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INTRODUCTION

The Petitioner, City of Miami, was the Defendant in the trial Court and the Appellee below.

The Respondents, Mauricio Ameller, a minor, Jorge Ameller and Maria De Los Angeles Ameller, his parents, and Jorge Ameller and Maria De Los Angeles Ameller, individually were the Plaintiffs in the trial Court and the Appellants below.

This appeal arises out of a reversal by the Third District Court of Appeal of an Order dismissing a Third Amended complaint with prejudice entered by the trial court.

Reference to the record on appeal will be designated by the letter "R". Reference to the Appendix attached hereto will be designated by the letter "A".

ISSUE ON APPEAL

I.

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL OF FLORIDA IN ALEGRE v. SHURKEY, 396 So.2d 247 (Fla. 1st DCA 1981) AS TO WHETHER A COMPLAINT ALLEGING THAT THE DEFENDANT PLACED MONKEY BARS IN ITS PUBLIC PARK OVER A HARD-PACKED GROUND SURFACE STATES A CAUSE OF ACTION FOR NEGLIGENCE.

STATEMENT OF FACTS AND CASE

The CITY OF MIAMI maintained a city park with a playground structure known as a "Monkey Climb" or "Monkey Bars." The respondent child, AMELLER, allegedly fell from the playground structure, landing on the ground beneath it, and allegedly injured himself. His parents filed a Third Amended Complaint against the CITY OF MIAMI alleging that the CITY had placed the monkey bars in its public park over a hard-packed ground surface and was liable for the child's alleged damages.

The AMELLERS filed a Third Amended Complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. The Trial Court granted an Order dismissing the Third Amended Complaint with prejudice. (A 1-6).

The AMELLERS appealed to the Third District Court of Appeal, which reversed and remanded. (A 7-8). The Petition to Invoke the Discretionary Jurisdiction of the court follows.

ARGUMENT

WHETHER THE DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH ALEGRE v. SHURKEY, 396 So.2d 247 (Fla 1st DCA 1981) AS TO WHETHER A COMPLAINT ALLEGING THAT THE DEFENDANT PLACED MONKEY BARS IN ITS PUBLIC PARK OVER A HARD-PACKED GROUND SURFACE STATES A CAUSE OF ACTION FOR NEGLIGENCE.

This Court has jurisdiction to invoke its discretionary power in the instant case pursuant to the Fla.Const. Art. V, §3(b)(3) and Fla.R.App.P. Rule 9.030(a)(2)(A)(iv).

The Third District Court of Appeal specifically stated that this case presented the same question addressed by the First District Court of Appeal in Alegre v. Shurkey, 396 So.2d 247 (Fla. 1st DCA 1981) which relied on Hillman v. Greater Miami Hebrew Academy, 72 So.2d 668 (Fla. 1954).

The issue in Alegre, supra, and in this case is whether a complaint, which alleges that the Defendant placed monkey bars in its public park over a hard-packed ground surface, states a cause of action for negligence. The Third District Court of Appeal specifically stated:

In Alegre, a majority of the court held that no cause of action was stated; here, a majority of this court, agreeing with the dissenting opinion of Judge Ervin in Alegre, 396 So.2d at 248, holds otherwise.

(A 7-8).

Further, the Third District noted in footnote No. 1 of its opinion:

There is no contention that there were rocks under the apparatus, and we are thus unable to distinguish Alegre as we did in Atlantic

Christian School, Inc. v. Salinas, 422 So.2d  
362 (Fla. 3d DCA 1982).

(A 7-8).

The decision of the Third District Court of Appeal expressly and directly conflicts with the decision of the First District Court of Appeal in Alegre, cited supra. Therefore, this Court may review this decision under the Fla.Const. Art. V, §3(b)(3) and Jenkins v. State, 385 So.2d 1356 (Fla. 1980).



CONCLUSION

Based upon the foregoing arguments and citations of law, this Court has jurisdiction to review the merits of this case. Petitioner requests that this Court issue a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was mailed the 10 day of May, 1984 to: ROBERT F. FLEITAS, JR., ESQ., and GASTON R. ALVAREZ, ESQ., Attorneys for the Respondents, 835 Southwest 37th Avenue, Suite 102, Miami, Florida 33135.

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