

# ORIGINAL

IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

DOCKET NO. 90,197

RUPERT B. BROWN and LETTIE  
NELL BROWN, his wife, and V.  
LEE POTTER,

Petitioners/Defendants,

vs.

THE ESTATE OF A. P. STUCKEY,  
SR., and SARAH STUCKEY,

Respondents/Plaintiffs.

**FILED**

SID J. WHITE

MAY 20 1997

CLERK SUPREME COURT  
By *[Signature]*  
Chief Deputy Clerk

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APPEAL FROM THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT  
STATE OF FLORIDA

DOCKET NO. 96-00150

**RESPONDENTS/PLAINTIFFS' BRIEF ON JURISDICTION**

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**STATEMENT OF THE CASE AND OF THE FACTS**

Respondents accept the statement of case and facts as set forth by Petitioners, with the exception that Respondents cannot confirm or deny the mailing date of Petitioners' Motion for Rehearing or Clarification and Motion for Rehearing En Banc. Respondents add to the statement that the district court decision was issued by an unanimous court, and that on May 2, 1997 the district court issued its Opinion On Appellees' Motion For Rehearing Or For Clarification And Appellees' Motion For Rehearing En Banc, attached hereto as Appendix D.

**SUMMARY OF ARGUMENT**

This Court should deny review of the district court's decision because the Petitioners have failed to establish an express conflict with this Court or another district court as to a question of law. Because the trial court granted a new trial on the grounds that the amount of damages awarded by the jury was against the manifest weight of the evidence, the district court was required to determine if reasonable persons could differ as to the propriety of the trial court's finding that the damages fell outside the range that a reasonable jury could award. There is no indication in the district court decision that it failed to apply that standard, and Petitioners have failed to identify any case applying a conflicting standard of law. Furthermore, the District Court issued a clarified opinion which makes it clear that the appropriate abuse of discretion standard was applied and the court receded from any language in the opinion that had any potential for creating

conflict jurisdiction. Petitioners cannot self-generate a conflict by arguing the potential application of improper standards in the future. Consequently, conflict jurisdiction does not exist and review should be denied.

#### ARGUMENT

Petitioners have petitioned this Court to accept discretionary jurisdiction of this matter pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv). This Court should not accept jurisdiction under that Rule because review of the district court opinion demonstrates that there is no express conflict as to a question of law.

The general question of law for which Petitioners try to create a conflict is "the standard for appellate review of orders granting new trials upon the ground that the verdict of the jury is contrary to the manifest weight of the evidence." (Petition, p.5). It is unquestioned under Florida law that the test for an order granting new trial is whether the trial court abused its discretion, and that there is no abuse of discretion if reasonable persons could differ as to the propriety of the trial court's action. Smith v. Brown, 525 So.2d 868 (Fla. 1988) (Appendix D); Miller v. Affleck, 632 So.2d 79 (Fla. 1st DCA 1993) (Appendix E). The applicability of that standard has never been at issue in this action and has been reiterated in the District Court's Opinion on Appellees' Motion for Rehearing or for Clarification and Appellees' Motion for Rehearing (clarified opinion) (Appendix D). , which apparently led the district court not to expressly address that

issue in its opinion.<sup>1</sup> Consequently, nothing in the subject district court opinion expressly conflicts with any decision of this Court or another district court, or any case cited by Petitioners, as to the applicable standard of review.

Perhaps recognizing the absence of an express conflict as to the abuse of discretion standard, Petitioners rely on the argument that:

The First District Court has, unfortunately, propagated a "mutation" of the proper principle applicable here by incorporating principles that are properly to be applied to the review of verdicts held to be *inadequate*.

(Petition, p.7).<sup>2</sup> That "mutation," Petitioners assert, is the application of this Court's reasonable jury inquiry expressed in Griffis v. Hill, 230 So.2d 143 (Fla. 1969), as follows:

The test to be applied in determining the adequacy of a verdict is whether a jury of reasonable men could have returned that verdict.

Id. (Appendix F). This argument is moot based on the district court's clarified opinion which emphatically reiterates that it applied the appropriate abuse of discretion standard set forth by this Court in Smith v. Brown, 525 So.2d 868 (Fla. 1988). Moreover,

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<sup>1</sup>Both parties acknowledged in their briefs the applicability of the abuse of discretion standard, and that "an abuse cannot be found if 'reasonable men could differ as to the propriety of the trial court's granting a new trial.'" (citing Respondents' Reply Brief filed in the district court).

<sup>2</sup>Petitioners argue that the standards set forth in prior First District Court decisions are in conflict with this Court. (P.7). Respondents do not make counter arguments herein because this Court has held that conflict review will not be granted based on previous decisions, even if cited for authority in the decision under review. Harrison v. Hyster Co., 515 So.2d 1279 (Fla. 1987) (Appendix I); Dodi Publishing Co. v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980) (Appendix J).

the clarified opinion makes it clear that the district court receded from dicta language in their opinion: "[t]o the extent that our prior decision in this case appeared to state that we would overturn a trial court's decision to grant a new trial 'if there was sufficient evidence from which a jury could have returned a verdict in favor of the plaintiffs'," that Petitioners rely on for conflict jurisdiction in both their Notice and Amended Brief on Jurisdiction.

Neither the opinion nor its clarified opinion of the district court rely on Griffis v. Hill because there is no reference to that case in either opinion. In addition, it was appropriate for the district court to consider the reasonableness of the jury's verdict because the only specific ground provided by the trial court to support its Order was that the damages awarded were not supported by the evidence.<sup>3</sup> (See Order, Appendix B; and Petition statement of facts, p.1). Thus, in order to determine whether the trial court abused its discretion, the district court had to determine what standard the trial court should apply when considering the amount of damages awarded. This Court has clearly stated:

The verdict should not be disturbed unless it is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate.

Ashcroft v. Calder Race Course, 492 So.2d 1309, 1314 (Fla. 1986) (Appendix G). Consequently, the context under which the

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<sup>3</sup>Petitioners conceded at oral argument that the trial court did not rely on jury misconduct as grounds for granting the new trial. See district court opinion, p. 4.

district court determined whether the trial court abused its discretion required the district court to review the record to determine whether there was sufficient evidence from which a reasonable jury could have returned the verdict for the damages awarded. If that evidence was sufficient to indicate that reasonable persons could not differ as to the inappropriateness of granting a new trial on the grounds that the damages were against the manifest weight of the evidence, then under Smith v. Brown, the trial court abused its discretion.

Review of the district court's unanimous opinion and clarified opinion provides no indication that it failed to follow the authority set by this Court in Smith v. Brown in light of Ashcroft and Griffis as well as the First District Court's interpretation of an appeal in Miller v. Affleck. Those cases are not in conflict with each other or the district court opinion herein. See Short v. Grossman, 245 So.2d 217 (Fla. 1971)(Appendix H). Consequently, Petitioners do not cite any conflict between the district court's opinion and clarifying opinion herein and the application of the reasonable jury or reasonable range analysis set forth in Ashcroft, Griffis, Smith, and Miller. Petitioners attempt to create a conflict by discussing a "some evidence" standard, upon which there is no indication of application in the district court opinion, and which standard was clearly rejected by this Court in Smith v. Brown. Because Petitioners cannot create a non-existent conflict through argument, conflict jurisdiction does not exist sub judice and review should be denied.



**CONCLUSION**

This Court should deny review of the district court opinion because there is no express conflict as to a question of law.

Respectfully submitted,

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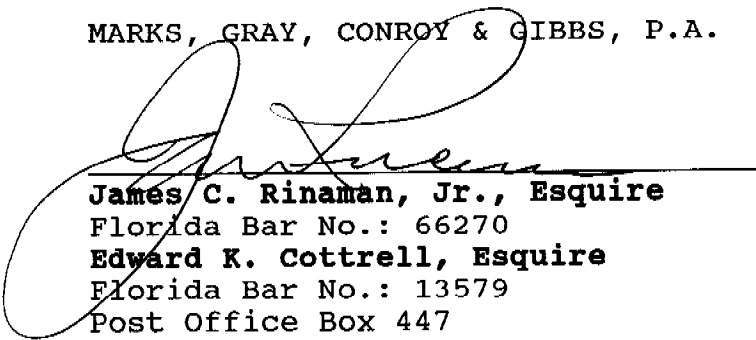
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and Sarah Stuckey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents/Plaintiffs' Brief on Jurisdiction and the appendix thereto has been furnished by U.S. Mail to counsel for Petitioners, **Martin Page, Esquire**, 228 East Duval Street, Lake City, Florida 32055, this 19<sup>th</sup> day of May, 1997.

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