

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-2432

JAMES ROSE,

Petitioner,

vs.

NORTH AMERICAN VAN LINES

and

FWCIGA/UNISOURCE,

Respondents.

PETITIONER JAMES ROSE'S
BRIEF ON JURISDICTION

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IN THE SUPREME COURT OF FLORIDA

JAMES ROSE,

CASE NO: SC07-2432

Petitioner,

vs.

Petitioner’s Brief on Jurisdiction

NORTH AMERICAN VAN LINES
and FWCIGA/UNISOURCE,

Respondents.

I
Preamble

Petitioner seeks to invoke the discretionary jurisdiction of this Court on the grounds of express and direct conflict of decision. Petitioner James Rose, Appellant and Claimant below, shall be referred to as “Claimant.” Respondent North American Van Lines, Appellee and Employer below, shall be referred to as “Employer.” Respondent FWCIGA/UNISOURCE, Appellee and Carrier below, shall be referred to as “Carrier.” Jointly Respondents shall be referred to as “Employer/Carrier.” The appendix to this brief shall be referred to by the letters “App.” The First District Court of Appeal shall be referred to as “District Court.” The Judge of Compensation Claims, the Honorable Judith A. Brechner, shall be referred to as “JCC”.

II Statement of the Case and Facts

This case arises from a final order rendered by the JCC in a worker's compensation matter. The issue before the JCC was whether she had jurisdiction over Claimant's motion to vacate and set aside a settlement agreement. In *Flamily v. City of Orlando*, 924 So.2d 78 (Fla. 1DCA), *rev. granted* 944 So.2d 344 (Fla. 2006) and *Marchenko v. Sunshine Company*, 894 So.2d 311 (Fla. 1DCA 2005), the District Court had construed the 2001 amendment to §440.20(11)(c), Fla. Stat. to eliminate the judge of compensation claims' jurisdiction and to set aside a settlement which the claimant entered into while represented by an attorney. The JCC determined that this case was controlled by *Flamily* and *Marchenko* and that as a result of the 2001 statutory changes to §440.20(11)(c), Fla. Stat., she did not have jurisdiction to set aside or vacate the settlement. The JCC further noted that the 2001 changes to §440.20(11)(c), Fla. Stat. did not contain a "savings clause" and therefore applied to all pending cases including this case. Based upon these findings, the JCC found that she lacked jurisdiction and dismissed the petition to vacate settlement.

Claimant appealed to the District Court. On November 29, 2007, the District Court affirmed the decision of the JCC by a per curiam decision citing to *Flamily v. City of Orlando* (App 1). In the opinion, the District Court expressly noted that this Court had granted review of the *Flamily* decision (App 1).

Claimant now seeks to invoke this Court's jurisdiction on the grounds of express and direct conflict of decision because the decision of the District Court cites as controlling authority a decision that is pending before this Court. *Jollie v. State*, 405 So.2d 418 (Fla. 1981); *Harrison v. Hyster Company*, 515 So.2d 1279 (Fla. 1987). This Court has jurisdiction to entertain the instant cause where the decision below cites to *Flamily v. City of Orlando*, this Court has accepted jurisdiction over *Flamily* and heard argument in that case, but has yet to render its decision.

III

Point Involved on Appeal

WHETHER THIS COURT HAS JURISDICTION OVER THIS CASE ON THE GROUND OF EXPRESS AND DIRECT CONFLICT OF DECISION DUE TO THE DISTRICT COURT'S CITATION TO *FLAMILY v. CITY OF ORLANDO*, A CASE PENDING BEFORE THIS COURT?

IV

Summary of the Argument

Ordinarily this Court has no jurisdiction over a per curiam affirmance without opinion because there can be no express and direct conflict of decision arising from a per curiam affirmance. *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980). In *Jollie v. State, supra*. this Court recognized an exception to that rule and held that a where a district court of appeal in a per curiam opinion cites as controlling authority a case pending review before this Court, such constitutes a

prima facie express and direct conflict and allows this Court to exercise jurisdiction. In the District Court opinion below, the District Court cited to *Flamily v. City of Orlando*, which is pending before this Court under Case No. S06-847. This Court has accepted jurisdiction over *Flamily* and consequently there exists an express and direct conflict of decision.

V
Argument

THIS COURT HAS JURISDICTION OVER THIS CASE ON THE GROUND OF EXPRESS AND DIRECT CONFLICT OF DECISION DUE TO THE DISTRICT COURT'S CITATION TO *FLAMILY v. CITY OF ORLANDO*, A CASE PENDING BEFORE THIS COURT

In *Jollie v. State, supra*. at 420, this Court stated:

We thus conclude that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.

This Court clarified its holding in *Jollie* and in *Harrison v. Hyster Company, supra*. There, this Court noted:

Jollie's reference to the “controlling authority ... that is ... pending review” refers to a case in which the petition for jurisdictional review has been granted and the case is pending for disposition on the merits.

(Id. at 1280).

The District Court's opinion is set forth verbatim as follows:

AFFIRMED. See *Flamily v. City of Orlando*, 924 So.2d 78, 80 (Fla. 1st DCA 2006), rev. granted 944 So.2d 344 (Fla. 2006) (No. SC06-847; restyled *Sanders v. City of Orlando* on August 20, 2007).

(App. 1).

The case cited by the District Court as controlling authority in its per curiam decision in this case, *Flamily v. City of Orlando*, is presently pending before this Court under Case No. SC06-847. This Court has accepted jurisdiction over *Flamily* by order dated December 12, 2006, and entertained oral argument on June 6, 2007. Consequently this Court has jurisdiction pursuant to the *Jollie* exception and there exists an express and direct conflict of decision which vests this Court with jurisdiction.¹

VI Conclusion

Based upon the foregoing cases and arguments, Petitioner James Rose respectfully requests that this Court determine that there exists an express and direct conflict of decision and accept jurisdiction over this case.

JAY M. LEVY, P.A.

¹ A review of the briefs in *Sanders* indicate that the issues raised by Claimant below, the effect of the 2001 amendments to Florida Statutes §440.20(11)(c) on the JCC's jurisdiction to set aside worker's compensation settlement agreements reached by Claimant represented by counsel, is the same issue before this Court in *Flamily*.

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VII
Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed to Damian F. Albert, Esquire, Walton, Lantaff, et al, Corporate Center, Suite 2000, 110 East Broward Boulevard, Ft. Lauderdale, Florida 33301-3503, this _____ day of January, 2008.

Attorney for Petitioner

VIII
Certificate of Type Size and Format

Counsel for Respondent hereby certifies that this brief has been prepared in 14 point Times New Roman, Microsoft Word format.

Attorney for Petitioner