

IN THE
SUPREME COURT OF FLORIDA

CASE NUMBER: 70,910

DEMPSEY J. BARRON

Petitioner,

v.

FLORIDA FREEDOM NEWSPAPERS, INC.

Respondent.

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ON PETITION FOR REVIEW OF A DECISION OF
THE FIRST DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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CITATIONS OF AUTHORITY

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<u>Sentinel Communications Co. v. Smith,</u> 493 So.2d 1048 (Fla. 5th DCA 1986), <u>rev. denied,</u> 503 So.2d 328 (Fla. 1987).....	3,4,6

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STATEMENT OF FACTS

Florida Freedom moved to intervene on September 30, 1986, (Appendix Exhibit 1) after their requests to review Senator Barron's divorce case court file had been denied by personnel in the clerk's office. This motion was followed by a motion to set aside order on October 2, 1986 (Appendix Exhibit 2).

The order which had been entered by the trial court on September 9, 1986, (Appendix Exhibit 3) merely cited the Sentinel Communication Company case [493 So.2d 1048 (Fla. 5th DCA 1986)] and Article I, Section 23 of the Florida Constitution as authority.

On October 13, 1986, hearing was had on Florida Freedom's motions at which time the newspaper contended that there had been no showing the three-pronged test had been met. There was no evidence produced at this hearing by Senator Barron, and therefore, Respondent would deny Petitioner's contention that they were afforded a "full hearing" (Petitioner's brief on jurisdiction at p. 2). As Florida Freedom has not been privy to the information presented to support this closure, there is no way to respond to the contention the trial court performed any balancing test.

Regardless of basis used by the court, Florida Freedom contends the court erred as a matter of law for failing to use the proper procedure.

The remaining chronological facts offered by the Petitioner are accepted as accurate by the Respondent.

SUMMARY OF ARGUMENT

In Sentinel Communication Company v. Smith, 493 So.2d 1048 (Fla. 5th DCA 1986) the court had two additional factors for consideration that were not present in Florida Freedom Newspapers, Inc., v. Sirmons, 12 FLW 1365 (Fla. 1st DCA, June 1, 1987).

- 1) The case in Smith had long been closed with the order of closure having been entered almost two years prior to the Sentinel's efforts to intervene. Florida Freedom moved to intervene within one month of the entry of the order of closure.

- 2) The trial court in Sentinel based the order of closure, at least in part, on the need to protect the parties' minor children. There were no minor children involved in the Barron dissolution action.

While Florida Freedom disagrees with the holding in Smith and believes it to be unsupported in the law, Respondent would contend there is an insufficient basis to invoke the discretionary jurisdiction of this Court.

ARGUMENT

The Petitioner, Senator Dempsey J. Barron, urges this Court to invoke their discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure, alleging a conflict between the holdings in Sentinel Communications Co. v. Smith, 493 So.2d 1048 (Fla. 5th DCA 1956), rev. denied, 503 So.2d 328 (Fla. 1987), and Florida Freedom Newspapers, Inc. v. Sirmons, 12 FLW 1365 (Fla. 1st DCA, June 1, 1987). While Respondent concedes that the First District Court of Appeals rejected the reasoning of the Fifth District's opinion, Florida Freedom would contend that the factual situations in the two cases are so dissimilar as to eliminate the claimed conflict. In denying the existence of conflict, Florida Freedom does not endorse the holding of Sentinel and does not believe that the holding is supported by existing case law.

As noted, Respondent would represent that the facts of the two cases are so different as to support a finding by this Court that there is no conflict sufficient to invoke the jurisdiction of the Court. The differences in the cases will be more fully discussed below.

Initially, The Orlando Sentinel did not seek any relief until the file had been sealed for almost two years. (Sealed October 26, 1983, Sentinel filed to intervene October 9, 1985, see Sentinel Communication Company's brief on jurisdiction, Supreme Court Case # 69,491 at pp. 1 and 2, Appendix Exhibit 4). The Fifth District Court of Appeals also attached importance to this delay. Sentinel Communications Company v. Smith, 493 So.2d 1048, 1049 (Fla. 5th DCA 1986). The district court went so far as to supply their own emphasis when discussing the title of the motion filed by the Sentinel in the trial court. They noted the paper sought "to intervene as a party in the closed case..." Id. at 1049.

Florida Freedom, in contrast, sought to intervene as soon as it learned of the closure. The motion to intervene by Florida Freedom was filed within one month of the order of closure. (Appendix Exhibits 1 and 3). The intervention motion was heard prior to the completion of discovery and the final hearing.

While Florida Freedom Newspapers, Inc., does not agree with the application of this distinction by the Fifth District, from a purely factual basis, it does

constitute a distinguishing factor. This factual difference does act to diminish any conflict claimed to merit this Court's intervention.

The parties in the Smith case also had minor children who truly could have been those "innocent third persons" the court spoke of at 1048. In the instant case, there are no such innocent third parties. Quite to the contrary, Senator Barron's children are grown. One of the sons, Steve, is a practicing attorney in Bay county and did not seek to intervene in support of non-disclosure.

This second factual difference adds to Florida Freedom's contention that it is an "apples and oranges" comparison and that any conflict can be attributed to the varying factual basis.

Florida Freedom notes also that this factual distinction was recognized by the First District Court of Appeal in their opinion rendered in the instant case. 12 FLW 1365 (Fla. 1st DCA June 1, 1987). The court in footnote 9, at 1366, stated:

"This factual basis further distinguishes this case from Sentinel Communications Company v. Smith, 493 So.2d 1048, where closure was predicated in part upon the protection of the interests of the minor children."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to the following persons this 18th day of August, 1987.

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