APPELLATE PROCEDURE

Appellate Procedure: Written Opinions

R.J. Reynolds Tobacco Co. v. Kenyon,
882 So. 2d 986 (Fla. 2004)

Florida Rule of Appellate Procedure 9.330(a) allows an appellant to request a written opinion after receiving a per curiam affirmance but does not require the district court of appeal to issue a written opinion.

FACTS AND PROCEDURAL HISTORY

R.J. Reynolds Tobacco Co. (Reynolds) appealed after losing a tobacco litigation case, and the Second District Court of Appeal responded by issuing a per curiam affirmance (PCA). Reynolds moved for rehearing, rehearing en banc, certification, and issuance of a written opinion under Florida Rule of Appellate Procedure 9.330(a). The Second District denied all the motions without further explanation. Reynolds then filed a petition in the Florida Supreme Court for all writs jurisdiction. The Court dismissed the petition.

ANALYSIS

The Supreme Court examined Rule 9.330(a), which it had amended to read: "to allow a litigant to request, as part of a motion for rehearing, that a district court of appeal issue an opinion in a case where that court has issued a decision without opinion." *Amends. to Fla. R. of App. P.*, 827 So. 2d 888, 889 (Fla. 2002). Reynolds argued that the amendment was meaningless if it gave an appellant the right to request a written opinion from the appellate court but still allowed the district court to deny the request and preclude further review. Therefore, Reynolds sought review of the PCA as an abuse of discretion.

The Court found that amended Rule 9.330(a) does not require a district court to issue a written opinion when none is necessary. Further, the amendment does not disturb the precedent that when a district court has issued a PCA, the Supreme Court does not have jurisdiction to review the decision. The Court cited several cases in which it held that petitions for extraordinary writs,

including all writs petitions, could not circumvent the Supreme Court's lack of jurisdiction to review per curiam affirmances. The amended Rule 9.330(a) now allows for an appellant to request a written opinion from the district court issuing a PCA, but it does not require the district court to issue an opinion or grant the Supreme Court jurisdiction to review the PCA.

Therefore, Reynolds was not able to seek review of the Second District's PCA under abuse of discretion, or any other standard. In dismissing this case, the Supreme Court specifically stated that it would dismiss all future extraordinary writ petitions for review of a district court's denial of a request for written opinion.

SIGNIFICANCE

R.J. Reynolds is important because it affirms the fact that the Supreme Court does not have jurisdiction to review a PCA, even under the revised Rule 9.330(a). Under *Reynolds*, practitioners may request a written opinion of a district court, but they have no recourse if the district court denies the motion. In other words, Rule 9.330(a) provides a right for a party to request a written opinion, but it does not create a right to obtain the opinion.

RESEARCH REFERENCES

- Arthur J. England, Jr., *PCAs in the DCAs: Asking for Written Opinion from a Court That Has Chosen Not to Write One*, 78 Fla. B.J. 10 (Mar. 2004).
- Steven Brannock & Sarah Weinzierl, *Confronting a PCA: Finding a Path around a Brick Wall*, 32 Stetson L. Rev. 367 (2003).
- Jack R. Reiter, *Common Law Writs: From the Practical to the Extraordinary*, 80 Fla. B.J. 32 (Feb. 2006).

Katherine Jane Hurst