

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

IN RE: ESTATE OF
ADELE M. LAFLIN,
Deceased.

FIRST FIDELITY BANK, N.A., NEW JERSEY,)
Petitioner,)
vs.)
DISTRICT COURT OF APPEAL, FOURTH DISTRICT,)
Respondent.)

JUL 8 1990
CLERK OF THE COURT
TALLAHASSEE, FLORIDA

CASE NO. 75,315

RESPONSE TO PETITION F WRIT OF ANDAMUS

Respondent, Adele R. Laflin, Personal Representative of the Estate of Adele M. Laflin, deceased, pursuant to this Court's Order dated May 9, 1990, files this Response to the Petition for Writ of Mandamus, as follows:

I. STATEMENT OF CASE

On August 16, 1989, the Circuit Court for Palm Beach County, Florida entered an Order determining that First Fidelity Bank, N.A., New Jersey ("First Fidelity") was not qualified to serve as Trustee of the testamentary trust of the decedent, Adele M. Laflin. On September 12, 1989, First Fidelity filed a Petition for Writ of Common Law Certiorari ("Certiorari Petition") in the Court of

Appeals for the Fourth District ("Fourth District"), to review the Circuit Court Order. By Order dated December 12, 1989, the Fourth District, without opinion, dismissed the Certiorari Petition for lack of jurisdiction.

First Fidelity then filed an Emergency Motion for Clarification; Certification of Conflict or a Question of Great Public Importance; or Vacating of Order and Retention of Jurisdiction ("Emergency Motion"). The Emergency Motion argued, inter alia, that the Fourth District should write an opinion, giving its reason for dismissing the Certiorari Petition. First Fidelity stated that this was required so that if certain specified reasons were the cause of the dismissal, First Fidelity could seek review of the Fourth District's December 12, 1989 Order before this Court. On January 3, 1990, the Fourth District entered an Order denying First Fidelity's Emergency Motion in all respects.

Subsequently, on January 10, 1990, First Fidelity filed a Petition for Writ of Mandamus ("Mandamus Petition") in this Court requesting this Court to exercise its discretionary jurisdiction to review both Orders of the Fourth District and to issue a writ of mandamus to the Fourth District.

11. ARGUMENT

A. A Writ of Mandamus is an Extraordinary Procedure Only Issued by Courts In Special Limited Circumstances.

Pursuant to Fla.R.App.P 9.030(a)(3), this Court may issue writs of mandamus to state officers. A writ of mandamus is an extraordinary writ, to be used by courts in limited instances. A writ of mandamus compels the performance of a duty which is ministerial and not discretionary. Accordingly before a writ of

mandamus can be issued, the petitioner must show that there is a clear legal right on the part of the petitioner, an indisputable legal duty on the part of the respondent and that the duty sought to be compelled is ministerial in nature. Holland v. Wainwright, 499 So. 2d 21 (1st D.C.A. 1986). It is not proper for this Court to issue a writ of mandamus to the Fourth District **in this** matter for the reasons set forth below herein.

B. This Court Should Not Grant Mandamus Review of the December 12, 1989 Order Because The Fourth District did not Write an Opinion and there are Numerous Possible Legal Grounds that Could Have Been the Basis for the Dismissal of the Certiorari Petition.

In its Mandamus Petition, First Fidelity assumes that the Certiorari Petition was dismissed based on procedural defects similar to those in the case of Skinner v. Skinner, 541 So. 2d 176 (Fla. 4th D.C.A. 1989), remanded 15 F.L.W. 268 (Fla. May 3, 1990). Although there may have been procedural defects in this case identical to those in Skinner, there are numerous grounds other than Skinner, upon which the Fourth District could have dismissed the Certiorari Petition. In fact, as will be discussed, it is clear from the Orders of the Fourth District that a Skinner type procedural defect was not the basis for dismissal.

For example, First Fidelity stated in the "Jurisdiction" section of its Certiorari Petition that three distinct elements were necessary to establish jurisdiction for its Certiorari Petition. First, First Fidelity stated that the lower court's order must depart from the essential requirements of law. Second, First Fidelity stated that it must be shown that the lower court's order may cause material injury throughout subsequent proceedings.

Third, First Fidelity stated that it must be shown that appeal from the lower court's order is an inadequate remedy. Finally, First Fidelity stated that it had satisfied the multitude of general procedural requirements for jurisdiction.

Having been presented by First Fidelity with all these jurisdictional requirements, the Fourth District could have dismissed the Certiorari Petition because it determined that any one or more of these elements was lacking. Even First Fidelity conceded that there could have been different grounds upon which the Fourth District dismissed the Certiorari Petition. In its Emergency Motion, First Fidelity acknowledged that the Fourth District may have determined, as First Fidelity argued, that the Circuit Court Order was an interlocutory order, in which case review by appeal at a subsequent time was the appropriate remedy. In any event, since the Fourth District did not write an opinion, neither First Fidelity, the Personal Representative, nor this Court, can make a definitive statement as to why the Certiorari Petition was dismissed.

Under these circumstances, it would be inappropriate for this Court to issue a writ of mandamus. A writ of mandamus can only be issued to a lower court if the issuing court is able to determine the legal grounds upon which the lower court's order was premised. In this case, there are many grounds upon which the Fourth District could have dismissed the Certiorari Petition. It is a well established legal principle that if there is any legal basis why the lower court could have issued a proper ruling, including alternative theories, that the ruling should be upheld on review.

In addition, in appellate proceedings, decisions of the lower court have a presumption of correctness, which the appellant must overcome. Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150 (Fla. 1979). Because the Fourth District did not issue a written opinion from which this Court can determine the grounds for dismissal, it is not proper for a writ of mandamus to be issued.

C. This Court Should Not Grant Mandamus Review of the December 12, 1989 Order Because the Fourth District Exercised Its Discretionary Power and Not A Ministerial Duty in Dismissing the Certiorari Petition.

A fundamental requirement for the issuance of a writ of mandamus is that the legal duty in question must be ministerial in nature and not discretionary. Here the Fourth District was requested by First Fidelity to issue a writ of common law certiorari, which extraordinary writ is discretionary in nature. For example, First Fidelity acknowledged that for the Fourth District to have jurisdiction, it was not sufficient to merely demonstrate that the Circuit Court Order was incorrect. Instead, the Fourth District had to make a discretionary finding that there had been a departure from the essential requirements of the law. Clearly, a district court of appeal has discretion to determine whether a lower court has departed from essential requirements of law, and if so, whether material injury will result therefrom. Therefore, this Court should not issue a writ of mandamus as to an action that was clearly in the discretion of the Fourth District.

D. This Court Should Not Grant Mandamus Review of the January 3, 1990 Order of the Fourth District Because the Order Does Nothing More than Deny a Request for Clarification.

Subsequent to the Order dismissing the Certiorari Petition, First Fidelity filed its Emergency Motion. The purpose of the

Emergency Motion was to seek clarification as to why the Certiorari Petition was dismissed. First Fidelity pointed out that if the Certiorari Petition was dismissed on principles similar to the Fourth District's ruling in Skinner, the Fourth District must either certify the case to this Court based on conflict or question of public importance, or vacate the order and maintain jurisdiction. However, the Fourth District denied the Emergency Motion for clarification and also did not grant any of the other requested forms of relief.

The Fourth District cited Lampkin - Asam v. District Court of Appeal, 364 So. 2d 469 (Fla. 1978) as its authority for denying the Emergency Motion. In its Mandamus Petition however, First Fidelity mistakenly states that the Fourth District applied the Lampkin - Asam case in dismissing its Certiorari Petition. As discussed earlier, the District Court's Order dismissing the Certiorari Petition did not cite any authority **or give** any legal grounds for the dismissal.

The Lampkin - Asam case is frequently cited for the general proposition that a court has no power to act in the absence of a jurisdictional foundation for the exercise of power. The Lampkin - Asam case was only cited by the Fourth District when it denied First Fidelity's Emergency Motion for clarification or other relief. The Fourth District's Order denying **the** Emergency Motion in no way indicated that the Lampkin -Asam case related back to its original Order dismissing the Certiorari Petition. If this were the case, the Fourth District would have aranted clarification or one of the other requested forms of relief, and thereafter, cited

Lampkin - Asam as the basis for the Order dismissing the Certiorari Petition, It is improper, and a misstatement of the literal language of the Order, for First Fidelity to attempt to argue that the Fourth District cited the Lampkin - Asam case for anything other than the proposition that its Emergency Motion for clarification or other relief was denied.

E. The Skinner case was not the Basis Upon Which the Fourth District Dismissed the Certiorari Petition.

First Fidelity argued that the Certiorari Petition was dismissed based on Skinner, as certain jurisdictional issues in this case were similar to those in Skinner. There is no question that there may be a Skinner type issue in the case, however, this does not mean that there were not other jurisdictional issues. However, if Skinner was the basis of the dismissal, the Fourth District, having certified the Skinner question to this Court, would have maintained jurisdiction until this Court ruled in Skinner. Jollie v. State, 405 So. 2d 418 (Fla. 1981). In the alternative, the Fourth District would have granted one of the other requested forms of relief as part of the December 12, 1989 Order. Therefore, there must have been grounds other than Skinner upon which the Fourth District dismissed the Certiorari Petition.

This Court recently answered the certified question in Skinner in the affirmative and remanded the case back to the Fourth District. Skinner v. Skinner, 15 F.L.W. 268 (Fla. May 3, 1990). In these proceedings however, this Court's ruling in Skinner is inapplicable, because it is clear that the Fourth District did not rely on Skinner as the grounds for its dismissal of the Certiorari Petition.

The Fourth District was obviously aware of its duty, if similar issues were involved, to withhold disposition of this case pending review of the Skinner question by this Court. Accordingly, because the Fourth District's January 3, 1990 Order denied First Fidelity's request that jurisdiction be maintained until this Court decided the Skinner question, it is clear that the Fourth dismissed the Certiorari Petition on grounds other than Skinner. It is inconceivable that if a Skinner type procedural defect was the sole basis for dismissal, the Fourth District would have refused to maintain jurisdiction until this Court ruled in Skinner.

F. Mandamus Review of the Fourth District's Order Denying First Fidelity's Emergency Motion Is Not Appropriate Because Mandamus Does Not Apply to the Exercise of a Discretionary Power.

Mandamus review is also inapplicable to the Fourth District's January 10, 1990 Order denying First Fidelity's Emergency Motion, because clarification is a discretionary form of relief, for which mandamus review is not available. Fla.R.App.P. 9.330 provides that a party may seek clarification of an order; however, the rule in no way indicates that providing clarification is a non-discretionary duty of a district court of appeal.

It is a well established principle that there is no statute requiring an appellate court to write an opinion in support of its decision. Taylor v. Knight, 234 So. 2d 156 (1st D.C.A. 1970). Discussing the nature of District Courts of Appeal, the First District Court in Taylor stated:

"These courts are not established by the people of Florida as intermediate public courts or "way stations" to the Supreme Court of Florida... Appellants are not entitled as a matter of constitutional right to a written opinion from this Court in order that they might petition for writ of certiorari." (Taylor at 157).

Accordingly, in denying the motion for clarification, the Fourth District did nothing more than exercise a discretionary power, not subject to mandamus review. Once the Fourth District denied clarification, and thereby confirmed that Skinner was not the reason for dismissing the Certiorari Petition, First Fidelity could not seek to compel the Fourth District to grant the other forms of requested relief.

III. CONCLUSION

The Petition for Writ of Mandamus should be denied. With respect to the Order dismissing the Certiorari Petition, there are a myriad of grounds upon which the Fourth District could have dismissed the Certiorari Petition. The Order of the Fourth District denying First Fidelity's Certiorari Petition was without opinion. Furthermore, the Orders of the Fourth District come to this Court with a presumption of correctness. Therefore, this Court cannot conclude that a writ of mandamus should be issued to the Fourth District when it has no way of determining why the Certiorari Petition was dismissed. Furthermore, the act of the Fourth District in denying the Certiorari Petition was an exercise of its discretionary power and not a ministerial duty, subject to mandamus review.

The Order of the Fourth District denying First Fidelity's Emergency Motion does nothing more than deny a request to clarify an Order. Accordingly, First Fidelity's argument that the Order somehow relates back to the Order dismissing the Certiorari Petition is unfounded. Furthermore, because the Fourth District did not maintain jurisdiction in this matter pending this Court's

determination of Skinner, the Fourth District must have dismissed the Certiorari Petition because of some other jurisdictional defect. In addition, the Order is not subject to mandamus review because the Fourth District did nothing more than exercise its discretionary power. Based upon the foregoing, it is clear that a Writ of Mandamus is not appropriate to review either Order of the Fourth District Court of Appeal.

Executed this 5th day of June, 1990.

Respectfully submitted,




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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 Judge Vaughn J. Rudnick, Palm Beach County Courthouse, 300 North Dixie Highway, Room #308, West Palm Beach, Florida 33401, Robert Maass, Esquire, Alley, Maass, Rogers & Lindsay, 321 Royal Poinciana Plaza, Palm Beach, Florida 33480, Joyce M. Boyer, Midlantic National Bank and Trust Co./Florida, N.A., 777 East Atlantic Avenue, Delray Beach, Florida 33447 and Arthur C. Wallberg, Assistant Attorney General, Department of Legal Affairs, The Capitol/Suite 1501, Tallahassee, Florida 32399-1050 this 5th day of June, 1990.



ABRAHAM MORA, ESQUIRE