IN THE SUPREME COURT OF FLORIDA

CASE NO: 64,419

JAMES H. PAYNE, etc., et al.,

Petitioners,

v.

BROWARD COUNTY, et al.,

Respondents.

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

THE ACADEMY OF FLORIDA TRIAL LAWYERS

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CITATIONS OF AUTHORITY

ARGUMENT

CERTIFIED QUESTION NUMBER ONE

WAS THIS THE CREATION OF THE KIND OF KNOWN DANGER WHICH REQUIRES A WARNING OR AN AVERSION OF THE DANGER?

The County opened a new road next to a school. It had long recognized the need for pedestrian control features and had promised to install them. Thus, the County was aware that a dangerous condition existed which required some control. Nevertheless, the road was opened without any of the planned traffic or pedestrian signals, or even a center stripe. Certainly, this situation created by the County fits squarely within the "known dangerous condition" category recognized in CITY OF ST. PETERSBURG v. COLLOM, 419 So.2d 1082 (Fla. 1982). As such, the County had an operational level duty to either warn the public of the danger or protect the public from it. The failure of the County to do so constitutes negligence for which it may be held liable under COLLOM, supra, and DEPARTMENT OF TRANSPORTATION v. NEILSON, 419 So.2d 1071 (Fla. 1982). See also, DEPARTMENT OF TRANSPORTATION v. WEBB, ___ So. 2d ___, 8 FLW 323 (Fla. 1983); RALPH v. CITY OF DAYTONA BEACH, ___ So.2d ___, 8 FLW 79 (Fla. 1983).

CERTIFIED QUESTION NUMBER TWO

DID THE DECISION ONCE MADE OF THE NEED TO INSTALL THE TRAFFIC LIGHT CARRY WITH IT THE CONCOMITANT DUTY TO WARN UNTIL SUCH TIME AS THE LIGHT WAS OPERATIONAL?

The focus of this question is misplaced. The certified question, as phrased, focuses on whether there is a duty to warn during the period between making a decision to install a traffic light and the light being functional. This case,

however, involves the creation of a known dangerous condition by the County which, under CITY OF ST. PETERSBURG v. COLLOM, supra, carries with it an operational level duty to warn or protect the public. The case was presented to the jury on the issue of whether there could be liability for opening the road to traffic, thereby creating a dangerous condition, when the risks were known. The danger, rather than the time period, is determinative.

CERTIFIED QUESTION NUMBER THREE

AS THE SUPREME COURT REQUIRED IN HARRISON, DID THE INSTANT COMPLAINT ADEQUATELY ALLEGE THE DANGEROUS CONDITION REQUIRING WARNING NOTICE OF THE DANGER?

In HARRISON v. ESCAMBIA COUNTY SCHOOL BOARD, ___ So.2d ___, 8 FLW 219 (Fla. 1983), a complaint which simply alleged "unusual traffic hazards" was found to be insufficient to state a cause of action under the "creation of a dangerous condition" rationale of CITY OF ST. PETERSBURG v. COLLOM, supra, and DEPARTMENT OF TRANSPORTATION v. NEILSON, supra. The Complaint in the present case, however, contains much more than the general assertion involved in HARRISON.

Here, the Complaint alleged that the County knew that the area was inadequately designed due to the absence of lines, markings, warning signs, or pedestrian controls; that the area was dangerously and inadequately designed; that the County knew students would be crossing in the area; that the County failed to provide adequate warnings, signs, crosswalks, or other protective devices to students, and

knew that such failure placed the students in a perilous condition subject to hazardous traffic in the area; that the County failed to provide interim safety measures when the road was opened to traffic, including warning signs, crosswalks, traffic control devices.

While the Complaint does not use the specific "known dangerous condition" language referred to in HARRISON, the operative facts were alleged. The Complaint clearly alleged that the County knew that opening the road in its present condition would be dangerous to the students and, nevertheless, failed to take steps to warn or protect them.

CONCLUSION

The certified questions should be answered in the affirmative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to: KARTHEN & SPERRY, P.A., 521 So. Andrews Avenue, Ft. Lauderdale, FL 33301, NANCY LITTLE HOFFMAN, 644 S.E. Fourth Avenue, Ft. Lauderdale, FL 33301; LARRY KLEIN, 501 So. Flagler Drive, WPB, FL 33401; SOLOMON & FLANAGAN, 311 S.E. 13th Street, Ft. Lauderdale, FL 33301 and JOHN FRANKLIN WADE, Room 248, County Courthouse, 201 S.E. 6th Avenue, Ft. Lauderdale, FL 33301, this 15th day of NOVEMBER, 1983.

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