IN THE SUPREME COURT IN THE STATE OF FLORIDA
CASE NO. 93,240

4TH DCA CASE NO. 95-02949

SAM PARISI, Individually, and
SAM PARISI d/b/a SAM'S
RECYCLING, INC.,

Petitioner,

v.

BROWARD COUNTY and
BROWARD COUNTY OFFICE
OF NATURAL RESOURCE
PROTECTION,

Respondents.
_____/

RESPONDENTS' BRIEF ON JURISDICTION

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CERTIFICATE OF TYPE SIZE AND STYLE

Pursuant to Chief Justice Major B. Harding's Administrative Order dated July 13, 1998 relating to font requirements for briefs filed in this Court, undersigned counsel certifies that the type size and style of used in this brief is 14 point Times New Roman, proportionately spaced.

STATEMENT OF THE CASE AND FACTS

Many of the facts set forth in the Petitioners' Statement of the Case and of the Facts are not contained in the majority opinion in Parisi v. Broward County, 1997 WL 530543 (Fla. App. 4 Dist. 1997), which Petitioners contend is in conflict with Johnson v. Bednar, 573 So.2d 822 (Fla. 1991).

Petitioners' reliance on matters contained in the record and in the dissent to the Fourth District's opinion ignores the "four corners" rule, which confines this court's determination of conflict jurisdiction to the facts set forth in the four corners of the majority opinion. See Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Therefore, Respondents have set forth their own Statement of the Case and of the Facts, confined to the relevant facts set forth in the majority opinion in Parisi.

The district court's opinion in Parisi indicates the following : A trial court issued orders, including one civil contempt order, enjoining PARISI from certain environmental hazards. (Petitioners' Appendix, Exhibit A, p.1). As the district court stated, after the trial court found that the Petitioner had the ability to comply with those orders, but did not, the trial court issued an order requiring PARISI to post a bond to secure performance of certain remedial measures on the property. Id. The district court recognized that the trial court's order involved a bond, not a fine. The trial

court's ruling provided that in the event PARISI failed to perform, BROWARD COUNTY could then apply to the court for release of the bond funds so it could arrange to perform the necessary corrective measures. Id.

On review, the Fourth District Court of Appeal specifically found that the trial court's order was entered within the parameters of Johnson v. Bednar, 573 So.2d 822 (Fla. 1991), and was valid even if it did not include a finding that PARISI had the ability to post the bond. The court stated that PARISI's ability to post the bond would become relevant in a motion for contempt for failure to post the bond, where the county seeks the imposition of a fine under Johnson, or of a purgeable jail sentence. Id.

SUMMARY OF ARGUMENT

Johnson v. Bednar, 573 So.2d 822 (Fla. 1991) holds that when a coercive **fine** is imposed as a sanction for contempt of court, the court must make a determination that the party being ordered to pay the fine has the ability to do so.

The present case does not involve a court order which imposed a fine. Rather it involves only a court order that required a party to post a **bond**.

Petitioners' argument that the rationale applied in Johnson should be extended to bonds as well as fines does not establish conflict jurisdiction; it is simply an inappropriate attempt to gain a second appeal. The decision under review here specifically recognizes Johnson. It simply refuses to extend its holding to bonds. It thus deals with a separate issue and, whatever the merit or lack of merit of Petitioners' argument as to that separate issue, can not and does not conflict with Johnson.

ARGUMENT

I. PARISI V. BROWARD COUNTY, 1997 WL 530543 (FLA. APP. 4 DIST.) DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH JOHNSON V. BEDNAR, 573 SO.2D 822 (FLA. 1991) ON THE SAME ISSUE OF LAW.

The 1980 amendments to Article V of the Florida Constitution made clear that the district courts of appeal are not intended to be intermediate courts, but rather than their decisions are intended to be final and absolute in most instances. In Jenkins v. State, 385 So.2d 1356 (Fla. 1980), the Florida Supreme Court noted that the purpose of the Supreme Court is to act as a supervisory body in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity, not to provide a forum for second appeals.

In Jenkins, the Florida Supreme Court recognized the narrow boundaries of its jurisdiction to consider a decision from a district court of appeal on the basis of an alleged conflict. The Court stated that, "The pertinent language of [Article 5], section 3(b)(3) of the Florida Constitution leaves no room for doubt. This Court may only review a decision of a district court of appeal that **expressly** and **directly** conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law." Id. at 1359. (Emphasis added).

In the matter at hand, the cases alleged to conflict simply do not address the same issue of law. Johnson v. Bednar, 573 So.2d 822 (Fla. 1991) involves the trial court's imposition of a coercive fine. The present case, Parisi v. Broward County involves an order that requires a party to post a bond. As no fine has yet been imposed in Parisi, the dictates of Johnson simply do not apply. Petitioners' argument, both in the district court and here, amounts to no more than a claim that the Johnson rationale should extend to bonds as well as fines. The Fourth District's rejection of that claim, whatever its merit or lack thereof, does not in any way create conflict, much less express or direct conflict. It is a determination of a separate issue and therefore not a basis for the exercise of this Court's jurisdiction.

In fact, in Parisi, the Fourth District Court of Appeal stated in its majority opinion that Parisi's ability to post the bond would become relevant in the future, "in a motion for contempt for the failure to post [the bond], where the county seeks the imposition of a fine under Johnson or of a purgeable jail sentence." Thus, Parisi not only does not conflict with Johnson; it expressly follows it.

Petitioners' present claim is simply an attempt to obtain a second appeal. They disagree with the district court's decision and want a second bite at the apple. Such an approach is clearly inappropriate. Johns v. Wainwright, 253 So.2d 873 (Fla. 1971);

Ansin v. Thurston, 101 So.2d 808 (Fla. 1958); Lake v. Lake, 103 So.2d 639 (Fla. 1958).

CONCLUSION

As there is no express and direct conflict between Parisi v. Broward County, 1997 WL 530543 (Fla. App. 4 Dist.) and Johnson v. Bednar, 573 So.2d 822 (Fla. 1991), this Court is without jurisdiction to review the above-referenced matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via U.S. Mail this 23rd day of July, 1998 to: Paul R. Regensdorf, Esq., AKERMAN, SENTERFITT & EIDSON, P.A., Attorneys for Petitioners, Las Olas Centre, Suite 950, 450 East Las Olas Boulevard, Fort Lauderdale, Florida 33301.

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