

IN THE SUPREME COURT
STATE OF FLORIDA

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BARBARA URSIN,

Plaintiff, Petitioner,

v.

District Court Case
No. 83-938

LAW ENFORCEMENT INSURANCE
COMPANY, LTD., a foreign
corporation, FLORIDA SHERIFF'S
SELF INSURANCE FUND, AUBREY
ROGERS, individually and as
Sheriff of Collier County,
Florida, AL BEATTY, individually
and as Deputy Sheriff of Collier
County, Florida and GEORGE SNIDER,
individually and as Deputy of
Collier County, Florida,

FILED

SID J. WHITE

JUL 30 1984

CLERK, SUPREME COURT

By

Chief Deputy Clerk

Defendants, Respondents.

APPLICATION FOR CONSTITUTIONAL CERTIORARI TO
THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF
FLORIDA

BRIEF OF RESPONDENTS ON JURISDICTION

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CITATION OF AUTHORITIES

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<u>Everton v. Willard</u> 426 So.2d 996 (Fla. 2d DCA 1983)	4, 5
<u>Gibson v. Maloney</u> 231 So.2d 823 (Fla. 1970)	3
<u>Jenkins v. State</u> 385 So.2d 1356 (Fla. 1980)	3
<u>Nielson v. City of Sarasota</u> 117 So.2d 731 (Fla. 1960)	3
<u>Smith v. Department of Corrections</u> 432 So.2d 1338 (Fla. 1st DCA 1983)	4, 5

STATEMENT OF THE CASE AND OF THE FACTS

Respondent generally concurs in Petitioner's Statement of the Case and of the Facts.

QUESTION PRESENTED

WHETHER THE DECISION IN THE INSTANT CASE DIRECTLY AND EXPRESSLY CONFLICTS WITH THOSE CASES OF OTHER DISTRICT COURTS OF APPEAL WHICH PURPORT TO HOLD THAT SOVEREIGN IMMUNITY DOES NOT EXIST UNDER THE FACTS AND CIRCUMSTANCES OF SUCH CASES.

ARGUMENT

Petitioners seek to invoke the discretionary jurisdiction of this Court pursuant to Rule 9.030(a)(2)(a)(iv), Florida Rules of Appellate Procedure. There are only two principal situations authorizing the use of conflict jurisdiction:

(1) when the decision announces a rule of law that conflicts with a rule previously announced by another appellate court; or (2) when the decision applies a rule of law to produce a different result in a case involving substantially the same controlling facts as those in a prior case decided by another appellate court. Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960). Under the recent amendments to the Florida Constitution, the conflict must be "express" and contained within the written rules announced by the court. Jenkins v. State, 385 So.2d 1356 (Fla. 1980). For jurisdictional purposes, a conflict must exist between the actual decisions and not merely between statements of opinion or reasons contained with the decisions. Gibson v. Maloney, 231 So.2d 823 (Fla. 1970).

Although the Defendants/ Respondents generally agree with the statement of the case and of the facts as recited by Petitioner, excluding the characterization, the Defendants/ Respondents see no necessity for the invoking of jurisdiction by this honorable court. The Plaintiff has correctly stated that acceptance of jurisdiction is discretionary.

This court has already accepted jurisdiction in the case of Everton v. Willard, 426 So.2d 996 (Fla. App. 2 Dist. 1983) for which an amended jurisdictional brief was filed on April 4, 1983 and which has apparently been heard in oral argument by this court in November, 1983. It would appear to be an unnecessary redundancy to consider similar cases involving similar legal issues in cases where there may be a conflict and a waste of judicial energy.

The opinion in this cause in the Second District Court of Appeals states on its face "in reaching our decision, we acknowledge that it expressly and directly conflicts with the decision of our sister court" in Smith v. Department of Corrections, 432 So.2d 1338 (Fla. 1st DCA 1983). Nonetheless the court should, at the least, stay the proceedings in this case pending a decision of Everton v. Willard.

CONCLUSION

The decision of the Second District is well-reasoned. Jurisdiction should be denied in this case. This court should affirm Everton v. Willard, 426 So.2d 996 (Fla. 2d DCA 1983) and reverse Smith v. Department of Corrections, 432 So.2d 1338 (Fla. 1st DCA 1983). In the alternative, this court should stay any further proceedings in this cause until such determination is made.

Respectfully submitted,

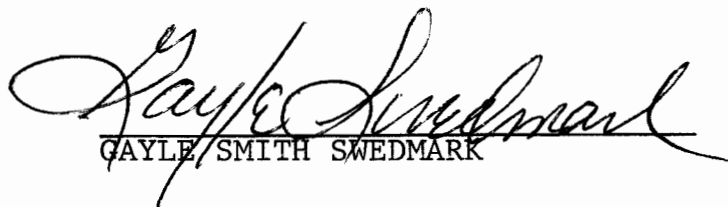


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail to John B. Cechman, Esquire Goldberg, Rubinstein and Buckley, P. A., Post Office Box 2366, Fort Myers, Florida 33902 this 30th day of July, 1984.


GAYLE SMITH SWEDMARK