O.A 10-3-94

087

SUPREME COURT OF FLORIDA

CASE NO. 83,283

DISTRICT COURT OF APPEAL
FIRST DISTRICT - NO. 93-917

HOLMES COUNTY SCHOOL BOARD,

Petitioner,

vs.

TERRY DUFFELL, ET AL.,

Respondents.

BRIEF OF METROPOLITAN DADE COUNTY
AS AMICUS CURIAE

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QUESTION PRESENTED

Whether a public employee injured in the course of employment may evade the exclusive remedy under §440.11(1) of Florida's Worker's Compensation Act and sue the public employer in tort when the employee's injury is caused by a fellow employee assigned to unrelated works.

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INTRODUCTION

This Brief is submitted by Metropolitan Dade County ("Dade County") as amicus curiae. On June 7, 1994, this Court granted Dade County's motion for permission to file an amicus curiae brief.

DECISION BELOW

The decision of the First District Court of Appeal is reported at 630 So.2d 639.

STATEMENT OF THE CASE AND FACTS

Respondent Terry Duffell was employed as a custodian by Petitioner, the Holmes County School Board (the "School Board"). On February 8, 1990, Duffell was injured at work after being pinned against a wall by a school bus being operated by Robert Lewis, a School Board bus driver.

On October 22, 1990, Duffell and his wife, Linda Duffell (also a Respondent in this action), filed a complaint against the School Board in the Circuit Court for the Fourteenth Judicial Circuit. They contended that the accident resulted from Lewis' negligence and that the School Board was in turn liable. They sought recovery for Terry Duffell's personal injuries and Linda Duffell's loss of consortium.

While Respondents' tort action was pending before the Fourteenth Circuit, Terry Duffell and the School Board, pursuant to §440.20(12)(a) of the Florida Worker's Compensation Act, entered into a settlement of Duffell's

workers' compensation claim. The Judge of Compensation Claims approved the settlement on October 9, 1991.

Following the workers' compensation settlement, the School Board moved for summary judgment on Respondents' tort claim. The School Board contended that §440.11(1) of the Act made workers' compensation Respondents' exclusive remedy in this case and thus granted the School Board immunity from Respondents' tort action. On February 17, 1993, the Circuit Court entered an order denying the motion.

On appeal, the First District Court of Appeal affirmed, holding that the Circuit Court properly denied summary judgment. See Holmes County School Bd. v. Duffell, 630 So. 2d 639 (Fla. ist DCA 1994).[1/] The First District based its determination in large part on its earlier decision in Department of Corrections v. Koch, 582 So. 2d 5 (Fla. 1st DCA), review denied, 592 So. 2d 679 (Fla. 1991).

Koch had ruled that §440.11(1), which makes workers' compensation the exclusive remedy for an employee injured in the course of employment, did not apply when a public employee sues his public employer for a workplace injury occurring due to the negligence of a fellow employee assigned to "unrelated works." Koch reached this result by

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1/ The First District exercised jurisdiction pursuant Rule 9.130(a)(3)(C)(vi) of the Florida Rules of Appellate Procedure, which grants appellate courts jurisdiction to review non-final orders denying workers' compensation immunity.

reading §440.11(1) in tandem with §768.28(9)(a) of the Florida Statutes. Section 440.11(1) provides an exception to workers' compensation exclusivity by depriving immunity to public and private employees who negligently injure colleagues in "unrelated works." Section 768.28(9)(a), however, vests public employees with immunity from suit for all workplace negligence. Koch took note of the case law that explains §768.28(9)(a)'s purpose as that of converting a tort action against a public employee to one against his employer. See Department of Corrections v. Koch, 582 So. 2d at 8 (citing Bryant v. Duval County Hosp. Auth., 459 So. 2d 1154, 1155 (Fla. 1st DCA 1984); White v. Hillsborough County Hosp. Auth., 448 So. 2d 2, 3 (Fla. 2d DCA 1983)). Koch reasoned that it likewise should convert a public employee's tort action against a fellow employee assigned to unrelated works into one against the public employer, notwithstanding §440.11(1)'s "exclusivity of remedy" provision. See Department of Corrections v. Koch, 582 So. 2d at 7-8. Koch suggested that this result was necessary to avoid tension with the "access to courts" guarantee of Article I, §21, of the Florida Constitution. See id.

Relying on Koch, the First District held that §440.11(1)'s unrelated works exception to fellow employee immunity operated to permit Respondents' tort action against the School Board. See Holmes County School Bd. v. Duffell, 630 So. 2d at 640. On May 17, 1994, this Court entered an order accepting jurisdiction of the case.

SUMMARY OF ARGUMENT

Section 440.11(1) plainly and unambiguously makes workers' compensation a public employee's exclusive remedy against his public employer when the employee is injured in the course of employment. Section 440.11(1) contains no exception that subjects the public employer to added tort liability when the employee is injured by a fellow employee assigned to unrelated works. Where the Legislature intended to qualify §440.11(1), it did so expressly. Its failure to expressly provide for the exception created by the First District indicates that it never intended to permit public employer liability for torts among fellow employees. Special reasons exist in this case for adhering to §440.11(1)'s plain meaning. The First District's departure from §440.11(1)'s plain meaning both upsets basic principles of sovereign immunity and undermines the protection §440.11(1)'s exclusive remedy affords to public employers.

The result produced by §440.11(1)'s plain language does not conflict with the "access to courts" guarantee under Article I, §21, of the Florida Constitution. Section 440.11(1) does not abolish a traditional common law right, for public employees did not have a common law right to sue their public employers for the torts of fellow employees. Moreover, this Court has consistently reaffirmed that workers' compensation benefits provide a sufficient alternative to common law remedies. In addition, the workers' compensation system fills a compelling public need.

Nothing in either §440.11(1)'s "unrelated works" exception to fellow employee immunity or §768.28(9)(a)'s grant of immunity to public employees for torts committed in the course of employment dictates a contrary result. In creating overlapping grants of immunity, the Legislature may have acted with excess caution. But that caution certainly did not intend to create through silence wholly new forms of governmental liability.

ARGUMENT

I.

SECTION 440.11(1) OF FLORIDA'S WORKER'S COMPENSATION ACT EXPRESSLY PRECLUDES A PUBLIC EMPLOYEE INJURED IN THE COURSE OF EMPLOYMENT FROM SUING HIS PUBLIC EMPLOYER IN TORT FOR AN INJURY SUSTAINED IN THE COURSE OF EMPLOYMENT

A. Section 440.11(1)'s Plain Language Makes Worker's Compensation A Public Employee's Exclusive Remedy Against His Public Employer For An Injury Sustained In The Course of Employment

Florida's Worker's Compensation Act, Chapter 440 of the Florida Statutes, is motivated by two goals. The first is to ensure that workers are adequately compensated following workplace accidents. See, e.g., De Ayala v. Florida Farm Bureau Casualty Ins. Co., 543 So. 2d 204, 206 (Fla. 1989). The Act accomplishes this purpose by making workers' compensation benefits payable for "death or disability of an employee . . . arising out of and in the course of employment." See §440.09(1), Fla. Stat. (1993). Most importantly, Chapter 440 makes workers' compensation

available generally without regard to the employee's fault in causing the injury. See §440.11(1), Fla. Stat. (1993) (prohibiting employers from interposing assumption of risk or comparative negligence as a defense to a workers' compensation claim).

Chapter 440's second and equally important goal is to provide certainty for employers by "replac[ing] an unwieldy tort system that made it virtually impossible for businesses to predict or insure for the cost of industrial accidents." De Ayala v. Florida Farm Bureau Casualty Ins. Co., 543 So. 2d at 206. To both assist employers in budgeting for accident costs and ensure rationality in the workers' compensation system, Chapter 440 contains extensive guidelines for calculating compensation according to the nature, extent, and duration of given disabilities. See §§440.15-440.16, Fla. Stat. (1993). The backbone of the protection Chapter 440 furnishes employers, however, is §440.11(1), which establishes workers' compensation as the employee's exclusive remedy against his employer for workplace injuries. Section 440.11(1) provides, in pertinent part:

> The liability of an employer prescribed in s. 440.10 [which sets forth employer obligations under Chapter 440] 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

on account of such injury or death (emphasis added).

Section §440.11(1)'s exclusive remedy protection is sweeping. While §440.11(1) contains several exceptions that make fellow employees potentially liable to one another, §440.11(1) identifies only a single instance when an employee may sue an employer outside of Chapter 440 following a workplace accident: when the employer fails make compensation payments required by Chapter 440. See id. (exclusivity of remedy protection not available "if an employer fails to secure payment of compensation as required by this chapter").

Section 440.11(1), however, contains no language suggesting that an employer, private or public, may be liable in tort when a employee is injured because of the negligence of a fellow employee assigned to unrelated works. Section 440.11(1)'s plain language alone should suffice to establish that the First District erred in holding that such public employer liability nonetheless exists. This Court has regularly instructed that "'[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)). Accord, e.g., St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071, 1073 (1982); State v. Egan, 287 So. 2d 1, 4 (1973). Section

440.11(1)'s language making workers' compensation the exclusive remedy against employers for workplace accidents is clear and unambiguous. That language should be given its plain and natural effect.

Where the Legislature intended to qualify the exclusive remedy limitation under §440.11(1), it did so expressly. As noted, §440.11(1) expressly retains employer liability for employers who fail to make payments required under Chapter 440. Section 440.11(1) similarly makes express provision for employee liability for willful torts.

Most significantly, §440.11(1) contains language expressly providing employee liability for accidents occurring between employees assigned to unrelated works. Had the Legislature additionally intended to create tort liability for public employers for these same accidents, it presumably would have said so expressly. This is especially the case when, as explained below, see infra at 9-13, that liability would run so squarely counter to both an essential pillar of Chapter 440's basic structure and elemental principles of sovereign immunity. The unavoidable conclusion from this legislative silence is that, contrary to the First District's assumption, the Legislature never intended to make public employers liable in tort to public employees injured by fellow employees assigned to unrelated works. See PW Ventures v. Nichols, 533 So. 2d 281, 283 (Fla. 1988) (by providing for one type of statutory exception, the Legislature is presumed to exclude those not

expressly mentioned); Towerhouse Condominium, Inc. v. Millman, 475 So. 2d 674, 676 (Fla. 1985) ("It is a general principle of statutory construction, well established in Florida's jurisprudence, that the mention of one thing implies the exclusion of another.")

B. The Policies That Underlie Both Sovereign Immunity And §440.11(1) Confirm That Workers' Compensation Is The Exclusive Remedy For Public Employees Injured In The Course Of Employment

Special reasons exist in this case for adhering to §440.11(1)'s plain language. Most plainly, the First District's contrary rule imposes monetary liability upon State and local governments. In view of the dual needs of safeguarding public treasuries and ensuring the orderly administration of government, see Berek v. Metropolitan Dade County, 396 So. 2d 756, 758 (Fla. 3d DCA 1981), approved 422 So. 2d 838 (Fla. 1982), this Court has refused to endorse governmental financial liability in the absence of a clear and express legislative command, see, e.g., Carlile v. Game & Fresh Water Fish Commn., 354 So. 2d 362, 364 (Fla. 1978); State ex rel. Division of Administration v. Oliff, 350 So. 2d 484, 486 (Fla. 1st DCA 1977). Without question, there is no such clear and express legislative directive to support the First District's modification of §440.11(1).

Berek v. Metropolitan Dade County illustrates courts' refusal to rely on inference as a means of creating governmental financial liability. Berek addressed whether

the Legislature, by waiving under §768.28 the sovereign immunity of the State and its political subdivisions up to $50,000 per claimant,[2/] intended to allow successful claimants with damages at the statutory cap to add court costs pursuant to §57.041 of the Florida Statutes and thereby raise the total recovery above the $50,000 cap. The plaintiff had argued that §768.28's $50,000 waiver "necessarily carries with it" the obligation to pay court costs mandated by statutes of general application such as §57.041. See 396 So. 2d at 760 (3d DCA) (Schwartz, J., dissenting) (setting forth this position).

This Court disagreed. It observed that §768.28's waiver fixed total liability at $50,000 per claimant and that nothing in §768.28 or §57.041 stated expressly that the cap could be stretched to accommodate added court costs. The Court held that the absence of a clear legislative directive was decisive. "A waiver of sovereign immunity must be strictly construed." 422 So. 2d at 840.

Berek's reasoning leads to a similar result here. Like the plaintiff in Berek, the First District in Koch and the decision below found governmental liability through inference rather than through express statutory language. As noted, the First District observed that §440.11(1) retained the tort liability of fellow employees in unrelated

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2/ In 1981, the Legislature raised the $50,000 cap to $100,000 per claimant. See Ch. 81-317, §1, Laws of Fla.

works to one another. See Holmes County School Bd. v. Duffell, 630 So. 2d at 640; Department of Corrections v. Koch, 582 So. 2d at 7. The First District further observed that §768.28(9)(a) immunized public employees for negligence committed in the course of their employment. See Holmes County School Bd. v. Duffell, 630 So. 2d at 640; Department of Corrections v. Koch, 582 So. 2d at 7. The First District thus inferred that the Legislature intended for injured employees to instead obtain tort damages from their public employers. See Holmes County School Bd. v. Duffell, 630 So. 2d at 640; Department of Corrections v. Koch, 582 So. 2d at 7-8. Even if the inference made by the First District were tenable (and as we set forth below, see infra, at 16-20, it is not), it is not permissible. Berek - along with well-settled standards requiring strict construction of purported waivers of sovereign immunity - firmly reject the creation of governmental liability through statutory inference.

Not only does the rule endorsed by the First District upset established principles of sovereign immunity, it also significantly erodes a critical foundation of Florida's workers' compensation scheme - and without advancing any similarly weighty public policy. Section 440.11(1)'s exclusive remedy protection exists to "mak[e] the compensation system work in accord with the purposes of the Act." Mullarkey v. Florida Feed Mills, Inc., 268 So. 2d 363, 366 (Fla. 1972), appeal dismissed, 411 U.S. 944 (1973).

Recognizing the substantial purpose served by this exclusive remedy provision, courts have fortified it through numerous means. For instance, courts have held that §440.11(1)'s protection covers injuries that occur prior to an employee's commencing his shift but while he is preparing to start. See Winn Dixie Stores, Inc. v. Akin, 533 So. 2d 829, 830 (Fla. 4th DCA 1988), review denied, 542 So. 2d 988 (Fla. 1989); Johns v. State Dept. of Health and Rehab. Servs., 485 So. 2d 857 (Fla. 1st DCA), review denied, 492 So. 2d 1333 (Fla. 1986). Courts moreover have extended that protection to general contractors who purchase insurance for the benefit of independent contractors, see Mandico v. Taos Construction, Inc., 605 So. 2d 850, 852-53 (Fla. 1992); to companies leasing dangerous instrumentalities to an injured worker's employer, see Larzelere v. Employers Ins. of Wassau, 613 So. 2d 510, 511 (Fla. 2d DCA), review denied, 624 So. 2d 267 (Fla. 1993); and to temporary employers who procure employees from a general employer that is in the business of providing temporary help, see Booher v. Pepperidge Farm, Inc., 468 So. 2d 985 (Fla. 1985) (approving Pepperidge Farm, Inc. v. Booher, 446 So. 2d 1132 (Fla. 4th DCA 1984)); J.B. Ivey and Co. v. Merchant, 502 So. 2d 93 (5th DCA 1987). Taken collectively, these decisions indicate courts' desire to bolster the force of §440.11(1)'s exclusive remedy command and their corresponding reluctance to take steps that might dilute §440.11(1)'s potency.

The First District's approach substantially compromises the protection §440.11(1) furnishes public employers. In view of the continuing expansion of State and local government, workplace accidents between employees assigned to unrelated works likely are a frequent occurrence. The First District's rule endorsing governmental employer liability in these instances thus threatens to impose significant costs on governments. In so doing, it likewise complicates the ability of those public employers to plan for workplace accident costs - a feature that lies at the heart of Chapter 440's scheme. See generally De Ayala v. Florida Farm Bureau Casualty Ins. Co., 543 So. 2d 204, 206 (Fla. 1989); Mullarkey v. Florida Feed Mills, Inc., 268 So. 2d at 366. The harm the First District's rule visits upon §440.11(1)'s safeguards thus reinforces the conclusion that First District's rule is incompatible with legislative intent.

II.

SECTION 440.11(1)'S PROHIBITION UPON A PUBLIC EMPLOYEE SUING THE PUBLIC EMPLOYER FOR WORKPLACE TORTS OF FELLOW EMPLOYEES DOES NOT CONFLICT WITH ARTICLE I, §21, OF THE FLORIDA CONSTITUTION

The First District suggested that its contrary determination was necessitated to avoid tension with Article I, §21, of the Florida Constitution. This suggestion is misguided. Restricting a public employee's right to sue his

government employer in tort for his fellow employee's negligence does not create a constitutional problem.

Article I, §21, provides that "[t]he courts shall be open to every person for redress of any injury." The Court has construed this provision to limit the Legislature's power to abolish a common law right of action. See, e.g., Kluger v. White, 281 So. 2d 1, 4 (1973). The first inquiry in any Article I, §21, question is whether the legislation in question abolishes a right at common law. See, e.g., Smith v. Department of Insurance, 507 So. 2d 1080, 1087-88 (Fla. 1987). If so, the legislation still survives constitutional scrutiny if the Legislature provides "a reasonable alternative remedy or commensurate benefit," id., or there is a "legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such necessity," id. (emphasis in text).

None of these three considerations counsel in favor of the rule created by the First District. First, no common law right has ever existed under which public employees, when injured by the negligence of fellow employees in unrelated works, may recover tort damages from their governmental employers. Fellow employees long have enjoyed a common law right to sue one another for negligence. See, e.g., Frantz v. McBee Co., 77 So. 2d 796 (Fla. 1955). But they did not have a common law right to sue their employer for fellow employee torts when that employer was the

government. See generally Circuit Court of the Twelfth Judicial Circuit v. Department of Natural Resources, 339 So. 2d 1113, 1114-15 (Fla. 1976) (outlining general principles of sovereign immunity). It is only by conflating these two very separate and distinct rights that the First District was able suggest a potential constitutional problem.

Second, even if one were to find that limiting a public employee's ability to sue his governmental employer in tort runs counter to common law traditions, the employee's workers' compensation remedy under Chapter 440 is "a reasonable alternative." Smith v. Department of Insurance, 507 So. 2d at 1088. In response to a variety of challenges to limitations imposed by Chapter 440, this Court has uniformly held that workers' compensation benefits provide a sufficient alternative to common law rights. See Newton v. McCotter Motors, Inc., 475 So. 2d 230, 231 (Fla. 1985), cert. denied, 475 U.S. 1021 (1986); Sasso v. Ram Property Mgt., 452 So. 2d 932, 933-34 (Fla.), appeal dismissed 469 U.S. 1030 (1984); Acton v. Fort Lauderdale Hosp., 440 So. 2d 1282 (Fla. 1983). Indeed, the Court recently reaffirmed this very principle in Shova v. Eller, 630 So. 2d 537, 542-43 (1994).

Finally, workers' compensation meets an "overpowering public necessity." Smith v. Department of Insurance, 507 So. 2d at 1088. As Professor Larson explains:

> The necessity for workers' compensation legislation arose out of the coincidence of a sharp increase in industrial

> accidents attending the rise of the factory system and a simultaneous decrease in the employee's common-law remedies for his injuries.

1 A. Larson, The Law of Workmen's Compensation §4.00, at 2-10 (1993). Professor Larson recounts that before the advent of workers' compensation laws "it became clear enough that the precompensation loss-adjustment system for industrial accidents was a complete failure and, in the most serious cases, left the worker's family completely destitute." Id. §4.50, at 2-10. Workers' compensation provides a necessary response to the unacceptable situation that existed at common law. See Mullarkey v. Florida Feed Mills, Inc., 268 So. 2d 363 (Fla. 1972).

III.

NEITHER THE "UNRELATED WORKS" EXCEPTION TO §440.11(1)'S FELLOW EMPLOYEE IMMUNITY NOR §768.28(9)(a)'S PUBLIC EMPLOYEE IMMUNITY ANTICIPATES CREATING PUBLIC EMPLOYER TORT LIABILITY TO PUBLIC EMPLOYEES INJURED BY FELLOW EMPLOYEES

Even if the First District were permitted to infer from §440.11(1) and §768.28(9)(a) public employer liability for torts among fellow employees, neither provision - whether considered separately or collectively - would support such an inference.

In enacting §768.28's limited waiver of sovereign immunity in 1973, under subsection (9) the Legislature provided immunity to public employees for negligence committed in the scope of their official duties. See Ch.

73-313, §1, Laws of Fla.[3/] Subsection (9)'s purpose is plain: to prevent the disruption of governmental efficiency that would result if public employees were to perform their duties against the threat of personal liability. Cf. Berek v. Metropolitan Dade County, 396 So. 2d 756, 758 (Fla. 3d DCA 1981), approved 422 So. 2d 838 (Fla. 1982). In nonetheless positing that the Legislature did not intend for §768.28(9) to abolish a public employee's liability to fellow employees, see Department of Corrections v. Koch, 582 So. 2d 5, 7 (Fla. 1st DCA 1991), the First District surely is mistaken. For public employees would be seriously inhibited from the vigorous performance of their duties if forced to operate with the constant prospect of a single misstep creating massive liability to an injured co-worker.

Section §440.11(1)'s exclusive remedy provision was at the core of Florida's 1935 Worker's Compensation Act. When the Legislature enacted §768.28(9) in 1973, it presumably

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3/ Section 768.28(9) provides, in pertinent part:

> (a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willfull disregard of human rights, safety, or property.

was aware that because of §440.11(1) public employers for close to forty years had enjoyed immunity from tort actions brought by employees injured by co-workers in the course of employment. "There is . . . a general presumption that the legislature passes statutes with knowledge of prior existing laws." State v. Dunmann, 427 So. 2d 166, 168 (Fla. 1983). Accord, e.g., Oldham v. Rooks, 361 So. 2d 140, 143 (Fla. 1978). For this reason, the Legislature equally understood that in adopting public employee immunity under §768.28(9)(a) it effectively made workers' compensation the exclusive remedy for public employees injured in the course of employment by fellow employees.

Nothing in the 1978 amendment to §440.11(1) reveals a contrary understanding or, more importantly, an intent to create governmental tort liability for accidents occurring between fellow employees. The 1978 amendment provided:

> The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. [But] [s]uch fellow-employee immunities shall not be applicable . . . to employees of the same employer when each is operating in furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment.

Ch. 78-300, §2, Laws of Fla. The only plausible understanding of the 1978 amendment is that it intended to allow liability for fellow employees assigned to unrelated

works in public employment - so long as some other statute did not independently bar such liability. Admittedly, §768.28(9)(a)'s blanket immunity grant to public employees may have made it unnecessary for the Legislature to have extended fellow employee immunity to public employees as part of the 1978 amendment to §440.11(1). But it would be a mistake to read any hidden meaning into the Legislature's possible excess caution. Given that the primary thrust of the 1978 amendment was to expand employee immunity from suit, it is difficult to accept that the 1978 amendment silently intended to create wholly new and substantial forms of governmental liability.

Finally, even if there were tension between the exception to fellow employee immunity under §440.11(1) and the immunity provided to public employees by §768.28(9)(a), the proper way to resolve that tension would not be to impose tort liability upon governmental employers. When separate statutes yield conflicting commands, courts follow the statute directed more precisely to issue at hand. See, e.g., Gretz v. Florida Unemployment Appeals Commn., 572 So. 2d 1384, 1386 (Fla. 1991); Adams v. Culver, 111 So. 2d 665, 667 (Fla. 1959). Section 440.11(1) focuses specifically upon an employer's liability outside of the workers' compensation system for employment-related accidents. And as explained above, see supra, at 6-9, §440.11(1) unambiguously makes workers' compensation the exclusive remedy for an employee's workplace injuries. By contrast,

§768.28(9)(a) focuses upon employee immunity - rather than employer liability - and at best suggests employer liability only by negative inference. For this reason, §440.11(1)'s exclusive remedy provision is more specifically aimed at the question presented. That provision, of course, firmly rejects imposing tort liability upon governmental employers to public employees injured by fellow employees.[4/]

CONCLUSION

Section 440.11(1) makes workers' compensation a public employee's exclusive remedy against a public employer for an injury in the course of employment. Section 440.11(1)'s plain language does not authorize added public employer tort liability when the injury is caused by a fellow employee assigned to unrelated works. The result produced by §440.11(1)'s plain meaning meets the requirements of Article I, §21, of the Florida Constitution. Finally, neither §440.11(1)'s "unrelated works" exception to fellow employee immunity nor §768.28(9)(a)'s public employee immunity for torts committed in the course of employment suggests creating public employer tort liability to public

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4/ In the proceedings before the First District the parties also addressed two additional questions: whether on the facts of this case Terry Duffell and Robert Lewis, the School Board bus driver involved in Duffell's accident, were assigned to "unrelated works" within the meaning of §440.11(1); and whether the doctrines of estoppel and election of remedies independently precluded Duffell's tort action against the School Board. This brief does not address either issue.

employees injured by fellow employees. For these reasons, the decision of the First District Court of Appeal should be reversed and remanded with instructions to order the Circuit Court to grant the School Board's motion for summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 10 day of June, 1994, mailed to: MICHAEL W. KEHOE, ESQ., Fuller, Johnson & Farrell, P.O. Box 12219, Pensacola, Florida 32581; and BARRY GULKER, ESQ., Caminez, Walker and Brown, 1637 Metropolitan Boulevard, Tallahassee, FL 32308.

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