

RECEIVED, 6/12/2013 15:43:31, Thomas D. Hall, Clerk, Supreme Court

IN THE SUPREME COURT OF THE STATE OF FLORIDA

AARON FRANKLIN BROWN,

Petitioner,

v.

**NORTH FLORIDA SURGEONS, P.A.
and G. STEVEN WEBB, M.D.,**

Respondents.

Case No.: SC13-960

DCA: 1D12-3383

**L.T. No.: 2010-CA1445
(Duval County)**

**ON REVIEW FROM THE DISTRICT COURT
OF APPEAL, FIRST DISTRICT
STATE OF FLORIDA**

RESPONDENTS' JURISDICTIONAL BRIEF

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INTRODUCTION

In this brief, the parties will be referred to as follows:

Petitioner: Aaron Franklin Brown

Respondents: North Florida Surgeons, P.A.; G. Steven Webb, M.D.

Referenced to pages in the record transmitted to the First District are given as Vol. _____, R _____.

All emphasis in the brief appears in the original unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The court is being asked to review an arbitration agreement that was upheld by the trial court and the First District Court of Appeals. The arbitration agreement ("Agreement") was between the Respondents, North Florida Surgeons, P.A., G. Steven Webb, M.D. (collectively referred to herein as "North Florida Surgeons") and their patient Aaron Franklin Brown. The Agreement was signed by the parties prior to Mr. Brown receiving any medical care for an elective surgery performed by defendant G. Steven Webb, M.D. When Mr. Brown experienced complications after his surgery, he brought suit against North Florida Surgeons in Duval County Circuit Court.

North Florida Surgeons asserted its right to arbitrate the dispute pursuant to the Agreement and after a hearing, the circuit court compelled the parties to arbitration. Petitioner appealed the trial court's order to compel arbitration and argued that the Agreement was invalid for numerous reasons. (Vol. 2, R. 165) The First District Court of Appeal entered a per curiam affirmed decision which affirmed the trial court's order and cited to Franks v. Bowers, 62 So. 3d 16 (Fla. 1st DCA 2011) ("Opinion"). There is no indication that this was anything more than a counsel notification citation.

Subsequent to the issuance of the First District Court of Appeal's opinion upholding the Agreement (Opinion), Petitioner filed a Motion for Rehearing and

requested that the Court issue a written opinion. The First District Court of Appeal denied the motion. Petitioner now seeks this Court's jurisdiction based on express and direct conflict. However, for the reasons that follow, this Court does not have jurisdiction.

SUMMARY OF THE ARGUMENT

The First District Court of Appeal issued a per curiam affirmed citation opinion citing to Franks v. Bowers, 62 So. 3d 16 (Fla. 1st DCA 2011). PCA opinions that merely cite to a case do not provide jurisdiction. Dodi Publ. Co. v. Editorial AM., 385 So. 2d 1369 (Fla. 1980). There is no indication or allegation that this was anything more than a mere counsel notification citation.

The court's review of the instant case is not needed to resolve any conflicts among the jurisdictions. There has been no allegation that this case involves anything more than adjudication of the rights of particular litigants.

ARGUMENT

Standard of Review. This Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same point of law. Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv). The conflict must appear within the four corners of the district court's majority opinion and this Court may only consider those facts which are stated therein.

Reaves v. State of Florida, 485 So.2d 829, 830 (Fla. 1986).

I. THIS COURT DOES NOT HAVE JURISDICTION BECAUSE THE FIRST DISTRICT'S DECISION IS A PCA DECISION WITH A COUNSEL NOTIFICATION CITATION.

The Florida District Courts of Appeal were meant to be courts of final appellate jurisdiction. Lake v. Lake, 103 So. 2d 639, 642-43 (Fla. 1958); Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981). The district courts of appeal were never intended to be intermediate appellate courts. See Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958). The Supreme Court does not have jurisdiction to review a bare per curiam affirmance ("PCA"). See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980); See also R.J. Reynolds Tobacco, Co. v. Kenyan, 882 So. 2d 986 (Fla. 2004); South Florida Hospital Corp. v. McCrea, 118 So. 2d 25, 31 (Fla. 1960) ("this court will not dig into a record to determine whether or not a per curiam affirmance...conflicts with the interpretation petitioner's counsel has placed upon former decisions...'[because] to do so would in effect give the petitioner an unauthorized second day in an appellate court when he had already the one day the Constitution has given him"), quoting Lake. Likewise, PCA opinions that merely cite to a case do not provide jurisdiction. Dodi Publishing Co., 385 So. 2d 1369 (Fla. 1980).

In Jollie, the Court advised the district courts to isolate for possible review in the Florida Supreme Court those decisions which merely referenced to a lead opinion from those per curiam opinions which “merely cite counsel-advising cases.” 405 So. 2d 418, 420 (Fla. 1981) The Court advised the district courts to add an additional sentence in each citation PCA which references a controlling contemporaneous or companion case, stating that the mandate will be withheld pending final disposition of the petition for review, if any, filed in the controlling decision. Id. at 420. This Court further suggested that “the district courts devise one or more methods to distinguish a contemporaneous or companion case-for example with distinguishing citations signals or by certifying that an identical point is at issue in the cited case-from cases which offer a mere counsel notification citation.” Id. at 420. The First District Court in the instant case did not in any way identify the opinion as anything more than a mere counsel notification citation. The First District Court did not withhold its mandate. Petitioner requested that the First District Court of Appeal write a written opinion for purposes of providing a legitimate basis for Supreme Court review. That motion was denied which indicates that the First District Court of Appeal intended this to be nothing more than a mere counsel notification citation.

Unlike the instant case, Jollie was one of four cases involving the same legal issue before a district court of appeal. Id. at 419. Rather than write four identical opinions, the district court elected to write an opinion in the lead case and tie the other three cases to it by affirming them per curiam and citing to the lead case. Id. The citation per curiam affirmances that were the subject of the Jollie case were not of the common counsel advising variety. In the instant case, the decision is in no way a companion case or related in time or facts to the case in Franks v. Bowers, 62 So. 3d 16 (Fla. 1st DCA 2011), review granted, 74 So. 3d 1083 (Fla. 2011). In fact, they were decided two (2) years apart.

II. THIS COURT'S JURISDICTION SHOULD NOT BE EXERCISED BECAUSE IT WILL NOT CLARIFY OR RESOLVE ANY CONFLICT OF LAW AMONG THE JURISDICTIONS.

Petitioner spends virtually all of its time arguing that the court may exercise jurisdiction but does not advise this court why it should. Supreme Court review of the instant case is not needed to resolve any conflicts among the jurisdictions. The overall purpose of the 1980 amendments to Article V of the Florida Constitution was to limit the Court's jurisdiction to decrease its overwhelming case load and to allow the Court to focus its efforts on cases of statewide importance or a particular impact on the jurisprudence of the state. See Jenkins, 385 So. 2d 986 (Fla. 2004). Even if the Court does

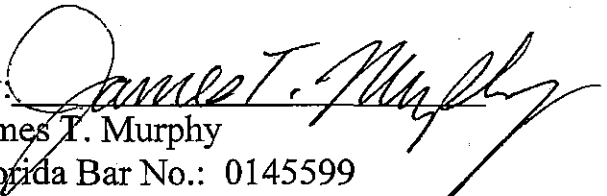
find that it has jurisdiction on this PCA citation opinion, it does not mean that the Court needs to or should exercise its discretionary jurisdiction. There has been no showing or allegation that the instant case involves an issue of statewide importance or a particular impact on the jurisprudence of the state. Although both Bowers and the instant case involve an arbitration agreement and a claim of medical malpractice, the facts of the cases and the causes of action are different. Franks v. Bowers, 62 So. 3d 16 (Fla. 1st DCA 2011). This court has stated that its primary concern is with decisions as precedents cases involving principles of importance to the public as opposed to adjudication of the rights of particular litigants. See Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958). In his Jurisdictional Brief, the petitioner has not alleged that the instant case involves principles of importance to the public, as needed to create precedent. There is no allegation to indicate that this is anything more than adjudication of the rights of a particular litigant.

CONCLUSION

Because there is no express and direct conflict, this Court lacks jurisdiction to hear this appeal. There is no indication that this case involves anything more than the adjudication of the rights of particular litigants. Therefore, Respondent respectfully requests this Court to deny review.

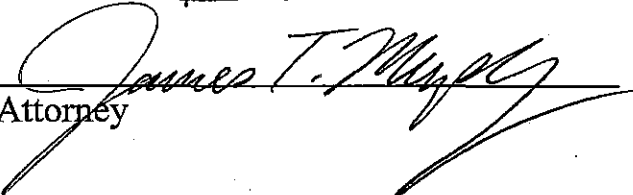
Respectfully Submitted,

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CERTIFICATE OF SERVICE

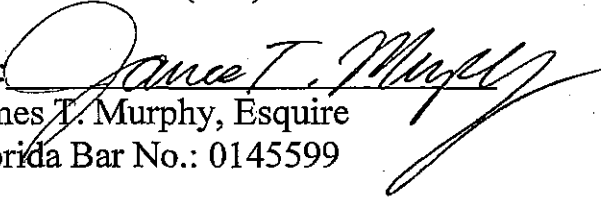
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Robert F. Jordan, Esquire, 934 N.E. Lake DeSoto Circle, Lake City, FL 32055 via email at rochellesims@bellsouth.net and C. J. Gideon, Jr., Esquire, Gideon, Cooper & Essary, PLC, 315 Deaderick Street, Suite 1100, Nashville, TN 37238, cj@gideoncooper.com, blake@gideoncooper.com and cindy@gideoncooper.com via email U.S. Mail this 12 day of June, 2013.


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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this Answer Brief complies with the font requirements of Rule 9.210(a)(2), Fla.R.App.P. and is submitted in Times New Roman 14-point font.

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