IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC17-631

MICHELLE RHEA, *et al.*,

Petitioners,

v.

PAM STEWART, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE FLORIDA DEPARTMENT OF EDUCATION, *et al.*,

Respondents.

RESPONDENT SCHOOL BOARD OF PASCO COUNTY'S JURISDICTIONAL ANSWER BRIEF

ON APPEAL FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA
CASE NOS. 1D16-3914; 1D16-3932; 1D16-3933;
1D16-3936; 1D16-4052; 1D16-4084

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STATEMENT OF THE CASE AND THE FACTS

The instant case involves a lawsuit by parents of children who failed to demonstrate academic mastery in mathematics and/or reading during the 2015 / 2016 school year, and/or who failed the Florida Standards Assessment ("FSA") in English Language Arts and/or Mathematics, forcing their respective school districts to retain those children in the third grade.[1] *See generally* Sch. Bd. of Hernando Cnty. v. Rhea, 2017 WL 899897 *1 – 2 (Fla. 1st Dist. Ct. App. 2017). The Respondent in this matter, the District School Board of Pasco County ("the Respondent"),[2] was one of those school districts.[3] The corresponding Petitioner is Scott Hastings. *See* App. Ex. 14.

Unsatisfied with their children's retention in the third grade, the Petitioners filed suit against their respective school districts, as well as the Florida State Board of Education, in the Second Judicial Circuit, in and for Leon County, Florida. Rhea, 2017 WL 899897 *1. The Petitioners chose this venue despite the fact that none of them reside in Leon County, none of their children attend school in Leon

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[1] Some parents directed their children to "opt-out" of the FSAs by signing their names, breaking the test seal, and turning in the test with all questions unanswered, in order to make a political statement about the parents' opposition to the FSAs. *See* Rhea, 2017 WL 899897 *1 – 2.

[2] The child enrolled in the Respondent's school district was J.H., daughter to Petitioner Scott Hastings. The trial court found that J.H.'s claims against the Respondent were moot as there was no evidence that J.H. was enrolled in the Respondent's school district when the lawsuit was filed. App. Ex. 20 at ¶¶ 36 – 38.

[3] The Respondent's co-defendants below are all either State or county level government entities. App. Ex. 1, pp. 5 – 7; ¶¶ 19 – 27.

County, none of the alleged constitutional or statutory violations occurred in Leon County, and none of them, except for Petitioner Hastings, made any allegations as to the Respondent. *See* id.[4]

Throughout the proceedings below, the local school districts repeatedly objected to venue in Leon County and repeatedly invoked the protections of the home venue privilege. *See* id. at *1 – 2. Despite these objections, and despite the lack of any connection between the local school districts and Leon County, the trial court ruled that venue was proper in Leon County because the school districts were not entitled to the protections of the home venue privilege. *See* id. at *2. Pertinent to the instant appeal, in so doing, the trial court created an exception to the home venue privilege when multiple government entities are joined as indispensable co-defendants. *See* id. at *4 – 5.

The Respondent and its co-defendants below appealed the trial court's ruling to the First District Court of Appeals.[5] The First District reversed the trial court because the trial court erroneously created a "government co-defendant" exception

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[4] Notably, Mr. Hastings did not appear at the injunction hearing at the trial court level, and the only evidence introduced at the hearing regarding Mr. Hastings was the affidavit attached to the Motion for Injunctive Relief. App. Ex. 19, pp. 410 – 411, 417 – 418.

[5] On appeal to the First District, the Respondent raised issues related to the trial court's ruling on the home venue privilege, and on the grounds that the case against the Respondent was moot. The School Board of Hernando County and the State co-defendants below also raised issues related to the trial court's issuance of injunctions against them.

to the home venue privilege when no such exception exists. Id. The Petitioners now seek discretionary review of the First District's decision on the basis that it "announces a rule of law that conflicts with and misapplies existing precedent of the Florida Supreme Court on the same questions of law." Pet'rs' Notice of Invoking Discretionary Jurisdiction. The Petitioners do so despite the fact that this very Court has recently rejected jurisdiction of a factually similar case,[6] and despite the fact that no such conflict or misapplication exists.

SUMMARY OF ARGUMENT

The Petitioners have failed to articulate a basis for this Court to exercise its discretionary jurisdiction to review the First District's decision because the decision does not expressly or directly conflict with a decision of another district court of appeal or of this Court on the same questions of law. The First District's decision is consistent with the binding precedent governing the home venue privilege. Moreover, this Court recently declined to accept jurisdiction over a case involving similar points of law. Therefore, this Court must decline to jurisdiction in this matter.[7]

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[6] Shaw v. Hunter, 212 So. 3d 362 (Fla. 2017) (mem.).

[7] This Brief only addresses the Petitioners' assertion that the First District's opinion conflicts with existing precedent because the Petitioners' remaining three assertions are not grounds for the Court to exercise discretionary jurisdiction to review the First District's decision. *See* FLA. CONST. ART. V, § 3(b); Fla. R. App. Proc. 9.030(a)(2)(A).

ARGUMENT

In the present case, the Petitioners have appealed the First District's opinion on the basis that it "announces a rule of law that conflicts with and misapplies existing precedent of the Florida Supreme Court on the same questions of law." The Petitioners have failed to allege any express constitutional, statutory, or common law basis for the Court to exercise discretionary jurisdiction to review the First District's opinion. *See* FLA. CONST. ART. V, § 3(b); Fla. R. App. Proc. 9.030(a)(2)(A). The basis for discretionary review most similar to that alleged by the Petitioners is for review of a 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." FLA. CONST. ART. V, § 3(b)(3). *See also* Fla. R. App. Proc. 9.030(a)(2)(A)(iv); Pet'rs' Br. at 2 ("The district court misapplied this Court's decision in *Bd. of County Com'rs of Madison County v. Grice*…").

An express and direct conflict only exists when the lower court's judgment and the opinion supporting it are irreconcilable with the judgment and opinion of this Court or another district court of appeal. Seaboard Air Line R.R. Co. v. Branham, 104 So. 2d 356, 357 – 358 (Fla. 1958). No such conflict exists between the First District's decision and the binding precedent of this Court and the district courts of appeal. Therefore, this Court must dismiss the Petitioners' appeal. *See*

Bush v. State Farm Mut. Auto. Inc. Co., 554 So. 2d 31, 31 (Fla. 5th Dist. Ct. App. 1989) (dismissing appeal for lack of jurisdiction when the appealed order was not within the ambit of the district court's discretionary review jurisdiction).

The essence of the Petitioners' appeal is that this Court did not actually mean what it wrote when it created an exception to the home venue rule for joint tortfeasors. The Petitioners have asserted that the joint tortfeasor exception was merely a "secondary basis for the Court's ruling," and that the primary basis was actually that "the home venue privilege is not absolute when its application does not promote judicial economy, the minimization of expenditures from the public treasury and the desire to avoid the multiplicity of lawsuits." Pet'rs' Br. at 5. This interpretation has the distinction of being unsupported by established case law and being previously presented and rejected by the First District.

Of the 14 cases in the Southern Reporter interpreting *Grice*'s creation of the joint tortfeasor exception, courts have three times explicitly rejected the argument propounded by the Appellees, including, in a recent opinion, the First District. Hunter v. Shaw, 182 So. 3d 784, 786 (Fla. 1st Dist. Ct. App. 2015) ("…Florida law does not recognize a co-defendant exception.") *cert. granted sub. nom.* Shaw v. Hunter, 2016 WL 3033775 (Fla. 2016) *appeal dismissed* Shaw v. Hunter, 212 So. 3d 362 (Fla. 2017) (mem.) (dismissing appeal on the basis that jurisdiction was improvidently granted); Dep't of Mgmt. v. Fastrac Const. Inc., 701 So. 2d 1200,

1201 (Fla. 5th Dist. Ct. App. 1997) ("In *School Board of Osceola County v. James E. Rose Mechanical Contractors* … this court refused to expand *Grice* and apply it to a case in which the governmental entity has a co-defendant, but where the governmental entity is not alleged to be a joint tortfeasor … Although *Rose* is distinguished in that no tort was alleged against either defendant, whereas in the instant case Fastrac sued the architect for negligence, the fact remains that the Department was not alleged to be a joint tortfeasor, and *Rose* therefore controls."); Sch. Bd. of Osceola Cnty. v. James E. Rose Mech. Contractors, Inc., 604 So. 2d 521, 522 (Fla. 5th Dist. Ct. App. 1992) ("…Rose has failed to plead that the School Board is a joint [tortfeasor], and therefore no exception to the home venue privilege exists in this case.").

Of the remaining 11 cases, courts have eight times implicitly rejected the Petitioners' argument by excluding any mention of an exception to the home venue privilege simply where the policy reasons fail to support its application. *See* Fla. Dep't of Children & Families v. Sun-Sentinel, Inc., 865 So. 2d 1278, 1287 – 1288 (Fla. 2004) ("We have recognized only three exceptions to the home venue privilege …. The third exception to the home venue privilege applies in those cases in which the governmental defendant is sued ***as a joint tortfeasor***.") (emphasis added); Dep't of Transp. v. Medina, 450 So. 2d 846 (Fla. 1984) ("…the decision to dispense with the home venue privilege when a governmental entity ***is sued as a***

joint tortfeasor is within the discretion of the trial court.") (emphasis added); Dep't of Agric. v. Middleton, 24 So. 3d 624, 628 (Fla. 2d Dist. Ct. App. 2009) ("The second exception asserted by the Plaintiffs is the joint tortfeasor exception. A trial court has the discretion to refuse to apply the home venue privileged ***when a party sues a governmental agency as a joint tortfeasor***.") (citing Bd. of Cnty. Comm'rs of Madison Cnty. v. Grice, 438 So. 2d 392, 295 (Fla. 1983)) (emphasis added); Shands Teaching Hosp. & Clinics, Inc. v. Sidky, 936 So. 2d 715 (Fla. 4th Dist. Ct. App. 2006) (referring repeatedly to the exception as the "*Grice* joint tortfeasor exception"); Fla. State Lottery v. Woodfin, 871 So. 2d 931, 932 – 933 (Fla. 5th Dist. Ct. App. 2004) ("…exceptions to the 'home venue' privilege exist, one of which, the 'joint tortfeasor' exception, was established by our supreme court in [*Grice*]."); Fla. Dep't of Ins., Div. of Risk Mgmt. v. Amador, 841 So. 2d 612, 613 (Fla. 3d Dist. Ct. App. 2003) ("Amador argues that the joint tortfeasor exception applies because the Department's co-defendants in this case are being sued in tort; however, in order for the joint tortfeasor exception to apply, the state agency itself must be sued as a joint tortfeasor. We have before us a simple breach of contract claim by Amador against the Department; therefore, this exception is not implicated.") (internal citations omitted); Jacksonville Elec. Auth. v. Clay Cnty. Util. Auth., 802 So. 2d 1190 (Fla. 1st Dist. Ct. App. 2002) (reversing trial court's denial of government defendant's motion to dismiss for improper venue when no

exceptions to the home venue privilege existed, despite the lack of any support from policy considerations for the application of the home venue privilege to the facts of the case); Boca Raton Hous. Auth. v. Carousel Dev., Inc., 482 So. 2d 543, 545 (Fla. 3d Dist. Ct. App. 1986) ("The home venue rule set forth in *Williams* was modified in [*Grice*], and now permits a trial court in the exercise of its discretion 'to dispense with the home venue privilege when a governmental body is sued ***as a joint tortfeasor***.") (internal citations omitted) (emphasis added).

The remaining three cases do not support the Petitioners' argument that trial courts can usurp this Court's role in inventing new exceptions to the home venue privilege based on their desire to fashion policy. The first case, *City of Panama City v. Florida Department of Transportation*, was a wrongful death ***negligence*** action in which this Court held that the trial court properly exercised its discretion in denying the government's motion to dismiss for improper venue. 477 So. 2d 646, 647 (Fla. 1st Dist. Ct. App. 1985). This case thus falls squarely within the ***joint tortfeasor*** exception.

The second case, *Levy County School Board v. Bowdoin*, was a breach of contract action wherein the plaintiff sued the Levy County School Board in Columbia County Circuit Court. 607 So. 2d 479, 480 (Fla. 1st Dist. Ct. App. 1992). The school board moved to dismiss the matter or transfer venue to Levy County on the basis of the home venue privilege. *See* id. The trial court denied the

motion and the school board appealed. *See* id. The First District reversed the trial court's denial of the government's motion and remanded the matter for further proceedings due to the lack of record support for venue in Columbia County. Id. at 481 – 482. The Court's discussion of the *Grice* opinion therein is thus dicta.

The third case, *State, Department of Insurance v. Accelerated Benefits Corporation*, was a proceeding supplementary for the enforcement of a final judgment in which the judgment creditor impleaded the State to recover a cash bond belonging to the judgment debtor, but held by the State. 817 So. 2d 1086, 1086 – 1087 (Fla. 4th Dist. Ct. App. 2002). The State filed a motion to transfer venue on the basis of the home venue privilege; the trial court denied the motion and the State appealed. Id. at 1087. The Fourth District affirmed the trial court's decision because venue in proceedings supplementary lay with the court that entered the judgment, and the statute governing proceedings supplementary did not contemplate new actions being filed outside of the judgment court's jurisdiction. Id. at 1088. Therefore, as in *Bowdoin*, the Fourth District's discussion of the policy considerations underlying the home venue privilege is dicta. *See* id.

Perhaps recognizing the futility of arguing over the existence of a conflict among Florida courts, the Petitioners have resorted to importing foreign case law to provide a basis for their appeal. Even cursory analysis reveals that those cases do not support the existence of conflict jurisdiction in the present matter.

The Petitioners have cited to three foreign cases in support of their argument that Florida courts have been misinterpreting *Grice* for over a third of a century: *Lawless v. Vill. of Park Forest S.*,[8] *Hoffman v. Bos*,[9] and *Peaceman v. Cades*.[10] The Petitioners spill much ink meticulously detailing the policy considerations behind the decisions of each foreign court. Pet'rs' Br. at 6 – 7. Not once, however, do the Petitioners comment on the causes of action in those cases. A review of the opinions immediately reveals an obvious reason for this lacuna: all three were ***tort*** cases. Lawless, 438 N.E.2d at 192 (trespass to land); Hoffman, 224 N.W.2d at 450 (motor vehicle accident involving personal injury); and Peaceman, 416 A.2d at 1043 (survival action and wrongful death claim arising from a fatal motor vehicle accident). The Petitioners' own cases thus refute the very argument in support of which they are cited.

CONCLUSION

This Court should decline to exercise discretionary jurisdiction to hear this appeal and thereby reject the Petitioners' argument because it lacks support among established case law and because this Court has recently rejected similar arguments in a similar case.

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8 438 N.E.2d 1299 (Ill. App. Ct. 1982).
9 224 N.W. 2d 107 (Mich. Ct. App. 1974).
10 416 A.2d 1042 (Pa. Super. Ct. 1979).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of May, 2017, a true and correct copy of the foregoing has been uploaded to the Clerk of the First District Court of Appeal utilizing the eDCA system, and has been furnished by email to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been filed in 14-point Times New Roman font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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