

IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

CASE NO. 64,258

J. RUSSELL FORLAW, M.D.,

Petitioner,

vs.

WALTER FITZER, as the personal
representative of the Estate
of DIANE FITZER, deceased.

Respondent.

FILED

NOV 4 1983

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BRIEF OF THE ACADEMY OF FLORIDA
TRIAL LAWYERS, AS AMICUS CURIAE,
IN SUPPORT OF POSITION OF RESPONDENT.

THE ACADEMY OF FLORIDA TRIAL LAWYERS

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ARGUMENT

CERTIFIED QUESTION

IS A PHYSICIAN WHO PRESCRIBES QUAALUDES TO A KNOWN DRUG ADDICT LIABLE TO A THIRD PARTY FOR THE NEGLIGENCE OF THE PATIENT IN DRIVING A CAR WHILE UNDER THE INFLUENCE OF THE DRUG.

The main argument advanced by the physician is that the holding of the Fourth District is analogous to dram shop legislation holding a tavern owner liable to a third party injured by an intoxicated patron. This is an extremely narrow view. The problem with defendant's argument is that legislation has never been necessary in the past to establish liability of one who sets a dangerous situation in motion resulting in injury to a third party.

It did not take an act of the legislature to make the owner of an automobile liable to a third party for the negligence of a person driving it with his knowledge and consent.

In Vining v. Avis Rent-A-Car Systems, Inc., 354 So.2d 54 (Fla. 1977), this Court held that one who leaves the key in his ignition can be held responsible for the negligent driving of a thief who steals the car and injures a third party.

In Angell v. F. Avanzini Lumber Co., 363 So.2d 571 (Fla. 2d DCA 1978), it was held that a store could be liable for the sale of a rifle to a person acting mentally unbalanced who then went out and shot somebody.

If a mental hospital negligently releases a violent patient who injures a third party, it can be held liable. Bellavance v. State, 390 So.2d 422 (Fla. 1st DCA 1980).

If an employer knowingly permits an employee addicted to drugs to drive in the scope of his employment, the employer would not only be liable for damages to a third person injured, but would also be liable for punitive damages. Mercury Motors Express, Inc. v. Smith, 393 So.2d 545 (Fla. 1981).

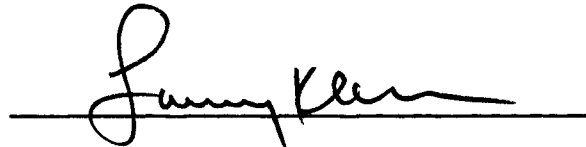
The issue boils down to foreseeability. It is reasonably foreseeable to expect that someone will be injured, where drugs are prescribed to a drug abuser, without an examination or diagnosis, and without a warning against operation of a motor vehicle after taking the drug. It is to be anticipated that this type of conduct will result in injury to the patient or a third person and accordingly a jury issue is presented as to the negligence of the physician.

CONCLUSION

The certified question should be answered in the affirmative.

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CERTIFICATE OF SERVICE

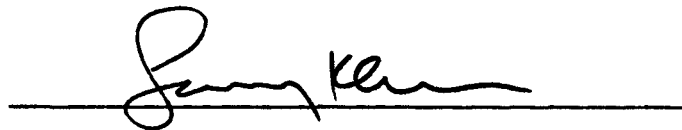
I HEREBY CERTIFY that a copy of the foregoing has been furnished, by mail, this 2nd day of November, 1983, to:

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