IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC19-1957
L.T. CASE NO. 3D18-2325

JANET M. RENO,

Petitioner,

vs.

JAMES ALAN HURCHALLA, as Successor Trustee of the Janet Reno Revocable Trust dated May 17, 2008, ROBERT HUNTER HURCHALLA, JANE ELIZABETH HURCHALLA, GEORGE HURCHALLA, KARIN HUNTER RENO, and DOUGLAS MARK RENO,

Respondents.

RESPONDENT JAMES ALAN HURCHALLA'S BRIEF ON JURISDICTION

On Discretionary Review from the Third District Court of Appeal
of the State of Florida

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

STATEMENT OF THE CASE & FACTS

In her jurisdictional brief, Petitioner seeks for this Court to disturb the Third District Court of Appeal's well-thought-out opinion in *Reno v. Hurchalla*, No. 3D18-2325, 2019 WL 3938297 (Fla. Dist. Ct. App. Aug. 21, 2019) ("Opinion"), and order denying rehearing and certification entered on October 14, 2019 ("Order"). To the extent that Petitioner's brief cites to matters not found on the face of the Opinion, they should be ignored for jurisdictional purposes. Nevertheless, to correct and clarify the inaccurate statements regarding the proceedings below, the necessary facts (and corrected procedural history are set forth below).

Prior to her passing, Janet Reno, the former Attorney General of the United States of America, executed the Janet Reno Revocable Trust dated May 17, 2008 ("Trust"). In it Ms. Reno details her two-fold intent with regard to her estate: (1) to ensure the well-being of her two brothers should either or both outlive her;[1] and (2) to document her general charitable intent to gift the Reno Papers and historically significant homestead property (the "Reno Homestead") to an institution that would ensure their preservation in perpetuity. The Trust—the document at the crux of the parties' dispute—emphasizes her unambiguous general charitable intent in Article III ("Beneficiaries"), Article V ("Dispositive Provisions Upon Death of

[1] It is undisputed that Mark Reno and Robert Reno predeceased Ms. Reno.

Settlor"), Article VI ("Provisions Relating to the Homestead"), and Article XX ("Miscellaneous").[2]

In Article III, Ms. Reno sets forth the general purpose of the Trust and the limited rights of her six nieces and nephews. In light of the instrument's dual-purpose (and cognizant that the property might be necessary to fund her and her brothers' well-being), Ms. Reno stipulates that the rights of the contingent beneficiaries "***are subject to the provisions of this Trust relating to survivorship of Settlor, rights of invasion of principal for the benefit of the Settlor and other provisions***." Trust, Art. III. (Emphasis Added).

In Article V, Ms. Reno reiterates her intent to provide for her brothers' long-term care after her passing, and documents her charitable intent concerning the Reno Papers and the Reno Homestead. In Paragraph D, Ms. Reno dictates that upon the death of her brothers, and in the event the Homestead ***was still part of the trust corpus***, the Trustee would be required to sell the Homestead and distribute the proceeds to Ms. Reno's beneficiaries. *Id*. However, Ms. Reno stipulates that the "***provisions relating to the direction of the Trustee to sell the homestead shall not be deemed inconsistent with the provisions set forth in Article VI hereof***." *Id.* Thus, to avoid any inconsistencies, Article VI harmonizes these provisions and explains Ms. Reno's general charitable intent concerning the Reno Homestead.

[2] Petitioner stipulated that the Trust is unambiguous.

In Article VI, Ms. Reno describes the Reno Homestead as a "unique parcel of real estate [having] historical importance." *Id*., Art. VI, ¶ A. In an effort to ensure the preservation of this historically-significant property, Ms. Reno stipulates that "[u]pon the death of Settlor, in the event the homestead is still owned by the Trust, the Trustee shall offer to gift the homestead to the University of Miami upon such terms and conditions as the Trustee deems appropriate" and in compliance with the requirements of the Trust. *Id*., Art. VI, ¶ C. The required terms and conditions are itemized in Paragraph C (i) – (v), which include that the recipient must agree to preserve the Reno Homestead in perpetuity and not destroy the property or its unique character. Thus, the Trust creates a general charitable gift with respect to the Reno Homestead which sole objective is to ensure the preservation of the property's unique character and historical importance.

Lastly, in Article XXI, Ms. Reno reaffirms her charitable intent by stating "***[i]n making distributions of principal, from the Trust, the Trustee shall primarily consider the needs of the Settlor, as primary beneficiary, or, upon her death, the needs of the Settlor's siblings, and not the needs of any nephew or nieces of Settlor***." Trust, Art. XXI, ¶ D (emphasis added).

Based on these clear and unequivocal instructions, upon Ms. Reno's passing, the Respondent offered the Reno Homestead to the originally-designated charitable donee—the University of Miami. However, the initial intended recipient rejected

the bequest, and the Respondent sought to preserve Ms. Reno's charitable intent by substituting an alternative institution through the cy pres doctrine. After extensive motion practice, the trial court determined that the cy pres doctrine, Fla. Stat. § 736.0413, authorized the substitution of Miami Dade College for the University of Miami and entered final judgment in favor of the Respondent. The Third District Court of Appeal affirmed the judgment, and summarily denied Petitioner's motion for rehearing and/or certification that presents many of the same arguments that are currently before this Court.

SUMMARY OF THE ARGUMENT

Petitioner contends that the decisions of the Third District Court of Appeal conflict with decisions rendered by this Court and several district courts of appeal. However, Petitioner's position is based on a misunderstanding of the cases she relies upon. The cases cited in Petitioner's Jurisdictional Brief are not inconsistent with the Opinion on review. Therefore, there is no express and direct conflict with this Court or another district court of appeal.

STANDARD OF REVIEW AND JURISDICTIONAL CRITERA

Petitioner contends this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution states that this Court "[m]ay review any decision of a district court of appeal…that expressly and directly conflicts with a decision of another district

court of appeal or of the supreme court on the same question of law." The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." *Reaves v. State*, 485 So.2d 829, 830 (Fla. 1986); *see also Dep't of Health & Rehab. Servs. v. Nat'l Adoption Counseling Serv., Inc*., 498 So. 2d 888, 889 (Fla. 1986) (dismissing petition based on "inherent" or "implied" conflict). Neither the record, nor a concurring opinion, nor a dissenting opinion may be used to establish jurisdiction. *Reaves, supra.* It is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).

ARGUMENT

A. The Challenged Decision Does Not Expressly or Directly Conflict With Any Decision from Another District Court of Appeal, or This Court, Regarding the Application of the Cy Pres Doctrine.

The Florida Constitution and Appellate Rule 9.030(a)(2)(A)(iv) provide this Court with the jurisdiction to review decisions of district courts of appeal that expressly and directly conflict with decisions rendered by this Court, or by other district courts of appeal. Decisions may be in conflict by announcing conflicting rules of law or by application of rules of law to substantially similar facts in such a manner as to produce conflicting results. *See, e.g., Mancini v. State*, 312 So. 2d 732 (Fla. 1975); *Nielsen v. City of Sarasota*, 117 So. 2d 731 (Fla. 1960). Thus, it

follows, that where cases involve dissimilar facts or substantially different issues, they cannot result in conflicting decisions for jurisdictional purposes.

In support of her request, Petitioner argues that the Opinion conflicts with *Sheldon v. Powell*, 128 So. 258 (Fla. 1930) and *Jewish Guild for the Blind v. First Nat'l Bank in St. Petersburg*, 226 So. 2d 414 (Fla. 2d DCA 1969). However, Petitioner's assertion fails as the facts, issues, and law of each of these cases are dissimilar and thus, do not present a conflict of law. In *Jewish Guild*, the testator's dominant intention was to create a charitable trust to aid afflicted children. *Jewish Guild*, 226 So. 2d at 415. To carry out his dominant intent, the testator created a fund for the acquisition or construction of a facility for blind children. *Id*. However, the testator—anticipating the possibility that his first charitable bequest could not be achieved—expressly provided an alternative charitable use for the funds (i.e., an orthopedic ward for children). *Id*. In determining whether the cy pres doctrine was applicable to the facts presented in that case, the court held that since under either alternative the dominant intention of the testator could be fulfilled, the cy pres doctrine was inapplicable. *Id.* at 416.

Similarly, in *Sheldon*, the testator made a charitable bequest to a library. 128 So. 258, 260 (Fla. 1930). However, the library ceased operations, and the executor of the estate declined to release the legacy to the association administering the library. *Id*. Despite this refusal, the Court authorized the substitution explaining,

"it would be natural to assume that the testator intended that it would be used to benefit the library and make it bigger, better and more efficient for the community." *Id*. As the association was the legal representative of the library, and there was no claim that they intended to use the legacy for any other purpose, the court determined that the provisions of the will could still be carried out and there was no need to resort to the application of the cy pres doctrine.

Therefore, the fact pattern in the case at bar is not even remotely similar to *Sheldon* or *Jewish Guild*, and there is no support for the proposition that the cases are in conflict with the Opinion. In *Sheldon*, the testator's general charitable intent was effectuated by applying the provisions of the will, and therefore, the cy pres doctrine was inapplicable in preserving the testator's general charitable intent. Further, unlike in *Jewish Guild*, where the testator's dominant charitable intent could have been fulfilled by alternative provisions of the trust, Ms. Reno's dominant charitable intent of preserving and maintaining the historical significance of the Reno Homestead in perpetuity cannot be fulfilled by any alternative provision in the Trust.

Petitioner also suggests that the Opinion conflicts with Florida law regarding the cy pres doctrine by imposing the doctrine where there is no evidence of a general charitable intent. Br. 7. In support, Petitioner cites *to Christian Hearld Ass'n v. First Nat. Bank of Tampa*, 40 So. 2d 563, 568 (Fla. 1949) and *SPCA*

Wildlife Care Ctr. v. Abraham, 75 So. 3d 1271, 1276 (Fla. 4th DCA 2011). However, neither of these opinions conflict with the Opinion under review, and Petitioner once again misconstrues their holdings.

In *Christian Herald Ass'n*, the decedent left a will that contained bequests to members of his family and charities. One of these was made to Christian Herald New Jersey. However, this entity ceased operations and its charitable endeavors were absorbed by Christian Herald New York. Finding that the initial recipient was simply a "conduit to accomplish the charitable intent," the court applied the cy pres doctrine to rescue the testator's charitable intent and substituted Christian Herald New York for the defunct entity. Thus, there is no conflict.

Similarly, in *SPCA Wildlife*, the decedent created a testamentary trust providing lifetime income for a beneficiary, and dictating that any remaining assets be distributed to the International Wildlife Society. 75 So. 3d at 1275. However, upon the death of the beneficiary, the successor trustee learned that the designated institution did not exist. On appeal, the Fourth District Court of Appeal authorized the application of the cy pres doctrine finding that the intention of a testator expressed in a will controls the legal effect of the disposition. Similar to the case at bar, the testator in *SPCA* had not designated an alternative charitable institution as a recipient of the bequest. Thus, the cy pres doctrine was available and appropriate to rescue the testator's general charitable bequest.

B. Petitioner's Brief on Jurisdiction Misconstrues Application of Cases Regarding Interpretation of Testamentary Documents.

Petitioner also suggests that the Opinion violates the rules of construction of trust agreements. Specifically, Appellant claims that the Opinion overlooks and expressly and directly conflicts with Florida appellate cases by ignoring the plain language of the Trust. Br. 10. However, it is well-settled that the polestar of construction is the testator's intent. *Hulsh v. Hulsh*, 431 So. 2d 658, 664 (Fla. 3rd DCA 1983). "[W]here the will viewed in its entirety expresses an intent to make a certain disposition, that intent should, where possible, prevail over some isolated clause of the will that appears contrary to the overall intent." *Id*. Further, "[w]hen faced with provisions of a will seemingly in conflict, it is the responsibility of the court to harmonize the conflicts in order to give full measure to the testamentary intent." *Meszaros v. Holsberry*, 84 So. 2d 565, 567 (Fla. 1956).

However, "[a]s not infrequently happens, the testator, operating under the all-too-human assumption that the younger would survive the older, fail[s] to foresee and provide for the possibility that the opposite might occur." *Hulsh* at 664. Thus, a testator's failure to provide for an unforeseen contingency, although creating inconsistencies between certain provisions of the will, is not fatal. *Id*. In such instances, the trial court is permitted to adhere to the testator's clear intent and reconcile any apparent inconsistencies taking into consideration such intent. *Id*. As

such, Petitioner assertion of a conflict once again fails as the Opinion adheres to the well-settled precedent regarding the interpretation of testamentary documents.

C. Petitioner's Brief on Jurisdiction Misconstrues the District Court Proceedings Regarding Ability to Devise Property.

Petitioner also suggests the Opinion conflicts with the public policy that Floridians have a constitutional right to devise their assets as they deem fit. Br. 7. However, as held by the Third District Court of Appeal, Petitioner's argument is without merit. Not only does the Opinion adhere to the well-established legal requirements for the application of the cy pres doctrine and the interpretation and construction of wills and trusts in Florida, there is absolutely no support for the proposition that the Respondent is "rewriting" or thwarting Ms. Reno's well-established testamentary intent. To the contrary, in accordance with the Florida Constitution, the Respondent is trying to salvage Ms. Reno's general charitable intent to preserve her charitable bequest of the Reno Homestead. Thus, Petitioner fails to demonstrate that the Opinion is in express or direct conflict with decisions from other district courts of appeal or from this Court.

CONCLUSION

Based on the foregoing, Petitioner fails to demonstrate that the Opinion is in express or direct conflict with decisions from other district courts of appeal or from this Court. Thus, Petitioner's request to invoke discretionary review should be denied, and her Brief on Jurisdiction should be dismissed.

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CERTIFICATE OF SERVICE

We certify that, pursuant to and in compliance with Florida Rule Judicial Administration 2.516, this Jurisdiction Brief was e-filed via eDCA and was served via electronic correspondence and/or via US Mail on December 23, 2019, upon: **Hung V. Nguyen, Esq.**, The Nguyen Law Firm, hung@nguyenlawfirm.net; **Robert Hunter Hurchalla**, 5775 S.E. Nassau Terrace, Stuart, FL 34997; **Jane Elizabeth Hurchalla**, 525 Saddle Drive, Nashville, TN 37221; **George Hurchalla**, 5775 S.E. Nassau Terrace, Stuart, FL 34997; **Karin Hunter Reno**, 5305 S.W. 62 Avenue, Miami, FL 33155; and **Douglas Mark Reno**, 3035 Kirk Street, Coconut Grove, FL 33133.

By: /s/ *Charles H. Johnson*
CHARLES H. JOHNSON

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Fla. R. App. P. 9.210(a)(2).

By: /s/ *Charles H. Johnson*
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