IN THE SUPREME COURT OF FLORIDA

CASE NO.: 64,171

HAROLD SNOWTEN,

Petitioner,

vs.

UNITED STATES FIDELITY and GUARANTY COMPANY and WILLIE LEE SNOWTEN,

Respondents.



# INITIAL BRIEF OF PETITIONER

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## STATEMENT OF THE CASE

HAROLD SNOWTEN filed an amended complaint for damages against USF&G and his wife for injuries resulting from a motor vehicle accident. USF&G insured the Snowtens under an automobile liability policy. RESPONDENTS answered the complaint interposing as an affirmative defense that they were immune from tort liability under the Interspousal Immunity Doctrine. Both parties moved for summary judgment. The lower court entered Summary Final Judgment in favor of RESPONDENTS declaring that HAROLD SNOWTEN'S action was barred by the doctrine of interspousal immunity.

HAROLD SNOWTEN appealed the Circuit Court's ruling to the First District Court of Appeal, Case No. AQ-380. The Appellate Court heard oral argument and on August 3, 1983, filed an opinion affirming the Circuit Court's ruling. In its opinion, a copy of which is attached hereto as an appendix, the First District Court of Appeals certified as being of great public importance the following question:

> Is the Doctrine of Interspousal Immunity waived, to the extent of available liability insurance, when the action is for a negligent tort?

A timely notice invoking this Court's discretionary jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v) was filed by HAROLD SNOWTEN on August 29, 1983.

## STATEMENT OF THE FACTS

The material facts are undisputed. HAROLD SNOWTEN was injured on February 13, 1982 when he was struck by a motor vehicle operated by WILLIE LEE SNOWTEN. At the time of the accident, and at all times material to this case, HAROLD and WILLIE LEE SNOWTEN were husband and wife. The actions of WILLIE LEE SNOWTEN in the operation of her motor vehicle were not intentional. At the time of the accident, WILLIE LEE SNOWTEN was insured by USF&G on a policy of automobile liability insurance with bodily injury liability limits of $10,000 per person. The injuries suffered by HAROLD SNOWTEN as a result of the subject accident are at least equal to these policy limits. PETITIONER seeks to recover only the amount of damages covered by this insurance. The sole basis for denial of HAROLD SNOWTEN'S claim is the "Interspousal Immunity Doctrine" which USF&G asserts bars any claim by HAROLD SNOWTEN against his wife or USF&G.

## ISSUE ON APPEAL

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

## ARGUMENT

### ISSUE

THE DOCTRINE OF INTERSPOUSAL IMMUNITY HAS BEEN MODIFIED BY THE COURTS OF THIS STATE SO THAT SUITS BETWEEN SPOUSES SHOULD BE PERMITTED TO THE EXTENT OF AVAILABLE LIABILITY INSURANCE, AND THE DECISION OF THE LOWER COURTS SHOULD BE REVERSED.

"Is the doctrine of interspousal immunity waived, to the extent of available liability insurance, when the action is for a negligent tort?" In certifying this question as being one of great public importance, the First District Court of Appeals has asked this Court to consider and re-evaluate the effect of the common law doctrine of interspousal tort immunity. Petitioner submits that the reasons for the common law rule no longer exist and that a series of recent decisions from this Court indicate a modification of the Interspousal Immunity Doctrine.

Interspousal immunity has its roots in the common law and was established as a consequence of the legal identity of husband and wife. It was said at common law that husband and wife were one person so that it was both morally and conceptually objectionable to permit a tort suit between two spouses. Annot., 92 A.L.R.3d 901, 906. The reasons traditionally assigned as justification for the Doctrine of Interspousal Immunity are: (1) the legal unity of the husband and wife; (2) the promotion of peace and harmony in the home; and (3) the avoidance of fraudulent or collusive claims. Raisen v. Raisen, 379 So.2d 352 (Fla. 1979), dissent at 356. These justifications are no longer valid. As set forth in the Raisen dissent, twenty-eight juris-

dictions have recognized the need to make a change in this doctrine.

The "unity concept" which prohibited suits between spouses is no longer viable. Florida has modified women's status by enacting Florida Statutes §708.08 (1981) which provides that every married woman is empowered to take charge of and control her separate property, to contract, and to sue in her own name. Florida Statutes §708.09 (1981) provides that every married woman may enter into agreements and contracts with her husband and may become the partner of her husband or others. These types of statutes permit the wife to contract with her husband as to her property, make her personally liable for her own torts and confer upon her the right to sue or be sued in tort in her own name. Thus, the common law concept which rendered the wife a chattel of her husband is no longer valid. There is no rational basis to preclude one spouse from suing the other for tortious injury. As stated by the court in Brown v. Brown, 88 CONN. 42, 89 A. 889 (1914), if a wife may sue her husband for a broken promise, then she ought to be allowed to sue him for a broken arm.

The theory that an uncompensated tort makes for peace in the family has no basis. On the contrary, an uncompensated tort can have devastating impact on family harmony and peace both financially and emotionally. As an example is the situation where the wife is a passenger in a vehicle driven by her husband and is mentally or physically crippled as a result of the driver's negligence. If the passenger was unrelated to the driver, liability insurance would be available to partially compensate the passenger and her family for the devastating effects of these injuries. Under the Interspousal Immunity

Doctrine, however, the family would be denied these resources simply because of the spousal relationship between the passenger and driver. A tort action would not disrupt the marriage to any greater degree than would actions of ejectment, partition or contract which are already allowed by statute. As Justice England, Adkins and Sundberg point out in his dissenting opinion in Raisen:

> If marital tranquility is preserved when lawsuits are permitted between spouses over property and contract rights, we see no reason to conclude that tort actions between spouses should destroy it. . . [We] conclude that the Doctrine of Interspousal Tort Immunity cannot be validly justified on grounds that it serves to maintain marital peace and harmony. Raisen at 358.

The fraud argument also no longer has validity. The danger of fraud and collusion is present in any tort action where liability insurance exists. On this basis, the Raisen dissent rejected fraud as a valid justification for denying one spouse compensation for injuries negligently inflicted by the other. In so doing, Justice England, Adkins and Sundberg quoted from decisions of various other states:

Rejecting the common law immunity rule, the Supreme Court of California noted:

> It would be a sad commentary on the law if we were to admit that the judicial processes are so ineffective that we must deny relief to a person otherwise entitled simply because in some future case, a litigant may be guilty of fraud or collusion. Once that concept were accepted, then all causes of action should be abolished. Our legal system is not that ineffectual. (Klein v. Klein, 376 P.2d 70 (Cal. 1962).

The Supreme Court of Indiana in abolishing common law interspousal tort immunity, noted that "the possibility of fraud and collusion exists in all litigation." Brooks v. Robinson, 284 N.E.2d 794, 797 (Ind. 1972). The

Court continued:

> We are not convinced that the danger is so great when the plaintiff and defendant are also husband and wife that judicial relief should be summarily denied. . . The testimony of both parties will be extremely vulnerable to impeachment at trial. . . and, as was stated in United States v. Freeman (2d Cir. 1966), 357F. 2d 606, 620, ". . . it cannot be presumed that juries will check their common sense at the courtroom door." Id at 797.

Judge Liles, dissenting in Vinci v. Gensler, 269 So.2d 20 (Fla. 2d DCA 1972), wrote:

> I further believe that the courts are capable of distinguishing between a fraudulent raid on a treasury of an insurance company and legitimate claims of a wife or child where the benefit of liability protection has been purchased by the husband and father. I cannot believe that the father purchased this insurance policy to protect all other wives and children but not his own.

This Court has over the past year and a half decided a series of cases which indicate a modification of the traditional immunity doctrines. In Ard v. Ard, 414 So.2d 1066 (Fla. 1982), this Court modified the doctrine of parental immunity allowing recovery to the extent of the parent's available liability insurance. In so doing, this Court said:

> Recently there has been a trend toward abrogating or limiting parental immunity. While many states still recognize this immunity, the changes in the contemporary conditions and public policy have caused numerous jurisdictions to restrict this doctrine where the policies behind it have lost their viability. . . For many of these states, a major justification for this abrogation has been the development and wide spread use of liability insurance. The presence of this type of insurance cannot create a liability where none previously existed, but, rather, forms the basis for the recognition of the change in conditions upon which the public policy behind the immunity is based. Several policy reasons have been relied on to justify this immunity. They include the preservation of domestic harmony and tranquility; depletion of the family assets in favor of the claimant at the expense of the other family members; danger of fraud and collusion between the parent

> and child when insurance is involved; interference with parental care, discipline, and control; and the possibility of inheritance by the parent of the amount recovered by the child.

This Court held that because of changes in the conditions which fostered its underlying policies, the parent's parental immunity was waived to the extent of available insurance coverage. Justice Adkins, in his concurring opinion, felt that parental immunity and spousal immunity should be abolished, saying:

> A party injured by the fault of another should be able to obtain relief from that party and it should make no difference that the wrongdoer is a spouse or a parent.

In Hill v. Hill, 415 So.2d 20 (Fla. 1982), decided by this Court the same day as Ard, the Court faced the question of whether interspousal immunity should bar a claim by a wife against her husband for malicious prosecution and false imprisonment. In holding that the claim was barred, this Court said:

> We also point out that in this circumstance, we are unable to modify our immunity doctrine as we did with parental immunity with Ard v. Ard, 414 So.2d 1066 (Fla. 1982), because insurance coverage is not available for intentional torts. . . We emphasize, however, that the purpose of 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.

The Fifth District Court of Appeal was faced with the issue of whether the doctrines of interspousal and parental immunity barred a claim for negligence in Tubbs v. Dressler, 419 So.2d 1151 (Fla. 5th DCA 1982), approved on other grounds, _____ So.2d _____ (Fla. 1983). In reaching its decision, the Court reviewed the policies and doctrines behind the previous holdings as well as the most recent Florida Supreme Court decisions and held that inter-

spousal immunity was waived to the extent of available liability insurance, saying:

> The action here is for a negligent tort, and is against the insurer which allegedly has coverage. We thus hold, for the reasons set forth in Ard, that interspousal immunity for negligent acts is waived to the extent of the negligent spouse's available insurance coverage.

The Court then certified this question to the Supreme Court as being of great public importance. This Court affirmed the Fifth District Decision on other grounds and did not reach the certified question.

The Tubbs Court concluded that there was no reason in logic or public policy not to apply the Ard principles to interspousal immunity. As Justice Boyd points out in his dissent in Joseph v. Quest, 414 So.2d 1063 (Fla. 1982), when discussing the grounds for interspousal and parental immunity: "Both rules of law stem from the fundamental notion concerning the importance of the family unit."

Under the guise of contribution, an action may have the effect of allowing one spouse to indirectly sue another. See, Shor v. Paoli, 353 So.2d 825 (Fla. 1977). This Court has also allowed contribution against a parent to the extent of existing liability insurance coverage for the parent's tort against a child. See, Joseph v. Quest, supra.

While the Interspousal Tort Immunity Doctrine is a rule of common law adopted by Florida Statutes §2.01, it can be abrogated by judicial decision. Discussing this statute, this Court in Ripley v. Ewell, 61 So.2d 420 (Fla.

1952), said:

> We have held that "When the reason for any rule of law ceases, the rule should be discarded." Randolph v. Randolph, 146 Fla. 491, 1 So.2d 480, 481. This is a part of the common law which was adopted by the statute above quoted. [F.S.A. §2.01]

And in Raisen v. Raisen, supra, this Court said:

> Only in very few instances and with great hesitation has this Court modified or abrogated any part of the common law enacted by §2.01, and then only where there was a compelling need for a change and the reason for the law no longer existed. E.g., Hoffman v. Jones, 280 So.2d 431 (Fla. 1973).

PETITIONER submits that there is a compelling need for change and there is no reason not to allow tort claims by one spouse against the other at least to the extent of available liability insurance.

## CONCLUSION

The lower courts erred in denying HAROLD SNOWTEN'S claims and in entering judgment for RESPONDENTS. Times have changed and the law must change with the times. The traditional reasons for the common law interspousal tort immunity rule no longer exist, just as the traditional reasons behind the parental immunity rule have been found by this Court to no longer totally bar such claims. The Interspousal Tort Immunity Doctrine should be abrogated at the very least by the extent of available liability insurance. PETITIONER respectfully requests this Court to reverse the findings of the lower courts and to enter Final Summary Judgment in favor of Harold Snowten.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to TOBY MONACO, Post Office Drawer J, Gainesville, Florida 32602, KIMBERLY A. ASHBY, Post Office Box 633, Orlando, Florida 32802, and LARRY KLEIN, Suite 201-Flagler Center, 501 S. Flagler Drive, West Palm Beach, Florida 33401, by United States Postal Service, on this 30th day of September, 1983.

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