
SUPREME COURT OF FLORIDA

CASE NO.: SC12-45

L.T. No.: 1D11-2315

05-494-DR

Dell Pomeroy

v.

Cynthia Jo Pomeroy

Appellant/Petitioner

Appellee/Respondent

APPELLANT/PETITIONER'S JURISDICTIONAL INITIAL BRIEF

/s/ Maria Perez Youngblood

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STATEMENT OF THE CASE

A. Statement of the Facts and Case

Dell Pomeroy and Cynthia Pomeroy married on March 12, 1988. (SR-01-06). There were two children borne from this marriage. (SR-01-06). Dell Pomeroy and Cynthia Pomeroy separated on July 1, 2005. (SR-01-06).

On July 19, 2005, Dell Pomeroy filed a Petition for Dissolution of Marriage. (SR-01-06). On May 31, 2007, County Court Judge Stephen Murphy entered the Final Judgment of Dissolution of Marriage. (R-01-03). Cynthia Pomeroy filed a Motion for Civil Contempt against Dell Pomeroy on January 19, 2011. (R-04-06). This hearing was scheduled to be heard by Circuit Court Judge James Roy Bean. (R-09). When Dell Pomeroy became aware that County Court Judge Stephen Murphy would be presiding over the hearing, Dell Pomeroy filed a Request for Recusal. (R-12).

County Court Judge Stephen Murphy denied Dell Pomeroy's Request for Recusal. (R-31-27). On March 30, 2011, County Court Judge Stephen Murphy entered an Order on Enforcement Proceeding stating that Dell Pomeroy had not paid any child support. (R-31-37). The Court ordered Dell Pomeroy to pay \$18,610.88 for child support, \$11,130.45 in alimony, and \$300.00 for medical bills. (R-31-37). The Court required that Dell Pomeroy maintain the coverage until Brittney Nicole Pomeroy becomes a full time student, is no longer dependent,

or until the insurance coverage is not available beyond an age stated in the policy. (R-31-37). On April 21, 2011, Dell Pomeroy filed a Notice of Appeal. (R-42).

On December 15, 2011, the First District Court of Appeals for the state of Florida filed their opinion in this case. On January 9, 2012, the Petitioner filed a timely Notice of Appeal in this Court appealing the First District Court of Appeals' December 15, 2011 opinion.

The First District Court of Appeals denied Petitioner's claim that the lower County Court Judge lacked subject matter jurisdiction to hear the matters in this case which is in direct conflict with recognized Florida case law.

SUMMARY OF THE ARGUMENT

This Court should exercise its jurisdiction to hear this case. The decision of the First District Court of Appeals, in the instant case, directly and expressly conflicts with prior decisions in Florida case law on the same question of law that judges without jurisdiction to preside over certain matters must be appropriately assigned by means of an Administrative Order. Pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), the Florida Supreme Court has jurisdiction to invoke discretionary review of the decision in this matter. This Court should exercise its discretion and resolve said conflict.

ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE AS THE FIRST DISTRICT COURT APPEALS IMPROPERLY HELD THAT A COUNTY COURT JUDGE HAD SUBJECT MATTER JURISDICTION TO PRESIDE OVER A PROCEEDING IN WHICH THE COUNTY COURT JUDGE WAS NEITHER ASSIGNED NOR HAD JURISDICTION

This court should exercise its discretionary jurisdiction to review this case.

Subject matter jurisdiction is the “power of the trial court to deal with a class of cases to which a particular case belongs.” *Strommen v. Strommen*, 927 So. 2d 176, 179 (Fla. 2d DCA 2006). Subject matter jurisdiction is “conferred upon a court by a constitution or statute, and cannot be created by waiver, acquiescence or agreement of the parties.” *Mikulec v. Mikulec*, 47 So. 3d 851 (Fla. 4th DCA 2010). Unless the court has the judicial power to resolve the issue presented by the case, the trial court may not proceed with the civil action. *Cunningham v. Standard Guar. Ins. Co.*, 630 So. 2d 179, 181 (Fla. 1994). Accordingly, if a judgment is entered by a court that lacks subject matter jurisdiction, the judgment is void and subject to collateral attack at any time. *McGhee v. Biggs*, 974 So. 2d 524 (Fla. 4th DCA 2008); *See also D.N.H.W., N.W.T. and G.S.T. v. L.H.D. and S.W.*, 955 So. 2d 1236 (Fla. 2d DCA 2007).

Jurisdiction “runs with the court and not with the judge assigned to the court.” *See* 5 Fla. Prac., Civil Practice § 1:6 (2009 ed.). A county judge’s court has no jurisdiction except what is conferred upon him or her by the constitution

and by statutory enactment and what may be “incidentally necessary to the execution of these powers.” *Michaels v. Dillon*, 191 So. 2d 80, 81 (Fla 2d DCA 1966). Proceedings under Chapter 61 of the Florida Statutes (“Dissolution of Marriage; Support; Custody”) are in chancery. § 61.011, Fla. Stat. *See also* 26 Fla. Jur 2d Family Law § 1019. Hence, “jurisdiction is vested by statute in the circuit courts, as courts of equity, to grant judgments of dissolution of marriage, orders for temporary and permanent alimony, for attorney’s fees, and to determine custody and support of minor children.” *Id.* *See also Meloche v. Meloche*, 101 Fla. 659, 133 So. 339 (1931); *Gill v. Gill*, 107 Fla. 588, 145 So. 758 (1933).

In the instant matter, the Third Judicial Circuit for the State of Florida issued an Administrative Order 2002-007A Amended Order. (Amended Appendix 1-Amended Appendix 2) The 2011 Amended Order Assigning County Judges to Circuit Court Proceedings gave the Honorable Judge James Roy Bean the following assignments:

- “Domestic relations; injunctions for protection, Juvenile Delinquency and Juvenile Dependency; probate and guardianship; DOR cases; and Marchman and Baker Acts.”

Judge Greg Parker was assigned the following:

- “Disqualifications and recusals from Judge Bean.

The 2011 Order states that County Court Judge Stephen Murphy and other County Court Judges were “hereby vested with the respective powers and prerogatives conferred by the Constitution and Laws of the State of Florida as a

Circuit Judge on a temporary basis to hear, conduct and determine all matters consistent with Florida Statute 26.012 which are presented to them.” The 2011 Order also states that “all cases under circuit court jurisdiction **shall** be calendared before the circuit judge assigned to the division in which the case has been filed. When a rule, statute or procedure mandates expedited judicial action on a matter and the judge assigned to the division is unavailable, the Chief Judge shall assign a judge to hear the case or cases pursuant to this order.” *emphasis added*. As the 2011 Order shows, County Court Judge Stephen Murphy was never specifically nor generally assigned to hear dissolution of marriage, such as the case at bar. Although this matter was placed on Judge Bean’s calendar, it was removed by the clerk (not Chief Judge) and placed on County Court Judge Stephen Murphy’s calendar when the appropriate judge was Judge Greg Parker. (R-9). Further, if Judge Bean was not available to hear the matter, per the Order, the Chief Judge shall assign a judge to hear the case (not the clerk). Here, the assignment by the Chief Judge per the Order was not conducted. Pursuant to the 2011 Order, a clerk’s assignment is insufficient. Additionally, Judge Bean was available to hear the matter since the hearing was placed on his calendar originally. (R-9).

A county court judge lacks jurisdiction over matters not included in an administrative order of the chief judge requesting for the court to preside over

specific circuit court proceedings. *Klossenberg v. Rainwater*, 410 So. 2d 1009 (Fla. 3d DCA 1982). Clearly, County Court Judge Stephen Murphy was never assigned to hear proceedings brought pursuant to Chapter 61, Dissolution of Marriage; Support; Time-Sharing. (Amended Appendix 2). Despite the fact that the County Court Judge Stephen Murphy did not have the authority under an Administrative Order, he proceeded to preside over the instant matter. Although a county court judge may be assigned to a circuit court matter, the assignment must be for a temporary time period and cannot be indefinitely assigned to serve as a circuit court judge. *Payret v. Adams*, 500 So. 2d 136 (Fla. 1986) (quoting *Crusoe v. Rowls*, 472 So. 2d 1163 (Fla. 1985) that “if a county judge is assigned to perform solely circuit court work, the assignment must be for a relatively short time for it to be temporary. If a county judge is assigned to spend a portion of his time performing circuit work, the assignment can be longer, but the assignment cannot usurp, supplant, or effectively deprive circuit court jurisdiction of a particular type of case on a permanent basis.”). In the case at bar, County Court Judge Stephen presided over the instant case in the year 2011 when he was not assigned.

As it is the case that County Court Judge Stephen Murphy was never assigned to hear proceedings brought pursuant to Chapter 61, he, therefore, did not have subject matter jurisdiction to preside over Appellant’s dissolution of marriage proceeding in 2011. *See Klossenberg*, 410 So. 2d at 1009 (holding that “because

the administrative orders of the chief judge, which assigned the respondent county court judge to preside over specified circuit court proceedings designated as ‘A.F.D.C., U.R.E.S.A. and uncontested paternity’ cases, manifestly did not include Dade County Circuit Court Case No. 77-42100 FC 02, the respondent [lacked] jurisdiction further to consider that cause, and [was] prohibited from doing so.”); *See also Diaz v. State of Florida*, 868 So. 2d 1281 (Fla. 4th DCA 2004) (holding that because “there was no order in effect assigning [the county court judge] to circuit court...[the court] grant[s] the petition for writ of prohibition based on the lack of an order of assignment.”); *Combs v. State*, 944 So. 2d 1067 (Fla. 4th DCA 2006) (District Court of Appeal would remand “for consideration by a circuit court judge of petitioner’s post-conviction motions, where petitioner and State agreed that there was no current order of assignment permitting county court judge to preside over petitioner’s pending post-conviction motions.”). Due to the fact that County Court Judge Stephen Murphy lacked subject matter jurisdiction, the judgment entered is void. *McGhee*, 974 So. 2d at 526; *See also D.N.H.W.*, 955 So. 2d at 1238.

The First District Court of Appeals held that Appellant’s argument that the trial court lacked subject matter jurisdiction was without merit. Specifically, the court cited to the General Assignment of Judges No. 2011-02 that the chief judge of the Third Judicial Circuit appointed County Court Judge Stephen Murphy as

“circuit court judge[] to adjudicate any issue pending in any circuit court case in the Third Judicial Circuit that will provide prompt disposition of cases and efficiently administer the courts.” The problem is that the Chief Judge never appointed County Court Judge Stephen Murphy to preside over the instant case as is required as a condition precedent to the matter being. The administrative order specifically sets out a method in which a circuit case will be presented to a county judge and the Chief Judge is an integral part of that process which is evidenced by the passage in the Order referenced above. Judge Bean was appointed to preside over the 2011 hearing but the Clerk instead removed the hearing from Judge Bean’s calendar and placed it on County Court Judge Stephen Murphy’s calendar. This is in direct conflict with the court’s holding that the clerk assigning Judge Murphy was for “prompt disposition of cases,” when in fact the case was to be heard by Judge Bean. If Judge Bean was not available, which was never the case, then the appropriate Judge to hear the matter would have been Judge Parker per the 2011 assignment.

Failure to strike the First District Court of Appeals Order and holding that the lower court possessed subject matter jurisdiction in the instant case, essentially deprives the Third Circuit of any county court judges. For example, if a County Court judge can preside in a matter without an assignment and without a chief judge appointing him or her to the specific case, then the circuit is deprived of

county court judges. Therefore, should it be the case that the 2011 order of assignment stands, a review by this Court is warranted as the Order conflicts with the case law stated above that jurisdiction “runs with the court and not with the judge assigned to the court.” *See* 5 Fla. Prac., Civil Practice § 1:6 (2009 ed.). Additionally and previously stated, a county court judge may be assigned to a circuit court matter, the assignment must be for a temporary time period and cannot be indefinitely assigned to serve as a circuit court judge. *See Payret*, 500 So. 2d at 136. Hence, County Court Judge Stephen Murphy never had jurisdiction to preside over the 2011 hearing in the instant case and the judgment is void. *McGhee*, 974 So. 2d at 526; *See also D.N.H.W.*, 955 So. 2d at 1238.

CONCLUSION

For the reasons set out above, the decision of the First District Court of Appeal expressly and directly conflicts with prior decisions of Florida case law on the same question of law that judges without jurisdiction to preside over certain matters must be appropriately assigned by means of an Administrative Order. The First District Court of Appeal stated in Oral Arguments that this was a “technicality.” However, it is not a “technicality” that a judge is not appointed to a particular case. The law is clear as to how judges are assigned to cases and there are reasons, as mentioned above, as to why the rules exist. If the courts are allowed to loosely construe the laws on judges’ assignments to cases, then the

question arises if the general public should also be allowed to loosely construe the very laws meant to protect us. Therefore, this Court should accept jurisdiction to resolve the conflict which results from the decision of the First District Court of Appeal in this case, which directly conflicts with previously held Florida case law.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and accurate copy of the above and foregoing Appellant's Jurisdictional Brief has been filed electronically with the Clerk of Court for the Supreme Court of Florida on January 24, 2012, and that a true and accurate copy of the above and foregoing Appellant's Jurisdictional Brief has been delivered by U.S. Mail delivery to:

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CERTIFICATE OF COMPLIANCE

Appellant, **DELL POMEROY**, by and through his undersigned counsel of record, hereby certifies and avers to this Court that the size and type style of the print used in this brief is “TIMES NEW ROMAN, 14 POINT” in compliance with the typeface requirements of Florida Rule of Appellate Procedure 9.210(a)(2). It is further certified that this brief contains a page count of 10 in compliance with the type-volume limitations set forth in Florida Rule of Appellate Procedure 9.210(a)(5).

/s/ Maria Perez Youngblood

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CERTIFICATE OF COMPLIANCE WITH
ADMINISTRATIVE ORDER AO04-84

I HEREBY CERTIFY that I have complied with Administrative Order AO04-84 in that a copy of Appellant’s Jurisdictional Brief has been electronically submitted on January 24, 2012.

/s/ Maria Perez Youngblood

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