

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FOURTH DISTRICT

CASE NO. 4D14-2282

BRADLEY J. EDWARDS,

Appellant,

-vs-

JEFFREY EPSTEIN,

Appellee.

**MOTION TO CONSOLIDATE FOR PURPOSES OF SCHEDULING ORAL
ARGUMENT AND NOTICE OF CASE WITH RELATED ISSUE**

BRADLEY J. EDWARDS, Appellant in Edwards v. Epstein, Case No. 4D14-2282, hereby files this Motion to Consolidate the appeal in his case with the appeal in Rivernider v. Meyer, Case No. 4D14-0819 for purposes of oral argument. The Edwards appeal involves one issue: whether the litigation privilege bars an action for malicious prosecution.

The Rivernider v. Meyer appeal involves four issues, however the first two issues, as framed in the Initial Brief encompass the same issue as in the Edwards' appeal:

Point I

The cause of action for malicious prosecution has not been abrogated by the litigation privilege.

Point II

Malicious prosecution and the litigation privilege are mutually exclusive. Even if they are not mutually exclusive, the litigation privilege is not a defense to a claim for malicious prosecution when the claimed wrongdoing goes to the heart and soul of the underlying proceeding.

The Rivernider appeal is set for oral argument on April 28, 2015. The Reply Brief in Edwards is being filed contemporaneously with this Motion, and therefore that appeal is now perfected.

Paragraph 5 of this Court's Notice to Attorneys ... (revised June 25, 2014) states:

All parties shall promptly bring to the court's attention the pendency in this court of any related case, or any case involving related issues.

Undersigned learned that the Rivernider appeal involved the same issue only because it was mentioned in Epstein's Answer Brief (although Epstein apparently did not inform this Court that the appeals involve the same issue). Only after obtaining the briefs from the Rivernider appeal has the undersigned learned that the issues are essentially identical.

In both appeals, the Appellees are contending that the Third District's decision in Wolfe v. Foreman, 128 So.3d 67 (Fla. 3rd DCA 2013) requires that the lower court's judgments be affirmed, while in both cases the Appellants contend that Wolfe was wrongly decided, is aberrational, and that the judgments should be

reversed because the litigation privilege does not bar an action for malicious prosecution. It is appellants' position in both appeals that this Court should follow the Fifth District's decision in Wright v. Yurko, 446 So.2d 1162 (Fla. 5th DCA 1984), that regardless of which way this Court rules, there will necessarily be decisional conflict which should ultimately be resolved by the Florida Supreme Court.

Therefore, in the interest of judicial economy in this Court, it would be prudent to have the oral arguments in these two cases held on the same day. Edwards is not asking to share the 10 minutes per side allocated to the Rivernider case, but to have a separate oral argument on the same calendar. Having these cases resolved at the same time will not only ensure uniformity of decision, but also ensure that any future proceedings in the Supreme Court can be pursued in a manner which would conserve judicial resources.

Undersigned has contacted John Beranek, opposing counsel in this appeal, to determine whether he objects to this motion, but he was unavailable.

Counsel for Appellant in Rivernider has been contacted and does not oppose this Motion. Counsel for the Appellees in Rivernider has been contacted but was unable to agree at this time.

Wherefore, for the reasons stated above, Bradley J. Edwards, Appellant in Edwards v. Epstein, requests this Court to consolidate his appeal with the appeal in Rivernider v. Meyer, for purposes of scheduling oral argument.

I HEREBY CERTIFY that a true copy of the foregoing was furnished to all counsel on the attached service list, by email, on March 30, 2015.

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