

FILED

IN THE SUPREME COURT OF THE STATE OF FLORIDA

AUG 8 1963

TAMIAMI TRAIL TOURS, INC.,
a Florida corporation, and
D.D. CROSBY,

END J. WHITE
CLERK SUPREME COURT

Petitioners,

CASE NO. 63,946
DCA - AN-109

vs.

J.C. COTTON and AUBREY
JESSE COTTON,

Respondents.

RESPONDENTS' BRIEF ON JURISDICTION

STANLEY BRUCE POWELL of
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and

WOODBURN S. WESLEY, JR. of
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ATTORNEYS FOR APPELLEES

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PRELIMINARY STATEMENT

The brief filed by petitioners fails to conform with Fla. R. App. P. 9.120(d) requiring jurisdictional briefs to be limited solely to the question of jurisdiction.

Petitioners' statements of both the case and facts are argumentative and their arguments are primarily directed to the merits of their case rather than jurisdictional issues.

For the purposes of this brief Respondents adopt the statements of the case and facts set forth by the First District Court of Appeal in their decision rendered May 9, 1983.

ISSUE

DOES THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THE CASE SUB JUDICE DIRECTLY AND EXPRESSLY CONFLICT WITH THE DECISIONS OF THE THIRD DISTRICT COURT OF APPEAL IN HALES v. ASHLAND OIL, INC., 342 So.2d 984 (Fla. 3d DCA 1977), and JOHN B. REID & ASSOCIATES, INC. v. JIMINEZ, 181 So.2d 575 (Fla. 3d DCA 1965)?

This Court should decline to accept jurisdiction because the decision under review does not directly and expressly conflict with either case cited by petitioners. Moreover, the issue sought to be raised in this Court was not properly preserved for appeal by petitioners as pointed out by the District Court in footnote 3 on page 8 of its opinion. Petitioners' trial counsel did not object to the jury charge. See also, Lollie v. General Motors Corp., 407 So.2d 613 (Fla. 1st DCA 1981) cert. denied, 413 So.2d 876 (1982) [a specific objection is required to preserve the point for review]

In Lollie, the trial court charged the jury on the doctrine of patent danger over a general objection. This Court denied certiorari, although the charge given clearly constituted fundamental error [under, Auburn Machine Works Co. v. Jones, 366 So.2d 1167 (Fla. 1979)], presumably because the point was not properly preserved for appeal because of counsel's failure to make a proper and specific objection to the charge.

In this case trial counsel for petitioners did not request the Court to charge the jury that it must find that the intentional and unjustified interference with respondent's rights must be for the purpose of securing an advantage over him. Therefore, the point alleged to be at issue was not properly preserved for appeal.

The District Court's discussion of the point, being unnecessary to its decision in the case, is obiter dictum as the Court points out in Footnote 3.

However, even if the issue had been properly preserved for appeal purposes, the evidence adduced at trial was sufficient to show that one purpose of petitioners' tortious interference was to secure an advantage over respondents.

On page 3 of its opinion, the District Court points out that after the intentional and unjustifiable tortious interference with respondents' advantageous relationship with General Hospital, petitioners' agents began delivering the needed blood themselves at "twice Cotton's (respondents) delivery price."

Finally, assuming for argument purposes that the instant decision expressly and directly conflicts with the cases relied upon by petitioners on the same point of law, a brief analysis shows the Third District Court of Appeal is in error, and the instant decision is correct.

Reason and logic dictate that there is no requirement to prove that intentional and unjustified interference with either a contract or an advantageous business relationship has been done to gain an advantage (presumably economic) over the victim.

Dean Prosser points out that a defendant in such cases will be held liable "if the reason underlying his interference is purely a malevolent one, and a desire to do harm to the plaintiff for its own sake." W. Prosser, Law of Torts, 953 (4th ed. 1971) [Emphasis supplied]

Contrary to the Third District's logic, having a legitimate interest to protect, thereby making interference justified rather than unjustified, will often insulate one from liability even though a spite motive is also present. See, Prosser at page 953.

Proof of intentional interference and resulting damage establishes a prima facie case shifting the burden to the defendant to show that the interference was privileged and therefore justified.

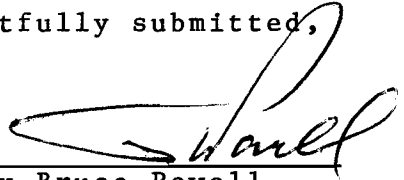
The adoption of the Third District's apparent requirement that a victim of such anti-social, reprehensible conduct cannot recover if the conduct is based solely on malice; motivated only by a "desire to do harm to plaintiff for its own sake" (as Prosser states) would be illogical, ill-conceived, and unjust.

This Court should decline to adopt such a requirement and align itself with the overwhelming weight of authority, which does not require a showing that the purpose of the otherwise tortious unjustified conduct was to "gain an advantage over the victim."

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 5th day of August, 1983 to: ALBERT M. SALEM, JR., SALEM, MUSIAL AND MORSE, P.A., 4600 W. Kennedy Boulevard, Tampa, Florida 33609.



STANLEY BRUCE POWELL