24-5052

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Kenton G. Findlay
Petitioner,

Case No: SC24-1095
Case No: 3D2023-1440
L.T. No: 14-14163

V.

Leslie Homeowner Estate No 3.
Respondent,

PETITION FOR WRIT OF MANDAMUS

Questions Presented

1. Did the Third District Court of Appeal Violate Section (9) in the Constitution of the State of Florida Due Process-No person shall be deprived of life, liberty, or property or without due process of law, or be twice put in jeopardy for the same offense or be compelled in any criminal matter to be witness against oneself?
2. Did the Third District Court of Appeal of Florida ("the third DCA") Violate the due process of the 5th and 14th Amendment of the U. S. Constitution?
3. Whether Petitioner is entitled to relief pursuant to 28 U. S. C. 1651(a) to vacate the order of the Third District Court of Appeal of Florida ("the third DCA") or other relief as this Court deems appropriate.

TABLE OF CONTENT

APPENDICES

TABLE OF AUTHORITIES

Cases

16. Pallai v. Dept. of Revenue. 955So. 2d 1205, 1206 Fla. 2 d DCA 2007

17. Roche v. Evaporated Milk Assn., 319 U.S. 21, 26, 63 S. Ct 938, 87 L. Ed 1185 (1943)

18. Smith v. State, 872 So. 2d 368, 369(Fla. 2d DCA 2004).

19. Wiggins v. Tigrent, Inc., 147 So. 3d 76, 81 Fla. 2d DCA

20. Will v. United States, 389 U.S. 90, 95, 88 S. Ct. 269, 19 L. Ed. 2d 305 (1967)

Constitution

Rules of Procedure

We have for review the following question certified to be of great public importance:

PETITION FOR WRIT OF MANDAMUS

Petitioner Kenton G. Findlay, respectfully files this petition for writ of Mandamus against, the Third District Court of Appeal and Florida Supreme Court for grounds would state:

1. This Petition is filed pursuant to the Jurisdiction of this Court is invoked under 28 U. S. C. 1651.., and Fla. R. App. P. 9.100, And Fla. R. Civ. P. 1.630.

SUMMARY OF JURISDICTION

2. The All-Writ Act, 28 U. S. C. 1651 (a), provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usage and principle of law."

JURISDICTION

The Jurisdiction of this Court is invoked under 28 U. S. C. 1651. Art. 1, Sec. 2 and 9, and Art. V, Sec. 4(b)(3), 3(b)(8) Fla Const (1968 Revision), Fla.R.App.Pro. R 9.030(b)(2)(A) ;(3),9.100 (c), 9.130 (a)(2), and 9.140(b)(1)(G) and (b)(2)(ii)(e). See Smith v. State, 872 So. 2d 368(Fla. 2d DCA 2004) (in this review of an order of the circuit court sitting in its appellate capacity, our review is limited to whether the circuit court afforded procedural due process and observed the essential requirements of law.)

REASONS FOR GRANTING THE PETITION

The All-Writ Act, 28 U. S. C. 1651, authorizes the Supreme Court to issue extraordinary writs in its discretion. "To justify granting any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court" **Sup. Ct. R. 20.1** See also U.S. Alkali Export Assn v. United States, 325 U. S. 196, 201-02 (1945); De Beers Consol. Mines, Ltd. V. United States, 325 U.S. 212, 217 (1945).

In this case, Jurisdiction and a direct consequence created the exceptional circumstances that warrant the mandamus review and can only be obtain relief from this Court. The Court may grant a petition for mandamus in its discretion, so long as it has jurisdiction over the matter. As the Court described in Cheney v. U.S. Dist. Court for the Dist. Of Columbia:

Mandamus is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." Ex parte Fahey, 332 U.S. 258, 259-260, 67 S. Ct 1558, 91 L. Ed. 2041 (1947). "The traditional use of writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." Roche v. Evaporated Milk Assn., 319 U.S. 21, 26, 63 S. Ct 938, 87 L. Ed 1185 (1943). Although courts have not "confined themselves to an arbitrary and technical definition of "jurisdiction, Will v. United States, 389 U.S. 90, 95, 88 S. Ct. 269, 19 L. Ed. 2d 305 (1967), "only exceptional circumstances amounting to a judicial usurpation of power, or a clear abuse of discretion, Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 383, 74 S. Ct 145, 98 L. Ed 106 (1953), "will justify the invocation of this extraordinary remedy," will, 389 U.S., at 95, 88 S. Ct. 269. 542 U.S. 367, 380 (2004). The Court in Cheney made clear that three conditions must be satisfied before such an extraordinary writ must issue: (1) the party must have no other adequate means to attain the relief he deserves, (2) the party must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable, and (3) the issuing court must be satisfied that the writ is appropriate under the circumstances. Petitioner satisfies the three condition sets out in Cheney.

The Petitioner Cannot Obtain Relief from any Other Court or Forum
The Court will not grant an extraordinary writ if another avenue of relief remains available. **Sup. Ct. R.20.1.** However, the relief petitioner seeks, a writ vacating the unlawful Order, cannot be granted by any other court. The lower federal court have no jurisdiction to hear the petitioner appeal, and the Court made clear that mandamus relief is available in such unique circumstances. See U.S. Alkali Export Assn. 325 U.S. at 202 (finding that a writ in aid of appellate jurisdiction must be to the Supreme Court where it has sole appellate jurisdiction).

Sup. Ct. R. 20.1 provides in relevant part:

Procedure on a Petition for an Extraordinary Writ
Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. 165(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

STATEMENTS OF FACTS AND CASE

We have for review the following question certified to be of great public importance:

Did the Third District Court of Appeal violate **Section (9)** in the Constitution of the State of Florida Due Process-No person shall be deprived of life, liberty, or property or without due process of law, or be twice put in jeopardy for the same offense or be compelled in any criminal matter to be witness against oneself?

Did the Third District Court of Appeal of Florida ("the Third DCA") violate the due process of the 5th and 14th Amendment to the U.S. Constitution?

Petitioner Appeal an Order issued under Fla. R. Civ. P. 1.540 (b) allows a Trial Court to Vacate a Final Judgement when an error of law therein arising from oversight or omission may be corrected by the Court at any time on its own initiative or on the Motion of any party and after such notice, if any, as the Court Orders. An error was made by the judge when she did not look at certain evidence denying the petitioner of his due process rights.

At the present time there are newly discovered evidence. On or about September 5, 2013, the Petitioner met with Barbara Henderson who stated that she was the Treasurer to the Leslie Estate Homeowner Association (HOA). The Petitioner explained his predicament of being unaware of an existing HOA. During the conversation Ms. Henderson requested a check for past HOA fees be made payable to Walton, Jones and Browne in the amount $500.00 under the pretense that she would follow up with HOA's bylaws, meeting dates, proof of membership to the HOA. The Petitioner paid the fees via check in good faith.

The Respondent submitted to the court a sworn Affidavit Statement taken by then HOA Treasurer Barbara Henderson, stating that on September 15, 2013, the Petitioner "came to her adobe" and requested the check (mentioned earlier) made payable to Walton, Jones and Browne be returned and the check was returned. She also stated the Petitioner "has not made any payments towards his maintenance

account." That statement is a blatant lie, on September 13, 2013, that exact check was cashed by Walton, Jones and Browne.

The opening balance on the billing statement shows an amount of $814.79 when asked by the Appointed Judge where the amount came from the Respondent responded, "I don't know," this suggest another attempt at deception. On Page 9 of the billing statement there is a $450.00 claim of lien foreclosure fee charged; yet on the Respondent billing there is the charges appear again which would suggest double billing. On page 7 of billing statement there is a $1000.00 charge with no explanation, this would suggest the Association is padding the bill. On Article V of the Declaration the Respondent submitted, section 1 page 19 clearly states: each such assessments together with interest, cost and reasonable attorney fee shall also be the personal obligation of the person who was the owner of such property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them, I never assumed any obligation. On March 23, 2013, the Respondent knowingly and fraudulently recorded a lien on the Petitioner property approximately six months after cashing a check large enough to satisfy nearly 2 years of assessment fees ($25 monthly). Additionally, because there no record of the money being credited to the Petitioner maintenance balance; and the fact that the Respondent has attempted to conceal the payment suggest theft.

The Trial Court denied Fla. R. Civ.P. 1.540 (b). On Motion for Reconsideration finding that after the April 11, 2023, hearing, the trial Court conducted a review of the entire court file and is satisfied with its prior adjudication. The one exception to rule of absolute finality is rule 1.540, which gives the court Jurisdiction to relieve a party from the act of finality in a narrow range of circumstances. "Bane v. Bane, 775 So. 2d 938, 941, (Fla. 2000) (Quoting Miller v. Fortune Ins. Co., 484 So. 2d 1221, 1223 (Fla. 1986). A motion pursuant to subsections (1), (2), or (3) or rule 1.540(b) must be filed within the Jurisdiction time limit of the rule: one year from the date of final Judgement. Fla. R. Civ. P. 1.540(b); see Batronie, 884 So. 2d at 349. However, a motion pursuant to rule 1.540(b) alleging that the Judgement is void, must be filed "within a reasonable time. Fla. R. Civ. P. 1.540(b) While it is true that rule 1.540(b)4) states that a motion for relief from a void Judgement must be made within a reasonable time, most Courts have felt constrained to interpret the reasonable time requirement of the rule to mean no time limit when the Judgement attacked is void. M.L. Builders, Inc. v. Reserve Developers, LLP, 769 So. 2d 1079, 1082 (Fl. 4th DCA 2000). And this Court has expressly stated that there is no time limit on setting aside a void Judgement limitation on setting aside a void Judgement. Wiggins v. Tigrent, Inc., 147 So. 3d 76, 81 (Fla. 2d DCA 2014). The Order granting the 1.540(b) motion is a final order.

The order is appealable under Florida Appellate Procedure 9.130(a)(5), which expressly governs procedures applicable to "orders entered on an authorized and timely motion for relief from judgment." The rule is thus applicable to all orders granting or denying a party's rule 1.540 motion, irrespective of whether the order is "final" or "non-final." New Day Miami, LLC v. Beach Devs, LLC. 225 So. 3d 372,375(Fla. 3d DCA 2017). "An order on a party's rule 1.540 motion seeking relief from judgment may be final or non-final. Federal Rule of Procedure Rule 60(b)(1) allows a party to seek relief from a final judgment based on, among other things a "mistake." The question presented is whether the term "mistake." include a judge's error of law. We conclude, based on the text, structure, and history of Rule 60(b) that a judge's error of law is indeed "mistake." Under Rule 60(b)(1). Kemp v. United States, 142 S. Ct. 1856,1861 & n.1, 213L. Ed. 2d 90 (2022). Resolving that question in Kemp, the U.S. Supreme Court held, based on the text, structure and history of Rule 60(b), that a judge's error of law are indeed mistakes under Rule 6(b)(1) should be given its broadest possible interpretation to include any mistakes, including "all mistakes of law made by a judge". Given that no evidence was presented at the hearing for reasons that appear to be based on the initial statement after the April 11, 2023, hearing the court conducted a review of the entire file and is satisfied with its prior adjudication we cannot determine if denial of the Motion would otherwise have been appropriate.

We note that where a Rule 1.540 Motion is facially sufficient and alleges a colorable entitlement to relief, a formally evidentiary hearing should be held. See Minda V. Minda,190 So. 3d 1126, 1128 (Fla. 2d DCA 2016. See also Pallai v. Dept. of Revenue. 955So. 2d 1205, 1206 (Fla. 2 d DCA 2007) "The Trial Court should have conducted an evidentiary hearing to consider the merits of the Motion."

NATURE OF RELIEF SOUGHT

The relief sought is the review in the U. S. Supreme Court under the All-Writ Act (28 U.S. Code 1651) Jurisdiction, requesting this Honorable Court to Quash per curiam dismissal that the circuit court sitting in its appellate capacity entered.

ARGUMENT

Denial of Substantive and Procedural "Due Process"

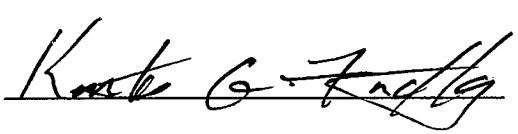
Article1, Sections 2and 9 contains Florida's due process" guarantee. See Fourteen Amendment. "Due Process" is a fundamental right. Although it encompasses more, "due Process." At its core, is basically the process which has to include "notice" and meaningful opportunity to be heard." The Court explained in Smith v. State, 872 So. 2d 368, 369(Fla. 2d DCA 2004).

In this Writ of Mandamus to review of an order of the circuit court sitting in its appellate capacity, our review is limited to whether the circuit court afforded

procedural due process and observed the essential requirements of law, See Allstate Ins. Co. V. Kaklamanos, 843 So. 2d 885,889 (Fla. 2003); Haines City Cmty. Dev. V. Heggs, 658 So. 2d 523, 530 (Fla. 1995). Procedural due process requires fair notice and real opportunity to be heard. Keys Citizens for Responsible Gov't,Inc. v. Fla. Keys Aqueduct Auth., 795 So. 2d 940,948 (Fla.2001); see also Massey v. Charlotte County, 842 So. 2d 142, 146 (Fla. 2d DCA 2003). This court explained in Massy that procedural due process imposes constraints on governmental decisions that deprive individuals of liberty or property interest. It serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue.

CONCLUSION

The Petitioner was deprived of "due process of law" when the trial "departed from the essential requirements of law" and the "harm caused by the error of law cannot be corrected on appeal from the final judgment in the case." Therefore, the Petitioner respectfully requests that this Honorable Court review under its All-Writ Act (28 U.S. Code 1651) Jurisdiction.



Respectfully Yours,

Kenton G. Findlay