

THE SUPREME COURT OF FLORIDA

**Teresa M. Gaffney,
Sarah K. Sussman
The Sussman Family Trust
Petitioners,**

**CASE NO.:SC2024-1862
DCA Case No.2D24-0352
On Appeal from:
L.T. 14-CA-003762**

v.

**Phillip A. Baumann,
Administrator ad Litem,
The Estate of John J. Gaffney.
Respondent.**

PETITIONER'S JURISDICTIONAL BRIEF

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In accordance with Rule 9.120(d), the Appendix to this Brief contains a copy of the decision entered into by the Second District. App. Pg. 1. References to the Appendix shall be cited as: (App., Pg. ____).

STATEMENT OF JURISDICTION

The Florida Constitution grants this Court discretionary jurisdiction to review a district court decision that expressly and directly conflicts with a decision of another district court. Art. V, §3(b)(3), Fla. Const. (1980).

STATEMENT OF THE CASE AND FACTS

Respondent filed a lawsuit against Petitioner seeking a declaratory action for the Estate of John J. Gaffney. The action was filed after the Statute of Limitations had expired, the Court did not have Subject Matter Jurisdiction, and the Respondent did not have standing under Fla. Stat. 415.1111. Petitioner allegedly missed a deposition, her pleadings were struck, and a default judgment was entered. The Final Judgment was executed on October 16, 2017, and recorded on October 26, 2017. The Final Judgment took the Petitioner's Homestead Property as a sanction pursuant to Chapter 726 and under Fla. 415.1111. There never was a determination as

to Homestead and there never were findings of fact as to a fraudulent transfer and no findings of fact as to exploitation. In fact, Respondent made a conclusory statement that Petitioner had exploited Mr. Gaffney in his Complaint. Respondent attached an Exhibit which was fatally inconsistent with the exploitation allegation. The exhibit established that Petitioner had given Mr. Gaffney money and further established that Petitioner did everything to help Mr. Gaffney.

On October 18, 2017, a timely and proper Notice of Homestead was filed pursuant to Fla. Stat. 222.01 and was not challenged. A timely second Notice of Homestead was filed on June 13, 2024, and was filed pursuant to Fla. Stat, 222.01. It was also not challenged.

The Second District Court of Appeal (2ndDCA) per curiam affirmed (PCA) the Final Judgment.

On November 17, 2023, Petitioner filed an Amended Motion to Vacate the Final Judgment and Declaratory Action to Determine Homestead pursuant to Fla. R. Civil Proc. 1.540(b).

On January 5, 2024, without a hearing and without evidence, the Trial Court denied the Motion with Prejudice stating that

Homestead had been determined. There has never been a determination of Homestead which was stated by Bankruptcy Judge Roberta Colton in her order of June 3, 2019. Judge Colton stated that Petitioner and her family met the requirements for Homestead but the Trial Court “decline[d] to determine Homestead” because the Homestead Property was taken as a sanction.

Bankruptcy Judge Colton reviewed the Record in Case No.: 14-CA-3762 and she found no evidence of an Order determining Homestead. Retired Judge Rex Barbas confirmed this on 9/13/2019 when he, Retired Judge Barbas, stated that he did take the Homestead Property as a sanction which is why he did not make a determination of Homestead.

The Second District on 9/12/2024, issued an Order which stated that the Court had no jurisdiction. The Court stated that matters had been ruled on, previously. There has not been a determination of Homestead. Petitioner purchased the Homestead Property, and it became her and her family’s Homestead Property in January of 2012. The lawsuit was filed by Respondent on April 10, 2014.

Homestead Property is protected by Article X Section 4 of the Florida Constitution.

On November 22, 2024, the 2ndDCA stated that Petitioner had filed meritless filings.

During the course of 2024, the unlawful conduct of Respondent and the Courts was discovered. The unlawful conduct being reviewed includes the corruption, the tampering with and falsification of the Official Court Files of the Lower Court, the 2ndDCA and other Court Files. Orders that Respondent and Judges say exist are not in the Official Court File and such Orders do not exist. Additionally, Lower Court Retired Judge Barbas was “caught” talking with Appellate Judge(s) regarding Petitioner’s cases on appeal. In *TFB v. McCain*, 361 So. 2d 700 (Fla. 1978), the ex parte misconduct of McCain wasn’t tolerated as this Court disbarred McCain, a former Supreme Court Justice based on the ex parte communications with Appellate Judges. See, *The Florida Bar v. McCain*, 361 So. 2d 700 (Fla. 1978).

SUMMARY OF THE ARGUMENT

The decisions from the Second District are in direct and express conflict with decisions from this Court and from all of the other district courts on the issue of Homestead. The Petitioner seeks this Court's discretionary review of the decision of the Second District, which is in contravention of Article X Section 4 of the Florida Constitution, the 156-year history of caselaw which includes but is not limited to *Havoco of America v. Hill*, 790 So. 2d 1018 (Fla. 2001) and *Butterworth v. Caggiano*, 605 So. 2d 56 (Fla. 1992) and expressly and directly conflicts with decisions of the other District Courts of Appeal and conflicts with its own decisions. Petitioner and her family were entitled to a determination of Homestead prior to the taken of their Homestead Property. The Second District has falsely stated that there has been a determination of Homestead. No such Orders exist because there was never a determination of Homestead as established by the Official Court File.

ARGUMENT I

THIS COURT SHOULD EXERCISE ITS JURISDICTION TO REVIEW THE UNLAWFUL CONDUCT OF FALSIFYING ORDERS, TAMPERING WITH THE DOCKET AND THE WELL DOCUMENTED EX PARTE COMMUNICATIONS.

The 2ndDCA has falsely stated that Homestead has been decided. The 2ndDCA refuses to allow Petitioner to have fair and impartial trier of fact and have stated that Petitioner cannot file her Motions without hiring counsel. The 2ndDCA's motive is too cover-up the well documented ex parte communications between Retired Judge Barbas and Appellate Judge(s) and the corruption and tampering with the Official Court File. Retired Judge Rex Barbas had a face-to-face discussion with a 2ndDCA Judge that was witnessed and overheard by another attorney who has provided an affidavit. This misconduct by Retired Judge Barbas was a blatant disregard for the integrity of the truth finding process, essential to our notion of equal justice under the law and is serious misconduct that cuts to the very heart of the judicial system. Retired Florida Supreme Court Justice David Lucius McCain was disbarred for similar

misconduct. See, *The Florida Bar v. McCain*, 361 So. 2d 700 (Fla. 1978).

Judge Daniel Sleet made the following comment during oral arguments in 2D20-1928 Lower Case 20-CA-2115:

JUDGE SLEET: You've already argued about that and we've reviewed that. We know about your claims for homestead because I looked up all the other appeals. Your claims about homestead have already been reviewed. What is new, ma'am?

There are no Orders on Homestead. The statement by Judge Sleet is patently false. Judge Sleet knows that homestead has never been properly decided or decided with an evidentiary hearing where witnesses testify, and the court provides in and in its order detailed findings fact that support the Court's written legal conclusions.

Respondent used the above quote by Judge Sleet in filings in his pleadings.

Tampering with court documents is considered unlawful in Florida.

The legal concept of "tampering with evidence" in Florida, means that a person cannot intentionally alter, destroy, hide, or remove

any document or record with the intent to prevent its use as evidence in a civil trial, nor can they knowingly present false documents as evidence in a legal proceeding.

Forgery is the act of falsifying, altering, forging, or counterfeiting a court document with the intent to defraud or injure someone. An example of forgery includes creating a fake court order.

In the case at bar, the issue of Homestead was never decided.

The evidence is overwhelming that Retired Judge Barbas had unlawful, ex parte communication with Appellate Court Judges to influence the Appellate Court to rule against Petitioner. This misconduct was witnessed by a reputable third party and this misconduct cannot be tolerated. See, *TFB v. McCain*, 361 So. 2d 700 (Fla. 1978).

The interaction with the Second District Court of Appeal and the falsification of the Official Court File has denied Petitioner due process.

ARGUMENT II

THIS COURT SHOULD EXERCISE ITS JURISDICTION TO BRING UNIFORMITY TO FLORIDA DECISIONAL LAW ON HOMESTEAD BECAUSE THE SECOND DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH ARTICLE X SECTION 4 OF THE FLORIDA CONSTITUTION, DECISIONS OF THIS COURT AND NUMEROUS DECISIONS OF THE OTHER DISTRICTS ON THE ISSUE OF THE PROTECTION OF HOMESTEAD.

In the instant case, this Court's resolution of the aforementioned decisions from the Second District, which decisions conflict with Article X Section 4 of the Florida Constitution, this Court decisions and decisions from the other districts, is necessary to definitively affirm the constitutionally guaranteed protection of Homestead Property.

In the case at bar, there is not a misapplication of the law but rather a failure to follow the law which goes to the fundamental issue of a Constitutional guarantee under Article X Section 4 of the Florida Constitution.

The decisions of the 2ndDCA are in direct contravention of *Havoco of America v. Hill*, 790 So. 2d 1018 (Fla. 2001). This is not a mere

misapplication of the law as discussed in *Askew v. Fla. Dep't of Children & Families*, 385 So. 3d 1034, 1038 (Fla. 2024) but a usurpation of the Law and a violation of the separation of powers.

The 2ndDCA's Decisions are in contravention of its own case law.

The Second District Court of Appeal in *Hayes v Norman Harris Servs., Inc.*, 198 So. 3d 716, 718 (Fla. 2nd Dist. Ct. App. 2016)

stated that “[o]n the merits, it was a denial of due process for the trial court to refuse to hear argument that the property was protected from forced sale by the homestead

exemption”. See *Beltran v. Kalb*, 982 So.2d 24, 26 (Fla. 3d DCA

2008) (holding that it was error to deny a party the right to be heard

on the homestead defense raised in his motion to set aside/vacate a

sheriff's sale); *Coy v. Mango Bay Prop. & Invs., Inc.*, 963 So.2d 873,

878 (Fla. 4th DCA 2007) (holding that it was reversible error to deny

a motion to prohibit a judicial sale without holding a hearing on a

homestead objection).

The Second District is also in direct contravention to the recently decided case from the Third District which is squarely on point.

Carbonell v. Marshall Glade, No. 3D23-0708 (Fla 3rd DCA June 19,

2024) was just issued on June 19, 2024, and *Carbonell* holds that Homestead property cannot be taken as a sanction, which is what was done in this case at bar. The Court in *Carbonell* also stated that the Court was “the constitutional dimension of Perez's homestead claim, and the protection it affords ... renders erroneous the trial court's inclusion of this property within the scope of its order, in the absence of an evidentiary hearing to determine the validity of Perez’s homestead claim.” *Carbonell v. Marshall Glade*, No. 3D23-0708 (Fla 3rd DCA June 19, 2024), citing, *Pelecanos v. City of Hallandale Beach*, 914 So. 2d 1044, 1047 (Fla. 4th DCA 2005).

The Lower Court’s Order entered on 10/16/2017, is in direct violation of *Havoco*.

District Courts of Appeal are duty bound to follow the holdings of the Florida Supreme Court. *Pardo v. State*, 596 So.2d 665 (Fla. 1992).

The Lower Court did not have a hearing on Homestead. There were no findings of fact. There was not a determination of Homestead.

The Homestead Property could not be taken as a sanction nor could

the Homestead Property be taken pursuant to Chapter 726, Florida Statutes. *Havoco* at 1029.

Florida constitutional exemptions are strongly protected.

Fraudulently transferring assets into the Florida constitutionally protected Homestead will not subject the Homestead to judicial sale or to a taking of the Homestead Property. *Id.*

The Final Judgment in the Lower Court was in direct contravention of *Havoco* rendering the Final Judgment void ab initio and all subsequent Orders void. *Campos v. Campos*, 230 So. 3d 553, 557 (Fla. 1st Dist. Ct. App. 2017) (This makes the point that if a *final* judgment, decree, or order is void, then all proceedings based on that void order are themselves void and nullities.).

The Final Judgment found that Petitioner exploited Mr. Gaffney.

The Lower Court took the Homestead Property based on exploitation which was contradicted by Respondent's own exhibit. There were no findings of fact and no evidence to support that conclusion. There was no hearing. In fact, the Exhibit attached to the Complaint was

“fatally inconsistent” with the allegation of exploitation and established that Petitioner was financially helping Mr. Gaffney.

Respondent had no standing to bring a count for exploitation.

Further, Exploitation is not one of the three exceptions to the Homestead Exemption in Art. X, § 4 of the Florida Constitution.

Petitioner was denied due process. The Second District Court failed to follow the law, more specifically Article X Section 4 of the Florida Constitution.

Petitioner and her family established Homestead in January 2012. The Lawsuit was filed on April 10, 2014. Therefore, Homestead was established two years prior to the filing of the lawsuit. A determination of Homestead was required prior to the taking of their Homestead Property.

Pursuant to Fla. Stat. §222.01, Respondent is time barred from making objection to the Notice of Homestead by his (Respondent's) failure to institute an action. The Judgment Lien “shall be deemed as not attaching to the property by virtue of its status as homestead property”. Fla. Stat. §222.01.

The concern now is that Courts can take Homestead Property as a sanction in violation of the Florida Constitution.

Petitioner respectfully urges this Court to accept jurisdiction of this cause in order to affirm the 156 years of Homestead Protection that has been afforded to Florida Citizens and to correct the unlawful conduct of the Court in tampering with the Official Court Files and with the well documented ex parte communications with Retired Judge Barbas and Appellate Judge(s).

This Court's guidance and precedent is urgently needed to preserve Homestead Protection and to clarify the public policy of this state to affirm Florida's Homestead Protection.

CONCLUSION

Petitioner respectfully requests that this Court accept jurisdiction.

This Court's guidance is urgently needed to bring stability and precedence to an issue of sweeping significance to Florida's citizens who believe that Homestead Property is protected under Article X Section 4 of the Florida Constitution. Constitutional rights cannot be unknowingly waived, and in the instant case, Homestead Property cannot be taken as a sanction. Trial Court Judges cannot

try to influence Appellate Judges. Official Court Files may not be tampered with or corrupted.

Respectfully submitted on this 2nd day of January 2025 by:

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CERTIFICATE OF FONT AND WORD COMPLIANCE

I HEREBY CERTIFY that this Brief complies with Florida Rule of Appellate Procedure 9.045 by using a Bookman Old Style 14-point font. The word count for required text is 2,406 words.

/s/Teresa M. Gaffney

Teresa M. Gaffney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by E-Portal, this 2nd day of January 2025.

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