurisdiction so the case was transferred and reassigned. Without a reservation of jurisdiction appearing on the face of the order, the order has no jurisdictional identity to the Trial Court, nor does the order vest the Trial Court with any legal authority. Lastly the final orders/judgments entered were executed specifically naming the Judge as a County Court Judge.

The 4th DCA therefore originally determined that the Trial Court Judge was acting as a County Court Judge relying on the Courts representations. Such would be the conclusion based on the principles of a de fact judge. Irrespective of whether the Judge was vested with Circuit Court jurisdiction or not, the Court adopted County Court status when it

transferred the action to Circuit Court without reserving jurisdiction and then identified itself in the challenged final orders/judgments as sitting in County Court capacity.

These events have prejudiced the Petitioner. Just for example, the Petitioner has paid repeatedly appellate filing fees for the same appeal. The Petitioner has been delayed in resolving the conflict which has allowed the Respondent to essentially destroy the subject matter of the suite

CONCLUSION

Conflict exists, this Honorable Court has jurisdiction to review this case and should grant review and resolve the conflict. Petitioner Lederer's Appeal should be reinstated and reviewed by the 4th DCA or in the alternative determine that the Judge was a de facto County Court Judge

CERTIFICATE OF CERTIFICATION

I hereby certify that a true and correct copy of the foregoing has been delivered by U.S. Mail this ____ day of September, 2010, to Sheldon Engelhard, Esq. , 7369 Woodmont Ct, Boca Raton, Florida 33434

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CERTIFICATE OF COMPLIANCE

I further certify that the font used in the foregoing Initial Brief is Times New Roman 14.

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1. District Court of Appeal of the State of Florida Fourth District
(Conformed) Opinion May 5, 2010