

IN THE SUPREME COURT OF FLORIDA

GEORGE MAY,

Petitioner,

Supreme Court Case No.: SC04-2270

vs.

DCA Case No.: 4D04-2800

PATRICK C. BARTHET, et al.,

Respondents.

**RESPONDENTS' MANDALAY RESORTS GROUP, INC.,
MICHAEL K. WINSTON, AND JOHN R. HART'S
JURISDICTIONAL BRIEF**

On Review from the Fourth District Court of Appeal

JOHN R. HART
Florida Bar No. 612553
MICHAEL K. WINSTON
Florida Bar No. 051403
CARLTON FIELDS, P.A.
Post Office Box 150
West Palm Beach, FL 33402-0150

Attorneys for Respondents,
MANDALAY RESORTS GROUP,
INC., MICHAEL K. WINSTON, AND
JOHN R. HART

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Vexatious Litigant Law, section 68.093, Florida Statutes 1, 5

STATEMENT OF THE CASE AND FACTS

For purposes of this brief, respondents rely upon the facts contained within the four corners of the Fourth District's decision in May v. Barthet, 886 So. 2d 324 (Fla. 4th DCA 2004). Respondents object to petitioner's improperly including alleged additional facts that are not contained within the Fourth District's decision.

Petitioner is a vexatious litigant. The circuit court on two separate occasions ordered the clerk not to accept any pro se filings unless this petitioner receives prior permission from the court or a licensed attorney files the papers. See id. at 324. Petitioner did not comply and continued filing new "baseless lawsuits" on the same claims, "frequently joining as defendants the attorneys and trial judges who participated in the prior proceedings decided against [petitioner]." Id.

Petitioner filed the instant lawsuit despite the court's orders. See id. at 324-25. Respondents invoked the Vexatious Litigant Law, section 68.093, Florida Statutes. See id. at 325. After complying with the provisions of that statute, the circuit court ultimately dismissed the complaint after petitioner failed to appear. See id. Petitioner appealed the dismissal to the Fourth District. See id.

Respondents moved the Fourth District to prohibit petitioner from filing pro se appeals at that court. See id. That court found that:

[Petitioner's] practices have caused this court (and others) to expend an unreasonable amount of judicial resources disposing of frivolous claims. See, e.g., May v. Int'l Game Tech., Inc., 871 So. 2d 242 (Fla. 4th DCA 2004); May v. Allapattah Props. P'ship, 867 So. 2d 442 (Fla. 4th DCA 2004); May v. Gen. Elec.

Capital Auto Lease, Inc., 661 So. 2d 1309 (Fla. 4th DCA 1995); see also May v. Hatter, 2001 WL 579782 (S.D.Fla.2001) (offering a detailed chronology of appellant's similar abuse of Florida's federal court system). This court takes judicial notice of this and prior appeals appellant has filed in this court and finds that his pro se activities have needlessly interfered with the resolution of our other cases.

Id. The Fourth District concluded that it was appropriate to require an attorney's signature on future appeals by this petitioner at that court. See id. The Fourth District then ordered petitioner to show cause why it should not impose that sanction upon petitioner for petitioner's misconduct.

By separate order dated December 3, 2004, nunc pro tunc to November 10, 2004 (the date of the decision under review), after petitioner failed to show cause as required by May, the Fourth District prohibited petitioner "from filing any appeal or petition in [the Fourth District] unless such filing is signed by a member of The Florida Bar."

Petitioner thereafter sought review of the Fourth District's decision in May. In response, respondents filed in this Court their "Respondent Mandalay Resorts Group, Inc., John R. Hart, and Michael K. Winston's Motion to Dismiss Appeal for Violation of Lower Court Order. By order dated July 21, 2005, this Court referred respondents' motion to the jurisdictional panel and ordered respondents to file their jurisdictional brief.

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction to review the decision under review. Accordingly, this Court should dismiss review.

ARGUMENT

I. The Decision For Review Does Not Expressly And Directly Conflict With Any Of The Decisions Cited By Petitioner.

Most of petitioner's convoluted argument involves alleged "facts" that do not appear within the four corners of the Fourth District's decision in May v. Barthet, 886 So. 2d 324 (Fla. 4th DCA 2004). Accordingly, this Court should not consider for jurisdictional purposes those alleged "facts." See, e.g., Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986) (holding only facts appearing within the four corners of the majority opinion may be considered for jurisdictional purposes).

Petitioner appears to contend in his jurisdictional brief that the decision for review involves grand theft and that the decision invalidates: (1) the United States Constitution; (2) the Florida Constitution; (3) the Common Law of England; (4) several federal statutes; and (5) chapters 772, 775, 777, 812, and 813, Florida Statutes. Of course, nothing in May invalidates any of those legal authorities or discusses grand theft.

In support of his argument, petitioner cites fourteen decisions – thirteen of which are federal decisions. Apparently, petitioner contends these decisions are in

express and direct conflict of the decision under review. As this Court is aware, though, under the express text of article V, section 3(b)(3), Florida Constitution, this Court does not have express and direct conflict jurisdiction where the decision for review allegedly conflicts with a federal decision. See generally, e.g., Gandy v. State, 846 So. 2d 1141, 1143-44 (Fla. 2003) (explaining constitutional provision granting jurisdiction is limited and can only be invoked where there is a contrary decision rendered by district court of appeal or Florida Supreme Court). Thus, none of the thirteen federal decisions may form the basis for conflict jurisdiction.

The only Florida decision that petitioner cites is Anton v. Anton, 763 So. 2d 404 (Fla. 4th DCA 2000). That decision, however, arises from the Fourth District – the same district court that decided the decision for review. As this Court is aware, this Court does not have conflict jurisdiction where the decision for review allegedly conflicts with another decision from the same district court. See, e.g., Terry v. State, 808 So. 2d 1249, 1250 n.1 (Fla. 2002) (this Court does not have conflict jurisdiction over intra-district conflict); State v. Walker, 593 So. 2d 1049 (Fla. 1992). Thus, Anton does not serve as a basis for conflict jurisdiction.

This Court does not have express and direct conflict jurisdiction.

II. No Other Jurisdictional Basis Exists To Confer Jurisdiction Upon This Court To Review The Decision For Review.

No other jurisdictional basis exists that grants this Court jurisdiction to review the Fourth District's decision below.

Petitioner cites to several constitutional provisions in his jurisdictional brief, which appear to be: (1) article I, section 9, clause 3, U.S. Constitution (“No bill of Attainder or ex post facto Law shall be passed”); (2) article I section 10, clause 1, United States Constitution (No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts); and (3) article VI (containing supremacy clause). Nothing in the decision under review, however, implicates or construes those constitutional provisions. Indeed, the decision under review does not even mention any of those constitutional provisions. Thus, there is no basis for this Court to accept jurisdiction based on the construction of a constitutional provision.

Petitioner also cites several statutory provisions. It is unclear whether petitioner seeks review based on an express declaration that a state statute is valid. All but one of the statutory cites by petitioner is a federal statute. The express text of article V, section 3(b)(3), Florida Constitution, though, does not grant this Court jurisdiction to review a decision that declares valid a federal statute. Regardless, nothing in the decision for review even addressed a federal statute. Thus, there is no jurisdiction based on a declaration that a federal statute is valid.

The only Florida statutory provision cited by petitioner in his jurisdictional brief is section 68.093, Florida Statutes (the Vexatious Litigant Law). It appears that petitioner contends that section 68.093 constitutes a bill of attainder, ex post facto law, or law impairing contracts. The Fourth District in the decision for

review, however, did not address or suggest that this statute was a bill of attainder, ex post facto law, or law impairing contracts, nor did the Fourth District expressly declare it valid. The Fourth District merely explained in May that section 68.093 is the Vexatious Litigant Law and that the respondents invoked the provisions of it. Nothing in May therefore serves as a basis to invoke this Court's jurisdiction based on an express declaration that a state statute is valid.

Petitioner's jurisdictional brief does not implicate any other basis for this Court accepting jurisdiction over the decision for review. Accordingly, this Court should decline to accept review.

CONCLUSION

This Court does not have jurisdiction and should dismiss the petition for review. The only Florida decision cited by petitioner in his jurisdictional brief was decided by the same district court that decided the case for review. Each of the other alleged conflict cases were decided by federal courts, which may not be used to confer conflict jurisdiction on this Court. Thus, none of the cited cases can form the basis for express and direct conflict jurisdiction. Additionally, the decision for review did not expressly construe a constitutional provision nor expressly declare valid a state statute.

Accordingly, this Court does not have jurisdiction to review the decision for review and should dismiss the petition for review.

Respectfully submitted,

John R. Hart
Florida Bar No. 612553
Michael K. Winston
Florida Bar No. 051403
CARLTON FIELDS, P.A.
Post Office Box 150
West Palm Beach, FL 33402-0150
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for Respondents
MANDALAY RESORTS GROUP, INC.,
MICHAEL K. WINSTON, AND JOHN R.
HART

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondents' Mandalay Resorts Group, Inc., Michael K. Winston, and John R. Hart's Jurisdictional Brief has been served by U.S. Mail, postage prepaid this ____ day of August, 2005 upon:

George May
P.O. Box 32247
Palm Beach Gardens, FL 33420
Petitioner *pro se*

Paul D. Breitner, Esq.
The Barthet Firm
200 South Biscayne Blvd.
Suite 1800
Miami, FL 33131
Counsel for Respondents, International Game Technology, Inc. and Paul D. Breitner

By: _____
Michael K. Winston
Attorney for Respondents

**CERTIFICATE OF COMPLIANCE
REGARDING TYPE SIZE AND STYLE**

I hereby certify that this brief was prepared in Times New Roman, 14-point type font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

By: _____
Michael K. Winston
Attorney for Respondents