IN THE SUPREME COURT OF FLORIDA

CASE NO.: 87,504

Y.H. INVESTMENTS, INC.,

Petitioner,

vs.

RAQUEL GODALES, individually and as guardian of ARMANDO RODRIGUEZ, a minor,

Respondent.



# BRIEF OF AMICUS CURIAE, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

JAMES K. CLARK, ESQUIRE
James K. Clark & Associates
Suite 1800, SunTrust International Center
One Southeast Third Avenue
Miami, Florida 33131
Telephone: (305) 416-2200
Florida Bar No. 161123

## TABLE OF CONTENTS

## TABLE OF CITATIONS

## POINT ON APPEAL[1]

WHETHER §768.81(3), FLORIDA STATUTES, APPLIES TO QUANTIFY A TORTFEASOR'S LIABILITY WHERE THE INJURED PLAINTIFF IS A MINOR CHILD?

## SUMMARY OF ARGUMENT

In the case *sub judice*, the Third District Court of Appeal has, once again, misapprehended the legislative policy and purpose behind the enactment of Florida's Comparative Fault Statute, §768.81(3), Florida Statutes. That stated purpose was, in certain situations, to do away with the concept of joint and several liability in the State of Florida. This Court made eminently clear in reversing the Third District Court in the case of *Fabre v. Marin*, 623 So.2d 1182 (Fla. 1993), that liability is to be determined on the basis of the percentage of fault of each participant to an accident.

In spite of the clear terms of the statute, and the even clearer application of its terms to similar facts by this Court, the Third District has, once again, sought to carve out exceptions to the statutory scheme where none exists.

Clearly, in Florida, there is no right to recover for injuries beyond those caused by a particular defendant. *Smith v. Department of Insurance,* 507 So.2d 1080 (Fla. 1987). The fact that the injured person is a minor child should have no impact on a particular defendant's liability under the Comparative Fault Statute. The application of that statute merely circumscribes the extent of a potential tortfeasor's liability in certain situations. It

[1] STATE FARM adopts the statement of the case and facts of Petitioner, Y. H. INVESTMENTS, INC.

does not implicate the "reduction of damages" from one who would be otherwise entitled to them.

As this Court noted in its *Fabre v. Marin* decision, it would be "incongruous" that the legislature would have intended that a tortfeasor's responsibility be 100% in situations where a minor child's vehicle was operated by her father yet equal only to the extent of liability in those other situations where, by chance, a minor child was a passenger in a vehicle operated by a friend. Accordingly, the stated public policy in Florida, as articulated by the legislature in the enactment of §768.81(3), should be given continuing effect by this Court and this Court should determine, here, that in applying comparative fault in a situation involving an injured minor child, the Plaintiff's award should be quantified to the extent of the liability of the tortfeasor against whom recovery can be had.

## ARGUMENT

As it did in its decision in *Fabre v. Marin*, 597 So.2d 883 (Fla. 3rd DCA 1992), the Third District Court of Appeal, in the case *sub judice,* has completely misapprehended the legislative policy and purpose behind the enactment of §768.81(3), Florida Statutes.

As this Court clearly pointed out in reversing the Third District there, the legislature enacted the Comparative Fault Statute to shift the focus, in cases to which it applies, from making the injured plaintiff whole, to the quantification of the amount of damages caused by an individual tortfeasor. In doing so, this Court noted:

> The court below erroneously interpreted §768.81 by concluding that the legislature would not have intended to preclude a fault-free plaintiff from recovering the total of her

> damages. Ever since this Court permitted contribution among joint tortfeasors, the main argument for retaining joint and several liability was that in the event one of the defendants is insolvent the plaintiff should be able to collect the entire amount of damages from a solvent defendant. By eliminating joint and several liability through the enactment of §768.81(3), the legislature decided that for the purposes of noneconomic damages a plaintiff should take each defendant as he or she finds them...The statute requires the same result where a potential defendant is not or cannot be joined as a party to a law suit. *Liability is to be determined on the basis of the percentage of fault of each participant to the accident and not on the basis of solvency or amenability to suit of other potential defendants.*
>
> *Fabre v. Marin*,
> 623 So.2d 1182, 1186
> (Fla. 1993)
> (Emphasis supplied).

Despite this court's clear declaration of the legislative intent, the Third District continues to improperly change the focus of the statute, in comparative fault cases, from the defendant to the injured plaintiff. This is aptly demonstrated by the court's articulation of the very question it has certified here; asking for a determination as to whether a "minor child plaintiff's award should be *reduced* by the negligence of the non-party parent or guardian". *Godales v. Y. H. Investments*, 21 Fla. L. Weekly D282, 283 (Fla. 3rd DCA, January 31, 1996). The question, properly phrased, does not involve a *reduction* in damages but rather a just *quantification* of one's liability. It involves not the *taking away* of damages from one otherwise entitled to them but the appropriate standard to determine their measure against a negligent party.

As it did in its *Fabre* decision, the lower court here has again focused on the concept that an award is "reduced" instead of the idea that a plaintiff take each defendant

as he or she finds them. Clearly, as this court indicated in *Smith v. Department of Insurance*, 507 So.2d 1080, 1091 (Fla. 1987), the right of access to the courts of the State of Florida "does not include the right to recover for injuries beyond those caused by the particular defendant."

Apparently the confusion of the issues before the Third District Court of Appeal, in the case *sub judice*, was such that it rationalized its decision on the "distinction" that where the injured party is a minor child, that child is dependent on its parent for the prosecution of its action. The court expressed concern that a parent might somehow be deterred from prosecution by the prospect of a child's diminished recovery because of the parent's own negligence. It is suggested that this is both illogical and contrary not only to the plain language of the statute, but also to this Court's interpretation of that statute in its *Fabre v. Marin* decision.

This is *not* a situation where a family's resources are exposed by a parent or guardian as in *Joseph v. Quest*, 414 So.2d 1063 (Fla. 1982). That case compels no contrary result, as argued by the Respondent and her Amici. In *Joseph*, this court was concerned that parents may be reluctant to sue on behalf of a minor child if they were potentially liable to a tortfeasor under the Uniform Contribution Among Joint Tortfeasors Act. §768.31, Florida Statutes. The application of the Comparative Fault Statute, however, in situations involving injured minor children would in no way change this court's decision in *Joseph*. Contribution and its potential effect on a family's resources would still be precluded. The application of the Comparative Fault Statute merely circumscribes the extent of a potential tortfeasor's liability. In comparative fault cases, where non-economic

damages are at issue, a defendant is called upon to pay only what he or she owes, no more, no less. The Uniform Contribution Among Joint Tortfeasors Act is, accordingly, not implicated.

The determination of a defendant's comparative fault through the application of §768.81(3) merely represents a process whereby the extent of a particular defendant's ultimate liability is quantified. A parent would not base a decision to prosecute a claim for injuries sustained by a minor child on the extent that a particular tortfeasor's liability may have contributed to an incident leading to injury. There is simply no rational basis to conclude that this would be a factor in such a decision.

In its *Fabre v. Marin* opinion, this Court favorably noted the rationale set forth by the Kansas Supreme Court in *Brown v. Keill*, 224 Kan. 195, 580 P.2d 867 (1978), that,

> There is nothing inherently fair about a defendant who is 10% at fault paying 100% of the loss, and there is no social policy that should compel defendants to pay more than their fair share of the loss. Plaintiffs now take the parties as they find them. If one of the parties at fault happens to be a spouse or a governmental agency or if by reason of some competing social policy the Plaintiff cannot receive payment for his injuries from the spouse or agency, there is no compelling social policy which requires the Co-Defendant to pay more than his fair share of the loss.

It is suggested that that language is equally applicable to the situation set forth in the matter *sub judice* and that the word *parent* could easily have been added to the list of parties at fault discussed by the *Brown* court.

In conformity with the stated legislative intent, this court must continue to focus the issue in comparative fault cases on the negligent defendant and not on the injured plaintiff.

The application of a legislative intention to do away with joint and several liability will necessarily create situations, from time to time, where an injured person will not achieve a full recovery. With the enactment of §768.81(3), the legislature decided, for public policy reasons, that the emphasis be shifted from making a plaintiff "whole" to requiring an individual tortfeasor to pay only what he, she, or it, owes. This latter concept has been well articulated by this Court in the past. In *Lincenberg v. Issen*, 318 So.2d 386 (Fla. 1975), this Court felt that it would be undesirable "to retain a rule that *under a system based on fault, casts the entire burden of a loss for which several may be responsible upon only one of those at fault.*"

In short, a negligent tortfeasor's responsibility to an injured plaintiff should not change because that Plaintiff is 17, or 22. Similar to the concept noted in the *Fabre v. Marin* decision, it would, here, be "incongruous" that the legislature would have intended that a tortfeasor's responsibility be 100% in situations where a minor child's vehicle was operated by her father yet equal only to the extent of liability in those other situations where, by chance, the minor child was a passenger in a vehicle operated by a friend.

The logical application of the comparative fault statute dictates that a negligent tortfeasor pay only those non-economic damages caused by that tortfeasor. This public policy was well-articulated by the legislature in its enactment of §768.81(3) and should be given continuing effect by this Court.

## CONCLUSION

It is respectfully suggested that §768.81(3) be applied to the case *sub judice* and that this Court determine that, in applying comparative fault to a situation involving an injured minor child, a plaintiff's award be quantified by the extent of the liability of the tortfeasors against whom recovery can be had.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed on May ~~20~~ 21, 1996, to: **ROBERT L. PARKS, ESQUIRE,** 330 Alhambra Circle, First Floor, Coral Gables, Florida 33134. Telephone: (305) 446-5700; **CARLOS LIDSKY, ESQUIRE,** 145 East 49th Street, Hialeah, Florida 33013. Telephone: 822-2100; **JOEL S. PERWIN, ESQUIRE,** 25 West Flagler Street, Suite 800, Miami, Florida 33130. Telephone: (305) 358-2800; and, **GEOFFREY B. MARKS, ESQUIRE,** One Biscayne Tower, 25th Floor, 2 South Biscayne Boulevard, Miami, Florida 33131. Telephone: (305) 379-6411.

**JAMES K. CLARK & ASSOCIATES**
SunTrust International Center, Suite 1800
One Southeast Third Avenue
Miami, Florida 33131
Telephone: (305) 416-2200

By: James K Clark
**JAMES K. CLARK**
Attorney for State Farm

Attorneys and Staff of James K. Clark & Associates are Employees of the Corporate Law Department of State Farm Mutual Automobile Insurance Company