

IN THE SUPREME COURT OF FLORIDA

CASE NO. 72,412

CLAY SHEARER,

Petitioner,

vs.

THE INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Respondent.

AN APPEAL FROM THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA
CASE NO. 87-1392

INITIAL BRIEF ON THE ISSUE OF THE
SUPREME COURT'S JURISDICTION

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original

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APPENDIX "A"

Copy of Opinion filed by Fifth District Court of
Appeal dated March 31, 1988

APPENDIX "B"

Copy of Order of the Court denying Appellants'
Motion for Rehearing and Suggestion of Certified
Question dated April 26, 1988

POINTS ON APPEAL

There exists an express and direct conflict with the decisions of the Fifth District Court of Appeal rendered in the instant case on March 31, 1988, and April 26, 1988, and the decision of the Second District Court of Appeal rendered in the case of Zordan v. Page, 500 So.2d 608 (2nd DCA 1986).

STATEMENT OF THE CASE

In January of **1986** Plaintiffs filed suit against Defendants essentially alleging that Defendant CLAY SHEARER, an employee of Defendant, CENTRAL FLORIDA YMCA, sexually molested the minor Plaintiffs during an overnight "sleepover" event in April of **1985**, that was held at the CENTRAL FLORIDA YMCA facility in Orlando, Florida.

After suit was commenced, THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA filed a Motion to Intervene which was granted by the trial court. Thereafter, THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA filed a Motion for Partial Final Summary Judgment based on its contention that the policy of insurance it issued to CENTRAL FLORIDA YMCA should not extend coverage to Defendant CLAY SHEARER. The trial court granted THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA's Motion for Partial Final Summary Judgment, finding no insurance coverage under the policy of insurance issued to the CENTRAL FLORIDA YMCA for Defendant CLAY SHEARER.

Following the decision of the trial court, counsel for Plaintiffs and counsel for CLAY SHEARER appealed the trial court's decision to the Fifth District Court of Appeal. By Order dated March **31, 1988**, and its Order on Appellant's Motion for Rehearing and Suggestion of Certified Question dated April **26, 1988**, the Fifth District Court of Appeal affirmed the decision of the trial court.

Petitioner, CLAY SHEARER, now appeals the decision of the Fifth District Court of Appeal to this Court.

STATEMENT OF FACTS

Plaintiffs C [REDACTED] M [REDACTED] R [REDACTED] P [REDACTED] and C [REDACTED] T [REDACTED] claim to have been sexually molested by CLAY SHEARER, an employee of the CENTRAL FLORIDA YMCA while the children were on the YMCA premises during an overnight sleepover in April of 1985.

In January of 1986, S [REDACTED] M [REDACTED] as mother and next friend of C [REDACTED] M [REDACTED] a minor; P [REDACTED] P [REDACTED] as mother and next friend of R [REDACTED] E [REDACTED] a minor; and C [REDACTED] A. T [REDACTED] as mother and next friend of C [REDACTED] T [REDACTED] a minor filed suit against CENTRAL FLORIDA YMCA and CLAY SHEARER.

SUMMARY OF THE ARGUMENT

It is the position of the Petitioner, CLAY SHEARER, that this Court should invoke its Discretionary Jurisdiction to review the decision of the Fifth District Court of Appeal rendered in this case, as it is in direct conflict with the decision rendered by the Second District Court of Appeal in the case of Zordan v. Page, 500 So.2d 608 (2nd DCA 1986).

ARGUMENT AND CITATIONS OF AUTHORITY

There exists an express and direct conflict between the decision rendered by the Fifth District Court of Appeal in this case and the decision rendered by the Second District Court of Appeal and this Court should invoke its discretionary jurisdiction to resolve this direct and express conflict.

By its Order dated March 31, 1986, and its Order on Appellant's Motion for Rehearing and Suggestion of Certified Question dated April 26, 1988, the Fifth District Court of Appeal essentially affirmed the trial court's ruling granting Summary Judgment in favor of intervener, THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA.

The Fifth District Court of Appeal affirmed the finding of the trial court finding no coverage based on Landis v. Allstate Insurance Co., 516 So.2d 305 (3rd DCA 1987), which, as this Court's opinion notes, follows Judge Frank's dissent in Zordan v. Page, 500 So.2d 608 (2nd DCA 1986). In fact, the decision of the Fifth District Court of Appeal notes that it is in express direct conflict with the majority opinion in the Zordan case.

Counsel for Petitioner, CLAY SHEARER, has been advised that the decision rendered by the Third District Court of Appeal in Landis v. Allstate Insurance Co. supra., is presently on appeal before this Honorable Court, said case bearing Case No. 71,910. Petitioner, CLAY SHEARER, respectfully requests this Court invoke discretionary jurisdiction and accept his appeal from the deci-

sion rendered by the Fifth District Court of Appeal, so that this case may be consolidated with the Landis Appeal thus resolving the express and direct conflict that presently exists between the District Courts of Appeal of this State.

CONCLUSION

Based on the reasons and authorities set forth, it is respectfully submitted that there is an express and direct conflict between the District Courts of Appeal of this State pertaining to the issue of insurance coverage in cases involving allegations of sexual molestation. For this reason, Petitioner, CLAY SHEARER, respectfully requests this Court invoke its discretionary jurisdiction to hear Petitioner, CLAY SHEARER's appeal.

RESPECTFULLY SUBMITTED,

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I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief on the Issue of the Supreme Court's Jurisdiction was furnished by regular mail delivery to SCOTT L. STERLING, ESQUIRE, 1214 E. Robinson Street, Suite One, Orlando, Florida 32801, Attorney for Appellants, M [REDACTED] and THOMAS G. KANE, ESQUIRE, 2816 E. Robinson Street, Suite One, Orlando, Florida 32803, Attorney for Appellee/Respondent, The Insurance Company of the State of Pennsylvania, this 19th day of *May*, 1988.

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