

# Supreme Court of Florida

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No. 69,745

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JOSEPH J. JOZWIAK, Petitioner,

vs.

ROBERT LEONARD, as Sheriff of Suwannee County, and SUWANNEE COUNTY, FLORIDA, a political subdivision of the state of Florida, Respondents.

[October 8, 1987]

SHAW, J.

We review Jozwiak v. Leonard, 504 So.2d 1260, 1262 (Fla. 1st DCA 1986), to answer a certified question of great public importance.

DOES THE SUPREME COURT'S HOLDING, IN AVALLONE V. BOARD OF COUNTY COMMISSIONERS OF CITRUS COUNTY, 493 So.2d 1002 (Fla. 1986), . . . THAT THE PURCHASE OF LIABILITY INSURANCE PURSUANT TO SECTION 286.28 CONSTITUTES A WAIVER OF SOVEREIGN IMMUNITY UP TO THE LIMITS OF INSURANCE COVERAGE NEGATE THE NECESSITY OF THE PLAINTIFF TO COMPLY WITH THE NOTICE PROVISIONS OF SECTION 768.28(6) FOUND BY THIS COURT IN BURKETT V. CALHOUN COUNTY, 441 So.2d 1108 (Fla. 1st DCA 1983)?

Id. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We approve the decision below and answer the question in the negative.

The issue is "whether the notice requirements of section 768.28(6) must be met where insurance has been procured pursuant to section 30.55 or section 286.28." 504 So.2d at 1262. The district court below canvassed the case law and concluded that notice was required. Petitioner argues that there is no notice

requirement contained in section 30.55 and that therefore the notice requirement in section 768.28(6) should not be given effect. This argument is meritless. There is no contradiction between the two statutes nor is there any reason why both statutes cannot be given effect. Satisfaction of the notice requirement is a condition precedent to suit against the government. Levine v. Dade County School Board, 442 So.2d 210, 213 (Fla. 1983). Accord Burkett v. Calhoun County, 441 So.2d 1108 (Fla. 1st DCA 1983). Cf. Ingraham v. Dade County School Board, 450 So.2d 847 (Fla. 1984)(the twenty-five percent limitation on attorney fees in section 768.28 applies regardless of whether liability insurance is purchased). Avallone, on which petitioner relies, is off point and not to the contrary. There we addressed the issue of whether a government unit which had purchased liability insurance could also claim sovereign immunity. We held that it could not because to do so would have been directly contrary to section 286.28. We note, but do not rely on, the recent enactment of chapter 87-134, section 4, Laws of Florida, repealing sections 30.55 and 286.28.

We answer the certified question in the negative and approve the decision below.

It is so ordered.

MCDONALD, C.J., and OVERTON, EHRLICH, BARKETT, GRIMES and KOGAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court  
of Appeal - Certified Great Public Importance

First District - Case No. BG-415

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