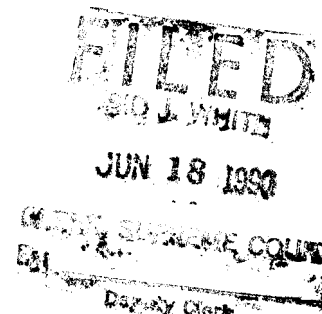


IN THE SUPREME COURT
OF THE STATE OF FLORIDA



IN RE: ESTATE OF ADELE M. LAFLIN

FIRST FIDELITY BANK, N.A.,
NEW JERSEY,

CASE NO. 75,315

Petitioner,

vs.

ADELE R. LAFLIN, ETC.,

Respondent.

REPLY TO RESPONDENT'S RESPONSE TO PETITION
FOR WRIT OF MANDAMUS

Petitioner, First Fidelity Bank, N.A., New Jersey, pursuant to this Court's Order dated May 9, 1990, files this Reply to the Response to Petition for Writ of Mandamus as follows:

I. STATEMENT OF CASE

Petitioner, First Fidelity Bank, N.A., New Jersey ("First Fidelity") stands by its Statement of the Case and of the Facts recited in its original Petition for Writ of Mandamus. References to the Appendix which accompanied First Fidelity's Petition for Writ of Mandamus will be indicated by "App.," followed by the appropriate page number.

11. ARGUMENT

Respondent, Adele R. Laflin, as personal representative of the Estate of Adele M. Laflin, deceased ("Laflin"), in her Response to First Fidelity's Petition for Writ of Mandamus, attempts to inject, for the first time, doubt as to the reason the District Court dismissed First Fidelity's Petition for Writ of Common Law Certiorari, suggesting that the District Court may simply have declined to exercise its discretionary jurisdiction, rather than refusing to consider an issue as to which First Fidelity had the right to appeal. Laflin then attempts to play on that doubt in repeatedly applying the discretionary standards under which a district court may accept or deny certiorari review instead of the mandatory standards imposed for direct appellate review in arguing mandamus is unavailable in this action.

To the contrary, the only ground asserted by Laflin below for dismissal of First Fidelity's Petition for Writ of Common Law Certiorari was that, under Rule 5.100, Florida Rules of Probate and Guardianship Procedure, First Fidelity should have filed a notice of appeal with the trial court, rather than a Petition for Writ of Common Law Certiorari with the District Court. (App. 74)¹. First Fidelity agrees with Laflin that,

¹ In her Response to Petition for Writ of Common Law Certiorari filed with the District Court, Laflin argued:

Petitioner has sought to invoke the certiorari jurisdiction of this Court to review a final order entered by the probate court. However, it is clear that the probate order is not subject to certiorari review. Petitioner's appropriate methods of relief
(Footnote continued on next page.)

under such rule, it should have initiated review of the trial court's order through filing of a notice of appeal. By its December 12, 1989, order, the District Court expressly dismissed the Petition for Writ of Common Law Certiorari for "lack of jurisdiction." (App. 2, 114, 116). The District Court's belief that it lacked jurisdiction, as opposed to merely declining to exercise its certiorari jurisdiction, could not have been expressed more clearly.

The District Court further confirmed the basis on which it found itself without jurisdiction in citing Lampkin-Asam v. District Court of Appeal, 364 So.2d 469 (Fla. 1978), when it denied Petitioner's Emergency Motion for Clarification. (App. 1, 112). Lampkin-Asam held that improper filing of a notice of appeal constituted a jurisdictional defect, depriving the district court of jurisdiction to entertain the petitioner's appeal.

were a motion for rehearing pursuant to Fla.R.P.&G.P. 5.020 or an appeal to this Court. Therefore, this Court lacks jurisdiction to grant a Writ of Common Law Certiorari and the Petition should be denied.

It should also be noted that Petitioner is now prohibited from requesting this Court to treat its Petition for Writ of Common Law Certiorari as an appeal from the Probate Order because Petitioner has failed to file a timely notice of appeal. Lampkin-Asam v. District Court of Appeal, 364 So.2d 469 (Fla. 1978), . . .; Skinner v. Skinner, 541 So.2d 176 (Fla. 4th DCA 1989) . . . (App. 76).

Of course, Skinner, was reversed by this Court on May 3, 1990, at 15 F.L.W. S. 268, after rendition of the decision of the District Court under consideration here.

The sole issue presented to this Court is whether the District Court erred in relying on Lampkin-Asam and instead should have treated First Fidelity's timely filed Petition for Writ of Common Law Certiorari as a notice of appeal. The answer is clear. This Court has twice receded from Lampkin-Asam², most recently in Skinner v. Skinner, 15 F.L.W. S. 268 (Fla. 1990), a case squarely on point. In Skinner, this Court held that a district court must consider the appropriate remedy when an appellant erroneously files a petition for writ of certiorari, rather than a notice of appeal, stating:

Article V, section 2(a) of our constitution prohibits a district court from dismissing a petition for writ of certiorari filed with the clerk of the district court, which should have been a notice of appeal filed in the circuit court. Even though the form of appellate relief was mischaracterized in this case, and even though it was filed in the wrong court, there is no question that the district court in this instance had jurisdiction to consider the appropriate remedy. Id. at 269. (emphasis added).

In Sky Lake Gardens Recreation v. District Court of Appeal, Third District, 511 So.2d 293 (Fla. 1987), this Court held that mandamus is an appropriate remedy to correct an erroneous determination of lack of jurisdiction on the part of a district court, concluding that "the district court has a

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2 The first time was in Johnson v. Citizen's State Bank, 537 So.2d 96 (Fla. 1989), wherein this Court held that a notice of appeal mistakenly filed with the trial court had to be transferred to the district court and treated as a timely petition for writ of certiorari.

ministerial duty to consider and decide the appeal." Id., at 294. Therefore, a writ of mandamus directed to the District Court is proper in this instance.

CONCLUSION

The District Court erred in dismissing First Fidelity's timely filed Petition for Writ of Common Law Certiorari expressly for lack of jurisdiction. Instead, under this Court's holding in Skinner v. Skinner, 15 F.L.W. S. 268 (1990), the District Court was required to treat the Petition as a notice of appeal. That duty was mandatory, not permissive.

The underlying issue in this action involves the capacity of an out of state bank to serve as trustee of a trust created under a Florida decedent's will. This underlying issue, on which there are no reported Florida decisions, is of great importance to Florida residents, the probate bar, and the national banking industry. First Fidelity respectfully requests that this Court issue a Writ of Mandamus to the District Court of Appeal, Fourth District, requiring it to exercise its non-discretionary duty to treat First Fidelity's Petition for Writ of Common Law Certiorari as a notice of appeal so that the underlying merits of this action can be reached.

ALLEY, MAASS, ROGERS
& LINDSAY, P.A.

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Abraham Mora, Esquire, Blank, Rome, Comisky & McCauley, 1401 Forum Way, Suite 700, West Palm Beach, Florida 33401; Joyce M. Boyer, Midlantic National Bank and Trust Co./Florida, N.A., 777 East Atlantic Avenue, Suite 200A, Delray Beach, Florida 33444; Honorable George W. Hersey, Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd., West Palm Beach, FL 33402; and Arthur C. Wallberg, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050, this 16th day of June, 1990.



Robb R. Maass