

IN THE SUPREME COURT OF FLORIDA

FILED

OCT 11 1988

CLERK OF THE COURT

By _____
Deputy Clerk

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THE CITY OF JACKSONVILLE,

Petitioner,

vs.

Case No. 73,060
DCA Case No. 87-1614

JOANN MILLS and PHILLIP MILLS,
her husband,

Respondents.

PETITIONER'S INITIAL BRIEF
ON THE MERITS

On Review from the District Court
of Appeal, First District
State of Florida

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ISSUE

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IS AN INHERENTLY GOVERNMENTAL ACTIVITY
INVOLVING ENFORCEMENT OF THE LAWS AND
PROTECTION OF THE PUBLIC SAFETY AND
THUS IMMUNE FROM TORT LIABILITY.

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STATEMENT OF THE CASE AND FACTS

This is an appeal from the First District Court of Appeal. Petitioner, City of Jacksonville, will be referred to as Defendant. Respondents, Joann Mills and Phillip Mills, will be referred to as Plaintiffs.

Plaintiff, Joann Mills, while paying a traffic ticket for her brother at the courthouse and while wearing spiked high heel shoes, at first safely passed over the area where she later fell, but then when she returned to that same area, she tripped.

In the lower tribunal, Plaintiffs sued Defendant alleging essentially negligent maintenance of a hallway located on the mezzanine of the courthouse. Prior to trial Defendant moved for summary judgment based on Zieja vs. Metropolitan Dade County, 508 So.2d 354 (Fla. 3 DCA 1987) and involving the legal issue of duty.

The lower tribunal ruled in effect that there was no legal duty on the part of Defendant to Plaintiffs, primarily based on the Zieja case above.

The issue below was whether or not there was a legal duty on the part of Defendant to Plaintiff.

The First District Court of Appeal reversed the lower tribunal and certified the conflict with Zieja vs. Metropolitan Dade County, 508 So.2d 354 (Fla. 3 DCA 1987), holding in effect that there was a duty on the part of the governmental agency and thus in effect conflicting with the Third District's en banc decision.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. Art. V § 3(b)(3) Fla.Const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iv). See Kimbrell v. Great American Insurance Co., 420 So.2d 1086 (Fla. 1982); State v. Dodd, 419 So.2d 333 (Fla. 1982); Hannewacker v. City of Jacksonville Beach, 419 So.2d 308 (Fla. 1982); Douglas v. Iowa National Mutual Insurance Co., 409 So.2d 1029 (Fla. 1982).

ISSUE PRESENTED

WHETHER THE OPERATION OF A COURTHOUSE IS AN
INHERENTLY GOVERNMENTAL ACTIVITY INVOLVING
ENFORCEMENT OF THE LAWS AND PROTECTION OF THE
PUBLIC SAFETY AND THUS IMMUNE FROM TORT LIABILITY.

SUMMARY OF ARGUMENT

In Zieja v. Metropolitan Dade County, 508 So.2d 354 (Fla. 3 DCA 1986), the plaintiff sought to hold the county liable for injuries he received when trying to rescue a court clerk from a knife-wielding attacker. The Third District en banc, concluded that the county's operation of a courthouse fell into category II of the classifications described in Trianon Park Condominium Ass'n vs. City of Hialeah, 468 So.2d 912 (Fla. 1985), and as such, the county owed no duty to the plaintiff.

The First District declined to follow Zieja and held that the city did owe a duty to properly maintain the floors of the courthouse on the basis that such conduct fell under category III in Trianon Park, supra.

This Court has jurisdiction based on Florida Appellate Rule 9.030(a)(2)(A)(iv), and on the conflict of law between the two district courts as certified by the First District Court of Appeal.

There was no legal duty on the part of Defendant to Plaintiff and therefore the lower tribunal correctly entered summary judgment for Defendant below. In Zieja, the Third District Court of Appeals sitting en banc held that the operation of a courthouse is an inherently governmental activity, an activity which involves enforcement of the laws and protection of the public safety under the authority of the Supreme Court decision of Trianon Park Condominium Ass'n vs. City of Hialeah, 468 So.2d 912, 917 (Fla. 1985).

The Third District, in an excellently reasoned analysis, was correct in determining that the operation of a courthouse is a governmental function which does not give rise to tort liability.

ARGUMENT

ISSUE

WHETHER THE OPERATION OF A COURTHOUSE IS AN INHERENTLY GOVERNMENTAL ACTIVITY INVOLVING ENFORCEMENT OF THE LAWS AND PROTECTION OF THE PUBLIC SAFETY AND THUS IMMUNE FROM TORT LIABILITY.

The operation of a courthouse is an inherently governmental activity involving enforcement of the laws and protection of the public safety, and is thus immune from tort liability.

Accordingly, the lower tribunal was correct in entering summary final judgment for the Defendant since there was no legal duty on the part of Defendant to Plaintiffs.

The decision of the First District Court of Appeal in this case expressly and directly conflicts with the decision of the Third District Court of Appeal sitting en banc in Zieja v. Metropolitan Dade County, 508 So.2d 354 (Fla. 3 DCA 1986).

In Zieja, the Third District Court of Appeals sitting en banc held that the operation of a courthouse is an inherently governmental activity, an activity which involves enforcement of the laws and protection of the public safety under the authority of the Supreme Court decision of Trianon Park Condominium Ass'n vs. City of Hialeah, 468 So.2d 912, 917 (Fla. 1985).

There the plaintiff sought to hold the county liable for injuries he received when trying to rescue a court clerk from a knife-wielding attacker. The Third District en banc, concluded that the county's operation of a courthouse fell into category II of the classifications described in Trianon Park Condominium Ass'n vs. City of Hialeah, 468 So.2d 912 (Fla. 1985), and as such, the county owed no duty to the plaintiff.

The First District declined to follow Zieja and held that the city did owe a duty to properly maintain the floors of the courthouse on the basis that such conduct fell under category III in Trianon Park, supra.

This Court has jurisdiction based on Florida Appellate Rule 9.030(a)(2)(A)(iv) and on the conflict of law between the two district courts as certified by the First District Court of Appeal.

The Third District Court of Appeals sitting en banc in a well reasoned, well written opinion determined that the matters of operation and maintenance of a courthouse is an inherently governmental activity which is essential to the enforcement of laws and which falls under the protection of the public safety and which is, therefore, immune from tort liability. The court states at page 356:

"The first step in determining whether a government is liable for negligent conduct is to decide whether the alleged negligent act could possibly give rise to either a common law or statutory duty." (citing to Trianon Park Condominium Ass'n v. City of Hialeah, 468 So.2d 912, 917 (Fla. 1985)). "If the act is inherently governmental, there can be no duty owed to individual citizens." (again citing to Trianon)

The Third District panel en banc framed the issue as follows:

"... whether a governmental entity may be held liable, pursuant to the legislature's waiver of sovereign immunity section 768.28, Florida Statutes (1985), for its negligent operation of a courthouse building". Zieja at page 355.

and then reviewed the four classifications of governmental conduct set out by the Florida Supreme Court in the Trianon decision.

The court rejected plaintiff's contention that the operation of a courthouse is a property control function, falling within category III under Trianon and subject to tort liability.

Although upon first blush such might appear to be the case, upon closer examination, as the Third District Court held en banc, the proper category under Trianon is category II, enforcement of the laws and the protection of public safety. The court reasoned at page 356, 357:

"While it is generally true that when a governmental entity decides to operate a structure it assumes the same liability as a private individual in a like circumstance, ...(citation omitted)... the operation of a courthouse is an activity which is not normally engaged in by private persons. Instead, the construction and operation of the courthouse is carried out by a governmental entity as an essential component to the enforcement of laws and the protection of the public safety. ...(citation omitted)... It is also essential to the other agencies of government which carry on their day-to-day activities within the building, such as permitting, licensing, tax-collecting, etc. ...(citation omitted)... The operation of the courthouse is, therefore, inherent in the county's act of governing."

The court added:

"Furthermore, the operation of a courthouse, and like facilities, has traditionally been treated as a governmental function, giving rise to no liability." Zeija at page 357.

The court supports its reasoning with numerous citations that have held the operation and maintenance of government buildings are an inherently governmental function and immune from liability. The court concludes at page 357:

"Based upon the traditional treatment of courthouse operation as a governmental function and its inherently governmental nature, we find that it falls more squarely within category II" (of the Trianon decision, which was enforcement of the laws and the protection of the public safety).

The court then affirmed the judgment on the pleadings entered for defendant in Zieja.

The issue here is fundamental and goes to whether or not there was a legal duty to begin with on the part of Defendant to Plaintiff. Since the construction, operation and maintenance of a courthouse is peculiarly and inherently a governmental function, it therefore falls within the enforcement of the laws and the protection of the

public safety category under Trianon, and there can be no tort liability in connection therewith.

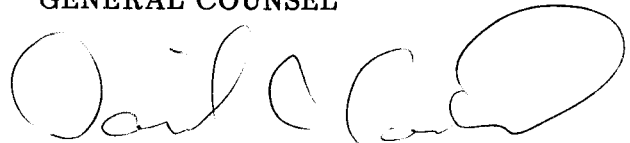
The lower tribunal therefore acted properly in following Zeija.

CONCLUSION

Under the rationale of the en banc decision by the Third District Court of Appeals in Zieja vs. Metropolitan Dade County, 508 So.2d 354, (Fla 3 DCA 1987), there is no legal duty on the part of a governmental entity to individuals where the alleged negligence involved is the construction, operation or maintenance of a courthouse. Under the Supreme Court decision of Trianon, such a function falls under category II, enforcement of the laws and protection of the public safety and is immune from tort liability.

The lower tribunal was correct in entering summary judgment for Defendant. It is respectfully urged that this Court reverse the opinion of the First District Court of Appeals and accordingly affirm the action of the lower tribunal.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to JOHN S. FAGAN,
ESQUIRE, 1035 LaSalle Street, Jacksonville, Florida 32207, by mail, this 7th day of
October, 1988.



Attorney