IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT
STATE OF FLORIDA

DANIEL W. UHLFELDER,

Appellant,

v.

CASE NO.: 1D20-1178
L.T. CASE NO.: 2020-CA-552

THE HONORABLE RON DESANTIS,
in his official capacity as Governor of
the State of Florida,

Appellee.
_____/

GOVERNOR'S REPLY TO RESPONSE TO ORDER TO SHOW CAUSE

On November 13, 2020, this Court summarily affirmed the circuit court's dismissal of Appellant's suit and observed that Appellant "fail[ed] to demonstrate even an arguable legal basis for reversal." *Uhlfelder v. DeSantis*, No. 1D20-1178 (1st DCA Nov. 13, 2020). On its own Motion, the Court ordered Appellant to show cause why he should not face sanctions for an appeal and accompanying documents that were seemingly "frivolous and/or filed in bad faith." *Id.* Appellant timely filed a Response. *See generally* Appellant Resp. Br. at 1-19. His filing fails to identify any defensible legal justification for his conduct before this Court. This Court has authority to sanction Appellant, and it should do so.

I. BACKGROUND

In March of 2020, Appellant sued the Governor, seeking to force the State's Chief Executive to use his discretionary emergency powers to respond to the COVID-19 pandemic as Appellant saw fit. *See* R. at 6-21.[1] Specifically, Appellant requested that the Court require the Governor to close Florida's beaches and to order Floridians to stay home. *See id.*[2] The Governor filed a Motion to Dismiss the Amended Complaint and a Response opposing Appellant's request for preliminary injunction. R. at 22-36. Among other things, the Governor argued that the trial court lacked authority to direct the elected Chief Executive to exercise his discretionary emergency powers in a specific manner. R. at 26, 28-31.

In April of 2020, the trial court held a hearing on several matters, including the Governor's Motion to Dismiss. R. at 854-97. The trial court granted the Motion. R. at 895. In its Order granting the Motion to Dismiss with prejudice, the Court concluded that it "lacks authority to grant the relief requested due to the

[1] The Governor incorporates by reference the statement of the case and facts contained within his Answer Brief. *See* Appellee Answer Br. at 1-7.

[2] As noted in the Governor's Answer Brief, while Appellant sought this appeal—to force all public beaches to close because of COVID-19—he simultaneously traveled to beaches across the state in a grim reaper costume and engaged in protests without following the very social distancing guidelines and health protections he demanded. *See* Appellee Answer Br. at 4 n.2.

separation of powers clause of the Florida Constitution. *See* Art. II, § 3, Fla. Const." R. at 850.

Appellant filed a Notice of Appeal, R. at 851-52, and an Initial Brief, Appellant Initial Br. at 1-21. Within that brief he accused the Governor of having "no interest in protecting [Floridians'] lives during this deadly global pandemic," and he asserted—without any basis in law or precedent—that the Governor had violated his constitutional "right to enjoy . . . life" by failing to close Florida's beaches and declining to require Floridians to stay home. *See* Appellant Initial Br. at 7, 8-11 (citing art. I, § 2, Fla. Const.). Appellant further argued—again without legal support—that the Governor had a statutory duty to take such actions because the Governor "is responsible for meeting the dangers presented to this state and its people by emergencies." *See* Appellant Initial Br. at 10-11 (citing § 252.36(1)(a), Fla. Stat.).

The Governor filed his Answer Brief two days later. Appellee Answer Br. at 1-45. The Governor explained why dismissal was proper in light of Florida's constitutional structure delineating a strict separation of powers. *See* Appellee Answer Br. at 11-25. The Governor's brief then laid out the many steps that the Governor took to meet the dangers presented by COVID-19. *See* Appellee Answer Br. at 27-30. Finally, the brief included a plain-language analysis of article I, section 2 of the Florida Constitution and section 252.36(1)(a), Florida Statutes, and

described in detail why Appellant's interpretations of those authorities were contrary to text and unsupported by caselaw. *See* Appellee Answer Br. at 31-43. Faced with this thorough analysis of law and text, Appellant did not file a reply or otherwise attempt to refute the Governor's arguments. Instead, he filed a Motion for Oral Argument.

On November 13, 2020, this Court expressed its view that Appellant "fail[ed] to demonstrate even an arguable legal basis for reversal" of the trial court's order. *Uhlfelder v. DeSantis*, No. 1D20-1178 (1st DCA Nov. 13, 2020). This Court summarily affirmed dismissal and ordered Appellant to show cause "why this court should not impose sanctions, including attorney fees and costs, on him and counsel for filing this appeal, the initial brief, and the request for oral argument, which appear to be frivolous and/or filed in bad faith." *Id.* Appellant filed his Response to the Court's Order to Show Cause on November 27, 2020. Appellant Response Br. at 1-19. For the reasons explained below, Appellant's arguments are deficient. His Response has no more merit than his frivolous appeal, and sanctions should follow.

II. LEGAL STANDARD

Florida law authorizes appellate courts to sanction attorneys and litigants for frivolous filings. Section 57.105(1)(b) provides that a court "shall award a reasonable attorney's fee" on its own initiative when it finds that the losing party

or their attorney "knew or should have known" that "the application of then-existing law to . . . material facts" did not support a "claim or defense."[3] "Such a finding is tantamount to a conclusion that the claim was frivolous when filed, or later became frivolous." *E. Indus., Inc. v. Fla. Unemployment Appeals Comm'n*, 960 So. 2d 900, 901 (Fla. 1st DCA 2007). "The purpose of section 57.105 is to discourage baseless claims, stonewall defenses and sham appeals in civil litigation by placing a price tag through attorney's fees awards on losing parties who engage in these activities." *Whitten v. Progressive Cas. Ins. Co.*, 410 So. 2d 501, 505 (Fla. 1982). This price tag is necessary because "[s]uch frivolous litigation constitutes a reckless waste of judicial resources as well as the time and money of prevailing litigants." *Id.*

In the same vein, Florida Rule of Appellate Procedure 9.410(a) provides that a court on its own motion "may impose sanctions . . . for the filing of any proceeding, motion, brief, or other document that is frivolous." "An appeal is frivolous if it 'is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law.' " *In re A.T.H.*, 180 So. 3d 1212, 1215-16 (Fla. 1st DCA 2015) (citation omitted).

[3] An exception—inapplicable to this case—exists where "the claim or defense was initially presented to the court as good faith argument for the extension, modification, or reversal of existing law or the establishment of new law . . . with a reasonable expectation of success." § 57.105(3)(a), Fla. Stat.

The rule affords wide discretion to appellate courts utilizing this penalty power, giving them "broad authority under rule 9.410 to determine sanctions." *Morales v. Rosenberg*, 879 So. 2d 1237, 1239 (Fla. 3d DCA 2004).

III. ARGUMENT

This Court correctly observed that Appellant "fail[ed] to demonstrate even an arguable legal basis for reversal." *Uhlfelder v. DeSantis*, No. 1D20-1178 (1st DCA Nov. 13, 2020). His appeal thus fits neatly within the category of baseless filings for which sanctions are permissible. Appellant offers several arguments in an attempt to refute this reality, but none suffice to undermine this Court's initial conclusion about the nature of his meritless appeal.[4]

Appellant first argues that he should not be sanctioned because the Governor's discretionary emergency powers are "subject to the Administrative Procedure Act and the APA's judicial review provisions." Appellant Response Br. at 10. This argument is a red herring. Appellant never raised any argument in his Initial Brief regarding the APA. Moreover, Appellant fails to proffer a legitimate explanation as to how the Legislature, through the APA, could authorize the

[4] Appellant raises the additional argument that he filed his appeal in "good faith." Appellant Response Br. at 8. The Governor will take him at his word. *Cf.* R. at 891 (trial court stating that Appellant had "pursued this matter in good faith" prior to the appeal).

judiciary to invade the province of the Executive and violate the separation of powers enshrined in Florida's governing charter.

Appellant also argues that sanctions are improper because the trial court's statement that he was pursuing his case in "good faith" and other remarks should "be deemed fact findings precluding sanctions." Appellant Response Br. at 15. Yet whether Appellant litigated this case in good faith at the trial level has no bearing on whether his appeal, initial brief, and request for oral argument were frivolous.

As a third alternative, Appellant makes several arguments that can be reduced to a simple premise: the topic of the lawsuit is important, so sanctions are inappropriate. He argues that this Court should not impose sanctions because his appeal "sought to vindicate Floridians' " constitutional "right to enjoy . . . life," and both the Florida Supreme Court and this Court have acknowledged that the State's interest in the preservation of life is "compelling." Appellant Response Br. at 11 (citing art. I, § 2, Fla. Const.; *In re Guardianship of Browning*, 568 So. 2d 4 (Fla. 1990); *Burton v. State*, 49 So. 3d 263 (Fla. 1st DCA 2010)). Likewise, he asserts that the Governor "is responsible for meeting the dangers presented to this state and its people by emergencies," such as the pandemic. Appellant Response Br. at 10 (quoting § 252.36(a)(a), Fla. Stat.). But these empty and alarmist statements fail to articulate a cogent legal theory providing any basis in law for the present appeal. Missing from this argument is any suggestion that the

constitutional text of the right-to-enjoy-life provision or the statutory emergency powers scheme requires the Governor to exercise his discretionary powers to implement Appellant's desired restrictions.

Appellant raises another class of arguments rooted in expectation, maintaining that he should evade sanctions because other litigants managed to do so. He maintains that this Court should not sanction him and counsel because "[a]s far as [his] research has revealed, no citizen or lawyer has been sanctioned for" seeking relief in various courts "to try to protect the health and well-being of individuals." Appellant Response Br. at 12. But none of those cases from other jurisdictions contain arguments even remotely like those raised by Appellant on appeal regarding Florida's constitutional "right to enjoy . . . life" provision. And the most analogous case—*Colvin v. Inslee*, 467 P.3d 953 (Wash. 2020)—may very well have warranted sanctions had it been brought in Florida. *See id.* (denying a petition for writ of mandamus brought by several inmates seeking to order the Governor of Washington to exercise his discretionary emergency powers to take action not required by law as such a mandate would violate the separation of powers).

Appellant similarly argues that this Court should withhold sanctions because courts have "traditionally not sanctioned an Attorney or Appellant because of the legal argument itself as that could result in the Court chilling vigorous advocacy or

lawyering." Appellant Response Br. at 16 (citing *Builders Shoring & Scaffolding v. King*, 453 So. 2d 534 (Fla. 5th DCA 1984)). But this Court should not license Appellant's frivolous filings simply because he raised novel—and baseless—legal arguments. None of the arguments raised in Appellant's Initial Brief even arguably provide a reasonable basis for an extension, modification, or reversal of existing law.

Finally, Appellant suggests that this Court cannot find his appeal devoid of merit because the Governor filed a lengthy Answer Brief that "goes to painstaking detail to cite to cases and authorities going back to the year 1689 in order to contradict appellant's position." Appellant Response Br. at 15. But this fact lends no credibility to his appeal. Indeed, the fact that the Governor's office, out of respect for the Court, diverted time and energy from the demands of pandemic response to provide a lengthy analysis of the myriad deficiencies in Appellant's suit only bolsters the case for sanctions. This Court has power to hold accountable those litigants who exploit the legal process with "a reckless waste of judicial resources as well as the time" of parties, counsel, and the Court. *Whitten*, 410 So. 2d at 505. In no situation is that danger more acute than the midst of emergency response. The present appeal, which fails to articulate even an arguable basis for reversal, is an axiomatic example of abuse of the justice system. Appellant's empty political posturing warrants repercussions.

IV. CONCLUSION

The many hours spent by this Court and the attorneys of the Executive Office of the Governor on this appeal could have been spent on innumerable other pressing matters related to the health, welfare, and safety of Floridians. Appellant knew or should have known that filing this appeal was frivolous. Appellant and his counsel should be sanctioned accordingly.

Respectfully submitted,
/s/ Joshua E. Pratt

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed using the Florida Courts e-Portal on this 11th day of December, 2020, and will be electronically served to all counsels of record.

/s/ Joshua E. Pratt
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CERTIFICATE OF COMPLIANCE

I hereby certify that this computer-generated Reply is prepared in Times New Roman 14-point font and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Joshua E. Pratt
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