IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

CASE NO. 64,171

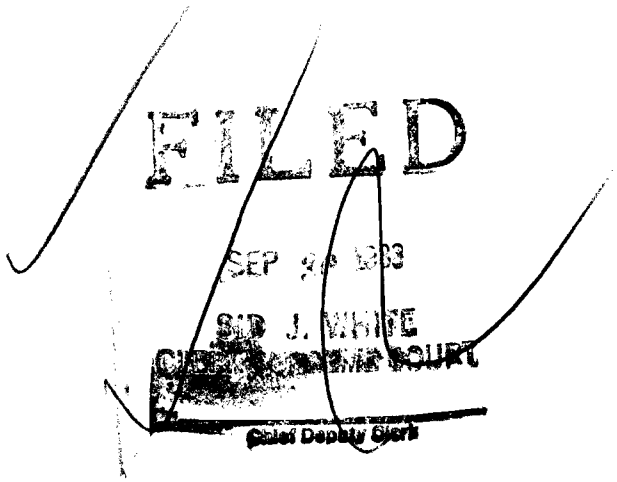
HAROLD SNOWTEN,

Petitioner,

vs.

UNITED STATES FIDELITY and GUARANTY COMPANY and WILLIE LEE SNOWTEN,

Respondent.
_____/



BRIEF OF AMICUS CURIAE, THE ACADEMY OF FLORIDA TRIAL LAWYERS, IN SUPPORT OF POSITION OF PETITIONER

THE ACADEMY OF FLORIDA TRIAL LAWYERS

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ISSUE

IS THE DOCTRINE OF INTERSPOUSAL IMMUNITY WAIVED, TO THE EXTENT OF AVAILABLE LIABILITY INSURANCE, WHEN THE ACTION IS FOR A NEGLIGENT TORT?

In Tubbs v. Dressler, 419 So.2d 1151 (Fla. 5th DCA 1982), the Fifth District held that interspousal immunity for negligent acts is waived to the extent of the negligent spouse's available insurance coverage and certified the question to the Supreme Court. The Supreme Court approved the result the Fifth District reached but avoided the certified question, holding that Shiver v. Sessions, 80 So.2d 905 (Fla. 1955), controlled the decision. Dressler v. Tubbs, ____So.2d___ (Fla. Case No. 62,805, opinion filed July 14, 1983) [8 FLW 239].

There is little we can add to the Fifth District's analysis in Tubbs v. Dressler, supra, of Ard v. Ard, 414 So.2d 1066 (Fla. 1982) and its effect on this case . Ard modified the parental tort immunity doctrine by permitting an action by children against a negligent parent to the extent of available insurance coverage. The Fifth District similarly modified the interspousal immunity doctrine.

Other and even more compelling reasons for modifying the interspousal tort immunity doctrine are set forth in Justices England's, Adkins', and Sundberg's dissenting opinion in Raisen v. Raisen, 379 So.2d 352, 356-359 (Fla. 1979), wherein the majority upheld the doctrine. Two of the Raisen dissenters also dissented in Hill v. Hill, 415 So.2d 20 (Fla. 1982), which refused to modify the doctrine to allow recovery for intentional torts between spouses.

Ard dealt with the potential for fraud and disrupting the family unit in this situation and discounted both reasons on pages 1068-1069:

> When recovery is allowed from an insurance policy the claimant will not force a depletion of the family assets at the expense of the other family members. As stated in Sorensen, rather than a source of disharmony, the action is more likely to ease the financial difficulties stemming from the injuries.
>
> The possibility of fraud or collusion by family members in dealing with liability insurance has traditionally been an argument in favor of both parental and interspousal immunity. We recognize that the possibility of fraud exists in every lawsuit but reject the contention that such possibility still forms a valid justification for denying a child compensation for injuries negligently inflicted by the parent when the immunity is waived by the presence of insurance. . . .

As the Court stated in Hill v. Hill, supra, 23:

> . . . the purpose the doctrine is to protect family harmony and resources, not to shield the wrongful acts of a spouse, whether negligent or intentionally tortious, and not to protect insurance companies.

Hill refused to abolish the doctrine for intentional torts because two courts would be necessary to try the dispute, one to determine damages and one to determine the dissolution and child custody matters, which is "neither efficient nor beneficial to the family unit, its resources, or possible reconciliation." The Court emphasized that the injured spouse could recoup whatever expenses, lost wages, and the equivalent of damages for permanent injury and/or disfigurement not covered by insurance, from the offending spouse in the dissolution proceeding. The majority in Hill, however, expressly noted it could not apply the Ard rationale because insurance coverage is not available for intentional torts.

None of these reasons apply to the instant facts. Only one forum is required to try the dispute and attorneys' fees can be arranged on a contingent basis. Unlike the intentionally injured spouse, however, the negligently injured or killed spouse presently has no means to recoup his or her losses.

We respectfully submit that no public policy or logical reason exists for not extending Ard to interspousal immunity cases. The doctrine should be waived to the extent of the negligent spouse's available insurance coverage.

CONCLUSION

The certified question should be answered, yes, and the FIrst District's decision reversed.

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