

8 986  
15

IN THE SUPREME COURT  
OF FLORIDA

GEORGE I. SANCHEZ,  
Petitioner,

Second District Court of Appeal  
No. 84-2227

vs.

Circuit Court of the Sixth  
Judicial Circuit  
No. 84-4636

MAYNARD F. SWANSON, JR.,  
Respondent.

Pinellas County Court No. 83-1830

66491

JURISDICTIONAL BRIEF OF PETITIONER

**FILED**

SID J. WHITE

FEB 4 1985

CLERK, SUPREME COURT

By *M*  
Chief Deputy Clerk

George I. Sanchez  
Petitioner Pro-Se  
6112 - 39 Avenue North  
St. Petersburg, FL 33709  
(813) 896-6633/343-9702

530 -

#### TABLE OF CITATIONS

1. Combs v. State, 436 So.2d 93 (Fla. 1983).
2. Gibson v. Avis Rent-A-Car Systems, Inc., 386 So.2d 520 (Fla. 1980).
3. Knee v. Smith, 313 So.2d 117 (Fla. 1st DCA 1975), cert. den., 330 So.2d 726 (Fla. 1976).
4. Mancini v. State, 312 So.2d 732 (Fla. 1975).
5. Nielsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960).
6. Perego v. Robinson, 377 So.2d 834 (Fla. 5th DCA 1979), cert. den., 388 So.2d 1116 (Fla. 1980).
7. Sanchez v. Swanson, 9 FLW 2518, Modified 10 FLW 125 (Fla. 2d DCA, Jan. 4, 1985).
8. Article V, Section 3(b)(3) Florida Constitution.
9. Fla. Rules of Appellate Procedure, 9.030(a)(2)(A)(ii),(iv).

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 jurisdiction of the Supreme Court is sought to be invoked pursuant to Article V, Section 3(b)(3), Florida Constitution, Florida Rule of Appellate Procedure 9.030(a)(2)(A)(ii), (iv); and Mancini v. State, 312 So.2d 732 (Fla. 1975). The Mancini Court held that the Supreme Court's jurisdiction to review decisions of Courts of Appeal because of alleged conflicts is invoked by the announcement of a rule of law which conflicts with a law previously announced by the Supreme Court or another District Court of Appeal. This Honorable Court adhered to the principals stated above subsequent to the 1980 Amendment to the Florida Constitution which modified this Court's jurisdiction. Combs vs. State, 436 So.2d 93 (Fla. 1983).

Petitioner alleges that there is direct and express conflict between the Second and Fifth Districts which can be gleaned from the decision here sought to be reviewed, Sanchez v. Swanson, 9 FLW 2518 as modified at 10 FLW 125, (Fla. 2nd DCA, Jan. 4, 1985), compared with the decision rendered in Perego v. Robinson, 377 So.2d 834 (Fla. 5th DCA 1979), Cert. den. 388 So.2d 1116 (Fla. 1980). In Perego, the Fifth District Court of Appeal held in effect that Notices of Appeal in order to be timely filed, must be filed at the County Seat within the jurisdictional time allowed for filing a Notice of Appeal, and filing the Notice of Appeal at a branch office is insufficient to confer jurisdiction. The Second District Court of Appeal stated in Sanchez, supra, that it disagreed with the Fifth District's holding,

while itself holding, in effect, that leaving a Notice of Appeal at a branch office is sufficient to confer jurisdiction if left at such a branch office within the jurisdictional time allowed for filing a Notice of Appeal.

This Court has also stated that its conflict jurisdiction can arise with the application of a rule of law by a District Court of Appeal to produce a different result in a case which involves substantially the same facts as a prior case. Mancini v. State, 312 So.2d 732 (Fla. 1975). In Mancini, this Court was quoting from Nielsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960). While Nielsen held that the "substantially same facts" involved cases previously decided by this Court, in Mancini, supra, the language pertaining to prior decisions of "this Court" is conspicuously absent. Moreover, Mancini further qualified the language of Nielsen pertaining to the alternative measure of conflict jurisdiction, that is "the announcement of a rule of law which conflicts with a rule previously announced by this Court" by adding "or another district".

Based on the language modification of Nielsen contained in Mancini it appears that the application of a rule of law by one District Court of Appeal to produce a different result in a case which involves substantially the same facts as a prior case of another District Court Appeal would also invoke the conflict jurisdiction of this Honorable Court.

In the instant case the essential facts are squarely on point with Perego v. Robinson, 377 So.2d 834 (Fla. 5th DCA 1979) yet the Second District Court of Appeal applied a rule of law which produced a different result.

A further basis for conflict jurisdiction announced by this Honorable Court exists when a District Court of Appeal misapplies the law by relying on a decision which involves a situation materially at variance with the one under review. Gibson v. Avis Rent-A-Car, Inc., 386 So.2d 520 (Fla. 1980). In the instant case the Second District Court of Appeal relied on Knee v. Smith, 313 So.2d 117 (Fla. 1st DCA 1975), Cert. den., 330 So.2d 726 (Fla. 1976) in reaching its decision. Knee is materially at variance with the instant case in that the Alachua County Clerk of the Circuit Court does not have, nor never has had, a branch office for the conduct of County business where notices of Appeal could be left for transmittal to the County Seat in Gainesville. Therefore Knee, supra, is materially at variance with the instant case, whereas Perego v. Robinson, 377 So.2d 834 (Fla. 5th DCA 1979) Cert. den. 388 So.2d 1116 (Fla. 1980) is directly on point.

Article V, Section 3(b)(3) Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(ii) also provide for discretionary jurisdiction by this Honorable Court to review a decision of a District Court of Appeal which expressly construes a provision of the State or Federal Constitution. Both the Sanchez v. Swanson, and Perego v. Robinson, Courts expressly construe Article VIII Section 1(k) Florida Constitution with differing conclusions creating additional conflict.

#### CONCLUSION

Based on the foregoing it is clear that conflict exists in the above decisions of Florida's Second and Fifth District Courts of

Appeal and this Court should exercise its power of discretionary review to harmonize the issue sought to be reviewed throughout the State.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Thomas H. McGowan, attorney for plaintiff at trial level, 4141 Central Avenue, St. Petersburg, Florida 33713; Brian B. Eisenstadt, Esquire, Office of Court Administrator, 150 - 5th Street North, St. Petersburg, Florida 33701 on this the 1<sup>ST</sup> day of February, 1985.

Respectfully submitted,



George I. Sanchez  
Petitioner Pro-Se  
6112 - 39th Avenue North  
St. Petersburg, FL 33709  
(813) 896-6633/343-9702