2012
CASE LAW SUMMARY

Negligence

Alcohol

Ryan v. National Marine Manufacturers Association, 103 So.3d 1001 (Fla. 3d DCA 2012)

The National Marine Manufacturers Association entered into a "temporary license and use agreement" for a piece of property owned by the City of Miami Beach. The agreement provided that the NMMA had the right to use the City-owned, private parking lot for the purpose of parking several tractor trailers used in conjunction with the boat show. The Plaintiff's decedent wondered on to the subject property, climbed under a parked and unhinged trailer and fell asleep. Shortly thereafter, an NMMA employee drove his truck onto the property to unload one trailer and pick up another trailer. After unloading and unhitching the first trailer, he backed up his truck to the trailer under which the decedent was sleeping, hitched the trailer to his truck and pulled out running the decedent over and causing the injuries which led to his death.

Following an investigation, it was determined that the driver was unaware that the decedent was under his truck and it also revealed that the decedent had a blood-alcohol level nearly 3 times the legal limit. The Defendants moved for summary judgment asserting that they were not liable under Florida Statute 768.075(1) which provides that "A person or organization owning or controlling an interest in real property … shall not be held liable for any civil damages for death of or injury or damage to a trespasser upon the property when such trespasser was under the influence of alcoholic beverages with a blood-alcohol level of 0.08% or higher.…"

The Plaintiff argued that this statute did not apply because NMMA were licensees and did not control an interest in the property. The trial court disagreed and found the immunity provision applicable and granted summary judgment. The Third District affirmed the finding that the agreement granted far more than a revocable permission or privilege to enter upon the property (i.e., a license) and more closely approached a contract which conveyed the right to use and occupy

the property in exchange for consideration and, therefore, NMMA was "controlling an interest in real property" and the summary judgment was affirmed.

Bailee Not Liable For Returning Car to Intoxicated Owner

Weber v. Marino Parking Systems, Inc., 100 So. 3d 729 (Fla. 2d DCA 2012)

The decedent's estate sued a valet parking service after she was killed in an automobile accident while riding in a vehicle being driven by the vehicle owner to whom the valet service had returned the car keys while the owner was obviously intoxicated. The trial court dismissed the action finding that the valet parking service owed no duty to third parties to refrain from returning car keys to an obviously intoxicated customer and that a valet service as a bailee, cannot be liable for negligently entrusting a car to its rightful owner. According, the Second District affirmed the dismissal of the action.

Constructive Notice

DeLeon v. Dollar Tree Store, Inc., 98 So. 3d 96 (Fla. 4th DCA 7/11/12)

On appeal from summary judgment for Defendants, the Fourth District reversed, finding Defendants had constructive notice of the shopping basket which Plaintiff tripped on. Constructive notice may be inferred from either: (1) the amount of time a substance has been on the floor, or (2) the fact that the condition occurred with such frequency that the owner should have known of its existence. Here, one of Defendant's employees testified that it was one of her job responsibilities to check for errant baskets and that it was common for customers to place baskets on the floor. She also warned customers of errant baskets on multiple prior occasions.

Contribution

Healthcare Staffing Solution, Inc. v. Wilkinson, 86 So. 3d 59 (Fla. 1st DCA 2012)

The Plaintiff sued University Medical Center and the Florida Board of Regents for medical malpractice. The case was settled for $6,150,000 with University Medical Center paying $5,950,000 and the Florida Board of Regents paying their sovereign immunity limits of $200,000. Thereafter, University Medical Center brought a contribution action and an equitable subrogation action against Healthcare Staffing Solution, Inc. seeking its pro-rata share of the settlement. Following a non-jury trial, the trial court ordered Healthcare Staffing

to pay the hospital $5,057,500 which was 85% of the amount paid by the hospital plus pre-judgment interest. The trial court did not apportion any fault to the Florida Board of Regents because it found their negligence to be irrelevant to the contribution claim. Healthcare Staffing appealed and the First District reversed the judgment based upon the trial court's failure to consider the Florida Board of Regents' fault in determining Healthcare's pro-rata share of the entire liability pursuant to Florida Statute §761.31(2)(b).

On remand, the trial court apportioned 70% of fault to the Florida Board of Regents; 25.5% to Healthcare Staffing; and the balance to University Medical Center. The trial court concluded; however, that it would be inconsistent with the prior decision of the First District to construe the phrase "entire liability" to mean the amount of the settlement and instead concluded that the phrase meant the potential value of the underlying malpractice claim. The court then found that the reasonable value of the malpractice claim was $15,000,000 and determined that Healthcare Staffing's pro-rata share of the entire liability was $3,825,000. The court then entered a judgment in favor of the hospital for this amount plus pre-judgment interest of approximately $2,500,000.

On appeal, Healthcare Staffing did not contest the finding that the potential value of the underlying malpractice claim was $15,000,000 nor did it contest the apportionment of fault. Rather, they appealed the trial court applying the finding of liability against the potential value and not the actual settlement. In a case of first impression, the First District held that the dollar amount paid to settle the underlying claim and to release the tortfeasors from any further liability for the claim represents the "entire liability" for purposes of Florida Statute §768.31.

They added, however, that the potential value of the underlying claim was not irrelevant in every contribution action. Specifically, they noted that the contribution Plaintiff was "not entitled to recover contribution … in respect to any amount paid in the settlement which is in excess of what was reasonable." Thus, if a contribution Defendant contends that the settlement was excessive, the trial court can then consider the potential value of the claim and other factors in determining the reasonableness of the settlement. Here, however, the contribution Defendant did not challenge the reasonableness of the settlement and, therefore, the potential value of the claim was irrelevant to the determination of the amount owed by the contribution Defendant.

Criminal Conduct by Plaintiff

Kuria v. BMLRW, LLP, 101 So. 3d 425 (Fla. 1st DCA 2012)

The decedent, while at an apartment complex owned and operated by the Defendants, was engaged in operating a "chop shop" in violation of Florida Statute 812.16 and 812.019; both of which were felonies. The decedent was fatally shot at the apartment complex and his estate brought a negligence action alleging that the apartment owner failed to provide adequate security measures and that those failures were the direct and proximate cause of his death. The apartment owners moved for summary judgment on the basis of Florida Statute 768.075(4) which provides that "A person or organization owning or controlling an interest in real property, or an agent of such person or organization, shall not be held liable for negligence that results in the death of, injury to, or damage to a person who is attempting to commit a felony or who is engaged in the commission of a felony on the property." The trial court granted the summary judgment and the Plaintiff challenged the ruling arguing that the legislature intended to provide liability protection only in those cases when a person's injury arose out of the commission of the felony.

The First District held there was no ambiguity and that the plain language of the statute barred recovery for any person who committed a felony on the property; not just the person whose injury arises out of the commission of the felony.

Duty of Care

Milanese v. City of Boca Raton, 84 So. 3d 339 (Fla. 4th DCA 2012)

After a night of heavy drinking, the decedent got into his truck and began driving erratically. His cousin, who was following him in her car, called 911. Shortly thereafter, a Boca Raton police officer pulled Milanese over. He appeared impaired. The police officer took Milanese into custody, told his cousin to leave and arranged for the decedent's truck to be towed. The officer then took Milanese to the police station. While there, the officer issued Milanese five traffic citations, none of which were for driving under the influence. About 75 minutes after originally pulling over the decedent, the police officer called a cab to take him home. Two minutes later, the cab arrived at the police station. A minute later, the officer escorted Milanese to the front door of the police station and released him

while Milanese was still impaired. The cab driver did not see him and left the station a few minutes later.

About an hour later, Milanese was laying next to nearby railroad tracks when a train approached. The engineer blew the train's horn; however, Milanese did not move. The train struck and killed Milanese. At the time of his death, his blood alcohol level was .199. The trial court dismissed the complaint and the Fourth District affirmed finding that a duty of care did not exist upon Milanese's release because the police: (1) did not create or permit dangers to Milanese to exist; (2) were no longer holding Milanese in custody; (3) were no longer detaining Milanese; and (4) did not otherwise subject Milanese to danger.

Duty to Warn

Burton v. MDC PGA Plaza Corp., 78 So. 3d 732 (Fla. 4th DCA 2012)

Burton tripped over a pothole in a parking lot outside a CVS pharmacy store. Burton filed suit against CVS and the property owner MDC. During her deposition, Burton admitted that she knew of the pothole before she tripped. The trial court granted summary judgment for both Defendants because Burton was aware of the condition. The Fourth District reversed, holding that the open and obvious nature of condition discharged the Defendant's duty to warn but not to maintain the premises in reasonably safe condition. The Court noted that the pothole is not a natural condition and did created a reasonable risk of harm. A pothole only occurs when the property is not maintained. Further, Burton's knowledge under these circumstances only raised an issue of comparative negligence.

Dampier v. Morgan Tire & Auto, LLC., 82 So. 3d 204 (Fla. 5th DCA 2012)

Dampier appealed summary judgment in favor of Morgan Tire. Dampier went to the store to get an oil change and have his tires rotated. While his vehicle was being serviced, he walked to a fast food restaurant. While walking back to Morgan Tire, he fell while he was crossing a landscape planting bed. The Fifth District held that the planting bed, and the stump within the planting bed, did not constitute a dangerous condition that would make Morgan Tire liable under a theory of failure to maintain the premises in a reasonably safe condition. Likewise, there was no duty to warn of the danger of walking in the planting bed, because the planting bed and stump did not constitute a dangerous condition when used as intended.

Fitzherbert v. Inland US Mgmt., 90 So. 3d 338 (Fla. 2d DCA 2012)

Fitzherbert appeals a summary judgment in a negligence case for a trip and fall on the side of a ramp outside a department store. The trial court granted summary judgment, finding that the condition of the ramp and pavement was not a dangerous condition as a matter of law and Inland did not have a duty to warn of the open and obvious condition. The Second District reversed, holding that a determination of the duty to warn did not discharge Inland's duty to maintain the premises in a reasonably safe condition. Inland failed to provide any evidence demonstrating the nonexistence of any genuine issue of material fact as to the duty to maintain the premises and thus summary was reversed.

Exculpatory Clause

Hackett v. Grand Seas Resort Owner's Ass'n, 93 So. 3d 378 (Fla. 5th DCA 2012)

A unit owner, Hackett, was injured on the balcony of a condominium unit and sued the association. The trial court entered summary judgment, finding that Hackett had signed an exculpatory clause releasing Grand Seas of liability. The Fifth District reversed, holding that the exculpatory clause was too ambiguous to allow application of the clause. The use of the word "accident" in the clause was too ambiguous to support the exculpation of negligence asserted by the association. Accident did not equate to negligent or negligence. An accident might simply be the result of bad luck or clumsiness, or it might refer to an injury caused by a third party who was not a signatory to the agreement. Further, the organization being protected by the exculpatory clause was the "Management." "Management", was not defined in the agreement. Thus, the clause was not sufficiently precise to be enforceable.

Incident Reports

Publix Super Markets, Inc. v. Anderson, 92 So. 3d 922 (Fla. 4th DCA 2012)

Plaintiffs in a slip and fall case sought "any and all reports concerning the incident identified in the plaintiff's complaint." Publix asserted work product privilege for an incident report and a "customer incident witness statement." The trial court ordered their production and the Fourth District reversed. The Court held that both documents were created after the slip and fall and thus clearly in

anticipation of litigation. Plaintiffs did not show that they were unable to obtain the "substantial equivalent of the material by other means," such as depositions.

Medicaid Liens

Garcon v. A.H.C.A., 96 So. 3d 472 (Fla. 3d DCA 2012)

The patient suffered a devastating gunshot injury which rendered him totally and permanently disabled. Medicaid expended $244,590.57 for his past medical expenses. He then received a $1,000,000 settlement from a tortfeasor which was stipulated to represent compensation only for past and future medical expenses and nothing for any intangible elements of damages for which Medicaid would not have been entitled to reimbursement. The issue involved the extent of Medicaid's lien on the settlement.

The Third District held that, pursuant to Florida Statute 409.910, Medicaid was entitled to be reimbursed the full amount of its lien. The Plaintiff argued that the case of *Arkansas Department of Health and Human Services v. Ahlborn,* 547 U.S. 268 (2006) preempted the statute and obliged the trial court to "allocate" any settlement based upon a "fair evaluation" of the Plaintiff's injuries which his expert testified would be over $8,000,000 between past and unreimburseable future Medicaid payments in between medical expenses and intangibles. The Third District disagreed and noted that *Ahlborn* struck down an Arkansas statute to the extent that it allowed for Medicaid recovery that could impinge on an entire Plaintiff's award and not merely past medical damages for which Medicaid may be reimbursed. Further, *Ahlborn* specifically recognized that even when a settlement is not allocated entirely to a recovery amount representing medical damages, the State was free to adopt "special rules and procedures" to fix the lien. Florida Statute 409.910 represented such a "special rule."

Roberts v. Albertson's, Inc., 37 FLW D2515 (Fla. 4th DCA 10/24/12)

The Plaintiff was involved in an accident in which he was rendered quadriplegic. Medicaid paid for all of the medical care associated with the accident which totaled $343,453. The Plaintiff brought actions against four Defendants. Three of them settled for policy limits and another one paid $2,735,000. This last Defendant provided a settlement agreement which did not contain any allocation between medical expenses, economic losses or non-economic losses. Prior to reaching the settlement, AHCA filed a lien against the third party benefits paid in settlement by the tortfeasors. AHCA did not participate

in the settlement agreement. Thereafter, the Plaintiff filed a motion to determine an equitable Medicaid lien amount asking the court to determine the amount of the settlement that was comprised of medical expenses and to limit recoupment of the Medicaid lien to that amount. The Plaintiff claimed that the true value of damages was $44.8 million dollars and his expert submitted an affidavit claiming economic damages totaling $11.8 million dollars, past non-economic damages in the amount of $8 million dollars and future non-economic damages of $25 million dollars. AHCA filed a response opposing the hearing because Florida Statute 409.910(11)(f) provides a statutory formula to determine what portion of the personal injury settlement is subject to Medicaid lien. Contrary to the decisions of the Third District in *Garcon v. AHCA*, 96 So.3d 472 (Fla. 3d DCA 2012) and *Russell v. AHCA*, 23 So. 2nd 1266 (Fla. 2d DCA 2010) and in accordance with the Fifth District decision in *Smith v. AHCA*, 24 So. 3d 590 (Fla. 5th DCA 2009), the Fourth District held that a Plaintiff should be afforded an opportunity to seek the reduction of a Medicaid lien amount by demonstrating, with evidence, that the lien amount exceeds the amount recovered for medical expenses. The Fourth District then certified conflict with *Garcon* and *Russell*.

Negligent Hiring and Retention

Valeo v. East Coast Furniture Co., 95 So. 3d 921(Fla. 4th DCA 2012)

Plaintiff was injured by Defendant's employee during an altercation following an auto accident. Plaintiff sued Defendant on theories of negligent hiring, negligent retention and vicarious liability. The Fourth District held that Defendant did not owe a duty to Plaintiff under the claims of negligent hiring and retention. To establish a duty under those claims, the issue is whether the incident was reasonably foreseeable. The Court concluded that this particular incident was not reasonably foreseeable to the Defendant in the context of hiring or retaining its employee. The Court followed the reasoning of *Magill v. Bartlett Towing, Inc*., 35 So. 3d 1017 (Fla. 5th DAC 2010), that to hold otherwise would create strict liability for an employer for tortious acts committed by a "dangerous employee" against a third person.

Premises Liability

Burton v. MDC PGA Plaza Corp., 78 So. 3d 732 (Fla. 4th DCA 2012)

Burton tripped over a pothole in a parking lot outside a CVS pharmacy store. Burton filed suit against CVS and the property owner MDC. During her

deposition, Burton admitted that she knew of the pothole before she tripped. The trial court granted summary judgment for both Defendants because Burton was aware of the condition. The Fourth District reversed, holding that the open and obvious nature of condition discharged the Defendant's duty to warn but not to maintain the premises in reasonably safe condition. The Court noted that the pothole is not a natural condition and did created a reasonable risk of harm. A pothole only occurs when the property is not maintained. Further, Burton's knowledge under these circumstances only raised an issue of comparative negligence.

Dampier v. Morgan Tire & Auto, LLC., 82 So. 3d 204 (Fla. 5th DCA 2012)

Dampier appealed summary judgment in favor of Morgan Tire. Dampier went to the store to get an oil change and have his tires rotated. While his vehicle was being serviced, he walked to a fast food restaurant. While walking back to Morgan Tire, he fell while he was crossing a landscape planting bed. The Fifth District held that the planting bed, and the stump within the planting bed, did not constitute a dangerous condition that would make Morgan Tire liable under a theory of failure to maintain the premises in a reasonably safe condition. Likewise, there was no duty to warn of the danger of walking in the planting bed, because the planting bed and stump did not constitute a dangerous condition when used as intended.

Fitzherbert v. Inland US Mgmt., 90 So. 3d 338 (Fla. 2d DCA 2012)

Fitzherbert appeals a summary judgment in a negligence case for a trip and fall on the side of a ramp outside a department store. The trial court granted summary judgment, finding that the condition of the ramp and pavement was not a dangerous condition as a matter of law and Inland did not have a duty to warn of the open and obvious condition. The Second District reversed, holding that a determination of the duty to warn did not discharge Inland's duty to maintain the premises in a reasonably safe condition. Inland failed to provide any evidence demonstrating the nonexistence of any genuine issue of material fact as to the duty to maintain the premises and thus summary was reversed.

Hanrahan v. Hometown America, LLC, 90 So. 3d 915 *(*Fla. 4th DCA 2012*)*

The decedent was a resident of a mobile home park. After taking his dog for a walk, he rushed back home telling his wife that ants were biting his face and neck. The decedent told his wife that he brushed up against bushes and that they

must have come from the bushes because they did not climb up his legs. He attempted to wash off the fire ants, but collapsed and later died. The estate presented evidence that the only bushes that the decedent could have touched while walking his dog would have been in a particular common area of his mobile home community. The community manager testified that she was unaware of any resident ever being attacked by fire ants anywhere on their premises nor was the community manager aware of any fire ant infestation where the incident allegedly took place. An employee of the exterminator used at the mobile home park testified that he sprayed insecticide every other month in order to kill ants and that he had no knowledge of any an activity or reason to recommend treating the area where the alleged incident took place. The exterminator also confirmed that fire ants are "wild animals" whose natural habitat is outdoors in South Florida. Lastly, he testified that permanent eradication of fire ants from a property would be an impossibility. The mobile home park staff also testified that, in addition to using the exterminator, the maintenance staff would also treat any visible ant mountains with granules. Under these circumstances, the trial court granted a motion for summary judgment and the Fourth District affirmed under the concept of "ferae naturae." Specifically, they found that the landlord had no duty to guard against fire ants where the landlord had not possessed, harbored or introduced the fire ants to the premises and the record did not reflect that the landlord had specific knowledge of the hazards presented by fire ants on the premises.

DeLeon v. Dollar Tree Store, Inc., 98 So. 3d 96 (Fla. 4th DCA 7/11/12)

On appeal from summary judgment for Defendants, the Fourth District reversed, finding Defendants had constructive notice of the shopping basket which Plaintiff tripped on. Constructive notice may be inferred from either: (1) the amount of time a substance has been on the floor, or (2) the fact that the condition occurred with such frequency that the owner should have known of its existence. Here, one of Defendant's employees testified that it was one of her job responsibilities to check for errant baskets and that it was common for customers to place baskets on the floor. She also warned customers of errant baskets on multiple prior occasions.

Kuria v. BMLRW, LLP, 101 So. 3d 425 (Fla. 1st DCA 2012)

The decedent, while at an apartment complex owned and operated by the Defendants, was engaged in operating a "chop shop" in violation of Florida Statute 812.16 and 812.019; both of which were felonies. The decedent was fatally shot at the apartment complex and his estate brought a negligence action alleging that the

apartment owner failed to provide adequate security measures and that those failures were the direct and proximate cause of his death. The apartment owners moved for summary judgment on the basis of Florida Statute 768.075(4) which provides that "A person or organization owning or controlling an interest in real property, or an agent of such person or organization, shall not be held liable for negligence that results in the death of, injury to, or damage to a person who is attempting to commit a felony or who is engaged in the commission of a felony on the property." The trial court granted the summary judgment and the Plaintiff challenged the ruling arguing that the legislature intended to provide liability protection only in those cases when a person's injury arose out of the commission of the felony.

The First District held there was no ambiguity and that the plain language of the statute barred recovery for any person who committed a felony on the property; not just the person whose injury arises out of the commission of the felony.

Ryan v. National Marine Manufacturers Association, 103 So.3d 1001 (Fla. 3d DCA 2012)

The National Marine Manufacturers Association entered into a "temporary license and use agreement" for a piece of property owned by the City of Miami Beach. The agreement provided that the NMMA had the right to use the City-owned, private parking lot for the purpose of parking several tractor trailers used in conjunction with the boat show. The Plaintiff's decedent wondered on to the subject property, climbed under a parked and unhinged trailer and fell asleep. Shortly thereafter, an NMMA employee drove his truck onto the property to unload one trailer and pick up another trailer. After unloading and unhitching the first trailer, he backed up his truck to the trailer under which the decedent was sleeping, hitched the trailer to his truck and pulled out running the decedent over and causing the injuries which led to his death.

Following an investigation, it was determined that the driver was unaware that the decedent was under his truck and it also revealed that the decedent had a blood-alcohol level nearly 3 times the legal limit. The Defendants moved for summary judgment asserting that they were not liable under Florida Statute 768.075(1) which provides that "A person or organization owning or controlling an interest in real property … shall not be held liable for any civil damages for death of or injury or damage to a trespasser upon the property when such trespasser was under the influence of alcoholic beverages with a blood-alcohol level of 0.08% or higher …" The Plaintiff argued that this statute did not apply because NMMA

were licensees and did not control an interest in the property. The trial court disagreed and found the immunity provision applicable and granted summary judgment. The Third District affirmed the finding that the agreement granted far more than a revocable permission or privilege to enter upon the property (i.e., a license) and more closely approached a contract which conveyed the right to use and occupy the property in exchange for consideration and, therefore, NMMA was "controlling an interest in real property" and the summary judgment was affirmed.

ERP Operating Ltd. P'ship. v. Sanders, 105 So. 3d 666 (Fla. 4th DCA 2012)

Sanders and another were murdered inside their apartment. A lawsuit for failure to maintain the premises in a reasonably safe condition was brought against the complex owner; ERB. The security gate had been broken for about two months prior to the murders and there had been two criminal incidents in the last three years related to the broken gate. On appeal, the Fourth District reversed because Sanders could not establish how the assailants gained entry into the apartment. Applying *Brown v. Motel 6 Operating, L.P.*, 989 So. 2d 658 (Fla. 4th DCA 2008), because there was no evidence of forced entry, Sanders could not prove that any breach of duty to provide adequate security was the proximate cause of the murders.

Proximate Cause

ERP Operating Ltd. P'ship. v. Sanders, 105 So. 3d 666 (Fla. 4th DCA 2012)

Sanders and another were murdered inside their apartment. A lawsuit for failure to maintain the premises in a reasonably safe condition was brought against the complex owner; ERB. The security gate had been broken for about two months prior to the murders and there had been two criminal incidents in the last three years related to the broken gate. On appeal, the Fourth District reversed because Sanders could not establish how the assailants gained entry into the apartment. Applying *Brown v. Motel 6 Operating, L.P.*, 989 So. 2d 658 (Fla. 4th DCA 2008), because there was no evidence of forced entry, Sanders could not prove that any breach of duty to provide adequate security was the proximate cause of the murders.

Sexual Abuse

Goss v. Human Services Associates, Inc., 79 So. 3d 127 (Fla. 5th DCA 2012)

The Fifth District affirmed in part, reversed in part, summary judgment in favor of Defendants in a negligence action for sexual abuse of a minor. Human Services Associates (HSA) and Visionquest National (Visionquest) entered into an agreement to manage a group care facility for troubled teens in need of foster care placement. Thereafter, Brown, a Visionquest employee, had a sexual relationship with Goss, one of the teens. Goss filed a negligence action against HAS, Visionquest, and Brown. He asserted HSA was negligent in supervising its subcontractors and in failing to prevent the harm. He alleged Visionquest was negligent in supervising Brown and was vicariously liable for Brown's acts.

The Fifth District affirmed summary judgment on the vicarious liability claim against Visionquest. The Court stated that sexual assaults and batteries committed by employees are generally outside the scope of an employee's employment and therefore insufficient to impose vicarious liability on the employer. An exception exists when the employee purported to act on behalf of the employer or when the employee was aided by the agency relationship. While at least one of sexual assaults occurred at work, it was not within the course and scope of Brown's employment because the act was not in furtherance of her employment with Visionquest. The Court relied on the fact that Brown actively concealed the affair because she knew it was not in furtherance of her duties under Visionquest and that she was not aided by the agency relationship.

Sovereign Immunity

Keck v. Eminisor, 104 So. 3d 359 (Fla. 2012)

The Plaintiff sued the Jacksonville Transit Authority, a transit management corporation contracted by the Authority and a bus driver employed by the management corporation for injuries sustained when he was struck by a JTA bus. The bus driver claimed sovereign immunity and the trial court denied the claim. The Florida Supreme Court held that a claim of individual immunity under Florida Statute 768.28(9)(a) should be appealable as a non-final order under Florida Rule of Appellate Procedure 9.130. They further held that the bus driver was entitled to immunity by virtue of his employment with the corporation acting primarily as an instrumentality of the JTA because Florida Statute 768.28(2) extends the status of a state agency or subdivision to those corporations acting as instrumentalities of independent establishments of the state.

Witness Immunity

Hoskins v. Metzger, 102 So. 3d 752 (Fla. 2d DCA 2012)

Mr. and Mrs. Hoskins had previously filed a lawsuit against Kia Motors. They were represented by Krohn and Moss. The Hoskins lost their trial and they and their attorneys then brought a cause of action against their private investigator/expert who testified for them in the case against Kia Motors. The trial court dismissed the claim based upon the Doctrine of Witness Immunity. The Second District reversed based upon the limited record before them.

Although they reversed, the Second District noted several problems with the claim including the fact that they were suing the investigator for professional negligence even though it did not appear as though he had a college degree. The Second District noted that, in general, a claim of professional negligence can only be alleged if the Defendant is required to have a minimum of a 4-year college degree. The second count of the Complaint sought purely economic losses based upon a theory of simple negligence. The Court noted, based upon the allegations, it was clear that the Plaintiffs or their attorneys had either a written or an oral contractual arrangement with the investigator (which the Complaint did not mention) and, thus, they pointed out that the economic loss would appear to create difficulty for recover under simple negligence. Third, the Plaintiffs alleged that they would have won the underlying lawsuit had the expert testified in a different fashion (he appeared at trial with "unkept hair" and was wearing "unwashed and excessively worn jeans and a polo-style shirt." At trial, the expert could not support his theory when cross-examined and was impeached concerning his prior experience and because he was unfamiliar with the critical aspects of the "scientific method of investigation."