24-5283

IN THE SUPREMECOURT OF THE UNITED STATES

ORIGINAL

KENTON G. FINDLAY

V.

Star Lakes Association, Inc.,

SC 2024-0285

CASE NO. 3D23-1148

L.T. No. 14-12750

PETITION FOR 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). Will v. United States, 389 U.S. 90, 95, 88 S. Ct. 269, 542 U.S. 367, 380 (2004).

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 201

20. Will v. United States, 389 U.S. 90, 95, 88 S. Ct. 269, 542 U.S. 367, 380 (2004).

Constitution

Rules of procedures

We have for review the following questions 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, (1945).

In this case, jurisdictional and 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, 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 conditions set 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 petition 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 authorize 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 questions 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** Amendments 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 the appeal was dismissed for lack of jurisdiction and did not look at certain evidence denying the appellant of his due process rights.

At the present time there are newly discovered evidence. On or about December 6, 2017, an amended final judgement of foreclosure was entered in favor of Star Lakes Association, Inc. for the following reasons:

1. The Petitioner name does not appear on the service list and was never served.

2. The Petitioner name I not listed on the Final Judgement.

3. The Respondent Violated the Florida Constitution Section 9. Due Process- No person shall be deprived of life, liberty or property without due process of law.

4. Florida Statue Section 120.68 states that any appeal of an award hall be taken to the District Court of Appeal and shall be limited to review on the record, and not de novo.

The Trial Court denied Fla. R. Civ.P. 1.540 (b). On Motion for Reconsideration finding that on June 13, 2023, the trial court did not have jurisdiction. 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 60(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 June 13, 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"

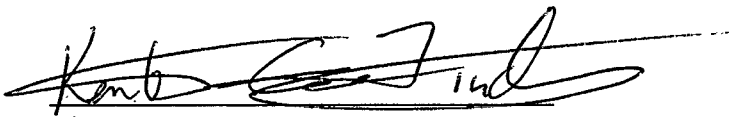
Article1, Sections 2and 9 contains Florida's due process" guarantee. See Fourteen Amendment. "Due Process" is a fundamental right. Although it encompasses more, "due Process." At its core, is basically the process which has to include "notice" and meaningful opportunity to be heard." The Court explained 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.



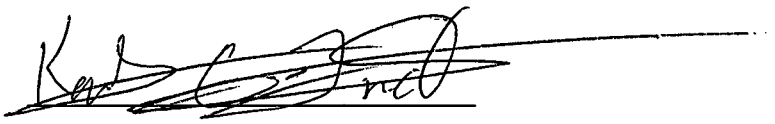
Respectfully Yours,

Kenton Findlay

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been sent by:

( ) Hand Delivery ( ) Fax (x) U.S. Mail to Bradley A. Friedman P.A. 10800 Biscayne Blvd. Suite 988 Miami Fl, 33161 this 22nd day of July 2024.



Kenton G. Findlay

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Exhibit A

Third District Court of Appeal

State of Florida

Opinion filed February 14, 2024.
Not final until disposition of timely filed motion for rehearing.

No. 3D23-1148
Lower Tribunal No. 14-12750

Kenton G. Findlay,
Appellant,

vs.

Star Lakes Association, Inc.,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Migna Sanchez-Llorens, Judge.

Kenton G. Findlay, in proper person.

No appearance, for appellee.[1]

Before SCALES, LINDSEY and GORDO, JJ.

GORDO, J.

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[1] Appellee was precluded from filing an answer brief after failing to comply with this Court's order.

Kenton G. Findlay ("Findlay") appeals a non-final order denying his motion for reconsideration. We dismiss the appeal for lack of jurisdiction.

On December 6, 2017, an amended final judgment of foreclosure was entered in favor of Star Lakes Association, Inc. ("Star Lakes"). On May 18, 2023, Findlay filed a "motion for reconsideration," arguing grounds for vacating the final judgment under Florida Rule of Civil Procedure 1.540(b). The trial court denied the motion. This appeal followed.

Our jurisdiction to review non-final orders is limited to those matters specifically enumerated in Florida Rule of Appellate Procedure 9.130. Mid-Continent Cas. Co. v. Flora-Tech Plantscapes, Inc., 225 So. 3d 336, 340 (Fla. 3d DCA 2017); see also Fla. R. App. P. 9.130 (stating "[t]his rule applies to appeals to the district courts of appeal of the nonfinal orders authorized herein"). Rule 9.130(a)(5) authorizes appeals of "[non-final] [o]rders entered on an **authorized and timely** motion for relief from judgment." Fla. R. App. P. 9.130(a)(5) (emphasis added).

In this case, the underlying motion was filed nearly six years after the trial court entered the amended final judgment of foreclosure. Because the motion was not timely filed, we dismiss the appeal for lack of jurisdiction. See Fla. R. Civ. P. 1.540(b) (stating that a motion for relief from judgment

based on newly discovered evidence cannot be filed more than one year after the judgment was entered).

Dismissed.