Filing # 200230781 E-Filed 06/10/2024 05:06:38 PM

No. SC2024-0556

In the Supreme Court of Florida

FLORIDA WILDLIFE FEDERATION, ET AL.,

Petitioners,

v.

THE FLORIDA LEGISLATURE, ET AL.,

Respondents.

RESPONDENTS' JURISDICTIONAL BRIEF

STRICKEN

On Review From the First District Court of Appeal

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INTRODUCTION

The FWF challenged the constitutionality of more than 130 legislative appropriations made nine years ago, in 2015.[1] That fiscal year eventually expired—as have seven more—but the litigation clambered on. Meanwhile, all of the disputed funds were expended or contractually obligated in due course, or reverted to the trust fund from which the Legislature had appropriated them.

When its case became moot, the FWF leaned back on the assertion that its claims were capable of repetition but evaded review. But in 2,387 days of litigation before the trial court granted summary judgment, the FWF had failed to employ the available means to secure a timely resolution while its claims remained live.

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In 2022, the trial court concluded that the FWF's claims were moot and that the FWF had not pursued its claims diligently. It therefore determined that the FWF could not invoke the capable-of-repetition exception and show that its claims evaded review. The court denied the FWF's two successive motions for reconsideration. The First District unanimously affirmed the trial court's entry

[1] In this brief, "FWF" refers collectively to the Florida Wildlife Federation and the other Petitioners.

of summary judgment and denied the FWF's motion for rehearing.

The arguments that the FWF asks this Court to review have thus been rejected five times. All five judges who have reviewed the FWF's assertion of various exceptions to the mootness doctrine have squarely rejected the FWF's position. More judicial review is unnecessary. The First District's decision does not expressly and directly conflict with a decision of this Court or another district court on the same question of law. And if it did, this Court should decline to exercise its discretion to review the decision below. It should put a final quietus to this wasteful and unfruitful litigation.

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STATEMENT OF THE CASE AND FACTS

On June 22, 2015, the FWF filed a complaint alleging that certain appropriations in the General Appropriations Act for Fiscal Year 2015–16 violated article X, section 28 of the Florida Constitution, which limits the purposes for which funds in the Land Acquisition Trust Fund may be expended. R.73. Over time, the number of disputed appropriations was whittled to 16. R.14831.

More than four years after Fiscal Year 2015–16 expired, Respondents moved for summary judgment. R.18822. Respondents' motion presented evidence that all funds in the challenged

appropriations had been expended or contractually obligated or had reverted to the trust fund for future appropriation. R.18839–54. Respondents therefore argued that the FWF's challenges to the long-expired legislative appropriations had become moot. R.18825.

Respondents also argued that the FWF was not entitled to invoke the narrow capable-of-repetition exception that permits trial courts to decide moot questions that genuinely evade judicial review. R.18827–29. Because the FWF had not prosecuted its six-year-old claims diligently, it was in no position to assert that its claims had evaded review through no fault of its own. R.18827–29.

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The trial court agreed. It found that the appropriations had expired long ago and that the funds had been expended or obligated or had reverted. R.16429 ¶ 7; R.16431 ¶¶ 23–24; R.16432 ¶ 28. The court also found that the FWF "did not pursue this case with any urgency," R.16429 ¶ 6, but rather "passively prosecuted the case," R.16432 ¶ 31. The FWF did not seek a temporary injunction, request a speedy hearing under the Declaratory Judgment Act, "timely initiate" or "aggressively push discovery," "close out the pleadings," or "notice the action for trial." R.16429 ¶ 6; R.16432–33 ¶ 31. If the FWF had acted diligently, then its claims could have

been timely resolved. R.16432–33 ¶ 31. Because it did not, the FWF could not establish that its claims evaded review. R.16433 ¶ 31.

The FWF moved for reconsideration, R.16434, but its motion was denied, R.16977. It moved for reconsideration a second time after the case was reassigned to another circuit judge, R.16983, but the trial court denied the FWF's second motion for reconsideration and entered final judgment, R.18887. The FWF appealed. R.17055.

A unanimous panel of the First District affirmed and wrote a limited opinion "only to address the issue of mootness." Op. 2. The court recognized that Fiscal Year 2015–16 had expired years earlier and that the disputed funds had been fully expended or obligated or had reverted. Op. 4. It noted the "long delays in the litigation" and concluded that, "through no fault of the defendants," the remedies sought by the FWF could no longer afford effectual relief. Op. 4. The FWF sought rehearing, but its motion was denied.

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Unfazed, the FWF now asks this Court to review the decision below. It contends that the First District's limited opinion expressly and directly conflicts with a decision of this Court or another district court on the same question of law. *See* Art. V, § 3(b)(3), Fla. Const.

ARGUMENT

Decisions expressly and directly conflict if they announce conflicting rules of law or apply the same rule of law in a manner that, despite substantially the same controlling facts, produces conflicting outcomes. *Askew v. Fla. Dep't of Child. & Fams.*, No. SC2023-1072, 2024 WL 2196216, at *2–3 (Fla. May 16, 2024). Absent these conditions, a district court's mere "misapplication" of precedent does not activate this Court's conflict jurisdiction. *Id.*

Conflict jurisdiction is limited to a review of decisions that "contain a statement or citation effectively establishing a point of law upon which the decision rests." *The Fla. Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988). The legal principle that supports the alleged conflict must appear within the four corners of the decision to be reviewed. *Tippens v. State*, 897 So. 2d 1278, 1280 (Fla. 2005) ("This Court does not, however, have subject-matter jurisdiction over a district court opinion that fails to expressly address a question of law . . . ." (quoting *The Fla. Star*, 530 So. 2d at 288 n.3)).

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To establish express and direct conflict, the FWF asserts the broad and general proposition that appellate courts may decide moot questions when a resolution of those questions is of great

public importance. Br. 6–9. It contends that the First District erred when it did not apply that exception to overlook the mootness of the FWF's claims. The FWF appears to argue that the First District's decision expressly and directly conflicts with every decision that has ever applied the "great public importance" exception. It does not.

A. The First District's decision does not even discuss the "great public importance" exception—or *any* mootness exception. It does not therefore *expressly* conflict with the decisions of other courts on that question of law. *See Tippens*, 897 So. 2d at 1280.

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Rather, the court wrote a limited opinion to explain one part of its holding: why the FWF's claims had become moot. Op. 2 ("We affirm, and write only to address the issue of mootness."). Because the court did not expressly discuss any mootness exceptions, the FWF cannot identify any expressly stated rule of law in the decision below that conflicts with a rule of law articulated in another case.

B. The FWF cites two cases in which this Court determined the constitutionality of appropriations after the fiscal year expired, but neither of those cases even mentions mootness. *See City of N. Miami v. Fla. Defs. of Env't*, 481 So. 2d 1196 (Fla. 1985); *Gindl v. Dep't of Educ.*, 396 So. 2d 1105 (Fla. 1979). It is therefore unclear

what rule of law *City of North Miami* and *Gindl* even applied: whether mootness was even raised and considered; what mootness exceptions, if any, the court might have found applicable; what facts might have supported a determination that the appeals were not moot or that a mootness exception applied; and whether the plaintiffs in those cases, unlike the FWF here, pursued their claims diligently. Nor did those cases purport to overrule *Department of Administration v. Horne*, 269 So. 2d 659, 663 (Fla. 1972), in which this Court instructed the trial court to dismiss as moot a challenge to 55 appropriations that became moot upon expiration of the fiscal year. Because *City of North Miami* and *Gindl* do not mention mootness, neither one expressly conflicts with the decision below.

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C. The "great public importance" exception does not apply here. Courts apply the "great public importance" exception when a case becomes moot on appeal. The exception allows an appellate court to complete the appellate process and render a decision in the public interest despite the mootness of the appeal. *See generally State v. Matthews*, 891 So. 2d 479, 483 (Fla. 2004). But that exception does not apply in trial courts. The FWF cites no authority to suggest that a *trial court* may decide that its resolution of a moot

question is of great public importance—and, on that basis, force parties that have no continuing stake in the controversy to litigate the moot question *even to trial* because of its perceived importance.

This case became moot in the trial court—not on appeal. In considering whether the trial court erred when it granted summary judgment, the First District correctly applied the mootness principles that governed the trial court. The mootness principles that apply when a case becomes moot on appeal were inapplicable.

D. The FWF argues that a decision on the *merits* is of great public importance. But the merits are not before this Court. Here, the question that the FWF asks this Court to decide is not whether the challenged appropriations are constitutional, but rather whether a mootness exception applies. The FWF does not contend that a decision on *that* question is of great public importance. The "great public importance" exception applies only when the question to be decided by the appellate court is of great public importance.

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The utility of the "great public importance" exception is limited to cases in which an appellate court's resolution of a moot question will provide the public or the court system with valuable guidance. *See Banks v. Jones*, 232 So. 3d 963, 965 (Fla. 2017) (electing to

decide a moot question "for guidance to our trial courts and appellate courts"); *Joughin v. Parks*, 143 So. 306, 306 (Fla. 1932) (electing to decide a moot question "for the guidance of the circuit courts and public officials"). Unlike cases in which a question of great public importance becomes moot while on an appeal and the appellate court nevertheless proceeds to decide the merits and provide valuable guidance, the merits of the FWF's claims have not been briefed on appeal and are not before this Court. This appeal will not therefore generate any guidance on a question of great public importance. At most, the Court would remand to the trial court for consideration of the merits, but a trial court's decision has no precedential effect and thus would not finally resolve a moot question of great public importance, and would be purely advisory.

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E. Even if the "great public importance" exception applied, the decision below would not implicate this Court's conflict jurisdiction. A court's decision to decide moot questions of great public importance is always *discretionary*. *See City of Hollywood v. Lombardi*, 770 So. 2d 1196, 1206 n.19 (Fla. 2000); *Bell v. U.S.B. Acquisition Co.*, 734 So. 2d 403, 405 n.1 (Fla. 1999); *Plante v. Smathers*, 372 So. 2d 933, 935 (Fla. 1979). A court's discretionary

decision not to exercise jurisdiction does not conflict with another court's equally discretionary decision to exercise jurisdiction. A different choice in a matter of discretion—a matter in which uniformity is not expected—does not create interdistrict conflict proper for resolution by this Court's exercise of conflict jurisdiction.

*   *   *

This is not the exceptional case that calls for multiple rounds of appellate review. The trial court granted summary judgment and denied two successive motions for reconsideration presented to two different circuit judges. A unanimous panel of the First District affirmed after extensive briefing and then denied the FWF's motion for rehearing. The FWF's endless procedural maneuvers have served no better purpose than to exhaust public resources and needlessly prolong this obsolete case. This Court should decline review and bring much-needed finality to this wasteful and unfruitful litigation.

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CONCLUSION

This Court should accordingly deny the FWF's petition for review.

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I certify that this brief complies with the font and word count limit requirements of Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(A).

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