

IN THE SUPREME COURT FOR THE STATE OF FLORIDA

Case No. SC18-1132
Dist. Case No.: 1D17-5122
Circuit Case No. 032009CA000458CAXXXX
Bay County, Florida

DAVID GRIFFIN,

Petitioner,

v.

LASALLE BANK, N.A., ETC.,

Respondent.

RESPONDENT'S ANSWER BRIEF ON THE MERITS

BITMAN O'BRIEN & MORAT PLLC

Allison Morat, Esquire
Florida Bar No.: 0099453
amorat@bitman-law.com
255 Primera Blvd, Suite 128
Lake Mary, Florida 32746
Telephone: (407) 815-3110
Facsimile: (407) 815-3111
Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF CASE AND FACTS 1

SUMMARY OF ARGUMENT 9

STANDARD OF REVIEW11

ARGUMENT12

 I. The First District Properly Concluded that the Circuit Court Lacked
 Jurisdiction to Consider Griffin’s Betterment Claim12

CONCLUSION20

CERTIFICATE OF SERVICE21

CERTIFICATE OF COMPLIANCE22

TABLE OF AUTHORITIES

Cases

<i>601 W. 26 Corp. v. Equity Capital Co.</i> , 178 So. 2d 894 (Fla. 3d DCA 1965).....	19
<i>Arsali v. Chase Home Fin. LLC</i> , 121 So. 3d 511 (Fla. 2013).....	17
<i>Bailey v. Bailey</i> , 114 So. 2d 804 (Fla. 1st DCA 1959).....	13, 14
<i>Bridier v. Burns</i> , 4 So. 2d 853 (Fla. 1941).....	9, 18, 19
<i>Canady v. Petit Jean State Bank</i> , 463 S.W.3d 328 (Ark. Ct. App. 2015)	14
<i>Cartee v. Florida Dept. of Health & Rehab. Services</i> , 354 So. 2d 81 (Fla. 1st DCA 1977).....	19
<i>Centennial Homeowners Ass’n, Inc. v. Dolomite Co., Inc.</i> , 47 So. 3d 863 (Fla. 3d DCA 2010).....	13, 14
<i>Chase Manhattan Bank v. Candelaria</i> , 2004-NMSC-017, 135 N.M. 527, 90 P.3d 985 (N.M. 2004).....	14
<i>Liberty Ins. Corp. v. Milne</i> , 98 So. 3d 613 (Fla. 4th DCA 2012).....	16
<i>Long Beach Mortg. Corp. v. Bebble</i> , 985 So. 2d 611 (Fla. 4th DCA 2008).....	16
<i>Macfarlane v. Macfarlane</i> , 39 So. 995 (Fla. 1905).....	9, 17, 18, 19
<i>Martyn v. First Fed. Sav. & Loan Ass’n of W. Palm Beach</i> , 257 So. 2d 576 (Fla. 4th DCA 1971).....	15

<i>Moats v. First Sanlando Bank, N.A.</i> , 567 So. 2d 446 (Fla. 5th DCA 1990).....	12
<i>Reaves v. State</i> , 485 So. 2d 829 (Fla. 1986).....	11
<i>Travelers Cas. & Surety Co. of Am. v. Culbreath Isles Prop. Owners Ass’n, Inc.</i> , 103 So. 3d 896 (Fla. 2d DCA 2012).....	15

Rules

Fla. R. App. P. 9.030.....	11
Fla. R. App. P. 9.210.....	22

Statutes

§ 66.021, Fla. Stat.	13
§ 66.041, Fla. Stat.	9, 13, 14

STATEMENT OF CASE AND FACTS

The Respondent (the “Trust”) provides its own Statement of the Case and Facts below.

I. Nature of the Case

This appeal emanates from a residential mortgage foreclosure and a vacated foreclosure sale. (R. 114–17). Griffin (a third party to the foreclosure) claims over \$300,000.00 in damages against the Trust (the mortgagee) for purported improvements he made to the subject property after he purchased the property at a foreclosure sale. (R. 140–41). It is undisputed that Griffin was not a good faith purchaser and he knowingly capitalized on the Trust’s law firm’s mistake in failing to cancel the foreclosure sale. (R. 116, first full paragraph). Griffin knew the sale would likely be vacated. (R. 110–11).

The issue in this appeal is not whether Griffin is entitled to damages for his purported improvements to the subject property. The circuit court has not yet resolved that issue. Should this Court reverse the First District’s prohibition order, the parties must still litigate whether Griffin is entitled to any damages at all.

The issue before this Court is whether the circuit court has jurisdiction to entertain Griffin’s claim for damages under the betterment statute in the Trust’s foreclosure action.

II. Course of the Proceedings and Disposition in the Lower Tribunal

The Trust filed a residential mortgage foreclosure action against Terrell and Linda Johnson in 2009. (R. 30). The Petitioner, David Griffin, was not a party to the original action. (*Id.*).

The circuit court entered a final foreclosure judgment against the Johnsons on March 1, 2010 in the amount of \$1,653,552.55. (R. 57–60). The Johnsons did not dispute the foreclosure action, and have not participated in this appeal.

After judgment, the property went to judicial sale on April 7, 2010. (R. 63). However, the sale should have never taken place. (R. 68–90). This is because the Trust had approved a short sale with an individual by the name of John Warren for the price of \$900,000.00. (R. 70). The Trust wanted the judicial sale canceled. (R. 69–70). Nevertheless, the Trust’s counsel did not file a motion with the court to cancel the sale, and the sale occurred. (*Id.*).

The Petitioner, David Griffin, was the high bidder at the sale in the amount of \$75,000.00. (*Id.*). No one represented the Trust at the sale. (*Id.*). The clerk of court issued a certificate of title to Griffin on April 20, 2010. (R. 66). The Trust would later find out that Griffin is the brother-in-law of John Warren. (R. 103, 110–11).

Three days later after title was issued, the Trust moved to vacate the sale and title. (R. 66; 68). In moving to vacate the sale, the Trust explained that its counsel was instructed to cancel the April 2010 sale; however, “due to inadvertence, accident and mistake, the motion was not filed with the Court.” (R. 68–69). Because the Trust intended for the sale to be canceled, proper arrangements were not made for attendance at the sale. (R. 70). This resulted in the property selling to Griffin for just 4% of the assessed value of the property. (*Id.*).

Griffin—having acquired the property for a nominal amount—did not want the sale vacated. (R. 91–92). Despite his knowledge of the short sale and his knowledge that the sale should have been canceled (R. 110–11), Griffin claimed that he made immediate repairs to the property in the amount of \$160,000.00. (R. 92). He also claimed he was now indebted to his attorney for fees and costs for the litigation, and he, his wife, and minor children resided at the property as their permanent residence. (*Id.*).

In response to Griffin’s efforts to uphold the sale, the Trust argued that Griffin was not a bona fide purchaser because he knew (i) his brother-in-law had entered into a short sale agreement to purchase the same property for \$900,000.00; (2) the failure to cancel the sale was a mistake; and (3) the sale would probably be set aside once Plaintiff or his attorneys realized their mistake. (R. 103). In the

Trust's written closing argument following an evidentiary hearing on the motion to vacate, the Trust represented, in part, as follows:

Not only did Griffin know that his brother-in-law had entered into a contract to purchase the property, Griffin also knew that the property was worth much more than he paid. Further, Griffin also knew that the sale had inadvertently not been canceled and that Plaintiff or its attorneys would likely object to the sale, after which Warren would purchase the property for \$900,000.

Significantly, not only did Griffin know all of this before the sale, but he also knew shortly after the sale that Plaintiff was moving to vacate the sale. Griffin admitted at the hearing that the undersigned attorney left him a telephone message and sent him a letter advising him that there was a problem with the sale and that Plaintiff had filed a motion to vacate it; however, rather than respond, Griffin instead chose to not respond to the undersigned, to hire attorney, Michael Burke and move into the house on May 1, 2010.

(R. 110–11).

The circuit court vacated the sale in December 2011. (R. 114–17). The court expressly found that Griffin was the brother-in-law of John Warren, appeared at the sale at the request of John Warren, and purchased the property at the sale pursuant to the instructions of John Warren and using funds provided by John Warren. (R. 114). The court additionally found that Griffin knowingly capitalized on the law firm's mistake and his bid could not be characterized as a good faith bid. (R. 116, first full paragraph).

After the sale was vacated, Griffin moved for rehearing. (R. 118–19). This resulted in the court amending its order. (R. 121–22). The sale remained vacated. In the amended order, the court provided for the return of the purchase price to Griffin. (R. 122). The court also, “reserve[d] jurisdiction to consider whether or not Mr. Griffin is entitled to damages and or other relief for the value added to the Property for the repairs and improvements made by Mr. Griffin to the property.” (*Id.*). The amended order stated, “Mr. Griffin shall have twenty (20) days from the date of this Amended Order . . . to file an appropriate pleading with this Court seeking damages or such other relief as the Court deems just.” (*Id.*). The amended order was dated June 21, 2012. (*Id.*).

Griffin filed a Notice of Appeal of the amended order on July 19, 2012. (R. 123). However, he dismissed his appeal on August 27, 2012. (R. 127–28).

On July 11, 2012, Griffin filed a motion for damages due to betterment (the “Motion for Damages,” unless otherwise denoted). (R. 140–42). In the Motion for Damages, Griffin sought to recover against the Trust approximately \$368,000.0 (increased from \$160,000.00) for his purported improvements to the property. (R. 141). The Trust was not the title-owner of the property when Griffin filed the Motion for Damages. (R. 148–49).

With the sale rescinded, the borrowers, Terrell Johnson and Linda Johnson, were still the property owners, and filed a motion for writ of possession. (*Id.*) However, the Johnsons did not obtain a writ of possession. (*Id.*) Instead, they later asserted they deeded their interest in the property to another non-party, Valdosta Valley Trust (“Valley”). (R. 153–54). A quitclaim deed was executed by the Johnsons to Valley on August 31, 2012. (R. 159). In the years that followed, Griffin did not pursue a claim for damages due to betterment against the property owners (neither the Johnsons nor Valley).

On October 25, 2012, the property went to public auction again. (R. 165). This time the Trust was the high bidder in the amount of \$900,100.00. (*Id.*) However, the sale was vacated because Valley filed bankruptcy prior to the sale. (R. 169–70; 176–77). The sale was void. (R. 177).

The sale was reset to August 2, 2013. (R. 179–80; 184–86). On or about July 31, 2013, Valley filed bankruptcy again. (R. 189). The second bankruptcy action was dismissed on September 30, 2013. (R. 191).

The sale was reset again to November 14, 2016. (R. 205). The Trust assigned its bidding rights for the sale to U.S. Bank NA, Successor Trustee to Bank of America, NA, Successor in Interest to LaSalle Bank NA, as Trustee, on Behalf of the Holders of the WAMU Mortgage Pass-Through Certificates, Series 2007-HY5. (R. 203).

Prior to the sale, Griffin filed a motion for referral to mediation, requesting mediation on the issues contained in the Motion for Damages between himself and the Trust. (R. 207–08). On or about October 23, 2016, the court granted the motion, ordered that mediation shall occur prior to December 12, 2016, and canceled the foreclosure sale. (R. 210–11). No agreement was reached at the mediation. (R. 212).

The property went to foreclosure sale yet again on May 1, 2017. (R. 214). The clerk of court issued a certificate of title to U.S. Bank, in its capacity as Successor Trustee, on May 12, 2017. (R. 215).

On August 15, 2017—over five years after filing the Motion for Damages—Griffin noticed the Motion for Damages for hearing. (R. 218). The court referred the case to mediation again. (R. 220–21). The Trust opposed the referral to mediation by filing a motion to strike on September 15, 2017 (“Motion to Strike”). (R. 222–24). The hearing on the Motion for Damages was canceled pending the resolution of the Trust’s Motion to Strike. (R. 226–27; 228).

The circuit court denied the Trust’s Motion to Strike, finding that it had jurisdiction to refer the case to mediation. (R. 230). The Trust sought a writ of prohibition from the First District Court of Appeal. (R. 4–22). The First District granted prohibition because “the circuit court did not have jurisdiction to entertain Griffin’s third-party motion for damages after it rendered the final judgment of

foreclosure in 2010.” (R. 310). The district court explained, “the circuit court reserved jurisdiction to consider a claim that was not related to its ability to enforce the final judgment of foreclosure. Instead, Griffin’s motion for damages raised a new claim that was not part of the previous foreclosure litigation.” (R. 311).

Griffin sought the discretionary review of this Court based upon purported conflict jurisdiction. (R. 335–36). This Court accepted jurisdiction on December 19, 2018. (R. 339).

SUMMARY OF ARGUMENT

The First District properly concluded that Griffin's motion for damages raised a new claim that was not part of the previous foreclosure litigation. The circuit court exceeded its jurisdiction by proceeding on the motion.

The Trust obtained a final foreclosure judgment in 2010. The circuit court lacks jurisdiction to consider a third-party complaint against the Trust at this stage of the proceedings. To hold otherwise would be to expose banks and mortgagees to litigation every time a foreclosure sale is vacated.

Moreover, betterment claims are statutory in nature. § 66.041, Florida Statutes. Griffin's post-judgment betterment claim against the lienholder in the foreclosure action runs afoul of the statutory process for betterment, and the statute does not extend the court's jurisdiction in this case. The courts lack jurisdiction to entertain betterment claims where there has been no eviction and the party against whom betterment is sought is a mere lienholder. Betterment claims are against property owners. Additionally, the betterment statute is for good faith purchasers. The circuit court below determined that Griffin was not a good faith purchaser.

This case is not the same as *Macfarlane v. Macfarlane*, 39 So. 995 (Fla. 1905) or *Bridier v. Burns*, 4 So. 2d 853 (Fla. 1941). The issue of jurisdiction over post-judgment betterment claims against mere lienholders in foreclosure actions was not expressly decided in those cases.

In the event the First District's decision conflicts with prior opinions of this Court, the Trust submits the issue of jurisdiction over betterment claims in foreclosure actions should be decided in agreement with the First District's decision.

STANDARD OF REVIEW

The Court's discretionary review of district court opinions is limited to those decisions that "expressly and directly conflict with a decision of another district court of appeal or the supreme court on the same question of law." Fla. R. App. P. 9.030(a)(2)(A)(iv). To establish express and direct conflict jurisdiction, a petitioner is limited to the four corners of the lower court's decision. *See, e.g., Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

ARGUMENT

I. The First District Properly Concluded that the Circuit Court Lacked Jurisdiction to Consider Griffin's Betterment Claim

The First District correctly concluded, without conflict, that Griffin's third-party betterment motion raised a new claim over which the circuit court lacked jurisdiction.

The Trust obtained a final judgment against the Johnsons in 2010. Griffin was not a party to the proceedings at that time. His claim for damages against the Trust was not related to the court's ability to enforce the final judgment. While courts retain jurisdiction to control the circumstances of a sale, the court's jurisdiction does not extend to third-party claims for damages against the lienholder. To hold otherwise would be to expose banks and mortgagees to litigation every time a sale is vacated, and would conflict with the doctrine of caveat emptor that applies to judicial sales. *Moats v. First Sanlando Bank, N.A.*, 567 So. 2d 446, 446 (Fla. 5th DCA 1990). ("A purchaser at a judicial sale is generally subject to the rule of caveat emptor."). In this instance, Griffin should not be able to invoke equity as a basis for jurisdiction over his damages claim where he bid on the property at a public sale, had knowledge of the short sale with his brother-in-law, and proceeded with the bid despite the buyer beware doctrine.

Additionally, Griffin's motion for damages is improper under the betterment statute. Betterment claims are purely statutory in nature. *Bailey v. Bailey*, 114 So. 2d 804, 805 (Fla. 1st DCA 1959) (underline added). The statute does not extend the court's jurisdiction in this case. Under the law, the term "betterment" means the permanent improvement of the value of real property. § 66.041, Fla. Stat. The betterment statute provides an avenue for compensation to a qualifying party. *Id.* However, compensation for betterment is not available for all improvements.

For example, "the party filing the betterment petition must establish that when he or she 'made the improvements or purchased the property improved, he or she believed the title which he or she held or purchased to the land thus improved to be a good and valid title.'" *Centennial Homeowners Ass'n, Inc. v. Dolomite Co., Inc.*, 96 So. 3d 954, 956 (Fla. 3d DCA 2012) (emphasis omitted). And, claims for betterment are "available only following a judgment of eviction rendered against the defendant in a suit in ejectment." *Bailey*, 114 So. 2d at 805 (underline added).

Ejectment is a claim for the recovery of possession of real property. § 66.021, Fla. Stat. The right of action for ejectment is reserved for a person with a superior right to possession of the property. *Id.* It follows that betterment claims may only be brought by a good faith purchaser against the owner of property with a superior right of possession, and only in an ejectment proceeding when the

purchaser has been dispossessed from the property by the owner. *See, e.g., Centennial Homeowners Ass'n, Inc.*, 47 So. 3d at 864 (“The Betterment cause of action was created to prevent unjust enrichment by compensating a party that has lost an ejectment case for any value of improvements that were made by the losing party and are received by the successful party along with the land.”).

Furthermore, the ejectment statutes provide a timeframe for when a betterment proceeding must be filed. “The period within which to file betterment proceedings, as fixed by the statute, is three months after the rendition of such judgment of eviction or, in the event of appeal, three months after affirmance of such judgment by the appellate court.” *Bailey*, 114 So. 2d at 806.

The betterment statute does not, however, permit a third party purchaser (who has been legally adjudicated to not be a good faith purchaser) to bring a claim for betterment against a mere lienholder in the lienholder’s foreclosure action after a foreclosure sale is merely vacated. § 66.041, Fla. Stat. *See also Canady v. Petit Jean State Bank*, 463 S.W.3d 328, 330 (Ark. Ct. App. 2015) (“The remedy provided by the Betterment Act is against the true owner of the property . . . Nor can we agree with appellant that a judgment lienholder is an owner.”) (internal citations omitted); *Chase Manhattan Bank v. Candelaria*, 2004-NMSC-017, ¶ 10, 135 N.M. 527, 530, 90 P.3d 985, 988 (N.M. 2004) (“Because this was not an ejectment action, Reule was not entitled to relief under the betterment statute.”).

Here, Griffin pursued damages for betterment against the Trust in the Trust's foreclosure action. The Trust did not obtain a judgment of eviction against Griffin. Both before and after the sale was vacated, the Trust was not the owner of the property. It was merely the lienholder. This is because Florida is a lien theory state. As a result, "[a] mortgagee has no right to possession, until purchase at a foreclosure sale." *Martyn v. First Fed. Sav. & Loan Ass'n of W. Palm Beach*, 257 So. 2d 576, 577 (Fla. 4th DCA 1971). When the sale was vacated, ownership necessarily reverted to the defendant-borrowers (the Johnsons), and then was transferred to Valley. Curiously, Griffin did not pursue a statutory betterment claim against the Johnsons or Valley.

Instead of pursuing a claim for betterment against the property owners, Griffin pursued a claim against the Trust as the lienholder in the foreclosure action after the sale was vacated, but at a time when the foreclosure judgment was final. The court did not have jurisdiction to allow Griffin's new third-party claim. In this sense, this case is comparable to *Travelers Cas. & Surety Co. of Am. v. Culbreath Isles Prop. Owners Ass'n, Inc.*, 103 So. 3d 896, 899 (Fla. 2d DCA 2012) ("Travelers claims that a writ of prohibition is a proper remedy because the circuit court exceeded its jurisdiction by allowing the Association to proceed on the supplemental third-party complaint at that stage in the proceedings. We agree.").

The court's jurisdiction over the foreclosure sale did not extend to an improperly filed third-party motion for damages against the lienholder in the foreclosure action. *See Liberty Ins. Corp. v. Milne*, 98 So. 3d 613, 615 (Fla. 4th DCA 2012) ("Milne's serving a third-party complaint could not revive an underlying action that already had been concluded...."). Griffin should be required to follow the dictates of the betterment statute.

Despite this, Griffin asserts that the Court should reverse "the First DCA's decision to safeguard circuit court jurisdiction in foreclosure cases, afford Mr. Griffin proper access to the equity he seeks, and keep the Trust from being unjustly enriched by the improvements he made to the property." (Initial Brief, p. 7). This argument should be rejected given the express findings of the circuit court. Mr. Griffin knowingly capitalized on the law firm's mistake. He knew the value of the property. He was not a good faith purchaser. He may not use equity as a basis for jurisdiction. Unjust enrichment would be to award Griffin damages for his purported improvements to the property. *See, e.g., Long Beach Mortg. Corp. v. Bebble*, 985 So. 2d 611, 614–15 (Fla. 4th DCA 2008) (concluding, the plaintiff was the innocent victim, not the purchaser, and "[t]he purpose of the law in this area is to promote the viability of the foreclosure sale process, to encourage good faith offers for foreclosed properties, not to protect outrageous windfalls to buyers who make *de minimis* bids."). Additionally, it would be manifestly unjust to

require the Trust to pay for improvements where it was never in possession of the property.

It is ironic that Griffin quotes *Arsali v. Chase Home Fin. LLC*, 121 So. 3d 511 (Fla. 2013) for the proposition that equity will act to prevent the wrong result where the wrong result in this case would be to allow Griffin to proceed on a motion for damages that falls wholly outside the betterment statute. Griffin is certainly not the innocent aggrieved purchaser that he claims to be. (*See, e.g.*, R. 110) (“Griffin also knew that the sale had inadvertently not been canceled and that Plaintiff or its attorneys would likely object to the sale, after which Warren would purchase the property for \$900,000.00.”) (*See also* R. 110–11) (“Significantly, not only did Griffin know all of this before the sale, but he also knew shortly after the sale that Plaintiff was moving to vacate the sale.”) (R. 111).

Griffin is also mistaken in his reliance upon *Macfarlane v. Macfarlane*, 39 So. 995 (Fla. 1905). *Macfarlane* is not so broad as to allow Griffin to bypass the statutory process for betterment; the Court did not expressly hold that the requirements of the betterment statute may be ignored. Critically, there is no indication that jurisdiction was ever an issue in *MacFarlane*, or that the Court considered the procedures for betterment in the 1905 case.

Equally as important, *Macfarlane* is factually distinguishable. There, the Court's decision focused upon the required showing to set aside a sale. The Court held that the foreclosure sale should be set aside because it was advertised in the wrong county. *Id.* at 998. That is not the issue here. Additionally, the issues in *MacFarlane* were primarily between the purchaser and the homeowners. *Id.* at 997. The purchaser was not seeking damages against a lienholder. Here, Griffin did not attempt to collect damages from the owner of the property, but from the party he presumably deems collectible, i.e., the lienholder.

Griffin is equally mistaken in his reliance upon *Bridier v. Burns*, 4 So. 2d 853 (Fla. 1941). He claims that *Bridier* stands for the general rule that a purchaser whose title has been vacated is "entitled to such sums as the purchaser paid out in good faith." (Brief, p. 7). Here, however, the circuit court expressly determined that Griffin was not a good faith purchaser. (R. 116) ("[H]is bid cannot be characterized as a good faith bid."). *C.f.*, *Bridier*, 4 So. 2d at 855 ("If the purchaser in good faith relying upon the validity of the title obtained by him under the mortgage sale makes improvements of the property....").

Even if *Bridier* is not distinguishable (it is), Griffin should not be able to obtain a reversal where he failed to rely upon the decision until he filed a motion for rehearing in the prohibition proceedings. The First District was not required to consider authority that was presented for the first time in the motion for rehearing despite it being available since 1941. See *Cartee v. Florida Dept. of Health & Rehab. Services*, 354 So. 2d 81, 83 (Fla. 1st DCA 1977) (“Appellee did not argue in its brief, nor in oral argument, these additional authorities which were for the first time relied on in its petition for rehearing. We will not entertain them now.”).

Similarly, Griffin failed to rely upon *601 W. 26 Corp. v. Equity Capital Co.*, 178 So. 2d 894 (Fla. 3d DCA 1965). He should not be permitted to rely upon the Third District decision now. In any event, like *Macfarlane* and *Bridier*, the court did not expressly address jurisdiction over betterment claims in *601 W. 26 Corp.* The opinion is distinguishable from the instant case.

Nevertheless, if the Court determines that the First District’s decision conflicts with prior opinions of this Court or with the Third District, then the issue of jurisdiction over betterment claims in foreclosure actions should still be decided in agreement with the First District’s decision. If any conflict exists, it is likely inadvertent. There is no indication that the issue of jurisdiction over a third-party claim for betterment in a foreclosure action was specifically addressed or challenged in *MacFarlane*, *Bridier*, or *601 W. 26 Corp.*

CONCLUSION

The Court should either dismiss this appeal for lack of conflict, or affirm the First District's decision.

BITMAN O'BRIEN & MORAT PLLC

/s/ Allison Morat

Allison Morat, Esquire

Florida Bar No. 0099453

amorat@bitman-law.com

255 Primera Blvd., Suite 128

Lake Mary, Florida 32746

Telephone: (407) 815-3110

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was served upon the following parties/counsel on this day, March 28, 2019 by email transmission, electronic filing, and/or U.S. Mail.

Michael S. Burke, Esquire
16215 Panama City Beach Parkway
Panama City Beach, FL 32413
Tel. (850) 236-4444
mburke@burkeblue.com
Counsel for David L. Griffin

Honorable Judge John L. Fishel, II
Fourteenth Judicial Circuit of Florida; Bay County Courthouse
300 East 4th Street, Panama City, FL 32401
Circuit Court Judge

Honorable Judge Elijah Smiley
Fourteenth Judicial Circuit of Florida; Bay County Courthouse
300 East 4th Street, Panama City, FL 32401
Circuit Court Judge

Wayne Kramer
Midler and Kramer, P.A.
120 E. Oakland Park Blvd., Ste 203, Ft. Lauderdale, FL 33334
pleadingsmidlerkramer@gmail.com; wayne@midlerkramer.com
Counsel for Terrell and Linda Johnson

BITMAN O'BRIEN & MORAT PLLC

/s/ Allison Morat _____
Allison Morat, Esquire
Florida Bar No. 0099453
amorat@bitman-law.com
255 Primera Blvd., Suite 128
Lake Mary, Florida 32746
Telephone: (407) 815-3110
Counsel for Respondent

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font requirements of Rule
9.210.

/s/ Allison Morat
Allison Morat
Florida Bar No.: 0099453