IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. 67,186

REED A BRYAN, III, et al.,

Petitioner,

vs.

CENTURY NATIONAL BANK OF BROWARD, as Personal Representative of the Estate of CAMILLE PERRY BRYAN, Deceased,

Respondents.

_____/

REED A. BRYAN, III, et al.,

Petitioners,

vs.

JAMES H. BRYAN, SR., STUART BRYAN and LUCY GARDNER OWENS,

Respondents.

_____/

RESPONDENT'S BRIEF ON CONFLICT JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent, CENTURY NATIONAL BANK OF BROWARD, agrees with the Statement of the Case and Facts as set out in Petitioner's brief.

JURISDICTIONAL ISSUE

Petitioner, has stated the jurisdictional issue for decision as follows:

> WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IS DIRECTLY AND EXPRESSLY IN CONFLICT WITH FLEMING V. FLEMING, 352 So.2d 895 (FLA. 1st DCA 1977)

Respondent, CENTURY NATIONAL BANK OF BROWARD, prefers to restate the jurisdictional issue more concisely as follows:

> WHETHER THE DECISION OF THE FOURTH DISTRICT OF APPEAL IS DIRECTLY AND EXPRESSLY IN CONFLICT WITH FLEMING V. FLEMING, 352 So.2d 895 (FLA. 1st DCA 1977) on the same question of law. (Emphasis supplied)

SUMMARY OF ARGUMENT

The decision of the Fourth District Court in this case is not in express and direct conflict with the decision of the First District Court in FLEMING V. FLEMING, 352 So.2d 895 (FLA. 1st DCA 1977) on the same question of law, and this Court need not and should not accept jurisdiction.

ARGUMENT

The beginning paragraph of the subject opinion of the Fourth District Court stated the precise issue which was decided as follows:

> "The dispositive question in these consolidated appeals is whether a person who has become a voluntary ward, pursuant to section 744.341, Florida Statutes (1979), may during the pendency of the voluntary guardianship make inter vivos conveyances of the ward's real and personal property without court approval."
> (Petitioner's Appendix A-5)

This issue raised and specifically decided, involved interpretation of the court approval requirements provided in § 744.441, Florida Statutes (1979).[1]

Plainly and simply the Fourth District Court held that that deed upon which Petitioner's title was predicated was ineffective because it had never been approved by the Guardianship Court.[2]

The FLEMING V. FLEMING decision, asserted to be in conflict, on the other hand, never involved the issue of whether or not the subject deeds necessitated approval by the Guardianship Court. The procedural context in FLEMING

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1 1. This statute enumerates those powers of a Guardian which can only be accomplished after obtaining Court approval. This is to be contrasted with § 744.444, Florida Statutes, which sets out those powers that a Guardian is permitted without Court approval.

2 2. Petitioner argues here for the first time that the Final Judgment below amounted to approval of the Deed by a Court having proper jurisdiction. However, Petitioner never objected to discharge of the Guardian after the Ward's death, never sought continuance of the approval proceedings pending in the Guardianship Court, nor did he appeal the Order terminating the Guardianship and discharging the Ward. Instead, Petitioner chose to begin a new proceeding to quiet title on the strength of his Deed alone, without regard to the considerations attendant to approval proceedings pursuant to § 744.441 Florida Statutes.

was manifestly different than involved in the decision of the Fourth District below. In FLEMING actions were brought by the administrator of the estates of a married couple, the DeVaughns, to set aside four deeds they had executed prior to their deaths. Although certain of the deeds were executed after Mrs. DeVaughn had been adjudicated incompetent, no approval proceedings had been instituted prior to her death in the guardianship court. The issue of whether approval was required was simply never raised. Not only was this precise issue raised in the Fourth District's opinion below, but the District Court squarely held that the statutory scheme outlined in the Florida Guardianship law renders a ward legally unable to convey his property without approval of the court, required under § 744.441, Florida Statutes. Considering this, it becomes apparent that no conflict exists or has been demonstrated since the FLEMING decision and the decision under review were based upon interpretation and consideration of different points and rules of law. (Emphasis supplied)

In Kyle V Kyle, 139 So.2d 885 (Fla.1962) this Court quite succinctly outlined the test for determining whether there is a direct conflict:

> "In concluding that we have no jurisdiction to review the instant decision on the "conflict theory" we repeat what we have written on other occasions. The test of our jurisdiction in such situations is not measured simply by our view regarding the correctness of the Court of Appeal decision. On the contrary, jurisdiction to review because of an alleged conflict requires a preliminary determination as to whether the Court of Appeal has announced a decision on a point of law, which if permitted to stand, would be out of harmony with a

> prior decision of this Court or another Court of Appeal on the same point, thereby generating confusion and instability among the precedents. We have said that conflict must be such that if the later decision and the earlier decision were rendered by the same Court the former would have the effect of overruling the latter. Ansin v Thurston, Fla., 101 So.2d 808. If the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise. Florida Power and Light Co. v Bell, Fla., 113 So.2d 697; Nielsen v. City of Sarasota, Fla., 117 So.2d 731." (Emphasis supplied)
> (KYLE V. KYLE, 139 So.2d 885,887)

Under the above test it is clear that no conflict exists between the decision challenged and the holdings in FLEMING. Not only do the facts of each case differ materially, but the rule of law applied in one was never raised and or considered in the other.

Something ought be said about Petitioner's final paragraph which asserts that discretionary review ought to be accepted because this case involves the elderly. While this may be true, this in and of itself is not reason or justification to assume jurisdiction for discretionary review. To do so would amount to a total disregard by this Court of the conflict jurisdiction exception which was substantially narrowed by the 1980 amendment to the Florida Constitution. This case was never certified as a question of great public importance and the holding of the Fourth District Court below is logical, well reasoned and otherwise amply supported by the precedent cited by the Fourth District in its Opinion. Alternatives to the voluntary guardianship

status of award are open if termination of the guardianship is desired during its pendency. This was never done in this case, no court approval of the subject deed was ever accomplished and Petitioner has failed to demonstrate that the subject opinion challenged conflicts with the decision of the First District Court in FLEMING.

CONCLUSION

There having been no conflict between the decisions of the Fourth District and the First District demonstrated by the Petitioner, this Court should decline jurisdiction for the reasons above stated.

Respectfully submitted,

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By: _____
Kenneth R. Mikos

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing has been furnished, by mail, this 11 day of July, 1985, to:

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and

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and

REED A. BRYAN, III,
In proper person
c/o McCune, Hiaasen, Crum
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