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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,096

CAYETANO E. ALFONSO
and SUNLAND ESTATES, INC.,

Petitioner,

-vs.-

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA

PETITIONERS' REPLY BRIEF

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ARGUMENT

THE THIRD DISTRICT ERRED IN DISMISSING THE APPEAL AND THIS COURT SHOULD EXERCISE ITS JURISDICTION OVER THIS CASE TO REMEDY FREQUENT INJUSTICES WHICH RESULT FROM THE EXALTATION OF FORM OVER SUBSTANCE

Sometimes in order to demonstrate the legal incorrectness of a given proposition, it is necessary to carry that proposition to its logical extreme and illustrate that an absurd result would occur under those circumstances. Where--upon application of a principle of law to a set of conceivable facts (albeit at the logical extreme)--a result occurs which is utterly absurd, the mere fact of that absurdity should weaken the legal proposition under review.

Respondent asserts that the only usefulness of Rule 9.040(b) is to "permit the transfer of cases where the appeal is taken to the wrong appellate court." (Answer Brief at 7). A logical extension of that proposition--that the Rule permits the exercise of jurisdiction by the Third District where the jurisdiction of another, wrong appellate court is invoked, but not where the jurisdiction of the Third District is sought to be invoked in a procedurally-incorrect manner--necessitates such absurd results that it cannot be a correct statement of the law.

Petitioners' first example arises from logical extension of the situation which Respondent asserts was the basis for the holding in Sternfield v. Jewish Introductions, Inc., 581 So. 2d 987 (Fla. 4th DCA 1991): that because the misfiled petition for

certiorari was filed in the circuit court "sitting in its appellate capacity," the transfer rule permitted the Fourth District to attain jurisdiction, by a transfer from the "wrong" appellate court to the correct one. Petitioners' example is this: if ALFONSO in the case below, instead of filing his Notice of Appeal in the Third District, had erroneously attempted to invoke the jurisdiction of the First District Court of Appeal by correctly filing a Notice of Appeal in **the** Leon Circuit Court, could the 1st DCA then properly "transfer" the case to the Third District?

If so, then why could not a Notice of Appeal filed in any circuit court in any judicial circuit across the state, which sought to invoke the jurisdiction of the local district court likewise be transferred to the Third District? The idea that Rule 9.040(b) requires transfer of a Notice of Appeal filed with the Broward Circuit Court Clerk seeking to invoke the jurisdiction of the Fourth District (or from the equivalent courts of any circuit and any other district), but that the law forbids such a transfer from the Dade Circuit Court on Flagler Street to the Third District on 117th Avenue is too absurd a result to be the law.

More absurd still is the result when the foregoing proposition is combined with the "two-wrongs" excuse that where an incorrectly-denominated paper seeks an inappropriate remedy, that paper lights the spark of jurisdiction in another court to consider the correct remedy. It is unfair enough to contend that--had ALFONSO filed a Petition for Writ of Mandamus (or certiorari or whatever) in the Third District--that mistake would give rise to a power to consider

the case on appeal, but that filing the paper seeking the correct remedy in that court would not have been sufficient.

Now let us assume that the wrong petition was filed in the wrong appellate court. Under the Respondent's position that paper invokes the power of that court; and does not Rule 9.040(b) require transfer of that power to consider the merits of the appeal? Common sense and ordinary principles of justice require rejection of the following proposition: that the filing a Petition for Habeas Corpus in the Second District in Lakeland is enough to invoke the jurisdiction of some appellate court; and that court's appellate jurisdiction must be transferred to the 3d DCA in Miami to consider the correct remedy of appeal; but the filing of the correct paper in the court whose review is being sought is not enough to invoke appellate jurisdiction.

Fundamental fairness requires that the transfer rule be read to apply to filing of a Notice of Appeal in the appellate court whose jurisdiction is sought to be invoked, and that the present appeal, therefore, be reinstated.

CONCLUSION

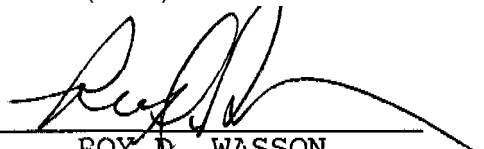
WHEREFORE, the question before the Court being one of great public importance which should be answered in the affirmative; Petitioners having demonstrated express and direct conflict between the decision of the Third District under review and the Fourth District Case in Sternfield, supra; and due process of law requiring resolution of that conflict in favor of the exercise of jurisdiction to review the merits of the present case, the decision under review should be quashed, and this appeal be reinstated therein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy hereof was served by mail, upon Francine M. Ffalkes, Esq., Assistant General Counsel, Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, FL 32399-2400, on this, the 6th day of March, 1992.

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