IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CRC14-00216CFAES

STATE OF FLORIDA

V.

CURTIS J. REEVES

STATE'S ARGUMENT AND MEMORANDUM IN SUPPORT OF ITS MOTION TO ENFORCE THE COURT'S ORDER OF SEPTEMBER 8TH, 2015 TO FORTHRIGHT FILE ALL DEFENSEDISCOVERY DEPOSITION TRANSCRIPTS WITH THE PASCO COUNTY CLERK OF COURT

STATE'S ARGUMENT

Upon filing by the State of its motion to compel the Defendant to file all transcribed discovery depositions with the clerk of court as directed by Administrative Order No. PA/PI-Cir-99-35, the Defendant filed with the trial court its response to the State's motion claiming, among other things[1], the Administrative Order did not apply to a Defendant with private counsel who was using private, not public funds to pay the cost of the criminal depositions. The Defendant did not seek a stay from the trial court in order to seek an exemption, as contemplated by Administrative Order No. PA/PI-Cir-99-35, from the Chief Judge of the circuit to the filing of criminal discovery depositions with the clerk of court. Instead, he invoked the jurisdiction of the trial court to seek an exemption to the filing of the depositions from the trial court by arguing in part Administrative Order No. PA/PI-Cir-99-35 did not apply to him. The Defendant adopted the strategy of not subjecting himself to the jurisdiction of the Chief Judge, more than likely out of fear that it would preclude him from making the argument that said Administrative Order did not apply to him. By adopting the tactic of seeking an exemption from said Administrative Order from the trial court, instead of the Chief Judge of the circuit, he is now bound by the decision of the trial court, subject only to his right of direct appeal at the close of the case.

By choosing to litigate his objection to the filing of criminal discovery deposition transcripts with the clerk of court with the trial court, the Defendant has impliedly waived his right to now seek an exemption from the Chief Judge. The Defendant has fully litigated this matter with a court of competent jurisdiction. The trial court and the Chief Judge are courts of equal competent jurisdiction. The Second District Court of Appeal found that the trial court, in signing the order compelling the Defendant to file the transcripts of all criminal discovery

[1] See, State's Appendix In Support Of Its Motion To Enforce The Court's Order Of September 8th, 2015 To Forthright File All Defense Discovery Deposition Transcripts With The Pasco County Clerk Of Court

depositions in the above-styled cause, did not depart from the essential requirements of the law and that the filing of said depositions did not result in a manifest injustice to the Defendant.

The Chief Judge does not have appellate review of the trial court's decision in this matter. Once the Defendant chose to litigate this matter via the trial and appellate courts, he cannot now pick another avenue of litigation to argue the same issues comprising his objection to this matter. The Defendant cannot forum shop hoping at some point in time to obtain a favorable ruling. The court's order of September 8, 2015 commanding defense counsel to forthright file all discovery deposition transcripts with the clerk of court is now the law of the case in the Sixth Judicial Circuit.

Having elected to invoke the jurisdiction of the trial court to seek an exemption to said Administrative Order, he has deemed to have acquiesced that the matter shall be considered and disposed of by the trial court and not the Chief Judge of the circuit. The Defendant's action of litigating the matter with the trial court amounts to an implied waiver of his right to seek an exemption from the Chief Judge, pursuant to Administrative Order No. PA/PI-Cir-99-35; thus, the principle of res judicata applies and is reviewable only by direct appeal at the close of the case.

The Defendant cannot now try to "unring the bell" by arguing the same issues in an attempt to seek an exemption from the Chief Judge of the circuit. The Defendant has already rung the bell by virtue of the Defendant litigating the matter before the trial court and appealing the court's ruling to the appellate court.

The Defendant, having exhausted or waived all available remedies available at this point in time, must now follow the court's prior order.

MEMORANDUM OF LAW

Several principles of law apply to the Defendant's desire to seek an exemption to Administrative Order No. PA/PI-Cir-99-35 from the Chief Judge of the circuit after fully litigating the issue with the trial court and after the Second District Court of Appeal denied his Petition for Writ of Certiorari and his motion for rehearing en banc.

The **Law of the Case Doctrine** requires that "questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings". State v. McBride, 848 So. 2d 287, 289 (Fla. 2003) (citations omitted). Here, the Second District Court of Appeal found that the trial court, in signing the order compelling the Defendant to file the transcripts of all criminal discovery depositions in the above-styled cause, did not depart from the essential requirements of the law and that the filing of said depositions did not result in a manifest injustice to the Defendant. At this point in time, there are no other remedies available to the Defendant until the closed of the case when, if necessary, he can file a direct appeal.

In McBride, the Florida Supreme Court explained **the principle of res judicata** means "a judgment on the merits rendered in a former suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action." Id. Res judicata prohibits not only relitigation of claims raised but also the litigation of claims that could have been raised in the prior action. Id. at 290. Here, the Defendant is not only precluded from raising all the issues he raised at the hearing before the trial court and before the Second District Court of Appeal. He cannot "sandbag" the court and argue that he wants to raise issues that he did not previously raise because those issues were ripe for litigation at the time the Defendant invoked the jurisdiction of the trial court instead of the Chief Judge of the circuit.

In Atlantic Shores Corporation the complainant in a mortgage foreclosure proceeding invoked the jurisdiction of the equity court asking for a personal judgment for deficiency. The Florida Supreme Court held that the complainant "was not compelled to submit the adjudication of this question to the court of equity, but if he did so, he would have been bound by its decision, subject only to his right of appeal where such discretion was abused". Atlantic Shores Corporation v. Zetterlund, 138 So. 50, 54 (Fla. 1931). The Florida Supreme Court in Atlantic Shores Corporation found,

> "But, where the chancellor does not just merely refuse to entertain the prayer for deficiency by refusing to enter upon the legal aspects of the case at all, and, on the contrary, does entertain such prayer and hears and considers pleadings and evidence for and against the entry of such a decree, or concerning the amount of it, if one is to be entered, the decision of the chancellor... then becomes the equivalent of a judgment in a common-law action and is res judicata, and whatever error may have been committed in the decree rendered is subject to redress and correction only by a direct appeal in the pending cause."

Id. at 54 (citation omitted). The Florida Supreme Court further determined,

> "He [the complainant] was not compelled to submit the adjudication of this question to the court of equity, but, if he did so, he would have been bound by its decision, subject only to his right of appeal where such discretion was abused. The discretion so vested is not an absolute and unbridled discretion, but a 'sound judicial discretion,' which must be supported by established equitable principles as applied to the facts of the case, and the exercise of which is subject to review on appeal."

Id. (quoting "Cragin v. Ocean & Lake Realty Co, (Fla.) 133 So. 569, also Id. (Fla.) 135 So. 795", [797]).

In Johnson, the wife moved to set aside final judgment of dissolution of marriage and settlement agreement. The lower court held the wife's prior waiver of claim that mediation settlement agreement was product of duress had res judicata effect on refiled motion arguing the same grounds. Johnson v. Johnson, 738 So. 2d 508, 509 (Fla. 1st DCA 1999).

The First District Court of Appeal found

> "The trial court correctly dismissed appellant's motion in so far as appellant relied upon the claim of duress. The record reflects, and the trial court found, that prior to the entry of final judgment, appellant filed a motion with an identical claim of duress in an effort to set aside the mediation settlement agreement. Appellant later withdrew the motion and filed a waiver with the court which stated that appellant had no objections to the entry of final judgment upon the settlement agreement. By raising the same claim of duress again in her motion to set aside the final judgment, appellant simply refiled a motion she previously withdrew and waived on the record nearly a year earlier. Rule 1.540(b) does not empower a trial court to upset the finality of a judgment in cases where a voluntary dismissal is based upon a party's "tactical error" and not upon "grounds set out in the rule."... Were we to allow, on these facts, a repeat claim of duress, we would exceed the limits of Rule 1.540(b) relief, violate the doctrine of res judicata and upset the finality of the judgment.

Id. (citations omitted).

In McBride, the Florida Supreme Court explained the **principle of collateral estoppel** "prevents identical parties from relitigating the same issues that have already been decided". McBride, 848 So. 2d at 290. "In addition, the particular matter must be fully litigated and determined in a contest that results in a final decision of a court of competent jurisdiction. Id. 291. The principle precludes relitigation of an issue in a subsequent but separate cause of action thereby preventing parties from rearguing the same issues that have been decided between them by a court of competent jurisdiction. Id.

In McBride, the Florida Supreme Court further explained that while the law of the case doctrine and the principles of res judicata and collateral estoppel will not be invoked where it would defeat the ends of justice. McBride, 848 So. 2d at 291.

There is no constitutional or legislative "right" associated with the matter at bar. But, just as a defendant has a right to waive constitutional and legislative due process rights, the Defendant here can waive his ability to seek an exemption from the Chief Judge of the circuit and seek the exemption from the trial court by arguing that said administrative order does not apply to him.

As an example of the principal of waiver, a criminal Defendant can waive his right to have his trial in the venue where the crime occurred. Venue, "the geographical subdivision in

which a court of competent jurisdiction may determine the case[,]" can be waived by a defendant. Tucker v. State, 417 So. 2d 1006, 1009 (Fla. 3d DCA 1982). By electing to have his case tried in a specific county, the defendant cannot then object because he is not being tried in the county where the crimes were committed. See Bundy v. State, 455 So. 2d 330, 339 (Fla. 1984); § 910.03, Fla. Stat ("By his election, the accused waives the right to trial in the county in which the crime was committed."). By asking for a change of venue, a defendant waives his right to be tried in the county the crimes were committed. Bundy, 455 So. 2d at 339. This is true even if the defendant claims he had to request the original change of venue because of error by the trial court. Id. Likewise, the Defendant, in the present case, has waived the ability to take this matter before the Chief Judge because he has litigated this matter in the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the *State's Argument And Memorandum In Support Of Its Motion To Enforce The Court's Order Of September 8th, 2015 To Forthright File All Defense Discovery Deposition Transcripts With The Pasco County Clerk Of Court* was furnished to Richard Escobar, Esq., Escobar & Associates, P.A., 2917 West Kennedy Blvd., Ste 100, Tampa, FL 33609, Attorney for the Defendant by U.S. Mail / Hand / Facsimile this 29th day of April, 2016.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

By: [redacted]
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