IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 77,251

(DISCRETIONARY REVIEW)

DCA-3 NO. 90-176

PARVIN WRIGHT,

Petitioner,

v.

GENERAL MOTORS
ACCEPTANCE CORPORATION,
a foreign corporation,

Respondent.

_____/

PETITIONER'S INITIAL BRIEF
ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL

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I

PREAMBLE

This is an Appeal invoking the Discretionary Jurisdiction of the Supreme Court of Florida. The Third District Court of Appeal Certified the question presented as one of great public importance. Petitioner/Appellant/Plaintiff below, PARVIN WRIGHT, shall be referred to as "WRIGHT". Respondent/Appellee/Defendant below, GENERAL MOTORS ACCEPTANCE CORPORATION, shall be referred to as "GMAC". The Petitioner's Appendix to her initial Brief shall be referred to by the letter "A". All emphasis shall be that of Petitioner's unless otherwise indicated.

II

STATEMENT OF THE CASE AND THE FACTS

WRIGHT filed a personal injury lawsuit against GMAC alleging that GMAC was vicariously liable for the negligence of the operator of the GMAC leased vehicle on the basis of the dangerous instrumentality doctrine. (A 2-3).

The lease agreement in this case was for over one (1) year and required the lessee to obtain liability insurance with limits of $100,000.00/$300,000.00 for bodily injury liability and $50,000.00 for property damage liability. (A 37-40).

Paragraph 24 of the lease provided:

> 24. OWNERSHIP. This is a lease only and lessor remains the owner of the vehicle. You will not transfer, sublease, rent, or do anything to interfere with lessor's ownership of the vehicle. You and lessor agree that this lease will be treated as a true lease for Federal Income Tax Purposes and elect to have lessor receive the benefits of ownership. [IRC sec. 168(f)(8)]. (A 37-40).

GMAC moved for Summary Judgment on the basis that under §324.021 (9)(a) & (b), Florida Statutes (1986), GMAC cannot be held vicariously liable for the negligent acts of the operator of its leased vehicle. (A 41-42).

III

CONTENTIONS OF THE PARTIES BELOW

The Motion for Summary Judgment came before the Honorable Mario Goderich on November 29, 1989.

WRIGHT's Counsel contended that GMAC is the legal owner of the vehicle, that Section 324.021 (9) Florida Statutes pertains only to the Financial Responsibility Requirements under Chapter 324 of the Florida Statutes and has no bearing upon who is considered an owner under the Dangerous Instrumentality Rule and even if Section 324.021 (9), Florida Statutes (1986), is a legislative attempt to abrogate the Dangerous Instrumentality Rule, then the statute is unconstitutional in that (1) the statute violates Article I, Section 2, of the Florida Constitution as it creates an arbitrary

and unconscionable scheme which denies equal protection of law; (2) the statute violates Article I, Section 21 of the Florida Constitution providing the right of access to the Courts; and (3) the statute violates WRIGHT's Federal and Florida Constitutional due process rights as the statute does not bear a reasonable relationship to any permissible legislative purpose and is discriminatory. (A 56-64).

GMAC's Counsel contended that Section 324.021 (9) protects GMAC from vicarious liability. (A 56-64).

Based upon these arguments, the Court granted the Motion for Summary Judgment. (A 55).

From that Order of the Circuit Court, WRIGHT timely filed a Final Appeal pursuant to Fla. R. App. Proc. [9.110 (a)(1)]. (A 54).

WRIGHT presented the same contentions on appeal to the District Court, but the decision of the Trial Court was affirmed. In its decision, the District Court stated that the Question presented here affects the rights of the motoring public and certified the question to the Supreme Court of Florida as one of great public importance.

From that Order of the District Court, WRIGHT timely filed her Notice of Intent to invoke the Discretionary Jurisdiction of the Supreme Court pursuant to Fla. R. App. Proc. [9.120(b)]

IV

POINTS INVOLVED ON APPEAL

I. Whether Section 324.021 (9) Florida Statutes, operates to immunize a party who contractually is the owner of a leased vehicle from liability under the Dangerous Instrumentality Doctrine.

II. Whether the 1986 Amendment to Section 324.021 (9)(b) violates the "Access to Courts" provision in Article I, Section 21 of the Florida Constitution.

III. Whether the 1986 Amendment to Section 324.021 (9)(b) violates the "Equal Protection of Law" provision in Article I, Section 2 of the Florida Constitution.

V

SUMMARY OF ARGUMENTS

I. GMAC is the owner of the subject leased vehicle. The lease agreement in question drafted by GMAC, explicitly states that GMAC is the owner of the leased vehicle. The lessee cannot transfer, sublease, rent or do anything to interfere with GMAC's ownership of the vehicle. The lease is to be construed as a true lease and GMAC is to receive the Federal Income Tax Benefit and receive the benefits of ownership.

Section 324.021 (9), Florida Statutes (1986) has no application whatsoever beyond the confines of Chapter 324. The provisions of subsection (9) merely operate to relieve conditional sellers and certain lessors of motor vehicles of the effect of the Financial Responsibility laws.

II. Effective July 1, 1986, Section 324.021 (9)(b), Florida Statutes was enacted. This section is an apparent attempt by the legislature to abrogate the Dangerous Instrumentality Doctrine when a lessor has an agreement to lease a motor vehicle for one year or longer so long as minimum bodily injury limits of $100,000.00/$300,000.00 and $50,000.00 in property damage are maintained by the lessee.

Section 324.021 (9)(b), Florida Statutes (1986) violates Article I, Section 21 of the Florida Constitution, the Access to Courts provision in the Florida Constitution. The legislature cannot take away vested common law rights without providing a reasonable alternative.

IV. Section 324.021 (9)(b), Florida Statutes (1986) violates Article I, Section 2 of the Florida Constitution, the equal protection clause of the Florida Constitution. In Section, 324.021 (9)(b), the legislature has set forth two distinct classifications for victims injured by a long-term lessor-owner. This scheme is arbitrary and unconscionable and denies equal protection of law.

VI

JURISDICTIONAL STATEMENT

The Florida Supreme Court has Discretionary Jurisdiction to review certified questions from the District Court of Appeal., Fla. R. App. Proc. [9.030 (2)(a)(v)].

VII

ARGUMENTS

Point I

Section 324.021(9), Florida Statutes, does not immunize a party who contracts that it is the owner of a leased vehicle from liability under the Dangerous Instrumentality Doctrine.

A

Contrary to GMAC's contention in the proceedings below, GMAC is the owner of the leased vehicle. GMAC drafted the lease

agreement in question and as such, GMAC is bound by its contents. Paragraph 24 of the lease agreement provides:

> 24. OWNERSHIP. This is a lease only and lessor remains the owner of the vehicle. You will not transfer, sublease, rent, or do anything to interfere with lessor's ownership of the vehicle. You and lessor agree that this lease will be treated as a true lease for Federal Income Tax Purposes and elect to have lessor receive the benefits of ownership. [IRC sec. 168(f)(8)].

The terms of the lease agreement explicitly state that GMAC is the owner of the leased vehicle. The lessee cannot transfer, sublease, rent, or do anything to interfere with GMAC's ownership of the vehicle. The lease is to be construed as a true lease and GMAC is to receive the Federal Income Tax benefit and receive the benefits of ownership.

Notwithstanding the contents of Paragraph 24, GMAC argued below, that Section 324.021 (9)(b) protects the lessor of a leased vehicle from vicarious liability under the Dangerous Instrumentality Doctrine. This argument cannot withstand close scrutiny.

B

Independent of any insurance requirement and by virtue of the Dangerous Instrumentality Doctrine, there is a common law obligation of owners of motor vehicles which makes them responsible for injuries caused by such vehicle in the course of its intended use. Racecon, Inc. v. Mead, 388 So. 2d 266, 268 (Fla. 5DCA, 1980), Insurance Company of North America v. Avis Rent-a-Car, 348 So. 2d 1149, 1153 (Fla. 1977)

Section 324.021 (9)(b), Florida Statutes (1986) provides:

> (b) Owner/Lessor -- Notwithstanding any other provision of the Florida Statutes or existing case law, the lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than $100,000.00/$300,000.00 bodily injury liability and $50,000.00 property damage liability, **shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility** of said motor vehicle or for the acts of the operator in connection therewith; further, this paragraph shall be applicable so long as the insurance required under such lease agreement remains in effect. (Emphasis Added)

Section 324.021 (9) Florida Statutes (1986) has no application beyond the confines of Chapter 324. Chapter 324, often referred to as the Financial Responsibility Law, deals with the requirements imposed on owners and operators of motor vehicles to show proof of insurance or other financial security, and provides penalties for those who fail to do so.

The purpose of the Chapter, as defined in Section 324.011, Florida Statutes, is to require proof that certain owners and operators of motor vehicles have the financial ability to respond for damages they may cause to others.

The 1986 amendment to Section 324.021 (9)(b) provides that a long term lessor who requires the lessee to maintain at least $100,000.00/$300,000.00 bodily injury liability and $50,000.00 property damage liability insurance coverage, is not considered the "owner" of the vehicle "**for the purpose of determining financial responsibility**" for the operation of the vehicle.

Properly interpreted, the 1986 Amendment operates only to relieve a long-term lessor from its obligation to provide proof of Financial Responsibility under Chapter 324.

It is generally presumed that no change in the common law was intended by the legislature unless the Statute explicitly states otherwise. Carlile v. Game and Fresh Water Fish Commission, 354 So. 2d 362, 364 (Fla. 1977). The failure of the 1986 amendment to state that it intended to abolish a common law doctrine leads to the conclusion that such a radical change was not intended by the legislature.

If the legislature had intended to abrogate an owner's common law liability for the negligent operation of a motor vehicle, as GMAC asserted below, then the logical place for such a statute would be under Chapter 768 (the Negligence chapter) rather than Chapter 324 (the Financial Responsibility chapter).

Recently, this Court in Kramer v. General Motors Acceptance Corporation, SC No. 75,580, Dec 20, 1990, rejected GMAC's contention that the legislature intended to create an exception to the dangerous instrumentality doctrine by defining "owner" in [Florida Statute] 324.021(9)(2)(1989) to include lessees such as Green's. The same should hold true in the instant case.

Properly interpreted, the provisions of subsection (9) merely operates to relieve conditional sellers and certain lessors of motor vehicles of the effect of the Financial Responsibility Laws. Subsection (9) does not abrogate the dangerous instrumentality doctrine.

Point II

The 1986 Amendment to Section 324.021 (9)(b) violates the "Access to Courts" provision in Article I, Section 21 of the Florida Constitution.

Article I, Section 21 of the Florida Constitution guarantees access to the State Courts for redress of "any injury". The legislature cannot take away vested common law rights without providing a reasonable alternative. Kluger v. White, 281 So. 2d 1 (Fla. 1973).

Effective July 1, 1986, Section 324.021(9)(b), Florida Statutes was enacted. This section as argued by GMAC in the proceedings below is an apparent attempt by the legislature to abrogate the Dangerous Instrumentality Doctrine when a lessor has an agreement to lease a motor vehicle for one year or longer so long as minimum bodily injury limits of $100,000.00/$300,000.00 and $50,000.00 in property damage are maintained by the lessee.

It is unconstitutional for the legislature to take away an accident victim's common law right to sue the owner of a leased vehicle in exchange for the purchase of a $100,000.00 insurance policy. A less restrictive cap of $450,000.00 on non-economic damages has been found unconstitutional as denying access to the Courts. See Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987).

If in fact the legislature intended to abrogate the common law rights of an injured accident victim by adopting section 324.021 (9)(b) Florida Statutes, then in essence the legislature is saying

that the injured party must trade away his/her right of full recovery in return for $100,000.00 insurance coverage which may or may not fully compensate the injured party. This is nothing more than a "cap" which was found to be unconstitutional in Smith, supra.

In effect, an accident victim's common law right has been bargained away by the purchase of a $100,000.00 liability insurance policy. The guarantee of having $100,000.00 insurance coverage to insure the liability of the lessee is not a "reasonable alternative benefit" for an injured accident victim.

Point III

The 1986 Amendment to Section 324.021 (9)(b) violates the "Equal Protection of Law" provision in Article I, Section 2 of the Florida Constitution.

Section 324.021 (9)(b) creates two distinct classifications. Frothingham v. Jabe Tile Corporation, et. al., 14 FLW 105, 17th Judicial Circuit, Case Number: 87-22252 CJ, December 6, 1988.

> The first classification is those victims with damages above $100,000.00 whereby the automobile owner (who is not a long-term lessor) is fully liable for the damages that were caused. The second classification is those victims who have damages above $100,000.00 but are injured by a different type of owner, a long term lessor. Those long term lessors are not liable for any amount under this Statute so long as the lessee has $100,000.00/$300,000.00 of bodily injury coverage and $50,000.00 of property damage, even though the lessors are the owners. A victim injured by a long term lessor cannot collect any damages from the long-term lessor-owner.
>
> A second classification is also created. The first class is those victims who have claims worth more than $100,000.00, versus those that have claims worth less than $100,000.00. Those victims having claims worth more than $100,000.00 will

not be fully compensated for their catastrophic injuries, while those who have claims for less than $100,000.00 will be fully compensated. Frothingham, at 105-106.

In Smith v. Department of Insurance, supra, at 1089, this Court noted that if the legislature can cap non-economic damages in the 1986 Fort Reform Act at $450,000.00, there is no reason why it could not cap recovery at some other figure such as $50,000.00 or $1,000.00 or even one dollar. The same reasoning applies here. The legislature could have provided for liability limits of $50,000.00/$100,000.00, or $10,000.00/$20,000.00.

Under the reasoning in Smith, Section 324.021 (9)(b) creates an arbitrary and unconscionable scheme which denies equal protection of the law. See, Smith v. Department of Insurance, 507 So. 2d 1080 (Florida 1987).

VII

CONCLUSION

Based upon the foregoing cases and arguments, Petitioner, WRIGHT, respectfully requests that this Court reverse the decisions of the District and Trial Courts.

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VIII

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petitioner's Initial Brief, was mailed this 22 day of FEBRUARY, 1991 to:

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