

**IN THE SUPREME COURT OF FLORIDA**

**Case No. SC14-1352  
Lower Tribunal Case 3D13-1822**

**NEDGE NORA TURNIER,**

**Petitioner,**

**v**

**JONATHAN LEE STOCKMAN,**

**Respondent.**

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**RESPONDENT, JONATHAN LEE STOCKMAN'S  
BRIEF ON JURISDICTION**

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## **SUMMARY OF ARGUMENT**

This Court should decline to exercise discretionary jurisdiction over this case. First, there is no authority for this Court to exercise discretionary review powers because there is no direct and express conflict between Turnier v. Stockman, 139 So. 3d 397 (Fla. 3d DCA 2014) (the “Stockman opinion”) issued in the instant case and the opinion issued in Bainbridge v. Pratt, 68 So. 3d 310 (Fla. 1st DCA 2011) (the “Bainbridge opinion”). The cases are factually distinguishable, and the reasoning and holding of Bainbridge do not apply to this case.

Even if this Court has the authority to exercise discretionary review based on a finding of a direct and express conflict, this Court should decline to accept jurisdiction because this case is unique on its facts, does not raise questions of statewide importance, and any opinion from this Court would not provide additional guidance to lower courts in their consideration of future cases beyond what has already been discussed in the district court’s opinion.

## **ARGUMENT**

### **POINT I**

#### **THERE IS NO DIRECT AND EXPRESS CONFLICT BETWEEN THE STOCKMAN OPINION AND THE BAINBRIDGE OPINION AND THUS THIS COURT DOES NOT HAVE AUTHORITY TO EXERCISE ITS DISCRETIONARY JURISDICTION.**

This Court has no authority to exercise its discretionary review powers because there is no direct and express conflict between the Stockman opinion issued in the instant case and the Bainbridge opinion.

The Florida Supreme Court is a court of limited jurisdiction. Its function is not to correct perceived errors by the district courts of appeal or to serve as a second layer of appellate review. Rather, its function is to resolve important questions of statewide importance and to ensure consistency in Florida law by resolving conflicts among the district courts of appeal. See, e.g., Gandy v. State, 846 So. 2d 1141, 1143 (Fla. 2003); The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988). Thus, in the vast majority of civil and criminal cases, the district courts of appeal are the appellate courts of last resort.

Florida's Constitution grants discretionary review power to the Florida Supreme Court enabling it to review, among other things, a decision of the district court 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. If a case does not fall with the Court’s mandatory appellate jurisdiction, or within the narrow range of discretionary jurisdiction within which the Court may operate, the Court has no power to take the case.

In order to invoke the Court’s discretionary conflict jurisdiction, the conflict must be “direct and express.” See Dept. of Health & Rehab. Servs v. Nat’l Adoption Counseling Serv., Inc., 498 So. 2d 888, 889 (Fla. 1986) (conflict cannot be inferred or implied). Moreover, the conflict must be expressed within the four corners of the opinion under review. Gandy, 846 So. 2d at 1144. Thus, when exercising discretionary review using conflict jurisdiction, the Court must examine only the majority opinion below and should not look to the record, examine extrinsic material, or second-guess the facts stated in the district court’s opinion. See Harry Lee Anstead, et. al., The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova L. Rev. 431, 512 (Spring 2005); see also Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975) (“... jurisdiction cannot be invoked merely because we might disagree with the decision of the district court nor because we might have made a different factual determination if we had been a trier of fact.”). In other words, it is the “conflict of decisions” not the conflict of opinions or

reasons that supplies jurisdiction for review. Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980).

Analyzing the facts, reasoning, and holdings in both the Bainbridge opinion and the Stockman opinion, it is clear there is no express and direct conflict between the two opinions. In Bainbridge, the trial court created an annual rotating time-sharing plan, which neither of the parents requested in their pleadings or at trial. Bainbridge, 68 So. 3d at 314. The trial court's decision was based on the premise that the parents were equal in relation to the custody factors under section 61.13(3), Florida Statutes. Id. at 312. The rotating time-sharing plan required the minor child, who had ADHD, to change schools each and every year. Id. at 314. The First District Court of Appeal reversed the trial court reasoning that "a trial court may not order an annual rotating time-sharing plan where neither parent requested such a plan in the pleadings, nor argued for such plan at the final hearing." Id. Further, the First District held that the time-sharing arrangement was not in the best interest of the child because an annual rotation would "force[] a minor child with special needs to change schools and acclimate to new surroundings every year". Id. at 312.

In the instant case, the parties and the minor child are deaf. Stockman, 139 So. 3d at 398. The Father, in his pleadings, requested majority time-sharing so that

the minor child could attend the Florida School for the Deaf and Blind (“FSDB”), located in St. Augustine, Florida, the same city where the Father resides. Id. The trial court, after hearing evidence from both parties on the minor child’s current educational status and the educational opportunities available where each party lived, ordered that the Father be the majority time-sharing parent during the school year and the Mother be the majority time-sharing parent during the summer. Id. 398-99; 401-02. The trial court awarded the Father majority time-sharing during the school year so that the minor could maximize his educational opportunities by attending FSDB. Id. at 399. FSDB provides a free public education to deaf and blind children from grades K-12. The trial court’s decision was later affirmed by the First District Court of Appeal in the Stockman opinion.

The Mother’s assertion that these cases are “virtually identical” belies the facts and holdings of each case. There is no express and direct conflict between the Stockman and Bainbridge opinions. First, unlike Bainbridge, there was never a “rotating time-sharing plan” ordered in the instant case. In the instant case, the time-sharing plan awarded the Father majority time-sharing during the school year and the Mother majority time-sharing during the summer months of June and July. Id. During the months that a parent was not acting as the majority time-sharing parent, each party was awarded time-sharing with the minor child every other



weekend. Id. Further, while winter break would be divided equally between the parties, the Mother was granted every holiday lasting more than three days. Therefore, unlike the annual time-sharing plan created in Bainbridge, in the instant case, both parents were and are able to maintain contact with the minor child throughout the year. The majority time-sharing designation to the Father during the school year ensured that the minor child's best interests were served by allowing the minor child to attend the best school for deaf children, FSDB.

Second, the time-sharing plan in the instant case, unlike the time-sharing plan in Bainbridge, does not require the minor child to change schools every year. On the contrary, it was the trial court's intention that the minor child received the best education available in the state of Florida that could accommodate the child's special need. The trial court intended the minor child to attend FSDB from kindergarten through twelfth grade. Because the minor child would be enrolled in one school throughout his developmental years, the minor child would not have to acclimate to new surroundings every year like the child in Bainbridge.

Third, unlike the parties in Bainbridge, the Father in the instant case specifically requested the relief actually awarded by the trial court in its Final Judgment. The Father specifically requested majority time-sharing and that the minor child be allowed to attend FSDB. Id. at 398.

Fourth, while the Bainbridge opinion held that there was no competent, substantial evidence to support a finding that an annual rotating time-sharing plan was in the best interest of the child, in the instant case, the appellate court affirmed the trial judge's time-sharing plan finding it was supported by ample competent and substantial evidence. Id. at 401-02. While the child in Bainbridge was in need of special care and was diagnosed with ADHD, the annual time-sharing plan was not created solely to meet those needs, but rather, was created because the parents were coequal in all the factors of Section 61.13(3), Florida Statutes. Id. at 312. In the instant case, the time-sharing plan was specifically arranged to address the minor child's special need (his deafness), and the trial court found that the educational opportunities offered by FSDB could fully meet the minor child's needs and was the only school in Florida that could do so.

Finally, the Stockman opinion discussed the Bainbridge opinion specifically finding it was not applicable to the instant case. Id. at 401. Thus, by implication, the First District determined that its decision does not, in any way, conflict with the Bainbridge opinion.

Based on the foregoing, Mother's argument is nothing more than a personal disagreement with the First District's Opinion which affirmed the trial court's Final Judgment. Mother's argument reflects her disappointment with the outcome:

a “conflict of opinion.” She has failed to show this Court there is an actual “conflict of decisions.” Because there is no direct and express conflict between the two opinions, there is no basis to exercise jurisdiction.

Based on the foregoing, Respondent respectfully requests this Court deny Petitioner’s request for this Court to take jurisdiction.

## **POINT II**

**EVEN IF THIS COURT CAN EXERCISE ITS DISCRETIONARY JURISDICTION, IT SHOULD DECLINE TO DO SO BECAUSE THERE ARE NO ISSUES OF STATEWIDE IMPORTANCE THAT HAVE NOT ALREADY BEEN PROPERLY AND ADEQUATELY ADDRESSED IN THE DISTRICT COURT’S OPINION.**

Even if this Court has the authority to exercise discretionary review based on conflict jurisdiction, this Court should decline to accept the case for review because this case is unique on its facts, does not raise a question of statewide importance, and an opinion from this Court will provide little additional guidance to lower courts in their consideration of future cases beyond what was already discussed in the district court’s opinion.

Use of discretionary review power should be exercised sparingly by this Court. In the past, this Court has declined to exercise its discretionary review where the outcome of the case would not change. See Wainwright v. Taylor, 476 So. 2d 669, 670-71 (Fla. 1985). If this Court were to grant discretionary review in

the instant case, the outcome would not change. First, this is a classic time-sharing case and the trial court's decision was supported by competent and substantial evidence. The trial court's decision, as affirmed by the appellate court, is also very unique to this particular family as the minor child is deaf and the Father happened to live in the same city as FSDB, providing this unique educational opportunity. The Father was awarded majority time-sharing during the school year to allow the minor child to attend FSDB because said school was in the best interest of the minor child. The Mother received majority time-sharing during the summer months and almost every holiday to ensure her ability to remain substantially involved with the minor child. Although, this case is important to this family and unique on its facts, it does not raise questions of statewide importance, nor conflicting or novel questions of law that need to be resolved by this Court.

The Mother attempts to sway this Court with an inflammatory portrayal of the underlying facts, but this Court should not look outside the district court's majority opinion. Mancini, 312 So. 2d at 733. The Stockman opinion accurately sets forth the underlying facts of this case and properly applied the law to those facts. This Court, if it decides to review the case on its merits, would find that it would not be able to provide any additional guidance then that which has already been provided within the First District's opinion. This Court's time would be

better spent on selective cases that will resolve issues of statewide importance and that would ensure consistency in Florida law.

Based on the foregoing, Respondent respectfully requests this Court decline to review the District Court's opinion in the instant case.

### **CONCLUSION**

Respondent respectfully requests this Court decline to exercise jurisdiction over this matter and deny the Mother's Petition for Discretionary Review.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Respondent's Jurisdictional Brief has been furnished to Lawrence Metsch, Esquire, Counsel for Petitioner, by e-mail at [l.metsch@metsch.com](mailto:l.metsch@metsch.com). and whose office is located at 20801 Biscayne Blvd., Suite 308, Aventura, Florida 33180-1423 on this 4th day of August, 2014.

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**CERTIFICATE OF COMPLIANCE WITH FONT SIZE**

I certify that Respondent's Jurisdictional Brief complies with the type-volume limitation contained in Florida Rules of Appellate Procedure. The font for this Answer Brief is proportionally spaced 14-point Times New Roman.

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