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IN THE SUPREME COURT OF FLORIDA

GEORGE I. SANCHEZ,	:	
Petitioner,	:	CASE NO. 66,491
vs.	:	DISTRICT COURT OF APPEAL, 2nd DISTRICT - NO. 84-227
MAYNARD F. SWANSON, etc.,	:	
Respondent.	:	

BRIEF OF PETITIONER

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813-822-1914/530-6042

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STATEMENT OF CASE

Petitioner was awarded a money judgment against his landlord in a wrongful eviction, breach of contract action in the County Court for Pinellas County. The Judgment was rendered by the Honorable Karl Grube on March 16, 1984. The above-mentioned landlord left a Notice of Appeal at the St. Petersburg branch office of the Clerk of the Circuit Court for Pinellas County on April 16, 1984. The county seat for Pinellas County is in Clearwater, where the Notice of Appeal was filed on April 17, 1984. Petitioner filed a Motion to Dismiss the Appeal for lack of jurisdiction by the Circuit Court for Pinellas County sitting in its appellate capacity. The Circuit Court found that the Appellant had timely filed his Notice of Appeal based on affidavits presented which stated in effect that the Notice of Appeal had been left at the St. Petersburg branch office of the Clerk of the Circuit Court for Pinellas County. After Petitioner's Motion for Rehearing was denied, Appellee petitioned the District Court of Appeal, Second District, for a Writ of Prohibition against the Circuit Court to prohibit the latter from exercising jurisdiction over Appellant's appeal based on a prior decision of the Fifth District Court of Appeal. The Second District Court of Appeal denied Petitioner the writ sought holding that "filing of a Notice of Appeal in the branch office of the Clerk of the Circuit Court of Pinellas County within the allowable jurisdictional period under the Clerk's practices in effect at the time was sufficient to confer jurisdiction on the Circuit Court." After modifying its opinion on Petitioner's Motion for Rehearing, the Second District Court of Appeal declined to issue the writ sought by Petitioner.

ARGUMENT

The main issue before this Honorable Court would appear to be: What are the definitions of recorded and filed, and whether they are distinguishable.

Article VIII, Section 1 (k) of the Florida Constitution states, inter alia, "No instrument shall be deemed recorded in the county until filed at the county seat according to law" (emphasis supplied). For reasons to be set forth below, it appears that the plain meaning of the above-quoted provision is that recorded and filed are one and the same. The lower tribunal, in considering "recorded" and "filed", attempted to distinguish between the two by interpreting the Florida Constitution in a manner that, in effect, melds branch offices of the Clerk of the Circuit Court into the county seat. In reading Article VIII, Section 1 (k), of the Florida Constitution, it grants the County Commission of each County the power to create branch offices of the Clerk of the Circuit Court for the conduct of business. It is obvious that this is so as a matter of convenience to the public, particularly in such counties as Pinellas, which is a densely populated county with the county seat being in Clearwater. The City of St. Petersburg is a considerable distance to the south of the county seat in Clearwater. A branch office of the Clerk of the Circuit Court for Pinellas County exists in the City of St. Petersburg as a matter of convenience to south Pinellas County residents, in accordance with Article VIII, Section 1 (k). The last sentence of Article VIII, Section 1 (k), however, succinctly provides that the county seat is still the only official location where documents and instruments which require recording can be filed. Perego v. Robinson, 377 So.2d 834

(Fla. 5th D.C.A. 1979), cert. denied, 388 So.2d 1116 (Fla. 1980). It should be noted that, to this end, the branch office at St. Petersburg conducts courier runs from St. Petersburg to Clearwater twice daily, the second run conducted after the close of business at the branch office in order that documents and instruments requiring recording be transmitted to Clearwater where the night shift receives, stamps, files and records such documents and instruments in order to accomplish timely filing and recording.

Logic would have it that if recording and filing are not one and the same, they at least occur simultaneously since Article VIII, Section 1 (k) provides that an instrument is not deemed recorded until filed at the county seat.

As was pointed out to the Second District Court of Appeal, Fla. R. App. P. 9.040 (g), provides that notices to review final orders of County and Circuit Courts shall be recorded (emphasis supplied). The lower tribunal conceded that Respondent's Notice of Appeal was "docketed" by the Clerk one day after the time expired for filing an appeal (emphasis supplied). The use of the word "docketed" was obviously used to replace the word "filed" (emphasis supplied). Sanchez v. Swanson, 461 So.2d 155 (Fla. 2nd D.C.A. 1985) at 156.

The Sanchez court held that the jurisdiction of the Circuit Court is invoked by the filing and not the recording of a notice of appeal. Since Rule 9.040 (g) requires that notices of appeal be recorded and since Article VIII, Section 1(k) provides that no instrument shall be deemed recorded until filed at the county seat, a notice of appeal is not filed until done so at the county seat. Since filing is required at the county seat, then the lower court's holding

"that the filing of a notice of appeal at the Clerk's branch office in St. Petersburg within the allowable jurisdictional period under the Clerk's practices in effect at the time was sufficient to confer jurisdiction on the circuit court" is a clear departure from the essential requirements of the law. See Flash Bonded Storage Co. v. Ades, 152 Fla. 482, 12 So.2d 164 (1943).

It was shown above that filing is accomplished only at the county seat, Perego v. Robinson, 377 So.2d 834 (Fla. 5th D.C.A. 1979), cert. denied, 388 So.2d 1116 (Fla. 1980), therefore a notice of appeal at a clerk's branch office is not a filing within the constitutional meaning of filing the type of instrument herein in question. To so hold, the Second District Court of Appeal in Sanchez did not interpret the Constitution but rather amended the Constitution by judicial fiat. This, too, is a departure from the essential requirements of the law since the Florida Constitution can only be amended by the people through the voting process, Article XI, Section 5, Florida Constitution. To apply the Sanchez Court's reasoning would render that portion of Article VIII, Section 1 (k) nugatory and would in effect render the various county seats throughout the State no different than their branch offices and would defeat the apparent purpose of centralization of county business.

The Sanchez Court relied on Knee v. Smith, 313 So.2d 117 (Fla. 1st D.C.A. 1975), cert. denied, 330 So.2d 726 (Fla. 1976) in support for its holding. As was pointed out to the lower tribunal, but not referred to in its opinion, Knee is distinguishable on its facts: Knee involved administrative agency action in Alachua County; moreover, there was no branch office issue involved in Knee since

Alachua County's county seat was and is in Gainesville; no branch offices existed in Alachua County at the time of Knee; the Knee Court did not address the issue of timely filing, but merely took jurisdiction; and it appears from the Knee opinion, that the notice of appeal was, in fact, delivered to the county seat within the jurisdictional time limit for filing notices of appeal. The Knee opinion can further be interpreted as that court holding that clerical oversight resulted in that notice of appeal being stamped "filed" the day following the expiration of the time period in which to file a notice of appeal. Such is not the situation in the instant case. Here the notice of appeal was not delivered to the county seat until one day after the time expired for filing an appeal.

In reading the Sanchez Court's interpretation of Perego v. Robinson, 377 So.2d 834 (Fla. 5th D.C.A. 1979), cert. denied, 388 So.2d. 1116 (Fla. 1980): "Perego does not indicate whether the Clerk of the Circuit Court of Volusia County had a duly authorized branch office or whether the appellant filed his notice of appeal in such a branch office", it appears as if the Sanchez Court is stating that a duly authorized branch office is equivalent to the county seat and that "filing" in a branch office is tantamount to "filing" in the county seat. Such reasoning is contra to the clear meaning of Article VIII, Section 1 (k), Florida Constitution. The Sanchez Court further interprets the last sentence of Article VIII, Section 1 (k) as pertaining only to instruments affecting title to land. It seems that if the framers of the Constitution intended this provision to apply only to instruments affecting title to land, they could and would have so stated. It is clear, however, that Article VIII, Section 1 (k),

particularly the last sentence, refers to all instruments requiring recording and since Rule 9.040 (g) requires recording of notices of appeal, then such are not recorded until filed at the county seat. While Respondent might argue that such a holding is inequitable, the constitutional provision is a rule of law and not of equity. While the procedures involved in amending the Constitution are lengthy, tedious and costly, those procedures are the established ones for amending the Constitution, not judicial interpretation. Article XI, Section 5, Florida Constitution.

The issue sought here to be reviewed is not a complicated one and it was not addressed as a complicated issue by Perego, supra. Simply stated, a notice of appeal can be filed only at the county seat within 30 days of rendition of a final order sought to be reviewed. Failure to do so renders a higher court without jurisdiction to review the final order. There must be an end to litigation. To vary the rule would be to render the rule ineffective. Moreover, it would appear that being on notice that the filing of a notice of appeal can be accomplished only at the county seat, a reasonably prudent attorney would hand deliver a notice of appeal to the county seat rather than risk the loss of a right to appeal by delivering a notice of appeal to a branch office on the last day of the time allowed to file a notice of appeal, which in this case was thirty-one (31) days because the thirtieth (30th) day was a Sunday. By so acting, Respondent assumed the risk of lack of timely filing.

From the above and foregoing, it is apparent that Sanchez v. Swanson, 461 So.2d 155 (Fla. 2nd D.C.A. 1985) and Hoffman v. Hoffman, 463 So.2d 517 (Fla. 1st D.C.A., February 12, 1985), are lengthy

opinions designed to circumvent the constitutional amendment process and in effect render the concept of a county seat without significance by making branch offices of the Clerks of the Circuit Court equivalent to the county seat, except for instruments affecting titles to land.

In Sanchez, supra, the Court, in effect, stated that the Clerk's practices and Respondent's affidavits satisfied the dictates of Article VIII, Section 1 (k), Florida Constitution, yet said constitutional provision fails to state or imply any acceptable variations from the rule that filing is accomplished only at the county seat. Perego v. Robinson supra.

The First District Court of Appeal in Hoffman v. Hoffman, supra, as did the Second District Court of Appeal in Sanchez v. Swanson, supra, made a distinction between instruments which must be recorded "to manifest ownership or priority" such as security interests, deeds and mortgages and instruments for which mere filing is sufficient. The Hoffman Court did not address Rule 9.040 (g), Fla. R. App. P. and, in effect, held that notices of appeal are not required to be recorded. Such a holding renders Rule 9.040 (g) without effect. The plain meaning of Article VIII, Section 1 (k), Florida Constitution, incorporates all instruments that require recording since it fails to state any exceptions. Article VIII, Section 1 (k) simply does not lend itself to the "priority" interpretation adopted by both the First and Second District Courts of Appeal.

Statutory Implied Discretion to Clerks of Circuit Courts. Section 28.07, Florida Statutes (1983), provides in part:

> [I]n those counties in which the clerk feels such offices to be necessary, he may establish branch offices in other places than the county seat and may provide such offices with a deputy clerk authorized to issue process; provided, that all permanent official books and records shall be kept at the county courthouse.

Said statute, by the use of the words "feels" and "may" appears to grant a given Clerk of Circuit Court the discretion to establish a branch office. Impliedly such discretion includes operating policies. A closer reading of the above-mentioned statute seems to further reveal that the only restriction on the Clerk's discretion is that all permanent official books and records shall be kept at the County Courthouse (or county seat). The above-mentioned restrictions coupled with the constitutional restrictions of Article VIII, Section 1 (k) when viewed in light of the practice of the Clerk of Circuit Courts for Pinellas and Okaloosa Counties of recording all instruments only at the county seat appear to establish a logical flow of events.

Since the above-mentioned statute gives to the Clerks of the Circuit Courts such discretion, it would appear that unless a given clerk violates the statutory restrictions of Section 28.07, Florida Statutes, or Article VIII, Section 1 (k), Florida Constitution, then said clerk should be allowed to function free of judicial interference, provided no other applicable constitutional or statutory provision is violated. In the instant case as well as in Hoffman v. Hoffman, supra, the respective clerks' policies demonstrated lack of timeliness in the filing of the respective notices of appeal.

CONCLUSION

From the above and foregoing, it is clear that filing and recording if not the same at least occur simultaneously and filing of an instrument required to be recorded is accomplished only at the county seat. The holding of the Second District Court of Appeal should be reversed with instructions to that court to issue the Writ of Prohibition prayed for by Petitioner at that level prohibiting the Circuit Court of Pinellas County from exercising jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Thomas H. McGowan, Esquire, 4141 Central Avenue, St. Petersburg, Florida, 33713; and Office of the Court Administrator, Sixth Judicial Circuit of Florida, 150 Fifth Street North, St. Petersburg, Florida, 33701, by hand, this 11th day of July, 1985.

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