IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. 88,772

SECOND DISTRICT COURT CASE NO. 95-01785
CIRCUIT COURT CASE NO. GC-G 94-1653

SAMUEL G. CROSBY and
MILLER, CROSBY & MILLER, P.A.,

Petitioners/Defendants,

vs.

PATRICIA JANE JONES and
LOGAN M. JONES, JR., her husband,

Respondents/Plaintiffs.

RESPONDENTS' JURISDICTIONAL BRIEF

On review from the District Court of Appeal
Second District, State of Florida

HERBERT M. BERKOWITZ, P.A.
Florida Bar No. 283347
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RESPONDENTS/PLAINTIFFS

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STATEMENT OF THE CASE AND FACTS

STATEMENT OF THE CASE

Respondents Mr. and Mrs. JONES (hereafter referred to as "JONES") would agree with the Statement of the Case as presented by Petitioner CROBSY, et. al. (hereafter referred to as "CROSBY"). JONES would note additional critical documents are attached to this Answer Brief pursuant to Florida Rule of Appellate Procedure 9.220 as an appendix and are designated as (App. ___)

STATEMENT OF THE FACTS

JONES accepts CROSBY's Statement of the Facts as to the description of the proceedings in the original case, with the following additions:

In the original case, after Gulf Coast moved for Summary Judgment arguing the dismissal with prejudice of Camus served as a dismissal with prejudice as to them as her employer, the vicarious tortfeasor, several other significant events occurred which are contained in the record. CROSBY filed a Joint Stipulation which sought to set aside the dismissal with prejudice, and which was signed by him and Camus' counsel, (but not Gulf Coast's counsel) claiming that the dismissal with prejudice had been entered by mistake. (App. 1) CROSBY then presented it to the trial judge ex parte and obtained an Order vacating the original dismissal with prejudice. (App. 2) Upon learning that Gulf Coast's counsel had not been advised of the Stipulation, the court sua sponte vacated its Order vacating the dismissal. (App. 3) The trial court, after hearing all parties, issued the Order granting Gulf Coast's Motion For Summary Judgment. (App. 4)

JONES also accepts CROSBY's Statement of the Facts as to the progress of the legal malpractice case filed on July 18, 1994, with the following addition:

After suit was filed and an extension of time to respond was afforded CROSBY, CROSBY filed a Motion To Dismiss. Before that motion could be heard, JFK Medical Center Inc. v. Price, 647 So. 2d 833 (Fla. 1994) was reported, which gave rise to CROSBY's Motion For Summary Judgment. JONES filed the affidavit of A. Woodson Isom, Jr., an expert in the area of tort litigation. (App. 5) No answer to the complaint has ever been filed, nor was any opposing affidavits filed by CROSBY.

The granting of Summary Judgment was appealed, and the Second District Court of Appeal reversed and remanded the case for determination by jury, Jones v. Crosby et. al., 21 Fla. L. W. D1666 (7/17/96). Nothing in its decision is in conflict with any decisions of this court, and granting of discretionary jurisdiction should be denied.

SUMMARY OF ARGUMENT

There is no express or direct conflict between the Second District Court of Appeal's ruling below and either JFK Medical Center Inc. v. Price, 647 So. 2d 833 (Fla. 1994) or Sun First National Bank of Melbourne v. Batchelor, 321 So. 2d 73 (Fla. 1975), and therefore, invocation of discretionary jurisdiction of the Supreme Court would be inappropriate.

Discretionary jurisdiction is narrow in its application and is available only when there is a decision which expressly and directly conflicts with the decision of either another District Court of the Supreme Court on the same question of law. For there to be a "direct conflict" sufficient to invoke discretionary jurisdiction, the conflict needs to concern the other court's decision as precedent, as opposed to simply being an adjudication of the rights of particular litigants. It is not enough to invoke this type of review simply to arrive at different results.

The decision being challenged is not in direct conflict with JFK Medical Center. The Second District reviewed and examined the record in light of JFK Medical Center and determined that a jury question existed in order to determine whether CROSBY's conduct (some 4 years before the rendition of JFK Medical Center) constituted negligence when viewed in the context of the state of the law at the time CROSBY acted.

No conflict exists between the Supreme Court's opinion in Sun First National Bank of Melbourne v. Batchelor and the Order under discussion and discretionary jurisdiction for review should not attach. Sun First is a case dealing with the effect of a release on other tortfeasors. Jones dealt with the effect of a dismissal of prejudice on other tortfeasors - a question of law quite different from that addressed in Sun First. Additionally, the Second District Court of Appeal in Jones v. Gulf Coast Newspapers Inc., 595 So. 2d 90 (Fla. 2d

DCA) rev. denied 602 So. 2d 942 (Fla. 1992) (hereafter referred to as "Jones I") addressed, acknowledged and distinguished Sun First from the facts before it. The Jones I court noted that CROSBY had signed a release indicating an intent to limit the settlement to just one tortfeasor, but failed to stop there, and proceeded to enter a dismissal with prejudice in addition. It was this additional act which caused the problem, and not anything dealing with a release. Sun First discussed releases under Florida Statute § 768.041(1) and does not discuss dismissals, either with or without prejudice.

Finally, CROSBY is not an innocent victim of the Second District Court of Appeal's "whims" and should not be immunized from his own negligence simply because fortuitously this court, more than 4 years later, in a different case, was called upon to resolve a conflict between District Court of Appeals and did so in a manner which would have saved Mrs. JONES' cause of action from dismissal, notwithstanding CROSBY's negligence.

ARGUMENT

1. The decision rendered by the Second District Court of Appeal on July 17, 1996 does not expressly or directly conflict with the decisions of the Florida Supreme Court in JFK Medical Center Inc. v. Price, 647 So. 2d 833 (Fla. 1994), or Sun First National Bank of Melbourne v. Batchelor, 321 So. 2d 73 (Fla. 1975), and therefore, it is inappropriate to invoke the discretionary jurisdiction of the Supreme Court pursuant to Article V, Section 3 (B)(3), Constitution of the State of Florida, or Florida Rule of Appellate Procedure 9.030 (a)(2)(A)(iv).

Petitioner seeks to invoke the discretionary jurisdiction of this Court in accordance with Article V, Section 3 (B)(3) of the Constitution of the State of Florida. That provision specifically states that:

> The Supreme Court may review any decision of a District Court of Appeal...that expressly and directly conflicts with a decision of another District Court of Appeal or of the Supreme Court on the same question of law.

Similarly, Rule 9.030 (a)(2)(A)(iv) of the Florida Rules of Appellate Procedure states that:

> the discretionary jurisdiction of the Supreme Court may be sought to review (a) decisions of District Courts of Appeal that...(iv) expressly and directly conflict with the decision of another District Court of Appeal or of the Supreme Court on the same question of law;....

It is not the purpose of discretionary review to reconsider decisions of the District Court of Appeal, nor is discretionary review designed to allow a losing party an additional theater of review. Indeed, such review is narrow in its application, and is available only when there is a decision that expressly and directly conflicts with the decision of another District Court or of the Supreme Court on the same question of law. The exercise of such discretionary review is narrowly drawn and the conflict between decisions must be direct, Mystan Marine, Inc. v. Harrington, 339 So. 2d 200 (Fla. 1976). It must also be obvious and

patently reflected in the decisions relied on, and it must result from an application of law to facts which are on all fours, regardless of the quantum and character of proof. Trustees of Internal Improvement Fund v. Lobean, 127 So. 2d 98, 100-101 (Fla. 1961); Florida Power & Light Co. v. Bell, 113 So. 2d 697 (Fla. 1959). See, too Department of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So. 2d 888 (Fla. 1986); and Reaves v. State, 485 So. 2d 829 (Fla. 1986).

In Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958), the court, in referring to the phrase, "direct conflict", stated that for there to be sufficient grounds to invoke discretionary jurisdiction, a direct conflict had to concern the other court's decisions as precedents, as opposed to simply being an adjudication of the rights of particular litigants. The conflict referred to both in the Constitution and the Rules of Appellate Procedure, require there to be a direct conflict in decisions, not simply whether different results would occur, or whether there are conflicts of reasons or opinions in order to satisfy the basis for jurisdiction by certiorari. See Mancini v. State, 312 So. 2d 732 (Fla. 1975); Kincaid v. World Insurance Co., 157 So. 2d 517 (Fla. 1963); Weston v. Nathanson, 173 So. 2d 451 (Fla. 1964); Gibson v. Maloney, 231 So. 2d 823 (Fla. 1970); and Dodi Publishing Co. v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980).

A. NO DIRECT CONFLICT EXISTS AS TO JFK MEDICAL CENTER

The decision rendered below is not in conflict with either case cited by the Petitioner and consequently, is not a decision appropriate for discretionary review as requested herein by the Petitioner. Indeed, Jones v. Crosby et. al., 21 Fla. L. W. D1666 (7/17/96) clearly demonstrates that the Second District Court of Appeal was very mindful of the Supreme

Court's opinion in JFK Medical Center and reviewed the record underlying this case in the context of that opinion. The Second District Court of Appeal decided that the trial judge's granting of the Motion for Summary Judgment was inappropriate because, when viewed in the context of the state of the law at the time CROSBY acted, it was clearly a jury question as to whether the Petitioner CROSBY's conduct surrounding his executing the Dismissal With Prejudice fell below the standard of care required of an attorney handling a lawsuit involving principles of vicarious liability. The Second District Court of Appeal recognized that the Supreme Court had resolved what had become a conflict in the law, rather than expressing a rule of long standing. Indeed, it should be noted that CROSBY's alleged misconduct occurred years before the Fourth District Court of Appeal entered its opinion in Price v. Beker, 629 So. 2d 911 (Fla. App. 4DCA 1993), which was the Fourth District opinion certifying conflict to the Supreme Court, ultimately resulting in the JFK Medical Center opinion.

Notwithstanding the Petitioner's suggestions that the Second District Court of Appeal somehow purposely sought to ignore the Supreme Court's opinion in JFK Medical Center, the Second District Court of Appeal acknowledged that JFK Medical Center resolved a conflict between districts, but under the facts in this case, whether CROSBY exercised reasonable judgment when he entered into the Dismissal With Prejudice was, after all, a jury question. See Department of Revenue v. Johnston, 442 So. 2d 950 (Fla. 1983).

In fact, there is absolutely nothing in the decision now under challenge that is in direct conflict with the JFK Medical Center opinion. As noted, discretionary jurisdiction does not attach where, arguendo, there may be a conflict of result as to the adjudication of

the rights of the particular litigants, Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958), or where there may be a conflict in the underlying reasons or opinions as opposed to the decision itself. Gibson v. Maloney, 231 So. 2d 823 (Fla. 1970). JFK Medical Center resolved a conflict between districts prospectively; the instant decision remands the case for a jury determination of the nature of this Defendant's conduct.

B. NO DIRECT CONFLICT EXISTS WITH SUN FIRST NATIONAL BANK OF MELBOURNE V. BATCHELOR

Petitioner's claim of conflict with the Supreme Court's opinion of Sun First National Bank of Melbourne v. Batchelor, 321 So. 2d 73 (Fla. 1975) is clearly inappropriate. Sun First is a case that discusses the effect of Florida Statute § 768.041(1) and deals with the effect of a release of one tortfeasor on all other tortfeasors who may be liable for the same tort. Jones I does not deal with the effects of a release, but rather deals with the effect of a Dismissal With Prejudice on vicarious tortfeasors. Indeed, the Second District Court of Appeal in Jones I points out that if CROSBY had executed only a release against one of the tortfeasors with appropriate restrictive language, he would have avoided all of the litigation that followed. Jones I came about because CROSBY had gone further than that contemplated by this Statute and further than that decided in Sun First, when he entered into a Dismissal With Prejudice. Indeed, at page 91 in Jones I, the Second District Court of Appeal makes reference to Sun First, acknowledges its decision and goes on to point out that,

> if we were considering only the release involved in this matter, or if the action had been dismissed without prejudice, we would agree with the appellants' position and reverse the Summary Judgment entered against them.

In this case, however, in addition to the release, the Court at the request of the parties entered an Order dismissing the appellants' claim against Mrs. Camus, the active tortfeasor, with prejudice.

Simply stated, there is no conflict between the decision of the Second District Court of Appeal in its opinion of July 17, 1996 and the Supreme Court in its decision in Sun First because the latter deals with releases and the former deals with dismissals. There is neither an express nor direct conflict with the Supreme Court's decision, nor do these cases even involve the same questions of law.

ARGUMENT

2. Discretionary review of the Second District Court of Appeal's Order of July 17, 1996 should not be granted in order to immunize negligent acts of an attorney simply because subsequent unrelated events have coincidentally occurred.

Petitioner argues that somehow this Court should take discretionary jurisdiction of the Second District Court of Appeal's opinion so it could immunize the alleged negligence of the Petitioner/Attorney and free him from answering for his conduct, simply because at a time distant in the future to the conduct in question, the Supreme Court addressed the issue and ruled in a manner that would have rendered his negligence harmless. It is the height of sophistry however, for this Petitioner to claim status as an "innocent advocate" when he was patently disingenuous with the original trial court (see App. 1-3) and which conduct resulted in the loss of his own client's cause of action.

The law cannot and does not require omniscience from its practitioners. On the other hand, it must require its practitioners to operate at the relevant minimum standard of care required of an attorney handling a lawsuit for his client. Petitioner, in essence, argues

for this Court to create blanket immunity for any acts of omission or commission by an attorney which some day might find itself enacted into law. While it is gracious of Mr. CROSBY to acknowledge that lawyers may be liable for negligent conduct, it is self serving and circular for him to argue "if a lawyer can be liable for the whims of an appellate court, a lawyer will always be susceptible to a malpractice action, although the law clearly supported his/her actions." (Petitioners Jurisdictional Brief, page 9)

PATRICIA JANE JONES did not cause the accident that occurred in 1986. PATRICIA JANE JONES was seriously injured as a result of that accident and hired CROSBY to represent her interests therein. PATRICIA JANE JONES was not consulted regarding the entry of the Stipulation for Dismissal With Prejudice, nor did she even have the foggiest notion as to what such stipulation meant. She reasonably relied on her lawyer, CROSBY, to act on her behalf, in her best interest, and to represent her in a non-negligent fashion. Because of CROSBY's alleged failure to conduct himself with the minimum standard of care required of an attorney handling a lawsuit involving principles of vicarious liability, Mrs. JONES was deprived of her cause of action against the vicarious tortfeasor and to date, has been left without an opportunity to adequately compensate her for the losses resulting from the accident in question. As Judge Patterson pointed out in his dissent in Jones I, "we should not permit the appellants (JONES) to be trapped into forfeiting their cause of action against Gulf Coast by the procedural method chosen by the lawyers involved", 595 So. 2d at 92.

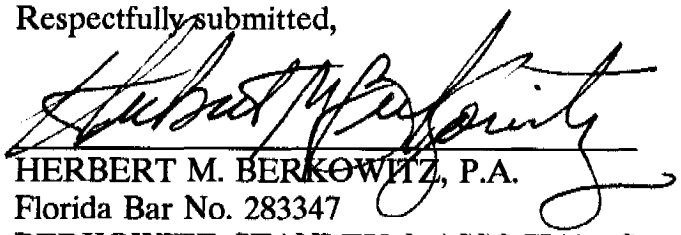
JONES sued CROSBY for legal malpractice because his conduct cost her a substantial cause of action. No one is more sorry than Mrs. JONES that JFK Medical

Center was not decided prior to June 13, 1990. If it had been, then CROSBY's negligence would not have caused her harm. Unfortunately for her, the status of the law was otherwise when CROSBY's actions occurred and it was to be more than 4 years later before the Supreme Court addressed the conflict in the law of Florida, a conflict which arose after CROSBY's conduct occurred. It is PATRICIA JANE JONES who is the innocent victim of the alleged negligence of her counsel, CROSBY, and not the innocent victim of "the whims of an appellate court" or the "unsupported rulings of appellate courts", as Petitioner states at page 9 of his Jurisdictional Brief. The Order of July 17, 1996 remands this matter to the trial court so that a jury can determine whether the conduct complained of in the complaint constitutes legal malpractice and ultimately justifies an award for damages in her favor and against her former counsel.

CONCLUSION

Based on the above, the Order of July 17, 1996 neither expressly nor directly conflicts with the decisions of the Florida Supreme Court in JFK Medical Center or Sun First, and therefore, Petitioner's request to invoke this court's discretionary jurisdiction to review said Order should be denied.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Lora A. Dunlap, Esq., FISHER, RUSHMER, WERRENRATH, WACK & DICKSON, P.A., P.O. Box 712, Orlando, FL 32802-0712, on this 20th day of September, 1996.

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IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. 88,772

SECOND DISTRICT COURT CASE NO. 95-01785
CIRCUIT COURT CASE NO. GC-G 94-1653

SAMUEL G. CROSBY and
MILLER, CROSBY & MILLER, P.A.,

Petitioners/Defendants,

vs.

PATRICIA JANE JONES and
LOGAN M. JONES, JR., her husband,

Respondents/Plaintiffs.
_____/

APPENDIX TO RESPONDENTS' JURISDICTIONAL BRIEF

On review from the District Court of Appeal
Second District, State of Florida

HERBERT M. BERKOWITZ, P.A.
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RESPONDENTS/PLAINTIFFS

INDEX TO APPENDIX TO RESPONDENTS' JURISDICTIONAL BRIEF

DOCUMENT NAME **DOCUMENT NUMBER**

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY

PATRICIA JANE JONES and LOGAN M. JONES, JR., Plaintiffs,	)	
v.	)	Case No. GC-G-87-2536
GEORGE EUGENE HOUSE, TIMOTHY P. CAMUS, JUDITH S. CAMUS and GULF COAST NEWSPAPERS, INC., Defendants.	)	

1990 AUG 31

FILED
LAW DEPARTMENT
POLK COUNTY CLERK

JOINT STIPULATION

COMES NOW the Plaintiffs, PATRICIA JANE JONES and LOGAN M. JONES, JR., by and through their undersigned attorneys, and JUDITH S. CAMUS, by and through her undersigned attorney, and jointly stipulate as follows:

1. Pursuant to this court's Order Directing Mediation the parties attended a mediation conference in May of this year. As a result of the mediation a settlement was entered whereby the insuror for Mrs. Camus paid policy limits in return for Mr. and Mrs. Camus being released from further liability.

2. No monies or other consideration were paid by Defendant GULF COAST NEWSPAPERS, INC, nor by their insuror. It was not discussed nor intended that the release of Mrs. Camus would release GULF COAST NEWSPAPERS, INC. However, GULF COAST NEWSPAPERS, INC. now asserts that the voluntary dismissal with prejudice of Mrs. Camus acts to bar further proceedings against her employer, GULF COAST NEWPAPERS, INC. Since such a result was never intended by the Plaintiffs nor by Mr. and Mrs. Camus; and

PLAINTIFF'S
EXHIBIT

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since no consideration was paid by either GULF COAST or its insuror to release it from further liability the voluntary dismissal with prejudice has the unexpected, unintended and unfair result of releasing GULF COAST.] Accordingly, the order of this court dated June 13, 1990 dismissing with prejudice JUDITH S. CAMUS from this lawsuit should be set aside nunc pro tunc to June 13, 1990.

WHEREFORE, PATRICIA JANE JONES and LOGAN M. JONES, JR., Plaintiffs and JUDITH S. CAMUS, Defendant jointly stipulate that the order of this court dated June 13, 1990 dismissing JUDITH S. CAMUS with prejudice be set aside nunc pro tunc to June 13, 1990.

MILLER, CROSBY & MILLER, P.A.

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Attorney for Judith S. Camus

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(813) 688-7038
Attorney for Plaintiffs

669:4709.2

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY

PATRICIA JANE JONES and LOGAN M. JONES, JR.,

Plaintiffs,

v.

GEORGE EUGENE HOUSE, TIMOTHY P. CAMUS, JUDITH S. CAMUS and GULF COAST NEWSPAPERS, INC.,

Defendants.

Case No. GC-G-87-2536

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ORDER VACATING DISMISSAL WITH PREJUDICE

This cause came on to be heard on the joint stipulation of Plaintiffs, PATRICIA JANE JONES and LOGAN M. JONES, JR. and Defendant, JUDITH S. CAMUS, to set aside the Order entered by this court on June 13, 1990 dismissing with prejudice the suit against Defendant, JUDITH S. CAMUS. The court being fully apprised of the facts and law in this matter, it is hereby:

ORDERED AND ADJUDGED

That the order of this court dated June 13, 1990 dismissing Defendant, JUDITH S. CAMUS with prejudice is hereby set aside and vacated nunc pro tunc to June 13, 1990 so as to render the June 13, 1990 order as if it never existed as to Defendant, JUDITH S. CAMUS.

DONE AND ORDERED in Chambers in Bartow, Polk County, Florida, this 30 day of August, 1990.

Carolyn K Fulmer

CAROLYN K. FULMER
Circuit Judge

PLAINTIFF'S EXHIBIT 3 Crosby

669:4709.7

FILED, RECORDED AND RECORD VERIFIED
E. D. "Bud" DIXON, Clk. Cir. Ct.
POLK COUNTY, FLA.
BY D.C.

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(3)

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

PATRICIA JANE JONES and
LOGAN M. JONES, JR.,

Plaintiffs,

vs.

GEORGE EUGENE HOUSE, TIMOTHY P. CAMUS, JUDITH S. CAMUS and GULF COAST NEWSPAPERS, INC.,

Defendants.

CASE NO. 87-252

ORDER VACATING ORDER ENTERED AUGUST 30, 1990
TITLED ORDER VACATING DISMISSAL WITH PREJUDICE

This matter came to the attention of the Court during a hearing on a Motion for Summary Judgment filed by Defendant, Gulf Coast Newspapers, Inc. On June 14, 1990, a joint motion for dismissal, signed by the attorneys for the plaintiffs, defendants Judith Camus and Timothy Camus, and defendant, Gulf Coast Newspapers, Inc., was filed. An order on the motion was also filed which dismissed with prejudice the plaintiffs' claims against defendants Judith Camus and Timothy Camus. Thereafter, defendant Gulf Coast Newspapers, Inc., filed a Motion for Summary Judgment on July 18, 1990, bearing a certificate of service to Mr. Samuel Crosby, counsel for the plaintiffs, dated July 9, 1990. This motion was scheduled for hearing August 30, 1990, at 4:00 p.m. On August 29, 1990, counsel for the plaintiffs contacted the Court and requested an appointment to hand deliver a motion and order for signing. He was advised that the [illegible] that afternoon but that he could bring the order the following morning between 8:30 and 9:00 a.m. The following morning, August 30, 1990,

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counsel did bring a pleading entitled Joint Stipulation and a corresponding order. When these papers were presented to the undersigned judge, they were not carefully reviewed because of the fact that the Court assumed the joint stipulation addressed a matter on which all parties were in agreement. At no time did counsel indicate to the Court that the Order being submitted pertained to a hearing coming before the Court later in the day. At the summary judgment hearing, the Court became aware of the nature of the joint stipulation and order that was signed earlier in the day and also became aware of the fact that counsel for defendant Gulf Coast Newspapers, Inc., was not served with any notice or copies of the joint stipulation and corresponding order. These were provided to him at the summary judgment hearing. At that time, counsel for Gulf Coast Newspapers, Inc. objected to entry of the order and questioned whether the Court had jurisdiction to enter such order. This Court announced that it was setting aside and vacating the order entered earlier in the day since no notice was provided to counsel for defendant Gulf Coast Newspapers, Inc., of that proceeding. The Court has further determined upon closer review of this matter that it did not have jurisdiction to sign the order dated August 30, 1990. The order which was previously entered dismissing the claims against defendants Judith Camus and Timothy Camus was dated June 13, 1990, and filed June 14, 1990. The time within which a motion for rehearing or notice of appeal could have been filed has long since expired. Therefore, the Court is without jurisdiction to enter any further orders with respect to the order dismissing with prejudice the action against Judith and Timothy Camus. It is therefore

ORDERED that the Order Vacating Dismissal with prejudice dated August 30, 1990, is hereby vacated.

DONE AND ORDERED this 31 day of August, 1990, at Bartow, Polk County, Florida.

Carolyn K. Fulmer
CAROLYN K. FULMER, CIRCUIT JUDGE

COPY TO:

Samuel G. Crosby
James R. Freeman
J. Michael McCarthy

FILED, RECORDED AND
RECORD VERIFIED
E. D. "Bud" DIXON, Cir. Ct.
POLK COUNTY, FLA.
BY D.C.

POLK OFFICIAL RECORDS PAGE

IN THE CIRCUIT COURT FOR POLK COUNTY, FLORIDA

PATRICIA JANE JONES and LOGAN M. JONES, JR.,

Plaintiffs,

vs.

GEORGE EUGENE HOUSE, TIMOTHY P. CAMUS, JUDITH S. CAMUS, and GULF COAST NEWSPAPERS, INC.,

Defendants.

CASE NO.: GC-G-87-2536

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CIRCUIT COURT
POLK COUNTY, FLA.

FINAL SUMMARY JUDGMENT

This cause came on to be heard on August 30, 1990, upon Defendant, Gulf Coast Newspapers, Inc.'s, Motion for Summary Judgment, and the Court, having heard the arguments of counsel, and having reviewed the evidence of record and Memoranda of Law submitted in support of and in opposition to the Defendant's Motion for Summary Judgment, makes the following findings:

1) The Plaintiffs' only claim against Defendant Gulf Coast Newspapers, Inc. (hereinafter Gulf Coast) was based on the theory that Gulf Coast was liable for the wrongful acts of its alleged employee, Judith S. Camus, under Respondeat Superior, or vicarious liability.

2) As a result of a settlement reached between the Plaintiffs and Defendants Judith S. Camus and Timothy P. Camus, this Court entered an Order dated June 14, 1990, which dismissed with prejudice the Plaintiffs' claims against Defendants Judith S. Camus and Timothy P. Camus.

3) The Order of this Court dismissing the Plaintiffs' claims against the Defendants, Judith S. Camus and Timothy P. Camus with

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prejudice operates as an adjudication on the merits under Rule 1.420 of the Florida Rules of Procedure of the Plaintiffs' claim against the Defendants, Judith S. Camus and Timothy P. Camus.

4) As a matter of law, the Plaintiffs' dismissal with prejudice of its claim against Gulf Coast's alleged employee has the legal effect of barring the Plaintiffs' claims against Defendant Gulf Coast Newspapers, Inc. Walsingham vs. Browning, 525 So. 2d 996 (1st DCA 1988), Citibank, N.A. vs. Data Lease Financial Corp., 904 F.2d 1498 (11th Cir. 1990).

The Court, having made the foregoing findings, finds that no genuine issue of any material fact exists, and that, as a matter of law the Defendant Gulf Coast Newspapers, Inc. is entitled to a Final Summary Judgment against the Plaintiffs, Patricia Jane Jones and Logan M. Jones, Jr., therefore it is:

ORDERED AND ADJUDGED that the Motion for Summary Judgment of Defendant, Gulf Coast Newspapers, Inc., be and is hereby granted, and that Plaintiffs Patricia Jane Jones and Logan M. Jones, Jr. take nothing by this action and that Defendant Gulf Coast Newspapers, Inc. go hence without day.

ORDERED AND ADJUDGED that this Court reserves jurisdiction to tax costs in favor of Defendant Gulf Coast Newspapers, Inc. upon proper motion.

DONE AND ORDERED this 5 day of October, 1990, in Bartow, Polk County, Florida.

Caroline K Fulmer

Caroline K. Fulmer
Circuit Court Judge

Copies furnished to:

FILED, RECORDED AND RECORD VERIFIED

(8)

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

PATRICIA JANE JONES and LOGAN M. JONES, JR.,
her husband,

Plaintiffs, CASE NO: GC-G 94-1653

vs.

SAMUEL G. CROSBY and
MILLER, CROSBY & MILLER, P.A.,

Defendants.

AFFIDAVIT OF A. WOODSON ISOM, JR.

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, appeared A. WOODSON ISOM, JR., who is personally known to me, and being duly sworn, does state:

1. My name is A. Woodson Isom, Jr. and my business address is 3802 Bay to Bay Boulevard, #B12, Tampa, Florida.

2. I was admitted to The Florida Bar in 1975 and am a member in good standing.

3. That I have been certified by The Florida Bar as a Civil Trial Lawyer since the inception of the Trial Lawyer Certification Program in 1983. I have been certified as a Trial Lawyer by the National Board of Trial Advocates since 1988.

4. That since 1975, my practice has been primarily in the areas of personal injury and wrongful death. From 1975 to 1985, my practice was limited to insurance defense

litigation. From 1985 until the present, the majority of my practice has been in the area of plaintiffs' personal injury and wrongful death.

5. That I have handled personal injury and wrongful death cases in several circuit courts of the State of Florida, including the Tenth Judicial Circuit.

6. That I have reviewed pleadings and other documents in the case of Patricia Jane Jones and Logan M. Jones, Jr. v. Gulf Coast Newspapers, Case No. GC-G-2536, which was pending in the Circuit Court of the Tenth Judicial Circuit in and for Polk County, relevant to the issue of the legal effect of the dismissal, with prejudice, of Defendants Timothy P. Camus and Judith S. Camus.

7. That I am familiar with the law of Florida as to the legal effect upon a claim against a passive, vicariously liable tortfeasor, (such as a principal/employer, Gulf Coast) of the dismissal, with prejudice, of a claim against an agent/servant (such as Camus). At the time that Defendant Crosby entered into a Joint Motion for Dismissal, with prejudice, of the claims of Jones against Camus, the well-settled law of Florida was that the dismissal effectively barred the claims of Jones against Gulf Coast.

8. That, in my opinion, all Florida attorneys handling personal injury claims knew or should have known that the dismissal, with prejudice, of the Camuses would act as a negative adjudication on the merits of the claim against Gulf Coast, whose culpability was vicarious, only.

9. That, in my opinion, Crosby failed to meet the minimum standards of acceptable legal representation by signing a Joint Motion for Dismissal, with prejudice, of the Camus'.

10. That I am familiar with JFK Medical Center, Inc. v. Price, 19 FLW S660 (December 23, 1994). This decision of the Florida Supreme Court changed the law of Florida regarding the issue of whether the dismissal, with prejudice, of an active tortfeasor would act as a bar to a claim against a passive tortfeasor. However, this decision does not change my opinions because the well-settled law of the State of Florida at the time of Crosby's actions was to the contrary and that principle should have been known to Crosby or any other Florida attorney who undertook to handle personal injury claims of this nature.

11. That, in my opinion, once Crosby realized that he should not have entered into the Joint Motion to Dismiss the claims with Camus, he should have filed a timely motion to set aside the dismissal pursuant to Rule. 1.540(b), F.R.C.P. In my opinion, the failure to file such a motion fell below the minimum standards of acceptable legal representation.

12. That, in my opinion, the negligence of Crosby caused legal damage to the Jones' in the following manner:

a. The Jones' were prevented from prosecuting their claims against Gulf Coast Newspapers, Inc., which had available liability insurance in the amount of $1,000,000, and apparently had assets sufficient to satisfy the full value of their claim.

b. The Jones' were prevented from obtaining a full recovery of their damages from their uninsured motorists carrier, CIGNA, because the dismissal of Gulf Coast Newspapers, Inc., presented CIGNA with several defenses to coverage, including: (1) no coverage was available because it was prejudiced

by the loss of its subrogation rights; and (2) it was entitled to a set off for the full amount of the available liability coverage of $1,000,000.

13. That, in my opinion, the settlement of Jones's claims against CIGNA for $125,000 was reasonable because of the problems noted in paragraph 12(b) above, which were created for them by Crosby's negligence.

14. That, in my opinion, the decision by Crosby to enter into a dismissal, with prejudice, of the claims against the Camus' was negligence and did not represent a reasonable exercise of professional judgment because the result of the dismissal, i.e., the subsequent dismissal of Gulf Coast, clearly was foreseeable and not subject to a difference of opinion among lawyers who undertake to handle personal injury claims. As stated above, this principle of law was well-settled at the time of the dismissal of the claims of the Camus'.

FURTHER AFFIANT SAYETH NOT.

A. WOODSON ISOM, JR.

The foregoing instrument was acknowledged before me this 2 day of March, 1995 by A. Woodson Isom, Jr., who is personally known to me or ~~who has produced _____ as identification~~ and who did take an oath.

Notary Public, State of Florida
My Commission Number/Expiration date:

CAMELLA L. DENNIS
MY COMMISSION # CC338699 EXPIRES
December 23, 1997
BONDED THRU TROY FAIN INSURANCE, INC.