

22-952

No. SC2022-361

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED
STATES

FILED
OCT 06 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RINA RICHARD DEMICHAEL, *Petitioner*

vs.

FLORIDA DIVISION OF MANAGEMENT SERVICES,
FLORIDA RETIREMENT SYSTEM, *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO
State of Florida Court of Appeals for the First
District

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

The lower court denied the right to husband petition.

1. Was I not married to my husband?
2. Why do I not have rights to my husbands petition?
3. After writing congress and the present, why has my case not been docketed?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[] 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:

RELATED CASES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or, [] is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or, [] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of _____

Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _A _____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was _____ A copy of that decision appears at Appendix _____

A timely petition for rehearing was thereafter denied on the following date:

_____, and a copy of the order denying rehearing appears at Appendix _____

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _A _____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

TABLE OF AUTHORITIES
FLORIDA CONSTITUTION

Article V. § 3(b)(3), Florida Constitution.....5

COURT CASES

DeMichael v. Florida Division of Management Services, Florida Retirement System, 1D20-2678 (Fla. p^t DCA 2022).....4, 5

Scheible v. Audley Livingston Brown, et. al., 4D20-1899 (Fla. 4th DC 2022)
.....4-5,

FLORIDA ADMINISTRATIVE CODE

Rule 60S-4.010(9)(b) F.A.C.....4

I. JURISDICTIONAL STATEMENT

The First District Court of Appeal's ("First DCA") decision in *Rina Richard Demichael v. Florida Division of Management Services, Florida Retirement System* L.T. Case No. 1D20-2678 (Fla. 1st DCA 2022) is in direct conflict with the recent decision of the Fourth District Court of Appeals ("Fourth DCA") in *Scheible v. Audley Livingston Brown et. al.* Case No. 4D20-1899 (Fla. 1st DCA 2022).

In *DeMichael* the First DCA held:

"Finally, we reject Ms. Demichael's argument about notarization. The Department persuades us to find that even a faulty notarization does not afford Ms. Demichael her requested relief. To be sure, the statute requires spousal acknowledgment. But the rules give multiple ways to secure such acknowledgment. See Fla. Admin. Code R. 60S-4.010(9) (b) (allowing acknowledgment even if a spouse refuses to sign the form by providing written notice of the member's selection). This means, as the Department puts it, the spousal acknowledgment form 'does not give Ms. Demichael "veto power" over the Member's selection. Ultimately, as with her first claim, Ms. Demichael cites nothing to ultimately show she can change the Member's selection even if the form's notarization were invalid."

In *Scheible* the Fourth DCA held that since: "The trial court determined that appellant had not proved that appellee's (the Notary) negligence in notarizing the deed was a proximate cause of appellant's damage, because the forged deed was void ... " "We reverse, as the

notarization allowed the deed to be recorded and was thereby a proximate cause of the damage to the estate."

In sum, the faulty notarization, was the proximate cause of DeMichael's damages. The spousal acknowledgement was void and therefore a nullity thereby making the entire pension election and spousal acknowledgement a nullity.

Therefore, the Demichael Opinion is thus in express and direct conflict with the Scheible Opinion and discretionary review is critical to bring clarity and bring the First DCA in line with the rest of the state. See Art. V. § 3(b)(3), Fla. Const.

STATEMENT OF THE CASE AND FACTS

This case began as an administrative action to have the STATE OF FLORIDA DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF RETIREMENT (hereafter DMS) enable RINA RICHARD DEMICHAEL (hereafter RINA or PETITIONER) to receive retroactive spousal Florida Retirement System (hereafter FRS) retirement benefits earned by her late husband, DAVID JOHN DEMICHAEL (hereafter DAVID).

DAVID was a 20-year plus veteran of the BROWARD SHERIFF'S OFFICE (hereafter BSO) and was also a severe alcoholic. BSO gave DAVID many opportunities to rehabilitate by sending him to several Detox

clinics and several extended-stay, in-patient Rehab facilities. David was unable to improve his work conduct because alcoholism had taken total control of DAVID's daily personal and career life to the extent that after his last BSO ordered stay at Sunrise Detox Clinic (hereafter SUNRISE) he was forced to resign.

On February 11, 2013, on leaving the SUNRISE Rehab facility, sometime after 8:30 a.m., DAVID was ordered to immediately report to BSO driven to BSO by RINA and accompanied by his sister Susan Herzog (hereafter HERZOG).

At BSO, RINA and DAVID were separated until they left BSO Headquarters (except for a brief time when DAVID took a cigarette break on the BSO rooftop terrace where RINA was told by BSO officials to wait.) At no time during their time at BSO Headquarters on February 11, 2013, nor at any time prior to that date, did the DeMichael's discuss DAVID's forced resignation, his FRS retirement, or the consequences of FRS retirement options.

While RINA waited on the BSO rooftop terrace she was approached by a woman who she later came to discover was Tiffany Pieters (hereafter Pieters). PIETERS told RINA to sign a blank document which was partially obstructed by PIETERS' hand. PIETERS did not explain the document to

RINA. RINA signed the document that RINA recalls as being blank without being fully aware of what she was signing, without being advised of its import or consequences, Rina was not given a copy of the document to read or keep nor was the document notarized in her presence.

At the hearing below, Petitioner asserted that DAVID did not possess the mental and/or emotional capacity to make a reasoned, knowing, and informed retirement option selection while at the same time being forced to resign from BSO pending termination charges just minutes after being discharged from Rehab where he was given drugs and diagnosed with anxiety and depression.

Petitioner also asserts that she was intimidated by her surroundings, being at BSO Headquarters and was coerced into sign a blank document by a BSO employee (Pieters). It was not until after David's death that Rina learned that the document she signed was an FRS Spousal Acknowledgement form. (ROA p. 462, R. Ex.# 6)

Further, the meaning and consequences of her signature on that Spousal Acknowledgement Form, which she signed in blank were not explained to RINA by anyone. Additionally, the document states that the Notary, PIETERS, personally knew RINA. RINA did not know PIETERS

prior to February 11, 2013, nor has she seen her since that day. (ROA p. 462, R. Ex. # 6)

Sometime after DAVID died {August 25, 2015} Rina personally inquired of FRS and her probate attorney regarding FRS benefits due her without satisfactory explanation. Thereafter, a Petition was filed with DMS/DOR resulting in the matter being referred to DOAH. (ROA pp. 96-

110) A hearing was held in this matter on January 21, 2020.

The transcript of the hearing was filed on February 14, 2020. (ROA pp. 246-375 and Vol. 1 pp. 1-130). Proposed Recommended Orders were filed by both parties on March 20, 2020 (ROA pp. 386-403 and pp. 404-424) the ALJ filed his Recommended Order on April 14, 2020. (ROA pp.

425-437)

Petitioner filed Exceptions to the Recommended Order on April 28, 2020 (ROA pp. 440-445) and Respondent filed a Response to Petitioner's Exceptions on May 8, 2020. (ROA pp. 446-451)

The Agency filed its Final Order on August 18, 2020, finding for the Agency. (ROA pp. 452-458)

PetitionerAppealed the Agency's Final Order to the 1st District Court of Appeal on September 15, 2020.

On February 16, 2022, the First DCA issued its opinion denying DeMichael's appeal.

On March 21, 2022, DeMichael appealed to the Florida Supreme Court to invoke discretionary appellate jurisdiction of that Court.

DeMichael applied for an extension of time to file her Jurisdictional Brief which by Order of the Court is due on April 20, 2022.

III. SUMMARY OF THE ARGUMENT

This Court should exercise its discretionary jurisdiction in this matter. The First DCA Opinion expressly and directly conflicts with the Fourth DCA's Opinion in Scheible to the extent that the faulty notarization caused the deed and subsequent sale of property to be a nullity and applying that logic the faulty notarization of both the Option Election and Spousal Acknowledgement Form must create those documents a nullity as well. Therefore, requiring Respondents to make DeMichael whole for her losses.

IV. ARGUMENT

The First DCA Opinion expressly and directly conflicts with the Fourth DCA's Opinion in Scheible to the extent that the faulty notarization caused the deed and subsequent sale of property to be a nullity and applying that logic the faulty notarization of both the Option Election and Spousal Acknowledgement Form must create those documents a nullity as well. To

find otherwise provides convenient escape hatch for unscrupulous persons, entities, and notaries to create, forge or fraudulently deprive widows such a DeMichael of their rights and benefits. Not only does Scheible require reversal the equities demand that DeMichael be made whole regarding her losses which are a direct result of the faulty notarization.

VI. CONCLUSION

Petitioner respectfully request that his Court accept jurisdiction and resolve the conflict.

Respectfully submitted this 20th day of March 2023

Rina Richard DeMichael

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