

IN THE SUPREME COURT
OF FLORIDA

CASE NO. 64,725

DCA-3 NO. 82-1475

FILED

SID J. WHITE

FEB 9 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

MIAMI DAILY NEWS, INC. d/b/a :
THE MIAMI NEWS and THOMAS H. :
DUBOCQ, :

Petitioners, :

vs. :

ALICE P., SUSAN A., JEANETTE :
R., BARBARA D., CATHLEEN O., :
DOREEN F., HELEN M., ILENE T., :
JANET T., MARGARET Y., NANCY :
J., JUDY R., and TWO UNNAMED :
MOTHERS, :

Respondents. :

ANSWER BRIEF ON JURISDICTION OF THE DADE
COUNTY DEPARTMENT OF PUBLIC HEALTH, DEPART-
MENT OF HEALTH AND REHABILITATIVE SERVICES,
STATE OF FLORIDA

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ARGUMENT

I. THIS COURT SHOULD NOT EXERCISE ITS DISCRETIONARY JURISDICTION BECAUSE THE DECISION BELOW NEITHER DIRECTLY NOR EXPRESSLY CONFLICTS WITH DECISIONS OF THIS COURT.

a. THE COURT BELOW PROPERLY EXEMPTED MIDWIFE APPLICATION ATTACHMENTS FROM INSPECTION BY THE NEWS MEDIA DUE TO THE STATUTORY EXEMPTIONS PROHIBITING DISCLOSURE FOUND IN CHAPTER 382.35 AND CHAPTER 455.241, FLORIDA STATUTES.

This Court should follow its strict standards in testing the "conflict theory" claim of the Petitioners:

The measure of our appellate jurisdiction on the so-called "conflict theory" is not whether we would necessarily have arrived at a conclusion differing from that reached by the District Court. The constitutional standard is whether the decision of the District Court on its face collides with a prior decision of this Court or another District Court on the same point of law so as to create an inconsistency or conflict among the precedents. *Ansin v. Thurston*, Fla., 101 So.2d 808; *Nielson v. City of Sarasota*, Fla., 117 So. 2d 731; *Kincaid v. World Insurance Company*, 157 So.2d 517 (Fla. 1963).

The District Court's opinion in ALICE P. v. MIAMI DAILY NEWS, INC., 440 So. 2d 1300 (Fla. 3d DCA 1983), collides with no prior decision of this Court or another District Court on the same point of law so as to create an inconsistency or conflict among the precedents.

The District Court did not create exemptions to the public records act in ALICE P. The public records law in Chapter 119.07(3) (a), clearly provides:

All public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, shall be exempt (from the Act).

The District Court found two general laws, Florida Statutes 382.35 and Florida Statutes 455.241, which presently provided for the confidentiality of detailed birthing records and birth records. The District Court, therefore, properly exempted these highly intimate documents from disclosure to the news media and the public.

The District Court did not create a new category of exempt records nor a new exemption for information contained in a midwife licensure application. These laws were the creation of the Legislature which were properly construed by the District Court.

This Court limits its jurisdiction to cases "involving principles, the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between decisions. (See Layne & Bowler Corp. v. Western Wells Works, 261 U.S. 387, 43 S.Ct. 422, 423, 67 L. Ed. 712; Ansin v. Thurston, 101 So.2d 808, 811 (Fla. 1958).

The ALICE P. case does not meet the standard of importance to the public as distinguished from the parties in this matter.

The Third District in ALICE P. did not create a real nor embarrassing conflict of opinion and authority between decisions. The embarrassment lies with the Petitioners in their

quest for open government and sunshine where their demand is to know the intimate details of the deliveries of fifteen mothers, including:

1. Type of delivery -- whether C section or vaginal
2. Significant laboratory findings, e.g., venereal disease
3. Cervical or vaginal lacerations
4. Whether enema was used
5. Delivery of placenta and firmness of uterus.

CONCLUSION

The Third District's opinion in ALICE P. neither expressly nor directly conflicts with prior decisions of this Court. No conflicting rule of law was announced in the District Court's opinion.

Based upon the foregoing reason, the Department of Public Health respectfully submits that the Petitioners' application for Discretionary Review should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief on Jurisdiction of the Dade County Department of Public Health, Department of Health and Rehabilitative Services, State of Florida, was mailed on this 7th day of February, 1984, to:

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