Filing # 194376517 E-Filed 03/19/2024 05:30:21 PM

IN THE SUPREME COURT OF FLORIDA

Case No.: SC23-0915

JJJTB, INC.,

Petitioner,

v.

STEPHEN V. SCHMIDT, and SCHMIDT FARMS, INC.,

Respondents.
_________________________/

RESPONDENTS' STEPHEN V. SCHMIDT AND SCHMIDT FARMS, INC.'S
ANSWER BRIEF ON THE MERITS

JESSE L. RAY, ESQUIRE
JESSE LEE RAY ATTORNEY AT LAW, P.A.
Florida Bar No. 0919101
13014 N. Dale Mabry Hwy
Suite 315
Tampa, Florida 33618-2808
TELEPHONE: (813) 443-9701
jray@jesseleeray.com
Attorney for Respondents Stephen V. Schmidt and Schmidt Farms, Inc.

EDWARD WILLIAM COLLINS
THE LAW OFFICE OF WILLIAM COLLINS, P.A.
Florida Bar No. 16463
503 E. Jackson Street, #332
Tampa, Florida 33602
TELEPHONE: (727) 403-0070
bill@williamcollinslaw.com
Co-Counsel for Respondents Stephen V. Schmidt and Schmidt Farms, Inc.

TABLE OF CONTENTS

TABLE OF CITATIONS 3

STATEMENT OF THE CASE AND FACTS 8

STANDARD OF REVIEW 8

SUMMARY OF ARGUMENT 9

ARGUMENT 11

I. THE COURT SHOULD RESOLVE THE CERTIFIED CONFLICT BY APPROVING THE SECOND DISTRICT'S DECISION THAT CASE JURISDICTION IS FUNDAMENTAL AND A PARTY CANNOT WAIVE A CHALLENGE TO CASE JURISDICTION, AND THAT SUCH A CHALLENGE MAY BE RAISED AT ANY TIME, EVEN FOR THE FIRST TIME ON APPEAL 11

II. UPON THE TERMINATION OF THE TRIAL COURT'S CASE JURISDICTION THE TRIAL COURT LACKED AUTHORITY TO ENTER FURTHER ORDERS OR ADJUDICATE THE CASE IN ANY WAY. 17

III. *SCHMIDT V. JJJTB, INC*. DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL. THEREFORE, REVIEW SHOULD BE DISMISSED 31

IV. THE TRIAL COURT'S FINAL ORDER IN THE FIRST APPEAL WAS FINAL IN EVERY RESPECT, THEREBY PROPERLY SUBJECTING THE ORDER TO PLENARY APPEAL 37

CONCLUSION 39

CERTIFICATE OF SERVICE 42

CERTIFICATE OF COMPLIANCE 42

TABLE OF CITATIONS

Cases:

Bank One, N.A. v. Batronie,
884 So. 2d 346 (Fla. 2d DCA 2004) 19

Bereska v. State,
194 Md. App. 664 (2010) 30

Brown v. State,
124 So. 2d 481 (Fla. 1960) 9

Clarke v. Global Guaranteed Goods & Servs., Inc.,
2023 WL 3909995 (Fla. 6th DCA 2023) 33, 35

Citizens of the State v. Clark,
373 So. 3d 1128 (Fla. 2023) 34

C.W. v. State,
637 So. 2d 28 (Fla. 2d DCA 1994) 16

Dandar v. Church of Scientology Flag Service Organization, Inc.,
190 So. 3d 1100 (Fla. 2d DCA 2016) 22

Dept. of Law Enforcement v. House,
678 So. 2d 1284 (Fla. 1996) 41

Dober, M.D. v. Worrell,
401 So. 2d 1322 (Fla. 1981) 40

Don Suntan Corp. v. Tanning Rsch. Lab'ys, Inc.,
505 So. 2d 35 (Fla. 5th DCA 1987) 10

Friedman v. Friedman,
825 So. 2d 1010 (Fla. 4th DCA 2002) 38

Getman v. Tracey Const., Inc.,
62 So. 3d 1289 (Fla. 2d DCA 2011) 38

Hughes v. State,
22 So. 3d 132 (Fla. 2d DCA 1991) 15

In re KCMVNO, Inc.,
395 B.R. 860 (Bankr. Del. 2008) 28

Kartsonis v. State,
319 So. 3d 622 (Fla. 2021) 32

Kozel v. Kozel,
302 So. 3d 939 (Fla. 2d DCA 2019) 22, 26

Malone v. Meres,
109 So. 677 (Fla. 1926) 27, 28

MCR Funding v. CMG Funding Corp.,
771 So. 2d 32 (Fla. 4th DCA 2000) 33, 34

Mich Auto Sales Inc. v. 14004 NW 19th Avenue, LLC,
347 So. 3d 438 (Fla. 3d DCA 2022) 25

M.M. v. Fla. Dep't of Children and Families,
189 So. 3d 134 (Fla. 2016) 38

Mocegui v. Public Service Mut. Ins. Co.,
821 So. 2d 1189 (Fla. 3d DCA 2002) 26

Morgan v. Am. Airlines,
296 So. 3d 565 (Fla. 1st DCA 2020) 34

Ocean Bank v. Caribbean Towers Condo. Ass'n,
121 So. 3d 1087 (Fla. 3d DCA 2013) 33, 36

Padron v. Padron,
356 So. 3d 306 (Fla. 3d DCA 2023) 18

Pino v. Bank of New York,
121 So. 3d 23 (Fla. 2013) 22

Polk County v. Sofka,
702 So. 2d 1243 (Fla. 1997) 16

Polls v. State,
134 So. 3d 1068 (Fla. 4th DCA 2013) 16

Pulte v. New Common School Foundation,
334 So. 3d 677 (Fla. 2d DCA 2022) 23, 26

Randle-Eastern Ambulance Service, Inc. v. Vasta,
360 So. 2d 68 (Fla. 1978) 10, 17, 21

Ray v. State,
403 So. 2d 956 (Fla. 1981) 15

Robbins v. Pfeiffer,
407 So. 2d 1016 (Fla. 5th DCA 1981) 11

Romero v. Wells Fargo Bank, N.A.,
209 So. 3d 633 (Fla. 2d DCA 2017) 18

Ross v. Wells Fargo Bank,
114 So. 3d 256 (Fla. 3d DCA 2013) 11

Rushing v. State,
50 S.W. 3d 715 (Tex. Crim. App. 2001) 29

Schmidt v. JJJTB, Inc.,
357 So. 3d 208 (Fla. 2d DCA 2023) 8, 9, 15, 26, 38

Sheffield v. R.J. Reynolds Tobacco Co.,
329 So. 3d 114 (Fla. 2021) 8

Schroeder v. MTGLQ Inv'rs, L.P.,
290 So. 3d 93 (Fla. 4th DCA 2020) 33, 35

Schroeder v. MTGLQ Inv'rs, L.P.,
2020 WL 3525940 (Fla. 2020) 35

S.L.T. Warehouse Co. v. Webb,
304 So. 2d 97 (Fla. 1974) 38

Sochor v. State,
619 So. 2d 285 (Fla. 1993) 16

Stanford v. Rubin,
237 So. 2d 134 (Fla. 1970) 9

State v. Filiaggi,
714 N.E. 2d 867 (1999).. 31

State v. Jackson,
306 So. 3d 936 (Fla. 2020) 38

State v. Lovelace,
928 So. 2d 1176 (Fla. 2006) 41

State v. Mancuso,
355 So. 3d 942 (Fla. 4th DCA 2023).. 17, 18

State v. Williams,
260 So. 3d 472 (Fla. 2018) 9, 16, 26

State Farm Mut. Auto. Ins. Co. v. Open MRI of Orlando, Inc.,
780 So. 2d 39 (Fla. 5th DCA 2001)... 38

Stokes v. Jones,
319 So. 3d 166 (Fla. 1st DCA 2021).. 26

Stone v. Stone,
873 So. 2d 628 (Fla. 2d DCA 2004)... 20

Summit Claims Management v. Lawyers Express Trucking, Inc.,
944 So. 2d 339 (Fla. 2006) 41

Treice v. Treice,
250 So. 3d 695 (Fla. 4th DCA 2018)... 10, 24

Universal Ins. Co. of N.A. v. Warfel,
82 So. 3d 47 (Fla. 2012) 9

U.S. Bank Nat. Ass'n v. Anthony-Irish,
204 So. 3d 57 (Fla. 5th DCA 2006)... 25

Voth v. Felderhoff,
768 S.W. 2d 403 (Tex. App. 1989)... 29

WBCMT 2007-C33 Office 7870, LLC v. Bar J Ranch-Kemper Point, LLC,
108 N.E. 3d 772 (Ohio Com. Pl. 2018) 30

Wolfe v. Newton,
310 So. 3d 1077 (Fla. 2d DCA 2020)... 23

14302 Marina San Pablo Place SPE, LLC v. VCP-San Pablo, Ltd.,
92 So. 3d 320 (Fla. 1st DCA 2012).. 25

84 Lumber Co. v. Cooper,
656 So. 2d 1297 (Fla. 2 DCA 1994)... 20

Florida Constitution:

Article V, § (3)(b)(3)... 35

Rules:

Fla. R. App. P. 9.045... 42

Fla. R. App. P. 9.210(a)(2)... 42

Fla. R. Civ. P. 1.540 .... 18, 19, 26

STATEMENT OF THE CASE AND THE FACTS

In the interest of brevity, the Respondents adopt the Second District Court of Appeal's statement of case and facts set forth in the Court's opinion in *Schmidt v. JJJTB, Inc.,* 357 So. 3d 208 (Fla. 2d DCA 2023). Additionally, the Respondents accept the Petitioner's Statement of the Case and Facts set forth in its Initial Brief with the following exceptions:

The Respondents do not accept the Petitioner's assertion that the Respondents waived any argument or challenge to the trial court's case jurisdiction. The contrary is an accurate statement of the facts in this case. Additionally, the Respondents do not accept the Petitioner's assertion that any challenge to case jurisdiction was required to be raised in response to the Petitioner's Motion for Leave to Amend Complaint, and that the Respondents failure to do so at that time now renders their argument untimely.

STANDARD OF REVIEW

The Respondents agree that a pure question of law is reviewed de novo. *Sheffield v. R.J. Reynolds Tobacco Co.,* 329 So. 3d 114, 119 (Fla. 2021).

<u>SUMMARY OF THE ARGUMENT</u>

The Court should approve the Second District Court of Appeal's decision in *Schmidt v. JJJTB, Inc.* because it is based on sound judicial policies supported by this Court and other appellate courts in Florida that have addressed the question at issue. The Second District correctly held that the issue of case jurisdiction is fundamental, and a party cannot waive a challenge to subject matter or case jurisdiction by failing to raise it in the trial court, and that such a challenge of case jurisdiction may be raised at any time, even for the first time on appeal. *Schmidt v. JJJTB, Inc.,* 357 So. 3d at 211.

This Court established the test for determining fundamental error in *Brown v. State*, 124 So. 2d 481 (Fla. 1960). In *Brown* the Court held that, to overcome the timely objection rule and be deemed fundamental, "the error must reach down into the validity of the trial itself." *Id*. *See also Sanford v. Rubin,* 237 So. 2d 134 (Fla. 1970); *Universal Ins. Co. of N.A. v. Warfel*, 82 So. 3d 47 (Fla. 2012). "Lack of jurisdiction constitutes fundamental error because a trial court cannot act in excess of its authority, and failure to correct that error 'would undermine the integrity of our system of justice.'" *State v. Williams*, 260 So. 3d 472, 475 (Fla. 1st DCA 2018) (quoting *Bain v. State*, 730 So. 2d 296, 302 (Fla. 2d DCA 1999)).

Because the Respondents raised their objection to the trial court's lack of case jurisdiction in a timely filed Motion for Rehearing, their objection was timely asserted in the trial court and properly preserved for appellate review. Additionally, the trial court lacked case jurisdiction to enter any further orders in the case, specifically the order allowing the Petitioner to file an amended complaint, after the final judgment in the case had been affirmed on appeal. *Don Suntan Corp. v. Tanning Rsch. Lab'ys, Inc.*, 505 So. 2d 35 (Fla. 5th DCA 1987) ("In order to prevent later events in the trial court from circumventing or 'mooting' the binding aspect of an appellate adjudication, the general rule is that once an appeal has been taken, the decision on appeal becomes 'law of the case,' and, ***on remand, amendments to the pleadings cannot be made to present new and different issues of fact or law unless the appellate court in its opinion has authorized such amendments***.") (Emphasis added). This Court has held and firmly established that the termination of a trial court's case jurisdiction results in a corresponding termination of the trial court's power to "adjudicate the cause in any way." *Randle-Eastern Ambulance Service, Inc. v. Vasta*, 360 So. 2d 68 (Fla. 1978). *See also Treice v. Treice,* 250 So. 3d 695 (Fla. 4th DCA 2018) (when a final judgment or a final order dismissing a case is entered, the court loses its "jurisdiction" over the particular case…. and is without authority to act.). *See*

also Ross v. Wells Fargo Bank, 114 So. 3d 256 (Fla. 3d DCA 2013) (A trial court loses case jurisdiction upon the rendition of a final judgment and expiration of the time allotted for altering, modifying or vacating the judgment.). *See also Robbins v. Pfeiffer*, 407 So. 2d 1016 (Fla. 5th DCA 1981) (A mandate affirming the order under review leaves nothing to be done in the lower tribunal but to enforce the order.).

Finally, the Court should dismiss review because the conflict certified by the Second District Court of Appeal in *Schmidt* does not expressly and directly conflict with a decision of another district court of appeal. This Court is therefore without jurisdiction to review this case.

ARGUMENT

I. THE COURT SHOULD RESOLVE THE CERTIFIED CONFLICT BY APPROVING THE SECOND DISTRICT'S DECISION THAT CASE JURISDICTION IS FUNDAMENTAL AND A PARTY CANNOT WAIVE A CHALLENGE TO CASE JURISDICTION, AND THAT SUCH A CHALLENGE MAY BE RAISED AT ANY TIME, EVEN FOR THE FIRST TIME ON APPEAL.

Introduction

The facts and issues presented in this conflict case are not complicated. All Parties agree that subject matter jurisdiction is fundamental and cannot be waived, and cannot be conferred by consent, agreement or waiver, and may be challenged at any time, even for the first time on appeal.

All Parties further agree that, unlike subject jurisdiction, personal jurisdiction over a person or entity is not fundamental, and may be conferred by consent, agreement or waiver. This case does not pertain to subject matter jurisdiction or personal jurisdiction. The matter now before the Court on conflict review is the issue of "case jurisdiction," which is sometimes also referred to as "procedural" or "continuing" jurisdiction. Specifically, whether case jurisdiction is fundamental and cannot be waived as held by the First, Second and Third District Courts of Appeal, or if case jurisdiction is merely procedural and can be waived as held by the Fourth and Sixth District Courts of Appeal.

The Petitioner implores the Court to determine that the trial court's lack of case jurisdiction is nothing more than a "procedural irregularity." The Respondents submit that the trial court lacking of case jurisdiction, and thus being completely devoid of any authority to act further in the case, is not a procedural irregularity, but rather fundamental error.

Undisputed Facts[1]

Because the issue of a trial court's case jurisdiction is determined largely by the facts of the case, a brief summary of the undisputed facts in this case will be helpful:

---

[1] The undisputed facts are derived from the Petitioner's Initial Brief and the Second District's opinion in *Schmidt v. JJJTB, Inc*.

- In 2011 the Petitioner filed a foreclosure action against the Respondents.
- In 2015, after a non-jury trial, the trial court entered a written Final Order denying a foreclosure judgment in favor of the Petitioner.
- The trial court thereafter denied the Petitioner's Motion for Rehearing.
- The Petitioner appealed the trial court's Final Order to the Second District Court of Appeal.
- The Second District Court of Appeal issued a per curiam affirmance of the Final Order without a written opinion, and then issued its mandate in the case.
- More than two years after the Second District issued its mandate in the above referenced appeal case, the Petitioner returned to the trial court and sought leave to amend its original pleadings to file an amended complaint to assert a cause of action on the promissory note and add a new cause of action for new and separate alleged defaults.
- The trial court permitted the Petitioner's motion for leave to amend to file a new amended complaint in the case.
- The Respondent filed a motion to dismiss the Amended Complaint.
- The trial court dismissed the Petitioner's claim on the promissory note and permitted the Amended Complaint on the new cause of action for new and separate alleged defaults.

- After a three-day non-jury trial, the trial court entered a Foreclosure Judgment in favor of the Petitioner and against the Respondents.
- The Respondents filed a Motion for Rehearing, arguing, *inter alia*, that the trial court lacked jurisdiction to permit the Amended Complaint and proceed with the new foreclosure case after the conclusion of the previous appeal in the case.
- After the Motion for Rehearing was fully briefed and argued to the trial court, the trial court denied the Motion for Rehearing.
- The Respondents appealed the Foreclosure Judgment to the Second District Court of Appeal.
- The Second District entered a written opinion reversing the Foreclosure Judgment, ruling the trial court had no case jurisdiction to permit the Petitioner to file amended pleadings after the conclusion of the first appeal. The Second District certified its opinion to be in conflict with the Fourth District on the issue of waiver of case jurisdiction.
- The Petitioner then filed a petition to invoke the discretionary jurisdiction of this Court to review the certified conflict by the Second District.
- This Court accepted the certified conflict case for review.

Argument

The decision of the Second District presently on review is no aberration in the progress of the law of "case jurisdiction." Prior decisions by this Court and the Florida District Courts of Appeal support the analysis and conclusion of the Second District in *Schmidt v. JJJTB, Inc*. that the issue of case jurisdiction is fundamental and that a party cannot waive a challenge to the trial court's case jurisdiction.

Fundamental Error

The trial court's action in allowing the Petitioner to amend its pleadings after the final judgment had been entered and affirmed on appeal constitutes fundamental error in the case. This Court has long held that "[F]undamental error has been defined as 'error which goes to the foundation of the case or goes to the merits of the cause of action.'" *Ray v. State*, 403 So. 2d 956, 960 (Fla. 1981) (quoting *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1970)). "'In its narrowest functional definition, 'fundamental error' describes an error that can be remedied on direct appeal, even though the appellant made no contemporaneous objection in the trial court and, thus, the trial judge had no opportunity to correct the error.'" *Hughes v. State*, 22 So. 3d 132, 135 (Fla. 2d DCA 2009) (quoting *Judge v. State*, 596 So. 2d 73, 79 n. 3 (Fla. 2d DCA 1991)). This Court has further held that "[F]undamental error occurs in

cases ‘where a jurisdictional error appears or where the interests of justice present a compelling demand for its application.’” *Sochor v. State*, 619 So. 2d 285, 290 (Fla. 1993) (quoting *Ray v. State*, 403 So. 2d at 960).

“Lack of jurisdiction constitutes fundamental error because a trial court cannot act in excess of its authority, and failure to correct that error ‘would undermine the integrity of our system of justice.’” *State v. Williams*, 260 So. 3d 472, 475 (Fla. 1st DCA 2018) (quoting *Bain v. State*, 730 So. 2d 296, 302 (Fla. 2d DCA 1999)). Moreover, the Second District Court of Appeal has held that “it is axiomatic that failure to raise a jurisdictional issue is fundamental error and may be raised at any time.” *C.W. v. State*, 637 So. 2d 28, 29 (Fla. 2d DCA 1994) (citing *State v. Booker*, 497 So. 2d 957 (Fla. 1st DCA 1986)); *See also Polls v. State*, 134 So. 3d 1068 (Fla. 4th DCA 2013) (the doctrine of fundamental error should be applied where a jurisdictional error appears or where the interests of justice present a compelling demand for its application.). This Court has held that “[c]ourts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order.”). *Polk County v. Sofka,* 702 So. 2d 1243 (Fla. 1997).

Based upon well-established Florida jurisprudence, this Court should determine that the trial court committed fundamental error by acting in excess of its jurisdiction in allowing the Petitioner to amend its pleadings after the final judgment in the case had been entered and affirmed on appeal.

II. UPON THE TERMINATION OF THE TRIAL COURT'S CASE JURISDICTION THE TRIAL COURT LACKED AUTHORITY TO ENTER FURTHER ORDERS OR ADJUDICATE THE CASE IN ANY WAY.

This Court has established that the termination of a trial court's case jurisdiction results in a corresponding termination of the trial court's power to "adjudicate the cause in any way." *Randle-Eastern Ambulance Service, Inc. v. Vasta*, 360 So. 2d 68 (Fla. 1978).

"'[T]he word 'jurisdiction' ordinarily refers to 'subject matter' or 'personal' jurisdiction, but there is a third meaning ('case' jurisdiction) which involves the power of the court over a particular case that is within its subject matter jurisdiction." *State v. Mancuso*, 355 So. 3d 942, 945 (Fla. 4th DCA 2023) (quoting *Tobkin v. State*, 777 So. 2d 1160, 1163 (Fla. 4th DCA 2001)). "'[A]fter entry of a final judgment and expiration of time to file a motion for rehearing or for a new trial, the trial court loses jurisdiction of the case … unless jurisdiction was reserved to address that matter or the issue is allowed to be considered post-judgment by statute or under a provision of the Florida

Rules of Civil Procedure.'" *Padron v. Padron*, 356 So. 3d 306, 308 (Fla. 3d DCA 2023) (quoting *Ross v. Damas*, 31 So. 3d 201, 203 (Fla. 3d DCA 2010)). "A trial court acts in excess of its jurisdiction when it acts without case jurisdiction." *State v. Mancuso*, 355 So. 3d at 945.

In *Romero v. Wells Fargo Bank, N.A.*, 209 So. 3d 633 (Fla. 2d DCA 2017), the Second District Court of Appeal vacated the trial court's order denying a motion to vacate a final judgment of foreclosure that was filed more than a year and a half after the final judgment was entered, finding that the trial court lost jurisdiction to adjudicate that motion because it was filed after the time limit set forth in Fla. R. Civ. P. 1.540 expired. *See Id*. at 635. While the Second District Court of Appeal's decision in *Romero* does not specifically use the terms "subject matter jurisdiction" or "case jurisdiction," it is clear from the analysis in the opinion that the Second District was referring to case jurisdiction. *See Id*. at 635 ("Ordinarily, once a final judgment is entered, 'the trial court loses jurisdiction over the case except to enforce the judgment.'…'[T]he one exception to the rule of absolute finality is rule 1.540, 'which gives the court jurisdiction to relieve a party from the act of finality in a narrow range of circumstances.''…'Among those circumstances…is compliance with the time limit of rule 1.540(b)(3), which, like other jurisdictional time limits such as the time for filing a notice of appeal or a

motion for new trial, may not be extended for any reason.'… 'Once beyond the reach of rule 1.540(b), the final judgment of foreclosure 'pass[es] into the unassailable realm of finality.''") (Internal citations omitted).

Similarly, in *Bank One, N.A. v. Batronie*, 884 So. 2d 346 (Fla. 2d DCA 2004), the Second District Court of Appeal reversed the trial court's order on a motion seeking relief from a final judgment of foreclosure that was filed more than one (1) year after the final judgment was entered. Notably, even though the untimeliness of the filing of the homeowners' motion seeking relief from the final judgment was not raised in the trial court until the bank filed a motion for reconsideration after the final judgment was entered, the Second District held that the trial court's lack of jurisdiction could be raised at any time, and could even be considered independently by the appellate court. *See Id*. at 349. Although the Second District Court of Appeal did not expressly state that the trial court's order on the homeowners' motion seeking relief from the final judgment constituted "fundamental error," the Second District did find that "the jurisdictional nature of rule 1.540(b) allows the error to be raised for the first time on appeal," which clearly implies that the error being reviewed was considered fundamental. *See Id*. at 348. Without question, the jurisdictional time limit set forth in Fla. R. Civ. P. 1.540(b) is a procedural limitation on the trial court's case jurisdiction, rather

than a limitation on the trial court's constitutional or statutory authority to decide a class of cases. Accordingly, the Second District Court of Appeal's decision in *Batronie* supports the proposition that the trial court's case jurisdiction over a particular action can be challenged at any time, and even for the first time on appeal.

In *Stone v. Stone*, 873 So. 2d 628 (Fla. 2d DCA 2004), the Second District Court of Appeal vacated an order entered by the trial court that denied a "complaint-motion" filed in a case one (1) year and five (5) months after a notice of voluntary dismissal had been filed in the case, and found that the trial court did not have jurisdiction to consider the "complaint-motion" in that closed case. *See Id*. at 630. Notably, the issue of the trial court's jurisdiction to enter the order denying the "complaint-motion" in *Stone* was raised by the Second District Court of Appeal *sua sponte* on appeal, while acknowledging that a trial court's lack of jurisdiction can be challenged at any time. *See Id*. at 630 n. 1 ("We note that the lack of jurisdiction can be challenged at any time and may be considered independently by the appellate court, even if the issue was never raised in the trial court.").

In *84 Lumber Co. v. Cooper*, 656 So. 2d 1297 (Fla. 2d DCA 1994), the Second District Court of Appeal held that the filing of a joint stipulation for dismissal completely divested the trial court of any subject matter jurisdiction

to adjudicate any future issues in that case. *See Id*. at 1299 ("We conclude, therefore, that the joint stipulation for dismissal filed by Cooper and his insurance company in the uninsured motorist lawsuit under rule 1.420(a) divested the trial court of any subject matter jurisdiction to adjudicate any future issues *arising in that case*, including Cooper's motion to determine the amount 84 Lumber was entitled to be reimbursed.") (Emphasis in original). Notably, the filing of a joint stipulation for dismissal in *84 Lumber Co.* did nothing to divest the trial court of actual subject matter jurisdiction, *i.e.* jurisdiction to hear and adjudicate an uninsured motorist lawsuit. Instead, the filing of a joint stipulation for dismissal only divested the trial court of case jurisdiction, which the Second District Court of Appeal clearly treated as a fundamental issue that was the equivalent of subject matter jurisdiction.

In *Randle-Eastern Ambulance Service, Inc. v. Vasta*, 360 So. 2d 68 (Fla. 1978), this Court held that the filing of a voluntary dismissal completely deprived the trial court of "jurisdiction" to adjudicate any issues in the cause of action whatsoever, stating:

> The right to dismiss one's own lawsuit during the course of trial is guaranteed by Rule 1.420(a), endowing a plaintiff with unilateral authority to block action favorable to a defendant which the trial judge might be disposed to approve. The effect is to remove completely from the court's consideration the power to enter an order, equivalent in all respects to a deprivation of "jurisdiction." If the trial judge loses

> the ability to exercise judicial discretion or to adjudicate the cause in any way, it follows that he has no jurisdiction to reinstate a dismissed proceeding. The policy reasons for this consequence support its apparent rigidity.

Id. at 69.

Similarly, in *Dandar v. Church of Scientology Flag Service Organization, Inc.*, 190 So. 3d 1100 (Fla. 2d DCA 2016), the Second District Court of Appeal relied upon this Court's decision in *Pino v. Bank of New York*, 121 So. 3d 23 (Fla. 2013), and held that the filing of a voluntary dismissal completely divested the trial court of jurisdiction to enter any further orders in the case. *See Id*. at 1102 ("'[t]he voluntary dismissal serves to terminate the litigation, to instantaneously divest the court of its jurisdiction to enter or entertain further orders that would otherwise dispose of the case on the merits, and to preclude revival of the original action.'") (quoting *Pino v. Bank of New York*, 121 So. 3d at 32). Again, even though the filing of a voluntary dismissal did nothing to divest the trial court of subject matter jurisdiction to hear and adjudicate the underlying dispute, the Second District clearly treated case jurisdiction as a fundamental issue that was the equivalent of subject matter jurisdiction.

In *Kozel v. Kozel*, 302 So. 3d 939 (Fla. 2d DCA 2019), the Second District Court of Appeal held that the trial court did not have continuing

jurisdiction to award damages for breach of a marital settlement agreement after the trial court entered a final judgment approving the agreement, where the agreement did not include a reservation of jurisdiction to award damages for a breach that was not specified in the agreement, and the agreement did not specify the damages a party could seek and the trial court could award. *See Id*. at 941.

In *Wolfe v. Newton*, 310 So. 3d 1077 (Fla. 2d DCA 2020), the Second District Court of Appeal held that the trial court's entry of an order dismissing a petition for a temporary injunction divested the court of jurisdiction to conduct an evidentiary hearing and adjudicate a motion for return of firearms. *See Id*. at 1082-1083 ("The case between Ms. Newton and Mr. Wolfe was over and the court's order was final. The court had no lawful authority to compel Mr. Wolfe to testify as a prerequisite to what should have been the purely ministerial act of returning his property to him. Therefore, we must grant his petition for prohibition.").

In *Pulte v. New Common School Foundation*, 334 So. 3d 677 (Fla. 2d DCA 2022), the Second District Court of Appeal held that a seemingly procedural act, the entry of an order approving a settlement agreement, in the absence of any reservation of jurisdiction to enforce the agreement in the future, divested the trial court of jurisdiction to enforce the terms of the

settlement agreement. *See Id*. at 681. ("And because the probate court's order approving the Agreement did not retain jurisdiction to enforce its terms…the court lacked jurisdiction to do so.") (Internal citation omitted). Once again, the Second District treated a lack of case jurisdiction, stemming from a procedural step that ended the litigation (the entry of an order approving a settlement agreement), as a fundamental issue that was the equivalent of subject matter jurisdiction.

The Second District Court of Appeal has repeatedly and consistently held that a "procedural" act in a case which ends the litigation with finality deprives the trial court of all jurisdiction to adjudicate issues in that particular case, with the exception of issues that are ancillary to the entry of the final judgment, or issues which the trial court reserved jurisdiction to adjudicate at a later date. In addition, several other Florida appellate courts have reached the same conclusion. *See Trerice v. Trerice*, 250 So. 3d 695, 697 (Fla. 4th DCA 2018) ("We are affirming without discussion the trial court's decision to dismiss the case for lack of personal jurisdiction and forum *non conveniens*. By dismissing the case on those grounds, the trial court determined it was without jurisdiction. 'Without jurisdiction, the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact

and dismissing the cause.'") (quoting *Griffith v. Fla. Parole and Prob. Comm'n*, 485 So. 2d 818, 821 (Fla. 1986)); *see also U.S. Bank Nat. Ass'n v. Anthony-Irish*, 204 So. 3d 57, 60 (Fla. 5th DCA 2016) ("The court is said to act outside of its jurisdiction if it enters additional orders after a voluntary dismissal or a final judgment that did not reserve jurisdiction for the specific purpose of entering those orders.") (citing *Paulucci v. Gen. Dynamics Corp.*, 842 So. 2d 797, 803 (Fla. 2003)); *see also Mich Auto Sales Inc. v. 14004 NW 19th Avenue, LLC*, 347 So. 3d 438, 439-440 (Fla. 3d DCA 2022) ("'The rule is firmly established in this State that the trial court loses jurisdiction of a cause after a judgment or final decree has been entered and the time for filing petition for rehearing or motion for new trial has expired or same has been denied.'…Other than ancillary matters, the trial court 'retains jurisdiction to the extent such is specifically reserved in the final judgment or as otherwise provided by statute or rule.'") (Internal citations omitted); *see also 14302 Marina San Pablo Place SPE, LLC v. VCP-San Pablo, Ltd.*, 92 So. 3d 320, 320 (Fla. 1st DCA 2012) ("The trial court entered this order in the context of a foreclosure case, upon a motion for clarification filed more than three months after entry of the final judgment. Because the period for rehearing or clarification had passed and the trial court was not ruling on a motion filed under Florida Rule of Civil Procedure 1.540, the court lacked

jurisdiction to enter the order at issue."); *see also Mocegui v. Public Service Mut. Ins. Co.*, 821 So. 2d 1189, 1192 (Fla. 3d DCA 2002) ("Because PSM did not file a motion to alter or amend the final judgment within ten days of the January 1995 personal injury judgment, the trial court lost jurisdiction to alter or amend the judgment under rule 1.530."); *see also Stokes v. Jones*, 319 So. 3d 166, 170 (Fla. 1st DCA 2021) ("'It is well settled that the trial court loses jurisdiction over a case after it becomes final, with the exception that the trial court has jurisdiction to entertain a timely filed motion under Florida Rule of Civil Procedure 1.540.'") (quoting *Rodriguez v. Temperature Concepts, Inc.*, 267 So. 3d, 38 (Fla. 4th DCA 2019)).

The Petitioner asserts in its Initial Brief that the District Court cases which have found that case jurisdiction cannot be waived and any objection can be raised for the first time on appeal treat the objection as one of subject matter jurisdiction. The Petitioner incorrectly argues that the District Court cases which have found that case jurisdiction cannot be waived and can be challenged for the first time on appeal "conflate" the issues of subject matter jurisdiction and case jurisdiction. Such an argument is simply a misstatement or misreading of the appellate court opinions. A simple reading of the court opinions in *Schmidt v. JJJTB, Inc*, *Pulte v. New Common School Foundation*, *State v. Williams, Kozel v. Kozel*, and the other cases clearly establishes that

those courts distinguished the difference between subject matter jurisdiction and case jurisdiction, and then properly afforded case jurisdiction the equivalent level of consideration and review as subject matter jurisdiction.

The Petitioner cites to and relies upon the Supreme Court of Florida's decision in *Malone v. Meres*, 109 So. 677 (Fla. 1926) in support of its argument that a "procedural error" or "procedural irregularity" is not the equivalent of a lack of subject matter jurisdiction. Notably, the Petitioner has not cited to any binding legal precedent that holds that a lack of case jurisdiction is akin to a "procedural error" or "procedural irregularity." Instead, the Petitioner only cites and quotes portions of the opinion authored by Justice Ellis in *Malone* denying a petition for rehearing filed after the Court's majority opinion was issued, and specifically, the portion that states:

> The jurisdiction of the chancery court to entertain this case being shown and the defendant having appeared by counsel, thus subjecting his person to the court's jurisdiction, the decree, although it may be subject to the criticism of procedural error, is not void.

Id. at 757.

First, the facts in *Malone* are considerably distinguishable from the issue presently before the Court, because *Malone* did not even remotely involve a question of whether or not the trial court had case jurisdiction. Instead, the question before the Court in *Malone* was whether or not the trial

court had subject matter jurisdiction to enter the orders being challenged. *See Id*. at 681-682 ("It is clear that, if the court had jurisdiction of the defendant and of the subject-matter with authority to render a decree in the cause, a failure to comply with the statute regulating the method of taking testimony and making the record in the cause does not render the decree void. The subject-matter of the suit was the assertion of a lien predicated upon a contract of sale of personal property that was within the jurisdiction of the court."). Thus, the "procedural error" referenced in *Malone* did not involve a situation where the trial court had lost case jurisdiction over the underlying cause, as in the case presently before the Court.

Moreover, in *In re KCMVNO, Inc.*, 395 B.R. 860 (Bankr. Del. 2008), the United States Bankruptcy Court for the District of Delaware properly recognized that Justice Ellis' opinion denying rehearing in *Malone* was nothing more than dicta, stating:

> The *Malone* court was not tasked with deciding whether a vendor's lien should be imposed or enforced in the case, however. Rather, because no appeal of a lower court's decision entering a foreclosure decree was timely filed, the only issue before the court was whether the lower court, sitting in equity, had jurisdiction to enter the decree. The majority held that the simple act of a party asserting the claim of a lien gave the court jurisdiction, regardless of whether the facts of the case justified a finding that a valid lien existed. Therefore, any suggestion in *Malone* that a vendor's lien might be imposed against personal property under Florida law is nothing more than dicta.

In re KCMVNO, Inc., 395 B.R. at 863 (Internal footnote omitted).

Legal Authority from Other States on the Issue of Case Jurisdiction

The Petitioner cites 13 cases from other states in support of its argument that case jurisdiction is a "procedural irregularity," rather than a fundamental issue. Interestingly, the Petitioner provides no case analysis or even case parentheticals for any of the out of state cases it cites to the Court. That is because none of the cases cited are factually similar or address the issue now presented to this Court. Notably, not one case cited by the Petitioner dealt with a trial court having lost case jurisdiction by the entry of a final judgment and then entering further orders permitting amended pleadings in the case.

Notably, in its out of state case research, the Petitioner has failed to cite to the Court the cases from other states that provide that case jurisdiction is fundamental, unable to be waived, and capable of being challenged at any time. *See Rushing v. State*, 50 S.W. 3d 715, 723 (Tex. Crim. App. 2001) ("Lack of jurisdiction is fundamental error, and is appealable at any time, even if raised for the first time on appeal…Lack of jurisdiction ***over a case*** renders the judgment void.") (Emphasis added); *see also Voth v. Felderhoff*, 768 S.W. 2d 403, 415-416 (Tex. App. 1989) ("We interpret the cited cases

as requiring that we must reluctantly find the trial court committed fundamental error by relitigating ownership interests in the three tracts of land under discussion—the jury trial was held at a time when the trial court had lost jurisdiction to alter the terms of the two prior final preliminary decrees of partition. We therefore sustain appellants' first point of error and hold the trial court erred in refusing to vacate its November 17, 1986 judgment, because this is a void judgment."); *see also Bereska v. State*, 194 Md. App. 664, 690-691 (2010) ("In sum, by August of 2004, appellant had completed his probation, and the criminal matter over which the circuit court had exercised its jurisdiction was concluded. No provision of the Maryland rules, and no motion by appellant, provided the circuit court with the authority to allow appellant to withdraw his 1996 guilty plea and exchange it for a different plea. By this advanced stage, his original guilty plea is inviolate. Because the circuit court lacked the jurisdiction to allow appellant to withdraw his plea and enter a new plea, the 2004 proceedings were void for lack of jurisdiction."); *see also WBCMT 2007-C33 Office 7870, LLC v. Bar J Ranch-Kemper Point LLC*, 108 N.E. 3d 772, 782 (Ohio Com. Pl. 2018) ("Thus, it is a red herring to bootstrap decisions relating to personal jurisdiction to matters related to the exercise of jurisdiction over a particular case, especially as the latter is tied to the exercise of subject-matter jurisdiction, not personal

jurisdiction…Furthermore, notwithstanding the effort of WBCMT 2007-C33 to claim waiver, the Ohio Supreme Court has expressly rejected the proposition that a challenge to the exercise of jurisdiction over a particular case or certain aspects of a case may be waived.") (Internal citations omitted); *see also State v. Filiaggi*, 714 N.E. 2d 867 (1999) (holding that the presiding judge acting alone lacked jurisdiction over the particular portion of the case involving non-capital charges, when only a three-judge panel could properly exercise jurisdiction over non-capital charges pursuant to Ohio statutes).

The Court should be persuaded by its own previous decisions, the decision of the Second District in *Schmidt v. JJJTB, Inc*. and the other district courts in Florida, and other state cases holding that case jurisdiction is fundamental, unable to be waived, and capable of being challenged at any time.

III. *SCHMIDT V. JJJTB, INC*. DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL. THEREFORE, REVIEW SHOULD BE DISMISSED.

The Petitioner presents for the Court's review the issue of whether a party can waive a challenge to case jurisdiction by failing to timely assert such a challenge in the trial court. But that suggested issue in this case is simply manufactured by the Petitioner, and in no respect reflects the facts of

this case. By asserting that the Respondents did not timely assert a challenge to the trial court's case jurisdiction, the Petitioner infers that the Respondents failed to raise the issue (and challenge) of the trial court's case jurisdiction in the trial court. Such is simply not an accurate presentation of the facts in this case. The Respondents did in fact raise their challenge to the trial court's case jurisdiction in the trial court. The Second District's opinion specifically recognized this fact. "[S]chmidt moved for rehearing based, in part, on the trial court's lack of jurisdiction. The trial court denied Schmidt's rehearing motion …." (App. 005).

The certified conflict case of *MCR Funding v. CMG Funding Corp.,* and every other case cited to the Court by the Petitioner, involve factual situations where the challenging party raised the challenge to the trial court's jurisdiction ***for the first time*** on appeal. Given that the Respondents did in fact raise their challenge to the trial court's case jurisdiction in the trial court, there is simply no waiver issue in this case, and no conflict between the district court cases for this Court to resolve. This Court has long recognized that the facts of the case are of the utmost importance in evaluating the existence of conflict between the district courts, and when the district courts decisions are materially distinguishable this Court has no discretion and lacks jurisdiction to review the case. *Kartsonis v. State,* 319 So. 3d 622 (Fla.

2021) (citing *Mancini v. State*, 312 So. 2d 732 (Fla. 1975)). The inquiry in this case should now end here and the Court should decline to exercise its jurisdiction in this case.

Petitioner identifies four cases allegedly conflicting with the Second District's decision in the case at bar, to wit: *MCR Funding v. CMG Funding Corp.,* 771 So. 2d 32 (Fla. 4th DCA 2000); *Schroeder v. MTGLQ Inv'rs, L.P.,* 290 So. 3d 93 (Fla. 4th DCA 2020); *Clarke v. Global Guaranteed Goods & Servs., Inc.,* 2023 WL 3909995 (Fla. 6th DCA 2023); and *Ocean Bank v. Caribbean Towers Condo. Ass'n,* 121 So. 3d 1087 (Fla. 3d DCA 2013). The facts of the case at bar are readily distinguishable from the cases presented to the Court by the Petitioner.

In the certified conflict case of *MCR Funding v. CMG Funding Corp.,* on appeal, ***for the first time***, the appellant claimed that the trial court lacked subject matter jurisdiction. *Id.* The Fourth District specifically ruled that "[h]aving willingly submitted itself, and the dispute, to the court's authority, MCR may not ***for the first time*** on appeal challenge the court's power to decide the issue." *Id.* (Emphasis added). The facts in the case at bar are readily distinguishable from the facts in *MCR Funding v. CMG Funding Corp.* In the case at bar the challenge to the trial court's case jurisdiction was clearly raised in the trial court by way of motion for rehearing. As such, the

trial court had the full opportunity to consider the issue and render a proper order. The trial court did in fact fully consider the issue on rehearing, but unfortunately entered an erroneous order when ruling. The law is well recognized by this Court and the appellate courts of Florida that an issue that had not been previously raised or challenged in the trial court will be properly preserved for appellate review if the issue is raised in a motion for rehearing in the trial court. *Citizens of the State v. Clark*, 373 So. 3d 1128 (Fla. 2023) (when a final order addresses substantive issues or reaches legal conclusions that have not been previously raised or challenged, then a party must file a motion for rehearing to preserve those alleged errors for appellate review); *See also Morgan v. Am. Airlines*, 296 So. 3d 565 (Fla. 1st DCA 2020).

The Petitioner next cites the case of *Schroeder v. MTGLQ Inv'rs, L.P.,* 290 So. 3d 93 (Fla. DCA 2020) in support of its argument for express and direct conflict with the case at bar. Again, the facts in *Schroeder* are readily distinguishable from this case. In *Schroeder*, the appellant claimed fundamental error occurred in the trial court. But the objection to the alleged fundamental error was not raised in the trial court, and was raised ***for the first time*** on appeal. The court in *Schroeder,* citing *MCR Funding v. CMG Funding Corp.,* ruled that any fundamental error was waived by the appellant

having willingly submitted herself to the trial court's authority to decide the dispute. *Id.* The court went on to hold that the appellant "could have raised the issue as a matter of case jurisdiction," and didn't. *Id.* As with *MCR Funding v. CMG Funding Corp.,* the appellant raised the issue of alleged fundamental error ***for the first time*** on appeal. Again, in the case at bar the Respondents raised their challenge to the trial court's case jurisdiction in the trial court. It is significant to note that review of the *Schroeder* case was presented to this Court on jurisdictional briefs under Art. V. § (3)(b)(3) Fla. Const., and the Court declined to accept jurisdiction and review of the case. *Schroeder v. MTGLQ Investors, L.P*., 2020 WL 3525940 (Fla. 2020).

The Petitioner next cites the case of *Clarke v. Global Guaranteed Goods & Servs., Inc.,* 2023 WL 3909995 (Fla. 6th DCA 2023) in support of its argument for express and direct conflict with the case at bar. Again, the facts in *Clarke* are readily distinguishable from the case at bar. In *Clarke* the appellant **for the first time** on appeal argued that the trial court lacked jurisdiction to adjudicate a motion to enforce settlement. On appeal the Sixth District wrote that it was persuaded by *MCR Funding v. CMG Funding Corp.,* and held that "case jurisdiction may be waived if not first raised in the trial court, and it was indeed waived for that reason." *Id.* A simple reading of *Clarke* establishes that it is inapplicable to the case at bar. In *Clarke*, the

court clearly ruled that the challenge to the trial court's case jurisdiction was waived for the very reason that the challenge was not first raised in the trial court. Such are not the facts in this case now before the Court. The Respondents did in fact raise their challenge to the trial court's case jurisdiction in the trial court. One can only surmise how the Sixth District would have ruled in *Clarke* had the appellant first raised the challenge to the trial court's case jurisdiction in the trial court.

Finally, the Petitioner cites the case of *Ocean Bank v. Caribbean Towers Condo. Ass'n,* 121 So. 3d 1087 (Fla. 3d DCA 2013) in support of its argument for express and direct conflict with the case at bar. The citation of *Ocean Bank* by the Petitioner in this case seems to be a stretch. The court in *Ocean Bank* seemed to have construed "case jurisdiction" as "procedural" jurisdiction, but that is not exactly certain from the court's opinion. It is also not certain if the issue of the challenge to the trial court's procedural jurisdiction was raised in the trial court. The only thing that seems certain in *Ocean Bank* is that the court ruled that a non-jurisdictional argument can be waived. It seems in *Ocean Bank* that the appellant attempted ***for the first time*** on appeal to argue that the trial court's jurisdiction had been waived, but even that assumption is uncertain from the *Ocean Bank* opinion.

Notwithstanding, there is clearly no express and direct conflict between *Ocean Bank* and the case at bar.

The Petitioner asserts in its Initial Brief that the Third, Fourth and Sixth Districts have held that a challenge to the trial court's case jurisdiction is waived if it is not timely raised. But that is clearly not the factual issue in this case. The Second District's opinion and the Petitioner's Initial Brief [at pg. 6] both readily acknowledge that the Respondents first raised their challenge to the trial court's case jurisdiction in the trial court before appeal.

IV. THE TRIAL COURT'S FINAL ORDER IN THE FIRST APPEAL WAS FINAL IN EVERY RESPECT, THEREBY PROPERLY SUBJECTING THE ORDER TO PLENARY APPEAL.

The Petitioner asserts in conclusion, for the first time ever, that the "Final Order" from the initial appeal in this case was not final at all. Therefore, notwithstanding the Second District's complete plenary appeal proceeding and the issuance of its mandate, the Petitioner now asserts such an appeal was erroneous and that the trial court never lost case jurisdiction in this case. Such an assertion by the Petitioner is completely devoid of any factual or legal merit, and should be summarily dismissed by the Court.

Notwithstanding that the trial court, all of the parties, and the Second District Court of Appeal treated the July 16, 2015, "Final Order" as a final order subject to plenary appeal, the Petitioner now asserts for the first time

that the Final Order from the initial appeal lacked words of finality, and thus was not a final order subject to plenary appeal.

The law in Florida is long held and well established that the test of finality of a court order is "whether the order in question constitutes the end of the judicial labor in the case, and nothing further remains to be done by the court to effectuate a termination of the cause as between the parties directly affected." *S.L.T. Warehouse Co. v. Webb*, 304 So. 2d 97 (Fla. 1974). *See also M.M. v. Fla. Dep't of Children and Families*, 189 So. 3d 134 (Fla. 2016); *State v. Jackson*, 306 So. 3d 936 (Fla. 2020).

While the language used in an order or judgment may be helpful in determining the issue of finality, typical words of finality like "plaintiff shall go hence without day" or "for which let execution issue" are not essential to finality. The content and language of the judgment can show that it is final even though it does not include one of the standard phrases. *Getman v. Tracey Const., Inc.,* 62 So. 3d 1289 (Fla. 2d DCA 2011); *Friedman v. Friedman,* 825 So. 2d 1010 (Fla. 4th DCA 2002); *State Farm Mut. Auto. Ins. Co. v. Open MRI of Orlando, Inc.,* 780 So. 2d 339 (Fla. 5th DCA 2001).

The Second District unequivocally recognized that the trial court entered a final order in the initial Hillsborough County case. In its opinion in *Schmidt v. JJJTB, Inc*., the Second District wrote:

> **Unquestionably, the trial court entered a final order in the initial Hillsborough County case** without reserving jurisdiction over any matter. JJJTB unsuccessfully appealed that final order. *See* Fla. R. App. P. 9.030(b)(1)(A); *JJJTB, Inc.,* 197 So. 3d 50; *see generally SCI, Inc. v. Aneco Co.,* 410 So. 2d 531, 532 (Fla. 2d DCA 1982) ("The test to be used by appellate courts in determining finality of an order, judgment or decree is whether there has been an end to the judicial labor below and nothing further remains to be done to terminate the dispute between the parties directly affected." (citation omitted)). (Emphasis added).

The trial court's July 16, 2015, "Final Order" was in fact a final order terminating the judicial labor in the case. The Petitioner has failed to assert what judicial labor, if any, remained for the trial court after the entry of the Final Order. As stated by the Second District, upon the entry of the Final Order the trial court did not reserve jurisdiction over any matter in the case. As such, the Final Order was final in all respects subject to plenary appeal.

CONCLUSION

As the Second District recognized, this case presents nothing more than an ill-advised tactical decision by the Petitioner to seek to amend its pleadings after the case had been determined in finality on appeal, rather than seeking to file a new action as it should have. The trial court acted in excess of its jurisdiction and committed fundamental error by entering an erroneous order permitting the Petitioner to amend its pleadings after the final judgment in the case had been entered and affirmed on appeal.

This Court ruled over 40 years ago that a procedure that allows an appellate court to rule on the merits of a trial court judgment and then permits the losing party to amend its initial pleadings to assert matters not previously raised renders a mockery of the finality concept in our judicial system. *Dober, M.D. v. Worrell*, 401 So. 2d 1322 (Fla. 1981) ("It is our view that a procedure which allows an appellate court to rule on the merits of a trial court judgment and then permits the losing party to amend his initial pleadings to assert matters not previously raided renders a mockery of the 'finality' concept in our system of justice. Clearly, this procedure would substantially extend litigation, expand its costs, and, if allowed, would emasculate summary judgment procedure."). The Court should approve the Second District Court of Appeal's decision in *Schmidt v. JJJTB, Inc.* because it is based on sound judicial policies supported by this Court and other appellate courts in Florida that have addressed the question at issue.

Additionally, the Court should decline review of this case because there is no actual conflict between the opinions of the district courts. Although a decision certified as being in direct conflict does not need to "expressly" conflict with another appellate decision, there still must be conflict in the decisions of the district courts. *Dept. of Law Enforcement v. House*, 678 So. 2d 1284 (Fla. 1996). The Court should decide that the district court decisions

in this case are distinguishable and that there is no conflict to be resolved. *State v. Lovelace*, 928 So. 2d 1176 (Fla. 2006); *Summit Claims Management v. Lawyers Express Trucking, Inc.,* 944 So. 2d 339 (Fla. 2006).

JESSE LEE RAY ATTORNEY AT LAW, P.A.

/s/ Jesse L. Ray, Esquire
Jesse L. Ray, Esquire
jray@jesseleeray.com
Florida Bar No. 0919101
JESSE LEE RAY ATTORNEY AT LAW, P.A.
13014 N. Dale Mabry Hwy. #315
Tampa, Florida 33618-2808
Secondary: efile@jesseleeray.com
Telephone: (813) 443-9701
Facsimile: (866) 523-5468
Counsel for Respondents Stephen V. Schmidt and Schmidt Farms, Inc.

And

EDWARD WILLIAM COLLINS
THE LAW OFFICE OF WILLIAM COLLINS, P.A.
Florida Bar No. 16463
503 E. Jackson Street, #332
Tampa, Florida 33602
TELEPHONE: (727) 403-0070
bill@williamcollinslaw.com
Co-Counsel for Respondents Stephen V. Schmidt and Schmidt Farms, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I served a true and correct copy of the foregoing document via electronic transmission via E-PORTAL to: Kansas R. Gooden, Esq., Boyd & Jenerette, P.A., 11767 S. Dixie Hwy, #274, Miami, FL 33156 kgooden@boydjen.com and APStaff@boydjen.com; Sophia Bernard, Esq. and Lauren Feldman, Esq., Taylor Johnson, PL, 20 3rd Street SW, #209, Winter Haven, FL 33880 sbernard@taylorlawpl.com; ifeldman@taylorlawpl.com;lroberts@taylorlawpl.com; efiling@taylorlawpl.com.

/s/ Jesse L. Ray, Esquire
Jesse L. Ray, Esquire

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Respondents' Answer Brief on the Merits complies with the font and page limit requirements of Rule 9.045 and 9.210(a)(2)(A) of the Florida Rules of Appellate Procedure, as this Answer Brief on the Merits is filed in Arial 14-point font and is less than 13,000 words in length excluding the portions exempted by Rule 9.210(a)(2)(E).

/s/ Jesse L. Ray, Esquire
Jesse L. Ray, Esquire