OA 10-3-94

IN THE SUPREME COURT OF FLORIDA

HOLMES COUNTY SCHOOL BOARD,

Petitioner,

vs.

TERRY DUFFELL, et al.,

Respondents.

CASE NO.: 83,283

BRIEF OF FLORIDA ASSOCIATION OF COUNTY ATTORNEYS AS AMICUS CURIAE

JOHN J. COPELAN, JR.,
Broward County Attorney

ANTHONY C. MUSTO,
Assistant County Attorney
Appellant Section Chief

CHRISTINE M. DUIGNAN,
Assistant County Attorney

Attorneys for Florida Association
of County Attorneys

Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (305) 357-7600
Telecopier: (305) 357-7641

TABLE OF CONTENTS

TABLE OF CITATIONS

INTRODUCTION

This brief is submitted by the Florida Association of County Attorneys ("FACA") on behalf of Petitioner Holmes County School Board. Petitioner will be referred to in this brief as "the School Board" and Respondents will be referred to as "Respondents" or by name.

STATEMENT OF THE CASE AND FACTS

FACA adopts the Statement of Case and Facts contained in the School Board's Initial Brief, as well that contained in the brief submitted by Metropolitan Dade County as amicus curiae.

SUMMARY OF ARGUMENT

Under Florida's workers compensation system, when an accident occurs within the course of employment, the remedies provided therein are exclusive and immunize the employer from liability. sec. 440.11(1), Fla. Stat. The only exception by which an employer may be liable in tort is when the employer fails to pay its workers compensation premiums. The only exceptions by which an employee may be liable is where one employee acts with intent to harm another or where one employee harms another employee engaged in unrelated work. As Respondents have not alleged that the School Board failed to pay its premiums, this court is obligated to enforce the plain and unambiguous meaning of the exclusivity provision.

Although the above-cited statutory provision does contain exceptions for employee liability, this court should not read sec. 768.28, Fla. Stat., whereby a government employer is required to step into the shoes of its employees, as inferring liability onto the School Board. Not only would such a reading be in direct contravention of the exclusivity provisions of sec. 440.11(1), it would create an inequitable situation where government employers are subject to more liability than private employers. Moreover, injured workers would be receiving double recovery at public expense.

The legislature is required to read statutes in such a way as to promote the intent of the drafters. Accordingly, this court should enforce the exclusivity provision of sec. 440.11(1), and

avoid the unintended results which would be produced by juxtaposing sec. 440.11 with sec. 768.28.

ARGUMENT

UNDER THE EXCLUSIVITY PROVISION OF FLORIDA'S WORKERS COMPENSATION STATUTE, A PUBLIC EMPLOYER MAY NOT BE SUED IN NEGLIGENCE FOR AN INJURY TO ONE EMPLOYEE BY A CO-EMPLOYEE WHICH OCCURS IN THE COURSE OF EMPLOYMENT

When an accident occurs within the course of employment, the remedies provided by the workers compensation statute are exclusive and immunize the employer from further liability. Sec. 440.11(1), Fla. Stat. The exclusivity of the workers compensation remedy is express:

> The liability of an employer ... shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or admiralty ...

Id. (emphasis added). The exclusivity provision is sweeping in effect, with only a few exceptions. The reason that the exceptions are limited is to fulfill the dual purposes of the workers compensation system: providing employees with a remedy for on-the-job injuries without regard to fault while concomitantly providing employers with more economic certainly by immunizing them from liability in tort. Ayala v. Florida Farm Bureau Ins., Co., 543 So. 2d 204 (Fla. 1989) (citations omitted); see also, Mullarkey v. Florida Feed Mills, Inc., 268 So. 2d 363 (Fla. 1972), appeal dismissed, 411 U.S. 944 (1973). To promote these goals, the few

recognized exceptions are narrowly construed and derived from the express language of the statutory scheme. Elliot v. Dugger, 579 So. 2d 827 (Fla. 1st DCA 1991).

With regard to employer liability, the statute contains only one exception: an employer who has failed to pay workers compensation premiums may be liable in tort. Sec. 440.11(1), Fla. Stat. The statute also contains only two exceptions for employee liability. Specifically, fellow employees may be liable in tort where 1) they act with intent to harm another employee, or 2) they harm another employee who is engaged in unrelated work.[1] Id. Absent these recognized exceptions, the language of Chapter 440 mandates that workers compensation is an employees' exclusive remedy which immunizes employers from further liability.

As none of these recognized exceptions apply to the instant case,[2] the exclusivity rule should control. As this court has stated, it is a fundamental tenet of statutory construction that

---

[1] Notably, the latter exception, the so-called "unrelated work" exception, applies only to employees and not to employers. Under the statutory maxim, expressio unius est exclusio alterius, (the inclusion of one thing implies the exclusion of others), if the legislature had intended to create tort liability for employers under the unrelated work exception it would have expressly done so.

[2] Respondents do not allege that the School Board may be liable in negligence because it failed to pay its workers' compensation premiums. Because this is the only exception pertaining to employers, even if one of the two employee exceptions applied, Respondents' action would be against the allegedly negligent bus driver, not the School Board.

"'[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning ... the statute must be given its plain and obvious meaning.'" Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) (quoting A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 1144, 137 So. 157, 159 (1931)). The language of sec. 440.11(1) making workers compensation the exclusive remedy for workplace injuries is clear and unambiguous; therefore it should be given its plain and obvious meaning, thereby immunizing the School Board from suit.

Because sec. 440.11(1) does not impose liability on an employer under the unrelated work exception, the only way for Respondents and the appellate court to infer liability on the part of the School Board was by juxtaposing sec. 440.11(1), Fla. Stat., with sec. 768.28, Fla. Stat., which requires a government employer to step into the shoes of and defend a lawsuit against an allegedly negligent employee. However, this result was caused by reading two distinct, independent statutory sections together in a way that the legislature could not have intended. The error in reading these two sections together is demonstrated by the inequalities that such a reading would create. Government employers would be subject to liability while their similarly situated counterparts in the private sector would not. Moreover, injured workers would be able to receive at public expense the windfall of being compensated twice for the same injury.

This disparate treatment produced by the appellate court's analysis is contrary to this court's precedent concerning the

treatment of public and private employers under the workers compensation statute. In Hodges v. State Road Dept., 171 So. 2d 523 (Fla. 1965), this court stated that government agencies are subject to the same workers compensation rules that would apply to private employers similarly conditioned. See also, O'Neill v. Department of Transportation, 468 So. 2d 904 (Fla. 1985) (dissenting opinion). For example, if the facts of a case were to establish a waiver by a private employer, the same rule would apply to a government employer. See Hodges, 171 So. 2d at 525. Similarly, the facts of the instant case clearly indicate that, had Mr. Duffell's employer been a private business, under the exclusivity provisions of sec. 440.11(1), there would be no employer liability. Thus, under Hodges, the same rule should apply to the School Board.

Moreover, this unequal treatment of public and private employers buttresses the conclusion that sec. 440.11(1) and sec. 768.28 were never intended to be read together. Legislative intent is the polestar by which courts must be guided in interpreting the provisions of a law. Parker v. State, 406 So. 2d 1089, 1091 (Fla. 1981). The courts are obligated to honor the obvious legislative intent and policy behind an enactment. Byrd v. Richardson-Greenshields Securities, 552 So. 2d 1099, 1102 (Fla. 1989). The intent of a statute is the law and the courts are charged with the duty of ascertaining and effectuating it. Gay v. City of Coral Gables, 47 So. 2d 529 (Fla. 1950). Thus, the cardinal rule of statutory construction is that a statute should be construed so as

to ascertain and give effect to the intention of the legislature as expressed in the statute. City of Tampa v. Thatcher Glass Corp., 445 So. 2d 578, 579 (Fla. 1984). In determining legislative intent, courts must consider an act as a whole, including the evil to be corrected, the language of that act, including its title, the history of its enactment and the state of the law already in existence bearing on the subject. Parker, 406 So. 2d at 1092; State v. Webb, 398 So. 2d 820, 824 (Fla. 1981); Foley v. State, 50 So. 2d 179, 184 (Fla. 1951). Moreover, it is a well-settled principle that courts should avoid interpreting laws in ways which ascribe an intent to create an absurd result. McKibben v. Mallory, 293 So. 2d 48 (Fla. 1974); City of St. Petersburg v. Siebold, 48 So. 2d 291 (Fla. 1950); Ferre v. State ex rel. Reno, 478 So. 2d 1077 (Fla. 1986), approved and opinion adopted, 494 So. 2d 214 (Fla. 1986), cert. denied 481 U.S. 1037 (1987). Likewise, an interpretation that leads to an unreasonable or ridiculous conclusion will not be adopted. Ferre v. State ex rel. Reno; Allied Fidelity Ins. Co. v. State, 415 So. 2d 109 (Fla. 3d DCA 1982).

By advancing a policy that would impose greater liability on government employers than on private employers, the appellate court extended sec. 440.11(1) beyond the intent embodied in its express terms. Additionally, the appellate court's analysis violates the most basic principles of sovereign immunity by imposing more liability on a government employer than on a public employer,

thereby modifying sec. 440.11(1) in a way that would lead to an unreasonable result.

Finally, in resolving a conflict between the workers compensation statute and the sovereign immunity statute, this court has favored government employer immunity. Elliot v. Dugger, 579 So. 2d 827, 831 (Fla. 1st DCA 1991). Therefore, even if sec. 768.28 was applicable to the instant case, the exclusivity provisions of sec. 440.11(1) should control and immunize the School Board from liability in tort.

CONCLUSION

Based upon the foregoing, FACA respectfully submits that the decision of the appellate court should be reversed and judgment be entered in favor of Holmes County School Board based upon workers compensation immunity.

Respectfully submitted,

JOHN J. COPELAN, JR.,
Broward County Attorney

ANTHONY C. MUSTO,
Assistant County Attorney
Appellate Section Chief

CHRISTINE M. DUIGNAN
Assistant County Attorney

Attorneys for Florida Association
of County Attorneys
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (305) 357-7600
Telecopier: (305) 357-7641

By _____
CHRISTINE M. DUIGNAN
Assistant County Attorney
Florida Bar No. 896500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States mail to Michael Kehoe, Esq., Fuller, Johnson & Farrell, P.O. Box 12219, Pensacola, FL 32581; Michael S. Davis, Assistant County Attorney, Stephen P. Clark Center, Suite 2810, 111 N.W. 1st Street, Miami, FL 33128; and Barry Gulker, Esq., Caminez, Walker & Brown, 1637 Metropolitan Boulevard, Tallahassee, FL 32308, on this 19th day of August, 1994.

CHRISTINE M. DUIGNAN
Assistant County Attorney