

IN THE SUPREME COURT OF FLORIDA

JOSEPH MASON,

Petitioner,

vs.

GEORGE BOYUNG, et al,

Respondents.

FILED
APR 15 1987
CLERK OF THE SUPREME COURT
By _____
Deputy Clerk

Case No. 70,187

BRIEF OF RESPONDENT, GEORGE BOYUNG

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TABLE OF CITATIONS

Akin v. Harvey, 283 So.2d 892
(Fla. 1st DCA 1973)..... 2

In Re Proposed Florida Appellate Rules,
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ARGUMENT

Respondent, GEORGE BOYUNG, by and through his undersigned attorney, hereby files his Brief on Jurisdiction of this Court pursuant to Florida Rule of Appellate Procedure 9.120(d) and would pray this Court to deny Petitioner's, JOSEPH MASON, request for discretionary jurisdiction on Writ of Certiorari.

Pursuant to Florida Rule of Appellate Procedure 9.120(d), the Petitioner's Brief, limited solely to the issue of jurisdiction of this Court and an accompanying conformed copy of the decision of the District Court of Appeal "shall be served within 10 days of filing the notice." (emphasis supplied). In the instant case, Petitioner, JOSEPH MASON, by and through his attorney, has failed to timely file any such brief or conformed copy of the District Court of Appeal's decision. Petitioner filed his Notice of Review with the district court below on or about March 6, 1987. No jurisdictional brief, or conformed copy of the decision was filed with this Court within the ten (10) day time limit.

Moreover, while Respondent recognizes the holding in Weintraub v. Alter, 482 So.2d 454, 457 (Fla. 3d DCA 1986) (failure to timely pay filing fee will not alone affect jurisdiction of appellate court), Petitioner herein not only failed to timely file a jurisdictional brief, but failed to pay his filing fee within the thirty (30) day limit for filing the Notice of

Review and filing fee as required in Florida Rule of Appellate Procedure 9.120(b). As stated in Florida Rule of Appellate Procedure 9.040(h), failure to timely file fees "may be subject to the appropriate sanction." The appropriate sanction here is denial of discretionary review.

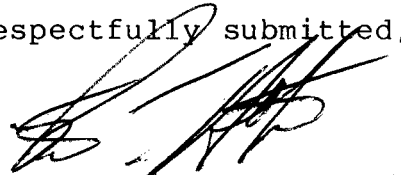
The unique stance of this case, to-wit: dismissal at the trial court level for failure to prosecute, and a review of the history of this case indicate that Petitioner, through his attorney, seeks to ignore the rules this Court promulgated for the efficient disposition of cases in the Florida courts. In Re Proposed Florida Appellate Rules, 351 So.2d 981, 983 (Fla. 1977) ("It was the intent of many persons involved in the drafting of these...rules to implement the public policy of Florida that appellate procedures operate to protect rather than thwart the substantive legal rights of the people by...expediting the process." Since the filing of Petitioner's action in 1981, the Defendants (Respondents here) have been required to move Plaintiff's case. However, Petitioner has the duty to timely prosecute his case. Akin v. Harvey, 283 So.2d 872 (Fla. 1st DCA 1973).

The filing of a timely Notice of Review is mandatory, as is the filing of a timely brief on jurisdiction. Florida Rule of Appellate Procedure 9.120(d). Throughout the history of this case, Petitioner has disregarded the rules of procedure and now

seeks to continue to do so with impunity. Petitioner continues to delay these proceedings as he did in the circuit court and the district court.

The rules of appellate procedure are clearly worded and applicable to all, bench and bar alike. In the instant case, the court should deny discretionary review and prevent Petitioner from "thwart(ing) the...legal rights of the" Respondents herein to have this case brought to an end.

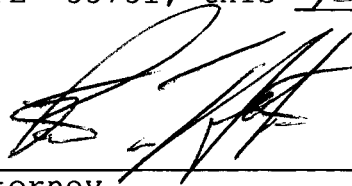
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular U.S. Mail to Mr. J. Stanford Lifsey, 201 East Kennedy Blvd., Suite 803, Tampa, FL 33602, and to Mr. Kenneth C. Deacon, Jr., of Harris, Barrett, Mann & Dew, Post Office Drawer 1441, St. Petersburg, FL 33731, this 13th day of April, 1987.



Attorney