IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF TRANSPORTATION, Petitioner, vs. CLEOPATRA GAYLE ANGLIN, et. vir., et al., Respondents.	)	CASE NO. 67,599 FIRST DISTRICT COURT OF APPEAL NOS. AT-276 and AT-277
SEABOARD COAST LINE RAILROAD COMPANY, now known as SEABOARD SYSTEM RAILROAD, INC., Petitioner, vs. CLEOPATRA GAYLE ANGLIN and THOMAS P. ANGLIN, her husband, Respondents.	)	CASE NO. 67,600

PETITIONER SEABOARD'S BRIEF ON JURISDICTION

An Appeal From a Decision of the District Court of Appeal, First District, State of Florida

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STATEMENT OF THE CASE AND FACTS

The Circuit Court in and for Leon County entered a Final Summary Judgment for Seaboard Coast Line Railroad Company and the State of Florida, Department of Transportation, in this personal injury negligence action arising out of a motor vehicle accident which occurred in Polk County, Florida, on September 3, 1979.

In its Final Summary Judgment, the trial court found the negligence of the Anglins, Plaintiffs below, as well as the negligence of Edward DuBose, the driver of the vehicle that ran into Plaintiffs' vehicle, constituted independent, efficient intervening causes of the accident. The First District Court of Appeal reversed and remanded the consolidated appeal. (A 1).

The facts are not in dispute. The Anglins' pickup truck stalled after going through a puddle of water approximately six inches deep. The puddle of water was standing in the roadway of Alternate U. S. 27 near a railroad crossing. After their engine stalled, the Anglins were able to safely maneuver their truck off the roadway. The Anglins then decided, however, to push their truck back onto the road and continued to push it down the road for approximately fifteen minutes. (A 2, 8).

The accident occurred when a passing motorist, Edward DuBose, coming from the opposite direction of the Anglins

passed them and turned around to assist them. Although the Anglins saw Mr. DuBose turn around, they continued to push their pickup truck. As Mr. DuBose approached the Anglin vehicle, he failed to stop his car in time and slid into the rear of the pickup truck, pinning Mrs. Anglin between the two vehicles and causing her severe personal injuries. (A 2, 8).

The pooling of water on the highway had no effect on Mr. DuBose's negligent operation of his car. (A 5). The DuBose vehicle approached the Anglins from the opposite direction and turned around before reaching the point in the road where the puddle of water was located. (A 2, 5).

Seaboard Coast Line Railroad Company, following a denial of its Motion for Rehearing, filed a Notice of Appeal to invoke this Court's discretionary jurisdiction.

ARGUMENT

I. THE DISTRICT COURT OPINION IS IN DIRECT CONFLICT WITH METROPOLITAN DADE COUNTY v. COLINA, 456 So.2d 1223 (Fla. 3d DCA 1984).

As correctly noted by Judge Booth in her dissent, the instant case, though factually close to that before the Third District Court of Appeal in Metropolitan Dade County v. Colina, 456 So.2d 1233 (Fla. 3d DCA 1984), review denied, 464 So.2d 554 (Fla. 1985), reaches an opposite result. (A 7). The plaintiff's decedent in Colina was a passenger in a van which had stopped at an intersection because the traffic signal was out due to a power outage. While the driver of the van saw two cars approaching the intersection, he nonetheless decided to try to cross the intersection ahead of them but was unsuccessful.

In Colina, the decedent's estate brought suit against the driver of the car which actually struck the van and the county for failing to repair the traffic light in a timely manner, and the jury returned a verdict against both. The Third District Court of Appeal reversed as to the county holding the trial court erred in failing to direct a verdict since the county's negligence, though a cause in fact, was not a proximate cause of the passenger's death. The Third District Court stated:

> Any negligence on Dade County's part simply provided the occasion for the actions of Masferrer and Colina [drivers of car and van, respectively], which together were the proximate cause of Mrs. Colina's death. Both Masferrer and Colina could see that the traffic light was not functioning and,

> by complying with statutory requirements, could have avoided the collision. To hold the county liable on these facts would make it an insurer of motorists acting in disregard of their own safety and that of others.

Id. at 1235 (emphasis added).

Similarly, any negligence on the part of Defendants in the instant case simply provided the occasion for the negligent actions of the Anglins and Edward DuBose. The Anglins testified that after their engine stalled, they were able to safely maneuver their truck off the road. At that point, there were no injuries. Rather than leave their truck off the roadway, however, the Anglins decided to push it back onto the roadway and keep going down the road,[1] continuing to push even after hearing someone from the DuBose car call out "We will be back to help," and watching the DuBose vehicle turn around and head back toward them.[2] Like the individuals in Colina, the actions of the Anglins and of Mr. DuBose were independent, efficient intervening causes of the accident that followed and the First District's ruling to the contrary is in direct conflict with the Third District's ruling in Colina.

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[1]Whether knowingly or not, the Anglins were complying with Section 316.071, Florida Statutes, when they initially decided to remove their truck from the road. Likewise, the Anglins' decision to push their truck back onto the highway was in violation of this statute which requires the driver of a disabled vehicle to remove it from the street or highway so as not to obstruct the flow of traffic.

[2]The negligent actions of Mr. DuBose are discused in greater detail in Part II, infra.

II. THE FIRST DISTRICT'S RELIANCE ON CRISLIP v. HOLLAND, 401 So.2d 1115 (Fla. 4th DCA 1981), WAS MISPLACED AND ITS DECISION IS IN CONFLICT WITH THIS COURT'S DECISION IN GIBSON v. AVIS RENT-A-CAR SYSTEM, INC., 386 So.2d 520 (FLA. 1980), AND OTHER DECISIONS.

The First District ruled that the trial court correctly characterized Edward DuBose's negligent operation of his car as an independent intervening cause but nonetheless reversed the trial court's entry of summary judgment on the authority of Crislip v. Holland, 401 So.2d 1115 (Fla. 4th DCA 1981)[3]. The First District's reliance on Crislip was misplaced[4] and its ruling in conflict with Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520 (Fla. 1980), and related decisions.

In Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520 (Fla. 1980), this Court set forth a three-part test for determining the foreseeability of an intervening cause. First, the Legislature may specify the type of harm for which a tortfeasor is liable. Second, it may be shown that a partiular defendant had actual knowledge that the same type of harm has resulted in the past from the same type of

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[3]This Court has certiorari jurisdiction based on conflict when a district court of appeal misapplies the law by relying on a decision which involves a situation materially at variance with the one under review. Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520, 521 (Fla. 1980).

[4]The First District's reliance on Crislip who misplaced because there were no independent causes present in Crislip. Rather, the injuries merely occurred in an unexpected manner.

negligent conduct. Third, there is the type of harm that has so frequently resulted from the same type of negligence that in the field of human experience the same type result may be expected again.

Applying the above analysis to the facts of this case, it is clear Mr. DuBose's operation of his vehicle was an unforeseeable intervening cause. In Gibson, this Court ruled that from the field of human experience reasonable persons could conclude that the stopping of a car on an interstate highway creates the risk of a collision caused by an approaching driver who does not become aware of the stopped car in a sufficient amount of time to stop. However, this Court did not hold that reasonable persons could conclude it creates the risk of a collision caused by an approaching driver who does becomes aware of the stopped car in a sufficient amount of time to stop yet nevertheless fails to do so. Indeed, in at least three cases Florida courts have found precisely such a result to be an unforeseeable intervening cause. McClain v. McDermott, 232 So.2d 161 (Fla. 1970); Atlantic Coast Line Railroad Co. v. Ponds, 156 So.2d 781 (Fla. 2d DCA 1963); Banat v. Armando, 430 So.2d 503 (Fla. 3d DCA 1983), pet. for rev. denied, 446 So.2d 99 (Fla. 1984).

The defendant in McClain v. McDermott, supra, was the driver of a car who allegedly allowed the car to run out of gas and proceeded to park the empty car on the side of the street. The plaintiff's decedent volunteered to get

gasoline from a nearby station and upon his return began pouring the gas in the tank. While pouring the gas into the car, a second automobile crashed into the rear of the parked car, fatally injuring the decedent. Finding no causal relationship between the negligence claimed by the plaintiff and the injuries sustained by the decedent, this Court reversed the Third District Court of Appeal and reinstated the Summary Judgment entered by the trial court. McClain v. McDermott, 232 So.2d at 162.

Atlantic Coast Line Railroad v. Ponds, supra, is a similar case. The plaintiff in Ponds brought suit against the defendant railroad company for damages arising out of her husband's death in a railway grade-crossing collision, alleging the company was negligent because the train failed to blow a whistle or bell indicating its approach. The Second District, however, found the actions of the car's driver constituted an independent, efficient cause of the collision because the driver became aware of the train in a sufficient amount of time to avoid the collision but did not do so because he misjudged the efficiency of his brakes.

Banat v. Armando, supra, is a third case where an approaching driver who became aware of a stopped vehicle in what should have been a sufficient amount of time to stop was found to be an unforeseeable intervening cause. In Banat, the plaintiff was a passenger in the front of a small car which crashed into the rear of a stopped truck because of a brake failure. The plaintiff alleged the truck driver

was liable for his injuries because a heavy metal lift at the truck's rear, designed to be folded while the truck was being operated in traffic, was left down, and upon impact tore through the windshield and roof of the car causing serious injury to the plaintiff. The Third District, noting the driver of the car saw the dangerous conditions well ahead of time and would have had plenty of time to stop were it not for the brake failure, affirmed the trial court's entry of Summary Judgment.

Like the drivers in McClain, Ponds and Banat, the approaching driver in the instant case was well aware of the stalled Anglin truck in sufficient time to avoid a collision. Indeed, the driver in the instant case was not only aware of the stalled truck, he had already passed it in the opposite lane. As noted by Judge Booth, his actions can only be considered gross negligence. Had the District Court applied the three-part test in Gibson, it would have found his actions to be an unforeseeable intervening cause because from the field of human experience one could not conclude that the stopping of a car on a roadway creates a risk of a collision caused by a driver who becomes aware of the stopped car in sufficient time to stop yet fails to do so. However, by relying on Crislip v. Holland, the First District reached an opposite result, one that is in conflict with the decisions of this Court and the other district courts of appeal.

CONCLUSION

The First District Court of Appeal's decision that the actions of the Anglins did not constitute an independent cause of the accident is in direct conflict with the Third District's decision in Metropolitan Dade County v. Colina.

Similarly, the First District's ruling that the actions of Mr. DuBose presented a jury question as to foreseeability conflicts with Gibson v. Avis Rent-A-Car System, Inc., and related decisions.

Petitioner respectfully requests this Court to accept jurisdiction and review the merits of this decision.

Respectfully submitted this 13th day of September, 1985.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail to Mr. William Whitaker and Mr. Karl O. Koepke, Whitaker and Koepke, Chartered, Post Office Box 1906, Orlando, Florida 32802; and Mr. Ronald Brooks, Brooks and Callahan, 863 East Park Avenue, Tallahassee, Florida 32301, this 13th day of September, 1985.

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ATTORNEY