

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,090

DICK LOCKE,

Petitioner,

v.

PAUL M. HAWKES,

Respondent.

FILED
APR 27 2017
CLERK OF THE SUPREME COURT
TALLAHASSEE, FLORIDA
Clerk

ON APPLICATION FOR DISCRETIONARY REVIEW OF THE
DISTRICT COURT OF APPEAL, FIFTH DISTRICT OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

Respondent, PAUL M. HAWKES, specifically disagrees with the Statement of the Case and of the Facts contained in the Petitioner's Brief on Jurisdiction in the following respects:

(1) The District Court of Appeal did not accept as fact Locke's contention that Locke produced records pursuant to legislative policy reflecting the receipt and deposit of each allowance received by him pursuant to §11.13(4), Florida Statutes, and each item of expenditure. In fact, the District Court of Appeal noted on page 3 of its decision that "the legislative rules and policies under which Locke, a member of the House of Representatives, *contends* he delivered some of the requested records were rules and policies adopted only by the legislators in the 1988 session." [Emphasis supplied.] Hawkes filed suit on September 8, 1988. The legislative rule which Locke contends applies to this case was adopted by the Florida House of Representatives on November 22, 1988, at its organizational session. The District Court of Appeal also noted on page 3 of its decision that "[e]ach legislative session is a new legislature. Neither the internal rules nor the individual or collective opinions of one legislature constitute the rules or opinions of another legislature."

(2) Whether Petitioner Locke actually produced all the records involved was not an issue with the trial court nor was it an issue with the District Court of Appeal as evidenced by the orders rendered by both of those courts.

Respondent Hawkes wishes to invite the Court's attention to the following additional fact:

(1) The activity complained of below was that Locke failed to comply with Chapter 119, Florida's Public Records Law, a statute with a history dating back to 1909, by failing to produce records maintained by Locke relating to the expenditure of state tax money allocated for the maintenance of his office. *See* page 1 of the decision of the District Court of Appeal. At no time did Hawkes complain that Locke failed to comply with Rule 1.11 adopted November 22, 1988, by the Florida House of Representatives to govern the House during that particular session of the legislature.

QUESTIONS PRESENTED

- I. WHETHER THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.
- II. WHETHER THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW.

JURISDICTIONAL STATEMENT

The Florida Constitution, Article V, Section 3(b)(3), and Fla.R.App.P. 9.030(a)(2)(A)(iii), (iv), do not provide a basis for invoking the discretionary jurisdiction of the Florida Supreme Court to review this decision of the Fifth District Court of Appeal.

SUMMARY OF ARGUMENT

In order for the Supreme Court to exercise its discretionary jurisdiction pursuant to Article V, Section 3(b)(3) and Fla.R.App.P. 9.030(a)(2)(A)(iii), the decision of the district court of appeal must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state. To vest the Supreme Court with discretionary jurisdiction, the decision must *directly* and *exclusively* affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers. In the instant case, the Fifth District Court of Appeal simply construed a statute when it held that Chapter 119 does apply to the members of the legislature and the public records in their custody. It did nothing more. It did not add anything to the statute which was not already part of the statute. Thus this decision does not fit within the standard to invoke the discretionary jurisdiction of the Supreme Court on the grounds that it expressly affects a class of constitutional or state officers. The Supreme Court should therefore decline to exercise its discretionary jurisdiction in this case.

Additionally, the Fifth District Court of Appeal *expressly* held that its decision does not conflict with the Supreme Court decision in *Moffitt v. Willis*, 459 So.2d 1018 (Fla. 1984). A review of the precise activity complained of in the suit below in each case reveals that the two activities are entirely different. In *Moffitt*, the activity was that house and senate committees were holding secret closed meetings during the 1981 legislative session in violation of their own rules of procedure. In the instant case the activity is the refusal of a member of the legislature to produce records maintained by this legislator relating to the expenditure of state tax money allocated for the maintenance of his office pursuant to §11.13(4), Florida Statutes. No internal activity of the House of Representatives is involved; there is no complaint of any rule of procedure being violated; there are no internal records of the legislature itself involved in this case. The *Moffitt* case and this case involve two totally different issues and two totally different questions of law which in no way conflict with each other. The Supreme Court should therefore decline to exercise its discretionary jurisdiction in this case.

ARGUMENT

I. THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AFFECT A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.

The standard which applies to the determination of whether the district court of appeal decision expressly affects a class of constitutional or state officers was enunciated by this court in *Spradley v. State*, 293 So.2d 697, 701 (Fla. 1974):

A decision which "affects a class of constitutional or state officers" must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that the members of these classes are bound by the law the same as any other citizen. To vest this Court with certiorari jurisdiction, a decision must *directly* and, in some way, *exclusively* affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers.

In the instant case, the District Court of Appeal simply construed a statute and it did nothing more. It did not add anything to the statute which was not already part of the statute. Additionally,

Locke offered no argument whatsoever to support his position that the District Court of Appeal did anything more than simply construe a statute.

Accordingly, Respondent respectfully urges that this Court should not exercise its discretionary jurisdiction in this case in that the decision does not affect a class of constitutional or state officers as defined by this Court in *Spradley*.

II. THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW.

The Fifth District Court of Appeal expressly held that its decision *does not conflict* with the Supreme Court decision in *Moffitt v. Willis*, 459 So.2d 1018 (Fla. 1984). The District Court pointed out in its decision on page 3:

It is emphasized that this case involves the application of the public records act, Chapter 119, Florida Statutes, to the records in the office of a particular member of a particular legislature, and not to the internal records of the legislature itself, and therefore, this case does not present the issue that was involved in *Moffitt v. Willis*, 459 So.2d 1018 (Fla. 1989). [sic]

This court in *Moffitt* held:

In order to determine jurisdiction we must first identify the precise activity complained of in the suit below. The publishing companies allege that certain groups of individuals, which they identify as house and senate committees, held secret closed meetings during the 1981 legislative session. They do not complain of or challenge any specific act or law promulgated by the legislature. Rather, the complaint is that the house and senate violated their own rules of procedure.

Id., at 1021. This court additionally held in that case that "[i]t is the final product of the legislature that is subject to review by the courts, not the internal procedures. . . . [T]he legislature has the power to enact measures, while the judiciary is restricted to the construction or interpretation thereof." *Id.*

In the instant case, it is the final product of the legislature, Chapter 119, which Hawkes seeks to construe and enforce. There are no internal records of the legislature itself involved in this case. The *Moffitt* case and this case involve two totally different issues and two totally different questions of law which in no way conflict with each other.

Locke attempts to mislead this court into accepting jurisdiction by asserting that House Rule 1.11 governs the records which Hawkes seeks for production pursuant to Chapter 119. Locke fails to point out to this court that at the Organization Session of the House of Representatives on Tuesday, November 22, 1988, HR 1-Org was passed establishing the Rules of the House of Representatives. This resolution provided, among other things:

(b) Rule 1.11 is *created* [emphasis supplied] to read:

1.11-Legislative Records

There shall be available for public inspection the papers and records developed and received in the course of legislative business as follows:

[Then follows a list of those papers.]

Thus, even if this rule had been created prior to Hawkes' initial request in July of 1988 for the records maintained by Locke relating to the expenditure of state tax money allocated for the maintenance of his office pursuant to §11.13(4), Florida Statutes, it would not apply to this case because these records were not developed and received in the course of legislative business by the legislature during a particular session of the legislature. The facts of the instant case simply are not like the facts of the *Moffitt* case where the activity complained of was the holding of secret closed meetings by House and Senate committees during the legislative session itself. These two decisions, therefore, do not conflict with each other at all.

This court has previously held:

While this Court has subject-matter jurisdiction to hear any petition arising from an opinion that establishes a point of law, we have operated within the intent of the constitution's framers, as we perceive it, in refusing to exercise our discretion where the opinion below establishes no point of law contrary to a decision of this Court or another district court."

The Florida Star v. B.J.F., 530 So.2d 286, 288-289 (Fla. 1988). Respondent Hawkes, therefore, respectfully urges that this court should not exercise its discretionary jurisdiction in this case where the opinion below establishes no point of law contrary to a decision of this Court or another district court.

CONCLUSION

This Court should continue to operate within the intent of the constitution's framers and refuse to exercise its discretion in this case where the opinion below does not expressly affect a class of constitutional or state officers and where it establishes no point of law contrary to a decision of this Court or another district court.

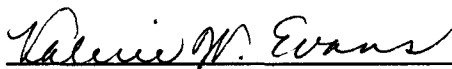
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to KEVIN X. CROWLEY, ESQUIRE, Cobb Cole & Bell, 315 S. Calhoun Street, Suite 500, Tallahassee, Florida 32301, Attorney for Petitioner, and to CHARLES P. HORN, ESQUIRE, Hawkes & Horn, 5641 W. Gulf To Lake Highway, Crystal River, Florida 32629, Additional Attorney for Respondent, by United States Mail, on this 26th day of June, 1990.



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