SUPREME COURT OF FLORIDA

CASE NO. 78,~~081~~ 091

METROPOLITAN DADE COUNTY,

Appellant,

vs.

GREGORY GREEN ET AL.,

Appellee.
_____/

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This appeal is from an order by the Third District Court of Appeal dismissing an appeal of a non-final order taken pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).[1/]

The litigation is based on a motor vehicle accident which occurred in Dade County, Florida. One of the vehicles involved was a church van carrying over 20 passengers, one of whom was killed. (App.A). Separate claims were made on behalf of most of the passengers, but all were ultimately consolidated for purposes of discovery and trial. (App.B).

On April 22, 1988, and pursuant to Rule 1.270(b),[2/] the County served its motion for separate trials on issues of liability and damages. (App.C). The County argued that the interest of convenience to the parties and to the court would be served by first trying the issue of liability, which was identical in all cases. The County also argued that the trial of 17 damages claims would be unnecessarily confusing to a jury, and therefore prejudicial to one or perhaps all parties. The trial court agreed, and granted the County's motion. (App.D).

1/ The rule provides: "Review of non-final orders of lower tribunals is limited to those which determine the issue of liability in favor of a party seeking affirmative relief. . . .

2/ "The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim . . . or of any separate issue or of any number of claims . . . or issues."

Trial of the liability issues commenced on October 1, 1990, and after a four day trial, resulted in a jury verdict finding liability against the Defendant. (App.E). All post trial motions were denied. (App.F).

A notice of appeal was timely filed pursuant to Rule 9.130(a)(3)(C)(iv). Upon motion, however, the appeal was dismissed, based on a prior Third District decision which concluded Rule 9.130(a)(3)(C)(iv) was not intended to include findings of liability after trial. (App.G). However, the Court granted the County's motion for certification of the following question to be one of great public importance:

> Does appellate jurisdiction under Rule 9.130(a)(3)(C)(iv) authorize review of a jury verdict determining liability in favor of a claimant seeking affirmative relief?

(App.H and I). This appeal timely followed.

SUMMARY OF ARGUMENT

Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) allows an appeal to be taken from any order determining "the issue of liability in favor of a party seeking affirmative relief." Since there is no qualification or limitation on the type of such an order encompassed by that Rule, either in the language of the rule itself or in the Committee Notes, the lower court should have permitted the present appeal from the jury's finding of liability and the trial court's entry of an order validating that finding.

The rule must also be so construed so as to retain the reason for and effectiveness of Rule 1.270(b), which provides trial courts a discretion to allow separate trials on certain issues, including liability. The purpose for and effectiveness of having such a trial is lost if the parties are nonetheless required to wait for a final order before an appeal can be taken.

The principle case relied upon by the lower court in dismissing the present appeal, Dauer v. Freed, 444 So.2d 1012 (Fla. 3d DCA 1984), is flawed in its reasoning. The court's concern over the ostensible incongruity between the accelerated review schedule in Rule 9.130 and the extensive, 18,000 page trial transcript in Dauer was misplaced and inappropriate.

ARGUMENT

I. RULE 9.130(a)(3)(C)(iv) ALLOWS FOR THE APPEALABILITY OF A FINDING OF LIABILITY AFTER A TRIAL ON THAT ISSUE.

A. The Lower Tribunal's Order Dismissing The Appeal Was Contrary To The Plain Language Of The Rule.

The construction of court rules is governed by the same over aiding principle of statutory construction: Before speculating on intent, underlying policies, or other guideposts, the court must look to the plain meaning of the language used. Rowe v. State, 394 So.2d 1057 (Fla. 1st DCA 1981) (in construing court rules, rules of statutory construction apply).

Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) allows an appeal to be taken from any order determining "the issue of liability in favor of a party seeking affirmative relief." No language in the Rule limits appeals to only certain orders determining liability. Nor does the Committee Note to the 1977 Revision support such a restrictive reading. Indeed, the Committee first states, contrary to the effect of the lower court's order, that Rule 9.130(a)(3) "provides for review of certain interlocutory orders based upon necessity or desirability of expeditious review." The Committee goes on to confirm that "[i]tem (c)(iv) allows appeals from interlocutory orders which determine liability in favor of a claimant." Thus, based on the language of the Rule above, the lower court erred in dismissing the appeal.

B. Judicial Speed And Efficiency Requires That Rule 9.130(a)(3)(C)(iv) Be Construed To Allow Appeal After Trial.

A proper construction of the intent of and policy behind the Rule also supports the County's position. Rules governing the right to appeal are to be liberally construed in the interest of manifest justice. State ex rel. Reichard v. Smith, 177 So.2d 340 (Fla. 1965); Gaskins v. Mack, 91 Fla. 284, 107 So. 918 (1926). They are designed to aid in the speedy determination of causes. Holland v. Miami Springs Bank, 53 So.2d 646 (Fla. 1951). The Introductory Note to the Florida Rules by the Advisory Committee on Appellate Rules echoes, "[I]t was the intent of the many persons involved in the drafting of these revised rules to implement the public policy of Florida that appellate procedures operate to protect rather than thwart the substantive legal rights of the people by alleviating existing burdens on the judicial system, [and] by . . . expediting the appellate process." If an ambiguity is perceived in the rules, it should be construed in favor of access to the courts. Lehman v. Cloniger, 294 So.2d 344 (Fla. 1st DCA 1974). Moreover, rules should be construed so as to be consistent with one another. See Dibble v. Dibble, 377 So.2d 1001 (Fla. 3d DCA 1979).

The most compelling reason to construe Rule 9.130(a)(3)(C)(iv) to include appeals from liability determinations after trial can be found in the purpose behind Fla.R.Civ.P. 1.270(b): "The court in furtherance of

convenience or to avoid prejudice may order a separate trial . . . of any separate issue. . . ." The very raison d'etre of that rule is to allow trial judges the flexibility and discretion to dispose of cases in the most expedient way possible. "The rule is one of trial convenience and the administration of justice. . . . A common use may be the consolidation for trial of the issue of liability in an automobile accident resulting in personal injuries to several persons with reservation of separate trials of the issues of damages where the latter are extensive and complicated." Rule 1.270, Author's Comments - 1967. This is just such a case. See also 5 Moore's Federal Practice ¶42.03[1], Martin v. Bell Helicopter Co., 85 FRD 654 (D. Colo. 1980); Ellingson Timber Co. v. Great N.R. Co., 424 F.2d 497 (9th Cir. 1970).

Little analysis is required to see that the purpose of using Rule 1.270(b) in such a case is emasculated to a large extent if a non-final appeal is not permitted from the liability determination. All of the savings in time, money and judicial resources are thereby lost, because the parties are forced to follow through with discovery and trial on damages so as to obtain a final, appealable order (which, more than likely, will generate a much larger transcript and record, longer briefs, and greater appellate labors than would have the non-final appeal). A construction of Rule 9.130(a)(3)(C)(iv) as suggested by the Third District is necessarily inconsistent with the provision for separate trials, and the reasons therefor.

C. The Lower Court Erred In Relying On Dauer v. Freed, 444 So.2d 1012 (Fla. 3d DCA 1984), Which Was Improperly Decided.

The lower court erred in relying on Dauer v. Freed, 444 So.2d 1012 (Fla. 3d DCA 1984), because the reasoning by both the majority and by J. Hubbart in his special concurrence is flawed in several respects. In Dauer, as here, the trial court ordered separate trials on liability, "with the damage issues reserved for a second trial if necessary." Id. at 1013. After a jury verdict was rendered against defendants, the trial court first entered an order denying defendants' post trial motions, and then entered an order based upon the jury verdict that defendants were liable for damages to Plaintiff.[3/] The Third District ruled that neither order was appealable. The Third District conceded that 9.130(a)(3)(C)(iv) did encompass appeals from orders granting summary judgment (see e.g. Aetna Casualty & Surety Co. v. Meyer, 385 So.2d 10 (Fla. 3d DCA 1980)), or an order denying a

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3/ The fact that such an order was neither sought nor issued in the present case is of no significant consequence. First, since a jury verdict is the foundation of the later judgment, Myers v. State, 115 Fla. 627, 155 So. 797 (1934), and is absolutely binding on the court, Thornton v. Culver, 105 So.2d 489 (Fla. 1958), it is conclusively a determination of liability within the meaning of the Rule. To the extent that the verdict is not an "order" per se, as that word is defined in the Rules (Fla.R.App.P. 9.020(e)), that either is resolved by the trial court's denial of the County's post trial motion. Alternatively, if such an order is deemed semantically inadequate because it does not expressly determine liability, then the Third District should have simply indicated such an order was appropriate.

defense motion to vacate a default (see Sunny South Aircraft Service Inc. v. Inversiones, 1120 C.A., 417 So.2d 676 (Fla. 1982)). The panel first stated that it was "apodictic" that the order denying the post trial motions did not determine the issue of liability in favor of the Plaintiff. Id. at 1055. Although in a strictly semantic sense the panel was correct, in that the order did not expressly "determine liability", such a strained construction places form over substance. The only possible context for a motion to vacate a jury verdict, or for directed verdict, is one in which there has been a determination of liability, albeit by a jury.[4/] The court's denial[5/] of such a motion carries with it the necessary and conclusive implication that liability is thereby determined in favor of the claimant. The cases relied upon by the panel[6/]

4/ It should be noted that this rationale by the Third District would carry no weight had the trial judge been the factfinder. It would be incongruous to think that a jury's finding of liability cannot be appealed, while a judge's finding can.

5/ Another incongruity illuminated by the panel's reasoning in Dauer is that had the lower court granted the motion for new trial, that order would be appealable. Fla.R.App.P. 9.130(a)(4). Moreover, the majority also recognized that "the plain language of the rule . . . would appear to allow" an appeal from an order granting a motion for directed verdict. Dauer at 1015, n.1.

6/ Seigle v. Barry, 422 So.2d 63 (Fla. 4th DCA 1982); Lliteras v. Lliteras, 413 So.2d 859 (Fla. 4th DCA 1982); Habelow v. Travelers Insurance Co., 389 So.2d 218 (Fla. 5th DCA 1980); Peavy v. Parrish, 385 So.2d 1034 (Fla. 4th DCA 1980); Vanco Construction Inc. v. Nucor Corporation, 378 So.2d 116 (Fla. 5th DCA 1980); State Farm Mutual Automobile Insurance Company v. Morris, 370 So.2d 828 (Fla. 1st DCA 1979).

involved attempted appeals from orders denying motions to dismiss or for summary judgment, which clearly carried no such conclusive implication.

The Dauer panel also improperly dismissed the appeal from the order which expressly found liability based on the jury verdict. The court, in rejecting the plain language of both the order and the rule, cited to only one case: Ballard v. Hopkins, 142 So.2d 738 (Fla. 2d DCA 1962), which did not involve a non-final appeal at all, but rather involved an attempt to take a final appeal directly from a jury verdict. Simply because a jury verdict is itself not appealable as a final order (certainly true, as far as it goes, for additional court labors clearly remain) does not in any way support the conclusion that a non-final verdict which necessarily determines liability is also non-appealable.

Judge Hubbart's concurring opinion that the expedited method of review is inconsistent with an appeal after trial, as opposed to after motion. There is simply no principled reasons to distinguish the appealability of an order determining liability on motion for summary judgment from the appealability of such an order after trial. The concurrence's conclusion was reached after the length of the trial transcript (over 18,000 pages) was revealed to the panel.[7/] Such a transcript is massive by any method or review.

7/ The trial transcript in the present case is approximately 800 pages.

Similarly, although the County concedes that in such an extreme case, it would be unreasonable to expect an initial brief within (15) days of the notice, it would be nearly as unreasonable to expect within 70 days, had the appeal been from a final order. In any event, it appears at least equally as reasonable that the expedited review is consistent with an appeal of a liability finding after trial, as there is a greater need to return to the trial court to complete the trial, if necessary. Surely a prevailing Plaintiff would not wish to drag out the appeal. If an isolated Defendant is confronted with the likes of an 18,000 page transcript, and is therefore unable to meet the expedited schedule, then perhaps that Defendant may have to elect to defer its appeal until final judgment. Such an unusual scenario should not, however, dictate construction of the rule to foreclose the County's appeal, which does not present nearly so an extreme situation.

CONCLUSION

For all of the reasons stated above, the County respectfully requests this Court to REVERSE the order of the lower tribunal, and REMAND for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 15th day of July, 1991, mailed to: FRED BORUCHOU, ESQ., Cohen & Cohen, P.A., 2525 North State Road #7 (441), Hollywood, Florida 33021; HAROLD LONG, ESQ., 4770 Biscayne Blvd., #970, Miami, Florida 33137; MILTON KELNER, ESQ., 2225 Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130; JOEL BARNETT, ESQ., 7103 S.W. 102nd Avenue, Miami, Florida 33173; DAVID ROSENBLATT, ESQ., 9190 Sunset Drive, Miami, Florida 33173; ROBERT G. CORIROSSI, ESQ., 2000 South Dixie Highway, Suite 101, Miami, Florida 33133; ROBERT McILVAIN, ESQ., 9917 N.W. 13th Street, Apt. 10, Miami, Florida 33129; WILLIAM RANDALL JONES, III, ESQ., Carroll & Halbert, P.A., 5th Floor, Coconut Grove Bank Bldg., 2701 S. Bayshore Drive, Miami, Florida 33133; and MILAN PAUMER (address unknown).

Assistant County Attorney