DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

February 05, 2021

CASE NO.: **1D20-1178**
L.T. No.: 20-CA-552

Daniel W. Uhlfelder	v.	The Honorable Ron DeSantis, in his Official Capacity as Governor of the State of Florida
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

We summarily affirmed this appeal because Appellant's briefs merely expressed disagreement with Governor Ron DeSantis on non-justiciable policy questions arising out of the Governor's response to the COVID-19 pandemic. This was an improper use of the appeal process, as Appellant sought merely to express an opinion regarding political and public-policy matters lying within the Governor's discretion. We ordered Appellant and his counsel, all of whom appeared on the briefs, to show cause why they should not be sanctioned for taking a frivolous appeal and filing frivolous briefs.

In response, Appellant and his counsel merely repeat the arguments we have already found frivolous. They blame the trial court for suggesting that they appeal its order, even though the judge clearly ruled that Appellant had failed to raise any justiciable issue.

Appellant presented no good-faith argument rooted in existing law and no good-faith argument for the modification, extension, or reversal of existing law. Appellant and his counsel knew or should have known that their appeal was not rooted in the law and that their briefs merely stated their opinion without relying on good-faith, reasonably arguable citations to any legal authority for reversal. In so doing, they improperly consumed this court's resources as well as those of the Governor and his staff.

The district court of appeal exists to resolve any bona fide dispute between parties over whether there has been a cognizable *legal* error committed by a trial court affecting a disposition brought before us for review. A court such as this does not hear public-policy grievances or resolve political disputes. So, when a lawyer—who is an officer of the court—brings an appeal as counsel of record, the lawyer must make a good-faith argument as to why the trial court erred based on either existing law or a proposed reasonable extension of the law.

As the rules governing a lawyer's conduct states:

> The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. *The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.*

Comment to R. Regulating Fla. Bar 4-3.1 (emphasis added).

This appeal, together with Appellant's brief, did not comport with this foundational expectation of professionalism and candor to the court. Indeed, Appellant and his counsel abused the judicial process. Appellant later admitted publicly that he filed this action to "draw attention" to political issues, not to vindicate legal rights. Appellant stated as follows in an op-ed:

> As a native Floridian and attorney who has fought for equal justice and consumer protection my whole life, I have gone to *great lengths to draw attention* to how badly Gov. Ron DeSantis has mishandled this health crisis, going *so far as to sue him* to issue a temporary stay-at-home and beach closure order.

Daniel Uhlfelder, *Florida COVID-19 cases have hit tragic milestone*, THE GAINESVILLE SUN, Dec. 2, 2020, https://www.gainesville.com/story/opinion/2020/12/02/daniel-uhlfelder-florida-covid-19-cases-have-hit-tragic-milestone/3784434001 (newspaper column published while show-cause sanctions order was pending).

In addition, Appellant and his counsel's failure to comply with the appellate rules demonstrates a lack of seriousness about these proceedings, at best; at worst, it provides further proof of bad faith. Appellant and his counsel were late to file the initial brief, and then did so only at the prompting of the Governor and this court. Even after the court gave Appellant more time, Appellant waited until the last day of the extension to file a brief. The brief itself was short on law and long on overstatement, invective, and political atmospherics.

The initial brief was nineteen pages long. Out of ten pages of putative legal argument, only the first three pages reference a constitutional or statutory provision or a case at all. And those references were simply to support broad statements of principle; they were not tied to any legal analysis and certainly not used to identify legal error committed by the trial court. Mostly, the brief expressed repeated personal attacks, stating for example that the Governor "has reverted to his *complete disregard for the lives of his constituents*" and that he "*has no regard for their safety.*" (emphasis added). Appellant and his counsel also described their opponent's actions as "reckless in the extreme" and "*morally indefensible*." (emphasis added). Notably, none of these comments were supported by citations to evidence or factual findings by the trial court in the record.

Two days after Appellant filed his initial brief, the Governor filed an answer brief. In addition, the Governor moved to dispense with oral argument and to expedite the resolution of this meritless appeal. The Governor also requested that if this court were to grant oral argument, the argument be conducted promptly after Appellant filed his reply brief.

Two weeks after the Governor filed his motion, Appellant and his counsel responded, opposing the Governor's motion to dispense with oral argument. In that response, Appellant and his counsel claimed they were so committed to pursuing this appeal that they would file a motion for oral argument at the appropriate time. One day *after* the deadline to file a reply brief (and to request oral argument), Appellant asked for oral argument, stating that "[t]he gravity of the underlying action is far too significant to deny Uhlfelder the opportunity to argue his position in front of this Court." Despite the purported gravity of the underlying action, Appellant failed to file a reply brief.

Conclusion

Baseless and personal attacks of an opponent may be commonplace in the political arena, but such attacks have no place in a court of law. Appellant and his counsel are officers of this state's courts; they knew or should have known that their "demands" that the Governor "close the beaches" were not validly asserted below or on appeal because those demands were prohibited under Florida's strict separation of powers. *See State v. Cotton*, 769 So. 2d 345, 353 (Fla. 2000) ("This Court, on the other hand, in construing the Florida Constitution, has traditionally applied *a strict separation of powers doctrine*." (emphasis added)). There was no good faith legal argument to support a claim for such relief in the trial court, and there was certainly no good faith basis to argue legal error on appeal. Appellant and his counsel undoubtedly used this court merely as a stage from which to act out their version of political theater. This was unprofessional and an abuse of the judicial process.

Therefore, we refer this opinion to The Florida Bar for its consideration of whether Appellant and his counsel violated the Rules Regulating the Florida Bar. We encourage the Bar to take appropriate action to ensure that Appellant and his counsel understand their ethical obligations and proper roles as officers of the court. To the extent determined necessary, we also encourage The Florida Bar to require Appellant and his counsel to undertake additional educational training the Bar may deem appropriate to ensure that Appellant and counsel comply with their ethical and professionalism obligations.

B.L. THOMAS and TANENBAUM, JJ., concur; KELSEY, J., concurs in part.

KELSEY, J., concurring in part.

I concur in the holding that Appellant and his counsel used the appeal process improperly and unethically, and that sanctions are warranted. I would also impose significant monetary sanctions.

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I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Colleen M. Ernst
Joshua Elliott Pratt
William Gautier Kitchen
Daniel W. Uhlfelder
Marie A. Mattox

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KRISTINA SAMUELS, CLERK

DISTRICT COURT OF APPEAL
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FIRST DISTRICT
STATE OF FLORIDA