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IN THE SUPREME COURT OF FLORIDA

METROPOLITAN DADE COUNTY,

Petitioner,

vs.

ORLANDO REYES and BEATRIZ REYES,

Respondents.
_____/

CASE NO. 86,911

District Court of Appeal,
3d District - No. 94-1737

PETITIONER'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

This is an appeal following a final judgment in favor of the Petitioner and Defendant below, Metropolitan Dade County (the "County"), in a "slip and fall" tort case. The Respondents are the Plaintiffs, Orlando Reyes and Beatriz Reyes, his wife.

Mr. Reyes, a delivery man, slipped and fell on a loading dock at a County jail facility. The fall was allegedly caused by an unknown, greasy liquid on the dock.

On August 6, 1990, the Plaintiffs' counsel wrote a letter to the County's Clerk of the Board of County Commissioners, with a copy to the state Department of Insurance. (R. at 45-51.) The body of the letter states:

> Please be advised that this firm has been retained by Orlando Reyes to represent him for injuries and trauma suffered as he slipped and fell on a greasy floor in the loading dock of the TCK Correctional Center on December 5, 1989.
>
> Please allow this letter to serve as formal notice pursuant to Florida Statutes 768.28 (6) of our intention to proceed against you and your insurance carrier for the injuries incurred.

(Id.) The letter thus does not mention Mrs. Reyes or her claim. Subsequently, on May 14, 1991, Mr. Reyes sued the County. His wife joined in the suit, claiming loss of consortium.

Prior to trial, the court took up the County's motion in limine to exclude a written statement from one of the jail's inmates. The statement indicated that the inmate had taken out garbage prior to the fall. The trial court fairly quickly determined that this statement

was inadmissible hearsay. (R. at 192-93.) (This ruling was upheld by the district court.)

Later in the hearing the trial court inquired:

> The Court: . . . Is there any testimony as to how long the greasy liquid substance was on the floor . . . [?]
>
> [Plaintiffs' Counsel]: There would be, but in view of your ruling this morning, Your Honor, there won't be.

(R. at 197.) The exchange continued:

> The Court: Without waiving any objection you may have to the Court's earlier ruling, barring that statement contained in the records what do you have?
>
> [Plaintiffs' Counsel]: You've basically taken the meat out of my case.

(R. at 198.)

Despite these concessions from the Plaintiffs about the weakness of their case, the trial court nonetheless expressed doubt that the case was so devoid of evidence as to sustain a directed verdict:

> If by stipulation you want to present law to me now, I'll go ahead and rule. . . . I would say if that's what he's got I wouldn't grant [a directed verdict].

(Id.) Later the court again indicated the case was appropriate for submission to a jury:

> We know garbage was removed an hour or two earlier through the same door. We know he slipped on something that may have been garbage. So I guess is it a reasonable inference for the jury to believe that which he slipped or might have fallen to the floor following the morning removal of garbage. Yes, I think that's a reasonable inference the jury might find.

(R. at 203 (emphasis added).)

Notwithstanding the trial court's announced intention to deny the motion for directed verdict, and apparently still troubled about the court's earlier exclusionary ruling, Plaintiffs' counsel made the following novel suggestion:

> [I]n view of this guy's statement being knocked out, if the Court is inclined to grant a directed verdict, I'd rather have it done now so it can go up.

(R. at 208.) The court responded, almost apologetically, by again announcing its disinclination toward doing what the Plaintiffs suggested:

> I'll tell you truthfully, Richard [i.e., Plaintiffs' counsel], if you have evidence that your guy is complaining of garbage was removed from that door an hour or two earlier and that nobody inspected it and that your person slipped on something that could have, you know, is likely that it was garbage, then I think there's reasonable inference that if they are going to remove garbage from the door that they have an obligation to take a look and make certain nothing spills afterwards. If they are not doing that inspection, they ought to be doing that inspection.

(Id. (emphasis added).) Apparently sensing the Plaintiffs' concern about the weakness of their case and the significant expense that would be incurred in calling the Plaintiffs' doctor,[1] but still not comfortable about granting the directed verdict, the court suggested bifurcating the case:

> Maybe what we ought to do is bifurcate the thing because it's a close question, but I'm not firmly convinced that what you have is not a jury question.

(R. at 209.) This bifurcation alternative was foreclosed, however, by the County's objection.[2] (See R. at 210-11.) Though again indicating that it would not grant the

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[1] Plaintiffs' counsel indicated that he would incur expenses of $750 an hour for the doctor's time during trial. (R. at 198.)

[2] The County objected to bifurcation because it had impeachment evidence, including statements of four witnesses that the floor was clear when the Plaintiff fell, which it wished the jury to consider on both the liability and damages questions. (R. at 210-11.)

directed verdict at that point, the trial court cautioned that it could easily grant such a motion after the complete presentation of the Plaintiffs' case (including their expensive doctor):

> When he finishes it all, I know you'll make your motion for directed verdict and I will have heard more and have a better feeling. I can't say the fact that I'm not inclined to grant it now means I won't grant it later. I'm just not feeling comfortable enough.

(R. at 213.)

The Plaintiffs again referred to their dilemma from the court's unfavorable evidentiary ruling excluding the inmate's statement ("Which brings us back to the statement . . . ."). (R. at 213.) The court then suggested taking a voluntary dismissal, presumably to allow the Plaintiffs to locate the prisoner for live testimony. (Id.) But again this option was foreclosed, apparently because of statute of limitations concerns. (Id.)

This exchange then followed:

> The Court: Then I guess we go back to the question do you want me to direct a verdict. How do you feel about that?
>
> * * *
>
> What do you want me to do? Do you all lawyers want me to direct a verdict?
>
> [Plaintiffs' Counsel]: If your inclined to do that and he wants to do it, I'd rather have it all up there at one time rather than piecemeal because the strongest part of my case is that statement, and if it goes to a jury on what I have its much weaker that it would be without that statement.

(R. at 213.) Without the introduction of any new evidence or any further argument on this issue,[3] the court complied and directed the verdict for the County as to Plaintiff Orlando Reyes. (R. at 222.) The court observed: "[N]ow you can take it all up." (Id.)

The court also granted the directed verdict on the wife's claim of lost consortium based on her failure to comply with § 768.28, Florida Statutes. (R. at 222.)

The Plaintiffs appealed. Prior to oral argument the County submitted a Notice of Supplemental Authority citing cases on the issue of invited error. The Third District Court of Appeal reversed the directed verdicts on both claims. Reyes v. Metropolitan Dade County, 661 So. 2d 98 (Fla. 3d DCA 1995). The Third District found error in the denial of the loss of consortium claim, based on its en banc ruling in Chandler v. Novak, 596 So. 2d 749 (Fla. 3d DCA 1992). The court also reversed the directed verdict granted against Mr. Reyes. The opinion did not address the issue of invited error. The County then sought review in this Court based upon conflict with the Fifth District's decision in Orange County v. Piper, 523 So. 2d 196 (Fla. 5th DCA 1988). This Court accepted jurisdiction pursuant to article V, section (b)(3) of the Florida Constitution.

SUMMARY OF ARGUMENT

At issue here is whether a loss of consortium claimant must comply with the presuit notice requirement for the waiver of sovereign immunity, § 768.28(6)(a), Florida Statutes. That legislation requires that "the claimant present[] the claim in writing." Like every other claimant, a loss of consortium claimant must obey this legislative mandate.

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[3] Argument had turned to the County's second motion in limine relating to evidence of internal jail procedures and the issue of the Plaintiffs' compliance with the presuit notice of requirements of § 768.28, Florida Statutes. (R. at 211-13, 214-22.)

The plain language of the statute requires providing the government written notice of each claimant's claim. That plain statutory language must be read strictly, with due deference to the legislature as a coordinate branch of government. Levine v. Dade County Sch. Bd., 442 So. 2d 210 (Fla. 1983). The district court's contrary construction, which divides claims into main and derivative ones and abandons the notice requirement for derivative claims, does not enforce the statute's plain language. Worse, such a contrary construction frustrates the statute's purpose by burdening the government with additional investigation or the risk of later consortium claims. Consequently, the district court's decision on the loss of consortium claim should be reversed.

Also at issue is whether a party may challenge a trial court's ruling after inviting that ruling in order to appeal. According to the doctrine of invited error, a party may not. The doctrine of invited error prohibits a party from encouraging an adverse final order to appeal an issue that is not ripe for review. The doctrine is necessary to preserve the courts' procedural and jurisdictional rules. In this case, the trial court asked the parties if they wanted a directed verdict. The Plaintiffs should have responded, unequivocally, "No." They did not. Instead, faced with a damaging evidentiary ruling, they accepted -- if not asked for -- the directed verdict against them, in an attempt to circumvent the Rules of Appellate Procedure. They should not be permitted now to challenge the very ruling they invited. The trial court's directed verdict should therefore be reinstated.

ARGUMENT

I. A LOSS OF CONSORTIUM CLAIMANT MUST PROVIDE WRITTEN NOTICE OF THE CLAIM PURSUANT TO § 768.28(6)(a), FLORIDA STATUTES, TO SATISFY THE REQUIREMENTS FOR WAIVER OF SOVEREIGN IMMUNITY.

Sovereign immunity is a fundamental legal doctrine, constitutional in dimension. The doctrine operates according to the principle, which originated with the infancy of the common law, that the state is immune from suit "until the state itself, through its Legislature, by methods pointed out in the Constitution, consents to waive or withdraw such immunity." State ex rel. Davis v. Love, 99 Fla. 333, 126 So. 374, 377 (1930); see also Cauley v. City of Jacksonville, 403 So. 2d 379, 381 (Fla. 1981) (tracing the historical underpinnings of sovereign immunity). See generally Gerald T. Wetherington & Donald I. Pollack, Tort Suits Against Government Entities in Florida, 44 Fla. L. Rev. 1, 5-8 (1992). This Court has thus long recognized that, "[i]n Florida, sovereign immunity is the rule, rather than the exception, as evidenced by article X, section 13 of the Florida Constitution: 'Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereinafter originating.'" Pan-Am Tobacco Corp. v. Department of Corrections, 471 So. 2d 4, 5 (Fla. 1984).

The Florida Legislature has, in fact, provided for bringing suit against the state, but only if particular preconditions are met. At issue here is the statutory precondition of presuit notice, § 768.28(6)(a), Florida Statutes, which states:

> (6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Spaceport Florida Authority, presents such claim in writing to the Department of Insurance, within

> 3 years after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to s. 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against him, to discharge the common liability.

(Emphasis supplied.)

The plain language of this statute requires a loss of consortium claimant to present a written claim to the applicable governmental entities. The provision that "[a]n action may not be instituted on a claim . . . unless the claimant presents the claim in writing" allows little room for confusion. Quite simply, each claimant's claim must be presented in writing.

Applying the statute's plain terms in this way is not only sensible, it is constitutionally required. As a matter of judicial restraint, the § 768.28(6)(a) waiver provisions must be followed to the letter. "Because this subsection is part of the statutory waiver of sovereign immunity, it must be strictly construed." Levine v. Dade County Sch. Bd., 442 So. 2d 210, 212 (Fla. 1983).

In Levine, the Court addressed whether a plaintiff may sue the state under § 768.28 without notifying the Department of Insurance, even where the Department has no interest in the case and no prejudice results. The Court unanimously rejected that possibility, despite finding some support for the argument that the notice requirement should only apply when the Department has an official role or interest. "Such speculation," the Court explained, "does not authorize us to ignore the plain language of

the statute." Levine, 442 So. 2d at 212. The Court considered it "inappropriate" to provide the plaintiff relief despite the clear terms of the statute. "Our views about the wisdom or propriety of the notice requirement are irrelevant because the requirement is so clearly set forth in the statute." Id. at 212. Since then, in construing § 768.28(6)(a), the Court has consistently reaffirmed Levine's principle of strictly adhering to the literal statutory requirements. See Pirez v. Brescher, 584 So. 2d 993, 994 n.2 (Fla. 1991) (citing Levine and explaining the statute "must be strictly construed"); Menendez v. North Broward Hosp. Dist., 537 So. 2d 89, 91 (Fla. 1988) (discussing Levine and explaining "the state's notice provision is clear and must be strictly construed").

The jurisprudential concerns of Levine apply with equal force here. The language of § 768.28(6)(a) plainly requires that "the claimant present[] the claim in writing." Loss of consortium is the claim, and the injured party's spouse is the claimant. Written notice of the claim must be provided accordingly. As the Court explained in Levine, it would be inappropriate to second-guess the Florida Legislature and interpret the statute otherwise.

In this case, however, the district court indulged in just that sort of second-guessing. In refusing to require notice for loss of consortium claims, the Third District relied on its reasoning in Chandler v. Novak, 596 So. 2d 749 (Fla. 3d DCA 1992) (en banc). See Reyes v. Metropolitan Dade County, 661 So. 2d 98, 99 (Fla. 3d DCA 1995) (citing Chandler). In Chandler, the Third District examined a different piece of legislation, the presuit notice provisions for medical malpractice claims, § 768.57(2), Florida Statutes.[4] The district court held that the provisions of that statute do not require

[4] Section 768.57(2), Florida Statutes, provides that "prior to filing an action for medical malpractice, a claimant shall notify each prospective defendant . . . of intent to initiate litigation for medical malpractice."

a loss of consortium claimant to provide notice once the injured spouse provides notice. The court reasoned that loss of consortium is a derivative action, and that the "clear legislative intent" of the notice statute was to allow prospective defendants only an opportunity to investigate and settle claims. On that basis the district court concluded that, by providing notice of the "main" claim and not the spouse's "derivative" one, the plaintiffs satisfied the legislative intent of the notice statute -- not the language of the statute itself -- and that was sufficient. Furthermore, in reaching its conclusion, the court burdened the defendants with proving that they were harmed by the lack of notice on the consortium claim, and then held the defendants failed to carry that burden. Chandler, 596 So. 2d at 751 ("There's no showing that the appellees were prejudiced by the lack of a separate notice letter regarding the derivative claim.").

Chandler's reasoning falters under scrutiny. First and foremost, it cannot survive in light of Levine's concerns for judicial restraint. Under Levine, the courts must apply the letter of the statute, and cannot presume to divine its spirit; otherwise the courts risk second-guessing the legislature, a coordinate branch of government. But by parsing claims into main and derivative ones, and by presuming both that investigation was the statute's purpose and that the purpose was satisfied by notice only about the main claim, Chandler second-guesses the legislature. Chandler is thus unique in allowing a claimant to sue the state by "piggybacking" on another claimant's written notice. Compare Pirez, 584 So. 2d at 995 (refusing one plaintiff to rely on another's notice); Lecuyer v. State Dep't of Transp., 535 So. 2d 720, 721 (Fla. 4th DCA 1989) (similar).

The practice of divining legislative intent is dubious in applying any statute, but it is disastrous in applying a statute governing the state's sovereign immunity. Thus, even if Chandler's reasoning is persuasive regarding presuit notice for medical malpractice defendants, that reasoning does not carry over to presuit notice for the state. Section 768.28(6)(a) protects the state itself, and not a particular group, like medical malpractice insurers protected by § 768.57, at issue in Chandler. A creative interpretation of § 768.28(6)(a) risks frustrating the government's efforts to protect itself. This Court should not permit such a risk.

The Third District's decision also fails to recognize that the Florida Legislature has compelling reasons to require notice from loss of consortium claimants. The notice simply eases the investigation and evaluation of all the claims. After all, loss of consortium is a separate cause of action and not merely a form of damages in a tort claim. As the Second District explained in Orange County v. Piper, 523 So. 2d 196, 197 (Fla. 2d DCA 1988):

> Florida case law recognizes that loss of consortium is a separate cause of action belonging to the spouse of the injured married partner, and though derivative in the sense of being occasioned by injury to the spouse, it is a direct injury to the spouse who has lost the consortium.

The married spouse may thus bring suit independently of the injured spouse. Busby v. Winn & Lovett Miami, Inc., 80 So. 2d 675, 676 (Fla. 1955). Moreover, not every injured person is married, and not every married injured person's spouse is in a position to claim lost consortium. See Propst v. Neily, 467 So. 2d 398, 399 (Fla. 4th DCA 1985) (holding that loss of consortium claimant must establish, beyond the underlying injury, an impact on the marital relationship). The Third District's interpretation needlessly burdens the state

with investigating these possibilities, or with bearing the risk of unforeseen consortium claims.

There is little justification for rejecting the plain language of § 768.28(6)(a) and burdening the state with greater investigation or risk. At root is a fear that meritorious claims will be lost through a "technical defect in a notice." See Piper, 523 So. 2d at 198 (discussing Whitney v. Marion County Hosp. Dist., 416 So. 2d 500 (Fla. 5th DCA 1982)). Whether this is happening -- and whether the defects result alternatively from attorneys' neglect rather than a legislative "technicality" -- is a matter for the legislature to investigate and address, not the judiciary. The Court should accordingly quash the district court's decision and hold that loss of consortium claimants must provide written notice of their claims.

II. THE DISTRICT COURT SHOULD NOT HAVE REVERSED THE DIRECTED VERDICT AGAINST PLAINTIFF ORLANDO REYES BECAUSE HE INVITED THAT ORDER IN THE TRIAL COURT.

The doctrine of invited error precludes a party from appealing or complaining about an action or order which the party helped induce. "One who has contributed to alleged error will not be heard to complain on appeal." Behar v. Southeast Banks Trust Co., 374 So. 2d 572, 575 (Fla. 3d DCA 1979) (citing, e.g., Hawkins v. Perry, 146 Fla. 766, 1 So. 2d 620 (1941)). "If a party consents to the rendition of a particular judgment decree, or order, he cannot appeal therefrom or have it reviewed on error proceedings." Union Trust Co. v. Baker, 143 So. 2d 565 (Fla. 3d DCA 1962) (quoting with approval 2 Am. Jur. 974) (quotation marks omitted).

Based on the doctrine of invited error, this Court has consistently refused to consider even well-founded claims of error when the appealing party has allowed the error to occur in the first place. E.g., Bould v. Touchette, 349 So. 2d 1181, 1186 (Fla. 1977); Omni-Vest, Inc. v. Reichold Chemicals, Inc., 352 So. 2d 53, 54 (Fla. 1977); Marek v. Patterson, 75 So. 2d 808, 809 (Fla. 1954); Hawkins v. Perry, 146 Fla. 766, 1 So. 2d 620, 621 (1941); Roe v. Henderson, 139 Fla. 386, 190 So. 618, 620 (1939); Dorman v. Dorman, 125 Fla. 280, 169 So. 867, 867 (1936); Marx v. Withers, 119 Fla. 692, 160 So. 662, 662 (1935); Borst v. Gale, 99 Fla. 376, 126 So. 290, 291 (1930).

Moreover, a party need not be the actual movant for the doctrine to apply; simply contributing to the error is enough. See Behar, 374 So. 2d at 575 ("order complained of was, in part, induced by stipulation of the parties. One who has contributed to alleged error will not be heard to complain on appeal.") (emphasis added); County of Volusia v. Niles, 445 So. 2d 1043, 1048 (Fla. 5th DCA 1985) (jury's zero verdict upheld since it was induced "at least in part" by party's failure to move for directed verdict and submission of contradictory jury instructions); Florida Antilles Properties N.V. v. Rose & Rose, Inc., 324 So. 2d 129, 130 (Fla. 3d DCA 1975) (counsel's silence constituted tacit approval of court's procedural error, thus precluding appeal).

With venerable roots grounded in strong policy, the doctrine of invited error prevents the circumvention of appropriate practice and procedure, and consequently streamlines the utilization of judicial resources. Allowing a party to appeal any time he receives an unfavorable ruling increases piecemeal litigation and delays the ultimate resolution of the case, thus frustrating concerns for finality and repose. The doctrine also

preserves the proper functions of each tribunal in the judicial framework. Lower court proceedings followed by appropriate review are not mere formalities to be dispensed with when inconvenient for the litigant. Rather, established, mandatory appellate procedures have been carefully crafted to meet the objective of allocating judicial resources to provide for the fair and timely hearing, review, and resolution of each case. This Court must preserve and protect those procedures.

Here, the Plaintiffs have shirked procedure by inviting the very directed verdict they appealed. The Plaintiffs' conduct before the trial court reveals that, at best, they failed to object to the entry of the directed verdict, and at worst (and most likely) they actively sought it. Simply put, they sought the directed verdict as a vehicle for an unauthorized interlocutory appeal of an evidentiary ruling.

After the Court had excluded their convict witness's hearsay statement, the Plaintiffs had serious doubts about the strength and viability of their case:

> The Court: Is there any testimony as to how long the greasy liquid substance was on the floor . . .[?]
>
> [Plaintiffs' Counsel]: There would be, but in view of your ruling this morning, Your Honor, there won't be.
>
> * * *
>
> The Court: . . . [W]hat [else] do you have?
>
> [Plaintiffs' Counsel]: You've basically taken the meat out of my case.

(R. at 197, 198.) On the other hand, the trial court was not inclined to grant the directed verdict, and repeatedly so stated.[5] (See R. at 198, 203, 208, 209.)

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[5] Indeed, after the parties had finished argument on the directed verdict issue the court proceeded to take up the County's second motion in limine, pertaining to evidence of internal jail procedures. (R. at 211.) The court ultimately ruled that the Plaintiffs could

Nevertheless, the Plaintiffs concluded their situation was dismal. Because the options of bifurcation and voluntary dismissal were not available, (R. at 209-11, 213), the Plaintiffs were faced with going forward on a severely weakened case. They also faced an expensive bill from their expert witness. (See R. at 198.) Faced with this, Plaintiffs' counsel concluded that he would prefer to have the court grant a directed verdict, facilitating an immediate review of the hearsay ruling. ("In view of this guy's statement being knocked out, if the Court is inclined to grant a directed verdict, I'd rather have it done now so it can go up.") (R. at 208 (emphasis supplied).) At that point, the Plaintiffs apparently thought the case as it stood was not worth trying at all.

Finally, the court asked, "Do you all lawyers want me to direct a verdict?" (R. at 213.) The Plaintiffs response should have been an unequivocal "No." Almost anything else would at best constitute tacit approval and waiver. Cf. Florida Antilles Properties, 324 So. 2d at 130 (tacit approval precludes claim of error). But the Plaintiffs did not say "No." Instead they welcomed this unfavorable final order so they could obtain an immediate review of an adverse evidentiary ruling:[6]

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put on testimony as to those procedures. (R. at 212-13.) Obviously there would have been no need to even consider this issue had the court intended to direct the verdict based on the previous submissions. Moreover, it is inconceivable that the court would, after repeatedly indicating that the evidence was sufficient to withstand a motion for directed verdict, suddenly, on the heels of a ruling which expanded the parameters of that evidence, conclude that the evidence was now insufficient.

[6] The Plaintiffs' strategy to obtain an immediate review of the evidentiary ruling yielded an unusual dynamic between counsel and the court. Instead of the Plaintiffs advocating against the directed verdict, they urged just the opposite. It was then the court which had to convince the Plaintiffs why the court could not rule against the Plaintiffs:

> [Plaintiffs' Counsel]: . . . [I]f the Court is inclined to grant a directed verdict, I'd rather have it done now so it can go up.

> [Plaintiffs' Counsel]: If you're inclined to do that he wants to do it, I'd rather have it all up there at one time rather than piecemeal because the strongest part of my case is that statement, and if it goes to a jury on what I have it's much weaker than it would be without that statement.

(R. at 213.) Such a manipulation of the lower proceedings is an impermissible circumvention of the Rules of Appellate Procedure. Those Rules do not provide for an interlocutory review of evidentiary rulings. See Fla. R. App. P. 9.100 ("Original Proceedings"), 9.130 ("Proceedings to Review Non-Final Orders").

Considering these facts, the Plaintiff undoubtedly invited the directed verdict imposed by the trial court. This case's facts are much like others where parties invited rulings and were consequently barred from challenging those rulings by appeal. See Rubin v. Gordon, 165 So. 2d 824 (Fla. 3d DCA 1965); Sierra v. Public Health Trust of Dade County, 661 So. 2d 1296 (Fla. 3d DCA 1995).

In Rubin, for example, the trial court orally announced it was inclined to dismiss much of a complaint, but invited the parties to submit legal memoranda. The plaintiff instead wrote a letter asking the court to dismiss the entire complaint so he could appeal. The trial court obliged, and the plaintiff filed for review. Based on the doctrine of invited error, however, the district court refused to hear the appeal. The court explained:

> [T]he procedure employed circumvented the normal channels of pleading, and in effect, attempted to make the

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> The Court: I'll tell you truthfully, Richard [i.e., Plaintiffs' Counsel], if you have evidence that your guy is complaining of garbage was removed from that door an hour or two earlier and that nobody inspected it . . . then I think there's reasonable inference . . . that they ought to be doing that inspection. . . . I'm not firmly convinced what you have is not a jury question.

(R. at 208.)

> appellate court the first court to consider and rule upon the sufficiency of the plaintiff's complaint.

Rubin, 165 So. 2d at 825. The court further explained that the plaintiff's method effectively circumvented the rules of civil procedure. Id.

The Plaintiffs here acted much as the plaintiff in Rubin. Like the plaintiff in Rubin, who asked for a dismissal to secure appellate review portions of his pleadings, the Plaintiffs here used a directed verdict to secure review of an evidentiary ruling. In each case the parties attempted to circumvent trial court procedures to effect an immediate appellate review. As in Rubin, it would be improper to reward such attempts. The trial court's directed verdict should thus be reinstated in its entirety.

CONCLUSION

The district court erred in reversing the trial court's directed verdict on the loss of consortium claim. Through § 768.28(6)(a), the Florida Legislature has required that "the claimant present[] the claim in writing" in order to sue the state. That phrase means what it says, so that a claim of a loss of consortium claimant, like any other, must be presented in writing. To construct some other meaning from the statute would undermine the legislature's position, an outcome this Court must avoid by all means. Such a construction would also frustrate the legislative intent to provide the state with notice of all claims and claimants involved. The Court should therefore reverse the district court's decision on the loss of consortium.

Based on the doctrine of invited error, the district court also erred in reversing the trial court's directed verdict on the main claim. The doctrine of invited error does not allow a party to complain about a ruling that he allowed to occur. It also prohibits the

circumvention of the established rules of procedure. Because the Plaintiff allowed a directed verdict to be granted against him, and because he did so to obtain an improper interlocutory appeal, he should not be heard to complain now. Accordingly, this Court should reverse the district court and direct it to reinstate the trial court's order in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 22nd day of March, 1996, mailed to: Arnold R. Ginsburg, P.A. and Richard B. Burke, Esq., 410 Concord Building, 66 West Flagler Street, Miami, FL 33130.

Assistant County Attorney