

SUPREME COURT OF FLORIDA

CASE NO.: SC11-2010

MOLLY S. WHITE and RALPH N. WHITE

Petitioners,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR THE
MORGAN STANLEY ABS CAPITAL 1 INC. TRUST 2006-NC5 et al.,

Respondents.

On Review From The Fifth District Court of Appeal of Florida
L.T. CASE NO. 5D14-1163
Trial Court Case No. 2008-31558 CICI

PETITIONER'S INITIAL BRIEF ON JURISDICTION

MOLLY S. WHITE
5948 Doraville Drive
Port Orange, Florida 32127
Ph. (386) 290-0563
Email: rawhit33@aol.com

--and--

RALPH N. WHITE
5948 Doraville Drive
Port Orange, Florida 32127
Ph. (386) 290-0563
Email: rawhit33@aol.com

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STATEMENT OF THE CASE AND OF THE FACTS

This is an appeal taken from an order of the Fifth District Court of Appeals that dismissed the Petitioner's (Appellant's in the appeal below) Emergency Motion to Vacate Foreclosure Judgment and Cancel Foreclosure Sale that was premised upon a void judgment and fraud upon the court.

The trial court's order denied the motion without hearing on March 5, 2014. In the Motion, Petitioners provided evidence that the real property was property of a Delaware Trust and that the Trustee over the property for the trust beneficiaries was an indispensable party and has not been before the Court or participated at all in the Florida proceedings. Further, the Petitioner pointed out in the motion that the United States Supreme Court had previously reversed an order that had been affirmed by this Court as lacking jurisdiction over the subject matter of the Trust. The Petitioner (Defendant's in the Trial Court) timely filed Notice of Appeal on April 3, 2014.

JURISDICTIONAL STATEMENT

Petitioners believe that this Court has Appellate jurisdiction under Art. V, 3(b)(1), Fla. Const. and Fla. R. App. P. 9.030(a) (1)(A)(ii) which provides that this Court shall review, by appeal decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

Petitioners believe that this Court has discretionary jurisdiction under Art. V,

§ 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(ii), which provide that this Court may review decisions that expressly construe a provision of the Federal Constitution. Petitioner further believes it is questionable whether this Court has discretionary jurisdiction under Art. V, § 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provide that this Court may review decision that expressly and directly conflict with a decision of another district court of appeal or the supreme court on the same question of law.

SUMMARY OF THE ARGUMENT

Petitioners believe that the District Court could not have dismissed the Appeal in this case unless the district court misconstrued the application of Rule 1.540(b), Fla. R. Civ. P., and the district court's jurisdiction under Rule 9.130(a)(5) and Art. V, § 4(b)(1), Florida Constitution.

Petitioners also believe that district court's failure to recognize and give deference to the U.S. Supreme Court Decision in Hanson v. Denckla, 375 U.S. 235, at 245-54 (1958) caused a violation of the Petitioner's rights to Due Process under the 14 amendment. The Court has discretionary jurisdiction under Art. V, 3(b)(1), Fla. Const. and Fla. R. App. P. 9.030(a) (2)(A)(ii) which provides that this Court shall review, by appeal decisions of district courts of appeal construing a provision of the federal constitution.

The Petitioners believe that precedent established by this Court that a indispensable party not a part of the proceeding renders the judgment void and subject to collateral attack at any time in any court has discretionary jurisdiction under Art. V, § 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provide that this Court may review decisions that expressly conflict with with a decision of another district court of appeal or of the supreme court on the same question of law.

It is not enough for the trial court to deny the Petitioner's motion and the district court to dismiss the appeal as lacking jurisdiction, whereas this court has held that such judgment may be attacked at any time.

ARGUMENT

I. This Court has Jurisdiction under Rule 9.030(a)(1)(A)(ii), FLA.R.APP.P., Because the Order below conflicts with Art. V, § 4(b)(1), Florida Constitution.

This Court has jurisdiction to review orders declaring invalid a provision of the state constitution. Pursuant to the Florida Constitution, the Supreme Court is authorized to review those decisions. In the case at bar, the district court's dismissal of an appeal for lack of jurisdiction when such jurisdiction was specifically provided under the Florida Constitution. As such, the district court could only have misconstrued or declared that such provision was invalid or not applicable when it dismissed appeal.

Jurisdiction of Florida District Courts of Appeal:

The Florida Constitution provides district courts with the authority to hear appeals from trial court final orders and to review interlocutory orders of trial courts as provided by the procedural rules. Art. V, § 4(b)(1), Fla. Const.

Florida Rule of Appellate Procedure 9.030 (b)(1) more fully outlines the appellate jurisdiction of our district courts of appeal and provides:

(b) Jurisdiction of District Courts of Appeal.

(1) Appeal Jurisdiction. District courts of appeal shall review,
by appeal

(A) final orders of trial courts, not directly reviewable
by the supreme court or a circuit court, including county
court final orders declaring invalid a state statute or
provision of the state constitution;

(B) non-final orders of circuit courts as prescribed by
rule 9.130;

Rule 9.130(a)(5) provides that orders entered on motions filed under Florida Rule of Civil Procedure 1.540 are reviewable by direct appeal.

Rule 1.540(b) provides in pertinent part: (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been

reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application. The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court.

Jurisdiction of Florida Supreme Court:

The Florida Constitution provides the Supreme Court with the authority to hear decisions of the district court of appeal declaring invalid a state statute or provision of the state constitution. Art. V, § 3(b)(1), Fla. Const.

Florida Rule of Appellate Procedure 9.030 (a)(1) and (a)(2) more fully outlines the appellate jurisdiction of the Supreme Court of appeal and provides:

(a) Jurisdiction of Supreme Court.

(1) Appeal Jurisdiction. The supreme court shall review, by appeal

(ii) decisions of district courts of appeal declaring invalid a state statute or provision of the state constitution.

(2) Discretionary Jurisdiction. The discretionary jurisdiction of the supreme court may be sought to review

(A) Decisions of the district court of appeal that

(ii) expressly and directly construes a provision of the federal Constitution;

(iv) expressly and directly conflict with a decision of another district court of appeal or the supreme court on the same question of law.

This Court has Jurisdiction over this appeal and this Court should request fully briefing.

II. This Court has Jurisdiction over the Fifth District's Failure to Give Deference to Property Owned by and a part of an out of State Trust that was not before the Court which violates the Due Process Clause of 14th Amendment to the U.S. Constitution upon which the United States Supreme Court previously Reverse a decision of this Court.

The Florida Supreme Court has long recognized Florida's public policy of adjudicating cases on the merits. *N. Shore Hosp., Inc. v. Barber*, 143 So.2d 849, 852 (Fla.1962):

It is the rule that the opening of judgments is a matter of judicial discretion and , in a case of reasonable doubt, where there has been no trial upon the merits, this discretion is usually exercised in favor of granting the application so as to permit a determination of the controversy upon the merits.

Rule 1.540(b)(4) specifically provides for relief from a void Final Judgment. On a proper motion, a trial court must set aside a void judgment, and Florida courts have routinely held that a trial court has no discretion and is obligated to vacate such a judgment. See *Horton v. Rodriguez Espaillat Y Asociados*, 926 So.2d 436 (Fla. 3d DCA 2006).

As the U.S. Supreme Court ruled in the case of Hanson v. Denckla, 375 U.S. 235, at 245-54 (1958), the Florida court did not have *in rem* jurisdiction over the corpus of the Trust...Without such jurisdiction, it had no power under Florida law

to pass on the validity of the trust. Therefore, its decree is void under the Due Process Clause of the Fourteenth Amendment, and it is reversed, not only as to the trust company, but also as to the individual over whom it did have jurisdiction.

Denckla, 357 U.S. 245-254. No hearing in the case on the motion was unjust.

**III. This Court has Jurisdiction under Rule 9.030(a)(2)(A)(iv),
FLA.R.APP.P., Because the Opinion below conflict with this Court's
prior decision in DeClaire v. Yohanan, 453 So. 2d 375 (Fla. 1984).**

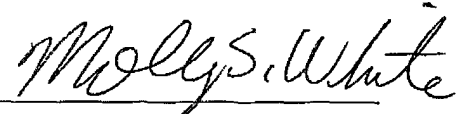
In DeClaire, this Court defined extrinsic fraud as conduct calculated to force an opposing party litigant to abandon his judicial remedy, The essence of extrinsic fraud, DeClaire held, is conduct preventing a party from presenting his case in court. *Id.* The essence of the trial court order denying the Defendant's (the Appellants in the Appeal below) motion to vacate premised on a void judgment and fraud upon the Court warranted a hearing. The district court has jurisdiction and this court has jurisdiction due to conflict of such dismissal.

CONCLUSION

For the foregoing reasons, Petitioners, Molly S. White and Ralph N. White, respectfully request this Court to recognize and exercise its Appellate jurisdiction, or in the alternative, discretionary jurisdiction and grant full review of this case on its merits, with opportunity for full briefing.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent electronically on this 12th day of November, 2014 to all parties on the attached service list.



Molly S. White
5948 Doraville Drive
Port Orange, Fl 32127
Ph: (386) 290-0563
Email: rawhit33@aol.com

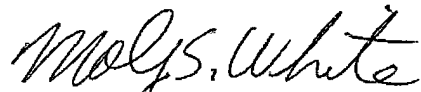
--and--

/s/ Ralph N. White

Ralph N. White

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the requirements of Fla. R. App. P. 9.100 (l). This document is being submitted in New Times Roman 14 point font.



Molly S. White
5948 Doraville Drive
Port Orange, Fl 32127
Ph: (386) 290-0563
Email: rawhit33@aol.com

Service List

Gennifer L. Bridges, Esq.
Burr & Forman, LLP.,
200 S. Orange, Ave., Suite 800
Orlando, FL 32801
cparrish@burr.com

Christine Irwin Parrish, Esq.
Burr & Forman, LLP.,
200 S. Orange, Ave., Suite 800
Orlando, FL 32801
cparrish@burr.com