

IN THE SUPREME COURT OF FLORIDA

Case No.: SC23-0915

JJTB, INC.,

Petitioner,

v.

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

Respondents

PETITIONER JJTB, INC.'S
REPLY BRIEF

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ARGUMENT IN RESPONSE AND REBUTTAL

I. CASE JURISDICTION IS DIFFERENT THAN SUBJECT MATTER JURISDICTION AND SHOULD NOT BE TREATED THE SAME.

A. THE RESPONDENTS' ARGUMENT IS NOT SUPPORTED BY THE TEXT OF THE CONSTITUTION OR STATUTES.

Like the Second District, the Respondents make a crucial error—treating case jurisdiction like subject matter jurisdiction. While Respondents claim that they are not, the analysis in their Answer Brief shows otherwise.

Subject matter jurisdiction is simply a court's authority to hear controversies within "a certain class of cases or causes." Fla. Power & Light Co. v. Canal Auth., 423 So. 2d 421, 423 (Fla. 5th DCA 1982).

It is the power lawfully conferred to deal with the general subject involved in the action. It does not depend upon the ultimate existence of a good cause of action in the plaintiff, in the particular case before the court. It is the power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case.

Cunningham v. Standard Guar. Ins. Co., 630 So. 2d 179, 181 (Fla. 1994) (internal quotations omitted). See also In re Adoption of D.P.P., 158 So. 3d 633, 636-37 (Fla. 5th DCA 2014).

Respondents perpetuate this error by claiming that a lack of case jurisdiction is "fundamental error," citing subject matter jurisdiction cases as support. This ignores why a lack of subject matter jurisdiction is considered

fundamental error—it is outside the boundaries of the Florida Constitution and beyond the authority of the Court. See State v. Williams, 260 So. 3d 472, 474 (Fla. 1st DCA 2018) (“It is true that the question of subject-matter jurisdiction may generally be raised for the first time on appeal. This is because a court acting beyond its jurisdiction may be committing fundamental error.”).

Indeed, the Florida Constitution is the document which gives the judicial branch the authority to act. Art. II, § 3, Fla. Const. (“The powers of the state government shall be divided into legislative, executive and judicial branches.”). Article V broadly defines subject matter jurisdiction. Art. V, § 5(b), Fla. Const. (“The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law.”). “[T]he legislature may further define a court’s jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution.” Alexdex Corp. v. Nachon Enters., 641 So. 2d 858, 861 (Fla. 1994). The Legislature did so here with section 26.012, Florida Statutes. § 26.012(2)(a), (c), (g), Fla. Stat.; see also § 702.01, Fla. Stat.

Those same considerations are not present with case jurisdiction. Neither the Constitution nor section 26.012, Florida Statutes, address procedural or case jurisdiction—indeed, it is judge-made and arises from the

common law. See Scott Stephens, Florida’s Third Species of Jurisdiction, 82 Fla. Bar J. 10, 11 (March 2008) (“Procedural jurisdiction has nothing to do with the scope of the court’s constitutional or statutory power, or the status of the parties. Instead, it is a matter of compliance with applicable procedural principles, some codified in rules, but more often products of case law.”). Thus, Respondents lack any textual support for their argument that case jurisdiction should be treated the same as subject matter jurisdiction.

B. FOR A PROCEDURAL ERROR TO BE FUNDAMENTAL, IT MUST AMOUNT TO A DENIAL OF DUE PROCESS.

Lacking support in the Florida Constitution or any statute, Respondents next turn to numerous criminal cases on fundamental error. But, those cases show that for a procedural error, such as this, to be considered fundamental, it must rise to the level of a denial of due process.¹ See, e.g., Ray v. State, 403 So. 2d 956, 960 (Fla. 1981) (“This Court has indicated that for error to be so fundamental that it may be urged on appeal, though not properly presented below, the error must amount to a denial of due process.”); Sochor v. State, 619 So. 2d 285, 290 (Fla. 1993) (“As to the first argument,

¹ This general principle also applies to civil cases. See Kirkpatrick Tr. v. Lakeview Loan Servs., LLC., 377 So. 3d 650 (Fla. 5th DCA 2024) (“Courts have all but foreclosed fundamental error in civil cases. Nonetheless, basic principles of due process must be observed.”) (internal citation omitted).

fundamental error occurs in cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its application. The error must amount to a denial of due process.”) (internal citations omitted).

The Florida Constitution provides: “No person shall be deprived of life, liberty or property without due process of law. . . .” Art. I, § 9, Fla. Const. See also U.S. Const., amend XIV. “The constitutional guarantee of due process requires that judicial decisions be reached by a means that ‘preserves both the appearance and reality of fairness.’” Verizon Bus. Network Servs., Inc. v. Dep’t of Corr., 988 So. 2d 1148, 1151 (Fla. 1st DCA 2008) (citation omitted).

“Basic due process requires a party be provided notice and a meaningful opportunity to be heard, the denial of which constitutes fundamental error.” Pena v. Rodriguez, 273 So. 3d 237, 240 (Fla. 3d DCA 2019). “To qualify under due process standards, the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive.” Rucker v. City of Ocala, 684 So. 2d 836, 841 (Fla. 1st DCA 1996).

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information,

and it must afford a reasonable time for those interested to make their appearance.

Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950).

Schmidt and Schmidt Farms were **not** denied procedural due process. They had more than sufficient notice and opportunity to be heard. In fact, Schmidt and Schmidt Farms actively litigated this case for two and a half years after the complaint was amended. During that time, they sought affirmative relief by way of a counterclaim and asserted eighteen different affirmative defenses. (R. 2761-2789). They participated in a three-day bench trial and entered evidence. (R. 5070-5580). During trial, the Respondents even moved for judgment as a matter of law in their favor. (R. 4370-4404; 5245).

Schmidt and Schmidt Farms waited until **after** final judgment had been entered to raise any objection to “jurisdiction.” Even at that point, they simply objected on the basis of subject matter jurisdiction and did not raise an objection on case jurisdiction. (R. 4487-4556). There simply was no denial of due process. They had sufficient notice of these proceedings and were meaningfully heard at every step. The trial court fully afforded Schmidt and Schmidt Farms due process of law required by our Constitution.

As in this case, the lack of case jurisdiction does not automatically create a denial of due process. Notice and opportunity to be heard can be given. Therefore, a lack thereof is not fundamental error.²

C. THE RESPONDENTS' ARGUMENT IS NOT SUPPORTED BY PRECEDENT FROM THIS COURT.

Schmidt and Schmidt Farms repeatedly turn to Second District precedent to support their argument. Nevertheless, this Court has recognized the differences between subject matter and case jurisdiction on several occasions. See, e.g., Malone v. Meres, 109 So. 677 (Fla. 1926); State ex rel. Fulton Bag & Cotton Mills v. Burnside, 15 So. 2d 324, 326 (Fla. 1943); State v. King, 426 So. 2d 12, 14 (Fla. 1982); Finkelstein v. N. Broward Hosp. Dist., 484 So. 2d 1241, 1243 (Fla. 1986); Cunningham, 630 So. 2d at 181; Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 801 n.3. (Fla. 2003).

Yet, Schmidt and Schmidt Farms have not asked this Court to recede from any of these cases and have not argued that they are clearly erroneous. State v. Poole, 297 So. 3d 487, 507 (Fla. 2020). Respondents only attempted to distinguish one of these cases. In any event, this Court should

² Additionally, case jurisdiction can appear and disappear throughout a case depending on what is occurring in the case. Stephens, supra at 17. Elevating it to fundamental error ignores this reality.

adhere to the principles set forth within these opinions—that subject matter jurisdiction and case jurisdiction are separate and distinct concepts.

D. THE TWO TYPES OF JURISDICTION ARE DIFFERENT AND A LACK THEREOF PRODUCES DIFFERENT RESULTS.

Respondents have not rebutted or even grappled with the fact that a lack of subject matter jurisdiction produces a void judgment, whereas a lack of case jurisdiction produces a voidable judgment. Compare Roberts v. Seaboard Sur. Co., 29 So. 2d 743, 748 (Fla. 1947); with Clarke v. Global Guaranteed Goods & Servs., Inc., 364 So. 3d 1135, 1138 (Fla. 6th DCA 2023), and 14302 San Pablo Place SPE, LLC v. VCP-San Pablo, Ltd., 92 So. 3d 320, 321 (Fla. 1st DCA 2012) (Ray, J., concurring).

There is distinction between a judgment that is “void” and one that is “voidable.” *See generally Malone v. Meres*, 91 Fla. 709, 109 So. 677 (Fla. 1926). A void judgment is so defective that it is deemed never to have had legal force and effect. In contrast, a voidable judgment is a judgment that has been entered based upon some error in procedure that allows a party to have the judgment vacated, but the judgment has legal force and effect unless and until it is vacated.

Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007). See also Metro. Mortg. Co. v. Rose, 353 So. 3d 1230, 1233 (Fla. 3d DCA 2022) (“A judgment is void, rather than voidable, when it is entered by a court lacking jurisdiction over the subject matter of the case or jurisdiction over the person . . . or where there is a violation of due process.

Conversely, a voidable judgment is a judgment that has been entered based upon some error in procedure that allows a party to have the judgment vacated, but the judgment has legal force and effect unless and until it is vacated.”) (internal citations omitted).

Objections to voidable matters must be timely made or they are waived. King, 426 So. 2d at 14; Haddock v. State, 176 So. 782 (Fla. 1937); Fla. Power & Light Co., 423 So. 2d at 423 n.5.

II. THIS COURT HAS JURISDICTION UNDER TWO SEPARATE CONSTITUTIONAL PROVISIONS.

The Respondents challenge whether this Court has jurisdiction. Nevertheless, this Court has jurisdiction under two separate constitutional provisions. First, the Second District certified conflict with the Fourth District’s decision in MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000). See Art. V, § 3(b)(4), Fla. Const.; State v. Vickery, 961 So. 2d 309, 311 (Fla. 2007) (explaining requirements of certified conflict). This case easily meets this requirement.

Second, this Court has jurisdiction as the Second District’s decision expressly and directly conflicts with other district court of appeal decisions on the same question of law. See Art. V, § 3(b)(3), Fla. Const. To try to get around the Court’s acceptance of jurisdiction on this ground, Respondents

try to distinguish the cases as to when the objection to lack of case jurisdiction was raised. Respondents claim that Petitioner “simply manufactured” the issue before this Court and that they did raise this issue in the trial court. However, a review of the record shows that simply is not the case.

The record shows that the parties actively litigated this case for over two years after the amended complaint was filed. The Respondents sought affirmative relief and asserted eighteen affirmative defenses. (R. 2761-2789). The Respondents participated in a three-day bench trial and moved for affirmative relief in their favor. (R. 4370-4404; 5070-5580; 5245).

Schmidt and Schmidt Farm waited until *after* final judgment had been entered to raise any objection to “jurisdiction.” Even then, they simply objected on the basis of subject matter jurisdiction and did not raise an objection to case jurisdiction. (See R. 4492) (“I. “The Trial Court Lacks Subject Matter Jurisdiction.”); (R. 4493) (“At that point, the Court had no subject matter jurisdiction to grant any amendment. . . .Granting that motion was erroneous and the court lacked subject matter jurisdiction.”); (R. 4500) (“The Court lacked subject matter jurisdiction to entertain the amended pleadings after the Second DCA mandate.”).

Respondents never made the specific argument that the trial court lacked case jurisdiction. See Sunset Harbour Condo. Ass'n v. Robbins, 914 So. 2d 925, 928 (Fla. 2005) (“In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.”); Harrell v. State, 894 So. 2d 935, 940 (Fla. 2005) (“First, a litigant must make a timely, contemporaneous objection. Second, the party must state a legal ground for that objection. Third, “[i]n order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below.”) (internal citations omitted).

Even on appeal, the Respondents argued that the trial court lacked “subject matter jurisdiction or other legal authority.” (A. 456, 470, 486). It was not until the Reply Brief that Respondents even used the words “case jurisdiction” or “continuing jurisdiction.” (A. 565). Thus, an objection specifically to case jurisdiction was not raised until the appeal. Indeed, the only thing manufactured is their version of the “facts” of what they asserted below.

In any event, these record facts squarely puts this case in line with 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., 364 So. 3d 1135 (Fla. 6th DCA 2023), and Ocean Bank v. Caribbean Towers Condo. Ass'n, 121 So. 3d 1087 (Fla. 3d DCA 2013). The same issue of law is present—whether an objection or challenge to case jurisdiction is waivable. The Second District ruled that it is not waivable, while the Third, Fourth, and Sixth Districts have held that this type of challenge is waived if not timely raised. This Court has jurisdiction.

CONCLUSION

Subject matter and case jurisdiction are different. Subject matter jurisdiction springs from our Constitution and statutes. Whereas, case jurisdiction is purely procedural and is judge-made. A lack of subject matter jurisdiction produces a void judgment, where a lack of case jurisdiction renders it merely voidable. As a result, these two types of jurisdiction should be treated differently.

This Court should quash the Second District's decision and approve the conflict cases—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., 364 So. 3d

1135 (Fla. 6th DCA 2023); and Ocean Bank v. Caribbean Towers Condo. Ass'n, 121 So. 3d 1087 (Fla. 3d DCA 2013).

It should hold that an objection to case jurisdiction is waived if not timely asserted at the first opportunity. Case jurisdiction is about the procedural posture of the case and procedural irregularities can be waived. Otherwise, there is an incentive to remain silent about procedural defects; it would allow a party to litigate a case to conclusion and exercise veto power over the trial court's judgment.

WHEREFORE, Petitioner JJTB, INC. respectfully requests for this Court to approve the conflict cases, and quash the Second District's decision.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing has been furnished via E-PORTAL to: **Jesse L. Ray, Esq.**, Jesse Lee Ray Attorney at Law, P.A., 13014 N. Dale Mabry Hwy., Suite 315, Tampa, FL 33618, (jray@jesseleeray.com); **Edward William Collins, Esq.**, The Law Office of William Collins, P.A., 203 E. Jackson Street, #332, Tampa, FL 33602 (bill@williamcollinslaw.com); on this 17th day of April, 2024.

/s/ Kansas R. Gooden
KANSAS R. GOODEN

CERTIFICATE OF COMPLIANCE

In accordance with Florida Rule of Appellate Procedure Rules 9.045 and 9.210(a)(2)(A), the undersigned counsel hereby certifies that this Brief complies with the font and word requirements of the Rule: Arial 14-point font and does not exceed 4,000 words.

/s/ Kansas R. Gooden
KANSAS R. GOODEN