OA 10-5-90



**IN THE SUPREME COURT OF FLORIDA**

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CASE NO. 75,180

4TH DCA CASE NO. 88-0727

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
and PALM BEACH COUNTY,

Appellants,

vs.

LORETTA KONNEY, Personal Representative
of the Estate of DOUGLAS M. KONNEY,
Deceased, R. EDWARD CAMPBELL,
Administrator Ad Litem for the Estate of
DOUGLAS M. KONNEY, Deceased, DOUGLAS
D. FUNK, Personal Representative of the
Estate of GEORGE ROBERT FUNK, Deceased,

Appellees.

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# AMICUS CURIAE BRIEF OF THE CITY OF WEST PALM BEACH SUBMITTED IN BEHALF OF STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND PALM BEACH COUNTY

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## TABLE OF CONTENTS

## CITATIONS OF AUTHORITY

## STATEMENT OF THE CASE AND FACTS

For the purposes of this Brief, Amicus Curiae adopts the Statement of the Case and the Facts contained in the Initial Brief of the Petitioner.

## SUMMARY OF ARGUMENT

Governmental decisions as to the type of traffic control devices to be installed at road intersections are discretionary, judgmental, planning-level decisions immune from liability, under Department of Transportation v. Neilson, 419 So.2d 1071 (Fla. 1982). The decision of the District Court of Appeal, below, conflicts with Neilson and is contradictory.

## ARGUMENT

This Court's ruling in the present case will directly impact the future liability of all governmental entities in the State of Florida who currently enjoy sovereign immunity for planning level decisions. In Department of Transportation v. Neilson, 419 So.2d 1071, (Fla.1982), this court held that the failure to install traffic control devices and failure to upgrade an existing road or intersection, as well as the decision to build a road or roads with a particular alignment, are judgmental, planning level functions and absolute immunity attaches. In rendering its decisions, this court determined that the installation of traffic control devices, building of new roads and redesigning of roads are basic capital improvements.

To affirm this appeal, this Court has to overturn its ruling

in Neilson. Affirming this appeal would destroy the immunity of all cities and governmental entities which currently regulate traffic by use of traffic lights and warning signs. Each and every decision made by such a governmental entity would then be opened to scrutiny by the courts to determine whether or not the decision made by the entity was a good decision. Governmental entities would no longer be free to govern without the fear of the decisions being second guessed by the courts and jury. And that is exactly the reason that governmental entities have sovereign immunity for planning level decisions.

Although Neilson stands for the proposition that the failure to warn of a known danger is a negligent ommission at the operational level of government for which there is no sovereign immunity, it does not extend to tell the governmental entity the manner in which it must warn of said condition. In the case of Palm Beach County Bd. of Com'rs. v Salas, 511 So.2d 544 at 546(Fla.1987), this Court held that the decision to utilize a left turn signal was planning level and immuned from liability. The court further held that Palm Beach County had a duty to warn that left turns were no longer permitted. The Court did not go so far as to tell Palm Beach County how this warning should have been accomplished.

In the present case, the Fourth District Court of Appeals held that where the evidence shows that a dangerous condition exists at an intersection, then a duty to warn of that condition may arise. We agree that this is the law in the State of Florida as established by Neilson. However, the Court went further and determined that it was proper to allow into evidence and to permit

the jury to determine that a governmental entity has a duty to utilize a flashing traffic light to provide warning of an allegedly dangerous condition. By its decision, the Fourth District Court of Appeals, permits plaintiffs to challenge every decision by a governmental entity as to the type of warning it would utilize at an intersection.

In other "failure to warn cases" such as Salas, where the governmental entity was found to be liable, the governmental entity had provided no warning of known dangerous conditions, as distinguished from inadequate warnings. Bailey Drainage District v. Stark, 526 So.2d 678 (Fla. 1988) (failure to warn of danger caused by brush overgrowth obstructing visibility at intersection resulting in motorist being injured); Robinson v. Department of Transportation, 465 So.2d 1301 (Fla.1stDCA 1985) (failure to warn in a situation which was similar to the one presented in Palm Beach County v. Salas, supra.); Department of Transportation v. Webb, 438 So.2d 780 (Fla. 1983) (failure to warn of danger at railroad intersection resulting in an accident and injuries). In the present case the governmental entities had not ignored the requirement to warn of the condition. Warning signs were installed. The question was not whether warning was given but whether, in the judgment of the court and jury, the warning was adequate.

Applying the Fourth District's ruling to future case could expose a governmental entity to liability for installing a stop sign instead of a traffic control device, for putting up a sign which says "Warning dangerous intersection" instead of a traffic control device and for using any warning signage instead of traffic

control devices. Any plaintiff wishing to include a governmental entity in litigation involving an intersectional accident need merely allege that no matter what warning were provided, be it by signs or markings, that the entity should have installed a traffic light. This would place an extreme burden on all governmental entities and would completely destroy the sovereign immunity doctrine as it exists in this State. A city such as the City of West Palm Beach, to avoid the possibility of future liability would be required, by fear of liability, to install traffic lights at each and every one of its intersections.

The City of West Palm Beach could no longer rely on warning signs or markings as sufficient devices to warn of dangerous conditions but would have to expend enormous amounts to protect itself from the scrutiny of the courts. Our cities would become cluttered with traffic lights, left turn signals, right turn signals and flashings lights. If this Court affirms the District Court would the decision of whether it is a flashing light or a sequential traffic light be the next thing to be challenged by plaintiffs? We submit that it would. This Court should continued the protection which has afforded governmental entities so that they may continue to govern without the fear of always being second guessed.

## CONCLUSION

The Court should quash the holding of the District Court upon this issue and reverse as to all issues raised in the appeal.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing

has been furnished to Flecther N. Baldwin, III, Esquire, 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401, Christopher D. Mauriello, Esquire, Post Office Box 1989, West Palm Beach, Florida, 33402, Edward Campbell, Esquire, 4114 Northlake Boulevard, Suite 202, Palm Beach Gardens, Florida, 33410, Stephanie V. Werner, Esquire,, Assistant County Attorney, Broward County, 115 South Andrews Avenue, Ft. Lauderdale, Florida 33301, Charlene V. Edwards, Esquire, Assistant City Attorney, City of Tampa, 315 East Kennedy Blvd., Fifth Floor, Tampa, Florida, 33602, Robert R. Warchola, Esquire, Assistant County Attorney, Hillsborough County, P.O. Box 1110, Tampa, Florida 33601, Thomas Santurri, Esquire, P.O. Box 13410, Pensacola, Florida, 32591, Susan H. Churuti, Esquire, County Attorney,Pinellas County, 315 Court Street, Clearwater, Florida 34616,and Michael B. Davis,Esquire, Post Office Box 3797, West Palm Beach, Florida, 33402, by U.S. Mail, this 16th day of July, 1990.

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By _____
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