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IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

AUG 7 1985

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

GEORGE I. SANCHEZ, )

Petitioner/Appellant, )

vs. )

MAYNARD F. SWANSON, etc., )

Respondent/Appellee. )

\_\_\_\_\_ )

CASE NO. 66,491

DISTRICT COURT OF APPEAL,

SECOND DISTRICT, No. 84-227

REPLY BRIEF OF RESPONDENT/APPELLEE

Submitted by:

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## STATEMENT OF THE CASE

The Petitioner, GEORGE SANCHEZ, was awarded a money judgment against his landlord, DANIEL MERLINOS, in Pinellas County, Florida. The judgment was rendered by the Honorable Karl Grube on March 16, 1984.

A Motion to Dismiss was filed by SANCHEZ on the grounds that the appeal was not timely filed. The basis for this assertion was that the Notice of Appeal was filed in the St. Peterburg, Florida office of the Clerk of Pinellas County, Florida, and not stamped "received" until the following day, which would have been the thirty-first day after the rendition of the Final Judgment.

SANCHEZ filed a Motion to Dismiss the appeal on the grounds of lack of jurisdiction before the Circuit Court, and the court denied said motion on November 28, 1984. SANCHEZ then appealed this decision to the Second District Court of Appeals, which affirmed the lower court.

During the entire pendency of the said appeal, SANCHEZ sought to have the appeal carried forward and, in fact, invoked the jurisdiction of the Court in and for Pinellas County specifically through a Motion to Dismiss the appeal, which was now pending before the Second District Court of Appeal, for failure to timely file briefs, by the filing of a brief and by presentation of oral arguments. Said oral arguments resulted in a reversal of the original lower court ruling entered unanimously on July 16, 1985. A

copy of that Order and Opinion has been previously filed by MERLINOS with this Court.

The issue to be determined in this case is whether or not the filing of an appeal in a timely fashion in a lawfully created branch office of a clerk is sufficient to render jurisdiction over an appeal.

## 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.

In the Statement of the Case, SANCHEZ correctly points out that Pinellas County, Florida is a densely populated county which has established branch offices of the Clerk of the Pinellas County Court. Several other counties in the State of Florida have done this and both the First and Second District Court of Appeals have correctly ruled that the filing (emphasis supplied) of an appeal in such a branch office within the time allotted by the rule (i.e. thirty days) and confers jurisdiction on the Appeals Court. Hoffman vs. Hoffman, 463 So.2d 517 (1st DCA, Feb. 12, 1985); Sanchez vs. Swanson, 461 So.2d 155 (2d DCA, 1985); Knee vs. Smith, 313 So.2d 117 (1st DCA, 1975) cert. denied 330 So.2d 726 (Fla. 1976).

As the Second District Court of Appeals reasoned in the instant case, Article VIII, Sec. 1(k) of the Florida Constitution provides for the establishment of branch offices for the conduct of all county business as prescribed by law and goes on to say that no instrument shall be deemed recorded (emphasis supplied) until it is filed in the county seat. This may well apply to instances concerning real property, but does not apply to the filing of

appeals because, as the Second District Court of Appeals reasoned, jurisdiction of the Circuit Court is "invoked by the filing (and not the recording) of the Notice of Appeal accompanied by the required filing fee within thirty days of the rendition of the order to be reviewed. Rule 9.110(b)." Sanchez vs. Swanson, supra.

Accordingly, based upon the record below, it is clear that the petition was timely filed. Moreover, from the record below, it is clear that from the facts determined by the Circuit Court, it was clear that the Clerk of the Court in St. Petersburg, Florida, led the attorney for MERLINOS to believe that said papers would be appropriately stamped as of the correct filing date, but for some reason, were not.

As a practical matter, it would be grossly unfair for the State to establish branch offices of clerks throughout the State of Florida if they could not conduct business as is sought here. If they were to be considered otherwise, then nothing more than drop boxes at various locations in the counties would be necessary. The purpose of establishing branch Clerk's offices is specifically to permit greater and easier access to the courts. Their establishment was certainly not to create a means by which cases such as this can be disposed of without hearings on the merits, but on "technicalities", which in effect often make the quest for justice more difficult.

The entire thrust of the Rules of Appellate Procedure and, indeed, of the case law in the State of Florida, all point to resolving disputes on the merits of cases wherever it is so

possible. This is why, for example, the Rule of Appellate Procedure, 9.040, grants substantial liberality to appellants, even if the improper forum or remedy are initially sought. (See Rule 9.040(a) and 9.040(b)).

This, read with Rule 9.110(b) which states that jurisdiction is conferred by the "filing", not docketing, and not recording of a Notice of Appeal within a timely fashion, it is thus manifestly clear in light of these rules that the holdings of the Circuit Court and the Second District in the instant case, as well as that of the First District in Knee, supra, and Hoffman, supra, should be followed. To do otherwise would represent a step backward and in effect render meaningless the establishment of branch offices of Clerks throughout this State.

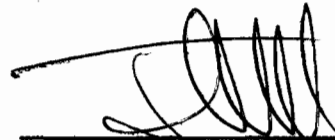


CONCLUSION

The judgments of the Circuit Court of Pinellas County and of the Second District Court of Appeals in this cause should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished by U.S. Mail to GEORGE I. SANCHEZ, 2044 Second Avenue North, St. Petersburg, FL 33713, and original and two copies have been furnished by U.S. Mail to THE SUPREME COURT OF FLORIDA, Appeals Division, Supreme Court Building, Tallahassee, FL 32301, on this 5<sup>th</sup> day of August, 1985.



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