IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC22-984
L.T. CASE NOS. 1D19-850; 2016-CA-4539

JAMES SEADLER,

Petitioner,

vs.

MARINA BAY RESORT CONDOMINIUM ASSOCIATION, INC. D/B/A MARINA BAY RESORT,

Respondent.
_____/

RESPONDENT'S AMENDED[1] BRIEF ON JURISDICTION

On Appeal from the First District Court of Appeal

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[1] Amended to comply with this Court's September 30, 2022 Order.

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STATEMENT OF THE ISSUES

The issue on which jurisdiction is invoked is whether a true conflict exists between the instant case and those cited by the First District Court of Appeal concerning the denial of additional peremptories in the context of a civil trial.

If this Court were to accept review, Respondent will brief, affirmatively and in response to Petitioner's stated issues, that in the absence of a substantive right and no historical basis for considering peremptories in a civil context to be of fundamental importance, there was no legal authority compelling a reversal or a grant of a new trial; and, without more, there was no miscarriage of justice requiring a reversal by the First District.

STATEMENT OF CASE AND FACTS

Appellant, James Seadler, brought the underlying action to recover damages for an injury he sustained when his pool chair broke at the Marina Bay Resort. (App. 1-13 at p. 1).[2] Ultimately, the jury found Appellee, Marina Bay, liable and awarded Mr. Seadler $50,000 in past medical expenses and $10,000 in non-economic damages. *Id.* After collateral source setoffs, the trial court rendered final judgment in Mr. Seadler's favor for $14,504.50. *Id.*

[2] References to the Appendix to Petitioner's Brief on Jurisdiction will be designated "(App. [page range] at [document page number(s)])."

Despite having prevailed, Mr. Seadler appealed the final judgment, arguing he was entitled to a new trial on the basis that, according to him, the trial court erred when it denied his for-cause challenge of a juror (Juror 16), thereby forcing him to use a peremptory challenge to strike Juror 16 and leaving him without a challenge later in the process to strike another juror he found subjectively objectionable. *Id.* at pp. 1-2. According to Mr. Seadler, this denied him a fair trial. *Id.*

Ultimately, the First District Court of Appeal unanimously affirmed the final judgment. (App. 1-13). After a careful and extremely thorough review of the jury selection process, including the applicable "miscarriage of justice" legal standard of review, the First District issued a detailed 13-page Opinion holding there would have been someone that Mr. Seadler found subjectively objectionable serving on his jury regardless of whether the trial court had allowed Juror 16 to be stricken for cause. *Id.* Accordingly, the First District no miscarriage of justice ensued from the jury selection process. *Id.* at p. 12.

Mr. Seadler moved for rehearing of the First District's Opinion. (App. 14-28). The First District denied rehearing but certified conflict between its decision in this case and several decisions from other district courts: *Kochalka v. Bourgeois*, 162 So. 3d 1122, 1126 (Fla. 2d DCA 2015); *Tizon v. Royal Caribbean Cruise Line*, 645 So. 2d 504, 506 (Fla. 3d DCA 1994);

Weinstein Design Grp., Inc. v. Fielder, 884 So. 2d 990, 996 (Fla. 4th DCA 2004); and, *Gootee v. Clevinger*, 778 So. 2d 1005, 1009–10 (Fla. 5th DCA 2000). *Id.* at pp. 1-2.

On Rehearing, Justice Tanenbaum, who authored the original 3-0 Opinion, wrote separately, concurring with the denial of the rehearing and with the original Opinion issued. *Id.* at pp. 2-12. Justice Tanenbaum wrote that in affirming and denying Mr. Seadler's request for rehearing, the First District reached a conclusion consistent with the common-law usage of peremptory challenges and emphasized "there is no historical support for finding an equivalency between the peremptory challenge made available in a Florida criminal trial and one available in a civil trial" and that "[i]n Florida there is a substantive right to peremptory challenges in criminal trials (established by statute); no similar right exists for civil trials." *Id.* at pp. 3-11. He concluded, "Given the lack of an historical basis for the peremptory challenge in a civil trial context, and absent a constitutional or statutory right to such a challenge, we could not say that having to 'waste' a challenge provided merely by procedural rule provides a legal basis to find a miscarriage of justice." *Id.* The instant appeal followed.

ARGUMENT

There is no question that all parties to a civil suit are entitled to an

impartial jury. *See* Art. I, § 22, Fla. Const. The Florida Supreme Court has said, "The tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community." *State v. Silva*, 259 So. 2d 153, 160 (Fla. 1972). "[A]nything less than an impartial jury is the functional equivalent of no jury at all." *R.J. Reynolds Tobacco Co. v. Allen ex rel. Allen*, 228 So. 3d 684, 693 (Fla. 1st DCA 2017) (Osterhaus, J., dissenting) (quoting *City of Miami v. Cornett*, 463 So. 2d 399, 402 (Fla. 3d DCA 1985)).

However, Mr. Seadler's argument before the First District was not that one of the prospective jurors on the panel was not impartial. Because it is undisputed an impartial juror did not serve on Mr. Seadler's jury. Rather, his argument was that the right to peremptory challenges is critical to the right to an impartial jury and that a party being forced to use a peremptory challenge on a potential juror who should have been stricken for cause is itself a miscarriage of justice if/when the party exhausts his allotted challenges, requests another, and has that request denied. According to Mr. Seadler, having to use a peremptory challenge to remove the objectionable juror (Juror 16), rather than on another potential juror that he did not want (for reasons known only to Mr. Seadler), standing alone should have been enough to warrant a new trial.

In all the alleged conflict cases cited by the First District, the denial of a cause challenge resulted in the need to use a peremptory challenge and a subsequent denial of additional peremptories when those were used up. *See Kochalka*, 162 So. 3d 1122; *Tizon*, 645 So. 2d 504; *Fielder*, 884 So. 2d 990; *Gootee*, 778 So. 2d 1005. The district courts in all of these cases held this constituted reversible error in each instance because the party who was denied the additional peremptory was forced to keep an objectionable juror on the panel as a direct result of that denial.

This case, however, is distinguishable from those cases because, as the First District's detailed analysis revealed, regardless of the denial of an additional peremptory, an objectionable juror still would have sat on the panel. In the other alleged conflict cases, but for the denial of the cause challenge, there would not have been an objectionable juror on the panel, whereas here, regardless of the denial of the cause challenge, an objectionable juror still would have served because there was more than one allegedly objectionable juror in Mr. Seadler's mind. *Id.*

That is the significant distinction between this case and those cited by the First District: the very fact that there would have been an objectionable juror regardless. One cannot then say with any degree of certainty that the one objectionable juror that sat on the panel (and not the other) created any

sense of impartiality, deprived Mr. Seadler of a fair trial, or, applying the applicable legal standard, resulted in a miscarriage of justice – a trial which it is important to note Mr. Seadler won. On this very specific factual distinction, this case stands apart from the cases cited by the First District and is not in fact in direct conflict. A similar application of a per se rule of reversal was not warranted under the unique facts of the case.

Notwithstanding that, all of the alleged conflict cases rely entirely on a line of criminal cases – including *Matarranz v. State*, 133 So. 3d 473 (Fla. 2013), *Busby v. State*, 894 So. 2d 88 (Fla. 2004), and *Hill v. State*, 477 So. 2d 553 (Fla. 1985) – and apply concepts exclusively available in a criminal context to conclude that in a civil context an alleged improper denial of a for-cause challenge and subsequent denial of an additional peremptory *necessarily* results in the denial of a *right* related to peremptory challenges, automatically warranting a new trial. This reasoning is misdirected. There is no historical support for finding that the special treatment this Court has given to peremptory challenges in a criminal case is also available in a civil case.

As detailed in Justice Tanenbaum's concurring opinion on rehearing, *Matarranz* and the line of cases it draws from address criminal trials that historically have been treated differently with respect to jury selection because of the greatly increased consequences of such a trial. (App. 14-28

at pp. 5-8). The stakes involved simply do not compare, and the resulting prejudice required to necessitate a new trial is subject to a different, and much higher, standard. *Id.*

Matarranz and its progeny also draw from Florida's statutory right to peremptory challenges in the criminal context. In Florida, there is no constitutional or statutory right to a peremptory challenge in a civil trial. Rather, peremptory challenges in a civil trial are provided only by procedural rule. The other district courts, which nevertheless apply the principle stated in *Matarranz* in the context of civil trials, fail to address these important and dispositive distinctions. Given this, how could one assume an equivalence of significance between the two scenarios? *Id.* at p. 5. The peremptory challenge in each context differs in a way that bears directly on whether the erroneous failure to strike a potential juror in a civil case necessarily is harmful within the meaning of section 59.041. *Id.*

The Florida Supreme Court's reversible error analysis is firmly rooted in the existence of a defendant's statutory *right* to a peremptory challenge in a criminal trial – a right which does not exist in the civil context. *See* § 913.08, Fla. Stat. It is this statutory right that gives rise to this age-old rule:

> In a case where an objectionable juror is challenged by the defendant for cause, and the court wrongfully overrules the challenge, and the defendant uses one of his peremptory challenges to excuse the objectionable venireman, the

> record should show that the jury finally impaneled contained at least one juror objectionable to the defendant, who sought to excuse him peremptorily, but the challenge was overruled.

Young v. State, 96 So. 381, 383 (Fla. 1923).

However, again, that principle is premised on a substantive legislative right that exists in the first place, and Florida law does not provide for peremptories in civil trials. *See* Ch. 73-333, §24 at 840, Laws of Fla. (repealing statute providing for peremptory challenges in civil trials). The only thing in place with regard to peremptories in a civil context is a judicially adopted civil rule – Florida Rule of Civil Procedure 1.431(d) – which provides that each party is entitled to three peremptory challenges of jurors. However, this does not effectuate a constitutional right and cannot amount to a substantive right. *See Benyard v. Wainwright*, 322 So. 2d 473, 475 (Fla. 1975) ("Substantive law prescribes the duties and rights under our system of government. The responsibility to make substantive law is in the legislature within the limits of the state and federal constitutions. Procedural law concerns the means and method to apply and enforce those duties and rights. Procedural rules concerning the judicial branch are the responsibility of this Court, subject to repeal by the legislature in accordance with our constitutional provisions."); *see also Boyd v. Becker*, 627 So. 2d 481, 484 (Fla. 1993) ("While the Florida Constitution grants this Court exclusive rule-

making authority, this power is limited to rules governing procedural matters and does not extend to substantive rights.").

In the context of a civil trial, then, "the peremptory challenge at best is a procedural grace." (App. 14-28 at p. 10). And, employing peremptories in the way they were employed in this case was exactly in line with that intended purpose. Mr. Seadler received the three peremptory challenges provided by rule, and he used them as intended – to ensure a potential juror suspected of bias was excluded even if the trial court was incorrect in failing to do so.

CONCLUSION

The First District's fact-specific review of the process by which the jury was selected in Mr. Seadler's case showed there was no irregularity that deprived Mr. Seadler of a fair trial (which he won) and held that there would have been someone that Mr. Seadler found subjectively objectionable serving on his jury regardless of whether the trial court had allowed Juror 16 to be stricken for cause; therefore, there was no miscarriage of justice warranting a new trial. (App. 1-13). The First District's conclusion was consistent with what the law requires and with the usage of peremptory challenges as they are meant to be employed in the civil context.

The approach reflected in the alleged conflict cases cited by the First

District was not applicable in the underlying case as the cases are factually distinct in that here, regardless of the denial of the additional peremptory here, an objectionable juror *still* would have served on the panel because there was more than one allegedly objectionable juror in Mr. Seadler's mind. On this very specific factual distinction, the instant case stands apart from the cases cited by the First District and is not in fact in direct conflict.

Notwithstanding that, the alleged conflict cases overlooked the unique historical purpose behind peremptory challenges in the criminal context and the fact that the principle stated in criminal cases has no proper application outside that context as there is no statutory right to a peremptory challenge in a civil trial. In the absence of a substantive right, and no historical basis considering it of fundamental importance, there was no legal authority compelling a reversal or a new trial. (App. 14-28 at p. 11). Without more, and, there was nothing in this case that amounted to a miscarriage of justice requiring reversal. (App. 1-13; 14-28).

In sum, under the unique facts of this case, there is no true conflict between this case and the decisions cited by the First District. However, the conflict, if any, should be resolved in favor of the First District's well-reasoned decision in the instant case based on the relevant historical and legislative history.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 7th day of October, 2022, a true and correct copy of the foregoing was electronically filed with the Florida Supreme Court, Clerk of the Courts by using the Florida Courts e-Filing Portal, therefore furnished via E-mail to: **Charles F. Beall**, **Jr., Esquire**, and **Haley J. VanFleteren, Esquire**, Moore, Hill & Westmoreland, P.A., 350 West Cedar Street, Pensacola, Florida 32502, (cbeall@mhw-law.com), *Counsel for Petitioner;* **Jonathan D. Simpson, Esq.**, Simpson Law Firm, 1048 Mar Walt Drive, Fort Walton Beach, Florida 32547, *Trial Counsel for Petitioner;* (jd@dsimpsoninjurylaw.com; kristina@impsoninjurylaw.com); and **D. Grayson Miller, Esquire,** Cole, Scott & Kissane, P.A., 890 South Palafox Street, Suite 200, Pensacola, Florida 32502 (Douglas.Miller@csklegal.com; Nicole.Mills@csklegal.com), *Trial Counsel for Respondent.*

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(f) and Fla. R. App. P. 9.045 (b), the undersigned counsel hereby certifies that this brief was submitted in Arial, 14-point font. This brief also complies with the word count limit requirements, excluding the parts exempted by Fla. R. App. P. 9.045(e).

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