
IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1335

Lower Tribunal Case Nos.
1D13-3608
2012-CA-004091

SAMUIEL K. MESSIHA

Petitioner,

v.

FIRST FLORIDA CREDIT UNION,

Respondent.

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

(On petition for discretionary appellate jurisdiction
from the First District Court of Appeal)

WILLIAMS, GAUTIER, GWYNN, DELOACH & SORENSON, P.A.

James E. Sorenson

Brian C. Bohm

2010 Delta Boulevard

Tallahassee, Florida 32303

Telephone: (850) 386-3300

Facsimile: (850) 386-3663

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STATEMENT OF THE CASE AND OF THE FACTS

The Respondent, FIRST FLORIDA CREDIT UNION, was the prevailing party in the underlying foreclosure suit, wherein the trial court entered a summary final judgment of foreclosure (the “Final Judgment”) upon a promissory note and mortgage involving real property located in Leon County, Florida, in favor of the Respondent. The Petitioner, SAMUIEL K. MESSIHA, thereafter appealed the Final Judgment to the First District Court of Appeal (the “First DCA”).

On May 12, 2014, the First DCA entered an Opinion, per curiam, affirming the entry of the Final Judgment, but remanding the cause to the trial court based upon the Respondent’s concession that the Final Judgment contained a miscalculation of interest (the “May Opinion”). (Appendix, p. 1-2). On or about May 19, 2014, the Petitioner filed a Motion for Rehearing directed at the May Opinion. On June 11, 2014, the First DCA entered an Order denying the Petitioner’s Motion for Rehearing (the “June Order”). (Appendix, p. 3). The June Order stated, in full:

Appellant’s motion filed May 19, 2014, for rehearing is denied.

(Appendix, p. 3). The June Order does not set forth any facts of the case, nor does the June Order set forth any opinion, ruling or findings of the First DCA.

On or about July 2, 2014, the Petitioner filed a Notice of Appeal, seeking to appeal the entry of the June Order to this Court (the “Notice”). On July 29, 2014, this Court entered an Acknowledgment of New Case, treating the Notice as a notice to invoke discretionary jurisdiction.

On or about September 3, 2014, the Petitioner filed his Initial Brief on Jurisdiction (the “Initial Brief”). Attached as an appendix to the Petitioner’s Initial Brief on Jurisdiction is a copy of the May Opinion, rather than the June Order. (See appendix to Petitioner’s Initial Brief on Jurisdiction).

SUMMARY OF THE ARGUMENT

The Petitioner filed its notice to invoke discretionary jurisdiction of this Court based upon the entry of the June Order. However, the Petitioner attached a copy of the May Opinion to the Initial Brief instead. Accordingly, the Petitioner is improperly seeking review of the May Opinion and this matter should be dismissed.

Even assuming that the May Opinion may be properly considered, the Petitioner has failed to demonstrate a basis for this Court to exercise its discretionary jurisdiction over this matter. Accordingly, this matter should be dismissed for lack of jurisdiction.

JURISDICTIONAL STATEMENT

The Supreme Court of Florida has discretionary jurisdiction that may be invoked to review a decision of a district court of appeal in certain limited circumstances. *See* Art. V, § 3(b)(3), Fla. Const. *and* Fla. R. App. P. 9.030(a)(2) (2014). As set forth in Rule 9.030(a)(2)(A), this Court has discretionary jurisdiction over decisions of the district courts of appeal that:

- i. Expressly declare valid a state statute;
- ii. Expressly construe a provision of the state or federal constitution;
- iii. Expressly affect a class of constitutional or state officers;
- iv. Expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
- v. Pass upon a question certified to be of great public importance;
- vi. Are certified to be in direct conflict with decisions of other district courts of appeal.

Fla. R. App. P. 9.030(a)(2)(A) (2014). The Initial Brief does not invoke any of the foregoing.

AGRUMENT

I. The Petitioner has Failed to Attach the Order Upon Which he Seeks Discretionary Review.

The Petitioner filed the Notice, seeking to invoke the jurisdiction of this Court based upon the June Order. However, the Petitioner has failed to attach the June Order to the Initial Brief, but rather has attached the May Opinion to the

appendix of the Initial Brief. The May Opinion was not identified in the Notice as the order to be reviewed, and, therefore, this matter should be dismissed.

Rule 9.120, *Florida Rules of Appellate Procedure*, provides the procedure for invoking discretionary appellate jurisdiction of this Court. *See* Fla. R. App. P. 9.120 (2014). Pursuant to subsection (c), the notice to invoke discretionary jurisdiction “shall contain the date of rendition of the order to be reviewed.” *Id.* at (c). Subsection (d) requires that the petitioner’s initial brief on jurisdiction “be accompanied by an appendix containing only a conformed copy of the decision of the district court of appeal.” *Id.* at (d).

The Notice clearly identifies that the Petitioner is seeking review of the “order of [the First DCA] rendered June 11, 2014, rehearing and clarification denied.” Accordingly, the June Order is required by Rule 9.120 to be attached as an appendix to the Initial Brief, and the Petitioner has failed to so attach the June Order.

Therefore, this matter should be dismissed for the Petitioner’s failure to comply with Rule 9.120.

II. The Petitioner Has Failed to Demonstrate a Basis for this Court to Exercise its Discretionary Jurisdiction.

The Initial Brief fails to identify or demonstrate any basis for this Court to exercise its discretionary jurisdiction over this matter. Accordingly, this matter should be dismissed.

Article V, § 3(b)(3) of the Florida Constitution, which sets forth the jurisdiction of the Supreme Court of Florida to hear decisions of the district courts of appeal, provides that this Court:

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

Art. V, § 3(b)(3), Fla. Const. Rule 9.030(a)(2), set forth in detail above, also provides the separate bases for this Court to exercise its discretionary jurisdiction. *See Fla. R. App. P. 9.030(a)(2) (2014).*

The Petitioner has failed to demonstrate any basis for this Court to exercise its discretion. Instead, the Initial Brief is a recitation of the same arguments and allegations made by the Petitioner within the appeal below.

As set forth in Rule 9.120(d), a brief on jurisdiction is limited solely to the issue of jurisdiction. *See Fla. R. App. P. 9.120(d) (2014).* Further, the committee

notes to Rule 9.120 provide that “[i]t is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue.” *Id.*

As noted above, the June Order does not recite any facts of the underlying matter, does not make any findings, and does not make any rulings based upon any law. The June Order was simply a denial of the Petitioner’s Motion for Rehearing. As such, the Order is not a decision that comes within the bounds of either Article V, § 3(b)(3) or Rule 9.030(a)(2) that would provide this Court with any basis to exercise its discretionary jurisdiction.

Even to the extent this Court wishes to entertain the May Opinion that was attached to the Initial Brief, rather than the June Order from which the Petitioner filed the Notice, the Initial Brief still fails to demonstrate a basis for this Court to exercise its discretionary jurisdiction.

Within the Conclusion section of the Initial Brief, the Petitioner appears to seek discretionary jurisdiction based upon Rule 9.120(a)(2)(B)(i), arguing this matter to be of “great public importance.” Subsection (a)(2)(B)(i) only applies to decisions or orders of trial courts that are certified by a district court of appeal to this Court, requiring immediate resolution. *See Fla. R. App. P. 9.030(a)(2)(B)(i) (2014).* Neither the May Opinion nor the June Order is a certification from the First DCA seeking immediate resolution by this Court.

Accordingly, this matter should be dismissed for failure to invoke the discretionary jurisdiction of this Court.

CONCLUSION

The Petition has failed to comply with Rule 1.920 by failing to attach as an appendix to the Initial Brief the appropriate order from which the Petitioner has sought review from this Court. Notwithstanding, the Petitioner has failed to demonstrate any basis for this Court to exercise its discretionary jurisdiction over this matter. Accordingly, this Court should decline to exercise jurisdiction of this matter and should remand this cause to the trial court for further proceedings.

RESPECTFULLY SUBMITTED,

s/ Brian C. Bohm

JAMES E. SORENSON (0086525)
BRIAN C. BOHM (0092270)
Williams, Gautier, Gwynn, DeLoach
& Sorenson, P.A.
2010 Delta Boulevard (32303)
Post Office Box 4128
Tallahassee, Florida 32315-4128
Phone: 850-386-3300
Facsimile: 850-386-3663
bbohm@wggdlaw.com
liteservice@wggdlaw.com

ATTORNEYS FOR RESPONDENT,
FIRST FLORIDA CREDIT UNION

CERTIFICATE OF SERVICE

I certify that a true and correct copy hereof has been e-filed with the Supreme Court of Florida and furnished via U.S. Mail to the Petitioner, Samuiel K. Messiha, 2656 Bantry Bay Drive, Tallahassee, FL 32309, on this 22nd day of September, 2014.

s/ Brian C. Bohm

Brian C. Bohm

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is in compliance with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

s/ Brian C. Bohm

Brian C. Bohm