

IN THE SUPREME COURT OF FLORIDA

MOLLY S. WHITE AND
RALPH N. WHITE,

Appellants,

v.

Case No.: SC14-2010
L.T. Case No.: 5D14-1163

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR MORGAN
STANLEY ABS CAPITAL 1 INC. TRUST
2006-NC5, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-NC5,

Appellee.

APPELLEE'S JURISDICTIONAL ANSWER BRIEF

On Review from the District Court of Appeal,
Fifth Judicial District,
State of Florida

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
SUMMARY OF THE CASE AND FACTS.....	4
SUMMARY OF THE ARGUMENT	6
ARGUMENT	6
A. The Order does not Declare a Provision of the State Constitution Invalid.....	7
B. The Fifth DCA did not Expressly Construe a Provision of the Federal Constitution.	8
C. There is not an Express and Direct Conflict Between the Fifth DCA’s Order and <i>DeClaire v. Yohanan</i>	9
CONCLUSION	11
CERTIFICATE OF FONT COMPLIANCE	11
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

Cases

<i>DeClaire v. Yohanan</i> , 453 So. 2d 375 (Fla. 1984)	6, 9, 10
<i>Dep't of Health & Rehab. Servs. v. Nat'l Adoption Counseling Serv., Inc.</i> , 498 So. 2d 888 (Fla. 1986)	10
<i>Graham v. Haridopolos</i> , 108 So. 3d 597 (Fla. 2013)	7
<i>Jackson v. State</i> , 926 So. 2d 1262 (Fla. 2006)	7
<i>White v. Deutsche Bank National Trust Co., et al.</i> , Case No. 5D14-1163, Order (Oct. 9, 2014)	6

Other Authorities

Art. V, § 3(b)(1), Fla. Const.....	6, 7, 8
Art. V, § 3(b)(3), Fla. Const.....	6, 8, 9

SUMMARY OF THE CASE AND FACTS

In the instant proceeding, which is the latest installment in a foreclosure case that has been pending since 2008, *pro se* Appellants Molly S. White and Ralph N. White (collectively, the “Whites”) seek review of an order (“Order”) entered by the Fifth District Court of Appeal (“Fifth DCA”) on October 9, 2014 in *White v. Deutsche Bank National Trust Co., et al.*, Case No. 5D14-1163 (“Fifth DCA Proceeding”). A true and correct copy of Appellants’ “Notice of Appeal, or, Alternatively, Notice to Invoke Discretionary Jurisdiction of Florida Supreme Court” (“Notice of Appeal”), to which the Order is attached as an exhibit, is attached hereto as **Appendix A**.

The Order ruled on several pending motions in the Fifth DCA Proceeding, including a Motion to Dismiss for Lack of Jurisdiction (“Motion to Dismiss”) that was filed by Appellee, Deutsche Bank National Trust Company as Trustee for Morgan Stanley ABS Capital 1 Inc. Trust 2006-NC5, Mortgage Pass-Through Certificates, Series 2006-NC5 (“Deutsche Bank”). True and correct copies of the Motion to Dismiss and the Whites’ response thereto are attached as **Appendix B** and **Appendix C**, respectively. The Motion to Dismiss argued that the Fifth DCA did not have jurisdiction to review the trial court order forming the basis of the Fifth DCA Proceeding, which denied the Whites’ Emergency Motion to Vacate Foreclosure Judgment and Cancel Foreclosure Sale (“Motion to Vacate

Judgment”), filed on March 4, 2014 in *Deutsche Bank National Trust Company, et al. v. White*, 2008 31558 CICI, Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida. As stated in the Motion to Dismiss, the Fifth DCA lacked jurisdiction to review the trial court order because (1) in an earlier appeal, the Fifth DCA had previously ruled on all arguments raised in the Motion to Vacate Judgment, thus precluding further review under the law of the case doctrine; and (2) the trial court order was a non-reviewable non-final order in which the circuit court declined to consider the Motion to Vacate Judgment and only considered—and granted—a motion to reset the foreclosure sale. The Fifth DCA apparently agreed with one or both of these arguments, as it granted the Motion to Dismiss without discussion in the Order.

The Whites filed their Notice of Appeal on October 10, 2014, seeking this Court’s review of the Order. This Court entered an order on October 20, 2014, observing that the Notice of Appeal “asserts that the underlying decision of the district court of appeal declares invalid a state statute or provision of the state constitution,” but finding that “no such declaration [is] explicit in the decision.” This Court therefore instructed the Whites to show cause why this appeal should not be dismissed for lack of jurisdiction, or alternatively, to specify another form or forms of this Court’s limited jurisdiction that the Whites seek. The Whites’ Initial Jurisdictional Brief followed, to which Deutsche Bank now responds.

SUMMARY OF THE ARGUMENT

A cursory review of the Order demonstrates that this Court does not have jurisdiction under Article V, sections 3(b)(1) or 3(b)(3), Florida Constitution, despite the Whites' arguments otherwise. Although the Whites claim that the Fifth DCA declared provisions of the state and federal Constitutions to be invalid and that the Order expressly and directly conflicts with this Court's decision in *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984), the Order did not include any discussion of constitutional provisions or questions of law whatsoever. Therefore, the Whites have failed to identify a basis for this Court to exercise its jurisdiction.

ARGUMENT

The one-page, five-sentence Order rendered by the Fifth DCA does not establish a basis for this Court's jurisdiction. In its entirety, the Order reads:

ORDERED that Appellants' Emergency Motion to Stay, filed October 8, 2014, is denied. Appellants' Motion for Extension of Time to File Response, filed August 25, 2014 is granted and Appellants' September 2, 2014 Response is accepted as timely. Appellee's Motion to Dismiss for Lack of Jurisdiction, filed July 29, 2014, is granted. Accordingly, the above-styled cause is hereby dismissed. Appellee's Motion for Clarification of Time to File Answer Brief, filed September 24, 2014, is moot.

White v. Deutsche Bank National Trust Co., et al., Case No. 5D14-1163, Order (Oct. 9, 2014). The Fifth DCA did not opine in the Order on any legal issues. Therefore, the three grounds for jurisdiction to which the Whites cite do not apply to this case. The Court must dismiss this proceeding for lack of jurisdiction.

A. The Order does not Declare a Provision of the State Constitution Invalid.

The Whites argue that this Court has jurisdiction over this matter because “the district court’s dismissal of an appeal for lack of jurisdiction when such jurisdiction was specifically provided under the Florida Constitution” must mean that the Fifth DCA “misconstrued or declared that such provision was invalid or not applicable when it dismissed [the] appeal.” (Juris. Br. 3.) However, because the Order did not contain a declaration regarding a provision of the state constitution, the Whites’ argument must fail.

Article V, section 3(b)(1) of the Florida Constitution gives this Court the authority to review decisions of the district courts of appeal “declaring invalid a state statute or provision of the state constitution.” Before the Court is vested with such authority, however, the decision in question must actually contain a declaration regarding a statute or constitutional provision. *See Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). For that reason, “unelaborated” decisions cannot form a basis for an exercise of jurisdiction under section 3(b)(1). *See id.*; *compare, e.g., Graham v. Haridopolos*, 108 So. 3d 597, 599 (Fla. 2013) (finding that the Court had jurisdiction to review a decision of the First District Court of Appeal that expressly declared a state statute valid by holding that a constitutional amendment did not transfer certain authority from the state legislature and that challenged statutes were therefore valid).

In this case, the Order in question did not address the validity of a provision of the Florida constitution, nor did Deutsche Bank's Motion to Dismiss or the Whites' response in opposition. Thus, by granting the Motion to Dismiss, the Fifth DCA did not implicitly or explicitly declare a provision of the state constitution invalid. This Court therefore does not have jurisdiction under Article V, section 3(b)(1) of the Florida Constitution, and these proceedings should be dismissed.

B. The Fifth DCA did not Expressly Construe a Provision of the Federal Constitution.

The Whites also seek to invoke this Court's jurisdiction pursuant to Article V, section 3(b)(3) of the Florida constitution on the basis that the Order expressly construes a provision of the federal Constitution. (Juris. Br. 1-2.) For the same reasons cited above, the Whites' argument is misplaced. The Order did not opine in any way on a provision of the federal Constitution. The Court therefore does not have jurisdiction on the basis that the Order "expressly construed" the Constitution.

The Whites appear to continue their argument by stating that they were denied due process under the Fourteenth Amendment of the United States Constitution. (Juris. Br. 6-7.) This does not, however, establish that the Fifth DCA "expressly construed" the Fourteenth Amendment in its Order. To the contrary, the four corners of the Order show that the Fifth DCA did not opine on the Fourteenth Amendment or any other constitutional provision. As a result, this

Court does not have discretionary jurisdiction to review the Order on the basis that it “expressly construed” the Constitution, and these proceedings must be dismissed.

C. There is not an Express and Direct Conflict Between the Fifth DCA’s Order and *DeClaire v. Yohanan*.

The Whites’ last argument is that this Court has express and direct conflict jurisdiction to review this matter. They claim that the Fifth DCA’s Order expressly and directly conflicts with *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984). The Whites’ argument is misplaced and does not salvage this proceeding from dismissal.

First, according to the Whites, the “**essence of the trial court order** denying the [Whites’] . . . motion to vacate premised on a void judgment and fraud upon the Court warranted a hearing.” (Juris. Br., 7) (emphasis added). This statement alone demonstrates that this Court does not have express and direct conflict jurisdiction in this case. First, the Whites seem to be seeking review of the order entered by the trial court rather than of the DCA’s Order, which is improper when invoking express and direct conflict jurisdiction. That jurisdictional basis is limited by the Florida Constitution to those situations where a “decision of a **district court of appeal** . . . 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. (emphasis added). The jurisdiction of this Court does not extend to

determining whether a decision by a trial court is in express and direct conflict with an opinion of a district court of appeal or this Court.

Moreover, this Court's express and direct conflict jurisdiction is limited to those situations where an express and direct conflict "appear[s] within the four corners of the majority decision." *Dep't of Health & Rehab. Servs. v. Nat'l Adoption Counseling Serv., Inc.*, 498 So. 2d 888, 889 (Fla. 1986) (internal citations omitted). In other words, "inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction." *Id.* The "essence" of a decision therefore cannot form a reason for exercising express and direct conflict jurisdiction.

Again, a review of the Order (which is the only decision on which this Court's discretionary jurisdiction may be based) reveals that the Fifth DCA did not address *any* questions of law, let alone address the issues raised in *DeClaire*, which involved a husband's filing of a false financial affidavit in a dissolution of marriage action.¹ *See DeClaire*, 453 So. 2d at 376.

It is therefore apparent that the Court does not have express and direct conflict jurisdiction in this matter. This proceeding must be dismissed for lack of jurisdiction.

¹ *DeClaire* is no longer good law. As the Court noted in *Parker v. Parker*, 950 So. 2d 386 (Fla. 2007), it has been superseded by Rule 1.540(b), Florida Rules of Civil Procedure.

CONCLUSION

The three jurisdictional grounds cited by the Whites do not apply to this case. The Order, which merely decided several pending motions, including Deutsche Bank's Motion to Dismiss, did not address any questions of law or constitutional provisions. This Court thus does not have jurisdiction to review the Order and must dismiss this proceeding.

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirements for Rule 9.100(l), Florida Rules of Appellate Procedure.

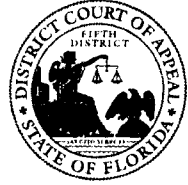
/s/ Gennifer L. Bridges
Gennifer L. Bridges (FBN 0072333)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2014, I filed a true and correct copy of the foregoing via Florida's ePortal system and will serve the following via U.S. Mail:

Ralph N. White and Molly S. White
5948 Doraville Drive
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/s/ Gennifer L. Bridges
Gennifer L. Bridges (FBN 0072333)



IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, DAYTONA BEACH, FLORIDA

MOLLY S. WHITE AND
RALPH N. WHITE,

Appellants,

DCA Case No: 5D12-404

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR MORGAN
STANLEY ABS CAPITAL 1 INC. TRUST
2006-NC5, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-NC5

Appellee,

NOTICE OF APPEAL

I hereby certify that the above and foregoing is a
true copy of instrument filed in District Court of Appeal

PAMELA R. MASTERS, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FIFTH DISTRICT

Per

[Signature] 10/10/14
Deputy Clerk

NOTICE OF APPEAL, OR, ALTERNATIVELY,
NOTICE TO INVOKE DISCRETIONARY JURISDICTION OF
FLORIDA SUPREME COURT

NOTICE IS GIVEN that Appellants, Molly S. White and Ralph N. White, (the "Whites") appeals to the Florida Supreme Court, the decision of this Court rendered October 9, 2011 (attached hereto), which declares state statute, section 736.0205, Florida Statutes, and Article I, sec. 9, invalid, as it is offensive to the Due Process Clause of the Fourteenth Amendment because the Florida trial court was without jurisdiction to render decision over foreign trust. The decision is within the appeal jurisdiction of the Florida Supreme Court. Fla. R. App. P. Rule 9.030(a)(1)(A)(ii).

Alternatively, the Whites seek to invoke the Florida Supreme Court's discretionary jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v), because the decision passes on a question certified to be of great public importance.

Dated this 10th day of October, 2014,

Respectfully submitted,


Molly S. White
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--and--

/s/ Ralph N. White
Ralph N. White

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October, 2014, a true and correct copy of the foregoing Notice been provided by U.S. Mail to the Attorney's below and via electronic mail to the following Attorneys at the email addresses listed below:

Christine Irwin Parrish, Esq.
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By:


Molly White

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

MOLLY S. WHITE AND
RALPH N. WHITE,

Appellant,

v.

CASE NO. 5D14-1163

DEUTSCHE BANK
NATIONAL TRUST
COMPANY,

Appellee.
_____ /

DATE: October 09, 2014

BY ORDER OF THE COURT:

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*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Pamela R. Masters
PAMELA R. MASTERS, CLERK



cc:

Christine Irwin Parrish
Ralph N. White

Michael Shifrin
Molly S. White

Gennifer L. Bridges

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

MOLLY S. WHITE AND
RALPH N. WHITE,

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CASE NO. 5D14-1163

DEUTSCHE BANK
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*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Pamela R. Masters
PAMELA R. MASTERS, CLERK



I hereby certify that the above and foregoing is a true copy of instrument filed in my office.

PAMELA R. MASTERS, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FIFTH DISTRICT

Per

[Signature] 10/10/14
Deputy Clerk

cc:

Christine Irwin Parrish
Ralph N. White

Michael Shifrin
Molly S. White

Gennifer L. Bridges