

IN THE SUPREME COURT OF FLORIDA

Case No.: SC2026-1072
Fifth DCA Case No.: 5D2024-3124

ROBERT WILLIAM BURNS, III,

Petitioner,

vs.

RANDY FINE and TIM BOBANIC,

Respondents.

ON REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT RANDY FINE

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TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF CITATIONS.....	iii
STATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
CONCLUSION	8
CERTIFICATE OF SERVICE.....	8
CERTIFICATE OF TYPEFACE COMPLIANCE	9

TABLE OF CITATIONS

<i>Aquasol Condo. Ass'n, Inc. v. HSBC Bank USA, Nat'l Ass'n</i> , 312 So. 3d 105 (Fla. 3d DCA 2018)	1, 3, 5
<i>Davis v. State</i> , 347 So. 3d 315 (Fla. 2022)	1, 3, 6, 7
<i>Fine v. Bobanic</i> , 2026 WL 1765386 (Fla. 5th DCA June 19, 2026)	<i>passim</i>
<i>Kyle v. Kyle</i> , 139 So. 2d 885 (Fla. 1962)	3, 4, 6, 7
<i>Rogers v. State</i> , 630 So. 2d 513 (Fla. 1993)	1, 4
<i>Fla. R. Gen. Prac. & Jud. Admin. 2.330(c)(1)</i>	4

STATEMENT OF THE ISSUE

Whether the Fifth District's decision in *Fine v. Bobanic*, No. 5D2024-3124, 2026 WL 1765386 (Fla. 5th DCA June 19, 2026) conflicts with this Court's decision in *Rogers v. State*, 630 So. 2d 513 (Fla. 1993), the Third District's decision in *Aquasol Condo. Ass'n, Inc. v. HSBC Bank USA, Nat'l Ass'n*, 312 So. 3d 105, 107 (Fla. 3d DCA 2018), or this Court's decision in *Davis v. State*, 347 So. 3d 315, 318 (Fla. 2022) on the issue of whether a trial court must give a brief recess in order to prepare the appropriate documents when a party discovers mid-trial or mid-hearing that a motion for disqualification is required.

STATEMENT OF THE CASE AND FACTS

This case began in the trial court when Petitioner Robert Burns sought to disqualify Randy Fine from seeking the position of Republican State Committeeman. (App. 4). After a hearing on Respondent Tim Bobanic's motion to dismiss, the trial court dismissed Petitioner's petition. (App. 4). Thereafter, the trial court issued an order requiring Respondent Fine to show cause why he should not be held in "civil contempt of court," and a hearing was

scheduled on October 1, 2024. (App. 4).

At the civil contempt hearing, Respondent Fine's counsel requested a recess to draft a written motion to disqualify the trial judge based upon matters that occurred during the hearing. (App. 4-5). The trial court denied this requested recess, proceeded with the hearing, and found Respondent Fine in civil contempt. (App. 4-5).

On appeal to the District Court of Appeal of Florida, Fifth District, Respondent Fine argued that the trial court committed numerous errors in holding him in civil contempt of court. (App. 4). The Fifth District agreed with one and declined to rule on the others. (App. 4). In reversing the order finding Respondent Fine in civil contempt of court, the Fifth District held that “[u]nder long-established Florida law, denial of the requested recess was error that requires reversal. See [Rogers v. State, 630 So. 2d 513, 516 (Fla. 1993)].” (App. 5).

SUMMARY OF THE ARGUMENT

The Fifth District’s decision in *Fine v. Bobanic*, No. 5D2024-3124, 2026 WL 1765386 (Fla. 5th DCA June 19, 2026) followed the

holding of *Rogers v. State*, 630 So. 2d 513 (Fla. 1993) that “[u]nder long-established Florida law, denial of the requested recess [to prepare and file a written motion to disqualify the trial judge] was error that requires reversal.” *Fine*, 2026 WL 1765386, at *2. There is no conflict.

Petitioner asserts that the Fifth District’s decision conflicted with the Third District’s decision in *Aquasol Condo. Ass’n, Inc. v. HSBC Bank USA, Nat’l Ass’n*, 312 So. 3d 105, 107 (Fla. 3d DCA 2018), where, unlike in *Fine*, the party seeking to move to disqualify was given time to prepare a written motion. Because *Aquasol* is factually distinguishable, there is no conflict. “If the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise.” *Kyle v. Kyle*, 139 So. 2d 885, 887 (Fla. 1962).

Petitioner also asserts that that the Fifth District’s decision conflicted with this Court’s decision in *Davis v. State*, 347 So. 3d 315, 318 (Fla. 2022), in which the Court resolved the question of the standard to be applied when a party contends that the trial

court erroneously denied a legally sufficient motion to disqualify the trial judge. Because the factual issues in *Davis* are distinguishable and the points of law are not the same, there is no conflict. *Kyle*, 139 So. 2d at 887.

ARGUMENT

The Fifth District held in *Fine v. Bobanic*, No. 5D2024-3124, 2026 WL 1765386, at *2 (Fla. 5th DCA June 19, 2026) that when a party advises the trial judge that, based on certain occurrences during a hearing, the party believes sufficient grounds exist that require the party to file a motion to disqualify, the trial court must grant a brief recess to enable the party to prepare a written motion as required by Florida Rules of General Practice and Judicial Administration 2.330(c)(1).

The Fifth District's decision did not conflict with *Rogers v. State*, 630 So. 2d 513, 516 (Fla. 1993); it followed it: "Under long-established Florida law, denial of the requested recess was error that requires reversal. See [*Rogers v. State*, 630 So. 2d 513, 516 (Fla. 1993)]." *Fine*, 2026 WL 1765386, at *2.

Petitioner asserts that the Fifth District's decision in *Fine*

conflicted with the Third District's decision in *Aquasol Condo. Ass'n, Inc. v. HSBC Bank USA, Nat'l Ass'n*, 312 So. 3d 105, 107 (Fla. 3d DCA 2018). *Aquasol*, however, is factually distinguishable because the party seeking to move to disqualify was given time to prepare a written motion:

Aquasol's counsel orally moved for a continuance so he could prepare a written motion for disqualification of the trial judge, contending that the trial judge had “prejudged” the case. The trial judge denied the request for a continuance at that point, but took a recess shortly thereafter, advising Aquasol's counsel he could prepare and submit a written motion for disqualification, and that the trial court would address the written motion when the trial resumed. When the trial judge returned to the bench, Aquasol's counsel requested some additional time to complete the motion, which the trial court granted, and then denied a subsequent request for further additional time. Thereafter, the written motion was presented to the trial judge, who denied it as legally insufficient.

Id. at 107. In *Fine*, “during the hearing, Fine's counsel requested a

recess and indicated he needed time to draft a written motion to disqualify the trial judge based upon matters that occurred during the hearing. The trial court denied this requested recess.” 2026 WL 1765386, at *1. “If the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise.” *Kyle v. Kyle*, 139 So. 2d 885, 887 (Fla. 1962).

Petitioner also asserts that that the Fifth District’s decision conflicted with this Court’s decision in *Davis v. State*, 347 So. 3d 315, 318 (Fla. 2022), in which “the Second District Court of Appeal certified the following question of great public importance:

WHEN A DEFENDANT IN A CRIMINAL CASE ASSERTS IN AN APPEAL FROM A JUDGMENT AND SENTENCE THAT THE TRIAL COURT ERRONEOUSLY DENIED A LEGALLY SUFFICIENT MOTION TO DISQUALIFY THE TRIAL JUDGE FOR ALLEGED BIAS OR PREJUDICE UNDER SECTION 38.10, FLORIDA STATUTES (2015), AND FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.330(D)(1), SHOULD AN APPELLATE COURT REVIEW THE ERRONEOUS DENIAL FOR

HARMLESS ERROR AND, IF SO, WHAT HARMLESS ERROR
TEST SHOULD THE APPELLATE COURT APPLY?”

Id. The legal issue in *Davis* was different than that facing the Fifth District in *Fine*. In *Davis*, the legal issue certified was whether the harmless error standard applied when a trial court considered a motion to disqualify. 347 So. 3d at 318. In *Fine*, the legal issue was whether a trial court must give a brief recess so that a party can file a written motion to disqualify a trial judge. 2026 WL 1765386. Thus, there is no conflict jurisdiction. *Kyle*, 139 So. 2d at 887 (“If the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise.”).

CONCLUSION

Respondent Fine respectfully requests that the Court decline to exercise its discretionary jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 20, 2026, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal system, which will transmit the foregoing document via email to all counsel and parties of record.

/s/ Ryan Christopher Rodems

Ryan Christopher Rodems, Esquire

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for respondent Randy Fine certifies that this
Jurisdictional Brief is typed in 14-point (proportionately spaced)
Bookman Old Style and contains 1,253 words.

/s/ Ryan Christopher Rodems
Ryan Christopher Rodems, Esquire