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IN THE SUPREME COURT OF FLORIDA

Case No. SC13-1258

J. STANFORD LIFSEY,

Petitioner,

vs.

**MARY ANN MCCANDLESS, Individually
and as Trustee of the Julian H. Lifsey, Jr.,
Trust Fund No. 3 and JOHN SHEPARD,
Individually and as Trustee of the Julian H.
Lifsey, Jr., Trust Fund No. 3,**

Respondents.

RESPONDENTS' JURISDICTIONAL BRIEF

Discretionary Review of Second District Court of Appeal Decision

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STATEMENT OF THE CASE AND OF THE FACTS

The facts relevant to determining whether jurisdiction exists based on a conflict of decisions are those stated in the district court's opinion. State v. Klayman, 835 So. 2d 248, 250 (Fla. 2002) (the "relevant facts are set forth in the district court opinion"). Even facts stated in a dissenting or concurring opinion are irrelevant. Stallworth v. Moore, 827 So. 2d 974, 977 (Fla. 2002). "[I]t is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below" because the only facts relevant to whether to accept jurisdiction are those "contained within the four corners of the decisions allegedly in conflict." Reaves v. State, 485 So. 2d 829, 830 fn. 3 (Fla. 1986).

Petitioner's statement of the case and of the facts primarily includes facts not contained within the four corners of the decision allegedly in conflict. These purported facts must be disregarded; this Court's consideration of facts relevant to the determination of jurisdiction should be limited to those contained within the opinion (in this case an order dismissing the appeal).

The order reflects only that Respondents' motion to relinquish jurisdiction and to stay appeal that was initially denied by the Second District was reconsidered and treated as a motion to dismiss the appeal as being from a non-final, non-appealable order, and that motion was granted, resulting in the dismissal of the appeal and cross-appeal. The order cites Brake v. Swan, 767 So. 2d 500 (Fla. 3d

DCA 2000), and Kondler v. Bottner, 85 So. 3d 1225 (Fla. 4th DCA 2012). The order does not identify conflict with either of these cases nor does it address any salient facts contained within either the record in the instant matter or the referenced decisions.

SUMMARY OF THE ARGUMENT

This Court lacks jurisdiction because there simply is no conflict between the Second District order in this case and either of the cases cited therein. The order from which Petitioner seeks review establishes only that the Second District dismissed the appeal as one improperly seeking review of a non-final, non-appealable order. The cases cited in the Second District decision both stand for the proposition that where the trial court's judicial labor is not at an end, an order is not final and an appeal is premature. The order includes no pertinent facts and therefore fails to evidence any express and direct conflict, and none exists in any event. The petition for review should be denied because this Court has no basis for conflict jurisdiction and review is not warranted.

ARGUMENT

The jurisdiction of this Court extends only to the narrow class of cases enumerated in Article V, Section 3(b) of the Florida Constitution. Gandy v. State, 846 So. 2d 1141, 1143 (Fla. 2003). See also Mystan Marine, Inc. v. Harrington,

339 So. 2d 200, 201 (Fla. 1976). (“Time and again we have noted the limitations on our review and we have refused to become a court of select errors.”).

Conflict jurisdiction is limited to decisions “that expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law.” Art. V, sec. 3(b)(3), Fla. Const. The conflict must “appear within the four corners” of the decision brought up for review. See Hill v. Hill, 778 So. 2d 967 (Fla. 2001).

“[W]here the district court has not explicitly identified a conflicting decision, it is necessary for the district court to have included some facts in its decision so that the question of law addressed by the district court in its decision can be discerned by this Court.” Persaud v. State, 838 So. 2d 529, 532 (Fla. 2003). Moreover, “there can be no actual conflict discernible in an opinion containing only a citation to other case law unless one of the cases cited as controlling authority is pending before this Court, or has been reversed on appeal or review, or receded from by this Court, or unless the citation explicitly notes a contrary holding of another district court or of this Court.” Florida Star v. B.J.F., 530 So. 2d 286, 288 fn. 3 (Fla. 1988). Absent a conflict, this Court lacks jurisdiction to review the district court’s decision. Id. at 288-89.

Petitioner alleges conflict jurisdiction arising from the purported misapplication of Brake and Kondler as authority for the dismissal of the instant

appeal, alleging factual distinctions between the instant case and the two cited authorities.¹ Petitioner cannot demonstrate a misapplication of the referenced authorities, both because he must rely on purported facts not contained within the four corners of the decision from which he seeks review and because the application of these authorities in the instant case was proper and warranted dismissal of the appeal.

As set forth above, Petitioner is limited to the facts contained within the four corners of the order from which he seeks review in his efforts to demonstrate conflict. The order at issue does not include any facts that would reflect a conflict with the cited authorities. Indeed, to make his argument Petitioner refers to matters outside of the order. For example, Petitioner states that “in the instant case, the trial court at the conclusion of the case awarded attorneys’ fees in excess of \$200,000” (Petitioner’s Jurisdictional Brief at p. 5). This fact is not contained in the order from which Petitioner seeks review. Petitioner further argues that “the final judgment clearly apportions personal liability to Lifsey *alone*, directs the source from which the attorneys’ fees and costs are to be paid . . . and reserves jurisdiction . . .” to determine other payment issues. (*Id.* at p. 6). And Petitioner asserts that “the final judgment from which Lifsey seeks to appeal is a

¹ Respondents do not quarrel with the notion that misapplication of the law can create conflict jurisdiction for this Court in an appropriate case. Rather, as set forth above, Respondents respectfully submit that Petitioner cannot demonstrate a misapplication of the law in this case.

final order from which the trustees are entitled to immediate possession of up to \$243,251.97 of Lifsey's interest in Lifsey Trust Fund Number Three," an alleged fact not contained in the order and not technically accurate.² None of these purported facts are contained within the order and are improperly relied upon by Petitioner to demonstrate the alleged misapplication of the cited authorities.

Moreover, even if this Court were to consider the extra-opinion facts relied on by Petitioner, they only demonstrate the proper application of the cited authorities. Brake held that an order deferring to a future date the determination of who should pay fees was not final and therefore the appeal was premature. 767 So. 2d at 502. Kondler held that an appeal was premature where the trial court had not determined the source of funds from which the fees would be paid, therefore the judicial labor was not concluded. 85 So. 3d at 1227. Both of these cases stand for the simple proposition that where additional judicial labor remains, an order is not final and not appealable.

The facts on which Petitioner relies are not complete and are not fully accurate. Nevertheless, even his purported facts demonstrate that the trial court has not completed its judicial labor in regard to the attorneys' fee award at issue and the Second District correctly applied the cited authorities in determining that

² Respondents likewise are limited to the facts in the order. The actual holdings of the trial court's fee order and their interplay with the provisions of the various trusts necessitated Respondents' motion to relinquish jurisdiction and the continued trial court labors that render the fee order non-final.

the appeal must be dismissed. The actual facts of record would further support such a conclusion. Respondents will not, however, violate controlling authority and deviate from the confines of the order at issue to recite those facts herein.

Finally, to the extent Petitioner argues that the dismissal of the appeal bars him from obtaining review of the award on its merits (Petitioner's Jurisdictional Brief, p. 7), Petitioner is wrong and also argues an error correcting function outside the confines of the jurisdiction of this Court. Petitioner is wrong because the Second District opinion at issue simply dismissed the appeal as premature, plainly anticipating further proceedings below that should culminate in an appealable order. Thus, Petitioner will have the right to review once he obtains a final order. Moreover, this Court does not correct errors of the district courts of appeal, but instead confines its jurisdiction to matters that fit within the constitutional framework, which in the instant case would require a showing of an express and direct conflict.

CONCLUSION

The Second District Court of Appeal order from which Petitioner seeks review does not create conflict jurisdiction in this Court. The order does not contain facts demonstrating a conflict with the referenced case law, nor does it identify conflict with the referenced authorities. Moreover, the application of the principle of law contained within the referenced authorities to the instant case was correct and consistent, not in conflict. Petitioner has failed to demonstrate express and direct conflict between the Second District order and any existing district court of appeal or Florida Supreme Court case. Instead, the Second District correctly applied the decisions to which it cited. In the absence of an express and direct conflict, this Court is without jurisdiction and Petitioner's Petition for Review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Respondents' Jurisdictional Brief* has been furnished by U.S. Mail to J. Stanford Lifsey, Esquire, 324 S. Hyde Park Ave., Suite 275, Tampa, Florida 33606 and by email to: lifseyjspa@gmail.com on this 22nd day of July, 2013.

/s/ Marie Tomassi
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Respondents' Jurisdictional Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

/s/ Marie Tomassi
Attorney