

FILED

SID J. WHITE

APR 24 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

KYE S. HOFFMAN,

Petitioner,

vs.

CASE NO. 66,718

GLENN A. HOFFMAN,

Respondent,

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Respondent concurs with the Petitioner's statement of the Case and Facts.

SUMMARY OF ARGUMENT

The order on appeal, in which the First District held that notices of appeal must be considered "filed" at the time they are presented for filing at a branch office of the clerk, expressly conflicts with the holding in Perego v. Robinson, et al, in which the Fifth District stated that a notice of appeal cannot be considered filed until it reaches the county seat.

It is constitutionally permissible for a notice of appeal to be considered filed at the time it is presented at a location other than at the courthouse in the county seat, if: (1) the filing location is a branch office of the clerk that has been established in accordance with law, and (2) the clerk operates the branch office for the purpose of filing pleadings and issuing process. The branch office of the clerk in question was established in accordance with law and performed all functions of a clerk's office except for recording.

The notice of appeal was filed within the time established by the Florida Rules of Appellate Procedure. Accordingly the order on appeal should be affirmed.

ARGUMENT

- I. **WHETHER, FOR PURPOSES OF THE APPELLATE RULES, PLEADINGS MAY BE CONSIDERED FILED AT THE TIME THEY ARE PRESENTED AT A BRANCH OFFICE OF THE CLERK.**
- A. **Whether the Shalimar Branch Office was Established in Accordance with Law.**

The county commission resolution which determined that a courthouse annex should be built in Shalimar, Florida and which referred to construction plans filed with the clerk authorized the establishment of a branch office of the Clerk of Circuit Court for Okaloosa County.

The Florida Constitution in Article VIII, Section 1 (k) provides in part that:

Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law.

The adoption of the resolution satisfied the requirements of this section of the Florida Constitution.

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.

The above statute, as well as Article VIII, Section 1(k), Florida Constitution (previously quoted), clearly contemplates the establishment of branch offices for the conduct of the clerk's business at places other than the county seat, except for the recording function and the keeping of all permanent official books and records in the county seat as required by the Florida Constitution.

B. The conflict with *Perego v. Robinson*

The order on appeal is directly in conflict with *Perego v. Robinson et al*, 377 So. 2d 834 (Fla. 5th DCA 1979), cert denied, 388 So. 2d 1116 (Fla. 1980), in which the Fifth District, noting that the office of the clerk in Volusia County is located at the county seat in DeLand, broadly held that, although the clerk had a branch office established in Daytona Beach, no documents are filed or recorded anywhere but the county seat.

The Perego opinion did not discuss the distinction between the filing and the recording of a document for the purposes of Article VIII, Section 1 (k) (which states that documents shall not be considered recorded until they reach the county seat). The Perego opinion did not discuss that although Fla.R.App.P. 9.040(g) requires the clerk to record certain notices of appeal, the operative date for deciding the timeliness of the notice is the date of filing, not recording. See, Magnant, et al v. Peacock, et al, 24 So. 2d 314 (Fla. 1945).

The cited case of In Re: Switzer's Estate, 156 So. 1, (Fla. 1934) was decided prior to Section 28.07, Florida Statutes (1983). This case involved a notice that was taken to the home of the clerk on a weekend and not filed at the clerk's office.

As stated by the First District in its opinion:

" It would seem apparent that the drafters of the constitutional provision, as well as the statute, were well aware that the ever growing population of many Florida counties has placed great burdens on the offices of the clerks of circuit courts throughout the state. To hold that these lawfully established branch offices may accept pleadings for filing, but that said documents are not to be at loggerheads with the stated purpose of providing for the establishment of branch offices in order to better serve the needs of the public. "

CONCLUSION

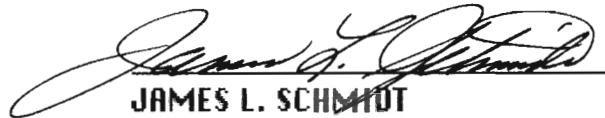
The notice of appeal was filed within the time permitted under the Florida Rules of Appellate Procedure, the decision of the First District Court of Appeal should be affirmed.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to WALTER A. STEIGLEMAN, Esquire, Attorney for Petitioner, P.O. Box 1510, Ft. Walton Beach, FL 32549, by regular U.S. Mail, this 23rd day of April, 1985.



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