

21-5220 **ORIGINAL**

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN BRANTLEY,

Petitioner,

vs.

DEPARTMENT OF REVENUE,

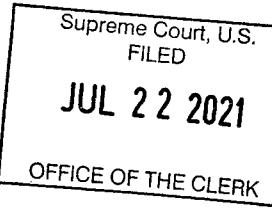
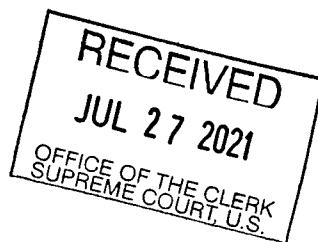
Respondent(s).

On Petition for Writ of Certiorari
to the Second District Court of Appeal
for the State of Florida

PETITION FOR WRIT OF CERTIORARI

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PETITIONER *IN PRO SE.*



QUESTION PRESENTED FOR REVIEW

Whether a court's decision denying a petitioner rule 1.540(b)(4) motion to vacate order as void for lack of subject matter jurisdiction not based on the evidence presented before the court by the court violates a petitioner right to due process and due process of law.

Whether a rule 1.540(b)(4) motion to vacate order as void for lack of subject matter jurisdiction can be filed at any time and granted at any time.

PARTIES TO THE PROCEEDING

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Brian Brantley, the Petitioner.

Department of Revenue, the Respondent.

Shavonta Demothenes, the mother.

TABLE OF CONTENTS

	Page
Question Presented For Review	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Authorities	v
Petition for Writ of Certiorari	1
Opinions Below	1
State of Jurisdiction	1
Constitutional Provisions in this Case	1
Statement of the Case	2
Reasons for Granting the Writ	3
I. The Issue Is of Exceptional Importance	3
II. Court's decision conflicts with the opinions of other District Court of Appeals and the Florida Supreme Court	9
III. Court's decision affects large numbers of people	10
Conclusion	10

INDEX OF APPENDICES

March 3, 2021 Opinion of the Second District Court of Appeal	App 1
June 11, 2021 Order Denying Appellant's Motion for Rehearing, for Rehearing En Banc, and for Certification to the Supreme Court of Florida by Second District Court of Appeal	App 2
July 15, 2020 Order Denying Brian Brantley's Rule 1.540(b)(4) Motion To Vacate Order As Void For Lack Of Subject Matter jurisdiction by the Twentieth Judicial Circuit Court in and for Collier County, Florida	App 3

TABLE OF AUTHORITIES

CASES:	Page
<u>Lovett v. Lovett</u> , 98 Fla. 611 (Fla. 1927)	5
<u>Ramagli Reality Co. v. Craver</u> , 121 So. 648, 654 (Fla. 1960)	6
Anthy-Irish, 204 So. 3d at 60 (Fla. 5 th DCA 2016)	6
<u>Taff v. Donellan Jerome, Inc.</u> , 407 F. 2d 807 (7 th Cir. 1969)	6
<u>Shields v. Flinn</u> , 528 So. 2d 967, 968 (Fla. 3d DCA 1988)	6
<u>David Johnson v. United Airlines, Inc.</u> , 2019 WL 1239723 (N.D. Ill., Mar. 18, 2019)	6
<u>Smith v. State</u> , 521 So. 2d 106, 108 (Fla. 1988)	9
<u>Honaker v. State</u> , 199 So. 3d 1008, 1070 (Fla. 5 th DCA 2016)	9
CONSTITUTION AND STATUTES	
Rule 1.540(b)(4)	6, 9, 10
U.S. Const. amend. XIV	2
28 U.S.C. § 1254(1)	1
Fla. Const. Art. V. § 3	1
Rule 60(b)(4)	3, 6, 10

PETITION FOR WRIT OF CERTIORARI

Petitioner seeks review of the decision of Florida's Second District Court of Appeal affirming the Circuit Court's order denying his rule 1.540(b)(4) motion to vacate order as void for lack of subject matter jurisdiction.

OPINIONS BELOW

The opinion of the Second District Court of Appeal is in Appendix at App.

1. The order denying rehearing is in the Appendix at App. 2.

STATEMENT OF JURISDICTION

The opinion of the Second District Court of Appeal was filed on March 3, 2021. Brian Brantley's petition for rehearing was denied June 11, 2021, which is less than 90 days before this Petition. There are no grounds for review by the Supreme Court of Florida. See Fla. Const. Art. V, § 3. This Court has jurisdiction under 29 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS IN THIS CASE

Petitioner relies upon the Fourteenth Amendment's protection for due process of law: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state

deprive any person of life, liberty, or property, due process of law”

U.S. Const. amend. XIV.

STATEMENT OF THE CASE AND FACTS

The appeal arose from the Circuit Court’s Order denying the Petitioner Brian Brantley’s rule 1.540(b)(4) motion to vacate order as void for lack of subject matter jurisdiction after the Trial Court submitted the recommended Order to the Circuit Court in which indicated a Hearing was held on July 9, 2020, before Child Support Hearing Officer, and the Court having reviewed the file and receiving testimony finds: Department of Revenue argues issues raised by Brian Brantley res judicata. Brian Brantley argues subject matter jurisdiction is never waived. Court finds issues of jurisdiction and Brian Brantley’s pursuit to vacate the order dated 03/05/1997 are res judicata and, therefore the relief requested is denied., on July 10, 2020. App. 3. App. 4. The Petitioner filed a timely notice of appeal.

The Petitioner appealed, and the Second District Court of Appeal filed its opinion per curium affirmed on March 3, 2021. App. 1. Petitioner’s motion for rehearing was denied June 11, 2021. App. 2.

Petitioner now seeks this Court’s grant of certiorari.

REASONS FOR GRANTING THE WRIT

The petition brings the question whether a court's decision denying petitioner rule 1.540(b)(4) motion to vacate order as void for lack of subject matter jurisdiction not based of the evidence presented before the court violates a petitioner right to due process and due process of law. This is an issue of exceptional importance, such a court's decision conflicts with other District Court of Appeals and the Supreme Court and affects large numbers of people.

1. The Issue Is Of Great Exceptional Importance

To the Petitioner in this case, the issue is of exceptional importance as well because Petitioner argues that the Circuit Court's decision denying his rule 1.540(b)(4) (the equivalent of the **rule 60(b)(4)**) motion to vacate order as void for lack of subject matter jurisdiction not based on the evidence presented before the court violates his right to due process and due process of law.

During the trial, Brian Brantley objected to Department of Revenue's res judicata argument. App. 34.

The Department of Revenue argued that all these grounds have been ruled upon, they are res judicata. App. 32.

Your Honor, we would ask that this motion be denied.

Brian Brantley presented to the Court the bases for his objection to the Department of Revenue's res judicata argument. App. 34.

First, Brian Brantley argued that subject matter jurisdiction cannot be waived. App. 34.

Second, Brian Brantley argued that the trial court lack subject matter jurisdiction when it by its own action instituted a proceeding sue sponte to enter order of contempt which renders the order void and therefore the order must be vacated. App. 34.

The jurisdiction of the Court remain at rest until called into action by some suitor. The Court cannot by its own action institute a proceeding sue sponte.

**Motion For Order Of Contempt And
Notice For Mediation**

On February 14, 1997, Department of Revenue called into action a Motion For Order Of Contempt And Notice For Mediation indicating to Brian Brantley that the Petitioner has applied for an Order adjudging you in contempt of court for failure to appear for blood testing plus courts costs of \$346.00 and that you are hereby commanded to appear at the Collier County Courthouse, on March 5, 1997,

at 9 A.M. for mediation conference. See Motion For Order Of Contempt And Notice For Mediation. App. 15.

The motion for order of contempt and notice for mediation is proof and evidence that only the Department of Revenue's motion for order of contempt for Brian Brantley failure to appear for blood testing plus court costs of \$346.00 was scheduled at the courthouse on March 5, 1997, for mediation.

Final Support Order

On March 5, 1997, at the mediation by default the Circuit Court Judge entered the Final Support Order. See Final Support Order. App. 17.

The final support order is evidence and proof that the trial court entered the final support order instead of the order of contempt at the March 5, 1997, mediation.

The trial court lack subject matter jurisdiction when it by its own action instituted a proceeding sue sponte to enter the final support order instead of the order of contempt which renders the order void and therefore order must be vacated. See Lovett v. Lovett, 98 Fla. 611 (Fla. 1927) (The Florida Supreme Court held that the Court cannot by its own action institute a proceeding sue sponte. If a

Court should render a judgment in a case where it had jurisdiction of parties, upon a matter entirely outside the issue made, it would of necessity be arbitrary and unjust as being outside the jurisdiction of the subject matter of the particular case, and such judgment would be void).

Judgment

A void order makes the judgment void. Ramagli Reality Co. v. Craver, 121 So. 648, 654 (Fla. 1960) (A void judgment may be stricken at any time).

Accordingly, Brian Brantley moves this Court to vacate the final support order as void for lack of subject matter jurisdiction.

An order entered without subject matter jurisdiction is void and can be challenged at any time under Fla. R. Civ. P. 1.540(b)(4); **like under 60(b)(4)**. See Anthony-Irish, 204 So. 3d at 60 (Fla. 5th DCA 2016); Taft v. Donellan Jerome, Inc., 407 F. 2d 807 (7th Cir. 1969).

Rule 1.540(b)(4); **just like Rule 60(b)(4)**, provides relief from void orders and void judgments. Relief from a void order may be granted at any time. See Shields v. Flinn, 528 So. 2d 967, 968 (Fla. 3d DCA 1988); David Johnson v. United Airlines, Inc., 2019 WL 1239723 (N.D. Ill., Mar. 18, 2019).

Third, Brian Brantley failure to raise the trial court lack subject matter jurisdiction when it by its own action instituted a proceeding sue sponte to enter the final support order instead of the order of contempt argument in two previous motions that the Court ruled on in two orders has prevented the argument from being res judicata, and therefore the argument is not res judicata. App. 34.

Brian Brantley presented the only two orders from the court file that the Court ruled on in two previous motions filed by him as follows:

Order Denying Motion To Quash Service

On September 21, 2018, the Circuit Court issued the Order Denying Motion To Quash Service ruling the Respondent [Brian Brantley] has waived any objection to the Court's personal jurisdiction over him in this matter, Motion is denied with prejudiced. App. 20.

The Order Denying Motion To Quash Service proves that the Circuit Court issued only a personal jurisdiction ruling. Not a subject matter jurisdiction ruling.

Order Denying Motion To Vacate Written Agreement

On December 16, 2019, the Circuit Court issued the Order Denying Motion

To Vacate Written Agreement ruling the Respondent's (Brian Brantley's) Motion to vacate written agreement is denied [the Motion To Vacate Written Agreement contained a due process violation argument]. App. 25.

The Order Denying Motion to Vacate Written Agreement proves that the Circuit Court issued only a due process ruling. Not a subject matter jurisdiction.

The two Circuit Court orders are evidence and proof that Brian Brantley's argument the trial court lack subject matter jurisdiction when it by its own action instituted a proceeding sue sponte to enter the final support order instead of the order of contempt was never previously presented before the Circuit Court nor ruled on by the Circuit Court and therefore the argument is not res judicata.

Department of Revenue then abruptly stated to the Court that, "Brian Brantley has argued this and raised this issue in past. The Court has ruled upon it. It has now become res judicata and law of the case. App. 34.

Brian Brantley stated to the Court is the court going to rule on my objection Your Honor? App. 35.

The Court responded to Brian Brantley just a moment. I'm making some notes. App. 35.

3. Court's decision affect large numbers of people

All petitioners have a constitutional right to be heard by the court on his or her rule 1.540(b)(4) (or rule 60(b)(4)) motion to vacate order as void for lack of subject matter jurisdiction based on the evidence presented before the court and have the rule 1.540(b)(4) (or rule 60(b)(b)) motion to vacate order as void for lack of subject matter jurisdiction based on the evidence presented before the court granted by the court. To allow such a court's decision affects large numbers of people, including the Petitioner in this case. Such a decision should not and must not be allowed to stand. This Honorable Court should grant petition for review

CONCLUSION

This is a question of great importance, the Court should grant certiorari to hear.

Respectfully submitted,

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