IN THE SUPREME COURT OF FLORIDA

POLK COUNTY,

Petitioner,

v.

DONNA M. SOFKA,

Respondent,

CASE No.: **88,407**

Second District Court of Appeal - No. **95-01886**

PETITIONER'S AND RESPONDENT'S JOINT SUPPLEMENTAL BRIEF

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PREFACE

In this Supplemental Brief, Petitioner will be referred to as "POLK COUNTY." Respondent will be referred to as "SOFKA."

The following symbols will be used:

"R" Record on Appeal

CITATIONS OF AUTHORITY

ARGUMENT

I. THE STIPULATED FINAL JUDGMENT VACATED THE TRIAL COURT'S ORDER GRANTING POLK COUNTY'S MOTION FOR NEW TRIAL.

By way of its April **25,** 1997, Order, this Court questions whether the dispositive issues preserved by the parties' Settlement Agreement were effectively rendered moot by the Trial Court's granting of POLK COUNTY'S Motion for New Trial, thus negating jurisdiction in the District Court of appeal. Thus, the parties were instructed to file simultaneous briefs on the following issue:

> Whether the District Court of appeal had jurisdiction to hear Polk County's Appeal from rulings made before its motion for new trial had been granted because it had entered into a stipulated final judgment permitting it to seek such review, notwithstanding that the order granting the motion for new trial had not been vacated and that one is generally deemed to have waived the right to review of rulings made prior to, or during, a previous trial by moving for and receiving **a** new trial.

While a party may generally be deemed to have waived appellate review of rulings made during trial if a motion for new trial is granted, see Atlantic **Coast** Line Railroad Co. v. Boone, **85** So.2d 834,839 (Fla. 1956), that general waiver is simply inapplicable in this case because the Stipulated Final Judgment entered by the Trial Court effectively vacated the Trial Court's Order Granting a New Trial. (R-5174).

A careful reading of the Stipulated Final Judgment entered by the Honoralbe Oliver Green on May 2, 1995, shows that the Stipulated Final

Judgment came before the Court on the "Settlement Agreement" entered into by the parties. **(R-5530-5535).** The parties' Settlement Agreement (R-5531-**5535)** specifically stipulates that the intermediate appellate court has jurisdiction over the appeal and that the appellate issues are dispositive as to POLK COUNTY'S liability. It is, then, axiomatic that the Trial Court's entry of the Stipulated Final Judgment would effectively vacate any procedural "barrier" to the intermediate appellate court's jurisdiction to hear POLK COUNTY? appeal.

When determining the effect to be given to a consent decree, a court can and, where possible, should give consideration to the intention of the parties with respect to the effect of that consent decree. See e.g., **Kaspar** Wire Works. Inc, v. Leco Enpineering, **575** F.2d **530, 540** (5th Cir. 1978) (interpreting Florida Law--holding that the doctrine of collateral estoppel did not bar a subsequent action when the parties did not have such intent when entering into the consent judgment in prior action).

In the instant case, the parties' intent that the intermediate appellate court have jurisdiction is crystal clear, The express terms of the Settlement Agreement, incorporated into the Stipulated Final Judgment, leave no doubt that the purpose of the Stipulated Final Judgment was to effectively vacate any "hurdle," jurisdictional or otherwise, and to allow the parties to seek appellate review of certain specified issues which were litigated in the Trial Court.

II. SINCE PARTIES CAN STIPULATE TO THE DISPOSITIVE NATURE OF ISSUES ON APPEAL, THOSE PARTIES SHOULD BE ALLOWED TO STIPULATE TO THE WAIVER OF PROCEDURAL HURDLES TO THAT APPEAL.

Parties can stipulate to the dispositiveness of issues on appeal, and an appellate court will not "go behind" the stipulation to re-examine whether the stipulated issues are, in fact, dispositive. Zeigler v. State, 471 So.2d 174,176 (Fla. 1st DCA 1985). The purpose of the Stipulated Final Judgment in this case was to crystallize the two issues which the parties agree are dispositive as to POLK COUNTY's liability. The parties also stipulated that the most efficient and expedient way to have the intermediate appellate court review these issues was to enter into a Stipulated Final Judgment which specifically preserves these issues on appeal and articulates their dispositive nature.

Rule 9.200(a)(3), Florida Rules of Appellate Procedure, allows parties to stipulate to the procedural aspects of the case, including the record on appeal. The purpose of this Rule is to allow the parties to an appeal to focus the intermediate appellate court's attention on the salient issues, and that part of the record that both parties deem relevant to resolving the dispute. Obviously, the policy behind this Rule is to allow for not only an efficient use of resources but to eliminate extrinsic, unnecessary, irrelevant and possibly voluminous information which could, at best, burden the appellate court, or, at worst, cloud the appellate issues.

In the instant case it is not the parties' intent to attempt to circumvent the well- established rules of intermediate appellate court jurisdiction. Those rules

serve a clear purpose, which purpose, however, would be frustrated, rather than advanced, if strictly applied in the instant case. Allowing the parties to stipulate to a stipulated final judgment, clearly indicating the desire for expedient appellate review, bolsters the judicial policy of allowing parties to stipulate to the dispositiveness of an issue, and furthers the same goals.

III. THE DISTRICT COURT OF APPEAL HAD JURISDICTION TO HEAR ISSUES CONCERNING THE DENIED MOTION TO DISMISS AND MOTIONS FOR SUMMARY JUDGMENT REGARDLESS OF THE EFFECT OF THE STIPULATED FINAL JUDGMENT.

In Section III, Paragraph A, of the Settlement Agreement, the parties stipulated to and agreed that POLK COUNTY has standing to appeal two specific issues. The first issue is the Trial Court's refusal to grant POLK COUNTY's Motion to Dismiss, to enter summary judgment for POLK COUNTY, or to direct a verdict against SOFKA, by virtue of POLK COUNTY's sovereign immunity, which POLK COUNTY asserts immunizes it from any liability for the accident. The second issue is the Trial Court's refusal to direct a verdict against SOFKA, by virtue of POLK COUNTY's assertion that SOFKA failed to adduce sufficient evidence showing that any alleged fault of POLK COUNTY was the proximate cause of the accident or any of SOFKA's damages stemming therefrom. As POLK COUNTY and SOFKA indicated above, the parties are free to stipulate to such terms and agree that they are dispositive of the issue of POLK COUNTY's liability for the accident, Furthermore, the effect of the Stipulated Final Judgment nullifies or makes the issue of the new trial moot. Accordingly, the District Court of Appeal had jurisdiction to hear the

agreed upon issues,

Should this Court not agree with the parties with respect to the effect of the Stipulated Final Judgment, presumably the case would then be postured as if no trial had taken place. Boone at 839. Under such circumstances, the intermediate appellate court may not have jurisdiction to hear an appeal with regard to POLK COUNTY's motion to direct a verdict against SOFKA in the initial trial, although the grant of a new trial presupposes, except in this fairly novel and rare instance, a second trial where those very issues would have been necessarily addressed again.

Nevertheless and even assuming such a literal, formalistic and restrictive interpretation, the appellate court clearly had jurisdiction to decide whether the Trial Court erred in denying POLK COUNTY's Motion to Dismiss and Motions for Summary Judgment, given the fact that these Motions were made and decided prior to trial. Id. Accordingly, regardless of POLK COUNTY's Motion for New Trial and the Trial Court's granting of same, the District Court of Appeal clearly had jurisdiction to consider the sovereign immunity issues which were addressed prior to trial.

IV. A HOLDING BY THIS COURT THAT THE INTERMEDIATE APPELLATE COURT LACKED JURISDICTION WILL RESULT IN A WASTE OF JUDICIAL RESOURCES.

Practically speaking, if this Court holds that the Second District Court of Appeal did not have jurisdiction to hear this case because the Trial Court's Order granting POLK COUNTY's Motion for New Trial was not vacated, then

this case would be remanded and set for trial pursuant to the terms of the Settlement Agreement. The parties could then file a joint motion with the Trial Court requesting the Trial Court to vacate its previous Order Granting POLK COUNTY's Motion for New Trial, and then the parties could again enter into a stipulated final judgment which POLK COUNTY would then appeal to the intermediate appellate court.

Then, presumably, the Second District Court of Appeal would render the same opinion as it rendered previously, certifying the question to this Court, which could hear the certified question. In short, the parties would be postured in almost virtually identical positions, with no substantive change whatsoever, i.e. this Court would effectively be sanctioning "form over substance." The ensuing process would require an unnecessary taxation of judicial resources as well as the parties' financial resources.

It is well settled in this State, and has been clearly articulated by this Court, that properly entered into stipulations are appropriate and binding upon the parties and upon the court. Gunn Plumbing, Inc. v. Dania Bank, 252 So.2d 1, 4 (Fla. 1971). The value of such stipulations, including preserving judicial economy and resources, has been well recognized by the courts of the State. See e.g. Johnson v. Johnson, 663 So.2d 663,665 (Fla. 2d DCA *1995)* (enforcing an attorney's fees stipulation in a dissolution case, including a general discussion of the efficiency and value of stipulations).

Against the procedural backdrop of the instant case, and given the clear intention of the parties to the Stipulated Final Judgment to effectively vacate any

hurdles to intermediate appellate review (as is further evidenced by the filing of this *joint* brief by the parties), the doctrine of the conservation of judicial resources should persuade this Court that the intermediate appellate court did in fact have jurisdiction to hear POLK COUNTY's appeal from rulings made by the Trial Court.

CONCLUSION/PRAYER

The Second District Court of Appeal clearly had jurisdiction to hear this case based on the Stipulated Final Judgment and the terms of the Settlement Agreement incorporated therein. Moreover, it would be a waste of judicial economy for this Court to consider form over substance and to refuse *to* proceed further in this matter,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail this 9th day of May, 1997, to: JOHN W. FROST, II, ESQUIRE, Post Office Box 2188, Bartow, Florida 33830; LOUIS F. HUBENER, ESQUIRE, Assistant Attorney General, The Capitol - PL01, Tallahassee, Florida 32399-105; JORGE L. FERNANDEZ, ESQUIRE, 1660 Ringling Boulevard, Second Floor, Sarasota, Florida 34236; ROSEMARY E. PERFIT, ESQUIRE, Post Office Box 1110, Tampa, Florida 33601; STEVEN F. LENGAUER, ESQUIRE, Post Office Box 4973, Orlando, Florida 32802-4973; RONALD K. MCRAE, ESQUIRE, Assistant Palm Beach County Attorney, Post Office Box 1989, West Palm Beach, Florida 33401; JOHN E. SCHAEFER, ESQUIRE, Assistant Pinellas County Attorney, 315 Court Street, Clearwater, Florida 34616; and ROY D. WASSON, ESQUIRE, 1320 South Dixie Highway, Suite 450, Miami, Florida 33146.

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