

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 86,652

GULLIVER ACADEMY, INC., :

Petitioner, :

vs. :

RALPH BODEK and LORRAINE :

BODEK, as Parents and Natural Guardians :

of their minor son, ROBERT BODEK, on :

behalf of their minor son, Robert Bodek :

and themselves, individually, :

Respondents. :

DISCRETIONARY REVIEW OF THE
DISTRICT COURT OF APPEAL, THIRD DISTRICT

JURISDICTIONAL BRIEF OF RESPONDENTS
RALPH BODEK AND LORRAINE BODEK

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 and themselves, individually, :
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 Respondents. :

INTRODUCTION

This jurisdictional brief is filed on behalf of the respondents, Ralph Bodek and Lorraine Bodek, as parents and natural guardians of their minor son Robert Bodek.

SUMMARY OF ARGUMENT

There is no factual or procedural similarity between this case and any case relied upon by Gulliver Academy. In the absence of factual and procedural similarity, the constitutionally required express and direct conflict simply does not exist.

JURISDICTIONAL ARGUMENT

Conflict jurisdiction is limited to conflicts created by the announcement of a rule of law in conflict with a rule previously announced, or the application of a rule of law to

produce a different result in a case involving substantially the same facts as a prior case. Florida Power & Light Co. v. Bell, 113 So.2d 697, 698 (Fla. 1959); Ansin v. Thurston, 101 So.2d 808, 810 (Fla. 1958). Under the first situation, it is the announcement of a conflicting rule of law that conveys jurisdiction. Under the second situation, it is the controlling facts that become paramount.

As is patent from Gulliver Academy's jurisdictional brief, there is no factual or procedural similarity between this case and any case relied upon by Gulliver Academy. Gulliver Academy fails to cite any conflicting case "on all fours." Cf. Florida Power & Light Co. v. Bell, 113 So.2d at 698. In the absence of factual and procedural similarity, the constitutionally required direct conflict simply does not exist. E.g. Department of Revenue v. Johnston, 442 So.2d 950 (Fla. 1983) ("Because we find this cause distinguishable on its facts from those cited in conflict, we discharge jurisdiction").


The only case similar to this case is Bosch v. Hajjar, 639 So.2d 1096 (Fla. 4th DCA 1994). The Third District does not announce a conflicting rule of law, but holds entirely consistent with Bosch v. Hajjar. More recently, the Second District in footnote dictum has construed the thirty day rule consistent with the Third and Fourth Districts. Bevan v. Bean, 20 FLW D2398, 2399 n. 2 (Fla. 2d DCA October 25, 1995). When all districts addressing the subject rule consistently with each other, there is no conflict for this court to resolve.

CONCLUSION

The petition for review should be denied for want of jurisdiction.

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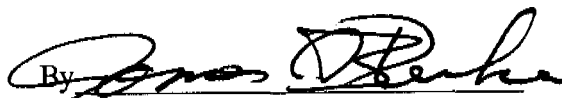
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon: CHARLES B. PATRICK, ESQUIRE, Counsel for Bodek, 1648 South Bayshore Drive, Miami, FL 33133; and to HAROLD C. KNECHT, JR., ESQUIRE, Knecht & Knecht, P.A., Counsel for Gulliver Academy, Inc., Douglas Centre, Suite 411, 2600 Douglas Road, Coral Gables, FL 33134, this 15th day of November, 1995.

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