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ISSUES PRESENTED FOR REVIEW:

I.

Whether a Voluntary Dismissal With Prejudice divests a trial Court of jurisdiction to allow a Plaintiff to amend the Dismissal to "Without" Prejudice when it is alleged, pursuant to Rule 1.540(b)(1), that there was mistake, inadvertance or excusable neglect.

II.

Whether the Supreme Court should grant a Writ of Certiorari when the decision below is in conflict with a decision of another District Court of Appeals.

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I.
FACTS

At the trial Court level Respondent herein made a tactical decision to voluntarily dismiss its cross-claim against Petitioner, ANDREW BENDER. Respondent filed a Voluntary Dismissal With Prejudice. (See Page 2 of Appendix filed herein).

Thereafter, on July 24, 1984, Respondent filed its Motion to Amend Voluntary Dismissal so that it would read "Without" Prejudice. (See Page 3 of Appendix filed herein). Said Motion relied upon Rule 1.540(b), Rules of Civil Procedure in seeking relief from mistake or inadvertance.

On November 15, 1984, Broward County Circuit Court Judge LAWRENCE L. KORDA granted Respondent's Motion to Amend the Voluntary Dismissal. (See Page 5 of Appendix filed herein).

Said decision was appealed to the Fourth District Court of Appeals. Petitioner relied on the Supreme Court holding in RANDLE-EASTERN AMBULANCE SERVICE, INC. v. VASTA, 360 So 2nd 68, and the Second District holding in MILLER v. FORTUNE INSURANCE COMPANY, 453 So 2nd 489 to support his position that the trial court lost its jurisdiction for all purposes when Respondent filed its Voluntary Dismissal With Prejudice. In reply, Respondent cited the Fourth District case of SHAMPAINE INDUSTRIES, INC. v. SOUTH BROWARD HOSPITAL DISTRICT, 411 So 2nd 364.

The Fourth District affirmed the lower Court, based upon their previous holding in SHAMPAINE, (Supra).

II.
NATURE OF RELIEF SOUGHT

Petitioner herein seeks the certiorari jurisdiction of the Florida Supreme Court based on the conflict of opinions between the Fourth District Court of Appeal and those of the Second District Court and Supreme Court.

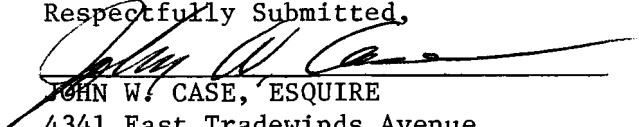
III.
ARGUMENT

The opinion in RANDLE-EASTERN, (Supra), states, in part, that the effect of a Voluntary Dismissal is to terminate the litigation instantaneously. The Second District case of MILLER v. FORTUNE (Supra), contains the same basic set of facts as the instant case. Relying upon RANDLE, (Supra), the Court held that the trial Court was divested of all jurisdiction, even to entertain a 1.540(b) motion when the Voluntary Dismissal was entered.

The SHAMPAINE INDUSTRIES, (Supra) case also contains the same basic set of facts as the instant case. There, however, the Fourth District held that Rule 1.540(b) could be used to amend a pleading, even after the case had been voluntarily dismissed.

WHEREFORE, Petitioner respectfully submits to this Court that there is a conflict of opinions between the Fourth District Court of appeals and the Second District Court of Appeals and respectfully requests the Supreme Court of the State of Florida to take jurisdiction of this matter and grant Petitioner a Writ of Certiorari.

Respectfully Submitted,


JOHN W. CASE, ESQUIRE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to CHARLES C. PAPY, III, 201 Alhambra Circle, Suite 502, Coral Gables, Florida 33134 this 14th day of March, 1985.



JOHN W. CASE, ESQUIRE