

IN THE SUPREMECOURT OF THE UNITED STATES

CASE NO. 24-5283

KENTON G. FINDLAY

SC. 2024-0285

V.

CASE NO. 3D23-1148

Star Lakes Association, Inc.,

L.T. No. 14-12750

MOTION FOR RECONSIDERATION

Questions Presented

1. May Pro Se Petitioner Kenton G. Findlay be granted leave to proceed in forma pauperis under Supreme Court Rule 39?
2. 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?
3. 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?
4. 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.

MOTION TO PROCEED IN FORMA PAUPERIS

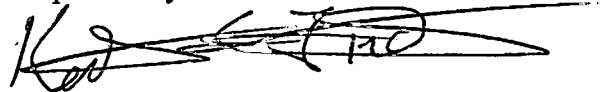
Pursuant to Supreme Court Rule 39 of this Court, the Petitioner Kenton G. Findlay Request that the Court grant him leave to proceed in forma pauperis. In support of this Motion, the Petitioner states that:

1. Petitioner is unable to afford the cost of representation in this matter.
2. Petitioner proceeded below in the Third District Court without counsel.
3. Because of the continuing inability to afford counsel, that the petitioner be allowed to proceed in forma pauperis.
4. I declare under penalty of perjury under the laws of the United States of America, the foregoing is true and correct.

WHEREFORE, the petitioner Kenton G. Findlay respectfully request that he be allowed to proceed in forma pauperis without payment of filing fees or service of notice fees, and for such other relief as the Court deems just and proper.

Respectfully Submitted this 28th day of October 2024.

Respectfully Submitted.



Kenton G. Findlay

10/28/2024

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7. Haines City Cmty. Dev. V. Heggs, 658 So. 2d 523, 530 (Fla. 1995)
8. Kemp v. United States, 142 S. Ct. 1856, 1861& n.1, 213 L. Ed. 2d 90 (2022)
9. Keys Aqueduct Auth., 795 So. 2d 940,948 (Fla.2001)
- 10.Massey v. Charlotte County, 842 So. 2d 142,146 (Fla. 2d DCA 2003).
- 11.Miller v. Fortune Ins. Co., 484 So. 2d 1221 Fla. 1986
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16. Smith v. State, 872 So. 2d 368, 369(Fla. 2d DCA 2004).

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

MOTION FOR RECONSIDERATION

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”

Article 1, Sections 2 and 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

No. 24-5283

IN THE
SUPREME COURT OF THE UNITED STATES

Kenton G. Findlay PETITIONER
(Your Name)

VS.

Star Lakes Association Inc RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Appeal Court
El Supreme Court

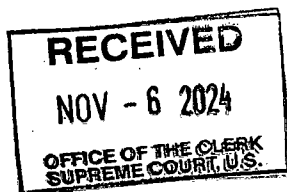
☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.



Kenton G. Findlay
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Kenton G. Fradley, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>800.00</u>	\$ _____	\$ _____	\$ _____
Self-employment	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ <u>1,200</u>	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Gifts	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Alimony	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Child Support	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ <u>2000</u>	\$ _____	\$ _____	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
People Ready	2843 Hollywood Blvd, Hollywood FL, 33020	2/20/22	\$ 800.00
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
			\$
			\$

4. How much cash do you and your spouse have? \$ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	\$ 30.00	\$ N/A
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value 225 K

☐ Other real estate
Value N/A

☒ Motor Vehicle #1
Year, make & model 2000 Chevy 1500
Value 300.00

☐ Motor Vehicle #2
Year, make & model N/A
Value

☐ Other assets
Description N/A
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money

Amount owed to you

Amount owed to your spouse

WA

\$ NA

\$ WA

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name

Relationship

Age

WA

WA

WA

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 950.-

\$

Are real estate taxes included? ☒ Yes ☐ No

Is property insurance included? ☒ Yes ☐ No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ 330.-

\$

Home maintenance (repairs and upkeep)

\$ 25.-

\$

Food

\$ 250.-

\$

Clothing

\$ 20.-

\$

Laundry and dry-cleaning

\$ 0

\$

Medical and dental expenses

\$ 65.-

\$

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 120.	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ _____
Life	\$ 0	\$ _____
Health	\$ 0	\$ _____
Motor Vehicle	\$ 80.	\$ _____
Other: _____	\$ 0	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0	\$ _____
Installment payments		
Motor Vehicle	\$ 0	\$ _____
Credit card(s)	\$ 25.	\$ _____
Department store(s)	\$ 0	\$ _____
Other: _____	\$ 0	\$ _____
Alimony, maintenance, and support paid to others	\$ 0	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ 1865.00	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I work for a temp agency there are weeks without working and the pay scale fluctuates.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 28th October, 2024

[Signature]
(Signature)